

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Craig Thomas and Louanne O’Quinn
(formerly known as Louanne O. Weller),
*on behalf of themselves and all others
similarly situated,*

¶

Plaintiffs,

v.

Sherwin P. Robin & Associates, P.C.,
Sherwin P. Robin, Sara G. Robin, Cavalry
SPV I, LLC, and Cavalry Portfolio
Services, LLC¹

Defendants.

Civil Action File No.
16-CV-2529-AT-AJB

**PRELIMINARY ORDER APPROVING SETTLEMENT, DIRECTING
NOTICE TO CLASS MEMBERS
AND SCHEDULING FAIRNESS HEARING**

¹ Pursuant to ECF Doc. 91, this action was previously dismissed without prejudice as to Cavalry SPV I, LLC and Cavalry Portfolio Services, LLC (“the Cavalry Defendants”) by stipulation. Pursuant to that stipulation, in the event that a Final Order approving this Settlement is not entered in this action, the dismissal of the Cavalry Defendants shall become null and void. Conversely, upon entry of a Final Order approving this Settlement, the dismissal shall be with prejudice.

THIS MATTER presented for hearing before the Honorable Amy Totenberg, United States District Judge, in order for this Court to conduct a preliminary hearing to determine whether the proposed Settlement Agreement and Release of Claims dated September 23, 2018 (“Settlement Agreement”) between Plaintiffs Craig Thomas and Louanne O’Quinn (collectively “Plaintiffs”) and the Sherwin P. Robin & Associates, P.C., Sherwin P. Robin and Sara G. Robin (collectively the “Law Firm Defendants”) is fair, reasonable and adequate, to provisionally certify the Settlement Class, to address the appointment of Class Counsel and Class Representative, and to schedule a Fairness Hearing;

AND THE COURT, having read and considered the Settlement Agreement and other papers submitted by counsel for the parties, having reviewed and considered the parties Joint Motion for Preliminary Approval of Class Action Settlement (the “Motion”), the memorandum of law in support thereof and the declarations and exhibits attached thereto, oral arguments of counsel presented to the Court, and all papers filed and proceedings had herein, and for good cause appearing, the Court finds the following:

1. The settlement before the Court is between Plaintiffs, the Class Members in the class proposed to be certified for settlement purposes, and the Law Firm Defendants. The Cavalry Defendants, who are not a party to the Settlement

Agreement were dismissed by separate stipulation dated September 28, 2018 with said dismissal to become null and void only in the event this Settlement is not approved.

2. Defendants have denied any and all liability alleged in the Amended Complaint.

3. As a result of arm's-length negotiations over an extended period, Class Counsel and Law Firm Defendants' Counsel reached a settlement on behalf of Plaintiffs and the Law Firm Defendants that provides, among other relief, monetary relief to the Class Members.

4. Plaintiffs and Law Firm Defendants now request preliminary approval of a Settlement Class pursuant to Fed. R. Civ. P. 23(b)(3).

NOW, THEREFORE IT IS HEREBY ORDERED THAT:

5. The Motion for Preliminary Approval of the proposed settlement is GRANTED and Plaintiffs and Law Firm Defendants are hereby ordered to comply with the schedule as set forth in this Order.

6. The Court has jurisdiction over the subject matter of this matter and over Plaintiffs and all Defendants in this action.

7. Law Firm Defendants have complied with the obligation to serve written notice of the proposed class settlement to the appropriate governmental

representatives pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and the terms of the Settlement Agreement.

8. Pursuant to Fed. R. Civ. P. 23(b)(3), the following Settlement Class is preliminarily certified for purposes of final settlement:

Settlement Class:

- i. Natural persons;
- ii. who have been defendants in state court consumer collection lawsuits filed in Georgia;
- iii. in which Sherwin P. Robin & Associates, P.C. was counsel to the state court plaintiff or represented the state court plaintiff in judgment enforcement proceedings;
- iv. in which either Cavalry SPV I, LLC or Cavalry Portfolio Services, LLC was the state court plaintiff or an assignee of state court plaintiff;
- v. in which judgment was taken against the state court defendant;
- vi. in which subsequent to the taking of judgment, Defendants herein filed an Affidavit of Garnishment which identified, as the interest to be collected, interest calculated on the basis of the judgment date plus some number of days after the garnishment was filed; and
- vii. in which such interest was sought, collected and or attempted to be collected within one year of the filing of the initial Complaint in the instant action through preliminary class certification.

9. The following people who otherwise meet the Settlement Class definition are hereby excluded:

- i. anyone employed by counsel for Plaintiffs in this action; and
- ii. any Judge to whom this case is assigned, as well as his or her immediate family and staff.

10. The Court finds that, for the purpose of this Settlement (and without prejudice to any party in the event final approval is not granted), the requirements of Rule 23 of the Federal Rules of Civil Procedure are satisfied, and that a class action is an appropriate method for resolving the disputes in this litigation. Specifically, the Court finds that the Settlement Class satisfies the prerequisites for class certification under Rule 23 in that:

- a. The members of the above defined class are so numerous that joinder of all members is impracticable.
- b. There are questions of law and fact common to the Settlement Class.
- c. The claims of the Class Representatives (appointed below) are typical of the claims of the Settlement Class.
- d. The Class Representatives fairly and adequately represents the interests of the Settlement Class. There are no conflicts of interest between the Class Representatives and members of the Settlement Class.
- e. Questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members of the class.
- f. Certification of the Settlement Class is superior to other available methods for the fair and efficient adjudication of this controversy.

11. The Court finds that the Settlement, on the terms and conditions set forth in the Settlement Agreement attached hereto as **Exhibit 1**, is fundamentally fair, reasonable, adequate and is in the best interests of the Class Members, especially in

light of the benefits achieved on behalf of them; the risk and delay inherent in litigation; and the limited amount of any potential recovery that could be shared by the Class Members.

12. Pursuant to Fed. R. Civ. P. 23(a)(4) (and without prejudice to any party in the event final approval is not granted), the Court finds that Plaintiffs Craig Thomas and Louanne O'Quinn fairly and adequately represent and protect the interests of the Settlement Class and appoints them as Settlement Class Representatives.

13. Pursuant to Fed. R. Civ. P. 23(g) (and without prejudice to any party in the event final approval is not granted), the Court appoints Daniel A. Schlanger and Evan S. Rothfarb of Schlanger Law Group LLP and E. Talley Gray of the Law Offices of E. Talley Gray to serve as Settlement Class Counsel. They have investigated the claims, prosecuted the case, negotiated a fair and reasonable settlement, and have the experience, knowledge, and resources to represent the Settlement Class.

14. The Settlement Agreement provides in part for the Law Firm Defendants or their insurer to (1) provide monetary relief to each Class Member who does not exclude himself or herself from the Settlement; (2) pay the costs of administering the settlement; (3) pay reasonable attorneys' fees, costs and expenses; and (4) pay

an amount to the Class Representatives as service payment and for a release of his individual claims, as provided by the Settlement Agreement.

15. The Court approves Heffler Claims Group as the Settlement Administrator. The Settlement Administrator shall be responsible for administering the Settlement according to the terms set forth in the Settlement Agreement and as Ordered herein.

16. Pursuant to the procedures set forth in Paragraphs 37 through 41 of the Settlement Agreement, the Law Firm Defendants provided Plaintiffs with a verified class list, R4 reports for each of the first 50 class members alphabetically appearing on the verified class list, a judgment and affidavit of garnishment for each of the 50 class members in the verified class list and a declaration or affidavit confirming that no improper interest (as alleged by Plaintiffs in their Amended Complaint but without admission as to those allegations by Defendants) has been collected from any of the Class Members. The Parties have agreed that 745 consumers disclosed in the verified class list are Class Members (inclusive of the two Class Representatives).

17. The costs of administering the Settlement, including but not limited to, printing the Notice, updating the database and mailing the Notice and, thereafter, issuing and mailing the settlement checks shall be covered by the Law Firm

Defendants or their insurer and paid by the Law Firm Defendants or their insurer pursuant to the terms of the Settlement Agreement.

18. The Court finds that the first-class mailing of the proposed form of Settlement Class Notice attached hereto as **Exhibit 2** in the manner set forth herein and in the Settlement Agreement is the best notice practicable under the circumstances, consistent with due process of law, and constitutes due and sufficient notice of this Order to all persons entitled thereto and is in full compliance with the requirements of Fed. R. Civ. P. 23. The Court finds that mailing of class notice is the only notice required and that such notice satisfies the requirements of due process and Federal Rule of Civil Procedure 23(c)(2)(B).

19. The Settlement Administrator shall cause the Notice to be mailed to all Class Members in accordance with the terms of the Settlement Agreement in substantially the same form as **Exhibit 2, NO LATER THAN FEBRUARY 14, 2019.**

20. The Notice shall clearly state the procedures and deadlines for an individual to opt out of the class or to object to the Settlement.

21. By no later than sixty (60) days following the date of this Order, the Settlement Administrator shall provide to Class Counsel and counsel for the Defendants one or more declarations attesting to compliance with the terms of this Order and the Settlement Agreement, including declarations stating that it properly

mailed the Notice in accordance with the terms of this Order and as required by the Settlement Agreement and maintained a settlement website as provided for in the Settlement Agreement.

22. The moving parties shall file the Settlement Administrator's declaration with the application for Final Approval.

23. Objections not conforming to the requirements set forth in the Notice shall be stricken and shall not be considered or heard by this Court. Requests for exclusion from the class not conforming to the requirements set forth in the Notice shall be deemed inadequate and shall not serve to exclude any individual from the class.

24. The parties have agreed that the Law Firm Defendants or their insurer shall pay Class Counsel's fees and costs in the amount of \$100,000.00. The Court finds this amount to be fair and reasonable under applicable law, including 15 U.S.C. § 1692k and lodestar jurisprudence more generally.

25. A Fairness Hearing shall be held before this Court at 10:30 AM on May 30, 2019 in Courtroom 2308 at the United States District Court, Northern District of Georgia, Atlanta Division, Richard B. Russell Federal Building, 2211 United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303, on the proposed Settlement including: (a) whether to grant final approval to the Settlement as fair,

reasonable, and adequate and issue an Order dismissing the Complaint with prejudice; (b) whether the parties' agreement regarding the process to determine Class Counsel's attorneys' fees and costs is fair and reasonable and (c) whether to approve the service payment to Plaintiffs. This hearing may be adjourned to a later date without further or prior notice by oral announcement by the Court or by written order.

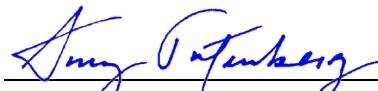
26. Any Member of the Settlement Class may appear, in person or through counsel (at their own expense), at the aforementioned Fairness Hearing and be heard in support of or in opposition to the fairness, reasonableness and adequacy of the proposed Settlement, award of counsel fees, reimbursement of costs and expenses, and Class Representatives service fee provided, however, that no person shall be heard in opposition to the proposed Settlement or the award, and no paper or brief submitted by such person shall be received or considered by the Court unless such person has timely filed with the court a written objection and sent a copy to the Settlement Administrator in the manner described in the Notice.

27. In the event that the Settlement Agreement is not approved by the Court, or if approval of the Settlement Agreement, including the entry of the Order for Preliminary Approval or the Final Order and Judgment, is reversed or modified on appeal (except for the modification of any attorney's fee award), or any one of the

conditions precedent set forth in the Settlement Agreement is not met, then the Order for Preliminary Approval and the Final Order and Judgment, including, but not limited to, the conditional class certification entered to effectuate this Agreement, and all findings of fact and conclusions of law therein, shall be automatically dissolved *ab initio* without further order of the Court, and become null and void and of no force and effect, and in such event all *status quo ante* rights of the Defendants to, among other things, (i) oppose any subsequent efforts by Plaintiffs to certify this action as a class action, and (ii) all other defenses, rights, and positions shall in all respects be unaffected and preserved as shall those rights of Plaintiffs and all Class Members.

IT IS SO ORDERED.

Date: January 25, 2019



**Hon. Amy Totenberg
United States District Judge**