IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

APRIL NGUYEN, individually and on behalf of all others similarly situated, Plaintiff, v. OUTERWALL, INC., *et al*., Defendants.	Civil Action No. 16-cv-00611
BRETT BOYER, individually and on behalf of all others similarly situated, Plaintiff, v. OUTERWALL, INC., *et al*., Defendants.	Civil Action No. 17-cv-00853

PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF SETTLEMENT CLASS, APPROVAL OF AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES AND CASE CONTRIBUTION AWARD TO PLAINTIFFS

Plaintiffs April Nguyen and Brett Boyer ("Named Plaintiffs"), by and through their undersigned counsel, Connolly Wells & Gray, LLP and Kalikhman & Rayz, LLC (collectively, "Plaintiffs' Counsel"), individually and on behalf of the other members of the proposed Settlement Classes (as defined in the Settlement Agreement submitted contemporaneously herewith), respectfully move the Court for an order: (i) granting final approval of the Class Action Settlement; (ii) certifying the Settlement Classes; (iii) approving the Case Contribution award for Plaintiffs; (iv) granting Class Counsel's requested award of attorneys' fees and expenses; and (v) such further and other relief as this Court deems just and proper. Plaintiffs are

submitting a proposed Final Order attached hereto and incorporated herein for the Court's consideration.

In support of this Motion, Plaintiffs submit the accompanying Memoranda of Law, Declaration of Gerald D. Wells, III, and exhibits thereto. As set forth in the Settlement Agreement, and Memoranda of Law, Defendant supports the granting of this motion.

Dated: December 6, 2017

Respectfully submitted,

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Counsel for Plaintiffs and the Proposed Classes

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was electronically filed with the Court this 6th day of December, 2017. All counsel of record will receive service by the Court-generated notice and may access the documents via the Court's ECF/electronic filing system.

/s/ Gerald D. Wells, III
Gerald D. Wells, III

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MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS
SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS

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I. INTRODUCTION

Plaintiffs April Nguyen and Brett Boyer ("Plaintiffs") submit this brief in support of their unopposed motion for final approval of the Settlement reached by the Parties in this matter.[1] With this unopposed motion, Plaintiffs are filing the Settlement Agreement and related documents as well as supporting declarations and a proposed Final Approval Order. This Court preliminarily approved the Settlement on July 14, 2017 (Dkt. No. 43). As set forth below, all conditions required for final approval have been met.

Plaintiffs' counsel, on behalf of Plaintiffs and the proposed classes of individuals set forth below, seeks final approval of the proposed Settlement which will resolve claims against Defendant Coinstar, LLC (formerly known as "Outerwall Inc.") (hereafter "Defendant" or "Coinstar") for violation of the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et. seq.* ("ADA"), as well as the California Unruh Act, Cal. Civ. Code § 51 *et seq.* ("Unruh"), and California Disabled Persons Act, Cal. Civ. Code § 54 *et seq.* ("CDPA"). Plaintiffs allege that Coinstar Kiosks were not independently useable by persons who are blind or visually-impaired. Coinstar has denied and continues to deny the claims and any liability. The Settlement results in significant injunctive relief that will provide accessibility solutions for Coinstar Kiosks located in retail outlets across the country, a settlement fund for the California Sub-Class in the amount of Five Hundred Thousand Dollars ($500,000.00) (due to California state law, that, unlike the

[1] All capitalized terms used in this brief that are also defined in the Settlement Agreement shall have the same meaning as set forth in the Settlement Agreement. Although previously provided to the Court, for sake of thoroughness, Class Counsel is resubmitting the Settlement Agreement as Exhibit 1 to the Declaration of Gerald D. Wells, III ("Wells Decl."). The Wells Decl. is being filed in support of the present motion and Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses and Case Contribution Award to Plaintiffs. The Wells Decl. is incorporated herein by reference. All citations to exhibits shall reference the exhibits attached to the Wells Decl. and shall be cited to as "Ex.__").

ADA, permits monetary relief[2]), and payment of attorneys' fees and costs in an amount not to exceed $210,000.00.[3] The payment of attorneys' fees and costs is separate and apart from the payment into the Settlement Fund. The agreement related to Class Counsel's fees and expenses was negotiated after the parties reached agreements in principle as to material issues. Separate and apart from the Settlement Fund and the fees and costs approved by the Court, Defendant is bearing all costs of notice to the Settlement Class and all costs associated with the Settlement, including Claims Administration Costs up to $25,000.00. Only costs associated with the administration of this Settlement in excess of $25,000.00 shall be deducted from the Settlement Fund. Thus, these amounts (administration costs up to $25,000) and attorneys' fees and costs are separate and apart from the Settlement Fund, and do not dilute the amount available for recovery by members of the California-Sub Class. Thus, the proposed Settlement effectively achieved the stated goal of this litigation – remediation for all Class Members and financial recovery for those California Sub-Class members who elect to submit a claim -- without causing the Class to suffer the time and risk of a trial. The foregoing parameters of the Settlement were conveyed to members of the Settlement Class. The Settlement resolves all claims asserted by Plaintiffs in this Lawsuit.

The proposed Settlement is now ready for final review, as Plaintiffs have fully complied with the terms of the Court's Preliminary Approval Order ("Preliminary Approval Order"), dated July 14, 2017, including providing notice of the proposed Settlement to the Settlement Class. Pursuant to the Settlement Agreement and in accordance with the Preliminary Approval Order,

[2] "Under Title III of the ADA, private plaintiffs may not obtain monetary damages and therefore only prospective injunctive relief is available." *Anderson v. Macy's, Inc.*, 943 F. Supp. 2d 531, 538 (W.D. Pa. 2013).

[3] The appropriateness of Class Counsel's request for attorneys' fees, reimbursement of expenses, and Case Contribution award to Plaintiffs is set forth in greater detail in the accompanying memorandum filed contemporaneously herewith.

publication of the approved form of Class Notice was effectuated by mailing the Class Notice to 69 organizations serving Legally Blind individuals. *See* Declaration of Mark Patton ("Patton Decl."), Ex. 2, ¶5. In addition, on September 28, 2017, the Claims Administrator established a website (www.coinstarkiosksettlement.com), and on or before October 5, 2017 a toll-free phone line was established which Class Members could call to ask questions about the Settlement and request the Class Notice. *Id*. at ¶¶ 3, 4. Moreover, in September 2017, the Short Notice was electronically mailed to American Council of the Blind and National Federation of the Blind with the request that the notice be published in the Braille Monitor and Braille Forum as well as emailed out to their email list serves. *See* Ex.3, Declaration of Amanda Beane "Bean Decl.") ¶ 3. In addition, the Short Notice was published in the October edition of the American Council of the Blind Braille Forum that was emailed on September 27, 2017 and available online shortly thereafter. The notice can be found at http://acb.org/content/notice-proposed-settlement-class-action-lawsuit-1. *Id*. at ¶ 4. Lastly, the Short Notice was published in the October edition of the National Federation of the Blind Braille Monitor. The notice is available online at https://nfb.org/images/nfb/publications/bm/bm17/bm1709/bm170918.htm. *Id*. at ¶ 5. Class Counsel has received no objections to any aspect of the proposed Settlement including the requested attorneys' fees and Case Contribution Award to Named Plaintiffs. Nor has any Member of the California Sub-Class submitted an opt-out request. *See*, Ex. 2 at ¶ 8.

This Settlement is an excellent result considering the factual and legal risks to the class of continued litigation. The Parties reached the Settlement after lengthy settlement negotiations, including an in-person settlement conference with Magistrate Judge Hey (and multiple subsequent telephonic conferences with Her Honor). Even after reaching agreement in principal to settle Plaintiffs' claims, it took months of additional negotiations between counsel in order to

achieve the Settlement *sub judice*. Indeed, every aspect of this Settlement was meticulously negotiated by experienced counsel. Absent the Settlement reached here, there is no guarantee that Plaintiffs would have prevailed at trial. Consequently, this Settlement removes the possibility of years of litigation including possible appellate arguments. Indeed, had this Settlement not been achieved, Plaintiffs and the members of the Settlement Class faced the very real risk that they would not achieve any relief.

Specifically, Plaintiff requests that the Court enter the accompanying proposed Order of Final Judgment that, among other things, will: (a) grant final approval of the Settlement Agreement, and (b) certify the proposed Settlement Class pursuant to Fed. R. Civ. P. 23(b)(1) and/or (b)(2) and 23(b)(3) for the California Sub-Class. For the reasons set forth in greater detail below, the Settlement is fair, reasonable and adequate to the Settlement Class and satisfies all of the criteria that courts in this Circuit routinely apply for the approval of class action settlements. *See, e.g. In Re Prudential Ins. Co. of Am. Sales Litig.*, 148 F.3d 283 (3d Cir. 1998); *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975).

II. STATEMENT OF FACTS[4]

A. LITIGATION HISTORY

Plaintiff April Nguyen filed a class action lawsuit against Coinstar in this District on February 8, 2016 (the "Nguyen Lawsuit"). Plaintiff Nguyen alleged that Coinstar's Kiosks violated the ADA in that they were not independently useable by persons who are blind or visually-impaired, and sought to represent a class of "all legally blind individuals who have been and/or are being denied access to Coinstar kiosks within the United States, excluding the state of

[4] Much of the Sections II and III were previously submitted to the Court in Plaintiffs' memorandum in support of preliminary approval (Dkt. No. 39). For ease of reference, Plaintiffs are resubmitting the history of the Litigation and the terms of the Settlement for the Court's convenience.

California." Plaintiff Nguyen sought a declaratory judgment, injunctive relief and attorneys' fees and costs.

That same day, February 8, 2016, Plaintiff Brett Boyer filed a class action complaint against Coinstar in the Southern District of California. Plaintiff Boyer alleged that Coinstar's Kiosks violated the ADA as well as Unruh and the CDPA, because they were not independently useable by persons who are blind or visually-impaired, and sought to represent a class of "all legally blind individuals who have been and/or are being denied access to Coinstar kiosks within the state of California." Plaintiff Boyer also sought a declaratory judgment, injunctive relief and attorneys' fees and costs.

The Southern District of California dismissed Plaintiff Boyer's initial complaint for procedural reasons on October 24, 2016. Plaintiff Boyer refiled his claims on November 6, 2016, asserting the same factual allegations as set forth in the Nguyen Lawsuit, but limiting his claims to a proposed California class (the "Boyer Lawsuit"). On November 7, 2016, Plaintiff Nguyen and Defendant engaged in a settlement conference before Magistrate Judge Hey. Thereafter, the counsel for the Parties engaged in several settlement teleconferences with Magistrate Judge Hey wherein the Parties discussed, inter alia, resolution of the claims set forth in the Boyer Lawsuit. By joint motion of the Parties, the Boyer Lawsuit was subsequently transferred to the Eastern District of Pennsylvania on February 21, 2017. Thereafter, the Parties moved to jointly consolidate the cases for all pretrial purposes, which the Court granted on March 16, 2017. (*See* Dckt. No. 30).[5]

After the cases were consolidated the Parties continued to engage in settlement discussions. However, it took months of further negotiations between the Parties before the

[5] In conformity with the terms of the Agreement, the Plaintiffs contemporaneously filed a Consolidated Complaint with their Unopposed Motion for Preliminary Approval on July 7, 2017. (Dkt. No. 40).

Settlement Agreement was finalized. Indeed, in addition to multiple teleconferences with Magistrate Judge Hey, counsel for the Parties also engaged in numerous telephonic conferences amongst themselves and exchanged multiple draft versions of the Agreement now before the Court.

In short, the Parties reached an agreement regarding the overall contours of a settlement only after months of negotiations and the assistance of Magistrate Judge Elizabeth T. Hey. Even then, it took several additional months of settlement discussions amongst counsel before the Settlement was finalized and memorialized in the Agreement now before the Court. As set forth below, the proposed settlement resolves potential claims for individuals nationwide – effectively all individuals who would be subject to a potential claim that Defendant violated the ADA. In addition, the Settlement also resolves claims for the monetary relief pursuant to California law. Accordingly, Plaintiffs believe that the proposed settlement is fair, reasonable, and adequate and, as such, the proposed classes should be notified of the pendency of this settlement through dissemination of the proposed Notice.

III. KEY PROVISIONS OF THE SETTLEMENT

Plaintiffs respectfully submit that the proposed Settlement represents an excellent recovery for the proposed classes. As an initial matter, the Settlement requires Defendant to modify their Coinstar Kiosks.[6] Additionally, the Settlement also mandates that Plaintiffs and their counsel monitor the Coinstar Kiosks for a period of time after the remediation is completed –ensuring that the modifications contemplated by the Settlement remain in place and effective well after the closure of this litigation. Indeed, Plaintiff Boyer regularly travels to visit friends, family, and for personal vacation and is willing to test machines while traveling. Plaintiffs'

[6] Under the Agreement, the modifications will include ensuring a functional and tactile keypad exists on each modified Kiosk, the addition of a 3.5mm headphone jack, and the addition of text-to-speech output via audio through the headphone jack (a "Nonvisual User Interface").

Counsel will do the same. Similar modifications to kiosk machines and continued future monitoring has served as the basis for two analogous class settlements. *See, Jahoda v. Redbox Automated Retail, LLC, No.* 14-CV-01278, (W.D. Pa. October 31, 2016, Dkt. No. 80) (granting final approval to class action settlement of claims pursuant to the ADA);[7] *see also Lighthouse for the Blind & Visually Impaired v. Redbox Automated Retail, LLC*, No. C 12-0195 PJH, (N.D. Cal. May 18, 2012 Dkt. No. 85)(granting final approval to California state class action settlement of ADA and California Unruh Act claims).

Further, the Settlement also provides for the establishment of the California Settlement Fund, which shall consist of $500,000 plus interest thereon. This amount shall be made available to California Sub-Class members who submit Valid Claim Forms wherein they shall receive their pro rata portion of the California Settlement Fund, up to $4,000.00 per California Sub-Class member. This represents the statutory maximum an individual can receive for a violation of Unruh and four times the amount permitted under the CDPA. For that reason alone, the proposed Settlement should be approved. *Cf. Good v. Nationwide Credit, Inc.*, No. 14-cv-4295, 2015 U.S. Dist. LEXIS 135266 (E.D. Pa. Oct. 5, 2015) (denying preliminary approval of proposed FDCPA class action settlement where parties agreed to amount in excess of statutory cap).

Notably, Defendant has agreed to pay separately the administrative expenses, up to $25,000.00, necessary to administer this Settlement. This, coupled with Defendant's agreement to separately pay attorney's fees and costs, means that the Class's recovery is not being reduced by fees and expenses normally born by the Class in such settlements. Thus, the proposed Settlement effectively achieved the stated goal of this litigation – remediation for all Class

[7] Notably, this case did not include any claims seeking monetary damages, and, unlike the instant case, did not establish a settlement fund in which any class members were to receive any monetary payments.

Members and financial recovery for those California Sub-Class members who elect to submit a claim -- without causing the Class to suffer the time and risk of a trial. Finally, the Settlement provides for Plaintiffs to receive a Case Contribution Award (subject to Court approval) in the amount of $2,500.00 each. Thus, based on the key provisions of the proposed Settlement, Plaintiffs respectfully submit that the Settlement should be granted preliminary approval.

IV. CLASS CERTIFICATION IS PROPER

One of this Court's functions in reviewing a proposed settlement of a class action such as this one is to determine whether the action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure. The Supreme Court has acknowledged the propriety of certifying a class solely for settlement purposes. *See Amchem Prods. v. Windsor*, 521 U.S. 591 (1997). Plaintiffs request and Defendant does not oppose, that the Court certify following class for settlement purposes only (hereinafter referred to as the "Settlement Class"):

> All Legally Blind individuals who attempted but were unable to access or who were deterred from accessing those products or services available at Coinstar Kiosks in all 50 states and the District of Columbia during the time period starting on February 8, 2014 for all states and the District of Columbia excluding California and February 8, 2013 in California and continuing through the entry of this order.

Coinstar Kiosks is defined as a Coinstar-branded automated kiosk that permits individuals to exchange their coins for cash or a value product and is located at a retail store within the United States. Certification of the Settlement Class is warranted in the Lawsuit for a number of reasons. Most significantly, before entering the Preliminary Approval Order, this Court examined the record and preliminarily certified the Settlement Class pursuant to Fed. R. Civ. P. 23(b)(1) and/or (b)(2). (*See* Dkt. No. 43).

Further, Plaintiffs request and Defendant does not oppose, that the Court certify the following sub-class for settlement purposes only (hereinafter referred to as the "California Sub-Class"):

> All Legally Blind individuals who attempted, but were unable to access or who were deterred from accessing those products or services available at Coinstar Kiosks in California during the time period February 8, 2013 and continuing through the entry of this order.

Certification of the California Sub-Class is warranted in the Lawsuit for a number of reasons. Most significantly, before entering the Preliminary Approval Order, this Court examined the record and preliminarily certified the California Sub-Class pursuant to Fed. R. Civ. P. 23 (b)(3).

Nothing has changed in the record that would compel the Court to reach a different conclusion with respect to the final, rather than preliminary, approval of the Settlement Class and California Sub-Class. No objections have been filed. Finally, as set forth below, this case satisfies every requirement for certifying a Settlement Class and California Sub-Class pursuant to Fed. R. Civ. P. 23.

A. STANDARD FOR CLASS CERTIFICATION

For a class to be certified, Plaintiffs must satisfy all four requirements of Rule 23(a) along with one of the three categories of Rule 23(b). *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997); *Mielo v. Steak 'n Shake Operations, Inc.*, No. 15-180, 2017 U.S. Dist. LEXIS 64051, *10 (W.D. Pa. April 27, 2017). Certification here for settlement purposes is sought under Rule 23(b)(1) and/or (b)(2) for the Settlement Class and Rule (b)(3) for the California Sub-Class.

Rule 23(a) provides that a class should be certified if: (1) the class members are so numerous that joinder of all members is impracticable; (2) the action addresses questions of law or fact common to the class; (3) the claims or defenses of the class representatives are typical of the claims or defenses of the class; and (4) the class representative parties will fairly and

adequately protect the interests of the class. As set forth below, each of these Rule 23 requirements, as well as the requirements of Rule 23(b)(3), is met in this case.

Importantly, class actions challenging the barriers to accessibility regularly receive class certification. *See, e.g., Access Now, Inc. v. Ambulatory Surgery Ctr. Group, Ltd.*, 197 F.R.D. 522 (S.D. Fl. 2000) (certifying class of individuals affected by defendants' architectural barriers); *Heinzl v. Cracker Barrel Old Country Stores, Inc.*, No. 14-1455, 2016 U.S. Dist. LEXIS 58153 (W.D. Pa. Jan. 27, 2016) (certifying nationwide class of individuals with mobility disabilities who were denied "full and equal enjoyment of" Cracker Barrel facilities due to defendant's failure to comply with ADA's accessible parking and path of travel requirements).

B. THE PROPOSED CLASS MEETS THE REQUIREMENTS FOR CERTIFICATION

1. Rule 23(a)(1) - Numerosity

"Numerosity requires a finding that the putative class is so numerous that joinder of all members is impracticable." *Bonett v. Educ. Debt Servs.*, No. 01-6528-LDD, 2003 U.S. Dist. LEXIS 9757 at *5, (E.D. Pa. May 11, 2003) (quoting *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 182 (3d Cir. 2001)). Generally, if the "potential number of plaintiffs exceeds 40, the [numerosity] prong of Rule 23(a) has been met." *Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001).

In the context of an ADA class action, a sister court in this Circuit recently noted that:

> Rule 23 does not require a plaintiff to offer direct evidence of the exact number and identities of the class members, but in the absence of direct evidence, a plaintiff must show sufficient circumstantial evidence specific to the problems, parties, and geographic areas actually covered by a class definition to allow the court to make factual findings respecting numerosity. *Marcus v. BMW of North America, LLC*, 687 F.3d 583, 596 (3d Cir. 2012). Mere speculation is insufficient. *Id.* Only then may the court rely on "common sense" to forgo precise calculations and exact numbers. *Id.* (citing *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F.Supp. 450, 468, 510 (D. N.J. 1997)).

Mielo, 2017 U.S. Dist. LEXIS 64051, **13-14. The *Mielo* court went on to hold that "the numerosity standard may be relaxed in cases where injunctive and declaratory relief is sought" and that plaintiffs could rely on "statistical census data concerning the numbers of persons with mobility disabilities" to "meet their burden with respect to numerosity." *Id.*, at *15. *See Gray v. Golden Gate Nat'l Recreational Area*, 279 F.R.D. 501, 508 (N.D. Cal. 2011) (using U.S. Census data to infer that thousands of persons with mobility and/or vision disabilities visit defendant's park each year).

Here, for the purposes of settlement no party is contesting numerosity. Data from the 2010 Census indicates that more than 8 million people in the United States have difficulty seeing, including more than 2 million who have "severe difficulty" seeing.[8] Data from the 2014 American Community Survey indicates that approximately 2.3% of non-institutionalized individuals in the United States have a visual disability.[9] According to the National Federation of the Blind, as of 2014, there are over 760,000 individuals in California with a visual disability.[10] The prevalence of visual impairments in the United States is such that those who attempted to use a Coinstar Kiosk would satisfy the numerosity standard for purposes of certifying the settlement classes.

[8] Brault, Matthew W., "Americans With Disabilities: 2010," Current Population Reports, P70-131, U.S. Census Bureau, 14, Table 1 (2012), available at https://www.census.gov/content/dam/Census/library/publications/2012/demo/p70-131.pdf.

[9] Erickson, W., Lee.C., von Schrader, S., Disability Statistics from the 2014 American Community Survey, Cornell University Yang Tan Institute (2016), information *available at* http://www.disabilitystatistics.org/StatusReports/2015-PDF/2015-StatusReport_US.pdf?CFID=154144&CFTOKEN=31418575baacaeda-21348029-EFED-E131-D2327BD95BAD7CAB.

[10] *See* https://nfb.org/blindness-statistics (last visited June 28, 2017).

2. Rule 23(a)(2) – Plaintiffs' Claims Present Common Questions of Law and Fact For Purposes of Settlement

The "commonality" requirement of Rule 23(a)(2) is not overbearing. *Bonett*, 2003 U.S. Dist. LEXIS 9757 at *5. Indeed, it "does not require an identity of claims or facts among class members; instead, [it] 'will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class.'" *Johnston v. HBO Film Management, Inc.*, 265 F.3d 178, 183 (3d Cir. 2001) (quoting *In re the Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 310 (3d Cir. 1998)); *see also Baby Neal for and by Kanter v. Casey*, 43 F.3d 48, 56-57 (3rd Cir. 1994). As the Third Circuit has noted, commonality only requires "that the harm complained of be common to the class." *Hassine v. Jeffes*, 846 F.2d 169, 177 (3d Cir.1988). Moreover, in civil rights suits, commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members. *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir.2001), *abrogated on other grounds as recognized by Harris v. Alvarado*, 402 F. App'x 180, 181 (9th Cir. 2010).

"As Plaintiffs seek injunctive relief against Defendants, who are allegedly engaged in a common course of conduct on a class-wide basis . . . the commonality requirement is met in this case." *Kerrigan v. Phila. Bd. of Election*, 248 F.R.D. 470, 477 (E.D. Pa. 2008).

Here, Plaintiffs allege that all members of the proposed classes – Legally Blind individuals -- were deterred from and/or encumbered by utilizing Defendant's Coinstar Kiosks. The Parties agree that Coinstar Kiosks utilize a touchscreen interface. Plaintiffs allege that all Coinstar Kiosks affect all Legally Blind customers in a consistent way – by providing an interface that was not independently useable. Thus, "[t]he harm is common to the class" and the commonality prong is satisfied. *Mielo*, 2017 U.S. Dist. LEXIS 64051, *18.

3. Rule 23(a)(3) - Plaintiffs' Claims are Typical of Class Claims For Purposes of Settlement

"Typicality" under Rule 23(a)(3) requires "the interests of the class and the class representatives [align] so that the latter will work to benefit the entire class." *Pichler v. UNITE*, 228 F.R.D. 230, 249-50 (E.D. Pa. 2005). "The central inquiry in a typicality evaluation is whether 'the named plaintiff's individual circumstances are markedly different or … the legal theory upon which the claims are based differs from that upon which the claims of other class members will perforce be based.'" *Bonett*, 2003 U.S. Dist. LEXIS 9757 at *7, *citing Eisenberg v. Gagnon*, 766 F.2d 770, 786 (3d Cir. 1985). Notably, Rule 23(a)(3) does not require identical claims. *See Eisenberg*, 766 F.2d at 786. A plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory. *See Baby Neal*, 43 F.3d at 57.[11]

Here, Plaintiffs allege that all claims arise from Defendant's use of a touchscreen interface. Accordingly, for settlement purposes, Plaintiff's claims are typical of the Class, and there are no unique facts or circumstances that would render Plaintiff's claims atypical. *See, e.g.*, *Access Now, Inc.*, 197 F.R.D. at 528 (finding typicality where "the representative Plaintiffs, like the class members, seek injunctive relief requiring Defendants to modify each of their facilities . . . in compliance with the ADA and the regulations promulgated thereunder").

4. Rule 23(a)(4) – Plaintiffs and Class Counsel are "Adequate"

Rule 23(a)'s fourth requirement is that "[t]he representative parties will fairly and adequately protect the interests of the class." The adequacy requirement seeks first to "test[] the

[11] The typicality requirement may be satisfied even if there are some factual distinctions between the claims of the named plaintiff and those of other class members. *See Baby Neal*, 43 F.3d at 57-58; *Stewart v. Associates Consumer Discount Co.*, 183 F.R.D. 189, 196 (E.D. Pa. 1998); *see also Bonett*, 2003 U.S. Dist. LEXIS 9757 at *8 (Additional claims by class representative not atypical since all arose from same initial event or practice as those of the class).

qualifications of the counsel to represent the class" and second to "uncover conflicts of interest between named parties and the class they seek to represent." *Prudential*, 148 F.3d at 312. Both prongs are met in this case.

(a) Qualifications of Counsel

Fed. R. Civ. P. 23 requires the Court to examine the capabilities and resources of counsel to determine whether they will provide adequate representation to the class. Class Counsel – Connolly Wells & Gray, LLP and Kalikhman & Rayz, LLC – easily meet these requirements.

Plaintiffs are represented by counsel experienced in class action litigation. Class Counsel's work in this case on behalf of the Plaintiffs and the proposed Classes has been substantial. They have committed significant time and effort to identify, investigate, and prosecute the claims in the Lawsuit. They have devoted substantial time and resources to the case, including: (i) developing the factual basis of the claims; (ii) preparing a detailed and thorough Complaint; (iii) conducting informal discovery; (iv) engaging in hard-fought and ultimately successful settlement negotiations with Defendant; and (v) memorializing their efforts in an Agreement that requires Class Counsel to continue to work for the benefits of the classes well after any final approval order is issued. Additionally, Class Counsel have substantial experience, individually and collectively, in handling class actions, other complex litigation, and claims of the type asserted here. Class Counsel's extensive efforts in prosecuting this case together with their background and experience in ADA litigation satisfy the requirements of Rule 23(g). In the past, courts have not hesitated to appoint these firms to lead counsel positions in other complex class actions. *See, e.g., Magness v. Walled Lake Credit Bureau et al*, No. 12-CV-06586 (E.D. Pa.) (appointing Connolly Wells & Gray, LLP and Kalikhman & Rayz, LLC to serve as class counsel for FDCPA settlement class); *Ebner v. United Recovery Systems, LP* et al, No. 14-CV-06881 (E.D. Pa.)(same); *Graudins v. Kop Kilt, LLC*, No. 14-2589, 2017 U.S. Dist.

LEXIS 25926, *29 (E.D. Pa. Feb. 24, 2017) (in approving class/collective action settlement, noting that "result that counsel has achieved here likely compensates Participating Settlement Class Members beyond their actual damages and would not have been achieved without counsel's skill and experience").

Based on the foregoing, this Court should appoint Plaintiffs as class representatives for the Settlement Classes and appoint Connolly Wells & Gray, LLP and Kalikhman & Rayz, LLC as Class Counsel.

(b) Absence of Conflict

There is nothing to suggest that Plaintiffs have any interest antagonistic to the Settlement Class. Plaintiffs have represented the interests of the proposed Classes vigorously and without conflict, and are prepared to vigorously pursue this Lawsuit, filed on behalf of themselves and the proposed Classes. Indeed, Plaintiffs provided their attorneys with key information necessary to investigate and prosecute this Lawsuit, and remained fully abreast of the settlement negotiations with defense counsel. Moreover, Plaintiffs have agreed to monitor Defendant's modifications going forward to ensure compliance. Further, there are no individualized issues, for example, of reliance or intent. The claims of Plaintiffs and the proposed Classes are identical, and there is no potential for conflicting interests in the class action. *See Colbert v. Trans Union Corp.*, No. 93-6106, 1995 U.S. Dist. LEXIS 578 *9 (E.D. Pa. Jan. 12, 1995).

Plaintiffs respectfully submit that the adequacy prong is readily met, as are all of the elements of Rule 23(a).

C. PLAINTIFFS HAVE SATISFIED THE REQUIREMENTS OF RULE 23(B)(1) AND/OR (B)(2) FOR PURPOSES OF SETTLEMENT

Plaintiffs meet the requirements for certification of their nationwide class for purposes of settlement as they are seeking declaratory and injunctive relief – namely the remediation of

Coinstar Kiosks. "Class relief is especially appropriate 'where plaintiffs request declaratory and injunctive relief against a defendant engaging in a common course of conduct toward them, and there is therefore no need for individualized determinations of the propriety of injunctive relief.'" *Bacal v. SEPTA*, No. 94-6497, 1995 U.S. Dist. LEXIS 6609, *11 (E.D. Pa. May 15, 1995) (quoting *Baby Neal*, 43 F.3d at 57).

1. Plaintiffs Meet The Requirements Of Rule 23(b)(1)[12]

As a sister court in this District has held:

> Rule 23(b)(1) provides that class certification is appropriate under two specific scenarios. First, a class may be certified where prosecution of separate actions would create a risk of inconsistent judgments for class members and incompatible standards for the party opposing the class. Second, a class may be certified where individual prosecution of separate actions would create a risk that the rights of members not party to the individual adjudication would be substantially impaired or would impede nonparty members' ability to protect their interests.

Markocki v. Old Republic Nat'l Title Ins. Co., 254 F.R.D. 242, 250 (E.D. Pa. 2008).

In *Markocki*, the court held that certification was appropriate under Rule 23(b)(1) because "prosecution of separate actions could result in incompatible standards of conduct for Defendant, and could jeopardize the interests of members not party to the individual actions." *Id.* Here, the issue is whether Defendant's use of a touchscreen interface in its Coinstar Kiosks violated the ADA, Unruh and the CDPA. Accordingly, the logic of *Markocki* holds true here as a court's ruling regarding the accessibility/inaccessibility of Defendant's Coinstar Kiosks would invariably "jeopardize the interests of members not party to the individual action[]."

As such, Plaintiffs respectfully submit that the requirements of Rule 23(b)(1) are met for settlement purposes.

[12] Plaintiffs respectfully submit that this matter is more appropriately certified under Rule 23(b)(2). However, Plaintiffs move for certification under both Rule 23(b)(1) and (b)(2) in an abundance of caution and so as not to jeopardize the interests of non-parties to this action.

2. Plaintiffs Meet The Requirements Of Rule 23(b)(2) For Settlement Purposes

"Rule 23(b)(2) permits class actions for declaratory or injunctive relief where 'the party opposing the class has acted or refused to act on grounds generally applicable to the class.' Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples." *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 614 (1997). "Rule 23(b)(2) applies ... when a single injunction or declaratory judgment would provide relief to each member of the class." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011). "The requirements of Rule 23(b)(2) are met by the allegations of the Plaintiffs which describe ADA violations and discriminatory practices of the Defendants to which the named Plaintiffs and members of the Class allege that they have been and continue to be subjected." *Access Now, Inc.*, 197 F.R.D. at 529. Thus, courts have not hesitated to certify classes seeking remediation of barriers to access. *Id*. ("plaintiffs' complaint about the same categories of architectural barriers necessarily involves acts that are generally applicable to the class and therefore appropriate for 23(b)(2) treatment"); *see also Arnold v. UA Theatre Circuit, Inc.*, 158 F.R.D. 439, 452 (N.D. Cal. 1994) (in suit challenging accessibility, granting certification and finding "this suit is a paradigm of the type of action for which the (b)(2) form was created").

The instant matter involves remediation of Defendant's Coinstar Kiosks. Accordingly, "[t]his case is clearly the type of institutional reform action for which Rule 23(b)(2) was designed" as "a single injunction would provide relief to each member of the class by ensuring within a reasonable period of time that Defendant's" Coinstar Kiosks "are barrier free and properly maintained going forward." *Mielo*, 2017 U.S. Dist. LEXIS 64051, *21

D. PLAINTIFF BOYER HAS SATISFIED THE REQUIREMENTS OF RULE 23(B)(3) FOR THE PURPOSES OF SETTLEMENT REGARDING THE CALIFORNIA SUB-CLASS

Rule 23(b)(3) requires that the questions of law or fact common to all members of the class predominate over questions pertaining to individual members and that class action is superior to other available methods of adjudication. *Georgine v. Amchem Products, Inc.*, 83 F.3d 610, 625 (3rd Cir. 1996), *aff'd sub nom Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997). Here, Plaintiff Boyer alleges that for settlement purposes the common questions predominate over any individual issues as the principal issue is whether Defendant's Coinstar Kiosks were independently useable to Legally Blind individuals in California.[13]

1. Common Questions Predominate

The predominance requirement "does not demand unanimity of common questions," it merely requires that the common questions outweigh individual questions. *McCall v. Drive Fin. Servs., L.P.*, 236 F.R.D. 246, 254 (E.D. Pa. 2006) (citing *Johnston, 2*65 F.3d at 185). Moreover, the Supreme Court has held that plaintiffs need not show that every element of plaintiffs' claims can be proven with class-wide evidence: "Rule 23(b)(3) … does not require a plaintiff seeking class certification to prove that each elemen[t] of [her] claim [is] susceptible to classwide proof. What the rule does require is that common questions predominate over any questions affecting only individual [class] members." *Amgen Inc. v. Connecticut Retirement Plans and Trust Funds*, 133 S. Ct. 1184, 1196 (2013) (internal citation omitted). The law is not that every issue or element must be proven with class-wide evidence but only that common evidence must predominate in the case as a whole. Thus, the criterion is normally satisfied when there is an

[13] Should the Court determine that certification of the California Sub-Class under Rule 23(b)(3) is not appropriate in this case, certification is still warranted under Rule 23(b)(2) as the primary relief in this settlement is the remediation of the Coinstar Kiosks so that they are independently accessible and the monetary relief to the California Sub-Class is effectively incidental to that relief. *Wilson v. Pennsylvania State Police Dep't*, No. 94-CV-6547, 1995 U.S. Dist. LEXIS 9981, *9 (E.D. Pa. July 14, 1995) ("As long as the damages sought are incidental, the action can be maintained under 23(b)(2)").

essential common factual link between all class members and the defendants for which the law provides a remedy. *See Lake v. Nationwide Bank*, 156 F.R.D. 615, 625 (E.D. Pa. 1994).

Here, all members of the proposed California Sub-Class are Legally Blind and, thus, have allegedly faced the same common barrier – the use of the touchscreen interface on the Coinstar Kiosks. These facts support a finding of predominance. *See, e.g., Huynh v. Harasz*, No. 14-CV-02367, 2015 U.S. Dist. LEXIS 154078, *34 (N.D. Cal. Nov. 12, 2015) (finding predominance prong met in action alleging, *inter alia*, violations of ADA and CDPA where claims involved "Defendants' alleged uniform policy"); *see also Lighthouse for the Blind & Visually Impaired v. Redbox Automated Retail, LLC*, No. C 12-0195 PJH, (N.D. Cal. May 18, 2012 Dkt. No. 85) (certifying for settlement purposes a 23(b)(3) class of California Legally Blind individuals who were unable to fully access Redbox kiosks). Plaintiff Boyer and all members of the proposed California Sub-Class have damages claims that they allege turn on the same issue and all seek the same damages remedy -- minimum statutory damages under California's disability discrimination statutes (Unruh and the CDPA). Thus, their claims are appropriate for certification under Rule 23(b)(3) for settlement purposes. *See, e.g., Nat'l Fed'n of the Blind v. Target*, 582 F. Supp. 2d 1185, 1203 (N.D. Cal. 2007) (in granting class certification pursuant to Rule 23(b)(3), characterizing the complexity of individual damages determinations under the statutory minimum damages framework of Unruh and the CDPA as "relatively minor"); *Botosan v. Paul McNally Realty*, 216 F.3d 827, 834–35 (9th Cir. 2000) (proof of actual damages not required for recovery of statutory damages under Unruh).

2. Class Action Treatment of This Case is Superior

Certification of the proposed California Sub-Class would be, as Rule 23(b)(3) requires, "superior to other available methods for the fair and efficient adjudication of the controversy." Efficiency is a primary focus in determining whether the class action is the superior method for

resolving the controversy presented. *Lake*, 156 F.R.D. at 625-26. Indeed, "[t]he superiority requirement tests whether 'classwide litigation of common issues will reduce litigation costs and promote greater efficiency.'" *Brazil v. Dole Packaged Foods, LLC,* No. 12-CV-01831, 2014 U.S. Dist. LEXIS 74234 (N.D. Cal. May 30, 2014) (quoting *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996)).

The proposed California Sub-Class here satisfies the objectives of the 23(b)(3) class by efficiently resolving a large set of nearly identical claims. *Hanlon*, 150 F.3d at 1023 (holding that 23(b)(3) class was superior to alternative of numerous individual actions that would burden courts and would be uneconomic for many class members). Indeed, resolution of the California Sub-Class claims will require a review of common evidence, namely Defendant's touchscreen interface for its Coinstar Kiosks.

Here, the proposed settlement will provide all class members with modifications that will include ensuring a functional and tactile keypad exists on each modified Kiosk, the addition of a 3.5mm headphone jack, and the addition of text-to-speech output via audio through the headphone jack within a reasonable timeframe. In addition, the proposed resolution of the damages claims involves a streamlined claims procedure that provides redress to aggrieved California Sub-Class members. Absent this settlement, the members of the California Sub-Class would be required to adjudicate their claims individually -- burdening the courts with numerous individual lawsuits asserting largely duplicative claims. Of course, this assumes that members of the proposed California Sub-Class have the means to secure legal counsel to prosecute individual claims against Defendant.

Resolving claims of the proposed class in a class-wide settlement is also superior to the alternatives because it is more manageable. *Leyva v. Medline Industries, Inc.*, 716 F.3d 510, 515

(9th Cir. 2013) (holding that manageability favored class-wide adjudication of claims even where individual damages determinations were necessary). The proposed Settlement resolves the injunctive relief claims of the class in one stroke by applying the modifications nationwide for Kiosks in retail locations. The proposed Settlement also sets up a simplified claims procedure that will efficiently resolve the damages claims of the proposed California Sub-Class without the need for further adjudication.

In short, for purposes of settlement, a class action is simply a more efficient and consistent means of adjudicating Defendant's accessibility issues regarding its Coinstar Kiosks. Therefore, class treatment is the superior means of adjudication here.

E. THE CLASS NOTICE SATISFIED RULE 23 & DUE PROCESS REQUIREMENTS

The form and method of notice utilized here to notify the Settlement Class of the pendency of the proposed Settlement and the fairness hearing plainly satisfied all due process considerations and meets the requirements of Fed. R. Civ. P. 23(e)(1). In accordance with the Court's Preliminary Approval Order, as well as the terms of the Settlement Agreement, publication of the approved form of Class Notice was effectuated by mailing the Class Notice to the 69 organizations serving Legally Blind individuals. *See* Ex. 2, ¶5. In addition, on September 28, 2017, the Claims Administrator established a website (www.coinstarkiosksettlement.com) and on or before October 5, 2017 a toll-free phone line was established which Class Members could call to ask questions about the Settlement and request the Class Notice. *Id*. at ¶¶ 3, 4. Moreover, in September 2017, the Short Notice was electronically mailed to American Council of the Blind and National Federation of the Blind with the request that the notice be published in the Braille Monitor and Braille Forum as well as emailed out to their email list serves. *See* Ex.3,) ¶ 3. Lastly, the Short Notice was published in the October edition of the American Council of

the Blind Braille Forum that was emailed on September 27, 2017 and available online shortly thereafter. The Notice can be found at http://acb.org/content/notice-proposed-settlement-class-action-lawsuit-1. (*Id.* at ¶ 4). The publishing of the Notice on a dedicated website and establishment of a dedicated phone line ensured that Class Members had ready access to all relevant information. Importantly, a similar mechanism for publishing notice was approved and used in analogous ADA class actions involving modification of kiosk machines. *See Jahoda v. Redbox Automated Retail, LLC, No.* 14-CV-01278, (W.D. Pa. October 31, 2016, Dkt. No. 80) (class action settlement granted final approval); *Lighthouse for the Blind & Visually Impaired v. Redbox Automated Retail, LLC,* No. C 12-0195 PJH, (N.D. Cal. May 18, 2012 Dkt. No. 85).

Importantly, "even in Rule 23(b)(3) class actions, due process does not require that class members actually receive notice." *Juris v. Inamed Corp.*, 685 F.3d 1294, 1321 (11th Cir. 2012) (collecting cases). Rather, "[w]here certain class members' names and addresses cannot be determined with reasonable efforts, notice by publication is generally considered adequate." *Id.* (citing *In re Agent Orange Prod. Liab. Litig.*, 818 F.2d 145, 168-69 (2d Cir. 1987)). Here, given the circumstances of the use of the Coinstar Kiosks (including the fact that Coinstar users are generally anonymous), it is simply not feasible to determine the names and addresses of settlement class members. Accordingly, the form and method of notice plainly satisfies all due process considerations and meets the requirements of Fed. R. Civ. P. 23(e).

The Class Notice utilized here provided Settlement Class Members with all the pertinent information regarding the Lawsuit and the Settlement. The Class Notice fully informed Settlement Class Members of the Action, the proposed Settlement and the information they need to make informed decisions about their rights. The Class Notice provided detailed information about the Settlement, including: (i) a comprehensive summary of its terms, including the

allocation formula for the California Settlement Fund; (ii) their rights with respect to the settlement, including their right to object or exclude themselves (from the California Sub-Class); (iii) detailed information regarding the identities of the released parties and the released claims; (iv) Class Counsel's intent to request attorneys' fees, reimbursement of expenses, and seek a Case Contribution award for the Plaintiffs separate from the Settlement Fund; and (v) information about the date of the final approval hearing. In sum, the Notice provides specifics on the date, time, and place of the Fairness Hearing and describes the procedures, as well as deadlines, for objecting to the settlement, the proposed allocation formula for the California Sub-Class, or the motion for attorneys' fees, payment of costs, and payment of the Case Contribution Award.

As such, the proposed notice provisions here exceed notice provisions that have been found to be appropriate by sister courts in this District. *See, e.g., In re Budeprion XL Mktg. & Sales Litig.*, MDL No. 2107, 2012 U.S. Dist. LEXIS 91176, **14-15 (E.D. Pa. July 2, 2012). Now that Class Counsel and the Claims Administrator have effectuated the Notice pursuant to the Court-approved plan, this Court should finally hold that the Class Notice was adequate and fully satisfied all due process and Rule 23 requirements.

V. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL

A. THE STANDARDS FOR FINAL APPROVAL

The settlement of class action litigation is favored and encouraged in the Third Circuit. *See Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010)("Settlement agreements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts"); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("there is an overriding public interest in settling class action litigation, and it should therefore be encouraged"); *In re General Motors Corporation Pick-Up*

Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 784 (3d Cir. 1995) ("The law favors settlements, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation"); *In re School Asbestos Litig.*, 921 F.2d 1330, 1333 (3d Cir. 1986) (noting Third Circuit's policy of "encouraging settlement of complex litigation that otherwise would linger for years").

Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval for the settlement of class actions. When a proposed class settlement is reached, it must be submitted to the Court for approval. H. Newberg & A. Conte, NEWBERG ON CLASS ACTIONS § 11.41 (4th ed. 2009) ("NEWBERG"); *Oslan*, 232 F. Supp. at 439-40. Preliminary approval is the first of three steps comprising the approval process for settlement of a class action. The second step is the dissemination of notice of the settlement to all class members. Finally, there is a settlement approval or final fairness hearing. *See* Manual for Complex Litigation § 21.632-633 (4th ed. 2004). This matter is now at the third and final step. As set forth below, based on the terms of the Settlement and applicable case law, final approval is plainly warranted.

The Third Circuit has stressed that the most relevant consideration is whether the proposed settlement is within a "range of reasonableness" in light of all costs and risks of continued litigation; that is, the test is whether the proposed settlement is fair and reasonable under the circumstances. *In re Prudential*, 148 F.3d at 322. To determine whether the settlement is fair, reasonable and adequate under Rule 23(e), courts in the Third Circuit apply the nine-factor test enunciated in *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975), which was reaffirmed in *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 534-35 (3d Cir. 2004). These factors are:

1) The complexity, expense, and likely duration of the litigation;

2) the reaction of the class to the settlement;

3) the stage of the proceedings and the amount of discovery completed;

4) the risks of establishing liability;

5) the risks of establishing damages;

6) the risks of maintaining the class action through the trial;

7) the ability of the defendant to withstand a greater judgment;

8) the range of reasonableness of the settlement fund in light of the best possible recovery; and

9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Girsh, 521 F.2d at 156-57.

Plaintiffs' counsel believes the terms of the proposed settlement in this case are fundamentally fair, reasonable, and adequate, and achieve the goals envisioned by the ADA and Unruh, especially when considering the risk, expense, complexity, and delay associated with further litigation. In making its determination of these risks, the Court should give deference to the opinions of Plaintiffs' counsel, who have researched the issues and are familiar with the facts of the litigation. *Austin v. Pennsylvania Dep't of Corrs.*, 876 F.Supp. 1437, 1472 (E.D. Pa. 1995)("In determining the fairness of a proposed settlement, the Court should attribute significant weight to the belief of experienced counsel that settlement is in the best interests of the class."); *Lake v. First Nationwide Bank*, 900 F.Supp. 726, 732 (E.D. Pa. 1995)("Significant weight should be attributed 'to the belief of experienced counsel that settlement is in the best interest of the class.'").

As explained below, the application of the *Girsh* factors unequivocally demonstrates that the proposed Settlement is fair, reasonable and adequate.

1. Complexity, Expense, And Likely Duration Of The Litigation

This factor is concerned with assessing the "'probable costs, in both time and money, of continued litigation.'" *Pro v. Hertz Equipment Rental Corp*., No. 06-cv-3830, 2013 U.S. Dist. LEXIS 86995, at *9 (D.N.J. June 20, 2013) (*quoting In re Cendant Corp. Litig*., 264 F.3d 201, 234 (3d Cir. 2001)). Here, the probable costs of continued litigation with respect to both time and money are high. As a sister court aptly noted in granting final approval to an ADA class settlement, "[t]his suit has been, and, absent settlement, would continue to be complex, lengthy and expensive." *Serventi v. Bucks Tech. High Sch.*, 225 F.R.D. 159, 166 (E.D. Pa. Nov. 29, 2004). This case is no exception. Indeed, this litigation has already gone on for nearly two years and has been diligently litigated by both sides. Further, much work has been done by counsel for Plaintiffs, including but not limited to: informal discovery, extensive legal research and comparison of analogous cases, exhaustive settlement negotiations, and motion practice so as to bring both underlying actions before this Court.

If the Settlement is not approved, additional litigation will be required. Importantly, additional litigation would likely bring no extra benefit to the Classes, given the fact that the proposed settlement achieves Plaintiffs' underlying goal of remediation. A trial on the merits, and preparing for the same, would entail considerable expense on both sides - and would arguably not result in any better outcome for Plaintiffs or members of the classes. The result would not necessarily end the litigation, giving the right of the losing party to appeal. Accordingly, all of these facts weigh in favor of the Settlement. *See In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 642 (E.D. Pa. 2003)(noting that the "protracted nature of class action antitrust litigation means that any recovery would be delayed for several years," and "substantial and immediate benefits" to class members favors settlement approval); *Slomovics v. All for a*

Dollar, *Inc.*, 906 F. Supp. 146, 149 (E.D.N.Y. 1995) (where litigation is potentially lengthy and will result in great expense, settlement is in the best interest of the class members).

As such, this factor warrants the granting of final approval of this proposed Settlement.

2. Reaction Of The Class To The Settlement

Pursuant to the Court's Preliminary Approval Order, as well as the terms of the Settlement Agreement, the deadline for Class Members to object or to exclude themselves from the Settlement Agreement has now passed.[14] Class Counsel has received no objections to the Settlement. *See* Wells Decl. at ¶ 27. In *Bonett*, a sister court in this District found that "[t]he lack of dissenting class members and/or members exercising the opt-out right further evidences that the proposed settlement is fair, adequate, and reasonable." *Bonett*, 2003 U.S. Dist. LEXIS 9757, *16 (approving settlement consisting of 1,969 class members where no objections were filed and only one individual opted out of settlement). In addition, the Claims Administrator did not receive any opt-out requests from any Class Members of the California Sub-Class. *See* Ex. 2, ¶ 8.

A complete absence of any objections weighs in favor of final approval of the Settlement.

3. Stage Of The Proceedings And The Amount Of Discovery Completed

As noted above, the Parties exchanged significant information during the course of their settlement negotiations. In short, Plaintiffs and their counsel had sufficient information to be fully informed as to the appropriateness of the proposed settlement.

Notably, the proposed settlement is the result of arm's-length negotiations including a formal, in-person settlement conference between the Parties under the auspices of a magistrate judge (as well as numerous telephonic conferences with the magistrate). The participation of

[14] The Class Notice, which was approved by the Court in its Preliminary Approval Order, clearly informed all prospective Class Members that the response deadline to object or submit a claim for the California Settlement Fund was December 1, 2017.

Magistrate Judge Hey insured that the settlement negotiations were conducted at arm's length and without collusion between the parties. *See, e.g., Bernhard v. TD Bank, N.A.*, No. 08-4392, 2009 U.S. Dist. LEXIS 92308, *5 (D.N.J. Oct. 5, 2009); *D'Amato v. Deutsche Bank* , 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in . . . settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure"); *Tiro v. Public House Invs., LLC*, No. 11-7679, 2013 U.S. Dist. LEXIS 129258 (S.D.N.Y. Sept. 10, 2013), *citing In re Citigroup Inc. Bond Litigation*, 2013 U.S. Dist. LEXIS 117838, (S.D.N.Y. Aug. 20, 2013) ("Additionally, whereas here, the settlement is the by-product of a mediation before an experienced employment law mediator, there is a presumption of fairness and arm's-length negotiations").

Accordingly, this factor also weighs in favor of final approval of the settlement. *See Perry v. FleetBoston Fin. Corp.*, 229 F.R.D. 105, 115 (E.D. Pa. 2005) (finding that the *Girsh* factor satisfied where the parties "gained such an appreciation through their exchange of some discovery" and participation in the mediation process).

4. Risks Of Establishing Liability And Damages

"These inquiries survey the possible risks of litigation in order to balance the likelihood of success and the potential damage award if the case were taken to trial against the benefits of an immediate settlement." *Ikon*, 209 F.R.D. at 105 (*quoting In re Prudential Ins. Co., Am. Sales Practice Litig. Agent Actions,* 148 F.3d at 319). The *Ikon* court went on to explain:

> For example, if it appears that further litigation would realistically risk dismissal of the case on summary judgment or an unsuccessful trial verdict, it is in the plaintiffs' interests to settle at a relatively early stage. In contrast, if it appears that liability is extraordinarily strong, and it is highly likely that plaintiffs would prevail at trial, settlement might be less prudent. On this issue, the court should avoid conducting a mini-trial and must to a certain extent, give credence to the estimation of the probability of success proffered by class counsel, who are experienced with the

> underlying case, and the possible defenses which may be raised to their causes of action. *LaChance,* 965 F. Supp. at 638.

In the instant matter, class certification, liability, and establishing damages would all have been hotly contested issues. Defendant would likely have argued that proof of any liability – particularly under Unruh - would require an individual fact inquiry and that no class member suffered any real harm. It is Plaintiffs' Counsel's considered opinion that settlement on the proposed terms at this juncture in the case, given the potential downside risks, upside rewards, and concomitant costs of going forward, is the most prudent course for Plaintiffs and the Classes to take.

5. Risks Of Maintaining The Class Action Through The Trial

A district court in this Circuit evaluating a settlement noted that:

> The value of a class action depends largely in the certification of the class because, not only does the aggregation of the claims enlarge the value of the suit, but often the combination of the individual cases also pools litigation resources and may facilitate proof on the merits. Thus, the prospects for obtaining certification have a great impact on the range of recovery one can expect to reap from the action.

General Motors, 55 F.3d at 817.

Although it is Plaintiffs' strong belief that certification of their proposed class would have been granted by the Court, there was certainly cause for doubt. Based on Plaintiffs' counsel's experience in these kinds of cases Defendant would have vigorously opposed class certification in this case. The risks associated with class certification increase the risk of maintaining the proposed class, and therefore support settlement. *Serventi*, 225 F.R.D. at 167 (noting that risk of class certification in ADA case warranted approval of settlement); *see also In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 460 (S.D.N.Y. 2004) (concluding settlement was appropriate because defendants may contest class certification "thereby creating appreciable risk to the class members' potential for recovery").

6. Ability Of The Defendant To Withstand A Greater Judgment

This factor considers "whether the defendants could withstand a judgment for an amount significantly greater than the [s]ettlement." *Warfarin*, 391 F.3d at 537–538. This "factor is most relevant when the defendant's professed inability to pay is used to justify the amount of the settlement." *In re NFL Players Litig.*, 821 F.3d 410, 440 (3d Cir. 2016). For the Settlement Class, "[t]his factor is inapplicable in this case because the plaintiffs never sought monetary damages. They were only seeking injunctive and declaratory relief. They obtained everything they were seeking in the settlement." *Serventi*, 225 F.R.D. at 167. However, while Defendant has not professed an inability to pay, and, while the proposed Settlement does not provide for damages to the Settlement Class, Plaintiffs submit that the comprehensive injunctive relief provided to the Settlement Class under the terms of the proposed Settlement is obviously costly to Defendant. The proposed Settlement results in injunctive relief that requires Defendant to modify kiosks throughout all 50 states and the District of Columbia so Legally Blind customers will be able to independently use the Coinstar Kiosks.

In addition to the costs incurred for modification of the Coinstar Kiosks throughout the country, Defendants also must establishment the California Settlement Fund in the amount of $500,000 for the benefit of the California Sub-Class. As such, this factor weighs in favor of the Settlement.

7. Range Of Reasonableness Of The Settlement Fund In Light Of The Best Possible Recovery And All The Attendant Risks Of Litigation

"This inquiry measures the value of the settlement itself to determine whether the decision to settle represents a good value for a relatively weak case or a sell-out of an otherwise strong case." *General Motors*, 55 F.3d at 806. As previously discussed the proposed Settlement confers a substantial benefit on the Settlement Class. Indeed, the proposed Settlement provides

the structural relief which addresses the principle issue set forth in the Consolidated Complaint – the inability of blind or visually-impaired customers to independently use Defendant's Coinstar Kiosks due to their exclusive use of touchscreen interface. Here, the proposed settlement provides all of the changes Plaintiffs had sought – remediation of the Coinstar Kiosks. Additionally, the Settlement provides for monitoring to ensure the accessibility modifications are maintained and kept functional for the blind community. On the other hand, as set forth above, continued litigation would be protracted and costly, causing the Class to wait years before being afforded the same relief, if at all

Consequently, this factor also favors final approval of the proposed Settlement. *See Serventi*, 225 F.R.D. at 167 (approving settlement where the "Settlement Agreement provides all the basic policy changes that plaintiffs had sought").

B. THE PROPOSED SETTLEMENT PROVIDES SUBSTANTIAL BENEFIT TO THE CLASS

The principal feature of the Settlement is the modifications to the Coinstar Kiosks. By way of the Settlement, Defendant has agreed to equip one Coinstar Kiosk at each retail location with a Nonvisual User Interface. *See* Agreement at ¶ 7.1. The Nonvisual User Interface will consist of a 3.5mm headphone jack that will autonomously detect a Coinstar Kiosk's text-to-speech features when compatible headphones are connected to it and ensuring that a functional and tactile keypad exists. *See* Agreement at ¶ 7.1.2.

As set forth in the Agreement, Defendant will design and present the proposed modifications to Plaintiffs so as to permit them to provide feedback regarding the true accessibility of the proposed modifications. *See* Agreement at ¶ 7.2. It is estimated that Defendant will begin remediation efforts no later than eighteen months after the Effective Date and that it shall complete the remediation of the at-issue Coinstar Kiosks within five years of the

Effective Date. *See* Agreement at ¶ 7.2. Thereafter, the Plaintiffs and their counsel shall monitor the Coinstar Kiosks for a period of eighteen months. *See* Agreement at ¶ 8.1.3.

In addition to the above modifications to the Coinstar Kiosks, Defendant shall establish the California Settlement Fund with a payment of $500,000. Importantly, no money from the California Settlement Fund will revert to the Defendant, regardless of the number of Participating Settlement Class Members.[15] *See* Wells Decl. at ¶ 35. Any amounts remaining in the Settlement Fund after distribution will be distributed to a non-profit organization, as approved by the Court.[16] Counsel for the Parties have conferred and shall propose up to three (3) organization for the Courts consideration at Final Approval.

As set forth above, the payments to Participating Settlement Class Members will not be diluted either through settlement administration costs of up to $25,000 or payment of fees or expenses. Because of the substantial benefit conferred to the Settlement Class, as well as the attendant risks of continued litigation, Class Counsel believes that the Settlement is an outstanding result and should be, respectfully, granted final approval by this Court. *See* Wells Decl. at ¶¶ 25-35.

VI. CONCLUSION

The proposed settlement provides a fair, reasonable, and adequate award to Plaintiff and the proposed class, and puts an end to this Lawsuit. Accordingly, final approval should be granted. Further, the proposed Settlement Class satisfies the requirements of Rules 23(a) and Rule 23(b)(1) and/or 23(b)(2). Moreover, the proposed California Sub-Class satisfies the

[15] The Claims Administrator has received 61 Claim Forms from members of the California Sub-Class. *See*, Ex. 2 at ¶ 7.

[16]The Settlement Agreement provides: 3.14 "Cy Pres Fund" means any amount remaining in the California Settlement Fund after the payments to the California Sub-Class. The Cy Pres Fund shall be payable to the entity ordered by the Court as part of Final Approval. Prior to Final Approval, the Parties shall jointly suggest to the Court three separate Cy Pres recipients from which the Court may choose if it so desires.

requirements of Rule 23(b)(3), and should be certified as a settlement class. Accordingly, the Settlement Class and California Sub-Class should be certified as settlement classes. For the foregoing reasons, Plaintiffs respectfully request that the Court: (1) grant final approval of the Settlement, and (2) certify, for settlement purposes, Plaintiffs' claims pursuant to Fed. R. Civ. P. 23(b)(1) and/or 23(b)(2) and Plaintiff Boyer's claims pursuant to 23(b)(3).

Dated: December 6, 2017

Respectfully submitted,

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Counsel for Plaintiffs and the Proposed Classes

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 6th day of December, 2017, a true and correct copy of the foregoing document was filed with the Court utilizing its ECF system, which will send notice of such filing to all counsel of record.

/s/ Gerald D. Wells, III
Gerald D. Wells, III

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

APRIL NGUYEN, individually and on behalf of all others similarly situated, Plaintiff, v. OUTERWALL, INC., *et al*., Defendants.	Civil Action No. 16-cv-00611
BRETT BOYER, individually and on behalf of all others similarly situated, Plaintiff, v. OUTERWALL, INC., *et al*., Defendants.	Civil Action No. 17-cv-00853

MEMORANDUM OF LAW IN SUPPORT OF PLAINITIFFS' MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND CASE CONTRIBUTION AWARD TO PLAINTIFFS

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Plaintiffs April Nguyen and Brett Boyer ("Plaintiffs"), by and through their undersigned counsel, respectfully request an award of $210,000.00. This amount is to be paid directly by Defendant Coinstar, LLC ("Coinstar" or "Defendant", formerly known as "Outerwall Inc."), and not from the California Settlement Fund,[1] and shall represent an award of Class Counsel's attorney's fees and out-of-pocket expenses. In addition, Plaintiffs respectfully request a Case Contribution Award of $2,500.00 to each of the Named Plaintiffs in recognition of their services to the Settlement Class. Plaintiffs seek their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 12205. Defendant does not oppose this motion for the purposes of settlement.

I. INTRODUCTION

This Settlement follows more than a year and a half of contested litigation in what began as two separately filed lawsuits. In these matters, individually and collectively, Class Counsel devoted their time, skill and resources, with full knowledge of the risks inherent in contingency fee litigation, and, ultimately, obtained a meaningful settlement for the Settlement Class. Indeed, as set forth below, Class Counsel obtained through this settlement what Plaintiffs sought on behalf of the putative class at trial – modification of Defendant's Coinstar Kiosks.[2] Under the Agreement, the modifications will include ensuring a functional and tactile keypad exits on each modified Kiosk, the addition of a 3.5 mm headphone jack, and the addition of text-to-speech output via audio through the headphone jack. Plaintiffs' believe that this Settlement was a direct result of the continuing efforts of Class Counsel that began before the filing of the initial complaints and continued throughout the litigation process. Class Counsel's skill, creativity,

[1] All capitalized terms used in this brief that are also defined in the Settlement Agreement shall have the same meaning as set forth in the Settlement Agreement. Although previously provided to the Court, for sake of thoroughness, Class Counsel is resubmitting the Settlement Agreement as Exhibit 1 to the Declaration of Gerald D. Wells, III ("Wells Decl."). The Wells Decl. is incorporated herein by reference.

[2] Coinstar Kiosks means a Coinstar-branded automated kiosk that permits individuals to exchange their coins for cash or a value product and is located at a retail store within the United States.

perseverance and hard work allowed them to successfully resolve the Litigation, subject to the Court's approval. In achieving this result for the Settlement Class, Class Counsel devoted substantial time and resources to the case, including: (i) developing the factual basis of the claims; (ii) personally visiting and examining Defendant's Coinstar Kiosks; (iii) preparing detailed and thorough complaints, (iv) engaging in informal discovery; (v) engaging in motion practice to have the separately filed matters transferred and consolidated before this Court; (vi) participating in a settlement conference before Magistrate Judge Hey; and (vii) engaging in hard-fought and ultimately successful settlement negotiations with Defendant. *See, e.g.* Wells Decl. at ¶ 88. In short, Class Counsel have performed significant work for the Settlement Class for which compensation is well-deserved.

As discussed below, Plaintiffs' fee request is appropriate when compared to the overall result obtained for the Settlement Class. Moreover, this request is fundamentally supported: (i) by the time and effort devoted to litigating the Lawsuit; (ii) the significant risks undertaken; (iii) the quality of the services rendered; (iv) the results achieved; (v) the time that will be spent monitoring Defendant's modifications to the Coinstar Kiosks post settlement; and (vi) by applicable case law in this Circuit and analogous class actions.

Importantly, Class Counsel's fee request also includes reimbursement of Plaintiffs' Counsel's out-of-pocket expenses in the amount of $1,456.05, which were reasonable and necessary in prosecuting this Lawsuit. Finally, Plaintiff requests a modest Case Contribution Award of $2,500.00 for both Plaintiff Boyer and Plaintiff Nguyen in recognition of the time and effort they devoted to this Litigation on behalf of the Settlement Class. As with Plaintiffs' other requests, this request is also well supported by applicable case law. Significantly, after publishing the approved form of Class Notice – which stated that Class Counsel would seek up

to $210,000.00 in attorneys' fees and Case Contribution Awards to the Plaintiffs in the amount of up to $2,500.00 – no Settlement Class Member objected to any portion of the proposed Settlement, including any of the aforementioned requests. The lack of objections to Plaintiffs' request for attorneys' fees, reimbursement of expenses, and Case Contribution Awards evinces the propriety of each of these requests.

II. PLAINTIFFS' FEE REQUEST IS FAIR AND REASONABLE[3]

Class Counsel respectfully requests the Court approve its fees in the amount of $210,000.00. Importantly, the fee application does not dilute the California Settlement Fund and is fair and reasonable, and consequently appropriate, given the work performed, the excellent result achieved and the significant risks undertaken by Class Counsel.

A. THE LAW PROVIDES FOR AN AWARD OF ATTORNEYS' FEES AND COSTS TO PLAINTIFFS

Class Counsel is entitled to compensation based upon the benefits conferred on the Settlement Class. "In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). The Americans with Disabilities Act authorizes the payment of attorneys' fees and costs to a prevailing party who files a case to enforce their rights under the statute. 42 U.S.C. § 12205.[4] Under statutes with fee-shifting provisions, "it is well-established that a prevailing party should recover an award of attorneys' fees absent special circumstances." *Truesdell v. Philadelphia Housing Authority*, 290 F.3d 159, 163 (3d Cir. 2002) (citation omitted); *accord People Against Police Violence v. City of Pittsburgh*, 520 F.3d 226, 232 (3d Cir. 2008).

[3] Plaintiffs hereby incorporates by reference the factual and procedural background of this Lawsuit set forth in the memorandum of law filed in support of final approval of the Settlement.

[4] "In any action or administrative proceeding commenced pursuant to this chapter, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual." 42 U.S.C. § 12205.

As explained below, through the resulting settlement, the Named Plaintiffs have achieved the relief sought under the ADA – modification of Defendant's Coinstar Kiosks. Thus, the Named Plaintiffs submit that they have prevailed for purposes of recovering fees and costs and there are no special circumstances that would warrant a denial of their request. For the purposes of achieving settlement, Defendant does not oppose this request.

B. FOR THE PURPOSES OF ACHIEVING SETTLEMENT, PLAINTIFFS ARE PREVAILING PARTIES FOR THE PURPOSE OF FEE AND COST RECOVERY

"To obtain an award of attorneys' fees under the ADA, a plaintiff must show she has "prevailed."" *Ward v. Phila. Parking Auth.*, 634 F. App'x 901, 903 (3d Cir. 2015). A plaintiff is the "prevailing party" if he "'succeed[s] on any significant issue in litigation which achieves some of the benefits the part[y] sought in bringing suit.'" *People Against Police Violence*, 520 F.3d at 232 (citation omitted). "To 'succeed' under this standard, a party must achieve a 'court-ordered change in the legal relationship between the plaintiff and the defendant.'" *Id.* (citations omitted).[5] "The touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties . . . ." *Texas State Teachers Association v. Garland Independent School District,* 489 U.S. 782, 792-93 (1989).

The Supreme Court "has further determined that, to be considered prevailing, a plaintiff 'must obtain [either] an enforceable judgment against the defendant from whom fees are sought, or comparable relief through a consent decree or settlement, . . . [and] [w]hatever relief the

[5] When a court *approves a settlement agreement* and *retains jurisdiction*, there is a judicially sanctioned material alteration in the legal relationship of the parties sufficient to confer prevailing party status on the plaintiff under fee-shifting statutes, such as the ADA. *Truesdell*, 290 F.3d at 164, 165; *accord P.N. v. Clementon Bd. of Educ.*, 442 F.3d 848, 853 (3d Cir.), *cert. denied*, 549 U.S. 881 (2006); *Arc of Delaware v. Meconi*, No. 02-255-KAJ, 2005 U.S. Dist. LEXIS 39039 at *8-9 (D. Del. June 13, 2005); *Witcher v. Philadelphia Housing Authority*, No. 01-CV-585, 2002 U.S. Dist. LEXIS 16262 at *5-6 (E.D. Pa. Aug. 19, 2002). The Settlement Agreement, here, embodies the type of judicial involvement necessary to confer prevailing party status on Plaintiffs. The Settlement Agreement must be approved and adopted by the Court. (Settlement Agreement Section 4.5). Also, the Settlement Agreement provides that the Court will retain jurisdiction for purposes of interpretation and enforcement of the Settlement. (Settlement Agreement Section 15).

plaintiff secures must directly benefit him at the time of the judgment or settlement.'" *Ward*, 634 F. App'x at 903 (quoting *Farrar v. Hobby*, 506 U.S. 103, 111 (1992). The settlement obtained by Plaintiffs in this case unquestionably meets this standard. "[t]he fact that respondent prevailed through a settlement rather than through litigation does not weaken [the respondent's] claim to fees." *Ward*, 634 F. App'x at 903.

The legally binding and judicially enforceable settlement agreement that resolves this case effects a material alteration in the legal relationship between Plaintiffs and Defendant. The Agreement obligates Defendant to take concrete steps to benefit Plaintiffs and the blind community; Defendant will modify its Coinstar Kiosks nationwide pursuant to the Settlement Agreement. Presently, Plaintiffs believe that the Coinstar Kiosks are not accessible to blind customers, but through this Litigation they will become independently accessible as a result of the judicially enforceable settlement agreement obtained by Class Counsel. Defendant likely would not have taken these actions absent this Litigation and resulting agreement. Accordingly, Plaintiffs have achieved a judicially-sanctioned, material alteration in the relationship between the parties for purposes of recovering their fees and costs in this case.

C. THE REQUESTED FEE IS REASONABLE UNDER THE LODESTAR METHOD

Third Circuit case law establishes two methods for evaluating the award of attorney's fees – the lodestar approach and the percentage-of-the-recovery approach – and each method has attributes suited to different types of cases. *In re GM Trucks Litig.*, 55 F.3d 768, 820-21 (3d Cir. 1995) (citing Report of the Third Circuit Task Force on Court Awarded Attorney Fees, 108 F.R.D. 237, 250-53 (1985). A court, when approving a fee award, must first categorize the action it is adjudicating and then "primarily rely on the corresponding method of awarding fees." *Id*. at 821.

In this case, arising out of a fee shifting statute (the ADA), the lodestar method is the appropriate method for awarding fees. As the Third Circuit aptly noted, "Courts generally regard the lodestar method…as the appropriate method in statutory fee shifting cases." *In re GM Trucks Litig.*, 55 F.3d at 821. Considering the excellent result achieved, as evidenced by the material modifications Defendant is undertaking to its Coinstar Kiosks, the Court should determine a fee of $210,000.00 to be reasonable, and award that amount to Class Counsel.

Under the lodestar analysis, counsel fees are determined by multiplying the number of hours reasonably spent litigating the matter by counsel's hourly rate. This yields the presumptively reasonable fee. *See Hahnemann Univ. Hosp. v. All Shore, Inc.,* 514 F.3d 300, 310 (3d Cir. 2008); *Washington v. Philadelphia Court of Common Pleas,* 89 F.3d 1031, 1035 (3d Cir. 1996). The "resulting product *is presumed* to be the reasonable fee to which counsel is entitled." *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 564 (1986)(emphasis in original). Where, as here, the Plaintiffs obtained excellent results, their attorneys "should recover a fully compensatory fee…encompass[ing] all hours reasonably expended on the litigation…" *Hensley v. Eckherhart*, 461 U.S. 424, 435 (1983). Moreover, an enhanced award may be justified in cases of exceptional success. *Id.*

A court determines an attorney's lodestar award by multiplying the number of hours he or she reasonably worked on a client's case by a reasonable hourly billing rate for such services given the geographical area, the nature of the services provided, and the experience of the lawyer. *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 (3d Cir. 2000); s*ee also Maldonado v. Houstoun,* 256 F.3d 181, 184 (3d Cir.2001). Attorney fee awards in complex civil rights cases are "governed by the same standards which prevail in other types of *equally complex*

federal litigation…" *Hensley*, 461 U.S. at 430 n. 4 (complex civil rights case compared with complex antitrust litigation for purposes or awarding attorneys' fees) (emphasis added).

Here, Class Counsel's lodestar amount of $166,295.00 arises from 313.4 hours prosecuting this matter. *See* Wells Decl. at ¶¶ 80, 83. As a preliminary matter, there is no question that Class Counsel's hourly rate is appropriate. Indeed, their rates have been approved by sister courts within this District for class settlements. *See Kotchmar v. Movie Tavern Partners, LP, et al,* No. 15-CV-4061 (E.D. Pa. 2016) (Dkt. No. 43). This Court should likewise approve Class Counsel's hourly rate. *See Bonett,* 2003 U.S. Dist. LEXIS 9757, *25 (approving counsel's hourly rate where rates were "consistent with prior awards for this attorney in this district.").

Comparing the fee request of $210,000.00 to Class Counsel's lodestar, it is abundantly clear that the requested fee award is fair, reasonable, and adequate in that it results in a modest upward adjustment of approximately $43,000.00 While Plaintiffs acknowledge there is a presumption against upward adjustments, or using multipliers, to increase the lodestar amount, in statutory fee-shifting cases, *Blum v. Stenson,* 465 U.S. 886 (1984), the Supreme Court has also held "[t]he lodestar method was never intended to be conclusive in all circumstances." *Perdue v. Kenny A.*, 559 U.S. 542, 553 (2010). "[T]here is a 'strong presumption' that the lodestar figure is reasonable, but that presumption may be overcome in those rare circumstances in which the lodestar does not adequately take into account a factor that may properly be considered in determining a reasonable fee." *Id*. at 554.

Here, the exceptional results obtained by Class Counsel includes the modification of approximately 16,000 Coinstar Kiosks nationwide. However, Class Counsel's loadstar does not adequately take into account the time and expenses that will be incurred reviewing and

commenting on Defendant's proposed design modifications six months after the Effective Date of the Settlement.[6] In addition, once Defendant has begun implementing its design modifications, Class Counsel shall devote time to reviewing progress reports submitted by Defendant every three months. Lastly, once Defendant has reported that it has modified one machine at each of its retail locations, Class Counsel will seek to certify that Defendant is in compliance with the Settlement over an eighteen month time period (the "Monitoring Period"). Notably, the Monitoring Period could occur several years after the Settlement has been approved.

Confirming Defendant's modification going forward is an important factor of the Settlement, and should be a factor properly considered in determining a reasonable fee. Accordingly, Class Counsel's upward adjustment is part of the fee Defendant agreed to pay, which incorporates the time Class Counsel will expend in the future. Indeed, this "multiplier" may ultimately translate into a negative multiplier. The enhancement would compensate Class Counsel for less than 80 hours going forward to confirm Defendant's compliance, along with costs incurred traveling to inspect various Coinstar Kiosk locations. In a directly analogous matter involving future modifications made to a kiosk rental machine a court awarded $75,000.00 for future monitoring. *Lighthouse for the Blind & Visually Impaired v. Redbox Automated Retail, LLC,* No. C 12-0195 PJH, (N.D. Cal. May 18, 2012 Dkt. No. 86). Here, Class Counsel's requested upward adjustment is well below that amount. Indeed, Class Counsel will likely incur fees and costs in excess of $43,000 post-settlement.

Further, Class Counsel have conformed to the Third Circuit's guidance and provided a breakdown of hours and rates for each of the attorneys involved. They are set forth in detail in

[6] Indeed, Class Counsel and Plaintiffs will devote significant time to the implementation of the Settlement, including reviewing Defendant's proposed design of a Nonvisual User Interface within six (6) months of the Effective Date. Thereafter, Class Counsel and Plaintiffs will review a functional prototype within eleven (11) months and report back to the Court whether a functional prototype has been developed.

the Wells Declaration filed contemporaneously herewith. *See* Wells Decl. at ¶¶ 86, 91. Importantly, sister courts within this District have relied on precisely the same information when granting fee awards to Class Counsel in other statutory class actions. *See, e.g.*, *Magness v. Walled Lake Credit Bureau et al*, No. 12-cv-06586 (E.D. Pa. 2015); *Volyansky v. Hayt Hayt & Landau,* No. 13-cv-03360 (E.D. Pa. 2016). Accordingly, based on the records provided, the work performed, and the settlement result achieved, this Court should not hesitate in granting the requested fee award here.

D. PLAINTIFFS' FEE REQUEST SATISFIES ALL RELEVANT FACTORS FOR THE PURPOSES OF SETTLEMENT

While Class Counsel is not seeking a fee award based upon the percentage of recovery of the California Settlement Fund obtained for the California Sub-Class, an analysis of those factors relevant to the percentage of recovery approach further supports Class Counsel's request. The Third Circuit has held that these factors include: (1) the amount of the value created and the number of persons benefited; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiff's counsel; (7) the awards in similar cases. *Gunter* 223 F.3d at 195 n.1. The Third Circuit has determined that "these fee award factors 'need not be applied in a formulaic way … and in certain cases one factor may outweigh the rest.'" *Rite Aid*, 396 F.3d at 301, *citing Gunter*, 223 F.3d at 195 n.1.

Here, Class Counsel has negotiated a Settlement creating the California Settlement Fund which permits California Sub-Class members to obtain the statutory damages. This recovery is in addition to the significant modifications to Defendant's Coinstar Kiosks that will provide substantial relief to Legally Blind individuals nationwide. Importantly, the fee request is

unopposed by Defendant, and is being paid by Defendant separate and apart from the Settlement Fund. Thus no relief available to members of the Settlement Class is being diluted by Class Counsel's fee request. Application of the *Gunter* factors clearly supports the reasonableness of Plaintiffs' fee request.

1. The Amount of Value Created and the Number of Persons Benefited

The proposed Settlement is very favorable to the Settlement Class, and participating California Sub-Class Members will receive an immediate benefit in the form of direct monetary payments. More importantly, the Settlement provides modifications to approximately 16,000 Coinstar Kiosks nationwide. Thus, all Settlement Class Members benefitted from Class Counsel's efforts. The Settlement also avoids the various risks involved in the litigation – risks that Plaintiff and Class Counsel considered carefully when negotiating and reaching the Settlement now before the Court. Indeed, absent a class-wide settlement such as this, individual lawsuits could result in "varying and inconsistent degrees for relief, contrary to the ADA's very purpose." *Ass'n for Disabled Ams., Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 468 (S.D. Fla. 2002). Further, approximately 61 individuals have elected to become members of the California Sub-Class and will each receive $4,000.00 from the California Settlement Fund, which is the maximum statutory damage amount available under the California Unruh Act.

In short, Class Counsel have conferred a real benefit to the Settlement Class, in addition to the monetary benefits conferred on the California Sub-Class, and should be compensated for their achievement.

2. The Presence or Absence of Substantial Objections by Members of the Class to the Settlement Terms and/or Fees Requested by Counsel

The second *Gunter* factor is whether there are any objections from class members regarding the requested fee amount. Here, Class Counsel have received no objections to either

the Settlement or their requested fee award. The Class Notice informed the members of the Settlement Class that, *inter alia*, Class Counsel would request fees of up to $210,000.00, payable by Defendant, and not payable from the Settlement Fund, which would also provide reimbursement of expenses Class Counsel incurred in connection with the litigation. The Class Notice also advised all Settlement Class Members of the option and process of objecting to any aspect of the proposed Settlement, including the requested attorneys' fees, expenses, and/or case contribution awards. Importantly, not a single objection to the Settlement has been registered, nor has any member of the California Sub-Class submitted an opt-out form to the California Settlement Fund. *See* Wells Decl. at ¶ 27.

As numerous district courts have held, the dearth of objections "strongly supports approval of the requested fee." *In re Flonase Antitrust Litig*., 2013 951 F. Supp. 2d 739, 743 (E.D. Pa. 2013); *see also In re Schering-Plough Corp.,* No. 08-1432, 2012 U.S. Dist. LEXIS 75213 *12 (D.N.J. May 31, 2012) (finding the "lack of objections to the requested attorneys' fees supports the request"); *Moore v. Comcast Corp.*, No. 08-773, 2011 U.S. Dist. LEXIS 6929 * 13 (E.D. Pa. Jan. 24, 2011) (recognizing as significant that "not one member of the class ha[d] filed an objection to the settlement" despite the fact that notice was mailed to 35,360 class members).

As noted above, despite the wide-spread dissemination of a fully informative Class Notice, no objections have been received. The absence of objections strongly supports approval of Class Counsel's requested fee award. *See Barel v. Bank of Am.*, 255 F.R.D. 393, 404 (E.D. Pa. 2009) (approving fee request, and stating "[i]mportantly, there were no objections").

3. The Skill and Efficiency of the Attorneys Involved

The third *Gunter* factor measures the skill and efficiency of the attorneys involved. The quality of representation is measured by "the quality of the result achieved, the difficulties faced,

the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel." *In re Ikon Office Solutions v. Stuart*, 194 F.R.D. 166, 194 (E.D. Pa. 2000) *quoting In re Computron Software*, 6 F.Supp. 2d 313, 323. (E.D. Pa. 1998). In short, the "single clearest factor reflecting the quality of class counsels' service to the class are the results obtained." *Cullen v. Whitman Medical Corp.*, 197 F.R.D. 136, 149 (E.D. Pa. 2000); *see also In re Janney Montgomery Scott LLC Fin. Consultant Litig.,* 2009 U.S. Dist. LEXIS 60790 *15 (E.D. Pa. July 16, 2009) (noting "the quality of representation in a case can be measured by the quality of the result achieved."); *In re Linerboard Antitrust Litig.,* MDL No. 1261, 2004 U.S. Dist. LEXIS 10532 *19 (E.D. Pa. June 2, 2004) ("The result achieved is the clearest reflection of petitioners' skill and expertise.").

The Settlement obtained for Plaintiffs and the Settlement Class Members would not have been achieved without the skill and experience of Class Counsel. As set forth in the Wells Declaration, Class Counsel are experienced and well versed in complex class action litigation, including consumer class action litigation. *See* Wells Decl. at ¶¶ 57-64. Indeed, in this District, the attorneys comprising Class Counsel previously served as class counsel in cases alleging statutory violations, including *Magness v. Walled Lake Credit Bureau et al*, No. 12-CV-06586 (E.D. Pa. 2015), *Volyansky v. Hayt Hayt & Landau,* No. 13-CV-03360 (E.D. Pa. 2016) and *Ebner v. United Recovery Systems, LP*, No. 14-CV-06881 (E.D. Pa. 2016). *See* Wells Decl. at ¶ 65.

In prosecuting the Lawsuit, Class Counsel engaged in significant informal discovery, investigated potential modification options for the Coinstar Kiosks, participated in a settlement conference before Magistrate Judge Hey and participated in intense, protracted negotiations with

Defendant. *See* Wells Decl. at ¶¶ 28, 88. Further, Class Counsel worked diligently to have the two separately filed cases consolidated and resolved together. This speaks to the skill and efficiency of Class Counsel.

Accordingly, the third *Gunter* factor also supports the requested fee award.

4. The Complexity and Duration of the Litigation

The fourth *Gunter* factor, which measures the complexity and duration of the litigation, also supports Class Counsel's fee request. Indeed, the litigation was aggressively litigated by both sides over the course of over a year. Many hours of effort were expended in investigating Plaintiffs and the Settlement Class' claims, modification options and settlement negotiations. This Lawsuit involves legal issues, which, if pursued, would involve further protracted litigation, and possibly trial, with inarguably no additional benefit being available on a nationwide basis as Class Counsel obtained Defendant's agreement to modify Coinstar Kiosks. Had the Lawsuit not settled, Class Counsel was prepared to devote substantial additional time and effort to pressing the claims of Plaintiffs and the Settlement Class, including invariably contested class certification and summary judgment motions. *See* Wells Decl. at ¶ 29.

Therefore, this factor also supports approval of the requested fee award.

5. The Risk of Nonpayment

Courts have long recognized that there is some degree of risk that attorneys will receive no fee – or at least a fee that does not reflect their efforts – when representing a class, as this risk is inherent when undertaking any contingency fee litigation. *See In re Philips/Magnavox TV Litig.*, No. 09-3072 (CCC), 2012 U.S. Dist. LEXIS 67287 *51 (D.N.J. May 14, 2012). As noted above, this case has been aggressively pursued for some time. Despite Class Counsel's significant effort in litigating the matter, they remain completely uncompensated for the time they invested and the expenses they advanced, including the time devoted to investigating the

claims prior to initiating the Lawsuit. Uncompensated expenditures can severely damage or destroy firms of the relatively small size of Class Counsel. There can be no dispute that this case entailed substantial risk of nonpayment, further supporting the requested fee.

Although Plaintiffs and Class Counsel strongly believe in the merits of the claims, there is no guarantee that in proceeding, the Lawsuit would have concluded as favorably as with the Settlement. The Defendant is well represented by experienced counsel. Had this case proceeded, Defendant would have aggressively pursued its defenses, and likely presented a vigorous opposition to class certification and summary judgment, and, if necessary, sought appellate review of each. Thus, there is ample evidence to support the assertion that Class Counsel faced the very real risk of non-payment.

Simply stated, this *Gunter* factor is clearly satisfied and further justifies Plaintiffs' fee request.

6. The Amount of Time Devoted to the Litigation by Class Counsel

Class Counsel has spent 313.4 hours prosecuting this Lawsuit on behalf of Plaintiffs and the Settlement Class. *See* Wells Decl. at ¶ 80. Although Class Counsel consistently sought to keep costs and fees, to a minimum, the Lawsuit and defense presented by Defendant required a significant amount of work. The hours spent on this Lawsuit were devoted to, *inter alia*, researching and developing the case, drafting the two class action complaints, engaging in informal discovery, investigating potential modification options and engaging in protracted settlement negotiations. Indeed, it took a settlement conference with Magistrate Judge Elizabeth T. Hey, months of settlement negotiations between counsel, numerous conference calls (including many calls with the Magistrate Judge), and the exchange and revisions of numerous draft settlement documents, before the Settlement could be agreed to by all Parties. *See* Wells Decl. at ¶ 13.

Moreover, the hours expended by Class Counsel do not account for the significant work Class Counsel has and will expend overseeing the Settlement administration, including the distribution of the Settlement's proceeds to the California Sub-Class. *See* Wells Decl. at ¶ 82. More importantly, this time does not include the substantial additional time Class Counsel will expend ensuring the modifications to the Coinstar Kiosks satisfy the Settlement Agreement. This additional work represents a material portion of time that counsel will spend for the Settlement Class that is not reflected in the lodestar calculation reflected above. *See, e.g., In re Merck & Co. Vytorin ERISA Litig.*, No. 08-CV-285, 2010 U.S. Dist. LEXIS 12344 *40 (D.N.J. Feb. 9, 2010) (noting "the time dedicated and expenditures incurred do not include costs that will arise immediately in the future, such as the settlement hearing conducted before this Court"); *see also Lighthouse for the Blind & Visually Impaired v. Redbox Automated Retail, LLC.* No. C 12-0195 PJH, (N.D. Cal. May 18, 2012 Dkt. No. 86).

Accordingly, the number of hours devoted by Class Counsel to this Lawsuit, in addition to the number of hours to be spent in the future, supports the requested fee award.

7. Awards in Similar Cases

The seventh and final *Gunter* factor compares the fee request with fee awards in similar cases. In a directly analogous class action pursuant to the ADA where Class Counsel achieved modifications to Redbox rental kiosks, the Court awarded fees and costs in the amount of $400,000. *See Jahoda v. Redbox Automated Retail, LLC, No.* 14-CV-01278, (W.D. Pa. October 31, 2016, Dkt. No. 80);[7] *see also Lighthouse for the Blind & Visually Impaired v. Redbox Automated Retail, LLC,* No. C 12-0195 PJH, (N.D. Cal. May 18, 2012 Dkt. No. 86)(awarding $800,000 in fees and costs in California state class action settlement of ADA and Unruh Act

[7] Notably, this case did not include any claims seeking monetary damages, and, unlike the instant case, did not establish a settlement fund in which any class members were to receive any monetary payments.

claims, including $75,000 for future monitoring) Moreover, Courts have routinely awarded fees in statutory class actions negotiated separate from a settlement fund. *See Good v. Nationwide Credit, Inc.*, 314 F.R.D. 141 (E.D. Pa. 2016) (in FDCPA case, court approved $125,000 in negotiated attorney's fees and costs separate and apart from settlement fund representing the maximum statutory recovery, noting that "[e]ven if the Court were to approve less than the $125,000 negotiated amount, the class would not gain a greater recovery"). Courts have even awarded attorney's fees which exceeded the amount of the settlement fund. *See Volyansky v. Hayt, Hayt & Landau, et al,* No. 13-cv-03360 (E.D. Pa. 2016) (awarding $91,500.00 in attorney's fees where settlement fund was $7,500.00); *Harlan v. Transworld Sys.*, No. 13-5882, 2015 U.S. Dist. LEXIS 14787 *21 (E.D. Pa. Feb. 6, 2015) (finding attorneys' fees and costs of $44,450.00 reasonable where common fund was $22,900.00). Given that Class Counsel here has obtained significant modifications to the Coinstar Kiosks, established a California Settlement Fund for the California Sub-Class, and seeks fees separate and apart from said settlement fund, Class Counsel's fee request is imminently reasonable. Indeed, there is no sound reason why Class Counsel's separately negotiated fee request – for which no Settlement Class Member has opposed – should be denied. Consequently, this factor supports approval of Class Counsel's fee request.

E. CLASS COUNSEL IS ENTITLTED TO REASONABLE FEES AND COSTS FOR MONITORING DEFENDANT'S COMPLIANCE WITH THE SETTLEMENT

Plaintiffs are entitled to reasonable fees and costs for monitoring compliance with the Settlement. *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 558–59 (1986), *supplemented,* 483 U.S. 711, (1987) (post-judgment monitoring is compensable activity for which counsel is entitled to a reasonable fee). Here, Class Counsel and Plaintiffs will monitor Defendant's Coinstar Kiosks in order to ensure that they comply with the terms of the

Settlement. Specifically, Class Counsel will assist Plaintiffs to test certain modified kiosks by attempting to interact with the kiosks using the tactile keypads and headphone jacks on the retrofitted kiosks. Moreover, once the modifications have been implemented, Class Counsel will visit Coinstar Kiosk locations to confirm implementation. Finally, Class Counsel will, pursuant to the Settlement Agreement, periodically report to the Court on the progress of Defendant's remediation efforts. All told, these efforts will cause Class Counsel to incur additional expenses and expend significant time. *See* Wells Decl. at ¶ 82. Fees for future monitoring have been awarded in analogous ADA actions. *See Lighthouse for the Blind & Visually Impaired v. Redbox Automated Retail, LLC,* No. C 12-0195 PJH, (N.D. Cal. May 18, 2012 Dkt. No. 86)(awarding $75,000 for future monitoring).

F. THE COURT SHOULD AWARD REIMBURSEMENT OF EXPENSES

In the event of a successful enforcement action, the ADA allows the award of reasonable attorneys' fees and costs to a prevailing party. Indeed, a "'prevailing' party should ordinarily recover its attorneys' fees and costs absent 'special circumstances.'" *Ward*, 634 F. App'x at 906 (*citing Newman v. Piggie Park Enters., Inc.*, 390 U.S. 400, 402 (1968) (*per curiam*). In prosecuting this Lawsuit, Class Counsel have incurred $1,456.05 in expenses. *See* Wells Decl. at ¶ 99. These expenses reflect the costs typically associated with litigating these types of claims. Although many of these expenses were incurred more than a year ago, Class Counsel is seeking reimbursement of the actual expense and has not made any upward adjustment. *See* Wells Decl. at ¶ 100. Notably, this expense request is factored into Class Counsel's fee request, not separate and above its fee request. As such, this Court should not hesitate in awarding Class Counsel reimbursement for their out-of-pocket expenses.

G. THE CASE CONTRIBUTION AWARD TO PLAINTIFFS IS EMINENTLY REASONABLE

The excellent result in this Lawsuit could not have been achieved without the substantial efforts of Plaintiffs. Here, Plaintiffs prosecuted their claims on behalf of the Settlement Class. They were engaged in assisting Class Counsel with investigating the claims and during the litigation process, and provided valuable assistance to Class Counsel throughout the settlement process. This assistance included: (1) submitting to interviews with Class Counsel; (2) providing Class Counsel with information; (3) participating in conferences with Class Counsel; (4) conferring with Class Counsel regarding the parameters of any proposed settlement and (5) actively participating in discussing potential modifications to the kiosks to make them more accessible. *See* Wells Decl. at ¶ 105.[8] In so doing, Plaintiffs were integral in all phases of this Lawsuit. They devoted time and effort to the Lawsuit, and as a result of their efforts, and those of Class Counsel, a substantial benefit was conferred to the Settlement Class.

Accordingly, and in recognition of the substantial benefit they conferred on the Settlement Class and their efforts generally, a modest Case Contribution Award of $2,500 to Plaintiffs is entirely appropriate. This request is in-line with similar enhancement awards in analogous actions. *See, e.g., Jahoda v. Redbox* (approving incentive award of $5,000 each to the two class representatives in an ADA class action settlement); *see also Lighthouse for the Blind & Visually Impaired v. Redbox Automated Retail, LLC,* No. C 12-0195 PJH, (N.D. Cal. May 18, 2012 Dkt. No. 85) (awarding $10,000 to each of five named Plaintiffs in ADA and California Unruh Act class action settlement); *see also Bonett,* 2003 U.S. Dist. LEXIS 9757, *23 (award of $4,000 to class representative to compensate her for "her service to the Class"); *see also Barel v. Bank of Am.*, 255 F.R.D. 393, 404 (E.D. Pa. 2009) (awarding $10,000 to named plaintiff in

[8] Further, in the case of Plaintiff Nguyen, her participation included traveling to Philadelphia to attend the parties' settlement conference with Magistrate Judge Hey. *See* Wells Decl. at ¶ 105.

FCRA class litigation). As with the other requests, no Settlement Class Member has objected to Plaintiffs' requested Case Contribution Award. Importantly, this award is not being paid from or diluting the California Settlement Fund.

Accordingly, Plaintiffs respectfully submit that the Case Contribution Awards are exceedingly reasonable and should be approved.

III. CONCLUSION

For all of these reasons, Plaintiffs respectfully request the Court grant Class Counsel's fee request in amount of $210,00.00, which includes reimbursement of expenses in the amount of $1,456.05 and approve Case Contribution Awards in the amount of $2,500.00 each to Named Plaintiff.

Dated: December 6, 2017

Respectfully submitted,

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Counsel for Plaintiffs and the Proposed Classes

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 6th day of December, 2017, a true and correct copy of the foregoing document was filed with the Court utilizing its ECF system, which will send notice of such filing to all counsel of record.

/s/ Gerald D. Wells, III
Gerald D. Wells, III

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

APRIL NGUYEN, individually and on behalf of all others similarly situated, Plaintiff, v. OUTERWALL, INC., *et al*., Defendants.	Civil Action No. 16-cv-00611
BRETT BOYER, individually and on behalf of all others similarly situated, Plaintiff, v. OUTERWALL, INC., *et al*., Defendants.	Civil Action No. 17-cv-00853

FINAL ORDER AND JUDGMENT

This matter came on for hearing on December 20, 2017. Upon consideration of the Parties' request for final approval of the Settlement Agreement ("Agreement") between Plaintiffs, April Nguyen and Brett Boyer ("Plaintiffs"), individually, and as representatives of the class(es) of persons defined below, and Defendant, Outerwall, Inc. (now known as Coinstar, LLC "Coinstar"), the Court orders and finds as follows[1]:

1. This Court has jurisdiction over the subject matter of this lawsuit, Plaintiffs, members of the Settlement Class and California Sub-Class, and Coinstar.

2. The following Settlement Class is certified pursuant to Fed. R. Civ. P. 23(b)(1) and (b)(2):

[1] All capitalized terms set forth herein, unless otherwise noted, shall have the same meaning as set forth in the Agreement.

> All Legally Blind individuals who attempted but were unable to access or who were deterred from accessing those products or services available at Coinstar Kiosks in all 50 states and the District of Columbia during the time period starting on February 8, 2014 for all states and the District of Columbia excluding California and February 8, 2013 in California and continuing through July 14, 2017.

3. Based on the Parties' stipulations and for the purpose of settlement: (A) the Settlement Class as defined is sufficiently numerous such that joinder is impracticable; (B)common questions of law and fact predominate over any questions affecting only individual Settlement Class Members; (C) the Plaintiffs' claims are typical of the Settlement Class Members' claims; (D) Plaintiffs are an appropriate and adequate representative for the Class and their attorneys, Gerald D. Wells, III of the law firm Connolly Wells & Gray, LLP, 2200 Renaissance Blvd., Suite 275, King of Prussia, PA 19406 and Arkady "Eric" Rayz, of the law firm Kalikhman & Rayz, LLC, 1051 County Line Road, Suite " A," Huntingdon Valley, PA 19006, are hereby appointed as Settlement Class Counsel; (E) class treatment of Plaintiffs' claims will prevent inconsistent or varying adjudications with respect to individual class members and/or adjudication of an individual class member's claim is, effectively, dispositive of the interests of other members of the class; and (F) relief is appropriate with respect to the class as a whole for the purpose of settlement.

4. The California Sub-Class is certified pursuant to Fed. R. Civ. P. 23(b)(3):

> All Legally Blind individuals who attempted, but were unable to access or who were deterred from accessing those products or services available at Coinstar Kiosks in California during the time period February 8, 2013 and continuing through July 14, 2017.

5. Based on the Parties' stipulations and for the purpose of settlement: (A) the California Sub-Class as defined is sufficiently numerous such that joinder is impracticable; (B) common questions of law and fact predominate over any questions affecting only individual California Sub-Class members; (C) the Plaintiffs' claims are typical of the California Sub-Class

members' claims; (D) Plaintiff Boyer is an appropriate and adequate representative for the Class and his attorneys, Gerald D. Wells, III of the law firm Connolly Wells & Gray, LLP, 2200 Renaissance Blvd., Suite 275, King of Prussia, PA 19406 and Arkady "Eric" Rayz of the law firm Kalikhman & Rayz, LLC, 1051 County Line Road, Suite " A," Huntingdon Valley, PA 19006, are hereby appointed as Settlement Class Counsel; (E) questions of law or fact common to members of the California Sub-Class predominate over any questions affecting only individual members; and (F) class treatment of these claims is superior to other available methods for the fair and efficient adjudication of this controversy and will be efficient and manageable, thereby achieving judicial economy.

6. There are no individuals who timely requested exclusion from the California Sub-Class. There are no individuals who untimely submitted requests for exclusion.

7. The Court approved the plan for the dissemination of Notice, including the forms of notice, to the Settlement Class that was set forth in the Agreement. The Court is informed that notice was disseminated pursuant to the Court's order granting preliminary approval of the settlement and the Agreement.

8. No objections were filed or received.

9. On December 20, 2017, the Court held a Fairness Hearing to which Settlement Class Members and California Sub-Class members, including any with objections, were invited. All California Sub-Class members who submitted a Valid Claim Form shall receive their *pro rata* portion of the California Settlement Fund pursuant to the terms of the Agreement.

10. The Court finds that provisions for notice to the class satisfy the requirements of due process pursuant to the Federal Rules of Civil Procedure, including Rule 23, the United States Constitution and any other applicable law.

11. The Court finds that the settlement is fair, reasonable, and adequate and hereby

finally approves the Agreement submitted by the Parties, including the Release and payments byCoinstar. Upon the Effective Date, as that term is defined in the Agreement, Coinstar, or its insurer, shall make the following payments:

a) Five hundred thousand dollars ($500,000.00) ("California Settlement Fund") to be deposited with the Claims Administrator to be distributed in accordance with the terms of the Agreement.

b) Two thousand five hundred dollars ($2,500.00) to each Plaintiff as a Case Contribution Award in recognition of his/her efforts in prosecuting these claims on behalf of the class(es).

c) Two hundred ten thousand dollars ($210.000.00) to be paid to Class Counsel for attorneys' fees and costs. Class Counsel will not request additional fees or costs from Coinstar.

d) Coinstar will pay up to $25,000 to the Claim Administrator arising from or related to the services performed in furtherance of this Settlement pursuant to Section 16 of the Agreement. Any costs in excess of $25,000.00 will be paid for from the California Settlement Fund.

12. This Court approves the individual and class releases set forth in the Agreement, and the released claims are consequently compromised, settled, released, discharged, and dismissed with prejudice by virtue of these proceedings and this Order. The Lawsuit and all claims asserted in the Lawsuit are dismissed with prejudice as to the Named Plaintiffs and the Settlement Class Members subject to those who validly and timely opted out of the monetary relief portion of the Agreement (discussed in this Order in paragraph 6).

13. The Court finds the Agreement is fair and made in good faith.

14. The Court hereby appoints _____ as the Cy Pres Recipient(s) should there be any portion of the California Settlement Fund remaining four hundred (400) days after the Claims Administrator[2] has mailed the settlement checks to California Sub-Class members who submitted Valid Claim Forms.

[2] The Court appointed Settlement Services, Inc. as the Claims Administrator in the Court's order granting preliminary approval of the Settlement.

15. The terms of the Agreement are incorporated into this Order. This Order shall operate as a final judgment and dismissal *with prejudice* of the claims in this action.

16. Neither the Agreement nor this Order constitutes an admission of liability, fault, or wrongdoing by Defendant, or any of the Releasees, nor a finding of the validity of any claims in this Lawsuit or any violation of law. Nothing in this Order shall be interpreted to prohibit the use of it: (1) in a proceeding to consummate or enforce the Agreement or Judgment; (2) to defend against the assertion of the released claims in any other proceeding, or; (3) as otherwise required by law.

17. The Court finds, in accordance with Fed. R. Civ. P. 54(b), that there is no just reason for delay of enforcement of, or appeal from, this Order.

18. The Court retains continuing and exclusive jurisdiction over the Parties and all matters relating to this matter, including the administration, interpretation, construction, effectuation, enforcement, and consummation of the Settlement and this Order.

19. Without affecting the finality of this Order, Magistrate Judge Elizabeth Hey is hereby appointed to oversee administration of the Settlement, including Sections 6, 7.2, and 13 of the Agreement.

20. The Parties are hereby ordered to comply with the terms of the Agreement and this Order.

IT IS SO ORDERED:

_____
LAWRENCE F. STENGEL, U.S.D.J.