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BLOGS

Class Actions

Court Approves Settlement in Class Action Lawsuit Filed Against Franchisor

A class action settlement has been approved in *Swift v. DirectBuy, Inc.*, 2013 U.S. Dist. LEXIS 152618 (N.D. Ind. Oct. 24, 2013), in which current and former member-customers of buying club franchisor DirectBuy sued the company alleging that they did not enjoy savings commensurate with their membership fee. The plaintiffs alleged that DirectBuy failed to disclose material information regarding the true prices for its products and the fact that DirectBuy received payments from vendors, manufacturers, and suppliers but did not pass along these savings to members. After the court certified the class, the parties reached a settlement that requires DirectBuy to pay \$1.9 million, including \$900,000 in attorneys' fees. The settlement provided that the individual members could receive a cash distribution or a discount of \$10 off future purchases. Several class members objected to the settlement amount as too low. After the court conducted a fairness hearing, in which the objectors failed to appear, the court issued an opinion approving the settlement.

In assessing the settlement, the court noted that it satisfied the requirements of Federal Rule of Civil Procedure 23(c)(2)(B), which requires that class members receive notice of the settlement. The notice reached 99% of class members, which exceeded the 70% to 95% threshold recommended by the Federal Judicial Center. Turning to the adequacy of the settlement, the court found it was fair, reasonable, and adequate. In assessing a class action settlement, a court generally weighs five factors: (1) the strength of plaintiffs' case compared to the defendants' offered settlement amount; (2) the likely complexity, length, and expense of the litigation; (3) the amount of opposition to settlement among affected parties; (4) the opinion of competent counsel; and (5) the stage of the proceedings and the amount of discovery completed at the time of settlement. In this case, the court focused on the fact that class members would be compensated immediately. This was important because DirectBuy's financial condition was "dire" and its indebtedness exceeded the value of its tangible assets. The court found that, if the parties continued to litigate, it would be uncertain whether DirectBuy could satisfy any judgment. Finally, in affirming the award of \$900,000 in attorneys' fees, the court considered the merits of the dispute, the substantial risk of nonpayment to counsel, and the complexity of the case in concluding the fee award was fair and reasonable.

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