

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

ROBERT D. BYRNE, *et al.*,

Plaintiff,

vs.

OREGON ONE, INC.,

Defendant.

Case No.: 3:16-CV-01910-SB

ORDER PRELIMINARILY APPROVING
CLASS SETTLEMENT, CONDITIONALLY
CERTIFYING PROPOSED SETTLEMENT
CLASS, AND APPROVING FORM AND
MANNER OF NOTICE

Plaintiff has filed a Motion for an Order Preliminarily Approving Class Action Settlement, Conditionally Certifying Proposed Settlement Class, Directing Notice, and Setting Hearing on Final Approval of Settlement (“Motion”). Having reviewed the Motion and supporting materials, the Court determines and orders as follows:

A. Counsel have advised the Court that the parties have agreed, subject to final approval by this Court following notice to the proposed Plaintiff Settlement Class and a hearing,

to settle this action on the terms and conditions set forth in the Settlement Agreement and Release of Claims (the “Agreement”).

B. Counsel for both parties have requested and stipulated to Magistrate Judge Beckerman for the limited purpose of considering this Order and an Order Granting Motion for Final Approval and Final Judgment in this Action.

C. The Court has reviewed the Agreement, as well as the files, records, and proceedings to date in this matter. The terms of the Agreement are hereby incorporated as though fully set forth in this Order. Capitalized terms shall have the meanings attributed to them in the Agreement.

D. Based upon preliminary examination, it appears to the Court that the Agreement is sufficiently fair, reasonable, and adequate to warrant notice to the proposed Class; that the Plaintiff Settlement Class should be certified for settlement purposes; and that the Court should hold a hearing after notice to the Plaintiff Settlement Class to determine whether to enter a settlement approval order and final judgment in this action, based upon that Agreement.

Based upon the foregoing, IT IS HEREBY ORDERED:

1. ***Preliminary Approval of Proposed Settlement.*** The Agreement, including all exhibits thereto, is preliminarily approved as fair, reasonable and adequate. The Court finds that (a) the Agreement resulted from extensive arm’s-length negotiations, with participation of an experienced mediator, and (b) the Agreement is sufficient to warrant notice thereof to members of the Class and the Settlement Hearing described below. The names of all Class Members are attached as Exhibit A to the Settlement Agreement. The Court finds that the parties’ methodology for identifying class members is appropriate.

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2. ***Class Certification for Settlement Purposes Only.***

(a) Pursuant to *Fed. R. Civ. P. 23(b)(3)*, the Court, for settlement purposes only, conditionally certifies a class consisting of all persons, including the Representative Plaintiff, who meet the following criteria:

(1) All individuals with Oregon addresses;

(2) From whom OOI attempted to collect debts incurred for personal, family or household purposes;

(3) With respect to the individuals that meet the criteria set forth in sections (1) and (2), on or after September 29, 2015, one of the following is true:

(i) OOI sent to that consumer an initial collection letter that

(A) Did not state the name of the current creditor to whom the debt was owed; or

(B) Contained bolded double-spaced text listing the consumer's available options in response to the collection letter, but listing the notices required by *15 U.S.C. § 1692g (a)* in single spaced, non-bolded language at the bottom of the page; or

(C) Stated “[w]e would like to confirm the status of your account and decide as to our future course of action. Our decision will largely depend on you. Your response to this letter will determine the measures we take to collect the principal balance, all accrued and unpaid interest”; or

(D) Did not contain language that if the consumer notifies Oregon One *in writing* within the thirty-day period that the debt, or any portion thereof, is disputed, that OOI would obtain verification of the debt or a copy of a judgment against the

consumer and a copy of such verification or judgment would be mailed to the consumer by OOI;
or;

(E) Did not contain language stating that upon the consumer's *written* request within the thirty-day period that OOI would provide the consumer with the name and address of the original creditor, if different from the current creditor.

(ii) OOI sent to that consumer a collection letter that stated interest was accruing on the debt but did not include the amount owed that included the interest that had accrued or did not include the rate of interest that was accruing on the debt.

(iii) That stated an amount owed for the debt that did not include interest, or an interest rate, but stated that interest was accruing on the debt.

(b) In connection with the certification, the Court makes the following preliminary findings:

(1) The Class satisfies *Fed. R. Civ. P. 23(a)(1)* because the Class appears to be so numerous that joinder of all members is impracticable;

(2) The Class satisfies *Fed. R. Civ. P. 23(a)(2)* because there appear to be questions of law or fact common to the Class;

(3) The Class satisfies *Fed. R. Civ. P. 23(a)(3)* because the claims of the plaintiffs named in the caption appear to be typical of the claims being resolved through the proposed Settlement;

(4) The Class satisfies *Fed. R. Civ. P. 23(a)(4)* because the named plaintiffs appear to be capable of fairly and adequately protecting the interests of the above-described Class in connection with the proposed Settlement and because counsel representing the Class are qualified, competent and capable of prosecuting this action on behalf of the Class.

(5) The Class satisfies the requirements of *Fed. R. Civ. P. 23(b)(3)* because, for purposes of Settlement approval and administration, common questions of law and fact appear to predominate over questions affecting only individual Class Members and because settlement with the above-described Class appears to be superior to other available methods for the fair and efficient resolution of the claims of the Class. The Class appears to be sufficiently cohesive to warrant settlement by representation.

(c) In making the foregoing findings, the Court has exercised its discretion in conditionally certifying a settlement class.

(d) Robert D. Byrne is hereby designated as Class Representative.

3. ***Class Counsel.*** The Court appoints Kelly D. Jones and Bret A. Knewton as counsel for the Class (“Class Counsel”). For purposes of these settlement proceedings only, the Court finds that Kelly D. Jones and Bret A. Knewton are competent and capable of exercising their responsibilities as Class Counsel.

4. ***Settlement Hearing.*** A final approval hearing (the “Settlement Hearing”) shall be held before this Court on December 10, 2018, at 10 a.m., as set forth in the Notice (described in Paragraph 5 below), to determine whether the Agreement is fair, reasonable and adequate and should be given final approval. Papers in support of final approval of the Agreement and Class Counsel’s application for an award of attorneys’ fees, costs and expenses and for service awards to the Representative Plaintiffs (the “Fee and Expense Application”) shall be filed with the Court according to the schedule set forth in Paragraphs 12 and 13, below. The Court may postpone, adjourn, or continue the Settlement Hearing without further notice to the Class. After the Settlement Hearing, the Court may enter a Settlement Order and Final Judgment in accordance

with the Agreement (the “Final Judgment”), which will adjudicate the rights of the Class Members with respect to the claims being settled.

5. **Notice.** The Court approves the form and content of the notices substantially in the forms attached as Exhibits C and D to the Agreement. Pursuant to the Agreement, Garden City Group, LLC (“GCG”) shall administer the settlement. GCG shall comply with the notice requirements of Paragraph 3.03 of the Agreement. In compliance with that Paragraph, beginning thirty (30) days after entry of this Order, GCG shall cause notice to be delivered to all Class Members who can be identified with reasonable effort in the manner set forth in the Agreement. Notices sent by U.S. Mail shall be substantially in the form attached as Exhibit C to the Agreement, and a notice substantially in the form attached as Exhibit D to the Agreement shall be posted at a website, the Internet address for which shall be disclosed in the notice transmitted by U.S. Mail.

6. **Filing of CAFA Notice.** Before the Settlement Hearing, GCG shall file with the Court proof of Defendant’s compliance with the notice provisions of the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715.

7. **Findings Concerning Notice.** The Court finds that the Notice and the manner of its dissemination described in Paragraph 5 above and Paragraph 3.03 of the Agreement constitutes the best practicable notice under the circumstances and is reasonably calculated, under all the circumstances, to apprise Class Members of the certification of the Class and the pendency of this action, the terms of the Agreement, and their right to object to or exclude themselves from the Class. The Court finds that the notice is reasonable, that it constitutes due, adequate and sufficient notice to all persons entitled to receive notice, and that it meets the

requirements of due process, *Rule 23 of the Federal Rules of Civil Procedure*, and any other applicable laws.

8. ***Exclusion from Class.*** Each Class Member who wishes to exclude himself or herself from the Class and follows the procedures set forth in this Paragraph shall be excluded. Any potential member of the Class may mail a written request for exclusion, in the form specified in the Notice, to GCG at the address set forth in the Notice. All such written requests must be postmarked by ninety (90) days after entry of this Order. All persons who properly request exclusion from the Class shall not be Class Members and shall have no rights with respect to, nor be bound by, the Agreement, should it be approved. The names of all such excluded individuals shall be attached as an exhibit to any Final Judgment.

9. ***Right to Abrogate Agreement.*** In the event more than a previously-agreed number of Class Members to whom defendants transmit notice timely exclude themselves from the Settlement Class, Defendant shall have the unilateral right to abrogate the Agreement by written notice of abrogation to Class Counsel in accordance with subject to the procedures set forth in the Agreement. If Defendant exercises its right to abrogate the Agreement, then all aspects of the Agreement and the settlement underlying it shall be altogether null and void, and no aspect of the Agreement, the settlement, or this Order shall serve as legal precedent or as any basis for legal or factual argument in this or any other case.

10. ***Distribution Procedures.*** The Court approves the distribution procedures set forth in the Agreement.

11. ***Costs of Notice and Claims Processing.*** Pursuant to the terms of the Agreement, Defendant will separately pay all costs of notice to the Class of the pendency and settlement of the Actions and of settlement administration.

12. ***Objections and Appearances.***

(a) ***Written Objections.*** Any Class Member who has not timely submitted a written request for exclusion from the Class, and thus is a Class Member, may object to the fairness, reasonableness or adequacy of the Agreement, or the Fee and Expense Application. Any Class Member, who wishes to object to the Settlement, must submit his or her objection in writing to GCG, postmarked no later than ninety (90) days after entry of this Order. Class Counsel will file copies with the Court via ECF. Objecting Class Members must include their name and address, the name and number of the case, and a statement of the reasons why they (i) believe the Court should find that the proposed settlement is not in the best interests of the Class, or (ii) object to the Fee and Expense Application. Any objection not timely made in this manner shall be forever barred.

(b) ***Appearance at Settlement Hearing.*** Any objecting Class Member who wishes to address the Court at the Settlement Hearing must indicate his or her intent to do so in writing to GCG at the same time that the Class Member submits the objection. Class Counsel will inform the Court and Defendant' counsel accordingly. Any Class Member who does not timely deliver a written objection and notice of intention to appear by ninety (90) days from entry of this Order, in accordance with the requirements of this Order, shall not be permitted to object or appear at the Settlement Hearing, except for good cause shown, and shall be bound by all proceedings, orders and judgments of the Court.

(c) ***Papers for Fees and Expenses.*** Class Counsel shall file their Fee and Expense Application, together with all supporting documentation, by no later than thirty (30) days from entry of this Order, sufficiently in advance of the expiration of the objection period

that any Class Member will have sufficient information to decide whether to object and, if applicable, to make an informed objection.

(d) ***Responses to Objections.*** Any responses to objections to the Agreement or the Fee and Expense Application shall be filed with the Court within twenty-one (21) days after the deadline for serving objections.

13. ***Dates of Performance.*** In summary, the dates of performance are as follows:

(a) Defendant shall send the Notice to potential Class Members on or before September 5, 2018, i.e., within thirty (30) days after entry of this Order;

(b) Counsel's Fee and Expense Application, and all supporting materials, shall be filed no later than October 5, 2018, i.e., within sixty (60) days after entry of this Order;

(c) Class Members who desire to be excluded shall mail requests for exclusion postmarked by November 5, 2018, i.e., within ninety (90) days from the date of this Order;

(d) All objections to the Agreement or the Fee and Expense Application shall be filed and served by November 5, 2018, i.e., within ninety (90) days from entry of this Order;

(e) Responses to objections, if any, and in further support of the Fee and Expense Application, along with a Motion for Final Approval shall be filed by November 26, 2018, i.e., within twenty-one (21) days after expiration of the deadline for objections; and

(f) The Settlement Hearing shall be held on December 10, 2018, at 10 a.m., approximately one hundred twenty-six days after entry of this Order.

14. ***Effect of Failure to Approve the Agreement.*** In the event the Court does not approve the Agreement, or for any reason the Parties fail to obtain a Final Judgment as

contemplated in the Agreement, or the Agreement is terminated pursuant to its terms for any reason, then the following shall apply:

(a) All orders and findings entered in connection with the Agreement shall become null and void and have no further force and effect, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in any other proceeding;

(b) The case shall return to its status as it existed before entry of this Order;

(c) Nothing contained in this Order is, or may be construed as, any admission or concession by or against Defendant or Representative Plaintiffs on any point of fact or law; and

(d) Nothing in this Order or pertaining to the Agreement shall be used as evidence in any further proceeding in this case, including, but not limited to, motions or proceedings pertaining to treatment of this case as a class action.

15. ***Discretion of Counsel.*** Counsel are hereby authorized to take all reasonable steps in connection with approval and administration of the Settlement not materially inconsistent with this Order or the Agreement, including, without further approval of the Court, making minor changes to the content of the Notice that they jointly deem reasonable or necessary.

16. ***Stay of Proceedings Pending Approval of the Settlement.*** All proceedings before the Court are stayed pending final approval of the settlement, except as may be necessary to implement the settlement or comply with the terms of the Agreement.

17. ***Injunction against Asserting Released Claims Pending Settlement Approval.*** Pending final determination of whether the settlement should be approved, Plaintiff, all Class Members and any person or entity allegedly acting on behalf of Class Members, either directly, representatively or in any other capacity, are preliminarily enjoined from commencing or

prosecuting against the Released Parties any action or proceeding in any court or tribunal asserting any of the Released Claims, provided, however, that this injunction shall not apply to individual claims of any Class Members who timely exclude themselves in a manner that complies with this Order. This injunction is necessary to protect and effectuate the settlement, this Order, and the Court's flexibility and authority to effectuate this settlement and to enter judgment when appropriate and is ordered in aid of the Court's jurisdiction and to protect its judgments pursuant to 28 U.S.C. § 1651(a).

18. ***Reservation of Rights and Retention of Jurisdiction.*** The Court reserves the right to adjourn or continue the date of the Settlement Hearing without further notice to Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the settlement. The Court may approve or modify the settlement without further notice to Class Members.

Dated: August 6, 2018.



Hon. Stacie F. Beckerman
US District Court Magistrate Judge

It is so stipulated and agreed.

Dated: _____

HASSON LAW, LLC

Jeffrey I. Hasson, OSB#872419
Attorney for Defendant
Oregon One, Inc.

Dated: _____

Dated: _____

LAW OFFICE OF KELLY D. JONES

Kelly D. Jones, OSB#074217
Attorney for Plaintiff

Dated: _____

Bret A. Knewtson, OSB#03355
Attorney for Plaintiff