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

GLEN ELLYN PHARMACY, INC., on behalf of plaintiff and the class members defined herein,	)	
Plaintiff,	)	19 cv 5919
v.	)	
	)	Hon. John Robert Blakey
XSPIRE PHARMA, LLC, doing business as Saver Express; GENTEX PHARMA, LLC; WRASER, LLC; and JOHN DOES 1-10,	)	
Defendants.	)	

PLAINTIFF'S MEMORANDUM IN SUPPORT OF
FINAL APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT

Plaintiff Glen Ellyn Pharmacy, Inc., by class counsel, Edelman, Combs, Latturner & Goodwin, LLC, respectfully submits the following Memorandum in Support of Final Approval of the Class Action Settlement Agreement with Defendants Xspire Pharma, LLC, doing business as Saver Express, Gentex Pharma, LLC and Wraser, LLC (collectively, "Defendants").

In summary, this Court preliminarily approved the Agreement on April 15, 2021. [Dkt No. 54] Subsequent to the entry of preliminary approval, Xspire Pharma, LLC, Gentex Pharma, LLC and Wraser, LLC provided Class-Settlement.com with a list containing 8,123 unique fax numbers identified by Defendants as the Class List. (*See* Affidavit of Dorothy Sue Merryman, Appendix A)

Commencing on May 18, 2021, the Settlement Claims Administrator, Class-Settlement.com, sent the Court-approved Notice and Claim Form in the form attached to the Settlement Agreement as Exhibit A via facsimile to the 8,123 unique fax numbers in the Class

List. Transmission was successful with regard to 6,201 of the 8,123 fax numbers. Also on May 18, 2021, Class-Settlement.com caused delivery of the Court-approved Notice and Claim Form in the form attached to the Settlement Agreement as Exhibit A via First Class Mail to addresses associated with 8,123 unique fax numbers on the class list. (Appendix A)

409 of the mailed notices were returned by the U.S. Postal Service to Class-Settlement.com. Of the 409 Notices returned, 97 contained forwarding information, or Class-Settlement.com was otherwise able to obtain new address information, and those Notices were re-mailed. (*See* Affidavit of Dorothy Sue Merryman, Appendix A)

As of August 18, 2021, **no objections** have been filed or received by either Class-Settlement.com or by Counsel. Class-Settlement.com has received **one (1) request for exclusion**. (*See* Affidavit of Dorothy Sue Merryman, Appendix A)

Class-Settlement.com has received a total of 1,527 timely and valid claims. Class-Settlement.com received total of 52 Claim Forms received were incomplete, unsigned, or did not contain a number which matched to the Class List. As of August 23, 2021, 48 members resubmitted claims which cured the deficiency (*See* Affidavit of Dorothy Sue Merryman, Appendix A)

I. OVERVIEW OF THE LITIGATION PRECEDING SETTLEMENT.

Plaintiff filed this action on September 4, 2019 in the Northern District of Illinois against Defendant Xspire Pharma, LLC alleging violations of the Telephone Consumer Protection Act, 47 U.S.C. §227 ("TCPA"), and state law and sought damages individually and on behalf of a putative class. On October 9, 2019 Plaintiff filed a First Amended Complaint, adding Gentex Pharma, LLC and Ford Mundy as Defendants. On October 28, 2020, Plaintiff amended its complaint a second time, adding Wraser, LLC as Defendant and removing Ford Mundy.

Subsequent to service, the parties undertook extensive discovery, settlement discussions, including a formal settlement conference with Magistrate Judge Cox, and ultimately, the parties negotiated the settlement at arms-length and in good faith. The Agreement was presented to the Court for preliminary approval. As demonstrated below, the parties' Agreement is now ripe for this Court's consideration and final approval.

II. THE ADMINISTRATION OF THIS CLASS ACTION SETTLEMENT.

A. The Preliminary Approval Order.

On April 15, 2021, this Court entered an order granting preliminary approval of the Agreement reached between the parties and certifying the following class for settlement purposes:

> All persons and entities who were successfully sent faxes by or on behalf of Xspire Pharma, LLC, d/b/a Saver Express; Gentex Pharma, LLC; and Wraser, LLC on or about August 4, 2019, promoting the commercial availability or quality of their goods or services which did. not contain an opt out notice as described in 47 U.S.C. § 227.

In the Preliminary Approval Order ("Order"), the Court specifically found that the proposed terms of the Agreement satisfied all of the elements of Federal Rules of Civil Procedure 23(a) and 23(b)(3). The Order further established a procedural framework for the final approval of the Agreement. The Order required that notices be sent to the members of the Class, set deadlines and procedures for submission of claims, requests for exclusion, and objections to the settlement, and set a September 8, 2021 final approval hearing.

B. The Class Notice.

As stated above, on May 18, 2021, subsequent to the entry of the preliminary approval order, the Facsimile Notice and Claim Form was sent by facsimile to the 8,123 unique fax numbers identified in records produced by Defendants as belonging to the Class Members. Of the Notices sent via fax, 6,201 were successfully transmitted and 1,922 transmissions failed,

yielding a success rate of 76.3%. (*See* Affidavit of Dorothy Sue Merryman, Appendix A)

In addition to the Facsimile Notice and Claim Form, and also on May 18, 2021, Class-Settlement.com caused the Court approved Notice and Claim Form to be mailed to 8,123 addresses. Of the 8,123 mailings, 409 mailed Notices were returned by the U.S.P.S. without forwarding address information. Of the 409 mailed Notices returned, 97 either contained forwarding information, or Class-Settlement.com was otherwise able to obtain new address information, and those Notices were re-mailed (Appendix A)

C. Case Website

Class-Settlement.com made case information regarding the Settlement available to the Class Members on their website. The website URL was provided to the Class Members in the mailed and faxed Notice materials. From the website, Class Members were able to view and/or download copies of the Settlement Agreement, Notice, Fee Petition and other case-related documents. Class Members were permitted to submit their claim online using the Claim ID and PIN Code found in their Class Notice and Claim Form. (*See* Affidavit of Dorothy Sue Merryman, Appendix A)

D. The Value of the Agreement.

The terms of the Agreement entered into by Plaintiff and Defendants are as follows:

1. Settlement Fund. Subject to Court approval, Defendant has agreed to pay the sum of $800,000.00 to a settlement fund (the "Settlement Fund"). The Settlement Fund shall be distributed as follows:

(a) All costs related to notice and administration of the Settlement are to be paid from the Settlement Fund and are not to exceed $30,000.00.

(b) Plaintiffs' incentive awards, which must be approved by the Court is to be paid from the Settlement Fund. Plaintiff Glen Ellyn

Pharmacy, Inc, has requested payment of $7,500 and Medicine to Go Pharmacies, Inc. has requested payment of $2,500 as an incentive awards for their services as a Class Representatives.

(c) Plaintiff's counsel's attorneys' fees must also be approved by the Court and are to be paid from the Settlement Fund. Plaintiff's counsel has requested fees in the amount of $256,666.67 which amount represents 1/3 of the Settlement Fund to Plaintiff's Counsel Edelman, Combs, Latturner & Goodwin, LLC.

(d) After payments set forth in subparagraphs (a) - (c) of this Paragraph, the balance of the Settlement Fund (presently $503,333.33) shall be distributed pro rata among those members of the Settlement Class who returned a valid claim form.

As of this filing, Class-Settlement.com has processed 1,527 submissions.

As a result, as of the date of this filing, there are 1,527 fax numbers on behalf of which a claim has been filed. Each participating Class Member will likely receive a payment of $329.62. Settlement Class Members shall be paid by checks void 60 days after issuance.

2. Unclaimed or Undistributed Settlement Funds. If the Court allows the payments set forth above, including the incentive award to Plaintiff and the attorney's fees and costs petitioned for, the only funds that might remain in the settlement account are those that may result from Class Members' failure to timely negotiate their settlement checks. Additional funds may also exist as the remainder in the account following the payments set out in subparagraphs (a) and (b) of paragraph 1, above, may not be equally divisible amongst the valid claimants. To the extent that any settlement checks remain uncashed after the void date, if it is administratively feasible, Class-Settlement.com shall distribute the funds associated with those checks to Settlement Class Members who cashed their check from the first distribution on a *pro rata* basis. If a second distribution is not administratively feasible, or if any amounts remain in the Settlement Fund after a second distribution, Class-Settlement.com shall pay, subject to Court approval, all amounts as a *cy pres* award to an organization to be selected by the parties and approved by the

Court. The parties jointly propose that The Chicago Bar Foundation be named as the designated *cy pres* recipient for any remaining funds.

3. Attorney's Fees and Costs. Defendants have agreed not to oppose Plaintiff's counsel's request for attorney's fees in an amount equal to 1/3 of the Settlement Fund ($256,666.67).

E. No Objections Were Received.

Neither the Claims Administrator nor Counsel have received any objection to the settlement. There was **1** request for exclusion. This should be viewed as an endorsement of the Agreement by the Class.

F. No Government Entities Have Objected to the Proposed Settlement.

In accordance with this Court's Preliminary Approval Order and the Class Action Fairness Act, counsel for Defendants sent notice of the proposed settlement to the Attorney General of the United States as well as the Attorney General of each state in which Class Members reside. *See* Defendants' Notice of Compliance with 28 U.S.C. §1715. [Dkt No. 55] Neither Plaintiff's counsel nor counsel for Defendants have received any objections from these government officials, nor have any of those officials sought to intervene in this action.

III. THE COURT SHOULD GRANT FINAL APPROVAL TO THE AGREEMENT

The Agreement satisfies all the requirements of Rule 23.

A. Rule 23(a)(1) - The Class Is So Numerous That Joinder Of All Members Is Impracticable.

The class consists of 8,123 persons and/or entities. The Seventh Circuit has recognized that as few as 40 class members are sufficient to satisfy the "numerosity" requirement of Rule 23(a)(1). *Swanson v. American Consumer Industries, Inc.*, 415 F.2d 1326, 1333 (7th Cir. 1969); *see also, Newberg on Class Actions*, 3rd ed. Sec. 3.05, pp. 3-25 ("The difficulty in joining as few as 40 class

members should raise a presumption that joinder is impracticable, and the plaintiff whose class is that large or larger should meet the test of Rule 23(a)(1) on that fact alone."). The number of Settlement Class Members in this case plainly satisfies the numerosity requirement of Rule 23(a)(1).

B. Rule 23(a)(2) - The Claims Of The Class Arise From Common Questions Of Law And Fact.

The "commonality" requirement of Rule 23(a)(2) is usually satisfied where the class members' claims arise from a common nucleus of operative fact. *Rosario v. Livaditis*, 963 F.2d 1013 (7th Cir. 1992). Rule 23(a)(2) requires only that the class members share at least one question of fact or law in common. *Kreuzfeld A.G. v. Carnehammer*, 138 F.R.D. 594, 599 (S.D.Fla. 1991) (the issue of commonality "turns on whether there exists at least one issue affecting all or a significant number of proposed class members").

In the present case, the claim arose from common questions: Whether Defendants engaged in a pattern of sending unsolicited fax advertisements; and whether by doing so it thereby violated the TCPA and Illinois state law. These common questions satisfy Rule 23(a)(2).

C. Rule 23(a)(3) - Named Plaintiff's Claims are Typical Of the Claims Of The Settlement Class Members.

The "typicality" requirement of Rule 23(a)(3) is satisfied for many of the same reasons that the "commonality" requirement of Rule 23(a)(3) is met. *De La Fuente v. Stokley-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1993)("A plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory"); *see also Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984)(the typicality requirement is satisfied where the "claims or defenses of the class and the class representative arise from the same event or practice and are

based upon the same legal theory").

In this case, Plaintiff's claims arose from the same question of law as those of the Settlement Class Members: Whether the sending of unsolicited fax advertisements by Defendants violated the TCPA and Illinois state law. Rule 23(a)(3) is plainly satisfied in this case.

D. Rule 23(a)(4) - Plaintiff and Class Counsel Have Fairly And Adequately Protected The Interests Of The Class.

The determination that the "representative parties will fairly and adequately protect the interests of the class" as required by Rule 23(a)(4) involve two considerations: (1) whether the Plaintiff's attorneys are properly qualified and experienced to conduct the litigation; and (2) whether the Plaintiff has any interests antagonistic to the class. *General Tel. Co. v. Falcon*, 102 S.Ct. 2364, 2370, n.13 (1982); *Retired Chicago Policy Ass'n v. City of Chicago*, 7 F.3d 584, 598 (7th Cir. 1993).

As set forth in the Declaration of Daniel A. Edelman (Appendix B), Plaintiff's counsel is experienced in class action litigation. In addition, Plaintiff does not have any interest in conflict with the Settlement Class Members. Therefore, the named Plaintiff and its counsel satisfy the adequacy of representation requirement of Rule 23(a)(4).

E. The Class Is Appropriate Pursuant to Rule 23(b)(3).

Class certification is appropriate under Rule 23(b)(3) where: (1) common questions of law or fact predominate over individual questions and where (2) a class action represents a superior method for the fair and efficient adjudication of the controversy. Because the claims at issue address the alleged practice of Defendants in sending unsolicited facsimiles, there are no individual issues and common questions predominate. A class action presents a superior method to fairly and efficiently adjudicate all claims of the Class in this case, within the meaning of Rule 23(b)(3). The Agreement provides Settlement Class Members the opportunity to obtain a portion of the statutory

damages provided for by the TCPA without the filing of numerous identical lawsuits.

F. The Standard For Granting Final Approval To The Class Action Settlement.

In *Amchem Productions, Inc. v. Windsor*, 521 U.S. 591 (1997), the Supreme Court explained that, before approving a class action settlement, the District Court must first be satisfied that the elements of Rule 23(a) and 23(b) have been met. *Id.* at 621, 117 S.Ct. at 2248. Once the Court has determined that the requirements of Rule 23(a) and 23(b) have been met, the Court must then determine whether Rule 23(e) has been satisfied by determining whether the settlement is fair, reasonable, and adequate. *General Electric Capital Corporation v. Lease Resolution Corp.*, 128 F.3d 1074, 1082 (7th Cir. 1997). The Court considers the following six factors in making this determination:

1. The strength of the plaintiff's case on the merits measured against the terms of the settlement;
2. The complexity, length, and expense of continued litigation;
3. The amount of opposition to the settlement among class members;
4. The presence of collusion in gaining a settlement;
5. The stage of the proceedings; and
6. The amount of discovery completed.

Id. (citing *Donovan v. Estate of Fitzsimmons*, 778 F.2d 298, 308 (7th Cir. 1985)).

The class action settlement in the present case satisfies each of the factors outlined in *GE Capital*. Plaintiff believes that it had a strong chance of prevailing if this case had gone to trial. Defendants dispute Plaintiff's claims and believe that they have strong defenses to Plaintiff's claims and to class certification. However, in order to avoid the uncertainty and expenses presented by further litigation, the parties agreed to settle the dispute between them. The arguable strength of the Class's claims compare favorably to the terms of the settlement, set forth above, satisfying the first of the *GE Capital* factors.

In addition, the settlement is warranted by the complexity, length and expense of continued

litigation, satisfying the second *GE Capital* factor. The settlement easily satisfies the third *GE Capital* factor because none of the Class Members have elected to exclude themselves from the settlement and no Class Members have objected to the settlement. There is no evidence of any collusion in reaching the settlement. To the contrary, the above-described payment amounts to Plaintiff and Class Counsel compare favorably to the direct benefits to the Class, thereby satisfying the fourth *GE Capital* factor.

Settlement Class Members who submitted a valid claim will likely receive a recovery in excess of $366.00 per fax number. This recovery represents 73% of the statutory damages that could be obtained in an individual lawsuit for a non-willful violation of the TCPA.

Finally, the fifth and sixth *GE Capital* factors also support the final approval of this settlement in light of the stage of pre-trial proceedings and the discovery completed to date. The parties reviewed extensive documentation and engaged in protracted negotiations in an attempt to resolve this case. Given the stage of proceedings, the investigation and discovery completed, the proposed settlement satisfies the fifth and sixth *GE Capital* factors.

IV. THE ATTORNEY'S FEES AND COSTS ARE REASONABLE.

Pursuant to the Agreement, Class Counsel requests approval of payment of attorney's fees equal to 1/3 of the Settlement Fund in an amount equal to $256,666.67. Plaintiff's counsel includes experienced class action attorneys, all of whom contributed their skills and expended their resources in a coordinated effort that resulted in the settlement of this matter. The Seventh Circuit has specifically authorized the district courts to award attorney's fees using the lodestar method or the percentage of fund method. *Cook v. Niedert*, 142 F.3d 1004, 1010 (7th Cir. 1998); *In re Synthroid Mktg. Litig.*, 264 F.3d 712 (7th Cir. 2001).

It has been well established in the Seventh Circuit, and elsewhere, that fee awards based

upon a percentage of a recovery are fair and reflect what could have been contracted for in the marketplace. Consumer protection cases, where counsel is retained on a contingent fee basis, are certainly no different. It is well established that when a representative party has created a "common fund" for, or has conferred a "substantial benefit" upon, an identifiable class, counsel for that party is entitled to an award of attorneys' fees from the fund. *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970); *In re: Synthroid Marketing Litigation*, 264 F.3d 712, 717 (7th Cir. 2001). When deciding on appropriate attorney compensation in a common-fund case, a court must endeavor to award "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 Marketing Litigation*, 264 F.3d at 718.

The Seventh Circuit in *Synthroid* explained that determination of the market rate for the legal fees should be based in part on the following factors: The market rate for legal fees depends in part on the risk of nonpayment a firm agrees to bear, in part on the quality of its performance, in part on the amount of work necessary to resolve the litigation, and in part on the stakes of the case. *Id.* at 721.

Plaintiff's counsel took this case on a contingent fee basis nearly two years ago, and thus was faced with a significant risk of non-payment. A fee request of 1/3 of the Settlement Fund is also consistent with the marketplace. The market rate for contingent fees in consumer cases such as this is in the 25% to 40% range, depending on various facts and circumstances. *Gaskill v. Gordon*, 942 F. Supp. 382 (N.D. Ill. 1996), aff'd, 160 F.3d 361 (7th Cir. 1998) (38% awarded); *Spicer v. Board of Options Exchange*, 844 F. Supp. 1226 (N.D Ill. 1993) (29% awarded); *Family L.P. v. Price Waterhouse LLP*, 2001 WL 1568856 (N.D. Ill. 2001) (33 1/3 % awarded); *Gilbert v. First Alert, Inc.*, 1998 WL 14206 (N.D. Ill. 1998); (30% awarded); *Goldsmith v. Technology*

Solutions Co., 1995 U.S. Dist. LEXIS 15093 (N.D. Ill. 1995) (33 1/3 % awarded); *Montgomery v. Aetna Plywood, Inc.*, 231 F.3d 399 (7th Cir. 2000) (25% awarded).

This case was prosecuted by Plaintiff's counsel on a contingent fee basis with no assurance of any fee. In undertaking to prosecute this case on that basis, Plaintiff's counsel assumed a significant risk of nonpayment or underpayment. Numerous cases recognize that the contingent fee risk is an important factor in determining the fee award. *See In re Continental Illinois Sec. Litig.*, 962 F.2d 566 (7th Cir. 1992) (holding that when a common fund case has been prosecuted on a contingent basis, plaintiff's counsel must be compensated adequately for the risk of non-payment); *Ressler v. Jacobsen*, 149 F.R.D. 651, 654 (M.D. Fla. 1992) ("Numerous cases recognize that the attorney's contingent fee risk is an important factor in determining the fee award.").

Class Counsel filed a well-researched complaint alleging claims for relief under federal law and state law. Class Counsel also engaged in extensive discovery and settlement discussions and participated in a settlement conference. Additionally, Class Counsel and its staff handled inquiries and conducted extensive follow ups with numerous Class Members. As discussed above, those Settlement Class Members who have submitted claims will likely receive approximately $367.00 from the Settlement Fund. In light of the work performed in this matter, Class Counsel's request for an amount equal to 1/3 of the Settlement Fund is reasonable. Accordingly, Class Counsel believes the amounts requested are reasonable and requests approval of $256,666.67 in fees and costs to class counsel.

V. CONCLUSION.

For all the reasons set forth above, Plaintiff individually, and as a representative of the Settlement Class of similarly situated persons, by Class Counsel, requests that this Court grant final approval of the Agreement and enter the parties' proposed final approval order, attached hereto as Appendix C.

Respectfully submitted,

/s/ Dulijaza Clark
Dulijaza Clark

Daniel A. Edelman
Dulijaza Clark
EDELMAN, COMBS, LATTURNER & GOODWIN, LLC
20 South Clark Street, Suite 1500
Chicago, IL 60603
(312) 739-4200
(312) 419-0379 (FAX)

CERTIFICATE OF SERVICE

I, Dulijaza Clark, certify that on August 24, 2021, I caused a true and accurate copy of the foregoing document to be served, via the Court's CM/ECF system, upon all counsel of record.

/s/ Dulijaza Clark
Dulijaza Clark

Daniel A. Edelman
Dulijaza Clark
EDELMAN, COMBS, LATTURNER & GOODWIN, LLC
20 S. Clark Street, Suite 1500
Chicago, IL 60603
(312) 739-4200
(312) 419-0379 (FAX)

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR NORTHERN DISTRICT OF ILLINOIS

Glen Ellyn Pharmacy, Inc. on behalf of Plaintiff and the class members Plaintiffs, v. Xspire Pharma, LLC d/b/a Saver Express: and Gentex Pharma, LLC, Wraser, LLC Defendants.	)	Case No. 19 C 5919

AFFIDAVIT OF DOROTHY SUE MERRYMAN

I, Dorothy Sue Merryman, declare under penalty of perjury, as provided for by 28 U.S.C. §1746, that the following statements are true:

1. I am over twenty-one years of age and am a Project Manager at Class-Settlement.com, ("Class Settlement").

2. Class Settlement provides claims administration services, including class notification, claims processing and distribution services.

3. At the request of Plaintiff's Counsel, I coordinated the transmission of the Class Notice and Claim Forms via fax and U.S. Mail, and have knowledge of what work was performed.

4. Class Counsel provided Class-Settlement.com with a list of 8,123 unique fax numbers to which Defendant allegedly sent an unsolicited fax advertisement promoting Defendants' goods or services that did not contain a proper opt out notice, which gave rise to this lawsuit ("Class List"). The list also included the name and contact information associated with each fax number.

5. Class Counsel asked that I send the Notice by fax to each fax number on the list, and then also mail the Notice to each member, after first comparing the list to the U.S. Postal Service's National Change of Address (NCOA) database.

6. Each fax number on the Class List was assigned a unique user ID and password, which was printed on the Class Notice sent to Settlement Class Members.

7. I added one test number to the Class List to ensure the accuracy of the broadcast.

8. On May 18, 2021, the Class Notice and Claim Form (Exhibit A) was sent via fax to the 8,123 fax numbers on the class list, and the test number. Each number was attempted three times.

9. Of the Notices sent via fax, 6,201 were successfully transmitted and 1,922 transmissions failed, yielding a success rate of 76.3%. The one test number added to the Fax List was successfully sent and is not included in the numbers reported above.

10. On May 18, 2021, the Class Notice and Claim Form (Exhibit A) was sent via First Class Mail to the 8,123 persons or entities on the Class List. The addresses were run through the NCOA database prior to being mailed.

11. Class-settlement.com provided a website that allowed for electronic submission of claim forms using the unique Username/Password printed on the Class Notice and Claim Form they were sent. The website, www.class-settlement.com, also posted the Class Notice, Claim Form, Preliminary Approval Order, Complaint, and Settlement Agreement. Settlement Class Members were also able to file claims via U. S. Mail.

12. As of August 23, 2021, 409 mailed Class Notices and Claim Forms were returned as undeliverable by the U.S. Postal Service. Of the 409 Notices returned, 97 contained forwarding information, or we were otherwise able to obtain new address information, and those Notices were re-mailed.

13. As Claim Forms were received, Class-settlement.com reviewed Claim Forms and ensured each was signed and otherwise complete.

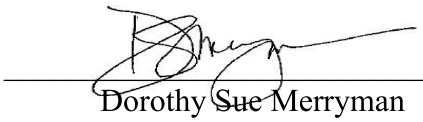
14. A total of 52 Claim Forms received were incomplete, unsigned, or did not contain a number which matched to the Class List. Class-Settlement contacted those members, requesting that the member correct and resubmit the Claim Form. As of August 23, 2021, 48 members resubmitted claims which cured

the deficiency. The remaining four members have not responded to the request to resubmit as of this writing.

15. As of August 23, 2021, Class-Settlement received 1,527 timely and valid claims. There was one claim submitted after the July 20, 2021 claims deadline that was otherwise valid.

16. As of August 23, 2021, Class-settlement.com received one request to opt out of the Settlement, attached as Exhibit B, and no objections to the settlement.

Executed this _23rd_ day of August, 2021.



Dorothy ~~Sue~~ Merryman

EXHIBIT A

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS
NOTICE OF PROPOSED CLASS ACTION SETTLEMENT:

GLEN ELLYN PHARMACY, INC *v.* XSPIRE PHARMA, LLC
d/b/a Saver Express; and GENTEX PHARMA, LLC WRASER, LLC
Case No. 19 C 5919

THIS IS A NOTICE OF A SETTLEMENT OF A CLASS ACTION LAWSUIT.
THIS IS NOT A NOTICE OF A LAWSUIT AGAINST YOU.

YOUR RIGHTS WILL BE AFFECTED BY THE SETTLEMENT OF THIS LAWSUIT. PLEASE READ THIS NOTICE CAREFULLY FOR INFORMATION ABOUT THE LAWSUIT, THE SETTLEMENT, AND YOUR LEGAL RIGHTS.

I. **THE LAWSUIT:** Glen Ellyn Pharmacy, Inc. ("Plaintiff") sued Xspire Pharma, LLC, d/b/a Saver Express; Gentex Pharma, LLC; and Wraser, LLC (collectively, "Defendants") alleging that Plaintiff received an unsolicited fax advertisement promoting Defendants' goods or services that did not contain a proper opt out notice. Plaintiff alleged that these faxes violated the Telephone Consumer Protection Act ("TCPA"), the Illinois Consumer Fraud Act ("ICFA") and common laws of conversion and trespass to chattels. Defendants deny these allegations and have raised certain defenses, but agreed to settle to avoid the expense, burden, and uncertainty of further litigation.

II. **WHO IS INCLUDED:** Defendants' records show that you were sent one or more faxes from Defendants and may be included in the Settlement. Specifically, the Court certified a "Settlement Class" of: all persons and entities who were successfully sent faxes by or on behalf of Xspire Pharma, LLC, d/b/a Saver Express; Gentex Pharma, LLC; and Wraser, LLC on or about August 4, 2019, promoting the commercial availability or quality of their goods or services which did not contain an opt out notice as described in 47 U.S.C. § 227.

III. **THE PROPOSED SETTLEMENT:** Defendants have agreed to fund an $800,000.00 Settlement Fund. Before making payments to Settlement Class members, the Settlement Fund will be used to pay notice and administrative expenses not to exceed $30,000.00, an incentive award to the participating Plaintiffs (in an amount not to exceed $10,000.00) and attorneys' fees and costs (an amount not to exceed $256,666.67 which is 1/3 of the Net Settlement Fund). Settlement Class Counsel will file a Petition for Attorney's Fees by June 18, 2021. Your share of the Settlement Fund depends on how many members of the Settlement Class submit valid claims. This notice is being sent to approximately 8,123 Settlement Class members. Participating Settlement Class who submit a valid claim form will receive a *pro rata* distribution of the Net Settlement Fund per unique fax number.

IV. **WHO REPRESENTS YOU:** The Court appointed Daniel A. Edelman and Dulijaza (Julie) Clark from Edelman, Combs, Latturner, & Goodwin, LLC to represent the Settlement Class as Class Counsel.

V. **YOUR LEGAL RIGHTS AND OPTIONS: (1) Submit a Claim Form**. You must complete and submit the attached Claim Form by July 20, 2021 to receive a payment. The value of each individual settlement payment cannot be determined until the Claims Deadline has passed and all claims have been verified. If your payment exceeds $599.99 you may be required to complete and submit a W-9. **(2) Exclude Yourself.** If you do not wish to participate in the Settlement you may exclude yourself from it by July 20, 2021 by sending (via US Mail) a letter to Class Counsel at Edelman, Combs, Latturner & Goodwin, LLC, 20 S. Clark Street, Suite 1500, Chicago, IL 60603, fax: (312) 419-0379, or the Class Administrator, *Glen Ellyn Pharmacy, Inc. v. Xspire, LLC, et al,* Class-Settlement.com, PO Box 9009, Hicksville, NY 11802-9009. The Notice of Exclusion must state your name or your company's name, address, the fax number to which you were sent the fax, the case name and number, and a signed statement providing that: "I hereby request that I be excluded from the proposed Settlement Class in the Litigation.". If you exclude yourself from the Settlement you will not receive a payment and you will not release any claims against Defendants. Your request for exclusion must be postmarked by July 20, 2021 to be valid. **(3) Object.** If you do not exclude yourself, you can file an objection, either on your own or through an attorney, explaining why you think the Court should not approve the settlement. The objection must contain the case name and number; your name and address; the fax number to which you were sent the fax; a statement of your objection; an explanation of the legal and factual basis for the objection; and documentation, if any, to support your objection. The objection must be filed by July 20, 2021 with (1) the Clerk of the United States District Court, Northern District of Illinois, 219 S. Dearborn, Chicago, IL 60604; and sent to (2) Edelman, Combs, Latturner, & Goodwin, LLC (36440), 20 S. Clark St., Suite 1500, Chicago, IL 60603; and (3) John C. Ochoa, SmithAmundsen, LLC, 150 N. Michigan Ave., Suite 3300, Chicago, IL 60601. **(4) Do Nothing.** If you do nothing you will not receive a monetary recovery, but you will be bound by all the terms of the Settlement Agreement.

VI. **WHAT AM I GIVING UP UNDER THE SETTLEMENT?** If the settlement becomes final, you will be releasing Xspire Pharma, LLC, d/b/a Saver Express; Gentex Pharma, LLC; Wraser, LLC; and all the Released Parties as defined in the Settlement Agreement from any claims you may have relating in any way to any unsolicited advertising faxes sent to you during the class period. The Released Claims are fully explained in the Settlement Agreement, available at www.edcombs.com and www.class-settlement.com.

VII. **FINAL APPROVAL HEARING:** The Court has scheduled a Final Approval Hearing before Judge John Robert Blakey on September 8, 2021 at 11:00 a.m, at the United States District Courthouse for the Northern District of Illinois at 219 S. Dearborn St., Chicago, IL 60604. You or your attorney may attend this hearing if you desire and request to address the Court regarding any matters relating to this Settlement.

VIII. **MORE INFORMATION:** More information is available at www.edcombs.com and www.class-settlement.com. You may also inspect the pleadings and other papers that have been filed in this case at the office of the Clerk of the Court, U.S. District Court for the Northern District of Illinois, 219 S. Dearborn St., 20th Floor, Chicago, IL 60604 or through PACER. If you have questions about this notice or the proposed settlement, you may contact Settlement Class Counsel.

THE COURT AND THE DEFENDANTS CANNOT PROVIDE INFORMATION.

Glen Ellyn v. Xspire
Class-Settlement.com
P.O. Box 9009
Hicksville, NY 11802-9009

CLAIM FORM

GLEN ELLYN PHARMACY, INC v. XSPIRE PHARMA, LLC, et al LLC Case No. 19 C 5919 (N.D. Ill.)

TO RECEIVE A PAYMENT UNDER THIS SETTLEMENT AGREEMENT, THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR POSTMARKED ON OR BEFORE JULY 20, 2021 TO THE FOLLOWING:

Online at www.class-settlement.com
Username:
Password:

OR

Glen Ellyn v. Xspire
Class-Settlement.com
P.O. Box 9009
Hicksville, NY 11802-9009

IF YOU DO NOT SUBMIT A COMPLETED CLAIM FORM BY THE DATE INDICATED YOU WILL NOT RECEIVE A PAYMENT UNDER THIS SETTLEMENT. THE VALUE OF EACH INDIVIDUAL SETTLEMENT PAYMENT CANNOT BE DETERMINED UNTIL THE CLAIMS DEADLINE HAS PASSED AND WILL BE BASED ON, AMONG OTHER THINGS, THE TOTAL NUMBER OF CLAIMS RECEIVED.

INSTRUCTIONS: You must provide all required information below and sign the claim form and submit online or mail the claim form. You may be required to submit a W-9 form if the value of your claim exceeds $599.99. If you are required to submit a W-9 form and do not do so, the settlement administrator will reduce your recovery.

Please print or type the following information:

NAME OF PERSON OR ENTITY THAT SUBSCRIBED TO THE FAX LINE (a subscriber is the person or entity that maintained the account with the telecommunications company):

Company Name

Contact Name

Last Name

First Name

Address:

Line 1:

Line 2:

City/St/Zip

Day Time Phone (area code-number):

Telephone ___ - ___ - ____

Fax Number at which you received a fax from Defendants (area code-number):

Fax ___ - ___ - ____

Verification: I submit that the foregoing information is true and correct to the best of my knowledge, information and belief.

X_____ Date: _____

Signature

_____

Print name and title

IT IS YOUR RESPONSIBILITY TO KEEP A CURRENT ADDRESS ON FILE WITH THE CLASS ADMINISTRATOR.

EXHIBIT B

25496469

EXCLUDE

Bernens Convalescent Pharmacy, Inc

5053 Glenway Avenue

Cincinnati, Ohio 45238

Phone: 513-471-7575

Fax: 513-471-1443

Case No: 19 C 5919

To Whom It May Concern:

I hereby request that I be excluded from the proposed Settlement Class in the Litigation.

Sincerely,

Katherine E. Kuhlmann, PharmD

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR NORTHERN DISTRICT OF ILLINOIS

Glen Ellyn Pharmacy, Inc. on behalf of Plaintiff and the class members Plaintiffs, v. Xspire Pharma, LLC d/b/a Saver Express: and Gentex Pharma, LLC, Wraser, LLC Defendants.	)	Case No. 19 C 5919

DECLARATION OF DANIEL A. EDELMAN

Daniel A. Edelman declares under penalty of perjury, as provided for by 28 U.S.C. §1746, that the following statements are true:

Daniel A. Edelman declares under penalty of perjury, as provided for by 735 ILCS 5/1-109, that the following statements are true:

1. Edelman, Combs, Latturner & Goodwin, LLC, has 6 principals, Daniel A. Edelman, Cathleen M. Combs, Tara L. Goodwin, Julie Clark, Heather Kolbus, and Cassandra P. Miller, and four associates. Member James O. Latturner retired in 2020.

2. **Daniel A. Edelman** is a 1976 graduate of the University of Chicago Law School. From 1976 to 1981 he was an associate at the Chicago office of Kirkland & Ellis with heavy involvement in the defense of consumer class action litigation (such as the General Motors Engine Interchange cases). In 1981 he became an associate at Reuben & Proctor, a medium-sized firm formed by some former Kirkland & Ellis lawyers, and was made a partner there in 1982. From the end of 1985 he has been in private practice in downtown Chicago. Virtually all of his practice involves litigation on behalf of consumers, through both class and individual actions. He is the author of the chapters on the "Fair Debt Collection Practices Act," "Truth in Lending Act," and "Telephone Consumer Protection Act" in *Illinois Causes of Action* (Ill. Inst. For Cont. Legal Educ. 2020 and earlier editions), author of the chapter on the Telephone Consumer Protection Act in *Federal Deception Law* (National Consumer Law Center 2013 Supp.), author of *Collection Litigation: Representing the Debtor* (Ill. Inst. Cont. Legal Educ. 2008, 2011, 2014, 2019), and *Collection Litigation: Representing the Debtor* (Ill. Inst. Cont. Legal Educ. 2014); author of Chapter 5, "Predatory Lending and Potential Class Actions," in *Real Estate Litigation* (Ill. Inst. For Cont. Legal Educ. 2020 and earlier editions), co-author of Rosmarin & Edelman, *Consumer Class Action Manual* (2d-4th editions, National Consumer Law Center 1990, 1995 and 1999); author of *Representing Consumers in Litigation with Debt Buyers* (Chicago Bar Ass'n 2008); *Predatory Mortgage Lending* (Ill. Inst. for Cont. Legal. Educ. 2008, 2011), author of Chapter 6, "Predatory Lending and Potential Class Actions," in *Real Estate Litigation* (Ill. Inst. For Cont. Legal Educ. 2004, 2008, 2014), *Illinois Consumer Law*, in Consumer Fraud and Deceptive Business Practices Act and Related Areas Update (Chicago Bar Ass'n 2002); *Payday Loans: Big Interest Rates and Little Regulation*, 11 Loy.Consumer L.Rptr. 174 (1999); author of *Consumer Fraud and Insurance Claims*, in Bad Faith and Extracontractual Damage Claims in Insurance Litigation, Chicago Bar Ass'n 1992; co-author of Chapter 8, "Fair Debt Collection Practices Act," *Ohio Consumer Law* (1995 ed.); co-author of *Fair Debt Collection: The Need*

for Private Enforcement, 7 Loy.Consumer L.Rptr. 89 (1995); author of *An Overview of The Fair Debt Collection Practices Act*, in Financial Services Litigation, Practicing Law Institute (1999); co-author of *Residential Mortgage Litigation*, in Financial Services Litigation, Practicing Law Institute (1996); author of *Automobile Leasing: Problems and Solutions*, 7 Loy.Consumer L.Rptr. 14 (1994); author of *Current Trends in Residential Mortgage Litigation*, 12 Rev. of Banking & Financial Services 71 (April 24, 1996); co-author of *Illinois Consumer Law* (Chicago Bar Ass'n 1996); co-author of D. Edelman and M. A. Weinberg, *Attorney Liability Under the Fair Debt Collection Practices Act* (Chicago Bar Ass'n 1996); and author of *The Fair Debt Collection Practices Act: Recent Developments*, 8 Loy.Consumer L. Rptr. 303 (1996), among others. Mr. Edelman is also a frequent speaker on consumer law topics for various legal organizations including the Chicago Bar Association, the National Consumer Law Center's Consumer Rights Litigation Conference, and the Illinois Institute for Continuing Legal Education, and he has testified on behalf of consumers before the Federal Trade Commission and the Illinois legislature. He is a member of the Illinois bar and admitted to practice in the following courts: United States Supreme Court, Seventh Circuit Court of Appeals, First Circuit Court of Appeals, Second Circuit Court of Appeals, Third Circuit Court of Appeals, Fifth Circuit Court of Appeals, Sixth Circuit Court of Appeals, Eighth Circuit Court of Appeals, Ninth Circuit Court of Appeals, Tenth Circuit Court of Appeals, Eleventh Circuit Court of Appeals, United States District Courts for the Northern and Southern Districts of Indiana, United States District Courts for the Northern, Central, and Southern Districts of Illinois, United States District Courts for the Eastern and Western Districts of Wisconsin, and the Supreme Court of Illinois. He is a member of the Northern District of Illinois trial bar.

3. **Cathleen M. Combs** is a 1976 graduate of Loyola University Law School. From 1984-1991, she supervised the Northwest office of the Legal Assistance Foundation of Chicago, where she was lead or co-counsel in class actions in the areas of unemployment compensation, prison law, social security law, and consumer law. She joined what is now Edelman, Combs, Latturner & Goodwin, LLC in early 1991 and became a named partner in 1993. Ms. Combs received an Award for Excellence in Pro Bono Service from the Judges of the United States District Court for the Northern District of Illinois and the Chicago Chapter of the Federal Bar Association on May 18, 2012. Ms. Combs has argued over fifteen cases in the 1st, 3rd and 7th Circuit Court of Appeals and the Illinois Appellate Court, and she is a frequent speaker on consumer law topics at various legal organizations including the Chicago Bar Association, the National Consumer Law Center's Consumer Rights Litigation Conferences, and the Practicing Law Institute's Consumer Financial Services Institute. Ms. Combs is coauthor of *The Bankruptcy Practitioner's Guide to Consumer Financial Services Actions After the Subprime Mortgage Crisis* (LRP Publications 2010). Her reported decisions include: *Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636 (7th Cir. 2014) (en banc); *Siwulec v. J.M. Adjustment Servs., LLC*, 465 Fed. Appx. 200 (3d Cir. 2012); *Nielsen v. Dickerson*, 307 F.3d 623 (7th Cir. 2002); *Chandler v. American General Finance, Inc.*, 329 Ill. App.3d 729, 768 N.E.2d 60 (1st Dist. 2002); *Miller v. McCalla Raymer*, 214 F.3d 872 (7th Cir. 2000); *Bessette v. Avco Financial Services*, 230 F.3d 439 (1st Cir. 2000); *Emery v. American Gen. Fin., Inc.*, 71 F.3d 1343 (7th Cir. 1995); *McDonald v. Asset Acceptance, LLC,* 296 F.R.D. 513 (E.D.Mich. 2013); and *Tocco v. Real Time Resolutions*, 48 F.Supp.3d 535 (S.D.N.Y. 2014). She is a member of the Illinois bar and admitted to practice in the following courts: United States District Courts for the Northern, Central and Southern Districts of Illinois, United States District Courts for the Northern and Southern Districts of Indiana, Seventh Circuit Court of Appeals, Third Circuit Court of Appeals, Fifth Circuit Court of Appeals, and Tenth Circuit Court of Appeals. She is a member of the Northern District of Illinois trial bar.

4. **James O. Latturner** (retired 2020) is a 1962 graduate of the University of Chicago Law School. Until 1969, he was an associate and then a partner at the Chicago law firm of Berchem, Schwanes & Thuma. From 1969 to 1995 he was Deputy Director of the Legal Assistance Foundation of Chicago, where he specialized in consumer law, including acting as lead counsel in over 30 class actions. His publications include Chapter 8 ("Defendants") in *Federal Practice Manual for Legal Services Attorneys* (M. Masinter, Ed., National Legal Aid and Defender Association 1989); *Governmental Tort Immunity in Illinois*, 55 Ill.B.J. 29 (1966); *Illinois Should Explicitly Adopt the Per Se Rule for Consumer Fraud Act Violations*, 2 Loy.Consumer L.Rep. 64 (1990), and *Illinois Consumer Law* (Chicago Bar Ass'n 1996). He has taught in a nationwide series of 18 Federal Practice courses sponsored by the Legal Services Corporation, each lasting four days and designed for

attorneys with federal litigation experience. He has argued over 30 appeals, including two cases in the United States Supreme Court, three in the Illinois Supreme Court, and numerous cases in the Seventh, Third, Fifth, and Eleventh Circuits. Mr. Latturner was involved in many of the significant decisions establishing the rights of Illinois consumers. He is a member of the Northern District of Illinois trial bar.

5. **Tara L. Goodwin** is a graduate of the University of Chicago (B.A., with general honors, 1988) and Illinois Institute of Technology, Chicago-Kent College of Law (J.D., with high honors,1991). Ms. Goodwin was Chair of the Chicago Bar Association's Consumer Law Committee from 2007 - 2010, and she has previously been on the faculty of the Practicing Law Institute's Consumer Financial Services Institute in Chicago, speaking on issues relating to the Fair Debt Collection Practices Act and mortgage litigation. Ms. Goodwin spoke at the 2016 Conference on Consumer Finance Law on mortgage servicing issues. Ms. Goodwin has also been a frequent speaker at the Chicago Bar Association, speaking on topics such as how to assist consumers with credit reporting problems, developments in class action law and arbitration agreements in consumer contracts. **Reported Cases.** *Aleksic v. Experian Information Solutions, Inc.*, 13cv7802, 2014 WL 2769122, 2014 U.S. Dist. LEXIS 83086 (N.D.Ill. June 18, 2014); *Taylor v. Screening Reports, Inc.*, 13cv2886, 2015 WL 4052824, 2015 U.S. Dist. LEXIS 86262 (N.D.Ill. July 2, 2015); *Williams v. Chartwell Financial Services, Ltd.*, 204 F.3d 748 (7th Cir. 2000); *Hillenbrand v. Meyer Medical Group*, 288 Ill.App.3d 871, 682 N.E.2d 101 (1st Dist. 1997), later opinion, 308 Ill.App.3d 381, 720 N.E.2d 287 (1st Dist. 1999); *Bessette v. Avco Fin. Servs.*, 230 F.3d 439 (1st Cir. 2000); *Large v. Conseco Fin. Servicing Co.*, 292 F.3d 49 (1st Cir. 2002); *Flippin v. Aurora Bank, FSB*, 12cv1996, 2012 WL 3260449 , 2012 U.S. Dist. LEXIS 111250 (N.D.Ill. Aug. 8, 2012); *Henry v. Teletrack, Inc.,* 11cv4424, 2012 WL 769763, 2012 U.S. Dist. LEXIS 30495 (N.D.Ill. March 7, 2012); *Kesten v. Ocwen Loan Servicing, LLC*, 11cv 6981, 2012 WL 426933, 2012 U.S. Dist. LEXIS 16917 (N.D.Ill. Feb. 9, 2012); *Bunton v. Cape Cod Village, LLC*, 09cv1044, 2009 WL 2139441, 2009 U.S. Dist. LEXIS 57801 (C.D.Ill. July 6, 2009); *Wilson v. Harris N.A.*, 06cvJuly 9, 20205840, 2007 WL 2608521, 2007 U.S. Dist. LEXIS 65345 (N.D.Ill. Sept. 4, 2007); *Carbajal v. Capital One*, 219 F.R.D. 437 (N.D.Ill. 2004); *Russo v. B&B Catering*, 209 F.Supp.2d 857 (N.D.Ill. 2002); *Romaker v. Crossland Mtg. Co.*, 94cv3328, 1996 WL 254299, 1996 U.S.Dist. LEXIS 6490 (N.D.Ill. May 10, 1996); *Mount v. LaSalle Bank Lake View*, 926 F.Supp. 759 (N.D.Ill 1996). Ms. Goodwin is a member of the Illinois bar and is admitted in the Seventh, First, and D.C. Circuit Courts of Appeals, and the United States District Courts for the Northern and Central Districts of Illinois, and the Northern District of Indiana. She is also a member of the Northern District of Illinois trial bar.

6. **Julie Clark** (neé Cobalovic) is a graduate of Northern Illinois University (B.A., 1997) and DePaul University College of Law (J.D., 2000). **Reported Cases:** *Ballard RN Center, Inc. v. Kohll's Pharmacy and Homecare, Inc.*, 2015 IL 118644, 48 N.E.3d 1060 (Ill.Sup.Ct.) **;** *Record-A-Hit, Inc. v. Nat'l. Fire Ins. Co.*, 377 Ill. App. 3d 642; 880 N.E.2d 205 (1st Dist. 2007); *Qualkenbush v. Harris Trust & Savings Bank*, 219 F. Supp.2d 935 (N.D.Ill. 2002); *Covington-McIntosh v. Mount Glenwood Memory Gardens*, 00cv186, 2002 WL 31369747, 2002 U.S. Dist. LEXIS 20026 (N.D.Ill., Oct. 21, 2002), later opinion, 2003 WL 22359626, 2003 U.S. Dist. LEXIS 18370 (N.D.Ill. Oct. 15, 2003); *Western Ry. Devices Corp. v. Lusida Rubber Prods.*, 06cv52, 2006 WL 1697119, 2006 U.S. Dist. LEXIS 43867 (N.D.Ill. June 13, 2006); *Nautilus Ins. Co. v. Easy Drop Off, LLC*, 06cv4286, 2007 U.S. Dist. LEXIS 42380 (N.D.Ill. June 4, 2007); *Ballard Nursing Center, Inc. v. GF Healthcare Products, Inc.*, 07cv5715, 2007 WL 3448731, 2007 U.S. Dist. LEXIS 84425 (N.D.Ill. Nov. 14, 2007); *Sadowski v. Med1 Online, LLC*, 07cv2973, 2008 WL 2224892, 2008 U.S. Dist. LEXIS 41766 (N.D.Ill. May 17, 2008); *Sadowski v. OCO Biomedical, Inc.*, 08cv3225, 2008 WL 5082992, 2008 U.S. Dist. LEXIS 96124 (N.D.Ill. Nov. 25, 2008); *ABC Bus. Forms, Inc. v. Pridamor, Inc.*, 09cv3222, 2009 WL 4679477, 2009 U.S. Dist. LEXIS 113847 (N.D.Ill. Dec. 1, 2009); *Glen Ellyn Pharmacy v. Promius Pharma, LLC*, 09cv2116, 2009 WL 2973046, 2009 U.S. Dist. LEXIS 83073 (N.D.Ill. Sept. 11, 2009); *Garrett v. Ragle Dental Lab., Inc.*, 10cv1315, 2010 WL 4074379, 2010 U.S. Dist. LEXIS 108339 (N.D.Ill. Oct. 12, 2010); *Garrett v. Sharps Compliance, Inc.*, 10cv4030, 2010 WL 4167157, 2010 U.S. Dist. LEXIS 109912 (N.D.Ill. Oct. 14, 2010).

7. **Heather A. Kolbus** (neé Piccirilli) is a graduate of DePaul University (B.S. *cum laude,* 1997), and Roger Williams University School of Law (J.D., 2002). **Reported Cases:** *Clark v. Experian Info. Solutions, Inc.*, 8:00cv1217-22, 2004 WL 256433, 2004 U.S. Dist. LEXIS 28324 (D.S.C., Jan. 14, 2004);

DeFrancesco v. First Horizon Home Loan Corp., 06cv0058, 2006 WL 3196838, 2006 U.S. Dist. LEXIS 80718 (S.D.Ill. Nov. 2, 2006); *Jeppesen v. New Century Mortgage Corp.*, 2:05cv372, 2006 WL 3354691, 2006 U.S. Dist. LEXIS 84035 (N.D.Ind. Nov. 17, 2006); *Benedia v. Super Fair Cellular, Inc.*, 07cv1390, 2007 WL 2903175, 2007 U.S. Dist. LEXIS 71911 (N.D.Ill. Sept. 26, 2007); *Gonzalez v. Codilis & Assocs., P.C.*, 03cv2883, 2004 WL 719264, 2004 U.S. Dist. LEXIS 5463 (N.D.Ill. March 30, 2004); *Centerline Equipment Corp. v. Banner Personnel Svc., Inc.*, 07cv1611, 2009 WL 1607587, 2009 U.S. Dist. LEXIS 48092 (N.D.Ill. June 9, 2009); *R. Rudnick & Co. v. G.F. Protection, Inc.*, 08cv1856, 2009 WL 112380, 2009 U.S. Dist. LEXIS 3152 (N.D.Ill. Jan. 15, 2009); *Pollack v. Cunningham Financial Group, LLC*, 08cv1405, 2008 WL 4874195, 2008 U.S. Dist. LEXIS 4166 (N.D.Ill. June 2, 2008); *Pollack v. Fitness Innovative Techs., LLC*, 08 CH 03430, 2009 WL 506280, 2009 TCPA Rep. 1858 (Ill. Cir. Ct., Jan. 14, 2009); *R. Rudnick & Co. v. Brilliant Event Planning, Inc.*, No. 09 CH 18924, 2010 WL 5774848, 2010 TCPA Rep. 2099 (Ill. Cir. Ct., Nov. 30, 2010).

8. **Cassandra P. Miller** is a graduate of the University of Wisconsin – Madison (B.A. 2001) and John Marshall Law School (J.D. *magna cum laude* 2006). **Reported Cases:** *Pietras v. Sentry Ins. Co.*, 513 F.Supp.2d 983 (N.D.Ill. 2007); *Hernandez v. Midland Credit Mgmt.*, 04cv7844, 2007 WL 2874059, 2007 U.S. Dist. LEXIS 16054 (N.D.Ill. Sept. 25, 2007); *Balogun v. Midland Credit Mgmt.*, 1:05cv1790, 2007 WL 2934886, 2007 U.S. Dist. LEXIS 74845 (S.D.Ind. Oct. 5, 2007); *Herkert v. MRC Receivables Corp.*, 655 F. Supp. 2d 870 (N.D.Ill. 2008); *Miller v. Midland Credit Management, Inc.*, 08cv780, 2009 WL 528796, 2009 U.S. Dist. LEXIS 16273 (N.D.Ill. March 2, 2009); *Frydman v. Portfolio Recovery Associates, LLC*, 11cv524, 2011 WL 2560221, 2011 U.S. Dist. LEXIS 69502 (N.D.Ill. June 28, 2011).

9. **Associates**:

a. **David Kim** is a graduate of the University of Illinois (B.A. 2001, M.A. 2004) and Illinois Institute of Technology, Chicago-Kent College of Law (J.D. 2010). He is a member of the Illinois Bar.

b. **Carly Cengher** is a graduate of the University of Oregon (B.A., 2011), the University of California (M.A., 2015), and the University of New Hampshire School of Law (J.D. 2019). She is a member of the Illinois Bar.

c. **Samuel Park** is a graduate of University of Illinois Urbana-Champaign (B.A. 2012) and University of California, Irvine School of Law (J.D. 2018). He is a member of the Illinois Bar.

d. **Stephen J. Pigozzi** is a graduate of the University of Wisconsin - Madison (B.A. 2007) and Chicago-Kent College of Law (J.D. 2018). He is a member of the Illinois Bar.

10. The firm also has a dozen legal assistants and support staff.

11. Since its inception, the firm has recovered more than $500 million for consumers. The types of cases handled by the firm are illustrated by the following:

12. **Collection practices:** The firm has brought numerous cases under the Fair Debt Collection Practices Act, both class and individual. Decisions include: *Jenkins v. Heintz*, 25 F.3d 536 (7th Cir. 1994), aff'd 514 U.S. 291 (1995) (FDCPA coverage of attorneys); *Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636 (7th Cir. 2014)(en banc); *Janetos v. Fulton, Friedman & Gullace, LLP*, 825 F.3d 317 (7th Cir. 2016); *Barbato v. Greystone Alliance, LLC,* 916 F.3d 260 (3d Cir. 2019); *Phillips v. Asset Acceptance, LLC*, 736 F.3d 1076 (7th Cir. 2013); *Soppet v. Enhanced Recovery Co.,* 679 F.3d 637 (7th Cir. 2012); *Ruth v. Triumph Partnerships*, 577 F.3d 790 (7th Cir. 2009); *Hale v. Afni, Inc.*, 08cv3918, 2010 WL 380906, 2010 U.S. Dist. LEXIS 6715 (N.D.Ill. Jan. 26, 2010); *Parkis v. Arrow Fin Servs.*, 07cv410, 2008 WL 94798, 2008 U.S. Dist. LEXIS 1212 (N.D.Ill. Jan. 8, 2008); *Foster v. Velocity Investments*, 07cv824, 2007 WL 2461665, 2007 U.S. Dist. LEXIS 63302 (N.D. Ill. Aug. 24, 2007); *Foreman v. PRA III, LLC*, 05cv3372, 2007 WL 704478, 2007 U.S. Dist. LEXIS 15640 (N.D.

Ill. March 5, 2007); *Schutz v. Arrow Fin. Services*, 465 F. Supp. 2d 872 (N.D.Ill. 2006); *McMahon v. LVNV Funding, LLC*, 744 F.3d 1010 (7th Cir. 2014), later opinion, 807 F.3d 872 (7th Cir. 2015) (collection of time-barred debts); *Siwulec v. J.M. Adjustment Servs., LLC*, 465 Fed. Appx. 200 (3d Cir. 2012) (activities of mortgage company field agents); *Fields v. Wilber Law Firm, P.C.*, 383 F.3d 562 (7th Cir. 2004); *Peter v. GC Servs. L.P.*, 310 F.3d 344 (5th Cir. 2002); *Nielsen v. Dickerson*, 307 F.3d 623 (7th Cir. 2002) (attorney letters without attorney involvement); *Boyd v. Wexler*, 275 F.3d 642 (7th Cir. 2001); *Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, & Clark, L.L.C.*, 214 F.3d 872 (7th Cir. 2000); *Johnson v. Revenue Management, Inc.*, 169 F.3d 1057 (7th Cir.1999); *Keele v. Wexler & Wexler*, 95cv3483, 1995 WL 549048, 1995 U.S.Dist. LEXIS 13215 (N.D.Ill. Sept. 12, 1995) (motion to dismiss), later opinion, 1996 WL 124452, 1996 U.S.Dist. LEXIS 3253 (N.D.Ill., March 18, 1996) (class), aff'd, 149 F.3d 589 (7th Cir. 1998); *Mace v. Van Ru Credit Corp.*, 109 F.3d 338 (7th Cir. 1997); *Maguire v. Citicorp Retail Services, Inc.*, 147 F.3d 232 (2nd Cir. 1998); *Young v. Citicorp Retail Services, Inc.*, 97-9397, 1998 U.S.App. LEXIS 20268, 159 F.3d 1349 (2nd Cir., June 29, 1998) (unpublished); *Charles v. Lundgren & Assocs., P.C.*, 119 F.3d 739 (9th Cir. 1997); *Avila v. Rubin*, 84 F.3d 222 (7th Cir. 1996), aff'g *Avila v. Van Ru Credit Corp.*, 94cv3234, 1994 WL 649101, 1994 U.S. Dist. LEXIS 16345 (N.D.Ill., Nov. 14, 1994), later opinion, 1995 WL 22866, 1995 U.S. Dist. LEXIS 461 (N.D.Ill., Jan. 18, 1995), later opinion, 1995 WL 41425, 1995 U.S. Dist. LEXIS 461 (N.D.Ill., Jan. 31, 1995), later opinion, 1995 WL 55255, 1995 U.S. Dist. LEXIS 1502 (N.D.Ill., Feb. 8, 1995), later opinion, 1995 WL 683775, 1995 U.S.Dist. LEXIS 17117 (N.D.Ill., Nov. 16, 1995); *Tolentino v. Friedman*, 833 F.Supp. 697 (N.D.Ill. 1993), aff'd in part and rev'd in part, 46 F.3d 645 (7th Cir. 1995); *Diaz v. Residential Credit Solutions, Inc.*, 965 F.Supp.2d 249 (E.D.N.Y. 2013), later opinion, 297 F.R.D. 42 (E.D.N.Y. 2014), later opinion, 299 F.R.D. 16 (E.D.N.Y. 2014); *Stubbs v. Cavalry SPV I*, 12cv7235, 2013 WL 1858587, 2013 U.S. Dist. LEXIS 62648 (N.D.Ill., May 1, 2013); *Osborn v. J.R.S.-I., Inc.*, , 949 F. Supp. 2d 807 (N.D.Ill. 2013); *Terech v. First Resolution Mgmt. Corp.*, 854 F.Supp.2d 537, 544 (N.D.Ill. 2012); *Casso v. LVNV Funding, LLC*, 955 F. Supp. 2d 825 (N.D.Ill. 2013); *Simkus v. Cavalry Portfolio Services, LLC*, 11cv7425, 2012 WL 1866542, 2012 U.S. Dist. LEXIS 70931 (N.D.Ill., May 22, 2012); *McDonald v. Asset Acceptance LLC*, 296 F.R.D. 513 (E.D.Mich. 2013); *Ramirez v. Apex Financial Management, LLC*, 567 F. Supp.2d 1035 (N.D. Ill. 2008); *Cotton v. Asset Acceptance, LLC*, 07cv5005, 2008 WL 2561103, 2008 U.S. Dist. LEXIS 49042 (N.D.Ill., June 26, 2008); *Buford v. Palisades Collection, LLC*, 552 F. Supp. 2d 800 (N.D.Ill. 2008); *Martin v. Cavalry Portfolio Servs., LLC,* 07cv4745, 2008 WL 4372717, 2008 U.S. Dist. LEXIS 25904 (N.D.Ill., March 28, 2008); *Ramirez v. Palisades Collection LLC*, 250 F.R.D. 366 (N.D.Ill. 2008) (class certified), later opinion, 07cv3840, 2008 WL 2512679, 2008 U.S. Dist. LEXIS 48722 (N.D.Ill., June 23, 2008) (summary judgment denied); *Hernandez v. Midland Credit Mgmt.*, 04cv7844, 2007 WL 2874059, 2007 U.S. Dist. LEXIS 16054 (N.D.Ill., Sept. 25, 2007) (balance transfer program); *Blakemore v. Pekay*, 895 F.Supp.972 (N.D.Ill. 1995); *Oglesby v. Rotche*, 93cv4183, 1993 WL 460841, 1993 U.S.Dist. LEXIS 15687 (N.D.Ill., Nov. 5, 1993), *later opinion*, 1994 U.S.Dist. LEXIS 4866, 1994 WL 142867 (N.D.Ill., April 18, 1994); *Laws v. Cheslock*, 98cv6403, 1999 WL 160236, 1999 U.S.Dist. LEXIS 3416 (N.D.Ill., Mar. 8, 1999); *Davis v. Commercial Check Control, Inc.*, 98cv631, 1999 WL 89556, 1999 U.S. Dist. LEXIS 1682 (N.D.Ill., Feb. 12, 1999); *Hoffman v. Partners in Collections, Inc.*, 93cv4132, 1993 WL 358158, 1993 U.S.Dist. LEXIS 12702 (N.D.Ill., Sept. 15, 1993); *Vaughn v. CSC Credit Services, Inc.*, 93cv4151, 1994 WL 449247, 1994 U.S.Dist. LEXIS 2172 (N.D.Ill., March 1, 1994), adopted, 1995 WL 51402, 1995 U.S.Dist. LEXIS 1358 (N.D.Ill., Feb. 3, 1995); *Beasley v. Blatt*, 93cv4978, 1994 WL 362185, 1994 U.S.Dist. LEXIS 9383 (N.D.Ill., July 11, 1994); *Taylor v. Fink*, 93 C 4941, 1994 WL 669605, 1994 U.S.Dist. LEXIS 16821 (N.D.Ill., Nov. 23, 1994); *Gordon v. Fink*, 93cv4152, 1995 WL 55242, 1995 U.S.Dist. LEXIS 1509 (N.D.Ill., Feb. 7, 1995); *Brujis v. Shaw*, 876 F.Supp. 198 (N.D.Ill. 1995).

13. *Jenkins v. Heintz* is a leading decision regarding the liability of attorneys under the Fair Debt Collection Practices Act. Mr. Edelman argued it before the Supreme Court and Seventh Circuit. *Avila v. Rubin* and *Nielsen v. Dickerson* are leading decisions on phony "attorney letters." *Suesz v. Med-1 Solutions, LLC* is a leading decision on the FDCPA venue requirements. *McMahon v. LVNV Funding, LLC* is a leading decision on the collection of time-barred debts.

14. **Debtors' rights**. Important decisions include: *Ramirez v. Palisades Collection LLC*, 250 F.R.D. 366 (N.D.Ill. 2008) (class certified), later opinion, 07cv3840, 2008 WL 2512679, 2008 U.S. Dist. LEXIS 48722 (N.D.Ill., June 23, 2008) (summary judgment denied) (Illinois statute of limitations for

credit card debts); *Parkis v. Arrow Fin Servs.*, 07cv410, 2008 WL 94798, 2008 U.S. Dist. LEXIS 1212 (N.D.Ill. Jan. 8, 2008); *Rawson v. Credigy Receivables, Inc.,* 05cv6032, 2006 WL 418665, 2006 U.S. Dist. LEXIS 6450 (N.D.Ill., Feb. 16, 2006) (same); *McMahon v. LVNV Funding, LLC*, 744 F.3d 1010 (7th Cir. 2014) (collection of time-barred debts without disclosure); *Jones v. Kunin*, 99cv818, 2000 WL 34402017, 2000 U.S. Dist. LEXIS 6380 (S.D.Ill., May 1, 2000) (scope of Illinois bad check statute); *Qualkenbush v. Harris Trust & Sav. Bank*, 219 F. Supp. 2d 935 (N.D.Ill. 2002) (failure to allow cosigner to take over obligation prior to collection action); *Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636 (7th Cir. 2014) (en banc) (venue abuse).

15. **Telephone Consumer Protection Act.** The firm has brought a number of cases under the Telephone Consumer Protection Act, 47 U.S.C. §227, which prohibits "junk faxes," spam text messages, robocalls to cell phones, and regulates telemarketing practices. Important junk fax and spam text message decisions include: *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446 (7th Cir. 2005); *Sadowski v. Med1 Online, LLC*, 07cv2973, 2008 WL 2224892, 2008 U.S. Dist. LEXIS 41766 (N.D.Ill., May 27, 2008); *Benedia v. Super Fair Cellular, Inc.*, 07cv01390, 2007 WL 2903175, 2007 U.S. Dist. LEXIS 71911 (N.D.Ill., Sept. 26, 2007); *Centerline Equip. Corp. v. Banner Pers. Serv.*, 545 F. Supp. 2d 768 (N.D.Ill. 2008); *ABC Business Forms, Inc. v. Pridamor, Inc.*, 09cv3222, 2009 WL 4679477, 2009 U.S. Dist. LEXIS 113847 (N.D.Ill. Dec. 1, 2009); *Glen Ellyn Pharmacy, Inc. v. Promius Pharma, LLC*, 09cv2116, 2009 WL 2973046, 2009 U.S. Dist. LEXIS 83073 (N.D.Ill. Sept. 11, 2009); *Garrett v. Ragle Dental Laboratory, Inc.*, 10cv1315, 2010 WL 3034709, 2010 U.S. Dist. LEXIS, 108339 (N.D.Ill., Aug. 3, 3010).

16. The firm has also brought a number of cases complaining of robocalling and telemarketing abuse, in violation of the Telephone Consumer Protection Act. Decisions in these cases include: *Soppet v. Enhanced Recovery Co.*, 679 F.3d 637 (7th Cir. 2012); *Balbarin v. North Star Capital Acquisition, LLC*, 10cv1846, 2011 WL 211013, 2011 U.S. Dist. LEXIS 686 (N.D.Ill. Jan. 21, 2011), *motion to reconsider denied,* 2011 U.S. Dist. LEXIS 58761 (N.D.Ill. 2011); *Sojka v. DirectBuy, Inc.*, 12cv9809 et al., 2014 WL 1089072, 2014 U.S.Dist. LEXIS 34676 (N.D.Ill., Mar. 18, 2014), later opinion, 35 F. Supp. 3d 996 (N.D.Ill. 2014). The firm has a leadership role in Portfolio Recovery Associates, LLC, Telephone Consumer Protection Act Litigation, MDL No. 2295, and Midland Credit Management, Inc., Telephone Consumer Protection Act Litigation, MDL No. 2286.

17. **Fair Credit Reporting Act:** The firm has filed numerous cases under the Fair Credit Reporting Act, which include: *Henry v. Teletrack, Inc.,* 11cv4424, 2012 WL 769763, 2012 U.S. Dist. LEXIS 30495 (N.D.Ill. March 7, 2012).

18. Another line of cases under the Fair Credit Reporting Act which we have brought, primarily as class actions, alleges that lenders and automotive dealers, among others, improperly accessed consumers' credit information, without their consent and without having a purpose for doing so permitted by the FCRA. *Cole v. U.S. Capital, Inc.*, 389 F.3d 719 (7th Cir. 2004); *Murray v. GMAC Mortgage Corp.*, 434 F.3d 948 (7th Cir. 2006); *Perry v. First National Bank*, 459 F.3d 816 (7th Cir. 2006).

19. **Class action procedure:** Important decisions include *McMahon v. LVNV Funding, LLC*, 807 F.3d 872 (7th Cir. 2015); *Phillips v. Asset Acceptance, LLC*, 736 F.3d 1076 (7th Cir. 2013); *Crawford v. Equifax Payment Services, Inc.,* 201 F.3d 877 (7th Cir. 2000); *Blair v. Equifax Check Services, Inc.*, 181 F.3d 832 (7th Cir. 1999); *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997); *McMahon v. LVNV Funding, LLC*, 744 F.3d 1010 (7th Cir. 2014) (mootness); *Ballard RN Center, Inc. v. Kohll's Pharmacy and Homecare, Inc.*, 2015 IL 118644, 48 N.E.3d 1060 (Ill.Sup.Ct.) (mootness), and *Gordon v. Boden,* 224 Ill.App.3d 195, 586 N.E.2d 461 (1st Dist. 1991).

20. **Landlord-tenant:** The firm has brought more than 20 class actions against landlords to enforce tenants' rights. Claims include failing to pay interest on security deposits or commingling security deposits. Reported decisions include *Wang v. Williams*, 343 Ill. App. 3d 495; 797 N.E.2d

179 (5th Dist. 2003); *Dickson v. West Koke Mill Vill. P'Ship*, 329 Ill. App. 3d 341; 769 N.E.2d 971 (4th Dist. 2002); and *Onni v. Apartment Inv. & Mgmt. Co.*, 344 Ill. App. 3d 1099; 801 N.E.2d 586 (2nd Dist. 2003).

21. **Mortgage charges and servicing practices:** The firm has been involved in dozens of cases, mostly class actions, complaining of illegal charges on mortgages and improper servicing practices. These include MDL-899, *In re Mortgage Escrow Deposit Litigation*, and MDL-1604, *In re Ocwen Federal Bank FSB Mortgage Servicing Litigation*, as well as the Fairbanks mortgage servicing litigation. Decisions in the firm's mortgage cases include: *Hamm v. Ameriquest Mortg. Co.*, 506 F.3d 525 (7th Cir. 2007); *Johnson v. Thomas*, 342 Ill.App.3d 382, 794 N.E.2d 919 (1st Dist. 2003); *Handy v. Anchor Mortgage Corp.*, 464 F.3d 760 (7th Cir. 2006); *Christakos v. Intercounty Title Co.*, 196 F.R.D. 496 (N.D.Ill. 2000); *Flippin v. Aurora Bank, FSB*, 12cv1996, 2012 WL 3260449 , 2012 U.S. Dist. LEXIS 111250 (N.D.Ill. Aug. 8, 2012); *Kesten v. Ocwen Loan Servicing, LLC*, 11cv6981, 2012 WL 426933, 2012 U.S. Dist. LEXIS 16917 (N.D.Ill. Feb. 9, 2012); *Johnstone v. Bank of America, N.A.*, 173 F.Supp.2d 809 (N.D.Ill. 2001); *Leon v. Washington Mut. Bank, F.A.*, 164 F.Supp.2d 1034 (N.D.Ill. 2001); *Williamson v. Advanta Mortg. Corp.*, 99cv4784, 1999 WL 1144940, 1999 U.S. Dist. LEXIS 16374 (N.D.Ill., Oct. 5, 1999); *McDonald v. Washington Mut. Bank, F.A.*, 99cv6884, 2000 WL 875416, 2000 U.S. Dist. LEXIS 11496 (N.D.Ill., June 22, 2000); *GMAC Mtge. Corp. v. Stapleton*, 236 Ill.App.3d 486, 603 N.E.2d 767 (1st Dist. 1992), leave to appeal denied, 248 Ill.2d 641, 610 N.E.2d 1262 (1993); *Leff v. Olympic Fed. S. & L. Ass'n,* 86cv3026, 1986 WL 10636 (N.D.Ill. Sept. 19, 1986); *Aitken v. Fleet Mtge. Corp.*, 90cv3708, 1991 WL 152533, 1991 U.S.Dist. LEXIS 10420 (N.D.Ill. July 30, 1991), later opinion, 1992 WL 33926, 1992 U.S.Dist. LEXIS 1687 (N.D.Ill., Feb. 12, 1992); *Poindexter v. National Mtge. Corp.*, 94cv45814, 1995 WL 242287, 1995 U.S.Dist. LEXIS 5396 (N.D.Ill., April 24, 1995); *Sanders v. Lincoln Service Corp.*, 91cv4542, 1993 WL 1125433, 1993 U.S.Dist. LEXIS 4454 (N.D.Ill. April 5, 1993); *Robinson v. Empire of America Realty Credit Corp.*, 90cv5063, 1991 WL 26593, 1991 U.S.Dist. LEXIS 2084 (N.D.Ill., Feb. 20, 1991); *In re Mortgage Escrow Deposit Litigation*, M.D.L. 899, 1994 WL 496707, 1994 U.S.Dist. LEXIS 12746 (N.D.Ill., Sept. 9, 1994); *Greenberg v. Republic Federal S. & L. Ass'n*, 94cv3789, 1995 WL 263457, 1995 U.S.Dist. LEXIS 5866 (N.D.Ill., May 1, 1995).

22. The recoveries in the escrow overcharge cases alone are over $250 million. *Leff* was the seminal case on mortgage escrow overcharges.

23. The escrow litigation had a substantial effect on industry practices, resulting in limitations on the amounts which mortgage companies held in escrow.

24. **Bankruptcy:** The firm brought a number of cases complaining that money was being systematically collected on discharged debts, in some cases through the use of invalid reaffirmation agreements, including the national class actions against Sears and General Electric. *Conley v. Sears, Roebuck*, 1:97cv11149 (D.Mass); *Fisher v. Lechmere Inc.*, 1:97cv3065 (N.D.Ill.). These cases were settled and resulted in recovery by nationwide classes. Cathleen Combs successfully argued the first Court of Appeals case to hold that a bankruptcy debtor induced to pay a discharged debt by means of an invalid reaffirmation agreement may sue to recover the payment. *Bessette v. Avco Financial Services*, 230 F.3d 439 (1st Cir. 2000).

25. **Automobile sales and financing practices:** The firm has brought many cases challenging practices relating to automobile sales and financing, including:

a. Hidden finance charges resulting from pass-on of discounts on auto purchases. *Walker v. Wallace Auto Sales, Inc.*, 155 F.3d 927 (7th Cir. 1998).

b. Misrepresentation of amounts disbursed for extended warranties. *Taylor v. Quality Hyundai, Inc.*, 150 F.3d 689 (7th Cir. 1998); *Grimaldi v. Webb*, 282 Ill.App.3d 174, 668 N.E.2d 39 (1st Dist. 1996), leave to appeal denied, 169 Ill.2d 566 (1996); *Slawson v. Currie Motors Lincoln Mercury, Inc.*, 94cv2177, 1995 WL 22716, 1995 U.S.Dist. LEXIS 451 (N.D.Ill., Jan. 13, 1995); *Cirone-Shadow v. Union Nissan, Inc.*, 955 F.Supp. 938 (N.D.Ill. 1997) (same); *Chandler v. Southwest Jeep-Eagle, Inc.*, 162 F.R.D. 302 (N.D.Ill. 1995); *Shields v. Lefta, Inc.*, 888 F. Supp. 891 (N.D.Ill. 1995).

c. Spot delivery. *Janikowski v. Lynch Ford, Inc.*, 98cv8111, 1999 WL 608714, 1999 U.S. Dist. LEXIS 12258 (N.D.Ill., Aug. 5, 1999); *Diaz v. Westgate Lincoln Mercury, Inc.*, 93cv5428, 1994 U.S.Dist. LEXIS 16300 (N.D.Ill. Nov. 14, 1994); *Grimaldi v. Webb*, 282 Ill.App.3d 174, 668 N.E.2d 39 (1st Dist. 1996), leave to appeal denied, 169 Ill.2d 566 (1996).

d. Force placed insurance. *Bermudez v. First of America Bank Champion, N.A.*, 860 F.Supp. 580 (N.D.Ill. 1994); *Travis v. Boulevard Bank*, 93cv6847, 1994 U.S.Dist. LEXIS 14615 (N.D.Ill., Oct. 13, 1994), modified, 880 F.Supp. 1226 (N.D.Ill. 1995); *Moore v. Fidelity Financial Services, Inc.*, 884 F. Supp. 288 (N.D.Ill. 1995).

e. Improper obligation of cosigners. *Lee v. Nationwide Cassell*, 174 Ill.2d 540, 675 N.E.2d 599 (1996); *Taylor v. Trans Acceptance Corp.*, 267 Ill.App.3d 562, 641 N.E.2d 907 (1st Dist. 1994), leave to appeal denied, 159 Ill.2d 581, 647 N.E.2d 1017 (1995); *Qualkenbush v. Harris Trust & Sav. Bank*, 219 F. Supp. 2d 935 (N.D.Ill. 2002).

f. Evasion of FTC holder rule. *Brown v. LaSalle Northwest Nat'l Bank*, 148 F.R.D. 584 (N.D.Ill. 1993), later opinion, 820 F.Supp. 1078 (N.D.Ill. 1993), later opinion, 92cv8392, 1993 U.S.Dist. LEXIS 11419 (N.D.Ill., Aug. 13, 1993).

26. These cases also had a substantial effect on industry practices. The warranty cases, such as *Grimaldi, Gibson, Slawson, Cirone-Shadow, Chandler*, and *Shields*, resulted in the Federal Reserve Board's revision of applicable disclosure requirements, so as to prevent car dealers from representing that the charge for an extended warranty was being disbursed to a third party when that was not in fact the case.

27. **Predatory lending practices:** The firm has brought numerous cases challenging predatory mortgage and "payday" lending practices, both as individual and class actions. *Jackson v. Payday Financial LLC*, 764 F.3d 765 (7th Cir. 2014), *cert. denied,* 135 S.Ct. 1894 (2015); *Livingston v. Fast Cash USA, Inc.,* 753 N.E.2d 572 (Ind. Sup. Ct. 2001); *Williams v. Chartwell Fin. Servs.*, 204 F.3d 748 (7th Cir. 2000); *Hamm v. Ameriquest Mortg. Co.*, 506 F.3d 525 (7th Cir. 2007); *Handy v. Anchor Mortg. Corp.*, 464 F.3d 760 (7th Cir. 2006); *Laseter v. Climateguard Design & Installation LLC*, 931 F.Supp.2d 862 (N.D.Ill. 2013); *Hubbard v. Ameriquest Mortg. Co.*, 624 F.Supp.2d 913 (N.D.Ill. 2008); *Martinez v. Freedom Mortg. Team, Inc.*, 527 F. Supp. 2d 827 (N.D.Ill. 2007); *Pena v. Freedom Mortg. Team, Inc.*, 07cv552, 2007 WL 3223394, 2007 U.S. Dist. LEXIS 79817 (N.D.Ill., October 24, 2007); *Miranda v. Universal Fin. Group, Inc.*, 459 F. Supp. 2d 760 (N.D.Ill. 2006); *Parker v. 1-800 Bar None, a Financial Corp., Inc.*, 01cv4488, 2002 WL 215530 (N.D.Ill., Feb. 12, 2002); *Gilkey v. Central Clearing Co.*, 202 F.R.D. 515 (E.D.Mich. 2001); *Van Jackson v. Check 'N Go of Illinois, Inc.*, 193 F.R.D. 544 (N.D.Ill. 2000), later opinion, 114 F. Supp. 2d 731 (N.D.Ill. 2000), later opinion, 123 F. Supp. 2d 1079 (N.D.Ill. 2000), later opinion, 123 F. Supp. 2d 1085 (N.D.Ill. 2000); *Henry v. Cash Today, Inc.*, 199 F.R.D. 566 (S.D.Tex. 2000); *Donnelly v. Illini Cash Advance, Inc.*, 00cv94, 2000 WL 1161076, 2000 U.S. Dist. LEXIS 11906 (N.D.Ill., Aug. 14, 2000); *Jones v. Kunin,* 99cv818, 2000 WL 34402017, 2000 U.S. Dist. LEXIS 6380 (S.D.Ill., May 1, 2000); *Davis v. Cash for Payday*, 193 F.R.D. 518 (N.D.Ill. 2000); *Reese v. Hammer Fin. Corp.*, 99cv716, 1999 U.S. Dist. LEXIS 18812, 1999 WL 1101677 (N.D.Ill., Nov. 29, 1999); *Pinkett v. Moolah Loan Co.*, 99cv2700, 1999 WL 1080596, 1999 U.S. Dist. LEXIS 17276 (N.D.Ill., Nov. 1, 1999); *Gutierrez v. Devon Fin. Servs.*, 99cv 2647, 1999 U.S. Dist. LEXIS 18696 (N.D.Ill., Oct. 6, 1999); *Vance v. National Benefit Ass'n*, 99cv2627, 1999 WL 731764, 1999 U.S. Dist. LEXIS 13846 (N.D.Ill., Aug. 26, 1999).

28. **Other consumer credit issues:** The firm has also brought a number of other Truth in Lending and consumer credit cases, mostly as class actions, involving such issues as:

a. Phony nonfiling insurance. *Edwards v. Your Credit Inc.*, 148 F.3d 427 (5th Cir. 1998); *Adams v. Plaza Finance Co.*, 168 F.3d 932 (7th Cir. 1999); *Johnson v. Aronson Furniture Co.*, 96cv117, 1997 U.S. Dist. LEXIS 3979 (N.D.Ill., March 31, 1997), later opinion, 1993 WL 641342 (N.D.Ill., Sept. 11, 1998).

b. The McCarran Ferguson Act exemption. *Autry v. Northwest Premium Services, Inc.*, 144 F.3d 1037 (7th Cir. 1998).

c. Loan flipping. *Emery v. American General*, 71 F.3d 1343 (7th Cir. 1995). *Emery* limited the pernicious practice of "loan flipping," in which consumers are solicited for new loans and are then refinanced, with "short" credits for unearned finance charges and insurance premiums being given through use of the "Rule of 78s."

d. Home improvement financing practices. *Fidelity Financial Services, Inc. v. Hicks*, 214 Ill.App.3d 398, 574 N.E.2d 15 (1st Dist. 1991), leave to appeal denied, 141 Ill.2d 539, 580 N.E.2d 112; *Heastie v. Community Bank of Greater Peoria*, 690 F.Supp. 716 (N.D.Ill. 1989), later opinion, 125 F.R.D. 669 (N.D.Ill. 1990), later opinions, 727 F.Supp. 1133 (N.D.Ill. 1990), and 727 F.Supp. 1140 (N.D.Ill. 1990).

e. Insurance packing. *Elliott v. ITT Corp.*, 764 F.Supp. 102 (N.D.Ill. 1990), later opinion, 150 B.R. 36 (N.D.Ill. 1992).

29. **Automobile leases:** The firm has brought a number of a cases alleging illegal charges and improper disclosures on automobile leases, mainly as class actions. Decisions in these cases include *Lundquist v. Security Pacific Automotive Financial Services Corp.*, 993 F.2d 11 (2d Cir. 1993); *Kedziora v. Citicorp Nat'l Services, Inc.*, 780 F.Supp. 516 (N.D.Ill. 1991), later opinion, 844 F.Supp. 1289 (N.D.Ill. 1994), later opinion, 883 F.Supp. 1144 (N.D.Ill. 1995), later opinion, 91cv3428, 1995 U.S.Dist. LEXIS 12137 (N.D.Ill., Aug. 18, 1995), later opinion, 1995 U.S.Dist. LEXIS 14054 (N.D.Ill., Sept. 25, 1995); *Johnson v. Steven Sims Subaru and Subaru Leasing*, 92cv6355, 1993 WL 761231, 1993 U.S.Dist. LEXIS 8078 (N.D.Ill., June 9, 1993), and 1993 WL 13074115, 1993 U.S.Dist. LEXIS 11694 (N.D.Ill., August 20, 1993); *McCarthy v. PNC Credit Corp.*, 2:91CV00854 (PCD), 1992 U.S.Dist. LEXIS 21719 (D.Conn., May 27, 1992); *Highsmith v. Chrysler Credit Corp.*, 18 F.3d 434 (7th Cir. 1994); *Simon v. World Omni Leasing Inc.*, 146 F.R.D. 197 (S.D.Ala. 1992).

30. *Lundquist* and *Highsmith* are leading cases; both held that commonly-used lease forms violated the Consumer Leasing Act. As a result of the *Lundquist* case, the Federal Reserve Board completely revamped the disclosure requirements applicable to auto leases, resulting in vastly improved disclosures to consumers.

31. **Insurance litigation:** Often securing recovery for a class requires enforcement of the rights under the defendant's insurance policy. The firm has extensive experience with such litigation. Reported decisions in such cases include: *Record-A-Hit, Inc. v. Nat'l Fire Ins. Co.*, 377 Ill. App. 3d 642; 880 N.E.2d 205 (1st Dist. 2007); *Pietras v. Sentry Ins. Co.*, 06cv3576, 2007 WL 715759, 2007 U.S. Dist. LEXIS 16015 (N.D.Ill., March 6, 2007), later opinion, 513 F. Supp. 2d 983 (N.D.Ill. 2007); *Auto-Owners Ins. Co. v. Websolv Computing, Inc.*, 06cv2092, 2007 WL 2608559, 2007 U.S. Dist. LEXIS 65339 (N.D.Ill., Aug. 31, 2007); *National Fire Ins. Co. v. Tri-State Hose & Fitting, Inc.*, 06cv5256, 2007 U.S. Dist. LEXIS 45685 (N.D.Ill., June 21, 2007); *Nautilus Ins. Co. v. Easy Drop Off, LLC*, 06cv4286, 2007 U.S. Dist. LEXIS 42380 (N.D.Ill., June 4, 2007).

32. Some of the other reported decisions in our cases include: *Elder v. Coronet Ins. Co.*, 201 Ill.App.3d 733, 558 N.E.2d 1312 (1st Dist. 1990); *Smith v. Keycorp Mtge., Inc.*, 151 B.R. 870 (N.D.Ill. 1992); *Gordon v. Boden*, 224 Ill.App.3d 195, 586 N.E.2d 461 (1st Dist. 1991), leave to appeal denied, 144 Ill.2d 633, 591 N.E.2d 21, cert. denied, U.S. (1992); *Armstrong v. Edelson*, 718 F.Supp. 1372 (N.D.Ill. 1989); *Newman v. 1st 1440 Investment, Inc.,* 89cv6708, 1993 U.S.Dist. LEXIS 354 (N.D.Ill. Jan. 15, 1993); *Mountain States Tel. & Tel. Co.*, v. District Court, 778 P.2d 667 (Colo. 1989); *Harman v. Lyphomed, Inc.*, 122 F.R.D. 522 (N.D.Ill. 1988); *Haslam v. Lefta, Inc.*, 93cv4311, 1994 WL 117463, 1994 U.S.Dist. LEXIS 3623 (N.D.Ill., March 25, 1994); *Source One Mortgage Services Corp. v. Jones*, 88cv8441, 1994 WL 13664, 1994 U.S.Dist. LEXIS 333 (N.D.Ill., Jan. 13, 1994); *Wilson v. Harris N.A.*, 06cv5840, 2007 WL 2608521, 2007 U.S. Dist. LEXIS 65345 (N.D.Ill. Sept. 4,

2007). *Wendorf v. Landers*, 755 F.Supp.2d 972 (N.D.Ill. 2010); *QuickClick Loans LLC v. Russell*, 407 Ill.App.3d 46; 943 N.E.2d 166 (1st Dist. 2011), *pet. denied*, 949 N.E.2d 1103 (2011) and *Adkins v. Nestle Purina Petcare Co.,* 973 F.Supp.2d 905 (N.D.Ill. 2013).

33. *Gordon v. Boden* is the first decision approving "fluid recovery" in an Illinois class action. *Elder v. Coronet Insurance* held that an insurance company's reliance on lie detectors to process claims was an unfair and deceptive trade practice.

34. The hourly rates for the attorneys set forth below, are the same as the regular current rates charged for their services in other contingent matters in class action litigation. They are also consistent with fees charged to occasional hourly paying clients. The firm adjusts them annually to account for inflation and increasing experience and they are consistent with the rates charged by attorneys of comparable experience and expertise in the Chicago area. The rates listed and used in this case represent rates previously approved in a number of cases plus an annual adjustment.

35. Examples of the approval of counsel's rates include:

a. Rates of $700 for Daniel Edelman, Cathleen Combs, and James Latturner, $600 an hour for Tara Goodwin, $500 an hour for Julie Clark and Heather Kolbus, $450 an hour for Cassandra P. Miller and Tiffany N. Hardy, $230 to $250 an hour for associates, and $100 to $125 an hour for paralegals were approved in *Anguiano v. LVNV Funding LLC et al.*, 2:12-cv-00523-TLS (N.D.Ind., April 14, 2020).

b. The rates charged by Edelman, Combs, Latturner & Goodwin, LLC were used as a benchmark by Judge Kennelly in *In re Southwest Airlines Voucher Litigation*, No. 11 C 8176, 2013 WL 5497275 (N.D.Ill., Oct. 3, 2013), at 19-20:

> In particular, the Court has reviewed fee awards approved for the law firm of Edelman, Combs, Latturner & Goodwin, a Chicago law firm that has a long-established practice in the same field as Siprut, PC, the firm representing the plaintiff class in this case. Here are some examples. In *Jablonski v. Riverwalk Holdings, Ltd.*, No. 11 C 840, 2012 WL 3043687, at *1 (N.D. Ill. July 12, 2012), Judge Blanche Manning approved rates of $400 per hour for work done in 2011 by attorneys Daniel Edelman, Catherine Combs, and James Latturner, who had, respectively, thirty-six, thirty-six, and fifty years of practice experience. *Id.* at *1. In 2009, in the case of *In re Trans Union Corp. Privacy Litig.*, No. 00 C 4729, 2009 WL 4799954, at *20 (N.D. Ill. Dec. 9, 2009), Judge Robert Gettleman appears to have okayed a $550 rate for attorney Edelman. That same year, in *Jones v. Ameriquest Mortg. Co.*, No. 05 C 432, 2009 WL 631617, at *4 (N.D. Ill. Mar. 10, 2009), Judge David Coar approved rates of $465 per hour for partners Latturner, Combs, and Tara Goodwin, and a rate of $250 per hour for an associate who was six or seven years out of law school during the relevant period. In 2008, Judge Sam Der-Yeghiayan approved rates of $450 per hour for partners at the Edelman firm and $210 per hour for the same associate. *See Hamm v. Ameriquest Mortg. Co.*, 549 F. Supp. 2d 1018, 1022 (N.D. Ill. 2008).
>
> On September 25, 2013, the Court considered a fee award (a very modest one) in a case brought by the Edelman firm in which it obtained a default judgment. That firm submitted a very comprehensive affidavit by its lead partner, Daniel Edelman, supporting the following hourly rates claimed for each of its partners and associates:
>
> - $550 for partners Edelman (thirty-seven years of experience), Combs (thirty-seven years), and Latturner (fifty-one years);
>
> - $505 for partner Goodwin (twenty-two years);

- $445 for partner Julie Clark (thirteen years);

- $400 for partner Heather Kolbus (eleven years);

- $355 for a partner with ten years experience;

- $230 to $290 for associates; and

- $100 to $125 for paralegals.

See Quazi v. Lizetty and Assoc. Grp. LLC, Case No. 13 C 4512, dkt. no. 19-5 (affid. of Daniel Edelman). This Court's own experience in dealing with fee awards (mostly agreed-upon awards) in consumer cases is generally consistent with a range bracketed on the higher end by the hourly rates proposed for lawyers from the Edelman firm in the *Quazi* case and, at the lower end, with the awards approved by Judges Der-Yeghiayan, Coar, and Gettleman in the cases cited earlier. The latter are, at this point, several years old, indicating that they may not actually represent appropriate current rates. . . .

c. The rates of $700 for Daniel A. Edelman was approved in *Manuel v. Caliber Home Loans, Inc.*, 14-5233-SRC-CLW (D. N.J. on August 20, 2015. The order is attached as Appendix A.

d. Rates of $550 for Daniel A. Edelman and $230 for Cassandra P. Miller were approved in *Nadyenova v. Midland Funding, et al.*, 12-cv-632 (N.D.Ill.), on July 11, 2012. The order is attached as Appendix B.

e. Rates of $550 for Daniel A. Edelman, James O. Latturner and Cathleen M. Combs, $400 for former partner, Michelle R. Teggelaar, and $250 for former associate Jeremy P. Monteiro were requested in the Plaintiff's Final Approval Memorandum and approved in *Bruce v. Wells Fargo Bank*, 2:05cv243 (N.D.Ind.), on October 18, 2007 (Transcript of proceedings, Appendix C).

f. A rate of $325 for Ms. Hardy was approved by the Honorable Arthur D. Spatt at a fairness hearing in the Eastern District of New York in 2014, *Altagracia Diaz v. Residential Credit Solutions,* 12-cv-03781 (Appendix D).

36. In determining the rates charged by the firm charges and requests, counsel consults surveys of rates charged by other Chicago law firms. Such surveys have been relied upon by courts in awarding fees. E.g., *FDIC v. Morris*, 1992 U.S. Dist. LEXIS 9439 (N.D.Ill., June 29, 1992); *Alliance to End Repression v. City of Chicago*, 1993 U.S. Dist. LEXIS 1972 (N.D.Ill., Feb. 22, 1993).

37. I am reasonably confident that the rates are accurate, based on my personal knowledge of rates in the legal community, court awards, negotiations with defendants, and discussions with other attorneys.

38. The rates we used are also consistent with fee awards by courts in this or other comparable areas for comparable work:

a. In *Harris N.A. v. Acadia Investments*, 09 C 6661, 2012 WL 1681985 (N.D.Ill., May 14, 2012) (Schenkier, M.J.), a commercial dispute in which the fees paid by plaintiff were shifted to the defendant pursuant to a contractual provision, the court awarded $775/ hour for a 1984 partner, $745/ hour for a 1985 partner, $700/ hour for a 1992 partner, and $570/ hour for a 1995 partner. Copies of the affidavits establishing these rates are in Appendix E.

b. In *Winston v. O'Brien*, 10 C 8218, 2013 WL 2897161 (N.D.Ill., June 13, 2013) (Bucklo, J.), a police excessive force case, court awarded $535/ hour for lead counsel, $450/ hour

for a 1994 graduate, $225/ hour for a second year associate, and $125 /hour for paralegal work.

c. In *McDonough v. Briatta*, 06 C 2732, 2013 WL 1303800 (N.D.Ill., March 27, 2013) (Pallmeyer, J.), a First Amendment retaliation claim, the court awarded $500/ hour for 1964 and 1984 partners, $450/ hour for a 1993 graduate, $425/ hour for a 1999 graduate, $400/ hour for a 2001 graduate, $285/ hour for 2006 and 2007 graduates, and $100/ hour for paralegal time.

d. In *Scott v. Illinois Youth Center Joliet*, 09 C 1633, 2011 WL 586408 (N.D.Ill., Feb. 9, 2011), an individual employment discrimination case, Magistrate Judge Brown awarded $100/ hour for paralegal time, $250/ hour for an associate with 5 years experience, and $285-$390/ hour for attorneys with 12-18 years experience, noting that only limited justification had been provided.

e. In *Richardson v. City of Chicago*, 08 C 4824, 2012 WL 6185867 (N.D.Ill., Nov. 20, 2012) (Cole, M.J.), a police misconduct case, the court approved rates of $425/ hour for an attorney with 17 years experience, $400/ hour for an attorney with 9 years experience, $300/ hour for an attorney with 7 years experience, and $175/ hour for a second year associate.

f. In *Covington v. District of Columbia*, 839 F. Supp. 894 (D.D.C., December 13, 1993), Judge Lamberth found, on the basis of court-approved surveys of rates in the Washington, D.C., area, that it was appropriate to award $260 per hour to attorneys with between 11 and 19 years experience for the time period 1992-93. He further found that it was appropriate to have an annual increment of $10 per year or, alternatively, to multiply by 103.4% in accordance with the Consumer Price Index (the result is approximately the same). He also noted that it had been relied upon by six other District Judges in the District of Columbia and the Court of Appeals for the District of Columbia Circuit. Judge Lamberth awarded current rates for all work done in the past, in lieu of making the award at the then-current rate and awarding interest on it.

g. The figures used in the *Covington* case have been updated each year by the office of the U. S. Attorney for the District of Columbia. The updated figures (through 2017) are in the chart attached as Appendix F, available on the Internet site of the U. S Attorney's office ("Laffey Matrix", after *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354 (D.D.C. 1983)).

39. The usual rates which I and the others in my firm charge at the present time are as follows:

a. Daniel Edelman, Cathleen Combs, and James Latturner (partners): $700 an hour;

b. Tara Goodwin (partner): $600 an hour;

c. Julie Clark (partner): $500 an hour;

d. Heather Kolbus (partner): $500 an hour;

e. Cassandra P. Miller (partner): $450 an hour;

f. Tiffany N. Hardy (partner): $450 an hour;

g. Associates: $230 to 250 an hour;

j. Paralegals: $100-$125 an hour (based upon experience).

40. All attorneys and legal assistants in my firm are required to and do in fact keep track of their time on a contemporaneous basis, on computer. Everyone enters their time into a computer program, by case number. The computer system automatically sorts the entries by case and generates totals. Expenses are entered into the same computer program as they are incurred.

Executed at Chicago, Illinois.

/s/ Daniel A. Edelman
Daniel A. Edelman

EDELMAN, COMBS, LATTURNER & GOODWIN, LLC
20 S. Clark Street, Suite 1500
Chicago, Illinois 60603
(312) 739-4200
(312) 419-0379 (FAX)

APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CL

LUTHER B. MANUEL JR. and GERTRUDE MANUEL, on behalf of themselves and the class members described herein,

Plaintiffs,

vs.

CALIBER HOME LOANS, INC.; U.S. BANK TRUST, N.A., as Trustee of LSF8 MASTER PARTICIPATION TRUST; WELLS FARGO DELAWARE TRUST COMPANY, N.A., as Trustee for VERICREST OPPORTUNITY LOAN TRUST 2013 NPL2 and VERICREST OPPORTUNITY LOAN TRUST 2014 NPL2; and DOES 1-25,

Defendants.

Case No.: 2:14-cv-05233-SRC-CLW

~~[PROPOSED]~~
FINAL APPROVAL ORDER

WHEREFORE, it appearing to the Court that:

A. On May 5, 2015, this Court entered a Preliminary Approval Order which, among other things, preliminarily and conditionally certified this lawsuit to proceed as a class action for settlement purposes only, defined the Settlement Class and Settlement Class Claims, appointed Settlement Class Counsel, preliminarily approved the proposed Stipulation of Settlement which would be binding on the Settlement Class, provided for notice to the Settlement Class including an opportunity for Settlement Class members to request exclusion from the Settlement Class and to object to the proposed Stipulation of Settlement, and scheduled a hearing ("Final Hearing") for August 20, 2015, to consider any objections and to determine whether the proposed settlement is fair, reasonable, and adequate.

B. In satisfaction of Fed. R. Civ. P. 23(e)(3), a copy of the Stipulation of Settlement was provided to the Court with the Parties' Joint Motion seeking the entry of the Preliminary Approval Order.

C. In accordance with the Court's Preliminary Approval Order, on June 5, 2015, actual notice was sent by first class mail to 15,050 Settlement Class Members by Heffler Claims Group (the "Class Administrator"). A total of 1,331 notices were returned by the United States Postal Service as undeliverable with no forwarding address or further information; 49 notices were returned by the United States Postal Service with a new address and successfully re-mailed; and a total of 3,338 claim forms have been received.

D. In accordance with the Court's Preliminary Approval Order, on June 5, 2015, the Class Administrator established a toll-free telephone number to answer questions from Settlement Class Members through an interactive voice response (IVR) system with an option to leave a message to be responded to by Class Counsel.

E. On August 20, 2015, in accordance with the Preliminary Approval Order [Doc. 32] and Fed. R. Civ. P. 23(e)(2), counsel for the Parties timely appeared for the Final Fairness Hearing to determine whether the action satisfies the applicable prerequisites for class action treatment and whether the proposed settlement is fundamentally fair, reasonable, adequate, and in the best interest of the Class Members and should be approved by the Court;

F. The Class Members were given an opportunity to object to the settlement. Only one Class Member, through counsel, objected to the settlement ("Objector") [Doc. 35]. The Objector's counsel appeared at the Final Hearing and presented the Objector's arguments against the Settlement. The Court having heard and considered the Objections finds them to be without merit and accordingly overrules them for the reasons stated on the record.

G. The Class Members who made valid and timely requests for exclusion are excluded from the class and settlement and are not bound by this Order. Only 31 Class Members requested exclusion. The identities of such persons are set forth in **Exhibit A**, attached hereto; and

H. With the Court having concluded that the proposed settlement is fair, reasonable, and adequate; and the Court being duly advised in the premises, and for good cause shown;

IT IS HEREBY ORDERED AND ADJUDGED:

1. The Court confirms its certification in the Preliminary Approval Order of this lawsuit as a class action for settlement purposes only and, in accordance with Fed. R. Civ. P. 23(b)(3), defines the "Settlement Class" as:

> All persons who were sent the following letters from Caliber on the following dates: (1) A letter with the title "Notice of Sale of Ownership of Mortgage Loan", dated January 9, 2014; (2) A letter with the title "Welcome to Caliber", dated February 12, 2014; and, (3) A letter listing the creditor and principal amount of the loan, dated February 18, 2014.

The Court further defines the "Settlement Class Claims" as those claims of the Settlement Class arising from written communications sent by Caliber, in connection with its servicing of residential mortgage obligations, which allegedly failed to make accurate disclosures as required by 15 U.S.C. §1692(g)(a)(2), 12 U.S.C. §2605, and 15 U.S.C. §1641(g).

2. The Court declares that the Parties' Notice Plan as set forth in the Stipulation, including the notice mailed to Class Members, satisfied the requirements of Fed. R. Civ. P. 23 and constitutional due process.

3. The Court approves the disbursement of the Settlement Fund as provided for in the Stipulation of Settlement and directs that the Class Administrator disburse the payments in accordance with the terms of the Stipulation.

4. The Court approves the award of attorneys' fees and costs to Settlement Class Counsel, in the amount of 288,000, and declares such fees and costs, and the hourly rates sought to be fair and reasonable.

5. The Stipulation, which was filed with the Court on April 3, 2015 [Doc. 30-2], and which shall be deemed incorporated herein by reference in its entirety, is finally approved and shall be consummated in accordance with the terms and provisions thereof, except as amended by any subsequent order issued by this Court.

6. This Order is binding on all Class Members, except those individuals identified in ***Exhibit A*** hereto, who validly and timely excluded themselves from the Settlement Class.

7. The Class Representatives, Class Members, and their successors and assigns are permanently barred and enjoined from instituting or prosecuting, either individually or as a class, or in any other capacity, any of the Released Claims against any of the Released Parties, as set forth in the Stipulation. Pursuant to the release contained in the Stipulation, the Released Claims are compromised, settled, released, discharged, and dismissed with prejudice by virtue of these proceedings and this Order.

8. The Lawsuit is hereby dismissed with prejudice in all respects.

9. This Order is not, and shall not be construed as, an admission by Defendants of any liability or wrongdoing in this or in any other proceeding.

10. The Court retains jurisdiction over the interpretation, enforcement, and implementation of the Stipulation of Settlement and this Final Order. Except as retained, all claims against all Defendants are dismissed with prejudice and without taxing costs.

IT IS SO ORDERED:

HONORABLE STANLEY R. CHESLER
Judge, United States District Court

Dated: 8/20/15

EXHIBIT "A"

First Name	Last Name	Exclusion #
Steven	Catalfamo	1
Lazina	King	2
Rebecca	Luker	3
Charles	Wild	4
Trevor	Nightengale	5
Elwood	Gilchrist	6
Rhonda	Evans	7
Melissa	Filipos	8
Paul	Zawadzke	9
[redacted]	[redacted]	[redacted]
Pamela	Carrig	11
Edward	Accomando	12
Latif	Giwa	13
Madison	Rogers	15
Hieu	Nguyen	16
William	Pastino	17
Suzanne	Thompson	19
Edna	Albright	20
Beverly	Marretta	21
Paula	Mexner	22
Fitzroy	Lyte	24
Hugh	Mills	25
Theresa	Jones	26
Richard	Koesler	27
David	Walkerr	28
Kelly	Smith	29
Laura	Wellnitz	30
Charlie	Smith	31
Michael	Szczepaniak	32
Ronald	Carter	33
Rodell	Cotrell	34

First Name	Last Name	Exclusion #
Anuoluwa	Giwa	14
Heather	Rogers	15
Roberta	Pastino	18
Roberta	McGuane	23
San Juan	Koesler	27

APPENDIX B

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	John J. Tharp, Jr.	Sitting Judge If Other than Assigned Judge	
CASE NUMBER	12-c-632	DATE	7/11/2012
CASE TITLE	Naydenova vs. Midland Funding et al.		

DOCKET ENTRY TEXT

Status hearing held. Parties waive briefing on fee petition following presentation of positions in open court and submit issue to Court for resolution. Upon review of Parties' LR 54.3(e) Joint Statement, the Court awards fees and costs to Plaintiff in the amount of $2,529.98. For further details see text below. This amount stands as the "reasonable attorneys' fees and costs" included in the Court's Judgment [22] entered 4/24/12. Case terminated.

■[For further details see text below.] Docketing to mail notices.

00:06

STATEMENT

This Fair Debt Collection Practices Act case was resolved by Plaintiff's acceptance of Defendants' Offer of Judgment, served on April 19, 2012, pursuant to FRCP 68. The Offer of Judgment was "in the amount of $1,001 plus reasonable attorneys' fees and costs, as determined by the Court and as allowed by law." This Court entered judgment on the accepted offer and directed the parties to confer regarding the amount of reasonable attorneys' fees and costs to be included in the judgment. On July 9, 2012, the parties reported by means of a Local Rule 54.3(e) Joint Statement, advising that they had been unable to reach agreement on the amount of reasonable attorneys' fees and costs to be included in the judgment. At the status hearing on July 12, the parties waived further briefing on the issue of the amount of attorneys' fees and costs to be awarded, and submitted the issue to the Court for determination. Having reviewed the Joint Statement, including the exhibits supplied by the parties, the Court concludes that attorneys' fees and costs in the amount of $2,529.98 should be awarded to Plaintiffs under the Offer of Judgment.

The Court finds in general that the fees charged, and effort expended, by Plaintiff's counsel are reasonable, with the exception that the Court concurs with Defendant's objection that it is unnecessary to have five lawyers (four of whom are partners) involved in a case in which the issues were not complex and which was resolved almost immediately. The Court has therefore deducted the time of the three partners who were most tangentially involved in the drafting and review of the complaint (at least as measured by the time they spent on that task). Defendant also objected to the rates charged by these attorneys, but as their time has been excluded, the objection to those rates is moot. By contrast, Defendant's Exhibit B letter to Plaintiff acknowledges that the rates of $550 per hour for Daniel Edelman and $230/hour for Cassandra Miller are reasonable and, accordingly, the Court accepts those rates, noting as well that"[c]ourts in this circuit generally have awarded somewhere in the range of $200 to $300 per hour for lawyers with significant experience handling these types of cases." See *Brown v. Patelco Credit Union*, 2011 WL 4375865, *3 (N.D.Ill.).

STATEMENT

While Mr. Edelman's rate is substantially higher, in view of his status as one of the senior partners in the firm and the limited time expended (one hour), the Court does not find the request to recover his fees to be unreasonable, particularly where he is the only partner whose fees will be recovered.

Defendants object to time entries by paralegals that they characterize as "secretarial" in nature. While a few of these tasks are arguably non-legal in nature (*e.g.*, "prep letter and mailing to process server"), the Court finds that most of the paralegal tasks identified in the time entries require specialized knowledge and/or experience that goes beyond generically clerical or secretarial tasks. The filing of specialized forms, such as appearances and civil cover sheets, are examples. In any event, the rate charged by the paralegals performing these task was $100/hour, and the Court finds that rate reasonable whether the tasks are characterized as "legal" or "clerical" in nature. See, *e.g.*, *Smith v. Astrue*, 2011 WL 2064843, *2 (S.D. Ill.) (reducing attorney hours devoted to similar clerical tasks by 60% where they could have been performed by an experienced secretary or paralegal; the rates charged by paralegals here are approximately 60% lower than the $230 hour rate charged by the associate attorney assigned to the case).

Defendants object as well to the time entries related to the drafting of a settlement agreement, but the Court finds that effort to have been a reasonable attempt to try to resolve the case (indeed, counsel for the defendants undoubtedly incurred time on the same pursuit). Further, the fact that the Plaintiffs had spent time drafting settlement language was obviously known to the Defendants when the offer of judgment was made; had they wished to exclude time for that purpose, they could have so indicated in their Offer.

The Court does conclude, however, that fees incurred after Plaintiff accepted the Offer of Judgment should be excluded. By its terms, Rule 68 provides only for the recovery of "costs then accrued," that is, the costs incurred up to the point that the Offer of Judgment is made. Once the Rule 68 offer was made, "the clock stopped ticking." *Patelco Credit Union*, 2011 WL 4375865, *6. Attorney's fees are considered "costs" under Rule 68 when the underlying statute provides for attorney's fees to be awarded as part of the costs.

Marek v. Chesney, 473 U.S. 1, 2 (1985) ("[T]he term costs in the Rule was intended to refer to all costs properly awardable under the relevant substantive statute."). Accordingly, there is no basis to assess fees differently in the context of an Offer of Judgment. Defendants' Offer did not extend to cover fees and costs incurred after it was made and Plaintiff's acceptance of that offer renders its request for fees and costs incurred after that date unreasonable.

The Court therefore calculates the fees and costs to be awarded to Plaintiff as follows:

Plaintiff's total fees and costs:	$4,011.53
Less:	
JOL Time	330.00
MRT Time	160.00
CMC Time	110.00
Time incurred after offer was made (4/19/12)	878.00
Costs incurred after offer was made (4/19/12)	3.55
Revised total fees and costs	$2,529.98

John J. Throp Jr

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

DARRELL BRUCE,

PLAINTIFF,

VS.) Cause: 2:05 cv 243

WELLS FARGO BANK NA,

DEFENDANT.

The FAIRNESS HEARING in the above-entitled matter was commenced before Honorable Philip P. Simon judge of said court, at the Federal Building, 5400 Federal Plaza, Hammond, Indiana, on the 18TH day of October, 2007 commencing at the hour of 1:20 in the afternoon.

Sharon Boleck Mroz, CSR, RPR, CPE
Official Court Reporter
US District Court
Northern District of Indiana
Hammond Division
5400 Federal Plaza
Hammond, IN 46320
(219) 852-6728

Appearances:

Ms. Michelle R. Teggelaar
Edelman Combs Latturner & Goodwin
120 S. LaSalle Street, Suite 1800
Chicago, IL 60603

On behalf of the Plaintiff;

Mr. Robert J.Emanuel PHV
Burke Warren MacKay and Serritella
330 N.Wabash Avenue
Chicago, IL 60611

On behalf of the Defendant.

INDEX

EXHIBITS

(None)

THE CLERK: All rise.

THE COURT: You can be seated. Good afternoon everyone.

We're on the record. The cause number is 2:05 CV 243 Bruce versus Wells Fargo.

Back on the 21st day of June of this year, I preliminarily approved a class action settlement, and I set this date for the fairness hearing.

So, if you all can introduce who you are so I know who I'm dealing with here.

Sir.

MR. EMANUEL: My name is Bob Emanuel. E M A N U E L. And I represent Wells Fargo, and I am very sorry that I was tardy today.

I went to the 507 building.

THE COURT: Got it.

We have been here almost what, five years, Noel?

MR. EMANUEL: I've been to this building before. I tried using a navigation system which I'm not really --

THE COURT: Don't worry about it.

MR. EMANUEL: Obviously.

THE COURT: Ma'am. You Miss Teggelaar?

MS. TEGGELAAR: Miss Teggelaar, Plaintiff.

THE COURT: Nice to see you.

All right. Just for the record, it is now 21 minutes after 1:00.

This hearing was scheduled to begin at 1:00. There is nobody in the courtroom other than the party -- other than the lawyers and people from the court staff and the court security officer.

Evidently, there is no class member who has saw fit to appear to object to the settlement.

So, my -- ordinarily my procedure, Miss Teggelaar, is just for you to give a brief summary as to what the terms of the settlement are for the record, and I'll make my findings on the fair and reasonableness of the settlement.

So, you may proceed.

MS. TEGGELAAR: Pursuant to the settlement, the Plaintiff Darrell Bruce is to receive a thousand dollars which is the maximum provided for by the statute. Each class member that submits a claim form will be entitled to receive a payment of $200, and the settlement provides for payment of $75,000 in fees in addition to the class recovery.

There were 4,377 notices mailed to the class members. And there were a relatively low number returned, undeliverable, 210.

There were eight that were returned and remailed, but we received a very, very --

THE COURT: That is a very high percentage, isn't it?

MS. TEGGELAAR: -- of claim forms back in this case. Actually there is only one other case that we had that anyone at my

firm could recall that was rate -- or return this high.

There were 1,500 timely. There were 25 late that we had as of October 5. That is about one-third of the class members who decided to return a claim form, which I think shows an overwhelming positive response from the class. We usually see about ten percent returning claim forms.

So, the class then -- recovery was about $300,000. It would be 305,000 if the Court elects to allow those late claim forms.

We did want to draw to the Court's attention that there were some other claim forms that were received that did not appear to be valid. They were all sent by individuals that had the same address as the class member. They probably were family or friends, and individuals did -- that were class members also returned claim forms.

So those, after discussing it, we were -- decided we were not going to honor those claims forms. They did not appear to be valid, and we wanted to bring that to the Court's attention.

There was only one other issue we found out today that the CAFA notice was not provided.

THE COURT: I'm sorry. I can't hear you.

MS. TEGGELAAR: I'm sorry.

The CAFA notice was not provided at the time that was required by statute and Defendant can probably speak. It was apparently a miscommunication with the administrator that was

handling it they believed to have done it.

And under CAFA, the Court cannot enter that final approval order until after 90 days after the notice has been provided. So, in fact we had discussed what to do in this circumstance, and actually this summer I had a case where that happened, and the defendants didn't provide it on time. And what the Judge did -- that was in Central District of Illinois. The judge held the hearing, didn't enter the final order, made findings that he had approved the settlement. As soon as we -- the time had passed since the notice was provided, that it could be unclear that no state or Federal authorities wished to appear and object to the settlement.

THE COURT: When will that be?

MR. EMANUEL: It -- and let me address this.

And I -- I probably ought to be in the position of thanking Michelle and apologizing to her at the same time.

CAFA as you know is a new statute. Many of the cases -- I've been doing these cases for 15-some years.

And some settlement administrators, the one that I work with, picked up on it right away and sent out the CAFA notice, which is basically a notice to any Federal authority that might have an interest. And I did get correspondence from them saying the quote "notices" had gone out.

I -- it's my fault at the end of the day. I did not drill down and find out did they mean the CAFA notice.

So, ultimately, what happened is that CAFA notice did not go out. And until it's been out and there have been 90 days, for someone to speak up, my understanding is consistent with Michelle's, no final order can be entered.

It does leave the class and Plaintiff's counsel in a position that is not enviable and we have to figure out what we ought do about that.

I have -- as the Court noted, never -- I mean, I think this settlement is -- usually defendants don't speak up much in these hearings, but I've never seen a turnout like this.

We usually -- Michelle says ten. We usually see seven, eight percent.

That said, I'm not worried about anyone having an objection to the settlement.

What I'm wondering if is there any way the Court can give final approval to the settlement or approve the settlement and retain jurisdiction to alter that finding if there is an objection, and I don't know if that's -- if that's possible, so that we can go ahead and pay the class members and pay Plaintiff's counsel.

THE COURT: Miss Teggelaar. I don't know.

MS. TEGGELAAR: Well, that's also come up because recently the Seventh Circuit has said we don't want any orders entered that approve the settlement, retain jurisdiction because that --

THE COURT: More than familiar with them.

MS. TEGGELAAR: What we have been doing is alternatively to that is having the case dismissed without prejudice, the Court finding that the settlement should be approved but dismissing without prejudice, subject to the settlement being implemented. And then at that time have the order become with prejudice. And I mean, I'm not sure if we can -- technically wouldn't be the final order being entered.

THE COURT: When was this CAFA notice sent?

MR. EMANUEL: It has not.

THE COURT: Has not even occurred.

MR. EMANUEL: What happened today is Michelle out of courtesy said to me, "Bob, did you make sure to file the CAFA notice?"

And I called the settlement administrator and said -- because he sent up a bunch of notices that were filed in this case.

And I said, did you send out the CAFA notice. I cannot find it.

And he said -- and I don't want to imitate him; he is from the very deep south. He said basically, I don't know what a CAFA notice is.

And I say this to be candid with the Court.

It did not go out. It will go out today, and then we have a 90 day period. But I think it would be consistent if --

THE COURT: What am I supposed to do here then? What if one in a hundred the notice gets out, somebody comes in here and

gripes about it and changes my mind. It's not very likely. I can't unring the bell. I can't get money back.

I can't -- you know, I mean, in many ways, I'm -- I mean, I think I can make the findings today as it stands right now so we don't even have to have another hearing, that it's a fair and reasonable settlement, that it's -- and make whatever findings I need to make, but take under advisement the possible reconsideration of that should the CAFA notice generate some adverse findings. And unfortunately, you're going to have to wait to get your money, unless you have some other solution here.

MS. TEGGELAAR: Well, it's just -- it's the difficulty with the class members. I mean, if it's just a question of waiting, you know, three months to get our fees to have to enter it, that is something we have to deal with, but we already had those individuals calling and asking about that, and --

THE COURT: So, what's the solution? What am I missing here? What would be the solution?

MS. TEGGELAAR: I really don't have a solution to that. I mean, I -- personally, I think the Defendant should issue the class checks. They want to wait on our fees, do it. It's their risk because it's their mistake. We should have been prepared to go forwarded too. The longer you wait, the less likely those checks get to the class members and be cashed.

That is something we see a lot, the longer it takes. And we could say the Defendant then has to try to skip trace them or

something if that does happen later.

THE COURT: Mr. Emanuel.

MR. EMANUEL: Miss Teggelaar makes good points.

There is some small, I think very small risk although we do -- first of all, she mentioned some late claims.

Once we have come to a settlement, you know, we shall -- we generally -- more than generally. I think we have 25 late claims. We are going to pay those claims. And in any case, whether you approved it today or whether it was in 90 days. If we send a check out to someone and then it comes back, we track that person down.

They don't just leave the checks stale.

And here, the amount of money is large enough that people are going to get into contact with us.

That's why you have such a high response here. It was a larger settlement per person. I really do -- I apologize to the Court and I apologize to Miss Teggelaar for the issue with the notice. It is embarrassing for me, but I have to be candid and take responsibility for it.

And if there is a way that the Court can -- can approve the settlement and retain jurisdiction, once the settlement is approved, we'd be happy to start cutting the necessary checks.

THE COURT: I'll approve the settlement today.

MR. EMANUEL: Okay.

THE COURT: I mean, there is nothing about this

settlement that is unreasonable.

I was prepared to do that.

My concern is maybe not -- I don't quite understand what the effect of the CAFA notice is. Who does it go to, and what is the down side risk here?

MR. EMANUEL: It would go to the State Attorney General. It would go to, I believe, a variety of federal agencies.

MS. TEGGELAAR: I think they only give it to the US Attorney.

MR. EMANUEL: Okay, that's it, not the OCC?

MS. TEGGELAAR: Since this is just an Indiana class.

MR. EMANUEL: Okay. And in my experience, from what I read in the time that Michelle raised this issue -- I suppose I shouldn't say my experience, I might be overstating things.

I think the chances of getting an objection here are very, very slim, and I think the chances of getting an objection that could be sustained are even slimmer.

THE COURT: All right.

Here's what I'm going to do. I'm going to issue -- I'm going to approve the settlement.

MR. EMANUEL: Okay.

THE COURT: And I'm going to order you to pay the class members and counsel immediately, or --

MR. EMANUEL: Pursuant to --

THE COURT: Pursuant to the agreement, a few weeks.

MS. TEGGELAAR: Right.

THE COURT: And I will simply dismiss the case without prejudice, pending -- even though I probably can't do that, but I will, because this is -- you know, this is -- the risk is so low here.

MR. EMANUEL: Uh-huh.

THE COURT: And we'll just keep it -- I'll wait to hear back from you all --

MR. EMANUEL: Okay.

THE COURT: -- in 90 days, in which case you can file something that will tell me that you can dismiss it with prejudice, because nobody has objected to it.

MR. EMANUEL: And specifically, what I would propose is that perhaps we even set a -- I don't know if you can set a status date that in 91 days, we will provide the Court with proof that the CAFA notice went out, and that there has been no objection or response, if that's what the Court wants.

THE COURT: That's fine.

I don't think we have to have a hearing. In my world on the 91st day you'll just file something that will tickle us that will say, oh, by the way we sent out the notice, we got no response, the dismissal can be converted from without prejudice to with prejudice and the case is over.

MR. EMANUEL: Okay.

MS. TEGGELAAR: There is one other little glitch.

THE COURT: Sure.

MS. TEGGELAAR: That's because of the Seventh Circuit, not because of the CAFA notice, because we need to make sure everything is done in the settlement before it's final because the Court can't dismiss, retain jurisdiction, we need to make sure that we can do that up and through the time when they would have to give the cy pres award.

So when I originally calculated that out before I was aware of this issue, triggered by the approval today and then when the payment would come due and checks would be issued to class members, the settlement agreement provides that their checks are good for 90 days. And after the checks are void, then the Defendant has to give out cash funds to the cy pres.

I think I calculated that out to be about six months total into April. And I think in the draft order I submitted I just left a blank that this order will become final on X date unless--

MR. EMANUEL: Can I -- because if the case can't be dismissed with prejudice for six months anyways --

MS. TEGGELAAR: Then this will be done well before that.

MR. EMANUEL: Yes.

THE COURT: Okay.

MS. TEGGELAAR: I mean, I could --

MR. EMANUEL: Or the --

THE COURT: One at a time.

MS. TEGGELAAR: I'm sorry.

I can add a paragraph actually in what I submitted that has a separate requirement that verification after the 90 days passed, defendant will file something that -- saying that no objection has been made, and leave the paragraph in here as it is about being converted to dismissal with prejudice, and we can pick a date in April some time.

THE COURT: That's fine. Why don't you go ahead and do that by a week from today.

MS. TEGGELAAR: I mean, I can probably as soon as I get back to my office, I can make that change --

THE COURT: Fair enough. Okay.

MS. TEGGELAAR: -- and send it over.

THE COURT: And you wanted to appear here telephonically?

MR. EMANUEL: Today I asked if I could. We had done it in the past in this case frequently.

I want to make clear that my request to appear telephonically was made before I got Michelle's e-mail.

THE COURT: Fair enough.

MR. EMANUEL: Then when I talked to Michelle because I told Michelle I was hoping -- she said, are you going to appear telephonically. I said, not now. So --

THE COURT: All right.

MR. EMANUEL: Usually at a -- at a final approval hearing, I did it in front of Judge Zagle. Usually I say nothing

other than we think the settlement is fair.

THE COURT: I'm relatively new at this. I've probably done five of these, but you know, you never know when somebody is going to walk in the door and say, I don't like what I'm seeing here.

MR. EMANUEL: Well, I would appear telephonically and our local counsel is going to come and sit where I'm sitting. Once the CAFA issue came up, I thought it was important for me to be here and explain.

THE COURT: You thought it was important go to 507 State Street.

MR. EMANUEL: It's been a -- not been my best day.

THE COURT: All right.

Here are the factors I have to consider in deciding whether to grant final approval of a class action settlement: The strength of the Plaintiff's case on the merits as measured against the terms of the settlement; the complexity, length and expense of the continued litigation; the amount of opposition to the settlement among class members; the presence of any collusion in gaining a settlement; the stage that the proceedings are in; and the amount of discovery that's been completed. In taking -- in consideration all those factors, this is a very favorable settlement to the Plaintiff class as I see it, although I -- I felt that it was a fairly strong case for the plaintiff. Although I know that there's been no admission of liability here, I had

concern with this -- with this particular solicitation. So, it -- it was a strong case and that's perhaps what led to a favorable settlement in my judgment for the Plaintiff's class.

The law firm that is representing the Plaintiff's class has appeared in this Court and across the Midwest and I assume around the country litigating consumer class action litigation, and as always, done excellent work in my court. And this was a complex piece of litigation.

The fact that we have no one here in court opposing the settlement, and more importantly the fact that there's been really a very amazing response from the class participating in the settlement, approximately a third of the prospective class or of the class have returned the forms to -- asking to participate really indicates the overwhelming approval that the class members have in the settlement that's been negotiated by the Plaintiff's counsel.

There's no evidence at all of any -- of any inclusion, and -- and on the issue of attorney's fees, I think they are more than reasonable on a case in which approximately $300,000 is going to be paid to the class. I guess what would amount to approximately 25 percent of that amount in addition to that as attorney's fees does not strike me at all as unreasonable and the rates that were requested in the loadstar method that are set out in the petition to approve the settlement, I find to be totally reasonable given the prevailing market rates for this type of

litigation.

I will also approve the late filers, the people who filed the claim forms late. I believe there is 25 of them. I would include them as part of the final judgment here. And that they too can participate in the settlement.

Okay. Anything else I need to do then?

MS. TEGGELAAR: I don't think so.

THE COURT: No?

MR. EMANUEL: No, your Honor.

THE COURT: So then I want to make sure I'm clear. Miss Teggelaar, you'll file something today or tomorrow that is going to update the proposed form of order adding the information that we talked about?

MS. TEGGELAAR: Yes.

THE COURT: And I'll enter that immediately, you're saying or do I want until the 90 days?

MS. TEGGELAAR: That -- the order that I would be submitting, you could enter immediately.

THE COURT: And then in 90 days you'll be filing something else that I can convert what I'm entering tomorrow or the next day into a final dismissal with prejudice?

MS. TEGGELAAR: The order that I will submit will have a provision in it stating that it will become final with prejudice after a certain date, and I can count out six months from --

THE COURT: I got it.

MS. TEGGELAAR: -- today.

THE COURT: I'm following you now.

MS. TEGGELAAR: We won't have to go and enter another --

THE COURT: I was a little murky on that. Got it.

Okay. Thank you very much. Thank you, sir.

MR. EMANUEL: And again I apologize. I do have a couple of comments once we left the record.

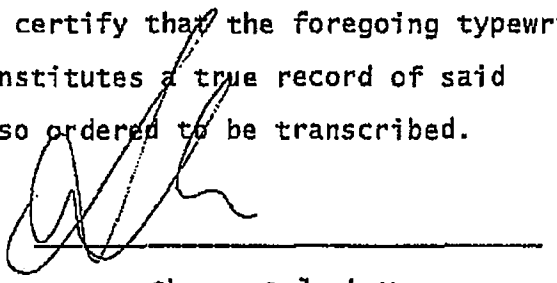
THE COURT: Yeah. okay. We can go off the record.

(WHICH WERE ALL THE PROCEEDINGS HAD).

C E R T I F I C A T E

I, Sharon Boleck Mroz, being a duly authorized and acting official court reporter for the United States District Court, for the Northern District of Indiana, Hammond Division, do hereby Certify that I did report in machine shorthand the foregoing proceedings, and that my shorthand notes So taken at said time and place were reduced to typewriting under my personal direction.

I further certify that the foregoing typewritten transcript constitutes a true record of said proceedings, so ordered to be transcribed.



Sharon Boleck Mroz
Official Court Reporter

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - X

ALTAGRACIA DIAZ, on behalf of herself and all others similarly situated,

Plaintiff,

-against-

RESIDENTIAL CREDIT SOLUTIONS, INC.,

Defendant.

- - - - - - - - - - - - - - - - - X

12 CV 3781

U.S. Courthouse
Central Islip, N.Y.

September 29, 2014
9:30 a.m.

TRANSCRIPT OF FAIRNESS HEARING

BEFORE:

HONORABLE ARTHUR D. SPATT, U.S.D.J.

APPEARANCES:

For the Plaintiff: LAW OFFICES OF KLEINMAN, LLC
626 Rexcorp Plaza
Uniondale, New York 11556
BY: ABRAHAM KLEINMAN, ESQ.

For the Defendant: LOWENSTEIN SANDLER, LLP
1251 Avenue of the Americas
New York, New York
BY: JASON HALPER, ESQ.

Court Reporter: HARRY RAPAPORT, CSR
United States District Court
100 Federal Plaza
Central Islip, New York 11722
(631) 712-6105

Proceedings recorded by mechanical stenography.
Transcript produced by computer-assisted transcription.

THE CLERK: Civil cause for fairness hearing, Diaz against Residential Credit Solutions, Inc.

THE COURT: Please state your appearances.

MR. KLEINMAN: Good morning, your Honor.

Law offices of Kleinman LLC, by Abraham Kleinman, for the plaintiff and the class.

THE COURT: Good morning.

MR. HALPER: Good morning, your Honor.

Jason Halper of Loweinstein Sandler LLP, for the defendant.

THE COURT: I didn't get your name, what is it.

MR. HALPER: Jason Halper, H-A-L-P-E-R.

THE COURT: Mr. Kleinman, you are interested in me approving this settlement, right?

MR. KLEINMAN: We are, your Honor.

THE COURT: Why?

MR. KLEINMAN: Your Honor, this is a case that involved a Fair Debt Collections Practices Act, where the plaintiff complained a violative collection letter.

With the assistance of your Honor we reached a settlement several months ago, and subsequent to that notice was sent out.

Notice was sent, your Honor, to 378 persons. Only 350 of those were effective and reached their destination.

Of those 350 notices that reached their destination, ninety-one persons opted into the class. Eighty-eight of those were timely, your Honor. Three were a bit late. And at this juncture, if your Honor approves the class, we would ask that the Court allows those three that were late to be included in the class.

Should your Honor approve the class and approve all 91 claim forms each member would receive $1,098.90.

THE COURT: $1,098 and 98 cents?

MR. KLEINMAN: 90 cents.

Plaintiff believes it is a terrific result for the class because in an ordinary situation the maximum amount a consumer could receive under the Act would be $1,000.

Here each class member, should the Court approve, would be getting in excess of the statutory amount listed in the Fair Debt Collections Practices Act.

Also at this time, your Honor, we would ask the class representative receive an incentive fee totalling $5,000 for her participation in the class.

THE COURT: That is Ms. Diaz. A male or female?

MR. KLEINMAN: A female, at Altagracia Diaz.

THE COURT: She is going to get 5,000?

MR. KLEINMAN: Should the Court approve.

The reason we ask for the incentive fee is

Ms. Diaz was very involved in the class, and followed the travel of the case, appeared for deposition, appeared for a conference before Magistrate Judge Tomlinson, and has been very effective and has followed the case in toto.

We would also ask, your Honor, that the Court approve the attorney's fees in the amount of $98,330.

THE COURT: That would be in addition to the 100,000?

MR. KLEINMAN: It would, your Honor.

THE COURT: And what is the hourly rate for that?

MR. KLEINMAN: My hourly rate was at $300, and Ms. Hardy in Illinois, if I can have a moment to double check, I believe that was at $325 per hour for Ms. Hardy of the Edelman Combs firm in Illinois.

THE COURT: And what about payments to the paralegal? What rate is being paid?

MR. KLEINMAN: They pay their paralegal between 100 and $125 per hour, your Honor.

THE COURT: Mr. Halper.

MR. HALPER: Good morning, your Honor.

We have no objection to the settlement.

The only thing that I would point out to your Honor is that in the proposed final order for approval of the class settlement that the plaintiff filed on September

24th, in paragraph one it does mention that there were 88 class members who submitted a timely claim firm.

So, if we are going to approve --

THE COURT: Which form are we talking about?

MR. HALPER: I'm sorry, your Honor.

The proposed final order, document 62-4 on the documents, which was filed by the plaintiff on September 24th.

MR. KLEINMAN: If the Court would like, your Honor, I can present a copy.

THE COURT: I don't see it. Can I see a copy?

MR. KLEINMAN: Can I approach?

THE COURT: Yes.

MR. KLEINMAN: Thank you.

(Handed to the Court.)

THE COURT: Just one minute.

I do have a copy. It is Exhibit C, for Charley, right?

MR. KLEINMAN: Yes, your Honor.

THE COURT: Okay.

You can return this.

MR. KLEINMAN: May I approach?

THE COURT: Yes.

So, you mentioned that the final order says 88 class members, when there actually are going to be 91 if I

approve the three late filings?

MR. HALPER: Yes.

THE COURT: I will approve the three late filings, so it will be 91.

MR. HALPER: Yes, your Honor.

We have no objection to that.

The only other thing I will mention, your Honor, in paragraphs 6 and 17 of the proposed final order, it states that the claims that are being released in this case are being dismissed without prejudice. We would just ask the claims be dismissed with prejudice.

I have conferred with Mr. Kleinman about that, and if you look at paragraph 21 --

THE COURT: Any objection to the dismissal with prejudice, Mr. Kleinman?

MR. KLEINMAN: Your Honor, we would be happy to dismiss it with prejudice after a period where an appeal might be filed.

THE COURT: Okay.

MR. HALPER: And that is fine with me.

If we were to do that, I would ask that paragraphs 6 and 17 be clarified.

THE COURT: You will have to amend that.

MR. HALPER: Yes.

THE COURT: Anything else?

MR. HALPER: Not from the defendant, your Honor.

MR. KLEINMAN: If I may, your Honor? I would just like the Court to note that there have been no objections or exclusions, and no one has appeared today.

However, I was informed that a Ms. Francine Moore, who was a claim member, whose claim was title, who the Court has since approved, was planning in attending today. And I do not see her in the Court.

I have a conference before Judge Feuerstein at 11:00 o'clock this morning, and if the Court allows I will stay to address the concerns.

THE COURT: What concerns does she have?

MR. KLEINMAN: She just wanted to see the proceedings, but nonetheless, if I can stay I will address any concerns she may have.

THE COURT: Anything else, counsel?

MR. KLEINMAN: No, your Honor.

THE COURT: This is one of the easiest class actions fairness hearings, I have ever been in. As a matter of fact, it is probably the only one in which there is no objection. And the attorney's fees are fair. That combination we rarely see.

We have a situation where under the statute the damages would be a thousand dollars a person generally with some exceptions, to the Fair Debt Collections

Practices Act violation. And here the claimants are going to receive $1,098.90. So they are a little bit ahead of the game.

I think that, therefore, the $100,000 to be distributed to the 91 class members is fair. Each class member, as I said would get $1,098.90, which is a little more than they would receive under the statute.

The $5,000 to the class representative is also in my opinion fair. She is the one who put the work in.

Also, the attorney's fees of $94,330 at rates of 300 and 325 dollars an hour is also fair.

The paralegal of 100 to 125, that is okay as well.

So that, surprisingly, everything in this agreement is fair. And I'm going to approve it in its entirety.

So, I want you to send me a final approval order with the revisions that counsel for the defendant has raised. And that is paragraph 17 has to be revised.

What is the other revision?

MR. HALPER: It was also paragraph six, your Honor, it was to be without prejudice.

THE COURT: Yes.

MR. HALPER: And I believe --

THE COURT: It is going to be with prejudice.

MR. HALPER: And paragraph 1 references there were 88 participating --

THE COURT: It has to be 91?

MR. HALPER: Yes.

THE COURT: So you will have to make those changes.

Send that to me with notice and I will sign it.

MR. KLEINMAN: Thank you, your Honor.

THE COURT: Okay.

This has been a very easy fairness hearing.

Thank you very much.

MR. KLEINMAN: Thank you, your Honor.

Just for completeness of the record, those members who do not cash their checks, those monies will go to the Legal Aid Society, your Honor.

THE COURT: Thank you.

This fairness hearing is concluded.

MR. HALPER: Thank you, Judge.

(End of proceedings.)

APPENDIX E

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

HARRIS N.A.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:09-cv-06661
	)	
ACADIA INVESTMENTS L.C., and LOREN W. HERSHEY,	)	Hon. Sidney I. Schenkier
	)	
	)	
Defendants.	)	

DECLARATION OF DAVID T.B. AUDLEY

I, David T.B. Audley, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct.

1. The undersigned is an attorney for BMO Harris Bank N.A. ("*Harris*") in this case and is authorized to make this Declaration on behalf of Harris in support of Plaintiff's Motion for Attorneys' Fees and Costs Pursuant to Fed.R.Civ.P. 54(D) and Local Rule 54.3 (the "*Motion*"). This Declaration is made based upon my personal knowledge of the facts contained herein.

2. I received my law degree from the University of Wisconsin in 1985. I am attorney licensed to practice in the State of Illinois. I am admitted to practice in the United States District Courts for the Northern District of Illinois, Southern District of Indiana, Eastern District of Wisconsin, Western District of Wisconsin and Massachusetts. I am also admitted to practice in the United States Courts of Appeals for the Seventh Circuit and Sixth Circuit.

3. I am a partner in the firm of Chapman and Cutler LLP. I have had primary responsibility for the services rendered in this case on behalf of Harris.

4. My current hourly rate is $745.00. My hourly rates in 2009, 2010 and 2011 were $560, $595 and $650, respectively. The hourly rates for the other attorneys and paralegals at Chapman and Cutler LLP who worked on this case are reflected in the table below.

Attorney/Paralegal	2009 Rate	2010 Rate	2011 Rate	2012 Rate
Terry McIroy	610.00	650.00	710.00	775.00
Leo Gagion	N/A	650.00	710.00	775.00
Michael Benz	560.00	595.00	650.00	715.00
Steve Hastings	560.00	595.00	650.00	715.00
Dan Baker	495.00	520.00	570.00	655.00
Jim Sullivan	470.00	500.00	530.00	575.00
Laura Appleby	285.00	335.00	390.00	455.00
David Standa	245.00	245.00	315.00	390.00
Kaitlin Corkran	245.00	290.00	365.00	
John Giazzon	200.00	210.00	225.00	235.00

5. These are the actual rates which Chapman and Cutler LLP charges and has charged paying clients (including Harris) in other cases for the types of services rendered in this case. These hourly rates fall within, and do not exceed, the prevailing market hourly rates in Chicago (and in the case of Leo Gagion and Kaitlin Corkran, in New York, as reflected by Mr. Gagion's Declaration also submitted with this Motion) for similar services by lawyers and paralegals of reasonably comparable skill, experience and reputation.

6. For services and disbursements incurred in connection with the representation of Harris in this case, Harris has paid or become obligated to pay attorneys' fees and costs to

Chapman and Cutler LLP in the total amount of $613,777.25, comprised of $19,747.00 in fees and $14.88 in costs as reflected on the detailed billing records and time entries attached as Exhibits 9, 10 and 11 to the Motion, $499,192.00 in fees and $72,047.83 in costs as reflected on the detailed billing records and time entries attached as Exhibits 12, 13 and 14 to the Motion, and $22,299.50 in fees and $476.04 in costs for Harris' local Virginia counsel as reflected on the detailed billing records and time entries as attached as Exhibits 15, 16 and 17 to the Motion.

7. The amount of fees requested in the Motion, and the hours expended by Chapman and Cutler LLP in its representation of Harris in this case, are reasonable. The referenced Exhibits to the Motion relate to discrete categories of fees and costs incurred by Harris as a result of Acadia's default under the Credit Agreement, and thereafter the enforcement of Harris' rights under the Credit Agreement, $15.5 Million Note and Hershey's $15.5 Million Guaranty, including post-default/pre-litigation efforts to resolve matters and thereafter the litigation itself, as well as post-judgment collection activities occurring in Chicago, Illinois, Fairfax County, Virginia, and New York City.

8. Specifically, the Chapman fees and costs identified at paragraph 11 of the Motion as "Matter No. 1679539," totaling $19,747.00 in fees, and $14.88 in costs, were incurred as a result of default under the Credit Agreement starting in February 2009, which resulted in, *inter alia*, the negotiation, drafting and execution of the Forbearance and Second Amendment between Harris, Acadia and Hershey, and before any litigation ensued in the Fall of 2009. The separate Chapman fees and costs identified at paragraph 11 of the Motion as "Matter No. 1966589", totaling $499,192.00 in fees, and $72,047.83 in costs, were incurred by Harris from August 2009 through February 1, 2012, and relate to activity after default occurred under the Forbearance and Second Amendment, which necessitated the issuance of a formal demand for payment and the subsequent litigation phase of the matter, including all post-judgment collection efforts. Those

post-judgment collection efforts, alone, include: (i) the utilization of a partner in Chapman's New York City Office, Leo Gagion, relating to domestication of the Judgment and enforcement efforts seeking to obtain over $1.5 million in distributions otherwise payable to Hershey, currently being held by a private equity fund, DLJ Private Equity Partners Fund II, L.P. (the *"DLJ Fund"*), which has now been the subject of objections filed by Hershey and his New York lawyers, as well as (ii) the utilization of a Virginia firm, McGuireWoods, to domesticate the Judgment in Fairfax County, Virginia (where Hershey resides), and thereafter to conduct post-judgment citation examinations of Hershey and other collection efforts.

9. Detailed reports of the fees and costs incurred (redacted as necessary to protect attorney client privilege) are attached hereto as Exhibits 9 through 17, as referenced in the tables above. These reports provide the name of the attorney or paralegal providing the services, a description of the services provided, the date(s) the services were provided, the amount of time expended for such services, and the charge for such services based upon the normal and customary hourly rate charged by each service provider. Costs are also broken down in these reports by the date incurred, line item description, and the amount(s) charged for each expense.

10. As to my direct participation in this credit and the litigation itself, in the Fall of 2009 default occurred under the Forbearance and Second Amendment, which was not cured by Acadia, necessitating pre-filing loan document reviews, meetings with Harris, and the preparation and issuance of default and demand notices, all as reflected in the detailed billing and time entries attached as Exhibit 12.

11. After multiple fruitless negotiations with Hershey were attempted to reach a non-litigation resolution, the lawsuit was prepared and filed in October, 2009, and thereafter prosecuted through summary judgment, which was opposed by Acadia and Hershey throughout, on multiple grounds.

12. Discovery was initiated by Acadia and Hershey, including document production and the depositions of multiple Harris employees. In addition, during the litigation, Harris sought to enforce its rights under the loan documents in seeking to obtain payment from the various private equity funds in which Acadia held an interest, and which had been pledged to Harris as collateral. These private equity funds, in turn, initiated extensive communications with Harris as to Acadia's capital call defaults thereunder, with multiple and lengthy discussions occurring with these private equity funds to try and accomplish a sale of these funds, which necessitated Acadia and Hershey's consent, but which was never obtained.

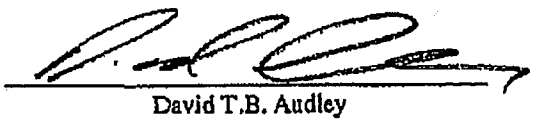
13. Continual subsequent attempts at settlement were also made by Harris to try and avoid further litigation costs. Settlement, however, could not be reached, requiring the preparation and filing of the summary judgment motion, statements and counter statements of material fact, and legal memoranda submitted by all of the parties. After summary judgment was granted, Hershey would not initially agree to resolve matters, including a relatively small interest rate issue that required extensive negotiations with counsel to Acadia and Hershey, ultimately resulting in a resolution of the issue per stipulation (but which Hershey subsequently, but unsuccessfully, attempted to withdraw from).

14. After the Judgment was entered, post-judgment collection activities were then initiated in this Court via the issuance of multiple third party citations, as well as the registration of the Judgment in Fairfax County, Virginia, and New York state court located in New York City. The Declarations of Leo Gagion of Chapman's New York office (Exhibit 3 the Motion), and Doug Foley of McGuireWoods' Norfolk, Virginia office (Exhibit 4 the Motion), describe these post-judgment activities.

15. In addition, Chapman has represented Harris in Hershey's efforts before this Court to enjoin or stay enforcement of the Judgment, Hershey's subsequent motion to quash third party

citations issued by the clerk of this Court, as well as Hershey's appellate efforts in the Seventh Circuit, including settlement conferences before the Seventh Circuit settlement panel. Chapman has also represented Harris against Hershey's more recent attempts to utilize the Acadia bankruptcy to enjoin further collection efforts by Harris.

16. All of these efforts are as set forth in the detailed billing and time entries attached to the Motion as Exhibits 12, 13 and 14.



David T.B. Audley

EXHIBIT 2

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

HARRIS N.A.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:09-cv-06661
	)	
ACADIA INVESTMENTS L.C., and LOREN W. HERSHEY,	)	Hon. Sidney I. Schenkier
	)	
	)	
Defendants.	)	

DECLARATION OF DANIEL W. BAKER

I, Daniel W. Baker, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct.

1. The undersigned is an attorney for BMO Harris Bank N.A. ("*Harris*") in this case and is authorized to make this Declaration on behalf of Harris in support of Plaintiff's Motion for Attorneys' Fees and Costs Pursuant to Fed.R.Civ.P. 54(D) and Local Rule 54.3 (the "*Motion*"). This Declaration is made based upon my personal knowledge of the facts contained herein.

2. I received my law degree from the University of Chicago in 1995. I am an attorney licensed to practice in the State of Illinois.

3. I am a partner in the firm of Chapman and Cutler LLP. I had primary responsibility for the services rendered in this case on behalf of Harris prior to the matter being transferred to our litigation department, where David Audley, a partner in our litigation group, assumed primary responsibility.

4. My hourly rates in 2009, 2010 and 2011 were $495, $520 and $570, respectively.

5. These are the actual rates which Chapman and Cutler LLP charges and has charged paying clients (including Harris) in other cases for the types of services I rendered to Harris in

this matter. These hourly rates fall within, and do not exceed, the prevailing market hourly rates in Chicago, Illinois for similar services by lawyers and paralegals of reasonably comparable skill, experience and reputation.

6. For services and disbursements incurred in connection with my representation of Harris in this case, Harris has paid or become obligated to pay attorneys' fees and costs to Chapman and Cutler LLP in the total amount of $19,761.85. This figure is comprised of $19,747.00 in fees and $14.88 in costs and expenses.

7. Detailed reports of these fees and expenses incurred to date are attached to the Motion as Exhibits 9, 10 and 11.

8. The amount of fees requested in the Motion, and the hours expended by myself and others under my supervision at Chapman and Cutler LLP in its representation of Harris in this matter, are reasonable. I was the principal attorney representing Harris in the preparation of the notice of acceleration, as well as the negotiation, preparation and execution of the Forbearance Agreement and Second Amendment to Credit Agreement (*"Forbearance and Second Amendment"*), after default occurred under the Credit Agreement, as well as other matters incident to the credit, including conferences with Harris and the review of letters to private equity funds, all of which are described in the time entries attached to the Motion as Exhibits 9, 10 and 11.

Daniel W. Baker

EXHIBIT 3

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

HARRIS N.A.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:09-cv-06661
	)	
ACADIA INVESTMENTS L.C., and LOREN W. HERSHEY,	)	Hon. Sidney I. Schenkier
	)	
	)	
Defendants.	)	

DECLARATION OF LEO V. GAGION

I, Leo V. Gagion, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct.

1. The undersigned is an attorney for BMO Harris Bank N.A. ("*Harris*") in this case and is authorized to make this Declaration on behalf of Harris in support of Plaintiff's Motion for Attorneys' Fees and Costs Pursuant to Fed.R.Civ.P. 54(D) and Local Rule 54.3 (the "*Motion*"). This Declaration is made based upon my personal knowledge of the facts contained herein.

2. I received my law degree from the Fordham University School of Law in 1984. I am an attorney licensed to practice in the State of New York. I am admitted to practice in the United States District Courts for the Eastern District of New York, Southern District of New York and Northern District of New York. I am also admitted to practice in the United States Courts of Appeals for the Federal Circuit, Second Circuit and Tenth Circuit.

3. I am a partner in the General Litigation Department of Chapman and Cutler LLP, headquartered in Chapman's New York City office. I have had primary responsibility for the post-judgment collection legal services rendered in this case on behalf of Harris in New York State Supreme Court, New York County.

4. My current hourly rate is $775.00. My hourly rate in 2011 was $710.00.

5. These are the actual rates which Chapman and Cutler LLP charges and has charged paying clients (including Harris) in other cases for the types of services rendered in this case. These hourly rates fall within, and do not exceed, the prevailing market hourly rates in New York City for similar services by lawyers and paralegals of reasonably comparable skill, experience and reputation.

6. For the 168 total hours for legal services and disbursements incurred from September 9, 2011 to February 1, 2012 in connection with my representation of Harris in this case to prosecute post-judgment collection activities in New York state court, Harris has paid or become obligated to pay attorneys' fees and costs to Chapman and Cutler LLP in the total amount of $123,245.00.

7. Detailed reports of these fees and expenses incurred to date for my representation of Harris in this matter are attached to the Motion as part of Exhibits 12 (one entry on September 7, 2011) and Exhibits 13 and 14.

8. The amount of fees requested in the Motion, and the hours expended by myself on behalf of Harris in this matter, are reasonable. From September 9, 2011 to February 1, 2012, I have devoted my time and attention to a number of different matters in connection with enforcing the Judgment obtained in this Court. Specifically, I devoted time and attention to the registration of the Judgment in this case with the New York State Supreme Court in New York County under Article 54 of the NY CPLR. My work included researching the process for such registration both in New York federal and state court, and the preparation of the judgment documents for filing with the New York State Supreme Court, including the preparation of a substantive affidavit supporting the filing of the Judgment. In addition, I devoted substantial time to commencing and prosecuting the matter of *BMO Harris Bank N.A. v. DLJ Private Equity*

Partners Fund II, Index No. 112067/2011 (N.Y. State Supreme, N.Y. Co.), a turnover action, pursuant to NY CPLR 5225(b) & 5227, that Harris commenced in October 2011, for the purpose of securing approximately $1.5 million in distributions that the DLJ Private Equity Fund owes to Loren W. Hershey, the Judgment Debtor in this matter, but had not yet paid to him. My work on this matter was extensive and included researching and drafting the Verified Petition, negotiating with the DLJ Private Equity Fund over the terms of the turnover, preparation of a proposed judgment for the turnover proceeding, and defense of an extensive motion of the Judgment Debtor, brought by Order to Show Cause, to intervene and vacate the New York Court's Order granting the Verified Petition. The defense of the Judgment Debtor's Motion consisted of substantial briefing of the issues to the Court (including an extensive Memorandum of Law and two substantive Affidavits) and preparation for and attending the hearing on the motion held on January 25, 2012.

Leo V. Gagion

EXHIBIT 4

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

BMO HARRIS N.A., Plaintiff,	)	
v.	)	No. 1:09-cv-06661
ACADIA INVESTMENTS L.C., and LOREN W. HERSHEY, Defendants.	)	Hon. Sidney I. Schenkier

DECLARATION OF DOUGLAS M. FOLEY

I, Douglas M. Foley, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct.

1. The undersigned is an attorney for BMO Harris Bank N.A. ("*Harris*") in this case and is authorized to make this Declaration on behalf of Harris in support of Plaintiff's Motion for Attorneys' Fees and Costs Pursuant to Fed.R.Civ.P. 54(D) and Local Rule 54.3 (the "*Motion*"). This Declaration is made based upon my personal knowledge of the facts contained herein.

2. I received my law degree from the George Mason University School of Law in 1992. I am an attorney licensed to practice in the Commonwealth of Virginia in all state and federal courts. I am admitted to practice in the State of North Carolina, the State of New York and the District of Columbia. I am also admitted to practice in the United States Courts of Appeals for the Fourth Circuit.

3. I am a partner in the firm of McGuireWoods LLP. I have had primary responsibility for the services rendered in this case on behalf of Harris.

4. My current hourly rate is $700.00. My hourly rate in 2011 was $650.00. The hourly rates for the other attorneys and paralegals at McGuireWoods LLP who worked on this case are reflected in the table below.

Attorney/Paralegal	2011 Rate	2012 Rate
Cullen Ann Drescher	$350.00	n/a
Connie Ferrell	$260.00	$270.00
Linda J. Neilson	$220.00	$240.00
Kenneth M. Misken	$450.00	n/a
Erin Q. Ashcroft	$365.00	$400.00

5. These are the actual rates which McGuireWoods LLP charges and has charged paying clients (including Harris) in other cases for the types of services rendered in this case. These hourly rates fall within, and do not exceed, the prevailing market hourly rates in Virginia for similar services by lawyers and paralegals of reasonably comparable skill, experience and reputation.

6. For services and disbursements incurred in connection with the representation of Harris in this case Harris has paid or become obligated to pay attorneys' fees and costs to McGuireWoods LLP in the total amount of $22,775.54. This figure is comprised of $22,299.50 in fees and $476.04 in costs and expenses.

7. Detailed reports of the fees and expenses incurred to date is attached to the Motion as Exhibits 15, 16 and 17).

8. The amount of fees requested in the Motion, and the hours expended by McGuireWoods LLP in its representation of Harris in this case, are reasonable.

Douglas M. Foley

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APPENDIX F

USAO ATTORNEY'S FEES MATRIX — 2015-2019

Revised Methodology starting with 2015-2016 Year

Years (Hourly Rate for June 1 – May 31, based on change in PPI-OL since January 2011)

Experience	2015-16	2016-17	2017-18	2018-19
31+ years	568	581	602	613
21-30 years	530	543	563	572
16-20 years	504	516	536	544
11-15 years	455	465	483	491
8-10 years	386	395	410	417
6-7 years	332	339	352	358
4-5 years	325	332	346	351
2-3 years	315	322	334	340
Less than 2 years	284	291	302	307
Paralegals & Law Clerks	154	157	164	166

Explanatory Notes

1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia (USAO) to evaluate requests for attorney's fees in civil cases in District of Columbia courts. The matrix is intended for use in cases in which a fee-shifting statute permits the prevailing party to recover "reasonable" attorney's fees. *See, e.g.,* 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412(b) (Equal Access to Justice Act). The matrix has not been adopted by the Department of Justice generally for use outside the District of Columbia, or by other Department of Justice components, or in other kinds of cases. The matrix does **not** apply to cases in which the hourly rate is limited by statute. *See* 28 U.S.C. § 2412(d).

2. A "reasonable fee" is a fee that is sufficient to attract an adequate supply of capable counsel for meritorious cases. *See, e.g., Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). Consistent with that definition, the hourly rates in the above matrix were calculated from average hourly rates reported in 2011 survey data for the D.C. metropolitan area, which rates were adjusted for inflation with the Producer Price Index-Office of Lawyers (PPI-OL) index. The survey data comes from ALM Legal Intelligence's 2010 & 2011 Survey of Law Firm Economics. The PPI-OL index is available at http://www.bls.gov/ppi. On that page, under "PPI Databases," and "Industry Data (Producer Price Index - PPI)," select either "one screen" or "multi-screen" and in the resulting window use "industry code" 541110 for "Offices of Lawyers" and "product code" 541110541110 for "Offices of Lawyers." The average hourly rates from the 2011 survey data are multiplied by the PPI-OL index for May in the year of the update, divided by 176.6, which is the PPI-OL index for January 2011, the month of the survey data, and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).

3. The PPI-OL index has been adopted as the inflator for hourly rates because it better reflects the mix of legal services that law firms collectively offer, as opposed to the legal services that typical consumers use, which is what the CPI-

Legal Services index measures. Although it is a national index, and not a local one, *cf. Eley v. District of Columbia*, 793 F.3d 97, 102 (D.C. Cir. 2015) (noting criticism of national inflation index), the PPI-OL index has historically been generous relative to other possibly applicable inflation indexes, and so its use should minimize disputes about whether the inflator is sufficient.

4. The methodology used to compute the rates in this matrix replaces that used prior to 2015, which started with the matrix of hourly rates developed in *Laffey v. Northwest Airlines, Inc*. 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985), and then adjusted those rates based on the Consumer Price Index for All Urban Consumers (CPI-U) for the Washington-Baltimore (DC-MD-VA-WV) area. Because the USAO rates for the years 2014-15 and earlier have been generally accepted as reasonable by courts in the District of Columbia, *see* note 9 below, the USAO rates for those years will remain the same as previously published on the USAO's public website. That is, the USAO rates for years prior to and including 2014-15 remain based on the prior methodology, *i.e.*, the original *Laffey* Matrix updated by the CPI-U for the Washington-Baltimore area. *See Citizens for Responsibility & Ethics in Washington v. Dep't of Justice*, 142 F. Supp. 3d 1 (D.D.C. 2015) and Declaration of Dr. Laura A. Malowane filed therein on Sept. 22, 2015 (Civ. Action No. 12-1491, ECF No. 46-1) (confirming that the USAO rates for 2014-15 computed using prior methodology are reasonable).

5. Although the USAO will not issue recalculated *Laffey* Matrices for past years using the new methodology, it will not oppose the use of that methodology (if properly applied) to calculate reasonable attorney's fees under applicable fee-shifting statutes for periods prior to June 2015, provided that methodology is used consistently to calculate the entire fee amount. Similarly, although the USAO will no longer issue an updated *Laffey* Matrix computed using the prior methodology, it will not oppose the use of the prior methodology (if properly applied) to calculate reasonable attorney's fees under applicable fee-shifting statutes for periods after May 2015, provided that methodology is used consistently to calculate the entire fee amount.

6. The various "brackets" in the column headed "Experience" refer to the attorney's years of experience practicing law. Normally, an attorney's experience will be calculated starting from the attorney's graduation from law school. Thus, the "Less than 2 years" bracket is generally applicable to attorneys in their first and second years after graduation from law school, and the "2-3 years" bracket generally becomes applicable on the second anniversary of the attorney's graduation (*i.e.*, at the beginning of the third year following law school). *See Laffey*, 572 F. Supp. at 371. An adjustment may be necessary, however, if the attorney's admission to the bar was significantly delayed or the attorney did not otherwise follow a typical career progression. *See, e.g., EPIC v. Dep't of Homeland Sec.*, 999 F. Supp. 2d 61, 70-71 (D.D.C. 2013) (attorney not admitted to bar compensated at "Paralegals & Law Clerks" rate); *EPIC v. Dep't of Homeland Sec.*, 982 F. Supp. 2d 56, 60-61 (D.D.C. 2013) (same). The various experience levels were selected by relying on the levels in the ALM Legal Intelligence 2011 survey data. Although finer gradations in experience level might yield different estimates of market rates, it is important to have statistically sufficient sample sizes for each experience level. The experience categories in the current USAO Matrix are based on statistically significant sample sizes for each experience level.

7. ALM Legal Intelligence's 2011 survey data does not include rates for paralegals and law clerks. Unless and until reliable survey data about actual paralegal/law clerk rates in the D.C. metropolitan area become available, the USAO will compute the hourly rate for Paralegals & Law Clerks using the most recent historical rate from the USAO's former *Laffey* Matrix (*i.e.*, $150 for 2014-15) updated with the PPI-OL index. The formula is $150 multiplied by the PPI-OL index for May in the year of the update, divided by 194.3 (the PPI-OL index for May 2014), and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).

8. The USAO anticipates periodically revising the above matrix if more recent reliable survey data becomes available, especially data specific to the D.C. market, and in the interim years updating the most recent survey data with the PPI-OL index, or a comparable index for the District of Columbia if such a locality-specific index becomes available.

9. Use of an updated *Laffey* Matrix was implicitly endorsed by the Court of Appeals in *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988) (en banc). The Court of Appeals subsequently stated that parties may rely on the updated *Laffey* Matrix prepared by the USAO as evidence of prevailing market rates for litigation counsel in the Washington, D.C. area. *See Covington v. District of Columbia*, 57 F.3d 1101, 1105 & n.14, 1109 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1115 (1996). Most lower federal courts in the District of Columbia

have relied on the USAO's *Laffey* Matrix, rather than the so-called "*Salazar* Matrix" (also known as the "LSI Matrix" or the "Enhanced *Laffey* Matrix"), as the "benchmark for reasonable fees" in this jurisdiction. *Miller v. Holzmann*, 575 F. Supp. 2d 2, 18 n.29 (D.D.C. 2008) (quoting *Pleasants v. Ridge*, 424 F. Supp. 2d 67, 71 n.2 (D.D.C. 2006)); *see, e.g., Joaquin v. Friendship Pub. Charter Sch.*, 188 F. Supp. 3d 1 (D.D.C. 2016); *Prunty v. Vivendi*, 195 F. Supp. 3d 107 (D.D.C. 2016); *CREW v. U.S. Dep't of Justice*, 142 F. Supp. 3d 1 (D.D.C. 2015); *McAllister v. District of Columbia*, 21 F. Supp. 3d 94 (D.D.C. 2014); *Embassy of Fed. Republic of Nigeria v. Ugwuonye*, 297 F.R.D. 4, 15 (D.D.C. 2013); *Berke v. Bureau of Prisons*, 942 F. Supp. 2d 71, 77 (D.D.C. 2013); *Fisher v. Friendship Pub. Charter Sch.*, 880 F. Supp. 2d 149, 154-55 (D.D.C. 2012); *Sykes v. District of Columbia*, 870 F. Supp. 2d 86, 93-96 (D.D.C. 2012); *Heller v. District of Columbia*, 832 F. Supp. 2d 32, 40-49 (D.D.C. 2011); *Hayes v. D.C. Public Schools*, 815 F. Supp. 2d 134, 142-43 (D.D.C. 2011); *Queen Anne's Conservation Ass'n v. Dep't of State*, 800 F. Supp. 2d 195, 200-01 (D.D.C. 2011); *Woodland v. Viacom, Inc.*, 255 F.R.D. 278, 279-80 (D.D.C. 2008); *American Lands Alliance v. Norton*, 525 F. Supp. 2d 135, 148-50 (D.D.C. 2007). *But see, e.g.*, *Salazar v. District of Columbia*, 123 F. Supp. 2d 8, 13-15 (D.D.C. 2000). Since initial publication of the instant USAO Matrix in 2015, numerous courts similarly have employed the USAO Matrix rather than the *Salazar* Matrix for fees incurred since 2015. *E.g.*, *Electronic Privacy Information Center v. United States Drug Enforcement Agency*, 266 F. Supp. 3d 162, 171 (D.D.C. 2017) ("After examining the case law and the supporting evidence offered by both parties, the Court is persuaded that the updated USAO matrix, which covers billing rates from 2015 to 2017, is the most suitable choice here.") (requiring re-calculation of fees that applicant had computed according to *Salazar* Matrix); *Clemente v. FBI*, No. 08-1252 (BJR) (D.D.C. Mar. 24, 2017), 2017 WL 3669617, at *5 (applying USAO Matrix, as it is "based on much more current data than the *Salazar* Matrix"); *Gatore v. United States Dep't of Homeland Security*, 286 F. Supp. 3d 25, 37 (D.D.C. 2017) (although plaintiff had submitted a "'great deal of evidence regarding [the] prevailing market rates for complex federal litigation' to demonstrate that its requested [*Salazar*] rates are entitled to a presumption of reasonableness, . . . the Court nonetheless concludes that the defendant has rebutted that presumption and shown that the current USAO Matrix is the more accurate matrix for estimating the prevailing rates for complex federal litigation in this District"); *DL v. District of Columbia*, 267 F. Supp. 3d 55, 70 (D.D.C. 2017) ("the USAO Matrix ha[s] more indicia of reliability and more accurately represents prevailing market rates" than the *Salazar* Matrix). The USAO contends that the *Salazar* Matrix is fundamentally flawed, does not use the *Salazar* Matrix to determine whether fee awards under fee-shifting statutes are reasonable, and will not consent to pay hourly rates calculated with the methodology on which that matrix is based. The United States recently submitted an appellate brief that further explains the reliability of the USAO Matrix vis-à-vis the *Salazar* matrix. *See* Br. for the United States as *Amicus Curiae* Supporting Appellees, *DL v. District of Columbia*, No. 18-7004 (D.C. Cir. filed July 20, 2018).

APPENDIX C

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

GLEN ELLYN PHARMACY, INC., on behalf of plaintiff and the class members defined herein,	)	
Plaintiff,	)	19 cv 5919
v.	)	
	)	Hon. John Robert Blakey
XSPIRE PHARMA, LLC, doing business as Saver Express; GENTEX PHARMA, LLC; WRASER, LLC; and JOHN DOES 1-10,	)	
Defendants.	)	

[PROPOSED] FINAL ORDER OF APPROVAL

On April 15, 2021, this Court entered an order granting preliminary approval (the "Preliminary Approval Order") of the settlement between Plaintiff Glen Ellyn Pharmacy, Inc. ("Plaintiff"), on its own behalf and on behalf of the Settlement Class (as defined below), and Defendants Xspire Pharma, LLC, doing business as Saver Express, Gentex Pharma, LLC and Wraser, LLC (collectively, "Defendants"). as memorialized in the Settlement Agreement (the "Settlement Agreement").

On September 8, 2021, the Court held a fairness hearing (the "Final Approval Hearing"), for which members of the Settlement Class had been given appropriate notice and were invited to appear, including those with any objections. An opportunity to be heard was given to all persons requesting to be heard in accordance with the Preliminary Approval Order. Having considered the Parties' Settlement Agreement, Plaintiff's Memorandum in Support of Final Approval of the Class Action Settlement and all other evidence submitted, and good cause having been shown,

IT IS HEREBY ORDERED THAT:

1. This Court has jurisdiction over Plaintiff, Defendants, members of the Settlement Class, and the claims asserted in the Litigation.

2. The Settlement Agreement was entered into in good faith following arm's length negotiations and is non-collusive.

3. This Court grants final approval of the Settlement Agreement, including, but not limited to, the releases therein, and finds that the settlement is in all respects fair, reasonable, and adequate, and in the best interests of all those affected by it. The Parties and their counsel shall implement and consummate the Settlement Agreement according to its terms and provisions. The Settlement Agreement is binding on, and has res judicata and preclusive effect in all pending and future lawsuits or other proceedings brought or maintain by or on behalf of Plaintiff and all other Settlement Class Members who have not opted out of the Settlement. Any pending actions addressing the same conduct and harm that is the subject of this Settlement Agreement shall be terminated based on the entry of this Final Judgment and Order. Any timely objections that were filed have been considered and are overruled. Accordingly, all members of the Settlement Class who have not opted out are bound by this Order finally approving the Settlement.

Class Certification

4. On September 15, 2021, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court entered an order entitled, "Order Preliminarily Approving Class Action Settlement and Class Notice" (the "Preliminary Approval Order").

5. The following Settlement Class is now finally certified for purposes of settlement pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3):

> All persons and entities who were successfully sent faxes by or on behalf of Xspire Pharma, LLC, d/b/a Saver Express; Gentex Pharma, LLC; and Wraser, LLC on or about August 4, 2019, promoting the commercial availability or quality of their goods or services which did. not contain an opt out notice as described in 47 U.S.C. § 227.

6. The Court finds that certification solely for purposes of settlement is appropriate in that: (a) the class is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the class that predominate over any questions affecting only individual class members; (c) Plaintiff's claims are typical of the claims of the class; (d) Plaintiff will fairly and adequately protect the interests of the class; (e) Edelman, Combs, Latturner & Goodwin, LLC is adequate class counsel; and (f) a class action is the superior method for the fair and efficient adjudication of this controversy.

6. Glen Ellyn Pharmacy, Inc. and Medicine to Go Pharmacies, Inc. are designated as representatives of the Settlement Class.

7. Dulijaza (Julie) Clark and Daniel A. Edelman of Edelman, Combs, Latturner and Goodwin, LLC are appointed as Class Counsel.

Class Notice

8. The Class Notice (as described in the Settlement Agreement) fully complies with the requirements of Federal Rule of Civil Procedure 23(c)(2)(B) and due process, constitutes the best notice practicable under the circumstances, and is due and sufficient notice to all persons entitled to notice of the settlement of the Action. The Court has approved the forms of notice to the Settlement Class.

9. With respect to the Settlement Class, this Court finds that certification is appropriate under Federal Rule of Civil Procedure 23(a) and (b)(3). Notice was given by facsimile and first-class U.S. Mail to each Settlement Class Member whose identity could be identified

through reasonable effort. Settlement Class Counsel also posted the Settlement Agreement (without exhibits) and Notice on its firm website, www.edcombs.com. The Class Notice and Settlement Agreement were also posted on www.Class-Settlement.com.

10. 1,495 valid claim forms have been submitted.

11. Plaintiff submitted the affidavit of Dorothy Sue Merriman of Class-Settlement.com to demonstrate that the "Notice of Class Action and Proposed Settlement" (the "Notice") was sent to the members of the Settlement Class as ordered in the Preliminary Approval Order. The Court finds that the Notice and the process by which it was sent: (1) fully complied with the requirements of Rule 23(c)(2)(B) and due process; (2) constituted the best notice practicable under the circumstances; (3) constituted notice that was reasonably calculated, under the circumstances, to apprise the members of the Settlement Class of the pendency of this Action, their right to object to or exclude themselves from the proposed Agreement and to appear at the Final Approval Hearing; and (4) constituted due and sufficient notice to all persons entitled to notice of the settlement of this lawsuit.

Objections and Opt-Outs

12. **No** member of the Settlement Class has filed an objection to the settlement. The Court has considered each of these objections carefully and has overruled them. None of these objections raised a valid concern about the Settlement Agreement.

13. Requests for exclusion have been submitted on behalf of the following entity / fax numbers which is hereby excluded from the Class and this case:

Bernens Convalescent Pharmacy, Inc.
5053 Glenway Avenue
Cincinnati, OH 45238
FAX Number: 513-471-1443

Class Compensation

14. In accordance with the terms of the Settlement Agreement, Defendants shall provide a total of three million and three hundred thousand dollars ($800,00.00) to create a Settlement Fund, less any costs advanced for notice and administrative expenses pursuant to the Settlement Agreement. No portion of the Settlement Fund shall revert back to Defendant.

15. As set forth in the Settlement Agreement, each member of the class who has submitted a timely and otherwise valid claim will be entitled to a *pro rata* share of amounts remaining in the Settlement Fund subsequent to deductions for costs of notice and administration expenses; attorneys' fees; and class representative award to Glen Ellyn Pharmacy, Inc. and Medicine to Go Pharmacies, Inc. The Settlement Administrator will cause delivery of payments to class members. As agreed between the parties, checks issued to the class members will be void sixty (60) days after issuance. Any money remaining from checks issued to claiming class members but not cashed shall be awarded to The Chicago Bar Foundation.

Releases

16. All claims or causes of action of any kind by Plaintiff and Settlement Class Members who have not timely opted out or otherwise excluded themselves from the Settlement Class are forever barred and released pursuant to the terms of the releases set forth in Paragraph 11 of the Settlement Agreement.

17. This lawsuit is dismissed with prejudice as to Plaintiff and all members of the Settlement Class (except that the dismissal shall be without prejudice as to those persons identified above who submitted valid exclusions), and without fees or costs except as provided for in the Settlement Agreement.

Award of Attorneys' Fees, Costs, and Incentive Award

18. The Court has considered Class Counsel's application for attorneys' fees. The Court awards Class Counsel the sum of $256,666.67 as an award of attorneys' fees to be paid from the Settlement Fund, and finds this amount of fees is fair and reasonable.

19. The Court grants Class Counsel's request for an incentive award to the class representatives and awards $7,500.00 to Glen Ellyn Pharmacy, Inc. and $2,500.00 to Medicine to Go Pharmacies, Inc. The Court finds that this payment is justified by the Class Representative's service to the Settlement Class. This payment shall be made from the Settlement Fund.

Other Provisions

20. The Court adopts and incorporates all of the terms of the Settlement Agreement by reference here.

21. The Parties to the Settlement Agreement shall carry out their respective obligations thereunder.

22. This Court retains continuing jurisdiction over this action, Plaintiff, all members of the Settlement Class, and Defendant to determine all matters relating in any way to this Final Approval Order and Judgment, the Preliminary Approval Order, or the Settlement Agreement, including, but not limited to, their administration, implementation, interpretation, or enforcement.

23. Neither the Settlement Agreement, the Preliminary Approval Order, this Order Finally Approving the Settlement, nor any of their provisions, nor any of the documents (including but not limited to drafts of the Settlement Agreement, the Preliminary Approval Order, Order Finally Approving the Settlement), negotiations, or proceedings relating in any way to the settlement, shall be construed as or deemed to be evidence of an admission or concession of any kind by any person, including Defendants, and shall not be offered or received in evidence in this

or any other action or proceeding except in an action brought to enforce the terms of the Settlement Agreement or except as may be required by law or court order.

24. Without further approval from the Court, the Parties may agree to and adopt such amendments, modifications, and expansions of the Settlement Agreement and its implementing documents (including Exhibit B to this Agreement) as (1) shall be consistent in all material respects with this Final Approval Order and Judgment, or (2) do not limit the rights of Settlement Class Members

25. The Settlement Class Administrator shall distribute the Net Settlement Fund to the Settlement Class Members in accordance with the provisions of this Order and the parties' Settlement Agreement, within thirty (30) days following the Effective Date as more fully set forth in the Settlement Agreement.

26. Within thirty (30) days of the Funding Date, Class Counsel shall file a notice with the Court affirming that the Settlement Fund was paid out as contemplated by the Settlement Agreement.

27. Any amounts remaining in the Settlement Fund after all distributions are made, inclusive of any second distribution payment to Class Members provided for in Settlement Agreement, if needed, are to be paid as a *cy pres* award to the Chicago Bar Foundation.

28. The Court finds that there is no just reason to delay the enforcement of or appeal from this Final Approval Order and Judgment.

ENTER:

Dated: _____

_____

United States District Judge