UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY KERRIGAN, LORI MIKOVICH and RYAN M. VALLI, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

VISALUS, INC., a corporation, et al.,

Defendants.

Case No. 2:14-cv-12693
Hon. Matthew F. Leitman

PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Class Representatives Timothy Kerrigan, Lori Mikovich and Ryan Valli acting individually and on behalf of the Settlement Class, file this Unopposed Motion for Final Approval of the Class Action Settlement preliminarily approved by this Court (the "Motion" to approve the "Settlement"). The Settlement resolves all individual and Class claims that were made, or could have been made, in Plaintiffs' Fourth Amended Complaint relating to the ViSalus IP Program (Dkt. 196).

This Motion is filed pursuant to the schedule set by this Court in its June 14, 2019 Order Granting Preliminary Approval of Settlement, Dkt. 230, and as modified on June 27, 2019, Dkt. 231, certifying this Settlement Class, appointing the Class

Representatives, appointing Class Counsel, approving the notice to the Class, and setting the Final Fairness Hearing for October 1, 2019. In support of this Motion, Plaintiffs rely upon the accompanying Memorandum of Law, and exhibits thereto.

Respectfully submitted: September 9, 2019.

SOMMERS SCHWARTZ, P.C.

s/ Andrew Kochanowski
Andrew Kochanowski (P55117)
One Towne Square, Suite 1700
Southfield, MI 48076
(248) 355-0300
akochanowski@sommerspc.com

s/ Matthew J.M. Prebeg
PREBEG, FAUCETT & ABBOTT, PLLC
Matthew J.M. Prebeg
(TX Bar No: 00791465)
Brent T. Caldwell
(TX Bar No: 24056971)
Attorneys for Plaintiffs
8441 Gulf Freeway, Suite 307
Houston, TX 77017
(832) 743-9260
mprebeg@pfalawfirm.com
bcaldwell@pfalawfirm.com

s/ Mark R. Miller
WEXLER WALLACE LLP
Edward A. Wallace
(IL Reg. No. 6230475)
Mark R. Miller
(IL Reg. No. 6283542)
55 W. Monroe Street, Suite 3300

Chicago, IL 60603
(312) 589-6272
EAW@wexlerwallace.com
MRM@wexlerwallace.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY KERRIGAN, LORI MIKOVICH and RYAN M. VALLI, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

VISALUS, INC., a corporation, et al.,

Defendants.

Case No. 2:14-cv-12693
Hon. Matthew F. Leitman

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

TABLE OF CONTENTS

ISSUE PRESENTED

Whether this Court should grant final approval of the Settlement Agreement, settling this class action, which this Court preliminarily approved on June 14, 2019 (Dkt. 70)?

Answer: Yes.

TABLE OF AUTHORITIES

Cases

Rules

This brief is submitted in support of final approval of a class action Settlement between Plaintiffs and Defendants to settle all individual and Class claims that have, or could have, been made in Plaintiffs' Fourth Amended Complaint (Dkt. 196) relating to the ViSalus IP Program.[1]

This Settlement satisfies Fed. R. Civ. P. 23 and is fair, reasonable, and adequate. Therefore, Plaintiffs and Class Representatives request that this Court grant final approval of this class action Settlement.

I. INTRODUCTION

This class action lawsuit was initially filed on July 9, 2014 (Dkt. 1) by Plaintiffs Timothy Kerrigan, Lori Mikovich and Ryan Valli, later appointed by this Court as Class Representatives, acting individually and on behalf of the Settlement Class, alleging nine counts against over thirty separate defendant entities, including ViSalus, Inc. ("ViSalus"), Nick Sarnicola, Robert Goergen, Sr., Todd Goergen, Ryan Blair, Blake Mallen, Frank Varon, Kyle Pacetti, Jr., Michael Craig, Timothy Kirkland, Holley Kirkland, Aaron Fortner, Rachel Jackson, Tara Wilson, Anthony Lucero, Rhonda Lucero, Jake Trzcinski, Gary J. Reynolds, Kevin Merriweather, Ropart Asset Management Fund I, LLC, Ropart Asset Management Fund II, LLC, Living Trust Dated 9/30/1991 f/b/o Robert B. Goergen, OCD Marketing, Inc., Power

[1] Capitalized terms in this Motion have the same meaning given to them in the parties written settlement agreement (the "Settlement Agreement"), Dkt. 228-2.

Couple, Inc., Arrive By 25, Inc., BAM Ventures, Inc., Gooder, LLC, Red Letters, LLC, M-Power Path, Inc., A Berry Good Life, Inc., Network Dynamics America Corp., Freedom Legacy, LLC, Residual Marketing, Inc., Got Heart Global, Inc., Jaketrz, Inc., Mojos Legacy, LLC, Beachlifestyle Enterprises, LLC, Wealth Builder International, Prospex Automated Wealth Systems, Inc., 9248-2587 Quebec, Inc., Jason O'Toole, and Lori Petrilli (collectively "Defendants"). The Fourth Amended Complaint, Dkt. 196, alleged counts of fraud and malfeasance in connection with a nutritional product multi-level marketing company, ViSalus, Inc., alleged by Plaintiffs as a scheme to defraud the independent promoters ("IPs") recruited by the company out of fees charged to become, and maintain their status as, IPs. These counts included civil RICO, violations of the Michigan Consumer Protection Act, Unjust Enrichment, Statutory and/or Common Law Conversion, Civil Conspiracy, violations of the Michigan Franchise Investment Law, and a request for an accounting and constructive trust.

This case was aggressively pursued by the Plaintiffs and Class Representatives for five years, against vigorous defenses that included at least six (6) motions to dismiss on various points of fact and law (Dkts. 168, 169, 170, 204, 205, and 207), and a motion to strike Plaintiffs' Class allegations (Dkt. 185) filed by multiple Defendants. The Plaintiffs responded to each of these motions (Dkts. 171, 172, 174, 215, 216, and 207) and to the motion to strike the Class allegations (Dkt.

189), and amended their complaint on four separate occasions. The Plaintiffs conducted extensive written discovery, deposed eight (8) of Defendants' fact witnesses and Defendants' expert, and presented themselves for deposition. They submitted their expert's report, and filed a detailed motion for class certification (Dkt. 115).

The Parties engaged in arms-length settlement negotiations conducted with the assistance of a mediator, Mr. Thomas G. McNeill. These sessions included three full-day mediation sessions. The first two sessions were held in Detroit, Michigan in 2017 and 2018, and the third session was held in New York, New York in October 2018. The parties have also engaged in multiple telephonic discussions with the mediator and counsel for the parties and their insurers in 2018 and 2019. After extensive review of the products of discovery and independent investigations, the prevailing law, and the risks presented, and after three full-day mediations, the Plaintiffs concluded that this Settlement, the terms of which are set out in the written Settlement Agreement, Dkts. 228-2 and 229-1, is best for the Class, and Defendants have agreed to the terms.

The Court considered and gave preliminary approval to the Settlement Agreement on June 14, 2019. Dkt. 230. By its Order Granting Preliminary Approval of Settlement, Dkt. 230, the Court also certified the Settlement Class, approved the notice plan for the Class, appointed Class Representatives, appointed Class Counsel,

approved the notice plan for the Class, and set the Final Fairness Hearing for October 1, 2019. The notice plan approved by the Court has been accomplished and all prerequisites for final approval have been met.

II. LEGAL STANDARD FOR FINAL APPROVAL

"[T]here is a strong public interest in encouraging settlement of complex litigation and class action suits because they are notoriously difficult and unpredictable and settlement conserves judicial resources." *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 532 (E.D. Mich. 2003). The law favors the voluntary settlement of class action litigation, and when considering approval, "the court evaluates the proposed class action settlement 'in light of the general federal policy favoring the settlement of class actions.'" *IUE-CWA v. Gen. Motors Corp.*, 238 F.R.D. 583, 593 (E.D. Mich. 2006) (*quoting UAW v. GM*, 2006 WL 891151, at *12). With preliminary approval, "the settlement is presumptively reasonable, and an individual who objects has a heavy burden of proving the settlement is unreasonable." *In re Southern Ohio Correctional Facility*, 173 F.R.D. 205, 211 (S.D. Ohio 1997); *See also Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir. 1983).

III. SETTLEMENT TERMS

Pursuant to the Settlement Agreement, the Settlement Class is defined as:

> All current or former independent promoters ("IPs") of ViSalus who reside in the United States or Canada that lost money as a ViSalus IP between July 9, 2008 and the Preliminary Approval

Date (June 14, 2019). In determining whether an IP lost money between July 9, 2008 and the Preliminary Approval Date, the following calculation was used:

a. $49.00 of the cost of any ViSalus promoter system purchased (regardless of additional amounts spent above $49.00); plus

b. the costs spent on Vi-Net; plus

c. all renewal fees paid by the IP, minus

d. all commissions received by the IP; minus

e. the value of all free product received by the IP (including, but not limited to, free products received as part of the *3 for Free* promotion); and minus

f. the value of all Vi Points earned by the IP.

The Settlement Agreement provided the Class Members who had not previously released claims against Defendants with two settlement options. Class Members could choose a cash payment option or a benefits option. By default, a Class Member that did not choose a cash payment option was automatically awarded the benefits option.

Excluded from the Settlement Class, even if they meet the criteria above, were (i) IPs who profited from ViSalus (that is, earned more as a ViSalus IP than they paid ViSalus); (ii) Defendants, and any IPs owned, controlled or otherwise affiliated with any defendant other than merely the IP's status as an IP; (iii) the presiding judge(s) and his or her (or their) immediate family; (iv) any individual that elects to

be excluded from the Settlement Class; and (v) any person who had previously released claims against Defendants or whose claims had been fully and finally adjudicated by a court with jurisdiction over the claims.

Each Class Member choosing a cash payment option receives a cash payment of $25 or $50, subject to possible reduction depending on the number of Class Members choosing this option. The maximum amount to be paid out under the Cash Option is $4,535,000, and Class Members who elected the Cash Option shall be terminated as IPs and will no longer be eligible to receive benefits as IPs.

Each Class Member awarded the benefits option receives the following benefits (besides any other benefits to which he or she may be entitled as an IP):

a. 25% Commission Rate on all sales (both first time sales and subsequent sales) personally made by the Class Member to customers who purchase product from ViSalus for the first time after the Effective Date (i.e., new customers) for one (1) year from the Effective Date;

b. 35% Product Discount on up to $1,000.00 in product purchases made by the Class Member at normal IP (i.e., wholesale) prices for one (1) year from the Effective Date (up to $1,000.00 in product purchases for only $650.00);

c. Free re-enrollment as an IP on the Basic enrollment track (no purchase necessary) for one (1) year from the Effective Date;

d. Free event registration for one (1) event, if any are held, for one (1) year from the Effective Date, and if none are held within one (1) year, then free event registration for the next held event, if held within eighteen (18) months from the Effective Date; and

e. Free Vi-Net Pro Subscription for:

(i) one (1) year from the Effective Date for all Settlement Class Members who choose the free re-enrollment listed in Section (c) above and who previously paid for Vi-Net Pro; or

(ii) six (6) months from the Effective Date for all Settlement Class Members who choose the free re-enrollment listed in Section (c) above and who did not previously pay for Vi-Net Pro.

In addition to the cash and benefits available to the Class, ViSalus also agreed to the following substantial corporate reforms and injunctive relief for a period of three (3) years from the Effective Date of the Settlement.

a. Within thirty (30) days of the Effective Date, ViSalus will publish and maintain a retail price list for all products on its corporate website which will be prominently available to all IP's and customers;

b. ViSalus will prominently disclose in the IP Application and the ViSalus Policies and Procedures that any product purchases are optional and

that IPs are not required to purchase or stock inventory as a condition of doing business;

c. ViSalus will not compensate IPs primarily for the act of recruiting or registering other IPs;

d. ViSalus will maintain a policy allowing buy backs of product at commercially reasonable terms for a period of at least 30 days from purchase;

e. When making sales-based bonus payments or incentives to IP's, ViSalus will condition such payments or incentives on reasonably reliable reported levels of sales to end-user consumers (*i.e.*, non-IP customers) and IPs who purchase product for personal consumption;

f. ViSalus will not make any false or misleading representations regarding IPs who are parties to a special compensation agreement with any IP named as a defendant in the ViSalus Action;

g. ViSalus will maintain a compliance department and have and enforce rules requiring IP compliance with applicable law; and

h. ViSalus will not make any representations regarding its relationship with Blyth, the Goergen family, or its sales activity between 2010 and 2014 that are false or misleading.

Under the terms of the Settlement Agreement, Class Counsel sought the following incentive awards for the three Class Representatives in recognition of the

amount of time and effort they expended in acting as Representatives of the Settlement Class: (i) Timothy Kerrigan, $15,000.00; (ii) Lori Mikovich, $10,000.00; and (iii) Ryan Valli, $10,000.00. Defendants did not oppose this request for incentive awards. ViSalus has also agreed to pay the incentive awards, up to these stated amounts. *See* Dkt. 232.

Also, under the terms of the Settlement Agreement, Class Counsel filed an application for an award of attorneys' fees and costs of four million, two hundred and sixty-five thousand dollars ($4,265,000), Dkts. 232, 233.[2] Defendants did not oppose this request, and any award approved by the Court (up to $4,265,000) will be paid by ViSalus out of funds that are separate from and in addition to the payment of the Settlement amounts available to the eligible members of the Settlement Class.

The Settlement provides there will be a release of claims such that all Class Members who do not file a timely notice of exclusion are forever enjoined and barred from asserting any of the matters, claims or causes of action released pursuant to the Settlement Agreement, and any such Settlement Class Member are deemed to have forever released the Released Persons from any and all such matters, claims and causes of action as provided for in the Settlement Agreement. *See* Dkt. 228-2.

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE.

[2] Class Counsel's Motion for an Award of Attorneys' Fees, Litigation Costs, and Expenses, Dkts. 232 and 233, ECF p. 19, estimated almost 400,000 class members. Consultation with the Settlement Administrator revealed the actual number was slightly more than 300,000 members.

To assess the fairness, adequacy and reasonableness of a class action settlement, the Court considers the following factors:

(a) the likelihood of success on the merits weighed against the amount and form of the relief offered in the settlement;

(b) the risks, expense, and delay of further litigation;

(c) the judgment of experienced counsel who have competently evaluated the strength of their proofs;

(d) the amount of discovery completed and the character of the evidence uncovered;

(e) whether the settlement is fair to the unnamed class members;

(f) objections raised by class members;

(g) whether the settlement is the product of arm's length negotiations as opposed to collusive bargaining; and

(h) whether the settlement is consistent with the public interest.

Sheick v Auto Component Carrier, LLC, No. 09-14429, 2010 WL 3070130, at *11 (E.D. Mich., Aug. 2, 2010) (citing *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 522 (E.D. Mich.2003)).

Given the circumstances surrounding the Class Members' enrollment in the ViSalus IP program, the prevailing law, the risks and challenges associated with

securing a finding of liability, and the length of time necessary for executing on any final judgment, this is a fair and reasonable Settlement under any standard.

A. SETTLEMENT WAS REACHED THROUGH ARM'S LENGTH NEGOTIATIONS WITHOUT FRAUD OR COLLUSION.

Courts presume the absence of fraud or collusion in class action settlements unless there is evidence to the contrary. *IUE-CWA v. Gen'l Motors Corp.*, 238 F.R.D. 583, 598 (E.D. Mich. 2006). Courts also consider whether the settlement was reached with the assistance of a mediator. *See, e.g.*, *Dallas v. Alcatel-Lucent USA, Inc.*, No. 09–14596, 2013 WL 2197624, at *8-9 (E.D. Mich. May 20, 2013). This Settlement was reached after three separate full-day mediations with a highly qualified mediator, Thomas G. McNeill, while the parties continued to zealously litigate their claims and defenses.

B. THE SETTLEMENT PROVIDES PROMPT PAYMENT TO THE CLASS AND AVOIDS RISKS.

"[M]ost class actions are inherently complex and settlement avoids the costs, delays, and multitude of other problems associated with them." *In re Telectronics Pacing Sys, Inc.*, 137 F. Supp. 2d 985, 1013 (S.D. Ohio 2001). Courts view class action settlements favorably because they avoid the costs, delays, and other problems inherently associated with class actions. *In re Delphia Corp. Sec., Derivative & "ERISA" Litig.*, 248 F.R.D. 483, 497 (E.D. Mich. 2008). The

settlement of this case spares the parties and Class Members the time, costs, and risks associated with pursuing this case through trial and appeal.

The Court certified this Class for settlement purposes. Dkt. 230. Before this Settlement was reached, the Class Representatives filed an extensive brief in support of their initial motion for certification in January of 2017. Defendants opposed that initial motion for certification, and moved to strike the Class allegations. No class certification hearing was held, however, as the question of certification was deferred while the parties continued to conduct discovery and to resolve Defendants' various motions to dismiss. At the time this Settlement was reached, three of Defendants' motions to dismiss were pending, and additional discovery was necessary, including additional expert reporting and discovery.

The Court has resolved several legal issues raised in other dispositive motions, but there are still numerous hurdles in this case – hurdles that could take years to get over. As mentioned above, the Court has not decided the contested certification issue. Even if they were to win on that issue, Plaintiffs would still need to prove the elements of their causes of action, overcome the various defenses on the merits raised by multiple Defendants, and prevail at trial. And regardless of whether the Class Representatives had won their bid for class certification, and then prevailed at trial, they faced the possibility of an interlocutory appeal of the certification order and an eventual appeal of a final judgment. The Class

Representatives and Class Counsel have also considered the risks associated with attempting to collect on any judgment obtained through trial, and affirmed on appeal. These risks were real, and the resources and costs to overcome them were significant.

C. SUBSTANTIAL DISCOVERY PROVIDED PLAINTIFFS ACCESS TO SUFFICIENT INFORMATION TO REACH THIS SETTLEMENT.

The parties conducted extensive discovery in order to gain the information and documents necessary to make an informed decision to reach this Settlement. Plaintiffs conducted rigorous pre-trial fact and data collection, and after filing suit, engaged in extensive written discovery that yielded volumes of important documents and information relevant to their claims and defenses. Plaintiffs deposed eight (8) of Defendants' fact witnesses and Defendants' expert, ultimately collecting more than enough facts and data to develop and submit a detailed expert report that supported their motion for class certification. Plaintiffs had the necessary and sufficient information to reach this Settlement.

D. SUCCESS ON THE MERITS WAS NOT GUARANTEED.

Plaintiffs were confident their putative class action would be certified, and that they would win on the merits of their claims. However, prevailing before this Court, and potentially on appeal, on each of the questions of certification, liability, and damages was far from guaranteed. The Court had not ruled on Plaintiffs' initial,

opposed motion for class certification, but rather deferred the hearing on that motion. At the time this Settlement was reached, three of Defendants' dispositive motions were pending, and the case had not yet been set for trial.

"The fairness of each [class action] settlement turns in large part on the bona fides of the parties' legal dispute." *UAW v. General Motors Corp.*, 497 F.3d 615, 631 (6th Cir. 2007). This inquiry does not require the Court to decide the merits of the case or resolve unsettled legal questions, but to judge the fairness of the compromise, the Court must weigh the plaintiffs' likelihood of success on the merits. *Id.* The Court must resolve "whether the parties are using settlement to resolve a legitimate legal and factual disagreement." *Id.* at 632.

Because of the uncertainties associated with this class action lawsuit, success on the merits was not guaranteed for any party, and this Settlement resolved legitimate legal and factual disagreements.

E. CLASS COUNSEL BELIEVE THAT THE SETTLEMENT IS REASONABLE.

The Class Counsel are experienced complex litigation and class action litigators, who fully appreciate the complexity of Plaintiffs' claims, the risks associated with a trial on the merits and eventual appeal, and the obstacles commonly blocking Plaintiffs from timely collecting on a judgment. Class Counsel fully appreciate the value of this Settlement to the Class.

Courts give substantial weight to the experience of the attorneys who prosecuted the case and negotiated the settlement. *IUE-CWA*, 238 F.R.D. at 597. The Class Counsel considered the risks associated with not settling, and the value of this Settlement to the Class Members, and believe this Settlement is reasonable.

F. THE SETTLEMENT IS FAIR TO ABSENT CLASS MEMBERS.

Each Class Member that does not opt-out of this Settlement may either continue to operate as a ViSalus IP, but with a package of benefits that provide substantial economic opportunities to the IP, or may choose to receive approximately 50% of the initial funds they paid to ViSalus to become a promoter (aside from funds paid for product, samples, etc.). This is a substantial percentage of recovery of the Class Members' initial payment. And each Class Member, as well as other individuals that join ViSalus as a promoter in the future, will benefit from the structural changes ViSalus will implement as a result of this Settlement. Yet the incentive fees proposed for the Class Representatives for their five years of service to the Class are modest. The Settlement is fair and does not improperly favor the Class Representatives over the interests of the Class Members. *Cf. Pelzer v. Vassalle*, 655 Fed. Appx. 352 (6th Cir. 2016).

G. THE PUBLIC INTEREST IS SERVED BY THE SETTLEMENT.

Through this Settlement, each Class Member receives a substantial benefit, and future ViSalus IPs will enjoy structural changes and assurances that are intended

to ensure they are treated fairly. The Settlement preserves significant judicial resources by avoiding the time and funds necessary to conduct and resolve a class certification hearing, a trial on the merits, and the many additional motions by the parties before trial. "[T]here is a strong public interest in encouraging settlement of complex litigation and class action suits because they are notoriously difficult and unpredictable and settlement conserves judicial resources." *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 532 (E.D. Mich. 2003).

V. THE NOTICE PLAN HAS BEEN ACCOMPLISHED

A. THE CLASS HAS RECEIVED NOTICE.

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice 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 . . . The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance.

Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

Rule 23(c)(2)(B) requires that "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Here, the notice provisions ("Notice Plan") in the Settlement Agreement, approved by this Court, fulfilled this standard. The notice and related claim election form, Dkts. 228-3, 228-4, and 228-5, clearly and unambiguously described the nature of the claims at issue

in this class action, the effects of Settlement on the Class Members, and options available to the Class Members.

This Court appointed Epiq Class Action & Claims Solutions as the Settlement Administrator to accomplish the Notice Plan, including sending notice to the Class Members and processing Class Member elections, opt-outs, and any objections. The Settlement Administrator also maintained, and still maintains, both a toll-free number and a settlement website by which the Settlement notice and important documents filed in this case are and have been available for public inspection.

As of the date of filing this Motion, the Settlement Administrator has identified 300,282 Class Members, and has accomplished notice to the vast majority of the Class Members. The last report by the Settlement Administrator indicates that as of August 30, 2019, the Administrator reported only 7,082 undelivered notices, which is slightly more than 2% of the Class. *See* Exhibit 1, Report attached to Declaration of Andrew Kochanowski.

Pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S. C. § 1715, on May 31, 2019 the Settlement Administrator sent ninety-nine (99) CAFA notice packages concerning this Class Action Settlement to officials throughout the United States, which included the Attorney General of the United States, the Attorneys General of each of the 50 states, the District of Columbia and Puerto Rico, and securities regulators for the 50 states (excluding Alaska, Delaware, Idaho, North

Dakota, Rhode Island, and South Dakota). The notice packages included the Complaints in this action, the Motion for Preliminary Approval of Settlement, the Class Action Settlement Agreement, and other related documents. *See* Exhibit 2, Declaration of Stephanie J. Fiereck, and exhibits attached thereto.

B. NO OBJECTIONS WERE MADE TO THIS SETTLEMENT.

As of August 30, 2019, according to the report of the Settlement Administrator, no person or entity has timely objected to this Settlement, or any aspect of this Settlement. *See* Exhibit 1.

C. FEW CLASS MEMBERS OPTED OUT OF THE SETTLEMENT.

As of August 30, 2019, according to the report of the Settlement Administrator (Exhibit 1), of the approximately 300,282 Class Members, only eighteen (18) have timely submitted an election to opt-out of the Settlement. The Class Members opting out of this class action Settlement are:

Individual or Entity	Indep. Promoter No.
Johnny Volpe, Laval, QC, CN	3396754
Victoria Hughes, Hinton, Alberta, CN	1822936
Cynthia Cialdella, Laval, QC, CN	2757479
Alison Belgrave, Ottawa, CN	1330764
Carlos Ubinas, Miami, FL	2502998
Jean-Michel Moulin, Victoriaville, QC, CN	1621357

Kimberley Earl, Melfort, SK, CN	3462962
Maxime Lacoursiere, Richmond, BC, CN	2329006
Benoit Giguere, Sherbrock, QC, CN	1269371
Caroline Dombroskie, Street, MD	3953459
Christopher Scarfo, Roxboro, QC, CN	514227
Youri Durocher, St-Andre-d'Argenteuil, QC, CN	1631810
Claire Durocher, St-Andre-d'Argenteuil, QC, CN	1837926
Claudette Grondin, Sherbrooke, QC, CN	1269648
Claudie Giguere, Montreal, QC, CN	1235982
Shakeel Khan, Surrey, BC, CN	1422532
Victoria Loughlin, Penhold, AB, CN	667640
Willington Tique	1247502

VI. CONCLUSION

The Class Representatives believe that this Settlement is in the best interests of the Class and meets the requirements for final approval. Therefore, for the reasons set forth herein, they respectfully ask the Court for final approval of this Settlement.

Respectfully submitted: September 9, 2019,

SOMMERS SCHWARTZ, P.C.

s/ Andrew Kochanowski
Andrew Kochanowski (P55117)
Jason J. Thompson (P47184)
Attorneys for Plaintiffs
One Towne Square, Suite 1700
Southfield, MI 48076
(248) 355-0300
akochanowski@sommerspc.com
jthompson@sommerspc.com

PREBEG, FAUCETT & ABBOTT, PLLC
Matthew J.M. Prebeg
(TX Bar No: 00791465)
Brent T. Caldwell
(TX Bar No: 24056971)
Attorneys for Plaintiffs
8441 Gulf Freeway, Suite 307
Houston, TX 77017
(832) 743-9260
mprebeg@pfalawfirm.com
bcaldwell@pfalawfirm.com

WEXLER WALLACE LLP
Edward A. Wallace (IL Reg. No. 6230475)
Mark R. Miller (IL Reg. No. 6283542)
Attorneys for Plaintiffs
55 W. Monroe Street, Suite 3300
Chicago, IL 60603
(312) 589-6272
mrm@wexlerwallace.com
EAW@wexlerwallace.com

CERTIFICATE OF SERVICE

I certify that on September 9, 2019, I caused the forgoing paper to be electronically filed with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record on the ECF Service List.

s/ Andrew Kochanowski
Andrew Kochanowski (P55117)
Sommers Schwartz, P.C.
One Towne Square, Suite 1700
Southfield, MI 48076
(248) 355-0300
akochanowski@sommerspc.com