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

LOOP SPINE & SPORTS CENTER, LTD.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	22-cv-04198
	)	
AMERICAN COLLEGE OF MEDICAL QUALITY, INC., DANIEL J. MCLAUGHLIN, AFFINITY STRATEGIES, LLC,	)	
	)	
Defendants.	)	

PLAINTIFF'S MEMORANDUM IN SUPPORT
OF MOTION FOR PRELIMINARY APPROVAL

Plaintiff Loop Spine & Sports Center, Ltd. ("Plaintiff") respectfully submits this memorandum in support of its motion for preliminary approval of the class action settlement with Defendants American College of Medical Quality, Inc., ("ACMQ") and Daniel J. McLaughlin ("McLaughlin").

I. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE.

As the Seventh Circuit has recognized, federal courts strongly favor and encourage settlements, particularly in class actions and other complex matters, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain:

> It is axiomatic that the federal courts look with great favor upon the voluntary resolution of litigation through settlement. In the class action context in particular, there is an overriding public interest in favor of settlement. Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources.

Armstrong v. Bd. of Sch. Dirs. of Milwaukee, 616 F.2d 305, 312-13 (7th Cir. 1980) (citations and quotations omitted), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998); *see also Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996) ("Federal courts naturally favor the settlement of class action litigation."); 4 Alba Conte & Herbert B. Newberg, Newberg on Class Actions § 11.41 (4th ed. 2002) (citing cases).

Under Rule 23(e) of the Federal Rules of Civil Procedure, a class-action settlement may be approved if the settlement is "fair, reasonable, and adequate." *In re AT & T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 345 (N.D. Ill. 2010). "Approval of a class action settlement is a two-step process." *In re Northfield Labs., Inc. Sec. Litig.*, 06cv1493, 2012 U.S. Dist. LEXIS 12741, at *15 (N.D. Ill. Jan. 31, 2012) citing *In re AT & T Mobility*, 270 F.R.D. at 346 (quoting *Armstrong*, 616 F.3d at 314). "First, the court holds a preliminary, pre-notification hearing to consider whether the proposed settlement falls within a range that could be approved." *Id.* "If the court preliminarily approves the settlement, the class members are notified." *Id.*

Rule 23 – and particularly the portions thereof dealing with settlement – was amended in December 2018. The first step in the amended process requires that counsel submit the proposed terms of settlement to the district court, along with "information sufficient to enable [the court] to determine whether to give notice of the proposal to the class." Fed. R. Civ. P. 23(e)(1)(A) (2018). This is so the Court may make "a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms[.]" Fed. Judicial Ctr., Manual for Complex Litigation § 21.632 (4th ed. 2004); *see also* 4 Alba Conte & Herbert B. Newberg, Newberg on Class Actions, § 11.25 (4th ed. 2002).

Fed. R. Civ. P. 23(e) now states that grounds exist for class notice where the parties show that "the court will likely be able to (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B). Where, as here, the proposed settlement would bind class members, it may only be approved after a final hearing and a finding that it is fair, reasonable, and adequate, based on the following factors:

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

Fed. R. Civ. P. 23(e)(2). If the court preliminarily finds that the settlement is fair, adequate, and reasonable, it then "direct[s] the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing." *Id.*; Fed. R. Civ. P. 23(e)(1)(B) (2018).

The second step in the process is a final fairness hearing. Fed. R. Civ. P. 23(e)(2) (2018); see also Fed. Judicial Ctr Manual for Complex Litigation, § 21.633-34; *In re Northfield Labs*, 2012 U.S. Dist. LEXIS 12741, at *15-16. As explained below, consideration of these factors supports preliminary approval of the Settlement and issuing notice to the Class.

II. PLAINTIFF AND ITS COUNSEL HAVE ADEQUATELY REPRESENTED THE CLASS AND THERE HAS BEEN NO FRAUD OR COLLUSION.

By their very nature, class actions readily lend themselves to compromise because of the many uncertainties of outcome, difficulties of proof, and their often, lengthy duration. Indeed, there is an "overriding public interest in favor of settlement," particularly in class actions that have the well-deserved reputation as being most complex. *In re: Sears, Roebuck & Co. Front-loading Washer Prod. Liab. Litig.*, 06cv7023, 2016 U.S. Dist. LEXIS 25290, at *25 (N.D. Ill. Feb. 29, 2016); *Armstrong*, 616 F.2d at 313 ("Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources."). This matter is no exception. Here, the Plaintiff, ACMQ and McLaughlin entered into the settlement only after fact discovery was closed, the class was certified and both sides were fully apprised of the facts, risks, and obstacles involved with protracted litigation. Settlement discussions were conducted in good faith and at arm's length before Hon. Morton Denlow (Ret.) who has experience in resolving TCPA and other complex class action cases.

Plaintiff filed a complaint against ACMQ on August 10, 2022, alleging violations of the TCPA, Illinois Consumer Fraud Act, 815 ILCS 505/2 ("ICFA") and common law (conversion and trespass to chattels). ACMQ moved to dismiss the state law claims and the motion was granted in part, dismissing the ICFA claim. (*Dkt. 46*) Plaintiff later filed an amended complaint adding McLaughlin and Affinity, and all Defendants moved to dismiss the ICFA claim, which was granted. (*Dkt. 93, 99*) Affinity's motion to dismiss the amended complaint was granted without prejudice and with leave to refile. (*Dkt. 99*) Plaintiff subsequently filed a second amended complaint. All Defendants moved to dismiss the second amended complaint, and all motions were denied. (*Dkt. 253*) Defendants answered the second amended complaint and asserted numerous affirmative defenses.

The parties exchanged multiple rounds of written discovery requests and responses and conducted over 10 party and third-party depositions. Plaintiff issued numerous third-party subpoenas and engaged in discovery in Canada. The parties engaged in Fed. R. Civ. P. 37 discussions and filed multiple motions to compel. The parties completed fact discovery.

Plaintiff's contested motion for class certification was granted. (*Dkt. 298*) ACMQ filed a petition for interlocutory appeal pursuant to Fed. R. Civ. P. 23(f) to the Seventh Circuit Court of Appeals, which was denied. Following the filing of Plaintiff's motion for approval of the delivery of the notice of pendency of class action, Plaintiff, ACMQ and McLaughlin agreed to attend a mediation session with JAMS. All defendants opposed Plaintiff's motion for approval of the delivery of the notice of pendency of class action. The parties disagreed on several issues including, the number of faxes sent to the class members, whether Defendant's obtained permission from the fax recipients prior to the time the faxes were sent, and the identity of the class members.

At the time Plaintiff, ACMQ and McLaughlin agreed to attend a mediation, Plaintiff's counsel was satisfied that further protracted litigation may risk a recovery for the class or result in a reduction of the size of the class and thus, it was in the best interest of the class to explore resolution of this matter. Plaintiff, ACMQ and McLaughlin agreed to attend a mediation before Hon. Morton Denlow (Ret.) on February 5, 2026, and focused their efforts to reach a sensible resolution to this matter at this juncture. At the time of the negotiations, Plaintiff, ACMQ and McLaughlin completed fact discovery and were in a position to be able to place value on their respective positions in this case. Plaintiff and its counsel strongly believe that the proposed Settlement Agreement is fair and reasonable to the Class Members and should be granted preliminary approval.

Courts usually refuse to substitute their business judgment for that of counsel, absent fraud or overreaching. *Patterson v. Stovall*, 528 F.2d 108, 114 (7th Cir. 1976) ("In reviewing a proposed settlement, the court should consider the judgment of counsel and the presence of good faith bargaining."), *overruled on other grounds* by *Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998). *Id.* The adequacy of Plaintiff's representation is also satisfied because Plaintiff's interests are coextensive with, and not antagonistic to, the interests of the Settlement Class. *See G.M. Sign, Inc. v. Finish Thompson, Inc.*, 07cv5953, 2009 U.S. Dist. LEXIS 73869, at *15-*16 (N.D. Ill. Aug. 20, 2009). Because Plaintiff's claims are aligned with the claims of the other class members, Plaintiff has every incentive to vigorously pursue the claims of the class. Plaintiff has remained actively involved in this matter since its inception, contributing time and attention to the pre-suit litigation research, responding to written discovery, attending depositions, and staying involved in the settlement process. Further, Plaintiff is represented by qualified and competent counsel with extensive experience in litigating consumer class actions, and TCPA actions in particular. *See,* Appendix B, Declaration of Daniel A. Edelman. *Am.*

Int'l Grp., Inc. v. ACE INA Holdings, Inc., 07cv2898, 2012 U.S. Dist. LEXIS 25265, at *39 (N.D. Ill. Feb. 28, 2012)(quoting *Wal–Mart Stores, Inc. v. Visa USA, Inc.*, 396 F.3d 96, 116 (2d Cir.2005))("A 'presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery,'").

III. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE.

The question presented on a motion for preliminary approval of a class action settlement is whether the proposed settlement is "within the range of possible approval." *Armstrong*, 616 F.2d 305, 314 (7th Cir. 1980); *Kaufman v. Am. Express Travel Related Servs. Co., Inc.*, 264 F.R.D. 438, 447 (N.D. Ill. 2009); *Manual for Complex Litigation*, (4th ed.), §21.62 and §21.63.

To grant preliminary approval, a court need only find that there is "probable cause to submit the [settlement] proposal to class members and hold a full-scale hearing as to its fairness." *In re Traffic Exec. Ass'n-E. R.R.*, 627 F.2d at 634 (quoting *Manual For Complex Litigation* (3d ed.) § 1.46 n.10) (internal quotation marks omitted); *Newberg*, §11.25 (noting that "[i]f the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness . . . and appears to fall within the range of possible approval," the court should permit notice of the settlement to be sent to class members) (citations omitted).

In making this determination, courts consider several factors: "(1) the strength of the plaintiffs' case on the merits compared to the amount of the defendants' settlement offer, (2) an assessment of the likely complexity, length and expense of litigation, (3) an evaluation of the amount of opposition to the settlement among affected parties, (4) the opinion of competent counsel, and (5) the stage of the proceedings and the amount of discovery completed at the time of settlement." *Wong v. Accretive Health, Inc.*, 773 F.3d 859, 863 (7th Cir. 2014); *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 6467, 653 (7th Cir. 2006).

A. The Settlement Provides Adequate Relief to Class Members Given the Risks Posed by Continued Litigation

In evaluating a proposed settlement, courts recognize that the "essence of settlement is compromise" and will not represent a total win for either side. *Isby v. Bayh*, 75 F.3d 1191, 1200 (7th Cir.1996), quoting *Armstrong,* 616 F.2d 305, 315 (7th Cir.1980). Accordingly, the court is not called upon to determine whether the settlement reached by the parties is the best possible deal, nor whether class members will receive as much from a settlement as they might have recovered from victory at trial. *In re Tiktok, Inc., Consumer Privacy Litig.*, 565 F.Supp.3d 1076, 1087 (N.D. Ill. 2021), quoting *Kaufman v. Am. Express Travel Related Servs. Co., Inc.*, 877 F.3d 276, 285 (7th Cir. 2017); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F.Supp. 450, 534 (D.N.J.1997), *aff'd*, 148 F.3d 283 (3d Cir.1998); *E.E.O.C. v. Hiram Walker & Sons*, 768 F.2d 884, 889 (7th Cir.1985)." As courts in this Circuit noted, "[a] settlement need not provide the class with the maximum possible damages to be reasonable." *Douglas v. W. Union Co.*, 328 F.R.D. 204, 215 (N.D. Ill. 2018).

Because the traditional means for handling claims like those at issue here — individual litigation — would unduly tax the court system, require a massive expenditure of resources, and, given the small value of the claims of the individual class members, would be wholly impracticable, the proposed settlement is the best vehicle for Class Members to receive prompt and efficient relief.

The TCPA, 47 U.S.C. §227(b)(3), provides for injunctive relief and/or damages in the amount of "actual monetary loss from such a violation, or to receive $500.00 in damages for each such violation, whichever, is greater." The TCPA also provides that the court has discretion to award enhanced or treble damages "not more than 3 times the amount available" or $1,500.00, if defendant is found to have willfully or knowingly violated the statute. 47 U.S.C. §227(b)(3). Damages for the common law claims are actual and punitive damages.

Here, Plaintiff contends that junk faxes in the form of Exhibit A were sent, which could yield $3,600,000.00 (7,200 unique fax numbers x $500.00) in damages under the TCPA. This calculation assumes that Plaintiff is successful in proving liability against Defendants, and that no one opts out. Not to mention the considerable time and expense which may result from any procedural and substantive appeals at later stages of this litigation. Moreover, even successful litigation could ultimately result in minimal or no additional monetary relief for the class.

The maximum recovery for each class member also compares favorably to the recovery available in an individual action under the TCPA where a Court could award anything between $0.00 and $1,500.00 in statutory damages, actual damages, injunctive relief and costs. The maximum recovery for Class Members is $500.00, which is consistent with statutory damages under the TCPA and greater than actual damages under the common law claims.

Plaintiff estimates a high rate of success in sending the notice to the class as the fax numbers and addresses of the Class Member may be checked through the National Change of Address database and NPI Registry. Based on a conservative estimate of between 3% to 5% valid claims submitted, Plaintiff's counsel anticipates that each class member may receive approximately $487 (at 5% valid claims) to $500.00 (at 3% valid claims). A recovery within the range achieved here compares favorably with other TCPA fax settlements in this Circuit. *West Loop Chiropractic & Sports Injury Ctr., Ltd., et al. v. North Am. Bancard, LLC*, 16cv5856 (N.D. Ill.) (*Dkt. 324, 327*, $676.07 per fax transmission); *Sadowski v. Med1Online, LLC*, 07cv2973 (N.D. Ill.) (*Dkt. 214*, $414.89 per class member). In addition to a Settlement Website, the class notice will also be posted on www.edcombs.com.

To assert an individual claim, a class member would first have to recognize that his or her rights were violated, and then retain a lawyer, participate in discovery and possibly a deposition and wait through litigation. In contrast here Class Members need to submit a valid claim to receive a monetary payment.

Class litigation is oftentimes expensive, time-consuming, complex and risky and continued litigation may not result in a greater benefit to any class. Defendants deny liability, and therefore, Plaintiff would have to overcome challenges to obtain a favorable outcome. Plaintiff would need to succeed at summary judgment and trial. Without the Settlement Agreement, the Class Members could wait years for any potential payment on their alleged claims, the future value of which is unknown.

Moreover, it would be imprudent at this stage of the litigation to presume ultimate success on liability and thereafter. *Miller UK Ltd. v. Caterpillar, Inc.*, 17 F. Supp. 3d 711, 739 (N.D. Ill. 2014) ("[T]he reality known to first year law students [is] that juries are inherently unpredictable, and there is no such thing as a sure winner either in pretrial proceedings or at trial.") (internal citation omitted) "It is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced." *In re Nationwide Financial Services Litigation*, No. 2:08-CV-00249, 2009 U.S. Dist. LEXIS 126962, at *6 (S.D. Ohio, 2009), quoting, *West Virginia v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970), aff'd, 440 F. 2d 1079, 1085-86 (2d Cir.), cert. denied, 404 U.S. 871, 92 S. Ct. 81, 30 L. Ed. 2d 115 (1971); *In re General Motors Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 812 (3d Cir. 1995) (concluding that lengthy discovery and ardent opposition from the defendant were facts favoring settlement, which offers immediate benefits and avoids delay and expense). The proposed settlement is warranted by the length and expense of continued litigation.

B. Continued Litigation Would be Complex, Costly and Lengthy

Class settlement approval is also favored where "[s]ettlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation." *Schulte*, 805 F. Supp. 2d at 586. While Plaintiff's counsel strongly believes in the strength of the claims asserted, if this litigation continued, it would be lengthy, expensive and involve additional extensive motion practice, including possibly a motion for decertification, motions for summary judgment and various pretrial motions, as well as the possible retention of experts, preparation of expert reports, and expert depositions.

Additionally, even if the Settlement Class recovered a judgment at trial in excess of what is provided by the Settlement, post-trial motions and any appellate process would deprive them of any recovery for years, and possibly forever in the event of a reversal. Instead, the settlement provides Class Members who submit valid claims, nearly full, monetary recovery now, not years from now.

C. Reaction of Class Members Will be Evaluated at Final Approval

An analysis of the class members' reaction to the settlement is premature at this juncture. *In re AT & T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 349 (N.D. Ill. 2010). The Court should analyze this factor after the Class Notice is sent and the Class Members have had an opportunity to opt out of the Settlement. There are no other competing TCPA class action cases pending against Defendants.

D. Class Counsel Strongly Endorses the Settlement

The opinion of Class Counsel is also relevant to whether a settlement is fair, reasonable, and adequate under Rule 23." *Schulte,* 805 F.Supp.2d at 586-87; *Isby* at 1200. Many courts recognize that the opinion of experienced counsel supporting the settlement is entitled to considerable weight. *Armstrong*, 616 F.2d at 325; *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988); *Reed v. General Motors Corp*., 703 F.2d 170, 175 (5th Cir. 1983); *Weinberger v. Kendrick*, 698 F.2d 61, 74 (2nd Cir. 1982); *In re Mexico Money Transfer Litigation, supra*, 164 F. Supp. 2d at 1020. In fact, courts are "entitled to rely heavily on the opinion of competent counsel," *Gautreaux v. Pierce*, 690 F.2d 616, 634 (7th Cir. 1982) (quoting *Armstrong v. Board of School Directors, supra*, 616 F.2d at 325); *Isby v. Bayh, supra*, 75 F.3d at 1200.

Plaintiff's counsel are experienced in consumer class action litigation. (Appendix B). Based upon their analysis, the relief being offered to Class Members represents a significant recovery for the Class, particularly when weighed against Defendants' asserted defenses and the inherent risks of continued litigation. Class Counsel strongly endorses this settlement and believes it is a great result for the class.

E. Further Litigation is Unlikely to Result in Better Recovery to the Class

The last factor concerns the stage of the proceedings and amount of discovery completed at the time the settlement is reached. *Synfuel*, 463 F.3d at 653. This factor is significant because "it indicates how fully the district court and counsel are able to evaluate the merits of plaintiffs' claims." *Am. Int'l Grp., Inc. v. ACE INA Holdings, Inc.*, 07cv2898, 2011 U.S. Dist. LEXIS 84219, at *39-41 (N.D. Ill. July 26, 2011) (quoting *Armstrong*, 616 F.2d at 325) (internal quotations omitted). No further investigation, discovery and/or analysis would change Class Counsels' evaluation of this case or their opinion about this settlement. The parties completed fact discovery as detailed, *supra,* and were aware of the strengths and weaknesses of the merits and defenses at the time Plaintiff, ACMQ and McLaughlin reached an agreement. The resolution of this matter avoids further expense and delay and ensures a recovery for the class members.

Every case involves some level of uncertainty on the merits. *See In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000) ("Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them."). Settlements resolve that inherent uncertainty, and are therefore strongly favored by the courts, particularly in class actions. This action is not unique in this regard, and, absent settlement, the parties would be forced to continue to litigate complex issues and prepare for trial.

Following completion of fact discovery and class certification, Plaintiff, ACMQ and McLaughlin discussed certain risk factors concerning identification of the class members, ACMQ's finances, as well as the merits of Defendant's affirmative defenses.

Because class members may receive up to 100% of the statutory damages of what they could receive had Plaintiff prevailed on liability and damages on the TCPA claim, and because the settlement avoids the risk, time, and expense of continued litigation, the settlement is fair, reasonable, and adequate. As a result, the Court should approve the settlement. See *Shulte*, 805 F. Supp. 2d at 585-86

(N.D. Ill. 2011).

IV. THE METHOD OF PROVIDING RELIEF IS EFFECTIVE AND TREATS ALL CLASS MEMBERS FAIRLY.

"[T]he effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims," is also a relevant factor in determining the adequacy of relief. Fed. R. Civ. P. 23(e)(2)(C)(ii). The Committee Note to the 2018 amendments to Rule 23(e)(2) says that this factor is intended to encourage courts to evaluate a proposed claims process "to ensure that it facilitates filing legitimate claims. A claims processing method should deter or defeat unjustified claims, but the court should be alert to whether the claims process is unduly demanding." This settlement proposes the gold-standard in class member relief: cash payments. Cash awards will be distributed equally and at the same time to all Class Members who do not opt out and submit valid claims. The settlement relief is both effective and treats all members of the Class fairly, and the claim procedure proposed is consistent with the spirit of Rule 23(e)(2).

Rule 23(e)(1) requires the Court to "direct notice in a reasonable manner to all class members who would be bound by" a proposed settlement. Fed. R. Civ. P. 23(e)(1)(B); see also MCL 4th § 21.312. The best practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Here, the proposed form of notice does just that. (Exhibit 1 to Appendix A) The proposed notice is clear, and straightforward, and provides Class Members with enough information to evaluate whether to participate in the settlement. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 808 (1985)) (explaining a settlement notice must provide settlement class members with an opportunity to present their objections to the settlement). The claims process requires minimal effort. Class Members must provide their names, addresses, phone and fax numbers and affirm with a signature that they had the fax number on the claim form from August 6-10, 2022. Claims may be submitted by mail, fax or online through the settlement website.

The proposed Settlement provides for the Class Recovery to be paid to Class Members who submitted valid claims. Each Class Member who does not opt out and submits a valid claim will receive up to $500, or the amounts will be reduced *pro rata* so the total distribution to the Class is $175,000. Such distribution plans indicate equitable treatment of class members relative to each other. *T.K. v. Bytedance Tech. Co., Ltd., 19cv7915,* 2022 U.S. Dist. LEXIS 65322, at *42 (N.D. Ill. March 25, 2022). Generally, a settlement that provides for a *pro rata* share to each class member will meet this standard. *E.g., Burnett v. Conseco Life Ins. Co.,* No. 18cv0200, 2021 U.S. Dist. LEXIS 6510, at *23-24 (S.D. Ind. Jan. 13, 2021).

None of the Class Recovery will revert back to USLI, ACMQ or McLaughlin and if there are any uncashed settlement checks after distribution, those funds are awarded to a *cy pres* recipient, to be selected by the parties and subject to court approval. *Schulte*, 805 F. Supp. 2d at 591; *See also, Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 499 [*747] (N.D. Ill. 2015) ("A cumbersome claims process is particularly suspect in the case of a reversionary settlement, that is, a settlement under which the defendant recaptures unclaimed funds"), citing *Schulte* and *Pearson v. NBTY, Inc.*, 772 F.3d 778, 783 (7th Cir. 2014) (observing that the imposition of an unduly burdensome claims process typically benefit defendants who stand to recover leftover funds). Indeed, the Seventh Circuit instructs that "[m]oney not claimed by class members should be used for the class's benefit to the extent that is feasible…" *Ira Holtzman, C.P.A. v. Turza*, 728 F.3d 682, 689 (7th Cir. 2013).

V. CONCLUSION.

For the foregoing reasons, Counsel for Plaintiff and the Class believe that the settlement of this action on the terms and conditions set forth in the Settlement Agreement is fair, reasonable, and adequate, and would be in the best interest of the class members. Plaintiff respectfully requests that this Court enter an order in the form of Exhibit 2 to the Settlement Agreement, which (i) grants preliminary approval of the Settlement Agreement attached hereto as Appendix A; (ii) directs the dissemination of the Class Notice and a Claim Form in the form of Exhibit 1 to the Settlement Agreement by fax or First Class U.S. Mail as set forth in the Settlement Agreement, and (iii) sets dates for submission of Claim Forms, opt-outs, appearances and objections, and schedules a hearing for final approval under Fed. R. Civ. P. 23(c)(2).

Respectfully submitted,

s/ Heather Kolbus
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CERTIFICATE OF SERVICE

I, Heather Kolbus, hereby certify that on June 4, 2026, I caused a true and accurate copy of the foregoing document to be filed via the Court's CM/ECF online system, which sent notice via email to all counsel of record.

s/ Heather Kolbus
Heather Kolbus