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

KEVIN VODAK, et al.,

Plaintiffs,

v.

CITY OF CHICAGO, et al.,

Defendants.

Case No. 03 C 2463

Judge Virginia M. Kendall

JOINT MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs Kevin Vodak, Sarah Bergstrand, Prudence Browne, Robert Castillo, John Patrick Donnell, Matthew Gaines, Angela Garcia, Kathleen Gruber, Steven Hudosh, Elizabeth Johnson, Sophia Sieczkowski, individually and on behalf of the Class and respective Subclasses they represent (collectively, "Plaintiffs"), and Defendants the City of Chicago, Terry Hillard, Philip Cline, James Maurer, Thomas Byrne, Frank Radke, Joseph Griffin, The Estate of John Risley, Thomas Epach and Karen Rowan (collectively, "Defendants"), by and through their respective undersigned attorneys, pursuant to Fed. R. Civ. P. 23(e), hereby move the Court to enter a Final Judgment Order (a draft of which is attached hereto as Ex. A) granting final approval of the settlement reached as embodied in the Amended Stipulation and Agreement of Settlement ("Stipulation," or "Settlement,"[1] Docket No. 697-2) previously submitted to and preliminarily approved by the Court. (Docket Nos. 692, 704.)

[1] Capitalized terms not defined herein shall have the same meaning as set forth in the Amended Stipulation and Agreement of Settlement.

I. INTRODUCTION

On March 20, 2003, approximately 850 people were detained, arrested and/or criminally charged by officers of CPD at or near a demonstration opposing the initiation of the Iraq war. On April 10, 2003, Plaintiffs filed a class action lawsuit against Defendants alleging they were seized in violation of their rights to speech, assembly and liberty guaranteed by the First, Fourth and Fourteenth Amendments to the United States Constitution and Illinois law and that the City was liable under *Monell*, *respondeat superior* and 745 ILCS 10/9-102. After nine years of litigation, the parties reached a settlement which resolves all of the claims at issue in the litigation. That Settlement has received preliminary approval from the Court. (Docket Nos. 692, 704.)

The proposed Settlement consists of payment of up to $6.2 million to be paid (a) to Class Members in varying amounts (depending upon the Subclass of which they are a member) for the release of their claims, (b) to the Plaintiffs and Deposed Class Members as incentive awards, and (c) for $14,000 in expert expenses incurred by the Class. As non-monetary consideration, the City also agreed to provide certified Criminal History Record Information documents ("CHRI") to Class Members in the A-2 and A-3 Subclasses who requested that information through the claims process. The City also agreed to pay $4.8 million in Attorneys' Fees to Class Counsel in two equal payments on January 7, 2013 and January 7, 2014, and to pay for Administrative Expenses incurred in implementing the Settlement.

On May 9, 2012, this Court issued a Preliminary Approval Order. (Docket No. 692.) Through that Order, the Court preliminarily approved the settlement between the Parties, which, at that time, was comprised of Defendants' agreement to establish a $6.2 million settlement fund, with additional issues (including Class Counsel's attorneys' fees and the possibility of expungement relief for Class Members in the A-2 and A-3 Subclasses) yet to be resolved. (Docket No. 688.) After

obtaining preliminary court approval, the Parties resolved the remaining two settlement terms, specifically agreeing that the City will pay Class Counsel's attorneys' fees in the amount of $4.8 million, and that the City will provide copies of CHRIs to members of the A-2 and A-3 Subclasses who request those documents during the claims process. The Parties then presented a Motion to Preliminarily Approve the Amended Stipulation and Agreement of Settlement which was granted by the Court on June 28, 2012. (Docket No. 704.)

The Court also separately approved the form and method of individualized notice of the proposed Settlement to members of the Class and the various Subclasses, approved a form and method of notice by publication to the Class and various Subclasses, set a deadline of October 22, 2012 for receipt of Claims and objections to the Settlement, and set a final hearing on the fairness of the Settlement for November 7, 2012 at 9:00 a.m. (the "Scheduling Order," Docket No. 703).

In accordance with the Preliminary Approval Order and Scheduling Order, the Claims Administrator provided notice of the Settlement to Class Members. Specifically, the Claims Administrator made the following efforts, pursuant to the Stipulation, to ensure that the Class Members received individualized notice of the proposed Settlement:

- The Claims Administrator reviewed the class list provided by the Parties, and updated mailing addresses using credit-reporting databases. Following the address update process, the Claims Administrator was able to obtain addresses for 678 of the 685 identified Class Members. (Declaration of Mathew E. Pohl – Class Administrator, herein "CAA Decl.", Ex. B, ¶ 4.)

- On July 23, 2012, the Claims Administrator mailed the court-approved Notice of Proposed Class Action Settlement and Fairness Hearing, and the appropriate claim form to all 678 Class Members for whom the Claims Administrator had mailable addresses. (*Id.*, ¶ 5.)

- The Claims Administrator sought to obtain alternate addresses for any Notices returned as "undeliverable" and to resend the Notice to the Class Members at the alternate addresses within thirty (30) days of the mailing of the Notice. (*Id.*, ¶ 9.)

- The Claims Administrator also set up a toll-free telephone number, and a website through which Class Members could obtain information regarding the proposed Settlement. (*Id.*, ¶¶6-7.)

- In addition, the Claims Administrator provided Class Counsel and Defendants' Counsel with weekly updates regarding undeliverable mailings to allow Class Counsel to attempt additional follow up with Class Members.

The Claims Administrator also arranged for publication of the Summary Notice, in the form approved by the Court, on three occasions, on July 12, 19 and 26, 2012 in the *Chicago Reader* and *The Onion*. (Docket No. 706.) This notice by publication was authorized and directed in the Preliminary Approval Order, ¶ 5 and the Stipulation, ¶ 11.2 (Docket Nos. 703 and 697-1, respectively.)

The proposed Settlement has received the overwhelming support of the Class, with 585 Class Members submitting valid and timely Proofs of Claim. Not a single Class Member has asserted an objection to the Settlement. In addition to the positive reaction of the Class and Subclasses, other relevant factors weigh heavily in support of final approval of the proposed Settlement. Class Counsel and Defendants' Counsel negotiated the Settlement after actively litigating the case for nine years, including a significant amount of discovery, briefing cross motions for summary judgment, an appeal to the Seventh Circuit Court of Appeals, and preparing for a jury trial. All of this evidence strongly supports final approval of the Settlement.

II. OVERVIEW OF THE LITIGATION

On April 10, 2003, Plaintiffs filed individual and class claims against the City and individual members of the CPD for inter alia false detention, arrest and imprisonment, excessive force, denial of their first amendment rights to free speech association and various state law claims. On December 30, 2004, Plaintiffs filed a thirteen count third amended complaint against the City and individual current and former members of the CPD. After extensive briefing on April 17, 2006, the Court

entered a memorandum opinion and order certifying a class consisting of "all persons who were surrounded by Defendants on March 20, 2003 on Chicago Avenue, just East of Michigan Avenue and west of Mies Van Der Rohe Way between approximately 8:30 and 11:30 p.m." The Court also certified three subclasses. On May 16, 2006, the City filed an amended counterclaim against Plaintiff seeking to impose liability against them for the costs of providing police and emergency services during the 2003 anti-war protest. Class Counsel and Defendants' Counsel conducted extensive discovery and investigation into the claims alleged, including the issuance and responses to numerous sets of written interrogatories and requests to admit, and oral discovery consisting of 153 depositions of class members, City and CPD personnel and witnesses.

After briefing, on February 27, 2009, the Court granted summary judgment in favor of Defendants on the Third Amended Complaint, holding that the individual CPD officers were immune from suit and the City was not liable because no official authorized to make policy for the City had been responsible for any of the alleged wrongful conduct. The Court also granted summary judgment in favor of Plaintiffs on the City's counterclaim finding that the City was unable to set forth any evidence of illegal conduct specific to the Plaintiffs that could subject them to liability. Plaintiffs appealed the Court's grant of summary judgment in favor of Defendants on the Third Amended Complaint and Defendants filed an appeal of the Court's grant of summary judgment in favor of Plaintiffs on the City's Amended Counterclaim, although the City subsequently withdrew that appeal.

On March 17, 2011, the United States Court of Appeals for the Seventh Circuit entered an Order reversing the District Court's grant of summary judgment for Defendants, finding that the original Defendants were not entitled to benefit from qualified immunity if a jury were to find that the CPD failed to give effective orders to disburse prior to the arrests, and that Superintendent

Hillard was the final policy maker for the City on matters relating to the subject of the claims asserted in the litigation concerning the 2003 anti-war protest, so that the City could be held liable if the jury were to determine that Hillard participated in the decisions to arrest the class. The Court remanded the case to the District Court "for further proceedings consistent with [the Seventh Circuit's] opinion."

III. THE PROPOSED SETTLEMENT

A. THE CLASS AND SUBCLASSES

The proposed Settlement has been reached on behalf of a Class defined as:

> Any Persons who were surrounded by Defendants on March 20, 2003, on Chicago Avenue, just east of Michigan Avenue and west of Mies Van Der Rohe Way (the "Bounded Area") between 8:30 p.m. and 11:30 p.m., and who were either detained in that area for at least 90 minutes or who were arrested and taken to a police station.

The proposed Settlement addresses all claims of the three certified Subclasses as well. Subclass A-1 is defined as "all persons who were surrounded by Defendants in the Bounded Area for 1-1/2 to 3 hours before they were allowed to leave the area." (Docket No. 219, Docket No. 697-1, Stipulation, §2.5.) Subclass A-2 is defined as "all persons who were surrounded by Defendants in the Bounded Area, and who were arrested and detained at a police station, but who were released without being charged with any crime or ordinance violation." (*Id.*) Subclass A-3 is defined as "all persons who were surrounded by Defendants in the Bounded Area, arrested and detained at a police station, and who were charged with criminal offenses, released only upon conditions of bond, required to appear in court on criminal charges and later the charges against them were dismissed in their favor." (*Id.*)

B. THE SETTLEMENT CONSIDERATION AND APPROVED CLAIMS

Pursuant to the proposed Settlement and the Court's Preliminary Approval Hearing on May 9, 2012, the City agreed to create an Aggregate Settlement Fund in an amount not to exceed $6.2

million. After completion of the claims process, the actual amount to be paid by the City (excluding Attorneys' Fees and Administrative Costs) has now been calculated to be approximately $5.4 million.

The Aggregate Settlement Fund is to be used to pay the claims of all Members of the Class and each of the Subclasses, to pay certain incentive awards to the Plaintiffs and Deposed Class Members, and to pay $14,000 incurred in expert expenses by the Class as a part of the Litigation. Pursuant to the terms of the Stipulation, the Aggregate Settlement Fund shall be divided into six (6) sub-funds, with three (3) of the sub-funds corresponding to each particular Subclass, and the remaining three (3) sub-funds corresponding to Plaintiff Incentive Awards, payments to Deposed Class Members, and Class Counsel's expert witness costs, respectively.

The six (6) separate and distinct sub-funds are: (a) One Hundred Thousand Dollars ($100,000.00) to pay the Claims of the members of the A-l Subclass; (b) One Million Eight Hundred Ninety Eight Thousand Seven Hundred and Fifty Dollars ($1,898,750.00) to pay the Claims of the members of the A-2 Subclass; (c) Four Million Sixty Five Thousand Dollars ($4,065,000.00) to pay the Claims for the members of the A-3 Subclass; (d) Eighty Five Thousand Two Hundred Fifty Dollars ($85,250.00) to pay Plaintiff Incentive Awards; (e) Thirty Seven Thousand Dollars ($37,000.00) to pay awards to Deposed Class Members; and (f) Fourteen Thousand Dollars ($14,000.00) to pay Class Counsel's expert witness costs.

The division of the Aggregate Settlement Fund into six (6) Subfunds was to ensure that there were sufficient funds with which to address the claims of all members of each of the Subclasses. According to the terms of the Stipulation, the Parties agreed that the members of each Subclass would receive the following maximum award:

Subclass	Maximum Award

A-1	$500
A-2	$8,750
A-3	$15,000

The awards were subject to a *pro rata* limitation, in the event that more Claims were filed than anticipated. Here, after fully completing the claims process, the number of Proofs of Claim filed did not reach the level requiring a *pro rata* distribution, or reduction in the amount of benefits anticipated. In addition, each of the Plaintiffs who filed timely Claims will receive an additional incentive award in the amount of $7,750, and each of the Deposed Class Members who timely filed Claims will receive an additional incentive award in the amount of $948.71.

According to the Stipulation, and the amount of claims filed in each respective Subclass, upon obtaining final approval of the Settlement, the City will make the following payments for Subclass, from each respective Subfund:

Sub-fund Category	**Maximum Amount Available**	**Number of Approved Claims**	**Payment Amount per Class Member**	**Total Payment**
A-1 Subclass	$100,000	162	$500	$81,000
A-2 Subclass	$1,898,750	178-180[2]	$8,750	$1,557,500-$1,575,000
A-3 Subclass	$4,065,000	245	$15,000	$3,675,000
Plaintiff Incentive Award	$85,250	11	$7,750	$85,250
Deposed Class Members	$37,000	39	$948.71	$37,000
Expert Witness Costs	$14,000			$14,000
Total				**$5,449,750-$5,467,250**

Subject to this Court's review and approval, set forth below is a summary of the disbursements to be made under the Stipulation, as well as timing of each disbursement:

[2] The Parties have provided a range for the final funding of the Aggregate Settlement Fund because two claims asserted on behalf of deceased Class Members in the A-2 Subclass remain unresolved and are awaiting supporting documentation. *See* Ex. B, CAA Decl., ¶ 11. The Parties request that the payment follow the decision of the Claims Administrator regarding whether the Claims should be approved.

Recipient	Amount	Timing of Payment
A-1 Subclass Members	$500.00 per person	January 7, 2013
A-2 Subclass Members	$8,750 per person	January 7, 2013
A-3 Subclass Members	$15,000 per person	January 7, 2013
Named Plaintiffs[3]	$7,750 per person	January 7, 2013
Deposed Class Members[4]	$948.71 per person	January 7, 2013
Class Counsel's Expert Witness	$14,000	January 7, 2013
Attorney's Fees – 50%[5]	$2.4 Million	January 7, 2013
Attorney's Fees – 50%	$2.4 Million	January 7, 2014

In addition to the monetary payment to the Members of the Class and the various Subclasses, the Settlement also provides for a non-monetary benefit to members of the A-2 and A-3 Subclasses (*e.g.*, the Class members who were arrested), namely, the opportunity to obtain a copy of his or her Criminal History Record Information ("CHRI") without cost. A CHRI is necessary to obtain the expungment of an arrest. One hundred twenty-seven (127) A-2 and A-3 Subclass Members have requested copies of their CHRIs, which pursuant to the Stipulation, will be provided to Class Members in January of 2013.

IV. ARGUMENT

A. THIS COURT SHOULD ENTER JUDGMENT APPROVING THE SETTLEMENT.

This Court has succinctly summarized the principles that govern judicial evaluation of class action settlements:

[3] This amount will be provided to each of the Named Plaintiffs in addition to the amount each are to receive for membership in their respective Subclass.

[4] This amount will be provided to each of the Deposed Class Members in addition to the amount each are to receive for membership in their respective Subclass.

[5] The specific recipients of the payments for Class Counsel's Attorneys' Fees are included in the Draft Final Judgment Order, Ex. A hereto. Class Counsel is contemporaneously filing Plaintiffs' Motion for Approval of Proposed Class Action Settlement of Attorneys' Fees and Costs seeking Court approval of the payment of these fees.

> Courts favor the resolution of a class action by way of settlement and will approve such a settlement if it is fair, reasonable and adequate when viewed in its entirety . . . . In evaluating a proposed settlement, the court recognizes that the essence of settlement is compromise and will not represent a total win for either side . . . . 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 Mex. Money Transfer Litig., 164 F. Supp. 2d 1002, 1014 (N.D. Ill. 2000) (citations omitted). The Seventh Circuit has established six factors that district courts must evaluate and balance in deciding whether to approve a class action settlement:

(1) The strength of plaintiffs' case, weighed against the settlement offer;

(2) The complexity, length and expense of further litigation;

(3) The presence of collusion between the parties;

(4) The opinion of competent counsel;

(5) The reaction of class members to the proposal; and

(6) The stage of proceedings and discovery completed.

Id.; see also Donovan v. Estate of Fitzsimmons, 778 F.2d 298, 308 (7th Cir. 1985) (noting the factors that courts consider when approving a settlement). Here, each of these elements supports final approval of the proposed Settlement.

1. The Strength of Plaintiffs' Case, Weighed Against The Settlement Offer.

The proposed Settlement is a fair compromise, and takes into account the risks in continuing the Litigation for Plaintiffs, the Class, each of the Subclasses, and Defendants. The proposed Settlement is also appropriate after weighing the strengths of the Class' case against the value of the monetary and non-monetary components of the proposed Settlement.

The Litigation poses legal and factual challenges to Plaintiffs, the Class, and the various Subclasses. Likewise, Defendants recognize the risks inherent in the Litigation, as well as their potential exposure, and wish to compromise and settle this matter. Consequently, there are substantial risks for Defendants, Plaintiffs, the Class, and the Subclasses in continuing the Litigation.

In light of these risks, the proposed Settlement is appropriate for the Class and the various Subclasses, as it: (i) provides for substantial monetary benefits to the Class and members of the various Subclasses compared to the risk that further protracted and contested litigation might lead to no recovery, or a smaller recovery, against the Defendants; (ii) was reached after serious, arms-length negotiations mediated by the Honorable Judge Wayne Andersen between informed counsel; and (iii) Class Counsel support the Settlement as a fair result for the Class and members of the various Subclasses.

Here, there is no question that the Settlement offers both the Class and the various Subclasses substantial value, ranging between $500 and $15,000, plus additional funds for those Class Members actively involved in the Litigation. After consideration of the merits of the case, the difficulties and potential costs in the prosecution and defense of the Litigation, and the value of the Settlement to the Class and the Subclasses, the Court should provide final approval to the proposed Settlement.

2. The Complexity, Length, and Expense of Further Litigation.

These factors consider "the probable costs, in both time and money, of continued litigation." *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 254 (D. Del. 2002). In most cases, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." *Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) quoting WILLIAM B. RUBENSTEIN ET AL., NEWBERG ON CLASS ACTIONS, § 11:50 at 155 (4th Ed. 2002). There is no question that if this case does not settle, the

potential for this Litigation to result in enormous expense, including expense to the taxpayers of the City, and to continue for a long time, is great. This case will surely involve significant further expense if the case proceeded to trial. These costs would substantially increase the significant costs and fees already incurred by the Parties. Additionally, the Litigation would most likely take several years to finally resolve, considering the length of the anticipated trial and any appeals. Accordingly, avoiding a trial and inevitable appeals in this complex suit weigh strongly in support of approval of the Settlement rather than prolonged and uncertain litigation.

3. The Absence of Collusion Between the Parties.

Some class action settlements look suspiciously collusive because they are reached shortly after filing, before the plaintiffs' counsel has invested much time or money in the prosecution of the cases. That certainly is not the case here. These cases have been vigorously litigated for over nine years, with significant amounts of discovery, cross motions for summary judgment, an appeal in the Seventh Circuit Court of Appeals, and significant amounts of trial preparation. Even a cursory review of the docket in this matter establishes that the Litigation to date was hard fought and lacking in collusion.

4. Opinion of Competent Counsel.

In assessing the adequacy of the Settlement, the trial court is entitled to and should rely upon the judgment of experienced counsel for the parties. *See DIRECTV*, 221 F.R.D. at 528 ("Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation") (internal quotations and citations omitted); *see also Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977). The basis for such reliance is that "[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation." *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir.

1995). When evaluating the propose settlement, the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel. *See, e.g., Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975); *see also Hanrahan v. Britt*, 174 F.R.D. 356, 366-68 (E.D. Pa. 1977) (noting that the presumption of correctness applies to a class action settlement reached in arm's length negotiations between experienced, capable counsel after meaningful discovery) citing MANUAL FOR COMPLEX LITIGATION § 30.41 (2d ed. 1985).

After thorough consideration, both Class Counsel and Defendants' Counsel have concluded that the Settlement terms are fair, adequate and reasonable and in the best interests of their respective clients, and recommend that it be granted final approval. (*See* Docket No. 689, Plaintiffs' Motion for Preliminary Approval of Proposed Class Action Settlement, p. 11, fn. 4, identifying other settlement amounts paid in demonstration mass arrest cases). The Settlement provides a substantial cash benefit to the Class and various Subclasses, as well as non-monetary relief to help address Class Members' arrest history. Moreover, the Settlement avoids the risk of a trial relating to the scope of liability and the amount of provable damages. In negotiating the terms of the Settlement, the Parties considered a multitude of factors, including: the nature and complexity of the allegations and defenses; the availability and admissibility of evidence to support each of the required elements of the alleged causes of action; the extent to which Class Members were damaged by the alleged conduct of Defendants; the defenses asserted; the anticipated motions to be filed by Parties; and the benefit of obtaining a settlement on the proposed terms now, as opposed to litigating for some indeterminate amount of time. After considering all of these relevant factors, counsel have concluded that the proposed Settlement is in the best interest of their respective clients.

5. The Settlement Has Overwhelming Class Support.[6]

The last criteria to be considered for final approval of the Settlement is the reaction of the Class. *See, e.g., Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). In any class action of significant size, the absence of any objections "constitutes a ringing endorsement of the settlement by class members." *In re Global Crossing Sec. ERISA Litig.*, 225 F.R.D. 436, 458 (S.D.N.Y. 2004). Here, not a single Class member has filed or otherwise asserted an objection to the proposed Settlement. (CAA Decl., Ex. B., ¶ 13.) In addition, the Class has evidenced strong support of the proposed Settlement through the Claims Process.

The Claims Administrator mailed claim form packets to 678 Class Members. The participation rates of both the Class as a whole, and each of the Subclasses, reflects overwhelming support of the Class and Subclasses for the Settlement, and supports final approval of the Settlement:

- Eighty-six percent (86%) of the Class: 585 Class Members submitted Claims to the Claims Administrator. (*Id.*, ¶ 11.) 678 Class Members were pre-identified.
- Eighty-one percent (81%) of Subclass A-1: 162 identified Subclass A-1 members submitted Claims to the Claims Administrator. (*Id.*) 198 Subclass A-1 members were pre-identified.
- Eighty percent (80%) of Subclass A-2: 178 identified Subclass A-2 members submitted Claims to the Claims Administrator. (*Id.*) 222 Subclass A-2 members were pre-identified.
- Ninety four percent (94%) of Subclass A-3: 245 identified Subclass A-3 members submitted Claims to the Claims Administrator. (*Id.*) 265 Subclass A-3 members were pre-identified.

[6] While the Notice and Proof of Claim form were mailed to Class Members pre-identified by Class Counsel, the claims process was also open to the public through Notice by Publication and the downloadable Proof of Claim form. The Claims Administrator rejected a number of Proof of Claim forms which, on their face, established that the individuals were not, in fact Class Members entitled to a benefit. The letters rejecting claims were mailed on or before November 1, 2012. Accordingly, these individuals have through and including November 15, 2012 to appeal the denial of claims to the District Court. One such individual has filed a Request for Hearing (Exhibit C attached). The Parties respectfully request that this Court schedule a hearing to address the appeal of the denial of that Claim, as well as any additional timely filed Requests for Hearing.

As a court in this district has noted, response rates are frequently below 20% when individuals are required to take affirmative steps, such as submitting claim form, in order to obtain the benefits of a class action settlement. *Henry v. Sears Roebuck & Co.*, No. 98-CV-4110, 1999 WL 33496080 at *10 (N.D. Ill. July 23, 1999).

In addition, the Plaintiffs and the Deposed Class Members have established overwhelming support for the Settlement, with all (100%) timely submitting Proof of Claim forms to the Claims Administrator.

6. The Stage of Proceedings And Discovery Completed.

"To approve a proposed settlement, the Court need not find that the parties have engaged in extensive discovery." *In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 176 (S.D.N.Y. 2000). However, "the pretrial negotiations and discovery must be sufficiently adversarial that they are not designed to justify a settlement . . . [but] an aggressive effort to ferret out facts helpful to the prosecution of the suit." *Id.* The record here justifies final approval. Counsel conducted extensive discovery regarding the relevant issues in the case, including the depositions of 153 witnesses. Further, at the time of the negotiated settlement, the Parties had the benefit of the Court's ruling on class certification (after an evidentiary hearing), as well as the opinions of the District Court and the Seventh Circuit Court of Appeals on the Parties' cross motions for summary judgment. The stage of the proceedings weighs heavily in favor of approval of the proposed Settlement.

V. THE NOTICE SATISFIES DUE PROCESS.

Due process requires that class members be given notice of a proposed settlement and their right to be heard at the fairness hearing. The standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules is measured by reasonableness.

See, e.g., Soberal-Perez v. Heckler, 717 F.2d 36, 43 (2d Cir. 1983); Fed.R.Civ.P. 23(e). There are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements; the settlement notice must "fairly apprise prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Weinberger v. Kendrick*, 698 F.2d 61, 70 (2d Cir. 1982) (internal quotation marks and brackets omitted). Notice is "adequate if it may be understood by the average class member." 4 WILLIAM B. RUBENSTEIN ET AL., NEWBERG ON CLASS ACTIONS, § 11.53, at 167; *see also Walmart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 113-14 (2d Cir. 2005).

There is no statutory or due process requirement that all class members receive actual notice by mail or other means; rather, "individual notice must be provided to those Class Members who are identifiable through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175-76 (1974). Rule 23(e) gives the Court "virtually complete discretion" as to the manner of service of settlement notice. *Franks v. Kroger Co.*, 649 F.2d 1216, 1222-23 (6th Cir. 1981). Here, the notice was disseminated via individual mailing and publication.

1. Notice to the Settlement Class and Subclasses

The Claims Administrator made the following efforts to ensure that Class Members received Notice of the proposed Settlement:

- On or about June 29, 2012, the Claims Administrator received electronic spreadsheets (the "Class List") containing lists of class members for each of the Sub-Classes, including addresses. (CAA Decl., Ex. B, ¶ 3.)
- The Claims Administrator reviewed the Class List and updated mailing addresses using credit-reporting databases. Following the address update process, there remained seven (7) individuals who did not have a mailable address. The 678 Class List records with complete mailing information comprised the "Notice Mailing List". (*Id.*, ¶ 4.)
- On July 23, 2012, the Claims Administrator mailed the court-approved Notice of Proposed Class Action Settlement and Fairness Hearing (Exhibit B-1) along with the

appropriate claim form (Exhibit B-2 was mailed to members of Subclass A-1 and Exhibit B-3 was mailed to members of Subclasses A-2 and A-3) (collectively the "Notice Packet") to individuals on the Notice Mailing List. (CAA Decl., Ex. B, ¶ 5.)

- As of November 1, 2012, associates for the Claims Administrator have fielded 305 incoming calls. The Claims Administrator also mailed out 57 Notice Packets per request, received three incoming letters, mailed two deficiency letters and received 35 incoming faxes related to this Settlement. (*Id.*, ¶ 7.)

- As of November 1, 2012, a total of 82 Notice Packets in the original mailing have been returned as undeliverable. The Claims Administrator re-mailed the Notice Packets to forwarding addresses provided by the U.S. Postal Service, addresses the Claims Administrator located through research of credit reporting databases, and addresses provided by Class Counsel. (*Id.*, ¶ 9.)

- There are 28 individuals on the Class List where all notice attempts have been returned. The "net" undeliverable rate – which takes into account the results of additional mailing attempts – is 4.1%. (*Id.*)

In addition to the Claims Administrator's efforts to ensure that personal Notice was received by as many members of the Settlement Class as possible, efforts were made so that Class Members who did not receive the Notice could nonetheless find out about the proposed Settlement. Specifically, the following actions were taken:

- Prior to July 23, 2012, the Claims Administrator established a settlement website with the URL www.ChicagoAntiWarProtestSettlement.com. This website provides general information about the case, answers to common questions, links to key case documents, and an email contact form through which class members could contact the Claims Administrator. (*Id.*, ¶ 6.)

- Prior to July 23, 2012, the Claims Administrator established a toll-free number for class members to call to find out information about the case and have their questions answered by associates, including support for Spanish-speaking callers. The Claims Administrator monitored this number and responded to all requests received. (*Id.*, ¶ 7.)

- The Claims Administrator arranged for the Summary Notice to be published on a weekly basis over the course of three weeks in two local newspapers, *The Onion* and *The Chicago Reader*. (Docket No. 706.)

Consequently, even if Class Members did not receive information regarding the proposed Settlement through the Notice, they had access to the information through alternative means.

In addition, the Parties undertook every effort to obtain updated addresses for each and every potential member of the Class, including hand-searches for addresses. As outlined above, the Parties requested that the Claims Administrator not only conduct a computerized search for updated addresses for all undeliverable notices, but also requested that the Administrator also conduct a manual search for addresses. The Parties used the resources available to them to ensure that the Settlement Class Members received the notice of the proposed Settlement, including posting the notice on Class Counsel's website, using social media to disseminate the notice and information about the Settlement, and emailing and calling numerous members of the Class to inform them about the Settlement and claims process.

2. The Contents of the Notice Satisfy Due Process

A settlement notice is a summary, not a complete source of information. *See, e.g., Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1153 (8th Cir. 1999); *In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 145, 170 (2d Cir. 1987); *cert. denied*, 484 U.S. 1004 (1988); *Mangone v. First USA Bank*, 206 F.R.D. 222, 233 (S.D. Ill. 2001). Proper notice should provide: (1) the material terms of the proposed settlement; (2) disclosure of any special benefit to the class representatives; (3) disclosure of the attorneys' fees provisions; (4) the time and place of the final approval hearing and the method for objecting to the settlement; (5) an explanation regarding the procedures for allocating and distributing the settlement funds; and (6) the address and phone number of class counsel and the procedures for making inquiries. *In re Aetna Inc.*, No. Civ. A. MDL 1219, 2001 WL 20928, at *5 (E.D.Pa. Jan. 4, 2001) (finding that notice of the settlement to class members was adequate).

Here, the Notice provides all of the required information: the material terms of the proposed Settlement, including a description of the monetary relief offered to members of each of the Subclasses, as well as the incentive payments to Deposed Class Members and Plaintiffs; Class

Counsel's intent to apply for a Fee Award in the amount of $4.8 million; the time and place of the final approval hearing on November 7, 2012; the method for making objections to the Settlement; and contact information for Class Counsel, including how to make inquiries. The Notice also informed Class Members that any Proof of Claim or objection to the Settlement must be received by the Claims Administrator and/or the Court and delivered to Class Counsel and counsel for Defendants no later than October 22, 2012. The Notice further advised Class members that if the Settlement is approved, Defendants will be released of any liability to the Class Members arising out of the conduct alleged or which could have been alleged in this suit. In addition to the individual mailed Notice, information was also available to Class Members through a website, a toll free phone number, and through publication over three weeks in two local publications.

Given the informative content of the notice and its comprehensive dissemination, due process has been satisfied.

VI. CONCLUSION

For the reasons set forth above, the proposed Settlement warrants this Court's final approval. Consequently, Defendants respectfully request the entry of an order in substantially the form submitted herewith as Exhibit A which provides the following relief:

1. Approve the Stipulation and Settlement as fair, reasonable and adequate to the Class and each of the Subclasses;

2. Approve the Settlement as being in the best interests of the Class and each of the Subclasses, and directing consummation of the Settlement in accordance with the terms and conditions of the Stipulation;

3. Authorize and direct the Claims Administrator or the City, as applicable, to make payments to Class Counsel, the Plaintiffs, the Deposed Class Members, and Claimants as outlined herein, in the Stipulation, and in the Final Judgment Order;

4. Dismiss the Third Amended Complaint on the merits and with prejudice as to Class Members, extinguishing all claims, rights, demands and causes of action which might have been asserted therein by (1) Plaintiffs on behalf of themselves, the Class, and each of the respective Subclasses, and (2) all Class Members, and discharging Defendants therefrom, except for those individuals who previously opted out of the Class (Exhibit 1 to Final Judgment Order);

5. Bar and permanently enjoin all Class Members, except for those individuals who previously opted out of the Class (Exhibit 1 to Final Judgment Order); either directly, representatively, or in any other capacity, from instituting or prosecuting the Settled Claims against any of the Released Parties;

6. Dismiss the Third Amended Complaint and order that Persons in the Class, whether or not they filed a Proof of Claim within the time provided for, except for those individuals who previously opted out of the Class (Exhibit 1 to Final Judgment Order), shall be barred from asserting any Settled Claims and all Class Members shall be conclusively deemed to have released the Released Parties from the Settled Claims; and

7. Determine there is no just reason for delay and direct that the Final Judgment and Order be final and appealable.

8. Grant such other or further relief as the Court believes necessary and appropriate.

Dated: November 2, 2012

By: s/ Allan T. Slagel
One of the Attorneys for Defendants
CITY OF CHICAGO

Allan T. Slagel (ARDC No. 6198470)
aslagel@shefskylaw.com
Cary E. Donham (ARDC No. 6199385)
cdonham@shefskylaw.com
Heather A. Jackson (ARDC No. 6243164)
hjackson@shefskylaw.com
SHEFSKY & FROELICH LTD.
111 East Wacker Drive
Suite 2800
Chicago, Illinois 60601
Telephone: (312) 527-4000
Facsimile: (312) 527-4011

By: s/ Joey L. Mogul
One of the Attorneys for Plaintiffs

Joey L. Mogul
John L. Stainthorp
Janine L. Hoft
Sarah Gelsomino
People's Law Office
1180 North Milwaukee Avenue, 3rd Floor
Chicago, Illinois 60642
Telephone: (773) 235-0070
Facsimile: (773) 235-6699

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

KEVIN VODAK, et al.,

Plaintiffs,

v.

CITY OF CHICAGO, et al.,

Defendants.

Case No. 03 C 2463

Judge Virginia M. Kendall

EXHIBITS TO JOINT MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Exhibit	Document
A	Draft Final Judgment Order
B	Declaration of Matthew E. Pohl – Class Administrator
C	Request for Hearing filed by James T. Struck