

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CASE NO.: 7:13-CV-1416 (GLS/TWD)

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	:
GERALD ESPOSITO, on behalf of himself	:
and all others similarly situated,	:
	:
Plaintiff,	:
	:
vs.	:
	:
DEATRICK & SPIES, P.S.C., a Kentucky	:
Professional Services Corporation,	:
	:
Defendant.	:
_____	X

FINAL ORDER AND JUDGMENT

On November 13, 2013, Gerald Esposito (“Plaintiff”) filed a class action complaint (hereinafter referred to as the “Lawsuit”) against Deatrnick & Spies, PSC (“Defendant”) in the United States District Court for the Northern District of New York, Case No. 7:13-cv-01416-GLS-TWD, asserting class claims under the Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. §1693, *et seq.*, (hereinafter referred to as the “EFTA”).

Defendant has denied any and all liability alleged in the Lawsuit.

On July 28, 2014, after extensive arms-length negotiations, Plaintiff and Defendant (hereinafter jointly referred to as the “Parties”) entered into a Class Action Settlement Agreement (hereinafter referred to as the “Settlement Agreement”), which is subject to review under Fed. R. Civ. P. 23.

On July 31, 2014, the Parties filed the Settlement Agreement, along with their Motion for Preliminary Approval of Class Action Settlement (the “Preliminary Approval Motion”).

In compliance with the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(D), 1453,

and 1711-1715, Defendant caused to be served written notice of the proposed class settlement on the United States Attorney General and the Attorneys General of Kentucky, Louisiana, Rhode Island, Indiana and New York.

On September 30, 2014, upon consideration of the Parties' Preliminary Approval Motion and the record, the Court entered an Order of Preliminary Approval of Class Action Settlement (hereinafter referred to as the "Preliminary Approval Order"). Pursuant to the Preliminary Approval Order, the Court, among other things, (i) preliminarily certified a class of plaintiffs (hereinafter referred to as the "Class Members") with respect to the claims asserted in the Lawsuit; (ii) preliminarily approved the proposed settlement; (iii) appointed Plaintiff Gerald Esposito as the Class Representative; (iv) appointed James L. Davidson of Greenwald Davidson PLLC as Class Counsel; and, (v) set the date and time of the Settlement Approval Hearing.

On January 14, 2015 Plaintiff filed his Motion for Final Approval of Class Action Settlement (the "Final Approval Motion").

On January 26, 2015, the court canceled the final approval hearing, originally scheduled for January 28, 2015, because no objections or exclusions were filed. Instead, the court determined on the papers whether the Lawsuit satisfies the applicable prerequisites for class action treatment pursuant to Fed. R. Civ. P. 23 and 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.

The Parties now request final certification of the settlement class under Fed. R. Civ. P. 23 (b)(3) and final approval of the proposed class action settlement.

The Court has read and considered the Settlement Agreement, Motion for Final Approval, and record. All capitalized terms used herein have the meanings defined herein and/or

in the Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED:

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

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

All persons throughout the United States who, between November 13, 2012 and November 12, 2013, signed an ACH Agreement with Deatrick & Spies, P.S.C. containing the following language: “I understand that said credit and/or debit entries will be initiated without prior notice to me” and/or “This authority is to remain in force and effect until COMPANY has received written notification from me (or either of us) of its termination in such time and in such manner as to afford the COMPANY and DEPOSITORY a reasonable opportunity to act on it.”

3. The Parties believe that there are 26 Class Members.

4. **CLASS REPRESENTATIVE AND CLASS COUNSEL APPOINTMENT** – Pursuant to Fed. R. Civ. P. 23, the Court certifies Plaintiff Gerald Esposito as the Class Representative and James L. Davidson of Greenwald Davidson Radbil PLLC as Class Counsel. *See, e.g., Ritchie v. Van Ru Credit Corp.*, No. 2:12-CV-01714-PHX-SMM, 2014 WL 3955268, at *1 (D. Ariz. Aug. 13, 2014) (appointing Greenwald Davidson as class counsel and granting final approval of class action settlement).

5. **NOTICES TO THE CLASS** – Pursuant to the Court’s Preliminary Approval Order, the approved class action notices were mailed. The form and method for notifying the Class Members of the settlement and its terms and conditions was in conformity with this Court’s Preliminary Approval Order and satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B)

and due process, and constituted the best notice practicable under the circumstances. The Court finds that the notice was clearly designed to advise the Class Members of their rights.

6. **FINAL CLASS CERTIFICATION** – The Court 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.

7. The Court 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 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. *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 117 (2d Cir. 2005) (discussing the factors to be considered when assessing the fairness, adequacy and

reasonableness of a class action settlement).

8. **SETTLEMENT TERMS** – The Settlement Agreement, which is attached hereto as **Exhibit A** and shall be deemed incorporated herein, and the proposed settlement are 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 Settlement Agreement include, but are not limited to, the following:

A. **Settlement Fund** – Defendant shall establish a \$6,500.00 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 60 days after the Court’s entry of the Order of Preliminary Approval of Class Action Settlement shall receive a pro rata share of the Settlement Fund. Each settlement check will be void sixty (60) 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 redistributed to Class Members if such a distribution, after the associated costs are deducted, will allow for additional payments of at least \$10.00. Otherwise the remaining funds will be paid to a to-be-determined *cy pres* recipient.

C. **Incentive award to Plaintiff Gerald Esposito** – Plaintiff Gerald Esposito shall receive from Defendant the sum of \$1,000.00 for his work in pursuing these claims and securing a recovery for the Class. This payment shall be separate and apart from the Settlement Fund and his pro-rata share of the same.

D. **Attorney’s Fees and Expenses for Class Counsel:** Defendant shall pay Class Counsel \$36,750.00 for attorneys’ fees, costs and expenses, separate and apart from the Settlement Fund, the Incentive Award to Plaintiff and any Settlement Administration Costs; and

E. Settlement Administration: Separate from the Settlement Fund, the Incentive award to Plaintiff and the Attorney's Fees and Expenses for Class Counsel, Defendant shall be responsible for paying the costs of administration of the settlement.

9. OBJECTIONS AND EXCLUSIONS – The Class Members were given an opportunity to object to the settlement. No Class Member objected to the settlement. No Class Members excluded themselves from the Settlement.

10. This Order is binding on all Class Members.

11. RELEASE OF CLAIMS AND DISMISSAL OF LAWSUIT – The Class Representative, Class Members, and their successors and assigns are permanently barred and enjoined from instituting or prosecuting, 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 Settlement Agreement. Pursuant to the release contained in the Settlement Agreement, the Released Claims are compromised, settled, released, and discharged, by virtue of these proceedings and this order.

12. The Lawsuit is hereby dismissed with prejudice in all respects, with the Court specifically retaining jurisdiction to award attorneys' fees, costs, expenses, and disbursements to Class Counsel.

13. This Order is not, and shall not be construed as, an admission by Defendant of any liability or wrongdoing in this or in any other proceeding.

14. The Court hereby retains continuing and exclusive jurisdiction over the Parties and all matters relating to the Lawsuit and/or Settlement Agreement, including the administration, interpretation, construction, effectuation, enforcement, and consummation of the settlement and this order, including the award of attorneys' fees, costs, disbursements, and

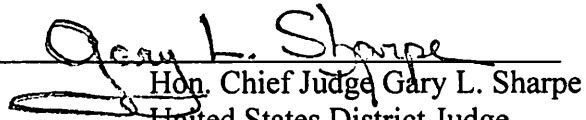
expenses to Class Counsel.

15. Plaintiff's incentive fee award request of \$1,000.00 is approved.
16. Plaintiff's attorney fee, expense and cost request of \$36,750.00 is approved.

ORDER

IT IS SO ORDERED.

DATED: January 28, 2015


Hon. Chief Judge Gary L. Sharpe
United States District Judge