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ANTHONY CELESTIN, on behalf of himself and all others similarly situated, Plaintiff, v. AVIS BUDGET GROUP, INC. and BUDGET RENT A CAR SYSTEM, INC., Defendants.	SUPERIOR COURT OF NEW JERSEY MERCER COUNTY LAW DIVISION DOCKET NO. MER-L-000102-19

PLAINTIFF'S BRIEF IN SUPPORT OF UNOPPOSED MOTION TO GRANT PRELIMINARY APPROVAL TO PROPOSED CLASS ACTION SETTLEMENT, TO APPROVE DISTRIBUTION OF PROPOSED SETTLEMENT NOTICE AND TO SET A HEARING DATE FOR A FORMAL FAIRNESS HEARING ON PROPOSED SETTLEMENT

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Summary of Relief Sought

Pursuant to New Jersey Court Rule 4:32-1(e), Plaintiff hereby moves for an order:

1) Granting preliminary, non-binding approval of the proposed class action settlement memorialized in the Class Action Settlement Agreement and Release ("Settlement Agreement") attached hereto as Attachment 1;

2) Granting preliminary certification of the proposed settlement class;

3) Approving the proposed settlement notice and claim form (Exhibits A and B to Settlement Agreement) and the proposed manner of class notice distribution; and

4) Scheduling a formal fairness hearing on whether to grant final, binding approval of the proposed class action settlement seventy-five (75) days from the date of preliminary approval (**projected date: August 25, 2021**).

Introduction

This is a class action, brought under New Jersey law, on behalf of a class of New Jersey citizens who, during the class period, rented a motor vehicle from Budget Rent A Car and were charged an undisclosed "cleaning fee." Plaintiff alleges that Defendants' policy of charging this cleaning fee to their customers, including Plaintiff and the class, violated New Jersey law because the cleaning fee was not disclosed in the "Rental Agreement" signed by Defendants' customers, but rather was first disclosed in a "Rental Terms and Conditions" document that was not provided to Defendants' customers until after they had already signed the Rental Agreement. Plaintiff claims that this alleged uniform policy violates the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. § 56:8-1, et seq., and the New Jersey Truth in Consumer Contract, Warranty and Notice Act ("TCCWNA"), N.J.S.A. §§ 56:12-14, et seq., and further constitutes a breach of contract and breach of the implied covenant of good faith and fair dealing. Plaintiff's class complaint seeks money damages on behalf of himself and the class and injunctive relief to end Defendants' alleged unlawful policies.

Defendants vehemently deny the claims of Plaintiff and the class, deny any wrongdoing or liability of any kind, and assert that they fully complied with New Jersey law. Despite this, after the parties had begun discovery and had conducted significant motion practice – including a motion to dismiss by Defendants, two motions to stay and compel arbitration by Defendants, an appeal of the motion to compel arbitration, a motion for class certification by Plaintiff, and a motion for partial summary judgment by Plaintiff – the parties concluded that settlement was desirable in order to avoid the time, expense, and inherent uncertainties of protracted litigation and to resolve finally and completely all pending and potential claims of Plaintiff and the class members which were or could have been asserted in the litigation. Consequently, the parties engaged in extensive settlement discussions and, after lengthy and contentious arms-length negotiations between the parties, the proposed class action settlement detailed in the Settlement Agreement ultimately was reached, subject to Court approval.

For the following reasons, the proposed class action settlement should be given preliminary, non-binding approval; the proposed settlement class should be given preliminary certification; the proposed claim form and notice of the proposed settlement should be approved and distributed to the settlement class; and a public fairness hearing on whether to grant final, binding approval of the proposed settlement should be scheduled.

Summary of the Proposed Settlement

As part of the proposed settlement, the parties have agreed, solely for purposes of the settlement, to certification of a Settlement Class defined as follows:

> **All New Jersey citizens who, between October 9, 2012 and the date of preliminary approval, rented a motor vehicle from Budget Rent A Car, returned said vehicle to a New Jersey facility, and paid a Cleaning Fee.**

Under the proposed settlement, Defendants will establish a Settlement Fund of $125,000.00 in cash for payment of the following: (i) valid claims for cash benefits submitted by Class Members; (ii) the Notice and Other Administrative Costs actually incurred by the Settlement Administrator; (iii) check distribution costs; and (iv) an Incentive Award to the Class Representative, not to exceed $5,000, subject to Court approval. Each class member shall be entitled to submit a claim for a cash payment in the amount of $250.00. A maximum of one claim, submitted on a single Claim Form, may be submitted by each Class Member. A claimant must provide the information requested in the Claim Form, and may complete the Claim Form either online or in hard copy mailed to the Settlement Administrator. If the dollar value of valid class member claims exceeds the amount available in the Settlement Fund, after payment of Administrative Costs and the Incentive Award, payments to Class Members from the Settlement Fund shall be reduced on a pro-rata basis, such that the total available cash will satisfy all claims. All payments shall be distributed from the Settlement Fund within one hundred (100) days of when this Settlement becomes final. Any cash remaining in the Settlement Fund, after payment of all timely claims of Class Members, the Administrative Fee of the Settlement Administrator, and the Incentive Award to the Class Representative as approved by the Court, shall revert back to the Defendants.

The Parties have agreed that Angeion Group shall be the Settlement Administrator, subject to Court approval, to help implement the terms of the proposed Settlement Agreement and process claims. The Settlement Administrator shall be responsible for administrative tasks, including: (a) notifying the appropriate state officials about the Settlement, if any; (b) distributing and publishing the Class Notice and Claim Form to class members; (c) answering inquiries from Class Members and/or forwarding such written inquiries to class counsel; (d)

receiving and maintaining on behalf of the Court and the parties any Class Member correspondence regarding Requests for Exclusion from the Settlement; (e) establishing the Settlement Website that posts the Class Notice and Claim Form and other related documents as directed by class counsel; (f) receiving and processing Claims and distributing payments to class members; and (g) otherwise assisting with implementation and administration of the Settlement Agreement terms. The actual costs and expenses of the Settlement Administrator will be paid from the Settlement Fund.

Pursuant to the class counsel's usual practice, class counsel refused to discuss attorneys' fees during settlement negotiations until after agreement had been reached on the substantive relief for the class. Once agreement on the substantive relief for the class had been reached, the parties engaged in a second round of contentious, arms-length bargaining which culminated in an agreement as to proposed attorneys' fees and litigation costs as follows. Class counsel shall petition the Court (and Defendants have agreed not to oppose) for an award of attorneys' fees not to exceed $275,000.00, which shall be paid by Defendants separate and apart from the Settlement Fund, subject to Court approval, and thus will not lessen or reduce in any way the payments to Class Members.

Finally, the Parties recognize that the named Plaintiff has conferred a benefit on his fellow class members, and has performed services in securing that benefit, which include bringing the dispute to class counsel, meeting numerous times with class counsel, and gathering documents needed to prosecute the case. Therefore, the Parties have also agreed that named Plaintiff and Class Representative Tony Celestin shall receive a one-time Incentive Award in the amount of Five Thousand Dollars ($5,000.00) to be paid from the Settlement Fund, subject to Court approval.

I. THE PROPOSED CLASS ACTION SETTLEMENT SHOULD BE GRANTED PRELIMINARY APPROVAL.

A. The Standard for Preliminary Approval of a Proposed Class Settlement.

New Jersey state courts have long encouraged settlement of lawsuits, including the settlement of class actions. See Schmoll v. J.S. Hovnanian & Sons, LLC, 2006 WL 1520751 at *2 (N.J. Super. Ch. 2006), aff'd 394 N.J. Super. 415 (App. Div. 2007):

> **As in all cases, our courts have long subscribed to the policy that encouraged the settlement of lawsuits between the parties, inclusive of class action proceedings.**

New Jersey state courts have also adopted federal procedures, and have relied upon federal case law, in evaluating and approving proposed class action settlements. See id. at *3:

> **The standards for approval of class actions that have been developed in the federal courts have been followed by our state courts.**

Approval of a proposed class action settlement takes place in two stages. See Jones v. Commerce Bancorp, Inc., 2007 WL 2085357 at *2 (D.N.J. 2007):

> **Review of a proposed class action settlement is a two-step process: preliminary approval and a subsequent fairness hearing.**

See also Manual for Complex Litig., Third, § 30.41, at 236-37 (1995):

> **Approval of class action settlements involves a two-step process. First, counsel submit the proposed terms of settlement and the court makes a preliminary fairness evaluation.**
>
> * * *
>
> **If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment to class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice under Rule 23(e) be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement.**

At the preliminary approval stage, the court is not asked to make a binding determination as to whether the proposed class action settlement will ultimately be approved. See Jones, 2007 WL 2085357 at *2 (**"Preliminary approval is not binding, and it is granted unless a proposed settlement is obviously deficient."**) (citations omitted). See also In re Inter-Op Hip Prosthesis Liab. Litig., 204 F.R.D. 330, 350 (N.D. Ohio 2001), stating on a preliminary approval application that:

> **[T]he Court, at this juncture, is not obligated to, nor could it reasonably, undertake a full and complete fairness review.**

Rather, during the preliminary approval process, the court makes a cursory review of the proposed settlement to determine if there any "glaring deficiencies" in the proposal. See West v. Circle K Stores Inc., 2006 WL 1652598 at *9 (E.D. Cal. 2006), stating that on an application for preliminary approval of a proposed class action settlement:

> **[T]he court will simply conduct a cursory review of the terms of the parties' settlement for the purpose of resolving any glaring deficiencies before ordering the parties to send the proposal to class members.**

Thus, at the preliminary approval stage, the court is not asked to determine whether the proposal will ultimately be approved, but rather whether it might possibly be approved in the future, after additional briefing, at a final hearing open to the public. In re Nasdaq Mkt. Makers Antitrust Litig., 176 F.R.D. 99, 102 (S.D.N.Y. 1997) (quoting Manual for Complex Litig., 3d, § 30.41 (West 1995):

> **Where the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval, preliminary approval is granted.**

See also Gautreaux v. Pierce, 690 F.2d 616, 621 n. 3 (7th Cir. 1982) (noting that on a preliminary approval application the court is merely asked to **"determine whether the proposed settlement**

is within the range of possible approval."); In re Prudential Secs. Inc. Ltd. P'ships, 163 F.R.D. 200, 209 (S.D.N.Y. 1995) (describing the court's function on an application for preliminary approval as a limited search for **"obvious deficiencies"** and **"unduly preferential treatment of class representatives or of segments of the class"**).

Accordingly, the first stage of the class settlement approval process – the preliminary approval stage – is not binding. Rather, it merely: (1) triggers the mechanism for notice to potential class members; (2) sets in motion a process that will culminate in a full and final public fairness hearing (at which time the question of fairness is reviewed de novo); and (3) establishes a procedure for class members to "opt out" or register objections to the proposed settlement with the court. Id.

After notice of the proposed class action settlement is given to the prospective class members, the second stage of the class settlement approval process takes place: the formal fairness hearing. At the formal fairness hearing, the court, inter alia, entertains any objections by putative class members to the treatment of the litigation as a class action and/or the terms of the settlement. See Diaz v. Trust Territory of Pac. Islands, 876 F.2d 1401, 1408 (9th Cir. 1989). Following that formal fairness hearing, the court makes a de novo determination as to whether the parties should be allowed to settle a class action pursuant to the terms agreed upon. West, 2006 WL 1652598 at *9.

B. The Proposed Class Action Settlement Meets the Standard for Preliminary, Non-Binding Approval.

At the current time, the parties are moving **only** for a non-binding, preliminary approval of the proposed class action settlement, which is memorialized in the accompanying Settlement

Agreement. See Attachment 1.[1] Specifically, the parties are seeking court permission to distribute the proposed class settlement notice and claim form informing the class of the terms of the proposed settlement, and notifying them of their rights (1) to "opt out" of the proposed class, (2) to object to the proposed settlement, and/or (3) to appear and be heard at a formal fairness hearing. The parties are also asking the Court to schedule a formal fairness hearing on the proposed settlement seventy-five (75) days from the date of preliminary approval (suggested date on or after **August 25, 2021**), which class members may attend and at which the parties will present more full and detailed arguments as to why they believe the proposed settlement should be granted final approval.[2] It is submitted that the proposed class action settlement meets the standard for preliminary approval as set forth in the above-cited authorities.

The proposed settlement is also an outstanding result for the class in light of the risks of continued litigation. The Court is no doubt well aware of the amount of contested motion practice which this matter has generated thus far – including a motion to dismiss, two motions to compel arbitration and an appeal thereof, a motion for class certification, and a motion for partial summary judgment – and, if litigation continues, more motions will no doubt follow. Further, the pending motions for class certification and for partial summary judgment involve significant risk to all parties, depending on their outcome. Moreover, Defendants have made no bones about their plans, if this matter proceeds in litigation, to appeal any adverse rulings by this Court and/or the result of any adverse result at trial (and class counsel would no doubt do the same). While

[1] While only preliminary approval is being sought here, the parties will show at the final hearing that the settlement is fair and reasonable, was arrived at by arms-length negotiations, and represents a fair value and valid compromise in light of the complexity, expense, and duration of the litigation and the risks involved in establishing liability and obtaining certification of the class.

[2] The parties will submit more detailed briefs relating to the proposed class action settlement and the request for attorney's fees and costs in advance of that formal fairness hearing.

class counsel believes that the class would ultimately win the pending motions, win at trial, and win on any appeal, there is no doubt that such motion practice, trial, and appeal would present a significant risk to the class and would significantly delay any class recovery, with no corresponding benefit to the class beyond what is being offered in settlement now. Put simply, any additional time spent litigating this matter would only increase the amount of attorney time and litigation costs spent, and thus increase the size of class counsel's lodestar and the defense costs; none of which will benefit the class. Accordingly, Plaintiff respectfully requests that the Court grant preliminary approval to the proposed settlement and allow notice of the proposed settlement to be distributed and published.

C. The Proposed Form of Notice and Claim Form to the Settlement Class and the Plan of Notice Distribution Should Be Approved.

The plan of notice distribution under the proposed settlement is as follows. The Settlement Administrator initially will send via U.S. Mail a Class Notice (Exhibit B to the Settlement Agreement) and Claim Form (Exhibit A to the Settlement Agreement) to Class Members who are identified by Defendants, at the addresses set forth in Defendants' books and records. The Class Notice will inform Class Members of (i) the preliminary approval of the Settlement; (ii) the scheduling of the Final Approval Hearing; and (iii) information on how Class Members may submit a Claim Form in order to make a claim or opt out of or object to the settlement if they so choose. Should the Settlement Administrator receive any undelivered Notices, it will conduct one skip trace or postal look-up to search for a new address for said class member and resend the Notice to any newly found class member address.

The Settlement Administrator shall also be responsible for creating a settlement website www.avisNJcleaningfeesettlement.com, which will contain information describing the settlement and will contain the Class Notice (Exhibit B to Settlement Agreement), the Claim Form (Exhibit

A to Settlement Agreement), information regarding Class Counsel's contact information, a copy of the Settlement Agreement and a copy of Plaintiffs' Complaint in the action, as filed in the Superior Court of New Jersey, Mercer County. The Class Notice and the Claim Form will also be posted by Class Counsel in a prominent location on Class Counsel's website: www.denittislaw.com.

It is submitted that this notice distribution plan is more than sufficient. Mailing of notices by U.S. Mail is considered the gold standard for class notice. See Good v. Am. Water Works Co., Civil Action No. 2:14-01374, 2016 U.S. Dist. LEXIS 135304, at *34 (S.D. W. Va. Sep. 30, 2016) (calling **"direct mail notices"** the **"gold standard for class notice"**).

It is further submitted that the proposed forms of notice and claim form are fair, adequate and reasonable. The Class Notice contains ample information regarding how to find and obtain the Claim Form, and gives class members a fair and reasonable opportunity to consider the proposed settlement, to "opt out" of the settlement if they chose, and/or to raise objections thereto. This includes: (1) appropriate information regarding the litigation, the class, the class representative, class counsel, and the essential terms of the settlement agreement; (2) appropriate information about counsel's forthcoming application for attorneys' fees; (3) appropriate information about how to participate in, or opt out of, the settlement; (4) appropriate information about this Court's final approval procedure; (5) appropriate information about how to object to the proposed settlement; and (6) appropriate information as to how to submit a valid claim.

II. THE COURT SHOULD PRELIMINARILY CERTIFY A SETTLEMENT CLASS.

As the Court is no doubt aware, Plaintiff filed a motion for class certification in this matter on August 13, 2020. The memorandum of law submitted by Plaintiff in support of that motion sets forth, in great detail, the reasons why the New Jersey requirements for class

certification are met in this case, and why a class should be certified herein. That memorandum is incorporated herein and summarized below. Defendants, while not conceding that a contested class should be certified, have nevertheless agreed to the certification of a settlement class defined as:

> **All New Jersey citizens who, between October 9, 2012 and the date of preliminary approval, rented a motor vehicle from Budget Rent A Car, returned said vehicle to a New Jersey facility, and paid a Cleaning Fee.**

This proposed settlement class should be granted preliminary certification for the following reasons.

A. New Jersey Law Strongly Favors Class Certification.

1. New Jersey Law Requires That a Class Must Be Certified Unless There Is a Clear Showing That Certification Is Improper.

New Jersey state courts apply a more liberal standard to class certification than the federal courts. Indeed, unlike the federal courts and the courts of virtually every other state, a New Jersey court must certify a class unless there has been a clear showing that class certification is either infeasible or improper. See Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 103 (2007) (**"Accordingly, a class action 'should lie unless it is clearly infeasible.'"**); Delgozzo v. Kenny, 266 N.J. Super. 169, 179 (App. Div.1993) (**"a class action 'should be permitted unless there is a clear showing that it is inappropriate or improper'"**); Lusky v. Capasso Bros., 118 N.J. Super. 369, 373 (App. Div.), cert. denied, 60 N.J. 433 (1972) (**"The class action rule should be liberally construed, and such an action should be permitted unless there is a clear showing that it is inappropriate or improper."**); Gallano v. Running, 139 N.J. Super. 239, 244 (Law Div. 1976) (**"In the absence of a 'clear showing' that a class suit is improper, this court must certify the instant action as a class suit in accordance with the liberal construction that must be afforded the rule."**); Cold Indian Springs Corp. v.

Ocean, 154 N.J. Super. 75, 89-90 (1977) (same); Daniels v. Hollister Co., 440 N.J. Super. 359, 363 (App. Div. 2015) (**"In short, as the Court made clear in Iliadis, a class action 'should lie unless it is clearly infeasible.'"**). See also Pressler, Current N.J. Court Rules, Cmt. R. 4:32:

> **The rule is required to be liberally construed and the class action permitted to be maintained unless there is a clear showing that it is inappropriate or improper.**

In the case at bar, there can be no showing that class certification is improper or infeasible. Rather, like many certified New Jersey class actions, this case involves allegations of a uniform policy and common course of conduct by Defendants directed to their customers and seeks to apply uniform principles of law to that conduct.

2. All Factual Allegations Pleaded in Plaintiff's Complaint Must Be Accepted as True on a Class Certification Motion in New Jersey State Court.

Unlike the federal courts, a New Jersey state court considering a motion to certify a class under New Jersey Court Rule 4:32 must accept all factual allegations pleaded in a plaintiff's complaint as true. This mandate was most recently affirmed by the New Jersey Supreme Court in Lee v. Carter Reed, 203 N.J. 496, 505 (2010), where the Court held:

> **In deciding whether to grant or deny class certification, a trial court does "not decid[e] the ultimate factual issues" underlying the plaintiff's cause of action. Rather, at the class-certification stage, a court must "accept as true all of the allegations in the complaint."** (emphasis added)

Indeed, in Lee, the New Jersey Supreme Court reversed the Appellate Division and the trial court precisely because the lower courts had failed to accept the facts pleaded in the class complaint as true in deciding class certification. See id. In explaining the error of the Appellate Division and the trial court, the New Jersey Supreme Court made clear that New Jersey jurisprudence required that the factual allegations pleaded in the complaint must be accepted as true on a motion for class certification, stating at 203 N.J. at 505:

> **We now reverse. For purposes of the class-certification motion, the trial court and Appellate Division failed to accept as true the allegations asserted in plaintiff's complaint or to view the pleadings in a light favorable to plaintiff, as required by our jurisprudence.** (emphasis added)

Nor was Lee the first time the New Jersey Supreme Court directed lower New Jersey courts that they must accept all factual allegations pleaded in the plaintiff's complaint as true in deciding whether to grant class certification. In Int'l. Union of Operating Eng'rs Local No. 68 Welfare Fund v. Merck & Co., 192 N.J. 372, 376 (2007), for example, the New Jersey Supreme Court held: **"We accept as true all of the allegations in the complaint in light of the fact that we are considering the issues in the context of a challenge to class certification."** Indeed, these principles have been black letter law in New Jersey for decades. See Delgozzo, 266 N.J. Super. at 181 (holding that in deciding a class certification motion **"The court is bound to take the substantive allegations of the complaint as true…"**); Varacallo v. Mass. Mut. Life Ins. Co., 332 N.J. Super. 31, 42 (App. Div. 2000) (same); Hearn v. Rite Aid Corp., 2012 WL 996603 at *2 (App. Div. 2012) (**"At the certification stage, the court is not entitled to decide the ultimate factual issues but must accept as true all the allegations in the complaint."**) (emphasis added); Daniels, 440 N.J. Super. at 362-63 (**"Notwithstanding defendant's factual assertions, we review an order granting class certification by according plaintiff 'every favorable view' of the complaint. Accordingly, we proceed on the assumption that the facts contained in the complaint are true"**) (emphasis added) (citations omitted). See also Joseph A. Osefchen & Philip Stephen Fuoco, "Leveling the Playing Field in the Garden State: A Guide to New Jersey Class Action Case Law," 37 Rutgers L.J. 399, 425-426 (2006):

> **While New Jersey courts may consider the type of claims set forth in the class complaint, the actual substantive factual allegations of the class complaint must be accepted as true for the purpose of determining whether a class should be certified. It is the claims and**

> **factual allegations set forth in the class complaint that determine whether the requirements of New Jersey Court Rule 4:32-1 are met, not whether a plaintiff has proven those claims and allegations or whether a defendant denies them. For this reason, there is no need for New Jersey courts to conduct some sort of evidentiary hearing to determine whether to certify a class.** (footnotes omitted) (emphasis added).

There is no question that the factual allegations set forth in the complaint, which allege a uniform policy and common course of conduct by Defendants, meet the requirements for class certification by a wide margin.

B. <u>The Prerequisites of Certification Under 4:32-1(a) Are Met.</u>

Under New Jersey Court Rule 4:32-1(a), the party seeking class certification must satisfy four prerequisites: numerosity, commonality, typicality, and adequacy of representation. In addition, the party seeking class treatment must also satisfy one of three alternatives under Rule 4:32-1(b). Accepting the factual allegations of the complaint as true for the purposes of this class certification motion, the requirements for certification are clearly met in the case at bar.

1. <u>Rule 4:32-1(a)(1) Numerosity.</u>

Numerosity requires that the class be so large that joinder of all members would be "impracticable." N.J. Ct. R. 4:32-1(a)(1). It is well-settled that a class size of 40 or more members satisfies the "numerosity" requirement. <u>See</u> <u>Stewart v. Abraham</u>, 275 F.3d 220, 226-227 (3d Cir.2001): **"No minimum number of plaintiffs is required to maintain a suit as a class action, but generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met."** <u>See</u> <u>also</u> 1 H. Newberg, Newberg on Class Actions 2d, §3.05 at 142 (1985): **"The difficulty in joining as few as 40 class members should raise a presumption that joinder is impracticable, and the plaintiff whose class is that large or larger should meet the test of Rule 23(a)(1) on that fact alone."**

It is not necessary that the exact number of class members be known at the time of class certification or that the members of the class be identified by name at the time of certification. See Kronisch v. Howard Sav. Inst., 133 N.J. Super. 124, 132 (Law Div. 1975) (**"It is not necessary that the exact numbers comprising the class be specified or that the members be identified."**); Gallano v. Running, 139 N.J. Super. 239, 245 (Law Div. 1976) (**"This court makes no effort to determine the exact number of members nor their identity, since such an exercise goes well beyond the court's duties so long as the class itself is well defined."**).

Indeed, at the class certification stage, the numerosity element may be satisfied by good faith estimates based on common sense. See Vinh Nguyen v. Radient Pharm. Corp., 2012 WL 5947028 at *4 (C.D. Cal. 2012) (**"where the exact size of the proposed class is unknown, but general knowledge and common sense indicate it is large, the numerosity requirement is satisfied."**); Ingram v. Corporate Receivables, Inc., 2003 WL 21982152 at *2 (N.D. Ill. 2003):

> **[T]he precise number of putative class members need not be known. A plaintiff can offer good faith estimates of class size if the specific number of class members may be difficult to assess, and the Court may use "common sense assumptions" to determine the validity of those estimates.**

In the case at bar, the proposed class is clearly defined according to objective criteria, and informal discovery from Defendants has revealed that there are approximately 850 class members. Thus, the size of the proposed settlement class clearly exceeds the 40 members needed to satisfy Rule 4:32-1(a)(1)'s "numerosity" requirement.

2. Rule 4:32-1(a)(2) Commonality.

Every issue in a proposed class action does not need to be common for class certification to be proper. Rather, there need be only one common issue of law or fact in an entire case for the "commonality" prerequisite to be met. See Delgozzo, 266 N.J. Super. at 185 (noting that

"a single common question is sufficient" to meet Rule 4:32-1(a)(2) commonality); Gurriere v. Bloomfield Condo. Assocs., LLC, 2015 N.J. Super. Unpub. LEXIS 2137, *53 (Ch. Div. Aug. 28, 2015) (**"New Jersey has followed the approach under the Federal Rule which holds that 'a single common question is sufficient'"** to meet Rule 4:32-1(a)(2) commonality); Gross v. Johnson & Johnson, 303 N.J. Super. 336, 342 (Law Div. 1997) (for N.J. Ct. R. 4:32-1(a)(2) to be met, **"the class as a whole must raise at least one common question of law or fact."**).

In this case, the class claims arise from an alleged uniform policy and common course of conduct by Defendants. Based on the facts alleged in the complaint, there are numerous common questions of law and/or fact in this case, including:

- Whether Defendants' policy of providing the Rental Terms and Conditions document – which describes the complained-of cleaning fee – to their customers only after the customer has already signed the Rental Agreement contract is adequate for a valid incorporation;
- Whether Defendants may lawfully collect a cleaning fee from customers who were not shown the Rental Terms and Conditions form until after they had already signed the one page Rental Agreement form contract;
- Whether Defendants' policies constitute unconscionable commercial practices in violation of N.J.S.A. 56:8-2 of the New Jersey Consumer Fraud Act;
- Whether Defendants' policies violate the clearly established legal rights of Plaintiff and the class under New Jersey law in violation of N.J.S.A. 56:12-15 of the New Jersey Truth in Consumer Contract, Warranty and Notice Act;
- Whether Defendants' policies violate the implied covenant of good faith and fair dealing;
- Whether Defendants' policies constitute a breach of contract; and
- Whether Plaintiff and the class are entitled to injunctive and declaratory relief to end the challenged policies.

3. Rule 4:32-1(a)(3) Typicality.

In explaining why the "typicality" requirement of New Jersey Court Rule 4:32-1(a)(3) is easily met, the Appellate Division in Laufer v. U. S. Life Ins. Co. in City of N.Y., 385 N.J.

Super. 172, 180 (App. Div. 2006) (emphasis added) (citations omitted) stated:

> **The claims of a putative class representative are typical if they have the essential characteristics common to the claims of the class. Since the claims only need to share the same essential characteristics, and need not be identical, the typicality requirement is not highly demanding.** (emphasis added)

It is a well-established principle of class action law that a class representative's claim is typical of the class if it **"arises from the same event or course of conduct which has given rise to the claims of the other class members."** Gross, 303 N.J. Super. at 342. As stated by the Appellate Division in Laufer, 385 N.J. Super. at 180: **"If the class representative's claims arise from the same events, practice, or conduct, and are based on the same legal theory, as those of other class members, the typicality requirement is satisfied."**

In the case at bar, the claims of Plaintiff and the class arise from the same alleged common course of conduct by Defendants and depend on the same law – Plaintiff was shown the same two form documents, in the same order, and was charged the same cleaning fee by Defendants as every other class member. Based on the foregoing, typicality is clearly met.

4. Rule 4:32-1(a)(4) Adequacy of Representation.

The final question under New Jersey Court Rule 4:32-1(a) is whether the named plaintiff and plaintiff's counsel will fairly and adequately protect the interests of the class. See N.J. Ct. R. 4:32-1(a)(4). As explained by the Appellate Division in Laufer, 385 N.J. Super. at 182: **"To satisfy this requirement, 'the plaintiff must not have interests antagonistic to those of the class.'"** Under this requirement, New Jersey law provides that defendant has the burden of proving that plaintiff or plaintiff's counsel are inadequate. See Delgozzo, 266 N.J. Super. at 188 (**"The defense bears the burden of demonstrating that the proposed representation will be inadequate."**); Gross, 303 N.J. Super. at 342 (**"[T]he burden is on the opposing party to**

demonstrate that the proposed representations will be inadequate.").

There are no conflicts of interest between Plaintiff and the class. Nor are any such conflicts of interest possible. Plaintiff was victimized by the same policies as all other class members and seeks the same relief for himself as for all other class members. Plaintiff has pursued this action vigorously and has retained highly-experienced class counsel to represent herself and the class. As such, there can be no showing that Plaintiff would be an inadequate class representative.

As to the second prong of Rule 4:32-1(a)(4), there can be no doubt that Plaintiff has retained experienced and competent counsel to represent herself and the class. Plaintiff's co-counsel, Stephen P. DeNittis, has participated in over 200 class actions, serving as lead class counsel or co-lead class counsel in most of those cases, including the following class actions: (In Federal Court): Ashkenazi v. Bloomingdale's, Inc., Case No. 3:15-cv-02705-PGS-DEA (a TCPA class action that settled for $1.4 million); Manopla, et al. v. Home Depot USA, Inc., et al., Civil Action No. 3:15-cv-01120-PGS-TJB (TCPA class action which resulted in a $4.3 million settlement); Filannino-Restifo v. TD Bank, N.A., Civil Action No. 1:16-cv-2374-JBS-JS (D.N.J.) (a N.J. CFA action that settled for $9,445,000 alleging Defendants coin-counting machines were under counting); In re: Whole Foods Market Inc. Greek Yogurt Marketing & Sales Practices Litig., MDL. No. 2588 (2015) (co-lead counsel in pending MDL proposed consumer fraud class action); Telliho v. East Windsor Twp., Civil Action No. 3:12-cv-4800 (lead counsel in the New Jersey red light camera cases which settled for $4.2 million); Poole v. Merrill Lynch, Civil Action No. 06-cv-1657 (D. Or.) (co-lead counsel in a nationwide wage and hour class action which settled for $43.5 million); Kaufman v. JP Morgan Chase, Civil Action No. 05-cv-9750 (S.D.N.Y.) ($5 million wage and hour class settlement); Anderson v. Redflex, Civil Case No.

3:12-cv-5198 (D.N.J.) ($2.1 million settlement regarding New Jersey red light cameras); Bernhard v. TD Bank, Civil Action No. 08-4392-RBK-AMD (D.N.J.) (co-lead counsel in wage and hour class action); Kaufmann v. Commerce Bancorp, Civil Action No. 06-cv-4664-RBK-RMD (D.N.J.) (co-lead counsel in wage and hour class action); Jones v. Commerce Bancorp. Inc., Civil Action No. 05-cv-05600-RBK-AMD (D.N.J.) (consumer fraud class action); DeMarco v. Nat'l Collector's Mint, Inc., 229 F.R.D. 73 (S.D.N.Y. 2005) (lead counsel in a matter of first impression which resulted in a $9,000,000 valued settlement); Carnival v. WMX Techs., Civil Action No. 97-5122 (D.N.J.) ($5.1 million settlement); Arnold v. Ambassadors Int'l, Inc., Civil Action No. 01-CV-2020 (RBK)(D.N.J.) (co-lead counsel in class action resulting in $5 million settlement and injunctive relief); (In State Court): Pearson v. Camden County, et al., Docket No. CAM-L-2715-19 ($250,000 settlement providing refunds of allegedly-unlawful electronic convenience fees paid by New Jersey consumers to Camden County); Andrews, et al. v. Gap, et al., Case No. CGC-18-567237 (Superior Court of California) ($144 million settlement for a class of almost 24 million class members who were subjected to fake sales and false reference pricing); Press, et al. v. J. Crew Group, Inc., et al., Case No. 56-2018-00512503 (Superior Court of California) ($24 million settlement for a class of almost three million class members who were subjected to fake sales and false reference pricing); Anderson, et al. v. Burlington Coat Factory, et al., Docket No. CAM-L-2582-17 ($9 million settlement on behalf of a class alleging deceptive comparison pricing); Jones v. EEG, Inc., Phila. Ct. Comm. Pls. No. 160800812 (August Term, 2016) ($6.75 million settlement in consumer fraud class action against a beauty school accused of overcharging its paying customers); Krivy v. Jean Madeline Educ. Ctr. of Cosmetology, Inc., Phila. Ct. Comm. Pls. No. 2603 (Feb. Term 2014) ($1.35 consumer fraud settlement); Barkers v. PSEG, Docket No. BUR-C-39-03 (co-lead counsel in class action

settlement resulted in PSEG repairing 3,000 defective gas meter sets throughout New Jersey and resulted in the Board of Public Utilities adopting new gas meter regulations); Felderstein v. Orleans, Docket No. BUR-L-479-02 (co-lead counsel in $345,000 class settlement in construction defect class action); Melnick v. Orleans, Docket No. BUR-L-152-01(co-lead counsel in $1.4 million settlement in construction defect class action); Spectracom, Inc. v. Cell Direct Corp. and Fax.com, Inc., Docket No. CAM-C-116-02 (co-lead counsel in class action injunctive relief under the TCPA); Ward & Decker v. York Int'l., Docket No. BUR-L-2693-03 (co-lead counsel in construction defect class action); Schmoll v. Hovnanian, Docket No. BUR-C-141-02 (co-lead counsel in construction defect class action); Staub v. Hoeganaes, Docket No. BUR-L-2080-03 (lead counsel in $1.4 million dollar class settlement); Blasini v. Weichert S. Jersey, Inc., Docket No. BUR-L-736-11 (lead counsel in a class of 8,000 Weichert buyers charged an allegedly $200 illegal administrative fee in violation of the NJ CFA fraud); Blasini v. Prudential Fox & Roach, Docket No. BUR-989-11 (lead counsel in class action involving 4,000 Prudential buyers charged an allegedly $275 illegal administrative fee in violation of the NJ CFA); Espinosa & DeSimone v. MAMCO Prop. Mgmt., Docket No. CAM-L-180-11 (lead counsel in class action involving approximately 4,000 condominium residents allegedly overcharged processing and transfer fees by Defendant in violation of the NJ CFA); Baraldi v. Surety Title, Docket No. BUR-L-3379-11 (lead counsel in class action on behalf of 36,000 Surety consumers who were allegedly overcharged deed and mortgage recording fees and were refunded 100% of the overcharge through a claims process); Blasini v. Trident Land Transfer Co. of N.J., Docket No. CAM-L -2355-11 (lead counsel in class action on behalf of 17,000 Trident consumers who were allegedly overcharged mortgage recording fees and were refunded 100% of the overcharge through a claims process); Gallagher v. Title Co. of Jersey, Docket No.

SLM-L-67-12 (lead counsel in class action on behalf of 16,000 consumers who were allegedly overcharged deed and mortgage recording fees and were refunded 100% of the overcharge through a claims process); Gloucester Props. v. N. Am. Title, Docket No. CAM-L-5738-11 (lead counsel in class action on behalf of 11,000 consumers who were allegedly overcharged deed and mortgage recording fees and were refunded 100% of the overcharge through a claims process); Espinosa v. Integrity Title Agency, Inc., Docket No. BUR-L-2668-11 (lead counsel in class action on behalf of 5,000 consumers who were allegedly overcharged deed and mortgage recording fees and were refunded 100% of the overcharge through a claims process).

Mr. DeNittis has also presented and/or lectured to attorneys on class action topics at the following Continuing Legal Education seminars:

- Lecturer, "Fair Labor Standards Act (FLSA) Collection Actions", Camden County Bar Association Labor & Employment Law Committee, November 12, 2008;
- Lecturer, "Private Practice Professional Development Symposium – Class Action Litigation", Rutgers-Camden University School of Law, February 28, 2009;
- Lecturer, "Anticipating Class Actions", Camden County Bar Association Class Action Practice Committee, March 23, 2010;
- Lecturer, "The Impact of Recent Developments in Class Action Law in the Interests of Plaintiffs and Defendants – New Jersey and Beyond", Camden County Bar Association Class Action Committee, April 19, 2011;
- Lecturer, "Challenges for Plaintiffs & Defendants Posed By Recent NJ Class Action Decisions", Camden County Bar Association Class Action Practice Committee, May 16, 2012;
- Lecturer, "Consumer Fraud Product Labeling Class Actions: One Label, Very Different Perspectives – Plaintiffs, Defendants and the Government", Perrin Conferences, November 5, 2012;
- Lecturer, "Litigating Medical Negligence Claims: Similarities and Differences Between New Jersey and Pennsylvania", Cape Institute, December 10, 2012;
- Lecturer, "Ascertainable Loss Under the NJ CFA – More than Just Out-of-Pocket Damages", New Jersey Association for Justice, Meadowlands Seminar, November 15,

2013;

- Lecturer, "Identifying Consumer Class Action," New Jersey Association of Justice, Boardwalk Seminar, April 9, 2015;

- Co-Chair, "Consumer Law – Boardwalk Seminar 2016", NJAJ Educational Foundation, Inc.'s Boardwalk Seminar 2016, April 8, 2016;

- Lecturer, "Insights into Federal Practice: Perspectives of the Bench and Bar", The United States District Court for the District of New Jersey, in conjunction with the Association of the Federal Bar of New Jersey, February 24, 2017;

- Moderator and Co-Chair, "Consumer Law – Boardwalk Seminar 2018", NJAJ Educational Foundation, Inc.'s Boardwalk Seminar, May 9 & 10, 2018

- Lecturer, "Class Action Litigation in 2020: What You Need to Know", New Jersey Law Center, New Jersey Bar Association, February 10, 2020

I am co-author of the following publication relating to class actions:

- Co-author, "A Plaintiff's Perspective of the New "Ascertainability" Requirement in Federal Class Actions," New Jersey Lawyer Magazine, March 2015.

Plaintiff's co-counsel, Joseph A. Osefchen, has focused his practice almost exclusively on class actions for the last 28 years and he has participated in well over 250 certified class actions. These include: Moench v. Robertson, 62 F.3d 553 (3rd Cir.1995) (ERISA class action); Mancuso v. Crystal Title Agency, Docket No. MID-L-2990-14 (consumer fraud class action); Espinosa v. MAMCO Property Mgmt., 2011 WL 4478558 (D.N.J.2011) (consumer fraud class action); Jones v. Commerce Bancorp. Inc., Civil Action No. 05-cv-05600-RBK-AMD (D.N.J.) (consumer fraud); Carnival v. WMX Techs., CIVIL ACTION NO. 97-5122 (D.N.J.) (toxic tort/trespass); Arnold v. Ambassadors Int'l., Civil Action No. 01-CV-2020 (JEI) (D.N.J.) (consumer fraud); Hawker v. Consovoy, 198 F.R.D. 619 (D.N.J.2001) (class action civil rights); Blasini v. Weichert S. Jersey, Inc., Docket Number BUR-L-736-11 (consumer class action); Blasini v. Prudential Fox & Roach, Docket Number BUR-989-11 (consumer class action); Baraldi v. Surety Title, Docket Number BUR- L-3379-11 (consumer class action); Lott v. Swift

Transp. Co., No. 09-cv-02287 BBD (W.D. Tenn. 2011) (class action involving CDL testing); Simel v. JP Morgan Chase, No. 05-9750-GBD (S.D.N.Y. 2011); Bernhard v. TD Bank, N.A., D.N.J. Civil Action No. 08-cv-4392 (D.N.J. 2010) (wage and hour class action); McAlarnen v. Dolan, Civil Action No. 09-cv-1737 (E.D. Pa.) (civil rights class action); Skye v. Maersk Lines, Ltd., Civil Action No. 08-4813 (D.N.J. 2008) (Jones Act class action); Felderstein v. Orleans, Docket No. BUR-L-479-02 (construction defect class action); Melnick v. Orleans, Docket No. BUR-L-152-01 (construction defect class action); Ward & Decker v. York Int'l., Docket No. BUR-L-2693-03 (construction defect); Staub v. Hoeganaes, Docket No. BUR-L-2080-03 (toxic tort/trespass); Thomas v. SmithKline Beecham Corp., 201 F.R.D. 386, 396 (E.D. Pa. 2001) (holding that plaintiffs' counsel in the SmithKline matter, including Joseph A. Osefchen, **"have extensive experience litigating class actions"**).

Mr. Osefchen is also co-author of the following articles on class actions:

- Co-Author, "New Jersey Parts Company with the Federal Courts on Whether to Consider Merits Issues on Class Certification," 43 Rutgers L.J. 59 (2011);
- Co-Author, "Leveling the Playing Field in the Garden State: A Guide to New Jersey Class Action Case Law," 37 Rutgers L.J. 399 (2006), cited with approval in Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 105 (2007);
- Co-Author, "Interlocutory Class Action Appeals," New Jersey Law Journal, Vol. CLX, No. 3, Index 173 (April 17, 2000); and
- Co-Author, "A Plaintiff's Perspective of the New Ascertainability Requirement in Federal Class Actions," New Jersey Lawyer, April 2015 at 24.

Plaintiff's co-counsel, Shane T. Prince, has focused the majority of his 19-year legal career on class actions and other complex litigation, having participated in well over 75 class actions as counsel for both plaintiff and defendant. These include: Pearson v. Camden County, et al., Docket No. CAM-L-2715-19 ($250,000 settlement providing refunds of allegedly-unlawful electronic convenience fees paid by New Jersey consumers to Camden County); Kasher

Law Group LLC v. Ciox Health LLC, Docket No. CAM-L-4719-17 (Super. Ct. Camden Co., NJ) (consumer fraud class action); Andrews, et al. v. The Gap Inc., et al., No. CGC-18-567237 (Super. Ct. San Francisco Co., Cal.) (consumer fraud class action); Stanley v. Capri Training Ctr., Inc., Docket No. ESX-L-1182-16 (Super. Ct. Essex Co., N.J.) (consumer fraud class action); Milstead v. Robert Fiance Beauty Schools, Inc., Docket No. CAM-L-328-16 (Super. Ct. Camden Co., N.J.) (consumer fraud class action); Anderson v. Burlington Coat Factory of N.J., LLC, Docket No. CAM-L-2582-17 (Super. Ct. Camden Co., N.J.) (pricing/consumer fraud class action); Hockfield & Kasher, PA v. Star Med, LLC, Docket No. CAM-L-813-17 (Super. Ct. Camden Co., N.J.) (consumer fraud class action); Regis Fitzgerald v. Rizzieri Inst., Inc., Docket No. CAM-L-3646-16 (Super. Ct. Camden Co., N.J.) (consumer fraud class action); LMA Legal, LLC v. Record Reprod. Servs., Inc., Docket No. CAM-L-4137-16 (Super. Ct. Camden Co., N.J.) (consumer fraud class action); Roseman v. Bevco Serv., Inc., Docket No. CAM-L-3038-17 (Super. Ct. Camden Co., N.J.) (consumer fraud class action); Leese v. Albert Ellis, Inc., Docket No. BUR-L-2702-16 (Super. Ct. Burlington Co., N.J.) (consumer fraud class action); Bernetich, Hatzell & Pascu, LLC v. Medical Records Online, Inc., Docket No. CAM-L-1271-15 (Super. Ct. Camden Co., N.J.) (consumer fraud class action); Ciolino v. Christine Valmy, Inc. Docket No. MRS-L-2218-15 (Super. Ct. Morris Co., N.J.) (consumer fraud class action); Warren v. Gen. Abstract & Title Agency, Docket No. MER-L-2161-15 (Super. Ct. Mercer Co., N.J.) (consumer fraud class action); Snyder v. Tim Schaeffer Dev. Corp., Docket No. CAM-L-864-14 (Super. Ct. Camden Co., N.J.) (consumer fraud class action); Mancuso v. Crystal Title Agency, LLC, Docket No. MID-L-2990-14 (Super. Ct. Middlesex Co., N.J.) (consumer fraud class action); Priest v. Title Source, Inc., Docket No. CUM-L-578-14 (Super. Ct. Cumberland Co., N.J.) (consumer fraud class action); Sinclair v. Merck & Co., 948 A.2d 587 (N.J. 2008) (medical

monitoring and consumer fraud class action); In re Risperdal/Seroquel/Zyprexa Litig., No. 274 (Super. Ct. Middlesex Co., N.J.) (product liability, consumer fraud, and medical monitoring class actions); In re Vioxx Prods. Liab. Litig., No. 619 (Super. Ct. Atlantic Co., N.J.) (product liability, consumer fraud, and medical monitoring class actions); Jones v. EEG, Inc., Phila. Ct. Comm. Pls. No. 812 (Aug. Term 2016) (consumer fraud class action); Krivy v. Jean Madeline Educ. Ctr. of Cosmetology, Inc., Phila. Ct. Comm. Pls. No. 2603 (Feb. Term 2014) (consumer fraud class action); McCurdy v. Wilkinson Enters., Inc., No. 2013-01447-TT (Ct. Comm. Pls. Chester Co., Pa.) (consumer fraud class action); Flora v. Luzerne Cnty., No. 120404517 (C.C.P. Luzerne Co., Pa.) (civil rights class action); Fowler v. M&C Ass'n Mgmt. Servs., Inc., No. RG 11600700 (Super. Ct. Alameda Co., Cal.) (consumer fraud class action); Engle v. Liggett Group, Inc., 945 So. 2d 1246 (Fla. 2006) (product liability class action); In re Baycol Cases I and II, 2011 WL 682378 (Cal. 2011) (consumer fraud/economic loss class action); Lewis v. Bayer A.G., No. 010802353 (C.C.P. Phila. Co., Pa.) (medical monitoring class action); In re Baycol Litig., No. 011100001 (C.C.P. Phila. Co., Pa.) (numerous consolidated product liability and consumer fraud class actions); Filannino-Restifo v. TD Bank, N.A., Case No. 1:16-cv-2374-JBS-JS (D.N.J.) (consumer fraud class action); Block v. RBS Citizens, N.A., Inc., Case No. 1:15-cv-1524-JHR-JS (D.N.J.) (consumer fraud class action); Green v. Silvertowne, L.P., Case No. 1-15-cv-8703-NLH-AMD (D.N.J.) (Hobby Protection Act class action); Roseman v. BGASC, LLC, Case No. 1:15-cv-1100-VAP-SPx (C.D. Cal.) (Hobby Protection Act class action); Styczinski v. Westminster Mint, No. 0:14-cv-00619-SRN-JJG (D. Minn.) (Hobby Protection Act class action); Everett v. Pitt Cnty. Bd. of Educ., No. 6:69-cv-702 (E.D.N.C.) (civil rights class action); Espinosa v. MAMCO Prop. Mgmt., 2011 WL 4478558 (D.N.J. 2011) (consumer fraud class action); Smith v. Bayer Corp. (In re Baycol Prods. Litig.), 593 F.3d 716 (8th Cir. 2010), rev'd

131 S. Ct. 2368 (2011) (economic loss/consumer fraud class action); In re Nutraquest, Inc., No. 03-5869 (D.N.J.) (product liability and consumer fraud class actions); and McCollins v. Bayer Corp. (In re Baycol Prods. Litig.), 265 F.R.D. 453 (D. Minn. 2008) (economic loss/consumer fraud class action).

Mr. Prince has also presented and/or lectured to attorneys and law students on class action topics at the following Continuing Legal Education and law school seminars:

- Lecturer, "Forced Arbitration Update", Consumer Law Seminar, NJAJ Educational Foundation, Inc.'s Boardwalk Seminar 2018, May 10, 2018.
- Lecturer, "Class Actions: Perspective of a Plaintiffs' Lawyer", Class Action Litigation, Rutgers Law School, September 20, 2018.
- Lecturer, "Class Actions: Perspective of a Plaintiffs' Lawyer", Class Action Litigation, Rutgers Law School, November 16, 2017.

Based on the foregoing, the requirements of Rule 4:32-1(a)(4) are satisfied.

C. The Prerequisites of Certification Under Rule 4:32-1(b)(1) and (3) Are Also Met.

In order for a class to be certified, all requirements of New Jersey Court Rule 4:32-1(a) must be satisfied, as well as one of the three alternative requirements set forth in New Jersey Court Rule 4:32-1(b). It is not necessary that the requirements of (b)(1), (2) and (3) all be met. Rather, only one of these three alternative requirements needs to be met for class certification. See N.J. Ct. R. 4:32-1(b). Here, the requirements of (b)(1) and (b)(3) are both satisfied.

1. The Class Should Be Certified Under Rule 4:32-1(b)(3).

In order to meet the requirements for certification under Rule 4:32-1(b)(3), two requirements must be satisfied. First, common questions of law or fact must predominate over individual issues. In re Cadillac V8-6-4 Class Action, 93 N.J. 412, 426 (1983); Delgozzo, 266 N.J. Super. at 189. Second, the Court must find that a class action is the superior method to decide the issues before it. See In re Cadillac, 93 N.J. at 426; Delgozzo, 266 N.J. Super. at 189.

a. Predominance.

At the outset, it must be noted that "predominance" does not require the absence of individual issues. See Strawn v. Canuso, 140 N.J. 43, 37 (1995). Indeed, the Supreme Court of New Jersey has stated that a class may be certified under (b)(3) even where a court has found that **"substantial individual issues"** exist. Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 108 (2007). See also Lee, 203 N.J. at 520:

> **Significantly, to establish predominance, plaintiff does not have to show that there is an "absence of individual issues or that the common issues dispose of the entire dispute," or "that all issues [are] identical among class members or that each class member [is] affected in precisely the same manner." Iliadis, supra, 191 N.J. at 108-09, 922 A.2d 710 (citations omitted). Indeed, in a class-action setting, "[i]ndividual questions of law or fact may remain following resolution of common questions."** (emphasis added)

The question the "predominance" prong seeks to answer is: does the **"core of the case concern common issues of fact and law."** Iliadis, 191 N.J. at 108. The single "core" common issue in the case at bar is whether Defendants were permitted to charge an undisclosed cleaning fee to their customers. All claims in this case will turn on the resolution of this one core common issue. The legal determination of this issue is based on the policies of Defendants, an interpretation of New Jersey law, and common proofs. Based on the foregoing, the class claims constitute a "common legal grievance" which more than satisfies the requirements of (b)(3) "predominance" in this case.

b. Superiority.

The other prerequisite for certification under New Jersey Court Rule 4:32-1(b)(3) is that a class action must be **"superior to other available methods for the fair and efficient adjudication of the controversy."** Lee, 203 N.J. at 520; Iliadis, 191 N.J. at 114; In re Cadillac, 93 N.J. at 435.

In addressing the "superiority" requirement, the New Jersey Supreme Court has repeatedly held that class actions are the preferred and superior method of resolving claims where – as in the case at bar – most members of the proposed class have suffered relatively small monetary damages. See Lee, 203 N.J. at 528-529 (**"The whole point of a class action is to provide a diffuse group of persons, whose claims are too small to litigate individually, the opportunity to engage in collective action and to balance the scales of power between the putative class members and a corporate entity."**); In Re Cadillac, 93 N.J. at 435-436 (**"One frequent characteristic of a consumer class action is that the individual claims involve too small an amount to warrant recourse to litigation."**); Iliadis, 191 N.J. at 105 (**"When one inflicts minor harm across a dispersed population, 'the defendant is, as a practical matter, immune from liability unless a class is certified.'"**).

New Jersey courts have also held that class actions are typically the "superior" means of resolving cases such as this one where Defendants are alleged to have a uniform policy of charging an unlawful fee, which sounds in consumer fraud. See Strawn v. Canuso, 140 N.J. 43, 68 (1995) (**"a class action is the superior method for adjudication of consumer-fraud claims"**); In re Cadillac, 93 N.J. at 425 (**"We are mindful that the class action rule should be construed liberally in a case involving allegations of consumer fraud."**); Riley v. New Rapids Carpet Ctr., 61 N.J. 218, 228 (1972) (holding that in a consumer fraud case, **"a court should be slow to hold that a suit may not proceed as a class action"**); Kronisch v. Howard Sav. Inst., 133 N.J. Super. 124, 132 (Law. Div. 1975) (holding that the class action device **"has been recognized as a particularly useful device in the area of consumer litigation"**).

Forcing each and every class member to individually litigate these same claims – based on Defendants' uniform policy of charging an undisclosed $250 cleaning fee – over and over in a

series of individual lawsuits would be contrary to the case law, judicial economy, and common sense. Logic and the case law dictate that these common issues be decided once, in a class-wide proceeding. Thus, class certification is the superior method of resolving this matter.

2. Alternatively, the Requirements of Rule 4:32-1(b)(1)(A) Are Also Met.

The language of New Jersey Court Rule 4:32-1(b)(1)(A) is modeled on that of Federal Rule of Civil Procedure 23(b)(1)(A). It permits a class to be certified when the requirements of Rule 4:32-1(a) are satisfied and the prosecution of separate actions by class members would create a risk of:

> **Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class.**

While the language of this rule focuses on whether the defendants would face irreconcilable standards of conduct, a defendant has no veto power over certification under this section. See Hohe v. Casey, 128 F.R.D. 68 (M.D. Pa. 1989) (Rule 23(b)(1)(A) class certified over defendant's objection). The defendant cannot "waive" its right to be free of such inconsistent standards. Id. As stated in Newberg on Class Actions, § 4.07:

> **The needs of the judicial system to avoid inconsistent adjudications of a single controversy must be respected, despite the willingness of a litigant to assume the risk.**

In the case at bar, individual, case-by-case determinations on the common issues surrounding, inter alia, whether Defendants are permitted to charge an undisclosed cleaning fee could subject Defendants to potentially incompatible legal standards of conduct with regard to the class members. These common issues need to be resolved consistently, in a single, comprehensive proceeding. Thus, certification of the proposed settlement class is proper.

Conclusion

For the foregoing reasons, the Court should grant preliminary approval to the proposed class action settlement, preliminarily certify a settlement class, authorize the distribution of the proposed claim form and proposed notice of the class settlement to prospective class members, and set a date for a formal fairness hearing on or after August 25, 2021.

Respectfully submitted,

Dated: May 26, 2021

DeNITTIS OSEFCHEN PRINCE, P.C.

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