**UNITED STATES DISTRICT COURT**
**DISTRICT OF NEW JERSEY**

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| ALEJANDRO MORALES, *on behalf of himself and those similarly situated,*<br><br>Plaintiff,<br><br>vs.<br><br>HEALTHCARE REVENUE RECOVERY GROUP, LLC and JOHN DOES 1 to 10,<br><br>Defendants. | Civil Action No.<br>2:15-cv-08401-JBC |

# PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT

**RETURNABLE: APRIL 7, 2025**

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## INTRODUCTION

Plaintiff Alejandro Morales and Defendant Healthcare Revenue Recovery Group, LLC have executed a Class Action Settlement Agreement to resolve the instant class action. The Agreement is subject to the Court's approval pursuant to FED. R. CIV. P. 23(e).

This motion initiates the first of the two-step approval process. At this stage, the Court is asked to preliminarily approve the Agreement so as to justify giving notice to members of the Class of (a) the hearing as to whether the Court should grant final approval, (b) the Class members' right to request exclusion from the Class, and (c) the Class members' right to object to the reasonableness of the proposed settlement. Therefore, Plaintiff now moves for preliminary approval of the Agreement including:

- the scheduling of a hearing to determine whether to grant final approval,
- to give notice to public officials as required under the Class Action Fairness Act,
- setting the deadline for Class members to request exclusion from the Class or to file objections to the proposed settlement, and
- to approve the form and method of notice to the Class members of these proceedings.

## MOTION RECORD

In addition to this Brief and the docket in this case, the record supporting this Motion consists of:

1. Notice of Motion.
2. Declaration of Yongmoon Kim (cited here as *Kim Decl.*).
    a. Exhibit A –Class Action Settlement Agreement (cited here as *Settlement*) (with Exhibit 1 which is the proposed form of the class notice), and
3. Proposed form of Order.

**NATURE OF THE CLAIMS**

Plaintiff alleges Defendant Healthcare Revenue Recovery Group, LLC ("HRRG") unlawfully disclosed Plaintiff's personal identifying information by the use of impermissible language or symbols on an envelope in connection with the collection of a debt in violation of 15 U.S.C. § 1692f(8). Specifically, in an attempt to collect on a debt arising out of the provision of healthcare services, HRRG sent a dunning letter to Plaintiff that featured a glassine window through which a barcode was visible that identified Plaintiff's debtor account number and related account information. Compl. (ECF No. 1) at ¶¶ 14-24.

The FDCPA prohibits a debt collector from "[u]sing any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram. . . ." 15 U.S.C. § 1692f(8). In this case, the Third Circuit determined that "[H]RRG broke the law

when it placed a barcode on the envelope." *Morales v. Healthcare Revenue Recovery Grp., LLC*, 859 F. App'x 625, 626 (3d Cir. 2021).

In its Opinion reversing the District Court's Order dismissing Plaintiff's Complaint, the Third Circuit explained that,

> A smartphone could scan the envelope's barcode to reveal an "Internal Reference Number" (IRN)—UM###2—and the first ten characters of Morales's street address . . . The FDCPA bans "unfair or unconscionable" debt collection. Specifically, the FDCPA protects consumers by ensuring letters arrive in plain envelopes: it prohibits "[u]sing any language or symbol, other than the debt collector's address, on any envelope when" sending mail. So HRRG broke the law when it placed a barcode on the envelope.

*Id*. (quoting 15 U.S.C. § 1692f(8)) (internal citation omitted).

**PROCEDURAL BACKGROUND**

On December 12, 2015, Plaintiff filed his Class Action Complaint (ECF No. 1) alleging Defendant committed violations of the Fair Debt Collection Practices Act.

There has been numerous motion practice in this case. For example, Defendant moved to dismiss several times. (*See, e.g.*, ECF Nos. 4, 22). After the motions were fully briefed then administratively terminated due to changing caselaw, on February 22, 2017, Defendant filed an Answer to Plaintiff's Complaint denying all wrongdoing (ECF No. 46).

On November 16, 2017, Defendant filed a Motion for Summary Judgment (ECF No. 66). On January 29, 2018, the Court issued an Order administratively terminating Defendant's Motion for Summary Judgment (ECF No. 79). On January 30, 2018, Defendant refiled its Motion for Summary Judgment (ECF No. 80). On July 19, 2018, the Court issued an Order denying Defendant's Motion for Summary Judgment without Prejudice. (ECF No. 97). On January 9, 2019, Defendant filed a renewed Motion for Summary Judgment. (ECF No. 114).

On July 24, 2019, the Court entered an Order granting Defendant's Motion for Summary Judgment and dismissing Plaintiff's Complaint without prejudice for lack of standing (ECF No. 122). On August 21, 2019, Plaintiff filed a Motion for Reconsideration and a Motion to Alter or Amend the Judgment. (ECF No. 123). On March 16, 2020, the Court entered an Order denying Plaintiff's Motion for Reconsideration. (ECF No. 140).

On April 15, 2020, Plaintiff filed a Notice of Appeal to the United States Court of Appeals for the Third Circuit. (ECF No. 142). That same day, Plaintiff filed an Amended Notice of Appeal. (ECF No. 143).

On August 13, 2021, the United States Court of Appeals for the Third Circuit issued an Opinion reversing the District Court's Orders entered on July 24, 2019, and March 16, 2020, and remanded the action to District Court for further

proceedings (*Morales v. Healthcare Revenue Recovery Grp., LLC*, 859 F. App'x 625 (3d Cir. 2021). (ECF No. 146).

On December 19, 2022, for the third time, Defendant filed a Motion for Summary Judgment (ECF No. 189) and Plaintiff filed his Motion for Class Certification (ECF No. 192).

After both motions were fully briefed, on September 20, 2023, this District Court denied Defendant's motion for summary judgment and granted Plaintiff's motion for class certification (ECF No. 227). In that Order, the Court ordered the parties to submit a consent order approving the form and method for notice to the Class, or to file a motion for approval as to the form and method of notice to the Class if the parties' meet and confer efforts were unsuccessful. Thereafter, on October 23, 2023, the parties appeared for a status telephonic conference where Defendant advised the Court that they are in the process of investigating and recalculating the class size of 6,187.[1] The Court issued a Letter Order that same day ordering the parties to meet and confer to resolve the class size issue and scheduled the next teleconference for January 4, 2024 (ECF No. 230).

Since the October 23, 2023 teleconference, the parties continued their settlement discussions and made significant progress. Therefore, on November 2,

[1] Plaintiff learned for the first time shortly before the call that Defendant had previously failed to include all Emergency Physician Association of North Jersey locations within the scope of the certified class definition.

2023, the parties submitted a joint letter seeking to extend the deadline for submitting the class notice as that would no longer be necessary if the parties are able to finalize a class settlement agreement (ECF No. 231). The Court granted the parties' request for an extension of time until the January 4, 2024 teleconference (ECF No. 232). On December 28, 2023, the Court adjourned the January 4, 2024 teleconference to January 8, 2024 *sua sponte* (ECF No. 233).

With respect to outstanding discovery disputes, the parties filed a joint status letter on December 29, 2023 (ECF No. 234), outlining the existing discovery dispute that was raised in Plaintiff's September 11, 2023 discovery dispute letter (ECF No. 224) regarding the issues related to the account notes that were to be addressed during class discovery.[2]

On January 8, 2024, the parties appeared for the teleconference, where the parties advised the current status of discovery and Defendant's efforts to compile the updated class list. Pursuant to the call, the Court Ordered the parties to work on finalizing the agreed upon class list by March 15, 2024 and scheduled the next teleconference for March 27, 2024 (ECF No. 235).

[2] The outstanding and existing discovery dispute included the need for the explanation regarding duplicative internal reference numbers termed "CRS numbers." In this letter, Plaintiff also requested the collection service agreement governing Defendant's collection activities against Plaintiff and the Class Members.

On March 14, 2024, Plaintiff submitted a letter requesting a three-week extension to finalize the class list as Plaintiff needed additional time to analyze the class data received on March 6, 2024 (ECF No. 236). In light of Plaintiff's request for an extension, Plaintiff also requested that the March 27, 2024 be adjourned to a date after April 5, 2024 (ECF No. 236). The next day, the Court granted Plaintiff's request and adjourned the March 27, 2024 status conference to April 10, 2024 (ECF No. 237).

On April 5, 2024, Plaintiff submitted a letter informing the Court that Plaintiff had completed analyzing the data however, requested an extension to May 10, 2024, to allow the parties to explore the terms of a possible class settlement, and also requested that the April 10, 2024 teleconference be adjourned. On April 8, 2024, the Court granted Plaintiff's request and also adjourned the April 10, 2024 teleconference to May 13, 2024 (ECF No. 239).

The parties appeared for the May 13, 2024 teleconference where Defendant raised their wish to modify the class definition to narrow the class size. That same day, the Court entered an Order advising Defendant to submit a letter to Judge Padin describing the motion that they wish to file regarding the modification of the class definition, and also scheduled the next teleconference for June 20, 2024 (ECF No. 240).

On May 16, 2024, pursuant to the Court's directive, Defendant filed a letter to Judge Padin explaining their request to modify the class definition so that the class size could be amended to align with the pretrial discovery in this case which would bring the class size down from 49,427 to 7,916.[3]

On July 10, 2024, Judge Padin entered a Text Order (ECF No. 244) denying Defendant's request to modify the class definition.

Thereafter, the parties continued their efforts to finalize the class settlement agreement.

On September 23, 2024, the parties appeared for a teleconference, pursuant to which the parties were ordered to file the motion for preliminary approval by November 15, 2024, and also scheduled the next teleconference for November 26, 2024 (ECF No. 245).

On November 14, 2024, Defendant filed a letter requesting a three-week extension to file the motion for preliminary approval as Defendant's counsel needed additional time to review the class action settlement agreement (ECF No. 246). The Court granted the extension to December 6, 2024 (ECF No. 247).

[3] The discrepancy of the class size arose as Defendant had only provided the number of accounts for the Emergency Physician Association of North Jersey location that Plaintiff visited, and not for ***all*** locations, which include 46 hospitals and medical centers.

Thereafter, on December 5, 2024, Defendant filed a letter advising the Court that the attorney who was handling the case had to unexpectedly and abruptly went on medical leave, and therefore requested an extension of 60 days to file the joint preliminary approval motion, and to adjourn the December 18, 2024 teleconference. The Court granted Defendant's request and adjourned the teleconference to February 19, 2025 (ECF No. 250).

On January 5, 2025, the current counsel for Defendant, Mitchell Williamson, filed a substitution of counsel (ECF No. 252).

On February 3, 2025, Defendant's counsel filed a letter seeking an extension of the February 4, 2025 deadline for the parties to file joint motion and to adjourn the February 19, 2025 teleconference. In response, the Court scheduled a teleconference for February 5, 2025 (ECF No. 254). At that teleconference, the parties advised the Court of the current status of the filing of the joint motion for preliminary approval, after which the Court set a deadline of February 28, 2025 (ECF No. 256).

On February 28, 2025, Defendant's counsel filed a letter seeking a final request for extension to March 7, 2025, to obtain signatures of the finalized class action settlement agreement (ECF No. 257). On March 3, 2025, the Court granted the parties' request (ECF No. 258),

Plaintiff now submits this motion for preliminary approval.

## THE SETTLEMENT'S TERMS

### *A. The Class Definition.*

The Agreement at § I.1 defined the "Settlement Class" to mean:

> All consumers residing in the State of New Jersey, to whom, from December 2, 2014 to December 2, 2015, Defendant sent a collection letter; which letter (a) was seeking to collect a consumer debt on behalf of creditor EMER PHY ASSOC N JERSEY; and (b) was sent in a window envelope such that the barcode was visible from outside the envelope which a smartphone could scan to reveal an IRN and the first ten characters of the recipient's street address.
>
> [(¶ 4, ECF No. 227).]

### *B. Benefits to the Settlement Class.*

Defendant represents that there are 49,252 persons, excluding Plaintiff, who meet the Class definition. Agreement § II.15. Plaintiff has relied on Defendant's representation as to the number of persons who meet the Class definition and considers same to be a material term in negotiating the terms of this Settlement Agreement. Defendant agrees to pay to each Settlement Class Member a pro rata share of $500,000.00 (if all 49,252 persons remain Settlement Class Members, $10.15 per person).

Under the FDCPA, the class, excluding the named plaintiff(s), share in an amount not to exceed the lesser of $500,000 or 1% of the debt collector's net worth. 15 U.S.C. § 1692k(a)(2). Defendant has stipulated to the maximum class statutory damages of $500,000.00. Agreement § II.14.

Defendant also agrees to make a payment in the amount of $15,000 to Plaintiff, which shall be as settlement for his individual FDCPA claims and as a service award in recognition of his efforts on behalf of the Class since 2015. Agreement § III.17.

It is likely that there will be an undistributed portion from the Class Fund. This arises from rounding down to ensure that the remaining members are paid the same amount. For example, if the remaining members are all the Class members, the per capita distribution is $10.15 resulting from rounding down the result from $500,000 ÷ 49,252 = $10.151872 but $10.15 × 49,252 = $499,907.80 leaving $92.20 undistributed. There also may be remaining members who do not cash their checks resulting in additional undistributed funds. No later than forty-five (45) days after the last expiration date of the delivered Class Relief Checks, the Settlement Administrator shall mail to Class Counsel a check in the amount of the sum of (a) all Class Relief Checks that were twice returned as undeliverable and not re-sent and (b) all uncashed checks that were not returned as undeliverable. The check(s) shall be made payable to one or more *cy pres* recipient(s), with no restrictions on its use.[4]

No later than thirty (30) days after the last check expiration date, the

[4] The parties will meet and confer to agree upon the *cy pres* recipient. If the parties cannot agree, the parties will each propose two recipients for the Court's consideration.

Settlement Administrator shall provide Class Counsel and Defendant's counsel with a report of the number of relief checks cashed, which shall include the number of checks cashed together with the names of the persons who either cashed or did not cash their respective check or if the check was undeliverable and the amount of the *cy pres* check. The final report shall also include verification and a detailed certification confirming that the requirements of the Settlement Agreement have been complied with.

Class Counsel shall deliver the *cy pres* check to the *cy pres* recipient, within ten (10) days of receipt, and shall provide Defendant's counsel with a copy of the transmittal document for the *cy pres* check.

***C. Other Economic Terms.***

Defendant agrees to make a payment in the amount of $***15***,000 to Plaintiff, which shall be as settlement for his individual FDCPA claims and as a service award in recognition of his efforts on behalf of the Class ***since 2015.*** Agreement § III.17.

Finally, Defendant shall pay all fees and costs of the Settlement Administration and Settlement Administrator. Within five days following entry of the Preliminary Approval Order, Defendant shall retain the services of the Settlement Administrator to perform settlement administration duties outlined in their recently served written estimate, including formatting, printing and mailing

the Class Notice, updating addresses of members of the Settlement Class, tabulating any requests from members of the Settlement Class to be excluded, providing an affidavit to the Court related to the Class Notice process and requests to be excluded, providing settlement checks to Settlement Class Members. Agreement § VII.30(b).

***D. Releases.***

The following release language ("Release of Claims") shall appear in the final judgment:

> "As a result of the settlement that has been approved in this matter, when this judgment becomes effective upon the final approval date, Plaintiff and each Settlement Class Member, for themselves, their heirs, successors and assigns shall have jointly and severally remised, released, acquitted and forever discharged the Defendant from the Class Claims."

**PROPOSED SCHEDULE.**

The Hearing required under FED. R. CIV. P. 23(e)(2) to determine that the Agreement is "fair, reasonable, and adequate" should be scheduled no sooner that 100 days after the filing of this Motion to ensure compliance with the Class Action Fairness Act (CAFA), 28 U.S.C. § 1715. The Agreement is filed with this Motion. Under CAFA, within *ten* days after filing the Agreement, Defendant must serve notice to certain public officials. § 1715(b). The Agreement, at ¶ 27, requires Defendant's CAFA compliance.

CAFA prohibits final approval until *ninety* days after those officials are served. § 1715(d). Hence, Plaintiff requests that the final hearing for final approval be scheduled no sooner than 100 days after the filing of this Motion.

To allow the parties to effectuate the various steps in the settlement approval process pursuant to the Agreement (including the printing and mailing of the Notice to the Class, allowing Class members time to either request exclusion or file objections, for preparation and filing of the Administrator's reports on giving Notice and opt outs, and for Class Counsel's submission of materials for the Hearing), Plaintiff proposes the following schedule which is dependent of the date scheduled for the Hearing:

| Event | | Proposed Timing |
|---|---|---|
| 1 | Hearing | At least 105 days after filing of this Motion. |
| 2 | Initial Notice Date | Approximately 80 days before the Hearing |
| 3 | "Bar Date" (per Agreement §VI.24.a, the deadline for objections and opt outs) | Approximately 45 days before the Hearing |
| 4 | Deadline to file Motion for Final Approval (including any response to Class member objections and application for Attorney Fees) | At least 10 days before the Hearing. |

By way of example:

Hearing Date: Fri., Jun. 20, 2025 (105 days after 3/7/2025)

Initial Notice Date: Tues., Apr. 1, 2025 (80 days before 6/20/25)

Bar Date: Tues., May 6, 2025 (45 days before 6/20/25)

Final Approval Motion: Tues., Jun. 10, 2025 (10 days before 6/20/25)

## LEGAL ARGUMENTS

### POINT I: PRELIMINARY APPROVAL SHOULD BE GRANTED

Plaintiff seeks preliminary approval of the Agreement. "Compromises of disputed claims are favored by the courts." *Williams v. First Nat'l Bank*, 216 U.S. 582 (1910); *see also In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 317 (3d Cir. 1998) ("*Prudential II*"). Settlement will avoid the uncertainty, delay, and expense of a trial for the parties while simultaneously reducing the burden on judicial resources from continued litigation. As discussed below, there is clear evidence that the Agreement falls within the range of reasonableness at this stage in the litigation process, and that preliminary approval is warranted. The most persuasive fact is that, if approved, the class members who remain will receive their maximum recovery if this action is litigated through judgment.

#### *A. Preliminary Approval Standards and Procedures.*

Rule 23(e) of the Federal Rules of Civil Procedure, with amendments that went into effect as of December 1, 2018, sets forth the process for Court approval of a class action settlement:

> **(e) Settlement, Voluntary Dismissal, or Compromise.** The claims, issues, or defenses of a certified class—or a

class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

**(1)** Notice to the Class.

**(A)** *Information That Parties Must Provide to the Court.* The parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.

**(B)** *Grounds for a Decision to Give Notice.* The court must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties' showing that the court will likely be able to:

**(i)** approve the proposal under Rule 23(e)(2); and

**(ii)** certify the class for purposes of judgment on the proposal.

**(2)** *Approval of the Proposal.* If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

**(A)** the class representatives and class counsel have adequately represented the class;

**(B)** the proposal was negotiated at arm's length;

**(C)** the relief provided for the class is adequate, taking into account:

**(i)** the costs, risks, and delay of trial and appeal;

**(ii)** the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

**(iii)** the terms of any proposed award of attorney's fees, including timing of payment; and

**(iv)** any agreement required to be identified under Rule 23(e) (3); and

**(D)** the proposal treats class members equitably relative to each other.

**(3)** *Identifying Agreements.* The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

> **(4)** *New Opportunity to Be Excluded.* If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.
> **(5)** Class-Member Objections.
> **(A)** *In General.* Any class member may object to the proposal if it requires court approval under this subdivision (e). The objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection.
> **(B)** *Court Approval Required for Payment in Connection with an Objection.* Unless approved by the court after a hearing, no payment or other consideration may be provided in connection with:
> **(i)** forgoing or withdrawing an objection, or
> **(ii)** forgoing, dismissing, or abandoning an appeal from a judgment approving the proposal.
> **(C)** *Procedure for Approval After an Appeal.* If approval under Rule 23(e)(5)(B) has not been obtained before an appeal is docketed in the court of appeals, the procedure of Rule 62.1 applies while the appeal remains pending.

"Where the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval, preliminary approval is granted." *In re Nasdaq Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997) (*citing* MANUAL FOR COMPLEX LITIGATION, THIRD, § 30.41 (West 1995)).

### *B. The Settlement Agreement is Fair, Reasonable, and Adequate.*

The Court should make a preliminary determination that the proposed settlement is fair, reasonable, and adequate prior to sending notices to Settlement Class members. That determination establishes a presumption rebuttable after hearing the members' response after notice.

> [T]he Third Circuit Court of Appeals has stated that preliminary approval of a class action settlement "establishes an initial presumption of fairness when the court finds that: (1) the settlement negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the settlement's proponents are experienced in similar litigation; and (4) only a small fraction of the class objected."

*Huffman v. Prudential Ins. Co. of Am.*, 2019 U.S. Dist. LEXIS 58667, *8 n.6, 2019 WL 1499475, *3 n.6 (E.D.Pa. Apr. 5, 2019) (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995). *See also* MANUAL FOR COMPLEX LITIGATION, *supra,* § 30.42 (a class settlement may be presumed fair, reasonable, and adequate if "reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.").

The Court will be able to evaluate the settlement as to the last *Huffman* factor (*i.e.*, the number of Settlement Class Members who object) after the Bar Date. For now, the Court can consider that the Agreement was drafted, finalized, and executed after (1) the parties' arm's length negotiations, (2) the exchange of discovery, including that which evinced the Class's size and Defendants' net

worth, and (3) between counsel extensively experienced in similar litigation. (*Kim Decl.* ¶¶ 41-58).

Additionally, FED. R. CIV. P. 23(e)(1)(B)(i) notes that for the Court to direct notice, the parties must show that the Court is likely to be able to "approve the proposal under Rule 23(e)(2)." FED. R. CIV. P. 23(e)(2) "list[s] factors to guide a court's fairness inquiry:"

> **(A)** the class representatives and class counsel have adequately represented the class;
> **(B)** the proposal was negotiated at arm's length;
> **(C)** the relief provided for the class is adequate, taking into account:
> **(i)** the costs, risks, and delay of trial and appeal;
> **(ii)** the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> **(iii)** the terms of any proposed award of attorney's fees, including timing of payment; and
> **(iv)** any agreement required to be identified under Rule 23(e)(3); and
> **(D)** the proposal treats class members equitably relative to each other.

Plaintiff and Plaintiff's counsel have adequately represented the class as evidenced by the successful terms negotiated for the class and the absence of any evidence of any conflict between the interests of Plaintiff or Plaintiff's counsel and those of the class members. In addition, Plaintiff has played an appropriately active role and understands his duties as a class representative. Furthermore, the settlement was reached through arm's length negotiations. Consistent with an

arm's length negotiation Defendant agrees to make a payment in the amount of $15,000 to Plaintiff, which shall be as settlement for his individual FDCPA claims and as a service award in recognition of his efforts on behalf of the Class since 2015. Agreement § III.17.

The relief provided pursuant to the Agreement is facially adequate based on the Rule 23(e)(2)(C) considerations and all other considerations because is equals the maximum recoverable class award available under the FDCPA. Under 15 U.S.C. § 1692k(a)(2)(B)(ii), a class may recover up to the lesser of $500,000 or 1% of Defendant's net worth. Per Agreement § II.14, Defendant has stipulated to the maximum class statutory damages of $500,000.00. If the class size remains at 49,252, each class member will receive $10.15.

Settlement Class Members who wish to opt out of this settlement must mail to the Settlement Administrator a written statement opting out of this settlement which must include: (1) the Settlement Class Member's name and address, and (2) a statement that the Settlement Class Member wishes to be excluded from the Settlement Class. Such notice must be received by the Settlement Administrator no later than the date set forth in the Preliminary Approval Order and in the Class Notice. The opt-out date shall be set by the Court. The Parties will suggest that the opt-out date be set thirty-five (35) days or five (5) weeks after the Class Notice is mailed or the next business day thereafter if that day is on a weekend or holiday.

Any such individual who timely provides notice of their desire to opt out of the settlement will receive no compensation pursuant the Settlement Agreement and shall not release any claims. Every Settlement Class Member who does not timely opt out shall be deemed a Settlement Class Member. Agreement § VI.24.

### *C. The Girsh Factors Favor Approval.*

The amendments to FED. R. CIV. P. 23(e) were not intended to and do not replace pre-existing considerations.

> Courts within the Third Circuit [continue to] evaluate class action settlements under the nine factors outlined in *Girsh v. Jepson*, [521 F.2d 153 (3d Cir. 1975)]which require a court to consider (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

*Huffman*, 2019 U.S. Dist. LEXIS at *6-*8, 2019 WL 1499475 at *3 (citing *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 534-35 (3d Cir. 2004).[5]

[5] A trial court may consider other relevant factors "illustrative of additional inquiries that in many instances will be useful for a thoroughgoing analysis of a settlement's terms." *Sullivan*, 667 F.3d at 320 (quoting *In re Pet Food Prods. Liab. Litig.*, 629 F.3d 333, 350 (3d Cir. 2010)). These factors include:

***(i) Complexity, Expense, and Likely Duration of Litigation.***

"The first *Girsh* factor 'captures the probable costs, in both time and money, of continued litigation.'" *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 320 (3d Cir. 2011) (quoting *Warfarin*, 391 F.3d at 536).

In the present action, Plaintiff agrees to settle the matter as it is in the best interest of the Settlement Class, particularly due to the length of time and expenses required to prosecute this action through trial as weighed against the inevitable appeals process and the uncertainty of the lawsuit's outcome, potentially concluding with no benefit to Settlement Class Members. Enduring litigation "would not only further prolong the litigation but also reduce the value of any

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> [T]he maturity of the underlying substantive issues, as measured by the experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; the existence and probable outcome of claims by other classes and subclasses; the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved-or likely to be achieved-for other claimants; whether class or subclass members are accorded the right to opt out of the settlement; whether any provisions for attorneys' fees are reasonable; and whether the procedure for processing individual claims under the settlement is fair and reasonable.

*Id.* (quoting *Prudential II*, 148 F.3d at 323).

recovery to the class." *Warfarin*, 391 F.3d at 536. Moreover, continuing litigation would consume significant judicial resources and unnecessarily burden the parties, requiring them to expend additional time and resources. Avoidance of "unnecessary and unwarranted expenditure of resources and time benefit[s] all parties." *In re Computron Software*, 6 F. Supp. 2d 313, 317 (D.N.J. 1998).

Any judgment that may be obtained as to the subject action can be appealed, thereby lengthening the duration of litigation. The parties' proposed settlement removes the inherent risk of undergoing trials and appeals and provides excellent benefits to the Settlement Class. Finally, giving credence to the fact that the Agreement compromises claims that are contested, Defendant states that this settlement is "without any admission of liability or wrongdoing." Agreement, Preamble.

***(ii) Class Reaction to the Settlement.***

"The second *Girsh* factor 'attempts to gauge whether members of the class support the settlement,' by considering the number of objectors and opt-outs and the substance of any objections." *Sullivan*, 667 F.3d at 321 (quoting *Prudential II*, 148 F.3d at 318).

At the preliminary stage, this is difficult to assess because the Class has yet to receive notice. Notably, a mere "minimal number of objections and requests for exclusion" received from the class members is consistent with other class

settlements approved in the Third Circuit. *Sullivan*, 667 F.3d at 321.

***(iii) The Stage of this Litigation and the Discovery Completed.***

"The third *Girsh* factor 'captures the degree of case development that class counsel had accomplished prior to settlement,' and allows the court to 'determine whether counsel had an adequate appreciation of the merits of the case before negotiating.'" *Sullivan,* 667 F.3d at 321 (quoting *Warfarin*, 391 F.3d at 537).

The parties have satisfied this factor. The procedural stage is evident from the docket and is summarized above in PROCEDURAL BACKGROUND section including numerous motion practice, appeal to the Court of Appeals, and a contested motion for class certification.

***(iv) The Risks in Establishing Liability.***

"The fourth *Girsh* factor 'examine[s] what the potential rewards (or downside) of litigation might have been had class counsel decided to litigate the claims rather than settle them.'" *Sullivan*, 667 F.3d at 322 (quoting *In re Cendant Corp. Litig.*, 264 F.3d 201, 237 (3d Cir. 2001)).

In evaluating the benefits provided by reaching a settlement as compared with the potential award from success after trial, the Third Circuit instructs that the settlement's fairness factors must be judged "against the realistic, rather than theoretical, potential for recovery after trial." *Sullivan*, 667 F.3d at 323 (quotation omitted). Defendant categorically denies having violated the FDCPA in their

Answer and again in the Agreement. Notwithstanding Plaintiff's belief in his ultimate success on the merits, there nevertheless exist risks of not being successful in obtaining adequate class damages. But one thing is certain here: Plaintiff could never be as successful in obtaining a class recovery after trial as he is in securing the Class Fund under the Agreement which is the maximum damages available to the Class no matter how successful he might be by continuing to litigate.

***(v) The Risks in Establishing Damages.***

"As with the fourth *Girsh* factor, 'this inquiry attempts to measure the expected value of litigating the action rather than settling it at the current time.'" *Sullivan*, 667 F.3d at 522 (quoting *Cendant*, 264 F.3d at 238-39). The Court must determine whether the proposed settlement is within a range that experienced attorneys could accept, against inherent risk undertaken in proceeding with litigation. *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.,* 55 F.3d 768, 806 (3d Cir. 1995).

If the present case were to proceed to trial, Defendants' maximum liability to the class would not exceed the lesser of $500,000 or 1% of the net worth of the debt collector. *See* 15 U.S.C. § 1692k(a)(2)(B). To determine the amount between nothing and the maximum, the Court must consider, among any other relevant factors, "the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of

persons adversely affected, and the extent to which the debt collector's noncompliance was intentional." 15 U.S.C. § 1692k(b)(2). It is uncertain whether consideration of those factors would result in the maximum class award. But, here, the Class is getting the maximum $500,000.

***(vi) Risks of Maintaining the Class Action Through Trial.***

"The sixth *Girsh* factor 'measures the likelihood of obtaining and keeping a class certification if the action were to proceed to trial', considering that 'the prospects for obtaining certification have a great impact on the range of recovery one can expect to reap from the class action.'" *Sullivan*, 667 F.3d at 322 (quoting *Warfarin*, 391 F.3d at 537). Following the Supreme Court's opinion in *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), this "may not be significant to a court's determination of the approval of a settlement." *Prudential II,* 148 F.3d at 321. "[T]his factor adds little to the consideration of the fairness of the settlement" especially because this is a settlement class. *In re Safety Components Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 91 (D.N.J. 2001).

As above-described, litigation of this matter carried risks. Had Plaintiff rejected settling on a class basis in favor of pursuing litigation, Plaintiff may not obtain the maximum class damages.

***(vii) Defendant's Ability to Withstand a Greater Judgment.***

The seventh *Girsh* factor considers "'whether the defendants could

withstand a judgment for an amount significantly greater than the settlement.'" *Sullivan,* 667 F.3d at 323 (quoting *Cendant*, 264 F.3d at 240). This factor is inapposite here because it is impossible for there to be a judgment greater than the settlement with respect to the class relief as well as Plaintiff's recovery. The only increase in Defendant's liability from further litigation is that the attorneys for both sides would need to perform more services and incur additional litigation expenses—all to obtain a likely worse result for the class and no better result for Plaintiff. It is uncertain whether Defendant could withstand a judgment which included counsel's legal fees through trial but, as a logical matter, the risk that it cannot withstand such a judgment increases as the amount goes up.

This factor thus encourages approval of settlement.

***(viii) The Range of Reasonableness of the Settlement Fund.***

"The final two *Girsh* factors contemplate 'whether the settlement represents a good value for a weak case or a poor value for a strong case.'" *Sullivan*, 667 F.3d). "The reasonableness of a proposed settlement is assessed by comparing 'the present value of the damages plaintiffs would likely recover if successful [at trial], appropriately discounted for the risk of not prevailing … with the amount of the proposed settlement.'" *Id.* at 323-24 (quoting *Prudential II*, 148 F.3d at 322). The Court, in evaluating a settlement, should "guard against demanding too large a settlement based on its view of the merits of the litigation," as "settlement is a

compromise, a yielding of the highest hopes in exchange for certainty and resolution." *GMC Pick-Up*, 55 F.3d at 806 (citations omitted).

Continued litigation would be lengthy, complex, expensive, and amount to a burden on court dockets. *Lake v. First Nationwide Bank*, 900 F. Supp. 726, 732 (E.D. Pa. 1995) (litigation's expense and duration are factors to be considered in evaluating the reasonableness of settlement); *Weiss v. Mercedes-Benz of N. Am. Inc.*, 899 F. Supp. 1297, 1301 (D.N.J. 1995) (burden on crowded court dockets to be considered). Furthermore, counsels' experience and reputation shaped the fairness of the parties' settlement process and the resulting Agreement, constituting an important factor in approval of class action settlements. *See GMC Pick-Up*, 55 F.3d at 787-88; *Fisher Brothers v. Phelps Dodge Industries, Inc.*, 604 F. Supp. 446, 452 (E.D. Pa. 1985) ("The professional judgment of counsel involved in the litigation is entitled to significant weight."). Being the result of extensive arm's length negotiations between the parties' experienced counsels, as opposed to the product of collusive dealings, the settlement was specifically negotiated to meet all of the requirements of FED. R. CIV. P. 23 as discussed in *Amchem*.

Once again, by providing maximum class relief makes this settlement indisputably reasonable.

**POINT II: THE CLASS NOTICE SHOULD BE APPROVED**

After concluding that the Agreement appears to be fair, reasonable, and

adequate pending a final hearing, and that the requirements for class certification will likely be met (the Court already certified a class), the Court must approve the form and method for giving notice to class members.

Pursuant to FED. R. CIV. P. 23(c)(2)(B), a notice sent to a class under FED. R. CIV. P. 23(b)(3) class must:

> clearly and concisely state in plain, easily understood language:
>
> (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 members under Rule 23(c)(3).

The parties request approval of the form of notice attached to the Agreement as Exhibit 1. The proposed short form notice explains its purpose, the nature of the settlement, and the Settlement Class members' rights, including their rights to opt-out, object, hire counsel, and attend the Hearing. *Id.* The notice also clearly provides Class Counsel's contact information, the date for each deadline as well as the date, time, and location of the Hearing. Further, the notice explains that it is a summary only and provides the method of obtaining complete information. *Id.*

Pursuant to the Agreement, Settlement Class members would receive the

information required by Rule 23(c)(2)(B) via the proposed form of notice. The Settlement Administrator shall format, address, print and mail the Class Notice, by first class U.S. mail, postage prepaid, to the last known address of each Settlement Class member. The Settlement Administrator will update the addresses of the Settlement Class members by means of the National Change of Address Databank (NCOA) maintained by the U.S. Postal Service prior to the initial mailing of the Class Notice and shall update the addresses by other reasonable methods available to the Administrator after receipt of returned undeliverable mailed Class Notices. Reasonable methods may include the use of Social Security numbers, email addresses, telephone numbers, and databases such as Accurint, Westlaw, and LexisNexis, and the Preliminary Approval Order shall expressly permit the use of such databases. The Settlement Administrator shall provide to Class Counsel and Defendant's counsel one or more certifications or affidavits stating that the Class Notice was deposited in the U.S. mail in accordance with the terms of the Preliminary Approval Order and as required by this Settlement Agreement, along with statistics on how many Class Notices were: (i) mailed successfully; (ii) retuned as undeliverable; and (iii) re-mailed successfully. Agreement § VII.30(c).

## CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court enter an Order (1) pursuant to Rule 23(b)(3), certifying a settlement class for the

purposes of settlement, and appointing Plaintiff as Class Representative and Plaintiff's attorneys as Class Counsel; (2) preliminarily approving the proposed settlement; (3) directing notice to Settlement Class members in the manner as proposed in the Agreement; and (4) scheduling a final Fairness Hearing for the purpose of determining final approval of the parties' settlement.

Respectfully submitted,

KIM LAW FIRM LLC

By: *s/Yongmoon Kim*

Dated: March 7, 2025 Yongmoon Kim