

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MARIE FRITZINGER,

Plaintiff,

v.

ANGIE'S LIST, INC.,

Defendant.

Case No. 1:12-cv-1118-JMS-DML

PROPOSED CASE MANAGEMENT PLAN

I. Parties and Representatives

A. Plaintiff: Marie Fritzinger

Defendant: Angie's List, Inc.

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Counsel shall promptly file a notice with the Clerk if there is any change in this information.

II. Synopsis of Case

- A. **Plaintiff's Statement:** Defendant Angie's List, Inc. is an internet-based company that provides a forum for registered members to post and read reviews of home contractors and other service providers. Membership in Angie's List is available on a monthly, annual and multi-year basis, pursuant to the terms of the Membership Agreement, which includes a provision for automatic membership renewal. Plaintiff alleges in this class action that Defendant has breached its Membership Agreement, and has been unjustly enriched, by: 1) renewing its members at a higher membership fee than that which is permitted pursuant to the Membership Agreement, and 2) automatically renewing existing members at a more costly membership level than that at which they subscribed. Plaintiff further alleges that Defendant has knowingly and intentionally made false statements concerning its membership renewal policies, and that Defendant has misapplied entrusted property in the form of its members' credit cards. The Court has subject matter jurisdiction pursuant to CAFA, 28 U.S.C. § 1332(d), because Plaintiff and Defendant are citizens of different states, and the amount in controversy exceeds \$5 million, exclusive of interest and costs.
- B. **Defendant's Statement:** Angie's List denies plaintiff's allegations. In particular, plaintiff's claims are premised upon an unfounded interpretation of the Membership Agreement. That contract also contains various provisions that bar and/or significantly limit plaintiff's alleged claims and damages. While Angie's List denies any liability for any of plaintiff's alleged claims, it also has specifically moved to dismiss plaintiff's claims for deception, which are nothing more than a re-packaged recitation of plaintiff's breach of contract claims. Plaintiff's final claim is based upon unjust enrichment. Angie's List denies this claim for multiple reasons, including the fact that any enrichment by Angie's List was just. Angie's List also denies that class certification is appropriate in this case, particularly given the vast disparity between the facts, law, claims, and

defenses that would apply to individual class members.

III. Pretrial Pleadings and Disclosures

- A. The parties shall serve their Fed. R. Civ. P. 26 initial disclosures on or before **January 14, 2013**.
- B. Plaintiff(s) shall file preliminary witness and exhibit lists on or before **June 28, 2013**.
- C. Defendant(s) shall file preliminary witness and exhibit lists on or before **July 30, 2013**.
- D. All motions for leave to amend the pleadings and/or to join additional parties shall be filed on or before **February 28, 2013**.
- E. Plaintiff(s) shall serve Defendant(s) (but not file with the Court) a statement of special damages, if any, and make a settlement demand, on or before **April 15, 2013**. Defendant(s) shall serve on the Plaintiff(s) (but not file with the Court) a response thereto within 30 days after receipt of the demand.
- F. Plaintiff(s) shall disclose the name, address, and vita of any expert witness, and shall serve the report required by Fed. R. Civ. P. 26(a)(2) on or before **February 28, 2014**. Defendant(s) shall disclose the name, address, and vita of any expert witness, and shall serve the report required by Fed. R. Civ. P. 26(a)(2) on or before **April 30, 2014**.
- G. If a party intends to use expert testimony in connection with a motion for summary judgment to be filed by that party, such expert disclosures must be served on opposing counsel no later than 60 days prior to the dispositive motion deadline. If such expert disclosures are filed the parties shall confer within 7 days to stipulate to a date for responsive disclosures (if any) and completion of expert discovery necessary for efficient resolution of the anticipated motion for summary judgment. The parties shall make good faith efforts to avoid requesting enlargements of the dispositive motions deadline and related briefing deadlines. Any proposed modifications of the CMP deadlines or briefing schedule must be approved by the court.
- H. Any party who wishes to limit or preclude expert testimony at trial shall file any such objections no later than 60 days before trial. Any party who wishes to preclude expert witness testimony at the summary judgment stage shall file any such objections with their responsive brief within the briefing schedule established by Local Rule 56-1.

Sec. III. E. is modified to include: The parties shall submit (not file) courtesy copies of their respective demand and response at the time of service via email to *judgelynychambers@insd.uscourts.gov*. There is no need to follow the email with a hard copy.

- I. All parties shall file and serve their final witness and exhibit lists on or before **June 13, 2014.**
- J. Any party who believes that bifurcation of discovery and/or trial is appropriate with respect to any issue or claim shall notify the Court as soon as practicable.
- K. The parties are in the process of developing a production protocol regarding electronically stored discovery information which they anticipate submitting to the Court.

IV. Discovery¹ and Dispositive Motions

Due to the time and expense involved in conducting expert witness depositions and other discovery, as well as preparing and resolving dispositive motions, the Court requires counsel to use the CMP as an opportunity to seriously explore whether this case is appropriate for such motions (including specifically motions for summary judgment), whether expert witnesses will be needed, and how long discovery should continue. To this end, counsel must select the track set forth below that they believe best suits this case. If the parties are unable to agree on a track, the parties must: (1) state this fact in the CMP where indicated below; (2) indicate which track each counsel believes is most appropriate; and (3) provide a brief statement supporting the reasons for the track each counsel believes is most appropriate. If the parties are unable to agree on a track, the Court will pick the track it finds most appropriate, based upon the contents of the CMP or, if necessary, after receiving additional input at an initial pretrial conference.

- A. Does any party believe that this case may be appropriate for summary judgment or other dispositive motion? **YES.** If yes, the party(ies) that expect to file such a motion must provide a brief statement of the factual and/or legal basis for such a motion.

Plaintiff's Statement: Plaintiff anticipates seeking summary judgment on her breach of contract claims. Plaintiff believes that the undisputed material facts will demonstrate that: 1) Defendant breached its Membership Agreement by charging renewing members impermissibly high fees, and 2) Defendant breached its Membership Agreement by automatically renewing certain members at a more costly membership level than that at which the member subscribed.

¹The term "completed," as used in Section IV.B, means that counsel must serve their discovery requests in sufficient time to receive responses before this deadline. Counsel may not serve discovery requests within the 30-day period before this deadline unless they seek leave of Court to serve a belated request and show good cause for the same. In such event, the proposed belated discovery request shall be filed with the motion, and the opposing party will receive it with service of the motion but need not respond to the same until such time as the Court grants the motion.

Defendant’s Statement: Angie’s List anticipates moving for summary judgment based on explicit provisions in the Membership Agreement that bar and/or significantly limit plaintiff’s alleged claims and damages. Angie’s List also anticipates moving for summary judgment on the basis that plaintiff and class members have received sufficient benefit from their Angie’s List memberships to defeat plaintiff’s unjust enrichment claims. Angie’s List further reserves the right to move for summary judgment on additional issues not yet apparent at this early stage of litigation and to move for summary judgment on plaintiff’s deception claims in the event that the pending motion to dismiss those claims is denied.

B. Select the track that best suits this case:

_____ Track 1: No dispositive motions are anticipated. All discovery shall be completed by _____ [no later than 16 months from Anchor Date]. [Note: Given that no dispositive motions are anticipated, the parties should consider accelerating discovery and other pretrial deadlines to the extent practicable and suggest a trial date (Section VI) substantially earlier than the presumptive trial date of 18 months from the Anchor Date. The Court encourages a track faster than the standard track in all cases in which dispositive motions are not anticipated].

[Plaintiff’s Proposal:]

 X Track 2: Dispositive motions are expected and shall be filed no later than **December 20, 2013**; non-expert witness discovery and discovery relating to liability issues shall be completed by **October 30, 2013**; expert witness discovery and discovery relating to damages shall be completed by **June 13, 2014**. [Note: The Court expects this will be the typical track when dispositive motions are anticipated.]

[Defendant’s Proposal:]

 X Track 2: Dispositive motions are expected and shall be filed no later than **February 28, 2014**; non-expert witness discovery and discovery relating to liability issues shall be completed by **December 17, 2013**; expert witness discovery and discovery relating to damages shall be completed by **June 13, 2014**. [Note: The Court expects this will be the typical track when dispositive motions are anticipated.]

_____ Track 3: Dispositive motions are expected and shall be filed no later than _____ [no later than 11 months from Anchor Date]; expert witness discovery that may be necessary at the dispositive motions stage shall be completed by [no later than 7-10 months from Anchor Date]; all remaining discovery shall be completed by [no later than 12-16 months from Anchor Date].

Defendant's
Proposal is
approved

[Note: The Court expects that this will not be the typical track when dispositive motions are anticipated.]

_____ Track 4: Dispositive motions shall be filed by _____ [not later than 13 months from the Anchor Date]; non-expert discovery shall be completed by _____; expert witness discovery shall be completed by _____. [Note: The Court provides Track 4 as an open option because it recognizes that there may be unusual cases for which special circumstances necessitate additional flexibility. However, the Court has found that Tracks 1-3 are appropriate in the large majority of cases, and therefore the parties must briefly state below the special circumstances justifying a departure from Tracks 1-3.]

V. Pre-Trial/Settlement Conferences

Although the parties believe that such a conference would be premature at this juncture, both parties have expressed a willingness to maintain an open dialogue with regard to the resolution of this litigation. The parties will avail themselves of such a conference if they agree that it could be a productive endeavor.

VI. Trial Date

The presumptive trial date is 18 months from the Anchor Date. The parties request a trial date in **September 2014**. The trial is by **Jury** and is anticipated to take **between two and five days**.

VII. Referral to Magistrate Judge

At this time, all parties **do not** consent to refer this matter to the currently assigned Magistrate Judge pursuant to 28 U.S.C. 636(b) and Federal Rules of Civil Procedure 73 for all further proceedings including trial.

VIII. Required Pre-Trial Preparation

A. TWO WEEKS BEFORE THE FINAL PRETRIAL CONFERENCE, the parties shall:

1. File a list of witnesses who are expected to be called to testify at trial.
2. Number in sequential order all exhibits, including graphs, charts and the like, that will be used during the trial. Provide the Court with a list of these exhibits, including a description of each exhibit and the identifying designation. Make the original exhibits available for inspection by opposing counsel. Stipulations as to the authenticity and admissibility of exhibits are encouraged to the greatest extent possible.

3. Submit all stipulations of facts in writing to the Court. Stipulations are always encouraged so that at trial, counsel can concentrate on relevant contested facts.
4. A party who intends to offer any depositions into evidence during the party's case in chief shall prepare and file with the Court and copy to all opposing parties either:
 - a. brief written summaries of the relevant facts in the depositions that will be offered. (Because such a summary will be used in lieu of the actual deposition testimony to eliminate time reading depositions in a question and answer format, this is strongly encouraged.); or
 - b. if a summary is inappropriate, a document which lists the portions of the deposition(s), including the specific page and line numbers, that will be read, or, in the event of a video-taped deposition, the portions of the deposition that will be played, designated specifically by counter-numbers.
5. Provide all other parties and the Court with any trial briefs and motions in limine, along with all proposed jury instructions, voir dire questions, and areas of inquiry for voir dire (or, if the trial is to the Court, with proposed findings of fact and conclusions of law).
6. Notify the Court and opposing counsel of the anticipated use of any evidence presentation equipment.

B. ONE WEEK BEFORE THE FINAL PRETRIAL CONFERENCE, the parties shall:

1. Notify opposing counsel in writing of any objections to the proposed exhibits. If the parties desire a ruling on the objection prior to trial, a motion should be filed noting the objection and a description and designation of the exhibit, the basis of the objection, and the legal authorities supporting the objection.
2. If a party has an objection to the deposition summary or to a designated portion of a deposition that will be offered at trial, or if a party intends to offer additional portions at trial in response to the opponent's designation, and the parties desire a ruling on the objection prior to trial, the party shall submit the objections and counter summaries or designations to the Court in writing. Any objections shall be made in the same manner as for

proposed exhibits. However, in the case of objections to video-taped depositions, the objections shall be brought to the Court's immediate attention to allow adequate time for editing of the deposition prior to trial.

3. File objections to any motions in limine, proposed instructions, and voir dire questions submitted by the opposing parties.
4. Notify the Court and opposing counsel of requests for separation of witnesses at trial.

IX. Other Matters

A. Class Certification

1. [Plaintiff's Proposal]: Plaintiff shall file her amended or supplemental motion for class certification no later than **June 14, 2013**.

Consistent with the procedure outlined in *Damasco v. Clearwire Corp.*, 662 F.3d 891 (7th Cir. 2011), Plaintiff filed a motion on November 12, 2012 for the certification of this action as a class action, in order to protect the class by eliminating the possibility that Defendant might try to render these claims moot by offering to settle Plaintiff's action on an individual basis. Given that "the parties have yet to fully develop the facts needed for certification," *Damasco*, 662 F.3d at 896, Plaintiff requests that the Court delay adjudication of the motion for certification, *id.*, and permit Plaintiff to amend or supplement her motion by June 14, 2013.

[Defendant's Proposal]: The second paragraph of Plaintiff's proposal reflects legal argument by counsel that Defendant believes is not appropriate to include in a Proposed Case Management Plan. Throughout the course of negotiating this Proposed Case Management Plan, Defendant has offered the following compromise:

Plaintiff filed a Motion to Certify on November 12, 2012. Plaintiff intends to ask for leave to file a "renewed" motion based upon discovery that has not yet been requested. Plaintiff also might ask for leave to supplement her motion with an expert report which has not yet been provided to Defendant. Defendant opposes the filing of any "renewed" motion or supplemental materials (including an expert report) and reserves the right to raise this issue with the Court at the appropriate time. Notwithstanding Defendant's objection, Plaintiff's proposed "renewed" motion and any "supplemental" materials must be filed by **June 14, 2013**.

Plaintiff's proposal is adopted except the court will address the form of amendment or supplementation of the class certification motion in advance of the June 14, 2013 deadline

2. Defendant shall file its response to class certification, along with any expert report relating to class certification, no later than **August 14, 2013**.
3. Plaintiff shall file her reply in further support of class certification no later than **September 20, 2013**.
4. All experts shall be made reasonably available for deposition after service of their expert report.
5. [Defendant's Proposal]: Defendant also reserves the right to request that the Court stay discovery and/or enlarge certain deadlines in this Case Management Plan pending the Court's ruling on Plaintiff's Motion to Certify.

[Plaintiff's Proposal]: The deadlines set forth in this Case Management Plan shall govern, as set forth in L.R. 16-1(e). Any request for enlargement of deadlines shall be made pursuant to Local Rule 6-1.

Respectfully submitted,

Dated: November 30, 2012

Dated: November 30, 2012

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Attorneys for Defendant, Angie's List, Inc.

Attorneys for Plaintiff, Marie Fritzing

X PARTIES APPEARED BY COUNSEL ON DECEMBER 7, 2012, FOR AN INITIAL PRETRIAL CONFERENCE.

 APPROVED AS SUBMITTED.

 X APPROVED AS AMENDED.

 APPROVED AS AMENDED PER SEPARATE ORDER.

 APPROVED, BUT ALL OF THE FOREGOING DEADLINES ARE SHORTENED/LENGTHENED BY _____ MONTHS.

 APPROVED, BUT THE DEADLINES SET IN SECTION(S) _____ OF THE PLAN IS/ARE SHORTENED/LENGTHENED BY _____ MONTHS.

 THIS MATTER IS SET FOR TRIAL BY _____ ON _____ . FINAL PRETRIAL CONFERENCE IS SCHEDULED FOR _____ AT _____ .M., ROOM _____ .

 A SETTLEMENT/STATUS CONFERENCE IS SET IN THIS CASE FOR _____ AT _____ .M. COUNSEL SHALL APPEAR:

_____ IN PERSON IN ROOM _____ ; OR

_____ BY TELEPHONE, WITH COUNSEL FOR INITIATING THE CALL TO ALL OTHER PARTIES AND ADDING THE COURT JUDGE AT (____) _____ ; OR

_____ BY TELEPHONE, WITH COUNSEL CALLING THE JUDGE'S STAFF AT (____) _____ ; OR

 X DISPOSITIVE MOTIONS SHALL BE FILED BY FEBRUARY 28, 2014.

 X NON-EXPERT WITNESS AND LIABILITY DISCOVERY SHALL BE COMPLETED BY DECEMBER 17, 2013.

If the required conference under LR 37-1 does not resolve discovery issues that may arise, **and if the dispute does not involve a claim of privilege**, the parties are ordered *jointly* to request a phone status conference before filing any motion to compel or for protective order. **If the dispute has arisen because a party has failed to timely respond to discovery, the party that served the discovery may proceed with a motion to compel without seeking a conference. Any contacts with the court to request a discovery conference must be made jointly by counsel, absent compelling circumstances.**

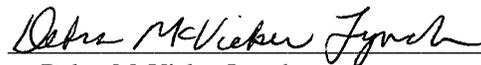
When filing a non-dispositive motion, the movant shall contact counsel for the opposing party and solicit opposing counsel's agreement to the motion. The movant shall indicate opposing counsel's consent or objection in the motion.

Upon approval, this Plan constitutes an Order of the Court. Failure to comply with an Order of the Court may result in sanctions for contempt, or as provided under Rule 16(f), to and including dismissal or default.

Approved and So Ordered.

12/10/2012

Date


Debra McVicker Lynch
United States Magistrate Judge
Southern District of Indiana

Distribution to all counsel of record via CM/ECF