

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

BRYAN JALLO, on behalf of himself and others similarly situated,	§	
	§	Case No. 4:14-cv-00449
	§	
Plaintiff,	§	Jury Trial Demanded
	§	
vs.	§	
	§	
	§	
RESURGENT CAPITAL SERVICES, L.P. and LVNV FUNDING, LLC,	§	
	§	
Defendants.	§	

ORDER OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Before the Court is Bryan Jallo’s motion for preliminary approval of class action settlement. (Dkt. #146). The motion is unopposed and ready for adjudication.

The Court has been advised that the parties to this action, Bryan Jallo (“Plaintiff” or “Class Representative”) and Resurgent Capital Services, LP (“Defendant”), through their respective counsel, have agreed, subject to Court approval following notice to the Class Members and a hearing, to settle the above-captioned action upon the terms and conditions set forth in the Class Action Settlement Agreement (“Agreement”), which has been filed with the Court, and the Court deeming that the definitions set forth in the Agreement are hereby incorporated by reference herein;

NOW, THEREFORE, based upon the Agreement and all of the files, records, and proceedings herein, and it appearing to the Court that, upon preliminary examination, the proposed settlement appears fair, reasonable, and adequate, and that a hearing should and will be held on March 7, 2017, after notice to the Class Members, to confirm that the proposed settlement is fair, reasonable, and adequate, and to determine whether a Final Order and

Judgment should be entered in this lawsuit, IT IS HEREBY ORDERED:

Summary of Procedural History

Plaintiff, individually and on behalf of the Class Members, filed the above-captioned action (the “Litigation”) on July 8, 2014, against Defendant and co-defendant LVNV Funding, LLC (“LVNV”) in the United States District Court for the Eastern District of Texas, Case No. 4:14-cv-00449, asserting alleged violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, and the Texas Debt Collection Act (“TDCA”), Tex. Fin. Code § 392.001 *et seq.* On June 23, 2016, the parties mediated this matter, after which they reached a complete agreement to resolve this matter.

Jurisdiction

The Court has jurisdiction over the subject matter of this action and over the parties. The Court finds that Plaintiff has standing to bring his claims outlined above under the FDCPA because he properly alleges he (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendants, and (3) that is likely to be redressed by a favorable judicial decision. *See Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).

The Class

The Court certifies the following Class:

- (a) All persons for whom LVNV’s or Resurgent’s records show a Texas address,
- (b) from whom Resurgent, on behalf of LVNV, attempted to collect an alleged consumer debt that HSBC charged off and subsequently sold to LVNV as part of its portfolio labeled 13289, (c) during the period of time beginning on July 8, 2013 and ending on July 8, 2014.

Defendant represents there are approximately 1,337 Class Members.

The Court appoints Plaintiff as Class Representative and Greenwald Davidson Radbil PLLC as Class Counsel. *See, e.g., Harper v. Law Office of Harris and Zide LLP*, 2016 WL 2344194 (N.D. Cal. May 4, 2016) (appointing Greenwald Davidson Radbil PLLC as counsel in an FDCPA action); *Schuchardt v. Law Office of Rory W. Clark*, --- F.R.D. ----, 2016 WL 1701349 (N.D. Cal. Apr. 28, 2016) (same); *Brown v. Hunt & Henriques, Attorneys at Law*, Case 5:15-cv-01111-EJD, Doc. 45 (N.D. Cal. Apr. 26, 2016) (same); *Silva v. Unifund CCR, LLC and Pilot Receivables Management LLC*, Case No. 2:14-cv-00799-TSZ, Doc. 30 (W.D. Wash. Feb. 11, 2016) (same); *Gonzalez v. Dynamic Recovery Solutions, LLC*, 2015 WL 738329 (S.D. Fla. Feb. 23, 2015) (same).

Discussion

The parties have agreed to settle this matter pursuant to which Defendant will pay, among other amounts, an amount that Defendant states exceeds 1 percent of its net worth on an assets-minus-liabilities basis, which is notable given the cap on statutory damages under the FDCPA. *See* 15 U.S.C. § 1682k(A)(2)(B) (“in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or 1 per centum of the net worth of the debt collector”). “Thus, the parties’ settlement represents more monetary relief for each Class Member than the FDCPA itself would allow, and therefore represents a recovery in excess of what Plaintiffs would have received had they proceeded with trial.” *Schuchardt*, 2016 WL 1701349, at *8. “Because damages are not mandatory, continued litigation presents a risk to Plaintiffs of expending time

and money on this case with the possibility of no recovery at all for the Class. In light of the risks and costs of continued litigation, the immediate reward to class members is preferable.” *Id.*

The Court preliminarily finds that the settlement of this matter, on the terms and conditions set forth in the Agreement, is in all respects fundamentally fair, reasonable, adequate, and in the best interest of the Class Members, after a review of the following factors: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiffs’ success on the merits; (5) the range of possible recovery; and (6) the opinions of the class counsel, class representatives, and absent Class Members. *See Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 639 n.11 (5th Cir. 2012) (quoting *Reed v. Gen. Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983)).

A third-party class administrator (“Class Administrator”) acceptable to the parties will administer the settlement and notification to Class Members. The Class Administrator will be responsible for mailing the approved class action notice and settlement checks to the Class Members. Defendant will pay the costs and expenses for the administration of the settlement and class notice separate and apart from other amounts it agrees to pay under the Agreement. Upon the recommendation of the parties, the Court appoints the following Class Administrator: First Class, Inc.

The Court approves the form and substance of the Notice of Class Action Settlement, attached to the Agreement as Exhibit B. The proposed form and method for notifying the Class Members of the settlement and its terms and conditions meet the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and

constitute due and sufficient notice to all persons entitled to the notice. The Court finds that the proposed Notice is clearly designed to advise the Class Members of their rights. In accordance with the Agreement, the Class Administrator will mail the notice to the Class Members as expeditiously as possible, but in no event later than 30 days after the Court's entry of this order, *i.e.*, not later than December 7, 2016. The Class Administrator will confirm, and if necessary, update the addresses for the Class Members through standard methodology that the Class Administrator currently uses to update addresses.

The Class Administrator will also, not later than 30 days after the Court's entry of the order of preliminary approval of class action settlement, establish and maintain a dedicated website—www.resurgentfdcpasettlement.com—that provides Class Members access to documents related to this Agreement, including, at a minimum, Plaintiff's class action complaint, this Agreement and its accompanying exhibits, the Order of Preliminary Approval of Class Action Settlement, and the Class Notice.

Any Class Member who desires to be excluded from the Class must send a written request for exclusion to the Class Administrator with a postmark dated not later than January 6, 2017 (60 days after the entry of this order). To be effective, the written request for exclusion must set forth: (1) his or her full name, (2) address, (3) telephone number, and (4) email address (if available), along with a statement that he or she wishes to be excluded. Any Class Member who submits a valid and timely request for exclusion will not be bound by the terms of the Agreement.

Any Class Member who intends to object to the fairness of this settlement must file a written objection with the Court not later than January 6, 2017 (60 days after the entry of this order).

Further, any such Class Member must, within the same time period, provide a copy of the written objection to Class Counsel: Aaron D. Radbil, Greenwald Davidson Radbil PLLC, 106 East Sixth Street, Suite 913, Austin, Texas 78701; and counsel for Defendants: Derek W. Edwards, Waller Landsen Dortch & Davis, LLP, 511 Union Street, Suite 2700, Nashville, Tennessee 37219.

To be effective, a written objection to the settlement must:

- (a) Include a heading which includes the name of the case and case number;
- (b) Provide the name, address, telephone number and signature of the Class Member filing the objection;
- (c) Be filed with the Clerk of the Court not later than January 6, 2017 (60 days after the entry of this order);
- (d) Be sent to Class Counsel and counsel for Defendants at the addresses designated in the Notice by first-class mail, postmarked no later than January 6, 2017 (60 days after the entry of this order);
- (e) Contain the name, address, bar number and telephone number of the objecting Class Member's counsel, if represented by an attorney. If the Class Member is represented by an attorney, he/she must comply with all applicable laws and rules for filing pleadings and documents in the U.S. District Court for the Eastern District of Texas; and
- (f) Contain a statement of the specific factual and legal basis for each objection, and proof that the objector is a Class Member.

Any Class Member who has timely filed an objection may appear at the Settlement Approval Hearing, in person or by counsel, to be heard to the extent allowed by the Court, applying applicable law, in opposition to the fairness, reasonableness, and adequacy of the settlement, and on the application for an award of attorneys' fees, costs, and expenses.

The Court will conduct the Settlement Approval Hearing on **March 7, 2017**, at the United States District Court for the Eastern District of Texas, Paul Brown United States Courthouse, 101

East Pecan Street, Sherman, Texas, 75090, at **2:00 p.m.**, to review and rule upon the following:

- A. To confirm that this action satisfies the applicable prerequisites for class action treatment under Fed. R. Civ. P. 23;
- B. Whether the proposed settlement is fundamentally fair, reasonable, adequate, and in the best interest of the Class Members and should be approved by the Court;
- C. Whether a Final Approval Order, as provided under the Agreement, should be entered, dismissing the lawsuit with prejudice and releasing the Released Claims against the Released Parties; and
- D. To discuss and review other issues as the Court deems appropriate.

Attendance by Class Members at the Settlement Approval Hearing is not necessary. Class Members need not appear at the hearing or take any other action to indicate their approval of the proposed class action settlement. Class Members wishing to be heard are, however, required to appear at the Settlement Approval Hearing. The Settlement Approval Hearing may be postponed, adjourned, transferred, or continued without further notice to the Class Members.

Submissions by the parties, including responses to any objections and petitions for attorney's fees and reimbursement of costs and expenses by Class Counsel, must be filed with the Court not later than 28 days prior to the Settlement Approval Hearing, *i.e.*, not later than February 7, 2017. Opposition briefs to any of the foregoing must be filed not later than 14 days prior to the Settlement Approval Hearing, *i.e.*, not later than February 21, 2017. Reply memoranda in support of the foregoing must be filed with the Court not later than 7 days prior to the Settlement Approval Hearing, *i.e.*, not later than February 28, 2017.

The Agreement and this order will be null and void if any of the following occur:

- A. The Agreement is terminated by any of the Parties for cause, and as permitted by the Agreement;
- B. The Court rejects any material component of the Agreement, including any amendment thereto approved by the Parties; or
- C. The Court approves the Agreement, including any amendment thereto approved by the Parties, but such approval is reversed on appeal and such reversal becomes final by lapse of time or otherwise.

If the Agreement and/or this order are voided, then the Agreement will be of no force and effect and the parties' rights and defenses will be restored, without prejudice, to their respective positions as if the Agreement had never been executed and this order never entered.

In compliance with the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(D), 1453, and 1711-1715, the Court directs Defendant to cause to be served written notice of the proposed class settlement on the United States Attorney General and the Attorney General of the State of Texas.

The Court retains continuing and exclusive jurisdiction over the action and parties and administration and enforcement of this agreement.

The Court sets the following schedule:

<u>Date</u>	<u>Event</u>
November 7, 2016	Preliminary Approval Order Entered
November 28, 2016	Notice Sent (21 days after entry of Preliminary Approval Order)
January 6, 2017	Deadline to Send Exclusion or File Objection (60 days after entry of Preliminary Approval Order)

February 7, 2017 Motion for Final Approval and Attorney Fees Papers Filed (28 days before Settlement Approval Hearing)

February 21, 2017 Opposition to Motion for Final Approval and Attorney Fees Papers (14 days before Settlement Approval Hearing)

February 28, 2017 Reply in support of Motion for Final Approval and Attorney Fees Papers (7 days before Settlement Approval Hearing)

March 7, 2017 Settlement Approval Hearing Held at 2:00 p.m. at the Paul Brown United States Courthouse, 101 E. Pecan Street, Sherman, Texas 75090

IT IS SO ORDERED.

SIGNED this 8th day of November, 2016.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE