

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

**IN RE: TIKTOK, INC., CONSUMER
PRIVACY LITIGATION**

MDL No. 2948

Master Docket No. 20-cv-4699

Judge John Z. Lee

This Document Related to All Cases

Magistrate Judge Sunil R. Harjani

**OPPOSED¹ MOTION TO ACCEPT MOVANTS' TIMELY AND VALID
REQUEST FOR EXCLUSION FROM THE SETTLEMENT, IN THE
ALTERNATIVE, OBJECTIONS TO CLASS SETTLEMENT FOR
FAILURE TO PROVIDE NOTICE REGARDING THE OPT OUT
PROCEDURE**

Movants are 2,254 people each of whom, individually signed and submitted a timely opt out form, requesting to be excluded from the class action settlement. Declaration of Michael Kind (“Kind Decl.”) ¶ 39, Exh. B; Declaration of Yana Hart (“Hart Decl.”) ¶ 3, Exh. E; Declaration of Joshua B. Swigart (“Swigart Decl.”), ¶ 3, Exhs. G, H. The Settlement Administrator wrongfully, and without any authority, determined that Movants’ individually signed exclusion requests were “mass opt outs” and, therefore, not allowed. Although it is unclear why the Settlement Administrator determined these individually signed opt outs to be “mass” opt outs, the only plausible, yet absurd, explanation of their rejection is that the 2,254 opt outs were sent inside of several envelopes as opposed to 2,254 envelopes. No opt outs were jointly signed by multiple

¹ TikTok, Inc. opposes Movants’ motion; Plaintiffs in this matter have indicated that they take “no position” on the instant motion.

Movants. Therefore, the Settlement Administrator wrongfully determined that those exclusion requests were “class opt outs” and therefore not allowed.

This motion is based upon the accompanying memorandum of points and authorities, all papers and records on file herein and on such oral arguments which may be presented at the hearing of the motion.

I. INTRODUCTION

It is fundamental to Due Process that an absent plaintiff be allowed to remove herself from a class action settlement, if she so chooses.

[W]e hold that due process requires at a minimum that an absent plaintiff be provided with an opportunity to remove himself from the class by executing and returning an “opt out” or “request for exclusion” form to the court.

Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 812 (1985).

Opt-out rights play a central role in class actions because the class actions bind parties who are not central participants, imposing res judicata effect on their individual rights. Therefore, courts absolutely must protect the rights of the absentee class members allowing for them to follow reasonable and clear instructions for submitting their exclusion requests. *See id.*

Movants, following the Court’s Preliminary Approval Order (“Order”) (Dkt. 162) and the class Notice instructions, submitted their individual exclusion requests, within each of the 2,254 exclusions stating: (i) the name of the Action; (ii) the person’s or entity’s full name, address, email address and telephone number; (iii) a specific statement of the person’s or entity’s intention to be excluded from the Settlement; (iv) the identity of the person’s or entity’s counsel, if represented; and (v) the person’s or entity’s authorized representative’s signature and the date on which the request was signed. Kind Decl., Exh. B; Hart Decl., Exh. E; Swigart Decl., Exhs. G, H. Each request for exclusion contains specific language, showing the class member’s informed consent, and intent to be excluded from the class settlement. *See id.* Each Movant has individually signed his or her request for exclusion. *Id.*

First, each individual request for exclusion provided all of the information required by the class Notice and the Court's Order. *See id.* Since Movants complied with the Notice requirements, Due Process requires that their opt out requests be honored. *Phillips Petroleum Co.* 472 U.S. at 812. The Settlement Administrator erroneously deemed these individual opt outs as "mass opt outs" for an unknown reason. In fact, none of the concerns raised in this Court's September 30, 2021, Order, regarding "class opt outs" are present here. Counsel for the Movants did not provide a single signed opt out form for all 2,254 individuals. Each Movant signed an individual exclusion request, that included an unequivocal intent to opt out of the class settlement. Therefore, the Court must accept the Movants' valid exclusion requests, and grant this instant Motion.

Second, if more was required from the absentee plaintiffs who wish to opt out, then the Notice violated Movants' due process rights by failing to advise them of these additional requirements. *See Phillips Petroleum Co.*, 472 U.S. at 812 ("The notice must be the best practicable, '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.'"); *In re Sys. Software Assocs. Sec. Litig.*, Master File No. 97 C 177, 2000 U.S. Dist. LEXIS 3071, at *30 (N.D. Ill. Mar. 8, 2000) ("[D]ue process requires that an absent plaintiff be provided with the opportunity to opt out of the proposed class."); *Chaffee v. A&P Tea Co.*, Nos. 79 C 3625, 1991 WL 5859, at *2 (N.D. Ill. Jan. 16, 1991) (The "notice requirement of Rule 23 is designed to guarantee that those bound by the ruling in a class action were accorded their due process rights to notice and an opportunity to be heard."). Here, each Movant complied with the Court's Preliminary Approval Order and the Notice requirements. Nevertheless, the Settlement Administrator "invalidated" these individual exclusion requests. Should the Court determine that the Opt Outs were, in fact, invalid, the Movants object on the grounds that the Notice was not sufficiently clear to meet the Due Process requirements and Rule 23's requirement for "the best notice that is practicable under the circumstances." Fed. R. Civ. P. 23.

Third, should this Court find any deficiency within the signed opt out requires (which Movants do not believe exists), and in an abundance of caution, Movants request additional time

to cure any such deficiency and/or provide the Movants with an opportunity to be heard. There is no question that Movants acted in good faith and timely submitted their unequivocal exclusions from the class settlement. However, since Movants each unequivocally, and individually, requested to be opted out of the settlement, this Court should rule that Movants' requests are valid and opt Movants out of the class.

II. STATEMENT OF FACTS

A. Preliminary Approval Orders.

On September 30, 2021, this Court overruled the objects by Brian Behnken and Joshua Dugun, requesting to be allowed to “opt out *en masse* by means of a single unsigned, electronic filing from their lawyers.” Dkt. 161, pp. 30. The Court recognized the potential for “unauthorized mass opt-outs” and ruled that “individual signatures” were required. *Id.* “For this reason, courts have routinely enforced the requirement that class members individually sign and return a paper opt-out form as ‘vital’ to ensuring ‘that the class member is individually consenting to opt out.’” Dkt. 161. As the result, the Court ordered:

Requests for Exclusion (“Opt-Outs”). Any Settlement Class Member who does not wish to participate in the Settlement must submit a Request for Exclusion to the Settlement Administrator stating his or her intention to be excluded from the Settlement. For a Request for Exclusion to be valid, it must set forth: (i) the name of the Action; (ii) the person’s or entity’s full name, address, email address and telephone number; (iii) a specific statement of the person’s or entity’s intention to be excluded from the Settlement; (iv) the identity of the person’s or entity’s counsel, if represented; and (v) the person’s or entity’s authorized representative’s signature and the date on which the request was signed.

Dkt. 162, pp. 6, ¶ 10 (Oct. 1, 2021).

Notably, while “individual signatures” were required, this Court did not require people to directly submit their individually signed exclusions requests to the administrator. *See id.* Nor was counsel banned from submitting such requests. *See id.* Similarly, there was no requirement that each of the individual opt outs be placed in a separate envelope for mailing; which, if known, Movants would have completed. *See id.*

B. Class Notice.

The Notice to the Class Members provided as follows:

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want benefits from the Settlement, and you want to keep the right to sue or continue to sue Defendants on your own about the legal issues in this case, then you must take steps to get out of the Settlement. This is called excluding yourself—or it is sometimes referred to as “opting out” of the Settlement Class.

10. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a timely letter by mail to:

Musical.ly and/or TikTok Class Action
Attn: Exclusion Request
P.O. Box 58220 Philadelphia, Pennsylvania 19102

Your request to be excluded from the Settlement must include: (i) the name of the Action; (ii) your full name, address, email address and telephone number; (iii) a specific statement of your intention to be excluded from the Settlement; (iv) the identity of your counsel, if represented; and (v) your signature and the date on which the request was signed.

Your exclusion request must be postmarked no later than **January 31, 2022**. You cannot ask to be excluded on the phone, by email, or at the Settlement Website.

You may opt out of the Settlement Class only for yourself or your minor child.

Class Notice, Kind Decl., Exh. A. pp. 6.²

While the notice required to be signed by claimants (as they are – Exhs. B, E, G, H), there was no limitation on *who* can facilitate this submission to the Settlement Administrator. *Id.* To the

² See also Dkt. 196, Exh. B (directing the individuals wishing to opt out to use www.tiktokdataprivacysettlement.com website, which contains the same notice within the “Important Documents”) (see [https://angeion-public.s3.amazonaws.com/www.TikTokDataPrivacySettlement.com/docs/TikTok+Long+Form+Notice+\(website\)+v3+draft+20211019.pdf](https://angeion-public.s3.amazonaws.com/www.TikTokDataPrivacySettlement.com/docs/TikTok+Long+Form+Notice+(website)+v3+draft+20211019.pdf))

contrary, the notice anticipated inclusion of “the identity of your counsel, if represented,” and thus, submission of the individual requests via counsel. *Id.*

C. Movants’ Exclusion Requests.

After the class action settlement was preliminary approved, Movants each—individually—completed a form that requested to be excluded from this class action.³ Each Movant requested that their respective attorneys submit their letter to the Settlement Administrator. *E.g.*, Kind Decl., ¶¶ 39-43; Hart Decl., ¶¶ 6-9; Swigart Decl., ¶¶ 6-9. Counsel then timely mailed each individual exclusion request to the Settlement Administrator (Angeion Group LLC). *Id.*, Exhs. B, E, G, H. A copy was also sent to the class counsel, and/or defense counsel. *Id.*

Specifically, Kind Law and Freedom Law Firm submitted 419 individual exclusion requests on January 21, 2022. Kind Decl., Exh. B. Clarkson Law Firm submitted 433. Hart Decl., Exh. E. Swigart Law Group submitted 1,402 opt outs. Swigart Decl., Exhs. G, H. While many of the requests were provided to the Settlement Administrator at once, each request was signed and submitted by each Movant separately⁴, on a separate paper or form. Kind Decl., ¶¶ 39-43; Hart Decl., ¶¶ 6-9; Swigart Decl., ¶¶ 6-9. Each law firm subsequently received a letter from the

³ Electronic signatures have been repeatedly accepted by courts, including the U.S. Supreme Court. *See e.g. Becker v. Montgomery*, 532 U.S. 757, 763, 121 S. Ct. 1801, 149 L. Ed. 2d 983 (2001) (“We do not doubt that the signature requirement can be adjusted to keep pace with technological advances.”); *Flakes v. Carr*, No. 21-2464, 2022 U.S. App. LEXIS 4701, at *3 (7th Cir. Feb. 22, 2022) (rejecting argument that an electronic signature was invalid as a “non-starter.” “Congress has made clear that a signature ‘may not be denied legal effect . . . solely because it is in electronic form.’”) (citing 15 U.S.C. § 7001(a)(1); *Princeton Indus., Prods. v. Precision Metals Corp.*, 120 F. Supp. 3d 812, 819-822 (N.D. Ill. 2015) (discussing series of cases to explain that Illinois has its own version of laws allowing for electronic signatures and even acceptances of the “signature block at the end of an email”); *Just Pants v. Wagner*, 247 Ill.App.3d 166, 173, 617 N.E.2d 246, 251, 187 Ill. Dec. 38 (1st Dist. 1993) (“a writing has been considered ‘signed’ for the purpose of the statute even if it merely contains something which manifests that the instrument has been executed . . . by the party to be charged by it.”). Importantly, the process of opting out should not be more burdensome than the process of participating in the case.

⁴ The law firms maintain a Certificate of Completion, verifying each individual digital signature which depicts their own IP addresses from which each client accessed the signed form, the date they viewed and signed the form on, and the device that was used to sign the form (for instance “mobile” device). Hart Decl., ¶ 12; Kind Decl., ¶ 44; Swigart Decl., ¶ 11.

appointed settlement administrator, Angeion Group LLC, stating that “[p]ursuant to Section 10 of the Settlement Agreement . . . the Exclusion Requests you submitted in ‘mass’ . . . is not valid.”⁵ Kind Decl., Exh. C; Hart Decl., Exh. F; Dkt. 196 pp. 21-23.

D. Movants’ Response to Angeion Group LLC

On March 1, 2022, counsel jointly submitted a response to the Settlement Administrator. Kind Decl., Exh. D. In the letter, counsel asked what additional information the Settlement Administrator would need to reverse its baseless decision. *Id.* Counsel detailed that Movants had complied with the instructions in the Class Notice and both preliminary approval Orders. *Id.* Angeion Group LLC did not respond. Hart Decl., ¶ 14; Swigart Decl., ¶ 14. As a result, this motion follows.

III. ARGUMENT

Movants respectfully request that this Court accept their exclusion requests because: (1) they properly complied with the class Notice requirements; (2) their exclusion requests were not “class opt outs;” (3) Movants’ requests for exclusion should be honored under the Excusable Neglect doctrine; and (4) If more was required, the Notice was not sufficiently clear to provide Due Process.

A. The requests for exclusion provided all the information required by the class Notice.

Due process requires that this Court accept Movants’ requests to opt out because Movants complied with the class Notice. All class members in a Rule 23(b)(3) action are entitled to due process, including notice. *Phillips Petroleum*, 472 U.S. 797, 810-813. The procedural due process rights of these members include an opportunity to be excluded from the action. *Id.* Here, in relevant part, the Notice provided:

Your request to be excluded from the Settlement must include: (i) the name of the Action; (ii) your full name, address, email address and telephone number; (iii) a specific statement of your intention to be excluded from the

⁵ Although Clarkson has not received all of the remaining notices for all of the 433 clients stating that the opt outs were invalid, the Settlement Administrator appears to have determined all of Clarkson’s clients’ opt outs to be invalid. *See* Dkt. 196, ¶¶ 39-40.

Settlement; (iv) the identity of your counsel, if represented; and (v) your signature and the date on which the request was signed.

Your exclusion request must be postmarked no later than **January 31, 2022**. You cannot ask to be excluded on the phone, by email, or at the Settlement Website.

You may opt out of the Settlement Class only for yourself or your minor child.

Kind Decl., Exh. A. *See also* Court Order, Dkt. 162.

It cannot be disputed that the exclusion requests fully complied with the requirements of the Notice (or this Court's Order Dkts. 161, 162). *See In re Navistar Maxxforce Engines Mktg.*, 990 F.3d 1048, 1050 (7th Cir. 2021) (holding that where a judge "specified in excruciating detail how opting out is to be accomplished" the court does not need to accept exclusion requests that varied from the court's set procedures). While the notice required "your signature," there was no limitation on who can submit the request. Kind Decl., Exh. A. To the contrary, the notice anticipated inclusion of "the identity of your counsel, if represented." *Id.* In fact, in the Administrator's letter rejecting Movants' opt outs, the Administrator does not claim that Movants failed to comply with the Notice. Kind Decl., Exh. C; Hart Decl., Exh. F; dkt. 196 pp. 21-23 (does not even mention the class Notice). Thus, Movants fully complied with the Notice and Court's requirements. Accordingly, their requests to opt out must be honored.

B. Movants' exclusion requests were not "class opt outs."

Movants fully satisfied this Court's concerns regarding "class opt outs," discussed in this Court's September 30, 2021, Order. In its Memorandum Opinion and Order (Dkt. 161) signed on September 30, 2021, this Court overruled Brian Behnken's and Joshua Dugan's objections that "they should be able to opt out *en masse* by means of a single unsigned, electronic filing from their lawyers." *Id.* (emphasis added). In overruling the objection, this Court correctly held that it was "vital" that "the class member is individually consenting to opt out." *Id.* (citation omitted). Therefore, this Court found that each class member would need to individually consent to their exclusion request, which was done here.

Each Movant, individually, completed a request to be excluded from this class action. *E.g.*, Kind Decl., Exh. B; Hart Decl., Exh. E, Swigart Decl., Exhs. G, H. Each request includes a statement that “I would like to be excluded from the class action settlement reached in In Re TikTok, Inc., Consumer Privacy Litigation: 20-cv-4699 [MDL 2948], Northern District of Illinois (Eastern Division) [“Class Action”]” - or a similar statement. *Id.* Each of the opt out requests include a heading “Tik Tok Class action Opt Out Request.” *Id.* Each client consented, and requested, for counsel to submit their opt out request to the Settlement Administrator. *Id.* In the 419 opt outs submitted from Kind Law and 433 opt outs submitted by Clarkson, the following statement was included in most of the opt out requests:

The specific reason for exclusion: I do not wish to be a part of the settlement class, and I would like to retain the right to file my own individual lawsuit against TikTok, Inc., if I believe it to be necessary. I understand that by opting out, I am giving up my right to receive any payment under the settlement. I have not been coerced by anyone to opt out of this Class Action, and I choose to opt out of my own free will.

Id. at Exh. B, E. Each Movant requested that their respective attorney submit their letter to the Settlement Administrator. *E.g.*, Kind Decl., ¶¶ 39-43; Hart Decl., ¶¶ 6-9; *see similar* Swigart Decl., ¶¶ 6-9.

The Administrator acted without authority and in bad faith in refusing to accept Movants’ requests, based on the Notice, Settlement Agreement, and the Court’s Order. There is absolutely nothing in the movants’ signed separate exclusion requests that leaves any doubt of their unequivocal desire to opt out.

Simply put, Movants did not “opt out *en masse* by means of a single unsigned, electronic filing from their lawyers,” and instead submitted individual opt outs in order to comply with the Court’s September 30 Order. *Council of Social Work Education, Inc. v. Texas Instruments*, 105 F.R.D. 68, 70 (N.D. Texas 1985) (“The decision to be in or out of a class is solely the decision of the one whose rights are to be foreclosed by class litigation.”).

Therefore, the concerns raised in this Court’s September 30 Order are not present here, where each absentee class member signed their own exclusion forms unequivocally expressing their intent to opt out. *See In re Diet Drugs Prods. Liab. Litig.*, 282 F.3d 220, 241 (3d Cir. 2002) (involving lawyers who wanted to “effect mass opt outs of all of their clients with the filing of a single notice”); *In re CenturyLink Sales Practices & Sec. Litig.*, No. 17-2795 (MJD/KMM), 2020 U.S. Dist. LEXIS 114110, at *7 (D. Minn. June 29, 2020) (rejecting 2,000 opt outs because of the “failure to include individual signatures”); *In re Oil Spill by Oil Rig Deepwater Horizon*, 910 F. Supp. 2d 891, 937 (E.D. La. 2012) (invalidating 9,460, requests because “they were not signed by the individual wishing to be excluded” but “were signed by counsel purporting to act on behalf of the purported Class Members”); *see also Martin v. Kan. City Chiefs Football Club, LLC (In re NFL Players’ Concussion Injury Litig.)*, No. 2:12-md-02323-AB, 2019 U.S. Dist. LEXIS 652, at *18 (E.D. Pa. Jan. 3, 2019) (the movant’s ex-husband’s opt out did not automatically opt out the movant since individual opt outs were required); *Seacor Holdings, Inc. v. Mason (In re Deepwater Horizon)*, 819 F.3d 190, 192 (5th Cir. 2016) (involving a class member who made no reasonable indication of a desire to opt out of the settlement class because their attorney failed to discuss the need to opt out with his client before the opt-out deadline); *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 118 (D.N.J. 2012) (class member entity was not allowed to unilaterally opt out other class members).

Here, Movants each individually signed their opt out request and specifically said that they wanted to be excluded. This Court must honor Movants’ timely exclusion request.

C. If more was required, the Notice was not sufficiently clear to provide Due Process.

Due Process precludes a finding that Movants were required to do more than what the Notice required. “For any class certified under Rule 23(b)(3) . . . the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812, 105 S. Ct. 2965, 86 L. Ed. 2d 628 (1985) (Each class member has a due process right to opt out of a class settlement.); *Breslow v. Prudential-Bache*

Properties, Inc., 1994 U.S. Dist. LEXIS 12325, 1994 WL 478611 at *2 (N.D. Ill. Sept. 1, 1994); *Gert v. Elgin Nat'l Indus. Inc.*, 773 F.2d 154, 159 (7th Cir. 1985) (When a class has been certified under Rule 23(b)(3), notice and an opportunity to opt out must be sent to absent class members.).

The purpose of Rule 23(c)(2) is to afford members of the class due process, thereby guaranteeing class members the opportunity to be excluded from the class action and not be bound by any subsequent judgment. *Id.* (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-74, 40 L. Ed. 2d 732, 94 S. Ct. 2140 (1974)); *see also McCubrey v. Boise Cascade Home & Land Corp.*, 71 F.R.D. 62, 70 (N.D. Cal. 1976) (“The serious due process implications of holding an absent member bound by a class adjudication demand that we look beyond formalistic procedures to evaluate whether a class member has reasonably expressed a desire to be excluded from a class suit.”); *Council of Social Work Education, Inc. v. Texas Instruments*, 105 F.R.D. 68, 70 (N.D. Texas 1985) (“‘[C]onsiderable flexibility’ should be used in determining what constitutes an effective request for exclusion;” “[i]t need only be sufficiently unequivocal and timely to be counted.”); *see also In re Four Seasons Securities Laws Litigation*, 493 F.2d 1288, 1291 (10th Cir. 1974) (rejecting a “rule that in order to opt out the request must be explicit” and instead holding that a “reasonable indication” of intent to opt out is sufficient); *Plummer v. Chemical Bank*, 668 F.2d 654, 657 n. 2 (2d Cir. 1982) (“Any reasonable indication of a desire to opt out should suffice.”).

Here, the Notice did not inform absent class members of any additional requirements, including precluding their counsel from submitting these requests.⁶ Therefore, if such a

⁶ Furthermore, precluding counsel from submitting their clients’ individually signed opt out requests would be unduly burdensome and unreasonably interfere with attorney-client relationships, and their absolute right to retain counsel of their choice. Importantly, the Court “must be especially wary of unequal treatment among class segments” *See Arena v. Intuit Inc.*, No. 19-cv-02546-CRB, 2021 U.S. Dist. LEXIS 41994, at *35 (N.D. Cal. Mar. 5, 2021) (citing *In re Bluetooth Headset Prods. Liability Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (rejecting proposed opt out procedure as unduly burdensome especially where the class members’ expected recovery was minimal, and noting that heightened opt out procedures are only proper in cases where class members’ recovery is in at least thousands of dollars); *Espenscheid v. DirectSat USA, LLC*, 705 F.3d 770, 772 (7th Cir. 2013) (noting the “obvious” difference between class actions and collective actions is the “need to protect the right of Rule 23(b)(3) class members to opt out.”)

requirement is imposed after-the-fact, then this Court should find that the Notice was deficient under Rule 23(c)(2) and Due Process. Therefore, the Court should either (a) invalidate any additional requirements; and/or (b) require that the new notice be submitted to the class members and allow sufficient time for the class members to meet these requirements and provides absentee members with the right to challenge these additional requirements. *See e.g., Kaufman v. Am. Express Travel Related Servs. Co.*, 264 F.R.D. 438, 445 (N.D. Ill. 2009) (granting leave to proceed with an amended notice).

D. In the alternative, Movants’ request additional time under Rule 6.

Assuming *arguendo*, if this Court finds that Movants failed to properly opt out in accordance with the Notice or Court’s Orders, this Court should allow Movants to cure any defect⁷ under Rule 6’s excusable neglect doctrine. Under Rule 6(b), “[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time: . . . on motion made after the time has expired if the party failed to act because of excusable neglect.” Fed R. Civ P. 6(b); *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship.*, 507 U.S. 380, 388 (1993); *Fox v. Iowa Health Sys.*, No. 18-cv-327-jdp, 2021 U.S. Dist. LEXIS 36880, at *5 (W.D. Wis. Feb. 26, 2021) (citing *Snyder v. Ocwen Loan Servicing, LLC*, No. 14 C 8461, 2019 U.S. Dist. LEXIS 80926, 2019 U.S. Dist. LEXIS 80926, 2019 WL 2130079, at *10 (N.D. Ill. May 14, 2019) (allowing late opt-outs without requiring motions from class members themselves under the court’s “considerable discretion to allow late . . . opt-outs to go forward”); *see also Silber v. Mabon*, 18 F.3d 1449, 1455 (9th Cir. 1994).

Here, Movants all signed individual opt outs and acted in good faith and timely providing the requested information. Therefore, as discussed above, their opt out requests should be honored. However, out of an abundance of caution, Movants request that should this Court find any defect in their opt out requests, that this Court allow movants additional time to cure any such defects.

⁷ The existence of any defects is disputed.

IV. Conclusion

This Court should grant the Movants' motion accepting their timely opt-out requests as valid and compliant with the Court's order and the Notice. Each Movant has unequivocally stated that they wish to be excluded from the settlement by executing their separate requests to opt out, and provided sufficient information in good faith. For the foregoing reasons, the Settlement Administrator's unilateral and erroneous decision to reject Movants' opt out requests should be overruled.

Dated: April 13, 2022.

Respectfully submitted,

CHICAGO CONSUMER LAW CENTER, P.C.

/s/ Bryan Paul Thompson

Bryan Paul Thompson

Bryan.Thompson@cclc-law.com

Robert W. Harrer

Rob.Harrer@cclc-law.com

33 N. Dearborn St., Suite 400

Chicago, IL 60602

Tel: 312.858.3239 | Fax: 312.610.5646

CLARKSON LAW FIRM, P.C.

Yana Hart (*pro hac vice forthcoming*)

yhart@clarksonlawfirm.com

22525 Pacific Coast Highway

Malibu, CA 90265

Tel: 213.788.4050

Fax: 213.788.4070

KIND LAW

Michael Kind (*pro hac vice forthcoming*)

8860 S. Maryland Parkway, Suite 106

Las Vegas, NV 89123

Tel: 702.337.2322

Fax: 702.329.5881

SWIGART LAW GROUP, APC

Joshua Swigart (*pro hac vice forthcoming*)

2221 Camino del Rio South, Ste. 308

San Diego, CA 92108

Tel. 619.728.6348

Fax. 866.219.8344