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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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9 Renia Bogner and Jeff Bogner, on behalf)
10 of themselves and others similarly)
situated,)

No. CV-08-1511-PHX-DGC

11 Plaintiffs,)

ORDER

12 vs.)

13 Masari Investments, LLC, an Arizona)
14 limited liability company; Joseph F.)
15 Musumeci, P.C., an Arizona professional)
corporation; and Joseph F. Musumeci, a)
licensed Arizona attorney,)

16 Defendants.)
17)

18 On June 2, 2009, the Court issued an order granting Plaintiffs' motion for class
19 certification pursuant to Rule 23 of the Federal Rules of Civil Procedure. Dkt. #49. The
20 Court certified, pursuant to Rules 23(a) and 23(b)(2) and (3), a class defined as:

- 21 (i) All persons with mailing addresses in Arizona, (ii) to whom a letter was
22 sent or caused to be sent by Defendants in the form of the demand letter sent
23 to Plaintiffs, (iii) in an attempt to collect a debt allegedly due Masari
24 Investments, LLC, (iv) arising out of a transaction involving goods or services
primarily used for personal, family, or household purposes, (v) sent on or after
August 18, 2007, (vi) which was not returned as undeliverable by the United
States Postal Service.

25 *Id.* at 8, ¶ 2.

26 The parties have filed a joint motion for preliminary and final approval of class action
27 settlement agreement. Dkt. #60. Having reviewed the proposed settlement agreement
28 (Dkt. 60-1) and the supporting memorandum (Dkt. #59), and having considered the relevant

1 factors, *see Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998), the
2 Court finds that the proposed settlement appears to be fundamentally fair, adequate, and
3 reasonable. *See* Fed. R. Civ. P. 23(e). The Court will grant the parties' motion to the extent
4 they seek preliminary approval of the proposed class settlement.

5 The Court finds the proposed class notice (Dkt. #60-3) to be adequate except with
6 respect to the description of the class claims. *Id.* at 1. The proposed class notice (*see id.* at 2)
7 shall be revised to include the following description of the claims:

8 Plaintiffs allege in this action that collection letters Defendants sent to
9 Plaintiffs and class members violate the Fair Debt Collection Practices Act,
10 15 U.S.C. § 1692 et seq., because the letters falsely state that any dispute over
11 the validity of the alleged debt must be made in writing. Specifically,
12 Plaintiffs allege (1) that the letters violate 15 U.S.C. § 1692g(a) because the
13 notice provisions of that section do not contain a requirement that a dispute be
14 made in writing, and (2) that the letters violate 15 U.S.C. § 1692e because they
15 are false and deceptive in that they misrepresent Plaintiffs' and the class
16 members' rights under § 1692g(a). Plaintiffs seek a declaratory judgment that
17 Defendants' practices violated the Fair Debt Collection Practices Act and an
18 award of statutory damages, costs, and attorney fees pursuant to 15 U.S.C. §
19 1692k.

20 *See also* Dkt. #54 at 2.

21 Defendants shall, subject to the supervision of class counsel, complete notice to all
22 potential class members by **December 4, 2009**. *See* Dkt. #60-1 at 7-8. The deadline for class
23 members to opt-out of this action or file objections to the proposed settlement will be
24 **February 5, 2010**. *See id.* at 8. The parties shall, by **February 19, 2010**, file with the Court
25 (i) proof of notice to all potential class members and (ii) copies of any responses or
26 objections received from class members. A hearing will be held on **February 26, 2010 at**
27 **4:00 p.m.** to address any objections and to determine whether final approval of the proposed
28 class settlement is appropriate. *See* Fed. R. Civ. P. 23(e)(2).

IT IS ORDERED:

1. The parties' joint motion for preliminary and final approval of class action
settlement agreement (Dkt. #60) is **granted in part** and **denied in part**. The
motion is granted to the extent the parties seek preliminary approval of the
proposed settlement agreement (Dkt. #60-1).

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2. The proposed class notice (Dkt. #60-3) shall be revised to include a complete description of the class claims.
3. Defendants shall complete notice to all class members by **December 4, 2009**.
4. The deadline for class members to opt-out of this action or file objections to the proposed settlement is **February 5, 2010**.
5. The parties shall, by **February 19, 2010**, file with the Court (i) proof of notice to all potential class members and (ii) copies of any responses or objections received from class members.
6. A fairness hearing is set for **February 26, 2010 at 4:00 p.m.**

DATED this 28th day of October, 2009.



David G. Campbell
United States District Judge