IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Michelle Lee Tannlund, *et al.* Plaintiffs, v. **Real Time Resolutions, Inc.,** Defendant.	Case No. 1:14-cv-5149 Hon. Edmond E. Chang

Motion for Final Approval of Class Action Settlement

Plaintiff Michelle Lee Tannlund ("Plaintiff") respectfully submits the following Motion for Final Approval of Class Action Settlement. No objections were raised to the proposed settlement, the claims rate exceeds 4%, and the estimated payout is nearly $50 per person. It is fair, adequate, reasonable and in the best interests of the Settlement Class. Accordingly, Plaintiff requests an Order (1) approving the proposed settlement as fair, reasonable, and adequate for the certified Settlement Class and (2) finding that adequate notice was provided to the Settlement Class.[1]

I. Procedural History and Factual Background

Plaintiff filed her class action complaint on July 7, 2014, on behalf of herself and a proposed nationwide class alleging that Defendant had violated the TCPA by making non-emergency calls to class members' cellular telephones using an automatic telephone dialing system without the consent of the called party. R. 1. Defendant answered the Complaint on August 1, 2014, and asserted a number of affirmative defenses, including the defense of consent and the defense that Defendant had manually dialed some of the numbers. R. 11. Defendant also moved for judgment on the pleadings (R. 12) and moved to transfer the case (R. 15) to a different venue.

[1] Class Counsel's request for fees and costs and a service award for the named plaintiff are the subject of a separate motion. R. 92.

At the same time, the Parties began discussing settlement, ultimately agreeing to participate in a mediation session before the Hon. Wayne Anderson (ret.) on September 3, 2014. During the in-person mediation session and in three subsequent telephonic mediation sessions with Judge Anderson, the Parties made progress in settlement negotiations. Subsequent to the mediation sessions, after additional discussions, the Parties agreed to settle the litigation. After reaching agreement on the material terms of the class-wide settlement structure, the Parties then spent several more weeks exchanging drafts of a final, written settlement agreement. After many exchanges of drafts and edits, the Parties were finally able to agree to the form and content of a settlement agreement.

Plaintiff filed her original unopposed motion for preliminary approval (R. 45), but also moved, over Defendant's objection, to compel production of class data (R. 57) in order to directly notify potential class members of the benefits of the settlement. As originally agreed, Defendant would provide an account credit of up to $200 for future timely payments on debt it currently services and a $17 cash payment for former customers and recipients of wrong number calls. *See* Original S.A. § 5.02(a) (R. 45-1). However, the notice plan proposed was publication only, based on Defendant's contractual restrictions with its clients, which prevented it from voluntarily turning over customer information. Memo. in Support of Prelim. Approval (R. 45), at 19-20; Ankcorn Decl. (R. 45-3), ¶¶ 8-13 (describing contractual restrictions); Motion to Compel (R. 57), ¶¶ 3-9.

After the hearing on the two motions on February 9, 2016, which the Court entered and continued, the Parties undertook renewed settlement negotiations and came to an agreement for a non-reversionary common fund of $1.3 million with costs of notice and administration paid separately by Defendant and with direct notice to be sent to the class by U.S. mail pursuant to an order of this Court. The Parties filed a renewed motion for preliminary approval of the prior Settlement Agreement (R. 68) that the Court granted on May 24, 2016. R. 72.

Defendant immediately began gathering the names and addresses of persons known to it to provide to the claims administrator. The process of doing so proved more difficult than anticipated due to the manner in which this data was stored and organized. As a result, the Parties filed a Joint Motion to Continue Status Hearing and Final Approval Hearing (R.76) on July 31, 2016, which the Court granted on August 1, 2016. R.78.

As a result of this review by Defendant, the Parties amended the Settlement Agreement to clarify the definition of the Settlement Class to exclude individuals whose phone numbers were not uploaded and dialed by Defendant's telephone system, or who received no calls after (i) signing a release of all claims, (ii) representing that they had no claims against Defendant, or (iii) filing for bankruptcy and receiving a discharge.

The Parties then filed a Motion for Preliminary Approval of the Amended Class Action Settlement on March 28, 2017 (R. 81), and on April 10, 2017, the Court certified the proposed Settlement Class for settlement purposes and set specific deadlines for notice and briefing. R. 89.

II. The Settlement Should be Approved as Fair, Adequate, and Reasonable

"Federal courts naturally favor the settlement of class action litigation." *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996) (citing *E.E.O.C. v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 888–89 (7th Cir. 1985)). When faced with a motion for final approval of a class action settlement under Rule 23, a court's inquiry is limited to whether the settlement is "lawful, fair, reasonable, and adequate." *Uhl v. Thoroughbred Tech. & Telecommunc'ns, Inc.*, 309 F.3d 978, 986 (7th Cir. 2009); *see also* Fed. R. Civ. P. 23(e)(2). A settlement is fair, adequate, and reasonable, and merits final approval, when "the interests of the class as a whole are better served by the settlement than by further litigation." *Manual for Complex Litigation* (Fourth) ("MCL 4th") § 21.61, at 480 (2010). Moreover, courts must protect class members by "excercis[ing] the highest degree of vigilance in scrutinizing proposed settlements of class actions." *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 652 (7th Cir. 2006) (quotations omitted).

A. The Settlement Is the Result of Informed, Arm's Length Negotiations

A proposed class settlement is presumptively fair where it "is the product of arm's length negotiations, sufficient discovery has been taken to allow the parties and the court to act intelligently, and counsel involved are competent and experienced." H. Newberg & A. Conte, NEWBERG ON CLASS ACTIONS § 11:41 (4th ed. 2002). The settlement here satisfies this test.

The settlement is the product of extensive negotiations spanning over two years and included an all-day, arm's-length mediation session before the Hon. Wayne Anderson, with several additional telephone mediation sessions, as well as a second round of negotiations over an additional several months. R. 81-3, at ¶¶ 6-7. The requirement that a settlement be fair is designed to prevent collusion among the Parties. *Mars Steel Corp. v. Cont'l Ill. Nat'l. Bank & Trust Co. of Chicago*, 834 F.2d 677, 684 (7th Cir. 1987) (approving settlement upon a finding of no "hanky-panky" in negotiations).

Counsel for the Parties are particularly experienced in the litigation, certification, trial, and settlement of nationwide class action cases. R. 81-3 at ¶¶ 2-5. In negotiating this settlement, Class Counsel had the benefit of years of experience with class actions in general and a familiarity with the facts of this case in particular. *Id.* An experienced mediator, a distinguished former judge of this District, participated actively throughout the negotiation process. R. 81-1 at § 1.03; R. 81-3 at ¶¶ 6-7. These sessions culminated in a Settlement Agreement that provides substantial benefits to the Settlement Class, including a non-reversionary payment by Defendant of $1.3 million into a settlement fund that Plaintiff proposes be used to pay (1) Settlement Class Member claims in the amount of $754,694.45, (2) court-approved incentive award to Plaintiff in the amount of $12,500, and (3) court-approved attorneys' fees in the amount of $502,000 and out-of-pocket costs of $30,805.55. In addition, the settlement provides business practice changes designed to make sure that Defendant's collection call procedures comply with the TCPA.

The settlement is the result of a thorough investigation by the parties. During the mediation process, the parties submitted detailed mediation submissions, setting forth their respective views as to the strengths of their arguments. R. 81-3 at ¶ 6. Additionally, Plaintiff conducted confirmatory discovery related to the class size and composition of the settlement

class, including written discovery, the deposition of Defendant's Chief Executive Officer, and disclosure of documents. R. 81-3, at ¶¶ 8-12.

The fact that Plaintiff achieved an excellent result for the Settlement Class despite facing significant procedural and substantive hurdles is a testament to the non-collusive nature of the proposed Settlement. Additionally, in light of Plaintiff's efforts to obtain information necessary to determine the value of the settlement and the hard work negotiating fair relief for the Settlement Class, the settlement is entitled to a presumption of fairness. Moreover, the fact that not a single member of the Settlement Class raised any objections to the settlement also underscores that the settlement is fair, reasonable, and adequate.

B. Class Members Received the Best Notice Practicable

The notice directed to the settlement class must be "the best notice that is practicable under the circumstances, including individual notice to all members through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Where individual members cannot be identified through reasonable effort, "notice by publication, imperfect though it is, may be substituted." *Hughes v. Kore of Indiana Enter., Inc.*, 731 F.3d 672, 677 (7th Cir. 2013). This Court has already determined that the notice program in this case meets the requirements of due process and applicable law, provides the best notice practicable under the circumstances, and constitutes due and sufficient notice to all individuals entitled thereto. (R. 89 ¶ 97) This notice program has been implemented by independent claims administrator, Claims Administrator ILYM Group, Inc. ("ILYM"). *See generally* Declaration of Lisa Mullins Concerning Final Implementation of Notice Plan ("Mullins Decl.").

Defendant originally provided ILYM with a list containing records of Settlement Class members for whom Defendant possesses a mailing address (the "Class List"). Mullins Decl. ¶ 3. After receiving the Class List, ILYM processed the data to ensure adequate formatting and de-duplicated the data to obtain a list of unique Settlement Class Members and cell phone numbers. *Id.* ILYM then mailed a postcard summarizing the settlement to Settlement Class

members for whom ILYM had mailing information, totaling 375,954 names and mailing addresses. *Id.*, ¶ 5.

The notice plan as set out in the Settlement Agreement also includes a supplemental notice by online publication intended to reach at least 20 million web impressions. S.A., § 9.04. Notice by publication is the only reasonable option to alert wrong number call recipients of their option to participate in the settlement benefits. The contact information for the Class Members cannot identify these persons because Defendant would not and did not knowingly place calls to persons it knew were not customers. They cannot be easily ascertained through reasonable effort. This kind of administrative hurdle makes providing direct notice to each member of the Settlement Class extremely challenging and costly, making it infeasible to give direct notice. Thus, notice by publication was done to reach these class members. The publication notice consisted of banner advertisements on the internet, which were linked directly to the Settlement Website maintained by the Claims Administrator. Mullins Decl., ¶ 7.

15,297 valid claims have been submitted as of August 9, 2017. *Id.*, at ¶ 11. The last day to submit a claim is August 23, 2017, and Class Counsel will submit a final claims accounting as soon as possible thereafter. The deadline for opting out of the settlement and for filing an objection was July 24, 2017. S.A. §§ 2.23-2.24; Order for Prelim. Appr. (R. 89), at 5-6. The deadline for Class Counsel to move for fees and a service award for the named plaintiff was July 3, 2017. Order for Prelim. Appr. (R. 89), at 5. Not a single Settlement Class Member has objected to the settlement or the request for fees and service award, and only ten have requested to opt out. Mullins Decl., at ¶ 10.

The notices mailed to Settlement Class members informed them of: (1) the settlement's benefits; (2) deadlines for all Settlement Class members to file a claim form, opt out of the settlement, and object to the settlement and/or Class Counsel's fee request; (3) the address for the settlement website where they can obtain more information, download forms, and file claims; and (4) the date and location of the final approval hearing. *Id.*, at ¶ 6.

If a mailed notice was returned as undeliverable with a forwarding address, ILYM re-mailed the notices to that forwarding address. *Id.*, at ¶ 9. ILYM also performed a computerized skip trace on Postcard Settlement Notices that were returned without a forwarding address and obtained an additional 3,361 updated addresses, where were each re-mailed a Postcard Settlement Notice. *Id.*

ILYM also established a toll free telephone number and a settlement website (www.RealTimeTCPASettlement.com) where Settlement Class members may go for information or to submit a claim electronically. *Id.*, at ¶ 6. The Settlement Agreement with all exhibits, the Rider to the Settlement Agreement, the Preliminary Approval Order, and Class Counsel's Fee motion have been continuously posted on the website, along with a Frequently Asked Questions page. *Id.* The supplemental publication program's internet banner advertisements were seen by an estimated 26,212,816 persons over a four week period, increasing the reach and scope of notice to class members. *Id.*, at ¶ 7.

The notice program has been successful. As of August 8, 2017, ILYM had received approximately 3,800 telephone calls to its toll free line and there have been approximately 82, 400 visits to the website. Mullins Decl. ¶ 8.

In sum, the notice program implemented by ILYM has provided due and adequate notice of these proceedings and satisfies the requirements of due process.

C. The Settlement Satisfies the Criteria for Settlement Approval

Federal courts look with great favor upon the voluntary resolution of litigation through settlement. In the class action context in particular, "there is an overriding public interest in favor of settlement" because such settlements minimize "the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources." *Armstrong v. Bd. of Sch. Dirs. of the City of Milwaukee*, 616 F.2d 305, 312-13 (7th Cir. 1980) (citations and quotations omitted), overruled on other grounds by *Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998); *see also Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996) ("Federal courts naturally favor the

settlement of class action litigation."); 4 NEWBERG ON CLASS ACTIONS § 11.41 (4th ed. 2002) (citing cases).

In evaluating a settlement, a district 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, 1999 (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)).

The judge also "must assess the value of the settlement to the class and the reasonableness of the agreed-upon attorneys' fees for class counsel, bearing in mind that the higher the fees the less compensation will be received by the class members." *Redman*, 768 F.3d at 629. The judge evaluating the settlement is "a fiduciary of the class, who is subject therefore to the high duty of care that the law requires of fiduciaries." *Pearson*, 772 F.3d at 780.

1. The Strength of Plaintiffs' Case Compared to the Amount of the Settlement

In evaluating the strength of a plaintiff's case on the merits, "courts should refrain from resolving the merits of the controversy or making a precise determination of the parties' respective legal rights." *In re AT&T Mobility Wireless Data Services Sales Litig.*, 270 F.R.D. 330, 346 (N.D. Ill. 2010) (internal quotations omitted). "Because the essence of settlement is compromise, courts should not reject a settlement solely because it does not provide a complete victory to the plaintiffs." *Id.* (internal quotations omitted). Rather, an integral part of the Court's strength-versus-merits evaluation "is a consideration of the various risks and costs that accompany continuation of the litigation." *Donovan v. Estate of Fitzsimmons*, 778 F.2d 298, 309 (7th Cir. 1985). Courts should attempt to "quantify the net expected value of continued litigation to

the class" by "estimating the range of possible outcomes and ascribing a probability to each point on the range." *Reynolds*, 288 F.3d at 285 (citation omitted).

Plaintiff continues to believe that her claims against Defendant have merit and she could make a compelling case if her claims were tried. Nevertheless, Plaintiff and the Settlement Class Members would face a number of difficult challenges if the litigation were to continue.

First, the Parties have competing interpretations of what constitutes "prior express consent" under the TCPA based on the FCC's January 4, 2008 declaratory ruling, *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 F.C.C.R. 559, 23 FCC Rcd. 559, 43 Commc'ns. Reg. (P&F) 877, 2008 WL 65485 (F.C.C.) (hereinafter "2008 FCC Ruling"). The 2008 FCC Ruling is the FCC's official interpretation of the governing provisions of the TCPA. It provides that "prior express consent is deemed to be granted only if the wireless number was provided by the consumer to the creditor, and that such number was provided during the transaction that resulted in the debt owed." *Id.*, ¶ 10. Plaintiff maintains that this definition requires that the cell phone number be "provided during the transaction that resulted in the debt owed," i.e., during the "origination" of the credit or banking relationship. Defendant, however, interprets the term "transaction" to cover a much longer time period. Circuit courts have come to differing interpretations of this language from the Declaratory Ruling. Compare *Hill v. Homeward Residential, Inc.*, 799 F.3d 544, 552 (6th Cir. 2015) ("a person gives his 'prior express consent' under the [TCPA] if he gives a company his number before it calls him") with *Nigro v. Mercantile Adjustment Bureau, LLC*, 769 F.3d 804, 806-7 (2nd Cir. 2014) ("Nigro plainly did not consent. He did not provide his phone number 'during the transaction that resulted in the debt owed.' Indeed, he provided his number long after the debt was incurred and was not in any way responsible for — or even fully aware of — the debt.") (internal citations omitted).

Based on its interpretation of the 2008 FCC Ruling, Defendant maintains that some or all of the persons in the Settlement Class gave their prior express consent to contact them at

their cell phone numbers. If the Court found that the FCC's Declaratory Ruling and/or the TCPA permits "prior express consent" to be given any time a customer provides a cell phone number as a contact number, the amount of recoverable damages would be reduced significantly.

Second, two key issues in TCPA jurisprudence, the definition of an "automatic telephone dialing system" and whether revocation of consent can be done orally, are in a state of flux due to court challenges to the FCC's rulemaking authority and the composition of Commission membership. In July 2015, the FCC attempted to clarify the definition and found, over strong dissents from Commissioners Pai and Reilly, that "the capacity of an autodialer is not limited to its current configuration but also includes its potential functionalities." Declaratory Ruling & Order, *Rules & Regs. Implementing the Tel. Cons. Prot. Act of 1991*, 30 FCC Rcd. 7961 (2015), at ¶ 16 ("2015 FCC Ruling"). Industry groups representing high-volume callers immediately filed court challenges to the 2015 FCC Ruling both on the grounds that this definition of an ATDS is far outside the statute's definition (and hence the FCC's scope of rule-making authority), as well as the ruling's decision that consent can be revoked at any time using any reasonable method, including verbally. *ACA Int'l v. FCC*, No. 15-1211 (D.C. Cir.). In the meantime, with the change in presidential administration, three Republican commissioners now outnumber the two Democrats, with both dissenters from the 2015 FCC Ruling now in the majority.[2]

Third, Defendant has consistently argued that class certification is not appropriate because the individualized question of whether a customer consented will predominate at trial. "Courts are split on whether the issue of individualized consent renders a TCPA class uncertifiable on predominance and ascertainability grounds, with the outcome depending on the specific facts of each case." *Chapman v. First Index, Inc.*, No. 09 C 5555, 2014 WL 840565, at *2 (N.D. Ill. March 4, 2014) (citing cases). For example, in *Savanna Group, Inc. v. Trynex, Inc.*, No. 10-cv-7995, 2013 WL 66181, at *3 (N.D. Ill. Jan. 4, 2013), the court granted class certification

[2] *See, e.g.*, http://thehill.com/policy/technology/345209-senate-confirms-two-new-fcc-commissioners (last accessed Aug. 7, 2017).

and rejected the defendant's argument that questions of consent caused individual issues to predominate, noting that the defendant had not offered evidence tending to show that any particular class member consented to the faxes at issue. On the other hand, in *G.M. Sign, Inc. v. Brinks Mfg. Co.*, No. 09 C 5528, 2011 WL 248511, at *8 (N.D. Ill. Jan. 25, 2011), the court declined to certify a class, finding that the defendant offered evidence illustrating that consent could not be shown with common proof. If Defendant were able to present convincing facts to support its position, there is a risk that the Court would decline to certify the class, leaving only the named Plaintiff to pursue her individual claims.

Fourth, at least some courts view awards of aggregate, statutory damages with skepticism and reduce such awards on due process grounds even after a plaintiff has prevailed on the merits. *See, e.g.*, *Aliano v. Joe Caputo & Sons – Algonquin, Inc.*, No. 09 C 910, 2011 WL 1706061, at *4 (N.D. Ill. May 5, 2011) (statutory damages under FACTA would be "shocking, grossly excessive, and punitive in nature" even though authorized by statute); *but see Phillips Randolph Enters., LLC v. Rice Fields*, No. 06 C 4968, 2007 WL 129052, at *3 (N.D. Ill. Jan. 11, 2007) (due process does not require Congress "to make illegal behavior affordable, particularly for multiple violations.").

Finally, there is a risk of losing a jury trial. And, even if Plaintiffs did prevail at trial, any judgment could be reversed on appeal. By contrast, the Settlement provides substantial relief to Settlement Class Members without delay and is within the range of reasonableness, particularly in light of the above risks that Settlement Class Members would face in litigation.

As explained above, the Settlement allows Settlement Class Members to receive a *pro rata* cash payment from a $1.3 million common fund, after deducting Class Counsel's fees and an incentive award for the named Plaintiff. No amount of the settlement fund will be returned to Defendant.

This payment is estimated at $49.33 per claim, derived by assuming (a) 15,297 claims, the current number of valid claims; (b) attorneys' fees and costs of $532,805.55; and (c) class representative's service award at $12,500. (It is only an estimate since the claims period still

has an additional two weeks to run.) This recovery exceeds recent payouts in TCPA class action settlements. *See Wright v. Nationstar Mortg. LLC*, 2016 U.S. Dist. LEXIS 115729, at *27 (N.D. Ill. Aug. 29, 2016) (approving a TCPA settlement with an estimated $45 to each class member) (Chang, J.); *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 787 (N.D. Ill. 2015) (providing $34.60 each to individual claimants); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 494 (N.D. Ill. 2015) (providing roughly $30 per claimant).

While Plaintiff believes that her claim for maximum statutory damages under the TCPA is strong, Plaintiff is also aware of the inherent risks and costs of continuing with complex litigation of this nature. If Defendant were to prevail on its asserted consent defense, Plaintiff's TCPA claim would fail and she would lack standing to represent the putative Settlement Class. Further, even if Class Counsel were able to substitute a new Class Representative, the individualized inquiry that the resolution of the consent issue would require for each putative Settlement Class Member could preclude certification of the class. In other words, it is entirely possible that Settlement Class Members, including Plaintiff, would receive no relief at all because they could not meet the commonality, predominance, superiority and ascertainability requirements under Federal Rule 23(a) and (b)(3). Given this possibility, the relief — both monetary and business practice changes — to the Settlement Class Members is a meaningful achievement. Accordingly, the proposed Settlement provides a significant monetary benefit to all those affected by Defendant's alleged violation of the TCPA and should be approved.

2. Continued Litigation Is Likely to Be Complex, Lengthy, and Expensive

"Settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation." *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011). When litigation will be costly and lengthy, settlement is especially favored because "the present lawsuit will come to an end and Class Members will realize both immediate and future benefits as a result." *Id.* To prepare this case for trial, the parties would need to engage in significant additional discovery, including depositions and expensive, time-consuming expert

investigation. Given the risks outlined above when viewed in light of the certainty of a settlement payout to class members and substantial changes to Real Time's business practices, this factor also favors settlement.

3. No Opposition to the Settlement and Counsel Support Favor Settlement

The amount of opposition to a settlement among affected parties is another factor district courts should consider in deciding whether to approve a class action settlement. *Synfuel*, 463 F.3d at 653; *see also In re Sw. Airlines Voucher Litig.*, No. 11 C 8176, 2013 U.S. Dist. LEXIS 120735, 2013 WL 4510197, *7 (N.D. Ill. Aug. 26, 2013) (less than 0.01% objecting or opting out supports reasonableness of settlement). Not a single Settlement Class member has objected to the settlement, and only ten have opted out, compared to the 15,297 members who timely submitted claims. Mullins Decl. ¶¶ 10-11.

The opinion of competent counsel is also relevant to the question whether a settlement is fair, reasonable, and adequate under Rule 23." *Schulte*, 805 F.Supp.2d at 586-87; *see also Isby v. Bayh*, 75 F.3d 1191, 1200 (7th Cir. 1996). Here, Class Counsel has extensive experience in consumer class actions and complex litigation. R. 81-3 at ¶¶ 2-5. Based upon proposed Class Counsel's analysis, the relief being offered to Settlement Class Members represents a significant recovery for the Settlement Class, particularly when weighed against Defendant's anticipated defenses and the inherent risks of continued litigation. *Id.* at ¶ 26. Class Counsel strongly endorses this settlement and believes it is a great result for the class. R. 81-3.

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

Courts consider the extent of discovery completed and the stage of the proceedings in determining whether a class action settlement is fair, adequate and reasonable. Courts regularly approve prompt settlements achieved prior to the commencement of formal discovery, especially where counsel "have conducted a significant amount of informal discovery and dedicated a significant amount of time and resources to advancing the underlying lawsuits." *In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 350 (N.D. Ill. 2010).

Here, Class Counsel has thoroughly analyzed the factual and legal issues involved. Based upon information exchanged by the Parties, Plaintiff believes it possesses the evidence

needed to evaluate the strengths and weaknesses of the case. Class Counsel has reviewed information produced by Defendant about its business practices, extensively interviewed key personnel at the company, and took the deposition of its Chief Executive Officer, in addition to informal discovery into the size of the proposed settlement class. R. 81-3 at ¶¶ 9-13.

While the Parties have informally exchanged information critical to evaluating the strength of Plaintiff's contentions (and Defendant's defenses), the amount of discovery taken is not a prerequisite to a class action settlement. Courts have noted that, "the label of 'discovery' [either formal or informal] is not what matters. Instead, the pertinent inquiry is what facts and information have been provided." *Schulte*, 805 F.Supp.2d at 587 (internal citation omitted); *see also In re Corrugated Container Antitrust Litigation*, 643 F.2d 195, 211 (5th Cir. 1981) ("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") (emphasis omitted). Here, information more than sufficient to make a reasonable and informed decision has been procured, meaning that there was a reasonable, informed basis to evaluate the Settlement. This factor weighs in favor of settlement.

III. Conclusion

Because the Settlement is fair, reasonable, adequate and advantageous to the Settlement Class, Plaintiff respectfully requests that the Court enter an Order granting final approval of the settlement.

Dated: August 9, 2017

ANKCORN LAW FIRM PLLC

/s/ Mark Ankcorn
N.D. Illinois General Bar No. 1159690
California Bar No. 166871
mark@ankcorn.com
Ann Marie Hansen
California Bar No. 282008
Nevada Bar No. 10144

200 West Madison Street, Suite 2143
Chicago, Illinois 60606

Attorneys for Plaintiff

Certificate of Service

I hereby certify that on August 9, 2017, I electronically filed the above and foregoing through the Court's CM/ECF System, which perfected service on all counsel of record.

/s/ Mark Ankcorn