

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT - CHANCERY DIVISION**

AMY JOSEPH AND ROBERT O'BRIEN.
INDIVIDUALLY AND ON BEHALF OF ALL
OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

MONSTER, INC., A DELAWARE
CORPORATION, BEST BUY STORES, L.P., A
MINNESOTA CORPORATION, AND
BESTBUY.COM, LLC, A MINNESOTA
CORPORATION,

Defendants,

and

BENJAMIN A. PEREZ AND DARON JACOBSON,

Intervenors.

15 CH 13991

Honorable Franklin U. Valderrama
Calendar 03

MEMORANDUM OPINION AND ORDER

This matter comes to be heard on Plaintiffs, Amy Joseph and Robert O'Brien's, Motion for Class Certification. For the reasons that follow, Plaintiffs' Motion is granted.

BACKGROUND

In 2002, the leading consumer electronics companies partnered to develop a new digital standard called High Definition Multimedia Interface ("HDMI"). Pl. Complt., ¶18.¹ HDMI is a signal for transmitting digital audio and video from high definition ("HD") sources, such as digital cable boxes and Blu-ray devices to HD monitors such High Definition Televisions ("HDTVs"). Pl. Complt., ¶ 16.

Prior to the introduction of HDMI and digital media, all audio and video data was transmitted through analog signals along analog cables. Pl. Complt., ¶ 17. After the introduction of HDMI, advanced video and audio data could be transmitted through a single HDMI cable. Pl. Complt., ¶18.

¹ These facts are derived from Plaintiffs' First Amended Complaint.

HDMI is now the standard format for digital video and, since 2003, it has been licensed by more than 1,300 companies that have produced various HDMI products. Pl. Complt., ¶18.

There are five categories of HDMI cables: HDMI standard; HDMI standard with Ethernet; HDMI standard automotive; HDMI High Speed; and HDMI High Speed with Ethernet. Pl. Complt., ¶ 20. HDMI cables have two basic classifications: HDMI standard and HDMI High Speed. Pl. Complt., ¶ 20. A HDMI High Speed cable is designed to handle video resolutions of 1080p and above, including advanced displays for 4K and 3D televisions. Pl Complt., ¶21. To qualify as an HDMI High Speed cable, a cable must be able to transmit digital signals at 10.2 gigabits per second (“Gbps”). Pl. Complt., ¶ 21. There is no noticeable difference between any two functioning HDMI cables within the same category. Pl. Complt., ¶19.

Manufacturers of 4K devices recommend that consumers use HDMI High Speed cables with their devices. Pl. Complt., ¶ 22. These cables can usually be purchased for less than ten dollars. Pl. Complt., ¶ 22. Any HDMI High Speed Cable with a bandwidth of 10.2 Gbps can transmit signals to 4K devices. Pl. Complt., ¶ 22.

Monster Inc. (“Monster”) sells 10.2 Gbps cables and cables with greater bandwidth. As noted, the official HDMI standards include the High Speed Category of HDMI cables. Pl. Compl., ¶ 25. Monster, however, has its own categories of High Speed cables: Advanced High Speed, Ultra High Speed and Ultimate High Speed. Pl. Complt., ¶ 25.

Monster’s advertising contains a performance chart detailing the various speeds of its HDMI cables and instructs consumers to choose a cable based on the speed necessary for transmission of digital signals. Pl. Complt., ¶ 26. The performance chart called “The Need For Speed Chart” provides consumers with a comparison of bandwidth speeds and informs them that they need Monster’s faster cables in order to transmit various amounts of data. Pl. Complt., ¶ 22-3. The performance chart states that “Advanced High Speed” cables with a bandwidth greater than 18.0 Gbps are needed to transmit a signal with “1080p, 120Hz, 16 Bit Color” or “4K, 30/60 Hz, 8-12 Bit Color”, “Ultra High Sped Cables” with a bandwidth “greater than 22.5 Gbps” are necessary to transmit a signal with “4K, 30/60Hz, 8-14 Bit Color”; and “Ultimate High Speed” cables with a bandwidth greater than 27.0 Gbps are necessary to transmit a signal with “4K, 60/120Hz 8-16 Bit Color.” Pl. Complt., ¶ 26.

Monster’s Performance Chart



Best Buy owns and operates the website www.bestbuy.com. Pl. Complt., ¶ 29. On its website, Best Buy advertises and sells Monster HDMI cables. Pl. Complt., ¶ 29. The Monster HDMI cable descriptions on the Best Buy website use the same terminology as Monster's advertising. Pl. Complt., ¶ 30. Best Buy also advertises that certain cables are necessary to transmit digital signals. For example, Best Buy advertises that Advanced High Speed cables with a bandwidth greater than 18. Gbps are needed to transmit a signal with "1080p, 120Hz, 16 Bit Color" or "4K 30/60 HZ, 8-12 Bit Color"; "Ultra High Speed" cables with a bandwidth greater than 22.5 Gbps" are necessary to transmit a signal with "4k, 30/60 Hz, 8-14 Bit Color"; and "Ultimate High Speed" cables with a bandwidth greeter than 27.0 Gbps are necessary to transmit a signal with "4K, 60/120 Hz, 8-16 Bit Color." Pl. Cmplt., ¶ 30. Best Buy also advertises and sells Monster HDMI cables in its retail stores. Pl. Complt., ¶ 31.

Amy Joseph purchased a Monster HDMI cable from a Best Buy retail store in Illinois. Pl. Complt., ¶ 11. Prior to her purchase, Joseph "carefully reviewed" the Monster HDMI's cable's packaging. Pl. Complt., ¶ 34. Joseph noted that Monster's packaging represented that a cable exceeding 10.2 Gbps was needed to transmit HDMI signals to her 4K television. Pl. Complt., ¶ 34. Due to Monster and Best Buy's alleged misrepresentations, Joseph purchased a more expensive HDMI when a lesser priced HDMI cable would have sufficed. Pl. Complt., ¶ 35-7.

In March, 2014, Benjamin Perez ("Perez") allegedly purchased a Monster Ultra High Speed HDMI cable from a Best Buy store in Orange, California, for approximately \$189.00. Before buying the cable, Perez allegedly reviewed the packaging, which represented that a HDMI cable with a bandwidth exceeding 10.2 Gbps was needed to transmit video signals to his television.

On August 25, 2015, Perez filed a class action lawsuit in the United States District Court for the Northern District of California ("California Action") against Monster and Best Buy, alleging that Monster misrepresents that 1080p and 4K HDTV's will not work properly unless consumers use Monster HDMI cables with bandwidths of 18.0, 22.5 or 27.0 Gbps, when in fact any HDMI cable with a bandwidth of 10.2 Gbps can transmit 1080p and 4K signals. Perez further alleged that Monster placed these misrepresentations prominently and conspicuously on the packaging of every HDMI cable that it sells throughout the United States. As for Best Buy, Perez alleged that Best Buy affirmed Monster's misrepresentations at the time of sale through sales personnel, floor displays and on their website. The proposed class was defined as "all persons in the United States who purchased a Monster HDMI cable" with a sub-class defined as "all persons in the United States who purchased a Monster HDMI cable from Best Buy."

On September 22, 2015, Joseph filed a Class Action Complaint against Monster and Best Buy in the Circuit Court of Cook County. The gravamen of Joseph's Complaint is that Monster, through representations made on its packaging of certain HDMI cables, induces consumers to purchase higher bandwidth and thus, more expensive cables than necessary. Joseph alleged that she relied on the chart that is printed on the back of the packaging of certain of the Monster HDMI cables. Specifically, Joseph alleged that Monster misrepresented that Monster HDMI cables of 10.2

Gbps and faster are required to transmit digital signals and can do so in a superior manner when compared to HDMI cables of 10.2 Gbps from other brands. Joseph sued Best Buy because Best Buy allegedly advertises and sells Monster HDMI cables and uses the same terminology as Monster in its advertising. Joseph also simultaneously filed a Motion for Class Certification.

Sometime after filing the Joseph filed her complaint, Joseph's counsel contacted Perez's attorneys in the California Action to ascertain whether they were interested in coordinating their efforts and seek a global resolution. Perez's attorneys, however, were not interested and opted to continue with their lawsuit in California. Joseph's counsel subsequently forwarded a copy of the Joseph Complaint to Defendants' counsel in the California action. Sometime thereafter, Joseph's counsel commenced settlement discussions with Defendants. Defendants' counsel informed Joseph's counsel that they were interested in a nationwide class settlement. Defendants agreed to participate in mediation with Joseph's counsel. Zimmerman Decl., ¶¶ 13-17

The Defendants in the California Action filed a motion to dismiss the case. The district court granted in part and denied in part the motion. Perez was given leave to file an amended complaint.

On February 10, 2016, Perez filed an Amended Complaint in the California Action. Count I alleges a violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act ("ICFA"); Count II alleges Breach of Express Warranty; Count III alleges Breach of Implied Warranty of Merchantability; Count IV alleges Common Law Fraud; Count V alleges Negligent Misrepresentation; Count VI alleges Unjust Enrichment; Count VII alleges violation of the California Consumer Legal Remedies Act; Count VIII alleges Violation of the California Unfair Competition Law; Count IX alleges violation of the California False Advertising Law and Count X alleges Violation of the Consumer Fraud and Deceptive Trade Practices Act of various states and the District of Columbia. The proposed class is defined as "all persons who purchased a Monster HDMI Cable advertised as having a bandwidth exceeding 10.2 Gbps in the United States since August 25, 2011 to the date of Preliminary Approval of the Settlement."

On February 11, 2016, the parties in the California Action disclosed the pendency of the Joseph action to the Northern District of California judge through a Joint case Management Statement.

On March 16, 2016, Plaintiff Joseph, through her counsel and Defendants attended a mediation before the Honorable Richard J. Billik, Jr. (Ret). Prior to the mediation, Defendants' counsel provided Joseph's counsel with sales data relating to the Monster HDMI cables at issue, showing wholesale and retail sales, as well as other information regarding the size of the class and potential damages. While the parties did not settle the case at the mediation, they continued settlement negotiations. On June 21, 2016, the parties executed a Memorandum of Understanding reflecting the agreed terms of settlement. Zimmerman Decl., ¶¶ 17-24. On July 13, 2016, the parties executed the Settlement Agreement, which called for: (1) Joseph to file an amended complaint asserting a nationwide class action, and (2) to substitute out Best Buy Co., Inc., as a defendant and substitute in Best Buy Stores, L.P. and Best Buy.com LLC as defendants.

On July 12, 2016, Perez filed a Petition to Intervene and to Stay this case, alleging that he was a member of the class. The defendants opposed Perez's Petition to Intervene, arguing, among other things, that Perez was not a member of the class. Perez also filed an opposition to the Preliminary Approval Motion. Perez argued that the proposed settlement was a product of collusion. In support of that contention, Perez alleged that: (1) Joseph's complaint was filed only a few weeks after Perez filed his complaint; that (2) Joseph's complaint copied generously from Perez's complaint; that (3) the Defendants chose not to remove the Joseph's case to federal court where it could have been transferred to the Northern District of California; that (4) Defendants failed to advise either Perez or the federal judge in the California matter about this case; that (5) the Joseph parties have settled this case without any formal discovery; and that (5) the parties in this case seek to settle this matter on a nationwide basis. The Petition was supported by the Declarations of Perez and his counsel, Joshua D. Arisohn ("Arisohn"). The Court² granted Perez's Petition to Intervene, concluding that consideration of the objections would assist the Court in seeking to protect the best interests of the class. The Court, however, denied Perez's motion to stay this action.

On July 14, 2016, Joseph filed an Amended Class Action Complaint against Monster and Best Buy. The Amended Complaint added Robert O'Brien (a California resident) as a plaintiff, substituted out Best Buy Co., Inc., as a defendant and substituted in Best Buy Stores, L.P. and Best Buy.com LLC as defendants.

Robert O'Brien allegedly purchased a Monster HDMI cable from a Best Buy retail store in California. Pl. Compl., ¶ 12. Prior to his purchase, O'Brien allegedly reviewed the Monster HDMI cable's packaging and noted that Monster's packaging represented that a cable exceeding 10.2 Gbps was needed to transmit HDMI signals to his 4K televisions. Pl. Compl., ¶ 34. Count I alleges a violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act ("ICFA"); Count II alleges Breach of Express Warranty; Count III alleges Breach of Implied Warranty of Merchantability; Count IV alleges Common Law Fraud; Count V alleges Negligent Misrepresentation; Count VI alleges Unjust Enrichment; Count VII alleges violation of the California Consumer Legal Remedies Act; Count VIII alleges Violation of the California Unfair Competition Law; Count IX alleges violation of the California False Advertising Law and Count X alleges Violation of the Consumer Fraud and Deceptive Trade Practices Act of various states and the District of Columbia. The Proposed Class is defined as "all persons who purchased a Monster HDMI Cable advertised as having a bandwidth exceeding 10.2 Gbps in the United States since August 25, 2011" to the date of preliminary approval of the settlement. Pl. Compl., ¶ 39. Plaintiffs also filed an Amended Motion for Class Certification.

Plaintiffs subsequently filed their Unopposed Motion for Preliminary Approval of the Proposed Class Action Settlement.

On August 15, 2016, Perez's counsel, Arisohn sent a letter to Plaintiffs' counsel, Zimmerman

² At that time, the Hon. Kathleen Kennedy presided over this case. Judge Kennedy subsequently retired and the matter was assigned to this Calendar.

requesting: all communications between Plaintiffs and Defendants; all documents that Defendants produced to Plaintiffs, whether through formal or informal discovery; all communications between the parties and Steven Weisbrot and/or Angeion Group, LLC; and all documents that the parties provided to Steven Weisbrot and/or Angeion Group, LLC. Arisohn Decl. Ex. A. On August 18, 2016, Zimmerman's office responded and offered hard copies of the documents Plaintiffs considered in the settlement. As for the other documents requested in the August 15, correspondence, Zimmerman's office directed Arisohn to contact Defendants' counsel to obtain said documents. Arisohn Decl. Ex.B. On August 19, 2016, Perez's counsel wrote to Defendants' counsel, seeking the documents. Arisohn, Decl. Ex. C. According to Perez's counsel, however, to this date the Defendants have not produced the requested documents. Arisohn Decl., ¶ 4.

On August 26, 2016, Perez, as Intervenor (hereinafter "Intervenor") filed his Opposition to Plaintiffs' Motion for Preliminary Approval. Intervenor also filed Arisohn's Declaration and numerous exhibits. In addition, Intervenor filed the Declaration of Michael J. Kaufman, the Declaration of Colin B. Weir and the Amended Declaration of Todd B. Hilsee.

On October 3, 2016, Plaintiffs and Defendants' each filed separate motions to dismiss Perez's complaint based on lack of standing as an intervenor, and for Rule 137 sanctions against Perez and his counsel. The Court ordered and subsequently held an evidentiary hearing on this motion.

On November 11, 2016, Perez agreed to withdraw and be replaced by three new intervenors. On November 23, 2016, Daron Jacobson ("Jacobson"), Meredith Price and Shannon Anderson filed a Petition to Intervene. Plaintiffs and Defendants opposed the motion. On July 25, 2017 the Court granted the Petition to Intervene in part and denied it in part, granting Jacobson leave to intervene. Jacobson has adopted Perez's objection to the Motion for Preliminary Approval.

Plaintiffs' Joseph and O'Brien's fully-briefed motion for class certification is presently before the Court.

STANDARD FOR CLASS CERTIFICATION

Under Illinois law, certification of a class action is proper where the court finds: (1) the class is so numerous that joinder is impracticable; (2) questions of fact or law common to the class predominate over questions affecting individual members; (3) the representative parties will fairly and adequately protect the interest of the class; and (4) the class action is an appropriate avenue of the fair and efficient adjudication of the controversy. 735 ILCS 5/2-801 (West 2014). The named plaintiffs in a class action have the burden of establishing the statutory prerequisites, and the court must find all prerequisites present before it can sanction the maintenance of the suit as a class action. *McCabe v. Burgess*, 75 Ill. 2d 457, 464 (1979). In assessing whether class certification should be granted, the allegations of the complaint are taken as true. *Ramirez v. Midway Moving & Storage, Inc.* 378 Ill. App. 3d 51, 53 (1st Dist. 2007). When reviewing the specific factors to certify a class, "such inquiry requires the court to look beyond the pleadings to understand the claims, defenses,

relevant facts, and applicable substantive law.” *Smith v. Ill. Cent. R.R. Co.*, 223 Ill. 2d 441, 449 (2006). “In deciding whether to certify a class, a court may consider ‘any matters of fact or law properly presented by the record, including the pleadings, depositions, affidavits, answers to interrogatories and any evidence that may have been adduced at hearings.’” *Brown v. Murphy*, 278 Ill. App. 3d 981, 989-90 (1st Dist. 1996). Furthermore, because of the relationship between Section 2-801 and Federal Rule of Civil Procedure 23, federal decisions interpreting Rule 23 are considered persuasive authority when interpreting and applying Section 2-801. *Avery v. State Farm Mut. Auto. Ins.*, 216 Ill. 2d 100, 125 (2005).

DISCUSSION

The Proposed Class

Plaintiffs define the proposed class as: “All persons who purchased a Monster HDMI Cable advertised as having a bandwidth exceeding 10.2 Gbps in the United States since August 25, 2011.” Pl. Cmplt., ¶ 39. Plaintiffs further define a proposed subclass as: “All persons who purchased from Best Buy a Monster HDMI Cable advertised as having a bandwidth exceeding 10.2 Gbps in the United States since August 25, 2011.” Pl. Cmplt., ¶ 39.

Numerosity

The first prerequisite under section 2-801 that a plaintiff must establish for the court to certify a class is that the class is so numerous that joinder of all members is impracticable. 735 ILCS 5/2-801(1) (West 2014). “There is no ‘magic number’ below which there cannot be a class, but above which there can.” *Wood River Area Dev. Corp. v. Germania Federal Sav. & Loan Ass’n*, 198 Ill. App. 3d 445, 450 (5th Dist. 1990). Thus, “[t]he number of class members is relevant, not determinative.” *Id.* However, as a general guideline, the numerosity prerequisite is typically satisfied if the proposed class is comprised of more than forty individuals. *Id.* On the other hand, the numerosity prerequisite is typically not satisfied if the proposed class is comprised of fewer than twenty-five individuals. *Id.* When the number of individuals in a proposed class is between twenty-five and forty, factors other than class size become more relevant to establish that joinder is impracticable. *Id.* “These additional factors include: (1) the class members’ geographical distribution; (2) the ability to identify and locate the class members; (3) the degree of knowledge and sophistication of the class members and their need for protection; (4) the amount of the claims of the individual class members; and (5) the nature of the cause of action.” *Id.* at 451.

While Plaintiffs acknowledge that the exact number of the class is unknown because the class members are retail purchasers. Best Buy’s retail sales data, according to Plaintiffs indicate that it alone sold more than 700,000 of the relevant Monster HDMI cables during the class period. In fact, argue Plaintiffs, Best Buy comprised seventy percent (70%) of Monster’s retail sales during the class period. When the sales of all retailers are considered, posit Plaintiffs, the estimated class size will exceed one million cables. As such, Plaintiffs conclude that the proposed class exceeds forty members. Given the estimated size of the class, contend Plaintiffs, joinder of all class members would be impractical. The Court agrees with Plaintiffs and finds that Plaintiffs satisfy the numerosity

requirement.

Predominance of Common Issues of Law or Fact

The second prerequisite under section 2-801 that a plaintiff must establish to certify a class is that there are questions of fact or law common to the class which predominate over any questions affecting only individual members. 735 ILCS 5/2-801(2) (West 2014). The test for commonality is disjunctive, thus requiring the presence of a common issue of law or fact. *Gordon v. Boden*, 224 Ill. App. 3d 195, 200 (1st Dist. 1991). To satisfy the commonality requirement, the proponent of class certification must show that the successful adjudication of the purported class representatives' individual claims will establish a right of recovery in other class members. *Bemis v. Safeco Ins. of Am.*, 407 Ill. App. 3d 1164, 1167 (5th Dist. 2011). Determining whether issues common to the class predominate over individual issues requires the court to identify the substantive issues that will control the outcome, assess which issues will predominate, and then determine whether these issues are common to the class. *S37 Mgmt., Inc. v. Advance Refrigeration Co.*, 2011 IL App (1st) 102496, ¶17. The issues common to the class predominate if a judgment in favor of the class members would decisively settle the entire controversy, and all that should remain is for other members of the class to file proof of their claim. *Id.* Once a court determines that common questions of law or of fact predominate among the class members, the existence of questions that apply only to individual class members will not defeat the predominating common question. *Id.*

Plaintiffs maintain that this case involves alleged misrepresentations that were printed on the packaging of Monster's HDMI cables. According to Plaintiffs, matters which involve labeling are well suited for class treatment because all putative class members were allegedly exposed to the same alleged misrepresentation, citing *Mullins v. Direct Digital, LLC*, 795 F.3d 654 (7th Cir. 2015). Plaintiffs assert that in this case the putative class members share several common questions of fact and law, including but not limited to: (1) whether the challenged advertising is or was false and misleading; (2) whether the challenged packaging contained fraudulent misrepresentations or omissions and was drafted to intentionally misled Plaintiffs and class members, (3) whether the challenged packaging violated the Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/1, et seq. (West 2014); (4) whether the challenged packing breached an express warranty related to the Monster HDMI cables; and (5) whether the challenged packaging breached implied warranties related to the Monster HDMI cables. Plaintiffs conclude that common issues of fact and law predominate over individual issues and certification for the class settlement is appropriate.

“Where liability is premised on a common practice uniformly applied . . . it is proper for the trial court to find the plaintiff's claims present questions of fact and law, common to the class, that predominate over questions affecting only individual members of the class.” *S37 Mgmt.*, 2011 IL App (1st) 102496, ¶ 32. Taking as true Plaintiffs' allegation that Defendants misrepresented material facts regarding the Monster HDMI cables, the Court finds that Plaintiffs have established the second prerequisite of section 2-801, that there are issues of fact or law common to the class, and that common questions predominate over questions affecting only individual members.

Adequacy of Representation

The third prerequisite under section 2-801 that a plaintiff must establish for the Court to certify a class is that the representative party will fairly and adequately protect the interest of the class. 735 ILCS 5/2-801(3) (West 2014). “The purpose of the adequate representation requirement is to ensure that all class members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim.” *Walczak v. Oryx Acceptance Corp.*, 365 Ill. App. 3d 664, 678 (2d Dist. 2006) (quoting *P.J.’s Concrete Pumping Serv. v. Nextel W. Corp.*, 345 Ill. App. 3d 992, 1004 (2d Dist. 2004)). “The test to determine the adequacy of representation is whether the interests of those who are parties are the same as those who are not joined.” *Id.* “Also, the named plaintiff’s interest must not appear collusive.” *Id.* “Additional factors courts consider include the extent to which the class’s interests and those of existing parties converge or diverge, the commonality of legal and factual positions, the practical abilities of existing parties in terms of resources and expertise, and the vigor with which existing parties represent the class’s interests.” *Id.*

Plaintiffs maintain that there is no conflict between Plaintiffs’ interest and the interest of the proposed class. In addition, assert Plaintiffs, counsel for the Class has extensive experience in litigating consumer class actions similar to the case at hand.

Intervenor does not challenge any of the factors for class certification, including this factor. However, in opposing the motion for Preliminary Approval, Intervenor argues that the class settlement was the product of collusion. As such, the Court will address this issue.

“Courts have long recognized that ‘settlement class actions present unique due process concerns for absent class members.’ One inherent risk is that class counsel may collude with the defendants, ‘tacitly reducing the overall settlement in return for a higher attorney’s fee.’” *In re Bluetooth Headset Products Liability Litigation*, 654 F.3d 935, 946-948 (9th Cir. 2011) (internal citations omitted). In addition, prior to formal class certification there is an even greater potential for a breach of fiduciary duty owed to the class during settlement. *Id.* Accordingly, such agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required before securing the court’s approval as fair. *Id.*

Plaintiffs maintain that the proposed settlement is the result of an arms-length and protracted negotiations among the parties which included the exchange of relevant information, including sales data, before attending the mediation.

Intervenor, on the other hand, maintains that there exists the presence of collusion because there is a reverse auction,³ citing *Reynolds v. Beneficial National Bank*, 288 F.3d 277, 282, (7th Cir. 2002) and several treatises. In support of that contention, Perez argues that: (1) Joseph’s complaint was filed only a few weeks after Perez filed his complaint; that (2) Joseph’s complaint copied

³ Intervenor cites Dean Kaufman’s Declaration in support of this claim. The Court, however, has stricken Dean Kaufman’s Declaration will not consider it.

generously from his complaint; that (3) Defendants chose not to remove Joseph's case to federal court where it could have been transferred to the Northern District of California; that (4) Defendants failed to advise either Perez or the federal judge in the California matter about this case; that (5) the Joseph parties have settled this case without any formal discovery; and that (6) the parties in this case seek to settle this matter on a nationwide basis.

Plaintiffs reply that the evidence shows that the proposed settlement is the result of extensive negotiations between the parties, including formal discovery, formal mediation with and follow-up negotiations with the Hon. Richard J. Billik, Jr. (Ret).

A reverse auction is a practice whereby the defendants in a series of class actions pick the most ineffectual class lawyers to negotiate a settlement with in the hope that the district court will approve a weak settlement that will preclude other claims against the defendant, citing *Reynolds v. Beneficial National Bank*, 288 F.3d 277, 282, (7th Cir. 2002). The gravamen of Intervenor's contention is that Defendants opted to settle with Joseph's counsel rather than Intervenor's counsel because Joseph's counsel as between the two, is weak. There are several problems with that proposition. First and foremost, Intervenor presents no evidence in support of this proposition. The fact that Perez's and Joseph's complaints bear some similarities is not, in itself, evidence of collusion. Nor is the fact that the case settled without formal discovery. Second, taking Intervenor's contention to its logical extension, where there are parallel class actions "none of the competing cases could settle without being accused by another of participating in a collusive reverse auction." *Rutter v. Willbanks Corp., v. Shell Oil Co.*, 314 F.3d 1180, 1189 (10th Cir.2002). In sum, the Court finds Intervenor's argument as to collusion unpersuasive and unsupported by any evidence.

Moreover, the Court finds that the Plaintiffs' interests and those of the class are the same and that class counsel is experienced in litigating consumer class action cases. As such, the Court finds that Plaintiffs have established the third prerequisite of section 2-801, that Plaintiffs will fairly and adequately protect the interest of the proposed classes.

Appropriateness

The fourth prerequisite under section 2-801 that a plaintiff must establish for the Court to certify a class is that the class action is an appropriate method for the fair and efficient adjudication of the controversy. 735 ILCS 5/2-801(4) (West 2014). In deciding whether a class action is an appropriate method for fairly and efficiently adjudicating a controversy, "a court should consider whether 'the class action (1) can best secure the economies of time, effort, and expense and promote a uniformity of decision or (2) can accomplish the other ends of equity and justice that class actions seek to obtain.'" *Hall*, 376 Ill. App. 3d at 833 (quoting *Clark v. TAP Pharm. Prods., Inc.*, 343 Ill. App. 3d 538, 552 (5th Dist. 2003)). Additionally, where a court finds that the movant has established the first three prerequisites of section 2-801, the fourth prerequisite of fair and efficient adjudication is typically fulfilled as well. *Id.*

Plaintiffs assert that maintenance of a class action will lead to efficient adjudication of the

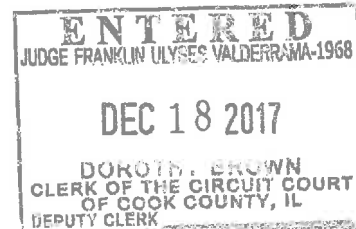
claims of the members of the proposed classes. On the other hand, assert Plaintiffs, if the case does not proceed on a class-wide basis, it will be unlikely that class members will be able to obtain redress on an individual basis or that Defendants would change their conduct. Plaintiffs note that the HDMI cables are relatively low-priced items. Thus, reason Plaintiffs, the amount in controversy for individual claims is low and it is unlikely that a consumer would incur the significant costs associated with litigation to secure such small recovery.

As the Court found that Plaintiffs satisfied the first three prerequisites of section 2-801, a presumption thus exists that the fourth prerequisite has been fulfilled as well. Accordingly, the Court finds that Plaintiffs have established the fourth and final prerequisite of section 2-801 that maintenance of a class action is an appropriate method for the fair and efficient adjudication of the controversy.

CONCLUSION

In conclusion, having found that Plaintiffs satisfied all the prerequisites for class certification, the motion for class certification is granted.

ENTERED:



Franklin U. Valderrama
Judge Presiding

DATED: December 18, 2017