UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

LOU ELLEN CHAPMAN, Individually and on behalf of others similarly situated,	)	
Plaintiff,	)	
v.	)	Case No. 2:15-CV-120 JD
DOWMAN, HEINTZ, BOSCIA & VICIAN, P.C.,	)	
Defendant.	)	

ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Now before the Court is the Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement and an Award of Attorneys' Fees and Expenses. [DE 20]. The plaintiff, Lou Ellen Chapman, filed this action asserting a claim under the Fair Debt Collection Practices Act, contending that the defendant, Bowman, Heintz, Boscia & Vician, P.C., failed to properly provide the disclosures required by 15 U.S.C. § 1692g(a)(4) in a debt collection letter it sent to her. She brought this action on her own behalf and on behalf of a class of individuals who received similar letters. The parties reached a class settlement early in this action, and the Court granted a motion for preliminary certification of the class and for preliminary approval of the class settlement. Chapman has now moved for final approval of the settlement and for an award of attorneys' fees and expenses, and the Court has held a final fairness hearing. For the following reasons, the Court grants the motion.

I. PROCEDURAL HISTORY

Chapman alleges that the defendant violated the FDCPA by failing to properly advise her of her rights as required by statute. On January 16, 2015, she received an initial debt collection letter that stated, in part:

> If you notify this firm within thirty (30) days after your receipt of this letter, that the debt or any portion thereof, is disputed, we will obtain verification of the debt or a copy of the judgment, if any, and mail such verification or judgment to you. Upon your written request within the same thirty (30) day period mentioned above, we will provide you with the name and address of the original creditor, if different from the current creditor.

[DE 1]. However, the statute requires a debt collector to provide a notice containing:

> a statement that if the consumer notifies the debt collector *in writing* within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector[.]

15 U.S.C. § 1692g(a)(4) (emphasis added). Chapman alleges that the defendant violated this requirement by failing to specify that a notice disputing her debt needed to be "in writing." She thus filed this action on behalf of herself and on behalf of other people who received similar letters from the defendant. The Court has jurisdiction over this claim pursuant to 28 U.S.C. § 1331, as the action arises under federal law, in particular 15 U.S.C. § 1692k(d).[1]

Shortly after discovery began, the parties reached a Class Settlement Agreement containing the following terms. First, the defendant would establish a settlement fund of $3,030,

[1] The Court acknowledges that the Supreme Court's recent opinion in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) may call into question the plaintiff's standing, which is an aspect of the Court's jurisdiction under Article III of the Constitution. In supplemental briefing, both parties have agreed that *Spokeo* does not deprive the plaintiff of standing and should not affect the approval of the settlement. Because *Spokeo* largely reiterated long-standing principles of Article III standing, and did not clearly disrupt appellate precedent holding that plaintiffs in Ms. Chapman's position have standing to bring this type of claim under the FDCPA, *see Keele v. Wexler*, 149 F.3d 589, 592–94 (7th Cir. 1998), the Court agrees that Ms. Chapman has standing to assert this claim.

to be distributed evenly among each of the class members. The parties initially believed there to be 202 class members, so that amount was equivalent to $15 per class member. Upon further review, the parties have confirmed that there are actually 176 class members, meaning that each class member will receive a check for $17.21. The settlement fund of $3,030 exceeded one percent of the defendant's net worth, which is the maximum amount of statutory damages that is recoverable under the FDCPA. 15 U.S.C. § 1692k(a)(2)(B). Pursuant to the settlement, checks would be mailed to each class member upon approval of the settlement, without requiring class members to submit claims. In addition, Chapman will receive a payment of $1,000, which is the maximum amount of statutory damages recoverable by a named plaintiff under the FDCPA. *Id.* Any checks that go undistributed or uncashed within 60 days of being mailed to the class members will be donated to Indiana Legal Services as a *cy pres* recipient. The defendant agreed to pay the costs of administering the settlement. The defendant also agreed to modify the language in the debt-collection letters it sends in the future. Finally, the defendant agreed to pay reasonable attorneys' fees in an amount not to exceed $35,000. In return, the class would release its claim against the defendant arising out of the language in question in the debt-collection letters they received from the defendant.

On December 29, 2015, the Court granted the parties' motion for preliminary certification of a class and approval of the class settlement. Accordingly, the approved notices were sent to each member of the class. Only 3 of the 176 notices were returned as undeliverable. No class members objected to the settlement, and no class members requested to opt out of the class. The parties also sent notice of the class settlement to the Attorney General of the United States and the Attorney General of Indiana, neither of which has responded. The Court also held

a fairness hearing on May 12, 2016, which no class members attended. The parties have now moved for final approval of the class settlement and an award of attorneys' fees and expenses.

II. FINAL APPROVAL OF CLASS CERTIFICATION AND SETTLEMENT

The Court first finds that this action satisfies the requirements under Rule 23 to proceed as a class action. Under Rule 23(a), an action may proceed as a class action only if:

> (1) the class is so numerous that joinder of all members is impracticable;
>
> (2) there are questions of law or fact common to the class;
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> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
>
> (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). The Court discussed each of those elements in its order preliminarily certifying the class. In short, the Court found that there were sufficient numbers of class members that joinder of all members would be impracticable; that each of the claims involved essentially identical questions of law or fact since they were each based on letters containing the same language; that Chapman's claim was typical of the class's since they each received the same letter and would have suffered the same injury; and that Chapman, as class representative, and Greenwald Davidson Radbil PLLC, as class counsel, would fairly and adequately protect the interests of the class. The only fact underlying that analysis that has changed is that, after removing duplicates from the list of class members, the parties learned that there are 176 class members instead of 202, as previously thought. However, that number is still more than enough to satisfy the numerosity requirement. *See Flood v. Dominguez*, 270 F.R.D. 413, 417 (N.D. Ind. 2010 ("Generally speaking, when the putative class consists of more than 40 members, numerosity is met . . . ."). Accordingly, for the reasons discussed at more length in the Court's

order granting preliminary certification of the class, the Court finds that the Rule 23(a) prerequisites have been met.

In addition to meeting the threshold requirements in Rule 23(a), a class must also satisfy the requirements of one of the three subsections of Rule 23(b). The third of those subsections permits a class action to proceed where "the court finds that 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). The Court likewise considered that issue in its order granting preliminary certification of the class. Questions of law or fact common to class members predominate over any questions affecting only individual members in this case because each of the class members have identical claims, having received the same letter from the defendant. In addition, a class action is the superior method of resolving this controversy. Since the class members' claims are identical, no individual members have an interest in controlling the prosecution of the action. Moreover, given the number of class members, prosecuting each claim individually would be extremely inefficient.

The only apparent drawback to proceeding as a class action in this matter is that the FDCPA contains a cap on statutory damages for class actions that results in an amount per class member that is lower than the cap that would be applicable to an action brought individually. 15 U.S.C. § 1692k(a). However, the class notice specified the respective damages caps and no class members objected or opted out, suggesting that no class members are interested in filing an individual action. And given the risk and expense of litigation, it is doubtful that many individual claims would be pursued, since even the damages cap for individual actions is only $1,000. Further, a higher damages cap does not guarantee that an individual will actually receive greater

damages, since a Court need not award the maximum statutory damages. Thus, even given the respective damages caps, the absence of a class action would more likely lead to few or none of the class members receiving any recovery at all, and to less of a recovery as a whole.

Accordingly, and also for the reasons discussed at more length in the Court's order granting preliminary certification of the class, the Court finds that Rule 23(b)(3) has also been met. The Court therefore certifies the following class:

> (a) All persons with an Indiana address, (b) to whom Bowman, Heintz, Boscia & Vician, P.C. mailed an initial debt collection communication that stated: "If you notify this firm within thirty (30) days after your receipt of this letter, that the debt or any portion thereof, is disputed, we will obtain verification of the debt or a copy of the judgment, if any, and mail a copy of such verification or judgment to you," (c) between March 30, 2014 and March 30, 2015, (d) in connection with the collection of a consumer debt.

Likewise, the Court appoints Plaintiff Lou Ellen Chapman as the Class Representative and Michael L. Greenwald of Greenwald Davidson Radbil PLLC as Class Counsel.

The Court further finds that class members have received adequate notice of the class action and of the settlement. Rule 23(c)(2)(B) requires a court to "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." Fed. R. Civ. P. 23(c)(2)(B). Rule 23(e) similarly states that the court "must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). Here, the claims administrator sent the approved notices by First Class mail to each member of the class. The administrator also processed the addresses through services to update the mailing addresses prior to sending the notices. In total, only 3 of the 176 notices were returned as undeliverable, which is a success rate of over 98 percent. [DE 21-1]. The Court thus finds that appropriate notice has been provided. Consistent with the Court's prior order, the Court also finds that the notices contained all of the information required to be provided to class members.

The Court therefore turns to the settlement agreement. Pursuant to Rule 23(e)(2), a court may only approve a settlement "after a hearing and on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The Seventh Circuit has identified a number of factors used to assess whether a settlement proposal is fundamentally fair, adequate, and reasonable: (1) the strength of plaintiff's case compared to the terms of the proposed settlement; (2) the likely complexity, length and expense of continued litigation; (3) the amount of opposition to settlement among affected parties; (4) the opinion of competent counsel; and (5) the stage of the proceedings and the amount of discovery completed. *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006).

Here, the merits of the plaintiff's case appear strong. *Bishop v. Toss Earle & Bonan, P.A.*, No. 15-12585, 2016 WL 1169064, at *5 (11th Cir. Mar. 25, 2016) (holding that the omission of the "in writing" requirement from a similar debt collection letter violated the FDCPA). However, the settlement reflects that, as it gives the class more than they could recover even by litigating this action to its conclusion. As noted above, the FDCPA permits a class to recover statutory damages "not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector." 15 U.S.C. § 1692k(a)(2)(B). Here, the defendant represents that its net worth is $260,000. Defense counsel, who has had a longstanding relationship with the defendant as a client, represents that that figure is consistent with the figures that have been provided in other cases over time, and she expressed confidence in the accuracy of that figure. Plaintiff's counsel likewise expressed no doubt as to the validity of the defendant's net worth. Accordingly, the most that the class could receive in statutory damages would be $2,600. The settlement exceeds that amount, as it provides a total of $3,030 to the class. The FDCPA likewise permits a named plaintiff to receive up to $1,000 in statutory damages, and the settlement provides Chapman with

exactly that.[2] Moreover, there is no suggestion that any class member has sustained actual damages, so it does not appear that the class is compromising any potential recovery by entering this settlement. Thus, not only does the class get everything it could hope to, it receives that recovery now, as opposed to months or years down the line, and it foregoes the risk and expense that is inherent in litigation.[3] The settlement also imposes no administrative burdens on the class members to receive the settlement proceeds, as checks will be mailed to every class member without requiring a claims process. Additionally, no class members objected or opted out, indicating their satisfaction with the settlement.

Finally, the Court believes that the distribution of any uncashed checks to Indiana Legal Services as a *cy pres* recipient is appropriate. Given the small amounts in question and the likelihood that many class members will deposit the checks, the amount that might be left over to redistribute among the class will likely be small, and the administrative costs would make doing so impractical. And since the claim here relates to a failure to properly advise individuals of their legal rights, Indiana Legal Services, which offers legal aid to individuals who cannot afford it and who may be in similar positions as the class members, is an appropriate recipient. Therefore, the Court finds that the proposed settlement is fair, reasonable, adequate, and in the best interests of the class members.

Last, class counsel request approval of an award of $26,500 in attorneys' fees and expenses. That amount consists of $25,222.81 in attorneys' fees and $1,277.19 in expenses.

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[2] Chapman's involvement in this action has included assisting in the investigation of her claim, retaining and communicating with counsel throughout this action and during the settlement negotiations, and reviewing and signing the settlement agreement, which justifies a recovery that is greater than the other class members.

[3] The defendant has also agreed to modify the debt collection letters it sends in the future, though that offers little if any benefit to the class itself.

Counsel represent that through the filing of the motion for final approval of the settlement, they spent 55.1 hours on this case, and they estimate that they will spend an additional 22.5 hours to see the settlement through to its completion. At counsel's standard hourly rate of $350 per hour, that would amount to a lodestar of $27,160, which exceeds the amount they actually seek. In addition, the settlement agreement allows counsel to seek up to $35,000 in attorneys' fees and expenses, and the class members were advised of the same in the class notices. The defendant believes that this request is reasonable, and the Court agrees.

Counsel's work in this case has included speaking with Chapman at the outset, investigating her claim, and preparing the complaint; filing a placeholder motion to certify the class to avoid having the class mooted by an offer of judgment; researching the defendant's affirmative defenses upon the filing of the answer; serving formal written discovery; negotiating a settlement with the defendant and reducing the agreement to writing; preparing the notice to the class and coordinating with the claims administrator; preparing the motion for preliminary certification of the class and approval of the settlement; speaking with two class members who called with questions about the action; monitoring the status of any objections or opt-outs by class members; and preparing the motion for final approval of the settlement. Since the filing of the motion for final approval, counsel has traveled from Florida to Indiana and attended the final fairness hearing, and in the future will oversee the execution and completion of the settlement agreement. Counsel also represented that they will make reasonable efforts to contact class members whose checks have not been cashed to encourage them to cash the checks prior to the void date. Finally, at the Court's direction, counsel submitted a brief on the impact, if any, of the Supreme Court's recent opinion in *Spokeo*, which required additional time not anticipated at the time the motion for final approval was filed. All of these steps were necessary to the successful

prosecution of this action, and the Court finds that the amount of time spent to complete them is reasonable. The Court further believes that the hourly rate is reasonable given counsel's expertise and experience.

The fact that the attorneys' fees substantially exceed the recovery to the class does warrant scrutiny. *See Schlacher v. Law Offices of Phillip J. Rotche & Assocs., P.C.*, 574 F.3d 852, 857 (7th Cir. 2009) (noting, in an FDCPA case, that "fee awards should not be linked mechanically to a plaintiff's award," and that "although there is no rule requiring proportionality between damages and attorney's fees, a district court may consider proportionality as one factor in determining a reasonable fee"). Given the presence of a fee-shifting provision under the FDCPA, though, 15 U.S.C. § 1692k(a)(3), that fact is not dispositive. *Anderson v. AB Painting & Sandblasting Inc.*, 578 F.3d 542, 545 (7th Cir. 2009) ("Fee-shifting provisions signal Congress' intent that violations of particular laws be punished, and not just large violations that would already be checked through the incentives of the American Rule. . . . Because Congress wants even small violations of certain laws to be checked through private litigation and because litigation is expensive, it is no surprise that the cost to pursue a contested claim will often exceed the amount in controversy."); *Estate of Enoch ex rel. Enoch v. Tienor*, 570 F.3d 821, 823 (7th Cir. 2009) (noting that the Seventh Circuit "has repeatedly rejected the notion that the fees must be calculated proportionally to damages" in cases with fee-shifting provisions). And since, as discussed above, the class is receiving a very favorable settlement relative to its maximum potential recovery under the statute, the Court finds that the requested attorneys' fees and expenses are reasonable.

III. CONCLUSION

For the foregoing reasons, the Court GRANTS the motion for final approval of class action settlement and an award of attorneys' fees and expenses. [DE 20]. Pursuant to Rule 23(e) of the Rules of Civil Procedure, the Court ORDERS as follows:

1. The CERTIFIED CLASS consists of:

> (a) All persons with an Indiana address, (b) to whom Bowman, Heintz, Boscia & Vician, P.C. mailed an initial debt collection communication that stated: "If you notify this firm within thirty (30) days after your receipt of this letter, that the debt or any portion thereof, is disputed, we will obtain verification of the debt or a copy of the judgment, if any, and mail a copy of such verification or judgment to you," (c) between March 30, 2014 and March 30, 2015, (d) in connection with the collection of a consumer debt.

2. Michael L. Greenwald and Greenwald Davidson Radbil PLLC are APPOINTED as class counsel, and Lou Ellen Chapman is APPOINTED as the class representative.

3. The parties' Class Settlement Agreement is APPROVED as fair, reasonable, adequate, and in the best interests of the settlement class.

4. The Court APPROVES the application for an award of attorneys' fees and expenses in the amount of $26,500, which the Court finds to be reasonable.

5. This order is binding on all class members, as no class members validly and timely excluded themselves from the settlement.

6. The Court ORDERS the parties to comply with the terms of the settlement, which include, without limitation, mailing settlement checks to each class member within fifteen (15) days of the Effective Date, as that term is defined in the Class Settlement Agreement.

7. This court retains continuing and exclusive jurisdiction over the parties and all matters relating this matter, including the administration, interpretation, construction, effectuation, enforcement, and consummation of the settlement and this order.

8. Within thirty (30) days after the Void Date, and no later than ninety-five (95) days after the Effective Date, as those terms are defined in the Class Settlement Agreement, the parties are ORDERED to file a Notice of Compliance that the parties have complied with the terms of the Agreement, all Class members have been issued checks, and any undistributed funds or uncashed checks have been donated to Indiana Legal Services as a *cy pres* recipient.

9. Ten (10) days after the filing of the Notice of Compliance, the Court will enter an order dismissing this action with prejudice, absent a timely motion by either party.

SO ORDERED.

ENTERED: June 13, 2016

/s/ JON E. DEGUILIO
Judge
United States District Court