

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

BOBBI J. RIDDLE, on behalf of herself and
others similarly situated,

Plaintiff,

v.

CIVIL ACTION NO. 3:19-0249

ATKINS & OGLE LAW OFFICES, LC,

Defendant.

ORDER

Presently pending before the Court is Plaintiff Bobbi J. Riddle's unopposed Motion for Preliminary Approval of Class Action Settlement. *Mot. for Prelim. Approval*, ECF No. 15. Plaintiff's briefing has adequately presented the relevant issues to the Court, and her motion is ripe for review. For the reasons set forth below, the Court **GRANTS** the motion and **SCHEDULES** deadlines in this matter pursuant to the below analysis.

DISCUSSION

The Court has been advised that the parties to this action, Bobbi J. Riddle ("Plaintiff" or "Class Representative"), and Atkins & Ogle Law Offices, LC ("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 ("Lawsuit") upon the terms and conditions set forth in the Class Action Settlement Agreement ("Settlement Agreement"), which has been filed with the Court. The Court deems 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).

Based upon the Settlement Agreement and all of the files, records, and proceedings herein, and it appearing to this Court that, upon preliminary examination, the proposed settlement appears fair, reasonable, and adequate, and that a hearing should and will be held on **June 29, 2020 at 11:00 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, it is hereby ordered:

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

If Defendant has not already done so, then pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(D), 1453, and 1711-1715, within 10 days of this Order Defendant will cause to be served written Notice of the proposed class settlement on the United States Attorney General and the West Virginia Attorney General.

Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, the Lawsuit is hereby preliminarily certified, for settlement purposes only, as a class action on behalf of the following class of plaintiffs (“Class Members”) with respect to the claims asserted in the Lawsuit:

All persons (a) with a West Virginia address, (b) to whom Atkins & Ogle Law Offices, LC mailed an initial debt collection communication not returned as undeliverable, (c) in connection with the collection of a consumer debt, (d) between April 4, 2018 and April 4, 2019, (e) which stated: “You have the right to cure this default by sending this amount to me within 30 days of the date of this letter.”

Defendant represents that there are 200 Class Members, including Plaintiff.

Pursuant to Rule 23, the Court appoints Bobbi J. Riddle as the Class Representative. The Court also appoints Jesse S. Johnson of Greenwald Davidson Radbil PLLC as Class Counsel. *See Spencer v. #1 A LifeSafer of Ariz., LLC*, No. 18-2225, 2019 WL 1034451 (D. Ariz. Mar. 4, 2019) (appointing Greenwald Davidson Radbil PLLC class counsel); *Garza v. Mitchell*

Rubenstein & Assocs., P.C., No. 15-1572, 2015 WL 9594286 (D. Md. Dec. 28, 2015) (same); *Baldwin v. Glasser & Glasser, P.L.C.*, No. 15-490, 2015 WL 7769207 (E.D. Va. Dec. 1, 2015) (same).

Based on the Parties' agreement and the submission of the Parties, and its review of the applicable law, this Court preliminarily finds that the Lawsuit satisfies the applicable prerequisites for class action treatment under Rule 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 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.

Decohen v. Abbasi, LLC, 299 F.R.D. 469, 477-78 (D. Md. 2014) (approving class action settlement).

This 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 (i) the benefits to the Class Members; (ii) the strengths and weaknesses of Plaintiff's case; (iii) the anticipated

duration and expense of additional litigation; (iv) the risk and delay inherent in possible appeals; (v) the risk of collecting any judgment obtained on behalf of the Class; (vi) the limited amount of any potential total recovery for the Class, given the cap on statutory damages for claims brought pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*; and (vii) the opinion of Class Counsel, who are highly experienced in this area of class action litigation. *See In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 159 (4th Cir. 1991).

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. The costs of administration will be paid by Defendant separate and apart from the Settlement Fund. Upon the recommendation of the parties, this Court hereby appoints the following class administrator: First Class, Inc. *See Smith v. Cohn, Goldberg & Deutsch, LLC*, No. 17-2291, ECF No. 25 (D. Md. July 19, 2018) (appointing First Class, Inc. as class administrator); *Veness v. Heywood, Cari & Anderson, S.C.*, No. 17-338, 2017 WL 6759382, at *5 (W.D. Wisc. Dec. 29, 2017) (same); *Green v. Dressman Benzinger Lavelle, PSC*, No. 14-142, 2014 WL 4816698, at *2 (W.D. Ohio Sept. 18, 2014) (same).

This Court approves the form and substance of the Direct Mail Notice of Class Action Settlement, attached to the Settlement Agreement as Exhibit C. The proposed form and method for notifying the Class Members of the settlement and its terms and conditions meet the requirements of Rule 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. This 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 March 18, 2020**. 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.

Class counsel's petition for an award of attorneys' fees and reimbursement of costs and expenses must be filed with the Court no later than 30 days after the Court's entry of this order, *i.e.*, **no later than March 27, 2020**. Opposition briefs to any petition for an award of attorneys' fees and reimbursement of costs and expenses must be filed no later than 14 days thereafter, *i.e.*, **no later than April 10, 2020**. Reply memoranda in support of the foregoing must be filed with the Court no later than 7 days after the filing of any opposition brief.

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 60 days after the Court's entry of this order, *i.e.*, **no later than April 27, 2020**, as April 26 is a Sunday. 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 60 days after the Court's entry of this order, *i.e.*, **no later than April 27, 2020**, as April 26 is a Sunday. Further, any such Class Member must, within the same time period, provide a copy of the written objection to Class Counsel, attention: Jesse S. Johnson, Greenwald Davidson Radbil PLLC, 7601 N. Federal Highway, Suite A-230, Boca Raton, FL 33487; and Counsel for Defendant, Chadwick A. McTighe, Stites & Harbison PLLC,

400 West Market Street, Suite 1800, Louisville, Kentucky 40202.

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 email address (if available) 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 Southern District of West Virginia; and
- (f) Contain a statement of the specific basis for each objection.

Any Class Member who has timely filed an objection may appear at the Final 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, costs, and expenses.

Upon final approval from the Court, the class administrator will mail a settlement check to each Class Member who does not exclude himself or herself. Each participating Class Member will receive a pro-rata portion of the \$5,500 settlement fund. Additionally, Defendant will pay to the Class Representative the sum of \$1,000 as statutory damages pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k(a)(2)(B)(i).

The Court will conduct a fairness hearing on **June 29, 2020 at 11:00 a.m.** at the United

States District Court for the Southern District of West Virginia, 845 Fifth Avenue, Huntington, West Virginia 25701, to review and rule upon the following issues:

- A. Whether this action satisfies the applicable prerequisites for class action treatment for settlement purposes under Rule 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 Fairness 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 Fairness Hearing. The Final Fairness Hearing may be postponed, adjourned, transferred, or continued without further notice to the Class Members.

Submissions by the Parties in support of the settlement, including memoranda in support of final approval of the proposed settlement, and responses to any objections, must be filed with the Court no later than 28 days prior to the Final Fairness Hearing, *i.e.*, **no later than June 1, 2020**. Opposition briefs to any of the foregoing must be filed no later than 14 days prior to the Final Fairness Hearing, *i.e.*, **no later than June 15, 2020**. Reply memoranda in support of the foregoing must be filed with the Court no later than 7 days prior to the Final Fairness Hearing, *i.e.*, **no later than June 22, 2020**.

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.

If the Settlement Agreement and/or this order are voided, 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.

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.

CONCLUSION

Consistent with the foregoing analysis, the Court **GRANTS** Plaintiff's unopposed motion, ECF No. 15, and **SCHEDULES** the following deadlines in this matter:

- A. Direct mail notice shall be sent by **March 18, 2020**.
- B. Class counsel's petition for attorney's fees, costs, and expenses shall be filed by **March 27, 2020**.
- C. Opposition briefs to any petition for an award of fees or expenses shall be filed by

April 10, 2020.

- D. Reply briefs in support of an award of fees or expenses shall be filed by **April 17, 2020.**
- E. Class members shall send exclusions or file objections by **April 27, 2020.**
- F. Any motions for final approval of this settlement and any responses to objections shall be filed by **June 1, 2020.**
- G. Any responses in opposition to any motion for final approval shall be filed by **June 15, 2020.**
- H. Any reply briefs shall be filed by **June 22, 2020.**
- I. The final fairness hearing in this matter will take place on **June 29, 2020 at 11:00 a.m.** here in Huntington.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: February 26, 2020



ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE