

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

LISA A. ARDINO, on behalf of herself and all
others similarly situated,

Plaintiff(s),

v.

LYONS, DOUGHTY & VELDHUIS, P.C., and
JOHN DOES 1-25,

Defendant(s).

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: Civil Action No. 1:11-cv-848 (NLH/KMW)
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: **ORDER GRANTING PRELIMINARY**
: **APPROVAL OF PROPOSED CLASS**
: **ACTION SETTLEMENT, APPROVING**
: **CLASS NOTICE, SCHEDULING**
: **FINAL APPROVAL HEARING, AND**
: **STAYING LITIGATION**
:
:

The Court having reviewed and considered the Joint Motion for Preliminary Approval of Class Action Settlement (“Joint Motion”), filed on May 31, 2013, by Representative Plaintiff Lisa A. Ardino and Defendant Lyons, Doughty & Veldhuis, P.C. (all collectively, the “Parties”), and having reviewed and considered the terms and conditions of the proposed settlement (the “Settlement”) as set forth in the Settlement Agreement and General Release dated May 31, 2013 (the “Agreement”),¹ a copy of which has been submitted as Exhibit 2 to the Joint Motion, and on the basis of such submissions, together with any other submissions in support of the Joint Motion, and all prior proceedings had in this litigation, and good cause for this Order having been shown,

¹Capitalized terms used in this Order that are not otherwise defined herein have the meaning assigned to them in the Agreement.

IT IS ORDERED AND ADJUDGED:

That the terms of the Agreement are hereby preliminarily approved, subject to further consideration at the Final Approval Hearing provided for below. The Court concludes that the Settlement is sufficiently within the range of reasonableness to warrant the preliminary certification of the Settlement Class, the scheduling of the Final Approval Hearing and the circulation of notice to putative Class Members, each as provided for in this Order.

Preliminary Certification Of The Class

1. For purposes of settlement only, pursuant to Rules 23(a), 23(b)(1) and 23(b)(3) of the Federal Rules of Civil Procedure, solely with respect to Defendant, the action styled as “Lisa A. Ardino, on behalf of herself and all others similarly situated, Plaintiff(s) v. Lyons, Doughty & Veldhuis, P.C., et al., Defendant(s),” Civil Action No. 1:11-cv-848 (NLH/KMW) is preliminarily certified as a class action on behalf of the following persons (collectively, the “Class” and each member of the Class a “Class Member”):

Any Person who received a letter from Defendant, in the form annexed to the Agreement as Exhibit A and dated at any time during the Class Period. The Class expressly excludes all Persons who, in accordance with the terms of this Agreement, execute a timely request for exclusion (“Opt Out”) from the Class.

2. Representative Plaintiff is appointed as representative of the Class. Class Counsel is appointed and designated as counsel for the Class. This certification of the Class, appointment of the Representative Plaintiff as representative of the Class and appointment and designation of Class Counsel as counsel for the Class are solely for purposes of effectuating the Settlement. If the

Agreement is terminated or is not consummated for any reason, the foregoing certification of the Class, appointment of the Representative Plaintiff as representative of the Class, and appointment and designation of Class Counsel as counsel for the Class, shall be void and of no effect and the Parties to the Agreement shall be returned to the status each occupied before entry of this Order without prejudice to any legal argument that any of the Parties to the Agreement might have asserted but for the Agreement.

Based on the Court's review of the Joint Motion and supporting materials, the Court preliminarily finds that the proposed Class satisfies Rules 23(a), 23(b)(1) and 23(b)(3).

Final Approval Hearing; Right To Appear And Object

3. A Final Approval Hearing shall take place before the Court on September 20, 2013 at 10:00 a.m./p.m. before the Honorable Karen M. Williams, U.S.M.J., at the United States District Court, District of New Jersey, Mitchell H. Cohen U.S. Courthouse, 1 John F. Gerry Plaza, Camden, New Jersey 08101 to determine:

provided Notice on marked on or before August 5, 2013

in courtroom 5C

(a) whether the Court should certify the Class and whether the Court should find the Representative Plaintiff and Class Counsel to be adequate representatives of the Class and counsel for the Class, respectively;

(b) whether the Settlement, on the terms and conditions provided for in the Agreement, should be finally approved by the Court as fair, reasonable, and adequate;

(c) whether the Released Claims of the Class Members

asserted in the Action should be dismissed on the merits and with prejudice as to Defendant;

(d) whether the Court should permanently enjoin the assertion of any Claims that arise from or relate to the subject matter of the Lawsuit against Released Parties by the Class Members or any other Persons;

(e) whether the application for attorneys' fees, costs, and expenses to be submitted by Class Counsel in connection with the Final Approval Hearing should be approved;

(f) whether the application for payment to Representative Plaintiff to be submitted in connection with the Final Approval Hearing should be approved;

(g) whether the Court should permanently enjoin the assertion of Claims by the Releasing Parties that arise from or relate to conduct by the Released Parties that occurred on or before the Effective Date of the Agreement; and

(h) such other matters as the Court may deem necessary or appropriate.

4. The Court may finally approve the Agreement at or after the Final Approval Hearing with any appropriate modifications agreed to by the Parties and without further notice to the Class Members.

5. Any putative Class Member who has not timely and properly provided notice of an election to Opt Out of the Class and the Agreement in the manner set forth below, and any other interested Person, may appear at the Final

Approval Hearing in person or by counsel and be heard, to the extent allowed by the Court, either in support of or in opposition to the matters to be considered at the Final Approval Hearing; provided, however, that no Person who has elected to Opt Out of the Class and the Agreement shall be entitled to object; and provided further that no Person shall be heard, and no papers, briefs, or other submissions shall be considered by the Court, unless on or before a date forty-five (45) days after the Notice Date, such Person:

(a) files with the Court a written statement of objection setting forth such Person's full name, full address and telephone number and such Person's objections to the matters to be considered and the basis therefore, together with all other support, papers, or briefs that he or she wishes the Court to consider. If any Person making an objection wishes to appear at the Final Approval Hearing, he or she must also file with the Court a written, signed notice of intention to appear, setting forth such Person's full name, full address and telephone number and whether such person intends to appear in person or through an attorney; and

(b) serves copies of all such materials either by hand delivery, overnight mail, or first class mail upon the following counsel: (i) Class Counsel - Joseph K. Jones, Esq., Law Offices of Joseph K. Jones, LLC, 374 Passaic Avenue, Suite 100, Fairfield, New Jersey 07004; and (ii) Defendant's Counsel - Gregg S. Kahn, Esq., Wilson, Elser, Moskowitz, Edelman & Dicker LLP, 200 Campus Drive, Florham Park, New Jersey 07932-0668.

All responses by the Parties to objections shall also be served by hand delivery, overnight mail, or first class mail on the objecting Person or his, her, or its

attorney no later than fifteen (15) days before the Final Approval Hearing. Objectors' papers may be supplemented ten (10) days before the Final Approval Hearing following the filing of any responsive papers by the Parties and served in the manner and on counsel described above.

Any Class Member who does not file a timely and valid written statement of objection or written notice of intention to appear shall be barred from challenging the fairness or adequacy of the settlement, including the payment of attorneys' fees, costs and expenses to Class Counsel and from seeking review of the settlement by appeal or otherwise, unless otherwise ordered by the Court.

6. The Court may adjourn the Final Approval Hearing, or any subsequent hearings, including the consideration of the application for attorneys' fees, costs and expenses, without any additional notice to putative Class Members other than an announcement in open court.

Form and Timing of Notice

7. No later than thirty (30) days after entry of this Order, Defendant shall cause copies of the Notice of Class Action and Proposed Settlement in the form attached as Exhibit 3 to the Motion (the "Mailed Notice"), the form of which is hereby approved, including the Claim Form substantially in the form attached as Exhibit 4 to the Motion (the "Claim Form"), the form of which is hereby approved, to be mailed by first-class mail, postage pre-paid, to all putative Class Members who can be identified with reasonable diligence by Class Counsel and Defendant.

8. Prior to the Final Approval Hearing, Defendant shall serve and file a

sworn statement attesting to compliance with paragraph 7 of this Order. Costs of providing the notice to the Class specified in this Order shall be paid as set forth in the Agreement.

9. The notice to be provided as set forth in paragraph 7 of this Order is hereby found to be the best means of notice to putative Class Members that is practicable under the circumstances and, when completed, shall constitute due and sufficient notice of the Settlement, the Agreement and the Final Approval Hearing to all Persons affected by and/or entitled to participate in the Settlement, the Agreement or the Final Approval Hearing, in full compliance with the requirements of due process and the Federal Rules of Civil Procedure.

10. All notices to any Party required under the Agreement shall be sent by first class mail, by hand or overnight delivery, or by facsimile, to the recipients designated in the Agreement. Unless otherwise specifically stated, timeliness of all submissions and notices shall be measured by the date of the postmark. The Persons designated to receive notices under the Agreement are as follows (unless the addressee refuses or intentionally or willfully delays receipt, or unless notification of any change to such designated recipient is given to each other Party to the Agreement pursuant to Paragraph 5 of the Agreement).

Notice to be given to Parties as follows: (i) Representative Plaintiff - Joseph K. Jones, Esq., Law Offices of Joseph K. Jones, LLC, 374 Passaic Avenue, Suite 100, Fairfield, New Jersey 07004; and (ii) Defendant - Gregg S. Kahn, Esq., Wilson, Elser, Moskowitz, Edelman & Dicker LLP, 200 Campus Drive, Florham Park, New Jersey 07932-0668.

Ability Of Putative Class Members To Opt Out Of Settlement Class

11. All putative Class Members who wish to be excluded from or to Opt Out of the Class and the Settlement must do so by sending written notice of their election to Opt Out to Class Counsel and Defendant's Counsel at the address and in the manner set forth in the notices to be provided pursuant to paragraph 7 of this Order. To be considered proper and timely, a complete, signed Opt Out request must be hand delivered by, or postmarked by, no later than forty-five (45) days after the Notice Date (the "Opt Out Deadline") and must state the full name, full address and telephone number of the putative Class Member along with a statement that he or she wishes to be excluded from or to Opt Out of the Class. Prior to the Final Approval Hearing, Defendant's Counsel or their designee shall submit to the Court a sworn statement setting forth the names and addresses of each putative Class Member who has properly and timely elected to Opt Out of the Class and the Settlement.

12. Any putative Class Member who does not properly and timely Opt Out of the Class shall be included in such Class and, if the Settlement is approved and becomes effective, shall be bound by all the terms and provisions of the Agreement, including but not limited to the releases, waivers, and covenants not to sue described therein, whether or not such Person shall have objected to the Settlement and whether or not such Person makes a claim upon, or participates in, the Submitted Claim Fund or the other benefits to the Class to be provided under the Agreement.

Any putative Class Member who submits a valid and timely request

to Opt Out shall not be bound by the terms of the Agreement and shall not be a member of the Class.

Other Provisions

13. All discovery and any other proceedings in the Lawsuit against or concerning the Released Parties in the Lawsuit, other than proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of the Court. Pending final determination of whether the Settlement and the Agreement should be finally approved and the Class permanently certified, all putative Class Members are hereby barred and enjoined from commencing any action asserting any Released Claims.

14. No discovery with regard to the Settlement or the Agreement shall be permitted other than as may be directed by the Court upon a proper showing by the Person seeking such discovery by motion properly noticed and served in accordance with this Court's Local Rules.

15. Upon entry of an Order setting forth the final determination of the Court with respect to the Parties' application for final approval of the Settlement, the Released Parties are relieved of any and all obligations to preserve documents and evidence with respect to Released Claims in this Lawsuit.

16. Defendant and Defendant's Counsel are authorized to communicate with putative Class Members regarding the provisions of the Agreement (including, but not limited to, Defendant's right to withhold all Settlement benefits from putative Class Members who Opt Out of the Class and the Settlement) so long as such communications are not inconsistent with any agreed upon communications

concerning the Agreement. Defendant and Defendant's Counsel shall refer to Class Counsel any inquiries from Class Members about claims to be filed under the Agreement.

17. Any putative Class Member may enter an individual appearance in this Action at his or her own expense. Any putative Class Member who does not enter an individual appearance will be represented by Class Counsel.

18. Neither the Settlement, nor the Agreement, nor any provision therein, nor any negotiations, statements, or proceedings in connection therewith shall be construed as, or be deemed to be evidence of, an admission or concession on the part of the Representative Plaintiff, Class Counsel, any putative Class Members, Defendant, or any other Person of any liability or wrongdoing by it, or that the claims and defenses that have been, or could have been, asserted in the Lawsuit were or were not meritorious, and neither the Settlement, the Agreement, nor any such communications shall be offered or received in evidence in any action or proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that Representative Plaintiff, any Class Member, Defendant, or any other Person has or has not suffered any damage.

19. In the event that the Agreement is terminated by Class Counsel or Defendant or is not consummated for any reason, the Settlement and all proceedings had in connection therewith shall be null and void, except to the extent expressly provided to the contrary in the Agreement, and without prejudice to the rights of the Parties to the Agreement before it was executed.

DONE AND ORDERED after a hearing in open court at the United States District Courthouse in Camden, New Jersey, on September 20, 2013, and signed this 16th day of July, 2013.



HONORABLE KAREN M. WILLIAMS, U.S.M.J.