

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

Thomas E. Whatley, on behalf of
himself and others similarly situated,

Plaintiff

vs.

TeleCheck Services Inc., and TRS
Recovery Services, Inc.,

Defendants

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Civil Action No.: 4:17-cv-00133-ALM

ORDER PRELIMINARILY APPROVING SETTLEMENT

The Court has been advised that the parties to this action, Thomas E. Whatley (“Plaintiff” or “Class Representative”), and TRS Recovery Services, Inc. (“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. Based upon the Settlement Agreement and all of the files, records, and proceedings herein, the Court preliminarily finds that the proposed settlement is fair, reasonable, and adequate, and that a hearing should and will be held on **August 6, 2018**, at **10:00 a.m.**, 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.

The Court finds that it has jurisdiction over the subject matter of the Lawsuit and over all settling parties hereto. In compliance with the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(D), 1453, and 1711-1715, and if it has not already done so, Defendant will cause to be served

written notice of the proposed class settlement within ten days of the date of this Order.

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

All persons with a Texas address to whom TRS Recovery Services, Inc., on behalf of TeleCheck Services, Inc., mailed an initial debt collection communication between February 22, 2016 and February 22, 2017, in connection with the collection of a consumer debt.

Defendant represents that there are 13,885 Class Members, including Plaintiff.

Pursuant to Fed. R. Civ. P. 23, the Court appoints Thomas E. Whatley as the Class Representative. The Court also appoints James L. Davidson of Greenwald Davidson Radbil PLLC as Class Counsel. *See, e.g., Jallo v. Resurgent, L.P., et al.*, Case No. 4:14-cv-00449, 2016 WL 6610322, at *1 (E.D. Tex. Nov. 8, 2016) (Mazzant, J.); (appointing Greenwald Davidson Radbil PLLC as class counsel); *Prater v. Medcredit, Inc.*, No.: 4:14-cv-00159-ERW, 2015 WL 8331602, at *2 (E.D. Mo. Dec. 7, 2015) (same).

The Court preliminarily finds that the Lawsuit satisfies the applicable prerequisites for class action treatment under Fed. R. Civ. P. 23, for purposes of settlement only, 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 Jallo, 2016 WL 6610322, at *2 (granting preliminary approval of class action settlement under the FDCPA).

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 the benefits to the Class Members; the strengths and weaknesses of Plaintiff's case; the anticipated complexity, duration and expense of additional litigation; the risk and delay inherent in possible appeals; and the opinion of Class Counsel, who are highly experienced in this area of class action litigation.

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 and settlement checks to the Class Members. All costs of administration will be paid by Defendant from the Settlement Fund. Upon the recommendation of the parties, the Court hereby appoints the following class administrator: First Class, Inc.

The Court approves the form and substance of the Notice of Class Action Settlement, attached to the Settlement Agreement as Exhibits C and D. 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 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 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 April 25, 2018**. 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.

Any Class Member who desires to be excluded from the class must send a written request for exclusion to the class administrator with a postmark date no later than 75 days after the Court's entry of this order, *i.e.*, **no later than June 18, 2018**. 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.

Any Class Member who intends to object to the fairness of this settlement must file a written objection with the Court within 75 days after the Court's entry of this order, *i.e.*, **no later than June 18, 2018**. Further, any such Class Member must, within the same time period, provide a copy of the written objection to: James L. Davidson, Esq., Greenwald Davidson Radbil PLLC, 5550 Glades Road, Suite 500, Boca Raton, FL 33431; and David R. Esquivel, Bass, Berry & Sims PLC, 150 3rd Avenue South, Suite 2800, Nashville, TN 37201.

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) Provide proof that the objector is a Class Member;
- (d) Be filed with the Clerk of the Court no later than 75 days after the Court preliminarily approves the settlement;
- (e) Be sent to Class Counsel and Defendant at the addresses designated in the Notice by first-class mail, postmarked no later than 75 days after the Court preliminarily approves the settlement;

- (f) 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 must comply with all applicable laws and rules for filing pleadings and documents in the U.S. District Court for the Eastern District of Texas;
- (g) A statement of the specific basis for each objection;
- (h) A list of any legal authority the objector will present at the Final Approval Hearing; and
- (i) A statement as to whether he or she intends to appear at the final fairness hearing.

Any Class Member who has timely filed an objection may appear at the Final Approval Hearing, in person or by counsel, and 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. The right to object to the Settlement must be exercised individually by an individual Class Member, not as a member of a group or subclass and, except in the case of a deceased, minor, or incapacitated Class Member, not by the act of another person acting or purporting to act in a representative capacity.

The Court will conduct a hearing **at 10:00 a.m. on August 6, 2018**, at the United States District Court for the Eastern District of Texas, Paul Brown United States Courthouse, 101 East Pecan Street, Sherman, TX 75090, 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.

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.

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 because 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.

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.

The Court sets the following schedule:

<u>Date</u>	<u>Event</u>
April 4, 2018	Preliminary Approval Order Entered
April 25, 2018	Notice Sent (21 days after entry of Preliminary Approval Order)
June 18, 2018	Deadline to Send Exclusion or File Objection (75 days after entry of Preliminary Approval Order)

July 3, 2018 Motion for Final Approval Filed and Motion for Attorneys' Fees and Expenses (90 days after entry of Preliminary Approval Order)

July 17, 2018 Opposition to Motion for Final Approval and Opposition to Attorney Fees Award Filed (104 days after entry of Preliminary Approval Order)

July 24, 2018 Reply to Opposition to Motion for Final Approval and Opposition to Attorney Fees Award Filed (111 days after entry of Preliminary Approval Order))

August 6, 2018 Final Approval Hearing Held

IT IS SO ORDERED.

SIGNED this 4th day of April, 2018.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE