

1 (In open court.)

2 THE CLERK: 15 C 5569, West v. Act II Jewelry.

3 THE COURT: That's going to have to go at the end.

4 THE CLERK: Oh, sorry. Okay.

5 THE COURT: It's going to take a few minutes.

6 (The Court attends to other matters.)

7 THE CLERK: Okay. 15 C 5569, West v. Act II Jewelry.

8 MR. McLAWHORN: Good morning, your Honor. Todd
9 McLawhorn on behalf of the plaintiffs.

10 THE COURT: Good morning.

11 MR. LIU: Good morning, your Honor. Ke Liu on behalf
12 of plaintiffs.

13 MR. BALFOUR: Good morning, your Honor. Ronald
14 Balfour for defendants.

15 MR. McLAWHORN: We also have our client Cindy West,
16 who is the lead --

17 THE COURT: All right.

18 MR. McCARTHY: -- plaintiff, with us.

19 THE COURT: Good morning, Ms. West.

20 MS. WEST: Good morning.

21 THE COURT: All right. This is up on a motion for
22 final approval of a settlement of a class action case.

23 My first question is, since there's been public notice
24 of this, is there anyone here who is an objector to this
25 settlement? I've received two written objections, but parties

1 are -- this has been noticed up for today, and individuals are
2 free to come to court to orally raise objections. Is there
3 anyone here who is objecting to the -- or wants to be heard on
4 plaintiffs' motion for final approval of class action
5 settlement?

6 (No response.)

7 THE COURT: All right. Not only is there no one
8 objecting, there's no one in the courtroom other than court
9 personnel, my externs, and the lawyers.

10 All right. Well, I had a couple questions. First,
11 there's an issue about late claims, 159 valid but late claims.
12 I'm going to include those in with the valid claims. They
13 should be counted, and those people who filed a late claim
14 should be compensated consistent with whatever their --
15 whatever their membership in a class is.

16 Secondly, there was repeated reference in this to the
17 fact that Act II Jewelry, which is a Delaware limited liability
18 corporation doing business as Lia Sophia, was out of business.
19 Did they file bankruptcy, or what was their status?

20 MR. McLAWHORN: They did not file bankruptcy. They
21 sold off the rest of their inventory and closed their business.
22 They're no longer operating as a going concern.

23 THE COURT: All right. And although Victor Kiam, III,
24 was dismissed from an original complaint based on Judge
25 Der-Yeghiayan's order, he was added to an amended complaint.

1 Is he participating? Is he a defendant who is part of the
2 settlement? I saw his signature on the --

3 MR. BALFOUR: He did agree to the settlement, yes.

4 THE COURT: All right. And how is this being funded
5 if Act II Jewelry is out of business and has sold off all their
6 assets?

7 MR. McLAWHORN: They have an insurance policy, and
8 they have Mr. Kiam.

9 THE COURT: Okay.

10 MR. McLAWHORN: I don't know what the allocation is
11 between the two.

12 THE COURT: Okay. All right. Fair enough. All
13 right.

14 All right. Well, you can all have a seat because I'm
15 going to make some findings, and it's going to take a few
16 minutes.

17 MR. McLAWHORN: Thank you, your Honor.

18 MR. BALFOUR: Thank you, your Honor.

19 THE COURT: All right. Act II Jewelry, LLC, did
20 business as Lia Sophia and sold costume jewelry to consumers
21 through a party-planning method that utilized sales advisers
22 who sold jewelry at parties hosted for that purpose, similar to
23 the method used by Avon and Tupperware.

24 On December 14th -- December 1st, 2014, Act II
25 announced that it would wind down its direct sales business,

1 including fulfillment of claims under the lifetime replacement
2 guarantee which they gave to its full-price jewelry that was
3 sold.

4 There was some -- there are many thousands of people
5 who were involved in this -- many thousands of people involved
6 as customers, but scores of people involved as sales advisers.
7 And when Act II shut down its business, a class action was
8 filed by Ms. West and other plaintiffs. There were mediations
9 held on this case, and, finally, a settlement was obtained.

10 There were three classes -- three distinct types of
11 classes that were named as plaintiffs in this case:

12 Approximately 15 to 20,000 former Act II sales
13 advisers whose customer information had been utilized by Act II
14 to compete against them in Act II's post-closing selloff of
15 over \$11 million in inventory.

16 That's significant because those sales advisers had
17 been told that the only sales of this jewelry would be done by
18 them and Act II itself would never compete with them. Their
19 job as a sales adviser would be to go out and sell to
20 consumers, but that would be the only way a person could obtain
21 this jewelry, through a purchase from a sales adviser. So the
22 company was acting, in that sense, contrary to its
23 representations to the sales advisers. And so that's one of
24 the classes.

25 There are approximately 4 million customers who had

1 purchased jewelry within the past four to five years whose
2 jewelry was no longer guaranteed to be replaced upon return.
3 That's in violation of the representation made by the sales
4 advisers based on the corporate representation that anyone
5 whose jewelry was purchased could get it replaced upon return.
6 Not lost jewelry, but anyone dissatisfied with the jewelry
7 could get it replaced.

8 Finally, there were approximately 1,000 to 2,000 new
9 sales advisers who joined Act II while, unbeknownst to them,
10 Act II was planning on closing. There's monies they had to pay
11 to become a sales adviser, for kits and other materials, and
12 they allege that Act II acted improperly by taking that money,
13 full well knowing they were going to be shutting down the
14 business.

15 The three classes then contain nearly 4 million class
16 members, and a notice plan was devised to reach all the
17 members. There was a huge amount of -- and I'll get into it in
18 more detail, but a huge number of people who were contacted
19 and, frankly, a huge number of people that actually responded
20 and made claims. There were over 158 -- there was over 158,000
21 valid and timely claims that were made, and coupled with the
22 late claims, there's a total of 158 -- 158,225 valid claims.

23 So those are the three classes that were involved.

24 And there were expenses from the settlement
25 administration process of some 1.3 million. The settlement

1 itself is for \$6.7 million in cash that the defendants have --
2 are providing to a non-reversionary settlement fund.
3 Non-reversionary means none of it's going back to the
4 defendant. That is correct?

5 MR. McLAWHORN: Yes, your Honor.

6 THE COURT: Okay. All right.

7 There are three separate classes, and there's three
8 separate mechanisms on how they're going to be paid.

9 The consumer class, or the customer class, will
10 receive benefits based on their -- based on the tier that
11 they're associated with, which is determined by the amount of
12 jewelry they purchased, with benefits anywhere from \$8 up to
13 \$24 per claim.

14 The sales adviser class is going to receive monies
15 based on a percentage of the sales they made between
16 January 1st, 2014, and August 17th, 2014, and that translates
17 to payments of between \$15 and change up to almost -- over
18 \$7,400, with an average payment of \$426 and a median payment of
19 \$151.

20 Then, finally, the new sales adviser class are going
21 to receive full reimbursements of their cost of their initial
22 starter kits, ranging from \$99 to \$149.

23 There was a claims rate of 3.92 percent of the
24 customer class, 16.84 percent of the sales adviser class, and
25 15.58 of the new sales adviser class. A casual observer would

1 think that's a low return rate, but having now sat through a
2 number of class action -- approved a number of class action
3 settlements, surprisingly, a return rate of anywhere from 4 to
4 16 percent is actually a fairly large return rate.

5 Most people don't want to participate in a class
6 action process either because, frankly, they didn't want to
7 return the jewelry that they bought or, if they did want to
8 return it, they didn't have the sales -- the modest amount of
9 information they would have needed to file a claim form. Some
10 people just choose not to participate in this process.

11 So I've been surprised since I became a judge how low
12 these return rates are, but these rates are no different than
13 those I've seen in all the other class actions I've approved
14 since -- in the five and a half years I've been a judge.

15 There are incentive awards to class representatives,
16 which I'll speak to in a minute, and then there's attorneys'
17 fees of 1.8 million, which I'll speak to in a moment.

18 I believe the settlement class should be certified
19 because it meets all the requirements of Rule 23. Plaintiffs
20 seek certification of the settlement classes under Rule 23(b),
21 which requires that (1) the questions of law or fact common to
22 all class members predominate over issues affecting only
23 individual members; (2) the maintenance of a class action would
24 be superior to other available methods for the fair and
25 efficient adjudication of the controversy.

1 And each of the proposed settlement classes meets the
2 requirements of 23(a) and (b). Therefore, I believe
3 certification is appropriate.

4 23(a)'s -- Rule 23(a)'s first requirement, numerosity,
5 is satisfied where the class is so numerous that joinder of all
6 members is impractical. Here the settlement class comprises
7 three classes -- settlement agreement comprises three classes.
8 There's 3,930,219 individuals in the customer class, 19,069
9 individuals in the sales adviser class, and 2,709 individuals
10 in the new sales adviser class. These classes easily satisfy
11 the numerosity requirement.

12 The commonality element requires that there are
13 questions of law or fact common to the class. That's under
14 Federal Rule of Civil Procedure 23(a)(2). Here the settlement
15 classes share numerous common questions of fact and law that
16 predominate over issues affecting only individual settlement
17 class members. Those common factual and legal issues are set
18 forth in pages 15 and 16 of the motion for approval of the
19 class action settlement. I will not read them verbatim, but
20 I'll give examples.

21 The customer class, a common question is whether
22 defendant Act II offered a lifetime replacement guarantee on
23 its jewelry and whether Act II -- defendant Act II breached the
24 contract of the terms of its sale with those customers that
25 purchased products with lifetime replacement guarantees.

1 Examples of the common questions for the sales adviser
2 class are whether defendants sold supplies and jewelry to their
3 sales advisers and encouraged their sales advisers to purchase
4 supplies and jewelry while planning to close and subsequently
5 precluded the sales advisers from recouping those expenditures
6 and whether defendants actively concealed that they were
7 closing from their sales advisers.

8 Examples of the common questions for the new sales
9 adviser class is whether defendants sold individual starter
10 kits to new sales advisers and encouraged new sales advisers to
11 purchase initial starter kits while planning to close and
12 subsequently precluded the new sales advisers from recouping
13 those expenditures and whether defendants actively concealed
14 that fact, the fact that they were closing, from the new sales
15 advisers.

16 So I find that in this case, common questions
17 predominate for the settlement class because defendants'
18 alleged unlawful conduct presents common questions with regard
19 to all proposed settlement class members.

20 So in the context of the proposed classwide
21 settlement, the predominance requirement is satisfied because
22 liability and damages would have been decided predominantly, if
23 not entirely, based on common evidence of defendants' conduct.

24 Rule 23 also requires that a plaintiff's -- that
25 plaintiffs' claims be typical of other class members' claims.

1 Typicality is very closely related to commonality. Here,
2 plaintiffs Hollander, Ballon, and the customer class allege
3 that they purchased jewelry from Act II that was accompanied by
4 a lifetime guarantee.

5 I will ask plaintiffs and defense. Are the named
6 plaintiffs in this case in any way related to any member of the
7 law firms involved in this case?

8 MR. McLAWHORN: No, your Honor.

9 MR. BALFOUR: No, your Honor.

10 THE COURT: Okay. All right.

11 Plaintiffs Hollander, Ballon, and the customer class
12 allege that they were similarly injured by Act II when Act II
13 unilaterally revoked the lifetime guarantee. Therefore,
14 plaintiffs Hollander and Ballon -- Ballon's claims are typical
15 of those of the customer class.

16 Similarly, plaintiffs West, Esposito, Roman, and the
17 sales adviser class allege they worked as sales advisers for
18 Act II, continued to purchase jewelry and supplies from Act II
19 based on defendants' representations and omissions that Act II
20 was doing business as usual and had no plans to close. They
21 were all similarly harmed when Act II suddenly ceased
22 operations and usurped their customer lists, and therefore
23 plaintiffs West, Esposito, and Roman's claims are typical of
24 those of the sales adviser class.

25 Finally, plaintiffs Zimmerman and the new sales

1 adviser class allege they purchased initial starter kits from
2 Act II based on defendants' representations and omissions that
3 Act II would continue to operate and had no plans to close.
4 Zimmerman and the new sales adviser class were similarly harmed
5 when Act II suddenly ceased operations. Therefore, plaintiff
6 Zimmerman's claims are typical of those of the new sales
7 adviser class.

8 Accordingly, the claims of each sales -- each class
9 representative is typical of the class she seeks to represent.

10 The final Rule 23(a) prerequisite requires that a
11 proposed class representative fairly and adequately protect the
12 interests of the class. To do that, they must have a
13 sufficient stake in the outcome to ensure zealous advocacy,
14 they have no claims antagonistic or conflicting with the claims
15 of other class members, and are represented by qualified,
16 experienced counsel.

17 I have reviewed the affidavit of Mr. McLawhorn. The
18 lead plaintiffs have no interests antagonistic to the interests
19 of the other settlement class members. And I've also reviewed
20 the affidavit and the Sipurut firm résumé. Plaintiffs' counsel
21 are well-respected members of the legal community. They've
22 appeared in front of me in the past, so I have personal
23 experience with them. They've regularly engaged in major
24 complex litigation and have significant experience in consumer
25 class actions involving similar issues, scope, and complexity.

1 So I believe the adequacy of representation requirement is
2 satisfied.

3 In addition to satisfying Rule 23(a), a plaintiff
4 seeking certification must satisfy one of the provisions of
5 Rule 23(b). 23(b)(3) provides that matters pertaining to a
6 finding of superiority include the interest of members of the
7 class in individually controlling the prosecution or defense of
8 separate actions, the extent and nature of any litigation
9 concerning the controversy already commenced by or against
10 members of the class, the desirability or undesirability of
11 concentrating the litigation of the claims in the particular
12 forum, and the difficulties likely to be encountered in the
13 management of a class action.

14 Clearly the present class action is superior to other
15 methods for a fair and efficient adjudication of plaintiffs'
16 and other settlement class members' claims. The burden and
17 expense of trying any of these cases, bringing them
18 individually or trying them individually, significantly
19 outweighs this method of resolution. It would be impossible,
20 quite frankly, for individual members of the class to obtain
21 effective relief both because of the complexity of the issues
22 and because the expense involved would far outweigh any
23 recovery for any one individual.

24 So, in sum, the settlement classes meet the
25 requirements of Rule 23(a) and Rule 23(b)(3) and are certified.

1 I believe the proposed settlement is fair and should
2 receive final approval. I have to determine -- the Seventh
3 Circuit requires me to -- I review several factors and analyze
4 them. The factors I need to analyze are the -- before
5 giving -- whether I should give final approval include the
6 strength of the case for plaintiffs on the merits balanced
7 against the extent of a settlement offer; the complexity,
8 length, and expense of further litigation; the amount of
9 opposition to the settlement; the reaction of the members of
10 the class to the settlement; the opinion of competent counsel;
11 and the stage of the proceedings and the amount of discovery
12 completed.

13 The most important factor relevant to the fairness of
14 a class action settlement is the strength of plaintiffs' case
15 on the merits balanced against the amount offered in the
16 settlement. The plaintiffs Hollander and Ballon allege the
17 defendants breached their contracts, violated the ICFA,
18 committed common-law fraud, and were unjustly enriched.

19 By failing to honor the promise of lifetime guarantees
20 on jewelry they sold and by unilaterally repudiating the terms
21 of the lifetime replacement guarantee, even though defendants
22 knew they wouldn't honor the lifetime guarantee upon closure of
23 the business, plaintiffs West, Esposito, and Roman allege
24 defendants violated the ICFA, committed common-law fraud, and
25 were unjustly enriched by continuing to encourage their sales

1 advisers to purchase jewelry from Act II, by assuring the sales
2 advisers they would never bypass them and sell directly to
3 customers, and by taking their sales advisers' customer
4 information and using it to compete against them.

5 Finally, Zimmerman -- plaintiff Zimmerman alleges that
6 the defendants violated the ICFA and committed common-law fraud
7 by encouraging new sales advisers to purchase initial starter
8 kits, even though the defendants knew they -- the new sales
9 advisers would never recoup their expenditures because Act II
10 was going out of business.

11 So all of these plaintiffs have sustained damages
12 through their reliance on defendants' various statements and
13 actions.

14 The defendants denied liability and asserted defenses
15 that they believe would defeat plaintiffs' claims, both on
16 substantive and procedural grounds.

17 With respect to the customers, defendants contend that
18 the lifetime guarantee was expressly limited only to
19 manufacturer's defects; that breach of contract claims was not
20 actionable under the ICFA; that most customers, including the
21 relevant named plaintiffs, had no breach of warranty claim
22 because they never attempted to return their jewelry; and that
23 determining whether each customer tried and failed to return
24 jewelry with a manufacturer's defect is an individualized
25 question not suitable for class treatment.

1 With respect to the sales advisers and new sales
2 advisers, defendants contend that the advisers waived their
3 right to participate in class actions pursuant to the terms of
4 their employment contracts and that sales advisers had no right
5 to continue as sales advisers after the agreements were
6 terminated and that sales advisers -- the sales adviser claims
7 were defeated by their contracts and the injuries that the
8 sales advisers alleged had no connection to the theory of
9 liability, among other defenses.

10 Defendants further contend that alleged statements
11 made to the customers or advisers were true or were believed to
12 be true at the time they were made. It's a classic defense.
13 Company may be planning on going out of business from the
14 plaintiffs' perspective. Defendants may say it was not a sure
15 thing. We, the defendants, believe we can continue to go
16 through business -- continue our business. And that would be a
17 contested factual issue that the parties, if it went to trial,
18 would fight about.

19 Defendants had also claimed that there was no reliance
20 on the allegedly false statements and fraudulent statements and
21 that they didn't cause any actual injury.

22 These are all factors I need to consider on whether
23 this is a fair settlement.

24 Defendants could have raised any of these defenses,
25 and if they were successful on any of them, plaintiffs get

1 nothing. There are individual defenses to each one of the
2 classes' allegations that, if successful by the defense -- the
3 defenses were successful -- plaintiffs wouldn't receive a
4 penny.

5 So in that sense, this is a fair settlement given the
6 amounts of money I talked about, the 6.7 million that's being
7 paid by the defendants and the -- how it's being divided up
8 among the class members who have sought relief.

9 The complexity, length, and expense of the continued
10 litigation, I've spoken about that. But the key fact there is,
11 among other expenses of tracking down all the managers of
12 Act II that would have to be deposed -- these are people
13 scattered around the country -- Act II is out of business. And
14 there is nothing harder, in my experience in litigation, than
15 litigating with a party that is out of business. It's usually
16 not possible.

17 And if it is possible, it is extremely expensive and
18 difficult because there's no central corporate entity where you
19 can obtain documents, you can obtain cooperation of the
20 corporation to make its employees and officers available for
21 depositions, and there's always a risk that the insurance
22 policies that may be provided for purposes of a settlement, the
23 insurance company may decide to mount a defense. There's all
24 kinds of reasons why the -- this would have been complex,
25 lengthy, and expensive litigation if it had not settled.

1 I need to also evaluate the settlement class's
2 reaction and lack of opposition to the settlement. The
3 reaction was, as I stated earlier, very -- well, I think the
4 plaintiffs characterize it as an excellent result of return
5 of -- on claims. I'm not sure I'd go that far, but it's
6 certainly a good result. I think "excellent" may overstate it.

7 The settlement administrator, though, has -- certainly
8 they've acted well in this case and have earned the money that
9 is being asked to pay for them. There have been over 500,000
10 visits to the settlement website, over 8100 calls, and over
11 10,000 online inquiries and over 1100 mail inquiries from class
12 members. That is extraordinary.

13 There's been an extremely low opt-out rate.
14 114 individuals have opted out. That's an opt-out rate of
15 .00288 percent. And there have been only two objections, which
16 I'll deal with in a moment. Only one of them was timely, but
17 there have been only two objections filed to this settlement.
18 That's a factor that weighs strongly in favor of final
19 approval.

20 Class counsel's opinion. As I've stated, the class
21 counsel is excellent in this case, and they have -- believe
22 this is a fair, reasonable, and adequate settlement. And I
23 credit that opinion because of the competence of class counsel.

24 I also am very mindful of the fact of where this case
25 stood. Lots of paper discovery was done. Some class

1 depositions -- class representative depositions took place.
2 And so the parties had sufficient information to assess the
3 strengths, weaknesses, and likely expenses of taking this case
4 to trial.

5 It wasn't so far along in the case where a lot more
6 money had to be spent for purposes of additional discovery, but
7 there certainly was enough discovery to take place -- that did
8 take place which would allow the parties to make a reasonable
9 judgment as to whether or not a class -- this class settlement
10 makes sense.

11 I was also impressed with the fact there were four
12 mediation sessions that took place. I was especially impressed
13 by the fact that Judge Holderman, a former colleague in the
14 federal -- on the federal bench, conducted those mediation
15 sessions, especially the last one that resulted in a
16 settlement. Judge Holderman is an outstanding mediator. He
17 was an outstanding judge, but he's an outstanding mediator.

18 And I'm confident, frankly, and take great comfort in
19 the fact that Judge Holderman was the one who was able to,
20 with -- obviously, with the consent of the parties, to get this
21 matter on track and settled. And so I credit both Judge
22 Holderman's efforts, but also I credit -- not having spoken to
23 him about this, nor could I, but knowing that he was involved
24 in that process gives me great comfort in believing that this
25 was a hard-fought and fairly resolved matter.

1 The -- I believe the court-approved notice program
2 satisfies due process. I won't go through the details set
3 forth in pages 29 and 30 of the motion other than to note that
4 there was a 9,630,000 banner ad impressions nationwide sent out
5 relating to this settlement. There was 223 news outlets that
6 picked up the press release relating to this settlement.
7 Notice was e-mailed to over 2 million settlement class members.
8 Postcard notice was mailed to over 2.7 million settlement class
9 members. A toll-free number was established where over 8,000
10 phone calls were received. And as I said, over 500,000 visits
11 were recorded on the class action website.

12 The settlement administrator estimates the notice
13 received approximately 87 percent -- notice was received by
14 approximately 87 percent of the class members. So I believe
15 the form and method of notice given to class members satisfies
16 all the legal requirements of Rule 23, as well as
17 constitutional due process requirements.

18 There were two objectors. Objector Christine Pierce
19 objects to the settlement because she, quote, "believes it to
20 be dishonest and a way for lawyers to get rich." And in
21 support of her allegations, she says Act II went out of
22 business. She has no further reasoning and authority for her
23 objection.

24 That objection is overruled. The settlement is not
25 dishonest. Class action device is the only way anybody who is

1 a plaintiff in this case would have received a penny of -- will
2 receive a penny for their losses. There's no way this could
3 have been brought individually.

4 If the settlement is a way for lawyers to get rich,
5 the petition for attorneys' fees, which I'll deal with in a
6 minute, is something I review independently. And everyone's
7 view of what -- of someone becoming rich is different.
8 Everyone's got an opinion.

9 But lawyers earn a lot of money in class action
10 settlements, but lawyers put a lot of time in on class actions
11 settlements, full knowing that if a settlement is not reached
12 or there's a judgment in favor of the defendants, they don't
13 get a penny.

14 And so I don't believe that the objection of
15 Ms. Pierce is valid. The fact that Act II is no longer in
16 business makes this settlement, in my mind, an extremely good
17 one for the plaintiffs.

18 All right. The other objector is Cara Menz. Her
19 objection was filed on April 16th. Objections were due by
20 April 9th, so her objection is untimely and is overruled on
21 that basis alone.

22 But were it to be a timely objection, I also overrule
23 her objection. She objects to class counsel's requested
24 attorneys' fees and believes they'll receive a disproportionate
25 percentage of the settlement.

1 In fact, using the Seventh Circuit *Redman* ratio, the
2 attorneys' fees are about a third of what the overall monies
3 being paid out by the defendants are, and that's one-third net
4 settlement fund. If this were one-third of the full settlement
5 fund, I'd likely knock down the attorneys' fees because the
6 administration costs, which are substantial, are not a benefit
7 to the defendants, at least -- or the plaintiffs, at least not
8 a direct benefit.

9 But this is one-third of the direct benefit, and I
10 believe that's fully in line -- at about a third of the
11 ratio -- the ratio being about a third -- that's fully in line
12 with other settlements in this district and is appropriate.

13 The lodestar of 1.7, multiplier, is well within
14 reason. Lodestars significantly higher than that have been
15 approved, as I spoke about a moment ago. There's a significant
16 amount of uncertainty in litigation like this, and it is both
17 appropriate and allowable to approve a lodestar, a modest
18 lodestar, which this is. Multipliers much higher than that
19 have been approved in litigation just as chancy, if not
20 chancier, and probably this is more chancy litigation given the
21 fact the defendant went out of business.

22 All right. So I for that reason -- well, and Ms. Menz
23 also complains that there's a "clear sailing" provision in this
24 settlement. No such provision exists anywhere. The fees are
25 not approved by the defendants; the fees are approved by me.

1 Defendants simply paid a lump-sum amount of money, and from
2 that there are administrator costs, attorneys' fees, and monies
3 given to the class members.

4 The amount of fees are not approved by the defense, so
5 there's no "clear sailing" provision even in this settlement
6 agreement. And on top of that, none of the monies revert back
7 to the defendant. It either goes to fees, administrative
8 costs -- attorneys' fees, administrative costs, or to the
9 plaintiffs themselves.

10 Menz objects to the requested settlement
11 administration expenses. I reviewed the affidavit of the
12 administrator. The majority of those administrative expenses
13 are hard-copy mailing costs.

14 And the fact that only a small fraction of class
15 members will file claims, which is what Ms. Menz said, is not
16 the fault of the settlement administrator. And how you
17 could -- it would be monumentally unfair to tell someone to go
18 out and send out notices to millions and millions of people but
19 you're only going to get paid for -- based on a percentage of
20 the people that actually respond. Administrator has no way of
21 knowing who's going to respond, nor did anyone, and the
22 administrator is paid for their time and hard-copy expenses.

23 So those expenses were appropriate, and the objection
24 to them by Ms. Menz is overruled.

25 In fact, it's likely that, given the amount of fees

1 I'll be approving for the settlement administrator, they will
2 have operated at a loss. Their current expenditures are
3 \$1,083,433.47. I'll be approving 1.3 million for them. And
4 they expect another 300,000 in the future, so that will be over
5 1.3 million that they will be expending. So, in effect, they
6 will be not fully compensated for their expenses.

7 So for all those reasons, Ms. Menz's objection is
8 overruled.

9 The attorneys' fees in this case, although large in
10 any real-world sense, in the sense of settle -- over three
11 years of litigation are reasonable. As I said, without any
12 guarantee of payment or success, class counsel aggressively
13 prosecuted this litigation. There was a year of extensive
14 discovery and four private mediations.

15 Who participated in the mediations, Mr. McLawhorn?

16 MR. McLAWHORN: In --

17 THE COURT: From the plaintiffs' side. I mean, I see
18 both Mr. Liu and Mr. Siprut. Mr. Siprut had a number of hours
19 in this case.

20 MR. McLAWHORN: It's Mr. Siprut and myself from our
21 side. There might have been an associate on occasion. I don't
22 believe so.

23 THE COURT: But --

24 MR. McLAWHORN: Four different ones.

25 THE COURT: But both of you were in all four

1 mediations.

2 MR. McLAWHORN: Yes, sir.

3 THE COURT: All right.

4 MR. McLAWHORN: Or three to four.

5 THE COURT: Okay. All right.

6 Because I did have a question when I went through the
7 detail about Mr. Sipurut's fees because obviously you were the
8 main attorney on this, and your fees are reflective of that --
9 or your time is reflective of that. And I saw Mr. Sipurut spent
10 a fair amount of time. But if he participated in the
11 mediations, which includes both preparation and follow-up, then
12 his fee -- his time expended are not unreasonable.

13 The rates for the Sipurut firm that were -- when I
14 looked at the actual lodestar were certainly within the realm
15 of what other firms -- Hagens Berman, Edelson, Wolf
16 Haldenstein -- some of the other large plaintiff class action
17 firms charge for their partners and associates, and certainly
18 even my own experience working at Mayer Brown. The rates that
19 you charge are consistent with that which partners at big
20 firms, such as the defense firm in this case -- are certainly
21 all within the realm of what experienced lawyers charge and are
22 able to have clients pay for in complex, contested litigation.

23 And the multiplier in this case I believe is
24 appropriate for the reasons already stated. I think the
25 class -- the attorneys' fees are one-third ultimately, along

1 with unreimbursed costs -- litigation costs of \$24,349.02.

2 The lodestar is consistent with the fees being sought.
3 And as I said, the one-third of the monies actually going to
4 the class members is consistent with other class actions
5 approved and with the type of arrangements plaintiff lawyers
6 make with their clients when they operate on risky litigation.

7 As to the -- so for all those reasons, I approve the
8 attorneys' fees.

9 There was significant work that was involved here
10 pre-complaint, factual and legal investigation, mediations with
11 Judge Holderman and others, a motion to dismiss that had to be
12 fully briefed and contested, discovery, a first amended
13 complaint. And the settlement administration and even getting
14 the case to -- case to this point all involved a significant
15 amount of time, expense, and expertise.

16 I believe the class counsel should be reimbursed for
17 out-of-pocket expenses because those are authorized by law in
18 this case, and the parties have agreed to them also.

19 The incentive award sought by plaintiffs are
20 appropriate.

21 The incentive award for plaintiffs Roman, Esposito,
22 and Ballon of \$2,500 each, which included providing documents
23 and answering interrogatories, is appropriate.

24 The incentive award of \$5,000 for plaintiffs Hollander
25 and Zimmerman, which included answering written discovery,

1 being deposed, and performing significant work to provide a
2 number of the documents to support their claims, is
3 appropriate.

4 And, finally, plaintiff West, who is present, should
5 be awarded \$10,000 for her services because of what the parties
6 characterize -- or at least the plaintiffs do -- as an
7 extraordinary contribution. In addition to responding to
8 discovery requests and having her deposition taken, Ms. West,
9 who had no prior involvement in class actions -- which is
10 unusual. Many class reps -- some class reps are repeat
11 offenders.

12 "Offenders" is the wrong word. Repeat litigants.
13 And, you know, there's some skepticism about how they end up
14 being plaintiffs.

15 Ms. West is a retired schoolteacher from Iowa. No
16 prior involvement in class actions. She sought out class
17 counsel for this case, gathered documents that enabled class
18 counsel to prosecute the case, spent countless hours meeting
19 with and talking to class counsel concerning Act II's business
20 and the manners in which various class members had been harmed,
21 facilitated class counsel's interview with multiple witnesses
22 and class members, attended one mediation in person and others
23 telephonically, and served as the lead plaintiff in the
24 litigation.

25 She certainly is deserving of the incentive award that

1 I'm giving her in this case, or approving in this case. It's
2 appropriate in light of other cases, and her efforts I find to
3 be extraordinary compared to relatively modest efforts other
4 plaintiffs' class representatives put in on class action cases.

5 So for those reasons, all of those incentive awards
6 are approved.

7 I will sign the order that is prepared. I don't think
8 I've made any findings today that are inconsistent with the
9 proposed order, unless the parties have noted any.

10 Did you find any?

11 MR. McLAWHORN: No, your Honor.

12 THE COURT: All right. If you could submit that
13 order. I have a hard copy of it here. I've read it over in
14 form, and I'm satisfied with the form. It's on two-sided
15 paper, which means that I can't sign the copy I have here.

16 Sandy, can we -- can this be printed out one-sided, or
17 do we need it to go to the proposed order inbox?

18 THE CLERK: Was it attached as an exhibit?

19 THE COURT: Yes. It's Exhibit 4.

20 THE CLERK: I'll take a look here.

21 No one has a copy with them, right?

22 MR. McLAWHORN: That's single-sided.

23 THE CLERK: Okay.

24 THE COURT: Okay. Why don't you submit it to the
25 proposed order inbox in a single-sided form, and I'll sign it

1 today.

2 MR. McLAWHORN: Thanks.

3 THE COURT: So for all those reasons, this -- I'm
4 giving final approval to the class action settlement.

5 Any questions by plaintiffs or defendants?

6 MR. McLAWHORN: No, your Honor.

7 MR. BALFOUR: No, your Honor.

8 THE COURT: All right. Thank you all.

9 MR. McLAWHORN: Thank you.

10 MR. LIU: Thank you, your Honor.

11 THE COURT: Thank you, Ms. West.

12 (Concluded at 10:10 a.m.)

13 C E R T I F I C A T E

14 I certify that the foregoing is a correct transcript of the
15 record of proceedings in the above-entitled matter.

16

17 /s/ LAURA R. RENKE
18 LAURA R. RENKE, CSR, RDR, CRR
Official Court Reporter

July 3, 2018

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