

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

	:	x
	:	Case No.: 3:15-CV-00196-CAN
WENDI A. OAKS, individually and on behalf	:	
of others similarly situated,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
PARKER L. MOSS, P.C.,	:	
	:	
Defendant.	:	
	:	x

ORDER OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

WHEREAS, the Court has been advised that the parties to this action, Wendi A. Oaks (hereinafter referred to as “Plaintiff” or “Class Representative”), and Parker L. Moss, P.C. (hereinafter referred to as “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 (hereinafter referred to as the “Lawsuit”) upon the terms and conditions set forth in the Class Action Settlement Agreement (hereinafter referred to as the “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 **January 5, 2016 at 10:30 a.m.** (EST), 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 Indiana.

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 (hereinafter referred to as the “Class Members”) with respect to the claims asserted in the Lawsuit:

(a) All persons with Indiana addresses, (b) to whom Parker L. Moss, P.C. mailed an initial debt collection communication that stated: “If you notify the undersigned within the stated 30-day period that the debt, or any portion of it, is disputed, we will obtain verification of the debt or judgment against you and a copy of the verification or judgment will be mailed to you by the undersigned” or “On the other hand, if you request proof of the debt or the name and address of the original creditor within the 30 day period that begins with your receipt of this letter, I am required by law to suspend my efforts to collect the debt until I mail the requested information to you”, (c) from May 7, 2014 to May 7, 2015, (d) in connection with the collection of a consumer debt.

4. Defendant represents that there are a maximum of 419 Class Members, including Plaintiff.

5. **CLASS REPRESENTATIVE AND CLASS COUNSEL APPOINTMENT** –

Pursuant to Fed. R. Civ. P. 23, the Court appoints Plaintiff Wendi A. Oaks as the Class Representative. The Court also appoints Michael L. Greenwald of Greenwald Davidson Radbil PLLC as Class Counsel. *See, e.g., Prater v. Medicredit, Inc.*, Case No. 4:14-cv-00159-ERW, 2015 WL 4385682 (E.D. Mo. July 13, 2015) (preliminarily approving class action settlement and appointing Greenwald Davidson Radbil PLLC as class counsel); *Jones v. I.Q. Data Int'l, Inc.*, No. 14-00130, 2015 WL 2088969, at *2 (D.N.M. Apr. 21, 2015) (same); *Rhodes v. Olson Associates, P.C. d/b/a Olson Shaner*, --- F. Supp. 3d ----, 2015 WL 1136176, at *14 (D. Colo. Mar. 13, 2015) (appointing Greenwald Davidson Radbil PLLC as class counsel); *Roundtree v. Bush Ross, P.A.*, 304 F.R.D 644, 661 (M.D. Fla. 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 Cox v. Sherman Capital LLC, 295 F.R.D. 207, 210-12 (S.D. Ind. 2013) (certifying class action under Fair Debt Collection Practices Act (“FDCPA”)).

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 (1) the strength of Plaintiff’s case compared to the terms of the proposed settlement; (2) the likely complexity, length and expense of continued litigation; (3) the opinion of competent counsel; and (4) the stage of the proceedings and the discovery completed. *See Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006).

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, claim form, 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. 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 and claim form to the Class Members as expeditiously as possible, but in no event later than 21 days after the Court's entry of this order, *i.e.*, **no later than October 20, 2015**. 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 November 28, 2015**. 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 November 28, 2015**. Further, any such Class Member must, within the same time period, provide a copy of the written objection to Class Counsel, attention: Michael L. Greenwald, Esq., Greenwald Davidson Radbil PLLC, 5550 Glades Road, Suite 500, Boca Raton, FL 33431; and Counsel for Defendant, Peter A. Velde, Kightlinger & Gray, LLP, One Indiana Square, Suite 300, 211 North Pennsylvania Street, Indianapolis, IN 46204.

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 counsel for 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 Northern District of Indiana;
- (f) Contain a statement of the specific basis for each objection; and
- (g) Contain any documents in support of the objection.

13. 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 and costs.

14. **SETTLEMENT PAYMENTS** – The class administrator will mail a settlement check to each Class Member who timely submits a claim form. Each participating Class Member will receive a pro-rata portion of the \$2,095.00 common fund.

15. **PAYMENT TO CLASS REPRESENTATIVE** – Separate and apart from the common fund, Defendant will pay to the Class Representative the sum of \$1,000 as statutory damages pursuant to the FDCPA.

16. **FINAL APPROVAL** – The Court will conduct a hearing on **January 5, 2016 at 10:30 a.m.** (EST) at the United States District Court for the Northern District of Indiana, 240 S. Main Street, South Bend, Indiana 46601, 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.

17. 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.

18. Submissions by the Parties, including memoranda in support of the proposed settlement, responses to any objections, petitions for attorney's fees and reimbursement of costs and expenses by Class Counsel, must be filed with the Court no later than 21 days prior to the Final Approval Hearing, *i.e.*, **no later than December 15, 2015**.

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

- A. The Settlement Agreement is terminated by any of the Parties for cause, or any specified material condition to the settlement set forth in the Settlement Agreement is not satisfied and the satisfaction of such condition is not waived in writing by the Parties;
- B. The Court rejects any material component of the Settlement Agreement, including any amendment thereto approved by the Parties; or
- C. 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.

20. If the Settlement Agreement and/or this order are voided per ¶ 19 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.

21. 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.

22. The Court sets the following schedule:

<u>Date</u>	<u>Event</u>
9-29-15	Preliminary Approval Order Entered
10-20-15	Notice Sent (21 days after entry of Preliminary Approval Order)
11-28-15	Deadline to Submit Claim, Send Exclusion or File Objection (60 days after entry of Preliminary Approval Order)

12-15-15 Motion for Final Approval and Attorney Fees Papers Filed (21 days before
Final Approval Hearing)

1-15-16 Final Approval Hearing Held

IT IS SO ORDERED.

Dated: September 29, 2015

s/Christopher A. Nuechterlein
Christopher A. Nuechterlein
United States Magistrate Judge