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

BRYAN JALLO, on behalf of himself and others similarly situated,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	Case No. 4:14-cv-00449
	§	Judge Mazzant
	§	Jury Trial Demanded
RESURGENT CAPITAL SERVICES, L.P. and LVNV FUNDING, LLC,	§	
	§	
Defendants.	§	

ORDER OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVING INCENTIVE AWARD FOR PLAINTIFF, AWARD OF ATTORNEYS' FEES FOR CLASS COUNSEL, AND REIMBURSEMENT OF LITIGATION EXPENSES

The Court has been advised that the parties to this action, Bryan Jallo ("Plaintiff") and Resurgent Capital Services, LP ("Defendant"), through their respective counsel, have agreed, subject to this Court's approval following notice to the class members and a hearing, to settle the above-captioned action upon the terms and conditions set forth in the parties' class action settlement agreement ("Agreement"), which Plaintiff filed with this Court.

On September 23, 2016, Plaintiff filed his unopposed motion to preliminarily approve the parties' proposed class settlement.

On October 3, 2016, Defendant served the Class Action Fairness Act ("CAFA") notice required by 28 U.S.C. § 1715 on the United States Attorney General and the Attorney General of Texas.

On November 8, 2016, this Court preliminarily approved the parties' proposed settlement.

On December 7, 2016, First Class, Inc. distributed notice of the parties' proposed class settlement, as ordered.

On February 7, 2017, Plaintiff filed his unopposed motions to finally approve the parties' proposed class settlement, and to approve an incentive award for himself, and an award of attorneys' fees and reimbursement of litigation expenses for class counsel.

NOW, THEREFORE, based upon the Agreement and all of the files, records, and proceedings herein, and it appearing to this Court that the proposed settlement appears fair, reasonable, and adequate, and that a fairness hearing was held on March 7, 2017, 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:

Summary of Procedural History

Plaintiff, individually and on behalf of the Class Members, filed the above-captioned action (the "Litigation") on July 8, 2014, against Defendant and co-defendant LVNV Funding, LLC ("LVNV") in the United States District Court for the Eastern District of Texas, Case No. 4:14-cv-00449, asserting alleged violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq*., and the Texas Debt Collection Act ("TDCA"), Tex. Fin. Code § 392.001 *et seq*. On June 23, 2016, the parties mediated this matter, after which they reached a complete agreement to resolve this matter.

Jurisdiction

This Court has jurisdiction over the subject matter of this action and over the parties. This Court finds that Plaintiff has standing to bring his claims outlined above under the FDCPA

because he properly alleges he (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendants, and (3) that is likely to be redressed by a favorable judicial decision. *See Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).

The Class

The Court confirms its certification the following Class:

> (a) All persons for whom LVNV's or Resurgent's records show a Texas address, (b) from whom Resurgent, on behalf of LVNV, attempted to collect an alleged consumer debt that HSBC charged off and subsequently sold to LVNV as part of its portfolio labeled 13289, (c) during the period of time beginning on July 8, 2013 and ending on July 8, 2014.

Defendant represents that there are approximately 1,387 Class Members.

The Court confirms its appointment of Plaintiff as a class representative and Greenwald Davidson Radbil PLLC as class counsel. *See, e.g.*, *Cobb v. Edward F. Bukaty, III, PLC*, No. 15-335, 2017 WL 424904 (M.D. La. Jan. 27, 2017) (appointing Greenwald Davidson Radbil PLLC as class counsel in an FDCPA action); *Harper v. Law Office of Harris and Zide LLP*, No. 15-1114, 2016 WL 2344194 (N.D. Cal. May 4, 2016) (same); *Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673 (N.D. Cal. 2016) (same); *Gonzalez v. Dynamic Recovery Solutions, LLC*, 2015 WL 738329 (S.D. Fla. Feb. 23, 2015) (same).

Discussion

The parties have agreed to settle this matter pursuant to which Defendant will pay, among other amounts, an amount that Defendant states exceeds one percent of its net worth on an assets-minus-liabilities basis, which is notable given the cap on statutory damages under the FDCPA. *See* 15 U.S.C. § 1682k(A)(2)(B) ("in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court

may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector"). "Thus, the parties' settlement represents more monetary relief for each Class Member than the FDCPA itself would allow, and therefore represents a recovery in excess of what Plaintiffs would have received had they proceeded with trial." *Schuchardt,* 314 F.R.D. at 683. "Because damages are not mandatory, continued litigation presents a risk to Plaintiffs of expending time and money on this case with the possibility of no recovery at all for the Class. In light of the risks and costs of continued litigation, the immediate reward to class members is preferable." *Id.*

This Court finds that the settlement of this matter, on the terms and conditions set forth in the Agreement, is in all respects fundamentally fair, reasonable, adequate, and in the best interest of the class members, after a review of the following factors: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiffs' success on the merits; (5) the range of possible recovery; and (6) the opinions of the class counsel, class representatives, and absent Class Members. *See Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 639 n.11 (5th Cir. 2012) (quoting *Reed v. Gen. Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983)).

The material terms of the settlement include, but are not limited to:

1. Pursuant to 15 U.S.C. § 1692k(a)(2)(B)(ii), Defendant will create a class settlement fund in the amount of $31,962.40, which will be distributed on a pro-rata basis to each of the 1,386 class members who did not exclude themselves from the settlement.

2. Pursuant to 15 U.S.C. § 1692k(a)(1), Defendant will refund all collected interest payments to those class members from whom it actually collected post-charge off interest, in the aggregate amount of $4,164.

3. Defendant will pay Plaintiff $1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(B)(i), plus an additional $4,000 for his service to the class, for a total of $5,000.

4. Defendant will pay the costs of notice and administration of the settlement separate and apart from any monies paid to Plaintiff, class members, or class counsel.

First Class, Inc., a third-party class administrator ("Class Administrator") appointed by this Court, will continue to administer the settlement, and will be responsible for mailing the settlement checks to the class members.

This Court additionally finds that the parties' notice of class action settlement, and the distribution thereof, satisfied the requirements of due process under the Constitution and Rule 23(e), that it was the best practicable under the circumstances, and that it constitutes due and sufficient notice to all persons entitled to notice of the class action settlement. This Court similarly finds that the parties' notice of class action settlement was adequate and gave all class members sufficient information to enable them to make informed decisions as to the parties' proposed settlement, and the right to object to, or opt out of, it.

This Court finds that the class members were given a fair and reasonable opportunity to object to the settlement. No class members objected to the settlement, and the one class member who made a valid and timely request for exclusion—Maria Monjaraz—is hereby excluded from the class and settlement and is not bound by this order.

This order is binding on all class members, except those individuals who validly and timely excluded themselves from the settlement.

This Court approves the individual and class releases set forth in the class action settlement agreement. The released claims are consequently compromised, settled, released,

discharged, and dismissed with prejudice by virtue of these proceedings and this order.

This Court awards a total of $150,000 for class counsel's attorneys' fees, and reimbursement of litigation expenses borne by class counsel in the amount of $6,290.32.

This action is dismissed with prejudice as to all other issues and as to all parties and claims.

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.

IT IS SO ORDERED.

SIGNED this 7th day of March, 2017.

AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE