UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

Alex Cooper, on behalf of himself and others similarly situated, Plaintiff, v. InvestiNet, LLC, Defendant.	:	Civil Action No.: 1:21-cv-01562-TWP-DML

PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Introduction

InvestiNet, LLC ("Defendant") transmits information regarding consumers and their alleged debts to a print and mail vendor. In turn, Defendant's vendor uses the information to fashion, print, and mail debt collection letters to Indiana consumers. Alex Cooper ("Plaintiff") alleges that this practice violates section 1692c(b) of the Fair Debt Collection Practices Act ("FDCPA").[1] Defendant denies any liability.

Following more than a month of settlement discussions, the parties have reached an agreement to resolve this matter. To that end, Defendant will create a non-reversionary settlement

[1] 15 U.S.C. § 1692c(b) provides:

> Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

fund of $18,800—a total that nears one percent of its book value net worth—to be distributed pro-rata to each participating class member. This is significant because statutory damages under the FDCPA are capped at one percent of a defendant's net worth. *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").

In addition, and separate from the settlement fund so as not to dilute class members' recoveries, Defendant also will pay: (1) all costs of class notice and settlement administration, which will include the mailing of notice and a short claim form to each potential class member; (2) full statutory damages of $1,000 to Plaintiff; and (3) class counsel's reasonable attorneys' fees, costs, and litigation expenses in an amount to be awarded by this Court. Considering the statutorily limited damages available to the class under the FDCPA, as well as the risks of continued litigation, the settlement here represents an excellent result for class members.

Accordingly, Plaintiff respectfully requests that this Court enter the accompanying order granting preliminary approval to the settlement and directing the notice program described below. Defendant does not oppose this relief.

Summary of the Settlement

I. The settlement provides monetary compensation for each participating class member.

The settlement agreement ("Agreement")[2] defines a settlement class under Rule 23(b)(3) comprised of all persons (a) with an Indiana address, (b) to which InvestiNet, LLC sent, or caused

[2] A true and correct copy of the Agreement is attached to the Declaration of Michael L. Greenwald, submitted as Exhibit A.

to be sent, a written debt collection communication, (c) in connection with the collection of a consumer debt, (d) from June 9, 2020 through June 8, 2021, (e) that was printed or mailed by CompuMail, Inc.[3]

Class members who elect to participate in the settlement and state that their respective debts were consumer (as opposed to commercial) in nature will receive a pro-rata share of the $18,800 settlement fund. And given that claims rates in consumer protection cases like this one tend to be between approximately 5 percent and 20 percent, each participating class member is likely to receive between $10 and $40 (as there are approximately 9,400 potential class members). To the extent any settlement checks go uncashed after the settlement administrator takes all reasonable steps to forward checks to any forwarding addresses, such funds will be redistributed to Indiana Legal Services, Inc., which is the *cy pres* recipient selected by the parties. No settlement monies will revert to Defendant.

In addition, and separate and apart from the settlement fund, Defendant will pay $1,000 to Plaintiff as additional damages pursuant to 15 U.S.C. § 1692k(a)(2)(B)(i), the costs of class notice and administration, and an award of reasonable attorneys' fees, costs, and litigation expenses. The parties have not reached an agreement on the amount of fees, costs, or litigation expenses that Plaintiff will seek.

II. The Agreement provides for direct mail notice to all class members.

The Agreement requires an ample notice program consisting of direct mail notice to each member of the class. Defendant has in its possession the names and recent addresses of each class member. The settlement administrator will take all reasonable steps necessary to ensure that each

[3] CompuMail, Inc. is the vendor Defendant used to print and mail debt collection letters to class members.

class member receives direct mail notice. Counsel for Plaintiff will also maintain relevant case documents on its website.

To that end, the parties have selected Class-Settlement.com, a third-party notice and administration company, to act as the settlement administrator.

This Court should preliminarily certify the settlement class

I. Plaintiff has Article III standing to assert his claims.

As an initial matter, Plaintiff notes that he enjoys Article III standing to pursue his claims in federal court, as several district courts in this circuit have recently held with respect to identical claims. *See, e.g.*, *Liu v. Radius Global Sols., LLC*, No. 21 C 2895, 2021 WL 4167585, at *2 (N.D. Ill. Sept. 14, 2021) (finding Article III standing for section 1692c(b) claim because, in part, "the FDCPA recognizes the invasion of individual privacy as one of the harms against which the statute protects" and "[b]ecause the disclosure of private information is a harm traditionally recognized as cognizable"); *Thomas v. Unifin, Inc.*, No. 21-cv-3037, 2021 WL 3709184 (N.D. Ill. Aug. 20, 2021) (same); *Keller v. NorthStar Location Servs.*, No. 21-cv-3389, 2021 WL 3709183 (N.D. Ill. Aug. 20, 2021) (same).

II. Claims under the FDCPA are well suited for class treatment.

To certify the proposed settlement class, Plaintiff must satisfy each of the four requirements of Fed. R. Civ. P. 23(a), referred to as numerosity, commonality, typicality, and adequacy of representation, as well as one of the requirements of Fed. R. Civ. P. 23(b). *See Selburg v. Virtuoso Sourcing Grp., LLC*, No. 1:11-cv-1458-RLY-MJD, 2012 WL 4514152, at *2 (S.D. Ind. Sept. 29, 2012) (certifying FDCPA class action).[4] Here, the requirements of Rule 23(a) and 23(b)(3) are readily satisfied. *See, e.g.*, *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997)

[4] Internal citations and quotations are omitted, and emphasis is added, unless otherwise noted.

("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, *see* Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no trial.").

III. Plaintiff satisfies the requirements of Rule 23(a).

A. Plaintiff's proposed class is so numerous that joinder of all members is impracticable.

The first requirement of Rule 23(a) is that the class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Where the class numbers at least 40, joinder is generally considered impracticable. *Simpson v. Safeguard Properties, LLC*, No. 13 CV 2453, 2014 WL 4652336, at *2 (N.D. Ill. Sept. 17, 2014) (citing *Swanson v. Am. Consumer Indus.*, 415 F.2d 1326, 1333 (7th Cir. 1969)). Moreover, a plaintiff need not allege the exact number or identity of class members. *See Vergara v. Hampton*, 581 F.2d 1281, 1284 (7th Cir. 1978) ("The difficulty in determining the exact number of class members does not preclude class certification.").

Here, Defendant avers that there are approximately 9,400 potential members of the class, including Plaintiff. And because the class is so numerous that it exceeds 9,000 potential members, joinder would be impracticable and Plaintiff satisfies the numerosity element of Rule 23(a). *See Chapman v. Bowman, Heintz, Boscia & Vician, P.C.*, No. 2:15-cv-120JD, 2015 WL 9478548, at *2 (N.D. Ind. Dec. 29, 2015) (finding numerosity satisfied with 202 class members, and preliminarily approving FDCPA class action settlement).

B. Questions of law and fact are common to the class Plaintiff seeks to represent.

"To satisfy the commonality requirement of Rule 23(a)(2), a plaintiff must show that there are questions of fact or law that are common to all class members. This requirement is usually met where a class's claims arise out of some form of standardized conduct by the defendant." *Simpson*,

2014 WL 4652336, at *3 (citing *Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998) ("Common nuclei of fact are typically manifest where . . . the defendants have engaged in standardized conduct towards members of the proposed class . . . .")).

Here, class members' claims stem from the same factual circumstances, in that Defendant transmitted their debt-related information to a print and mail vendor in the same manner. Each class member, therefore, has the same claim against Defendant, and each class member's claim will rise or fall on the common legal question of whether Defendant's transmission of class member data to a third party violates the FDCPA.

Accordingly, the commonality requirement is met. *See Chapman*, 2015 WL 9478548, at *3 ("Chapman has satisfied the commonality requirement because the elements of each cause of action will be common to all of the persons affected given Defendant's standardized conduct towards the members of the Proposed Class."); *Lucas v. GC Servs. L.P.*, 226 F.R.D. 337, 340 (N.D. Ind. 2005) ("Courts consistently have found a common nucleus of operative facts if a defendant has allegedly directed standardized conduct toward the putative class members or if the class claims arise out of standardized documents."); *see also Agan v. Katzman & Korr*, P.A., 222 F.R.D. 692, 697 (S.D. Fla. 2004) ("Similarly, a plaintiff satisfies the commonality requirement when all class members received the same collection letter."); *Mann v. Acclaim Fin. Services*, 232 F.R.D. 278, 284 (S.D. Ohio 2003) ("In FDCPA cases, where plaintiffs have received similar debt collection letters ... courts have found common questions of law or fact sufficient to certify the class.").

C. Plaintiff's claims are typical of the claims of the class he seeks to represent.

The third requirement under Rule 23(a) is that the claims or defenses of the class representative must be typical of the claims or defenses of the class. Fed. R. Civ. P. 23(a)(3). Here,

Plaintiff and the members of the class were all subject to the same complained-of activity: Defendant's transmission of information about their alleged debts, and their status as alleged debtors, to a print and mail vendor. Thus, Plaintiff possesses the same interests and has suffered the same injuries as each class member and asserts identical claims and seeks identical relief on behalf of the unnamed class members.

As a result, Plaintiff's claims are typical of those of the class. *See Lucas,* 226 F.R.D. at 341 ("All of the class members' claims arise from the same practice of GC Services which gave rise to Plaintiffs' claims, that is each time Defendants sent a collection letter similar to that received by Plaintiffs, they allegedly violated the Fair Debt Collection Practices Act. Thus, Plaintiffs' claims are typical of the class because they arise from the same course of conduct and are based on the same general legal theory."); *Mann,* 232 F.R.D. at 284-285 ("Plaintiff alleges, *inter alia,* that the language in [Defendant's] initial communication violated both the FDCPA and the OCSPA. As was discussed *supra,* the class members' claims arise from the very same course of conduct by [Defendant]. While the extent of a class member's particular injuries may differ, because they all received communications containing the same language, the type of injury will generally be the same. Therefore, this Court concludes that the typicality element of Rule 23(a)(3) has been satisfied."); *Agan*, 222 F.R.D. at 698 ("Parties seeking class certification have satisfied the typicality requirement by showing that all prospective class members received a variation of the same collection letter.").

D. Plaintiff, and his counsel, will continue to fairly and adequately protect the interests of the class.

Next, the Court must determine if "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To adequately represent a class, a named

plaintiff must show that he can act in a fiduciary role representing the interests of the class, and has no interests antagonistic to the interests of the class.

Here, Plaintiff has been a model class representative who has diligently pursued this case since its inception. *See Selburg*, 2012 WL 4514152, at *9 ("Here, the court finds Plaintiff to be an adequate representative without any conflicts or antagonistic claims of the proposed class members. All members of the class received the allegedly deficient letter issued by Virtuoso and are challenging its validity under the FDCPA. The Plaintiff has a sufficient stake in the outcome and will be a zealous advocate of the class. In addition, counsel for named Plaintiff is experienced in class actions and other complex litigation and thus satisfies that requirement. Accordingly, the adequacy of representation requirement under Rule 23(a)(4) has been met.").

In addition, Plaintiff has retained the services of counsel who are well-versed in class action litigation and who are committed to continuing to vigorously pursue this matter. *See* Ex. A at ¶¶ 9-25 (outlining class counsel's experience). As such, Plaintiff and his counsel satisfy Rules 23(a)(4) and 23(g).

IV. Plaintiff satisfies the requirements of Rule 23(b)(3).

In addition to meeting the four requirements of Rule 23(a), a party seeking class certification must demonstrate that the action is maintainable under one of the three subsections of Rule 23(b). Pertinent here, Rule 23(b)(3) requires that questions of law or fact common to the class predominate over questions affecting the individual members and that, on balance, a class action is superior to other methods available for adjudicating the controversy. Fed. R. Civ. P. 23(b)(3).

A. The questions of law and fact common to the class predominate over any questions affecting only individual class members.

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods., Inc.*, 521 U.S. at 594. The

objective of Rule 23(b)(3) is to promote economy and efficiency in actions that are primarily for money damages. Where common questions "predominate," a class action can achieve economies of time, effort, and expense as compared to separate lawsuits, permit adjudication of disputes that cannot be economically litigated individually, and avoid inconsistent outcomes, because the same issue can be adjudicated the same way for the entire class. Fed. R. Civ. P. 23(b)(3), advisory committee's note (1966).

Here, the central legal issue before this Court is whether Defendant's transmission of debt-related information regarding Indiana consumers to its vendor violated the FDCPA. As the Middle District of Alabama explained in certifying a class action based on an allegedly misleading form debt collection letter:

> In general, predominance is a test readily met in certain cases alleging consumer . . . fraud. Here, not only will class-wide issues of proof predominate, but it is unlikely that there will be any issues of individualized proof. To determine whether the collection letters sent by American Recovery Systems violated the FDCPA, the court will not need to question whether each class member was deceived or misled by the privacy notice, because the least sophisticated consumer standard governs. Thus, the only individualized proof necessary will be whether each class member received a letter identical to [Plaintiff's]. Since that is a prerequisite for joining the class, the court finds that common questions of fact and law predominate in this case.

Lewis v. ARS Nat'l Servs. Inc., No. 2:09cv1041–MHT, 2011 WL 3903092, at *5 (M.D. Ala. 2011).

Courts have routinely found that common questions of law and fact predominate where class members' claims are based on standardized debt collection activity. *See, e.g., Edwards v. Key 2 Recovery, Inc.*, No. 1:18-cv-03170-RLY-DLP, 2020 WL 4005080, at *5 (S.D. Ind. Feb. 28, 2020) ("Because the Class' claims turn on the outcome of the same legal question—namely, whether the Settling Defendants violated the FDCPA by attempting to collect accounts originating out of the Class members' enrollment at Harrison College, despite Harrison College's closure—it makes sense to adjudicate all of their claims at once, rather than having hundreds of class members

file individual lawsuits."); *see also Evon v. L. Offs. of Sidney Mickell*, 688 F.3d 1015, 1029 (9th Cir. 2012) (reversing the district court's decision not to certify a class of persons whose information a debt collector disclosed to third parties, and finding commonality satisfied because whether the debt collector's disclosure violated § 1692c(b) of the FDCPA "is a common contention among the class and determination of its truth or falsity is pivotal to this lawsuit and is capable of determination in one stroke"); *Hernandez v. Midland Credit Mgmt.,* 236 F.R.D. 406, 412 (N.D. Ill. 2006) (certifying a class of persons to whom a debt collector sent a form letter that "included a privacy notice that disclosed the possibility that [the debt collector] or its corporate parent . . . might share nonpublic information about [the consumer] with certain nonaffiliated third parties unless [the consumer] took affirmative steps to prevent this," and finding commonality satisfied because "whether [the debt collector's] privacy notice violates [§ 1692c(b) and § 1692e of] the FDCPA is an issue common to all putative class members"); *accord Klewinowski v. MFP, Inc.*, No. 8:13–cv–1204–T–33TBM, 2013 WL 5177865, at *4 (M.D. Fla. Sept. 12, 2013) ("Furthermore, the common question to be decided is whether the "YOUR CREDITORS" letter violates the FDCPA. This common issue predominates over any other issue presented in this matter, and thus, the requirement of predominance has been satisfied."); *Agan,* 222 F.R.D. at 701 ("The common issues presented by sending allegedly illegal form letters and claims of lien predominate over any individual issues presented, and the class action is the superior method for resolving this dispute because it would be uneconomical to litigate these issues individually.").

B. A class action is superior to other available methods for the fair and efficient adjudication of this matter.

To determine if the superiority requirement of Rule 23(b)(3) is satisfied, the Court must consider (1) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy

already commenced by or against members of the class; (3) the desirability or undesirability of concentrating the litigation of claims in the particular forum; and (4) the difficulties likely to be encountered in the management of a class action. Fed. R. Civ. P. 23(b)(3). Because the claim in this case arises from standardized debt collection activity, a class action is the superior vehicle for determining the rights of absent class members. On a similar note, "[a] class action is superior where potential damages may be too insignificant to provide class members with incentive to pursue a claim individually." *Randolph v. Crown Asset Mgmt., LLC*, 254 F.R.D. 513, 520 (N.D. Ill. 2008).

Here, no one member of the class has an interest in controlling the prosecution of the action because the claims of all members of the class are identical, as the allegations involve standardized conduct.

As the court in *Selburg* summarized:

> A class action is superior to all other methods in this case as it will efficiently resolve a potentially large number of claims that share a similar set of legal and factual issues. In the absence of class certification, the courts could potentially be inundated with "many individual cases that seek to litigate an essential core of the same legal and factual issues." *Lucas*, 226 F.R.D. at 342. These separate actions would be "repetitive, wasteful and an extraordinary burden on the courts[,]" so a class action is necessary here. *Tatz v. Nanophase Technologies Corp.*, No. 01–C–8440, 2003 WL 21372471, at *9 (N.D. Ill. June 13, 2003).
>
> Even more, individual suits would be unlikely, as recipients of the collection letter may be hesitant to prosecute individual claims without the availability of the cost-sharing efficiencies of a class action. Indeed, "individual recovery under the FDCPA can be relatively small, and many consumers are unfamiliar with its protections, [so] a class action is the best method for the fair and efficient adjudication of [this] issue[,] ... where the underlying liability issue can be determined relative to the whole class." *Balogun*, 2007 WL 2934886, at *8; *see also Parker*, 206 F.R.D. at 213 (finding class action a superior method because damages awarded to individual class members may be too insignificant to provide enough incentive for them to pursue their FDCPA claims individually).
>
> At its core, a class action is the appropriate way to proceed in this action.

Selburg, 2012 WL 4514152, at *10; *see also Lucas*, 226 F.R.D. at 342-43 ("[A] class action is

superior to individual action in this case because litigation costs are high and the likely recovery is limited. Thus, recipients of the letter are unlikely to prosecute individual claims without the availability of cost-sharing efficiencies of a class action. Furthermore, many of the persons in this class may be unaware that the form letter sent by GC Services may violate the FDCPA and a class action suit may help them to safeguard their rights. Public policy encourages that cases of this type proceed as class actions in order to put an end to any illegal activity that may be occurring.").

This Court should preliminarily approve the parties' settlement as fair, reasonable, and adequate under Rule 23(e).

"Federal courts naturally favor the settlement of class action litigation." *Isby v. Bayh,* 75 F.3d 1191, 1196 (7th Cir. 1996); *see also Armstrong v. Bd. of Sch. Dirs. of Milwaukee,* 616 F.2d 305, 313 (7th Cir. 1980), *overruled on other grounds by Felzen v. Andreas,* 134 F.3d 873 (7th Cir. 1998) ("Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources.").

While settlements are favored, Rule 23(e) requires that the Court make a preliminary determination of fairness:

> Review of a proposed class action settlement generally involves two hearings. First, counsel submit the proposed terms of settlement and the judge makes a preliminary fairness evaluation. In some cases, this initial evaluation can be made on the basis of information already known, supplemented as necessary by briefs, motions, or informal presentations by the parties. If the case is presented for both class certification and settlement approval, the certification hearing and preliminary fairness evaluation can usually be combined. . . . The judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing.

MANUAL FOR COMPLEX LITIGATION § 21.632 (4th ed. 2004); *see also* 4 ALBA CONTE & HERBERT B. NEWBERG, NEWBERG ON CLASS ACTIONS, §11.25 (4th ed. 2002). After the preliminary fairness evaluation has been made, the class has been certified for settlement purposes,

and notice has been issued, the Court holds a final fairness hearing to show that the proposed settlement is truly fair, reasonable, and adequate. *See* MANUAL FOR COMPLEX LITIGATION § 21.633-34; 4 NEWBERG, *supra* at §11.25.

Preliminary approval requires only that the Court evaluate whether the proposed settlement "is within the range of possible approval." *Armstrong*, 616 F.2d at 314. The Seventh Circuit has identified a number of factors used to assess whether a settlement proposal is fundamentally fair, adequate, and reasonable: (1) the strength of plaintiffs' case compared to the terms of the proposed settlement; (2) the likely complexity, length and expense of continued litigation; (3) the amount of opposition to settlement among affected parties; (4) the opinion of competent counsel; and (5) the stage of the proceedings and the amount of discovery completed. *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006) (quoting *Isby*, 75 F.3d at 1199).

In addition, Rule 23(e) itself requires the Court to consider several additional factors, including that the class representatives and class counsel have adequately represented the class, and that the settlement treats class members equitably relative to one another. Fed. R. Civ. P. 23(e).

Here, each relevant factor supports the conclusion that the settlement is fundamentally fair, reasonable, and adequate, and that this Court should preliminarily approve it.

I. The strengths of Plaintiff's case and the risks inherent in continued litigation and securing class certification favor preliminary approval.

Every class action—indeed, every case—involves some level of uncertainty on the merits. Settlements resolve that inherent uncertainty, and are therefore strongly favored by the courts, particularly in class actions. This action is not unique in this regard. The parties disagree about the merits, and there is uncertainty about the ultimate outcome of this litigation. To be sure, Defendant denies any liability and asserted a host of affirmative defenses. *See* ECF No. 13 at 8-10. Moreover, the Eleventh Circuit recently vacated a decision on which Plaintiff relies—*Hunstein v. Preferred*

Collection & Mgmt. Servs, Inc., 994 F.3d 1341 (11th Cir. 2021)—as the Eleventh Circuit will rehear the case *en banc*. It is unknown how, or when, the Eleventh Circuit will decide the matter.

Given these considerations, preliminary approval of the settlement is appropriate to avoid the uncertainties of continued litigation. *See Edwards*, 2020 WL 4005080, at *7 ("In light of this risk to the Class that no violation of the FDCPA occurred, the Undersigned agrees with the parties that the terms of the settlement are fair under the circumstances.").

II. The stage of the proceedings and experience and views of counsel favor preliminary approval.

While this matter has only been pending since July, during that time the parties were able to assess the relative strengths and weaknesses of their respective positions, and to compare the benefits of the proposed settlement to further litigation. Plaintiff served formal discovery, to which Defendant responded, and the parties exchanged information regarding Defendant's net worth, class damages, and the number of class members. Counsel, who have substantial experience in litigating class actions, and this Court are therefore adequately informed to evaluate the fairness of the settlement. Both Plaintiff and class counsel firmly believe that the settlement is fair, reasonable, and adequate, and in the best interests of the class. *See Swift v. Direct Buy, Inc.*, Nos. 2:11–CV–401–TLS, 2:11–CV–415–TLS, 2:11–CV–417–TLS, 2:12–CV–45–TLS, 2013 WL 5770633, at *7 (N.D. Ind. Oct. 24, 2013) ("Third, as the Court has already noted, the 'opinion of competent counsel' supports a determination that the settlement is fair, reasonable, and adequate under Rule 23.").

III. The cash relief afforded by the settlement—when compared to the limitations on damages imposed by the FDCPA—favors preliminary approval.

Here, the settlement provides cash relief to class members near the limits imposed by the FDCPA. In particular, the FDCPA limits statutory damages to a maximum of one percent of Defendant's net worth. *See* 15 U.S.C. § 1682k(A)(2)(B). By paying $18,800 to class members,

Defendant will pay nearly one percent of its book value net worth as reflected on its most recent audited financials. *See Sanders v. Jackson*, 209 F.3d 998, 1004 (7th Cir. 2000) (holding that "net worth" in an FDCPA action means "balance sheet or book value net worth" of assets minus liabilities).

Moreover, there was no guarantee of full statutory damages at trial because the FDCPA's damages provision is permissive rather than mandatory. That is, the law provides for statutory damages awards *up to* certain amounts—$1,000 for Plaintiff, and the lesser of $500,000 or one percent of Defendant's net worth for the class—after balancing such factors as the nature of Defendant's noncompliance, the number of persons adversely affected, and the extent to which Defendant's noncompliance was intentional. *See* 15 U.S.C. § 1692k(b)(2). And the risk of a minimal damages award to the class here is not hypothetical. *See, e.g.*, *Dickens v. GC Servs. Ltd. P'ship*, 220 F. Supp. 3d 1312, 1326 (M.D. Fla. 2016) ("Applying the factors the Court must apply under Section 1692k of the FDCPA, the Court concludes in its discretion that the facts of this case call for the award of only nominal damages. The plaintiff or plaintiffs in this case, however many they may have been, would have been awarded $1.00 in statutory damages."), *vacated and remanded*, 706 F. App'x 529 (11th Cir. 2017); *see also Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, No. 1:06 CV 1397, 2011 WL 1434679, at *11 (N.D. Ohio 2011) (analyzing the factors set forth in 15 U.S.C. § 1692k, and awarding no "additional damages' to members of the class).

As Judge Simon explained in approving a class action settlement in *Swift*:

> Although $20 (the expected pro rata award of the net settlement fund for each class member who filed a claim notice) is not significant in a vacuum, "a dollar today is worth a great deal more than a dollar ten years from now," *Reynolds*, 288 F.3d at 284, and a major benefit of the settlement is that class members will obtain these benefits much more quickly than had the parties not settled. The parties have informed the Court that this case, were it to proceed, would face numerous

> challenges such that, even if the case reached trial, the class members would not receive benefits for many years, if they received any at all. Faced with the prospect of receiving no recovery—both because DirectBuy might have succeeded in any aspect of what would have been a vigorous defense absent settlement and because DirectBuy had no unencumbered assets—Class Counsel is confident that payment of up to $20.00 per household is an excellent result in this litigation. The parties assert that because the only amount the Plaintiffs could hope to recover after an award of damages is zero, a settlement involving any cash should be considered adequate.

2013 WL 5770633, at *5.

Because class members will receive statutory damages of nearly the maximum they could receive had Plaintiff prevailed at trial and on appeal, the settlement is fair, reasonable, and adequate. As a result, this Court should preliminarily approve it.

IV. The settlement treats class members equitably.

Finally, Rule 23(e)(2)(D) requires that this Court confirm that the settlement treats all class members equitably. The Advisory Committee's Note to Rule 23(e)(2)(D) advises that courts should consider "whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." Fed. R. Civ. P. 23(e), advisory committee's note (2018).

Here, each class member has the same claim resulting from Defendant's transmission of their debt-related information to a print and mail vendor. And as a result, the settlement provides that each participating class member will receive an equal portion of the settlement fund. Plus, the release affects each class member in the same way as each class member is agreeing to release the same claim. As such, this factor supports preliminary approval. *See Hale v. State Farm Mutual Automobile Ins. Co.*, No. 12-0660-DRH, 2018 WL 6606079, at *5 (S.D. Ill. Dec. 16, 2018) ("This proposal is fair and equitable because the class members' interests in the Avery judgment were undivided when they were lost and, thus, each class member's damages were identical. The

proposed Settlement therefore entitles each class member to an equal, pro-rata share of the Settlement fund.").

Moreover, class members will have the ability to exclude themselves from the settlement and pursue their claims individually, should they choose to do so. *See Charvat v. Valente*, No. 12:5746, 2019 WL 5576932, *6 (N.D. Ill. Oct. 28, 2019) ("Moreover, the ability to opt out of the settlement allows class members who received more than three calls to pursue the possibility of a greater award in an individual suit.").

V. This Court should approve the proposed notice to class members.

Under Rule 23(e), this Court must also "direct notice in a reasonable manner to all class members who would be bound" by the proposed settlement. Fed. R. Civ. P. 23(e)(1). Notice of a proposed settlement to class members must be the "best notice practicable." *See* Fed. R. Civ. P. 23(c)(2)(B). "[B]est notice practicable" means "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). If class members can be identified and are given individual notice, there is no requirement for notice by publication or other means. *See In re Wal-Mart Stores, Inc. Wage and Hour Litig.*, No. 06-02069 SBA, 2008 WL 1990806, at *2 (N.D. Cal. May 5, 2008) ("[N]otice by publication is only used when the identity and location of class members cannot be determined through reasonable efforts….").

Here, the parties have agreed to a notice program to be administered by a third-party settlement administrator that will use all reasonable efforts to provide direct mail notice to each potential member of the class. This notice plan complies with Rule 23 and due process because, among other things, it informs class members of: (1) the nature of the action; (2) the essential terms of the settlement, including the class definition and claims asserted; (3) the binding effect of a judgment if the class member does not request exclusion; (4) the process for objection and/or

exclusion, including the time and method for doing so; (5) information regarding Plaintiff's request for statutory damages and reimbursement of attorneys' fees, costs, and litigation expenses; and (6) how to submit claims or make inquiries. Fed. R. Civ. P. 23(c)(2)(B); MANUAL FOR COMPLEX LITIGATION § 21.312.

In short, this notice plan ensures that class members' due process rights are amply protected, and, as a result, should be approved. *See* Fed. R. Civ. P. 23(c)(2)(A); *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 479 (D. Md. 2014) ("Under the circumstances of this case, when all class members are known in advance, the Court finds that the method of direct mail notice to each class member's last known address—and a second notice if the first was returned as undeliverable—was the best practicable notice.").

VI. This Court should schedule a final fairness hearing.

The last step in the settlement approval process is a final fairness hearing for this Court to hear all evidence and argument necessary to make its final settlement evaluation. *See* Fed. R. Civ. P. 23(e)(2). Proponents of the settlement may offer argument in support of final approval, and class members who have properly objected to the settlement may be heard at this hearing as well. The Court then will determine after the final fairness hearing whether the settlement should be approved, and whether to enter a judgment and order of dismissal under Rule 23(e).

Plaintiff respectfully requests that this Court set a date for a final fairness hearing at the Court's convenience, approximately 120 days after the Court's preliminary approval of the settlement.

Conclusion

Plaintiff respectfully requests that this Court enter the accompanying order granting preliminary approval to the parties' class action settlement. As noted, Defendant does not oppose this relief.

Dated: December 3, 2021

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