UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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VICTOR PHILEMON, individually and *on behalf of all persons similarly situated*,

Plaintiff,

-against-

ARIES CAPITAL PARTNERS, INC.; MATTHEW BLACK; SCOTT SHARINN; and AMANDA MORENO,

Defendants.
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MEMORANDUM AND ORDER
18 CV 1927 (CLP)

POLLAK, United States Magistrate Judge:

On March 29, 2018, plaintiff Victor Philemon ("plaintiff") filed this class action against defendants Aries Capital Partners, Inc. ("Aries"), as Assignee for Technical Career Institutes, Inc. ("TCI"), Matthew Blake, Scott Sharinn, and Amanda Moreno (collectively, "defendants"), alleging that defendants had violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1601 et seq., and the New York Judiciary Law § 487, in filing and litigating TCI Consumer Debt Actions, and obtaining default judgments against certain class members. (See generally Compl.[1]).

Presently before this Court is plaintiff's unopposed motion requesting provisional certification of a settlement class and preliminary approval of the settlement reached with defendants.[2] (Pl.'s Mem.[3] at 1). For the reasons set forth below, the Court grants plaintiff's

[1] Citations to "Compl." refer to plaintiff's First Amended Complaint, filed March 29, 2018, ECF No. 1.

[2] On February 7, 2019, the parties consented to the undersigned for all purposes. (See Order dated February 7, 2019, ECF No. 45).

[3] Citations to "Pl.'s Mem." refer to Plaintiff's Memorandum of Law in Support of Provisional Certification of A Settlement Class and Preliminary Approval of Class Action Settlement, filed February 28, 2019, ECF No. 50.

motion in its entirety.

FACTUAL BACKGROUND

TCI is a now defunct for-profit college that offered Associate's Degrees in technology related fields. (Compl. ¶ 23). The college, which was located at 320 West 31st Street, and at 940 8th Avenue in New York City, closed permanently on September 1, 2017. (Id. ¶¶ 23, 24). According to the Complaint, TCI's students were predominantly from low-income backgrounds and over 80% of them received Pell Grants. (Id. ¶ 25).

In September 2010, plaintiff Philemon, a 74 year old Brooklyn resident, who is retired and living on a pension, enrolled at TCI in an Associate's Degree Program. (Id. ¶¶ 87-89). Plaintiff alleges that TCI had a poor track record, with a graduation rate of less than 25%. (Id. ¶¶ 25-27). Mr. Philemon withdrew from the school on January 12, 2011, unhappy with TCI, but, according to the Complaint, TCI marked his withdrawal date incorrectly. (Id. ¶¶ 91-93). Plaintiff disputed the withdrawal date in writing with TCI multiple times and wrote to confirm that he did not owe any balance on his account. (Id. ¶¶ 93-94). He eventually received an account statement from TCI indicating that he did not owe any money. (Id. ¶ 95). According to the Complaint, defendant Blake is a partial or whole owner and President of Aries, which is alleged to be a "debt collector" within the meaning of the FDCPA. (Id. ¶¶ 16, 17). Defendants Sharinn and Moreno are attorneys, who were alleged to be acting as debt collection attorneys at Sharinn & Lipshie, P.C., a debt collection law firm. (Id. ¶¶ 19-21).

On December 5, 2014, defendant Aries entered into a Receivable Purchase Agreement with TCI in which Aries purchased a set of TCI student accounts having outstanding balances. (Id. ¶ 30). As the putative assignee of TCI, Aries commenced an action against Mr. Philemon in

New York City Civil Court, Kings County, on February 15, 2017 (the "Civil Court action"). (Id. ¶¶ 22, 96; see also Ranucci Decl.,[4] Ex. 2[5]). The Civil Court action, brought by Sharinn & Lipshie, retained on behalf of Aries, alleges that Aries, "a debt collector," was seeking to recover on an account stated between TCI and Philemon in the amount of $2,136.50, which was allegedly due and owing. (Ex. 2 ¶¶ 1, 7, 8). The signature line on the Civil Court Complaint lists defendants Scott C. Sharinn, Esq. and Amanda Moreno, Esq. as counsel. (Ex. 2). Plaintiff alleges that defendants hired process servers, Benjamin Lamb and Osmond Tinglin to serve the majority of the students in this case, and that the defendants knew that these process servers engaged in "'sewer service,'" which consists of the "practice of filing a fraudulent affidavit of service swearing that service has been made, when in fact service has not been made." (Compl. ¶¶ 60, 61).

In this federal action, plaintiff Philemon alleges that prior to commencing the Civil Court action, Aries had not investigated the claim and falsely represented that it had conducted a reasonable inquiry to determine that the statute of limitations had not expired. (Id. ¶¶ 104, 107; see also Ex. 2 ¶ 9). Mr. Philemon alleges that the six year statute of limitations had in fact run as of the time the Civil Court action was filed and that Scott Sharinn and Amanda Moreno had failed to conduct any meaningful review prior to preparing and filing the summons and complaint. (Compl. ¶¶ 97, 103, 105). In addition, the Complaint alleges that the summons demands $250 in attorneys' fees even though no such fees are authorized by law. (Id.)

[4] Citations to "Ranucci Decl." refer to the Declaration of Jessica Ranucci, an attorney in the Special Litigation Unit at the New York Legal Assistance Group ("NYLAG"), in Support of Plaintiff's Motion For Provisional Certification of A Settlement Class and Preliminary Approval of Class Action Settlement, dated February 28, 2019, ECF No. 51.

[5] Exhibit 2 to the Ranucci Declaration is a copy of the Verified Complaint filed against Philemon in Kings County.

Furthermore, attached to the Civil Court complaint was a record containing personal information about Mr. Philemon, including his unredacted social security number. (Id. ¶ 100).

Mr. Philemon was never served with a copy of the summons and complaint. (Id. ¶ 59). As a consequence, he was unaware of the lawsuit and did not file an answer or otherwise appear in court. (Id. ¶ 125). Defendants thereafter sought a default judgment against Mr. Philemon. (Id. ¶ 67).

Plaintiff alleges that at or around the time that defendants commenced the Civil Court action against Mr. Philemon, they brought suit against 212 other former students of TCI. (Ranucci Decl. ¶ 31). Each complaint asserted an account stated claim, with the same word-for-word allegations, except for details relating to the identity of the student and certain dates. (Compl. ¶ 43). Plaintiff alleges that Aries failed to investigate and could not prove the allegations in these cases and that the attorney defendants had failed to conduct a meaningful review of any of the documents they filed. (Id. ¶¶ 41, 54-55). Among other things, each complaint alleged that the statute of limitations had not expired, even though in many cases it had, and each summons included a demand for $250 in attorney's fees. (Id. ¶¶ 46, 50-51). As with Mr. Philemon, defendants allegedly failed to properly serve the students named in these complaints and obtained default judgments against them when they failed to answer or appear in court in response to the summons. (Id. ¶¶ 111, 117).

Plaintiff brings claims on behalf of a class consisting of:

> All individuals who were sued in New York City Civil Court by, or paid money to, Aries Capital Partners Inc., represented by Sharinn & Lipshie, P.C., in connection with debts allegedly owed for the individual's enrollment and/or attendance at the Technical Career Institutes, Inc.

("Settlement Class"). (See Ranucci Decl. ¶ 31).

According to Ms. Ranucci's Declaration, she and her colleagues at NYLAG retrieved and reviewed case files from 60 of the TCI Consumer Debt Actions filed by defendants in Civil Court, against former TCI students, seeking to collect on purported debts owed to TCI as unpaid tuition and fees. (Id. ¶¶ 6, 7). The case files retrieved by NYLAG included cases from each of the borough branches of the New York City Civil Court. (Id. ¶ 7). According to the NYLAG review, most of the cases were commenced with "virtually identical form complaints," with the only differences being the student's name and amount of debt owed. (Id. ¶ 9). Each complaint represents that defendants conducted a reasonable inquiry and determined that the statute of limitations had not expired. (Id.) Each is also signed in the same fashion as plaintiff's Civil Court complaint with a pre-printed signature line, stating "Scott C Sharinn Esq. / Andrea Moreno, Esq." (Id.) According to Ms. Ranucci, the defendants issued virtually identical summons in each of the cases reviewed, including a demand for $250 in attorneys' fees. (Id. ¶ 12).

Ms. Ranucci's Declaration further states that, based on NYLAG's review, it appears that defendants filed applications for default judgment in many of the actions, and again, the documents included as part of the default judgment action are virtually identical, except for details relating to the identity of the student and the amount of the debt. (Id. ¶ 14).

On April 19, 2018, plaintiff filed a motion for class certification but briefing was stayed pending the outcome of settlement negotiations. (Id. ¶ 16). The motion was subsequently withdrawn once the parties reached an agreement on the primary terms of the settlement. (Id.) Beginning in August 2018, plaintiff's counsel began settlement negotiations with the defendants who had appeared in the action: Aries, Blake and Sharinn. (Id. ¶ 19). Ms. Moreno has defaulted

by failing to respond to the Complaint. In August, it was agreed that defendants would dismiss all TCI Consumer Debt Actions and vacate any judgments obtained; they would return all money collected from class members, and pay plaintiff's reasonable attorneys' fees, in addition to an amount to be determined as relief to the Class. (Id. ¶ 20).

What the parties were unable to agree on at that time was the monetary amount to be paid to the class members. (Id. ¶ 21). Under the FDCPA, statutory damages are capped at the lesser of $500,000 or 1% of the defendant's net worth. (Id. ¶ 22). See 15 U.S.C. § 1692k(a)(2)(B). Defendants produced some documentation as to their net worth in September 2018 and then additional documentation was provided in October and November 2018. (Ranucci Decl. ¶ 23). On November 29, 2018, this Court held a settlement conference, at which time the parties agreed to a cap on attorneys' fees but refused to negotiate the fee amount until the relief for the Class had been agreed upon. (Id. ¶ 24). In December 2018, an agreement was reached as to the statutory damages to be paid to the Class.

The parties also agreed to resolve the claims against the defaulted defendant, Ms. Moreno. It was agreed that for an additional $2,000 in attorney's fees and $500 for Mr. Philemon, to be paid for by Mr. Sharinn, the parties would release all claims against Ms. Moreno. (Id. ¶ 26).

In the course of negotiating the settlement, the plaintiff learned that monies had been collected by defendants from two individuals even though no collection action was filed. Since the parties had agreed that anyone who paid money would be entitled to refunds, the Class definition was expanded to include these two individuals. (Id. ¶ 28). They will thus be able to receive a refund of their payments. (Id.)

On February 26, 2019, the parties submitted their executed Settlement Agreement, and now seek approval from the court. (Id., Ex. 1).

A. Settlement Agreement

The proposed settlement covers 212 class members as identified in defendants' business records, which contain the members' social security numbers and an address for each class member. (Ranucci Decl. ¶ 31). Plaintiff has confirmed the identity of the class members by searching the Unified Court System's case information. (Id. ¶ 32). Based on defendants' records, defendants collected a total of $23,761.80 from 26 class members through August 1, 2018. (Id. ¶ 34). Using this figure, the parties agreed to an actual damages figure of $23,000. (Id.) In addition, defendants have agreed to refund all payments collected after August 1, 2018 up until January 24, 2019; the refunds were to be paid within 14 days of execution of the Settlement Agreement. (Id. ¶ 35). These refunds were separate from the administration process of the rest of the Settlement and are not included in the actual damages portion of the Settlement. (Id.)

In addition, 14 class members filed an answer, hired an attorney and appeared in court in connection with the TCI Consumer Debt Actions. (Id. ¶ 36). Two retained NYLAG, two were represented by other attorneys, and nine filed answers or appeared in court *pro se*. (Id. ¶¶ 37, 38). Based on a review of the court records, NYLAG determined that Aries obtained a judgment against 78 class members. (Id. ¶ 40). In addition to Mr. Philemon, 103 unique class members paid money to defendants in connection with the TCI Consumer Debts; filed an answer, retained counsel or appeared in court, or had a judgment entered against them. (Id. ¶ 42). The parties have designated this group as the "Compensation Group." (Id.)

The Settlement Amount agreed to by defendants totals $66,500 of which $38,250 is to be paid by Aries and Matthew Blake, and $28,250 to be paid by Scott Sharinn. (Id. ¶ 43; Ex. 1, Sec. III, A (1)). The Settlement Amount, minus any Service Award approved by the Court for Mr. Philemon and any Administration Expenses over $3,500, will be distributed to the Compensation Group pursuant to the Allocation Plan, outlined in Exhibit B to the Settlement Agreement. Each eligible claimant is to receive a full refund of any money paid to defendants (the "Refund Group"); the remaining Settlement Amount will be divided evenly among all eligible claimants, regardless of whether an eligible claimant is also entitled to a refund payment (the "Compensation Group"). (Ranucci Decl. Ex. 1, Ex. B ¶ 8(a), (b)). If any amounts remain after the initial distribution, the remainder will be divided on a per capita basis to the eligible claimants. (Id., Ex. B ¶ 9). The Settlement Agreement also contains a provision for a Cy Pres award to a not-for-profit organization approved by the court that benefits individuals who are adversely affected by consumer debt collection practices, if for some reason an additional distribution is not economically feasible. (Id., Ex. B ¶ 10).

Counsel explain that the rationale for the difference in treatment between the Refund Group, who will be receiving refunds, and the remainder of the Compensation Group is that the group receiving the refund was actually harmed in addition to having their rights violated. The remainder of the Class only experienced violations of their rights, but did not expend money hiring an attorney, paying money to defendants or expending time and incurring expenses in appearing in court to defend against these actions. (Id. ¶¶ 45, 46).

According to plaintiff's calculations, a minimum of $39,238 will be available to distribute to the Compensation Group on a per capita basis. (Id. ¶ 48). If all 103 members of the Compensation Group submit timely claim forms, he or she will receive a payment of $380 in

addition to any refund payment that they may be entitled to receive. (Id.) Class counsel indicates that this $39,238 may actually exceed the amount that would be awarded in statutory damages if the Class were to litigate the claims to judgment given the FDCPA's cap on damages. (Id. ¶ 50).

In addition to monetary relief, the settlement affords injunctive relief as well. (Id. ¶ 51). Defendants have agreed to stop collecting TCI Consumer Debts and will not sell or assign those Debts to another party for collection. (Id. ¶ 52). Defendants further agree to move to dismiss all open cases in New York City Civil Court that have brought against class members, in which a judgment was not obtained. (Id. ¶ 54). They will also move to vacate all judgments that have been obtained and move to dismiss those actions. (Id. ¶ 55). Removal of these actions and judgments will result in them being removed from public record searches so as not to impair the ability of class members to access credit, obtain employment, or rent apartments. (Id. ¶ 56). As counsel notes, such relief would have been impossible to receive in this action had the case been litigated to its conclusion. (Id.) In addition, defendants will move to remove any confidential personal information that remains in the public court files. (Id. ¶ 57).

Plaintiff also seeks a Service Award for Mr. Philemon, based on his contribution of significant time and effort expended in the investigation and prosecution of the case. (Id. ¶ 60). According to the Ranucci Declaration, Mr. Philemon met repeatedly with Class Counsel, provided documents and information regarding his disputed debt, and defendants' collection practices, which assisted Class Counsel in litigation and settlement negotiation. (Id.) Mr. Philemon had already resolved his own Debt Action and, despite being an individual of limited means, he continued to assist counsel "because he wanted to assist fellow New York City consumers who had been harmed by Defendants' actions and, unlike Mr. Philemon, were unable

to find free legal assistance." (Id. ¶ 61). Under the Settlement, Mr. Philemon may seek a Service Award of $3,500, an amount comparable to the statutory damages that Class Counsel believes he could have obtained from defendants had he brought an individual action. (Id. ¶ 62).

The Settlement also contemplates that the parties will retain an experienced claims administrator, Atticus Administration ("Atticus"). (Id. ¶ 69). On November 30, 2018, Atticus submitted a proposal to perform certain work at a total cost of no more than $3,500. (Id. ¶ 72). Atticus agrees that for this sum, it will notify the class members by: 1) conducting a search of the National Change of Address database to obtain current addresses for class members; 2) conducting first-level skip tracing for current addresses; 3) mailing the notices to all class members and claim forms to the Compensation Group; 4) conducting a second-level skip trace for those class members whose mailings are returned as non-deliverable; 5) mailing a reminder post card shortly before the deadline for filing the claim form; 6) conducting a second-level skip tracing for any Compensation Group members who have not submitted timely claim forms; and 7) having live operators to answer class members' questions by phone. (Id. ¶ 70; see Sett. Agr.[6], Ex. A). To verify their identity, class members will be asked to provide the last four digits of their Social Security number. (Id. ¶ 71).

The Settlement Agreement contemplates that Class Counsel will file a motion for an award of attorney's fees. As part of the proposed Settlement, defendants have agreed to pay reasonable attorneys' fees and costs in the amount awarded by the Court up to $52,000. (Id. ¶ 82). Of this, $50,000 is to be paid by the three settling defendants and $2,000 will be paid by

[6] Citations to "Sett. Agr." refer to the Stipulation of Settlement as to All Claims Against All Defendants, attached as Exhibit 1 to the Ranucci Declaration, dated February 28, 2019, ECF No. 51.

Scott Sharinn on behalf of Ms. Moreno, who has defaulted in the action. (Id.) The fees are wholly separate from the Class Settlement Amount and will not reduce the compensation to be available to the class members. (Id. ¶ 84).

The parties propose the following schedule: 1) within 20 business days of an Order of Preliminary Approval of the Settlement, defendant will provide the Settlement Administrator with a list of class members, their contact and wage information necessary to calculate each member's settlement amount; 2) within 10 days after receiving the contact and wage information, the Administrator shall mail the Notice to class members; 3) class members then have 30 days from the date of the mailing of the Notice to opt-out, and to file any objections to the Settlement with the Court; 4) a final fairness hearing will be held and if approved, the Court will issue a Final Approval Order. (Pl.'s Mem. at 12; see also Sett. Agr. §§ III(2)(a), (3)(a)).

DISCUSSION

A. Rule 23 Class Certification

Plaintiff moves pursuant to Federal Rule of Civil Procedure 23 for provisional certification, for purposes of settlement, of a class consisting of all individuals who were sued in New York City Civil Court by, or paid money to, Aries Capital Partners Inc., represented by Sharinn & Lipshie, P.C., in connection with debts allegedly owed for the individual's enrollment and/or attendance at the Technical Career Institutes, Inc. (Sett. Agr. § II).

1. Legal Standards

Rule 23(a) of the Federal Rules of Civil Procedure governs class certification, providing:

> One or more members of a class may sue or be sued as representative parties on behalf of all members only if: (1) the class

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

Fed. R. Civ. P. 23(a).

In addition to satisfying these prerequisites, plaintiff also must satisfy one of the three subdivisions of Rule 23(b): (1) that separate actions pose a risk of inconsistent adjudications or would substantially impair the ability of other individuals to protect their interests; (2) injunctive or declaratory relief is sought concerning the class as a whole; or (3) common questions of law or fact predominate over individual questions, and a class action is superior to other methods for bringing suit. Fed. R. Civ. P. 23(b). See generally Amchem Prods., Inc. v. Windsor, 521 U.S. 591 (1997); Annunziato v. Collecto, Inc., 293 F.R.D. 329, 334 (E.D.N.Y. 2013). It is plaintiff's burden to establish compliance with each of the requirements of Rule 23 by a preponderance of the evidence, In re U.S. Foodservice Inc. Pricing Litig., 729 F.3d 108, 117 (2d Cir. 2013), but in analyzing the issue of certification, the court accepts as true the allegations in the complaint regarding the merits of the claim. See D'Alauro v. GC Servs. Ltd. P'ship, 168 F.R.D. 451, 454 (E.D.N.Y. 1996) (citation omitted). While courts are required to conduct a "rigorous" analysis, Amgen Inc. v. Conn. Ret. Plans & Tr. Funds, 568 U.S. 455, 465-66 (2013), the court may exercise "broad discretion" and "take a liberal rather than a restrictive approach" when reviewing whether to certify a class. Annunziato v. Collecto, Inc., 293 F.R.D. at 334.

Pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, "the court can make a conditional determination of whether an action should be maintained as a class action, subject to final approval at a later date." Collier v. Montgomery Cty Hous. Auth., 192 F.R.D. 176, 181 (E.D. Pa. 2000). For purposes of settlement only, defendants do not oppose conditional

certification. (See Pl.'s Mem. at 20); see also 4 Alba Conte, et al., Newberg on Class Actions § 11.27 (4th ed. 2002) (providing "[w]hen the court has not yet entered a formal order determining that the action may be maintained as a class action, the parties may stipulate that it be maintained as a class action for the purpose of settlement only").

2. The Requirements of Rule 23(a)

(a) Numerosity

Turning to the Rule 23(a) factors, the court may certify a class only if the class is so numerous that joinder becomes impractical. Fed. R. Civ. P. 23(a)(1). The standard for presuming numerosity is 40 or more members. Consol. Rail Corp. v. Town of Hyde Park, 47 F.3d 473, 483 (2d Cir. 1995).

In this case, there are 212 class members, which is more than sufficient for numerosity. (Pl.'s Mem. at 23). Thus, the allegations in the Complaint clearly satisfy the standard of numerosity.

(b) Commonality

In determining whether plaintiff can show that the claims of the potential Rule 23 class members share common questions of law or fact, the Rule does not require that "'all questions of law or fact raised be common.'" Savino v. Computer Credit, Inc., 173 F.R.D. at 352 (emphasis in original) (quoting Halford v. Goodyear Tire & Rubber Co., 161 F.R.D. 13, 18 (W.D.N.Y. 1995)). As long as "common questions . . . predominate," any differences in the circumstances raised by individual members will not defeat the requirement of commonality. In re Sadia, S.A. Sec. Litig., 269 F.R.D. 298, 304 (S.D.N.Y. 2010). In other words, "there need only be a single issue common to all members of the class," as the "critical inquiry is whether the common

questions lay at the 'core' of the cause of action alleged." Savino v. Computer Credit, Inc., 173 F.R.D. at 352.

Here, there are several common legal and factual issues. More specifically, plaintiff's claims all stem from the same unlawful debt collection scheme orchestrated by defendants. (Pl.'s Mem. at 23). Defendants acted in a similar manner toward all class members by filing nearly identical documents, containing similar misrepresentations, in connection with collection actions filed in New York City Civil Court. (Id.) Among other things, there are common questions of fact that affect all class members, such as: 1) whether the defendants conducted a "reasonable inquiry" into the statute of limitations before filing, a representation that appears in virtually all the complaints; 2) whether defendants filed lawsuits after the statute of limitations had expired; 3) whether the defendants included a demand for attorney's fees in the amount of $250 in the summons filed; 4) whether the lawsuits were filed without any verifiable basis and without the intent to obtain the necessary documentation; and 5) whether defendants hired process servers who they knew would not serve plaintiff and would file false affidavits of service. (Id. at 24).

There are also common questions of law as to whether these various practices violate the FDCPA and the Judiciary Law. (Id.) In Sykes v. Mel Harris & Associates, LLC, 285 F.R.D 279 (S.D.N.Y. 2012), aff'd, 780 F.3d 70 (2d Cir. 2015), the Second Circuit certified a class action in which the plaintiff alleged that a debt buyer, like Aries, had illegally sued in New York City Civil Court, and through counsel, filed uniform, false affidavits of service, and false affidavits in support of default judgments, in violation of the FDCPA and the Judiciary Law. The court held that the plaintiff had satisfied the commonality requirement because he had presented the same

"overarching claim" that defendants had engaged in practices designed to "fraudulently procure default judgments."

As such, the Court finds that there are common legal and factual issues sufficient to satisfy the requirements of Rule 23(a)(2).

(c) Typicality

Rule 23(a)(3) requires that the lead plaintiff's claims be typical of the claims of the class. Typicality has been found "when each class member's claim arises from the same course of events and each class member makes similar legal arguments to prove the defendant's liability." Robidoux v. Celani, 987 F.2d at 936. Typicality is "usually met irrespective of varying fact patterns which underlie individual claims" so long as the claims of the class representative are typical of the class members' claims. Bourlas v. Davis Law Assocs., 237 F.R.D. 345, 351 (E.D.N.Y. 2006) (quoting D'Alauro v. GC Servs. Ltd. P'ship, 168 F.R.D. at 456-57).

Here, the claims of plaintiff Philemon satisfy the requirements of the Rule in that he, like other members of the proposed Class, alleges claims based on the same legal and factual circumstances that form the bases of the class members' claims. Specifically, plaintiff alleges that defendants' litigation scheme, including the filing of form summons and complaints, and applying for default judgments, violated his rights under the FDCPA and the New York Judiciary Law, just as it violated the rights of the other class members. (Pl.'s Mem. at 25). Plaintiff's claims are therefore sufficiently typical to warrant certification.

(d) Adequacy of Representation

In order to satisfy Rule 23(a)(4), there must be a showing that the class representative fairly and adequately represents the interests of the class. Fed. R. Civ. P. 23(a)(4). In Sykes, the Court held that "adequacy is satisfied 'unless plaintiff's interests are antagonistic to the interests

of other members of the class.'" Sykes v. Mel Harris & Assocs. LLC, 780 F.3d at 90 (quoting Baffa v. Donaldson, Lufkin & Jenrette Sec. Corpl, 222 F.3d 52, 60 (2d Cir. 2000).

To demonstrate that the class will be adequately represented, the Second Circuit has established a two-prong test. In re Drexel Burnham Lambert Grp., 960 F.2d 285, 291 (2d Cir. 1992). First, there must be a showing that class counsel is "'qualified, experienced and generally able' to conduct the litigation." Halford v. Goodyear Tire & Rubber Co., 161 F.R.D. at 19 (quoting Eisen v. Carlisle & Jacquelin, 391 F.2d 555, 562 (2d Cir. 1968), vacated on other grounds, 417 U.S. 156 (1974)). Second, the class members' interests may not be "'antagonistic'" to one another. County of Suffolk v. Long Island Lighting Co., 710 F. Supp. 1407, 1413 (E.D.N.Y. 1989), aff'd, 907 F.2d 1295 (2d Cir. 1990).

Here, plaintiff claims that he has no interests that are antagonistic to the interests of the other class members. Instead, because he was subjected to the same unlawful conduct as the other class members, his interests are clearly aligned with them and "'the same strategies that will vindicate [Mr. Philemon's] claims will vindicate those of the class.'" (Pl.'s Mem. at 26 (quoting Damassia v. Duane Reade, Inc., 250 F.R.D. 152, 158 (S.D.N.Y. 2008))).

Pursuant to Fed. R. Civ. P. 23(g), the Court must also assess the adequacy of proposed Class Counsel, looking to the work counsel has done in identifying and investigating the potential claims, counsel's experience in handling class actions and claims of the type at issue in the case, and counsel's knowledge of the applicable law. See Fogarazzo v. Lehman Bros., Inc. 232 F.R.D. 176, 182 (S.D.N.Y. 2005); see also In re Fuwei Films Sec. Litig., 247 F.R.D. 432, 436 (S.D.N.Y. 2008) (stating: "'(1) there should be no conflict between the interests of the class and the named plaintiff nor should there be collusion among the litigants; and (2) the parties' attorney must be qualified, experienced, and generally able to conduct the proposed litigation'")

(quoting Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust v. LaBranche & Co., 229 F.R.D. 395, 412-13 (S.D.N.Y. 2004)); Babcock v. Computer Assocs. Int'l, Inc., 212 F.R.D. 126, 131 (E.D.N.Y. 2003) (quoting In re Drexel Burnham Lambert Grp., Inc., 960 F.2d at 291). The Court should also consider the resources that counsel is able to commit in representing the Class.

Here, the proposed Class has been represented by attorneys from NYLAG. (Ranucci Decl. ¶ 1). According to the Declaration of Ms. Ranucci, NYLAG is a nonprofit organization that represents low-income New Yorkers in a number of different areas, and "provides high quality, free civil legal services," in fields such as consumer protection. (Id. ¶ 80; Pl.'s Mem. at 29). She represents that NYLAG is highly experienced in class actions and other large and complex matters, and has successfully litigated "dozens of class actions to benefit poor New Yorkers." (Ranucci Decl. ¶ 81). In 2016, NYLAG represented 160,000 individuals in class actions alone. (Id.) Three NYLAG attorneys have participated in this action: Danielle Tarantolo, Partner, Shanna Tallarico, Senior Associate, and Jessica Ranucci, Junior Associate. Together, they have accrued in excess of 255 hours litigating this matter, not including the additional time needed to provide notice to the Class, conducting the fairness hearing, seeking final approval, and administering the settlement. (Id. ¶ 86). Thus, they are knowledgeable as to the substantive law at issue and well-qualified to represent the interests of the class.

Since the inception of this case, plaintiff's attorneys have demonstrated to this Court their ability to prosecute this case diligently and to represent the interests of the potential Rule 23 Class, as shown by the extensive effort that they engaged in to settle this action on behalf of all class members. Based on the legal experience of the attorneys involved in this case, particularly their extensive experience in similar cases, the Court agrees that Class Counsel is "well-qualified to serve as lead counsel in this matter." In re Fuwei Films Sec. Litig., 247 F.R.D. at 439.

Second, the named plaintiff does not have any interests that are antagonistic to or at odds with those of class members, and his interests are aligned with those of the other class members. (Pl.'s Mem. at 21-22). In order for a potential or actual conflict to defeat certification, it "must be fundamental." In re Flag Telecom Holdings, Ltd. Sec. Litig., 574 F.3d 29, 36 (2d Cir. 2009) (internal quotation marks and citations omitted). There is no evidence that the interests of the named plaintiff are antagonistic to those of the class members, and the Court is unaware of any potential, fundamental conflict of interest between plaintiff and the class members. Based on the nature of plaintiff's claims, the Court finds that Mr. Philemon's claims are so interrelated with those of the other potential Rule 23 class members that he will be an adequate class representative.

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

Plaintiff seeks class certification under both Rules 23(b)(2) for injunctive relief, and 23(b)(3) for damages. Under Rule 23(b)(2), certification is appropriate where "final injunctive relief or corresponding declaratory relief is appropriate [for] the class as a whole." Fed. R. Civ. P. 23(b)(2).

Here, class-wide injunctive relief, as expressed in the proposed settlement, would provide relief for every class member who faces the potential risk of illegal collection efforts made by defendants in the form of continued or renewed litigation, default judgments or the enforcement of settlement agreements reached prior to this lawsuit. Specifically, defendants have agreed to stop collecting on TCI debts permanently and they have agreed to dismiss any pending TCI actions or move to vacate all judgments. This latter aspect of the settlement is something that the plaintiff could not otherwise have obtained short of the settlement and it is a valuable benefit in

that it clears these judgments from the affected class members' credit reports. In Sykes, the court found that injunctive relief for the class was appropriate under the Judiciary Law where the allegations were similar to those here – namely, that defendants filed false affidavits in state court of obtain default judgments against the class members. 285 F.R.D. at 293. In Sykes II, the court further explained that even though the class members were in different procedural postures in terms of their state court actions, they all would receive relief from the injunctive part of the settlement. 780 F.3d at 97.

Accordingly, the Court finds that certification of the Class for injunctive relief is appropriate.

4. The Requirements of Rule 23(b)(3)

Plaintiff also seeks to certify a class under Rule 23(b)(3) because the class members are entitled to monetary damages under the FDCPA and the Judiciary Law. Thus, in addition to satisfying the requirements of Rule 23(b)(2), plaintiff must also establish that the proposed class meets the requirements of Fed. R. Civ. P. 23(b)(3).

(a) Common Questions Predominate Over Individual Issues

Under Rule 23(b)(3), a proposed class must be sufficiently cohesive and common issues must predominate in order to warrant adjudication as a class. Amchem Prods, Inc. v. Windsor, 521 U.S. at 623. Courts focus on whether there are common questions related to liability. See Smilow v. Southwest Bell Mobile Sys. Inc., 323 F.3d 32, 40 (1st Cir. 2003); Iglesias-Mendoza v. La Belle Farm, Inc., 239 F.R.D. 363, 372-73 (S.D.N.Y. 2007). Even if there are defenses that affect class members differently, that alone "does not compel a finding that individual issues predominate over common ones." In re Visa Check/MasterMoney Antitrust Litig., 280 F.3d 124,

138 (2d Cir. 2001) (quoting Waste Mgmt. Holdings, Inc. v. Mowbray, 208 F.3d 288, 296 (1st Cir. 2000)), overruled on other grounds, In re IPO Secs. Litig., 471 F.3d 24 (2d Cir. 2006).

In this case, plaintiff alleges that there are common issues of law and fact stemming from defendants' actions in demanding attorneys' fees, in filing suits after the expiration of the statute of limitations, and by disclosing un-redacted information such as Social Security numbers, all of which plaintiff contends could be proven based just on the litigation documents filed by defendants in Civil Court. (Pl.'s Mem. at 28). Generalized proof, is therefore, more than sufficient to determine defendants' liability, satisfying the predominance requirement. (Id. at 23-24). Since the class members' core factual allegations and legal theories predominate over any factual or legal variations among class members, the Court finds that common questions predominate in this case and plaintiff has therefore satisfied Rule 23(b)(3). See Torres v. Gristede's Corp., 2006 WL 2819730 at *16)).

(b) Class Action as Superior Method of Resolution

Additionally, to satisfy Rule 23(b)(3), plaintiff must demonstrate that "a class action would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." Brown v. Kelly, 609 F.3d 467, 483 (2d Cir. 2010) (citation and internal quotation marks omitted). The Rule requires the Court to consider:

> [(1)] the class members' interests in individually controlling the prosecution or defense of separate actions; [(2)] the extent and nature of any litigation concerning the controversy already begun by or against class members; [(3)] the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and [(4)] the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3).

Here, plaintiff claims that because class members have limited financial resources, the expense and burden of individual litigation would make it impossible for them to individually redress the alleged harm done to them. (Pl.'s Mem. at 28). See Morris v. Affinity Health Plan, Inc., 859 F. Supp. 2d 611, 617 (S.D.N.Y. 2012). In addition, proceeding as a class will preserve judicial resources by consolidating common issues of fact and law, and avoid repetitive proceedings and inconsistent adjudications. See Aponte v. Comprehensive Health Mgmt, No. 10 CV 4825, 2011 U.S. Dist. LEXIS 60882, at *35 (S.D.N.Y. June 2, 2011).

As a result, the Court accepts that a class action is the superior method of resolution in this case.

c) Ascertainability

As plaintiff points out, another threshold requirement is that the members of the proposed class be readily identifiable. (Pl.'s Mem. at 29). Here the Class has already been ascertained from the defendants' records. (Ranucci Decl. ¶ 31).

B. Preliminary Approval of the Class Settlement

Plaintiff seeks preliminary approval of the proposed settlement, as memorialized in the Settlement Agreement.

1. Legal Standards

To grant preliminary approval of a class settlement under Rule 23(e), the Court must determine that the proposed settlement is "fair, adequate, and reasonable, and not a product of collusion." Joel A. v. Giuliani, 218 F.3d 132, 138 (2d Cir. 2000) (citations omitted); see Fed. R.

Civ. P. 23(e). Judicial policy favors the settlement and compromise of class actions. Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 116-17 (2d Cir. 2005); see also In re Warfarin Sodium Antitrust Litig., 391 F.3d 516, 535 (3d Cir. 2004). Whether a settlement is fair is a determination within the sound discretion of the court. Levitt v. Rodgers, 257 Fed. App'x 450, 453 (2d Cir. 2007) (citing In re Ivan F. Boesky Sec. Litig., 948 F.2d 1358, 1368 (2d Cir. 1991)).

Generally, approval of a class action settlement involves a two-step process: first, the court preliminarily approves the proposed settlement by evaluating the written submissions and informal presentation of the settling parties and the negotiating process leading to the settlement, Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d at 116; and second, the court holds a fairness hearing to "determine whether the settlement's terms are fair, adequate, and reasonable . . ." Capsolas v. Pasta Res., Inc., No. 10 CV 5595, 2012 WL 4760910, at *4 (E.D.N.Y. Oct. 5, 2012). In evaluating a proposed settlement in order to grant preliminary approval, the court need only find that there is "probable cause" to submit the settlement to the class members and to hold a fairness hearing. Hernandez v. Merrill Lynch & Co., No. 11 CV 8471, 2012 WL 5862749, at *1 (S.D.N.Y. Nov. 15, 2012) (quoting In re Traffic Exec. Ass'n E. R.Rs., 627 F.2d 631, 634 (2d Cir. 1980)).

For procedural fairness, the court must determine if the settlement was "achieved through arms-length negotiations by counsel with the experience and ability to effectively represent the class's interests." Becher v. Long Island Lighting Co., 64 F. Supp. 2d 174, 178 (E.D.N.Y. 1999) (citing Weinberger v. Kendrick, 698 F.2d 61, 73 (2d Cir. 1982)); see also D'Amato v. Deutsche Bank, 236 F.3d at 85 (noting that the district court must "determine[] a settlement's fairness by examining the negotiating process leading up to the settlement as well as the settlement's

substantive terms"); In re Nissan Radiator/Transmission Cooler Litig., No. 10 CV 7493, 2013 WL 4080946, at *4 (S.D.N.Y. May 30, 2013). In reviewing a proposed settlement, the court has the "'fiduciary responsibility of ensuring that the settlement is . . . not a product of collusion, and that the class members' interests [were] represented adequately.'" Clement v. Am. Honda Fin. Corp., 176 F.R.D. 15, 29 (D. Conn. 1997) (internal citation omitted) (quoting In re Warner Commc'ns Secs. Litig., 798 F.2d 35, 37 (2d Cir. 1986)).

For substantive fairness, the Second Circuit has enumerated nine factors to guide courts in evaluating a proposed settlement:

> (1) [T]he 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 the 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; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation[.]

City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974) (internal citations omitted), abrogated on other grounds, Goldberger v. Integrated Res., Inc., 209 F.3d 43 (2d Cir. 2000); see also D'Amato v. Deutsche Bank, 236 F.3d 78, 86 (2d Cir. 2001); Garcia v. Pancho Villa's of Huntington Village, No. 09 CV 486, 2012 WL 5305694, at *4 (E.D.N.Y. Oct. 4, 2012). Although the Court is not required to make a finding of fairness as to the underlying settlement at this time, the Grinnell factors are instructive. See Torres v. Gristede's Operating Corp., Nos. 04 CV 3316, 08 CV 8531, 08 CV 9627, 2010 WL 2572937, at *2 (S.D.N.Y. June 1, 2010) (noting that "[p]reliminary approval of a settlement agreement requires only an initial evaluation

of the fairness of the proposed settlement on the basis of written submissions and an informal presentation by the settling parties") (internal quotation marks and citations omitted).

2. Analysis of Procedural Fairness

The plaintiff represents that the proposed settlement was entered into only after plaintiff's counsel performed an investigation of the Class' claims sufficiently to assess the settlement. (Pl.'s Mem. at 11). While there was little formal discovery conducted, the plaintiff's counsel retrieved court files from all five boroughs, analyzed 60 of these files, reviewed Freedom of Information requests and searches of public records, gathered documents from the plaintiff as well as other class members, and consulted with accountants. (Id.; see Ranucci Decl. ¶¶ 76-79).

In addition, the parties engaged in arms-length settlement negotiations over a period of months, including attending a settlement conference with the undersigned Magistrate Judge. (Id.) Although these negotiations were initially unsuccessful, after months of arms-length discussions, the parties reached an agreement in principle. (Id.)

Given the presumption of fairness when a class settlement has been reached after "arm's-length negotiations between experienced, capable counsel after meaningful discovery," see Wal-Mart Stores, Inc. v. Visa U.S.A. Inc., 396 F.3d at 116, the Court finds that the process of reaching the proposed settlement in this case was procedurally fair.

3. Analysis of Substantive Fairness

(a) Complexity, Expense, and Likely Duration of the Litigation

Turning to the Grinnell factors, the parties seek to avoid significant expense and delay that would result from continuing litigation. With 212 class members involved, the number of factual and legal claims in the case makes it clear that trial in the case would be complex. See

Romero v. La Revise Assocs., L.L.C., 58 F. Supp. 3d 411, 420 (S.D.N.Y. 2014) (finding in an FLSA and NYLL lawsuit that "the large number of class members and the fact-intensive nature of their claims mean that litigation would likely be lengthy, complex, and expensive"); Garland v. Cohen & Krassner, No. 08 CV 4626, 2011 WL 6010211, at *7 (E.D.N.Y. Nov. 29, 2011) ("Given the complexity of any class action lawsuit . . . it is reasonable to assume that absent the instant Settlement, continued litigation would have required extensive time and expense").

Even though plaintiff's counsel believe they have a strong case and would prevail on liability and damages were the case to proceed, counsel concede that there are inherent risks involved in litigation. (Pl.'s Mem. at 15 (citing In re PaineWebber ltd. P'ships Litig., 171 F.R.D. 104, 126 (S.D.N.Y. 1997)). Among the risks they cite are the uncertainty of proving and collecting damages under the FDCPA given defendants' claim of limited net worth. (Id.) Moreover, in the absence of a settlement, litigating this case to trial would require a substantial expenditure of money and time by both parties in pursuing this litigation. Further delay while the litigation proceeding could also mean that defendants would continue to file these collection cases in state court.

Thus, this factor of potential protracted litigation favors settlement.

(b) Reaction of Class to Settlement

The reaction of the class to the settlement is an issue that can be addressed only after notice of the proposed Stipulation has been sent to the Class and the time for objections has passed. Since notice of the settlement has not been distributed to the potential Rule 23 class members, the Court need not address this issue at this time.

(c) The Stage of the Proceedings and Amount of Discovery Completed

As noted, the parties have already conducted extensive review of documents, evaluated the merits of the case, and participated in a mediation with this Court.

When counsel has sufficient information to appreciate the merits of the case, settlement is favored. Velez v. Novartis Pharm. Corp., No. 04 CV 09194, 2010 WL 4877852, at *13 (S.D.N.Y. Nov. 30, 2010); In re Warfarin Sodium Antitrust Litig., 391 F.3d at 537.

Thus, this factor favors approval of the settlement.

(d) Establishing Liability and Damages

The risk of establishing liability also favors settling this dispute. Although plaintiff has expressed confidence in the merits of the claims, defendants have not admitted or conceded fault, liability, or wrongdoing. (See Sett. Agr. at 1). Thus, plaintiff's likelihood of success should be evaluated in light of the risks of trial and appeal and the prolonged nature of this type of litigation. Defendants have been well represented by highly competent counsel who would likely pursue all potential defenses and raise multiple issues in the course of the litigation, making the outcome of plaintiff's claims uncertain.

Therefore, the risks of establishing liability and damages weigh in favor of settlement.

(e) Maintaining the Class Through Trial

Plaintiff also faces a risk associated with obtaining and maintaining class certification through trial. If plaintiff were to move for class certification, defendants would likely oppose the motion and move for decertification. Plaintiff must overcome the more stringent requirement for Rule 23(b)(3) certification. (Id.) This process would require extensive briefing by both parties and inherently involves risk, expense, and delay. (Id.) Since the proposed settlement would

eliminate the aforementioned risk, expense, and delay, the Court finds that this factor favors approval.

(f) Ability of Defendant to Withstand a Greater Judgment

The parties do not address whether defendants could withstand a judgment greater than what is provided for in the Settlement Agreement, but plaintiff notes that one element favoring settlement was defendants' claim of limited assets. While this factor standing alone does not mean that the settlement is unfair, it supports the conclusion that the settlement is fair under all the circumstances. (Id. (citing Frank v. Eastman Kodak Co., 228 F.R.D. 174, 186 (W.D.N.Y. 2005))).

(g) Range of Reasonableness of Settlement Fund

The Settlement Agreement provides that defendants will pay $66,500. (Ranucci Decl., Ex.1). Although plaintiff acknowledges that it is possible that the Class could recover a greater amount at trial, plaintiff also recognizes the inherent risks of trial. (Id.) "It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." Johnson v. Brennan, No. 10 CV 4712, 2011 WL 4357376, at *11 (S.D.N.Y. Sept. 16, 2011) (quoting Officers for Justice v. Civil Serv. Comm'n, 688 F.2d 615, 628 (9th Cir. 1982)). When the proposed settlement provides a meaningful benefit to the class when considered against the obstacles to proving plaintiff's claims with respect to damages in particular, the agreement is reasonable. See In re MetLife Demutualization Litig., 689 F. Supp. 2d 297, 340 (E.D.N.Y. 2010).

Even absent the risk of establishing damages at trial, the value of the Settlement Fund justifies settling this case. Under the Settlement Agreement, class members will each receive

their proportionate share of the total award based on the division of the Class into two groups: the group who experienced tangible harm as a result of defendants' conduct; and those who did not pay money out of pocket but who had their statutory rights violated. (Pl.'s Mem. at 18). Plaintiff's counsel contends that this is a "straightforwardly fair" allocation in that it puts money into the hands of the injured class members in an amount related to their harm and it reduces administration costs. (Pl.'s Mem. at 19).

Nor does the Settlement provide excessive compensation for Class Counsel. (Id. at 16). Indeed, counsel's fees will be addressed separately, with fees to be capped at a maximum of $52,000. (Id. at 16-17). Plaintiff's counsel represent that as of February 15, 2019, they had already expended a total of 255 hours, representing approximately $76,000 of work, not counting the time that they anticipate having to spend in administering and finalizing the settlement. (Id.)

Based on all of these considerations, the Court finds that the total award, including the deductions for a service award to plaintiff, which the Court finds to be within the proper range for such fees, and the administrative costs, are fair and reasonable.

On the basis of the foregoing discussion of the Grinnell factors, the Court finds that the proposed settlement should be deemed fair and reasonable under the circumstances present in this case.

C. Appointment of the Class Counsel

The Court also finds that plaintiff's counsel's motion to be appointed as Class Counsel should be granted. In evaluating the adequacy of Class Counsel, Rule 23(g) requires the Court to consider: (1) the work done by counsel in investigating the potential claims in the case; (2) counsel's experience in handling similar class actions and other complicated litigation; (3)

counsel's knowledge of the applicable law; and (4) the resources counsel will expend to represent the class. Fed. R. Civ. P. 23(g). In this case, NYLAG has extensive experience litigating and settling class actions and other complex legal matters in cases that benefit low income and poor New Yorkers, and thus it is well-versed in the applicable law. (Ranucci Decl. ¶¶ 80, 81; Pl.'s Mem. at 29). Moreover, plaintiff's counsel has performed substantial work in this litigation, identifying, investigating, prosecuting, and settling the claims on behalf of the affected individuals. (Pl.'s Mem. at 30).

Accordingly, the Court finds that proposed Class Counsel satisfy the criteria of Rule 23(g), and appoints the New York Legal Assistance Group as Class Counsel to represent the class members in this matter.

D. The Proposed Notice

Pursuant to the Federal Rules of Civil Procedure, the "court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). Under Rule 23(e)(1), the "'[c]ourt has virtually complete discretion as to the manner of giving notice to class members.'" In re MetLife Demutualization Litig., 689 F. Supp. 2d at 345 (quoting Handschu v. Special Servs. Div., 787 F.2d 828, 833 (2d Cir. 1986)). In a Rule 23(b)(3) class action such as this, "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort" must be provided to the class. Fed. R. Civ. P. 23(c)(2)(B).[7] In Eisen v. Carlisle & Jacquelin, the

[7] The Rule further provides that, for any class certified under Rule 23(b)(3), the notice must "concisely and clearly state . . . (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)." Fed. R. Civ. P. 23(c)(2)(B).

Supreme Court held that individual notice, as opposed to general published notice, is required by Rule 23(c)(2) for class members who are identifiable through reasonable effort. 417 U.S. at 173-76 (holding that "individual notice to identifiable class members is not a discretionary consideration" but rather, is an "unambiguous requirement of Rule 23"); Becher v. Long Island Lighting Co., 64 F. Supp. 2d at 177. Notice is adequate if it "'fairly apprise[s] the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.'" Wal-Mart Stores, Inc. v. Visa U.S.A. Inc., 396 F.3d at 114 (quoting Weinberger v. Kenrick, 698 F.2d at 70). Notice need not be perfect, but must be the best notice practicable under the circumstances, and each and every class member need not receive actual notice, so long as class counsel acted reasonably in choosing the means likely to inform potential class members. See Weigner v. City of New York, 852 F.2d 646, 649 (2d Cir. 1988).

Here, the Notice provides an overview of the claims in language that is "as plain and simple as possible." (Pl.'s Mem. at 21). The Notice contains a definition of the proposed class to be certified, and the date, time, and location of the Fairness Hearing. (See Proposed Notice,[8] attached as Exhibit D to Sett. Agr.). The Notice also sets forth the options available to class members, an explanation as to how the settlement amount is to be allocated to each class member, and a description sufficient to allow class members to make an informed decision as to whether to participate in the settlement, object, or opt out. (Pl.'s Mem. at 21).

The Court finds that the Notice fairly and adequately advises class members of the terms of the Settlement, as well as the right of class members to opt out of or to object to the

[8] Citations to "Proposed Notice" refer to plaintiffs' proposed Notice of Class Action Lawsuit and Fairness Hearing (the "Notice"), attached as Exhibit B to the Ginsberg Declaration.

Settlement, and to appear at the Fairness Hearing. Thus, the Court approves the Proposed Notice.

The procedure for providing notice is also the best available under the circumstances and is designed to reach as many class members as possible. Plaintiff's counsel has retained a Claims Administrator who will mail individualized notices to each class member and there is a detailed procedure set out in the Settlement Agreement for locating addresses for class members who do not respond to the initial notice. (Id. at 21). Under the circumstances, the Court finds both the content of the Notices and their distribution method to be reasonable.

E. Approval of Service Award for Plaintiff

An "incentive" or "service" award is common in class actions and serves to compensate a plaintiff for his or her time and effort in the pursuit of litigating the claim. See In re Nissan Radiator/Transmission Cooler Litig., 2013 WL 4080946, at *15; Capsolas v. Pasta Res. Inc., 2012 WL 4760910, at *9. The general "guiding standard" is, broadly, "the existence of special circumstances including the personal risk (if any) incurred by the plaintiff[] in becoming and continuing as a litigant . . . [or] any other burdens sustained by that plaintiff in lending himself or herself to the prosecution of the claim, and, of course, the ultimate recovery." Gay v. Tri-Wire Eng'g Solutions, Inc., No. 12 CV 2231, 2014 WL 28640, at *13 (E.D.N.Y. Jan. 2, 2014) (quoting Roberts v. Texaco, Inc., 979 F. Supp. 185, 200 (S.D.N.Y. 1997)).

Courts often grant named plaintiffs in class action cases an enhanced award, either in the form of a flat fee or a multiplied amount of their share of the settlement fund. Compare Capsolas v. Pasta Res. Inc., 2012 WL 4760910, at *10 (awarding a service award of $20,000 to one named plaintiff and $10,000 for the remaining named plaintiffs), with Velez v. Majik Cleaning Serv.,

Inc., 2007 WL 7232783, at *7 (awarding named plaintiffs "twice the amount of the award that other class members will receive").

According to plaintiff's counsel, the named plaintiff was actively involved at all stages of the litigation, including conferring with counsel, and producing documents even after his own personal claim had been resolved. Thus, plaintiff seeks a Service Award of $3,500 for Mr. Philemon. (Pl.'s Mem. at 19). Defendant does not object to the Service Award. (See Sett. Agr. § VII).

Although service awards have been found appropriate, Xiao Ling Chen v. XpressSpa at Terminal 4 JFK LLC, No. 15 CV 1347, 2018 WL 1633027, at *4 (E.D.N.Y. Mar. 30, 2018) (holding that the practice "of awarding an extra amount to named plaintiffs in a Rule 23 class action is widespread, and also is increasingly recognized as appropriate for named plaintiffs under the FLSA"), courts are skeptical "when the average recovery to each member of the Collective appears small in comparison to the hefty payments to . . . the named plaintiffs." Id.; see also In re AOL Time Warner ERISA Litig., No. 02 CV 8853, 2007 WL 3145111, at *3 n. 10 (S.D.N.Y. Oct. 26, 2007). Here we do not have such a discrepancy.

The Court finds that given the participation of plaintiff in this case, the service payment requested in this case is reasonable.

F. Approval of the Requested Attorneys' Fees and Costs

Plaintiff's counsel will seek fees and costs accrued during this litigation separately from the amount allocated to the Class. (Pl.'s Mem. at 7). Defendant does not oppose plaintiff's counsel's application for attorneys' fees as long as it is within the agreed upon capped amount. (Ranucci Decl. ¶¶ 82, 83; Sett. Agr. § VI). The parties have indicated that Class Counsel will

petition the Court for an award at the Fairness Hearing. (Id.) The Court therefore reserves decision on the fairness of the attorneys' fees.

CONCLUSION

Accordingly, for the reasons stated above, the Court grants plaintiff's motion for preliminary approval of the proposed settlement as articulated in the Settlement Agreement and certification of the class for the purposes of settlement be approved. The Court further Orders that: (1) NYLAG be appointed as Class Counsel; (2) the proposed Notice of Class Action Lawsuit Settlement be approved; and 3) the Fairness Hearing be scheduled for October 1, 2019 at 2:30 p.m., which is more than 90 days from the date of this Order, as requested by the parties. The Proposed Class will have forty-five (45) days after the date the Proposed Notice is mailed to opt-out of or object to the Settlement Agreement.

The Clerk is directed to send copies of this Order to the parties either electronically through the Electronic Case Filing (ECF) system or by mail.

SO ORDERED.

Dated: Brooklyn, New York
July 1, 2019

/s/ Cheryl L. Pollak
Cheryl L. Pollak
United States Magistrate Judge
Eastern District of New York