

FILED
11/17/2025 2:38 PM
Mariyana T. Spyropoulos
CIRCUIT CLERK
COOK COUNTY, IL
2025CH06466
Calendar, 16
35392723

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

SHAYLA MARCOTTE, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

CAVU ECOMMERCE (AMER) LLC,

Defendant.

Civil Action No.: 2025CH06466

Hon. David B. Atkins

Calendar 16

NOTICE OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

TO: **SQUIRE PATTON BOGGS (US) LLP**
Marisol C. Mork
555 S. Flower Street, Suite 3100
Los Angeles, California 90071
Telephone: (213) 689-5137
marisol.mork@squirepb.com

Adam R. Fox
555 S. Flower Street, Suite 3100
Los Angeles, California 90071
Telephone: (213) 689-5166
adam.fox@squirepb.com

Counsel for Defendant

PLEASE TAKE NOTICE that on December 1, 2025 at 10:00 a.m., Plaintiff Shayla Marcotte (“Plaintiff”) will appear in the Circuit Court of Cook County, Illinois, Chancery Division, before the Honorable David B. Atkins, or any judge sitting in his stead, to present her ***Unopposed Motion for Final Approval of Class Action Settlement***,¹ a copy of which is attached hereto and served upon you. Pursuant to the Court’s standing order, the hearing shall take place via Zoom: Meeting ID: 925 5932 0340; Password: 209408.

¹Plaintiff’s Motion will be heard in conjunction with her previously-filed Unopposed Motion for Service Award and Attorneys’ Fees, Costs, and Expenses.

Plaintiff will move the Court to:

- (a) Enter an order granting final approval of the Settlement and dismissing Plaintiff's Claims with prejudice; and
- (b) Enter a final judgment as to Plaintiff's and Class Members' claims;

Plaintiff's Motion is based on: (1) Plaintiff's Unopposed Motion for Final Approval of Settlement; (2) the Declaration of Cameron R. Azari ("Azari Decl.") and all exhibits thereto; (3) the Declaration of Philip L. Fraietta ("Fraietta Decl.") and all exhibits thereto; and (4) the Proposed Final Order and Judgement submitted herewith.

Dated: November 17, 2025

Respectfully submitted,

BURSOR & FISHER, P.A.

By: /s/ Philip L. Fraietta

Philip L. Fraietta (ARDC No. 6337165)
50 Main Street, Suite 475
White Plains, NY 10606
Telephone: (914) 874-0708
Facsimile: (914) 206-3656
E-mail: pfraietta@bursor.com

Class Counsel

FILED
11/17/2025 2:38 PM
Mariyana T. Spyropoulos
CIRCUIT CLERK
COOK COUNTY, IL
2025CH06466
Calendar, 16
35392723

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

SHAYLA MARCOTTE, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

CAVU ECOMMERCE (AMER) LLC,

Defendant.

Civil Action No.: 2025CH06466

Hon. David B. Atkins

Calendar 16

**MEMORANDUM IN SUPPORT OF PLAINTIFF’S UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT**

Dated: November 17, 2025

BURSOR & FISHER, P.A.
Philip L. Fraietta (ARDC No. 6337165)
50 Main Street, Suite 475
White Plains, NY 10606
Telephone: (914) 874-0708
Facsimile: (914) 206-3656
E-mail: pfraietta@bursor.com

Class Counsel

TABLE OF CONTENTS

	PAGE(S)
INTRODUCTION	1
I. FACTUAL AND PROCEDURAL BACKGROUND.....	2
II. TERMS OF THE SETTLEMENT.....	3
A. Class Definition	3
B. Monetary Relief	4
C. Prospective Relief	4
D. Release	4
E. Notice and Administrative Expenses	4
F. Incentive Award, Attorneys' Fees, Costs, and Expenses.....	4
CLASS ACTION SETTLEMENT APPROVAL PROCESS.....	5
ARGUMENT	5
I. FINAL APPROVAL OF SETTLEMENT IS APPROPRIATE	6
A. The Settlement Provides Substantial Relief.....	6
B. Defendant's Ability To Pay	8
C. Continued Litigation Is Likely To Be Complex, Lengthy, And Expensive.....	8
D. There Has Been No Opposition To The Settlement	9
E. The Settlement Was The Result Of Arm's-Length Negotiations Between The Parties After A Significant Exchange Of Information	10
F. The Settlement Agreement Has Support of Experienced Class Counsel	10
G. The Parties Exchanged Information Sufficient To Assess The Adequacy Of The Settlement.....	11
II. THE UNOPPOSED MOTION FOR SERVICE AWARD AND ATTORNEYS' FEES, COSTS, AND EXPENSES SHOULD BE GRANTED	12
CONCLUSION.....	13

TABLE OF AUTHORITIES

	PAGE(S)
CASES	
<i>Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee</i> , 616 F.2d 305 (7th Cir. 1980)	5, 6
<i>Boyd v. Bechtel Corp.</i> , 485 F. Supp. 610 (N.D. Cal. 1979)	11
<i>Boyzo v. United Serv. Cos., Inc.</i> , 2020 WL 13505349 (N.D. Ill. Aug. 3, 2020)	2, 7
<i>Chambers v. Together Credit Union</i> , 2021 WL 1948453 (S.D. Ill. May 14, 2021)	8, 12
<i>City of Chicago v. Korshak</i> , 206 Ill. App. 3d 968 (1st Dist. 1990)	6, 9, 10, 12
<i>GMAC Mortg. Corp. of Pa. v. Stapleton</i> , 236 Ill. App. 3d 486 (1992)	11
<i>Hale v. State Farm Mut. Automobile Ins. Co.</i> , 2018 WL 6606079 (S.D. Ill. Dec. 16, 2018)	13
<i>Low v. Trump Univ., LLC</i> , 246 F. Supp. 3d 1295 (S.D. Cal. 2017)	11
<i>Martin v. AmeriPride Servs, Inc.</i> , 2011 WL 2313604 (S.D. Cal. June 9, 2011)	13
<i>McClaine v. DX Enters., Inc.</i> , 2025 WL 1114273 (S.D. Ill. Apr. 15, 2025)	1, 13
<i>McCormick v. Adtalem Glob. Educ., Inc.</i> , 2022 IL App (1st) 201197-U	9, 13
<i>Schulte v. Fifth Third Bank</i> , 805 F. Supp. 2d 560 (N.D. Ill. 2011)	7
<i>Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.</i> , 2016 IL App (2d) 150236	10
<i>Torres v. Pet Extreme</i> , 2015 WL 224752 (E.D. Cal. Jan. 15, 2015)	9

<i>Torres v. Pet Extreme</i> , 2015 WL 13653878 (E.D. Cal. Feb. 24, 2015)	9

<i>Vandervort v. Balboa Cap. Corp.</i> , 8 F. Supp. 3d 1200 (C.D. Cal. 2014)	9

STATUTES

735 ILCS 5/2-801	6

Cal. Bus. & Prof. Code § 17200	2

Cal. Civ. Code § 1770(a)(29).....	2

Cal. Civ. Code § 1770(a)(29)(A)	4, 7

N.Y. Arts & Cult. Aff. Law § 25.07(4).....	8

RULES

Fed. R. Civ. P. 23(e)(2).....	6

OTHER AUTHORITIES

Alba Conte & Herbert B. Newberg, <i>Newberg on Class Actions</i> (4th ed. 2002).....	5, 10

Pursuant to the Court's August 26, 2025 Order, Plaintiff Shayla Marcotte ("Plaintiff") respectfully moves for final approval of the class-wide Settlement Agreement entered into between the Parties in this Action. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit 1 to the Declaration of Philip L. Fraietta ("Fraietta Decl.") filed herewith.¹ Defendant does not oppose this Motion.

INTRODUCTION

On August 26, 2025, the Court preliminarily approved the class action settlement between Plaintiff Marcotte and Defendant CAVU Ecommerce (Amer) LLC ("Defendant") and directed that notice be sent the Class. *See* Fraietta Decl. ¶ 11, Ex. 2. The settlement administrator has implemented the Court-approved notice plan and direct notice has reached approximately 92.8% of the Class. Declaration of Cameron R. Azari ("Azari Decl.") ¶ 18. The reaction from the Class has been overwhelmingly positive. To date, only one Class Member has requested to be excluded, *id.* ¶ 30, and **none** have objected. *Id.* The Settlement is an excellent result for the Class and worthy of final approval. *See e.g., McClaine v. DX Enters., Inc.*, 2025 WL 1114273, at *2 (S.D. Ill. Apr. 15, 2025) (finding settlement reasonable and adequate as "supported by, among other things: the immediate benefits to the Settlement Class Members [and] the fact that only 2 class members opted out and no objections were filed[.]").

The strength of the Settlement speaks for itself. Defendant collected \$540,818.19 in allegedly unlawful service charges from California consumers from July 1, 2024 through March 10, 2025, and has agreed to a \$425,000 non-reversionary settlement fund from which Class Members who file a valid claim will receive *pro rata* cash payments. Fraietta Decl. Ex. 1 at § 2.1(b). The Settlement also provides meaningful prospective relief as Defendant modified the

¹ Unless otherwise defined herein, all capitalized terms have the same force, meaning and effect as defined in the Settlement Agreement.

purchase flows on its Websites. And, as part of the Settlement, Defendant agreed to clearly and conspicuously disclose Service Charges to consumers with the initially advertised price in the first instance, unless and until California's Honest Pricing Law, Cal. Civ. Code § 1770(a)(29) is amended, repealed, or otherwise invalidated.

Critically, the Settlement was reached despite substantial risk of non-recovery. Given the untested nature of California's Honest Pricing Law, Defendant's arguments would raise novel issues. This presents risks to Plaintiff's claims. Accordingly, since "the proposed settlement reflect[s] a reasonable compromise over contested issues, the court should approve the settlement." *Boyo v. United Serv. Cos., Inc.*, 2020 WL 13505349, at *2 (N.D. Ill. Aug. 3, 2020).

I. FACTUAL AND PROCEDURAL BACKGROUND

On or about January 29, 2025, Plaintiff Marcotte sent Defendant a Notice and Demand for Corrective Action as required by California's Consumers Legal Remedies Act (the "CLRA Letter"). Fraietta Decl. ¶ 4. The CLRA Letter informed Defendant that the checkout flows on its Websites, airportparkingreservations.com and airportparking.com (together, the "Websites"), violated California's Honest Pricing Law and were unfair and unlawful under California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* *Id.* California's Honest Pricing Law prohibits businesses from advertising, displaying, or offering a service "that does not include all mandatory fees or charges other than" taxes, government fees and/or postage and shipping charges. *See* Cal. Civ. Code § 1770(a)(29). The CLRA Letter informed Defendant that it was in violation of the Honest Pricing Law by providing consumers a host of airport parking reservation options at stated prices while failing to include the "Service Charge" with those prices. Fraietta Decl. ¶¶ 4, 7. That Service Charge was only added to the transaction at the checkout page;

several pages after Plaintiff and consumers have already selected a reservation option at an initially advertised price. *Id.* ¶ 7.

Over the next several months, the Parties engaged in good faith settlement discussions culminating in the agreement here. *Id.* ¶¶ 5-6. On June 18, 2025, Plaintiff filed the operative Class Action Complaint, seeking actual damages, restitution and disgorgement, injunctive relief, and certification of a Class of California residents who paid Defendant's "Service Charge" at checkout. *Id.* ¶ 7.

On July 23, 2025, Plaintiff filed her Motion for Preliminary Approval of Class Action Settlement, Fraietta Decl. ¶ 11, which the Court granted on August 26, 2025. On October 23, 2025, Plaintiff filed her Motion for Service Award and Attorneys' Fees, Costs, and Expenses. *Id.* ¶ 11. That motion is unopposed.

II. TERMS OF THE SETTLEMENT

The key terms of the Settlement, attached hereto to the Fraietta Declaration as Exhibit 1, are briefly summarized as follows:

A. Class Definition

The "Settlement Class" is defined as:

All California residents who made a reservation through airportparkingreservations.com or airportparking.com and paid a mandatory "Service Charge" at checkout from July 1, 2024 to March 10, 2025.²

Fraietta Decl, Ex. 1, § 1.36. The Settlement Class is comprised of 57,325 Members. Azari Decl. ¶ 21.

² Excluded from the Class are (1) any Judge or Magistrate presiding over this Action and members of their families; (2) CAVU, CAVU's subsidiaries, parent companies, successors, predecessors, and any entity in which CAVU or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (3) Persons who properly execute and file a timely request for exclusion from the Class; and (4) the legal representatives, successors or assigns of any excluded Persons.

B. Monetary Relief

Defendant will establish a non-reversionary Settlement Fund of \$425,000. *Id.* at Ex. 1 § 1.38. Class Members who submit timely, valid claims forms will receive a *pro rata* payment from the Settlement Fund equal to that Settlement Class Member's Out-of-Pocket Percentage multiplied by the Available Settlement Fund. *Id.* § 2.1(b). Payment will be made in the form of a check or electronic payment, at the Class Member's election. *Id.* § 2.1(c).

C. Prospective Relief

Defendant modified the purchase flow on its Websites effective March 11, 2025. Defendant agreed that it will clearly and conspicuously disclose Service Charges to the consumer with the advertised price presented to a consumer in the first instance, unless and until California's Honest Pricing Law, Cal. Civ. Code § 1770(a)(29)(A), is amended, repealed, or otherwise invalidated.

D. Release

Class Members will release Defendant and the "Released Parties" as defined in § 1.30 of Exhibit A, from all claims relating to or arising out of the collection of Fees from online reservations made on the Websites from July 1, 2024 to March 10, 2025. *Id.* § 1.29.

E. Notice and Administrative Expenses

The Settlement Fund will be used to pay the costs of sending Notice and costs of administration of Settlement. *Id.* § 1.34.

F. Incentive Award, Attorneys' Fees, Costs, and Expenses

Defendant has agreed that the Settlement Fund may also be used to pay Class Counsel reasonable attorneys' fees and to reimburse costs and expenses in this Action, in an amount to be approved by the Court. *Id.* § 8.1. Class Counsel has agreed to petition the Court for attorneys'

fees, costs, and expenses of no more than 35% of the Settlement Fund. *Id.* Additionally, Defendant agreed that Plaintiff Marcotte may receive, subject to the Court's approval, a service award of up to \$5,000. *Id.* § 8.3. These awards are subject to Court's approval, which Plaintiff moved for separately on October 23, 2025. That motion is unopposed.

CLASS ACTION SETTLEMENT APPROVAL PROCESS

Strong judicial and public policies favor the settlement of complex class action litigation, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Quick v. Shell Oil Co.*, 404 Ill. App. 3d 277, 282 (3rd Dist. 2010); *see also* 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.41 (4th ed. 2002) (hereinafter "*Newberg*").

Courts review proposed class action settlements using a well-established two-step process. *Newberg* § 11.25, at 38-39; *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 492 (1st Dist. 1992). The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is "within the range of possible approval." *Newberg*, § 11.25, at 38-39; *Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other grounds*. If the Court finds the settlement proposal is "within the range of possible approval," the case proceeds to the second step in the review process: the final approval hearing. *Newberg*, § 11.25, at 38-39. Plaintiff is presently at the second step of this two-step process.

ARGUMENT

Upon final approval, the Settlement reached in this matter will provide Settlement Class Members with substantial financial compensation and prospective relief that they otherwise likely would have been unable to obtain. Because the Settlement reached by the Parties is fair,

reasonable, and provides adequate compensation to the Settlement Class, and because the Notice Plan effectively notified class members of their rights under the Settlement Agreement, the Settlement warrants final approval by the Court.

I. FINAL APPROVAL OF SETTLEMENT IS APPROPRIATE

Section 2-801 provides that a court may approve a proposed class settlement “on a finding that it is fair, reasonable, and adequate.” 735 ILCS 5/2-801; *see also* Fed. R. Civ. P. 23(e)(2). In assessing the fairness, reasonableness, and adequacy of a proposed class settlement, Illinois courts consider the following factors: “(1) the strength of the case for the plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant’s ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed.” *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990); *see also Armstrong*, 616 F.2d at 314.

In this case, as the Court has already found in granting preliminary approval of the Settlement, all eight factors weigh in favor of finding the Settlement fair, reasonable, and adequate, warranting its final approval.

A. The Settlement Provides Substantial Relief

As to the first factor, the Settlement in this case provides substantial material benefits to the Settlement Class: each Settlement Class Member will automatically receive a *pro rata* payment from the Settlement Fund. Fraietta Decl., Ex. 1 § 2.1(b). Additionally, Defendant has revised its Websites’ displays such that it will clearly and conspicuously disclose Service Charges to the consumer with the advertised price presented to a consumer in the first instance,

unless and until California's Honest Pricing Law, Cal. Civ. Code § 1770(a)(29)(A), is amended, repealed, or otherwise invalidated. *Id.* § 2.2.

While Plaintiff believes in the strength of her case and believes that she would prevail in litigation, she is aware that Defendant intends to vigorously defend against the allegations asserted in the Complaint. These defenses include whether Defendant's Websites sufficiently appraised her and Class Members of the Service Charge and whether consumers were, in fact, deceived by the checkout flow. Plaintiff is keenly aware that, given the untested nature of California's Honest Pricing Law, Defendant's arguments would raise novel issues. This presents risks to Plaintiff's claims. Fraietta Decl. ¶¶ 16-18. Accordingly, since "the proposed settlement reflect[s] a reasonable compromise over contested issues, the court should approve the settlement." *Boyzo*, 2020 WL 13505349, at *2. Indeed, should Plaintiff continue, she would be required to prevail on a class certification motion, which would be highly contested and for which success is certainly not guaranteed. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) ("Settlement allows the class to avoid the inherent risk, complexity, time and cost associated with continued litigation") (internal citations and quotation omitted). And since the case law is largely undeveloped, "[i]f the Court approves the [Settlement], the present lawsuit will come to an end and [Settlement Class Members] will realize both immediate and future benefits as a result." *Id.* Approval would allow Plaintiff and the Settlement Class Members to receive meaningful and significant payments now, instead of years from now or never. *Id.* at 582.

Moreover, the reasonableness, adequacy, and fairness of this settlement are supported by similar "Fees" settlements. This settlement is similar to that approved in *Charles v. Color Factory, LLC*, brought under New York's similar Arts and Cultural Affairs Law. Like

California's, that law requires businesses to "disclose the total cost of the ticket, inclusive of all ancillary fees that must be paid in order to purchase the ticket." N.Y. Arts & Cult. Aff. Law § 25.07(4). The settlement in *Charles* consisted of a \$714,705.68 common fund for a class period of August 29, 2022 to January 23, 2024; nearly 17 months of fees. Case No. 1:24-cv-00322-JSR, ECF No. 35 at 4-5. There, like here, each class member will receive a *pro rata* cash payment as a percentage of the total amount of Out-of-Pocket fees they paid during the class period. *See id.* at 5.

Here, Defendant agreed to establish a settlement fund of \$425,000, equivalent to 78% of the total fees collected from the date California's statute went into effect until March 10, 2025. Fraietta Decl. ¶ 5. This is a better result than in *Chambers v. Together Credit Union*—a similar fee case—which granted final approval of \$525,000 settlement fund, 2021 WL 1948453, at *3; *5 (S.D. Ill. May 14, 2021), despite finding "net potential damages were \$885,541," or approximately 59% of fees collected during the class period. *Chambers*, Case No. 3:19-cv-00842-SPM (S.D. Ill. 2021), ECF No. 74, at 1-3. Importantly, like in *Charles*, this "proposal treats the Class members equitably to one another because the [] Settlement Fund will be divided pro rata based on the number of ... Fees each member was charged[.]" *Chambers*, 2021 WL 1948453, at *3.

B. Defendant's Ability To Pay

The second factor that can be considered is Defendant's ability to pay the Settlement sum. Defendant's financial standing has not been placed at issue here.

C. Continued Litigation Is Likely To Be Complex, Lengthy, And Expensive

The third factor asks whether the settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation. *See City of Chicago*, 206 Ill.

App. 3d at 972. In absence of settlement, it is certain that the expense, duration, and complexity of the protracted litigation that would result would be substantial. Aside from the typical risks associated with class action litigation, such as certifying a class, this case presented several matters of first impression under California law. Voluminous briefing and argument would likely be required for most issues. Fraietta Decl. ¶ 17. There is strong public policy in favor of settling and avoiding costly and time-consuming litigation. *McCormick v. Adtalem Glob. Educ., Inc.*, 2022 IL App (1st) 201197-U, ¶ 13. This resolution does that. *See also Torres v. Pet Extreme*, No. 1:13-CV-01778-LJO, 2015 WL 224752, at *6 (E.D. Cal. Jan. 15, 2015) (finding that the “risk that an opinion could issue changing the legal landscape in this relatively new area of [law]” favors approval of settlement), *adopted* 2015 WL 13653878 (E.D. Cal. Feb. 24, 2015); *Vandervort v. Balboa Cap. Corp.*, 8 F. Supp. 3d 1200, 1206 (C.D. Cal. 2014) (finding “novel legal issues” raised in the case “favor approving [the] settlement). As such, the immediate and considerable relief provided to the Settlement Class under the Settlement Agreement weighs heavily in favor of its approval compared to the inherent risk and delay of a long and drawn-out litigation, trial, and appeal. Protracted and expensive litigation is not in the interest of any of the Parties or Settlement Class Members.

D. There Has Been No Opposition To The Settlement

The fourth and sixth factors consider the amount of opposition to the Settlement and the reaction of the Settlement Class to the Settlement. *See City of Chicago*, 206 Ill. App. 3d at 972. Following the implementation of the Notice plan set forth in the Settlement Agreement, the Settlement Class’s reaction to the Settlement has been overwhelmingly favorable. In accordance with the Notice plan, the Settlement Administrator successfully provided direct notice to approximately 92.8% of the Class. Azari Decl. ¶ 18. Moreover, to date, only one Class Member

has requested to be excluded and **none** have objected. *Id.* ¶ 30. Accordingly, the fourth and sixth factors weigh in favor of granting final approval.

E. The Settlement Was The Result Of Arm's-Length Negotiations Between The Parties After A Significant Exchange Of Information

The fifth factor considers the presence of any collusion by the Parties in reaching the proposed settlement. *City of Chicago*, 206 Ill. App. 3d at 972. There is an initial presumption that a proposed settlement is fair and reasonable when it was the result of arm's-length negotiations. *Newberg*, § 11.42; *see also Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 21 (finding no collusion where there was "no evidence that the proposed settlement was not the product of 'good faith, arm's-length negotiations'").

Over the course of several months, the Parties engaged in discussions seeking to resolve this matter without having to burden the Court or expend resources. Class Counsel and Defendant's Counsel are each experienced in consumer class action litigation and Class Counsel, in particular, is experienced in similar "Fee" cases. *See Fraietta Decl. Ex. 3* (firm resume). In reaching resolution, Class Counsel relied on experience to ensure that the Settlement achieved the goals of getting relief for Class Members while recognizing the uncertainty of Plaintiff's largely untested claims. *Id.* ¶¶ 12-14. Finally, given the fair result for the Settlement Class in terms of the monetary and prospective relief, it is clear that this Settlement was reached as a result of good faith negotiations rather than any collusion between the Parties. Accordingly, this factor weighs in favor of final approval.

F. The Settlement Agreement Has Support of Experienced Class Counsel

The seventh factor is the opinion of competent counsel as to the fairness, reasonableness, and adequacy of the proposed settlement. *See City of Chicago*, 206 Ill. App. 3d at 972. Courts rely on affidavits in assessing proposed class counsel's qualifications under this factor. *Id.*

Class Counsel believes that the Settlement is in the best interest of the Settlement Class Members because the Settlement Class Members will be provided an immediate payment instead of having to wait for lengthy litigation and any subsequent appeals to run their course. Further, due to the defenses that Defendant has indicated that it would raise should the case proceed through litigation—and the resources that Defendant has committed to defend and litigate this matter—it is possible that the Settlement Class Members would receive no benefit whatsoever in the absence of this Settlement. “Where ‘[b]oth Parties are represented by experienced counsel,’ the recommendation of experienced counsel to adopt the terms of the proposed settlement ‘is entitled to great deal of weight.’” *Low v. Trump Univ., LLC*, 246 F. Supp. 3d 1295, 1302 (S.D. Cal. 2017) (internal citations omitted). Specifically, “[t]he recommendations of plaintiffs’ counsel should be given a presumption of reasonableness” as the “[a]ttorneys, having an intimate familiarity with a lawsuit ... are in the best position to evaluate the action, and the Court should not without good cause substitute its judgment for theirs.” *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979). Here, Plaintiff’s counsel has litigated fee cases previously, including *Color Factory*, which further supports preliminary approval. *See Fraietta Decl.* ¶ 12. Given proposed Class Counsel’s experience litigating similar “fee” cases, this factor also weighs in favor of granting preliminary approval. *Id.*; *See also Fraietta Decl. Ex. 3*; *see also GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 497 (1992) (finding that the court should give weight to the fact that class counsel supports the class settlement in light of its experience prosecuting similar cases).

G. The Parties Exchanged Information Sufficient To Assess The Adequacy Of The Settlement

The eighth factor is structured to permit the Court to consider the extent to which the court and counsel were able to evaluate the merits of the case and assess the reasonableness of

the settlement. *City of Chicago*, 206 Ill. App. 3d at 972. Here, the Parties exchanged information regarding class size and Fees paid during the Class Period. The Parties thoroughly investigated the facts and law relating to Plaintiff's allegations and Defendant's defenses. The Settlement represents approximately 78% of the total Fees collected by Defendant during the Class Period. Fraietta Decl. ¶ 5. *See also Chambers*, 2021 WL 1948453, at *3 ("[T]he amount of Defendants' settlement offer is significant, estimated to be nearly 60% of the potential damages the Class would have obtained had they prevailed on every issue[.]"). Accordingly, this factor also weighs in favor of approval.

II. THE UNOPPOSED MOTION FOR SERVICE AWARD AND ATTORNEYS' FEES, COSTS, AND EXPENSES SHOULD BE GRANTED

Because no objections were filed in opposition to Plaintiff's Motion for Attorneys' Fees, Costs, Expenses, and Service Award (the "Fee Petition"), and because all factors in favor of granting final approval of the Settlement have been met, the Court should also approve the requested Service Award to Plaintiff, and the Fee Award to Class Counsel.

The Fee Petition was filed on October 23, 2025 and was uploaded to the settlement website shortly after. In addition, the Class Notice was sent to all Settlement Class Members even before the Fee Petition was filed and fully informed the Settlement Class Members of the maximum amount of the Service Award and Fee Award that Class Counsel and Plaintiff would seek. Accordingly, Settlement Class Members had ample opportunity to consider the merits of the Fee Petition. However, no objections to the Fee Petition were filed, and no Settlement Class Members even informally expressed any dissatisfaction with the requested Service Award or Fee Award. The lack of any opposition is not surprising because, as discussed above, the Settlement provides substantial cash benefits to the Settlement Class and will result in meaningful changes to Defendant's compliance going forward. Moreover, the request for 35% of the Settlement

Fund (*i.e.*, \$148,750) in attorneys' fees, costs, and expenses is well within the range of fee awards approved by courts in Cook County and Illinois federal courts since "[c]ourts within the Seventh Circuit, and elsewhere, regularly award percentages of 33.33% or higher to counsel in class action litigation." *Hale v. State Farm Mut. Automobile Ins. Co.*, 2018 WL 6606079, at *10 (S.D. Ill. Dec. 16, 2018). *See e.g., Martin v. AmeriPride Servs, Inc.*, 2011 WL 2313604, at *8 (S.D. Cal. June 9, 2011) ("Other case law surveys suggest that 50% is the upper limit, 30-50% commonly being awarded in cases in which the common fund is relatively small."); *McCormick*, 2022 IL App (1st) 201197-U, ¶ 32 (affirming 35% award where "the attorneys were skilled litigators who undertook significant risk in overcoming DeVry's thin liability and achieving an extraordinary settlement for the class."); *McClaine*, 2025 WL 1114273 at *2 (granting final approval of "[a]ttorney's fees in the amount of ... 35% of the Settlement Fund[] and litigation costs of \$666.97[.]").

For the reasons stated in the unopposed Fee Petition, and because no Settlement Class Member has voiced any opposition or objection to the requested Fee Award or Service Award, Plaintiff and Class Counsel respectfully request that the Court approve the requested Service Award and Fee Award.

CONCLUSION

For the reasons stated above and in the unopposed Fee Petition, Plaintiff respectfully requests that the Court enter an Order granting final approval of the Settlement and approving the requested Service Award and Fee Award. A proposed Final Order and Judgment is submitted herewith.

Dated: November 17, 2025

Respectfully submitted,

BURSOR & FISHER, P.A.

By: /s/ Philip L. Fraietta

Philip L. Fraietta (ARDC No. 6337165)
50 Main Street, Suite 475
White Plains, NY 10606
Telephone: (914) 874-0708
Facsimile: (914) 206-3656
E-mail: pfraietta@bursor.com

Class Counsel

616 F.2d 305

United States Court of Appeals, Seventh Circuit.

Kevin ARMSTRONG et al., Plaintiffs-Appellees,

and

Jeffrey Jackson et al., Intervening Plaintiffs-Appellants,

v.

BOARD OF SCHOOL DIRECTORS OF the CITY

OF MILWAUKEE et al., Defendants-Appellees,

and

Milwaukee Teachers' Education
Association, Intervening Defendant.

No. 79-1655

|

Argued Nov. 9, 1979.

|

Decided Feb. 19, 1980.

|

Rehearing and Rehearing In Banc Denied April 28, 1980.

Synopsis

Intervening class members appealed from order of the United States District Court for the Eastern District of Wisconsin, John W. Reynolds, Chief Judge, [471 F.Supp. 800](#), approving a settlement agreement terminating a public school desegregation class action. The Court of Appeals, Sprecher, Circuit Judge, held that: (1) settlement was an appropriate method of arriving at a school desegregation remedy; (2) Court of Appeals was not required to employ a standard of review more stringent than usual abuse of discretion standards; (3) the settlement did not initiate or authorize any clearly illegal or unconstitutional conduct such as would have rendered it facially invalid; (4) District Court did not abuse its discretion in approving the settlement; and (5) District Court did not err in denying intervening class members' motion to intervene for purpose of seeking an order vacating the settlement since, due to such members' notice of appeal, the Court was without power to enter such an order.

Affirmed.

Procedural Posture(s): On Appeal.**Attorneys and Law Firms**

***307** Thomas I. Atkins, Atkins & Brown, Boston, Mass., for intervening plaintiffs-appellants.

Lloyd A. Barbee, Milwaukee, Wis., for plaintiffs-appellees.

L. C. Hammond, Quarles & Brady, Milwaukee, Wis., for defendants-appellees.

Before SPRECHER and CUDAHY, Circuit Judges, and DUMBAULD, Senior District Judge. *

Opinion

SPRECHER, Circuit Judge.

The issue in this appeal is whether the district court properly approved a settlement agreement terminating the Milwaukee public school desegregation class action ***308** after fifteen years of litigation. The intervening class members, the appellants here, contend that the district court failed to apply the correct standard in its evaluation of the settlement agreement. We conclude that the district court acted properly and affirm.

I

The original complaint in this litigation was filed in 1965, pursuant to [42 U.S.C. s 1983](#). An amended complaint was filed in 1968 alleging that the Milwaukee public school system was unlawfully segregated on the basis of race in violation of the Equal Protection Clause of the Fourteenth Amendment. The trial began in September 1973, and consumed thirty full days on the district court's calendar until its conclusion in January 1974. The parties produced approximately fifty witnesses and hundreds of exhibits during the trial and submitted proposed findings of fact and post-trial briefs after its conclusion. The district court then took the case under advisement.

In January 1976, the district court issued its decision and order, finding that the defendants had knowingly and intentionally carried out a systematic program of faculty and student segregation and had created and maintained a dual school system. [Amos v. Board of School Directors of the City of Milwaukee](#), 408 F.Supp. 765, 821 (E.D.Wis.1976). In its decision and order, the district court also certified the litigation as a class action pursuant to [Fed.R.Civ.P. 23\(b\)\(2\)](#),¹ and appointed counsel for the class. [408 F.Supp. at 771-76](#).² An immediate appeal from the district court's finding of a violation was brought to this court pursuant to [28 U.S.C. s 1292\(b\)](#).

In addition to finding a violation of the Equal Protection Clause, the district court, in its initial decision, also permanently enjoined the defendants from any future acts of racial discrimination and appointed a special master to assist in the formulation of an appropriate remedy. While defendants' appeal was pending, they petitioned the district court to stay enforcement of the permanent injunction and to revoke the appointment of the special master until final resolution of the appeal by this court. In a decision issued in May 1976, the district court declined to stay the injunction, revoke the appointment of the special master or suspend his activities. *Armstrong v. O'Connell*, 416 F.Supp. 1325, 1344 (E.D.Wis.1976).³ Soon thereafter, the district court ordered the defendants to begin desegregation of students and faculty pursuant to an interim plan. *Armstrong v. O'Connell*, 416 F.Supp. 1344 & 1347 (E.D.Wis.1976). The defendants *309 complied with the district court's orders and exceeded the goals established by the court.

This court issued its decision affirming the district court's initial finding of a constitutional violation in July 1976. *Armstrong v. Brennan*, 539 F.2d 625, 637 (7th Cir. 1976). Defendants filed a petition for certiorari in the Supreme Court in December 1976, after unsuccessfully petitioning this court for rehearing and rehearing en banc. While the certiorari petition was pending in the Supreme Court, the district court held further hearings with respect to the adoption of a final desegregation plan for the Milwaukee public schools. In March 1977, the district court issued its final desegregation order, which encompassed both faculty and student body desegregation. *Armstrong v. O'Connell*, 427 F.Supp. 1377 (E.D.Wis.1977). The defendants appealed from this order, but also began to act in compliance with it.

The Supreme Court granted defendants' petition for certiorari in June 1977, and, in a per curiam order, vacated this court's judgment and remanded the case for reconsideration in light of *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977) and *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977). *Brennan v. Armstrong*, 433 U.S. 672, 97 S.Ct. 2907, 53 L.Ed.2d 1044 (1977). On remand from the Supreme Court, this court vacated and remanded both the district court's original liability decision and its final desegregation order. 566 F.2d 1175 (7th Cir. 1977).

On remand, the district court allowed the parties to supplement the record with respect to the issue of

segregative intent. This supplementation amounted to a hearing consuming twenty-seven days, during which sixty-five witnesses were called and almost 1,000 new exhibits were admitted; the record doubled in size as a result. On the basis of the expanded record, the district court found that the defendants had discriminated against the plaintiffs with segregative intent in violation of the Equal Protection Clause. *Armstrong v. O'Connell*, 451 F.Supp. 817, 820 (E.D.Wis.1978). Another evidentiary hearing, this one consuming eight days, was then conducted with respect to the present effects of the past segregative acts of the defendants. The district court found that the defendants' violations had had a "pervasive, systemwide impact (requiring) . . . a systemwide remedy encompassing both student population and teacher assignment" *Armstrong v. O'Connell*, 463 F.Supp. 1295, 1309 (E.D.Wis.1979). The court did not order any particular remedial action at that time; it instead ordered the parties to submit proposed desegregation plans.⁴ *Id.* at 1310.

On March 1, 1977, the plaintiffs and defendants submitted for the court's approval a proposed settlement agreement; the agreement was the product of nine months of negotiations between counsel for both sides. This settlement agreement, which is the subject of this appeal,⁵ deals only with desegregation of the student population. A separate faculty desegregation proposal was submitted but not made part of the agreement because an intervening party, the Milwaukee Teachers' Education Association, would not approve its terms. The court held an initial hearing on March 5, *310 1979, to determine whether the settlement agreement was within the range of possible approval; finding that it was, the court approved a class notice which was sent to all class members on March 14, 1979, and published in five Milwaukee newspapers.⁶ The notice informed all class members of their right to appear at the scheduled fairness hearing and of the procedures to be followed in making oral or written objections to the proposal.

At the fairness hearing, which was conducted on March 26, 27 and 29, 1979, the district court heard statements from all counsel, received a number of exhibits, and heard testimony from several witnesses and from forty-five class members responding to the notice, most of whom opposed the settlement. On the basis of this information, the district court, after a careful analysis of the factors to be considered in evaluating a class action settlement, entered its order approving the settlement agreement. *Armstrong v. Board of*

School Directors, 471 F.Supp. 800, 813 (E.D.Wis.1979). The intervening class members appeal from this order.⁷

On June 11, 1979, the intervening plaintiffs filed a motion in the district court for leave to intervene for the purpose of seeking an order vacating the settlement approval or, alternatively, for the purpose of appealing from that approval. The district court, in an order issued June 20, 1979, denied the motion on the ground that the notice of appeal contemporaneously filed by the intervening plaintiffs had transferred all jurisdiction over the case to this court, thus depriving the district court of jurisdiction to grant the motion. The district court indicated, however, that if it had possessed jurisdiction, it would have permitted intervention for purposes of appeal but would not have vacated the settlement. The intervening class members also appeal from the district court's denial of their motions to intervene.

II

The settlement agreement is published as Appendix A to the district court's decision, 471 F.Supp. 800, 813-20; it is therefore unnecessary to discuss its terms in detail in this opinion. We will, however, briefly describe its most important provisions insofar as they are relevant to our review of the district court's order.

The settlement agreement begins with a recital of the protracted history of the Milwaukee school desegregation litigation and a brief explanation of the reasons underlying plaintiffs' and defendants' decision to terminate the dispute through settlement. The first substantive provision of the agreement permanently enjoins the defendants, their successors, officers and agents from discriminating on the basis of race in the operation of the Milwaukee public schools. 471 F.Supp. at 815. The agreement contains one other injunctive provision, which requires that decisions respecting school openings and closings and the location of specialty programs not be made in a racially discriminatory manner. 471 F.Supp. at 818.

In addition to the injunctive provisions, the agreement places affirmative obligations *311 upon the defendants in terms of active desegregation of the Milwaukee public schools. Every student in the system is given the right to attend a desegregated school⁸ upon request; defendants are required to provide annual written notice of this right to all students. 471 F.Supp. at 815. The defendants also must assign students

within the system so that a certain minimum number are enrolled in desegregated schools.⁹ This minimum number is derived by means of a formula contained in the agreement and will vary with the system's total and minority enrollment. 471 F.Supp. at 815. Application of the agreement precludes the existence of any all-white schools in Milwaukee; the desegregation formula, however, leaves open the possibility that some all-black schools will persist. The formula does not require that any one-race schools exist and defendants are free to go beyond the order's minimum requirements to eliminate all one-race schools in the Milwaukee public school system. 471 F.Supp. at 816.¹⁰ In addition, the agreement requires that defendants continue to implement the pre-existing "racial balance" transfer system which permits student transfers only where they will enhance the racial balance of the system. 471 F.Supp. at 815, 819-20. In order to ensure the success of the settlement agreement as an educational and social, as well as a legal, *312 venture, the defendants are required to develop and implement a "human relations program for students" which will aid in the achievement of quality education and successful desegregation. 471 F.Supp. at 816.

The agreement establishes a procedure whereby the defendants' compliance with its provisions shall be monitored by a United States Magistrate and by a five-member monitoring board appointed to assist him. Individual class members may file complaints of noncompliance with the board; the Superintendent of Schools must respond to such complaints and the monitoring board may investigate further if it finds the response insufficient. The board may recommend to the Magistrate that action be taken on particular complaints. The board and plaintiffs' counsel have the right, upon reasonable notice, to visit any school in the system to determine whether it is in compliance with the terms of the agreement. In addition, the defendants are required to submit periodic reports regarding the racial composition of the Milwaukee public schools. Decisions of the board may be reviewed by the Magistrate with a right of appeal to the district court. The monitoring procedure will remain in effect throughout the full five year duration of the settlement agreement.¹¹ 471 F.Supp. at 816-18.

Finally, the agreement provides for the payment of \$550,000.00 in fees and \$13,428.11 in expenses to counsel for the named plaintiffs and \$300,000.00 in fees and \$29,350.00 in expenses to counsel for the absent class members in complete payment for services rendered and expenses incurred in this litigation. 471 F.Supp. at 818-19.

The district court readily approved the payments because it was

III

A

well aware of (counsel's) competence, of the time and labor spent by them, of the magnitude and complexity of this litigation, of the responsibility undertaken by them, of the work performed by them out of court in preparation for court proceedings, and of what they have achieved during this litigation.

471 F.Supp. at 811. The court went on to comment that it was

satisfied that the amount offered them in settlement of their claim for legal services rendered is less than the Court would have awarded had it been required to decide the issue of fees, but not too small that it will discourage attorneys in the future from undertaking class representation in cases of public interest. Therefore, the Court finds that the portion of the settlement agreement which deals with compensation for plaintiffs' attorneys is fair, reasonable, and adequate under all of the circumstances of this case.

Id. at 811. No party to this appeal raises any specific objections to this aspect of the district court's order.

The district court carefully considered each of the settlement terms outlined above as well as the strength of plaintiffs' case on the merits, the complexity and expense of further litigation, the opinion of counsel for both sides, and all of the other factors which must be weighed when any class action settlement is presented for approval. We do not understand the intervening plaintiffs to argue that the court somehow misapplied the class action standard; rather, they argue that the class action standard should not have been applied at all. It is to this argument which we direct our primary attention.

It is axiomatic that the federal courts look with great favor upon the voluntary resolution of litigation through settlement. *U. S. v. McInnes*, 556 F.2d 436, 441 (9th Cir. 1977); *Du Puy v. Director, Office of Workers' Compensation Programs*, 519 F.2d 536, 541 (7th Cir. 1975), cert. denied *313, 424 U.S. 965, 96 S.Ct. 1459, 47 L.Ed.2d 732 (1976). In the class action context in particular, "there is an overriding public interest in favor of settlement." *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977). Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources. Id.

Settlement of a class action is not, however, an unmixed blessing. Balanced against the "overriding public interest in favor of settlement" are strong countervailing public policies which counsel against automatic judicial acceptance of such agreements. First and foremost is the fact that most of those whose rights are affected by a class action settlement the members of the class are not involved in its negotiation nor are they present to voice their views in court. The class members must rely upon the representation of the class representatives and class counsel to protect their interests. While this representation is no doubt vigorous in most cases, on occasion the negotiating parties may find that their individual interests can best be served by a settlement which is not in the best interests of the class as a whole. Similarly, class counsel may be persuaded by the prospect of a substantial fee to accept a settlement proposal which leaves the class with less relief than could have been procured through more vigorous negotiation. In such cases, the class members may find that substantial rights have been bargained away in exchange for relief which inures primarily to the benefit of a few class members or class counsel. See *In re General Motors Corp. Engine Interchange Litigation*, 594 F.2d 1106, 1120 (7th Cir. 1979), cert. denied, — U.S. —, 100 S.Ct. 146, 62 L.Ed.2d 95 (1979); *Moreland v. Rucker Pharmacal Co.*, 63 F.R.D. 611, 615 (W.D.La.1974).

In addition to this concern with the interests of class members, there is a concern with the interests of the public as a whole. The substantive issues involved in many class actions reflect a broad public interest in the rights to be vindicated or the social or economic policies to be established. In such cases,

the ramifications of a settlement can extend far beyond the rights of individual class members. This public interest is present not only in civil rights suits such as the one now before us, but also in such economic litigation as antitrust and consumers' rights actions. Uncritical acceptance of a class action settlement can, therefore, disturb important national policies beyond the immediate impact upon the rights of class members. See *Developments in the Law Class Actions*, 89 Harv.L.Rev. 1318, 1536-39 (1976).

To safeguard the rights of class members and allow consideration of the broader implications of a class action settlement, [Rule 23\(e\) of the Federal Rules of Civil Procedure](#) requires that notice of a proposed settlement be sent to all class members and that judicial approval of settlement offers be procured prior to dismissal of a class action.¹² [Rule 23\(e\)](#) does not specify any particular standard which a settlement must satisfy nor does it provide for a procedure within which settlement proposals should be reviewed. The courts of appeals have required that district court approval of a settlement pursuant to [Rule 23\(e\)](#) be given only where the district court finds the settlement fair, reasonable and adequate. See, e. g., [Grunin v. International House of Pancakes](#), 513 F.2d 114, 123 (8th Cir.), cert. denied, 423 U.S. 864, 96 S.Ct. 124, 46 L.Ed.2d 93 (1975). A district court's determination that a settlement is fair, reasonable and adequate will be reversed on appeal only upon a clear showing that the court abused its discretion. [Dawson v. Pastrick](#), 600 F.2d 70, 75 (7th Cir. 1979); *314 [E. E. O. C. v. American Telephone & Telegraph](#), 556 F.2d 167, 174 (3d Cir. 1977), cert. denied, 438 U.S. 915, 98 S.Ct. 3145, 57 L.Ed.2d 1161 (1978).

B

District court review of a class action settlement proposal is a two-step process. The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is "within the range of possible approval." This hearing is not a fairness hearing; its purpose, rather, is to ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing. *Manual for Complex Litigation* s 1.46, at 53-55 (West 1977).¹³ If the district court finds a settlement proposal "within the range of possible approval," it then proceeds to the second step in the review process, the fairness hearing. Class members are notified of the proposed settlement and of the fairness hearing at which they and all

interested parties have an opportunity to be heard. The goal of the fairness hearing is

to adduce all information necessary to enable the judge intelligently to rule on whether the proposed settlement is "fair, reasonable, and adequate."

Manual for Complex Litigation at 57. On the basis of all information available to him, the trial judge must decide whether or not to approve the proposed settlement.

Although review of class action settlements necessarily proceeds on a case-by-case basis, certain factors have been consistently identified as relevant to the fairness determination. The district court's opinion approving the settlement now before us listed these factors:

Among the factors which the Court should consider in judging the fairness of the proposal are the following:

- "(1) ' * * * the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement';
- "(2) '(T)he defendant's ability to pay';
- "(3) '(T)he complexity, length and expense of further litigation';
- "(4) '(T)he amount of opposition to the settlement';"

Manual, supra, at 56.

Professor Moore notes in addition the factors of:

- "(1) * * *
- "(2) Presence of collusion in reaching a settlement;
- "(3) The reaction of members of the class to the settlement;
- "(4) The opinion of competent counsel;

“(5) The stage of the proceedings and the amount of discovery completed.”

3B Moore's Federal Practice P 23.80(4) at 23-521 (2d ed. 1978).

471 F.Supp. at 804. As the district court noted, the first factor, the strength of plaintiffs' case on the merits balanced against the settlement offer, is generally regarded as the most important. See *Grunin v. International House of Pancakes*, 513 F.2d 114, 124 (8th Cir.), cert. denied, 423 U.S. 864, 96 S.Ct. 124, 46 L.Ed.2d 93 (1975); *Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974). While consideration of this factor will require some evaluation of the merits of the dispute, the district court must refrain from reaching conclusions upon issues which have not been fully litigated. *Detroit v. Grinnell Corp.*, 495 F.2d at 456; *Patterson v. Stovall*, 528 F.2d 108, 114 (7th Cir. 1976).

In making its fairness determination, the district court must not forget that it is reviewing a settlement proposal rather *315 than ordering a remedy in a litigated case. As the Second Circuit noted:

The Court must eschew any rubber stamp approval in favor of an independent evaluation, yet, at the same time, it must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case.

Detroit v. Grinnell Corp., 495 F.2d 448, 462 (2d Cir. 1974). Nonetheless, the district court must clearly set forth in the record its reasons for approving the settlement in order to make meaningful appellate review possible. *Dawson v. Pastrick*, 600 F.2d 70, 75-76 (7th Cir. 1979). This is particularly important in civil rights class actions. See, e. g., *Bryan v. Pittsburgh Plate Glass Co.*, 494 F.2d 799, 804 (3d Cir.), cert. denied, 419 U.S. 900, 95 S.Ct. 184, 42 L.Ed.2d 146 (1974) (employment discrimination). Even in such cases, however, the court's reasoning need not be so specific as to amount to a judgment on the merits. *Id.*

Courts of appeals, in reviewing district court approval of class action settlements, engage in an even more limited inquiry than the district court. In determining whether a district court abused its discretion, a court of appeals focuses not on the substantive law governing the claims asserted in the litigation, but on the general principles governing approval of class action settlements. As this court noted in a recent Title VII class action:

(W)e must recognize that we are here reviewing the propriety of a settlement and not a judgment rendered after trial. We believe that the issues raised by the intervenor should not be decided on the basis of Title VII law, but rather must be decided on the basis of legal principles regulating judicial review of settlement agreements.

Airline Stewards & Stewardesses Ass'n v. American Airlines, Inc., 573 F.2d 960, 963 (7th Cir.), cert. denied, 439 U.S. 876, 99 S.Ct. 214, 58 L.Ed.2d 190 (1978). See also *Dawson v. Pastrick*, 600 F.2d 70, 75 (7th Cir. 1979). Courts of appeals view the facts in the light most favorable to the settlement. *Patterson v. Stovall*, 528 F.2d 108, 112 (7th Cir. 1976). In addition, they do not focus on individual components of settlements, but rather view them in their entirety in evaluating their fairness. *McDonald v. Chicago Milwaukee Corp.*, 565 F.2d 416, 425 (7th Cir. 1977); *Cotton v. Hinton*, 559 F.2d 1326, 1331-32 (5th Cir. 1977). Such deference is due the judgment of the district judge because of his familiarity with the litigants, the history of the litigation and the merits of the substantive claims asserted. *Ace Heating & Plumbing Co. v. Crane Co.*, 453 F.2d 30, 34 (3d Cir. 1971).

The principles governing district court and court of appeals review of settlement proposals seek to take account of the special concerns implicit in class action settlements while still preserving the essential character of settlement of a lawsuit. Whether the lawsuit being settled is a civil rights class action or a simple two-party contract suit, the essence of a settlement is compromise an abandonment of the usual total-win versus total-loss philosophy of litigation in favor of a solution somewhere between the two extremes. This court has, on more than one occasion, taken note of this essential character, stating that “the essence of a settlement is a bilateral exchange. ‘The inherent nature of a compromise is to give up

certain rights or benefits in return for others.’ ” *In re General Motors Corp. Engine Interchange Litigation*, 594 F.2d 1106, 1135 (7th Cir. 1979) (citation omitted), cert. denied, — U.S. —, 100 S.Ct. 146, 62 L.Ed.2d 95 (1979). See also *Patterson v. Stovall*, 528 F.2d 108, 115 (7th Cir. 1976); *McDonald v. Chicago Milwaukee Corp.*, 565 F.2d 416, 425, 429 (7th Cir. 1977). Because settlement of a class action, like settlement of any litigation, is basically a bargained exchange between the litigants, the judiciary's role is properly limited to the minimum necessary to protect the interests of the class and the public. Judges should not substitute their own judgment as to optimal settlement terms for the judgment of the litigants and their counsel.

IV

A

The initial issue with which we are faced on this appeal is whether the principles *316 outlined above governing judicial approval of class action settlements are to be applied in this case or whether the settlement before us must be evaluated according to some more stringent standard of review. The district court applied class action settlement principles to the settlement proposal, found it fair, adequate and reasonable, and thus approved it. The settlement's proponents, of course, argue that the district court acted properly in approving the settlement. The intervenors, on the other hand, argue in effect that, because the district court had already found a constitutional violation with a system-wide impact, the settlement should have been evaluated as if it had been presented for the district court's consideration as a possible remedy in a fully litigated dispute.¹⁴ They go on to assert that the settlement cannot be approved because it stops short of providing the degree and scope of desegregation relief available in school desegregation suits which are litigated to a final conclusion.¹⁵

The underlying question implicit in the intervenors' argument is whether it is possible to “settle” the remedial portion of a school desegregation class action at all. As we noted in Part III, *supra*, the essence of settlement is a compromise in which both parties relinquish some rights in order to gain benefits which would not otherwise be available or would be available only at the expense of further litigation. The intervenors appear to argue that once liability is established in a school desegregation suit, the plaintiffs may not agree

to any compromise as to the remedial portion of the suit; the plaintiffs may not exchange their potential right to a particular remedial plan for other remedies or programs or for a speedy final resolution of the litigation. Such a rule would effectively preclude settlement because, by prohibiting any meaningful compromise as to remedy, it would eliminate the element of exchange which is at the heart of settlement of any litigation. The essence of the intervenors' position seems to be that this element of exchange, while most desirable in purely economic litigation, is inappropriate when rights of constitutional stature are involved.

The issue raised by the intervenors appears to be one of first impression in the federal courts. Although resolution of school desegregation controversies by way of settlement or consent decree is not uncommon,¹⁶ our research has uncovered no case in which such a resolution was challenged on the fundamental basis asserted here. However, other varieties of civil rights litigation, particularly employment discrimination class actions, are frequently resolved by settlement and these settlements are often reviewed by courts of appeals. These cases provide a useful analogy in the school desegregation context.

*317 Settlement of an employment discrimination class action would seem to raise many of the concerns expressed by the intervenors in this case. Although it is difficult to rank civil rights in terms of importance, it is clear that the rights involved in employment discrimination and school desegregation cases are similar in scope, origin and significance.¹⁷ Despite this fact, in the many court of appeals decisions which review district court approval of settlements in employment discrimination class actions, there are no suggestions that the importance of the substantive rights involved precludes compromise or requires a special standard of review. While the terms of such settlements are to be evaluated by the district courts with particular care, in view of the public policies implicated in these suits, the courts must also keep in mind the policy favoring settlement. *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977); *Mandujano v. Basic Vegetable Products, Inc.*, 541 F.2d 832, 835-36 (9th Cir. 1976).¹⁸ The appropriate balance between the public policies involved in these civil rights actions and the policy favoring settlement is struck by application of the class action settlement principles described in Part III, *supra*. District courts regularly apply these principles to employment discrimination settlements and are reversed on appeal only for an abuse of discretion. See, e. g., *Dawson v. Pastrick*, 600 F.2d 70, 74 (7th Cir. 1979); *Pettway v. American Cast*

Iron Pipe Co., 576 F.2d 1157, 1170 (5th Cir. 1978), cert. denied, 439 U.S. 1115, 99 S.Ct. 1020, 59 L.Ed.2d 74 (1979); *Cotton v. Hinton*, 559 F.2d 1326, 1329 (5th Cir. 1977). Such settlements may provide for the compromise of some of the remedies potentially available to the plaintiff class as long as the settlement as a whole is fair, reasonable and adequate. See, e. g., *Airline Stewards & Stewardesses Ass'n v. American Airlines*, 573 F.2d 960, 964 (7th Cir.), cert. denied, 439 U.S. 876, 99 S.Ct. 214, 58 L.Ed.2d 190 (1978).¹⁹

The employment discrimination cases cited above persuade us that, despite the importance of the substantive rights of the class members, settlement is an appropriate method of arriving at a school desegregation remedy. While courts should be extremely sensitive to the possibilities for abuse where a compromise of the civil *318 rights of a class is proposed, a blanket prohibition of compromise could result, in many cases, in abandonment of the substantial benefits which can result from voluntary resolution of litigation, without a commensurate increase in the protection accorded the civil rights of the class. Indeed, it appears that school desegregation is one of the areas in which voluntary resolution is preferable to full litigation because the spirit of cooperation inherent in good faith settlement is essential to the true long-range success of any desegregation remedy. Cf. *Patterson v. Newspaper & Mail Deliverers' Union*, 514 F.2d 767, 771 (2d Cir. 1975), cert. denied, 427 U.S. 911, 96 S.Ct. 3198, 49 L.Ed.2d 1203 (1976) (employment discrimination). Accord *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977). A remedial decree reached through agreement between the parties may, because of the community cooperation it inspires, more effectively implement the constitutional guarantee of equal protection than a seemingly more stringent court-ordered remedy which the community views as imposed upon it from the outside. See *Williamsburg Fair Housing Committee v. New York City Housing Authority*, 450 F.Supp. 602, 606 (S.D.N.Y.1978) (fair housing). The observations of the district court in *Tate v. Werner*, 68 F.R.D. 513 (E.D.Pa.1975), a prisoners' rights class action, are equally appropriate in the school desegregation context:

We were well aware of the subtlety of the alleged discrimination and the uncertain efficacy of any relief unless all parties were willing to participate in the Court's decree. Under these circumstances, a settlement . . .

presented the most appropriate solution to the controversy.

Id. at 521. We are unwilling to forego the potential benefits of settlement of school desegregation cases.²⁰ The standard of review applied by the district court in this case, when applied flexibly on a case-by-case basis, ensures the maximum protection possible for the rights of class members consistent with the public interest in resolution of such litigation by settlement.

As a corollary to the argument that the district court's application of the class action standard was inappropriate in this case, it is urged that this court employ a standard of review more stringent than the usual abuse of discretion standard. The basis for this suggestion is explained by amici as follows:

In this case the plaintiffs raise substantial constitutional claims. The case is one of broad public importance and significance. In this regard this case differs substantially from cases where a class of plaintiffs is seeking money damage relief for economic harms suffered in violation of law.

Brief of Amici Curiae at 5. This argument misconceives the reasoning which underlies court of appeals deference to district court approval of class action settlements. The abuse of discretion standard is employed not because the courts of appeals consider the economic claims involved in most class actions too insignificant to deserve closer scrutiny, but rather

because (the trial judge) is exposed to the litigants, and their strategies, positions and proofs. He is aware of the expense and possible legal bars to success. Simply stated, he is on the firing line and can evaluate the action accordingly.

Ace Heating & Plumbing Co. v. Crane Co., 453 F.2d 30, 34 (3d Cir. 1971). The consistent application of the abuse

of discretion standard in employment discrimination cases reveals that it is not reserved only for purely economic litigation. See, e. g., *E. E. O. C. v. American Telephone & Telegraph*, 556 F.2d 167, 174 (3d Cir. 1977), cert. denied, 438 U.S. 915, 98 S.Ct. 3145, 57 L.Ed.2d 1161 (1978); *319 *Pettway v. American Cast Iron Pipe Co.*, 576 F.2d 1157, 1168-69, 1214 (5th Cir. 1978), cert. denied, 439 U.S. 1115, 99 S.Ct. 1020, 59 L.Ed.2d 74 (1979); *Dawson v. Pastrick*, 600 F.2d 70, 75-76 (7th Cir. 1979).

We can imagine no case in which deference to the judgment of the district court is more appropriate than the present one. This litigation has been before the same district judge for its entire fifteen year history. He has issued hundreds of pages of published opinions, has heard voluminous testimony and reviewed countless documents, and has ruled on a variety of issues ranging from preliminary procedural matters to the substantive merits of the plaintiffs' constitutional claims. His familiarity with the litigants and the litigation is a valuable asset which should not lightly be discarded. In the absence of a showing of exceptional circumstances, we decline to do so. The abuse of discretion standard will govern our review of the district court's approval of the settlement proposal.

B

Despite our resolution of the issues discussed above, we believe that the intervenors' position is not wholly without merit. Their concern that constitutional requirements might be frustrated through the use of settlement agreements in school desegregation class actions is a valid one deserving serious attention. The Eighth Circuit expressed a similar concern in *Liddell v. Caldwell*, 546 F.2d 768 (8th Cir. 1976), cert. denied, 433 U.S. 914, 97 S.Ct. 2987, 53 L.Ed.2d 1100 (1977), and clearly indicated that a school desegregation plan devised through voluntary means, in that case a consent decree, must attain a certain minimum level of constitutional compliance. *Id.* at 773-74.²¹ A federal court cannot permit an agreement between counsel for the defendants and counsel for the plaintiff class seriously to undercut the constitutional policy requiring desegregation of our nation's schools; this is true even where the class members themselves do not oppose a particular settlement. At the same time, however, the court cannot disregard the desire of the litigants amicably to settle their litigation nor can it ignore the substantial benefits which can accrue to both the class members and the general public from a fair and adequate settlement of a school desegregation controversy.

The accommodation of these potentially competing interests can be achieved within the framework of the class action settlement standard. Inherent in this standard are two characteristics which ensure that federal courts reviewing class action settlements will give due consideration to the public interests implicated in the suits before them. First, as has been recognized in employment discrimination cases, while the relative importance of the substantive claims asserted in civil rights class actions does not require abandonment of ordinary settlement principles, it does require that both district courts and courts of appeals apply these principles with particular care and state their reasoning with particular clarity. See, e. g., *Bryan v. Pittsburgh Plate Glass Co.*, 494 F.2d 799, 804 (3d Cir. 1974); *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977). The strength of the class action settlement standard lies in this flexibility; in applying it a district judge may adjust his inquiry to give constitutional claims the close scrutiny they deserve while still allowing ample room for settlement and compromise. Second, implicit in the class action settlement standard is a requirement that no settlement be approved which either initiates or authorizes the continuation of clearly illegal conduct. *Robertson v. National Basketball Ass'n*, 556 F.2d 682, 686 (2d Cir. 1977); *Grunin v. International House of Pancakes*, 513 F.2d 114, 123-24 (8th Cir.), cert. denied, 423 U.S. 864, 96 S.Ct. 124, 46 L.Ed.2d 93 (1975).²² A *320 school desegregation settlement which authorizes clearly unconstitutional behavior is, on its face, neither fair, reasonable nor adequate as required by the class action standard. In applying this principle, however, the court must not decide unsettled legal questions; any illegality or unconstitutionality must appear as a legal certainty on the face of the agreement before a settlement can be rejected on this basis. *Robertson*, *supra*, 556 F.2d at 686; *Grunin*, *supra*, 513 F.2d at 123-24.

Application of the class action settlement standard within these guidelines guarantees that civil rights, and other class action, litigants have reasonable latitude in negotiating a settlement without undercutting important national policies on their way to reaching agreement. Having articulated the relevant principles, we turn now to their application to the case before us.

C

In reviewing for an abuse of discretion the district court's approval of the settlement, the first step is to determine whether the settlement initiates or authorizes any clearly

illegal or unconstitutional conduct. The intervenors' brief is sprinkled with references to the constitutional inadequacy of the desegregation plan contained in the settlement agreement. Their objections appear to fall into three specific categories. First, they claim that the settlement plan "did not even purport" to effect the systemwide desegregation required by the finding of a constitutional violation with a systemwide impact. Brief of the Appellants at 14. Second, the settlement plan is said to place impermissible reliance upon voluntary techniques and private choices as the primary means to achieve desegregation. Finally, the fact that the settlement plan would permit the existence of some all-black schools²³ in the Milwaukee public school system is regarded as a constitutionally fatal defect. We will consider each of these objections in turn to determine whether they reveal the kind of clear unconstitutionality which will render a settlement on its face neither fair, reasonable nor adequate.

The intervenors' first objection need not detain us long. While it is clear that a finding of a systemwide impact requires a systemwide remedy in a fully litigated school desegregation suit, *Dayton Board of Education v. Brinkman*, 433 U.S. 406, 420, 97 S.Ct. 2766, 2775, 53 L.Ed.2d 581 (1977), it is not clear that this requirement applies where the remedial portion of a suit is resolved by settlement. We need not address this issue in this case, however, because the settlement plan before us clearly attempts to effect systemwide desegregation. As we read the provisions of the settlement plan, we are hard-pressed to understand the basis for the intervenors' objection. All elementary, junior and senior high schools in the system, with minor exception, are required to achieve certain minimum levels of black enrollment; all students in the system have the right to attend a desegregated school upon request; the racial balance transfer program applies throughout the entire system as does the human relations program; and the agreement's two injunctive provisions are clearly systemwide in operation. The intervenors apparently feel that these measures do not go far enough; however, the probable effectiveness of the measures proposed is an issue completely separate from whether these measures operate on a systemwide level. The plan before us clearly is an effort to effect systemwide desegregation.

The district court believed that the settlement would be effective in achieving substantial systemwide desegregation in *321 Milwaukee and found that the persistence of significant racial segregation after implementation of the plan would indicate that the defendants were in violation of the plan and the Fourteenth Amendment. 471 F.Supp. at

809. In light of the fact that there is no constitutional right to a particular level of racial balance, *Milliken v. Bradley*, 418 U.S. 717, 740-41, 94 S.Ct. 3112, 3125, 41 L.Ed.2d 1069 (1974), we cannot say that the plan is so clearly constitutionally inadequate as to render the settlement invalid on its face.

The second objection raised by the intervenors appears plausible on its face. A desegregation plan which relied wholly or primarily upon voluntary techniques to achieve desegregation would be constitutionally inadequate in a fully litigated case in which constitutional violations had been found. However, such is not the plan before us. As we noted earlier in this opinion, while the settlement agreement uses language which suggests that it relies primarily upon voluntary efforts to achieve desegregation, all of the parties to this litigation, other than the intervenors, have understood the agreement to impose an affirmative obligation to desegregate upon the defendants. The district court shared this understanding of the agreement and approved it in light of that understanding. In view of the almost universal acknowledgment of the mandatory effect of the agreement, its slightly ambiguous language does not render it constitutionally infirm.

Finally, the intervenors raise the possible continued existence of some one-race schools in the Milwaukee public school system as a constitutional defect requiring reversal of the district court. The intervenors apparently would have us follow *Tasby v. Estes*, 572 F.2d 1010 (5th Cir. 1978), cert. granted sub nom., *Estes v. Metropolitan Branches of Dallas NAACP*, 440 U.S. 906, 99 S.Ct. 1212, 59 L.Ed.2d 454 (1979), cert. dismissed, — U.S. —, 100 S.Ct. 716, 62 L.Ed.2d 626 (1980).²⁴ In *Tasby*, the Fifth Circuit rejected a court ordered desegregation plan which would have resulted in the existence of a substantial number of one-race schools. The court held that such a plan was unacceptable in the absence of specific findings by the district court as to the feasibility of the desegregation techniques approved in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971). *Tasby*, 572 F.2d at 1014-15.

We decline to upset the plan before us on the authority of *Tasby* for a number of reasons. First *Tasby* deals with a remedial plan ordered by a district court after full litigation, while the plan before us is the result of a settlement. The Fifth Circuit in *Tasby* instructed the district court as to the proper scope of its inquiry during the remedial portion of school desegregation litigation; it is precisely this portion of the

litigation which the parties in the present suit have attempted to avoid through settlement. Tasby thus appears inapplicable to the present case.

Second, before a settlement may be rejected because it initiates or authorizes a clearly illegal or unconstitutional practice, prior judicial decisions must have found that practice to be illegal or unconstitutional as a general rule. *Robertson v. National Basketball Ass'n*, 556 F.2d 682, 686 (2d Cir. 1977); *Grunin v. International House of Pancakes*, 513 F.2d 114, 123-24 (8th Cir.), cert. denied, 423 U.S. 864, 96 S.Ct. 124, 46 L.Ed.2d 93 (1975). In *Tasby*, the Fifth Circuit did not hold that a court ordered desegregation plan which permits some one-race schools must always be rejected; rather, the court held that, on the facts of that case, there was not sufficient justification in the record for the substantial number of one-race schools permitted under the lower court's order. 572 F.2d at 1014-15. Under *Tasby*, a district court must engage in a careful examination of the particular facts of the case and the feasibility of other desegregation techniques to determine whether there is any justification for the *322 existence of one-race schools. *Tasby* announces a case-by-case approach to one-race schools rather than a general rule prohibiting them. To have rejected the settlement on this basis, the court below would have been required to rule on legal and factual issues which the parties had chosen not to litigate; such an inquiry is clearly inappropriate in a case resolved by settlement. *Robertson*, 556 F.2d at 686; *Grunin*, 513 F.2d at 123-24. Thus, the fact that the plan before us permits one-race schools does not reveal the kind of clear unconstitutionality which would require rejection of the settlement as facially invalid.

Finally, a class action settlement is to be evaluated according to the state of the law as of the time it was presented to the district court for approval. *Dawson v. Pastrick*, 600 F.2d 70, 76 (7th Cir. 1979). At the time this settlement was presented to the court below, *Tasby* had been decided by the Fifth Circuit and certiorari had been granted. The state of the law as to one-race schools at that time, as at this, was far from clear, and is unlikely to become clear until the Supreme Court addresses the issue. This settlement should not be evaluated on the basis of unsettled legal principles which will only be clarified at some time in the future.²⁵ This court cannot, in reviewing approval of a settlement, resolve significant unsettled substantive issues without wholly undercutting the settlement process.

We conclude that, at the time of the district court's approval of the settlement agreement, the desegregation plan contained in it did not initiate or authorize any clearly unconstitutional activities. The settlement agreement is thus not per se inappropriate. We turn, therefore, to a review of the district court's application of the class action settlement standard to determine whether the court abused its discretion in finding the settlement fair, reasonable and adequate.

D

In reaching its decision to approve the settlement agreement, the district court considered each of the factors identified as relevant in Part III, B, *supra*, and carefully evaluated the probable effectiveness of the settlement agreement in eliminating the effects of defendants' unconstitutional conduct. 471 F.Supp. at 803-13. The court found that each of the relevant factors supported approval and that the settlement addressed itself to the defendants' constitutional violations and provided the plaintiffs with a fair, reasonable and adequate remedy for them. *Id.* at 809. As discussed in detail below, our review of the district court's action reveals no abuse of discretion.

As the district court noted, the most important factor to be considered in reviewing a class action settlement is the strength of plaintiffs' case on the merits balanced against the relief offered in the settlement. 471 F.Supp. at 804. Closely related to this factor is the complexity, length and expense of further litigation. The district court observed that the granting of certiorari in three school desegregation cases²⁶ both cast *323 doubt on the strength of plaintiffs' case on the merits and ensured that continued appeals in this litigation would indefinitely delay the imposition of a final desegregation remedy. *Id.* at 805-06, 811-12. The district court analyzed the relief offered in the settlement at length and found that, when balanced against the uncertain status of the law as to plaintiffs' claims and the probable complexity of any further litigation, it provided relief which was fair, reasonable and adequate. The district court based this conclusion on three aspects of the settlement: (1) although not requiring statistically perfect desegregation, the settlement requires substantial desegregation and permits the parties to achieve greater desegregation if possible; (2) the settlement goes to the heart of the constitutional violations found by the district court by ensuring that no white students can be insulated from attending schools with substantial black enrollments;²⁷ and (3) every student in the system is given the right to attend a

desegregated school upon request, thus protecting the rights of individual class members. The district court's analysis indicated to it that the settlement provides the plaintiff class with substantial relief from the unconstitutional acts of the defendants while securing for the litigants the benefits of a prompt resolution of the suit without further litigation. We cannot say that the district court abused its discretion in finding that the balance of these factors favored settlement.

The correctness of the conclusion reached by the district court as to the strength of plaintiffs' case on the merits is further supported by the fact that, under the law as it stood at that time, it was not clear that the plaintiffs, in the event of full litigation, would have been entitled to significantly more relief than the settlement provided. The district court observed that the plaintiffs could claim no right to a particular degree of racial balance, 471 F.Supp. at 806, and that to achieve "the most effective remedy for members of the plaintiff class" the court would be required to include school districts outside the Milwaukee system in the operation of the plan, a step the court did not have the power to order. *Id.* at 808 n. 2. The court expressed its agreement with the opinion of counsel as to the limitations upon its power to order a remedy:

The Court also is persuaded that little more could be achieved through further litigation than is offered in the settlement, and that the settlement is a realistic compromise in view of the status of the law in general and this litigation in particular, the harm that could result and the expense and delay that would result from further litigation, and the presently existing limitations on the Court's power to impose an effective remedy.

471 F.Supp. at 812. Thus, it is not at all clear that class counsel sacrificed any established remedial rights of the class in exchange for the benefits conferred by the settlement. At most, counsel negotiated as to whatever rights might be established or clarified by the Supreme Court in the pending school desegregation cases. This conclusion finds support in the brief of the intervening class members filed in this court. While they cite several Supreme Court school desegregation opinions in their attack upon the constitutional adequacy of the settlement, they seem to place special emphasis on

Columbus Board of Education v. Penick, 443 U.S. 449, 99 S.Ct. 2941, 61 L.Ed.2d 666 (1979) and *324 *Dayton Board of Education v. Brinkman*, 443 U.S. 526, 99 S.Ct. 2971, 61 L.Ed.2d 666 (1979).²⁸ Brief of the Appellants at 11, 20-23. As discussed above, however, post-approval changes or clarifications in the law cannot provide a basis for challenging a class action settlement. *Dawson v. Pastrick*, 600 F.2d 70, 76 (7th Cir. 1979). The fact that counsel or the district court may not have accurately predicted the outcome of pending cases does not amount to an abuse of discretion.²⁹

One additional fact is relevant to the strength of plaintiffs' case on the merits and the complexity and expense of further litigation. This litigation was settled at a relatively late stage, after a finding of liability and systemwide impact but before imposition of a remedy. The lateness of the settlement might suggest that there was little doubt as to the strength of plaintiffs' case and little reason to fear further complex litigation. While this may be a rational inference in the usual case, it is not so in a school desegregation class action. The remedial portion of a school desegregation case is unlike that of any other variety of litigation and conceivably can surpass the liability portion in terms of complexity and duration. As the Second Circuit noted in a recent school desegregation case:

Establishment of liability is but the first step. The precise remedy does not follow logically from the determination of liability, but rather reflects a careful reconciliation of the interests of the many affected members of the community and a choice among a wide range of possibilities. "The nature of the litigation does not lend itself to complete success by one side or the other." *Keyes v. School District No. 1*, supra, 439 F.Supp. (393) at 400.

U. S. & South End Education Committee v. Board of Education of Waterbury, 605 F.2d 573 at 576-77 (2d Cir. 1979). Thus, when a school desegregation suit is settled prior to *325 its remedial portion, a potentially complex and time-consuming segment of the litigation may be avoided. Class counsel did not bargain away a clear right to particular remedial action in exchange for virtually nothing, as the intervenors seem to suggest. Through settlement, counsel avoided the remedial portion of the litigation and possible appeals from the district court's earlier rulings while securing significant relief for the class free from the uncertainty and delay which would have resulted from further litigation.³⁰ It is difficult to imagine a more appropriate basis for agreeing to a settlement, even a settlement reached at such a late

stage of the litigation. The district court considered this and was convinced that it was not being presented with a one-sided bargain, 471 F.Supp. at 806, 811-12; we are similarly persuaded.

In addition to evaluating the merits of plaintiffs' case and the probable course of any further litigation, the district court placed great weight on the opinion of counsel for the plaintiffs and defendants. 471 F.Supp. at 811-12. While the court, of course, should not abdicate its responsibility to review a class action settlement merely because counsel support it, the court is entitled to rely heavily on the opinion of competent counsel. *Pettway v. American Cast Iron Pipe Co.*, 576 F.2d 1157, 1215 (5th Cir. 1978), cert. denied, 439 U.S. 115, 99 S.Ct. 1020, 59 L.Ed.2d 74 (1979); *Patterson v. Stovall*, 528 F.2d 108, 114 (7th Cir. 1976). The district court expressly noted that it had a high opinion of all counsel involved in the litigation, that they favored the settlement, and that their assessment of the strength of plaintiffs' case and the benefits offered by the settlement was in accord with the court's own views. 471 F.Supp. at 811-12. Counsel for the plaintiff class and counsel for the defendants had been extensively involved in the litigation through virtually all of its history, giving the court ample time to evaluate their competence and the weight to be accorded their opinions. There is no basis for disturbing the district court's finding that this factor favored approval of the settlement.

Related to the opinion of counsel are two other factors: (1) the stage of the proceedings and amount of discovery completed and (2) the presence of collusion in reaching the settlement. The stage of the proceedings at which settlement is reached is important because it indicates how fully the district court and counsel are able to evaluate the merits of plaintiffs' claims. As discussed above, settlement of this litigation was reached at a very late stage, after the issues had been clearly identified, liability and impact had been decided, and a massive record had been compiled. The district court found, and we agree, that the litigation had progressed to a point at which counsel and the court were fully capable of evaluating the merits of plaintiffs' case and the probable course of future litigation. 471 F.Supp. at 805 & 806. The district court also recognized the possibility of collusion among counsel in reaching a class action settlement. The court considered the history of this hotly contested litigation and affidavits of counsel describing the negotiating process sufficient proof of the absence of collusion. We note that there is nothing in the record to suggest any other conclusion and that the fees paid to class counsel, *326 without more, will not support an inference of

collusion in view of the district court's express finding that the amounts paid were less than the court would have awarded had the issue been presented. 471 F.Supp. at 811.

The final factors considered by the district court were the reaction of the class to the settlement and the amount of opposition to the settlement.³¹ All named plaintiffs in this action informed the district court that they favored the settlement. At the fairness hearing held to consider the views of class members, forty-five persons appeared and others sent written statements to the court, most to express their dissatisfaction with the settlement.³² As the court described these objections:

The opinions expressed were for the most part thoughtful and informative. They represent the opinion of only a small percentage of the class members,³³ however, and most were somewhat misinformed with respect to the present state of the law in school desegregation cases and in particular to the extent of the power which the court exercises in the case of a settlement and as to the probable effect of the settlement agreement.

471 F.Supp. at 812. The presence of objecting class members is a relevant factor, although not dispositive even when many class members object. *Bryan v. Pittsburgh Plate Glass Co.*, 494 F.2d 799, 803 (3d Cir. 1974); *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977). Similarly, while a district court should be hesitant to infer that the class supports a settlement merely because its members are silent, *In re General Motors Corp. Engine Interchange Litigation*, 594 F.2d 1106, 1137 (7th Cir. 1979), cert. denied, — U.S. —, 100 S.Ct. 146, 62 L.Ed.2d 95 (1979), where this silence is coupled with other indicia of fairness, it provides further support for approval. *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 462 (2d Cir. 1974).³⁴ The district court in this case clearly considered the objections voiced by class members, 471 F.Supp. at 812-13, and found that, in view of the relatively small number of objectors and their misconception of the law and probable effect of this settlement, the settlement should be approved.

Such a determination was, in view of the record before it, well within the discretion of the district court.

V

Having reviewed the district court's consideration of the factors discussed above, we are convinced that, far from abusing its discretion, the court proceeded with commendable care and fairness in approving a reasonable and equitable settlement of this hotly contested, complex lawsuit. The settlement provides for a desegregation plan *327 which promises to achieve substantial desegregation in the Milwaukee public school system. It guarantees that no student can be compelled to attend a segregated school and that all future decisions concerning the operation of the system are made in a manner which observes the constitutional rights of the plaintiff class. The district court stated that a failure to achieve these goals would indicate that defendants had failed to comply with its order. Such a failure to comply can be detected and dealt with within the settlement's own monitoring and policing framework. The settlement represents a major step in the effort to desegregate the Milwaukee public schools, and, while its effectiveness will be shown only by the passage of time, on its face it bodes well for the future of public school education and community cooperation in Milwaukee.³⁵

Amici admonish this court to follow the lead of the Fifth Circuit and resist the temptation to approve a possibly inadequate settlement merely to conclude a lengthy lawsuit. We share the concern expressed by the Fifth Circuit and acknowledge the wisdom of its statement:

While we deplore contributing further to the seemingly Methuselean duration of this case, "we would not substitute one hour of efficiency for one moment of justice."

Pettway v. American Cast Iron Pipe Co., 576 F.2d 1157, 1223 (5th Cir. 1978), cert. denied, 439 U.S. 1115, 99 S.Ct. 1020, 59 L.Ed.2d 74 (1979) (footnote omitted). In this case, however, we are not presented with a choice between an hour of efficiency and a moment of justice. Rather, our inquiry convinces us that we are presented with a resolution which secures both efficiency and justice. In the face of such a resolution, to "contribut(e) further to the seemingly Methuselean duration of this case," would be to sacrifice justice and efficiency without any rational basis. This we decline to do.

One final issue requires our attention. The intervening class members argue that the district court erred in denying their motion to intervene in the proceedings below. The district court based its denial on the fact that a notice of appeal had simultaneously been filed in this court, thus depriving the district court of jurisdiction to grant the motion. It is settled in this circuit that the filing of a notice of appeal terminates the jurisdiction of the district court. *Elgin Manufacturing Corp. v. Ventfabrics, Inc.*, 314 F.2d 440, 444 (7th Cir. 1963). A district court has no power to vacate a judgment once a notice of appeal has been filed. *Miller v. U. S.*, 114 F.2d 267, 269 (7th Cir. 1940), cert. denied, 313 U.S. 591, 61 S.Ct. 1114, 85 L.Ed. 1545 (1941). Thus, the district court clearly did not err in denying intervening class members' motion to intervene for the purpose of seeking an order vacating the settlement since the court was without power to enter such an order.

The intervening class members moved, in the alternative, for leave to intervene for the purpose of appealing from the district court's approval of the settlement. We need not decide whether the denial of this motion was proper, in view of the fact that the intervenors have been allowed to appeal and no one has contested their right to do so. See Joint Brief for Plaintiffs-Appellees and Defendants-Appellees at 26. Furthermore, their right to appeal exists independent of any motion made in the district court. In *Research Corp. v. Asgrow Seed Co.*, 425 F.2d 1059, 1060 (7th Cir. 1970), this court held that an unnamed class member who appears in response to a *Rule 23(e)* notice and objects to a settlement has a right to appeal from an adverse judgment. Accord, *Pettway v. American Cast Iron Pipe Co.*, 576 F.2d 1157, 1180 (5th Cir. 1978), cert. denied, 439 U.S. 1115, 99 S.Ct. 1020, 59 L.Ed.2d 74 (1979). The disposition of their motion by the district court is therefore *328 irrelevant on this appeal, since it is undisputed that Jeffrey, Christopher and Julie Jackson, through their mother Carolyn, appeared at the fairness hearing and opposed the settlement. The Jacksons were entitled to appeal as of right and have been accorded that right. We can find no reversible error in the district court's rulings.

We have considered the arguments raised by the intervening class members on this appeal and find them without merit. Accordingly, the order appealed from is affirmed in all respects.

All Citations

616 F.2d 305, 29 Fed.R.Serv.2d 618

Footnotes

- * Honorable Edward Dumbauld, Senior District Judge for the Western District of Pennsylvania, is sitting by designation.
- 1 [Rule 23 of the Federal Rules of Civil Procedure](#) provides, in relevant part:
- (a) Prerequisites to Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only 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.
- (b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:
- (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole;
- [Fed.R.Civ.P. 23\(a\), \(b\)\(2\)](#).
- 2 The district court certified the case as a bipartite [Rule 23\(b\)\(2\)](#) class action. One class consisted of all black pupils then enrolled and those who would in the future become enrolled in the Milwaukee public school system. The second class consisted of all non-black pupils then enrolled and those who would in the future become enrolled in the system. [408 F.Supp. at 775-76](#). The court appointed two attorneys as class counsel, one to represent the named plaintiffs and the other to represent the unnamed plaintiffs. [Id. at 775](#).
- 3 In its May 1976, order, the district court also disposed of defendants' request for a stay of proceedings relative to an award of attorneys' fees, [416 F.Supp. at 1332-35](#), and their request that the court revoke its appointment of counsel for the absent members of the plaintiff class. [416 F.Supp. at 1340-42](#).
- 4 A court-ordered interim desegregation plan was in effect at this time. The Milwaukee public schools had been operating pursuant to such a plan for three academic years, since the interim orders for the 1976-77 school year had been issued by the district court. [Armstrong v. O'Connell, 416 F.Supp. 1344 & 1347 \(E.D.Wis.1976\)](#). Similar plans were put into effect for the 1977-78 and 1978-79 school years pending final resolution of this dispute. In fact, in its evaluation of the present effects of defendants' segregative acts, the district court focused on the 1975-76 school year because, after that year, the Milwaukee public schools were being desegregated pursuant to the court's orders. [463 F.Supp. 1295, 1305](#).
- 5 Pursuant to the terms of the settlement agreement, the defendants agreed not to appeal from the district court's decisions finding that they had violated the Equal Protection Clause and that the violations had had a systemwide impact requiring a systemwide remedy.

- 6 The class notice is reproduced as Appendix B to the district court's opinion approving the settlement agreement. [Armstrong v. Board of School Directors, 471 F.Supp. 800, 821-24 \(E.D.Wis.1979\)](#).
- 7 The notice of appeal filed in this case by the intervening class members indicates that the appeal is taken from the district court's order of May 11, 1979. That order encompasses not only the settlement agreement as to student population desegregation, but also the faculty desegregation remedy ordered by the district court, which was not the subject of a settlement. The intervening class members apparently do not appeal from the faculty desegregation order. The briefs filed in this court raise no specific objections to that order and the "Statement of Issues Presented for Review" in the intervenors' brief makes no mention of it. Indeed, it appears from their brief that the intervenors may not have been aware that a faculty desegregation order had been issued. See Brief of the Appellants at 18-19 n.23. Accordingly, we consider only the district court's approval of the student desegregation settlement properly before us and will not address the faculty desegregation order. The district court's decision with respect to the faculty desegregation remedy is published at [471 F.Supp. 827 \(E.D.Wis.1979\)](#).
- 8 The agreement defines "desegregated school" as follows:
- A "desegregated" school for purposes of student desegregation is defined as:
- (1) Each elementary or junior high school which has a student population composed of not less than 25% and not more than 60% black students and
- (2) Each senior high school which has a student population composed of not less than 20% and not more than 60% black students.
- [471 F.Supp. at 815.](#)
- 9 This section of the settlement agreement speaks in terms of defendants' "good faith" assignment of students to achieve particular desegregation "goals." While this choice of phrasing suggests that the provision is advisory rather than mandatory, the district court clearly considered it mandatory and regarded the prescribed desegregation standards as minimum requirements rather than as mere aspirations. [471 F.Supp. at 809](#). We also have been informed that "all parties to this action have understood the order to be mandatory." Brief of Amici Curiae at 3. See also Joint Brief of Plaintiffs-Appellees and Defendants-Appellees at 7-8.
- 10 Because the formula provided in the settlement agreement depends upon variables such as the total enrollment and the total black enrollment in the Milwaukee public schools, it is difficult to state with any degree of precision what the actual desegregative effect of the agreement will be. The district court recognized this difficulty and published, as Appendix C to its order, [471 F.Supp. at 825](#), a table presenting the predicted effect of the agreement based upon the projected enrollment in each of the five years during which the agreement will be in effect.

The table presents projections of the minimum, most probable, and maximum percentages of students enrolled in desegregated schools for each year. In each case the maximum desegregation attainable under the agreement is 100%, the most probable exceeds 75%, and the minimum varies from 75% in the first year to approximately 60% in the final year.

Expert testimony below indicated that the minimum levels are "a realistic impossibility" because the Milwaukee public schools have already exceeded these requirements. To achieve the minimum levels, the defendants would have to reassign "massive numbers" of black students out of schools which are presently desegregated. [471 F.Supp. at 808](#). Attainment of the maximum levels is similarly unlikely because it would require "a perfect distribution of students within the Milwaukee public school system joined with the assignment of some black students to suburban public school systems." *Id.* As the district court noted, such

a metropolitan area remedy would make good sense and could be voluntarily implemented, but could not be required on the facts in this case. [471 F.Supp. at 808 n.2](#).

The court was also concerned with amici curiae's prediction that a substantial percentage of the system's black students could be attending non-desegregated schools by the time of the plan's expiration. The court took note of the possibility that as many as 35% of the system's black students might not be enrolled in desegregated schools in the final year of the agreement. On the basis of expert testimony and other provisions of the agreement, however, the court concluded:

(T)he dire predictions of amici will not be fulfilled, and, furthermore, . . . their fulfillment would mean that defendants had engaged in conduct violative of the settlement agreement and unlawful under the Fourteenth Amendment to the United States Constitution.

[471 F.Supp. at 809](#). See also [471 F.Supp. at 809 n.3](#).

- 11 The settlement agreement is to remain in effect for five full years over and above the three years of court ordered desegregation which have already occurred. Contrary to the suggestion of the intervenors, Brief of the Appellants at 13 n.18, the agreement does not provide for a gradual five-year phase-in of the desegregation requirements; the plan is in full force from the first year to the fifth. See Brief of Amici Curiae at 4-5.

- 12 [Rule 23\(e\)](#) provides:

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

[Fed.R.Civ.P. 23\(e\)](#). An identical provision is contained in Rule 23.1, governing shareholders' derivative suits. [Fed.R.Civ.P. 23.1](#).

- 13 As the district court correctly noted, this court has endorsed the concept of a pre-notification determination of "probable cause" to proceed with review of a settlement proposal, [471 F.Supp. 800, 804](#). In *In re General Motors Corp. Engine Interchange Litigation*, 594 F.2d 1106 (7th Cir. 1979), cert. denied, — U.S. —, 100 S.Ct. 146, 62 L.Ed.2d 95 (1979), we indicated that

the failure of the trial court to hold a preliminary hearing prior to the mailing of the notice of the proposed settlement is (not) inevitably reversible error. . . . (However,) we believe such a hearing is better practice and the Manual for Complex Litigation recommends it

[594 F.2d at 1133](#). We continue to adhere to this view.

- 14 Nowhere in their brief do the intervenors acknowledge that class action settlements are usually reviewed according to a standard different from that applied to orders proposed by the parties to be entered after full litigation. At oral argument, however, intervenors' counsel stated that their position was that once a constitutional violation is found, the remedy must meet the same constitutional standards whether it is the result of settlement or full litigation. In accordance with their view that the procedural context of this appeal is irrelevant, the intervenors' brief never mentions the class action standard and focuses instead upon Supreme Court decisions regarding the appropriate remedial action to be ordered in fully litigated school desegregation cases.

- 15 As the intervenors state their position:

Having made the findings of unconstitutional behavior, the District Court's duty extended beyond the mere issuance of proper sounding conclusions of law, but extended into the realm of using the full range of its

equitable powers to accomplish the remedial task. The District Court was required to instruct the defendants that they were to utilize all necessary techniques capable of effecting the desegregation process.

Brief of the Appellants at 12. See also *id.* at 14, 18, 21.

- 16 See, e. g., [Wright v. Baker County Bd. of Educ.](#), 501 F.2d 131 (5th Cir. 1974); [Lee v. Attalla City School System](#), 588 F.2d 499 (5th Cir. 1979); [Liddell v. Caldwell](#), 546 F.2d 768 (8th Cir. 1976), cert. denied, 433 U.S. 914, 97 S.Ct. 2987, 53 L.Ed.2d 1100 (1977). Although none of these cases address the issue confronting us in this case, all indicate that voluntary resolutions of school desegregation suits can and do occur.
- 17 Although most employment discrimination suits are based upon a statute, Title VII of the Civil Rights Act of 1964, [42 U.S.C. s 2000e et seq.](#), while school desegregation suits are based directly on the Constitution, through [42 U.S.C. s 1983](#), it is clear that both types of litigation have as their foundation the national policy against invidious discrimination. It is well settled that Title VII “was not intended to incorporate and particularize the commands of the Fifth and Fourteenth Amendments.” [United Steelworkers v. Weber](#), 443 U.S. 193, 206 n.6, 99 S.Ct. 2721, 2729 n.6, 61 L.Ed.2d 480 (1979). However, the fact that a Title VII plaintiff need not establish discriminatory intent or state action, as required of his Fourteenth Amendment counterpart, in no way affects the analogous character of the rights at issue in both types of litigation. A primary objective of Title VII is solution of the problem of racial discrimination in employment. [Weber, supra](#), 443 U.S. at 200 - 204, 99 S.Ct. at 2726-28. School desegregation suits seek solution of the same problem in the context of public education. Both varieties of litigation concern the fundamental right to be free of invidious discrimination and therefore stand on a similar footing with respect to the need for judicial scrutiny of settlement proposals.
- 18 There is a particularly strong policy in favor of settlement of Title VII class actions because the statute itself emphasizes voluntary conciliation. [Cotton v. Hinton](#), 559 F.2d 1326, 1331 (5th Cir. 1977). However, as the Fifth Circuit made clear in *Cotton*, this statutory policy merely augments the already strong judicial policy favoring settlement. *Id.* at 1330-31. We believe that this judicial policy is an appropriate consideration in school desegregation suits.
- 19 In the *Airline Stewards* case, this court made the following statement with respect to a hypothetical situation where some class members object to a settlement because it does not, in their view, provide sufficient relief:

It may well be that the minority members of the class will have to forego the full retroactive competitive seniority provided in [Franks \(Franks v. Bowman Transportation Co., 424 U.S. 747, 96 S.Ct. 1251, 47 L.Ed.2d 444\)](#), so that the majority may acquire some benefits and yet avoid the costs and uncertainties of litigation. Such a decision would have to be made on a case-by-case basis.

573 F.2d at 964-65 n.9.
- 20 In a related context, the Second Circuit recently emphasized the importance of settlement in school desegregation cases. In [U. S. & South End Educational Committee v. Bd. of Educ. of Waterbury](#), 605 F.2d 573 (2d Cir. 1979), the court based its flexible interpretation of the attorneys' fees provision of the Emergency School Aid Act, [20 U.S.C. s 1617](#), in part upon the need to encourage “compromise or concession” in order to facilitate settlement of the remedial portions of school desegregation cases. [605 F.2d at 576](#).
- 21 The *Liddell* court was not actually confronted with the issue discussed in the text. Its comments were made in the context of an opinion reversing a district court's refusal to allow objecting class members to intervene to oppose a consent decree in a school desegregation case.
- 22 The only cases our research has uncovered which articulate this limitation in this manner are antitrust class actions. However, the principle is clearly implicit in all opinions evaluating class action settlements and seems

to underlie the Eighth Circuit's comments in [Liddell v. Caldwell](#), 546 F.2d 768, 773-74 (8th Cir. 1976), cert. denied, 433 U.S. 914, 97 S.Ct. 2987, 53 L.Ed.2d 1100 (1977), discussed in the text, *supra*.

- 23 The briefs refer to “one-race” schools. As noted earlier in this opinion, however, the settlement plan precludes the existence of any all-white schools in the Milwaukee school system; the only one-race schools which can exist must therefore be all-black.
- 24 Oral argument in *Tasby* was held in the Supreme Court on October 29, 1979. On January 21, 1980, a divided Court dismissed the writs of certiorari as improvidently granted.
- 25 Indeed, a large incentive for settlement in many cases, including this one, is the desire by both parties to avoid the risks created by uncertainty in the legal standards applicable to the litigation. The granting of certiorari in *Tasby* and two other cases. [Columbus Board of Education v. Penick](#), 443 U.S. 449, 99 S.Ct. 2941, 61 L.Ed.2d 666 (1979) and [Dayton Board of Education v. Brinkman](#), 443 U.S. 526, 99 S.Ct. 2971, 61 L.Ed.2d 720 (1979), seems to have contributed enough uncertainty to plaintiffs' case to induce class counsel to seek settlement. 471 F.Supp. at 806, 811-12. To allow reevaluation of a settlement on the basis of decisions reached after its approval would undercut this motive for settlement. In addition, since our function is only to determine whether the district court abused its discretion, we must evaluate its actions as of the time of approval and not in light of post-approval changes in the law. [Dawson v. Pastrick](#), 600 F.2d 70, 76 (7th Cir. 1979).
- 26 [Brinkman v. Gilligan](#), 583 F.2d 243 (6th Cir. 1978), cert. granted sub nom. *Dayton Board of Education v. Brinkman*, 439 U.S. 1066, 99 S.Ct. 28, 58 L.Ed.2d 67 (1979); [Penick v. Columbus Board of Education](#), 583 F.2d 787 (6th Cir. 1978), cert. granted, 439 U.S. 1066, 99 S.Ct. 24, 58 L.Ed.2d 24 (1979); [Tasby v. Estes](#), 572 F.2d 1010 (5th Cir. 1978), cert. granted sub nom. [Estes v. Metropolitan Branches of Dallas NAACP](#), 440 U.S. 906, 99 S.Ct. 1212, 59 L.Ed.2d 454 (1979). The Dayton and Columbus cases have since been decided by the Supreme Court; *Tasby* has been dismissed.
- 27 The essence of the defendants' past unconstitutional conduct was their “practice of insulating white children from having to attend school with large numbers of black children.” 471 F.Supp. at 809 (footnote omitted). See also [Armstrong v. O'Connell](#), 451 F.Supp. 817, 866 (E.D.Wis.1978). The settlement agreement provides that there can no longer be any schools in the Milwaukee system “which do not have a significant number of black students.” 471 F.Supp. at 809 n. 4. Thus, there will be no public schools in Milwaukee in which white students can be insulated from black students.
- 28 As the intervening class members put it:

(W)e believe that the District Court and parties were proceeding at a time when the firm requirements imposed by Columbus and Dayton II were not anticipated.

While Appellants do not know for certain, the timing of the negotiated settlement suggests to us that the parties who reached agreement were less prescient than was the District Judge as to the ruling of the Supreme Court in the Dayton II and Columbus cases, and that mistaken notions might have been motive forces. In any event, Appellants are of the view that the language of Columbus and Dayton II makes clear the obligation of a school district such as Milwaukee which, despite the absence of compelling state segregation statutes, was fashioned into a dual system of black and white schools. The duty is to disestablish the dual system.

Brief of the Appellants at 21-22.

- 29 Amici Curiae concede that the settlement cannot be reviewed on the basis of post-approval changes in the law. They maintain, however, that the settlement is constitutionally inadequate under the law as set out in [Milliken v. Bradley](#), 433 U.S. 267, 97 S.Ct. 2749, 53 L.Ed.2d 745 (1977). They point to three factors identified

in Milliken as controlling in this case: (1) a remedy must be related to the constitutional violation; (2) a remedy must, as nearly as possible, restore the victims to the position they otherwise would have occupied; and (3) courts must take into account the interest of state and local authorities in managing their own affairs. Brief of Amici Curiae at 10-11, quoting [Milliken](#), 433 U.S. at 280-81, 97 S.Ct. at 2757. The first and third factors are not at issue here so Amici focus on the second factor.

We note initially that the Supreme Court in Milliken was addressing itself to a fully litigated school desegregation suit, not one resolved by settlement. Beyond this, however, it appears that the district court found, in effect, that the remedy proposed in the settlement agreement did, as nearly as possible, provide full relief to the plaintiffs. The court expressly observed that further litigation could achieve little more relief for the plaintiffs and that, to achieve maximum desegregation, the court would be required to order a remedy which it did not, in the present posture of the litigation, have the power to order. Keeping in mind that in considering a settlement proposal the district court is to evaluate the parties' claims but not to decide them, [Patterson v. Stovall](#), 528 F.2d 108, 114 (7th Cir. 1976), we cannot say that the lower court abused its discretion in reaching this conclusion as to the degree of relief to which plaintiffs would have been entitled in the event of full litigation, or in concluding that the settlement may have provided virtually the full extent of such relief. Therefore, even if the Milliken standard were applicable to a remedy reached through settlement rather than litigation, we believe that the district court made the required findings and that its findings, while not free from doubt, do not constitute a clear abuse of discretion.

30 The complexity and delay possible during this portion of school desegregation litigation is well-illustrated by [Tasby v. Estes](#), 572 F.2d 1010 (5th Cir. 1978), which reversed a district court's remedial order and remanded it with instructions to formulate a new student assignment plan, to justify with specific findings the maintenance of one-race schools, and to include in the order a particular remedy not included before. 572 F.2d at 1018. The desegregation plan on review in [Tasby](#) had been ordered by the district court in 1976, 412 F.Supp. 1192 (N.D.Tex.1976), pursuant to a Fifth Circuit opinion reversing and remanding a court ordered plan developed in 1971. 517 F.2d 92 (5th Cir. 1975). The Tasby desegregation plan was brought to the Supreme Court, was argued October 29, 1979, and was dismissed on January 21, 1980. [Estes v. Metropolitan Branches of Dallas NAACP](#), 444 U.S. 437, 100 S.Ct. 716, 62 L.Ed.2d 626 (1980). At oral argument in the present case, class counsel characterized the remedial portion of school desegregation litigation as often being "speculative" and indicated that concern with the ultimate outcome of Tasby led, at least in part, to the settlement efforts in this case.

31 In its initial list of relevant factors, 471 F.Supp. at 804, the district court included the defendants' ability to pay. The district court in fact did not consider this factor, and neither do we, because it is not relevant in this case. [Id.](#) at 805.

32 The district court observed, however, that some of the class members opposed to the settlement took that position because they felt the settlement achieved too much, rather than too little, desegregation. 471 F.Supp. at 812. At oral argument, counsel for the plaintiff class informed us that 8 to 10 of the 45 class members who appeared at the fairness hearing supported the settlement.

33 We were informed at oral argument that there are presently approximately 92,000 students enrolled in the Milwaukee public school system.

34 As the Second Circuit stated in [Grinnell Corp.](#):

Any claim by appellants that the settlement offer is grossly and unreasonably inadequate is belied by the fact that, from all appearances, the vast preponderance of the class members willingly approved the offer. Only twenty objectors appeared from the group of 14,156 claimants.

The favorable reception of the settlement offer at the hands of both plaintiffs and the individual attorneys who had little or nothing to do with the negotiation of the settlement is strong evidence that the District Court not only failed to abuse its discretion in approving the settlement but fulfilled its obligation in exemplary fashion.

[495 F.2d at 462](#). While this apparent approval on the part of class members perhaps should not be given as much weight in this, a civil rights action, as in Grinnell Corp., an antitrust action, it nonetheless weighs, however slightly, in favor of approval.

- 35 Class counsel stated at oral argument in this court that the settlement had received substantial support in Milwaukee's black community, and that the district court had been made aware of this support.

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.

485 F.Supp. 610

United States District Court, N. D. California.

Spotsel L. BOYD, Jr., Richard J. Carter, Sheila
McDonald and Alvino Hart, on behalf of
themselves and others similarly situated, Plaintiffs,
v.

BECHTEL CORPORATION; Bechtel
International Corporation; Bechtel, Incorporated
and Bechtel Power Corporation, Defendants.

No. C-75-1582 WHO.

|

Aug. 22, 1979.

Synopsis

In an employment discrimination suit brought on behalf of black employees, the parties presented a proposed settlement agreement for the court's approval. Following a contested hearing, the District Court, Orrick, J., held that in view of substantial doubt whether plaintiffs could prevail at trial and where the settlement, which was negotiated by experienced counsel after a great deal of discovery and complete trial preparation, was fair and reasonable, it was appropriate to approve the settlement as in the best interests of the class even though it provided very modest relief.

Ordered in accordance with opinion.

Attorneys and Law Firms

*612 William E. Hoefs, Thelen, Marrin, Johnson & Bridges,
San Francisco, Cal., for defendants.

Elizabeth G. Leavy, Carroll, Burdick & McDonough, Mark
S. Rudy, San Francisco, Cal., for plaintiffs.

Cole & Scott, Rufus L. Cole, John Houston Scott, San
Francisco, Cal., Oliver A. Jones, Regional Counsel, NAACP,
San Francisco, Cal., Lois L. Johnson, Bushnell, Caplan &
Fielding, Roderick P. Bushnell, San Francisco, Cal., for
plaintiffs/objectors.

OPINION AND ORDER

ORRICK, District Judge.

After more than three years of vigorous and thorough preparation, on the eve of trial, the parties to this employment discrimination suit against Bechtel Corporation, Bechtel International Corporation, Bechtel, Incorporated and Bechtel Power Corporation (hereinafter referred to as "Bechtel") brought on behalf of the black employees at Bechtel, presented to the Court for its approval a proposed settlement agreement. Following a lengthy and hotly contested Mandujano -type¹ hearing, the Court, for reasons discussed herein, finds that the agreement is fair, reasonable and adequate.

Before embarking upon a detailed discussion of the reasons for approving the settlement, it is appropriate to offer some general observations concerning the difficulties now facing plaintiffs in trying or settling "second generation" Title VII suits of the type here at issue.

"First generation" Title VII suits involved overt intentional acts and policies which were not difficult to discern as discriminatory, such as the blanket exclusion of women from certain positions regardless of their ability to do the work, e. g., [Rosenfeld v. Southern Pacific Co.](#), 444 F.2d 1219 (9th Cir. 1971), or the use of tests with an obvious racial bias, e. g., *613 [Griggs v. Duke Power Co.](#), 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d 158 (1971). Today, however, after vigorous enforcement of our laws against employment discrimination by government agencies and "private attorneys general," employers are aware that their overall employment policies must, at the very least, comply with the letter of the law. Discrimination is likely to be found, if at all, in the enforcement, at lower levels, of company-wide policies which appear fair and reasonable on their face. Many employers have enacted affirmative action programs, and others, having contracts with the government, are periodically inspected by federal compliance agencies. Thus, if discrimination in employment exists in large organizations, it is likely to be subtle, detectable, if at all, only upon careful examination of sophisticated statistical analyses. As Judge Clark put it in [Swint v. Pullman-Standard](#), 539 F.2d 77, 99 (5th Cir. 1976):

"If there ever was a time of facile Title VII litigation, it surely ended with the demise of intentional violations of equal employment opportunity. Today's parade of Title VII cases present more and more subtle manifestations of discrimination. Proof of invidious practices becomes more difficult as the ability to separate the real violation from the unfounded suspicion grows harder. This is especially

so since many employers and unions * * * have made substantial good faith efforts toward eliminating racial distinctions for the work force.”²

It is in this context that the Court examines the settlement in the typical “second generation” case presently before it.

I.

A.

The original complaint in this case was filed on July 28, 1975, by plaintiffs Thomesine Lewis, Spotsel L. Boyd, and Richard J. Carter on behalf of themselves and a class of Blacks similarly situated, charging Bechtel, at the San Francisco Home Office, with engaging in a pattern of racial discrimination in employment in violation of the Civil Rights Act of 1866, [42 U.S.C. s 1981 \(1974\)](#). Plaintiff Lewis subsequently withdrew from the case and has been dismissed. On June 16, 1976, the plaintiffs filed a First Amended Complaint against the defendants in which they added as a named plaintiff Sheila V. McDonald. This complaint was similar to the original one but added allegations under Title VII of the Civil Rights Act of 1964, [42 U.S.C. s 2000e](#), et seq., as amended (1974 & 1978 Supp.). On or about October 22, 1976, the plaintiffs filed a Second Amended Complaint against the defendants in which they added as a named plaintiff Alvino J. Hart. On January 3, 1978, the Court entered an Order that the action could be maintained as a class action under [Rule 23\(b\)\(2\) of the Federal Rules of Civil Procedure](#).³ Defendants have denied all of the material allegations of all of the complaints.

Plaintiffs, seeking back pay, compensatory damages, and injunctive relief, contend that defendants have engaged in across-the-board discrimination⁴ against them as a class in connection with job assignment, promotion, salary increase, transfer, training *614 and development, discharge, layoff, and rehire. In addition, the four named plaintiffs raised particularized claims of racial discrimination: Spotsel Boyd, a black male employed at Bechtel as an engineer from May, 1974, until March, 1976, claims discrimination with respect to salary increase, promotion, work assignment, performance evaluation, transfer to an overseas assignment, and critical observations regarding absenteeism and tardiness; Sheila McDonald, a black female who has been employed by Bechtel in the Finance and Accounting Department since November,

1972, claims discrimination with respect to promotion and retaliation for filing a complaint with the Equal Employment Opportunity Commission (“EEOC”); Alvino Hart, a black male employed at Bechtel from April, 1973, until May, 1976, claims discrimination with respect to denial of training, promotion, tuition refunds, salary increases, transfer, layoff, and rehire.

The Bechtel group of companies consists of a number of separate corporations, chief among which are the four named defendants in this case: Bechtel Corporation, Bechtel International Corporation, Bechtel, Incorporated and Bechtel Power Corporation. The Board of Directors for each company is identical, and the stock of each of the companies is privately held by members of the Bechtel family and by members of the Board of Directors of the various companies. All of the Bechtel companies engage in engineering construction and related activities. They contract primarily with private parties to design and construct a variety of facilities, including refineries, petro chemical complexes, mining-metallurgical facilities, pipelines, and electrical power generating stations.

Bechtel is divided into a number of operating divisions, as follows: Hydro and Community Facilities Division, Mining and Metals Division, Pipeline and Production Service Division, Los Angeles Power Division, and Gaithersburg Power Division. In addition, within the Bechtel Corporation certain administrative operations are carried out for the whole group of companies in a variety of departments. These departments include: Finance and Accounting, Internal Auditing, Information and Planning Services, Procurement, Data Processing, Manpower Services, Special Management Services, and Labor Relations and Safety.

The defendants' workforce has a hierarchy of increasing levels of responsibility, skill and compensation, structured upon a system of salary grades which is currently composed of twenty levels. The lower eight grades, A through H, are called the “letter grades” and the upper twelve grades, grades 21 through 32, are referred to as the “number grades.” Compensation, the level of responsibility, and the required skills progress in increasing alphabetical and numerical order. Numerous different jobs are lumped together in any one salary grade. There are presently over five hundred different job classifications which are held by the employees of the defendants. Broad categories have been devised to delineate groups of jobs having similar job content. Thus, Bechtel has divided its work into five job groups or “families”:

engineering, construction, administrative, technical support, and design drafting.

B.

During the period in which this action was pending, the plaintiffs conducted thorough and wide-ranging discovery which was designed to investigate all of the dimensions of the alleged class discrimination. They propounded to the defendants and the defendants answered in excess of three hundred interrogatories. Plaintiffs served on defendants seven separate requests for production of documents which obligated the defendants to produce thousands of separate documents. They noticed and took the depositions of approximately forty of defendants' managers and supervisors. In addition, they obtained defendants' year-end personnel tapes and had them carefully reviewed and analyzed by computer and statistical experts. Through their discovery, the plaintiffs obtained voluminous information concerning the nature of the defendants' personnel procedures, policies, *615 and practices. For their part, defendants took the depositions of all of the named plaintiffs and all of their trial witnesses, with the exception of plaintiffs' statistical expert, and developed their own statistical analysis based upon their year-end personnel tapes.

Trial was scheduled to commence on October 16, 1978. At the conclusion of the Second Pretrial Conference on October 12, 1978, counsel for the parties reached a tentative agreement or settlement. On October 17, 1978, counsel again met with the Court concerning the settlement and were advised that the Court would not be bound by any agreement they may have reached on the issue of attorneys' fees and costs, which would be set by the Court at or subsequent to the hearing on the fairness of the Consent Decree. On October 31, 1978, the parties lodged with the Court a mutually agreeable proposed Consent Decree, which provided that \$120,000, to be distributed according to a formula based upon the duration of an employee's tenure at Bechtel, was to be set aside for distribution to all present and past employee class members. An additional \$20,000 was allotted to the four named plaintiffs. Defendants also agreed to pay attorneys' fees and costs to opposing counsel in an amount to be determined by the Court, with an upper limit of \$120,000 for fees, and \$40,000 for costs.⁵ The Consent Decree contained no provisions for nonmonetary relief.

In considering the settlement, the Court followed procedures set forth in Section 1.46 of the Manual for Complex Litigation and prescribed by the United States Court of Appeals for the Ninth Circuit in *Mandujano v. Basic Vegetable Products, Inc.*, 541 F.2d 832 (9th Cir. 1976). After addressing in written memoranda the eight inquiries regarding settlement listed in the Manual, counsel argued the same at a preliminary fairness hearing on November 2, 1978. At that time the Court determined that the proposed settlement was within the range of possible approval, and set a second fairness hearing for January 11, 1979. The Court also directed that defendants notify the class of the proposed settlement and Consent Decree on or before November 21, 1978, and approved the form of notice submitted by the parties.⁶ Notice was provided *616 to 1,127 class members: 717 notices were sent by first class mail to the last known address of the past employee class members; 410 notices were delivered to current employee class members by defendants' internal mail system; and the notice was also published in the San Francisco Chronicle, the San Francisco Examiner, and the Oakland Tribune.

By December 21, 1978, 153 "Notices of Objection" with the identical text and format were filed with the Court.⁷ The Court also received 7 handwritten or typed objections, 3 of which contained supplemental documentation sent by persons who had also filed the form Notice of Objection. In sum, a total of 160 objections, representing approximately 16 percent of the class, have been submitted to the Court.

On January 11, 1979, as scheduled, the Court held a fairness hearing, at which time 70 persons who appeared in Court to object to the Consent Decree were asked to submit their names and addresses for the record.⁸ After generally explaining the nature and purpose of the fairness hearing to the objectors and advising them of their right to retain counsel, the Court adjourned the fairness hearing to provide counsel for the objectors sufficient time to become acquainted with the case and to prepare their objections in an organized fashion. To facilitate *617 matters, the Court ordered that counsel for the objectors be associated with class counsel, and directed counsel for the objectors to file detailed narrative statements of the testimony which their witnesses intended to give at the next fairness hearing. The Court directed those objectors who were not represented by counsel to testify before a magistrate. The hearing was then continued until June 1, 1979.⁹ Prior to that time, counsel for the objectors filed several briefs in opposition to the Consent Decree, declarations of some 100

individuals objecting to the Decree, and proposed findings of fact and conclusions of law.¹⁰ At the final hearing, on June 1, 1979, the Court heard final argument and took the matter under submission.

II.

In assessing a class action settlement, a district court must engage in a double-pronged inquiry. First, it must examine the proposed consent decree substantively and determine whether the relief it provides is fair, adequate and reasonable. In so doing, the court should consider several factors: the strength of the case; the reasonableness of the settlement in light of the attendant risks of litigation, and in light of the best possible recovery; the experience and views of plaintiffs' counsel; whether there is any evidence of collusion; the extent of discovery and the stage of the proceedings; the expected length, complexity and expense of further litigation; and objections to the settlement. *Cotton v. Hinton*, 559 F.2d 1326, 1330-31 (5th Cir. 1977); *Flinn v. FMC Corp.*, 528 F.2d 1169, 1172-74 (4th Cir. 1975), cert. denied, 424 U.S. 967, 96 S.Ct. 1462, 47 L.Ed.2d 734 (1976); *Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974); *Alaniz v. California Processors, Inc.*, 73 F.R.D. 269, 278 (N.D.Cal.1976).

The court should independently weigh and evaluate each of these factors as applied to the case before it. A mere "rubber stamp" or "boilerplate" approval is inadequate. *Detroit v. Grinnell Corp.*, supra, 495 F.2d at 462. On the other hand, the court is not to make a final determination of liability or damages, or to hold a trial or rehearsal of the trial. Nor is it to determine whether a better settlement might have been negotiated. Finally, the court should remain cognizant of the overriding public interest in settling large class actions, especially those involving employment discrimination. *Alaniz v. California Processors, Inc.*, supra, 73 F.R.D. at 278; *Flinn v. FMC Corp.*, supra, 528 F.2d at 1172-73; *Cotton v. Hinton*, supra, 559 F.2d at 1330; *Detroit v. Grinnell Corp.*, supra, 495 F.2d at 462; *Stull v. Baker*, 410 F.Supp. 1326, 1333 (S.D.N.Y.1976); *Saylor v. Lindsley*, 456 F.2d 896, 904 (2d Cir. 1972); *Pettway v. American Cast Iron Pipe Co.*, 576 F.2d 1157, 1214 (5th Cir. 1978), cert. denied, 439 U.S. 115, 99 S.Ct. 1020, 59 L.Ed.2d 74 (1979).

In addition to these substantive concerns, the court must ensure that litigants' procedural rights, and especially those of any objectors to the settlement, as outlined in *Mandujano* are safeguarded throughout the settlement process. Thus, class

members must be notified of a settlement in a manner that does not systematically leave any group without notice; notice must indicate that class members can object; each objection must be made part of the record; and each opponent raising a substantial objection has a right to be heard, to be represented by an attorney, and to have a reasoned response by the court on the record.

A.

First, and most important, a settlement must be evaluated in light of the *618 strength of the case, and the court must balance the probable outcome of an action, if tried, against the provisions of the settlement. It is not necessary or expected that litigants will obtain through settlement all they might have realized through a victorious trial. Cognizant of the likely disappointment of class members who perceive they have been victims of discrimination in receiving less than the full recovery sought, the Court also recognizes that simply because a settlement may amount to only a fraction of the potential recovery does not in itself render it unfair or inadequate. Compromise is the very nature of settlement. *Flinn v. FMC Corp.*, supra, 528 F.2d at 1173-74; *Muldrow v. H. K. Porter Co.*, 20 Fed.R.Serv.2d 1069, 1075 (N.D.Ala.1975); *Bryan v. Pittsburgh Plate Glass Co.*, 494 F.2d 799, 801 (3d Cir. 1974), cert. denied, 419 U.S. 900, 95 S.Ct. 184, 42 L.Ed.2d 146 (1974); *Grunin v. International House of Pancakes*, 513 F.2d 114, 124 (8th Cir. 1975), cert. denied, 423 U.S. 864, 96 S.Ct. 124, 46 L.Ed.2d 93 (1975); *Detroit v. Grinnell Corp.*, supra, 495 F.2d at 455; *Stull v. Baker*, supra, 410 F.Supp. at 1332.

The case before the Court, an across-the-board attack on Bechtel's employment practices and policies, depends primarily upon statistics, and secondarily upon testimony by class members and documentary evidence.¹¹ Having carefully examined the merits of this action, for reasons explained below, the Court finds that plaintiffs do not have a strong case, primarily because the results of their crucial statistical analyses are weak a shortcoming which cannot be overcome by their other evidence.

Statistical analysis is one of the most widely used and effective means of establishing the existence of a policy and pattern of discrimination. *Dickerson v. United States Steel Corp.*, 439 F.Supp. 55, 65 (E.D.Pa.1977); *Presseisen v. Swarthmore College*, 442 F.Supp. 593, 599 (E.D.Pa.1977), aff'd 582 F.2d 1275 (3d Cir. 1978).

Statistics are an especially important source of proof in cases involving employment discrimination, where plaintiffs attacking system-wide employment practices must establish that racial discrimination is the “standard operating procedure,” something more than the mere occurrence of isolated or sporadic discriminatory acts. [International Brotherhood of Teamsters v. United States](#), 431 U.S. 324, 339, 97 S.Ct. 1843, 1856, 52 L.Ed.2d 396 (1977). See also [Hazelwood School District v. United States](#), 433 U.S. 299, 97 S.Ct. 2736, 53 L.Ed.2d 768 (1977).

On the other hand, “statistics are not irrefutable; they come in infinite variety and, like any other kind of evidence, they may be rebutted. In short, their usefulness depends on all of the surrounding facts and circumstances.” [International Brotherhood of Teamsters v. United States](#), *supra*, 431 U.S. at 340, 97 S.Ct. at 1856-1857. Thus, the significance of statistical findings may be diminished by such factors as small sample size or failure to consider relevant variables, or bolstered by the testimony of individual class members which brings “the cold numbers convincingly to life.” *Id.* at 339-40, 97 S.Ct. at 1856. [Presseisen v. Swarthmore College](#), *supra*, 442 F.Supp. at 599-600; [Croker v. Boeing Co. \(Vertol Division\)](#), 437 F.Supp. 1138, 1186 (E.D.Pa.1977); [Parson v. Kaiser Aluminum & Chemical Corp.](#), 575 F.2d 1374, 1387 (5th Cir. 1978).

In this “second generation” case, statistics are of vital importance, offering the most practical and comprehensive means of proving that discrimination is Bechtel's standard *modus operandi*. Although the Court cannot say that statistics are required in every case, the strength of this particular case is largely dependent upon them. In view of the emphasis the Court places upon statistics, below it will painstakingly analyze plaintiffs' statistical showing. First, the Court will explain the problems it perceives, *619 aided in some instances by the analysis of plaintiffs' expert. Next it will set forth the assessment of plaintiffs' attorneys. Interspersed throughout are comments by the objectors.

Initially, the Court will address several foundational problems which place additional burdens upon plaintiffs in proving the validity of their statistics. First, there is some question as to the appropriateness of certain samples. For example, the statistics on salary differences compare the salaries earned by Blacks and Whites at the same general salary grade within a job group.¹² Defendants contend that plaintiffs should instead have compared salaries of persons holding the same individual jobs, who are engaged in literally “equal work.”

See, e. g., [Smith v. Union Oil Co. of California](#), 17 FEP 960, 983-85 (N.D.Cal.1977); [Agarwal v. McKee & Co.](#), 16 EPD P 8301 at 5580-81 (N.D.Cal.1977). The problem with defendants' view is that here, as in many cases, the resulting statistics would necessarily be predicated upon extremely small samples, which would make it virtually impossible for plaintiffs to develop significant data about company-wide practices. On the other hand, the Court could not permit plaintiffs to proceed with their present sample absent proof that in most cases various positions within a job family are sufficiently similar in skill, effort, and responsibility to warrant the use of job families as a proper ground for comparison of salaries, a proposition which defendants have already attempted to refute.¹³ See generally, [Schlei & Grossman, Employment Discrimination Law](#) 375-81 (1976), 104-05 (1979 Supp.).

A second, and related, problem, primarily affecting plaintiffs' statistics on promotion, is that many of the existing samples are too small to provide meaningful results. Although the value of statistics may be decreased by small sample size, even if the “universe” is relatively small, discrimination can still be shown if statistics show a great disparity in treatment and there is other strong evidence of discrimination. [International Brotherhood of Teamsters v. United States](#), *supra*, 431 U.S. at 339 n.20, 97 S.Ct. at 1856 n.20; [Ste. Marie v. Eastern R. R. Ass'n](#), 18 FEP 671, 683 (S.D.N.Y.1978); [Schlei & Grossman, Employment Discrimination Law](#) at 328-29 (1979 Supp.). In this case, as explained *infra*, the statistics do not show a consistent pattern of discrimination or significantly great disparities in treatment. Nor does there appear to be other sufficient “strong evidence” of discrimination.

For example, this does not appear to be, as the objectors contend, a case involving totally standardless discretion in promotion, a factor which has in other cases remedied the potential handicap of small sample size.¹⁴ When such allegations are raised, the Court must examine the entire selection and promotion process and inquire whether it is totally discretionary or whether there are some guidelines or written instructions regarding qualifications. [Ste. Marie v. Eastern R. R. Ass'n](#), *supra*, 18 FEP at 682-83. Here, in rebuttal to allegations of subjective performance evaluation, defendants have offered as trial exhibits policy manuals, instruction books, and training programs which specifically define the authority *620 of supervisors and the standards by which they operate. This rather impressive array of materials includes: a “Manual of Personnel Policies” (Exhibit 1521); a

“Basic Supervisory Training” (Exhibit 1530); a “Supervisor's Workbook” and other materials prepared for Performance Review Training Programs (Exhibit 1543); a publication entitled “Equal Employment Opportunity and Affirmative Action Responsibilities of Bechtel Supervisors” (Exhibit 1545). Thus, this case is distinguishable from other, stronger, cases, in which no guidelines whatsoever exist with respect to promotion.¹⁵

A third problem, affecting nearly all of the statistics, is that they fail to account for relevant individual variables. Both defendants and objectors, for different reasons, contend that absent consideration of, for example, the precise qualifications of an employee, statistics will be unreliable and skewed. Defendants point out that many personnel decisions affecting Whites as well as Blacks are based upon traditional nondiscriminatory reasons, so that statistical randomness cannot be assumed. The objectors contend that because the statistics fail to account for differences in authority or responsibility given to Blacks and Whites holding similar positions, they fail to adequately display the unfavorable treatment of Blacks. The omission of relevant factors does raise serious questions as to the weight to be afforded the statistics, and places a great burden on plaintiffs to illustrate, by testimony, the general absence of nondiscriminatory factors. The Court need not, however, reject the statistics in toto because of this problem, for it recognizes that it is virtually impossible to quantify all of the varied and individualized circumstances surrounding personnel actions. And in response to the objectors, some factors, such as “difference in authority,” are simply too particularized and subtle to be quantifiable; it is thus doubtful that discrimination on such bases can be effectively handled in class litigation.

Finally, and most important, in addition to these foundational problems, which to some extent can be cured, plaintiffs' statistics do not show that Blacks received significantly disparate treatment from other employees. On this issue, the Court affords great weight to the affidavit of plaintiffs' statistical expert, in which he assesses the strength of the data he collected from Bechtel. He found that there were statistically significant differences in treatment between Blacks and Whites in some areas but not in others. Specifically, based upon a regression analysis for the years 1972-1976, taking into account sex, age, and education when hired, he determined that on the average, Blacks were assigned a salary grade when hired approximately .46 grade lower than were Whites. Based upon a regression analysis of salaries, taking into account sex, age, salary

grade, time in salary grade, time since original hire, and job family, he found that for letter grade employees during 1972-1974 and for number grade employees in 1972, Blacks received significantly lower salaries than did Whites. For other years, the differences were not significant. His analysis of promotions in each year by job family and by letter or number grade showed disparities of statistical significance in only a few cases, although his analysis of employees promoted from a letter grade to a number grade demonstrated statistically significant differences for all years. His analyses of layoffs and firings by job family *621 and letter or number grade show statistically significant differences in few instances. His analysis of rehires of employees did not reveal statistically significant disparities. He concluded that the statistical results were mixed: plaintiffs' strongest issue was salary differences in early years; in regard to many other issues, though, he found plaintiffs' chances for recovery to be most uncertain. In fact, he recommended on several occasions that they attempt to settle the case. See generally Exhibits 128a-140.

The Court also notices that the statistics show an overall improvement in Bechtel's employment practices with respect to Blacks in recent years. Although this factor would not affect Bechtel's liability for discrimination in prior years, it, in addition to other evidence of Bechtel's efforts to counteract discrimination,¹⁶ renders uncertain the need for injunctive relief. See, e. g., [Donnell v. General Motors Corp.](#), 576 F.2d 1292, 1301 (8th Cir. 1978).

In addition to statistics, plaintiffs have prepared much individual testimony¹⁷ which, despite their commendable effort, would probably not be adequate to counteract the weakness of their statistics. Although such testimony is effective in bolstering statistics, it is a rare across-the-board case where, absent overt intentional discriminatory policies, it can effectively supplant the need for them.

The objectors, conceding that the statistics do not reflect a “strong” case, place a very high value on individual testimony, arguing that this case will stand or fall upon it. Thus, they contend that the one hundred affidavits they have submitted to the Court, alleging individual instances of discrimination, illustrate that black employees possess a very strong case against Bechtel. Even ignoring the foundational problems with the affidavits,¹⁸ the Court has already stated that testimony by class members, without more, cannot realistically reverse the uniform trend of data. As the class counsel somewhat facetiously suggest, literally thousands of

witnesses would be required to duplicate the comprehensive nature of statistics. Moreover, in the face of the very thorough rebuttal already prepared by defendants,¹⁹ the Court cannot readily *622 assume that the testimony of class members would have a uniformly therapeutic effect on their case.

Although the class plaintiffs will also suffer from the statistics, individual testimony will be of greater importance to their case. It is difficult to assess the strength of their claims, but the Court suspects that they will have difficulty proving much damage, as three of the four plaintiffs spent only a few years at Bechtel, subsequently moving on to higher paying jobs. All plaintiffs are being compensated under the Consent Decree for all or a substantial part of their demands. See *infra*.

The conclusion that plaintiffs' statistics have numerous foundational problems, that they do not, in many areas, support their claims of disparate treatment, and that the other evidence prepared by plaintiffs is not likely to cure these problems, is corroborated by the views of the class attorneys, which the Court finds persuasive in light of their considerable experience litigating Title VII actions such as this one,²⁰ *Muldrow v. H. K. Porter Co.*, *supra*, 20 Fed.R.Serv. at 1074; *Pettway v. American Cast Iron Pipe Co.*, *supra*, 576 F.2d at 1215; *Blank v. Talley Industries, Inc.*, 64 F.R.D. 125, 132 (S.D.N.Y.1974), and the high caliber of their work on this case. *Stull v. Baker*, *supra*, 410 F.Supp. at 1332-33.

The recommendations of plaintiffs' counsel should be given a presumption of reasonableness. *Id.* at 1332. Attorneys, having an intimate familiarity with a lawsuit after spending years in litigation, are in the best position to evaluate the action, and the Court should not without good cause substitute its judgment for theirs. On the other hand, recognizing the potential conflict of interest between attorneys and the class they represent, the Court should not blindly follow counsel's recommendations, but give them appropriate weight in light of all factors surrounding the settlement. *Pettway v. American Cast Iron Pipe Co.*, *supra*, 576 F.2d at 1215-16, 1176-77; *Saylor v. Lindsley*, *supra*, 456 F.2d at 900-01.

None of the circumstances surrounding this settlement detract from the presumption of reasonableness to which the class attorneys' views on this case are entitled. The settlement was reached after full discovery and full compliance with this Court's comprehensive pretrial order.²¹ Thus, the facts of this case have been sufficiently developed in an adversary context to permit a reasoned judgment of its merits. Moreover, there is no evidence whatsoever of collusion between the parties;

in fact much of the negotiation occurred in the presence of the Court. Nor do we find any conflict of interest between plaintiffs' attorneys and the class which would operate to the detriment of the class. See *infra*; *Pettway v. American Cast Iron Pipe Co.*, *supra*, 576 F.2d at 1215-16, 1176-77; *Saylor v. Lindsley*, *supra*, 456 F.2d at 900-01.

*623 It is the view of the class attorneys that the settlement affords the class as much as, if not more than, they would have received had the case gone to trial. They calculated the maximum liability of defendants to be about \$750,000. To reach this figure they compared salary, layoff, firing, and promotion rates of Blacks and Whites, under the assumption that they would have been treated equally absent discrimination. They then calculated the total difference in pay received by similarly situated Blacks and Whites. They omitted one area of alleged discrimination from their calculations, salary grade when hired, because they thought it was virtually certain they would not prevail on that claim. Because the trial was to be bifurcated, with individual hearings on damages following the trial on class-wide liability, they recognized that the amount actually paid out by defendants would depend upon the number of individuals who successfully filed damage claims. In view of the difficulty of proving damages, the cost of hiring an attorney, and the fact that typically a very small percentage of class members initiate such claims,²² they thought it unlikely that defendants would have been required to pay out the full \$750,000. Based upon their calculation that no more than eighteen percent of the class would prevail at the damage stage, they estimated that approximately \$135,000 was a more realistic assessment of defendants' maximum liability. Given the risk that plaintiffs might lose on one or all issues at the liability stage, and the extreme unlikelihood that all claimants would prevail at the damage stage, they felt that the \$120,000 set aside for the class, which represents eighty-nine percent of the maximum potential liability, was a reasonable figure. Another factor affecting their judgment was that the litigation would have been costly and time consuming: the trial on liability was estimated to last about six weeks; appeal was virtually certain; it is impossible to estimate how long it would have taken to complete the individual damage hearings.

Moreover, the class attorneys felt that the absence of nonmonetary relief should not invalidate the Consent Decree. Defendants were apparently unyielding in their refusal to accede to any such relief and, although class counsel would have preferred that the Decree contain injunctive relief, they did not think its absence warranted a refusal to settle the

case. They reasoned that even if they had prevailed on the merits, an award of injunctive relief was unlikely, recognizing from research, experience, and admonitions from this Court, that courts in recent years have been very reluctant to order nonmonetary relief in cases such as this one.

The class attorneys' views were corroborated by John Low, an independent counsel who has had a great deal of experience litigating Title VII class actions.²³ After reviewing the pleadings, motions, discovery, briefs, exhibits, proposed findings, and related documents on file in this case, Mr. Low stated that "the only reasonable inference that informed Title VII counsel could draw from the facts discovered was that should the case be tried, plaintiffs might lose on all counts," and under such circumstances might be liable for defendants' costs as well as their own. He also confirmed class counsel's view that few class members could be expected to file Stage Two (damage) claims, especially because the potential amount of back pay would be modest, at best, and that "a classwide settlement fund, although small in terms of individual awards, may far exceed the aggregate sum *624 obtained through the Stage Two 'mini-trial' process." Affidavit of John Low.

Finding the settlement fair, adequate, and reasonable thus far, the Court must at last take into account the numerous objections. Opposition of a significant number of class members is a factor to be considered when approving a settlement, although it is not controlling. A settlement is not unfair simply because a large number or a certain percentage of class members oppose it, as long as it is otherwise fair, adequate, and reasonable. *Mandujano v. Basic Vegetable Products, Inc.*, supra, 541 F.2d at 837; *Cotton v. Hinton*, supra, 559 F.2d at 1331; *Flinn v. FMC Corp.*, supra, 528 F.2d at 1173-74; *Muldrow v. H. K. Porter Co.*, supra, 20 Fed.R.Serv. at 1074-75; *Bryan v. Pittsburgh Plate Glass Co.*, supra, 494 F.2d at 803; *Pettway v. American Cast Iron Pipe Co.*, supra, 576 F.2d at 1214-15, 1217. Nor should a settlement be rejected merely because class plaintiffs oppose it. *Flinn v. FMC Corp.*, supra, 528 F.2d at 1174; *Saylor v. Lindsley*, supra, 456 F.2d at 899-900. Thus, there are several cases in which the presence of a large number of objectors has not prevented a court from approving a settlement. See, e. g., *Bryan v. Pittsburgh Plate Glass Co.*, supra (settlement approved despite opposition of more than twenty percent of the class); *Muldrow v. H. K. Porter Co.*, supra (settlement approved over objection of twenty percent of the class); *Cotton v. Hinton*, supra (fact that objectors purported to represent fifty percent of class did not prevent settlement).

To hold otherwise would put too much power in the hands of a few persons having no right to a preferred position in settlement, to thwart a result that might be in the best interests of the class. *Saylor v. Lindsley*, supra.

Cases in which large opposition has played a role in overturning settlements generally involve other significant factors as well. In the *Mandujano* case, in which five of nine named plaintiffs objected, there were serious due process violations: the court did not adequately notify class members of the settlement or enable them to voice their objections on the record. In *Pettway v. American Cast Iron Pipe Co.*, notice to class members was also deficient. Moreover, in that case the vast majority of the class, seventy percent, and all three named plaintiffs objected. The court reasoned that in cases where all class members are affected equally by a settlement, where there is, for example, a settlement fund,²⁴ the fact that a majority of the class objects is important. "(A)t some point objections from the class may become so numerous that in a very real sense it can be said that 'the class' has not agreed to the proposal, that counsel's perceptions of the best interests of the class are faulty, and that approval of the settlement by the district court constitutes an abuse of discretion. No simple percentages are determinative, of course, and each case must turn on its own facts." *Pettway v. American Cast Iron Pipe Co.*, supra, 576 F.2d at 1216.

In light of these principles, however, the Court does not find the quantum of objections, although impressive, sufficient in itself to overturn the settlement. Approximately sixteen percent of the class, including three of four named plaintiffs, have filed some opposition to the settlement.²⁵ But, as in *Pettway*, all class members are affected equally by the settlement, and the Court finds persuasive the fact that eighty-four percent of the class has filed no opposition.

The opposition by class plaintiffs is at first glance more troublesome. But upon close examination, it appears that two of the three objecting plaintiffs, Richard Carter and Sheila McDonald, will recover under the Decree one hundred percent of their back-pay demands. The third objector, Spotsel Boyd, will receive fifty percent of *625 his maximum recovery.²⁶ Moreover, two of the objecting plaintiffs are no longer employed at Bechtel, and thus have no real stake in whether the settlement includes nonmonetary relief. The weak standing of these plaintiffs to raise the objections they assert diminishes the initial impact of their numbers.

The Court therefore finds that plaintiffs have been represented by competent, experienced counsel, who, after a great deal of discovery and complete trial preparation, reasonably concluded that, due to the weakness of their case, the class would be better served by a fair settlement than by a costly, lengthy trial, which they could not expect to win. At arm's length, they negotiated a settlement with defendants, which, in light of the above factors, provided plaintiffs and the class with fair, reasonable and adequate relief. The size and the intensity of the opposition is not enough in itself to render the settlement inadequate. The Court additionally finds that more likely than not plaintiffs would have been unable to establish a prima facie case of class-wide discrimination with regard to most of the employment practices at issue, and that in light of the risks of litigation facing the individual plaintiffs, the \$20,000 allocated to them represents a fair, adequate and reasonable compromise of their claims.

B.

Under the second arm of its inquiry, the Court must respond to all substantial objections raised by opponents to the settlement. *Mandujano v. Basic Vegetable Products, Inc.*, supra. In attacking the settlement, the objectors have attempted to establish the following: that the case is a strong one; that the need for injunctive relief is great; that the size of the back-pay award is extremely small, while the attorneys' fees are substantial; that there was inadequate notice of or class participation in the case; and that the case was inadequately prepared and negotiated by class attorneys. The Court has reviewed those objections in light of the objectors' obligation to provide the Court with concrete facts showing that vital information was ignored by the Court. *Detroit v. Grinnell Corp.*, supra, 495 F.2d at 464. Under that standard, the Court can only conclude that the evidence proffered is insufficient to require rejection of the settlement.

The opponents' primary contention, one already discussed above, is that the proponents of the settlement have greatly underestimated the true strength of the case which, when compared to the limited relief offered by the Consent Decree, renders the settlement unreasonable and unfair. They focus upon what they perceive to be ongoing discriminatory employment practices at Bechtel, namely subjective performance evaluations, unequal pay, overt abusive behavior (such as racial slurs, retaliation, acts of personal bias), high concentration of Blacks in nonauthoritative low-level positions and corresponding lack

of participation by Blacks at managerial and supervisory levels, high turnover rate for Blacks, practice of bypassing Blacks for promotion, or denial of earned or promised promotions, under or over utilization as a method of pressuring Blacks to leave the company, denial of access to or adequate credit for successful participation in training programs, and inadequacy of existing affirmative action programs.

The Court's uniform response is that absent proof these practices have a class-wide effect, the objectors' additional "evidence," in the form of affidavits and declarations, although disturbing, is not adequate to alter the Court's assessment of the case. Affidavits showing nine percent of Bechtel's current employees, who comprise only a part of the entire class, feel they have been victims of discrimination, cannot effectively persuade the Court that discrimination has a class-wide, rather than a merely scattered, individual, effect in the *626 face of contradictory competent statistical evidence. Significantly, the objectors have failed to impeach any of the proponents' statistics.

Moreover, many of the practices about which the objectors complain, such as under or over utilization, retaliation, and overt abusive behavior, either do not form a part of this lawsuit or are so individualized in nature as to be incapable of review on a class-wide basis. See supra and *Croker v. Boeing Co. (Vertrol Division)*, supra, 437 F.Supp. at 1191-92. In any event, specific instances of such practices would have been used by class attorneys to bolster their statistics, and retaliation is already the focus of another lawsuit. *Graves v. Bechtel Corp.*, C-79-0783 WHO (N.D.Cal., filed Apr. 6, 1979) (See note 9, supra).

With the rejection of these fundamental points, objectors' arguments regarding adequacy of relief must also fail. Despite their strenuous objections with respect to the need for injunctive relief, namely, protection against retaliation, appointment of a monitor, establishment of goals, timetables and other protection for affirmative action and upward mobility, for reasons stated above, it is highly unlikely that such relief, discretionary with the Court, would have been granted even had the case gone to trial.

Many objectors are strongly disappointed at the amount of back pay set aside for the class, which they inaccurately describe as \$4 per month per employee. In view of the failure of many class members to submit claim forms, the estimated compensation is now approximately \$10 per month and could

ultimately be much more than that amount. As explained supra, class attorneys made a reasonable choice in opting for a formula approach to relief, which yields relatively small individual awards to a larger number of class members, and a greater overall recovery, than would individual damage trials. The aggregate sum allotted to the class, as also explained above, is fair and adequate in light of all the circumstances of this case.²⁷

The remaining issues raised by the objectors concern the class attorneys their handling of the case, their relationship with the class, and their fees.

With respect to case preparation, the objectors contend discovery was inadequate in three respects: first, certain administrative personnel at Bechtel whom the objectors consider potential key witnesses were not deposed; second, there was not sufficient testimony proffered from class members; and, third, the information contained in Bechtel's year-end personnel tapes, from which class attorneys developed their statistics, was of questionable reliability and should have been verified. The response to all of these criticisms is that although the objectors have explained how they would have done things differently, they have not shown that the judgment of class attorneys was critically defective in any respect. Mere difference in judgment regarding case strategy, where reasonable minds can differ, is not a sufficient reason to overturn a settlement.

Plaintiffs engaged in a massive amount of discovery over a period of three years. This is not a case where there is any doubt that truly adversary discovery has occurred. Compare, [Saylor v. Lindsley, supra, 456 F.2d at 904](#). They deposed all Bechtel personnel whom in their judgment would provide relevant testimony, and interviewed numerous class members. Mindful of the limitations on cumulative testimony imposed by this Court, they carefully selected for use at trial only the testimony they felt was strongest. The testimony objectors propose to develop is no different than that already prepared by class counsel.

The year-end personnel tapes were apparently incapable of verification because they *627 do not identify specific persons. It was reasonable to assume that Bechtel would not prepare fraudulent materials, and the objectors have not proffered any concrete facts supporting a contrary supposition. Moreover, the alternative to relying upon the tapes was to develop statistics from scratch from thousands of personnel files clearly not a feasible approach.

Related to criticism of class counsel's discovery is the contention that throughout the litigation the class was not adequately notified of the case or encouraged to participate in its development or settlement. Objectors contend that had there been greater class participation, the case would have been much stronger. The first official notice of this action was sent to the class on November 21, 1978, informing them of the settlement. Because the class was originally certified pursuant to [Rule 23\(b\)\(2\)](#), and because it is clear that "(when) an action is certified under [Rule 23\(b\)\(2\)](#), * * * absent class members are not required to receive notice * * *," [EEOC v. General Electric Telephone Co. of Northwest, Inc., 599 F.2d 322, 334 \(9th Cir., 1979\)](#), [Wright & Miller, 7A Federal Practice and Procedure s 1786 \(1st ed. 1972\)](#), notice was neither required nor sent at the time of certification.²⁸ In light of the contemporaneous finding that the class attorneys could provide fair and adequate representation, the Court is confident that it was within its discretion in refusing to require notice. Moreover, many class members were "unofficially" aware of the litigation, and on several occasions met with class counsel.

The objectors also maintain that they, in particular the class plaintiffs, were not adequately informed of the settlement prior to its consummation. It scarcely needs reminding that counsel has a duty to keep the client informed of settlement prospects and negotiations. In [Saylor v. Lindsley, supra](#), a shareholder's derivative action, class counsel apparently entered into a settlement without any notice to or authorization from the class plaintiff. Judge Friendly stated that:

"(W)e are not willing to * * * accept the view that the attorney for the plaintiff is the dominus litus and the plaintiff only a key to the courthouse door dispensable once entry has been effected. The attorney remains bound to keep his client fully informed of settlement negotiations, to advise the client before signing a stipulation of settlement on his behalf, and, if the client has objected, to inform the court of this when presenting the settlement, so that it may devise procedures whereby the plaintiff, with a new attorney, may himself conduct further inquiry if so advised." [Saylor v. Lindsley, supra, 456 F.2d at 900](#) (emphasis added).

The question of how to allocate decision-making between the attorney and the class in class litigation is a more difficult one.

This problem was discussed at length in [Pettway v. American Cast Iron Pipe Co.](#), *supra*, 576 F.2d at 1216:

“(T)he traditional notion of the ‘client’ deciding important litigation questions is often problematic in the class action context because of the difficulty in identifying the client. * * * The class itself often speaks in several voices. * * * it may be impossible for the class attorney to do more than act in what he believes to be the best interests of the class as a whole. If the attorneys decision in the face of * * * disagreement affects each class member more or less equally, * * * the attorneys views must be accorded great weight * * *.”

Elsewhere the court considers the role of class plaintiffs:

“(I)t remains unclear whether this model (the client deciding major litigation questions) can be carried over to the class action context, as no clear concept of the allocation of decision-making responsibility *628 between the attorney and the class members has yet emerged. Certainly it is inappropriate to import the traditional understanding of the attorney-client relationship into the class context by simply substituting the named plaintiffs as the client. * * * Were the class attorney to treat the named plaintiff as the exclusive client, the interests of other class members might go unnoticed and unrepresented.” *Id.* at 1176 (citations omitted).

In the case at bar, attorneys met with class plaintiffs to discuss the possibility of settlement on five occasions, and active class members were kept well informed of negotiations.²⁹ No stipulation of settlement was signed until all named plaintiffs and all active class members were informed of the terms of the settlement; and the Court was duly informed of the class' dissatisfaction. It is easy to appreciate the quandary facing the class attorneys, that is, whether to approve a settlement vociferously opposed by certain class members, or to prevent a disposition of the case, due to the opposition of some, which in their view would benefit the entire class. The Court finds

that under the well-reasoned standards delineated by Judge Friendly and by the court in *Pettway*, class counsel adequately fulfilled their duty to provide advance notice of the proposed settlement, acted reasonably on behalf of the majority of the class in accepting the settlement, and adequately protected the procedural rights of the objectors.

Finally, several objectors were concerned with the amount of attorneys' fees which they erroneously thought were to be awarded to class counsel pursuant to the Consent Decree. This Court has made it abundantly clear that it alone has the authority to determine whether and how much attorneys' fees will be awarded in this case, and that it will not be bound by any agreements between the parties regarding fees. At any rate, the Decree merely sets forth the maximum amount defendants have agreed to pay. After approval of the settlement, class counsel may, in a separate hearing, fully document their entitlement to the requested fees. See, e. g., [Norman v. McKee](#), 290 F.Supp. 29 (N.D.Cal.1968), *aff'd* 431 F.2d 769 (9th Cir. 1970); [Foster v. Boise Cascade, Inc.](#), 420 F.Supp. 674 (S.D.Tex.1976), *aff'd* 577 F.2d 335 (5th Cir. 1978).

In conclusion, this case has presented the Court with an exceedingly difficult decision. Both the forceful, heartfelt objections raised by the able and experienced counsel for the opponents to the settlement, and the fact that the Consent Decree provides very modest relief to the class, have given the Court great pause. As a fiduciary to the class, the Court has scrutinized this settlement with utmost care to determine its fairness, principally in light of the strength of the case. The Court has found that there is substantial doubt whether plaintiffs could have prevailed in this “second generation” [Title VII](#) action. Thus, it is the Court's opinion, after examining the entire record, and in particular all of the materials prepared for trial and for the fairness hearings, that the settlement is fair, adequate and reasonable and is in the best interests of the class. Accordingly, the Court hereby approves the Consent Decree. As provided in the Consent Decree, the Court shall retain jurisdiction over this matter until the defendants have fully complied with the terms of the Decree.

All Citations

485 F.Supp. 610, 20 Fair Empl.Prac.Cas. (BNA) 944, 20 Empl. Prac. Dec. P 30,246

Footnotes

- 1 [Mandujano v. Basic Vegetable Products, Inc.](#), 541 F.2d 832 (9th Cir. 1976).
- 2 See also, [Croker v. Boeing Co. \(Vertol Division\)](#), 437 F.Supp. 1138, 1192 (E.D.Pa.1977), and B. Nelson, New Directions in Settlement of Title VII Class Actions, paper presented at EEOC-MALDEF Employment Discrimination Law Conference, June 3, 1978.
- 3 The class was defined as all past, present and future black employees at defendants' San Francisco offices who have been discriminated against on the basis of their race in violation of Title VII of the Civil Rights Act of 1964. On August 9, 1978, the Court amended the class certification order to allow the class to proceed under [42 U.S.C. s 1981](#) as well as under Title VII. There are three subclasses: a "clerical" subclass consisting primarily of letter grade employees in the administrative job family; an "administrative" subclass consisting primarily of employees in number grades in the administrative family; and a "technical" subclass consisting primarily of employees in letter and number grades in the engineering, construction, technical support, and design drafting job families. Bechtel's salary and job structure is explained *infra*.
- 4 Bechtel's hiring practices are excepted from the otherwise comprehensive scope of this action.
- 5 Other provisions of the Decree include a description of the case, a denial of liability by defendants, instructions regarding notice to the class, an explanation of how the settlement fund is to be distributed, and a provision donating nondistributed funds to the University of California.
- 6 The notice sets forth the basic terms of the settlement and advises class members of their procedural rights, and states in relevant part:

"TIMETABLE FOR COURT ACTION

The Court has scheduled a hearing to consider approval of the Consent Decree, after class members have had an opportunity to review the Notice and make their views known to the Court. If you believe that the Consent Decree is fair, reasonable and adequate, there is nothing you need to do.

If you have any objections to the Consent Decree as proposed, you or your attorney must give written notice of these objections to (the Court and attorneys for plaintiffs and defendants)

All objections to the Consent Decree must be signed and must contain your address and social security number. Objections must be postmarked or filed with the Court no later than December 21, 1978. Any class member who does not make an objection in the manner provided here will be deemed to have waived that objection and will be forever foreclosed from making any objection to the proposed settlement by appeal or otherwise.

A hearing will be conducted by this Court on January 11, 1979, at 4:30 p.m. in the courtroom of the Honorable William H. Orrick, Jr., 450 Golden Gate Avenue, San Francisco, California. At this hearing, the Court will decide whether or not to give final approval to the Consent Decree. You are entitled to have your attorney present at this hearing at your expense or you may personally appear at the hearing. If you or your attorney wish to appear at the hearing, you must file with the Court and with the individuals listed in the preceding paragraph by December 21, 1978, a written notice of intention to appear. Failure to file and mail a notice of intention to appear on time will mean that you or your attorney will not be heard at the hearing.

Plaintiffs and the class are represented by Elizabeth C. Leavy, Esq. and Mark S. Rudy, One Ecker Building, Suite 400, Ecker and Stevenson Streets, San Francisco, California 94105, (415) 494-0500. If you prefer to be represented by your own counsel, you may enter an appearance by your counsel on or before December

21, 1978; otherwise, for purposes other than objecting to the Consent Decree, you will be represented in this lawsuit, without charge to you, by Ms. Leavy and Mr. Rudy.

EFFECT OF THE SETTLEMENT AND THIS NOTICE

If the Consent Decree is approved by the Court, a Judgment will be entered in the lawsuit which will (1) entitle all members of the class to participate in the applicable benefits provided in the Consent Decree and (2) completely discharge the defendants and all of their directors, officers, employees, and agents and their predecessors and successors from any further liability to plaintiffs or the class members from any claims of race discrimination occurring on or before the date of the Consent Decree. This Judgment will bind all class members.

You may not exclude yourself from this class action. The Judgment which is entered pursuant to the Consent Decree after it is finally approved will prevent you from obtaining any relief in any judicial or administrative proceeding which you have brought or may bring against any of the defendants relating to race discrimination occurring on or before the date of the Consent Decree.

The proposed settlement contained in the Consent Decree is subject to approval by the Court and the issuance of this Notice shall not create any right in any class member or affect any issue in the lawsuit until and unless the Court approves the proposed settlement and then only in accordance with its final decree.

This Notice has been approved by counsel for all parties and by the Court."

- 7 One hundred sixty such Notices were actually submitted, however, six were duplicates and one was filed by a person who was not a class member. The form reads as follows:

"As you are aware from the letter sent to you on December 4, 1978, three named plaintiffs did not agree to the terms of the Proposed Settlement of Class Action and Consent Decree. Additionally, the proposed settlement appears to provide a disproportionate sum for attorneys fees compared with those sums recommended for plaintiffs and members of the Class. Any statement alleging agreement to said documents by Plaintiffs Spotsel L. Boyd, Jr., Richard J. Carter and Sheila McDonald or by significant numbers of the Class is in error. On December 10, 1978 Richard J. Carter and Sheila McDonald, accompanied by several members of the named Class, met with you to discuss this matter. Despite stated objections by named plaintiffs and members of the Class therein present, you did not agree to pursue this matter further. Therefore, we request that you, as our representative, withdraw the Proposed Settlement and Consent Decree until such time as we, the clients, and you, our representatives, can agree on an appropriate course of action.

The Proposed Settlement and Consent Decree was initiated without specific consent of Spotsel L. Boyd, Jr., Richard J. Carter, Sheila McDonald or identified members of the Class. The signatories to this letter consider that the submittal of the Proposed Settlement and Consent Decree without consent of the named plaintiffs, and your lack of agreement to reconsider the matter, are possible grounds for submittal of necessary documents to the California State Bar Association charging you with not adequately representing those plaintiffs herein named and other members of the Class."

- 8 Not all of these persons had filed written objections prior to the hearing, as required by the notice to the class.
- 9 The hearing was initially set for April 23, 1979. On April 6, 1979, however, certain objectors filed a separate class action, Graves v. Bechtel Corp., No. C-79-0783 WHO (N.D.Cal.) seeking preliminary injunctive relief to prevent retaliation for participation in Boyd v. Bechtel. To better coordinate the two actions, the fairness hearing was postponed until June 1, 1979.

- 10 Objectors also attempted, for the most part unsuccessfully, to obtain further discovery from Bechtel. The Court felt that further discovery was unnecessary in light of the massive amount of information already gathered by class counsel. See, e. g., [Cotton v. Hinton](#), 559 F.2d 1326, 1329 (5th Cir. 1977); [Detroit v. Grinnell Corp.](#), 495 F.2d 448, 463 (2d Cir. 1974).
- 11 Plaintiffs have submitted the following statistical exhibits: racial distribution of employees by grade and job family; regression analysis of salary when hired; comparison of salaries earned by Blacks and Whites by grade and job family; regression analysis of year-end salary; comparison of promotions of Blacks and Whites by grade and job family; actual versus expected number of Blacks promoted by year and job group; comparison of black and white hires; comparison of black and white layoffs and fires; comparison of rehires; etc.
- 12 Bechtel's salary grades and job structure are described supra.
- 13 For example, defendants point out that lawyers and public relations agents, employed at the same salary level within one job family, have dramatically disparate duties. Plaintiffs retort that this example illustrates the exception rather than the rule. The Court has no doubt that this issue would be hotly contested at trial.
- 14 The objectors contend that Bechtel's use of subjective performance evaluations affects their ability to obtain promotions, as well as merit increases, training, and transfers, and causes them to receive a disproportionate number of layoffs and terminations. Specifically, they complain of a lack of adequately delineated standards or written qualifications; of a "buddy system" which operates to favor promotions of white employees over black employees by predominantly white supervisors; of job evaluations deliberately written to justify upcoming negative personnel decisions; and of the uneven application of the existing rules regarding performance evaluation.
- 15 At the same time, because the objectors have not shown that subjective performance evaluations disproportionately affect Blacks (in, e. g., salary or promotion), proof that Bechtel engages in such practices could not itself provide a basis for any class-wide findings of discrimination. "The fact that certain elements of an employer's personnel practices and procedures involve subjective personnel practices, or determinations of employees' relative merit and qualifications, does not establish a violation of Title VII absent proof that subjective elements of the process are made in a manner which has a significant adverse impact on minorities." [Agarwal v. McKee & Co.](#), 16 EPD P 8301 at 5586 (N.D.Cal.1977). Whatever method of proof is used, plaintiffs must show a disparity in their condition as compared to that of nonminority individuals. [Dickerson v. United States Steel Corp.](#), 439 F.Supp. 55, 64 (E.D.Pa.1977).
- 16 Defendants have prepared testimonial and documentary evidence showing that they already engage in many employment practices which injunctive relief would presumably address, such as job posting, career counseling, uniform performance appraisal system, uniform salary administration system, training programs for supervisors. Exhibits 1521, 1536, 1540, 1541, 1547. They have also submitted into evidence copies of their affirmative action programs, which contain goals and timetables and outline policies and procedures applicable to all the Bechtel entities. Exhibits 1533A-1533U. Moreover, defendants, as government contractors, are subject to a panoply of regulations, audits, and reviews by the Office of Federal Contract Compliance Program. The Court rejects, in light of defendants' unrefuted statistics, the objectors' contention that Bechtel's affirmative action programs, especially those with respect to training, are merely cosmetic. See, e. g., Exhibits 2021-2022.
- 17 In compliance with this Court's pretrial order, plaintiffs have listed detailed witness statements for all named plaintiffs and some fourteen Bechtel employees prepared to testify on behalf of the class. In excess of forty specific acts of discrimination would have been attested to at trial.

- 18 Many of the allegations contained in the affidavits are based upon hearsay, opinion testimony, and highly subjective feelings and suspicions about discrimination. Although the objectors were not required to adhere to rules of evidence, such testimony cannot readily be considered by the Court as “factual” support for the presence of class-wide discrimination.
- 19 Defendants have prepared “counter-statistics” and detailed witness statements for some eighty-two witnesses. They contend their statistics show that except for 1975, a greater percentage of Blacks were promoted than Whites (Exhibits 2016-2020); that their parity analysis shows that for each year and overall the actual number of black promotions did not differ significantly from the expected number (Exhibits 2084-2088); that their parity studies by salary grade prove that in later years Blacks received more training than would be expected from their percentage representation in various salary grades (Exhibits 2021-2022); that Blacks received favorable treatment with respect to transfer (Exhibits 2013, 2035-2039); that Blacks received on the average greater percentage of salary increase than comparable Whites (Exhibits 2062-2070); that there were no statistically significant differences in salary between Blacks and Whites in the same jobs from 1973-1977 (Exhibits 2047-2051); that their parity analysis of layoffs experienced by employees in the same job with the same length of service shows that there were no statistically significant differences between Blacks and Whites (Exhibits 2015, 2042-2046, 2077-2083); that their “turnover” analysis shows that on a job-by-job basis Black turnover percentages were comparable with nonblack percentages (Exhibits 2014, 2037-2041). Where conflicting statistical conclusions are drawn from reasonably reliable statistics, plaintiffs usually fail to sustain their burden of proving discriminatory impact. *Schlei & Grossman, Employment Discrimination Law* at 329 (1979 Supp.).
- 20 Elizabeth Leavy has practiced law since 1971. For three years she was a trial attorney with the San Francisco Regional Litigation Center of the EEOC, participating in six major actions initiated by the EEOC. For the past three years she has worked in a private law firm, where she has specialized in public sector labor law and employment discrimination law, representing both plaintiffs and defendants; while there she has been chief counsel for plaintiffs in five major Title VII cases. Mark Rudy has practiced law since 1970, during which time he has worked on eleven major lawsuits, chiefly in the areas of poverty law and employment discrimination.
- 21 Each party filed trial briefs, proposed findings of fact and conclusions of law, narrative statements of witness’ testimony, and exhibit lists, including statements of relevancy and sponsoring witnesses.
- 22 See affidavit of Mark Rudy, filed May 18, 1979, and affidavit of John Low, filed May 18, 1979. In this particular case, only 50 of 717, or 7 percent of, the former employee class members sent in claims for a share of the proposed settlement. Even assuming a greater percentage of current employee class members participating in the suit, we cannot anticipate that overall a substantially greater number of class members would prevail at the damages stage.
- 23 Prior to 1978, when he joined a private law firm, John Low was Senior Trial Attorney with the EEOC in San Francisco, where for five years he specialized in “pattern or practice” and class action litigation. He was lead government attorney in over fifteen major Title VII cases.
- 24 In contradistinction are cases where the interests of class members conflict, involving, for example, disputes as to allocation of funds.
- 25 In addition to the original objections, nine percent of the entire class, or nearly twenty-five percent of the current employee, filed affidavits.
- 26 Alvino Hart, who has filed neither an objection nor a declaration, will also receive fifty percent of his maximum recovery. None of the plaintiffs will recover compensation for emotional distress. It is unlikely such relief,

which is rarely awarded in [Title VII](#) or [Section 1981](#) cases, would have been granted even if the case had gone to trial.

- 27 Other substantive concerns of the objectors, including job training, different pay scales, and promotions, are discussed elsewhere. The remaining objections are insubstantial. These include, inter alia, the following complaints: that reserve funds will be donated to the University of California; that Bechtel does not admit discrimination; that the Consent Decree does not specifically identify discriminatory practices.
- 28 In response to certain dissidents wishing to exclude themselves from the action, there is no right to “opt out” of a 23(b)(2) class action. [EEOC v. General Telephone Co. of Northwest, Inc.](#), 599 F.2d 322, 334 (9th Cir., 1979); Wright & Miller, [7A Federal Practice and Procedure](#) s 1786 (1st ed. 1972).
- 29 The first such meeting was held with approximately fifteen class members well before any settlement discussion had been held with Bechtel's attorneys. This and other meetings are described in detail in the Affidavit of Elizabeth Leavy filed January 4, 1979.

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.

2020 WL 13505349

Only the Westlaw citation is currently available.
United States District Court, N.D. Illinois, Eastern Division.

Elvia Garcia BOYZO, Plaintiff,

v.

UNITED SERVICE COMPANIES, INC.,
United Temps, Inc., and United Maintenance
Company, Inc. d/b/a United Temps, Defendants.

Case No. 18 C 6854

|

Signed August 3, 2020

Attorneys and Law Firms

[Christopher John Williams](#), National Legal Advocacy Network, Chicago, IL, Javier Eduardo Castro, Raise The Floor Alliance, Chicago, IL, for Plaintiff.

[Emory Darnell Moore, Jr.](#), Honigman LLP, Chicago, IL, [Joseph Kevin Mulherin](#), McDermott Will & Emery LLP, Chicago, IL, for Defendants.

ORDER

[GABRIEL A. FUENTES](#), United States Magistrate Judge

*1 In this matter before the magistrate judge on consent (D.E. 32), before the Court are Plaintiff's Unopposed Motion for Preliminary Approval of the Parties' Class Action Settlement and for Approval of Class and Collective Certification, Form and Manner of Class Notice, and Scheduling of Fairness Hearing for Final Approval of Settlement ("Mot." D.E. 66), and a supplemental motion incorporating approval of an Amended Settlement Agreement into the request for relief (D.E. 73). Plaintiff Elvia Boyzo ("Plaintiff") seeks an order (1) preliminarily approving the Parties' Class Action Amended Settlement Agreement (hereinafter, the "Amended Settlement Agreement"), (2) approving class certification for settlement purposes, (3) approving the form and manner of class notice, and (4) scheduling a Fairness Hearing for the final approval of the settlement. The Motion and Supplemental Motion are granted.

I. Background

In this 2018 lawsuit filed by Plaintiff on behalf of a class of workers against United Service Companies, Inc.; United Temps, Inc.; and United Maintenance Company, Inc. (collectively "United Service" or "Defendants"), Plaintiffs alleged that United Service violated provisions of the Fair Labor Standards Act, [29 U.S.C. § 201, et seq.](#) ("FLSA"); the Illinois Minimum Wage Law, [820 ILCS 105/1, et seq.](#) ("IMWL"); the Illinois Day and Temporary Labor Services Act, [820 ILCS 175/1, et seq.](#) ("IDTLA"); and the Illinois Wage Payment and Collection Act ("IWCPA"), [820 ILCS 115/1, et seq.](#), by failing to pay class members certain wages during the class period of September 7, 2018 and October 5, 2018. The class members worked as temporary workers at various hotels in the Chicago area during the class period.

Though Defendants deny Plaintiff's claims, a settlement agreement was reached on October 11, 2019. The Settlement Agreement called for the class members to receive pro-rata settlement payments from a settlement fund created by United Service, in exchange for Plaintiff's class-wide release of claims that were or could have been alleged in the action. The settlement followed a mediation over which U.S. Magistrate Iain Johnston presided on May 13, 2019. Both parties were represented by counsel.

II. Settlement Approval Criteria

A court may approve a settlement that would bind class members only if it determines after a hearing that the proposed settlement is "fair, reasonable, and adequate." [Fed. R. Civ. P. 23\(e\)\(3\)](#). Settlement approval in the district court is a two-step process, [In re AT&T Mobility Wireless Data Servs. Sales Litig.](#), 270 F.R.D. 330, 346 (N.D. Ill. 2010), described as follows: The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is within the range of possible approval. This hearing is not a fairness hearing; its purpose, rather, is to ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing.¹ If the district court finds a settlement proposal within the range of possible approval, it then proceeds to the second step in the review process, the fairness hearing. Class members are notified of the proposed settlement and of the fairness hearing at which they and all interested parties have an opportunity to be heard. *Id.*

*2 At the preliminary approval stage, the Court considers "the strength of plaintiffs' case compared to the amount of defendants' settlement offer, an assessment of the likely

complexity, length and expense of the litigation, an evaluation of the amount of opposition to settlement among affected parties, the opinion of competent counsel, and the stage of the proceedings and the amount of discovery completed at the time of settlement.” *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006) (quoting *Isby v. Bayh*, 75 F.3d 1191, 1199 (7th Cir. 1996)).

“The ‘most important factor relevant to the fairness of a class action settlement’ is the first one listed: ‘the strength of plaintiff’s case on the merits balanced against the amount offered in the settlement.’ ” *Synfuel*, 463 F.3d at 653 (quoting *In re Gen. Motors Corp. Engine Interchange Litig.*, 594 F.2d 1106, 1132 (7th Cir. 1979)). Furthermore, “[i]n conducting this analysis, the district court should begin by ‘quantifying the net expected value of continued litigation to the class.’ To do so, the court should ‘estimate the range of possible outcomes and ascribe a probability to each point on the range.’ ” *Id.* (quoting *Reynolds v. Beneficial Nat’l Bank*, 288 F.3d 277, 284–85 (7th Cir. 2002)).

Courts approve FLSA settlements when they are reached as a result of contested litigation to resolve bona fide disputes. *See, e.g., Lynn’s Food Stores, Inc. v. United States*, 679 F.2d 1350, 1355 (11th Cir. 1982); *Fosbinder-Bittorf v. SSM Health Care of Wis., Inc.*, No. 11 Civ. 592, 2013 WL 5745102, at *1 (W.D. Wis. Oct. 23, 2013); *Burkholder v. City of Ft. Wayne*, 750 F. Supp. 2d 990, 994-95 (N.D. Ind. 2010); *see also Butler v. Am. Cable & Telephone, LLC*, No. 09 Civ. 5336, 2011 WL 4729789, at *8-9 (N.D. Ill. Oct. 6, 2011). If the proposed settlement reflects a reasonable compromise over contested issues, the court should approve the settlement. *Lynn’s Food Stores*, 679 F.2d at 1354; *Roberts v. Apple Sauce, Inc.*, No. 12 Civ. 830, 2014 WL 4804252, at *2 (N.D. Ind. Sept. 25, 2014).

III. Analysis and Findings on Motion for Preliminary Approval

The Court, having considered the unopposed Motion for Preliminary Approval (D.E. 66), the Memorandum of Law in support (D.E. 68), the initial Settlement Agreement attached as an exhibit to the memorandum of law (D.E. 68-1), the supplemental motion (D.E. 73), the Amended Settlement Agreement as filed publicly on July 7, 2020 (D.E. 70), and the form of notice to the class and the publicly filed proposed Form of Class Notice (D.E. 73-1 at 29-44), the Court finds as follows:

1. The Court grants preliminary approval to the Amended Settlement Agreement.

2. Upon review of the Amended Settlement Agreement, the Court preliminarily finds that the settlement is a fair and adequate resolution of a bona fide dispute, given the strength of the Plaintiff’s case balanced against the amount offered in the settlement. The settlement followed contested litigation in which Plaintiff and United Service were represented by qualified, skilled counsel, and the settlement also was a product of a mediation in which the parties negotiated at arms-length before an experienced mediator and member of this Court, Judge Johnston. The parties exchanged extensive discovery and data prior to their settlement negotiation. The settlement averts potentially protracted and costly litigation, with an uncertain outcome for Plaintiff and the class, and it compensates Plaintiff and the class reasonably soon and with certainty. The settlement falls well within the range of possible approval, making preliminary approval appropriate.

*3 3. The Court certifies the settlement class as defined under [Rule 23](#) and on Page 4 of the Plaintiff’s Memorandum of law (D.E. 68) as:

Plaintiff Boyzo and all other individuals assigned by Defendants United Service Companies, Inc., United Temps, Inc. and United Maintenance Company, Inc. to work at the following Chicago area hotels at any time between September 7, 2018 and October 5, 2018: the Allegro, Drake, Hilton, Hyatt McCormick, Hyatt Regency, Palmer House, Palomar, Ritz-Carlton and Sheraton.

The Court also conditionally certifies the proposed FLSA collective action. The [Rule 23](#) class claims are limited to those arising from class members’ work during the class period for minimum wages and overtime under the IMWL and the IDLTSA, whereas the claims being proposed for conditional certification as a collective FLSA action are limited to claims arising from work performed by the class during the class period for minimum wages and overtime under the FLSA.

The Court appoints Plaintiff Elvia Garcia Boyzo as the Class Representative of the Settlement Class. The Court further appoints Christopher J. Williams of the Workers’ Law

Office, PC as Class Counsel. The Court finds that the Class Representative and Class Counsel have provided adequate representation to the members of the class.

a. As for the [Rule 23](#) proposed class, the 2,000-member-plus class is sufficiently numerous, its claims satisfy the commonality and typicality requirements, and Boyzo has been an adequate class representative, for the reasons stated in the preliminary approval motion. [Fed. R. Civ. P. 23\(a\)](#); (Mem. of Law, D.E. 68, at 7-10). Questions common to the class predominate over those that are individual to class members. [Fed. R. Civ. P. 23\(b\)](#); (Mem. of Law, D.E. 68, at 10-12.) The proposed certification of the [Rule 23](#) class is granted.

b. As for the FLSA proposed collective action, the analysis that the Motion presents, and that the Court accepts, as to [Rule 23](#) class certification also applies to the conditional certification of the FLSA collective action, as they turn on many of the same principles. See [Espenscheid v. DirectSat USA, LLC](#), 705 F.3d 770, 771-72 (7th Cir. 2013). Per that analysis, the Court grants the conditional certification of the proposed FLSA class action.

4. The Court has reviewed the form and manner of proposed class notice as set forth in paragraph 13 of the Amended Settlement Agreement, and in the Form of Class Notice filed in support of the Motion. (D.E. 73-1 at 29-44.) The Court further approves of the Parties' proposed Notices of the Class and Collective Action Settlement, Proposed Settlement and Hearing, and the manner in which notices will be given as provided in the Amended Settlement Agreement. The Court also approves the Parties' proposed Notices of the Class and Collective Action Settlement for purposes of notice of the collective action pursuant to Section 216(b) of the FLSA. The proposed form of notice sufficiently informs Opt-In and Non-Opt-In eligible settlement class members of the terms of the settlement, including how Class Members may participate (or not participate), the estimated amount to which they are entitled under the allocation formula, the scope of the release, and the request for attorneys' fees and costs. See [Koszyk v. Country Fin. a/k/a CC Servs, Inc.](#), No. 16 C 3571, 2016 WL 5109196, at *2 (N.D. Ill. Sept. 16, 2016) (approving class notice that, *inter alia*, described settlement terms and fee allocation); [Zolkos v. Scriptfleet, Inc.](#), No. 12 Civ. 8230, 2014 WL 7011819, at *6 (N.D. Ill. Dec. 12, 2014) (same);

[Tobin v. Beer Capitol Distributing Inc.](#), No. 12 Civ. 274, 2012 WL 5197976, at *3 (E.D. Wis. Oct. 19, 2012) (same); see also [Bozak v. FedEx Ground Package Sys., Inc.](#), No. 11 Civ. 738, 2014 WL 3778211, at *3 (D. Conn. July 31, 2014) (approving FLSA notice providing notice of settlement terms and options facing class). The proposed form and manner of class notice are approved. Within fourteen (14) calendar days after the Notice Period, the Parties will submit to the Court any necessary documents for the Court's consideration of Final Approval of the Amended Settlement Agreement, including any Motions, and responses to any objections and/or comments.

*4 5. Pending final approval of the Amended Settlement Agreement, the prosecution and defense of the case is hereby stayed; the Class Representative, all members of the Class, and each of them, and anyone who acts or purports to act on their behalf, shall not threaten, institute, commence, or prosecute any action that seeks to assert claims against any Released Party related to the claims being certified as a [Rule 23](#) Settlement Class preliminarily herein or the FLSA claims alleged in the Complaint.

6. The Court reserves exclusive and continuing jurisdiction over this Litigation, the Class Representative, the Members of the Class, and the Released Parties for the purposes of: (1) supervising the implementation, enforcement, construction, and interpretation of this Order and the Amended Settlement Agreement and, upon the entry of a Final Order by this Court, granting final approval of the Amended Settlement Agreement and dismissing this Litigation, or in the event of an appeal of such Final Order, the final resolution of the appeal upholding the Final Order; (2) supervising the distribution of the Settlement Fund; and (3) resolving any disputes or issues that may arise in connection with this Litigation or the Settlement of this Litigation.

7. The fairness hearing in this matter is set for November 12, 2020 at 10 a.m. in Courtroom 1838 of the Dirksen Federal Courthouse in Chicago, Illinois.

SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2020 WL 13505349

Footnotes

- 1 The instant Order is being entered based on the unopposed, joint motion for preliminary approval of the settlement, without presentment of that motion at hearing, in view of the COVID-19 public health emergency. The Court already has entered a general order barring the noticing of civil motions for presentment, limiting in-court hearings to urgent matters that cannot be conducted remotely, and providing that the Court “may” schedule hearings by remote means. Fifth Amended General Order No. 20-0012 (July 10, 2020) (D.E. 71.) The Court also has accomplished by public minute order the public submission of additional materials in support of the Motion. (D.E. 72, 73.) The Settlement Agreement and Amended Settlement Agreement have been publicly filed. (D.E. 68-1, 70.) Final approval will be determined after the public fairness hearing as scheduled in this Order. Under these circumstances, the Court finds that no in-court or remote hearing is necessary for preliminary approval of this settlement.

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.

2021 WL 1948453

Only the Westlaw citation is currently available.

United States District Court, S.D. Illinois.

Leon CHAMBERS, on behalf of himself
and all others similarly situated, Plaintiff,

v.

TOGETHER CREDIT UNION, Defendants.

Case No. 19-CV-00842-SPM

|

Signed 05/14/2021

Attorneys and Law Firms

John F. Garvey, Jr., Carey, Danis and Lowe, St. Louis, MO, Vess Allen Miller, Lynn A. Toops, Cohen & Malad, LLP, Indianapolis, IN, Christopher D. Jennings, Johnson Firm, Little Rock, AR, J. Gerard Stranch, IV, Martin F. Schubert, Branstetter, Stranch & Jennings, PLLC, Nashville, TN, Jeffrey D. Kaliei, Sophia Goren Gold, Kaliei PLLC, Washington, DC, for Plaintiff.

Thomas M. Martin, Joseph E. Bant, Pro Hac Vice, Lewis Rice LLC, Kansas City, MO, for Defendants.

FINAL APPROVAL ORDER

McGLYNN, District Judge:

*1 Pending before the Court is Plaintiff's Motion for Final Approval of Class Action Settlement. The Court conducted a Rule 23 final approval hearing on May 13, 2021. For the reasons stated herein and those stated on the record, the Court **GRANTS** the motion as follows:

WHEREAS, Plaintiff Leon Chambers and Defendant Together Credit Union, by their respective counsel, entered into the Settlement Agreement and Release ("Settlement") (Doc. 73-1); and

WHEREAS, the Settlement provides, in exchange for a release of Defendant, for Defendant to pay \$525,000 into a Settlement Fund for the benefit of the Class; and

WHEREAS, the Plaintiff moved pursuant to [Rule 23 of the Federal Rules of Civil Procedure](#) for an order preliminarily approving the proposed Settlement and approving the form

and plan of notice and distribution set forth in the Settlement Agreement; and

WHEREAS, on February 3, 2021, this Court entered a Memorandum and Order (Doc. 76) (the "Preliminary Approval Order"), which granted preliminary approval to the Settlement, determined the settlement was "fair, reasonable and adequate" on a preliminary basis, certified a settlement Class on a preliminary basis, directed notice of the Settlement be distributed to the members of the settlement Class, and set deadlines for Class members to object to or opt-out of the Settlement, and set a hearing to consider final approval; and

WHEREAS, in accordance with the Preliminary Approval Order the Settlement Administrator caused notice to be sent to the members of the Class informing them of the terms of the Settlement and their rights to opt out, object, or do nothing and participate in the Settlement; and

WHEREAS, no member of the Class objected to the Settlement and only two members (joint accountholders) opted out of the Settlement; and

WHEREAS, on May 13, 2021, this Court held a final approval hearing under [Federal Rule of Civil Procedure 23\(e\)](#) to consider whether the Settlement is fair, reasonable, and adequate and whether the Class can be certified for purposes of entering judgment on the Settlement; and

WHEREAS, based upon the foregoing, having heard the statements of Class Counsel and Counsel for Defendant, having considered all of the files, records, and proceedings in the Lawsuit, the benefits to the Class under the Settlement, and the risks, complexity, expense, and probable duration of further litigation, and being fully advised;

THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. Terms capitalized herein and not otherwise defined shall have the meanings ascribed to them in the Settlement.
2. This Court has jurisdiction over the subject matter of this lawsuit and jurisdiction over Plaintiff and Defendant in the above-captioned case (the "Parties").

FINAL APPROVAL

3. [Federal Rule of Civil Procedure 23\(e\)](#) requires court approval of class action settlements. In general, the approval process involves three stages: (1) notice of the settlement to the class after “preliminary approval” by the court; (2) an opportunity for class members to opt out of, or object to, the proposed settlement; and (3) a subsequent hearing at which the court grants “final approval” upon finding that the settlement is “fair, reasonable, and adequate,” after which judgment is entered, class members receive the benefits of the settlement, and the defendant is released. [Fed. R. Civ. P. 23\(e\) \(1\)–\(2\), \(4\)–\(5\)](#).

*2 4. The Preliminary Approval Order previously granted preliminary approval to the Settlement, notice has been issued, no member of the Class has timely objected, and only two members of the Class (joint accountholders) have timely requested to be excluded from the Settlement.

5. In deciding whether to grant final approval the Court evaluates two issues: (1) whether the Settlement is fair, reasonable, and adequate, considering the factors listed in [Federal Rule of Civil Procedure 23\(e\)\(2\)](#); and (2) whether Class can be certified under [Federal Rule of Civil Procedure 23](#) for purposes of entering judgment on the settlement. [Fed. R. Civ. P. 23\(e\)](#).

The Settlement is fair, reasonable, and adequate.

6. In making a determination of whether a proposed class action settlement is “fair, reasonable, and adequate,” [Federal Rule of Civil Procedure 23\(e\)\(2\)](#) requires a court to consider whether (1) the class representatives and class counsel have adequately represented the class, (2) the proposal was negotiated at arm's length, (3) the proposal treats class members equitably relative to each other, and (4) the relief provided by the settlement is adequate, taking into account (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class; (iii) the terms of any proposed award of attorney's fees; and (iv) any agreement required to be identified under [Rule 23\(e\)\(3\)](#). In addition, courts in the Seventh Circuit also consider: (5) the strength of the plaintiffs' case compared to the amount of the defendants' settlement offer; (6) the opinion of experienced counsel; and (7) the stage of the proceedings and the amount of discovery completed. [Synfuel Techs., Inc. v. DHL Express \(USA\), Inc.](#), 463 F.3d 646, 653 (7th Cir. 2006).

7. In considering these factors, a court must bear in mind that “[f]ederal courts naturally favor the settlement of class action litigation.” [Isby v. Bayh](#), 75 F.3d 1191, 1196 (7th Cir. 1996). Indeed, “[s]ettlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources.” [Armstrong v. Bd. of Sch. Dir.'s of City of Milwaukee](#), 616 F.2d 305, 313 (7th Cir. 1980), *overruled on other grounds* [Felzen v. Andreas](#), 134 F.3d 873 (7th Cir. 1998).

8. The Court finds that the relevant factors favor final approval.

9. First, the Class Representative and Class Counsel have adequately represented the Class by vigorously pursuing this litigation both through motion practice on the legal merits and through discovery of facts and potential damages. [Fed. R. Civ. P. 23\(e\)\(2\)\(A\)](#).

10. Second, the proposal was negotiated at arm's length by experienced counsel on both sides. [Fed. R. Civ. P. 23\(e\)\(2\)\(B\)](#).

11. Third, the proposal treats the Class members equitably to one another because the Net Settlement Fund will be divided pro rata based on the number of Multiple NSF Fees each member was charged, net of amounts owed by Class members to Defendant. [Fed. R. Civ. P. 23\(e\)\(2\)\(D\)](#).

12. Fourth, the relief provided for by the Settlement appears adequate, taking into account the relevant factors. The costs, risks, and delays of trial and appeal would have delayed any recovery for several years, and would have risked the Class recovering nothing had this Court or an appellate court ruled against them on the pending motion to dismiss, a motion for class certification, a motion for summary judgment, at trial, or on appeal from a final judgment. [Fed. R. Civ. P. 23\(e\)\(2\)\(C\)\(i\)](#). The method of distributing the Net Settlement Fund is by direct payment, which is the best and most effective method of ensuring Class members receive the funds they are due and requires no claims to be submitted. [Fed. R. Civ. P. 23\(e\)\(2\)\(C\)\(ii\)](#). Attorneys' fees are subject to Court approval, and the Court is entering a separate Order on fees. [Fed. R. Civ. P. 23\(e\)\(2\)\(C\)\(iii\)](#). And there are no side agreements under [Rule 23\(e\)\(3\)](#) to be considered. [Fed. R. Civ. P. 23\(e\)\(2\)\(C\)\(iv\)](#).

*3 13. Fifth, while Plaintiff believes in the strength of the case, it was not without risk, yet the amount of the Defendants' settlement offer is significant, estimated to be

nearly 60% of the potential damages the Class would have obtained had they prevailed on every issue all the way through trial and appeal. *Synfuel Techs., Inc.*, 463 F.3d at 653.

14. Sixth, Class Counsel has submitted a Declaration showing they have experience litigating bank fee class actions across the country and that Class Counsel believes this Settlement represents a fantastic result for the Class.

15. Seventh, although the litigation was not nearing trial, Plaintiff had completed significant discovery and had fully briefed legal issues on a motion to dismiss to be able to fairly evaluate the risks and value of the case for purposes of achieving a fair settlement. *Id.*

16. For all of these reasons, the Court grants final approval because it finds that the Settlement is “fair, reasonable, and adequate.”

The Class meets the requirements for certification for purposes of entering judgment on the Settlement.

17. In deciding whether a class can be certified for entry of judgment on a proposed settlement, a court evaluates whether the proposed class meets the four requirements of Rule 23(a) and any one of the requirements of the subsections of Rule 23(b), which in this case is subsection 23(b)(3). *See, e.g., Bell v. PNC Bank, N.A.*, 800 F.3d 360, 373 (7th Cir. 2015).

18. Under Rule 23(a), the proposed class must satisfy the four requirements of numerosity, commonality, typicality, and adequacy. *Id.* Numerosity is satisfied where joinder of all class members is impracticable and is generally met when there are as few as 40 or more class members. *Cima v. WellPoint Health Networks, Inc.*, 250 F.R.D. 374, 378 (S.D. Ill. 2008) (“A class of more than 40 individuals raises a presumption that joinder is impracticable.”). Commonality is met where there is at least a “single common question of law or fact” involved and where the class’s claims “depend upon a common contention that is capable of class-wide resolution.” *Bell*, 800 F.3d at 374. Typicality is met where “the named representatives’ claims have the same essential characteristics as the claims of the class at large.” *Muro v. Target Corp.*, 580 F.3d 485, 492 (7th Cir. 2009). And “[t]he adequacy requirement is satisfied when the named representatives have ‘a sufficient interest in the outcome of the case to ensure vigorous advocacy’ and ‘[do] not have interests antagonistic to those of the class.’ ” *Suchanek v. Sturm Foods, Inc.*, 311 F.R.D. 239, 256 (S.D. Ill.

2015) (quoting *Saltzman v. Pella Corp.*, 257 F.R.D. 471, 480 (N.D. Ill. 2009) *aff’d*, 606 F.3d 391 (7th Cir. 2010)).

19. The requirements of Rule 23(b)(3) are satisfied if “the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed.R. Civ. P. 23(b)(3). The “predominance requirement is satisfied when common questions represent a significant aspect of a case and ... can be resolved for all members of a class in a single adjudication.” *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 815 (7th Cir. 2012). And the superiority requirement is generally satisfied when a class action would aggregate many relatively small-value individual claims into one case. *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801-02 (7th Cir. 2012). Further, in the context of a settlement, a court need not consider manageability issues that might make a class trial complicated because a settlement resolves all the claims without a trial. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial.”).

*4 20. Here, the Court finds that the requirements for certification under Rules 23(a) and 23(b)(3) are met.

21. The Class easily meets the Rule 23(a) requirements of numerosity, commonality, typicality, and adequacy. Numerosity is met because there are thousands of Class members. *Cima*, 250 F.R.D. at 378 (“A class of more than 40 individuals raises a presumption that joinder is impracticable.”). Commonality is met because all Class members share the “common question of law or fact” and their claims “depend upon a common contention that is capable of class-wide resolution,” namely whether Defendant’s standard form customer contracts permitted it to uniformly assess Multiple NSF Fees. *Bell*, 800 F.3d at 374. Typicality is met because “the named representatives’ claims have the same essential characteristics as the claims of the class at large” because, here, the Class Representative seeks to recover the same fees on the same theory as the Class members. *Muro*, 580 F.3d at 492. And similarly, “[t]he adequacy requirement is satisfied” because “the named representative[] ha[s] ‘a sufficient interest in the outcome of the case to ensure vigorous advocacy’ and ‘[does] not have interests antagonistic to those of the class.’ ” *Suchanek*, 311

F.R.D. at 256 (quoting *Saltzman*, 257 F.R.D. at 480 *aff'd*, 606 F.3d 391 (7th Cir. 2010)).

22. Finally, the “predominance” and “superiority” requirements of Rule 23(b)(3) are satisfied. Predominance is satisfied because “common questions represent a significant aspect of [this] case and ... can be resolved for all members of a class in a single adjudication,” as all of the claims depend on the issue of whether or not the Credit Union was permitted under its contract to charge the Class members Multiple NSF Fees. *Messner*, 669 F.3d at 815. And superiority is satisfied because a class settlement permits the relatively low-value claims (\$29 per Multiple NSF Fee) to be adjudicated for thousands of Class members in one action without the need for the complexities of trial. *Butler*, 727 F.3d at 799; *Amchem Prods., Inc.*, 521 U.S. at 620. In addition, Defendant has stipulated for the purposes of settlement that the requirements of Rules 23(a) and 23(b)(3) are met.

23. Thus, the Court hereby certifies the following Class for purposes of final approval and judgment: All members of Defendant who were assessed Multiple NSF Fees.¹ Excluded from the Class are Miles E. and Celestine A. Murdock who submitted a timely request for exclusion.

24. The Court appoints Cohen & Malad, LLP; Branstetter, Stranch & Jennings, PLLC; Kaliel PLLC; The Johnson Firm; and Carey Danis & Lowe as Class Counsel for the Settlement Class; and appoints Plaintiff as Class Representative. *Fed. R. Civ. P. 23(g)*.

Benefits of the Settlement and Releases.

25. The Settlement provides for certain benefits to Class Members. The Court approves those benefits and approves the distribution plan for the Settlement Fund set forth in the Settlement, and Class Counsel and the Settlement Administrator are authorized to implement that distribution after deductions for fees as approved by the Court by separate order.

*5 26. The Court shall have continuing jurisdiction over the administration of the Settlement Fund.

27. Upon the Effective Date, except as to the rights and obligations provided for under the terms of the Settlement, Plaintiff, on behalf of himself and each of the Class Members, releases and forever discharges Defendant, and all of its past, present and future predecessors, successors, parents, subsidiaries, divisions, employees, affiliates, assigns, officers, directors, shareholders, representatives, attorneys, insurers and agents (collectively, the “Defendant Releasees”) from any and all losses, fees, charges, complaints, claims, debts, liabilities, demands, obligations, costs, expenses, actions, and causes of action of every nature, character, and description, whether known or unknown, asserted or unasserted, suspected or unsuspected, fixed or contingent, which Named Plaintiff and the Class Members who do not opt out now have, own or hold against any of the Defendant Releasees that arise out of and/or relate to the facts and claims alleged in the Complaint, and any other claims relating to any Multiple NSF Fees assessed against said Class Members.

28. This Order is a final judgment because it disposes of all claims against all parties to this Lawsuit.

CONCLUSION

Accordingly, the Court **GRANTS** Plaintiffs’ Motion for Final Approval of the Class Settlement (Doc. 81). This action and all released claims asserted in it are **DISMISSED with prejudice**. No other attorney fees or costs to any of the Parties will be awarded other than as provided for in the Settlement Agreement. The Settling Parties are **DIRECTED** to take the necessary steps to effectuate the terms of the Settlement Agreement.

IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2021 WL 1948453

Footnotes

- 1 Multiple NSF Fees means “nonsufficient funds fees that were assessed and not refunded from January 2, 2015 to August 1, 2019 for ACH and check transactions that had been re-submitted by a merchant after being rejected for insufficient funds.”

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.

206 Ill.App.3d 968
Appellate Court of Illinois,
First District, Third Division.

CITY OF CHICAGO, a Municipal corporation,
Plaintiff–Counterdefendant–Appellee,

v.

Marshall KORSHAK, et al., Defendants–
Counterplaintiffs–Appellees (Martin Ryan, Bernard
McKay, Joseph Coglianese, Louis Eisen, Bernard Hogan,
Patricia Darcy, Sylvia Walsh and Katherine Doyle,
Class Representatives of the Participants in the City's
Annuitant Health Care Program, Intervenor–Appellants).

No. 1–89–3451.

|

Nov. 28, 1990.

|

Rehearing Denied Jan. 15, 1991.

Synopsis

City sued trustees of four annuity and benefit funds which covered city's retired employees, to recover payments made for a portion of pension fund beneficiaries' health care costs, and for an order declaring how much city must pay for annuitants' health care benefit costs. Class representatives of participants in the annuitant health care program intervened. The Circuit Court, Cook County, [Albert Green, J.](#), approved a settlement agreement between city and trustees, and class representatives appealed. The Appellate Court, [Rizzi, J.](#), held that settlement agreement was both reasonable and in the best interests of all concerned parties.

Affirmed.

Procedural Posture(s): On Appeal.

Attorneys and Law Firms

****69 *969 ***798** [Clinton A. Krislov](#), [John J. Lowrey](#)
and [Sidney Z. Karasik](#), Chicago, for intervenors-appellants.

[Kelly R. Welsh](#), Chicago ([Larence Rosenthal](#), [Ruth M. Moscovitch](#), [Lynn Mitchell](#), of counsel), for City of Chicago.

[Kevin M. Forde](#), [Katrina Veerhusen](#), Kevin M. Forde, Ltd.,
Chicago, for Policemen's Annuity & Ben. Fund.

[Martin J. Burns](#), Jacobs, Burns, Sugarman & Orlove,
Chicago, for Firemen's Annuity & Ben. Fund.

[William A. Marovitz](#), Marovitz & Edelstein, [Frederick P. Heiss](#), Boyle & Heiss, Ltd., Chicago, for Laborers' & Retirement Bd. Employees' Annuity & Ben. Fund and Mun. Employees' Officers' & Officials' Annuity & Ben. Fund.

Opinion

***970** Justice RIZZI delivered the opinion of the court:

Intervenor–Appellants Martin Ryan *et al.* (Intervenor), class representatives of the participants in the City of Chicago (City's) annuitant health care program, appeal from an order of the trial court which approved the class action settlement agreement proposed by the City and the trustees of four City pension funds (the Funds). We affirm.

The City of Chicago's retired employees are covered by four annuity and benefit funds: the Policemen's Annuity & Benefit Fund, the Firemen's Annuity and Benefit Fund, Municipal Employees' Officers' and Officials' Annuity Fund and the Laborers' and Retirement Board Employees' Annuity and Benefit Fund. Beginning in 1964, the Funds' annuitants were allowed to participate in a medical benefits plan sponsored by the City under the same coverage and premium rates offered to current City employees. In 1965, the City began paying the cost of its active employees' medical insurance coverage and, in 1971, the City paid the cost of its employees' dependents' medical insurance coverage. The medical insurance for active employees, annuitants and dependents was provided through traditional insurance policies until 1975 when the City became self-insured. The City then paid Blue Cross, Bankers Life and Home Pharmacy insurance companies to administer its insurance program.

When the annuitants first joined the City's plan in 1964, the premium rates charged for an individual annuitant under age 65 was \$8.04 per month. The premiums were periodically increased. By 1977, when the coverage was self-insured, the monthly rate charged by the City for a single annuitant under age 65 had increased to \$38.26.

Prior to 1980, the annuitant beneficiaries paid the entire cost of their health care. That year, the City contributed \$2,000,000 toward the cost of the beneficiaries' health insurance. The payment constituted 31% of the total cost of health care benefits. The City increased the rates charged the annuitants effective April 1982. Since 1982, Medicare-

qualified annuitants have paid \$21 per month while others have paid \$55 per month for health care benefits. The rates have not risen since 1982 and as a result, the City has had to cover the escalating costs of the pensioners' policies. By 1989, the City was paying 77% of the health care costs. Prior to 1983, the Funds did not pay any of the cost of annuitants' health benefits. In October 1987, the City informed the Funds of its intention to cease payment of annuitants' health care benefit costs as of December 31, 1987.

The dispute in this case arises out of the subsequent complaint for *mandamus*, restitution ****70 ***799** and other relief filed in 1987 by the City ***971** against trustees of the Funds to recover payments made for a portion of pension fund beneficiaries' health care costs. State law specifies the monthly amounts the City is to raise through its tax levy for the cost of beneficiaries' health care and the rest of the cost is paid by the beneficiaries who want coverage. The City's lawsuit sought both an order declaring how much the City must pay and recovery of prior "illegal" payments. The Funds' trustees responded to the City's suit by filing a motion to dismiss and a counterclaim on behalf of their annuitants to prevent the City from terminating the annuitants' coverage under the City's Plan and to compel the City to continue paying for a portion of the coverage. Certain individual annuitants, who are the appellants in this matter, were granted leave to intervene in the trial court proceedings.

Following a hearing, the trial court dismissed the City's complaint with prejudice finding that the Funds had no obligation to reimburse the City for the health care benefits received by the annuitants since 1980. The claims asserted in the Funds' counterclaims were the subject of a June 1988 bench trial. Before the trial court issued its decision, however, the City and the Funds agreed to support legislation amending the Pension Code and to enter into a settlement agreement consistent with the legislation. The terms of the settlement agreement provide that the City pay at least 50% of the cost of the health care claims of annuitants and dependants who participate in the City's plan. The legislation further provides that the City's obligation to continue coverage under the legislation will terminate at the end of 1997, but that, in the event that some permanent solution is not achieved by 1998, the annuitants will be permitted to assert whatever legal rights they had at the time the trial of the counterclaims commenced.

Intervenors filed a motion for summary judgment asking the trial court to permanently enjoin the City from changing the terms of the health care benefits provided to annuitants. The

trial court held a fairness hearing on November 27, 1989, wherein it approved the settlement and thus decided not to rule on the Intervenors' motion for summary judgment. This appeal followed. On February 14, 1990, this court granted the Intervenors' motion to stay pending appeal, implementation of the trial court's order which approved the settlement.

On appeal, the Intervenors contend that the trial court abused its discretion in approving the class action settlement. We disagree. The procedural and substantive standards governing class action settlement hearings are well established. On appeal, the trial court's decision may be reversed only on a clear showing that the trial court ***972** was guilty of an abuse of discretion. *People ex rel. Wilcox v. Equity Funding Life Insurance Co.* (1975), 61 Ill.2d 303, 316, 335 N.E.2d 448, 455. A trial court's approval of a settlement should not be overturned on appeal unless, taken as a whole, the settlement appears on its face so unfair as to preclude judicial approval. *Gowdey v. Commonwealth Edison Co.* (1976), 37 Ill.App.3d 140, 149–50, 345 N.E.2d 785, 793.

The determination of whether a settlement is fair, reasonable and adequate requires the examination of an amalgam of factors, the principle factor is a balancing or comparison of the terms of the compromise with the likely rewards of litigation, as well as a determination of whether the settlement is in the best interests of all those who will be affected by it. *Wilcox*, 61 Ill.2d at 316, 345 N.E.2d 448. Although review of class action settlements necessarily proceeds on a case-by-case basis, certain factors have been consistently identified as relevant to the fairness determination. Among the factors which the trial court should consider in judging the fairness of the proposal are the following:

- (1) the strength of the case for plaintiffs on the merits, balanced against the money or other relief offered in settlement;
- (2) the defendant's ability to pay;
- (3) the complexity, length and expense of further litigation;
- (4) the amount of opposition to the settlement;
- **71 ***800** (5) the presence of collusion in reaching a settlement;
- (6) the reaction of members of the class to the settlement;
- (7) the opinion of competent counsel;

(8) the stage of proceedings and the amount of discovery completed. *Armstrong v. Board of School Directors, et al.* (7th Cir.1980), 616 F.2d 305, 314.

We will review the trial court's approval of the settlement agreement using the above noted factors. The first factor is the strength of the case versus relief offered in settlement. In assessing the fairness, reasonableness and adequacy of the settlement, the trial court balanced the amount of the proposed settlement and the immediacy of a prospective recovery for class members against the continuing risks of litigation. The trial court found that the risks in the case primarily involve the establishment of the City's liability for the cost of its retired employees' health benefits. The settlement eliminates the risk that the Funds and their annuitants will not be successful in establishing liability. Throughout the litigation, the City maintained the position that it was legally entitled to terminate both the annuitants' *973 participation in the City's health benefits plan as well as its payment of any of the costs for those benefits.

Here, by contrast to the usual class action settlement, the Funds and annuitants have not sued for money damages and are not settling for some percentage of their actual damages. Instead, the proposed agreement eliminates the risk that the annuitants would have to pay the entire cost of their health benefits and the further and more serious risk that they may not be able to obtain coverage at any price. The agreement eliminates these risks by committing the City to pay at least 50% of the cost of the annuitants' health benefits through the end of 1997. At the conclusion of that period, if no permanent solution has been found, the parties will return to the legal postures they were in in June of 1988, before this compromise was negotiated.

The second factor is the defendant's ability to pay. The trial court found that under the circumstances of this case, this factor was not relevant. We agree.

The third factor is the complexity, length and expense of further litigation. On this point, the court found that this case presented the kind of dispute where a fair and reasonable settlement would be beneficial to all parties concerned and to the public interest. If the agreement were not approved, the litigation would return to the posture it was in in June of 1988 when the parties reached a settlement in principle. During the post-trial stage and probable appeal process, the annuitants' health benefits would remain in limbo, both as to coverage and liability for payment of the cost of coverage.

This settlement resolves these issues in the best interests of both the class and the public.

The fourth factor is the amount of opposition to the settlement. This factor and the sixth factor are closely related. We will therefore discuss the fourth factor in conjunction with our discussion of the sixth factor. The fifth factor is the presence of collusion. In this regard, the trial court noted that it had the opportunity to acquaint itself fully with the facts and law of the case and was aware of the procedural aspects of the litigation. The trial court found that the case was hard fought by both counsel for the City and the Funds and that settlement was reached after vigorously contested litigation and hard bargaining. The trial court therefore concluded that there was no collusion in conjunction with either the litigation or bargaining which preceded the agreement. We agree.

The sixth factor is the reaction of members of the class to the settlement. The trial court balanced the objections of class members against the strengths and weaknesses of the case and the risks of litigation *974 and found the settlement agreement to be manifestly reasonable. Several annuitants complained that as a result of the settlement they would be obligated to pay unaffordable premiums. Although the premiums will substantially increase under the plan, the City is obligated to pay at least 50% of the total \$340 actual cost per month for annuitant coverage. Because this settlement eliminates the possibility that the annuitants will not prevail on the merits **72 ***801 and obligates the City to pay at least 50% of the annuitants' health benefits coverage until the end of 1997, it is in the best interests of all parties. Furthermore, in oral argument before this court, counsel for the City indicated that the City has promulgated a municipal ordinance which obligates it to pay 62.5% of annuitants' health care costs.

The seventh factor is the opinion of competent counsel. The trial court did not separately consider this point, but noted within the context of discussing the arms length negotiations which lead to settlement that counsel for both sides reached agreement only after hard bargaining. The trial court therefore relied on the opinion of competent trial counsel who approved the agreement.

The eighth factor is the state of proceedings and the amount of discovery completed. The stage of proceedings at which settlement is reached is important because it indicates the extent to which the trial court and counsel were able to evaluate the merits of the case and assess the reasonableness

of the settlement. The proposed settlement in this case was entered into after all discovery was completed and a trial had been conducted on the pension funds' counterclaim. We therefore conclude that the trial court and the parties had all the information necessary to evaluate the merits of the parties' legal positions and the probable course of future litigation.

Under the circumstances, reviewing the facts in their entirety in the light most favorable to the settlement, we find the agreement to be both reasonable and in the best interests of all concerned parties. In reaching this conclusion, we defer to the trial court's decision in this matter. This deference is accorded the trial court because of its familiarity with the litigants, the history of the litigation and the merits of the substantive claims asserted. See *Armstrong*, 616 F.2d at 315.

Intervenors raised numerous additional challenges to the settlement agreement. The Intervenors claim that (1) notice to the participant class was defective and confusing; (2) the class representatives were prevented from communicating to the class; (3) the court erroneously precluded intervention by entities having vital interests pertinent to the determination of fairness; and (4) the settlement is unfair *975 and should be rejected. Upon review, however, we find the Intervenors' challenges to be without merit.

On the issue of notice, each of the approximately 16,000 annuitants and widows of annuitants who participate in the City health benefits plan were given notice of the proposed settlement and fairness hearing. The notice informed the class members of their right to appear at the fairness hearing and to enter appearances through their own counsel, if

desired. The notice which fully and explicitly explained the litigation, the proposed settlement and the rights and options of the class members complied with due process. Further, although the trial court denied the Intervenors' request that they be permitted to include, with the court-approved notice, a statement explaining their opposition to the settlement, they failed to appeal from that order. Accordingly, review of that order is waived. In addition, Intervenors failed to appeal from the trial court's order denying intervention to the Retired Chicago Police Association, therefore precluding review of that order. See Ill.Rev.Stat.1987, ch. 110A, par. 301; *Lewanski v. Lewanski* (1978), 59 Ill.App.3d 805, 815, 16 Ill.Dec. 854, 861-62, 375 N.E.2d 961, 968-69.

In sum, the Intervenors' challenges to the settlement agreement are without merit. Further, our independent review of the settlement agreement using the *Armstrong* criteria for approval of class action settlements leads us to conclude that the trial court did not abuse its discretion in approving the agreement.

Accordingly, the judgment order of the trial court which approved the settlement agreement in this matter is affirmed.

AFFIRMED.

CERDA, P.J., and WHITE, J., concur.

All Citations

206 Ill.App.3d 968, 565 N.E.2d 68, 151 Ill.Dec. 797

236 Ill.App.3d 486

Appellate Court of Illinois, First District, First Division.

GMAC MORTGAGE CORPORATION OF

PA, Plaintiff/Counter–Defendant–Appellee,

v.

Walter L. STAPLETON, et al., Defendants/

Counterclaimants–Appellees (Shirley B. Harding and

Barry Ruder, Class Member Objectors–Appellants).

No. 1–91–3495

|

Oct. 13, 1992.

Synopsis

Parties sought approval of settlement of class action suit brought by mortgagors against mortgage servicing corporation, wherein mortgagors alleged that servicer had engaged in improper escrow practices. The Circuit Court, Cook County, [Edwin M. Berman](#), J., approved settlement agreement proposed by parties. Some class members objected. The Appellate Court, [Buckley](#), P.J., held that settlement agreement proposed by parties was fair, reasonable, and adequate.

Affirmed.

Attorneys and Law Firms

****769 *487 ***699** Kenneth Hanson, William J. Stevens, ([Irving Morris](#), Karen L. Morris, of Delaware, G. Robert Blakely, of Indiana, of counsel), Chicago, for appellant.

Kirkland & Ellis, (Chaim T. Kiffel, [Sallie G. Smylie](#), of counsel), Chicago, for appellee GMAC Mortg. Corp.

Lawrence Walner & Associates, Ltd., ([Lawrence Walner](#), of counsel) and Law Offices of Daniel A. Edelman, ([Daniel A. Edelman](#), of counsel), Chicago, for appellees Walter L. Stapleton, et al.

Opinion

Presiding Justice [BUCKLEY](#) delivered the opinion of the court:

Class members objectors-appellants Shirley B. Harding and Barry Ruder (Objectors) appeal from a final judgment

of the circuit court of Cook County which approved a class action settlement agreement proposed by plaintiff/counter-defendant-appellee GMAC Mortgage Corporation of Pennsylvania (GMACM) and defendant/counterclaimant-appellee Walter L. Stapleton (Stapleton). The class action ***488** suit, brought by Stapleton on behalf of ****770 ***700** himself and all others similarly situated, charged GMACM with collecting excessive escrow fees from Stapleton and class members in violation of the escrow provisions of Stapleton's and each class member's mortgage. The sole issue on appeal is whether the circuit court abused its discretion in approving the class action settlement. We affirm.

GMACM is a wholly-owned subsidiary of General Motors Acceptance Corporation and a Pennsylvania corporation. Stapleton is an Illinois resident and Objectors are non-residents. The Objectors are also plaintiffs in a separate class action suit against GMACM. *Harding v. GMAC Mortgage Corp.* (E.D.Pa. filed March 8, 1991), No. 91–15119.

As one of the country's largest mortgage service companies, GMACM lends money to mortgagors and then packages the mortgages for resale to investors. GMACM services the mortgages during their existence by collecting the mortgagor's monthly payments of principal, interest and escrow monies, which GMACM uses to pay the mortgagor's taxes and insurance on the mortgaged property. The mortgages GMACM services are printed on standard form contracts authored by the Federal National Mortgage Association (F NMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal Housing Administration (FHA), and the Veterans Administration (VA).

In November 1990, GMACM filed a foreclosure action against Stapleton and his brother, alleging that he was in default on a promissory note for which a GMACM mortgage served as security. In responding to the foreclosure suit, Stapleton asserted a class action counterclaim which charged GMACM with collecting an amount of escrow money which exceeded the permissible amounts under the class members' respective standard form contracts. Asserting breach of contract and statutory consumer fraud claims (*e.g.*, Consumer Fraud and Deceptive Business Practices Act, [Ill.Rev.Stat.1989, ch. 121 ½, par. 261 et seq.](#)), the class sought equitable and monetary relief, penalties and attorney fees.

The class members involved in this suit consist of approximately 590,000 customers of GMACM, with 388,000 members having current mortgages with GMACM, and

202,000 members having mortgages which have been closed. Of the 388,000 current mortgages, 39% are FHA mortgages, 19% are VA mortgages and 42% are FNMA or FHLMC mortgages. The mortgages of Stapleton and Objector Harding are the standard FHA form while that of Objector Ruder is the FNMA/FHLMC form.

***489** The standard FHA form, which substantially mirrors the VA form, provided in part that the monthly escrow payment shall be:

“[a] sum equal to * * * the taxes and special assessments next due on the premises covered by this mortgage, plus the premiums that will next become due and payable on policies of fire and other hazard insurance on the premises covered hereby (all as estimated by the Mortgagee) less all sums already paid therefore *divided by the number of months to elapse before one month prior to the date when such [items] * * * become delinquent.*” (Emphasis added.)

The standard FNMA/FHLMC mortgage provided that:

“[b]orrower shall pay to the Lender on the day monthly payments are due under the Note, * * * a sum [Funds] equal to one twelfth of: [escrow items]. Lender may estimate the Funds due on the basis of current data and reasonable estimates of future escrow items.

* * *

If the amount of the Funds held by the Lender, together with the future monthly payments of Funds payable prior to the due dates of the escrow items, shall exceed the amount *required to pay the escrow items when due*, the excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly payments of Funds.” (Emphasis added.)

The dispute in this case, at its heart, is nothing more than attributing the proper interpretation to the above provisions. To ****771 ***701** understand more specifically what this dispute is about, however, it is necessary to comprehend the workings of an escrow account.

Generally, a mortgage escrow account is designed to ensure that customer bills are timely paid by the mortgage service company. To this end, a mortgage servicing company performs an annual analysis of each customer's escrow requirements for the following 12 months. Using past bills, the servicing company will estimate the amount of money

which will be needed for each bill over the next 12 months, calculate the number of months to elapse before each bill comes due, and then set a level monthly escrow payment so that sufficient funds will be available to pay each bill. A one or two month cushion may be employed to insure timely payment and guard against inflationary increases. Where a mortgagor has only one bill to pay during the year, which is rare, the calculations are relatively simple. Where, however, bills of varying amounts are due at different times, which is the usual case, escrow calculations are more complex. The present suit calls ***490** into question two accounting practices which mortgage servicers employ in these more complex escrow scenarios.

The first accounting practice is called individual item analysis. Under this analysis, the mortgage servicing company establishes separate sub-accounts for each individual escrow item (*i.e.*, city taxes, county taxes, insurance, etc.) Significantly, the amount of money in the aggregate escrow account is not a factor under this analysis and, thus, substantial monies in separate sub-accounts may exist at the time full payment of another sub-account is made. In addition to the monies in these other sub-accounts, a given sub-account may contain the one or two month reserve or cushion discussed above. Generally, individual item analysis requires more funds in an escrow account than if the escrow account were maintained without sub-accounts.

The second accounting practice employs an aggregate override to limit excessive escrow reserves. Under this method, the mortgage servicing company annually estimates the escrow account's aggregate annual low point during the upcoming 12-month period. This figure is then related to the monthly escrow payment. When a two-month aggregate override is employed, the mortgagor receives a credit or refund for any amount by which the low point in the aggregate escrow account exceeds one-sixth (two months) of the total amounts expected to be paid during the next 12 months from the escrow account. Generally, an escrow account serviced with an aggregate override employing a two-month cushion requires less funds than an account maintained on an individual item basis with a one-month cushion.

Although the Objector's claim otherwise, GMACM contends, and Stapleton does not dispute, that GMACM employs individual item analysis with a one-month cushion in servicing its mortgagors' accounts. GMACM submits to support its assertion the affidavit of its chief financial officer, Frederick A. Henderson, who states that GMACM targets a

one-month cushion for each sub-account, allowing GMACM to collect the full amount due for each escrow item one month before GMACM must pay that item. The Objectors have submitted printouts of their individual sub-accounts which they claim shows that GMACM exceeded one-month cushions on a number of occasions and, in fact, borrowed from one sub-account to correct a deficiency in another sub-account.

Aside from the issue of whether GMACM “in fact” practices individual item analysis with a one-month cushion, Stapleton and the Objectors assert that individual item analysis with a one-month cushion is, as an accounting practice, at odds with the language of the standard form contracts, and violates the Real Estate Settlement Procedures ***491** Act (RESPA) of 1974, 12 U.S.C. § 2601 (1988) *et seq.*, which imposes a two-month ceiling on the collection of escrow money. GMACM responds that individual item analysis with a one-month cushion is consistent with both the standard form contracts and RESPA. GMACM cites a wide variety of authority that RESPA permits the accounting practices it employs.

****772 ***702** To resolve the instant class action suit, Stapleton, individually and as class representative, entered with GMACM a proposed settlement agreement on April 29, 1991. Under the terms of the proposed settlement, in exchange for the class members release of GMACM as to any and all claims, GMACM agreed to do the following:

First, as to the estimated 388,000 current mortgages, GMACM would employ a two-month annual aggregate override to avoid the collection of excess reserves. Significantly, this portion of the settlement agreement incorporated prospectively any lower ceiling which might be achieved as a result of a similar suit pending in New York. In that suit, 12 attorney generals of various states sued GMACM over their accounting practices. *People of the State of New York v. GMAC Mortgage Corp.* (S.D.N.Y. filed Dec. 11, 1990), No. 90–Civ–7924 (the AG action).

On February 4, 1992, after the Stapleton–GMACM settlement in this case was approved by the circuit court, the AG action was settled. When the AG settlement is incorporated into the Stapleton–GMACM settlement, GMACM's future escrow practices will be as follows: (1) escrows of current mortgages using old FNMA/FHLMC forms will be calculated using a zero aggregate cushion, meaning the projected aggregate trial balance must fall to zero at some time during the year; and (2) escrows of old

FHA/VA mortgages will use an individual item analysis with a one-month cushion, or a two-month aggregate override, whichever produces the lower escrow amount.

Second, GMACM agreed under the proposed settlement to refund to current mortgagors any surplus escrow amounts determined by using a two-month aggregate override. GMACM would include in the refund as compensation an amount of money equal to 5 ½% of the refund. Prompted by the Objectors at the final settlement hearing, the circuit court deleted the requirement that had existed in the proposed settlement that current mortgagors supply GMACM with a notarized claim form to obtain their refund. Now, under the final settlement approved by the circuit court, no claim form is required.

GMACM next agreed in the proposed settlement to pay the 202,000 closed mortgagors a sum of money calculated by using the following formula: $.40 \times (3.3 \text{ years}) \times (5 \frac{1}{2} \% \text{ interest}) \times (\text{ending escrow } ***492** \text{ surplus})$. Under this formula, the .40 figure represents a litigation risk factor, and the 3.3 years figure pertains to the applicable statute of limitations period. Again, prompted by the Objectors, the circuit court deleted the requirement that past mortgagors file a notarized claim form. Now, under the final settlement approved by the circuit court, mortgagors with closed mortgages must submit only a claim form.

On June 4, 1991, the circuit court certified a class, gave preliminary approval to the proposed settlement agreement, and directed notice be provided to the class. Under the notice provision of the proposed settlement, GMACM mailed at its expense a court-approved notice form to current mortgagors and, using its computer records, to the 202,000 closed mortgagors. The notice form did not include a copy of the proposed settlement agreement, but did summarize its relevant provisions. The notice directed class members to read the settlement agreement for more information, a copy of which was obtainable through the circuit court. GMACM also twice-published the notice to the class in *U.S.A. Today* on July 8 and 15, 1991.

Of the 202,000 old mortgagors, less than 20% of the mailings were returned undeliverable. GMACM remailed, at its expense, over 5,000 notices which were returned with address corrections. Of the 590,000 potential class members, only eight members objected, and 26 members elected to opt-out.

On August 8, 1991, the Objectors intervened in the instant action, objecting to the proposed settlement and moved the court to allow their March 1991 Federal class action suit against GMACM to proceed forward. The objections the Objectors asserted parallel the arguments they raise on appeal.

****773 ***703** On August 19, 1991, the circuit court conducted a lengthy fairness hearing on the merits of the proposed settlement agreement. The court received evidence and oral argument from counsel of the class, GMACM, the objectors and counsel for the class representative in *Marquis v. GMACM Mortgage Corp.* (D.Minn. filed Dec. 14, 1990), No. 4–90–957, a class action suit making similar allegations to the present case. The court also had before it written briefs previously submitted by the parties. Of the parties present at the hearing, only the Objectors objected to the settlement; neither the AG attorneys nor the *Marquis* attorneys objected.

Following the hearing, the court received written briefs from Stapleton, the Objectors and GMACM. Special briefs were also received on the Objectors allegation that a recovery under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 (1988) *et seq.* would greatly enhance any damages awarded to the class.

***493** On September 27, 1991, the circuit court entered its “Order of Settlement Approval, Dismissal and Final Judgment.” The court in this order overruled the Objectors’ objections and gave final approval to the proposed settlement, with the only modifications being the less demanding claim filing requirements. The court expressly found the settlement to be “fair, reasonable and adequate to the class” and that Stapleton fairly and adequately represented the class members. The court retained jurisdiction over the case to administer and enforce the terms of the settlement. The Objectors bring this appeal from the court order approving the settlement.

The procedural and substantive standards governing class action settlement hearings are well settled. The standard used by the courts in evaluating a compromise is that the proposal must be fair and reasonable and in the best interest of all those who will be affected by it. (*People ex rel. Wilcox v. Equity Funding Life Insurance Co.* (1975), 61 Ill.2d 303, 316, 335 N.E.2d 448, 455; *Gowdey v. Commonwealth Edison Co.* (1976), 37 Ill.App.3d 140, 150, 345 N.E.2d 785, 793.) Since the result is a compromise, the court in approving it should not judge the legal and factual questions by the same criteria applied in a trial on the merits. (*People ex rel. Wilcox*,

61 Ill.2d at 316, 335 N.E.2d at 455.) Nor should the court turn the settlement approval hearing into a trial. To do so would defeat the purposes of a compromise such as avoiding a determination of sharply contested issues and dispensing with expensive and wasteful litigation. *People ex rel. Wilcox*, 61 Ill.2d at 316, 335 N.E.2d at 455.

Although review of class action settlements necessarily proceeds on a case-by-case basis, certain factors have been consistently identified as relevant to the determination of whether a settlement is fair, reasonable and adequate: (1) the strength of the case for plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant’s ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed. *City of Chicago v. Korshak* (1991), 206 Ill.App.3d 968, 971–72, 151 Ill.Dec. 797, 799, 565 N.E.2d 68, 70, citing *Armstrong v. Board of School Directors* (7th Cir.1980), 616 F.2d 305, 314.

On appeal, a reviewing court will intervene only upon a clear showing that the trial court was guilty of an abuse of discretion. (*People ex rel. Wilcox*, 61 Ill.2d at 316, 335 N.E.2d at 455; *Korshak*, 206 Ill.App.3d at 972, 151 Ill.Dec. at 799, 565 N.E.2d at 70.) Stated otherwise, a trial ***494** court’s approval of a settlement should not be overturned on appeal unless, taken as a whole, the settlement appears on its face so unfair as to preclude judicial approval. *Korshak*, 206 Ill.App.3d at 972, 151 Ill.Dec. at 799, 565 N.E.2d at 70; *Gowdey*, 37 Ill.App.3d at 149–50, 345 N.E.2d at 793.

In this case, the Objectors make numerous allegations as to why we should disturb the circuit court’s approval of the settlement. ****774 ***704** For purposes of brevity, the Objectors’ allegations will be categorized and discussed under the appropriate *Korshak* factor. We now turn to a discussion of each *Korshak* factor.

The first *Korshak* factor balances a plaintiff’s likelihood of success on the merits against the relief offered in the settlement. The Objectors make their most strenuous argument under this factor.

The Objectors initially argue that the necessary balancing required by this *Korshak* factor is not present in the circuit

court's final order approving the settlement. The Objectors next argue that the class has a highly likelihood of success on the merits of its action because GMACM's escrow practices were in clear violation of the standard form contracts and RESPA, and GMACM has no defenses to its conduct. Finally, the Objectors attack the relief offered the class by asserting that the class is receiving little in exchange for what they are relinquishing. The Objectors' criticism of the proffered benefits can be particularized as follows: (1) the class members are only being returned monies which GMACM wrongfully took in the first place; (2) the class members having current mortgages will prospectively pay greater monthly escrow payments than if the current mortgages were only enforced as written; (3) the settlement rewards GMACM's past illegal escrow practices and judicially rewards GMACM by allowing GMACM to collect excessive escrow monies in the future; (4) an estimated 30% of the class will receive no compensation for GMACM's past practices and, instead, will have their mortgages unilaterally changed for the future; and (5) if class members fail to file or properly file the claim form, GMACM retains its ill-gotten gains.

We find unpersuasive the Objectors' contentions under the first *Korshak* factor. We first disagree that reversal is required because the circuit court's order does not contain a discussion balancing the benefits and burdens of the settlement. The court was well advised by counsel on the settlement's terms and the potential risks facing the class if the litigation continued. Merely because the final order omits a balancing discussion does not mean the court approved the settlement without weighing the benefits and burdens of the settlement to the class.

***495** Next, we disagree with the Objectors' assertion that the class's likelihood of success on the merits is great while that of GMACM is small. Without expressing any opinion on the authority which GMACM cites to support its escrow practices under RESPA, the mere volume of that authority suggests that the class action may ultimately fail. This authority includes cases, official statements made by Housing and Urban Development Officials (HUD) on the propriety of individual item analysis, HUD homeowner advisory booklets given to new homeowners, General Accounting Office interpretations of RESPA, and the industry-wide practice of individual item analysis. Regarding GMACM's escrow practices under the language of the individual contracts, the FHA contracts seemingly permit GMACM's escrow practices, and the FNMA/FHLMC forms do not on their face prohibit individual item analysis with a one-month cushion. In short, GMACM's

authority and arguments on the propriety of individual item analysis presents a serious risk to the class of litigating this case on the merits. We believe the circuit court was clearly entitled to consider this risk in assessing the overall fairness of the settlement.

We next disagree with the Objectors' claim that the benefits the class will receive under the settlement are *de minimus*. Regarding class members with current mortgages, GMACM's escrow practices in the future are designed to avoid the collection of excess reserves. The evidence produced at the hearing shows that a two-month aggregate override will produce a lower aggregate escrow amount than individual item analysis with a one-month cushion. Thus, the escrow amounts that GMACM will collect in the future will generally be less than what it collects presently.

Moreover, in light of the incorporation of the AG settlement, GMACM's future escrow ****775 ***705** practices will be even more limited. Under the old FNMA/FHLMC mortgages, which 42% of current mortgagors possess, GMACM will employ a zero aggregate cushion analysis. The evidence GMACM produced at the hearing demonstrates that this practice will, on average, operate more favorably than its previous accounting practice. Under the old FHA/VA mortgages, which encompasses the remaining active mortgagors, mortgagors get the benefit of alternative formulas, one of which employs an aggregate override with a two-month cushion. Again, the average homeowner will benefit under this new formula.

Under the approved settlement, all new escrow formulas will be immediately implemented. Significantly, the circuit court has retained jurisdiction to administer and enforce the settlement, and Stapleton's ***496** counsel has the right to monitor GMACM's escrow practices over the next three years.

In addition to GMACM changing their future escrow practices, GMACM will pay compensation to previous and current mortgagors. While the Objectors assert that these monies are nothing more than monies which GMACM wrongfully took in the first place, this assertion merely reiterates the Objectors previous argument that GMACM's conduct was wrongful initially. Indeed, many of the Objectors' arguments which we previously particularized are premised on the assertion that GMACM was guilty of improper conduct and has no defenses to its conduct. As discussed above, GMACM's position in this lawsuit is not

without authority and, thus, the risk does exist that the class will recover nothing if the case proceeds to trial. Again, the terms of the settlement must be measured within this context.

The second *Korshak* factor requires this court to analyze GMACM's ability to pay. No party disputes this factor.

The third *Korshak* factor is the complexity, length and expense of further litigation. As before, the Objectors assert that the suit against GMACM will resolve itself quickly and to GMACM's detriment. For the reasons discussed above, we do not find their argument persuasive.

The fourth and six *Korshak* factors are typically discussed together, and they are the amount of opposition to the settlement and the reaction of class members to the settlement. While the Objectors do not dispute the relatively minor negative reaction the proposed settlement received, they claim the class's reaction is merely a reflection of the fact that the class received inadequate notice of the terms of the settlement. The Objectors assert the following defects in the notice: class members were not informed of how any changed escrow formula would affect their individual escrow accounts in the future; that the class was not informed that only some members will receive compensation while other will not; and the amount of compensation each member would receive, if any.

We reject the Objectors' assertions. The circuit court reviewed the notice which the class was to receive, approved its contents and approved of how GMACM would effectuate the mailing. The notice informed the class that it merely summarized the settlement's provisions and that the exact terms of the settlement were available from the circuit court if desired. While the settlement did not include how each homeowner would be affected in particular, or how much compensation they would receive, our affirmance of the circuit court's finding of fairness diminishes any claimed deficiency in the notice. *497 Further, if any particular homeowner disliked the terms of the settlement, questioned its particular effect, or approved of how GMACM was currently handling their escrow account, they could opt-out of the settlement. The fact that only 26 of 590,000 members elected to opt-out is testimony that the notice adequately informed the class and that the class believes the settlement is fair.

The fifth *Korshak* factor is the presence of collusion in reaching the settlement. The Objectors assert that Stapleton's

foreclosure prevents him from representing the class fairly, and that because Stapleton acquiesced in the terms of this allegedly unfair settlement, Stapleton cannot be representing the class vigorously. **776 ***706 The Objectors also cite to Stapleton's receipt under the settlement of \$2,000 for his service as class representative.

We affirm the circuit court's specific finding that Stapleton fairly and adequately represented the class. The fact that Stapleton is in foreclosure does not persuade us that he could not fairly and adequately represent the interests of the class. Stapleton's foreclosure is a neutral fact at best.

As for Stapleton's payment for his representing the class, such payments are not atypical in class action cases (*e.g.*, *Bryan v. Pittsburgh Plate Glass Co.* (W.D.Pa.1973), 59 F.R.D. 616 (\$17,500 award to class representatives)) and serve to encourage the filing of class actions suits. (See C. Krislov, *Scrutiny of the Bounty: Incentive Awards for Plaintiff's in Class Litigation*, 78 Ill.B.J. 286 (June 1990).) Finally, regarding Stapleton's acquiescence to the terms of this settlement, our affirmance demonstrates that Stapleton properly represented the class.

The seventh *Korshak* factor is the opinion of counsel. The Objectors assert that this court should give this factor little weight in light of the deficient advice Stapleton has received. We disagree.

Stapleton's counsel have filed two other mortgage escrow class action suits prior to their filing of the instant case. Counsel has also participated in numerous other class action suits during their professional careers. Aside from Stapleton's counsel approving the settlement, the *Marquis* counsel believes the settlement to be fair, and the AG counsel has not objected. The circuit court could appropriately resolve this factor against the Objectors.

The final *Korshak* factor is the stage of the proceedings and the amount of discovery completed. This factor is important because it bears directly on the ability of the trial court and Stapleton's counsel to evaluate the merits of the case and assess the reasonableness of the settlement.

*498 On this factor, the Objectors assert that the trial court lacked critical facts pertaining to the monies GMACM collected, the monies GMACM will collect, how the changed escrow practices will effect individual mortgagors, how much money will be refunded, how much GMACM will retain in

the event claim notices are not filed, who will and will not receive refunds, and the favored treatment GMACM received in exchange of the large deposits it made with the excess reserves it collected.

We believe that the circuit court was adequately informed. The size of the record in this appeal alone undermines the Objectors' argument that the circuit court lacked a proper basis upon which to base its decision. This record includes transcripts of the full-day hearing which the circuit court held, the parties various submissions to the trial court, and the results of the attorney general's two-year investigation into the escrow practices in question.

Moreover, the circuit court had before it representative accounts to determine how GMACM's past escrow practices worked and how they will effect the average homeowner in the future. While this account was theoretical, it demonstrates that the average class member will (1) benefit from the changed escrow accounting practices and (2) receive compensation for GMACM's past practices. It is worth reiterating that settlement hearings are not to be full trials

on the merits. One of the principal purposes of an early settlement is to avoid costly and lengthy discovery. This is part of the exchange the parties make in achieving settlement. We accordingly reject the Objectors' arguments under this factor.

In summary, we affirm the settlement. After reviewing the record and the parties arguments to determine whether the circuit court abused its discretion in approving the settlement, we conclude that no abuse of discretion has been shown.

For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

Affirmed.

[CAMPBELL](#) and [MANNING](#), JJ., concur.

All Citations

236 Ill.App.3d 486, 603 N.E.2d 767, 177 Ill.Dec. 697

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.

2018 WL 6606079

United States District Court, S.D. Illinois.

Mark HALE, Todd Shadle, and Laurie

Loger, on Behalf of Themselves and

All Others Similarly Situated, Plaintiffs,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, Edward Murnane,
and William G. Shepherd, Defendants.

No. 12-0660-DRH

|

Signed 12/16/2018

Attorneys and Law Firms

Bradley M. Cosgrove, Kevin P. Durkin, Kristofer S. Riddle, Robert A. Clifford, Robert A. Clifford, Colin H. Dunn, Michael S. Krzak, Shannon M. McNulty, George S. Bellas, Robert P. Sheridan, Clifford Law Offices PC, David T. Brown, Jonathan L. Loew, Steven P. Blonder, Much, Shelist et al., Chicago, IL, Charles F. Barrett, Neal & Harwell, PLC, Nashville, TN, Patrick W. Pendley, Pendley Law Firm, Jessica A. Perez, Nicholas R. Rockforte, Pendley, Baudin & Coffin, L.L.P., Plaquemine, LA, Stephen A. Saltzburg, Pro Hac Vice, Attorney at Law, Melinda R. Coolidge, William P. Butterfield, Hausfeld LLP, Washington, DC, W. Gordon Ball, Lance K. Baker, Gordon Ball PLLC, Knoxville, TN, Brent W. Landau, Jeannine M. Kenney, Hausfeld LLP, Philadelphia, PA, Elizabeth J. Cabraser, Kevin Reid Budner, Nimish Ramesh Desai, Richard M. Heimann, Robert J. Nelson, Lieff, Cabraser et al., Megan Elizabeth Jones, Pro Hac Vice, Megan Elizabeth Jones, Hausfeld LLP, San Francisco, CA, Erwin S. Chemerinsky, Pro Hac Vice, University of California—School of Law, Irvine, CA, John (Don) W. Barrett, Barrett Law Group, P.A., Lexington, MS, Marcus Neil Bozeman, Pro Hac Vice, Thomas P. Thrash, Pro Hac Vice, Thrash Law Firm PA, Little Rock, AR, Richard R. Barrett, Barrett Law Office, Oxford, MS, for Plaintiffs.

Joseph A. Cancila, Jr., Ronald S. Safer, Harnaik Kahlon, James P. Gaughan, Kevin Reidy, Matthew C. Crawl, Patricia B. Holmes, Patricia T. Mathy, Riley Safer et al., J. Timothy Eaton, Taft Stettinius & Hollister LLP, Andrew Chinsky, Karim Basaria, Patrick Edward Croke, Paul E. Veith, Sidley Austin LLP, Clark W. Hedger, Greensfelder, Hemker & Gale, PC, Chicago, IL, Patrick D. Cloud, Heyl, Royster et al., Edwardsville, IL, Jonathan D. Parente, Pro Hac Vice, Michael

P. Kenny, Pro Hac Vice, Alston & Bird LLP, Atlanta, GA, Jonathan M. Redgrave, Monica McCarroll, Pro Hac Vice, Partner, Redgrave LLP, Chantilly, VA, Russell K. Scott, Megha Shah, Greensfelder, Hemker & Gale PC, Swansea, IL, for Defendants.

AMENDED MEMORANDUM and ORDER

David R. Herndon, United States District Judge

Introduction

*1 Now before the Court are Plaintiffs' Motion for Final Approval of Settlement (Doc. 953) and Plaintiffs' Motion for Attorneys' Fees and Costs (Doc. 952). The Court has also received Defendant State Farm Mutual Automobile Insurance Company's Brief in Support of Final Approval of Class Settlement (Doc. 971). On December 13, 2018, the Court held a hearing on the motions and orally granted the motions in detail. Based on the reasons stated in the record and the following, the Court concludes that under the facts of this case: (1) the Settlement is fair, reasonable, and adequate; and (2) Class Counsel's requested fees and expenses are reasonable and reflect a fair *ex ante* price for their services.

Out of the approximately 4.7 million class members—many of whom received direct, individual notice—only one person, Lisa Marlow, objected to the proposed Settlement and fee request (Doc. 961). The Court has carefully considered the arguments raised in Ms. Marlow's objection and finds them unpersuasive.

Background

The facts underlying this lawsuit stretch back more than twenty years. In 1997, consumers filed a proposed nationwide class action, *Avery v. State Farm Mutual Automobile Insurance Co.* (“*Avery*”), alleging that State Farm violated consumer protection laws and breached its contracts with policy holders by equipping their vehicles with sub-standard non-OEM parts. A class of approximately 4.7 million insureds was certified and, after a multi-week trial in 1999, they secured a \$1.18 billion verdict. That verdict was reduced to \$1.056 billion by the intermediate court of appeals but otherwise upheld. State Farm then petitioned for review in the Illinois Supreme Court, and shortly thereafter, in 2002, it

was announced that there would be a vacancy on that Court in 2004.

At that time, as Plaintiffs alleged in this lawsuit, State Farm and its co-defendants engaged in a scheme to (1) secretly recruit then-trial Judge Karneier to run for the open seat on the Illinois Supreme Court, before which the billion-dollar judgment against State Farm in *Avery* was pending; (2) help organize and manage his campaign behind the scenes; (3) covertly funnel millions of dollars (well over a majority of all reported campaign funds) to support the Karneier campaign through intermediary organizations over which it exerted considerable influence; and (4) after helping to secure Justice Karneier's election, obscure, conceal, and misrepresent the degree and nature of their support so that Justice Karneier could participate in the *Avery* deliberations. In this *Hale* action, filed in 2012, Plaintiffs maintained that this scheme violated the Racketeer Influenced Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1962(c)-(d), and deprived them of an impartial forum and their property interest in the *Avery* judgment. The operative Complaint in this case, which was entered as part of the Settlement, the Second Amended Complaint, includes both RICO and unjust enrichment claims.

Defendants denied—and continue to deny—any wrongdoing and vigorously opposed all of Plaintiffs' claims. Defendants have asserted myriad defenses in this litigation, including *Rooker-Feldman*, *res judicata*, collateral estoppel, *Noerr-Pennington*, statute of limitations, and various other RICO element specific defenses. State Farm considers this settlement to be one which it is settling under the unjust enrichment claim rather than the alleged RICO claims.

***2** The litigation that ensued was long and extremely hard-fought. The discovery process involved dozens of disputes overseen by Magistrate Judge Williams, including no less than 50 discovery conferences, the production and review of hundreds of thousands of pages of documents, and 68 depositions. Furthermore, over the course of more than six years of litigation, the parties briefed approximately 100 contested motions, including: (1) motions to dismiss by each defendant and a petition for a writ of mandamus to the Seventh Circuit from the order denying the motions; (2) a motion for class certification, and two petitions to the Seventh Circuit for permission to leave to appeal from the orders granting class certification and later clarifying the order granting class certification; (3) two separate and extensive summary judgment motions on, among other issues, *Rooker-*

Feldman, claim and issue preclusion, *Noerr-Pennington*, statute of limitations, and RICO causation and injury; and (4) dozens of motions *in limine* and *Daubert* motions. The parties then prepared fully for what was to be a six-week trial and selected a jury. On the day of opening statements—and with the assistance of a Court-appointed settlement master—the parties announced a proposed settlement.

The proposed Settlement secures a non-reversionary cash fund of \$250 million. Doc. 941 ¶ 8. Each member of the class—the definition of which was set forth both in the order certifying the identical litigation class and in the Court's preliminary approval order—is entitled to an equal, pro-rata share of the fund. *Id.* § A(I). Settlement checks will be delivered automatically to the approximately 1.43 million class members whose addresses are known. *Id.*; see also Doc. 973 at 4. The remaining class members must submit relatively simple claim forms to establish class membership. Doc. 941 § A(I). If any funds remain after initial distributions, efforts at re-distribution to Class members—including redistribution to claimants—will continue until redistribution become impracticable. *Id.* ¶ 15. In no event will there be a reversion to Defendants. *Id.*

The common fund will also cover the cost of settlement notice and administration as well as attorneys' fees and costs. Here, Class Counsel has requested 33.33% of the common fund—net of the \$2.1 million in estimated costs for settlement notice and administration, but inclusive of interest accrued on the fund at the time of payment. Doc. 954 at 3. They also seek reimbursement of \$6,971,852.80 in litigation costs and expenses and awards of \$25,000 for each of the three Class Representatives. *Id.*

The Court previously granted preliminary approval to the Settlement and the notice plan (Docs. 942, 947), after which comprehensive direct and publication notice was implemented to reach the approximately 4.7 million class members. Pursuant to a schedule set by this Court, Plaintiffs moved for final approval of the Settlement and Class Counsel moved for an award of attorneys' fees and costs. Docs. 953-54. As noted above, one person objected to the terms of the Settlement and Class Counsel's fee request (Doc. 961), and her objection was thoroughly addressed in separate filings submitted by both Plaintiffs and Defendants (Docs. 971-73). The Court then held a fairness hearing and has considered all arguments raised at the hearing and in the written submissions before the Court.

Analysis**I. Final Approval of the Settlement**

The newly amended Rule 23 requires courts to determine whether a proposed settlement is “fair, reasonable, and adequate” after considering whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm's length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). These considerations overlap with the factors previously articulated by the Seventh Circuit, which include: (1) the strength of the plaintiff's case compared to the terms of the settlement; (2) the complexity, length, and expense of continued litigation; (3) the amount of opposition to the settlement; (4) the presence of collusion in gaining a settlement; (5) the stage of the proceedings and the amount of discovery completed. *See, e.g., Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006); *Gen. Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1082 (7th Cir. 1997). All of these factors, whether in Rule 23 or Seventh Circuit jurisprudence, favor approval of the Settlement.

A. Adequacy of Representation—Rule 23(e)(2)(A)

*3 At the initial class certification stage, when class certification was granted for trial purposes, the Court concluded that the Class Representatives and Class Counsel were adequate. Doc. 556 at 15-18. This remains true. The Class Representatives have “no conflicts of interest” (*id.* at

16) and have invested significant time and resources in this litigation for more than six years (Doc. 954-4 ¶ 11). Class Counsel have “extensive experience in prosecuting RICO claims, class actions, and various complex cases” (Doc. 556 at 17) and have litigated this case intensively, and successfully, for almost seven years (Doc. 954 at 5-6). Adequacy of representation is uncontested and favors approval.

B. Arm's Length Negotiations and Non-Collusiveness of Settlement Process—Rule 23(e)(2)(B) and the Seventh Circuit's First Factor

The settlement negotiations were conducted at arm's length and overseen by two experienced, Court-appointed mediators. The first mediation, overseen by Judge James F. Holderman (Ret.), failed after more than a year of effort, after which the Parties remained far apart. In the weeks leading up to trial, the Parties revived the negotiations under the guidance of Court-appointed settlement master Randi Ellis, and reached an agreement on the eve of opening statements. After considering the extensive record, the Court previously found that “the Settlement Agreement has been negotiated in good faith at arms' length between experienced attorneys familiar with the legal and factual issues of this case, and overseen by experienced and Court-appointed mediators.” Doc. 942 at 2. No objector offers any reason to disturb this conclusion. This factor, therefore, strongly favors final approval. *See Great Neck Capital Appreciation Inv. P'ship, L.P. v. PricewaterhouseCoopers, L.L.P.*, 212 F.R.D. 400, 410 (E.D. Wis. 2002) (citation omitted) (“A strong presumption of fairness attaches to a settlement agreement when it is the result of this type of [arm's length] negotiation.”).

C. Adequacy of the Relief Provided by the Settlement—Rule 23(e)(2)(C) and the Seventh Circuit's Second Factor

As noted above, the Settlement secures a non-reversionary, \$250 million common fund that—after deducting the cost of settlement notice and administration, attorneys' fees and costs, and class representative service awards—will be available in equal shares to all class members. The Court concludes that this relief is more than adequate taking into account each of the Rule 23(e)(2)(C) factors.

1. The Costs, Risks, and Delay of Trial and Appeal—Rule 23(e)(2)(C)(i)

As noted above, this case settled after a jury had been empaneled and after more than six years of intensive and extremely hard-fought litigation. Over the course of this litigation, the Court ruled on motions to dismiss filed by all Defendants, a heavily contested class certification motion, two different summary judgment motions and accompanying *Daubert* motions, and literally dozens of pre-trial *Daubert* motions and motions in limine, among many other disputed issues. The Court also oversaw and regularly communicated with Magistrate Judge Williams, who handled literally dozens of discovery disputes and held almost monthly hearings and status conferences. The Court, along with the parties, also prepared for what was to be a six-week trial. As a result of these efforts, the Court is completely, fully, and thoroughly familiar with the many complex factual and legal issues involved in this case. Indeed, the Court's and the parties' knowledge in this case is likely as close to complete as one could ever achieve in a piece of litigation, short of knowing what the jury and the court of appeals would do with the trial for which the parties, and the Court, had fully prepared.

***4** Based on this knowledge and history, the Court concludes that the Settlement provides fair, adequate, and reasonable relief to the class in light of the costs, risks, and delay of trial and appeal. Plaintiffs faced many significant risks at trial such as, among others, establishing all the elements of their causes of action, including the disputed RICO proximate causation requirement, and a fact-based statute of limitations inquiry. On appeal (which, given the history of this litigation, would be inevitable), Plaintiffs faced additional significant and difficult issues, including *Rooker-Feldman*, *Noerr-Pennington*, res judicata, and, again, statute of limitations and RICO-causation, among others. These points are well captured in State Farm's brief in support of final approval, which details what State Farm believed was “the strength of [its] powerful factual and legal defenses and the serious obstacles Plaintiffs would have faced at trial and on appeal.” Doc. 971 at 2. This brief makes clear both that significant risks remained and that, absent resolution, State Farm was fully committed to continuing its spirited defense at trial and on appeal.

Regardless of the outcome of these proceedings, there can be no question that they would have added significant costs and delay. The parties settled at the beginning of what was to be a long and undoubtedly expensive trial. Moreover, absent this proposed resolution, and considering the strong likelihood of post-trial motions and appeals, the parties were unlikely to achieve a final disposition any time soon. This factor strongly

favors final approval of the Settlement and is particularly compelling given the length both of this litigation and the underlying *Avery* litigation.

The sole objector, Marlow, makes two points in arguing otherwise. First, she believes that Plaintiffs had little risk because, among other reasons, many of the issues discussed above “made their way to the Seventh Circuit, ... and on each occasion, Plaintiffs were the victors.” Doc. 961 at 7. Second, she claims that the proposed settlement secures only a miniscule percentage of the over \$7 billion, including interest and trebled damages, “the jury (or the Court)” had “few, if any, alternatives but to award.” *Id.* at 5-6. Neither argument is persuasive.

As noted above, real risk remained at trial on, among other issues, the statute of limitations, RICO causation, and RICO injury. On appeal, moreover, all issues were fair game, because, contrary to Marlow's mistaken belief, the Seventh Circuit did not issue any definitive rulings in its three orders denying State Farm's petitions for interlocutory appeal. As to the amount of the Settlement, Marlow's assumption that post-judgment interest would automatically have been applied is incorrect. The Court had yet to decide that issue (Doc. 905 at 31-32), and State Farm adamantly maintained that such interest was unsupported by the law (Doc. 880 at 2). Finally, Marlow's suggestion that the adequacy of the relief secured by the Settlement must be measured against potential treble damages contravenes established authority. *See, e.g., Carnegie v. Household Int'l, Inc.*, 445 F. Supp. 2d 1032, 1035 (N.D. Ill. 2006) (“[I]n determining a settlement value, the potential for treble damages should not be taken into account.”).¹

***5** To reiterate, based on its extensive history and intimate familiarity with this litigation, the Court easily concludes that the relief secured by the proposed settlement is fair, adequate, and reasonable in light of the costs, risks, and delay of trial and appeal. *See In re Mexico Money Transfer Litig.*, 164 F. Supp. 2d 1002, 1014 (N.D. Ill. 2000) (quoting *Isby v. Bayh*, 75 F.3d 1191, 1200 (7th Cir. 1996)) (in evaluating a proposed settlement, the court must recognize that the “ ‘essence of settlement is compromise’ ” and will not represent a total win for either side); *Van Lith v. iHeartMedia + Entm't, Inc.*, No. 1:16-CV-00066-SKO, 2017 WL 4340337, at *12 (E.D. Cal. Sept. 29, 2017) (“ ‘It is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the class members at trial.’ ”) (citations omitted).

2. The Effectiveness of Any Proposed Method of Distributing Relief to the Class, Including the Method of Processing Class-Member Claims—Rule 23(e)(2)(C)(ii)

Under the terms of the proposed Settlement, settlement funds will be distributed automatically, with no need for a claim form, to the approximately 1.43 million class members whose contact information is known to the parties. The remainder of the class has only to submit a relatively simple claim form with basic questions about class membership. This procedure is claimant-friendly, efficient, cost-effective, proportional and reasonable under the particular circumstances of this case.

3. The Terms of any Proposed Award of Attorney's Fees, Including Timing of Payment—Rule 23(e)(2)(C)(ii)

The Court analyzes the terms of Class Counsel's request for attorneys' fees and expenses below. In short, the Court finds the requested fees and costs are reasonable and concludes that the relief that remains for the class—all of which will be distributed without any possibility of reversion—is adequate in light of all the additional factors discussed herein. This factor favors final approval.

4. Any Agreement Required To Be Identified Under Rule 23(e)(3)—Rule 23(e)(2)(C)(iv)

The parties have not identified, nor is the Court aware of, any agreement—other than the Settlement itself—that must be considered pursuant to Rule 23(e)(3). This factor is neutral.

D. Equitable Treatment of Class Members—Rule 23(e)(2)(D)

All class members are entitled to the same relief under the proposed Settlement. This proposal is fair and equitable because the class members' interests in the *Avery* judgment were undivided when they were lost and, thus, each class member's damages were identical. The proposed Settlement therefore entitles each class member to an equal, pro-rata share of the Settlement fund. Doc. 941 § A(l).

Objector Marlow does not dispute that the Settlement's allocation is equitable. She does, however, claim that the objection process is unduly burdensome because it requires

objectors, and not other class member claimants, to produce “proof of class membership.” Doc. 961 at 17. According to Marlow, “[s]addling objectors with burdens not imposed on all class members is punitive, intended to intimidate class members from objecting.” *Id.* The Court disagrees. Asking objectors to provide “proof of class membership ... is not burdensome and is a reasonable safeguard against manipulation of the process by non-class members.” *See, e.g., Mexico Money Transfer*, 164 F. Supp. 2d at 1032. The Court observes that objectors can play an important role in the settlement approval process. But, by appealing from a trial court order approving a settlement, objectors can also significantly delay the implementation of a settlement and the distribution of the settlement funds for the entire class—which here includes millions of class members who have voiced no opposition to the Settlement and who have waited for over 20 years for relief. Marlow has not convinced the Court that it erred in determining that those who wish to wield this leverage must demonstrate their standing to do so—and may be cross-examined on their standing and motives to object—particularly when, as here, there is but one objector out of millions of class members and she initially swore under penalty of perjury that she was not a class member. Marlow has advanced no evidence or compelling argument in support of her claim that this provision is in any way “punitive” or “intended to intimidate class members from objecting,” and the Court soundly rejects such a claim.

*6 This factor favors final approval as well.

E. The Amount of Opposition to the Settlement—the Seventh Circuit's Third Factor

The Court must independently analyze all factors relevant to the settlement approval inquiry. Nevertheless, the response from the class can provide insight into the fairness of both the settlement and, as discussed below, the requested attorney's fees and costs.

The Class here is estimated to include approximately 4.7 million members. Approximately 1.43 million of them received individual postcard or email notice of the terms of the proposed Settlement, and the rest were notified via a robust publication program “estimated to reach 78.8% of all U.S. Adults Aged 35+ approximately 2.4 times.” Doc. 966-2 ¶¶ 26, 41. The Court previously approved the notice plan (Doc. 947), and now, having carefully reviewed the declaration of the Notice Administrator (Doc. 966-2), concludes that it was fully and properly executed, and reflected “the best notice that is practicable under the circumstances, including

individual notice to all members who can be identified through reasonable effort.” See [Fed. R. Civ. P. 23\(c\)\(2\)\(B\)](#). The Court further concludes that CAFA notice was properly effectuated to the attorneys general and insurance commissioners of all 50 states and District of Columbia.

Of the millions of Class members and more than a hundred senior government officials who received notice, only *one person*—and not a single government official—objected or otherwise criticized the Settlement. This lone voice of opposition represents a mere 0.00002% of the estimated Class. Adding the 471 people who previously opted out after the Class was initially certified, the percentage of the Class that has expressed any disapproval of the litigation or settlement is 0.001%. Doc. 935 ¶ 6. This remarkably low level of opposition is “strong circumstantial evidence in favor of the settlement,” especially considering that nearly one-and-a-half million class members received individual, direct notice. See, e.g., [Mexico Money Transfer](#), 164 F. Supp. 2d at 1021 (the fact that more than “99.9% of class members have neither opted out nor filed objections ... is strong circumstantial evidence in favor of the settlement[]”).² This factor strongly favors settlement approval.

F. The Stage of the Proceedings and the Amount of Discovery Completed—the Seventh Circuit's Fifth Factor

*7 “The stage of the proceedings at which settlement is reached is important because it indicates how fully the district court and counsel are able to evaluate the merits of plaintiffs' claims.” [Armstrong v. Bd. of Sch. Dirs.](#), 616 F.2d 305, 325 (7th Cir. 1980). Here, the parties settled after trial had begun and after more than six years of intensive litigation. The discovery process was exhaustive, and involved: hundreds of thousands of documents exchanged and reviewed, including many documents from third parties; dozens of depositions; and dozens of discovery hearings and disputes resolved by Magistrate Judge Williams. The motion practice was also extensive. Indeed, there were approximately 100 contested motions filed in this litigation, including motions to dismiss, motions for class certification, motions for summary judgment, many *Daubert* motions and motions *in limine*, and three separate petitions to the Seventh Circuit. Finally, the parties were fully prepared for, and had in fact begun, what was to be a six-week trial that was to involve dozens of witnesses and thousands of documents. Thus, as this Court previously noted, the parties' knowledge of this case was likely as close to complete as one could ever achieve in a

piece of litigation, short of knowing what the jury and the appellate court would do. This factor also strongly favors final approval.

G. Opinion of Qualified Counsel

In assessing the fairness of a proposed settlement, courts are “entitled to rely heavily on the opinion of competent counsel.” [Gautreaux v. Pierce](#), 690 F.2d 616, 634 (7th Cir. 1982) (citation omitted); accord [Isby](#), 75 F.3d at 1200. As noted above, Class Counsel are experienced class action litigators whose knowledge of this case was built on years of intensive litigation and was about as complete as can ever be achieved in litigation short of completing a trial and appeal. Indeed, some of the Parties' counsel had tried the underlying *Avery* case and/or were involved in the underlying appeals. This track record of familiarity spans three decades of first-hand experience. Class Counsel's unanimous and strong endorsement therefore further supports the fairness, reasonableness, and adequacy of the proposed Settlement.

For all these reasons, and after considering all relevant factors set forth in [Rule 23](#) and the Seventh Circuit's jurisprudence, the Court concludes that the Settlement is “fair, adequate, and reasonable” and should be granted final approval.

II. Class Counsel's Request for Attorneys' Fees and Costs

“[L]awyer[s] who recover[] a common fund ... [are] entitled to a reasonable attorney's fee from the fund as a whole.” [Boeing Co. v. Van Gemert](#), 444 U.S. 472, 478 (1980); see also [Sutton v. Bernard](#), 504 F.3d 688, 691 (7th Cir. 2007). “[W]hen deciding on appropriate fee levels in common-fund cases,” like this one, courts in the Seventh Circuit “must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.” [In re Synthroid Mktg. Litig.](#) (“*Synthroid I*”), 264 F.3d 712, 718 (7th Cir. 2001); accord [Williams v. Rohm & Haas Pension Plan](#), 658 F.3d 629, 635 (7th Cir. 2011) (“[T]he district court must try to assign fees that mimic a hypothetical *ex ante* bargain between the class and its attorneys.”).

Although courts in this Circuit have the discretion to use either a percentage of the fund or lodestar methodology, [Florin v. Nationsbank of Georgia, N.A.](#), 34 F.3d 560, 566 (7th Cir. 1994), the percentage method is employed by “the vast majority of courts in the Seventh Circuit (like other Circuits).” Doc. 954-2 ¶ 13 (citing empirical studies); *C.f.*

Beesley v. Int'l Paper Co., No. 3:06-CV-703-DRH-CJP, 2014 WL 375432, at *2 (S.D. Ill. Jan. 31, 2014) (Herndon, J.) (“When determining a reasonable fee, the Seventh Circuit Court of Appeals uses the percentage basis rather than a lodestar or other basis.”).³ The percentage method makes sense because “it is essentially unheard of for sophisticated lawyers to take on a case of this magnitude and type on any basis other than a contingency fee, expressed as a percentage of the relief obtained.” *In re Payment Card Interchange Fee and Merch. Discount Antitrust Litig.*, 991 F. Supp. 2d 437, 440 (E.D.N.Y. 2014), *rev'd on other grounds*, 827 F.3d 223 (2d Cir. 2016). Thus, where, as here, “the ‘prevailing’ method of compensating lawyers for ‘similar services’ is the contingent fee, then the contingent fee is the ‘market rate.’” *Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986) (emphasis in original).

*8 Having concluded that the percentage method is appropriate, the Court must next determine whether Class Counsel's request of one-third of the common fund is reasonable and reflective of the *ex ante* market price for Class Counsel's services. This analysis is informed by a number of factors, including: (1) the actual agreements between the parties as well as fee agreements reached by sophisticated entities in the market for legal services; (2) the risk of non-payment at the outset of the case; (3) the caliber of Class Counsel's performance; and (5) information from other cases, including fees awarded in comparable cases. *See, e.g., Synthroid I*, 264 F.3d at 719. These factors, when viewed separately and together, support Class Counsel's request.

A. Fee Agreements from the Named Plaintiffs and Sophisticated Entities in Other Litigation.

“The first benchmark” of the market rate “is actual agreements” between plaintiffs and counsel. *Id.*, at 719. Here, all named plaintiffs signed agreements calling for attorneys' fees of 40%. Doc. 954-4 ¶ 11. Perhaps more importantly, Class Counsel have advanced significant evidence and empirical analysis—much of which is reflected in the declaration of Professor Charles Silver—demonstrating that sophisticated clients and sophisticated class representatives regularly agree to pay 33.33% or more in risky, complex litigation, even when potential rewards are very large. *See* Doc. 954-1 at 17-26. This in-depth analysis confirms that the market that this Court must mimic—one formed by sophisticated entities in comparable contexts—routinely produces fee agreements at or above the percentage Class Counsel request here. Moreover, as Professor Fitzpatrick

observed, sophisticated entities in the market for legal representation often negotiate fee agreements that call for higher percentages—sometimes reaching as high as 50%—of any resolution obtained after a trial begins, as was the case here. *See, e.g.,* Doc. 954-2 ¶ 20 (citing empirical data). This factor, therefore, supports Class Counsel's requested fees.

B. Risk of non-payment

“The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel.” *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013); *accord, e.g., Synthroid I*, 264 F.3d at 721 (The market rate must account for the “risk of nonpayment a firm agrees to bear.”). Thus, “[w]hen determining the reasonableness of a fee request, courts put a fair amount of emphasis on the severity of the risk (read: financial risk) that class counsel assumed in undertaking the lawsuit.” *In re Dairy Farmers of Am., Inc.*, 80 F. Supp. 3d 838, 847-48 (N.D. Ill. 2015). “[T]his consideration incentivizes attorneys to accept and (wholeheartedly) prosecute the seemingly too-big-to-litigate wrongs hidden within the esoteric recesses of the law, ensuring that the attorneys are compensated for their work at the end of the day.” *Id.* at 848.

It would be difficult to overstate the risk that this case presented at the outset. As a threshold matter, successful RICO actions are exceedingly rare. *Gross v. Waywell*, 628 F. Supp. 2d 475, 480 (S.D.N.Y. 2009) (“[T]he statistical record indicates that in 98 percent of the RICO appellate cases surveyed, which do not include RICO actions dismissed by the district courts but not appealed, plaintiffs and counsel invested extensive time and energies in litigation only to come away with a total loss.”). Successful RICO class actions are rarer still. *See, e.g.,* Doc. 954-1 at 34-36 (discussing study of RICO class actions). Moreover, the particular theory presented by this case was without precedent and presented a host of unique factual and legal challenges.

*9 On the facts, it is important to note that unlike many cases where attorneys seek a substantial fee, Class Counsel here were not assisted by any governmental investigations or prosecution, for example, as is often the case large class actions. *See, e.g.,* Doc. 954-2 ¶ 23 (discussing a study finding that “private lawyers ... were the first to discover fraud only 3% of the time”); *see also In Re: Syngenta Ag Mir 162 Corn Litig.*, No. 14-MD-2591-JWL, 2018 WL 6436074, at *12 (D. Kan. Dec. 7, 2018) (concluding that attorney fee award of 1/3 in super-mega-fund case was justified, in part, by the fact that the “case did not involve a government investigation

or prosecution of the defendant”). As a result, the burden of building this case was borne entirely by Plaintiffs, and there was certainly no guarantee when they took the case that they would prevail. According to Magistrate Judge Williams, who closely oversaw the discovery in this case, Plaintiffs did not have enough evidence to “connect the dots” of their case two years in, much less at the time they filed. Doc. 300 at 5. Plaintiffs did, ultimately, marshal enough evidence to defeat two summary judgment motions, but that does not mean that they would have triumphed at trial and on appeal, and more to the point, it does not undermine the complexity and uncertainty of the challenges Plaintiffs faced when they filed suit.

On the law, too, Plaintiffs faced significant risks at the outset of this case. Defendants repeatedly advanced a number of strong challenges on complex issues of law, any one of which could have resulted in complete dismissal of the case. Those challenges included, among others: *Rooker-Feldman*, claim and issue preclusion, RICO proximate cause, RICO injury, *Noerr-Penington*, and the statute of limitations. As noted herein, these challenging issues were briefed extensively in a motion to dismiss, a petition for writ of mandamus, class certification filings, two petitions for leave to appeal pursuant to Rule 23(f), and two summary judgment motions. Plaintiffs largely prevailed on these issues before this Court, but this was far from a foregone conclusion at the outset of this litigation, and many more obstacles remained at trial and on appeal.

For all these reasons, the three class action attorney fee experts supporting Class Counsel's motion—three of the most experienced and respected experts in this field—all opined that this case was as risky as they come. *See, e.g.*, Doc. 954-1 at 33 (“[T]his is one of the most important lawsuits of my lifetime[, and] ... also one of the riskiest, as every relevant metric shows.”); Doc. 954-3 ¶ 36 (identifying “[a] dozen independent factors [that] demonstrate the riskiness of this case viewed *ex ante* – and [that were] borne out by the arc of the litigation”); Doc. 954-2 ¶ 21 (“[I]t is a *gross* understatement to say that this case involved above-average risks.”) (emphasis in original). This Court agrees and concludes that the risk of non-payment at the outset of the case overwhelmingly favors Class Counsel's requested one-third fee.

Marlow's arguments to the contrary miss the mark entirely. She acknowledges that, in determining the market price for counsel's service, courts must assess the risk that existed “at

the outset of the case” (Doc. 961 at 8 (quoting *Synthroid I*, 264 F.3d at 718)), but her actual analysis focuses only on “the risks of proceeding to trial with the evidence [Class Counsel] amassed during over six years of litigation” (*id.* at 15). While the risk that remained at the time of resolution remained significant, as noted above, that level of risk—after having achieved victories on motions to dismiss, class certification, summary judgment and more—is irrelevant to the *ex ante* market price inquiry required in this Circuit. Moreover, Marlow's observation that more attorneys joined the litigation as it progressed overlooks the fact that some of the firms initially prosecuting this case later withdrew. *See* Docs. 439 and 455. Regardless, this point is, at best, evidence that Plaintiffs' case got stronger over the course of litigation. Finally, Marlow ignores the undisputed fact that no other lawyers were interested in taking this case when it was filed, and none opposed or otherwise contested Plaintiffs' Motion for Appointment of Co-Lead and Liaison Counsel. Doc. 179. There was no such competition, notwithstanding the potential size of the case, presumably because of the extremely high level of risk. Again, this factor strongly favors approval of Class Counsel's requested fees.

C. The Quality of Class Counsel's Performance

*10 Also relevant to this analysis is the quality of Class Counsel's work. *Taubenfeld v. AON Corp.*, 415 F.3d 597, 600 (7th Cir. 2005) (noting that the “evidence of the quality of legal services rendered” is among the “type[s] of evidence needed to mimic the market per *Synthroid I*”); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 597 (N.D. Ill. 2011) (Compensation also depends on “the quality of [counsel's] performance.”). Class Counsel's work here, and the results they obtained, are both exemplary. As described above, over the course of more than six years and approximately 100 contested motions, Counsel achieved many significant victories. They survived motions to dismiss, two independent motions for summary judgment, and three trips to the Seventh Circuit; achieved certification of a nationwide class; and also secured a series of important wins on pre-trial motions in limine and *Daubert* motions before taking the case through the beginning of trial. These were all significant achievements, given the complexity and difficulty of both the factual and legal issues involved in this novel case. In sum, Class Counsel worked hard on this litigation and the caliber of that work was consistently first rate. This factor, too, supports Class Counsel's request.

D. Information from Other Cases

Another relevant data point for the market price for attorneys' fees is those awarded in "analogous class action settlements." *Taubenfeld*, 415 F.3d at 600; accord *Silverman*, 739 F.3d at 958. Although it is difficult to find cases that compare to this one, this factor too supports Class Counsel's request.

Courts within the Seventh Circuit, and elsewhere, regularly award percentages of 33.33% or higher to counsel in class action litigation.⁴ Professor Rubenstein—drawing upon his analysis of recent empirical studies on class action fee awards—observed that the *average* awarded fee in the Seventh Circuit is 31.6%, only slightly below the percentage requested here. Doc. 954-3 ¶ 17 (citing studies); see also 954-2 ¶ 18 (discussing empirical study demonstrating that fees in the 30-35% range were the most common). These statistics, however, do not account for the riskiness of this case, and this case was extremely risky. The statistics also do not account for the quality of counsel's performance, which again, was noteworthy here. And finally, they do not account for the stage at which the case resolved. This is relevant because, as discussed previously, sophisticated market players typically set higher fee percentages when a case resolves during or after trial. Courts recognize this as well, and award fees reflecting this market tendency. While trials are rare and the data limited, of the 11 cases proceeding to trial that Professor Rubenstein found in his database, the "mean fee award ... was 36%, with five cases having awards of 38.9% or more and three of those having fee awards of 40% or more. The median fees and costs awarded in the 11 cases that progressed to trial with applicable data was 45%." Rubenstein Decl. ¶ 18. Class Counsel's fee request is reasonable when viewed in the context of this data.

*11 Marlow nevertheless argues that an award of 33.33% would be unreasonable here because "megafund settlements are different." Doc. 961 at 13. The Court acknowledges that some empirical studies of class action fee awards—including ones conducted by Class Counsel's expert, Professor Fitzpatrick—demonstrate that as recoveries increase attorney fee percentages tend to decrease. See Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 839 (2010). The Court also understands that courts in other circuits have, in some situations, enforced a "megafund cap" that limits the percentage that attorneys can recover in large cases. On this issue, however, the Seventh Circuit found reversible error for "follow[ing] decisions of district courts in other jurisdictions, rather than decisions of the ... Seventh Circuit" and rejected a percentage cap on megafund recoveries because "[p]rivate parties would never contract for such an arrangement."

Synthroid I, 264 F.3d at 718; see also *In re FedEx Ground Package Sys., Inc., Emp't Practices Litig.*, 251 F. Supp. 3d 1225, 1239 (N.D. Ind. 2017) ("Our court of appeals ... has rejected the concept behind the 'megafund' theory").

Professor Silver's declaration supports this conclusion and details many examples in which sophisticated parties—both in non-class fee agreements and when negotiating fee arrangements as lead plaintiffs in class actions—agree to flat percentages at or above 33.33% in cases that yield significant recoveries. See Doc. 954-1 at 17-28. Courts regularly follow suit, even in megafund cases. Indeed, Professor Silver's declaration cites at least 20 cases in which courts awarded 33% or more of recoveries between \$105 and \$974 million (not accounting for inflation). *Id.* at 39-45 (Table 2). One of those cases, *In re U.S. Foodservice, Inc. Pricing Litig.*, shares notable similarities with this case. No. 3:07-md-1894 (AWT) (D. Conn.), Doc. 510-1 (Aug. 29, 2014) (fee motion); Doc. 523 (Dec. 9, 2014) (order granting fee motion) (RICO class action with sophisticated lead plaintiffs that resulted in a \$297 million settlement from which the court awarded class counsel 33.33% in fees and \$7,941,358.41 litigation expenses). *Syngenta*, 2018 WL 6436074, decided after Class Counsel submitted their reply brief, provides further support. There, the court awarded counsel one-third of a \$1.5 billion settlement and concluded that "a one-third fee is customary in contingent-fee cases (factor 5), or is even on the low side, as that figure is often higher in complex cases or cases that proceed to trial." *Id.* at *14. This Court agrees.

The Seventh Circuit's decision in *Silverman* does not mandate otherwise. 739 F.3d 956. In *Silverman*, the court noted that 27.5% of \$200 million "may be at the outer limit of reasonableness," but it did not dispense with the Seventh Circuit's overarching instruction to "approximate the market rate that prevails between willing buyers and willing sellers of legal services." *Id.* at 959, 957. The outer limits of a reasonable *ex ante* fee negotiation in one case may be the inner limits in another. Indeed, as the Seventh Circuit noted in *Synthroid II*, "if securities suits present less risk to the plaintiff class than does a fraud suit against a drug manufacturer, it is unsound to use a contingent fee appropriate to the former as the measure in the latter." 325 F.3d 974, 979 (7th Cir. 2003). Likewise, if *Silverman* presented less risk to the plaintiff class than did this completely novel RICO class action—as it certainly did—then here, too, "it is unsound to use a contingent fee appropriate to the former as the measure in the latter." See *id.* The Court agrees with Professor Fitzpatrick's observation that *Silverman* "presented none of the *ex ante*

risks of this case (for example, *Silverman* was a securities fraud case, where class certification is relatively perfunctory), and, perhaps even more importantly, did not go to trial.” Doc. 954-2 ¶ 25. The Court therefore concludes that the extraordinary facts of this case—and the novel risks it entailed—set it apart from *Silverman*, and that sophisticated parties would have negotiated no less than a fee arrangement of 1/3 for a resolution reached after the case progressed to trial.

*12 For similar reasons, this Court declines to adopt a decreasing sliding scale fee structure. The Seventh Circuit explained the rationale for this approach in *Synthroid I*, but also cautioned that “systems with declining marginal percentages are [not] always best” because they “create declining marginal returns to legal work, ensuring that at some point attorneys’ opportunity cost will exceed the benefits of pushing for a larger recovery, even though extra work could benefit the client.” 264 F.3d at 721. Thus, while the Seventh Circuit, and courts within it, have applied the declining scale to large recoveries in some circumstances, the Court rejects Marlow’s suggestion that it is the only permissible model.

Silverman itself, which affirmed a flat percentage in a megafund case, confirms this. 739 F.3d at 956. So does *Dairy Farmers*, 80 F. Supp. 3d at 845. There, the court observed that the declining percentage approach “is not a one-size-fits-all recovery scheme, and there are many other factors to consider before declaring this pricing grid the Cinderella slipper.” *Id.* Ultimately, in that case, the court concluded that a flat 33.33% fee was appropriate even though the risk was relatively low and notwithstanding a “seemingly tailor-made tiered-pricing arrangement” set by the Seventh Circuit in *Synthroid II*. *Id.* at 845, 848.

Similarly, in *Young v. County of Cook*, No. 06 C 552, 2017 WL 4164238 (N.D. Ill. Sept. 20, 2017), Judge Kennelly concluded that the circumstances of that case placed it “squarely within the category of cases for which the use of a declining marginal percentage scale *is not appropriate*.” *Young*, 2017 WL 4164238, *5 (emphasis added). This was true, the court found, because of the “high risk of non-payment,” the “enormous amount of work [that] went into” the litigation, and the fact that counsel had turned down an earlier settlement offer in a successful effort to obtain more for the class. *Id.* at *4-5.

The Court finds this reasoning persuasive. As in *Young*, this case presented an extremely high risk of non-payment and

required an enormous amount of work. And like counsel in *Young*, Class Counsel here turned down settlement offers that were significantly lower than the \$250 million settlement that was ultimately reached. “Class Counsel rejected that offer in order to obtain a better recovery for the Class, and, after considerable additional litigation, pre-trial proceedings, and after jury selection once trial had commenced, they did just that.” Doc. 973-1 ¶ 2. Thus, Judge Kennelly’s conclusion that a “33% contingent fee of the total recovery is on the low end of what is typically negotiated *ex ante* by plaintiffs’ firms taking on large, complex cases” applies with equal force here, and justifies Class Counsel’s requested fees. See *Young*, 2017 WL 4164238, *6; see also, e.g., *Standard Iron Works*, 2014 WL 7781572, at *1 (awarding a flat 33% of \$163.9 million settlement); *City of Greenville*, 904 F. Supp. 2d at 908-09 (awarding 33% of \$105 million plus roughly \$8.5 million in costs); *Cent. Laborer’s Pension Fund v. Sirva, Inc.*, No. 1:04-cv-07644, Doc. 249 (N.D. Ill. Oct. 31, 2007) (awarding a flat 29.85% percent of \$53.3 million).

In sum, the Court agrees that with Class Counsel that

[T]his case is in a league of its own. It was brought under a statute that almost never rewards plaintiffs. It relied on a novel, untested theory. It was accompanied by extreme risk of non-payment. It required an enormous amount of work. And it settled only after trial had begun. In light of these factors, Class Counsel’s request of a flat 33.33% award is reasonable and, if anything, “is on the low end” of what sophisticated parties would have negotiated for a recovery during trial.

*13 Doc. 973 at 15. The Court therefore concludes that Class Counsel’s request for one-third of the common fund is reasonable and supported by the facts of this case.

Finally, the Court rejects Marlow’s contention that the percentage must be calculated after deducting any awarded expenses. Courts in this Circuit routinely award a percentage of the gross common fund without netting out separately awarded costs, and this Court sees no reason to depart from that approach here. See, e.g., *Spano*, 2016 WL 3791123, at *4 (awarding 33.33% of \$57 million fund in addition to costs for

a total of 36.51% of fund); *Johnson v. Meriter Health Servs. Emp. Ret. Plan*, No. 10-CV-426-WMC, 2015 WL 13546111, at *6 (W.D. Wis. Jan. 5, 2015) (awarding 27.5% of \$82 million settlement fund plus in costs for total of 29.66% of the fund); *Silverman*, 2012 WL 1597388, at *5 (N.D. Ill. May 7, 2012), *aff'd sub nom. Silverman v. Motorola Sols., Inc.*, 739 F.3d 956 (7th Cir. 2013) (“The Court awards attorney’s fees in the amount of 27.5% of the Settlement Amount and awards \$4,729,743.16 in costs.” (29.86% of settlement fund)); *Martin*, 2010 WL 11614985, at *6 (awarding 33.33% of gross settlement fund in addition to costs for a total of 35.24% of the fund).

E. Lodestar Cross-Check

A lodestar cross-check is not required in this Circuit. *Rohm & Haas Pension Plan*, 658 F.3d at 636 (“[C]onsideration of a lodestar check is not an issue of required methodology.”); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 500 (N.D. Ill. 2015) (“[N]o Seventh Circuit case law suggests that a percentage-of-the-fund approach will yield a reasonable result only where it satisfies a lodestar cross-check.”). Indeed, the “use of a lodestar cross-check has fallen into disfavor,” *Beesley*, 2014 WL 375432, at *3 (citing *Synthroid II*, 325 F.3d at 979-80), and, in some cases, can be “counterproductive,” *Gen. Dynamics Corp.*, 2010 WL 4818174, at *3 (collecting cases). Nevertheless, because an objection to the requested fees has been raised, the Court conducts this additional analysis to further confirm that Class Counsel’s fees are reasonable and will not result in a windfall.

The Court first finds that the records submitted by Counsel are sufficient for this analysis and rejects Marlow’s argument that “full billing records” are necessary. Contrary to Marlow’s assertion, it is well established that courts “may rely on summaries ... and need not review actual billing records.” See *Beesley*, 2014 WL 375432, at *3, n.1; accord *Gen. Dynamics*, 2010 WL 4818174, at *3 (same); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 264 (N.D. Cal. 2015) (“The lodestar cross-check calculation need entail neither mathematical precision nor bean counting.... [Courts] may rely on summaries submitted by the attorneys and need not review actual billing records.”) (citation omitted).

The Court further concludes that the hours worked, rates billed, and resulting multiplier are all customary and reasonable for cases of this complexity. According to their declarations, Class Counsel worked approximately 55,000 hours (totaling \$29,163,729.05 in lodestar) in the seven years from pre-filing investigation to the date the settlement was

announced. This number of hours is not, as Marlow suggests, “extraordinarily high” in the context of this case. In fact, it is well below the mean in cases in the \$250 million range that progressed to trial, and even lower after accounting for the number of years this case was litigated. See Doc. 954-3 ¶¶ 29-32. It is also about 20% less than hours that have been recently approved in this district. See, e.g., *City of Greenville*, 904 F. Supp. 2d at 909 (finding reasonable 83,300 hours for two firms over 8 years—approximately 10,412 hours/year). Given the complexity of this litigation, and the tremendous amount of work it involved, the Court has no trouble concluding that Class Counsel worked a reasonable number of hours to prosecute this case.

*14 Class Counsel’s historical billing rates are also reasonable. The reported blended average is \$527.34. As Professor Rubenstein’s analysis demonstrates, this is typical of rates approved in 22 recent class action fee awards in the Northern District of Illinois. Furthermore, courts in this District (including this Court) have recently approved a billing structure and rates that would, if applied to Class Counsel’s time here, result in a blended average rate approximately 1/3 higher than what Class Counsel have reported. See *Beesley*, 2014 WL 375432, at *3; *Spano*, 2016 WL 3791123, at *4. With these guideposts in mind, and given the complexity of this case and participation of highly-experienced lawyers with national practices and expertise, the Court concludes that the billed rates are reasonable.

The multiplier that results from Class Counsel’s reported lodestar is 2.83, or if applying the rates approved in *Spano*, 2.11. Doc. 954 at 17; Doc. 954-4 ¶ 10. This is reasonable under the facts of this case. Risk multipliers are “mandated” where, as here, counsel “had no sure source of compensation for their services.” *Florin*, 34 F.3d at 565; accord *City of Greenville*, 904 F. Supp. 2d at 909 (“[W]here counsel ‘had no sure source of compensation for their services,’ the Court must apply a risk multiplier to compensate the attorneys for the risk of nonpayment in the event the litigation were unsuccessful.”). Moreover, multipliers should reflect the risks counsel faces *ex ante*. *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 976 (7th Cir. 1991) (“The [multiplier] level selected should, to the extent possible, be without regard to most developments during discovery and litigation because it is designed to reflect the riskiness of the case at the outset.”). “The multiplier is” therefore “determined by dividing 1 by the probability of success” at the outset of the case. *City of Greenville*, 904 F. Supp. 2d at 909 (quoting *Florin*, 60 F.3d at 1248 n. 3). Thus, the 2.83 multiplier is justified here if

Plaintiffs had less than a 35% chance of prevailing when they filed suit ($1/2.83=0.3533$). For all the reasons detailed above, this is undoubtedly the case here.

The lodestar cross-check therefore confirms the reasonableness of Class Counsel's request.

III. Class Counsel's Requested Costs Are Reasonable.

"It is well established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses, which includes such things as expert witness costs; computerized research; court reports; travel expense; copy, phone and facsimile expenses and mediation." *Beesley*, 2014 WL 375432, at *3 (citing *Boeing*, 444 U.S. at 478); see also Fed. R. Civ. P. 23(h). Here, Class Counsel seek reimbursement of \$6,971,852.80 in litigation expenses. No objector challenges the fairness or reasonableness of the requested expenses.

As a threshold matter, the Court concludes that the billing records provided—which broke the costs down into 16 separate categories of litigation expenses—include sufficient detail to allow the Court to perform its oversight function. See, e.g., *Schulte*, 805 F. Supp. 2d at 600 (noting that a "summary document" of expenses would suffice); see also *Northbrook Excess & Surplus Ins. Co. v. Procter & Gamble*, 924 F.2d 633, 643 (7th Cir. 1991).

The Court further concludes that the requested expenses are reasonable under the facts of this case. As noted throughout this Order, this case was particularly hard-fought over more than six years. During that time, Counsel: secured the services of a number of highly-qualified experts, many of whom submitted multiple reports, were deposed, and prepared for trial; paid for the development and implementation of the litigation notice program; traveled to well over a hundred hearings and depositions; employed a discovery vendor to host and help analyze hundreds of thousands of pages of documents over more than six years; and worked extensively with jury consultants and other trial-preparation experts to achieve the best result for the Class. Doc. 954 at 18-21; Doc. 954-4 ¶ 12. These are but a few examples of the costs of doing business in a complex and high-stakes case such as this.

*15 Yet, while this was certainly an expensive case to prosecute, the requested expenses are only 2.8% of the common fund, which is significantly less than the average of "4 percent of the relief for the class." *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp.

2d 1028, 1041 (N.D. Ill. 2011) (citing Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. Empirical Legal Stud. 27, 70 (2004)). Moreover, as this Court previously recognized in a different case, "Class Counsel had a strong incentive to keep expenses at a reasonable level due to the high risk of no recovery when the fee is contingent." *Beesley*, 2014 WL 375432, at *3. Furthermore, here, as in *Beesley*, "the fact that Class Counsel does not seek interest as compensation for the time value of money or costs associated with advancing these expenses to the Class makes this fee request all the more reasonable." *Id.* Finally, Class Counsel incurred significant costs after submitting their motion—and will continue to do so until the settlement is finalized—for which they have not sought reimbursement. See Doc. 973-1 ¶ 3.

Class Counsel's expenses are therefore justified in the context of this case.

IV. Service Awards for the Class Representatives

Plaintiffs request service awards of \$25,000 for each of the three Class Representatives: Mark Hale, Todd Shadle, and Laurie Loger. As demonstrated by their Declarations, each of them has invested time and resources in this litigation by, among other things: reviewing pleadings, responding to discovery requests, producing documents, sitting for depositions, preparing for trial, remaining in contact with Class Counsel, and overseeing the litigation. Doc. 973-1, Exhibits 1-3. Furthermore, each of them served as a class representative in the underlying *Avery* action and thus have been representing this same group of policyholders for more than 20 years. *Id.* Service awards of \$25,000 are within the range of awards granted in similar situations, and are reasonable and appropriate under the facts of this case. See, e.g., *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (upholding award of \$25,000 to class representative); *Spano*, 2016 WL 3791123, at *4 (awarding \$25,000 to two representatives and \$10,000 to a third); *Beesley*, 2014 WL 375432, at *4 (awarding \$15,000 and \$25,000); *Abbott v. Lockheed Martin Corp.*, No. 06-CV-701-MJR-DGW, 2015 WL 4398475, at *4 (S.D. Ill. July 17, 2015) (awarding \$25,000); *Nolte v. Cigna Corp.*, No. 07-cv-2046, Doc. 413 at 9 (C.D. Ill. Oct. 15, 2013) (same); *Gen. Dynamics*, 2010 WL 4818174, at *4 (awarding \$25,000 each to three named plaintiffs, and finding such awards are "well within the ranges that are typically awarded in comparable cases"); *Heekin v. Anthem, Inc.*, No. 1:05-cv-01908-TWP-TAB, 2012 WL 5878032, at *1 (S.D. Ind. Nov. 20, 2012) (awarding

\$25,000 each to two class representatives based on extensive involvement over seven years of litigation).

Marlow's challenge to this request is unpersuasive. She points to no authority suggesting that under comparable facts such an award is inappropriate. Instead, her primary argument is that the Class Representatives did not themselves submit declarations attesting to the work they performed. But this very information was included in the one of Class Counsel's declarations attached to the initial motion and, in any case, in response to Marlow, all three Class Representatives have submitted their own declarations. All of them confirm that they performed significant work on behalf of the class and have earned the requested service awards.

CONCLUSION

Accordingly, the Court hereby orders, adjudges, finds and decrees as follows:

1. The Court hereby **GRANTS** Plaintiffs' motion for final approval of the Settlement.⁵ The Court fully and finally approves the Settlement in the form contemplated by the Settlement Agreement (Doc. 941) and finds its terms to be fair, reasonable and adequate within the meaning of [Rule 23 of the Federal Rules of Civil Procedure](#). The Court directs the consummation of the settlement pursuant to the terms and conditions of the Settlement Agreement.
- *16 2. The Court finds that the Notice given to the Class Members constituted the best notice practicable under the circumstances and complied in all respects with the requirements of [Rule 23](#) and due process.
3. The Court hereby dismisses this Action with prejudice as to the defendants, and, except as provided under the Settlement Agreement, without costs.

4. The Court hereby discharges and releases the Released Claims as to the Releasees, as those terms are used and defined in the Settlement Agreement (Doc. 941).
5. The Court hereby permanently bars and enjoins the institution and prosecution by Class Plaintiffs and any Class Member of any other action against the Releasees in any court or other forum asserting any of the Released Claims, as those terms are used and defined in the Settlement Agreement (Doc. 941).
6. The Court further reserves and retains exclusive and continuing jurisdiction over the Settlement concerning the administration and enforcement of the Settlement Agreement and to effectuate its terms.
7. The Court finds and determines pursuant to [Rule 54\(b\) of the Federal Rules of Civil Procedure](#) that there is no just reason for delay and directing entry of final judgment.

Further, the Court also **GRANTS** Class Counsel's motion for attorneys' fees and costs. Class Counsel are awarded (1) \$6,971,852.80 as reimbursement of reasonable litigation costs; and (2) attorneys' fees in the amount of one-third (33.33%) of the \$250 million common fund, net of the \$2.1 million estimated for settlement notice and administration, but inclusive of interest accrued on the fund at the time of distribution. The three Class Representatives—Mark Hale, Todd Shadle, and Laurie Loger—are each awarded service awards of \$25,000.

A separate judgment consistent with this Memorandum and Order will issue pursuant to [Fed. R. Civ. P. 58](#).

IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2018 WL 6606079, RICO Bus.Disp.Guide 13,111

Footnotes

- 1 See also, e.g., [Rodriguez v. W. Publ'g Corp.](#), 563 F.3d 948, 964 (9th Cir. 2009) ("[C]ourts do not traditionally factor treble damages into the calculus for determining a reasonable settlement value."); [Lorazepam & Clorazepate Antitrust Litig.](#), 205 F.R.D. 369, 376, n.12 (D.D.C. 2002) ("[T]he standard for evaluating

settlement involves a comparison of the settlement amount with the estimated single damages.”); *Cnty. of Suffolk v. Long Island Lighting Co.*, 907 F.2d 1295, 1324 (2d Cir. 1990) (“[T]he district judge correctly recognized that it is inappropriate to measure the adequacy of a settlement amount by comparing it to a possible trebled base recovery figure.”); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 458-59 (2d Cir. 1974) (“[T]he vast majority of courts which have approved settlements ... have given their approval ... based on an estimate of single damages only.”), *overruled on other grounds as recognized by U.S. Football League v. Nat’l Football League*, 887 F.2d 408, 415-16 (2d Cir. 1989). Although a small minority of district courts has evaluated treble damages in a settlement context, there is “no authority that requires a district court to assess the fairness of a settlement in light of the potential for trebled damages.” *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 325 (3d Cir. 2011) (quoting *In re Cmty. Bank of N. Va.*, 622 F.3d 275, 312 (3d Cir. 2010) (emphasis in original)).

- 2 See also *Camp Drug Store, Inc. v. Cochran Wholesale Pharm., Inc.*, No. 16-CV-488-SMY-RJD, 2017 WL 5724208, at *2 (S.D. Ill. Apr. 26, 2017) (“The lack of opposition from any settlement class member also militates in favor of settlement.”), *aff’d*, 897 F.3d 825 (7th Cir. 2018); *Kleen Prod. LLC v. Int’l Paper Co.*, No. 1:10-CV-05711, 2017 WL 5247928, at *3 (N.D. Ill. Oct. 17, 2017) (one objector out of 158,500 class members “attests to” the “fairness” of the settlement); *In re Sw. Airlines Voucher Litig.*, No. 11 C 8176, 2013 WL 4510197, at *7 (N.D. Ill. Aug. 26, 2013) (concluding that objections and opt outs “amount[ing] to less than 0.01%” is a “low level of opposition [that] supports the reasonableness of the settlement”), *aff’d as modified*, 799 F.3d 701 (7th Cir. 2015); *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 964-65 (N.D. Ill. 2011) (concluding that 10 objections and “less than 0.01%” of opt outs was “remarkably low level of opposition” that “supports the Settlement”); *Henry v. Sears Roebuck & Co.*, No. 98-cv-4110, 1999 WL 33496080, at *11 (N.D. Ill. July 23, 1999) (twenty-four objections was “extremely small number” and “weighs in favor of Court approval”); *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1313-14 (3d Cir. 1993) (“Less than 30 of approximately 1.1 million shareholders objected. This is an infinitesimal number” that “does not favor derailing settlement.”); *Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 119 (3d Cir. 1990) (where 29 of 281 (10.3%) class members objected, finding that the “response of the class members, both in numbers and in rationale, strongly favors settlement”); *Van Lith*, 2017 WL 4340337, at *14 (“Indeed, ‘[i]t is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class action settlement are favorable to the class members.’”) (citation omitted); *Office & Prof’l Emps. Int’l Union v. Int’l Union, United Auto., Aerospace & Agric. Implement Workers of Am.*, 311 F.R.D. 447, 458 (E.D. Mich. 2015) (objection from “[o]nly one class member[.]” is “extremely minimal level of opposition” and “is an indication of [the] settlement’s fairness”) (citations omitted); *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (“It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members.”).
- 3 See also, e.g., *Cooper v. IBM Pers. Pension Plan*, No. CIV. 99-829-GPM, 2005 WL 1981501, at *3 (S.D. Ill. Aug. 16, 2005), *rev’d and remanded on other grounds*, 457 F.3d 636 (7th Cir. 2006) (“The approach favored in the Seventh Circuit is to compute attorney’s fees as a percentage of the benefit conferred on the class.”); *Spano v. Boeing Co.*, No. 06-CV-743-NJR-DGW, 2016 WL 3791123, at *2 (S.D. Ill. Mar. 31, 2016) (same); *Nolte v. Cigna Corp.*, No. 2:07-CV-2046-HAB-DGB, 2013 WL 12242015, at *2 (C.D. Ill. Oct. 15, 2013) (same).
- 4 See, e.g., *Young v. Cnty. of Cook*, No. 06 C 552, 2017 WL 4164238, at *6 (N.D. Ill. Sept. 20, 2017) (awarding 33.33% of \$52 million common fund and overruling objections calling for sliding scale approach); *Spano*, 2016 WL 3791123, at *2 (“A one-third fee is consistent with the market rate in settlements concerning this particularly complex area of law.”); *Dairy Farmers*, 80 F. Supp. 3d at 862 (awarding one third plus expenses of \$46 million common fund); *Standard Iron Works v. ArcelorMittal*, No. 08 C 5214, 2014 WL 7781572, at *1 (N.D. Ill. Oct. 22, 2014) (“The Court finds that a 33% fee [of \$163.9 million common fund] comports with the prevailing market rate for legal services of similar quality in similar cases.”); *Beesley*, 2014 WL 375432, at

*4 (Herndon, J.) (awarding one third of common fund); *Fosbinder-Bittorf v. SSM Health Care of Wis., Inc.*, No. 11-CV-592-WMC, 2013 WL 5745102, at *1 (W.D. Wis. Oct. 23, 2013) (same); *George v. Kraft Foods Global, Inc.*, No. 1:07-CV-1713, 2012 WL 13089487, at *4 (N.D. Ill. June 26, 2012) (same); *City of Greenville v. Syngenta Crop Prot., Inc.*, 904 F. Supp. 2d 902, 908-09 (S.D. Ill. 2012) (awarding one-third of \$105 million settlement plus roughly \$8.5 million in costs and holding that “[w]here the market for legal services in a class action is only for contingency fee agreements, and there is a substantial risk of nonpayment for the attorneys, the normal rate of compensation in the market is 33.33% of the common fund recovered.”); *Schulte*, 805 F. Supp. 2d at 601 (awarding one third of common fund); *Will v. Gen. Dynamics Corp.*, No. CIV. 06-698-GPM, 2010 WL 4818174, at *4 (S.D. Ill. Nov. 22, 2010) (same); *Martin v. Caterpillar Inc.*, No. 07-CV-1009, 2010 WL 11614985, at *2 (C.D. Ill. Sept. 10, 2010) (“[C]ourts in the Seventh Circuit award attorney fees ‘equal to approximately one-third or more of the recovery.’ The Seventh Circuit itself has specifically noted that ‘the typical contingent fee is between 33 and 40 percent.’ ”); *Harzewski v. Guidant Corp.*, No. 05-cv-01009, Doc. 194 (S.D. Ind. Sept. 10, 2010) (awarding 38% of the common fund).

- 5 The Court notes that attorney Gordon Ball, co-lead counsel for plaintiffs, is also one of the responsible attorneys for the settlement-fund account.

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.

246 F.Supp.3d 1295

United States District Court, S.D. California.

Sonny LOW, J.R. Everett and John Brown, on Behalf of
Themselves and All Others Similarly Situated, Plaintiffs,

v.

TRUMP UNIVERSITY, LLC, a New York Limited
Liability Company, and Donald J. Trump, Defendants.

Art Cohen, Individually and on Behalf of
All Others Similarly Situated, Plaintiff,

v.

Donald J. Trump, Defendant.

Case No.: 3:10-cv-00940-GPC-WVG,

Case No.: 3:13-cv-02519-GPC-WVG

|

Signed March 31, 2017

Synopsis

Background: Purchasers of a real-estate investment seminar brought class action against seminar founder, alleging racketeering and violations of various state unfair competition laws. The United States District Court for the Southern District of California, [Gonzalo P. Curiel](#), J., 2016 WL 7387292, granted parties' joint motion for preliminary approval of class action settlement. Parties jointly moved for final approval and purchasers moved for approval of class representative awards.

Holdings: The District Court, [Gonzalo P. Curiel](#), J., held that:

proposed settlement was fair, adequate, and reasonable, and

incentive awards of \$15,000 for each class representative were warranted.

Motions granted.

Attorneys and Law Firms

*1297 [Aaron M. Olsen](#), Alreen Haeggquist, [Amber Lee Eck](#), [Helen Irene Zeldes](#), Zeldes Haeggquist & Eck, LLP, San Diego, CA, [Daniel Jacob Pfefferbaum](#), Robbins Geller Rudman & Dowd LLP, San Francisco, CA, [Jason A Forge](#), [Jeffrey J. Stein](#), [Maureen E. Mueller](#), [Patrick J. Coughlin](#),

[Rachel L. Jensen](#), [Thomas R. Merrick](#), [Xavier Jay Alvarez](#), [Brian E. Cochran](#), Robbins Geller Rudman & Dowd LLP, San Diego, CA, for Plaintiffs.

[Benjamin James Morris](#), Foley & Lardner LLP, San Diego, CA, [Daniel M. Petrocelli](#), [David Lee Kirman](#), [David Marroso](#), [Wallace Moore Allan](#), O'Melveny & Myers LLP, Los Angeles, CA, [Jeffrey L. Goldman](#), Belkin Burden Wenig & Goldman, LLP, New York, NY, [Jill Ann Martin](#), Rancho Palos Verdes, CA, for Defendants

ORDER:

**(1) GRANTING JOINT MOTION FOR
FINAL APPROVAL OF THE PROPOSED
CLASS ACTION SETTLEMENT;**

AND

**(2) GRANTING PLAINTIFFS' MOTION FOR
APPROVAL OF CLASS REPRESENTATIVE AWARDS**

[10cv940, ECF Nos. 589, 590.]

[13cv2519, ECF Nos. 294, 295.]

Hon. [Gonzalo P. Curiel](#), United States District Judge

On February 17, 2017, the Parties in the above-captioned, related actions (collectively, "Actions"; individually, "*Low*" and "*Cohen*") jointly moved the Court for final approval of the proposed class action settlement *1298 ("Settlement").¹ (*Low*, Dkt. No. 589; *Cohen*, Dkt. No. 294.)² Plaintiffs also moved for approval of class representative awards. (*Low*, Dkt. No. 590; *Cohen*, Dkt. No. 295.) Defendants do not oppose the motion.

The Court held a final approval hearing on March 30, 2017. (*Low*, Dkt. No. 617; *Cohen*, Dkt. No. 304.) Amber Eck, Jason Forge, Patrick Coughlin, Rachel Jensen, Daniel Pfefferbaum, and Jeffrey Stein appeared on behalf of Plaintiffs. (*Id.*) David Kirman, Daniel Petrocelli, and Jill Martin appeared on behalf of Defendants. (*Id.*) Gary Friedman and Ilann Maazel appeared on behalf of objector Sherri B. Simpson. (*Id.*)

The Court has now considered: (1) the memorandum submitted in support of the Joint Motion for Final Approval of Class Action Settlement (“Final Approval Motion”); (2) the declarations submitted in support of the Final Approval Motion; (3) the declaration submitted in support of the Service Award Motion; (4) the Stipulation of Class Action Settlement, including its Exhibits (collectively, “Agreement”); (5) the Objection of Sherri B. Simpson, accompanying declarations, and responses thereto; (6) the entire record in these Actions, including, but not limited to, the Motion for Preliminary Approval of Class Action Settlement (“Preliminary Approval Motion”), and the declarations and exhibits submitted in support thereof; (7) the oral presentations at the Fairness Hearing; (8) the Court’s findings and conclusions contained in its Preliminary Approval Order; (9) this Court’s experiences and observations while presiding over these Actions, and the Court’s file herein; and (10) the relevant law.

Having considered the above, the Court **GRANTS** the Parties’ joint motion for final approval of the Settlement and **GRANTS** Plaintiffs’ motion for approval of class representative awards.

RELEVANT PROCEDURAL BACKGROUND³

On December 19, 2016, the Parties entered into a Stipulation of Class Action Settlement (“Agreement”), after arm’s-length settlement negotiations overseen by the Honorable Jeffrey T. Miller. (*Low*, Dkt. No. 583; *Cohen*, Dkt. No. 281.) On December 20, 2016, the Court, after determining the proposed Settlement to be fair, reasonable, adequate, and within the range of possible approval, entered an Order (1) preliminarily approving the Settlement, (2) directing dissemination of the Class Notice, and (3) setting a final approval hearing. (*Low*, Dkt. No. 584; *Cohen*, Dkt. No. 282.)

On December 29, 2016, Defendants effectuated the notice required by the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715(b), to all appropriate federal *1299 and state officials. (*See Low*, Dkt. No. 585; *Cohen*, Dkt. No. 283). On January 4, 2017, the Better Business Bureau of Metropolitan New York (“Settlement Administrator”) mailed and emailed the Long-form Notice and Claim Form to 8,253 potential Class Members and published the Summary Notice in *USA Today*. (*See Low*, Dkt. No. 589–3, Declaration of Edward A. Wulff in Support of Joint Motion for Final

Approval of Class Action Settlement (“Wulff Decl.”) ¶¶ 6, 11; *Cohen*, Dkt. No. 294–3, Wulff Decl. ¶¶ 6, 11.)

On January 17, 2017, Trump University’s (“TU’s”) successor entity, Trump Entrepreneur Initiative (“TEI”), paid the full \$25 million Settlement Amount to the Escrow Agent. (*See Low*, Dkt. No. 589–2, Declaration of Rachel L. Jensen in Support of Joint Motion for Final Approval of Class Action Settlement (“Jensen Decl.”) ¶ 14; *Cohen*, Dkt. No. 294–2, Jensen Decl. ¶ 14.) The Escrow Agent distributed \$4 million to the New York Attorney General (“NYAG”) for settlement of the NYAG action pursuant to the Agreement and the Memorandum of Agreement. (*See id.*) The remaining \$21 million has been invested and is earning interest for the benefit of Class Members. (*See id.*)

The Claims Deadline and Objection Date expired on March 6, 2017. The Settlement Administrator received a total of 4,090 Claim Forms from potential Class Members submitted or postmarked by March 6, 2017. (*Low*, Dkt. No. 612–2, Reply Declaration of Edward A. Wulff (“Wulff Reply Decl.”) ¶ 5; *Cohen*, Dkt. No. 301–2, Wulff Reply Decl. ¶ 5.) Only one procedurally valid objection was filed.⁴ (*Low*, Dkt. Nos. 592–97.)

LEGAL STANDARD

The Ninth Circuit adheres to a “strong judicial policy that favors settlements, particularly where complex class action litigation is concerned.” *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *see also Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (“We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution[.]”). “[T]he decision to approve or reject a settlement is committed to the sound discretion of the trial judge[.]” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

Federal Rule of Civil Procedure 23(e) provides that a court may approve a proposed settlement “only after a hearing and on finding that it is fair, reasonable, and adequate.” *Fed. R. Civ. P. 23(e)(2)*; *see also Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003). In making this determination, a district court must consider a number of factors, including, but not limited to:

the strength of plaintiffs' case; the risk, expense, complexity, *1301 and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Staton, 327 F.3d at 959 (internal citation and quotation marks omitted).

In examining the settlement for “overall fairness,” a court must review the settlement “as a whole, rather than the individual component parts.” *Hanlon*, 150 F.3d at 1026. A court cannot “delete, modify or substitute certain provisions.”

*1300 *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 630 (9th Cir. 1982). Rather, “[t]he settlement must stand or fall in its entirety.” *Hanlon*, 150 F.3d at 1026.

DISCUSSION

I. The Settlement is Fair, Adequate, and Reasonable

The Court concludes that the Settlement is fair, adequate, and reasonable in light of the following factors.

A. The Strength of Plaintiffs' Case

The Settlement reflects both the strength of Plaintiffs' case and the strength of Defendants' defense. Having adjudicated numerous dispositive motions in both Actions, and having concluded all pretrial proceedings in *Low*, the Court has been “exposed to the litigants, and their strategies, positions and proofs,” and is duly “aware of the expense and possible legal bars to success.” *Officers for Justice*, 688 F.2d at 626 (quoting *Ace Heating & Plumbing Co. v. Crane Co.*, 453 F.2d 30, 34 (3d Cir. 1971)). Plaintiffs survived substantive hurdles, including class certification, motions to dismiss, motions for summary judgment, and motions for decertification. Defendants likewise zealously litigated the

Actions, ultimately securing the decertification of damages issues in *Low*. Moreover, the Court concludes that the proposed Settlement, reached after arm's-length negotiations overseen by the Honorable Jeffrey T. Miller, was “not the product of fraud or overreaching by, or collusion between, the negotiating parties.” *Id.* at 625. Based on the Court's evaluation of the Actions, the Court concludes that this factor weighs in favor of final approval of the Settlement.

B. The Risk, Expense, Complexity, and Likely Duration of Further Litigation; and the Risk of Maintaining Class Action Status Throughout the Trial

Settlement is favored where a case is “complex and likely to be expensive and lengthy to try.” *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009). Beyond the “inherent risks of litigation,” *Torresi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993), there were numerous risks specific to the instant Actions. Class Counsel acknowledges that in *Low*, Plaintiffs faced challenges, including: obtaining a unanimous jury verdict on liability against then-President Elect Trump, if the trial began as scheduled, or against President Trump, if the trial were continued; prevailing in thousands of individual damages proceedings, which, by any estimate, would have taken several years to complete; collecting a judgment against TU; and prevailing in a lengthy appeal process, with the corresponding risk that Class Members would receive no recovery. (*Low*, Dkt. No. 589–2, Jensen Decl. ¶ 7; Dkt. No. 294–2, Jensen Decl. ¶ 7.) Class Counsel further acknowledges that in *Cohen*, Plaintiff risked the possibilities that: the Court would grant Defendant's motion for decertification in its entirety, or decertify damages as it did in *Low*; the Court would stay the proceedings during President Trump's tenure; Plaintiff would be unable to obtain a unanimous jury verdict against President Trump on his civil RICO claim; and Plaintiff may not prevail in a lengthy appeal process, with the corresponding risk that Class Members would receive no recovery. (*Low*, Dkt. No. 589–2, Jensen Decl. ¶ 8; Dkt. No. 294–2, Jensen Decl. ¶ 8.)

In light of the above, the Court concludes that the risks, expense, complexity, and likely duration of further litigation weigh in favor of final approval.

C. The Amount Offered in Settlement

A settlement is not judged against only the amount that might have been recovered had the plaintiff prevailed at trial; nor must the settlement provide full recovery of the damages

sought to be fair and reasonable. See *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998). “Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with litigation.” *Officers for Justice*, 688 F.2d at 624 (quoting *United States v. Armour & Co.*, 402 U.S. 673, 681, 91 S.Ct. 1752, 29 L.Ed.2d 256 (1971)). “It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair.” *Id.* at 628.

In granting the Parties' joint motion for preliminary approval, the Court concluded that the amount offered in settlement was fair, reasonable, and adequate. (See *Low*, Dkt. No. 584 at 3–5; *Cohen*, Dkt. No. 282 at 3–5.) At the time the Court preliminarily approved the Settlement, it was estimated that Eligible Class Members would receive recovery amounting to 50% of what they spent on TU Live Events, less any refunds received. (*Low*, Dkt. No. 583 at 11; *Cohen*, Dkt. No. 281 at 11.) The Court further observed that Eligible Class Members may potentially recover more than 50% of what they spent: if any money remains in the Net Settlement Fund after the initial distribution, the Settlement Administrator will make additional *pro rata* distributions to Eligible Class Members who have cashed their Award checks, until the Net Settlement Fund is exhausted. (*Low*, Dkt. No. 583–1 ¶ III.8; *Cohen*, Dkt. No. 281–1 ¶ III.8.)

Presently, the Court confirms its preliminary finding in light of updated information from the Parties. The recovery rate for Eligible Class Members is likely to greatly exceed the 50% recovery rate preliminarily approved by the Court. According to the Parties' and the Settlement Administrator's records, it is estimated that Eligible Class Members will receive over 80%—with 80% being a conservative estimate—of their Net Purchase Amounts.⁵ (*Low*, Dkt. No. 612 at 8; *Cohen*, Dkt. No. 301 at 8.) At the final approval hearing, Class Counsel represented to the Court that Eligible Class Members are likely to receive at least 90% of their Net Purchase Amounts.

As the Court previously noted, courts have approved settlements with recovery rates far lower than provided for in the instant Settlement. See, e.g., *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 256 (N.D. Cal. 2015) (approving settlement where the “common fund represent[ed] between 27 percent and 11 percent of the total potential recovery”); *1302 *Greko v. Diesel U.S.A., Inc.*, No. 10-CV-02576 NC, 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26,

2013) (approving settlement in which the average settlement payment amounted to under 3% of the gross settlement value); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement in which class received payments in excess of 6% of potential damages); *Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068 MMC, 2007 WL 221862, at *4 (N.D. Cal. Jan. 26, 2007), *aff'd*, 331 Fed.Appx. 452 (9th Cir. 2009) (approving settlement in which amount of settlement amounted to 25% to 35% of potential damages).

Here, the amount offered in settlement provides significant and immediate recovery for Eligible Class Members. The extraordinary amount of recovery for Eligible Class Members—an estimated 80%, and potentially higher—is all the more exceptional when viewed in light of the risk of establishing liability at trial, the likelihood of appeal, the possibility of reversal, the complexity of conducting thousands of individual damages determinations, and the likely lengthy duration of further litigation. Moreover, none of the amount offered in settlement will inure to Class Counsel's benefit, as Class Counsel do not seek any fees or costs. The Court finds that the amount offered in settlement is fair, adequate, and reasonable, and accordingly concludes that this factor weighs in favor of final approval.

D. The Extent of Discovery Completed and the Stage of the Proceedings

Where a “case is near trial, and the parties have conducted extensive discovery” and thoroughly litigated the issues, the extent of discovery and the stage of the proceedings weigh in favor of the proposed settlement. *Cervantez v. Celestica Corp.*, No. EDCV 07-729-VAP, 2010 WL 2712267, at *4 (C.D. Cal. July 6, 2010). Here, the Parties conducted extensive fact discovery for four years, including propounding and responding to hundreds of requests for production of documents, special interrogatories, and requests for admission; reviewing half of a million pages of produced documents; taking and defending sixty-five depositions; and briefing and arguing over a dozen discovery disputes. (*Low*, Dkt. No. 589–2, Jensen Decl. ¶¶ 4–5; Dkt. No. 294–2, Jensen Decl. ¶¶ 4–5.) The Parties also completed expert discovery in *Cohen*, including taking and defending expert depositions, and briefing and arguing the Parties' five motions to exclude expert testimony. (*Id.*) In total, the Parties briefed 156 motions before executing the Settlement Term Sheet on November 18, 2016. (*Id.*)

Moreover, all pretrial proceedings had concluded in *Low*. The Court ruled on fifteen substantive and procedural motions *in limine*, and the liability phase of trial was scheduled to commence on November 28, 2016. (*Low*, Dkt. Nos. 502, 572.) When the Parties settled the Actions on the eve of trial, (*Low*, Dkt. No. 577), the Parties were in a position to clearly and frankly evaluate the strengths and weaknesses of their respective cases. In sum, the Court concludes that the extent of discovery and the stage of the proceedings weigh in favor of final approval of the Settlement.

E. The Experience and Views of Counsel

Where “[b]oth Parties are represented by experienced counsel,” the recommendation of experienced counsel to adopt the terms of the proposed settlement “is entitled to great deal of weight.” *In re Immune Response Sec. Litig.*, 497 F.Supp.2d 1166, 1174 (S.D. Cal. 2007). In *1303 particular, “[t]he recommendations of plaintiffs’ counsel should be given a presumption of reasonableness.” *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1043 (N.D. Cal. 2008) (internal citation and quotation marks omitted).

As the Court noted in preliminarily approving the Settlement, both Parties are represented by experienced, able counsel, and counsel on both sides believe that the Settlement provides a fair, adequate, and reasonable recovery for Class Members. Moreover, not only have Class Counsel (Robbins Geller Rudman & Dowd LLP (“RGRD”) and Zeldes Haeggquist & Eck, LLP (“ZHE”)) actively litigated the instant Actions for nearly seven years, they have significant experience prosecuting class actions and handling complex litigation. (*Low*, Dkt. No. 583 at 17–18; *Cohen*, Dkt. No. 281 at 17–18.) After carefully evaluating the strengths and weaknesses of the Parties’ positions in both Actions, Class Counsel attest to their “confiden[ce] that the Settlement represents a favorable resolution, which is in the best interests of Class Members.” (*Low*, Dkt. No. 589–2, Jensen Decl. ¶ 9; Dkt. No. 294–2, Jensen Decl. ¶ 9.) In light of the foregoing, the Court concludes that this factor weighs in favor of final approval of the Settlement.

F. The Presence of a Governmental Participant

After the Court preliminarily approved the Settlement, Defendants sent CAFA notices to the Attorneys General of all states, territories, and the District of Columbia, as well as to the Attorney General of the United States. (*Low*, Dkt. No. 613 at 2; *Cohen*, Dkt. No. 302 at 2.) Defendants informed the Court that to Defendants’ knowledge, no government

entity has objected to the Settlement. (*See id.*) Accordingly, the Court finds that Defendants are in full compliance with CAFA, 28 U.S.C. § 1715, and concludes that this factor weighs in favor of final approval. *See, e.g., Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673, 685 (N.D. Cal. 2016) (“[N]either state nor federal officials lodged any objection after receiving notice of the Settlement Agreement. Thus, this factor favors the Settlement Agreement.”).

G. The Reaction of the Class Members to the Proposed Settlement

Finally, the reaction of Class Members to the proposed Settlement weighs in favor of final approval. After mailing and emailing, to the extent email addresses were available, a total of 8,253 Long-form Notices and Claim Forms to all potential Class Members, the Settlement Administrator received a total of 4,090 Claim Forms from potential Class Members submitted or postmarked by March 6, 2017. (*Low*, Dkt. No. 612–2, Wulff Reply Decl. ¶¶ 3, 5; *Cohen*, Dkt. No. 301–2, Wulff Reply Decl. ¶¶ 3, 5.)

Only one individual, Sherri B. Simpson, submitted a procedurally valid objection.⁶ *1304 (*Low*, Dkt. Nos. 592–97.) One other individual, Harold Doe, submitted an objection that failed to comply with the requirements set forth in the Court’s preliminary approval Order.⁷ (*Cohen*, Dkt. No. 299.) Although the Court may overrule an objection solely for failure to comply with the procedural requirements for objecting to the Settlement, *see, e.g., Moore v. Verizon Commc’ns Inc.*, No. C 09–1823 SBA, 2013 WL 4610764, at *12 (N.D. Cal. Aug. 28, 2013), the Court nonetheless rejects Doe’s objection on the merits as well. That only one procedurally valid objection was filed, after 8,253 potential Class Members received notice of the Settlement and the opportunity to object, is indicative of the fairness, adequacy, and reasonableness of the Settlement. “It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members.” *Nat’l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004).

“If objections are filed, the district court is to evaluate whether they suggest serious reasons why the settlement proposal might be unfair.” *Californians for Disability Rights, Inc. v. California Dep’t of Transp.*, No. C 06–5125 SBA, 2010 WL 2228531, at *2 (N.D. Cal. June 2, 2010) (citing *Bennett v. Behring Corp.*, 737 F.2d 982 (11th Cir. 1984)). For the

reasons that follow, the Court concludes that neither objection presents serious reasons indicating that the Settlement is unfair, inadequate, or unreasonable.

1. Amount in Settlement

Harold Doe objects to the Settlement primarily on grounds that the amount offered in settlement is insufficient. (*Cohen*, Dkt. No. 299.) Doe states that he is entitled to treble damages, premised on full restitution, amounting to at least \$120,000. (*Id.*) However, as explained earlier in this Order, *supra* Part I.B, Plaintiffs faced the risk that they would be unable to obtain a unanimous jury verdict against Defendants. And even if Plaintiffs prevailed on the issue of liability, Plaintiffs risked the possibility of reversal on appeal, in which case Class Members would receive no recovery, and faced the potential challenge of collecting a judgment against TU. Moreover, even if liability were found, Doe *1305 would have to establish in individual damages proceedings that he was entitled to full restitution. “That certain Class Members evaluate the risks differently, or would prefer to go to trial despite those risks, does not prevent the Court from granting final approval to the Settlement.” *Perkins v. LinkedIn Corp.*, No. 13-CV-04303-LHK, 2016 WL 613255, at *6 (N.D. Cal. Feb. 16, 2016), *appeal dismissed* (Aug. 16, 2016). Doe’s objection does not disturb the Court’s finding that the amount offered in settlement is unfair, and is accordingly overruled. *See Officers for Justice*, 688 F.2d at 623 (“Of course, the very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes.” (internal citations and quotation marks omitted)).

2. Further Opportunity to Opt Out

Sherri B. Simpson objects to the lack of opportunity to opt out at the settlement stage. (*Low*, Dkt. No. 593.) Paragraph VII.1 of the Settlement Agreement provides, in pertinent part:

In Fall 2015, Notices of Pendency of Class Action were sent to Class Members in the Actions, providing a right to opt out of one or both Actions by November 16, 2015. Because all individuals who did not opt out are deemed to be Class Members for all purposes, the Parties agree that no new

opportunity to opt out will be provided as a part of this Settlement.

(*Low*, Dkt. No. 583–1 at 24; *Cohen*, Dkt. No. 281–1 at 24.) Simpson first asserts that the proposed Settlement violates the due process rights of absent class members to opt out of a damages class action lawsuit. (*Low*, Dkt. No. 593 at 10–11.) Simpson next argues, in the alternative, that the Court should exercise its discretion to require a settlement-stage opt-out opportunity pursuant to [Federal Rule of Civil Procedure 23\(e\)\(4\)](#). (*Id.* at 11–15.) However, Simpson’s arguments are unavailing, and Simpson’s objection is accordingly overruled.

a. Standing

“Simply being a member of a class is not enough to establish standing. One must be an aggrieved class member.” *In re First Capital Holdings Corp. Fin. Prod. Sec. Litig.*, 33 F.3d 29, 30 (9th Cir. 1994). The aggrieved class member must also establish redressability. To illustrate, “[i]f modifying the fee award would not ‘actually benefit the objecting class member,’ the class member lacks standing because his challenge to the fee award cannot result in redressing any injury.” *Glasser v. Volkswagen Of Am., Inc.*, 645 F.3d 1084, 1088 (9th Cir. 2011) (quoting *Knisley v. Network Assocs., Inc.*, 312 F.3d 1123, 1126 (9th Cir. 2002)). Here, Simpson has not shown how allowing for a further opportunity to opt out would redress any injury. In submitting her Claim Form on February 1, 2017, Simpson affirmed, “I understand that I am bound by the terms of any judgment in these actions and may not bring a separate lawsuit for these claims.” (*Low*, Dkt. No. 612–2 at 6–7; *Cohen*, Dkt. No. 301–2 at 6–7.) Having affirmed that she “may not bring a separate lawsuit,” Simpson has not shown how being allowed to opt out of the Settlement would permit her to redress any injury, including her desire for a higher damages award, ensuing from the foregone opportunity to sue Defendants separately. Rather, she has accepted the financial settlement offered by Defendants as complete redress for her injuries.

b. Due Process

Even assuming Simpson has standing, her due process objection lacks merit. *1306 First, there is no blanket rule that due process requires a settlement-stage opt-out opportunity. In fact, there is clear precedent to the contrary. In *Officers for Justice*, the Ninth Circuit rejected an objection from a class member who chose not to opt out after receiving notice of the class action, but later sought a second

opportunity to opt out of the settlement. *See* 688 F.2d at 635. In doing so, the Ninth Circuit stated that due process does not compel a settlement-stage opt-out opportunity:

[W]e have found no authority of any kind suggesting that due process requires that members of a Rule 23(b)(3) class be given a second chance to opt out. We think it does not. [The objector]'s rights are protected by the mechanism provided in the rule: approval by the district court after notice to the class and a fairness hearing at which dissenters can voice their objections, and the availability of review on appeal. Moreover, to hold that due process requires a second opportunity to opt out after the terms of the settlement have been disclosed to the class would impede the settlement process so favored in the law. “[A]llowing objectors to opt out would discourage settlements because class action defendants would not be inclined to settle where the result would likely be a settlement applicable only to class members with questionable claims, with those having stronger claims opting out to pursue their individual claims separately.”

Officers for Justice, 688 F.2d at 635 (quoting *Kincade v. Gen. Tire & Rubber Co.*, 635 F.2d 501, 507 (5th Cir. 1981)). Here, like the objector in *Officers for Justice*, Simpson had the opportunity to opt out after she received the 2015 Class Notice, and could have moved the Court to opt out even after the deadline had passed. (*See Cohen*, Dkt. Nos. 166, 231, 278.) She chose not to do so, and cannot now belatedly argue that due process compels a further opt-out opportunity.

As Simpson observes, the Supreme Court has held that “due process requires at a minimum that an absent plaintiff be provided with an opportunity to remove himself from the class by executing and returning an ‘opt out’ or ‘request for exclusion’ form to the court.” *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812, 105 S.Ct. 2965, 86 L.Ed.2d 628 (1985); accord *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 363, 131 S.Ct. 2541, 180 L.Ed.2d 374 (2011) (“In the context of a class action predominantly for money damages we have held that absence of notice and opt-out violates due process.”). However, consistent with *Phillips Petroleum* and *Dukes*, absent class members were provided notice and afforded the opportunity to opt out of both Actions after class certification, pursuant to Federal Rule of Civil Procedure 23(c)(2). (*See Low*, Dkt. No. 419 at 9–11; Dkt. No. 411–1 at 3–11; Dkt. No. 381–3 at 12–13, 15; *see also Cohen*, Dkt. No. 130 at 9–11; Dkt. No. 71–1 at 3–11; Dkt. No. 61–2 at 12–13, 15.) The Court granted three opt-out requests from absent class members, even after the opt-out deadline had

passed. (*Cohen*, Dkt. Nos. 166, 231, 278.) There was thus undoubtedly an opportunity to opt out after the Court directed dissemination of the 2015 Class Notice.

At the final approval hearing, Simpson's counsel advanced the argument that a parenthetical in Section 13 of the 2015 Long-form Class Notice guaranteed a second opt-out opportunity, and that the Settlement Agreement's denial of a new opportunity *1307 to opt out rendered the 2015 Class Notice constitutionally infirm.

To comport with due process, notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950). “The notice must be of such nature as reasonably to convey the required information, ... [b]ut if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met the constitutional requirements are satisfied. ‘The criterion is not the possibility of conceivable injury[.]’” *Id.* at 314–15, 70 S.Ct. 652 (quoting *American Land Co. v. Zeiss*, 219 U.S. 47, 67, 31 S.Ct. 200, 55 L.Ed. 82 (1911)). Federal Rule of Civil Procedure 23(c)(2)(B) further provides, in pertinent part, that notice at the class certification stage “must clearly and concisely state in plain, easily understood language that the court will exclude from the class any member who requests exclusion[, and] the time and manner for requesting exclusion.” Fed. R. Civ. P. 23(c)(2)(B)(v)–(vi).

The Court first examines the entire 2015 Class Notice. The Mailed Notice expressly informed Class Members of how to opt out, as well as the legal consequences of doing so:

If you remain in either or both Classes, you will be legally bound by all orders and judgments the Court makes. If you do not want to be a part of either or both lawsuits, you must take steps to exclude yourself (sometimes called “opting-out”). If you exclude yourself, you cannot receive money from the lawsuit—if any is won—but you will not be bound by any Court orders or judgments. *If you want to start or continue your own lawsuit against Trump University and Trump*

regarding their Live Events, you must exclude yourself.

(*Low*, Dkt. No. 381–3 at 13 (emphasis added).) The Summary Notice included the same language. (*Low*, Dkt. No. 381–3 at 15.) The 2015 Long-form Notice advised Class Members, on the very first page, that they had the option to “Do Nothing” or “Ask to Be Excluded.” (*Low*, Dkt. No. 411–1 at 3.) Specifically, the Notice informed Class Members of the consequences of choosing to “do nothing”: “By doing nothing, you keep the possibility of getting money or benefits that may come from a trial or settlement. *But, you give up any rights to sue Trump University and Trump separately about the same legal claims in these lawsuits.*” (*Id.* (emphasis added).) Conversely, “[i]f you ask to be excluded from these lawsuits and money or benefits are later awarded, you will not share in those monies or benefits. *But, you keep any rights to sue Trump University and Trump separately about the same legal claims in these lawsuits.*” (*Id.* (emphasis added).) And the preamble to Section 13 states unequivocally: You have to decide whether to stay in the Classes or ask to be excluded before the trial, and *you have to decide this now.*” (*Id.* at 9 (emphasis added).) The 2015 Class Notice provided, in no uncertain terms, notice of the right to opt out, and of the binding consequences of not electing to opt out. It clearly apprised Class Members that if they wished to bring a separate lawsuit against Defendants, they had to elect to opt out immediately.

Despite the clear language throughout the 2015 Class Notice, Simpson nonetheless maintains that a ten-word parenthetical in Section 13 conferred upon her a ***1308** right to a second opt-out opportunity. Section 13 states:

You don't have to do anything now if you want to keep the possibility of getting money or benefits from these lawsuits. By doing nothing, you are staying in one or both of the Classes. If you stay in and the Plaintiffs obtain money or benefits, either as a result of the trial or a settlement, you will be notified about how to obtain a share (or how to ask to be excluded from any settlement). Keep in mind that if you do nothing now, regardless of whether the Plaintiffs win or lose the trial,

you will not be able to sue (by way of separate lawsuit) Trump University and Trump about the same legal claims that are the subject of these lawsuits. You will also be legally bound by all of the Orders and judgments the Court makes in these class actions.

(*Id.*) A plain reading of the parenthetical that Simpson seizes upon—“or how to ask to be excluded from any settlement”—does not objectively give rise to the conclusion that Simpson had an unequivocal right to opt out of the Settlement. *See, e.g., In re Citigroup Inc. Sec. Litig.*, No. 07-CV-9901 SHS, 2014 WL 3610988, at *7 (S.D.N.Y. July 21, 2014), *aff'd sub nom. Burgess v. Citigroup Inc.*, 624 Fed.Appx. 6 (2d Cir. 2015) (“Because [the objector's] misunderstanding ignored explicit language in the notice, his mistake was not objectively reasonable. The settlement notice afforded him the benefit of due process. He cannot now take refuge in a subjective and unsupported misunderstanding of the notice.”). At most, the plain language of Section 13 confers on Simpson a right to be notified of how to *ask* the Court to exclude her from the Settlement. Any right to “ask to be excluded” does not equate to a right to opt out. Indeed, by Simpson's counsel's own admission at the final approval hearing, Simpson, who is an attorney, did not read or understand the Section 13 parenthetical to guarantee her a second opt-out opportunity. Simpson's belief that she is entitled to a settlement-stage opt-out opportunity was not based on an objective reading of the Notice's language. Nor was it based on a subjective misunderstanding of the Notice's language. Rather, Simpson did not identify the Section 13 parenthetical as important in any way, until she conferred with counsel. This admission sheds light on what an objective reading of Section 13 entails—an average Class Member (and here, an attorney, no less) would not objectively understand the parenthetical to guarantee a settlement-stage opt-out opportunity that would allow absent class members to pursue separate litigation against Defendants.

Even entertaining Simpson's counsel's argument that the phrase “ask to be excluded” must be read in light of parallel language in Sections 14 and 15 of the 2015 Long-form Notice, Simpson's interpretation of the Section 13 parenthetical cannot stand. In contrast to the ten-word parenthetical in Section 13, Section 14 states in clear, thorough language the effect of electing to opt out:

If you exclude yourself from one or both Classes—which also means to remove yourself from the Classes, and is sometimes called “opting-out” of the Classes—you will not get any money or benefits from these lawsuits even if the Plaintiffs obtain them as a result of the trial or from any settlement (which may or may not be reached). However, you may then be able to sue or continue to sue Trump University and Trump regarding their Live Events. If you exclude yourself, you will not be legally *1309 bound by the Court's judgments in these class actions. If you start your own lawsuit against Trump University and Trump regarding their Live Events after you exclude yourself, you will have to hire and pay your own lawyer for that lawsuit, and you will have to prove your claims. If you do exclude yourself so you can start or continue your own lawsuit against Trump University and Trump regarding their Live Events, you should talk to your own lawyer soon, because your claims may be subject to a statute of limitations.

(*Low*, Dkt. No. 411–1 at 9.) Simpson has not shown how the Section 13 parenthetical is ambiguous, much less how the ten-word clause defeats the clear language in the rest of the 2015 Class Notice.

Furthermore, the legal effect of a request to opt out depends on the timing and circumstances of the request. At the class certification stage, [Federal Rule of Civil Procedure 23\(c\)\(2\)\(b\)\(v\)](#) provides that “the court *will* exclude from the class any member who requests exclusion.” [Fed. R. Civ. P. 23\(c\)\(2\)\(b\)\(v\)](#) (emphasis added). In contrast, [Federal Rule of Civil Procedure 23\(e\)\(4\)](#), which applies to proposed settlements, provides that “[i]f the class action was previously certified under [Rule 23\(b\)\(3\)](#), the court *may* refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.” [Fed. R.](#)

[Civ. P. 23\(e\)\(4\)](#) (emphasis added). [Rule 23\(e\)\(4\)](#) expressly confers discretion, rather than a mandate, upon a district court to refuse to approve a settlement that does not allow for an opportunity to opt out. Indeed, [Denney v. Deutsche Bank AG](#), 443 F.3d 253 (2d Cir. 2006), a case which Simpson herself cites, emphasizes that due process does not require a second opt-out period, and that [Rule 23\(e\)](#) does not require a court to allow a new opportunity to opt out at the settlement stage.

Neither due process nor [Rule 23\(e\)\(3\)](#) [now [Rule 23\(e\)\(4\)](#)] requires, however, a second opt-out period whenever the final terms change after the initial opt-out period. Requiring a second opt-out period as a blanket rule would disrupt settlement proceedings because no certification would be final until after the final settlement terms had been reached. As the Advisory Committee Notes make clear, “[Rule 23\(e\)\(3\)](#) authorizes the court to refuse to approve a settlement unless the settlement affords a new opportunity to elect exclusion in a case that settles after a certification decision” Adv. Comm. 2003 Notes to [Fed. R. Civ. P. 23\(e\)\(3\)](#). However, the court is under no obligation to do so: “The decision whether to approve a settlement that does not allow a new opportunity to elect exclusion is confided to the court’s discretion.” *Id.*

[Denney](#), 443 F.3d at 271. It is untenable to read Section 13 as divesting the Court of its discretion under [Rule 23\(e\)\(4\)](#). At most, Section 13 gives Simpson a right to ask the Court to exercise its discretion and exclude her from the Settlement and the Class. This is precisely what has transpired in this case: Simpson has requested the Court to exercise its discretion under [Rule 23\(e\)\(4\)](#) to exclude her from the Settlement and accordingly reject the Settlement. Section 13 does not compel the Court to exercise its discretion and reject the Settlement.

Finally, Simpson's citations to [Maywalt v. Parker & Parsley Petroleum Co.](#), 67 F.3d 1072, 1079 (2d Cir. 1995), and *1310 [Litwin v. iRenew Bio Energy Sols., LLC](#), 226 Cal.App.4th 877, 172 Cal.Rptr.3d 328, 329 (2014), as modified (May 29, 2014), do not bolster her objection. The 2017 Long-form Notice and Summary Notice provided Class Members notice of their options with respect to the Settlement, including information on how to object to the Settlement. (*See Low*, Dkt. No. 583–1 at 51–61; *Cohen*, Dkt. No. 281–1 at 51–61.) Simpson has not shown how the Long-form Notice and Claim Form failed to fairly apprise her of the terms of the proposed Settlement and of her options in relation to the Settlement. In fact, Simpson's submission of her Claim Form suggests otherwise—she received notice of

the Settlement, and chose to submit a claim for a share of the Settlement fund.

c. Federal Rule of Civil Procedure 23(e)(4)

Finally, none of Simpson's four arguments persuades the Court to exercise its discretion to refuse to approve the Settlement pursuant to [Federal Rule of Civil Procedure 23\(e\)\(4\)](#). Simpson first contends that there was no settlement on the horizon at the time the initial opt-out period expired. Following Simpson's argument to its logical conclusion, a court must reject a class action settlement for lack of a settlement-stage opt-out opportunity each time a class action's initial opt-out period elapses before a settlement materializes. This line of reasoning runs contrary to the Ninth Circuit's reasoning that "[r]equiring a second opt-out period as a blanket rule would disrupt settlement proceedings because no certification would be final until after the final settlement terms had been reached." *Officers for Justice*, 688 F.2d at 635.

Simpson next contends that the 2015 Class Notice assured Class Members that they would have an opportunity to request exclusion from the Settlement. As explained above, Simpson has had an opportunity to do just that—she has objected to the Settlement in order to request exclusion from the Settlement.

Third, Simpson argues that the Court's decision to decertify damages issues in *Low* diminished Class Members' incentives to opt out. As detailed above, *supra* Part I.B, Plaintiffs faced the risk of losing their case for liability, either at trial or after appeal. That the Court declined to decertify *Low* with respect to liability issues does nothing to mitigate that risk. If anything, the complex process (a process that would have spanned several years) of administering thousands of individual damages determinations rendered the possibility of a settlement more likely. Moreover, at the time the Parties settled the Actions, the Court had not yet ruled on the motion for decertification pending in *Cohen*, exposing Class Members to the potential risk that the Court would decertify *Cohen* entirely.

Fourth, Simpson objects that the Settlement releases Defendants from liability on claims that the Class could not pursue, foreclosing individual Class Members' opportunities to bring suit separately. As a starting matter, "[t]he weight of authority holds that a federal court may release not only those claims alleged in the complaint, but also a claim 'based on the identical factual predicate as that underlying the claims in the settled class action even though the claim was not presented

and might not have been presentable in the class action.' " *Class Plaintiffs*, 955 F.2d at 1287 (quoting *TBK Partners, Ltd. v. Western Union Corp.*, 675 F.2d 456, 460 (2d Cir. 1982)) (emphasis in original). Simpson notes that the Court declined to certify a common law fraud claim under Florida ***1311** law, and that Simpson, who is a Florida resident, would have been able to pursue such a claim against Defendants, but for the Settlement. However, even setting aside potential collateral estoppel or *res judicata* issues, Simpson had the opportunity to bring such a claim on her own behalf as soon as the Court declined to certify the Florida common law fraud claim. She chose not to do so then, and she cannot do so now.⁸

Having considered each objection and the arguments made at the final approval hearing, the Court overrules the objections. Neither of the two objections warrants rejection of the Settlement. Accordingly, the Court concludes that the reaction of Class Members weighs in favor of final approval.

II. The Notice Plan

Where there is a proposed settlement, [Federal Rule of Civil Procedure 23\(e\)\(1\)](#) provides that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." [Fed. R. Civ. P. 23\(e\)\(1\)](#). Due process requires notice to be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane*, 339 U.S. at 314, 70 S.Ct. 652. [Rule 23](#) "accords a wide discretion to the District Court as to the form and content of the notice." *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1350–51 (9th Cir. 1980) *disapproved of on other grounds by* *Evans v. Jeff D.*, 475 U.S. 717, 106 S.Ct. 1531, 89 L.Ed.2d 747 (1986).

The Court previously found in its preliminary approval Order that the Settlement's notice plan complied with [Rule 23](#) and the requirements of due process. (*Low*, Dkt. No. 584 at 8; *Cohen*, Dkt. No. 282 at 8.) The Court directed the Settlement Administrator to compile a list of names and addresses of purchasers of TU programs as they appeared in the Parties' records; update and monitor the Settlement Website, post all Settlement-related documents, list a mailing address and the toll-free telephone number, and provide for the online submission of Claim Forms; update and monitor the toll-free telephone number for Class Members to call for additional information; send through U.S. First-Class mail and email, to the extent email addresses were available, within

fifteen days of the Court's preliminary approval Order, the Long-form Notice and Claim Form to all potential Class Members whose contact information was available in the Parties' records; publish on one occasion in the national edition of *USA Today* the Summary Notice, within fifteen days of the Court's preliminary approval Order; and provide the Long-form Notice and/or Claim Form to Class Members who requested them. (*Id.* at 9–11.) The Long-form Notice and Summary Notice provided Class Members notice of their options with respect to the Settlement, including information on how to object to the Settlement. (*See Low*, Dkt. No. 583–1 at 51–61; *Cohen*, Dkt. No. 281–1 at 51–61.)

The Settlement's notice plan has since been implemented in accordance with the terms of the Agreement and the Court's Order. The Parties provided the Settlement Administrator with the most current *1312 list of names and email and physical addresses of Class Members. (*See Low*, Dkt. No. 589–3, Wulff Decl. ¶¶ 4–5; *Cohen*, Dkt. No. 294–3, Wulff Decl. ¶¶ 4–5.) This list was compiled from information from Defendants' records, potential Class Member inquiries, the Notice Administrator's updated records from the Notice of Pendency, and the NYAG. (*Id.* ¶¶ 4–8.) On January 4, 2017, the Settlement Administrator mailed and emailed, to the extent email addresses were available, the Long-form Notice and Claim Form to 8,253 potential Class Members. (*Id.* ¶ 6.) The Settlement Administrator also published the Summary Notice in the national edition of *USA Today* on January 4, 2017. (*Id.* ¶ 11.) For mailings that were returned as undeliverable, the Settlement Administrator and Class Counsel attempted to update the addresses, and the Settlement Administrator resent them accordingly. (*Id.* ¶ 9.) The Settlement Website and toll-free telephone number have been updated and maintained as ordered. (*Id.* ¶¶ 12–13.) Finally, although not required by the Court's Order, the Settlement Administrator sent a reminder letter on February 14, 2017 to 6,837 potential Class Members. (*Id.* ¶ 10.)

Accordingly, the Court concludes that the distribution of the Class Notices has been implemented in accordance with the terms of the Agreement and the Court's preliminary approval Order. Furthermore, the Court confirms its finding that through the mailing, emailing, and publication of the Class Notices in the form and manner ordered by the Court, Class Members have received the best practicable notice of the Settlement, the Fairness Hearing, and of their rights and options, including their rights to participate in the Settlement, object to the Settlement, and/or to appear at the Fairness Hearing in support of a properly submitted objection, and of

the binding effect of the Orders and Judgment in this Action, whether favorable or unfavorable, on all Class Members. The Class Notices fully satisfied all notice requirements under the law, including the Federal Rules of Civil Procedure and due process rights under the U.S. Constitution and California Constitution.

III. Attorney's Fees

Notably, Class Counsel do not seek any compensation at all for their representation of Plaintiffs and Class Members. Instead, Class Counsel are voluntarily representing Plaintiffs and Class Members on a *pro bono* basis, including paying all of their litigation expenses. (*Low*, Dkt. No. 589–2, Jensen Decl. ¶ 10; Dkt. No. 294–2, Jensen Decl. ¶ 10.) Class Counsel's exceptional decision to provide nearly seven years of legal services to Class Members on a *pro bono* basis evidences not only a lack of collusion, but also that Class Counsel are in fact representing the best interests of Plaintiffs and the Class Members in this Settlement. Instead of seeking compensation for fees and costs that they would otherwise be entitled to, Class Counsel have acted to allow maximum recovery to Plaintiffs and Class Members. Indeed, that Eligible Class Members may receive recovery of 90% or greater is a testament to Class Counsel's representation and dedication to act in their clients' best interest. The Court commends Class Counsel for their *pro bono* representation of Plaintiffs and the Class Members.

IV. Request for Class Representative Incentive Awards

Plaintiffs seek incentive awards of \$15,000 for each Class Representative: John Brown, Art Cohen, J.R. Everett, Sonny Low, and former plaintiff Tarla Makaef. *1313 (*Low*, Dkt. No. 590–1 at 5; *Cohen*, Dkt. No. 295–1 at 5.)

Incentive awards are designed to “compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez*, 563 F.3d at 958–59. “Incentive awards are fairly typical in class action cases,” but are ultimately “discretionary.” *Id.* at 958.

In deciding whether to approve an incentive award, courts consider factors including:

1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the

amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Van Vranken v. Atl. Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995). The district court must evaluate incentive awards individually. See *Staton*, 327 F.3d at 977.⁹

A. Risk

Plaintiffs highlight the risk of defeat, as discussed above, *supra* Part I.B, and the unique financial and reputational risks ensuing from commencing the Actions, citing, as an example, TU's counterclaim against Makaeff. (*Low*, Dkt. No. 590–1 at 14–15; *Cohen*, Dkt. No. 295–1 at 14–15.) Plaintiffs maintain that in light of these risks, the incentive awards are reasonable, citing comparable incentive awards in this District. See, e.g., *Mirkarimi v. Nevada Prop. 1, LLC*, No. 12CV2160 BTM (DHB), 2016 WL 795878, at *6 (S.D. Cal. Feb. 29, 2016) (approving \$30,000 incentive award where class representative “took a financial risk” by taking time away from his law practice, and spent “a total of 120 hours of work, both preparing for and participating in the litigation”); *Smith v. CRST Van Expedited, Inc.*, No. 10-CV-1116-IEG WMC, 2013 WL 163293, at *6 (S.D. Cal. Jan. 14, 2013) (awarding \$15,000 to representatives who settled employment class action during class certification, noting risk to class representatives' reputations and future employability).

B. Notoriety and Personal Difficulties

Plaintiffs assert that the Class Representatives were subjected to significant public scrutiny as a result of heightened public interest and coverage of the Actions. (*Low*, Dkt. No. 590–1 at 9; *Cohen*, Dkt. No. 295–1 at 9.) Moreover, each of the Class Representatives devoted their time and energy to represent the interests of the Class Members. (See *Low*, Dkt. No. 590–2, Declaration of Rachel L. Jensen in Support of Plaintiffs' Motion for Approval of Class Representative Service Awards *1314 (“Jensen Decl.”) ¶ 5; *Cohen*, Dkt. No. 295–2, Jensen Decl. ¶ 5.)

C. Amount of Time and Effort

Plaintiffs assert that each Class Representative expended significant amounts of time and effort in order to represent the interests of Class Members. By Class Counsel's estimates, each Class Representative contributed well over one hundred hours in connection with their representation of Class Members. (See *Low*, Dkt. No. 590–2, Jensen Decl. ¶ 4; *Cohen*, Dkt. No. 295–2, Jensen Decl. ¶ 4.) Plaintiffs cite cases in

which courts have approved comparable incentive awards for representatives who devoted less time than the Class Representatives in the instant Actions. See, e.g., *Martin v. AmeriPride Servs., Inc.*, No. 08CV440-MMA JMA, 2011 WL 2313604, at *9 (S.D. Cal. June 9, 2011) (approving award of \$18,500 where the representative “responded to written discovery requests and assisted in the preparation of initial disclosures,” and also “traveled to San Diego twice at personal expense to participate in depositions and the full day mediation”); *Singer v. Becton Dickinson & Co.*, No. 08-CV-821-IEG (BLM), 2010 WL 2196104, at *7 (S.D. Cal. June 1, 2010) (approving \$25,000 incentive award where the representative “protected the interests of the class and exerted considerable time and effort in maintaining this action for the past two-and-a-half years, conducting extensive informal discovery, and engaging in day-long settlement negotiations with a respected mediator”); *Rippee v. Boston Mkt. Corp.*, No. 05–cv–1359 BTM(JMA), 2006 U.S. Dist. LEXIS 101136, at *12–13 (S.D. Cal. Oct. 10, 2006) (approving \$20,000 award where the representative “took a very active role in the litigation” and spent about 200 hours working on the case); *Van Vranken*, 901 F.Supp. at 299–300 (approving \$50,000 award where the representative participated in “years of litigation,” including sitting for two depositions, attending forty-nine telephone conferences, five meetings with class counsel, and three pre-trial hearings, and testifying at trial).

Plaintiffs detail each Class Representative's specific contributions, as follows:

1. John Brown

Brown took the initiative to foster relationships with, and encourage, the other Class Representatives, particularly as trial approached. (See *Low*, Dkt. No. 590–1 at 11; *Cohen*, Dkt. No. 295–1 at 11.) Brown provided a declaration in support of plaintiffs' motion for class certification, participated in meetings and calls with Class Counsel, reviewed pleadings, answered interrogatories, responded to requests for production, searched for and produced responsive documents, and sat for a full-day deposition. (See *id.*) He traveled across the country from New York City to San Diego for his full-day deposition in October 2012, for a mandatory settlement conference with Magistrate Judge Gallo in March 2015, and for multiple days of trial preparation with Class Counsel in November 2016. (*Id.*) Brown arranged to take time off from work in order to remain in San Diego for the duration of the trial. (See *id.*) Finally, Brown participated in the settlement process, reviewed and approved the draft Agreement before execution, and provided authorization for

Class Counsel to enter into the Settlement terms on behalf of the Class. (*See id.*)

2. Art Cohen

The sole named plaintiff in the *Cohen* Action, Cohen stayed in close contact with *1315 Class Counsel and reviewed pleadings and Court Orders to stay apprised of litigation developments. (*Low*, Dkt. No. 590–1 at 12; *Cohen*, Dkt. No. 295–1 at 12.) Cohen provided documents and information to guide crafting of the complaint. (*See id.*) Cohen participated in conference calls with Class Counsel to help them prepare for the telephonic Early Neutral Evaluation Conference (“ENE”) hearing in April 2014, answered special interrogatories, responded to requests for production, and produced 720 pages of responsive documents to Defendants. (*See id.*) He submitted a declaration in support of his motion for class certification, and prepared for and sat for two depositions on May 29, 2014, and June 9, 2015. (*See id.*) Cohen also traveled from San Jose to San Diego to participate in two mandatory settlement conferences before Magistrate Judge Gallo in March 2015 and in March 2016. (*See id.*) In addition, although the *Cohen* Action had not yet been set for trial, Cohen spent hours preparing to testify in *Low*. (*See id.*) Finally, Cohen actively monitored the settlement negotiations, reviewed the Agreement before it was executed, and authorized Class Counsel to agree to the Settlement terms on behalf of the Class. (*See id.*)

3. J.R. Everett

Everett stayed in close contact with Class Counsel and actively monitored the ongoing litigation. (*Low*, Dkt. No. 590–1 at 12–13; *Cohen*, Dkt. No. 295–1 at 12–13.) She reviewed pleadings, participated in numerous meetings and after-hours calls with Class Counsel, and provided her thoughts on the investigation of the class claims. (*See id.*) Everett participated in extensive discovery, motions practice, trial preparation, and settlement negotiations. (*See id.*) To illustrate, Everett answered two separate sets of special interrogatories, responded to requests for production, and produced 337 pages of responsive documents. (*See id.*) She also provided two declarations, one in support of plaintiffs' motion for class certification and one in opposition to Defendants' motions for summary judgment. (*See id.*) Everett traveled across the country from Florida to San Diego to prepare for and sit for a full-day deposition in October 2012, to participate in a mandatory settlement conference before Magistrate Judge Gallo in March 2015, and to prepare for trial with Class Counsel in November 2016. (*See id.*) Everett

cleared her schedule to return to San Diego later in November to attend trial in *Low*. (*See id.*) Finally, Everett was actively involved with the settlement process, reviewed the draft Agreement, and authorized Class Counsel to enter into the Settlement terms on behalf of the Class. (*See id.*)

4. Sonny Low

According to Class Counsel, Low devoted hundreds of hours to representing the Class, in spite of his advanced age. (*Low*, Dkt. No. 590–1 at 13–14; *Cohen*, Dkt. No. 295–1 at 13–14.) Low made himself available to Class Counsel, provided a declaration in support of Plaintiffs' motion for class certification, reviewed pleadings, answered special interrogatories, responded to requests for production, and searched for and produced 1,357 pages of responsive documents. (*See id.*) He prepared extensively with Class Counsel and sat for two depositions in October 2012 and April 2016. (*See id.*) Low spent many hours with Class Counsel preparing for trial and also participated in a mock trial. (*See id.*) Finally, Low remained engaged throughout the settlement process, reviewed the draft Agreement before it was executed, and authorized Class Counsel to agree to the Settlement terms for the Class. (*See id.*)

*1316 5. Tarla Makaeff

Makaeff, the first plaintiff to step forward in connection with the instant litigation, contributed hundreds of hours to prosecute her claims and represent the Class. (*Low*, Dkt. No. 590–1 at 14; *Cohen*, Dkt. No. 295–1 at 14.) She provided information to Class Counsel to formulate the allegations in the original complaint and guide their investigation. (*See id.*) She participated in extensive discovery, responding to six separate sets of requests for production and requests for admission, answering five separate sets of special interrogatories, and producing a total of 5,806 pages of responsive documents to defendants. (*See id.*) Makaeff prepared for, traveled to, and sat for four deposition sessions on January 30, 2012, January 31, 2012, April 13, 2012, and February 10, 2014. She participated in the ENE in August 2011 and the mandatory settlement conference before Magistrate Judge Gallo in March 2015. (*See id.*) Makaeff submitted six separate declarations in *Low*, including two in opposition to TU's counterclaim, one in support of her anti-SLAPP motion to strike, two in support of Plaintiffs' motion for class certification, and one in support of her motion to withdraw. (*See id.*) In connection with her representation of Class Members, Makaeff endured significant publicity. (*See*

Low, Dkt. No. 590–2, Jensen Decl. ¶ 5; *Cohen*, Dkt. No. 295–2, Jensen Decl. ¶ 5.)

D. Duration of the Litigation

Low, filed on April 30, 2010, has proceeded for nearly seven years, (*Low*, Dkt. No. 1), and *Cohen*, filed on October 18, 2013, (*Cohen*, Dkt. No. 1), has proceeded for nearly four years. For *Low*, the Class Representatives participated in years of discovery, including document requests, written discovery, depositions, and discovery disputes, and also participated in extensive motions practice, with over one hundred motions filed in *Low* alone. (See *Low*, Dkt. No. 590–2, Jensen Decl. ¶¶ 6–7, 11; *Cohen*, Dkt. No. 295–2, Jensen Decl. ¶¶ 6–7, 11.) For *Cohen*, the Class Representative also participated in extensive discovery, including providing documents and sitting for two depositions, and reviewed pleadings for many of the fifty motions filed in *Cohen*. (See *Low*, Dkt. No. 590–2, Jensen Decl. ¶¶ 8–11; *Cohen*, Dkt. No. 295–2, Jensen Decl. ¶¶ 8–11.)

E. Personal Benefit, or Lack Thereof

Finally, Plaintiffs assert that any personal benefits enjoyed by the Class Representatives as a result of the litigation are outweighed by the risks of litigation. (*Low*, Dkt. No. 590–1 at 15; *Cohen*, Dkt. No. 295–1 at 15.) Plaintiffs maintain that they have incurred risks and made sacrifices in order to achieve a significant result for Class Members, citing, as an example, the large amount of damages sought in TU's counterclaim. (*Id.*)

Each Class Representative devoted significant amounts of time and energy to participating in the Actions, and each encountered risks and challenges as a consequence of representing the Class Members. In sum, the Court concludes

that the balance of the factors weighs in favor of awarding incentive awards of \$15,000 to each Class Representative.

CONCLUSION

For the foregoing reasons, the Court **GRANTS** the Parties' joint motion for final approval of the Settlement and **GRANTS** Plaintiffs' motion for approval of *1317 class representative incentive awards of \$15,000 for Sonny Low, J.R. Everett, John Brown, Art Cohen, and Tarla Makaeff.

The Parties and the Settlement Administrator are directed to implement the Agreement according to its terms and conditions. The Parties are authorized for purposes of implementing the Agreement, without further approval from the Court, to agree to and to adopt such non-substantive amendments, modifications, and expansions of the Agreement and the exhibits thereto that are consistent with this Final Approval Order and the Court's Final Judgment and do not limit the rights of the Class Members under the Agreement. Any substantive amendments, modifications, and/or expansions of the Agreement and the exhibits thereto shall require prior approval by the Court.

The Actions, including the individual claims of Plaintiffs and Class claims resolved therein, will be dismissed on the merits and with prejudice pursuant to the Court's separately-entered Final Judgment.

IT IS SO ORDERED.

All Citations

246 F.Supp.3d 1295, 97 Fed.R.Serv.3d 724, RICO Bus.Disp.Guide 12,868

Footnotes

- 1 This Order incorporates the Agreement and the Court's findings of fact and conclusions of law contained in its preliminary approval Order. Unless otherwise defined, all terms used herein have the same meanings as set forth in the Stipulation of Class Action Settlement ("Agreement").
- 2 All citations to the record are based upon the pagination generated by the CM/ECF system.

- 3 The Parties recounted at length the procedural history of the Actions in their joint motion for preliminary approval. (See *Low*, Dkt. No. 583 at 8–10; *Cohen*, Dkt. No. 281 at 8–10.) The Court will limit its recitation of the Actions' procedural history to relevant background for purposes of this Order.
- 4 See *infra* Part I.G.
- 5 Plaintiffs qualify that the Settlement Administrator is continuing to process Claim Forms. (*Low*, Dkt. No. 612 at 8; *Cohen*, Dkt. No. 301 at 8.) The estimated recovery rate cannot be finalized until claimants have been given a chance to cure deficiencies, and until processing has concluded. (*Id.*) As of March 23, 2017, 2,741 unique purchases, amounting to a total of \$21.3 million, have been verified by crosschecking Defendants' purchase data records. (*Id.* at 8.) Still, Plaintiffs anticipate that the total amount of verified purchasers could rise to \$25 million and still yield an 80% recovery rate. (*Id.*)
- 6 Two other individuals, Leeland O. White and Michael De Cesare, submitted objection letters to the Court. (*Low*, Dkt. Nos. 582, 603.) However, because these individuals are not Class Members, the Court declines to consider their objections. See, e.g., [Chavez v. PVH Corp.](#), No. 13-CV-01797-LHK, 2015 WL 9258144, at *3 (N.D. Cal. Dec. 18, 2015) (declining to consider objections of individuals who do not appear to be class members). In addition, White's objection letter was prematurely submitted prior to the Court's preliminary approval Order. (*Low*, Dkt. No. 582.) His intervention motion has been adjudicated in a separate Order. (*Cohen*, Dkt. No. 303.) Class Counsel additionally notes that two Class Members sent objection letters to Class Counsel, but did not file them with the Court. (*Low*, Dkt. No. 612 at 7 n.2; *Cohen*, Dkt. No. 301 at 7 n.2.) Ramona Kleeman faxed a letter, requesting more money. (See *id.*) Carolyn Class wrote to express her satisfaction with her TU purchases and her disagreement with the lawsuit. (See *id.*) Because the objections were not properly filed, the Court declines to consider them. Notwithstanding their procedural infirmity, to the extent the objections are cognizable, Kleeman's objection is overruled for the same reasons Doe's objection is overruled. Class's objection does not comment substantively on the Settlement, but opposes the basis of lawsuit—in fact, Class's objection is adverse to the Class, and is accordingly overruled. See [Ko v. Natura Pet Prods., Inc.](#), No. C 09–02619 SBA, 2012 WL 3945541, at *6 (N.D. Cal. Sept. 10, 2012) (“[A]n objection based on a concern for the Defendants and an apparent non-substantive assessment of the frivolity of the action are not germane to the issue of whether the settlement is fair.”).
- 7 The objection did not comply with the requirements set forth in the Court's preliminary approval Order. (*Low*, Dkt. No. 584; *Cohen*, Dkt. No. 282.) There was no certificate of service indicating that the objection had been served on counsel for the Parties. (*Cohen*, Dkt. No. 299.) The objection did not include the telephone number of the objector or a statement of whether the objector intended to appear at the final approval hearing, in person or through counsel. (*Id.*)
- 8 Even if Simpson had not waived her ability to sue separately, Simpson does not address the likelihood that a common law fraud claim under Florida law would be time-barred. Simpson purchased and attended TU Live Events in 2010, six years prior to the Settlement. (See Dkt. No. 595.)
- 9 The Ninth Circuit has articulated a number of relevant factors that district courts may use in evaluating whether representative plaintiffs are entitled to incentive awards. They include: “the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefited from those actions, ... the amount of time and effort the plaintiff expended in pursuing the litigation ... and reasonabl[e] fear[s] of workplace retaliation.” [Staton](#), 327 F.3d at 977 (alterations in original) (quoting [Cook v. Niedert](#), 142 F.3d 1004, 1016 (7th Cir. 1998)). These general factors dovetail with the more specific [Van Vranken](#) factors enumerated above.

2011 WL 2313604

Only the Westlaw citation is currently available.

United States District Court,
S.D. California.Lloyd MARTIN, et al., individually and
on behalf of others similarly situated, and,
Grady O'Bryant, et al., individually and on
behalf of others similarly situated, Plaintiffs,

v.

AMERIPRIDE SERVICES, INC., et al., Defendants.

No. 08cv440–MMA (JMA).

|

June 9, 2011.

Attorneys and Law Firms

Angela Mee Jae, Fern M. Steiner, Thomas Lee Tosdal, Tosdal, Smith, Steiner & Wax, San Diego, CA, Daniel M. Kopfman, The Law Offices Of Wagner & Jones, Nicholas J.P. Wagner, Law Offices of Wagner & Jones, Fresno, CA, for Plaintiffs.

Julie A. Vogelzang, Duane Morris Llp, San Diego, CA, for Defendants.

**ORDER ON FINAL APPROVAL OF
CLASS ACTION SETTLEMENT****ORDER ON FINAL APPROVAL OF CLASS ACTION
SETTLEMENT, JUDGMENT AND DISMISSAL**

MICHAEL M. ANELLO, District Judge.

*1 On June 6, 2011, this matter came before the Court on Plaintiffs' Motion for Final Approval of Class Settlement, Approval of Attorneys Fees and Costs, and Class Representative Service Payment [Doc. No. 57]. At the hearing, the Court advised the parties of its tentative decision to grant Plaintiffs' motion. For the following reasons, the Court **AFFIRMS** its tentative ruling and **GRANTS** Plaintiffs' motion in its entirety.

BACKGROUND

The operative pleading in this case is the First Amended Consolidated Complaint (the "complaint") [Doc. No. 35], filed on July 1, 2009. Individually named plaintiffs acting as class representatives include: Lloyd Martin, Kirk Sword, Daniel Gore, Grady O'Bryant, Jorge Mejia, Paul Luna, Kye Jacoby, and Rigo Martinez. These individuals were employed by Defendant AmeriPride Services, Inc. as route delivery drivers (holding the official title of customer service representatives or "CSRs") during the class period commencing on January 15, 2004. AmeriPride is in the business of linen supply, supplying to customers clean laundered towels, linens, uniforms, wearing apparel, and other items. AmeriPride employs CSRs to operate delivery trucks to supply its products and services to its local customers on routes assigned to them by AmeriPride.

Plaintiffs brought this class action against their employer AmeriPride alleging that they and other CSRs are misclassified as "exempt" employees and are thus entitled to unpaid overtime wages and other remedies under California law. Specifically, Plaintiffs' complaint alleges that AmeriPride violated California state law, and alleges five causes of action under the California Labor Code and California Business and Professions Code for (1) overtime pay for introductory employees; (2) overtime pay for regular full-time employees; (3) meal periods; (4) rest periods; and (5) unfair business practices.

PROCEDURAL HISTORY

This matter began as two separate purported class action law suits filed in California state court by Martin, Sword, and Gore in San Diego County, and O'Bryant in Sacramento County. AmeriPride answered the complaint in each case, and simultaneously removed the Martin, et al. action to this Court and the O'Bryant action to the United States District Court for the Eastern District of California. The O'Bryant court transferred that action to this Court. On October 15, 2008, this Court ordered the two actions consolidated. The operative complaint was filed on July 1, 2009.

On September 7, 2010, the parties notified the Court that the action had settled and the Court ordered the parties to file a motion for preliminary approval of class settlement. See Doc. No. 46. On December 3, 2010, Plaintiffs filed an unopposed motion for preliminary approval. See Doc. No. 51. On January 4, 2011, the Court granted the motion and approved a preliminary settlement, authorized the notice

process, and scheduled a hearing on final approval. *See* Doc. No. 55.

*2 On April 11, 2011, Plaintiffs filed the motion for final approval currently pending before the Court. *See* Doc. Nos. 57–59. On April 15, 2011, AmeriPride filed an opposition to the motion, asserting that Plaintiffs “are now seeking to fundamentally alter the terms of the agreed-upon Settlement Agreement.” *See* Doc. No. 60. According to AmeriPride, disputes developed between the parties with respect to material terms of the Settlement Agreement, including the definition of the class, the effective date of the Settlement Agreement, the timing for deposit of settlement funds, the release of claims, and payment of employment taxes.

In light of the issues raised in AmeriPride's opposition, the Court vacated the Final Approval Hearing which had been previously set for April 25, 2011 and rescheduled the hearing for June 6, 2011, in order to allow counsel for the parties to meet and confer regarding the outstanding disputes related to the Settlement Agreement. *See* Doc. No. 61. On May 27, 2011, in compliance with the Court's order, the parties filed a Joint Statement advising the Court regarding the status of settlement, confirming that all disputes except one have been resolved, and setting forth each party's position on the sole remaining dispute—the effective date of the Settlement Agreement. Because the parties indicated in the Joint Statement that they would seek the Court's determination on the issue, and the dispute did not threaten the integrity of the Settlement Agreement, the Court found the settlement of this class action ready for final approval.

TERMS OF THE SETTLEMENT

1. Settlement Class

This Court provisionally certified the settlement class as follows: “Any individual who was employed as Customer Service Representative (including introductory and/or probationary Customer Service Representatives) in California for AmeriPride during the Class Period (January 15, 2004 through December 31, 2009).” Several class members have claimed compensation for time worked during the class period as relief drivers, wholesale drivers or “route jumpers.” Subsequent to their meet and confer efforts during the month of May, the parties agreed that the settlement class does not include these types of drivers because they are in a different payroll category and are compensated differently than CSRs, except as to those class member CSRs who may

have been relief and/or wholesale drivers at times during the class period. *See Joint Hearing Statement*, Doc. No. 62.

On Friday, May 20, 2011, the Settlement Administrator mailed responses to claimants who filed claims or disputes indicating whether the claim or dispute was accepted or denied and the basis for the denial consistent with the parties' agreed upon definition of the Settlement Class.

Subsequent to their meet and confer efforts during the month of May, the parties also agreed that all named plaintiffs have agreed to a comprehensive release that releases all claims against AmeriPride “arising out of their employment with Defendant or termination thereof and/or any other event, act, occurrence, or omission taking place on or before the Settlement Effective Date ...” *See Joint Hearing Statement*, 4. With respect to the unnamed class members, the parties agree that all class members—as defined above—are releasing any and all wage claims that were brought or could have been brought against AmeriPride during the class period. The parties agree that AmeriPride employees who are not part of the settlement class are not releasing any claims.

2. Settlement Terms

*3 AmeriPride has agreed to pay a gross settlement amount of \$5,250,000 (five million two hundred fifty thousand dollars) (“the common fund”). Upon final approval, the common fund will be allocated among payments to class members, administrative costs, attorneys fees, litigation costs, and class representative service awards. The entire fund is non-reversionary and will be distributed to individual class members on a pro rata basis based on the time and location of where the class member worked as well as the number of weeks worked.

Subsequent to their meet and confer efforts during the month of May, the parties agreed that the Settlement Agreement states that AmeriPride will pay the employer taxes on the portion of each Settlement Payment deemed to be wages, which is fifty percent (50%) of the Settlement Payment. *See Joint Hearing Statement*, 5. This portion will be issued via W–2 form. The other portion is for penalties and interests for which no taxes are due because it will be issued via 1099–MISC form. The employer taxes will be paid by AmeriPride from monies separate and apart from the common fund.

The class representatives will receive an enhancement award of \$18,500. The parties stipulate to award attorneys fees to Class Counsel in the amount of 25% of the common

fund (\$1,312,500), to be split equally between Wagner & Jones LLP and Tosdal Smith Steiner & Wax LLP, plus actual litigation costs of \$16,891.77 to Wagner & Jones and \$14,720.42 to Tosdal Smith Steiner & Wax.

3. Effective Settlement Date

The meaning of the term “Effective Settlement Date” remains in dispute. The parties have requested that the Court determine the issue. The “Effective Settlement Date” is defined in the Settlement Agreement as:

Effective Settlement Date: The Effective Settlement Date is the date on which this Settlement will become final and effective, which shall be upon the occurrence of all of the following events:

- (a) entry of the Preliminary Approval Order;
- (b) the occurrence of the Final Settlement Hearing;
- (c) entry of the Final Judgment; and
- (d) the Final Judgment becomes final, which shall mean,
 - (i) the date the Final Judgment is signed by the Court if there are no objections to the settlement; or
 - (ii) if there are objections to the settlement which are not withdrawn, and if an appeal, review or writ is not sought from the Judgment, the date one day after which the Final Judgment is no longer subject to judicial review or other challenge; or
 - (iii) if a timely notice of appeal is filed, the day after the Final Judgment is affirmed, or the appeal or review is dismissed or denied and the Final Judgment is no longer subject to judicial review or other challenge.

“A settlement agreement is treated as any other contract for purposes of interpretation.” *United Commercial Ins. Serv., Inc. v. Paymaster Corp.*, 962 F.2d 853, 856 (9th Cir.), cert. denied sub nom., *Paymaster Corp. v. American Bankers Ins. Co. of Fla.*, 506 U.S. 1022, 113 S.Ct. 660, 121 L.Ed.2d 585 (1992); see also *Winet v. Price*, 4 Cal.App.4th 1159, 1164, 6 Cal.Rptr.2d 554 (Cal.Ct.App.1992). Under California law, contract interpretation is a question of law. *SDR Capital Mgmt., Inc. v. Am. Int’l Specialty Ins. Co.*, 320 F.Supp.2d 1043, 1046 (S.D.Cal.2004); see also *Parsons v. Bristol Develop. Co.*, 62 Cal.2d 861, 44 Cal.Rptr. 767, 402 P.2d 839 (Cal.1965). “The fundamental goal of contractual interpretation is to give effect to the mutual intention of

the parties.” *Byrne v. Laura*, 52 Cal.App.4th 1054, 60 Cal.Rptr.2d 908, 916 (Cal.Ct.App.1997). “When a contract is reduced to writing, the parties’ intention is determined from the writing alone, if possible.” *Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.*, 109 Cal.App.4th 944, 135 Cal.Rptr.2d 505, 513 (Cal.Ct.App.1992). “If contractual language is clear and explicit, it governs.” *Bank of the West v. Superior Court*, 2 Cal.4th 1254, 10 Cal.Rptr.2d 538, 833 P.2d 545, 552 (Cal.1992). A court must interpret contractual language in its ordinary sense, unless terms are used by the parties in a technical sense, or a special meaning is given to them by usage. Cal. Civ.Code § 1638.

*4 Plaintiffs argue that “the express terms of subsection (d) (i) above states that the ‘Final Judgment becomes final’ on ‘the date the Final Judgment is signed by the Court [because] there are no objections to the settlement.’ It is undisputed that no objections to the settlement have yet been filed. This means that the Effective Settlement Date is the date of entry of final judgment.” See *Joint Hearing Statement*, 6. AmeriPride counters that the Effective Settlement Date is not only after the Final Judgment is signed by the Court, but *also* after the time for an appeal has expired. *Id.* at 8, 10 Cal.Rptr.2d 538, 833 P.2d 545.

First, the Court finds that the use of the word “or” to transition between subsections (d)(i), (ii), and (iii), does not support AmeriPride’s interpretation of the contract language. Merriam Webster’s Eleventh Collegiate Dictionary (2005) defines “or” as “used as a function word to indicate an alternative.” Here, use of the word “or” indicates that subsections (d)(i), (ii), and (iii), above, are alternatives to one another, and as such, the Final Judgment becomes final as defined by one subsection—not all three, as AmeriPride insists. If the word “and” instead of “or” had been used, the language of the contract would support AmeriPride’s position, but the result would be unworkable because the three conditions in subsections (d)(i), (ii), and (iii) cannot obtain simultaneously.

The parties confirmed during the final approval hearing that there are no objections to the settlement. Subsection (d)(i) expressly contemplates such a situation and provides that the Final Judgment becomes final “the date the Final Judgment is signed by the Court *if there are no objections to the settlement.*” (emphasis added). Unlike subsections (d)(i) (no objections) and (d)(ii) (objections), subsection (d)(iii), which provides the meaning of the word “final” in the event a timely notice of appeal is filed, does not expressly contemplate either

the presence or absence of objections to the settlement, as it does not even contain the word “objections.” Seizing on this, AmeriPride argues that subsection (d)(iii) applies irrespective of whether there are objections to the settlement and therefore applies here.

AmeriPride's interpretation of the contract language is untenable because the Effective Settlement Date cannot at once be the date the Court signs the Final Judgment (subsection (i)) *and* some undetermined date in the future (subsection (iii)), as the two are mutually exclusive.¹ Furthermore, AmeriPride's interpretation of subsection (d) (iii) renders subsection (d)(i) superfluous. The Court will not conclude that the carefully negotiated Settlement Agreement in this case contains unnecessary or extraneous language, particularly when that language bears directly upon the deposit and distribution of millions of dollars. Subsection (d) (iii) must be interpreted as impliedly contemplating objection to the settlement, from which a timely notice of appeal could be filed. Otherwise the word “final” has no clear meaning, when the terms of the Settlement Agreement obviously intended the opposite result.

*5 Accordingly, the Court finds that because there are no objections to the settlement, the Final Judgment in this case becomes final pursuant to subsection (d)(i)—the date the Final Judgment is signed by the Court. The preliminary approval order has been entered and the final settlement hearing occurred on June 6, 2011. Therefore, upon entry of the Final Judgment and on the date the Final Judgment is signed by the Court, the Settlement will become final and effective.

MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT

1. Class Certification

A plaintiff seeking a Rule 23(b)(3) class certification must first satisfy the prerequisites of Rule 23(a). Once subsection (a) is satisfied, the purported class must then fulfill the requirements of Rule 23(b)(3). In the present case, the Court had previously preliminarily certified the following California class:

“Any individual who was employed as Customer Service Representative (including introductory and/or probationary Customer Service

Representatives) in California for AmeriPride during the Class Period (January 15, 2004 through December 31, 2009).”

At that time, the Court concluded that the proposed classes satisfied the numerosity, commonality, typicality, and adequacy of representation requirements of Rule 23(a). *See* Doc. No. 55. The Court also found that the proposed classes satisfied the predominance and superiority requirements of Rule 23(b)(3). Based on its previous findings, the Court certifies the class for the purpose of settlement.

2. The Settlement

a) Legal Standard

Courts require a higher standard of fairness when settlement takes place prior to class certification to ensure class counsel and defendant have not colluded in settling the case. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.1998). Ultimately, “[t]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir.1982).

A court considers several factors in determining whether a proposed settlement is “fair, adequate and reasonable” under Rule 23(e). Such factors may include: (1) the strength of the case; (2) the risk, expense, complexity and likely duration of further litigation and the risk of maintaining class action status throughout the trial; (3) the stage of the proceedings (investigation, discovery and research completed); (4) the settlement amount; (5) whether the class has been fairly and adequately represented during settlement negotiations; and (6) the reaction of the class to the proposed settlement. *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir.2003). The Court need only consider some of these factors—namely, those designed to protect absentees. *See Molski v. Gleich*, 318 F.3d 937, 954 (9th Cir.2003) (overruled in part on other grounds).

*6 Judicial policy favors settlement in class actions and other complex litigation where substantial resources can be conserved by avoiding the time, cost, and rigors of

formal litigation. *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F.Supp. 1379, 1387 (D.Ariz.1989). On November 6, 2009, the parties and their counsel attended one full day mediation, which was conducted by a highly qualified mediator. Subsequent to the mediation, the parties continued negotiations with the assistance of the mediator, which resulted in an oral agreement on the common fund settlement and stipulated Settlement Agreement currently before the Court for final approval. See *Kopfman Decl'n* ¶¶ 35–36.

b) Analysis

(1) *The strength of the case, and risk, expense, complexity and likely duration of further litigation*

Regarding the strength of Plaintiffs' case, the Court must “determine whether the decision to settle is a good value for a relatively weak case or a sell-out of an extraordinarily strong case.” *Livingston v. Toyota Motor Sales USA*, 1995 U.S. Dist. LEXIS 21757 (N.D.Cal.1995). Here, Plaintiffs assert that the proposed settlement is both fair and reasonable in light of AmeriPride's available legal and factual grounds for defending against the asserted claims. For example, Plaintiffs contend that, absent settlement, AmeriPride would have asserted a defense that Plaintiffs and the class members are exempt from overtime compensation requirements. See *Kopfman Decl'n* ¶¶ 41–45. Such a defense would present a serious threat to Plaintiffs' claims, as well as create uncertainty as to the appropriateness of class certification. Plaintiffs also asserts that the risk of further litigation is significant, as is the likely duration of further litigation. *Id.* ¶ 47. Given these risks, the actual recovery through settlement confers substantial benefits on the class that outweigh the potential recovery through full adjudication.

(2) *The stage of the proceedings (investigation, discovery and research completed)*

In the context of class action settlements, as long as the parties have sufficient information to make an informed decision about settlement, “ ‘formal discovery is not a necessary ticket to the bargaining table.’ ” *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239 (9th Cir.1998) (quoting *In re Chicken Antitrust Litig.*, 669 F.2d 228, 241 (5th Cir.1982)). Here, the parties engaged in extensive formal and informal discovery, as is reflected by looking at the docket of this case. The parties participated in a number of discovery conferences with the assigned magistrate judge. Depositions were conducted, experts hired and consulted, and so on. See *Kopfman Decl'n* ¶¶ 48–49.

(3) *The settlement amount*

To assess whether the amount offered is fair, the Court may compare the settlement amount to the parties' estimates of the maximum amount of damages recoverable in a successful litigation. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 459. While settlement amounts that are close to the plaintiffs' estimate of damages provide strong support for approval of the settlement, settlement offers that constitute only a fraction of the potential recovery do not preclude a court from finding that the settlement offer is fair. *Id.* (finding settlement amount constituting one-sixth of the potential recovery was fair and adequate). Thus, district courts have found that settlements for substantially less than the plaintiffs' claimed damages were fair and reasonable, especially when taking into account the uncertainties involved with litigation. See, e.g., *Glass v. UBS Fin. Serv., Inc.*, No. C–06–4068 MMC, 2007 U.S. Dist. LEXIS 8476, 2007 WL 2216862, at *4 (N.D. Cal. Jan. 26, 2007) (finding settlement of wage and hour class action for 25 to 35% of the claimed damages to be reasonable); *Williams v. Costco Wholesale Corp.*, No. CV–02–2003 IEG, 2010 U.S. Dist. LEXIS 67731, 2010 WL 2721452, at *4 (S.D.Cal. July 7, 2010) (finding settlement amount constituting approximately 75.6% of the plaintiffs' claimed losses from unpaid overtime pay to be adequate).

*7 Here, the common fund represents approximately 36% of the total potential damages in the case. See *Kopfman Decl'n* ¶ 49. The average class member will receive a settlement payment of \$11,552.31. In addition, AmeriPride has implemented methods of now compensating CSRs in compliance with California's wage and hour laws, such that class members who are still employed by AmeriPride will continue to reap the benefits of settlement by receiving full overtime compensation. The amount offered in settlement is adequate.

(4) *Whether the class has been fairly and adequately represented during settlement negotiations*

Class Counsel have significant experience in both the substance of wage and hour claims as well as the procedures for class and collective actions. See *Kopfman Decl'n* ¶¶ 4–6. As such, their support of the settlement should be accorded significant consideration. See, e.g., *Nat'l Rural Telcoms Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D.Cal.2004) (“Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation. This is because parties represented

by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation") (internal quotation marks and citations omitted).

(5) *The reaction of the class to the proposed settlement*

The Ninth Circuit has held that the number of class members who object to a proposed settlement is a factor to be considered. *Mandujano v. Basic Vegetable Prods. Inc.*, 541 F.2d 832, 837 (9th Cir.1976). The absence of any objector strongly supports the fairness, reasonableness, and adequacy of the settlement. See *In re Austrian & German Bank Holocaust Litig.*, 80 F.Supp.2d 164, 175 (S.D.N.Y.2000) ("If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.") (citations omitted); *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 624 (N.D.Cal.1979) (finding "persuasive" the fact that 84% of the class has filed no opposition). Here, no class members have objected to the Settlement Agreement and no class member has opted out. See *Kopfman Decl'n* ¶ 52.

3. *Conclusion*

The Court **GRANTS** the motion for final approval, finding that the Settlement Agreement is "fair, adequate and reasonable" under Rule 23(e).

**MOTION FOR AWARD OF
ATTORNEYS FEES AND COSTS**

1. *Relevant Law*

Rule 23(h) of the Federal Rules of Civil Procedure provides that, "[i]n a certified class action, the court may award reasonable attorneys fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed.R.Civ.P. 23(h). California recognizes the common fund doctrine for the award of attorneys fees. Under California and Ninth Circuit precedent, a court has discretion to calculate and award attorneys fees using either the lodestar method or the percentage-of-the-fund method. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 253, 110 Cal.Rptr.2d 145 (2001); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir.2002).

*8 The Ninth Circuit has held that 25% of the gross settlement amount is the benchmark for attorneys fees awarded under the percentage method, with 20 to 30% as the usual range in common fund cases where the recovery is between \$50 and 200 million. *Vizcaino*, 290 F.3d at 1047.

Other case law surveys suggest that 50% is the upper limit, with 30–50% commonly being awarded in cases in which the common fund is relatively small. See Rubenstein, Conte and Newberg, *Newberg on Class Actions* at § 14:6. Indeed, California cases in which the common fund is small tend to award attorneys fees above the 25% benchmark. See *Craft v. County of San Bernardino*, 624 F.Supp.2d 1113, 1127 (C.D.Ca.2008) (holding attorneys fees for large fund cases are typically under 25% and cases below \$10 million are often more than the 25% benchmark). More particularly, courts may award attorneys fees in the 30–40% range in wage and hour class actions that result in recovery of a common fund under \$10 million. See *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491–92 (E.D.Ca.2010) (citing to five recent wage and hour class actions where federal district courts approved attorney fee awards ranging from 30 to 33%); *Singer v. Becton Dickinson and Co.*, 2010 U.S. Dist. LEXIS 53416, 2010 WL 2196104, * 8 (S.D.Ca. June 1, 2010) (approving attorney fee award of 33.33% of the common fund and holding that award was similar to awards in three other wage and hour class action cases where fees ranged from 30.3% to 40%); *Romero v. Producers Dairy Foods, Inc.*, 2007 U.S. Dist. LEXIS 86270, 2007 WL 3492841 (E.D.Ca. Nov.14, 2007).

2. *Analysis*

Regardless of whether the court uses the percentage approach or the lodestar method, the main inquiry is whether the end result is reasonable. *Powers v. Eichen*, 229 F.3d 1249, 1258 (9th Cir.2000). The Ninth Circuit has identified a number of factors that may be relevant in determining if the award is reasonable: (1) the results achieved; (2) the risks of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee; (5) the burdens carried by class counsel; and (6) the awards made in similar cases. See *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir.2002). An explanation is necessary when the district court departs from the "benchmark" of 25% of recovery. *Powers*, 229 F.3d at 1256–57. The award sought in this case equals 25% of the common fund.

Here, the results achieved in this case were favorable. The risks of litigation were real and substantial. The complexity and duration of the case, coupled with the intensity of settlement negotiations, weighs in favor of awarding the 25 percent "benchmark" amount that counsel request here, for a total award of \$1,312,500 plus actual costs and expenses incurred prior to entry of final approval. See *Kopfman Decl'n* ¶ 57. Class Counsel took this case on a contingent fee basis and had to forego other financial opportunities to litigate it

for more than three years. *See Kopfman Decl'n* ¶¶ 60–61. Fifth, the request for attorneys fees in the amount of 25% of the common fund falls within the typical range of 20 to 50% awarded in similar cases, and is lower than many other awards where counsel worked on a contingent basis. *See, e.g., Ingalls v. Hallmark Mktg. Corp.*, 08cv4342 VBF (Ex), Doc. No. 77, P 6 (C.D.Cal. Oct. 16, 2009) (awarding 33.33% fee on a \$ 5.6 million wage and hour class action); *Birch v. Office Depot, Inc.*, Case No. 06cv1690 DMS (WMC), Doc. No. 48, P 13 (S.D.Cal. Sept. 28, 2007) (awarding a 40% fee on a \$ 16 million wage and hour class action); *Rippee v. Boston Mkt. Corp.*, Case No. 05cv1359 BTM (JMA), Doc. No. 70, at 7–8 (S.D.Cal. Oct. 10, 2006) (awarding a 40% fee on a \$ 3.75 million wage and hour class action). Finally, no class members have objected to the attorneys fees.

3. Conclusion

*9 The Court **APPROVES** an award of attorneys fees equal to 25% of the value of the common fund as well as Class Counsel's request for litigation costs and expenses in the requested amount.

CLASS REPRESENTATIVE SERVICE PAYMENTS

1. Relevant Law

In assessing the reasonableness of an incentive award, several district courts in the Ninth Circuit have applied the five-factor test set forth in *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D.Cal.1995), which analyzes: (1) the risk to the class representative in commencing a class action, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit, or lack thereof, enjoyed by the class representative as a result of the litigation. *See, e.g., Carter v. Anderson Merchs., LP*, No. EDCV 08–0025–VAP, 2010 U.S. Dist. LEXIS 55629, 2010 WL 1946757, at *3 (C.D.Cal. May 11, 2010); *Williams v. Costco Wholesale Corp.*, No. 02cv2003 IEG, 2010 U.S. Dist. LEXIS 67731, 2010 WL 2721452, at *7 (S.D.Cal. July 7, 2010).

2. Analysis

No class members have objected to Plaintiffs' intent to seek an enhancement award of \$18,500. The \$18,500 incentive award is also well within the acceptable range awarded in similar cases. *See, e.g., Brotherton v. Cleveland*, 141 F.Supp.2d 907,

913–14 (S.D.Ohio 2001) (approving an award of \$50,000 where the class representative “has been instrumental in bringing [the] lawsuit forward” and “has performed numerous tasks in association with [the] litigation”). Each named plaintiff has provided a declaration to the Court summarizing the time and resources expended in assisting with the preparation for and litigation of this case. For example, Plaintiff O'Bryant responded to written discovery requests and assisted in the preparation of initial disclosures. *See O'Bryant Decl'n* ¶ 15. O'Bryant also traveled to San Diego twice at personal expense to participate in depositions and the full day mediation, *id.* ¶¶ 16–17, as did the other named plaintiffs. *See Jacoby Decl'n* ¶¶ 13–14; *Mejia Decl'n* ¶¶ 12–13; *Martinez Decl'n* ¶¶ 11–12; *Luna Decl'n* ¶¶ 11–12; *Martin Decl'n* ¶ 12; *Sword Decl'n* ¶ 8; *Gore Decl'n* ¶ 12.

3. Conclusion

The Court **APPROVES** the service fee award as reasonable.

CONCLUSION

The Court **GRANTS** Plaintiffs' motion in its entirety, and finds the proposed settlement of this class action appropriate for final approval pursuant to [Federal Rule of Civil Procedure 23\(e\)](#). The Court further finds that the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential treatment to any individuals. The Court finds that the settlement was entered into in good faith; that the settlement is fair, reasonable and adequate; and that Plaintiffs have satisfied the standards for final approval of a class action settlement under federal law.

JUDGMENT AND ORDER OF DISMISSAL

*10 This Court **APPROVES** the settlement and directs the Parties to effectuate the Settlement Agreement according to its terms.

The Court **DISMISSES** this case on the merits and with prejudice, pursuant to the terms of the Settlement Agreement.

The Court retains continuing jurisdiction over the interpretation, implementation and enforcement of the Settlement Agreement and all orders and judgments entered in connection therewith.

If this Judgment and the settlement do not become final and effective in accord with the terms of the Settlement Agreement, then this Judgment and all orders entered in connection therewith shall be deemed null and void and shall be vacated.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2011 WL 2313604

Footnotes

- 1 By way of contrast, at least one court has approved a final settlement wherein the settlement agreement included a definition of the effective date of settlement as: "The effective date shall be the date of final approval if no objections are filed to the settlement. If objections are filed and overruled, and no appeal is taken of the final approval order, then the effective date of final approval shall be sixty-five (65) days after the district court enters final approval. If an appeal is taken from the Court's overruling of objections to the settlement, then the effective date of final approval shall be twenty (20) days after the appeal is withdrawn or after an appellate decision affirming the final approval decision becomes final. No money will be distributed unless and until the effective date of final approval occurs." *Chiaramonte v. Pitney Bowes, Inc.* 2008 WL 510765 (S.D.Cal.). The terms of the *Chiaramonte* settlement agreement were clear that an appeal would only effect the finality of the judgment and subsequent distribution of funds in the event objections were filed. Absent any objections, the settlement became effective on the date of final approval, period. The settlement agreement was written such that the three possibilities were plainly mutually exclusive.

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.

2025 WL 1114273

Only the Westlaw citation is currently available.

United States District Court, S.D. Illinois,
East St. Louis.

Heather MCCLAINE, on behalf of herself and all other
persons similarly situated, known and unknown, Plaintiff,
v.

DX ENTERPRISES, INC. f/k/a DX Enterprises,
LLC d/b/a [DXE](#), d/b/a GCQA, LLC, Defendant.

Case No. 3:23-cv-01168-DWD

Signed April 15, 2025

Attorneys and Law Firms

[Max P. Barack](#), The Garfinkel Group, LLC, Chicago, IL, for
Plaintiff.

[Jamie L. Filipovic](#), Megan Archibald, Nitika Suchdev,
O'Hagan Meyer, LLC, Chicago, IL, [Max P. Barack](#), The
Garfinkel Group, LLC, Chicago, IL, [Stacey Vucko](#), Littler
Mendelson, Chicago, IL, for Defendant.

FINAL APPROVAL ORDER

[David W. Dugan](#), Judge

*1 This matter comes before this Court on Plaintiff Heather McClaine's ("Plaintiff" or "McClaine") Motion for Final Approval of Class Action Settlement (the "Motion"). This Court, having considered the Motion, the Settlement Agreement, supporting documentation, and the proceedings to date, including the preliminary approval granted on January 7, 2025, and having held a Final Approval Hearing on March 26, 2025, finds that due and adequate notice has been given to the Settlement Class as required in this Court's Preliminary Approval Order.

The Court has reviewed all papers filed in connection with the Settlement, including the memoranda and declarations in support of final settlement approval, attorney's fees and costs, and the Class Representative service award. After careful consideration of these materials and the arguments presented at the Final Approval Hearing and having found that the Settlement Agreement was negotiated at arm's length between October 5, 2023 and March 5, 2024, and into September

2024, the Court now enters the following Order granting final approval of the settlement.

1. This Court has jurisdiction over the subject matter of the action and personal jurisdiction over all parties to the action, including all Settlement Class Members.

2. The Court preliminarily approved the Settlement Agreement by Preliminary Approval Order dated January 7, 2025. At that time, the Court preliminarily certified a settlement class of the following individuals:

All individuals whose biometric identifiers or biometric information were collected, captured, received, or otherwise obtained and/or stored by DX Enterprises, Inc. in Illinois during the period from February 27, 2018 through January 7, 2025 ("Settlement Class" or "Settlement Class Members"). The Settlement Class includes 586 members, including a subclass of 86 members who were rehired by Defendant during the Class Period.

ECF No. 57.

3. With respect to the Settlement Class, this Court finds, for settlement purposes only, that: (a) the Settlement Class defined above is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement Class, and those common questions predominate over any questions affecting only individual members; (c) the Class Representative and Class Counsel (The Garfinkel Group, LLC) have fairly and adequately protected, and will continue to fairly and adequately protect the interests of the Settlement Class; and (d) certification of the Settlement Class is an appropriate method for the fair and efficient adjudication of this controversy.

4. This Court finds that the Settlement Class Members are readily ascertainable based on Defendant's records and the Court's review of the Settlement Administrator's declaration regarding the notice process, which successfully reached the vast majority of the 586 class members, with only 46 notices ultimately undeliverable after skip-tracing efforts.

5. The Court finds that the Notice given to Settlement Class Members, in accordance with the Preliminary Approval Order dated January 7, 2025, fully and accurately informed Settlement Class Members of all material elements of the Settlement and constituted the best notice practicable under the circumstances. The Notice was reasonably calculated to apprise the Settlement Class of the pendency of the Action, their rights to object to or exclude themselves from the Settlement Class, and their right to appear at the Final Approval Hearing. The Notice program, which included First-Class Mail notice to all 586 class members, with successful skip-tracing efforts resulting in only 46 ultimately undeliverable notices, was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice, fully satisfying the requirements of [Federal Rule of Civil Procedure 23](#) and Due Process.

*2 6. Based on the papers filed with this Court and the presentations made at the Final Approval Hearing on March 26, 2025, at which time all interested persons were afforded the opportunity to be heard in support of and in opposition to the Settlement, the Court finds that the Settlement Agreement is fair, adequate, reasonable, and was entered into in good faith. The settlement is in the best interests of the Settlement Class considering the complexity of the litigation, the significant risks of continued litigation, and the likely duration of further litigation. The Court notes that the Settlement Agreement was reached after extensive arms-length negotiations between October 5, 2023 and March 5, 2024, which continued into September 2024, and conducted by experienced counsel who were thoroughly familiar with the legal and factual issues of this case.

7. The Court finds that the consideration to be paid to Settlement Class Members, consisting of a total Settlement Fund of \$1,519,796.84 (including \$1,432,617.64 for the Class Fund providing \$2,444.74 per member, and \$87,179.20 for the Subclass Fund), is reasonable and adequate. This finding is supported by, among other things: the immediate benefits to the Settlement Class Members; the fact that only 2 class members opted out and no objections were filed; and the effectiveness of the notice program in reaching the vast majority of class members. The complex legal and factual posture of the Action, including multiple BIPA violation claims, and the fact that the Settlement Agreement resulted from extensive negotiations between experienced counsel, further support this finding.

8. This Court hereby confirms the appointment of Heather McClaine as Class Representative of the Settlement Class. The Court finds that Ms. McClaine has adequately represented the interests of the Settlement Class throughout this litigation and settlement process.

9. This Court hereby confirms the appointment of The Garfinkel Group, LLC, as Class Counsel. The Court finds that Class Counsel, particularly through the representation of Max Barack, has demonstrated extensive experience in class action litigation and has vigorously and competently represented the Settlement Class throughout this litigation. Class Counsel's contact information is as follows:

The Garfinkel Group, LLC
Max Barack
701 N. Milwaukee Avenue
The CIVITAS
Chicago, IL 60659
Phone: (312) 736-7991
Email: max@garfinkelgroup.com

10. This Court finds that both the Class Representative and Class Counsel have fairly and adequately protected the interests of the Settlement Class throughout the litigation and settlement negotiations, which took place from October 5, 2023 through March 5, 2024, and will continue to do so through the settlement implementation process.

11. The Court hereby orders the Parties to perform their obligations under the Settlement Agreement. The parties and Settlement Class Members are bound by the terms and conditions of the Settlement Agreement. The Settlement Administrator, Simpluris, shall distribute the Settlement Fund as follows:

- a) Attorney's fees in the amount of \$532,929.89 (35% of the Settlement Fund) and litigation costs of \$666.97 shall be paid to Class Counsel within twenty-one (21) days of the Effective Date;
- b) The Class Representative service award of \$15,000 shall be paid to Heather McClaine within twenty-one (21) days of the Effective Date;
- c) Settlement administration costs, not to exceed \$15,000, shall be paid to Simpluris;

d) Individual settlement payments from the Class Fund (\$1,432,617.64) shall be distributed to Settlement Class Members in the amount of \$2,444.74 per member, and payments from the Subclass Fund (\$87,179.20) shall be distributed to eligible Subclass Members, within fourteen (14) days of the Effective Date.

12. The Settlement Administrator shall issue reminder notices to Settlement Class Members who have not cashed their settlement checks 60 days and again 30 days before the check void date. Any settlement checks that remain uncashed after 180 days from the date of issuance shall become void, and such funds shall be returned to Defendant.

***3** 13. The Court dismisses the Action with prejudice and without costs (except as otherwise provided herein and in the Settlement Agreement).

14. Upon the Effective Date and in consideration of the payment of the Settlement Fund and the releases, agreement, and covenants contained in the Settlement Agreement, the Settlement Class Members who did not opt out shall release, relinquish, and give up any and all potential, filed, unfiled, known or unknown claims, suits, actions, controversies, demands, and/or causes of action arising out of or related to the allegations set forth in the pleadings in this Action, including those arising under the BIPA and any similar law that were brought or could have been brought in the Action.

15. The Court finally approves the Release of Claims provided in the Settlement Agreement. Upon the Effective

Date, the Releasors shall be deemed to have released, and by operation of this Final Approval Order shall have fully, finally, and forever released, acquitted, relinquished, and completely discharged any and all released claims against the Released Parties.

16. The Parties, without further approval from this Court, may agree to and adopt such amendments, modifications, and expansions of the Settlement Agreement and its implementing documents (including all exhibits thereto) that: (1) are consistent in all material respects with this Final Approval Order; and (ii) do not limit the rights of Settlement Class Members.

14. Without affecting the finality of this Final Approval Order for purposes of appeal, the Court retains jurisdiction over all matters relating to the administration, consummation, enforcement, and interpretation of the Settlement Agreement and this Final Approval Order. The Court specifically retains jurisdiction to: (a) enforce the Settlement Agreement and Final Approval Order; (b) resolve any disputes concerning settlement claims or settlement payments; (c) address settlement payment issues, including the disposition of unclaimed funds; (d) enforce the release and covenant not to sue provisions of the Settlement Agreement; and (e) address such other matters as may be appropriate under the Settlement Agreement or Final Approval Order.

All Citations

Slip Copy, 2025 WL 1114273

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.

2022 IL App (1st) 201197-U

UNPUBLISHED OPINION. CHECK COURT RULES
BEFORE CITING.Appellate Court of Illinois, First District,
THIRD DIVISION.Dave MCCORMICK, Robby Brown, T'Lani
Robinson, Dennis Magana, Scott Swindell, and
Davis Torosyna, Individually and on Behalf of All
Others Similarly Situated, Plaintiffs-Appellees,

v.

ADTALEM GLOBAL EDUCATION, INC.,
Formerly Known as DeVry Education Group, Inc.,
a Delaware corporation, and DeVry University,
Inc., a Delaware corporation, Defendants-Appellees
(Richardo Peart, Objector-Appellant).

No. 1-20-1197

|

May 4, 2022

Appeal from the Circuit Court of Cook County, 2018-
CH-004872, Honorable Michael T. Mullen, Judge Presiding

ORDER

JUSTICE McBRIDE delivered the judgment of the court.

*1 ¶ 1 *Held*: In class action, objector did not show that proposed settlement was unfair or that awarding plaintiffs' attorneys 35% of settlement fund was unreasonable.

¶ 2 Adtalem Global Education, Inc. and DeVry University, Inc., who jointly operated DeVry University and Keller Graduate School of Management (collectively DeVry), were sued by Dave McCormick and five others (collectively McCormick) as class representatives of students who claimed that DeVry was able to recruit students and charge higher tuition between 2008 and 2016 by making misleading and deceptive statements about the income and employment statistics of DeVry graduates. McCormick sought actual damages for the tuition premium that they paid for a DeVry education, as well as equitable relief, statutory damages, and attorney fees. Two years later, McCormick reached a preliminary settlement agreement with DeVry, to which Richardo Peart objected. The trial court denied Peart's

objections, gave final approval to the settlement as fair, reasonable, and adequate, and awarded 35% of the settlement as reasonable attorney fees for the "extraordinary" result that plaintiffs' counsel had negotiated despite DeVry's "thin" liability. Peart appeals the denial of his objections and approval of the settlement.

¶ 3 DeVry University was one of the country's largest for-profit colleges. In 2008, DeVry launched a nationwide advertising campaign in which it boasted of a high rate of job placements for its graduates and highlighted above-average salaries at the jobs which they secured. In 2016, the Federal Trade Commission (FTC) sought an injunction and tuition refunds from DeVry based on advertisements, marketing materials, and other recruitment efforts touting allegedly-deceptive representations about the advantages of holding a DeVry degree. The FTC claimed that DeVry misled consumers when stating that 90% of its graduates who actively sought jobs were able to secure them within their field within six months of graduation and that within one year of graduation, bachelor degree holders were earning an average of 15% more than the graduates of other institutions. That same year, the Department of Education pursued DeVry for its marketing practices. The FTC action resulted in an injunction prohibiting DeVry from misrepresenting how many of its graduates were able to secure jobs within their field of study. In addition, in late in 2016, DeVry settled with the two federal agencies by depositing \$49.4 million toward tuition refunds and providing \$50.6 million for loan and debt relief to its former students. In July 2017, the FTC used DeVry's records to identify former students who were eligible for refunds and mailed 173,000 refund checks worth more than \$49 million to those individuals. Not all of those checks were cashed. When there was money left in the fund in April 2019, the FTC mailed a second round of 128,875 checks totaling more than \$9.4 million to individuals who had cashed their first check. According to appellant Peart's calculations, the average per student payment was \$383.31. The FTC did not publicize how many students accepted their part of the \$50.6 million in debt forgiveness that DeVry was obligated to provide as part of the settlement.

*2 ¶ 4 Other actions were filed around the country. There was a \$27.5 million settlement in a securities lawsuit, and smaller settlements, including \$2.25 million for consumer restitution with the state of New York and \$455,000 with the Commonwealth of Massachusetts. This Illinois case was commenced in 2018.

¶ 5 In this Illinois action, a former DeVry student, Nicole Versetto, alleged that DeVry's false statements persuaded prospective students to enroll at its institutions instead of at similar colleges and to also pay a premium for their tuition. Versetto's claims were based on Illinois consumer protection statutes and the common law theories of fraud, breach of contract, breach of fiduciary duty, conversion, and unjust enrichment. DeVry filed a motion to dismiss which was stayed pending an attempt to mediate in February 2019. The parties' first attempt at mediation was unproductive and the litigation resumed with an amended complaint in March 2019 in which Dave McCormick was substituted as the plaintiff. DeVry's motion to dismiss McCormick's first amended complaint was subsequently granted, with leave to replead. Around this time, however, two similar actions against DeVry which students filed in Illinois federal court were dismissed with prejudice and the second amended complaint that McCormick filed against DeVry was met with a motion to dismiss. See *Robinson v. DeVry Education Group, Inc.*, No. 16-CV-7447, 2018 WL 828050 (N.D. Ill., Feb. 12, 2018); *Polly v. Adtalem Global Education, Inc.*, No. 16-CV-9754, 2019 WL 587409 (N.D. Ill., Feb. 13, 2019). The tide that was seemingly in DeVry's favor shifted while McCormick and DeVry were briefing DeVry's motion, when motions to dismiss three similar suits in other parts of the country were denied. See *Rangel v. Adtalem Global Education, Inc.*, 2019 WL 682 (W.D. Tex., Dec. 13, 2019) (magistrate judge recommending that federal district court deny motion to dismiss); *Brown v. Adtalem Global Education, Inc.*, No. 19-00250-CV-W-ODS, 421 F. Supp. 3d 825 (W.D. Mo., 2019); *Robinson v. Adtalem Global Education, Inc.*, No. 19-CV-1505 (N.D. Ga., Nov. 25, 2019) (granting in part and denying in part motion to dismiss, with leave to replead); *Rangel v. Adtalem Global Education, Inc.*, Mar. 12, 2020 (district court accepting and acting on magistrate judge's report and recommendation filed on December 13, 2019 to deny motion to dismiss). Before DeVry's motion to dismiss McCormick's second amended complaint could be heard on January 13, 2020, the parties agreed to a second mediation.

¶ 6 During the mediation session on December 17, 2019, the parties reached an agreement in principle. Limited discovery ensued. This is the settlement at issue on appeal. For purposes of settlement, McCormick proposed to represent the class of approximately 323,000 individuals nationwide who paid for any part of a DeVry education between 2008 and 2018; and DeVry agreed to create a \$44.95 million fund from which to pay the claims of class members, as well as notice costs and attorney fees. The parties agreed that class

members who submitted valid claims would be entitled to a *pro rata* payment from the \$44.95 million in proportion to their number of paid credit hours. By this they meant that if Claimant A paid for twice as many credit hours as Claimant B, then Claimant A's *pro rata* share would be twice that of Claimant B's *pro rata* share. In addition to the *pro rata* payments, the parties agreed that associate and graduate degree holders who had been unable to find jobs within their fields of study within six months of graduation would be paid an additional \$500; and their bachelor degree counterparts would be paid an additional \$1000. It was also agreed that claims would be subject to an offset for debt forgiveness and money that claimants had already received from any of the federal and state government actions against DeVry, up to one-third of the fund. In addition, DeVry became obligated to provide career counseling services to graduates who were unable to find a job within their field of study within six months, and to request that the credit reporting bureaus delete negative credit events that DeVry had reported about student debt. The former students' release to DeVry preserved their right to seek loan forgiveness through the Department of Education's Borrower Defense to Repayment program.

*3 ¶ 7 On May 28, 2020, the trial court granted preliminary approval to the settlement agreement and ordered that notice be given to settlement class members by paper mail and e-mail. A professional class action claims administrator was retained to communicate with eligible individuals by mail, e-mail, website, and telephone.

¶ 8 Class member Peart, who was represented by counsel in Watkinsville, Georgia, filed an objection on September 22, 2020 to the court's final approval of the settlement, arguing primarily that he was better off pursuing "claims for debt cancellation" rather than participating in a settlement in which his compensation would be reduced or nullified by the payments he took in other settlements. (We note that the settlement preserved class members' right to seek debt forgiveness.) Peart also argued that the requested attorney fees were not reasonable.

¶ 9 In a declaration made on September 16, 2020 under penalty of perjury, the claims administrator stated that of 444,039 known class members, 53,132 individuals submitted claims. This response rate of slightly under 12% of potential claims was considered an "exceptional" response. Only a small number of settlement class members, 866, or about .91% of the settlement class, had opted out of the settlement. Only four settlement class members, including

Peart, filed objections to the settlement. The objectors are .0009% of the settlement class.

¶ 10 After hearing arguments on the motion for final approval and objections, the trial court overruled the objections, noted that it “had given great thought to and *** considered all eight factors identified in the *City of Chicago v. Korshak* case *** and conclud[ed] that the proposed settlement is fair, reasonable, and adequate.” The court gave final approval to the settlement and also reviewed McCormick’s motion for attorney fees and granted the requested amount as reasonable. This appeal followed.

¶ 11 Peart’s first of three arguments is that it was an abuse of discretion to approve a settlement that was not in the best interests of class members whose compensation will be offset, potentially entirely, by their compensation from DeVry’s settlement with the Federal Trade Commission (FTC). Peart claimed and was paid \$772.96 from the FTC settlement and contends that he will be “disadvantaged” when that amount either reduces or eliminates his share of the McCormick settlement. The exact amount of Peart’s offset has not been stated by the settlement administrator, but depends upon the total number of paid credit hours of all former students who participate in the McCormick settlement. Peart contends the trial court should have obtained this data and specifically addressed it before giving approval. However, the payment offsets were “hardly mentioned” in the trial court, were not one of the judge’s considerations, and should not be analyzed for the first time on appeal because “that is not a function of an appellate court (not to mention impossible on this record).” Peart also argues that class members whose compensation is going to be reduced by their earlier compensation are being treated differently from first-time claimants, and that this is an intra-class conflict which entitled his subset of the class to the appointment of separate counsel.

¶ 12 A trial court’s final approval of a class settlement is reviewed for an abuse of discretion. *Steinberg v. System Software Associates, Inc.*, 306 Ill. App. 3d 157, 169, 713 N.E.2d 709, 717 (1999). The abuse-of-discretion standard of review is the most deferential standard that is employed in an appeal. *In re D.T.*, 212 Ill. 2d 347, 356, 818 N.E.2d 1214, 1222 (2004). Under this standard, the question is not whether we would take the same view as the trial court, but only whether no reasonable person would take the same view. *Shaun Fauley, Sabon, Inc. v. Metropolitan Life Insurance Co.*, 2016 IL App (2d) 150236, ¶ 45, 52 N.E.3d 427.

*4 ¶ 13 There is strong public policy in favor of settling and the avoiding costly and time-consuming litigation. *Security Pacific Financial Services v. Jefferson*, 259 Ill. App. 3d 914, 919, 632 N.E.2d 299, 303 (1994); *In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d 768, 784 (3rd Cir. 1995) (“the law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation”); *In re School Asbestos Litigation*, 921 F.2d 1330, 1333 (1990) (there is a policy of “encouraging settlement of complex litigation that otherwise could linger for years”).

¶ 14 “Many factors enter into the consideration of the parties to litigation in arriving at a compromise settlement. The result is achieved by each party weighing and assessing the strength and weakness of his position.” *People ex rel. Wilcox v. Equity Funding Life Insurance Co.*, 61 Ill. 2d 303, 316, 335 N.E.2d 448, 456 (1975). “Given that a settlement is a compromise, a trial court is not to judge the legal and factual questions by the criteria employed in a trial on the merits.” *Shaun Fauley*, 2016 IL App (2d) 150236, ¶ 45.

“Approval should be given if the settlement offer is fair, reasonable and adequate. These general terms cannot be precisely defined. The Supreme Court has directed that a judge reach ‘an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated’ and to ‘form an educated estimate of the complexity, expense, and likely duration of such litigation *** and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.’ [Citations.]” *Wilcox*, 61 Ill. 2d at 317, 335 N.E.2d at 456.

See also *Steinberg*, 306 Ill. App. 3d at 169, 713 N.E.2d at 717. When assessing the fairness of a proposed settlement, some of the factors the trial judge should consider include:

- “(1) the strength of the case for plaintiffs on the merits, balanced against the money or other relief offered in settlement;
- (2) the defendant’s ability to pay;
- (3) the complexity, length and expense of further litigation;
- (4) the amount of opposition to the settlement;
- (5) the presence of collusion in reaching a settlement;

- (6) the reaction of members of the class to the settlement;
- (7) the opinion of competent counsel; [and]
- (8) the stage of proceedings and the amount of discovery completed.”

City of Chicago v. Korshak, 206 Ill. App. 3d 968, 972, 565 N.E.2d 68, 70 (1990).

¶ 15 The record does not support Peart's contention that the trial court lacked sufficient information about the offset for the payments and debt forgiveness that were claimed in other settlements with DeVry and should have engaged in further analysis of the issue, or the contention that the settlement agreement is unfair to those individuals. The record shows that McCormick's counsel gave a detailed presentation of both the facts and law which provided the trial court with ample support for its discretionary decision to approve the settlement as fair, reasonable, and adequate.

¶ 16 The record shows, for instance, that McCormick submitted lengthy memos with his motions seeking preliminary approval and final approval of the settlement agreement. Length is not indicative of quality, but in this instance, both the preliminary and final motion memos were very informative. The memo regarding preliminary approval was 41 pages; outlined the relevant procedural history of the case; included a summary of settlement agreement; and also cited and applied legal authority regarding certification of the class for settlement purposes, naming the six plaintiffs as settlement class representatives, appointing settlement class counsel, giving preliminary approval to the settlement agreement, and approving the proposed notice and distribution. Attached to this memo was a copy of the settlement agreement. The memo regarding final approval was 51 pages, and was similar in content to the preliminary memo, but also addressed the objections that had been received. Its attachments included the settlement agreement, a declaration from the professional claims administrator, and an affidavit from McCormick's counsel.

*5 ¶ 17 In paragraph 2 of the settlement agreement that was twice submitted for the court's review, the parties specify that class members are entitled to compensation for the credit hours they paid for and that an additional \$500 or \$1000 is owed to the degree holders who did not secure a job within their field of study within six months. Paragraph 2 then states that the compensation will be reduced or precluded by the

debt forgiveness and other forms of compensation that former students have received from other forums, in order to prevent double recovery:

“2. SETTLEMENT RELIEF

2.1 Monetary Payments to Settlement Class Members.

a. Settlement Payments.

- i. Each Settlement Class Member who submits an Approved Claim shall be entitled to a *pro rata* payment based on the number of DeVry and/or Keller credit hours that they have paid for. ***

* * *

- ii. Settlement Class Members submitting an Approved Claim who have graduated from a DeVry associate's or bachelor's degree program or Keller master's degree program, but did not obtain employment in their fields of study within six (6) months of graduation, are entitled to a Graduate Payment in addition to their *pro rata* share described in Section 2.1.a.i. Those Settlement Class Members that graduated from a DeVry associate's degree program, but did not obtain employment in their fields of study within six (6) months of graduation, will be entitled to an additional payment of five hundred dollars (\$500.00). Those Settlement Class Members that graduated from a DeVry bachelor's degree program, but did not obtain employment in their fields of study within six (6) months of graduation, will be entitled to an additional payment of one thousand dollars (\$1,000.00). Those Settlement Class Members that graduated from a Keller master's degree program, but did not obtain employment in their fields of study within six (6) months of graduation, will be entitled to an additional payment of five hundred dollars (\$500.00). Graduate Payments will be paid solely from the Settlement Fund.

b. Settlement Payment Offsets.

- i. In order to prevent double recovery, the total payment to which a Settlement Class Member is otherwise entitled to pursuant to Section 2.1.a shall first be offset by an amount equal to: (i) any debt forgiveness or Borrower Defense to Repayment relief received by that Settlement Class member as of

the Effective Date; and (ii) any cash payment and/or debt forgiveness, including but not limited to loan forgiveness and accounts receivable forgiveness, that the Settlement Class Member received pursuant to Defendants' settlements with the Federal Trade Commission, Department of Education, New York Attorney General and Massachusetts Attorney General ('Government Settlement Payments'). By way of example, if the total amount of debt forgiveness and Government Settlement Payments a Settlement Class Member already received is equal to or exceeds the amount of the cash payment to which the Settlement Class Member would otherwise be entitled to under this Settlement, the Settlement Class Member would not receive a settlement payment under the Settlement. If the total amount of debt forgiveness and Government Settlement Payments associated with a particular Settlement Class Member is less than the amount of the cash payment to which the Settlement Class Member would otherwise be entitled, the Settlement Class Member would receive a payment equal to the difference between the two—*i.e.* total settlement payment less the total amount of debt forgiveness and Government Settlement Payments.”

*6 ¶ 18 Thus, prior to oral argument, the trial court was fully apprised of the relevant facts, including details about the offset. The court also had benefit of Peart's written six-page objection in which his primary argument was, “Since the offset from the FTC settlement creates an intra-class conflict and may leave Mr. Peart and many thousands of other class members with zero recovery, the Court should deny final approval.” Although unnecessary, toward the end of arguments, the trial judge even specified, “I have considered everything that has been submitted to me.”

¶ 19 Neither Peart nor his Georgia-based attorney attended the final approval hearing. Nevertheless, Peart's offset argument was addressed by one of McCormick's attorneys, who stated the following:

“Mr. Peart's objection, from our perspective, primarily raises issues with respect to the offset mechanism in the settlement. He largely contends that it treats [groups of class members] differently, and therefore, unfairly, but really the opposite is true.

I think you have to look at this from DeVry's perspective, which is to say that DeVry has been litigating over these alleged misrepresentations with a number of different folks

prosecuting claims in a number of different forums. Not just us here in this class action, but the FTC, for example, a couple of attorneys general as well.

Through those different pieces of litigation, including this settlement were it to be finally approved, DeVry has been issuing refunds to former students. From DeVry's perspective, it doesn't matter what mechanism those refunds are made through, whether it's through the FTC or this settlement or otherwise. Money is fungible at the end of the day.

What does matter to DeVry, though, is that thus far, absent this settlement, only a limited number of its former students have actually been able to receive refunds. For example, the FTC settlement involved approximately 173,000 former students that were able, under the terms of that deal, to make claims. This case, as your Honor knows, involves several hundred thousand. So the point is that certain folks have already received refunds and others have not.

Here that mechanism would be offset and actually creates more fairness. What it does is it ensures that nobody is getting out ahead of anyone else. Everyone is starting at the same starting line. No one has an advantage in terms of having previously received funds and then getting more funds. So what it allows us to do here is ensure that everybody's refunds are accounted for once, and everybody has the same opportunity to claim under this settlement.

It's also important to note, your Honor, that this was a significant negotiating point for DeVry. I believe throughout our negotiations and I still believe today that DeVry would not have offered the same amount of money in the settlement fund absent this offset.

You know, there's some mention of Mr. Peart wanting additional debt relief that he doesn't get. That's not really tied to the offset at all, your Honor; and as I mentioned previously, this settlement specifically preserves his ability to seek additional debt forgiveness through the Department of Education.”

¶ 20 Accordingly, we find that there is no basis for Peart's argument that payment offsets were “hardly mentioned” in the trial court or that it would be “impossible” from the record for a reviewing court to address the topic. Furthermore, the quoted portion of the oral arguments effectively refutes Peart's contention that the offsets are unfair to him and others like him. The offset language ensures that all former students will be compensated equally and that “double” claimants such as

Peart will not recover double compensation or double debt forgiveness through the McCormick litigation. During oral arguments, McCormick's attorney disclosed that the offset terms were "a significant negotiating point for DeVry," and thus were a key to reaching a settlement at all. There was no apparent reason to appoint separate counsel to represent Peart and others who are receiving the same compensation as their classmates. To the extent that Peart is arguing that the settlement is unfair in general, the trial court made a final determination that the class settlement was fair, reasonable, and adequate. In making this decision, the trial court reviewed the parties' written submissions, the four objections to the settlement, which included the objection filed by Peart, and heard arguments regarding all eight of the *Korshak* factors concerning fairness, reasonableness, and adequacy. *Korshak*, 206 Ill. App. 3d at 972, 565 N.E.2d 68. While Peart is apparently displeased by the settlement, his argument falls far short of meeting his burden to show that the trial court's ruling was an abuse of discretion.

*7 ¶ 21 Peart's second argument is that it was an abuse of discretion to award attorney fees as a percentage of the settlement when some of that money will revert to DeVry as unclaimable by class members who successfully took part in other settlements, primarily the FTC action. Peart estimates that up to 100,000 class members made claims in the FTC action and that this means only \$30 million of the \$44.9 million fund will be paid to claimants in the current action and the remainder of the fund will revert to DeVry. Peart's estimation is that awarding \$15.7 million in attorney fees overcompensates counsel by \$5.24 million. Peart's written objection to final approval of the settlement included this argument and these figures. Peart's solution is that we order the trial court to reconsider the award, based on what Peart considers to be the "actual benefit" to the class.

¶ 22 This is not a persuasive argument. Peart is proposing that McCormick's counsel not be compensated for their advocacy and communication with the entire class for two years and for ultimately negotiating a settlement that benefits all class members. An attorney who recovers a common fund for the benefit of persons other than the attorney or the client is entitled to reasonable attorney fees from the fund as a whole, so as to prevent unjust enrichment to those other individuals. *Scholtens v. Schneider*, 173 Ill. 2d 375, 385, 671 N.E.2d 657, 662 (1996). As discussed below with regard to Peart's next argument about the attorney fees, the trial court based the award on the "extraordinary resolution" that McCormick's counsel achieved in this case despite DeVry's "thin" liability.

McCormick and DeVry negotiated a compromise that gives a mix of financial and nonfinancial benefits to all the class members. Under the negotiated resolution of the case, class members are entitled to financial compensation which will, in some instances, be reduced or eliminated by the compensation those individuals already claimed in the other actions. In addition, class members' nonfinancial entitlements include preservation of the right to obtain loan forgiveness through the Department of Education's Borrower Defense to Repayment program, under which federal direct student loan borrowers who were defrauded by a school may seek forgiveness of their loans. Class members will also benefit from DeVry's obligation to ask the credit reporting bureau to delete negative events that were reported about their DeVry accounts. Class members are also entitled to continue using DeVry's career counseling services past the typical cutoff date for former students. Thus, due to counsel's advocacy, Peart and his fellow class members are receiving a package of financial and nonfinancial compensation in the present without the expense, uncertainty, and time of further litigation. He may have preferred greater financial compensation and is arguing that attorney fees should be based strictly on financial payments. However, he cites no authority for that proposition and, in our opinion, it would be unjust for plaintiffs' counsel to have worked for and obtained "extraordinar[il]y" positive results for the entire class, despite "thin" grounds for negotiating with DeVry, yet be compensated for only a portion of the settlement. The attorneys' efforts created a common fund and the attorneys are equitably entitled to reasonable attorney fees for that work. *Scholtens*, 173 Ill. 2d at 385, 671 N.E.2d at 662.

¶ 23 Peart's final argument is that the attorney fee award of 35% of the settlement was "unreasonably high" and a "windfall" for a case that was actively litigated for less than two years, "never advanced beyond the motion to dismiss stage," and "piggybacked" on the FTC action. He contends the trial court should have required evidence of the legal work in order to perform a "lodestar" cross-check. He also argues that the judge's only stated reason for exceeding a 25% benchmark was being "very familiar with what appropriate fees are."

*8 ¶ 24 When determining a fee award in class action litigation, the trial court has discretion to use either the percentage-of-recovery or lodestar methods. *Brundidge v. Glendale Federal Bank, F.S.B.*, 168 Ill. 2d 235, 243-44, 659 N.E.2d 909, 914 (1995). In McCormick's motion for attorney fees, expenses, and incentive awards to the class

representatives, McCormick contended that the percentage-of-the-recovery method of determining attorney fees was the most suitable in this case. Under the percentage-of-recovery approach, reasonable attorney fees are awarded as a percentage of the amount that counsel recovered on behalf of the class. *Brundidge*, 168 Ill. 2d at 238, 659 N.E.2d at 911. Under the lodestar approach, the reasonable value of services rendered, based upon the number of hours that counsel worked, is increased by a multiplier which accounts for the complexity of the litigation, the contingent risk that counsel took on, and the benefit conferred upon the members of the class. *Brundidge*, 168 Ill. 2d at 239-40, 659 N.E.2d at 912.

¶ 25 In the motion, McCormick's counsel offered to provide the data and caselaw the court needed to perform a lodestar cross-check of the reasonableness of the fee award as determined under the percentage method, and cited *Shaun Fauley*, 2016 IL App (2nd) 150236, ¶ 59, for the proposition that the court was not required to use both methods. The trial judge did not, however, ask counsel to perform a lodestar calculation or submit their underlying records.

¶ 26 Peart cites no authority indicating that the lodestar method was preferable to the percentage-of-recovery method in this instance, *i.e.*, that the trial judge's choice of methods was an abuse of discretion. He also cites no authority for his proposal that fees be calculated under both methods as a cross-check. In fact, numerous criticisms have been lodged against the lodestar method since it originated in the federal Third Circuit and went into wider practice in the early 1970's. *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 923, 654 N.E.2d 483, 490 (1995) (“the lodestar approach has been subjected to increased scrutiny as its deficiencies began to offset or exceed its benefits”). A task force appointed by the Third Circuit to compare the respective merits of the percentage-of-recovery and lodestar methods reported that the lodestar method:

“increases the workload of an already overtaxed judicial system, *** creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law, *** has led to abuses such as lawyers billing excessive hours, *** creates a disincentive for the early settlement of cases, *** does not provide the trial court with enough flexibility to reward or deter lawyers so that desirable objectives will be fostered, *** [and] is confusing and unpredictable in its administration.” *Ryan*, 274 Ill. App. 3d at 923, 654 N.E.2d at 490 (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force*, 108 F.R.D. 237, 246-49 (1985) (*Third Circuit Report*)).

See also *Brundidge*, 168 Ill. 2d at 242-43, 659 N.E.2d at 913 (quoting Macey & Miller, *The Plaintiffs' Attorney's Role in Class Action and Derivative Litigation: Economic Analysis and Recommendations for Reform*, 58 U.Chi.L.Rev. 1, 54 (1991)) (in which the supreme court criticized the lodestar method in part because “[e]valuating the hours actually expended is a laborious, burdensome, and time-consuming task that may be biased by hindsight,” and “[t]he risk multiplier is little short of a wild card in the already uncertain game of assessing fees under the lodestar calculation”). The task force recommended retaining the lodestar for some statutory fee cases but concluded that the percentage-of-recovery was the best way to calculate reasonable attorney fees in class action cases. *Ryan*, 274 Ill. App. 3d at 923, 654 N.E.2d at 490-91 (citing *Third Circuit Report*, 108 F.R.D. at 255-56). Peart's argument that a method that is disfavored in class actions should have been used at least for a cross-check of the fee award is an argument for inefficiency. He is proposing what the supreme court disapproved of in *Brundidge*: “protracted satellite litigation involving the attorney fees award” as the trial court determines “the reasonable fees to be awarded based upon hourly rates and the reasonable number of hours expended.” *Brundidge*, 168 Ill. 2d at 243, 659 N.E.2d at 913 (acknowledging “valid criticisms” against the lodestar method). Nevertheless, it would have been in the trial judge's discretion to conduct a cross-check. *Brundidge*, 168 Ill. 2d at 244, 659 N.E.2d at 914 (“The decision to award fees based on the lodestar or percentage method is a matter within the sound discretion of the trial court, considering the particular facts and circumstances of each case.”). Peart has not persuasively argued that it was error to proceed solely under the percentage method that is favored in class actions. Furthermore, in addition to being efficient and fair, the percentage approach is likely what the class members and counsel would have negotiated when counsel agreed to take on the case. *In re Capital One Telephone Consumer Protection Act Litigation*, 80 F. Supp. 3d 781, 793 (N.D. Ill. 2015) (indicating that the “normal practice” in consumer class actions is to negotiate compensation based upon a percentage of the recovery). “This is so because fee arrangements based on the lodestar method require plaintiffs to monitor counsel and ensure that counsel are working efficiently on an hourly basis, something a [large class of] lightly-injured plaintiffs likely would not be interested in doing.” *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 501 (N.D. Ill. 2015). “The class would not have negotiated a compensation scheme that required a level of monitoring the class members were not interested in or capable of providing.” *Capital One*, 80 F. Supp. 3d at 795. Instead, the class would

have chosen the compensation scheme that required the least monitoring to align the incentives of the class and its counsel—the percentage method.” *Capital One*, 80 F. Supp. 3d at 795. We do not find that the trial court used an improper standard or procedure in determining attorney fees.

*9 ¶ 27 Also, the record belies Peart's statement that the award was based solely on trial court being “very familiar with what appropriate fees are.” The record shows that the court undertook an in-depth analysis of the facts and had ample evidentiary and legal basis for the 35% award. Consistent with the thorough presentation of facts and law that McCormick's attorney made in seeking the trial court's preliminary and final approvals of the settlement agreement, McCormick's attorney gave the trial court a comprehensive, 29-page memo in support of the motion for attorney fees, expenses, and incentive awards for the class representatives. The memo set out the procedural history of the case, discussed relevant authority, and explained why counsel considered \$15,732,500 (35% of the settlement) to be fair compensation for the work and risks that were undertaken and the result that was achieved. The memo also provided the settlement agreement and release, and sample settlement notices and claim forms which the attorneys had distributed to class members. Also attached to the memo were declarations from plaintiffs' co-counsel Benjamin H. Richman (eight pages) and Robert L. Teel (three pages) regarding their efforts on the case between 2016 and 2020 (see 735 ILCS 5/1-109 (West 2018) (providing for a verified document under penalty of perjury)).

¶ 28 The memo summarized that the settlement was based on allegations that DeVry's 90% placement claim and higher income claim enabled it to charge a tuition premium (not on allegations that a DeVry degree was valueless, but that a DeVry degree was more expensive than it would have been). Counsel recounted that it was disputed as to whether DeVry's statements were inaccurate and how much of a tuition premium it had charged; that similar suits against law schools had been dismissed; and that there had been a significant risk that the litigation would not succeed. Counsel's familiarity with the litigation included two years in motion practice and discovery in federal court before filing in state court, as well as participation in some of the other class actions that were filed in other parts of the country. The state court pleading benefitted from the success and failures of plaintiffs in other jurisdictions. In state court, there was motion practice, settlement negotiations, an unfruitful mediation with Hon. Layn R. Phillips (Ret.), rulings favorable to DeVry which had rekindled its inclination to litigate

rather than use alternative dispute resolution, and then rulings that favored McCormick and restarted the negotiations. After written submissions and telephone conferences with Judge Phillips, there was another all-day mediation session. The attorneys reached an agreement in principle that day, negotiated further, and then agreed to the written terms of settlement and notice that received the court's preliminary approval. Counsels' subsequent work included responding to inquiries and opposing objections.

¶ 29 The supporting memo included Illinois state and federal court cases in which attorney fees were awarded in the 30-to-39% or higher range. See *Ryan*, 274 Ill. App. 3d at 922, 654 N.E.2d at 489 (under Illinois law, “an attorney is entitled to an award from the [common] fund for the reasonable value of his or her services.”); *In re Continental Illinois Securities Litigation*, 962 F.2d 566, 572 (7th Cir. 1992) (“The object in awarding a reasonable attorney's fee *** is to give the lawyer what he would have gotten in the way of a fee in an arm's length negotiation, had one been feasible.”); *Taubenfeld v. AON Corp.*, 415 F.3d 597, 600 (7th Cir. 2005) (approving of the trial court's reliance on “a table of thirteen cases in the Northern District of Illinois where counsel was awarded fees amounting to 30-to-39% of the settlement fund”); see also Herbert Newberg & Alba Conte, *Newberg on Class Actions*, § 15.83 (William B. Rubenstein ed., 5th ed.) (50% of a common fund is the upper limit of a reasonable fee award).

¶ 30 During the hearing, the trial judge stated that he was familiar with appropriate awards because he had practiced law for 30 years before becoming a judge and subsequently presided over many class actions. Also, as “the Judge on this case since its inception in Cook County,” he had observed McCormick's attorneys to be “highly experienced and more than competent.” The judge reviewed precedent and the identified theories of liability and this information confirmed for the court that there had been “significant risk in this case.” Nonetheless, McCormick's capable counsel had overcome DeVry's “thin liability” and performed “an extraordinary job” *** to secure the amount of money for the class.” The judge also found that the settlement was “truly an extraordinary resolution to the great benefit of the class” and deemed the 35% fee request to be fair and reasonable compensation.

*10 ¶ 31 This record is contrary to Peart's contention that the trial judge's only reason for awarding 35% was being “ ‘very familiar with what appropriate fees are.’ ”

¶ 32 The fact that Peart is able to cite three cases suggesting 25% as a benchmark in common fund cases is of no moment. See *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 272-73 (9th Cir. 1989) (“We leave to the district court the task of determining what this reasonable percentage should be. Nevertheless, the district court should take note that 25 percent has been a proper benchmark figure, which it can then adjust upward or downward to fit the individual circumstances of this case”); *In re Home Depot Inc.*, 931 F.3d 1065, 1076 (11th Cir. 2019) (“In this Circuit, courts typically award between 20-30%, known as the benchmark range.”); *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 51 (2d Cir. 2000) (quoting, 1 Alba Conte, *Attorney Fee Awards* § 2.02 (2d ed.1993)) (25% is a “ ‘formula born from judicial practice and experience,’ ” however, the court is “disturbed by the essential notion of a benchmark” and cautions that a benchmark is not a “substitute for the searching assessment that should properly be performed in each [common fund] case.”). In our opinion, even if the trial

judge had used 25% as a starting point, he gave reasons for increasing that percentage, including that he was in the best position to assess the circumstances as he was “the Judge on this case since its inception in Cook County,” and that the attorneys were skilled litigators who undertook significant risk in overcoming DeVry's thin liability and achieving an extraordinary settlement for the class. On this record, we do not find that the 35% award was an abuse of discretion.

¶ 33 Affirmed.

Presiding Justice Gordon and Justice Burke concurred in the judgment.

All Citations

Not Reported in N.E. Rptr., 2022 IL App (1st) 201197-U, 2022 WL 1417513

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.

805 F.Supp.2d 560

United States District Court, N.D. Illinois, Eastern Division.

Shannon SCHULTE, on behalf of herself
and all others similarly situated, Plaintiff,

v.

FIFTH THIRD BANK, Defendant.

Case No. 09-cv-6655

|

July 29, 2011.

Synopsis

Background: Accountholders brought putative class actions against bank, alleging that bank engaged in unlawful practice by processing debit card purchases and ATM (automated teller machine) withdrawals in high-to-low order, which resulted in higher overdraft fees than if transactions had been processed chronologically. Settlement between accountholders and bank was preliminarily approved and settlement class was certified. Several class members submitted objections. Settling parties moved for final approval of settlement, and class counsel requested approval of attorney's fees, costs, and expenses, and approval of incentive awards for class representatives.

Holdings: The District Court, [Robert M. Dow, Jr.](#), J., held that:

strength of accountholders' claims against bank, balanced against proposed settlement, weighed in favor of approval of settlement;

complexity, length, and expense of continued litigation weighed in favor of approval of settlement;

small amount of opposition to settlement weighed in favor of approval;

opinion of competent counsel weighed in favor of approval of settlement;

stage of proceedings and amount of discovery completed did not weigh against approval of settlement;

notice to class members of settlement agreement was best notice practicable, met the requirements of due process, and

provided court with jurisdiction over absent class members; and

award of \$3,166,666 in attorney's fees for class counsel was reasonable.

Final approval of settlement granted; request for attorney's fees approved; request for costs and expenses denied; incentive award approved.

Attorneys and Law Firms

***565** [Ben Barnow](#), [Sharon Harris](#), Barnow and Associates, P.C., Chicago, IL, [Burton H. Finkelstein](#), Finkelstein Thompson LLP, Washington, DC, for Plaintiff.

[Drew M. Hicks](#), [James E. Burke](#), Keating Muething & Klekamp PLL, Cincinnati, OH, [Roger Andrew Lewis](#), [Steven A. Levy](#), Goldberg Kohn Ltd., Chicago, IL, for Defendant.

MEMORANDUM OPINION AND ORDER

[ROBERT M. DOW, JR.](#), District Judge.

Before the Court is the settling parties' motion for final approval of the settlement and Class Counsel's motion for approval of attorneys' fees, costs, and expenses, and for approval of incentive awards for the Class Representatives [103]. For the reasons explained below, the motion is granted in part and denied in part. Specifically, the Court (1) grants final approval of the settlement, finding that the settlement is fair, reasonable, and adequate; (2) approves Class Counsel's request for attorneys' fees of \$3,166,666; (3) denies Class Counsel's request for cost and expense reimbursement without prejudice; and (4) approves an incentive award of \$1,000 each for the Class Representatives, Shannon Schulte and Marlene Willard.

I. Factual Background**A. History of the Litigation**

Plaintiff filed her class action complaint in this case [1]¹ on November 21, 2009. In their complaints, Plaintiffs allege that they were Fifth Third² accountholders and had used a debit card in connection with their accounts. Plaintiffs further allege that Fifth Third improperly assessed them (and other Fifth Third customers) overdraft fees for insufficient

funds on debit card purchases and ATM withdrawals by “re-sequencing” transactions in order to maximize the number of overdraft fees. To explain, Fifth Third did not process debit card and ATM transactions in strict chronological order; rather, within a given posting period, the bank processed the transactions in high-to-low order. If a customer overdrew his account, posting transactions in a high-to-low order sometimes resulted in Fifth Third charging the customer a higher number of overdraft fees than it would have charged had it posted the transactions chronologically. Plaintiffs allege that Fifth Third's practice was unlawful and caused them and others similarly situated to suffer financial injury.

On February 16, 2010, Defendant filed a motion to dismiss the *Schulte* case [17].

On March 2, 2010, the United States Judicial Panel on Multidistrict Litigation (“JPML”), entered a Conditional Transfer Order (“CTO 13”) conditionally transferring the Actions to the Southern District of Florida, where the Multidistrict Litigation, *In re Checking Account Overdraft* *566 *Litigation*, MDL No. 2036 (the “Overdraft MDL”), was and remains pending. Shortly thereafter, Plaintiffs and Defendant filed oppositions to CTO 13 and, on April 2, 2010, Fifth Third filed a motion with the JPML requesting that the Actions be transferred to this Court for coordinated or consolidated pretrial proceedings.

That same day, Objector Michelle Keyes, who is represented, *inter alia*, by various counsel from the Overdraft MDL, filed a complaint against Fifth Third in the United States District Court for the Southern District of Florida. See *Keyes v. Fifth Third Bank*, Case No. 10–cv–21283 (S.D.Fla.). Less than a week later, on April 7, 2010, Objector Keyes requested that her case be consolidated into the Overdraft MDL; that request was granted on April 19, 2010. On April 19, 2010, an attorney representing Objector Keyes sent a letter to the JPML arguing that Defendant's motion to transfer the Actions was inappropriate, because it would create a new MDL and Objector Keyes' case had already been consolidated into the Overdraft MDL.

On May 27, 2010, the parties entered into the Settlement Agreement, the terms of which are discussed below. That day, the parties filed a motion for preliminary approval of the settlement [35].³

Later that day, counsel for the settling parties notified the JPML that the parties had entered into the Settlement

Agreement and, on June 3, 2010, the JPML vacated CTO 13. The JPML reasoned that in light of the settlement reached between Plaintiffs and Defendant, the *Schulte* and *Willard* cases should not be transferred into the Overdraft MDL. The Panel further ruled that the *Schulte* and *Willard* cases should not be centralized as a separate and new MDL in this district. The Panel noted that its ruling does not bar either the creation of a new MDL, or the transfer of the Actions to the Overdraft MDL, in the event that the settlement here was not approved or did not fully resolve those actions.

On June 9, 2010, Objectors Michelle Keyes, Amanda Ratliff and Verdel Ratliff appeared and filed objections to the motion for preliminary approval of the proposed settlement [39]. The Court postponed ruling on the motion for preliminary approval to allow the parties time to respond in writing to the objections. See [45, 46]. Objectors Keyes and the Ratliffs subsequently filed a copy of the Findings of Fact and Conclusions of Law After Bench Trial issued in *Gutierrez v. Wells Fargo Bank*, 730 F.Supp.2d 1080 (N.D.Cal.2010)[53], another case involving overdraft fees resulting from debit reordering, which the Objectors argued supported their position that the settlement here should not be preliminarily approved. The parties each responded to that filing [54, 57].

After considering the arguments from the parties and from the Keyes and Ratliff Objectors, on September 10, 2010, the Court entered an order addressing the various objections and (1) preliminarily approving the settlement; (2) approving the notice plan; (3) appointing a notice specialist and claims administrator; (4) certifying the Settlement Class for settlement purposes only; (5) appointing Class Counsel; and (6) scheduling a final fairness hearing to consider final approval of the settlement [59]. The Court subsequently reset the final fairness hearing to March 3, 2011[70].⁴

*567 Beginning in January, 2010, a number of Class Members submitted objections to the settlement.⁵ On March 7, the parties each filed their memoranda in support of final approval [102, 103], which, *inter alia*, responded to the various objections. After denying a request by the parties to conduct discovery on some of the objectors (see [111]), the Court held a fairness hearing on March 16, 2011[112], at which time the Court heard argument from counsel for the parties and from a number of objectors. Subsequently, the Court requested additional briefing on one issue raised at the fairness hearing [117], and the parties provided that briefing shortly thereafter [118]. Finally, on June 3, 2011, the Keyes and Ratliff Objectors filed a Notice of Recent Developments

in Support of Objections, in which they notified the Court of an order preliminarily approving a settlement in MDL 2036.

B. Terms of the Settlement⁶

The Court here briefly summarizes the more important provisions of the Settlement Agreement. The Agreement and Preliminary Approval Order define the relevant class as follows:

All persons in the United States who hold or held a Fifth Third Account who at any time during the Class Period incurred at least one Overdraft Fee (as defined in the Settlement Agreement) associated with at least one Fifth Third Debit Card Transaction.

Excluded from the Settlement Class are Fifth Third Bank, any parent, subsidiary, affiliate or sister company of Fifth Third Bank, and all officers or directors of Fifth Third Bank, or any parent, subsidiary, affiliate or sister company at any time during the Class Period, and the legal representatives, heirs, successors, and assigns of any of the foregoing. The Court presiding over any motion to approve the Settlement Agreement is excluded from the Settlement Class. Also excluded from the Settlement Class is any person who timely submits a valid request to be excluded from this Settlement.

¶ 7; Preliminary Approval Order [59] at 10. The class period is from October 21, 2004 through July 1, 2010. ¶ 1(d). The term “Overdraft Fee” means an “insufficient funds fee, overdraft fee, or other similar fee, incurred as a result of the ‘re-sequencing’ of a Fifth Third Debit Card Transaction in non-chronological order that was not previously reversed, refunded, or returned to the Settlement Class Member by Defendant.” ¶ 1(s). The term “re-sequencing” is not defined in the Agreement or elsewhere. A “Fifth Third Debit Card Transaction” is a transaction *568 that is “effectuated with or relating to such Fifth Third Debit Card(s), including but not limited to automatic teller machine (“ATM”) transactions and point of sale (“POS”) transactions.” ¶ 1(l). Accordingly, the settlement covers overdraft fees that result from debit card purchases and ATM transactions, but not fees that are the result of the payment of checks or other transfers.

The settlement provides for the creation of a \$9,500,000 settlement fund from which Class Members may receive reimbursement for overdraft charges incurred during any one continuous forty-five day period within the Class Period. ¶¶ 9, 23–24. There is no cap on the amount that an individual

Class Member may recover. If, after fees, costs, expenses, and incentive awards are paid, the amount claimed by Class Members is less than the remaining amount, the remainder will be distributed to claimants on a *pro rata* basis, with each such Class Member receiving up to (but not exceeding) three times the amount claimed on his or her claim form. After that, any remaining amounts will be distributed under the *cy pres* doctrine to one nonprofit credit counseling organization in each of the twelve states in which Fifth Third has branches. See ¶¶ 30, 31.

In order to obtain these benefits, Class Members are required to fill out a claim form. Dissatisfaction with the claim form (in fact, with the entire claims process) has been the subject of many of the objections submitted to the Court. Following the preliminary approval order, in which the Court expressed some skepticism regarding the claims process ([59] at 8–9), the parties submitted a revised claim form [62], which the Court approved [64]. On the revised form, Class Members must provide their name, address, social security or tax identification number, and account number(s) with Fifth Third. Class Members can then choose one of two options for submitting a claim. “Option 1” is the option for customers who “do not have all of [their] records,” and allows the Class Member to make a claim “to the best of [his or her] knowledge or belief.” Class Members are asked to identify a year, and then estimate the number of Overdraft Fees incurred during *any* 45–day period within that year, along with the aggregate amount of fees charged during that 45–day period. Class Members are not asked to identify the specific 45–day period for which they are making a claim, only the year. “Option 2” is for customers who “used [their] bank statements and/or other records to determine the information” that they were providing. Under that option, the Class Member was to identify the number and amount of “Overdraft Fees” incurred in a particular 45–day period. Under both options, the Class Member was asked to “declare under penalty of perjury that I believe that the information I am providing is true and correct to the *best of my knowledge and belief*.” (emphasis in original).

The settlement also provides for non-monetary consideration. By entering into the settlement, Fifth Third agrees to modify its business practices to no longer re-sequence debits from highest to lowest amount; instead, it will process all charges in the order that they are presented to Defendant for payment.

¶ 10(a).⁷ Fifth Third further agrees to train its call center telephone operators on issues related to overdraft charges and to authorize those *569 operators to waive any overdraft

fee for good cause (including an automatic waiver of one overdraft fee per year, plus those resulting from errors in account reporting and other hardship situations such as hospitalization or illness causing an inability to examine account balances). ¶ 10(b).

In addition to paying Class Members, the \$9.5 million settlement fund was also intended to be used to pay all attorneys' fees, costs and expenses, incentive payments, and the costs of claims administration and notice. ¶ 9; see also ¶¶ 14; 20.⁸ To date, \$1,000,984.18 had been paid from the fund to cover such costs. Further, in a letter to the Court, the parties indicated that as of May 18, 2011, they "have agreed that the Settlement Fund will not be required to pay any more of the notice and claims administration costs * * *" [119]. It appears that Defendant has paid at least an additional \$668,580.52 out of pocket to cover notice and claims administration costs. See [113]. The Agreement provides that Class Counsel will "seek approval of the Court for payment of not more than one-third of the Settlement Fund for attorneys' fees." ¶ 11. The Agreement also provides for an incentive award not to exceed \$1,000 for Plaintiffs Schulte and Willard. ¶ 12. In their motion [103], Class Counsel requests \$3,166,666 (which is 33.3% of the settlement fund) in attorneys' fees, and \$54,281.32 as reimbursement for costs and expenses. Counsel also requests an incentive award of \$1,000 for Plaintiffs Schulte and Willard.

Once the settlement becomes final (see ¶ 32), Class Members will be bound to a broad release. ¶ 34. The Agreement provides that Defendant "expressly denies any and all liability" in the lawsuits. ¶ 33.

As of May 13, 2011, the claims administrator had received "over 100,000 claims." Parties Supplemental Mem. [118] at 1. In contrast to this high participation rate, 342 Class Members excluded themselves from the settlement, and 15 Class Members submitted 13 separate objections to the settlement.

C. Plaintiffs' Expert Report

As explained in detail below, before the Court can finally approve the settlement, it must first quantify the "net expected value of continued litigation to the class." *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir.2006). For that reason, in its order preliminarily approving the settlement, the Court called for the parties to provide at the final approval stage "evidence that would enable the Court to

determine the potential value of Class Members' claims." [59] at 5.

In response to that directive, Plaintiffs have attached to their memorandum in support of final approval an expert report prepared by Mr. Thomas A. Tarter, an expert in banking and financial institutions.⁹ Class Counsel retained Mr. Tarter *570 to estimate: (1) the amount of excess overdraft fees caused by Defendant's practice of re-sequencing debit card and ATM transactions from the highest to lowest amount during the class period; and (2) the present value of Defendant's change in business practices, required under the settlement, to no longer re-sequence debit card and ATM transactions. Tarter Expert Report at 6. Mr. Tarter estimates that during the class period, Defendant collected approximately \$97.7 million as a result of its re-sequencing policy. *Id.* at 15. Mr. Tarter also estimates that the present value of Fifth Third's agreement to end its practice of re-sequencing is \$58.8 million over the next five years, or \$108.8 million over the next ten years (computed at a 3.5% discount rate). *Id.* at 15–16.

In order to reach his opinions, Mr. Tarter reviewed various documents including the complaint, settlement-related documents, Defendant's public filings and web site, and information provided by Defendant including non-public and confidential documents and data. *Id.* at 5.

To estimate total "Excess OD Fees" (Mr. Tarter's term for earnings from overdraft fees resulting from re-sequencing), Mr. Tarter multiplied the net overdraft fees attributable to debit card and ATM transactions by the probability that the fees collected by FTB were the result of re-sequencing. First, using data provided by Defendant, Mr. Tarter took the total amount of overdraft fees received from customers for each month during the class period (adjusted for waivers, reversals and charge offs).¹⁰ He then multiplied these monthly charge amounts by .57, to reflect that approximately 57% of overdraft fees were generated by debit card and ATM transactions. *See id.* at 8. These monthly totals gave Mr. Tarter an estimation of the total monthly amounts of overdraft fees collected by Defendant that resulted from debit card or ATM transactions. Mr. Tarter then attempted to estimate how much of these totals were "Excess OD Fees."

Defendant provided Mr. Tarter with the average number of overdraft fees charged to customers who incurred one or more overdraft fee for each month during the class period. *Id.* at 9. (Over the class period, the average number of overdraft fees

for this customer population ranged between 3.12 and 4.24 fees per month). Mr. Tarter recognized that there was a direct relationship between the number of overdraft fees charged to a customer in any given day¹¹ and the likelihood that one or more of the fees was the result of re-sequencing. When a fee was the result of re-sequencing, Mr. Tarter called it a “mismatch.” Using a set of matrices, Mr. Tarter calculated that the probability of mismatch was 0% where there was only one overdraft transaction,¹² 10% for two, 17.65% for three, and 20.21% for four. *Id.* at 11. These probabilities were plotted on a graph, and a “best-fit” curve was created, *571 which enabled Mr. Tarter to calculate the probability of “mismatch” for average numbers of overdraft transactions that were not whole numbers.¹³

Mr. Tarter calculated the total amount of Excess OD Fees for three different scenarios, assessing the likely total Excess OD Fees depending on whether the average number of fees assessed per month all occur on one day, or are spread over two or three days. Mr. Tarter reasoned that if overdrafts were spread over two or three days, the percentage of OD fees that were “mismatched” would be lower. To calculate Excess OD Fees, assuming the average number of fees assessed per month all occur on one day, Mr. Tarter multiplied 57% of the total amount of overdraft fees collected for a given month by the mismatch probability for that month. Each month's totals were then summed, giving Fifth Third's total Excess OD Fee earnings for the entire class period, assuming the average number of fees assessed per month all occurred on one day. The calculation assuming the average number of fees assessed per month occurred on two or three days was identical, except that Mr. Tarter divided the probability of a “mismatch” by two or three, respectively, to reflect the chance that overdrafts within a particular month were spread over two or three days.

Ultimately, Mr. Tarter concluded, based on his experience in banking, that the average number of overdraft fees assessed per month would likely be spread over two or three days. This assumption was based on the fact that most people are paid by their employers either twice or three times per month, and individuals are most likely to overdraft their accounts the day before they are paid. *Id.* at 9. Thus, to calculate Excess OD Fees for the class period, Mr. Tarter averaged the total Excess OD Fees collected, where the average number of overdraft fees assessed per month would likely be spread over two or three days. This resulted in a figure of \$97.7 million.¹⁴

Mr. Tarter then estimated the present value of Defendant's change in business practices, required under the settlement, to no longer re-sequence debit card and ATM transactions. In determining this figure, Mr. Tarter had to account for Regulation E, which became effective in July and August of 2010. This regulation provided that accountholders can only be assessed overdraft fees for debit and ATM transactions if they have affirmatively authorized a bank to allow them to overdraft their account—otherwise, the transaction is simply declined. *Id.* at 13. Analysis of data provided by Defendant indicated that Regulation E is associated with a 36% decrease in overdraft fee revenue.

Thus, to estimate the present value of the settlement's requirement that Defendant no longer re-sequence, Mr. Tarter used the most recent completed calendar year for which data was available, 2009, to calculate Defendant's likely theoretical future earnings from re-sequencing. In this calculation, the estimated Excess OD Fees for 2009 were reduced by 36% to take into *572 account Regulation E. *Id.* at 14. The resulting figure was discounted at a rate of 3.50% (to correlate with the 10-year U.S. Treasury Bond) for five and ten years, resulting in a net present value of \$58.8 million over five years or \$108.3 million over ten years in losses to Defendant resulting from the settlement's requirement that it no longer engage in re-sequencing.

D. Defendant's Damage Calculation

Attached to their memorandum in support of final approval of the settlement (Ex. 1 to [102]), Defendant includes its own damage calculation that estimates that “the impact of high-to-low posting on debit and ATM transactions during the Class Period was \$16,752,710 annually.” See Affidavit of Kevin Sullivan, Senior Vice President, CFO–Retail, Banking (“Sullivan Aff.”), ¶ 9. Extrapolated out over the entire class period, that figure amounts to approximately \$95,281,038.

Mr. Sullivan explains that over the class period, Fifth Third realized an average total of approximately \$244,922,667 per year in overdraft fees.¹⁵ This figure represents all overdraft fees, not just those that resulted from debit card or ATM transactions. Fifth Third determined that “approximately 57% of the yearly realized overdraft fees were the result of a debit card or ATM transaction.” *Id.* ¶ 8. Thus, multiplying the above figure by .57 resulted in average yearly overdraft fees of \$139,605,920 that were the result of debit card and ATM transactions. Using financial models that Fifth Third prepared for its periodic regulatory filings, Fifth Third estimated that

approximately 12% of the overdraft fees relating to debit card and ATM transactions were attributable to its use of a high-to-low posting order. *Id.* ¶ 9. Thus, the “estimated impact of high-to-low posting on debit and ATM transactions during the Class Period was \$16,752,710 annually,” *id.*, which is \$1,396,059 per month, or \$95,281,038 over a 68.25-month class period.

Fifth Third's data further showed that approximately 72% of the overdraft fee revenue was generated by the approximately 7% of Fifth Third's customers who overdrafted six or more times a month. *Id.* ¶ 10. Adjusting for these “chronic overdrafters,” the “total estimated impact of high-to-low posting on debit card and ATM transactions for the 93% 'non-frequent overdrafters' was * * * \$26,711,266” over the entire class period. *Id.* ¶ 11.

E. Objections to the Settlement

As noted above, construing the term “objection” broadly, 15 Class Members filed 13 separate objections to the settlement. The Court summarizes each of the objections below.

1. Keyes and Ratliff, and Kannapel Objections

Objectors Michelle Keyes, Amanda Ratliff, Verdel Ratliff, and Laura Kannapel are each represented by members of the Plaintiffs' Executive Committee (“PEC”) in the Overdraft MDL. Objectors Keyes, Amanda Ratliff, and Verdel Ratliff filed an objection [90] that challenges the settlement on numerous grounds. Objector Kannapel filed a separate objection [91]. In further support of their objection, the Keyes/Ratliff Objectors filed the preliminary approval order of a settlement agreement reached between the plaintiffs and defendant Bank of America in the Overdraft MDL [121]. The Court will discuss these objections together and will refer to the two groups of objectors collectively as the “PEC Objectors.”

*573 a. Amount of Settlement Fund and Criticism of Expert Report

The PEC Objectors argue that given the potentially high value of Class Members' claims, the amount that the settlement fund provides to reimburse Class Members is inadequate.

Before discussing this objection, the Court should note that pursuant to the schedule set by the Court, the PEC Objectors' filed their objections before the parties filed their briefs in support of the settlement. As discussed in detail above, Plaintiffs' brief attached and discussed the Tarter Expert Report and Defendant provided its own damages calculation. In their opening objections, the PEC Objectors argued that the Court could not grant final approval because the settling parties had, at the time those objections were filed, failed to provide evidence that would enable the Court to determine the value of Class Members' claims. *See, e.g.* Keyes/Ratliff Objection at 3–4; Kannapel Objection at 4–5. The filing of the Tarter Report and Sullivan Affidavit corrected this deficiency, and so, the Court need not discuss these arguments further.

After receiving the parties' memoranda in support of final approval, the PEC Objectors did not seek leave to file a reply brief to attack the Tarter Report or Sullivan Affidavit (or to address any other issues with the parties' memoranda).¹⁶ However, at the fairness hearing, counsel for Objectors Keyes and Ratliff did offer two specific criticisms of the way in which Mr. Tarter calculated the value of the class's claims. See Fairness Hearing Tr. at 96–100. First, the Keyes/Ratliff Objectors note that while Mr. Tarter recognized that those individuals who incurred only one overdraft fee in a month could not be Class Members, the population from which he obtained his average number of fees charged per month was customers who incurred *one or more* overdraft fees for each month during the class period. Tarter Report at 9. Counsel argues that there is no way to know how much this “mistake” skewed Mr. Tarter's results. Second, Mr. Tarter assumed that because 57 percent of all transactions were debit card or ATM transactions, 57 percent of overdraft fees were attributable to debit card or ATM transactions. Counsel argues that this is a *non sequitur*. In fact, according to counsel, a customer would probably be more likely to overdraft when making a debit card transaction than when writing a check. Fairness Hearing Tr. at 98–99 (“Debit cards probably account for 95 percent of the overdraft fees.”).

Because the PEC Objectors could not challenge the Tarter Report or Sullivan Affidavit in their opening objections, the PEC Objectors instead pointed to settlements and verdicts in other cases involving claims similar to those at issue in this lawsuit as proof that the settlement amount here is inadequate. Specifically, the objectors argue that the decision in *Gutierrez v. Wells Fargo Bank*, 730 F.Supp.2d 1080 (N.D.Cal.2010), where a judge excoriated Wells Fargo for its debit reordering practices and ordered it to pay \$203 million in restitution to

its California customers and cease its reordering practices, is evidence of the inadequacy of this settlement. Keyes/Ratliff Obj. at 5–6. The Court discussed the *Gutierrez* decision in its preliminary approval order ([59] at 6 n. 4) and will do so again below. Further, the objectors point to a settlement reached in the Overdraft MDL between the plaintiffs there and Bank of America, in which Bank of America agreed to pay class members *574 \$410 million to resolve the claims pending against it in that litigation. See Ex. A to [121]. The Court will address the objection about the size of the \$9.5 million fund in detail below, along with each of the other objections raised.

b. Benefits Allocation

The PEC Objectors argue that the distribution of the settlement proceeds is arbitrary and capricious, resulting in unwarranted inequitable treatment of Class Members. Keyes/Ratliff Obj. at 7–9; Kannapel Obj. at 7–10. Objectors argue that by forcing Class Members to choose a single 45–day period in which to claim a refund of overdraft charges, the settlement will unfairly “benefit [] a Class Member who incurred the brunt of his or her overdraft fees over a short period of time at the expense of another Class Member who accumulated a larger amount of impermissible fees over a greater period of time.” Kannapel Obj. at 8. For instance, a customer who incurred a total amount of overdraft fees of \$100, but incurred them all in one month, may be entitled to a full refund. However, a customer who incurred \$1,000 in total fees, spread out evenly over a two-year period, could only recover approximately \$63. Further, the Objectors take issue with the fact that funds left over after the initial distribution are to be used to pay up to treble damages to Class Members who have already been compensated, instead of being used to refund Class Members for charges from outside the 45–day period.

c. Claims Process

The PEC Objectors argue that the claims process is unnecessary and that it is unduly burdensome on Class Members and deters claims.

First, the Objectors have a fundamental disagreement with the need for a claims process. The Objectors argue that because the identity of Class Members and the amount that each has been overcharged can be determined from Fifth Third's records, there is no need for customers to submit

a claim form. Instead, argue the Objectors, Fifth Third should simply send payments directly to Class Members. The Keyes/Ratliff Objectors argue that “[t]he Bank of America settlement demonstrates the feasibility of a direct distribution of settlement benefits to class members without the requirement of self identification.” [121] at 1. “There, the settlement administrator will identify class members and the harm they incurred for the [class period] and then class members will have a credit posted to their account, or in the case of former customers, have a check sent to their most recent address.” *Id.*

Next, the Objectors identify problems with the claims process as it is employed in this case. First, as the Court explained in its order calling for additional briefing [117], the Objectors argued that it would be impossible for any Class Member to submit a claim in good faith on the basis of the settlement documents as they currently are written. *Id.*; see also Kannapel Obj. at 12; Fairness Hearing Tr. at 73–78. As the Court also explained in its prior order, under both options in the claim form, a Class Member must identify an amount of “Overdraft Fees” that he or she incurred during a particular time period. Again, the term “Overdraft Fee” means “an insufficient funds fee, overdraft fee, returned item fee, daily overdraft fee, overlimit fee, or other similar fee, incurred as a result of the ‘re-sequencing’ of a Fifth Third Debit Card Transaction in non-chronological order that was not previously reversed or refunded.” According to the Objectors, a major problem with the settlement is that Class Members have no way of knowing which fees were the “result of [* * *] ‘re-sequencing’ ” such that they could accurately fill out the form and make a claim. The Objectors argue that *575 Defendant has not disclosed how it determines the order in which charges are posted to customers' accounts. Counsel further submitted that a Class Member viewing his or her statement would not be able to determine which fees were “Overdraft Fees” in part because the statements do not indicate the date on which charges were posted within a posting period—they only indicate the date on which a purchase was made.

Next, the Objectors vociferously object to Fifth Third's refusal to make Class Members' statements over the 69–month class period available for free so that Class Members can accurately fill out claim forms. The Settlement Agreement only provides free statements for a period going back 16 months from the date of request by the Class Member. A customer must pay \$5 per month for additional statements. The 16–month period of “free statements” does not appear to be a concession to

Class Members as part of the settlement; rather, it appears to be Fifth Third's standard practice with regard to making past statements available to customers. The Objectors argue that the requirement that Class Members pay Fifth Third for the records that they need to determine the value of their claims is unfair and intended to deter claims.

d. Amount of Discovery Conducted at Time of Settlement

Finally, the PEC Objectors argue that the absence of pre-settlement discovery demonstrates that Class Counsel failed to properly evaluate the merits of the claims at issue in this litigation. Keyes/Ratliff Obj. at 3; 10–11; Kannapel Obj. at 6. The Objectors point out that the “docket reflects that no formal or informal discovery was conducted, and the settlement reached at the early stage of the proceedings suggests that none was conducted.” Keyes/Ratliff Obj. at 10. Further, the Objectors argue that the 30–day period of “confirmatory discovery” provided for in the Settlement Agreement is “an inadequate substitute for adversary discovery.” *Id.* at 11.

2. Vitali Objection

Aaron Vitali raises a number of objections to the settlement. See Vitali Obj. [88]. First, Mr. Vitali takes issue with the fact that Defendant “[has] not admitted guilt.” To Mr. Vitali, this “is much more important than any nominal fee or recovery.” Next, Mr. Vitali argues that the class period ends on July 1, 2010, and Defendant will have no “repercussions” and Class Members will have no recovery “for the months post July 2010.” In recognition of lost interest and “emotional and financial hardship” suffered by customers as a result of Defendant's conduct, Mr. Vital proposes that interest “be taken into account when repaying the fees incurred.” Next, Mr. Vitali objects that “Fifth Third is only willing to refund a 45 day window of fees”—Mr. Vitali feels that Fifth Third should refund all fees wrongfully obtained. Furthermore, Mr. Vitali argues that the “online data provided only goes back 16 months” and “the only ones who can bring up past data about closed accounts or older accounts is Fifth Third.” Mr. Vitali asserts that Fifth Third (or rather, an independent agency working with Fifth Third) should determine the amount of refund owed to each Class Member. Mr. Vitali appeared at the fairness hearing and reiterated these objections.

3. Katz Objection

Joshua K. Katz raises three objections to the settlement. See Katz Obj. [93]. First, Mr. Katz argues that the proposed settlement fund is too small. Second, Mr. Katz argues that the court in the Overdraft MDL has already “considered and rejected” some of the arguments that Defendant makes in its motion to dismiss. Mr. Katz argues that this shows that the *576 “plaintiff's case rests on very solid ground [* * * and therefore] there is no justification for accepting such a small amount in comparison to the amount of money wrongfully realized by the defendant.” Katz Obj. at 1. Mr. Katz's third objection is “that the settlement contains a provision whereby the defendants will actually make money from the class members if they need to obtain their banking records in order to submit a claim.” *Id.* In this settlement, because a Class Member “may not be aware of what specific 45–day period should be used in submitting his or her claim,” there is a “legitimate need to examine 5 years' worth of records to make this decision.” Mr. Katz argues that Defendant should provide customer records for the entire class period to those who request them at no charge.

4. Scyoc Objection

David R. Scyoc identifies three problems with the proposed settlement and makes three proposals as to how Defendant's business practices should be changed going forward. See Scyoc Obj. [96]. First, Mr. Scyoc argues that the class period should extend through December 31, 2010. Scyoc also objects that a “45 continuous days claim period is too restrictive,” instead, a Class Member should choose “any 45 [presumably non-contiguous] days during [the] claim period.” Finally, like Objector Katz, Mr. Scyoc argues that “16 months [of] free statements is too restrictive.” With regard to the change in Defendant's business practices, Mr. Scyoc believes that instead of agreeing to process charges chronologically, Defendant should “process all charges from lowest to highest unless requested otherwise by [the] customer in writing.” Further, the bank should “reject/deny all prospective charges if [there are] insufficient funds in [the] customer's account unless [the] customer has requested otherwise in writing.” Finally, Mr. Scyoc argues that Defendant should “credit deposits first, before processing debits.” Mr. Scyoc appeared at the fairness hearing and reiterated these objections.

5. Ackerson Objection

Objector Roger Ackerson did not file his objection; instead it was mailed directly to the Court and to Class Counsel. Class Counsel attached Mr. Ackerson's objections to Exhibit I to Plaintiffs' memorandum in support of final approval [103]. Mr. Ackerson objects that the settlement only covers customers who utilized debit cards or ATMs. Further, Mr. Ackerson argues that "[i]f indeed wrongdoing was done, then a single period of 45 days seems to be of little value." Ackerson Obj. at ¶ 5. Mr. Ackerson argues that claims period should be "expanded to the amount of time that I held accounts with Fifth Third Bank." Portions of Mr. Ackerson's objection relate to a dispute that he had with Fifth Third about his particular account, and not to the settlement generally. In addition to his objection, Mr. Ackerson has included some correspondence with the Better Business Bureau and Fifth Third executives that relates to this dispute. The Court has not considered this material.

6. Cannata Objection

Objector Sam P. Cannata also did not file his objection; instead it was mailed directly to Class Counsel. Class Counsel also included Mr. Cannata's objection in Exhibit I to Plaintiffs' memorandum [103]. First, Mr. Cannata argues that the fees sought by Class Counsel (1/3 of the entire settlement fund) are excessive. Mr. Cannata notes that much of this fund will not be paid out to Class Members; some may be distributed in a *cy pres* and other amounts will go towards covering administrative costs. Mr. Cannata argues that the issue of attorney's fees should be "deferred until such time as the Court has received reports indicating the amount of *\$577 monetary relief that has actually been delivered to the Class." Cannata Obj. at 2.

Second, Mr. Cannata takes issue with the *cy pres* distribution itself. Mr. Cannata argues that distributions to Class Members should be "large enough so as to exhaust the fund," such that no *cy pres* is needed. Further, Mr. Cannata questions how the charity that will be the recipient of the distribution will be chosen. Cannata Obj. at 3–4.

7. Albright Objection

The Court received a letter dated March 9, 2011 from Patrick Albright. In it, Mr. Albright includes receipts and account statements and argues that these materials show that he was improperly assessed overdraft charges. With respect to the instant settlement, Mr. Albright argues that it "astounds [him] that [* * * the settlement] [l]imits the period of questionable transactions to 45 days." Further, Mr. Albright questions the need for a claims process—instead the amounts owed to customers "should be determined by Fifth Third's own records [because] * * * [t]hey know exactly how much they took." Third, Mr. Albright objects that the settlement "[a]llows for no admission of guilt or punitive damages, and has no deterrent value." Mr. Albright argues that "\$9.5M is an insulting sum from a bank that may have profited ten times that amount by their fraudulent practices."

8. Other Objections and Submissions

The Court has received the following additional communications from Class Members. Some of these are not "objections" in the formal sense; however in the interest of completeness, the Court will summarize them below.

On February 14, 2011, Elizebeth Stackel filed a packet of material with the Court [89]. The Court has closely read Ms. Stackel's filing and concludes that it does not identify any specific objection to the settlement.

In a handwritten letter to Class Counsel dated February 23, 2011, Andrew Kelly states only that he is "an objector to this settlement [and is] hiring my own lawyer!" Mr. Kelly's letter was included in Exhibit I to Plaintiffs' memorandum. Mr. Kelly identifies no specific grounds for his objection.

In a handwritten letter to the Court dated December 27, 2010 and filed with the Court [84], Christopher Basie states that he "object[s] to the settlement" and gives the Court permission to use "[t]he history of my checking account and phone calls [to the Goodlettsville, TN Branch]" in support of his objection. Mr. Basie identifies no specific grounds for his objection.

On February 24, 2011, Teresa and Timothy Drew filed a "declaratory affidavit" with the Court [95]. The Drews report that on February 15, 2011, they attempted to obtain records that they needed in order to prepare their claim form, and were told that they could not obtain the records free of charge. The Drews argue that the "requirement to pay for the records necessary to establish [their] claim create[s] a hardship and

[is] divisive to just and equitable discovery of the facts to settle damages and is directly contrary to the findings & Settlement Order of Judge Robert M. Dow, Jr.” Further, the Drews attach various of their bank account records and identify instances where transactions “were posted out of sequence with obvious results.” The Drews state that “[i]f it is found that mine or my sons credit record was in some way impugned, and or I do not receive at least the amount of recovery per my claim herein, I may seek additional damages and hereby give Notice that I reserve the right to do so and to be conditionally excluded* * *.” Because the Drews’ affidavit attempts to reserve certain claims that would otherwise be released in the settlement and purports to *578 seek “conditional” exclusion, the Court interprets the Drews’ affidavit as a request for exclusion.

The Court received two letters from R. McKinley Elliot, Esq. The first, dated March 2, 2011, informs the Court that Defendant “continues to reorder the posting of checks to customer accounts.” The second letter, dated March 11, 2011, complains that the implementation date for Fifth Third’s change in business practices was twice pushed back, finally to March 25, 2011.

II. Legal Standard

A court may approve a settlement that would bind class members only if it determines after a hearing that the proposed settlement is “fair, reasonable, and adequate.” *Fed.R.Civ.P. 23(e)(2)*. To evaluate the fairness of a settlement, a court must consider “the strength of plaintiffs’ case compared to the amount of defendants’ settlement offer, an assessment of the likely complexity, length and expense of the litigation, an evaluation of the amount of opposition to settlement among affected parties, the opinion of competent counsel, and the stage of the proceedings and the amount of discovery completed at the time of settlement.” *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir.2006) (quoting *Isby v. Bayh*, 75 F.3d 1191, 1199 (7th Cir.1996)).

“The ‘most important factor relevant to the fairness of a class action settlement’ is the first one listed: ‘the strength of plaintiff’s case on the merits balanced against the amount offered in the settlement.’” *Synfuel*, 463 F.3d at 653 (quoting *In re Gen. Motors Corp. Engine Interchange Litig.*, 594 F.2d 1106, 1132 (7th Cir.1979)). Furthermore, “[i]n conducting this analysis, the district court should begin by ‘quantifying the net expected value of continued litigation to the class.’ To do so, the court should ‘estimate the range of possible

outcomes and ascribe a probability to each point on the range.’” *Id.* (quoting *Reynolds v. Beneficial Nat’l Bank*, 288 F.3d 277, 284–85 (7th Cir.2002)). Although the Seventh Circuit has recognized that “a high degree of precision cannot be expected in valuing a litigation,” the court should nevertheless “insist that the parties present evidence that would enable possible outcomes to be estimated,” so that the court can at least come up with a “ballpark valuation.” *Id.* (quoting *Reynolds v. Beneficial Nat. Bank*, 288 F.3d 277, 285 (7th Cir.2002)). In essence, a court must weigh the value of the proposed settlement against the total amount that the class could recover, discounted by the weaknesses and risks inherent in the class’ claims.

“Federal courts naturally favor the settlement of class action litigation.” *Isby*, 75 F.3d at 1196. Nevertheless, the Seventh Circuit has warned that “the structure of class actions under *Rule 23* * * * gives class action lawyers an incentive to negotiate settlements that enrich themselves but give scant reward to class members, while at the same time the burden of responding to class plaintiffs’ discovery demands gives defendants an incentive to agree to early settlement that may treat the class action lawyers better than the class.” *Thorogood v. Sears, Roebuck & Co.*, 627 F.3d 289, 293 (7th Cir.2010) (emphasis omitted). District courts must therefore “exercise the highest degree of vigilance in scrutinizing proposed settlements of class actions.” *Synfuel*, 463 F.3d at 652; see also *Reynolds*, 288 F.3d at 280.

III. The Settlement Satisfies *Rule 23* Because It Is Fair, Reasonable, and Adequate

Applying the five factors identified in *Synfuel*, 463 F.3d at 653, the Court concludes that the settlement is “fair, reasonable, *579 and adequate” and thus meets the requirements of *Rule 23*.

A. Strength of Plaintiffs’ Case Balanced Against Amount of Settlement

As noted above, the “most important factor” in determining whether a proposed settlement satisfies *Rule 23* is the “strength of plaintiff’s case on the merits balanced against the amount offered in the settlement.” *Synfuel*, 463 F.3d at 653. Because the Settlement promises to yield benefits to the class that are significant in light of Defendant’s potentially strong defenses should the case proceed to trial, the first factor under *Synfuel* counsels approval.

1. Potential Value of the Class's Claims

The Court begins its task by “‘quantify[ing] the net expected value of continued litigation to the class.’” *Synfuel*, 463 F.3d at 653 (quoting *Reynolds*, 288 F.3d at 284–85). Setting aside the specter of punitive damages, the evidence introduced by the settling parties established that the top of “the range of possible outcomes,” *id.*, is a recovery by the class of between \$95.2 million (Defendant's number) and \$97.7 million (Plaintiffs' expert's number). The potential exposure calculations put forward by the parties went essentially unchallenged,¹⁷ and no objector sought to introduce his own analysis of the class's potential recovery in this case. The evidence before the Court therefore conclusively establishes that around \$96.5 million (the average of parties' top-end damage calculations) is the most that the class could hope to recover.

The next step in determining the fairness of the settlement is to discount the value of the class's claims based on the various defenses available to the defendant. See *Synfuel*, 463 F.3d at 653. The record in this case establishes that Plaintiffs would face considerable hurdles if they proceeded toward trial. Were this litigation to proceed absent settlement, Fifth Third's memorandum in support of its motion to dismiss [23] shows that it would argue that Fifth Third was contractually authorized to re-sequence Class Members' debit card transactions from the *580 highest to lowest amount, and that the terms of the Deposit Agreement preclude a finding that Fifth Third engaged in any deception or unfair conduct. *Id.* at 2–3. All customers signed a signature card when opening a personal deposit account, which provides that the terms and conditions contained in the card, “together with resolutions or authorizations which accompany this signature card, if applicable, and the Rules, Regulations, Agreements and Disclosures of Bank constitute the Deposit Agreement (“Agreement”) between individual(s) or entity(ies) named hereon (“Depositor”) and the Bank.” *Id.* at 2. Fifth Third's Rules and Regulations state, *inter alia*:

In the case of overdraft or overpayment of any account, whether such by error, mistake, inadvertence, or otherwise, the amount of such overdraft shall immediately be paid to [Fifth Third]. An overdraft fee may be assessed by [Fifth Third] whether

[Fifth Third] pays the item or not. If multiple items are presented to [Fifth Third] and there are not sufficient collected funds to pay all of those items, [Fifth Third] (not customer) has the right to decide the order of the items that will be paid and which items will be returned, if any. [Fifth Third] may select any payment order at any time, which may include paying the largest items first such as your mortgage, rent or car payment.

Id. at 2.

While Plaintiffs would oppose a contract-based defense, a number of courts have accepted similar arguments when made by bank defendants in cases where the plaintiff was alleging that the defendant bank's re-sequencing practices were unlawful. Most notably, in *Hassler v. Sovereign Bank*, 374 Fed.Appx. 341 (3d Cir.2010), where a New Jersey plaintiff alleged that the defendant bank's practice of re-sequencing debit card transactions from highest-to-lowest amount was unlawful, the Third Circuit affirmed the dismissal of the plaintiff's breach of contract for violation of the duty of good faith and fair dealing, consumer fraud, and unjust enrichment claims based on its determination that the account agreement at issue (which Fifth Third has argued is similar to the language of the Deposit Agreement) allowed the defendant bank to reorder overdraft fees and “explicitly provided for the reordering of charges.” *Id.* at 344; see also *Fetter v. Wells Fargo Bank, N.A.*, 110 S.W.3d 683, 691 (Tex.App.Ct.2003) (affirming summary judgment against breach of implied duty of good faith and fair dealing claim because the deposit agreement “specifically permit[ted] high to low posting in addition to the authorization provided in UCC section 4–303(b)”; *Daniels v. PNC Bank, N.A.*, 137 Ohio App.3d 247, 738 N.E.2d 447, 449 (2000) (dismissing breach of implied duty of good faith and fair dealing claim because the deposit agreement that authorized the defendant bank to post items “in any order convenient to [the bank]” authorized the bank to post items from highest-to-lowest); *Smith v. First Union Nat'l Bank*, 958 S.W.2d 113, 114 (Tenn.Ct.App.1997).

Fifth Third has also argued that federal and Illinois law authorized it to re-sequence debit card transactions from highest to lowest amount, and accordingly, Plaintiffs could

not establish a violation of the Illinois Consumer Fraud Act (Count I) or other similar state consumer fraud statutes. See, e.g. 815 ILCS 505/10b(1) (“Nothing in this Act shall apply to * * * [a]ctions or transactions specifically authorized by laws administered by any regulatory body or officer acting under statutory authority of this State or the United States.”). In its memorandum in support of its motion to dismiss, Fifth Third relied on an Illinois decision affirming the dismissal of claims alleging that a bank's practice of reordering checking transactions *581 was unlawful. See *Hill v. St. Paul Fed. Bank for Savings*, 329 Ill.App.3d 705, 263 Ill.Dec. 562, 768 N.E.2d 322, 328 (Ill.App.Ct. 1st Dist.2002). Citing to 815 ILCS 505/10b(1), the *Hill* Court held that “a bank's failure to disclose the posting order of checks in its schedule of fees comes under the Act's exemption for conduct authorized by law.” *Id.*, 263 Ill.Dec. 562, 768 N.E.2d at 328. The court explained that the portion of the federal Truth in Savings Act addressing bank fees specifies that a bank “need not include” in its disclosures “any information not specified” in applicable regulations. *Id.*, 263 Ill.Dec. 562, 768 N.E.2d at 327–328 (quoting 12 U.S.C. § 4303(a)). That regulation, 12 C.F.R. Pt. 230, Supp. I, § 230.4(b)(4), requires only that the bank state the fee amount and the conditions under which a fee may be imposed, such as by stating a “\$4.00 monthly service fee.” *Id.*, 263 Ill.Dec. 562, 768 N.E.2d at 328. Because the order in which overdrawn checks are posted “is not a ‘condition’ under which overdraft fees are assessed within the meaning of section 4303(b)(1),” the court concluded that “federal law does not require banks to disclose in their schedules of fees the posting order of checks and other items.” *Id.*

Furthermore, under the Illinois Uniform Commercial Code, banks are expressly authorized to post “items” to a customer's account “in any order.” 810 ILCS 5/4–303(b) (UCC § 4–303(b)). An “item” is defined in the UCC as “an instrument or a promise or order to pay money handled by a bank for collection or payment.” 810 ILCS 5/4–104(9) (UCC § 4–104(9)). Paragraph 7 of the Official Comments to 810 ILCS 5/4–303 (UCC § 4–303) provides the rationale for allowing banks to pay “items” in any order:

As between one item and another no priority rule is stated. This is justified because of the impossibility of stating a rule that would be fair in all cases, having in mind the almost infinite number of combinations of

large and small checks in relation to the available balance on hand in the drawer's account; the possible methods of receipt; and other variables. *Further, the drawer has drawn all of the checks, the drawer should have funds available to meet all of them and has no basis for urging one should be paid before another;* and the holders have no direct right against the payor or bank in any event, unless of course, the bank has accepted, certified or finally paid a particular item, or has become liable for it under Section 4–302. Under subsection (b) the bank has the right to pay items for which it is itself liable ahead of those for which it is not.

Id., Official Comment ¶ 7 (emphasis added); see also *Hill*, 263 Ill.Dec. 562, 768 N.E.2d at 325 (discussing 810 ILCS 5/4–303(b)). While *Hill* concerned the re-sequencing of checks, Defendant would argue that the same rationale would apply to re-sequencing of debit card and ATM transactions. In their memorandum, Plaintiffs acknowledged that Defendant's contract-based defenses and arguments that its conduct was authorized by law would be difficult to overcome.

With regard to Plaintiffs' unjust enrichment claims, in addition to the foregoing arguments, Fifth Third would argue that such claims are barred because Fifth Third's relationship with each Class Member was governed by the express terms of the Deposit Agreement. Although some exceptions exist, Plaintiffs acknowledge that each of twelve states in which Fifth Third has offices recognizes that a cause of action for unjust enrichment does not lie when an express contract governs the relationship between parties. See Unjust Enrichment Chart, Exhibit D to Pl. Mem. [103]. Plaintiffs concede that “this issue would necessitate briefing and review, further complicating this matter absent settlement.” Pl. Mem. at 15.

*582 Plaintiffs would also be required to face arguments relating to the voluntary payment doctrine. As a general matter, the voluntary payment doctrine provides that “[a]bsent fraud, coercion or mistake of fact, monies paid under a claim of right to payment but under a mistake of law are not recoverable.” *Spivey v. Adaptive Mktg. LLC*, 622 F.3d

816, 822 (7th Cir.2010) (discussing Illinois' interpretation of the voluntary payment doctrine). According to Plaintiffs, each of the states where Fifth Third has offices recognizes a similar form of the voluntary payment doctrine. See Voluntary Payment Doctrine Chart, Exhibit E to Pl. Mem. As attested to in the Affidavit of Kevin Sullivan, Fifth Third estimates that approximately 72% of its overdraft fee revenue was generated from the approximately 7% of Fifth Third customers who overdrafted six or more times a month. Sullivan Aff. ¶ 10. Fifth Third would likely argue that, at some point, such persons had actual or constructive notice of Fifth Third's practice of re-sequencing debit card and ATM transactions, potentially rendering such Class Members' claims barred (or greatly reduced) by the voluntary payment doctrine.

In addition to these defenses on the merits, absent settlement, Plaintiffs would be required to overcome a contested class certification proceeding. There is no guarantee that Plaintiffs would prevail at this stage. See *Pella Corp. v. Saltzman*, 606 F.3d 391, 393 (7th Cir.2010) (“Class treatment of consumer fraud cases can certainly present difficulties, and courts should consider these concerns before deciding to grant class certification”). At such a proceeding, Plaintiffs would have to demonstrate the manageability of the case; a requirement absent in a class certified for settlement purposes only. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997) (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems for the proposal is that there be no trial.”) (citations omitted). Additionally, any ruling on class certification would likely be appealed pursuant to Rule 23(f), further lengthening and complicating the matter.¹⁸

While Plaintiffs maintain that their claims would ultimately succeed, the above discussion establishes that Fifth Third has a number of potentially meritorious defenses. Absent settlement, Class Members would face the real risk that they would win little or no recovery. What is assured is that any victory would come only after many months (or years) of hard-fought litigation. For these reasons, the use of a significant discount percentage is appropriate. In fact, Mr. Sullivan's calculations show that if the Court accepted just one of Defendant's defenses—the “chronic overdrafter”/voluntary payment argument—the value of the Class's claims would fall approximately 72% (from \$95.3 million to \$26.7 million). Sullivan Aff. ¶ 11.

2. Value of the Settlement to Class Members

On the other side of the ledger, the evidence presented to the Court establishes that Class Members will realize significant benefits from the settlement. In addition to paying \$9.5 million to the settlement fund, Fifth Third has also expended over \$416,000 in fulfilling its notice *583 obligations under the agreement. Also, Fifth Third has paid at least an additional \$668,580.52 out of pocket to cover other notice and claims administration costs. See [113]. This amounts to a total expenditure of at least \$10.58 million. It must also be remembered that “a dollar today is worth a great deal more than a dollar ten years from now,” *Reynolds*, 288 F.3d at 284, and a major benefit of the settlement is that Class Members may obtain these benefits much more quickly than had the parties not settled. If the Class Members were “required to await the outcome of a trial and inevitable appeal, [* * *] they would not receive benefits for many years, if indeed they received any at all.” *In re AT & T Mobility Wireless Data Services Sales Tax Litig.*, 789 F.Supp.2d 935, 961, 2011 WL 2204584, at *24 (N.D.Ill. June 2, 2011).

Further, the prospective relief agreed to by Defendant, including its agreement to cease its practice of re-sequencing transactions from the highest to lowest amount, is an important and valuable benefit for the numerous Class Members who inevitably will continue to bank with Fifth Third. For those customers, the prospective relief will reduce the number of overdraft fees that they will pay in the future. Plaintiff's expert has estimated the value of this relief to be \$58.8 million over the next five years, and \$108.3 million over the next ten years. Tarter Rep. at 16. Class Counsel represents that it is his belief that “this relief is groundbreaking, in that no other bank defendant has agreed to that concession in a case settlement related to the re-sequencing of debit card transactions.” Pl. Mem. at 5.

3. The Amount of the Benefits Offered in the Settlement is Fair

“The uncertain nature of the legal issues implicated by proceeding to trial makes it difficult to calculate a precise probability of success.” *In re AT & T Mobility Wireless Data Services Sales Tax Litig.*, 789 F.Supp.2d at 963, 2011 WL 2204584, at *25 (citing *Synfuel*, 463 F.3d at 653). Nevertheless, the information before the Court conclusively establishes that the amount of settlement benefits offered to

the class is “fair, reasonable, and adequate.” [Fed.R.Civ.P. 23\(e\)\(2\)](#).

As an initial matter, without taking into account the \$1.08 million that Defendant has paid to effectuate the settlement, and without taking into account the real value of the prospective change in Defendant's business practices, the \$9.5 million settlement fund still represents approximately 10% of the \$96.5 million that is the class's maximum potential recovery. Numerous courts have approved settlements with recoveries around (or below) this percentage. See, e.g. [Lazy Oil Co. v. Witco](#), 95 F.Supp.2d 290, 339 (W.D.Pa.1997) (approving settlement amounting to 5.35% of damages for the entire class period, and 25.5% of damages within the limitations period); [Erie Forge and Steel, Inc. v. Cyprus Minerals Co.](#), Civil No. 94-404 (W.D.Pa. Dec. 23, 1996) (approving settlement of \$3.6 million where plaintiffs' expert estimated damages at \$33 million); [In re Domestic Air Transp. Antitrust Litig.](#), 148 F.R.D. 297, 325 (N.D.Ga.1993) (12.7% to 15.3%); [In re Newbridge Networks Sec. Litig.](#), 1998 WL 765724, at *2 (D.D.C. Oct. 23, 1998) (approving settlement and concluding that while “[c]ourts have not identified a precise numerical range within which a settlement must fall in order to be deemed reasonable; [] an agreement that secures roughly six to twelve percent of a *potential* trial recovery, while preventing further expenditures and delays and eliminating the risk that no recovery at all will be won, seems to be within the targeted range of reasonableness”); [In re Ravisent Techs., Inc. Sec. Litig.](#), 2005 WL 906361, at *9 (E.D.Pa. Apr. 18, 2005) (approving settlement, *584 which amounted to 12.2% of damages, and citing study by Columbia University Law School, which determined that “since 1995, class action settlements have typically recovered between 5.5% and 6.2% of the class members' estimated losses.”) (internal citations omitted).

In *Domestic Air Transp. Antitrust Litigation*, the court reasoned that simply because “the proposed settlement amounts to a fraction of potential recovery does not render the proposed settlement inadequate and unfair.” 148 F.R.D. at 325. “In fact, there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery. * * * The proposed settlement cannot be judged without reference to the strength of plaintiffs' claims and other factors relating to a potential recovery for plaintiffs.” *Id.* (citing [Detroit v. Grinnell Corp.](#), 495 F.2d 448, 455 n. 2 (2d Cir.1974)). When the Court takes Fifth Third's strong defenses into account, and considers the real value of the

prospective relief (at least to those who continue to bank with Fifth Third), the Court must conclude that the “most important factor” in determining whether a proposed settlement satisfies Rule 23—namely the “strength of plaintiff's case on the merits balanced against the amount offered in the settlement,” [Synfuel](#), 463 F.3d at 653—supports approving the Settlement Agreement in the present case. In short, the settlement provides immediate value to the Class Members that is well within the range of—and may in fact significantly exceed—their expected recovery from proceeding to trial.

In their objections, the PEC Objectors argue that this is a low-ball settlement. Support for this argument relies on the Objectors' comparison of the settlement fund in this case with the amounts awarded (\$203 million in *Gutierrez*) and the amounts agreed to (\$410 million against Bank of America in the Overdraft MDL) in cases involving similar claims. The Court concludes that comparison of this settlement with the recoveries in similar cases does not upset the Court's conclusion that this settlement merits approval.

As an initial matter, the Court recognized in its order preliminarily approving the settlement that “comparison of settlements in similar cases is relevant to whether a settlement is fair, adequate and reasonable.” [59] at 5. That is undoubtedly true. See [Trombley v. National City Bank](#), 759 F.Supp.2d 20, 24–25 (D.D.C.2011) (“The Court recognizes that the comparison of settlements in similar cases can be relevant when evaluating the fairness, adequacy, and reasonableness of a proposed settlement.”). However, when it granted preliminary approval to the settlement, the Court agreed with the PEC Objectors' criticisms of the parties' “adequacy by analogy” argument, and warned that such an argument was no substitute for evidence concerning *this case* that would enable the Court to determine the potential value of Class Members' claims. [59] at 5. It appears that the PEC Objectors did not take their own criticism to heart: While the parties presented expert and other evidence regarding the value of the class's claims in *this lawsuit*, the PEC Objectors' main challenge to the settlement is an “*inadequacy by analogy*” argument. Indeed, it bears repeating that the PEC Objectors did not seek to conduct discovery on the basis for the settling parties' damages calculations or offer an expert report of their own. Each case is different and must be evaluated on its own merits. E.g. [Liebman v. J.W. Petersen Coal & Oil Co.](#), 73 F.R.D. 531, 536 (C.D.Ill.1973). And due to the inevitable variations among different cases, solid evidence involving the value of the class's claims in *this case* is inherently more persuasive *585 than comparisons

to other settlements or verdicts. See *Goldberg v. Touche Ross & Co.*, Fed. Sec. L. Rep. (CCH) ¶ 96,892 (S.D.N.Y.1979) (in approving the settlement, the court did not consider plaintiffs' comparative table of settlements in other actions of claimed comparative value as having any impact because the variables between cases were too many to justify such a comparison) (cited in William B. Rubenstein, Alba Conte and Herbert B. Newberg, 4 NEWBERG ON CLASS ACTIONS § 11:47 (4th ed. 2011)).

Regardless, neither the *Gutierrez* case nor the Bank of America settlement in the Overdraft MDL shows that the amount of this settlement is insufficient. In a 90–page opinion following a bench trial, the Court in *Gutierrez v. Wells Fargo Bank*, 730 F.Supp.2d 1080 (N.D.Cal.2010), ordered Wells Fargo to and cease its reordering practices and pay \$203 million in restitution to its California customers. Most importantly, this award is not an appropriate basis for comparison because it is the result of a judgment after a bench trial; not a settlement. Further, Plaintiffs have explained that there are significant differences between *Gutierrez* and this case that make comparison difficult. The law at issue in *Gutierrez* was different than the law at issue in this case. There, the plaintiffs prevailed on claims brought under California's Unfair Competition Law, Cal. Bus. & Prof.Code §§ 17200 *et seq.* Under that statute, relief is available without individualized proof of deception, reliance, and injury. *Gutierrez*, 730 F.Supp.2d at 1138. Further, the court in *Gutierrez* relied heavily on the California version of U.C.C. § 4–303 and its California-specific comments, which expressly prohibit establishing a practice solely to maximize overdraft fees. *Id.* at 1121. As explained above, Illinois's version of U.C.C. § 4–303 contains no such prohibition. Fifth Third Bank has no branches in California. And finally, as the Court explained in its previous order, once the differences between the relative sizes of Wells Fargo and Fifth Third are taken into account, it is possible that the result in *Gutierrez* actually supports the fairness of the size of the recovery here. See [59] at 6 n. 4; [54] at 4.¹⁹

The PEC Objectors have also filed an order preliminarily approving a settlement agreement between Bank of America and a group of plaintiffs in the Overdraft MDL. Ex. A to [121]. Tellingly, neither of the PEC Objections nor the “Notice of Recent Developments” [121] to which the PEC Objectors attached the Bank of America settlement agreement contains a discussion of the similarities between this case and the lawsuit against Bank of America, a discussion of the relative sizes of the banks or the settlement classes, or other information

that would permit the Court to compare the two settlements. Accordingly, it is of little value to the Court in assessing the sufficiency of the benefits of this settlement.

B. Likely Complexity, Length, and Expense of the Litigation

The Seventh Circuit has held that the likely complexity, length, and expense of continued litigation are relevant factors *586 in determining whether a class-action settlement is fair, reasonable, and adequate. *Synfuel*, 463 F.3d at 653. Those factors support approval of the Settlement Agreement in this case.

If the Court approves the Agreement, the present lawsuit will come to an end and Class Members will realize both immediate and future benefits as a result. If the Court denies approval, however, protracted litigation would likely ensue (either in this Court or before the court presiding over the Overdraft MDL). If the Court denied approval, Defendant would likely re-file its motion to dismiss. If Plaintiffs' claims survive that hurdle, the parties would engage in discovery related both to the merits of the Class' claims and to the propriety of class certification. “The costs associated with discovery in complex class actions can be significant.” *In re AT & T Mobility Wireless Data Services Sales Tax Litig.*, 789 F.Supp.2d at 964, 2011 WL 2204584, at *26 (citing Nicola Faith Sharpe, *Corporate Cooperation Through Cost-Sharing*, 16 MICH. TELECOMM. & TECH. L.REV. 109, 110 (2009) (“Discovery accounts for about 50% of all litigation costs and up to 90% of the costs in the top 5% of the most expensive case.”) (citation omitted)). As explained above, a class certification proceeding would likely be hotly-contested and followed by an inevitable appeal. If the Class was certified, and if Plaintiffs survive through summary judgment proceedings, they would still be required to establish their entitlement to damages at trial. Settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation. See *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir.1982) (“There are weighty justifications, such as the reduction of litigation and related expenses, for the general policy favoring the settlement of litigation.”).

C. Amount of Opposition to the Settlement

The Seventh Circuit has instructed district courts to evaluate the amount of opposition to a settlement among affected parties in deciding whether to approve a class-action settlement. *Synfuel*, 463 F.3d at 653. A very small percentage of affected parties have opposed the settlement. As of May

13, 2011, the claims administrator had received “over 100,000 claims.” Parties Supplemental Mem. [118] at 1. In contrast to this high participation rate, only 342 Class Members excluded themselves from the settlement and only 15 Class Members submitted documents that could be considered objections. See *In re Mexico Money Transfer Litig.*, 164 F.Supp.2d 1002, 1021 (N.D.Ill.2000) (holding that the fact that more than “99.9% of class members have neither opted out nor filed objections * * * is strong circumstantial evidence in favor of the settlement”), aff’d, 267 F.3d 743 (7th Cir.2001); cf. *The Authors Guild, et al. v. Google, Inc.*, 770 F.Supp.2d 666, 676 (S.D.N.Y.2011) (denying approval of Google’s class action, in part because “an extremely high number of class members—some 6,800—opted out” and because “the objections [were] great in number”).

D. Opinion of Competent Counsel

The opinion of competent counsel is relevant to the question whether a settlement is fair, reasonable, and adequate under Rule 23. *Synfuel*, 463 F.3d at 653. Class Counsel has extensive experience in consumer class actions and complex litigation and there is no indication that the Settlement Agreement is the victim of collusion. Class Counsel believes that the Settlement is beneficial to the Class and meets the class-certification requirements of Rule 23. See Pl. Mem. at 20. The Court thus concludes that the opinion of *587 competent counsel in this case supports its approval of the Settlement. Accord *Retsky Fam. Ltd. v. Price Waterhouse L.L.P.*, 2001 WL 1568856, at *3 (N.D.Ill. Dec. 10, 2001) (“[T]heir opinion that the settlement is fair, reasonable and adequate also favors approval of the settlement.”).

E. Stage of the Proceedings and the Amount of Discovery Completed at the Time of Settlement

The last factor that the Seventh Circuit deems relevant to the question whether a class-action settlement is fair, reasonable, and adequate concerns the stage of the proceedings and the amount of discovery completed. *Synfuel*, 463 F.3d at 653. This factor is relevant because it determines “how fully the district court and counsel are able to evaluate the merits of plaintiffs’ claims.” *Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 325 (7th Cir.1980), overruled on other grounds by *Felzen v. Andreas*, 134 F.3d 873 (7th Cir.1998).

The PEC Objectors argue that the absence of formal pre-settlement discovery demonstrates that Class Counsel failed to properly evaluate the merits of the claims at issue in this litigation. *Keyes/Ratliff* Obj. at 3; 10–11; Kannapel

Obj. at 6. The Objectors point out that the “docket reflects that no formal or informal discovery was conducted, and the settlement was reached at the early stage of the proceedings suggests that none was conducted.” *Keyes/Ratliff* Obj. at 10. Further, the Objectors argue that the 30-day period of “confirmatory discovery” provided for in the Settlement Agreement is “an inadequate substitute for adversary discovery.” *Id.* at 11.

Apart from exchanging initial disclosures pursuant to Rule 26(a), Class Counsel concedes that no formal discovery was conducted, but states that “[d]uring months of arms-length negotiations occurring prior to settlement, Settlement Class Counsel engaged in substantial informal discovery.” Pl. Mem. at 21. That discovery apparently consisted of “multiple meetings and conversations with Fifth Third’s counsel, during which information was appropriately shared.” *Id.* In addition, prior to settling, Class Counsel conducted a “great deal of independent research” to evaluate his claim, including “examining hundreds of pages of bank statements to study the manner in which Fifth Third’s practices affected Settlement Class Members.” *Id.*

The Court concludes that this factor does not weigh against approval of the settlement. As the Court noted in its preliminary approval order, that counsel conducted no formal discovery prior to settlement does not necessarily preclude final approval. See *In re Prudential Ins. Co. of America Sales Practice Litigation*, 148 F.3d 283, 319 (3rd Cir.1998); *Cotton v. Hinton*, 559 F.2d 1326, 1332 (5th Cir.1977) (“It is true that very little formal discovery was conducted and that there is no voluminous record in the case. However, the lack of such does not compel the conclusion that insufficient discovery was conducted.”). Indeed, the “label of ‘discovery’ [either formal or informal] is not what matters.” *In re AT & T Mobility Wireless Data Services Sales Tax Litig.*, 789 F.Supp.2d at 967, 2011 WL 2204584, at *29. Instead, “[t]he pertinent inquiry is what facts and information have been provided.” *Id.* As the Southern District of New York has noted:

[T]he question that this Court must answer is not how much or how little discovery was completed by the parties before they agreed to the settlement, but rather whether the discovery that was completed was sufficient for “effective representation.” * * * Intervenor * *

* have not explained how additional discovery would have been in the interest *588 of the class. Discovery has costs, and further discovery would have taken additional time and resulted in the expenditure of additional funds on both sides, neither of which is in plaintiffs' interests.* * * [C]lass counsel's decision to forgo additional discovery in the hopes of minimizing costs and achieving a quick recovery for their clients appears to be both fair and reasonable[.]

McBean v. City of New York, 233 F.R.D. 377, 384–85 (S.D.N.Y.2006); see also *In re Corrugated Container Antitrust Litigation*, 643 F.2d 195, 211 (5th Cir.1981) (finding settlement appropriate, despite absence of formal discovery, when “plaintiffs did have access to information”).

Here, Class Counsel asserts that they had access to sufficient information such that they could effectively represent the Class. The Objectors have not explained “how additional discovery would have been in the interest of the class” or would have resulted in a better settlement. *McBean*, 233 F.R.D. at 384–85. Indeed, as the Seventh Circuit has suggested, the fact that Class Counsel negotiated a fair settlement is evidence that he had enough information to effectively represent the class. *Mars Steel Corp. v. Continental Illinois Nat. Bank and Trust Co. of Chicago*, 834 F.2d 677, 684 (7th Cir.1987) (“Rather than attempt to prescribe the modalities of negotiation, the district judge permissibly focused on the end result of the negotiation, which was more favorable to the class than any class member could reasonably have expected. The proof of the pudding was indeed in the eating.”). Further, pursuant to the Settlement Agreement, settlement Class Counsel was entitled to reasonable confirmatory discovery. This discovery confirmed the fairness of the settlement.²⁰ This is not the sort of case where the absence of formal discovery suggests collusion or that the class counsel otherwise failed to get the best agreement possible for their class. Cf. *Olden v. Gardner*, 294 Fed.Appx. 210, 218 (6th Cir.2008); *Reynolds v. Beneficial Nat. Bank*, 260 F.Supp.2d 680, 687–88 (N.D.Ill.2003) (declining to approve settlement on remand and disqualifying class counsel because evidence established that they attempted to settle case without first undertaking sufficient discovery to estimate class damages).

The stage of proceedings at which this case settled does not weigh against approval. In *In re Asbestos Litigation*, 90 F.3d 963, 988 (5th Cir.1996), rev'd on other grounds *sub nom. Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 119 S.Ct. 2295, 144 L.Ed.2d 715 (1999), the court held that that the fact that the parties “filed their proposed settlement agreement on the same day as the plaintiff class filed its complaint [and] clearly did not intend to litigate the complaint” did not “change the adversarial nature of the disputes which the settlement resolves and does not contradict the district court's finding that settlement negotiations were heated, difficult and conducted at arm's length.” That a case is settled early does not establish that the class was ill-represented or that the settlement was the product of collusion. *589 *Id.* In any event, the stage of proceedings here was further along than in *Asbestos Litigation*—the parties did not come to this Court holding hands. Rather, the filing of Defendant's motion to dismiss suggests that the parties began the litigation in an adversarial posture. See also *In re AT & T Mobility Wireless Data Services Sales Tax Litig.*, 789 F.Supp.2d at 967, 2011 WL 2204584, at *29 (quoting *Molski v. Gleich*, 318 F.3d 937, 959 (9th Cir.2003)) (“Early dispute resolution is salutary, and we should not encourage the unnecessary expense, delay, and uncertainty caused by lengthy litigation when the parties are prepared to compromise. Nor should we hold * * * that a prompt settlement necessarily suggests a failure to prosecute or defend the action with due diligence and reasonable prudence. To the contrary, an early resolution may demonstrate that the parties and their counsel are well prepared and well aware of the strength and weaknesses of their positions and of the interests to be served by an amicable end to the case.”) (Graber, J., concurring), overruled on other grounds by *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571 (9th Cir.2010), and judgment reversed by — U.S. —, 131 S.Ct. 2541, 180 L.Ed.2d 374 (2011)).

IV. Objections to the Settlement

For the preceding reasons, the five factors outlined by the Seventh Circuit support approving the Settlement Agreement. Nevertheless, 15 Class Members have filed 13 separate objections, which collectively articulate a number of specific arguments why the Court should not approve the settlement. The Court has addressed some of these objections in the discussion above and will consider the balance here. The objections filed by Class Members do not establish that the Court should deny final approval of the settlement.

A. Benefits Allocation

As discussed above, the settlement does not distribute benefits on a strictly *pro rata* basis depending on the amount of fees incurred. Instead, customers must choose a 45-day period within the Class Period for the reimbursement of fees. The Court concludes that this allocation of benefits is appropriately tailored to the facts and law at issue in this case, and is fair, reasonable, and adequate. As the Court recognized in its order preliminarily approving the settlement, “when real and cognizable differences exist between the likelihood of ultimate success for different plaintiffs, it is appropriate to weigh distribution of the settlement in favor of plaintiffs whose claims comprise the set that was more likely to succeed.” *In re PaineWebber Ltd. Partnerships Litigation*, 171 F.R.D. 104, 133 (S.D.N.Y.1997) (internal quotations and citations omitted); see also *id.* (collecting cases); see also *In re Lucent Techs., Inc., Secs. Litig.*, 307 F.Supp.2d 633, 649 (D.N.J.2004) (citing *In re Cendant Corp. Litig.*, 264 F.3d 201, 248–49 (3d Cir.2001) (“Courts have routinely approved plans of allocation that provide different payments to class members.”)).

By reimbursing customers for damages incurred in a 45-day period, the settlement recognizes that customers who incurred “surprise” charges have stronger claims than the “chronic overdrafters” who paid many fees over a long period of time. This allocation method ensures that the benefits of the settlement are made available to all Class Members, while protecting the interests of Class Members with the strongest claims—those who incurred “surprise” overdraft charges—from erosion of the settlement fund by Class Members who were chronic overdrafters, and therefore those with arguably the weakest claims. Approximately 72% of all overdraft fee revenue was generated from the *590 approximately 7% of Fifth Third's customers who overdrafted six or more times a month. Sullivan Affidavit ¶ 10. As the Court has explained, these frequent overdrafters arguably have weaker claims than the other Members of the Settlement Class because they can be said to have had actual or constructive notice of Fifth Third's reordering policies and are more susceptible to defenses such as the voluntary payment doctrine. The way in which the settlement allocates benefits is fair because it recognizes these important differences among Class Members. What would be “arbitrary, unreasonable, and unfair[]” (Objector Kannapel's words) would be to distribute 72% of the settlement fund to the 7% of Class Members who have the weakest claims.

In *Trombley v. National City Bank*, a class action where a plaintiff alleged that a bank's re-sequencing of debit/check card and ATM transactions was unlawful, the court reached a similar conclusion when granting preliminary approval of a settlement that allowed class members to file claims for reimbursement of overdraft fees incurred during any two months of the class period at issue there, in stating that:

Reimbursing for the highest amount of overdraft fees incurred in any two calendar months—the two months do not have to be consecutive—enables Class Members to receive compensation, even though they may have had reasonable notice of the manner in which overdraft fee charges are imposed. There is also no cap on the number of overdraft fees that Class Members may recover for the two calendar months that they select for reimbursement. Limiting the recovery period to two months also prevents chronic overdrafters, who had notice of National City Bank's overdraft policies yet continued incurring overdraft fees anyway, from being unfairly rewarded for their behavior. It appears to be, therefore, a reasonable allocation methodology for the settlement funds, with the remaining funds then distributed among Class Members on a *pro rata* basis.

759 F.Supp.2d at 27 (D.D.C.2011). Thus, the allocation method provided for under the Settlement takes is tailored to the facts of this case and is fair, reasonable, and adequate. The Court overrules the objections of the PEC Objectors, and Objectors Vitali, Scyoc, Ackerson, and Albright, all of whom complain that recovery should not be limited to a 45-day period.²¹

B. Claims Process

As discussed above, a number of Objectors have argued that various aspects of the claims process are unfair, unduly burdensome on Class Members, and designed to deter claims.

While some of the Objectors' concerns about the claims process are indeed concerning, they are not serious enough to warrant rejection of the settlement in its entirety.

A few initial points about the claims process: First, many of the concerns about the claims process were voiced before data about the Class's response to the settlement was available. Again, Class Members have filed more than 100,000 claims. This excellent response strongly suggests that many of the concerns about the allegedly burdensome or confusing character of ^{*591} the claims process were unwarranted. Next, the Court has reviewed the claim form and concludes that it is not unduly burdensome, long, or complex. All information called for on the form is required of the claims administrator in order for it to process claims. See *In re WorldCom, Inc. Sec. Litig.*, 2004 WL 2591402, at *12 (S.D.N.Y. Nov. 12, 2004) (holding that “[t]he [one] objection to the length and complexity of the proof of claim form is * * * meritless,” as “the information that claimants are required to submit is necessary in order for a fair distribution of the settlement proceeds”); *In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 2004 WL 3671053, at *14 (W.D.Mo. April 20, 2004) (“The objectors also complain that the claim form for former subscribers is ‘burdensome.’ The one-page form merely requires a claimant to provide enough information to enable Defendants to search their records to confirm that the claimant falls within the definition of the relevant subclass. This requirement is reasonable.”). The parties' use of a settlement website and toll free number suggests that the claims process was designed to encourage—not discourage—the filing of claims. For example, the ability to submit a claim online through the settlement website allowed Class Members to submit a claim without the need to pay for a stamp. See, e.g. *In re Nasdaq Market-Makers Antitrust Litigation*, 2000 WL 37992, *4–5 (S.D.N.Y. Jan. 18, 2000) (recognizing that the “innovative use” of “electronic claim forms is likely to contribute to a far larger number of claims”); see also 3 NEWBERG ON CLASS ACTIONS § 8:40 (4th ed.) (“the inclusion of toll-free numbers in notices serves to facilitate, and thereby encourage, the filing of claims”) (collecting cases). And as the Court observed in its order preliminarily approving the settlement, because Defendant's total monetary payment to the settlement fund will be \$9.5 million regardless of the number of claims filed, it seems unlikely that the claims process is designed to limit the “take rate” of the Class Members.

That said, a number of Objectors raised three specific concerns about the claims process. First, the PEC Objectors,

and Objectors Vitali, Katz, and Scyoc argue that the provision of only 16 months of free statements from the date of a Class Member's request is unfair, when Class Members could use statements going back to the start of the Class Period to determine which 45-day period would be the best for making their claim. Assuming that these records are indeed kept, the Court imagines that there are costs associated with the retrieval and transmission of years-worth of old account statements. Plaintiffs explain that the number of account statements that would be provided was a negotiated term, and the Objectors' arguments that more free statements should have been provided are “tantamount to complaining that the settlement should be ‘better,’ which is not a valid objection.” *Browning v. Yahoo! Inc.*, 2007 WL 4105971, at *5 (N.D.Cal. Nov. 16, 2007) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir.1998)). Further, Class Members did not need all of their account statements in order to file a claim—the claim form provided that if Class Members were unable to locate their statements, they could submit a form based on the best of their knowledge and belief, identifying only a year in which they incurred overdraft charges.

Perhaps the claims process would have functioned better if Class Members had all of their account statements for the months during the Class Period that they were customers. However, “the courts have held that their function is not to modify the terms of a proposed settlement; but rather to approve or disapprove of the ^{*592} proposed settlement ‘as a whole.’ ” 8 NEWBERG ON CLASS ACTIONS § 24:126 (4th ed.) (citing *Evans v. Jeff D.*, 475 U.S. 717, 727, 106 S.Ct. 1531, 89 L.Ed.2d 747 (1986)) (“the power to approve or reject a settlement negotiated by the parties before trial does not authorize the court to require the parties to accept a settlement to which they have not agreed.”); see also *Turner v. Murphy Oil, USA, Inc.*, 472 F.Supp.2d 830, 843 (E.D.La.2007) (“the Court is also limited in that it may not make unilateral modifications or alterations to the proposed settlement, but rather may only accept or reject the agreement as a whole.”); 7B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, FEDERAL PRACTICE AND PROCEDURE § 1797.5 & n. 9 (3d ed. 2005); MANUAL FOR COMPLEX LITIGATION § 21.61. For all of the reasons explained above, the settlement as a whole is worthy of approval; that the Court believes that one or a few terms could have been improved—such as the number of free statements made available—is an insufficient grounds for rejection.

Next, as explained above, the PEC Objectors argue that it would be impossible for any Class Member to submit a claim

in good faith on the basis of the settlement documents as they currently are written. Again, the claim form asks customers to identify an amount of “Overdraft Fees” that he or she incurred during a particular time period, where “Overdraft Fees” are fees “incurred as a result of the ‘re-sequencing’ of a Fifth Third Debit Card Transaction in non-chronological order.” The Objectors argue that Class Members cannot know which overdraft fees are “the result of ‘re-sequencing.’”

The settling parties conclusively rebutted this objection in the joint supplemental brief called for by the Court [118]. The parties explain that there are a number of ways that a Class Member could know that a specific overdraft fee was caused by re-sequencing. First, a Class Member's personal knowledge of his account activity, transactional history, and prior overdraft charges could support a claim made in “the best of [their] knowledge and belief.” Claim Form at 1. The parties explain that based on their knowledge of their daily schedules and purchasing habits, customers often knew when fees were the result re-ordering. See [118] at 3–4. Other customers—such as Plaintiff Willard—kept contemporaneous personal financial records from which they could deduce that they were the victims of high-to-low re-sequencing. See Declaration of Marlene Willard, Ex. 4 to [118] (explaining that she ascertained that she had incurred fees as a result of re-sequencing by examining her actual receipts and notebook ledger).

Second, the parties explain that Fifth Third mailed customers an “Overdraft Letter” each time that a customer incurred an overdraft charge. See Ex. 2 to [118], Affidavit of Thomas K. Kappes, Jr., at ¶ 7. Each Overdraft Letter, *inter alia*: detailed the date of overdraft(s), amount the account was overdrawn by, and amount of overdraft charges incurred; included a summary of relevant account activity detailing the beginning balance, the amount of any deposits/credits, whether there were any unavailable funds from deposits, the pending amounts and withdrawals/debits deducted from any balance, and the ending balance; and stated “[i]f you have questions or need additional information, please call us at 1–800–972–3030.” *Id.* ¶¶ 8, 9. The Overdraft Letters also included the date an item was charged or credited to a customer's account, the date each debit card transaction occurred (in the description for each charge), and detailed the order in which debit card transactions were charged to the customer's account—from highest to lowest amount. *Id.* The parties provided examples of such letters. A Settlement Class Member could *593 use an Overdraft Letter to determine that a particular overdraft fee was the result of resequencing. [118] at 4–5. If a Class

Member did not have his or her relevant Overdraft Letters, the Class Member could use his or her monthly account statements to determine that multiple overdraft fees were charged on one day and that the amount of money in the account at the beginning of the day was sufficient to pay at least one debit card charge. The Class Member could then use the description of the debit card charges and overdraft fees on the statement and knowledge of his transactional history and daily activity to come to an informed belief that he incurred an overdraft fee as the result of Fifth Third's re-sequencing of debit card transactions. Finally, Class Members could submit a claim in good faith if they had a conversation with a Fifth Third customer service representative, during which they were informed that fees has been charged as a result of the bank's re-sequencing policy. According to Defendant, Fifth Third's customer service representatives were trained to explain to customers the basis of any overdraft fees charged, including those resulting from the bank's re-sequencing of debit card transactions in non-chronological order. *Id.* (citing Affidavit of Anna Gise, at ¶ 4, Ex. 3 to [118]).

All of the above conclusively rebuts the assertion that Class Members could not in good faith fill out and submit a claim form, and the “proof of the pudding” (*Mars Steel Corp.*, 834 F.2d at 684) is the fact that Class Members have submitted more than 100,000 claims, and none has submitted an objection or other document complaining that it was impossible for them to file a claim in good faith.

Finally, the PEC Objectors and Objector Albright question the very need for a claims process. The Keyes/Ratliff Objectors note that in the Bank of America settlement, class members will be paid directly; they will not be required to submit a claim form. There, the settlement administrator will identify class members and the harm they incurred and then class members will have a credit posted to their account, or in the case of former customers, have a check sent to their most recent address. The Court rejects this objection.

First, as the Court noted in its prior opinion, there is nothing inherently suspect about requiring class members to submit claim forms in order to receive payment, see, e.g. *Milliron v. T-Mobile*, 2009 WL 3345762, *6 (D.N.J.2009) (“the Court finds it perfectly appropriate to require Class members to submit certain information proving they are entitled to collect the relief awarded in this case”); 3 NEWBERG ON CLASS ACTIONS § 8:45 (4th ed.) (settlements employing proof of claim requirement are “commonly employed” in consumer fraud cases), especially in a common fund case like this,

where the defendant's payout is capped regardless of the take rate.

Second, and perhaps most importantly, the claims process is a negotiated facet of this settlement, which, as the Court explained above, is fair as a whole. The Court may not “make unilateral modifications or alterations to the proposed settlement,” *Turner*, 472 F.Supp.2d at 843, such as the substitution of a claims process for a direct payout.

Third, despite the fact that Defendant presumably knows (or could ascertain) which Class Members incurred overdraft fees as the result of re-sequencing, there is evidence before the Court to support the argument that a claims process is not completely superfluous. For one, there would presumably be costs associated with investigating how much is owed to each Class Member under the settlement and distributing payments. Had the onus of that process been placed on Defendant, there *594 may have been less money available to pay claims. Second, there has been some suggestion that certain customers intentionally overdrafted their accounts, using the overdraft as an “easy loan program.” Fairness Hearing Tr. at 27:24. The option to file (or to not file) a claim gives customers who were aware of and assented to Defendant's re-sequencing policies the ability to opt out of receiving a payment that they feel they do not deserve. See *Lonardo v. Travelers Indem. Co.*, 706 F.Supp.2d 766 (N.D. Ohio 2010) (rejecting objection that “the [claim] form is unnecessary because it does not provide [defendant] with any information they do not already have” in part because “the claim form and opt-in procedure are negotiated components of the settlement that [defendant] insisted upon in order to force Settlement Class Members to affirm that they would have purchased a lower-priced policy had it been offered to them.”).

And finally, it must be noted that a direct-distribution of settlement benefits (at least to former customers who would be mailed checks) is not a panacea. See, e.g. *In re: Educational Testing Service Praxis Principles of Learning and Teaching, Grades 7–12*, MDL No. 1643, 2006 WL 3332829, at *2 (E.D. La. Nov. 15, 2006) (overruling objection that a “claims process for the expedited payments was unnecessary * * * because the names and addresses of [class members] are known” and checks could therefore be mailed directly to class members; finding that claims process prevents checks from being mailed to unverified and old addresses and thereby reduces undeliverable mail and fraudulently cashed checks).²²

C. Miscellaneous Objections

Objectors Albright and Vitali take issue with the fact that Defendant has not admitted guilt. But Defendant is not required to admit that it did anything wrong when settling a case. In fact, it “is common to most settlement agreements” that the defendant “does not admit liability.” *Hernandez v. Talman Home Mortg. Corp.*, 1986 WL 5205, at *3 (N.D. Ill. April 29, 1986); see also *In re Enron Corp. Securities, Derivative & ERISA Litigation*, 2008 WL 2566867, at *12 (S.D. Tex. June 24, 2008) (“A settlement is not tantamount to an admission of liability. Defendants settle for many reasons, such as the avoidance of bad publicity and litigation costs, the possibility of an adverse verdict, and the maintenance of favorable commercial relationships.”).

Objector Scyoc argues that the Class Period should extend through December 31, 2010. Similarly, Objector Vitali argues that the Class Period ends on July 1, 2010, and Defendant will have no “repercussions” and Class Members will have no recovery “for the months post July 2010.” Plaintiffs explain that the length of the Class Period was tailored to the facts of this case, specifically, the effectuation of Regulation E, which provides:

(1) Existing account holders. For accounts opened prior to July 1, 2010, the financial institution must not assess any fees or charges on a consumer's account on or after August 15, 2010 for paying an ATM or one-time debit card transaction pursuant to the overdraft service, unless the institution has complied with *595 § 205.17(b)(1) and obtained the consumer's affirmative consent.

(2) New account holders. For accounts opened on or after July 1, 2010, the financial institution must comply with § 205.17(b)(1) and obtain the consumer's affirmative consent before the institution assesses any fee or charge on the consumer's account for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service.

12 C.F.R. § 205.17(c). With the effect of this regulation in mind, the Court concludes that the length of the Class Period is not a reason that approval of the settlement should be withheld.

Next, Objector Vitali argues that [i]n recognition of lost interest and “emotional and financial hardship” suffered by customers as a result of Defendant's conduct, interest “be

taken into account when repaying the fees incurred.” As this objection simply argues that the amount awarded to Class Members should be increased, it is “tantamount to complaining that the settlement should be ‘better,’ which is not a valid objection.” *Browning v. Yahoo! Inc.*, 2007 WL 4105971, at *5. Similarly, Objector Scyoc's proposals about how the prospective relief could be improved are not proper grounds upon which to deny final approval. *Id.*

Finally, Objector Ackerson objects that the settlement only covers customers who utilized debit cards or ATMs, and does not provide reimbursement for fees incurred as a result of overdrawn checks. The Settlement Agreement provides that Class Members only release claims that relate to “the use of a Fifth Third Debit Card.” Settlement Agreement at ¶ 34. While the settlement provides no compensation for overdraft fees that were the result of overdrawn checks, it does not purport to release such claims either. That the settlement does not cover checks is not a reason why the approval should be withheld.

V. Class Notice

Constitutional due process and [Federal Rule of Civil Procedure 23\(c\)\(2\)\(B\)](#) require that absent class members receive “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” What comprises the best notice possible depends on various elements, including the size of the class, whether the class members can be easily identified, and the probability notice will reach the intended audience. See, e.g. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 166–67, 94 S.Ct. 2140, 40 L.Ed.2d 732 (1974) (considering the size, ease of identifying the class, and probability of receiving notice); *Phillips Petroleum v. Shutts*, 472 U.S. 797, 105 S.Ct. 2965, 86 L.Ed.2d 628 (1985). Where lists of class members and their addresses are readily ascertainable, the court generally demands individual notice. *Id.* at 173, 94 S.Ct. 2140. Here, no one objects to the sufficiency of Notice, and the Court concludes that it is indeed unobjectionable.²³

The Notice Program was developed and implemented by Hilsoft Notifications, a professional class action notification company. Cameron R. Azari, Esq., a Hilsoft executive, filed an affidavit with the Court attesting to the implementation and adequacy of the Notice Program. See Azari Aff., Ex. C to Pl. Mem. Azari attests that Fifth Third was able to identify names and contact information for virtually all potential Class Members, and individual *596 Notice

reached approximately 89.7% of potential Settlement Class Members. *Id.* ¶¶ 7, 13.²⁴ In addition to individual notice, the parties disseminated notice by publication on the internet, in a number of daily newspapers, and via press release.²⁵ The parties also established a toll-free number, maintained by the Claims Administrator, with which Class Members could listen to answers to frequently asked questions and/or request that a copy of the Claim Form or Detailed Notice be mailed to them. *Id.* ¶ 36. As of March 7, 2011, the toll-free number had handled 66,906 calls representing 181,206 minutes of use. *Id.*

The Court has reviewed the content of all of the various notices, as well as the manner in which Notice was disseminated, and concludes that the Notice given to the Class fully complied with [Federal Rule of Civil Procedure 23](#), as it was the best notice practicable, satisfied all constitutional due process concerns, and provided the Court with jurisdiction over the absent Class Members. [Fed.R.Civ.P. 23\(c\)\(2\)\(B\)](#); *Eisen*, 417 U.S. at 177–78, 94 S.Ct. 2140; *Phillips Petroleum*, 472 U.S. at 797, 105 S.Ct. 2965. Indeed, the high number of claims filed is further proof of the adequacy of the Notice program. See *In re Agent Orange Product Liability Litigation MDL No. 381*, 818 F.2d 145, 169 (2d Cir.1987) (fact that large number of claims were filed by class members “suggest[ed] *597 that no practical problem exist[ed] as to the adequacy of the notice”).

VI. Motion for Fees, Costs, Expenses, and Incentive Awards

Class Counsel requests approval of attorneys' fees, costs and expenses, and for approval of incentive awards for the Class Representatives (see [103]). For the reasons explained below, the Court approves attorneys' fees of \$3,166,666. The request for cost and expense reimbursement of \$54,281.32 is denied without prejudice. The Court approves an incentive award of \$1,000 each for Plaintiffs Schulte and Willard.

A. Attorneys' Fees

“In a certified class action, the court may award reasonable attorney's fees * * * that are authorized by law or by the parties' agreement.” [Fed.R.Civ.P. 23\(h\)](#). The Settlement Agreement provides that Class Counsel would “seek approval of the Court for payment of not more than one-third of the Settlement Fund for attorneys' fees,” Settlement Agreement at ¶ 11, and Class Counsel have indeed sought \$3,166,666, which is precisely one-third of the \$9.5 million fund. In determining whether this sought-after amount is reasonable,

the Court “must balance the competing goals of fairly compensating attorneys for their services rendered on behalf of the class and of protecting the interests of the class members in the fund.” *Skelton v. Gen. Motors Corp.*, 860 F.2d 250, 258 (7th Cir.1988).

To determine the reasonableness of the sought-after fee in this, a common-fund case, “courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.” *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir.2001) (“*Synthroid I*”); see also *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 572 (7th Cir.1992) (“[t]he object in awarding a reasonable attorney's fee * * * is to give the lawyer what he would have gotten in the way of a fee in arm's length negotiation, had one been feasible. In other words the object is to simulate the market where a direct market determination is infeasible.”). The Seventh Circuit has recognized, however, that “[s]uch estimation is inherently conjectural[.]” *Trans Union Corp. Privacy Litig.*, 629 F.3d 741, 744 (7th Cir.2011). In *Synthroid I*, the Seventh Circuit held that the “market rate for legal fees depends in part on (1) the risk of nonpayment a firm agrees to bear, in part (2) the quality of its performance, in part on (3) the amount of work necessary to resolve the litigation, and in part on (4) the stakes of the case.” *Synthroid I*, 264 F.3d at 721; see also *Taubenfeld v. AON Corp.*, 415 F.3d 597, 599 (7th Cir.2005).²⁶ The probability of success at the outset of the litigation is relevant to this inquiry. See *Florin v. Nationsbank of Ga., N.A.*, 34 F.3d 560, 565 (7th Cir.1994).

Consideration of all of the relevant factors reveals that an award of \$3,166,666 is reasonable. First, Class Counsel incurred a significant risk of nonpayment by accepting this case. *Trans Union*, 629 F.3d at 746 (“within the set of colorable legal claims, a higher risk of loss does argue for a higher fee.”). As discussed in detail above, Fifth Third possesses a number of potentially meritorious defenses to the Actions. At the inception of this lawsuit, there was no certainty that *598 Plaintiffs would win, or that the case would settle; and if Plaintiffs had lost, Class Counsel “would receive no fees at all.” *Id.* All contingent fee class action cases involve some degree of risk for plaintiffs' counsel. See *Sutton v. Bernard*, 504 F.3d 688, 694 (7th Cir.2007) (“there is generally some degree of risk that attorneys will receive no fee (or at least not the fee that reflects their efforts) when representing a class because their fee is linked to the success of the suit”). Further, the Seventh Circuit recognizes that “the higher the risk of failure the higher the contingent fee that a

client would have to pay in an arm's length negotiation with the lawyer in advance of the suit.” *Trans Union*, 629 F.3d at 746. That at the inception of this lawsuit, Plaintiff Shannon Schulte authorized her attorney (Mr. Burton H. Finkelstein) to seek a fee of up to 33.3% of her potential recovery is further evidence that the risk that Counsel was undertaking at the beginning of the suit was relatively high. *Id.*; see also *Synthroid I*, 264 F.3d at 718–19.

Second, the quality of Class Counsel's performance in this litigation favors approval of the fees requested. Class Counsel have navigated a complicated case and have negotiated a Settlement Agreement that provides significant benefits to the Class Members.

Third, the amount of work necessary to resolve this lawsuit was substantial. *Synthroid I*, 264 F.3d at 721. As of March 3, 2011, Class Counsel and other attorneys from their firms reported having spent 2,815.50 hours advancing this matter, which represents a lodestar of \$1,258,385.20. See Summary of Attorney Time, Ex. H to Pl. Mem. Class Counsel undoubtedly spent additional time since March 3, 2011 attending the fairness hearing and responding to the Court's request for additional briefing. While many courts in this circuit have criticized the use of a lodestar cross-check in common fund cases,²⁷ the fee request here would nevertheless survive such an analysis. The requested award here would represent a multiplier of less than 2.5, which is not an unreasonable risk multiplier. See *Harman v. Lophomed, Inc.*, 945 F.2d 969, 974 (7th Cir.1991) (noting that “[a risk] multiplier is, within the court's discretion, appropriate when counsel assume a risk of non-payment in taking a suit” and “[m]ultipliers anywhere between one and four * * * have been approved”).

The Court also observes that the stakes in the case are high given the size of the Class, the scale of the challenged activity, the complexity and costs of the legal proceedings, and the amount of money involved. Accord *In re AT & T Mobility Wireless Data Services Sales Tax Litig.*, 792 F.Supp.2d 1028, 1037–38, 2011 WL 2173746, at *9 (N.D.Ill. June 2, 2011).

Lastly, the Court should consider attorneys' fee awards in other class actions when assessing a fee request. See *Taubenfeld*, 415 F.3d at 600–601. A number of fee awards in common-fund cases from within the Seventh Circuit show that an award of 33.3% of the settlement fund is within the reasonable range. See *Taubenfeld v. AON Corp.*, 415 F.3d 597, 598–600 (7th Cir.2005) (finding that the district *599 court

was within its discretion in awarding lead counsel 30% of a \$7.25 million settlement fund); *In re Synthroid Mktg. Litig. (Synthroid II)*, 325 F.3d 974, 980 (7th Cir.2003) (“We * * * give consumer class counsel 30% of the first \$10 million and 25% of the next \$10 million * * * from \$20 million to \$46 million, consumer class counsel is entitled to 22% of that portion of the recovery. And we think that 15% of all amounts over that is a decent estimate of the fee that would have been established in ex ante arms'-length negotiations. Because the consumer class recovered a total of \$88 million, the fee comes to \$17.52 million, or 19.9% of the fund.”); *Meyenburg v. Exxon Mobil Corp.*, 2006 WL 2191422, at *2 (S.D.Ill. July 31, 2006) (“The Court is independently aware that 33 1/3% to 40% (plus the cost of litigation) is the standard contingent fee percentages in this legal marketplace for comparable commercial litigation.”); *Abrams v. Van Kampen Funds, Inc.*, 2006 WL 163023, at *7 (N.D.Ill. Jan. 18, 2006) (“This bench has previously found that 25% is the median fee award in cases involving recoveries of \$5–\$15 million. The present case is in a somewhat higher category, with the gross recovery being \$31,500,000. However, * * * 25% of the net recovery will be considered the median fee award in the present type of case. The court will award fees based on that percentage unless the specific circumstances of this case call for a higher or lower award.”); *Gaskill v. Gordon*, 942 F.Supp. 382, 388 (N.D.Ill.1996) (“[T]he Court concludes that the professionals should recover 38% of the total fund available for distribution. This award reflects an increase of five percent over the court's original award of 33% and exceeds the range of most common fund fee awards.”) (citing *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1272 (D.C.Cir.1993) for the proposition that “common fund awards typically fall between twenty and thirty percent”); *Goldsmith v. Tech. Solutions Co.*, 1995 WL 17009594, at *8 (N.D.Ill. Oct. 10, 1995) (“Thirty-three percent appears to be in line with what attorneys are able to command on the open market in arms-length negotiations with their clients.”).

In addition, it must be remembered that Class Counsel's fee award is much less than one-third of the Class's total recovery once the value of the prospective relief is taken into account. Where a settlement includes substantial affirmative relief, such relief must be considered in evaluating the overall benefit to the class. *Will*, 2010 WL 4818174, at *1 (citing MANUAL FOR COMPLEX LITIGATION (Fourth) § 21.71, at 337 (2004); PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION, § 3.13 (2010); cf. *Blanchard v. Bergeron*, 489 U.S. 87, 95, 109 S.Ct. 939, 103 L.Ed.2d 67 (1989) (cautioning against an “undesirable emphasis”

on monetary “damages” that might “shortchange efforts to seek effective injunctive or declaratory relief.”)). Taking the value of this relief into account is further proof of the reasonableness of Class Counsel's sought-after fees.²⁸

*600 B. Costs and Expenses

The Federal Rules of Civil Procedure allow the Court, in a certified class action, to “award reasonable * * * nontaxable costs that are authorized by law or by the parties' agreement.” *Fed.R.Civ.P.* 23(h). Here, the agreement states that “Class Counsel shall seek approval of the Court for reimbursement of reasonable costs and expenses incurred by [Class Counsel] in litigating, handling, and resolving the Actions.” Settlement Agreement at ¶ 11. Exhibit 2 to the Affidavit of Sharon Harris (one of Plaintiff's attorneys) is a list of expenses incurred through March 4, 2011. The exhibit is a one-page document that shows the amount of expenses incurred in broad categories only; for example, it shows \$12,908.41 in “Hotels, Transportation, (airfare & taxi service), and Meals.” The other expenses sought by Class Counsel are for court reporter fees, filing fees, transcript fees, copying, travel, expert fees, and so forth.

Although no one has objected to Class Counsel's request for reimbursement of costs and expenses—and thus any such objections are waived—the Seventh Circuit has explained that district courts must exercise their discretion to “disallow particular expenses that are unreasonable whether because excessive in amount or because they should not have been incurred at all.” *Zabkowitz v. W. Bend Co., Div. of Dart Indus., Inc.*, 789 F.2d 540, 553 (7th Cir.1986) (quoting *Henry v. Webermeier*, 738 F.2d 188, 192 (7th Cir.1984)). The requested expenses do not seem excessive on their face. However, Class Counsel has provided insufficient itemization and back-up documentation of the expenses so to allow the Court to make a meaningful assessment. The Seventh Circuit has explained that “the amount of itemization and detail required is a question for the market.” *Synthroid I*, 264 F.3d at 722. “If counsel submit bills with the level of detail that paying clients find satisfactory, a federal court should not require more.” *Id.* Paying clients (especially in today's marketplace) typically would require more detail than Class Counsel has provided regarding how its attorneys are spending the Class's money. To be sure, the Court is not requesting an encyclopedic accounting of the expenditures; a summary document containing the amount of detail that generally accompanies a bill of costs submitted under *Fed.R.Civ.P.* 54(d) and 28 U.S.C. § 1920 will suffice to enable the Court

to perform its oversight function. Cf. *Northbrook Excess & Surplus Ins. Co. v. Procter & Gamble*, 924 F.2d 633, 643 (7th Cir.1991) (explaining that a prevailing party submitting a bill of costs is “not required to submit a bill of costs containing a description so detailed as to make it impossible to economically recover photocopying costs”). But the single page submitted thus far is simply not enough. Class Counsel's request for reimbursement of costs and expenses is denied without prejudice; counsel may re-submit its request along with additional supporting materials, within 30 days of the date of this order.

C. Incentive Payments

With respect to incentive payments, the Seventh Circuit has explained that such “awards are justified when necessary to induce individuals to become named representatives.” *Synthroid I*, 264 F.3d at 722. In deciding whether an incentive award is proper, and, if so, in what amount, “relevant factors include the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation.” *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir.1998) (approving incentive award of \$25,000). Class Counsel represents that the Class Representatives *601 participated in this

litigation and willingly undertook “the responsibilities and risks attendant with bringing this class action.” Pl. Mem. at 41. Further, notice of this lawsuit was sent to millions of customers and it and similar suits have garnered attention in the press. Class Representative's willingness to publically place their names on this suit and open themselves up to scrutiny and attention is certainly worth some remuneration. The Court grants the requested incentive award of \$1,000 each.

VII. Conclusion

For the reasons set forth above, the Court (1) grants final approval of the settlement, finding that the settlement is fair, reasonable, and adequate; (2) approves Class Counsel's request for attorneys' fees of \$3,166,666; (3) denies Class Counsel's request for cost and expense reimbursement without prejudice to re-filing within 30 days of the date of this order; and (4) approves an incentive award of \$1,000 each for the Class Representatives, Shannon Schulte and Marlene Willard.

All Citations

805 F.Supp.2d 560

Footnotes

- 1 On February 1, 2010, Marlene Willard filed a similar action in the Northern District of Georgia against Fifth Third. *Willard v. Fifth Third Bank, N.D. Ga.*, Case No. 1:10-CV-0271-JOF. While Willard is not a party to this action, she is a party to the Settlement Agreement, which provides that upon entry of final approval, the *Willard* action will be dismissed with prejudice. Willard and Schulte together are referred to as “Plaintiffs” or the “Class Representatives.” The Settlement Agreement refers to the *Schulte* and *Willard* cases as the “Actions.”
- 2 The Court will refer to Defendant Fifth Third Bank as “Fifth Third” or “Defendant.”
- 3 The Settlement Agreement is attached as Ex. A to Plaintiffs' motion for final approval of the settlement [103].
- 4 On November 8, 2010, 2010 WL 4483975, the Court denied a motion by the Keyes and Ratliff Objectors to amend the schedule that the Court had set for considering final approval of the settlement. [68]. The Objectors had asked the Court to (1) amend the schedule *ex ante* to provide objectors an opportunity to file a reply brief in support of their objections, and (2) delay the final approval hearing until after the close of the claims period.
- 5 The Settlement Agreement, at § 19, provided a procedure for the filing of objections. To be considered valid, an objection had to be filed with the Clerk of the Court at least 21 days before the final approval hearing and sent to Class Counsel and Defendant's counsel. The Settlement Agreement also imposed a number of requirements on the objection itself; for example, objectors were required to include “a list of all other

objections filed by the objector during the five years prior to the date the objection was filed.” *Id.* With the agreement of counsel for the parties, the Court has considered *all* of the objections that it received, regardless of whether the objections were properly and timely filed with the Court, or complied with the other formal requirements. However, Plaintiffs preserve their right to challenge improperly-submitted objections on the basis of their invalidity. See Pl. Mem. at 19 n. 11.

6 Unless otherwise indicated, all citations in this section are to the Settlement Agreement.

7 At the fairness hearing, counsel for Defendant informed the Court that the injunctive relief provided for in the Settlement Agreement “will be fully implemented by the first quarter of 2011.” Transcript of Final Fairness Hearing [120] at 46:25–47–1. As the Court has had no indication that that schedule has been delayed, the Court assumes that the prospective relief is now in place.

8 However, Defendant agreed to directly pay for the portion of the notice costs that involved notices on Defendant’s website or in the monthly statements that Defendant sends to its customers (i.e., these costs were not paid out of the fund). ¶ 15. Defendant has paid at least \$416,000 out of pocket to cover such costs. Pl. Mem. [103] at 6.

9 No one has challenged Mr. Tarter’s experience and qualifications, so the Court need not discuss them in detail. Briefly, Mr. Tarter holds a B.S. in business from the University of California at Los Angeles and an M.B.A. from Santa Clara University. Mr. Tarter is currently the managing director of the Andela Consulting Group, a consulting firm whose services include research, management consulting (especially for troubled companies), litigation consulting, and expert witness services. Mr. Tarter’s experience in the banking industry spans more than 40 years. Mr. Tarter has worked as a financial and management consultant, business advisor, and board member for public and private companies engaged in deposit transactions. Mr. Tarter has also been a senior bank officer at four banks, has served on the boards of directors for two banks, and has served as an independent outside director and chair of the audit committee for a large mortgage company.

10 For example, Defendant received \$15,546,166 in February 2006 from overdraft fees paid by its customers (after waiving, reversing, or charging off \$1,647,754). Ex. E–1 to Tarter Report.

11 The Court uses the word “day” here, but technically, Defendant processes debits for the purpose of assessing overdraft fees at the end of each “business cycle.” A “business cycle” is the end of the business day Tuesday through Friday. *Id.* at 9. Processing at the end of the day on Monday incorporates transactions made since the end of the banking day on the previous Friday. *Id.*

12 Of course, if a customer was assessed only one overdraft fee within a given posting period, the order in which the debits were posted would not have had any effect on the number of fees assessed.

13 For an example, the Court returns to February 2006. Since the average number of fees assessed on customers who incurred at least one fee during that month was 3.19, if all of the fees were assessed on one day (explained below), Tarter estimates that 18.3% of the fees collected during that month were the result of re-sequencing. Ex. E–1 to Tarter Report.

14 As a side note, Mr. Tarter cites a report from the American Bankers Association for the proposition that 77% of U.S. deposit accountholders polled said that they had not paid any debit card overdraft fees during the 12–month period preceding mid-August 2010. Tarter Report at 7. Accordingly, Mr. Tarter concluded that “the great majority of [Defendant’s] customers would not be affected by the Settlement Agreement.” *Id.* at 8.

15 This figure is adjusted for waivers, reversals, and charge-offs.

- 16 In a previous order (see [68] at 2), the Court indicated that it would entertain a motion by the PEC Objectors for leave to file a reply brief in support of their objections. The PEC Objectors decided not to take the Court up on this offer.
- 17 The Court will here address the PEC Objectors' criticisms of the Tarter Report. Both are unwarranted. Objectors argue that Mr. Tarter erred because the population from which Mr. Tarter drew his average number of fees incurred per month included customers who incurred just one overdraft fee per month, and these individuals could not be Class Members. Tarter Report at 9. But Mr. Tarter accounted for the inclusion of these individuals in the way in which he calculated and applied the mismatch probabilities—those calculations recognized that the probability of mismatch was 0% where there was only one overdraft transaction in particular day. *Id.* at 11. The PEC Objectors' second criticism of the Tarter Report is equally unfounded. Again, the PEC Objectors criticize Mr. Tarter's assumption that because 57 percent of all transactions were debit card or ATM transactions, 57 percent of overdraft fees were attributable to debit card or ATM transactions. First of all, Mr. Sullivan's affidavit establishes that 57 percent was the appropriate discount factor. See Sullivan Aff. at ¶ 8 (“Based on modeling done by Fifth Third in connection with the preparation of its periodic regulatory filings, it has been determined by approximately 57% of the yearly realized overdraft fees were the result of a debit card or ATM transaction.”). And in any event, assuming *arguendo* that Mr. Tarter's assumption was not validated by Mr. Sullivan's affidavit, the Objectors offer no concrete evidence to substantiate their concern that Mr. Tarter's choice to equate percentage of transactions performed with percentage of fees generated may have materially affected his ultimate damages calculation. The PEC Objectors did not seek to depose Mr. Tarter, nor did they seek to discover the information upon which Mr. Tarter based his analysis in order to test it or to offer an expert report of their own.
- 18 The Court makes clear that in enumerating Defendant's potential defenses, it does not purport to determine whether or not they would ultimately be successful. See [Williams v. General Elec. Capital Auto Lease](#), 1995 WL 765266, at *4 (N.D.Ill. Dec. 26, 1995) (“It is neither appropriate nor necessary to resolve the merits of the conflicting positions in the case in order to evaluate the fairness of the settlement.”).
- 19 In briefing at the preliminary approval stage, Plaintiffs argued that “adjusting [the award in *Gutierrez*] for the relative size between the class certified in *Gutierrez* and the proposed Settlement Class here, that judgment is reduced, on a comparative basis, to \$29 million.” [54] at 4. In her objection, Kannapel argues that in Plaintiffs' reduced the *Gutierrez* settlement too much, because they failed to account for the fact that the settlement only applied to Wells Fargo's *California* customers. Kannapel Obj. at 4–5. However, this objection seems misplaced, as Plaintiffs' did compare the number of Wells Fargo's *California* customers to the number of Fifth Third's customers nationwide. [54] at 4.
- 20 Plaintiffs report that they engaged in “wide-rang[ing]” and “detailed” confirmatory discovery following preliminary approval. See Pl. Mem. [103] at 7–8. Class Counsel examined financial information including “data and information pertaining to monthly summaries of consumer overdraft item fees, daily fee dollars, waivers, reversals and charge offs; net consumer fees; principal losses; realized fees; the number of monthly overdraft occurrences; the number of accounts with occurrences (that is, the posting of an overdraft fee); and the average number of overdraft occurrences.” *Id.* Class Counsel (and their expert) also participated in several in-person and telephone conferences with Fifth Third's attorneys and management wherein Fifth Third responded to various questions. *Id.*
- 21 Objector Cannata takes issue with the *cy pres* aspect of the settlement, and argues that distributions to Class Members should be “large enough so as to exhaust the fund,” such that no *cy pres* is needed. In their papers and at the fairness hearing, Class Counsel confirmed that because of the large number of claims filed by the Class, there will be no *cy pres* distribution. Fairness Hearing Tr. at 16–17; see also *id.* at 88; Pl. Mem. at 34. For this reason, the Court need not discuss the *cy pres* aspects of the settlement further.

- 22 The Keyes/Ratliff Objectors renew their request that the Court postpone any decision on final approval until after completion of the claims process. This would allow the Court to learn the actual number of claims filed by class members before granting or denying approval of the settlement. Because the large number of claims filed suggests no problems with notice to the class or with the claims process, and for the reasons explained in its previous order on this subject [68], the Court need not delay ruling.
- 23 In its order preliminary approving the settlement [59], the Court preliminarily approved the form and content of the Notice Plan and approved and appointed Hilsoft Notifications as Notice Specialist. *Id.* at ¶¶ 10; 11; 14.
- 24 Individual Notice was comprised of the following: A summary notice of the settlement (“Summary Statement Notice”) was included in the monthly statements of all potential Class Members who were current Fifth Third customers as of December 1, 2010, and who received monthly paper statements by mail. *Id.* ¶ 14. The Summary Statement Notices were inserted in the envelopes containing the monthly paper statements so that the headline of the Summary Statement Notices faced the flap of the envelopes and the Summary Statement Notices would be the first thing seen when the envelopes were opened. *Id.* The outside of the envelopes containing the monthly paper statements mailed to potential Class Members included a printed “call out” to alert Class Members that important legal information was included. *Id.* Additionally, the enclosed statements included text directing Class Members to the enclosed Summary Statement Notices. *Id.* ¶ 14. Fifth Third has reported that 1,425,631 account statements including the Summary Statement Notice were mailed to potential Class Members. *Id.* ¶ 15. In addition, a Summary Postcard Notice was mailed to potential Class Members who were Fifth Third customers who did not receive monthly statements by mail, and to all potential Class Members who were former Fifth Third customers. *Id.* ¶ 16. Prior to mailing, the addresses of potential Class Members who were former Fifth Third account holders were verified and, where appropriate, updated. *Id.* ¶¶ 16–18. Altogether, 2,711,981 Summary Postcard Notices were mailed to potential Class Members. *Id.* ¶ 23.
- 25 Publication notice of the settlement appeared in a weekday edition of 19 daily newspapers, having a combined daily circulation of over 3.6 million, in markets where Fifth Third has a significant number of branch offices. *Id.* ¶¶ 26–29. Additionally, a Court-approved informational release was issued to approximately 5,600 press outlets throughout the United States. *Id.* ¶ 31. Notice was also posted on the settlement website, www.OverdraftSettlement.com, in English and Spanish. *Id.* ¶ 33. The settlement website allows Class Members to view information about the settlement, including copies of the Detailed Notice, Settlement Agreement, and the Court's orders regarding the settlement. The settlement website also contains answers to frequently asked questions and includes contact information for the Claims Administrator. *Id.* By visiting the settlement website, Class Members can view and file a Claim Form, and can download and print a paper Claim Form. *Id.* As of March 7, 2011, there had been 243,574 website visitor sessions in which 1,291,650 website pages were viewed, which equates to just over 5.3 pages per visitor session. *Id.* ¶ 34. Additionally, a banner displaying the notice headline was also posted on Fifth Third's website, www.53.com, throughout the notice period, which included the address of the settlement website. *Id.* ¶ 30.
- 26 Of course, district courts must exercise caution in focusing on the first factor, for a dogmatic application of the principle would justify large attorneys' fees for frivolous class-actions suits that defendants agreed to settle. *In re Trans Union Corp. Privacy Litig.*, 629 F.3d at 746.
- 27 “The use of a lodestar cross-check in a common fund case is unnecessary, arbitrary, and potentially counterproductive.” *Will v. General Dynamics Corp.*, 2010 WL 4818174, at *3 (S.D.Ill. Nov. 22, 2010) (citing *In re Synthroid Mktg. Litig.*, 325 F.3d 974, 979–980 (7th Cir.2003) (“The client cares about the outcome alone” and class counsel's efficiency should not be used “to reduce class counsel's percentage of the fund that their work produced.”); *In re Comdisco Sec. Litig.*, 150 F.Supp.2d 943, 948 n. 10 (N.D.Ill.2001) (“To view the matter through the lens of free market principles, [lodestar analysis] (with or without a multiplier) is truly unjustified as a matter of logical analysis.”)).

- 28 Because the Court has approved the amount of attorneys' fees sought by Class Counsel, it overrules Mr. Cannata's objection that the amount of attorneys' fees sought are excessive. See Cannata Obj. Further, Mr. Cannata argues that the issue of attorney's fees should be "deferred until such time as the Court has received reports indicating the amount of monetary relief that has actually been delivered to the Class." *Id.* at 2. Because there is no *cy pres* distribution and because the fund's exposure for the costs of notice and administration has been capped by agreement of the parties as discussed above, the Court is aware now of how much of the fund will actually be distributed to Class Members.

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.

2016 IL App (2d) 150236
Appellate Court of Illinois, Second District.

SHAUN FAULEY, SABON, INC.; [Sandy Rothschild and Associates, Inc.](#); Debaun Development, Inc.; and Christopher Lowe Hicklin DC PLC, Individually and as the Representatives of a Class of Similarly Situated Persons, Plaintiffs–Appellees,
v.

METROPOLITAN LIFE INSURANCE CO., Storick Group Co., The Storick Group, Scott R. Storick, and John Does 1–10, Defendants–Appellees (Judd Clayton, Jr., Objector–Appellant). Shaun Fauley, Sabon, Inc.; [Sandy Rothschild and Associates, Inc.](#); Debaun Development, Inc.; and Christopher Lowe Hicklin DC PLC, Individually and as the Representatives of a Class of Similarly Situated Persons, Plaintiffs–Appellees and Cross–Appellants,
v.

Metropolitan Life Insurance Co., Storick Group Co., The Storick Group, Scott R. Storick, and John Does 1–10, Defendants–Appellees (Austin Distributing, Objector–Appellant and Cross–Appellee).

Nos. 2–15–0236, 2–15–0326

|
March 23, 2016.

Synopsis

Background: Class action was brought against insurance company and others for violations of Telephone Consumer Protection Act, arising out of defendants sending of unsolicited facsimile advertisements. The Circuit Court, Lake County, [Luis A. Berrones](#), J., approved settlement agreement following hearing, and objectors to settlement agreement appealed. Class representatives cross-appealed.

Holdings: The Appellate Court, [McLaren](#), J., held that:

character attacks on class counsel and objectors' counsel in appellate briefs violated rules governing briefs;

direct notice to class members, by facsimile, of proposed settlement agreement comported with due process;

provision of proposed settlement agreement that objectors appear in person at hearing on final approval in order to present their objections did not violate due process;

appellate review of trial court's determination that proposed settlement agreement was fair, reasonable, and adequate was for abuse of discretion, and not de novo review;

trial court did not abuse its discretion in finding that class counsel adequately represented interests of all class members, as factor in determining whether proposed settlement agreement was fair, reasonable, and adequate;

trial court did not abuse its discretion in refusing to allow lodestar cross-check of award of approximately \$7.6 million in attorney fees under settlement agreement.

Affirmed; cross-appeal dismissed.

Procedural Posture(s): On Appeal.

Attorneys and Law Firms

***430** [C. Jeffrey Thut](#), of Roach, Johnston & Thut, Libertyville, for appellant.

[Michael Resis](#), of SmithAmundsen LLC, Chicago, and [Frank A. Zacherl](#), of Shutts & Bowen LLP, Miami, FL, for appellee Metropolitan Life Insurance Company.

[Brian J. Wanca](#) and [David M. Oppenheim](#), both of Anderson & Wanca, Rolling Meadows, for appellees Shaun Fauley, Sabon, Inc. et al.

OPINION

Justice [McLAREN](#) delivered the judgment of the court, with opinion.

****509 ¶ 1** Objectors, Judd Clayton, Jr., and Austin Distributing, appeal the trial court's final approval of a settlement in a class-action fax-blasting lawsuit. Plaintiffs, Shaun Fauley, Sabon, Inc., [Sandy Rothschild & Associates, Inc.](#), Debaun Development, Inc., and Christopher Lowe Hicklin DC PLC (class representatives), individually and as the representatives of a class of ****510 *431** similarly situated persons, filed the lawsuit against defendants, Metropolitan Life Insurance Company, Storick Group Company, The Storick Group, Scott R. Storick, and John

Does 1 through 10 (collectively MetLife). Objectors objected to the settlement reached by the class-action parties. The trial court considered the objections and approved the settlement, which included a common fund of \$23 million and attorney fees of over \$7.6 million. On appeal, objectors argue that the trial court erred by approving the settlement, because: (1) the due-process rights of the class were violated; (2) class counsel was inadequate; (3) the class representatives were inadequate; and (4) the attorney-fee award was excessive. The class representatives cross-appeal, arguing that the trial court erred by denying their motion to strike Austin's objection. We affirm the trial court's final approval of the settlement. We dismiss the class representatives' cross-appeal appeal as moot.

¶ 2 I. BACKGROUND

¶ 3 On July 28, 2014, class representatives filed a class action complaint against MetLife, alleging that MetLife sent facsimile advertisements in violation of the Telephone Consumer Protection Act of 1991 (TCPA) (47 U.S.C. § 227 (2012)) and seeking \$500 in statutory damages for each violation.

¶ 4 On July 30, 2014, two days after filing their complaint, the class representatives filed a motion for “Preliminary Approval of Class Action Settlement.” The attached settlement agreement created a common fund of \$23 million to be paid by MetLife, from which the class representatives' counsel, Anderson & Wanca (class counsel), would receive approximately \$7.6 million and each class representative would receive \$15,000. In addition, the settlement agreement provided that C-Mart and Richard Cadenasso would each receive \$15,000 from the common fund.

¶ 5 C-Mart and Cadenasso were class representatives in three fax-blast class action lawsuits against MetLife that were filed before this case in other jurisdictions. C-Mart and Cadenasso, like the class representatives here, were represented by Anderson & Wanca. These three prior lawsuits were dismissed after discovery and mediation.

¶ 6 The settlement agreement in this case also provided that, from the remainder of the \$23 million common fund, all class members could submit claims and receive: (1) \$150 to \$250 per fax, for up to 10 faxes; (2) a *pro rata* share, up to \$100 per fax, for a maximum of 10 faxes (where indicated by the record of transmission); or (3) a *pro rata* share up to \$50 (if

the claimant submitted a sworn statement). Any checks issued to claimants that were not cashed would be paid to certain named charities (the *cy pres* provision).

¶ 7 On August 7, 2014, the trial court granted preliminary approval of the proposed settlement agreement, certified the class, and found that the proposed forms of notice satisfied the requirements of due process under the Illinois and United States Constitutions (Ill. Const. 1970, art. I, § 2; U.S. Const., amends. V, XIV) and section 2–803 of the Code of Civil Procedure (Code) (735 ILCS 5/2–803 (West 2014)). The trial court's written order provided:

“The Settlement Agreement proposes notice to the Settlement Class by: (i) facsimile [direct notice], (ii) publication in USA Today on three (3) occasions, and (iii) by maintaining a settlement website. The Court finds that such proposed notice satisfies the requirements of due process under the Illinois and United States Constitutions and ****511 *432 735 ILCS 5/2–803**. The Court approves the form of the [direct] Notice.”

¶ 8 The direct notice was sent to those who received faxes during the relevant time period as determined by MetLife's electronic records. The direct notice explained that class members were those who received unsolicited facsimile advertisements or faxes that did not contain opt-out language as required by the TCPA. The direct notice briefly described the lawsuit as alleging that MetLife violated the TCPA by sending “unsolicited advertisements by fax.” The direct notice explained that, although MetLife denied the allegations and raised defenses, MetLife had created the \$23 million settlement fund. The direct notice described the three types of relief available to class members and explained who represented the class; it further relayed that class counsel would request a \$15,000 incentive award for each of the class representatives and an award of attorney fees equal to “one-third of the settlement fund.” The direct notice provided the following four options: (1) “Submit a Proof of claim (attached) to receive a check”; (2) “Do nothing” and be bound by the settlement, but “you will not receive any money”; (3) “Opt out of the settlement”; or (4) “Object to the settlement.” Regarding instructions on how to object to the settlement, the direct notice provided:

“**Object to the Settlement:** If you wish to object to the settlement rather than excluding yourself, you must file a written objection with the Clerk of the Circuit Court of Lake County, 18 N. County St., Waukegan, Illinois 60085. Your objection must be filed by [October 14], 2014, and

must contain the name and number of this case (as indicated at the top of this notice). You must also serve copies of your objection on Class Counsel and Defendants' attorneys (identified above), postmarked by the same date. Your objection must include your name, fax number, and street address, along with a statement of the reasons why you believe the Court should find that the proposed settlement is not in the best interests of the Settlement Class. It is not sufficient to simply state that you object; you must state your reasons. Additionally, if you want the Court to consider your objection, then *you must also appear* at the final approval hearing in Room C-301, on [November 14], 2014 at [9:00 a.m.] *You are not required to attend this hearing unless you object to the settlement.*" (Emphases in original.)

The direct notice also provided:

"WHERE CAN YOU GET MORE INFORMATION?"

This Notice only summarizes the litigation and the settlement. To see the complete file, including a copy of the settlement agreement, you may visit the office of the Clerk of the Circuit Court of Lake County, 18 N. County St., Waukegan, Illinois 60085. The clerk will make the files relating to the lawsuit available to you for inspection and copying at your own expense. If you have specific questions, you can write to Class Counsel at the address listed above. Include the case number, your name, your fax number, and your current street address on any correspondence. You may also call attorney Brian J. Wanca, Class Counsel, at * * *.

* * *

TO FILE YOUR CLAIM, GO TO: <http://www.class-settlement.com>

Enter your unique USER ID & PASSWORD and follow the easy online instructions." (Emphases in original.)

¶ 9 The publication notice defined the class and indicated that class members could be entitled to a portion of the \$23 ****512 *433** million fund for unsolicited faxes. The publication notice provided in part:

"Claim forms are available from the claims administrator or the website listed below. Claim forms are due by *November 26, 2014*. If you wish to object to the settlement, you must identify yourself as a class member and state the reason for and file and serve your objection by *October 14, 2014*,

and you must appear at the Court hearing on *November 14, 2014*." (Emphases in original.)

The publication notice referred class members to www.termllifeinsurancetcpa.settlement.com. The record indicates that this website contained a link to the proposed settlement and the preliminary approval order, which provided, "Settlement Class members who wish to opt out of the settlement * * * are required to serve a written request for exclusions * * * on the parties or their designated agent * * * on or before Oct. 14, 2014."

¶ 10 Austin filed an objection to the proposed settlement, arguing that the settlement amount was too low in relation to the amount of potential damages, the award of attorney fees was too high, the *cy pres* award was a breach of class counsel's fiduciary duty to the class, and the *cy pres* award established that class counsel was inadequate.

¶ 11 Clayton received direct notice of the settlement and submitted a claim. Thereafter, Clayton filed an objection to the settlement, arguing that the settlement amount was unfair relative to the TCPA penalties, the award of attorney fees was excessive, and the direct notice to the class was not the "best notice practicable," because it did not provide access to relevant court documents on a public website. In addition, Clayton joined and incorporated Austin's objection. The class representatives filed a brief in support of final approval of the settlement.

¶ 12 The class representatives also filed a motion to strike Austin's objection, alleging that Austin failed to provide information required by the trial court's preliminary approval order, such as a fax number and address. The class representatives also alleged that Austin failed to show class membership and that the settlement administrator could not locate Austin in MetLife's database listing the recipients of the faxes. The trial court denied the class representatives' motion to strike.

¶ 13 Austin issued a subpoena requesting a settlement agreement relating to the case *Old National Bank v. Anderson, Cook Co. Cir. Ct., No. 2014 CH 06229*. In that case, Old National Bank sought relief against Wanca and Anderson & Wanca, alleging that Wanca fraudulently transferred funds to avoid a \$3.35 million debt. After the instant class-action lawsuit was filed, Wanca and Anderson & Wanca entered into a settlement agreement with Old National Bank, and the case was voluntarily dismissed. The class representatives, Wanca, and Anderson & Wanca filed a motion to quash Austin's

subpoena for the Old National Bank settlement agreement, and the trial court granted their motion.

¶ 14 Austin also issued a subpoena requesting “[a]ny and all records of [class counsel’s] time and costs advanced in [this case].” The class representatives and class counsel filed a motion to quash the subpoena and for a protective order pursuant to [Illinois Supreme Court Rule 201\(c\)](#) (eff. July 1, 2014). The trial court granted the request for class counsel’s time records, to be submitted for *in camera* inspection pursuant to a protective order.

¶ 15 After a fairness hearing held on January 16, 2015, the trial court issued a written order on February 27, 2015, in which it overruled in part and sustained in ****513** ***434** part objectors’ objections. The trial court summarized the facts and the proposed settlement as follows. The class representatives filed their class-action lawsuit alleging violations of the TCPA. Section 227(b)(3)(B) of the TCPA provides that a person may recover \$500 in damages for each violation. [47 U.S.C. § 227\(b\)\(3\)\(B\) \(2012\)](#). The class representatives and MetLife agreed to settle the lawsuit for \$23 million. This settlement occurred during the pendency of several similar cases in other jurisdictions with different class representatives, which ultimately were dismissed. Each class representative here will receive an incentive award of \$15,000. C-Mart and Cadenasso, who served class representatives in lawsuits that were dismissed, will each receive an incentive award of \$15,000. Class counsel will receive attorney fees of approximately \$7.6 million and be reimbursed for costs and expenses in the amount of \$592,094. Class members will be paid \$250, \$85, or \$42.50, depending on whether they submit level-one, level-two, or level-three claims. The checks issued to class members but not cashed will be paid as a *cy pres* award: 50% to the Lake County Bar Association and 50% to various charities.

¶ 16 The trial court identified the following objections: (1) the amount of information provided relating to the proposed settlement; (2) the amount of the settlement; (3) Anderson & Wanca being class counsel; (4) the *cy pres* award; (5) the amount of the attorney fees; and (6) the named plaintiffs being class representatives. The trial court analyzed the proposed settlement and the objections under the eight-factor test set forth in [City of Chicago v. Korshak](#), 206 Ill.App.3d 968, 972, 151 Ill.Dec. 797, 565 N.E.2d 68 (1990), to determine whether the proposed settlement was fair, reasonable, and in the best interests of the class members. The trial court discussed each factor in turn: (1) the strength of the class representatives’

case balanced against the amount of the proposed settlement; (2) MetLife’s ability to pay; (3) the complexity, length, and expense of further litigation; (4) the amount of opposition to the proposed settlement and the reaction of the class members to it; (5) the presence of collusion in reaching the settlement agreement; (6) the opinion of competent counsel; (7) the stage of the proceedings and the amount of discovery completed; and (8) the amount of attorney fees. See *id.*

¶ 17 Regarding the first factor, the strength of the case balanced against the amount of the proposed settlement, the trial court determined that the application of this factor addressed two of the objections: the insufficiency of information relating to the proposed settlement and the inadequacy of the settlement amount. The trial court was provided with “a substantial amount of information regarding the litigation * * * and each side’s perceived strengths and weakness[es] [including] confidential mediation submissions that ultimately led to settling this case and later with class counsel’s time records.” Based on this information, the trial court found that MetLife had “some strong defenses that would result in substantial additional litigation and pose a real risk to a successful outcome for [class] plaintiffs.” The trial court found that “the potential damages for a class of 2,792,213 members, or even the 1,892,792 [\$500 each = over \$946 million] class members contacted, are substantially more than the settlement amount; balanced against the strength of defendant’s possible defenses this factor weighs in favor of settlement.”

¶ 18 The trial court found that the second factor, MetLife’s ability to pay, favored approval of the settlement.

435** *514** ¶ 19 Regarding the third factor, the complexity, length, and expense of further litigation, the trial court found that MetLife asserted several defenses, raising complex issues, that would “require additional litigation to resolve” and require the parties to incur additional expense, substantial time, effort, and resources. The trial court therefore found that this factor weighed in favor of the settlement.

¶ 20 Regarding the fourth factor, the amount of opposition and the reaction of class members to the settlement, the trial court found that 1,892,782 direct notices were sent to class members and 50,000 claims were made, but only two objections were filed. The trial court found that the opposition was “*de minimis*” and that this factor weighed in favor of approving the settlement.

¶ 21 Regarding the fifth factor, the presence of collusion in reaching the settlement agreement, the trial court stated that this factor addressed objectors' objection regarding Anderson & Wanca's adequacy as class counsel. The trial court stated that the proposed settlement was the product of "extensive negotiations that included multiple third-party mediation sessions." Further, the amount of the proposed settlement was the "second highest" for a TCPA case. Objectors had provided no evidence that the proposed settlement was not the product of "good-faith, arm's-length negotiations." Objectors had provided no evidence that class counsel breached its fiduciary duty to any class member. The trial court wrote the following in a footnote:

"The objectors attempt to create a conflict between the Anderson & Wanca firm and the class members by submitting evidence of an unrelated lawsuit against Anderson & Wanca and the multi-million dollar payment obligation that Anderson & Wanca has in that case. The objectors then ask the Court to conclude that because the payment obligation and the amount of attorney's fees requested in this case are comparable amounts that Anderson & Wanca breached its fiduciary duty to the class members by entering into the proposed settlement. The objectors, however, fail to provide any evidence that this multi-million dollar payment obligation influenced any action taken by Anderson & Wanca in this case. Absent additional evidence from the objectors the Court has no basis upon which it can reach this conclusion."

The trial court also found that the *cy pres* award was proper and that overall the fifth factor weighed in favor of approving the settlement.

¶ 22 Regarding the sixth factor, the opinion of competent counsel, the trial court found, "[c]lass counsel has extensive experience in the prosecution of TCPA cases and it is class counsel's opinion that the proposed settlement is fair, reasonable, and in the best interest of all class members." The trial court found this opinion supported by retired Judge Terrance J. Brady, who set forth class counsel's experience and competency in support of its request for attorney fees. The trial court found that the sixth factor weighed in favor of approving the settlement.

¶ 23 Regarding the seventh factor, the stage of the proceedings and the amount of discovery, the trial court found that, although the case was in the early stages of litigation, substantial discovery and motion practice had been

completed, as had the litigation in the dismissed cases in other forums. The parties had sufficient information to evaluate the merits of their respective positions and, therefore, this factor weighed in favor of approving the settlement.

*436 **515 ¶ 24 Regarding the eighth factor, the amount of attorney fees, the trial court, citing *Brundidge v. Glendale Federal Bank, F.S.B.*, 168 Ill.2d 235, 238, 213 Ill.Dec. 563, 659 N.E.2d 909 (1995), stated that "[a]n award of fees under the common fund doctrine may be determined by the percentage-of-the-award method or by the [lodestar] method at the court's discretion. *Id.* at 244, 213 Ill.Dec. 563, 659 N.E.2d 909." The trial court found that class counsel's time records showed "the substantial amount of time, expense and effort expended in litigating this case [and that] class counsel accepted a substantial risk in prosecuting this case under a contingency fee agreement given the vigorous defense of the case." The trial court found that there was no reason to award attorney fees under the lodestar method instead of the one-third percentage-of-the-award method.

¶ 25 The trial court overruled all of the objections it had identified to the final approval of the settlement agreement except for the objection relating to the adequacy of the settlement as it related to the payment of the incentive awards to C-Mart and Cadenasso. The trial court withheld for 14 days the entry of an order approving the settlement, to provide the class representatives and MetLife an opportunity to revise the settlement to conform to the court's findings and ruling and to adjust the payment amounts to account for an additional \$30,000 available for distribution to the class members. The trial court also ruled that, if the parties failed to revise the settlement to conform to the court's findings and ruling, the court would enter an order denying the class representatives' motion for final approval of the settlement.

¶ 26 On March 2, 2015, Clayton renewed his objection to any revised settlement.

¶ 27 On March 3, 2015, the settling parties revised the settlement, eliminating the incentive awards to C-Mart and Cadenasso, and provided a proposed final approval order to the trial court. On March 6, 2015, the trial court entered the final approval order and overruled the objections, based on its findings from the January 16, 2015, final fairness hearing and the February 27, 2015, written order.

¶ 28 Clayton filed a notice of appeal on March 6, 2015, and an amended notice of appeal on March 16, 2015. Austin filed

its notice of appeal on April 2, 2015. On April 13, 2015, the class representatives filed their notice of cross-appeal, appealing the trial court's denial of their motion to strike Austin's objection. This court consolidated the appeals.

¶ 29 II. ANALYSIS

¶ 30 Initially, we address Clayton's motion to strike the class representatives' brief because its statement of facts is a “[p]etulant attack on the character of Objectors and their counsel” in violation of [Illinois Supreme Court Rule 341\(h\)\(6\)](#) (eff. Feb. 6, 2013) (requiring an appellant's brief to contain a statement of facts with “facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal”). We note that the argument section of Austin's brief contains similar attacks on the character of class counsel, in violation of [Illinois Supreme Court Rule 341\(h\)\(7\)](#) (eff. Feb. 6, 2013) (requiring that the argument section contain “the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on”). We do not condone this conduct. Although attorneys in high-stakes civil cases often find their veracity and reputations under attack, they must remember that ****516 *437** they are members of an honorable profession and that personal and hyperbolic attacks of the type made by the attorneys here do not serve our system of justice. Further, such attacks do not take the place of factual or legal analysis. We also note that the parties' use of string citations to federal court decisions and Illinois trial court decisions is neither helpful nor persuasive. However, the parties' flagrant improprieties are not so egregious as to hinder our review of the facts or the issues. See [John Crane Inc. v. Admiral Insurance Co.](#), 391 Ill.App.3d 693, 698, 331 Ill.Dec. 412, 910 N.E.2d 1168, (2009). Therefore, we deny Clayton's motion to strike the class representatives' brief, but we will disregard any unsupported or inappropriate statements contained in the briefs of both the class representatives and Austin. *Id.*

¶ 31 A. Due-Process Rights

¶ 32 1. Notice

¶ 33 Clayton argues that the notices violated the class members' constitutional due-process rights because they were defective and not the best notice practicable. Specifically, and

for the first time on appeal, Clayton argues that the publication notice was defective because it failed to inform potential class members of their opt-out rights and the procedures to opt out. It is well settled that issues not raised in the trial court cannot be raised for the first time on appeal. [People ex rel. Wilcox v. Equity Funding Life Insurance Co.](#), 61 Ill.2d 303, 313, 335 N.E.2d 448 (1975) (class-action objectors could not raise an argument on appeal regarding the adequacy of notice where they failed to raise it in the trial court). Because Clayton failed to challenge the sufficiency of the publication notice in the trial court, he cannot raise this issue here for the first time. See *id.*

¶ 34 Clayton also argues that the direct notice was not the “best practicable” notice, because it failed to direct potential class members to a settlement website with court documents, such as the settlement documents. Clayton argues more precisely that, although the direct notice directed potential class members to a website containing the notice, proposed settlement, and preliminary approval order, the notice was misleading because it led members to believe that the website was solely for submitting claims. Clayton asserts that the website should have provided access to court documents without confusion as to whether a claim must first be submitted.

¶ 35 According to [section 2–803 of the Code \(735 ILCS 5/2–803 \(West 2014\)\)](#), “[u]pon a determination that an action may be maintained as a class action, or at any time during the conduct of the action, the court in its discretion may order such notice that it deems necessary to protect the interests of the class and the parties.” However, the exercise of the court's discretion is limited by the dictates of due process. [Carrao v. Health Care Service Corp.](#), 118 Ill.App.3d 417, 429, 73 Ill.Dec. 684, 454 N.E.2d 781 (1983). Our supreme court has indicated that “[t]he question of what notice must be given to absent class members to satisfy due process necessarily depends upon the circumstances of the individual action.” [Miner v. Gillette Co.](#), 87 Ill.2d 7, 15, 56 Ill.Dec. 886, 428 N.E.2d 478 (1981) (citing [Frank v. Teachers Insurance & Annuity Ass'n of America](#), 71 Ill.2d 583, 593, 17 Ill.Dec. 796, 376 N.E.2d 1377 (1978)).

¶ 36 The United States Supreme Court has explained that due process requires notice to be the “best practicable, ‘reasonably calculated, under all the circumstances, to apprise interested parties ****517 *438** of the pendency of the action and afford them an opportunity to present their objections.’ ” [Phillips Petroleum Co. v. Shutts](#), 472 U.S. 797, 812, 105 S.Ct. 2965,

86 L.Ed.2d 628 (1985) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314–15, 70 S.Ct. 652, 94 L.Ed. 865 (1950)). In addition, the “notice should describe the action and the plaintiffs' rights in it.” *Id.* We review *de novo* a trial court's finding, upon approval of a class-action settlement, that notice to the class satisfied due process. See *Vassalle v. Midland Funding LLC*, 708 F.3d 747, 759 (6th Cir.2013).

¶ 37 The record indicates that the direct notice informed potential class members of the class action's pendency and the opportunity to object to the proposed settlement, and it provided a website containing the notice, preliminary approval order, and proposed settlement. The trial court found that the “Notice and the process by which it was sent fully complied with the requirements of 735 ILCS 5/2–803 and due process under the Illinois and United States Constitutions, constituted the best practicable notice under the circumstances, and provided due and sufficient notice to all persons entitled to notice of settlement of this lawsuit.” The record indicates that the notice was adequate and satisfied the requirements of due process. Thus, the trial court properly so found.

¶ 38 Clayton cites *Gooch v. Life Investors Insurance Co. of America*, 672 F.3d 402 (6th Cir.2012), and *Mirfasihi v. Fleet Mortgage Corp.*, 356 F.3d 781 (7th Cir.2004), to support his argument. In *Gooch*, the court of appeals held that a notice that included a website where potential class members could obtain additional information “met the due-process baseline.” *Gooch*, 672 F.3d at 424. In *Mirfasihi*, the court of appeals held that, where individual notice is impossible, notice by publication in a national newspaper and a settlement website maintained by the settlement administrator are “acceptable.” *Mirfasihi*, 356 F.3d at 786. Nothing in *Gooch* or *Mirfasihi* indicates that a website containing access to court documents is necessary to satisfy due process. Therefore, neither *Gooch* nor *Mirfasihi* is controlling.

¶ 39 2. Requirement to Appear

¶ 40 Next, Clayton argues that requiring class members to appear at the fairness hearing to object to the proposed settlement violated their due-process rights under the United States Constitution, because it unreasonably deprived absent class members the opportunity to be heard. Due process requires that all class members “receive notice plus an opportunity to be heard and participate in the litigation,

whether in person or through counsel.” *Phillips Petroleum Co.*, 472 U.S. at 812, 105 S.Ct. 2965.

¶ 41 While our research has revealed no Illinois case on point, MetLife cites an unreported federal court of appeals case, *Spark v. MBNA Corp.*, 48 Fed.Appx. 385 (3d Cir.2002), which held, “we are confident that a court, consistent with due process, may require an objector to be present, in person or by counsel, to present his objections and respond to inquiries.” *Id.* at 391. Although *Spark* is not binding on this court, we find it persuasive.

¶ 42 In contrast, Clayton cites no persuasive authority to support his argument. Clayton cites only *Litwin v. iRenew Bio Energy Solutions, LLC*, 226 Cal.App.4th 877, 172 Cal.Rptr.3d 328 (2014), wherein the court determined that requiring an objector to appear at the final approval hearing violated the California Rules of Court. Clayton cites no similar Illinois rule. Therefore, *Litwin* is not persuasive. The other cases cited by Clayton are not on point or Clayton misstates their holdings. In this case, we determine that requiring **518 *439 class members to be present in court to object did not violate their due-process rights. See *Spark*, 48 Fed.Appx. at 391.

¶ 43 B. Approval of Class Settlement

¶ 44 1. Standard of Review

¶ 45 Objectors attack the trial court's final approval of the class settlement. Objectors contend that our review is *de novo*. We disagree. To support their argument, objectors cite federal cases that are not binding on this court (see *Hope Clinic for Women, Ltd. v. Flores*, 2013 IL 112673, ¶ 78, 372 Ill.Dec. 255, 991 N.E.2d 745) and decisions that are factually distinguishable. In Illinois, a trial court's final approval of a class-action settlement will not be disturbed unless the trial court abused its discretion. *People ex rel. Wilcox v. Equity Funding Life Insurance Co.*, 61 Ill.2d 303, 316, 335 N.E.2d 448 (1975); *Quick v. Shell Oil Co.*, 404 Ill.App.3d 277, 281, 344 Ill.Dec. 549, 937 N.E.2d 255 (2010). In such a case, the question is not whether the reviewing court agrees with the action taken by the trial court, but whether “no reasonable person would take the view adopted by the trial court.” *In re Marriage of Schneider*, 214 Ill.2d 152, 173, 291 Ill.Dec. 601, 824 N.E.2d 177 (2005). Given that a settlement is a compromise, a trial court is not to judge the legal and factual questions by the criteria employed in a trial on the merits.

See *GMAC Mortgage Corp. of Pennsylvania v. Stapleton*, 236 Ill.App.3d 486, 493, 177 Ill.Dec. 697, 603 N.E.2d 767 (1992). Rather, the standard used to evaluate the settlement of a class action is whether the agreement is fair, reasonable, and adequate. *Steinberg v. System Software Associates, Inc.*, 306 Ill.App.3d 157, 169, 239 Ill.Dec. 178, 713 N.E.2d 709 (1999).

¶ 46 2. Adequate Representation of Class

¶ 47 a. Class Counsel

¶ 48 i. Fraudulent–Transfer Lawsuit

¶ 49 Objectors argue that class counsel breached its fiduciary duty to the class by failing to disclose that, just after the trial court granted preliminary approval of the settlement, class counsel settled a separate case. In this separate case, *Old National Bank v. Anderson*, Cook Co. Cir. Ct., No. 2014 CH 06229, *Old National Bank* sought \$3.6 million, alleging that class counsel was liable for fraudulent transfer. *Old National Bank* alleged that in 2011 *Wanca* was liable for a \$3.6 million judgment and that, in 2012, *Wanca* engaged in a fraudulent transfer to avoid payment. *Old National Bank* filed its complaint in April 2014, and the class representatives here filed their complaint in July 2014. Thereafter, the trial court granted preliminary approval of the settlement and class counsel settled its lawsuit with *Old National Bank*. Objectors contend that class counsel's failure to disclose the details of the settlement in the fraudulent-transfer case, coupled with its efforts to prevent disclosure, leads to the conclusion that class counsel did not adequately represent the class.

¶ 50 The trial court conducted a lengthy fairness hearing and considered objectors' argument regarding class counsel's concurrent litigation and settlement with *Old National Bank*. The trial court found that objectors failed to present any evidence that the settlement here was not the product of good-faith, arm's-length negotiation, that the *Old National Bank* settlement influenced any action taken by class counsel in this case, or that class counsel breached its fiduciary duty to any class member. Nothing in the record indicates otherwise. Therefore, the trial court did not abuse its **519 *440 discretion by overruling objectors' objection.

¶ 51 Objectors cite *Eubank v. Pella Corp.*, 753 F.3d 718 (7th Cir.2014) to support their argument. In *Eubank*, the court of appeals held that the district court's approval of

the settlement was error for numerous reasons, including class counsel's legal problems, namely, the fact that class counsel was a defendant in two lawsuits involving his former law firm's accusation that he misappropriated assets and a recommendation from the Illinois Attorney Registration and Disciplinary Commission that he be suspended from the practice of law. *Id.* at 722. In holding that the settlement should have been disapproved, the court of appeals also reasoned that class counsel replaced three named class plaintiffs because they opposed the settlement. *Id.* In this case, objectors provided no evidence that class counsel here was under the kind of financial duress as class counsel in *Eubank* or that class counsel in this case engaged in the type of self-dealing that class counsel engaged in *Eubank* (replacing named class plaintiffs who opposed the proposed settlement). Therefore, *Eubank* is distinguishable from this case.

¶ 52 ii. Class Counsel's Relationship with Sabon and C–Mart

¶ 53 Next, objectors argue that class counsel's less-than-arm's-length relationships with Sabon and C–Mart show that class counsel is inadequate and, therefore, cannot serve as class counsel. Objectors argue that Sabon and class counsel have collaborated on at least five TCPA class actions and that class counsel has paid Sabon more than \$10,000. Objectors also contend that class counsel had a similar relationship with C–Mart, class counsel solicited C–Mart, and C–Mart did not know what a class action was. Because objectors failed to raise these arguments in the trial court, these issues are forfeited on appeal. See *Haudrich v. Howmedica, Inc.*, 169 Ill.2d 525, 536, 215 Ill.Dec. 108, 662 N.E.2d 1248 (1996).

¶ 54 3. Class Representatives

¶ 55 Objectors argue that Fauley and Sabon are inadequate class representatives. Objectors contend that Fauley is an inadequate class representative because “no information is available about [him] because he refused to appear for a deposition.” Objectors argue that Sabon is an inadequate class representative because Sabon is closely associated with class counsel in that “[they] work together on TCPA cases.” MetLife argues that objectors have forfeited these arguments because they raise them for the first time on appeal. We agree with MetLife. Austin's objection to the final approval of the settlement (adopted and joined by Clayton) did not raise the issues it now raises on appeal regarding Fauley and Sabon.

Austin made only a vague allegation that “[g]iven the obvious defects in the Proposed Class Settlement one must seriously question whether class counsel and the named representatives can fairly and adequately represent the class.” It is well settled that “issues not raised in the trial court are deemed [forfeited] and may not be raised for the first time on appeal.” *Id.* Because objectors failed to raise these issues in the trial court, these arguments are forfeited.

¶ 56 4. Attorney Fees

¶ 57 Objectors argue that the trial court erred by refusing to allow a lodestar cross-check on class counsel's more than \$7.6 million in attorney fees. Objectors also argue that the amount was excessive. The class representatives argue that the trial court did not abuse its discretion by approving the award based on the percentage ****520 *441** method. We agree with the class representatives.

¶ 58 In *Brundidge*, our supreme court held that a trial judge has discretionary authority to choose a percentage or a lodestar method when determining the amount of fees to be granted to plaintiff's counsel in common-fund class-action litigation. *Brundidge*, 168 Ill.2d at 243–44, 213 Ill.Dec. 563, 659 N.E.2d 909. The lodestar method is a computation that increases the reasonable value of services rendered by a weighted multiplier; this multiplier represents certain considerations, for example, “the contingency nature of the proceeding, the complexity of the litigation, and the benefits [to] * * * the class.” *Id.* at 239–40, 213 Ill.Dec. 563, 659 N.E.2d 909 (citing *Fiorito v. Jones*, 72 Ill.2d 73, 91, 18 Ill.Dec. 383, 377 N.E.2d 1019 (1978)).

¶ 59 In this case, class counsel submitted time records to the trial court, as ordered, and the trial court examined them *in camera*. In a brief filed in support of the final approval of the settlement, class counsel summarized its time records, representing that “the time records submitted *in camera* show that [class] counsel's lodestar value was \$2,577,811.” Therefore, had the trial court used the lodestar method, the effective multiplier would have been approximately 2.97, well within the range of multipliers used in other common-fund cases. See *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n. 6 (9th Cir.2002) (a survey of multipliers showed a range from 0.6 to 19.6, with most ranging from 1 to 4, and a “bare majority” ranging from 1.5 to 3.0). We note that the multiplier here was also justified in light of the trial court's finding that class counsel accepted “substantial risk

in prosecuting this case under a contingency fee agreement given the vigorous defense of the case and defenses asserted by [MetLife].” See *Brundidge*, 168 Ill.2d at 239–40, 213 Ill.Dec. 563, 659 N.E.2d 909 (to determine the proper multiplier, a court may consider “the contingency nature of the proceeding” and the complexity of the litigation). Accordingly, under the lodestar method, the amount of attorney fees would not necessarily have been lower. Thus, objectors' argument that the trial court should have used a lodestar cross-check on class counsel's fees is unpersuasive. We cannot say that the trial court abused its discretion by granting the attorney fees based on a percentage of the common fund.

¶ 60 In a related argument, objectors argue that the trial court erred by denying them access to class counsel's time records, “making it impossible to determine whether the amount of hourly fees logged were reasonable and necessary.” It is the appellant's burden to provide a complete record on appeal in order to support a claim of error. *Corral v. Mervis Industries, Inc.*, 217 Ill.2d 144, 156, 298 Ill.Dec. 201, 839 N.E.2d 524 (2005). Since class counsel's time records are not part of the record on appeal, we are unable to determine if error, let alone prejudicial error, arose. Class counsel's hours and fees were listed in a pleading, and we will presume that the trial court would have noted any discrepancies between the pleading and the actual time records after its *in camera* review. Accordingly, we must presume that the trial court's ruling regarding class counsel's fees had a sufficient factual basis and was in conformity with the law. See *Foutch v. O'Bryant*, 99 Ill.2d 389, 391–92, 76 Ill.Dec. 823, 459 N.E.2d 958 (1984) (in the absence of a complete record on appeal, a reviewing court presumes that the trial court's order had a sufficient factual basis and was in conformity with the law).

¶ 61 Next, objectors argue that the trial court erred by awarding class counsel over ****521 *442** \$7.6 million in attorney fees, because class counsel breached its fiduciary duty to the class. Objectors again contend that class counsel breached its fiduciary duty by failing to disclose the Old National Bank lawsuit. Objectors also contend, again, that class counsel was inadequate because it included Sabon as a class representative and Sabon had “extensive prior dealings with class counsel in [other] TCPA cases.” We have already determined that these arguments have no merit. Objectors point to nothing in the record indicating that the settlement was not fair, reasonable, and adequate. See *Steinberg*, 306 Ill.App.3d at 169, 239 Ill.Dec. 178, 713 N.E.2d 709. Therefore, the trial court did not abuse its discretion by

approving the fee award. See [Quick](#), 404 Ill.App.3d at 281, 344 Ill.Dec. 549, 937 N.E.2d 255.

¶ 62 C. Cross–Appeal

¶ 63 The class representatives appeal the trial court's order denying their motion to strike Austin's objection. We will not address this issue, because it is moot. Our affirmance of the approval of the settlement renders the failure to strike Austin's objection at worst *de minimis*, and harmless, error. Therefore, the class representatives' cross-appeal is dismissed.

¶ 64 III. CONCLUSION

¶ 65 For the reasons stated, we affirm the trial court's judgment approving the settlement and dismiss the class representatives' cross-appeal.

¶ 66 No. 2–15–0236, Affirmed.

¶ 67 No. 2–15–0326, Affirmed; cross-appeal dismissed.

Justices [HUDSON](#) and [BIRKETT](#) concurred in the judgment and opinion.

All Citations

2016 IL App (2d) 150236, 52 N.E.3d 427, 402 Ill.Dec. 506

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.

2015 WL 13653878

Only the Westlaw citation is currently available.
United States District Court, E.D. California.

Cirena TORRES, on behalf of herself and
all others similarly situated, Plaintiffs,

v.

PET EXTREME, Defendant.

Case No. 1:13-cv-01778-LJO-SAB

I

Filed 02/24/2015

Attorneys and Law Firms

Chant Yedalian, Chant & Company, Glendale, CA, for
Plaintiffs.

Lawrence Michael Cirelli, Mohammad Walizadeh, Hanson
Bridgett LLP, San Francisco, CA, for Defendant.

ORDER ADOPTING FINDINGS AND RECOMMENDATIONS AND GRANTING FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT AND MOTION FOR ATTORNEY FEES AND COSTS AND INCENTIVE AWARD TO CLASS REPRESENTATIVE

(ECF Nos. 20, 21, 23, 25, 26)

Lawrence J. O'Neill, UNITED STATES DISTRICT JUDGE

*1 On December 12, 2014, the parties filed a motion for final approval of the class action settlement in this action. The matter was referred to the magistrate judge for findings and recommendations. (ECF No. 14.) On January 15, 2015, the magistrate judge issued findings and recommendations. (ECF No. 25.) On February 5, 2015, an order issued amending the findings and recommendations to notify the parties that objections were to be filed within fourteen days. (ECF No. 26.) More than fourteen days have passed and no objections to the findings and recommendations have been filed.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the findings and recommendations to be supported by the record and by proper analysis.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations, filed January 15, 2015, is adopted in full;
2. Final approval of the proposed settlement upon the terms and conditions set forth in the agreement, as partially modified by the parties' stipulation regarding amendments to Defendant's proposed charities (ECF No. 18) and the Court's September 23, 2014 Order (ECF No. 19) is granted.
3. The terms of the proposed Settlement are found to be fair, adequate and reasonable and to comply with [Rule 23\(e\) of the Federal Rules of Civil Procedure](#).
4. The following settlement class is certified for settlement purposes only:

All consumers who, at any time during the period November 2, 2011 to October 18, 2013, were provided an electronically printed receipt at the point of a sale or transaction at any Pet Extreme or Discount Pet store, on which receipt was printed the expiration date of the consumer's credit card or debit card.

5. For purposes of the settlement, the above-defined settlement class is found to meet all of the requirements of [Rule 23\(a\) and 23\(b\)\(2\)](#).
6. The notice that has been provided to the settlement class members, as well as the means by which it was provided constitutes the best notice practicable under the circumstances and is in full compliance with the United States Constitution and the requirements of due process and [Rule 23 of the Federal Rules of Civil Procedure](#). Further, such notice fully and accurately informed settlement class members of all material elements of the lawsuit and proposed class action settlement, of each member's right to be excluded from the settlement, and each member's right and opportunity to object to the proposed class action settlement and be heard at the final approval (fairness) hearing.

7. No settlement class members have timely requested exclusion from the settlement.

8. No settlement class members have timely objected to the settlement.

9. No settlement class members have timely requested to appear or be heard at the final approval hearing.

10. All settlement class members who did not timely exclude themselves from the settlement are bound by the agreement, including the releases contained in paragraphs 17 and 18 of the agreement.

***2** 11. The parties are directed to effectuate all terms of the settlement and the agreement.

12. Reasonable attorney fees in the amount of \$118,750.00 are awarded to Class Counsel Chant Yedalian of Chant & Company A Professional Law Corporation. Defendant Pet Extreme, Inc. is directed to make payment of this award to Class Counsel pursuant to the terms of the agreement.

13. Class representative Cirena Torres is awarded an incentive of \$2,500.00 in compensation for her service as the representative of the settlement class. Defendant Pet Extreme, Inc. is directed to make payment of this award to the class representative pursuant to the terms of the agreement.

14. The parties shall bear their own fees and costs except as expressly provided in the agreement.

15. This action is dismissed with prejudice in accordance with the terms of the agreement; however, the Court shall retain continuing jurisdiction to interpret, implement and enforce the settlement, and all orders and judgment entered in connection therewith.

16. The Clerk of the Court is directed to close this action.

IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2015 WL 13653878

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.

2015 WL 224752

Only the Westlaw citation is currently available.

United States District Court,
E.D. California.Cirena TORRES, on behalf of herself and
all others similarly situated, Plaintiffs,
v.

PET EXTREME, Defendant.

No. 1:13-cv-01778-LJO-SAB.

Signed Jan. 14, 2015.

Filed Jan. 15, 2015.

Attorneys and Law FirmsChant Yedalian, Chant & Company, Glendale, CA, for
Plaintiff.Lawrence Michael Cirelli, Mohammad Walizadeh, Hanson
Bridgett LLP, San Francisco, CA, for Defendant.FINDINGS AND RECOMMENDATIONS
RECOMMENDING GRANTING FINAL APPROVAL
OF THE CLASS ACTION SETTLEMENT
AND ATTORNEY FEES AND COSTS AND
INCENTIVE AWARD TO CLASS REPRESENTATIVE

OBJECTIONS DUE WITHIN FOURTEEN DAYS

STANLEY A. BOONE, United States Magistrate Judge.

*1 Plaintiff Cirena Torres, on behalf of herself and all others similarly situated, filed this class action complaint against Defendant Pet Extreme alleging violations of the Fair and Accurate Credit Transactions Act ("FACTA"), 15 U.S.C. 1681 et seq. Currently before the Court are Plaintiff's motion for final approval of the class action settlement and a motion for attorney fees and class representative incentive award.

I.**FACTUAL AND PROCEDURAL BACKGROUND**

Defendant Pet Extreme operates a chain of retail stores offering a variety of goods and services for sale to the public. (Compl. ¶ 11, ECF No. 1.) In conducting business, Defendant accepts credit card and debits cards. (*Id.* at ¶ 31.) The FACTA provides that by December 4, 2006, merchants were to comply the FACTA, which requires that no more than the last five digits of the credit card number can be printed on the receipt and the expiration date of the card must be deleted. (*Id.* at ¶¶ 29, 39.) Plaintiff Torres contends that she made a purchase from Defendant after December 2006 using a credit card or debit card and the expiration date of her card, the brand of the card, and the last four digits of the card were printed on the receipt. (*Id.* at ¶ 32.)

On November 2, 2013, Plaintiff filed this class action alleging that Defendant is in violation of the FACTA by printing the expiration date of credits cards on customer receipts. After engaging in negotiations, on September 23, 2014, the parties received preliminary approval of the class-wide settlement of this lawsuit. On December 12, 2014, Plaintiff filed a motion for final approval of the class action settlement and a motion for attorney fees and costs and an incentive award for the class representative. (ECF Nos. 20, 21.) On January 10, 2014, Plaintiff filed supplemental briefing at the request of the Court. (ECF No. 23.)

The Court held a final fairness hearing on January 14, 2015. (ECF No. 24.) Class counsel Chant Yedalian appeared in person for Plaintiff, and counsel Mohammad Walizadeh appeared telephonically for Defendant. *Id.* Having considered the moving papers, the declarations and exhibits attached thereto, arguments presented at the January 14, 2015 hearing, as well as the Court's file, the Court issues the following findings and recommendations.

II.**LEGAL STANDARD**

The Ninth Circuit has declared that a strong judicial policy favors settlement of class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir.1992). The role of the district court in evaluating the fairness of the settlement is not to assess the individual components, but to assess the settlement as a whole. *Lane v. Facebook, Inc.*, 696 F.3d 811, 81819 (9th Cir.2012) *reh'g denied* 709 F.3d 791 (9th Cir.2013).

Review of the proposed settlement of the parties proceeds in two phases. *True v. American Honda Motor Co.*, 749 F.Supp.2d 1052, 1062 (C.D.Cal.2010). At the preliminary approval stage, the court determines whether the proposed agreement is within the range of possible approval and whether or not notice should be sent to class members. *Id.* at 1063. “If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that the notice be given to the class members of a formal fairness hearing.” *In re Tableware Antitrust Litigation*, 484 F.Supp.2d 1078, 1079 (N.D.Cal.2007) (quoting *Manual for Complex Litigation*, Second § 30.44 (1985)). At the final approval stage, the court takes a closer look at the settlement, taking into consideration objections and other further developments in order to make the final fairness determination. *True*, 749 F.Supp.2d at 1063.

III.

TERMS OF THE SETTLEMENT AGREEMENT

*2 The terms of the settlement agreement are as follows:

The settlement class consists of all consumers who were provided with an electronically printed receipt which included the expiration date of the consumer's credit card after making a purchase at any Pet Extreme or Discount Pet store during the period of November 2, 2011 to October 18, 2013.

Defendant shall establish a settlement fund in the amount of \$475,000.00 (“gross settlement fund”). All settlement administration costs, except for the postage charges for the distribution of Pet Extreme Gift Cards, will be paid for separately by Pet Extreme and will not be deducted from the gross settlement fund. The first \$57,645.00 in postage charges will not be deducted from the gross settlement fund, but will be paid separately by Pet Extreme. Class counsel attorney fees and costs, an incentive payment to the class representative, settlement website programming costs, and any postage charges in excess of \$57,645.00 will be deducted from the gross settlement amount, and the remaining funds (“net settlement amount”) will be divided by the total number of settlement class members who submit a valid and timely claim.

Each settlement class member that submits a valid and timely claim will be mailed a Pet Extreme Gift Card. The amount of the gift card will be determined by dividing the total number of settlement class members who submit a valid and timely claim by the net settlement fund. The maximum amount of the gift card that any settlement class member would receive is \$45.00. Each settlement class member may only submit one claim regardless of the number of credit purchases they made during the period of November 2, 2011 to October 18, 2013.

The Pet Extreme Gift Card will not expire and is fully transferrable. The gift card may be used to make purchases at any Pet Extreme or Discount Pet store, but is not redeemable for cash. If any of the net settlement fund remains after all settlement class members who submit valid claim forms receive Pet Extreme Gift Cards, the residual funds will be distributed to charities.

Defendant Pet Extreme shall implement a written FACTA compliance policy which states that it will not print more than the last five digits of credit or debit card numbers on receipts and the expiration date of credit or debit cards will not be printed on any receipt provided to a consumer for purchases at any Pet Extreme or Discount Pet store.

Since Defendant does not have information to determine the identifies of the consumers who made purchases from the period of November 2, 2011 to October 18, 2013, notice of the settlement shall be provided in the following manner: 1) each Pet Extreme and Discount Pet store shall post the Short–Form Notice–1 in a conspicuous location at the front door and at each register for a period of at least 180 days; 2) each Pet Extreme and Discount Pet store shall post the Short–Form Notice–2 on the Community Board for a period of at least 180 days. The Short–Form Notice shall include the settlement website address and a toll-free number which settlement class members may contact to obtain further information.

*3 During this same period of time, a notice of settlement will be posted on the homepage of Pet Extreme's website. The notice will state “Notice of Class Action Settlement” in boldface font and will contain a hyperlink to the Settlement website. There will also be a viewable and printable long-form notice on the settlement website containing a description of the settlement terms.

Settlement class members will have 180 days from the date the Short–Form Notice is first posted at Pet Extreme and Discount Pet stores to submit a claim form. Claim forms may

be submitted by mail or by facsimile. There will also be an electronic version of the claim form that can be submitted through the settlement website. To submit a valid claim, the class member must produce evidence that he or she received a customer receipt at any time during the period of November 2, 2011 to October 18, 2013 that displays the expiration date of his or her credit or debit card. Proof may consist of the original or a copy of the receipt showing a transaction made during the period of November 2, 2011 to October 18, 2013 or a credit or debit card statement showing a transaction made at any Pet Extreme or Discount Pet store during the period of November 2, 2011 to October 18, 2013.

Settlement class members will have 60 days from the date the Short-Form Notice is first posted by Pet Extreme to exclude themselves from or object to the settlement. The settlement agreement shall be self-administered by the parties. All administration expenses, except for the postage charges for mailing the Pet Extreme Gift Cards, will be paid for by Pet Extreme and will not be deducted from the settlement fund.

IV.

DISCUSSION

When the settlement takes place before formal class certification, as it has in this instance, settlement approval requires a “higher standard of fairness.” *Lane*, 696 F.3d at 819 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.1998)). This more exacting review of class settlements reached before formal class certification is required to ensure that the class representatives and their counsel do not receive a disproportionate benefit “at the expense of the unnamed plaintiffs who class counsel had a duty to represent.” *Lane*, 696 F.3d at 819.

A. Final Certification of the Class

Rule 23(a) of the Federal Rules of Civil Procedure requires that to certify a class action the members must meet the prerequisites of numerosity, commonality, typicality, and adequacy of representation. “Moreover, the proposed class must satisfy the requirements of Rule 23(b), which defines three different types of classes.” *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 512 (9th Cir.2013)

The Court has previously found that the class meets the prerequisites of numerosity, commonality, typicality and

adequacy of representation. Further, the Court found that common questions predominate and allowing this action to proceed as a class action is the superior method of adjudicating the controversy given the number of potential class members and the amount of damages at issue for each class member. (Findings and Recommendations Recommending Preliminary Approval of Class Action Settlement 3–7, ECF No. 17.)

*4 No class member has objected to the settlement of this action and the Court is unaware of any changes that would affect the class certification findings. For the reasons set forth in the findings and recommendations on Plaintiffs' motion for preliminary approval of the class action settlement, which was adopted by Judge O'Neill on September 18, 2014, the Court finds that the settlement class continues to meet the requirements of [Federal Rule of Civil Procedure 23\(a\)](#) and [\(b\)](#). (ECF Nos. 17, 19.)

The settlement class in this matter consists of all consumers who, at any time during the period November 2, 2011 to October 18, 2013, were provided an electronically printed receipt at the point of a sale or transaction at any Pet Extreme or Discount Pet store, on which receipt was printed the expiration date of the consumer's credit card or debit card. This class is certified solely for the purpose of entering a settlement in this matter.

B. Notice

Rule 23 requires that notice for any class certified under Rule 23(b)(3) must be “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” [Fed.R.Civ.P. 23\(c\)\(2\) \(B\)](#). In this instance, the parties were not able to identify the individuals that made purchases by credit card to provide notice by mail. For that reason, the Court found that posting a legal notice at the front door and at each register at each location and posting the information on the company website regarding this class action settlement was the best notice practicable under the circumstances. (ECF No. 17 at 12–13.) Notice by publication has been found to be adequate where identification of individual class members is not possible through reasonable effort. *In re Tableware Antitrust Litigation*, 484 F.Supp.2d at 1080.

The notice itself clearly identifies the options available to the putative class members: to complete a claim form to receive a gift card under the settlement or opt out of the class. (Notice of Class Action Lawsuit and Settlement, ECF No. 20–1.)

The Court finds that the notice itself is sufficient to satisfy the requirements of Rule 23(c)(2)(B). See *Churchill Village, L.L.C. v. General Electric*, 361 F.3d 566, 576 (9th Cir.2004) (“Notice is satisfactory if it ‘generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.’”) (quoting *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir.1980)).

As provided by the settlement agreement, notice was posted at each of Pet Extreme's ten retail locations and the settlement information was posted on Pet Extreme's website. (Suppl. Decl. of Eric Gonsalves ¶¶ 3, 4, ECF No. 20–3.) The Court finds that the notice provided was the best notice practicable to inform the class members of their rights under the settlement agreement.

C. Final Approval of Settlement

*5 The court considers a number of factors in making the fairness determination including: “the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.” *Lane*, 696 F.3d at 819 (quoting *Hanlon*, 150 F.3d at 1026). All of these factors will not apply to every class action settlement and one factor alone may prove sufficient grounds for court approval. *Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc. (DIRECTV)*, 221 F.R.D. 523, 525–26 (C.D.Cal.2004). “The relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case.” *Officers for Justice v. Civil Serv. Comm'n of San Francisco*, 688 F.2d 615, 625 (9th Cir.1982).

The class representatives have an incentive to advance their own interests over that of the class and class counsel owes the ultimate fiduciary responsibility to the class as a whole and is not bound by the views of the named plaintiffs regarding settlement. *Staton v. Boeing Co.*, 327 F.3d 938, 959–60 (9th Cir.2003). Therefore, in assessing the fairness of the settlement, the court is to ensure that “the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Hanlon*,

150 F.3d at 1027 (quoting *Officers for Justice*, 688 F.2d at 625.)

1. The Strength of Plaintiff's Case

“An important consideration in judging the reasonableness of a settlement is the strength of the plaintiffs' case on the merits balanced against the amount offered in the settlement.” *DIRECTV*, 221 F.R.D. at 526 (quoting 5 Moore Federal Practice, § 23.85[2][b] (Matthew Bender 3d. ed.)). The court's role is not to reach any ultimate conclusion on the facts or law which underly the merits of the dispute as the very uncertainty of the outcome and the avoidance of expensive and wasteful litigation is what induces consensual settlements. *Officers for Justice*, 688 F.2d at 625.

In order to prevail and recover statutory damages under 15 U.S.C. § 1681n, Plaintiff must show that Defendant's conduct was willful. *U.S. v. Bormes*, — U.S. —, —, 133 S.Ct. 12, 15, 184 L.Ed.2d 317 (2012). While Pet Extreme vigorously denies that it willfully printed information on receipts in violation of the statute, Plaintiff believes that the conduct was reckless and a result of Defendant failing to use adequate measures to safeguard the rights of consumers. Given the uncertainty of litigating the issue of willfulness, the proposed settlement agreement provides the parties with a fair resolution of the issues presented in this action which weighs in favor of settlement.

2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

*6 There is essentially only one issue present in this action, whether Defendant willfully printed the credit card dates on consumer's credit card receipts. Absent a settlement, the parties to this action dispute whether this action is suitable for class certification. Litigating class certification issues would cause further expense and delay in this action. Additionally, the settlement agreement provides that a change of law prior to final approval will not compromise the settlement class' benefits. This provides a benefit to the class as they do not run the risk of losing the opportunity to recover statutory damages given that the provisions at issue here were recently enacted in 2003. *Bateman v. American Multi-Cinema, Inc.*, 623 F.3d 708, 717 (9th Cir.2010). This has occurred in the past when, due to misunderstandings regarding the requirements, the statute was amended in 2008 to insulate any merchants from liability who printed an expiration date on a receipt from December 4, 2004 to June 3, 2008. *Id.* There is some risk that

an opinion could issue changing the legal landscape in this relatively new area of statutory law.

The parties have reached an agreement at an early stage of these proceedings and litigating the issues of class certification and liability would likely result in several years of costly litigation. This factor weighs in favor of settlement.

3. The Amount Offered in Settlement

Defendant in this action has agreed to establish a settlement fund in the amount of \$475,000.00. Each class member who submits a claim form will receive a Pet Extreme gift card worth up to \$45.00. Additionally, Defendant has agreed to self-administer the settlement and claims process increasing the funds available to the class members.

A willful violation of [section 1681n](#) provides actual damages or statutory damages of not less than \$100.00 and not more than \$1,000.00. [15 U.S.C. § 1681n\(a\)\(1\)\(A\)](#). Plaintiff argues that the propriety of awarding the maximum statutory damages to a plaintiff who does not have actual monetary loss is strongly disputed. The Court agrees that without any actual monetary loss or facts regarding willful conduct not present here, it appears unlikely that the class members would receive maximum statutory damages for the conduct at issue.

The settlement agreement provides that each class member who elects to participate in the settlement will receive a gift card in an amount up to \$45.00, depending upon the number of class members who submit claim forms. As of the date of the hearing, only 45 claim forms have been submitted by the unnamed class members. ¹ (Pl.'s Supplemental Briefing in Support of Mot. for Final Approval of Class Action Settlement 3, ECF No. 23.) Based upon the response to date each participating class member will receive 45% of the minimum statutory damages. While the gift cards the class members receive are not redeemable for cash, they will not expire and are transferable.

*7 Given the facts present here, this appears to be a fair resolution for the individual class members. Further, as a result of the settlement, Defendant has implemented a written FACTA compliance policy ensuring that its' stores will be in compliance with the FACTA in printing information on credit receipts. As of October 19, 2013, Defendant has not printed credit receipts that fail to comply with the FACTA. (ECF No. 20–3 at ¶ 5.)

The amount provided to each participating class member and the policy implemented by Defendant to ensure compliance with the FACTA weigh in favor of settlement.

4. The Stage of the Proceedings

While a settlement that occurs in an advanced stage of the proceedings indicates that the parties have carefully investigated the claims before resolving the action, [Ontiveros v. Zamora](#), — F.R.D. —, 2014 WL 5035935, at *12 (E.D.Cal. Oct.8, 2014), the settlement in this action occurred shortly after Defendants filed an answer to the complaint. In reaching a settlement, the parties engaged in extensive negotiations and exchanged information to facilitate the discussions. (Decl. of Chant Yedalian ¶ 3, ECF No. 20–4.) This action has settled at a relatively early stage of the proceedings and the Court finds that this fact is neutral in the settlement analysis.

5. The Experience and Views of Counsel

Class counsel has extensive experience in consumer related lawsuits and in litigating actions alleging violations of the FACTA. (ECF No. 20–4 at ¶¶ 34–42.) Class counsel carefully considered the merits of and risks associated with this litigation and the benefits the class receives by this settlement. (*Id.* at ¶¶ 5–23, 303 F.R.D. 356.) While counsel believes that the violation of the FACTA was willful, he considered the issues and risks concerned with litigating the legal requirements for a willful violation of the FACTA on the facts of this case, that class certification will be a hotly contested issue, and the substantial benefit to the class compared to the risks of continued litigation. (*Id.* at ¶¶ 7, 10, 14–16, 303 F.R.D. 356.) After investigating the facts, law, and potential exposure and issues that could arise at trial, he believes that this settlement is fair, adequate, and reasonable. (*Id.* at ¶¶ 22–23, 303 F.R.D. 356.)

Given counsel's familiarity with the facts of this action and his experience in this area of law, the Court gives considerable weight to his opinion. Counsel's opinion that the settlement is fair, adequate, and reasonable provides further support in favor of settlement.

6. The Reaction of the Class Members to the Proposed Settlement

“It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement

action are favorable to the class members.” *DIRECTV*, 221 F.R.D. at 529. Here, no class member has opted out of the class, filed an objection, or requested to appear at the final fairness hearing. (ECF No. 20–4 at ¶¶ 26–32.) Further, notice of this settlement was provided to the California Office of the Attorney General and the U.S. Department of Justice who have not objected to the settlement. (Decl. of Mohammad Walizadeh ¶¶ 2–3, ECF No. 20–5.) The absence of any objections is compelling evidence that the settlement is fair, adequate and reasonable. *DIRECTV*, 221 F.R.D. at 529. The reaction of the class members weighs in favor of settlement.

*8 After considering the foregoing factors, the Court finds that the settlement is fair, adequate, and reasonable pursuant to Rule 23(e).

D. Attorney Fees

Class counsel seeks \$118,750.00 in attorney fees associated with prosecuting this action. (Motion for Award of Attorney's Fees and Costs to Class Counsel and Incentive Payment to the Class Representative 2, ECF No. 21.) There is no dispute that the plaintiff is entitled to reasonable attorney fees in this action as the prevailing party. However, “[i]n a class action, the district court ‘must exercise its inherent authority to assure that the amount and mode of payment of attorneys’ fees are fair and proper.’ ” *Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1170 (C.D.Cal.2010) (quoting *Zucker v. Occidental Petrol. Corp.*, 192 F.3d 1323, 1328–29 (9th Cir.1999)).

Federal Rule 23(h) provides that “[i]n a certified class action, the court may award attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” The Ninth Circuit has affirmed the use of two separate methods of calculating attorney fees, depending upon the case. *Hanlon*, 150 F.3d at 1029. “In ‘common-fund’ cases where the settlement or award creates a large fund for distribution to the class, the district court has discretion to use either a percentage or ‘lodestar’ method.” *Id.*

The “lodestar” method is typically used where the benefit received by the class is primarily injunctive in nature and therefore monetary benefit is not easily calculated. *In re Bluetooth Headset Products Liability Litigation (In re Bluetooth)*, 654 F.3d 15941. The “lodestar” approach calculates attorney fees by multiplying the number of hours reasonably expended by a reasonable hourly rate. *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir.2013);

Camacho v. Bridgeport Fin., Inc., 523 F.3d 973, 978 (9th Cir.2008).

Since the benefit to the class is easily calculated in a common fund case, courts may award a percentage of the common fund rather than engaging in a “lodestar” analysis to determine the reasonableness of the fee request. *In re Bluetooth*, 654 F.3d at 942. In the Ninth Circuit, courts typically calculate 25% of the common fund as the “benchmark” for a reasonable fee award providing adequate explanation in the record for any special circumstances that justify departure. *Id.* The usual range for common fund attorney fees are between 20–30%. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir.2002). When applying the percentage of the common fund method in calculating attorney fees, courts use the “lodestar” method as a crosscheck to determine the reasonableness of the fee request. See *Vizcaino*, 290 F.3d at 1050. “This amount may be increased or decreased by a multiplier that reflects any factors not subsumed within the calculation, such as ‘the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment.’ ” *Adoma v. Univ. of Phoenix, Inc.*, 913 F.Supp.2d 964, 981 (E.D.Cal.2012) (quoting *In re Bluetooth*, 654 F.3d at 942).

1. Counsel's Request for Twenty-Five Percent of the Gross Settlement Fund is Reasonable

*9 The settlement in this action has resulted in a common fund of \$475,000.00. The attorney fees requested, \$118,750.00, are 25% of the gross settlement fund. Defendants have also agreed to self-administer the settlement, to pay up to \$57,645.00 in postage charges for distribution of the settlement, and to change their procedures to comply with the FACTA.

Courts generally reject “the idea that the face value of coupons or rebates should be used for settlement valuation purposes; ‘[c]ompensation in kind is worth less than cash of the same nominal value.’ ” *True*, 749 F.Supp.2d at 1075 (citations omitted). However, during the January 14, 2015 hearing, class counsel convincingly argued that the Court should use the percentage of the fund method in determining reasonable attorney fees.

In this instance the participating class members are receiving a Pet Extreme Gift Card which will not expire and is fully transferrable. Pet Extreme carries approximately 10,224 items that cost less than \$45.00. (Decl. of Eric Gonsalves ¶ 12, ECF No. 20–2.) Class members who receive a gift card

will be able to redeem the gift card for its face value without expending any additional funds should they so choose. Pet Extreme has also agreed to pay the first \$57,645.00 in postage fees and to implement a policy to ensure compliance with FACTA. Finally, any undisbursed funds do not revert to Defendant, but will be distributed to the designated cypres beneficiaries. For these reasons, the Court shall apply the percentage of common fund approach in determining attorney fees. Plaintiff is requesting the Court to award 25% of the common fund (\$475,000.00) as attorney fees to class counsel.

In determining if the twenty-five percent benchmark should be adjusted up or down, the Court considers the “the result achieved, the risk involved in the litigation, the skill required and quality of work by counsel, the contingent nature of the fee, awards made in similar cases, and the lodestar crosscheck.” *Ontiveros*, 303 F.R.D. 356, 2014 WL 5035935, at *13.

Counsel has negotiated a settlement in which each participating class member will receive a gift card that is worth forty-five percent of the minimum statutory damages. Additionally, Defendant is paying the cost of postage and implementing a policy to ensure that its' stores are in compliance with FACTA in regards to printing credit card information on receipts. Counsel has obtained an excellent result for the class. The results achieved weigh in favor of granting the requested fees.

While the statute litigated here is relatively recent, the issue of whether the statute is violated by printing the expiration date of the credit card on the receipt is clear and willfulness under the statute has been addressed by the Supreme Court. *Safeco Ins. Co. of America v. Burr*, 551 U.S. 47, 56–60, 127 S.Ct. 2201, 167 L.Ed.2d 1045 (2007). The issue in this action was whether Defendant's conduct was willful and the action did not involve complex or novel issues. However, class counsel accepted this action on a contingency basis and as such there was a risk that he would not receive payment for his services. Consideration of the complexity of the issues involved in this action weigh in favor of granting the fee request.

***10** Counsel is highly experienced in litigating FACTA cases and negotiated an early settlement in this action. Counsel initially communicated with the client on September 11, 2013; and settlement in this action was reached less than a year later by July 9, 2014. Plaintiff's skill and the quality of his representation support the award of attorney fees.

The Court finds that counsel's request for twenty-five percent of the gross settlement fund is fair and reasonable.

2. Lodestar Cross Check

Courts frequently cross check the percentage of the common fund fees with the lodestar analysis to determine if the fees are reasonable. See *Vizcaino*, 290 F.3d at 1050.

a. Reasonable Hourly Rate

Counsel states his hourly rate is \$550.00 per hour which is consistent with the prevailing rate in Los Angeles and the Central District of California. (ECF No. 21–1 at ¶¶ 9, 10.) The loadstar amount is to be determined based upon the prevailing market rate in the relevant community. *Blum v. Stenson*, 465 U.S. 886, 896, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984). It is the moving party's burden to establish that requested rates are in line with those prevailing in the community for similar services by attorneys of reasonably comparable skill, experience, and reputation. *Jadwin v. County of Kern*, 767 F.Supp.2d 1069, 1124 (E.D.Cal.2011). The “relevant legal community” for the purposes of the lodestar calculation is generally the forum in which the district court sits. *Gonzalez*, 729 F.3d at 1205. Plaintiff has provided no information on the prevailing rates in the Eastern District of California.

The court may rely on its own knowledge of customary legal local rates and experience with the legal market in setting a reasonable hourly rate. *Ingram v. Oroudjian*, 647 F.3d 925, 926 (9th Cir.2011). While Plaintiff argues that this Court should accept the rate in the area in which he practices, the Court is aware that there are experienced and competent attorneys litigating consumer cases within this division. Therefore, the Court shall consider the prevailing rates in the Fresno Division of the Eastern District of California.

In determining the relevant rate within the Eastern District of California, courts have found that \$375.00 per hour is the top range for a senior lead attorney practicing in the Fresno area. *Luna v. Hoa Trung Vo*, No. 1:08–cv–01962–AWI–SMS, 2011 WL 2078004, at *5 (E.D.Cal. May 25, 2011) (attorney with more than 40 years' experience and specializing in disability related litigation); see also *Joe Hand Productions, Inc. v. Garl*, 2013 WL 4736826, at *3 (E.D.Cal.Sept.3, 2013) (\$350.00 per hour is reasonable hourly rate for very experienced and skilled trial attorney within the Fresno Division of the Eastern District and awarding attorney with twenty years' experience \$350.00 per hour); *Jadwin*, 767 F.Supp.2d at 1133 (awarding labor law attorney with over 30

years' experience \$380 per hour for serving as fee counsel in action). This Court has recently examined attorney rates in a consumer case, *Alonso v. Blackstone Financial*, 1:11-cv-01693-SAB, and found that \$300.00 per hour is the maximum rate for an experienced attorney in a non-class action consumer action. *Id.* at *5.

*11 Mr. Yedalian has experience in prosecuting consumer related lawsuits and has been appointed as class counsel in both state and federal court cases. (Decl. of Chant Yedalian ¶ 35, 36, ECF No. 13 .) Mr. Yedalian was one of the first attorneys in the nation to prosecute FACTA cases. (*Id.* at ¶ 42.) He has extensive experience in litigating FACTA actions and has litigated at least nine FACTA class action cases. (*Id.* at ¶¶ 37, 40.) Given Mr. Yedalian's overall experience and his experience litigating FACTA case and the issues involved in this class action, the Court finds that \$400.00 per hour is a reasonable fee for Mr. Yedalian to be compensated for his services in this action.

b. Reasonable Number of Hours

In determining reasonable attorney fees, the court should exclude hours that could not reasonably be billed to a private client, such as hours that are excessive, redundant or unnecessary. *McCown v. City of Fontana*, 565 F.3d 1097, 1101 (9th Cir.2009); *Gates v. Deukmejian*, 987 F.2d 1392, 1397 (9th Cir.1992). The district court may reduce the hours by 1) conducting "an hour by hour analysis of the fee request," and excluding "those hours for which it would be unreasonable to compensate the prevailing party[;]" or 2) "when faced with a massive fee application the district court has the authority to make across-the-board percentage cuts either in the number of hours claimed or in the final lodestar figure as a practical means of [excluding non-compensable hours] from a fee application." *Gonzalez*, 729 F.3d at 1203 (quoting *Gates*, 987 F.2d at 1399).

If the "district court decides that a percentage cut (to either the lodestar or the number of hours) is warranted, it must "set forth a concise but clear explanation of its reasons for choosing a given percentage reduction." *Gonzalez*, 729 F.3d at 1203 (quoting *Gates*, 987 F.2d at 1400). There is a recognized exception to this rule where the district court can impose a small reduction, no greater than 10 percent based upon its discretion, without providing a more specific explanation. *Gonzalez*, 739 F.3d at 1203.

Class counsel submits his time records for in camera review. Counsel's records show that he has expended 200.75 hours to

date in litigating this action and he states that he anticipates expending an additional 30 hours before the action is finalized. Accordingly, Plaintiff submits that he will have expended 230.75 hours in litigating this action. Review of the attorney time records provided by Mr. Yedalian raise some areas of concern regarding the reasonableness of the hours. For example:

- On September 13, 2013, 1:15 hours are billed for preparing an attorney-client retainer agreement which would be a standard fill in the blank form. The amount of time billed appears to be excessive.
- From September 25, 2013 through September 29, 2013, over 18 hours are billed for driving to various store locations throughout California to investigate Plaintiff's claims. These are hours that could easily have been designated to nonprofessionals. *Reibstein v. Rite Aid Corp.*, 761 F.Supp.2d at 259 ("Just as '[a] Michelangelo should not charge Sistine Chapel rates for painting a farmer's barn,' counsel should not be using 'highly priced talent for matters easily delegable to non-professionals or less experienced associates.'") (quoting *Uric v. Bethlehem Mines*, 719 F.2d 670, (3d Cir.1983); see *Missouri v. Jenkins*, 491 U.S. 274, n. 10, 109 S.Ct. 2463, 105 L.Ed.2d 229 (1989) ("It is appropriate to distinguish between legal work, in the strict sense, and investigation, clerical work, compilation of facts and statistics and other work which can often be accomplished by non-lawyers but which a lawyer may do because he has no other help available. Such non-legal work may command a lesser rate. Its dollar value is not enhanced just because a lawyer does it.")).
- *12 • On November 2, 2013, 35 minutes were billed for completing a civil cover sheet and filing with the complaint. These hours are excessive and filing the complaint is a clerical task. Clerical tasks are part of an attorney's overhead and are not compensable at the attorney's hourly rate. *Robinson v. Plourde*, 717 F.Supp.2d 1092, 1100–1101 (D.Haw.2010); *Prison Legal News v. Schwarzenegger*, 561 F.Supp.2d 1095, 1101–1102 (N.D.Cal.2008).
- On November 11, 2013, 10 minutes were billed for texting a request to the client for a call. This seems to be an excessive amount of time to compose a text message given the medium by which the recipient will be able to view it.

- On December 6, 2013, 10 minutes were billed for filing an executed waiver of summons with the Court. This is a clerical task.
- On January 1, 2014; November 3, 2014; May 13, 2014; July 17, 2014; July 18, 2014; and August 25, 2014, counsel billed for 5 minutes each, for a total of 30 minutes, to review orders issued by this Court that consisted of one to two paragraphs. Again, the Court finds this time to be excessive.

Upon review of the billing records, the court finds that the hours requested by counsel should be reduced by five percent to account for excessive and inappropriately billed hours. The Court finds that 219.2 hours is a reasonable amount of hours to have been expended in litigating this action.

c. The Lodestar Analysis Supports the Award of Attorney Fees

Based upon the foregoing, the Court determines that under a lodestar analysis, class counsel's reasonable attorney fees would be \$87,680.00 (219.2 hours at \$400.00 per hour). While the Court recognizes that this is somewhat out of line with the total provided by the percentage of the fund requested (\$118,750.00), class counsel did take this action on a contingency basis, negotiated an early settlement by which the participating class members have received significant benefit, and the class received additional benefit beyond the gross settlement amount. While the Court is unable to place a monetary value on the equitable relief provided by the settlement, the settlement agreement also provides that Defendant will assume the first \$57,645.00 in postage costs and the costs of administering the settlement agreement. Considering the value of these additional benefits provided by the settlement agreement, the amount requested by class counsel is actually less than twenty-five percent of the benefit received by the class. Accordingly, the Court finds that the lodestar analysis supports the award of attorney fees. The Court recommends awarding class counsel twenty-five percent of the common fund or \$118,750.00 as attorney fees in this action.

E. Incentive Award to Class Representative

The class representative is requesting an incentive award of \$5,000.00 for serving the class in this action. In the findings and recommendations approving the preliminary settlement agreement, the Court expressed its concern with

the \$10,000.00 payment originally requested by the class representative.

***13** This seems excessive in relation to the amount that the unnamed class members will be receiving. Plaintiff has not set forth any information as to the amount of time that she devoted to this action, or that she made any personal sacrifices on behalf of the class. At the fairness hearing, based upon the detailed evidence of Plaintiff's actual involvement in litigating this action, the Court will determine what portion of the amount sought is actually justified.

(ECF No. 21–1 at 11:7–12.) Plaintiff has submitted a request for an incentive award of \$5,000.00.

Incentive awards “are payments to class representatives for their service to the class in bringing the lawsuit.” *Radcliffe v. Experian Information Solutions Inc.*, 715 F.3d 1157, 1163 (9th Cir.2013). These awards come out of the class's recovery in instances where the class receives a monetary settlement. *Radcliffe*, 715 F.3d at 1163. While the court may approve incentive awards, the Ninth Circuit has advised district courts to carefully scrutinize the awards to ensure they do not undermine the adequacy of the class representatives. *Radcliffe*, 715 F.3d at 1163.

In *Staton*, the Ninth Circuit found it was an abuse of discretion to approve a settlement where the class representatives received an incentive award that was, on average sixteen times greater than the award that the unnamed class members would receive. 327 F.3d at 946. The district court must evaluate the fairness of the incentive award by considering “relevant factors includ[ing] the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, ... the amount of time and effort the plaintiff expended in pursuing the litigation ... and reasonabl[e] fear[s of] workplace retaliation.” *Id.* at 977 (quoting *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir.1998)).

In prosecuting this action, Plaintiff has communicated with counsel, reviewed documents, and provided input during the

rounds of settlement negotiations. (ECF No. 21–1 at ¶ 26.) Counsel estimates that Plaintiff has devoted 25 to 30 hours to pursuing this litigation. (*Id.* at ¶ 29.)

In this instance, Plaintiff is seeking to receive \$5,000.00 for her participation in the litigation compared to the unnamed class members who will only receive a gift card to Pet Extreme worth up to \$45.00. Were the Court to grant Plaintiff's request, she would be receiving 5 times the maximum statutory damages available, and at least 200 times more than the unnamed class members, in addition to the fact that she is requesting a cash payment while the unnamed class members will only receive a gift card. Further, at \$5,000.00 the class representative is seeking \$200.00 to 166.67 per hour for the time she devoted to assisting the class in this action. Plaintiff has not provided any reason for the Court to justify the extreme discrepancy between the award she is seeking and the damages to be received by the unnamed class members.

***14** This action was litigated for a period of less than one year. Plaintiff's assistance did result in this action settling and the class members will benefit from her participation. However, there is no evidence that Plaintiff spent more time assisting counsel than would occur in an average case. Plaintiff did not provide any discovery or participate in depositions. Plaintiff's consultation with counsel and review of settlement documents is no more than an average litigant would do in participating in a case.

Further, while recognizing that Plaintiff did assume some personal risk in litigating this action, contrary to Plaintiff's assertion, the allegations here regarding violations of the FACTA are not the type that would be expected to lead to intrusive discovery being propounded to Plaintiff; nor have the allegations in this action subjected Plaintiff to any personal notoriety in bringing these claims.

Plaintiff cites one published case, *In re Toys R Us–Delaware, Inc.–Fair and Accurate Credit Transactions Litigation (Toys R Us)*, 295 F.R.D. 438 (C.D.Cal.2014), where the court approved a settlement in which unnamed class members would receive vouchers ranging from \$5 to \$30. *Id.* at 447–48. In *Toys R Us*, the aggregate amount of relief to the settlement class in the action was estimated to be between \$65.25 million and \$391.5 million. *Id.* at 453. The case was the result of two separate class actions in which class certification was initially denied and then granted following the Ninth Circuit's decision in *Bateman v. American Multi–Cinema, Inc.*, 623 F.3d 708 (9th Cir.2010). The parties participated in three mediation

sessions, a motion for summary judgment was decided, and the case was appealed to the Ninth Circuit. *Toys R Us*, 295 F.R.D. at 444–45, 447. Following seven years of litigation, the parties settled and the class representatives were awarded an incentive award of \$5,000.00. *Id.* at 471–72. The Court finds this action to be distinguishable from *Toys R Us* as this action was filed less than one year prior to settlement, extensive discovery was not conducted, and the parties did not participate in mediation, nor were any disputed motions filed.

The Court finds Plaintiff's participation in this action similar to cases in which incentive awards in the range of \$2,000.00–3,000.00 have been found appropriate to compensate the class representative for participation in a class action. See *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 462–63 (E.D.Cal.2013) (awarding class representative \$2,500.00 where action settled for \$400,000.00 and each class member will receive \$65.79); *Wolph v. Acer America Corporation*, No. C 09–01314 JSW, 2013 WL 5718440, at *6 (N.D.Cal. Oct.21, 2013) (reducing incentive award to \$2,000.00 where named representatives did not demonstrate any great risk to either finances or reputation in bringing the class action); *Rigo v. Kason Industries, Inc.*, No. 11–cv–64–MMA(DHB), 2013 WL 3761400, at *8 (S.D.Cal. July 16, 2013) (finding \$2,500.00 incentive award for more than two years of service well within the acceptable range); *Vinh Nguyen v. Radient Pharmaceuticals Corp.*, No. SACV 11–00406 DOC (MLGx), 2014 WL 1802293 (C.D.Cal. May 6, 2014) (approving \$2,000.00 for class representatives where settlement was reached after discovery was completed, class representatives participated in depositions, and class settled for \$2.5 million).

***15** The Court finds that Plaintiff is entitled to an incentive award for her efforts on behalf of the class members. However, given the time this action was litigated, the large disproportion of the incentive award to the recovery of the unnamed class members, and the actual time Plaintiff devoted to this action, Plaintiff is entitled to an incentive award in the mid range of the cases reviewed. Giving consideration to the relevant factors, the Court finds an incentive award to Plaintiff of \$2,500.00 for her efforts in this action is fair and reasonable.

V.

CONCLUSION AND RECOMMENDATIONS

Based on the foregoing, IT IS HEREBY RECOMMENDED that:

1. Final approval of the proposed settlement upon the terms and conditions set forth in the agreement, as partially modified by the parties' stipulation regarding amendments to Defendant's proposed charities (ECF No. 18) and the Court's September 23, 2014 Order (ECF No. 19) be granted.

2. The terms of the proposed Settlement be found to be fair, adequate and reasonable and comply with [Rule 23\(e\) of the Federal Rules of Civil Procedure](#).

3. The following settlement class be certified for settlement purposes only:

All consumers who, at any time during the period November 2, 2011 to October 18, 2013, were provided an electronically printed receipt at the point of a sale or transaction at any Pet Extreme or Discount Pet store, on which receipt was printed the expiration date of the consumer's credit card or debit card.

4. For purposes of the settlement, the above-defined settlement class be found to meet all of the requirements of [Rule 23\(a\)](#) and [23\(b\)\(2\)](#).

5. The notice that has been provided to the settlement class members, as well as the means by which it was provided constitutes the best notice practicable under the circumstances and is in full compliance with the United States Constitution and the requirements of due process and [Rule 23 of the Federal Rules of Civil Procedure](#). Further, that such notice fully and accurately informed settlement class members of all material elements of the lawsuit and proposed class action settlement, of each member's right to be excluded from the settlement, and each member's right and opportunity to object to the proposed class action settlement and be heard at the final approval (fairness) hearing.

6. No settlement class members have timely requested exclusion from the settlement.

7. No settlement class members have timely objected to the settlement.

8. No settlement class members have timely requested to appear or be heard at the final approval hearing.

9. All settlement class members who did not timely exclude themselves from the settlement be bound by the agreement, including the releases contained in paragraphs 17 and 18 of the agreement.

10. The parties be directed to effectuate all terms of the settlement and the agreement.

11. Reasonable attorney fees in the amount of \$118,750.00 be awarded to Class Counsel Chant Yedalian of Chant & Company A Professional Law Corporation. Defendant Pet Extreme, Inc. be directed to make payment of this award to Class Counsel pursuant to the terms of the agreement.

***16** 12. Class representative, Cirena Torres be awarded an incentive of \$2,500.00 in compensation for her service as the representative of the settlement class. Defendant Pet Extreme, Inc. be directed to make payment of this award to the class representative pursuant to the terms of the agreement.

13. The parties bear their own fees and costs except as expressly provided in the agreement.

14. This action be dismissed with prejudice in accordance with the terms of the agreement; however, the Court shall retain continuing jurisdiction to interpret, implement and enforce the settlement, and all orders and judgment entered in connection therewith.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.3d, 2015 WL 224752

Footnotes

- 1 At the January 14, 2015 hearing, counsel informed the Court that four additional claim forms had been submitted.

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.

8 F.Supp.3d 1200

United States District Court, C.D. California.

Michael A. VANDERVORT and [U.S. Sample](#)[Services, Inc.](#), on behalf of themselves

and all others similarly situated, Plaintiffs,

v.

BALBOA CAPITAL CORPORATION, Defendant.

Case No. SACV 11-1578-JLS (JPRx)

|

Signed March 27, 2014.

Synopsis

Background: Recipients of fax advertisements brought putative class action against solicitor, alleging violations of [Telephone Consumer Protection Act \(TCPA\)](#). Following class certification, 287 F.R.D. 554, the parties reached settlement agreement. Recipients moved for final approval of settlement.

Holdings: The District Court, [Josephine L. Staton, J.](#), held that:

settlement was fair, reasonable, and adequate;

incentive award of \$10,000 to named plaintiffs was justified; and

award of attorney fees and costs of 33% of ceiling amount of settlement fund was warranted.

Motion granted.

Attorneys and Law Firms

*1202 [Aytan Y. Bellin](#), Bellin & Associates LLC, White Plains, NY, [Joseph R. Compoli, Jr.](#), Law Office of Joseph Compoli, Cleveland, OH, [Roger Furman](#), Los Angeles, CA, for Plaintiffs.

[Carl N. Marschall](#), [Lance A. Brewer](#), Brewer and Brewer, Newport Beach, CA, [Nancy M. Barnes](#), Thompson Hine LLP, Cleveland, OH, [Matthew Thomas Heartney](#), Arnold and Porter LLP, Los Angeles, CA, for Defendant.

ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL SETTLEMENT APPROVAL[JOSEPHINE L. STATON](#), District Judge.**I. INTRODUCTION**

Before the Court is a Motion for Final Approval of Class Settlement filed by Plaintiffs Michael A. Vandervort and U.S. Sample Services, Inc. (Mot., Doc. 120.) Defendant Balboa Capital Corporation agreed not to oppose the Motion. (*Id.* at 1-2.) Pursuant to this Court's Orders, Plaintiffs filed supplemental memoranda as to settlement administration and class member reactions to the settlement. (Suppl. Br., Doc. 121; Second Suppl. Br., Doc. 124.) Having reviewed the papers, held a fairness hearing, and taken the matter under submission, the Court GRANTS Plaintiffs' Motion.

II. BACKGROUND**A. Procedural History**

Plaintiffs in this class action allege that during the period from October 12, 2007 through November 23, 2011, Defendant *1203 sent them solicited and unsolicited fax advertisements in violation of state and federal law. On November 23, 2011, Plaintiffs filed a First Amended Complaint alleging causes of action for violation of the Telephone Consumer Protection Act ("TCPA") and [California Business & Professions Code § 17538.43](#), and seeking damages and injunctive relief. (First Am. Compl. ("FAC"), Doc. 18.)

On October 23, 2012, the Court granted in part and denied in part Plaintiffs' motion for class certification. (Class Cert. Order, Doc. 54.) The Court certified a [Rule 23\(b\)\(3\)](#) class under the TCPA, consisting of:

All persons in the United States from October 12, 2007 through November 23, 2011 to whom Defendant sent or caused to be sent a solicited or unsolicited facsimile advertisement that advertised the commercial availability or quality of any property, goods, or services, and contained an opt-out notice identical or substantially similar to

that contained on the facsimile advertisement attached as Exhibit 1 to the First Amended Complaint.

(*Id.* at 17.) The Court denied Plaintiffs' request for certification of another class under the TCPA class and a class under [California Business & Professions Code § 17538.43](#). (*Id.* at 6–8.)

On April 5, 2013, the Court heard oral argument on the parties' cross motions for summary judgment. (Docs. 65, 66, 88.) At the hearing, the Court stated that it would delay issuing its rulings on the motions until after the parties attended a settlement conference before a magistrate judge. (Doc. 90 at 28.) On May 20, 2013, following a day-long settlement conference before the Honorable Jay Gandhi, the parties settled the case and signed a Memorandum of Understanding memorializing their agreement. (*See* Preliminary Approval Order at 3, Doc 117.) On October 25, 2013, the parties signed a fully executed settlement agreement. (Aytan Y. Bellin Decl. Ex. A (“Settlement”), Doc. 120–2.)

On August 16, 2013, Plaintiffs moved for preliminary approval of the Settlement and approval of the form and method of class notice. (Doc. 102.) The Court preliminarily approved the Settlement on November 20, 2013. (Preliminary Approval Order.) As part of the preliminary approval, the Court ordered the parties to modify the class notice and claims forms to remove an ambiguity regarding the deadline to submit claims, make other minor edits to the notices, and add a section to the notice on how lawyers and class representatives would be paid. (*Id.* at 15.) The parties submitted revised versions of the proposed forms, which the Court approved. (Docs. 118, 119.)

B. Settlement

The Settlement applies to a class consisting of “all persons in the United States who, from October 12, 2007 through November 23, 2011, were sent or caused to be sent one or more facsimile advertisements by Defendant Balboa Capital Corporation, its employees, agents, vendors or contractors.” (Settlement ¶ 2(c).)

Under the Settlement, Defendant shall make a total payment of no less than \$2.3 million and no more than \$3.3 million. (*Id.* ¶ 2(a)-(b).) That amount will cover payments to class members, class representative incentive payments of \$10,000

in total, and attorney's fees and costs. (*Id.* ¶¶ 2(a)-(b), 10.) In return, class members agree to release claims that “are or could be based on, arise from or relate in any way to the claims asserted in this Litigation or to Defendant's alleged sending or transmission of fax advertisements to Plaintiffs *1204 ... from October 12, 2007 through November 23, 2011.” (*Id.* ¶ 11(a).)

If the sum of valid claims, the incentive award, and attorney's fees and costs (“Total Payment”) is greater than or equal to \$2.3 million but less than or equal to \$3.3 million, then the payments to class members will be distributed as follows: Claimants who submit an affidavit or declaration under penalty of perjury stating that they received a fax or faxes will be eligible for a cash payment of between \$175 and \$275, depending on the number of faxes they declare they received. (*Id.* ¶¶ 6(a), 8.) Claimants who submit copies of the faxes they received will be eligible for a cash payment of \$500 per fax submitted. (*Id.* ¶ 8.)

If the total payment is less than \$2.3 million, then the balance shall be distributed to claimants on a *pro rata* basis, based on the amount they would have received had the Total Payment been greater than \$2.3 million, up to a maximum of \$1,500 per fax claimed and five faxes per claimant. (*Id.* ¶¶ 2(b), 8.) If the total payment remains under \$2.3 million even with the pro-rata increase to payments, the balance will be distributed *cy pres* to a charity agreed upon by the parties and approved by the Court. (*Id.* ¶ 2(b).)¹ By contrast, if the total payment is greater than \$3.3 million, then each claimant's payment will be reduced on a *pro rata* basis. (*Id.* ¶¶ 2(a), 8.)

Pursuant to the Settlement, class counsel moved for attorney's fees after the class administrator finished sending out the Short-Form Notices. (*Id.* ¶ 9; Mot.) Defendant agreed not to object to class counsel seeking approval of attorney's fees up to one-third of the ceiling settlement amount of \$3,300,000. (Settlement ¶ 9.) The Settlement does not state that it is contingent upon the Court approving this particular amount in fees. (*See id.*) Finally, Defendant agreed to the entry of a permanent injunction prohibiting it from advertising by fax in violation of the TCPA. (*Id.* ¶ 3.)

C. Notice and Response

Notice was sent to class members pursuant to the method approved by the Court. The class notice comprised a “Short-Form Notice” that briefly described the litigation and explained the terms of the Settlement Agreement, including

class members' options to submit a claims form, opt-out of the settlement, and/or object to the settlement. (Short Form Notice, Doc. 118–2; Settlement ¶ 4(f).) It also directed class members to a website containing a more detailed “Long–Form Notice.” (Short–Form Notice; Long–Form Notice, Doc. 118–1; Claim Form, Doc. 118–3.)

On December 6 and 9, 2013 the class administrator successfully faxed approximately 35,000 Short–Form Notices to fax numbers provided by Defendant. (Suppl. L. Stephens Tilghman Decl. ¶ 2, Doc. 121–1.)² Pursuant to the Settlement, Defendant provided the class administrator with mailing addresses, to the extent available, for class members for whom the fax transmission failed. (Settlement ¶ 4(f).) As a *1205 result, on December 13, 2013, the class administrator sent approximately 26,500 Short–Form Notices by first-class mail to class members who did not receive a fax notice but for whom the class administrator had received mailing addresses from Defendant. (Suppl. Tilghman Decl. ¶ 3.) According to the settlement administrator, approximately 22,000 settlement notices were mailed successfully. (*Id.*) Thus, approximately 57,000 notices were delivered successfully. (*Id.* ¶ 4.)³

Class members had until February 4, 2014, to exercise their rights under the Settlement. (Short Form Notice.) All class members who failed to opt out of the Settlement within that time period are bound by the release in the Settlement. (Settlement ¶ 11.) As of February 18, 2014, the class administrator received 271 claim forms. (Suppl. Tilghman Decl. ¶ 5.)⁴ Of those, 70 were either incomplete or had other irregularities that required review by counsel. (*Id.* ¶ 6; Suppl. Mem. at 2.) The class administrator did not receive any objections to the settlement, and only one person opted out of the settlement, without explanation. (Suppl. Tilghman Decl. ¶¶ 7–8; Second Suppl. Tilghman Decl. ¶ 4.)⁵

The Court's Order on Preliminary Approval also directed Plaintiffs to submit a sufficient number of declarations from class members discussing their reactions to the proposed settlement. (Preliminary Approval Order at 12.) Accordingly, Plaintiffs' counsel sent a letter to claimants through the class administrator, asking for a short declaration as to their opinion on the settlement. (Second Suppl. Br. at 1.) On March 18, 2014, class counsel provided statements from 48 class members with their reactions to the settlement. (*Id.* at 1–6.) The vast majority of the reactions were positive. The reactions are discussed in Section IV.A.7 below.

III. LEGAL STANDARD

Before approving a class-action settlement, [Rule 23 of the Federal Rules of Civil Procedure](#) requires the Court to determine whether the proposed settlement is fair, reasonable, and adequate. [Fed.R.Civ.P. 23\(e\)\(2\)](#). “To determine whether a settlement agreement meets these standards, a district court must consider a number of factors, including: [1] the strength of plaintiffs' case; [2] the risk, expense, complexity, and likely duration of further litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered in settlement; [5] the extent of discovery completed, and the stage of the proceedings; [6] the experience and views of counsel; [7] the presence of a governmental participant; and [8] the reaction of the class members to the proposed settlement.” [Staton v. Boeing Co.](#), 327 F.3d 938, 959 (9th Cir.2003) (internal citation and quotation marks omitted).⁶ “The relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case.” [Officers for Justice v. Civil Serv. Comm'n](#), 688 F.2d 615, 625 (9th Cir.1982). “It is the settlement taken as a whole, rather than the individual component parts, that must *1206 be examined for overall fairness, and the settlement must stand or fall in its entirety.” [Staton](#), 327 F.3d at 960 (quoting [Hanlon v. Chrysler Corp.](#), 150 F.3d 1011, 1026 (9th Cir.1998)).

A. Final Approval of Settlement

The Courts finds the factors listed above favor final approval of the proposed settlement.

1. Strength of Plaintiffs' Case

Plaintiffs argue that they believe they have a strong case, but that the case raised several novel legal issues that favor approving a settlement. In particular, Plaintiffs note that this was the first case in which a court certified a nationwide class of recipients of fax advertisements allegedly violating the opt-out provisions of the TCPA; that Defendant has asserted a “substantial compliance” defense, on which the Ninth Circuit has not yet ruled; and that the damages award could trigger due process concerns. (Mem. at 13.) The Court notes that Defendant has strongly defended this case, including by filing a motion for summary judgment. In light of these

considerations, the Court finds that this factor weighs in favor of granting final approval.

2. Likely Expense and Duration of Further Litigation

The likely expense and duration of further litigation also favors settlement. The parties have filed cross-motions for summary judgment. Absent a settlement, if summary judgment were not granted as to all claims, the parties would incur additional costs in preparing for trial. If instead summary judgment were granted on all claims, there is a high likelihood that this case would be appealed to the Ninth Circuit. (See Mem. at 14.) In light of these considerations, the Court finds that this factor weighs in favor of granting final approval.

3. Risk of Maintaining Class Certification

Plaintiffs argue in a footnote that “there is some small risk of decertification” if the Ninth Circuit rules adversely on the issue of certifying a class similar to the class certified in this action. (Mem. at 9 n. 3.) The Court agrees with Plaintiffs that this presents at best a small risk. Nonetheless, the presence of such a risk would weigh in favor of granting final approval, as the settlement would eliminate the risk.

4. Amount Offered in Settlement

The Court finds that the amount offered in settlement is reasonable.⁷ Plaintiffs sought \$5 million in statutory damages (plus treble punitive damages) for the class that was certified, and reached a proposed settlement with a \$2.3 million floor and a \$3.3 million ceiling. See *Officers for Justice*, 688 F.2d at 628 (“It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair.”).

The allocation of settlement funds is likewise reasonable. A class member who submits a claim with copies of the fax advertisement they received is awarded \$500 for each fax (subject to a possible upward or downward pro rata adjustment), (Settlement ¶ 8), which is the same amount of statutory damages awarded (subject to a trebling of damages for a willful or knowing violation by Defendant). 47 U.S.C.

§ 227(b)(3)(B), (C). Class members that submit a sworn declaration as to the number of faxes received will receive between \$175 and \$275, subject to a possible upward or downward pro rata adjustment. (Settlement ¶ 8); see *1207 *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1045 (N.D.Cal.2008) (“It is reasonable to allocate the settlement funds to class members based on the extent of their injuries or the strength of their claims on the merits.”). Attorney's fees and an incentive award are to be awarded from the settlement fund, which is not unusual or unreasonable. (See Preliminary Approval Order at 9 (citing *Staton*, 327 F.3d at 969).)⁸ Finally, in the event the settlement floor amount is not met based on the distribution to claimants, the attorney's fees, and the incentive award, the parties propose a *cy pres* distribution to Public Citizen, a nonprofit organization that has successfully litigated TCPA cases on behalf of consumers. (Mem. at 11 n. 7.) The Court finds the proposed *cy pres* distribution appropriate, as it would further the objectives of the TCPA and benefit the interests of silent class members. See *Dennis v. Kellogg Co.*, 697 F.3d 858, 865 (9th Cir.2012) (“A *cy pres* award must be guided by (1) the objectives of the underlying statute(s) and (2) the interests of the silent class members, and must not benefit a group too remote from the plaintiff class.”) (citations and quotation marks omitted); accord *3081 Main Street, LLC v. Americas Merchant Receivables LLC*, Case No. 3:11 CV 01386(JCH), ECF No. 34, at *3 (D.Ct. Nov. 16, 2012) (approving Public Citizen for *cy pres* distribution in TCPA class action settlement).

Accordingly, this factor weighs in favor of granting final approval.

5. Extent of Discovery Completed

This factor requires the Court to evaluate whether “the parties have sufficient information to make an informed decision about settlement.” *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239 (9th Cir.1998). Fact discovery closed on October 29, 2012. (Doc. 25.) Class counsel represents that they propounded written discovery, took multiple depositions, and responded to Defendant's written discovery requests. (Bellin Decl. ¶ 13.) The parties filed cross-motions for summary judgment and ultimately settled the case after the close of fact discovery. (Docs.65, 66, 97.) Given the parties' representations regarding completed discovery, and the Court's review of the parties' motions for summary judgment, the Court finds that the parties had sufficient

information to make an informed decision about settlement. Accordingly, this factor weighs in favor of granting final approval.

6. Experience and Views of Counsel

All three of class counsel have experience in TCPA cases, and two have experience in complex class action litigation. (Bellin Decl. ¶ 7; Roger Furman Decl. ¶ 4, Doc. 120–3; Joseph R. Compoli Decl. ¶ 3, Doc. 120–4.) Class counsel and Defendant's counsel endorsed the Settlement as fair, reasonable, and adequate. (Bellin Decl. ¶ 15, Furman Decl. ¶ 7, Compoli Decl. ¶ 5.) Accordingly, this factor weighs in favor of granting final approval.

7. Reaction of Class Members to Proposed Settlement

As discussed above, approximately 57,000 notices were successfully sent either by fax or first class mail. Only one person has opted out of the settlement, without explanation, and no one has objected to the settlement. Class counsel also requested and received declarations from claimants as to their reaction to the settlement. (Second Suppl. Br.) Class counsel provided the Court with 48 declarations that were made by claimants. (*Id.*) Almost all of the reactions were positive—many claimants *1208 expressed frustration with having received faxes from Defendant and were very happy that Defendant would be held accountable. Several claimants were critical of certain aspects of the settlement.⁹ Three claimants believed that class members should be awarded damages based on Defendant's records of faxes sent, and that class members should not have to prove the number of faxes they received. (*Id.* at 2:10–12, 3:15–18, 4:8–10.) However, the parties represented at the hearing that while they have records indicating to whom faxes may have been sent, they do not have records of who actually received a fax or how many faxes they received. Moreover, the claim form allows claimants to provide a declaration as to the number of faxes they received, without providing the actual faxes received, which the Court finds fair and reasonable under the circumstances. Three other claimants suggested or stated either that the total settlement amount or the per-fax amount is too low. (Second Suppl. Br. at 2:16–18, 5:16.) However, for the reasons stated above, the Court finds these amounts to be fair and reasonable. Thus, although the number of claimants is relatively small,¹⁰ their reactions were very

positive overall. This factor therefore weighs in favor of granting final approval.

B. Incentive Award

District courts have the discretion to award incentive payments to named plaintiffs as compensation for their actions taken on behalf of the class. *Staton*, 327 F.3d at 977. The Court must “scrutiniz[e] all incentive awards to determine whether they destroy the adequacy of the class representatives.” *Radcliffe v. Experian Info. Solutions Inc.*, 715 F.3d 1157, 1164 (9th Cir.2013). Here, Plaintiffs request a combined \$10,000 incentive award. (Settlement ¶ 10.) In granting preliminary approval, the Court found the amount justified based on time spent (1) seeking out class counsel; (2) educating class counsel about the facts of the case and providing them with documents; (3) responding to requests for documents, admissions, and interrogatories; (4) appearing for their deposition; (5) participating in telephonic mediations and reviewing numerous settlement offers; and (6) flying from Ohio to California to attend the in-person settlement conference before Judge Gandhi. (Preliminary Approval Order at 10–11.) For the same reasons, the Court finds the amount justified for purposes of final approval.

C. Award of Attorney's Fees and Costs

Plaintiffs' Counsel seeks an award of attorney's fees and costs in the amount of \$1.1 million, which represents 33% of the ceiling on the \$3.3 million settlement fund. (Mem. at 17–18.) Rule 23 permits a court to award “reasonable attorney's fees ... that are authorized by law or by the parties' agreement.” Fed.R.Civ.P. 23(h). “[C]ourts have an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties *1209 have already agreed to an amount.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir.2011).

The benchmark for a fee award in a common fund case is 25% of the recovery obtained. *See id.* at 942 (“Where a settlement produces a common fund for the benefit of the entire class, ... courts typically calculate 25% of the fund as the ‘benchmark’ for a reasonable fee award, providing adequate explanation in the record for any ‘special circumstances’ justifying a departure.”). In “megafund” cases, fees will commonly be under the benchmark, while in smaller cases—particularly where the common fund is under \$10 million—awards more frequently exceed the benchmark. *See Lopez v. Youngblood*, No. CV–F–07–0474 DLB, 2011 WL 10483569, *13 (E.D.Cal. Sept. 2, 2011).

The Ninth Circuit has identified a number of factors the Court may consider in assessing whether an award is reasonable and whether a departure from that figure is warranted, including: (1) the results achieved; (2) the risk of litigation; (3) the skill required and quality of work; and (4) the contingent nature of the fee and the financial burden carried by the plaintiffs. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir.2002).

1. Results Achieved

Class counsel achieved certification of the first federal TCPA class covering recipients of faxes that lacked compliant opt-out notices, regardless of whether the fax advertisements were solicited or unsolicited, and regardless of whether the defendant had an established business relationship with the persons to whom it sent the fax advertisements. (Mem. at 19.) Class counsel achieved a settlement whereby claimants can receive the statutory damages amount per fax if they provide actual evidence of faxes received, or a slightly lesser amount per fax if they provide only a declaration. The Court finds that the unprecedented nature of the class certified and the settlement reached for the class present an exceptional result warranting an upward departure from the benchmark. See *Vizcaino v. Microsoft Corp.*, 290 F.3d at 1048 (finding of exceptional results warranted where “counsel pursued [the] case in the absence of supporting precedents”).

2. Risk of Litigation

The risks presented by this litigation also support an upward departure from the Ninth Circuit's benchmark. As discussed above, class counsel pursued and obtained certification of an unprecedented class. The Court further notes Defendant's vigorous opposition to this case, including its interlocutory appeal of the Court's class certification order as well as its motion for summary judgment, which raised numerous significant defenses to the claims presented.

3. Skill Required and Quality of Work

This nationwide class action presented challenging issues of first impression concerning the TCPA, which required a high degree of skill to litigate successfully. The exceptional results achieved in this case are directly attributable to class

counsel's high quality work. Accordingly, this factor supports an upward departure from the benchmark.

4. Contingent Nature of the Fee and Financial Burden Carried by Plaintiffs

Class counsel took this case on a contingent basis, and between the three of them spent approximately 1,100 hours on the case over two years. (Bellin Decl. ¶ 16; Furman Decl. ¶ 8; Compoli Decl. ¶ 6.) Class counsel also fronted approximately \$50,000 in costs. (Bellin Decl. ¶ 19.) While this by itself does not support an upward departure from the benchmark, the Court does not find this factor dispositive. See *Vizcaino*, 290 F.3d at 1048 *1210 (courts must consider all of the circumstances of the case in arriving at a percentage fee award).

5. Conclusion as to Fee Award

Considering all of the circumstances described above, the Court finds that a 33% award of fees and costs is warranted. The Court further finds that a percentage award based on the ceiling amount of the settlement fund is appropriate. See *Williams v. MGM–Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir.1997) (district court abused its discretion by basing fee on class members' claims against fund rather than on percentage of entire fund or lodestar); *In re Wal-Mart Stores Inc. Wage & Hour Lit.*, No. 06–02069 SBA, 2011 WL 31266, *3, *7 (N.D.Cal. Jan. 5, 2011) (basing fee percentage on ceiling amount, following supplemental briefing on class actions structured with a floor and ceiling amount). Accordingly, the Court awards attorney's fees and costs in the amount of \$1.1 million, or 33% of the \$3.3 million settlement fund ceiling amount. As class counsel expended \$54,649.79 in costs, (Bellin Decl. ¶ 19, Exs. D, E), the award amounts to \$54,649.79 in costs and \$1,045,350.21 in fees.

The reasonableness of this amount is confirmed by a cross-check with a lodestar comparison. *Vizcaino*, 290 F.3d at 1050–51. Class counsel provide documentation as to the hours each of them billed in this litigation, and they anticipate billing a total of 1140.8 hours. (Bellin Decl. Ex. C; Furman Decl. Ex. A; Compoli Decl. Ex. A; Mem. at 23.) The Court agrees this amount is reasonable given the length of the case and the issues involved. Moreover, class counsel's rates—between \$300 and \$400—are reasonable given that each has at least twenty years of litigation experience. (Bellin Decl. ¶¶ 3, 8;

Furman Decl. ¶¶ 2, 8; Compoli Decl. ¶¶ 2, 6; *see also* Mem. at 24 (noting cases in this district have approved hourly rates ranging from \$150 to \$1,000).) Class counsel represent that multiplying their hours by their rates results in a lodestar of \$415,155. (Mem. at 25.) The Court's \$1,045,350.21 fee award is 2.52 times higher than the lodestar, which is well within the range of acceptable multipliers in a common fund case. *See Vizcaino*, 290 F.3d at 1051 n. 6 (noting majority of fee awards are 1.5 to 3 times higher than lodestar).

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS Plaintiffs' Motion for Final Approval of Class Settlement. The Court finds the settlement to be fair, adequate and reasonable, and accordingly grants final approval of the settlement. The Court

awards class counsel \$54,649.79 in costs and \$1,045,350.21 in fees, based on an award of 33% of the \$3.3 million settlement fund ceiling amount. The Court awards each of the two Plaintiffs \$5,000 as an incentive award. Distribution of the settlement funds to claimants shall be made in accordance with the method outlined in the Settlement. If a *cy pres* distribution is necessary to meet the floor settlement amount, the distribution shall be made to Public Citizen.

The parties shall submit a proposed judgment in accordance with this Order forthwith.

All Citations

8 F.Supp.3d 1200, 88 Fed.R.Serv.3d 365

Footnotes

- 1 Plaintiffs propose that any *cy pres* distribution be made to Public Citizen, a nonprofit organization that litigates on behalf of consumers and has been involved in pursuing TCPA litigation. (Mem. at 11 n. 7, Doc. 120–1.)
- 2 The class administrator sent faxes to all persons who were “activated” in Defendant's marketing database during the class period of October 12, 2007 through November 23, 2011. (Settlement ¶ 4(a).) If the fax transmission to a class member failed on the first attempt, the class administrator was to make a second attempt at fax transmission. (*Id.* ¶ 4(f).)
- 3 Previously, the class administrator successfully sent approximately 56,000 notices regarding the pendency of the action. (*Id.*)
- 4 Two additional claims were received after the deadline. (Second Suppl. L. Stephens Tilghman Decl. ¶ 2, Doc. 124–1.)
- 5 Ten class members previously opted out in response to the notice of the pendency of the action. (Suppl. Tilghman Decl. ¶ 7.)
- 6 Factor [7], the presence of a governmental participant, does not apply to this case.
- 7 The Court previously found the proposed settlement was the result of an arms-length negotiation. (Preliminary Approval Order at 7.)
- 8 The Court addresses the amount of the incentive award and attorney's fees in Sections IV.B and IV.C below.
- 9 Each of these individuals submitted claims instead of opting out or objecting. Some even expressed approval of the settlement overall despite specific criticisms.
- 10 In considering the proposed settlement as a whole, the Court does not find that the relatively small number of claimants renders the settlement unfair. *See Staton*, 327 F.3d at 960 (courts consider the settlement as a whole for overall fairness). The parties' notice and claims method was reasonable, (Preliminary Approval

Order at 12–13), and the proposed *cy pres* distribution guarantees Defendant will pay the floor amount of the settlement. Cf. [Six \(6\) Mexican Workers v. Arizona Citrus Growers](#), 904 F.2d 1301, 1306–07 (9th Cir.1990) (focusing on amount of unclaimed funds as opposed to number of claimants).

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.

FILED
11/17/2025 2:38 PM
Mariyana T. Spyropoulos
CIRCUIT CLERK
COOK COUNTY, IL
2025CH06466
Calendar, 16
35392723

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

SHAYLA MARCOTTE, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

CAVU ECOMMERCE (AMER) LLC,

Defendant.

Civil Action No.: 2025CH06466

Hon. David B. Atkins

Calendar 16

**DECLARATION OF PHILIP L. FRAIETTA IN SUPPORT OF PLAINTIFF’S
UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

I, Philip L. Fraietta, hereby aver, pursuant to 735 ILCS 5/1-109, that I am fully competent to make this Declaration, that I have personal knowledge of all matters set forth herein unless otherwise indicated, and that I would testify to all such matters if called as a witness in this matter.

1. I am a Partner at Bursor & Fisher, P.A., counsel of record for Plaintiff in this action. I make this declaration in support of Plaintiff’s Unopposed Motion Final Approval of Class Action Settlement, filed herewith.

2. I am a member in good standing of Illinois, California, Michigan, New York and New Jersey Bars.

3. Attached hereto as **Exhibit 1** is a true and correct copy of the Parties’ Class Action Settlement and the exhibits attached hereto.

4. On or about January 29, 2025, Plaintiff sent Defendant a Notice and Demand for Corrective Action as required by California’s Consumers Legal Remedies Act (“CLRA”). The Notice advised Defendant that its additional “Service Charge” imposed on consumers at the end of their transaction violated California’s Honest Pricing Law and was unfair and unlawful under

California's Unfair Competition law.

5. During negotiations, the Parties exchanged informal discovery, including the amount of "Service Charges" that Defendant collected during the Class Period and the total number of Class Members. The Settlement Amount equates to 78% of the total Service Charges collected from July 1, 2024 to March 10, 2025. The total Class size is 57,325 individuals. The information exchanged would have been similar to the information exchanged in formal discovery. The information exchanged is relevant to damages and class certification. In my experience litigating similar "Junk Fee" cases, this represents an excellent settlement as it guarantees relief for Class Members while avoiding the time, expense, and unknowns that will come from litigating claims under California's relatively new Honest Pricing Law.

6. After exchanging this discovery, the Parties drafted and executed the Settlement Agreement and related documents.

7. On June 18, 2025, Plaintiff filed the operative Complaint in the Circuit Court of Cook County, Illinois County Department, Chancery Division, titled, *Marcotte v. CAVU ECOMMERCE (AMER) LLC*, Case No. 2025CH06466 (Cir. Ct. Cook Cnty.). The material allegations in the Complaint were that Defendant offered parking reservations options on its Websites at stated prices. However, on the checkout page, Defendant added a mandatory "Service Charge" that was never disclosed with the initially advertised prices for those reservations. Plaintiff alleged this practice violates California's Honest Pricing Law, Cal. Civ. Code § 1770(a)(29), and California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* The Complaint seeks actual damages, restitution, disgorgement, and asks the Court to certify a class defined as "All California residents who made a reservation through airportparkingreservations.com or airportparking.com and paid a mandatory 'Service Charge' at checkout."

8. The resulting \$425,000 settlement provides extraordinary relief to members of the Settlement Class. Given that California's Honest Pricing Law has only been in effect since July 1, 2024 and the case law is still developing, issues concerning what constitutes a "mandatory fee" and sufficient notice remain uncertain. Because of this uncertainty, this settlement provides extraordinary results. It guarantees recovery for Settlement Class Members who paid this "Service Charge." Indeed, this settlement is similar to the class settlement approved in *Charles v. Color Factory, LLC*, Case No. 1:24-cv-00322-JSR, ECF No. 35 (S.D.N.Y. 2024). That case was brought under New York's Arts and Cultural Affairs Law, N.Y. Arts & Cult. Aff. Law § 25.07(4), which prohibits business practices similar to those prohibited under California's Honest Pricing Law. The settlement in *Charles* consisted of a \$714,705.68 common fund for a class period of August 29, 2022 to January 23, 2024; nearly 17 months of fees. *Id.* at ECF No. 35, at 4-5.

9. Pursuant to the terms of the Proposed Settlement, every Settlement Class Member will receive a *pro rata* payment equal to a percentage of the total amount of Service Charges they paid from July 1, 2024 to March 10, 2025. Payment will be made in either a check or electronic payment as selected by the Class Member.

10. Additionally, Defendant has agreed to not reinstate the Service Charge unless it clearly and conspicuously discloses it to the consumer with the advertised price for a reservation in the first instance or California's Honest Pricing Law is amended, repealed, or otherwise invalidated.

11. On August 26, 2025, the Court preliminarily approved the class action settlement. A true and correct copy of the Order is attached hereto as **Exhibit 2**. On October 23, 2025, Plaintiff filed her Motion for Service Award and Attorneys' Fees, Costs, and Expenses.

12. A copy of the firm resume of Bursor & Fisher, P.A. is attached hereto as **Exhibit 3**. Bursor & Fisher, P.A. is well suited to continue to represent Plaintiff and the Class in this matter. As noted, my firm has served as class counsel in another substantially similar Fees action, *Charles v. Color Factory, LLC*, 1:24-cv-00322-JSR, ECF No. 38, at 3 (“For purposes of settlement only: ... (a) Philip L. Fraietta ... of Bursor & Fisher, P.A, are appointed Class Counsel for the Settlement Class[.] The Court finds that these attorneys are competent and capable of exercising the responsibilities of Class Counsel[.]”).

13. Further, since December 2010, my firm has been court-appointed Class Counsel or Interim Class Counsel by numerous courts, including courts in Illinois. *See Exhibit 3*, p. 1-7.

14. In general, my firm has significant experience in litigating class actions of similar size, scope, and complexity to the instant action. My firm has also been recognized by courts across the country for its expertise. *See also Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561, 566 (S.D.N.Y. Feb. 25, 2014) (“Bursor & Fisher, P.A., are class action lawyers who have experience litigating consumer claims. ... The firm has been appointed class counsel in dozens of cases in both federal and state courts, and has won multimillion dollar verdicts or recoveries in five class action jury trials since 2008.”).

15. The Parties agreed to the terms of the Settlement through experienced counsel who possessed all the information necessary to evaluate the case, determine all the contours of the proposed class, and reached a fair and reasonable compromise after negotiating the terms of the Settlement at arm’s-length.

16. Plaintiff and Class Counsel recognize that despite our belief in the strength of Plaintiff’s claims, and Plaintiff’s and the Class’s ability to ultimately secure a favorable judgment at trial, the expense, duration, and complexity of protracted litigation would be substantial and the outcome of trial uncertain. This is especially true given the still-developing

case law underwriting threshold defenses Defendant intended to raise.

17. Plaintiff and Class Counsel are also mindful that absent a settlement, the success of Defendant's various defenses in this case could deprive Plaintiff and the Settlement Class Members of any potential relief whatsoever. Defendant is represented by highly experienced attorneys who have made clear that absent a settlement, they were prepared to continue their vigorous defense of this case, including by moving for summary judgment after discovery. Plaintiff and Class Counsel are also aware that Defendant would continue to challenge liability, as well as assert a number of defenses, including but not limited to whether the Service Charge is one prohibited by the statute and whether Defendant's Websites provided adequate notice of the Service Charge before Plaintiff and Settlement Class Members paid it. Given that the statute is relatively untested, Defendant's defenses were sure to raise novel issues of first impressions which would require copious briefing and argument.

18. Looking beyond trial, Plaintiff is also keenly aware that Defendant could appeal the merits of any adverse decision, including seeking to decertify a class.

19. Plaintiff and Class Counsel believe that the relief provided by the settlement weighs heavily in favor of a finding that the settlement is fair, reasonable, and adequate, and worthy of final approval.

I declare under penalty of perjury that the above and foregoing is true and accurate.
Executed this 17th day of November, 2025 at White Plains, New York.

/s Philip L. Fraietta

Philip L. Fraietta

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

SHAYLA MARCOTTE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

CAVU ECOMMERCE (AMER) LLC,

Defendant.

Case No. 2025CH06466

CLASS ACTION SETTLEMENT AGREEMENT

This Agreement (“Agreement” or “Settlement Agreement”) is entered into by and among (i) Plaintiff Shayla Marcotte (“Plaintiff”); (ii) the Settlement Class (as defined herein); and (iii) Defendant, CAVU eCommerce (AMER) LLC (“Defendant” or “CAVU”). The Settlement Class and Plaintiff are collectively referred to as the “Plaintiffs” unless otherwise noted. The Plaintiff and CAVU are collectively referred to herein as the “Parties.” This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the terms and conditions of this Agreement, and subject to the final approval of the Court.

RECITALS

A. On January 29, 2025, Plaintiff sent Defendant a Demand for Corrective Action (“Demand”) asserting claims against Defendant. The Demand alleged that CAVU charged a mandatory “Service Charge” on its Websites without including it in the initially advertised prices of its services. Plaintiff alleged this pricing scheme violates (1) Honest Pricing Law, Cal. Civ. Code § 1770(a)(29)(A) and (2) California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.*

B. Shortly upon receipt of the Demand, the Parties engaged in good-faith settlement negotiations, and, on June 2, 2025, reached an agreement on all material terms of a class action settlement.

C. On June 18, 2025, Plaintiff filed a putative class action in the Circuit Court of Cook County, Illinois making the same allegations as in the Demand.

D. At all times, CAVU has denied, and continues to deny, any wrongdoing whatsoever, denies that it committed, or threatened or attempted to commit, any wrongful act or violation of law or duty alleged in the Action, and denies that certification of a litigation class is necessary or proper. Accordingly, any references to the alleged business practices of CAVU in this Agreement, any settlement document, or the related Court hearings and processes will raise no inference with respect to the propriety of those business practices or any other business practices of CAVU. Nonetheless, taking into account the uncertainty and risks inherent in any litigation and the desire to avoid the expenditure of further legal fees and costs, CAVU has concluded it is desirable and beneficial that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement to avoid further expense, inconvenience, and burden. This Agreement is a compromise, and the Agreement, any related documents, and any negotiations resulting in it shall not be construed as, or deemed to be, evidence of or an admission or concession of liability or wrongdoing on the part of CAVU, or any of the Released Parties (defined below), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever or with respect to the certifiability of a litigation class.

E. Plaintiff believes that the claims asserted in the Action against CAVU have merit and that she would have prevailed at summary judgment and/or trial. Nonetheless, Plaintiff and Class Counsel recognize that CAVU has raised factual and legal defenses that present a risk that Plaintiff may not prevail. Plaintiff and Class Counsel also recognize the expense and delay

associated with continued prosecution of the Action against CAVU through class certification, summary judgment, trial, and any subsequent appeals. Plaintiff and Class Counsel also have taken into account the uncertain outcome and risks of litigation, especially in complex class actions, as well as the difficulties inherent in such litigation. Therefore, Plaintiff believes it is desirable that the Released Claims, as further defined herein, be fully and finally compromised, settled, and resolved with prejudice. Based on its evaluation, Class Counsel has concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

F. CAVU maintains that it has meritorious defenses to the claims asserted in this action, and that CAVU would prevail in this matter on summary judgment or at trial. CAVU denies any wrongdoing and any liability to Plaintiff and the Settlement Class whatsoever. CAVU also denies that class certification is warranted or appropriate. Nevertheless, CAVU recognizes the risks and uncertainties inherent in litigation, the significant expense associated with defending class actions, the costs of any appeals, and the disruption to business operations arising out of class action litigation. CAVU also recognizes the risks that a trial on class-wide claims might present. Accordingly, CAVU believes that the Settlement set forth in the Agreement is likewise in the best interests of all parties involved.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff, the Settlement Class, and CAVU, by and through its undersigned counsel that, subject to final approval of the Court after a hearing or hearings as provided for in this Settlement Agreement, in consideration of the benefits flowing to the Parties from the Agreement set forth herein, that the Action and the Released Claims shall be finally and fully compromised, settled,

and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

AGREEMENT

1. DEFINITIONS.

As used in this Settlement Agreement, the following terms have the meanings specified below:

1.1 “Action” means *Shayla Marcotte v. CAVU eCommerce (AMER) LLC.*, Case No. 2025CH06466, pending in the Circuit Court of Cook County, Illinois.

1.2 “Alternate Judgment” means a form of final judgment that may be entered by the Court herein but in a form other than the form of Judgment provided for in this Agreement and where none of the Parties elect to terminate this Settlement by reason of such variance.

1.3 “Approved Claim” means a Claim Form submitted by a Settlement Class Member (defined below) that: (a) is submitted timely and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement; (b) is fully and truthfully completed by a Settlement Class Member with all of the information requested in the Claim Form; (c) is signed by the Settlement Class Member; and (d) is approved by the Settlement Administrator pursuant to the provisions of this Agreement.

1.4 “Claim Form” means the document substantially in the form attached hereto as Exhibit A, as approved by the Court. The Claim Form must be completed by Settlement Class Members who wish to file a Claim for a payment.

1.5 “Claims Deadline” means the date by which all Claim Forms must be postmarked or received to be considered timely and shall be set as a date no later than forty-five (45) days after the Final Approval Hearing. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Notice and the Claim Form. Settlement Class

Members who do not return valid claim forms by the Claims Deadline will not be entitled to any payment pursuant to this Settlement Agreement.

1.6 “Class Counsel” means Philip L. Fraietta of Bursor & Fisher, P.A.

1.7 “Class Period” means the period of time from July 1, 2024 to March 10, 2025.

1.8 “Class Representative” means the named Plaintiff in this Action: Shayla Marcotte.

1.9 “Court” means the Circuit Court of Cook County, Illinois.

1.10 “Defendant” or “CAVU” means CAVU eCommerce (AMER) LLC.

1.11 “Defendant’s Counsel” or “CAVU’s Counsel” means Adam R. Fox and Marisol C. Mork of Squire Patton Boggs (US) LLP.

1.12 “Effective Date” means the date ten (10) days after which all of the events and conditions specified in Paragraph 8.1 have been met and have occurred.

1.13 “Escrow Account” means the separate, interest-bearing escrow account to be established by the Settlement Administrator under terms acceptable to all Parties at a depository institution insured by the Federal Deposit Insurance Corporation. The Settlement Fund shall be deposited by Defendants into the Escrow Account in accordance with the terms of this Agreement and the money in the Escrow Account shall be invested in the following types of accounts and/or instruments and no other: (i) demand deposit accounts and/or (ii) time deposit accounts and certificates of deposit, in either case with maturities of forty-five (45) days or less. The costs of establishing and maintaining the Escrow Account shall be paid from the Settlement Fund.

1.14 “Fee Award” means the amount of attorneys’ fees and reimbursement of costs and expenses awarded by the Court to Class Counsel.

1.15 “Final” when not used in combination with any other term defined herein, means one business day following the latest of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Final Judgment approving the Settlement Agreement; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or *certiorari*, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*.

1.16 “Final Approval Hearing” means the hearing before the Court where the Parties will request the Final Judgment to be entered by the Court approving the Settlement Agreement, the Fee Award, and the incentive award to the Class Representative.

1.17 “Final Judgment” means the Final Judgment and Order to be entered by the Court approving the Agreement after the Final Approval Hearing.

1.18 “Final Settlement Approval Date” means one business day following the latest of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Settlement Approval Order and Final Judgment approving the Settlement Agreement, if no appeal has been filed; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of completion, in a manner that finally affirms and leaves in place the Settlement Approval Order and Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review

and/or *certiorari*, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*.

1.19 “Individual Out-of-Pocket Fees” means the total amount of Service Charges paid to CAVU by any one Settlement Class Member in connection with a booking on the Websites during the Class Period.

1.20 “Notice” means the notice of this proposed Class Action Settlement Agreement and Final Approval Hearing, which is to be sent to the Settlement Class substantially in the manner set forth in this Agreement, consistent with the requirements of Due Process, 735 ILCS 5/2-803, and substantially in the form of Exhibits A, B and C, hereto.

1.21 “Notice Date” means the date by which the Notice set forth in Paragraph 4.1 is complete, which shall be no later than twenty-eight (28) days after Preliminary Approval.

1.22 “Objection/Exclusion Deadline” means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a Person within the Settlement Class must be made, which shall be designated as a date no later than forty-five (45) days after the Notice Date and no sooner than fourteen (14) days after papers supporting the Fee Award are filed with the Court and posted to the settlement website listed in Paragraph 4.1(d), or such other date as ordered by the Court.

1.23 “Out-of-Pocket Fees” means the total amount of Service Charges paid to CAVU collectively by every Settlement Class Member.

1.24 “Out-of-Pocket Percentage” for a Settlement Class Member means that Settlement Class Member’s Individual Out-of-Pocket Fees divided by Out-of-Pocket Fees.

1.25 “Person” shall mean, without limitation, any individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal

representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouse, parent, child, guardian, associate, co-owners, heirs, predecessors, successors, representatives, or assigns. “Person” is not intended to include any governmental agencies or governmental actors, including, without limitation, any state Attorney General office.

1.26 “Plaintiffs” means Shayla Marcotte and the Settlement Class Members.

1.27 “Preliminary Approval” means the Court’s conditional certification of the Settlement Class for settlement purposes, preliminary approval of this Settlement Agreement, and approval of the form and manner of the Notice.

1.28 “Preliminary Approval Order” means the Order preliminarily approving the Settlement Agreement, conditionally certifying the Settlement Class for settlement purposes, and directing notice thereof to the Settlement Class.

1.29 “Released Claims” means any and all claims, liabilities, demands, causes of action, and lawsuits of the Plaintiff and Settlement Class Members, whether known or unknown, filed or unfiled, asserted or as of yet unasserted, existing or contingent, whether legal, statutory, equitable, or of any other type or form, whether under federal, state, or local law, and whether brought in an individual, representative, or any other capacity, of every nature and description whatsoever, including, but not limited to, claims that were or could have been brought in the Action or any other actions filed (or to be filed) by Plaintiff and Settlement Class Members against Released Parties relating in any way to or connected with the alleged collection of a mandatory “Service Charge” Fee in connection with online reservations made on airportparkingreservations.com and/or airportparking.com (the “Websites”) from July 1, 2024 to March 10, 2025, including, but not limited to, claims arising out of California’s Honest Pricing Law, Cal. Civ. Code §§ 1770(a)(29)(A) and California’s Unfair Competition Law (“UCL”), Cal.

Bus. & Prof. Code §§ 17200, *et seq.* This release includes, without limitation, statutory, constitutional, contractual, and/or common law claims for damages, unpaid costs, penalties, liquidated damages, punitive or exemplary damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief to the extent permitted by applicable law which may arise from the Released Claims.

1.30 “Released Parties” means CAVU eCommerce (AMER) LLC and/or any or all of its current, former, and future parents, predecessors, successors, affiliates, assigns, subsidiaries, divisions, or related corporate entities, and all of their respective current, future, and former employees, officers, directors, shareholders, assigns, agents, trustees, administrators, executors, insurers, attorneys, and customers.

1.31 “Releasing Parties” means Plaintiff, those Settlement Class Members who do not timely opt out of the Settlement Class, and all of their respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, limited liability companies, partnerships and corporations.

1.32 “Service Award” means an award approved by the Court that is payable to Plaintiff by Defendant pursuant to the terms set forth herein.

1.33 “Service Charges” means the “Service Charge” levied in connection with a booking on the Websites during the Class Period that is at issue in this Action.

1.34 “Settlement Administration Expenses” means the expenses incurred by the Settlement Administrator in providing Notice, processing claims, responding to inquiries from

members of the Settlement Class, mailing checks for Approved Claims, and related services, paying taxes and tax expenses related to the Settlement Fund (including all federal, state or local taxes of any kind and interest or penalties thereon, as well as expenses incurred in connection with determining the amount of and paying any taxes owed and expenses related to any tax attorneys and accountants). Settlement Administration Expenses will be paid thirty (30) days after the Final Settlement Approval Date from the Settlement Fund.

1.35 “Settlement Administrator” means Epiq, or such other reputable administration company that has been selected by Class Counsel and reasonably acceptable to CAVU and approved by the Court to perform the duties set forth in this Agreement, including but not limited to overseeing the distribution of Notice, as well as the processing and payment of Approved Claims to the Settlement Class as set forth in this Agreement, and disbursing all approved payments out of the Settlement Fund, and handling the determination, payment and filing of forms related to all federal, state and/or local taxes of any kind (including any interest or penalties thereon) that may be owed on any income earned by the Settlement Fund.

1.36 “Settlement Class” means all California residents who made a reservation through airportparkingreservations.com or airportparking.com and paid a mandatory “Service Charge” at checkout during the Class Period. Also excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this Action and members of their families; (2) CAVU, CAVU’s subsidiaries, parent companies, successors, predecessors, and any entity in which CAVU or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (3) Persons who properly execute and file a timely request for exclusion from the Class; and (4) the legal representatives, successors or assigns of any excluded Persons.

1.37 “Settlement Class Member” means a Person who falls within the definition of the Settlement Class.

1.38 “Settlement Fund” means the non-reversionary cash fund that shall be established by the Settlement Administrator and funded by CAVU in the total amount of \$425,000.00, according to the schedule set forth herein. From the Settlement Fund, the Settlement Administrator shall pay all Approved Claims made by Settlement Class Members, Settlement Administration Expenses, any incentive award to the Class Representative, any Fee Award to Class Counsel, and any other costs, fees or expenses approved by the Court. The Settlement Administrator shall be granted permission to access said funds as set forth herein. The Settlement Administrator shall be responsible for all tax filings with respect to any earnings on the Settlement Fund and the payment of all taxes that may be due on such earnings. The Settlement Fund represents the total extent of CAVU’s monetary obligations under this Agreement. The payment of the Settlement Amount by CAVU fully discharges CAVU and the other Released Parties’ financial obligations (if any) in connection with the Settlement, meaning that no Released Party shall have any other obligation to make any payment to any Class Member, or any other Person, under this Agreement.

1.39 “Unknown Claims” means claims that could have been raised in the Action and that any or all of the Releasing Parties do not know or suspect to exist, which, if known by him or her, might affect his or her agreement to release the Released Parties or the Released Claims or might affect his or her decision to agree, object or not to object to the Settlement. Upon the Effective Date, the Releasing Parties shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT A
CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Upon the Effective Date, the Releasing Parties also shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to § 1542 of the California Civil Code. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims that they may have, as that term is defined in this Paragraph.

1.40 “Websites” means airportparkingreservations.com and/or airportparking.com.

2. SETTLEMENT RELIEF.

2.1 Payments to Settlement Class Members.

(a) Within twenty-eight (28) business days after entry of the Preliminary Approval Order, CAVU shall pay into the Escrow Account the Settlement Amount.

(b) Settlement Class Members shall have until the Claims Deadline to submit an Approved Claim. Each Settlement Class Member with an Approved Claim shall be entitled to receive as a Cash Award a pro rata payment from the Settlement Fund. The pro rata payment for each Settlement Class Member will be equal to that Settlement Class Member’s Out-of-Pocket Percentage multiplied by the Available Settlement Fund.

(c) The Settlement Administrator shall pay from the Settlement Fund all Cash Awards to those Settlement Class Members with Approved Claims by check or electronic payment, at the Settlement Class Member’s election. Payments of Cash Awards to all Settlement

Class Members with Approved Claims shall be made within twenty-eight (28) days after the Claims Deadline.

(d) To the extent that any Settlement Class Members do not claim their Cash Awards within one-hundred-eighty (180) days after Cash Awards are distributed in accordance with Section 2.1(b), such Settlement Class Members shall have waived their right to a Cash Award and any unclaimed funds will revert to the Greater Chicago Legal Clinic, a 501(c)(3) entity, as *cy pres*.

(e) Subject to the provisions pertaining to the termination or cancellation of the Settlement, as set forth in Paragraph 9, no portion of the Settlement Fund shall revert back to CAVU.

2.2 Prospective Relief. CAVU represents that it will clearly and conspicuously disclose Service Charges to the consumer with the advertised price presented to a consumer in the first instance, unless and until California's Honest Pricing Law, Cal. Civ. Code § 1770(a)(29)(A), is amended, repealed, or otherwise invalidated.

3. RELEASE.

3.1 The obligations incurred pursuant to this Settlement Agreement shall be a full and final disposition of the Action and any and all Released Claims, as against all Released Parties.

3.2 Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, and each of them.

4. NOTICE TO THE CLASS.

4.1 The Notice Plan shall consist of the following:

(a) *Settlement Class List.* No later than 28 days after the full execution of this Settlement Agreement, CAVU shall produce an electronic list from its records that includes

the names and last known e-mail and postal addresses, and the total amount of Out-of-Pocket Fees paid by each Settlement Class Member, to the extent available, belonging to Persons within the Settlement Class. This electronic document shall be called the “Class List.”.

(b) *Direct Notice via Email.* No later than twenty-eight (28) days after entry of the Preliminary Approval Order, the Settlement Administrator shall send Notice via email substantially in the form attached as Exhibit B to all Settlement Class Members for whom a valid email address is in the Class List. In the event transmission of email notice results in any “bounce-backs,” the Settlement Administrator shall, if possible, correct any issues that may have caused the “bounce-back” to occur, including running a “skip-trace” to identify any potential alternative email addresses, and make a second attempt to re-send the email notice.

(c) *Reminder Notice.* Both thirty (30) days prior to the Claims Deadline and seven (7) days prior to the Claims Deadline, the Settlement Administrator shall send Notice via email substantially in the form attached as Exhibit B (with minor, non-material modifications to indicate that it is a reminder email rather than an initial notice), along with an electronic link to the Claim Form, to all Settlement Class Members for whom a valid email address is available in the Class List.

(d) *Settlement Website.* Within ten (10) days from entry of the Preliminary Approval Order, Notice shall be provided on a website at an available settlement URL (such as, for example, www.cavuservicechargesettlement.com) which shall be obtained, administered and maintained by the Settlement Administrator and shall provide Settlement Class Members with the ability to file Claim Forms online. Copies of this Settlement Agreement, the long-form Notice, and other pertinent documents and Court filings pertaining to the Settlement (including the motion for attorneys’ fees upon its filing), shall be provided on the Settlement Website. The

Notice provided on the Settlement Website shall be substantially in the form of Exhibit C hereto.

4.2 The Notice shall advise the Settlement Class of their rights, including the rights to be excluded from or object to the Settlement Agreement or any of its terms. The Notice shall specify that any objection to the Settlement Agreement, and any papers submitted in support of said objection, shall be considered by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice, the Person making the objection files notice of an intention to do so and at the same time (a) files copies of such papers he or she proposes to be submitted at the Final Approval Hearing with the Clerk of the Court, or alternatively, if the objection is from a Class Member represented by counsel, files any objection through the Court's electronic filing system, and (b) sends copies of such papers by mail, hand, or overnight delivery service to Class Counsel and CAVU's Counsel.

4.3 Any Settlement Class Member who intends to object to this Agreement must present the objection in writing, which must be personally signed by the objector, and must include: (1) the objector's full name, address and current telephone number; (2) an explanation of the basis upon which the objector claims to be a Settlement Class Member; (3) all grounds for the objection, including all citations to legal authority and evidence supporting the objection; (4) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the "Objecting Attorneys"); and (5) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Local Rules).

4.4 If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption and amount of payment received.

4.5 A Settlement Class Member may request to be excluded from the Settlement Class by sending a written request postmarked on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice. To exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator, and must include in any such exclusion request: (a) his/her full name, address, and current telephone number; (b) the case name and number of this Action; (c) a statement that he/she made a reservation through the Websites and paid a Service Charge at checkout; (d) all grounds for the request to be excluded, with factual and legal support for the stated request, including any supporting materials; (e) the identification of any other exclusion requests he/she has filed, or has had filed on his/her behalf, in any other class action cases in the last five years; and (f) the requestor's signature. If represented by counsel, the Settlement Class Member requesting to be excluded must also provide the name and telephone number of his/her counsel. A request to be excluded that does not include all of this information, or that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and the Person(s) serving such a request shall be a member(s) of the Settlement Class and shall be bound as a Settlement Class Member by this Agreement, if approved. Any member of the Settlement Class who validly elects to be excluded from this Agreement shall not: (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be

entitled to object to any aspect of this Agreement. Any request for exclusion must be personally signed by each Person requesting exclusion. So-called “mass” or “class” opt-outs shall not be allowed. To be valid, a request for exclusion must be submitted on the Settlement Website by 11:59 p.m., Central Time, on the date specified in the Notice, or be postmarked or received by the date specified in the Notice.

4.6 The Final Approval Hearing shall be no earlier than ninety (90) days after the Notice described in Paragraph 4.1(b) is provided.

4.7 Any Settlement Class Member who does not exclude himself or herself from the Settlement Agreement by the Objection/Exclusion Deadline or does not submit a valid claim form by the Claims Deadline shall be forever barred from receiving any distribution from the Settlement Fund and any other payment or benefits pursuant to the Settlement Agreement, but shall in all other respects be bound by the terms of the Settlement Agreement, and will be permanently barred and enjoined from bringing any action, claim or other proceeding of any kind concerning the Released Claims.

5. SETTLEMENT ADMINISTRATION.

5.1 The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel and CAVU’s Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Class Counsel and CAVU’s Counsel with regular reports at weekly intervals containing

information concerning Notice, administration, and implementation of the Settlement Agreement. Should the Court request, the Parties shall submit a timely report, prepared by Class Counsel and/or the Settlement Administrator and approved by CAVU, to the Court summarizing the work performed by the Settlement Administrator, including a report of all amounts from the Settlement Fund paid to Settlement Class Members on account of Approved Claims. Without limiting the foregoing, the Settlement Administrator shall:

(a) Upon request, forward to CAVU's Counsel, with copies to Class Counsel, all original documents and other materials received in connection with the administration of the Settlement, and all copies thereof, within thirty (30) days after the date on which all Claim Forms have been finally approved or disallowed in accordance with the terms of this Agreement;

(b) Provide Class Counsel and CAVU's Counsel with drafts of all administration related documents, including but not limited to Notices, follow-up class notices or communications with Settlement Class Members, telephone scripts in a form approved by Class Counsel and CAVU's Counsel, website postings or language or other communications in a form approved by Class Counsel and CAVU's Counsel with the Settlement Class, at least five (5) days before the Settlement Administrator is required to or intends to publish or use such communications, unless Class Counsel and CAVU's Counsel agree to waive this requirement in writing on a case by case basis;

(c) Receive requests to be excluded from the Settlement Class and other requests and promptly provide Class Counsel and CAVU's Counsel copies thereof. If the Settlement Administrator receives any exclusion forms or other requests after the deadline for the submission of such forms and requests, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and CAVU's Counsel;

FILED DATE: 11/17/2025 2:38 PM 2025CH06466

(d) Provide weekly reports to Class Counsel and CAVU's Counsel, including without limitation, reports regarding the number of Claim Forms received, the number approved by the Settlement Administrator, and the categorization and description of Claim Forms rejected, in whole or in part, by the Settlement Administrator; and

(e) Make available for inspection by Class Counsel or CAVU's Counsel the Claim Forms received by the Settlement Administrator at any time upon reasonable notice.

5.2 The Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud. The Settlement Administrator shall determine whether a Claim Form submitted by a Settlement Class Member is an Approved Claim by determining if the Person is on the Class List and shall reject Claim Forms that fail to (a) comply with the instructions on the Claim Form or the terms of this Agreement, or (b) provide full and complete information as requested on the Claim Form. If a Person submits a timely Claim Form by the Claims Deadline where the Person appears on the Class List but the Claim Form is not otherwise complete, then the Settlement Administrator shall give such Person one (1) reasonable opportunity to provide any requested missing information, which information must be received by the Settlement Administrator no later than twenty-one (21) calendar days after providing notice of the deficiency. If the Settlement Administrator receives such information more than twenty-one (21) calendar days after providing notice of the deficiency, then any such claim shall be denied. The Settlement Administrator may contact any Person who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form.

5.3 CAVU's Counsel and Class Counsel shall have the right to challenge the acceptance or rejection of a Claim Form submitted by Settlement Class Members. The Settlement Administrator shall follow any agreed decisions of Class Counsel and CAVU's

Counsel as to the validity of any disputed submitted Claim Form. To the extent Class Counsel and CAVU's Counsel are not able to agree on the disposition of a challenge, the disputed claim shall be submitted to the Court for binding determination.

5.4 In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Settlement Class Member.

5.5. CAVU, the Released Parties, and CAVU's Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to: (i) any act, omission, or determination by Class Counsel, or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the allocation of net Settlement Funds to Settlement Class Members or the implementation, administration, calculation or interpretation thereof; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; or (v) the payment, reporting, or withholding of any taxes, tax expenses, or costs incurred in connection with the taxation of the Settlement Fund or the filing of any federal, state, or local returns.

5.6. All taxes and tax expenses shall be paid out of the Settlement Fund, and shall be timely paid by the Settlement Administrator pursuant to this Agreement and without further order of the Court. Any tax returns or reporting forms prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with this Agreement and in all events shall reflect that all taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Released Parties shall have no responsibility or liability for the acts or omissions of the Settlement Administrator or its agents with respect to the reporting or payment of taxes or tax expenses.

6. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER.

6.1 Promptly after the execution of this Settlement Agreement, Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement; conditional certification of the Settlement Class for settlement purposes only; appointment of Class Counsel and the Class Representative; and entry of a Preliminary Approval, which order shall set a Final Approval Hearing date and approve the Notice and Claim Form for dissemination substantially in the form of Exhibits A, B, and C hereto. The Preliminary Approval Order shall also authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all Exhibits to this Agreement) so long as they are consistent in all material respects with the terms of the Settlement Agreement and do not limit or impair the rights of the Settlement Class or expand the obligations of CAVU.

6.2 At the time of the submission of this Agreement to the Court as described above, Class Counsel shall request that, after Notice is given, the Court hold a Final Approval Hearing and approve the settlement of the Action as set forth herein.

6.3 After Notice is given, the Parties shall request and seek to obtain from the Court a Final Judgment, which will (among other things):

(a) find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Agreement, including all Exhibits thereto;

(b) approve the Settlement Agreement and the proposed settlement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate the Agreement according to its terms

and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and Releasing Parties;

(c) find that the Notice implemented pursuant to the Agreement

(1) constitutes the best practicable notice under the circumstances; (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to object to or exclude themselves from the proposed Agreement, and to appear at the Final Approval Hearing; (3) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) meets all applicable requirements of the Illinois Code of Civil Procedure, the Due Process Clause of the United States and Illinois Constitutions, and the rules of the Court;

(d) conditionally find that the prerequisites for a class action under ILCS 735

5/2-801 have been satisfied for settlement purposes for the Settlement Class in that: (1) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (2) there are questions of law and fact common to the Settlement Class Members; (3) the claims of the Class Representative are typical of the claims of the Settlement Class they seek to represent; (4) the Class Representative has and will continue to fairly and adequately represent the interests of the Settlement Class for purposes of entering into the Settlement Agreement; (5) the questions of law and fact common to Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; (6) the Settlement Class is ascertainable; and (7) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

(e) dismiss the Action (including all individual claims and Settlement Class Claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;

(f) incorporate the Release set forth above, make the Release effective as of the date of the Effective Date, and forever discharge the Released Parties as set forth herein;

(g) permanently bar and enjoin all Settlement Class Members from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any lawsuit or other action in any jurisdiction based on the Released Claims;

(h) without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose;

(i) close the case; and

(j) incorporate any other provisions, as the Court deems necessary and just, provided that such other provisions do not materially abridge, enlarge, or modify any rights or responsibilities of the Released Parties or Settlement Class Members under this Agreement.

6.4 The Parties agree to stay all proceedings in the Action, other than those proceedings necessary to carry out or enforce the terms and conditions of the Settlement, until the Effective Date of the Settlement has occurred. The Parties also agree to use their best efforts to seek the stay and dismissal of, and to oppose entry of any interim or final relief in favor of any Settlement Class Member in, any other proceedings against any of the Released Parties which challenges the Settlement or otherwise asserts or involves, directly or indirectly, a Released Claim.

7. TERMINATION OF SETTLEMENT

7.1 Subject to Paragraphs 9.1-9.3 below, CAVU or the Class Representative on behalf of the Settlement Class, shall have the right but not the obligation to terminate this Agreement by providing written notice of the election to do so (“Termination Notice”) to all other Parties hereto within twenty-one (21) days of any of the following events: (i) the Court’s refusal to grant Preliminary Approval of this Agreement in any material respect; (ii) the Court’s refusal to grant final approval of this Agreement in any material respect; (iii) the Court’s refusal to enter the Final Judgment in this Action in any material respect; (iv) the date upon which the Final Judgment is modified or reversed in any material respect by an appellate court with jurisdiction; or (v) the date upon which an Alternate Judgment, as defined in Paragraph 9.1(d) of this Agreement is modified or reversed in any material respect by an appellate court with jurisdiction.

7.2 Confirmatory Discovery. CAVU represents that it has collected \$540,818.19 in Service Charges from California residents in connection with its online parking reservation marketplaces accessible through the Websites from July 1, 2024 to March 10, 2025. Defendant has executed an affidavit from an appropriate representative with knowledge attesting to the same prior to execution of this Settlement Agreement.

8. CLASS COUNSEL’S ATTORNEYS’ FEES AND REIMBURSEMENT OF EXPENSES; SERVICE AWARD.

8.1 CAVU agrees that Class Counsel shall be entitled to seek an award of attorneys’ fees and costs out of the Settlement Fund in an amount to be determined by the Court as the Fee Award. With no consideration given or received, Class Counsel will limit its petition for attorneys’ fees, costs, and expenses to no more than 35% of the Settlement Fund (i.e., \$148,750.00). Payment of the Fee Award shall be made from the Settlement Fund and should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this Paragraph shall remain in the Settlement Fund.

8.2 The Fee Award shall be payable by the Settlement Administrator within ten (10) days after entry of the Court's Final Judgment, subject to Class Counsel executing the Undertaking Regarding Attorneys' Fees and Costs (the "Undertaking") attached hereto as Exhibit D, and providing all payment routing information and tax I.D. numbers for Class Counsel. Payment of the Fee Award shall be made from the Settlement Fund by wire transfer to Class Counsel in accordance with wire instructions to be provided by Class Counsel, and completion of necessary forms, including but not limited to W-9 forms. Notwithstanding the foregoing, if for any reason the Final Judgment is reversed or rendered void as a result of an appeal(s) then any Persons or firms who shall have received the funds shall be severally liable for payments made pursuant to this subparagraph, and shall return such funds to the Settlement Fund. Additionally, should any parties to the Undertaking dissolve, merge, declare bankruptcy, become insolvent, or cease to exist prior to the final payment to Class Members, those parties shall execute a new undertaking guaranteeing repayment of funds within fourteen (14) days of such an occurrence.

8.3 Class Counsel intends to file a motion for Court approval of a Service Award to the Class Representative, to be paid from the Settlement Fund, in addition to any funds the Class Representative stands to otherwise receive from the Settlement. With no consideration having been given or received for this limitation, Plaintiff will seek no more than \$5,000 as a Service Award. Should the Court award less than this amount, the difference in the amount sought and the amount ultimately awarded pursuant to this Paragraph shall remain in the Settlement Fund. Such Service Award shall be paid from the Settlement Fund (in the form of a check to the Class Representative that is sent care of Class Counsel), within five (5) business days after entry of the Final Judgment if there have been no objections to the Settlement Agreement, and, if there have been such objections, within five (5) business days after the Effective Date.

9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION.

9.1 The Effective Date of this Settlement Agreement shall not occur until all of the following events occur, and shall be the date which falls ten (10) calendar days after the last (in time) of the following events:

- (a) The Parties and their counsel have executed this Agreement;
- (b) The Court has entered the Preliminary Approval Order;
- (c) The Court has entered an order finally approving the Agreement,

following Notice to the Settlement Class and a Final Approval Hearing, as provided in the Illinois Code of Civil Procedure, and has entered the Final Judgment, or a judgment consistent with this Agreement in all material respects; and

(d) The Final Judgment has become Final, as defined above, or, if the Court enters an Alternate Judgment, such Alternate Judgment becomes Final.

9.2 If some or all of the conditions specified in Paragraph 8.1 are not met, or if this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Settlement Agreement shall be canceled and terminated unless Class Counsel and CAVU's Counsel mutually agree in writing to proceed with this Agreement. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Agreement on notice to all of the Settling Parties.

Notwithstanding anything herein, the Parties agree that the Court's failure to approve, in whole or in part, Class Counsel's request for payment of attorneys' fees, costs and/or expenses and/or the request for Service Award payments set forth in Paragraph 7 above shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination.

9.3 If this Agreement is terminated or fails to become effective, including but not limited to, for the reasons set forth in Paragraphs 9.1-9.2 above, the Parties shall be restored to their respective positions in the Action as of the moment just prior to the signing of this Agreement and the Class Action Settlement Term Sheet entered into between CAVU and the Class Representative shall be cancelled, null, and void. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Agreement and the Class Action Settlement Term Sheet had never been entered into. If the Final Settlement Order and Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, Class Counsel shall, within thirty (30) days, repay to CAVU, based upon written instructions provided by CAVU's Counsel, the full amount paid by CAVU into the Settlement Fund, including any accrued interest. If the Service Award or attorneys' fees and costs awarded by the Court or any part of them are vacated, modified, reversed, or rendered void as a result of an appeal, Class Counsel shall within thirty (30) days repay to CAVU, based upon written instructions provided by CAVU's Counsel, the attorneys' fees and costs paid to Class Counsel and/or Class Representative from the Settlement Fund, in the amount vacated or modified, including any accrued interest.

10. MISCELLANEOUS PROVISIONS.

10.1 The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement, to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement, to secure final approval, and to defend the Final Judgment through

any and all appeals. Class Counsel and CAVU's Counsel agree to cooperate with one another in seeking Court approval of the Settlement Agreement, entry of the Preliminary Approval Order, and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

10.2 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff, the Settlement Class and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiff or defended by CAVU, or each or any of them, in bad faith or without a reasonable basis.

10.3 The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully the above and foregoing agreement and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

10.4 Whether or not the Effective Date occurs or the Settlement Agreement is terminated, neither this Agreement, the Class Action Settlement Term Sheet, or any other settlement document, nor the settlement contained herein or any term, provision or definition therein, nor any act or communication performed or document executed in the course of negotiating, implementing or seeking approval pursuant to or in furtherance of this Agreement or the settlement:

(a) is, may be deemed, or shall be used, offered or received in any civil, criminal or administrative proceeding in any court, administrative agency, arbitral proceeding or other tribunal against the Released Parties, or each or any of them, as an admission, concession

or evidence of, the validity of any Released Claims, the truth of any fact alleged by the Plaintiff, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the definition or scope of any term or provision, the reasonableness of the settlement amount or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them. CAVU, while continuing to deny all allegations of wrongdoing and disclaiming all liability with respect to all claims, considers it desirable to resolve the action on the terms stated herein to avoid further expense, inconvenience, and burden, and therefore has determined that this settlement is in CAVU's best interests. Any public statements made by Plaintiff or Class Counsel will be consistent with this paragraph and Class Counsel will not issue any press release concerning this Agreement or the settlement contained herein;

(b) is, may be deemed, or shall be used, offered or received against any Released Party, as an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

(c) is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission or concession with respect to any liability, negligence, fault or wrongdoing or statutory meaning as against any Released Parties, or supporting the certification of a litigation class, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. Further, if this Settlement Agreement is approved by the Court, any Party or any of the Released Parties may file this Agreement and/or the Final

Judgment in any action that may be brought against such Party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(d) is, may be deemed, or shall be construed against Plaintiff, the Settlement Class, the Releasing Parties, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

(e) is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiff, the Settlement Class, the Releasing Parties, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiff's or the Settlement Class's claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

10.5 The Parties acknowledge that (a) any certification of the Settlement Class as set forth in this Agreement, including certification of the Settlement Class for settlement purposes in the context of Preliminary Approval, shall not be deemed a concession that certification of a litigation class is appropriate, or that the Settlement Class definition would be appropriate for a litigation class, nor would CAVU be precluded from challenging class certification in further proceedings in the Action or in any other action if the Settlement Agreement is not finalized or finally approved; (b) if the Settlement Agreement is not finally approved by the Court for any reason whatsoever, then any certification of the Settlement Class will be void, the Parties and the Action shall be restored to the status quo ante, and no doctrine of waiver, estoppel or preclusion will be asserted in any litigated certification proceedings in the Action or in any other action; and

(c) no agreements made by or entered into by CAVU in connection with the Settlement may be used by Plaintiff, any person in the Settlement Class, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in the Action or any other judicial proceeding.

10.6 No person or entity shall have any claim against the Class Representative, Class Counsel, the Settlement Administrator or any other agent designated by Class Counsel, or the Released Parties and/or their counsel, arising from distributions made substantially in accordance with this Agreement. The Parties and their respective counsel, and all other Released Parties shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the determination, administration, calculation, or payment of any claim or nonperformance of the Settlement Administrator, the payment or withholding of taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

10.7 The Plaintiff, Settlement Class Members, and Class Counsel receiving funds pursuant to this Agreement shall be solely responsible for filing all information and other tax returns necessary or making any tax payments related to funds received pursuant to this Settlement Agreement. The Released Parties provide no legal advice and make no representations to the Plaintiff, Class Members, or Class Counsel regarding the legal or tax consequences of this agreement, including any benefit or monies paid and received. The Plaintiff, Class Members, and Class Counsel shall be solely responsible for any tax or legal consequences for any benefit or award paid and/or received pursuant to this Agreement.

10.8 All proceedings with respect to the administration, processing and determination of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the Court.

10.9 The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

10.10 The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

10.11 All of the Exhibits to this Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

10.12 This Agreement and its Exhibits and the Class Action Settlement Term Sheet, set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits or the Class Action Settlement Term Sheet other than the representations, warranties and covenants contained and memorialized in such documents. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

10.13 Except as otherwise provided herein, each Party shall bear its own costs.

10.14 Plaintiff represents and warrants that she has not assigned any claim or right or interest therein as against the Released Parties to any other Person or Party and that they are fully entitled to release the same.

10.15 Each counsel or other Person executing this Settlement Agreement, any of its Exhibits, or any related settlement documents on behalf of any Party hereto, hereby warrants and represents that such Person has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

10.16 This Agreement may be executed in one or more counterparts. Signature by digital means, facsimile, or in PDF format will constitute sufficient execution of this Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

10.17 This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

10.18 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

10.19 This Settlement Agreement shall be governed by and construed in accordance with the substantive laws of the State of California without giving effect to its conflict of laws provisions.

10.20 This Agreement is deemed to have been prepared by counsel for all Parties, as a result of arms' length negotiations among the Parties. Because all Parties have contributed substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.

10.21 Where this Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: Philip L. Fraietta, Bursor & Fisher, P.A., 1330 Avenue of the Americas, 32nd Floor, New York, NY 10019 and Adam R. Fox, Squire Patton Boggs (US) LLP, 555 South Flower Street, Suite 3100, Los Angeles, California 90071.

Signature page to follow

IT IS SO AGREED TO BY THE PARTIES:

Dated: July 14, 2025

SHAYLA MARCOTTE

By: 
Shayla A Marcotte (Jul 14, 2025 17:28 PDT)

Shayla Marcotte, individually and as representative
of the Class

Dated: July 16, 2025

CAVU eCOMMERCE (AMER) LLC

By: 
DocuSigned by:
4629555D727541E...

Martin Jones, CEO

IT IS SO STIPULATED BY COUNSEL:

Dated: July 15, 2025

BURSOR & FISHER, PA

By: 

Philip L. Fraietta
pfraietta@bursor.com
BURSOR & FISHER, P.A.
1330 Avenue of the Americas, 32nd Floor
New York, New York 10019
Tel: (646) 837-7150
Fax: (212) 989-9163
*Class Counsel and Attorney for Class
Representative and the Settlement Class*

Dated: July 18, 2025

SQUIRE PATTON BOGGS (US) LLP

By: 

Adam R. Fox
adam.fox@squirepb.com
SQUIRE PATTON BOGGS (US) LLP
555 South Flower Street, Suite 3100
Los Angeles, California 90071
Tel: (213) 689-5166
Fax: (213) 623-4581
*Attorney for Defendant CAVU eCommerce (AMER)
LLC*

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

SHAYLA MARCOTTE, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

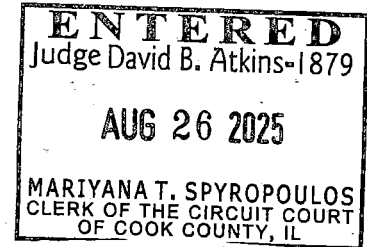
CAVU ECOMMERCE (AMER) LLC,

Defendant.

Civil Action No.: 2025CH06466

Hon. David B. Atkins

Calendar 16



PRELIMINARY APPROVAL ORDER

This matter, having come before the Court on Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval" or "Motion), the Court having reviewed and considered the Motion, the Memorandum in Support, attached, including the Class Action Settlement Agreement and its attachments, and the Court being fully advised in the premises,

IT IS ORDERED AS FOLLOWS:

1. Terms and phrases in this Order shall have the same meaning as ascribed to them in the Settlement Agreement.
2. The Parties have moved the Court for an order approving the settlement of the Action in accordance with the Settlement Agreement, which, together, with the documents incorporated herein, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice, and the Court having read and considered the Settlement Agreement and having heard the parties and being fully advised in the premises, hereby preliminarily approves the Settlement Agreement in its entirety subject to the Final Approval Hearing referenced to be in Paragraph 5 of this Order.

3. The Court finds that it has jurisdiction over the subject matter of this action and over all Parties to the Action.

4. The Court finds that, subject to the Final Approval Hearing, the Settlement and Settlement Agreement is fair, reasonable, and adequate, within the range of possible approval, and in the best interests of the Settlement Class set forth below. The Court further finds that the Settlement Agreement substantially fulfills the purposes and objectives of the class action, and provides substantial relief to the Settlement Class without the risks, burdens, costs, or delay associated with continued litigation, trial, and/or appeal. The Court also finds that the Settlement Agreement (a) is the result of arm's-length negotiations between experienced class action attorneys; (b) is sufficient to warrant notice of the settlement and the Final Approval Hearing to be disseminated to the Settlement Class; (c) meets all applicable requirements of law, including 735 ILCS 5/2-801 to 807; and (d) is not a finding or admission of liability by the Defendant or any other person, nor a finding of the validity of any claims asserted in the Action or of any wrongdoing or any violation of law.

Final Approval Hearing

5. The Final Approval Hearing shall be held before this Court on December 1, 2025, at 10:30 a.m. via Zoom at the Daley Center, 50 W. Washington Street, Rm. 2102, Chicago, Illinois to determine (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be given final approval by the Court; (b) whether a judgment and order of dismissal with prejudice should be entered; (c) whether to approve the payment of attorneys' fees, costs, and expenses to Class Counsel; and (d) whether to approve the payment of an incentive award to the Class Representative. Settlement Class Members may, but are not required, to appear at the Final Approval Hearing or to speak in favor or against the settlement. At least two weeks before the

Final Approval Hearing, Class Counsel shall ensure the Settlement Administrator posts the Final Approval Hearing details on the Settlement website.

6. The Court may postpone, adjourn or continue by order the Final Approval Hearing without further notice to members of the Settlement Class. At or following the Final Approval Hearing, the Court may enter a Final Judgment approving the settlement and entering a Final Approval Order in accordance with the settlement that adjudicates the rights of all Settlement Class Members and dismisses the case with prejudice.

7. Class Counsel shall file a motion for attorneys' fees, litigation costs, settlement administration costs, and the Class Representative's Service Award (collectively, the "Fee Petition") with the Court on or before October 23, 2025. Class Counsel shall ensure the Settlement Administrator posts the Fee Petition on the Settlement website at least 14 days prior to the November 7, 2025, Objection/Exclusion deadline.

8. Papers in support of final approval of the Settlement Agreement and any supplementation to the Fee Petition, including a sworn Declaration from the Class Administrator that contains a report of the number of opt-outs and objections, shall be filed with the Court on or before November 17, 2025, Class Counsel shall provide that motion and supporting exhibits in advance to Defendant's counsel for review and approval, which shall not be unreasonably withheld.

Certification of the Settlement Class

9. For purposes of settlement only: (a) Philip L. Fraietta of Bursor & Fisher, P.A. is appointed Class Counsel for the Settlement Class; and (b) Shayla Marcotte is named Class Representative. The Court finds that Plaintiff's counsel is competent and capable of exercising the responsibilities of Class Counsel and that Plaintiff will adequately protect the interests of the Settlement Class defined below.

10. For purposes of settlement only, the Court conditionally certifies the following Settlement Class as defined in the Settlement Agreement:

All California residents who made a reservation through airportparkingreservations.com or airportparking.com and paid a mandatory "Service Charge" at checkout from July 1, 2024 to March 10, 2025.¹

11. The Court finds, subject to the Final Approval Hearing referred to in Paragraph 5 above, that the Settlement Agreement is fundamentally fair, adequate, and reasonable, and, solely within the context of and for the purposes of settlement only, that the Settlement Class satisfies the requirements of 735 ILCS 5/2-801, specifically, that: the Settlement Class is so numerous that joinder of all members is impracticable; there are questions of fact and law common to the Settlement Class (*e.g.*, whether Defendant unlawfully imposed and collected a mandatory Fee without having properly disclosed it with the initially advertised price); the claims of the Class Representative is typical of the claims of the members of the Settlement Class; the Class Representative and Class Counsel will fairly and adequately protect the interests of the members of the Settlement Class; common questions of law or fact predominate over questions affecting individual members; and a class action is a superior method for fairly and efficiently adjudicating the Action.

12. If the Settlement Agreement does not receive the Court's final approval, or if final approval is reversed on appeal, or if the Settlement Agreement is terminated or otherwise fails to become effective, the Court's grant of class certification shall be vacated, and the Class Representative and the Settlement Class will once again bear the burden of establishing the

¹ Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this Action and members of their families; (2) CAVU, CAVU's subsidiaries, parent companies, successors, predecessors, and any entity in which CAVU or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (3) Persons who properly execute and file a timely request for exclusion from the Class; and (4) the legal representatives, successors or assigns of any excluded Persons.

propriety of class certification. In such case, neither the certification of the Settlement Class for settlement purposes, nor any other act relating to the negotiation or execution of the Settlement Agreement shall be considered as a factor in connection with any class certification issue(s).

Notice and Administration

13. The Court approves, as to form, content, and distribution, the Notice Plan set forth in the Settlement Agreement, including the Notice Plan and all forms of Notice to the Settlement Class as set forth in the Settlement Agreement and Exhibits A-C thereto, and finds that such Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of 735 ILCS 5/2-803. The Court also finds that the Notice constitutes valid, due and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice is reasonably calculated to, under all circumstances, reasonably apprise members of the Settlement Class of the pendency of this action, the terms of the Settlement Agreement, and the right to object to the settlement and to exclude themselves from the Settlement Class. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this Action. The Parties, by agreement, may revise the Notice in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting.

14. The Court approves the request for the appointment of Epiq as Settlement Administrator of the Settlement Agreement.

15. Pursuant to paragraph 4.1 of the Settlement Agreement, the Settlement Administrator is directed to publish the Notice on the Settlement Website by September 4, 2025 and to send direct notice via e-mail in accordance with the Notice Plan called for by the Settlement Agreement by September 22, 2025 (the "Notice Deadline"). The Settlement Administrator shall also maintain the Settlement Website to provide full information about the

Settlement and allow for the filing of claims online.

Requests for Exclusion from Class

16. Any person falling within the definition of the Settlement Class may, upon valid and timely request, exclude themselves or “opt out” from the Class. Any such person may do so if, on or before the Objection/Exclusion Deadline of November 7, 2025, they comply with the exclusion procedures set forth in the Settlement Agreement and Notice. Any members of the Class so excluded shall neither be bound by the terms of the Settlement Agreement nor entitled to any of its benefits.

17. Any members of the Settlement Class who elect to exclude themselves or “opt out” of the Settlement Agreement must submit a written opt-out request with the Settlement Administrator, received or postmarked no later than the November 7, 2025, Objection/Exclusion Deadline. The request for exclusion must comply with the exclusion procedures set forth in Section 4.5 of the Settlement Agreement and Notice. The “opt out” must be a written request for exclusion to the Settlement Administrator, and must include: (a) his/her full name, address, and current telephone number; (b) the case name and number of this Action; (c) a statement that he/she made a reservation through the Websites and paid a Service Charge at checkout; (d) all grounds for the request to be excluded, with factual and legal support for the stated request, including any supporting materials; (e) the identification of any other exclusion requests he/she has filed, or has had filed on his/her behalf, in any other class action cases in the last five years; and (f) the requestor’s signature. If represented by counsel, the Settlement Class Member requesting to be excluded must also provide the name and telephone number of his/her counsel.

18. Individuals who opt out of the Class relinquish all rights to benefits under the Settlement Agreement and will not release their claims. However, members of the Settlement Class who fail to submit a valid and timely request for exclusion shall be bound by all terms of

the Settlement Agreement and the Final Judgment, regardless of whether they have requested exclusion from the Settlement Agreement.

Appearances and Objections

19. At least twenty-one (21) calendar days before the Final Approval Hearing, any person who falls within the definition of the Settlement Class and who does not request exclusion from the Class may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice. Any Settlement Class Member who does not enter an appearance will be represented by Class Counsel.

20. Any members of the Settlement Class who have not timely filed a request for exclusion may object to the fairness, reasonableness, or adequacy of the Settlement Agreement or to a Final Judgment being entered dismissing the Action with prejudice in accordance with the terms of the Settlement Agreement, or to the attorneys' fees and expense reimbursement sought by Class Counsel in the amounts specified in the Notice, or to the award to the Class Representative as set forth in the Notice and Settlement Agreement. At least fourteen (14) days prior to November 7, 2025, the Objection/Exclusion Deadline, Class Counsel will ensure that the Settlement Administrator posts the Fee Petition to the settlement website. Members of the Class may object on their own or may do so through separate counsel at their own expense.

21. To object, members of the Class must sign and file a written objection no later than on or before the Objection/Exclusion Deadline, November 7, 2025. To be valid, the objection must comply with the objection procedures set forth in Section 4.3 of the Settlement Agreement and Notice, and must present the objection in writing, personally signed by the objector, and include: (1) the objector's full name, address and current telephone number; (2) an explanation of the basis upon which the objector claims to be a Settlement Class Member; (3) all grounds for the objection, including all citations to legal authority and evidence supporting the

objection; (4) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the “Objecting Attorneys”); and (5) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Local Rules).

22. Members of the Class who fail to file and serve timely written objections in compliance with the requirements of this paragraph and the Settlement Agreement shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement Agreement or to any of the subjects listed in paragraph 5, above, *i.e.* (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be given final approval by the Court; (b) whether a judgment and order of dismissal with prejudice should be entered; (c) whether to approve the payment of attorneys’ fees and expenses to Class Counsel; and (d) whether to approve the payment of a service award to the Class Representative. If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption and amount of payment received.

23. To be valid, objections must be filed with the Court and sent to the following: Class Counsel Philip L. Fraietta of Bursor & Fisher, P.A., 1330 Avenue of the Americas, New York, NY 10019; and Defendant’s Counsel Adam R. Fox and Marisol C. Mork of Squire Patton Boogs (US) LLP, 555 South Flower Street, Suite 3100, Los Angeles, CA 90071. In addition,

any objections made by a Class member represented by counsel must be filed through the Court's electronic filing system.

Further Matters

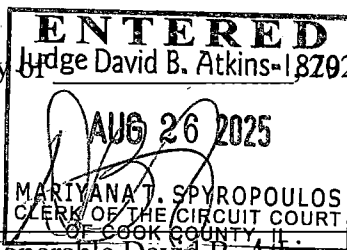
24. All further proceedings in the Action are ordered stayed until Final Judgment, except for those matters necessary to obtain and/or effectuate final approval of the Settlement Agreement.

25. Members of the Settlement Class shall be bound by all determinations and judgments in the Action concerning the Action and/or Settlement Agreement, whether favorable or unfavorable.

26. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement Agreement. The Court may approve the Settlement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class.

27. Any Settlement Class Member who does not timely and validly opt out of the Settlement: (a) shall be bound by the provisions of the Settlement Agreement and all proceedings, determinations, orders and judgments in the Action relating thereto, including, without limitation, the Judgment or Alternate Judgment, if applicable, and the Releases provided for therein, whether favorable or unfavorable to the Class; and (b) shall forever be barred and enjoined from directly or indirectly filing, commencing, instituting, prosecuting, maintaining, or intervening in any action, suit, cause of action, arbitration, claim, demand, or other proceeding in any jurisdiction, whether in Illinois or elsewhere, on their own behalf or in a representative capacity, that is based upon or arises out of any or all of the Released Claims against any of the Defendant and the other Released Parties, as more fully described in the Settlement Agreement.

IT IS SO ORDERED, this _____ day of _____ Judge David B. Atkins-182925.



Honorable David B. Atkins



50 MAIN STREET
WHITE PLAINS, NY 10606

www.bursor.com

1990 N. CALIFORNIA BLVD.
WALNUT CREEK, CA 94596

1330 AVE. OF THE AMERICAS
NEW YORK, NY 10019

701 BRICKELL AVENUE
MIAMI, FL 33131

FIRM RESUME

With offices in Florida, New York, and California, BURSOR & FISHER lawyers have represented both plaintiffs and defendants in state and federal courts throughout the country.

The lawyers at our firm have an active civil trial practice, having won multi-million-dollar verdicts or recoveries in six of six class action jury trials since 2008. Our most recent class action trial victory came in May 2019 in *Perez v. Rash Curtis & Associates*, in which Mr. Bursor served as lead trial counsel and won a \$267 million jury verdict against a debt collector found to have violated the Telephone Consumer Protection Act. During the pendency of the defendant's appeal, the case settled for \$75.6 million, the largest settlement in the history of the Telephone Consumer Protection Act.

In August 2013 in *Ayyad v. Sprint Spectrum L.P.*, in which Mr. Bursor served as lead trial counsel, we won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

In *Thomas v. Global Vision Products, Inc. (II)*, we obtained a \$50 million jury verdict in favor of a certified class of 150,000 purchasers of the Avacor Hair Regrowth System. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009, and the largest in any class action.

The lawyers at our firm have an active class action practice and have won numerous appointments as class counsel to represent millions of class members, including customers of Honda, Verizon Wireless, AT&T Wireless, Sprint, Haier America, and Michaels Stores as well as purchasers of Avacor™, Hydroxycut, and Sensa™ products. Bursor & Fisher lawyers have been court-appointed Class Counsel or Interim Class Counsel in:

1. *O'Brien v. LG Electronics USA, Inc.* (D.N.J. Dec. 16, 2010) to represent a certified nationwide class of purchasers of LG French-door refrigerators,
2. *Ramundo v. Michaels Stores, Inc.* (N.D. Ill. June 8, 2011) to represent a certified nationwide class of consumers who made in-store purchases at Michaels Stores using a debit or credit card and had their private financial information stolen as a result,
3. *In re Haier Freezer Consumer Litig.* (N.D. Cal. Aug. 17, 2011) to represent a certified class of purchasers of mislabeled freezers from Haier America Trading, LLC,
4. *Rodriguez v. CitiMortgage, Inc.* (S.D.N.Y. Nov. 14, 2011) to represent a certified nationwide class of military personnel against CitiMortgage for illegal foreclosures,

5. *Rossi v. The Procter & Gamble Co.* (D.N.J. Jan. 31, 2012) to represent a certified nationwide class of purchasers of Crest Sensitivity Treatment & Protection toothpaste,
6. *Dzielak v. Whirlpool Corp. et al.* (D.N.J. Feb. 21, 2012) to represent a proposed nationwide class of purchasers of mislabeled Maytag Centennial washing machines from Whirlpool Corp., Sears, and other retailers,
7. *In re Sensa Weight Loss Litig.* (N.D. Cal. Mar. 2, 2012) to represent a certified nationwide class of purchasers of Sensa weight loss products,
8. *In re Sinus Buster Products Consumer Litig.* (E.D.N.Y. Dec. 17, 2012) to represent a certified nationwide class of purchasers,
9. *Ebin v. Kangadis Food Inc.* (S.D.N.Y. Feb. 25, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
10. *Forcellati v. Hyland's, Inc.* (C.D. Cal. Apr. 9, 2014) to represent a certified nationwide class of purchasers of children's homeopathic cold and flu remedies,
11. *Ebin v. Kangadis Family Management LLC, et al.* (S.D.N.Y. Sept. 18, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
12. *In re Scotts EZ Seed Litig.* (S.D.N.Y. Jan. 26, 2015) to represent a certified class of purchasers of Scotts Turf Builder EZ Seed,
13. *Dei Rossi v. Whirlpool Corp., et al.* (E.D. Cal. Apr. 28, 2015) to represent a certified class of purchasers of mislabeled KitchenAid refrigerators from Whirlpool Corp., Best Buy, and other retailers,
14. *Hendricks v. StarKist Co.* (N.D. Cal. July 23, 2015) to represent a certified nationwide class of purchasers of StarKist tuna products,
15. *In re NVIDIA GTX 970 Graphics Card Litig.* (N.D. Cal. May 8, 2015) to represent a proposed nationwide class of purchasers of NVIDIA GTX 970 graphics cards,
16. *Melgar v. Zicam LLC, et al.* (E.D. Cal. March 30, 2016) to represent a certified ten-jurisdiction class of purchasers of Zicam Pre-Cold products,
17. *In re Trader Joe's Tuna Litigation* (C.D. Cal. December 21, 2016) to represent purchaser of allegedly underfilled Trader Joe's canned tuna.
18. *In re Welspun Litigation* (S.D.N.Y. January 26, 2017) to represent a proposed nationwide class of purchasers of Welspun Egyptian cotton bedding products,
19. *Retta v. Millennium Products, Inc.* (C.D. Cal. January 31, 2017) to represent a certified nationwide class of Millennium kombucha beverages,
20. *Moeller v. American Media, Inc.,* (E.D. Mich. June 8, 2017) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
21. *Hart v. BHH, LLC* (S.D.N.Y. July 7, 2017) to represent a nationwide class of purchasers of Bell & Howell ultrasonic pest repellers,
22. *McMillion v. Rash Curtis & Associates* (N.D. Cal. September 6, 2017) to represent a certified nationwide class of individuals who received calls from Rash Curtis & Associates,

23. *Lucero v. Solarcity Corp.* (N.D. Cal. September 15, 2017) to represent a certified nationwide class of individuals who received telemarketing calls from Solarcity Corp.,
24. *Taylor v. Trusted Media Brands, Inc.* (S.D.N.Y. Oct. 17, 2017) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
25. *Gasser v. Kiss My Face, LLC* (N.D. Cal. Oct. 23, 2017) to represent a proposed nationwide class of purchasers of cosmetic products,
26. *Gastelum v. Frontier California Inc.* (S.F. Superior Court February 21, 2018) to represent a certified California class of Frontier landline telephone customers who were charged late fees,
27. *Williams v. Facebook, Inc.* (N.D. Cal. June 26, 2018) to represent a proposed nationwide class of Facebook users for alleged privacy violations,
28. *Ruppel v. Consumers Union of United States, Inc.* (S.D.N.Y. July 27, 2018) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
29. *Bayol v. Health-Ade* (N.D. Cal. August 23, 2018) to represent a proposed nationwide class of Health-Ade kombucha beverage purchasers,
30. *West v. California Service Bureau* (N.D. Cal. September 12, 2018) to represent a certified nationwide class of individuals who received calls from California Service Bureau,
31. *Gregorio v. Premier Nutrition Corporation* (S.D.N.Y. Sept. 14, 2018) to represent a nationwide class of purchasers of protein shake products,
32. *Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast* (S.D.N.Y. Oct. 24, 2018) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
33. *Bakov v. Consolidated World Travel Inc. d/b/a Holiday Cruise Line* (N.D. Ill. Mar. 21, 2019) to represent a certified class of individuals who received calls from Holiday Cruise Line,
34. *Martinelli v. Johnson & Johnson* (E.D. Cal. March 29, 2019) to represent a certified class of purchasers of Benecol spreads labeled with the representation “No Trans Fat,”
35. *Edwards v. Hearst Communications, Inc.* (S.D.N.Y. April 24, 2019) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
36. *Galvan v. Smashburger* (C.D. Cal. June 25, 2019) to represent a proposed class of purchasers of Smashburger’s “Triple Double” burger,
37. *Kokoszki v. Playboy Enterprises, Inc.* (E.D. Mich. Feb. 7, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
38. *Russett v. The Northwestern Mutual Life Insurance Co.* (S.D.N.Y. May 28, 2020) to represent a class of insurance policyholders that were allegedly charged unlawful paper billing fees,
39. *In re: Metformin Marketing and Sales Practices Litigation* (D.N.J. June 3, 2020) to represent a proposed nationwide class of purchasers of generic diabetes medications that were contaminated with a cancer-causing carcinogen,

40. *Hill v. Spirit Airlines, Inc.* (S.D. Fla. July 21, 2020) to represent a proposed nationwide class of passengers whose flights were cancelled by Spirit Airlines due to the novel coronavirus, COVID-19, and whose tickets were not refunded,
41. *Kramer v. Alterra Mountain Co.* (D. Colo. July 31, 2020) to represent a proposed nationwide class of purchasers to recoup the unused value of their Ikon ski passes after Alterra suspended operations at its ski resorts due to the novel coronavirus, COVID-19,
42. *Qureshi v. American University* (D.D.C. July 31, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by American University due to the novel coronavirus, COVID-19,
43. *Hufford v. Maxim Inc.* (S.D.N.Y. Aug. 13, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
44. *Desai v. Carnegie Mellon University* (W.D. Pa. Aug. 26, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Carnegie Mellon University due to the novel coronavirus, COVID-19,
45. *Heigl v. Waste Management of New York, LLC* (E.D.N.Y. Aug. 27, 2020) to represent a class of waste collection customers that were allegedly charged unlawful paper billing fees,
46. *Stellato v. Hofstra University* (E.D.N.Y. Sept. 18, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Hofstra University due to the novel coronavirus, COVID-19,
47. *Kaupelis v. Harbor Freight Tools USA, Inc.* (C.D. Cal. Sept. 23, 2020), to represent consumers who purchased defective chainsaws,
48. *Soo v. Lorex Corporation* (N.D. Cal. Sept. 23, 2020), to represent consumers whose security cameras were intentionally rendered non-functional by manufacturer,
49. *Miranda v. Golden Entertainment (NV), Inc.* (D. Nev. Dec. 17, 2020), to represent consumers and employees whose personal information was exposed in a data breach,
50. *Benbow v. SmileDirectClub, Inc.* (Cir. Ct. Cook Cnty. Feb. 4, 2021), to represent a certified nationwide class of individuals who received text messages from SmileDirectClub, in alleged violation of the Telephone Consumer Protection Act,
51. *Suren v. DSV Solutions, LLC* (Cir. Ct. DuPage Cnty. Apr. 8, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
52. *De Lacour v. Colgate-Palmolive Co.* (S.D.N.Y. Apr. 23, 2021), to represent a certified class of consumers who purchased allegedly “natural” Tom’s of Maine products,
53. *Wright v. Southern New Hampshire University* (D.N.H. Apr. 26, 2021), to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Southern New Hampshire University due to the novel coronavirus, COVID-19,

54. *Sahlin v. Hospital Housekeeping Systems, LLC* (Cir. Ct. Williamson Cnty. May 21, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
55. *Landreth v. Verano Holdings LLC, et al.* (Cir. Ct. Cook Cnty. June 2, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act.
56. *Rocchio v. Rutgers, The State University of New Jersey*, (Sup. Ct., Middlesex Cnty. October 27, 201), to represent a certified nationwide class of students for fee refunds after their classes were moved online by Rutgers due to the novel coronavirus, COVID-19,
57. *Malone v. Western Digital Corp.*, (N.D. Cal. Dec. 22, 2021), to represent a class of consumers who purchased hard drives that were allegedly deceptively advertised,
58. *Jenkins v. Charles Industries, LLC*, (Cir. Ct. DuPage Cnty. Dec. 21, 2021) to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
59. *Frederick v. Examsoft Worldwide, Inc.*, (Cir. Ct. DuPage Cnty. Jan. 6, 2022) to represent a certified class of exam takers who used virtual exam proctoring software, in alleged violation of the Illinois Biometric Information Privacy Act,
60. *Isaacson v. Liqui-Box Flexibles, LLC, et al.*, (Cir. Ct. Will Cnty. Jan. 18, 2022) to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
61. *Goldstein et al. v. Henkel Corp.*, (D. Conn. Mar. 3, 2022) to represent a proposed class of purchasers of Right Guard-brand antiperspirants that were allegedly contaminated with benzene,
62. *McCall v. Hercules Corp.*, (N.Y. Sup. Ct., Westchester Cnty. Mar. 14, 2022) to represent a certified class of who laundry card purchasers who were allegedly subjected to deceptive practices by being denied cash refunds,
63. *Lewis v. Trident Manufacturing, Inc.*, (Cir. Ct. Kane Cnty. Mar. 16, 2022) to represent a certified class of workers who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
64. *Croft v. Spinx Games Limited, et al.*, (W.D. Wash. Mar. 31, 2022) to represent a certified class of Washington residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Washington law,
65. *Fischer v. Instant Checkmate LLC*, (N.D. Ill. Mar. 31, 2022) to represent a certified class of Illinois residents whose identities were allegedly used without their consent in alleged violation of the Illinois Right of Publicity Act,
66. *Rivera v. Google LLC*, (Cir. Ct. Cook Cnty. Apr. 25, 2022) to represent a certified class of Illinois residents who appeared in a photograph in Google Photos, in alleged violation of the Illinois Biometric Information Privacy Act,
67. *Loftus v. Outside Integrated Media, LLC*, (E.D. Mich. May 5, 2022) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,

68. *D'Amario v. The University of Tampa*, (S.D.N.Y. June 3, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by The University of Tampa due to the novel coronavirus, COVID-19,
69. *Fittipaldi v. Monmouth University*, (D.N.J. Sept. 22, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Monmouth University due to the novel coronavirus, COVID-19,
70. *Armstead v. VGW Malta Ltd. et al.* (Cir. Ct. Henderson Cnty. Oct. 3, 2022) to present a certified class of Kentucky residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Kentucky law,
71. *Cruz v. The Connor Group, A Real Estate Investment Firm, LLC*, (N.D. Ill. Oct. 26, 2022) to represent a certified class of workers who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
72. *Delcid et al. v. TCP HOT Acquisitions LLC et al.* (S.D.N.Y. Oct. 28, 2022) to represent a certified nationwide class of purchasers of Sure and Brut-brand antiperspirants that were allegedly contaminated with benzene,
73. *Kain v. The Economist Newspaper NA, Inc.* (E.D. Mich. Dec. 15, 2022) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
74. *Strano v. Kiplinger Washington Editors, Inc.* (E.D. Mich. Jan. 6, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
75. *Moeller v. The Week Publications, Inc.* (E.D. Mich. Jan. 6, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
76. *Ambrose v. Boston Globe Media Partners, LLC* (D. Mass. May 25, 2023) to represent a nationwide class of newspaper subscribers who were also Facebook users under the Video Privacy Protection Act,
77. *In re: Apple Data Privacy Litigation*, (N.D. Cal. July 5, 2023) to represent a putative nationwide class of all persons who turned off permissions for data tracking and whose mobile app activity was still tracked on iPhone mobile devices,
78. *Young v. Military Advantage, Inc. d/b/a Military.com* (Cir. Ct. DuPage Cnty. July 26, 2023) to represent a nationwide class of website subscribers who were also Facebook users under the Video Privacy Protection Act,
79. *Whiting v. Yellow Social Interactive Ltd.* (Cir. Ct. Henderson Cnty. Aug. 15, 2023) to represent a certified class of Kentucky residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Kentucky law,
80. *Kotila v. Charter Financial Publishing Network, Inc.* (W.D. Mich. Feb. 21, 2024) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
81. *Schreiber v. Mayo Foundation for Medical Education and Research* (W.D. Mich. Feb. 21, 2024) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,

82. *Norcross v. Tishman Speyer Properties, et al.* (S.D.N.Y. May 17, 2024) to represent a class of online ticket purchasers under New York Arts & Cultural Affairs Law § 25.07(4).

SCOTT A. BURSOR

Mr. Bursor has an active civil trial practice, having won multi-million verdicts or recoveries in six of six civil jury trials since 2008. Mr. Bursor's most recent victory came in May 2019 in *Perez v. Rash Curtis & Associates*, in which Mr. Bursor served as lead trial counsel and won a \$267 million jury verdict against a debt collector for violations of the Telephone Consumer Protection Act (TCPA).

In *Ayyad v. Sprint Spectrum L.P.* (2013), where Mr. Bursor served as lead trial counsel, the jury returned a verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

In *Thomas v. Global Vision Products, Inc.* (2009), the jury returned a \$50 million verdict in favor of the plaintiff and class represented by Mr. Bursor. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009.

Class actions are rarely tried to verdict. Other than Mr. Bursor and his partner Mr. Fisher, we know of no lawyer that has tried more than one class action to a jury. Mr. Bursor's perfect record of six wins in six class action jury trials, with recoveries ranging from \$21 million to \$299 million, is unmatched by any other lawyer. Each of these victories was hard-fought against top trial lawyers from the biggest law firms in the United States.

Mr. Bursor graduated from the University of Texas Law School in 1996. He served as Articles Editor of the Texas Law Review, and was a member of the Board of Advocates and Order of the Coif. Prior to starting his own practice, Mr. Bursor was a litigation associate at a large New York based law firm where he represented telecommunications, pharmaceutical, and technology companies in commercial litigation.

Mr. Bursor is a member of the state bars of New York, Florida, and California, as well as the bars of the United States Court of Appeals for the Second, Third, Fourth, Sixth, Ninth and Eleventh Circuits, and the bars of the United States District Courts for the Southern and Eastern Districts of New York, the Northern, Central, Southern and Eastern Districts of California, the Southern and Middle Districts of Florida, and the Eastern District of Michigan.

Representative Cases

Mr. Bursor was appointed lead or co-lead class counsel to the largest, 2nd largest, and 3rd largest classes ever certified. Mr. Bursor has represented classes including more than 160 million class members, roughly 1 of every 2 Americans. Listed below are recent cases that are representative of Mr. Bursor's practice:

Mr. Bursor negotiated and obtained court-approval for two landmark settlements in *Nguyen v. Verizon Wireless* and *Zill v. Sprint Spectrum* (the largest and 2nd largest classes ever certified). These settlements required Verizon and Sprint to open their wireless networks to

third-party devices and applications. These settlements are believed to be the most significant legal development affecting the telecommunications industry since 1968, when the FCC's Carterfone decision similarly opened up AT&T's wireline telephone network.

Mr. Bursor was the lead trial lawyer in *Ayyad v. Sprint Spectrum, L.P.* representing a class of approximately 2 million California consumers who were charged an early termination fee under a Sprint cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory and common law claims. After a five-week combined bench-and-jury trial, the jury returned a verdict in June 2008 and the Court issued a Statement of Decision in December 2008 awarding the plaintiffs \$299 million in cash and debt cancellation. Mr. Bursor served as lead trial counsel for this class again in 2013 during a month-long jury trial in which Sprint asserted a \$1.06 billion counterclaim against the class. Mr. Bursor secured a verdict awarding Sprint only \$18.4 million, the exact amount calculated by the class's damages expert. This award was less than 2% of the damages Sprint sought, less than 6% of the amount of the illegal termination fees Sprint charged to class members. In December 2016, after more than 13 years of litigation, the case was settled for \$304 million, including \$79 million in cash payments plus \$225 million in debt cancellation.

Mr. Bursor was the lead trial lawyer in *White v. Cellco Partnership d/b/a Verizon Wireless* representing a class of approximately 1.4 million California consumers who were charged an early termination fee under a Verizon cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory and common law claims. In July 2008, after Mr. Bursor presented plaintiffs' case-in-chief, rested, then cross-examined Verizon's principal trial witness, Verizon agreed to settle the case for a \$21 million cash payment and an injunction restricting Verizon's ability to impose early termination fees in future subscriber agreements.

Mr. Bursor was the lead trial lawyer in *Thomas v. Global Visions Products Inc.* Mr. Bursor represented a class of approximately 150,000 California consumers who had purchased the Avacor® hair regrowth system. In January 2008, after a four-week combined bench-and-jury trial, Mr. Bursor obtained a \$37 million verdict for the class, which the Court later increased to \$40 million.

Mr. Bursor was appointed class counsel and was elected chair of the Official Creditors' Committee in *In re Nutraquest Inc.*, a Chapter 11 bankruptcy case before Chief Judge Garrett E. Brown, Jr. (D.N.J.) involving 390 ephedra-related personal injury and/or wrongful death claims, two consumer class actions, four enforcement actions by governmental agencies, and multiple adversary proceedings related to the Chapter 11 case. Working closely with counsel for all parties and with two mediators, Judge Nicholas Politan (Ret.) and Judge Marina Corodemus (Ret.), the committee chaired by Mr. Bursor was able to settle or otherwise resolve every claim and reach a fully consensual Chapter 11 plan of reorganization, which Chief Judge Brown approved in late 2006. This settlement included a \$12.8 million recovery to a nationwide class of consumers who alleged they were defrauded in connection with the purchase of Xenadrine® dietary supplement products.

Mr. Bursor was the lead trial lawyer in *In re: Pacific Bell Late Fee Litigation*. After filing the first class action challenging Pac Bell's late fees in April 2010, winning a contested

motion to certify a statewide California class in January 2012, and defeating Pac Bell's motion for summary judgment in February 2013, Mr. Bursor obtained final approval of the \$38 million class settlement. The settlement, which Mr. Bursor negotiated the night before opening statements were scheduled to commence, included a \$20 million cash payment to provide refunds to California customers who paid late fees on their Pac Bell wireline telephone accounts, and an injunction that reduced other late fee charges by \$18.6 million.

L. TIMOTHY FISHER

L. Timothy Fisher has an active practice in consumer class actions and complex business litigation and has also successfully handled a large number of civil appeals.

Mr. Fisher has been actively involved in numerous cases that resulted in multi-million dollar recoveries for consumers and investors. Mr. Fisher has handled cases involving a wide range of issues including nutritional labeling, health care, telecommunications, corporate governance, unfair business practices and consumer fraud. With his partner Scott A. Bursor, Mr. Fisher has tried five class action jury trials, all of which produced successful results. In *Thomas v. Global Vision Products*, Mr. Fisher obtained a jury award of \$50,024,611 — the largest class action award in California in 2009 and the second-largest jury award of any kind. In 2019, Mr. Fisher served as trial counsel with Mr. Bursor in *Perez. v. Rash Curtis & Associates*, where the jury returned a verdict for \$267 million in statutory damages under the Telephone Consumer Protection Act.

Mr. Fisher was admitted to the State Bar of California in 1997. He is also a member of the bars of the United States Court of Appeals for the Ninth Circuit, the United States District Courts for the Northern, Central, Southern and Eastern Districts of California, the Northern District of Illinois, the Eastern District of Michigan, and the Eastern District of Missouri. Mr. Fisher taught appellate advocacy at John F. Kennedy University School of Law in 2003 and 2004. In 2010, he contributed jury instructions, a verdict form and comments to the consumer protection chapter of Justice Elizabeth A. Baron's *California Civil Jury Instruction Companion Handbook* (West 2010). In January 2014, Chief Judge Claudia Wilken of the United States District Court for the Northern District of California appointed Mr. Fisher to a four-year term as a member of the Court's Standing Committee on Professional Conduct.

Mr. Fisher received his Juris Doctor from Boalt Hall at the University of California at Berkeley in 1997. While in law school, he was an active member of the Moot Court Board and participated in moot court competitions throughout the United States. In 1994, Mr. Fisher received an award for Best Oral Argument in the first-year moot court competition.

In 1992, Mr. Fisher graduated with highest honors from the University of California at Berkeley and received a degree in political science. Prior to graduation, he authored an honors thesis for Professor Bruce Cain entitled "The Role of Minorities on the Los Angeles City Council." He is also a member of Phi Beta Kappa.

Representative Cases

Thomas v. Global Vision Products, Inc. (Alameda County Superior Court). Mr. Fisher litigated claims against Global Vision Products, Inc. and other individuals in connection with the sale and marketing of a purported hair loss remedy known as Avacor. The case lasted more than seven years and involved two trials. The first trial resulted in a verdict for plaintiff and the class in the amount of \$40,000,000. The second trial resulted in a jury verdict of \$50,024,611, which led to a \$30 million settlement for the class.

In re Cellphone Termination Fee Cases - Handset Locking Actions (Alameda County Superior Court). Mr. Fisher actively worked on five coordinated cases challenging the secret locking of cell phone handsets by major wireless carriers to prevent consumers from activating them on competitive carriers' systems. Settlements have been approved in all five cases on terms that require the cell phone carriers to disclose their handset locks to consumers and to provide unlocking codes nationwide on reasonable terms and conditions. The settlements fundamentally changed the landscape for cell phone consumers regarding the locking and unlocking of cell phone handsets.

In re Cellphone Termination Fee Cases - Early Termination Fee Cases (Alameda County Superior Court and Federal Communications Commission). In separate cases that are a part of the same coordinated litigation as the Handset Locking Actions, Mr. Fisher actively worked on claims challenging the validity under California law of early termination fees imposed by national cell phone carriers. In one of those cases, against Verizon Wireless, a nationwide settlement was reached after three weeks of trial in the amount of \$21 million. In a second case, which was tried to verdict, the Court held after trial that the \$73 million of flat early termination fees that Sprint had collected from California consumers over an eight-year period were void and unenforceable.

Selected Published Decisions

Melgar v. Zicam LLC, 2016 WL 1267870 (E.D. Cal. Mar. 30, 2016) (certifying 10-jurisdiction class of purchasers of cold remedies, denying motion for summary judgment, and denying motions to exclude plaintiff's expert witnesses).

Salazar v. Honest Tea, Inc., 2015 WL 7017050 (E.D. Cal. Nov. 12, 2015) (denying motion for summary judgment).

Dei Rossi v. Whirlpool Corp., 2015 WL 1932484 (E.D. Cal. Apr. 27, 2015) (certifying California class of purchasers of refrigerators that were mislabeled as Energy Star qualified).

Bayol v. Zipcar, Inc., 78 F.Supp.3d 1252 (N.D. Cal. 2015) (denying motion to dismiss claims alleging unlawful late fees under California Civil Code § 1671).

Forcellati v. Hyland's, Inc., 2015 WL 9685557 (C.D. Cal. Jan. 12, 2015) (denying motion for summary judgment in case alleging false advertising of homeopathic cold and flu remedies for children).

Bayol v. Zipcar, Inc., 2014 WL 4793935 (N.D. Cal. Sept. 25, 2014) (denying motion to transfer venue pursuant to a forum selection clause).

Forcellati v. Hyland's Inc., 2014 WL 1410264 (C.D. Cal. Apr. 9, 2014) (certifying nationwide class of purchasers of homeopathic cold and flu remedies for children).

Hendricks v. StarKist Co., 30 F.Supp.3d 917 (N.D. Cal. 2014) (denying motion to dismiss in case alleging underfilling of 5-ounce cans of tuna).

Dei Rossi v. Whirlpool Corp., 2013 WL 5781673 (E.D. Cal. October 25, 2013) (denying motion to dismiss in case alleging that certain KitchenAid refrigerators were misrepresented as Energy Star qualified).

Forcellati v. Hyland's Inc., 876 F.Supp.2d 1155 (C.D. Cal. 2012) (denying motion to dismiss complaint alleging false advertising regarding homeopathic cold and flu remedies for children).

Clerkin v. MyLife.com, 2011 WL 3809912 (N.D. Cal. August 29, 2011) (denying defendants' motion to dismiss in case alleging false and misleading advertising by a social networking company).

In re Cellphone Termination Fee Cases, 186 Cal.App.4th 1380 (2010) (affirming order approving \$21 million class action settlement).

Gatton v. T-Mobile USA, Inc., 152 Cal.App.4th 571 (2007) (affirming order denying motion to compel arbitration).

Selected Class Settlements

Melgar v. Zicam (Eastern District of California) - \$16 million class settlement of claims alleging cold medicine was ineffective.

Gastelum v. Frontier California Inc. (San Francisco Superior Court) - \$10.9 million class action settlement of claims alleging that a residential landline service provider charged unlawful late fees.

West v. California Service Bureau, Inc. (Northern District of California) - \$4.1 million class settlement of claims under the Telephone Consumer Protection Act.

Gregorio v. Premier Nutrition Corp. (Southern District of New York) - \$9 million class settlement of false advertising claims against protein shake manufacturer.

Morris v. SolarCity Corp. (Northern District of California) - \$15 million class settlement of claims under the Telephone Consumer Protection Act.

Retta v. Millennium Products, Inc. (Central District of California) - \$8.25 million settlement to resolve claims of bottled tea purchasers for alleged false advertising.

Forcellati v. Hyland's (Central District of California) – nationwide class action settlement providing full refunds to purchasers of homeopathic cold and flu remedies for children.

Dei Rossi v. Whirlpool (Eastern District of California) – class action settlement providing \$55 cash payments to purchasers of certain KitchenAid refrigerators that allegedly mislabeled as Energy Star qualified.

In Re NVIDIA GTX 970 Graphics Chip Litigation (Northern District of California) - \$4.5 million class action settlement of claims alleging that a computer graphics card was sold with false and

misleading representations concerning its specifications and performance.

Hendricks v. StarKist Co. (Northern District of California) – \$12 million class action settlement of claims alleging that 5-ounce cans of tuna were underfilled.

In re Zakskorn v. American Honda Motor Co. Honda (Eastern District of California) – nationwide settlement providing for brake pad replacement and reimbursement of out-of-pocket expenses in case alleging defective brake pads on Honda Civic vehicles manufactured between 2006 and 2011.

Correa v. Sensa Products, LLC (Los Angeles Superior Court) - \$9 million settlement on behalf of purchasers of the Sensa weight loss product.

In re Pacific Bell Late Fee Litigation (Contra Costa County Superior Court) - \$38.6 million settlement on behalf of Pac Bell customers who paid an allegedly unlawful late payment charge.

In re Haier Freezer Consumer Litigation (Northern District of California) - \$4 million settlement, which provided for cash payments of between \$50 and \$325.80 to class members who purchased the Haier HNCM070E chest freezer.

Thomas v. Global Vision Products, Inc. (Alameda County Superior Court) - \$30 million settlement on behalf of a class of purchasers of a hair loss remedy.

Guyette v. Viacom, Inc. (Alameda County Superior Court) - \$13 million settlement for a class of cable television subscribers who alleged that the defendant had improperly failed to share certain tax refunds with its subscribers.

JOSEPH I. MARCHESE

Joseph I. Marchese is a Partner with Bursor & Fisher, P.A. Joe focuses his practice on consumer class actions, employment law disputes, and commercial litigation. He has represented corporate and individual clients in a wide array of civil litigation, and has substantial trial and appellate experience.

Joe has diverse experience in litigating and resolving consumer class actions involving claims of mislabeling, false or misleading advertising, privacy violations, unlawful and junk fees, data breach claims, and violations of the Telephone Consumer Protection Act and Servicemembers Civil Relief Act.

Joe also has significant experience in multidistrict litigation proceedings. Recently, he served on the Plaintiffs' Executive Committee in *In Re: Blue Buffalo Company, Ltd. Marketing And Sales Practices Litigation*, MDL No. 2562, which resulted in a \$32 million consumer class settlement. Currently, he serves on the Plaintiffs' Steering Committee for Economic Reimbursement in *In Re: Valsartan Products Liability Litigation*, MDL No. 2875.

Joe is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York,

and the Eastern District of Michigan, as well as the United States Courts of Appeals for the First, Second and Sixth Circuits.

Joe graduated from Boston University School of Law in 2002 where he was a member of The Public Interest Law Journal. In 1998, Joe graduated with honors from Bucknell University.

Selected Published Decisions:

Farwell v. Google, LLC, 595 F. Supp. 3d 702 (C.D. Ill. Mar. 31, 2022), denying defendant's motion to dismiss BIPA claims brought on behalf of Illinois students using Google's Workspace for Education platform.

Boelter v. Hearst Communications, Inc., 269 F. Supp. 3d 172 (S.D.N.Y. Sept. 7, 2017), granting plaintiff's motion for partial summary judgment on state privacy law violations in putative class action.

Boelter v. Hearst Communications, Inc., 192 F. Supp. 3d 427 (S.D.N.Y. June 17, 2016), denying publisher's motion to dismiss its subscriber's allegations of state privacy law violations in putative class action.

In re Scotts EZ Seed Litigation, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

Ebin v. Kangadis Food Inc., 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

In re Michaels Stores Pin Pad Litigation, 830 F. Supp. 2d 518 (N.D. Ill. 2011), denying retailer's motion to dismiss its customers' state law consumer protection and privacy claims in data breach putative class action.

Selected Class Settlements:

Schreiber v. Mayo Foundation, Case No. 22-cv-0188-HYJ-RSK (W.D. Mich. 2024) – final approval granted for \$52.5 million class settlement to resolve claims of periodical subscribers for alleged statutory privacy violations.

Edwards v. Mid-Hudson Valley Federal Credit Union, Case No. 22-cv-00562-TJM-CFH (N.D.N.Y. 2023) – final approval granted for \$2.2 million class settlement to resolve claims alleging unlawfully charged overdraft fees on accounts with sufficient funds.

Benbow v. SmileDirectClub, LLC, Case No. 2020-CH-07269 (Cir. Ct. Cook Cnty. 2022) – final approval granted for \$11.5 million class settlement to resolve claims for alleged TCPA violations.

Marquez v. Google LLC, Case No. 2021-CH-1460 (Cir. Ct. Cook Cnty. 2022) – final approval granted for \$100 million class settlement to resolve alleged BIPA violations of Illinois residents appearing on the Google Photos platform.

Edwards v. Hearst Communications, Inc., Case No. 15-cv-09279-AT (S.D.N.Y. 2019) – final approval granted for \$50 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast, Case No. 15-cv-05671-NRB (S.D.N.Y. 2019) – final approval granted for \$13.75 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

In re Scotts EZ Seed Litigation, Case No. 12-cv-4727-VB (S.D.N.Y. 2018) – final approval granted for \$47 million class settlement to resolve false advertising claims of purchasers of combination grass seed product.

In Re: Blue Buffalo Marketing And Sales Practices Litigation, Case No. 14-MD-2562-RWS (E.D. Mo. 2016) – final approval granted for \$32 million class settlement to resolve claims of pet owners for alleged false advertising of pet foods.

Rodriguez v. Citimortgage, Inc., Case No. 11-cv-4718-PGG (S.D.N.Y. 2015) – final approval granted for \$38 million class settlement to resolve claims of military servicemembers for alleged foreclosure violations of the Servicemembers Civil Relief Act, where each class member was entitled to \$116,785 plus lost equity in the foreclosed property and interest thereon.

O'Brien v. LG Electronics USA, Inc., et al., Case No. 10-cv-3733-DMC (D.N.J. 2011) – final approval granted for \$23 million class settlement to resolve claims of Energy Star refrigerator purchasers for alleged false advertising of the appliances' Energy Star qualification.

SARAH N. WESTCOT

Sarah N. Westcot is the Managing Partner of Bursor & Fisher's Miami office. She focuses her practice on consumer class actions, complex business litigation, and mass torts.

She has represented clients in a wide array of civil litigation, and has substantial trial and appellate experience. Sarah served as trial counsel in *Ayyad v. Sprint Spectrum L.P.*, where Bursor & Fisher won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

Sarah also has significant experience in high-profile, multi-district litigations. She currently serves on the Plaintiffs' Steering Committee in *In re Zantac (Ranitidine) Products Liability Litigation*, MDL No. 2924 (S.D. Florida). She also serves on the Plaintiffs' Executive Committee in *In re Apple Inc. App Store Simulated Casino-Style Games Litigation*, MDL No. 2985 (N.D. Cal.) and *In Re: Google Play Store Simulated Casino-Style Games Litigation*, MDL No. 3001 (N.D. Cal.).

Sarah is admitted to the State Bars of California and Florida, and is a member of the bars of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, the United States District Courts for the Southern and Middle Districts of Florida, and the bars of the United States Courts of Appeals for the Second, Eighth, and Ninth Circuits.

Sarah received her Juris Doctor from the University of Notre Dame Law School in 2009. During law school, she was a law clerk with the Cook County State's Attorney's Office in Chicago and the Santa Clara County District Attorney's Office in San Jose, CA, gaining early trial experience in both roles. She graduated with honors from the University of Florida in 2005.

Sarah is a member of The National Trial Lawyers Top 100 Civil Plaintiff Lawyers, and was selected to The National Trial Lawyers Top 40 Under 40 Civil Plaintiff Lawyers for 2022.

PHILIP L. FRAIETTA

Philip L. Fraietta is the Managing Partner of Bursor & Fisher, P.A.'s White Plains office. Phil focuses his practice on data privacy, complex business litigation, and consumer class actions. Phil has been named a "Rising Star" in the New York Metro Area by Super Lawyers® every year since 2019.

Phil has significant experience in litigating consumer class actions, particularly those involving privacy claims under statutes such as the Michigan Preservation of Personal Privacy Act, the Illinois Biometric Information Privacy Act, and Right of Publicity statutes. Since 2016, Phil has recovered over \$100 million for class members in privacy class action settlements. In addition to privacy claims, Phil has significant experience in litigating and settling class action claims involving false or misleading advertising.

Phil is admitted to the State Bars of New York, New Jersey, Illinois, Michigan, and California, the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, the Western District of New York, the Northern District of New York, the District of New Jersey, the Eastern District of Michigan, the Western District of Michigan, the Northern District of Illinois, the Central District of Illinois, and the United States Court of Appeals for the Second, Third, and Ninth Circuits. Phil was a Summer Associate with Bursor & Fisher prior to joining the firm.

Phil received his Juris Doctor from Fordham University School of Law in 2014, graduating cum laude. During law school, Phil served as an Articles & Notes Editor for the Fordham Law Review, and published two articles. In 2011, Phil graduated cum laude from Fordham University with a B.A. in Economics.

Selected Published Decisions:

Garner v. Me-TV National Limited Partnership, 132 F.4th 1022 (7th Cir. Mar. 28, 2025), reversing grant of motion to dismiss under federal Video Privacy Protection Act and specifying standard for being a "consumer" under the Act.

Jancik v. WebMD LLC, 2025 WL 560705 (N.D. Ga. Feb 20, 2025), certifying the first ever contested class under the federal Video Privacy Protection Act.

Fischer v. Instant Checkmate LLC, 2022 WL 971479 (N.D. Ill. Mar. 31, 2022), certifying class of Illinois residents for alleged violations of Illinois' Right of Publicity Act by background reporting website.

Kolebuck-Utz v. Whitepages, Inc., 2021 WL 157219 (W.D. Wash. Apr. 22, 2021), denying defendant's motion to dismiss for alleged violations of Ohio's Right to Publicity Law.

Porter v. NBTY, Inc., 2019 WL 5694312 (N.D. Ill. Nov. 4, 2019), denying supplement manufacturer's motion for summary judgment on consumers' allegations of false advertising relating to whey protein content.

Boelter v. Hearst Communications, Inc., 269 F. Supp. 3d 172 (S.D.N.Y. 2017), granting plaintiff's motion for partial summary judgment on state privacy law violations in putative class action.

Selected Class Settlements:

Ramos v. ZoomInfo Technologies, LLC, Case No. 21-cv-02032-CPK (N.D. Ill. 2024) – final approval granted for \$29.5 million class settlement to resolve claims for alleged statutory right of publicity violations.

Awad v. AMC Entertainment Holdings, Inc., Index No. 607322/2024 (Sup. Ct. Nassau Cnty. 2024) – final approval granted for \$12.3 million class settlement to resolve claims for alleged New York ticket fee claims.

Schreiber v. Mayo Foundation for Medical Education and Research, Case No. 22-cv-00188-HYJ (W.D. Mich. 2024) – final approval granted for \$52.5 million class settlement to resolve claims of newsletter subscribers for alleged statutory privacy violations.

Fischer v. Instant Checkmate LLC, Case No. 19-cv-04892-MSS (N.D. Ill. 2024) – final approval granted for \$10.1 million class settlement to resolve claims for alleged statutory right of publicity violations.

Young v. Military Advantage, Inc., Case No. 2023LA000535 (Cir. Ct. DuPage Cnty. 2023) – final approval granted for \$7.35 million class settlement to resolve claims of newsletter subscribers for alleged federal Video Privacy Protection Act claims.

Rivera v. Google LLC, Case No. 2021-CH-1460 (Cir. Ct. Cook Cnty. 2022) – final approval granted for \$100 million class settlement to resolve alleged BIPA violations of Illinois residents appearing in photos on the Google Photos platform.

Edwards v. Hearst Communications, Inc., Case No. 15-cv-09279-AT (S.D.N.Y. 2019) – final approval granted for \$50 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Ruppel v. Consumers Union of United States, Inc., Case No. 16-cv-02444-KMK (S.D.N.Y. 2018) – final approval granted for \$16.375 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast, Case No. 15-cv-05671-NRB (S.D.N.Y. 2019) – final approval granted for \$13.75 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Benbow v. SmileDirectClub, LLC, Case No. 2020-CH-07269 (Cir. Ct. Cook Cnty. 2021) – final approval granted for \$11.5 million class settlement to resolve claims for alleged TCPA violations.

Gregorio v. Premier Nutrition Corp., Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for \$9 million class settlement to resolve claims of protein shake purchasers for alleged false advertising.

NEAL J. DECKANT

Neal J. Deckant is a Partner with Bursor & Fisher, P.A., where he serves as the firm's Head of Information & e-Discovery. Neal focuses his practice on complex business litigation and consumer class actions. Prior to joining Bursor & Fisher, Neal counseled low-income homeowners facing foreclosure in East Boston.

Neal is admitted to the State Bars of California and New York, and is a member of the bars of the United States District Court for the Northern District of California, the United States District Court for the Eastern District of California, the United States District Court for the Central District of California, the United States District Court for the Southern District of California, the United States District Court for the Southern District of New York, the United States District Court for the Eastern District of New York, and the bars of the United States Courts of Appeals for the Second and Ninth Circuits.

Neal received his Juris Doctor from Boston University School of Law in 2011, graduating cum laude with two Dean's Awards. During law school, Neal served as a Senior Articles Editor for the Review of Banking and Financial Law, where he authored two published articles about securitization reforms, both of which were cited by the New York Court of Appeals, the highest court in the state. Neal was also awarded Best Oral Argument in his moot court section, and he served as a Research Assistant for his Securities Regulation professor. Neal has also been honored as a 2014, 2015, 2016, and 2017 Super Lawyers Rising Star. In 2007, Neal graduated with Honors from Brown University with a dual major in East Asian Studies and Philosophy.

Selected Published Decisions:

Martinelli v. Johnson & Johnson, 2019 WL 1429653 (N.D. Cal. Mar. 29, 2019), granting class certification of false advertising and other claims brought by purchasers of Benecol spreads labeled with the representation "No Trans Fats."

Dzielak v. Whirlpool Corp., 2017 WL 6513347 (D.N.J. Dec. 20, 2017), granting class certification of consumer protection claims brought by purchasers of Maytag Centennial washing machines marked with the “Energy Star” logo.

Duran v. Obesity Research Institute, LLC, 204 Cal. Rptr. 3d 896 (Cal. Ct. App. 2016), reversing and remanding final approval of a class action settlement on appeal, regarding allegedly mislabeled dietary supplements, in connection with a meritorious objection.

Marchuk v. Faruqi & Faruqi, LLP, et al., 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting individual and law firm defendants’ motion for judgment as a matter of law on plaintiff’s claims for retaliation and defamation, as well as for all claims against law firm partners, Nadeem and Lubna Faruqi.

Ebin v. Kangadis Food Inc., 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported “100% Pure Olive Oil” product.

Ebin v. Kangadis Food Inc., 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor’s motion for summary judgment against nationwide class of purchasers of purported “100% Pure Olive Oil” product.

Selected Class Settlements:

In Re NVIDIA GTX 970 Graphics Chip Litigation, Case No. 15-cv-00760-PJH (N.D. Cal. Dec. 7, 2016) – final approval granted for \$4.5 million class action settlement to resolve claims that a computer graphics card was allegedly sold with false and misleading representations concerning its specifications and performance.

Hendricks v. StarKist Co., 2016 WL 5462423 (N.D. Cal. Sept. 29, 2016) – final approval granted for \$12 million class action settlement to resolve claims that 5-ounce cans of tuna were allegedly underfilled.

In re: Kangadis Food Inc., Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014) – class action claims resolved for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy, following claims that its olive oil was allegedly sold with false and misleading representations.

Selected Publications:

Neal Deckant, *X. Reforms of Collateralized Debt Obligations: Enforcement, Accounting and Regulatory Proposals*, 29 Rev. Banking & Fin. L. 79 (2009) (cited in *Quadrant Structured Products Co., Ltd. v. Vertin*, 16 N.E.3d 1165, 1169 n.8 (N.Y. 2014)).

Neal Deckant, *Criticisms of Collateralized Debt Obligations in the Wake of the Goldman Sachs Scandal*, 30 Rev. Banking & Fin. L. 407 (2010) (cited in *Quadrant Structured Products Co., Ltd. v. Vertin*, 16 N.E.3d 1165, 1169 n.8 (N.Y. 2014); *Lyon Village Venetia, LLC v. CSE Mortgage LLC*, 2016 WL 476694, at *1 n.1 (Md. Ct. Spec. App. Feb. 4, 2016); Ivan Ascher, Portfolio

Society: On the Capitalist Mode of Prediction, at 141, 153, 175 (Zone Books / The MIT Press 2016); Devon J. Steinmeyer, *Does State National Bank of Big Spring v. Geithner Stand a Fighting Chance?*, 89 Chi.-Kent. L. Rev. 471, 473 n.13 (2014)).

YITZCHAK KOPEL

Yitzchak Kopel is a Partner with Bursor & Fisher, P.A. Yitz focuses his practice on consumer class actions and complex business litigation. He has represented corporate and individual clients before federal and state courts, as well as in arbitration proceedings.

Yitz has substantial experience in successfully litigating and resolving consumer class actions involving claims of consumer fraud, data breaches, and violations of the telephone consumer protection act. Since 2014, Yitz has obtained class certification on behalf of his clients five times, three of which were certified as nationwide class actions. Bursor & Fisher was appointed as class counsel to represent the certified classes in each of the cases.

Yitz is admitted to the State Bars of New York and New Jersey, the bar of the United States Court of Appeals for the Second, Eleventh, and Ninth Circuits, and the bars of the United States District Courts for the Southern District of New York, Eastern District of New York, Eastern District of Missouri, Eastern District of Wisconsin, Northern District of Illinois, and District of New Jersey.

Yitz received his Juris Doctorate from Brooklyn Law School in 2012, graduating *cum laude* with two Dean's Awards. During law school, Yitz served as an Articles Editor for the Brooklyn Law Review and worked as a Law Clerk at Shearman & Sterling. In 2009, Yitz graduated *cum laude* from Queens College with a B.A. in Accounting.

Selected Published Decisions:

Bassaw v. United Industries Corp., 482 F.Supp.3d 80, 2020 WL 5117916 (S.D.N.Y. Aug. 31, 2020), denying motion to dismiss claims in putative class action concerning insect foggers.

Poppiti v. United Industries Corp., 2020 WL 1433642 (E.D. Mo. Mar. 24, 2020), denying motion to dismiss claims in putative class action concerning citronella candles.

Bakov v. Consolidated World Travel, Inc., 2019 WL 6699188 (N.D. Ill. Dec. 9, 2019), granting summary judgment on behalf of certified class in robocall class action.

Krumm v. Kittrich Corp., 2019 WL 6876059 (E.D. Mo. Dec. 17, 2019), denying motion to dismiss claims in putative class action concerning mosquito repellent.

Crespo v. S.C. Johnson & Son, Inc., 394 F. Supp. 3d 260 (S.D.N.Y. 2019), denying defendant's motion to dismiss fraud and consumer protection claims in putative class action regarding Raid insect fogger.

Bakov v. Consolidated World Travel, Inc., 2019 WL 1294659 (N.D. Ill. Mar. 21, 2019), certifying a class of persons who received robocalls in the state of Illinois.

Bourbia v. S.C. Johnson & Son, Inc., 375 F. Supp. 3d 454 (S.D.N.Y. 2019), denying defendant's motion to dismiss fraud and consumer protection claims in putative class action regarding mosquito repellent.

Hart v. BHH, LLC, 323 F. Supp. 3d 560 (S.D.N.Y. 2018), denying defendants' motion for summary judgment in certified class action involving the sale of ultrasonic pest repellents.

Hart v. BHH, LLC, 2018 WL 3471813 (S.D.N.Y. July 19, 2018), denying defendants' motion to exclude plaintiffs' expert in certified class action involving the sale of ultrasonic pest repellents.

Penrose v. Buffalo Trace Distillery, Inc., 2018 WL 2334983 (E.D. Mo. Feb. 5, 2018), denying bourbon producers' motion to dismiss fraud and consumer protection claims in putative class action.

West v. California Service Bureau, Inc., 323 F.R.D. 295 (N.D. Cal. 2017), certifying a nationwide class of "wrong-number" robocall recipients.

Hart v. BHH, LLC, 2017 WL 2912519 (S.D.N.Y. July 7, 2017), certifying nationwide class of purchasers of ultrasonic pest repellents.

Browning v. Unilever United States, Inc., 2017 WL 7660643 (C.D. Cal. Apr. 26, 2017), denying motion to dismiss fraud and warranty claims in putative class action concerning facial scrub product.

Brenner v. Procter & Gamble Co., 2016 WL 8192946 (C.D. Cal. Oct. 20, 2016), denying motion to dismiss warranty and consumer protection claims in putative class action concerning baby wipes.

Hewlett v. Consolidated World Travel, Inc., 2016 WL 4466536 (E.D. Cal. Aug. 23, 2016), denying telemarketer's motion to dismiss TCPA claims in putative class action.

Bailey v. KIND, LLC, 2016 WL 3456981 (C.D. Cal. June 16, 2016), denying motion to dismiss fraud and warranty claims in putative class action concerning snack bars.

Hart v. BHH, LLC, 2016 WL 2642228 (S.D.N.Y. May 5, 2016) denying motion to dismiss warranty and consumer protection claims in putative class action concerning ultrasonic pest repellents.

Marchuk v. Faruqi & Faruqi, LLP, et al., 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting clients' motion for judgment as a matter of law on claims for retaliation and defamation in employment action.

In re Scotts EZ Seed Litigation, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

Brady v. Basic Research, L.L.C., 101 F. Supp. 3d 217 (E.D.N.Y. 2015), denying diet pill manufacturers' motion to dismiss its purchasers' allegations for breach of express warranty in putative class action.

Ward v. TheLadders.com, Inc., 3 F. Supp. 3d 151 (S.D.N.Y. 2014), denying online job board's motion to dismiss its subscribers' allegations of consumer protection law violations in putative class action.

Ebin v. Kangadis Food Inc., 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

Ebin v. Kangadis Food Inc., 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor's motion for summary judgment against nationwide class of purchasers of purported "100% Pure Olive Oil" product.

Selected Class Settlements:

Hart v. BHH, LLC, Case No. 1:15-cv-04804 (S.D.N.Y. Sept. 22, 2020), resolving class action claims regarding ultrasonic pest repellers.

In re: Kangadis Food Inc., Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014), resolving class action claims for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy following the certification of nationwide claims alleging that its olive oil was sold with false and misleading representations.

West v. California Service Bureau, Case No. 4:16-cv-03124-YGR (N.D. Cal. Jan. 23, 2019), resolving class action claims against debt-collector for wrong-number robocalls for \$4.1 million.

ALEC M. LESLIE

Alec Leslie is a Partner with Bursor & Fisher, P.A. He focuses his practice on consumer class actions, employment law disputes, and complex business litigation.

Alec is admitted to the State Bar of New York and is a member of the bar of the United States District Courts for the Southern and Eastern Districts of New York. Alec was a Summer Associate with Bursor & Fisher prior to joining the firm.

Alec received his Juris Doctor from Brooklyn Law School in 2016, graduating *cum laude*. During law school, Alec served as an Articles Editor for Brooklyn Law Review. In addition, Alec served as an intern to the Honorable James C. Francis for the Southern District of New York and the Honorable Vincent Del Giudice, Supreme Court, Kings County. Alec graduated from the University of Colorado with a B.A. in Philosophy in 2012.

Selected Class Settlements:

Gregorio v. Premier Nutrition Corp., Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final

approval granted for class settlement to resolve claims of protein shake purchasers for alleged false advertising.

Wright v. Southern New Hampshire Univ., Case No. 1:20-cv-00609-LM (D.N.H. 2021) – final approval granted for class settlement to resolve claims over COVID-19 tuition and fee refunds to students.

Mendoza et al. v. United Industries Corp., Case No. 21PH-CV00670 (Phelps Cnty. Mo. 2021) – final approval granted for class settlement to resolve false advertising claims on insect repellent products.

Kaupelis v. Harbor Freight Tools USA, Inc., Case No. 8:19-cv-01203-JVS-DFM (C.D. Cal. 2021) – final approval granted for class settlement involving allegedly defective and dangerous chainsaws.

Rocchio v. Rutgers Univ., Case No. MID-L-003039-20 (Middlesex Cnty. N.J. 2021) – final approval granted for class settlement to resolve claims over COVID-19 fee refunds to students.

Malone v. Western Digital Corporation, Case No. 5:20-cv-03584-NC (N.D. Cal.) – final approval granted for class settlement to resolve false advertising claims on hard drive products.

Frederick et al. v. ExamSoft Worldwide, Inc., Case No. 2021L001116 (DuPage Cnty. Ill. 2021) – final approval granted for class settlement to resolve claims over alleged BIPA violations with respect to exam proctoring software.

D'Amario et al. v. Univ. of Tampa, Case No. 7:20-cv-07344 (S.D.N.Y. 2022) – final approval granted for class settlement to resolve claims over COVID-19 fee refunds to students.

Olin et al. v. Meta Platforms, Inc., Case No. 3:18-cv-01881-RS (N.D. Cal. 2022) – final approval granted for class settlement involving invasion of privacy claims.

Croft v. SpinX Games et al., Case No. 2:20-cv-01310-RSM (W.D. Wash. 2022) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

Armstead v. VGW Malta Ltd. et al., Case No. 22-CI-00553 (Henderson Cnty. Ky. 2023) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

Barbieri v. Tailored Brands, Inc., Index No. 616696/2022 (Nassau Cnty. N.Y.) – final approval granted for class settlement involving untimely wage payments to employees.

Metzner et al. v. Quinnipiac Univ., Case No. 3:20-cv-00784 (D. Conn.) – final approval granted for class settlement to resolve claims over COVID-19 fee refunds to students.

In re GE/Canon Data Breach, Case No. 1:20-cv-02903 (S.D.N.Y.) – final approval granted for class settlement to resolve data breach claims.

Davis v. Urban Outfitters, Inc., Index No. 612162/2022 (Nassau Cnty. N.Y.) – final approval granted for class settlement involving untimely wage payments to employees.

Armstead v. VGW Malta LTD et al., Civil Action No. 22-CI-00553 (Henderson Cir. Ct. Ky.) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

Casler et al. v. Mclane Company, Inc. et al., Index No. 616432/2022 (Nassau Cnty. N.Y.) – final approval granted for class settlement involving untimely wage payments to employees.

Wyland v. Woopla, Inc., Civil Action No. 2023-CI-00356 (Henderson Cir. Ct. Ky.) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

Graziano et al. v. Lego Systems, Inc., Index No. 611615/2022 (Nassau Cnty. N.Y.) – final approval granted for class settlement involving untimely wage payments to employees.

Lipsky et al. v. American Behavioral Research Institute, LLC, Case No. 50-2023-CA-011526-XXXX-MB (Palm Beach Cnty. Fl.) – final approval granted to resolve allegedly deceptive automatic renewal and product efficacy claims.

Whiting v. Yellow Social Interactive Ltd., Civil Action No. 2023-CI-00358 (Henderson Cir. Ct. Ky.) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

DANIEL GUERRA

Daniel Guerra is a Senior Associate with Bursor & Fisher, P.A. Dan focuses his practice on complex civil litigation and consumer class actions.

Prior to working at Bursor & Fisher, Dan practiced at a national law firm in San Francisco. He helped represent various companies during internal investigations and in complex civil litigation, including product liability litigation and commercial disputes. He also advised clients on a range of matters including regulatory compliance, litigation risk assessment, and product counseling.

Dan is admitted to the State Bar of California, all California Federal District Courts, and the United States District Court for the Western District of Texas.

Dan received his Juris Doctor from the University of California Law, San Francisco (formerly U.C. Hastings College of the Law) in 2009.

STEPHEN BECK

Stephen is an Associate with Bursor & Fisher, P.A. Stephen focuses his practice on complex civil litigation and class actions.

Stephen is admitted to the State Bar of Florida and is a member of the bars of the United States District Courts for the Southern and Middle Districts of Florida, the Eastern District of Missouri, and the Northern District of Illinois.

Stephen received his Juris Doctor from the University of Miami School of Law in 2018. During law school, Stephen received an Honors distinction in the Litigation Skills Program and was awarded the Honorable Theodore Klein Memorial Scholarship for excellence in written and oral advocacy. Stephen also received the CALI Award in Legislation for earning the highest grade on the final examination. Stephen graduated from the University of North Florida with a B.A. in Philosophy in 2015.

STEFAN BOGDANOVICH

Stefan Bogdanovich is an Associate with Bursor & Fisher, P.A. Stefan litigates complex civil and class actions typically involving privacy, intellectual property, entertainment, and false advertising law.

Prior to working at Bursor & Fisher, Stefan practiced at two national law firms in Los Angeles. He helped represent various companies in false advertising and IP infringement cases, media companies in defamation cases, and motion picture producers in royalty disputes. He also advised corporations and public figures on complying with various privacy and advertising laws and regulations.

Stefan is admitted to the State Bar of California and all of the California Federal District Courts. He is also a Certified Information Privacy Professional.

Stefan received his Juris Doctor from the University of Southern California Gould School of Law in 2018, where he was a member of the Hale Moot Court Honors Program and the Trial Team. He received the highest grade in his class in three subjects, including First Amendment Law.

MAX S. ROBERTS

Max Roberts is an Associate in Bursor & Fisher's New York office. Max focuses his practice on class actions concerning data privacy and consumer protection. Max was a Summer Associate with Bursor & Fisher prior to joining the firm and is now Co-Chair of the firm's Appellate Practice Group.

Since 2023, Max has been named "Rising Star" in the New York Metro Area by Super Lawyers®.

Max received his Juris Doctor from Fordham University School of Law in 2019, graduating *cum laude*. During law school, Max was a member of Fordham's Moot Court Board, the Brennan Moore Trial Advocates, and the Fordham Urban Law Journal, for which he published a note entitled [*Weaning Drug Manufacturers Off Their Painkiller: Creating an Exception to the Learned Intermediary Doctrine in Light of the Opioid Crisis*](#). In addition, Max served as an intern to the Honorable Vincent L. Briccetti of the Southern District of New York and the Fordham Criminal Defense Clinic. Max graduated from Johns Hopkins University in 2015 with a B.A. in Political Science.

Outside of the law, Max is an avid triathlete.

Selected Published Decisions:

Huertas v. Bayer US LLC, 120 F.4th 1169 (3d Cir. 2024), reversing district court and holding plaintiffs had alleged an injury-in-fact sufficient for Article III standing. Max personally argued the appeal before the Third Circuit, which can be listened to [here](#).

Jackson v. Amazon.com, Inc., 65 F.4th 1093 (9th Cir. 2023), affirming district court's denial of motion to compel arbitration. Max personally argued the appeal before the Ninth Circuit, which can be viewed [here](#).

Javier v. Assurance IQ, LLC, 2022 WL 1744107 (9th Cir. May 31, 2022), reversing district court and holding that Section 631 of the California Invasion of Privacy Act requires prior consent to wiretapping. Max personally argued the appeal before the Ninth Circuit, which can be viewed [here](#).

Mora v. J&M Plating, Inc., 213 N.E.3d 942 (Ill. App. Ct. 2d Dist. 2022), reversing circuit court and holding that Section 15(a) of Illinois' Biometric Information Privacy Act requires an entity to establish a retention and deletion schedule for biometric data at the first moment of possession. Max personally argued the appeal before the Second District, which can be listened to [here](#).

Newman v. Bayer Corp., 348 F.R.D. 567 (S.D.N.Y. 2025), certifying class of New York purchases of "One A Day" gummy multivitamins.

Deivaprakash v. Condé Nast Digital, --- F. Supp. 3d ---, 2025 WL 2541952 (N.D. Cal. Sept. 4, 2025), denying motion to dismiss alleged violations of California pen register statute.

Shah v. Fandom, Inc., 754 F. Supp. 3d 924 (N.D. Cal. 2024), denying motion to dismiss alleged violations of California pen register statute.

Yockey v. Salesforce, Inc., 745 F. Supp. 3d 945 (N.D. Cal. 2024), denying motion dismiss alleged violations of California and Pennsylvania wiretapping statutes.

Gladstone v. Amazon Web Services, Inc., 739 F. Supp. 3d 846 (W.D. Wash. 2024), denying motion to dismiss alleged violations of California wiretapping statute.

Rancourt v. Meredith Corp., 2024 WL 381344 (D. Mass. Jan. 11, 2024), denying motion to dismiss alleged violations of federal Video Privacy Protection Act, and finding personal jurisdiction over operator of mobile application.

Saunders v. Hearst Television, Inc., 711 F. Supp. 3d 24 (D. Mass. 2024), denying motion to dismiss alleged violations of federal Video Privacy Protection Act.

Cristostomo v. New Balance Athletics, Inc., 647 F. Supp. 3d 1 (D. Mass. 2022), denying motion to dismiss and motion to strike class allegations in case involving sneakers marketed as “Made in the USA.”

Selected Class Settlements:

Sholopa v. Turk Hava Yollari A.O. (d/b/a Turkish Airlines), Case No. 1:20-cv-3294-ALC (S.D.N.Y. 2023) – final approval granted for \$14.1 million class settlement to resolve claims of passengers whose flights with Turkish Airlines were cancelled due to COVID-19 and who did not receive refunds.

Payero v. Mattress Firm, Inc., Case No. 7:21-cv-3061-VB (S.D.N.Y. 2023) – final approval granted for \$4.9 million class settlement to resolve claims of consumers who purchased allegedly defective bed frames.

Miranda v. Golden Entertainment (NV), Inc., Case No. 2:20-cv-534-AT (D. Nev. 2021) – final approval granted for class settlement valued at over \$4.5 million to resolve claims of customers and employees of casino company stemming from data breach.

Malone v. Western Digital Corp., Case No. 5:20-cv-3584-NC (N.D. Cal. 2021) – final approval granted for class settlement valued at \$5.7 million to resolve claims of hard drive purchasers for alleged false advertised.

Frederick v. ExamSoft Worldwide, Inc., Case No. 2021-L-001116 (18th Judicial Circuit Court DuPage County, Illinois 2021) – final approval granted for \$2.25 million class settlement to resolve claims of Illinois students for alleged violations of the Illinois Biometric Information Privacy Act.

Bar Admissions

- New York State
- Southern District of New York
- Eastern District of New York
- Northern District of New York
- Northern District of Illinois
- Central District of Illinois
- Eastern District of Michigan
- District of Colorado
- First Circuit Court of Appeals
- Second Circuit Court of Appeals

- Third Circuit Court of Appeals
- Seventh Circuit Court of Appeals
- Ninth Circuit Court of Appeals

SPENCER N. MIGOTSKY

Spencer Migotsky is an Associate with Bursor & Fisher, P.A. Spencer focuses his practice on data privacy, complex commercial litigation, and consumer class actions. He has experience litigating data privacy class actions under the California Invasion of Privacy Act, the federal Video Privacy Protection Act, and the Arizona Telephone, Utility, and Communication Service Records Act.

Prior to joining Bursor & Fisher, Spencer practiced at a national law firm in New York City. He is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York and the Eastern District of New York. Spencer received his J.D. from Harvard Law School in 2019. In 2014, Spencer graduated magna cum laude from New York University with a B.A. in Economics.

JULIA K. VENDITTI

Julia K. Venditti is an Associate with Bursor & Fisher, P.A. Julia focuses her practice on complex civil litigation and class actions. Julia was a Summer Associate with Bursor & Fisher prior to joining the firm.

Julia is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Julia received her Juris Doctor in 2020 from the University of California, Hastings College of the Law, where she graduated *cum laude* with two CALI Awards for the highest grade in her Evidence and California Community Property classes. During law school, Julia was a member of the UC Hastings Moot Court team and competed at the Evans Constitutional Law Moot Court Competition, where she finished as a national quarterfinalist and received a best brief award. Julia was also inducted into the UC Hastings Honors Society and was awarded Best Brief and an Honorable Mention for Best Oral Argument in her First-Year Moot Court section. In addition, Julia served as a Research Assistant for her Constitutional Law professor, as a Teaching Assistant for Legal Writing & Research, and as a Law Clerk at the San Francisco Public Defender's Office. In 2017, Julia graduated *magna cum laude* from Baruch College/CUNY, Weissman School of Arts and Sciences, with a B.A. in Political Science.

JULIAN DIAMOND

Julian Diamond is an Associate with Bursor & Fisher, P.A. Julian focuses his practice on privacy law and class actions. Julian was a Summer Associate with Bursor & Fisher prior to joining the firm.

Julian received his Juris Doctor from Columbia Law School, where he was a Harlan Fiske Stone Scholar. During law school, Julian was Articles Editor for the Columbia Journal of

Environmental Law. Prior to law school, Julian worked in education. Julian graduated from California State University, Fullerton with a B.A. in History and a single subject social science teaching credential.

MATTHEW GIRARDI

Matt Girardi is an Associate with Bursor & Fisher, P.A. Matt focuses his practice on complex civil litigation and class actions, and has focused specifically on consumer class actions involving privacy violations, illegal gambling, financial misconduct, and false advertising. Matt was a Summer Associate with Bursor & Fisher prior to joining the firm.

Matt is admitted to the State Bar of New York, and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, the Eastern District of Michigan, the Western District of Michigan, the First Circuit Court of Appeals, and the Ninth Circuit Court of Appeals.

Matt received his Juris Doctor from Columbia Law School in 2020, where he was a Harlan Fiske Stone Scholar. During law school, Matt was the Commentary Editor for the Columbia Journal of Tax Law, and represented fledgling businesses for Columbia's Entrepreneurship and Community Development Clinic. In addition, Matt worked as an Honors Intern in the Division of Enforcement at the U.S. Securities and Exchange Commission. Matt graduated from Brown University in 2016 with a B.A. in Economics, and worked as a Paralegal Specialist at the U.S. Department of Justice in the Antitrust Division prior to law school.

Selected Class Settlements:

Armstead v. VGW Malta Ltd. et al., Case No. 22-CI-00553 (Henderson Cnty. Ky. 2023) – final approval granted for \$11.75 million class settlement involving allegedly deceptive and/or illegal gambling practices.

Edwards v. Mid-Hudson Valley Federal Credit Union, Case No. 22-cv-00562-TJM-CFH (N.D.N.Y. 2023) – final approval granted for \$2.2 million class settlement to resolve claims that an upstate New York credit union was unlawfully charging overdraft fees on accounts with sufficient funds.

Fischer, et al. v. Instant Checkmate LLC, et al., No. 19-cv-04892 (N.D. Ill. 2024) – final approval granted for state-by-state non-reversionary cash settlements involving alleged violations of right of publicity statutes totaling in excess of \$10.1 million.

Wyland v. Woopla, Inc., Civil Action No. 2023-CI-00356 (Henderson Cir. Ct. Ky. 2023) – final approval granted for \$835,000 class settlement involving allegedly deceptive and/or illegal gambling practices.

Whiting v. Yellow Social Interactive Ltd., Civil Action No. 2023-CI-00358 (Henderson Cir. Ct. Ky. 2023) – final approval granted for \$1.32 million class settlement involving allegedly deceptive and/or illegal gambling practices.

XAVIER JOHNSON

Xavier Johnson is a Staff Attorney at Bursor & Fisher, where they focus their practice on complex civil litigation and consumer class actions. They are admitted to the State Bar of California. Xavier is a former Director of Policy Justice at the Just Cities Institute where their work focused on Fair Chance Housing policies, re-entry policy, as well as tenants' rights. Previously, Xavier worked as a Tenants' Rights Attorney at Centro Legal de la Raza. Their work at Centro Legal de la Raza centered on representing tenants in hearings with the Oakland Rent Adjustment Program. Xavier provided assistance to tenants through all stages of the petition process including providing representation on the day of the hearings. Xavier successfully advocated for more than one million dollars in rent reductions. Xavier engaged with the community through outreach and documented how tenants are being impacted by the housing crisis and what steps we can take to ensure that our tenant communities are protected. Xavier Johnson is also an elected official serving as a Commissioner on the Berkeley Rent Stabilization Board.

Over their career, Xavier has worked with law firms, non-profits, and governmental entities in the realms of policy advocacy, research and community organizing. Xavier spent two years as a Congressional Aide in Congresswoman Barbara Lee's District Office with a focus on housing and housing justice.

Xavier holds a Juris Doctorate from University of California Berkeley School of Law and a Bachelor of Arts in Sociology from University of Texas at San Antonio.

JENNA GAVENMAN

Jenna Gavenman is an Associate with Bursor & Fisher, P.A. Jenna focuses her practice on complex civil litigation and consumer class actions. Jenna was a Summer Associate and a part-time intern with Bursor & Fisher prior to joining the firm as a full-time Associate in September 2022.

Jenna is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Jenna received her Juris Doctor in 2022 from the University of California, Hastings College of the Law (now named UC Law SF). During law school, she was awarded an Honorable Mention for Best Oral Argument in her First-Year Moot Court section. Jenna also participated in both the Medical Legal Partnership for Seniors (MLPS) and the Lawyering for Children Practicum at Legal Services for Children—two of UC Hastings's nationally renowned clinical programs. Jenna was awarded the Clinic Award for Outstanding Performance in MLPS for her contributions to the clinic. In addition, Jenna volunteered with her law school's Legal Advice and Referral Clinic and as a LevelBar Mentor.

In 2018, Jenna graduated *cum laude* from Villanova University with a B.A. in Sociology and Spanish (double major). Jenna was a Division I athlete, competing on the Villanova Women's Water Polo varsity team for four consecutive years.

IRA ROSENBERG

Ira Rosenberg is an Associate with Bursor & Fisher, P.A. Ira focuses his practice on complex civil litigation and class actions.

Ira received his Juris Doctor in 2022 from Columbia Law School. During law school, Ira served as a Student Honors Legal Intern with Division of Enforcement at the U.S. Securities and Exchange Commission. Ira also interned during law school in the Criminal Division at the United States Attorney's Office for the Southern District of New York and with the Investor Protection Bureau at the Office of the New York State Attorney General. Ira graduated in 2018 from Beth Medrash Govoha with a B.A. in Talmudic Studies.

LUKE SIRONSKI-WHITE

Luke Sironski-White is an Associate with Bursor & Fisher, P.A., focusing on complex civil litigation and consumer class actions. Luke joined the firm as a full-time Associate in August 2022.

Luke is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Luke received his Juris Doctor in 2022 from the University of California, Berkeley School of Law. During law school, Luke was on the board of the Consumer Advocacy and Protection Society (CAPS), edited for the Berkeley Journal of Employment and Labor Law, and volunteered with the Prisoner Advocacy Network.

In 2017, Luke graduated from the University of Chicago with a B.A. in Anthropology. Before entering the field of law Luke was a professional photographer and filmmaker.

MUJGHAN AHMAD

Mujghan Ahmad is a Staff Attorney at Bursor & Fisher, where she focuses her practice on complex civil litigation and consumer class actions. She is admitted to the State Bar of California.

Mujghan earned her Juris Doctor from Golden Gate University, School of Law in 2022, with specializations in Intellectual Property and Public Interest. During law school, she received a CALI Award in Intellectual Property Law Survey, wrote for the Environmental Law Journal, and was a member of the Moot Court Board and the Pro Bono Honor Society. She also served as a teaching assistant for Criminal Law Professor Thomas Schaaf. In 2017, Mujghan received a Bachelor of Arts in Political Science from the University of California, Irvine.

Her prior legal experience includes internships with the Los Angeles County Counsel's Property Division, Homeless Advocacy Project, Bay Area Legal Aid's Economic Justice Unit, and California Lawyers for the Arts. Before joining Bursor & Fisher, Mujghan served as a Foreclosure Prevention Attorney at Legal Assistance to the Elderly, where she litigated cases

involving wrongful foreclosure and financial elder abuse, and provided pro bono estate planning services to low-income seniors in San Francisco.

INES DIAZ

Ines Diaz is an Associate with Bursor & Fisher, P.A. Ines focuses her practice on complex civil litigation and class actions.

Ines is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Ines received her Juris Doctor in 2023 from the University of California, Berkeley School of Law. During law school, Ines served as an Executive Editor of the California Law Review. She also served as an intern with the East Bay Community Law Center's Immigration Clinic and as a Fellow of the Berkeley Law Academic Skills Program. Additionally, Ines served as an instructor with the University of California, Berkeley Extension, Legal Studies Global Access Program where she taught legal writing to international law students. In 2021, Ines was selected for a summer externship at the California Supreme Court where she served as a judicial extern for the Honorable Mariano-Florentino Cuéllar.

CAROLINE C. DONOVAN

Caroline C. Donovan is an Associate with Bursor & Fisher, P.A. Caroline focuses her practice on complex civil litigation, data protection, mass arbitration, and class actions. Caroline interned with Bursor & Fisher during her third year of law school before joining full time in Fall 2023.

Caroline is admitted to the State Bar of New York.

Caroline received her Juris Doctor in 2023 from Brooklyn Law School. During law school, Caroline was a member of the Moot Court Honor Society Trial Division, where she was chosen to serve as a National Team Member. Caroline competed and coached in numerous competitions across the country, and placed second at regionals in AAJ's national competition in both her second and third year of law school. Caroline was also the President of the Art Law Association, and the Treasurer of the Labor and Employment Law Association.

During law school, Caroline was a judicial intern for Judge Kenneth W. Chu of the National Labor Relations Board. She also interned at the United States Attorney's Office in the Eastern District of New York, as well as a securities class action firm.

JOSHUA B. GLATT

Joshua Glatt is an Associate with Bursor & Fisher, P.A. Joshua focuses his practice on complex civil litigation and consumer class actions. Joshua was a Summer Associate with Bursor & Fisher prior to joining the firm as an Associate.

Joshua is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Joshua earned his Juris Doctor from the University of California College of the Law, San Francisco (formerly U.C. Hastings). While there, he received a CALI Award for earning the highest grade in Constitutional Law II and served on the executive boards of the Jewish Law Students Association and the American Constitution Society. Prior to law school, Joshua graduated *summa cum laude* from the Walter Cronkite School of Journalism and Mass Communication at Arizona State University in 2016 and earned a master's degree from the University of Southern California in 2018.

JOSHUA R. WILNER

Joshua Wilner is an Associate with Bursor & Fisher, P.A. Joshua focuses his practice on complex civil litigation, data privacy, consumer protection, and class actions. Joshua was a Summer Associate at Bursor & Fisher prior to joining the firm full time in Fall 2023.

Joshua is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Joshua received his Juris Doctor in 2023 from Berkeley Law. During law school, he received the American Jurisprudence Award for Constitutional Law.

During law school, Joshua served on the board of the Berkeley Journal of Employment and Labor Law. Joshua also interned at Disability Rights California, Legal Aid at Work, and a private firm that worked closely with the ACLU of Northern California to enforce the California Racial Justice Act. In 2022 and 2023, Joshua worked as a research assistant for Professor Abbye Atkinson.

VICTORIA ZHOU

Victoria Zhou is an Associate in Bursor & Fisher's New York office. Victoria focuses her practice on class actions concerning data privacy and consumer protection.

Victoria is admitted to the State Bar of New York.

Victoria received her Juris Doctor from Fordham Law School in 2023. During law school, Victoria served as an Associate Editor of the Moot Court Board and competed in multiple mock trial competitions as a member of the Brendan Moore Trial Advocates. In addition, Victoria served as a judicial extern to Chief Judge Mark A. Barnett of the United States Court of International Trade. In 2019, Victoria graduated *magna cum laude* from Fei Tian College with a B.F.A. in Classical Dance.

KYLE D. GORDON

Kyle Gordon is an Associate with Bursor & Fisher, P.A. Kyle focuses his practice on class actions concerning data privacy and consumer protection. Kyle was a Summer Associate with Bursor & Fisher prior to joining the firm.

Kyle is admitted to the State Bar of New York.

Kyle received his Juris Doctor from Columbia Law School in 2023, where he was a Harlan Fiske Stone Scholar. During law school, Kyle was a Staff Editor for the Columbia Science and Technology Law Review. In 2020, Kyle graduated *summa cum laude* from New York University with a B.A. in Politics and became a member of Phi Beta Kappa. Prior to law school, Kyle interned in the Clerk's Office of the United States District Court for the District of Columbia.

ELEANOR R. GRASSO

Eleanor Grasso is an Associate with Bursor & Fisher, P.A. Eleanor focuses her practice on complex civil litigation, including data privacy and consumer protection class actions.

Eleanor is admitted to the State Bars of New York and Florida, and is a member of the bars of the United States District Courts for the Southern District of New York and Eastern District of New York.

Eleanor earned her Juris Doctor from Fordham University School of Law. During law school, Eleanor was a member of the Fordham Journal of Intellectual Property, Media & Entertainment Law, serving as Symposium Editor for Volume XXXIV. Eleanor was also a member of the Brendan Moore Trial Advocacy Team, served as a Research Assistant, and was a member of the Board of Student Advisors.

Throughout her time in law school, Eleanor interned for the Office of the Public Defender for the Sixth Judicial Circuit of Florida in the Misdemeanor Unit, the Office of the Federal Public Defender for the Middle District of Tennessee in the Capital Habeas Unit, the ACLU of Florida, and for the Honorable Kiyo A. Matsumoto in the United States District Court for the Eastern District of New York. Eleanor was a Summer Associate with Bursor & Fisher and also interned part-time during her third year of law school.

Eleanor earned her Bachelors from the University of Florida, with a double-major in Criminology & Law and Political Science and a minor in French & Francophone studies.

RYAN B. MARTIN

Ryan Martin is an Associate with Bursor & Fisher, P.A. Ryan focuses his practice on complex civil litigation and consumer class actions. He was a Summer Associate and part-time law clerk with Bursor & Fisher prior to joining the firm as a full time Associate in August 2024.

Ryan is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

He earned his Juris Doctor from the University of California College of the Law, San Francisco (formerly U.C. Hastings), graduating *Cum Laude* with a Concentration in Environmental Law and as a member of the Honors Society. While there, he was a Senior Production Editor of the *U.C. Law Journal*, was President of the Hastings Environmental Law Association, and was a Torts Teaching Fellow.

Prior to law school, Ryan graduated from the W.A. Franke College of Business at Northern Arizona University with a Bachelors of Science in Hotel and Restaurant Management and a minor in Business. Ryan also studied Sustainable Business and Hotel Management at the Internationale Hochschule of Applied Sciences in Bad Honnef Germany and is a certified yoga instructor.

LOGAN HAGERTY

Logan Hagerty is an Associate with Bursor & Fisher, P.A. Logan is admitted to the State Bar of New York and the Southern District of New York.

Logan received his Juris Doctor from Boston College Law School in 2024, where he received a certificate in Land & Environmental Law.

During law school, Logan was President of the Environmental Law Society. In addition, Logan worked for a class action firm, a general practice firm, and interned at a Massachusetts state agency.

Logan earned his Bachelors from St. Lawrence University, where he graduated magna cum laude with a double major in History and Environmental Studies and a minor in African Studies. He is also a member of Phi Beta Kappa.

KAREN VALENZUELA

Karen Valenzuela is an Associate with Bursor & Fisher, P.A. Karen focuses her practice on complex civil litigation and class actions. Karen was a Summer Associate and a part-time intern with Bursor & Fisher prior to joining the firm as a full-time Associate.

Karen is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Karen received her Juris Doctor in 2024 from the University of California, Berkeley School of Law. During law school, Karen was part of the Consumer Protection Public Policy Order, and interned for the Los Angeles County Public Defender's Office. Karen also participated in the International Human Rights Law Clinic, La Alianza Workers' and Tenants' Rights Clinic, and the Death Penalty Clinic.

Prior to law school, Karen graduated from the University of California, Berkeley with a B.A. in Gender and Women's Studies and a minor in Global Poverty and Practice.

FILED
11/17/2025 2:38 PM
Mariyana T. Spyropoulos
CIRCUIT CLERK
COOK COUNTY, IL
2025CH06466
Calendar, 16
35392723

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

SHAYLA MARCOTTE, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

CAVU ECOMMERCE (AMER) LLC,

Defendant.

Civil Action No.: 2025CH06466

Hon. David B. Atkins

**DECLARATION OF CAMERON R. AZARI, ESQ. REGARDING IMPLEMENTATION
AND ADEQUACY OF NOTICE PLAN**

I, Cameron R. Azari, Esq., hereby declare and state as follows:

1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.
2. I am a nationally recognized expert in the field of legal notice and have served as an expert in hundreds of federal and state cases involving class action notice plans.
3. I am a Senior Vice President of Epiq Class Action & Claims Solutions, Inc. (“Epiq”) and the Managing Director of Epiq Legal Noticing (aka Hilsoft Notifications), a business unit of Epiq that specializes in designing, developing, analyzing, and implementing large-scale, un-biased, legal notice plans.
4. Epiq is an industry leader in class action administration, having implemented more than a thousand successful class action notice and settlement administration matters. Epiq Legal Noticing has handled some of the most complex and significant notice programs in recent history, examples of which are discussed below. With experience in more than 700 cases, including more than 75 multidistrict litigation settlements, Epiq Legal Noticing has prepared notices that have appeared in 53 languages and been distributed in almost every country, territory, and dependency in the world. Courts have recognized and approved numerous notice plans developed by Epiq Legal Noticing, and those decisions have invariably withstood appellate review.

DECLARATION OF CAMERON R. AZARI, ESQ. REGARDING IMPLEMENTATION AND
ADEQUACY OF NOTICE PLAN

RELEVANT EXPERIENCE

5. I have served as a notice expert and have been recognized and appointed by courts to design and provide notice in many significant cases, including:

a) *In re Juul Labs, Inc. Marketing, Sales Practices, and Products Liability Litigation* 19-md-02913 (N.D. Cal.), involved two settlements totaling \$300 million for JUUL Labs, Inc. and Altria, which alleged consumers were misled about JUUL products' addictiveness and safety, causing them to pay more, and that JUUL products were unlawfully marketed to minors. Two companion notice programs were implemented with more than 10.7 million email notices and nearly 500,000 postcard notices sent to potential class members and comprehensive media efforts (over 936 million impressions delivered). The notice programs each reached approximately 80% of the class nationwide.

b) *In Re: Zoom Video Communications, Inc. Privacy Litigation*, 3:20-cv-02155 (N.D. Cal.), involved an extensive notice plan for a \$85 million privacy settlement involving Zoom, the most popular videoconferencing platform. Notice was sent to more than 158 million class members by email or mail, and millions of reminder notices were sent to stimulate claim filings. The individual notice efforts reached approximately 91% of the class. A supplemental media campaign provided notice via regional newspaper notice, nationally distributed digital and social media notice (delivering more than 280 million impressions), sponsored search, an informational release, and a settlement website.

c) *In re Takata Airbag Products Liability Litigation*, MDL No. 2599, 1:15-md-02599 (S.D. Fla.), involved \$1.91 billion in settlements with BMW, Mazda, Subaru, Toyota, Honda, Nissan, Ford, and Volkswagen regarding Takata airbags. The notice programs included individual mailed notice to more than 61.8 million potential class members and extensive nationwide media via consumer publications, U.S. Territory newspapers, radio, digital notices, mobile digital notices, and behaviorally targeted digital media. Combined, the notice programs reached more than 95% of adults aged 18+ in the U.S. who owned or leased a subject vehicle, with a frequency of 4.0 times each.

DECLARATION OF CAMERON R. AZARI, ESQ. REGARDING IMPLEMENTATION AND
ADEQUACY OF NOTICE PLAN

d) *In Re: Capital One Consumer Data Security Breach Litigation*, MDL No. 2915, 1:19-md-02915 (E.D. Va.), involved an extensive notice program for a \$190 million data breach settlement. Notice was sent to more than 93.6 million settlement class members by email or mail. The individual notice efforts reached approximately 96% of the identified settlement class members and were enhanced by a supplemental media plan that included digital and social media notices (delivering more than 123.4 million impressions), sponsored search, and a settlement website.

e) *In re: Disposable Contact Lens Antitrust Litigation*, 3:15-md-02626 (M.D. Fla.), involved several notice programs to notify retail purchasers of disposable contact lenses for four separate settlements totaling \$88 million. For each notice program more than 1.98 million email or postcard notices were sent to potential class members and a comprehensive media plan was implemented, with a well-read nationwide consumer publication, internet digital notices (delivering more than 312.9 million – 461.4 million impressions per campaign), sponsored search listings, and a case website.

f) *In re U.S. Office of Personnel Management Data Security Breach Litigation* MDL No. 2664, 15-cv-01394 (D.D.C.), involved a \$63 million settlement for compromised personal information of then-current and former federal government employees and contractors, and certain applicants for federal employment. An extensive nationwide media notice campaign was implemented using magazines, digital and social media notices (delivering more than 758 million impressions), traditional and satellite radio, and other forms of media. The media notice reached at least 85% of the class. In addition, more than 3.5 million email notices and/or postcard notices were sent to identified class members. The notice program was supplemented with outreach to unions and associations, sponsored search listings, an informational release, and a settlement website.

g) *In re: fairlife Milk Products Marketing and Sales Practices Litigation*, 1:19-cv-03924 (N.D. Ill.), involved a \$21 million settlement against The Coca-Cola Company, fairlife, LLC, and other defendants alleging false labeling and marketing of fairlife milk products. A

comprehensive media plan was implemented with a consumer print publication notice, targeted digital and social media notices (delivering more than 620.1 million impressions in English and Spanish nationwide). Combined with individual notice to a small percentage of the class, the notice plan reached approximately 80.2% of the class. The reach was further enhanced by sponsored search, an informational release, and a website.

h) *In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, MDL No. 1720 (E.D.N.Y.). Second Circuit affirmed. *See Fikes Wholesale, Inc. v. Visa U.S.A., Inc.* 62 F.4th 704 (2d Cir. 2023). The case involved a \$5.5 billion settlement reached by Visa and MasterCard. An intensive initial notice program included more than 19.8 million direct mail notices sent to potential class members, together with insertions in over 1,500 newspapers, consumer magazines, national business publications, trade and specialty publications, with notices in multiple languages, and a digital notice campaign (delivering more than 770 million adult impressions). Sponsored search listings and a settlement website in eight languages expanded the notice program. For the subsequent settlement reached by Visa and MasterCard, an extensive notice program was implemented, which included over 16.3 million direct mail notices to class members together with more than 354 print publication insertions and digital notices (delivering more than 689 million adult impressions).

i) *In re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010*, MDL No. 2179 (E.D. La.), involved landmark settlement notice programs to distinct “Economic and Property Damages” and “Medical Benefits” settlement classes for BP’s \$7.8 billion settlement of claims related to the Deepwater Horizon oil spill. Notice efforts included more than 7,900 television spots, 5,200 radio spots, and 5,400 print insertions and reached over 95% of Gulf Coast residents.

6. Courts have recognized our testimony as to which method of notification is appropriate for a given case, and I have provided testimony on numerous occasions on whether a certain method of notice represents the best notice practicable under the circumstances. Numerous court opinions and comments regarding my testimony, and the adequacy of our notice efforts, are

included in the Epiq Legal Noticing *curriculum vitae* included as **Attachment 1**.

7. In forming expert opinions, my staff and I draw from our in-depth class action case experience, as well as our educational and related work experiences. I am an active member of the Oregon State Bar, having received my Bachelor of Science from Willamette University and my Juris Doctor from Northwestern School of Law at Lewis and Clark College. I have served as the Director of Legal Notice for Epiq since 2008 and have overseen the detailed planning of virtually all our court-approved notice programs during that time. Overall, I have more than 25 years of experience in the design and implementation of legal notification and claims administration programs, having been personally involved in well over one hundred successful notice programs.

8. The facts in this declaration are based on my personal knowledge, as well as information provided to me by my colleagues in the ordinary course of my business at Epiq and Epiq Legal Noticing (hereinafter “Epiq”).

OVERVIEW

9. This declaration describes the successful implementation of the Settlement notice plan (“Notice Plan”) and notices (the “Notice” or “Notices”) for *Shayla Marcotte v. CAVU eCommerce (AMER) LLC*, Case No. 2025CH06466, pending in the Circuit Court of Cook County, Illinois. Epiq designed this Notice Plan based on our extensive prior experience and research into the notice issues particular to this Settlement. The Notice Plan as designed and implemented was the best method practicable under the circumstances to provide notice to the Settlement Class.

DATA PRIVACY AND SECURITY

10. Epiq has procedures in place to protect the security of class data. As with all cases, Epiq maintains extensive data security and privacy safeguards in its official capacity as the Settlement Administrator for this Action. A Services Agreement, which formally retains Epiq as the Settlement Administrator, governs Epiq’s administration responsibilities for the Action. Epiq maintains adequate insurance in case of errors.

11. With respect to the data it receives, collects, and otherwise hosts, Epiq serves as a data processor and acts only at the direction of the designated data controller or of the Court, as described in applicable contracts, statements of work, and/or Court documents and Orders. Epiq does not utilize or perform other procedures on personal data provided or obtained as part of services as Settlement Administrator. Epiq does not use any information provided by Settlement Class Members for any other purpose than the administration of this Action. Specifically, Settlement Class Member information is not used, disseminated, or disclosed by or to any other person for any other purpose unrelated to the administration of this Action.

12. The security and privacy of clients' and class members' information and data are paramount to Epiq. That is why Epiq has invested in a layered and robust set of trusted security personnel, controls, and technology to protect the data we handle. To promote a secure environment for client and class member data, industry leading firewalls and intrusion prevention systems protect and monitor Epiq's network perimeter with regular vulnerability scans and penetration tests. Epiq deploys best-in-class endpoint detection, response, and anti-virus solutions on our endpoints and servers. Strong authentication mechanisms and multi-factor authentication are required for access to Epiq's systems and the data we protect. In addition, Epiq has employed the use of behavior and signature-based analytics as well as monitoring tools across our entire network, which are managed 24 hours per day, 7 days per week, by a team of experienced professionals.

13. Epiq's world class data centers are defended by multi-layered, physical access security, including formal ID and prior approval before access is granted, closed-circuit television ("CCTV"), alarms, biometric devices, and security guards, 24 hours per day, 7 days per week. Epiq manages minimum Tier 3+ data centers in 18 locations worldwide. Our centers have robust environmental controls including uninterruptable power supply ("UPS"), fire detection and suppression controls, flood protection, and cooling systems.

14. Beyond Epiq's technology, our people play a vital role in protecting class members' and our clients' information. Epiq has a dedicated information security team comprised of highly

trained, experienced, and qualified security professionals. Our teams stay on top of important security issues and retain important industry standard certifications, like SysAdmin, Audit, Network, and Security (“SANS”), Certified Information Systems Security Professional (“CISSP”), and Certified Information Systems Auditor (“CISA”). Epiq is continually improving security infrastructure and processes based on an ever-changing digital landscape. Epiq also partners with best-in-class security service providers. Our robust policies and processes cover all aspects of information security to form part of an industry leading security and compliance program, which is regularly assessed by independent third parties.

15. Epiq holds several industry certifications including: Trusted Information Security Assessment Exchange (“TISAX”), Cyber Essentials, Privacy Shield, and ISO 27001. In addition to retaining these certifications, we are aligned to Health Insurance Portability and Accountability Act (“HIPAA”), National Institute of Standards and Technology (“NIST”), and Federal Information Security Management Act (“FISMA”) frameworks. Epiq follows local, national, and international privacy regulations. To support our business and staff, Epiq has a dedicated team to facilitate and monitor compliance with privacy policies. Epiq is also committed to a culture of security mindfulness. All employees routinely undergo cybersecurity trainings to ensure that safeguarding information and cybersecurity vigilance is a core practice in all aspects of the work our teams complete.

16. Upon completion of a project, Epiq continues to host all data until otherwise instructed in writing by a customer to delete, archive or return such data. When a customer requests that Epiq delete or destroy all data, Epiq agrees to delete or destroy all such data; provided, however, that Epiq may retain data as required by applicable law, rule or regulation, and to the extent such copies are electronically stored in accordance with Epiq’s record retention or back-up policies or procedures (including those regarding electronic communications) then in effect. Epiq keeps data in line with client retention requirements. If no retention period is specified, Epiq returns the data to the client or securely deletes it as appropriate.

NOTICE PLAN SUMMARY

17. Illinois Code of Civil Procedure Sec. 2-803 states, “Upon a determination that an action may be maintained as a class action, or at any time during the conduct of the action, the court in its discretion may order such notice that it deems necessary to protect the interests of the class and the parties.”¹ The Notice Plan as implemented satisfied these requirements.

18. The Notice Plan as designed and implemented reached the greatest practicable number of Settlement Class Members. The Notice Plan individual notice efforts via email reached approximately 92.8% of the identified Settlement Class. The reach was further enhanced by a settlement website. In my experience, the reach of the Notice Plan was consistent with other court-approved notice plans, was the best method practicable under the circumstances of this case, and satisfied the requirements of due process, including its “desire to actually inform” requirement.²

NOTICE PLAN DETAIL

19. On August 26, 2025, the Court approved the Notice Plan and appointed Epiq as the Settlement Administrator in the *Preliminary Approval Order* (“Preliminary Approval Order”). In the Preliminary Approval Order, the Court approved and conditionally certified, for settlement purposes only, the following “Settlement Class”:

All California residents who made a reservation through airportparkingreservations.com or airportparking.com and paid a mandatory “Service Charge” at checkout from July 1, 2024 to March 10, 2025.

Excluded from the Settlement Class are: (1) any Judge or Magistrate presiding over this Action and members of their families; (2) CAVU, CAVU’s subsidiaries, parent companies, successors, predecessors, and any entity in which CAVU or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (3) Persons who properly execute and file a timely request for exclusion from

¹ 735 ILCS 5/2-803.

² *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950) (“But when notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . .”).

the Class; and (4) legal representatives, successors or assigns of any excluded Persons.

20. After the Court's Preliminary Approval Order was entered, Epiq implemented the Notice Plan. This declaration details the notice activities undertaken to date and explains how and why the Notice Program was comprehensive and well-suited to reach the Settlement Class Members. This declaration also discusses the administration activity to date.

NOTICE PLAN

Individual Notice

21. On September 3, 2025, Epiq received one data file with 57,325 records for identified Settlement Class Members, which included names, last known email addresses, and the total amount of Out-of-Pocket Fees paid by each Settlement Class Member, to the extent available ("Class List"). Epiq deduplicated and rolled-up the records and loaded the unique, identified Settlement Class Member records into its database. These efforts resulted in 57,306 unique, identified Settlement Class Member records (of these, 145 records did not have a valid email address and were not sent Notice).

Individual Notice – Email Notice

22. On September 22 2025, Epiq commenced sending 57,161 Email Notices to all identified Settlement Class Members for whom a valid email address was available. The following industry standard best practices were followed. The Email Notice was drafted in such a way that the subject line, the sender, and the body of the message overcame SPAM filters and ensured readership to the fullest extent reasonably practicable. For instance, the Email Notice used an embedded html text format. This format provided easy-to-read text without graphics, tables, images, and other elements that in our experience would have increased the likelihood that the message would have been blocked by Internet Service Providers (ISPs) and/or SPAM filters for this type of email communication. The Email Notices were sent from an IP address known to major email providers as one not used to send bulk "SPAM" or "junk" email blasts. Each Email Notice was transmitted with a digital signature to the header and content of the Email Notice, which allowed ISPs to programmatically authenticate that the Email Notices were from our

authorized mail servers. Each Email Notice was also transmitted with a unique message identifier. The Email Notice included an embedded link to the settlement website. By clicking the link, recipients were able to access the Long Form Notice and other information about the Settlement. The Email Notice is included as **Attachment 2**.

23. If the receiving email server could not deliver the message, a “bounce code” was returned along with the unique message identifier. For any Email Notice for which a bounce code was received indicating that the message was undeliverable for reasons such as inactive or disabled account, the recipient’s mailbox was full, technical autoreplies, etc., at least two additional attempts were made to deliver the Notice by email.

24. Additionally, a Long Form Notice and Claim Form (“Claim Package”) was mailed to all persons who requested one via the toll-free telephone number or by other means. As of November 17, 2025, Epiq mailed five Claim Packages as a result of such requests. The Long Form Notice is included as **Attachment 3**. The Claim Form is included as **Attachment 4**.

Notice Results

25. As of November 17, 2025, an Email Notice was delivered to 53,182 of the 57,306 unique, identified Settlement Class Members. This means the individual notice efforts reached approximately 92.8% of the identified Settlement Class.

Reminder Notice

26. Prior to the Claims Deadline, Epiq will send Email Reminder Notices to all identified Settlement Class Members with a valid email address that was not previously returned as undeliverable and who have not submitted a Claim Form or requested exclusion from the Settlement.

Settlement Website

27. On September 22, 2025, Epiq established a dedicated website for the Settlement with an easy to remember domain name (www.CAVUServiceChargeSettlement.com). Settlement Class Members are able to obtain detailed information about the Settlement and review key documents, including the Claim Form, Long Form Notice, Preliminary Approval Order, Settlement Agreement, and other important court documents. In addition, the settlement website

includes relevant dates, answers to frequently asked questions (“FAQs”), instructions for how Settlement Class Members could opt-out (request exclusion) from or object to the Settlement prior to the deadlines, contact information for the Settlement Administrator, and how to obtain other case-related information. Settlement Class Members are able to file a Claim Form on the settlement website. Settlement Class Members were also able to submit an online request for exclusion prior to the Exclusion Deadline. The settlement website address was prominently displayed in all Notice documents. As of November 17, 2025, there have been 7,478 unique visitor sessions to the settlement website, and 14,689 web pages have been presented.

Toll-Free Telephone Number

28. On September 22, 2025, Epiq established a toll-free telephone number (1-888-887-5409) for the Settlement. Callers are able to hear an introductory message and have the option to learn more about the Settlement in the form of recorded answers to FAQs and to request that a Claim Package be mailed to them. This automated telephone system is available 24 hours per day, 7 days per week. The toll-free telephone number was prominently displayed in all Notice documents. As of November 17, 2025, there have been 19 calls to the toll-free telephone number representing 42 minutes of use.

29. A postal mailing address was established and continues to be available, allowing Settlement Class Members the opportunity to request additional information or ask questions.

Request for Exclusion and Objections

30. The deadline to request exclusion from the Settlement or to object to the Settlement was November 7, 2025. As of November 17, 2025, Epiq has received one request for exclusion. As of November 17, 2025, Epiq is aware of no objections to the Settlement. The Exclusion Report is included as **Attachment 5**.

Claim Submission & Distribution Options

31. The Notices provided a detailed summary of the relevant information about the Settlement, including the settlement website address and how Settlement Class Members can file a Claim Form online or by mail. With any method of submitting a Claim Form, Settlement Class

Members are given the option of receiving a digital payment or traditional paper check. Epiq worked with counsel for the parties to select an appropriate menu of payment options. The type of digital payment selected does not impact Epiq's compensation for its work as the Settlement Administrator, and no digital option is discouraged relative to other options.

32. The Claims Deadline for Settlement Class Members to file a Claim Form is January 15, 2026. As of November 17, 2025, Epiq has received 1,939 Claim Forms (1,721 online and 218 paper). Since the Claims Deadline has not yet passed, these numbers are preliminary. As standard practice, Epiq is in the process of conducting a complete quality control review of Claim Forms received. There is a likelihood that after detailed review, the total number of Claim Forms received will change due to duplicate and denied Claim Forms.

CONCLUSION

33. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, by state and local rules and statutes, and further by case law pertaining to notice. This framework directs that the notice plan be designed to reach the greatest practicable number of Settlement Class Members and, in a settlement class action notice such as this, that the notice or notice plan itself not limit knowledge of the availability of benefits—nor the ability to exercise other options—to Settlement Class Members in any way. All of these requirements were met in this case.

34. The Notice Plan individual notice effort via email to identified Settlement Class Members reached approximately 92.8% of the identified Settlement Class. The reach was further enhanced by a settlement website. In 2010, the Federal Judicial Center ("FJC") issued a *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*, which is relied upon for federal cases, and is illustrative for state courts. This Guide states that, "the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice

efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%.”³ Here, we have developed a Notice Plan that readily achieve a reach within that standard.

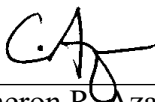
35. The Notice Plan followed the guidance for satisfying due process obligations that a notice expert gleans from the United States Supreme Court’s seminal decisions, which emphasize the need: (a) to endeavor to actually inform the Settlement Classes, and (b) to ensure that notice is reasonably calculated to do so.

- a) “[W]hen notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it,” *Mullane v. Central Hanover Trust*, 339 U.S. 306, 315 (1950); and
- b) “[N]otice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections,” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974) (citing *Mullane*, 339 U.S. at 314).

36. The Notice Plan conformed to all aspects of Illinois Code of Civil Procedure Sec. 2-803 regarding notice, comported with the guidance for effective notice articulated in the Manual for Complex Litigation, Fourth and applicable FJC materials, and satisfied the requirements of due process, including its “desire to actually inform” requirement.

37. The Notice Plan schedule afforded sufficient time to provide full and proper notice to the Settlement Class Members before the Objection/Exclusion Deadline.

38. I declare under penalty of perjury that the foregoing is true and correct. Executed on November 17, 2025.



Cameron R. Azari, Esq.

³ FED. JUDICIAL CTR, JUDGES’ CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE 3 (2010), available at <https://www.fjc.gov/content/judges-class-action-notice-and-claims-process-checklist-and-plain-language-guide-0>.

Attachment 1

epiq

legal noticingSM

FILED DATE: 11/17/2025 3:33 PM 2025CH06466



Legal Noticing Experts

Epiq Legal Noticing is a leading global provider of legal noticing services. Our team of recognized noticing experts provide superior notice programs that satisfy due-process requirements and withstand judicial scrutiny. For over 30 years, our notice programs and notices have been approved and upheld by courts.

We have handled over 700 cases, including over 75 MDL case settlements. Our notices have appeared in over 53 languages and in almost every country, territory, and dependency in the world.

Epiq Legal Noticing (a/k/a Hilsoft Notifications) is a business unit of Epiq Class Action & Claims Solutions, Inc. ("Epiq"). www.EpiqLegalNoticing.com.



Case Expertise

In re Juul Labs, Inc. Marketing, Sales Practices, and Products Liability Litigation 19-md-02913 (N.D. Cal.)

For two settlements totaling \$300 million involving JUUL Labs, Inc. and Altria, Epiq designed and implemented cutting-edge, companion notice programs. The settlements alleged consumers were misled about JUUL products' addictiveness and safety, causing them to pay more, and that JUUL products were unlawfully marketed to minors. For the notice programs, over 10.7 million email notices and nearly 500,000 postcard notices were sent to potential class members, and a comprehensive media plan was implemented (over 936 million impressions delivered). The notice programs each reached approximately 80% of the class nationwide with combined individual notice and media notice.

10.7M
email notices

836M
digital impressions

80%
of class reached

\$190M
settlement

93.6M
email or mail
notices

96%
of class reached

In re Capital One Consumer Data Security Breach Litigation MDL No. 2915, 1:19-md-02915 (E.D. Va.)

For a \$190 million data breach settlement involving Capital One, Epiq implemented an extensive notice program. Notice was sent to over 93.6 million settlement class members by email or mail. The individual notice efforts reached approximately 96% of the identified settlement class members. In addition, a supplemental media campaign was implemented and enhanced the notice program with digital and social media notices (over 123.4 million impressions delivered), sponsored search listings, and a settlement website.

In re Zoom Video Communications, Inc. Privacy Litigation 3:20-cv-02155 (N.D. Cal.)

Epiq designed and implemented an extensive notice program for a \$85 million privacy settlement involving Zoom, the most popular video-conferencing platform. Notice was sent to over 158 million class members by email or mail, and millions of reminder notices were sent to stimulate claim filings. The individual notice efforts reached approximately 91% of the class. A supplemental media campaign provided notice via regional newspaper and nationally distributed digital and social media notices (over 280 million impressions delivered), along with sponsored search listings, an informational release, and a settlement website.

\$85M
settlement

158M
email or mail
notices

91%
of class reached

Case Expertise

FILED DATE: 11/17/2025 2:38 PM 2025CH06466

\$5.5B
settlement

36.1M
mail notices

1.45B
digital impressions

In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation MDL No. 1720, 1:05-md-01720, (E.D.N.Y.). Second Circuit affirmed. See *Fikes Wholesale, Inc. v. Visa U.S.A., Inc.* 62 F.4th 704 (2d Cir. 2023)

For a landmark \$5.5 billion settlement reached by Visa and MasterCard, Epiq implemented an extensive initial notice program with over 19.8 million direct mail notices together with insertions in over 1,500 newspapers, consumer magazines, national business publications, and trade and specialty publications, with notices in multiple languages, and a digital notice campaign that generated over 770 million impressions. Sponsored search listings and a website in eight languages expanded the notice efforts. Subsequently, Epiq implemented a notice program with over 16.3 million direct mail notices, over 354 print publication insertions, and digital notices that generated over 689 million impressions.

In re fairlife Milk Products Marketing and Sales Practices Litigation 1:19-cv-03924 (N.D. Ill.)

For a \$21 million settlement that involved The Coca-Cola Company, fairlife, LLC, and other defendants regarding allegations of false labeling and marketing of fairlife milk products, Epiq designed and implemented a media based notice program. The program included a consumer print publication notice, targeted digital and social media notices (over 620.1 million impressions delivered in English and Spanish nationwide). Combined with individual notice to a small percentage of the class, the notice program reached approximately 80.2% of the class. The reach was further enhanced by sponsored search listings, an informational release, and a settlement website.

\$21M
settlement

620.1M
digital impressions

80.2%
of class reached

\$1.91B
settlements

61.8M
mail notices

95%
reach of notice
program

In re Takata Airbag Products Liability Litigation MDL No. 2599 (S.D. Fla.)

Epiq designed and implemented numerous monumental notice campaigns to notify current or former owners or lessees of certain BMW, Mazda, Subaru, Toyota, Honda, Nissan, Ford, and Volkswagen vehicles as part of \$1.91 billion in settlements regarding Takata airbags. The notice programs included mailed notice to over 61.8 million potential class members and notice via consumer publications, U.S. Territory newspapers, radio, digital notices, mobile notices, and behaviorally targeted digital media. Combined, the notice programs reached over 95% of adults aged 18+ in the U.S. who owned or leased a subject vehicle, 4.0 times each.

Case Expertise

In re Morgan Stanley Data Security Litigation 1:20-cv-05914 (S.D.N.Y.)

For a \$60 million settlement for Morgan Stanley Smith Barney's account holders in response to "Data Security Incidents," Epiq designed and implemented an individual notice program. Over 13.8 million email or mailed notices were delivered, reaching approximately 90% of the identified potential settlement class members. The individual notice efforts were supplemented with nationwide newspaper notice and a settlement website.

\$60M
settlement

13.8M
email or mail
notices

\$88M
settlements

7.92M
email or mail
notices

In re Disposable Contact Lens Antitrust Litigation 3:15-md-02626 (M.D. Fla.)

Epiq implemented notice programs for retail purchasers of disposable contact lenses in four settlements totaling \$88 million. For each notice program, over 1.98 million email or postcard notices were sent to potential class members and a comprehensive media plan was implemented, with a robust, nationwide consumer publication, digital notices (over 312.9 million – 461.4 million impressions delivered per campaign), sponsored search listings, and a settlement website.

Yamagata et al. v. Reckitt Benckiser LLC 3:17-cv-03529 (N.D. Cal.)

For a \$50 million settlement on behalf of certain purchasers of Schiff Move Free® Advanced glucosamine supplements, nearly 4 million email notices and 1.1 million postcard notices were sent. The individual notice efforts sent by Epiq were delivered to approximately 98.5% of the identified class sent notice. A media campaign with digital notices and sponsored search listings combined with the individual notice efforts reached at least 80% of the class.

\$50M
settlement

5.1M
email or mail
notices

\$63M
settlement

758M
digital impressions

85%
of class reached

In re U.S. Office of Personnel Management Data Security Breach Litigation MDL No. 2664, 15-cv-01394 (D.D.C.)

For a \$63 million settlement, Epiq designed and implemented an extensive, nationwide media notice campaign using magazines, digital and social media notices (over 758 million impressions delivered), traditional and satellite radio, and other forms of media. The media notice reached at least 85% of the class. In addition, over 3.5 million email notices and/or postcard notices were sent to identified class members. The individual notice and media notice were supplemented with outreach to unions and associations, sponsored search listings, an informational release, and a settlement website.

Case Expertise

In re Toll Roads Litigation 8:16-cv-00262 (C.D. Cal.)

Epiq implemented a notice program for several settlements alleging improper collection and sharing of PII of drivers on certain toll roads in the state of California. The settlements provided benefits of over \$175 million, including penalty forgiveness. Combined, over 13.8 million email or postcard notices were sent, reaching approximately 93% - 95% of class members across all settlements. Individual notice was supplemented with digital notices and notices in newspapers, geo-targeted within California. Sponsored search listings and a settlement website further extended the reach of the notice program.

\$175M
settlement
benefits

13.8M
email or mail
notices

93% – 95%
of class reached

In re Flint Water Cases 5:16-cv-10444, (E.D. Mich.)

In response to largescale municipal water contamination in Flint, Michigan, Epiq's expertise was relied upon to design and implement a comprehensive notice program that reached over 95% of the class. The program included direct mail notice and reminder email notice sent to identified class members, and a media plan with local newspaper publications, online video and audio ads, local television and radio ads, sponsored search listings, an informational release, a website, and digital and social media notices geo-targeted to Flint, Michigan and the state of Michigan.

geo-targeted
media noticing

95%
of class reached

Zanca et al. v. Epic Games, Inc. 21-CVS-534 (Sup. Ct. Wake Cnty., N.C.)

For a \$26.5 million settlement, Epiq designed and implemented a notice program to reach individuals 13+ in the U.S. who exchanged or purchased in-game virtual currency in *Fortnite* or *Rocket League*. Over 29 million email notices and 27 million reminder notices were sent to class members. In addition, a targeted media campaign was implemented with digital and social media notices, *Reddit* feed ads, and *YouTube* pre-roll ads, generating over 350.4 million impressions. Combined, the notice efforts reached approximately 93.7% of the class.

\$26.5M
settlement

29M
email notices

93.7%
of class reached

In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation (Bosch Settlement) MDL No. 2672 (N.D. Cal.)

Epiq executed a comprehensive notice program within the *Volkswagen Emissions Litigation* with individual notice to over 946,000 vehicle owners via first class mail and to over 855,000 vehicle owners via email. A targeted digital notice campaign further enhanced the notice efforts.

1.8M
mail or email
notice to vehicle
owners

Case Expertise

Hale v. State Farm Mutual Automobile Insurance Company et al. 3:12-cv-00660 (S.D. Ill.)

For a \$250 million settlement with 4.7 million class members, Epiq designed and implemented a notice program with postcard or email notice to over 1.43 million class members and a robust publication program that reached 78.8% of all U.S. adults aged 35+, approximately 2.4 times each.

\$250M
settlement

4.7M
class members

FILED DATE: 11/17/2025 2:38 PM 2025CH06466

one of the **largest, most complex** cases in **Canadian** history

In re Residential Schools Class Action Litigation 00-cv-192059 (Ont. Super. Ct.)

One of the largest and most complex class actions cases in Canadian history. Epiq handled groundbreaking notice to disparate, remote Indigenous people to provide notice of a multi-billion-dollar settlement.

In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010 MDL No. 2179 (E.D. La.)

For BP's \$7.8 billion settlement for the Deepwater Horizon oil spill, possibly the most complex class action case in U.S. history, Epiq opined on all forms of notice, and designed and implemented a dual notice program for "Economic and Property Damages" and "Medical Benefits." The notice program reached at least 95% of Gulf Coast region adults with over 7,900 TV spots, 5,200 radio spots, 5,400 print insertions in newspapers, consumer publications and trade journals, digital media, and individual notice. Epiq also implemented one of the largest claim deadline notice campaigns, with paid print, television, radio, and digital notice, reaching over 90% of adults aged 18+ in 26 identified Designated Market Areas ("DMAs") covering the Gulf Coast Areas, an average of 5.5 times each.

\$7.8B
settlement

7,900
tv spots

5,200
radio spots

5,400
print insertions

6.9M

email or mail notices

90%

of class reached

Vergara et al., v. Uber Technologies, Inc. 1:15-cv-06972 (N.D. Ill.)

For a \$20 million Telephone Consumer Protection Act settlement, Epiq sent mail or email notice to over 6.9 million class members and provided media notice via newspaper and digital notices and reached over 90% of the class.

In re Kaiser Gypsum Company, Inc. et al. 16-cv-31602 (Bankr. W.D. N.C.)

Epiq implemented an extensive notice effort for asbestos personal injury claims with nationwide consumer print, trade and union labor publications, digital notices, an informational release, and a website.

**asbestos, personal
injury claims
notice program**

Cameron Azari, Esq., Senior Vice President Epiq, Managing Director Epiq Legal Noticing



Cameron Azari, Esq. is a recognized international notice expert. He has over 24 years of experience in providing expert notice opinions regarding notice adequacy in compliance with Fed R. Civ. P. 23, state class action statutes, or international legal requirements in over 700 class action cases, including over 75 MDLs. He has testified in numerous cases and no notice program has been overturned. Cam is a trusted expert and consults directly with clients to share his extensive knowledge regarding all aspects of class action noticing.

He is an active author and speaker. Cam holds a J.D. from Northwestern School of Law at Lewis and Clark College and a B.S. from Willamette University. He is an active member of the Oregon State Bar. Cam can be reached at caza@epiqglobal.com.

Stephanie Fiereck, Esq., Senior Director Epiq Legal Noticing & Notice Expert Services



Stephanie Fiereck, Esq. leads our Notice Expert Services team. As a notice expert with over 24 years of legal experience, she consults with clients about all aspects of class action noticing. She has written over 1,000 expert notice adequacy declarations, and written or reviewed hundreds of notices, all approved by federal or state courts. Stephanie has a keen understanding of what judges are looking for, how to withstand judicial scrutiny, satisfy due process, and provide plain language notice to class members.

Prior to joining Epiq, she was a Vice President at Wells Fargo Bank for five years where she led the class action services business unit. She is an active author regarding class action notice. Stephanie holds a J.D. from the University of Oregon School of Law and a B.A. from St. Cloud State University. She is an active member of the Oregon State Bar. Stephanie can be reached at sfie@epiqglobal.com.

Kyle Bingham, Senior Director Epiq Legal Noticing & Media Noticing



Kyle Bingham leads the Media Noticing team, an in-house legal noticing advertising agency, and has over 15 years of experience in the advertising industry. He is a pivotal resource for researching, planning, and executing legal notice programs for class action, bankruptcy, and similar legal cases. Kyle's continued success with clients is a direct result of achieving media goals and ensuring that advertising is as efficient and impactful as possible. Kyle has also worked on over 500 CAFA notice mailings.

Prior to Epiq, Kyle worked at Wieden+Kennedy advertising agency for seven years, where he planned and purchased print, digital and broadcast media, managed multiple paid search accounts, and presented strategy and media campaigns to clients for multi-million-dollar branding campaigns. He received his B.A. from Willamette University. Kyle can be reached at kbingham@epiqglobal.com.

Experts' Articles and Presentations

- **Cameron Azari** Speaker, "Legal Noticing." Hausfeld, Washington, D.C., Sept. 2024.
- **Cameron Azari** Speaker, "Increase in Fraudulent Claims in Class Action and Mass Tort." Harris Martin MDL Conference, Portland, Maine, July 24, 2024.
- **Cameron Azari** Speaker, "Settlements." Class Action Litigation Forum – Plaintiffs' Bar, Dana Point, CA, May 9, 2024.
- **Cameron Azari** Speaker, "Consumer Class Action Notice/Fraud." Mass and Class Conference, Fort Lauderdale, FL, Mar. 6, 2024.
- **Cameron Azari** Speaker, "Rising Number of Privacy-Data-Breach Class Actions, including Those Centralized in MDLs, Temporary or Here to Stay? Consideration of Special Case-Management Procedures." Rabiej Litigation Law Center Class Action Conference, Virtual, July 20, 2023.
- **Cameron Azari** Chair, "Panel Discussion: Class Actions Case Management." Global Class Actions Symposium 2022, Amsterdam, The Netherlands, Nov. 17, 2022.
- **Cameron Azari** Speaker, "Driving Claims in Consumer Settlements: Notice/Claim Filing and Payments in the Digital Age." Mass Torts Made Perfect Bi-Annual Conference, Las Vegas, NV, Oct. 12, 2022.
- **Cameron Azari** Chair, "Panel Discussion: Class Actions Case Management." Global Class Actions Symposium 2021, London, UK, Nov. 16, 2021.
- **Cameron Azari** Speaker, "Mass Torts Made Perfect Bi-Annual Conference." Class Actions Abroad, Las Vegas, NV, Oct. 13, 2021.
- **Cameron Azari** Speaker, "Virtual Global Class Actions Symposium 2020, Class Actions Case Management Panel." Nov. 18, 2020.
- **Cameron Azari** Speaker, "Consumers and Class Action Notices: An FTC Workshop." Federal Trade Commission, Washington, DC, Oct. 29, 2019.
- **Cameron Azari** Speaker, "The New Outlook for Automotive Class Action Litigation: Coattails, Recalls, and Loss of Value/Diminution Cases." ACI's Automotive Product Liability Litigation Conference, American Conference Institute, Chicago, IL, July 18, 2019.
- **Cameron Azari** Moderator, "Prepare for the Future of Automotive Class Actions." Bloomberg Next, Webinar-CLE, Nov. 6, 2018.
- **Cameron Azari** Speaker, "The Battleground for Class Certification: Plaintiff and Defense Burdens, Commonality Requirements and Ascertainability." 30th National Forum on Consumer Finance Class Actions and Government Enforcement, Chicago, IL, July 17, 2018.
- **Cameron Azari** Speaker, "Recent Developments in Class Action Notice and Claims Administration." PLI's Class Action Litigation 2018 Conference, New York, NY, June 21, 2018.

Experts' Articles and Presentations

- **Cameron Azari** Speaker, "One Class Action or 50? Choice of Law Considerations as Potential Impediment to Nationwide Class Action Settlements." 5th Annual Western Regional CLE Program on Class Actions and Mass Torts, Clyde & Co LLP, San Francisco, CA, June 22, 2018.
- **Cameron Azari** and **Stephanie Fiereck** Co-Authors, *A Practical Guide to Chapter 11 Bankruptcy Publication Notice*. E-book, published, May 2017.
- **Cameron Azari** Featured Speaker, "Proposed Changes to Rule 23 Notice and Scrutiny of Claim Filing Rates." DC Consumer Class Action Lawyers Luncheon, Washington, DC, Dec. 6, 2016.
- **Cameron Azari** Speaker, "Recent Developments in Consumer Class Action Notice and Claims Administration." Berman DeValerio Litigation Group, San Francisco, CA, June 8, 2016.
- **Cameron Azari** Speaker, "2016 Cybersecurity & Privacy Summit. Moving From 'Issue Spotting' To Implementing a Mature Risk Management Model." King & Spalding, Atlanta, GA, Apr. 25, 2016.
- **Stephanie Fiereck** Author, "Tips for Responding to a Mega-Sized Data Breach." *Law360*, May 2016.
- **Cameron Azari** Speaker, "Live Cyber Incident Simulation Exercise." Advisen's Cyber Risk Insights Conference, London, UK, Feb. 10, 2015.
- **Cameron Azari** Speaker, "Pitfalls of Class Action Notice and Claims Administration." PLI's Class Action Litigation 2014 Conference, New York, NY, July 9, 2014.
- **Cameron Azari** and **Stephanie Fiereck** Co-Authors, "What You Need to Know About Frequency Capping In Online Class Action Notice Programs." *Class Action Litigation Report*, June 2014.
- **Cameron Azari** Speaker, "Class Settlement Update – Legal Notice and Court Expectations." PLI's 19th Annual Consumer Financial Services Institute Conference, New York, NY, Apr. 7-8, 2014.
- **Cameron Azari** Speaker, "Class Settlement Update – Legal Notice and Court Expectations." PLI's 19th Annual Consumer Financial Services Institute Conference, Chicago, IL, Apr. 28-29, 2014.
- **Stephanie Fiereck** Author, "Planning For The Next Mega-Sized Class Action Settlement." *Law360*, Feb. 2014.
- **Cameron Azari** Speaker, "Legal Notice in Consumer Finance Settlements - Recent Developments." ACI's Consumer Finance Class Actions and Litigation, New York, NY, Jan. 29-30, 2014.
- **Cameron Azari** Speaker, "Legal Notice in Building Products Cases." HarrisMartin's Construction Product Litigation Conference, Miami, FL, Oct. 25, 2013.

Experts' Articles and Presentations

- **Cameron Azari** and **Stephanie Fiereck** Co-Authors, "Class Action Legal Noticing: Plain Language Revisited." *Law360*, Apr. 2013.
- **Cameron Azari** Speaker, "Legal Notice in Consumer Finance Settlements Getting your Settlement Approved." ACI's Consumer Finance Class Actions and Litigation, New York, NY, Jan. 31-Feb. 1, 2013.
- **Cameron Azari** Speaker, "Perspectives from Class Action Claims Administrators: Email Notices and Response Rates." CLE International's 8th Annual Class Actions Conference, Los Angeles, CA, May 17-18, 2012.
- **Cameron Azari** Speaker, "Class Action Litigation Trends: A Look into New Cases, Theories of Liability & Updates on the Cases to Watch." ACI's Consumer Finance Class Actions and Litigation, New York, NY, Jan. 26-27, 2012.
- **Cameron Azari** Speaker, "Data Breaches Involving Consumer Financial Information: Litigation Exposures and Settlement Considerations." ACI's Consumer Finance Class Actions and Litigation, New York, NY, Jan. 2011.
- **Cameron Azari** Speaker, "Notice in Consumer Class Actions: Adequacy, Efficiency and Best Practices." CLE International's 5th Annual Class Action Conference: Prosecuting and Defending Complex Litigation, San Francisco, CA, 2009.
- **Cameron Azari** Author, "Clearing the Five Hurdles of Email - Delivery of Class Action Legal Notices." *Thomson Reuters Class Action Litigation Reporter*, June 2008.
- **Cameron Azari** Speaker, "Planning for a Smooth Settlement." ACI: Class Action Defense – Complex Settlement Administration for the Class Action Litigator, Phoenix, AZ, 2007.
- **Cameron Azari** Speaker, "Structuring a Litigation Settlement." CLE International's 3rd Annual Conference on Class Actions, Los Angeles, CA, 2007.
- **Cameron Azari** Speaker, "Noticing and Response Rates in Class Action Settlements." Class Action Bar Gathering, Vancouver, British Columbia, 2007.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements." Skadden Arps Slate Meagher & Flom, LLP, New York, NY, 2006.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements." Bridgeport Continuing Legal Education, Class Action and the UCL, San Diego, CA, 2006.
- **Stephanie Fiereck** Author, "Consultant Service Companies Assisting Counsel in Class-Action Suits." *New Jersey Lawyer*, Vol. 14, No. 44, Oct. 2005.
- **Stephanie Fiereck** Author, "Expand Your Internet Research Toolbox." The American Bar Association, *The Young Lawyer*, Vol. 9, No. 10, July/Aug. 2005.

Experts' Articles and Presentations

- **Stephanie Fiereck** Author, "Class Action Reform: Be Prepared to Address New Notification Requirements." BNA, Inc. The Bureau of National Affairs, Inc. *Class Action Litigation Report*, Vol. 6, No. 9, May 2005.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements." Stoel Rives Litigation Group, Portland, OR / Seattle, WA / Boise, ID / Salt Lake City, UT, 2005.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements." Stroock & Stroock & Lavan Litigation Group, Los Angeles, CA, 2005.
- **Stephanie Fiereck** Author, "Bankruptcy Strategies Can Avert Class Action Crisis." TMA - *The Journal of Corporate Renewal*, Sept. 2004.
- **Cameron Azari** Author, "FRCP 23 Amendments: Twice the Notice or No Settlement." *Current Developments* – Issue II, Aug. 2003.
- **Cameron Azari** Speaker, "A Scientific Approach to Legal Notice Communication." Weil Gotshal Litigation Group, New York, NY, 2003.

Judicial Quotes

Judge Christine P. O'Hearn, *In re U.S. Vision Data Breach Litigation* (Oct. 15, 2024) 1:22-cv-06558 (D.N.J.):

The Court finds that the Notice Plan, set forth in the Settlement and effectuated pursuant to the Preliminary Approval Order, was the best notice practicable under the circumstances, was reasonably calculated to provide and did provide due and sufficient notice to the Settlement Class Members of the pendency of the Action, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement, their right to exclude themselves, their right to object to the Settlement and to appear at the final approval hearing, and satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable law.

Judge Madeline Cox Arleo, *In re American Financial Resources, Inc. Data Breach Litigation* (Oct. 2, 2024) 22-cv-01757 (D.N.J.):

The Court finds that Notice of the Settlement was timely and properly disseminated and effectuated pursuant to the approved Notice Plan, and that said Notice constitutes the best notice practicable under the circumstances and satisfies all requirements of Rule 23(e) and due process.

Judge Zahid N. Quraishi, *In re Lipitor Antitrust Litigation (End Payor)* (Oct. 1, 2024) MDL 2332; 3:12-cv-02389 (D.N.J.):

The notices of Settlement . . . that was directed to Class Members constituted the best notice practicable under the circumstances and was timely and properly disseminated and effectuated. Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, the Court hereby finds that the Notice provided Class Members due and adequate notice of the Settlement, the Settlement Agreement, these proceedings, the rights of Class Members to object to the Settlement, and the rights of Class Members to opt out of the Settlement, and satisfied all requirements of Rule 23 and due process.

Judge James B. Clark, III, *Hu et al. v. BMW of North America LLC* (Sept. 25, 2024) 2:18-cv-04363 (D.N.J.):

Notice to the Settlement Class required by Rule 23(e) of the Federal Rules of Civil Procedure has been provided in accordance with the Court's Preliminary Approval Order, by sending such Notice by first-class mail and email . . . These individual notice efforts reached approximately 97.9% of the Settlement Class . . . The Settlement Administrator also utilized digital notice and social media and placed the Notice on the settlement website . . . The Court finds that notice (a) constituted the best practicable notice; (b) constituted notice that was reasonably calculated under the circumstances to apprise members of the Settlement Class of the pendency of the Action, or their right to object or to exclude themselves from the proposed Settlement, of their right to appear at the Fairness Hearing and of their right to seek relief; (c) constituted reasonable, due, adequate and sufficient notice to all Persons entitled to receive notice; and (d) met all applicable, requirements of Rule 23(e), due process and any other applicable law. The Court further finds that Settlement Class Members have been provided the best notice practicable of the Settlement and that such notice fully satisfies all requirements of law as well as all requirements of due process.

Judge Susan Illston, *Perez et al. v. Discover Bank* (Sept. 23, 2024) 3:20-cv-06896 (N.D. Cal.):

The Court finds that the form and means of disseminating notice to the Settlement Class as provided for in the Order Preliminarily Approving Settlement constituted the best notice practicable under the circumstances and was directed to Settlement Class Members in accordance with the Court's Order Preliminarily Approving Settlement. The notice provided due and adequate notice of these proceedings to all Settlement Class Members entitled to such notice and satisfied the requirements of Federal Rule of Civil Procedure 23 and of constitutional due process.

Judge Allen Price Walker, *Agnew v. Foris DAX, Inc. d/b/a Crypto.com* (Sept. 13, 2023) 2024-CH-00435 (Cir. Ct. Cook Cnty., Ill.):

The Court has determined that the Notice given to the settlement Class Members, in accordance with the Preliminary Approval Order, fully and accurately informed Settlement Class Members of all material elements of the settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of 735 ILCS 5/2-803, applicable law, and the Due Process Clauses of the U.S. Constitution and Illinois Constitution.

Judicial Quotes

Judge Patricia M. DeMaio, *Beauford v. The Johns Hopkins Hospital, Inc. et al.* (Sept. 6, 2024) C-03-CV-23-000501 (Cir. Ct. Baltimore Cnty.):

The notice provided to the Settlement Class pursuant to the Settlement Agreement and order granting Preliminary Approval - including: (i) direct notice to the Settlement Class via email and U.S. mail, based on the comprehensive Settlement Class List provided by Defendants; and (ii) the creation of the Settlement Website fully complied with the requirements of Md. R. Civ. P. Cir. Ct. 2-231 and due process, and was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, their right to object to or to exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing.

Judge Charles S. Treat, *Doe v. Clinivate, LLC* (Aug. 29, 2024) C22-01620 (Sup. Ct. Cnty. of Contra Costa, Cal.):

The Court finds that Epiq abided by the terms and conditions of the Agreement that pertain to the Clams Administrator, and has provided appropriate notice to all members of the Settlement Class.

Judge Claude M. Hilton, *Domitrovich et al. v. M.C. Dean, Inc.* (Aug. 27, 2024) 1:23-cv-00210 (E.D. Vir.):

The Court finds and determines that the Notice Program . . . constituted the best notice practicable under the circumstances, constituted due and sufficient notice of the matters set forth in the notices to all persons entitled to receive such notices, and fully satisfies the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure . . . and all other applicable laws and rules. The Court finds that all of the notices are written in plain language and are readily understandable by Settlement Class Members.

Judge Susan Illston, *Moradpour et al. v. Velodyne Lidar, Inc. et al.* (Aug. 19, 2024) 3:21-cv-01486 (N.D. Cal.):

The Court hereby finds that the distribution of the Notice and the publication of the Summary Notice as provided for in the Preliminary Approval Order constituted the best notice practicable under the circumstances – including individual notice to all Class Members who could be identified through reasonable effort – of those proceedings and of the matters set forth therein, including the proposed Settlement, to all Persons entitled to such notice, and said notice fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, and any other applicable law . . . Pursuant to and in full compliance with Rule 23 of the Federal Rules of Civil Procedure, the Court finds and concludes that due and adequate notice was directed to all Class Members advising them of the Plan of Allocation and of their right to object, and a full and fair opportunity was given to all Class Members to be heard with respect to the Plan of Allocation.

Judge Christina R. Klineman, *In re Goodman Campbell Brain and Spine Data Incident Litigation* (Aug. 19, 2024) 49D01-2207-PL-024807 (Ind. Comm. Ct.):

The Court finds that the notice program, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order, was the best notice practicable under the circumstances, was reasonably calculated to provide and did provide due and sufficient notice to the Settlement Class of the pendency of the Action, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and their right to object and to appear at the final approval hearing or to exclude themselves from the Settlement Agreement, and satisfied the requirements of the Indiana Rules of Civil Procedure, the United States Constitution, and other applicable law.

Judge Jeffrey L. Reed, *Doe v. Lima Memorial Hospital et al.* (Aug. 12, 2024) CV2022 0490 (Ct. of Common Pleas Allen Cnty., Ohio):

The Court finds that such Notice constitutes the best possible notice practicable under the circumstances and constitutes valid, due and sufficient notice to all Settlement Class Members.

Judge Alison C. Conlon, *Mikulecky et al. v. Lutheran Social Services of Illinois* (Aug. 8, 2024) 2023-CH-00895 (Cir. Ct. Cook Cnty., Ill.):

The Court has determined that the Notice given to the Settlement Class Members in accordance with the Preliminary Approval Order fully and accurately informed Settlement Class Members of all materials terms of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of 735 ILCS 5/2-803, applicable law, and the due process clauses of both the U.S. and Illinois Constitutions.

Judicial Quotes

Judge Benjamin F. Coats, *Wells Fargo Bank, N.A. v. Agak* (Aug. 5, 2024) 56-2017-00500587 (Sup. Ct. Cnty. of Ventura, Cal.):

The form and means of disseminating the Class Notice as provided for in the Order Preliminarily Approving Settlement and Providing for Notice constituted the best notice practicable under the circumstances, including individual notice to all members of the Class who could be identified through reasonable effort. Said Notice provided the best notice practicable under the circumstances of the proceedings and the matters set forth therein, including the proposed Settlement set forth in the Agreement, to all persons entitled to such notice, and said Notice fully satisfied the requirements of California Rules of Civil Procedure and complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution.

Judge Gretchen Walsh, *Finn et al. v. Empress Ambulance Services, LLC* (July 31, 2024) 61058/2024 (Sup. Ct. Cnty. of Westchester, N.Y.):

There was a reach of 87.3% of the identified class members (i.e., 265,863 of the 304,362 notices mailed were successfully mailed and not returned to sender). The Court finds that this notice was in full compliance with the Preliminary Approval Order and in accordance with the requirements of New York law and constitutional due process. Furthermore, the result of reaching 87.3% of the Settlement Class is reasonable.

The Court finds that the dissemination of Notice to Settlement Class Members: (a) was successfully implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of (i) the pendency of the Action; (ii) their right to submit a claim (where applicable) by submitting a Claim Form; (iii) their right to exclude themselves from the Settlement Class; (iv) the effect of the proposed Settlement (including the releases to be provided thereunder); (v) Class Counsel's motion for a Fee Award and Costs and for Service Awards to the Class Representatives; (vi) their right to object to any aspect of the Settlement, and/or Class Counsel's motion for Service Awards to the Class Representatives and for a Fee Award and Costs; (vii) their right to appear at the Final Approval Hearing; (d) constituted due, adequate, and sufficient notice to all natural persons entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of NY CPLR 901, et seq., the Constitution of the United States (including the Due Process Clause), and all other applicable laws and rules.

Judge James Wesley Hendrix, *Lara v. Lubbock Heart Hospital, LLC, dba Lubbock Heart & Surgical Hospital* (July 31, 2024) 5:23-cv-00036 (N.D. Tex.):

[T]he Court finds that the notice provided to the class members complied with Rule 23's due process requirements . . . [T]he Court concludes that this notice process comported with due process by providing proper notice to the class members and enabled them to assess whether to object or seek exclusion . . . Almost 90% of class members received direct notice mailed to them of the settlement that identified its key terms, what steps they needed to take to obtain relief, and the consequences of failing to act by certain dates . . . The class members further were given multiple avenues to seek out additional information on the settlement. All of this information was given in plain language, ensuring that the members receiving direct notice were made aware of their rights and the consequences of inaction. Accordingly, the Court concludes that the notice given pursuant to the Court's preliminary approval order provided the class members with the material terms of the settlement and constituted the best notice practicable under the circumstances.

Judge Lindsey Robinson Vaala, *Morrow et al. v. Navy Federal Credit Union* (July 25, 2024) 1:21-cv-00722 (E.D. Va.):

The Notice and Claims Process provided to the Settlement Class in accordance with the Preliminary Approval Order was the best notice practicable under the circumstances and constituted due and sufficient notice of the proceedings and matters set forth therein, to all persons entitled to notice. The Notice and Claims Process fully satisfied the requirements of due process, Federal Rule of Civil Procedure 23(e)(1), and all other applicable law and rules. No Settlement Class Member has objected to the Settlement.

Judge Marsha J. Pechman, *Guy et al. v. Convergent Outsourcing, Inc.* (July 19, 2024) 2:22-cv-01558 (W.D. Wash.):

The Court finds and determines that the Notice Program, preliminarily approved on February 20, 2024, and implemented on March 21, 2024, constituted the best notice practicable under the circumstances, constituted due and sufficient notice of the matters set forth in the notices to all persons entitled to receive such notices, and fully satisfies the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and all other applicable laws and rules. . . The Court further finds that all of the notices are written in plain

Judicial Quotes

language and are readily understandable by Settlement Class Members. The Court further finds that notice has been provided to the appropriate state and federal officials in accordance with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715, drawing no objections.

Judge Katherine A. Bacal, *Ward-Howie v. Frontwave Credit Union* (July 18, 2024) 37-2022-00016328 (Sup. Ct. Cal. San Diego Cnty., Cal.):

The Court finds that the distribution of the Notice of the Settlement has been completed in conformity with the Court's Preliminary Approval Order. The Court finds that the Notice was the most practicable under the circumstances and provided due and adequate notice of the proceedings and of the terms of the Settlement, and fully satisfied the requirements of California Rules of Court, rules 3.766 and 3.769(f), and Due Process.

Judge Catherine C. Eagles, *Farley et al. v. Eye Care Leaders Holding, LLC* (June 27, 2024) 1:22-cv-00468 (M.D.N.C.):

The court-approved notice process was reasonable and provided the class members with adequate notice.

Judge William J. Martini, *Holden et al. v. Guardian Analytics, Inc. et al.* (June 5, 2024) 2:23-cv-2115 (D.N.J.):

The Court finds that such notice as therein ordered constituted the best practicable notice under the circumstances, apprised Settlement Class Members of the pendency of the action, gave them an opportunity to opt out or object, complied with the requirements of Federal Rule of Civil Procedure 23(c)(2), and satisfied due process under the United States Constitution, and other applicable law.

Judge Angelo J. Kappas, *Bobo et al. v. Clover Network, LLC* (May 29, 2024) 2023CH000168 (18th Jud. Cir., Cir. Ct., Dupage Cnty. Ill.):

[T]he Notice provided to the Settlement Class fully complied with the requirements of 735 ILCS 5/2-803 and due process was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, their right to object or to exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing.

Judge Stanley A. Bastian, *Dam v. Perkins Coie, LLP et al.* (May 23, 2024) 2:20-CV-00464 (E.D. Wash.):

The notice afforded to Class Members is adequate and sufficient to inform Class Member of their rights.

Judge Angelo J. Kappas, *Hoover et al. v. Camping World Group, LLC et al.* (May 23, 2024) 2023LA00037 (18th Jud. Cir., Cir. Ct., DuPage Cnty, Ill.):

The Court finds that such Notice as therein ordered, constitutes reasonable notice of the commencement of the action as directed by the Court and meets all applicable requirements of law pursuant to 735 ILCS 5-2/801 and constitutes Due Process under the U.S. and Illinois Constitutions.

Judge Paul L. Maloney, *In re Hope College Data Security Breach Litigation* (May 20, 2024) 1:22-cv-01224 (W.D. Mich.):

The Court finds that the Class Notice, website, and Notice Plan implemented pursuant to the Settlement Agreement and the Court's Preliminary Approval Order: (a) constituted the best practicable notice; (b) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of this Action, of their right to exclude themselves from or object to the proposed Settlement, of their right to appear at the Final Approval Hearing, of Plaintiffs Counsel's application for an award of attorneys' fee and expenses, and of Plaintiffs' application for a Service Award associated with the Action; (c) provided a full and fair opportunity to all Settlement Class Members to be heard with respect to the foregoing matters; and (d) met all applicable requirements of Federal Rule of Civil Procedure 23, due process, and any other applicable rules or law.

Judge Richard J. Leon, *Shaffer et al. v. George Washington University et al.* (May 13, 2024) 20-1145 (D.D.C.):

[T]he Court concludes that the notice provided to the Settlement Class...complied with the requirements of Federal Rule of Civil Procedure 23(c)(2) and was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the action, their right to object to or to exclude themselves from the Settlement Agreement, and their right to appear at the final approval hearing.

Judicial Quotes

Judge Ann M. Donnelly, *In re Canon U.S.A. Data Breach Litigation* (May 9, 2024) 1:20-cv-06239 (E.D.N.Y.):

The Court finds that the emailed and mailed notice, publication notice, website, and Class Notice plan implemented pursuant to the Settlement Agreement and Magistrate Judge Sanket J. Bulsara's Preliminary Approval Order: (a) were implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of this Action, of the effect of the proposed Settlement (including the Releases to be provided thereunder), of their right to exclude themselves from or object to the proposed Settlement, of their right to appear at the Fairness Hearing, of the Claims Process, and of Class Counsel's application for an award of attorneys' fees, for reimbursement of expenses associated with the Action, and any Service Award; (d) provided a full and fair opportunity to all Settlement Class Members to be heard with respect to the foregoing matters; (e) constituted due, adequate and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (f) met all applicable requirements of Rule 23 of the Federal Rule of Civil Procedure, the United States Constitution, including the Due Process Clause, and any other applicable rules or law.

Judge Christopher R. Cooper, *Qureshi et al. v. American University* (May 7, 2024) 1:20-cv-01141 (D.D.C.):

The Court further finds that the notice program approved in the Court's Preliminary Approval Order and implemented in accordance with that Order was the best practicable under the circumstances. The notice program was reasonably calculated under the circumstances to apprise the Class of (a) the pendency of the Action; (b) the Court's preliminary certification of the Settlement Class; (c) the terms of the Settlement Agreement and the Settlement Class Members' rights to opt-out of the Settlement Class or to object to the settlement; (d) and the maximum amounts of Class Counsel's expected application for attorneys' fees and request for a Service Award for the Plaintiffs. The notice program provided sufficient notice to all persons entitled to notice. The notice program satisfied all applicable requirements of law, including Federal Rule of Civil Procedure 23 and the constitutional requirement of Due Process.

Judge Eric V. Moyé, *Patterson et al. v. DPP II LLC et al.* (April 29, 2024) DC-23-01733 (Dist. Ct of Dallas Cnty., Tex.):

The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due and sufficient notice to all Settlement Class Members.

Judge Josephine L. Staton, *In re Hyundai and Kia Engine Litigation II* (April 26, 2024) 8:18-cv-02223 (C.D. Cal.):

The Class Notice was disseminated in accordance with the procedures required by the Court's Orders ..., in accordance with applicable law, and satisfied the requirements of Rule 23(e) and due process and constituted the best notice practicable for the reasons discussed in the Preliminary Approval Order and Final Approval Order.

Judge Elaine P. Lujan, *Briscoe et al. v. First Financial Credit Union* (April 25, 2024) D-202-CV-2022-02974 (2nd. Jud. Dist. Cnty. of Bernalillo, N.M.):

The Court has determined that the Notice given to the Settlement Class Members in accordance with the Preliminary Approval Order fully and accurately informed Settlement Class Members of all material terms of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Rule 1-023, applicable law, and the due process clauses of both the U.S. and New Mexico Constitutions.

Judge Eleanor L. Ross, *Sherwood et al. v. Horizon Actuarial Services, LLC* (April 2, 2024) 1:22-cv-01495 (N.D. Ga.):

The Court's Preliminary Approval Order approved the Short Form Settlement Notice, Long Form Notice, Claim Form, and found the mailing, distribution, and publishing of the various notices as proposed met the requirements of Fed. R. Civ. P. 23 and due process, and was the best notice practicable under the circumstances, constituting due and sufficient notice to all persons entitled to notice. The Court finds that the distribution of the Notices has been achieved pursuant to the Preliminary Approval Order and the Settlement Agreement, and that the Notice to Class Members complied with Fed. R. Civ. P. 23 and due process.

Judicial Quotes

Judge Beth Phillips, *Niewinski et al. v. State Farm Life Insurance Company et al.* (April 1, 2024) 23-04159-CV (W.D. Mo.):

[T]he Court confirms the Class Notice was implemented in accordance with the Court's October 18, 2023 Order... The Court further confirms its prior findings that the form and substance of the Class Notice meet, and have met, the requirements of Rule 23(c) and the Due Process Clause of the United States Constitution.

Judge Beth Labson Freeman, *Prescott et al. v. Reckitt Benckiser LLC* (Mar. 28, 2024) 5:20-cv-02101 (N.D. Cal.):

The Court finds that notice has been disseminated to the Classes in compliance with the Court's Order Granting Preliminary Approval. The Court further finds that the notice given was the best notice practicable under the circumstances; constituted notice that was reasonably calculated, under the circumstances, to apprise Class members of the pendency of the action, the terms of the proposed Settlement, the right to object to or exclude themselves from the proposed Settlement, and the right to appear at the Final Approval Hearing; constituted due, adequate, and sufficient notice to all persons entitled to receive notice; fully satisfied due process; and met the requirements of Rule 23 of the Federal Rules of Civil Procedure. The Court further finds that notice provisions of 28 U.S.C. § 1715 were complied with in this case.

Judge Kimberly Fitzpatrick, *Kaether et al. v. Metropolitan Area EMS Authority D/B/A MedStar Mobile Healthcare* (Mar. 20, 2024) 342-339562-23 (Dist. Ct. Tarrant Cnty., Tex.):

The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due and sufficient notice to all Settlement Class Members.

Judge Denise L. Cote, *In re Waste Management Data Breach Litigation* (Mar. 15, 2024) 1:21-cv-06199 (S.D. N.Y.):

The Court finds and concludes that the Postcard Notice, Detailed Notice, Claim Form, Settlement Website, and all other aspects of the Notice Program, opt-out, and claims submission procedures set forth in the Settlement Agreement fully satisfied Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, were the best notice practicable under the circumstances, and support the Court's exercise of jurisdiction over the Settlement Class.

Judge Douglas L. Rayes, *Medina et al. v. PracticeMax, Inc.* (Mar. 14, 2024) CV-22-01261 (D. Ariz.):

The Court's Preliminary Approval Order approved the Short Form Settlement Notice, Long Form Notice, Claim Form, and found the mailing, distribution, and publishing of the various notices as proposed met the requirements of Fed. R. Civ. P. 23 and due process, and was the best notice practicable under the circumstances, constituting due and sufficient notice to all persons entitled to notice.

Judge William H. Orrick, *In re Juul Labs, Inc., Marketing, Sales Practices, and Products Liability Litigation* (Altria Settlement) (Mar. 14, 2024) 19-md-02913 (N.D. Cal.):

Notice of the Altria Settlement was provided by: (1) direct notice via email to those Settlement Class Members for whom an email address was available; (2) direct notice via postcard mailed to those Settlement Class Members for whom a physical mailing address was available but an email address was not available; (3) publication notice of the Settlement, which comprised 409,315,597 impressions, targeted at likely Settlement Class Members served across relevant internet websites and social media platforms; and (4) publication on the settlement website. In total, the Notice Plan is estimated to have reached at least 80% of Settlement Class Members. The Court finds that the Notice Plan provided the best practicable notice to the Settlement Class Members and satisfied the requirements of due process.

Judge Aleta A. Trauger, *Bandy v. TOC Enterprises, Inc. d/b/a Tennessee Orthopaedic Clinics, a division of Tennessee Orthopaedic Alliance, P.A.*, (Mar. 14, 2024) 3:23-cv-00598 (M.D. Tenn.):

The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Class Members in compliance with the requirements of Rule 23(c)(2). The Court finds that the notice program was reasonably calculated to, and did, provide due and sufficient notice to the Class of the pendency of the Action, certification of the Class for settlement purposes only, the existence and terms of the Settlement Agreement, and their rights to object to and appear at the Final Fairness Hearing or to exclude themselves from the Settlement, and satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable law.

Judicial Quotes

Judge Allen Price Walker, *Sayas et al. v. Biometric Impressions Corp.*, (Mar. 6, 2024) 2020 CH 00201 (Cir. Ct. Cook Cnty. Ill.):

Notice to the Settlement Class was provided in accordance with the Court's Preliminary Approval Order, and the substance of and dissemination program for the Notice which included direct notice via U.S. Mail and email (where available), and by substitute media notification according to a targeted media campaign designed by the Settlement Administrator, and the creation of the Settlement Website... provided the best practicable notice under the circumstances. The Notice was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and their rights to object to or exclude themselves from the Settlement and to appear at the Final Approval Hearing. Therefore, the Notice was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice and fulfilled the requirements of 735 ILCS 5/2-803, due process, and the rules of the Court.

Judge Angel Kelley, *Fiorentino v. Flosports, Inc.*, (Mar. 5, 2024) 1:22-cv-11502 (D. Mass.):

The Court finds that the notice program, as set forth in Section 4 of the Settlement Agreement and effectuated pursuant to the Court's August 23, 2023 Preliminary Approval Order (Doc No. 63) and November 6, 2023 Order Granting Joint Motion for Extension of Time (Doc No. 65), satisfies the requirements of Federal Rule of Civil Procedure 23(c) and due process and constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of (i) the pendency of the Action and of the Settlement, including the terms thereof; (ii) class members' rights to object to or exclude themselves from the Settlement, including the procedure for objecting to or opting out of the Settlement, and to appear at the Final Approval Hearing; (iii) contact information for Class Counsel, the Settlement Administrator, the Settlement Website, and a toll-free number to ask questions about the Settlement; (iv) important dates in the settlement approval process, including the date of the Final Approval Hearing; (v) Class Counsel's request for an award of reasonable attorneys' fees and expenses; and (vi) the Class Representative's application for a service award.

Judge David O. Carter, *Nielsen v. Walt Disney Parks and Resorts U.S., Inc.*, (Mar. 4, 2024) 8:21-cv-02055 (C.D. Cal.):

The Court finds that the Class Notice plan provided for in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under the circumstances; (ii) was reasonably calculated to provide, and did provide, due and sufficient notice to the Settlement Class regarding the existence and nature of this case, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and the rights of Settlement Class members to exclude themselves from the settlement, to object and appear at the Final Approval Hearing, and to receive benefits under the Settlement Agreement; and (iii) satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable law.

Judge Craig Schwall, *Mayheu et al. v. Chick-fil-A Inc.*, (Feb. 29, 2024) 2022CV365400 (Sup. Ct. Fulton Cnty., Ga.):

The Court finds that the distribution of the Class Notice and notice methodology was properly implemented in accordance with O.C.G.A. § 9-11-23(c)(2), the terms of the Agreement, and the Preliminary Approval Order. The Court finds that the Class Notice was simply written and readily understandable and that the Class Notice (a) constitutes the best notice practicable under the circumstances; (b) constitutes notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class and Settlement Subclasses of the Agreement and their right to exclude themselves or object to the Agreement and to appear at the Fairness Hearing; (c) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to notice; and (d) meets all applicable requirements of Georgia law, the Uniform Superior Court Rules, and all other applicable law and due process requirements.

Judge Sheila D. Stinson, *Nimsey v. Tinker Federal Credit Union*, (Feb. 23, 2024) CJ-2019-6084 (Dist. Ct. Oklahoma Cnty., Okla.):

The form, content, and method of dissemination of Notice given to members of the Settlement Class—individual emailed or mailed notice—were adequate and reasonable constituted the best notice practicable under the circumstances and satisfied the requirements of 12 Okla. Stat. § 12-2023(C)(4) and (E)(1) and Due Process.

Judicial Quotes

Judge Phillip A. Brimmer, *Beasley et al. v. TTEC Services Corporation; Anderson v. TTEC Services Corporation* (Feb. 21, 2024) 22-cv-00097; 22-cv-00347 (D. Col.):

[T]he Court finds that the notice given to members of the class was the best notice practicable under the circumstances, was reasonably calculated under the circumstances to apprise such members of the pendency of this action and to afford them an opportunity to object to, and meets the requirements of Rule 23 (c)(2)(B) and (e)(1).

Judge Yvonne Gonzalez Rogers, *In re PFA Insurance Marketing Litigation* (Feb. 5, 2024) 4:18-cv-03771 YGR (N.D. Cal.):

The Court finds that the relief provided to class members under the SA is fair and reasonable when considering the Rule 23(e)(2)(C) factors...

Judge Charles R. Breyer, *In re McKinsey & Co., Inc. National Prescription Opiate Consultant Litigation Schools* (Feb. 2, 2024) 3:21-md-02996 (N.D. Cal.):

The Court finds that the notice provided to the Settlement Class pursuant to the Settlement Agreement (ECF No. 599-2) and the Preliminary Approval Order fully complied with Due Process and Rule 23, and was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, their right to object to or to exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing.

Judge Charles R. Breyer, *In re McKinsey & Co., Inc. National Prescription Opiate Consultant Litigation Subdivision* (Feb. 2, 2024) 3:21-md-02996 (N.D. Cal.):

[T]he Court has considered each of the Rule 23(e) factors and finds that the Class Representatives and Class Counsel have adequately represented the Class, the settlement agreement was negotiated at arm's length, the relief provided for the Class is adequate, and the plan of allocation treats Class Members equitably relative to one another.

Judge David E Schwartz, *Stauber v. Sudler Property Management* (Jan. 22, 2024) 023LA000411 (18th Jud. Cir., Cir. Ct., DuPage Cnty., Ill.):

The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of 735 ILCS 5/2-801, et seq.

Judge Edward J. Davila, *Harbour et al. v. California Health & Wellness et al.* (Jan. 16, 2024) 5:21-cv-03322 (N.D. Cal.):

[T]he Court finds that the terms of the Settlement, including the awards of attorneys' fees, costs and incentive awards, is fair, adequate, and reasonable that it satisfies Federal Rule of Civil Procedures 23 (e) and the fairness and adequacy factors; and that it should be approved and implemented.

Judge Susan Illston, *Roberts v. Zuora Inc. et al.* (Jan. 16, 2024) 3:19-cv-03422 (N.D. Cal.):

The form and method of notifying the Settlement Class of the motion for attorneys' fees, litigation expenses, and a service award satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4(a)(7)), due process, and all other applicable laws and rules, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

Judge Leigh Martin May, *Black v. USAA Casualty Insurance Company* (Dec. 14, 2023) 1:21-cv-01363 (N.D. Ga.):

[T]he Court finds that the notice provided to Settlement Class Members (i) was the best practicable notice under the circumstances; (ii) was calculated to apprise Settlement Class Members of the pendency of the Action and their right to object to or seek exclusion from the Proposed Settlement and to appear at the final Fairness Hearing; and (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice.

Judicial Quotes

Judge Timothy McJoynt, *Jackson et al. v. Fandango Media, LLC* (Dec. 4 2023) 2023LA000631 (18th Jud. Cir. Ct., DuPage Cnty., Ill.):

The Court has determined that the notice provided to the Settlement Class pursuant to the Settlement Agreement and order granting Preliminary Approval—including: (i) direct notice in the form of an email to Settlement Class Members for whom a valid email address is available in the Class List, containing an electronic link to the Claim Form; (ii) reminder notice via a second email thirty (30) days prior to the Claims Deadline containing an electronic link to the Claim Form; and (iii) the creation of a Settlement website . . . apprising the Settlement Class of the proposed Settlement and enabling the Settlement Class to submit Claim Forms online—fully complied with the requirements of 735 ILCS 5/2-803 and due process, and was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, the Settlement and Settlement Agreement, their right to object to or to exclude themselves from the Settlement and Settlement Agreement, and their right to appear at the Final Approval Hearing.

Judge Nadine Nieto, *Arevalo et al. v. USAA Casualty Insurance Company et al.* (Nov. 27, 2023) 2020-CI-16240 (Dist. Ct., Bexar County, Tex. 285th Jud. Dist.):

The Court confirms and approves, as to form and content, the Notice delivered to Settlement Class members, and finds that the Notice Program was fair, adequate, and satisfied due process. The Court finds the notice constituted the best notice practicable under the circumstances by providing individual notice to all Settlement Class Members who could be identified through reasonable effort and constituted valid and sufficient notice to all persons entitled thereto, complying fully with the requirements of due process and Texas Rule of Civil Procedure 42 (e)(1)(B).

Judge Todd Taylor, *Alexander et al. v. Salud Family Health, Inc.* (Nov. 22, 2023) 2023CV030580 (19th Dist. Ct. Greeley Cnty., Col.):

The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Colorado Rule of Civil Procedure 23(e). The Court finds that the Claims Administrator's notice fully and accurately informed Settlement Class Members about the Litigation and the existence and terms of the Settlement Agreement; advised Settlement Class Members of all terms of the Settlement; advised Settlement Class Members of their right to request exclusion from the Settlement and provided sufficient information so Settlement Class Members were able to decide whether to accept the benefits offered, opt out and pursue their own remedies, or object to the proposed Settlement; provided procedures for Settlement Class Members to file written objections to the proposed Settlement, to appear at the Final Approval Hearing, and to state objections to the proposed Settlement; and provided the time, date, and place of the Final Approval Hearing.

Judge John R. Tunheim, *In re Cattle and Beef Antitrust Litigation* (Nov. 21, 2023) 22-3031 (D.Minn.):

The notice given to the Settlement Class, including individual notice to all members of the Settlement Class who could be identified through reasonable effort, was the most effective and practicable under the circumstances. This notice provided due and sufficient notice of the proceedings and of the matters set forth therein, including the proposed settlement, to all persons entitled to such notice, and this notice fully satisfied the requirements of Rules 23(c)(2) and 23(e)(1) of the Federal Rules of Civil Procedure and the requirements of due process.

Judge Lawrence P. Riff, *Ross et al. v. Panda Restaurant Group, Inc.* (Nov. 20, 2023) 21STCV03662 (Sup. Ct. Cal., Cnty. of Los Angeles):

The Court finds that the distribution of the Notice of the Settlement has been completed in conformity with the Court's Preliminary Approval Order. The Court finds that the notice was the most practicable under the circumstances and provided due and adequate notice of the proceedings and of the terms of the Settlement. The Court finds that the notice fully satisfied the requirements of due process. The Court also finds that all Settlement Class Members were given a full and fair opportunity to participate in the Fairness Hearing, all Class Members wishing to be heard have been heard, and all Class Members have had a full and fair opportunity to exclude themselves from the Settlement Class.

Judicial Quotes

Judge Stephen Dries, *Fernandez et al. v. 90 Degree Benefits Wisconsin et al.* (Nov. 17, 2023) 2:22-cv-00799 (E.D. Wis.):

The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action, (ii) the effect of the proposed Settlement (including the releases to be provided thereunder), (iii) Class Counsel's motion for a Fee Award and Costs, (iv) Class Representatives' motion for a Service Award Payments, (v) their right to object to any aspect of the Settlement, Class Counsel's motion for a Fee Award and Costs, and/or Class Representatives' motion for a Service Award Payments, (vi) their right to exclude themselves from the Settlement Class, and (vii) their right to appear at the Final Approval Hearing; (d) constituted due, adequate and sufficient notice to all persons and entities entitled to receive notice the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.

Judge Joseph V. Salvi, *Gudgel et al. v. Reynolds Consumer Products, Inc. et al.* (Nov. 15, 2023) 23LA00000486 (Cir. Ct. 19th Jud. Cir., Lake Cnty., Ill.):

The Court has determined that the Notice given to the Settlement Class Members, in accordance with the Preliminary Approval Order, fully and accurately informed Settlement Class Members of all material elements of the Settlement and constituted the best notice practicable under the circumstances, applicable law, and the due process clauses of the United States and Illinois Constitutions.

Judge Kimberly Dowling, *Sharma et al. v. Accutech Systems Corporation* (Nov. 13, 2023) 18C02-2210-CT-000135 (Cir. Ct. 2, Del. Cnty., Ind.):

The Court finds that such Notice as therein ordered was the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Indiana Rule of Trial Procedure 23(c)(2).

Judge William T. Ridley, *Julien et al. v. Cash Express, LLC* (Nov. 9, 2023) 2022-CV-221 (Cir. Ct. Putnam Cnty. Tenn.):

The form, content, and method of dissemination of the notice given to members of the Settlement Class were adequate and reasonable, constituted the best notice practicable under the circumstances, and satisfied the requirements of Due Process.

Judge Jennifer Barron, *Young et al. v. Military Advantage, Inc. d/b/a Military.com* (Nov. 9, 2023) 2023LA00535 (18th Jud. Dist. Cir. Ct. Dupage Cnty. Ill.):

The notice provided to the Settlement Class pursuant to the Settlement Agreement and order granting Preliminary Approval - including (i) direct notice to the Settlement Class via email and U.S. mail, based on the comprehensive subscriber list provided by Defendant, and (ii) the creation of the Settlement Website - fully complied with the requirements of 735 ILCS 5/2-803 and due process, and was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, their right to object to or to exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing.

Judge Laura Scott, *Lukens v. Utah Imaging Associates, Inc.* (Nov. 8, 2023) 210906618 (3rd Dist., Salt Lake Cnty., Utah):

The Court has determined that the notice given to the Settlement Class Members in accordance with the Preliminary Approval Order fully and accurately informed Settlement Class Members of all material terms of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Utah R. Civ. P. 23, applicable law, and the due process clauses of both the U.S. and Utah Constitutions.

Judge Christopher C. Nash, *Gulf Coast Injury Center, LLC, A/A/O Jordan Rimert v. Esurance Property and Casualty Insurance Company* (Nov. 3, 2023) 21-CA-002738 (Cir. Ct. 13th Jud. Cir. Hillsborough Cnty, Fla.):

The Court hereby finds that the Notice Plan (i) constituted the best practicable notice under the circumstances; (ii) was reasonably calculated to apprise potential Settlement Class Members of the pendency of the Action, their right to object to or exclude themselves from the Proposed Settlement, and to appear at the final approval hearing; and (iii) constituted due, adequate, and sufficient process and notice to all persons entitled to receive notice.

Judicial Quotes

Judge Robert R. Reed, *Gold et al. v. New York Life Insurance Co. et al.* (Oct. 26, 2023) 653923/2012 (Sup. Ct. N.Y., Cnty., NY):

The Court finds that the procedures for notifying the Class Members about the Settlement, including the Class Settlement Notice, Summary Notice of Settlement, and Advertisement via LinkedIn, as provided for in the Settlement Agreement, constituted the best notice practicable under the circumstances to all Class Members, and fully satisfied all necessary requirements of due process. Based on the evidence, arguments and other materials submitted in connection with the Fairness Hearing, the Court finds that the notice provided was adequate, due, sufficient and valid notice to Class Members.

Judge Sidney H. Stein, *Sonterra Capital Master Fund Ltd. v. Credit Suisse Group AG et al.* (Oct. 24, 2023) 1:15-cv-00871 (S.D.N.Y.):

The Court finds that the mailed notice, publication notice, website, and Class Notice plan implemented pursuant to the Settlement Agreement and approved by the Court in the Order dated February 15, 2023 (ECF No. 426), amended by Order dated May 16, 2023 (ECF No. 458); (a) constituted the best practicable notice; (b) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, of their right to exclude themselves from or object to the proposed Settlement, of their right to appear at the Fairness Hearing, of the Distribution Plan, and of Class Counsel's application for an award of attorneys' fees, Incentive Award(s), and for reimbursement of expenses associated with the Action; (c) provided a full and fair opportunity to all Settlement Class Members to be heard with respect to the foregoing matters; and (d) met all applicable requirements of Federal Rule of Civil Procedure 23, Due Process, and any other applicable rules or law.

Judge Jennifer P. Wilson, *Banks et al. v. Allstate Fire & Casualty Insurance Company* (Oct. 23, 2023) 19-cv-01617 (M.D. Penn.):

WHEREAS the Allstate Defendants, through the Notice Agent, have served the notices required under the Class Action Fairness Act on the appropriate state and federal government officials. Id.... due and adequate notice has been given to the Settlement Class Members in satisfaction of the requirements of Rules 23(c)(2) and 23 (e)(1) of the Federal Rules of Civil Procedure and Constitutional Due Process ...

Judge Michael F. Stelzer, *Perry v. Schnuck Markets, Inc.* (Oct. 10, 2023) 2022-CC10425 (Cir. Ct. City of St. Louis, Mo.):

Notice to the Members of the Settlement Class required by Mo. R. Civ. P. 52.08(b)(3) has been provided as directed by this Court in the Preliminary Approval Order, and such notice constituted the best notice practicable, including, but not limited to, the forms of notice and methods of identifying and providing notice to the Settlement Class Members, and satisfied the requirements of the Missouri Rules of Civil Procedure, and all other applicable laws. The Court finds that adequate notice was given to all Settlement Class Members pursuant to the terms of the Parties' Settlement Agreement and the Preliminary Approval Order. The Court has further determined that the Notice Plan fully and accurately informed Settlement Class Members of all material elements of the Settlement, constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Mo. R. Civ. P. 52.08(b)(3), applicable law, and the Due Process Clause of the United States Constitution.

Judge Eleanor L. Ross, *Dusko v. Delta Airlines, Inc.* (Oct. 5, 2023) 1:20-cv-01664 (N.D. Ga.):

The Court finds the Settlement Class received the best notice practicable under the circumstances in compliance with due process and Federal Rules of Civil Procedure 23(c)(2) and (e)(1).

Judge Timothy S. Black, *Miranda v. Xavier University* (Oct. 3, 2023) 1:20-cv-00539 (S.D. Ohio):

Considering the notice procedures, nearly all, if not all, Class Members received notice, and the Court finds that the notice issued to class members satisfied (if not exceeded) the requirements of the federal rules and due process.

Judge R. Barclay Surrick, J., *Checchia v. Bank of America, N.A.* (Sept. 21, 2023) 2:21-cv-03585 (E.D. Penn.):

Notice to the Class required by Rule 23(d) of the Federal Rules of Civil Procedure' has been provided in accordance with the Court's Preliminary Approval Order, entered February 16, 2023, and such Notice by mail and publication has been given in an adequate and sufficient manner; constitutes the best notice practicable under the circumstances; and satisfies Rule 23(e) and due process. Notice of Settlement was

Judicial Quotes

timely mailed to governmental entities as provided for in 28 U.S.C. § 1715.

Judge William H. Orrick, *In re Juul Labs, Inc., Marketing, Sales Practices, and Products Liability Litigation* (Juul Settlement) Sept. 19, 2023) 19-md-02913 (N.D. Cal.):

The Court also approved the appointment of Epiq as the Claims Administrator based on representations of Epiq's qualifications and experience and an outline of administrative and communication services to be provided to class members... The record establishes that the Class Settlement Administrator served the required notices under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, with the documentation required by 28 U.S.C. § 1715(b)(1)-(8). ECF No. 3742.

Judge Richard G. Stearns, *Ambrose et al v. Boston Globe Media Partners, LLC* (Sept. 8, 2023) 1:22-cv-10195 (D. Mass.):

The notice provided to the Settlement Class pursuant to the Settlement Agreement (ECF No. 51) and order granting Preliminary Approval (ECF No. 52)-including (i) direct notice to the Settlement Class via email and U.S. mail, based on the comprehensive subscriber list provided by Defendant, and (ii) the creation of the Settlement Website -fully complied with the requirements of Fed. R. Civ. P. 23 and due process, and was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, their right to object to or to exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing... The Court finds that Defendant properly and timely notified the appropriate government officials of the Settlement Agreement, pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715. The Court has reviewed the substance of Defendant's notice, and finds that it complied with all applicable requirements of CAFA. Further, more than ninety (90) days have elapsed since Defendant provided notice pursuant to CAFA and the Final Approval Hearing.

Judge Matthew P. Brookman, *In re Midwestern Pet Foods Marketing, Sales Practices and Product Liability Litigation* (Aug. 21, 2023) 3:21-cv-00007 (S.D. Ind.):

The notice given to the Class was the best notice practicable under the circumstances. Said notice provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Settlement Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of due process.

Judge David B. Atkins, *King et al. v. PeopleNet Corporation* (Aug. 10, 2023) 2021-CH-01602 (Cir. Ct. Cook Cnty., Ill.):

The Court has determined that the Notice given to the Settlement Class Members, in accordance with the Preliminary Approval Order, fully and accurately informed Settlement Class Members of all material elements of the Settlement, constituted the best notice practicable under the circumstances, and fully satisfied the requirements of 735 ILCS 5/2-803, applicable law, and the Due Process Clauses of the U.S. Constitution and Illinois Constitution.

Judge William F. Highberger, *Holly Wedding et al. vs. California Public Employees' Retirement System et al.* (July 28, 2023) BC517444 (Sup. Ct. Cnty of Los Angeles, Cal.):

The Court finds and determines that this notice procedure afforded adequate protections to all members of the Settlement Class including those who requested exclusion and provides the basis for the Court to make an informed decision regarding approval of the Second Settlement based on the responses of the Settlement Class. The Court finds and determines that the notice provided in this case was the best notice practicable, which satisfied the requirements of law and due process.

Judge James Donato, *In re Robinhood Outage Litigation* (July 18, 2023) 3:20-cv-01626 (N.D. Cal.):

The Court finds that the Long Form Notice and the Notice Plan including a combination email and physical mail to Settlement Class Members based on Robinhood's records, a social media campaign, and a dedicated website, was implemented in accordance with the Preliminary Approval Order and (a) constituted the best practicable notice under the circumstances; (b) constituted notice that is appropriate, in a manner, content, and format reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and the effect of the Settlement (including the releases contained therein); their right to object to any aspect of the Settlement, the Plan of Allocation, and/or Class Counsel's Motion for Attorneys' Fees and Expenses and Service Awards; their right to exclude themselves from the Settlement Class; and their right to appear at the Fairness Hearing; (c) was reasonable and constituted due, adequate, and sufficient notice to all Persons entitled to receive

Judicial Quotes

notice; and (d) met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court. These combined efforts directly reached approximately 99% of the identified Settlement Class members.

Judge Antonio Arzola, *Hrebenar v. Davis Yulee LLC, d/b/a Davis Chrysler Dodge Jeep Ram of Julee* (July. 18, 2023) 2023-001405-CA-01 (11th Jud. Cir. Ct. Miami-Dade Cnty., Fla.):

The Court finds that the distribution of the Class Notice, as provided for in the Settlement Agreement, (i) constituted the best practicable notice under the circumstances to Settlement Class Members, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of, among other things, the pendency of the Action, the nature and terms of the proposed Settlement, their right to object or to exclude themselves from the proposed Settlement, and their right to appear at the Final Approval Hearing, (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice, and (iv) complied fully with the requirements of Fla. R. Civ. P. 1.220, the United States Constitution, the Rules of this Court, and any other applicable law. (b) The Court finds that the Class Notice and methodology set forth in the Settlement Agreement, the Preliminary Approval Order, and this Final Approval Order (i) constitute the most effective and practicable notice of the Final Approval Order, the relief available to Settlement Class Members pursuant to the Final Approval Order, and applicable time periods; (ii) constitute due, adequate, and sufficient notice for all other purposes to all Settlement Class Members; and (iii) comply fully with the requirements of Fla. R. Civ. P. 1.220, the United States Constitution, the Rules of this Court, and any other applicable laws.

Judge Rodolfo A. Ruiz II, *Wenston Desue et al. v. 20/20 Eye Care Network, Inc. et al.* (July. 8, 2023) 21-CIV-61275 (S.D. Fla.):

The Notice was provided to Class Members in accordance with the plan approved in the Court's Order Certifying Settlement Class and Granting Preliminary Approval of Class Action Settlement and Notice Program...Under these circumstances, the Court finds the Notice fairly apprised the Class of the proposed settlement terms and of the options open to them...The Court finds the Notice was the best practical, and the response and claims rates are within the acceptable range for final approval.

Judge William M. Skretny, *Ingram v. Jamestown Import Auto Sales, Inc. d/b/a Kia of Jamestown* (June 13, 2023) 1:22-cv-00309 (W.D.N.Y.):

The Court finds that the distribution of the Class Notice, as provided for in the Settlement Agreement, (i) constituted the best practicable notice under the circumstances to Settlement Class Members, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of, among other things, the pendency of the Action, the nature and terms of the proposed Settlement, their right to object or to exclude themselves from the proposed Settlement, and their right to appear at the Final Approval Hearing, (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice, and (iv) complied fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable law. (b) The Court finds that the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715, et seq ("CAFA"), including all notice requirements therein, have been met.

Judge Jesse M. Furman, *Dickens et al. v. Thinx, Inc.* (June 8, 2023) 1:22-cv-04286 (S.D.N.Y.):

The form and methods of notifying the Settlement Class of the terms and conditions of the proposed Settlement Agreement met the requirements of Fed R. Civ. P. 23, due process, and any other applicable law, and constituted the best notice practicable under the circumstances. Further, the settlement administrator, Epiq, on behalf of Defendant, caused timely notice of the Settlement and related materials to be sent to the Attorney General of the United States and the Attorneys General of all U.S. states, territories, and the District of Columbia pursuant to the Class Action Fairness Act of 2005 ("CAFA"). The Court finds that such notification complies fully with the applicable requirements of CAFA.

Judge Ed Kinkeade, *Kostka et al. v. Dickey's Barbecue Restaurants, Inc. et al.* (June 6, 2023) 3:20-cv-03424 (N.D. Tex.):

The Court has determined that the Notice given to the Settlement Class members in accordance with the Preliminary Approval Order fully and accurately informed Settlement Class members of all material terms of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Fed. R. Civ. P. 23, applicable law, and the due process clause of the U.S. Constitution.

Judicial Quotes

Judge James C. Dever, III, *Silva et al v. Connected Investors, Inc.* (June 2, 2023) 7:21-cv-00074 (E.D.N.C.):

The Court finds that the distribution of the Class Notice...(i) constituted the best practicable notice under the circumstances to Settlement Class Members, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of, among other things, the pendency of the Action, the nature and terms of the proposed Settlement, their right to object or to exclude themselves from the proposed Settlement, and their right to appear at the Final Approval Hearing, (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice, and (iv) complied fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable law.

Judge Charles S. Treat, *Service et al. v Volkswagen Group of America et al.* (May 31, 2023) c22-01841 (Sup. Ct. Cal. Cnty. of Contra Costa):

Class Notice was provided to the Class in accordance with the Preliminary Approval Order and satisfied the requirements of due process, California Code of Civil Procedure section 382 and rule 3.766 of the California Rules of Court and: (a) provided the best notice practicable; and (b) was reasonably calculated under the circumstances to apprise Settlement Class Members of the pendency of the Action, the terms of the settlement, their right to appear at the Final Approval Hearing, their right to object to the settlement, and their right to exclude themselves from the settlement. The Court finds that the Notice Plan set forth in the SA and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency of the Action, certification of the Settlement Class, the terms of the SA, and the Final Approval Hearing, and satisfies the requirements of California law and due process of law.

Judge Erin B. O'Connell, *McCullough v. True Health New Mexico, Inc.* (May 30, 2023) d-202-cv-2021-06816 (2nd Dist. Ct, N.M.):

The Court has determined that the Notice given to the Settlement Class members in accordance with the Preliminary Approval Order fully and accurately informed Settlement Class members of all material terms of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Rule 1-023, applicable law, and the due process clauses of both the U.S. and New Mexico Constitutions.

Judge Greg Hill, *Meier v. Prosperity Bank* (May 23, 2023) 109569-CV (239th Jud. Dist., Brazoria Cnty., Tex.):

The Court finds that Notice to the Settlement Class was the best notice practicable and complied with the requirements of Due Process, and that the Notice Program was completed in compliance with the Preliminary Approval Order and the Agreement.

Judge Thomas L. Ludington, *Thomsen et al. v. Morley Cos, Inc.* (May 12, 2023) 1:22-cv-10271 (E.D. Mich.):

Class notice was sent as ordered, the time for objections passed, and a final-approval hearing was held to determine whether the Agreement is "fair, reasonable, and adequate" under Rule 23(e)(2) on April 19, 2023...In sum, the Settlement Agreement and Class Notice satisfy all the relevant factors.

Judge Roseann A. Ketchmark, *Rogowski et al. v. State Farm Life Insurance Company et al.* (April 18, 2023) 4:22-cv-00203 (W.D. Mo.):

[T]he Court confirms the Class Notice was implemented in accordance with the Court's December 16, 2022 preliminary approval order.... The Court further confirms its prior findings that the form and substance of the notice meet, and have met, the requirements of Rule 23(c) and the Due Process Clause of the United States Constitution.

Judge Gregory W. Pollack, *In re Scripps Health Data Incident Litigation* (April 7, 2023) 37-2021-00024103 (Sup. Ct. Cal. Cnty. of San Diego):

The Court finds that...Notice (i) was reasonable and constituted the best practicable notice under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, the terms of the Settlement including its release of Released Claims, their right to exclude themselves from the Settlement Class or object to all or any part of the Settlement, their right to appear at the Final Approval Hearing (either on their own or through counsel

Judicial Quotes

hired at their own expense), and the binding effect of final approval of the Settlement on all persons who do not exclude themselves from the Settlement Class; (iii) constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) fully satisfied the requirements of California Code of Civil Procedure § 382, the United States Constitution (including the Due Process Clause), and any other applicable law.

Judge Christopher C. Conner, *Chapman v. Insight Global LLC* (April 6, 2023) 1:21-cv-00824 (M.D. Penn.):

The Court finds that the distribution of the mail and publication Notices to Class Members as set forth in the Declaration of Claims Administrator was in compliance with the Court's October 27, 2022 Order approving the proposed class notices and notice plan, and that notice has been given in an adequate and sufficient manner; constitutes the best notice practicable under the circumstances; and satisfies Federal Rule of Civil Procedure 23 and due process...Defendant has provided notice of the settlement to the appropriate government officials pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715.

Judge William P. Dimitrouleas, *South et al. v. Progressive Select Insurance Company* (March 31, 2023) 19-21760-CIV (S.D. Fla.):

The Notice program was the best notice practicable under the circumstances. The Notice program provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed Settlement set forth in the Agreement, to all persons entitled to such notice and said Notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.

Judge Douglas R. Cole, *Middleton et al. v. Liberty Mutual Personal Insurance Company et al.* (Mar. 15, 2023) 1:20-cv-00668 (S.D. Ohio):

The Court hereby finds that the Notice Plan and the Class Notice constituted the best notice practicable under the circumstances, and constituted valid, due and sufficient notice to members of the Settlement Classes.

Judge Jennifer P. Wilson, *Miller v. Bath Saver, Inc. et al.* (Mar. 6, 2023) 1:21-cv-01072 (M.D. Penn.):

The Notice and the Notice Plan implemented pursuant to the Agreement (1) constitute the best practicable notice under the circumstances; (2) constitute notice that is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Litigation, their right to object to or exclude themselves from the proposed Settlement, and to appear at the Final Approval Hearing; (3) are reasonable and constitute due, adequate, and sufficient notice to all Persons entitled to receive notice; and (4) meet all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court.

Judge David O. Carter, *In re California Pizza Kitchen Data Breach Litigation* (Feb. 22, 2023) 8:21-cv-01928 (C.D. Cal.):

The Court finds that the Class Notice plan provided for in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under the circumstances; (ii) was reasonably calculated to provide, and did provide due and sufficient notice to the Settlement Class regarding the existence and nature of the Consolidated Cases, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and the rights of Settlement Class members to exclude themselves from the settlement, to object and appear at the Final Approval Hearing, and to receive benefits under the Settlement Agreement; and (iii) satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable law.

Judge David Knutson, *Duggan et al. v. Wings Financial Credit Union* (Feb. 3, 2023) 19AV-cv-20-2163 (Dist. Ct., Dakota Cnty., Minn.):

The Court finds that notice of the Settlement to the Class was the best notice practicable and complied with the requirements of Due Process.

Judge Clarence M. Darrow, *Rivera v. IH Mississippi Valley Credit Union* (Jan. 26, 2023) 2019 CH 299 (Cir. Ct 14th Jud. Cir., Rock Island Cnty., Ill.):

The Court finds that the distribution of the Notices and the notice methodology were properly

Judicial Quotes

implemented in accordance with the terms of the Settlement Agreement and the Preliminary Approval Order. The Court further finds that the Notice was simply written and readily understandable and Class members have received the best notice practicable under the circumstances of the pendency of this action, their right to opt out, their right to object to the settlement, and all other relevant matters. The notices provided to the class met all requirements of due process, 735 ILCS 5/8-2001, et seq., and any other applicable law.

Judge Andrew M. Lavin, *Brower v. Northwest Community Credit Union* (Jan. 18, 2023) 20CV38608 (Ore. Dist. Ct. Multnomah Cnty.):

This Court finds that the distribution of the Class Notice was completed in accordance with the Preliminary Approval/Notice Order, signed September 8, 2022, was made pursuant to ORCP 32 D, and fully met the requirements of the Oregon Rules of Civil Procedure, due process, the United States Constitution, the Oregon Constitution, and any other applicable law.

Judge Gregory H. Woods, *Torretto et al. v. Donnelley Financial Solutions, Inc. and Mediant Communications, Inc.* (Jan. 5, 2023) 1:20-cv-02667 (S.D.N.Y.):

The Court finds that the notice provided to the Class Members was the best notice practicable under the circumstances, and that it complies with the requirements of Rule 23(c)(2).

Judge Ledricka Thierry, *Opelousas General Hospital Authority v. Louisiana Health Service & Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana* (Dec. 21, 2022) 16-C-3647 (27th Jud. D. Ct. La.):

Notice given to Class Members and all other interested parties pursuant to this Court's order of October 31, 2022, was reasonably calculated to apprise interested parties of the pendency of the action, the certification of the Class as defined, the terms of the Settlement Agreement, Class Members rights to be represented by private counsel, at their own costs, and Class Members' rights to appear in Court to have their objections heard, and to afford persons or entities within the Class definition an opportunity to exclude themselves from the Class. Such notice complied with all requirements of the federal and state constitutions, including the Due Process Clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Class as defined..."

Judge Dale S. Fischer, *DiFlauro et al. v. Bank of America, N.A.* (Dec. 19, 2022) 2:20-cv-05692 (C.D. Cal.):

The form and means of disseminating the Class Notice as provided for in the Order Preliminarily Approving Settlement and Providing for Notice constituted the best notice practicable under the circumstances, including individual notice to all Members of the Class who could be identified through reasonable effort. Said Notice provided the best notice practicable under the circumstances of the proceedings and the matters set forth therein, including the proposed Settlement set forth in the Agreement, to all persons entitled to such notice, and said Notice fully satisfied the requirements of Federal Rule of Civil Procedure 23 and complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution.

Judge Stephen R. Bough, *Browning et al. v. Anheuser-Busch, LLC* (Dec. 19, 2022) 4:20-cv-00889 (W.D. Mo.):

The Court has determined that the Notice given to the Classes, in accordance with the Notice Plan in the Settlement Agreement and the Preliminary Approval Order, fully and accurately informed members of the Classes of all material elements of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of due process, Federal Rule of Civil Procedure 23, and all applicable law. The Court further finds that the Notice given to the Classes was adequate and reasonable.

Judge Robert E. Payne, *Haney et al. v. Genworth Life Insurance Co. et al.* (Dec. 12, 2022) 3:22-cv-00055 (E.D. Va.):

The Court preliminarily approved the Amended Settlement Agreement on July 7, 2022, and directed that notice be sent to the Class. ECF No. 34. The Notice explained the policy election options afforded to class members, how they could communicate with Class Counsel about the Amended Settlement Agreement, their rights and options thereunder, how they could examine certain information on a website that was set up as part of the settlement process, and their right to object to the proposed settlement and opt out

Judicial Quotes

of the proposed case. Class members were also informed that they could contact independent counsel of their choice for advice.

In assessing the adequacy of the Notice, as well as the fairness of the settlement itself, it is important that, according to the record, as of November 1, 2022, the Notice reached more than 99% of the more than 352,000 class members. All things considered, the Notice is adequate under the applicable law....

Judge Danielle Viola, *Dearing v. Magellan Health, Inc. et al.* (Dec. 5, 2022) CV2020-013648 (Sup. Ct. Cnty. Maricopa, Ariz.):

The Court finds that the Notice to the Settlement Class fully complied with the requirements of the Arizona Rules of Civil Procedure and due process, has constituted the best notice practicable under the circumstances, was reasonably calculated to provide, and did provide, due and sufficient notice to Settlement Class Members regarding the existence and nature of the Litigation, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, the rights of Settlement Class Members to exclude themselves from or object to the Settlement, the right to appear at the Final Fairness Hearing, and to receive benefits under the Settlement Agreement.

Judge Michael A. Duddy, *Churchill et al. v. Bangor Savings Bank* (Dec. 5, 2022) BCD-CIV-2021-00027 (Maine Bus. & Consumer Ct.):

The Class Notice provided to the Settlement Class in accordance with the Preliminary Approval Order was the best notice practicable under the circumstances, and constituted due and sufficient notice of the proceedings and matters set forth therein, to all persons entitled to notice.

Judge Andrew Schulman, *Guthrie v. Service Federal Credit Union* (Nov. 22, 2022) 218-2021-CV-00160 (Sup. Ct. Rockingham Cnty., N.H.):

The notice given to the Settlement Class of the Settlement and the other matters set forth therein was the best notice practicable under the circumstances, including individual notice to all Settlement Class Members who could be identified through reasonable effort. Said notice provided due and adequate notice of these proceedings and of the matters set forth in the Agreement, including the proposed Settlement, to all Persons entitled to such notice, and said notice fully satisfied the requirements of New Hampshire law and due process.

Judge Charlene Edwards Honeywell, *Stoll et al. v. Musculoskeletal Institute, Chartered d/b/a Florida Orthopaedic Institute* (Nov. 14, 2022) 8:20-cv-01798 (M.D. Fla):

The Court finds and determines that the Notice Program, preliminarily approved on May 16, 2022, and implemented on June 15, 2022, constituted the best notice practicable under the circumstances, constituted due and sufficient notice of the matters set forth in the notices to all persons entitled to receive such notices, and fully satisfies the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and all other applicable laws and rules. The Notice Program involved direct notice via e-mail and postal mail providing details of the Settlement, including the benefits available, how to exclude or object to the Settlement, when the Final Fairness Hearing would be held, and how to inquire further about details of the Settlement. The Court further finds that all of the notices are written in plain language and are readily understandable by Class Members. The Court further finds that notice has been provided to the appropriate state and federal officials in accordance with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715, drawing no objections.

Judge Thomas W. Thrash, Jr., *Callen v. Daimler AG and Mercedes-Benz USA, LLC* (Nov. 7, 2022) 1:19-cv-01411 (N.D. Ga.):

The Court finds that notice was given in accordance with the Preliminary Approval Order (Dkt. No. 79), and that the form and content of that Notice, and the procedures for dissemination thereof, afforded adequate protections to Class Members and satisfy the requirements of Rule 23(e) and due process and constitute the best notice practicable under the circumstances.

Judicial Quotes

Judge Mark Thomas Bailey, *Snyder et al. v. The Urology Center of Colorado, P.C.* (Oct. 30, 2022) 2021CV33707 (2nd Dist. Ct, Cnty. of Denver Col.):

The Court finds that the Notice Program, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under the circumstances; (ii) was reasonably calculated to provide, and did provide, due and sufficient notice to the Settlement Class regarding the existence and nature of the Litigation, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and the rights of Settlement Class Members to exclude themselves from the Settlement, to object and appear at the Final Approval Hearing, and to receive benefits under the Settlement Agreement; and (iii) satisfied the requirements of the Colorado Rules of Civil Procedure, the United States Constitution, and all other applicable law.

Judge Amy Berman Jackson, *In re U.S. Office of Personnel Management Data Security Breach Litigation* (Oct. 28, 2022) MDL No. 2664, 15-cv-01394 (D.D.C.):

The Court finds that notice of the Settlement was given to Class Members in accordance with the Preliminary Approval Order, and that it constituted the best notice practicable of the matters set forth therein, including the Settlement, to all individuals entitled to such notice. It further finds that the notice satisfied the requirements of Federal Rule of Civil Procedure 23 and of due process.

Judge John R. Tunheim, *In re Pork Antitrust Litigation (Commercial and Institutional Indirect Purchaser Actions - CIIPPs) (Smithfield Foods, Inc.)* (Oct. 19, 2022) 18-cv-01776 (D. Minn.):

The notice given to the Settlement Class, including individual notice to all members of the Settlement Class who could be identified through reasonable effort, was the most effective and practicable under the circumstances. This notice provided due and sufficient notice of the proceedings and of the matters set forth therein, including the proposed settlement, to all persons entitled to such notice, and this notice fully satisfied the requirements of Rules 23(c)(2) and 23(e)(1) of the Federal Rules of Civil Procedure and the requirements of due process.

Judge Harvey E. Schlesinger, *In re Disposable Contact Lens Antitrust Litigation (Alcon Laboratories, Inc. and Johnson & Johnson Vision Care, Inc.)* (Oct. 12, 2022) 3:15-md-02626 (M.D. Fla):

The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Order; (b) constitutes the best notice practicable under the circumstances; (c) constitutes notice that was reasonably calculated, under the circumstances, to apprise the Settlement Classes of (i) the pendency of the Action; (ii) the effect of the Settlement Agreements (including the Releases to be provided thereunder); (iii) Class Counsel's possible motion for an award of attorneys' fees and reimbursement of expenses; (iv) the right to object to any aspect of the Settlement Agreements, the Plan of Distribution, and/or Class Counsel's motion for attorneys' fees and reimbursement of expenses; (v) the right to opt out of the Settlement Classes; and (vi) the right to appear at the Fairness Hearing; (d) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the Settlement Agreements; and (e) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure and the United States Constitution (including the Due Process Clause).

Judge George H. Wu, *Hameed-Bolden et al. v. Forever 21 Retail, Inc. et al.* (Oct. 11, 2022) 2:18-cv-03019 (C.D. Cal):

[T]he Court finds that the Notice and notice methodology implemented pursuant to the Settlement Agreement and the Court's Preliminary Approval Order: (a) constituted methods that were reasonably calculated to inform the members of the Settlement Class of the Settlement and their rights thereunder; (b) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Final Approval Hearing; (c) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to notice; and (d) met all applicable requirements of the Federal Rules of Civil Procedure, and any other applicable law.

Judicial Quotes

Judge Robert M. Dow, Jr., *In re fairlife Milk Products Marketing and Sales Practices Litigation* (Sept. 28, 2022) MDL No. 2909, 1:19-cv-03924 (N.D. Ill.):

The Court finds that the Class Notice Program implemented pursuant to the Settlement Agreement and the Order preliminarily approving the Settlement ... (i) constituted the best practicable notice, (ii) constituted notice that was reasonably calculated under the circumstances to apprise Settlement Class Members of the pendency of the Litigation, of their right to object to or exclude themselves from the proposed Settlement, of their right to appear at the Fairness Hearing, and of their right to seek monetary and other relief, (iii) constituted reasonable, due, adequate, and sufficient notice to all persons entitled to receive notice, and (iv) met all applicable requirements of due process and any other applicable law.

Judge Ethan P. Schulman, *Rodan & Fields LLC; Gorzo et al. v. Rodan & Fields, LLC* (Sept. 28, 2022) CJC-18-004981, CIVDS 1723435 & CGC-18-565628 (Sup. Ct. Cnty. of San Bernadino, Cal. & Sup. Ct. Cnty. of San Francisco, Cal.):

The Court finds the Full Notice, Email Notice, Postcard Notice, and Notice of Opt-Out (collectively, the "Notice Packet") and its distribution to Class Members have been implemented pursuant to the Agreement and this Court's Preliminary Approval Order. The Court also finds the Notice Packet: a) Constitutes notice reasonably calculated to apprise Class Members of: (i) the pendency of the class action lawsuit; (ii) the material terms and provisions of the Settlement and their rights; (iii) their right to object to any aspect of the Settlement; (iv) their right to exclude themselves from the Settlement; (v) their right to claim a Settlement Benefit; (vi) their right to appear at the Final Approval Hearing; and (vii) the binding effect of the orders and judgment in the class action lawsuit on all Participating Class Members; b) Constitutes notice that fully satisfied the requirements of Code of Civil Procedure section 382, California Rules of Court, rule 3.769, and due process; c) Constitutes the best practicable notice to Class Members under the circumstances of the class action lawsuit; and d) Constitutes reasonable, adequate, and sufficient notice to Class Members.

Judge Anthony J. Trenga, *In re Capital One Customer Data Security Breach Litigation* (Sept. 13, 2022) MDL No. 1:19-md-2915, 1:19-cv-02915 (E.D. Va.):

Pursuant to the Court's direction, the Claims Administrator appointed by the Court implemented a robust notice program ... The Notice Plan has been successfully implemented and reached approximately 96 percent of the Settlement Class by the individual notice efforts alone.... Targeted internet advertising and extensive news coverage enhanced public awareness of the Settlement.

The Court finds that the Notice Program has been implemented by the Settlement Administrator and the Parties in accordance with the requirements of the Settlement Agreement, and that such Notice Program, including the utilized forms of Notice, constitutes the best notice practicable under the circumstances and satisfies due process and the requirements of Rule 23 of the Federal Rules of Civil Procedure. The Court finds that the Settlement Administrator and Parties have complied with the directives of the Order Granting Preliminary Approval of Class Action Settlement and Directing Notice of Proposed Settlement and the Court reaffirms its findings concerning notice

Judge Evelio Grillo, *Asetine v. Chipotle Mexican Grill, Inc.* (Sept. 13, 2022) RG21088118 (Cir. Ct. Cal. Alameda Cnty.):

The proposed class notice form and procedure are adequate. The email notice is appropriate given the amount at issue for each member of the class.

Judge David S. Cunningham, *Muransky et al. v. The Cheesecake Factory et al.* (Sept. 9, 2022) 19 stcv 43875 (Sup. Ct. Cal. Cnty. of Los Angeles):

The record shows that Class Notice has been given to the Settlement Class in the manner approved by the Court in its Preliminary Approval Order. The Court finds that such Class Notice: (i) constitutes reasonable and the best notice that is practicable under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the terms of the Agreement and the Class Settlement set forth in the Agreement ("Class Settlement"), and the right of Settlement Class Members to object to or exclude themselves from the Settlement Class and appear at the Fairness Hearing held on May 20, 2022; (iii) constitutes due, adequate, and sufficient notice to all person or entities entitled to

Judicial Quotes

receive notice; and (iv) meets the requirements of due process, California Code of Civil Procedure § 382, and California Rules of Court, Rules 3.760-3.771.

Judge Steven E. McCullough, *Fallis et al. v. Gate City Bank* (Sept. 9, 2022) 09-2019-cv-04007 (East Cent. Dist. Ct. Cass Cnty. N.D.):

The Courts finds that the distribution of the Notices and the Notice Program were properly implemented in accordance with N.D. R. Civ. P. 23, the terms of the Agreement, and the Preliminary Approval Order. The Court further finds that the Notice was simply written and readily understandable and that the Notice (a) constitutes the best notice practicable under the circumstances; (b) constitutes notice that was reasonably calculated, under the circumstances, to apprise the Settlement Classes of the Agreement and their right to exclude themselves or object to the Agreement and to appear at the Final Approval Hearing; (c) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to notice; and (d) meets all applicable requirements of North Dakota law and any other applicable law and due process requirements.

Judge Susan N. Burke, *Mayo v. Affinity Plus Federal Credit Union* (Aug. 29, 2022) 27-cv-20-11786 (4th Jud. Dist. Ct. Minn.):

The Court finds that Notice to the Settlement Class was the best notice practicable and complied with the requirements of Due Process, and that the Notice Program was completed in compliance with the Preliminary Approval Order and the Agreement.

Judge Paul A. Engelmayer, *In re Morgan Stanley Data Security Litigation* (Aug. 5, 2022) 1:20-cv-05914 (S.D.N.Y.):

The Court finds that the emailed and mailed notice, publication notice, website, and Class Notice plan implemented pursuant to the Settlement Agreement and Judge Analisa Torres' Preliminary Approval Order: (a) were implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to appraise Settlement Class Members of the pendency of this Action, of the effect of the proposed Settlement (including the Releases to be provided thereunder), of their right to exclude themselves from or object to the proposed Settlement, of their right to appear at the Fairness Hearing, of the Claims Process, and of Class Counsel's application for an award of attorneys' fees, for reimbursement of expenses associated with the Action, and any Service Award; (d) provided a full and fair opportunity to all Settlement Class Members to be heard with respect to the foregoing matters; (e) constituted due, adequate and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (f) met all applicable requirements of Rule 23 of the Federal Rule of Civil Procedure, the United States Constitution, including the Due Process Clause, and any other applicable rules of law.

Judge Denise Page Hood, *Bleachtech L.L.C. v. United Parcel Service Co.* (July 20, 2022) 14-cv-12719 (E.D. Mich.):

The Settlement Class Notice Program, consisting of, among other things, the Publication Notice, Long Form Notice, website, and toll-free telephone number, was the best notice practicable under the circumstances. The Notice Program provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Settlement Agreement, to all persons entitled to such notice and said notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.

Judge Robert E. Payne, *Skochin et al. v. Genworth Life Insurance Company et al.* (June 29, 2022) 3:21-cv-00019 (E.D. Va.):

The Court finds that the plan to disseminate the Class Notice and Publication Notice the Court previously approved has been implemented and satisfies the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process. The Class Notice, which the Court approved, clearly defined the Class and explained the rights and obligations of the Class Members. The Class Notice explained how to obtain benefits under the Settlement, and how to contact Class Counsel and the Settlement Administrator. The Court appointed Epiq Class Action & Claims Solutions, Inc. ("Epiq") to fulfill the Settlement Administrator duties and disseminate the Class Notice and Publication Notice. The Class Notice and Publication Notice permitted Class Members to access information and documents about the case to inform their decision about whether to opt out of or object to the Settlement.

Judicial Quotes

Judge Fernando M. Olguin, *Johnson v. Moss Bros. Auto Group, Inc. et al.* (June 24, 2022) 5:19-cv-02456 (C.D. Cal.):

Here, after undertaking the required examination, the court approved the form of the proposed class notice. (See Dkt. 125, PAO at 18-21). As discussed above, the notice program was implemented by Epiq. (Dkt. 137-3, Azari Decl. at ¶¶ 15-23 & Exhs. 3-4 (Class Notice)). Accordingly, based on the record and its prior findings, the court finds that the class notice and the notice process fairly and adequately informed the class members of the nature of the action, the terms of the proposed settlement, the effect of the action and release of claims, the class members' right to exclude themselves from the action, and their right to object to the proposed settlement....

Judge Harvey E. Schlesinger, *Beiswinger v. West Shore Home, LLC* (May 25, 2022) 3:20-cv-01286 (M.D. Fla.):

The Notice and the Notice Plan implemented pursuant to the Agreement (1) constitute the best practicable notice under the circumstances; (2) constitute notice that is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Litigation, their right to object to or exclude themselves from the proposed Settlement, and to appear at the Final Approval Hearing; (3) are reasonable and constitute due, adequate, and sufficient notice to all Persons entitled to receive notice; and (4) meet all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court.

Judge Scott Kording, *Jackson v. UKG Inc., f/k/a The Ultimate Software Group, Inc.* (May 20, 2022) 2020L0000031 (Cir. Ct. of McLean Cnty., Ill.):

The Court has determined that the Notice given to the Settlement Class Members, in accordance with the Preliminary Approval Order, fully and accurately informed Settlement Class Members of all material elements of the Settlement, constituted the best notice practicable under the circumstances, and fully satisfied the requirements of 735 ILCS 5/2-803, applicable law, and the Due Process Clauses of the U.S. Constitution and Illinois Constitution.

Judge Denise J. Casper, *Breda v. Celco Partnership d/b/a Verizon Wireless* (May 2, 2022) 1:16-cv-11512 (D. Mass.):

The Court hereby finds Notice of Settlement was disseminated to persons in the Settlement Class in accordance with the Court's preliminary approval order, was the best notice practicable under the circumstances, and that the Notice satisfied Rule 23 and due process.

Judge William H. Orrick, *Maldonado et al. v. Apple Inc. et al.* (Apr. 29, 2022) 3:16-cv-04067 (N.D. Cal.):

[N]otice of the Class Settlement to the Certified Class was the best notice practicable under the circumstances. The notice satisfied due process and provided adequate information to the Certified Class of all matters relating to the Class Settlement, and fully satisfied the requirements of Federal Rules of Civil Procedure 23(c)(2) and (e)(1).

Judge Laurel Beeler, *In re Zoom Video Communications, Inc. Privacy Litigation* (Apr. 21, 2022) 20-cv-02155 (N.D. Cal.):

Between November 19, 2021, and January 3, 2022, notice was sent to 158,203,160 class members by email (including reminder emails to those who did not submit a claim form) and 189,003 by mail. Of the emailed notices, 14,303,749 were undeliverable, and of that group, Epiq mailed notice to 296,592 class members for whom a physical address was available. Of the mailed notices, efforts were made to ensure address accuracy and currency, and as of March 10, 2022, 11,543 were undeliverable. In total, as of March 10, 2022, notice was accomplished for 144,242,901 class members, or 91% of the total. Additional notice efforts were made by newspaper ... social media, sponsored search, an informational release, and a Settlement Website. Epiq and Class Counsel also complied with the court's prior request that best practices related to the security of class member data be implemented.

[T]he Settlement Administrator provided notice to the class in the form the court approved previously. The notice met all legal prerequisites: it was the best notice practicable, satisfied the requirements of Rule 23(c)(2), adequately advised class members of their rights under the settlement agreement, met the requirements of due process, and complied with the court's order regarding court notice. The forms of notice fairly, plainly, accurately, and reasonably provided class members with all required information

Judicial Quotes

Judge Federico A. Moreno, *In re Takata Airbag Products Liability Litigation (Volkswagen)* (Mar. 28, 2022) MDL No. 2599 (S.D. Fla.):

[T]he Court finds that the Class Notice has been given to the Class in the manner approved by the Court in its Preliminary Approval Order ... The Court finds that such Class Notice: (i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense) and the binding effect of the orders and Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), FED. R. CIV. P. 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.

Judge James Donato, *Pennington et al. v. Tetra Tech, Inc. et al.* (Mar. 28, 2022) 3:18-cv-05330 (N.D. Cal.):

On the Rule 23(e)(1) notice requirement, the Court approved the parties' notice plan, which included postcard notice, email notice, and a settlement website. Dkt. No. 154. The individual notice efforts reached an impressive 100% of the identified settlement class. Dkt. No. 200-223. The Court finds that notice was provided in the best practicable manner to class members who will be bound by the proposal. Fed. R. Civ. P. 23(e)(1).

Judge Edward J. Davila, *Cochran et al. v. The Kroger Co. et al.* (Mar. 24, 2022) 5:21-cv-01887 (N.D. Cal.):

The Court finds that the dissemination of the Notices: (a) was implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that is appropriate, in a manner, content, and format reasonably calculated, under the circumstances, to apprise Settlement Class Members ...; (d) constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United (including the Due Process Clause), and all other applicable laws and rules.

Judge Sunshine Sykes, *In re Renovate America Finance Cases* (Mar. 4, 2022) RICJCCP4940 (Sup. Ct. of Cal., Riverside Cnty.):

The Court finds that notice previously given to Class Members in the Action was the best notice practicable under the circumstances and satisfies the requirements of due process ... The Court further finds that, because (a) adequate notice has been provided to all Class Members and (b) all Class Members have been given the opportunity to object to, and/or request exclusion from, the Settlement, the Court has jurisdiction over all Class Members.

Judge David O. Carter, *Fernandez v. Rushmore Loan Management Services LLC* (Feb. 14, 2022) 8:21-cv-00621 (C. D. Cal.):

Notice was sent to potential Class Members pursuant to the Settlement Agreement and the method approved by the Court. The Class Notice adequately describes the litigation and the scope of the involved Class. Further, the Class Notice explained the amount of the Settlement Fund, the plan of allocation, that Plaintiff's counsel and Plaintiff will apply for attorneys' fees, costs, and a service award, and the Class Members' option to participate, opt out, or object to the Settlement. The Class Notice consisted of direct notice via USPS, as well as a Settlement Website where Class Members could view the Long Form Notice.

Judge Otis D. Wright, II, *In re Toll Roads Litigation* (Feb. 11, 2022) 8:16-cv-00262 (C. D. Cal.):

The Class Administrator provided notice to members of the Settlement Classes in compliance with the Agreements, due process, and Rule 23. The notice: (i) fully and accurately informed class members about the lawsuit and settlements; (ii) provided sufficient information so that class members were able to decide whether to accept the benefits offered, opt-out and pursue their own remedies, or object to the proposed settlements; (iii) provided procedures for class members to file written objections to the proposed settlements, to appear at the hearing, and to state objections to the proposed settlements; and (iv) provided the time, date, and place of the final fairness hearing. The Court finds that the Notice provided to the Classes

Judicial Quotes

pursuant to the Settlement Agreements and the Preliminary Approval Order and consisting of individual direct postcard and email notice, publication notice, settlement website, and CAFA notice has been successful and (i) constituted the best practicable notice under the circumstances; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, their right to object to the Settlements or exclude themselves from the Classes, and to appear at the Final Approval Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) otherwise met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court.

Judge Virginia M. Kendall, *In re Turkey Antitrust Litigations (Commercial and Institutional Indirect Purchaser Plaintiffs' Action) Sandee's Bakery d/b/a Sandee's Catering Bakery & Deli et al. v. Agri Stats, Inc.* (Feb. 10, 2022) 1:19-cv-08318 (N.D. Ill.):

The notice given to the Settlement Class, including individual notice all members of the Settlement Class who could be identified through reasonable efforts, was the most effective and practicable under the circumstances. This notice provided due and sufficient notice of proceedings and of the matters set forth therein, including the proposed Settlement, to all persons entitled to such notice, and this notice fully satisfied the requirements of Rules 23(c)(2) and 23(e)(1) of the Federal Rules of Civil Procedure and the requirements of due process.

Judge Beth Labson Freeman, *Ford et al. v. [24]7.ai, Inc.* (Jan. 28, 2022) 5:18-cv-02770 (N.D. Cal.):

The Court finds that the manner and form of notice (the "Notice Program") set forth in the Settlement Agreement was provided to Settlement Class Members. The Court finds that the Notice Program, as implemented, was the best practicable under the circumstances. The Notice Program was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Settlement, and their rights to opt-out of the Settlement Class and object to the Settlement, Class Counsel's fee request, and the request for Service Award for Plaintiffs. The Notice and notice program constituted sufficient notice to all persons entitled to notice. The Notice and notice program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the constitutional requirement of due process.

Judge Terrence W. Boyle, *Abramson et al. v. Safe Streets USA LLC et al.* (Jan. 12, 2022) 5:19-cv-00394 (E.D.N.C.):

Notice was provided to Settlement Class Members in compliance with Section 4 of the Settlement Agreement, due process, and Rule 23 of the Federal Rules of Civil Procedure. The notice: (a) fully and accurately informed Settlement Class Members about the Actions and Settlement Agreement; (b) provided sufficient information so that Settlement Class Members could decide whether to accept the benefits offered, opt-out and pursue their own remedies, or object to the settlement; (c) provided procedures for Settlement Class Members to submit written objections to the proposed settlement, to appear at the hearing, and to state objections to the proposed settlement; and (d) provided the time, date, and place of the Final Approval Hearing.

Judge Joan B. Gottschall, *Mercado et al. v. Verde Energy USA, Inc.* (Dec. 17, 2021) 1:18-cv-02068 (N.D. Ill.):

Epiq mailed and emailed notice to the Class on October 1, 2021. Therefore, direct notice was sent and delivered successfully to the vast majority of Class Members. The Class Notice, together with all included and ancillary documents thereto, complied with all the requirements of Rule 23(c)(2)(B) and fairly, accurately, and reasonably informed members of the Class of: (a) appropriate information about the nature of this Litigation, including the class claims, issues, and defenses, and the essential terms of the Settlement Agreement; (b) the definition of the Class; (c) appropriate information about, and means for obtaining additional information regarding, the lawsuit and the Settlement Agreement; (d) appropriate information about, and means for obtaining and submitting, a claim; (e) appropriate information about the right of Class Members to appear through an attorney, as well as the time, manner, and effect of excluding themselves from the Settlement, objecting to the terms of the Settlement Agreement, or objecting to Lead and Class Counsel's request for an award of attorneys' fees and costs, and the procedures to do so; (f) appropriate information about the consequences of failing to submit a claim or failing to comply with the procedures and deadline for requesting exclusion from, or objecting to, the Settlement; and (g) the binding effect of a class judgment on Class Members under Rule 23(c)(3) of the Federal Rules of Civil Procedure.

Judicial Quotes

The Court finds that Class Members have been provided the best notice practicable of the Settlement and that such notice fully satisfies all requirements of applicable laws and due process.

Judge Patricia M. Lucas, *Wallace v. Wells Fargo* (Nov. 24, 2021) 17CV317775 (Sup. Ct. Cal. Cnty. of Santa Clara):

On August 29, 2021, a dedicated website was established for the settlement at which class members can obtain detailed information about the case and review key documents, including the long form notice, postcard notice, settlement agreement, complaint, motion for preliminary approval . . . As of October 18, 2021, there were 2,639 visitors to the website and 4,428 website pages presented.

On August 30, 2021, a toll-free telephone number was established to allow class members to call for additional information in English or Spanish, listen to answers to frequently asked questions, and request that a long form notice be mailed to them . . . As of October 18, 2021, the telephone number handled 345 calls, representing 1,207 minutes of use, and the settlement administrator mailed 30 long form notices as a result of requests made via the telephone number.

Also, on August 30, 2021, individual postcard notices were mailed to 177,817 class members . . . As of November 10, 2021, 169,404 of those class members successfully received notice.

Judge John R. Tunheim, *In re Pork Antitrust Litigation (Commercial and Institutional Indirect Purchaser Plaintiff Action)* (JBS USA Food Company, JBS USA Food Company Holdings) (Nov. 18, 2021) 18-cv-01776 (D. Minn.):

The notice given to the Settlement Class, including individual notice to all members of the Settlement Class who could be identified through reasonable effort, was the most effective and practicable under the circumstances. This notice provided due and sufficient notice of the proceedings and of the matters set forth therein, including the proposed settlement, to all persons entitled to such notice, and this notice fully satisfied the requirements of Rules 23(c)(2) and 23(e)(1) of the Federal Rules of Civil Procedure and the requirements of due process.

Judge H. Russel Holland, *Coleman v. Alaska USA Federal Credit Union* (Nov. 17, 2021) 3:19-cv-00229 (D. Alaska):

The Court approved Notice Program has been fully implemented. The Court finds that the Notices given to the Settlement Class fully and accurately informed Settlement Class Members of all material elements of the proposed Settlement and constituted valid, due, and sufficient Notice to Settlement Class Members consistent with all applicable requirements. The Court further finds that the Notice Program satisfies due process.

Judge A. Graham Shirley, *Zanca et al. v. Epic Games, Inc.* (Nov. 16, 2021) 21-CVS-534 (Sup. Ct. Wake Cnty., N.C.):

Notice has been provided to all members of the Settlement Class pursuant to and in the manner directed by the Preliminary Approval Order. The Notice Plan was properly administered by a highly experienced third-party Settlement Administrator. Proof of the provision of that Notice has been filed with the Court and full opportunity to be heard has been offered to all Parties to the Action, the Settlement Class, and all persons in interest. The form and manner of the Notice is hereby determined to have been the best notice practicable under the circumstances and to have been given full compliance with each of the requirements of North Carolina Rule of Civil Procedure 23, due process, and applicable law.

Judge Judith E. Levy, *In re Flint Water Cases* (Nov. 10, 2021) 5:16-cv-10444 (E.D. Mich.):

(1) a “Long Form Notice packet [was] mailed to each Settlement Class member ... a list of over 57,000 addresses—[and] over 90% of [the mailings] resulted in successful delivery;” (2) notices were emailed “to addresses that could be determined for Settlement Class members;” and (3) the “Notice Administrator implemented a comprehensive media notice campaign.” ... The media campaign coupled with the mailing was intended to reach the relevant audience in several ways and at several times so that the class members would be fully informed about the settlement and the registration and objection process.

The media campaign included publication in the local newspaper . . . local digital banners . . . television . . . and radio spots . . . banner notices and radio ads placed on Pandora and SoundCloud; and video ads placed on YouTube . . . [T]his settlement has received widespread media attention from major news outlets nationwide.

Plaintiffs submitted an affidavit signed by Azari that details the implementation of the Notice plan The affidavit is bolstered by several documents attached to it, such as the declaration of Epiq Class Action and Claims Solutions, Inc.’s Legal Notice Manager, Stephanie J. Fiereck. Azari declared that Epiq “delivered individual notice

Judicial Quotes

to approximately 91.5% of the identified Settlement Class" and that the media notice brought the overall notice effort to "in excess of 95%." The Court finds that the notice plan was implemented in an appropriate manner.

In conclusion, the Court finds that the Notice Plan as implemented, and its content, satisfies due process.

Judge Vince Chhabria, *Yamagata et al. v. Reckitt Benckiser LLC* (Oct. 28, 2021) 3:17-cv-03529 (N.D. Cal.):

The Court directed that Class Notice be given to the Class Members pursuant to the notice program proposed by the Parties and approved by the Court. In accordance with the Court's Preliminary Approval Order and the Court-approved notice program, the Settlement Administrator caused the forms of Class Notice to be disseminated as ordered. The Long-form Class Notice advised Class Members of the terms of the Settlement Agreement; the Final Approval Hearing, and their right to appear at such hearing; their rights to remain in, or opt out of, the Settlement Class and to object to the Settlement Agreement; procedures for exercising such rights; and the binding effect of this Order and accompanying Final Judgment, whether favorable or unfavorable, to the Settlement Class.

The distribution of the Class Notice pursuant to the Class Notice Program constituted the best notice practicable under the circumstances, and fully satisfies the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. § 1715, and any other applicable law.

Judge Otis D. Wright, II, *Silveira v. M&T Bank* (Oct. 12, 2021) 2:19-cv-06958 (C.D. Cal.):

Notice was sent to potential class members pursuant to the Settlement Agreement and the method approved by the Court. The Class Notice consisted of direct notice via USPS first class mail, as well as a Settlement Website where Class Members could view and request to be sent the Long Form Notice. The Class Notice adequately described the litigation and the scope of the involved class. Further, the Class Notice explained the amount of the Settlement Fund, the plan of allocation, that Plaintiff's counsel and Plaintiff will apply for attorneys' fees, costs, and a service award, and the class members' option to participate, opt out, or object to the settlement.

Judge Timothy J. Korrigan, *Smith v. Costa Del Mar, Inc.* (Sept. 21, 2021) 3:18-cv-01011 (M.D. Fla.):

Following preliminary approval, the settlement administrator carried out the notice program The settlement administrator sent a summary notice and long-form notice to all class members, sent CAFA notice to federal and state officials ... and established a website with comprehensive information about the settlement Email notice was sent to class members with email addresses, and postcards were sent to class members with only physical addresses Multiple attempts were made to contact class members in some cases, and all notices directed recipients to a website where they could access settlement information A paid online media plan was implemented for class members for whom the settlement administrator did not have data When the notice program was complete, the settlement administrator submitted a declaration stating that the notice and paid media plan reached at least seventy percent of potential class members [N]otices had been delivered via postcards or email to 939,400 of the 939,479 class members to whom the settlement administrator sent notice—a ninety-nine and a half percent deliverable rate....

Notice was disseminated in accordance with the Preliminary Approval Order Federal Rule of Civil Procedure 23(c)(2)(B) requires that notice be "the best notice that is practicable under the circumstances." Upon review of the notice materials ... and of Azari's Declaration ... regarding the notice program, the Court is satisfied with the way in which the notice program was carried out. Class notice fully complied with Rule 23(c)(2)(B) and due process, constituted the best notice practicable under the circumstances, and was sufficient notice to all persons entitled to notice of the settlement of this lawsuit.

Judge Jose E. Martinez, *Kukorinis v. Walmart, Inc.* (Sept. 20, 2021) 1:19-cv-20592 (S.D. Fla.):

[T]he Court approved the appointment of Epiq Class Action and Claims Solutions, Inc. as the Claims Administrator with the responsibility of implementing the notice requirements approved in the Court's Order of Approval The media plan included various forms of notice, utilizing national consumer print publications, internet banner advertising, social media, sponsored search, and a national informational release According to the Azari Declaration, the Court-approved Notice reached approximately seventy-five percent (75%) of the Settlement Class on an average of 3.5 times per Class Member

Pertinently, the Claims Administrator implemented digital banner notices across certain social media platforms, including Facebook and Instagram, which linked directly to the Settlement Website ... the digital banner notices generated approximately 522.6 million adult impressions online [T]he Court finds that notice was "reasonably

Judicial Quotes

calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”

Judge Steven L. Tiscione, *Fiore et al. v. Ingenious Designs, LLC* (Sept. 10, 2021) 1:18-cv-07124 (E.D.N.Y.):

Following the Court’s Preliminary Approval of the Settlement, the Notice Plan was effectuated by the Parties and the appointed Claims Administrator, Epiq Systems. The Notice Plan included a direct mailing to Class members who could be specifically identified, as well as nationwide notice by publication, social media and retailer displays and posters. The Notice Plan also included the establishment of an informational website and toll-free telephone number. The Court finds the Parties completed all settlement notice obligations imposed in the Order Preliminarily Approving Settlement. In addition, Defendants through the Class Administrator, sent the requisite CAFA notices to 57 federal and state officials. The class notices constitute “the best notice practicable under the circumstances,” as required by Rule 23(c)(2).

Judge John S. Meyer, *Lozano v. CodeMetro, Inc.* (Sept. 8, 2021) 37-2020-00022701 (Sup. Ct. Cal. Cnty. of San Diego):

The Court finds that Notice has been given to the Settlement Class in the manner directed by the Court in the Preliminary Approval Order. The Court finds that such Notice: (i) was reasonable and constituted the best practicable notice under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Litigation, the terms of the Settlement, their right to exclude themselves from the Settlement Class or object to all or any part of the Settlement, their right to appear at the Final Fairness Hearing (either on their own or through counsel hired at their own expense), and the binding effect of final approval of the Settlement on all persons who do not exclude themselves from the Settlement Class; (iii) constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), and any other applicable law.

Judge Mae A. D’Agostino, *Thompson et al. v. Community Bank, N.A.* (Sept. 8, 2021) 8:19-cv-0919 (N.D.N.Y.):

Prior to distributing Notice to the Settlement Class members, the Settlement Administrator established a website, ... as well as a toll-free line that Settlement Class members could access or call for any questions or additional information about the proposed Settlement, including the Long Form Notice. Once Settlement Class members were identified via Defendant’s business records, the Notices attached to the Agreement and approved by the Court were sent to each Settlement Class member. For Current Account Holders who have elected to receive bank communications via email, Email Notice was delivered. To Past Defendant Account Holders, and Current Account Holders who have not elected to receive communications by email or for whom the Defendant does not have a valid email address, Postcard Notice was delivered by U.S. Mail. The Settlement Administrator mailed 36,012 Postcard Notices and sent 16,834 Email Notices to the Settlement Class, and as a result of the Notice Program, 95% of the Settlement Class received Notice of the Settlement.

Judge Anne-Christine Massullo, *UFCW & Employers Benefit Trust v. Sutter Health et al.* (Aug. 27, 2021) CGC 14-538451 consolidated with CGC-18-565398 (Sup. Ct. Cnty. of San Francisco, Cal.):

The notice of the Settlement provided to the Class constitutes due, adequate and sufficient notice and the best notice practicable under the circumstances, and meets the requirements of due process, the laws of the State of California, and Rule 3.769(f) of the California Rules of Court.

Judge Graham C. Mullen, *In re Kaiser Gypsum Company, Inc. et al.* (July 27, 2021) 16-cv-31602 (W.D.N.C.):

[T]he Declaration of Cameron R. Azari, Esq. on Implementation of Notice Regarding the Joint Plan of Reorganization of Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc. ... (the “Notice Declaration”) was filed with the Bankruptcy Court on July 1, 2020, attesting to publication notice of the Plan.

[T]he Court has reviewed the Plan, the Disclosure Statement, the Disclosure Statement Order, the Voting Agent Declaration, the Affidavits of Service, the Publication Declaration, the Notice Declaration, the Memoranda of Law, the Declarations, the Truck Affidavits and all other pleadings before the Court in connection with the Confirmation of the Plan, including the objections filed to the Plan. The Plan is hereby confirmed in its entirety

Judicial Quotes

Judge Anne-Christine Massullo, *Morris v. Provident Credit Union* (June 23, 2021) CGC-19-581616 (Sup. Ct. Cal. Cnty. of San Fran.):

The Notice approved by this Court was distributed to the Classes in substantial compliance with this Court's Order Certifying Classes for Settlement Purposes and Granting Preliminary Approval of Class Settlement

("Preliminary Approval Order") and the Agreement. The Notice met the requirements of due process and California Rules of Court, rules 3.766 and 3.769(f). The notice to the Classes was adequate.

Judge Esther Salas, *Sager et al. v. Volkswagen Group of America, Inc. et al.* (June 22, 2021) 18-cv-13556 (D.N.J.):

The Court further finds and concludes that Class Notice was properly and timely disseminated to the Settlement Class in accordance with the Class Notice Plan set forth in the Settlement Agreement and the Preliminary Approval Order (Dkt. No. 69). The Class Notice Plan and its implementation in this case fully satisfy Rule 23, the requirements of due process and constitute the best notice practicable under the circumstances.

Judge Josephine L. Staton, *In re Hyundai and Kia Engine Litigation and Flaherty v. Hyundai Motor Company, Inc. et al.* (June 10, 2021) 8:17-cv-00838 and 18-cv-02223 (C.D. Cal.):

The Class Notice was disseminated in accordance with the procedures required by the Court's Orders ... in accordance with applicable law and satisfied the requirements of Rule 23(e) and due process and constituted the best notice practicable for the reasons discussed in the Preliminary Approval Order and Final Approval Order.

Judge Harvey Schlesinger, *In re Disposable Contact Lens Antitrust Litigation (ABB Concise Optical Group, LLC)* (May 31, 2021) 3:15-md-02626 (M.D. Fla.):

The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Order; (b) constitutes the best notice practicable under the circumstances; (c) constitutes notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class of (i) the pendency of the Action; (ii) the effect of the Settlement Agreement (including the Releases to be provided thereunder); (iii) Class Counsel's possible motion for an award of attorneys' fees and reimbursement of expenses; (iv) the right to object to any aspect of the Settlement Agreement, the Plan of Distribution, and/or Class Counsel's motion for attorneys' fees and reimbursement of expenses; (v) the right to opt out of the Settlement Class; (vi) the right to appear at the Fairness Hearing; and (vii) the fact that Plaintiffs may receive incentive awards; (d) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the Settlement Agreement; and (e) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure and the United States Constitution (including the Due Process Clause).

Judge Haywood S. Gilliam, Jr. *Richards et al. v. Chime Financial, Inc.* (May 24, 2021) 4:19-cv-06864 (N.D. Cal.):

The Court finds that the notice and notice plan previously approved by the Court was implemented and complies with Rule 23(c)(2)(B) ... The Court ordered that the third-party settlement administrator send class notice via email based on a class list Defendant provided ... Epiq Class Action & Claims Solutions, Inc., the third-party settlement administrator, represents that class notice was provided as directed Epiq received a total of 527,505 records for potential Class Members, including their email addresses If the receiving email server could not deliver the message, a "bounce code" was returned to Epiq indicating that the message was undeliverable Epiq made two additional attempts to deliver the email notice As of March 1, 2021, a total of 495,006 email notices were delivered, and 32,499 remained undeliverable In light of these facts, the Court finds that the parties have sufficiently provided the best practicable notice to the Class Members.

Judge Henry Edward Autrey, *Pearlstone v. Wal-Mart Stores, Inc.* (Apr. 22, 2021) 4:17-cv-02856 (C.D. Cal.):

The Court finds that adequate notice was given to all Settlement Class Members pursuant to the terms of the Parties' Settlement Agreement and the Preliminary Approval Order. The Court has further determined that the Notice Plan fully and accurately informed Settlement Class Members of all material elements of the Settlement, constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule 23(c)(2) and 23(e)(1), applicable law, and the Due Process Clause of the United States Constitution.

Judicial Quotes

Judge Lucy H. Koh, *Grace v. Apple, Inc.* (Mar. 31, 2021) 17-cv-00551 (N.D. Cal.):

Federal Rule of Civil Procedure 23(c)(2)(B) requires that the settling parties provide class members with “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).” The Court finds that the Notice Plan, which was direct notice sent to 99.8% of the Settlement Class via email and U.S. Mail, has been implemented in compliance with this Court’s Order (ECF No. 426) and complies with Rule 23(c)(2)(B).

Judge Gary A. Fenner, *In re Pre-Filled Propane Tank Antitrust Litigation* (Mar. 30, 2021) MDL No. 2567, 14-cv-02567 (W.D. Mo.):

Based upon the Declaration of Cameron Azari, on behalf of Epiq, the Administrator appointed by the Court, the Court finds that the Notice Program has been properly implemented. That Declaration shows that there have been no requests for exclusion from the Settlement, and no objections to the Settlement. Finally, the Declaration reflects that AmeriGas has given appropriate notice of this settlement to the Attorney General of the United States and the appropriate State officials under the Class Action Fairness Act, 28 U.S.C. § 1715, and no objections have been received from any of them.

Judge Richard Seeborg, *Bautista v. Valero Marketing and Supply Company* (Mar. 17, 2021) 3:15-cv-05557 (N.D. Cal.):

The Notice given to the Settlement Class in accordance with the Notice Order was the best notice practicable under the circumstances of these proceedings and of the matters set forth therein, including the proposed Settlement set forth in the Settlement Agreement, to all Persons entitled to such notice, and said notice fully satisfied the requirements of Fed. R. Civ. P. 23 and due process.

Judge James D. Peterson, *Fox et al. v. Iowa Health System d.b.a. UnityPoint Health* (Mar. 4, 2021) 18-cv-00327 (W.D. Wis.):

The approved Notice plan provided for direct mail notice to all class members at their last known address according to UnityPoint’s records, as updated by the administrator through the U.S. Postal Service. For postcards returned undeliverable, the administrator tried to find updated addresses for those class members. The administrator maintained the Settlement website and made Spanish versions of the Long Form Notice and Claim Form available upon request. The administrator also maintained a toll-free telephone line which provides class members detailed information about the settlement and allows individuals to request a claim form be mailed to them.

The Court finds that this Notice (i) constituted the best notice practicable under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise Settlement Class members of the Settlement, the effect of the Settlement (including the release therein), and their right to object to the terms of the settlement and appear at the Final Approval Hearing; (iii) constituted due and sufficient notice of the Settlement to all reasonably identifiable persons entitled to receive such notice; (iv) satisfied the requirements of due process, Federal Rule of Civil Procedure 23(e)(1) and the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and all applicable laws and rules.

Judge Larry A. Burns, *Trujillo et al. v. Ametek, Inc. et al.* (Mar. 3, 2021) 3:15-cv-01394 (S.D. Cal.):

The Class has received the best practicable notice under the circumstances of this case. The Parties’ selection and retention of Epiq Class Action & Claims Solutions, Inc. (“Epiq”) as the Claims Administrator was reasonable and appropriate. Based on the Declaration of Cameron Azari of Epiq, the Court finds that the Settlement Notices were published to the Class Members in the form and manner approved by the Court in its Preliminary Approval Order. See Dkt. 181-6. The Settlement Notices provided fair, effective, and the best practicable notice to the Class of the Settlement’s terms. The Settlement Notices informed the Class of Plaintiffs’ intent to seek attorneys’ fees, costs, and incentive payments, set forth the date, time, and place of the Fairness Hearing, and explained Class Members’ rights to object to the Settlement or Fee Motion and to appear at the Fairness Hearing The Settlement Notices fully satisfied all notice requirements under the law, including the Federal

Judicial Quotes

Rules of Civil Procedure, the requirements of the California Legal Remedies Act, Cal. Civ. Code § 1781, and all due process rights under the U.S. Constitution and California Constitutions.

Judge Sherri A. Lydon, *Fitzhenry v. Independent Home Products, LLC* (Mar. 2, 2021) 2:19-cv-02993 (D.S.C.):

Notice was provided to Class Members in compliance with Section VI of the Settlement Agreement, due process, and Rule 23 of the Federal Rules of Civil Procedure. The notice: (i) fully and accurately informed

Settlement Class Members about the lawsuit and settlement; (ii) provided sufficient information so that Settlement Class Members could decide whether to accept the benefits offered, opt-out and pursue their own remedies, or object to the settlement; (iii) provided procedures for Class Members to file written objections to the proposed settlement, to appear at the hearing, and to state objections to the proposed settlement; and (iv) provided the time, date, and place of the final fairness hearing.

Judge James V. Selna, *Alvarez v. Sirius XM Radio Inc.* (Feb. 9, 2021) 2:18-cv-08605 (C.D. Cal.):

The Court finds that the dissemination of the Notices attached as Exhibits to the Settlement Agreement: (a) was implemented in accordance with the Notice Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action; (ii) their right to submit a claim (where applicable) by submitting a Claim Form; (iii) their right to exclude themselves from the Settlement Class; (iv) the effect of the proposed Settlement (including the Releases to be provided thereunder); (v) Named Plaintiffs' application for the payment of Service Awards; (vi) Class Counsel's motion for an award of attorneys' fees and expenses; (vii) their right to object to any aspect of the Settlement, and/or Class Counsel's motion for attorneys' fees and expenses (including a Service Award to the Named Plaintiffs and Mr. Wright); and (viii) their right to appear at the Final Approval Hearing; (d) constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States (including the Due Process Clause), and all other applicable laws and rules.

Judge Jon S. Tigar, *Elder v. Hilton Worldwide Holdings, Inc.* (Feb. 4, 2021) 16-cv-00278 (N.D. Cal.):

"Epiq implemented the notice plan precisely as set out in the Settlement Agreement and as ordered by the Court." ECF No. 162 at 9-10. Epiq sent initial notice by email to 8,777 Class Members and by U.S. Mail to the remaining 1,244 Class members. *Id.* at 10. The Notice informed Class Members about all aspects of the Settlement, the date and time of the fairness hearing, and the process for objections. ECF No. 155 at 28-37. Epiq then mailed notice to the 2,696 Class Members whose emails were returned as undeliverable. *Id.* "Of the 10,021 Class Members identified from Defendants' records, Epiq was unable to deliver the notice to only 35 Class Members. Accordingly, the reach of the notice is 99.65%." *Id.* (citation omitted). Epiq also created and maintained a settlement website and a toll-free hotline that Class Members could call if they had questions about the settlement . . . The Court finds that the parties have complied with the Court's preliminary approval order and, because the notice plan complied with Rule 23, have provided adequate notice to class members.

Judge Michael W. Jones, *Wallace et al. v. Monier Lifetile LLC et al.* (Jan. 15, 2021) SCV-16410 (Sup. Ct. Cal.):

The Court also finds that the Class Notice and notice process were implemented in accordance with the Preliminary Approval Order, providing the best practicable notice under the circumstances.

Judge Kristi K. DuBose, *Drazen v. GoDaddy.com, LLC and Bennett v. GoDaddy.com, LLC* (Dec. 23, 2020) 1:19-cv-00563 (S.D. Ala.):

The Court finds that the Notice and the claims procedures actually implemented satisfy due process, meet the requirements of Rule 23(e)(1), and the Notice constitutes the best notice practicable under the circumstances.

Judge Haywood S. Gilliam, Jr., *Izor v. Abacus Data Systems, Inc.* (Dec. 21, 2020) 19-cv-01057 (N.D. Cal.):

The Court finds that the notice plan previously approved by the Court was implemented and that the notice thus satisfied Rule 23(c)(2)(B). [T]he Court finds that the parties have sufficiently provided the best practicable notice to the class members.

Judicial Quotes

Judge Christopher C. Conner, *Al's Discount Plumbing et al. v. Viega, LLC* (Dec. 18, 2020) 19-cv-00159 (M.D. Pa.):

The Court finds that the notice and notice plan previously approved by the Court was implemented and complies with Fed. R. Civ. P. 23(c)(2)(B) and due process. Specifically, the Court ordered that the third-party Settlement Administrator, Epiq, send class notice via email, U.S. mail, by publication in two recognized industry magazines, Plumber and PHC News, in both their print and online digital forms, and to implement a digital media campaign. (ECF 99). Epiq represents that class notice was provided as directed. See Declaration of Cameron R. Azari, ¶¶ 12-15 (ECF 104-13).

Judge Naomi Reice Buchwald, *In re Libor-Based Financial Instruments Antitrust Litigation* (Dec. 16, 2020) MDL No. 2262, 1:11-md-02262 (S.D.N.Y.):

Upon review of the record, the Court hereby finds that the forms and methods of notifying the members of the Settlement Classes and their terms and conditions have met the requirements of the United States Constitution (including the Due Process Clause), Rule 23 of the Federal Rules of Civil Procedure, and all other applicable law and rules; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all members of the Settlement Classes of these proceedings and the matters set forth herein, including the Settlements, the Plan of Allocation and the Fairness Hearing. Therefore, the Class Notice is finally approved.

Judge Larry A. Burns, *Cox et al. Ametek, Inc. et al.* (Dec 15, 2020) 3:17-cv-00597 (S.D. Cal.):

The Class has received the best practicable notice under the circumstances of this case. The Parties' selection and retention of Epiq Class Action & Claims Solutions, Inc. ("Epiq") as the Claims Administrator was reasonable and appropriate. Based on the Declaration of Cameron Azari of Epiq, the Court finds that the Settlement Notices were published to the Class Members in the form and manner approved by the Court in its Preliminary Approval Order. See Dkt. 129-6. The Settlement Notices provided fair, effective, and the best practicable notice to the Class of the Settlement's terms. The Settlement Notices informed the Class of Plaintiffs' intent to seek attorneys' fees, costs, and incentive payments, set forth the date, time, and place of the Fairness Hearing, and explained Class Members' rights to object to the Settlement or Fee Motion and to appear at the Fairness Hearing ... The Settlement Notices fully satisfied all notice requirements under the law, including the Federal Rules of Civil Procedure, the requirements of the California Legal Remedies Act, Cal. Civ. Code § 1781, and all due process rights under the U.S. Constitution and California Constitutions.

Judge Timothy J. Sullivan, *Robinson v. Nationstar Mortgage LLC* (Dec. 11, 2020) 8:14-cv-03667 (D. Md.):

The Class Notice provided to the Settlement Class conforms with the requirements of Fed. Rule Civ. Proc. 23, the United States Constitution, and any other applicable law, and constitutes the best notice practicable under the circumstances, by providing individual notice to all Settlement Class Members who could be identified through reasonable effort, and by providing due and adequate notice of the proceedings and of the matters set forth therein to the other Settlement Class Members. The Class Notice fully satisfied the requirements of Due Process.

Judge Yvonne Gonzalez Rogers, *In re Lithium Ion Batteries Antitrust Litigation* (Dec. 10, 2020) MDL No. 2420, 4:13-md-02420 (N.D. Cal.):

The proposed notice plan was undertaken and carried out pursuant to this Court's preliminary approval order prior to remand, and a second notice campaign thereafter. (See Dkt. No. 2571.) The class received direct and indirect notice through several methods – email notice, mailed notice upon request, an informative settlement website, a telephone support line, and a vigorous online campaign. Digital banner advertisements were targeted specifically to settlement class members, including on Google and Yahoo's ad networks, as well as Facebook and Instagram, with over 396 million impressions delivered. Sponsored search listings were employed on Google, Yahoo and Bing, resulting in 216,477 results, with 1,845 clicks through to the settlement website. An informational release was distributed to 495 media contacts in the consumer electronics industry. The case website has continued to be maintained as a channel for communications with class members. Between February 11, 2020 and April 23, 2020, there were 207,205 unique visitors to the website. In the same period, the toll-free telephone number available to class members received 515 calls.

Judge Katherine A. Bacal, *Garvin v. San Diego Unified Port District* (Nov. 20, 2020) 37-2020-00015064 (Sup. Ct. Cal.):

Notice was provided to Class Members in compliance with the Settlement Agreement, California Code of Civil Procedure §382 and California Rules of Court 3.766 and 3.769, the California and United States

Judicial Quotes

Constitutions, and any other applicable law, and constitutes the best notice practicable under the circumstances, by providing notice to all individual Class Members who could be identified through reasonable effort, and by providing due and adequate notice of the proceedings and of the matters set forth therein to the other Class Members. The Notice fully satisfied the requirements of due process.

Judge Catherine D. Perry, *Pirozzi et al. v. Massage Envy Franchising, LLC* (Nov. 13, 2020) 4:19-cv-807 (E.D. Mo.):

The COURT hereby finds that the CLASS NOTICE given to the CLASS: (i) fairly and accurately described the ACTION and the proposed SETTLEMENT; (ii) provided sufficient information so that the CLASS MEMBERS were able to decide whether to accept the benefits offered by the SETTLEMENT, exclude themselves from the SETTLEMENT, or object to the SETTLEMENT; (iii) adequately described the time and manner by which CLASS MEMBERS could submit a CLAIM under the SETTLEMENT, exclude themselves from the SETTLEMENT, or object to the SETTLEMENT and/or appear at the FINAL APPROVAL HEARING; and (iv) provided the date, time, and place of the FINAL APPROVAL HEARING. The COURT hereby finds that the CLASS NOTICE was the best notice practicable under the circumstances, constituted a reasonable manner of notice to all class members who would be bound by the SETTLEMENT, and complied fully with Federal Rule of Civil Procedure Rule 23, due process, and all other applicable laws.

Judge Robert E. Payne, *Skochin et al. v. Genworth Life Insurance Company et al.* (Nov. 12, 2020) 3:19-cv-00049 (E.D. Va.):

For the reasons set forth in the Court's Memorandum Opinion addressing objections to the Settlement Agreement, ... the plan to disseminate the Class Notice and Publication Notice, which the Court previously approved, has been implemented and satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process.

Judge Jeff Carpenter, *Eastwood Construction LLC et al. v. City of Monroe* (Oct. 27, 2020) 18-cvs-2692 and ***The Estate of Donald Alan Plyler Sr. et al. v. City of Monroe*** (Oct. 27, 2020) 19-cvs-1825 (Sup. Ct. N.C.):

The Settlement Agreement and the Settlement Notice are found to be fair, reasonable, adequate, and in the best interests of the Settlement Class, and are hereby approved pursuant to North Carolina Rule of Civil Procedure 23. The Parties are hereby authorized and directed to comply with and to consummate the Settlement Agreement in accordance with the terms and provisions set forth in the Settlement Agreement, and the Clerk of the Court is directed to enter and docket this Order and Final Judgement in the Actions.

Judge M. James Lorenz, *Walters et al. v. Target Corp.* (Oct. 26, 2020) 3:16-cv-1678 (S.D. Cal.):

The Court has determined that the Class Notices given to Settlement Class members fully and accurately informed Settlement Class members of all material elements of the proposed Settlement and constituted valid, due, and sufficient notice to Settlement Class members consistent with all applicable requirements. The Court further finds that the Notice Program satisfies due process and has been fully implemented.

Judge Maren E. Nelson, *Harris et al. v. Farmers Insurance Exchange and Mid Century Insurance Company* (Oct. 26, 2020) BC 579498 (Sup. Ct. Cal.):

Distribution of Notice directed to the Settlement Class Members as set forth in the Settlement has been completed in conformity with the Preliminary Approval Order, including individual notice to all Settlement Class members who could be identified through reasonable effort, and the best notice practicable under the circumstances. The Notice, which reached 99.9% of all Settlement Class Members, provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed Settlement, to all persons entitled to Notice, and the Notice and its distribution fully satisfied the requirements of due process.

Judge Vera M. Scanlon, *Lashambae v. Capital One Bank, N.A.* (Oct. 21, 2020) 1:17-cv-06406 (E.D.N.Y.):

The Class Notice, as amended, contained all of the necessary elements, including the class definition, the identifies of the named Parties and their counsel, a summary of the terms of the proposed Settlement, information regarding the manner in which objections may be submitted, information regarding the opt-out procedures and deadlines, and the date and location of the Final Approval Hearing. Notice was successfully delivered to approximately 98.7% of the Settlement Class and only 78 individual Settlement Class Members did not receive notice by email or first class mail.

Judicial Quotes

Having reviewed the content of the Class Notice, as amended, and the manner in which the Class Notice was disseminated, this Court finds that the Class Notice, as amended, satisfied the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and all other applicable law and rules. The Class Notice, as amended, provided to the Settlement Class in accordance with the Preliminary Approval Order was the best notice practicable under the circumstances and provided this Court with jurisdiction over the absent Settlement Class Members. See Fed. R. Civ. P. 23(c)(2)(B).

Chancellor Walter L. Evans, K.B., by and through her natural parent, Jennifer Qassis, and Lillian Knox-Bender v. Methodist Healthcare - Memphis Hospitals (Oct. 14, 2020) CH-13-04871-1 (30th Jud. Dist. Tenn.):

Based upon the filings and the record as a whole, the Court finds and determines that dissemination of the Class Notice as set forth herein complies with Tenn. R. Civ. P. 23.03(3) and 23.05 and (i) constitutes the best practicable notice under the circumstances, (ii) was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of Class Settlement, their rights to object to the proposed Settlement, (iii) was reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, (iv) meets all applicable requirements of Due Process; (v) and properly provides notice of the attorney's fees that Class Counsel shall seek in this action. As a result, the Court finds that Class Members were properly notified of their rights, received full Due Process

Judge Sara L. Ellis, Nelson v. Roadrunner Transportation Systems, Inc. (Sept. 15, 2020) 1:18-cv-07400 (N.D. Ill.):

Notice of the Final Approval Hearing, the proposed motion for attorneys' fees, costs, and expenses, and the proposed Service Award payment to Plaintiff have been provided to Settlement Class Members as directed by this Court's Orders.

The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Federal Rule of Civil Procedure 23(c)(2)(B).

Judge George H. Wu, Lusnak v. Bank of America, N.A. (Aug. 10, 2020) 14-cv-01855 (C.D. Cal.):

The Court finds that the Notice program for disseminating notice to the Settlement Class, provided for in the Settlement Agreement and previously approved and directed by the Court, has been implemented by the Settlement Administrator and the Parties. The Court finds that such Notice program, including the approved forms of notice: (a) constituted the best notice that is practicable under the circumstances; (b) included direct individual notice to all Settlement Class Members who could be identified through reasonable effort; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the nature of the Lawsuit, the definition of the Settlement Class certified, the class claims and issues, the opportunity to enter an appearance through an attorney if the member so desires; the opportunity, the time, and manner for requesting exclusion from the Settlement Class, and the binding effect of a class judgment; (d) constituted due, adequate and sufficient notice to all persons entitled to notice; and (e) met all applicable requirements of Federal Rule of Civil Procedure 23, due process under the U.S. Constitution, and any other applicable law.

Judge James Lawrence King, Dasher v. RBC Bank (USA) predecessor in interest to PNC Bank, N.A. (Aug. 10, 2020) 1:10-cv-22190 (S.D. Fla.) as part of **In re Checking Account Overdraft Litigation** MDL No. 2036 (S.D. Fla.):

The Court finds that the members of the Settlement Class were provided with the best practicable notice; the notice was "reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Shutts, 472 U.S. at 812 (quoting Mullane, 339 U.S. at 314-15). This Settlement was widely publicized, and any member of the Settlement Class who wished to express comments or objections had ample opportunity and means to do so.

Judge Jeffrey S. Ross, Lehman v. Transbay Joint Powers Authority et al. (Aug. 7, 2020) CGC-16-553758 (Sup. Ct. Cal.):

The Notice approved by this Court was distributed to the Settlement Class Members in compliance with this Court's Order Granting Preliminary Approval of Class Action Settlement, dated May 8, 2020. The Notice provided to the Settlement Class Members met the requirements of due process and constituted the best notice practicable in the circumstances. Based on evidence and other material submitted in conjunction with the final approval hearing, notice to the class was adequate.

Judicial Quotes

Judge Jean Hoefer Toal, *Cook et al. v. South Carolina Public Service Authority et al.* (July 31, 2020) 2019-CP-23-6675 (Ct. of Com. Pleas. 13th Jud. Cir. S.C.):

Notice was sent to more than 1.65 million Class members, published in newspapers whose collective circulation covers the entirety of the State, and supplemented with internet banner ads totaling approximately 12.3 million impressions. The notices directed Class members to the settlement website and toll-free line for additional inquiries and further information. After this extensive notice campaign, only 78 individuals (0.0047%) have opted-out, and only nine (0.00054%) have objected. The Court finds this response to be overwhelmingly favorable.

Judge Peter J. Messitte, *Jackson et al. v. Viking Group, Inc. et al.* (July 28, 2020) 8:18-cv-02356 (D. Md.):

[T]he Court finds, that the Notice Plan has been implemented in the manner approved by the Court in its Preliminary Approval Order as amended. The Court finds that the Notice Plan: (i) constitutes the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of this Lawsuit and the terms of the Settlement, their right to exclude themselves from the Settlement, or to object to any part of the Settlement, their right to appear at the Final Approval Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the Final Approval Order and the Final Judgment, whether favorable or unfavorable, on all Persons who do not exclude themselves from the Settlement Class, (iii) due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) notice that fully satisfies the requirements of the United States Constitution (including the Due Process Clause), Fed. R. Civ. P. 23, and any other applicable law.

Judge Michael P. Shea, *Grayson et al. v. General Electric Company* (July 27, 2020) 3:13-cv-01799 (D. Conn.):

Pursuant to the Preliminary Approval Order, the Settlement Notice was mailed, emailed and disseminated by the other means described in the Settlement Agreement to the Class Members. This Court finds that this notice procedure was (i) the best practicable notice; (ii) reasonably calculated, under the circumstances, to apprise the Class Members of the pendency of the Civil Action and of their right to object to or exclude themselves from the proposed Settlement; and (iii) reasonable and constitutes due, adequate, and sufficient notice to all entities and persons entitled to receive notice.

Judge Gerald J. Pappert, *Rose v. The Travelers Home and Marine Insurance Company et al.* (July 20, 2020) 19-cv-00977 (E.D. Pa.):

The Class Notice ... has been given to the Settlement Class in the manner approved by the Court in its Preliminary Approval Order. Such Class Notice (i) constituted the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency and nature of this Action, the definition of the Settlement Class, the terms of the Settlement Agreement, the rights of the Settlement Class to exclude themselves from the settlement or to object to any part of the settlement, the rights of the Settlement Class to appear at the Final Approval Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the Settlement Agreement on all persons who do not exclude themselves from the Settlement Class, (iii) provided due, adequate, and sufficient notice to the Settlement Class; and (iv) fully satisfied all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the due process requirements of the United States Constitution.

Judge Christina A. Snyder, *Waldrup v. Countrywide Financial Corporation et al.* (July 16, 2020) 2:13-cv-08833 (C.D. Cal.):

The Court finds that mailed and publication notice previously given to Class Members in the Action was the best notice practicable under the circumstances, and satisfies the requirements of due process and FED. R. Civ. P. 23. The Court further finds that, because (a) adequate notice has been provided to all Class Members and (b) all Class Members have been given the opportunity to object to, and/or request exclusion from, the Settlement, it has jurisdiction over all Class Members. The Court further finds that all requirements of statute (including but not limited to 28 U.S.C. § 1715), rule, and state and federal constitutions necessary to effectuate this Settlement have been met and satisfied.

Judicial Quotes

Judge James Donato, *Coffeng et al. v. Volkswagen Group of America, Inc.* (June 10, 2020) 17-cv-01825 (N.D. Cal.):

The Court finds that, as demonstrated by the Declaration and Supplemental Declaration of Cameron Azari, and counsel's submissions, Notice to the Settlement Class was timely and properly effectuated in accordance with FED. R. CIV. P. 23(e) and the approved Notice Plan set forth in the Court's Preliminary Approval Order. The Court finds that said Notice constitutes the best notice practicable under the circumstances, and satisfies all requirements of Rule 23(e) and due process.

Judge Michael W. Fitzgerald, *Behfarin v. Pruco Life Insurance Company et al.* (June 3, 2020) 17-cv-05290 (C.D. Cal.):

The Court finds that the requirements of Rule 23 of the Federal Rule of Civil Procedure and other laws and rules applicable to final settlement approval of class actions have been satisfied . . . This Court finds that the Claims Administrator caused notice to be disseminated to the Class in accordance with the plan to disseminate Notice outlined in the Settlement Agreement and the Preliminary Approval Order, and that Notice was given in an adequate and sufficient manner and complies with Due Process and Fed. R. Civ. P. 23.

Judge Nancy J. Rosenstengel, *First Impressions Salon, Inc. et al. v. National Milk Producers Federation et al.* (Apr. 27, 2020) 3:13-cv-00454 (S.D. Ill.):

The Court finds that the Notice given to the Class Members was completed as approved by this Court and complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process. The settlement Notice Plan was modeled on and supplements the previous court-approved plan and, having been completed, constitutes the best notice practicable under the circumstances. In making this determination, the Court finds that the Notice provided Class members due and adequate notice of the Settlement, the Settlement Agreement, the Plan of Distribution, these proceedings, and the rights of Class members to opt-out of the Class and/or object to Final Approval of the Settlement, as well as Plaintiffs' Motion requesting attorney fees, costs, and Class Representative service awards.

Judge Harvey Schlesinger, *In re Disposable Contact Lens Antitrust Litigation (CooperVision, Inc.)* (Mar. 4, 2020) 3:15-md-02626 (M.D. Fla.):

The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Orders; (b) constitutes the best notice practicable under the circumstances; (c) constitutes notice that was reasonably calculated, under the circumstances, to apprise the Settlement Classes of (i) the pendency of the Action; (ii) the effect of the Settlement Agreements (including the Releases to the provided thereunder); (iii) Class Counsel's possible motion for an award of attorneys' fees and reimbursement of expenses; (iv) the right to object to any aspect of the Settlement Agreements, the Plan of Distribution, and/or Class Counsel's motion for attorneys' fees and reimbursement of expenses; (v) the right to opt out of the Settlement Classes; (vi) the right to appear at the Fairness Hearing; and (vii) the fact that Plaintiffs may receive incentive awards; (d) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the Settlement Agreement and (e) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure and the United States Constitution (including the Due Process Clause).

Judge Amos L. Mazzant, *Stone et al. v. Porcelana Corona De Mexico, S.A. DE C.V f/k/a Sanitarios Lamosa S.A. DE C.V. a/k/a Vortens* (Mar. 3, 2020) 4:17-cv-00001 (E.D. Tex.):

The Court has reviewed the Notice Plan and its implementation and efficacy, and finds that it constituted the best notice practicable under the circumstances and was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to the proposed settlement in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution and Rules 23(c) and (e) of the Federal Rules of Civil Procedure.

In addition, Class Notice clearly and concisely stated in plain, easily understood language: (i) the nature of the action; (ii) the definition of the certified Equitable Relief Settlement Class; (iii) the claims and issues of the Equitable Relief Settlement Class; (iv) that a Settlement Class Member may enter an appearance through an attorney if the member so desires; (v) the binding effect of a class judgment on members under Fed. R. Civ. P. 23(c)(3).

Judicial Quotes

Judge Michael H. Simon, *In re Premera Blue Cross Customer Data Security Breach Litigation* (Mar. 2, 2020) MDL No. 2633, 3:15-md-2633 (D. Ore.):

The Court confirms that the form and content of the Summary Notice, Long Form Notice, Publication Notice, and Claim Form, and the procedure set forth in the Settlement for providing notice of the Settlement to the Class, were in full compliance with the notice requirements of Federal Rules of Civil Procedure 23(c)(2)(B) and 23(e), fully, fairly, accurately, and adequately advised members of the Class of their rights under the Settlement, provided the best notice practicable under the circumstances, fully satisfied the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure, and afforded Class Members with adequate time and opportunity to file objections to the Settlement and attorney's fee motion, submit Requests for Exclusion, and submit Claim Forms to the Settlement Administrator.

Judge Maxine M. Chesney, *McKinney-Drobnis et al. v. Massage Envy Franchising* (Mar. 2, 2020) 3:16-cv-06450 (N.D. Cal.):

The COURT hereby finds that the individual direct CLASS NOTICE given to the CLASS via email or First Class U.S. Mail (i) fairly and accurately described the ACTION and the proposed SETTLEMENT; (ii) provided sufficient information so that the CLASS MEMBERS were able to decide whether to accept the benefits offered by the SETTLEMENT, exclude themselves from the SETTLEMENT, or object to the SETTLEMENT; (iii) adequately described the manner in which CLASS MEMBERS could submit a VOUCHER REQUEST under the SETTLEMENT, exclude themselves from the SETTLEMENT, or object to the SETTLEMENT and/or appear at the FINAL APPROVAL HEARING; and (iv) provided the date, time, and place of the FINAL APPROVAL HEARING. The COURT hereby finds that the CLASS NOTICE was the best notice practicable under the circumstances and complied fully with Federal Rule of Civil Procedure Rule 23, due process, and all other applicable laws.

Judge Harry D. Leinenweber, *Albrecht v. Oasis Power, LLC d/b/a Oasis Energy* (Feb. 6, 2020) 1:18-cv-01061 (N.D. Ill.):

The Court finds that the distribution of the Class Notice, as provided for in the Settlement Agreement, (i) constituted the best practicable notice under the circumstances to Settlement Class Members, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of, among other things, the pendency of the Action, the nature and terms of the proposed Settlement, their right to object or to exclude themselves from the proposed Settlement, and their right to appear at the Final Approval Hearing, (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice, and (iv) complied fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable law.

The Court finds that the Class Notice and methodology set forth in the Settlement Agreement, the Preliminary Approval Order, and this Final Approval Order (i) constitute the most effective and practicable notice of the Final Approval Order, the relief available to Settlement Class Members pursuant to the Final Approval Order, and applicable time periods; (ii) constitute due, adequate, and sufficient notice for all other purposes to all Settlement Class Members; and (iii) comply fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable laws.

Judge Robert Scola, Jr., *Wilson et al. v. Volkswagen Group of America, Inc. et al.* (Jan. 28, 2020) 17-cv-23033 (S.D. Fla.):

The Court finds that the Class Notice, in the form approved by the Court, was properly disseminated to the Settlement Class pursuant to the Notice Plan and constituted the best practicable notice under the circumstances. The forms and methods of the Notice Plan approved by the Court met all applicable requirements of the Federal Rules of Civil Procedure, the United States Code, the United States Constitution (including the Due Process Clause), and any other applicable law.

Judge Michael Davis, *Garcia v. Target Corporation* (Jan. 27, 2020) 16-cv-02574 (D. Minn.):

The Court finds that the Notice Plan set forth in Section 4 of the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency of this case, certification of the Settlement Class for settlement purposes only, the terms of the Settlement

Judicial Quotes

Agreement, and the Final Approval Hearing, and satisfies the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law.

Judge Bruce Howe Hendricks, *In re TD Bank, N.A. Debit Card Overdraft Fee Litigation* (Jan. 9, 2020) MDL No. 2613, 6:15-MN-02613 (D.S.C.):

The Classes have been notified of the settlement pursuant to the plan approved by the Court. After having reviewed the Declaration of Cameron R. Azari (ECF No. 220-1) and the Supplemental Declaration of Cameron R. Azari ..., the Court hereby finds that notice was accomplished in accordance with the Court's directives. The Court further finds that the notice program constituted the best practicable notice to the Settlement Classes under the circumstances and fully satisfies the requirements of due process and Federal Rule 23.

Judge Margo K. Brodie, *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation* (Dec. 13, 2019) MDL No. 1720, 05-md-01720 (E.D.N.Y.):

The notice and exclusion procedures provided to the Rule 23(b)(3) Settlement Class, including but not limited to the methods of identifying and notifying members of the Rule 23(b)(3) Settlement Class, were fair, adequate, and sufficient, constituted the best practicable notice under the circumstances, and were reasonably calculated to apprise members of the Rule 23(b)(3) Settlement Class of the Action, the terms of the Superseding Settlement Agreement, and their objection rights, and to apprise members of the Rule 23(b)(3) Settlement Class of their exclusion rights, and fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, any other applicable laws or rules of the Court, and due process.

Judge Steven Logan, *Knapper v. Cox Communications, Inc.* (Dec. 13, 2019) 2:17-cv-00913 (D. Ariz.):

The Court finds that the form and method for notifying the class members of the settlement and its terms and conditions was in conformity with this Court's Preliminary Approval Order (Doc. 120). The Court further finds that the notice satisfied due process principles and the requirements of Federal Rule of Civil Procedure 23(c), and the Plaintiff chose the best practicable notice under the circumstances. The Court further finds that the notice was clearly designed to advise the class members of their rights.

Judge Manish Shah, *Prather v. Wells Fargo Bank, N.A.* (Dec. 10, 2019) 1:17-cv-00481 (N.D. Ill.):

The Court finds that the Notice Plan set forth in Section VIII of the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency of this case, certification of the Settlement Class for settlement purposes only, the terms of the Settlement Agreement, and the Final Approval Hearing, and satisfies the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law.

Judge Liam O'Grady, *Liggio v. Apple Federal Credit Union* (Dec. 6, 2019) 1:18-cv-01059 (E.D. Va.):

The Court finds that the manner and form of notice (the "Notice Plan") as provided for in this Court's July 2, 2019 Order granting preliminary approval of class settlement, and as set forth in the Parties' Settlement Agreement was provided to Settlement Class Members by the Settlement Administrator The Notice Plan was reasonably calculated to give actual notice to Settlement Class Members of the right to receive benefits from the Settlement, and to be excluded from or object to the Settlement. The Notice Plan met the requirements of Rule 23(c)(2)(B) and due process and constituted the best notice practicable under the circumstances.

Judge Brian McDonald, *Armon et al. v. Washington State University* (Nov. 8, 2019) 17-2-23244-1 (consolidated with 17-2-25052-0) (Sup. Ct. Wash.):

The Court finds that the Notice Program, as set forth in the Settlement and effectuated pursuant to the Preliminary Approval Order, satisfied CR 23(c)(2), was the best Notice practicable under the circumstances, was reasonably calculated to provide-and did provide-due and sufficient Notice to the Settlement Class of the pendency of the Litigation; certification of the Settlement Class for settlement purposes only; the existence and terms of the Settlement; the identity of Class Counsel and appropriate information about Class Counsel's then-forthcoming application for attorneys' fees and incentive awards to the Class Representatives; appropriate information about how to participate in the Settlement; Settlement Class Members' right to exclude themselves; their right to object to the Settlement and to appear at the Final Approval Hearing, through counsel if they

Judicial Quotes

desired; and appropriate instructions as to how to obtain additional information regarding this Litigation and the Settlement. In addition, pursuant to CR 23(c)(2)(B), the Notice properly informed Settlement Class Members that any Settlement Class Member who failed to opt-out would be prohibited from bringing a lawsuit against Defendant based on or related to any of the claims asserted by Plaintiffs, and it satisfied the other requirements of the Civil Rules.

Judge Andrew J. Guilford, *In re Wells Fargo Collateral Protection Insurance Litigation* (Nov. 4, 2019) 8:17-ml-02797 (C.D. Cal.):

Epiq Class Action & Claims Solutions, Inc. (“Epiq”), the parties’ settlement administrator, was able to deliver the court-approved notice materials to all class members, including 2,254,411 notice packets and 1,019,408 summary notices.

Judge Paul L. Maloney, *Burch v. Whirlpool Corporation* (Oct. 16, 2019) 1:17-cv-00018 (W.D. Mich.):

[T]he Court hereby finds and concludes that members of the Settlement Class have been provided the best notice practicable of the Settlement and that such notice satisfies all requirements of federal and applicable state laws and due process.

Judge Gene E.K. Pratter, *Tashica Fulton-Green et al. v. Accolade, Inc.* (Sept. 24, 2019) 2:18-cv-00274 (E.D. Pa.):

The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Federal Rule of Civil Procedure 23(c)(2)(B).

Judge Edwin Torres, *Burrow et al. v. Forjas Taurus S.A. et al.* (Sept. 6, 2019) 1:16-cv-21606 (S.D. Fla.):

Because the Parties complied with the agreed-to notice provisions as preliminarily approved by this Court, and given that there are no developments or changes in the facts to alter the Court’s previous conclusion, the Court finds that the notice provided in this case satisfied the requirements of due process and of Rule 23(c)(2)(B).

Judge Amos L. Mazzant, *Fessler v. Porcelana Corona De Mexico, S.A. DE C.V f/k/a Sanitarios Lamosa S.A. DE C.V. a/k/a Vortens* (Aug. 30, 2019) 4:19-cv-00248 (E.D. Tex.):

The Court has reviewed the Notice Plan and its implementation and efficacy, and finds that it constituted the best notice practicable under the circumstances and was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to the proposed settlement or opt out of the Settlement Class in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution and Rules 23(c) and (e) of the Federal Rules of Civil Procedure.

In addition, Class Notice clearly and concisely stated in plain, easily understood language: (i) the nature of the action; (ii) the definition of the certified 2011 Settlement Class; (iii) the claims and issues of the 2011 Settlement Class; (iv) that a Settlement Class Member may enter an appearance through an attorney if the member so desires; (v) that the Court will exclude from the Settlement Class any member who requests exclusions; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Fed. R. Civ. P. 23(c)(3).

Judge Karon Owen Bowdre, *In re Community Health Systems, Inc. Customer Data Security Breach Litigation* (Aug. 22, 2019) MDL No. 2595, 2:15-cv-00222 (N.D. Ala.):

The court finds that the Notice Program: (1) satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process; (2) was the best practicable notice under the circumstances; (3) reasonably apprised Settlement Class members of the pendency of the Action and their right to object to the settlement or opt-out of the Settlement Class; and (4) was reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice. Approximately 90% of the 6,081,189 individuals identified as Settlement Class members received the Initial Postcard Notice of this Settlement Action.

The court further finds, pursuant to Fed. R. Civ. P. 23(c)(2)(B), that the Class Notice adequately informed Settlement Class members of their rights with respect to this action.

Judicial Quotes

Judge Christina A. Snyder, *Zaklit et al. v. Nationstar Mortgage LLC et al.* (Aug. 21, 2019) 5:15-cv-02190 (C.D. Cal.):

The Class Notice provided to the Settlement Class conforms with the requirements of Fed. Rule Civ. Proc. 23, the California and United States Constitutions, and any other applicable law, and constitutes the best notice practicable under the circumstances, by providing individual notice to all Settlement Class Members who could be identified through reasonable effort, and by providing due and adequate notice

of the proceedings and of the matters set forth therein to the other Settlement Class Members. The notice fully satisfied the requirements of Due Process. No Settlement Class Members have objected to the terms of the Settlement.

Judge Brian M. Cogan, *Luib v. Henkel Consumer Goods Inc.* (Aug. 19, 2019) 1:17-cv-03021 (E.D.N.Y.):

The Court finds that the Notice Plan, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under the circumstances; (ii) was reasonably calculated to provide, and did provide, due and sufficient notice to the Settlement Class regarding the existence and nature of the Action, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and the rights of Settlement Class members to exclude themselves from the Settlement Agreement, to object and appear at the Final Approval Hearing, and to receive benefits under the Settlement Agreement; and (iii) satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable law.

Judge Yvonne Gonzalez Rogers, *In re Lithium Ion Batteries Antitrust Litigation* (Aug. 16, 2019) MDL No. 2420, 4:13-md-02420 (N.D. Cal.):

The proposed notice plan was undertaken and carried out pursuant to this Court's preliminary approval order. [T]he notice program reached approximately 87 percent of adults who purchased portable computers, power tools, camcorders, or replacement batteries, and these class members were notified an average of 3.5 times each. As a result of Plaintiffs' notice efforts, in total, 1,025,449 class members have submitted claims. That includes 51,961 new claims, and 973,488 claims filed under the prior settlements.

Judge Jon Tigar, *McKnight et al. v. Uber Technologies, Inc. et al.* (Aug. 13, 2019) 3:14-cv-05615 (N.D. Cal.):

The settlement administrator, Epiq Systems, Inc., carried out the notice procedures as outlined in the preliminary approval. ECF No. 162 at 17-18. Notices were mailed to over 22 million class members with a success rate of over 90%. Id. at 17. Epiq also created a website, banner ads, and a toll free number. Id. at 17-18. Epiq estimates that it reached through mail and other formats 94.3% of class members. ECF No. 164 ¶ 28. In light of these actions, and the Court's prior order granting preliminary approval, the Court finds that the parties have provided adequate notice to class members.

Judge Gary W.B. Chang, *Robinson v. First Hawaiian Bank* (Aug. 8, 2019) 17-1-0167-01 (Cir. Ct. of First Cir. Haw.):

This Court determines that the Notice Program satisfies all of the due process requirements for a class action settlement.

Judge Karin Crump, *Hyder et al. v. Consumers County Mutual Insurance Company* (July 30, 2019) D-1-GN-16-000596 (D. Ct. of Travis Cnty. Tex.):

Due and adequate Notice of the pendency of this Action and of this Settlement has been provided to members of the Settlement Class, and this Court hereby finds that the Notice Plan described in the Preliminary Approval Order and completed by Defendant complied fully with the requirements of due process, the Texas Rules of Civil Procedure, and the requirements of due process under the Texas and United States Constitutions, and any other applicable laws.

Judge Wendy Bettlestone, *Underwood v. Kohl's Department Stores, Inc. et al.* (July 24, 2019) 2:15-cv-00730 (E.D. Pa.):

The Notice, the contents of which were previously approved by the Court, was disseminated in accordance with the procedures required by the Court's Preliminary Approval Order in accordance with applicable law.

Judicial Quotes

Judge Andrew G. Ceresia, J.S.C., *Denier et al. v. Taconic Biosciences, Inc.* (July 15, 2019) 00255851 (Sup Ct. N.Y.):

The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of the CPLR.

Judge Vince G. Chhabria, *Parsons v. Kimpton Hotel & Restaurant Group, LLC* (July 11, 2019) 3:16-cv-05387 (N.D. Cal.):

Pursuant to the Preliminary Approval Order, the notice documents were sent to Settlement Class Members by email or by first-class mail, and further notice was achieved via publication in People magazine, internet banner notices, and internet sponsored search listings. The Court finds that the manner and form of notice (the "Notice Program") set forth in the Settlement Agreement was provided to Settlement Class Members. The Court finds that the Notice Program, as implemented, was the best practicable under the circumstances. The Notice Program was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Settlement, and their rights to opt-out of the Settlement Class and object to the Settlement, Class Counsel's fee request, and the request for Service Award for Plaintiff. The Notice and Notice Program constituted sufficient notice to all persons entitled to notice. The Notice and Notice Program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the constitutional requirement of due process.

Judge Daniel J. Buckley, *Adlouni v. UCLA Health Systems Auxiliary et al.* (June 28, 2019) BC589243 (Sup. Ct. Cal.):

The Court finds that the notice to the Settlement Class pursuant to the Preliminary Approval Order was appropriate, adequate, and sufficient, and constituted the best notice practicable under the circumstances to all Persons within the definition of the Settlement Class to apprise interested parties of the pendency of the Action, the nature of the claims, the definition of the Settlement Class, and the opportunity to exclude themselves from the Settlement Class or present objections to the settlement. The notice fully complied with the requirements of due process and all applicable statutes and laws and with the California Rules of Court.

Judge John C. Hayes III, *Lightsey et al. v. South Carolina Electric & Gas Company, a Wholly Owned Subsidiary of SCANA et al.* (June 11, 2019) 2017-CP-25-335 (Ct. of Com. Pleas., S.C.):

These multiple efforts at notification far exceed the due process requirement that the class representative provide the best practical notice.... Following this extensive notice campaign reaching over 1.6 million potential class member accounts, Class counsel have received just two objections to the settlement and only 24 opt outs.

Judge Stephen K. Bushong, *Scharfstein v. BP West Coast Products, LLC* (June 4, 2019) 1112-17046 (Ore. Cir., Cnty. of Multnomah):

The Court finds that the Notice Plan ... fully met the requirements of the Oregon Rules of Civil Procedure, due process, the United States Constitution, the Oregon Constitution, and any other applicable law.

Judge Cynthia Bashant, *Lloyd et al. v. Navy Federal Credit Union* (May 28, 2019) 17-cv-1280 (S.D. Cal.):

This Court previously reviewed, and conditionally approved Plaintiffs' class notices subject to certain amendments. The Court affirms once more that notice was adequate.

Judge Robert W. Gettleman, *Cowen v. Lenny & Larry's Inc.* (May 2, 2019) 1:17-cv-01530 (N.D. Ill.):

Notice to the Settlement Class and other potentially interested parties has been provided in accordance with the elements specified by the Court in the preliminary approval order. Adequate notice of the amended settlement and the final approval hearing has also been given. Such notice informed the Settlement Class members of all material elements of the proposed Settlement and of their opportunity to object or comment thereon or to exclude themselves from the Settlement; provided Settlement Class Members adequate instructions and a means to obtain additional information; was adequate notice under the circumstances; was valid, due, and sufficient notice to all Settlement Class [M]embers; and complied fully with the laws of the State of Illinois, Federal Rules of Civil Procedure, the United States Constitution, due process, and other applicable law.

Judicial Quotes

Judge Edward J. Davila, *In re HP Printer Firmware Update Litigation* (Apr. 25, 2019) 5:16-cv-05820 (N.D. Cal.):

Due and adequate notice has been given of the Settlement as required by the Preliminary Approval Order. The Court finds that notice of this Settlement was given to Class Members in accordance with the Preliminary Approval Order and constituted the best notice practicable of the proceedings and matters set forth therein, including the Settlement, to all Persons entitled to such notice, and that this notice satisfied the requirements of Federal Rule of Civil Procedure 23 and of due process.

Judge Claudia Wilken, *Naiman v. Total Merchant Services, Inc. et al.* (Apr. 16, 2019) 4:17-cv-03806 (N.D. Cal.):

The Court also finds that the notice program satisfied the requirements of Federal Rule of Civil Procedure 23 and due process. The notice approved by the Court and disseminated by Epiq constituted the best practicable method for informing the class about the Final Settlement Agreement and relevant aspects of the litigation.

Judge Paul Gardephe, *37 Besen Parkway, LLC v. John Hancock Life Insurance Company (U.S.A.)* (Mar. 31, 2019) 15-cv-9924 (S.D.N.Y.):

The Notice given to Class Members complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process and provided due and adequate notice to the Class.

Judge Alison J. Nathan, *Pantelyat et al. v. Bank of America, N.A. et al.* (Jan. 31, 2019) 16-cv-08964 (S.D.N.Y.):

The Class Notice provided to the Settlement Class in accordance with the Preliminary Approval Order was the best notice practicable under the circumstances, and constituted due and sufficient notice of the proceedings and matters set forth therein, to all persons entitled to notice. The notice fully satisfied the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and all other applicable law and rules.

Judge Kenneth M. Hoyt, *Al's Pals Pet Card, LLC et al. v. Woodforest National Bank, N.A. et al.* (Jan. 30, 2019) 4:17-cv-3852 (S.D. Tex.):

[T]he Court finds that the class has been notified of the Settlement pursuant to the plan approved by the Court. The Court further finds that the notice program constituted the best practicable notice to the class under the circumstances and fully satisfies the requirements of due process, including Fed. R. Civ. P. 23(e)(1) and 28 U.S.C. § 1715.

Judge Robert M. Dow, Jr., *In re Dealer Management Systems Antitrust Litigation* (Jan. 23, 2019) MDL No. 2817, 18-cv-00864 (N.D. Ill.):

The Court finds that the Settlement Administrator fully complied with the Preliminary Approval Order and that the form and manner of providing notice to the Dealership Class of the proposed Settlement with Reynolds was the best notice practicable under the circumstances, including individual notice to all members of the Dealership Class who could be identified through the exercise of reasonable effort. The Court further finds that the notice program provided due and adequate notice of these proceedings and of the matters set forth therein, including the terms of the Agreement, to all parties entitled to such notice and fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715(b), and constitutional due process.

Judge Federico A. Moreno, *In re Takata Airbag Products Liability Litigation (Ford)* (Dec. 20, 2018) MDL No. 2599 (S.D. Fla.):

The record shows and the Court finds that the Class Notice has been given to the Class in the manner approved by the Court in its Preliminary Approval Order. The Court finds that such Class Notice: (i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense) and the binding effect of the orders and Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), FED. R. Civ. P. 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.

Judicial Quotes

Judge Herndon, *Hale v. State Farm Mutual Automobile Insurance Company et al.* (Dec. 16, 2018) 3:12-cv-00660 (S.D. Ill.):

The Class here is estimated to include approximately 4.7 million members. Approximately 1.43 million of them received individual postcard or email notice of the terms of the proposed Settlement, and the rest were notified via a robust publication program “estimated to reach 78.8% of all U.S. Adults Aged 35+ approximately 2.4 times.” Doc. 966-2 ¶¶ 26, 41. The Court previously approved the notice plan (Doc. 947), and now, having carefully reviewed the declaration of the Notice Administrator (Doc. 966-2), concludes that it was fully and properly executed, and reflected “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” See Fed. R. Civ. P. 23(c)(2)(B). The Court further concludes that CAFA notice was properly effectuated to the attorneys general and insurance commissioners of all 50 states and District of Columbia.

Judge Jesse M. Furman, *Alaska Electrical Pension Fund et al. v. Bank of America, N.A. et al.* (Nov. 13, 2018) 14-cv-07126 (S.D.N.Y.):

The mailing and distribution of the Notice to all members of the Settlement Class who could be identified through reasonable effort, the publication of the Summary Notice, and the other Notice efforts described in the Motion for Final Approval, as provided for in the Court's June 26, 2018 Preliminary Approval Order, satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all Persons entitled to notice.

Judge William L. Campbell, Jr., *Ajose et al. v. Interline Brands, Inc.* (Oct. 23, 2018) 3:14-cv-01707 (M.D. Tenn.):

The Court finds that the Notice Plan, as approved by the Preliminary Approval Order: (i) satisfied the requirements of Rule 23(c)(3) and due process; (ii) was reasonable and the best practicable notice under the circumstances; (iii) reasonably apprised the Settlement Class of the pendency of the action, the terms of the Agreement, their right to object to the proposed settlement or opt out of the Settlement Class, the right to appear at the Final Fairness Hearing, and the Claims Process; and (iv) was reasonable and constituted due, adequate, and sufficient notice to all those entitled to receive notice.

Judge Joseph C. Spero, *Abante Rooter and Plumbing v. Pivotal Payments Inc., d/b/a/ Capital Processing Network and CPN* (Oct. 15, 2018) 3:16-cv-05486 (N.D. Cal.):

[T]he Court finds that notice to the class of the settlement complied with Rule 23(c)(3) and (e) and due process. Rule 23(e)(1) states that “[t]he court must direct notice in a reasonable manner to all class members who would be bound by” a proposed settlement, voluntary dismissal, or compromise. Class members are entitled to the “best notice that is practicable under the circumstances” of any proposed settlement before it is finally approved by the Court. Fed. R. Civ. P. 23(c)(2)(B) ... The notice program included notice sent by first class mail to 1,750,564 class members and reached approximately 95.2% of the class.

Judge Marcia G. Cooke, *Dipuglia v. US Coachways, Inc.* (Sept. 28, 2018) 1:17-cv-23006 (S.D. Fla.):

The Settlement Class Notice Program was the best notice practicable under the circumstances. The Notice Program provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Agreement, to all persons entitled to such notice and said notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.

Judge Beth Labson Freeman, *Gergetz v. Telenav, Inc.* (Sept. 27, 2018) 5:16-cv-04261 (N.D. Cal.):

The Court finds that the Notice and Notice Plan implemented pursuant to the Settlement Agreement, which consists of individual notice sent via first-class U.S. Mail postcard, notice provided via email, and the posting of relevant Settlement documents on the Settlement Website, has been successfully implemented and was the best notice practicable under the circumstances and: (1) constituted notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, their right to object to or to exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing; (2) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (3) met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause, and the Rules of this Court.

Judicial Quotes

Judge M. James Lorenz, *Farrell v. Bank of America, N.A.* (Aug. 31, 2018) 3:16-cv-00492 (S.D. Cal.):

The Court therefore finds that the Class Notices given to Settlement Class members adequately informed Settlement Class members of all material elements of the proposed Settlement and constituted valid, due, and sufficient notice to Settlement Class members. The Court further finds that the Notice Program satisfies due process and has been fully implemented.

Judge Dean D. Pregerson, *Falco et al. v. Nissan North America, Inc. et al.* (July 16, 2018) 2:13-cv-00686 (C.D. Cal.):

Notice to the Settlement Class as required by Rule 23(e) of the Federal Rules of Civil Procedure has been provided in accordance with the Court's Preliminary Approval Order, and such Notice by first-class mail was given in an adequate and sufficient manner, and constitutes the best notice practicable under the circumstances, and satisfies all requirements of Rule 23(e) and due process.

Judge Lynn Adelman, *In re Windsor Wood Clad Window Product Liability Litigation* (July 16, 2018) MDL No. 2688, 16-md-02688 (E.D. Wis.):

The Court finds that the Notice Program was appropriately administered, and was the best practicable notice to the Class under the circumstances, satisfying the requirements of Rule 23 and due process. The Notice Program, constitutes due, adequate, and sufficient notice to all persons, entities, and/or organizations entitled to receive notice; fully satisfied the requirements of the Constitution of the United States (including the Due Process Clause), Rule 23 of the Federal Rules of Civil Procedure, and any other applicable law; and is based on the Federal Judicial Center's illustrative class action notices.

Judge Stephen K. Bushong, *Surrett et al. v. Western Culinary Institute et al.* (June 18, 2018) 0803-03530 (Ore. Cir. Cnty. of Multnomah):

This Court finds that the distribution of the Notice of Settlement ... fully met the requirements of the Oregon Rules of Civil Procedure, due process, the United States Constitution, the Oregon Constitution, and any other applicable law.

Judge Jesse M. Furman, *Alaska Electrical Pension Fund et al. v. Bank of America, N.A. et al.* (June 1, 2018) 14-cv-07126 (S.D.N.Y.):

The mailing of the Notice to all members of the Settlement Class who could be identified through reasonable effort, the publication of the Summary Notice, and the other Notice distribution efforts described in the Motion for Final Approval, as provided for in the Court's October 24, 2017 Order Providing for Notice to the Settlement Class and Preliminarily Approving the Plan of Distribution, satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all Persons entitled to notice.

Judge Brad Seligman, *Larson v. John Hancock Life Insurance Company (U.S.A.)* (May 8, 2018) RG16813803 (Sup. Ct. Cal.):

The Court finds that the Class Notice and dissemination of the Class Notice as carried out by the Settlement Administrator complied with the Court's order granting preliminary approval and all applicable requirements of law, including, but not limited to California Rules of Court, rule 3.769(f) and the Constitutional requirements of due process, and constituted the best notice practicable under the circumstances and sufficient notice to all persons entitled to notice of the Settlement.

[T]he dissemination of the Class Notice constituted the best notice practicable because it included mailing individual notice to all Settlement Class Members who are reasonably identifiable using the same method used to inform class members of certification of the class, following a National Change of Address search and run through the LexisNexis Deceased Database.

Judge Federico A. Moreno, *Masson v. Tallahassee Dodge Chrysler Jeep, LLC* (May 8, 2018) 17-cv-22967 (S.D. Fla.):

The Settlement Class Notice Program was the best notice practicable under the circumstances. The Notice Program provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Agreement, to all persons entitled to such notice and said notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.

Judicial Quotes

Chancellor Russell T. Perkins, *Morton v. GreenBank* (Apr. 18, 2018) 11-135-IV (20th Jud. Dist. Tenn.):

The Notice Program as provided or in the Agreement and the Preliminary Amended Approval Order constituted the best notice practicable under the circumstances, including individual notice to all Settlement Class members who could be identified through reasonable effort. The Notice Plan fully satisfied the requirements of Tennessee Rule of Civil Procedure 23.03, due process and any other applicable law.

Judge James V. Selna, *Callaway v. Mercedes-Benz USA, LLC* (Mar. 8, 2018) 8:14-cv-02011 (C.D. Cal.):

The Court finds that the notice given to the Class was the best notice practicable under the circumstances of this case, and that the notice complied with the requirements of Federal Rule of Civil Procedure 23 and due process.

The notice given by the Class Administrator constituted due and sufficient notice to the Settlement Class, and adequately informed members of the Settlement Class of their right to exclude themselves from the Settlement Class so as not to be bound by the terms of the Settlement Agreement and how to object to the Settlement.

The Court has considered and rejected the objection ... [regarding] the adequacy of the notice plan. The notice given provided ample information regarding the case. Class members also had the ability to seek additional information from the settlement website, from Class Counsel or from the Class Administrator.

Judge Thomas M. Durkin, *Vergara et al., v. Uber Technologies, Inc.* (Mar. 1, 2018) 1:15-cv-06972 (N.D. Ill.):

The Court finds that the Notice Plan set forth in Section IX of the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Classes of the pendency of this case, certification of the Settlement Classes for settlement purposes only, the terms of the Settlement Agreement, and the Final Approval Hearing, and satisfies the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law. Further, the Court finds that Defendant has timely satisfied the notice requirements of 28 U.S.C. Section 1715.

Judge Federico A. Moreno, *In re Takata Airbag Products Liability Litigation (Honda & Nissan)* (Feb. 28, 2018) MDL No. 2599 (S.D. Fla.):

The Court finds that the Class Notice has been given to the Class in the manner approved by the Court in its Preliminary Approval Order. The Court finds that such Class Notice: (i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense) and the binding effect of the orders and Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), FED R. CIV. R. 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.

Judge Susan O. Hickey, *Larey v. Allstate Property and Casualty Insurance Company* (Feb. 9, 2018) 4:14-cv-04008 (W.D. Kan.):

Based on the Court's review of the evidence submitted and argument of counsel, the Court finds and concludes that the Class Notice and Claim Form was mailed to potential Class Members in accordance with the provisions of the Preliminary Approval Order, and together with the Publication Notice, the automated toll-free telephone number, and the settlement website: (i) constituted, under the circumstances, the most effective and practicable notice of the pendency of the Lawsuit, this Stipulation, and the Final Approval Hearing to all Class Members who could be identified through reasonable effort; and (ii) met all requirements of the Federal Rules of Civil Procedure, the requirements of due process under the United States Constitution, and the requirements of any other applicable rules or law.

Judicial Quotes

Judge Muriel D. Hughes, *Glasko v. Independent Bank Corporation* (Jan. 11, 2018) 13-009983 (Cir. Ct. Mich.):

The Court-approved Notice Plan satisfied due process requirements ... The notice, among other things, was calculated to reach Settlement Class Members because it was sent to their last known email or mail address in the Bank's files.

Judge Naomi Reice Buchwald, *Orlander v. Staples, Inc.* (Dec. 13, 2017) 13-cv-00703 (S.D.N.Y.):

The Notice of Class Action Settlement ("Notice") was given to all Class Members who could be identified with reasonable effort in accordance with the terms of the Settlement Agreement and Preliminary Approval Order. The form and method of notifying the Class of the pendency of the Action as a class action and the terms and conditions of the proposed Settlement met the requirements of Federal Rule of Civil Procedure 23 and the Constitution of the United States (including the Due Process Clause); and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

Judge Lisa Godbey Wood, *T.A.N. v. PNI Digital Media, Inc.* (Dec. 1, 2017) 2:16-cv-132 (S.D. Ga.):

Notice to the Settlement Class Members required by Rule 23 has been provided as directed by this Court in the Preliminary Approval Order, and such notice constituted the best notice practicable, including, but not limited to, the forms of notice and methods of identifying and providing notice to the Settlement Class Members, and satisfied the requirements of Rule 23 and due process, and all other applicable laws.

Judge Robin L. Rosenberg, *Gottlieb v. Citgo Petroleum Corporation* (Nov. 29, 2017) 9:16-cv-81911 (S.D. Fla.):

The Settlement Class Notice Program was the best notice practicable under the circumstances. The Notice Program provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Settlement Agreement, to all persons entitled to such notice and said notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.

Judge Donald M. Middlebrooks, *Mahoney v. TT of Pine Ridge, Inc.* (Nov. 20, 2017) 9:17-cv-80029 (S.D. Fla.):

Based on the Settlement Agreement, Order Granting Preliminary Approval of Class Action Settlement Agreement, and upon the Declaration of Cameron Azari, Esq. (DE 61-1), the Court finds that Class Notice provided to the Settlement Class was the best notice practicable under the circumstances, and that it satisfied the requirements of due process and Federal Rule of Civil Procedure 23(e)(1).

Judge Gerald Austin McHugh, *Sobiech v. U.S. Gas & Electric, Inc., i/t/d/b/a Pennsylvania Gas & Electric et al.* (Nov. 8, 2017) 2:14-cv-04464 (E.D. Pa.):

Notice has been provided to the Settlement Class of the pendency of this Action, the conditional certification of the Settlement Class for purposes of this Settlement, and the preliminary approval of the Settlement Agreement and the Settlement contemplated thereby. The Court finds that the notice provided was the best notice practicable under the circumstances to all persons entitled to such notice and fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process.

Judge Federico A. Moreno, *In re Takata Airbag Products Liability Litigation* (BMW, Mazda, Toyota, & Subaru) (Nov. 1, 2017) MDL No. 2599 (S.D. Fla.):

[T]he Court finds that the Class Notice has been given to the Class in the manner approved in the Preliminary Approval Order. The Class Notice: (i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the orders and Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), Federal Rule of Civil Procedure 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.

Judicial Quotes

Judge Charles R. Breyer, *In re Volkswagen “Clean Diesel” Marketing, Sales Practices and Products Liability Litigation* (May 17, 2017) MDL No. 2672 (N.D. Cal.):

The Court is satisfied that the Notice Program was reasonably calculated to notify Class Members of the proposed Settlement. The Notice “apprise[d] interested parties of the pendency of the action and afford[ed] them an opportunity to present their objections.” Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Indeed, the Notice Administrator reports that the notice delivery rate of 97.04% “exceed[ed] the expected range and is indicative of the extensive address updating and re-mailing protocols used.”

Judge Rebecca Brett Nightingale, *Ratzlaff et al. v. BOKF, NA d/b/a Bank of Oklahoma et al.* (May 15, 2017) CJ-2015-00859 (Dist. Ct. Okla.):

The Court-approved Notice Plan satisfies Oklahoma law because it is “reasonable” (12 O.S. § 2023(E)(I)) and it satisfies due process requirements because it was “reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Shutts, 472 U.S. at 812 (quoting Mullane, 339 U.S. at 314-15).

Judge Joseph F. Bataillon, *Klug v. Watts Regulator Company* (Apr. 13, 2017) 8:15-cv-00061 (D. Neb.):

The court finds that the notice to the Settlement Class of the pendency of the Class Action and of this settlement, as provided by the Settlement Agreement and by the Preliminary Approval Order dated December 7, 2017, constituted the best notice practicable under the circumstances to all persons and entities within the definition of the Settlement Class, and fully complied with the requirements of Federal Rules of Civil Procedure Rule 23 and due process. Due and sufficient proof of the execution of the Notice Plan as outlined in the Preliminary Approval Order has been filed.

Judge Yvonne Gonzalez Rogers, *Bias v. Wells Fargo & Company et al.* (Apr. 13, 2017) 4:12-cv-00664 (N.D. Cal.):

The form, content, and method of dissemination of Notice of Settlement given to the Settlement Class was adequate and reasonable and constituted the best notice practicable under the circumstances, including both individual notice to all Settlement Class Members who could be identified through reasonable effort and publication notice.

Notice of Settlement, as given, complied with the requirements of Rule 23 of the Federal Rules of Civil Procedure, satisfied the requirements of due process, and constituted due and sufficient notice of the matters set forth herein.

Notice of the Settlement was provided to the appropriate regulators pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715(c)(1).

Judge Carlos Murguia, *Whitton v. Deffenbaugh Industries, Inc. et al.* (Dec. 14, 2016) 2:12-cv-02247 and **Gary, LLC v. Deffenbaugh Industries, Inc. et al.** 2:13-cv-02634 (D. Kan.):

The Court determines that the Notice Plan as implemented was reasonably calculated to provide the best notice practicable under the circumstances and contained all required information for members of the proposed Settlement Class to act to protect their interests. The Court also finds that Class Members were provided an adequate period of time to receive Notice and respond accordingly.

Judge Yvette Kane, *In re Shop-Vac Marketing and Sales Practices Litigation* (Dec. 9, 2016) MDL No. 2380 (M.D. Pa.):

The Court hereby finds and concludes that members of the Settlement Class have been provided the best notice practicable of the Settlement and that such notice satisfies all requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and all other applicable laws.

Judge Timothy D. Fox, *Miner v. Philip Morris USA, Inc.* (Nov. 21, 2016) 60CV03-4661 (Ark. Cir. Ct.):

The Court finds that the Settlement Notice provided to potential members of the Class constituted the best and most practicable notice under the circumstances, thereby complying fully with due process and Rule 23 of the Arkansas Rules of Civil Procedure.

Judicial Quotes

Judge Eileen Bransten, *In re HSBC Bank USA, N.A.*, as part of *In re Checking Account Overdraft Litigation* (Oct. 13, 2016) 650562/2011 (Sup. Ct. N.Y.):

This Court finds that the Notice Program and the Notice provided to Settlement Class members fully satisfied the requirements of constitutional due process, the N.Y. C.P.L.R., and any other applicable laws, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all persons entitled thereto.

Judge Jerome B. Simandle, *In re Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation* (Sept. 20, 2016) MDL No. 2540 (D.N.J.):

The Court hereby finds that the Notice provided to the Settlement Class constituted the best notice practicable under the circumstances. Said Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the terms of the Settlement Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of Fed. R. Civ. P. 23, requirements of due process and any other applicable law.

Judge Marcia G. Cooke, *Chimeno-Buzzi v. Hollister Co. and Abercrombie & Fitch Co.* (Apr. 11, 2016) 14-cv-23120 (S.D. Fla.):

Pursuant to the Court's Preliminary Approval Order, the Settlement Administrator, Epiq Systems, Inc., has complied with the approved notice process as confirmed in its Declaration filed with the Court on March 23, 2016. The Court finds that the notice process was designed to advise Class Members of their rights. The form and method for notifying Class Members of the settlement and its terms and conditions was in conformity with this Court's Preliminary Approval Order, constituted the best notice practicable under the circumstances, and satisfied the requirements of Federal Rule of Civil Procedure 23(c)(2)(B), the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715, and due process under the United States Constitution and other applicable laws.

Judge Yvonne Gonzalez Rogers, *In re Lithium Ion Batteries Antitrust Litigation* (Mar. 22, 2016) MDL No. 2420, 4:13-md-02420 (N.D. Cal.):

From what I could tell, I liked your approach and the way you did it. I get a lot of these notices that I think are all legalese and no one can really understand them. Yours was not that way.

Judge Christopher S. Sontchi, *In re Energy Future Holdings Corp et al.* (July 30, 2015) 14-cv-10979 (Bankr. D. Del.):

Notice of the Asbestos Bar Date as set forth in this Asbestos Bar Date Order and in the manner set forth herein constitutes adequate and sufficient notice of the Asbestos Bar Date and satisfies the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

Judge David C. Norton, *In re MI Windows and Doors Inc. Products Liability Litigation* (July 22, 2015) MDL No. 2333, 2:12-mn-00001 (D.S.C.):

The court finds that the Notice Plan, as described in the Settlement and related declarations, has been faithfully carried out and constituted the best practicable notice to Class Members under the circumstances of this Action, and was reasonable and constituted due, adequate, and sufficient notice to all Persons entitled to be provided with Notice.

The court also finds that the Notice Plan was reasonably calculated, under the circumstances, to apprise Class Members of: (1) the pendency of this class action; (2) their right to exclude themselves from the Settlement Class and the proposed Settlement; (3) their right to object to any aspect of the proposed Settlement (including final certification of the Settlement Class, the fairness, reasonableness, or adequacy of the proposed Settlement, the adequacy of the Settlement Class's representation by Named Plaintiffs or Class Counsel, or the award of attorney's and representative fees); (4) their right to appear at the fairness hearing (either on their own or through counsel hired at their own expense); and (5) the binding and preclusive effect of the orders and Final Order and Judgment in this Action, whether favorable or unfavorable, on all Persons who do not request exclusion from the Settlement Class. As such, the court finds that the Notice fully satisfied the requirements of the Federal Rules of Civil Procedure, including Federal Rule of Civil Procedure 23(c)(2) and (e), the United States Constitution (including the Due Process

Judicial Quotes

Clause), the rules of this court, and any other applicable law, and provided sufficient notice to bind all Class Members, regardless of whether a particular Class Member received actual notice.

Judge Robert W. Gettleman, *Adkins et al. v. Nestlé Purina PetCare Company et al.* (June 23, 2015) 1:12-cv-02871 (N.D. Ill.):

Notice to the Settlement Class and other potentially interested parties has been provided in accordance with the notice requirements specified by the Court in the Preliminary Approval Order. Such notice fully and accurately informed the Settlement Class members of all material elements of the proposed Settlement and of their opportunity to object or comment thereon or to exclude themselves from the Settlement; provided Settlement Class Members adequate instructions and a variety of means to obtain additional information; was the best notice practicable under the circumstances; was valid, due, and sufficient notice to all Settlement Class members; and complied fully with the laws of the State of Illinois, Federal Rules of Civil Procedure, the United States Constitution, due process, and other applicable law.

Judge James Lawrence King, *Steen v. Capital One, N.A.* (May 22, 2015) 2:10-cv-01505 (E.D. La.) and 1:10-cv-22058 (S.D. Fla.) as part of ***In re Checking Account Overdraft Litigation***, MDL No. 2036 (S.D. Fla.):

The Court finds that the Settlement Class Members were provided with the best practicable notice; the notice was reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections . . . This Settlement with Capital One was widely publicized, and any Settlement Class Member who wished to express comments or objections had ample opportunity and means to do so.

Judge Rya W. Zobel, *Gulbankian et al. v. MW Manufacturers, Inc.* (Dec. 29, 2014) 1:10-cv-10392 (D. Mass.):

This Court finds that the Class Notice was provided to the Settlement Class consistent with the Preliminary Approval Order and that it was the best notice practicable and fully satisfied the requirements of the Federal Rules of Civil Procedure, due process, and applicable law. The Court finds that the Notice Plan that was implemented by the Claims Administrator satisfies the requirements of FED. R. CIV. P. 23, 28 U.S.C. § 1715, and Due Process, and is the best notice practicable under the circumstances. The Notice Plan constituted due and sufficient notice of the Settlement, the Final Approval Hearing, and the other matters referred to in the notices. Proof of the giving of such notices has been filed with the Court via the Azari Declaration and its exhibits.

Judge Edward J. Davila, *Rose v. Bank of America Corporation et al.* (Aug. 29, 2014) 5:11-cv-02390 & 5:12-cv-00400 (N.D. Cal.):

The Court finds that the notice was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of this action, all material elements of the Settlement, the opportunity for Settlement Class Members to exclude themselves from, object to, or comment on the settlement and to appear at the final approval hearing. The notice was the best notice practicable under the circumstances, satisfying the requirements of Rule 23(c)(2)(B); provided notice in a reasonable manner to all class members, satisfying Rule 23(e)(1)(B); was adequate and sufficient notice to all Class Members; and, complied fully with the laws of the United States and of the Federal Rules of Civil Procedure, due process and any other applicable rules of court.

Judge James A. Robertson, II, *Wong et al. v. Alacer Corp.* (June 27, 2014) CGC-12-519221 (Sup. Ct. Cal.):

Notice to the Settlement Class has been provided in accordance with the Preliminary Approval Order. Based on the Declaration of Cameron Azari dated March 7, 2014, such Class Notice has been provided in an adequate and sufficient manner, constitutes the best notice practicable under the circumstances and satisfies the requirements of California Civil Code Section 1781, California Civil Code of Civil Procedure Section 382, Rules 3.766 of the California Rules of Court, and due process.

Judge John Gleeson, *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation* (Dec. 13, 2013) MDL No. 1720, 05-md-01720 (E.D.N.Y.):

The Class Administrator notified class members of the terms of the proposed settlement through a mailed notice and publication campaign that included more than 20 million mailings and publication in more than 400 publications. The notice here meets the requirements of due process and notice standards . . . The objectors' complaints provide no reason to conclude that the purposes and requirements of a notice to a class were not met here.

Judicial Quotes

Judge Lance M. Africk, *Evans et al. v. TIN, Inc. et al.* (July 7, 2013) 2:11-cv-02067 (E.D. La.):

The Court finds that the dissemination of the Class Notice... as described in Notice Agent Lauran Schultz's Declaration: (a) constituted the best practicable notice to Class Members under the circumstances; (b) constituted notice that was reasonably calculated, under the circumstances...; (c) constituted notice that was reasonable, due, adequate, and sufficient; and (d) constituted notice that fully satisfied all applicable legal requirements, including Rules 23(c)(2)(B) and (e)(1) of the Federal Rules of Civil Procedure, the United States Constitution (including Due Process Clause), the Rules of this Court, and any other applicable law, as well as complied with the Federal Judicial Center's illustrative class action notices.

Judge Edward M. Chen, *Marolda v. Symantec Corporation* (Apr. 5, 2013) 3:08-cv-05701 (N.D. Cal.):

Approximately 3.9 million notices were delivered by email to class members, but only a very small percentage objected or opted out ... The Court ... concludes that notice of settlement to the class was adequate and satisfied all requirements of Federal Rule of Civil Procedure 23(e) and due process. Class members received direct notice by email, and additional notice was given by publication in numerous widely circulated publications as well as in numerous targeted publications. These were the best practicable means of informing class members of their rights and of the settlement's terms.

Judge Ann D. Montgomery, *In re Zurn Pex Plumbing Products Liability Litigation* (Feb. 27, 2013) MDL No. 1958, 08-md-01958 (D. Minn.):

*The form and content of the notices provided to the class were direct, understandable, and consistent with the "plain language" principles advanced by the Federal Judicial Center . . . The notice plan's multi-faceted approach to providing notice to settlement class members whose identity is not known to the settling parties constitutes "the best notice [*26] that is practicable under the circumstances" consistent with Rule 23(c)(2)(B).*

Magistrate Judge Stewart, *Gessele et al. v. Jack in the Box, Inc.* (Jan. 28, 2013) 3:10-cv-00960 (D. Ore.):

Moreover, plaintiffs have submitted [a] declaration from Cameron Azari, a nationally recognized notice expert, who attests that fashioning an effective joint notice is not unworkable or unduly confusing. Azari also provides a detailed analysis of how he would approach fashioning an effective notice in this case.

Judge Carl J. Barbier, *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010 (Medical Benefits Settlement)* (Jan. 11, 2013) MDL No. 2179 (E.D. La.):

Through August 9, 2012, 366,242 individual notices had been sent to potential [Medical Benefits] Settlement Class Members by postal mail and 56,136 individual notices had been e-mailed. Only 10,700 mailings—or 3.3%—were known to be undeliverable. (Azari Decl. ¶¶ 8, 9.) Notice was also provided through an extensive schedule of local newspaper, radio, television and Internet placements, well-read consumer magazines, a national daily business newspaper, highly-trafficked websites, and Sunday local newspapers (via newspaper supplements). Notice was also provided in non-measured trade, business and specialty publications, African-American, Vietnamese, and Spanish language publications, and Cajun radio programming. The combined measurable paid print, television, radio, and Internet effort reached an estimated 95% of adults aged 18+ in the Gulf Coast region an average of 10.3 times each, and an estimated 83% of all adults in the United States aged 18+ an average of 4 times each. (Id. ¶¶ 8, 10.) All notice documents were designed to be clear, substantive, and informative. (Id. ¶ 5.)

The Court received no objections to the scope or content of the [Medical Benefits] Notice Program. (Azari Supp. Decl. ¶ 12.) The Court finds that the Notice and Notice Plan as implemented satisfied the best notice practicable standard of Rule 23(c) and, in accordance with Rule 23(e)(1), provided notice in a reasonable manner to Class Members who would be bound by the Settlement, including individual notice to all Class Members who could be identified through reasonable effort. Likewise, the Notice and Notice Plan satisfied the requirements of Due Process. The Court also finds the Notice and Notice Plan satisfied the requirements of CAFA.

Judge Carl J. Barbier, *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010 (Economic and Property Damages Settlement)* (Dec. 21, 2012) MDL No. 2179 (E.D. La.):

The Court finds that the Class Notice and Class Notice Plan satisfied and continue to satisfy the applicable requirements of Federal Rule of Civil Procedure 23(c)(2)(b) and 23(e), the Class Action Fairness Act (28 U.S.C. § 1711 et seq.), and the Due Process Clause of the United States Constitution (U.S. Const., amend. V), constituting the best notice

Judicial Quotes

that is practicable under the circumstances of this litigation. The notice program surpassed the requirements of Due Process, Rule 23, and CAFA. Based on the factual elements of the Notice Program as detailed below, the Notice Program surpassed all of the requirements of Due Process, Rule 23, and CAFA.

The Notice Program, as duly implemented, surpasses other notice programs ... executed with court approval. The Notice Program included notification to known or potential Class Members via postal mail and e-mail; an extensive schedule of local newspaper, radio, television and Internet placements, well-read consumer magazines, a national daily business newspaper, and Sunday local newspapers. Notice placements also appeared in non-measured trade, business, and specialty publications, African-American, Vietnamese, and Spanish language publications, and Cajun radio programming. The Notice Program met the objective of reaching the greatest possible number of class members and providing them with every reasonable opportunity to understand their legal rights. See Azari Decl. ¶¶ 8, 15, 68. The Notice Program was substantially completed on July 15, 2012, allowing class members adequate time to make decisions before the opt-out and objections deadlines.

The media notice effort alone reached an estimated 95% of adults in the Gulf region an average of 10.3 times each, and an estimated 83% of all adults in the United States an average of 4 times each. These figures do not include notice efforts that cannot be measured, such as advertisements in trade publications and sponsored search engine listings. The Notice Program fairly and adequately covered and notified the class without excluding any demographic group or geographic area, and it exceeded the reach percentage achieved in most other court-approved notice programs.

Judge Alonzo Harris, Opelousas General Hospital Authority, A Public Trust, D/B/A Opelousas General Health System and ArklaMiss Surgery Center, L.L.C. v. FairPay Solutions, Inc. (Aug. 17, 2012) 12-C-1599 (27th Jud. D. Ct. La.):

Notice given to Class Members and all other interested parties pursuant to this Court's order of April 18, 2012, was reasonably calculated to apprise interested parties of the pendency of the action, the certification of the Class as Defined for settlement purposes only, the terms of the Settlement Agreement, Class Members rights to be represented by private counsel, at their own costs, and Class Members rights to appear in Court to have their objections heard, and to afford persons or entities within the Class Definition an opportunity to exclude themselves from the Class. Such notice complied with all requirements of the federal and state constitutions, including the Due Process Clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Class as Defined.

Judge James Lawrence King, Sachar v. Iberiabank Corporation (Apr. 26, 2012) as part of **In re Checking Account Overdraft** MDL No. 2036 (S.D. Fla.):

The Court finds that the Notice previously approved was fully and properly effectuated and was sufficient to satisfy the requirements of due process because it described "the substantive claims ... [and] contained information reasonably necessary to [allow Settlement Class Members to] make a decision to remain a class member and be bound by the final judgment.".... The Notice, among other things, defined the Settlement Class, described the release as well as the amount and method and manner of proposed distribution of the Settlement proceeds, and informed Settlement Class Members of their rights to opt-out or object, the procedures for doing so, and the time and place of the Final Approval Hearing. The Notice also informed Settlement Class Members that a class judgment would bind them unless they opted out, and told them where they could obtain more information, such as access to a full copy of the Agreement. Further, the Notice described in summary form the fact that Class Counsel would be seeking attorneys' fees of up to 30 percent of the Settlement. Settlement Class Members were provided with the best practicable notice "reasonably calculated, under [the] circumstances, to apprise them of the pendency of the action and afford them an opportunity to present their objections." Mullane, 339 U.S. at 314. The content of the Notice fully complied with the requirements of Rule 23.

Judge Bobby Peters, Vereen v. Lowe's Home Centers (Apr. 13, 2012) SU10-cv-2267B (Ga. Super. Ct.):

The Court finds that the Notice and the Notice Plan was fulfilled, in accordance with the terms of the Settlement Agreement, the Amendment, and this Court's Preliminary Approval Order and that this Notice and Notice Plan constituted the best practicable notice to Class Members under the circumstances of this action, constituted due and sufficient Notice of the proposed Settlement to all persons entitled to

Judicial Quotes

participate in the proposed Settlement, and was in full compliance with Ga. Code Ann § 9-11-23 and the constitutional requirements of due process. Extensive notice was provided to the class, including point of sale notification, publication notice and notice by first-class mail for certain potential Class Members.

The affidavit of the notice expert conclusively supports this Court's finding that the notice program was adequate, appropriate, and comported with Georgia Code Ann. § 9-11-23(b)(2), the Due Process Clause of the Constitution, and the guidance for effective notice articulate in the FJC's Manual for Complex Litigation, 4th.

Judge Lee Rosenthal, *In re Heartland Payment Systems, Inc. Customer Data Security Breach Litigation* (Mar. 2, 2012) MDL No. 2046 (S.D. Tex.):

*The notice that has been given clearly complies with Rule 23(e)(1)'s reasonableness requirement ... the notice plan after its implementation and conservatively estimated that notice reached 81.4 percent of the class members. (Docket Entry No. 106, ¶ 32). Both the summary notice and the detailed notice provided the information reasonably necessary for the presumptive class members to determine whether to object to the proposed settlement. See Katrina Canal Breaches, 628 F.3d at 197. Both the summary notice and the detailed notice "were written in easy-to-understand plain English." In re Black Farmers Discrimination Litig., — F. Supp. 2d —, 2011 WL 5117058, at *23 (D.D.C. 2011); accord AGGREGATE LITIGATION § 3.04(c).15 The notice provided "satisf[ies] the broad reasonableness standards imposed by due process" and Rule 23. Katrina Canal Breaches, 628 F.3d at 197.*

Judge John D. Bates, *Trombley v. National City Bank* (Dec. 1, 2011) 1:10-cv-00232 (D.D.C.) as part of ***In re Checking Account Overdraft Litigation*** MDL No. 2036 (S.D. Fla.):

The form, content, and method of dissemination of Notice given to the Settlement Class were in full compliance with the Court's January 11, 2011 Order, the requirements of Fed. R. Civ. P. 23(e), and due process. The notice was adequate and reasonable, and constituted the best notice practicable under the circumstances. In addition, adequate notice of the proceedings and an opportunity to participate in the final fairness hearing were provided to the Settlement Class.

Judge Robert M. Dow, Jr., *Schulte v. Fifth Third Bank* (July 29, 2011) 1:09-cv-06655 (N.D. Ill.):

The Court has reviewed the content of all of the various notices, as well as the manner in which Notice was disseminated, and concludes that the Notice given to the Class fully complied with Federal Rule of Civil Procedure 23, as it was the best notice practicable, satisfied all constitutional due process concerns, and provided the Court with jurisdiction over the absent Class Members.

Judge Ellis J. Daigle, *Williams v. Hammerman & Gainer Inc.* (June 30, 2011) 11-C-3187-B (27th Jud. D. Ct. La.):

Notices given to Settlement Class members and all other interested parties throughout this proceeding with respect to the certification of the Settlement Class, the proposed settlement, and all related procedures and hearings—including, without limitation, the notice to putative Settlement Class members and others ... were reasonably calculated under all the circumstances and have been sufficient, as to form, content, and manner of dissemination, to apprise interested parties and members of the Settlement Class of the pendency of the action, the certification of the Settlement Class, the Settlement Agreement and its contents, Settlement Class members' right to be represented by private counsel, at their own cost, and Settlement Class members' right to appear in Court to have their objections heard, and to afford Settlement Class members an opportunity to exclude themselves from the Settlement Class. Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedures, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Settlement Class.

Judge Stefan R. Underhill, *Mathena v. Webster Bank, N.A.* (Mar. 24, 2011) 3:10-cv-01448 (D. Conn.) as part of ***In re Checking Account Overdraft Litigation*** MDL No. 2036 (S.D. Fla.):

The form, content, and method of dissemination of Notice given to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all persons entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

Judicial Quotes

Judge Ted Stewart, *Miller v. Basic Research, LLC* (Sept. 2, 2010) 2:07-cv-00871 (D. Utah):

Plaintiffs state that they have hired a firm specializing in designing and implementing large scale, unbiased, legal notification plans. Plaintiffs represent to the Court that such notice will include: 1) individual notice by electronic mail and/or first-class mail sent to all reasonably identifiable Class members; 2) nationwide paid media notice through a combination of print publications, including newspapers, consumer magazines, newspaper supplements and the Internet; 3) a neutral, Court-approved, informational press release; 4) a neutral, Court-approved Internet website; and 5) a toll-free telephone number. Similar mixed media plans have been approved by other district courts post class certification. The Court finds this plan is sufficient to meet the notice requirement.

Judge Sara Loi, *Pavlov v. Continental Casualty Co.* (Oct. 7, 2009) 5:07-cv-02580 (N.D. Ohio):

[T]he elaborate notice program contained in the Settlement Agreement provides for notice through a variety of means, including direct mail to each class member, notice to the United States Attorney General and each State, a toll free number, and a website designed to provide information about the settlement and instructions on submitting claims. With a 99.9% effective rate, the Court finds that the notice program constituted the “best notice that is practicable under the circumstances,” Fed. R. Civ. P. 23(c)(2)(B), and clearly satisfies the requirements of Rule 23(c)(2)(B).

Judge James Robertson, *In re Department of Veterans Affairs (VA) Data Theft Litigation* (Sept. 23, 2009) MDL No. 1796 (D.D.C.):

The Notice Plan, as implemented, satisfied the requirements of due process and was the best notice practicable under the circumstances. The Notice Plan was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the action, the terms of the Settlement, and their right to appear, object to or exclude themselves from the Settlement. Further, the notice was reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice.

Legal Noticing Cases

Epiq Legal Noticing has served as a notice expert for planning, implementation and/or analysis in the following cases (this is a partial list of cases):

Case Name	Court & Case No.
<i>Beauford v. The Johns Hopkins Hospital, Inc. et al.</i> (Pixel)	Cir. Ct. Baltimore Cnty., No. C-03-CV-23-000501
<i>Doe v. Clinivate, LLC</i>	Sup. Ct. Cnty. of Contra Costa, Cal., No. C22-01620
<i>Barletti et al. v. Connexin Software, Inc. d/b/a Office Practicum</i> (Data Breach)	E.D. Penn., No. 2:22-cv-04676
<i>Guy et al. v. Convergent Outsourcing, Inc.</i> (Data Breach)	W.D. Wash., No. 2:22-cv-01558
<i>Farley et al. v. Eye Care Leaders Holding, LLC</i> (Data Breach)	M.D.N.C., No. 1:22-cv-00468
<i>In re Wright & Filippis, LLC Data Security Breach Litigation</i>	E.D. Mich., No. 2:22-cv-12908
<i>Holden et al. v. Guardian Analytics, Inc. et al.</i> (Data Breach)	D.N.J., No. 2:23-cv-2U5
<i>Bobo et al. v. Clover Network, LLC</i> (TCPA)	18th Jud. Cir., Cir. Ct., Dupage Cnty. Ill., No. 2023CH000168
<i>Dam v. Perkins Coie, LLP et al.</i> (Crypto)	E.D. Wash., No. 2:20-CV-00464
<i>Hoover et al. v. Camping World Group, LLC et al.</i> (Data Breach)	18th Jud. Cir., Cir. Ct., DuPage Cnty, Ill., No. 2023LA00037
<i>In re Hope College Data Security Breach Litigation</i>	W.D. Mich., No. 1:22-cv-01224
<i>Shaffer et al. v. George Washington University et al.</i> (Tuition Fees)	D.D.C., No. 20-1145
<i>In re U.S. Vision Data Breach Litigation</i>	D.N.J., No. 1:22-cv-06558
<i>Qureshi et al. v. American University</i> (Tuition Fees)	D.D.C., No. 1:20-cv-01141
<i>In re Canon U.S.A. Data Breach Litigation</i>	E.D.N.Y., No. 1:20-cv-06239
<i>Patterson et al. v. DPP II LLC et al.</i> (Data Breach)	Dist. Ct of Dallas Cnty., Tex., No. DC-23-01733
<i>In re Hyundai and Kia Engine Litigation II</i>	C.D. Cal, No. 8:18-cv-02223
<i>Perez et al. v. Discover Bank</i> (Alienage & Immigration Status Discrimination - Civil Rights for Loans)	N.D. Cal., No. 3:20-cv-06896
<i>In re Google Location History Litigation</i>	N.D. Cal., No. 5:18-cv-05062
<i>Finn and Contristano v. Empress Ambulance Services, Inc.</i> (Data Breach)	Sup. Ct. N.Y., Cnty. of Westchester, No. 61058/2023
<i>Ward-Howie v. Frontwave Credit Union</i> (Bank Fees)	Sup. Ct. Cal. San Diego Cnty., Cal., No. 37-2022-00016328
<i>Morrow et al. v. Navy Federal Credit Union</i> (Bank Fees)	E.D. Va., No. 1:21-cv-00722
<i>In re Goodman Campbell Brain and Spine Data Incident Litigation</i>	Ind. Comm. Ct., No. 49D01-2207-PL-024807
<i>Healy et al. v. Reiter Affiliated Companies, LLC</i> (Data Breach)	Sup. Ct. Cal., Cnty. of Monterey, No. 22-cv-003056
<i>Wells Fargo Bank, N.A. v. Agak</i> (Bank Fees)	Sup. Ct. Cnty. of Ventura, Cal., No. 56-2017-00500587-CL-CL-VTA

Legal Noticing Cases

Case Name	Court & Case No.
<i>Crema v. Apple Inc. and Apple Canada Inc.</i> (Apple iPhone 6, 6 Plus, 6s, 6s Plus, SE, 7 or 7 Plus Smartphone, iPhone Power Management Settlement; Product Defect)	Sup. Ct. of B.C., No. S188008
<i>Lara v. Lubbock Heart Hospital, LLC, dba Lubbock Heart & Surgical Hospital</i> (Data Breach)	N.D. Tex., No. 5:23-cv-00036
<i>Hu et al. v. BMW of North America LLC et al.</i> (Product Liability Auto Emissions)	D.N.J., No. 2:18-cv-04363
<i>Williams et al. v. Tallahassee Memorial Healthcare, Inc.</i> (Data Breach)	2nd Jud. Cir. Ct., Leon Cnty. Fla., No. 2023 CA 001430
<i>Doe v. Lima Memorial Hospital et al.</i> (Pixel)	Ct. of Common Pleas Allen Cnty. Ohio, No. CV2022 0490
<i>Mikulecky et al. v. Lutheran Social Services of Illinois</i> (Data Breach)	Cir. Ct. Cook Cnty. Ill., No. 2023-CH-00895
<i>In re Lipitor Antitrust Litigation</i> (End Payors - TPPs & Consumers) (Antitrust)	D.N.J., No. 3:12-cv-2389; MDL 2332
<i>In re American Financial Resources, Inc. Data Breach Litigation</i>	D.N.J., No. 2:22-cv-01757
<i>Lemar Agnew v. Foris DAX, Inc. d/b/a Crypto.com</i> (Cryptocurrency BIPA)	Cir. Ct. Cook Cnty. Ill., No. 2024-CH-00435
<i>Domitrovich et al. v. M.C. Dean, Inc.</i> (Data Breach)	E.D. Vir., No. 1:23-cv-00210
<i>Moradpour v. Velodyne Lidar, Inc. et al.</i> (Securities)	N.D. Cal., No. 3:21-cv-01486
<i>Guy et al. v. Convergent Outsourcing, Inc.</i> (Data Breach)	W.D. Wash., No. 2:22-cv-01558
<i>Briscoe et al. v. First Financial Credit Union</i> (Data Breach)	2nd. Jud. Dist. Cnty. of Bernalillo, N.M., No. D-202-CV-2022-02974
<i>Niewinski et al. v. State Farm Life Insurance Company et al.</i> (Universal Life Insurance Policies)	W.D. Mo., No. 23-04159-CV
<i>Sherwood et al. v. Horizon Actuarial Services, LLC</i> (Data Breach)	N.D. Ga., No. 1:22-cv-01495
<i>Prescott et al. v. Reckitt Benckiser LLC</i> (False Advertising)	N.D. Cal., No. 5:20-cv-02101
<i>Kaether et al. v. Metropolitan Area EMS Authority D/B/A MedStar Mobile Healthcare</i> (Data Breach)	Dist. Ct. Tarrant Cnty., Tex. No. 342-339562-23
<i>In re Waste Management Data Breach Litigation</i>	S.D. N.Y., No. 1:21-cv-06199
<i>Medina et al. v. PracticeMax, Inc.</i> (Data Breach)	D. Ariz., No. CV-22-01261
<i>Cavanaugh et al. v. Grenville Christian College et al.</i>	Sup. Ct. of Justice – Ontario, No. 08-CV-347100-00
<i>Bandy v. TOC Enterprises, Inc. d/b/a Tennessee Orthopaedic Clinics, a division of Tennessee Orthopaedic Alliance, P.A.</i> (Data Breach)	M.D. Tenn., No. 3:23-cv-00598
<i>Sayas et al. v. Biometric Impressions Corp.</i> (BIPA)	Cir. Ct. Cook Cnty. Ill., No. 2020 CH 00201
<i>Nimsey v. Tinker Federal Credit Union</i> (Overdraft Fees)	Dist. Ct. Oklahoma Cnty., Okla., No. CJ-2019-6084
<i>Fiorentino v. Flosports, Inc.</i> (VPPA)	D. Mass., No. 1:22-cv-11502
<i>Nielsen v. Walt Disney Parks and Resorts U.S., Inc.</i> , (Consumer False Advertising)	C.D. Cal., No. 8:21-cv-02055

Legal Noticing Cases

Case Name	Court & Case No.
<i>Mayheu et al. v. Chick-fil-A Inc. (Delivery Fees & Menu Prices)</i>	Sup. Ct. Fulton Cnty., Ga., No.2022CV365400
<i>Arevalo et al. v. USAA Casualty Insurance Company et al. (Consumer)</i>	Dist. Ct., Bexar County, Tex. 285th Jud. Dist, No. 202-CI-16240
<i>In re McKinsey & Co., Inc. National Prescription Opiate Consultant Litigation All School District</i>	N.D. Cal., No. 3:21-md-02996-CRB
<i>In re McKinsey & Co., Inc. National Prescription Opiate Consultant Litigation Subdivision</i>	N.D. Cal., No. 3:21-md-02996-CRB
<i>Beasley et al. v. TTEC Services Corporation; Anderson v. TTEC Services Corporation (Data Breach)</i>	D. Col, No. 22-cv-00097; No. 22-cv-00347
<i>In re PFA Insurance Marketing Litigation</i>	N.D. Cal, No. 4:18-cv-03771 YGR
<i>Stauber v. Sudler Property Management (Data Breach)</i>	18th Jud. Cir., Cir. Ct., DuPage Cnty, Ill, No. 2023LA000411
<i>In re Accellion, Inc. Data Breach Litigation Accellion; Harbour et al. v. California Health & Wellness et al. (Health Net)</i>	N.D. Cal., MDL 3002, No. 5:21-CV-01155; 5:21-cv-03322-EJD
<i>Roberts et al. v. Zuora Inc. et al. (Securities)</i>	N.D. Cal., No. 3:19-cv-03422
<i>Black v. USAA Casualty Insurance (Auto Insurance)</i>	N.D. Ga., No. 1:21-cv-01363
<i>Alexander et al. v. Salud Family Health, Inc.</i>	19th Dist. Ct. Greeley Cnty., Col., No. 2023CV030580
<i>Jackson et al. v. Fandango Media, LLC (VPPA)</i>	18 th Jud. Cir. Ct. Dupage Cnty., Ind., No. 2023LA000631
<i>In re Cattle and Beef Antitrust Litigation</i>	D.Minn., No. 22-3031
<i>Ross et al. v. Panda Restaurant Group, Inc.</i>	Sup. Ct. Cal., Cnty of Los Angeles, No. 21STCV03662
<i>Fernandez et al. v. 90 Degree Benefits Wisconsin et al.</i>	E.D. Wis., No. 2:22-cv-00799
<i>Gudgel et al. v. Reynolds Consumer Products, Inc. et al.</i>	Cir. Ct. 19th Jud. Cir., Lake Cnty, Ill., No. 23LA00000486
<i>Julien et al. v. Cash Express, LLC (Data Breach)</i>	Cir. Ct. Putnam Cnty., Tenn., No. 2022-CV-221
<i>Sharma et al. v. Accutech Systems Corporation (Data Breach)</i>	Cir. Ct. 2, Del. Cnty, Ind., No. 18C02-2210-CT-000135
<i>Young et al. v. Military Advantage, Inc. d/b/a Military.com</i>	18th Jud. Cir., Cir. Ct., DuPage Cnty, Ill., No. 2023LA00535
<i>Lukens v. Utah Imaging Associates, Inc.</i>	3 rd Dist. Ct., Salt Lake Cnty., Utah, No. 210906618
<i>Miranda v. Xavier University (Tuition)</i>	S.D. Ohio, No. 1:20-cv-00539
<i>Holly Wedding et al. vs. California Public Employees' Retirement System et al. (Calpers II Settlement)</i>	Sup. Ct. Cnty of Los Angeles, Cal., No. BC517444
<i>Hrebenar v. Davis Yulee LLC, d/b/a Davis Chrysler Dodge Jeep Ram of Yulee (Florida Telephone Solicitation Act)</i>	11th Jud. Cir. Ct. Miami-Dade Cnty., Fla., No. 2023-001405-CA-01
<i>Gulf Coast Injury Center, LLC, A/A/O Jordan Rimert v. Esurance Property and Casualty Insurance Company (Property and Casualty Insurance)</i>	Cir. Ct. 13th Jud. Cir. Hillsborough Cnty, Fla., No. 21-CA-002738
<i>Perry v. Schnuck Markets, Inc. (Consumer Product)</i>	Cir. Ct. City of St. Louis, Mo., No. 2022-CC10425

Legal Noticing Cases

Case Name	Court & Case No.
<i>Gold et al. v. New York Life Insurance Co. et al.</i> (FLSA Wage / Overtime)	Sup. Ct. N.Y., Cnty of New York, No. 653923/2012
<i>Banks et al. v. Allstate Fire & Casualty Insurance Company</i> (Auto Insurance PIP)	M.D. Penn., No. 19-cv-01617
<i>Dyck v. Tahoe Resources, Inc.</i> (Securities)	Sup. Ct. of Justice – Ontario, No. CV-18-00606411-00CP
<i>Ambrose et al. v. Boston Globe Media Partners, LLC.</i> (VPPA)	D. Mass., No. 1:22-cv-10195
<i>King et al. v. PeopleNet Corporation</i> (Undisclosed Data Collection)	Cir. Ct. Cook Cnty., Ill., No. 2021-CH-01602
<i>South et al. v. Progressive Select Insurance Company</i> (Automobile Total Loss)	S.D.Fla., No. 19-21760-CIV
<i>Paris et al. v. Progressive American Insurance Company et al.</i> (Automobile Total Loss)	S.D.Fla., No. 19-21761-CIV
<i>Silva et al. v. Connected Investors, Inc.</i> (TCPA)	E.D.N.C., No. 7:21-cv-00074
<i>In re Juul Labs, Inc., Marketing, Sales Practices, and Products Liability Litigation</i> (Juul and Altria Settlements)	N.D. Cal., No. 19-md-02913
<i>Dusko v. Delta Airlines, Inc.</i> (Airline Ticket Refunds)	N.D. Ga., 1:20-cv-01664
<i>Rogowski et al. v. State Farm Life Insurance Company et al.</i> (Whole Life or Universal Life Insurance)	W.D. Mo., No. 4:22-cv-00203
<i>Ingram v. Jamestown Import Auto Sales, Inc. d/b/a Kia of Jamestown</i> (TCPA)	W.D.N.Y., No. 1:22-cv-00309
<i>In re Hyundai and Kia Engine Litigation II</i>	C.D. Cal., No. 8:18-cv-02223
<i>In re Midwestern Pet Foods Marketing, Sales Practices and Product Liability Litigation</i>	S.D. Ind., No. 3:21-cv-00007
<i>Meier v. Prosperity Bank</i> (Bank Fees & Overdraft)	239th Jud. Dist., Brazoria Cnty, Tex., No. 109569-CV
<i>Middleton et al. v. Liberty Mutual Personal Insurance Company et al.</i> (Auto Insurance Claims Sales Tax)	S.D. Ohio, No. 1:20-cv-00668
<i>Checchia v. Bank of America, N.A.</i> (Bank Fees)	E.D. Penn., No. 2:21-cv-03585
<i>McCullough v. True Health New Mexico, Inc.</i> (Data Breach)	2nd Dist. Ct, N.M., No. D-202-CV-2021-06816
<i>Sonterra Capital Master Fund Ltd. v. Credit Suisse Group AG et al.</i> (Swiss Franc LIBOR-Based Derivatives)	S.D.N.Y., No. 1:15-cv-00871
<i>Duggan et al. v. Wings Financial Credit Union</i> (Bank Fees)	Dist. Ct., Dakota Cnty., Minn., No. 19AV-cv-20-2163
<i>Miller v. Bath Saver, Inc. et al.</i> (TCPA)	M.D. Penn., No. 1:21-cv-01072
<i>Chapman v. Insight Global LLC.</i> (Data Breach)	M.D. Penn., No. 1:21-cv-00824
<i>Thomsen et al. v. Morley Cos., Inc.</i> (Data Breach)	E.D. Mich., No. 1:22-cv-10271
<i>Walker v Highmark BCBS Health</i> (TCPA)	W.D. Penn., No. 20-cv-01975
<i>In re Scripps Health Data Incident Litigation</i> (Data Breach)	Sup. Ct. Cal. Cnty. of San Diego, No. 37-2021-00024103
<i>In re Robinhood Outage Litigation</i> (Trading Outage)	N.D. Cal., No. 3:20-cv-01626

Legal Noticing Cases

Case Name	Court & Case No.
<i>Dickens et al. v. Thinx, Inc.</i> (Consumer Product)	S.D.N.Y., No. 1:22-cv-04286
<i>Service et al. v. Volkswagen Group of America et al.</i> (Data Breach)	Sup. Ct. Cal. Cnty. of Contra Costa, No. C22-01841
<i>Paris et al. v. Progressive American et al. & South v. Progressive Select Insurance Company</i> (Automobile Total Loss)	S.D. Fla., No. 19-cv-21761 & 19-cv-21760
<i>Wenston Desue et al. v. 20/20 Eye Care Network, Inc. et al.</i> (Data Breach)	S.D. Fla., No. 21-cv-61275
<i>Rivera v. IH Mississippi Valley Credit Union</i> (Overdraft)	Cir. Ct 14th Jud. Cir., Rock Island Cnty., Ill., No. 2019 CH 299
<i>Guthrie v. Service Federal Credit Union</i> (Overdraft)	Sup. Ct. Rockingham Cnty, N.H., No. 218-2021-CV-00160
<i>Churchill et al. v. Bangor Savings Bank</i> (Overdraft)	Maine Bus. & Consumer Ct., No. BCD-CIV-2021-00027
<i>Opelousas General Hospital Authority v. Louisiana Health Service & Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana</i> (Medical Insurance)	27th Jud. D. Ct. La., No. 16-C-3647
<i>Brower v. Northwest Community Credit Union</i> (Bank Fees)	Ore. Dist. Ct. Multnomah Cnty., No. 20CV38608
<i>Kent et al. v. Women's Health USA, Inc. et al.</i> (IVF Antitrust Pricing)	Sup. Ct. Jud. Dist. of Stamford/Norwalk, Conn., No. FST-CV-21-6054676-S
<i>In re U.S. Office of Personnel Management Data Security Breach Litigation</i>	D.D.C., No. MDL No. 2664, 15-cv-01394
<i>In re fairlife Milk Products Marketing and Sales Practices Litigation</i> (False Labeling & Marketing)	N.D. Ill., No. MDL No. 2909, No. 1:19-cv-03924
<i>In re Zoom Video Communications, Inc. Privacy Litigation</i>	N.D. Cal., No. 3:20-cv-02155
<i>Browning et al. v. Anheuser-Busch, LLC</i> (False Advertising)	W.D. Mo., No. 20-cv-00889
<i>Callen v. Daimler AG and Mercedes-Benz USA, LLC</i> (Interior Trim)	N.D. Ga., No. 1:19-cv-01411
<i>In re Disposable Contact Lens Antitrust Litigation</i> (Alcon Laboratories, Inc. and Johnson & Johnson Vision Care, Inc.) (Unilateral Pricing Policies)	M.D. Fla., No. 3:15-md-02626
<i>Ford et al. v. [24]7.ai, Inc.</i> (Data Breach - Best Buy Data Incident)	N.D. Cal., MDL No. 2863, No. 5:18-cv-02770
<i>In re Takata Airbag Class Action Settlement - Australia Settlement</i> <i>Louise Haselhurst v. Toyota Motor Corporation Australia Limited</i> <i>Kimley Whisson v. Subaru (Aust) Pty Limited</i> <i>Akuratiya Kularathne v. Honda Australia Pty Limited</i> <i>Owen Brewster v. BMW Australia Ltd</i> <i>Jaydan Bond v. Nissan Motor Co (Australia) Pty Limited</i> <i>Camilla Coates v. Mazda Australia Pty Limited</i>	Australia; NSWSC, No. 2017/00340824 No. 2017/00353017 No. 2017/00378526 No. 2018/00009555 No. 2018/00009565 No. 2018/00042244
<i>In re Pork Antitrust Litigation (Commercial and Institutional Indirect Purchaser Actions - CIIPs)</i> (Smithfield Foods, Inc.)	D. Minn., No. 0:18-cv-01776
<i>Jackson v. UKG Inc., f/k/a The Ultimate Software Group, Inc.</i> (Biometrics)	Cir. Ct. of McLean Cnty., Ill., No. 2020L31
<i>In re Capital One Consumer Data Security Breach Litigation</i>	E.D. Va., MDL No. 2915, No. 1:19-md-02915
<i>Aseltine v. Chipotle Mexican Grill, Inc.</i> (Food Ordering Fees)	Cir. Ct. Cal. Alameda Cnty., No. RG21088118

Legal Noticing Cases

Case Name	Court & Case No.
<i>In re Morgan Stanley Data Security Litigation</i>	S.D.N.Y., No. 1:20-cv-05914
<i>DiFlauro et al. v. Bank of America, N.A. (Mortgage Bank Fees)</i>	C.D. Cal., No. 2:20-cv-05692
<i>In re California Pizza Kitchen Data Breach Litigation</i>	C.D. Cal., No. 8:21-cv-01928
<i>Breda v. Cellco Partnership d/b/a Verizon Wireless (TCPA)</i>	D. Mass., No. 1:16-cv-11512
<i>Snyder et al. v. The Urology Center of Colorado, P.C. (Data Breach)</i>	2nd Dist. Ct, Cnty. of Denver Col., No. 2021CV33707
<i>Dearing v. Magellan Health Inc. et al. (Data Breach)</i>	Sup. Ct. Cnty. of Maricopa, Ariz., No. CV2020-013648
<i>Torretto et al. v. Donnelley Financial Solutions, Inc. and Mediant Communications Inc. (Data Breach)</i>	S.D.N.Y., No. 1:20-cv-02667
<i>In re Takata Airbag Products Liability Litigation (Volkswagen)</i>	S.D. Fla., MDL No. 2599, No. 1:15-md-02599
<i>Beiswinger v. West Shore Home, LLC (TCPA)</i>	M.D. Fla., No. 3:20-cv-01286
<i>Cochran et al. v. The Kroger Co. et al. (Data Breach)</i>	N.D. Cal., No. 5:21-cv-01887
<i>Arthur et al. v. McDonald's USA, LLC et al.; Lark et al. v. McDonald's USA, LLC et al. (Biometrics)</i>	Cir. Ct. St. Clair Cnty., Ill., Nos. 20-L-0891; 1-L-559
<i>Kostka et al. v. Dickey's Barbecue Restaurants, Inc. et al. (Data Breach)</i>	N.D. Tex., No. 3:20-cv-03424
<i>Scherr v. Rodan & Fields, LLC; Gorzo et al. v. Rodan & Fields, LLC (Lash Boost Mascara Product)</i>	Sup. Ct. of Cal., Cnty. San Bernadino, No. CJC-18-004981; Sup. Ct. of Cal., Cnty. of San Francisco, Nos. CIVDS 1723435 and CGC-18-565628
<i>Fernandez v. Rushmore Loan Management Services LLC (Mortgage Loan Fees)</i>	C.D. Cal., No. 8:21-cv-00621
<i>Abramson v. Safe Streets USA LLC (TCPA)</i>	E.D.N.C., No. 5:19-cv-00394
<i>Stoll et al. v. Musculoskeletal Institute, Chartered d/b/a Florida Orthopaedic Institute (Data Breach)</i>	M.D. Fla., No. 8:20-cv-01798
<i>Mayo v. Affinity Plus Federal Credit Union (Overdraft)</i>	4th Jud. Dist. Ct. Minn., No. 27-cv-11786
<i>Johnson v. Moss Bros. Auto Group, Inc. et al. (TCPA)</i>	C.D. Cal., No. 5:19-cv-02456
<i>Muransky et al. v. The Cheesecake Factory, Inc. et al. (FACTA)</i>	Sup. Ct. Cal. Cnty. of Los Angeles, No. 19 stcv43875
<i>Haney v. Genworth Life Ins. Co. (Long Term Care Insurance)</i>	E.D. Va., No. 3:22-cv-00055
<i>Halcom v. Genworth Life Ins. Co. (Long Term Care Insurance)</i>	E.D. Va., No. 3:21-cv-00019
<i>Mercado et al. v. Verde Energy USA, Inc. (Variable Rate Energy)</i>	N.D. Ill., No. 1:18-cv-02068
<i>Fallis et al. v. Gate City Bank (Overdraft)</i>	East Cent. Dist. Ct. Cass Cnty. N.D., No. 09-2019-cv-04007
<i>Sanchez et al. v. California Public Employees' Retirement System et al. (Long Term Care Insurance)</i>	Sup. Ct. Cal. Cnty. of Los Angeles, No. BC 517444
<i>Hameed-Bolden et al. v. Forever 21 Retail, Inc. et al. (Data Breach for Payment Cards)</i>	C.D. Cal., No. 2:18-cv-03019

Legal Noticing Cases

Case Name	Court & Case No.
<i>Wallace v. Wells Fargo</i> (Overdraft Fees on Uber and Lyft One-Time Transactions)	Sup. Ct. Cal. Cnty. of Santa Clara, No. 17-cv-317775
<i>In re Turkey Antitrust Litigations</i> (Commercial and Institutional Indirect Purchaser Plaintiffs' Action – CIIPPs) <i>Sandee's Bakery d/b/a Sandee's Catering Bakery & Deli et al. v. Agri Stats, Inc.</i>	N.D. Ill., No. 1:20-cv-02295
<i>Coleman v. Alaska USA Federal Credit Union</i> (Retry Bank Fees)	D. Alaska, No. 3:19-cv-00229
<i>Fiore et al. v. Ingenious Designs, L.L.C. and HSN, Inc.</i> (My Little Steamer)	E.D.N.Y., No. 1:18-cv-07124
<i>In re Pork Antitrust Litigation</i> (Commercial and Institutional Indirect Purchaser Actions - CIIPPs) (JBS USA Food Company, JBS USA Food Company Holdings)	D. Minn., No. 0:18-cv-01776
<i>Lozano v. CodeMetro Inc.</i> (Data Breach)	Sup. Ct. Cal. Cnty. of San Diego, No. 37-2020-00022701
<i>Yamagata et al. v. Reckitt Benckiser LLC</i> (Schiff Move Free® Advanced Glucosamine Supplements)	N.D. Cal., No. 3:17-cv-03529
<i>Cin-Q Automobiles, Inc. et al. v. Buccaneers Limited Partnership</i> (TCPA)	M.D. Fla., No. 8:13-cv-01592
<i>Thompson et al. v. Community Bank, N.A.</i> (Overdraft)	N.D.N.Y., No. 8:19-cv-00919
<i>Bleachtech L.L.C. v. United Parcel Service Co.</i> (Declared Value Shipping Fees)	E.D. Mich., No. 2:14-cv-12719
<i>Silveira v. M&T Bank</i> (Mortgage Fees)	C.D. Cal., No. 2:19-cv-06958
<i>In re Toll Roads Litigation; Borsuk et al. v. Foothill/Eastern Transportation Corridor Agency et al.</i> (OCTA Settlement - Collection & Sharing of Personally Identifiable Information)	C.D. Cal., No. 8:16-cv-00262
<i>In re Toll Roads Litigation</i> (3M/TCA Settlement - Collection & Sharing of Personally Identifiable Information)	C.D. Cal., No. 8:16-cv-00262
<i>Pearlstone v. Wal-Mart Stores, Inc.</i> (Sales Tax)	C.D. Cal., No. 4:17-cv-02856
<i>Zanca et al. v. Epic Games, Inc.</i> (Fortnite or Rocket League Video Games)	Sup. Ct. Wake Cnty. N.C., No. 21-CVS-534
<i>In re Flint Water Cases</i>	E.D. Mich., No. 5:16-cv-10444
<i>Kukorinis v. Walmart, Inc.</i> (Weighted Goods Pricing)	S.D. Fla., No. 1:19-cv-20592
<i>Grace v. Apple, Inc.</i> (Apple iPhone 4 and iPhone 4S Devices)	N.D. Cal., No. 17-cv-00551
<i>Alvarez v. Sirius XM Radio Inc.</i>	C.D. Cal., No. 2:18-cv-08605
<i>In re Pre-Filled Propane Tank Antitrust Litigation</i>	W.D. Mo., No. MDL No. 2567, No. 14-cv-02567
<i>In re Disposable Contact Lens Antitrust Litigation</i> (ABB Concise Optical Group, LLC) (Unilateral Pricing Policies)	M.D. Fla., No. 3:15-md-02626
<i>Morris v. Provident Credit Union</i> (Overdraft)	Sup. Ct. Cal. Cnty. of San Fran., No. CGC-19-581616
<i>Pennington v. Tetra Tech, Inc. et al.</i> (Property)	N.D. Cal., No. 3:18-cv-05330
<i>Maldonado et al. v. Apple Inc. et al.</i> (Apple Care iPhone)	N.D. Cal., No. 3:16-cv-04067

Legal Noticing Cases

Case Name	Court & Case No.
<i>UFCW & Employers Benefit Trust v. Sutter Health et al.</i> (Self-Funded Payors)	Sup. Ct. of Cal., Cnty. of San Fran., No. CGC 14-538451 Consolidated with CGC-18-565398
<i>Fitzhenry v. Independent Home Products, LLC</i> (TCPA)	D.S.C., No. 2:19-cv-02993
<i>In re Hyundai and Kia Engine Litigation and Flaherty v. Hyundai Motor Company, Inc. et al.</i>	C.D. Cal., Nos. 8:17-cv-00838 & 18-cv-02223
<i>Sager et al. v. Volkswagen Group of America, Inc. et al.</i>	D.N.J., No. 18-cv-13556
<i>Bautista v. Valero Marketing and Supply Company</i>	N.D. Cal., No. 3:15-cv-05557
<i>Richards et al. v. Chime Financial, Inc.</i> (Service Disruption)	N.D. Cal., No. 4:19-cv-06864
<i>In re Health Insurance Innovations Securities Litigation</i>	M.D. Fla., No. 8:17-cv-02186
<i>Fox et al. v. Iowa Health System d.b.a. UnityPoint Health</i> (Data Breach)	W.D. Wis., No. 18-cv-00327
<i>Smith v. Costa Del Mar, Inc.</i> (Sunglasses Warranty)	M.D. Fla., No. 3:18-cv-01011
<i>Al's Discount Plumbing et al. v. Viega, LLC</i> (Building Products)	M.D. Pa., No. 19-cv-00159
<i>Rose v. The Travelers Home and Marine Insurance Company et al.</i>	E.D. Pa., No. 19-cv-00977
<i>Eastwood Construction LLC et al. v. City of Monroe The Estate of Donald Alan Plyler Sr. et al. v. City of Monroe</i>	Sup. Ct. N.C., Nos. 18-CVS-2692 & 19-CVS-1825
<i>Garvin v. San Diego Unified Port District</i>	Sup. Ct. Cal., No. 37-2020-00015064
<i>Consumer Financial Protection Bureau v. Siringoringo Law Firm</i>	C.D. Cal., No. 8:14-cv-01155
<i>Robinson v. Nationstar Mortgage LLC</i>	D. Md., No. 8:14-cv-03667
<i>Drazen v. GoDaddy.com, LLC and Bennett v. GoDaddy.com, LLC</i> (TCPA)	S.D. Ala., No. 1:19-cv-00563
<i>In re Libor-Based Financial Instruments Antitrust Litigation</i>	S.D.N.Y., MDL No. 2262, No. 1:11-md-2262
<i>Izor v. Abacus Data Systems, Inc.</i> (TCPA)	N.D. Cal., No. 19-cv-01057
<i>Ciuffitelli et al. v. Deloitte & Touche LLP et al.</i>	D. Ore., No. 3:16-cv-00580
<i>In re Wells Fargo Collateral Protection Insurance Litigation</i>	C.D. Cal., No. 8:17-ml-02797
<i>In re Roman Catholic Diocese of Harrisburg</i>	Bank. Ct. M.D. Pa., No. 1:20-bk-00599
<i>Denier et al. v. Taconic Biosciences, Inc.</i>	Sup Ct. N.Y., No. 00255851
<i>Robinson v. First Hawaiian Bank</i> (Overdraft)	Cir. Ct. of First Cir. Haw., No. 17-1-0167-01
<i>Burch v. Whirlpool Corporation</i>	W.D. Mich., No. 1:17-cv-00018
<i>Armon et al. v. Washington State University</i> (Data Breach)	Sup. Ct. Wash., No. 17-2-23244-1 consolidated with No. 17-2-25052-0
<i>Wilson et al. v. Volkswagen Group of America, Inc. et al.</i>	S.D. Fla., No. 17-cv-23033
<i>Prather v. Wells Fargo Bank, N.A.</i> (TCPA)	N.D. Ill., No. 1:17-cv-00481

Legal Noticing Cases

Case Name	Court & Case No.
<i>Cook et al. v. South Carolina Public Service Authority et al.</i>	Ct. of Com. Pleas. 13 th Jud. Cir. S.C., No. 2019-CP-23-6675
<i>K.B., by and through her natural parent, Jennifer Qassis, and Lillian Knox-Bender v. Methodist Healthcare - Memphis Hospitals</i>	30th Jud. Dist. Tenn., No. CH-13-04871-1
<i>Coffeng et al. v. Volkswagen Group of America, Inc.</i>	N.D. Cal., No. 17-cv-01825
<i>Audet et al. v. Garza et al.</i>	D. Conn., No. 3:16-cv-00940
<i>In re Disposable Contact Lens Antitrust Litigation (CooperVision, Inc.) (Unilateral Pricing Policies)</i>	M.D. Fla., No. 3:15-md-02626
<i>Hyder et al. v. Consumers County Mutual Insurance Company</i>	D. Ct. of Travis Cnty. Tex., No. D-1-GN-16-000596
<i>Fessler v. Porcelana Corona De Mexico, S.A. DE C.V f/k/a Sanitarios Lamosa S.A. DE C.V. a/k/a Vortens</i>	E.D. Tex., No. 4:19-cv-00248
<i>In re TD Bank, N.A. Debit Card Overdraft Fee Litigation</i>	D.S.C., MDL No. 2613, No. 6:15-MN-02613
<i>Liggio v. Apple Federal Credit Union</i>	E.D. Va., No. 1:18-cv-01059
<i>Garcia v. Target Corporation (TCPA)</i>	D. Minn., No. 16-cv-02574
<i>Albrecht v. Oasis Power, LLC d/b/a Oasis Energy</i>	N.D. Ill., No. 1:18-cv-01061
<i>McKinney-Drobnis et al. v. Massage Envy Franchising</i>	N.D. Cal., No. 3:16-cv-06450
<i>In re Optical Disk Drive Products Antitrust Litigation</i>	N.D. Cal., MDL No. 2143, No. 3:10-md-02143
<i>Stone et al. v. Porcelana Corona De Mexico, S.A. DE C.V f/k/a Sanitarios Lamosa S.A. DE C.V. a/k/a Vortens</i>	E.D. Tex., No. 4:17-cv-00001
<i>In re Kaiser Gypsum Company, Inc. et al. (Asbestos)</i>	Bankr. W.D. N.C., No. 16-31602
<i>Kuss v. American HomePatient, Inc. et al. (Data Breach)</i>	M.D. Fla., No. 8:18-cv-02348
<i>Lusnak v. Bank of America, N.A.</i>	C.D. Cal., No. 14-cv-01855
<i>In re Premiera Blue Cross Customer Data Security Breach Litigation</i>	D. Ore., MDL No. 2633, No. 3:15-md-02633
<i>Elder v. Hilton Worldwide Holdings, Inc. (Hotel Stay Promotion)</i>	N.D. Cal., No. 16-cv-00278
<i>Grayson et al. v. General Electric Company (Microwaves)</i>	D. Conn., No. 3:13-cv-01799
<i>Behfarin v. Pruco Life Insurance Company et al.</i>	C.D. Cal., No. 17-cv-05290
<i>Lashambae v. Capital One Bank, N.A. (Overdraft)</i>	E.D.N.Y., No. 1:17-cv-06406
<i>Trujillo et al. v. Ametek, Inc. et al. (Toxic Leak)</i>	S.D. Cal., No. 3:15-cv-01394
<i>Cox et al. v. Ametek, Inc. et al. (Toxic Leak)</i>	S.D. Cal., No. 3:17-cv-00597
<i>Pirozzi et al. v. Massage Envy Franchising, LLC</i>	E.D. Mo., No. 4:19-cv-00807
<i>Lehman v. Transbay Joint Powers Authority et al. (Millennium Tower)</i>	Sup. Ct. Cal., No. GCG-16-553758
<i>In re FCA US LLC Monostable Electronic Gearshift Litigation</i>	E.D. Mich., MDL No. 2744 & No. 16-md-02744

Legal Noticing Cases

Case Name	Court & Case No.
<i>Dasher v. RBC Bank (USA) predecessor in interest to PNC Bank, N.A., as part of In re Checking Account Overdraft</i>	S.D. Fla., No. 1:10-cv-22190, as part of MDL No. 2036
<i>Harris et al. v. Farmers Insurance Exchange and Mid Century Insurance Company</i>	Sup. Ct. Cal., No. BC 579498
<i>In re Renovate America Finance Cases (Tax Assessment Financing)</i>	Sup. Ct., Cal., Cnty. of Riverside, No. RICJCCP4940
<i>Nelson v. Roadrunner Transportation Systems, Inc. (Data Breach)</i>	N.D. Ill., No. 1:18-cv-07400
<i>Skochin et al. v. Genworth Life Insurance Company et al.</i>	E.D. Va., No. 3:19-cv-00049
<i>Walters et al. v. Target Corp. (Overdraft)</i>	S.D. Cal., No. 3:16-cv-01678
<i>Jackson et al. v. Viking Group, Inc. et al.</i>	D. Md., No. 8:18-cv-02356
<i>Waldrup v. Countrywide Financial Corporation et al.</i>	C.D. Cal., No. 2:13-cv-08833
<i>Burrow et al. v. Forjas Taurus S.A. et al.</i>	S.D. Fla., No. 1:16-cv-21606
<i>Henrikson v. Samsung Electronics Canada Inc.</i>	Ontario Super. Ct., No. 2762-16cp
<i>In re Comcast Corp. Set-Top Cable Television Box Antitrust Litigation</i>	E.D. Pa., No. 2:09-md-02034
<i>Lightsey et al. v. South Carolina Electric & Gas Company, a Wholly Owned Subsidiary of SCANA et al.</i>	Ct. of Com. Pleas., S.C., No. 2017-CP-25-335
<i>Rabin v. HP Canada Co. et al.</i>	Quebec Ct., Dist. of Montreal, No. 500-06-000813-168
<i>Di Filippo v. The Bank of Nova Scotia et al. (Gold Market Instrument)</i>	Ontario Sup. Ct., No. CV-15-543005-00CP & No. CV-16-551067-00CP
<i>Zaklit et al. v. Nationstar Mortgage LLC et al. (TCPA)</i>	C.D. Cal., No. 5:15-cv-02190
<i>Adlouni v. UCLA Health Systems Auxiliary et al.</i>	Sup. Ct. Cal., No. BC589243
<i>Lloyd et al. v. Navy Federal Credit Union</i>	S.D. Cal., No. 17-cv-01280
<i>Luib v. Henkel Consumer Goods Inc.</i>	E.D.N.Y., No. 1:17-cv-03021
<i>McIntosh v. Takata Corporation et al.; Vitoratos et al. v. Takata Corporation et al.; and Hall v. Takata Corporation et al.</i>	Ontario Sup Ct., No. CV-16-543833-00CP; Quebec Sup. Ct. of Justice, No. 500-06-000723-144; & Court of Queen's Bench for Saskatchewan, No. QBC. 1284 or 2015
<i>In re HP Printer Firmware Update Litigation</i>	N.D. Cal., No. 5:16-cv-05820
<i>In re Dealer Management Systems Antitrust Litigation</i>	N.D. Ill., MDL No. 2817, No. 18-cv-00864
<i>Mosser v. TD Bank, N.A. and Mazzadra et al. v. TD Bank, N.A., as part of In re Checking Account Overdraft</i>	E.D. Pa., No. 2:10-cv-00731, S.D. Fla., No. 10-cv-21386 and S.D. Fla., No. 1:10-cv-21870, as part of S.D. Fla., MDL No. 2036
<i>Naiman v. Total Merchant Services, Inc. et al. (TCPA)</i>	N.D. Cal., No. 4:17-cv-03806
<i>In re Valley Anesthesiology Consultants, Inc. Data Breach Litigation</i>	Sup. Ct. of Maricopa Ariz., No. CV2016-013446
<i>Parsons v. Kimpton Hotel & Restaurant Group, LLC (Data Breach)</i>	N.D. Cal., No. 3:16-cv-05387

Legal Noticing Cases

Case Name	Court & Case No.
<i>Stahl v. Bank of the West</i>	Sup. Ct. Cal., No. BC673397
<i>37 Besen Parkway, LLC v. John Hancock Life Insurance Company (U.S.A.)</i>	S.D.N.Y., No. 15-cv-09924
<i>Tashica Fulton-Green et al. v. Accolade, Inc.</i>	E.D. Pa., No. 2:18-cv-00274
<i>In re Community Health Systems, Inc. Customer Data Security Breach Litigation</i>	N.D. Ala., MDL No. 2595, No. 2:15-cv-00222
<i>Al's Pals Pet Card, LLC et al. v. Woodforest National Bank, N.A. et al.</i>	S.D. Tex., No. 4:17-cv-03852
<i>Cowen v. Lenny & Larry's Inc.</i>	N.D. Ill., No. 1:17-cv-01530
<i>Martin v. Trott (MI - Foreclosure)</i>	E.D. Mich., No. 2:15-cv-12838
<i>Knapper v. Cox Communications, Inc. (TCPA)</i>	D. Ariz., No. 2:17-cv-00913
<i>Dipuglia v. US Coachways, Inc. (TCPA)</i>	S.D. Fla., No. 1:17-cv-23006
<i>Abante Rooter and Plumbing v. Pivotal Payments Inc., d/b/a/ Capital Processing Network and CPN (TCPA)</i>	N.D. Cal., No. 3:16-cv-05486
<i>First Impressions Salon, Inc. et al. v. National Milk Producers Federation et al.</i>	S.D. Ill., No. 3:13-cv-00454
<i>Raffin v. Medicredit, Inc. et al.</i>	C.D. Cal., No. 15-cv-04912
<i>Gergetz v. Telenav, Inc. (TCPA)</i>	N.D. Cal., No. 5:16-cv-04261
<i>Ajose et al. v. Interline Brands Inc. (Plumbing Fixtures)</i>	M.D. Tenn., No. 3:14-cv-01707
<i>Underwood v. Kohl's Department Stores, Inc. et al.</i>	E.D. Pa., No. 2:15-cv-00730
<i>Surrett et al. v. Western Culinary Institute et al.</i>	Ore. Cir., Ct. Cnty. of Multnomah, No. 0803-03530
<i>Watson v. Bank of America Corporation et al.; Bancroft-Snell et al. v. Visa Canada Corporation et al.; Bakopanos v. Visa Canada Corporation et al.; Macaronies Hair Club and Laser Center Inc. operating as Fuze Salon v. BofA Canada Bank et al.; Hello Baby Equipment Inc. v. BofA Canada Bank and others (Visa and Mastercard Canadian Interchange Fees)</i>	Sup. Ct. of B.C., No. VLC-S-S-112003; Ontario Sup. Ct., No. CV-11-426591; Sup. Ct. of Quebec, No. 500-06-00549-101; Ct. of QB of Alberta, No. 1203-18531; Ct. of QB of Saskatchewan, No. 133 of 2013
<i>In re Takata Airbag Products Liability Litigation (OEMs – BMW, Mazda, Subaru, and Toyota)</i>	S.D. Fla., MDL No. 2599
<i>Vergara et al., v. Uber Technologies, Inc. (TCPA)</i>	N.D. Ill., No. 1:15-cv-06972
<i>In re Takata Airbag Products Liability Litigation (OEMs – Honda and Nissan)</i>	S.D. Fla., MDL No. 2599
<i>In re Takata Airbag Products Liability Litigation (OEM – Ford)</i>	S.D. Fla., MDL No. 2599
<i>Poseidon Concepts Corp. et al. (Canadian Securities Litigation)</i>	Ct. of QB of Alberta, No. 1301-04364
<i>Callaway v. Mercedes-Benz USA, LLC (Seat Heaters)</i>	C.D. Cal., No. 8:14-cv-02011
<i>Hale v. State Farm Mutual Automobile Insurance Company et al.</i>	S.D. Ill., No. 3:12-cv-00660

Legal Noticing Cases

Case Name	Court & Case No.
<i>Farrell v. Bank of America, N.A. (Overdraft)</i>	S.D. Cal., No. 3:16-cv-00492
<i>In re Windsor Wood Clad Window Products Liability Litigation</i>	E.D. Wis., MDL No. 2688, No. 16-md-02688
<i>Wallace et al. v. Monier Lifetile LLC et al.</i>	Sup. Ct. Cal., No. SCV-16410
<i>In re Parking Heaters Antitrust Litigation</i>	E.D.N.Y., No. 15-MC-00940
<i>Pantelyat et al. v. Bank of America, N.A. et al. (Overdraft / Uber)</i>	S.D.N.Y., No. 16-cv-08964
<i>Falco et al. v. Nissan North America, Inc. et al. (Engine – CA & WA)</i>	C.D. Cal., No. 2:13-cv-00686
<i>Alaska Electrical Pension Fund et al. v. Bank of America N.A. et al. (ISDAfix Instruments)</i>	S.D.N.Y., No. 14-cv-07126
<i>Larson v. John Hancock Life Insurance Company (U.S.A.)</i>	Sup. Ct. Cal., No. RG16813803
<i>Larey v. Allstate Property and Casualty Insurance Company</i>	W.D. Kan., No. 4:14-cv-04008
<i>Orlander v. Staples, Inc.</i>	S.D.N.Y., No. 13-cv-00703
<i>Masson v. Tallahassee Dodge Chrysler Jeep, LLC (TCPA)</i>	S.D. Fla., No. 1:17-cv-22967
<i>Gordon et al. v. Amadeus IT Group, S.A. et al.</i>	S.D.N.Y., No. 1:15-cv-05457
<i>Alexander M. Rattner v. Tribe App., Inc., and Kenneth Horsley v. Tribe App., Inc.</i>	S.D. Fla., Nos. 1:17-cv-21344 & 1:14-cv-02311
<i>Sobiech v. U.S. Gas & Electric, Inc., i/t/d/b/a Pennsylvania Gas & Electric et al.</i>	E.D. Pa., No. 2:14-cv-04464
<i>Mahoney v. TT of Pine Ridge, Inc.</i>	S.D. Fla., No. 9:17-cv-80029
<i>Ma et al. v. Harmless Harvest Inc. (Coconut Water)</i>	E.D.N.Y., No. 2:16-cv-07102
<i>Reilly v. Chipotle Mexican Grill, Inc.</i>	S.D. Fla., No. 1:15-cv-23425
<i>The Financial Oversight and Management Board for Puerto Rico as representative of Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy)</i>	D. Puerto Rico, No. 17-cv-04780
<i>In re Syngenta Litigation</i>	4th Jud. Dist. Minn., No. 27-cv-15-3785
<i>T.A.N. v. PNI Digital Media, Inc.</i>	S.D. Ga., No. 2:16-cv-00132
<i>Lewis v. Flue-Cured Tobacco Cooperative Stabilization Corporation (n/k/a United States Tobacco Cooperative, Inc.)</i>	N.C. Gen. Ct. of Justice, Sup. Ct. Div., No. 05 CVS 188, No. 05 CVS 1938
<i>McKnight et al. v. Uber Technologies, Inc. et al.</i>	N.D. Cal., No. 14-cv-05615
<i>Gottlieb v. Citgo Petroleum Corporation (TCPA)</i>	S.D. Fla., No. 9:16-cv-81911
<i>Farnham v. Caribou Coffee Company, Inc. (TCPA)</i>	W.D. Wis., No. 16-cv-00295
<i>Jacobs et al. v. Huntington Bancshares Inc. et al. (FirstMerit Overdraft Fees)</i>	Ohio C.P., No. 11CV000090
<i>Morton v. Greenbank (Overdraft Fees)</i>	20th Jud. Dist. Tenn., No. 11-135-IV

Legal Noticing Cases

Case Name	Court & Case No.
<i>Ratzlaff et al. v. BOKF, NA d/b/a Bank of Oklahoma et al.</i> (Overdraft Fees)	Dist. Ct. Okla., No. CJ-2015-00859
<i>Klug v. Watts Regulator Company</i> (Product Liability)	D. Neb., No. 8:15-cv-00061
<i>Bias v. Wells Fargo & Company et al.</i> (Broker's Price Opinions)	N.D. Cal., No. 4:12-cv-00664
<i>Greater Chautauqua Federal Credit Union v. Kmart Corp. et al.</i> (Data Breach)	N.D. Ill., No. 1:15-cv-02228
<i>Hawkins v. First Tennessee Bank, N.A. et al.</i> (Overdraft Fees)	13th Jud. Cir. Tenn., No. CT-004085-11
<i>In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation</i> (Bosch Settlement)	N.D. Cal., MDL No. 2672
<i>In re HSBC Bank USA, N.A.</i>	Sup. Ct. N.Y., No. 650562/11
<i>Glasko v. Independent Bank Corporation</i> (Overdraft Fees)	Cir. Ct. Mich., No. 13-009983
<i>MSPA Claims 1, LLC v. IDS Property Casualty Insurance Company</i>	11th Jud. Cir. Fla., No. 15-27940-CA-21
<i>In re Lithium Ion Batteries Antitrust Litigation</i>	N.D. Cal., MDL No. 2420, No. 4:13-md-02420
<i>Chimeno-Buzzi v. Hollister Co. and Abercrombie & Fitch Co.</i>	S.D. Fla., No. 14-cv-23120
<i>Small v. BOKF, N.A.</i>	D. Colo., No. 13-cv-01125
<i>Forgione v. Webster Bank N.A.</i> (Overdraft Fees)	Sup. Ct. Conn., No. X10-UWY-cv-12-6015956-S
<i>Swift v. BancorpSouth Bank, as part of In re Checking Account Overdraft</i>	N.D. Fla., No. 1:10-cv-00090, as part of S.D. Fla, MDL No. 2036
<i>Whitton v. Deffenbaugh Industries, Inc. et al.</i> <i>Gary, LLC v. Deffenbaugh Industries, Inc. et al.</i>	D. Kan., No. 2:12-cv-02247 D. Kan., No. 2:13-cv-02634
<i>In re Citrus Canker Litigation</i>	11th Jud. Cir., Fla., No. 03-8255 CA 13
<i>In re Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation</i>	D.N.J., MDL No. 2540
<i>In re Shop-Vac Marketing and Sales Practices Litigation</i>	M.D. Pa., MDL No. 2380
<i>Opelousas General Hospital Authority, A Public Trust, D/B/A Opelousas General Health System and ArklaMiss Surgery Center, L.L.C. v. FairPay Solutions, Inc.</i>	27th Jud. D. Ct. La., No. 12-C-1599
<i>Opelousas General Hospital Authority v. PPO Plus, L.L.C. et al.</i>	27th Jud. D. Ct. La., No. 13-C-5380
<i>Russell Minoru Ono v. Head Racquet Sports USA</i>	C.D. Cal., No. 2:13-cv-04222
<i>Kerry T. Thibodeaux, M.D. (A Professional Medical Corporation) v. American Lifecare, Inc.</i>	27th Jud. D. Ct. La., No. 13-C-3212
<i>Gattinella v. Michael Kors (USA), Inc. et al.</i>	S.D.N.Y., No. 14-cv-05731
<i>In re Energy Future Holdings Corp. et al.</i> (Asbestos Claims Bar Notice)	Bankr. D. Del., No. 14-10979
<i>Dorothy Williams d/b/a Dot's Restaurant v. Waste Away Group, Inc.</i>	Cir. Ct., Lawrence Cnty., Ala., No. 42-cv-2012- 900001.00
<i>Adkins et al. v. Nestlé Purina PetCare Company et al.</i>	N.D. Ill., No. 1:12-cv-02871

Legal Noticing Cases

Case Name	Court & Case No.
<i>Steen v. Capital One, N.A.</i> , as part of <i>In re Checking Account Overdraft</i>	E.D. La., No. 2:10-cv-01505 and 1:10-cv-22058, as part of S.D. Fla., MDL No. 2036
<i>Childs et al. v. Synovus Bank et al.</i> , as part of <i>In re Checking Account Overdraft</i>	S.D. Fla., MDL No. 2036
<i>Kota of Sarasota, Inc. v. Waste Management Inc. of Florida</i>	12th Jud. Cir. Ct., Sarasota Cnty., Fla., No. 2011-CA-008020NC
<i>In re MI Windows and Doors Inc. Products Liability Litigation (Building Products)</i>	D.S.C., MDL No. 2333
<i>Given v. Manufacturers and Traders Trust Company a/k/a M&T Bank</i> , as part of <i>In re Checking Account Overdraft</i>	S.D. Fla., MDL No. 2036
<i>Scharfstein v. BP West Coast Products, LLC</i>	Ore. Cir., Cnty. of Multnomah, No. 1112-17046
<i>Smith v. City of New Orleans</i>	Civil D. Ct., Parish of Orleans, La., No. 2005-05453
<i>Hawthorne v. Umpqua Bank (Overdraft Fees)</i>	N.D. Cal., No. 11-cv-06700
<i>Gulbankian et al. v. MW Manufacturers, Inc.</i>	D. Mass., No. 1:10-cv-10392
<i>Costello v. NBT Bank (Overdraft Fees)</i>	Sup. Ct. Del Cnty., N.Y., No. 2011-1037
<i>In re American Express Anti-Steering Rules Antitrust Litigation (II) (Italian Colors Restaurant)</i>	E.D.N.Y., MDL No. 2221, No. 11-md-2221
<i>Wong et al. v. Alacer Corp. (Emergen-C)</i>	Sup. Ct. Cal., No. CGC-12-519221
<i>Mello et al. v. Susquehanna Bank</i> , as part of <i>In re Checking Account Overdraft</i>	S.D. Fla., MDL No. 2036
<i>In re Plasma-Derivative Protein Therapies Antitrust Litigation</i>	N.D. Ill., No. 09-cv-07666
<i>Simpson v. Citizens Bank (Overdraft Fees)</i>	E.D. Mich., No. 2:12-cv-10267
<i>George Raymond Williams, M.D., Orthopedic Surgery, a Professional Medical, LLC et al. v. Bestcomp, Inc. et al.</i>	27th Jud. D. Ct. La., No. 09-C-5242-B
<i>Simmons v. Comerica Bank, N.A.</i> , as part of <i>In re Checking Account Overdraft</i>	S.D. Fla., MDL No. 2036
<i>McGann et al., v. Schnuck Markets, Inc. (Data Breach)</i>	Mo. Cir. Ct., No. 1322-CC00800
<i>Rose v. Bank of America Corporation et al. (TCPA)</i>	N.D. Cal., Nos. 5:11-cv-02390 & 5:12-cv-00400
<i>Johnson v. Community Bank, N.A. et al. (Overdraft Fees)</i>	M.D. Pa., No. 3:12-cv-01405
<i>National Trucking Financial Reclamation Services, LLC et al. v. Pilot Corporation et al.</i>	E.D. Ark., No. 4:13-cv-00250
<i>Price v. BP Products North America</i>	N.D. Ill., No. 12-cv-06799
<i>Yarger v. ING Bank</i>	D. Del., No. 11-154-LPS
<i>Glube et al. v. Pella Corporation et al. (Building Products)</i>	Ont. Super. Ct., No. CV-11-4322294-00CP
<i>Miner v. Philip Morris Companies, Inc. et al. (Light Cigarettes)</i>	Ark. Cir. Ct., No. 60CV03-4661
<i>Fontaine v. Attorney General of Canada (Mistassini Hostels Residential Schools)</i>	Qué. Super. Ct., No. 500-06-000293-056 & No. 550-06-000021-056

Legal Noticing Cases

Case Name	Court & Case No.
<i>Williams v. SIF Consultants of Louisiana, Inc. et al.</i>	27th Jud. D. Ct. La., No. 09-C-5244-C
<i>Opelousas General Hospital Authority v. Qmedtrix Systems, Inc.</i>	27th Jud. D. Ct. La., No. 12-C-1599-C
<i>Evans et al. v. TIN, Inc. et al. (Environmental)</i>	E.D. La., No. 2:11-cv-02067
<i>Casayuran v. PNC Bank, as part of In re Checking Account Overdraft</i>	S.D. Fla., MDL No. 2036
<i>Anderson v. Compass Bank, as part of In re Checking Account Overdraft</i>	S.D. Fla., MDL No. 2036
<i>Eno v. M & I Marshall & Ilsley Bank as part of In re Checking Account Overdraft</i>	S.D. Fla., MDL No. 2036
<i>Blahut v. Harris, N.A., as part of In re Checking Account Overdraft</i>	S.D. Fla., MDL No. 2036
<i>In re Zurn Pex Plumbing Products Liability Litigation</i>	D. Minn., MDL No. 1958, No. 08-md-1958
<i>Saltzman v. Pella Corporation (Building Products)</i>	N.D. Ill., No. 06-cv-04481
<i>In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation (Mastercard & Visa)</i>	E.D.N.Y., MDL No. 1720, No. 05-md-01720
<i>RBS v. Citizens Financial Group, Inc., as part of In re Checking Account Overdraft</i>	S.D. Fla., MDL No. 2036
<i>Gessele et al. v. Jack in the Box, Inc.</i>	D. Ore., No. 3:10-cv-00960
<i>Vodanovich v. Boh Brothers Construction (Hurricane Katrina Levee Breaches)</i>	E.D. La., No. 05-cv-04191
<i>Marolda v. Symantec Corporation (Software Upgrades)</i>	N.D. Cal., No. 3:08-cv-05701
<i>In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010 (Medical Benefits Settlement)</i>	E.D. La., MDL No. 2179
<i>In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010 (Economic & Property Damages Settlement)</i>	E.D. La., MDL No. 2179
<i>Opelousas General Hospital Authority v. FairPay Solutions</i>	27th Jud. D. Ct. La., No. 12-C-1599-C
<i>Fontaine v. Attorney General of Canada (Stirland Lake and Cristal Lake Residential Schools)</i>	Ont. Super. Ct., No. 00-cv-192059 CP
<i>Nelson v. Rabobank, N.A. (Overdraft Fees)</i>	Sup. Ct. Cal., No. RIC 1101391
<i>Case v. Bank of Oklahoma, as part of In re Checking Account Overdraft</i>	S.D. Fla., MDL No. 2036
<i>Harris v. Associated Bank, as part of In re Checking Account Overdraft</i>	S.D. Fla., MDL No. 2036
<i>Wolfgeher v. Commerce Bank, as part of In re Checking Account Overdraft</i>	S.D. Fla., MDL No. 2036
<i>McKinley v. Great Western Bank, as part of In re Checking Account Overdraft</i>	S.D. Fla., MDL No. 2036
<i>Lawson v. BancorpSouth (Overdraft Fees)</i>	W.D. Ark., No. 1:12-cv-01016
<i>LaCour v. Whitney Bank (Overdraft Fees)</i>	M.D. Fla., No. 8:11-cv-01896
<i>Gwiazdowski v. County of Chester (Prisoner Strip Search)</i>	E.D. Pa., No. 2:08-cv-04463

Legal Noticing Cases

Case Name	Court & Case No.
<i>Williams v. S.I.F. Consultants</i> (CorVel Corporation)	27th Jud. D. Ct. La., No. 09-C-5244-C
<i>Sachar v. Iberiabank Corporation</i> , as part of <i>In re Checking Account Overdraft</i>	S.D. Fla., MDL No. 2036
<i>Williams v. Hammerman & Gainer, Inc.</i> (SIF Consultants)	27th Jud. D. Ct. La., No. 11-C-3187-B
<i>Williams v. Hammerman & Gainer, Inc.</i> (Risk Management)	27th Jud. D. Ct. La., No. 11-C-3187-B
<i>Williams v. Hammerman & Gainer, Inc.</i> (Hammerman)	27th Jud. D. Ct. La., No. 11-C-3187-B
<i>Gunderson v. F.A. Richard & Assocs., Inc.</i> (First Health)	14th Jud. D. Ct. La., No. 2004-002417
<i>Delandro v. County of Allegheny</i> (Prisoner Strip Search)	W.D. Pa., No. 2:06-cv-00927
<i>Mathena v. Webster Bank, N.A.</i> , as part of <i>In re Checking Account Overdraft</i>	D. Conn, No. 3:10-cv-01448, as part of S.D. Fla., MDL No. 2036
<i>Vereen v. Lowe's Home Centers</i> (Defective Drywall)	Ga. Super. Ct., No. SU10-cv-2267B
<i>Trombley v. National City Bank</i> , as part of <i>In re Checking Account Overdraft</i>	D.D.C., No. 1:10-cv-00232, as part of S.D. Fla., MDL No. 2036
<i>Schulte v. Fifth Third Bank</i> (Overdraft Fees)	N.D. Ill., No. 1:09-cv-06655
<i>Satterfield v. Simon & Schuster, Inc.</i> (Text Messaging)	N.D. Cal., No. 06-cv-02893
<i>Coyle v. Hornell Brewing Co.</i> (Arizona Iced Tea)	D.N.J., No. 08-cv-02797
<i>Holk v. Snapple Beverage Corporation</i>	D.N.J., No. 3:07-cv-03018
<i>In re Heartland Data Payment System Inc. Customer Data Security Breach Litigation</i>	S.D. Tex., MDL No. 2046
<i>Weiner v. Snapple Beverage Corporation</i>	S.D.N.Y., No. 07-cv-08742
<i>Gunderson v. F.A. Richard & Assocs., Inc.</i> (Cambridge)	14th Jud. D. Ct. La., No. 2004-002417
<i>Miller v. Basic Research, LLC</i> (Weight-loss Supplement)	D. Utah, No. 2:07-cv-00871
<i>In re Countrywide Customer Data Breach Litigation</i>	W.D. Ky., MDL No. 1998
<i>Boone v. City of Philadelphia</i> (Prisoner Strip Search)	E.D. Pa., No. 05-cv-01851
<i>Little v. Kia Motors America, Inc.</i> (Braking Systems)	N.J. Super. Ct., No. UNN-L-0800-01
<i>Opelousas Trust Authority v. Summit Consulting</i>	27th Jud. D. Ct. La., No. 07-C-3737-B
<i>Steele v. Pergo</i> (Flooring Products)	D. Ore., No. 07-cv-01493
<i>Pavlov v. Continental Casualty Co.</i> (Long Term Care Insurance)	N.D. Ohio, No. 5:07-cv-02580
<i>Dolen v. ABN AMRO Bank N.V.</i> (Callable CD's)	Ill. Cir. Ct., Nos. 01-L-454 & 01-L-493
<i>In re Department of Veterans Affairs (VA) Data Theft Litigation</i>	D.D.C., MDL No. 1796
<i>In re Katrina Canal Breaches Consolidated Litigation</i>	E.D. La., No. 05-cv-04182

Attachment 2

Legal Notice of Class Action Settlement

From CAVU Service Charge Settlement Administrator <noreply@cavuservicechargesettlement.com>

To [REDACTED]

Unique ID	PIN
[REDACTED]	[REDACTED]

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
Marcotte v. CAVU eCommerce (AMER) LLC, Case No. 2025CH06466
(Circuit Court, Cook County, Illinois)

Our Records Indicate You Made a Booking on airportparkingreservations.com and/or airportparking.com Between July 1, 2024, and March 10, 2025, and Paid a Mandatory Service Charge in Connection with Such Booking, and May Be Entitled to a Payment from a Class Action Settlement.

A Court authorized this Notice. You are not being sued. This is not a solicitation from a lawyer.

This Notice is to inform you that a settlement has been reached in a class action lawsuit claiming that Defendant CAVU eCommerce (AMER) LLC (“Defendant”) failed to properly disclose a mandatory “Service Charge” for online bookings on airportparkingreservations.com and/or airportparking.com, in alleged violation of California’s Honest Pricing Law, Cal. Civ. Code § 1770(a)(29)(A). Defendant denies that it violated any law but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.

Am I a Settlement Class Member? Our records indicate you are or were a California resident who made a booking on airportparkingreservations.com and/or airportparking.com between July 1, 2024, and March 10, 2025, and paid a mandatory “Service Charge” in connection with such booking(s).

What Does the Settlement Provide? A Settlement Fund of \$425,000 has been established to pay the Settlement Class, together with Notice and Settlement Administration Expenses, approved attorneys’ fees and costs, and a Service Award to the Class Representative. Additionally, as part of the settlement, Defendant has represented that it will clearly and conspicuously disclose Service Charges to the consumer with the advertised price presented to a consumer in the first instance, unless and until California’s Honest Pricing Law, Cal. Civ. Code § 1770(a)(29)(A), is amended, repealed, or otherwise invalidated.

How Do I Get a Payment? To receive a pro rata share of the settlement, which will be based on the total amount of Service Charges you paid, you **must** submit a timely and complete Claim Form **no later than January 15, 2026**. You can file a claim by clicking [here](#). Your payment will be issued by PayPal, Venmo, Zelle, or check, at your election. Claim Forms must be submitted online by 11:59 p.m. CT on **January 15, 2026**, or postmarked and mailed by **January 15, 2026**.

What are My Other Options? You may exclude yourself from the Settlement Class by sending a letter to the Settlement Administrator no later than **November 7, 2025**. If you exclude yourself, you cannot get a settlement payment, but you keep any rights you may have to sue the Defendant over the legal issues in the lawsuit. You and/or your lawyer have the right to appear before the Court and/or object to the proposed settlement. Your written objection must be filed no later than **November 7, 2025**. Specific instructions about how to object to, or exclude yourself from, the settlement are available at CAVUServiceChargeSettlement.com. If you file a claim or do nothing, and the Court approves the settlement, you will be bound by all of the Court's orders and judgments. In addition, your claims relating to the alleged collection of Service Charges in connection with bookings from July 1, 2024, through and including March 10, 2025, by Defendant will be released.

Who Represents Me? The Court has appointed lawyer Philip L. Fraietta of Bursor & Fisher, P.A. to represent the Settlement Class. This attorney is called Class Counsel. You will not be charged for this lawyer. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

When Will the Court Consider the Proposed Settlement? The Court will hold the Final Approval Hearing at **10:30 a.m. on December 1, 2025**, by Zoom video conference [instructions are available on the Settlement website at CAVUServiceChargeSettlement.com]. At that hearing, the Court will: (i) hear any objections concerning the fairness of the settlement; (ii) determine the fairness of the settlement; (iii) decide whether to approve Class Counsel's request for attorneys' fees and costs; and (iv) decide whether to award Class Representative Shayla Marcotte \$5,000 from the Settlement Fund for her service in helping to bring and settle this case. Defendant has agreed that Class Counsel may be paid reasonable attorneys' fees from the Settlement Fund in an amount to be determined by the Court. Class Counsel will seek no more than 35% of the Settlement Fund, but the Court may award less than this amount.

How Do I Get More Information? For more information, including the full Notice and Settlement Agreement, go to CAVUServiceChargeSettlement.com, contact the Settlement Administrator at 1-888-887-5409, or CAVU Service Charge Settlement Administrator, P.O. Box 3486, Portland OR 97208-3486, or call Class Counsel at 1-646-837-7150.

If [REDACTED] should not be subscribed or if you need to change your subscription information for CAVU Service Charge Settlement, [please use this preferences page](#).

Attachment 3

CIRCUIT COURT, COOK COUNTY, ILLINOIS*Marcotte v. CAVU eCommerce (AMER) LLC*, Case No. 2025CH06466

If You Made a Booking on Airportparkingreservations.com and/or Airportparking.com Between July 1, 2024, and March 10, 2025, and Paid a Mandatory Service Charge in Connection with Such Booking, You May Be Entitled to a Payment From a Class Action Settlement.

A Court authorized this Notice. You are not being sued. This is not a solicitation from a lawyer.

- A settlement has been reached in a class action lawsuit claiming that Defendant CAVU eCommerce (AMER) LLC (“Defendant”) failed to properly disclose a mandatory “Service Charge” for online bookings on airportparkingreservations.com and/or airportparking.com, in alleged violation of California’s Honest Pricing Law, Cal. Civ. Code § 1770(a)(29)(A). Defendant denies that it violated any law but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.
- You are included if you are or were a California resident who made a booking on airportparkingreservations.com and/or airportparking.com between July 1, 2024, and March 10, 2025, and paid a mandatory “Service Charge” in connection with such booking(s). Persons included in the settlement will be eligible to receive a pro rata portion of the Settlement Fund, which will be based on the total amount of processing fees they paid.
- Read this Notice carefully. Your legal rights are affected whether you act or don’t act.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM BY JANUARY 15, 2026	This is the only way to receive a payment.
EXCLUDE YOURSELF BY NOVEMBER 7, 2025	You will receive no benefits, but you will retain any rights you currently have to sue the Defendant about the claims in this case.
OBJECT BY NOVEMBER 7, 2025	Write to the Court explaining why you don’t like the settlement.
GO TO THE HEARING ON DECEMBER 1, 2025	Ask to speak in Court about your opinion of the settlement.
DO NOTHING	You won’t get a share of the settlement benefits and will give up your rights to sue the Defendant about the claims in the case.

SUBMIT A CLAIM FORM BY JANUARY 15, 2026	This is the only way to receive a payment.
EXCLUDE YOURSELF BY NOVEMBER 7, 2025	You will receive no benefits, but you will retain any rights you currently have to sue the Defendant about the claims in this case.
OBJECT BY NOVEMBER 7, 2025	Write to the Court explaining why you don’t like the settlement.
GO TO THE HEARING ON DECEMBER 1, 2025	Ask to speak in Court about your opinion of the settlement.
DO NOTHING	You won’t get a share of the settlement benefits and will give up your rights to sue the Defendant about the claims in the case.

These rights and options—and the deadlines to exercise them—are explained in this Notice.

BASIC INFORMATION

1. Why was this Notice issued?

A Court authorized this Notice because you have a right to know about a proposed settlement of this class action lawsuit and about 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 Judge David B. Atkins, of the Circuit Court of Cook County, Illinois, is overseeing this case. The case is called *Marcotte v. CAVU eCommerce (AMER) LLC*, Case No. 2025CH06466. The person who sued is called the Plaintiff. The Defendant is CAVU eCommerce (AMER) LLC.

2. What is a class action?

In a class action, one or more people called Class Representatives (in this case, Shayla Marcotte) sue on behalf of a group or a “class” of people who have similar claims. In a class action, the Court resolves the issues for all class members, except for those who exclude themselves from the class.

**QUESTIONS? CALL (888) 887-5409 TOLL-FREE,
OR VISIT CAVUSERVICECHARGESSETTLEMENT.COM**

3. What is this lawsuit about?

This lawsuit claims that Defendant failed to properly disclose a mandatory “Service Charge” for online bookings on airportparkingreservations.com and/or airportparking.com, in alleged violation of California’s Honest Pricing Law, Cal. Civ. Code § 1770(a)(29)(A). The Defendant denies it violated any law. The Court has not determined who is right. Rather, the Parties have agreed to settle the lawsuit to avoid the uncertainties and expenses associated with ongoing litigation.

4. Why is there a settlement?

The Court has not decided whether the Plaintiff or the Defendant should win this case. Instead, both sides agreed to a settlement. That way, they avoid the uncertainties and expenses associated with ongoing litigation, and Class Members will get compensation sooner rather than later, if at all, after the completion of a trial.

WHO’S INCLUDED IN THE SETTLEMENT?

5. How do I know if I am in the Settlement Class?

The Court decided that everyone who fits the following description is a member of the **Settlement Class**:

All California residents who made a reservation through airportparkingreservations.com or airportparking.com and paid a mandatory “Service Charge” at checkout from July 1, 2024, to March 10, 2025.

THE SETTLEMENT BENEFITS

6. What does the settlement provide?

Monetary Relief. A Settlement Fund has been created totaling \$425,000.00. Settlement Class Member payments, the cost to administer the settlement, the cost to inform people about the settlement, attorneys’ fees (inclusive of litigation costs), and an award to the Class Representative, will come out of this fund (*see* Question 12).

Prospective Relief. Additionally, as part of the settlement, Defendant has represented that it will clearly and conspicuously disclose Service Charges to the consumer with the advertised price presented to a consumer in the first instance, unless and until California’s Honest Pricing Law, Cal. Civ. Code § 1770(a)(29)(A), is amended, repealed, or otherwise invalidated.

A detailed description of the settlement benefits can be found in the Settlement Agreement, a copy of which is accessible on the settlement website at CAVUServiceChargeSettlement.com.

7. How much will my payment be?

To receive a pro rata share of the settlement, which will be based on the total amount of processing fees you paid, you **must** submit a timely and complete Claim Form **no later than January 15, 2026**. You can file a claim on the settlement website, CAVUServiceChargeSettlement.com. Your payment will be by PayPal, Venmo, Zelle, or check, at your election. Claim Forms must be submitted online by 11:59 p.m. CT on **January 15, 2026**, or postmarked and mailed by **January 15, 2026**. You can contact Class Counsel at (646) 837-7150 to inquire as to the number of claims and/or requests for exclusion that have been received to date.

8. When will I get my payment?

The hearing to consider the fairness of the settlement is scheduled for **December 1, 2025**. If the Court approves the settlement, eligible Settlement Class Members whose claims were approved by the Settlement Administrator will receive their payment 28 days after **January 15, 2026**. The payment will be made in the form of a check, unless you elect to receive payment by PayPal, Zelle, or Venmo, and all checks will expire and become void 180 days after they are issued.

**QUESTIONS? CALL (888) 887-5409 TOLL-FREE,
OR VISIT CAVUSERVICECHARGESSETTLEMENT.COM**

HOW TO GET BENEFITS

9. How do I get a payment?

If you are a Settlement Class Member and you want to get a payment, you **must** complete and submit a Claim Form by **January 15, 2026**. Claim Forms can be submitted on the settlement website, CAVUServiceChargeSettlement.com, or by printing a copy of a Claim Form from the settlement website and mailing it to the Settlement Administrator.

We also encourage you to submit your claim online. Not only is it easier and more secure, but it is completely free and takes only minutes!

REMAINING IN THE SETTLEMENT

10. What am I giving up if I stay in the class?

If the settlement becomes Final, you will give up your right to sue the Defendant and other Released Parties for the claims being resolved by this settlement. The specific claims you are giving up against the Defendant are described in the Settlement Agreement. You will be “releasing” the Defendant and certain of its affiliates, employees, and representatives as described in Section 1.30 of the Settlement Agreement. Unless you exclude yourself (*see* Question 13), you are “releasing” the claims, regardless of whether you claim your electronic payment or not. The Settlement Agreement is available through the “Court Documents” link on the website.

The Settlement Agreement describes the Released Claims with specific descriptions, so read it carefully. If you have any questions you can talk to the lawyers listed in Question 11 for free or you can, of course, talk to your own lawyer if you have questions about what this means.

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in the case?

The Court has appointed Philip L. Fraietta of Bursor & Fisher, P.A. to be the attorney representing the Settlement Class. He is called “Class Counsel.” He believes, after conducting an extensive investigation, that the Settlement Agreement is fair, reasonable, and in the best interests of the Settlement Class. You will not be charged for this lawyer. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

12. How will the lawyers be paid?

The Defendant has agreed that Class Counsel’s attorneys’ fees and costs may be paid out of the Settlement Fund in an amount to be determined by the Court. The fee petition will seek no more than 35% of the Settlement Fund, inclusive of reimbursement of costs and expenses; the Court may award less than this amount. Under the Settlement Agreement, any amount awarded to Class Counsel will be paid out of the Settlement Fund. Subject to approval by the Court, Defendant has agreed that the Class Representative may be paid a Service Award of \$5,000 from the Settlement Fund for her services in helping to bring and resolve this case.

EXCLUDING YOURSELF FROM THE SETTLEMENT

13. How do I get out of the settlement?

To exclude yourself from the settlement, you must submit a request for exclusion by 11:59 p.m. CT on **November 7, 2025**. Requests for exclusion may be submitted either on the settlement website (via the online form) or by mailing or otherwise delivering a letter (or request for exclusion) stating that you want to be excluded from the *Marcotte v. CAVU eCommerce (AMER) LLC*, Case No. 2025CH06466 settlement. Your letter or request for exclusion must also include your name, your address, a statement that you made a reservation through airportparkingreservations.com or airportparking.com and paid a mandatory “Service Charge” at checkout from July 1, 2024, to March 10, 2025, your signature, the name and number of this case, a statement that you wish to be excluded, the grounds for exclusion, and the identification of any other

**QUESTIONS? CALL (888) 887-5409 TOLL-FREE,
OR VISIT CAVUSERVICECHARGESSETTLEMENT.COM**

exclusion requests you have made in the last five years. If you choose to submit a request for exclusion by mail, you must mail or deliver your exclusion request, postmarked no later than **November 7, 2025**, to the following address:

CAVU Service Charge Settlement Administrator
P.O. Box 3486
Portland, OR 97208-3486

14. If I don't exclude myself, can I sue the Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue the Defendant for the claims being resolved by this settlement.

15. If I exclude myself, can I get anything from this settlement?

No. If you exclude yourself, you will not receive any payment from the Settlement Fund.

OBJECTING TO THE SETTLEMENT

16. How do I object to the settlement?

If you are a Settlement Class Member, you can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must file with the Court a letter or brief stating that you object to the Settlement in *Marcotte v. CAVU eCommerce (AMER) LLC*, Case No. 2025CH06466 and identify all your reasons for your objections (including citations and supporting evidence) and attach any materials you rely on for your objections. Your letter or brief must also include your name, your address, the basis upon which you claim to be a Settlement Class Member, the name and contact information of any and all attorneys representing, advising, or in any way assisting you in connection with your objection, and your signature. If you, or an attorney assisting you with your objection, have ever objected to any class action settlement where you or the objecting attorney has asked for or received payment in exchange for dismissal of the objection (or any related appeal) without modification to the settlement, you must include a statement in your objection identifying each such case by full case caption. You must also mail or deliver a copy of your letter or brief to Class Counsel and Defendant's Counsel listed below.

Class Counsel will file with the Court and post on the settlement website its request for attorneys' fees by **October 23, 2025**.

If you want to appear and speak at the Final Approval Hearing to object to the settlement, with or without a lawyer (explained below in answer to Question 20), you must say so in your letter or brief. File the objection with the Court (or mail the objection to the Court) and mail a copy of the objection to Class Counsel and Defendants' Counsel, at the addresses below, postmarked no later than **November 7, 2025**.

Court	Class Counsel	Defendant's Counsel
The Honorable Judge David B. Atkins Richard J. Daley Center 50 W. Washington Street Chicago, IL 60602	Philip L. Fraietta Bursor & Fisher P.A. 1330 Avenue of the Americas, 32nd Floor New York, NY 10019	Adam R. Fox Squire Patton Boggs (US) LLP 555 South Flower Street, Suite 3100 Los Angeles, CA 90071

17. What's the difference between objecting and excluding myself from the settlement?

Objecting simply means telling the Court that you don't like something about the settlement. You can object only if you stay in the class. Excluding yourself from the class is telling the Court that you don't want to be part of the class. If you exclude yourself, you have no basis to object because the case no longer affects you.

**QUESTIONS? CALL (888) 887-5409 TOLL-FREE,
OR VISIT CAVUSERVICECHARGESSETTLEMENT.COM**

THE COURT'S FINAL APPROVAL HEARING

18. When and where will the Court decide whether to approve the settlement?

The Court will hold the Final Approval Hearing at **10:30 a.m. on December 1, 2025**, by Zoom videoconference [instructions are available on the Settlement website at CAVUServiceChargeSettlement.com]. The purpose of the hearing will be: (i) for the Court to determine whether to approve the settlement as fair, reasonable, adequate, and in the best interests of the Class; (ii) to consider the Class Counsel's request for attorneys' fees and expenses; and (iii) to consider the request for a Service Award to the Class Representative. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the settlement.

The hearing may be postponed to a different date or time without notice, so it is a good idea to check for updates by visiting the settlement website at CAVUServiceChargeSettlement.com or calling (888) 887-5409. If, however, you timely objected to the settlement and advised the Court that you intend to appear and speak at the Final Approval Hearing, you will receive notice of any change in the date of the Final Approval Hearing.

19. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But you are welcome to come at your own expense. If you send an objection or comment, you don't have to come to Court to talk about it. As long as you filed and mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend, but it's not required.

20. May I speak at the hearing?

Yes. You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include in your letter or brief objecting to the settlement a statement saying that it is your "Notice of Intent to Appear in *Marcotte v. CAVU eCommerce (AMER) LLC*, Case No. 2025CH06466." It must include your name, address, telephone number, and signature, as well as the name and address of your lawyer, if one is appearing for you. Your objection and notice of intent to appear must be filed with the Court and postmarked no later than **November 7, 2025**, and be sent to the addresses listed in Question 16.

GETTING MORE INFORMATION

21. Where do I get more information?

This Notice summarizes the settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at CAVUServiceChargeSettlement.com. You may also write with questions to *CAVU Service Charge Settlement Administrator*, P.O. Box 3486, Portland, OR 97208-3486. You can call the Settlement Administrator at (888) 887-5409 or Class Counsel at (646) 837-7150, if you have any questions. Before doing so, however, please read this full Notice carefully. You may also find additional information elsewhere on the case website.

**QUESTIONS? CALL (888) 887-5409 TOLL-FREE,
OR VISIT CAVUSERVICECHARGESETTLEMENT.COM**

Attachment 4



40086988999999999999

Marcotte v. CAVU eCommerce (AMER) LLC
Circuit Court of Cook County
Case No. 2025CH06466
Settlement Claim Form

If you are a Settlement Class Member and wish to receive a cash payment, your completed Claim Form must be postmarked on or before January 15, 2026, or submitted online on or before January 15, 2026.

Please read the full Notice of this settlement (available at CAVUServiceChargeSettlement.com) carefully before filling out this Claim Form.

To be eligible to receive a cash payment from the settlement obtained in this class action lawsuit, you must submit this completed Claim Form online or by mail.

ONLINE: CAVUServiceChargeSettlement.com, "Submit a Claim" page

MAIL: CAVU Service Charge
Settlement Administrator
P.O. Box 3486
Portland, OR 97208-3486

PART ONE: CLAIMANT INFORMATION & PAYMENT METHOD ELECTION

Provide your name and contact information below. It is your responsibility to notify the Settlement Administrator of any changes to your contact information after the submission of your Claim Form.

First Name	MI	Last Name
Street Address		
City	State	ZIP Code
Email Address		
Unique ID		

POTENTIAL CASH PAYMENT: You may be eligible to receive a pro rata cash payment, which will be based on the total amount of Service Charges you paid, if you are a California resident who made a reservation through airportparkingreservations.com or airportparking.com and paid a mandatory "Service Charge" at checkout from July 1, 2024, to March 10, 2025.

PREFERRED PAYMENT METHOD:

☐ Venmo	Venmo Email:	
☐ PayPal	PayPal Email:	
☐ Zelle	Zelle Email:	
☐ Check		

**QUESTIONS? VISIT CAVUSERVICECHARGESETTLEMENT.COM OR
CALL 1-888-887-5409 TOLL-FREE**



400869889999999996

PART TWO: ATTESTATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury under the laws of the United States of America that between July 1, 2024, to and through March 10, 2025, I, while a resident of California, made a reservation through airportparkingreservations.com or airportparking.com and paid a mandatory “Service Charge” at checkout, and that all of the information on this Claim Form is true and correct to the best of my knowledge. I understand that my Claim Form may be subject to audit, verification, and Court review.

Signature

Date: – –

MMDDYYYY

Please keep a copy of your Claim Form for your records.

**QUESTIONS? VISIT CAVUSERVICECHARGESSETTLEMENT.COM OR
CALL 1-888-887-5409 TOLL-FREE**

Attachment 5



Exclusion Report

Shayla Marcotte v. CAVU eCommerce (AMER) LLC

Number	First Name	Middle Name	Last Name
1	Rhonda		Barkley

FILED
11/17/2025 2:38 PM
Mariyana T. Spyropoulos
CIRCUIT CLERK
COOK COUNTY, IL
2025CH06466
Calendar, 16
35392723

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

SHAYLA MARCOTTE, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

CAVU ECOMMERCE (AMER) LLC,

Defendant.

Civil Action No.: 2025CH06466

Hon. David B. Atkins

Calendar 16

[PROPOSED] FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

WHEREAS, a class action is pending before the Court entitled *Marcotte v. CAVU Ecommerce (AMER) LLC*, No. 2025CH06466; and

WHEREAS, Plaintiff Marcotte (“Plaintiff”) and Defendant CAVU Ecommerce (Amer) LLC (“Defendant” and together “Parties”) have entered into a Class Action Settlement Agreement which, together with the exhibits attached thereto, sets forth the terms and conditions of a proposed settlement and dismissal of the Action with prejudice as to Defendant upon the terms and conditions set forth therein (the “Settlement Agreement”); and

WHEREAS, on August 26, 2025, the Court granted Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, conditionally certifying a Class pursuant to 735 ILCS 5/2-801 of “all California residents who made a reservation through airportparkingreservations.com or airportparking.com and paid a mandatory ‘Service Charge’ at checkout” from the period of July 1, 2024 to March 10, 2025; and

WHEREAS, the Court has considered the Parties’ Class Action Settlement Agreement, as well as Plaintiff’s Unopposed Motion for Final Approval of Class Action Settlement, Plaintiff’s Unopposed Motion for Service Award, Attorneys’ Fees, Costs, and Expenses, together with all

exhibits thereto, the arguments and authorities presented by the Parties and their counsel at the Final Approval Hearing held on December 1, 2025, and the record in the Action, and good cause appearing;

IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS FOLLOWS:

1. Terms and phrases in this Final Judgment shall have the same meaning as ascribed to them in the Parties' Class Action Settlement Agreement.
2. This Court has jurisdiction over the subject matter of the Action and over all Parties to the Action, including all Settlement Class members.
3. The notice provided to the Settlement Class pursuant to the Settlement Agreement and order granting Preliminary Approval—including (i) direct e-mail notice to the Settlement Class, based on the comprehensive Settlement Class List provided by Defendant, and (ii) the creation of the Settlement Website—fully complied with the requirements of 735 ILCS 5/2-803 and due process, and was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, their right to object to or to exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing.
4. This Court now gives final approval to the Settlement Agreement, and finds that the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class. The settlement consideration provided under the Settlement Agreement constitutes fair value given in exchange for the release of the Released Claims against the Released Parties given (i) the disputed factual and legal circumstances of the Action, (ii) defenses asserted in the Action, and (iii) the potential risks and likelihood of success of pursuing litigation on the merits given the relatively untested nature of California's drip-pricing statute. The complex legal and factual issues in this case, many of which present novel issues of first impression requiring copious briefing and argument, and the fact that the Settlement is the result of arms'-length negotiations

between the Parties support this finding since settlement guarantees recovery for Class Members where recovery is otherwise uncertain. The Court finds that these facts, in addition to the Court's observations throughout the litigation, demonstrate that there was no collusion present in reaching this Settlement, implicit or otherwise.

5. The Court has specifically considered the factors relevant to class action settlement approval, including:

(1) the strength of the case for the plaintiff on the merits, balanced against the money or other relief offered in settlement; (2) the defendant's ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed.

City of Chicago v. Korshak, 206 Ill. App. 3d 968, 972 (1st Dist. 1990).

6. Pursuant to 735 ILCS 5/2-801 and 735 ILCS 5/2-802, the Court finally certifies, for settlement purposes only, the following Settlement Class¹:

All California residents who made a reservation through airportparkingreservations.com or airportparking.com and paid at mandatory "Service Charge" at checkout from July 1, 2024 to March 10, 2025 and who did not timely opt-out.

7. With respect to the Settlement Class, the Court finds, for settlement purposes only, that (a) the Settlement Class defined above is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Settlement Class, and those common questions predominate over any questions affecting only individual members; (c) the Class Representative and Class Counsel have fairly and adequately protected, and will continue

¹ Excluded from the Class is also (1) any Judge or Magistrate presiding over this Action and members of their families; and (2) Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees.

to fairly and adequately protect, the interests of the Class; and (d) certification of the Settlement Class is an appropriate method for the fair and efficient adjudication of this controversy.

8. The Court finds that the Class Representative and Class Counsel adequately represented the Settlement Class for the purposes of litigating this matter and entering into and implementing the Settlement Agreement.

9. Accordingly, the Settlement is hereby finally approved in all respects.

10. The Parties are hereby directed to implement the Settlement Agreement according to its terms and provisions. The Settlement Agreement is hereby incorporated into this Final Judgment in full and shall have the full force of an Order of this Court.

11. This Court hereby dismisses the Action, as identified in the Settlement Agreement, on the merits and with prejudice.

12. Upon the Effective Date of this Final Judgment, Plaintiff and each and every Settlement Class Member who did not opt out of the Settlement Class, including the Releasing Parties shall be deemed to have released Defendant, as well as the Released Parties from any and all claims or causes of action for actual damages, liquidated damages, penalties, injunctive relief, declaratory relief, attorneys' fees and costs, expenses and interest, liabilities, demands, or lawsuits against the Released Parties under California's Honest Pricing Law, Cal. Civ. Code § 1770(a)(29)(A) and California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq.*, and all other claims, liabilities, demands, causes of action, and lawsuits of the Plaintiff and Settlement Class Members, whether known or unknown, filed or unfiled, asserted or as of yet unasserted, existing or contingent, whether legal, statutory, equitable, or of any other type or form, whether under federal, state, or local law, and whether brought in an individual, representative, or any other capacity, of every nature and description whatsoever, including, but not limited to, claims that were or could have been brought in the Action or any other actions

FILED DATE: 11/17/2025 2:38 PM 2025CH06466

filed (or to be filed) by Plaintiff and Settlement Class Members against Released Parties relating in any way to or connected with the alleged collection of a mandatory “Service Charge” Fee in connection with online reservations made on airportparkingreservations.com and/or airportparking.com from July 1, 2024 to March 10, 2025.

13. Upon the Effective Date of this Final Judgment, the above release of claims and the Settlement Agreement will be binding on, and will have *res judicata* and preclusive effect on, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all other Settlement Class Members and Releasing Parties. All Settlement Class Members are hereby permanently barred and enjoined from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any lawsuit or other action in any jurisdiction based on or arising out of any of the Released Claims.

14. The Court has also considered Plaintiff’s Unopposed Motion For Service Award, Attorneys’ Fees, Costs, and Expenses Attorneys’ Fees, Costs, Expenses, as well as the supporting memorandum and declarations, and adjudges that the payment of attorneys’ fees, costs, and expenses in the amount of \$148,750 is a reasonable percentage of the fund. Such payment shall be made pursuant to and in the manner provided by the terms of the Settlement Agreement.

15. The Court has also considered Plaintiff’s Motion, memorandum of law, and supporting declaration for incentive award to the Class Representative, Shayla Marcotte. The Court adjudges that the payment of an incentive award in the amount of \$5,000 to Ms. Marcotte to compensate her for her efforts and commitment on behalf of the Settlement Class, is fair, reasonable, and justified under the circumstances of this case. Such payment shall be made pursuant to and in the manner provided by the terms of the Settlement Agreement.

16. All payments made to Settlement Class Members pursuant to the Settlement

Agreement that are not cashed within 180 days of issuance shall revert to the Greater Chicago Legal Clinic, which the Court approves as an appropriate *cy pres* recipient.

17. Except as otherwise set forth in this Order, the Parties shall bear their own costs and attorneys' fees.

18. The Parties, without further approval from the Court, are hereby permitted to agree and adopt such amendments, modifications, and expansions of the Settlement Agreement and its implementing documents (including all exhibits to the Settlement Agreement) so long as they are consistent in all material respects with this Final Judgment and do not limit the rights of Settlement Class Members.

19. Without affecting the finality of this Final Judgment for purposes of appeal, until the Effective Date the Court shall retain jurisdiction over all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement.

20. The Court finds that there is no just reason to delay and therefore directs the Clerk of Court to enter this Final Approval Order and Judgment as the judgment of the Court forthwith.

IT IS SO ORDERED, this _____ day of _____, 2025.

Honorable David B. Atkins