ADAM GUIFFRIDA	:	In the Court of Common Pleas of Lackawanna County
PLAINTIFF,	:	
v.	:	CIVIL LAW DIVISION
CITY OF SCRANTON	:	
DEFENDANT	:	2016-CV- 6933

MEMORANDUM & ORDER GRANTING PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

GIBBONS, J.

I. INTRODUCTION

Presently before the Court is a motion for class certification filed by Plaintiff Adam Guiffrida ("Guiffrida") in his action against the City of Scranton challenging the city's garbage fee framework. Guiffrida asks this Court to determine that the requisite criteria set forth in Rule 1702 of the Pennsylvania Rules of Civil Procedure governing class certification have been met. Based upon our review of the record and the pleadings, we conclude that they have, and we will therefore grant Mr. Guiffida's motion.

II. FACTUAL AND PROCEDURAL HISTORY

Guiffrida commenced this action for declaratory and injunctive relief on behalf of himself and members of a putative class by Class Action Complaint filed on December 15, 2016. His claims against Defendant City of Scranton ("Scranton") arise from the collection of residential refuse fees in the city. *Pl. Compl.* at ¶ 1. In 1994, Scranton enacted Ordinance number 17-1994 (the "Ordinance"), which entitled the city to collect an annual fee in the amount of three hundred dollars ($300.00) for

the purpose of collecting and disposing of residential garbage[1]. *Id.* at ¶ 2. The Ordinance also permitted the city to levy a twelve percent (12%) penalty on those property owners who fail to pay the fee in a timely fashion. *Id.* Pursuant to the Ordinance, the fees shall be deposited in a special interest-bearing account and shall be used to "reimburse the General City Operating Fund for costs *incurred directly for the disposal of refuse.*" *Id.* at ¶ 3. (emphasis added). Guiffrida alleges that the city has acted in violation of the Ordinance by collecting fees well in excess of the amount required to fund the refuse disposal program. *Id.* at 12. Specifically, Guiffrida alleges that Scranton is collecting approximately three million dollars in excessive fees, which is in turn being treated as revenue and used to fund other city operations. ¶ at 15. Scranton has recently reduced the budget for the Bureau of Refuse, yet expects refuse revenues for 2017 to increase. *Id.* at 16.

On February 14, 2017, President Judge Michael J. Barrasse issued an Order pursuant to Pa.R.C.P. 1703(b) assigning this matter to the undersigned. The initial Complaint filed by Mr. Guiffrida contained two claims; the first for declaratory and injunctive relief and the other for unjust enrichment. Scranton filed preliminary objections to these claims. As a result of a stipulation between the parties resolving the preliminary objections, Guiffrida' s claim for unjust enrichment was withdrawn. Therefore, only the cause of action for declaratory and injunctive relief remains. Guiffrida filed a motion to certify an "opt-in" class pursuant to Pa.R.C.P. 1707(a) and a hearing was held on the matter. As such, the class certification questions are now ripe for review.

III. LEGAL STANDARD

Rule 1702 of the Pennsylvania Rules of Civil Procedure governs what criteria must be met in order for a class action to proceed. Rule 1702 provides:

[1] Mr. Guiffrida avers that the Ordinance established a $300.00 per annum refuse fee amount at the time of its passage, and further avers that said fee was increased in 2014. However, it is unclear based upon the documentation submitted what the current fee amount is presently.

> "One or more members of a class may sue or be sued as representative parties on behalf of all members in a class action only if:
> (1) the class is so numerous that joinder of all members is impracticable;
> (2) there are questions of law or fact common to the class;
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
> (4) the representative parties will fairly and adequately assert and protect the interest of the class under the criteria set forth in Rule 1709; and
> (5) a class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Rule 1708.

Pa.R.Civ.P. 1702. Class actions were established to provide a means by which the claims of many individuals could be resolved at one time, thereby eliminating the possibility of repetitious litigation and providing small claimants with a method to seek compensation for claims that would otherwise be too small to litigate. *DiLucido v. Terminix Intern.,Inc.,* 676 A.2d 1237 (Pa.Super.1996) *appeal denied* 684 A.2d 557 (Pa.1996). We note that class certification is a mixed question of law and fact. *Debbs v. Chrysler Corp.,* 810 A.2d 137 (Pa.Super.2002) *appeal denied* 829 A.2d 311(Pa.2003)). The burden rests with the proponent of the class to present evidence that is sufficient to make out a prima facie case "from which the court can conclude that the five class certification requirements are met." *Id.* at 154. (internal citation omitted). At the class certification stage, courts should not dispose of class issues based on perceived adequacy or inadequacy of the underlying merits of the claim. *See Id.*; *see also Piper v. Portnoff Law Associates,* 215 F.R.D. 495 (E.D.Pa 2003)(noting that courts should refrain from conducting preliminary inquiry into the merits of the action at the class certification stage). Pennsylvania's courts have consistently held that, in applying the rules for class certification, decision should be made liberally and in favor of maintaining a class action. *Liss & Marion, P.C. v. Recordex Acquisition Corp.,* 937 A.2d 503 (Pa.Super.2007), *appeal granted* 957 A.2d 1175, *affirmed* 983 A.2d 652 (Pa.2009)(internal citation omitted). Further, ttial courts are vested with broad discretion in making decisions regarding

whether criteria for class certification have been met. *Baldassari v. Suburban Cable TV Co., Inc.,* 808 A.2d 184 (Pa.Super.2002), *reargument denied, appeal denied* 825 A.2d 1259; *Clark v. Pfizer, Inc.* 990 A.2d 17 (Pa.Super.2010), *reargument denied, appeal denied* 13 A.3d 473 (trial courts are vested with broad discretion in deciding whether to certify a class action.)

Both Guiffrida and Scranton agree that, should the refuse fees themselves or the use thereof be found to be excessive, any potential refund would be governed by 72 P.S. § 5566b, which provides:

> (a) "[w]henever any person or corporation of this Commonwealth has paid or caused to be paid, or hereafter pays or causes to be paid, into the treasury of any political subdivision, directly or indirectly, voluntarily or under protest, any taxes of any sort, license fees, penalties, fines or any other moneys to which the political subdivision is not legally entitled; then, in such cases, the proper authorities of the political subdivision, upon the filing with them of a written and verified claim for the refund of the payment, are hereby directed to make, out of the budget appropriations of public funds, refund of such taxes, license fees, penalties, fines or other moneys to which the political subdivision is not legally entitled. Refunds of said moneys shall not be made, unless a written claim therefor is filed, with the political subdivision involved, within three years of payment thereof."

72 P.S. §5566b(a).

IV. DISCUSSION

There are two issues presented to this court for consideration. First, Scranton maintains that a traditional class action is unnecessary and burdensome, and that, in the alternative, Guiffrida' s stated objectives may be achieved by a taxpayer action. While not entirely clear, we glean from Scranton's submissions that the city is asking this Court to refrain from certifying the class and instead require that this matter proceed as a taxpayer action. The second issue for our consideration is whether Guiffrida has met the statutory requirements for certification as set forth in Pa.R.C.P. 1702, 1708 and 1709.

A. *Whether a Taxpayer Action is a More Appropriate Remedy in This Case*

Scranton contends that a class action is not a fair and efficient method of adjudication and asks us to deny certification. *Scranton Br. in Opp.* at 2. Instead, Scranton argues that the Complaint "represents a Taxpayer's Action." *Id.* We take this contention to mean that Guiffrida's complaint, as read, is not plead as a class action, but rather as a taxpayer action. It is also apparent from Scranton's submissions that the city deems a taxpayer's action as a more appropriate remedy for Guiffrida's complaint. We disagree with both contentions.

Pennsylvania recognizes taxpayers' actions and class actions as distinct, but not wholly unrelated remedies. *Sica v. City of Philadelphia,* 465 A.2d. 91, 93 (Pa.Cmwlth.1983). The former is a creature of common law, whereas the latter has its basis in statute. *Id.* Unlike class actions, taxpayer actions can be maintained without the strict requirements of class actions. *Id.* Taxpayer Actions "permit a Plaintiff, solely on the strength of his status as a taxpayer, to challenge government actions which might otherwise be immune from suit because no one would have standing under traditional personal interest standards." *Id. See also Faden v. Philadelphia Housing Auth.,* 227 A.2d 619, 622 (Pa.1967) ("The fundamental reason for granting standing [in taxpayer suits] is simply that otherwise a large body of governmental activity would be unchallengeable in the courts.")[2] Where taxpayer actions rest solely on one's status as a taxpayer, class actions require that specific statutory prerequisites be met. *See* Pa.R.C.P. 1702.

[2] We note that the refund that Guiffrida seeks is from a fee and not a tax. Scranton circumvents this distinction by arguing that because § 5566b treats "taxes of any sort, license fees, penalties, fines or any other moneys" identically, a taxpayer action is appropriate. However, this court has previously stated that such a fee is "distinguishable from a tax, or revenue producing measure, which is characterized by the production of large income and a high proportion of income relative to the costs of collection and supervision." *Guiffrida v. City of Scranton,* 2016 WL 808684 at * 3 (Lacka.Co.2016) (internal quotation omitted). We decline to rule on this issue specifically, but note our question that, in taxpayer actions, where one derives standing solely from ones status as a taxpayer, such standing can extend beyond taxes to include license fees, fines, and penalties as Scranton would suggest.

First, Scranton's argument that Guiffrida's complaint really represents a taxpayer action fails because the complaint on its face pleads the requisite elements of a class action as set forth in Pa.R.C.P. 1704. It is titled as a class action, sets forth the putative class and then pleads with specificity the requisite elements. *See Penn Galvanizing Co. v. City of Philadelphia,* 130 A.2d 511, 514-15 (Pa.1957)("[i]n a class action the complaint should be so titled and the pleadings so framed as to identify it as a class action and to give some indication of the class being presented.")(internal citation omitted); *See also* Pa.R.C.P. 1704. Guiffrida defines the putative class in his complaint as "[a]ll persons who own residential property in the City of Scranton, Pennsylvania and paid a refuse fee." *Pl. Compl.* at ¶ 19. We do not see how, on the face of the complaint, we can read it as anything other than a class action. Neither Scranton nor our own research has produced any case law where a court *sua sponte* declared that a properly-pled class action complaint be interpreted as a taxpayer action. *See Penn Galcanizing, supra.* (Upon determining that a purported class action complaint was not properly pleaded, the court analyzed it as a taxpayer action and ultimately concluded it was neither.)

Scranton further alleges that the class action is not a fair and efficient mean of adjudication. Implicitly, Scranton asserts that the complaint fails the fifth and final prong of the statutory analysis set forth in Rule 1702. While absent from their papers, at oral argument Scranton took the position that an opt-in class would be burdensome because it would require that notice be mailed to all prospective class members and that class members file a writing indicating their desire to participate in the class. Scranton claims that, as a taxpayer action, notice would be unnecessary because, should Guiffrida prevail, any person who paid an excessive fee, not just class members, would be entitled to a *pro rata* refund pursuant to 72 P.S. § 5566(b). We therefore take Scranton's argument to be that a taxpayer's action is a more fair and efficient means of adjudication as opposed to a class action because adjudication of Guiffrida's individual claim would be dispositive for any person who paid the fee.

We note that regardless of how this case proceeds, the mechanism by which individuals obtain their refunds will be the same. This is a class action seeking declaratory and injunctive relief, not monetary damages[3]. As such, if we were to determine that the fee collected is excessive and that the city is not lawfully entitled to a portion of those revenues, the impetus is on the taxpayers to request their refunds individually. However, there is where this Court finds the practical difference in efficiency between the two types of actions.

If Guiffirida were to prevail in a taxpayer action, we do not see any requirement that Scranton provide notice to all taxpayers about their ability to request a refund. As we read § 5566b, it would be up to each individual to 1) become informed about the status of this case and their entitlements upon its resolution, 2) come to understand the process by which they may obtain their entitled refund, 3) complete that process, and 4) do so within the statutorily prescribed timeframe. However, in a class action, those parties who are members of the putative class will receive notice and have the opportunity to opt in. They will be informed of the progression and resolution of the claim and will be able to participate. It seems to us that those individuals who participate in the class will have greater access to the information necessary to obtain a refund and would be more likely to obtain one. As such, we see the latter as a much more efficient and fair path to making these aggrieved individuals whole[4].

Lastly, we note that this Court has previously held that a class action is an appropriate mechanism for obtaining declaratory and injunctive relief in an excessive fee context. In another case brought by Mr. Guiffrida, he challenge registration fees and permit fees for residential rental properties collected by the City of Scranton. In that case, Judge Terrence Nealon determined that, while

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[3] *See Arson v. City of Pittsburgh,* 510 A.2d 871, 873 (Pa.Cmwlth.1986) ("[t]he right [to a refund] is personal and may not be transferred by way of class action.")

[4] Scranton suggests in its letter brief from September 12 that the Court could require that the city notice all potential parties and advise them of their right to a refund. While this may be true, such a remedy is already inherent in the class action mechanism.

Pennsylvania law does not allow plaintiffs to obtain refunds through class actions, they may press their claims for declaratory and injunctive relief through this mechanism. *Guiffrida v. City of Scranton,* 2016 WL 808684 at * 3 (Lacka.Co.2016). This Court based its decision on the Commonwealth Court's decision in *Israelit v. Montgomery County,* 703 A.2d 722 (Pa.Cmwlth.1997) *app denied* 725 A.2d 184 (Pa.1998), which held that "the statutory refund procedure cannot adequately resolve taxpayer's constitutionally based claims for declaratory and injunctive relief." *Id.* at 725. Declaratory and injunctive relief is all putative class members would be seeking here and a class action would therefore be an appropriate remedy under our precedent.

We are not persuaded by Scranton's argument that Guiffrida's complaint represents a taxpayer's action; nor are we convinced that a taxpayer's action is any more fair or efficient than a class action. In fact, we conclude that, given the circumstances of this case, a class action presents more utility, practical efficiently, and fairness in this context. Guiffrida chose to institute this action via a properly-pled class action complaint. We are not inclined to read it as anything other than what it purports to be.

B. *Class Certification pursuant to Rules 1702, 1708 and 1709.*

We observe at the outset that the only class certification requirement that Scranton challenges in its submissions is the fifth and final prong pertaining to fair and efficient adjudication. However, pursuant to Pa.R.C.P. 1710, we make the following findings of fact and conclusions of law with respect to all of the class certification requirements.

Numerosity

With regard to the numerosity prong of Pa.R.C.P. 1702, Mr. Guiffrida avers that the potential class is likely in excess of eighteen thousand individuals. We note that there is no clear test of numerosity. *Muscarella v. Com.,* 39 A.3d 459, 468 (Pa.Cmwlth.2012). It is proper for a court to inquire whether the number of individual plaintiffs would pose a grave imposition on the resources of the

court and an unnecessary drain on the energies and resources of the litigants should such potential plaintiff sue individually. *Id.* at 468 (internal citation omitted). When a class is narrowly and precisely drawn and there are still so many potential class members that joinder is impracticable or impossible, the class is sufficiently delineated to meet the numerosity requirement. *Id.* Further, to satisfy the numerosity requirement for class certification, the class must be both numerous and identifiable; whether the class is sufficiently numerous is not dependent upon any arbitrary limit, but upon the facts of each case. *Dunn v. Allegheny County Property Assessment Appeals and Review,* 794 A.2d 216 (Pa.Cmwlth.2002) (internal quotation omitted). The Plaintiff's burden in establishing numerosity is not heavy, but may not assert in conclusory terms that the requirement has been met. *See Seibel v. Allstate Ins. Co.,* 449 A.2d 666, 670 (Pa.Super.1985) *appeal denied* 520 A.2d 1385.

In the instant matter, the sheer volume of potential plaintiffs is too excessive to make joinder practical or possible. Further, the class is sufficiently delineated and is readily identifiable in that it would be composed of those individuals who own residential property and paid refuse fees in the City of Scranton from 2013 (the applicable statute of limitations). Such information is readily available and class members would be easily identifiable. However, there is little doubt that this number of individual plaintiffs would be a grave imposition upon the energies and resources of both the litigants and the court. As such, we conclude that numerosity has been sufficiently established.

Commonality

Next, we must consider whether "questions of law or fact common to the class" are present in this case. *See* Pa.R.C.P. 1702(2). Our Commonwealth Court has described this commonality requirement as facts that "must be substantially the same so that proof as to one claimant could be proof as to all." *Buynak v. Dep't of Transp.,* 833 A.2d 1159, 1164 (Pa. Cmwlth. 2003) *app denied,* 859 A.2d 769 (2004)(citations omitted). Common questions will generally exist if the class member's legal

grievances arise out of the same practice or course of conduct on the part of the class opponent. *Id.; See also Muscarella,* 39 A.3d at 468-69.

Here, each potential class member is seeing a determination of the same legal question, specifically whether Scranton violated the Ordinance by using revenues from the refuse fee impermissibly. Further, the cause of action for each putative class member is predicated upon the same facts. Only one fee is at issue here and that fee would have been paid by every member of the class. As such, identical facts and questions of law are common to all of them.

Typicality

"While commonality tests the sufficiency of the class itself by focusing on the class claims, typicality tests the sufficiency of the named plaintiff by focusing on the relationship between the named plaintiff and the class as a whole." *Buynak v. Dep't of Transp.,* 833 A.2d 1159, 1164 (Pa. Cmwlth. Ct. 2003) The "typicality" element for class certification requires that the class representative's overall position on the common issues be sufficiently aligned with that of the absent class members to ensure that pursuit of those interests will advance those of the proposed class members. *Dunn v. Allegheny County Property Assessment Appeals and Review,* 794 A.2d 416, 424 (Pa.Cmwlth.2002). Typicality lies where the claims of the representatives and those of other class members arise out of the same course of conduct, involve the same legal theories, and do not raise divergent goals or interests. *Muscarella v. Com.,* 39 A.2d 459, 469-470 (Pa.Cmwlth.2012) (representative taxpayers seeking refunds under the Rebate Acts found to be typical of the claims and defenses of the class.) The existence of factual distinctions between the claims of the named plaintiff and claims of the proposed class will not necessarily preclude a determination of typicality. *Id.*

Here, Guiffrida's claims as class representative are identical to those of the absent class members. Guiffrida paid the same fee as all other members of the class and pressing his claim will advance the interests of all class members. His claim and the claims of the class members arise out of

the same legal theories and have the same goal of determining whether the fees charged by the city violate the Ordinance. As such, the typicality requirements is met.

Adequacy of Representation

The fourth prong of the 1702 class certification analysis requires us to determine whether "the representative parties will fairly and adequately assert and protect the interest of the class under the criteria set forth in Rule 1709." Pa.R.C.P. 1702(4). Rule 1709 provides:

> In determining whether the representative parties will fairly and adequately assert and protect the interests of the class, the Court shall consider:
> (1) Whether the attorney for the representative parties will adequately represent the interest of the class.
> (2) Whether the representative parties have a conflict of interest in the maintenance of the action, and
> (3) Whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

Pa.R.C.P. 1709. Generally, courts will assume that the members of the bar representing the class are skilled in their profession until the contrary is demonstrated. *Dunn v. Allegheny County Property Assessment Appeals and Review,* 794 A.2d 416, 425 (Pa.Cmwlth.2002). With respect to the second factor, as a general rule courts will also presume there is no conflict of interest unless the contrary is established. *Id.* at 425-26. With regard to the last factor, courts have accepted affidavits of counsel that they will advance the necessary litigation costs as sufficient evidence to support the finding that adequate financial resources exist. *Muscarella,* 39 A.3d at 471. Courts have also accepted a lack of a challenge to the ability to finance the litigation as sufficient to establish adequate financial resources. *Dunn,* 794 A.2d at 426.

Here, we have little doubt that counsel for Mr. Guiffrida will fairly and adequately assert and protect the interests of the class. Scranton does not raise a challenge to Mr. Guiffrida's counsel's ability, either professionally or financially, to advance this litigation. The presumptions that precedent allows this Court make with respect to the first and second factors adequacy have not been challenged, nor has the contrary been established. Further, counsel has informed the court they have an extensive

history of litigating class action cases, and are prepared to advance any fees or costs. *See. Pl. Br. in Supp. of Cert.* at 7, *See also Pl. Br. in Supp. of Cert.,* Ex. F. As such, the adequacy prerequisite of the class certification test has been established.

Fairness and Efficiency of Adjudication

The fifth and final requirement for class certification under 1702 mandates that we determine whether the class action "provides a fair and efficient method for adjudication of the controversy." Pa.R.C.P. 1702(5). Rule 1708 of the Pennsylvania Rules of Civil Procedure governs what facts we should consider when determining fairness and efficiency. When equitable or declaratory relief alone is sought, Rule 1708 provides, in relevant part:

> "In determining whether a class action is a fair and efficient method of adjudicating the controversy, the court shall consider among other matters....
>
> (a)(1) whether common questions of law or fact predominate over any question affecting only individual members;
>
> (2) the size of the class and the difficulties likely to be encountered in the management of the action as a class action;
>
> (3) whether the prosecution of separate actions by or against individual members of the class would create a risk of
>
> (i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct;
>
> (ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;
>
> (4) the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues;
>
> (5) whether the particular forum is appropriate for the litigation of the claims of the entire class; and
>
> (b)(2) whether the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making final equitable or declaratory relief appropriate with respect to the class.

Pa.R.C.P. 1708(a)(1-5) and (b)(2).

As discussed above, this Court is satisfied that questions of law and fact common to the class predominate over those affecting individual members. Also, the sheer number of potential class

plaintiffs is sufficiently large enough to justify a class action. We note that the nature of Guiffrida's challenge makes it such that any adjudication of this matter on an individual basis would, as a practical matter, likely be dispositive of the interests of other persons not party to the individual action. *See Muscarella,* 39 A.3d. at 472-73 (finding certification of class where two thousand potential class members were seeking tax rebates under a statutory entitlement program.) Further, we are unaware of any other litigation commenced on this issue by other members of the class. Finally, we find that declaratory relief is appropriate in this case because all class members have paid refuse fees, including potential penalties and interest on unpaid or late fees, as a result of Scranton's conduct. As such, Scranton has acted on grounds applicable to all members of the class. Further, Scranton is not obligated to issue *pro rata* refunds to individuals absent a judicial determination as to the Ordinance's construction and the city's compliance therewith. As such, pursuant to Pa.R.C.P. 1702(5) and 1708(a)(1-5) and (b)(2), we conclude that a class action seeking declaratory and injunctive relief is a fair and efficient means of resolving this dispute .

V. CONCLUSION

We recognize Scranton's argument that a class action is not necessary in this case and that it is more appropriately read as a taxpayer's action, but we cannot agree. Guiffrida has submitted a properly-pled class action complaint, which we determine to be worthy of certification. Guiffrida has met his burden in demonstrating the requisite elements for a class action. We also conclude that potential class members have a much higher likelihood of accessing the information necessary to advise themselves of their rights and entitlements resulting from this litigation by participating as a member of a class. Additionally, should we determine that a refund is due, we similarly find it more likely that class members will pursue refunds through the proper statutory procedure. For all of the foregoing reasons, Plaintiff's Motion for Class Certification will granted. An appropriate Order follows.

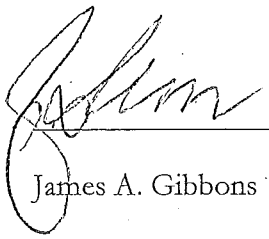
ADAM GUIFFRIDA	:	In the Court of Common Pleas
	:	of Lackawanna County
PLAINTIFF,	:	
	:	
v.	:	CIVIL LAW DIVISION
	:	
CITY OF SCRANTON	:	
	:	
DEFENDANT	:	2016-CV- 6933
	:	

ORDER

AND NOW, this 2nd day of January, 2018, upon consideration of Plaintiff Adam Guiffrida's Motion for Class Certification, briefs submitted by the parties, and oral argument held on the matter, it is HEREBY ORDERED and DECREED that:

1. Plaintiff's Motion for Class Certification is GRANTED subject to the terms and conditions set forth in the succeeding paragraphs;
2. A class action is certified for those residential property owners in the City of Scranton who paid the refuse fee during the period of the applicable statute of limitations;
3. In accordance with Pa.R.C.P. 1711(b), the class is certified on an "opt-in" basis pursuant to which a prospective member of the class must file a timely written election to be included in the class after receiving proper notice of the class action; and
4. In compliance with Pa.R.C.P. 1712, a status conference will be held on **Monday, March 5, 2018 at 2:00 PM** in order to discuss the proposed notice to be provided by plaintiff to the putative class members.

BY THE COURT:



_____ J.

James A. Gibbons

Cc: written notice of the entry of the foregoing Order has been provided to each party pursuant to Pa. R. C. P. 236(a) and (d) by transmitting time-stamped copies via electronic mail to:

Plaintiff: Simon B. Paris, Esq.; Sparis@smbb.com

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