

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MARY S. KAUSCH, on behalf of herself and)
others similarly situated,)
)
Plaintiff,)
)
v.) Civil Action No.: 4:15-cv-00537-AGF
)
BERMAN & RABIN, P.A.,)
)
Defendant.)
)

ORDER OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

WHEREAS, the Court has been advised that the parties to this action, Mary S. Kausch (“Plaintiff” or “Class Representative”), and Berman & Rabin, P.A. (“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 lawsuit (“Lawsuit”) upon the terms and conditions set forth in the Class Action Settlement Agreement (“Settlement Agreement”), which has been filed with the Court, and the Court deeming that the definitions set forth in the Settlement Agreement are hereby incorporated by reference herein (with capitalized terms as set forth in the Settlement Agreement);

NOW, THEREFORE, based upon the Settlement 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 **Friday, July 8, 2016 at 9:00 a.m.**, 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:

1. The Court has jurisdiction over the subject matter of the Lawsuit and over all settling parties hereto.

2. In compliance with the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d), 1453, and 1711-1715, Defendant will 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 Missouri.

3. **CLASS MEMBERS** – Pursuant to Fed. R. Civ. P. 23(b)(3), the Lawsuit is hereby preliminarily certified, for settlement purposes only, as a class action on behalf of the following class of plaintiffs (the “Class Members”) with respect to the claims asserted in the Lawsuit:

All persons with an address in Missouri to whom Berman & Rabin P.A. mailed an initial debt collection communication that stated: “If you notify this firm within thirty (30) days after your receipt of this letter, that the debt or any portion thereof, is disputed, we will obtain verification of the debt or a copy of the judgment, if any, and mail a copy of such verification or judgment to you,” between March 26, 2014 and March 26, 2015, in connection with the collection of a consumer debt on behalf of Bank of America, N.A.

4. Defendant represents that there are 237 Class Members.

5. **CLASS REPRESENTATIVE AND CLASS COUNSEL APPOINTMENT** – Pursuant to Fed. R. Civ. P. 23, the Court appoints Plaintiff Mary S. Kausch as the Class Representative. The Court also appoints Jesse S. Johnson of Greenwald Davidson Radbil PLLC as Class Counsel. *See, e.g., McWilliams v. Advanced Recovery Sys., Inc.*, --- F. Supp. 3d ---, 2015 WL 6686211, at *2 (S.D. Miss. Nov. 3, 2015) (appointing Greenwald Davidson Radbil PLLC as class counsel); *Prater v. Medicredit, Inc.*, No. 4:14-cv-00159, 2015 WL 4385682, at *1 (E.D. Mo. July 13, 2015) (same).

6. **PRELIMINARY CLASS CERTIFICATION** – The Court preliminarily finds that the Lawsuit satisfies the applicable prerequisites for class action treatment under Fed. R. Civ. P. 23, namely:

- A. The Class Members are so numerous that joinder of all of them in the Lawsuit is impracticable;
- B. There are questions of law and fact common to the Class Members, which predominate over any individual questions;
- C. The claims of the Plaintiff are typical of the claims of the Class Members;
- D. The Plaintiff and Class Counsel have fairly and adequately represented and protected the interests of all of the Class Members; and
- E. Class treatment of these claims will be efficient and manageable, thereby achieving an appreciable measure of judicial economy, and a class action is superior to other available methods for a fair and efficient adjudication of this controversy.

See Prater, 2015 WL 4385682, at *2 (preliminarily approving class action settlement).

7. The Court preliminarily finds that the settlement of the Lawsuit, on the terms and conditions set forth in the Settlement Agreement is in all respects fundamentally fair, reasonable, adequate, and in the best interest of the Class Members, especially in light of the benefits to the Class Members; the strength and weaknesses on the merits of the Plaintiff's case; the complexity, expense, and probable duration of further litigation; the risk and delay inherent in possible appeals; the risk of collecting any judgment obtained on behalf of the Class; and the limited amount of any potential total recovery for the Class in light of the cap on statutory

damages under the Fair Debt Collection Practices Act. *See In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 932-33 (8th Cir. 2005).

8. **ADMINISTRATION** – A third-party 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. All costs of administration will be paid by Defendant separate and apart from the Settlement Fund. Upon the recommendation of the parties, the Court hereby appoints the following class administrator: First Class, Inc.

9. **WRITTEN NOTICE** – The Court approves the form and substance of the Notice of Class Action Settlement, attached to the Settlement Agreement as Exhibit B, **except as follows:**

a. Section 6 shall read as follows:

6. What can I get from the settlement?

The Settlement Agreement provides for payment of a total of \$3,555.00 to be shared, pro rata, by all class members who do not choose to exclude themselves from the Class. The full amount will be distributed to the Class. Any funds remaining from uncashed checks will be paid to Legal Services of Eastern Missouri.

Each person who does not exclude himself or herself will receive at least **\$15.00**.

b. The last sentence of Section 13 shall read as follows:

Separately, Defendant will ask the Court for up to \$1,500.00 to be paid to the Class Representative. The Court may award less than this amount.

c. The second paragraph of Section 20 shall read as follows:

In addition, relevant pleadings, including the Settlement Agreement, will be available on Class Counsel's website, www.gdrlawfirm.com.

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 and entities 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 Settlement 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.*, **no later than May 12, 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.

10. **EXCLUSIONS** – Any Class Member who desires to be excluded from the class must send a written request for exclusion to Class Counsel with a postmark date no later than **60 days** after the Court's entry of this order, *i.e.*, **no later than June 13, 2016**. To be effective, the written request for exclusion must state the Class Member's full name, address, telephone number, and email address (if available), along with a statement that the Class Member 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 Settlement Agreement.

11. **OBJECTIONS** – Any Class Member who intends to object to the fairness of this settlement must file a written objection with the Court within **60 days** after the Court's entry of this order, *i.e.*, **no later than June 13, 2016**. Further, any such Class Member must, within the same time period, provide a copy of the written objection to Class Counsel, attention: Jesse S. Johnson, Esq., Greenwald Davidson Radbil PLLC, 5550 Glades Road, Suite 500, Boca Raton,

FL 33431; and Counsel for Defendant, Benjamin N. Hutnick, Esq., Berman & Rabin, P.A., 15280 Metcalf, Overland Park, KS 66223.

12. To be effective, a notice of intent to object to the Settlement must:
 - (a) Contain 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 no later than 60 days after the Court preliminarily approves the settlement;
 - (d) Be sent to Class Counsel and Defendant at the addresses designated in the Notice by first-class mail, postmarked no later than 60 days after the Court preliminarily approves the settlement;
 - (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 or it must comply with all applicable laws and rules for filing pleadings and documents in the U.S. District Court for the Eastern District of Missouri.
 - (f) A statement of the specific basis for each objection; and
 - (g) A list of any legal authority the objector will present at the Final Approval Hearing.

13. Any Class Member who has timely filed an objection must appear at the Settlement Approval Hearing, in person or by counsel, and 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 and costs. The right to object to the Settlement must be exercised individually by an individual Class Member, not as a member of a group or subclass and, except in the case of a deceased, minor, or incapacitated Class Member, not by the act of another person acting or purporting to act in a representative capacity.

14. **FINAL APPROVAL** – The Court will conduct a hearing on **Friday, July 8, 2016 at 9:00 a.m.** at the U.S. District Court for the Eastern District of Missouri, Thomas F. Eagleton U.S. Courthouse, 111 South 10th Street, Courtroom 12 South, St. Louis, Missouri 63102, to review and rule upon the following issues:

- A. Whether this action satisfies the applicable prerequisites for class action treatment for settlement purposes 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 Order and Judgment, as provided under the Settlement 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.

15. Attendance by Class Members at the Final 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 Final Approval Hearing. The Final Approval Hearing may be postponed, adjourned, transferred, or continued without further notice to the Class Members.

16. Any motion for attorney's fees and reimbursement of costs and expenses by Class Counsel must be filed with the Court no later than **50 days** after entry the Preliminary Approval order, *i.e.*, **no later than June 1, 2016**. Opposition briefs must be filed no later than 21 days prior to the Final Approving Hearing, *i.e.*, **no later than June 17, 2016**. Reply memoranda in support of the foregoing must be filed with the Court no later than 14 days prior to the Final

Approval Hearing, *i.e.*, **no later than June 24, 2016.**

17. The Settlement Agreement and this Order will be null and void if any of the following occur:

- A. The Court rejects any material component of the Settlement Agreement, including any amendment thereto approved by the Parties; or
- B. The Court approves the Settlement 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.

18. If the Settlement Agreement and/or this order are voided per ¶ 17 of this order, then the Settlement 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 Settlement Agreement had never been executed and this order never entered.

19. The Court retains continuing and exclusive jurisdiction over the action to consider all further matters arising out of or connected with the settlement, including the administration and enforcement of the Settlement Agreement.

20. The Court sets the following schedule:

<u>Date</u>	<u>Event</u>
April 12, 2016	Preliminary Approval Order Entered
April 22, 2016	CAFA Notice Sent (10 days after entry of Preliminary Approval Order)
May 12, 2016	Notice to Class Sent (30 days after entry of Preliminary Approval Order)
June 1, 2016	Motion for Final Approval and Attorney's Fees Papers Filed (50 days after entry of Preliminary Approval Order)
June 13, 2016	Deadline to Send Exclusion or File Objection (60 days after entry of

Preliminary Approval Order)

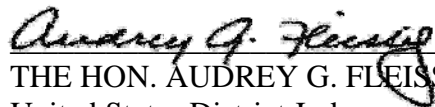
June 17, 2016 Opposition to Motion for Final Approval and Attorney's Fees Award Filed
(21 days prior to Final Approval Hearing)

June 24, 2016 Reply in Support of Motion for Final Approval and Attorney's Fees
Award Filed (14 days prior to Final Approval Hearing)

July 8, 2016, Final Approval Hearing Held
at 9:00 a.m.

IT IS SO ORDERED.

Dated: April 12, 2016.



THE HON. AUDREY G. FLEISSIG
United States District Judge