

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

JAY CLOGG REALTY GROUP, INC.,

Plaintiff

vs.

BURGER KING CORPORATION

Defendant.

CIVIL ACTION NO. 13-cv-00662

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF ITS MOTION FOR PRELIMINARY  
APPROVAL OF CLASS SETTLEMENT AND CONDITIONAL CERTIFICATION OF  
CLASS AND ENTRY OF SCHEDULING ORDER**

**I. INTRODUCTION**

Plaintiff Jay Clogg Realty Group, Inc. (“Plaintiff”) respectfully submits this Memorandum in Support of its Motion for Preliminary Approval of Class Settlement and Conditional Certification of Class and Entry of Scheduling Order (the “Motion”).<sup>1</sup> The terms of the proposed settlement are detailed in a Stipulation and Agreement of Settlement (the “Settlement Agreement” or the “Settlement”),<sup>2</sup> which resolves all claims asserted in this class action. By this Motion, the Plaintiff seeks, *inter alia*, preliminary certification of a settlement class, approval of claims procedures, and the approval of the parties’ proposed form and method of class notice, all as set forth in the Settlement Agreement. The following Memorandum

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<sup>1</sup> Defendant does not oppose this Motion for purposes of settlement only, and it does not adopt Plaintiff’s allegations nor does it make any admissions or waive any defenses by its non-opposition.

<sup>2</sup> The Settlement Agreement, with all exhibits, is attached to this Memorandum at Exhibit 1.

describes in detail the reasons why preliminary approval of the Settlement is in the best interests of the class, and is consistent with the provisions of Rule 23.

## II. STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On March 1, 2013, Plaintiff filed a class action complaint (the “Complaint”) in the United States District Court for the District of Maryland against Burger King Corporation (“BKC” or “Defendant”) captioned *Jay Clogg Realty Group, Inc. v. Burger King Corporation*, C.A. No. 13-cv-00662 (D. Md.) (the “Action”). The Complaint alleged that BKC violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the “TCPA”) by sending unsolicited advertisements via facsimile to Plaintiff and the putative class. The parties then engaged in contested litigation for well over a year. To investigate their claims, Plaintiff’s counsel pursued multiple subpoenas and depositions throughout the country. Plaintiff’s counsel also deposed many of BKC’s employees involved in the telemarketing campaign at issue and reviewed voluminous records produced by BKC and third parties. In its defense, Burger King raised and aggressively pursued many defenses including, but not limited, to the following:

- Whether the facsimile received constituted an “advertisement” under the TCPA.
- A challenge to the identity of the class, and whether a class could be certified under Rule 23.
- Whether Plaintiff could prove that facsimiles were “sent,” within the meaning of the TCPA, to the putative class;
- Whether some class members may have consented to or authorized receipt of the facsimile advertisement.
- Whether the TCPA’s use of the term express “invitation” or “permission” create different types of consent to receive a fax ad;

In addition, BKC argued that the Plaintiff bore the burden to prove that the facsimile advertisements were, in fact, unsolicited and were, in fact, received by each class member.

While all of the above issues remained pending, in August of 2014, the parties agreed to mediation before the Honorable Edward Infante of JAMS Resolutions in San Francisco, California. The mediation session, and subsequent negotiations, resulted in an agreement by all parties to present proposed terms for settlement to this Court for its consideration.

### III. PLAINTIFF'S STATEMENT OF THE LAW

The TCPA strictly regulates, but does not bar, advertisement via facsimile. See 47 U.S.C. §227. Advertisement via facsimile is lawful if (1) the “prior express permission” of the facsimile recipient has first been obtained, or (2) there is an “established business relationship” (“EBR”) between the entity whose goods are being advertised, and the facsimile recipient. 47 U.S.C. §227 (a)(5); 47 U.S.C. §227 (b)(C). In 2005 the TCPA was amended and now mandates that advertisers also include an “Opt Out Notice” on all unsolicited fax advertisements. In order to comply with the Opt Out Notice requirements of the TCPA, each unsolicited fax advertisement must include:

- Clear and conspicuous language on the first page of the unsolicited advertisement;
- That states that facsimile recipients may request that the sender not send any future unsolicited advertisements, and which;
- Language that specifically informs facsimile recipients that the *failure to comply with such a request within thirty days is unlawful*.
- The notice must also include *both* a toll free phone and facsimile number that a recipient may use to submit a request to cease transmitting unsolicited facsimile advertisements to the recipient.

See 47 U.S.C. §227(b)(C)(D); 47 CFR 64.1200(a)(3)(iii-v). It is Plaintiff's position that the failure to do so is an independent violation of the TCPA and also precludes a defendant from asserting particular defenses. 47 U.S.C. §227(b)(3) (setting forth private right of action for any

violations of “this section”); 47 U.S.C. § 227(b)(1)(C)(i-iii) (EBR defense only applicable where Opt Out Notice has been provided to facsimile recipients); 47 CFR 64.1200(a)(3) (iii-v)(same).

Furthermore, in enacting the TCPA, both Congress and the Federal Communications Commission, which interprets and enforces the TCPA, explicitly took steps to ensure that consumers could easily enforce the statute in an efficient manner. For example, under the TCPA and FCC regulations, a telemarketer who claims it had consent to send facsimile advertisements to a particular consumer bears the burden of proof to prove consent was obtained, and must maintain records that prove such a claim. As the FCC has noted:

In the event a complaint is filed, the burden of proof rests on the sender to demonstrate that permission was given. We strongly suggest that senders take steps to promptly document that they received such permission.

*See Matter of Rules & Regs. Implementing the Tel. Consumer Protection Act of 1991 & the Junk Fax Prevention Act of 2006*, 21 F.C.C.R. 3787, 3793, ¶46 (April 6, 2006).

Many consumers have sought to enforce their rights under the TCPA via class action.

#### **IV. THE COURT SHOULD CERTIFY A SETTLEMENT CLASS**

Rule 23 of the Federal Rules of Civil Procedure provides that class certification is appropriate upon a showing by the plaintiff that: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. *See* Fed.R.Civ.P. 23(a). *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613-614 (1997).

In addition, in order to obtain certification pursuant to Rule 23(b)(3) the plaintiff must also show that common questions of law and fact predominate over individualized questions, and

that the class action is superior to other available methods for fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b).

**A. The Proposed Class Satisfies The Numerosity Requirement**

Rule 23(a)(1) requires that the class be so numerous that joinder of all members is impracticable. Courts in this District have presumed that even a class size of 25 to 30 members raises the presumption that joinder would be impracticable, *In re Kirschner Medical Corp. Securities Litigation*, 139 F.R.D. 74, 78 (D.Md. 1991) citing *Dameron v. Sinai Hosp. of Baltimore*, 595 F.Supp 1404, 1408 (D.Md. 1984), *aff'd in part and rev'd in part* 815 F.2d 975 (4th Cir. 1987). *Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4<sup>th</sup> Cir. 1984) (certification of a class with 74 members deemed appropriate). Based on the records obtained in the course of discovery, the Class consists of approximately 97,000 class members. Numerosity in this case is easily satisfied.

**B. The Proposed Class Satisfies The Commonality Requirement**

Rule 23(a)(2) requires that the party seeking certification establish that there are questions of law or fact common to the class. Commonality exists where a question of law linking class members is substantially related to resolution of the litigation even where the individuals may not be identically situated. *American Finance System, Inc. v. Harlow*, 65 F.R.D. 94 (D. Md. 1974); Fed.R.Civ.P. 23(a)(2) & 23(b)(3). Common questions of law and fact almost always exist where the claims of the class originate from the same wrongful acts or underlying set of circumstances. *See Holsey v. Armour & Co.*, 743 F. 2d 199, 216-17 (4th Cir. 1984). In

*General Telephone Co. v. Falcon*, 457 U.S. 147 (1982), the Supreme Court stated:

The class device was designed ‘as an exception to the usual rule that of the individual named parties only.’ *Califano v. Yamasaki*, 442 US 682. Class relief is ‘peculiarly appropriate when the issues involved are common to the class as a whole’ and they turn on questions of law applicable in the same manner to each member of the class. *Id* at 701. For in such cases, the class device saves the resources of both the courts and the parties by permitting an issue potential affecting very class member to be litigated in an economical fashion under Rule 23.

The claims in this case involve the common question of law as to whether Defendant’s transmission of faxes to businesses throughout the United States violated the TCPA. All class members in this case received similar faxes promoting Defendant’s goods or services. The following questions are all common to all members of the proposed class in this action:

1. Did the Defendant’s transmission of unsolicited facsimile advertisements to recipients nationwide violate the TCPA?
2. Did the Defendant violate the TCPA when it transmitted facsimile advertisements that did not contain a complaint opt-out notice?

Commonality is satisfied in this case.

**C. The Proposed Class Satisfies The Typicality Requirement**

Rule 23(a)(3) requires that the party seeking certification establish that the claims of representative Plaintiff arise from the same unlawful conduct experienced by the other members of the class. In order for the typicality standard to be met, the claims of the named plaintiffs must be consistent with those of the class, however, the claims need not be identical. *Twyman v. Rockville Hous. Auth.*, 99 FRD 314, 321 (D. MD 1983). Rather, a plaintiff’s claims are typical when the nature of the plaintiff’s claims, judged from both a factual and a legal perspective, are such that, in litigating his personal claims, he can reasonably be expected to advance the interests of absent class members. *See General Telephone Co.* 457 U.S. at 156-157. To put it another way, a plaintiff’s claim is typical if it arises from the same events or practices or course of conduct that

gives rise to the claims of the other class members, and the named plaintiff's claims are based on the same legal theory. *See Broussard v. Meineke Discount Muffler Shops, Inc.*, 155 F.3d 331, 340 (4<sup>th</sup> Cir. 1998); *accord Deiter v. Microsoft Corp.*, 436 F.3d 461, 466-67 (4<sup>th</sup> Cir. 2006) (discussing the typicality requirement); *Smith v. Baltimore & Ohio R.R. Co.*, 473 F. Supp. 572, 581 (D. MD 1979).

In this case, the claims of the Plaintiff and the class all arise from the same facsimile campaign for which they assert that the Defendant is responsible. The Plaintiff, like all class members, has sustained identical statutory damages. The claims of the Plaintiff are "typical" and "similar" to all other class members as they 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 as the members of the class.

**D. Plaintiff and its Counsel will Adequately Represent the Interests of the Class**

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed.R.Civ.P. 23(a)(4). As stated by the U.S. Supreme Court in *Amchem Products, Inc. v. Windsor*, 521 U.S. 591:

The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent. A class representative must be part of the class and possess the same interest and suffer the same injury as the class members.

*Id.* at 625-26. The Plaintiff's interests are co-extensive and not in conflict with those of the class members, and there are no antagonistic or conflicting interests existing between the Plaintiff and the proposed class. Indeed, the Plaintiff and the class members have suffered the same type of alleged harm and share the same interests in establishing Burger King's alleged conduct. The Plaintiff has also hired lawyers who are experienced in class action and consumer litigation. *See* Exhibits 2-5, Declarations of Plaintiff's Counsel. These Declarations set forth Plaintiff's

counsel's qualifications to represent the interests of the class, all of whom have significant experience litigating TCPA consumer class actions to provide the required level of representation, and many of whom have previously been appointed in Maryland courts as class counsel in TCPA cases. *See e.g. Brey Corp t/a Hobby Works v. Life Time Pavers, Inc.*, Circuit Court for Montgomery County, Maryland, Civil Action No. 349410-V (2011).

The representative Plaintiff in this case, has elected not to solely pursue its individual claims in this matter, but to vindicate the rights of all individuals or entities who are similarly aggrieved..

## **V. THE PROPOSED SETTLEMENT SATISFIES RULE 23(B) REQUISITES**

Once it is determined that Plaintiff has satisfied the requirements for class certification set forth at Rule 23(a) of the Federal Rules of Civil Procedure, the Court must then proceed to analyze the requisites of Rule 23(b) and assess whether questions of law or fact common to the class predominate over any questions affecting only individual members, and whether use of the class action vehicle is the superior method to fairly and efficiently adjudicate the dispute at issue.

### **A. Common Questions Of Law And Fact Predominate**

Fed. R. Civ. P. 23(b)(3) requires, in pertinent part, that questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The Supreme Court has made clear "that the predominance of common issues requirement under Rule 23(b)(3) is a test readily met in certain cases alleging consumer ... fraud." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997). The reason is simple: when a defendant takes a common action (here, facsimile marketing) and applies it to a mass group of victims, the defenses and necessary proof overwhelmingly applies to the class as

opposed to any individual. In *Stillmock v. Weis Markets, Inc.*, 385 Fed Appx. 267, 273 (2010), the Fourth Circuit vacated the denial of a motion for class certification where the Plaintiff's alleged that a retail store printed credit card and debit card receipts in violation of Fair and Accurate Credit Transaction Act's ("FACTA") truncation requirement, instructing with respect to Rule 23(b)(3) analysis:

Critically, Rule 23(b)(3)'s commonality-predominance test is qualitative rather than quantitative. *Gunnells*, 348 F.3d at 429. Thus, while courts have properly denied class certification where individual damages issues are especially complex or burdensome, *see, e.g., Pastor v. State Farm Mut. Auto. Ins. Co.*, 487 F.3d 1042, 1047 (7th Cir.2007), where, as here, the qualitatively overarching issue by far is the liability issue of the defendant's willfulness, and the purported class members were exposed to the same risk of harm every time the defendant violated the statute in the identical manner, the individual statutory damages issues are insufficient to defeat class certification under Rule 23(b)(3). *See Murray v. GMAC Mortg. Corp.*, 434 F.3d 948, 953 (7th Cir.2006) ("Refusing to certify a class because the plaintiff decides not to make the sort of person-specific arguments that render class treatment infeasible would throw away the benefits of consolidated treatment. Unless a district court finds that personal injuries are large in relation to statutory damages, a representative plaintiff must be allowed to forego claims for compensatory damages in order to achieve class certification.");

*Stillmock* at 273. Predominance is a test readily met in certain cases alleging widespread consumer fraud or injury. *Amchem*, 521 U.S. at 625. Here, the Plaintiff has alleged that the Defendant transmitted Junk Fax to thousands of businesses throughout the United States in violation of the TCPA. For purposes of settlement, these identically situated class members will be given notice of the settlement.

**B. The Class Action is Superior to Other Available Methods for Resolving This Controversy**

Rule 23(b) of the Federal Rules of Civil Procedure also requires the Court to assess whether proceeding via a class action is the superior to other methods for the fair and efficient adjudication of the controversy at issue. *Fed.R.Civ.P. 23(b)*. Courts have repeatedly noted that

statutory claims with fixed damage awards, like TCPA claims, are ideal for class certification.

“Where the damages are capable of mathematical or formula computation, the class action comes rather close to an ideal one and there is certainly no question of the lack of ‘predominance’ of the common questions.” *Windham v. American Brands, Inc.*, 565 F.2d 59, 68 n.22 (4<sup>th</sup> Cir. 1977)

(quoting Practising Law Institute, *Current Problems In Federal Civil Practice* at 491(1975)). The

Fourth Circuit Court of Appeals in *Stillmock* described the relevant considerations when

performing this analysis:

Although a determination of superiority necessarily depends greatly on the circumstances surrounding each case, some generalizations can be made about the kinds of factors the courts will consider in evaluating this portion of Rule 23(b)(3). The rule requires the court to find that the objectives of the class-action procedure really will be achieved in the particular case. In determining whether the answer to this inquiry is to be affirmative, the court initially must consider what other procedures, if any, exist for disposing of the dispute before it. The court must compare the possible alternatives to determine whether Rule 23 is sufficiently effective to justify the expenditure of the judicial time and energy that is necessary to adjudicate a class action and to assume the risk of prejudice to the rights of those who are not directly before the court.

*Stillmock* at 274 quoting 7AA Charles Alan Wright, Arthur R. Miller, & Mary Kay

Kane, *Federal Practice and Procedure* § 1779 (3d ed.2005). This principle is particularly

applicable to the instant case and weighs heavily in favor of class certification as the most

superior method of adjudication. The TCPA provides for minimum statutory damages of \$500

per violation. 47 U.S.C. § 227(b)(3). Enforcement of this statute, however, requires individual

consumers to initiate litigation and incur its attendant costs and sacrifice. The prospect of

recovering \$500 per Junk Fax in statutory damages is too low for most people to promote

prosecution of an individual suit under the TCPA.

Finally, in assessing whether class certification is the “superior” method to adjudicate the litigation, Rule 23(b) requires that the Court consider the desirability of proceeding via class

action in contrast to allowing individual claims to proceed on their own, including an assessment of the difficulties in managing the dispute as a class action. As to these elements of the analysis, class certification is the preferred course to pursue. The individual litigation of such a phenomenal number of claims would obviously consume a vast amount of judicial resources in trial courts across the United States. The alleged misconduct in this case flows from telemarketing practices which are factually uniform as to each individual class member. Damages are set by statute and will be calculated by simply multiplication. Discovery has revealed that the class consists of tens of thousands of entities located throughout the United States who can be given actual notice of their right to file a claim. Class adjudication of this dispute is by far the most efficient and effective means to effectuate this settlement.

## **VI. THE PROPOSED SETTLEMENT**

### **A. Class Definition and Identification**

a. For settlement purposes only, the parties have stipulated to the certification of a class (the “Settlement Class” or “Class”) defined as follows: “All persons or entities within the United States to whom Defendant sent or caused to be sent one or more unsolicited facsimile advertisements promoting its goods or services from March 1, 2009 to November 17, 2014.

Based on the records obtained in the course of discovery, the Class consists of approximately 97,000 class members. These records identify class members by name, address and facsimile number, making class notice a straightforward and manageable process.

**B. Settlement Fund and Notice**<sup>4</sup>

The proposed settlement obligates the Defendant to establish a settlement fund of \$8,500,000.00 (“Settlement Fund”). *See* Exhibit 1, Settlement Agreement at Paragraph 4.01. If approved, Class Counsel will cause notice to be given to the settlement class members within thirty (30) days of the entry of the Preliminary Approval Order of the Class. Notice will be sent to class members via direct mail, facsimile, and publication. *See* Exhibit 1, Settlement Agreement, Paragraphs 7.01—7.03.

**C. Benefits To The Class**

Claimants who submit valid claims shall be entitled to receive a maximum Cash Benefit of up to \$500 per facsimile received, up to a maximum of eight facsimiles (up to \$4,000). Multiple subscribers to the same facsimile number will be entitled to a single recovery per facsimile. *See* Exhibit 1, Settlement Agreement at Paragraph 4.02.

**D. Final Approval and Payment of Claims**

Following the deadline for objections and requests for exclusion, the parties intend to petition the Court for Final Approval. The Settlement Agreement provides that if Final Approval is granted, and any applicable appellate period has run, settlement funds will be distributed to all entities who made a claim. First, court approved expenses, attorneys’ fees and class representative fees will be paid. Then, all remaining funds will be distributed directly to the class members who made a claim, on a pro rata basis. If there are class members who do not cash the check that is sent to them, there will be a second round of payments sent to class members who did, if that process is economically prudent (i.e., it will not end up costing the class members

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<sup>4</sup> Pursuant to the Class Action Fairness Act, within ten days of this filing, notice of this proposed settlement will be served on the Attorney General of the United States, and upon the Attorneys General of all fifty states. 28 U.S.C. §1715 (a).

money to have the settlement administrator draw and distribute the checks). After the second round of checks, remaining funds, if any, will be distributed to a *cy pres* recipient, subject to this Court's approval. If settlement checks are not cashed within one hundred eighty (180) days of issuance, those checks will become void. *See* Exhibit 1, Settlement Agreement at Paragraph 4.03(g).

**VII. THE SETTLEMENT AGREEMENT SHOULD BE PRELIMINARILY APPROVED AS FAIR, REASONABLE AND ADEQUATE**

Federal Rule of Civil Procedure 23(e) requires judicial approval of all class action settlements. Before approving a settlement, the Court must first find that the settlement is “fair, reasonable and adequate.” Fed. R. Civ. P. 23(e)(2). The question for this Court is whether the settlement falls well within the range of possible approval, and is sufficiently fair, reasonable and adequate to warrant dissemination of notice apprising class members of the proposed settlement and to establish procedures for a final settlement hearing under Rule 23(e). The initial presumption of fairness of a class settlement may be established by showing (1) That the settlement has been arrived at by arm's-length bargaining; (2) That sufficient discovery has been taken or investigation completed to enable counsel and the court to act intelligently; and (3) That the proponents of the settlement are counsel experienced in similar litigation. *Newberg*, at §11.41.

In determining whether class action settlements should be approved, “[c]ourts judge the fairness of a proposed compromise by weighing the Plaintiff's likelihood of success on the merits against the amount and form of the relief offered in the settlement. [Citation omitted] . . . They do not decide the merits of the case or resolve unsettled legal questions.” *Carson v. American Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981).

**A. Reasons For Approval**

**1. The Settlement Is The Largest TCPA Settlement Ever In Maryland.**

The proposed Settlement should be approved by this Court as it presents an excellent result for class members nationwide. To the knowledge of putative Class Counsel, the proposed Settlement in this case would be one the largest TCPA class settlement ever approved by a Maryland state or federal court.

**2. The Settlement Resulted From Arm's Length Negotiations -- It Is Not The Product of Collusion**

The requirement that a settlement be fair is designed to protect against collusion among the parties. The proposed Settlement was negotiated at arm's length by knowledgeable and experienced counsel, following an extended period of contested litigation. The Settlement was arrived at only after two mediation sessions, conducted under the guidance of the Honorable Stephen M. Orlofsky and the Honorable Edward A. Infante. After the second mediation session, Judge Infante remained involved in finalizing the settlement between the parties, which took more than a month. The contested nature of this litigation, the experience of counsel, the involvement of skilled mediators, and the fair result reached are all illustrative of the arm's length negotiations that led to the proposed Settlement.

**3. The Factual Record Was Well Developed Through Independent Investigation**

The factual record in this case was well developed by putative Class Counsel and the Settlement was achieved only after full discovery was obtained, third party subpoenas were issued and pursued, and after key witnesses were deposed. By the time the Settlement was reached, Class Counsel, had "a clear view of the strengths and weaknesses" of their case. *In re Warner Communications Sec. Litig.*, 618 F. Supp. 735, 745 (S.D.N.Y. 1985). Putative Class Counsel were in a strong position to make an informed decision on the merits of recommending

the settlement, as they have a "full understanding of the legal and factual issues surrounding [the] case." *Manchaca v. Chater*, 927 F. Supp. 962, 967 (E.D. Tex. 1996). These factors strongly support approval of the proposed Settlement.

**4. The Settlement Was Negotiated by Experienced Counsel**

As detailed in the attached affidavits, putative Class counsel are experienced in TCPA class action litigation. Defendant, at all times, was also represented by very able counsel. As a result of the evaluation of counsel on all sides, the Settlement was reached as a means of fully resolving the cases without the burden or risks attendant with further litigation.

**5. Continued Litigation Would Create Significant Risk**

The expense, complexity and duration of litigation are significant factors considered in evaluating the reasonableness of a settlement. Litigating this class action through class certification and trial would undoubtedly be time-consuming, expensive and risky. Had this matter proceeded further, it was anticipated that the Defendant would mount an aggressive defense raising challenges to a host of issues. Given the alternative of long and complex litigation before this Court, the risks involved in such litigation, and the possibility of further appellate litigation, the availability of prompt relief under the Settlement is highly beneficial to the Class.

**VII. CONCLUSION**

For all of the above reasons, the proposed Settlement presented to this Court by all parties is well within "the range of possible approval" and should be preliminarily approved in all respects, as specifically set forth in Plaintiff' Unopposed Motion for Preliminary Approval of Class Settlement and Conditional Certification of Class, and Entry of Scheduling Order.

Respectfully submitted for  
PLAINTIFF,

Jay Clogg Realty Group, Inc.  
By its attorneys,

/s/ Edward A. Broderick

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Dated: November 21, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that on November 21, 2014, I electronically filed the foregoing document with the Clerk of the Court, using the CM/ECF system, which will send a notice of electronic filing to all counsel of record

*/s/ Edward A. Broderick* \_\_\_\_\_

Edward A. Broderick