UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

In re TRANS UNION CORP. PRIVACY LITIGATION	)	Lead Case No. 000V4729
	)	MDL Docket No. 1350
	)	Judge Robert W. Gettleman
This Document Relates To: ALL ACTIONS	)	Magistrate Judge Michael T. Mason

OBJECTIONS OF CLASS MEMBER GLENN G. LAMMI TO THE PROPOSED SETTLEMENT, ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARDS AND NOTICE OF INTENT TO APPEAR

INTRODUCTION

Class member Glenn G. Lammi, 12704 Ox Meadow Drive, Herndon, VA 20171, through his undersigned counsel, hereby submits these objections to the proposed settlement and the attorneys' fees, expenses, and incentive awards in this class action.

Objector Lammi further reserves the right to file additional and supplemental objections to any fee request as provided by Fed. R. Civ. P. 23(h) after class counsel submit their application for fees, costs, and incentive payments. It is Objector's understanding that class counsel will not be filing their fee application until *after* the Court approves the final settlement. This puts class members and objectors at a serious disadvantage because according to the notice to class members, objections to both the settlement *and* the fees must be filed by August 22, 2008, which is well *before* any final settlement and, therefore, before the filing of

any fee application.[1]

In any event, the general fee request provided in the settlement notice, amounting to up to 25 percent of the common fund of $75 million, or approximately $18.7 million, appears to be a windfall in this case inasmuch as liability was all but certain due to related enforcement actions by the Federal Trade Commission (FTC) for violations of the Fair Credit Reporting Act. In short, this is a classic piggy-back class action case filed by opportunistic class counsel to reap multi-million dollar fees where liability is very strong, relatively little effort was expended, and the In-Kind Relief to the 190 million class members (six or nine months of certain credit monitoring services) is of dubious value compared to the $19 *billion* to $190 *billion* in statutory damages that plaintiffs could be awarded. Indeed, Magistrate Mason's Report & Recommendations of January 3, 2008 (Report), recommended the *denial* of the parties' Joint Motion for Preliminary Approval due to inadequacy of the proposed benefits and the failure of adequate individual notice to the class. Objector Lammi adopts Magistrate Mason's Report and Recommendations as well as all other well-grounded objections filed in this case.

If there is a final approval of this settlement, this Court should order class counsel to (1) post its fee application and supporting documentation on the website dedicated to this action; (2) serve objectors with a copy of the fee applications; (3) provide objectors with at least 20 days within which to file their responses to such fee application; (4) schedule a hearing

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[1] However, the Stipulation of Settlement at 23, ¶ 3.2 states: "*At* or after the Final Fairness Hearing, Settlement Class Counsel will request that the Court approve the proposed

for approval of the fee application after the time period to file responses thereto has expired, and (5) allow objectors to the fee application to appear and be heard at the fee approval hearing. This procedure is authorized by this Court's inherent authority as well as by ¶ 4.1 of the Stipulation of Settlement, which provides that the fee application process "shall occur in a manner to be determined by the Court."

BACKGROUND

This is a consolidated class action of some 14 class actions brought against Trans Union, one of the three major consumer reporting agencies in the United States, for selling consumer reports or "target marketing lists" to third parties beginning in 1987. The class actions are based upon the Federal Trade Commission's enforcement proceedings against Trans Union under the Fair Credit Reporting Act (FCRA), which were upheld by the D.C. Circuit. *Trans Union Corp. v. Federal v. Federal Trade Commission*, 81 F.3d 228 (D.C. Cir 1996); *Trans Union Corp. v. Federal Trade Commission*, 245 F.3d 809 (D.C. Cir. 2001). Report at 2, n.3. Trans Union's master file list contains the names of 190 million individuals. *Id*. at 3.

The class consists of all individuals, who, over the last 20 years, had an open credit account or an open line of credit from a credit grantor, such as credit cards, department store credit cards, mortgage loans, automobile loans, and student loans. Assuming a class of 190

Fee and Expense Application." (emphasis added).

million members, the potential liability under FCRA would range between $19 billion and $190 billion, based on statutory damages of $100 to $1,000 per violation. Report at 29. The chances of finding liability has been estimated to greater than 50 percent. *Id*. at 30. Accordingly, the settlement value of the case, computed at multiplying the chance of prevailing on liability times the statutory damages of at least $500 per violation, is approximately $47 billion.

The parties propose to settle the case whereby members of this class action, assuming they know about this case and are able to obtain and file a claim form, will receive credit monitoring services for six months or nine months, which the parties value at $59.75 and $115.50 respectively. A common fund of only $20 million was originally proposed, out of which plaintiffs' attorneys sought $10 million. After the Report was issued recommending the denial of the settlement, the parties agreed to a common fund of $75 million, with fees up to 25 percent, or $18.7 million. Thus, while the common fund increased somewhat, but still relatively small in comparison to the maximum exposure of liability, the fee request jumped from $10 million to over $18 million.

In addition, Trans Union will donate $150,000 to one or more non-profit organizations chosen by the parties and approved by the Court, along with any remaining funds from the proposed $75 million common fund after attorneys' fees, expenses, and other distributions.

OBJECTIONS

I. THE SETTLEMENT SHOULD NOT BE APPROVED

1. Inadequate Notice to the Class. As the Report discussed, the Notice Plan in this

case was deficient in that individual notice should have been made where possible as required by Fed. R. Civ. P. 23(c). This is particularly true for Trans Union's own customers for its credit monitoring services. As the Report noted, "Trans Union should not be able to profit from those who, unaware of their rights under the settlement, elect to purchase credit services which they may otherwise be entitled to as In-Kind Relief." Report at 26.

2. The Value of the In-Kind Relief is Overstated. As the Report notes, the value of the credit monitoring services is inflated. Report at 32. In addition, many of the services provided, such as providing credit scores, are already free to consumers in many circumstances, or other services offered by the settlement may not be needed. Moreover, it appears that this relief may be simply a marketing tool to obtain new customers and to continue those services at a cost to the consumer. This would be an ironic result, inasmuch as the gravamen of this class action lawsuit is the impermissible use of consumer lists by Trans Union for marketing purposes.

3. The Value of the Settlement Is Inadequate. As the Report noted, the value of this case is well into the billions based upon the likelihood of liability and the statutory damages. The original proposed settlement had placed its value at $42 million. Report at 29. However, even with the increased common fund of $75 million and the In-Kind Relief, the settlement is woefully inadequate.

4. The Charitable Donations Are Improper. There is no legitimate reason why there should be a charitable or cy pres donation of $150,000 and possibly a lot more when, in fact, those funds should belong to the class. Indeed, there are serious questions about both the

policy and legality of making such use of settlement funds. See George Kruegger & Judd Serotta, *Our Class Action System is Unconstitutional*, Wall St. J., Aug. 8, 2008 (attached hereto as Exhibit A).

II. THE FEES SHOULD BE DENIED OR SUBSTANTIALLY REDUCED

As noted, because the fee application has not be filed yet, Objector cannot meaningfully file his objections. He will submit those objections after the fee application is filed. Nevertheless, the fee request of up to 25 percent of the common fund, or over $18 million, is clearly excessive. At this point, class members do not know what class counsel's lodestar is; however, it appears that this was not a complicated or long drawn out case that warrants such huge fees. This is especially so since, just earlier this year, class counsel was willing to settle for $10 million in fees, and now they are requesting up to $18 million. The time and value they made to this case in those intervening months certainly do not justify an additional $8 million.

Moreover, Objector submits that there is no evidence of what the market rate would be for these fees, particularly given the fact that the FTC had already brought enforcement action against Trans Union. This circuit has approved the use of the market rate to evaluate fee requests in class actions. *In re Synthroid Mktg. Litig.*, 325 F.3d 974 (7th Cir. 2003). Accordingly, Objector submits that other law firms would have charged a lot less than the amount sought by class counsel. In any event, Objector submits that any fee awarded in this case should be no more than one-half of the lodestar, considering the meager results obtained.

III. THE PROPOSED INCENTIVE AWARDS OF UP TO $3,750 TO EACH OF THE EIGHT REPRESENTATIVE PLAINTIFFS SHOULD BE DENIED OR

SUBSTANTIALLY REDUCED.

The Settlement Agreement provides that class counsel will seek an award of up to $3,750 for each of the 23 Class Representatives when they file their fee application. Objector Lammi submits that such payments should be denied or should be substantially reduced because it does not appear that they are justified based on both the time and effort expended by the named plaintiffs, and the fact that class members, whom these named plaintiffs purportedly represent, will likely receive little or no monetary compensation. More importantly, they did a poor job representing the class inasmuch as they were willing to settle this case for a very small amount.

In class actions, compensation or incentive payments for class representatives are sometimes requested and approved by the court, depending upon the factual circumstances of each case. In many cases, class representatives do little to help the entire class other than lend their name as a class representative to class counsel. In addition, courts have been careful to examine the request and the efforts expended by the class representatives. For example, in *In re Carbon Dioxide Antitrust Litigation*, 1996 U.S. Dist. LEXIS 13418 (M.D. Fla.), the Court rejected altogether a request for incentive payments for the class representatives, stating:

> Petitioners seek $20,000 each for six of the class representatives who participated in discovery and $5,000 each for the remaining 12 representatives who are named plaintiffs. Neither the briefs of class counsel nor the record convince the court that such an award is appropriate. *Participating in some discovery or lending a name to the class action is not a sufficient basis for awarding incentive payments and also raises*

> *serious questions about the fiduciary nature of the named plaintiffs as class representatives*. See *Holmes v. Continental Can Co.*, 706 F.2d 1144, 1148 (11th Cir. 1983). This court finds that the named representatives are not entitled to preferential treatment and that the common fund should be distributed on an equal basis among the class members. Accordingly, the court deems incentive awards inappropriate in this case and denies that portion of petitioner's fee petition.

In re Carbon Dioxide Antitrust Litigation, 1996 U.S. Dist. LEXIS 13418 *21 (emphasis added). There is nothing in the Proposed Settlement that indicates that any of the class representatives participated in any protracted or unusual discovery or other special efforts. Accordingly, Objector Lammi submits that this Court should resist rubber-stamping class counsel's request for so-called incentive payments for class representatives. The fact that over a dozen similar lawsuits were filed and consolidated in this very case and filed elsewhere around the country suggests that plaintiffs do not need to be incentivized to bring these actions.

If the Court were to find that some of the class plaintiffs deserve some incentive award, Objector Lammi submits that the amount be no more than $500. In a very similar privacy violation case as this one, *Beringer v. Certegy Check Services, Inc.*, No. 8:07-cv-01657-SDM-MSS (M.D. Fla.), the proposed settlement agreement provided for incentive payments of $500 and $250. Settlement Agreement, at 19 ¶ 7.3 (attached hereto as Exhibit B).

CONCLUSION

For the foregoing reasons, the proposed Settlement should not be approved. If the court does approve the settlement, the application for attorneys' fees, expenses, and incentive

payments should be posted on the website for this case and provided to objectors, with another opportunity to file objections to those fees, as provided by Fed. R. Civ. P. 23(h), as well as appear and be heard at a fee approval hearing.

Dated: August 22, 2008

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Objections and Exhibits thereto by Class Member Glenn G. Lammi was served by first-class mail, postage pre-paid, this 22d day of August, 2008, to:

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