UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JACKIE BURKS; BRUNILDA PAGAN CRUZ; VENUS CUADRADO; and RHONDA DRYE, individually and on behalf of all persons similarly situated,

Plaintiffs,

-against-

GOTHAM PROCESS, INC.; MULLOOLY, JEFFERY, ROONEY & FLYNN, LLP; BASSEM ELASHRAFI; and CARL BOUTON,

Defendants.

No. 20 Civ. 1001 (NRM) (PK)

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF PROVISIONAL CERTIFICATION OF A SETTLEMENT CLASS AND PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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Preliminary Statement

After over three years of zealous litigation and extensive arm's-length negotiations, Named Plaintiffs Jackie Burks, Brunilda Pagan Cruz, and Venus Cuadrado have entered class-wide Settlement Agreements with Defendants that resolve all claims asserted by Plaintiffs and the over 3,000 putative class members they represent (the "Class Members,"[1] together, the "Class"). As detailed below, this settlement provides critical benefits to thousands of New Yorkers, including monetary relief drawn from a $1.35 million settlement fund and injunctive relief potentially worth millions more. Plaintiffs now move for preliminary approval of the settlement and hope that a speedy preliminary approval process will provide this much-needed relief to thousands of New Yorkers as soon as possible. All Defendants consent to the grant of this motion.

The Complaint in this case alleges that, in 2019, Named Plaintiff Jackie Burks received a notice in the mail informing her that her wages would be garnished because a judgment had been entered against her in a state court debt collection Action that she had never heard of and in which she had never been served with process. Unbeknownst to Ms. Burks, Defendant Mullooly, Jeffery, Rooney & Flynn, LLP ("MJRF") had filed a state court debt collection Action against her in 2017. In that state court Action, Defendant Bassem Elashrafi, on behalf of Defendant Gotham Process, Inc. ("Gotham") had sworn an affidavit of service in which he claimed that he served Ms. Burks in the Action by personally handing a copy of the summons and complaint to

[1] All capitalized terms have the meanings assigned in the Settlement Agreements. Stipulation of Settlement and Release as to All Claims Against Defendant Mullooly, Jeffery, Rooney & Flynn, LLP ("MJRF Settl.") § I, Declaration of Jessica Ranucci ("Ranucci Decl.") Ex. 2; Stipulation of Settlement and Release as to All Claims Against Defendants Gotham Process, Inc., Carl Bouton, and Bassem Elashrafi ("PSD Settl.") § I, Ranucci Decl. Ex. 3. In particular, the state court actions against the Class Members (hereinafter, the "Actions") are defined specifically in the Settlement Agreements as "all lawsuits commenced by MJRF, on behalf of a Civil Action Plaintiff in New York City Civil Court on or after January 1, 2016, against a natural person in which an affidavit of service has been filed stating that Bassem Elashrafi or Carl Bouton, on behalf of Gotham Process, Inc., effectuated service by delivering the papers to a person identified as a Relative of the person to be served."

"Christina Burks," who "identified herself as [a] relative of [Ms. Burks]." The Complaint alleges that this affidavit of service was false and that the "Christina Burks" named by Elashrafi does not exist; Ms. Burks alleges that she does not have any relatives, or know anyone else, with the name of Christina Burks, and that she was never served in the state court Action and thus did not know about that Action and did not show up in court. Nonetheless, on the basis of Elashrafi's false affidavit, MJRF obtained a default judgment against Ms. Burks in the state court Action.

The Complaint further alleges that Elashrafi and Bouton filed similarly false affidavits of service, alleging service on nonexistent relatives, in the state court debt collection Actions against Named Plaintiffs Brunilda Pagan Cruz, Venus Cuadrado, and Rhonda Drye. The "relatives" in those affidavits were "Daniel Cruz," "Anthony Cuadrado," and "Richard Drye," respectively. None of the Named Plaintiffs were ever served with summons and complaint documents.

The Complaint contends that the same pattern played out in thousands of other instances: companies that owned debts (the "Civil Action Plaintiffs"[2]) hired MJRF, the law firm Defendant, to collect those debts via state court civil Actions; MJRF hired Gotham, the process serving agency, to serve process in those Actions; Gotham, in turn, hired Bouton and Elashrafi to effectuate service in those Actions; Bouton and Elashrafi, according to the Complaint, faked service and signed false affidavits of service attesting to purported service of process on "relatives" of the consumers; those false affidavits of service were filed in court; the consumers, who were not served, typically did not learn of those Actions and thus could not appear in court

[2] To be clear, the Civil Action Plaintiffs are *not* parties to *this* case—either as plaintiffs or defendants. Rather, the Civil Action Plaintiffs are the companies that own the debts incurred by class members, and thus were the plaintiffs in the underlying state court actions against Class Members. In other words, the Civil Action Plaintiffs were the companies collecting debt from Class Members who hired MJRF as their attorneys to effectuate that debt collection via state court litigation.

to defend themselves; default judgments were often entered against the consumers; and MJRF, on behalf of the Civil Action Plaintiffs, collected millions of dollars from the over 3,000 Class Members in connection with the Actions and resulting judgments, with many more millions of dollars outstanding to potentially be collected if this settlement is not approved.

The Parties' Settlement Agreements, which were negotiated over many months, provide critical relief to redress the alleged harms to the Class. Defendants will together pay $1,350,000 into a Class Settlement Account. MJRF will permanently cease collecting on all state court judgments and debts that were the subject of this litigation, of which at least $6.5 million remains outstanding. Subject to Civil Action Plaintiffs' consent, and consistent with the terms of the MJRF Settlement Agreement, MJRF will essentially end those state court Actions by discontinuing open Actions and vacating or satisfying Actions with judgments, effectively ensuring that Class Members are permanently free from the threat of collections of the remainder owed in these suits. Additionally, Elashrafi and Bouton have agreed to a permanent ban on serving process in all jurisdictions, and Gotham has agreed to certain changed business practices.

Because the proposed Class meets all of Rule 23's requirements and the proposed settlement satisfies all the criteria for preliminary approval, Plaintiffs respectfully request that the Court:

1. grant preliminary approval of the Settlement Agreements and proposed Allocation Plan;

2. provisionally certify a Class for settlement purposes under Fed. R. Civ. P. 23(b)(2) and (b)(3), as defined below, and appoint New York Legal Assistance Group ("NYLAG") as Class Counsel, and Jackie Burks, Brunilda Pagan Cruz, and Venus Cuadrado as Class Representatives; and

3. approve the proposed notice plan and direct the provision of notice to the Class.

A Proposed Order is attached for the Court's consideration as Exhibit 1 to the Declaration of Jessica Ranucci ("Ranucci Decl.").

I. Background

A. Allegations in the Complaint

MJRF sued Named Plaintiffs Jackie Burks, Brunilda Pagan Cruz, Venus Cuadrado, and Rhonda Drye in New York City Civil Court to collect on allegedly unpaid debts, on behalf of MJRF's clients, the Civil Action Plaintiffs. Amended Complaint ("Am. Compl." or "Complaint"), ¶¶ 162, 206, 233, 256, ECF No. 27. In the affidavit of service in each Action, Elashrafi or Bouton, on behalf of Gotham, swore that he effectuated service by handing the summons and complaint to a person who "identified himself [or herself] as [a] relative of" each Plaintiff. *Id.* ¶¶ 166, 210, 237, 261. However, the Complaint alleges that the so-called relatives of Plaintiffs that Bouton or Elashrafi listed in the affidavits of service do not exist. *Id.* ¶¶ 168, 212, 239, 263. Plaintiffs do not have any relatives by those names and do not know anyone by those names. *Id.* ¶¶ 169, 213, 240, 264. None of the Plaintiffs were ever served. *Id.* ¶¶ 163, 207, 234, 258. While New York law permits "substitute service" (that is, service on an adult who resides with the person named in the lawsuit) when done lawfully, failing to effectuate service and lying on the affidavits of service is a clear violation of the law. N.Y.C. Admin. Code § 20-409.2; *In re Laureiro v. New York City Dep't of Consumer Affs.*, 41 A.D.3d 717, 719 (N.Y. App. Div. 2007).

The Complaint alleges that no attorney at MJRF meaningfully reviewed the affidavits of service, and further alleges that if MJRF attorneys had reviewed the affidavits of service, they would have seen that the affidavits were facially implausible because, as described above, virtually all the affidavits of service purport to make substitute service on a relative. Am. Compl. ¶¶ 104-05. Nonetheless, Gotham, at the direction of MJRF, filed the false affidavits of service in court. *Id.* ¶ 102. MJRF (on behalf of the Civil Action Plaintiffs) sought, and obtained, default judgments against many Class Members who did not appear in court. *Id.* ¶ 107. It is likely that many Class Members remain unaware of the Actions filed against them. *Id.* ¶¶ 60-61. When

Class Members did appear in court to challenge the falsified affidavits, MJRF filed and prepared boilerplate opposition papers, which contained no specific facts as to service, signed by a MJRF attorney under penalty of perjury, which had the effect of prolonging legal proceedings and forcing consumers to appear at one or more additional court dates for the motions. *Id.* ¶¶ 117, 121. MJRF then collected money in connection with the Actions and default judgments, including through enforcement actions like bank freeze and levy, and wage garnishment. *Id.* ¶¶ 40-41. Furthermore, Named Plaintiffs and Class Members spent time and money attending court dates and incurred out-of-pocket expenses, such as for transportation, photocopying, and postage, and experienced emotional harm. *Id.* ¶¶ 155-60, 201-04, 226-30, 251-54, 278-81.

The Complaint alleges that Defendants engaged in similar misconduct against thousands of New Yorkers. Specifically, the Complaint alleges that Bouton and Elashrafi, on behalf of Gotham, prepared false affidavits of service attesting to service on nonexistent relatives, *id.* ¶¶ 63-84, and MJRF relied on those false affidavits of service to obtain default judgments that allowed the firm to garnish Class Members' wages or restrain the bank accounts of thousands of individuals. *Id.* ¶¶ 40-41, 107, 117, 155-60. When any consumers like Plaintiffs challenged the executions in court, MJRF filed the same form oppositions, with the same lack of review. *Id.* ¶ 117. Defendants' conduct harmed Named Plaintiffs and Class Members, including through unlawfully procured payments to Defendants, temporary or permanent loss of access to funds, and missed work and other expenses in connection with court appearances. *Id.* ¶¶ 155-60, 201-04, 226-30, 251-54, 278-81.

B. This Litigation

Plaintiffs initiated this case on February 24, 2020, on behalf of themselves and the Class, and filed an Amended Complaint on July 17, 2020. ECF No. 27. On April 1, 2020, Plaintiffs

filed a Motion for Class Certification. ECF Nos. 10, 11, 28. On July 27, 2020, the Court "adopted a schedule under which the motions to dismiss will be adjudicated before the motion for class certification," and thus denied the Motion for Class Certification without prejudice to renewal. Order (July 27, 2020). On September 4, 2020, Defendants filed motions to dismiss: one by MJRF, and one by Bouton, Elashrafi, and Gotham (together, the "Process Server Defendants"). ECF Nos. 29-3, 30-3. On September 14, 2021, the Court denied Defendants' Motions to Dismiss. Order (Sept. 14, 2021). On October 22, 2021, the Defendants answered and denied the material allegations of the Complaint. ECF Nos. 47, 49.

The Parties proceeded with discovery. On February 11, 2022, Plaintiffs filed a Motion to Compel Defendants to produce documents and information in response to Plaintiffs' discovery requests. ECF No. 57-1. After a telephonic conference, the Court decided the Motion to Compel on February 19, 2022 and ordered Defendants to produce certain responsive documents to Plaintiffs. Order (Feb. 20, 2022). On November 18, 2022, Plaintiffs notified the Court of the death of Named Plaintiff Rhonda Drye, ECF No. 66, and on May 17, 2023, Ms. Drye's claims were dismissed with prejudice. Order (May 17, 2023).

C. Settlement Negotiations

As detailed below, Plaintiffs ultimately negotiated two separate Settlement Agreements: one with MJRF, and one with the Process Server Defendants. Even though these Agreements were signed and negotiated separately, Plaintiffs now move for preliminary approval of both Settlement Agreements, which together would accomplish a global resolution of all of Plaintiffs' and the Class's claims in this case.

Global settlement negotiations began nearly three years ago, in Fall 2020, but the Parties were unable to reach a resolution at that time. Ranucci Decl. ¶ 18. In mid-2022, Plaintiffs re-

started settlement negotiations, this time with MJRF only. *Id.* ¶ 19. In October 2022, after several months of intensive negotiations, Plaintiffs and MJRF came to an agreement in principle on the primary injunctive relief terms, including a pause and eventual cessation of MJRF's ongoing collections in connection with Class Members' debts and judgments. *Id.* ¶ 20. Negotiations about monetary relief from MJRF were extensive and involved over a dozen rounds of back-and-forth. *Id.* ¶ 21. In November 2022, Plaintiffs and MJRF reached agreement on the monetary portion of the Settlement, and began to work on memorializing that agreement. *Id.* ¶ 22.

On December 29, 2022, MJRF and Plaintiffs signed an agreement to put in place a standstill of collection. Ranucci Decl. ¶ 24; *see* Collection Standstill Agreement ("Standstill Agreement"), Ranucci Decl. Ex. 4. Under the Standstill Agreement, MJRF agreed to essentially cease collections on certain Class Members, by altogether ceasing certain collections activity on certain Actions and, as to others, placing continued collections in escrow to be returned to the Class Members upon a final settlement. Standstill Agreement, § III.

On May 2, 2023, Plaintiffs and MJRF executed a stipulation of settlement resolving Plaintiff's claims against MJRF. Stipulation of Settlement and Release as to All Claims Against Defendant Mullooly, Jeffery, Rooney & Flynn, LLP ("MJRF Settl."), Ranucci Decl. Ex. 2. On the same day, Plaintiffs and MJRF executed an amendment to the Standstill Agreement that applied the collection standstill (cessation of certain collections activities and holding of certain payments in escrow pending final approval) to the entire Class. ¶¶ 25-26; *see* Amendment to the December 29, 2022 Collection Standstill Agreement ¶¶ 25-26, Ranucci Decl. Ex. 5.

Plaintiffs' settlement negotiations with Process Server Defendants resumed in November 2022. Ranucci Decl. ¶ 27. The settlement discussions with Process Server Defendants were highly contested and led to the Parties' attendance at two settlement conferences before

Magistrate Judge Kuo, the second of which resulted in Plaintiffs' settlement with the Process Server Defendants. *Id.* ¶ 28. By that time, Plaintiffs and Process Server Defendants had already been involved in months of extremely intensive settlement negotiations, including over two dozen rounds of competing proposals covering both injunctive and monetary relief. *Id.* On May 17, 2023, Plaintiffs and the Process Server Defendants executed a stipulation of settlement resolving Plaintiffs' claims against the Process Server Defendants. *Id.* ¶ 32; *see* Stipulation of Settlement and Release as to All Claims Against Defendants Gotham Process, Inc., Carl Bouton, and Bassem Elashrafi ("PSD Settl."), Ranucci Decl. Ex. 3.

As part of the settlement negotiation process, Plaintiffs' Counsel reviewed detailed records showing the amount that MJRF collected from Class Members; financial documentation and the applicable insurance policy from Gotham; and tax returns from Elashrafi and Bouton. PSD Settl. § III.A.9; Ranucci Decl. ¶ 29. Plaintiffs' Counsel also consulted with an expert in insurance law regarding the applicability of Gotham's insurance policy's coverage. Ranucci Decl. ¶ 31.

D. Summary of the Settlement Terms

If approved, the Settlement Agreements would resolve all claims against all Defendants asserted by all Class Members, as follows:

i. Monetary Relief

To settle this case, Defendants will pay a total of $1,350,000 into a settlement fund (the "Class Settlement Account"), with $750,000 contributed by MJRF and $600,000 by the Process Server Defendants. MJRF Settl. §§ I.W, III.A.1; PSD Settl. §§ I.R, III.A.1; Ranucci Decl. ¶ 41.

ii. Cessation of Collections by MJRF

MJRF has agreed to continue the standstill of collections under the Standstill Agreement until the Final Settlement Date. MJRF Settl. § III.B.1.a. Upon the Final Settlement Date, MJRF

will permanently cease all collections on the Actions in accordance with the procedure set forth in the MJRF Settlement Agreement. *Id.* §§ III.B.2-3. The total amount outstanding on these Actions is estimated to be at least $6.5 million. Ranucci Decl. ¶¶ 46-47. Absent the settlement, MJRF could continue to collect on the full $6.5 million from the Class.[3] Prior to the standstill, many Class Members had ongoing wage garnishments that would have essentially meant automatic collection from their paychecks until their entire debts were paid. *Id.* ¶ 80. As a result of this settlement, MJRF will cease these collections forever. It is true that MJRF does not itself own the underlying debts and judgments—those are owned by MJRF's creditor clients, the Civil Action Plaintiffs. *See* MJRF Settl. § I.F. Thus, in theory, the Civil Action Plaintiffs could continue collection on those debts and judgments through other counsel. As described below, however, Class Counsel negotiated other features of the settlement that will make it very likely that such collections will not occur.

iii. Discontinuance, Vacatur, and Satisfaction in State Court

While some of the underlying Actions against Class Members have already been resolved (dismissed or discontinued, or judgments in those Actions have been vacated or satisfied), other Actions against Class Members remain open. In those Actions, MJRF will seek the consent of its creditor clients (the Civil Action Plaintiffs) to discontinue the Actions with prejudice and vacate

[3] It is difficult to precisely estimate the value of cessation of collections because the amount of any future collections is inherently speculative. But permanently ceased collections on the Class could be worth $6.5 million, which, as stated above, is a conservative figure representing the total outstanding amount of the Actions and judgments against the Class (conservative because it does not include interest accrued while those Actions have been with MJRF, which is likely substantial). Ranucci Decl. ¶¶ 47-48. This entire amount would be collectible by MJRF, as well as by the Civil Action Plaintiffs, absent the approval of these Settlement Agreements. *See* MJRF Settl. §§ III.B.3.a-d. Using an even more conservative estimate, assuming that collections against Class Members by MJRF would continue on an ongoing basis at approximately the annual rate of past collections, over the most conservative estimate of the full lifetime of the judgments (approximately $340,000 per year for the past seven years and for an additional thirteen years), the value of cessation of collections provided by the settlement would still be approximately $4.4 million. *Id.* ¶ 48. This even more conservative figure recognizes that some portion of the $6.5+ million outstanding balance on these may ultimately be uncollectible.

or satisfy judgments against Class Members. MJRF Settl. §§ III.B.3.a-d.[4] This will provide crucial protection to the Class Members. By having the Actions against them discontinued, or the judgments against them vacated or satisfied, the Class Members will not face the risk of future collections from *anyone*—not the Civil Action Plaintiffs themselves, and not another debt collection law firm. And because these debts are outside of the statute of limitations, Class Members cannot be sued on them again in the future. This will ensure permanent cessation of all collections against all Class Members by everyone, effectively keeping the $6.5 million or more outstanding balance in those Class Members' pockets. It will also save Class Members the stress and uncertainty that would come from having those Actions and judgments remain outstanding. Since judgments in New York are good for twenty years, absent this Settlement, Class Members could be dealing with efforts to vacate the judgments against them for decades to come. While this relief does require the consent of the Civil Action Plaintiffs, those companies are incentivized to consent by the springing release, described below.

iv. Releases

The Settlement Class Members and Named Plaintiffs will release all claims against all Defendants, and Defendants will release all claims against Class Members, arising out of or related to the Actions or to this *Burks* Civil Action. MJRF Settl. § V.A.1-2; PSD Settl. §§ V.A.1-2.

Class Members also have agreed to a springing release against the Civil Action Plaintiffs, who are not parties to this action. MJRF Settl. § V.B.1. The springing release serves as an incentive for the Civil Action Plaintiffs to consent to MJRF effectuating the

[4] The Settlement excludes from this relief Actions that MJRF has already dismissed or discontinued, as well as judgments that have already been vacated or satisfied. See MRJF Settl. § I.O.

dismissal/discontinuance of Actions against Class Members and vacatur/satisfaction of judgments against Class Members, described above.

Specifically, under the springing release, the Settlement Class Members and Named Plaintiffs will release all claims against a Civil Action Plaintiff only *after* that Civil Action Plaintiff discontinues or dismisses *all* open Actions, and satisfies or vacates *all* judgments, with respect to *all* Actions commenced by that Civil Action Plaintiff. MJRF Settl. § V.B.1-2. In other words, as the Settlement Agreement between Plaintiffs and MJRF expressly provides: "a Civil Action Plaintiff who commenced ten (10) Actions against Settlement Class Members which were each resolved" in this manner would get the benefit of the release, whereas "a Civil Action Plaintiff who commenced ten (10) Actions against Settlement Class Members but only nine (9) of said Actions were resolved" this way "would not be subject to the release." *Id.* § V.B.1. Thus, no Class Member will release any rights against the Civil Action Plaintiff (the company that sued the Class Member) —and thus expressly retain the ability to separately litigate against those parties—unless *all* Class Members sued by that same Civil Action Plaintiff have had their Actions dismissed/discontinued and judgments vacated/satisfied in accordance with the terms of the Settlement. *Id.* § V.B.1-2. This provides a strong incentive for the Civil Action Plaintiffs to consent to the discontinuance/vacatur/satisfaction procedure as to all Class Members, providing crucial protection to the Class because, as detailed above, these steps effectively make the cessation of collections permanent.

v. Permanent Ban on Service of Process

Defendants Bouton and Elashrafi have agreed to a permanent bar on serving process in all jurisdictions. PSD Settl. § III.B.1.a.

vi. Changed Business Practices by Defendants

MJRF has agreed to cease all business with Process Server Defendants. MJRF Settl. §

III.C.1. Gotham has agreed to permanently cease doing business with Bouton and Elashrafi. PSD Settl. § III.B.2.e. Gotham will also cease doing business with any process servers known to have disciplinary records arising from conduct alleged to have constituted fraud or misrepresentation in service of process. *Id.* § III.B.2.b. Gotham has agreed to comply with all rules and regulations governing service of process and with all aspects of the revised Compliance Plan it entered into as part of a Consent Agreement with the New York City Department of Consumer and Worker Protection. *Id.* § III.B.2.a. In addition, in all cases after August 1, 2016 where Bouton and Elashrafi purported to effectuate service (including, but not limited to, those against Class Members), Bouton and Elashrafi have agreed to only provide evidence or testimony defending their service when obligated to do so by law, court order, or subpoena; if so required, Bouton and Elashrafi have agreed to provide all parties and the court with a copy of the Amended Complaint and Final Approval Order. *Id.* §§ III.B.1.c. Generally, when a consumer challenges service in a New York City Civil Court case, the Court holds a hearing to determine if service occurred; these added protections will benefit consumers in these hearings, to minimize the harm of falsified service.

E. The Class

Defendants' records show that there are 3,253 unique Class Members, who were sued in 3,231 unique state court Actions. Ranucci Decl. ¶¶ 35-36. Approximately 1,300 (40%) of these Class Members paid money to MJRF in connection with the Actions against them. *Id.* ¶ 38. The total amount paid to MJRF by Class Members is approximately $2,380,000. *Id.* ¶ 39. The vast majority of Class Members who made payments (95%) each paid $5,000 or less, although a few Class Members paid more, as much as $31,500. *Id.* ¶ 40. The outstanding balance on all debts/judgments by all Class Members is at least $6.5 million, and likely significantly higher, as

this figure does not take into account interest accrued in the years since these accounts were referred to MJRF. *Id.* ¶¶ 46-47; *see supra* note 3.

F. Proposed Allocation Plan for Monetary Awards to Class Members

At least $850,000 of the settlement amount would be distributed directly to Class Members, and all Class Members will be eligible for a monetary payment under the Settlement. First, each Class Member who fills out a Claim Form will get a minimum base payment of $200. Allocation Plan ¶ 5.a.i; Ranucci Decl. Ex. 6. Then, remaining funds will be used to provide all Class Members who paid money to MJRF with a refund payment in addition to their $200 payment. Allocation Plan ¶ 5.a.ii. If there are not sufficient funds to give full refunds to all these Class Members, each will receive a payment that is a partial refund of the same percentage (e.g., all Class Members would receive a payment equal to 70% of what they paid to MJRF). Allocation Plan ¶ 5.a.ii. If there are sufficient funds, each such Class Member will receive a full refund of what he or she paid to MJRF, and then any remaining funds will be distributed evenly among all Class Members, effectively increasing the "base" payment above $200. Allocation Plan ¶ 5.a.iii. Class Counsel estimates that, at a 25% response rate (which would be high for a class action of this type), each Class Member would get a $200 payment, then all Class Members who paid money would get a full refund, and then there would be sufficient remaining funds to increase all responding Class Members' base payment by an additional $113. Ranucci Decl. ¶ 43. The remainder of the settlement amount would, upon Court approval, be allocated to service awards (up to $16,000), administration expenses (up to $34,000), and Approved Attorneys' Fees (up to $450,000). Allocation Plan ¶¶ 5.b-d.

G. Proposed Notice to Class Members, and Settlement Administration

Class Counsel has retained a Class Administrator, Atticus Administration, LLC. Ranucci

Decl. ¶ 53. Class Counsel engaged in a competitive bidding process to find a Class Administrator and sought bids from Atticus and another administrator in connection with this case, with Atticus providing a comparable bid for thousands of dollars less. *Id.* ¶ 57. As Class Administrator, Atticus will distribute notice of the settlement to the Class, process claim forms and any Class Member objections and requests to opt-out, distribute settlement funds, respond to Class Member inquiries about the settlement, and manage other aspects of administering the settlement. *Id.* ¶ 54. The Class Administrator has agreed to charge a fee of no more than $24,309 for basic services. *Id.* ¶ 55. However, Class Counsel anticipates that it may be particularly challenging to locate Class Members in this case and then incentivize them to participate in the settlement, since many of them may remain unaware of the underlying state court Actions against them, as well as the particular service-related misconduct giving rise to their claims. Accordingly, Class Counsel seeks authorization for total administration expenses of up to $34,000, so that Class Counsel may authorize Atticus to take additional steps to locate and reach out to Class Members. *Id.* ¶ 56.

Under the proposed notice plan (the "Notice Plan"), Notices will be provided to all Class Members. *Id.* ¶ 59. First, a written notice, which includes basic information, frequently asked questions, and brochure regarding Class Counsel's nonprofit status and free legal services, will be mailed to all Class Members, along with a link to the settlement website for electronic claims filing. *See* Exhibits 7-8 to the Ranucci Decl. (the "Notice" or "Notices"); Ranucci Decl. ¶ 59. There are two different versions of the Notice: one for Class Members who paid money to MJRF, and thus may be likely to recognize the name of the law firm, and the other for Class Members who did not pay money, and thus may be unlikely to even be aware of the underlying Actions at all. *Id.* ¶ 59.

Second, before the deadline to submit Claim Forms, a reminder postcard will be sent to

all Class Members who have not submitted a valid Claim Form. *Id.* ¶ 60. All postcard reminders will contain a website address and QR code to the settlement website, which contains more information about the Settlement Agreements; the landing page from that link will direct Class Members to an electronic Claim Form. *Id.* The postcard notices will contain a subset of the content of the full notices. *Id.* Atticus will maintain a website with information about the Settlement and the *Burks* Action, and will maintain a telephone line to answer Class Members' questions about the Settlement. *Id.* ¶ 66. As stated above, at the discretion of Class Counsel, Atticus and Class Counsel will cooperate on additional steps, at the limited additional cost not to exceed $34,000 total, to provide additional notice to Class Members as warranted. *Id.* ¶ 67.

H. Counsel's Zealous Work on Behalf of the Class

The New York Legal Assistance Group (NYLAG) is a nonprofit legal services provider dedicated to helping New Yorkers experiencing poverty or in crisis, and combatting financial and other injustice. *Id.* ¶ 68. NYLAG operates the Volunteer Lawyer for the Day Program, which provides free limited-scope legal assistance to consumers sued by debt collectors in New York City Civil Court, and it was through representing consumers in that program that NYLAG learned of patterns of falsified service by Bouton and Elashrafi. *Id.* ¶¶ 70, 72-73. Last year, NYLAG assisted more than 1,600 consumers via the Volunteer Lawyer for a Day Program. *Id.* ¶ 71.

NYLAG has zealously investigated and prosecuted Defendants' practices, expending hundreds of hours. *Id.* ¶ 74. NYLAG collected documents from and thoroughly interviewed Plaintiffs and investigated their claims. *Id.* ¶ 77. NYLAG has spoken with dozens of Class Members, reviewing their documents and providing legal advice regarding this *Burks* Action and their underlying state court Actions. *Id.* ¶ 78.

NYLAG has aggressively litigated this action, including by filing an exceedingly detailed Complaint and Amended Complaint and class certification motion and successfully opposing Defendants' motions to dismiss. *Id.* ¶ 82; *see also* ECF Nos. 1, 27, 32.

NYLAG pursued substantive discovery from Defendants, securing production of documents regarding the Named Plaintiffs, and reviewing tens of thousands of pages of document discovery, including detailed spreadsheets of all instances of service on a relative over a nearly-four-year period; nearly four years' worth of affidavits of service and logbooks from Defendants Elashrafi and Bouton covering thousands of instances of service; and financial statements including tax returns, insurance policies, and balance statements. Ranucci Decl. ¶ 83. NYLAG successfully compelled Defendants to produce certain of this discovery. *Id.* ¶ 15. NYLAG also retained a data analysis expert who provided technical assistance to analyze GPS records and an expert demographer who was prepared to provide expert testimony regarding the implausibility of Defendants' alleged service. *Id.* ¶ 84-85.

Through its efforts in reviewing and analyzing the evidence in this case, NYLAG developed an extremely strong evidentiary basis for the Class's claims; for example:

- A review of the 3,900 instances of purported attempted or completed service on the group that includes the class shows that there were only 13 times (.3%) that Bouton or Elashrafi found no one at home. Bouton or Elashrafi purported to complete service in more than 93% of attempts. And in over 93% of those completions, they claimed to serve an adult "relative" of the person to be served; only 5% of instances claimed services on the consumer himself/herself. This chain of events is wholly implausible: if the process servers had really been attempting to make service, they would have found many more people who were not home, would have been able to complete service much less often, and would not have happened upon so many relatives who accepted service in place of the actual person to be served. *Id.* ¶¶ 87.a-b.
- Technical analysis of the process servers' GPS records, performed by a vendor retained by NYLAG, confirms that effectuating service in the time periods claimed by the process servers was implausible and, sometimes, literally impossible. With the vendor, NYLAG has identified hundreds of instances of service when the purported time between services is less than time mapping software estimates it would take to drive between the locations, and 4,000 instances when the process servers would have had less than 5 minutes at a

location to actually effectuate service—a wildly implausible feat. *Id.* ¶ 87.c.

- NYLAG's review of individual instances of service confirmed the implausibility shown in the data. Dozens of consumers told NYLAG that they were never served. NYLAG have identified a class member for whom one of the process servers did not complete service, noting that the class member had died—but then six days later, he claimed to make service on her relative, and another who public records show died before service was purportedly completed. NYLAG identified numerous instances where the process servers noted that an address was wrong or a building did not exist, but then purported to make service at the same location shortly thereafter. *Id.* ¶¶ 87.d-e.

NYLAG also negotiated the Settlement Agreements over the course of months through dozens of phone conversations and emails and two settlement conferences with Magistrate Judge Kuo. *Id.* ¶¶ 17-33.

Notably, as a legal services provider, NYLAG has over decades assisted hundreds of clients affected by Defendants' business practices. *Id.* ¶¶ 68-72. With the resolution of this case, Defendants will no longer be able to engage in the practices challenged by the Complaint, providing a crucial benefit to NYLAG's clients and consumers across New York City.

II. Settlement Approval Process and Standard of Review

There is a "strong judicial policy in favor of settlements, particularly in the class action context." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (internal quotation marks and citation omitted). Speedy settlement "allows class members to recover without unnecessary delay and allows the judicial system to focus resources elsewhere." *Hadel v. Gaucho, LLC*, No. 15 Civ. 3706, 2016 WL 1060324, at *2 (S.D.N.Y. Mar. 14, 2016).

Federal Rule of Civil Procedure 23(e) requires a court to approve class action settlements before they can become binding. A court may approve such a settlement if it finds, in its discretion, that it is "fair, adequate, and reasonable, and not a product of collusion." *Wal-Mart*,

396 F.3d at 116; *see also* Fed. R. Civ. P. 23(e)(2).[5] In evaluating the substantive fairness, adequacy, and reasonableness of a class action settlement, courts in the Second Circuit have historically considered nine factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974).[6] In 2018, amendments to Federal Rule of Civil Procedure 23 took effect that, among other changes, added specific factors to Rule 23(e)(2) that a court must review in determining whether a proposed class-wide settlement is fair, reasonable, and adequate. Following the amendment, "the factors set forth in Rule 23(e)(2) have been applied in tandem with the Second Circuit's *Grinnell* factors and 'focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision to whether to approve the proposal.'"[7]

Class action settlement approval involves two steps. First, the Court must evaluate the proposed settlement on a preliminary basis, often called "preliminary approval." Upon "the parties' showing that the court will likely be able to (i) approve [the Settlement] under Rule 23(e)(2) and (ii) certify the class for purposes of judgment on the proposal," the Court must direct notice to the Class.[8] The standards for preliminary approval are less exacting than at the final stage, and preliminary approval is often granted without a hearing. *See Hadel*, 2016 WL

[5] "The District Court determines a settlement's fairness by examining the negotiating process leading up to the settlement as well as the settlement's substantive terms." *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001). The Court should "give proper deference to the private consensual decision of the parties . . . [and] should keep in mind the unique ability of class and defense counsel to assess the potential risks and rewards of litigation." *Clark v. Ecolab, Inc.*, No. 07 Civ. 8623, 2009 WL 6615729, at *3 (S.D.N.Y. Nov. 27, 2009) (internal quotation marks and citation omitted).

[6] *Abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000) ("*Goldberger*"); *see also In re LIBOR-Based Financial Instruments Antitrust Litigation*, 327 F.R.D. 483, 493 (S.D.N.Y. 2018) (discussing use of the *Grinnell* factors in the Second Circuit).

[7] *In re Namenda Direct Purchaser Antitrust Litigation*, 462 F. Supp. 3d 307, 311 (S.D.N.Y. 2020) (citation omitted); *see also In re GSE Bonds Antitrust Litigation*, 414 F. Supp. 3d 686, 692 (S.D.N.Y. 2019) (citing the Advisory Committee Notes to the 2018 Amendment).

[8] Fed. R. Civ. P. 23(e)(1)(B); *see also Yuzary v. HSBC Bank USA, N.A.*, No. 12 Civ. 3693, 2013 WL 1832181, at *2-4 (S.D.N.Y. Apr. 30, 2013); *In re Nasdaq Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997).

1060324, at *1-2. Second, after granting preliminary approval, the Court orders that notice of the proposed settlement be given to the class members, holds a hearing to determine the fairness and adequacy of the settlement on a final basis, and upon finding that the settlement is fair and adequate, grants the settlement final approval. *See In re Initial Public Offering Secs. Litig.*, 243 F.R.D. 79, 87 (S.D.N.Y. 2007).

A. The Settlement Is Fair, Reasonable, and Adequate

i. Rule 23(e)(2)(A): Named Plaintiffs and Class Counsel Have Adequately Represented the Class

Rule 23(e)(2)(A) directs the Court to consider whether "the class representatives and class counsel have adequately represented the class." This is a "procedural" inquiry, and the "the focus . . . is on the actual performance of counsel acting on behalf of the class." Advisory Committee Note, Rule 23(e)(2)(A-B). Here, the Named Plaintiffs and Class Counsel have more than adequately represented the Class throughout the litigation, weighing in favor of settlement.

Class Counsel performed hundreds of hours of work on this litigation, *see supra* § I.H.; Ranucci Decl. ¶¶ 74-75.

The Named Plaintiffs have adequately represented the Class through full and open cooperation with Class Counsel, including by attending meetings and interviews with counsel, providing records for production, making themselves available for the settlement conferences with the Court, making themselves available for scheduled depositions (ultimately cancelled due to settlement), and reviewing and approving the substance of the Settlement Agreements. *Id.* ¶ 49. Named Plaintiffs contributed substantial time and effort meeting with Class Counsel and providing documents and information to assist in both litigation and settlement negotiations. *Id.* They undertook these efforts despite having limited means and little familiarity with proceedings of this nature. *Id.* ¶ 50. Named Plaintiffs and Class Counsel have thereby adequately represented

the Class.

ii. Rule 23(e)(2)(B): The Settlement Proposal Was Negotiated at Arm's Length

Rule 23(e)(2)(B) requires that "the proposal was negotiated at arm's length." The procedural fairness of a settlement is based on the negotiating process that led to it.[9] The settlement discussions in this matter, which began in 2020 and then resumed in mid-2022, were highly contested and involved numerous rounds of negotiations spanning many months, including the Parties' attendance at two settlement conferences before Magistrate Judge Kuo. *See supra* § C; Ranucci Decl. ¶¶ 17-33. Rule 23(e)(2)(B) is therefore satisfied.

iii. Rule 23(e)(2)(C): The Relief Provided for the Class Is Adequate

1. Rule 23(e)(2)(C)(i): Costs, Risks, and Delay of Trial and Appeal

Rule 23(e)(2)(C)(i), which asks the Court to consider the "costs, risks, and delay of trial and appeal," overlaps with several *Grinnell* factors: the complexity, expense, and likely duration of the litigation (Factor 1); the risks of establishing liability (Factor 4); the risks of establishing damages (Factor 5); the risks of maintaining the class action through the trial (Factor 6); the ability of the defendants to withstand a greater judgment (Factor 7); the range of reasonableness of the settlement fund in light of the best possible recovery (Factor 8); and the range of reasonableness of the settlement fund as compared to a possible recovery in light of all the attendant risks of litigation (Factor 9). *Id.*

Complexity, expense and likely duration of the litigation (Factor 1): With regard to the first *Grinnell* factor, this case is complex, involving FDCPA and related state and city law claims

[9] *D'Amato*, 236 F.3d at 85. To find a settlement process fair, the court must "ensure that the settlement resulted from arm's-length negotiations and that plaintiff['s] counsel . . . possessed the experience and ability . . . necessary to effective representation of the class's interests." *Id.* (internal quotation marks and citation omitted).

on behalf of more than 3,250 Class Members, each with a separate state court debt collection Action. Continuing litigation would involve depositions, as well as some limited further document production by Defendants on pending requests, before proceeding to expert discovery and then class certification and summary judgment briefing. *See* Ranucci Decl. ¶ 86. As a result, even if this case were to be resolved at summary judgment without need for a trial, it could be years before a final judgment is reached. In the event this Settlement were not approved, the Standstill Agreement that has paused collections would be terminated, allowing MJRF and the Civil Action Plaintiffs to return to collecting on the Judgments against Class Members. MJRF Settl. § III.B.1.b.ii. They could then continue these collections all the way until a final judgment, leading to significant harm to the Class. In addition, as described below, Process Server Defendants may be less likely in the future to have funds with which to satisfy a judgment. Ranucci Decl. ¶¶ 29-31. This factor weighs in favor of the proposed settlement.[10]

Risks of establishing liability and damages (Factors 4 and 5): Class Counsel believes that the Class has a strong case and would prevail on liability and damages at trial. However, "[l]itigation inherently involves risks," and the main purpose of settlement "is to avoid a trial on the merits because of the uncertainty of the outcome" and the costs of delay. *See In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997) (internal quotation marks and citation omitted). Although the Court sustained Plaintiffs' claims at the motion to dismiss stage, there would inherently be risk in establishing Defendants' class-wide liability. In particular, Defendants MJRF and Gotham are likely to contest their own liability for the actions of Bouton and Elashrafi; while Plaintiffs feel confident that the law makes them liable, there is

[10] *See, e.g.*, *Charron v. Pinnacle Grp. N.Y. LLC*, 874 F. Supp. 2d 179, 196 (S.D.N.Y. 2012), (granting final approval of settlement class action where "[t]he path from this stage of the litigation to a final judgment . . . would be long, complicated, and expensive . . . [n]otwithstanding the strength of the evidence Plaintiffs elicited during . . . investigation and discovery"), *aff'd sub nom. Charron v. Wiener*, 731 F.3d 241 (2d Cir. 2013).

always some level of risk.

As to damages, Plaintiffs face litigation uncertainty as to the amount of actual and statutory damages that would be permitted under the FDCPA and state law, in light of governing case law and Defendants' limited net worth. *See* 15 U.S.C. § 1692k(a)(2)(B) (capping statutory damages under the FDCPA to 1% of the debt collector's net worth). Although Plaintiffs could potentially recover a larger amount if they litigated this matter to its conclusion—including the possibility of treble damages (though capped at $1,000 per class member) under New York General Business Law § 349—Plaintiffs would also risk recovering limited damages or nothing at all if they were unable to persuade the court that the funds collected by Defendants on behalf of the Civil Action Plaintiffs were an appropriate measure of damages. *See* Am. Compl. ¶ 330.d.iii, ECF No. 27. Additionally, Plaintiffs risk an allocation of damages after trial that awards the highest damages against Bouton and Elashrafi, the individual defendants with the most limited ability to pay, and a lower amount of damages against the insured corporate Defendants. Plaintiffs also risk a Court entering much narrower declaratory and injunctive relief then that sought in the Complaint. Moreover, the settlement involves extremely valuable relief that *would not* be available upon a judgment in this suit: likely cessation of collections by the Civil Action Plaintiffs, who are not parties to this case. *See* MJRF Settl. §§ III.B.3.a-d; V.B.1. "Settlement is favored" where, as here, it "results in substantial and tangible present recovery, without the attendant risk and delay of trial." *Sykes v. Mel S. Harris & Assocs. LLC* ("*Sykes III*"), No. 09 Civ. 8486, 2016 WL 3030156, at *12 (S.D.N.Y. May 24, 2016) (internal quotation marks and citation omitted).

Risks of maintaining the class action through the trial (Factor 6): The sixth *Grinnell* factor "weighs in favor of settlement" where "it is likely that defendants would oppose class

certification" if the case were to be litigated. *Garland v. Cohen & Krassner*, No. 08–CV–4626, 2011 WL 6010211, at *8 (E.D.N.Y. Nov. 29, 2011). While Plaintiffs believe that their arguments in favor of class certification are strong, and that a Class would ultimately be certified, Defendants would be likely to vigorously oppose certification. This factor thus weighs in favor of settlement.

Ability of the defendants to withstand a greater judgment (Factor 7): The Process Server Defendants' inability to withstand greater judgment weighs in favor of approval of settlement here. Settlement negotiations with Process Server Defendants focused on their financial condition and ability to withstand an eventual judgment. Ranucci Decl. ¶ 29. Process Server Defendants represented that they had limited assets and provided financial documentation, including a profit and loss statement and balance sheet from Gotham, and tax returns as to the individual defendants, which Class Counsel reviewed to substantiate the Process Server Defendants' claims of limited funds. *Id.* ¶¶ 29-30; PSD Settl. § III.A.9. And while Gotham does have a potentially applicable liability insurance policy, its carrier has taken the position that this policy would not cover an eventual judgment against Process Server Defendants at all, under the policy's exclusion for intentional acts. Ranucci Decl. ¶¶ 30-31. Because the likelihood of insurance coverage was central to the settlement negotiations, Class Counsel consulted with an insurance law expert regarding the policy's coverage. *Id.* ¶ 31. Following that consultation, Class Counsel believe that there is moderate, but real, risk that the carrier might not be obligated to cover an eventual judgment. *Id.* Even if the policy applied to a judgment, its value would be seriously eroded by the costs of defense, such that it would be inadequate to cover the full damages expected in this case. Class Counsel is thus satisfied that Process Server Defendants have limited financial resources and would be unlikely to withstand a judgment of the magnitude

sought in this case and that insurance coverage is uncertain, weighing in favor of settlement.

Range of reasonableness of the settlement fund in light of the best possible recovery and attendant risks of litigation (Factors 8 and 9): In analyzing the reasonableness of the settlement fund, the Court must assess "the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.'"[11] The Settlement Agreements will provide $1.35 million to the Class Settlement Account, cessation of collection on all Actions against all Class Members by MJRF; discontinuance of actions and vacatur or satisfaction of judgments upon Civil Action Plaintiff consent, which would result in full cessation of collection by all parties in perpetuity (valued at $4.4 million to $6.5 million); a permanent ban on service of process by Bouton and Elashrafi; and additional benefits. This is exceptionally valuable injunctive and monetary relief.

As to MJRF, while there is a possibility that Plaintiffs could be able to recover greater than $700,000 in monetary relief from MJRF if the case was litigated to its conclusion, the injunctive relief provided to the Class Members by the MJRF settlement provides tremendous value of the Class, much of which could not be obtained even if Plaintiffs were to prevail at trial—including a permanent cessation of collections by MJRF and, likely, the Civil Action Plaintiffs, on all Actions against all Settlement Class Members, relief worth millions of dollars. Ranucci Decl. ¶¶ 46-48.[12] With respect to the Process Server Defendants, the Settlement

[11] *Frank v. Eastman Kodak Co*., 228 F.R.D. 174, 186 (W.D.N.Y. 2005) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)). In other words, "[t]he adequacy of the amount offered should be judged 'in light of the strengths and weaknesses of the plaintiff[s'] case.'" *In re Austrian and German Bank Holocaust Litig*., 80 F. Supp. 2d 164, 178 (S.D.N.Y. 2000) (quoting *In re Med. X-Ray*, No. CV–93–5904, 1998 WL 661515, at *5 (E.D.N.Y. Aug. 7, 1998)).

[12] As detailed *supra*, the springing releases provided a strong incentive for the Civil Action Plaintiffs to give their consent for MJRF to discontinue/vacate/satisfy the Actions and judgments. But even if one or more Civil Action Plaintiffs were to withhold consent, the Settlement Agreements still provide crucial injunctive relief to the Class. First, MJRF, the attorneys of record, would be required by the Settlement Agreement to withdraw, thus ceasing MJRF's collection efforts against Class Members. MJRF Settl. § III.B.3.d. Second, even if they do not consent to

provides tremendous value given their limited resources, as described above, and the inherent litigation risk.[13]

2. Rule 23(e)(2)(C)(ii): Effectiveness of Proposed Method of Claims Processing

Rule 23(e)(2)(C)(ii) directs the Court to consider "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." The proposed method of processing claims will be effective. Upon receiving the Notice, Class Members will be able to submit Claim Forms online via the Settlement website and will be asked to verify their identity by providing easily accessible information such as a code printed on their Notice or the last four digits of their social security number.[14] Ranucci Decl. ¶ 61. This verification process will ensure that payments are made only to Class Members and will provide a simple way for the Class Administrator to process payment of claims. *Id.* Settlement Class Members will be able to elect to receive payment via electronic means (including PayPal, Venmo, Zelle, physical or electronic debit card, and bank transfer), which is both less expensive

vacatur or discontinuance on the front end, many Civil Action Plaintiffs may rationally decide not to continue collections on these judgments at all, given dubious legal status (and that NYLAG and others are available to litigate against any violations). Ranucci Decl. ¶ 69. Third, even if the Civil Action Plaintiffs wanted to collect, they would have to hire a new law firm—and such a law firm may be difficult to find, given the serious legal risk that such a firm would be taking. Third, notice from this case will make many Class Members aware of the judgments, allowing them to take the appropriate steps in state court to vacate those judgments. Fourth, it will be harder for judgment creditors to overcome Class Members' challenges to service of process, as Process Server Defendants Bouton and Elashrafi have agreed to only testify in defense of their service of process when required to by law, court order, or subpoena, and if so required, to provide copies of the amended complaint and final approval order in this action. PSD Settl. §§ III.B.1.b-c. Finally, Class Counsel is a non-profit legal services organization that will be available to provide advice to Class Members facing future collections issues and may be able to resolve them with minimal expense. Ranucci Decl. ¶ 69.

[13] "[W]hen a settlement assures immediate payment of substantial amounts to class members, even if it means sacrificing speculative payment of a hypothetically larger amount years down the road, settlement is reasonable under [the eighth and ninth Grinnell factors]." *Henry v. Little Mint, Inc.*, No. 12 Civ. 3996(CM),, 2014 WL 2199427, at *10 (S.D.N.Y. May 23, 2014) (internal quotation marks and citation omitted).

[14] Class Counsel can provide a screenshot of the Claim Form website to the Court upon request. Ranucci Decl. ¶ 64. Class Members who are unable to submit Claim Forms online will be able to submit a paper Claim Form by contacting the Settlement Administrator. *Id.* ¶ 63.

to administer and more convenient, or to be mailed a paper check. *Id.* ¶ 62. Class Counsel has worked with Atticus on other cases using a similar method of claims processing, and has found it to be very effective and efficient. *Id.* ¶ 65.

3. Rule 23(e)(2)(C)(iii): Attorneys' Fees

Class Counsel, the New York Legal Assistance Group (NYLAG), is a non-profit legal services organization that provides representation to New Yorkers like Jackie Burks, Brunilda Pagan Cruz, Venus Cuadrado, and Rhonda Drye, who would not otherwise have the means to obtain private counsel to assist them. Ranucci Decl. ¶ 69. Class Counsel has already expended hundreds of hours litigating this case, resulting in a preliminary lodestar of hundreds of thousands of dollars, and expect to spend considerable additional hours bringing this matter to its conclusion. *Id.* ¶¶ 74-75. Class Counsel will seek an award of attorneys' fees in an amount to be specified, but which will not exceed one-third of the settlement fund ($450,000). Such an award is well within the boundaries of fees awarded in this district,[15] and is equal to only up to 8% of the relief provided to the Class by the settlement when considering the monetary portion as well as the most conservative $4.4 million estimate of the value of the ceased collections on the Class.[16] A fee

[15] *See, e.g., Hayes v. Harmony Gold Min. Co.*, 509 Fed.Appx. 21, 23–24 (2d Cir. 2013) (summary order) (affirming an awarded fee of one third of a $9 million settlement, and noting that "the prospect of a percentage fee award from a common settlement fund, as here, aligns the interests of class counsel with those of the class"); *In re Facebook, Inc. IPO Sec. & Derivative Litig.*, No. MDL 12-2389, 2015 WL 6971424, at *11 (S.D.N.Y. Nov. 9, 2015), ("A fee award of one-third of the Settlement Fund 'is well within the range accepted by courts in this circuit.'" (quoting *Becher v. Long Island Lighting Co*., 64 F. Supp. 2d 174, 182 (E.D.N.Y.1999) and collecting cases), *aff'd sub nom*. *In re Facebook, Inc*., 674 F. App'x 37 (2d Cir. 2016); *In re IMAX Sec. Litig*., No. 06 CIV. 6128 NRB, 2012 WL 3133476, at *7 (S.D.N.Y. Aug.1, 2012); *In re Blech Sec. Litig*., No. 94 CIV. 7696, 2002 WL 31720381, at *1 (S.D.N.Y. Dec.4, 2002); *Hicks v. Stanley*, No. 01 CIV. 10071, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005); *Maley v. Del Global Techs. Corp*., 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002); *Frank v. Eastman Kodak Co*., 228 F.R.D. 174, 189 (W.D.N.Y. 2005); *In re Initial Pub. Offering Sec. Litig*., 671 F. Supp. 2d 467 (S.D.N.Y. 2009).

[16] A percentage of the common fund structure is favored for avoiding a potential ethical conflict between Class Members and Class Counsel. *See* American Bar Ass'n, Ethical Guidelines for Settlement Negotiations, at 43 ("In a class action, the attorneys' fees recovery will often be drawn from a common fund of cash paid by the defendant to the class. In that event, lawyers for the class should negotiate settlement terms – and, in particular, the amount of the common fund – without regard to attorneys' fees."), *available at* https://www.americanbar.org/content/dam/aba/administrative/dispute_resolution/dispute_resolution/settlementnegotiations.pdf.

award to NYLAG would support ongoing work on behalf of New Yorkers in need. *Id.* ¶¶ 68-69. Class Counsel will provide further details to support any fee request, including an up-to-date lodestar, in connection with Plaintiffs' request for final approval.

4. Rule 23(e)(2)(C)(iv): Agreements Made in Connection with Proposal

Rule 23(e)(2)(C)(iv) directs the Court to consider "any agreement made in connection with the [settlement] proposal." Other than the Standstill Agreement, described *supra* at II.C and attached as Exhibits 4 and 5 to the Ranucci Declaration, there are no agreements that have been made in connection with the proposed settlement. Ranucci Decl. ¶ 34.

iv. Rule 23(e)(2)(D): The Proposal Treats Class Members Equitably Relative to Each Other

The proposed Allocation Plan, attached as Exhibit 6 to the Ranucci Declaration, is fair and treats Class Members equitably relative to each other. "The method of allocation need not be perfect [to warrant preliminary approval]; it must only be rationally related to the relative strengths and weaknesses of the . . . claims asserted." *Sand v. Greenberg*, No. 08–cv–7840, 2011 WL 1338196, at *5 (S.D.N.Y. Mar. 22, 2011) (internal quotation marks and citation omitted).

The Allocation Plan is extremely fair and straightforward, providing allocation in three stages. First, each Class Member who completes a claim form receives $200. Allocation Plan ¶ 5.a.i. This is straightforwardly fair, in that it treats all Class Members the same. It also has the advantage of incentivizing Class Members to submit a Claim Form. Second, each Class Member who paid money to MJRF in connection with their Action or Judgment will receive a refund of those payments. *Id.* ¶ 5.a.ii. The extent of those refunds will depend on the response rate. If sufficient funds are available after the base payments have been earmarked for all Class Members who submitted forms, then the refunds will be full; if not, then each Class Member will receive a partial refund of the same percentage of what they paid. *Id.* This is also

straightforwardly fair, as the Class Members who paid money to MJRF are those who incurred out of pocket losses as a result of the conduct charged in the Complaint, and these losses will be redressed on a *pro rata* basis. Finally, if funds are left over after full refunds are paid to those entitled to them, the remaining funds will again be divided evenly between all Class Members—increasing each Class Member's base payment by an identical amount. This is, again, straightforwardly fair in that everyone is treated the same. *Id.* ¶ 5.a.iii. Class Counsel estimates that, at a 25% response rate, each Class Member would receive a $200 payment; all Class Members who paid MJRF would receive a full refund; and then each Class Member would get an additional $113 base payment. Ranucci Decl. ¶ 43.

Class Counsel considered a myriad of alternative allocation schemes, including, for example, ones with no (or a higher, or a lower) base payment; and ones which prioritized payments to certain categories of Class Members (for example, those who paid money after a judgment was entered in their Action versus before, or those who did not file an answer in their Actions, or those who were subject to involuntary collections). *Id*. ¶ 44. Ultimately, Class Counsel rejected each of these schemes, either because they were too administratively complex (which carries additional administrative costs that reduce funds available for distribution), or were not feasible to implement in light of available records, or would not adequately incentivize Class Members to submit Claim Forms, or were less equitable than the scheme now being proposed, or were not sensible in light of the reasonably expected ranges of response rates, or some combination of all these reasons. *Id.* ¶ 45.

Under the proposed Settlement Agreements, if money remains in the Class Settlement Account after a first distribution and further distributions are not economically feasible, a *cy pres* distribution may be made to a not-for-profit organization that benefits individuals adversely

affected by consumer debt, "for the aggregate, indirect, prospective benefit of the class." *Masters v. Wilhelmina Model Agency, Inc*., 473 F.3d 423, 436 (2d Cir. 2007) (quotations and citation omitted); Allocation Plan ¶ 6.

The Allocation Plan provides for a Service Award of $4,000 each to Mrs. Burks, Mrs. Cruz, and Mrs. Cuadrado. Allocation Plan ¶ 5.b. The Named Plaintiffs "play[ed] a crucial role in bringing justice to those who would otherwise be hidden from judicial scrutiny." *Guippone v. BH S&B Holdings LLC*, No. 09 Civ. 01029, 2016 WL 5811888, at *8 (S.D.N.Y. Sept. 23, 2016). The Service Awards, which are consistent with the range of awards made in similar cases in this Circuit, is reasonable considering the Named Plaintiffs' time and effort.[17] This amount is also comparable to the amount they would have received in actual or compensatory damages and statutory damages had they brought their own suits.

In connection with their application for final approval, Named Plaintiffs will request that the Court approve payment of deceased Named Plaintiff Rhonda Drye's Service Award to her family in recognition of her effort prosecuting the Class's claims against Defendants before her death. MJRF Settl. § 3.A.5; (explicitly permitting Plaintiffs to seek such an award); Ranucci Decl. ¶ 51. Prior to her passing (which occurred in Fall 2022, well into settlement negotiations and after much of the litigation), Ms. Drye was an active participant in the case and worked closely with Class Counsel in her role as Named Plaintiff, including by gathering documents and attending meetings. Ranucci Decl. ¶ 51.

v. Additional *Grinnell* Factors

The second *Grinnell* factor asks the Court to consider the reactions of the class to the

[17] *O'Connor v. AR Res., Inc*., No. 08 Civ. 1703, 2012 WL 12743, at *9 (D. Conn. Jan. 4, 2012) ($2,000 service award); *see also Garland v. Cohen & Krassner*, No. 08 Civ. 4626, 2011 WL 6010211, at *14 (E.D.N.Y. Nov. 29, 2011) ($3,000 service award); *Gross v. Washington Mut. Bank, F.A.*, No. 02 CV 4135, 2006 WL 318814, at *6 (E.D.N.Y. Feb. 9, 2006) ($5,000 service award).

settlement. All Named Plaintiffs approve of the Settlement Agreements. *Id.* ¶ 52. Thus, at this stage, the second *Grinnell* factor weighs in favor of approving the Settlement Agreements. The Court should re-examine this factor in connection with Final Approval, after notice has been issued to the rest of the Class Members.

The third *Grinnell* factor, which focuses on the stage of the proceedings and the amount of discovery completed, also favors preliminary approval of the Settlement Agreements. In general, settlement is appropriate if "the plaintiffs have obtained a sufficient understanding of the case to gauge the strengths and weaknesses of their claims and the adequacy of the settlement."[18] Here, in the three years that this case has been pending, the Parties have exchanged significant discovery, as described above. *See* Ranucci Decl. ¶¶ 15, 23, 29, 82-84. At the time of settlement, the Parties were on the eve of depositions and Plaintiffs had retained an expert. *Id.* ¶¶ 85-86. This factor also weighs in favor of settlement.

B. Rule 23(e)(1): Proposed Notice to the Class

i. Notice to the Class

"Where, as here, the parties seek simultaneously to certify a settlement class and to settle a class action, the elements of Rule 23(c) notice (for class certification) are combined with the elements of Rule 23(e) notice (for settlement or dismissal)."[19] The Parties have retained an experienced Claims Administrator, Atticus Administration, LLC, which will distribute notice of

[18] *In re AOL Time Warner, Inc. Secs. & "ERISA" Litig.*, No. MDL 1500, 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006) (approving settlement prior to depositions, etc.). *See, e.g., Johnson v. Brennan*, No. 10 Civ. 4712, 2011 WL 4357376, at *9-10 (S.D.N.Y. Sept. 16, 2011) (granting final approval of a class settlement where the parties engaged in informal discovery, class counsel conducted interviews and reviewed information provided by the defendants, the parties met with a mediator and exchanged mediation statements, and counsel performed "detailed damages calculations" based on defendant's data, but no depositions were taken).

[19] *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 448 (S.D.N.Y. 2004). Notice to class members must be made "in a reasonable manner" that is "the best notice that is practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B), 23(e)(1)(B).

the settlement to the Class, process any Class Member objections and requests to opt-out, process claims, distribute settlement funds, respond to Class Member inquiries about the settlement, and manage other aspects of administering the settlement. Ranucci Decl. ¶ 54. Plaintiffs' proposed Notice Plan involves at least two rounds of notice: First, a mailed notice to all Class Members for whom an address is available from Defendants' records and, second, a postcard reminder notice to all Class Members who have not submitted a Claim Form. *Id.* ¶¶ 59-60.

The proposed Notices are attached to the Ranucci Declaration as Exhibits 7 and 8. They are written in language that is as plain and simple as possible. *Id.*; *see* Ranucci Decl. Exs. 7 and 8. They also contain all the requirements listed in Rule 23(c)(2)(B), including a "general description" that "fairly apprise[s] the prospective members of the class of the class action's pendency, the relevant terms of the proposed settlement, and their options in connection with th[e] case." *Weinberger v. Kendrick*, 698 F.2d 61, 70-71 (2d Cir. 1982) (internal quotation marks omitted). Further, the Notices provide Class Members with information not only about this settlement, but also about what will happen in the underlying state court Actions — critical information, since many Class Members are likely to be unaware of the judgments entered against them and may not know where to turn for legal assistance. Ranucci Decl. ¶¶ 59-60. And the Notices will direct Class Members to the settlement website, which will have additional information. *Id.* ¶¶ 59-60, 66.

C. Provisional Class Certification Should Be Granted for Settlement Purposes

Plaintiffs seek provisional approval of the following settlement class pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3):

> all natural persons who have been sued by MJRF, on behalf of a Civil Action Plaintiff, in New York City Civil Court in Actions commenced on or after January 1, 2016, in which an affidavit of service has been filed, stating that Elashrafi or Bouton, on behalf of Gotham, effectuated service by delivering the papers to a

person identified as a Relative of the person to be served.

MJRF Settl. § II.A; PSD Settl. § II.A. Defendants have agreed to the certification of this Class for the purposes of settlement. MJRF Settl. § II.A; PSD Settl. § II.A.

Provisional class certification for the settlement of a putative class action has the key practical advantages of "avoiding the costs of litigating class status while facilitating a global settlement." *Francisco Corte v. Fig & Olive Founders LLC*, 2015 WL 12591677, at *2 (S.D.N.Y. June 24, 2015). Under Federal Rule of Civil Procedure 23(a), "a class may be certified only if four prerequisites have been met: numerosity, commonality, typicality, and adequacy of representation." *Sykes v. Mel S. Harris & Assocs. LLC* ("*Sykes II*"), 780 F.3d 70, 80 (2d Cir. 2015). In addition to satisfying the prerequisites of Rule 23(a), at least one of the three subdivisions of Rule 23(b) must be satisfied to qualify for class certification. Fed. R. Civ. P. 23(b). Here, Plaintiffs seek class certification under both Rule 23(b)(2) for injunctive relief, and Rule 23(b)(3) for damages.

Sykes v. Mel S. Harris & Associates LLC et al., a Second Circuit decision affirming certification of a class of New York City consumers asserting FDCPA and N.Y. Gen. Bus. Law § 349 claims against a debt collection law firm, a process serving agency, and individual process servers, is strong support for certification here because it arose from very similar facts. *See Sykes v. Mel S. Harris & Associates LLC et al.* ("*Sykes I*"), 285 F.R.D. 279, (S.D.N.Y. 2012), *aff'd*, *Sykes II*, 780 F.3d at 70. Like the Named Plaintiffs here, the *Sykes* plaintiffs alleged that the attorney defendants filed standard affidavits of service and other litigation documents that "follow[ed] a uniform format," *Sykes II*, 780 F.3d at 77, that those documents allegedly contained false statements that class members were lawfully served with process, *id*. at 76-78,

and that defendants' filing of such documents was "necessary to effectuating defendants' alleged scheme" to extract money through unlawful New York City Civil Court lawsuits," *id*. at 85.

The *Sykes* District Court found that "plaintiffs' injuries derive from defendants' alleged unitary course of conduct," and that the litigation documents used by the defendants were "form" documents filed as "part of a standard practice with respect to each putative class member." *Sykes I*, 285 F.R.D. at 290-91.[20] The Court therefore held that common questions predominated, noting that "[e]very potential class member's claim arises out of defendants' uniform, widespread practice of filing automatically-generated, form affidavits . . . to obtain default judgments against debtors in state court" and rejecting the argument that these questions "depend on individualized considerations." *Sykes I*, 285 F.R.D. at 293. The Second Circuit affirmed, finding that the district court properly "determin[ed] that defendants' scheme, which had multiple components, was a 'unitary course of conduct' that depended . . . for its success" on filing standard, uniform false affidavits. *Sykes II*, 780 F.3d at 85 (citation omitted). Here, as in *Sykes*, "[p]roof of fraudulent service" can "be achieved on a class-wide level," *Id.* at 86. *See also, e.g.*, Mem. & Order, *Philemon v. Aries Capital Partners, Inc.*, No. 18 Civ. 1927 (CLP) (E.D.N.Y Jul. 1, 2019), ECF No. 52 at 14 (finding commonality because "plaintiff's claims all stem from the same unlawful debt collection scheme orchestrated by defendants," including that "[d]efendants 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").

i. The Proposed Class Meets the Requirements of Rule 23(a)

[20] *See also Sykes I*, 285 F.R.D. at 290 n.10 ("[C]ourts throughout [the Second] Circuit have routinely found that putative classes alleging debt collection schemes that employ false or misleading language in mailings sent to debtors satisfy the commonality requirement of Rule 23(a)(2) and warrant class certification under Rule 23(b)." (collecting cases)).

1. The Proposed Class Is Sufficiently Numerous

Federal Rule of Civil Procedure 23(a)(1) requires that a class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Numerosity is generally presumed for classes larger than forty members. *Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995). Plaintiffs' proposed Class easily meets the numerosity requirement because the proposed Class contains 3,253 individuals. Ranucci Decl. ¶ 35.

2. There Are Common Questions of Law and Fact

Rule 23(a)(2) requires there to be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Rule 23(a)'s commonality requirement is met if the class members' claims depend on a "common contention . . . of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

Questions of fact common to the Class include, among others, whether Bouton and Elashrafi falsified affidavits of service by claiming to make substitute service on nonexistent Relatives of Class Members; what review, if any, Gotham conducted before notarizing and filing Bouton and Elashrafi's affidavits of service; what review, if any, MJRF conducted before relying on those affidavits of service; and whether MJRF prolonged legal proceedings in bad faith. Common questions of fact are "[i]nherent in this alleged course of conduct" because Defendants acted in a similar manner toward all Class Members. *Sykes I*, 285 F.R.D. at 290.

Moreover, there are numerous questions of law common to the class, including, among others: whether preparing and signing a false affidavit of service, filing a false affidavit of service, and filing affidavits of service without meaningful attorney review violates the FDCPA,

N.Y. Gen. Bus. Law § 349, and N.Y.C. Admin. Code § 20-409.2, and whether Gotham and MJRF's actions rise to a violation of the duties of reasonable care established by these statutes and codes and by New York common law. Am. Compl., ¶¶ 297-329, ECF No. 27. Each of these questions raises common issues that can be resolved "in one stroke," which would "drive the resolution of the litigation." *Dukes*, 564 U.S. at 350.

Finally, each member of the Class was harmed in a similar manner by all Defendants' actions, including in the form of payments to Defendants (that will be refunded by this settlement). *See* Am. Compl. ¶¶ 40-41, 155-60, 201-04, 226-30, 251-54, 278-81.

3. Named Plaintiffs' Claims Are Typical of Those of the Class Members

Rule 23(a)(3) requires that the claims of the class representative be typical of the claims of the class, that is, "the disputed issue[s] of law or fact occupy essentially the same degree of centrality to the named plaintiff[s'] claim[s] as to that of other members of the proposed class."[21] Named Plaintiffs assert claims typical of the claims asserted by the Class, in that they asserted that Defendants' scheme violated their individual rights under the FDCPA, N.Y. Gen. Bus. Law § 349, and N.Y.C. Admin. Code § 20-409.2, and/or violated New York common law.[22] Am. Compl., ¶¶ 297-329, ECF No. 27. The other Class Members have precisely the same claims based on Defendants' unitary course of conduct towards all Class Members. Am. Compl. ¶¶ 299, 303, 310, 320, 323-25, 328-29.

4. The Named Plaintiffs Are Adequate Representatives

The final requirement of Rule 23(a) is that the representative parties must fairly and

[21] *Mazzei v. Money Store*, 829 F.3d 260, 272 (2d Cir. 2016) (quoting *Caridad v. Metro–N. Commuter R.R.*, 191 F.3d 283, 293 (2d Cir. 1999)). "[M]inor variations in the fact patterns underlying individual claims" do not prevent a finding of typicality. *Robidoux v. Celani*, 987 F.2d 931, 937 (2d Cir. 1993).

[22] *See* ECF No. 12-1, Burks Aff,; ECF No. 12-2, Cruz Aff.; ECF No. 12-3, Cuadrado Aff.; ECF No. 12-4, Drye Aff.

adequately represent the interests of the class. Fed. R. Civ. P. 23(a)(4). "[A]dequacy is satisfied unless 'plaintiff's interests are antagonistic to the interest of other members of the class.'" *Sykes II*, 780 F.3d at 90 (quoting *Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 222 F.3d 52, 60 (2d Cir. 2000)). Named Plaintiffs have no interests antagonistic to the interest of other putative class members. *See* Burks Aff. ¶ 2, ECF No. 12-1; Cruz Aff. ¶ 2, ECF No. 12-2; Cuadrado Aff. ¶ 3, ECF No. 12-4; Drye Aff. ¶ 2, ECF No. 12-5. To the contrary, they have been subject to the same unlawful conduct as the other Class Members. Because "the same strategies that will vindicate [the Named Plaintiffs'] claims will vindicate those of the class," they are adequate class representatives. *See Damassia v. Duane Reade, Inc.*, 250 F.R.D. 152, 158 (S.D.N.Y. 2008).

D. The Proposed Classes Meet the Requirements of Rule 23(b)

In addition to satisfying the prerequisites of Rule 23(a), at least one of the three subdivisions of Rule 23(b) must be satisfied to qualify for class certification. Fed. R. Civ. P. 23(b). Here, Plaintiffs seek class certification both under Rule 23(b)(2), for injunctive relief, and Rule 23(b)(3), for damages.

i. The Court Should Certify a Class Seeking Injunctive Relief Under Rule 23(b)(2)

Rule 23(b)(2) supplies a basis for certification where, as here, the Defendants "ha[ve] acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate [for] the class as a whole." Fed. R. Civ. P. 23(b)(2). Defendants have acted on grounds that apply generally to the Class by falsifying, in a similar manner, affidavits of service purporting to serve Class Members, and then pursuing Judgments based on those false affidavits. The declaratory and injunctive relief provided by this settlement—that MJRF and Civil Action Plaintiffs cease collection on those Actions—will

provide critical relief to the Class, who would otherwise face future collections of $4.4 to 6.5 million. Ranucci Decl. ¶¶ 46-48.

ii. The Court Should Certify a Class Seeking Damages Under Rule 23(b)(3)

Plaintiffs and the proposed Class seek provisional certification of a Class under Rule 23(b)(3) because they are entitled to actual, statutory, and punitive damages under the FDCPA, N.Y. Gen. Bus. Law § 349, N.Y.C. Admin. Code § 20-409.2, and New York common law.

1. Common Questions Predominate

Certification under Rule 23(b)(3) requires that questions of law or fact common to the class predominate over individual questions.[23] "[C]ases regarding the legality of standardized documents . . . often result in the predomination of common questions of law or fact and are, therefore, generally appropriate for resolution by class action." *Sykes I*, 285 F.R.D. at 293 (quotation omitted). The Class's central claim is based on the alleged illegality of the standardized, falsified affidavits of service signed by Bouton and Elashrafi, essentially the same allegations that the Second Circuit in *Sykes II* affirmed justify class treatment.

2. A Class Action Is the Superior Method of Adjudication

Rule 23(b)(3) also requires that "a class action is superior to *other* available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3) (emphasis added). Adjudicating claims stemming from substantially identical debt collection practices in a single action avoids an unwieldy number of repetitive individual lawsuits. *See Sykes I*, 285 F.R.D. at

[23] "The predominance requirement is satisfied 'if resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof.'" *In re U.S. Foodservice Inc. Pricing Litig.*, 729 F.3d 108, 118 (2d Cir. 2013) (quoting *UFCW Local 1776 v. Eli Lilly & Co.*, 620 F.3d 121, 131 (2d Cir. 2010)). The rule does not require that individual questions be absent; to the contrary, "[t]he text of Rule 23(b)(3) itself contemplates that such individual questions will be present." *Sykes II*, 780 F.3d at 81.

294. Courts also find that damages class actions under Rule 23(b)(3) "can be superior precisely because they facilitate the redress of claims where the costs of bringing individual actions outweigh the expected recovery." *In re U.S. Foodservice Inc. Pricing Litig.*, 729 F.3d at 130 (internal citations omitted).

The substantial common legal and factual issues in this case are subject to generalized proof, and overwhelm the comparatively small factual distinctions among Class Members, making proceeding on a class basis far more economical for Class Members and the Court. Additionally, as many Class Members may lack the means or incentive to pursue their claims on their own, Ranucci Decl. ¶¶ 50, 81, certifying a Rule 23(b)(3) class action here would help to vindicate "the rights of groups of people who individually would be without effective strength to bring their opponents into court at all." *See Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 617 (1997) (quotation omitted).

3. The Proposed Class Is Ascertainable

Rule 23(b)(3) "contains an implicit threshold requirement that the members of a proposed class be readily identifiable, often characterized as an 'ascertainability' requirement." *In re Petrobras Sec.*, 862 F.3d 250, 264 (2d Cir. 2017) (internal quotation omitted). The membership of Plaintiffs' proposed Class is not only ascertainable, in that it is defined "using objective criteria that establish a membership with definite boundaries," *id.*, but it has already been ascertained—the identities of the 3,253 individuals who are in the Class are contained in Defendants' records, have been provided to Class Counsel, and have been provided to the Class Administrator to effectuate accurate and timely notice and claims administration. Ranucci Decl. ¶¶ 35-37.

E. NYLAG Satisfies the Rule 23(g) Prerequisites for Appointment as Class

Counsel

Rule 23(g)(1)(A) sets forth the factors a court must consider in appointing class counsel: "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1).

NYLAG is a nonprofit organization that provides high quality, free civil legal services to low-income New Yorkers in many fields, including consumer protection. NYLAG's Special Litigation Unit, which specializes in class actions to benefit low-income New Yorkers, has been described as "one of the highest caliber impact litigation practices in New York City." Declaration of Matthew Brinckerhoff ¶ 15, *Burkett v. Houslanger & Assocs. et al.*, No 19 Civ. 2285 (LDH)(JO) (E.D.N.Y. Nov. 7, 2019), ECF No. 43-3. NYLAG is particularly knowledgeable with respect to the claims asserted in this litigation and has been appointed class counsel in connection with class actions affecting hundreds of thousands of low-income New Yorkers, including numerous cases protecting New York consumers harmed by predatory or unlawful practices.[24] NYLAG's extensive work and extensive experience support appointment here.

[24] *See, e.g.*, *Mayfield v. Asta Funding*, No. 14-CV-2591 (LAP)(JLC) (S.D.N.Y.), ECF No. 130 (appointing NYLAG Class Counsel for settlement class comprising over 60,000 low-income New York City consumers in FDCPA action); *Salazar v. DeVos*, No. 14-CV-1230 (RWS) (S.D.N.Y.), ECF No. 72 (appointing NYLAG Class Counsel for settlement class comprising over 60,000 low-income student loan borrowers); *Philemon v. Aries Capital Partners, Inc.*, No. 18-CV-1927 (CLP) (E.D.N.Y.), ECF No. 52 (appointing NYLAG Class Counsel for settlement class of low-income New York City consumers in FDCPA action); *Flores v. Technical Career Institutes, Inc.*, Adv. Proceeding No. 18-01554 (MKV), ECF No. 25 (appointing NYLAG Class Counsel for settlement class of low-income New York City consumers in fraud-based adversary proceeding); *Williams v. Equitable Acceptance Corp.*, No. 18 Civ. 7537 (S.D.N.Y.), ECF No. 194 (appointing NYLAG Class Counsel for settlement class comprising 80,000 student loan borrowers); *Dupres v. Houslanger & Assocs.*, No. 19 Civ. 6691, ECF No. 93 (appointing NYLAG Class Counsel for settlement class of low-income New York City consumers in FDCPA action).

III. Conclusion

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval to the Parties' Settlement Agreements, provisionally certify a Class in this matter for settlement purposes, provisionally appoint NYLAG as Class Counsel, and direct notice to the Class Members, by entering the proposed Preliminary Approval Order. Ranucci Decl. Ex. 1.

Dated: June 27, 2023
New York, New York

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