

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**WENDY MCWILLIAMS, *individually and
on behalf of others similarly situated***

PLAINTIFF

V.

CAUSE NO. 3:15-CV-70-CWR-LRA

**ADVANCED RECOVERY SYSTEMS,
INC.; YOUNG WELLS WILLIAMS, P.A.**

DEFENDANTS

ORDER OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Before the Court is Class Representative Wendy McWilliams's unopposed motion for final approval of class action settlement. Docket No. 82. The motion is ready for adjudication.

IT IS HEREBY ORDERED:

On June 2, 2016, Wendy McWilliams ("Plaintiff") filed her unopposed motion to preliminarily approve the parties' proposed class settlement. Docket No. 74.

On October 20, 2016, this Court preliminarily approved the parties' proposed settlement. *McWilliams v. Advanced Recovery Sys., Inc.*, No. 3:15-CV-70-CWR-LRA, 2016 WL 6208633 (S.D. Miss. Oct. 20, 2016).

On October 21, 2016, Advanced Recovery Systems, Inc. and Young Wells Williams, P.A. (collectively, "Defendants") filed notice of serving the Class Action Fairness Act ("CAFA") notice required by 28 U.S.C. § 1715 on the United States Attorney General and the Attorney General of Mississippi. Docket No. 81.

On November 10, 2016, First Class, Inc. distributed notice of the parties' proposed class settlement, as ordered.

On February 1, 2017, Plaintiff filed her unopposed motion to finally approve the parties' proposed settlement, and her opposed motion for an award of attorneys' fees and expenses.

On March 1, 2017, this Court held a fairness hearing regarding the proposed settlement.

Having considered Plaintiff's motions, this Court finally approves the proposed settlement as fair, reasonable, and adequate under Rule 23 of the Federal Rules of Civil Procedure.

This Court also confirms that it has jurisdiction over this matter and the parties to it. Specifically, the Court finds that Plaintiff has standing to bring her claims under the FDCPA because her claims arise out of inaccurate disclosures in an initial debt collection letter in violation of 15 U.S.C. § 1692g(a)(3), 15 U.S.C. § 1692g(a)(4), and 15 U.S.C. § 1692g(a)(5), which constitute the violation of substantive rights to receive accurate disclosures, as provided by Congress. To that end, Plaintiff properly alleges she (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendants, and (3) that is likely to be redressed by a favorable judicial decision. *See Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).

This Court further confirms certification of the following classes under Rule 23(b)(3) of the Federal Rules of Civil Procedure:

The Notice Class

All persons located in the State of Mississippi to whom, between February 4, 2014 and February 4, 2015, Young Wells Williams P.A. sent an initial written communication in connection with an attempt to collect any purported consumer debt owed to Advanced Recovery Systems, Inc.

The Lawsuit Class

All persons located in the State of Mississippi to whom, between February 4, 2014 and February 4, 2015, Young Wells Williams P.A. sent a summons, as part of a lawsuit filed against such person to collect a debt owed to Advanced Recovery Systems, Inc.

McWilliams v. Advanced Recovery Sys., Inc., 301 F.R.D. 337, 340 (S.D. Miss. 2015).

This Court confirms that this matter meets the applicable prerequisites for class action treatment under Rule 23, namely:

1. The class members are so numerous that joinder of all of them is impracticable;
2. There are questions of law and fact common to the class members, which predominate over any individual questions;
3. Plaintiff's claims are typical of the class members' claims;
4. Plaintiff and class counsel have fairly and adequately represented and protected the interests of all class members; and
5. Class treatment of Plaintiff's 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.

McWilliams, 310 F.R.D. at 341.

This Court also confirms the appointment of Wendy McWilliams as class representative for the classes, and Michael L. Greenwald of Greenwald Davidson Radbil PLLC as class counsel for class members. *See McWilliams*, 301 F.R.D. at 340; *Rhodes v. Olson Assocs., P.C. d/b/a Olson Shaner*, 83 F. Supp. 3d 1096, 1114 (D. Colo. 2015) (same); *Roundtree v. Bush Ross, P.A.*, 304 F.R.D 644, 661 (M.D. Fla. 2015) (same).

This Court approves the terms of the parties' settlement, the material terms of which include, but are not limited to:

1. Defendants will pay to Plaintiff \$2,000 in statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(B)(i);
2. Defendants will create a settlement fund in the amount of \$35,000.00, which will be distributed on a pro-rata basis to each of the 119 class members who submitted valid claims. To the extent any settlement checks go uncashed after First Class takes all reasonable steps to forward those checks to any forwarding addresses, the residual funds will be redistributed to those class members who cashed their checks, provided that the second distribution

would total at least \$5.00 each, after factoring in the costs of sending new checks. Any remaining monies will then be distributed to a *cy pres* recipient—Mississippi Center for Legal Services. None of the funds will revert to Defendants; and

3. Defendants will pay the costs of notice and administration of the settlement separate and apart from any monies paid to Plaintiff, class members, or class counsel.

This Court additionally finds that the parties' notice of class action settlement, and the distribution thereof, satisfied the requirements of due process under the Constitution and Rule 23(e), that it was the best practicable notice under the circumstances, and that it constitutes due and sufficient notice to all persons entitled to notice of class action settlement.

This Court similarly finds that the parties' notice of class action settlement was adequate and gave all class members sufficient information to enable them to make informed decisions as to the parties' proposed settlement, and the right to object to, or opt-out of, it.

This Court additionally finds that the settlement, on the terms and conditions set forth in the class action settlement agreement, is in all respects fundamentally fair, reasonable, adequate, and in the best interests of the class members, after a review of the following factors: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiffs' success on the merits; (5) the range of possible recovery; and (6) the opinions of the class counsel, class representatives, and absent class members. *Jenkins v. Trustmark Nat'l Bank*, 300 F.R.D. 291, 302-303 (S.D. Miss. 2014) (Jordan III, J.) (citing *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 639 n. 11 (5th Cir. 2012) (quoting *Reed v. Gen. Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983))).

This Court finds that the class members were given a fair and reasonable opportunity to object to the settlement. No class members objected to the settlement. Moreover, no class members sought exclusion from the settlement. That no class members objected or sought exclusion from the class underscores that the settlement is fair, reasonable, and adequate and should be approved.

This order is binding on all class members.

This Court approves the individual and class releases set forth in the class action settlement agreement. The released claims are consequently compromised, settled, released, discharged, and dismissed with prejudice by virtue of these proceedings and this order.

By agreement of the parties, and as approved by the Court, this Court awards a service award of \$1,000 to Plaintiff—to be paid by Defendants separately from monies paid to class members—as recognition of her efforts on behalf of the classes. *See Jenkins*, 300 F.R.D. at 306 (“Courts have consistently found service awards to be an efficient and productive way to encourage members of a class to become class representatives.”).

Upon resolution of the plaintiffs’ motion for attorney’s fees and reimbursement of litigation expenses, Docket No. 84, this action will be dismissed with prejudice as to all issues and as to all parties and claims. The Court will retain continuing and exclusive jurisdiction over the parties and all matters relating to this matter, including the administration, interpretation, construction, effectuation, enforcement, and consummation of the settlement and this Order.

SO ORDERED, this the 16th day of June, 2017.

s/ Carlton W. Reeves
UNITED STATES DISTRICT JUDGE