

IN THE CIRCUIT COURT OF DUPAGE COUNTY, ILLINOIS  
EIGHTEENTH JUDICIAL CIRCUIT

JASMINE LOCKE, on behalf of herself and all  
others similarly situated,

Plaintiff,

v.

FIDELITONE INC.,

Defendant.

Case No. 2021L000068

**DECLARATION OF RICHARD W. SIMMONS OF  
ANALYTICS CONSULTING LLC IN SUPPORT OF  
PROPOSED NOTICE PROGRAM**

I, Richard W. Simmons, have personal knowledge of the facts and opinions set forth herein, and I believe them to be true and correct to the best of my knowledge. If called to do so, I would testify consistent with the sworn testimony set forth in this Declaration. Under penalty of perjury, I state as follows:

**SCOPE OF ENGAGEMENT**

1. I am the President of Analytics Consulting LLC (“Analytics”)<sup>1</sup>. My company is one of the leading providers of class and collective action notice and claims management programs in the nation. It is my understanding that Analytics’ class action consulting practice, including the design and implementation of legal notice campaigns, is the oldest in the country. Through my work, I have personally overseen court-ordered class and collective notice programs in more than 2,500 matters.

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<sup>1</sup> In October 2013, Analytics Consulting LLC acquired Analytics, Incorporated. I am the former President of Analytics, Incorporated (also d/b/a “BMC Group Class Action Services”). References to “Analytics” herein include the prior legal entity.

2. This Declaration summarizes: my experience and qualifications; the proposed Notice Program<sup>2</sup> (the “Notice Plan”); and why the Notice Plan will provide the best practicable notice in this matter.

### **QUALIFICATIONS AND EXPERIENCE**

3. Founded in 1970, Analytics has consulted for 54 years regarding the design and implementation of legal notice and claims management programs relating to class and collective action litigation. These engagements include notice and claims administration involving antitrust, civil rights, consumer fraud, data breach, employment, insurance, product defect/liability, and securities litigation.

4. Analytics’ clients include corporations, law firms (both plaintiff and defense), and the federal government. Analytics’ long-term federal contracts include the following:

- a) Since 1998, Analytics has been under contract (six consecutive five-year contracts, renewed in 2023) with the Federal Trade Commission (“FTC”) to administer and provide expert advice regarding notice (including published notice) and claims processing in their settlements/redress programs.
- b) Since 2012, Analytics has been under contract (two consecutive multi-year contracts, renewed in 2023) with the United States Department of Justice (“DOJ”) to administer and provide expert advice regarding notice and claims processing; and,
- c) Since 2013, Analytics has been appointed as a Distribution Agent (three consecutive five-year terms, renewed in 2023) by the Securities and Exchange Commission (“SEC”) to administer and provide expert advice regarding notice and claims processing.

5. I joined Analytics in 1990 and have 34 years of direct experience in designing and implementing class action settlements and notice campaigns. The notice programs I have managed range in size from fewer than 100 class members to more than 40 million known class members,

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<sup>2</sup> All capitalized terms not defined herein have the same meaning as those defined in the Settlement Agreement (the “Settlement,” “Settlement Agreement” or “SA”).

including some of the largest and most complex notice and claims administration programs in history.

6. I have testified in state and federal courts as to the design and implementation of notice programs, claims processes, and the impact attorney communications has had on claims rates. As has always been my practice, I personally performed or oversaw Analytics' consulting services in each of the cases indicated on my CV, which is attached hereto as **Exhibit 1**.

7. I have presented to panels of judges and lawyers on issues regarding class notice, claims processing, and disbursement. In 2011, I was a panelist at the Federal Judicial Center's ("FJC") workshop/meeting regarding class action notice and settlement administration. In 2014, I was interviewed by the CFPB regarding notice and claims administration in class action litigation as part of their study on arbitration and consumer class litigation waivers. In 2016, I worked with the FTC to conduct research regarding: a) the impact of alternate forms of notice on fund participation rates; and, b) the impact of alternate formats of checks on check cashing rates. In 2016, I was an invited participant to the Duke Law Conference on Class Action Settlements regarding electronic notification of class members. In 2017, I was the primary author of the Duke Law Conference on Class Action Settlement's guide to best practices regarding the evaluation of class action notice campaigns (including notice by electronic means). In 2021, I assisted in the development of George Washington University Law School's Class Action Best Practices Checklist. In 2023, I acted as the primary author for the Rabiej Litigation Law Center's Class Action Best Practices.

8. I have co-authored and presented CLE programs and whitepapers regarding class notice and class action claims administration. In 2016, I co-authored a paper titled "Crafting Digital Class Notices That Actually Provide Notice" (Law360.com, New York (March 10, 2016).

My speaking engagements regarding notice include: *Current Challenges in Claims Administration related to Fraudulent Claims and Artificial Intelligence/Machine Learning*, National Association of Securities and Consumer Attorneys in New York City (2024); *Risks and Regulations: Best Practices that Protect Class Member Confidentiality*, HB Litigation Conference on Class Action Mastery in New York City (2018); *Recent Developments in Class Action Notice and Claims Administration*, Practising Law Institute in New York City (2017); *The Beginning and the End of Class Action Lawsuits*, Perrin Class Action Litigation Conference in Chicago (2017); *Class Action Administration: Data and Technology*, Harris Martin Target Data Breach Conference in San Diego (2014); *Developments in Legal Notice*, accredited CLE Program, presented at Shook Hardy & Bacon, LLP in Kansas City (2013), Halunen & Associates in Minneapolis (2013), and Susman Godfrey in Dallas (2014); and *Class Actions 101: Best Practices and Potential Pitfalls in Providing Class Notice*, CLE Program, presented to the Kansas Bar Association (March 2009).

9. I have been recognized by courts for my opinion as to which method of notification is appropriate for a given case and whether a certain method of notice represents the best notice practicable under the circumstances. Some of the cases in which I testified are:

- a) Honorable Stephen J. Murphy III, *Doe I v. Deja vu Servs., Inc.*, No. 2:16-cv-10877, ECF No. 77 (E.D. Mich. June 19, 2017):

*Also, the Plaintiffs certified that notice had been provided in accordance with the Court's preliminary approval order. The notices stated—in clear and easily understandable terms—the key information class members needed to make an informed decision: the nature of the action, the class claims, the definition of the class, the general outline of the settlement, how to elect for a cash payment, how to opt out of the class, how to object to the settlement, the right of class members to secure counsel, and the binding nature of the settlement on class members who do not to opt out.*

\* \* \*

*In addition, the parties took additional steps to provide notice to class members, including through targeted advertisements on social media. The Court finds that the parties have provided the “best notice that is practicable under the*

*circumstances,” and complied with the requirements of the Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005, and due process.*<sup>3</sup>

- b) Associate Justice Edward P. Leibensberger, *Geanacopoulos v. Philip Morris USA, Inc.*, No. 9884CV06002, Dkt. No. 230 (Mass. Super. Ct. Sept. 30, 2016):

*The Court finds that the plan of Notice as described in paragraphs 12 through 20 of the Settlement Agreement, including the use of email, mail, publication and internet notice, constituted the best notice practicable under the circumstances and constituted due and sufficient notice to the Class.*

- c) Honorable Edward J. Davila, *In re: Google Referrer Header Privacy Litig.*, No. 5:10-cv-04809, ECF No. 85 (N.D. Cal. Mar. 31, 2015):

*On the issue of appropriate notice, the court previously recognized the uniqueness of the class asserted in this case, since it could potentially cover most internet users in the United States. On that ground, the court approved the proposed notice plan involving four media channels: (1) internet-based notice using paid banner ads targeted at potential class members (in English and in Spanish on Spanish-language websites); (2) notice via “earned media” or, in other words, through articles in the press; (3) a website devoted solely to the settlement (in English and Spanish versions); and (4) a toll-free telephone number where class members can obtain additional information and request a class notice. In addition, the court approved the content and appearance of the class notice and related forms as consistent with Rule 23(c)(2)(B).*

*The court again finds that the notice plan and class notices are consistent with Rule 23, and that the plan has been fully and properly implemented by the parties and the class administrator.*

- d) Honorable Terrence F. McVerry, *Kobylanski v. Motorola Mobility, Inc.*, No. 2:13-cv-01181, ECF No. 43 (W.D. Pa. Oct. 9, 2014):

*The Court finds that the distribution of the Notice to Class Members Re: Pendency of Class Action, as provided for in the Order Granting Preliminary Approval for the Settlement, constituted the best notice practicable under the circumstances to all Persons within the definition of the Class and fully met the requirements of due process under the United States Constitution.*

- e) Honorable Thomas N. O’Neill, Jr., *In re: CertainTeed Fiber Cement Siding Litig.*, No. 2:11-md-02270, ECF No. 119 (E.D. Pa. Mar. 20, 2014):

*Class Members were provided with notice of the settlement in the manner and form set forth in the settlement agreement. Notice was also provided to pertinent state and federal officials. The notice plan was reasonably calculated to give actual*

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<sup>3</sup> Unless otherwise indicated, citations are omitted and emphasis is added.

*notice to Class Members of their right to receive benefits from the settlement or to be excluded from the settlement or object to the settlement. The notice plan met the requirements of Rule 23 and due process.*

- f) Honorable Robert W. Gettleman, *In re Aftermarket Filters Antitrust Litig.*, No. 1:08-cv-04883, ECF No. 1031 (N.D. Ill. Oct. 25, 2012):

*Due and adequate notice of the Settlement was provided to the Class. . . The manner of giving notice provided in this case fully satisfies the requirements of Federal Rule of Civil Procedure 23 and due process, constitutes the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons entitled thereto. A full and fair opportunity was provided to the members of the Class to be heard regarding the Settlements.*

- g) Honorable Marco A. Roldan, *Plubell v. Merck & Co., Inc.*, NO. 04CV235817-01, Final Judgment and Order (Mo. Cir. Ct. Mar. 15, 2013):

*Under the circumstances, the notice of this Settlement provided to Class Members in accordance with the Notice Order was the best notice practicable of the proceedings and matters set forth therein, including the proposed Settlement, to all Persons entitled to such notice, and said notice fully satisfied the requirements due process and Missouri law.*

- h) Honorable James P. Kleinberg, *Skold v. Intel Corp.*, No. 2005-CV-039231, Order on Motion for Approval (Cal. Super. Ct. Mar. 14, 2013):

*The Court finds that Plaintiff's proposed Notice plan has a reasonable chance of reaching a substantial percentage of class members.*

- i) Honorable J. Phil Gilbert, *Greenville IL v. Syngenta Crop Prot., Inc.*, No 3:10-cv-00188, ECF No. 325 (S.D. Ill. Oct. 23, 2012):

*The Notice provided to the Class fully complied with Rule 23, was the best notice practicable, satisfied all constitutional due process requirements, and provides the Court with jurisdiction over the Class Members.*

10. In addition to my class action consulting work, I taught a college course in antitrust economics, was a guest lecturer at the University of Minnesota Law School on issues of statistical and economic analysis, was a charter member of the American Academy of Economic and Financial Experts and am a former referee for the Journal of Legal Economics (reviewing and critiquing peer-reviewed articles on the application of economic and statistical analysis to legal issues).

11. This Declaration describes the Notice Program that has been proposed to be implemented in this matter and why it will satisfy 735 ILCS 5/2-801 and provide due process for members of the proposed Settlement Class. In my opinion, the Notice Program described herein is the best practicable notice under the circumstances and fulfills all due process requirements.

### **SUMMARY OF NOTICE PLAN**

12. The Notice Program is the best notice that is practicable under the circumstances and fully comports with due process and 735 ILCS 5/2-801. The Notice Program provides for: 1) a Notice via U.S. Mail for all Settlement Class Member for whom a mailing address is available; and, 2) direct notice via email (the Email Notice) to all Settlement Class Members for whom the Defendants have an email addresses. Additionally, the Notice will be available for download at the Settlement Website.

13. The Notice Program also includes a Settlement Website and toll-free telephone line where individuals can learn more about their rights and responsibilities in the litigation.

14. This Notice Plan, supported by the details outlined below, conforms to the best practices identified in the Federal Judicial Center's (or "FJC") Publication "*Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*" (2010) and provides the best practicable notice in this litigation.

### **CLASS DEFINITION**

15. The Settlement Agreement defines the "Settlement Class" as:

All individuals who were enrolled in and/or used the Time-Keeping System at Defendant's facilities within the State of Illinois between January 19, 2016 and the date of entry of the Preliminary Approval Order who have not previously signed a waiver or release. (¶ 29)

### **DIRECT NOTICE**

16. The direct notice effort in this matter will consist of mailing a Class Notice to all Settlement Class Member for whom a mailing address is available and sending a notice via email (the Email Notice) to all Settlement Class Members for whom the Defendants have an email addresses. In many instances, a Settlement Class Member will receive both a mailed and -emailed Notice.

*Direct Mailed Notice*

17. A list of Settlement Class Members will be provided by Defendants within seven (7) days after entry of the Preliminary Approval Order

18. No later than 30 calendar days after the entry of the Preliminary Approval Order, the Notice will be sent by first-class mail, postage prepaid, to the last-known address, of each Settlement Class Member,

19. In preparation for mailing, mailing addresses will be updated using the National Change of Address (“NCOA”) database maintained by the United States Postal Service (“USPS”)<sup>4</sup>; certified via the Coding Accuracy Support System (“CASS”)<sup>5</sup>; and verified through Delivery Point Validation (“DPV”).<sup>6</sup> This ensures that all appropriate steps have been taken to send Notices to current and valid addresses. This address updating process is standard for the industry.

20. Notices returned as undeliverable will be re-mailed to any new address available through postal service information, for example, to the address provided by the postal service on

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<sup>4</sup> The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person’s name and last known address.

<sup>5</sup> The CASS is a certification system used by the USPS to ensure the quality of ZIP +4 coding systems.

<sup>6</sup> Records that are ZIP +4 coded are then sent through Delivery Point Validation (“DPV”) to verify the address and identify Commercial Mail Receiving Agencies. DPV verifies the accuracy of addresses and reports exactly what is wrong with incorrect addresses.

returned pieces for which the automatic forwarding order has expired, but which is still during the period in which the postal service returns the piece with the address indicated, or to better addresses that may be found using a third-party lookup service. This process is also commonly referred to as ‘skip-tracing.’ Upon successfully locating better addresses, mailed Notices will be promptly re-mailed.

***Direct E-Mailed Settlement Notice***

21. No later than 30 calendar days after the entry of the Preliminary Approval Order, Analytics will cause the Email Notice to be sent to Settlement Class Members who have an email address in the records provided by Defendants.

22. Prior to disseminating notice via e-mail, Analytics will perform an analysis of the class data records that contain an e-mail address. The e-mail addresses will be subjected to an e-mail cleansing and will be deduplicated. The e-mail cleansing process removes extra spaces, fixes common typographical errors in domain name, and corrects insufficient domain suffixes (e.g., gmail.com to gmail.com, gmail.co to gmail.com, yaho.com to yahoo.com, etc.).

23. The standardized e-mail addresses will then be subject to an e-mail validation process whereby each e-mail address is compared to known invalid e-mail addresses. As an additional step in the validation process, the e-mail address will be verified by contacting the Internet Service Provider (“ISP”) to determine if the e-mail address exists.

24. Additionally, Analytics designs e-mail notices to avoid many common “red flags” that might otherwise cause a Class Members’ spam filter to block or identify the e-mail notice as spam. For instance, Analytics does not include the Class Notice as an attachment to an e-mail notice, because attachments are often interpreted by various Internet Service Providers (“ISP”) as

spam. Rather, in accordance with industry best practices, Analytics includes a link to all operative documents so that Class Members can easily access this information.

25. At the completion of the notice campaign Analytics will report to the Court the total number of e-mailed, mailed and delivered notices. In short, the Court will possess a detailed, verified account of the success rate of the notice campaign.

### **RESPONSE MECHANISMS**

#### *Toll-Free Phone Support*

26. Prior to the mailing of the Notice, we will coordinate with Class Counsel to implement a dedicated toll-free number as a resource for Class Members seeking information about the Settlement.

27. By calling this number, Class Members will be able to listen to pre-recorded answers to Frequently Asked Questions (“FAQs”) or request to have a Notice mailed to them. Automated messages will be available to Class Members 24-hours a day, 7-days a week, with call center agents also available during standard business hours. Analytics’ IVR system allows Class Members to request a return call if they call outside of business hours or if they prefer not to remain on hold. This automated process confirms the caller’s phone number and automatically queues a return call the next business day.

28. Calls are transferred to agents specifically assigned to an engagement using “skillset” routing. In addition to engagement specific training, call center agents receive training regarding Analytics’ applications, policies, and procedures (such as privacy and identity proofing). This training also includes customer service-oriented modules to ensure that the answers to callers’ questions are delivered in a professional, conversational, and plain-English manner.

29. Answers to frequently asked questions will be standardized and managed in Analytics' centralized knowledge management system. Each time a call is delivered to an agent, the agent is provided, on-screen, with a list of questions and Counsel-approved responses. Call center agents are monitored, graded, and coached on an ongoing basis to ensure that consistent messages are delivered regarding each matter.

*Settlement Website*

30. Prior to the mailing of the Notice (and within 30 days of the Preliminary Approval Date), Analytics will coordinate with Class Counsel to develop an informational website to provide information to Class Members regarding the litigation and Settlement. The Settlement Website will be the principal means for Class Members to obtain information about the Settlement, requests for exclusion, and changes their address. Guided by an intent to keep Class Members fully informed, the Website will conform to key e-commerce best practices:

- a) The home page content will be simplified and streamlined, so that specific prominent language and graphic images can direct Class Members to specific content areas:
  - i) FAQs: "Learn How This Litigation Affects Your Rights and Get Answers to Your Questions About the Litigation";
  - ii) Important Deadlines: "Important Deadlines That Will Affect Your Rights"; and
  - iii) Case Documents: "Detailed Information About the Case" including the operative Complaint, Settlement Agreement, and Class Notice.

31. Recognizing the increasingly mobile nature of advertising and communications, the Website will be mobile optimized, meaning it can be clearly read and used by Class Members

visiting the Website via smart phone or tablet<sup>7</sup>. By visiting the Website, Class Members will be able to read and download key information about the litigation, including, without limitation:

- a) Class Members' rights and options.
- b) important dates and deadlines.
- c) answers to FAQs; and
- d) case documents.

32. In order to ensure accessibility to information regarding the settlement to all Class Members, the design and implementation of the website for this settlement will be compliant with ADA Section 508 of the Rehabilitation Act (29 U.S.C. § 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220).

#### *Email Support*

33. The Website will contain prominent links for Class Members to ask questions about the litigation and Settlement. These links and the supporting email address will be operational prior to the commencement of the Notice Plan.

34. Every email received by Analytics will be assigned a tracking number, and the sender will receive an immediate response confirming receipt along with a link to additional information regarding the litigation. When Class Members' questions have been answered, they will be sent a follow up email asking if they have any additional questions and verifying that their questions were answered.

### **PERFORMANCE OF THE NOTICE PROGRAM**

#### *Reach*

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<sup>7</sup> In a consumer settlement, it is common for more than half of class members who visit a settlement website to be using a smart phone or tablet.

35. Because of the nature of the Class, and the fact that all Class Members are known, we expect to successfully deliver the Settlement Notice to virtually all of the Class. Many courts have accepted and understood that a 75% or 80% reach is sufficient. In 2010, the FJC issued a “Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide” (the “FJC Guide”). This FJC Guide states that, “[t]he lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%.”<sup>8</sup> In this matter, we expect to deliver notice within this range.

### **PLAIN LANGUAGE NOTICE DESIGN**

36. The proposed Notice forms used in this matter are designed to be “noticed,” reviewed, and—by presenting the information in plain language—understood by Class Members. The design of the notices follows principles embodied in the Federal Judicial Center’s illustrative “model” notices posted at [www.fjc.gov](http://www.fjc.gov). The Notices attached as Exhibit A to the Settlement Agreement contains plain-language summaries of key information about Settlement Class Members’ rights and options pursuant to the Settlement. Consistent with normal practice, prior to being delivered and published, all notice documents will undergo a final edit for accuracy.

### **SETTLEMENT ADMINISTRATION EXPENSES**

37. Settlement Administration expenses include all fees, costs, and expenses incurred by Analytics as the Settlement Administrator related to notice and distribution administration, including data sanitation and standardization, printing and postage for mailing and re-mailing Notices, website and toll-free line development and maintenance, contact center service agents, handling Class Member correspondence, settlement distribution and fund management, and

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<sup>8</sup> *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide* at 3, FED. JUD. CTR. (2010), <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>.

escheatment for non-negotiated payments. We will incur costs for these services of approximately \$12,681.

### **ESTIMATED CLASS MEMBER RECOVERY**

38. Subject to class member participation, and decisions regarding attorneys' fees or expenses and service awards, it is likely that payment received by Class Members in this matter will be \$619.98 (at a minimum). In the event that tax reporting is required, and social security numbers are not available, Analytics will solicit W9 forms from class members. Non-responding class members will be subject to backup withholding, as required by the IRS. Fees and expenses for tax reporting depend upon class member participation and in addition to those expenses identified above.

### **CONCLUSION**

39. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, state and local rules and statutes, and further by case law pertaining to notice. This framework requires that: (1) notice reaches the class; (2) the notice that actually comes to the attention of the class is informative and easy to understand; and (3) class members rights and members' rights and options easy to act upon. All of these requirements will be met in this case:

- a) Direct Notice will be provided to nearly all Settlement Class Members in this Litigation.
- b) The Settlement Notice is designed to be "noticed" and are written in carefully organized, plain language; and,

- c) Response mechanisms are designed to support Settlement Class Member requests and respond to their inquiries.

40. The proposed Notice Program will inform Settlement Class Members of the existence of the Litigation and Settlement through email and direct mail. These notice efforts will be supplemented by a website, e-mail support, and toll-free phone support. Given the availability of data regarding Class Members, and the proposed efforts to identify updated addresses for Class Members, this Notice Program provides comprehensive notice and support to Class Members.

41. The Notice Program will provide the best notice practicable under the circumstances of this case, conforms to all aspects of 735 ILCS 5/2-801, and comports with the guidance for effective notice articulated in the Manual for Complex Litigation.

42. In my opinion, the Notice Program, if implemented, will provide the best notice practicable under the circumstances of this Litigation.

43. This Notice Program is consistent with, or exceeds:

- a) historic best practices for class notification,
- b) FJC guidance regarding class notification; and,
- c) Standards established by federal agencies with notification and distribution funds, such as the FTC, DOJ, and SEC.

under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: September \_\_\_, 2024

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Richard W. Simmons  
President  
Analytics Consulting LLC