UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

TRS RECOVERY SERVICES, INC., and TELECHECK SERVICES, INC., Fair Debt Collections Practices Act (FDCPA) Litigation	**MDL 2426** **Master File Civ. No. 2:13-md-2426-DBH** **CLASS ACTION**

This Document Relates To:

JEAN LaROCQUE, ex rel. DEIDRE J. SPANG v. TRS RECOVERY SERVICES, INC. and TELECHECK SERVICES, INC.
Civ. No. 2:11-cv-00091-DBH

MELISSA ALLEN v. TRS RECOVERY SERVICES, INC. and TELECHECK SERVICES, INC.
Civ. No. 2:11-cv-00091-DBH

PLAINTIFFS' UNCONTESTED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Pursuant to Fed. R. Civ. P. 23(c), Plaintiffs Jean LaRocque and Melissa Allen respectfully move this Honorable Court for an Order of final approval of this Class Action Settlement following notice to the Classes as directed by this Court by Order dated July 30, 2015. Dkt. No. 118.

In support thereof, Plaintiffs rely upon and incorporate by reference the attached Memorandum of Law and exhibits.

Defendants do not contest the requested relief.

Respectfully submitted,

FRANCIS & MAILMAN, P.C.

Date: January 11, 2016 BY: */s/ James A. Francis*

JAMES A. FRANCIS (*pro hac vice*)
JOHN SOUMILAS (*pro hac vice*)
Land Title Building, Suite 1902
100 South Broad Street

Philadelphia, PA 19110
Tel. (215) 735-8600
jfrancis@consumerlawfirm.com
jsoumilas@consumerlawfirm.com

LEWIS SAUL & ASSOCIATES, P.C.
LEWIS J. SAUL
JON HINCK
KEVIN M. FITZGERALD
183 Middle Street, Suite 200
Portland, ME 04101
Tel. (207) 874-7407
lsaul@lewissaul.com
jhinck@lewissaul.com
kfitzgerald@lewissaul.com

Attorneys for Plaintiffs and the Classes

CERTIFICATE OF SERVICE

I do hereby certify that on this day, I caused a true and correct copy of the foregoing Plaintiffs' Uncontested Motion For Final Approval Of Class Action Settlement to be served by ECF notification upon the following counsel of record:

Lucus A. Ritchie, Esq.
PIERCE ATWOOD, LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
lritchie@piercceatwood.com

Donald R. Frederico, Esq.
Kate R. Isley, Esq.
PIERCE ATWOOD, LLP
100 Summer Street, Suite 2250
Boston, MA 02110
dfrederico@pierceatwood.com
kisley@pierceatwood.com

Attorneys for Defendants
TRS Recovery Services, Inc. and TeleCheck Services, Inc.

DATE: January 11, 2016

/s/ James A. Francis
James A. Francis

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

----------X

TRS RECOVERY SERVICES, INC., and TELECHECK SERVICES, INC., Fair Debt Collections Practices Act (FDCPA) Litigation	**MDL 2426** **Master File Civ. No. 2:13-md-2426-DBH**

----------X

This Document Relates To:

JEAN LaROCQUE, ex rel. DEIDRE J. SPANG v. TRS RECOVERY SERVICES, INC. and TELECHECK SERVICES, INC.
Civ. No. 11-00091-DBH

MELISSA ALLEN v. TRS RECOVERY SERVICES, INC. and TELECHECK SERVICES, INC.
Civ. No. 2:11-cv-00091-DBH

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNCONTESTED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

TABLE OF CONTENTS

I. INTRODUCTION

Pursuant to Fed.R.Civ.P.23(e), and for reasons set forth below, Plaintiffs Jean LaRocque and Melissa Allen move the Court for an Order finally approving the terms of the Agreement of Compromise and Settlement ("Settlement Agreement")[1] with Defendants TRS Recovery Services, Inc. and TeleCheck Services, Inc. (collectively "Defendants") as fair, adequate and reasonable and in the best interests of the Settlement Class Members, certifying two settlement classes and one settlement subclass (the "Settlement Classes") for settlement purposes, and ordering the parties to consummate the Settlement Agreement in accordance with its terms.

This Court provisionally certified the Settlement Classes and directed notice to the Classes on July 30, 2015. Dkt. No. 118. Pursuant to the Order Directing Notice to the Class, notice of the pendency of this action, the terms of the proposed settlement, the opportunity to opt out, object or participate, and the date of the January 21, 2016 final approval hearing was provided to 319,560 individuals by first class mail on September 23, 2015. *See* Declaration of Lori L. Castaneda of Garden City Group, LLC ("Castaenda Decl.") (Dkt. No. 122). In addition to the mailed notices, notice of the settlement was published in the *Bangor Daily News* on September 26, 2015, in the *Lewiston Sun Journal* on September 24, 2015, and in the *Portland Press Herald* on September 27, 2015. *Id.* at ¶8.

The settlement represents a fair and reasonable resolution for the Classes for various reasons. First, in a consumer class action brought under the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 *et seq*. ("FDCPA"), which is remedial in nature, the settlement confirms

[1] The Settlement Agreement was filed with the Court as Dkt. No. 99-3, including proposed notices to the Classes, revised RECR3 letters, and a proposed Claim Form for Maine residents. The parties subsequently revised the proposed notices and filed a Modification to the Settlement Agreement in order to address concerns raised by the Court. Dkt. Nos. 113, 115.

significant practice changes by Defendants that will benefit American consumers in the future. As set forth in the Settlement Agreement, TRS has made changes to its RECR3 letter in response to the allegations set forth in Plaintiffs' Complaint. Dkt. No. 99-3 at Exhibit G-1 and G-2.

Second, the settlement provides substantial economic relief to members of the Settlement Classes.

Third, the deadline for class members to request exclusion from the settlement and for objections to the settlement was December 22, 2015. As of December 29, 2015, of the over 300,000 consumers who received a mail notice, only 12 requested to be excluded. Dkt. No. 122, Castaneda Decl. at ¶ 13. Only one person has filed an objection, and it has not been determine that he is even a class member. Dkt. No. 121. This response by the class indicates a fair settlement.

For these reasons and for the reasons set forth in greater detail below, the settlement is fair, reasonable and adequate to the Settlement Classes and satisfies all of the criteria that courts routinely apply for the approval of class action settlements.

II. NATURE AND HISTORY OF THE LITIGATION

A. The Claims

This is a consumer class action brought under the federal Fair Debt Collection Practices Act (FDCPA), the Maine Fair Debt Collection Practices Act (MFDCPA), and the Maine Unfair Trade Practices Act (MUTPA) against Defendants TRS Recovery Services, Inc. (TRS) and TeleCheck Services, Inc. (TeleCheck).

The Complaint alleges that Defendants violated these laws through a practice of sending a misleading form collection letter, the "RECR3 letter," and by improperly collecting on debts for purportedly returned checks. Plaintiffs allege that by collecting the amount of such a "debt" by demand draft simultaneously with the mailing of an initial collection letter, and further collection

of an additional "returned check fee" shortly thereafter, Defendants' uniform collection activity overshadows and/or constitutes action inconsistent with a consumer's right to dispute the debt. Plaintiffs further allege that Defendants' collection practices violate Maine consumer protection laws.

Defendants deny that their collection practices are unlawful.

B. Procedural History

On March 11, 2011, Plaintiff LaRocque filed this action, captioned *LaRocque ex rel. Spang v. TRS Recovery Services, Inc., et al.*, Civ. No. 2:11-00091-DBH, in the United States District Court for the District of Maine. Defendants filed an Answer on May 2, 2011. Civ. No. 2:11-00091-DBH at Dkt. No. 13.

Plaintiff LaRocque filed a Motion to Certify Class on December 15, 2011 seeking certification of four classes of consumers. Civ. No. 2:11-00091-DBH at Dkt. No. 43. On July 17, 2012, the Court granted the motion in part (*see* 285 F.R.D. 139 (D. Maine 2012)) and, on June 4, 2013, entered its Order Certifying A Class Action, certifying the three proposed classes. *See* Dkt. No. 17.

Following the July 17, 2012 class certification decision, plaintiffs represented by the same counsel filed similar legal actions in four other federal jurisdictions. On February 8, 2013, the related actions were consolidated by the Judicial Panel on Multidistrict Litigation into *In re TRS Recovery Services, Inc, and TeleCheck Services, Inc., Fair Debt Collection Practices Act (FDCPA) Litigation*, MDL No. 2426, , No. 2:13-md-2426-DBH, before this Honorable Court.[2]

[2] The four tag-along cases are: (1) *Bucko v. TRS Recovery Servs, Inc., et al.*, No. 2:13-cv-00046-DBH; (2) *Cook v. TRS Recovery Servs., Inc., et al.*, No. 2:13-cv-00043-DBH; (3) *Greer v. TRS Recovery Servs, et al.*, No. 2:13-cv-00050-DBH; and, (4) *Stout v. TRS Recovery Servs., Inc., et al.*, No. 2:13-cv-00049-DBH. These cases were never certified as class actions. Following this

On May 10, 2013, Plaintiff Allen filed a Complaint in Intervention against Defendants, and was certified as an additional representative of the nationwide class on March 20, 2014. Dkt. Nos. 12, 55. Plaintiff LaRocque and Defendants each filed a motion for partial summary judgment on April 14, 2014. Dkt. Nos. 58, 61.

C. Written Discovery and Depositions

The parties conducted substantial discovery beginning before and after the case was transferred to the MDL. Discovery included the exchange of multiple sets of interrogatories and responses, and the production of thousands of pages of documents. Plaintiffs' counsel conducted eight depositions of Defendants' representatives on a variety of pertinent topics. Defendants took the depositions of both Plaintiff Jean LaRocque and her daughter Deidre Spang, as well as Plaintiff Melissa Allen. Additionally, Plaintiffs proffered an expert witness and expert witness discovery was conducted, including Defendants' taking the deposition of Plaintiffs' expert.

D. Settlement Negotiations and Preliminary Approval

On September 16, 2013, the parties conducted an arms-length, complicated, lengthy and sometimes contentious in-person mediation session with the assistance of the Honorable Judge Margaret R. Hinkle (Ret.). *See* Declaration of Hon. Margaret R. Hinkle ("Hinkle Decl."), filed herewith. Although the parties were not able to reach an agreement during this session, they agreed to appear for a second day of mediation on November 20, 2013, and obtained temporary stay of proceedings pending this mediation. Dkt. Nos. 37-38. The parties again failed to reach agreement

---

Court's adverse ruling on the tolling of the statute of limitations of the tag-along actions, three of the four individual actions (brought by Plaintiffs Greer, Bucko, and Cook), were resolved through separate individual settlements. The settlement agreements are confidential, but will be made available to the Court at the Final Approval hearing should the Court wish to review them. With respect to the fourth tag-along action, the Plaintiff DellaRina Stout passed away before the parties were able to reach a final resolution. Class Counsel have been unable to reach any next of kin, and are still researching an appropriate way to resolve the case.

during the second mediation session, but decided to continue good-faith settlement discussions. The negotiations were subsequently conducted via numerous telephone conferences. In short, the substantive terms of the Settlement Agreement were vigorously negotiated through tenacious advocacy on behalf of all parties. Hinkle Decl. at ¶¶ 4-5.

Finally, in June 2014, the parties arrived at the general terms of a proposed settlement that they believed met the standards for preliminary approval and both sides believe is fair and reasonable. It took significant additional time for the parties to negotiate and reduce to writing the detailed terms of the settlement, the proposed notices to the Settlement Classes and preliminary and final proposed orders. In fact, the negotiations were so vigorous and time consuming that the parties required extensions of the deadline for moving for preliminary approval on eight separate occasions before finally coming to a fully documented settlement agreement, including all collateral exhibits. *See* Dkt Nos. 72, 75, 78, 81, 84, 87, 90, 94, and 99.

Plaintiffs presented the Motion for Preliminary Approval of Class Action and for Notice to Class on April 16, 2015. Dkt. No. 99. The parties continued to revise the terms of the settlement and the notices to the Settlement Classes in response to issues raised by the Court in its procedural orders and during the hearing on the Motion for Preliminary Approval, and submitted revised class notices and a modification agreement making changes to the Settlement Agreement for the Court's review. Dkt. Nos. 103, 105, 109, 113. The Court issued its Order Directing Notice to the Class on July 30, 2015. Dkt. No. 118.

Counsel for all parties find merit in this settlement and thereby avoiding the ongoing expense and uncertainties of further litigation leading to trial and possible appeals.

III. NATURE OF THE SETTLEMENT

Representative Plaintiffs LaRocque and Allen and Defendants TRS and TeleCheck have agreed, subject to this Court's approval, to a settlement of the LaRocque and Allen claims on a class-wide basis. The terms of the settlement are set forth in the Settlement Agreement and are summarized as follows.

A. The Settlement Classes

The classes of consumers covered by the settlement and provisionally certified by he Court are defined as:

> Settlement Class 1:
>
> All natural persons with an address in the United States, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, or U.S. Virgin Islands to whom the defendant TRS sent its RECR3 letter between March 11, 2010 and the date of preliminary approval of this Settlement.[3]
>
> Settlement Class 1 Subclass:
>
> All natural persons with an address in the United States, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, or U.S. Virgin Islands to whom the defendant TRS sent its RECR3 letter between March 11, 2010 and the date of preliminary approval of this Settlement, and from whom one or both Defendants collected in whole or in part, within 30 days of the RECR3 letter, the debt or returned check fee referenced in that RECR3 letter.
>
> Settlement Class 2:
>
> All natural persons who have paid a returned check fee of $25 to at least one of the Defendants by way of a TRS demand draft in connection with an underlying check transaction that occurred in the State of Maine between March 11, 2005 and the date of preliminary approval of this Settlement.[4]

Dkt. No. 99-3 at section 3; Dkt. No. 118 at ¶¶ 1-3.

---

[3] This Settlement Class includes certified classes 1 and 2, merged and expanded by agreement to include natural persons to whom TRS sent a RECR3 letter in any state or territory, regardless of whether any Defendant collected any amount of money from or on behalf of the recipient Class member.

[4] This class represents certified class 3.

B. Class Recovery

Under the Settlement Agreement, Defendants will pay a total amount of $3,430,000.00 for the benefit of the Settlement Classes in full and final settlement of the lawsuit (the "Settlement Fund"). All payments required under the Settlement Agreement will be taken out of the Settlement Fund. After deduction for expenses and costs of administering the settlement, including the costs of notice, and any court awarded attorney fees, costs and individual awards to the class representatives, the net proceeds will be distributed to Settlement Class members. From the Settlement Fund, approximately one million, two hundred twenty thousand dollars ($1,220,000) shall be earmarked for distribution to the Settlement Class 1 Subclass and to Settlement Class 2 on a *pro rata* basis. Dkt. No. 99-3 at sections 4.9–4.12. From the Settlement Fund, approximately eight hundred, twenty-five thousand dollars ($825,000) shall be earmarked for distribution to the members of Settlement Class 1 on a *pro rata* basis. *Id*.

Class Counsel allocated the settlement funds in this way in recognition of the differing values of the claims in the case. All members of Settlement Class 1 were sent the offending RECR3 letter. Members of the Settlement Class 1 Subclass and Settlement Class 2 have more valuable claims because they paid a returned check fee, usually $25.00, which Plaintiffs contend should never have been collected..

The deadline to submit a claim form in the case was December 22, 2015. Dkt. No. 115 (Revised Long-Form Notice); Dkt. No. 122, Castaneda Decl. at ¶ 11. As of December 29, 2015, the Class Administrator had received a total of 38,859 Claim Forms from Class Members. Dkt. No. 122, Castaneda Decl. at ¶ 11. As of this filing the total number of claims, including 313 late claims, has risen to 39,875. There have been 37,418 claims by members of Settlement Class 1, representing an approximate 11.6% claims rate; 26,859 of those claimants are also members of

the Settlement Class 1 Subclass. There have been 3,091 claims by members of Settlement Class 2, representing approximately 12.9% of the members of Class 2 identified by Defendants. Based on these figures, if the Court grants final approval to the Settlement, claimants from Settlement Class 1, who received a copy of the RECR3 letter but did not a pay a returned check fee within 30 days, will each receive approximately $22.04. Claimants from the Settlement Class 1 Subclass and Settlement Class 2 would each receive approximately $40.73. Thus, any claimant who both received a copy of the RECR3 letter (and is thus in Settlement Class 1) and paid a returned check fee (and is thus in the Settlement Class 1 Subclass or Settlement Class 2) would receive a total of approximately $62.77, representing a *pro rata* share of each of the two class funds. Maine claimants who did not receive the RECR3 letter within the pertinent time period, but did pay a returned check fee, would simply receive $40.73.

To the extent that funds remain in the Settlement Fund after payments to Settlement Class members, such funds will be paid as a *cy pres* donation, either as set forth in section 4.15 of the Settlement Agreement to the National Endowment for Financial Education and Pine Tree Legal Assistance, Inc., or to one or more substitute recipients in accordance with the Court's directives. Dkt. 99-3 at section 4.15; Dkt. No. 113-4 at ¶ 8.

C. Business Practice Changes

As set forth in the Agreement, TRS made revisions to its RECR3 letter in response to the allegations set forth in Plaintiff's Complaint. Dkt. No. 99-3, Exhibits G-1 and G-2. Such changes have been reviewed by Class Counsel, and have been adopted and implemented by Defendants. The parties and Class Counsel agree that such changes remedy the Named Plaintiffs' allegations that the RECR3 letter violated the FDCPA. Nothing in the Settlement Agreement limits TRS's ability to make future changes to the RECR3 letter.

D. Notice Costs

All costs associated with notice and administration of the settlement will be paid from the Settlement Fund. This includes all necessary and reasonable costs of administering the disbursement of consideration, and other administrative expenses including, but not limited to, postage charges, printing costs, a telephone assistance program, and all other notice costs and other charges as may be approved by the parties subject to approval by the Court. Dkt. No. 99-3 at section 4.1.

The original one hundred eighty-two thousand two hundred forty-three dollar ($182,243.00) payment allocated for costs of notice and administration has been exhausted, and the Settlement Administrator is tracking costs to be submitted by an invoice upon Final Approval. *See* Dkt. No. 118 at ¶ 8. Class Counsel will be prepared to provide the Court with an up-to-date figure for notice costs to date on the day of the Final Approval hearing.

E. Service Awards for Class Representatives

Subject to court approval, the parties have agreed that the representative Plaintiff LaRocque should be paid by the Defendants an award of $6,000, and the more recently appearing representative Plaintiff Allen an award of $4,000 for their individual settlement and their services in representing the Settlement Classes. Dkt. No. 99-3 at section 4.6. The appropriateness of these awards is addressed more fully in Plaintiffs' contemporaneously filed motion for fees and costs.

The requested awards reflect each Plaintiffs' long involvement in this litigation, and are reasonable in light of their efforts on behalf of the Settlement Classes.

F. Attorney Fees and Costs

Plaintiffs have simultaneously filed today a motion seeking payment of their counsel fees and costs under the fee-shifting provisions of the FDCPA, 15 U.S.C. § 1692k(a)(3). As set forth

therein, Plaintiffs are seeking $1,050,000, or approximately 31% of the total Settlement Fund in accordance with the Settlement Agreement. Dkt. No. 99-3 at section 4.3. The amount of attorney fees and expenses to be paid to Class Counsel was not agreed to by the parties until agreement was reached in principle on the other terms of this Settlement Agreement.

IV. LEGAL STANDARD

Rule 23(e)(2) requires a class action settlement to be fair, reasonable and adequate. There is no fixed test in the First Circuit for evaluating the fairness of a settlement. *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, 602 F. Supp. 2d 277, 280 (D. Mass. 2009) (Saris, J.). As a threshold matter, a settlement agreement is presumed to be fair if it follows sufficient discovery and genuine arm's-length negotiations. *See City P'Ship. Co. v. Atl. Acquisition Ltd. P'Ship.*, 100 F.3d 1041, 1043 (1st Cir. 1996); *In re Compact Disc Minimum Advertised Price Litig.*, 216 F.R.D. 197, 207 (D. Me. 2003).

In general terms, courts assess the fairness of proposed class action settlements by considering both their substance and the process that produced the parties' compromise. In this Circuit, courts have relied on factors set forth by the Second Circuit in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974). This Court has in the past molded versions of the *Grinnell* factors into a six-factor test: (1) comparison of the proposed settlement with the likely result of litigation; (2) stage of the litigation and the amount of discovery completed; (3) quality of counsel; (4) conduct of the negotiations; (5) the risk, complexity, expense and duration of the case; and (6) reaction of the class to the settlement. *Compact Disc*, 216 F.R.D. at 206. That test is argued below.

V. ASSESSMENT OF THE FACTORS GOVERNING APPROVAL SHOWS THE SETTLEMENT IS FAIR AND REASONABLE

A. Compared With the Available Damages Under the FDCPA, the Settlement Represents Exceptional Value

While question of what the outcome of this litigation would have been is not fully answerable at this time, a comparison of the monetary benefits of the settlement with the damages available under the FDCPA demonstrates that the settlement is an excellent outcome for class members. Under the FDCPA, prevailing consumers affected by a debt collector's failure to comply with the statute are entitled to both statutory and actual damages. 15 U.S.C. § 1692k(a). In the case of a class action, statutory damages are limited to the lesser of $500,000 or one percent of the defendant's net worth. *Id.* at 1692k(a)(2)(B).

Here, due to Defendants' size, the parties all approached settlement negotiations with the understanding that the relevant statutory damages cap was $500,000. Thus, even if the statutory cap applies separately to each Defendant here, the maximum recoverable statutory damages in this action would be one million dollars. The two million forty-five thousand dollars ($2,045,000.00) earmarked in the Settlement Agreement for distribution to class members is more than twice the available statutory damages if Plaintiffs and the classes were to prevail at trial.[5]

Plaintiffs were also able to achieve this excellent result in part because in addition to statutory damages, they have consistently asserted that the collection of an unauthorized returned check fee caused Plaintiffs and similarly affected class members compensable actual damages in

[5] This analysis is unaffected by the expansion of the Maine-only certified classes 1 and 2 into the nationwide Settlement Class 1. Defendants have made clear that their willingness to reach a settlement was premised on the existence of a nationwide settlement class. Dkt. No. 103 at pp. 1-2. Thus, without the expansion, members of certified classes 1 and 2 would have received no settlement at all, and instead borne the risks of additional litigation and possibility of no recovery whatsoever. Further, any settlement covering only the certified class claims would undoubtedly have involved significantly smaller dollar amounts.

the amount of the fee, which in most cases was $25.00. Compl., Dkt. No. 1; *see also* Dkt. Nos. 32, 50 (briefing on motion for class certification). Defendants vigorously disputed this position. Dkt. Nos. 42, 61. The settlement reached reflects the risk to Defendants that Plaintiffs would prevail on this issue. Even taking actual damages into account, the Settlement Agreement provides excellent results: based on the claims made here, claimants who paid a returned check fee will receive $42.62, well in excess of the fee paid.

Thus, by any measure, the settlement provides an excellent result for settlement class members, by providing substantial economic benefits now, without the need for the uncertainties of trial and appeal.

B. The Fact that Plaintiffs Reached the Settlement After Extensive Litigation and Discovery Supports Approving Them as Fair

This settlement follows more than four years of hard-fought litigation, which provided the parties with ample information about the strengths and weaknesses of their positions on liability and damages. The parties conducted extensive discovery, including multiple rounds of written discovery and the production of thousands of pages of documents, which Class Counsel reviewed and analyzed. Plaintiffs took the depositions of eight representatives of Defendants, some multiple times, and Defendants took the deposition of Mrs. LaRocque, Mrs. Spang, and Ms. Allen, as well as the named plaintiffs in the four tag-along state actions.

Before reaching the Settlement, the parties fully brief class certification for the Maine classes, as well as tolling issues for the four tag-along state actions, and had the benefit of the Court's decisions on both issues. The parties also took expert discovery, including the production of the report of Plaintiffs' expert and his deposition, and begun briefing his qualifications through Defendants' motion to strike. Dkt. Nos. 59-60. The parties had also filed cross motions for summary judgment outlining their respective position on the merits. Dkt. Nos. 58, 61-65. They

also had the opportunity to discuss their positions in detail through the assistance of an experienced JAMS mediator. *See* Hinkle Decl.

As a result, the Plaintiffs, TRS, and TeleCheck all possessed the requisite information with which to make informed judgments about the relative strength of their litigation positions before the settlement negotiations began or were completed. This fact fully supports approval of the Settlement.

C. Counsel are Highly Qualified and Experienced

Class Counsel are highly experienced in FDCPA and other consumer litigation, and have repeatedly been appointed as class counsel in consumer class actions under Rule 23(g), including over objection and against competing counsel. *Magallon v. Robert Half Int'l, Inc.*, ___ F.R.D. ___, 2015 WL 8773898, at *13-14 (D. Or. Nov. 10, 2015) (finding counsel qualified and certifying class on contest); *Patel v. Trans Union, LLC*, 308 F.R.D. 292, 307 (N.D. Cal. 2015) (same); *Berry v. LexisNexis Risk & Info. Analytics Grp., Inc.*, No. 3:11-c-v754, 2014 WL 4403524, at *11 (E.D. Va. Sept. 5, 2014) (finally approving class settlement, including appointment of class counsel, over objections) *aff'd sub nom Berry v. Schulman* ___ F.3d ___, 2015 WL 7888729, at *9-10 (4th Cir. Dec. 4, 2015); *See Ryals et al. v. Hireright Solutions, Inc.*, C.A. No. 3:09-cv-625 (E.D. Va. Dec. 22, 2011).

Here, counsel diligently pursued discovery, made effective written and oral arguments, kept the Court informed of all pertinent issues and developments, and unfailingly demonstrated candor in all pleadings and communications with the Court in the course of zealously advocating for Plaintiffs.

D. The Fact that Plaintiffs Reached the Settlements After Substantial and Arm's-Length Negotiations Makes the Settlements Presumptively Fair

Courts consistently judge settlements resulting from significant, arm's-length negotiations as being free from collusion, and therefore presumptively fair. *See, e.g., City P'Ship*

Co., 100 F.3d at 1043 ("When sufficient discovery has been provided and the parties have bargained at arm's-length, there is a presumption in favor of the settlement."); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 71-72 (D. Mass. 2005).

Here, the parties participated in two full days of detailed, complex mediation efforts under the auspices of the Hon. Margaret R. Hinkle (Ret.) of JAMS in Boston. These efforts were unquestionably at arms-length and non-collusive. Hinkle Decl. at ¶ 4. Although the parties were not able to resolve the matter during either of these sessions, the discussion formed the basis of the parties' continuing settlement discussions.

Even once the parties reached a settlement in principle in June 2014, the parties continued to negotiate vigorously and at arms-length regarding the details of the settlement for an additional ten months. *See* Dkt Nos. 72, 75, 78, 81, 84, 87, 90 and 94. This settlement is unquestionably the result of substantial advocacy and negotiation by both parties, and this factor favors final approval.

E. The Complexity and Ultimate Duration of the Litigation Support Approval of the Settlements as Fair and Reasonable

This action commenced in March 2011, almost five years ago. The litigation has been undeniably complex in all of its procedural and substantive attributes. To succeed at trial, Plaintiffs would have to overcome significant factual disputes on many elements of their claims necessitating the use of numerous evidentiary exhibits and the testimony of a substantial number of witnesses. There would also likely have be a significant battle of expert witnesses concerning the contents of the RECR3 letter. A trial would be lengthy, expensive and risky.

The factor of the complexity and duration of the litigation strongly supports approval of the Settlement as fair and reasonable.

F. Class Reaction Supports Approval of the Settlements as Fair

Courts in this Circuit also consider the reaction of class members to proposed settlements

in assessing whether to approve those compromises. *See Bussie v. Allmerica Financial Corp.*, 50 F. Supp. 2d 59, 77 (D. Mass. 1999) ("The number of requests for exclusion from the settlement, as well as the number and substance of objections filed, is relevant to this Court's analysis of the settlement."); *Relafen*, 231 F.R.D. 72 (class's reaction to the settlement supported approval where the "overall reaction to the settlement has been positive" and the objections asserted by class members did not focus upon the total settlement consideration). Overall, the response of the classes has been positive. The December 29, 2015 Castaneda Declaration reports on the status of notice and claims. Dkt. No. 122. In part as a result of a second round of skip tracing authorized by the parties in order to expand the reach of the notice, the Class Administrator confirmed that 319,560 of the notices sent to identified class members, or 93% of the total, were not returned as undeliverable. Dkt. No. 122, Castaneda Decl. at ¶ 6. The Class Administrator also reported that the website established pursuant to the settlement, www.TRSClassAction.com, has received 9,326 total visits, and the notice has been downloaded over 1,700 times. *Id.* at ¶ 9.

As set forth above, the deadline for class members to submit claims, to object, or to opt out was December 22, 2015. The overall claims rate is 11.5%, with a total of 39,332 consumers submitting claims. By contrast, only twelve class members requested to be excluded. *Id.* at ¶ 13. There has been only one objector, a serial professional objector whose arguments will be addressed separately pursuant to this Court's Order. Dkt. No. 121. The small number of exclusion requests and relatively high claims rate are strong factors favoring approval of the settlement.

VI. THE SETTLEMENT CLASSES ARE APPROPRIATELY CERTIFIED

When the Court directed notice to the classes, it also provisionally certified the proposed settlement classes. Dkt. No. 118 at ¶¶ 1-3. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591,

620 (1997) (trial court may disregard management issues in certifying a settlement class, but the proposed class must still satisfy the other requirements of Rule 23). As final approval of the settlement also involves the determination that certification of the Settlement Class is appropriate, the analysis applies again at this juncture.

As noted in Plaintiffs' Motion for Preliminary Approval, this Court has already affirmed that the claims presented in this litigation are suitable for class treatment, and the only Settlement Class members not already members of the classes certified by this Court on contest are natural persons with addresses in states and territories *other than Maine* to whom Defendant TRS sent its RECR3 letter between March 11, 2010 and the present, from whom one or both Defendants *did not* collect money within thirty days of the letter. These consumers are part of Settlement Class 1. Dkt. No. 99-3 at section 3.1.

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

"The [Federal Rules of Civil Procedure] establish four elements that must be present in order to obtain class certification. This taxonomy comprises numerosity of claims, commonality of legal or factual questions, typicality of representative claims or defenses, and adequacy of representation." *Matamoros v. Starbucks Corp.*, 699 F.3d 129, 138 (1st Cir. 2012) *citing* Fed. R. Civ. P. 23(a). As recognized in the Court's order on class certification, the Maine consumers who are members of the Settlement Classes satisfy these requirements. *LaRocque v. TRS Recovery Servs., Inc.*, 285 F.R.D. 139, 146-152, 153-54, 159-60. The non-Maine consumers who are not members of the certified classes in this matter also satisfy these requirements.

Defendants have identified 341,832 total class members, including 322,280 members of Settlement Class 1, 214,971 of whom are also members of the Settlement Class 1 Subclass. According to Defendants' records, Settlement Class 2 consists of a minimum of 22,720 members.

These numbers clearly satisfy the numerosity requirement of Rule 23.

The questions of law and fact are substantially identical among class members, namely, whether Defendants' RECR3 letter is misleading in violation of the FDCPA, and whether Defendants' practices for collecting a returned check fee from Maine consumers violated the MUTPA. Just as in the cases of Ms. LaRocque and Ms. Allen, Defendant TRS used its standard, uniform collection practices to send the standardized, form RECR3 letter to all members of Settlement Class 1. *See LaRocque*, 285 F.R.D. at 144-45. Defendants also used uniform procedures to collect returned check fees from members of Subclass 1, and from Maine consumers in Settlement Class 2. *Id.* at 154-55, 159. Thus, the settlement classes satisfy the commonality requirement.

The claims of Plaintiffs LaRocque and Allen are identical to those of all other members of settlement classes, and this Court has already determined that their claims are typical of those of certified classes because their claims are based on the same form dunning letter sent to all class members, and the same statutory theory of relief under the FDCPA and MUTPA. *LaRocque*, 285 F.R.D. at 148, 155, 159-60. Furthermore, this Court has determined that Plaintiffs and their counsel are adequate representatives of consumers with these claims. *LaRocque*, 285 F.R.D. at 148-52, 155, 160.

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

The settlement classes further meet the predominance and superiority requirements in Rule 23(b) because the issues of law and fact are identical among the class members, including non-Maine class members. *Waste Mgt. Holdings, Inc. v. Mowbray*, 208 F.3d 288, 296 (1st Cir. 2000) (predominance requirement satisfied by "sufficient constellation of common issues [that] bind class members together"). The claims of all consumers nationwide to whom defendant TRS sent

the RECR3 letter rise or fall upon the legality of the letter and Defendants' uniform and automated collection practices. *LaRocque*, 285 F.R.D. at 153. As recognized by this Court, the claims of Maine consumers under MUTPA all rise and fall together. *Id.* at 160. Class-wide resolution of all class members' claims together is appropriate because consumers have minimal interest in controlling prosecution of their individual cases; it is desirable to concentrate the litigation in a single forum; and no insurmountable difficulties in case management exist. *See id.*

VII. CONCLUSION

The class action settlement is fair, reasonable, and adequate. The in-depth discovery that has been accomplished; the complexity of this case and length of time that would be needed if it goes forward; the nature of the hard fought litigation and arm's-length negotiations; and the adequacy of the proposed Notice all support final approval of the settlement.

For the foregoing reasons, Representative Plaintiffs LaRocque and Allen respectfully request that this Court grant this Motion and enter the proposed Final Judgment and Order of Dismissal.

Date: January 11, 2016

Respectfully Submitted,

/s/ James A. Francis

JAMES A. FRANCIS
JOHN SOUMILAS
FRANCIS & MAILMAN, P.C.
Land Title Building, Suite 1902
100 South Broad Street
Philadelphia, PA 19110
Tel. (215) 735-8600
jfrancis@consumerlawfirm.com
jsoumilas@consumerlawfirm.com

LEWIS SAUL & ASSOCIATES, P.C.
LEWIS J. SAUL
JON HINCK
KEVIN M. FITZGERALD
183 Middle Street, Suite 200

Portland, ME 04101
Tel. (207) 874-7407
lsaul@lewissaul.com
jhinck@lewissaul.com
kfitzgerald@lewissaul.com

Attorneys for Plaintiffs and the Classes

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

----------X

TRS RECOVERY SERVICES, INC., and TELECHECK SERVICES, INC., Fair Debt Collections Practices Act (FDCPA) Litigation	**MDL 2426** **Master File Civ. No. 2:13-md-2426-DBH**

----------X

DECLARATION OF LORI L. CASTANEDA CONCERNING CLASS MEMBER EXCLUSIONS

I, Lori L. Castaneda, declare as follows:

1. I am Vice President, Operations of Garden City Group, LLC ("GCG"). The following statements are based on my personal knowledge and information provided by other knowledgeable GCG employees working under my supervision, and if called on to do so, I could and would testify competently thereto.

2. As noted in my December 29, 2015 Declaration Concerning Class Member Notification Program, No. 2:13-md-2426-DBH (ECF No. 122), GCG was appointed as the Settlement Administrator pursuant to Section 1.1.u. of the Agreement of Compromise and Settlement (the "Settlement Agreement").

EXCLUSIONS

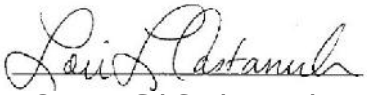
3. Pursuant to Section 7.1. of the Settlement Agreement, Settlement Class Members who wished to opt out must have sent a request for exclusion to GCG postmarked through the United States Postal Service, or other expedited mail service, on or before December 22, 2015. As of the date of this declaration, GCG has received 13 exclusion requests postmarked on or before December 22, 2015. Of the 13 timely exclusion requests received, three (3) requests were only included in Class One within the Settlement Class Member lists; eight (8) were included in both Class One and Subclass One within the Settlement Class Member lists; and two (2) requests

for exclusion were individuals who were not included in the Settlement Class Member lists. A list of these exclusion requests is attached as Exhibit A.

4. Pursuant to Section 7.4. of the Settlement Agreement, GCG provided a list of the excluded parties and all submitted documentation to both Class Counsel and Defendants' counsel via electronic mail.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on January 11, 2016 at Seattle, Washington.



LORI L. CASTANEDA

Exhibit A

GCG Record No	State	Class
1288450	MA	One/Sub
1281797	NC	One/Sub
1190254	OR	One/Sub
35	MA	
1302718	NJ	One/Sub
1256228	AZ	One
1185806	MI	One/Sub
1074991	RI	One/Sub
1143000	OH	One
1106302	FL	One/Sub
29	PA	
1040409	VA	One
1042457	NC	One/Sub

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

TRS RECOVERY SERVICES, INC., and TELECHECK SERVICES, INC., Fair Debt Collections Practices Act (FDCPA) Litigation	**MDL 2426** **Master File Civ. No. 2:13-md-2426-DBH** **CLASS ACTION**

This Document Relates To:

JEAN LaROCQUE, ex rel. DEIDRE J. SPANG v. TRS RECOVERY SERVICES, INC. and TELECHECK SERVICES, INC.
Civ. No. 2:11-cv-00091-DBH

MELISSA ALLEN v. TRS RECOVERY SERVICES, INC. and TELECHECK SERVICES, INC.
Civ. No. 2:11-cv-00091-DBH

DECLARATION OF THE HONORABLE MARGARET R. HINKLE

I, Margaret R. Hinkle, declare as follows:

1. I served as a judge on the Massachusetts Superior Court from 1993 until I retired in 2011.

2. I currently work as a mediator for JAMS in Boston, Massachusetts.

3. At the request of the parties in the above-referenced matter, I oversaw settlement negotiations at two full-day mediation sessions which took place on November 20, 2013, and September 26, 2013 at my Boston, Massachusetts office.

4. Counsel for the parties were present at both mediation sessions, and negotiated vigorously and at arms length. Counsel zealously advocated their respective positions and there was no collusion between the parties.

5. The matter did not settle at either mediation, in my view because there remained issues in the case which needed to be fleshed out by litigation before the parties were prepared to negotiate further.

6. It is my understanding that the parties subsequently reached a settlement on their own.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to sanction.

Dated: January 8, 2016

Margaret R. Hinkle (Ret.)
Hon. Margaret R. Hinkle

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

TRS RECOVERY SERVICES, INC., and TELECHECK SERVICES, INC., Fair Debt Collections Practices Act (FDCPA) Litigation	MDL 2426 Master File Civ. No. 2:13-md-2426-DBH CLASS ACTION

This Document Relates To:

JEAN LaROCQUE, ex rel. DEIDRE J. SPANG v. TRS RECOVERY SERVICES, INC. and TELECHECK SERVICES, INC.
Civ. No. 11-00091-DBH

MELISSA ALLEN v. TRS RECOVERY SERVICES, INC. and TELECHECK SERVICES, INC.
Civ. No. 2:11-cv-00091-DBH

FINAL JUDGMENT AND ORDER OF DISMISSAL

This matter, having come before the Court on Plaintiffs Jean LaRocque and Melissa Allen's (the "Class Representatives") Motion for Final Approval of the proposed class action settlement with Defendants TRS Recovery Services, Inc. and TeleCheck Services, Inc. ("Defendants"); the Court having considered all papers filed and arguments made with respect to the settlement, and having provisionally certified, by Order entered July 30, 2015 (Dkt. No. 118), three settlement classes, and the Court, being fully advised in the premises, finds that:[1]

1. For purposes of settlement, this action satisfies the applicable prerequisites for class action treatment under Fed. R. Civ. P. 23(a) and (b)(3). The classes as defined in this Court's

[1] Unless otherwise defined herein, all capitalized terms in this Order have the same meaning as in the Settlement Agreement.

Preliminary Approval Order (together, the "Settlement Classes") are so numerous that joinder of all members is not practicable, there are questions of law and fact common to the Settlement Classes, the claims of the Class Representatives are typical of the claims of the Settlement Classes, and the Class Representatives will fairly and adequately protect the interests of the Settlement Classes. Questions of law and fact common to the members of the Settlement Classes predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

2. Notice to the Settlement Classes required by Rule 23(e) of the Federal Rules of Civil Procedure has been provided in accordance with the Court's Preliminary Approval Order, and such notice by mail, website and publication has been given in an adequate and sufficient manner, constitutes the best notice practicable under the circumstances, and satisfies Rule 23(e) and due process.

3. Defendants have timely provided notification of this settlement to the appropriate federal and state officials pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715. The Court has reviewed such notification and accompanying materials, and finds that Defendants' notification complies fully with the applicable requirements of CAFA.

4. The Settlement Agreement was arrived at as a result of arms-length negotiations conducted in good faith by counsel for the parties, and is supported by the Class Representatives.

5. The settlement as set forth in the Settlement Agreement is fair, reasonable and adequate to members of the Settlement Classes in light of the complexity, expense, and duration of litigation and the risks involved in establishing liability and damages, and in maintaining the class action through trial and appeal.

6. The relief provided under the settlement constitutes fair value given in exchange for the releases of claims against the Released Parties.

7. The persons indicated on Exhibit A to the Declaration of Lori L. Castaneda Concerning Class Member Exclusions, have validly excluded themselves from the Settlement Classes in accordance with the provisions of the Preliminary Approval Order, and shall not be bound by the Settlement.

8. The parties and each member of the Settlement Classes have irrevocably submitted to the exclusive jurisdiction of this Court for any suit, action, proceeding or dispute arising out of the Settlement Agreement.

9. It is in the best interests of the parties and the members of the Settlement Classes and consistent with principles of judicial economy that any dispute between any member of the Settlement Classes (including any dispute as to whether any person is a member of the Settlement Classes) and any Released Party which in any way relates to the applicability or scope of the Settlement Agreement or this Final Judgment and Order of Dismissal should be presented exclusively to this Court for resolution by this Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. This action is finally certified as a class action for settlement purposes only against Defendants TRS Recovery Services, Inc. and TeleCheck Services, Inc. on behalf of a Settlement Class 1 defined as follows:

> All natural persons with an address in the United States American Samoa, Guam, Northern Mariana Islands, Puerto Rico or U.S. Virgin Islands to whom the defendant TRS sent its RECR3 letter between March 11, 2010 and July 30, 2015.

and on behalf of a Settlement Class 1 Subclass defined as follows:

> All natural persons with an address in the United States American Samoa, Guam, Northern Mariana Islands, Puerto Rico or U.S. Virgin Islands to whom the defendant TRS sent its RECR3 letter between March 11, 2010 and July 30, 2015, and from whom one or

both Defendants collected in whole or in part, within 30 days of the RECR3 letter, the debt or returned check fee referenced in that RECR3 letter.

and on behalf of a Settlement Class 2 defined as follows:

All natural persons who have paid a returned check fee of $25.00 to at least one of the defendants by way of a TRS demand draft in connection with an underlying check transaction that occurred in the State of Maine between March 11, 2005 and July 30, 2015.

(Collectively, Settlement Class 1, Settlement Class 1 Subclass and Settlement Class 2 are the "Settlement Classes" and the members of the Settlement Classes are "Settlement Class Members").

2. The Settlement Agreement submitted by the parties is finally approved pursuant to Rule 23(e) of the Federal Rules of Civil Procedure as fair, reasonable and adequate and in the best interests of the Settlement Class Members. The parties are directed to consummate the Agreement in accordance with its terms.

3. Within ten (10) business days after the Effective Date, as defined in the Settlement Agreement, Defendants shall transfer to the Settlement Administrator, by draft or by wire, the balance of the Settlement Amount, in the sum of three million, two hundred forty-seven thousand, seven hundred fifty-seven dollars ($3,247,757.00) (the "Settlement Fund"). Together with the funds Defendants have already delivered to the Settlement Administrator as provided by this Court's Order of Preliminary Approval of Settlement, the Settlement Fund shall constitute Defendants' full and final payment to settle this class action lawsuit, as set forth in the Settlement Agreement. The Settlement Administrator is directed to make disbursements from the Settlement Fund in accordance with the terms of Section 4 of the Settlement Agreement. The Settlement Administrator shall ensure that, if a check has not been deposited or cashed within ninety (90) days after the date of issue, the amount of the check remains in the Settlement Fund for distribution in accordance with the Settlement Agreement. Amounts that would have been payable on the

negotiation of any check not deposited or cashed are not subject to escheat under any state law.

4. This action is hereby dismissed on the merits, with prejudice and without costs.

5. The Court hereby approves the Release set forth in paragraphs 10.1 and 10.2 of the Settlement Agreement. As agreed by the parties in the Settlement Agreement, upon the Effective Date, the Released Parties as defined in the Settlement Agreement shall be released to the fullest extent provided therein.

6. Without affecting the finality of this judgment, the Court hereby reserves and retains jurisdiction over this action, including the administration and consummation of the settlement. In addition, without affecting the finality of this judgment, the Court retains exclusive jurisdiction over Defendants, Plaintiffs, and each Settlement Class Member for any suit, action, proceeding, or dispute relating to this Order or the Settlement Agreement. Without limiting the generality of the foregoing, any dispute concerning the Settlement Agreement, including, but not limited to, any suit, action, arbitration, or other proceeding by any Settlement Class Members in which the provisions of the Settlement Agreement are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection, is a suit, action or proceeding relating to this Order. Solely for purposes of such suit, action, or proceeding, to the fullest extent possible under applicable law, the parties hereto and all members of the Settlement Classes are hereby deemed to have irrevocably waived and agreed not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of this Court, or that this Court is, in any way, an improper venue or an inconvenient forum.

7. Upon consideration of Class Counsel's application for fees and expenses, the Court shall enter a separate Order awarding reasonable fees and expenses in an amount to be set forth in that Order. Payment of Class Counsel's fees and expenses shall be taken out of the Settlement

Fund, and no additional payment shall be required of Defendants.

8. Upon consideration of the application for an individual settlement award, Class Representative Jean LaRocque is awarded the sum of six thousand dollars ($6,000.00) and Class Representative Melissa Allen is awarded the sum of four thousand dollars ($4,000.00) in consideration for their individual claims against the Defendants and for the valuable services they have performed for and on behalf of the Settlement Classes. These payments shall be taken out of the Settlement Fund, and no additional payment shall be required of Defendants.

9. All Settlement Class Members shall be bound by all of the terms, conditions and obligations of the Settlement Agreement, and all determinations and judgments in the action concerning the Settlement.

10. Neither the Settlement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by any party of the truth of any allegation in the Action or of any liability, fault or wrongdoing of any kind.

11. The Parties and Class Counsel agree that certification of the Settlement Classes is a certification for settlement purposes only, and that Defendants retain their rights to object to certification of this Litigation if the Effective Date does not occur and/or the Agreement is terminated pursuant to the provisions of paragraphs 7.5.1 or 7.5.2, or of any other class action under Federal Rule of Civil Procedure 23 or any other applicable rule, statute, law or provision.

12. The Named Plaintiffs and all Settlement Class Members are hereby permanently barred and enjoined from asserting or prosecuting any of the Released Claims in any jurisdiction, as set forth in Section 10.1 and 10.2 of the Settlement Agreement, including during any appeal from this Final Approval Order.

13. Final Judgment is hereby entered in this action, consistent with the terms of the Settlement Agreement.

BY THE COURT:

_____

HON. D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

Dated: _____