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February 11, 2019

Via ECF & Facsimile:

The Honorable Naomi Reice Buchwald
United States District Court for the Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Moeller v. Advance Magazine Publishers Inc. d/b/a Condé Nast*,
Case No. 15-cv-05671-NRB (S.D.N.Y.)

Dear Judge Buchwald:

I write on behalf of Plaintiff Elizabeth Moeller (“Plaintiff”) pursuant to Rule 2.E.1 of your Honor’s Individual Practices, to summarize Plaintiff’s Motion For Final Approval Of Class Action Settlement (the “Motion”).

On October 24, 2018, the Court preliminarily approved the Class Action Settlement between Plaintiff and Defendant Advance Magazine Publishers, Inc. d/b/a Condé Nast (“Defendant” or “Condé Nast”) and directed that notice be sent to the Settlement Class. Dkt. 130. The settlement administrator, JND Legal Administration (“JND”) has implemented the Court-approved notice plan and direct notice has reached 98.9% of the certified Settlement Class. The reaction from the Class has been overwhelmingly positive. Specifically, of the approximately 1,155,538¹ Settlement Class Members, zero objected, and only 4 requested to be excluded.² As of February 7, 2019, 101,022 class members have filed claims, and that number will continue to grow as Settlement Class Members have until 45 days after the date of entry of Final Judgment to file claims. Thus, the Court should have no hesitation in granting final approval to the unopposed Settlement.

The Settlement was the product of a mediator’s proposal following approximately three years of litigation. It provides for substantial *pro rata* cash payments to Settlement Class Members, which Class Counsel estimates will be approximately \$75 per claimant. The Settlement creates a non-reversionary \$13.75 million cash common fund, which will be used to pay all approved claims by Settlement Class Members, notice and administration expenses, a Court-approved incentive award to Plaintiff, and attorneys’ fees, costs, and expenses to Class

¹ The number of class members was initially estimated as approximately 1,158,089 persons. Defendant provided JND with a list of 1,158,377 persons that resulted in a list containing 1,155,538 unique members of the Settlement Class after duplicates were removed. Declaration of Jennifer M. Keough Regarding Settlement Administration (“Keough Decl.”) ¶¶ 7-8.

² The deadline to object or opt-out of the Settlement was January 26, 2019. Dkt. 130 ¶¶ 16, 21.

Counsel to the extent awarded by the Court. And, as detailed in the Introduction to the Memorandum of Law In Support of Plaintiff's Motion ("Plf.'s Br."), the Settlement is well within the range of settlements that have been finally approved by other courts in Michigan Preservation of Personal Privacy Act, M.C.L. §§ 445.1711-1715 ("PPPA") class actions, and, in fact, exceeds the total value of all but one such settlement. *See* Plf.'s Br. at 1-2.

Before granting final approval, the Court must find that class certification for settlement purposes if appropriate. The Court's Preliminary Approval Order provisionally certified a class for settlement purposes of: "all Persons with a Michigan street address who subscribed to a Condé Nast Publication to be delivered to a Michigan street address between July 20, 2009 and July 30, 2016." Dkt. 130 ¶ 9 (the "Settlement Class"). Plaintiff now moves for final certification of that Settlement Class.

As discussed in Plaintiff's Motion, the proposed Settlement Class meets all the requirements for class certification, and Defendant does not oppose provisional certification. *See* Plf.'s Br. at Argument § I. Pursuant to Fed. R. Civ. P. 23(a), the Court should certify the Settlement Class as: (1) there are more than 1.1 million class members; (2) Plaintiff alleges that the common contention on which the claims of all class members depends is that Condé Nast disclosed each of its customers' protected personal reading information to third parties in violation of the PPPA; (3) Plaintiff alleges that Condé Nast's disclosure of her subscription information is not a one-off situation unique to her, but rather part of Condé Nast's alleged business practice of disclosing its customers' subscription information to third parties without consent; and (4) Plaintiff – like each and every one of the Settlement Class Members – is a Michigan customer that purchased a magazine subscription from Condé Nast and then allegedly had her subscription information disclosed to third parties without her consent. *See id.* §§ I.A-D. The proposed Settlement Class also satisfies the Second Circuit's ascertainability requirement because the Class is defined using objective criteria. *See id.* § I.E. In addition, Plaintiff meets the requirements of Fed. R. Civ. P. 23(b)(3) as: (1) common factual allegations and legal theories predominate over any variations among class members; and (2) a class action is a superior mechanism. *See id.* § I.F. Thus, the Court should certify the Settlement Class, as other courts have, including courts in this District, in other PPPA cases. *See, e.g., Ruppel v. Consumers Union of United States, Inc.*, 7:16-cv-02444, Dkt. 111 (S.D.N.Y. Dec. 4, 2018); *Taylor v. Trusted Media Brands, Inc.*, 7:16-cv-01812, Dkt. 87 (S.D.N.Y. Feb. 01, 2018); *Coulter-Owens v. Time, Inc.*, 308 F.R.D. 524, 537 (E.D. Mich. 2015) (granting plaintiff's contested class certification motion in a PPPA case).

Before granting final approval, the Court must also find that the notice plan comports with due process and Rule 23. At preliminary approval, the Court approved the Parties' proposed Notice Plan, finding it met the requirements of Rule 23 and due process. *See* Dkt. 130 ¶ 12. As detailed in the Motion, the Plan has been fully implemented by JND, and direct notice reached 98.9% of the Settlement Class. The summary notices – exemplars of which are attached as Exhibits B and C to the Declaration of Jennifer Keough – directed Settlement Class Members to the Settlement Website, where they were able to submit claims online; access important court filings, including the Motion for Attorneys' Fees and all related documents; and see deadlines and answers to frequently asked questions. Given the broad reach of the notice, and the comprehensive information provided, the requirements of due process and Rule 23 are easily met.

Finally, in evaluating a class action settlement, courts in the Second Circuit consider the nine factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974). The *Grinnell* factors are: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *Id.*³

As detailed in Plaintiff's Motion, all of the *Grinnell* factors weigh in favor of approval. *See* Plf.'s Br. at Argument § III. The proposed Settlement: (1) is the product of arms'-length negotiations between the Parties; (2) occurred after several years of litigation, including document and deposition discovery, and summary judgment briefing; (3) involved several complicated issues of law and fact; (4) was well received by the Settlement Class as evidenced by there having been zero objections, only 4 requests for exclusion, and 101,022 claims, to date; (5) provides substantial cash recovery of approximately \$75 for each claimant; and (6) avoids the risks associated with continued litigation, including a potential adverse decision on the Parties' pending summary judgment motions.

For the reasons set forth above, Plaintiff respectfully requests that the Court grant her Motion for Final Approval of the Settlement and enter the Final Approval Order in the form submitted herewith.

Very truly yours,



Joseph I. Marchese

CC: All counsel of record (via ECF)

³ Effective December 1, 2018, Rule 23(e) was amended. The 2018 amendment to Rule 23(e) provides factors for the Court to consider for approval of a proposed class action settlement. *See* Fed. R. Civ. P. 23(e)(2). The new Rule 23(e)(2) factors overlap with the Second Circuit's *Grinnell* factors.