

**IN THE CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT
COUNTY OF ST. CLAIR, STATE OF ILLNOIS**

FILED
ST. CLAIR COUNTY

AUG 04 2023

CIRCUIT CLERK

MACKENZIE HISE f/k/a)
MACKENZIE BROWN, individually, and on)
behalf of all others similarly situated,)

Plaintiff,)

v.)

ENHANCED RECOVERY COMPANY, LLC,)

Defendant.)

Case No. 21-L-0148

**ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT, PRELIMINARILY CERTIFYING SETTLEMENT CLASS,
APPROVING AND DIRECTING CLASS NOTICE PLAN, AND SETTING FINAL
APPROVAL HEARING**

This matter came before the Court on Wednesday, August 3, 2023, regarding Plaintiff's Motion for Preliminary Approval of Class Action Settlement of Plaintiff MacKenzie Hise, (the "Representative Plaintiff"), with Defendant Enhanced Recovery Company, LLC ("ERC" or the "Defendant"), including the parties' Settlement Agreement signed by the parties, and having been fully advised of the particulars, it is **HEREBY ORDERED, ADJUDGED and DECREED** as follows:

1. **Settlement.** The Representative Plaintiff and ERC have negotiated a proposed settlement of the Representative Plaintiff's claims in this action, individually and on behalf of a class of consumers who received certain collection letters from ERC, described below as the Settlement Class, to avoid the expense, uncertainties, and burden of protracted litigation, and to resolve the Released Claims against the Released Persons as set forth in the parties' settlement agreement ("the Agreement"). The Court has carefully reviewed the Agreement, as well as the

files, records, and proceedings to date in this matter. The terms and conditions in the Agreement are incorporated here as though fully set forth in this Order.

2. **Jurisdiction.** The Court has jurisdiction over the subject matter of the Litigation, the Parties, and all Settlement Class Members.

3. **Preliminary Approval.** The Agreement entered into, by and among the Representative Plaintiff and ERC, was negotiated in good faith at arm's length between experienced attorneys familiar with the legal and factual issues of this case; is approved on a preliminary basis as fair, reasonable, and adequate, and within the range of possible final approval; and with respect to the forms of notice of the material terms of the Agreement to the Settlement Class members for their consideration and reaction, that notice is appropriate and warranted; and subject to further consideration at the Final Approval Hearing.

4. **Settlement Class Relief.** The proposed payments to class members and the settlement consideration, as identified in Section 7 of the Agreement, is approved on a preliminary basis as fair, reasonable, and adequate.

a. The "Settlement Class" shall be defined as: All individuals from February 15, 2020, until the date of this order to whom ERC sent a collection letter in which ERC made an offer of settlement and stated the residual balance would remain with the creditor. The class is limited to only letters sent by ERC to an Illinois address and which were not returned as undeliverable.

b. A "Settlement Class Member" means any person included in the Settlement Class who does not timely and properly opt out of this settlement.

5. **Preliminary Certification of Settlement Class.** For settlement purposes only, the Court makes the following determinations as to certification of the Settlement Class:

a. The Court preliminarily certifies the Settlement Class for purposes of settlement only, under 735 ILCS 5/2-801;

b. The Settlement Class is so numerous that joinder of all members is impracticable;

c. There are questions of law or fact common to the members of the Settlement Class, which common questions predominate over any questions affecting only individual members;

d. The Representative Plaintiff is capable of fairly and adequately protecting the interests of the members of the Settlement Class, in connection with the Agreement; and

e. The class action is an appropriate method for the full and efficient adjudication of the controversy. This Court further finds that the Parties' Settlement, on this Preliminary basis, meets the factors of fairness, reasonableness, and adequacy laid out in *City of Chicago v. Korshak*, 206 Ill. App. 3d 968 (1st Dist. 1990). Those factors are the following: (1) the strength of the case for the Plaintiff on the merits, balanced against the money or other relief offered in the settlement; (2) the Defendant's ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed.

6. **Designation of Class Representatives.** The Representative Plaintiff is designated as the representative of the Settlement Class for the purpose of seeking approval of and administering the Settlement Agreement.

7. **Designation of Class Counsel** David T. Butsch and Christopher E. Roberts of Butsch Roberts & Associates LLC are appointed as Class Counsel for the Settlement Class for the sole purpose of the Settlement.

8. **Final Approval Hearing.** A hearing regarding **Final approval** of the Settlement ("Final Approval Hearing") will be held at **9:00 a.m. on November 21, 2023, in courtroom 403, 10 Public Square, Belleville, Illinois 62220** in the Circuit Court of St. Clair County, Illinois before the Honorable Judge Heinz Rudolf, to determine, among other things: (i) whether final judgment

should be entered resolving and approving the proposed Settlement of the Representative Plaintiff's and the Settlement Class Members' claims against the Defendant in the Action as fair, reasonable, and adequate; (ii) whether the Representative Plaintiff's and Settlement Class members' claims against the Defendant in the Action should be dismissed, with prejudice, pursuant to the Agreement; (iii) whether the Settlement Class Members should be bound by the Release set forth in the Agreement; and (iv) whether the application of Class Counsel for an award of attorneys' fees and expenses, and for a proposed service award to the Representative Plaintiff, should be approved and in what amount. The Final Approval Hearing will also take place via video conference via Zoom at [https://zoom.us/j/6188252594?pwd=VmNNMy96UDA1MVhuRWdGNXhXdkdtdz09](https://zoom.us/j/6188252594?pwd=VmNNMy96UDA1MVhuRWdGNXhXdkdtdz09;); Meeting ID 618 825 2594 and Password: 19262027. The link will be posted on the settlement website that will be created and setup by the settlement administrator.

9. Class Notice.

9.1 The Court approves the methods of providing notice to Class Members as described in the Agreement, including the Class Notice, a copy of which was submitted to the Court, and the manner of providing notice to Class Members described in Section 5 of the Agreement. The settlement administrator shall send the postcard notice to the Settlement Class Members, set up a settlement website with information concerning the case including the settlement agreement, and also post the long form notice submitted to the Court. The Court finds that notice as described in the Agreement is reasonably calculated, under all the circumstances, to apprise Class Members of the pendency of this Action, the terms of the Agreement, and their right to object to the Settlement or to exclude themselves from the Settlement Class. The Court further finds that the Class Notice, the Settlement website, and the other forms of notice described in the Agreement are reasonable, constitute due, adequate, and sufficient notice to all persons entitled to receive notice, and meet all legal requirements, including the requirements of ILCS 5/2-801 and due process.

9.2 The class notice shall be sent within twenty-one (21) days of this order.

9.3 No later than the sending of the class notice, the Settlement Administrator shall establish a website containing copies of the Agreement, the Preliminary Approval Order, the class notice, claim form, and such other documents and information about the Settlement as Class Counsel and Defendant's Counsel agree upon. The Claim Form shall be available to download or print from the settlement website, and signed, scanned, completed copies of the Class Form may

be uploaded on the settlement website. The Settlement website shall have a Uniform Resource Locator which identifies the settlement website as www.HiseSettlement.com, or such other URL as Class Counsel and the Defendant's Counsel agree upon. The settlement website shall not include any advertising and shall not bear any logos or trademarks of the Defendant other than those appearing in the Agreement.

9.4 No later than the posting of the class notice, the administrator shall establish a toll-free, interactive, voice response phone number, with script recordings of information about this Settlement, including information about the Claim Form, utilizing the relevant portions of the Class Notice and Claim Form. The Administrator shall send the Class Notice and Claim Form, upon request, to any Class Members. The phone number shall remain open and accessible through the Claim Deadline and allow for Class Members to leave recorded messages. Except for requests for the Class Notice or Claim Form, the Administrator will promptly advise Class Counsel of recorded messages left by Class Members, concerning the Action and/or the Settlement, or direct any Class Members with questions, that cannot be answered, to Class Counsel, so that Class Counsel may timely and accurately respond to such inquiries.

9.5 Settlement Class Members may submit claim forms in the form attached to the class notice, requesting a Claim Settlement Payment in accordance with the terms of the Agreement. To be considered valid and timely, a Claim Form must be materially complete, signed by or on behalf of the Class Member, and either: (a) mailed to the Administrator's address, as specified in the Claim Form, and postmarked by **November 21, 2023**; or (b) uploaded on the settlement website by **November 21, 2023**.

9.6 Class Counsel and the Defendant's Counsel, as jointly agreed, along with the Administrator, are authorized, prior to mailing, to complete any omitted information and to make any non-substantive revisions to the Claim Form and Class Notice, as necessary, that do not materially reduce the rights of Class Members in order to fulfill the purposes of the Settlement. The font size, layout, and other presentation elements of the Claim Form and Class Notice may be adjusted to accommodate printing and mailing considerations.

10. **Settlement Administrator.** The Court approves and authorizes the Defendant to retain Atticus Administration LLC, as the Administrator, to implement the terms of the Agreement, and authorizes and directs the Administrator to (a) mail the Class Notice, the Claim Form, and the Postcard Notice; (b) establish the interactive, voice response, phone line system; (c); establish the Settlement website; (d) receive and process Claim Forms; and, (e) carry out such other responsibilities as are provided for in the Agreement or as may be agreed to by Class Counsel and the Defendant, all according to and as provided in the Agreement.

11. **Exclusion from the Settlement Class.** Any Class Member who wishes to be excluded from the Settlement Class must complete and send to the Administrator, at the address listed in the Class Notice and on the Settlement website, a request for exclusion postmarked no later than **October 24, 2023** (“Opt Out Deadline”).

11.1 To be valid, the request for exclusion must: (a) identify the case name; (b) identify the name, address, phone number and e-mail address of the Class Member; (c) be personally signed by the Class Member requesting exclusion; and (d) state a desire to be excluded from the Settlement Class, such as “I hereby request that I be excluded from the proposed Settlement Class in the ERC Class Action.”

11.2 A Class Member who desires to opt out must take timely affirmative written action, pursuant to this Order and the Agreement, even if the Class Member desiring to opt out (a) files or has filed a separate action against any of the Released Persons, or (b) is or becomes a putative or actual class member in any other class action filed against any of the Released Persons. The Administrator shall provide Class Counsel and the Defendant’s Counsel a list of all timely requests for exclusion not less than ten (10) days before the Final Approval Hearing.

11.3 Except for Class Members who timely submit a valid request for exclusion from the Settlement Class, all other Class Members will be deemed to be Class Members for all purposes under the Agreement, and upon the Effective Date will be bound by its terms, including, but not limited to, the Releases in Section 14 of the Agreement and Final Judgment approving the Settlement.

11.4 If the proposed Settlement is finally approved, any Class Member who has not submitted a timely, written, request for exclusion, from the Settlement Class, shall be bound by the Final Judgment and all subsequent proceedings, orders, and judgments in this Action, even if he or she has pending, or subsequently initiates, litigation against the Defendant or any Released Persons relating to any of the Released Claims as defined in the Agreement.

11.5 If the proposed Settlement is finally approved, any Class Member, who has not submitted a timely, written, Request for Exclusion, from the Settlement Class, shall be bound by the Judgment and all subsequent proceedings, orders, and judgments, even if he or she has pending, or subsequently initiates, litigation against the Defendant or any Released Persons relating to any of the Released Claims as defined in the Agreement.

12. **Objections and Appearances.** Any Class Member, who does not submit a valid request for exclusion from the Settlement Class and who complies with the requirements of this Order and the Agreement, may object to the proposed Settlement. Any Class Member, who wishes to object to the Settlement, must do so in writing, filed with the Clerk of Court, and a mail a copy

to the Administrator, at the address in the Class Notice and on the Settlement website, a written statement of objection, in accordance with the requirements set forth below and in the Agreement, postmarked no later than **October 24, 2023** (“the Objection Deadline”).

12.1 A valid written objection must include: (a) the case name and number; (b) the name, address, e-mail and phone number of the objecting Class Member and of counsel, if represented; and (c) the basis for the objection. These requirements shall also be set forth in the class notice and on the settlement website.

12.2 Subject to approval of the Court, any Class Member, who files and serves a timely written objection, may appear, in person or by counsel, at the Final Approval Hearing, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Class Member: (a) mails copies of the notice to the Administrator, at the address set forth in the Class Notice and on the Settlement website. The notice must include copies of any papers, exhibits, or other evidence that the objecting Class Member will present to the Court in connection with the Final Approval Hearing. Any Class Member, who does not file a notice of intention to appear in accordance with the deadlines and other requirements of this Order and the Agreement, shall not be entitled to appear at the Final Approval Hearing.

12.3 Any Class Member, who fails to object to the Settlement in the manner described in this Order, shall be deemed to have waived any objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

13. **Releases.** If the Settlement is finally approved, all Releasing Parties, including the Representative Plaintiff and each Class Member, shall, release the Released Parties as set forth in Section 14 of the Agreement.

14. **Attorneys’ Fees and Expenses, and Case Contribution Awards.** The Representative Plaintiff and Class Counsel shall not seek an award of attorneys’ fees and reasonable litigation expenses in this Action in a total amount that exceeds \$150,000.00. Class Counsel and the Representative Plaintiff agree not to seek service awards that exceed \$8,000 to the Representative Plaintiff for her work and assistance in this matter. The Defendant agrees not to oppose applications for attorneys’ fees and expenses and for a service award that do not exceed the foregoing amounts.

15. **Preliminary Injunction.** In order to protect the continuing jurisdiction of the Court, and to effectuate this Order, the Agreement, and the Settlement, all Class Members, who do not timely exclude themselves from the Settlement Class, and anyone acting, or purporting to act on their behalf, are preliminarily enjoined from directly or indirectly (a) filing, commencing, prosecuting, maintaining, intervening in, or participating in (as parties, class members or otherwise), any new or existing action or proceeding before any court or tribunal regarding any Released Claims against any of the Released Persons; and (b) organizing any Class Members into a separate class for purposes of pursuing, as a purported class action any lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a new or pending action), based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the Released Claims.

16. **Service of Papers.** Class Counsel and the Defendant's Counsel shall promptly furnish to each other any objections or requests for exclusion that they receive and shall file such objections with the Court on or before the Final Approval Hearing unless such documents already appear on the Court's docket.

17. **Termination of Settlement.** This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (a) the proposed Settlement is not finally approved by the Court, or Final Judgment is not entered or does not become Final, or the Effective Date does not occur; or (b) the Settlement Agreement is terminated, pursuant to the terms of the Agreement, for any reason. In such event, and except as provided therein, the proposed Settlement and Agreement shall have no further force or effect, and all proceedings that have occurred, with regard to the Agreement and the Proposed Settlement, shall be without

prejudice to the rights and contentions of the Parties and any Class Members; the preliminary certification of the Settlement Class for settlement purposes shall be automatically vacated; all communications and documents related to the Settlement will be subject to Illinois Rules of Evidence and all other applicable settlement and negotiation privileges; this Order and other orders, entered by the Court pursuant to the Agreement, will be treated as vacated, *nunc pro tunc*; the Agreement and the Court's orders, including this Order, shall not be used or referred to for any purpose whatsoever; and the Parties shall retain, without prejudice, any and all objections, arguments, and defenses with respect to class certification.

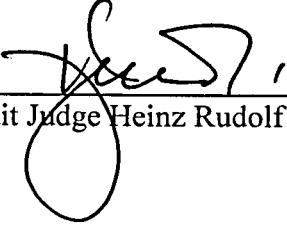
18. **Use of Order Following Termination of Settlement.** This Order shall be of no force and effect, if the Settlement does not become Final, and shall not be construed or used as an admission, concession, or declaration, by or against the Defendant, of any fault, wrongdoing, breach, or liability, or by or against the Representative Plaintiff or Class Members that their claims lack merit or that the relief requested in this Action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses. Evidence relating to this Agreement will not be discoverable or used, directly or indirectly, in any way, whether in the Litigation or in any other action or proceeding, except for purposes of demonstrating, describing, implementing, or enforcing the terms and conditions of the Agreement, this Order, and the Final Order of Dismissal.

19. **Stay.** All proceedings in the Action (as defined in the Agreement), as to the claims of the Representative Plaintiff against the Defendant, are stayed, except as necessary to effectuate the terms of the Settlement.

20. **Reasonable Procedures To Effectuate the Settlement.** The Court authorizes counsel and directs the Parties to take all other necessary and appropriate steps (that are not materially inconsistent with this Order) to implement the Settlement as set forth in the Agreement,

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including making, without further approval of the Court minor changes to the form or content of the Notice and Claim Form and other exhibits that they jointly agree are reasonable and necessary.

So Ordered: 
Circuit Judge Heinz Rudolf

Date: 8/4/23