

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

TRACY FRY, individually and on behalf of all other
similarly situated,

Plaintiff,

v.

MIDFLORIDA CREDIT UNION,

Defendant.

Case No. 8:15-CV-2743 RAL TGW

Judge Assigned: Hon. Richard A. Lazzara

**DECLARATION OF ROBERT WEISSMAN IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

I, Robert Weissman, declare as follows:

1. I am the President of Public Citizen Foundation, a section 501(c)(3) non-profit organization based in Washington, DC.

2. Among other things, Public Citizen does both research and litigation related to consumer protection, including financial services. Our work is supported by donations from individuals, foundation grants, and court-awarded attorney fees. Public Citizen accepts no corporate or government funding.

3. If awarded cy pres funds in this case, Public Citizen would use the funds to support its research and advocacy supporting strong protections for consumers, including consumers in Illinois, and its work on cases that involve consumer protection statutes or seek to protect consumers' access to the civil justice system.

4. Public Citizen conducts research and advocacy on consumer financial protection issues, advocating for rules to protect consumers from financial industry fraud, deceit and misrepresentation. Public Citizen serves on the executive committee of Americans for Financial

Reform (AFR), a broad coalition that advocates for consumer financial protections and an accountable financial sector. We regularly advocate with regulatory agencies to protect consumers from unfair billing practices, excessive and hidden fees and charges, and unconscionable interest rates, urging the issuance of strong rules and enforcement practices. In particular, Public Citizen researchers and advocates work to support and encourage rules from the Consumer Financial Protection Bureau, a federal agency set up to protect consumers from unfair and deceptive financial products and practices. Public Citizen has also done extensive work examining and critiquing the mandatory arbitration clauses used by banks, credit card companies, and others to bar consumers' access to the court system.

5. Public Citizen also works to support a legal system that permits consumers and others to pursue remedies effectively. We participate in the rulemaking processes of the federal courts and in that setting seek to protect the class action device established in Federal Rule of Civil Procedure 23 by opposing efforts to alter the rule to limit class actions, while advocating clarifications that ensure the availability of class actions in appropriate cases and the fairness of class settlements. We also seek to counter attacks on the civil justice system by those who would limit legal remedies by exposing their false factual premises. For example, in 2016, we issued a report demonstrating that claims in congressional testimony by class action opponents that there has been a recent proliferation of successful class actions involving consumers who did not suffer any actual injury were incorrect. In these and other ways we seek to educate the public in order to promote informed policies that encourage the proper use of class actions to remedy broadly shared harms to consumers.

6. In addition, Public Citizen, through its ten-lawyer Litigation Group, works on cases in the federal and state courts involving consumer protection, government transparency, class action standards, administrative law (federal health and safety regulation), and the First Amendment. Since its founding in 1972, the Litigation Group has litigated cases at all levels of the federal and state judiciaries. The Litigation Group's work is pro bono.

7. Public Citizen has represented parties or appeared as amicus curiae in many cases nationwide involving claims under federal and state consumer protection statutes as well as common-law consumer claims, including claims against financial institutions. Public Citizen has represented plaintiffs and amici curiae before the Supreme Court or on appeal in cases arising under statutes such as the Fair Credit Reporting Act, *see, e.g., Pele v. Pennsylvania Higher Educ. Assistance Agency*, 628 F. App'x 870 (4th Cir. 2015), *cert. denied*, 137 S. Ct. 617 (2017); *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) (amicus curiae brief); the Fair Debt Collection Practices Act, *see, e.g., Marx v. General Revenue Corp.*, 568 U.S. 371 (2013); *Zinni v. ER Solutions, Inc.*, 692 F.3d 1162 (11th Cir. 2012); and the Credit Repair Organizations Act, *see, e.g., CompuCredit v. Greenwood*, 565 U.S. 95 (2012). Public Citizen has also worked on access-to-courts issues in Telephone Consumer Protection Act cases, including as lead counsel before the Supreme Court in *Mims v. Arrow Financial Services*, 565 U.S. 368 (2012), which presented the question whether federal courts may assert federal question jurisdiction over claims arising under that statute.

8. Public Citizen also successfully represented the appellants on access-to-courts issues in cases including *Fulton Dental, LLC v. Bisco, Inc.*, 86 F.3d 541 (7th Cir. 2017); *Mey v. North American Bancard, LLC*, 655 F. Appx. 332 (6th Cir. 2016); *Hooks v. Landmark Indus., Inc.*, 797 F.3d 309 (5th Cir. 2015); *Floyd v. Sallie Mae*, 601 Fed. Appx. 919 (11th Cir. 2015); *Walker v. Financial Recovery Services*, 599 Fed. Appx. 359 (11th Cir. 2015); and *Keim v. ADF Midatlantic, LLC*, 586 F. App'x 573 (11th Cir. 2014).

9. Public Citizen's litigation also focuses on preserving the ability of consumers and workers to pursue class action and collective remedies, which are essential to the protection of their interests. Such cases include, among many others, *CompuCredit v. Greenwood*, 132 S. Ct. 665 (2012); *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011); and *Shady Grove Orthopedic Associates v. Allstate Insurance Co.*, 559 U.S. 393 (2010). We regularly represent both parties and amici curiae in such cases.

10. An example of a consumer class action in which Public Citizen represented the

plaintiff is *Briggs v. AAFES*, 564 F. Supp. 2d 1087 (N.D. Cal. 2008), which Public Citizen brought on behalf of a nationwide class of soldiers and veterans who used credit cards issued by the Army and Air Force Exchange Service, a quasi-government agency. AAFES's credit cards are used by military personnel to buy uniforms and make other purchases at stores on military bases. The suit alleged that the soldiers and veterans were subjected to illegal collection practices. The federal district court certified a nationwide class, ruled that AAFES's practices violated federal law, and approved a nationwide settlement under which class members received a refund of improperly withheld funds.

11. Other examples of cases in which we have represented the interests of consumers and workers in pursuing collective remedies include the *Concepcion* and *CompuCredit* cases discussed above. Last year, in *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663 (2016), Public Citizen served as Supreme Court co-counsel for the plaintiff class. Ruling on our favor, the Supreme Court held that a Rule 68 offer of judgment does not moot a plaintiff's individual claim. Had the defendant prevailed, the ruling would have had a significant detrimental impact on the viability of consumer class actions. Additional matters in which we have been involved, either as counsel for a party or amicus curiae include *Bloomington's, Inc. v. Vitolo*, 137 S. Ct. 2267 (2017) (denying certiorari); *ABM Indus. Inc. v. Castro*, 137 S. Ct. 82 (2016) (denying certiorari); *Initiative Legal Group APC v. Maxon*, 137 S. Ct. 43 (2016) (denying certiorari); *DIRECTV, Inc. v. Imburgia*, 136 S. Ct. 463 (2016); *Bridgestone Retail Operations, LLC v. Brown*, 135 S. Ct. 2377 (2015) (denying certiorari); *Chase Investment Services Corp. v. Baumann*, 134 S. Ct. 870 (2014) (denying certiorari); *Toyota Motor Corp. v. Choi*, 134 S. Ct. 62 (2013) (denying certiorari); *Ralphs Grocery Co. v. Brown*, 132 S. Ct. 1910 (2012) (denying certiorari); and *First American Financial Corp. v. Edwards*, 131 S. Ct. 3022 (2011).

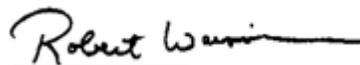
12. We have also worked to ensure that class settlements provide real relief to consumers, and we have represented objectors seeking to improve such settlements in numerous cases, including: *Batman v. Facebook, Inc.*, 638 Fed. Appx. 594 (9th Cir. 2016); *Day v. Persels & Associates*, 729 F.3d 1309 (11th Cir. 2013); and *In re Katrina Canal Breaches*, 628 F.3d 185

(5th Cir. 2010). Our work in this area reflects our commitment to the view that class settlements should be aimed at providing real value for class members and should minimize obstacles to the realization of those benefits by the class.

13. Public Citizen attorneys also represent parties and amici curiae in cases raising issues about class actions standards. For example, we served as co-counsel in *Tyson Foods v. Bouaphakeo*, 136 S. Ct. 1036 (2016), in which the Supreme Court held that the plaintiffs' reliance on representative proof did not defeat class certification because representative proof is allowed in individual wage-and-hour cases, and it would shrink plaintiffs' rights to deny them the opportunity to use such evidence when proceeding as a class. Public Citizen also filed briefs as amicus curiae in several cases raising questions about standards for class certification, including in support of the plaintiffs as appellees in *Siegel v. Delta Airlines*, No. 16-16401, pending in the Eleventh Circuit, in support of the plaintiffs in *Torres v. S.G.E. Management, L.L.C.*, 838 F.3d 629 (5th Cir. 2016), and in support of the plaintiffs in *In re Nexium Antitrust Litigation*, 777 F.3d 9, 13 (1st Cir. 2015).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11th day of December, 2017, in Washington, DC.



Robert Weissman

CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2018 I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Middle District of Florida by using the CM/ECF system, which sent notification of such filing to all CM/ECF participants.

/s/ Taras Kick

Taras Kick