IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

ALBERT GREGORY, *on behalf of himself and all others similarly situated,* Plaintiff, v. McCABE, WEISBERG & CONWAY, P.C., Defendant.	Civil No. 13-6962 (AMD)

FINAL JUDGMENT ORDER APPROVING CLASS ACTION SETTLEMENT AND CLOSING CASE

This matter comes before the Court for final approval of a class action settlement. For the reasons set forth herein, the Court grants final approval of the settlement.

By Memorandum Opinion and Order dated June 12, 2014, the Court granted in part the parties' joint motion for preliminary approval of the class action settlement. See generally Gregory v. McCabe, Weisberg & Conway, P.C., No. 13-6962, 2014 WL 2615534, at *10 (D.N.J. June 12, 2014). Specifically, the Court certified the proposed "settlement class solely for purposes of settlement pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3)[,]" and appointed Joseph K. Jones, Esquire, as "class counsel pursuant

to Federal Rule of Civil Procedure 23(g)." Id. Thereafter, by Order dated June 19, 2014, the Court approved Plaintiff's revised class notice and authorized its distribution by first-class mail to the putative settlement class members. (Order [Doc. No. 24], June 19, 2014, 2.) On June 26, 2014, Defendant mailed class notices by first-class mail "to 4,345 addresses[.]" (Affidavit of Counsel [Doc. No. 26], 1.) Defense counsel certified that of these notices, "574 were returned and could not be forwarded[,]" "279 timely claim forms" were received by Defendant, and six requests to opt-out of the settlement were received by Defendant. (Id. at 2.) Defense counsel did not receive any objection to the settlement agreement. (Id. at 1.)

On August 21, 2014, the Court held a final fairness hearing. No person appeared at the hearing to object to the settlement. However, during the hearing defense counsel stated that notice of the proposed settlement agreement had not been sent to either the Attorney General of the State of New Jersey or the Attorney General of the United States in accordance with 28 U.S.C. § 1715 prior to the hearing.[1] See 28 U.S.C § 1715. Consequently, the Court reserved finally approving the settlement pending

[1] Pursuant to 28 U.S.C. § 1715, the appropriate state and federal office must be served with "any proposed or final class action settlement[.]" See 28 U.S.C. § 1715(b)(4).

service of the 28 U.S.C. § 1715 notices on the appropriate officials.[2]

On August 21, 2014, the 28 U.S.C. § 1715 notices were served on the Attorney General of the United States and the Attorney General of New Jersey. (See Certification of Counsel [Doc. No. 28], 1-2.) Neither the Attorney General of the United States nor the Attorney General of New Jersey has filed any objection to the settlement. (See Certification on Behalf of McCabe, Weisberg & Conway, P.C. [Doc. No. 29], 1.) Moreover, defense counsel certified that neither official has contacted him regarding the settlement. (Id.)

Consequently, the Court has reviewed the submissions and, having considered the arguments of counsel and for good cause shown,

IT IS on this 27th day of February 2015,

ORDERED and ADJUDGED as follows:

(1) The Court finds that an appropriate and adequate notice was provided pursuant to Federal Rule of Civil Procedure 23 to the members of the Settlement Class, notifying the Settlement Class of, inter alia, the pendency of the present litigation and

[2] As further set forth in 28 U.S.C. § 1715, "[a]n order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under subsection(b)." 28 U.S.C. § 1715(d).

the settlement agreement. (See Order [Doc. No. 24], June 19, 2014, 2 (approving the proposed class notice).) The notice provided was the best practicable under the circumstances and included individual notice by first-class mail to the Settlement Class members.

(2) The Court further finds that the settlement agreement between the parties is fair, adequate, and reasonable. Pursuant to Federal Rule of Civil Procedure 23(e), "[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval." FED. R. CIV. P. 23(e). Consequently, prior to "giving final approval to a proposed class action settlement, the [c]ourt must determine that the settlement is 'fair, adequate, and reasonable.'" In re Par Pharm. Sec. Litig., No. 06-3226, 2013 WL 3930091, at *2 (D.N.J. July 29, 2013)(citing Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975)). In making this assessment, the courts consider nine factors, set forth by the Third Circuit in Girsh v. Jepson, 521 F.2d 153 (3d Cir. 1975), "in evaluating whether a proposed class action settlement is fair, adequate, and reasonable[.]" Id. (citing Girsh, 521 F.2d at 156-157). These factors include:

> (1) the complexity, expense and likely duration of the litigation . . . ; (2) the reaction of the class to the settlement . . . ; (3) the stage of the proceedings and the amount of discovery

> completed . . . ; (4) the risks of establishing liability . . . ; (5) the risks of establishing damages . . . ; (6) the risks of maintaining the class action through the trial . . . ; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery . . . ; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation[.]

Girsh, 521 F.2d at 157 (hereinafter, "Girsh factors") (citation and internal quotation omitted). However, the Girsh factors are "not exhaustive," and courts also consider other "potentially relevant and appropriate" factors. In re Elec. Carbon Products Antitrust Litig., 447 F. Supp. 2d at 398 (citing In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions, 148 F.3d 283 (3d Cir. 1998)). These other factors include:

> the maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; the existence and probable outcome of claims by other classes and subclasses; the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved—or likely to be achieved—for other claimants; whether class or subclass members are accorded the right to opt out of the settlement; whether any provisions for attorneys' fees are reasonable; and whether the procedure for processing individual claims under the settlement is fair and reasonable.

In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions, 148 F.3d 283, 323 (3d Cir. 1998) (hereinafter, "Prudential factors").[3]

In the instant action, the Court finds that, on balance, the factors set forth above weigh in favor of granting final approval of the settlement. First, although Plaintiff's claims are neither legally nor factually complex, absent the settlement agreement the parties would likely be engaged in additional discovery and potentially protracted pre-trial and trial preparation. See, e.g., Garland v. Cohen & Krassner, No. 08-4626, 2011 WL 6010211, at *7 (E.D.N.Y. Nov. 29, 2011) (noting that even though the action was neither factually nor legally complex, "continued litigation would have required extensive time and expense."); see also Oslan v. Law Offices of Mitchell N. Kay, 232 F. Supp. 2d 436, 441 (E.D. Pa. 2002) (noting that by settling a FDCPA class action the parties "avoid the expense of further preparation for trial, uncertainty of the trial outcome, and likely appeals from the judgment."). In addition, of the 4,345 individual class notices that were mailed, only six class members opted out

[3] The Court's prior opinion and orders, as well as the Court's consideration of the Girsh factors herein, implicitly address the Prudential factors relevant to this case and therefore the Court need not specifically address these factors. See, e.g., Gregory v. McCabe Weisberg & Conway, P.C., No. 13-6962, 2014 WL 2615534, at *8 n. 11 (D.N.J. June 12, 2014) (noting the proposed attorneys' fee award was reasonable); (Order [Doc. No. 24], June 19, 2014 (approving the class notice)).

of the settlement (Certification of Counsel [Doc. No. 26], 1-2), and no party appeared at the final fairness hearing to object to the settlement. See, e.g., In re Par Pharm. Sec. Litig., No. 06-3226, 2013 WL 3930091 at *4 (citation omitted) (noting that "[w]here 'no [c]lass members have sought to exclude themselves from the class,' this factor 'weighs strongly in favor of approval.'") (citation omitted). Consequently, the Court finds that the first and second Girsh factors weigh in favor of final approval of the settlement.

The Court further finds that counsel have had an adequate opportunity to consider the merits of the action. Counsel for Plaintiff certified that the settlement agreement "is the result of extensive arms-length negotiations between the parties." (Certification of Joseph K. Jones, Esq. [Doc. No. 11-1], ¶ 11.) Furthermore, as noted in the Court's prior opinion, both counsel have alleged that sufficient discovery was conducted to ascertain the "identities and current addresses of all class members[,]" and that any remaining disputes in the litigation are predominately legal in nature. Gregory, No. 13-6962, 2014 WL 2615534 at *9 (citation and internal quotations omitted). Consequently, the Court finds that the third Girsh factor weighs in favor of final approval of the settlement.

With respect to the fourth, fifth, and sixth Girsh factors – the risks of establishing liability at trial, the risks

of establishing damages at trial, and the risks of maintaining the class certification through trial – the Court finds that these factors do not necessarily weigh in favor of final approval of the settlement. The sole claim in this action pertains to whether Defendant, in "nearly identical letters" sent to the putative class members, complied with "certain requirements of the FDCPA." Gregory, No. 13-6962, 2014 WL 2615534 at *5. In light of these form letters, there is not much risk in establishing Defendant's liability at trial. Furthermore, the FDCPA statutorily defines and limits the potential damages for Defendant's purported violations of the FDCPA and Defendant's net worth is a negative number. See, e.g., 15 U.S.C. § 1692k(a)(2)(B) (defining the amount of damages); see also Gregory, No. 13-6962, 2014 WL 2615534 at *8 (noting Defendant's purported financial status). Therefore, there also does not appear to be any sufficient difficulty in establishing damages at trial. Additionally, there is nothing in the present record to suggest that there is much risk of decertification in this case.

The Court further finds that the seventh, eighth, and ninth Girsh factors – the ability of Defendant to withstand a greater judgment, the reasonableness of the settlement fund in light of the best possible recovery, and the reasonableness of the settlement fund in light of all the risks inherent in litigating a case – weigh in favor of final approval of the settlement. As

noted in the Court's prior opinion, defense counsel has represented that Defendant's net worth is a negative number. Gregory, No. 13-6962, 2014 WL 2615534 at *8. Moreover, Plaintiff's counsel certified that he personally reviewed Defendant's "financial information and balance sheets" for the years 2011, 2012, and 2013, and further certified that the proposed class fund "exceeds the statutory damages" Plaintiff could be awarded under the FDCPA if the case proceeds to trial. (See Certification of Joseph K. Jones, Esq. [Doc. No. 17-1], ¶¶ 6-7.) The Court therefore finds that given Defendant's financial condition, the $4,500 settlement fund is reasonable in light of the best possible recovery and the risks in litigating this case.

Consequently, the Court finds that, on balance, the Girsh factors support final approval of the settlement. The Settlement Agreement and General Release is hereby finally approved as fair, reasonable, and adequate pursuant to Federal Rule of Civil Procedure 23(e).

(3) For the reason set forth in the Court's prior opinion, Gregory v. McCabe Weisberg & Conway, P.C., No. 13-6962, 2014 WL 2615534 (D.N.J. June 12, 2014), the Court approves the payment to the representative Plaintiff, Albert Gregory, of an incentive award in the amount of One Thousand Five Hundred Dollars ($1,500) to be paid out of the settlement claim fund as set forth in the Settlement Agreement.

(4) The Court approves the award of attorneys' fees and costs to Class Counsel in the amount of Eighteen Thousand Dollars ($18,000). Pursuant to Federal Rule of Civil Procedure 23(e), courts must also assess any "attorneys' fee provision" made in connection with a class action settlement to determine whether the award is fair, adequate, and reasonable. See Little-King v. Hayt Hayt & Landau, No. 11-5621, 2013 WL 4874349, at *18 (D.N.J. Sept. 10, 2013) (noting that these provisions "are, like every other aspect of such agreements, subject to the determination whether the settlement is 'fundamentally fair, adequate, and reasonable.'" (citations omitted)). Plaintiff's counsel certified that, under the lodestar method, the total amount of counsel's fees and costs for work related to the instant matter is $21,570.44. (Certification of Joseph K. Jones, Esq. [Doc. No. 25-2], ¶¶ 7, 16.) The Court's calculation of counsel's fees under the lodestar method is consistent with this amount. (See Certification of Joseph K. Jones, Esq. Ex. A [Doc. No. 25-2].) Counsel certified that this amount is commensurate with both his experience and awards in similar FDCPA actions and further certified that he has not received any payment for his work. (Certification of Joseph K. Jones, Esq. [Doc. No. 25-2], ¶¶ 5-6, ¶¶ 11-12.) Notwithstanding this amount, Plaintiff's counsel has agreed to "cap all attorneys' fees and costs at $18,000[]" in the settlement agreement. (Id. at ¶ 17; see also Settlement Agreement and General Release [Doc. No.

17-3], 7.) Furthermore, the fee award is to be paid separately from the settlement fund and includes any and all further costs and fees associated with any work Class Counsel performs on behalf of the Settlement Class through the "[n]ext business day after the last date on which notice of appeal could have been timely filed." (Settlement Agreement and General Release [Doc. No. 17-3], 7.) Defendant did not oppose this amount. Consequently, the Court approves this award of attorneys' fees as fair, adequate, and reasonable.

(5) Payment to the Settlement Class shall be made as set forth in the Settlement Agreement. (See Settlement Agreement and General Release [Doc. No. 17-3], 3.)

(6) The claims of all members of the Settlement Class are hereby dismissed with prejudice, without costs to either party.

(7) As set forth in the Settlement Agreement, Plaintiff Albert Gregory and all Settlement Class members, by operation of this Order and the Settlement Agreement, shall hereby be deemed to have forever released and discharged with prejudice any and all released parties to and from any and all settled claims, rights, and liabilities, and shall be forever barred from filing, prosecuting, or proceeding, in any forum whatsoever, any claim settled in the Settlement Agreement. (See Settlement Agreement and General Release [Doc. No. 17-3], 5-7.)

(8) As set forth in the Settlement Agreement, without affecting the finality of this Order in any manner, the Court hereby retains "exclusive jurisdiction and authority to consider, rule upon, and issue a final order with respect to suits, whether judicial, administrative or otherwise, which may be instituted by any person, individually or derivatively, with respect to" the Settlement Agreement. (See Settlement Agreement and General Release [Doc. No. 17-3], 8-9.)

(9) The Clerk of Court is directed to close this file.

s/ Ann Marie Donio
ANN MARIE DONIO
UNITED STATES MAGISTRATE JUDGE