

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

JENNIFER MCCURDY, on behalf of
herself and others similarly situated,

No. 6:15-cv-01498-AA
ORDER

Plaintiff,

vs.

PROFESSIONAL CREDIT SERVICE,

Defendant.

AIKEN, Judge:

The matter before this Court is a motion to preliminarily approve the settlement reflected in the settlement agreement entered into by plaintiff, on behalf of herself and class members, and defendant. The motion is unopposed.

THIS COURT HEREBY ORDERS AS FOLLOWS:

1. This Court has jurisdiction under 28 U.S.C. § 1331;
2. I previously certified the following class: all persons with an address within the United States to whom defendant sent an initial written communication between April 1, 2015, and April 30, 2015, that stated: "If you dispute any account referenced in this letter,

please send all information regarding the dispute to P.O. Box 70127, Springfield, OR 97475”, in connection with the collection of a consumer debt. *See McCurdy v. Prof'l Credit Serv.*, 2016 WL 5853721, *6 (D. Or. Oct. 3, 2016) (doc. 37);

3. I previously approved plaintiff, Jennifer McCurdy, as class representative pursuant to Federal Rule of Civil Procedure 23(a)(4). *See id*;
4. I previously approved Greenwald Davidson Radbil PLLC as class counsel pursuant to Rule 23(g)(1). *See id*;
5. In a Rule 23(b)(3) class action,¹ potential class members must be notified of any proposed settlement. Fed. R. Civ. P. 23(c)(2)(B). The plan for such notice must comply with Rules 23(e)(1), 23(c)(2)(B), and due process. Rule 23(e)(1) requires the court to “direct notice in a reasonable manner to all class members who would be bound” by the settlement. Fed. R. Civ. P. 23(e)(1). Rule 23(c)(2)(B) provides:

[T]he court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B). Finally, principles of due process require notice to be “reasonably calculated, under all the circumstances, to apprise interested parties of the

¹ This is a Rule 23(b)(3) case because “the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

pendency of the action and afford them an opportunity to present their objections.”
Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950);

6. In his declaration, class counsel put forth: (1) a proposed postcard notice to be sent to class members (“postcard notice”); and (2) a proposed long-form, question and answer notice (“long-form notice”), which will appear online. *See* Davidson Decl. Exs. C, D. The postcard notice says if a class member does nothing, he or she “will release any claim(s)[.]” Davidson Decl. Ex. C. The postcard notice also says excluding oneself from the settlement “will not release any claim(s) that you have against Defendant[.]” *Id.* The long-form notice states, “[u]nless you exclude yourself from the settlement, you will be part of the settlement, and you will be bound by the release of claims in the settlement.” Davidson Decl. Ex. D § 15. The long-form notice also states, “if you submit a valid claim form . . . [you] will give up your rights to sue Defendant based on any of the released claims.” *Id.* at 2. I am confident that when both the postcard notice and the long-form notice are read in conjunction, it is clear that: (1) inaction will result in the release of any claims a class member has against defendant; (2) submission of a claim form will result in the release of any claims a class member has against defendant; and (3) excluding oneself from the settlement will not result in the release of claims against defendant. The notice will be administered by First Class, Inc., a third-party class administrator. I am satisfied that this notice plan complies with Rule 23(e)(1), Rule 23(c)(2)(B), and due process. This notice scheme is the best practicable under the circumstances to apprise interested parties;
7. Pursuant to Rule 23(e)(2), this Court may approve the settlement “only after a hearing and on finding that it is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2).

8. It appears fair and reasonable that defendant will pay the reasonable costs of notice and administration of the settlement, separate and apart from the settlement fund;
9. The substance of the releases set forth in the settlement agreement appears fair and reasonable. *See* Davidson Decl. Exs. C, D. I am satisfied that the releases conform with Rule 23(e)(2);
10. The class representative's incentive award appears fair, reasonable, and adequate. Incentive awards "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009). However, there should not be an unjustified disparity between the class representative and the unnamed class members. *See Staton v. Boeing Co.*, 327 F.3d 938, 978 (9th Cir. 2003). Here, plaintiff would recover \$1,000 in damages from defendant, in addition to her pro rata share of the settlement amount.² The pro rata share of the settlement is estimated to be between \$9.55 and \$28.67 for each class member. While the pro rata share and the incentive award are fairly disparate, I am satisfied that the incentive award is reasonable based on: (1) its small size relative to the typical incentive award in other class actions; (2) its conformity with 15 U.S.C. § 1692k(a)(2)(B)(i); and (3) defendant's acceptance of the award;
11. Defendant has agreed to pay plaintiff's "reasonable attorneys' fees and expenses." Pl.'s Unopposed Mot. Prelim. Approval Class Action Settlement ("Mot. Prelim. Approval") 2.

² Plaintiff asserts claims under the Fair Debt Collection Practices Act ("FDCPA"). 15 U.S.C. §§ 1692 *et seq.* \$1,000 is the maximum amount a class representative may receive under the FDCPA. *Id.* § 1692k(a)(2)(B)(i).

Class counsel declares, “[i]n advance of the final fairness hearing, the Parties will confer and attempt to reach an agreement on the amount of Class Counsel’s reasonable attorneys’ fees, costs, and expenses.” Davidson Decl. Ex. 1 at 10. Class counsel will then file an application with this Court for attorneys’ fees and costs, and indicate whether the application is opposed by defendant. *Id.* I will assess the fairness, reasonableness, and adequacy of the attorneys’ fees at this point. Relevant information, such as hours class counsel has spent on this case, will aid me in this assessment.

THIS COURT HEREBY ORDERS THE FOLLOWING SCHEDULING:

1. The class administrator will mail the notice to class members no later than 21 days after the entry of this Order;
2. A class member must postmark and submit a claim form (found directly on the postcard notice) to receive his or her pro rata share of the settlement no later than 60 days after the entry of this Order;
3. A class member must postmark and submit a claim to be excluded from the action no later than 60 days after the entry of this Order. To successfully exclude oneself, a class member must send a letter to the class administrator including the class member’s full name, address, telephone number, and email address (if available), as well as a statement that the class member wishes to be excluded;
4. A class member who wishes to object to the fairness of this settlement must file a written objection with this Court no later than 60 days after the entry of this Order. The written objection must also be submitted to class counsel and counsel for defendant. The written objection must include the class member’s full name, address, telephone number, email

address (if available), the reason(s) for the objection, and whether he or she will appear at the fairness hearing;

5. Submissions by the parties, including memoranda in support of the proposed settlement, responses to any objections, and any petitions for attorneys' fees and reimbursement of costs and expenses by Class Counsel, must be filed with this Court no later than 45 days before the final approval hearing;
6. Opposition briefs to any of the foregoing must be filed no later than 30 days before the final approval hearing;
7. Reply memoranda in support of the foregoing must be filed with the Court no later than 14 days before the final approval hearing; and
8. The final approval hearing will be held approximately 120 days from the date of this Order. Within seven days of the entry of this Order, the parties are directed to contact Courtroom Deputy Cathy Kramer at Cathy_Kramer@ord.uscourts.gov or (541) 431-4102 to schedule the hearing.

At the final approval hearing, I will review whether this action satisfies the criteria for a class action settlement set forth by Rule 23. After the final approval hearing, I will rule on whether this settlement agreement is fair, reasonable, and adequate. If the settlement agreement is fair, reasonable, and adequate:

1. I will finally approve the settlement;
2. The class administrator will send via U.S. Mail a settlement check to each participating class member within 21 days of the Final Approval Order;
3. Defendant will pay \$1,000 to plaintiff, separate and apart from the settlement fund, within 30 days of the Final Approval Order;

4. Defendant will continue to omit the language at issue from its future collection letters;
and
5. Any funds that remain in the settlement fund will be paid to Legal Aid Services of Oregon as a *cy pres* recipient.

After the settlement checks are mailed, defendant's obligations arising from the settlement agreement will be fulfilled.

IT IS SO ORDERED.

Dated this 25th day of July 2017.



Ann Aiken
United States District Judge