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 FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF MOTION FOR ATTORNEYS' FEES AND INCENTIVE AWARDS

In 2017, Plaintiffs Cassandra Baker and Corrine Morris, on behalf of themselves and all others similarly situated, brought suit alleging that an attorney and his law firm were violating the Fair Debt Collection Practices Act ("FDCPA") by regularly suing low-income Philadelphia consumers for rent they did not owe. Plaintiffs alleged that the rent was not owed because a Philadelphia ordinance prohibits collecting rent without first providing tenants with a Certificate of Rental Suitability.

Since the initiation of the litigation, the practice of collecting rent without first providing tenants with a Certificate of Rental Suitability has been substantially curtailed, both generally and by this defendant. Court rules have been put in place in Philadelphia's Municipal Court to protect consumers in the same position as the Plaintiffs here. Plaintiffs have been assured that Defendant no longer engages in the practice that Plaintiffs contend violates the law. And the parties reached a fair, arm's length settlement, preliminarily approved by this Court, which provisionally certified a class.

The provisionally approved class meets all the requirements of Rule 23. No opt outs or objections were registered. The concurrent request for attorneys' fees and incentive awards, ECF No. 38, is reasonable, well within the range of awards in similar cases, and was unopposed by Defendant and the class. Accordingly, the Court should grant final approval to the settlement and certify the settlement class, enter the proposed Final Approval Order, and approve Plaintiffs' request for attorneys' fees in the amount of $25,000, and for incentive awards for the named plaintiffs for their service.

I. BACKGROUND

Plaintiffs brought this putative class action suit against attorney Glenn M. Ross and his law firm, Glenn M. Ross, P.C. (collectively referred to as "Defendant"). The suit alleges that Defendant regularly 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., ECF No. 11 at ¶¶ 102-04. 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, Phila. Code § 9-3903, which precludes landlords from collecting rent without first providing tenants with a Certificate of Rental Suitability. *Id.* Defendant's 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 ¶ 103.

Defendant denied all liability in the action, and filed an answer with various affirmative defenses. *See* ECF Nos. 8, 12. Moreover, to both the Court and Plaintiffs, Defendant represented that a) he had limited funds that were accessible to satisfy a judgment; b) the disorganized state

of his files was such that so much as responding to Plaintiffs' requests for production of documents would cost tens of thousands of dollars; and c) he possessed an insurance policy that would erode with each dollar spent on the cost of his defense. Accordingly, with the significant assistance of the Honorable Elizabeth T. Hey, the parties engaged in arm's length settlement negotiations at an in-person settlement conference, and via email and phone.

After several months of negotiations, the parties finalized a settlement agreement ("Agreement" or "Settlement"), which was preliminarily approved by this Court on September 12, 2018. *See* ECF Nos. 34-3, 37. In the Agreement, in exchange for a full and complete release of claims, Defendant agreed to pay the sum of $78,336.40, the balance of his insurance policy. ECF No. 34-3 at ¶ II(A).

As defined in both the Agreement and the order preliminarily approving the settlement ("Preliminary Approval Order"), the settlement class (the "Class") is defined as:

> [A]ll 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.

Id. at ¶ I(U); ECF No. 37 at ¶4 (Preliminary Approval Order entered Sept. 12, 2018).

Next, as contemplated by the Preliminary Approval Order, the Settlement Administrator mailed notice ("Class Notice") to all Class Members identified on the class list, and mailing was complete by October 1, 2018. *See* Manigault Decl., Ex. 1, ¶ 6. No opt-outs or objections were received. *Id* ¶¶ 10-11.

As contemplated by the Agreement, on October 1, 2018, Class Counsel filed a motion for attorneys' fees of $25,000, significantly lower than the counsel's lodestar to date, and incentive awards in the amount of $1,000 for each named plaintiff to be paid from that Fund. ECF No. 38. After subtracting $8,975 for administrative costs, the Agreement therefore would

distribute an estimated $42,361.40 in direct payments to the Class, without a claims process. No objections or responses to the motion were filed or received by counsel.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 23(e) requires a determination by the Court that the proposed settlement is "fair, reasonable and adequate." Fed. R. Civ. P. 23(e); *see also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 534 (3d Cir. 2004) ("*Warfarin II*"). There is a strong judicial policy in favor of resolution of litigation before trial, particularly in "class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *In re CertainTeed Corp. Roofing Shingle Prods. Liab. Litig.*, 269 F.R.D. 468, 484 (E.D. Pa. 2010) (quoting *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010)); *see also In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) ("The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.").

Settlements enjoy a presumption that they are fair and reasonable when they are the product of arm's-length negotiations conducted by experienced counsel who are fully familiar with all aspects of class action litigation. *See, e.g.*, *Bredbenner v. Liberty Travel, Inc.*, No. 09-905, 2011 WL 1344745, at *10 (D.N.J. Apr. 8, 2011). The Third Circuit has adopted a nine-factor test to determine whether a settlement is "fair, reasonable, and adequate." The elements of this test—known as the "*Girsh* factors"—are:

> (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation.

In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d at 785 (citing *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975)).

III. ARGUMENT

The Court should grant Plaintiffs' Motion for Final Approval of the Settlement, as the *Girsh* factors are satisfied, 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 Notice program satisfied due process. The Court should also grant Plaintiffs' Motion for Attorneys' Fees and Incentive Awards, ECF No. 38, as the proposed sum is well within the range of those approved in similar settlements, is well below counsel's lodestar, and was unopposed by Defendant and the Class.

A. The Court Should Grant Plaintiffs' Motion for Final Approval

1. The *Girsh* Factors Weigh in Favor of Approval of the Settlement

While the *Girsh* factors are only "a guide and the absence of one or more does not automatically render the settlement unfair," *In re Am. Family Enters.*, 256 B.R. 377, 418 (D.N.J. 2000), each factor here is a guidepost pointing directly towards the fairness of the Agreement.

(a) The complexity, expense, and duration of continued litigation

The first *Girsh* factor considers "the probable costs, in both time and money, of continued litigation." *In re Cendant Corp. Litig.*, 264 F.3d 201, 233-34 (3d Cir. 1992) (*Cendant II*) (internal quotation marks omitted). "Where the complexity, expense, and duration of litigation are significant, the Court will view this factor as favoring settlement." *Bredbenner*, 2011 WL 1344745, at *11. This factor undoubtedly weighs in favor of settlement.

Here, due to the factual and legal complexities involved in this case, continued litigation would have been rigorously contested by Defendant, and would necessarily have been expensive and time-consuming. But for the parties agreeing to settle this matter, the condition of

Defendant's records would have made discovery monumentally difficult. Furthermore, such discovery would have been cost-prohibitive in the face of Defendant's quickly eroding insurance policy and his potential inability to satisfy any judgment exceeding the policy amount. For these reasons, the first *Girsh* factor weighs in favor of final approval of the Agreement.

(b) The reaction of the class to the settlement

The second *Girsh* factor "attempts to gauge whether members of the class support the Settlement." *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 318 (3d Cir. 1998) ("*Prudential II*"). As noted above, as of the date of this filing, there have been no objections to the Settlement submitted by Class Members, and no Class Member has elected to opt-out of the Settlement. Under *Girsh*, such a lack of objections and opt-outs weighs strongly in favor of granting final approval to a class action settlement agreement. As the Third Circuit has instructed, a "paucity of protestors . . . militates in favor of the settlement." *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1314 (3d Cir. 1993); *see also Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 119 (3d Cir. 1990) (objections by 29 members of a class comprised of 281 "strongly favors settlement"); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 537 (D.N.J. 1997) (small number of negative responses to settlement favors approval) ("*Prudential I*"). In other words, given the ability to vote with their feet, the Class's tally was unanimous.

(c) The stage of the proceedings

The stage of the proceedings is another factor that courts consider in determining the fairness, reasonableness and adequacy of a settlement. *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d at 785. "This factor considers the degree of case development accomplished by counsel prior to settlement." *Bredbenner*, 2011 WL 1344745 at *12. Here, the Settlement was reached after Plaintiffs served discovery and conducted significant

research using publicly available court filings to determine the extent of the alleged violative practice, class membership and approximate damages. *See* Donnelly Decl, ECF No. 34-5, ¶¶ 15, 24-28. The Settlement was also reached with the assistance of Judge Hey, an experienced and able jurist, through a multi-hour, in-person settlement conference, and weeks of follow-up discussions amongst the parties. While the settlement was reached early in the litigation, such timing was necessary and in the best interests of the class due to the quickly eroding insurance policy, combined with unusually high discovery costs given the condition of Defendant's files. *Id*. ¶¶ 14-19. This factor weighs in favor of approval. *See, e.g*, *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 133 (D.N.J. 2002) (early settlement following informal discovery is favorable, as it avoids considerable costs and litigation expenses).

(d) The risks of establishing liability and damages

This factor should be considered to "examine what potential rewards (or downside) of litigation might have been had class counsel decided to litigate the claims rather than settle them." *Cendant II*, 264 F.3d at 237 (quoting *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d at 814). "The inquiry requires a balancing of the likelihood of success if the case were taken to trial against the benefits of immediate settlement." *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 89 (D.N.J. 2001).

In addition to liability, courts also consider risks associated with proving damages. In *In re Warfarin Sodium Antitrust Litigation*, 212 F.R.D. 231, 256 (D. Del. 2002) ("*Warfarin I*"), *aff'd* 391 F.3d 516, 537 (3d Cir. 2004), the district court found that the risk of establishing damages strongly favored settlement, observing that "[d]amages would likely be established at trial through 'a "battle of experts," with each side presenting its figures to the jury and with no guarantee whom the jury would believe.'" Similarly, in *Cendant II*, the Third Circuit reasoned

that there was no compelling reason to think that "a jury confronted with competing expert opinions" would accept the plaintiff's damages theory rather than that of the defendant, and thus the risk in establishing damages weighed in favor of approval of the settlement. 264 F.3d at 239.

Although Class Counsel believe that Defendant's liability in this case is clear, it is also true that there are no reported decisions about the interplay between Philadelphia law and the FDCPA. Nor is there FDCPA precedent anywhere in the context of a similar landlord-tenant ordinance. Moreover, Defendant has zealously defended against these issues, and would have continued to do so if the case proceeded. Difficulties in establishing damages would further complicate the litigation. Furthermore, prolonged litigation would have quickly depleted Defendant's eroding insurance policy, leaving no funds available for Class Members. The Settlement, on the other hand, presents the Class with real relief now. *See, e.g., Teachers' Ret. Sys. v. A.C.L.N., Ltd.*, No. 01-11814, 2004 U.S. Dist. LEXIS 8608, at *12 (S.D.N.Y. May 14, 2004) (overriding consideration driving the settlement negotiations was the inability of the Settling Defendants to contribute in any meaningful way to a recovery by the Class).

(e) The risks of certifying and maintaining a litigation class through trial

Because the prospects for obtaining class certification have a great impact on the range of recovery one can expect to reap from the class action, *see In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d at 817, the Court must measure the likelihood of obtaining and maintaining a certified class if the action were to proceed to trial. *Girsh*, 521 F.2d at 157. There is always a risk that the Court would find this action not suitable for class certification. While differences in damage calculations are not fatal to obtaining class certification, and Class Counsel maintains that certification is appropriate, Defendant would likely have argued that factual differences amongst class members, including but not limited to

the amount of damages sustained, would make class treatment unmanageable. In the context of settlement, however, manageability is not a concern. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). This factor thus weighs in favor of approval.

(f) Defendant's ability to withstand greater judgment

This factor is most clearly relevant in cases where, like here, a defendant's financial circumstances do not permit a greater settlement. *Reibstein v. Rite Aid Corp.*, 761 F. Supp. 2d 241, 254 (E.D. Pa. 2011). Through confirmatory discovery, Class Counsel verified that, as represented to this Court and to Counsel, Defendant's assets are limited and there would be difficulty collecting a judgment that exceeded the remaining coverage on his eroding insurance policy. *See* Donnelly Decl., ECF No. 34-5, ¶¶ 18-19. This Settlement represents the full remaining coverage of Defendant's policy, maximizing the benefits to class members before continued litigation could further erode that policy. This, too, weighs strongly in favor of approval. *See, e.g., In re Corel Corp. Sec. Litig.*, 293 F. Supp. 2d 484, 489 (E.D. Pa. 2003) (noting that inability to satisfy a greater judgment was a "dominant factor favoring settlement"); *Oslan v. Law Offices of Mitchell N. Kay*, 232 F. Supp. 2d 436, 443 (E.D. Pa. 2002) (finding this factor weighed in favor of class action settlement approval where defendant law firm had no insurance policy that would cover a judgment); *c.f. Bredbenner v. Liberty Travel, Inc.*, No. 09-905, 2011 U.S. Dist. LEXIS 38663, at *42 (D.N.J. Apr. 8, 2011) (stating that "courts in this district regularly find a settlement to be fair even though the defendant has the practical ability to pay greater amounts").

(g) Reasonableness of the settlement in light of the best possible recovery and all attendant risks of litigation

The final two *Girsh* factors assess the reasonableness of a settlement in light of the best possible recovery, and all the attendant risks of litigation. In considering these factors, a court

"evaluates whether the settlement represents a good value for a weak case or a poor value for a strong case. The factors test two sides of the same coin: reasonableness in light of the best possible recovery and reasonableness in light of the risks the parties would face if the case went to trial." *In re Processed Egg Prods. Antitrust Litig.*, 302 F.R.D. 339, 360 (E.D. Pa. 2014). Settlement is appropriate when it "yields immediate and tangible benefits, and it is reasonable in light of the best possible recovery and the attendant risks of litigation—little or no recovery at all." *Halley v. Honeywell Int'l, Inc.*, 861 F.3d 481, 491 (3d Cir. 2017). This is precisely the situation at issue here, given the risks to proceeding in litigation, both on the merits and for collection, as described above. That is, there was a risk that there would be no recovery whatsoever, as opposed to the surrender of an insurance policy that provides meaningful payments to the Class.

Moreover, to the extent that a Court found that Class Members were entitled to statutory damages only—another real risk of continuing the litigation, and which Defendant pressed at the Rule 16 conference with the Court—the FDCPA limits recovery to one percent of Defendant's net worth. *See* 15 U.S.C. § 1692k(a)(2)(B). In other words, even were Defendant worth one million dollars, which appears unlikely in light of the financial information he provided in response to Class Counsel's request, a Class Member would be entitled to just $10,000, or $34 per person. In that scenario, the payment to the Class here "*exceeds* the value of the best possible recovery discounted by the risks of litigation." *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 540 (D.N.J. 1997) (emphasis added).

All told, this Settlement offers real cash benefits, with Class Counsel who performed a variety of work to avoid wasting the single most certain piece of recovery for the Class. These factors, too, support the granting of final approval.

(h) The direct benefit to the class weighs in favor of approval

The Third Circuit added an additional factor to consider in *In re Baby Products Antitrust Litigation*, 708 F.3d 163 (3d. Cir. 2013), where it examined the degree to which a proposed settlement provided a "direct benefit" to the class. *Id.* at 174; *see also McDonough v. Toys R. Us, Inc.*, 80 F. Supp. 3d 626, 650-51 (E.D. Pa. 2015) (discussing "*Baby Products* factor"). Here, the Settlement prioritizes direct cash benefits to Class Members by eliminating the need for a claims process, as checks will be mailed directly to Class Members following approval. This process minimizes administration costs and maximizes class member participation, weighing in favor approval of the settlement. *See, e.g.*, *McDonough*, 80 F. Supp. 3d at 647 n.21 ("[T]he class is likely to receive more . . . the less class members have to do to receive money . . . [D]irect payment to class members is optimal where possible.") (quoting Newberg on Class Actions § 12:18); *Lan v. Ludrof*, No. 1:06cv114-SJM, 2008 U.S. Dist. LEXIS 22574, at *49 (W.D. Pa. Mar. 21, 2008) (direct distribution of benefits to class members without the need for a claims process is "plainly fair").

(i) The proposal treats Class Members equitably relative to each other

Last, a 2018 amendment to Rule 23 made explicit a longstanding implicit factor in the *Girsh* analysis: whether the settlement treats Class Members equitably relative to each other. *See* Fed. R. Civ. P. 23(e)(2)(D). Here, again, the Agreement easily passes the test.

The Agreement contemplates the surrender of the balance of Defendant's insurance policy, or $78,336.40. After subtracting $25,000 for fees and costs, $2,000 for service awards, and $8,975 for administrative costs, the Agreement proposes $42,361.40 would be distributed in direct payments to the Class, without a claims process. *See* ECF No. 32-1 at 9-11.

Rather than treating all class members as a single category, while still avoiding the administrative cost (and loss of claims) that comes from a claims process, Class Counsel

manually reviewed the eviction docket in every single relevant eviction case to look for an indication that a Class Member was more likely to have suffered out-of-pocket loss. *See* Donnelly Decl. ¶¶ 27-28. This included looking for a) withdrawn cases; b) cases with a settlement or judgment by agreement that required ongoing payment to stay in the property, with no eviction occurring for at least sixty days after the settlement agreement; c) cases with a settlement or judgment by agreement that indicated the tenant was foregoing a last month's rent or security deposit as part of the agreement; d) cases where the docket entry indicates a tenant paid money after the eviction filing, including at court; and e) cases where a money judgment was marked satisfied. *Id.* The proposal then contemplates that those Class Members with identified indicia of out-of-pocket damages will receive three times the damages of those who do not, or estimated payments of $196.72 and $65.57, respectively. This is an appropriate—and equitable—distinction to make. *See Becker v. Bank of N.Y. Mellon Tr. Co., N.A.*, No. 11-6460, 2018 U.S. Dist. LEXIS 214823, at *23-24 (E.D. Pa. Dec. 21, 2018) (finding compliance with new Rule 23(e)(2)(D) where settlement allocates proceeds to class members based on their proportional damages).

In sum, the Agreement is fair, reasonable, and adequate, and should be approved.

2. The Notice Program is Constitutionally Sound and Has Been Fully Implemented

To protect the rights of absent members of the Class, the Court must ensure that all Class Members who would be bound by a class settlement are provided the best practicable notice. *See* Fed. R. Civ. P. 23(e)(1)(B); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985). The best practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

The form and manner of Notice was negotiated and agreed upon by the Parties, approved by this Court, and meets these requirements. As detailed above and in the Settlement Administrator Declaration, the direct notice program involved sending the Class Notice via U.S. Mail to each Class Member. Ex. 1 ¶¶ 7-8. Class Counsel assembled the class list through publicly available court records, and the Settlement Administrator updated the list using forwarding addresses from the Postal Service, and, if that were unsuccessful, a locator service. *Id.* ¶ 8. Of the 294 Class Members, only 56 initial notices were returned as undeliverable with no forwarding addresses. *Id.* The Settlement Administrator used a locator service to find 25 new addresses for that group, and sent new notices. *Id.* In other words, the direct mail notice sent to all reasonably identifiable Class Members provided the best notice practical under the circumstances, giving Class Members a full and fair opportunity to consider the terms of the Settlement and make a fully informed decision as to whether to participate, object, or opt-out of the Settlement. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974) (noting that individual notice is preferred method where addresses of class members can be ascertained through reasonable effort).[1] The notice therefore fulfilled the requirements of due process and those of Rule 23(c)(2).

[1] On January 30, 2019, this Court rescheduled the final fairness hearing from February 19 to February 22. While the Notice informed Class Members that the hearing date and time could be rescheduled without further notice, Class Counsel promptly instructed the Settlement Administrator to inform any class member inquiring about the settlement of the change in date. At the time of the date change, the Settlement Administrator had received no opt-outs or objections, and Class Counsel was not aware of any class members or other individuals who intended to attend the fairness hearing. Moreover, the Court has arranged for court staff to be present in the Courtroom at the original fairness hearing date and time to inform anyone who might show up of the date change.

3. The Settlement Class Should Be Certified

In addition to the settlement's fairness, the settlement also meets all the requirements for final approval under Rule 23, and should thus be approved.

Class certification under Rule 23 has two primary components. First, the party seeking class certification must first establish the four requirements of Rule 23(a): "(1) numerosity (a 'class [so large] that joinder of all members is impracticable'); (2) commonality ('questions of law or fact common to the class'); (3) typicality (named parties' claims or defenses 'are typical . . . of the class'); and (4) adequacy of representation (representatives 'will fairly and adequately protect the interests of the class')." *Warfarin II*, 391 F.3d at 527. Second, the Court must find that the class fits within one of the three categories of class actions set forth in Rule 23(b). *In re Cmty. Bank of No. Va.*, 418 F.3d 277, 302 (3d Cir. 2005). In the present case, Plaintiffs seek certification under Rule 23(b)(3), "the customary vehicle for damage actions." *Id.* Rule 23(b)(3) requires that common questions "predominate over any questions affecting only individual members" and that class resolution be "superior to other available methods for the fair and efficient adjudication of the controversy." *Amchem*, 521 U.S. at 592-93.

As discussed in Plaintiffs' Motion for Preliminary Approval of the Settlement, ECF No. 34-1 and below, all the Rule 23 requirements for a settlement class are met here. The Court was correct in preliminarily certifying the Class for settlement purposes pursuant to Rules 23(a) and (b)(3), and nothing has changed to alter the propriety of that conclusion.

(a) The Rule 23(a) Factors Are Met

Plaintiffs and the Class easily satisfy the numerosity, commonality, typicality, and adequacy of representation requirements of Rule 23(a).

(i) Numerosity

Rule 23(a)(1) requires that the class be so numerous that joinder of all class members is "impracticable." *Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp.*, 149 F.R.D. 65, 73 (D.N.J. 1993). "Impracticable" does not mean impossible, "only that common sense suggests that it would be difficult or inconvenient to join all class members." *See Prudential I*, 962 F. Supp. at 510; *see also Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001). The Class consists of 294 Class Members, which easily meets this criterion. *See Feret v. CoreStates Fin. Corp.*, No. 97-6759, 1998 U.S. Dist. LEXIS 12734, at *18-19 (E.D. Pa. Aug. 18, 1998) ("Indeed, classes with as few as 25 or 30 members have been certified by some courts.") (collecting cases).

(ii) Commonality

"Rule 23(a)(2)'s commonality element requires that the proposed class members share at least one question of fact or law in common with each other." *Warfarin II*, 391 F.3d at 527-28. "Commonality does not require perfect identity of questions of law or fact among all class members. Rather, even a single common issue will do." *Reyes v. Netdeposit, LLC*, 802 F.3d 469, 486 (3d Cir. 2015) (internal quotation marks omitted). Here, the Class shares many common issues of law and fact. All Class members claims' relate to and arise from the same alleged actions of Defendant, namely the unfair attempts to collect upon a debt not actually owed under Philadelphia law, via use of form demand letters and eviction filings. The key common question is whether an FDCPA claim may be predicated on violation of this law. Commonality is satisfied for purposes of the Settlement.

(iii) Typicality

In considering typicality under Rule 23(a)(3), the court must determine whether "the named plaintiffs['] individual circumstances are markedly different or . . . the legal theory upon

which the claims are based differs from that upon which the claims of other class members will perforce be based." *Johnston v. HBO Film Mgmt., Inc.*, 265 F.3d 178, 184 (3d Cir. 2001). Typicality does not require that all class members share identical claims. *Id.* Instead, so long as "the claims of the named plaintiffs and putative class members involve the same conduct by the defendant, typicality is usually established regardless of factual differences." *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 183-84 (3d Cir. 2001).

The proposed Class representatives alleged they both received demand letters from Defendant and were eventually subject to eviction lawsuits filed by Defendant despite not having previously received Certificates of Rental Suitability. They allege the same injury as the other members of the Class, caused by that uniform course of conduct. As such, the typicality requirement is satisfied.

(iv) Adequacy

The adequacy requirement has two components intended to ensure that the absent class members interests are protected: (a) the named plaintiffs' interests must be sufficiently aligned with the interests of the class, and (b) the plaintiffs' counsel must be qualified to represent the class. *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d at 800. Here, the requirements for adequacy are satisfied.

In examining the first component, the Court must determine whether "the representatives' interests conflict with those of the class." *Johnston*, 265 F.3d at 185. That examination makes clear that there is no conflict between the proposed Class Representatives and the Class, because, as with all members of the Class, Plaintiffs seek to recover losses stemming from Defendant's efforts to sue for eviction and collect upon debts not actually owed due to the landlord's failure to provide Certificates of Rental Suitability. In other words, Plaintiffs have no interests that are

in conflict with the Class they seek to represent and their alleged injuries are identical to those suffered by other Class Members.

As far as the adequacy of counsel, the Class is represented by lawyers from the Public Interest Law Center, a nonprofit with significant experience representing low-income individuals in the Philadelphia region, including class actions, as well as lawyers from Chimicles Schwartz Kriner & Donaldson-Smith LLP and the National Consumer Law Center, who each have sterling national reputations in the class action field, as demonstrated by the firm resumes and declarations submitted in connection with the Motion for Preliminary Approval. ECF No. 38. Together, those firms brought innovative litigation which used public records and local law, along with the protections of the FDCPA, to provide relief for low-income consumers.[2] Consequently, both prongs of the adequacy inquiry are satisfied.

(b) The Rule 23(b)(3) Factors Are Met

In addition to meeting the requirements of Rule 23(a), the Class also satisfies the requirements of Rule 23(b)(3). Questions of law or fact common to the Class predominate over any questions affecting only individual Class Members in light of the proposed Settlement, which eliminates any individual issues, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

[2] Moreover, while not necessary to the settlement analysis, Plaintiffs' efforts have contributed to lasting change for low-income Philadelphians. Specifically, in partial response to the problem highlighted by this lawsuit and one other that Plaintiffs' Counsel have filed on behalf of Philadelphia consumers, the Board of Judges of the Philadelphia Municipal Court changed its Rules of Procedure to affirmatively require landlords and landlord lawyers to attach to eviction complaints proof of their compliance with Philadelphia law. *See In re: Amendment of Philadelphia Municipal Court Civil Rule 109*, First Jud. Dist. of Pa., Phila. Mun. Ct., Gen'l Court Reg. No. 1 of 2017, https://www.courts.phila.gov/pdf/regs/2017/MC-PJGCR-2017-01.pdf; *see also* Jake Blumgart, PlanPhilly, *Philadelphia renters just scored a courtroom win* (Jan. 25, 2018), http://planphilly.com/articles/2018/01/25/philadelphia-renters-just-scored-a-courtroom-win.

(i) Predominance

Rule 23(b)(3) requires that "questions of law or fact common to class members predominate over any questions affecting only individual members." As the Supreme Court explained in *Amchem*, "[p]redominance is a test readily met in certain cases alleging consumer fraud . . . ." 521 U.S. at 625. Moreover, "[c]ommon issues predominate when the focus is on the defendants' conduct and not on the conduct of the individual class members." *In re Mercedes-Benz Antitrust Litig.*, 213 F.R.D. 180, 187 (D.N.J. 2003).

The key questions posed in this case—all of which relate to whether Defendants' actions violated the FDCPA and other laws—are common ones, and focused on the conduct of the Defendant. If resolved in one stroke, those issues would substantially advance the litigation. *See, e.g., In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 722 F.3d 838, 859 (6th Cir. 2013).

(ii) Superiority

Rule 23(b)(3) also requires that class resolution be "superior to other available methods for fairly and efficiently adjudicating the controversy." The following factors are relevant to the superiority inquiry:

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the likely difficulties in managing a class action.

Id.; *see also Danvers Motor Co., Inc. v. Ford Motor Co.*, 543 F.3d 141, 149 (3d Cir. 2008).

The superiority inquiry is simplified in the settlement context because the Court need not inquire whether the case, if tried, would pose intractable management problems, for the purpose of the settlement is to not have a trial. *See Amchem*, 521 U.S. at 620.

Moreover, class settlement is the superior method of resolving the claims of Class Members who have not elected to exclude themselves from the Settlement. It ensures that the claims of the Class Members will be resolved efficiently, without further delay, and without wasting of an insurance policy that is likely the single biggest source of available recovery. *See O'Brien v. Brain Research Labs, LLC*, No. 12-204, 2012 WL 3242365, at *9 (D.N.J. Aug. 9, 2012) (finding superiority because, *inter alia*, "denying certification would require each consumer to file suit individually at the expense of judicial economy"). By contrast, individualized litigation to enforce the FDCPA in this context is unlikely, given the relatively small recoveries available and the absence of precedent, carries with it great uncertainty, risk, and costs, and provides no guaranty that injured renters will obtain necessary and timely compensatory relief at the conclusion of the litigation. *See Varacallo*, 226 F.R.D. at 234 ("Without question, class adjudication of this matter will achieve an appreciable savings of effort, time and expense, and will promote uniformity of decision on the issues resolved and to which the parties will be bound.").

B. Plaintiffs' Motion for Attorneys' Fees and Incentive Awards Should be Granted.

Class Counsel's Motion for Attorneys' Fees and Named Plaintiffs Incentive Awards was filed on October 1, 2018, ECF No. 38, and has received no opposition or objection from Defendant or the Class. As detailed more fully in the Memorandum of Law accompanying Plaintiffs' Motion, ECF No. 38, the Court should grant that request because the attorneys' fees sought are reasonable under the circumstances and pursuant to Third Circuit case law; the efforts expended and lodestar incurred were reasonable and necessary to the prosecution of the case; and the incentive awards are also reasonable and appropriate to compensate the two named Plaintiffs for their work on this matter. Moreover, the $25,000 earmarked for attorneys' fees awards is a

figure far lower than Class Counsel's lodestar. The lack of objections to both the Fee Motion and the Settlement further supports Plaintiffs' request. *See Reinhart v. Lucent Techs., Inc. (In re Lucent Techs., Inc. Sec. Litig.)*, 327 F. Supp. 2d 426, 435 (D.N.J. 2004) ("[T]he Court concludes that the lack of a significant number of objections is strong evidence that the fees request is reasonable."); *Sanders v. City of Phila. & First Judicial Dist. of Pa.*, No. 15-0868, 2016 U.S. Dist. LEXIS 35388, at *6 (E.D. Pa. Mar. 17, 2016) ("The absence of objections to the settlement itself and to the requested award of attorneys' fees and expenses, and the small number of persons opting out of the settlement demonstrate support for the approval of this settlement as fair and reasonable."). For these reasons, and the reasons outlined in Plaintiffs' Motion for Attorneys' Fees and Incentive Awards, this Court should grant Plaintiffs' Motion.

C. Community Legal Services should be Appointed as *Cy Pres*.

During the course of negotiations, Defendant suggested, and Plaintiffs agreed, that Community Legal Services ("CLS") would receive a *cy pres* distribution from any excess funds that remain after two distributions to the class, subject to court approval. CLS is the premier organization representing low-income tenants in Philadelphia, and therefore should be approved by this Court.

While direct payments to class members are preferable, *cy pres* awards are often part of class action settlements, and more desirable than reversion of a fund to a defendant or escheat to the state. *See In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 173 (3d Cir. 2013). In considering whether a *cy pres* distribution is appropriate, courts use the same basic fairness factors illuminated in *Girsh*, as well as practical, prudential concerns. *Id.* at 174. Here, the Agreement takes all practical steps to ensure the Class receives as much of the settlement fund as possible, by providing for a) no reversion of funds, b) no claims process at all, and c) a second distribution

to the class, if economically feasible. Only then does the Agreement contemplate distributing money to CLS, a well-deserving recipient, which works to protect the very same groups of low-income tenants at issue here. *See, e.g.*, *McCalvin v. Condor Holdco Securitization Tr.*, No. 17-1350, 2018 U.S. Dist. LEXIS 190366, at *7 (E.D. Pa. Nov. 6, 2018) (approving settlement where "any uncashed disbursement checks . . . are to be disbursed as a cy pres distribution to Community Legal Services of Philadelphia, Pennsylvania, and these funds are to be used for consumer credit education and counseling, foreclosure prevention, and advocacy on behalf of low-income consumers").[3] Accordingly, CLS should be approved to receive any *cy pres* distribution.

IV. CONCLUSION

For the reasons set forth above, the Court should grant final approval to the Settlement and enter the proposed final approval order certifying the settlement class, ordering the distribution of the Settlement benefits, and approving Plaintiffs' Motion for Attorneys' Fees and Incentive Awards.

[3] One of Plaintiffs' attorneys (Daniel Urevick-Ackelsberg) was a staff attorney at CLS from 2009 to 2011, long before this action commenced. Mr. Urevick-Ackelsberg's father also serves on the CLS board of directors. CLS, of course, was agreed to by the parties for one reason: its impeccable reputation as a provider of legal services, particularly for low-income tenants facing eviction.

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Respectfully submitted,

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