

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

JASON DOUGLAS, individually and on behalf of all others similarly situated,)	
)	Case No. 14-cv-1741
)	
Plaintiff,)	Hon. Gary Feinerman
)	
v.)	Magistrate Judge Jeffrey Cole
)	
THE WESTERN UNION COMPANY, a Delaware corporation,)	
)	
)	
Defendant.)	

**PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Submitted by:

Joseph J. Siprut
jsiprut@siprut.com
Ismael T. Salam
isalam@siprut.com
SIPRUT PC
17 N. State Street
Suite 1600
Chicago, Illinois 60602
Phone: 312.236.0000
Fax: 312.241.1260
www.siprut.com

***Counsel for Plaintiff
and the Proposed Settlement Class***

TABLE OF CONTENTS

INTRODUCTION1

PROCEDURAL HISTORY3

 I. THE PROPOSED SETTLEMENT6

 A. Certification Of The Proposed Class6

 B. Class Relief6

 C. Class Notice6

 D. Incentive Award To Class Representative7

 E. Attorneys’ Fees And Expenses8

 II. THE PROPOSED SETTLEMENT IS FAIR
 AND SHOULD BE PRELIMINARILY APPROVED8

 A. Strength Of The Case Balanced Against The Settlement9

 1. Western Union’s Asserted Defense9

 2. This Settlement Is Among The Most
 Superior TCPA Class Action Settlement Of All Time11

 B. Risk, Expense, & Complexity Of Case12

 C. The Opinion Of Counsel13

 D. Extent Of Discovery13

 E. Presence Of Governmental Participants14

 III. THE SETTLEMENT CLASS SHOULD
 BE PROVISIONALLY CERTIFIED; THE FORM
 AND METHOD OF NOTICE TO THE CLASS MEMBERS
 SHOULD BE APPROVED; AND, A HEARING REGARDING
 FINAL APPROVAL OF THE SETTLEMENT SHOULD BE SCHEDULED14

 A. The Class Should Be Provisionally Certified14

 1. Numerosity – F.R.C.P. 23(a)15

 2. Commonality/Predominance – F.R.C.P. 23(a)(2) and 23(b)(3)16

 3. Typicality – F.R.C.P. 23(a)(3)18

 4. Adequacy Of Representation – F.R.C.P. 23(a)(4)18

 5. Superiority – F.R.C.P. 23(b)(3)19

 B. The Form and Method of Service of Class Notice Should Be Approved20

 C. The Court Should Schedule A Hearing For Final Settlement Approval22

CONCLUSION22

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT CASES

Amchem Prods. Inc. v. Windsor,
521 U.S. 591 (1997).....14, 15

Eisen v. Carlisle & Jacquelin,
417 U.S. 156 (1974).....20, 21

Green Tree Fin. Corp.-Alabama v. Randolph,
531 U.S. 79, 121 S. Ct. 513, 148 L. Ed. 2d 373 (2000).....11

Nicaj v. Shoe Carnival, Inc.,
135 S. Ct. 1429, 191 L. Ed. 2d 366 (2015).....8

Wal-Mart Stores, Inc. v. Dukes,
131 S. Ct. 2541 (2011).....16

UNITED STATES CIRCUIT COURT OF APPEALS CASES

Armstrong v. Board of Sch. Dirs. of City of Milwaukee,
616 F.2d 305 (7th Cir. 1980)8

Arnold Chapman & Paldo Sign & Display Co. v. Wagener Equities Inc.,
747 F.3d 489 (7th Cir. 2014)15

Butler v. Sears, Roebuck & Co.,
727 F.3d 796 (7th Cir. 2013)17

Carnegie v. Household Int’l, Inc.,
376 F.3d 656 (7th Cir. 2004)20

Donovan v. Estate of Fitzsimmons,
778 F.2d 298 (7th Cir. 1985)9

in re Corrugated Container Antitrust Litigation,
643 F.2d 195 (5th Cir. 1981)14

Ira Holtzman, C.P.A. v. Turza,
728 F.3d 682 (7th Cir. 2013)17

Isby v. Bayh,
75 F.3d 1191 (7th Cir. 1996)8

Marcial v. Coronet Ins. Co.,
880 F.2d 954 (7th Cir. 1989)15

<i>Murray v. GMAC Mortg. Corp.</i> , 434 F.3d 948 (7th Cir. 2006)	11
<i>Patterson v. Gen. Motors Corp.</i> , 631 F.2d 476 (7th Cir. 1980)	16
<i>Redman v. RadioShack Corp.</i> , 768 F.3d 622 (7th Cir. 2014)	8
<i>Rosario v. Livaditis</i> , 963 F.2d 1013 (7th Cir. 1992)	16
<i>Synfuel Techs, Inc. v. DHL Express (USA), Inc.</i> , 463 F.3d 646 (7th Cir. 2006)	9
<i>Szabo v. Bridgeport Machines, Inc.</i> , 249 F.3d 672 (7th Cir. 2001)	15
<i>Williams v. Chartwell Fin. Serv., Ltd.</i> , 204 F.3d 748 (7th Cir. 2000)	15
<i>Wong v. Accretive Health, Inc.</i> , 773 F.3d 859 (7th Cir. 2014)	9
UNITED STATES DISTRICT COURT CASES	
<i>A & L Indus., Inc. v. P. Cipollini, Inc.</i> , 2014 WL 906180 (D.N.J. Mar. 7, 2014).....	22
<i>Arthur v. Sallie Mae, Inc.</i> , No. 10-CV-00198-JLR (W.D. Wash. Sept. 17, 2012).....	12, 22
<i>Bayat v. Bank of the W.</i> , No. C-13-2376 EMC, 2015 WL 1744342 (N.D. Cal. Apr. 15, 2015)	11, 12
<i>Birchmeier v. Caribbean Cruise Line, Inc.</i> , 302 F.R.D. 240 (N.D. Ill. 2014).....	11
<i>Couser v. Comenity Bank</i> , No. 12CV2484-MMA-BGS (S.D. Cal. May 27, 2015)	12
<i>Fletcher v. ZLB Behring LLC</i> , 245 F.R.D. 328 (N.D. Ill. 2006).....	17
<i>Gomez v. Ill. State Bd. of Educ.</i> , 117 F.R.D. 394 (N.D. Ill. 1987).....	19

Gress v. Premier Healthcare Exchange, Inc.,
No. 14-cv-501, Dkt. No. 94 (N.D. Ill. Sept. 11, 2015)11

Hinman v. M and M Rental Ctr., Inc.,
545 F. Supp. 2d 802 (N.D. Ill. 2008)19

In re AT&T Mobility Wireless Data Services Sales Litig.,
270 F.R.D. 330 (N.D. Ill. 2010).....9

In re Capital One Tel. Consumer Prot. Act Litig.,
80 F. Supp. 3d 781, 790 (N.D. Ill. 2015)12, 21

In re Neopharm, Inc. Secs. Litig.,
225 F.R.D. 563 (N.D. Ill. 2004).....18

Kessler v. Am. Resorts Int’l,
2007 WL 4105204 (N.D. Ill. Nov. 14, 2007)8

Maxwell v. Arrow Fin. Servs., LLC,
No. 03-cv-1995, 2004 WL 719278 (N.D. Ill. Mar. 31, 2004)15

Pope v. Harvard Banchares, Inc.,
240 F.R.D. 383 (N.D. Ill. 2006).....16

Radmanovich v. Combined Ins. Co. of Am.,
216 F.R.D. 424 (N.D. Ill. 2003).....18

Rose v. Bank of Am. Corp.,
No. 5:11-CV-02390-EJD (N.D. Cal. Aug. 29, 2014)12

Scholes v. Stone, McGuire, & Benjamin,
143 F.R.D. 181 (N.D. Ill. 1992).....16

Schulte v. Fifth Third Bank,
805 F. Supp. 2d 560 (N.D. Ill. 2011)13, 14

Smith v. Nike Retail Servs., Inc.,
234 F.R.D. 648 (N.D. Ill. 2006).....15

Whitten v. ARS Nat’l Servs. Inc.,
2001 WL 1143238 (N.D. Ill. Sept. 27, 2001)16

Wilkins v. HSBC Bank Nevada, N.A.,
No. 14 C 190, 2015 WL 890566 (N.D. Ill. Feb. 27, 2015).....11, 12, 21

STATUTES AND FEDERAL RULES

28 U.S.C. § 1715.....14

47 U.S.C. § 227.....1

Fed. R. Civ. P. 23..... *passim*

MISCELLANEOUS

NEWBERG ON CLASS ACTIONS (4th ed. 2001 & 2002).....15, 16, 20

MANUAL FOR COMPLEX LITIGATION (Fourth)14, 22

EXHIBIT LIST

Settlement Agreement.....1
Affidavit of Joseph J. Siprut2
E-mail Notice3
Postcard Notice4
Detailed Notice5
Claim Form6

Pursuant to Fed. R. Civ. P. 23, Plaintiff Jason Douglas (“Plaintiff”), by his counsel, respectfully submits the following Motion For Preliminary Approval Of Proposed Class Settlement, and moves for an Order: (1) preliminarily approving the Agreement¹ as being fair, reasonable, and adequate; (2) preliminarily approving the form, manner, and content of the Class Notice; (3) setting the date and time of the Fairness Hearing for no earlier than 150 days from the date preliminary approval is granted; (4) provisionally certifying the Class under Rule 23 of the Federal Rules of Civil Procedure for settlement purposes only (“Class”); (5) provisionally appointing Plaintiff as representative of the Class; and (6) provisionally appointing Joseph J. Siprut and Siprut PC as Class Counsel.

INTRODUCTION

Plaintiff and Defendant The Western Union Company (“Western Union”) have entered into a Settlement Agreement (the “Settlement Agreement” or “Settlement”) in the above-referenced matter. (Exhibit 1 attached hereto.) The Settlement Agreement—a product of extensive negotiations over the course of several months and mediations with Judge Wayne Andersen—settles the dispute relating to Plaintiff’s allegation that Western Union sent unsolicited text messages to the wireless telephones of Plaintiff and the Class without prior express written consent in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”).

The cornerstone of the Settlement is the substantial, concrete monetary relief it provides for Settlement Class Members. The relief achieved by the Settlement is an “all-in” common fund in the amount of **\$8,500,000**—cash (the “Settlement Fund”). What is more, as detailed below, when measured apples-to-apples against other court-approved TCPA settlements in this District

¹ Unless otherwise stated herein, capitalized terms shall have the same meaning as provided in the Parties’ Settlement Agreement, attached hereto as Exhibit 1.

and nationwide, this Settlement is among the most superior TCPA class action settlements in the country—ever.

All Settlement Class Members who submit a Valid Claim will be paid cash out of the Settlement Fund. The Notice and Administration Costs, Attorneys' Fee Award, and Plaintiff's Incentive Award will be deducted from the Settlement Fund prior to the *pro rata* payments to the Settlement Class Members. The Settlement also provides that the best practicable notice be provided to Class Members, and calls for the designation of a reputable and competent professional Settlement Administrator to disseminate notice of and administer the Settlement.

This result is exceptional in light of Western Union's asserted defenses. Western Union not only had numerous defenses that could have defeated the Settlement Class Members' claims, but also had a potential arbitration claim that could have precluded class-wide litigation altogether. Moreover, the Parties were only able to reach the Settlement with the assistance of the respected and experienced JAMS mediator, the Hon. Wayne R. Andersen (Ret.). Negotiations were both difficult and multi-faceted as Western Union's insurer was also involved. The Parties were unable to reach the Settlement after months of arms' length negotiations and two separate mediation sessions. Nevertheless, the Parties continued negotiations until, finally, a resolution was achieved for the Settlement Class. The Settlement is thus the product of lengthy and particularly difficult negotiations.

In sum, although both sides believe their respective positions in the action are meritorious, they have concluded that, due to the uncertainties and expense of protracted litigation, it is in the best interest of Plaintiff, the putative Settlement Class, and Western Union to resolve this action on the terms provided in the attached Settlement Agreement. Accordingly,

and for reasons further detailed below, Plaintiff and Class Counsel request that this Court enter an order preliminary approving this Settlement.

PROCEDURAL HISTORY

On March 12, 2014, Plaintiff filed his Class Action Complaint against Western Union seeking to represent a proposed class of all individuals or entities who allegedly received unsolicited text messages to their wireless telephones from or on behalf of Western Union. (Dkt. No. 1.)

On March 14, 2014, Plaintiff's process server effected service on Western Union. (Dkt. No. 10.) That same day, this Court set an initial status hearing for May 7, 2014 and required the Parties to file an initial status report by April 30, 2014. (Dkt. No. 9.) On April 3, 2014, Western Union moved for an extension of time to answer or otherwise plead. (Dkt. No. 14.) This Court granted Western Union's motion for extension of time and required it to answer or otherwise plead to the complaint by May 5, 2014. (Dkt. No. 16.)

On April 30, 2014, the Parties filed a Joint Initial Status Report (the "Initial Report"). (Dkt No. 20.) During the Parties' scheduling conference and in the Initial Report, Western Union represented that Plaintiff's claims may be subject to an arbitration agreement. (*Id.* at ¶5.) Western Union stated that absent an agreement to submit the claim to arbitration, Western Union would move to compel arbitration. (*Id.*) On May 5, 2014 this Court issued a Minute Entry stating that if Western Union intended to file a motion to compel arbitration, it should notice the motion for presentment at the initial status hearing. (Dkt. No. 21.) That same day, however, Western Union filed its Answer, denying the substance of the allegations and raising 30 affirmative defenses. (Dkt. No. 22.)

At the initial status hearing on May 7, 2014, Western Union indicated that it remained interested in filing a motion to compel arbitration. (Dkt. No. 23.) Per an agreement by the

Parties, this Court stayed discovery until 14 days after the Court's ruling on the forthcoming motion to compel arbitration. (*Id.*)

On May 27, 2014, Plaintiff filed his Motion To Strike Western Union's Affirmative Defenses. (Dkt. No. 24.) Pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, Plaintiff sought to strike each of Western Union's 30 affirmative defenses. At the presentment hearing on Plaintiff's motion to strike on June 12, 2014, the Parties reported that they intended to engage in private mediation. (Dkt. No. 26.) Accordingly, Plaintiff agreed to withdraw his motion with prejudice. (*Id.*) This Court ordered discovery to remain stayed pending further order. (*Id.*)

Between June and September 2014, the Parties engaged in back-and-forth negotiations over the selection of a mediator. (Affidavit of Joseph J. Siprut (the "Siprut Aff."), attached hereto as Exhibit 2, ¶12.) At the status hearing on September 9, 2014, the Parties reported that a mediation was scheduled for early October. (Dkt No. 27.) On October 9, 2014, the Parties, as well as a representative from Western Union's insurer, CNA, attended a mediation at JAMS Resolution Center with Judge Andersen (Rt.) serving as the Parties' mediator. (Dkt. No. 28.) The Parties conducted negotiations for a full day, but were unable to reach a resolution. (*Id.*) Nevertheless, the Parties made progress and agreed to continue negotiations at a later date to be determined.

Between October 2014 and February 2015, the Parties continued productive, informal settlement discussions. Western Union also was working through various coverage issues with its insurer. (Dkt. No. 30.) On February 27, 2015, the Parties engaged in another full-day session of mediation in New York with Judge Andersen presiding. (Dkt. No. 36.) The Parties continued their vigorous settlement negotiations for another three months. During that time, Plaintiff refiled

his pending Motion For Class Certification, pursuant to the Court's instruction. (Dkt. Nos. 34, 35, 37.)

On April 22, 2015, the Parties reported that they had reached an agreement in principle, resolving Plaintiff's claims on a class-wide basis. (Dkt. No. 39.) The Parties then spent four more months exchanging drafts of a final, written settlement agreement. (*See* Sipurut Aff. ¶16.) After many exchanges of drafts and edits, the Parties were finally able to agree to the form and content of a settlement agreement in late July 2015 that has now been fully executed and attached hereto.

In the Agreement, Plaintiff negotiated confirmatory discovery given that the Court had previously stayed formal discovery. (Agreement ¶VII; Dkt. No. 26.) The Parties held several conference calls regarding the scope of confirmatory discovery following the execution of the Agreement. (Sipurut Aff. ¶17.) In addition, the Parties stipulated to an Agreed Confidentiality Order, entered by the Court on August 28, 2015. (Dkt. No. 46.)

Thereafter, Western Union produced thousands of pages of documents, including lists of Settlement Class Members. (Sipurut Aff. ¶18.) After conducting a comprehensive review of the documents, Plaintiff determined that the size of the Settlement Class is at most 823,472. Plaintiff has the names and last known addresses and mobile numbers for each Settlement Class Member. (*Id.*) In addition, Plaintiff has the last known email addresses for a subset of the Settlement Class. (*Id.*) Plaintiff also determined the manner in which the text messages were sent, including the involvement of third parties and the equipment used to send the text messages.

As a result of the above-described mediation sessions and conferences steered by Judge Anderson, the Parties have reached the Settlement they are now proposing that the Court preliminarily approve. The Parties request that the Court conditionally certify the Settlement Class set forth in their Settlement Agreement.

I. THE PROPOSED SETTLEMENT.

The proposed Settlement provides the following:

A. Certification Of The Proposed Class.

The Plaintiff requests that the Court, for the purposes of settlement, certify a Class defined as:

All Persons in the United States who received one or more unsolicited text messages sent by or on behalf of Western Union between March 12, 2010 and the date of Preliminary Approval.

B. Class Relief.

The Settlement establishes the following relief for Class members:

- **Cash Awards Available To All Settlement Class Members.** Each Settlement Class Member who submits a Valid Claim, shall receive one pro rata share of the \$8.5M Settlement Fund, after the Notice and Administration Costs (approximately \$240,000) Plaintiff's requested Attorneys' Fee Award (35% of the Fund, approximately \$2,891,000) and Incentive Award (approximately \$5,000) have been deducted from the Settlement Fund (the "Net Settlement Fund"). Assuming the Net Settlement Fund is \$5,364,000, Class Counsel estimates that if 1%, 3%, or 5% of Class Members submit Valid Claims, each said Class Member will receive approximately \$651.37, \$217.12, or \$130.28 respectively.
- **No Reversion.** Under no circumstances shall any amounts of the Settlement Fund revert back to Western Union.

The Settlement is thus designed to afford relief to as many Class members as possible.

C. Class Notice.

Subject to the Court granting preliminary approval of the Settlement, the Settlement Administrator will provide the Class with notice of the proposed Settlement by the following methods:

- **Direct Notice Via E-Mail And Postcard.** Within fourteen days after entry of an order preliminary approving the Settlement, Defendants shall provide the Settlement Administrator with the list of Settlement Class Members (the "List"). Within forty-five days after entry of an order preliminary approving the Settlement, the Settlement Administrator shall cause direct notice, in the form of Exhibit 3 attached hereto, to be sent to Class Members via e-mail from whom e-mail addresses are provided in the List.

In the event that the Settlement Administrator receives notifications of failed e-mail transmissions to Class Members, the Settlement Administrator shall cause direct notice to be sent to each of the affected Class Members at the physical addresses provided in the List via postcard. For those Class Members whom do not have e-mail address in the List, the Settlement Administrator shall cause direct notice, in the form of Exhibit 4 attached hereto, to be sent to Class Members for whom valid physical addresses are provided in the List.

- **Settlement Website.** The Settlement Administrator shall establish an Internet website. On the Settlement Website, Class Members shall be able to review the detailed notice, in the form of Exhibit 5 attached hereto, operative complaint, Settlement Agreement, and other settlement materials. In addition, Class Members may submit claims through the Settlement Website or may download a paper Claim Form, in the form of Exhibit 6 attached hereto, to be filed via mail. Class Members will also have access to information on how to opt-out of the Settlement.
- **Toll-Free Number.** The Settlement Administrator shall establish a toll-free number. Callers will hear an introductory message. Callers will then have the option to continue to get information about the Settlement in the form of recorded answers to frequently asked questions. Callers will also have an option to request a detailed notice and/or a Claim Form by mail.

In order to receive a Cash Award described above, the Settlement Class Member must submit a Claim Form within sixty days after the Notice Date. Class Members may submit their claims online and via mail. Class Members who wish to either opt-out of or object to the Settlement, must do so in accordance with the Agreement within sixty days after the Notice Date. Within thirty days of the Effective Date, or at another time as the Parties agree, the Settlement Administrator shall cause distribution of Cash Awards to the Settlement Class Members who submit Valid Claims.

D. Incentive Award To Class Representative.

Subject to Court approval, the Plaintiff-Class Representative will request an Incentive Award in the amount of \$5,000 in recognition of his contributions to the Settlement Class and the risk he incurred in commencing the action, both financial and otherwise. The Court does not need to award or otherwise rule on Plaintiff's incentive award at this time. Class Counsel will

file a motion for the incentive award, pursuant to the schedule in the Preliminary Approval Order, and will support the request for the award in detail.

E. Attorneys' Fees And Expenses.

Class Counsel will request fees and expenses in the amount of 35% of the Fund, after the Notice and Administration Costs are deducted (approximately \$2,891,000). Importantly, however, this is not a provision of the Settlement. There is no agreement on fees—i.e., no “clear-sailing” provision—consistent with recent Seventh Circuit jurisprudence. *Redman v. RadioShack Corp.*, 768 F.3d 622, 637 (7th Cir. 2014) (“Clear-sailing clauses have not been held to be unlawful per se, but at least in a case such as this, involving a non-cash settlement award to the class, such a clause should be subjected to intense critical scrutiny by the district court[.]”) *cert. denied sub nom. Nicaj v. Shoe Carnival, Inc.*, 135 S. Ct. 1429, 191 L. Ed. 2d 366 (2015). The

Court does not need to award or otherwise rule on Class Counsel’s fees at this time. Class Counsel will file a motion for attorneys’ fees separately, pursuant to the schedule in the Preliminary Approval Order, and will support the request for fees in detail.

II. THE PROPOSED SETTLEMENT IS FAIR AND SHOULD BE PRELIMINARILY APPROVED.

Both judicial and public policies strongly favor the settlement of class action litigation. *Isby v. Bayh*, 75 F.3d 1191, 1198 (7th Cir. 1996). Although the standards to be applied at the preliminary approval stage “are ultimately questions for the fairness hearing that comes after a court finds that a proposed settlement is within approval range, a more summary version of the same inquiry takes place at the preliminary phase.” *Kessler v. Am. Resorts Int’l*, 2007 WL 4105204, at *5 (N.D. Ill. Nov. 14, 2007) (citing *Armstrong v. Board of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980)). The factors considered at this stage include: “(1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement

offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to the settlement; (5) the opinion of competent counsel; and (6) stage of the proceedings and the amount of discovery completed.” *Wong v. Accretive Health, Inc.*, 773 F.3d 859, 863 (7th Cir. 2014).

A. Strength Of The Case Balanced Against The Settlement.

“The most important factor relevant to the fairness of a class action settlement is the strength of plaintiff’s case on the merits balanced against the amount offered in the settlement.” *Wong*, 773 F.3d at 864; *Synfuel Techs, Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006). However, “courts should refrain from resolving the merits of the controversy or making a precise determination of the parties’ respective legal rights.” *In re AT&T Mobility Wireless Data Services Sales Litig.*, 270 F.R.D. 330, 346 (N.D. Ill. 2010) (internal quotations omitted). Moreover, “[b]ecause the essence of settlement is compromise, courts should not reject a settlement solely because it does not provide a complete victory to the plaintiffs.” *Id.* (internal quotations omitted). Rather, the integral part of the Court’s strength-versus-merits evaluation “is a consideration of the various risks and costs that accompany continuation of the litigation.” *Donovan v. Estate of Fitzsimmons*, 778 F.2d 298, 309 (7th Cir. 1985).

1. Western Union’s Asserted Defenses.

Plaintiff alleges that Western Union violated the TCPA by sending unsolicited text messages to wireless telephones without prior express written consent. Plaintiff thus claims that he and the Settlement Class are entitled to statutory or actual damages, injunctive relief, and other equitable relief this Court deems appropriate.

Western Union, however, denies liability and contends that it has a number of affirmative defenses that would defeat Plaintiff’s claim on both substantive and procedural grounds. Western Union has principally contended that Plaintiff’s and the Settlement Class Members’ claims are

subject to arbitration. According to Western Union, text messages are sent to people who have registered an online account with Western Union and thereby agreed to Western Union's Terms & Conditions, which require any dispute arising from or relating to the use of Western Union's services to be submitted to arbitration. Western Union also imposes a class action waiver in its Terms & Conditions. Western asserts that even if some Settlement Class Members had opted out of the arbitration provision and class action waiver, thousands of individual, fact-intensive inquiries would preclude class certification.

Further, Western Union contends that it obtained the requisite consent from Settlement Class Members, like Plaintiff, to be called (or, as in this case, to be sent text messages) because they voluntarily provided their wireless telephone numbers during the account registration process. On Western Union's view, prior express written consent, which requires more than mere voluntary provision of the number, is not required, because the text messages at issue do not introduce an advertisement. Thus, based on the issue of consent, Western Union believes that it will be able to both defeat Settlement Class Members' claims on the merits and at class certification, even if the arbitration provision and class action waiver do not apply.

In addition, Western Union asserts that the equipment used to send the text messages at issue does not qualify as an automatic telephone dialing system and that Western Union is not liable because a third party sent the text messages. Clearly, one of the factors to be considered as to the fairness of a class action settlement is Western Union's willingness and ability to mount just such a vigorous defense.

As explained above, the Settlement allows Settlement Class Members to receive direct, monetary relief. While Plaintiff believes that his claim for maximum statutory damages under the TCPA is strong, Plaintiff is also aware of the inherent risks and costs of continuing with complex

litigation of this nature. If Western Union were to prevail on its asserted defenses, Settlement Class Members, including Plaintiff, would receive no relief *at all*. And if Western Union were correct about the applicability of an arbitration agreement, each Settlement Class Member would individually have to bear the burden of prosecuting their claims through arbitration—a common deterrent to individuals seeking legal recourse. *See Green Tree Fin. Corp.-Alabama v. Randolph*, 531 U.S. 79, 81, 121 S. Ct. 513, 517, 148 L. Ed. 2d 373 (2000) (“[T]he existence of large arbitration costs may well preclude a litigant like Randolph from effectively vindicating such rights.”).²

2. This Settlement Is Among The Most Superior TCPA Class Action Settlements Of All Time.

Class Counsel’s review of recent TCPA settlements from across the country empirically establishes that the Settlement here outranks virtually of the significant TCPA settlements to precede it. As illustrated below, on an apples-to-apples basis (comparing settlement common funds to class sizes), Settlement Class Members have the opportunity to receive more than

² Although Western Union’s total theoretical liability here is significant, and while “ruinous” liability is not a defense to class certification, it can, as a practical matter, affect a party’s ability to collect on a judgment. *See generally Birchmeier v. Caribbean Cruise Line, Inc.*, 302 F.R.D. 240, 256 (N.D. Ill. 2014) (discussing the holding in *Murray v. GMAC Mortg. Corp.*, 434 F.3d 948 (7th Cir. 2006)). Courts routinely approve settlements where a “total victory would threaten the defendant’s ability to continue on as a viable entity.” *Wilkins v. HSBC Bank Nevada, N.A.*, No. 14 C 190, 2015 WL 890566, at *5 (N.D. Ill. Feb. 27, 2015) (granting final approval of TCPA class action settlement where fund was \$40 million but potential liability was \$172 billion); *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 790 (N.D. Ill. 2015) (granting final approval of TCPA class action settlement where fund was \$75.5 million, but potential liability was \$2.85 trillion) *appeal pending*, No. 15-1490 (7th Cir.); *Bayat v. Bank of the West*, No. C-13-2376 EMC, 2015 WL 1744342, at *3 (N.D. Cal. Apr. 15, 2015) (granting final approval of TCPA class action settlement where fund was \$3.5 million, but potential liability was \$435 million); *Gress v. Premier Healthcare Exchange, Inc.*, No. 14-cv-501, Dkt. No. 94 (N.D. Ill. Sept. 11, 2015) (granting final approval of TCPA class action settlement where fund was \$756,075, but potential liability was \$25.9 million). “These cases properly recognize that a settlement is in the interests of class members who otherwise may not be entitled to any relief should their claims fail on the merits.” *Bayat*, 2015 WL 1744342, at *3.

double (and in some cases more than triple) what class members have received in other court-approved TCPA settlements:

CASE	CLASS SIZE	AMOUNT OF FUND	RATE/MEMBER
<i>Western Union</i>	823,472	\$8,500,000	\$10.32
<i>HSBC</i> ³	9,065,262	\$40,000,000	\$4.41
<i>Capital One</i> ⁴	17,522,049	\$75,500,000	\$4.31
<i>Bank of America</i> ⁵	7,723,000	\$32,000,000	\$4.14
<i>Bank of the West</i> ⁶	871,836	\$3,400,000	\$3.90
<i>Sallie Mae</i> ⁷	8,000,000	\$24,200,000	\$3.03
<i>Comenity Bank</i> ⁸	4,000,000	\$8,500,000	\$2.13

Given that these settlements have been deemed fair, adequate, and reasonable, there should be no doubt that this Settlement readily satisfies these same standards of Rule 23.

B. Risk, Expense, & Complexity Of Case.

Due to the nature of Plaintiff's case, trial will require the collection of evidence and witness testimony from across the country. Both Parties would examine a number of Western Union's current and former employees. Western Union intends to assert a number of affirmative defenses that it contends bar Plaintiff's claim in whole or in part. Western Union would present—and Plaintiff would necessarily attempt to rebut—evidence and testimony on whether individual Class members provided the requisite consent to Western Union. The uncertainty as to whether these affirmative defenses apply in this case creates substantial risk for both sides. Plaintiff and proposed Class Counsel also recognize that the expense, duration, and complexity

³ *HSBC*, 2015 WL 890566, at *5.

⁴ *In re Capital One*, No. 1:12-cv-10064, Docket No. 129 (N.D. Ill. July 14, 2014).

⁵ *Rose v. Bank of Am. Corp.*, No. 5:11-CV-02390-EJD, 2014 WL 4273358, at *1 (N.D. Cal. Aug. 29, 2014) *reconsideration denied sub nom. Rose v. Bank of Am. Corp.*, No. 5:11-CV-02390-EJD, 2015 WL 1969094 (N.D. Cal. May 1, 2015).

⁶ *Bayat*, 2015 WL 1744342, at *3.

⁷ *Arthur v. Sallie Mae, Inc.*, No. 10-CV-00198-JLR, 2012 WL 4075238, at *1 (W.D. Wash. Sept. 17, 2012).

⁸ *Couser v. Comenity Bank*, No. 12CV2484-MMA-BGS, 2015 WL 5117082, at *2 (S.D. Cal. May 27, 2015).

of protracted litigation would be substantial, and would require further briefing on numerous substantive issues, evidentiary hearings, and further discovery and the gathering of evidence and witnesses.

C. The Opinion Of Counsel.

“The opinion of competent counsel is relevant to the question whether a settlement is fair, reasonable, and adequate under Rule 23.” *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586-87 (N.D. Ill. 2011). Here, Class Counsel has extensive experience in consumer class actions and complex litigation, and has settled (with court approval) numerous TCPA cases. (*See Siprut Aff.* ¶29.) Based upon proposed Class Counsel’s analysis and the information obtained from Western Union, a *pro rata* share of the Class Payment represents a significant recovery for the Settlement Class, especially when weighed against Western Union’s anticipated defenses and the inherent risks of litigation. Class Counsel believes that the Settlement is beneficial to the Settlement Class and meets the class-certification requirements of Rule 23.

D. Extent Of Discovery.

Based upon information exchanged by the Parties and the confirmatory discovery provided pursuant to the Settlement, Plaintiff believes it possesses the evidence needed to evaluate the strengths and weaknesses of the case. Western Union has provided Plaintiff with information relating to the manner in which the wireless telephone numbers were compiled, the software and equipment used to send the text messages, the level of involvement of Western Union, and empirical data concerning the number of text messages sent. As such, counsel for each party has sufficient information to assess the strengths, weaknesses, and likely expense of taking this case to trial.

While the Parties have both formally and informally exchanged information critical to evaluating the strength of Plaintiff’s contentions (and Western Union’s defenses), the amount of

discovery taken is not a prerequisite to a class action settlement. Courts have noted that “the label of ‘discovery’ [either formal or informal] is not what matters. Instead, the pertinent inquiry is what facts and information have been provided.” *Schulte*, 805 F. Supp. 2d at 587 (internal citation omitted) (alteration original). *See also in re Corrugated Container Antitrust Litigation*, 643 F.2d 195, 211 (5th Cir. 1981) (“It is true that very little formal discovery was conducted and that there is no voluminous record in the case. However, the lack of such does not compel the conclusion that insufficient discovery was conducted.”) (emphasis omitted). Here, there is more than sufficient information to make a reasonable and informed decision, meaning that there was a reasonable, informed basis to evaluate the Settlement.

E. Presence Of Governmental Participants.

Although there is no governmental entity participating in this matter as of this time, full and complete notice is being provided to all appropriate state and federal authorities. Western Union will provide such notice which will include all appropriate information and documents required by the Class Action Fairness Act, 28 U.S.C. § 1715(b).

III. THE SETTLEMENT CLASS SHOULD BE PROVISIONALLY CERTIFIED; THE FORM AND METHOD OF NOTICE TO THE CLASS MEMBERS SHOULD BE APPROVED; AND, A HEARING REGARDING FINAL APPROVAL OF THE SETTLEMENT SHOULD BE SCHEDULED.

A. The Class Should Be Provisionally Certified.

Before preliminary approval of a class action settlement can be granted, the Court must determine that the proposed class is appropriate for certification. *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997); MANUAL FOR COMPLEX LITIGATION (Fourth) § 21.632. Federal Rule of Civil Procedure 23(a) provides that a class may be certified if (i) the class is so numerous that joinder of all members is impractical, (ii) there are questions of law or fact common to the class, (iii) the claims or defenses of the representative parties are typical of those of the class, and (iv)

the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a); *Williams v. Chartwell Fin. Serv., Ltd.*, 204 F.3d 748, 760 (7th Cir. 2000).

Once the requirements of Rule 23(a) have been met, the proposed class must then satisfy at least one of the three subsections of Rule 23(b). *Amchem*, 521 U.S. at 614. In this case, Plaintiff seeks certification of the Class under Rule 23(b)(3), which requires that (i) the questions of law or fact common to all class members predominate over issues affecting only individual members, and (ii) the maintenance of a class action be superior to other available methods for the fair and efficient adjudication of the controversy. *Id.* at 615; *Szabo v. Bridgeport Machines, Inc.*, 249 F.3d 672, 676 (7th Cir. 2001).

As discussed further below, the proposed Class meets each of the requirements of Rules 23(a) and (b), and therefore, certification is appropriate.⁹

1. Numerosity — Federal Rule Of Civil Procedure 23(a).

Rule 23(a)'s first requirement, numerosity, is satisfied where “the class is so numerous that joinder of all members is impractical.” Fed. R. Civ. P. 23(a)(1). There is neither a specific number required to satisfy this requirement, nor is a plaintiff required to state the exact number of potential class members. *Smith v. Nike Retail Servs., Inc.*, 234 F.R.D. 648, 659 (N.D. Ill. 2006) (citing *Marcial v. Coronet Ins. Co.*, 880 F.2d 954 (7th Cir. 1989)); 3 Alba Conte & Herbert B. Newberg, *NEWBERG ON CLASS ACTIONS* § 7.20, 66 (4th ed. 2001). Instead, courts are permitted “to make common-sense assumptions that support a finding of numerosity.” *Maxwell v. Arrow Fin. Servs., LLC*, 2004 WL 719278, at *2 (N.D. Ill. Mar. 31, 2004). “[A] class can be certified without determination of its size, so long as it’s reasonable to believe it large enough to make joinder impracticable and thus justify a class action suit.” *Arnold Chapman & Paldo Sign*

⁹ As detailed in the Settlement Agreement, Western Union does not oppose the request for class certification solely for the purposes of settlement.

& Display Co. v. Wagener Equities Inc., 747 F.3d 489, 492 (7th Cir. 2014). Generally, where the membership of the proposed class is at least 40, joinder is impracticable and the numerosity requirement is met. *Pope v. Harvard Bancares, Inc.*, 240 F.R.D. 383, 387 (N.D. Ill. 2006).

In this case, approximately 823,472 Settlement Class Members were sent text messages. (See Siprut Aff. ¶18.) Accordingly, the Class satisfies the numerosity requirement. See NEWBERG ON CLASS ACTIONS § 3:5, 243-46 (4th ed. 2002) (“Class actions under the amended Rule 23 have frequently involved classes numbering in the hundreds, or thousands . . . In such cases, the impracticability of bringing all class members before the court has been obvious, and the Rule 23(a)(1) requirement has been easily met.”).

**2. Commonality/Predominance —
Federal Rule Of Civil Procedure 23(a)(2) and 23(b)(3).**

The commonality element requires that “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). Courts recognize that there may be factual differences between class members, but “factual variations among class members’ claims” do not themselves “defeat the certification of a class.” *Rosario v. Livaditis*, 963 F.2d 1013, 1017 (7th Cir. 1992) (citing *Patterson v. Gen. Motors Corp.*, 631 F.2d 476, 481 (7th Cir. 1980)), *cert. denied*, 451 U.S. 914 (1980)), *cert. denied*, 506 U.S. 1051 (1993). In fact, the threshold for commonality is not high. *Scholes v. Stone, McGuire, & Benjamin*, 143 F.R.D. 181, 185 (N.D. Ill. 1992). Rather, commonality exists if a common nucleus of operative fact exists, even if as to one question of law or fact. *Whitten v. ARS Nat’l Servs. Inc.*, 2001 WL 1143238, *3 (N.D. Ill. Sept. 27, 2001) (commonality is often found where “Defendants have engaged in standardized conduct toward the members of the proposed class.”); *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (“[C]ommonality requires that the claims of the class simply “depend upon a common contention . . . of such a nature that it is capable of class-wide resolution—which means that

determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.”).

The Settlement Class shares common questions of fact and law that predominate over issues affecting only individual Settlement Class Members. Those common factual and legal issues include:

- a. Whether Western Union engaged in a pattern of sending unsolicited text messages;
- b. Whether Western Union and/or its agents used an automatic telephone dialing system to send the text messages, within the meaning of the TCPA;
- c. The manner in which Western Union compiled or obtained its list of wireless telephone numbers; and
- d. Whether Western Union thereby violated the TCPA.

Additionally, Rule 23(b)(3) provides that a class action may be maintained where the questions of law and fact common to members of the proposed class predominate over any questions affecting only individual members. Fed. R. Civ. P. 23(b)(3); *Fletcher v. ZLB Behring LLC*, 245 F.R.D. 328, 331-32 (N.D. Ill. 2006). “Predominance . . . is a question of efficiency.” *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 800 (7th Cir. 2013). A class action is the more efficient procedure for determining liability and damages in a case such as this, where “loss, and the statutory remedy, are the same for all recipients[.]” *Ira Holtzman, C.P.A. v. Turza*, 728 F.3d 682, 684 (7th Cir. 2013) *reh’g denied* (Sept. 24, 2013), *cert. denied*, 134 S. Ct. 1318, 188 L. Ed. 2d 306 (U.S. 2014).

In this case, common questions predominate for the Settlement Class because Western Union’s alleged unlawful conduct presents common questions with regard to all proposed Settlement Class Members. *See Holtzman*, 728 F.3d at 684 (“Class certification is normal in litigation under [the TCPA], because the main questions . . . are common to all recipients.”).

Thus, in the context of the proposed class-wide settlement, the predominance requirement is satisfied because liability and damages would have been decided predominantly, if not entirely, based on common evidence of Western Union's conduct.

3. Typicality — Federal Rule Of Civil Procedure 23(a)(3).

Rule 23 also requires that a plaintiff's claims be typical of other class members' claims. Fed. R. Civ. P. 23(a)(3). The typicality requirement is closely related to the commonality requirement and is satisfied if the plaintiff's claims arise from "the same event or practice or course of conduct that gives rise to the claims of other class members and . . . are based on the same legal theory." *Radmanovich v. Combined Ins. Co. of Am.*, 216 F.R.D. 424, 432 (N.D. Ill. 2003) (internal quotations omitted). The existence of factual differences will not preclude a finding of typicality. *Id.* "Typicality does not mean identical, and the typicality requirement is liberally construed." *In re Neopharm, Inc. Secs. Litig.*, 225 F.R.D. 563, 566 (N.D. Ill. 2004) (citation omitted).

Here, Plaintiff and the Settlement Class allege that they all received unsolicited text messages from or on behalf of Western Union, and that Western Union sent or had sent on its behalf the text messages in violation of the TCPA, thereby entitling Plaintiff and the Settlement Class to actual or statutory damages and equitable relief. Moreover, there are no defenses that pertain to Plaintiff that would not also pertain to the Settlement Class. Accordingly, Plaintiff's claims are typical of the other Class members' claims.

4. Adequacy of Representation — Federal Rule Of Civil Procedure 23(a)(4).

The final Rule 23(a) prerequisite requires that a proposed class representative "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To satisfy the adequacy requirement, class representatives must establish that: (i) their claims are not in conflict with

those of the proposed class, (ii) they have sufficient interests in the outcome of the case, and (iii) they are represented by experienced, competent counsel. *Hinman v. M and M Rental Ctr., Inc.*, 545 F. Supp. 2d 802, 807 (N.D. Ill. 2008). Furthermore, proposed class counsel must be competent and have the resources necessary to sustain the complex litigation necessitated by class claims; it is persuasive evidence that proposed class counsel have been found adequate in prior cases. *Gomez v. Ill. State Bd. of Educ.*, 117 F.R.D. 394, 401 (N.D. Ill. 1987).

Here, Plaintiff's interests are consonant with the interests of the Settlement Class—obtaining relief from Western Union for its alleged unlawful transmission of text messages, and ensuring that Western Union does not continue such conduct in the future. Plaintiff has no interests antagonistic to the interests of the other Settlement Class Members. (*See* Siprut Aff. ¶21.) Moreover, Plaintiff's counsel are well respected members of the legal community, have regularly engaged in major complex litigation, and have significant experience in consumer class actions involving similar issues, scope, and complexity. (*See id.* ¶20; Siprut Firm Resume (attached as Exhibit A to the Siprut Aff.)) Accordingly, Plaintiff and his counsel would adequately represent the proposed Class.

5. Superiority — Federal Rule Of Civil Procedure 23(b)(3).

In addition to satisfying Rule 23(a), a plaintiff seeking certification must satisfy one of the provisions of Rule 23(b). Rule 23(b)(3) provides that matters pertinent to a finding of superiority include: “(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the difficulties likely to be encountered in the management of a class action.” Fed. R. Civ. P.

23(b)(3). When settling a class action, Plaintiff does not have to prove manageability under Rule 23(b)(3) as if the case were being fully litigated because settlement may “eliminate all the thorny issues that the court would have to resolve if the parties fought out the case.” *Carnegie v. Household Int’l, Inc.*, 376 F.3d 656, 660 (7th Cir. 2004) (citing *Amchem*, 521 U.S. at 117)).

The present class action is superior to other available methods for the fair and efficient adjudication of Plaintiff’s and the Class’ claims. The burden and expense of individual prosecution of the litigation necessitated by Western Union’s actions makes a class action superior to other available methods of resolution. Thus, absent a class action, it would be difficult, if not impossible, for individual members of the Class to obtain effective relief.

B. The Form And Method Of Service Of Class Notice Should Be Approved.

“When the parties reach a settlement agreement before a class determination and seek to stipulate that the settlement will have class wide scope, a class notice must be sent to provide absent class members with certain basic information so that they have an opportunity to consider the terms of the settlement.” 2 NEWBERG, section 11.30, p. 11-62-11-63. The substance of the notice must describe, in plain language, the nature of the action, the definition of the certified class, and the class claims and defenses at issue. *See* Fed. R. Civ. P. 23(c)(2)(B). The notice must also explain that class members may enter an appearance through counsel if desired, may request to be excluded from the class, and that a class judgment shall have a binding effect on all class members. *Id.* Additionally, dissemination of the notice must comport with both Rule 23 and due process, which require that a class receive “the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). The proposed notice plan in this case satisfies Rule 23’s notice requirements as well as due process considerations, and provides:

1. A brief summary of the claims alleged in the action;

2. An explanation of the proposed terms of the Settlement, the amount the Class members are entitled to receive under the Settlement Agreement, and the method by which Class members can claim their Settlement benefit;

3. An explanation of the right to opt out of and/or object to the Settlement within given time-frames and subject to certain requirements;

4. An explanation that members of the Class who do not opt out will be bound by the proposed Settlement and judgment and will have released their claims;

5. An explanation that members of the Class who do not opt out will be represented by proposed Class Counsel; and

6. An identification of Class Counsel and a means for making inquiries thereof.

Federal courts authorize service of class notice by a variety of reliable means. In this regard, “[t]here 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*, 417 U.S. at 175-76.

In this case, the Settlement provides for direct notice via e-mail and postcard to each of the 823,472 Class Members identified by Western Union. This notice method is reasonably calculated to reach the Settlement Class Members by the best means practicable and should be approved.¹⁰

¹⁰ See *In re Capital One*, 80 F. Supp. 3d at 786 (granting final approval of notice plan that consisted of “(1) sending 12,342,000 summary notices via email to all potential class members who had email addresses reflected in Capital One’s records; (2) mailing 4,303,218 postcard notices via first class mail to class members who had opted out of receiving email from Capital One, who did not have email addresses on file, or whose emails were undeliverable; (3) running internet banner notices on 40 websites BrownGreer determined class members were likely to visit; (4) establishing a settlement website and toll-free information telephone number dedicated to answering telephone inquiries; and (5) providing notice of the settlement to the officials designated pursuant to Class Action Fairness Act”), *on appeal* 15-1490 (7th Cir.); *HSBC*, 2015

C. The Court Should Schedule A Hearing For Final Settlement Approval.

Following notice to the Class, a Fairness Hearing is to be held on the proposed Settlement. MANUAL FOR COMPLEX LITIGATION, § 21.633. Accordingly, Plaintiff, by proposed Class Counsel, respectfully requests that the Court schedule a hearing on final approval of the Settlement to be held no earlier than 150 days after entry of the Preliminary Approval Order. The hearing on the final settlement approval should be scheduled now so that the date can be disclosed in the class notice. After receiving final approval, the Parties request that the Court enter a Final Order and Judgment.

CONCLUSION

Based upon the foregoing, and because the proposed Settlement is fair, reasonable, and advantageous to the proposed Class, Plaintiff respectfully requests that the Court enter an Order:

- A. Preliminarily approving the Settlement as being fair, reasonable, and adequate;
- B. Setting the date and time of the Fairness Hearing to be held no earlier than 150 days after entry of the Preliminary Approval Order;
- C. Provisionally certifying the proposed Class under Rule 23 of the Federal Rules of Civil Procedure for settlement purposes only;
- D. Appointing Plaintiff as Class representative;

WL 890566, at *3 (granting final approval of notice plan that consisted of “sending 6,586,221 summary notices via email to all potential class members who had email addresses reflected in HSBC's (or Capital One's) records; (2) mailing paper notices to 667,698 class members whose records did not contain an email address; (3) mailing paper notices to 744,658 class members with undeliverable emails; and (4) re-mailing paper notices with updated address information where the original mailings were returned undeliverable”); *Sallie Mae*, 2012 WL 4075238, at *1 (granting final approval of notice plan that consisted of e-mail and mail notice); *see also Bank of Am.*, 2014 WL 4273358, at *2 (“In this case, postal mail was well suited for locating and notifying class members, since the violations by defendant arose out of auto-dialed telephone calls and text messages made to cellular telephones, which typically have a name and physical mailing address associated with them.”); *A & L Indus., Inc. v. P. Cipollini, Inc.*, 2014 WL 906180, at *1 (D.N.J. Mar. 7, 2014) (rejecting arguments that notice had to be served in accordance with Rule 5(b); “Rule 23(c) should supersede because Rule 23(c) addresses class notice specifically, whereas Rule 5 addresses service generally.”).

- E. Appointing Joseph J. Siprut and Siprut PC as Class Counsel; and
- F. Such other and further relief the Court deems just and proper.

Dated: October 28, 2015

Respectfully submitted,

By: s/ Joseph J. Siprut

Joseph J. Siprut
jsiprut@siprut.com
Ismael T. Salam
isalam@siprut.com

SIPRUT PC
17 N. State Street
Suite 1600
Chicago, Illinois 60602
312.236.0000
Fax: 312.241.1260

***Counsel for Plaintiff
and the Proposed Settlement Class***

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a true and correct copy of the foregoing **Plaintiff's Motion For Preliminary Approval Of Class Action Settlement** was filed this 28th day of October 2015 via the electronic filing system of the United States District Court for the Northern District of Illinois, which will automatically serve all counsel of record.

s/ Joseph J. Siprut

EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is entered into between Plaintiff Jason Douglas and Defendant The Western Union Company in order to effect a full and final settlement and dismissal with prejudice of all claims against Western Union as alleged in the case captioned Douglas v. The Western Union Company, Case No. 1:14-cv-01741 (N.D. Ill. filed March 12, 2014), on the terms set forth below and to the full extent reflected herein, subject to approval of the Court. Capitalized terms shall have the meaning ascribed to them in Section II of this Settlement Agreement.

I. RECITALS

A. On or about March 12, 2014, Plaintiff filed his Complaint alleging that Western Union had sent Plaintiff a text message to his wireless telephone number without his prior consent and purportedly in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”). Plaintiff seeks actual and statutory damages under the TCPA on behalf of himself and a proposed class of “[a]ll individuals in the United States who received one or more unsolicited text messages from or on behalf of” Western Union.

B. Western Union denies all material allegations in the Litigation and has asserted a variety of affirmative defenses. Western Union specifically denies that it has engaged in any wrongdoing whatsoever, that it has any liability in connection with the claims asserted or that could have been asserted in the Litigation and further denies that the claims in the Litigation can properly be maintained as a class action, other than for the purposes of settlement.

C. After initial discussions and various exchanges of information regarding the merits of the case, the Parties agreed to mediation, and on October 9, 2014, engaged in a full-day mediation with the assistance of the Hon. Wayne R. Andersen (Ret.). While the Parties did not reach a resolution that day, they made progress towards settlement and agreed to continue

negotiations. After the Parties had multiple additional settlement discussions with the continuing assistance of Judge Andersen, they agreed to engage in another full-day mediation session with Judge Andersen on February 27, 2015. Following that mediation session, after several more weeks of continued exchanges and discussions, the Parties reached an agreement in principle, subject to finalization of a mutually-agreeable settlement agreement that would resolve the claims in Plaintiff's Complaint on a class-wide basis.

D. Plaintiff and Class Counsel have conducted an examination of the facts and documents relating to the Litigation, including documents and information produced by Western Union during mediation, and have concluded that this Settlement provides substantial benefits to Plaintiff and the Settlement Class and resolves all issues that were or could have been raised in the Litigation without prolonged litigation and the risks and uncertainties inherent in litigation.

E. Plaintiff and Class Counsel have concluded that this Settlement provides substantial benefits to Plaintiff and to the Settlement Class and resolves all issues that were or could have been raised in the Litigation without prolonged litigation and the risks and uncertainties inherent in litigation and that this Settlement is fair, reasonable, adequate and in the best interest of the Settlement Class.

F. Western Union denies each and every allegation of wrongdoing, liability and damages that were or could have been asserted in the Litigation and further denies that the claims in the Litigation would be appropriate for class treatment if the Litigation were to proceed through litigation and trial. Nonetheless, without admitting or conceding any wrongdoing, liability or damages or the appropriateness of Plaintiff's claims or similar claims for class treatment, Western Union consents to the Settlement solely to avoid the expense, inconvenience and inherent risk of litigation as well as the disruption of its business operations.

G. Nothing in this Settlement or Settlement Agreement shall be construed as an admission or concession by Western Union of the truth of any allegations raised in the Litigation or of any fault, wrongdoing, liability or damages of any kind.

H. This Settlement Agreement, its terms, documents related to it and the negotiations or proceedings connected with it shall not be offered or received into evidence in the Litigation or in any other action or proceeding to establish any liability or admission by Western Union.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, promises and general releases set forth below and subject to preliminary and final approval of the Court, the Parties hereby agree as follows:

II. DEFINITIONS

As used herein, the following terms have the meanings set forth below.

A. “Attorneys’ Fee Award” means the Court-approved award to Class Counsel as defined in Section VI, Paragraph A and payable from the Net Settlement Fund.

B. “Available Cash Award Total” means the amount of money in the Net Settlement Fund available to pay such Cash Awards.

C. “Cash Award” means the cash compensation that Settlement Class Members who submit Valid Claims shall be entitled to receive as detailed in Section IV and payable from the Net Settlement Fund.

D. “Claim Deadline” means the date by which Class Members must submit Claims Forms to be eligible for the benefits described herein, which date will be specified in the Class Notice.

E. “Claim Form” means the claim form that Settlement Class Members must complete and submit on or before the Claim Deadline to be eligible for the benefits described

herein, which document shall be submitted to the Court when the Parties seek preliminary approval of the Settlement. Claim Forms will be processed after the Effective Date.

F. “Class Counsel” means Joseph Siprut of Siprut PC.

G. “Class Notice” means the Court-approved forms of notice to the Settlement Class, which will notify members of the Settlement Class of entry of the Preliminary Approval Order and the scheduling of the Fairness Hearing, among other things.

H. “Court” means the United States District Court for the Northern District of Illinois.

I. “Days” means calendar days, except that when computing any period of time prescribed or allowed by this Settlement Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. Furthermore, when computing any period of time prescribed or allowed by this Settlement Agreement, the last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a Federal or State of Illinois legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or Federal or State of Illinois legal holiday.

J. “Defense Counsel” means Latham & Watkins LLP.

K. “Effective Date” means the date defined in Section XII.

L. “Fairness Hearing” means the hearing at which the Court orders final approval of the Settlement.

M. “Final” means final as defined in Section XII, Paragraph B.

N. “Final Order and Judgment” means a final order entered by the Court after the Fairness Hearing, granting approval of the Settlement as further described in Section X.

O. “Incentive Award” means the Court-approved award, if any, to the individual class representative as defined in Section VI, Paragraph B and payable from the Net Settlement Fund.

P. “Litigation” means the action captioned Douglas v. The Western Union Company, Case No. 1:14-cv-01741 (N.D. Ill. filed March 12, 2014).

Q. “Net Settlement Fund” means the Settlement Fund, less the amounts paid for the Attorneys’ Fee Award, Incentive Awards, and Notice and Administration Costs, as described in more detail in Section IV.

R. “Notice And Administration Costs” means any and all costs and expenses of notice and administration relating to this Settlement.

S. “Notice Date” means the first day on which the Settlement Administrator begins disseminating the Class Notice.

T. “Opt-Out” shall refer to a member of the Settlement Class who properly and timely submits a request for exclusion from the Settlement Class as set forth in Section VII, Paragraph A. An Opt-Out may rescind a request for exclusion by submitting a Claim Form to the Settlement Administrator to obtain benefits under the Settlement.

U. “Opt-Out List” shall refer to the list compiled by the Settlement Administrator identifying those who properly and timely submit a request for exclusion from the Settlement Class and become Opt-Outs.

V. “Opt-Out and Objection Date” means the date by which a request for exclusion must be filed with the Settlement Administrator in order for a member of the Settlement Class to be excluded from the Settlement Class, and the date by which Settlement Class Members must file objections, if any, to the Settlement.

W. “Parties” means Plaintiff and Settlement Class Members together with Western Union. Plaintiff and Settlement Class Members shall be collectively referred to as one “Party,” with Western Union as the other “Party.”

X. “Person” means an individual, corporation, partnership, limited partnership, limited liability company, association, member, joint stock company, estate, legal representative, trust, unincorporated association, any business or legal entity and such individual’s or entity’s spouse, heirs, predecessors, successors, representatives and assignees.

Y. “Plaintiff” means Jason Douglas.

Z. “Preliminary Approval Date” means the date the Preliminary Approval Order has been executed and entered by the Court and received by counsel for the Parties.

AA. “Preliminary Approval Order” means the order defined in Section IX and entered by the Court preliminary approving the Settlement.

BB. “Release” means the release and discharge, as of the Effective Date, by Plaintiff and all Settlement Class Members (and their respective present, former and future administrators, agents, assigns, attorneys, executors, heirs, partners, predecessors-in-interest and successors), who have not excluded themselves from the Settlement Class, of the Released Persons and shall include the agreement and commitment by Plaintiff and all Settlement Class Members to not now or hereafter initiate, maintain or assert against the Released Persons or any of them any and all causes of action, claims, rights, demands, actions, claims for damages, equitable, legal and/or administrative relief, interest, demands or rights, including without limitation, claims for damages of any kind, including those in excess of actual damages, whether based on federal, state or local law, statute, ordinance, regulation, contract, common law or any other sources that have been, could have been, may be or could be alleged or asserted now or in the future by

Plaintiff or any Settlement Class Members against the Released Persons, or any of them, in the Litigation or in any other court action or before any administrative body (including any regulatory entity or organization), tribunal, arbitration panel or other adjudicating body arising out of or related to the Released Claims.

CC. “Released Claims” means any and all claims, actions, causes of action, rights, demands, suits, debts, liens, contracts, agreements, offsets or liabilities, including but not limited to tort claims, negligence claims, claims for breach of contract, breach of the duty of good faith and fair dealing, breach of statutory duties, actual or constructive fraud, misrepresentations, fraudulent inducement, statutory and consumer fraud, breach of fiduciary duty, unfair business or trade practices, false advertising, restitution, rescission, compensatory and punitive damages, injunctive or declaratory relief, attorneys’ fees, interests, costs, penalties and any other claims, whether known or unknown, alleged or not alleged in the Litigation, suspected or unsuspected, contingent or matured, under federal, state or local law, which Plaintiff and/or any Settlement Class Member had, now have or may in the future have with respect to any conduct, act, omissions, facts, matters, transactions or oral or written statements or occurrences on or prior to the Preliminary Approval Date arising from or relating to allegedly unauthorized text or other messages or phone calls by the Released Persons to the Releasing Persons, including, without limitation, the causes of action and allegations made by Plaintiff in the Litigation as well as claims and allegations that the Released Persons violated the TCPA or any similar claims under the consumer protection and/or deceptive trade practices acts and common law of any state or the District of Columbia.

DD. “Released Persons” means Western Union, its affiliates, past, present and future direct and indirect predecessors, successors, assigns, parents, subsidiaries, affiliates, joint

venturers, partnerships, limited liability companies, corporations, unincorporated entities, divisions, groups, directors, officers, shareholders, members, employees, partners, agents, insurers and attorneys.

EE. “Releasing Persons” means Plaintiff and all Settlement Class Members, and the respective present, former and future administrators, agents, assigns, attorneys, executors, heirs, partners, predecessors-in-interest and successors of each of Plaintiff and Settlement Class Members.

FF. “Settlement” means the settlement set forth in this Settlement Agreement.

GG. “Settlement Administrator” means the independent professional service company to be selected by Class Counsel, subject to approval of the Court, which will administer Class Notice, maintain the Settlement Website, administer the Settlement in accordance with this Settlement Agreement and engage in any other tasks directed by the Court, Class Counsel or Defense Counsel.

HH. “Settlement Agreement” or “Agreement” means this Settlement Agreement and Release, including all exhibits hereto.

II. “Settlement Class” means all Persons who fall within the definition of the class identified in Section III, Paragraph A.

JJ. “Settlement Class Members” means all Persons in the Settlement Class who do not exclude themselves (i.e., become Opt-Outs) pursuant to Section VII, Paragraph B.

KK. “Settlement Class Notice Program” means the process devised by the Parties and the Settlement Administrator, and approved by the Court, for notifying the Settlement Class of the Settlement and Settlement Agreement.

LL. “Settlement Fund” means \$8,500,000 in cash as described in Section IV, Paragraph A.

MM. “Settlement Website” means the dedicated website created and maintained by the Settlement Administrator, which will contain relevant documents and information about the Settlement, including this Settlement Agreement, the Class Notice and the Claim Form.

NN. “Valid Claim” means a timely and fully completed Claim Form submitted by a Settlement Class Member as more fully described in Section V.

OO. “Western Union” means Defendant The Western Union Company.

PP. The plural of any defined term includes the singular, and vice versa, as made necessary in context.

III. PROPOSED CLASS FOR SETTLEMENT PURPOSES

A. Pursuant to Fed. R. Civ. P. 23, the Parties hereto agree to certification, for settlement purposes only, of the following Settlement Class:

All Persons in the United States who received one or more unsolicited text messages sent by or on behalf of Western Union between March 12, 2010 and the date of Preliminary Approval.

Specifically excluded from the Settlement Class are the following Persons:

- (i) Western Union and its respective affiliates, employees, officers, directors, agents, and representatives and their immediate family members;
- (ii) Class Counsel; and
- (iii) The judges who have presided over the Litigation and their immediate family members.

B. Solely for the purpose of implementing this Settlement Agreement and effectuating the Settlement, the Parties stipulate to the entering an order preliminarily certifying the Settlement Class, appointing Plaintiff as representative of the Settlement Class and appointing the following as counsel for the Settlement Class:

Joseph J. Siprut
SIPRUT PC
17 North State Street, Suite 1600
Chicago, Illinois 60602
Telephone: (312) 236-0000
Facsimile: (312) 948-9196

C. Solely for the purpose of implementing this Settlement Agreement and effectuating the Settlement, the Parties stipulate to the Court entering an order preliminarily finding that Plaintiff and Class Counsel are adequate representatives of the Settlement Class.

D. In the event that the Settlement Agreement is terminated pursuant to its terms or is not approved in any material respect by the Court, or such approval is reversed, vacated, or modified in any material respect by the Court or by any other court, the certification of the Settlement Class shall be deemed vacated, the Litigation shall proceed as if the Settlement Class had never been certified and no reference to the Settlement Class, this Settlement Agreement or any documents, communications or negotiations related in any way thereto shall be made for any purpose in the Litigation or in any other action or proceeding.

IV. BENEFITS TO THE CLASS

A. Pursuant to the terms and conditions set forth below, Western Union agrees to pay a Settlement Fund of \$8,500,000, which will be used to pay all Settlement costs, including without limitation Cash Awards, Notice And Administrative Costs, Attorneys' Fee Award, and Incentive Awards and will be in full satisfaction of all of Western Union's obligations under this Settlement and Settlement Agreement. In no event shall Western Union be obligated to contribute any monies in excess of the amount comprising the Settlement Fund.

B. Subject to the terms of this Agreement, Settlement Class Members who received one or more unsolicited messages sent by or on behalf of Western Union and who submit a Valid Claim will be eligible to receive up to \$250.

C. No later than seven Days after the Parties have resolved any disputes regarding rejected claims, the Settlement Administrator will provide Class Counsel and Defense Counsel with a report identifying the total of the Cash Awards and the amount of money in the Net Settlement Fund available to pay such Cash Awards (“Available Cash Award Total”).

(i) If the Available Cash Award Total exceeds the Cash Awards, any additional amounts will be divided among the Settlement Class Members who submitted Valid Claims pro rata until the Cash Awards equal the Available Cash Award Total.

(ii) If, however, the Cash Awards exceed the Available Cash Award Total, the Cash Awards to the Settlement Class Members who submitted Valid Claims will be reduced on a pro rata basis until the Cash Awards equal the Available Cash Award Total.

D. Western Union shall have no obligation to make any payments under this Settlement Agreement until the Court enters a Preliminary Approval Order. Once the Court enters a Preliminary Approval Order, Western Union shall pay reasonable Notice and Administration Costs arising under this Settlement Agreement by making such payments directly to the Settlement Administrator (or to such other party incurring such costs) as those costs are incurred and payment becomes due.

E. Within 21 Days after the Effective Date, Western Union (and/or any insurer discharging Western Union’s obligations hereunder) and its insurer will wire transfer the balance of the Settlement Fund, less any amounts previously advanced by Western Union to the Settlement Administrator for Notice And Administrative Costs, into an interest-bearing bank account (the “Settlement Account”) designated by the Settlement Administrator. Any interest that accrues on the Settlement Fund in the Settlement Account will be added to the Settlement Fund.

F. Within 30 Days after the Effective Date, or another such time as the Parties agree upon, the Settlement Administrator shall cause the Cash Awards in the form of checks to be distributed to members of the Settlement Class, and shall remit payment to Class Counsel the Attorneys' Fee Award as approved by the Court

V. CLAIMS PROCESS

A. The Class Notice shall provide information regarding the filing of Claim Forms. Claim Forms shall be available from the Settlement Administrator and on the Settlement Website. To file a Valid Claim, Settlement Class Members must:

(i) Complete a Claim Form, providing all of the information required by the Settlement Agreement and the Claim Form;

(ii) Sign the Claim Form and state under penalty of perjury that they received one or more unsolicited messages sent by or on behalf of Western Union, when they received such a message;

(iii) Return the completed and signed Claim Form and related documents, if any, to the Settlement Administrator on or before the Claim Deadline. Only Settlement Class Members who submit Valid Claims shall be entitled to a Cash Award.

B. The Settlement Administrator shall be responsible for reviewing all claims to determine their validity.

(i) Any claim that is not substantially in compliance with the instructions on the Claim Form or the terms of this Settlement Agreement or is postmarked or submitted electronically later than the Claim Deadline shall be rejected.

(ii) Following the Claim Deadline, the Settlement Administrator shall provide a report of any rejected claims to Defense Counsel and Class Counsel. If Class Counsel do not agree with the rejection of a claim, they shall bring it to the attention of Defense Counsel, and the

Parties shall meet and confer and attempt, in good faith, to resolve any dispute regarding the rejected claim. Following their meet and confer, the Parties will provide the Settlement Administrator with their positions regarding the disputed, rejected claim. The Settlement Administrator, after considering the positions of the Parties and, if appropriate, seeking any additional information from the Settlement Class Member, will make the final decision in its sole discretion.

C. At any time during the claims' process, if the Settlement Administrator has a reasonable suspicion of fraud, the Settlement Administrator shall immediately notify both Class Counsel and Defense Counsel of that fact and the basis for its suspicion. Class Counsel and Defense Counsel shall endeavor to reach an agreed-upon solution to any suspected fraud and, if necessary, Western Union may suspend the claims' process, and the Parties will promptly seek assistance from the Court.

VI. ATTORNEYS' FEES AND COSTS AND INCENTIVE AWARD

A. Class Counsel will apply to the Court for an aggregate award of attorneys' fees and reimbursement of costs in an amount to be paid from the Settlement Fund. Class Counsel agrees that once Western Union has fully funded the Settlement Fund, Western Union's obligations to Class Counsel shall be fully satisfied and discharged, and Class Counsel shall have no further or other claim against Western Union, including but not limited to a claim for enforcement of any attorneys' lien.

B. Plaintiff will apply for Incentive Awards in an amount to be paid from the Settlement Fund. Plaintiff agrees that once Western Union has fully funded the Settlement Fund, Western Union's obligations to Plaintiff shall be fully satisfied and discharged, and Plaintiff shall have no further or other claim against Western Union.

C. Any order or proceedings relating to the applications for the Attorneys' Fee Award and the Incentive Award, or any appeal from any order relating thereto or reversal or modification thereof, will not operate to terminate or cancel this Agreement or affect or delay the finality of Final Order and Judgment approving the Settlement Agreement and the Settlement.

VII. OBJECTIONS AND OPT-OUT RIGHTS

A. Any Settlement Class Member who intends to object must do so on or before the Opt-Out and Objection Date. In order to object, the Settlement Class Member must include in the objection submitted to the Court and served on Class Counsel and Defense Counsel:

- (i) The name, address, telephone number of the Person objecting and, if represented by counsel, of his/her counsel;
- (ii) A signed declaration stating that he or she is a member of the Settlement Class and received one or more unsolicited messages sent by or on behalf of Western Union;
- (iii) A statement of all objections to the Settlement; and
- (iv) A statement of whether he or she intends to appear at the Fairness Hearing, either with or without counsel, and if with counsel, the name of his or her counsel who will attend. Any Settlement Class Member who fails to file and serve timely a written objection and notice of his or her intent to appear at the Fairness Hearing pursuant to this Paragraph and as detailed in the Class Notice shall not be permitted to object to the approval of the Settlement at the Fairness Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

B. A member of the Settlement Class who wishes to opt out of the Settlement Class must complete and send to the Settlement Administrator a request for exclusion that is post-marked or submitted electronically no later than the Opt-Out and Objection Date. The request for exclusion must be personally signed by the member of the Settlement Class requesting

exclusion, contain a statement that indicates his or her desire to be excluded from the Settlement Class and contain a statement that he or she is otherwise a member of the Settlement Class and purchased one or more of the Covered Products. A member of the Settlement Class may opt-out on an individual basis only. So-called “mass” or “class” opt-outs, whether filed by third parties on behalf of a “mass” or “class” of class members or multiple class members where no personal statement has been signed by each and every individual class members, shall not be allowed.

C. Except for those members of the Settlement Class who timely and properly file a request for exclusion, all members of the Settlement Class will be deemed to be Settlement Class Members for all purposes under the Settlement Agreement, and upon the Effective Date, will be bound by its terms, regardless of whether they file a Claim Form or receive any monetary relief.

D. Any member of the Settlement Class who properly opts out of the Settlement Class shall not: (i) be bound by any orders or judgments entered in the Litigation or relating to the Settlement; (ii) be entitled to relief under, or be affected by, the Settlement Agreement; (iii) gain any rights by virtue of the Settlement Agreement; or (iv) be entitled to object to any aspect of the Settlement.

E. The Settlement Administrator shall provide Class Counsel and Defense Counsel with the Opt-Out List within seven Days after the Opt-Out and Objection Date.

VIII. CONFIRMATORY DISCOVERY

After execution of this Settlement Agreement, the Parties shall commence confirmatory discovery to confirm and substantiate the size of the Settlement Class and the manner in which text messages were transmitted to members of the Settlement Class.

IX. PRELIMINARY APPROVAL PROCESS AND CLASS NOTICE

After the confirmatory discovery described in Section VIII has been completed, Class Counsel shall promptly move the Court for a Preliminary Approval Order preliminarily

approving the Settlement and the Settlement Class Notice Program. The Preliminary Approval Order will:

- A. Preliminarily approve this Settlement Agreement.
- B. Preliminarily certify the Settlement Class.
- C. Find that the proposed Settlement is sufficiently fair, reasonable and adequate to warrant providing notice to the Settlement Class, which notice will: (i) describe the essential terms of the Settlement; (ii) disclose any special benefits or incentives to the Class Representatives; (iii) provide information regarding the Attorneys' Fee Award; (iv) indicate the time and place of the hearing to consider final approval of the Settlement, and the method for objection to and/or opting out of the Settlement; (v) explain the procedures for allocating and distributing the Settlement Fund; and (vi) prominently display the address of Class Counsel and the procedure for making inquiries.
- C. Schedule a Fairness Hearing on final approval of this Settlement and Settlement Agreement to consider the fairness, reasonableness and adequacy of the proposed Settlement and whether it should be finally approved by the Court.
- D. Appoint the Settlement Administrator.
- E. Approve the Class Notice, and directs the Settlement Administrator to disseminate the Class Notice in accordance with the Settlement Class Notice Program.
- F. Find that the Settlement Class Notice Program: (i) is the best practicable notice; (ii) is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Litigation and of their right to object to or to exclude themselves from the proposed settlement; (iii) is reasonable and constitutes due, adequate and sufficient notice to all Persons entitled to receive notice; and (iv) meets all requirements of applicable law.

G. Require the Settlement Administrator to file proof of compliance with the Settlement Class Notice Program at or before the Fairness Hearing.

H. Approve the Claim Form and sets a Claim Deadline.

I. Require any member of the Settlement Class who wishes to exclude himself or herself from the Settlement Class to submit an appropriate, timely request for exclusion, postmarked or submitted electronically no later than the Opt-Out and Objection Date, or as the Court may otherwise direct, to the Settlement Administrator at the address on the Class Notice;

J. Order that any member of the Settlement Class who does not submit a timely, written request for exclusion from the Settlement Class (i.e., becomes an Opt-Out) will be bound by all proceedings, orders and judgments in the Litigation, even if such Settlement Class Member has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Release.

K. Require any Settlement Class Member who does not become an Opt-Out and who wishes to object to the fairness, reasonableness or adequacy of this Settlement or Settlement Agreement to file with the Court and serve on Class Counsel and Defense Counsel no later than the Opt-Out and Objection Date, or as the court may otherwise direct, a statement of the objection signed by the Settlement Class Member containing all of the following information:

(i) The objector's name, address, telephone number and, if represented by counsel, of his/her counsel;

(ii) A declaration stating that the objector is a member of the Settlement Class and received one or more unsolicited messages sent by or on behalf of Western Union;

(iii) A statement of all objections to the Settlement; and

(iv) A statement of whether the objector intends to appear at the Fairness Hearing, either with or without counsel, and if with counsel, the name of counsel who will attend.

L. Order that any response to an objection shall be filed with the Court no later than seven Days prior to the Fairness Hearing.

M. Specify that any Settlement Class Member who does not file a timely written objection to the Settlement or who fails to otherwise comply with applicable requirements shall be foreclosed from seeking any adjudication or review of this Settlement by appeal or otherwise.

N. Require that any attorney hired by a Settlement Class Member for the purpose of objecting to the proposed Settlement, the Attorneys' Fee Award or the Incentive Award and who intends to make an appearance at the Fairness Hearing to provide to the Settlement Administrator (who shall forward it to Class Counsel and Defense Counsel) and to file with the Clerk of the Court a notice of intention to appear no later than the Opt-Out and Objection Date or as the Court may otherwise direct.

O. Require any Settlement Class Member who files and serves a written objection and who intends to make an appearance at the Fairness Hearing shall so state in their objection papers or as the Court otherwise may direct.

P. Direct the Settlement Administrator to establish a post office box in the name of the Settlement Administrator to be used for receiving requests for exclusion and any other communications, and providing that only the Settlement Administrator, Class Counsel, Defense Counsel, the Court, the Clerk of the Court and their designated agents shall have access to this post office box, except as otherwise provided in this Settlement Agreement.

Q. Direct that Class Counsel shall file their applications for the Attorneys' Fee Award and Plaintiff's Incentive Award at least 14 days prior to the Opt-Out and Objection Date.

R. Order the Settlement Administrator to provide the Opt-Out List to Class Counsel and Defense Counsel no later than seven Days after the Opt-Out and Objection Date and then file with the Court the Opt-Out List with an affidavit attesting to the completeness and accuracy thereof no later than five Days thereafter or on such other date as the Parties may direct.

S. Preliminarily enjoin all members of the Settlement Class unless and until they have timely excluded themselves from the Settlement Class from (i) filing, commencing, prosecuting, intervening in or participating as plaintiff, claimant or class member in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation and/or the Released Claims; (ii) filing, commencing, participating in or prosecuting a lawsuit or administrative, regulatory, arbitration or other proceeding as a class action on behalf of any member of the Settlement Class who has not timely excluded himself or herself (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation and/or the Released Claims; and (iii) attempting to effect Opt-Outs of a class of individuals in any lawsuit or administrative, regulatory, arbitration or other proceeding based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation and/or the Released Claims. Any Person who knowingly violates such injunction shall pay the attorneys' fees and costs incurred by Western Union, any other Released Person and Class Counsel as a result of the violation. This Settlement Agreement is not intended to prevent

members of the Settlement Class from participating in any action or investigation initiated by a state or federal agency.

T. Contain any additional provisions agreeable to the Parties that might be necessary or advisable to implement the terms of this Settlement Agreement and the proposed settlement.

X. FINAL ORDER AND JUDGMENT AND RELEASES

A. If this Settlement Agreement (including any modification thereto made with the consent of the Parties as provided for herein) is approved by the Court following the Fairness Hearing scheduled by the Court in its Preliminary Approval Order, the Parties shall request the Court to enter a Final Order and Judgment pursuant to the Federal Rules of Civil Procedure and all applicable laws that, among other things:

- (i) Finds that the Court has personal jurisdiction over Plaintiff and all Settlement Class Members and that the Court has subject matter jurisdiction to approve this Settlement and Settlement Agreement and all exhibits thereto;
- (ii) Certifies a Settlement Class solely for purposes of this Settlement;
- (iii) Grants final approval to this Settlement Agreement as being fair, reasonable and adequate as to all Parties and consistent and in compliance with all requirements of due process and applicable law, as to and in the best interests of all Parties and directs the Parties and their counsel to implement and consummate this Settlement Agreement in accordance with its terms and provisions;
- (iv) Declares this Settlement Agreement and the Final Order and Judgment to be binding on and have res judicata and preclusive effect in all pending and future lawsuits or other proceedings encompassed by the Release maintained by or on behalf of Plaintiff and all Settlement Class Members, as well as their respective present, former and future administrators, agents, assigns, attorneys, executors, heirs, partners, predecessors-in-interest and successors;

(v) Finds that the Settlement Class Notice Program: (1) constituted the best practicable notice; (2) constituted notice that was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Litigation, of their right to object to or exclude themselves from the proposed Settlement, of their right to appear at the Fairness Hearing and of their right to seek monetary and other relief; (3) constituted reasonable, due, adequate and sufficient notice to all Persons entitled to receive notice; and (4) met all requirements of due process and any other applicable law;

(vi) Approves the Claim Form that was distributed to the Settlement Class;

(vii) Finds that Class Counsel and Plaintiff adequately represented the Settlement Class for purposes of entering into and implementing the Settlement and Settlement Agreement;

(viii) Dismisses the Litigation now pending before the Court on the merits and with prejudice and without fees or costs except as provided herein, in accordance with the terms of the Final Order and Judgment;

(ix) Adjudges that Plaintiff and the Settlement Class have conclusively compromised, settled, dismissed and released any and all Released Claims against Western Union and the Released Persons;

(x) Approves payment of the Attorneys' Fee Award and Plaintiff's Incentive Award;

(xi) Without affecting the finality of the Final Order and Judgment for purposes of appeal, reserves jurisdiction over the Settlement Administrator, Western Union, Plaintiff and the Settlement Class Members as to all matters relating to the administration,

consummation, enforcement and interpretation of the terms of the Settlement, the Settlement Agreement and Final Order and Judgment and for any other necessary purposes;

(xii) Provides that upon the Effective Date, Plaintiff and all Settlement Class Members, whether or not they return a Claim Form within the time and in the manner provided for, shall be barred from asserting any Released Claims against Western Union and/or any Released Persons, and any such Settlement Class Members shall have released any and all Released Claims as against Western Union and all Released Persons;

(xiii) Determines that the Settlement Agreement and the Settlement provided for therein and any proceedings taken pursuant thereto are not and should not in any event be offered or received as evidence of, a presumption, concession or an admission of liability or of any misrepresentation or omission in any statement or written document approved or made by Western Union or any Released Persons or of the suitability of these or similar claims to class treatment in active litigation and trial; provided, however, that reference may be made to this Settlement Agreement and the Settlement provided for therein in such proceedings solely as may be necessary to effectuate the Settlement Agreement;

(xiv) Bars and permanently enjoins all Settlement Class Members from (1) filing, commencing, prosecuting, intervening in or participating (as class members or otherwise) in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation and/or the Released Claims; and (2) organizing Settlement Class Members who have not excluded themselves from the Settlement Class into a separate class for purposes of pursuing as a purported class action any lawsuit or arbitration or other proceeding (including by seeking to amend a pending complaint to include class

allegations or seeking class certification in a pending action) based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation and/or the Released Claims, except that Settlement Class Members are not precluded from participating in any investigation or suit initiated by a state or federal agency;

(xv) States that any Person who knowingly violates such injunction shall pay the attorneys' fees and costs incurred by Western Union and/or any other Released Persons and Class Counsel as a result of the violation;

(xvi) Approves the Opt-Out List and determines that the Opt-Out List is a complete list of all members of the Settlement Class who have timely requested exclusion from the Settlement Class and, accordingly, shall neither share in nor be bound by the Final Order and Judgment, except for Opt-Outs who subsequently elect to submit Claim Forms during the Claim Period; and

(xvii) Authorizes the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of this Settlement Agreement and all exhibits hereto as (1) shall be consistent in all material respects with the Final Order and Judgment; and (2) do not limit the rights of the Parties or Settlement Class Members.

B. As of the Effective Date, the Releasing Persons are deemed to have fully released and forever discharged the Released Persons of and from all Released Claims by operation of entry of the Final Order and Judgment.

(i) Subject to Court approval, all Settlement Class Members who have not excluded themselves from the Settlement Class shall be bound by this Settlement Agreement and the Release and all of their claims shall be dismissed with prejudice and released, irrespective of whether they received actual notice of the Litigation or this Settlement.

(ii) Without in any way limiting the scope of the Release, this Release covers any and all claims for attorneys' fees, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiff or Settlement Class Members, or any of them, in connection with or related in any manner to the Litigation, the Settlement, the administration of such Settlement and/or the Released Claims as well as any and all claims for the Incentive Award to Plaintiff and the Attorneys' Fee Award to Class Counsel.

(iii) The Releasing Persons and the Released Persons expressly acknowledge that they are familiar with principles of law such as Section 1542 of the Civil Code of the State of California, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MIGHT HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Notwithstanding California or other law, the Releasing Persons and the Released Persons hereby expressly agree that the provisions, rights and benefits of Section 1542 and all similar federal or state laws, rights, rules or legal principles of any other jurisdiction that may be applicable herein are hereby knowingly and voluntarily waived, released and relinquished to the fullest extent permitted by law solely in connection with unknown claims that are the same as, substantially similar to, or overlap the Released Claims, and the Releasing Persons and the Released Persons hereby agree and acknowledge that this is an essential term of the Releases. In connection with the Release, the Releasing Persons and the Released Persons acknowledge that they are aware that they may hereafter discover claims presently unknown and unsuspected or facts in addition to or different from those which they now know or believe to be true with respect to matters released herein, and that such claims, to the extent that they are the same as, substantially similar to, or overlap the Released Claims, are hereby released, relinquished and discharged.

(iv) Nothing in the Releases shall preclude any action to enforce the terms of this Settlement Agreement, including participation in any of the processes detailed herein.

XI. WITHDRAWAL FROM OR TERMINATION OF SETTLEMENT

A. Within 15 Days after the occurrence of any of the following events and upon written notice to counsel for all Parties, a Party shall have the right to withdraw from the Settlement and terminate this Settlement Agreement:

(i) If the Court fails to approve the Settlement Agreement as written or if on appeal the Court's approval is reversed or modified;

(ii) If the Court materially alters any of the terms of the Settlement Agreement, except that a reduction in the Attorneys' Fee Award or the Incentive Award shall not be deemed to be a material alteration;

(iii) If the Preliminary Approval Order or the Final Order and Judgment is not entered by the Court or is reversed or modified on appeal, or otherwise fails for any reason; or

(iv) If, at any time prior to final approval, legislation is enacted or a controlling judicial decision is rendered that would materially impair the ability of Plaintiff and his counsel to pursue the individual and/or class claims being pursued in the Complaint.

B. In the event of a withdrawal pursuant to Paragraph A above, any certification of a Settlement Class will be vacated, without prejudice to any Party's position on the issue of class certification and the amenability of the claims asserted in the Litigation to class treatment, and the Parties shall be restored to their litigation position existing immediately before the execution of this Settlement Agreement.

C. If members of the Settlement Class properly and timely submit requests for exclusion from the Settlement Class thereby becoming Opt-Outs, are in a number more than 200, then Western Union may elect in its sole discretion to withdraw from the Settlement and

terminate this Settlement Agreement. In that event, all of Western Union's obligations under this Agreement shall cease to be of any force and effect; the certification of the Settlement Class shall be vacated without prejudice to Western Union's position on the issue of class certification; and Western Union shall be restored to its litigation position existing immediately before the execution of this Settlement Agreement.

(i) In order to elect to withdraw from the Settlement and terminate this Settlement Agreement on the basis set forth above, Western Union must notify Class Counsel in writing of its election to do so within 14 Days after the Opt-Out List has been served on the Parties.

(ii) In the event that Western Union exercises such right, Class Counsel shall have 14 Days or such longer period as agreed to by the Parties to address the concerns of the Opt-Outs. If through such efforts the total number on the Opt-Out List subsequently becomes and remains fewer than the number submitted to the Court under seal at the time of filing the Motion For Preliminary Approval, Western Union shall withdraw its election to withdraw from the Settlement and terminate the Settlement Agreement. In no event, however, shall Western Union have any further obligation under this Agreement to any Opt-Out unless he or she withdraws his or her request for exclusion.

(iii) For purposes of this Paragraph, Opt-Outs shall not include (1) Persons who are specifically excluded from the Settlement Class definition; (2) Opt-Outs who elect to withdraw their request for exclusion; and (3) Opt-Outs who agree to sign an undertaking that they will not pursue an individual claim, class claim or any other claim that would otherwise be a Released Claim as defined in this Settlement Agreement.

D. In the event of withdrawal by any Party in accordance with the terms set forth in this Section, the Settlement Agreement shall be null and void, shall have no further force and effect with respect to any Party in the Litigation and shall not be offered in evidence or used in any litigation for any purpose, including the existence, certification or maintenance of any proposed or existing class or the amenability of these or similar claims to class treatment. In the event of such withdrawal, this Settlement Agreement and all negotiations, proceedings, documents prepared and statements made in connection herewith shall be without prejudice to Western Union, Plaintiff and the Settlement Class Members and shall not be deemed or construed to be an admission or confession in any way by any Party of any fact, matter or proposition of law and shall not be used in any manner for any purpose, and the Parties to the Litigation shall stand in the same position as if this Settlement Agreement had not been negotiated, made or filed with the Court.

XII. EFFECTIVE DATE

A. The Effective Date of this Settlement Agreement shall be the date when each and all of the following conditions have occurred:

(i) This Settlement Agreement has been fully executed by all Parties and their counsel;

(ii) Orders have been entered by the Court certifying the Settlement Class, granting preliminary approval of this Settlement and approving the forms of Class Notice and Claim Form, all as provided above;

(iii) The Settlement Class Notice Program has been executed in accordance with the Preliminary Approval Order;

(iv) The Court has entered a Final Order and Judgment finally approving this Agreement, as provided above; and

(v) The Final Order and Judgment has become Final as defined in Paragraph B below.

B. “Final,” when referring to a judgment or order means that (i) the judgment is a final, appealable judgment; and (ii) either (1) no appeal has been taken from the judgment as of the date on which all deadlines to appeal therefrom have expired; or (2) an appeal or other review proceeding of the judgment having been commenced, the date by which such appeal or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petitions or rehearing or re-argument, petitions for rehearing en banc, petitions for writ of certiorari, or otherwise, and such appeal or other review has been finally resolved in a manner that affirms the Final Order and Judgment in all material respects.

C. If, for any reason, this Settlement Agreement fails to become Final pursuant to the foregoing Paragraph B, the orders, judgment and dismissal to be entered pursuant to this Settlement Agreement shall be vacated, and the Parties will be returned to the status quo ante with respect to the Litigation as if this Settlement Agreement had never been entered into.

XIII. NOTICES

A. All Notices (other than the Class Notice and CAFA Notices) required by the Settlement Agreement shall be made in writing and communicated by mail to the following addresses:

All Notices to Class Counsel shall be sent to Class Counsel, c/o:

Joseph J. Siprut
SIPRUT PC
17 North State Street, Suite 1600
Chicago, Illinois 60602
Telephone: (312) 236-0000
Facsimile: (312) 948-9196

All Notices to Defense Counsel provided herein shall be sent to Defense Counsel, c/o:

Mark S. Mester
Kathleen P. Lally
Latham & Watkins LLP
330 North Wabash Avenue, Suite 2800
Chicago, Illinois 60611
Telephone: (312) 876-7700
Facsimile: (312) 993-9767

B. The notice recipients and addresses designated above may be changed by written notice.

C. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of comments, objections, requests for exclusion, or other documents or filings received as a result of the Class Notice.

XIV. MISCELLANEOUS PROVISIONS

A. **Interpretation.** This Settlement Agreement contains the entire agreement among the Parties hereto and supersedes any prior discussions, agreements or understandings among them as well as any and all prior drafts of this Settlement Agreement. All terms are contractual. For the purpose of construing or interpreting this Settlement Agreement, the Parties agree that the Settlement Agreement is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party, and the Parties further agree that any prior drafts may not be used to construe or interpret this Settlement Agreement.

B. **Binding Effect.** The terms are and shall be binding upon each of the Parties hereto, their administrators, agents, assigns, attorneys, executors, heirs, partners, representatives, predecessors-in-interest and successors as well as upon all other Persons claiming any interest in the subject matter hereto through any of the Parties hereto including any Settlement Class Members.

C. **Headings.** The headings contained in this Settlement Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Settlement Agreement.

D. **No Rescission on Grounds of Mistake.** The Parties acknowledge that they have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so. Therefore, the Parties agree that they will not seek to set aside any part of the Settlement Agreement on the grounds of mistake. Moreover, the Parties understand, agree and expressly assume the risk that any fact not recited, contained, or embodied in the Settlement Agreement may turn out hereinafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree that the Settlement Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

E. **Amendment.** This Settlement Agreement may be amended or modified only by a written instrument signed by the Parties or their counsel. Amendments and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court.

F. **Integration Of Exhibits.** Any exhibits to this Settlement Agreement are hereby incorporated and made a part of the Settlement Agreement.

G. **Jurisdiction.** The United States District Court for the Northern District of Illinois has jurisdiction over the Parties to this Settlement Agreement and the Settlement Class.

H. **No Admission.** Neither this Settlement Agreement nor any of its provisions, its exhibits or related documents (including but not limited to drafts of the Settlement Agreement, the Preliminary Approval Order or the Final Order and Judgment), its negotiation or any proceedings relating in any way to the Settlement shall be construed as or deemed to be evidence

of an admission or concession by any person, including Western Union, and shall not be offered or received in evidence, or subject to discovery, in this or any other action or proceeding except in an action brought to enforce its terms or except as may be required by law or Court order. The provisions of this Paragraph shall become effective when this Settlement Agreement has been signed by the Parties and shall be binding on the Parties and their counsel regardless of whether the Settlement Agreement is approved by this Court or any other court and regardless of whether the Settlement Agreement is otherwise rendered null and void.

I. **Governing Law.** This Settlement Agreement shall be governed by and construed in accordance with the internal laws (as opposed to the conflicts of law provisions) of the State of Illinois.

J. **Counterparts.** This Settlement Agreement may be executed in counterparts and may be executed by facsimile, and as so executed shall constitute one agreement.

K. **No Media Statements.** Plaintiff, Class Counsel and all other counsel of record for Plaintiff agree not to issue any press releases regarding this settlement or publicize it in any way and further agree not to engage in any communications with the media or the press, on the internet, or in any public forum, orally or in writing, that relate to this Settlement or the Litigation other than statements that are fully consistent with the Class Notice. Notwithstanding the foregoing, nothing in this Settlement Agreement shall preclude Plaintiff or Class Counsel from making a public statement in support of the Settlement. For example, Plaintiff or Class Counsel may state that the Settlement is a good result for the Class. In addition, nothing in this Settlement Agreement shall preclude Plaintiff or Class Counsel from making a public statement that is consistent with the language of the Settlement Agreement or any motions submitted for approval of the Settlement.

L. **Confidentiality.** All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement.

M. **Return Of Material.** Within 30 Days after the Effective Date, Class Counsel and Defense Counsel will return all material produced by one to the other in discovery or otherwise in connection with the Litigation.

N. **No Assignment.** Plaintiff represents and warrants that no portion of any claim, right, demand, action, or cause of action against the Released Persons that Plaintiff has or may have arising out of any allegations made in any of the actions comprising the Litigation or pertaining to any of the Released Claims, and no portion of any recovery or settlement to which Plaintiff may be entitled, has been assigned, transferred, or conveyed by or for Plaintiff in any manner; and no Person other than Plaintiff has any legal or equitable interest in the claims, demands, actions, or causes of action referred to in this Agreement as those of Plaintiff.

O. **Stay.** The Parties stipulate to stay all proceedings in the Litigation until the approval of this Settlement Agreement has been finally determined, except the stay of proceedings shall not prevent the filing of any motions, affidavits and other matters necessary to obtain and preserve final judicial approval of this Settlement Agreement.

P. **Best Efforts.** In the event that there are any developments in the effectuation and administration of this Agreement that are not dealt with by the terms of this Agreement, then such matters shall be dealt with as agreed upon by the Parties, and failing agreement, as shall be ordered by the Court. The Parties shall execute all documents and use their best efforts to perform all acts necessary and proper to promptly effectuate the terms of this Agreement and to take all necessary or appropriate actions to obtain judicial approval of this Agreement in order to

give this Agreement full force and effect. The execution of documents must take place prior to the date scheduled for the Preliminary Approval Hearing.

IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by their duly authorized representatives below.

Plaintiff:

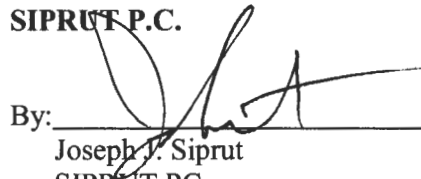
Jason Douglas



By: _____

Approved as to form:

SIPRUT P.C.



By: _____

Joseph J. Siprut
SIPRUT PC
17 North State Street, Suite 1600
Chicago, Illinois 60602
Telephone: (312) 236-0000
Facsimile: (312) 948-9196

Defendant:

THE WESTERN UNION COMPANY

By: _____

Its: _____

Approved as to form:

LATHAM & WATKINS LLP

By: _____

Mark S. Mester
Kathleen P. Lally
LATHAM & WATKINS LLP
330 North Wabash Avenue, Suite 2800
Chicago, Illinois 60611
Telephone: (312) 876-7700
Facsimile: (312) 993-9767

IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by their duly authorized representatives below.

Plaintiff:

Jason Douglas

By: _____

Approved as to form:

SIPRUT P.C.

By: _____

Joseph J. Siprut
SIPRUT PC
17 North State Street, Suite 1600
Chicago, Illinois 60602
Telephone: (312) 236-0000
Facsimile: (312) 948-9196

Defendant:

THE WESTERN UNION COMPANY

By: *A. J. Lally*

Its: ASSISTANT SECRETARY

Approved as to form:

LATHAM & WATKINS LLP

By: *M. S. Mester*

Mark S. Mester
Kathleen P. Lally
LATHAM & WATKINS LLP
330 North Wabash Avenue, Suite 2800
Chicago, Illinois 60611
Telephone: (312) 876-7700
Facsimile: (312) 993-9767

Peter L. Winik
Andrew D. Prins
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004-1304
Telephone: (202) 637-2200
Facsimile: (202) 637-2201

EXHIBIT 2

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

JASON DOUGLAS, individually and on)	
behalf of all others similarly situated,)	Case No. 14-cv-1741
)	
Plaintiff,)	Hon. Gary Feinerman
)	
v.)	Magistrate Judge Jeffrey Cole
)	
THE WESTERN UNION COMPANY, a)	
Delaware corporation,)	
)	
Defendant.)	

AFFIDAVIT OF JOSEPH J. SIPRUT

I, Joseph J. Siprut, declare:

1. I am over the age of eighteen and am fully competent to make this declaration. I make this declaration based upon personal knowledge unless otherwise indicated.
2. I am admitted to practice in the State of Illinois and in the United States District Court for the Northern District of Illinois, the Seventh Circuit Court of Appeals, the Eleventh Circuit Court of Appeals, the United States Supreme Court, and other federal district courts. I am one of the attorneys for Plaintiff Jason Douglas (“Plaintiff”) and lead counsel for the Settlement Class herein. I make this declaration in support of Plaintiff’s Motion For Preliminary Approval Of Class Action Settlement. If called as a witness, I would and could testify to the following:
3. I am the managing partner of the law firm of Siprut PC (herein “Siprut PC” or “Class Counsel”). I have personally been involved in the entirety of the prosecution of this class action lawsuit (the “Action”).
4. The operative complaint in the Action alleges that Defendant The Western Union Company (“Western Union”) sent or had sent on its behalf unsolicited text messages to unwilling

recipients in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”).

5. On March 12, 2014, Plaintiff filed his Class Action Complaint against Western Union seeking to represent a proposed class of all individuals or entities who allegedly received unsolicited text messages to their wireless telephones from or on behalf of Western Union. (Dkt. No. 1.)

6. On March 14, 2014, Plaintiff’s process server effected service on Western Union. (Dkt. No. 10.) That same day, this Court set an initial status hearing for May 7, 2014 and required the Parties to file an initial status report by April 30, 2014. (Dkt. No. 9.)

7. On April 3, 2014, Western Union moved for an extension of time to answer or otherwise plead. (Dkt. No. 14.) This Court granted Western Union’s motion for extension of time and required it to answer or otherwise plead to the complaint by May 5, 2014. (Dkt. No. 16.)

8. On April 30, 2014, the Parties filed a Joint Initial Status Report (the “Initial Report”). (Dkt No. 20.) During the Parties’ scheduling conference and in the Initial Report, Western Union represented that Plaintiff’s claims may be subject to an arbitration agreement. (*Id.* at ¶5.) Western Union stated that absent an agreement to submit the claim to arbitration, Western Union would move to compel arbitration. (*Id.*) On May 5, this Court issued a Minute Entry stating that if Western Union intended to file a motion to compel arbitration, it should notice the motion for presentment at the initial status hearing. (Dkt. No. 21.) On May 5, 2014, however, Western Union filed its Answer, denying the substance of the allegations and raising 30 affirmative defenses. (Dkt. No. 22.)

9. At the initial status hearing on May 7, 2014, Western Union indicated that it remained inclined to file a motion to compel arbitration. (Dkt. No. 23.) Per an agreement by the

Parties, this Court stayed discovery until 14 days after the Court's ruling on the forthcoming motion to compel arbitration. (*Id.*)

10. On May 27, 2014, Plaintiff filed his Motion To Strike Western Union's Affirmative Defenses. (Dkt. No. 24.) Pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, Plaintiff sought to strike each of Western Union's 30 affirmative defenses.

11. At the presentment hearing on Plaintiff's motion to strike on June 12, 2014, the Parties reported that they intended to engage in private mediation. (Dkt. No. 26.) Accordingly, Plaintiff agreed to withdraw his motion with prejudice. (*Id.*) This Court ordered discovery to remain stayed pending further order. (*Id.*)

12. Between June and September 2014, the Parties engaged in back-and-forth negotiations over the selection of a mediator. At the status hearing on September 9, 2014, the Parties reported that a mediation was scheduled for early October. (Dkt No. 27.)

13. On October 9, 2014, the Parties, as well as a representative from Western Union's insurer, CNA, attended a mediation at JAMS Resolution Center with Judge Andersen (Rt.) serving as the Parties' mediator. (Dkt. No. 28.) The Parties conducted negotiations for a full day, but were unable to reach a resolution. (*Id.*) Nevertheless, the Parties made progress and agreed to continue negotiations at a later date to be determined.

14. Between October 2014 and February 2015, the Parties continued productive, informal settlement discussions. Western Union also was working through various coverage issues with its insurer. (Dkt. No. 30.)

15. On February 27, 2015, the Parties engaged in another full-day session of mediation in New York with Judge Andersen presiding. (Dkt. No. 36.) The Parties continued their vigorous settlement negotiations for another three months. During that time, Plaintiff refiled

his pending Motion For Class Certification, pursuant to the Court's instruction. (Dkt. Nos. 34, 35, 37.)

16. On April 22, 2015, the Parties reported that they had reached an agreement in principle, resolving Plaintiff's claims on a class-wide basis. (Dkt. No. 39.) The Parties then spent four more months exchanging drafts of a final, written settlement agreement. After many exchanges of drafts and edits, the Parties were finally able to agree to the form and content of a settlement agreement in late July 2015 that has now been fully executed.

17. In the Agreement, Plaintiff negotiated confirmatory discovery given that the Court had previously stayed formal discovery. (Agreement ¶VII; Dkt. No. 26.) The Parties held several conference calls regarding the scope of confirmatory discovery following the execution of the Agreement. In addition, the Parties stipulated to an Agreed Confidentiality Order, entered by the Court on August 28, 2015. (Dkt. No. 46.)

18. Thereafter, Western Union produced thousands of pages of documents, including lists of Settlement Class Members. After conducting a comprehensive review of the documents, Plaintiff determined that the size of the Settlement Class is at most 823,472. Plaintiff has the names and last known addresses and mobile numbers for each Settlement Class Member. In addition, Plaintiff has the last known email addresses for a subset of the Settlement Class. Plaintiff also determined the manner in which the text messages were sent, including the involvement of third parties and the equipment used to send the text messages.

19. The benefit obtained for the Settlement Class is \$8,500,000, minus the costs of settlement administration, Class Counsel's fees, and Plaintiffs' incentive awards.

20. I have substantial experience in complex business litigation and class actions. My Firm, Siprut PC, substantially concentrates its practice in the prosecution of class actions. My Firm's resume is attached as Exhibit A hereto.

21. Throughout this litigation, my Firm has diligently prosecuted this matter, dedicating substantial resources to the investigation and litigation of the claims at issue, and has successfully negotiated the settlement of this matter to the benefit of the proposed Class. Neither my firm nor the Plaintiff have any interests antagonistic to the interests of the other Class members.

22. Plaintiff and Class Counsel believe that the claims asserted against Western Union in this litigation have merit. However, Plaintiff and Class Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the litigation against Western Union through trial and appeals. Plaintiff and Class Counsel have also taken into account the uncertainty and risk of any litigation, especially in complex actions such as this Action, as well as the difficulties and delays inherent in such litigation. This litigation involves complex class issues, which would involve protracted and risky litigation if not settled. Moreover, in the event of any judgment against Western Union, an appeal could postpone any recovery for several years.

23. Accordingly, Plaintiff and Class Counsel believe that there is substantial benefit to the Class of receiving a cash award from Western Union.

24. The Settlement Agreement, and the terms thereof, was reached after rigorous advocacy and extensive negotiations, in which I directly participated. Plaintiff and Class Counsel believe that the terms set forth in the Settlement Agreement confer substantial benefits upon the proposed Class, and is a fair, reasonable, and adequate resolution of the Class' claims against

Western Union. As such, the Settlement is entitled to a good-faith determination and I respectfully submit that this Court should enter the proposed Preliminary Approval Order and, ultimately, the Final Order and Judgment, approving this proposed Settlement in all respects.

I declare under penalty of perjury under the laws of the State of Illinois that the foregoing is true and correct.

Executed on October 27, 2015 at Chicago, Illinois.

s/ Joseph J. Siprut

EXHIBIT A

SIPRUT PC FIRM RESUME

Siprut PC is a commercial litigation firm based in Chicago, with additional offices in San Diego, Boston, and Colorado Springs. The firm focuses its practice exclusively on complex litigation and pre-litigation counseling, encompassing a wide variety of areas and issues. The firm's primary litigation groups include plaintiffs' class action litigation (with an emphasis on consumer law issues); *qui tam* and whistleblower litigation; intellectual property and patent litigation; and business litigation.

Siprut PC and its attorneys have repeatedly been appointed as lead counsel in federal and state class action lawsuits across the country, and have recovered hundreds of millions of dollars for its clients. The firm has been prominently featured in the mainstream media for its successes and advocacy on behalf of consumers nationwide, and our attorneys are frequently invited to speak at seminars on consumer protection and class action issues.

CLASS ACTION AND CONSUMER LITIGATION

Siprut PC is an established leader in the class action arena. The firm has been recognized for its "high-stakes, high-profile cases against large defendants" (Chicago Daily Law Bulletin, September 2011). As federal courts have further recognized in appointing the firm and its attorneys as lead counsel in some of the most prominent class cases in the country, Siprut PC has "substantial class action experience [and has served] as lead counsel" in myriad class litigation. *In re National Collegiate Athletic Association Student-Athlete Concussion Injury Litigation*, Case No. MDL 13-cv-9116 (N.D. Ill. July 29, 2014). The firm's recent settlements and leadership appointments include the following:

- *In re Southwest Airlines Voucher Litigation* (Case No. 11-cv-8176, N.D. Ill.): Appointed lead counsel in nationwide class action relating to Southwest's unilateral cancellation of drink vouchers paid for by business select travelers. Settlement valued up to \$58 Million granted final approval.
- *In re Energizer Sunscreen Litigation*, (Case No. 13-cv-00131, N.D. Ill.): Appointed lead counsel in nationwide class action relating to defective sunscreen nozzles manufactured by Energizer. Settlement valued up to \$200 Million granted final approval.
- *In re National Collegiate Athletic Association Student-Athlete Concussion Injury Litigation* (Case No. MDL 13-cv-9116, N.D. Ill.): Appointed co-lead counsel in consolidated MDL litigation against the NCAA on behalf of current and former collegiate athletes related to concussions and head injuries. Landmark settlement of \$75 million submitted for preliminary approval.
- *Illinois Nut & Candy Home of Fantasia Confections, LLC v. Grubhub, Inc., et al.* (Case No. 14-cv-00949, N.D. Ill.): Appointed lead counsel in nationwide class action relating to unsolicited facsimile transmissions by Grubhub, in violation of the Telephone Consumer Protection Act. Settlement of \$2 million granted final approval.

- *Padilla v. DISH Network LLC* (Case No. 12-cv-07350, N.D. Ill.): Appointed lead counsel in nationwide class action relating to statutory violations of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”). Landmark settlement providing class-wide injunctive relief – the first class settlement under SHVERA ever – granted final approval.
- *In Re Prescription Pads TCPA Litigation* (Case No. 13-cv-06897, N.D. Ill): Appointed lead counsel in nationwide class action relating to unsolicited facsimile transmissions by Rx Security, in violation of the Telephone Consumer Protection Act. Settlement of \$1 million granted final approval.
- *Lim, et al. v. Vendini* (Case No. 14-cv-561, Cal. Sup Ct.): Appointed co-lead counsel in nationwide class action relating to a security breach exposing the personal information of hundreds of thousands of consumers nationwide. Settlement of \$3 million granted final approval.
- *Muir v. W.S. Badger Co.*, (Case No. 14-CH-5935, Cir. Ct. Cook County, Illinois): Appointed lead counsel in nationwide class action relating to recall of defective sunscreen products. Settlement providing class-wide injunctive relief granted final approval.
- *Windows Plus, Incorporated v. Door Control Services, Inc.* (Case No. 13-cv-07072, N.D. Ill): Appointed lead counsel in nationwide class action relating to unsolicited facsimile transmissions by Door Control, in violation of the Telephone Consumer Protection Act. Settlement valued at \$1 million granted final approval.
- *Townsend v. Sterling* (Case No. 13-cv-3903, N.D. Ill): Appointed lead counsel in nationwide class action relating to violations of the Fair Credit Reporting Act in the employment context. Settlement granted final approval.
- *Dr. William P. Gress et al. v. Premier Healthcare Exchange West, Inc.* (Case No. 14-cv-501, N.D. Ill.): Appointed co-lead counsel in nationwide class action relating to unsolicited facsimile transmissions by Premier, in violation of the Telephone Consumer Protection Act. Settlement of \$756,000 granted preliminary approval.
- *Stephan Zouras LLP v. American Registry LLC* (Case No. 14-cv-943, N.D. Ill.): Appointed co-lead counsel in nationwide class action relating to unsolicited facsimile transmissions by Premier, in violation of the Telephone Consumer Protection Act. Settlement of granted preliminary approval.
- *Foos v. Ann, Inc.* (Case No. 11-cv-02794-L-MDD, S.D. Cal.): Appointed lead counsel in class action on behalf of California consumers for violations of the Song-Beverly Act. Settlement valued at \$2,323,500 granted final approval.
- *Lamb v. Bitech, Inc.* (Case No. 3:11-cv-05583-EDL, N.D. CA): Appointed lead counsel in class action on behalf of California consumers for violations of the Song-

- Beverly Act. Class-wide settlement on behalf of 30,000 California residents granted final approval.
- *Golba v. Dick's Sporting Goods, Inc.* (Case No. 30-2011-00472227, CA Superior Ct.): Appointed lead counsel in class action on behalf of California consumers for violations of the Song-Beverly Act. Settlement valued at \$1,150,000 granted final approval.
 - *Pietrantonio v. Ann Inc. d/b/a Ann Taylor, Inc.* (Case No. 13-cv-12721-RGS, D. Mass.): Appointed lead counsel in class action on behalf of Massachusetts consumers for violations of Massachusetts law prohibiting the collection of personal information. Settlement valued in excess of \$2 million received final approval.
 - *Christensen v. Sur La Table, Inc.* (Case No. 13-cv-11357-GAO, D. Mass.): Appointed lead counsel in class action on behalf of Massachusetts consumers for violations of Massachusetts law prohibiting the collection of personal information. Settlement received final approval.
 - *Monteferrante v. The Container Store, Inc.* (Case No. 13-cv-11362-RGS, D. Mass.): Appointed co-lead counsel in class action on behalf of Massachusetts consumers for violations of Massachusetts law prohibiting the collection of personal information. Settlement received final approval.
 - *Alberts v. TSA Stores, Inc.* (Case No. MICV2014-01491, Mass. Sup. Ct.): Appointed lead counsel in class action on behalf of Massachusetts consumers for violations of Massachusetts law prohibiting the collection of personal information. Settlement valued at \$2 million received final approval.
 - *Miller v. J. Crew Group, Inc.*, (Case No. 13-cv-11487, D. Mass.): Appointed co-lead counsel in class action on behalf of Massachusetts consumers for violations of Massachusetts law prohibiting the collection of personal information. Settlement valued at \$2 million received final approval.
 - *Rich, et al. v Lowe's Home Centers Inc.* (Case No. 13-cv-30144-MGM, D. Mass.): Appointed co-lead counsel in class action on behalf of Massachusetts consumers for violations of Massachusetts law prohibiting the collection of personal information. Settlement received final approval.
 - *Moyer v. Michaels* (Case No. 14-cv-561, N.D. Ill.): Appointed co-lead counsel in nationwide class action relating to a security breach exposing the personal information of hundreds of thousands of consumers nationwide.
 - *Lewert v. P.F. Chang's China Bistro* (Case No. 14-cv-04787, N.D. Ill.): Appointed co-lead counsel in nationwide class action relating to a security breach exposing the personal information of hundreds of thousands of consumers nationwide.

- *Mednick v. Precor Inc.* (Case No. 14-cv-03624, N.D. Ill.): Appointed co-lead counsel in nationwide class action relating to false representations in the sale and marketing of Precor treadmills.
- *John McNamara, et al. v. Samsung Telecommunications America, LLC, et al.* (Case No. 14-cv-1676, N.D. Ill.): Appointed co-lead counsel in nationwide class action alleging false representations in connection with the performance of the Samsung 4G phone.
- *Belville et al v. Ford Motor Company* (Case No. 13-cv-06529, W.D. Va.): Appointed to Plaintiffs' Steering Committee in consolidated class litigation against Ford related to sudden acceleration in Ford model vehicles.
- *In re Ventra Card Litigation* (Case No. 13-cv-07294, N.D. Ill.): Appointed co-lead counsel in class litigation related to the Chicago Transit Authority Ventra payment card system.
- *In re Barnes & Noble Pin Pad Litigation* (Case No. 12-cv-8617, N.D. Ill.): Appointed co-lead counsel in nationwide class action relating to a security breach exposing the personal information of hundreds of thousands of consumers nationwide.
- *Goodman v. Casting360, LLC* (Case No. 12-cv-09851, N.D. Ill.): Appointed lead counsel in nationwide class action for violations of the federal Telephone Consumer Protection Act.
- *Kruse, et al. v. Citigroup, Inc.* (Case No. 11-cv-01003-AG-AN, C.D. CA): Appointed lead counsel in a nationwide class action against Citigroup for a massive data breach exposing the personal information of hundreds of thousands of consumers nationwide.

BUSINESS LITIGATION

Siprut PC attorneys have substantial experience with emergency injunctive relief proceedings (representing both plaintiffs and defendants), restrictive covenant litigation, and large commercial contract disputes. Firm partners have contributed to the following matters:

- *NewSub Magazine Servs. LLC v Heartland Direct, Inc.* (Case No. 02-C-4949, N.D. Ill.): Pierced an entity's corporate veil to obtain a seven figure judgment against related corporations and individuals.
- *In re Estate of Edith-Marie Appleton* (Case No. 00-P-103, Cook County, IL): Successfully defended an estate, throughout a three-week jury trial, from a claim brought by Florida State University involving a \$2,000,001 alleged charitable pledge.

- *Edison Mission Energy v Mirant Corp* (Case No. 02-CC-0059, Orange County, CA.): Defended and settled \$750 million breach of contract case involving the purchase of a foreign power facility.
- *Johnson v. Sample & Cross Capital Mgmt.* (Case No. 07-L-929, Lake County, Ill.): Secured dismissal with prejudice of counts brought against a hedge fund by eleven investors in three separate actions, including claims for violation of the Illinois Securities Law Act, violation of the Illinois Consumer Fraud Act, breach of fiduciary duty, and negligence.
- *American Insurance v. Ingram* (Cook Co., Ill.): Obtained preliminary and permanent injunctions against former employee who opened competing business and used previous employer's confidential information.
- *Veal v. James and 7-Eleven* (Cook Co., Ill.): Obtained judgment following bench trial in favor of employee accused of wrongful conduct.
- *Des Plaines Office Equipment Co. v. Nicolin et al.* (Cook Co. Ill.): Represented hiring company and former employee in lawsuit brought by prior employer to enjoin employee from working. Successfully opposed motions for TRO, preliminary and permanent injunctions.
- *In re Confidential Arbitration* (JAMS Chicago, IL): Following week-long trial before retired federal judge, successfully defended breach of fiduciary duty and shareholder dilution claims in excess of \$7 million. Claims arose from issuance of capital call and allocation of distributions and management fees.
- *In re Confidential Arbitration* (AAA St. Louis, MO): Following trial before a three-member arbitration panel, recently obtained a \$1.7 million award, including recovery of all attorneys' fees and costs. Claims arose from purchase of multiple nursing home facilities.
- *Delaware Superior Court and Illinois Chancery Court Litigation.* Defended industrial equipment company in case brought by hedge fund investor concerning hedge fund's investment in \$75 million secured lending loan facility. Claims involved financing and dissolution of business issues.
- *Real estate arbitration* (AAA Minneapolis, MN). Obtained \$100,000 award, including all attorneys' fees and costs, on behalf of commercial real estate buyer in breach of contract action with seller.
- *Trilegiant v. Sitel Corporation* (S.D.N.Y.). Represented Trilegiant in breach of contract action seeking \$34 million in liquidated damages from vendor.
- *Confidential purchase price adjustment arbitration* (AAA Chicago). Represented plastics manufacturer in arbitration. The Panel found in Client's favor on claims for breach of asset purchase agreement entered into as part of reverse spin-off

transaction and public offering. In addition, the Panel denied the Opposing Party's counterclaim for breach of a related real estate sublease and awarded judgment to Client on its counterclaim concerning the same sublease.

- *Advertising Arbitration* (AAA Chicago). Arbitrated dispute on behalf of professional sports team relating to advertising sales and contracts; obtained favorable result.
- *Confidential arbitration for aviation company* (ICC Chicago). Represented aviation manufacturer in contract dispute arising from purchase of company. Following evidentiary hearings, obtained arbitration award in favor of client.
- *Lakeshore Drive Entertainment v. Prestige Films et al.* (Cook Co. Ill): Obtained dismissal of claims brought by movie production company over distribution rights.

ANTITRUST, UNFAIR COMPETITION, AND RICO LITIGATION

Siprut PC attorneys have substantial experience handling antitrust and unfair competition litigation, including RICO claims, against some of the largest corporations in the world. Representative litigation includes:

- *Woolsey v. JP Morgan Chase & Co.* (S.D. Cal.). Representing putative class alleging JP Morgan Chase manipulated the price for electricity within the California electricity market through a series of deceptive bidding strategies, resulting in higher prices to consumers.
- *In re Sulfuric Acid* (N.D. Ill.) Represented sulfuric acid manufacturer in putative nationwide class action pending in federal court in Chicago and indirect purchaser class action pending in California state court. Plaintiff alleged industry-wide scheme to constrain the supply and inflate the price of sulfuric acid. After eight years of litigation, obtained summary judgment on all direct purchaser claims, which was subsequently affirmed by the Seventh Circuit.
- *In re Credit Swaps Default Litigation* (N.D. Ill.). Represented financial services company in putative class action alleging defendants conspired to restrict competition in the market for credit default swaps by monopolizing the sell-side of the CDS market and thereby maintaining anti-competitively wide bid-ask spreads.
- *Rasterex Holdings v Research in Motion, et al* (Fulton Co., Georgia). Represented RIM and co-defendants in trade secret dispute. Plaintiff alleged RIM misappropriated trade secrets and incorporated them into RIM's Blackberry handheld device. Following summary judgment motions, obtained settlement on eve of trial.
- *Safelite Glass Corp.* (E.D. Tex.). Obtained summary judgment on behalf of all defendants, and then won affirmance by U.S. Court of Appeals for the Fifth Circuit, defeating all claims in *Stewart Glass & Mirror, Inc. v. USA GLAS Corp.*, a suit by

Texas plaintiffs against national corporate competitors asserting conspiracy and monopolization in violation of federal antitrust laws.

CIVIL RIGHTS AND CONSTITUTIONAL CLAIMS

Siprut PC attorneys have handled landmark, high-impact civil rights and constitutional claims against municipalities, state and government entities, and corporate employers. Representative litigation includes:

- *Doe II and Doe III , Does IV-VIII* (N.D. Ill.): Representing female victims of sexual assault for claims of civil rights and equal protection violations against The City of Harvey. We allege that Harvey has a custom, policy and practice of failing to adequately investigate claims by female rape victims, including in some instances failing to submit or process sexual assault evidence or rape kits.
- *Green v. Village of Winnetka* (Cook Co. Ill.): Representing putative class of Winnetka property owners who allege Village is violating the Illinois constitution by charging utility fees to fund a \$42 million stormwater project that includes an eight mile tunnel to Lake Michigan.
- *People Who Care v. Rockford Board of Education* (Case No. 89-cv-20168, N.D. Ill.) Represented African American and Hispanic students in desegregation and educational equity class action lawsuit against one of the largest school districts in Illinois. Proved liability across most areas of school operations, including special education, school building conditions, transportation, and student assignment. Secured multi-year, comprehensive court-ordered remedies. Represented plaintiffs throughout 10 years of remedies implementation.
- *Johnson v. Board of Education of Champaign Unit School District* (Case No. 00-cv-1349, C.D. Ill.) Represented African American and Hispanic students in race discrimination and desegregation class action lawsuit. Secured comprehensive settlement affecting many areas of school district operations, including climate and discipline, upper level courses, student assignment, special education, and gifted programs. Represented plaintiff class throughout seven years of settlement monitoring.
- *McFadden v. Board. of Education School District U-46* (Case No. 05-cv-0760, N.D. Ill.) Represented minority students in educational equity suit against second largest school district in Illinois. Defendant found liable for intentionally segregating Hispanic students into separate gifted program.
- *Ramirez v. Ceisel Masonry* (N.D. Ill.): Represented Hispanic laborers who alleged they were being discriminated against on the job because of their race. Obtained favorable settlement on behalf of all plaintiffs.

WHISTLEBLOWER AND FALSE CLAIMS ACT LITIGATION

Siprut PC attorneys have led litigation resulting in settlements in excess of \$100 million, and we are actively prosecuting numerous False Claims Act lawsuits:

- *U.S. ex rel. Robinson v. Northrop-Grumman Corp.* (Case No. 89-cv-6111, N.D. Ill.) Qui tam action brought against Northrop-Grumman for fraud in connection with the B-1 bomber, the B-2 “Stealth” bomber, and the F-15 fighter. Sixteen years after the case was filed, it was settled prior to trial for a total recovery of \$135 million.
- *U.S. ex rel. McGee v. IBM, Corp., et al.* (Case No. 11-cv-3482, N.D. Ill.) Currently pending, the case concerns a bid-rigging conspiracy in connection with a \$50 million Homeland Security Project in Cook County. Successfully defeated IBM’s motion to dismiss in its entirety.
- *U.S. ex rel. Solomon v. Lockheed Martin Corp.* (Case No. 3:12-DV-4495-D, N.D. Tx.) Currently pending, the case seeks more than \$100 million in damages for fraud in connection with the F-35 Joint Strike Fighter, the most expensive weapons program ever.
- Currently under seal is a qui tam action for the submission of false claims by a facility performing Magnetic Resonance Imaging in violation of Medicare’s Multiple Procedures Payment Reduction Policy.
- Currently under investigation is a potential Medicare *qui tam* action against a pharmaceutical manufacturer and its distributors for overcharging the government hundreds-of-millions of dollars through falsely reporting the Average Wholesale Price of its drugs.
- Currently under investigation is a potential Medicare/Medicaid *qui tam* action concerning fraud in connection with the efforts of a manufacturer of a defective medical implant device to obtain FDA approval of a the implant. Potential damages valued in excess of \$100 million.
- Currently under investigation is a potential *qui tam* action in connection with hundreds-of-millions of dollars in false claims relating to mortgage foreclosures

PATENT LITIGATION

Siprut PC and its attorneys have successfully represented public companies, mid-size businesses, small companies, and individuals in their patent disputes all over the United States and the world – from Chicago to San Francisco, from Russia to Cyprus. We have litigated cases in a variety of technological fields, including the life sciences (DNA amplification, screening, and sequencing), computer science (cloud computing, optical character recognition, and genome sequencing), and orthopedic fields (dental and hip implants). Siprut PC has recovered millions of dollars for our clients against some of the largest and most aggressive companies in the country.

ATTORNEYS

JOSEPH SIPRUT is the founder and managing partner of Sipur PC. He was named a “Super Lawyer” in Illinois for Class Action Litigation, and holds an *AV Preeminent* rating by Martindale Hubble, the highest possible peer review rating. He has been called a “fearless game-changer in class actions” by the Chicago Daily Law Bulletin. Mr. Sipur was previously named one of the Top 40 attorneys in Illinois under the age of 40, and was also named one of the “Top 40 Under 40” in the country by the National Trial Lawyers Association. ALM Legal Leaders named Mr. Sipur one of “Chicago’s Top Rated Lawyers of 2014.” Mr. Sipur was also selected for membership in the Multi-Million Dollar Advocates forum, one of the most prestigious groups of trial lawyers in the United States. Membership is limited to attorneys who have won million and multi-million dollar verdicts and settlements, and fewer than 1% of U.S. lawyers are members.

Mr. Sipur has appeared in dozens of publications and television and radio broadcasts worldwide, including CBS Radio, NPR, ESPN, Bloomberg Law, Law360, the Chicago Tribune, and more. He has been deemed by the media as the “Friend of the Frequent Fliers” for his successful litigation crusades against the airline industry on behalf of airline customers, as well as a “Leading Sports Reformer” for his advocacy to combat the problem of concussions and head injuries in college sports.

Mr. Sipur frequently speaks at national class action and consumer litigation seminars. He has substantial first-chair trial experience, and previously served as an Adjunct Professor at Northwestern University School of Law in the Trial Advocacy program. He is also a frequent author and speaker, having published over 25 articles in the nation's leading law reviews and legal journals on topics including the right of privacy, copyright litigation, and contract doctrine, as well as litigation strategy and tactics. He was appointed as a member of the Illinois ARDC Hearing Board, and is also a member of the Advisory Board for the Fair Contracts Project, an initiative focused on counteracting the implications of fine print in standard form consumer contracts.

Mr. Sipur is a graduate of Northwestern University School of Law, where he served as the Managing Editor of the Northwestern Law Review and was selected to represent Northwestern in national competition as a member of its National Moot Court team. He was also awarded the Institute for Humane Studies Fellowship, a national fellowship competition for law and graduate study.

Prior to founding Sipur PC, Mr. Sipur spent his career practicing at some of the top corporate litigation firms in the country. Mr. Sipur has been recognized by the Law in Public Service Committee of the ABA for his dedication to pro bono work. He is admitted to practice in Illinois, the United States District Court for the Northern District of Illinois (including its Trial Bar), the Seventh Circuit Court of Appeals, the Eleventh Circuit Court of Appeals, and the United States Supreme Court. For over five years, Mr. Sipur served as an arbitrator in the Cook County Arbitration Program.

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TODD MCLAWHORN is a partner at Siprut PC. He has over twenty years of commercial litigation trial experience, most of that with three of the country's largest law firms. He has tried cases and appeared before courts in a variety of jurisdictions, literally spanning the country from coast to coast. Mr. McLawhorn has significant experience with complex business litigation, including matters involving contracts, consumer fraud allegations, shareholder disputes and valuations, commercial real estate, trade secret issues, deceptive trade practices claims, antitrust issues, and merger and acquisition issues. He has represented assorted clients in a wide array of industries, including those in the financial services, banking, health care, computer hardware and software, membership services, manufacturing and professional sports fields. In addition, Mr. McLawhorn has devoted a substantial portion of his practice to class action litigation, particularly with respect to antitrust and consumer fraud claims.

Mr. McLawhorn recently received an AV Preeminent Rating, the highest possible rating, in the Martindale-Hubbell Peer Review Ratings Program. Mr. McLawhorn was previously recognized by The Chicago Law Bulletin and The Chicago Lawyer as one of the Top 40 lawyers under 40 in Illinois. He has contributed to several publications, most recently as a Contributor to the World Banks Group Doing Business 2015, and to various bar association publications. He has also provided significant pro bono representation, including assisting individuals who flee their home countries and seek political asylum in the United States, and helping individuals involved in the Illinois Chancery Court's Foreclosure Mediation Program, in an effort to help homeowners who are in foreclosure retain their homes.

In addition to being admitted to practice in New York and Illinois, Mr. McLawhorn is also admitted to practice before the United States Courts of Appeals for the Seventh Circuit, Federal Circuit, Fifth Circuit, and Eleventh Circuit, as well as the United States District Courts for the Northern District of Illinois (Trial Bar), Southern District of Illinois, Central District of Illinois, Southern District of New York, Eastern District of Michigan, Eastern District of Wisconsin, and Western District of Wisconsin. He is also a member of the American Bar Association, and is part of the Antitrust, Business Law, and Litigation Sections. As part of the Litigation Section, he is also a member of the Class Action and Derivatives Suit Committee, the Commercial and Business Litigation Committee, and the Intellectual Property Committee. Closer to home, Mr. McLawhorn is a longtime member of the Chicago Bar Association and the Illinois State Bar Association. In connection with the Chicago Bar Association, he is a member of the Antitrust, Class Action, and Consumer Law Committees.

Mr. McLawhorn received his law degree, with honors, from the University of North Carolina at Chapel Hill. At the University of North Carolina, he was on both Law Review and the Holderness Moot Court Bench. Prior to attending law school, Mr. McLawhorn graduated from East Carolina University, magna cum laude, in three years with a Bachelor of Arts in Psychology. In 2011 Mr. McLawhorn was elected to the District 101 Board of Education, and serves on the Building, Finance, and Legislative Committees. He is a former President and Board Member of the Village Club of Western Springs, a social and service organization. He is also actively involved in coaching and supporting his children's sports teams, and has served on various boards in connection with those activities.

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RICHARD L. MILLER II is a partner at Sipur PC. Richard was previously in-house counsel at a private equity firm, and before that, a partner at Novack and Macey LLP, where he specialized in commercial litigation. While there, Richard advised clients and litigated disputes involving real estate, insurance coverage, creditors' rights, products liability, licenses, trademark, employment contract and corporate veil piercing claims, among others.

Richard is an Adjunct Professor at Northwestern University School of Law where he has served as a Trial Advocacy instructor since 2005 and Advanced Trial Advocacy instructor since 2013. He has been an American Arbitration Association arbitrator since 2010 and, prior to that, was an arbitrator for the Cook County Mandatory Arbitration Program for two years.

Richard served as a prosecutor for Champaign County, Illinois for two years. He litigated approximately 50 jury trials, as well as innumerable bench trials. He prosecuted four murder cases, two of which went to trial, resulting in sentences of 45 and 55 years.

Richard was named one of the "40 Illinois Attorneys Under 40 To Watch" by the Law Bulletin Publishing Company, publishers of the Chicago Lawyer and Chicago Daily Law Bulletin. Chicago Magazine has repeatedly recognized Richard as a "Super Lawyer," "Rising Star" and one of the Top Young Commercial Litigation Attorneys in Illinois.

Richard has published articles appearing in the Illinois Bar Journal on Expert Testimony, Emergency Temporary Restraining Orders, The Wage Payment Act, and Spoliation Claims. He has also served as an author for the Illinois Institute of Continuing Legal Education (ICLE) for many years, authoring guides for practitioners on: Pleading Under the Federal Rules, Federal Motion Practice, Preparing for Trial, and Preserving the Record During Trial. Richard has lectured at webinars for ICLE on Motion Practice, Negotiating Settlements and Cross Examinations.

Richard is a member of the Illinois State Bar Association, the American Bar Association, the Chicago Bar Association and the University Club of Chicago. He currently serves as the President of the University of Illinois Law Alumni Board.

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BRUCE HOWARD is a partner at Sipur PC. He was named National Trial Lawyer of the Year Finalist by the Trial Lawyers for Public Justice, and was named a "Super Lawyer" in Illinois for Class Action Litigation, Securities Litigation, and ERISA Class Action Litigation. He was also named as a one of the Top Attorneys in Illinois by Chicago Magazine.

Mr. Howard has over thirty years of commercial litigation trial experience. Mr. Howard has significant experience with complex business litigation, including matters involving antitrust issues, shareholder fraud and corporate derivative class action claims, ERISA class actions claims, mass tort issues, trademark matters, deceptive trade practices issues, insurance defense matters, actions under the Racketeer Influenced and Corrupt Organizations Act, issues arising under the Anticybersquatting Consumer Protection Act, and whistle blower actions under the False Claims Act. He was also appointed as a Special Assistant Attorney General for the State of Illinois for purposes of prosecuting eminent domain matters. In addition to having devoted a

substantial portion of his career to antitrust and securities fraud matters, for the last twenty years, Mr. Howard has devoted a substantial portion of his practice to whistle blower actions for Medicare, Medicaid, Homeland Security, and defense contractor fraud.

Mr. Howard's notable cases include: *Ohio-Sealy Mattress Mfg. Co. v. Sealy, Inc.*, an antitrust action in which he was involved in several Seventh Circuit appeals and litigation work-up, resulting in a \$77 million jury verdict; *Morse v. Abbott Laboratories, Inc.*, a securities fraud class action which resulted in a \$15.3 million jury verdict; *In re Chicago Flood Litigation*, in which he had a prominent role in the work-up of the case, which settled for more than \$25 million; *Tyco International, Inc.*, a consolidated securities fraud class action that was jointly settled as part of a \$3.2 billion global settlement – the third largest class action recovery ever; *Robinson v. Northrop Corporation*, a whistle blower action which, after 16 years of litigation, settled prior to trial for \$134 million – the largest recovery in a False Claims Act case in this region at the time.

Mr. Howard received his law degree from Washington & Lee University School of Law.

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MATTHEW WAWRZYN is a partner at Siprut PC. He is a trial attorney with experience in many areas of law over 15 years. He has been lead counsel in various patent-infringement matters, both defending public companies and representing plaintiff companies of all sizes. Mr. Wawrzyn has also successfully defended businesses against allegations of fraud, breach of contract, white-collar crime, and has represented companies in accounting and insolvency cases in federal court and as part of federal regulatory proceedings.

In the last two years, Mr. Wawrzyn has acted as lead counsel on behalf of various inventors who seek to protect their patent portfolios from infringement by some of the largest companies in the world. Many of these cases were asserted against Fortune 100 companies and have since concluded favorably out of court.

Mr. Wawrzyn has argued before the Federal Circuit and five times before the Seventh Circuit Court of Appeals, and has drafted a petition for writ of certiorari on which the Supreme Court of the United States ordered a response. Mr. Wawrzyn began his career at Winston & Strawn in Chicago. His practice was largely devoted to representing major creditors in various large bankruptcy cases, including United Air Lines and Kmart. Mr. Wawrzyn also focused on white-collar crime and securities enforcement, including internal investigations and the defense of a large corporation in an investigation by the Securities Exchange Commission.

Mr. Wawrzyn subsequently joined Kirkland & Ellis in Chicago, where he continued to represent debtors in possession in large Chapter 11 cases at contested confirmation and Rule 9019 hearings. He also managed bankruptcy litigation on behalf of a private equity firm. In addition, Mr. Wawrzyn continued to devote his time to white-collar crime, securities enforcement, and general commercial litigation. Notably, Mr. Wawrzyn defended a “Big Four” accounting firm in one of the first investigations conducted by the Public Company Accounting Oversight Board, or PCAOB.

In early 2010, Mr. Wawrzyn founded a Chicago-based litigation boutique. Some of that firm's notable representations included the defense of the Russian software developer ABBYY against patent-infringement allegations of its chief competitor and the defense of the life sciences firm Illumina, again, against patent-infringement allegations of a chief competitor. The ABBYY case involved "optical character recognition" methods, and the Illumina case involved DNA amplification and sequencing techniques. Mr. Wawrzyn's litigation boutique merged with Siprut PC in 2015.

Mr. Wawrzyn graduated summa cum laude from DePaul University College of Law, where he was elected Order of the Coif and was a member of the DePaul Law Review. While at DePaul, Mr. Wawrzyn won 7 "CALI" awards for achieving the top grade in his class. He also published the following: Note, Constitutional Principles at Loggerheads with Community Action, 50 DePaul L. Rev. 371 (Fall 2000). Mr. Wawrzyn was named an Illinois "Super Lawyer -- Rising Star" in 2013 and again in 2014.

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KATHLEEN MANGOLD-SPOTO is Of Counsel at Siprut PC. She has over twenty years of class action litigation experience, primarily in the areas of consumer fraud, civil rights, and educational equity. She formerly was a partner at Futterman & Howard, Chtd., a premier civil rights, securities, and consumer fraud firm in Chicago. She has extensive experience as lead writer on trial and appellate briefs in complex federal cases, including on briefs to the United States Courts of Appeals for the Seventh and Second Circuits. She has been a conference presenter and college and law school guest lecturer on the topics of civil rights litigation under 42 U.S.C. Section 1983, education law, constitutional law, and the 50th Anniversary of *Brown v. Board of Education*.

Kathleen worked for six years as an elbow law clerk for federal judges in the Northern District of Illinois and the District of New Hampshire. She has many years' experience teaching legal writing and civil procedure at law schools in the Midwest and New England and has presented at regional, national, and international legal writing conferences. She recently served as a volunteer legal editor for the *Clearinghouse Review*, a publication of the Sargent Shriver National Center on Poverty Law. She is the author of *Third Party Challenges to Desegregation Remedies*, Ch.17, Civil Rights Litigation and Attorney Fees Annual Handbook, Vol. 15 (Dec. 1999), West Publishing.

Kathleen is a graduate of Loyola University Chicago School of Law, where she was a member of the Loyola Law Review. She received her undergraduate degree from the University of Illinois at Urbana-Champaign in English and Psychology.

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MICHAEL L. SILVERMAN is an attorney at Siprut PC. His practice is focused on complex and commercial litigation, with an emphasis on class action litigation involving antitrust, consumer protection, and contract law. Mr. Silverman has extensive experience in electronic discovery matters including electronic document preservation, spoliation, production, and

computer forensics. His efforts have assisted in the recovery of hundreds of millions of dollars for the class members he has represented.

Mr. Silverman received his Bachelors of Business Administration from the University of Wisconsin-Madison School of Business, where he concentrated his studies in Finance, Investments, and Banking. Mr. Silverman graduated *Cum Laude* from DePaul University College of Law, receiving his Juris Doctor degree in 2008. While in law school, Mr. Silverman served as an Editor for the Journal of Contemporary Moral Issues as well as a Legal Writing Teaching Assistant for first-year law students. He is admitted to the Illinois State Bar and United States District Court, Northern District of Illinois.

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JOHN MARRESSE is an attorney at Siprut PC. His practice focuses on complex commercial and class action litigation. Mr. Marrese has handled all phases of pre-trial litigation, including drafting and arguing dispositive and evidentiary motions, taking and defending depositions, developing and executing written discovery, and preparing fact and expert witnesses for deposition and trial. He has also assisted in several trials resulting in favorable verdicts and settlements for his clients.

Mr. Marrese graduated *cum laude* from The Ohio State University College of Law, where he was elected Chief Managing Editor of the Ohio State Journal of Criminal Law and as a member of the International Law Moot Court Team. Mr. Marrese achieved the top grade in his class in both Trial Practice and Appellate Advocacy, and clerked for the United States Attorney's Office for the Southern District of Ohio. He received his B.A. from Emory University in Atlanta.

Mr. Marrese is admitted to practice in Illinois, the United States District Court for the Northern District of Illinois, and the United States District Court for the Eastern District of Wisconsin.

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STEPHEN JARVIS is an attorney at Siprut PC. Mr. Jarvis has actively participated in over 20 patent litigations pending around the United States, including arguing and drafting an array of substantive motions and briefs in federal court. Mr. Jarvis has taken and defended depositions, including particularly expert witnesses.

Mr. Jarvis graduated summa cum laude from DePaul University College of Law, where he was elected Order of the Coif and was a member of the DePaul Law Review. While at DePaul, Mr. Jarvis won 4 "CALI" awards for achieving the top grade in his class. Mr. Jarvis also won the Scandaglia & Ryan Excellence in IP Legal Writing Award, and he published a Comment in the DePaul Law Review.

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GREGG BARBAKOFF is an attorney at Siprut PC. His practice encompasses a wide spectrum of litigation with an emphasis on commercial litigation and consumer class actions. Gregg serves on the Board of Directors for the American Constitution Society, a progressive legal organization dedicated to the core Constitutional values of civil liberties, open access to justice, and the rule of law.

Gregg is a graduate of the Chicago-Kent College of Law, where he served as an editor of the Seventh Circuit Review, in which he was also published. During law school, he was selected as a Member of the Chicago-Kent Moot Court Honor Society, where he won the award for Best Overall Oralist at the Appellate Lawyers Association Moot Court Competition. Gregg was selected for the Class of 1976 Honors Scholarship while attending Chicago-Kent. Gregg graduated from Chicago-Kent *magna cum laude*, and was recently inducted into the Order of the Coif. Gregg is admitted to practice in Illinois and in the United States District Court for the Northern District of Illinois.

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ISMAEL SALAM is an attorney at Siprut PC. His practice is focused principally on class action litigation, with an emphasis on consumer protection, data privacy and technology issues, and litigation under the Telephone Consumer Protection Act. Ismael is a graduate of Loyola University Chicago School of Law, where he served as Managing Editor of the Public Interest Law Reporter, in which he is also published. He also served as a junior member of the Loyola Law Journal, the law school's main publication. During law school, he was selected as a Student Fellow for Loyola's Institute for Consumer Antitrust Studies, where he drafted papers on price-fixing. He was also awarded the CALI for the highest grade in his Law and Economics course.

Prior to Siprut PC, Ismael interned with the U.S. Army Judicial Advocate General's Corps at Fort Carson, Colorado, U.S. Attorney's Office for the Northern District of Illinois, U.S. Court of Appeals for the Seventh Circuit, and U.S. District Court for the Northern District of Illinois.

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MICHAEL OBERNESSER is Of Counsel to Siprut PC. Michael graduated magna cum laude from Xavier University in Cincinnati, Ohio with a Bachelor's Degree in Philosophy in 1998. After graduation, Michael went on to receive his Juris Doctor at the Northwestern University School of Law in Chicago, Illinois in 2001. While attending Northwestern, Michael was a member of the Bluhm Legal Clinic, where he represented clients accused of a wide variety of criminal offenses, including drug and gun possession, assault and battery, and murder. After graduation, Michael went to work for some of the largest law firms in the nation, including Morgan, Lewis & Bockius LLP, and Howrey LLC, where he litigated complex matters on behalf of his clients.

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TODD C. ATKINS is Of Counsel at Siprut PC, and heads the Firm's California office. His litigation practice encompasses class actions, real estate and securities matters – representing



both brokers and plaintiffs. Todd is also a trained and experienced mediator, and received his certification from the National Conflict Resolution Center.

Todd is a graduate of the University of San Diego, School of Law. He is admitted to practice in California, the District of Columbia, and the United States District Court for the Southern District of California, and is also a licensed real estate broker

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ALEXANDER SHAPOVAL is Of Counsel at Sipur PC, and heads the Firm's Boston office. His practice encompasses all manner of civil litigation, including class actions and personal injury litigation. Alexander is an experienced trial lawyer, with substantial first-chair jury trial experience.

Alexander is a graduate of the Massachusetts School of Law. He is admitted to practice in Massachusetts and the United States District Court for the District of Massachusetts.

4821-5129-8057, v. 1

EXHIBIT 3

DRAFT EMAIL NOTICE

If You Were Sent A Text Message From The Western Union Company, You May Be Entitled To A Payment From A Class Action Settlement.

A Settlement has been reached in a class action lawsuit alleging that The Western Union Company (“Western Union”) sent text messages to wireless telephone numbers without prior express written consent of the recipients in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”). Western Union denies the allegations in the lawsuit and the Court has not decided who is right.

Who’s Included? Western Union’s records show that you may be a Settlement Class Member. The Settlement includes all persons in the United States who received one or more unsolicited text messages sent by or on behalf of Western Union between March 12, 2010 and [the date of Preliminary Approval].

What Are the Settlement Terms? Western Union has agreed to pay \$8.5 million to create a Settlement Fund that will be used to pay cash payments to valid claimants, attorney fees, a service award, and notice and administration costs. Each Settlement Class Member who makes a claim will be entitled to an equal share in the Settlement Fund. Only one claim is allowed per Settlement Class Member. The final cash payment amount will depend on the total number of Valid Claims filed by all Settlement Class Members.

How can I get a Payment? To get a payment you must submit a claim using this 13 digit, unique identifier: XXXXXXXXXXXXX. You can quickly file a claim online at the website listed below. You may also download a Claim Form and submit your claim via mail. The deadline to file a claim online is 11:59 p.m. PST on Month DD, 2015. If you send in a Claim Form by regular mail, it must be postmarked on or before [DATE], 2015. Settlement Class Members who submit Valid Claims will receive \$250 or their equal share of the Settlement Fund, depending on the number of Valid Claims received. For example, if 1% of the Settlement Class submit Valid Claims, each Settlement Class Member would receive approximately \$651.37. If, however, 5% of the Settlement Class submit Valid Claims, each Settlement Class Member would receive approximately \$130.28. The final cash payment amount will depend on the total number of Valid Claims filed by all Settlement Class Members.

Your Other Options. If you Stay In the Settlement Class, you will be legally bound by the Settlement’s terms and you will release your claims against The Western Union, regardless of whether you file a Valid Claim. If you do not want to be legally bound by the Settlement, you must Opt Out of the Settlement by Month DD, 2015. If you Opt Out, you will not be entitled to any payments but you will retain the ability to file your own claim against The Western Union. If you do not Opt Out, you may Object to the Settlement by Month DD, 2015. The detailed notice available on the Settlement Website explains how to Opt Out or Object. The Court will hold a Hearing on Month DD, 2015 to consider whether to approve the Settlement and a request for attorneys’ fees of up to 35% of the Fund (approximately \$2,891,000) and incentive award of \$5,000 to the Class Representative. You may appear at the hearing, either yourself or through an attorney hired by you, but you don’t have to. For more information, call or visit the website.

EXHIBIT 4

DRAFT POSTCARD NOTICE

If You Were Sent A Text Message From The Western Union Company, You May Be Entitled To A Payment From A Class Action Settlement.

A Settlement has been reached in a class action lawsuit alleging that The Western Union Company (“Western Union”) sent text messages to wireless telephone numbers without prior express written consent of the recipients in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”). Western Union denies the allegations in the lawsuit and the Court has not decided who is right.

Who’s Included? Western Union’s records show that you may be a member of the Settlement Class. The Settlement includes all persons in the United States who received one or more unsolicited text messages sent by or on behalf of Western Union between March 12, 2010 and [the date of Preliminary Approval].

What Are the Settlement Terms? A Settlement Fund of \$8.5 million has been established to pay valid claims, attorney fees, service awards, costs, expenses and settlement administration.

How can I get a Payment? To get a payment you must submit a claim using this **13 digit, unique identifier: XXXXXXXXXXXXX**. You can submit your claim online or by mail. Each Settlement Class Member who makes a claim will be entitled to an equal share in the Settlement Fund. Only one claim is allowed per Settlement Class Member. Settlement Class Members who submit Valid Claims will receive \$250 or their equal share of the Settlement Fund, depending on the number of Valid Claims received. For example, if 1% of the Settlement Class submit Valid Claims, each Settlement Class Member would receive approximately \$651.37. If, however, 5% of the Settlement Class submit Valid Claims, each Settlement Class Member would receive approximately \$130.28. The final cash payment amount will depend on the total number of Valid Claims filed by all Settlement Class Members. The claim deadline is **Month DD, 2015**.

Your Other Options. If you **Stay In** the Settlement Class, you will be legally bound by the Settlement’s terms and you will release your claims against The Western Union, regardless of whether you file a Valid Claim. If you do not want to be legally bound by the Settlement, you must **Opt Out** of the Settlement by **Month DD, 2015**. If you Opt Out, you will not be entitled to any payments but you will retain the ability to file your own claim against The Western Union. If you do not Opt Out, you may **Object** to the Settlement by **Month DD, 2015**. The detailed notice available on the Settlement Website explains how to Opt Out or Object. The Court will hold a Hearing on **Month DD, 2015** to consider whether to approve the Settlement and a request for attorneys’ fees of up to 35% of the Fund (approximately \$2,891,000) and incentive award of \$5,000 to the Class Representative. You may appear at the hearing, either yourself or through an attorney hired by you, but you don’t have to. For more information, call or visit the website.

www.WesternUnionTCPASettlement.com 1-(8XX) XXX-XXX

EXHIBIT 5

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

If You Were Sent A Text Message From The Western Union Company, You May Be Entitled To A Payment From A Class Action Settlement.

A federal court directed this notice. This is not a solicitation from a lawyer.

- A Settlement has been reached in a class action lawsuit alleging that The Western Union Company (“Western Union”) sent text messages to wireless telephone numbers without prior express written consent of the recipients in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”). Western Union denies the allegations in the lawsuit and the Court has not decided who is right.
- Settlement Class Members who submit Valid Claims will be entitled to a share of the Settlement Fund.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM (_____, 201_)	Submit a Claim Form seeking cash payment. Give up your right to be part of another lawsuit, arbitration or proceeding against Western Union for the same legal claims resolved by this Settlement.
OPT OUT OF THE SETTLEMENT (_____, 201_)	Request to be excluded and receive no benefits from the Settlement. This is the only option that allows you to start or continue your own lawsuit against Western Union for the claims as issue in the Settlement.
OBJECT (_____, 201_)	Remain in the Settlement and write to the Court about why you do not like the Settlement. If you would like benefits from the Settlement, you will need to file a Claim Form. Give up your right to be part of another lawsuit, arbitration or proceeding against Western Union for the same legal claims resolved by this Settlement.
GO TO A HEARING (_____, 201_)	Remain in the Settlement and ask to speak in Court about the fairness of the Settlement. Give up your right to be part of another lawsuit, arbitration or proceeding against The Western Union for the same legal claims resolved by this Settlement.
DO NOTHING	Get no benefits. Give up your right to be part of another lawsuit, arbitration or proceeding against Western Union for the same legal claims resolved by this Settlement.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. If it does, and after any appeals are resolved, benefits will be distributed to those who submit qualifying claim forms. Please be patient.

QUESTIONS? CALL 1-8XX-XXX-XXXX OR VISIT
www.WesternUnionTCPASettlement.com

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION PAGE 3

- 1. Why is there a notice?
- 2. What is this litigation about?
- 3. What is the Telephone Consumer Protection Act?
- 4. Why is this a class action?
- 5. Why is there a settlement?

WHO IS PART OF THE SETTLEMENT..... PAGE 4

- 6. Who is included in the Settlement?
- 7. What if I am not sure whether I am included in the Settlement?

THE SETTLEMENT BENEFITS..... PAGE 4

- 8. What does the Settlement provide?
- 9. How do I file a Claim?
- 10. When will I receive my payment?

EXCLUDING YOURSELF FROM THE SETTLEMENT PAGE 5

- 11. How do I get out of the Settlement?
- 12. If I do not exclude myself, can I sue the Defendant for the same thing later?
- 13. What am I giving up to stay in the Settlement Class?
- 14. If I exclude myself, can I still get a payment?

THE LAWYERS REPRESENTING YOU..... PAGE 6

- 15. Do I have a lawyer in the case?
- 16. How will the lawyers be paid?

OBJECTING TO THE SETTLEMENT PAGE 7

- 17. How do I tell the Court if I do not like the Settlement?
- 18. What is the difference between objecting and asking to be excluded?

THE FAIRNESS HEARING PAGE 7

- 19. When and where will the Court decide whether to approve the Settlement?
- 20. Do I have to attend the hearing?
- 21. May I speak at the hearing?

IF YOU DO NOTHING PAGE 8

- 22. What happens if I do nothing at all?

GETTING MORE INFORMATION PAGE 9

- 23. How do I get more information?

QUESTIONS? CALL 1-8XX-XXX-XXXX OR VISIT
www.WesternUnionTCPASettlement.com

BASIC INFORMATION

1. Why is there a notice?

This Notice is to inform you of the proposed Settlement of a class action lawsuit and about all of your rights and options before the Court decides whether to approve it. This Notice describes the lawsuit, the proposed Settlement, your legal rights, what benefits are available and who can get them.

Judge Gary Feinerman of the United States District Court, Northern District of Illinois is overseeing the proposed Settlement in the matter of *Douglas v. The Western Union Co.*, Case No. 14-cv-1741 (the “Litigation”). The proposed Settlement will resolve the claims made against Western Union in the Litigation. The people who sued is called the “Plaintiff.” Western Union is the “Defendant.”

2. What is this litigation about?

The lawsuit alleges that Western Union sent text messages to Plaintiff’s wireless telephone numbers without prior express written consent and in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”); and seeks statutory damages under the TCPA on behalf of the named Plaintiff and a proposed class of all individuals in the United States who received one or more unsolicited text messages from or on behalf of Western Union between March 12, 2010 and [the date of preliminary approval].

Western Union denies each and every allegation of wrongdoing, liability and damages that were or could have been asserted in the litigation and further denies that the claims in the litigation would be appropriate for class treatment if the litigation were to proceed through trial.

The Plaintiff’s Complaint and other case-related documents are posted on the website, www.XXXXXXXXXXXXXXXXXX.com. The Settlement resolves the lawsuit. The Court has not decided who is right.

3. What is the Telephone Consumer Protection Act?

The TCPA is a federal law that restricts telephone solicitations and the use of certain automated telephone equipment, such as automatic dialing systems, artificial or prerecorded voice messages, SMS text messages, and fax machines.

4. Why is this a class action?

In a class action, one or more people called “Class Representatives” (in this case, Plaintiff Jason Douglas) sue on behalf of themselves and other similarly situated people. Together, all the people with similar claims are members of a “Settlement Class.”

5. Why is there a Settlement?

The Court has not decided in favor of Plaintiff or Western Union. Instead, both sides have agreed to a settlement. By agreeing to the Settlement, the parties avoid the costs and uncertainty of a trial, and if the Settlement is approved by the Court, Settlement Class Members will receive the benefits

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described in this notice. The proposed Settlement does not mean that any law was broken or that Western Union did anything wrong. Western Union denies all legal claims in this case. Plaintiff and his lawyers think the proposed Settlement is best for everyone who is affected.

WHO IS PART OF THE SETTLEMENT

6. Who is included in the Settlement?

The Settlement includes all persons in the United States who received one or more unsolicited text messages sent by or on behalf of Western Union between March 12, 2010 and [the date of Preliminary Approval.] These people are called the “Settlement Class.”

Excluded from the Settlement Class are (A) Western Union, its officers, its directors; (B) Class Counsel; and (C) The Judges who have presided over the Litigation and their immediate family members.

7. What if I am not sure whether I am included in the Settlement?

If you are not sure whether you are in the Settlement Class, or have any other questions about the Settlement, visit the settlement website at www.XXXXXXXXXXXXXXXX.com or call the toll free number, 1-8XX-XXX-XXXX. You also may send questions to the Settlement Administrator at Epiq Systems, Inc., Settlement Administrator, PO Box XXXX, Portland, OR 97XXX-XXXX.

THE SETTLEMENT BENEFITS

8. What does the Settlement provide?

Western Union has agreed to pay \$8.5 million to create a “Settlement Fund.” The Settlement Fund will be used to pay all Settlement costs, including notice and administrative costs, the Attorneys’ Fee Award, and Incentive Award to the Class Representative. The remaining “Net Settlement Fund” will be distributed as cash payments to Settlement Class Members who submit Valid Claims. The cash payments will be approximately \$250 or an equal share of the Settlement Fund, depending on the number of Valid Claims received. For example, if 1% of the Settlement Class submit Valid Claims, each Settlement Class Member would receive approximately \$651.37. If, however, 5% of the Settlement Class submit Valid Claims, each Settlement Class Member would receive approximately \$130.28. Each Settlement Class Member may only file one claim and receive only one cash payment.

9. How do I file a Claim?

To get a payment you must submit a claim using your 13 digit, unique identifier provided in the postcard or e-mail notice you received. If you qualify for a cash payment you must complete and submit a valid Claim Form. You can submit your Claim Form online at www.XXXXXXXXXXXXXXXX.com. The deadline to file a Claim online is **11:59 p.m. PST on Month, Day, 2015**.

You may also submit your Claim Form via regular mail. Claim Forms submitted by mail must be postmarked on or before **Month Day, 2015** to:

QUESTIONS? CALL 1-8XX-XXX-XXXX OR VISIT
www.WesternUnionTCPASettlement.com

____ Settlement Administrator
PO Box XXX
Portland, OR 97XXX-XXXX

No matter which method you choose to file your Claim Form, please read the Claim Form carefully and provide all the information required. Only one Claim Form per Settlement Class Member may be submitted.

10. When will I receive my payment?

Payments to valid Claimants will be made only after the Court grants Final Approval to the Settlement and after any appeals are resolved (*see* “Fairness Hearing” below). If there are appeals, resolving them can take time. Please be patient.

EXCLUDING YOURSELF FROM THE SETTLEMENT

11. How do I get out of the Settlement?

If you do not want benefits from the Settlement, and you want to keep any right you might have to sue Western Union about the issues in this case, then you must take steps to get out of the Settlement. This is called excluding yourself or “opting-out” of the Settlement Class.

To exclude yourself from the Settlement, you must send a letter or other written document by mail to:

____ Settlement Administrator
PO Box XXXX
Portland, OR 97XXX-XXXX

Your request to be excluded from the Settlement must be personally signed by you and contain a statement that you are a member of the Settlement Class but desire to be excluded from it.

Your exclusion request must be postmarked no later than **Month Day, 2015**. You cannot ask to be excluded on the phone, by email, or at the website.

You may opt-out of the Settlement Class only for yourself. So-called “mass” or “class” opt outs, whether filed by third parties on behalf of a “mass” or “class” of members of the Settlement Class or multiple members of the Settlement Class where no personal statement has been signed by each and every individual member of the Settlement Class, are not allowed.

12. If I do not exclude myself, can I sue the Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right you might have to sue Western Union for legal claims that the Settlement resolves. You must exclude yourself from the Settlement Class in order to try to maintain your own lawsuit. If you start your own lawsuit, you will have to hire your own lawyer and you will have to prove your claims.

13. What am I giving up to stay in the Settlement Class?

QUESTIONS? CALL 1-8XX-XXX-XXXX OR VISIT
www.WesternUnionTCPASettlement.com

Unless you exclude yourself from the Settlement, you cannot sue or be part of any other lawsuit against Western Union about the issues in this case, including any existing litigation, arbitration, or proceeding. Unless you exclude yourself, all of the decisions and judgments by the Court will bind you. If you file a Claim Form for benefits or do nothing at all, you will be releasing Western Union from all of the claims described and identified in Section IX of the Settlement Agreement.

The Settlement Agreement is available at www.XXXXXXXXXXX.com. The Settlement Agreement provides more detail regarding the release and describes the released claims with specific descriptions in necessary, accurate legal terminology, so read it carefully. You can talk to the law firm seeking to represent the Settlement Class and listed in Question 15 for free or you can, at your own expense, talk to your own lawyer if you have any questions about the released claims or what they mean.

14. If I exclude myself, can I still get a payment?

No. You will not get a payment from the Settlement Fund if you exclude yourself from the settlement.

THE LAWYERS REPRESENTING YOU

15. Do I have a lawyer in the case?

The Court has appointed Joseph J. Siprut of Siprut PC as “Class Counsel” to represent all members of the Settlement Class.

You will not be charged for this lawyer’s services. The Attorneys’ Fee Award will be paid directly from the Settlement Fund. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

16. How will the lawyers be paid?

Class Counsel intend to request up to thirty-five percent (35%) (approximately \$2,891,000) of the value of the Settlement for attorneys’ fees, plus reimbursement of reasonable, actual out-of-pocket expenses incurred in the litigation. The fees and expenses awarded by the Court will be paid out of the Settlement Fund. The Court will decide the amount of fees and expenses to award.

Class Counsel also will request that an Incentive Award of \$5,000 be paid from the Settlement Fund to the Class Representative for his service as representatives on behalf of the whole Settlement Class.

OBJECTING TO THE SETTLEMENT

QUESTIONS? CALL [1-8XX-XXX-XXXX](tel:1-8XX-XXX-XXXX) OR VISIT
www.WesternUnionTCPASettlement.com

17. How do I tell the Court if I do not like the Settlement?

If you are a Settlement Class Member (and do not exclude yourself from the Settlement Class), you can object to any part of the Settlement. To object, you must submit a letter or other written document that includes the following:

- 1) A heading that includes the case name and case number - *Jason Douglas v. The Western Union Company*, Case No. 14-cv-1741.
- 2) Your name, address, telephone number and, if represented by counsel, the name, bar number, address and telephone number of your counsel;
- 3) A signed declaration stating, under penalty of perjury, that you are a member of the Settlement Class;
- 4) A statement of all your objections to the Settlement including your legal and factual basis for each objection; and
- 5) A statement of whether you intend to appear at the Fairness Hearing, either with or without counsel, and if with counsel, the name, bar number, address, and telephone number of your counsel who will attend.

You must file your objection with the Court and mail or email your objection to each of the following postmarked or emailed by **Month Day, 2015**:

Settlement Administrator	Class Counsel Joseph J. Siprut Siprut PC 17 N. State Street Suite 1600 Chicago, Illinois 60602	Defendant's Counsel Mark S. Mester Kathleen P. Lally Latham & Watkins LLP 330 N. Wabash Avenue Suite 2800 Chicago, Illinois 60611
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18. What is the difference between objecting and asking to be excluded?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object to the Settlement because it no longer affects you.

THE FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement and any requests for fees and expenses (“Fairness Hearing”).

QUESTIONS? CALL 1-8XX-XXX-XXXX OR VISIT www.WesternUnionTCPASettlement.com

19. When and where will the Court decide whether to approve the Settlement?

The Court has scheduled a Fairness Hearing on **Month Day, 2015 at __: __ m**, at the Everett McKinley Dirksen United States Courthouse, located at 219 South Dearborn Street, Courtroom 2125, Chicago, Illinois 60604. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check **www.XXXXXXXXXXXXXX.com** for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider the requests by Class Counsel for attorneys' fees and expenses and for an Inventive Award to the Class Representative. If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the Settlement. It is unknown how long these decisions will take.

20. Do I have to attend the hearing?

No. Class Counsel will answer any questions the Court may have. But, you are welcome to attend the hearing at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you submitted your written objection on time, to the proper addresses, and it complies with the other requirements set forth above, the Court will consider it. You also may pay your own lawyer to attend the hearing, but it is not necessary.

21. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, your filed objection must include a statement of whether you intend to appear at the Fairness Hearing (*See* question 17 above).

You cannot speak at the hearing if you exclude yourself from the Settlement.

IF YOU DO NOTHING

22. What happens if I do nothing at all?

If you are a member of the Settlement Class and do nothing, you will not get benefits from the Settlement. And, unless you exclude yourself, you will be bound by the judgment entered by the Court. This means you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit or proceeding against Western Union about the claims at issue in this case.

GETTING MORE INFORMATION

23. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. For a complete, definitive statement of the settlement terms, refer to the Settlement Agreement at **www.XXXXXXXXXXXXXX.com**. You also may write with questions to the Settlement Administrator at

QUESTIONS? CALL **1-8XX-XXX-XXXX** OR VISIT
www.WesternUnionTCPASettlement.com

_____ Settlement Administrator, [Settlement Administrator's Address], or call the toll-free number, 1-8XX-XXX-XXXX.

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QUESTIONS? CALL 1-8XX-XXX-XXXX OR VISIT
www.WesternUnionTCPASettlement.com

EXHIBIT 6

CLAIM FORM

Douglas v. The Western Union Company, Case No. 1:14-cv-01741
(N.D. Ill. filed March 12, 2014)

**WESTERN UNION TEXT MESSAGE SETTLEMENT
C/O EPIQ SYSTEMS, INC., [SETTLEMENT ADMINISTRATOR ADDRESS]**

**Your Signed Claim Form Must Be Completed, Submitted
Online or Mailed and Postmarked
No Later Than [_____, 201_]**

**If You Do Not Submit A Claim Form By [_____, 201_], You
Will Not Receive The Benefits Described In The Class Notice.
Please Read This Entire Form Carefully.**

If you received one or more unsolicited text messages sent by or on behalf of Western Union between March 12, 2010 and [PA DATE], you may be entitled to compensation if you complete this Claim Form and submit it either online or by mail no later than [_____, 201_].

Name: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Mobile Phone Number: _____ Email Address: _____

Date of Unsolicited Text Message: _____

Unique Identifier (in the postcard or e-mail notice you received): _____

By submitting this Claim Form and signing below, I declare under penalty of perjury that I received an unsolicited text messages sent by or on behalf of Western Union between March 12, 2010 and [PA DATE] and that all information in this Claim Form are true and correct to the best of my knowledge.

Signature: _____ Date: _____

Print Name: _____

Your claim will be submitted to the Settlement Administrator for review. If accepted, you will be mailed a check representing your share of the Settlement Fund. This process takes time, so please be patient. Please keep a copy of your completed Claim Form for your records and ensure that you keep your current address on file with the Settlement Administrator.

Questions or Need Help? Call [NUMBER] or visit [SETTLEMENT WEBSITE]