

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ELAINE C. SAUNDERS	:	Civil No.: 00-3477
on behalf of herself and all others similarly	:	
situated	:	
Plaintiff	:	
	:	
vs.	:	
	:	
BERKS CREDIT AND COLLECTIONS, INC.,	:	
KOZLOFF, DIENER, PAYNE & FEGLEY,	:	
P.C., and KOZLOFF STOUTDT, P.C.	:	
Defendants.	:	

DuBois, J.

July 11, 2002

MEMORANDUM

I. INTRODUCTION

This class action was brought by Elaine C. Saunders against defendants Berks Credit and Collections, Inc. (“Berks”), Kozloff Diener, Payne & Fegley, P.C. (“Kozloff Diener”), and Kozloff Stoutdt, P.C. (“Kozloff Stoutdt,” and together with Kozloff Diener, “Kozloff Defendants”) on behalf of herself and others similarly situated seeking damages arising from debt collection letters mailed by defendants to Saunders and others that allegedly violated provisions of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 et seq., and the Pennsylvania Debt Collection Trade Practices Regulations adopted under the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

The parties negotiated a settlement and thereafter filed a Joint Motion for Certification of Settlement Class and Preliminary Approval of Settlement and Notice to Class. By Order dated June 15, 2001, the Court provisionally certified the Class and two subclasses for settlement

purposes only. Presently pending are Saunders' motions for final approval of class action settlement and award to representative plaintiff and for award of attorney's fees and reimbursement of expenses.

For the reasons set forth below, the Court will finally certify the Class and the two subclasses pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3). The Court will also approve the proposed settlement and award Saunders incentive awards and will grant Plaintiff's Motion for Award of Attorneys' Fees and Reimbursement of Expenses as modified by the Stipulation Resolving Plaintiff's Motion for Award of Attorneys' Fees and Reimbursement of Expenses From Defendant Berks Credit & Collections, Inc.

II. BACKGROUND

Saunders filed a Class Action Complaint on July 10, 2000. An Amended Complaint was filed on July 31, 2000. Saunders alleges in the Amended Complaint that defendant Berks and the Kozloff Defendants each mailed a set of debt collection letters to Saunders and others that violated numerous provisions of the Fair Debt Collection Practices Act. According to Saunders, defendants violated that statute by, inter alia, failing to advise consumers of their statutory rights to dispute and seek verification of a debt pursuant to § 1692g of the Act, "using unfair or unconscionable means to attempt to collect a debt," "falsely representing or implying that an individual is an attorney or that a communication is from an attorney," threatening to initiate action that legally cannot be taken or that defendants did not intend to take, and "using a false representation or deceptive means to collect or attempt to collect a debt." Compl., ¶ 57. Saunders further alleges that defendants' conduct violated the Pennsylvania Unfair Trade

Practices and Consumer Protection Law and the Pennsylvania Debt Collection Trade Practices Regulations.

On September 26, 2000, defendant Berks filed a Motion to Dismiss the Amended Complaint on the ground that its debt collection letters did not violate the Fair Debt Collection Practices Act because they effectively conveyed the validation notification required by § 1692g of the statute. The Court denied Berks' Motion to Dismiss by Order dated November 2, 2000.

On January 25, 2001, defendant Berks filed an Offer of Judgment Pursuant to Rule 68,¹ not joined in by the Kozloff Defendants. By Order dated February 12, 2001, the Court extended the time for responding to the Offer of Judgment and referred the parties to Magistrate Judge Rueter for settlement conferencing. The case was settled after such conferencing and on May 25, 2001 the parties executed two settlement agreements, one between Saunders and defendant Berks, the Berks Settlement Agreement, and the other between Saunders and the Kozloff Defendants, the Kozloff Settlement Agreement.

On June 1, 2001, the parties filed the Joint Motion for Certification of Settlement Class and Preliminary Approval of Class Action Settlement and Proposed Notice. The proposed settlement provided for provisional certification of a settlement class (the "Class") defined as: "All persons in the Commonwealth of Pennsylvania, whose name and last known address can be supplied by Defendants, who were mailed collection letters from Defendants which demanded

¹ In the Offer of Judgment, Berks proposed the following: (1) "Judgment in favor of Elaine C. Saunders in the amount of \$1,300 plus the costs of the action together with reasonable attorney's fees as determined by the court;" and (2) "Judgment to the proposed class(es) in order to discharge its liability to the class pursuant to 15 U.S.C. §1692k(a)(2)(B) in the amount of \$5000 plus costs of the action together with reasonable attorney's fees as determined by the court."

payment within thirty days, which were characterized as a “Settlement Offer” or which did not contain the language required by section 1692g(a) of the federal Fair Debt Collection Practices Act.” The Class is comprised of two settlement subclasses, one, the Berks Subclass (Subclass A), for the set of collection letters sent by defendant Berks and the other, the Kozloff Subclass (Subclass B), for the set of collection letters sent by the Kozloff Defendants. The definitions of each subclass and the principal terms of the proposed settlement agreements are as follows:

A. The Berks Settlement Agreement

The Berks Settlement Agreement defines the Berks Subclass, or Subclass A, as:

[A]ll persons in the Commonwealth of Pennsylvania, whose name and last known address can be supplied by Defendant Berks Credit and Collections, Inc. (“Berks”), who were mailed letters from Berks in the form of the letters attached to the Complaint as Exhibits A, B and C in an attempt to collect a debt incurred primarily for personal, family or household purposes, which letters were not returned and/or were not undelivered by the U.S. Post Office.

Under the terms of the settlement, Berks established a settlement fund of \$12,300.00 plus interest (the “Berks Settlement Fund”) from which the costs of notice to the Berks Subclass and administration of the Berks Settlement Fund, and any award made by the Court to Saunders, are to be paid. The balance of the settlement fund is payable on a pro rata basis to each Berks Subclass member who did not opt out of the settlement and who submitted a timely, valid claim. For purposes of 15 U.S.C. § 1692k(a)(2)(B), which limits liability to the lesser of 1% of net worth or \$500,000, Berks warranted that it had a negative net worth of approximately \$13,045.

Individual notices were mailed to the last known address of each Berks Subclass member as reflected in defendant Berks’ records. The notice informed the subclass members of the existence of the action, the terms of the settlement agreement, and their rights under the

settlement.

Berks Subclass members were permitted to opt out of the settlement prior to final approval of the Berks Settlement Agreement, and any such claims are to be dismissed without prejudice following issuance of a final order and judgment of the court. Those members who did not opt out agreed to release defendant Berks from all further liability relating to these Fair Debt Collection Practices Act, Pennsylvania Unfair Trade Practices and Consumer Protection Law, and Pennsylvania Debt Collection Trade Practices Regulations claims, but not from other unrelated claims. Berks Subclass members were provided an opportunity to file objections in writing to any of the settlement terms and be heard regarding those objections at a fairness hearing.

Defendant Berks further agreed to pay reasonable attorney's fees and reimbursable expenses incurred by Saunders and the Berks Subclass. Saunders was required to petition the court for an award of attorney's fees and reimbursable expenses by separate motion, and defendant Berks retained the right to oppose such petition.

B. The Kozloff Settlement Agreement

The Kozloff Settlement Agreement defines the Kozloff Subclass, or Subclass B, as:

[A]ll persons in the Commonwealth of Pennsylvania, whose name and last known address can be supplied by Defendants Kozloff, Diener, Payne & Fegley, P.C. and Kozloff Stoudt, P.C. (together, "Kozloff"), who were mailed letters from Kozloff substantially in the form of the letters attached to the Complaint as Exhibits D and E in an attempt to collect a debt incurred primarily for personal, family or household purposes, which letters were not returned to sender and/or were not undelivered by the U.S. Post Office.

Under the terms of the settlement, the Kozloff Defendants established a settlement fund of \$37,500 plus interest (the "Kozloff Settlement Fund"). That fund is to be used to pay the costs of

notice to the Kozloff Subclass and administration of the Kozloff Settlement Fund, any award made by the Court to Saunders, reasonable attorney's fees and reimbursable expenses incurred by Saunders and the Kozloff Subclass, and pro rata distributions of not less than \$50.00 to each Kozloff Subclass member who did not opt out and who submitted a timely, valid claim form. For purposes of 15 U.S.C. § 1692k(a)(2)(B) (the provision that caps liability at the lesser of 1% of net worth or \$500,000), Kozloff Diener warranted that it had a net worth of approximately \$205,611 and Kozloff Stoudt warranted that it had a net worth of approximately \$620,116.

Individual notices were mailed to the last known addresses of each Kozloff Subclass member as reflected in the Kozloff Defendants' records. The notice informed the members of the existence of the action, the terms of the settlement agreement, and their rights under the settlement.

The Kozloff Subclass members were permitted to opt out of the settlement prior to final approval of the Kozloff Settlement Agreement, and any such claims are to be dismissed without prejudice following issuance of a final order and judgment of the court. Those members who did not opt out agreed to release the Kozloff Defendants from all further liability relating to these Fair Debt Collection Practices Act, Pennsylvania Unfair Trade Practices and Consumer Protection Law, and Pennsylvania Debt Collection Trade Practices Regulations claims, but not from other unrelated claims. Kozloff Subclass members were provided an opportunity to file objections in writing to any of the settlement terms and be heard regarding those objections at a fairness hearing.

Attorney's fees are to be paid out of the Kozloff Settlement Fund. Saunders was required to petition the Court for an award of attorney's fees and reimbursable expenses by separate

motion.

By Order dated June 15, 2001, the Court provisionally certified the “Class” for settlement purposes only and defined the Class as follows:

All persons in the Commonwealth of Pennsylvania, whose name and last known address can be supplied by Defendants, who were mailed collection letters from Defendants which demanded payment within thirty days, which were characterized as a “Settlement Offer” or which did not contain the language required by section 1692g(a) of the federal Fair Debt Collection Practices Act, all as further delineated in the definitions of the following two subclasses:

A. Subclass A [“Berks Subclass”] consists of all persons in the Commonwealth of Pennsylvania, whose name and last known address can be supplied by Defendant Berks Credit and Collections, Inc. (“Berks”), who were mailed letters from Berks in the form of the letters attached to the Complaint as Exhibits A, B and C in an attempt to collect a debt incurred primarily for personal, family or household purposes, which letters were not returned and/or were not undelivered by the U.S. Post Office; and

B. Subclass B [“Kozloff Subclass”] consists of all persons in the Commonwealth of Pennsylvania, whose name and last known address can be supplied by Defendants Kozloff, Diener, Payne & Fegley, P.C. and Kozloff Stoudt, P.C. (together, “Kozloff”), who were mailed letters from Kozloff substantially in the form of the letters attached to the Complaint as Exhibits D and E in an attempt to collect a debt incurred primarily for personal, family or household purposes, which letters were not returned to sender and/or were not undelivered by the U.S. Post Office.

Order of Preliminary Approval, June 15, 2001, at 2-3. By the foregoing Order, the Court: (1) certified Elaine C. Saunders as representative of the Class and James A. Francis and Mark D. Mailman of the firm Francis & Mailman, P.C. and Michael D. Donovan and David A. Searles of the firm Donovan Searles, LLC, as counsel to Saunders and the Class; (2) preliminarily approved as fair, adequate, and reasonable the Berks Settlement Agreement, with the exception of the Saunders’ and the Class’ entitlement to reasonable attorney’s fees and reimbursement of expenses, and the Kozloff Settlement Agreement; (3) scheduled the Final Approval Hearing for September 25, 2001; and (4) approved the proposed form and manner of issuing notice of the

proposed settlement to the Class.

As required by the terms of the agreements and the aforesaid Order, two Notices of Class Action and of Proposed Settlement (“Notices”) were mailed to the 3,053 members of the Class who could reasonably be identified from defendants’ records. The Notices informed the members of the terms of the settlement and their right to opt out of the settlement by August 15, 2001, object to the settlement by August 15, 2001, and receive a pro rata share of the settlement funds by returning a claim form postmarked on or before August 29, 2001. The Notices further informed Class members that Saunders would be applying for an award of attorney’s fees and incentive or settlement awards of \$1,300.00 from the Kozloff Settlement Fund and \$1,300.00 from the Berks Settlement Fund.

Ninety-one (91) members of the Berks Subclass submitted timely Claim Forms. The total cost of notice to the Berks Subclass and administration of the Berks Settlement Fund is \$5,308.46. After deduction of these expenses and the proposed \$1,300.00 award to Saunders, \$5,691.54 remains in the Berks Settlement Fund. Under the terms of the settlement, a pro rata distribution of this amount to the 91 Berks Subclass members who submitted timely claim forms amounts to \$62.54 per member.

Sixty-eight (68) members of the Kozloff Subclass submitted timely Claim Forms. The cost of administration of the Kozloff Settlement Fund totaled \$5,508.46. After deduction of administration costs and the proposed award to Saunders of \$1,300.00, the balance of the settlement fund is available for pro rata distribution to the 68 Kozloff Subclass members and payment of reasonable attorney’s fees and expenses approved by the Court. Class counsel proposes, in light of the pro rata distribution to each Berks Subclass member of \$62.54, that each

member of the Kozloff Subclass receive a distribution in the amount of \$62.54 and that the Court award the remainder of the fund, \$26,438.82,² to class counsel for attorney's fees and expenses.

On September 25, 2001, the Court conducted a hearing to determine whether the proposed settlement was fair, adequate, and reasonable. No members of the Class appeared at this hearing to object to the proposed settlement and there were no written objections to the proposed settlement. One potential Class member, William W. Fiske II, submitted a timely request for exclusion from the settlement. He will be excluded from the Class and is not bound by the final judgment and order entered in this matter.

III. DISCUSSION

A. Final Certification of the Class and the Subclasses

Saunders seeks final certification of the Class and the two subclasses, the Berks Subclass and the Kozloff Subclass, as defined above, that by Order dated June 4, 2001, this Court provisionally certified for settlement purposes only. The Third Circuit, in In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768 (3d Cir.), cert. denied, 516 U.S. 824, 116 S. Ct. 88, 133 L.Ed.2d 45 (1995), ruled that “‘a class is a class is a class,’ and a settlement class, if it is to qualify under [Federal] Rule 23 [of Civil Procedure], must meet all of its requirements.” Id. at 800. “The Court in General Motors explained that the district court must act as a fiduciary for absent class members and must protect the interests of the federal

² The Court notes that, in plaintiff's Motion for Final Approval of Class Action Settlement and Award to Representative Plaintiff, plaintiff proposes that the remaining \$26,438.82 in this fund be used to pay attorney's fees and costs. That figure is erroneously stated to be \$26,445.62 in Plaintiff's Motion for Award of Attorneys' Fees and Reimbursement.

judicial system.” Hanrahan v. Britt, 174 F.R.D. 356, 361 (E.D. Pa. 1997) (citing General Motors, 55 F.3d at 784, 790, 799).

For the Court to certify a plaintiff class, plaintiff must satisfy the four prerequisites for a class action set forth in Federal Rule of Civil Procedure 23(a) and at least one provision of Rule 23(b). Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 163, 94 S. Ct. 2140, 40 L. Ed. 2d 732 (1974).

The four elements of Rule 23(a) are:

- (1) the class is so numerous that joinder of all members is impracticable,
- (2) there are questions of law or fact common to the class,
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and
- (4) the representative parties will fairly and adequately protect the interests of the class.

Fed.R.Civ.P. 23(a). “These four elements are often referred to as numerosity, commonality, typicality, and adequacy of representation, respectively.” See In re Linerboard Antitrust Litig., 203 F.R.D. 197, 205 (E.D. Pa. 2001) (citing Hanrahan, 174 F.R.D. at 361).

1. Rule 23(a)

a. Numerosity

“Satisfaction of the first prerequisite, numerosity, does not require evidence of the exact number or identification of the members of the proposed class, but rather that the proposed class is so ‘numerous that joinder of all members is impracticable.’” In re Linerboard, 203 F.R.D. at 205 (citing Hanrahan, 174 F.R.D. at 362). “The exact number or identity of the members of the plaintiff class is not required.” Hanrahan, 174 F.R.D. at 362.

Based on defendants’ records, Saunders has identified 3,053 members of the Class. According to Saunders, the Berks Subclass consists of 1,474 persons and the Kozloff Subclass

consists of 1,579 persons. See Mot. for Final Approval of Class Action Settlement and Award to Representative Pl., Exs. B & C. Joinder of these parties would be impracticable, and given the small size of the individual claims and the gains to be made in judicial economy, the Class and both subclasses meet the numerosity requirement of Rule 23(a)(1).

b. Commonality

Commonality, the second requirement of Rule 23(a), requires a showing of the existence of “questions of law or fact common to the class.” Fed.R.Civ.P. 23(a)(2). A single common question is sufficient to satisfy this requirement. See In re Prudential Ins. Co., 148 F.3d 283, 310 (3d Cir. 1998). A common question is one arising from a common nucleus of operative facts. Ralston v. Zats, No. CIV. A. 94-3723, 2000 WL 17181590, *4 (E.D. Pa. Nov. 7, 2000). “Common nuclei of fact are typically manifest where . . . the defendants have engaged in standardized conduct towards members of the proposed class by mailing to them allegedly illegal form letters or documents.” Keele v. Wexler, 149 F.3d 589, 594 (7th Cir. 1998) (citations omitted).

The Court notes at the outset that the debt collection letters at issue were substantially similar. Common to each subclass, and the Class as a whole, are the issues of whether the mailing of the substantially similar debt collection letters violated the Fair Debt Collection Practices Act by, inter alia, threatening to take action against subclass members that legally cannot be taken or was not intended to be taken, Amended Complaint, ¶57(c), “using unfair or unconscionable means to attempt to collect a debt,” id. at ¶57(c), “the use of a false representation or deceptive means to collect or attempt to collect a debt,” id. at ¶57(d), and “failing to send . . . a written notice in the initial communication, or within five days thereafter,

that effectively conveyed the information required by section 1692g(a) of the [Fair Debt Collection Practices Act.]” Id. at ¶57(e). Accordingly, the Class and the two subclasses satisfy the commonality requirement of Rule 23(a)(2).

c. Typicality

The third element of Rule 23(a) requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed.R.Civ.P. 23(a)(3). “Typicality asks whether the named plaintiffs’ claims are typical, in common-sense terms, of the class, thus suggesting that the incentives of the plaintiffs are aligned with those of the class.” In re Linerboard, 203 F.R.D. at 207 (quoting Baby Neal ex rel. Kanter v. Casey, 43 F.3d 48, 55 (3d Cir. 1994)). In evaluating typicality, the Court should consider whether “the named plaintiff’s individual circumstances are markedly different or . . . the legal theory upon which the claims are based differs from that upon which the claims of other class members will perforce be based.” Eisenberg, 766 F.2d at 786 (quoting Weiss v. York Hosp., 745 F.2d 786, 809 n. 36 (3d Cir. 1984, cert. denied, 470 U.S. 1060, 105 S. Ct. 1777, 84 L. Ed. 2d 836 (1985)); see also Woodward v. Online Info. Servs., 191 F.R.D. 502, 505 (E.D.N.C. 2000) (“The class representative may satisfy [the typicality] requirement by demonstrating that his claims arise from the same practices, and are based on the same theory of law, as the class claims.”). “Factual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members, and if it is based on the same legal theory.” Hanrahan, 174 F.R.D. at 363 (quoting Hoxworth v. Blinder, Robinson & Co., 980 F.2d 912, 923 (3d Cir. 1992)); see also In re Res. Am. Sec. Litig., 202 F.R.D. 177, 186-87 (E.D. Pa. Aug.6, 2001). “The heart of this requirement is that the plaintiff and each member of the represented group have an

interest in prevailing on similar legal claims.” Seidman v. American Mobile Sys., Inc., 157 F.R.D. 354, 360 (E.D. Pa. 1994).

Saunders’ claims are typical of those of the Class and the two subclasses because the Berks Subclass members and the Kozloff Subclass members received substantially similar letters and Saunders and each subclass advance claims based on the same legal standards—namely, the Fair Debt Collection Practices Act, the Pennsylvania Unfair Trade Practices and Consumer Protection Law, and the Pennsylvania Debt Collection Trade Practices Regulations—that arise from the same practice or course of conduct. Thus, Saunders has met the typicality requirement of Rule 23(a)(3).

d. Adequacy

Finally, adequacy of the class representative is dependent on satisfying two factors: (1) that the plaintiff’s attorney is competent to conduct a class action; and (2) that the class representative does not have interests antagonistic to the interests of the class. See General Motors, 55 F.3d at 800-01; Rendler v. Gambone Bros. Dev. Co., 182 F.R.D. 152, 159 (E.D. Pa. 1998). Defendants do not challenge the qualifications of Saunders’ counsel and the Court finds them to be well qualified. See Oslan v. Collection Bureau of Hudson Valley, 206 F.R.D. 109, 112 (E.D. Pa. 2002) (“Francis & Mailman P.C. and Donovan Searles LLC, possess sufficient qualifications, skill, and experience in consumer law and class action practice to prosecute this suit to its conclusion.”). Saunders does not have any apparent conflicts of interest with other members of either the Berks Subclass or the Kozloff Subclass and the Court finds her to

adequately represent both subclasses.³ For these reasons, the Court finds that Saunders and her attorneys have satisfied the requirements of Rule 23(a)(4) as to the Class and each subclass.

2. Rule 23(b)

Having found that the four elements of Rule 23(a) are satisfied, the Court next considers whether Saunders meets at least one provision of Rule 23(b).⁴ Rule 23(b)(3)⁵ requires that the elements of predominance and superiority be met. See In re Prudential Ins. Co., 148 F.3d at 313. Predominance “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 623, 117 S.Ct. 2231, 138 L. Ed. 2d 68 (1997). This requirement is “a test readily met in certain cases alleging consumer or securities fraud.” Id. at 625. In this case in which defendants sent substantially similar debt

³ The Court notes that defendants do not challenge Saunders’ simultaneous representation of two subclasses nor does the Court find that she has any conflicts with one subclass arising from her representation of the other subclass.

⁴ The Court does not consider Saunders’ arguments with respect to Rule 23(b)(1) and (2) because this class action may proceed under Rule 23(b)(3).

⁵ Rule 23(b)(3) provides as follows with respect to the predominance and superiority issues:

[T]he questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

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

collection letters to members of the Berks Subclass and Kozloff Subclass “[c]ommon questions of law and fact predominate because of the virtually identical factual and legal predicates of each class member’s claim.” Smith v. First Union Mortgage Corp., No. CIV. A. 98-5360, 1999 WL 509967, *2 (E.D. Pa. July 19, 1999); see also Oslan, 206 F.R.D. at 112 (ruling that “factual and legal issues involved are identical because each member of the proposed class received substantially similar letters from the defendant).

Rule 23(b)(3) further requires that the Court determine that “a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” In certifying a class for settlement, the potential management problems associated with trying the class action need not be considered. See Alchem Prods., 521 U.S. at 593. A class action is superior to individual lawsuits in this case because it provides an efficient alternative to the infeasibility of pursuing individual small claims, each seeking relief for violations of federal and state law with respect to substantially similar debt collection letters, whose individual litigation expenses would exceed any potential recovery. See Ralston, 2000 WL 1781590 at *5 (ruling the class action the superior method for addressing claims in which “[e]ach plaintiff allegedly suffered harms, but the possibility of recovery would not be enough to make litigation worthwhile.”).

The Court concludes plaintiff has established that questions of law and fact common to the Class predominate over individual questions and that a class action is superior to other available methods of adjudicating the claim. Thus, plaintiff has met the requirements of Rule 23(b)(3).

After considering the record, arguments of counsel, and applying the standards of Rule 23, the Court certifies the Class and the two subclasses—the Berks Subclass and the Kozloff

Subclass—and concludes that this case may proceed as a class action pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3).

B. Final Approval of the Settlement

Rule 23(e) requires that all class actions settlements be approved by the Court.⁶ See General Motors, 55 F.3d at 785. Under this rule, “the district court acts as a fiduciary who must serve as a guardian of the rights of absent class members.” Id. (quoting Grunin v. Int’l House of Pancakes, 513 F.2d 114, 123 (8th Cir.), cert. denied, 423 U.S. 864, 96 S.Ct. 124, 96 L. Ed. 2d 93 (1975)) (further citations omitted).

Approval of a class action settlement requires that the settlement be fair, adequate, and reasonable. See id. In Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975), the Third Circuit set forth nine factors for consideration in determining whether a class action settlement was fair, adequate, and reasonable. Those factors are as follows: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through trial; (7) the ability of defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund in light of all the attendant risks of litigation. General Motors, 55 F.3d at 785 (citing Girsh, 521 F.2d at 157).

Upon consideration of each factor, the Court concludes that the settlement is fair,

⁶ This rule provides that “[a] class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such a manner as the court directs.” Fed.R.Civ.P. 23(e).

adequate, and reasonable. The Court bases its conclusion on the following:

1. The Complexity, Expense, and Likely Duration of the Litigation

The case presents complex issues of law and fact and the trial would likely be protracted and expensive. Moreover, considering those factors and the risks inherent in all trials, the immediate and guaranteed benefits of the settlement are in the best interests of the class.

2. The Reaction of the Class to the Settlements

Defendants mailed out 3,053 notices to Class members advising them of the terms of the settlement agreements and the right of each member to be excluded from the Class. The deadline for Class members to respond and exclude themselves from the proposed settlements was August 15, 2001. There were no objections and only one Class member opted out. See Pl.'s Mot. for Final Approval of Class Action Settlement and Award to Representative Pl., Ex. A. The absence of any objection to either of the proposed settlement agreements is evidence of the fairness, adequacy, and reasonableness of both settlement agreements.

3. The Stage of the Proceedings and the Amount of Discovery Completed

Further supporting the fairness, adequacy, and reasonableness of the proposed settlement agreements is the Court's conclusion that the parties conducted adequate investigation and discovery to gain an appreciation and understanding of the relative strengths and weaknesses of the claims and defenses asserted. There was extensive paper discovery and defendants took Saunders' deposition. The motions in the case—Berks' Motion to Dismiss, Saunders' Motion for Class Certification, and Berks' Rule 68 Offer of Judgment—required the parties to research the legal issues presented and investigate the claims and defenses. Moreover, the parties reached the terms of the proposed settlement only after complicated, arms-length settlement negotiations and

two settlement conferences before Magistrate Judge Rueter. After inquiring into the negotiation process the Court is confident there was no collusion. See General Motors, 55 F.3d at 805. The Court is therefore deferential to the reasoned judgment of the well-informed attorneys. See Jamison v. Butcher & Sherrerd, 68 F.R.D. 479, 481 (E.D. Pa. 1975).

4. The Risks of Establishing Liability

There is an appreciable risk of establishing liability under both the Fair Debt Collection Practices Act and state law claims. One such risk, among many others, that Saunders faces is demonstrating that the debt collection letters at issue did not comply the requirements of Fair Debt Collection Practices Act for such letters as set forth in 15 U.S.C. § 1692g. This provision requires that a debt collection letter include a validation notice and that this notice “be conveyed effectively to the debtor.” Wilson v. Quadramed Corp., 225 F.3d 350, 354 (3d Cir. 2000).

Defendants contend that, under the Third Circuit’s decision in Wilson, the debt collection letters at issue did comply with § 1692g because they effectively communicated this statutory validation notice to Saunders and the subclass members. While Saunders argues that Wilson is distinguishable from the instant case, there is a real risk that this Court or a jury could find otherwise. The proposed settlement eliminates this risk.

5. The Risks of Establishing Damages

Even if plaintiff established liability, it is unlikely that either subclass would recover substantially more compensation than is provided in the settlement agreements. The Fair Debt Collection Practices Act provides that a plaintiff may recover actual and/or statutory damages. See § 1692k(a)(1) & (2)(B). The nature of the Class’ claims—that defendants’ debt collection letters failed to effectively communicate the validation notice and were otherwise false and

misleading—make it unlikely that actual damages could be recovered because no evidence of obvious financial loss or emotional distress arising from receipt of the letters was presented. In that event the Class would be relegated to statutory damages under the Fair Debt Collection Practices Act.

The Fair Debt Collection Practices Act limits statutory damages in a class action “to \$1,000 to the named plaintiff and the lesser of 1% of the defendant’s ‘net worth’ or \$500,000 for all of the class members.” Fry v. Hayt, Hayt & Landau, 198 F.R.D. 461, 473 (E.D. Pa. 2000) (citing 15 U.S.C. § 1692k(a)(2)(B)). Defendant Berks has a net worth of negative \$13,045, permitting no recovery of statutory damages for the Berks Subclass under this statute, and the Kozloff Defendants have a combined net worth of \$825,727, permitting a potential recovery of \$8,257.27 for the Kozloff Subclass under this statute.

With respect to the limitation of liability to 1% of defendants’ net worth, plaintiff raised a question as to whether insurance policies issued to Berks (\$500,000 policy) and to the Kozloff Defendants (\$10,000,000 policy) should be included in calculating net worth. Plaintiff takes the position that the face amount of a liability insurance policy is included in a calculation of net worth under the Fair Debt Collection Practices Act because such an approach is consistent with the purpose of the statute’s 1% net worth limitation—to identify those assets that a company could safely liquidate to meet an award of damages without risking the breakup of that company. Hr’g Tr. at 13. That argument presupposes that such liability insurance policy provides coverage for any award of damages in this case. The Kozloff Defendants deny that their liability insurance policy provides coverage for plaintiff’s claims and argue that the face amount of a liability insurance policy is not included in the calculation of net worth. Defendant Berks does not

advance a position on this point because, under the terms of the settlement, the Berks Subclass recovers an amount (\$5,691.54) that exceeds the statutory damages available to the subclass under the statute even if Berks' \$500,000 liability insurance policy is included in the calculation of Berks' net worth.

The Fair Debt Collection Practices Act is silent with respect to the issue of including insurance policies in calculating net worth. The only circuit court to have addressed the definition of net worth under the statute, the Seventh Circuit, ruled in Sanders v. Jackson, 209 F.3d 998 (7th Cir. 2000), that "net worth" means "book net worth or balance sheet net worth as reported consistently with [generally accepted accounting principles ("GAAP")]." Id. at 1001. According to the Kozloff Defendants, their expert "would have unequivocally testified that GAAP would not include as a calculation of net worth the insurance itself." Hr'g Tr. at 20. Plaintiff cites no authority to the contrary and concedes that, if the Court calculates net worth under GAAP (a point which plaintiff disputes), an insurance policy that provides coverage for a claim might not be included. Hr'g Tr. at 13.

This is a complex question on which the Court will not rule. The Court observes, however, that, based on the Seventh Circuit ruling in Sanders, the Kozloff Defendants make a strong argument that the face amount of their liability insurance policy should not be included in determining defendants' net worth for the purpose of calculating the 1% of net worth limitation on liability for statutory damages.

As with the federal claims, plaintiff and the Class face risks establishing damages under state law. Section 201-9.2 of the Pennsylvania Unfair Trade Practices & Consumer Protection Law—the provision of the statute that governs recovery of damages in private actions—provides:

Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by section 3 of this act [73 P.S. § 201-3], may bring a private cause of action, to recover actual damages or one hundred dollars (\$100), whichever is greater. The court may, in its discretion, award up to three times the actual damages sustained, but not less than one hundred dollars (\$100), and may provide such additional relief as it deems necessary or proper.

73 P.S. § 201-9.2(a). The Pennsylvania Supreme Court has interpreted this section to mean that “statutory damages are unavailable under the [Pennsylvania Unfair Trade Practices & Consumer Protection Law] in the absence of an ascertainable loss of money or property proximately caused by the defendant’s prohibited conduct.” Tenuto v. Transworld Sys., Inc., No. CIV. A. 99-4228, 2002 WL 188569, *1 (E.D. Pa. Jan. 31, 2002) (citing Weinberg v. Sun Co., Inc., 565 Pa. 612, 777 A.2d 442, 446 (Pa. 2001)).⁷ A plaintiff who can establish actual damages can recover \$100 or actual damages, whichever is higher. In this case, the absence of an obvious ascertainable loss of either real or personal property as a result of defendants’ debt collection letters makes it unlikely that either subclass could establish actual damages, thus precluding recovery of damages under the Pennsylvania Unfair Trade Practices & Consumer Protection Law or the Debt Collection Trade Practices Regulations.

6. The Risks of Maintaining the Class Action Through Trial

Class certification is always conditional and may be reconsidered. Rendler v. Gambone Bros. Dev. Co., 182 F.R.D. 152, 160 (E.D. Pa. 1998). There is a risk that, absent settlement, the Court could revisit the issue of class certification prior to trial. The proposed settlements afford

⁷ Tenuto involved a similar claim under the Pennsylvania Unfair Trade Practices & Consumer Protection Law that was dropped by plaintiff on the ground that he could establish no actual damages.

monetary relief to over a hundred and fifty Class members who, without class certification, would have received nothing.

7-9. The Ability of the Defendants to Withstand a Greater Judgment (7), the Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery (8), and the Range of Reasonableness of the Settlement Fund in Light of All the Attendant Risks of Litigation (9)

These factors require the Court to balance the settlement against the defendants' ability to withstand a greater judgment and the best possible recovery in light of the already analyzed risks of litigation. As discussed above, in the absence of evidence of any obvious ascertainable losses, members of the two subclasses may not recover any damages under the state law claims or actual damages under the Fair Debt Collection Practices Act even if they prevail at trial. See infra, at 20-21. Moreover, the Berks Subclass members stand to receive no statutory damages if they prevail at trial on the Fair Debt Collection Practices Act claims because defendant Berks has a negative net worth. Given these risks of litigation and the statutory limitations on damages, the Berks Settlement Agreement, under which the Berks Subclass receives \$5,691.54, is clearly fair, adequate, and reasonable.

Under the Kozloff Settlement Agreement, the Kozloff Subclass receives \$4,252.72, which represents more than 50 percent of the potential statutory damages available under the Fair Debt Collection Practices Act if the Kozloff Subclass prevails at trial.⁸ This settlement amount is fair, adequate, and reasonable given the risks of establishing liability and the limitations imposed on damages under both federal and state law.

⁸ The maximum recovery of statutory damages—1% of net worth—is \$8,257.27.

That the settlement agreements provide subclass members with an immediate payment is additional support for the conclusion that these agreements are within the range of reasonableness. This benefit is also reasonable in light of the costs of a trial. Finally, the agreements provide additional social benefit because they vindicate the declared public policy of the Fair Debt Collection Practices Act “to eliminate abusive debt collection practices by debt collectors.” 15 U.S.C. § 1692(e).

In sum, the Court concludes that the settlement is in the best interests of the Class and both subclasses. It resulted from extensive arms-length negotiation by well-informed and experienced counsel. Also, appropriate notice was sent to each member of the class who could be reasonably identified from defendants’ records. Accordingly, the settlement will be approved as fair, adequate, and reasonable.

C. Incentive Awards to Saunders

Saunders requests that the Court award her \$1,300.00 from each settlement fund in statutory damages under § 1692k(a)(2)(B)(i) of the Fair Debt Collection Practices Act and § 201-9.2(a) of the Pennsylvania Unfair Trade Practices & Consumer Protection Law, and in the alternative, as an incentive award for her efforts on behalf of each subclass. Saunders has actively assisted counsel in the prosecution of this litigation to the benefit of each subclass. Among other things, she met with counsel on numerous occasions, gave deposition testimony, and appeared at the final hearing. “In such circumstances, an incentive award [from each settlement fund] is appropriate and the amount requested is reasonable.” Tenuto, 2002 WL 188569 at *5 (citing In re SmithKline Beckman Corp. Sec. Lit., 751 F. Supp. 525, 535 (E.D. Pa. 1990)). The approval of incentive awards makes it unnecessary for the Court to rule on

Saunders' alternative claim for statutory damages under the Fair Debt Collection Practices Act and the Pennsylvania Unfair Trade Practices & Consumer Protection Law .

D. Attorney's Fees and Reimbursement of Expenses

In Plaintiff's Motion for Award of Attorney's Fees and Reimbursement of Expenses, Saunders makes an unopposed request for an award of attorney's fees and reimbursement of expenses in the amount of \$26,438.82 from the Kozloff Settlement Fund. Saunders further requests approval of her stipulation with defendant Berks for Berks to pay class counsel \$35,000.00 in attorney's fees and \$1,437.92 in expenses,⁹ in addition to the Berks Settlement Fund. Any amount of the requested attorney's fees not approved by the Court will revert to defendant Berks and not to the Berks Settlement Fund.

Because this is a class action settlement, the Court must conduct thorough judicial review of the fee applications to determine if they are reasonable. See In re Prudential Ins. Co., 148 F.3d at 333 (“[A] thorough judicial review of fee application is required in all class action settlements.”) (quoting General Motors, 55 F.3d at 819)); see also Smith v. First Union Mortgage Corp., 98-CV-5360, 1999 WL 1081362, *2 (E.D. Pa. July 19, 1999) (“The court has an obligation to review the reasonableness of attorney fees in class action settlements even in the absence of any objection and whether or not they come from a common fund or will otherwise be paid.”) (citing Zucker v. Occidental Petroleum Corp., 192 F.3d 1323, 1328-29 (9th Cir. 1999)).

The Court first considers Saunders' request for reimbursement of expenses. Class

⁹ Saunders initially sought an award of counsel fees and expenses in the amount of \$48,183.92. Berks opposed the size of the award and asserted that only 70% of the requested fees are nominally related to prosecution of the lawsuit against defendant Berks. Defendant Berks now agrees to pay class counsel fees in the amount of \$35,000.00 and costs in the amount of \$1,437.92.

counsel incurred costs and expenses totaling \$1,437.92 in connection with the pursuit of the claims and settlement with defendant Berks, and class counsel incurred costs and expenses totaling \$1,435.68¹⁰ in connection with the pursuit of claims and settlement with the Kozloff Defendants. Counsel have submitted itemization of these costs. The Court concludes that these expenses are fair, reasonable, and necessary.

The Court next considers the request of Saunders for attorney's fees. There are two ways in which to calculate attorney's fees, the percentage-of-recovery method and the lodestar method. See In re Prudential Ins. Co., 148 F.3d at 333. "The lodestar method is more commonly applied in statutory fee-shifting cases, and is designed to reward counsel for undertaking socially beneficial litigation in cases where the expected relief has a small enough monetary value that a percentage-of-recovery method would provide inadequate compensation." Id. (citing General Motors, 55 F.3d at 820). "In situations where counsel and the class share a common fund, or where the fee and the settlement are claimed to be independent of each other, but actually derive from the same source, a percentage of the total recovery is more appropriate." Lake v. First Nationwide Bank, 900 F. Supp. 726, 734 (E.D. Pa. 1995). "Neither the lodestar method nor the percentage of recovery method, however, is mandatory. Thus, the district court has wide discretion to decide which method of fee calculation to apply." Id. (citing General Motors, 55 F.3d at 821). "[I]t is sensible for a court to use a second method of fee approval to cross check its initial fee calculation." In re Prudential Ins. Co., 148 F.3d at 333 (quoting General Motors, 55 F.3d at 820).

¹⁰ In her motion, Saunders requests an award to both counsel of \$26,438.82 in fees and expenses from the Kozloff Defendants—attorney's fees in the amount of \$25,003.14 and expenses totaling \$1,435.68.

Saunders asserts that she “was undeniably successful in obtaining substantial monetary benefit for the members of the Class,” and that the lodestar method is the most appropriate method by which to determine reasonable attorney’s fees in a statutory fee shifting case such as this case. See Pl.’s Mot. for Award of Attyns’ Fees and Reimbursement of Expenses, at 6.

The Court, having carefully considered the issue, concludes that the lodestar method is the superior approach in this case. The size of potential relief available to the Class under the Fair Debt Collection Practices Act (and thus under the settlement) is so small that application of the percentage-of-recovery method would limit compensation of class counsel to several thousand dollars, a sum the Court deems inadequate. Such an award would deter counsel from undertaking such socially beneficial litigation in cases involving a debt collector with limited net worth. Moreover, had counsel successfully prosecuted the case at trial, the Court concludes that an award of a lodestar fee to class counsel would have been mandatory under the Fair Debt Collection Practices Act. See 15 U.S.C. § 1692k; see also Norton v. Wilshire Credit Corp., 36 F. Supp. 2d 216, 218 (D.N.J. 1999) (“The [Fair Debt Collection Practices Act] requires the payment of attorneys fees to a successful consumer in a debt collection action.”). Thus, the Court will use the lodestar method to calculate reasonable attorney’s fees in this case.

Under this method, attorney’s fees are calculated by multiplying the number of hours reasonably expended by a reasonable hourly rate. Washington v. Philadelphia County Ct. of Common Pleas, 89 F.3d 1031, 1035 (3d Cir. 1996). The general rule is that a reasonable hourly rate is calculated according to the prevailing market rates in the community. Id. The result of this lodestar is strongly presumed to yield a reasonable fee. Id.

Class counsel maintained contemporaneous time records detailing the date of work

performed, the attorney who performed the work, the tasks performed, the amount of time devoted to those tasks, and the hourly rate charged for those tasks. Counsel expended over 157 hours prosecuting the Kozloff action and negotiating the Kozloff Settlement and over 181 hours prosecuting the Berks action and negotiating the Berks Settlement.¹¹ The Court has reviewed these time records and concludes that the time spent was fair, reasonable, and necessary. In addition, counsel have estimated future time necessary to conclude this matter to be approximately five hours. The Court finds this additional future time to be reasonable and compensable.

The Court has reviewed the hourly billing rates submitted by counsel and the information submitted concerning counsel's skill, experience, and reputation. Counsel are able and experienced class action litigators. They have submitted summaries of their professional education and experience, including other class action litigation in which they have been involved. Francis & Mailman, P.C. has also presented declarations from other experienced class action litigators attesting to the reasonableness of the billing rates. See Pl.'s Mot. for Award of Atty's Fees and Reimbursement of Expenses, Ex. B. The Court finds that the hourly billing rates requested by counsel (\$200.00 per hour for Mr. Francis and Mr. Mailman, \$390.00 per hour for Mr. Donovan, \$350.00 per hour for Mr. Searles, \$105.00 per hour for Mr. Koerner and \$75.00 per hour for Mr. Lang) are fair and reasonable in light of their education, experience and prior awards, and commensurate with the prevailing hourly billing rates of similarly-experienced class action litigators in this area.

The Court finds that the combined "lodestar" for class counsel with respect to the Kozloff

¹¹ For the time expended against the defendants jointly, counsel divided the time in half.

Defendants is \$40,577.00. Class counsel propose voluntary reductions to the lodestar, requesting that the Court award \$26,438.82 in attorney's fees and expenses, \$25,003.14 in attorney's fees and \$1,435.68 in expenses. With respect to defendant Berks, the Court finds that the combined "lodestar" for class counsel is \$46,746.00. As discussed above, class counsel has stipulated to a reduction of this amount to \$35,000.00.

The requested fees represent approximately 61% of the Kozloff lodestar and less than 75% of the Berks lodestar. The fees plaintiff's counsel requests are less than the total market value of services they rendered on behalf of the Class. Accordingly, in light of all the circumstances, the Court concludes that the fee applications are reasonable.

IV. CONCLUSION

For the aforesaid reasons, Saunders' unopposed Motion for Final Approval of Class Action Settlement and Award to Representative Plaintiff will be granted and Plaintiff's Motion for Award of Attorneys' Fees and Reimbursement of Expenses as modified by the Stipulation Resolving Plaintiff's Motion for Award of Attorneys' Fees and Reimbursement of Expenses From Defendant Berks Credit & Collections, Inc. will be approved.

An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ELAINE C. SAUNDERS	:	Civil No.: 00-3477
on behalf of herself and all others similarly	:	
situated	:	
Plaintiff	:	
	:	
vs.	:	
	:	
BERKS CREDIT AND COLLECTIONS, INC.,	:	
KOZLOFF, DIENER, PAYNE & FEGLEY,	:	
P.C., and KOZLOFF STOUTDT, P.C.	:	
Defendants.	:	

ORDER

AND NOW, to wit, this day 11th of July, 2002, upon consideration of plaintiff’s Motion for Final Approval of Class Action Settlement and Award to Representative Plaintiff (Document No. 32, filed September 7, 2001), Plaintiff’s Motion for Award of Attorneys’ Fees and Reimbursement of Expenses (Document No. 33, filed September 7, 2001) and responses thereto, and the Stipulation Resolving Plaintiff’s Motion for Award of Attorneys’ Fees and Reimbursement of Expenses from Defendant Berks Credit & Collections, Inc.,¹² and after notice and hearing, for the reasons set forth in the attached Memorandum, **IT IS ORDERED** that:

1. The plaintiff class, defined as follows, is **FINALLY CERTIFIED**:

All persons in the Commonwealth of Pennsylvania, whose name and last known address can be supplied by Defendants, who were mailed collection letters from Defendants which demanded payment within thirty days, which were characterized as a “Settlement Offer” or which did not contain the language required by section 1692g(a) of the federal Fair Debt Collection Practices Act, all as further delineated in the definitions of the following two subclasses:

A. Subclass A [“Berks Subclass”] consists of all persons in the

¹² The Stipulation Resolving Plaintiff’s Motion for Award of Attorneys’ Fees and Reimbursement of Expenses from Defendant Berks Credit & Collections, Inc. shall be docketed by the Clerk of the Court.

Commonwealth of Pennsylvania, whose name and last known address can be supplied by Defendant Berks Credit and Collections, Inc. (“Berks”), who were mailed letters from Berks in the form of the letters attached to the Complaint as Exhibits A, B and C in an attempt to collect a debt incurred primarily for personal, family or household purposes, which letters were not returned and/or were not undelivered by the U.S. Post Office; and

B. Subclass B [“Kozloff Subclass”] consists of all persons in the Commonwealth of Pennsylvania, whose name and last known address can be supplied by Defendants Kozloff, Diener, Payne & Fegley, P.C. and Kozloff Stoudt, P.C. (together, “Kozloff”), who were mailed letters from Kozloff substantially in the form of the letters attached to the Complaint as Exhibits D and E in an attempt to collect a debt incurred primarily for personal, family or household purposes, which letters were not returned to sender and/or were not undelivered by the U.S. Post Office.

2. The Settlement Agreement with Defendant Berks Credit & Collections, Inc. (the “Berks Settlement Agreement”) dated May 25, 2001 and the Settlement Agreement with Defendants Kozloff, Diener, Payne & Fegley, P.C. and Kozloff Stoudt, P.C. (the “Kozloff Settlement Agreement”) dated May 25, 2001 are **APPROVED** as being fair, reasonable and adequate, and in the best interest of the Plaintiff Class (as that term is defined in the Berks Settlement Agreement and the Kozloff Settlement Agreement); and

3. The Representative Plaintiff Elaine C. Saunders is **AWARDED** the sum of \$2,600.00 from all defendants for her efforts on behalf of the Class. Half of the award, \$1,300.00, shall be paid from the Kozloff Settlement Fund and half of the award, \$1,300.00, shall be paid from the Berks Settlement Fund; and

4. The payment to Donovan Searles, LLC and Francis & Mailman, P.C. of attorney's fees plus reimbursement of costs and expenses from the Kozloff Settlement Fund in the total amount of \$26,438.82 pursuant to the Kozloff Settlement Agreement is **APPROVED**; and

5. The payment to Donovan Searles, LLC and Francis & Mailman, P.C. of attorney's fees plus reimbursement of costs and expenses from defendant Berks in the total amount of

\$36,437.92 pursuant to the Stipulation Resolving Plaintiff's Motion for Award of Attorney's Fees and Reimbursement of Expenses from Defendant Berks Credit & Collections, Inc. is

APPROVED; and

6. William W. Fiske, II of Norristown, Pennsylvania, having timely requested exclusion from the class and not thereafter having revoked such request, shall not receive any of the proceeds to be distributed and shall not be bound by this order and judgment; and

7. This action is **DISMISSED WITH PREJUDICE.**

8. The Court retains jurisdiction over the interpretation, effectuation and implementation of the Berks Settlement Agreement and the Kozloff Settlement Agreement.

BY THE COURT:

JAN E. DUBOIS, J.