

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JANELL MOORE, on Behalf of Herself and All  
Others Similarly Situated,

Plaintiff,

vs.

ANGIE'S LIST, INC.,

Defendant.

CIVIL ACTION NO: 2:15-cv-01243

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

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## I. INTRODUCTION

Plaintiff Janell Moore,<sup>1</sup> by and through undersigned counsel, respectfully move for Preliminary Approval of the proposed Settlement Agreement attached hereto as Exhibit A (the “Settlement Agreement”), and certification of the Settlement Class, which will resolve Plaintiff’s and all proposed settlement class members’ (“Settlement Class Members”) claims in this action. Defendant Angie’s List, Inc. (“Angie’s List”) does not oppose this motion. The Court should grant preliminary approval because the proposed settlement provides substantial relief for the Settlement Class and because the terms of the settlement are fair, adequate, and reasonable. The settlement consists of the choice of cash payments or a membership benefit to Settlement Class Members who submit valid and timely claims, as well as structural relief. It is a tremendous result for the Settlement Class reached following extensive discovery enabling Plaintiff and her counsel to fully appreciate the relative strengths of the claims and Angie’s List’s defenses, and the significant risks presented by continued litigation through the summary judgment phase and beyond.

As set forth in further detail herein, the settlement meets the standard for preliminary approval. Thus, Plaintiff moves the Court to enter the [Proposed] Order Granting Preliminary Approval of Class Action Settlement, attached as Exhibit 7 to the Settlement Agreement. That order contemplates: (1) the preliminary approval of the settlement’s terms; (2) the certification of the Settlement Class, for settlement purposes only; (3) the appointment of Plaintiff (and the two other individuals whom Plaintiff Moore seeks to add through a simultaneously filed motion for leave to file an amended complaint and who have participated in the settlement negotiation

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<sup>1</sup> Plaintiff has simultaneously moved herewith to file a conditional amended complaint for settlement purposes only, which adds two additional proposed class representatives as plaintiffs. Although these individuals are parties to the proposed class action settlement, and support and join in this motion, because they have not been formally added as parties, this motion still refers to “Plaintiff” in the singular.

process) as class representatives; (4) the appointment of Golomb & Honik, P.C., Carter Wolden Curtis, LLP, and Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. as Plaintiffs' Class Counsel; (5) the appointment of Epiq Systems, Inc. ("Epiq") as the Settlement Administrator responsible for Class Notice and Claim administration; (6) the approval of the form, method, and plan of Class Notice; (6) the entry of procedures and deadlines for Settlement Class Members to make claims, object, or exclude themselves from the Settlement; and (7) the scheduling of a Fairness Hearing and related deadlines.

## **II. PROCEDURAL BACKGROUND**

There are currently three related pending actions, the most progressed of which is the action before this Court. A brief overview of each case follows.

### **A. The Pending Actions**

#### **1. This Action**

Plaintiff Janell Moore commenced this action on March 11, 2015, by filing a complaint (the "Complaint") on behalf of herself, as well as a proposed nationwide class (and Pennsylvania state sub-class) against Angie's List in this district. *See* ECF 1. The Complaint seeks monetary damages and other relief in connection with Angie's List's allegedly misleading representations and alleged omissions about whether service providers can pay to advertise on Angie's List and whether, by doing so, the service providers allegedly can influence their letter-grade rating, the content and visibility of reviews, and their search-result ranking. The Complaint asserts that Angie's List's alleged failure to adequately disclose this information constituted a breach of contract (*viz.*, the standardized Membership Agreement between Angie's List and its members) and breach of the implied covenant of good faith and fair dealing (Count I), fraud and fraudulent inducement (Count II), unjust enrichment (Count III), and a violation of state unfair trade practices and consumer protection laws (Count IV).

On May 13, 2015, Angie's List moved to dismiss the Complaint in its entirety. *See* ECF 10. On August 7, 2015, the Court granted in part and denied in part Angie's List's motion, dismissing certain aspects of the breach of contract claim predicated on alleged breaches of Frequently Asked Questions ("FAQs") posted to Angie's List's website, as well as the breach of the covenant of good faith and fair dealing claim and the unjust enrichment claim. *See* ECF 15. In its ruling, the Court declined to consider certain factual assertions in documents, and attached to, Angie's List's motion to dismiss purporting to rebut Plaintiff's allegations, including copies of statements from Angie's List's website regarding service provider advertising and the manner search-result rankings display under certain settings. ECF 15 at 13-14. In so doing, however, the Court noted that Angie's List's assertions and evidence may prove "persuasive . . . at some future point in this litigation" and further observed that "mutual discovery may eventually uncover contradictory facts" disputing Plaintiff Moore's characterization of Angie's List's service and statements. *Id.* at 14, 22.

Shortly thereafter, on August 14, 2015, this Court referred the parties to mediation before Magistrate Judge Jacob P. Hart, and directed the parties to engage in limited discovery. *See* ECF 17. The parties exchanged limited discovery to facilitate discussions and, on October 26, 2015, mediated before Magistrate Judge Hart. *See* ECF 21. A resolution could not be achieved at that time, and thus the Court set a schedule of further proceedings, including, but not limited to, a deadline for discovery and for summary judgment motions. Full discovery commenced per this Court's October 26, 2015 Order. *See* ECF 22.

An extensive factual record was developed over the course of the next several months, aided by the Court's approval of two requests for short extensions of the discovery deadline, particularly to accommodate document and electronic discovery and the scheduling of multiple depositions. *See* ECF 25; ECF 36.

The parties sought substantial discovery from one another. Plaintiff served multiple sets of document requests, interrogatories, and requests for admission on Angie's List. Angie's List, in turn, propounded multiple sets of interrogatories and document requests to Plaintiff.

The nature and scope of the discovery sought prompted a number of discovery disputes. Ultimately, with the benefit of the Court's guidance, the parties were able to resolve most of these disputes through extensive meet and confer efforts over the year-end holidays. ECF 34. Other disputes required Court intervention in and around that same time. *See* ECF 32 (denying Angie's List's motion for protective order).

The parties vigorously worked to fulfill their respective discovery obligations by the deadline. Plaintiff responded to Angie's List's written discovery and produced documents. She also sat for a full-day deposition on November 19, 2015.

Angie's List produced more than 100,000 pages of documents from multiple document custodians, and engaged a third-party vendor to assist with complex data extractions. Meanwhile, Plaintiff subpoenaed BPA Worldwide, Angie's List's outside auditor of certain of its practices, including the integrity of Angie's List's ratings, reviews, and advertising and related business practices. The subpoena sought documents and a corporate deposition. BPA Worldwide separately produced more than 15,000 pages of documents in response to the subpoena. Moreover, in February 2016, Plaintiff deposed four key Angie's List personnel in

Indianapolis, Indiana, both in their individual capacity and on a number of topics pursuant to Rule 30(b)(6).

While certain discovery remained pending in the days leading up to the February 29, 2016 discovery deadline, the parties had developed a thorough understanding of the facts upon which to base a reasoned determination of the risks of continued litigation and the benefits of a potential settlement. This understanding facilitated informal settlement discussions that soon ripened into a path for possible resolution. The parties subsequently sought a brief extension of the discovery deadline so they could engage an experienced mediator to aid negotiations. The Court granted this request on February 23, 2016 (*see* ECF 37), resulting in the discovery deadline being set for April 14, 2016, with dispositive motions to be filed by April 25, 2016. *Id.* As discussed below, the mediation and related discussions followed, which ultimately resulted in a settlement in principle memorialized in an executed Memorandum of Understanding. *See* Part II.B, *infra*.

## **2. The California Action**

On January 15, 2016, Ms. Michelle Zygelman, represented by some of the same counsel as Plaintiff Moore, filed a substantially similar class action in the United States District Court for the Northern District of California, styled, *Zygelman v. Angie's List, Inc.*, No. 3:16-cv-00276-SK (N.D. Cal.). The *Zygelman* action alleged the same types of claims and similar facts to those alleged in *Moore*. Plaintiff Zygelman filed an amended complaint on February 22, 2016. The *Zygelman* case was stayed before Angie's List's answer or other response to the complaint was due, on account of the settlement in principle reached by the parties – including Plaintiff Zygelman – that would resolve Ms. Zygelman's claims along with Plaintiff Moore's and the Settlement Class's claims. Pursuant to the terms of the settlement, the *Zygelman* matter will be

voluntarily dismissed if the Court grants Plaintiff Moore's motion for leave to file an Amended Complaint adding Ms. Zygelman as a plaintiff in this Action.

### **3. The New Jersey Action**

On February 1, 2016, Mr. Gary Glick, represented by some of the same counsel as Plaintiff Moore, filed a substantially similar class action in the United States District Court for the District of New Jersey, styled, *Glick v. Angie's List, Inc.*, No. 2:16-cv-00546-MCA-MAH (D.N.J.). The *Glick* action alleged the same types of claims similar facts to those alleged in *Moore*. The *Glick* case was stayed before Angie's List's answer or other response to the complaint was due, on account of the settlement in principle reached by the parties – including Plaintiff Glick – that would resolve Plaintiff Glick's claims along with Plaintiff Moore's, Plaintiff Zygelman's, and the Settlement Class's claims. The *Glick* action likewise will be voluntarily dismissed upon the Court's approval of the filing of the proposed Amended Complaint in this case adding Mr. Glick as a plaintiff.

### **B. Settlement Negotiations**

The parties' first in-person mediation occurred on October 26, 2015 before Magistrate Judge Jacob Hart, and after limited discovery. The parties could not resolve the matter at that time, but continued to keep channels open while they engaged in extensive discovery. As the litigation matured, and additional facts and information were learned by both sides, the parties believed it was worthwhile to re-engage in formal mediation.

To that end, the parties jointly engaged an experienced mediator, James T. Giles, Esq., currently Of Counsel to Pepper Hamilton LLP and a retired former Chief Judge of this District. *See* Decl. of David J. Stanoch, Esq. ("Stanoch Decl.") at ¶ 5 (Exhibit B to this motion). The first in-person, all-day mediation session before Judge Giles took place on April 4, 2016, after providing Judge Giles with certain case materials and information. *Id.* at ¶ 6. Unlike the first

mediation session before Magistrate Judge Hart, this mediation session had the benefit of having taken place after nearly all fact discovery had been completed, and the parties' discovery motions had been resolved. *Id.*

Indeed, the views that had stymied earlier efforts toward resolution before Magistrate Judge Hart had been tempered and adjusted on both sides by the ensuing discovery and each party's refined appreciation of the claims and defenses at issue. *See id.* at ¶¶ 4-7.

Angie's List defended this Action on several grounds, including that the existence of revenue from service providers has been publicly disclosed in different ways and in multiple locations, such as in response to FAQs posted to its website, through various mentions in the Membership Agreement, and in significant public filings with the SEC. Angie's List also has denied and continues to deny that service-provider advertising revenue has an impact on a service provider's rating, or the content or visibility of reviews about that service provider. Additionally, Angie's List has defended these claims on the basis that it tells its members that service providers offering coupons are placed at the top of category and keyword search results under the setting on the website in which members sort service providers using the "with coupon" category. Moreover, while Angie's List used a phrase that "businesses don't pay" and other similar language for a time, Angie's List produced evidence in discovery that the phrase or other similar language frequently was used in conjunction with important context, including an explanation that Angie's List claims was intended to mean that service providers cannot pay "to be on Angie's List," and, in many instances, with a link to a page purporting to describe service-provider advertising.

Plaintiff acknowledges that in light of these defenses, there are significant risks that Angie's List may be able to establish the absence of a genuine issue of material fact with regard to any claims relating to ratings and reviews. *See, e.g., id.* ¶ 19, 23. Plaintiff also recognizes that the existence of service provider advertising arguably might have been disclosed in certain ways, and that the challenged "businesses don't pay" advertising phrase substantially ceased by the end of November 2013. On the one hand, Plaintiff maintains that this disclosure was not adequate, clear enough, or consistent enough, and believes that she has a valid evidentiary basis to continue to assert these claims. Indeed, Plaintiff believes certain discovery suggests that the adequacy of the disclosure and transparency about certain fees Angie's List earned on certain service provider e-commerce transactions facilitated through the Angie's List website was lacking. On the other hand, she is mindful of the material risk of an adverse determination at the summary judgment stage.

Even to the extent Plaintiff's claims withstand summary judgment, significant manageability issues could cloud the prospects of certification of a litigation class. There is the potential that variations in state law could present manageability concerns, as could manageability issues regarding whether putative class members did or did not see the challenged statements, whether they knew that Angie's List received money from service providers, and whether the putative class member did or did not perceive that they received full value for their membership fee. The prospect of a trial represented its own risks for all parties. *See id.* ¶ 21.

The parties proceeded to mediate with this added and beneficial perspective. The mediation process was non-collusive and conducted at arms-length between the parties with divergent views as to the risks of litigation, and the ultimate value of any judgment, under the supervision of Judge Giles. The parties made substantial progress on April 4, but a resolution

could not be achieved that day. *Id.* at ¶ 7. The parties nevertheless continued to engage in negotiations and, after considerable back-and-forth, the contours of a potential agreement in principle began to take shape. *Id.* The parties therefore held another in-person, lengthy mediation session with Judge Giles on April 12, 2016, the result of which was a detailed, written Memorandum of Understanding executed with the authority of Plaintiff Moore, Mr. Glick, Ms. Zygelman, and Angie's List. *Id.* at ¶¶ 8-10.

On April 20, 2016, the parties informed this Court that they had reached an agreement in principle on behalf of the Settlement Class defined herein. *Id.* at ¶ 10. The parties informed the *Zygelman* and *Glick* courts about the settlement, securing a stay and anticipating that both cases will be voluntarily withdrawn shortly. *Id.* The parties executed the Settlement Agreement on June 24, 2016, memorializing the agreement and expanding upon the Memorandum of Understanding executed on April 19, 2016, subject to Preliminary Approval and Final Approval as required by Federal Rule of Civil Procedure 23. *Id.* at ¶ 11.

### **III. SUMMARY OF THE PROPOSED SETTLEMENT TERMS**

As set forth more fully below, the Settlement Agreement contemplates a nationwide settlement class consisting of all persons in the United States who were paying members of Angie's List at any time between March 11, 2009 and the date of Preliminary Approval. *See* Agreement (Ex. A hereto) at ¶ 4. The total class will number approximately 6,200,000 members based on current estimates. The terms most pertinent to this Motion are discussed below.

#### **A. Monetary Relief**

Angie's List will pay a total of \$1.4 million for monetary relief to the Settlement Class. *Id.* at ¶ 8. Settlement Class Members who submit a valid Claim may elect one of two forms of relief: a monetary benefit or a membership benefit. *See* Agreement (Ex. A hereto) at ¶¶ 17-21.

Settlement Class Members who purchased or renewed a membership with Angie's List between March 11, 2009 and December 31, 2013, may elect to receive a cash payment (estimated to be \$10.00), or one month of free membership for every year they were a paying member, with a minimum benefit of one month (including for those Settlement Class Members with only a partial year of membership) and a maximum benefit of four months. *Id.* at ¶¶ 18-19. The total monetary relief available is \$966,000.00, and the estimated \$10.00 monetary benefit may increase or decrease *pro rata* depending on the number of valid Claims electing this form of relief. *Id.*

Class Members who purchased or renewed a membership with Angie's List between January 1, 2014 and the date of Preliminary Approval may elect to receive a cash payment (estimated to be \$5.00), or one month of free membership for every year they had been a paying member, with a minimum benefit of one month (including for those Settlement Class Members with only a partial year of membership) and a maximum benefit of two months. *Id.* at ¶¶ 18, 20. The total monetary relief available to this group is \$434,000.00, and the estimated \$5.00 monetary benefit may increase or decrease *pro rata* depending on the number of valid claims electing this form of relief. *Id.*

In addition, Settlement Class Members who straddle both time periods above are eligible to make an election from both periods of relief; provided, however, that the maximum membership benefit for those electing a free membership period is four months of free membership. *Id.* at ¶ 21.

Relatively greater compensation is being made available to members who joined or renewed on or before December 31, 2013, out of recognition that Angie's List's use of advertising phrases that include words to the effect that "businesses do not pay" substantially

ceased by the end of November 2013. Given that this advertising phrase has become a material focus of the claims asserted in the Actions, the parties, including the representative Plaintiffs who became members during Angie's List's use of these marketing phrases and either rejoined or renewed their membership after Angie's List ceased using these phrases, agreed that Settlement Class Members who joined while the phrases were in use should receive more than those who joined after they ceased.

**B. Prospective Relief**

No later than thirty days after the settlement's Final Effective Date, Angie's List shall amend its standardized Membership Agreement to conform with the language agreed to by the parties and reflected in Exhibit 8 to the Settlement Agreement. *See* Agreement (Ex. A hereto) at ¶ 22. In addition, within the same timeframe, Angie's List shall amend its publicly available FAQs on its website to conform with the language agreed to by the parties and reflected in Exhibit 9 to the Agreement. *Id.* at ¶ 23. These amendments serve to enhance, *inter alia*, Angie's List's explanations that it derives advertising revenue from service providers offering coupons and discounts through its website, its call center, and its magazine, that eligible service providers offering discounts or coupons are placed at the top of category and keyword search results under the sort by "with coupon" sort option and that alternative sort options are available, and that Angie's List may earn a transaction fee in connection with service providers' e-Commerce offerings purchased through Angie's List.

**C. Class Release**

As consideration for its payment to the Class Settlement Fund, the prospective relief, and other promises, Angie's List will receive a Release from each Settlement Class Member as more specifically delineated in the Settlement Agreement with respect to any claim relating to Angie's List's alleged or asserted representations, statements, omissions, or conduct about service-

provider ratings, reviews, or rankings, and revenue Angie's List derives from service providers as further set forth in the Settlement Agreement. *Id.* at ¶¶ 42-47. Further, pending this Court's preliminary approval of the Settlement Agreement, and the granting of the simultaneously filed Motion for Leave to File Conditional Amended Complaint in Accordance with Class Action Settlement, the putative class actions filed against Angie's List in two other districts that allege substantially the same conduct, brought on behalf of plaintiffs represented by some of the same counsel as Plaintiff Moore, and all of whom are eligible Settlement Class Members, will be dismissed. *Id.* at ¶ 55. If the settlement receives final approval, this Action will be dismissed with prejudice.

**D. The Notice Program and Settlement Administration**

Angie's List will advance and pay all reasonable notice program and settlement administration costs. *Id.* at ¶ 68. This is an added benefit to the class as these costs will be paid separately from, and in addition to, Angie's List's payment into the Class Settlement Fund, as well as any payment of service awards, attorneys' fees, or costs. *See id.* at ¶¶ 8, 68, 82, 84. The parties have selected Epiq as the notice and settlement administrator for this settlement. *Id.* at ¶ 1(kk). Class Notice has been designed to give the best notice practicable, is tailored to reach members of the Settlement Class, and is reasonably calculated under the circumstances to apprise the Settlement Class of the Settlement and, specifically, each member's rights (i) to make claims, (ii) to exclude themselves from the Settlement, or (iii) to object to the settlement's terms or Plaintiffs' Class Counsel's anticipated fee application and request for Plaintiffs' service awards. *See, e.g., id.* at ¶¶ 56-69, & Exs. 2, 5, and 6 to Settlement Agreement.

The Class Notice program has three parts: (i) direct email notice; (ii) direct mail notice for e-mail transmissions for which Epiq receives an "undeliverable" notification; and (iii) long form notice with more detail than the e-mail and direct mail notices, which will be available on a

Settlement Website and via email and/or mail upon request. *Id.* at ¶¶ 58, 60-63. A toll-free telephone number will be established as well. *Id.* ¶ 60. The Settlement Website will host other pertinent information, such as copies of the full Settlement Agreement and copies of important other document as agreed by the parties, and will be updated to provide additional dates and information as appropriate. All forms of Notice will include, among other information: (i) a context-appropriate description of the settlement; (ii) the date by which Settlement Class Members may make a claim, exclude themselves from the Settlement Class, or object to the settlement; (iii) the address of the Settlement Website; and (iv) the number of the toll-free telephone line. *Id.* at ¶¶ 60-62 & Exs. 2, 5, and 6 to Settlement Agreement. The Class Notice plan constitutes sufficient notice to persons entitled to receive it, and satisfies all applicable requirements of law, including Federal Rule of Civil Procedure 23 and the constitutional requirement of due process.

Requests for exclusion and Claim Forms must be sent to the Settlement Administrator and postmarked or, for the Claim Forms, completed through the Settlement Website before their respective deadlines. *See, e.g., id.* at ¶¶ 18, 26-27 & Ex. 1 to Settlement Agreement. Objections must be filed with the Court, with copies of the objection sent to Plaintiff's Class Counsel and Defense Counsel, by the objection deadline. *See id.* at ¶¶ 72-73, 75. The deadlines for objections, requests for exclusion, and claims are all before the Fairness Hearing (*see* chart at Part VII, *infra*).

#### **1. Email and Mail Notice**

Angie's list will provide the Settlement Administrator a list of all members of the Settlement Class identified through Angie's List's membership records, including available email and mailing address information. *Id.* at ¶ 59. The Settlement Administrator will disseminate email notice to all such members of the Settlement Class. *Id.* at ¶ 61 & Ex. 2 to

Settlement Agreement. For each email transmission that is reported as “undeliverable” as described in the Settlement Agreement, the Settlement Administrator will send a direct-mail postcard notice. Both Email and Postcard Notice will further direct recipients to the Settlement Website or toll-free telephone number for additional information, including the Long Form Notice or other papers if desired. *Id.* at ¶¶ 61-63 & Ex. 5 to Settlement Agreement.

## **2. The Settlement Website and the Toll-Free Settlement Phone Line**

The Settlement Administrator will establish a Settlement Website as a means for Settlement Class Members to obtain notice of, and information about, the Settlement. *Id.* at ¶ 63. The Settlement Website (i.e., [www.MoorevALsettlement.com](http://www.MoorevALsettlement.com) or something similar) will include an electronic and printable copy of the Long Form Notice, information about the litigation and the settlement, and important court documents. *Id.* ¶ 63. The Settlement Website will also include an electronic and printable Claim Form, which may be submitted online or printed and mailed. *Id.* The Settlement Website shall be activated within 21 days of the Court’s entry of a Preliminary Approval Order. *Id.* at ¶ 60.

The Settlement Administrator will also establish and maintain an automated toll-free telephone line for Settlement Class members to obtain additional information about the settlement in the form of frequently asked questions and answers. *Id.* at ¶¶ 64-65. Settlement Class members may also call the telephone line for additional information – including to request a copy of the Long Form Notice and the Claim Form be mailed directly to them. *Id.*

## **3. Settlement Administration**

The Settlement Administrator’s duties and responsibilities include, among other things: (1) establishing and maintaining a Post Office box for requests for exclusion from the Settlement Class; (2) establishing and maintaining a toll-free telephone line for answering Settlement-related inquiries; (3) responding to any mailed Class Member inquiries; (4) processing requests

for exclusion; (5) tracking and processing Claim Forms and investigating any suspected fraudulent claims; (6) calculating and distributing appropriate funds to the Settlement Class; (7) performing any other settlement and claims administration-related functions at the instruction of Plaintiffs' Class Counsel and Defense Counsel and to effectuate the terms of the settlement. *See, e.g., id.* at ¶¶ 29, 35-37, 64-65.

**E. Service Awards, Attorneys' Fees, and Costs**

Plaintiffs' Class Counsel will seek, and Angie's List will not oppose, reasonable Service Awards for each of the representative Plaintiffs, in the amounts of \$7,500 for Plaintiff Moore, \$2,500 for Plaintiff Zygelman, and \$2,500 for Plaintiff Glick. *Id.* at ¶ 85. The Service Awards will compensate the representative Plaintiffs for their time and effort in the actions (including, but not limited to, responding to written discovery and sitting for deposition, as applicable), for the participation in the settlement process, and for the risks they undertook in prosecuting their actions. Angie's List will also not oppose Plaintiffs' Class Counsel's request for reasonable attorneys' fees up to \$937,500.00, which includes reimbursement of litigation costs and expenses. *Id.* at ¶ 83. The service awards, attorneys' fees, costs and expenses will be paid by Angie's List apart from the monetary relief available to the Settlement Class, and from each other. *Id.* at ¶ 85.

**IV. THE SETTLEMENT SATISFIES THE PRELIMINARY APPROVAL STANDARD**

Rule 23(e) of the Federal Rules of Civil Procedure provides for judicial approval of the compromise of claims brought on a class basis if the proposed class action settlement is "fair, reasonable, and adequate." Approval of class action settlements is committed to the sound discretion of the district court. *See Fed. R. Civ. P. 23(e)*. In exercising its discretion, a district

court should be mindful of the strong judicial policy favoring settlements. *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004).

At the preliminary approval stage, “the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute.” *Mack Trucks, Inc. v. Int’l Union, UAW*, Civ. A. No. 07-3737, 2011 U.S. Dist. LEXIS 51514, at \*7 (E.D. Pa. May 12, 2011) (internal quotations and citation omitted). Rather, a court should determine whether the “proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies[.]” *Id.* (internal quotations and citations omitted). A district court’s evaluation of a request to preliminarily approve a class action settlement focuses on whether the proposed settlement is the result of the parties’ good-faith negotiations, there was sufficient discovery, experienced counsel negotiated and support the settlement, and the settlement is within the range of reasonableness,. *See, e.g., In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995); *Glaberson v. Comcast Corp.*, Civ. A. No. 03-6604, 2014 U.S. Dist. LEXIS 172040, at \*14 (E.D. Pa. Dec. 12, 2014); *see also Manual for Complex Litigation (Fourth)* § 21.61-21.62. Each of these factors exists here and warrant preliminary approval of the settlement.

**A. There Was Substantial Discovery**

The settlement was not negotiated and consummated until after the parties had nearly completed fact discovery. Angie’s List had propounded multiple document requests and interrogatories to Plaintiff Moore, all of which she answered. Plaintiff Moore produced documents, and was deposed. Stanoch Decl. at ¶ 12. Plaintiff Moore, in turn, propounded multiple sets of document requests, interrogatories, and requests for admission to Angie’s List. *Id.* Angie’s List responded to Plaintiff’s written discovery, and also produced more than 100,000 pages of documents. *Id.* at ¶ 13. Plaintiff also deposed four key defense witnesses, including Angie’s List’s senior director of product management, senior director of sales originations,

manager of service provider integrity, and former director of product and market research. *Id.* at ¶ 14. In addition, Plaintiff had conduct third-party discovery as well, having subpoenaed Angie’s List’s outside auditor, BPA Worldwide, who separately produced more than 15,000 pages of documents. *Id.* at ¶ 15.

**B. The Settlement Was the Result of Arms’ Length, Informed Negotiations**

Typically, “[t]here is a presumption of fairness when a proposed class settlement, which was negotiated at arm’s-length by counsel for the class, is presented to the Court for approval.” *Newberg on Class Actions* § 11.41 (4th ed. 2002); *see, e.g., Glaberson*, 2014 U.S. Dist. LEXIS at \*14 (“Preliminary approval analysis often focuses on whether the settlement is the product of arms-length negotiations.”) (internal quotations and citation omitted).

Here, the parties certainly engaged in protracted arms’ length negotiations. *See, e.g., Stanoch Decl.* at ¶¶ 4-9. The parties’ initial in-person mediation session with Magistrate Judge Hart occurred after limited discovery. *Id.* at ¶ 4. The parties’ subsequent mediation efforts involved two lengthy, in-person mediation sessions with an experienced mediator, James T. Giles, Esq. *Id.* at ¶¶ 5-9.<sup>2</sup> By this time, fact discovery had been nearly completed, and this Court had resolved the parties’ discovery motions. *Id.* ¶ 6. Thus, the parties and their counsel had an informed view of the strengths and weaknesses of their respective positions, the risks of continued litigation, and an appreciation for the remarkable value this settlement delivers to the Settlement Class when evaluated in this context. *See id.* at ¶ 9; *see also id.* at ¶¶ 17-20.

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<sup>2</sup> That the parties were assisted by an experienced mediator over multiple mediation sessions evidences the Settlement’s fairness and non-collusive nature. *See, e.g., Adams v. Inter-Con Sec. Sys., Inc.*, No. C-06-5428, 2007 U.S. Dist. LEXIS 83147, at \*9-10 (N.D. Cal. Oct. 30, 2007) (“The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.”); *In re Indep. Energy Holdings PLC*, No. 00 Civ. 6689, 2003 U.S. Dist. LEXIS 17090, at \*13 (S.D.N.Y. Sept. 29, 2003) (“[T]he fact that the settlement was reached after exhaustive arm’s length negotiations, with the assistance of a private mediator experienced in complex litigation, is further proof that it is fair and reasonable.”).

**C. Counsel Are Experienced In Similar Litigation**

Both sides' counsel are qualified and competent class actions litigators, well-positioned to evaluate the strengths and weaknesses of continued litigation, as well as the reasonableness of the Settlement. Plaintiff's Class Counsel has successfully handled national, regional, and statewide class actions, as well as other complex mass or multi-party actions, throughout the United States in both federal and state courts. *See Stanoch Decl.* at ¶¶ 24-27.

**D. The Settlement Is Within The Range of Reasonableness**

In preliminarily assessing whether a settlement falls within the range of reasonableness, courts examine the potential relief to the class. *See, e.g., Mack Trucks*, 201 U.S. Dist. LEXIS at \*8. Here, the settlement provides a monetary benefit – cash or the equivalent in the form of free monthly membership in Angie's List – to each eligible Settlement Class Member. *See Agreement* at ¶¶ 17-21. The cash benefit will come out of a fund that will be paid, exclusively, to Settlement Class Members; it will not be reduced by notice or settlement administration costs, attorneys' fees and costs, or service awards, *see Agreement* at ¶¶ 19.a, 20.a, and the entire fund will be distributed *pro rata* to eligible Claimants. *Id.* Further, the structural relief in the form of enhanced disclosures achieved by the settlement is concrete and robust. *See id.* at ¶¶ 22-23 & Exs. 8-9 to the Settlement Agreement.

The reasonableness of the settlement must also be viewed against the complexity, expense, and duration of litigation, the stage of the proceedings, and the likelihood of success at trial. *See, e.g., In re Pet Food Prods. Liab. Litig.*, 629 F.3d 333, 350 (3d Cir. 2010); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *In re Foundation for New Era Philanthropy Litig.*, 175

F.R.D. 202, 205 (E.D. Pa. 1997) (Dalzell, J.).<sup>3</sup> Each of these considerations weighs in favor of the settlement.

Although each individual Settlement Class Member's claim is relatively small in value, the continued litigation of this matter will require (and has already required) substantial resources. Stanoch Decl. at ¶ 16. Although substantial fact discovery has occurred, some fact discovery remains were this case to be litigated further, such as additional depositions and the extraction, production, and analysis of various data from Angie's List. *Id.* The parties have not yet briefed class certification, which likely would require expert disclosures and depositions, and dispositive motions have not yet been filed. *Id.* at ¶ 17. All of these matters would require significant time and expense, and while Plaintiff and Plaintiffs' Class Counsel remain committed to their claims, they are also pragmatic that there is no guarantee of success and that substantial obstacles exist at the summary judgment, class certification, and trial phases as more fully discussed in Part II.B, *infra.* *Id.* at ¶¶ 17-19.

Moreover, the settlement was reached at a pivotal stage: after substantial fact discovery, but before pivotal procedural and merits junctures. This has enabled class counsel to evaluate with confidence the strengths and weaknesses of Plaintiff's claims and Angie's List's defenses. *Id.* at ¶ 18. Plaintiff also faces the very real prospect of being foreclosed from some or any recovery at all as a result of summary judgment or other motions practice.

#### **V. THE SETTLEMENT SATISFIES RULES 23(a) AND 23(b)**

“In order to approve a class settlement agreement, a district court must determine that the requirements for class certification under Federal Rule of Civil Procedure 23(a) and (b)” are met.

*In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 257 (3d Cir. 2009). “The requirements of

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<sup>3</sup> As this motion only requests preliminary approval, not all of the *Girsh* factors are pertinent. Plaintiff reserves the right to present additional argument or evidence about the *Girsh* factors as appropriate.

Rule 23(a) and (b) are designed to insure that a proposed class has sufficient unity so that absent class members can fairly be bound by decisions of class representatives.” *Id.* (internal quotations and citation omitted). In doing so, courts have expressed “an overriding interest in settling class action litigation, and it should therefore be encouraged.” *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d at 535. With this in mind, the Settlement plainly satisfies Rules 23(a) and (b).

**A. The Settlement Satisfies Rule 23(a)**

“Rule 23(a) lays out four threshold requirements for certification of a class action: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation.” *In re NFL Players Concussion Injury Litig.*, No. 15-2206, *et seq.*, 2016 U.S. App. LEXIS 6908, at \*22 (3d Cir. 2016); *see* Fed. R. Civ. P. 23(a). The Settlement satisfies each of these requirements.

**1. The Class Is Numerous**

A class must be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a). Although no magic number exists, courts typically find the numerosity requirement to be satisfied if there are more than 40 class members. *In re NFL*, 2016 U.S. App. LEXIS 6908, at \*22. The settlement easily exceeds this threshold. According to Angie’s List’s records, there are approximately 6.2 million class members. This is corroborated by Angie’s List’s most recent Form 10-Q, filed April 21, 2016, which states that Angie’s List has more than 3 million paying members for year-to-date in 2016 alone. *See* Angie’s List Form 10-Q (Apr. 21, 2016) at 17, available at <http://investor.angieslist.com/financials.cfm> (last viewed June 10, 2016).

**2. Common Questions of Fact and Law Exist**

Rule 23(a)’s commonality requirement also is satisfied here. “A putative class satisfies Rule 23(a)’s commonality requirement if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class.” *In re NFL*, 2016 U.S. App. LEXIS at \*22

(internal quotations and citation omitted). Thus, commonality is “easily met” in most instances. *Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994).

Such is the case here. Plaintiff’s and other Settlement Class Members’ claims stem from a common course of conduct. In targeting Settlement Class Members to join, it is alleged that Angie’s List made alleged material misrepresentations and omissions to class members about service-provider advertising. The falsity of each misrepresentation or omission will turn on common evidence. The same is true as to Angie’s List’s defenses. Some of the pertinent factual and legal questions include whether Angie’s List receives advertising revenue from service providers; what service providers receive in exchange for advertising revenue (e.g., do they receive the various forms of preferential treatment alleged in the Complaint); and whether the alleged misrepresentations and omissions concerning the foregoing constitutes, *inter alia*, a breach of the standardized Membership Agreement between Angie’s List and each Class member.

### **3. Plaintiff’s Claims Are Typical**

The typicality requirement aims to assure that the interests of named class representatives aligns with the interests of the class. *See In re NFL*, 2016 U.S. App. LEXIS, at \*25. The Third Circuit has “set a low threshold for typicality.” *Id.* (internal quotations and citation omitted). To this end, “even relatively pronounced factual differences will generally not preclude a finding of typicality where there is a strong similarity of legal theories or where the claim arises from the same practice or course of conduct.” *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 311 (3d Cir. 1998) (internal quotations and citation omitted).

The proposed class representatives’ claims are identical to those of the Settlement Class. As alleged in the proposed conditional amended complaint filed contemporaneously herewith, each proposed class representative alleges the same type of injury arising out of the same course

conduct. Just like each Settlement Class member, each proposed class representative paid to join (and, as applicable, to renew or to re-join) Angie's List. *See, e.g.*, Proposed Conditional Am. Compl. at ¶¶ 17-19. Each proposed class representative was exposed to the same marketing statements by Angie's list about its consumer-oriented ethos. *See id.* ¶¶ 46-63. Each proposed class representative was subject to Angie's List's standardized Membership Agreement. *Id.* ¶¶ 24, 74. Thus, the proposed class representatives clearly meet the typicality requirement, and are well-suited to represent other Settlement Class Members.

#### **4. The Adequacy Requirement Is Met**

Rule 23(a)(4) requires class representatives to "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). This requirement focuses on whether the representatives have any conflicts of interest with the interests of the class, and whether class counsel is capable of representing the class. *See Gen'l Tel. Co. of S.W. v. Falcon*, 457 U.S. 147, 157 n.13 (1982).

The proposed class representatives' interests are coextensive with, and not antagonist to, the interests of the Settlement Class because they have an equally great interest in the relief offered by the settlement, and there are no diverging interests between the proposed class representatives and the Settlement Class. Stanoch Decl. at ¶ 22. As noted above, the proposed class representatives and Settlement Class Members' claims arise from the same conduct, turn on the same alleged misrepresentations and omissions, and the proposed class representatives seek remedies equally applicable and beneficial to themselves and all Settlement Class Members. Further, the proposed class representatives are represented by qualified and competent Class Counsel with extensive experience and expertise in prosecuting complex class actions. *Id.* at ¶¶ 24-27.

**B. The Settlement Satisfies Rule 23(b)(3)**

Pertinent to the settlement's proposed monetary relief, Rule 23(b)(3) requires that common questions of law or fact predominate over individual questions, and that class action treatment is superior to other available methods of adjudication. Further, any potential manageability concerns are not pertinent here because this is a proposed settlement class. *See Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 303-304 (3<sup>rd</sup> Cir. 2011) (en banc). Predominance “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *In re NFL*, 2016 U.S. App. LEXIS 6908, at \*42 (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997)). Courts are “more inclined to find the predominance test met in the settlement context.” *Sullivan*, 667 F.3d at 304 n.29 (internal quotations and citation omitted).

Plaintiff satisfies the predominance requirement because liability questions common to the Settlement Class substantially outweigh any possible individual issues. The claims of the proposed class representatives and the Settlement Class are based on the same legal theories and the same uniform conduct. Further, resolution of the claims of class members through the settlement of a class action is far superior to individual lawsuits because it promotes consistency and efficiency of adjudication. *See Fed. R. Civ. P. 23(b)(3)*. Absent certification, potential class member would lack incentive to pursue individual claims due to the relatively small individual amounts at issue.

**VI. THE NOTICE PROGRAM IS APPROPRIATE AND SHOULD BE APPROVED**

For due process purposes, “notice to class members must be reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Glaberson*, 2014 U.S. Dist. LEXIS 172040, at \*18; *see Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Notice should be the best

practicable under the circumstances, including notice to all members who can be identified through reasonable efforts. *See Eisen*, 417 U.S. at 173.

The proposed Class Notice plan – collectively, direct email notice, a dedicated Settlement Website and toll-free telephone line, and direct mail notice where email is undeliverable – satisfies due process. As a provider of a primarily web-based service, Angie’s List maintains an email address for its current members and has maintained records of email addresses of former members during the class period. As members primarily use the service through the internet, email is the best way to directly reach this particular consumer population. In the event an email address is no longer valid, direct-mail postcard notice will be sent to the last address on file with Angie’s List. As noted in the proposed forms (Exhibits 2, 5, and 6 to the Agreement), the Class Notice will inform members of the Settlement Class of their options for opting-out of or objecting to the Settlement, the time and location of the Fairness Hearing, the pertinent terms of the Settlement, and how to obtain additional information. The language of the proposed Notice is plain and easy to understand and provides neutral and objective information about the nature of the Settlement. *See generally* Decl. of Cameron Azari, Esq. on Settlement Notice Plan (Exhibit C to this motion).

Accordingly, the proposed plan to disseminate Class Notice satisfies due process requirements. *See, e.g., Hanlon v. Palace Enmt. Holdings, LLC*, Civ. A. No. 11-987, 2012 U.S. Dist. LEXIS 364, at \*17 (W.D. Pa. Jan. 3, 2012) (use of summary notice via email or postcard, based on defendant’s databases, “provides a direct avenue to the persons most likely to be potential class members. The court finds this is the best notice practicable under the circumstances.”); *Esslinger v. HSBC Bank Nevada, N.A.*, Civ. A. No. 10-3213, 2012 U.S. Dist. LEXIS 165773, at \*19 (E.D. Pa. Nov. 2012) (“[F]irst-class mail and publication regularly have

been deemed adequate under the stricter notice requirements . . . of Rule 23(c)(2).”) (alteration in original) (quoting *Zimmer Paper Prods., Inc. v. Berger & Montague, P.C.*, 758 F.2d 86, 91 (3d Cir. 1985)).

## VII. THE PROPOSED SCHEDULE OF EVENTS

The proposed schedule of events depends on the date this Court may enter a Preliminary Approval Order and schedules a Fairness Hearing. If a Preliminary Approval Order is entered on Friday, July 15, 2016 (for sake of illustration), the parties propose the following deadlines:

<b>Event</b>	<b>Deadline</b>
Deadline for Commencement of Class Notice	Friday, August 19, 2016
Deadline to File Motion for Fee and Service Award Application(s)	Tuesday, September 13, 2016
Deadline for Class Members to Object or to Opt-Out	Monday, October 3, 2016
Deadline to file Motion for Final Approval	Monday, October 24, 2016
Deadline for Class Members to Submit Claims	Wednesday, November 2, 2016
Fairness Hearing	Monday, November 7, 2016

If Preliminary Approval is not granted by July 15, 2016, Class Counsel can propose dates by which the events above will occur.

## VIII. CONCLUSION

For the reasons set forth herein, Plaintiff respectfully requests that the Court preliminarily approve the class action settlement, conditionally certify the Settlement Class, approve the proposed notice plan, and schedule a fairness hearing.

**Dated: June 24, 2016**

**BY:** /s/ DJS8892

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**CERTIFICATE OF SERVICE**

I, David J. Stanoch, Esquire, hereby certify that on this **24<sup>th</sup>** day of **June 2016**, a copy of the foregoing Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement was filed and served upon all counsel via operation of the Court's CM/ECF system.

*/s/ DJS8892*

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**David J. Stanoch, Esquire**