

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOVANA MOUKENGESCHAIE, on behalf of
herself and all others similarly situated,

Plaintiff,

ORDER
14-CV-7539 (MKB) (CLP)

v.

ELTMAN, ELTMAN & COOPER, P.C.,
LVNV FUNDING, LLC, and
RESURGENT CAPITAL SERVICES, L.P.,
LLC,

Defendants.

MARGO K. BRODIE, United States District Judge:

Plaintiff Jovana Moukengeschaie commenced the above captioned action on behalf of herself and all other similarly situated, against, *inter alia*, Defendants Eltman, Eltman, and Cooper, P.C., LVNV Funding, LLC, and Resurgent Capital Services, L.P. (Compl. ¶ 1–7, Docket Entry No. 1.) On May 8, 2019, Plaintiff filed an Amended Complaint alleging that Defendants violated section 1692 of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, by sending a letter to Plaintiff threatening to attach her property to satisfy a debt even though they had no intention of doing so. (Am. Compl., Docket Entry No. 47.) On August 16, 2019, the parties notified the Court that they have agreed to a settlement and moved for an order preliminarily approving the settlement based on the terms set forth in the class action settlement agreement (the “Settlement Agreement”), (Mot. for Prelim. Approval, Docket Entry No. 151), and on October 15, 2019, the Court preliminarily approved the Settlement Agreement and certified the class for purposes of the settlement, (Order dated Oct. 15, 2019). On April 2, 2020, Magistrate Judge Cheryl L. Pollack conducted a fairness hearing and on April 21, 2020, issued a

report and recommendation (the “R&R”). (R&R, Docket Entry No. 158.)

For the reasons set forth below, the Court adopts the report and recommendation and grants Plaintiff’s motion for final settlement approval and attorneys’ fees.

I. Background

The parties reached a proposed settlement of \$633,500 on behalf of an estimated 8,000 class members. (R&R 4–5.) The proposed settlement amount consisted of: (1) “\$100,000 in cash relief to be distributed among a statewide class”; (2) “\$318,500 in debt forgiveness to the Subclass”; (3) “a \$15,000 service award to plaintiff Vasquez;” and (4) \$200,000 in attorney’s fees.” (*Id.* at 4–5.) In addition, the Settlement Agreement provides for \$318,500 in debt forgiveness to be distributed among 392 members of the subclass. (*Id.* at 5.)

By report and recommendation dated April 21, 2020, Judge Pollack recommended that the “Settlement Agreement be approved as fair, reasonable, and adequate.” (R&R 7.) Judge Pollack found the parties’ process in reaching the proposed settlement to be procedurally fair, (*id.* at 9), and also found that the class members positive response to the settlement weighs in favor of final settlement approval, (*id.* at 11). Judge Pollack further recommended that the Court approve class counsel’s request for attorneys’ fees, (*id.* at 15), and approve Plaintiff’s service award, (*id.* at 17).

No party has objected to the R&R and the time for doing so has passed.

II. Discussion

A district court reviewing a magistrate judge’s recommended ruling “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “Where parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further

judicial review of the magistrate’s decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P&C Food Markets, Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)); *see also Almonte v. Suffolk Cnty.*, 531 F. App’x 107, 109 (2d Cir. 2013) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.” (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Sepe v. N.Y. State Ins. Fund*, 466 F. App’x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue.” (citations omitted)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R pursuant to 28 U.S.C. § 636(b)(1).

III. Conclusion

Accordingly, the Court adopts the R&R, grants the motion, and approves the class action settlement.

Dated: October 8, 2020
Brooklyn, New York

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge