UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

CASSANDRA BAKER, CORRINE MORRIS, and all others similarly situated, Plaintiffs, vs. GLENN M. ROSS, P.C. and GLENN M. ROSS Defendants.	CIVIL ACTION No.: 17-4274

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR UNOPPOSED MOTION FOR PROVISIONAL CLASS CERTIFICATION AND PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs Cassandra Baker and Corrine Morris, on behalf of themselves and all others similarly situated, file this Unopposed Motion for Provisional Class Certification and Preliminary Approval of Class Action Settlement Agreement. The Settlement Agreement ("Agreement," Exhibit A to the Motion), if approved by the Court, will resolve all claims in this matter. The parties' proposed notice to class members ("Notice," Exhibit B to the Motion) will appropriately inform the class members of the Agreement and give them an opportunity to voice any objections. The proposed class meets all the requirements of Rule 23 and the Agreement and Notice meet the standards for approval of a class action settlement. The Court should therefore provisionally certify the class and grant preliminary approval of the proposed Settlement.

I. BACKGROUND

Plaintiffs brought this putative class action against attorney Glenn M. Ross and his law firm, Glenn M. Ross, P.C. (collectively referred to as "Defendant"). The suit alleges that Defendant violated the Fair Debt Collections Practices Act, 15 U.S.C. §1692, *et seq.*, in his

collections practice, where he filed over 900 eviction actions per year in Philadelphia's Municipal Court. *See, e.g.*, Am. Compl. at ¶¶ 102-04 (ECF No. 11). Plaintiffs alleged that Defendant would routinely file eviction actions against consumers, primarily low-income tenants, seeking back rent for times when his property-owner clients had not complied with Philadelphia's Certificate of Rental Suitability Ordinance, Philadelphia Code § 9-3903, which precludes landlords from collecting rent without first providing tenants with a certificate of rental suitability. *Id.* These complaints therefore allegedly contained false, deceptive, and misleading representations as to how much debt tenants owed to their landlords, in violation of the FDCPA, 15 U.S.C. §§ 1692e, e(2)(A), e(5), 10, f(1). *Id.* at ¶¶ 112-121.

For example, Plaintiff Cassandra Baker alleged the following: She lived in a home owned by one of Defendant's clients that had numerous housing code violations and habitability problems. *Id.* at ¶¶ 25-31. The property owner had failed to provide Ms. Baker with a Certificate of Rental Suitability during her tenancy, and was therefore entitled to no rent under Philadelphia law. *Id*. at ¶¶ 24, 39-46. When Defendant was retained to prosecute an eviction action against Ms. Baker, he sent her a notice to vacate the property, demanding that Ms. Baker pay her landlord $2,300, including $1,800 in rent and late fees and $500 in legal fees. *Id*. at ¶¶ 37-38. Defendant then filed a complaint again alleging Ms. Baker owed $2,300, even though no money was owed as a matter of law. *Id*. at ¶¶ 44-54.

Similarly, Plaintiff Corrine Morris alleged the following: She lived in a property that lacked running water for most of her tenancy, and she was also not provided with a Certificate of Rental Suitability for the majority of her tenancy. *Id*. at ¶¶ 66-75. Defendant sent Ms. Morris a notice to vacate demanding she pay $2,014 in back rent that was not legally owed. *Id*. at ¶¶ 82-

83. Defendant then filed an eviction suit against Ms. Morris which similarly demanded back rent that she did not owe as a matter of law. *Id*. at ¶¶ 85-95.

Defendant denied factual allegations and all liability in the action, and filed an answer with various affirmative defenses. *See* ECF Nos. 8, 12. Moreover, early in the litigation, Defendant informed the Court and Plaintiffs that Defendant had a small, eroding insurance policy, and limited independent means to satisfy a judgment. *See* Donnelly Decl. (Exhibit C to Motion) at ¶¶ 14, 16. Defendant further informed both the Court and Plaintiffs that the state of its files was such that it would cost tens of thousands of dollars to produce discovery in the matter, further eroding the policy. *Id*. at ¶ 16. Defendants therefore requested an early settlement conference. In response, the Court referred this matter to a settlement conference before the Honorable Elizabeth T. Hey. As this happened, Plaintiffs engaged in intensive work to use public records to independently identify class members without access to Defendants' files. *Id*. at ¶ 17.

With the help of Judge Hey, the parties engaged in arm's length settlement negotiations via email, phone, and in person. After several months of negotiations, the parties finalized the Agreement. *Id.* at ¶¶ 17-22.

The Agreement defines the class as

> all Philadelphia Residential Tenants who at any time between September 26, 2016 and March 14, 2018 (inclusive) were sued in Landlord-Tenant Court by Defendants, for leases identified as commencing on or after October 12, 2011, where that Complaint demanded moneys for tenancy periods prior to the tenant's receipt of a Certificate of Rental Suitability issued by the City of Philadelphia.

Agreement ¶ I(U). The Settlement Class was identified by Plaintiffs' counsel using two publicly available datasets, namely the court records of Philadelphia eviction filings between September

2016 and March 2018 and data from the Department of Licenses and Inspections regarding the issuance of Certificates of Rental Suitability for properties throughout the city of Philadelphia.[1]

In exchange for a full and complete release of claims, Defendant agreed to pay the sum of $78,336.40, or the balance of his insurance policy. Agreement at ¶ II(A). The Agreement contemplates that Class Counsel will apply for an award of $25,000 to be paid from that Fund, significantly lower than the counsel's lodestar to date. *Id.* at ¶ III(B); Donnelly Decl. at ¶ 21. Named Plaintiffs will each apply to receive $1,000 service awards. Agreement at ¶ III(A). If this Court grants the requested amounts, then each Settlement Class Member's payment will be determined pursuant to a Plan of Allocation that awards more to class members whose files show indicia of payment than to members without such indicia.[2] (This is because indicia of payment show that the class member most likely suffered out of pocket losses due to Defendant's seeking rent despite the absence of an applicable Certificate of Rental Suitability.) Counsel estimates class members with payment indicia will receive $196.72, while class members without an indicia of payment will receive $65.57. *Id.* at ¶ 2(C)(1); Donnelly Decl. at ¶ 28. If economically feasible, a second per capita distribution will be made to class members who have deposited checks. Proposed Order at ¶ 8. Unclaimed funds still remaining will then be awarded to

[1] The class in the Agreement differs in one material respect from the complaint: it excludes those persons who were threatened with a lawsuit, but never sued. That subset of potential plaintiffs cannot be ascertained from public records, and thus will not be part of the class.

[2] Plaintiffs' counsel determined which class members show an indicia of payment by examining, in detail, the eviction filings against them, including analyzing any agreements between the class member and landlord, whether the case against a class member was withdrawn, and other relevant factors. *See* Donnelly Decl. at ¶¶ 24-28. While all Plaintiffs are likely to have suffered actual damages in various ways, from lowered credit scores to out-of-pocket payments, there is no way to determine how much each class member actually paid without a claims process for each such person, which would further deplete the fund.

Community Legal Services of Philadelphia or another such recipient advocating for low-income tenants in Philadelphia. Agreement at ¶ 2(C)(4)(ii).

Plaintiffs did not admit or concede any lack of merit to their claims and Defendants did not concede or admit any liability or wrongdoing. *Id.* at Recitals. The parties executed the attached Agreement on July 9, 2018. This Motion followed.

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 23(e), the settlement of a class action requires approval of the Court. This is a two-step process, with the Court first reviewing a motion for preliminary approval and the proposed notice to class members before considering a motion for final approval. *See Harlan v. Transworld Sys.*, 302 F.R.D. 319, 324 (E.D. Pa. 2014). When the Court has not yet certified a class, it must determine at the preliminary approval stage whether the proposed settlement class satisfies the numerosity, commonality, typicality, and adequacy of representation requirements of Rule 23(a). It then must make a "preliminary fairness evaluation" of the proposed settlement. *In re Nat'l Football League Players' Concussion Injury Litig.*, 961 F. Supp. 2d 708, 713-14 (E.D. Pa. 2014). The Third Circuit has directed district courts to apply a "heightened standard" for preliminary approval in cases "where settlement negotiations precede class certification, and approval for settlement and certification are sought simultaneously." *In re Pet Food Products Liab. Litig.*, 629 F.3d 333, 350 (3d Cir. 2010). This is done by examining whether "(1) the settlement negotiations occurred at arm's length, (2) there was sufficient discovery, and (3) the proponents of settlement are experienced in similar litigation." *Kopchak v. United Res. Sys.*, No. 13-5884, 2016 U.S. Dist. LEXIS 102309, at *17 (E.D. Pa. Aug. 4, 2016) (citing *Harlan*, 302 F.R.D. at 324). If those factors are satisfied, the Court should grant preliminary approval when the agreement falls within the "range of reason" and has no obvious problems and deficiencies. *Id.*

III. ARGUMENT

The Court should grant Plaintiffs' Motion, as preliminary class certification is appropriate, there are no obvious problems with the Agreement or the process through which the Agreement was drafted and executed, the Agreement is fair, reasonable, and adequate, and the proposed notice to class members is sufficient.

A. Preliminary Class Certification is Appropriate

The Court should approve preliminary certification of the Settlement Class because the class meets the requirements of Rule 23(a) and Rule 23(b)(3).

1. The Settlement Class Satisfies the Requirements of Rule 23(a)

The Settlement Class meets the numerosity, commonality, typicality, and adequacy representation requirements of Rule 23(a). The class size of 294 individuals easily satisfies Rule 23(a)(1)'s requirement that the class be "so numerous that joinder of all members is impracticable." *See, e.g., Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001) ("[G]enerally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met").

The threshold for commonality is similarly met, as common legal questions will resolve the claims for the entire class. Each class member was named in eviction complaints where Defendant demanded back rent that was not legally owed because his landlord clients had failed to comply with Philadelphia's Certificate of Rental Suitability Ordinance. Accordingly, Plaintiffs contend that these complaints therefore contained false, deceptive, and misleading representations as to how much money tenants owed to their landlords, in violation of the FDCPA, 15 U.S.C. §§ 1692e, e(2)(A), e(5), 10, f(1). These common factual and legal contentions for each class member satisfy the commonality requirement of Rule 23(a)(2). *See, e.g., Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (finding the commonality

requirement satisfied when the resolution of a "common contention . . . [will] resolve an issue that is central to the validity of each one of the claims in one stroke.").

Relatedly, Plaintiffs' claims are typical of the claims of the class since they "arise[] from the same event or practice or course of conduct that gives rise to the claims of the class members" and are based on the same legal theory. *Barnes v. Am. Tobacco Co.*, 161 F.3d 127, 141 (3d Cir. 1998). Here, the claims all arise from Defendant's conduct while filing eviction complaints and are based on a legal theory grounded in the FDCPA and Philadelphia law. Thus, the typicality requirement of Rule 23(a)(3) is satisfied.

Finally, the adequate representation requirement of Rule 23(a)(4) is met. This is a two-part test, requiring that "the plaintiff's attorney[s] must be qualified, experienced, and generally able to conduct the proposed litigation [and that] the plaintiff[s] must not have interests antagonistic to those of the class." *Wetzel v. Liberty Mut. Ins. Co.*, 508 F.2d 239, 247 (3d Cir. 1975).

Proposed class counsel are qualified, experienced, and able. Chimicles & Tikellis LLP is a nationally recognized class action and complex litigation firm. Their litigation team here, Nicholas E. Chimicles and Alison G. Gushue, have served as lead counsel or lead trial counsel on numerous class action cases for many years. *See, e.g., Cont'l Ill. Corp. Sec. Litig.*, No. 82 C 4712 (N.D. Ill. 1987) (involving a twenty-week jury trial in which by Mr. Chimicles was lead trial counsel as he recovered nearly $40 million for the class); In re Real Estate Assocs. Ltd. P'ships Litig., No. 98-7035 DDP (Mr. Chimicles served as lead trial counsel in a class action fraud case resulting in a $185 million verdict); *Lockabey et al. v. American Honda Motor Co.*, Inc., No. 37-2010-00087755-CU-BT (San Diego Super. Ct.) (Ms. Gushue played a major role in securing a settlement valued by court at $170 million for a class of 460,000 purchasers and

lessees of Honda Civic Hybrids to resolve claims that the vehicle was advertised with fuel economy representations it could not achieve under real-world driving conditions and that a software update to the IMA system further decreased fuel economy and performance). *See, e.g.*, Chimicles Decl. (Exhibit D to Motion).

Charles Delbaum of the National Consumer Law Center ("NCLC") is a nationally recognized consumer class action expert and experienced in FDCPA class actions. He is the author of NCLC's *Consumer Class Actions* manual, a frequent presenter at national conferences on consumer law topics, and has served as counsel on dozens of consumer class action cases with court-approved settlements. *See, e.g.*, *Spence v. Cavalry Portfolio Services, LLC*, No. 1:14-cv-12655 (D. Mass. 2016) (granting final approval to settlement of $834,500 for FDCPA claims); *Bible v. United Student Aid Funds*, No. 1:13-cv-0575 (S.D. Ind. 2016) ($23,000,000 student loan debt collection abuse settlement); *Tullie v. T & R Market, Inc.*, No. 14-670, 2016 U.S. Dist. LEXIS 117491 (D.N.M. Aug. 30, 2016) (pawn shop loans settlement of $725,000). *See* Delbaum Decl. (Exhibit E to Motion).

The Public Interest Law Center is a nonprofit law firm "renowned for taking on difficult cases and achieving excellent results for [its] clients." *League of Women Voters of Pa. v. Pennsylvania*, No. 17-5137, 2018 U.S. Dist. LEXIS 63023, at *21 (E.D. Pa. Apr. 13, 2018). The firm has decades of experience serving as counsel in class actions, including in two cases currently pending in the Eastern District of Pennsylvania. *See Woods v. Marler*, No. 17-4443, 2018 U.S. Dist. LEXIS 47044, at *1 (E.D. Pa. Mar. 22, 2018) (representing certified class of inmates challenging the Philadelphia Federal Detention Center's child visitation policy); *T.R. v. Sch. Dist. of Phila.*, 223 F. Supp. 3d 321 (E.D. Pa. 2016) (representing putative class of School District of Philadelphia students and parents who were not provided translation services in their

IEP meetings). Their attorneys, Mary M. McKenzie, Daniel Urevick-Ackelsberg, and George A. Donnelly, are experienced litigators in a variety of areas, including class actions, consumer law, and landlord-tenant matters. *See* Donnelly Decl. at ¶¶ 2-7.

Together, Plaintiffs' counsel provide "assurance of vigorous prosecution" of the class claims as required by Rule 23(a)(4). *Grasty v. Amalgamated Clothing & Textile Workers Union*, 828 F.2d 123, 129 (3d Cir. 1987) (quotation marks and citation omitted).

Finally, Plaintiffs' interests are not antagonistic to other members of the class – instead, they are perfectly in line. Like the other class members, Ms. Baker and Ms. Morris were alleged victims of unfair debt collection practices stemming from Defendant's filing of eviction complaints. And, like the other class members, Plaintiffs have an interest in being fairly compensated for damages caused by these eviction complaints. Since Plaintiffs "possess the same interest and suffer[ed] the same injury as the class members," *Amchen Prods. v. Windsor*, 521 U.S. 591, 625-26 (1997), they are adequate representatives of the class.[3]

2. The Requirements of Rule 23(b)(3) Are Satisfied

The class also meets the requirements of Rule 23(b)(3). A class action seeking an award of damages is appropriate under Rule 23(b)(3) if "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." *Skeway v. China Nat. Gas, Inc.*, 304 F.R.D. 467, 475 (D. Del. 2014) (quoting Fed. R. Civ. P. 23(b)(3)). When assessing predominance and superiority, the

[3] This argument for the Plaintiffs' adequacy as representatives under Rule 23(a) also supports their proposed appointment as Class Representatives. *See Kopchak*, 2016 U.S. Dist. LEXIS 102309, at *22 (appointing named plaintiff class representative after finding plaintiff advanced claims typical of the class and had no antagonistic interests to those of the class).

court may consider that the class will be certified for settlement purposes only, and that a showing of manageability at trial is not required. *See Amchem*, 521 U.S. at 618.

The first prong of Rule 23(b)(3), predominance, is satisfied here as "questions of law or fact common to class members predominate over any questions affecting only individual members." *Skeway*, 304 F.R.D. at 475 (quoting Fed. R. Civ. P. 23(b)(3)). As discussed earlier, the questions of law and fact are identical for each member of the Settlement Class – namely, whether Defendant's conduct in demanding rent in eviction complaints that was not due under Philadelphia's Certificate of Rental Suitability Ordinance constituted a violation of the FDCPA.

The second prong, whether a class action is superior to other methods of adjudication, requires a court to examine a number of non-exhaustive factors: "(A) the class members' interests in individually controlling the prosecution . . . of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by . . . class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." *See* Fed. R. Civ. P. 23(b)(3).

Superiority is easily satisfied. The Agreement will provide class members with significant, immediate relief, something that is not guaranteed if each class member prosecuted separate actions. Further, the cost and complexity of litigation (in a case that is far from a standard FDCPA action) would preclude the vast majority of class members, many of whom are low-income Philadelphia residents, from filing suit in the first place, let alone individually controlling the action. No other litigation has been brought by a Settlement Class member against Defendant alleging FDCPA violations. Finally, Plaintiffs' counsel is experienced in managing class actions, thus there is a low risk of administrative difficulties in administering the Settlement Agreement.

In sum, because the requirements of Rule 23(a) and Rule 23(b)(3) are satisfied, certification of the proposed Settlement Class is appropriate.

B. There Are No Obvious Problems with the Agreement

The Agreement satisfies the requirements for preliminary approval under Rule 23(e). The parties engaged in arm's length negotiations mediated in large part by Judge Hey before executing the Agreement. These negotiations lasted for several months with the parties exchanging several draft agreements before signing the executed Agreement on July 9, 2018. There was sufficient discovery, as Plaintiffs intensively searched public records to identify class members and received information on Defendant's insurance policy and finances before concluding that an early settlement would be in the best interests of the class. *See*, *e.g.*, Donnelly Decl. at ¶¶ 14-17. Finally, the proponents of settlement are experienced in similar litigation, as evidenced by the above descriptions of Chimicles & Tikellis, NCLC, and the Public Interest Law Center's representation in prior class action suits.

C. The Agreement is Fair, Reasonable, and Adequate

The Agreement amply meets the standards for preliminary approval as it is fair, reasonable, and adequate. The test for meeting the fair, reasonable, and adequate standard is less exacting at the preliminary approval stage that at final approval, with the court tasked simply with determining whether the proposed settlement has "grounds to doubt its fairness or other obvious deficiencies…and whether it appears to fall within the range of possible approval." *In re Nat'l Football League Players' Concussion Injury Litig.*, 961 F. Supp. 2d at 714 (internal citations and quotations omitted). Here, the proposed settlement has no grounds to doubt its fairness or obvious deficiencies and falls within the range of possible approval. The Agreement was reached after intensive early discovery into both the factual and legal merits of the claims and Defendant's ability to pay any potential award. The early settlement reached here

maximizes the amount of funds available for sending adequate notice and the payout of awards. The Agreement therefore provides class members with a significant and immediate monetary award. In sum, the Agreement meets the preliminary approval stage standard for being fair, reasonable, and adequate.

D. The Proposed Notice to Class Members is Sufficient

The parties' proposed notice to class members ("Notice," Exhibit B to the Motion) will give the class members more than adequate opportunity to learn about the Agreement and to voice any objections. Rule 23(e)(1)(B) requires courts to notice class members bound by a proposed class action settlement.[4] The notice program must provide "the best notice practicable under the circumstances including individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974).

Notice must also contain a sufficient description of "(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on class members under Rule 23(c)(3)." *Beneli v. BCA Fin. Servs.*, 324 F.R.D. 89, 100 (D.N.J. 2018) (quoting Fed R. Civ. P. 23(c)(2)(B)).

Here, Plaintiffs' proposed form of Notice is sufficient in both process and substance. It will be sent via first class mail to the Settlement Class members, a process which "fully satisfy[ies] the notice requirements of both Fed. R. Civ. P. 23 and the due process clause."

[4] The Constitution's Due Process Clause also imposes certain minimum notice requirements, but the "mandatory notice [provision of Rule 23(c)(2)] … is designed to fulfill requirements of due process to which the class action procedure is of course subject." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-74 (1974).

Zimmer Paper Products, Inc. v. Berger & Montague, P.C., 758 F.2d 86, 90 (3d Cir. 1985) (affirming the use of first class mail as proper notice in class action administration). Moreover, the Notice clearly describes that this is an FDCPA class action against Defendant for his eviction filing practices, articulates the parameters of the class, conveys the terms of the Agreement, and communicates the rights of each class member to object to the Agreement, opt out of the class, and/or appear at a final fairness hearing represented by counsel. The Notice therefore "contain[s] sufficient information to enable class members to make informed decisions on whether they should take steps to protect their rights, including objecting to the settlement or, when relevant, opting out of the class." *In re Nat'l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 435 (3d Cir. 2016) (internal quotations omitted). Both the distribution process and contents of the Notice satisfy the requirements of Rule 23(c)(2)(B).

IV. CONCLUSION

For the reasons set forth above, the Court should provisionally certify the class, preliminarily approve the proposed Settlement Agreement, preliminarily appoint class counsel, appoint Plaintiffs as class representatives, approve the proposed Class Notice and process for providing notice, and schedule a Rule 23(e)(2) hearing.

Dated: August 31, 2018

Respectfully submitted,

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