UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

WILBUR MACY and PAMELA J. STOWE, on behalf of themselves and others similarly situated, Plaintiffs,

v. Civil Action No. 3:15-cv-819-DJH-CHL

GC SERVICES LIMITED PARTNERSHIP, Defendants.

* * * * *

ORDER

Plaintiffs Wilbur Macy and Pamela J. Stowe, on behalf of themselves and others similarly situated, seek final approval of their class-action settlement with Defendant GC Services Limited Partnership. (Docket No. 87) They also move for an award of attorney fees to class counsel. (D.N. 86) Both motions are unopposed, and there are no outstanding objections to the settlement. For the reasons explained below, the Court will grant Plaintiffs' motions.

I.

Plaintiffs allege that GC Services violated the Fair Debt Collection Practices Act by sending them debt-collection letters that did not accurately convey their rights under the Act. (D.N. 1) The Court previously certified the following class:

> (1) All persons with a Kentucky or Nevada address, (2) to whom GC Services Limited Partnership mailed an initial communication that stated: (a) "if you do dispute all or any portion of this debt within 30 days of receiving this letter, we will obtain verification of the debt from our client and send it to you," and/or (b) "if within 30 days of receiving this letter you request the name and address of the original creditor, we will provide it to you in the event it differs from our client," (3) between November 5, 2014 and November 5, 2015, (4) in connection with the collection of a consumer debt, (5) that was not returned as undeliverable to GC Services Limited Partnership[.]

(D.N. 36, PageID # 361) The class-certification decision, as well as the Court's conclusion that Plaintiffs have Article III standing, was affirmed by the Sixth Circuit Court of Appeals. *Macy v. GC Servs. L.P.*, 897 F.3d 747 (6th Cir. 2018). Following remand from the Sixth Circuit, the parties agreed to a settlement, which the Court preliminarily approved on December 6, 2019. (D.N. 85) Notice of the proposed settlement was then sent to class members, and the Court held a telephonic final fairness hearing on April 10, 2020. (D.N. 90)

The parties' settlement agreement provides for payment of $10 to each class member who did not opt out and $2,500 each to Macy and Stowe for their efforts in pursuing this action. (D.N. 74-1, PageID # 622) GC Services further agreed that it would no longer send the debt-collection letter at issue in this case. (*Id.*, PageID # 623) Class counsel seek $220,000 in fees in accordance with the settlement agreement. (*Id.*, PageID # 626; D.N. 86)

II.

The Court may approve a settlement only after determining that it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). In making this determination, the Court must consider whether

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3); and
> (D) the proposal treats class members equitably relative to each other.

Id. Rule 23(e)(2) largely encompasses the factors that have traditionally been employed by the Sixth Circuit:

> (1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest.

Pelzer v. Vassalle, 655 F. App'x 352, 359 (6th Cir. 2016) [*Vassalle II*] (quoting *UAW v. Gen. Motors Corp.*, 497 F.3d 615, 631 (6th Cir. 2007)). In addition to the seven factors listed above, the Sixth Circuit has "looked to whether the settlement 'gives preferential treatment to the named plaintiffs while only perfunctory relief to unnamed class members.'" *Vassalle v. Midland Funding LLC*, 708 F.3d 747, 756 (6th Cir. 2013) [*Vassalle I*] (quoting *Williams v. Vukovich*, 720 F.2d 909, 925 n.11 (6th Cir. 1983)).

The Court discussed the above-listed factors at length in its December 6, 2019 Memorandum Opinion and Order, ultimately finding that all of the factors supported preliminary approval of the settlement. (D.N. 85) As the Court is unaware of any change in circumstances relating to those factors, further analysis is unnecessary here.

To the extent the Court had concerns regarding the incentive payments to class representatives, those concerns have been adequately addressed by Plaintiffs. Macy and Stowe submitted declarations describing their efforts throughout this litigation and leading up to the settlement. (D.N. 87-2; D.N. 87-3) The Court notes that Macy and Stowe rejected offers of $1,000 each shortly after the case was filed, opting instead to pursue the litigation on behalf of the class and delaying any personal recovery for more than four years. The Court further observes that no class member objected to the incentive payments. For all these reasons, the incentive payments will be approved.

The Court is likewise satisfied that the requested award of attorney fees and expenses is reasonable. As the Court recognized in granting preliminary approval, "[a]ttorney fee awards under fee-shifting statutes often bear little or no relation to the actual or statutory damages

recovered under those statutes"; "[t]his result is sanctioned because . . . fee[-]shifting statutes 'enhance enforcement of important civil rights, consumer protection, and environmental policies." *Perez v. Perkiss*, 742 F. Supp. 883, 891 (D. Del. 1990) (quoting *Student Pub. Interest Research Grp. v. AT&T Bell Lab.*, 842 F.2d 1436, 1449 (2d Cir. 1988)); *see also Barrett v. Green Tree Servicing, LLC*, No. 3:14-cv-297, 2016 U.S. Dist. LEXIS 59795, at *7 (S.D. Ohio 2016) (noting that "the very purpose of statutory fee-shifting provisions is to advance the public interest served by the statutes in question, by providing incentives to attorneys to take on cases that otherwise would not generate income" (quoting *Roger E. Herst Revocable Tr. v. Blinds to Go (U.S.) Inc.*, No. ELH-10-3226, 2011 U.S. Dist. LEXIS 147032, at *33 (D. Md. Dec. 20, 2011))). The fee amount is properly determined through a lodestar calculation, *see Dowling v. Litton Loan Servicing LP*, 320 F. App'x 442, 446 (6th Cir. 2009), and here, the lodestar exceeds the fee request by more than $9,000—with an estimated 25-40 hours of work remaining.[1] (D.N. 86, PageID # 858, 861) The costs included in the requested amount are an additional $5,358.28. (*Id.*, PageID # 861) Moreover, no class member has objected to the requested fee award. Under these circumstances and in light of the "'strong presumption' that the lodestar figure is reasonable," *Perdue v. Kenny A.*, 559 U.S. 542, 554 (2010), the Court finds the requested fee award appropriate.

III.

In sum, the Court finds the parties' settlement to be fair, reasonable, and adequate. *See* Fed. R. Civ. P. 23(e)(2). Accordingly, and the Court being otherwise sufficiently advised, it is hereby

[1] The lodestar is "the product of 'a reasonable hourly rate' and 'the number of hours reasonably expended on the litigation.'" *Dowling*, 320 F. App'x at 446 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). Class counsel have demonstrated that both their hourly rates and the hours expended on this matter are reasonable. (*See* D.N. 86, PageID # 856-61)

ORDERED as follows:

(1) Plaintiffs' unopposed motion for final approval (D.N. 87) and unopposed motion for attorney fees (D.N. 86) are **GRANTED**. The parties' settlement agreement, which is deemed incorporated herein, is finally approved and shall be consummated in accordance with the terms and provisions thereof, except as amended by any order issued by this Court. The material terms of the Agreement include, but are not limited to, the following:

(a) Settlement Fund. Defendant will establish an $89,020 settlement fund (the "Settlement Fund").

(b) Settlement Payment to Class Members. Each Class Member who has not excluded himself or herself from the Class with a postmark date no later than 75 days after the Court's entry of the Order of Preliminary Approval of Class Action Settlement will receive a settlement check for $10.00. Each settlement check will be void ninety days after mailing. To the extent that any funds remain in the Settlement Fund after the void date (from uncashed checks or otherwise), these funds will be distributed first to Defendant up to the amount of the Settlement Administration Costs with the remainder to the Legal Aid Society of Louisville as the *cy pres* recipient.

(c) Class Representative Settlement Amount. Class Representatives will each receive from Defendant the sum of $1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(B)(i) and $1,500.00 as an incentive award for their work on behalf of the Class Members ("Class Representative Settlement Amount"). These payments will be separate and apart from the Settlement Fund and their pro-rata share of the same.

(d) Attorneys' Fees Expenses, and Costs of Class Counsel. Subject to this Court's approval, Defendant will pay Class Counsel the total sum of $220,000.00 for its reasonable

attorneys' fees, costs and expenses ("Attorneys' Fees"), separate and apart from the Settlement Fund, the Class Representative Settlement Amount, and any Settlement Administration Costs.

(e) Settlement Notice and Administration. Separate from the Settlement Fund, the Class Representative Settlement Amount, and the Attorneys' Fees, Defendant is responsible for paying all costs of notice and administration of the settlement ("Settlement Administration Costs"), which will be completed by First Class, Inc.

(2) Plaintiffs, Class Members, and their successors and assigns are permanently barred and enjoined from instituting, prosecuting, intervening in or participating in, either individually or as a class, or in any other capacity, any of the Released Claims against any of the Released Parties, as set forth in the Agreement. Pursuant to the release contained in the Agreement, the Released Claims are compromised, settled, released, and discharged by virtue of these proceedings and this Order.

(3) The certified class is defined as follows:

> (1) All persons with a Kentucky or Nevada address, (2) to whom GC Services Limited Partnership mailed an initial communication that stated: (a) "if you do dispute all or any portion of this debt within 30 days of receiving this letter, we will obtain verification of the debt from our client and send it to you," and/or (b) "if within 30 days of receiving this letter you request the name and address of the original creditor, we will provide it to you in the event it differs from our client," (3) between November 5, 2014 and November 5, 2015, (4) in connection with the collection of a consumer debt, (5) that was not returned as undeliverable to GC Services Limited Partnership.

Wilbur Macy and Pamela J. Stowe are designated as class representatives, and the law firm of Greenwald Davidson Radbil PLLC was previously appointed as class counsel pursuant to Federal Rule of Civil Procedure 23(g). (D.N. 36, PageID # 361) This Order is binding on all Class Members except for Otelia M. Tezeno and Winsor D. Harmon, who excluded themselves from the settlement.

(4) This action is **DISMISSED** with prejudice and **STRICKEN** from the Court's active docket. The Court retains continuing and exclusive jurisdiction over the Parties and all matters relating to the Lawsuit and/or Agreement, including the administration, interpretation, construction, effectuation, enforcement, and consummation of the settlement and this Order, and the approval of any attorneys' fees, costs, and expenses to Class Counsel.

May 28, 2020

David J. Hale, Judge
United States District Court