

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION AT MEMPHIS**

**MISHUNA MOORE, individually and
on behalf of all others similarly
situated,**

Plaintiff,

VS.

Case No. 2:20-cv-02443-MSN-cgc

MEDICAL FINANCIAL SERVICES, INC.,

Defendant.

**JOINT MOTION FOR CERTIFICATION OF SETTLEMENT CLASS AND
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT**

Plaintiff Mishuna Moore and Defendant Medical Financial Services, Inc. “Defendant” or (“MFSI”) jointly move the Court to certify Plaintiff conditionally as class representative, certify Plaintiff’s attorneys conditionally as class counsel, approve a proposed settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure, and approve the proposed class notice, and in support of such motion would respectfully show the following:

1. NATURE OF THE CASE

1.01. Plaintiff is an individual who received a collection letter from Defendant pertaining to an alleged past due medical debt. Defendant is a Tennessee corporation that performs debt collection services for its corporate affiliates. Plaintiff contends that Defendant’s collection letter violated the Fair

Debt Collection Practices Act, specifically 15 U.S.C. § 1692g. Plaintiff asserts that such conduct renders Defendant liable for statutory damages under the FDCPA.

1.02. Defendant denies liability in this case and asserts that even if it were liable to Plaintiff or the class she seeks to represent, the alleged violation at issue is so technical that only nominal statutory damages would be appropriate.

2. MOTION

2.01. Plaintiff moves the Court to certify a Rule 23(b)(3) class and to approve the settlement reflected in the Settlement Agreement filed as Appendix I to this motion, which is incorporated herein by reference. Class members will be given notice of this action, of the proposed settlement and of the opportunity to object or to opt out, and of their right to submit a claim form and receive a share of the settlement fund. Congress has set limits on the class liability in FDCPA cases, and the settlement provides for payment of more than the maximum statutory damages allowed under the FDCPA.

3. JOINT MOTION

3.01. Defendant joins in the request for certification solely for settlement purposes. In the event that the settlement is not approved or as may otherwise be provided in the Settlement Agreement, Plaintiff stipulates that the certification order will be set aside and neither this motion nor the settlement agreement or any documents related thereto or statements made in connection therewith will in any way prejudice Defendant's right to contest certification on any legal or equitable grounds.

3.02. In light of, and subject to the approval of the settlement agreement attached hereto, Plaintiff and Defendant jointly move that the Court certify

Plaintiff as class representative and Plaintiff's attorneys as class counsel.

3.03. Movants hereby stipulate that any failure of the Court to approve the settlement shall not operate as a waiver of the claims or defenses of any of the parties on the issue of certification at any such contested hearing.

3.04. Movants hereby stipulate that certification of the class is conditioned upon:

- a. the accuracy of the representations and warranties contained in the Settlement Agreement;
- b. the performance by the parties of their respective obligations under the Settlement Agreement in all material respects prior to the Consummation Date (as defined in the Settlement Agreement);
- c. the entry of a final order releasing on behalf of Plaintiff and the Class, all of the Released Claims as defined in the Settlement Agreement;
- d. the receipt by the parties of all documents reasonably required to implement the Settlement Agreement; and
- e. no other class actions being certified against Defendant asserting causes of action substantially identical to those asserted by Plaintiff in the present case.

3.05. In the event that any one of the foregoing conditions is not met as required by the Settlement Agreement, Plaintiff and Defendant agree that upon motion, the Court will then decertify the class and take up the issue of class certification as a contested matter.

4. NATURE OF SETTLEMENT

4.01. The parties have agreed in principle to a settlement of this litigation on a class-wide basis. The essential terms of the settlement are set out in the Settlement Agreement filed as Appendix I to this motion. The Settlement Agreement provides that the Court will certify Plaintiff as class representative and Plaintiff's attorneys as Class Counsel. The Settlement Agreement provides substantial benefits to the proposed Class and is fair, reasonable, and adequate in light of the relevant facts, the applicable law, the nature of the alleged violation, and the potential value of the settlement to the Class.

4.02. Defendant agrees to provide monetary relief to Plaintiff and the Class as set forth in Appendix I. Counsel for Plaintiff and Defendant represent to the Court that the proposed settlement was reached through arms-length negotiations between the parties and that Class Counsel are able and experienced attorneys who are well-qualified to evaluate the proposed Settlement Agreement on behalf of the Class Members. Plaintiff asserts, and Defendant does not dispute for settlement purposes only, that the Class meets the requirements for class certification under FED. R. CIV. P. 23.

4.03. A copy of the proposed Class Notice, which is to be mailed to each Class Member at the last known address as reflected in Defendant's records, is attached to the Settlement Agreement as **Exhibit C**. That notice is sufficient to inform Class Members regarding: (a) the formation of the Class; (b) the Class definition; (c) the terms of the proposed settlement; (d) the proposed award of attorney's fees and expenses to Class Counsel; (e) Class Members' right to object to or opt out of the proposed Settlement; (f) the time and date of the Final

Fairness Hearing; and (g) Class Members' right to appear at the Final Fairness Hearing in favor of or in opposition to the proposed Settlement. The Class Notice is written in plain English in a manner reasonably calculated to allow class members to evaluate and decide whether to participate in the settlement. The Notice provides Class Members with sufficient information to make an informed decision to object to any aspect of the proposed Settlement.

4.04. At the Final Fairness Hearing, the parties anticipate presenting a final order giving effect to the Settlement and dismissing without prejudice all claims of any purported class members who have been excluded from the class.

4.05. Upon confirmation of the settlement at the Final Fairness Hearing the final order will release Defendant of all liability to the Class for the Released Claims and will enjoin Class Members from pursuing or filing suit upon the Released Claims.

WHEREFORE, Plaintiff and Defendant pray that the Court:

1. preliminarily certify the Class for settlement purposes as set forth in the proposed Settlement Agreement;
2. order that Plaintiff may act as representative of the Class and that Plaintiff's attorneys may act as counsel for the Class;
3. authorize the form and mailing of the Notice;
4. set a final hearing to determine whether the Settlement is fair, adequate, and reasonable; and
5. at such hearing approve the Settlement and grant final judgment.

Plaintiff and Defendant further pray for all such other and further relief, both at law and in equity, as to which they may be justly entitled.

Respectfully submitted,

/s/ Yitzchak Zelman

Yitzchak Zelman [pro hac vice]
(N.J. #015872012)

Ari Marcus

Marcus & Zelman, LLC

701 Cookman Avenue, Suite 300

Asbury Park, New Jersey 07712

(732) 695-3282 telephone

(732) 298-6256 facsimile

yzelman@marcuszelman.com

ATTORNEYS FOR PLAINTIFF

/s/ Manuel H. Newburger

Manuel H. Newburger (Texas Bar
#14946500) [Admitted to USDC, WD TN
9/11/2008]

Barron & Newburger, P.C.

7320 N. MoPac Expy., Suite 400

Austin, Texas 78731

Telephone: (512) 649-4022

Facsimile: (512) 279-0310

mnewburger@bn-lawyers.com

Louis Jay Miller (TN #5418)

Mendelson Law Firm

Post Office Box 17235

Memphis, Tennessee 38187

Telephone: 901-763-2500

Facsimile: 901-763-2525

jmiller@mendelsonfirm.com

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that a true and correct copy of the foregoing Motion has been served on Defendant's attorneys below through the Court's ECF system, on this 6th day of January, 2021:

/s/ Yitzchak Zelman

SERVICE LIST:

Manuel H. Newburger
Barron & Newburger, P.C.
7320 N. MoPac Expy., Suite 400
Austin, Texas 78731
Telephone: (512) 649-4022
Facsimile: (512) 279-0310

Louis Jay Miller
Mendelson Law Firm
Post Office Box 17235
Memphis, Tennessee 38187
Telephone: 901-763-2500
Facsimile: 901-763-2525

ATTORNEYS FOR DEFENDANT