

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWARD ZYBURO, on behalf of
himself and all others similarly situated,

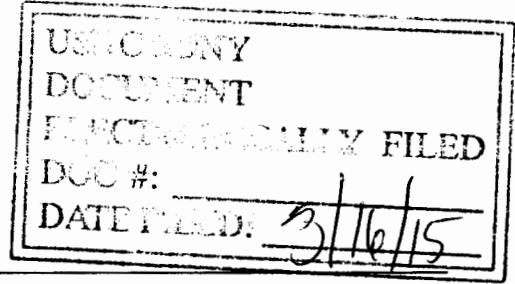
Plaintiff,

v.

NCSPLUS INC.,

Defendant.

CASE NO: 12-cv-06677 (JSR)



 ~~[PROPOSED]~~ ORDER PRELIMINARILY APPROVING SETTLEMENT
AND PROVIDING FOR CLASS NOTICE

WHEREAS, this action is pending before the Court entitled *Zybuero v. NCSPlus Inc.*, Case No. 12-cv-06677 (JSR) (“**Action**”), wherein the Court has certified a Class (Doc. 77);

WHEREAS, the Court has received the Stipulation and Agreement of Settlement dated March 6, 2015 (“**Stipulation**”), that has been entered into by the Settling Parties, and the Court has reviewed the Stipulation and the exhibits annexed thereto (collectively, the “**Exhibits**”);

WHEREAS, Plaintiff has filed an Unopposed Motion for Preliminary Approval of the Class Action Settlement (“**Motion**”), pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the settlement of this Action, in accordance with the Stipulation which, together with the Exhibits, sets forth the terms and conditions for a proposed settlement of the Action (“**Settlement**”) and for dismissal of the Action with prejudice upon the terms and conditions set forth therein; and the Court having read and considered the Stipulation, the Exhibits and Plaintiff’s Motion and Memorandum of Law in support thereof; and

WHEREAS, all capitalized terms not defined herein shall have the same meanings as set forth in the Stipulation;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court hereby preliminarily approves the Stipulation and the Settlement set forth therein, subject to further consideration at the Final Settlement Approval Hearing described below.

2. A hearing (“**Final Settlement Approval Hearing**”) shall be held before this Court on June 25, 2015 at 3:00 p.m., at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, to determine whether the proposed Settlement of the Action on the terms and conditions provided for in the Stipulation should be approved by the Court as fair, reasonable and adequate to the Settlement Class Members; whether, thereafter, the Action should be dismissed with prejudice; whether the proposed Plan of Distribution, as set forth in the Notice of Proposed Settlement of Class Action (“**Notice**”), should be approved; whether the Class Representative shall be given a service award and in what amount, and whether the motion of Class Counsel for the payment of attorney’s fees, costs and expenses incurred in connection with the Action should be granted, and in what amounts. The Court may adjourn the Final Settlement Approval Hearing without further notice to the Settlement Class Members.

3. The Court approves, as to form and content, the ^{revised} Notice of Proposed Settlement of Class Action (“**Notice**”) ~~attached to the Stipulation of Settlement as Exhibit A-3,~~ ^{received by the Court on 3/16/15,} and finds that the mailing and distribution of the Notice in the manner and form set forth in paragraph 5 of the Stipulation meets the requirements of Federal Rule of Civil Procedure 23 and Due Process, and

is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

4. Angeion Group, LLC or its successor (“**Settlement Administrator**”) is hereby appointed to supervise and administer the notice procedure as more fully set forth below:

(a) Not later than March 24, 2015, which is ~~eight (8)~~^{six} business days following the date of this Order Preliminarily Approving Settlement and Providing for Notice (“**Notice Date**”), Class Counsel shall cause the Settlement Administrator to mail to all Class Members a copy of the Notice, substantially in the form attached to the Stipulation as Exhibit A-3;

(b) Not later than March 24, 2015, Class Counsel shall cause the Settlement Administrator to have the Notice posted on www.ncspluslitigationsettlement.com;

(c) At least seven (7) calendar days prior to the Final Settlement Approval Hearing, Plaintiff’s Counsel shall cause to be served on Defendant’s counsel and filed with the Court proof, by affidavit or declaration, of such mailing.

5. All Class Members shall be bound by all determinations and judgments in the Action concerning the Settlement, whether favorable or unfavorable to the Class.

6. Any Class Member may enter an appearance in the Action, at his, her or its own expense, individually or through counsel of his, her or its own choice. If any Class Member does not enter an appearance, he, she or it will be represented by Class Counsel.

7. Any Class Member who objects to any aspect of the Settlement, the Plan of Distribution, the motion for a service award to the Class Representative, and/or the motion for attorney’s fees, costs and expenses to Class Counsel may appear and be heard at the Final Settlement Approval Hearing; provided, however, that any such Person must submit a written notice of objection, received on or before April 23, 2015, to each of the following:

CLERK OF THE COURT
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Daniel Patrick Moynihan United States
Courthouse
500 Pearl Street
New York, NY 10007

SETTLEMENT ADMINISTRATOR
Angeion Group, LLC
1801 Market Street, Suite 660
Philadelphia, PA 19103

The written objections must contain a statement of the reasons for objection, and whether the Class Member intends to appear at the Final Settlement Approval Hearing. Any Class Member who does not make his, her or its objection in the manner provided in this paragraph shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement as set forth in the Stipulation, to the Plan of Distribution or to the provision of a service award to the Class Representative, or to the award of attorney's fees, costs and expenses to Class Counsel, unless otherwise ordered by the Court.

8. Defendant and Continental shall cause the payment of \$1,800,000.00 to be transferred to the Escrow Agent within fifteen (15) business days after the later of: (i) the date this Order has been entered; or (ii) the date that Defendant receives instructions from Class Counsel referencing a taxpayer identification number for the Settlement Fund. These funds shall constitute the Settlement Fund. The Settlement Fund shall be held by the Escrow Agent until further order of the Court, except that prior to the time the Court enters the Judgment, funds may be drawn upon the account to pay notice and administration costs. All costs and expenses

incurred in connection with the administration of the Settlement shall be paid from the Settlement Fund, subject to approval from the Court.

9. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

10. All papers in support of the Settlement, the Plan of Distribution, and any application by Class Counsel for attorney's fees, costs or expenses shall be filed and served no later than ten (10) business days prior to the Final Settlement Approval Hearing, and all reply memoranda in support of such motions shall be filed and served no later than three (3) business days prior to the Final Settlement Approval Hearing.

11. Neither Defendant, the Released Parties nor Defendant's counsel shall have any responsibility for the Plan of Distribution or any application for attorney's fees, costs or expenses submitted by Class Counsel (other than responding in full to any inquiries from the Court regarding attorney's fees, costs or expenses applications by Class Counsel), and such matters will be considered separately from the fairness, reasonableness and adequacy of the Settlement.

12. At or after the Final Settlement Approval Hearing, the Court shall determine whether the Plan of Distribution proposed by Plaintiff's Counsel and any application for attorney's fees, costs or expenses shall be approved.

13. All reasonable expenses incurred in identifying and notifying Class Members, as well as administering the Settlement Fund, shall be paid as set forth in the Stipulation. In the event the Court does not approve the Settlement, or it otherwise fails to become effective, neither

Plaintiff nor Class Counsel shall have any obligation to repay any amounts actually and properly incurred or disbursed pursuant to the Stipulation.


14. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendant of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind, or as an admission or concession by Plaintiff that liability against Defendant did not exist or that the amount recoverable was not greater than the Settlement amount.

15. Pending approval of the Court of the Stipulation and its Exhibits, all proceedings in this Action, other than those preparatory to the Final Settlement Approval Hearing, shall be stayed.

16. Pending approval of the Court of the Stipulation and its Exhibits, all Persons shall be barred from prosecuting any Released Claim(s).

17. The Court retains jurisdiction to consider all further motions arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Class.

DONE and ORDERED in New York, New York this 16th day of March, 2015.



THE HONORABLE JED S. RAKOFF
UNITED STATES DISTRICT JUDGE