

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

LINDA BYRD, on behalf of plaintiff and a class,)	
)	
Plaintiff,)	
)	
v.)	
)	1:12-cv-00968-SEB-DKL
LVNV FUNDING, LLC; RESURGENT CAPITAL SERVICES, L.P.; and ALEGIS GROUP, LLC,)	
)	
Defendants.)	

**ORDER GRANTING
PRELIMINARY APPROVAL OF SETTLEMENT**

This cause comes before the Court on the Joint Motion of Class Representative LINDA BYRD ("Plaintiff"), and Defendants LVNV FUNDING, LLC; RESURGENT CAPITAL SERVICES, L.P.; and ALEGIS GROUP, LLC, (collectively, the "Defendants"), for Preliminary Approval of the Class Action Settlement Agreement, due notice having been given, and the Court being fully advised in the premises:

THE COURT HEREBY FINDS THAT:

1. The parties have entered into a Class Action Settlement Agreement ("Agreement") executed in September, 2015.
2. The Agreement has been submitted to the Court for preliminary approval pursuant to Fed. R. Civ. P. 23.
3. The Complaint in this action alleges that Defendants violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA").
4. Defendants deny that they have any liability to Plaintiff or the Class whatsoever, and further denies that their actions violated the FDCPA in any manner.

5. The Complaint sought recovery of actual and statutory damages pursuant to § 1692k of the FDCPA. Under § 1692k, the maximum statutory damages recoverable by the Plaintiff is \$1,000 and the maximum statutory damages recoverable by the Class against Defendant is the lesser of 1% of its net worth, or \$500,000. In this case, that amount ranges from \$90,000 to \$140,000.

6. The Agreement calls for payment of \$1,000 in statutory damages and an incentive award of \$1,500 for a total of \$2,500 to the Plaintiff. The Class will recover as follows:

Recovery to Class members with a \$0 balance as of the entry date of the Preliminary Approval Order. Defendants agree to pay TWO HUNDRED DOLLARS (\$200) to each Class member whose account has a \$0 balance as a result of payment as of the entry date of the Preliminary Approval Order.

Recovery to Class members with an account balance less than \$500 as of the entry date of the Preliminary Approval Order. No later than five (5) days after the Effective Date, Defendants further agree to forgive each debt less than \$500 owed by the Class members to LVNV Funding LLC as of the entry date of the Preliminary Approval Order and to reflect this debt forgiveness in the accounts of each of the respective Class members. LVNV Funding, LLC will cause to be filed a satisfaction of judgment in each of the small claims cases filed against these class members.

Recovery to Class members with an account balance between \$501 and \$1,000 as of the entry date of the Preliminary Approval Order. No later than five (5) days after the Effective Date, Defendants agree to post a credit of 40 % to the accounts of each of the Class members. This credit shall only be applied to the account owned by LVNV Funding LLC.

Recovery to Class members with an account balance between \$1001 and \$4999 as of the entry date of the Preliminary Approval Order. No later than five (5) days after the Effective Date, Defendants agree to post a credit of 20 % to the accounts of each of the Class members. This credit shall only be applied to the account owned by LVNV Funding LLC.

Recovery to Class members with an account balance higher than \$5000 as of the entry date of the Preliminary Approval Order. No later than five (5) days after the Effective Date, Defendants agree to post a credit of 10 % to the accounts of each of the Class members. This credit shall only be applied to the account owned by LVNV Funding LLC.

A person shall be determined to be in the \$0 balance group, the \$.01 to

\$499 account balance group, the \$500 to \$1000 balance group, the \$1001 to \$4,999 balance group, or the \$5,000 and greater account balance group as of the entry date of the Preliminary Approval Order.

For any Class member with any balance less than \$500, who makes account payments (voluntarily or involuntarily) between the entry date of the Preliminary Approval Order and the Effective Date that result in the Class member's account being classified in a different balance group, Defendants shall provisionally apply the credit that was applicable to the Class member's account as of the entry date of the Preliminary Approval Order.

Defendants will also refund any overpayments made by any such Class member with any balance less than \$500, who makes account payments (voluntarily or involuntarily) between the entry date of the Preliminary Approval Order and the Effective Date that result in the Class member's account being classified in a different balance group.

Defendants shall not sell, refer, transfer or assign any debt forgiven under this Agreement. If the application of any credit for any class member set forth above exceeds the amount owed by that same class member as of the Effective Date, the remaining portion of that credit shall not be converted into any cash payment to the same class member or applied to any other debt.

7. The Court finds these amounts to be fair, adequate and reasonable for the following reasons, among others, Plaintiff and the Class are receiving, and Defendants are paying, a sufficient amount of statutory damages under the FDCPA.

8. This Court hereby certifies a Class in this matter, pursuant to Fed.R.Civ.P. 23(b)(3), of (a) all natural persons (b) sued by LVNV (c) in a township small claims court (d) for a township other than one in which the person resided or signed a contract on which the debt is based (e) where either the original action or a proceeding supplemental was filed on or after a date one year prior to the filing of this action, and less than 20 days after the filing of this action.

Moreover, Linda Byrd, is appointed as representative of the Class and her attorneys, Daniel A. Edelman and Heather Kolbus of EDELMAN COMBS LATTURNER & GOODWIN, LLC, are appointed as Class Counsel.

9. Plaintiff will retain a settlement class administrator to send out the Class notice. Defendants shall distribute the settlement fund to the Class, and will provide the other relief (e.g., credits to accounts, forgiveness of debts, filing satisfactions of judgments, refund overpayments) to the settlement class members as set forth in the agreement. Defendants are to pay Class Counsel \$50,000 for their attorneys' fees and costs in this matter and Class Counsel will submit a motion, containing their time records, requesting an award in this amount.

10. The Court hereby approves the sending by the settlement class administrator within 30 days of this Order, the Class Notice in the form attached as Exhibit 2 to the Joint Motion to the Settlement Agreement to each Class Member at their last known address.

11. The Court finds that the settlement negotiations were conducted at arms-length and in good faith among all parties and preliminarily finds that the terms of the Settlement Agreement are fair, reasonable and adequate to Plaintiff and all members of the Class. In addition to the other facts stated herein, the Court finds the Settlement Agreement to be particularly fair, adequate and reasonable in light of the risk of establishing liability and the expense of further litigation.

IT IS HEREBY ORDERED THAT:

1. The above class is certified, pursuant to Fed.R.Civ.P. 23(b)(3) consisting of (a) all natural persons (b) sued by LVNV (c) in a township small claims court (d) for a township other than one in which the person resided or signed a contract on which the debt is based (e) where either the original action or a proceeding supplemental was filed on or after a date one year prior to the filing of this action, and less than 20 days after the filing of this action.

Linda Byrd, is appointed as representative of the Class and her attorneys, Daniel A. Edelman and Heather Kolbus of EDELMAN COMBS LATTURNER & GOODWIN, LLC, are appointed as Counsel for the Class.

2. The Settlement Agreement executed in September, 2015, is hereby granted preliminary approval.

3. Class Counsel shall send out the Class Notice to each Class Member by December 16, 2015.

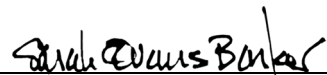
4. Defendants, pursuant to 28 U.S.C. § 1715 of the Class Action Fairness Act, have notified the appropriate Federal and State regulatory authorities of this proposed Settlement, within 10 days of the filing of the motion to approve the Settlement Agreement, and shall file with the Court verification of Defendants' compliance with 28 U.S.C. § 1715(b).

5. The settlement class administrator shall send Notice, in the form attached as Exhibit 2 to the Agreement which is attached to the Joint Motion, and that includes the revisions requested by the Court to all Class Members at their last known addresses who shall have until February 1, 2016, to opt-out or present any objections to the settlement. No skip tracing of Class Members whose Class Notices are returned is necessary. The parties shall present the Settlement for final approval on March 28, 2016 at 11:00 a.m. The parties shall file any documents in support of the Final Approval Hearing at least 7 days prior to the Final Approval Hearing.

6. Requests to opt out of the settlement are due on February 1, 2016. Objections to the settlement are due on February 1, 2016.

7. The Court may, for good cause, extend any of the deadlines set forth in this Preliminary Approval Order or adjourn or continue the Final Approval Hearing without further notice to the Settlement Class.

11/16/2015



SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

Distribution:

Service of this order will be made electronically on all ECF-registered counsel of record via email generated by the Court's ECF System.