 FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2019 APR 23 PM 4:05

**CHARLENE BAKER,  
on behalf of herself and  
all others similarly situated,**

CATHY S. CATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

**Plaintiff,**

v.

**CIVIL ACTION NO: 15-C-164  
Tera Salango, Judge**

**E.J. HAGAN ASSOCIATES, P.C.,  
and EDWARD J. HAGAN,**

**Defendants.**

**ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT  
AND DIRECTING CLASS NOTICE AND FURTHER PROCEEDINGS**

This matter came on for hearing concerning the parties' negotiations toward a proposed settlement of this putative class action and their joint request for its approval on October 4, 2017, December 11, 2017, December 27, 2017, January 18, 2018, and April 23, 2018. The Court is now advised that a complete and final proposed settlement agreement with attachments has been executed and approved by all parties. That proposed settlement agreement has been provided the Court and is filed as an exhibit to this order. The parties have renewed a joint request for its preliminary approval pursuant to W. Va. R. Civ. Pro. 23(e), and for conditional certification of the proposed plaintiff class as provided for within that proposed settlement.

This Court must decide whether any settlement that would be binding on absent class members should be approved finally as being fair, reasonable, and in the best interests of the class as a whole. The purpose of seeking preliminary judicial approval is to permit the Court to consider first whether the proposed settlement on its face "is neither illegal nor collusive and is within the range of possible approval" before notice is given to absent class members. 4 *Newberg on Class*

*Actions* § 13:12 - 13 (5th Ed.).<sup>1</sup>

Over the course of the several hearings on this matter, the Court has gained awareness of the lengthy process of negotiation which ensued after plaintiff Charlene Baker filed a Rule 59(e) motion to alter or amend judgment in August 2015. The course of those negotiations included mediation conducted with professional assistance in May 2017, resulting in an agreement as to all material settlement terms. However, even after mediation, the negotiations continued including by motions and arguments presented to the Court as to differing interpretations of the executed handwritten Class Settlement and Release Agreement achieved at mediation. This Court is convinced from its own observation of the parties and counsel in this matter that the proposed settlement now offered by agreement is the adversarial product of arms-length, good faith disagreements and negotiation. The Court **FINDS** that the proposed settlement agreement is not a product of collusion between the parties or counsel in this case.

Further, the Court has thoroughly reviewed the terms and provisions of the proposed settlement and the class notice and election forms proposed. That preliminary review has not revealed any indication that the agreement or any of its terms are illegal or facially deficient, discriminatory, or unfair such that class members should not be asked to approve or object to its terms. Subject to deeper consideration of all these questions at the fairness hearing, including any objections filed by or on behalf of absent class members, the Court **FINDS** the terms of the proposed settlement are not facially improper and are within the range of those that might ultimately be approvable under Rule 23(e).

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<sup>1</sup> “[Most courts call for approval] if ‘the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible [judicial] approval.’”

Based on these findings, the Court hereby **ORDERS, ADJUDGES, and DECREES:**

1. For purposes of the proposed settlement only, the Court preliminarily certifies a plaintiff class in this matter pursuant to Rule 23(a) and Rule 23(b)(3), defined as:

all residents of West Virginia who at any time on or after January 1, 2011 received an initial demand letter from E.J. Hagan Associates, P.C. and/or Edward J. Hagan, or were served with a complaint filed in any West Virginia Court, seeking to collect a consumer debt that included any claim for prejudgment interest and/or a demand for court costs.

The Parties currently believe the Settlement Class is comprised of 866 Members, broken down as follows:

- a. An estimated 394 Class Members who received correspondence but were not served with a summons and complaint. This sub-class is also comprised of Class Members against whom a Complaint was filed but was never served.
- b. An estimated 472 Class Members who were served with a summons and complaint.
2. Gary M. Smith and Mountain State Justice, Inc., are hereby appointed Class Counsel for purposes of this order and further proceedings concerning the proposed class settlement.
3. Mountain State Justice, Inc., is appointed as the Claim Administrator for the purpose of providing notice to absent class members and administering the Class Settlement Fund and claims process in accord with the terms of the proposed class settlement.
4. Defendants have provided class counsel with access to those relevant, non-privileged and non-proprietary records to permit class counsel to prepare a preliminary class roster for identification of all identifiable members of the class by name, last known contact information, and debt collection case information, including verification of information for the class members Defendants believe they have already identified. The Court **FINDS** that Defendants' records are confidential and may not be used except for purposes of administering the settlement class, and neither class counsel nor the administrator shall disclose Defendants' records for any purpose not

strictly related to the effectuation of the proposed settlement.

5. To the extent not already provided, the Parties will cooperate in good faith and disclose all relevant, non-privileged and non-proprietary information available to assist and support the class counsel and class administrator's efforts to identify absent class members and to provide absent class members notice and a Class Member Claim or Opt Out Election Form. The Parties shall further cooperate and undertake all reasonable actions necessary or helpful to accomplishing the purposes of this Order, the efforts of the class administrator, and the schedule set by the Court.

6. This matter is set for Final Fairness Hearing and determination of all questions and objections as to whether the proposed settlement should be approved and finally entered as the order of this Court on June 6, 2019 at 9:00 A.M. Class member claims must be postmarked, or delivered by fax, email, or personal delivery to the claims administrator no later than 11:59 P.M., May 10, 2019.

7. Any Class Member who wishes to be excluded from the Settlement Class and not be bound by the Class Action Settlement Agreement must complete a request for exclusion ("Opt-Out"). Class member Opt-Outs must be postmarked, or delivered by fax, email, or personal delivery to the Claim Administrator no later than 11:59 P.M., May 10, 2019.

8. For a Class Member's Opt-Out to be valid, it must be timely (as judged by procedures set forth above) and (a) set forth the Class Member's full name, address and telephone number; (b) and contain the Class Member's original or electronic signature (or the original signature of a person previously authorized by law, such as a trustee, guardian or person acting under a power of attorney, to act on behalf of the Class Member with respect to the Settled Claims as defined in the Class Action Settlement Agreement); and (c) state the Class Member's intent to be excluded from the Class, to be excluded from the Settlement, not to participate in the Settlement,

and/or to waive all right to the benefits of the Settlement. Completion and return of the Opt-Out portion of the approved Class Member Claim or Opt Out Election Form to the Class Administrator by mail, fax, email, or personal delivery as described in the Class Notice satisfies these requirements. Any Class Member who does not timely opt out in accord with the terms of this Order and the approved Class Notice shall be bound by the Agreement, including the Release, as embodied in Section IV(B) of the Class Action Settlement Agreement, and any Final Order and Judgment entered in the Action. Class Members who opt out waived all rights or benefits under the Settlement, and do not have standing to object to the Settlement or intervene in the Action.

9. Any Class Member who wishes to object to the proposed Settlement must provide a written objection (or objections) to the Settlement ("Objection") to the Settlement Administrator on or before the date specified in the approved Class Notice. Each Objection must: (a) set forth the Class Member's full name, current address, and telephone number; (b) state that the Class Member objects to the Settlement, in whole or in part; (c) set forth a statement of the legal and/or factual basis for the Objection; and (d) provide copies of any documents that the Class Member wishes to submit in support of his or her position. The Court has discretion to disregard and decline to hear any Objection not submitted in accordance with this Order.

10. The Court finds, subject to deeper consideration and review of any objections, that the amount of the fees and costs which the proposed settlement provides for class counsel and the class administrator do not facially appear to be excessive, illegal, or unreasonable, and that those amounts are preliminarily approved.

11. The Court approves the text and format of the Class Notice and Class Member Claim or Opt Out Election Form presented with the proposed settlement agreement and directs its use and

dissemination by the class administrator.

12. The claims administrator will mail the Class Notice and Class Member Claim or Opt Out Election Form to all persons identified as members of the Settlement Class on the preliminary Class Roster as filed with the Court.

13. Within thirty (30) days of that filing the Claim Administrator will mail to each person named thereon at his or her last known address the approved Notice of Proposed Settlement of Class Action and Class Member Claim or Opt Out Election Form. Additionally, the Claim Administrator shall advertise the Class Settlement in one or more publications with substantial circulation in West Virginia.

14. Any mailed notices returned as undeliverable, but with a forwarding address, shall be promptly re-mailed to the forwarding address by the Claim Administrator. The Claim Administrator shall perform a National Change of Address Registry and electronic database search (Westlaw or Lexis/Nexis) for the location and vital status of every class member whose mailed notice is finally returned as undeliverable, without a forwarding address. Notices and Election forms shall be re-mailed thereafter upon discovery of a new or different mailing address through that search.

15. The Claim Administrator shall also maintain a settlement website and toll-free number for class member inquiries, and will make consistent good faith efforts to publicize generally the terms and nature of the proposed settlement, the manner in which claims, objections, or opt-outs can be made, and the deadlines established by the Court, to maximize the likelihood that class members who do not receive the notice and election form may nonetheless learn of their rights.

16. The Court **FINDS** that the plan set forth in the Class Action Settlement Agreement for providing notice to Class Members is the best notice practicable under the circumstances and

satisfies the requirements of due process and W. Va. R. Civ. P. 23. That plan is approved and accepted. This Court further **FINDS** that the Class Notice complies with W. Va. R. Civ. P. 23 and is appropriate as part of the notice plan and the Settlement, and thus is hereby approved, adopted and authorized for dissemination. This Court further **FINDS** that no other notice to Class Members other than that identified in the Class Action Settlement Agreement is reasonably necessary in the Action.

17. The Claim Administrator shall file a report with the Court fourteen (14) days before the Final Fairness Hearing summarizing its actions to provide notice and the results of the notice process. That report shall notify all counsel and the Court of persons objecting to the Class Settlement. Copies of all objections received shall be filed with the Court at the time of that report under seal. All elections, opt outs, objections and other responses received by the class administrator shall be brought to the Final Fairness Hearing to allow final review. The Claim Administrator's report also will explain its recommendations as to any disputed, uncertain, or unapproved claims, on which the Court will rule at the time of the fairness hearing. All documents filed with the Court that include the identity of a Class Member shall be filed under seal to protect the privacy rights of said individuals.

18. The report shall include a proposed Final Class Roster naming every identified member of the plaintiff class; the status of notice to that member and any response; whether that class member has filed a claim, objected, or opted out, and the amount of reimbursement the administrator has determined that member should be paid from the Class Settlement Fund, if any.

19. Defendants' counsel may review, or request examination of the opt out or claim responses at any time and shall serve any objections to the Final Class Roster at least 48 hours in advance of the Final Fairness Hearing.

20. Within twenty (20) days of the date of this Order, Defendants shall pay to Class Counsel the total sum of \$100,000.00 (one hundred thousand dollars and no cents) as the Settlement Fund. The Settlement Fund shall remain in a federally chartered and insured financial institution reasonably acceptable to the Parties and the Court until either Final Judicial Approval of the settlement or an order from either this Court or an appellate court finally denying approval. At the time of final approval, the Parties shall submit a joint order to the Court directing the class administrator pay claims from the Settlement Fund in accord with the approved Final Class Roster. In the event Final Judicial Approval is not obtained, or the Court's order approving this Settlement Agreement is reversed on appeal, the Parties shall submit a joint order directing the Claim Administrator to return the Settlement Fund, with all interest earned, to the Defendants within fifteen (15) days of such order.

21. The Court agrees that the extent of any injury each class member may have suffered from the challenged practices is uncertain and difficult to quantify, and that the time, expenses, and difficulty of individually ascertaining and calculating any damages suffered as a result would significantly outweigh the likely benefit of that process to most class members. For these reasons, subject to deeper consideration and review of any objections at the fairness hearing, the Court preliminarily approves recovery of an equal, pro-rata share of the Class Settlement Fund by every class member who files a claim approved by the administrator and does not opt out of the settlement.

22. Within twenty (20) days of the date of this Order, Defendants shall pay Mountain State Justice, Inc., \$15,000.00 for administration of the class notice and claims processes. The Parties agree that Mountain State Justice, Inc., shall have fully earned the administration fee prior to the fairness hearing and shall be entitled to retain that fee whether this Agreement is finally approved



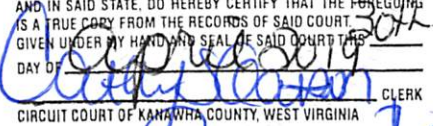
by the Court.

23. Mountain State Justice, Inc., has provided a copy of its W9 to counsel for the Defendants. Defendants will use best efforts and/or good faith in complying with the deadlines by which payments are to be received by Mountain State Justice, Inc., in any capacity, but the parties agree an inadvertent late payment shall not be considered a breach of this agreement or provide a basis for voiding this agreement, so long as Defendants pay per diem interest at the statutory rate for the period during which that payment was delayed.

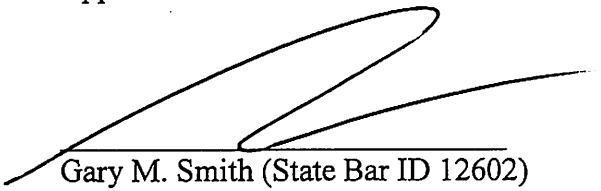
SO ORDERED.

April 23, 2019  
Date

  
Tera Salango, Judge

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS  
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT, 30th  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS  
DAY OF April 23, 2019  
 CLERK  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

Approved:



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Gary M. Smith (State Bar ID 12602)  
MOUNTAIN STATE JUSTICE, INC.  
1217 Quarrier St.  
Charleston, WV 25301  
(304) 344-3144  
(304) 344-3145 (fax)  
gary@msjlaw.org  
Attorney for Plaintiff

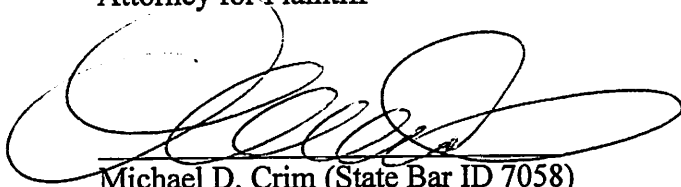
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Michael D. Crim (State Bar ID 7058)  
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Attorney for Defendants

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Attorney for Defendants

FILED

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CATHY S. GARSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

LEGAL NOTICE

## NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION

### A. THIS IS NOT A SUIT AGAINST YOU.

The purpose of this Notice is to advise you that a proposed Class Settlement has been reached in a class action lawsuit (the “**Lawsuit**”) filed by Charlene Baker (Plaintiff) against E.J. Hagan Associates, P.C., and Edward J. Hagan (**Defendants**). The Notice is being sent to you because Defendants’ records indicate that you have an option to remain in or opt out of the Class, and that you are entitled to a cash payment if you agree to be bound to the tentative Settlement terms.

This Notice describes the case in general but does not address every term of the proposed Settlement in detail. You may review a copy of the Settlement Agreement, Class Action Complaint, and the Court’s Order Preliminarily Approving Settlement at the Office of the Clerk of the Kanawha County Circuit Court, 111 Court St, Charleston, WV 25301, or online at <https://mountainstatejustice.org/get-help> (then click on document link under Baker Class Action).

### B. WHAT IS THE LAWSUIT ABOUT?

The Lawsuit alleges Defendants violated W. Va. Code § 46A-1-101 *et seq.* by seeking to collect prejudgment interest on sums that already included interest, and/or court costs expended in collection of a consumer debt in West Virginia. Defendants deny they acted improperly or did anything wrong. However, Plaintiff and Defendants have agreed tentatively to the Settlement solely to avoid the burden, expense, risk, and uncertainty of continuing the Lawsuit.

### C. WHO IS INCLUDED IN THE SETTLEMENT?

The proposed Settlement Class is defined by the Settlement to include:

all residents of West Virginia who at any time on or after January 1, 2011 received an initial demand letter from E.J. Hagan Associates, P.C. and/or Edward J. Hagan, or were served

with a complaint filed in any West Virginia Court, seeking to collect a consumer debt that included any claim for prejudgment interest and/or a demand for court costs.

The Parties currently believe the Settlement Class is comprised of 866 Members, broken down as follows:

- a. An estimated 394 Class Members who received correspondence but were not served with a summons and complaint. This sub-class is also comprised of Class Members against whom a Complaint was filed but was never served.
- b. An estimated 472 Class Members who were served with a summons and complaint.

Defendants' records indicate that you are a Class Member who will be bound by the Settlement Agreement (1) if you do not opt out of the Class Settlement; and (2) if that Settlement is finally approved by the Court as being fair and equitable. The Court has already preliminarily approved the Settlement for the purpose of providing this Notice.

#### **D. WHAT ARE THE SETTLEMENT TERMS?**

**(1) Class Settlement Fund.** The proposed Settlement provides for Defendants' payment of \$100,000.00 to create a Class Settlement fund. If the Settlement is approved, all Class Members who do not opt out and who complete and return the attached claim form within the time allowed will be entitled to receive a share of that Class Fund. It is estimated the Class may include over 800 members. As an example, if 500 members complete and return claim forms accepted by the Claim Administrator, each Class Member would receive an equal \$200.00 share of the Fund. A Class Member's individual share will increase or decrease depending upon the total number of class member claims received and accepted by the Claim Administrator, Mountain State Justice, Inc.

(2) **Service Award.** The Plaintiff who brought this lawsuit, Charlene Baker, is a member of the Class and may file a claim form. The proposed Settlement also provides for Defendants to pay her a separate amount of \$3,000.00, not from the Settlement Fund, for serving as class representative.

(3) **Attorneys' Fees and Costs.** Class counsel is Gary W. Smith, Mountain State Justice, Inc., 325 Willey St., Morgantown, WV 26505. Under the proposed settlement, Defendants would pay Mountain State Justice, Inc., \$45,000.00 for statutory attorneys' fees and litigation costs. This amount is to be paid by Defendants separate from and in addition to the Class Settlement Fund.

(4) **Class Administration** Defendants will also pay Mountain State Justice, Inc., \$15,000.00 to administer the Class Settlement. This amount will be paid separate from and in addition to the Class Settlement Fund.

(5) **Dismissal and Release** Any Class Member who fails to opt-out of the Class within the time allowed by the Court will be deemed to have completely and globally released and waived any and all claims asserted or which may have been asserted in the pending lawsuit against Defendants or any of their clients arising from actions or failures to act alleged in the Lawsuit, or which could have been so alleged, which occurred at any time between January 1, 2011 and January 31, 2018. Any Class Member who fails to opt-out of the Class within the time allowed by the Court will be forever barred from suing Defendants on any such claim, even if you fail to complete and submit a claim form. The only way to avoid releasing your claims is to **opt-out** of the Class by signing the attached form on the "Opt out" line and returning it within the time provided.

(6) **Other Terms.** The release of claims includes giving up any right a Class Member might have to sue a creditor or collection agency represented by Defendants with respect to the

counsel believes Class Members will be best off by agreeing to the settlement and submitting a claim form unless they have more valuable claims against the creditor or collection agency Defendants represented in its dealings with that Class Member.

By Order of the Circuit Court of Kanawha County, West Virginia.

Claim Administrator  
MOUNTAIN STATE JUSTICE, INC.  
325 Willey St.  
Morgantown WV 26505  
Phone: (304) 326-0188 (9:00 – 4:30 M-F)  
Fax: (304) 326-0189

Website: <https://mountainstatejustice.org/get-help>  
(then click on document link under Baker Class Action)

Email: BakerClassAction@msjlaw.org

**CLASS MEMBER CLAIM OR OPT OUT ELECTION FORM**

*Baker v. E. J. Hagan Associates, P.C., et al.*, Kanawha County Circuit Court Case No. 15-C-164  
Fairness Hearing to Approve Settlement \_\_\_\_, 2019 at \_\_\_\_ A.M./ P.M.  
Kanawha County Circuit Court

Your Full Name: \_\_\_\_\_

List All Other Names Used Since 2010: \_\_\_\_\_

Your Current Address: \_\_\_\_\_  
\_\_\_\_\_

Phone No(s). \_\_\_\_\_  
Home Work Cell

Last 4 Social Security No.: \_\_\_\_\_ Your Date of

Birth: \_\_\_\_\_

Name and Phone Number for Friend or Relative Not in Your Home Who will Always Know

How to Find You

\_\_\_\_\_  
\_\_\_\_\_

You must elect **ONE** of the following:

- I have read the Class Notice. I agree to the proposed Settlement, choose to remain in the Class, and claim a share of the Settlement Fund. If the Settlement is finally approved, I understand I am agreeing to release Settling Defendants and Released Party from all Settled Claims as defined in the Class Action Settlement Agreement arising from January 1, 2011 through January 31, 2018.
- I have read the Class Notice. I do **not** choose to remain in the Class and hereby **OPT OUT** of the proposed Settlement. I understand this means I am not eligible to receive a share of the Settlement Fund but I retain all my legal rights against Defendants or their clients.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Your Signature

*In addition or instead, you may object to the proposed Settlement. If you wish to object, mark this box  and attach your objection as explained in section (F)(3) of the Class Notice.*



**You must return this form to the Claim Administrator by mail, personal delivery, fax, or email by \_\_\_\_\_, 2019. If you fail to return this form within the time set by the Court, you may lose the right to claim a share of the Settlement Fund, or to opt out of the Settlement, and will be bound by the Settlement if it is finally approved.**

**Return this Form to**

**Claim Administrator  
MOUNTAIN STATE JUSTICE, INC.  
1217 Quarrier St.  
Charleston WV 25301  
Phone: (304) 344-3144 (9:00 – 4:30 M-F) Fax: (304)**

**344-3145**

**Website: <https://mountainstatejustice.org/BakerClass>  
Email: [BakerClassAction@msjlaw.org](mailto:BakerClassAction@msjlaw.org)**

**MAKE YOUR ELECTION NOW!! DO NOT DELAY  
RETURNING THIS FORM!!**