

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

EBONI L. WASHINGTON, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

NAVY FEDERAL CREDIT UNION,

Defendant.

Civil Action No. 2019 CA 005735 B

Next Court Date: June 19, 2020

Event: Scheduling Conference Hearing

Judge: Honorable Jason Park

**PLAINTIFF'S CONSENT MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiff Eboni Washington, with the consent of Defendant Navy Federal Credit Union (“Navy Federal”) (collectively the “Parties”), hereby moves the Court for preliminary certification of a Settlement Class for settlement purposes and preliminary approval of the Parties’ proposed class action settlement, as detailed in the Settlement Agreement attached hereto. The Settlement Class is defined as including members of the following three classes:

The Deficient Notification Class

All individuals who are or were a party to a secured auto loan agreement with Navy Federal from three years prior to the filing of the Complaint through the date the Complaint was filed by which Navy Federal provided financing for the purchase of a motor vehicle, from a dealer, for personal use, which (1) Navy Federal repossessed and (2) which Navy Federal, or its agent, failed to deliver to the individual written notice of the amount due and payable and/or the exact address where the motor vehicle is stored and/or the time and place of the disposition of the vehicle and/or (3) which Navy Federal, or its agent, failed to provide individuals with written notice of its intent to sell their vehicle through an auction, the location of the auction, and/or the time and date of the auction.

The Improper Storage Class

All individuals who are or were a party to a secured auto loan agreement with Navy Federal from three years prior to the filing of the Complaint through the date the Complaint was filed by which Navy Federal provided financing for the purchase of a motor vehicle, from a dealer, for personal use, which (1) Navy Federal repossessed and (2) which Navy Federal, or its agent, retained or stored the repossessed vehicle outside of the District of Columbia or the state and county where the consumer resides, or the state and county where the vehicle was repossessed.

Excessive Storage Fee Class

All individuals who are or were a party to a secured auto loan agreement with Navy Federal from three years prior to the filing of the Complaint through the date the Complaint was filed by which Navy Federal provided financing for the purchase of a motor vehicle, from a dealer, for personal use, which (1) Navy Federal repossessed and (2) which Navy Federal, or its agent, conditioned the redemption of, reinstatement of, or release upon the payment of a “repossession fee” or other fees related to the repossession of the motor vehicle, other than storage fees, which alone or in combination, exceeded \$100.

This motion is based upon the attached Memorandum of Points and Authorities in Support, the Declaration of Plaintiff’s Counsel, and the attached exhibits, which include the Settlement Agreement, notices, and any further papers filed in support of this motion.

Date: May 7, 2020

Respectfully Submitted,

/s/ Nicholas A. Migliaccio

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**CERTIFICATION PURSUANT TO
SUPER. CT. R. CIV. P. 12-1**

The Parties jointly file this Motion and have consented to the relief herein sought.

/s/ Nicholas A. Migliaccio

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing Consent Motion for Preliminary Approval of Class Action Settlement was served on all counsel of record by operation of the Court's CM/ECF system, File & Serve Xpress, this 7th day of May on all counsel of record, namely:

/s/ Nicholas A. Migliaccio

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Counsel for Plaintiff

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CONSENT
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiff, with the consent of Defendant, submits this Memorandum in Support of Plaintiff's Consent Motion for Preliminary Approval of Class Action Settlement.

I. INTRODUCTION

Plaintiff filed this class action on August 30, 2019, asserting claims on behalf of herself and all similarly situated individuals. After arms-length negotiations and a multiple-day virtual mediation, the Parties reached a settlement as detailed in the Settlement Agreement, attached hereto as Exhibit 1. Pursuant to D.C. Sup. Ct. R. 23, the Parties ask the Court to preliminarily certify the proposed class and preliminarily approve the Settlement by entering the proposed Order of Preliminary Approval of Class Action Settlement, attached hereto as Exhibit 2.

II. FACTS AND PROCEDURAL HISTORY

On August 30, 2019, Plaintiff filed a putative class action against Navy Federal in the Superior Court of the District of Columbia, asserting class claims on behalf of herself and a putative class of those similarly situated for alleged violations of the District of Columbia Consumer Protection and Procedures Act ("DCCPPA") in connection with the financing and repossession of her automobile. Plaintiff asserted the following claims against Navy Federal:

Count I: violations of the D.C. Consumer Protections Procedure Act 28 D.C.
Code Ch. 39 and violations of the express notification requirements

of D.C. Code § 28:9-614 on behalf of the Deficient Notification Class. Plaintiff alleged that Navy Federal failed to provide Plaintiff and the Deficient Notification Class members with written notification disclosing the amount due and payable and the time and place of the public disposition of their repossessed vehicles. Plaintiff sought damages pursuant to D.C. Code § 28:9-625 and § 28:9-626.

Count II: violations of the D.C. Consumer Protections Procedure Act 28 D.C. Code Ch. 39 and violations of the express notification requirements of D.C.M.R. § 16-341.4 and § 16-344.6 on behalf of the Deficient Notification Class. Plaintiff alleged that Navy Federal failed to provide Plaintiff and the Deficient Notification Class members with written notification disclosing the amount due and payable, the exact address the motor vehicle is stored, its intent to sell their vehicles through a public auction, and the time and place of the auction. Plaintiff sought damages pursuant to D.C. Code § 28-3905(k)(1) and attorney's fees and expenses among other relief.

Count III: violations of the D.C. Consumer Protections Procedure Act 28 D.C. Code Ch. 39 and violations of the express storage requirements of D.C.M.R. § 16-341.5 on behalf of the Improper Storage Class. Plaintiff alleged that Navy Federal caused Plaintiff's and the Improper Storage Class members' vehicles to be moved and stored outside of the District of Columbia, the state and county of their residence, or the state and county where the vehicle was repossessed, less than 15 days after written notice of their vehicles' repossession. Plaintiff sought damages pursuant to D.C. Code § 28-3905(k)(1) and attorney's fees and expenses among other relief.

Count III: violations of the D.C. Consumer Protections Procedure Act 28 D.C. Code Ch. 39 and violations of the express "repossession fee" requirements of D.C.M.R. § 16-342.2 on behalf of the Excessive repossession Fee Class. Plaintiff alleged that Navy Federal conditioned redemption, reinstatement, or release of Plaintiff's vehicle on the payment of repossession fees in excess of \$100. Plaintiff sought damages pursuant to D.C. Code § 28-3905(k)(1) and attorney's fees and expenses among other relief.

See Complaint ¶¶ 26-71.

Following the filing of the Complaint, the Parties began to confer and discuss the potential for an early resolution to the case but could not reach an agreement. On November 4, 2019, Defendant filed its Motion to Dismiss Plaintiff's Complaint, to which she filed an opposition on December 2, 2019. The Court entered an order denying Defendant's motion to dismiss on December

19, 2019. Thereafter, the Parties engaged in written discovery through which Navy Federal provided Plaintiff with information concerning potential class members, the documents associated with the repossession of putative class members' vehicles, and the deficiency amounts owed by putative Class Members whose vehicles were sold after repossession. *See* Declaration of Nicholas A. Migliaccio ("Migliaccio Decl.") ¶ 4, attached hereto as Exhibit 3.

In an attempt to resolve the litigation, the Parties participated in a multiple-day virtual mediation that began on March 24, 2020, and was facilitated by Jonathan Marks, a nationally recognized class action mediator. The mediation concluded with an agreement in principle and signed term sheet on March 26, 2020. *See* Migliaccio Decl. ¶ 5. Following mediation, and after extensive arms-length negotiations over the course of approximately four months, the Parties entered into the Settlement, the terms of which are memorialized in the Settlement Agreement. *Id.*

III. PROPOSED CLASS ACTION SETTLEMENT TERMS

The significant terms of the proposed settlement are the following:

A. CERTIFICATION OF A SUPER. CT. R. CIV. P. 23(B)(3) SETTLEMENT CLASS

For settlement purposes only, Plaintiff seeks preliminary certification of a Settlement Class pursuant to D.C. Sup. Ct. R. 23(b)(3), consisting of members of the following three classes:

The Deficient Notification Class

All individuals who are or were a party to a secured auto loan agreement with Navy Federal from three years prior to the filing of the Complaint through the date the Complaint was filed by which Navy Federal provided financing for the purchase of a motor vehicle, from a dealer, for personal use, which (1) Navy Federal repossessed and (2) which Navy Federal, or its agent, failed to deliver to the individual written notice of the amount due and payable and/or the exact address where the motor vehicle is stored and/or the time and place of the disposition of the vehicle and/or (3) which Navy Federal, or its agent, failed to provide individuals with written notice of its intent to sell their vehicle through an auction, the location of the auction, and/or the time and date of the auction.

The Improper Storage Class

All individuals who are or were a party to a secured auto loan agreement with Navy Federal from three years prior to the filing of the Complaint through the date the

Complaint was filed by which Navy Federal provided financing for the purchase of a motor vehicle, from a dealer, for personal use, which (1) Navy Federal repossessed and (2) which Navy Federal, or its agent, retained or stored the repossessed vehicle outside of the District of Columbia or the state and county where the consumer resides, or the state and county where the vehicle was repossessed.

Excessive Storage Fee Class

All individuals who are or were a party to a secured auto loan agreement with Navy Federal from three years prior to the filing of the Complaint through the date the Complaint was filed by which Navy Federal provided financing for the purchase of a motor vehicle, from a dealer, for personal use, which (1) Navy Federal repossessed and (2) which Navy Federal, or its agent, conditioned the redemption of, reinstatement of, or release upon the payment of a “repossession fee” or other fees related to the repossession of the motor vehicle, other than storage fees, which alone or in combination, exceeded \$100.

See Settlement Agreement at ¶ 1.2. There are two hundred forty-three (243) settlement class members. *See* Migliaccio Decl. ¶ 6.

B. CLASS REPRESENTATIVE AND CLASS COUNSEL APPOINTMENT

For settlement purposes, the Parties request that the Court appoint Plaintiff Eboni E. Washington as the Class Representative on behalf of the Settlement Class and appoint Plaintiff’s counsel, Migliaccio & Rathod LLP, as counsel for the Settlement Class (“Class Counsel”).

C. THIRD-PARTY CLASS ACTION ADMINISTRATOR

In the event that the Court preliminarily approves the Settlement, Navy Federal will retain RG/2 Claims Administration (“Class Administrator”) to administer the Settlement and pay costs of notice and administration up to a cap of \$11,000. The Class Administrator will oversee the administration of the settlement and notification to the Settlement Class. The Class Administrator will be responsible for mailing the approved class action notices to the Class Members. After receiving the Settlement Payment from Navy Federal, the Class Administrator shall set up a settlement fund for purposes of holding the Settlement Fund in escrow for ultimate disbursement after Final Judicial Approval.

D. CLASS NOTICE BY MAIL AND EMAIL

If the Court grants preliminary approval, within seven (7) days of the Court's entry of the Preliminary Approval Order, Navy Federal will provide the Class Administrator and Class Counsel its complete list of class members with the following personal identifiers: full name, last known address, telephone number, and email address in encrypted format as further described in the Settlement Agreement. *See* Settlement Agreement at ¶ 3.1(b). Within thirty (30) days of the Court's entry of the Preliminary Approval Order, the Class Administrator will email and mail the Court-approved notice to each Class Member by U.S. mail, postage prepaid, at his or her last known address. To the extent a mailing returns as undeliverable, the Settlement Administrator shall exercise reasonable means to locate an updated mailing address and mail to that address, including conducting "skip traces." The mailed notice will reference the website established by Class Counsel, www.nfreposettlement.com. This website will contain relevant court documents, frequently asked questions, and the notice, prepared by Class Counsel and approved by Defendant's counsel. The Parties request that the Court order notice in a form similar to the Proposed Notice attached as Exhibit A to the Settlement Agreement.

E. SETTLEMENT CONSIDERATION

1. Class Settlement

Per the terms of the Settlement, Navy Federal shall provide a Settlement Payment in the amount of eight hundred thousand dollars (\$800,000) to the settlement administrator within fourteen (14) days of the Court's preliminary approval of the Settlement. This is the only payment Defendant will make to settle the class claims. Following Final Judicial Approval, the Settlement Fund shall be divided as detailed below.

From the settlement fund, five hundred and three thousand, four hundred eighty-six dollars and eighty-four cents (\$503,486.84) (hereafter "the Settlement Class Consideration") shall be

divided between all 243 Settlement Class Members. The Settlement Class Consideration will be divided on an equal pro-rata basis for the estimated total of 673 alleged violations of the provisions of the D.C. Municipal Regulations and the D.C. Uniform Commercial Code. Migliaccio Decl. ¶ 6. Settlement Class Members will recover one pro-rata share for each violation associated with the repossession of their vehicle. Defendant's records will be used to determine the number of violations per class member. Payment checks will be mailed to Settlement Class Members within thirty (30) days of the Effective Date. However, no checks will be mailed to Settlement Class Members for whom the Settlement Administrator was unable to obtain a valid mailing address and for whom the class notice was returned as undeliverable with no forwarding address. Each mailed check shall become void ninety (90) days after issuance. Any checks not cashed, or funds not disbursed pursuant to this paragraph shall be deposited with the District of Columbia Office of the Chief Financial Officer Unclaimed Property Unit. *See* Settlement Agreement ¶ 2.2(d).

2. Named Plaintiff's Consideration

Class Counsel will seek, and Defendant will not oppose, a service award to Ms. Washington, in the amount of seven thousand five hundred dollars (\$7,500) in recognition of her willingness to step forward, participate in an investigation, file suit, and otherwise commit time and effort as a Class Representative.

In addition, within seven (7) days of entry of the Final Approval Order, Navy Federal will submit requests to the three major credit reporting agencies to which it reports (Experian, Equifax, and TransUnion) to delete the tradeline associated with Ms. Washington's auto loan account with Navy Federal. In addition, within seven (7) days of entry of the Final Approval Order, Navy Federal will forgive Ms. Washington's remaining balance on her vehicle loan and release any security interest in Ms. Washington's vehicle. *See* Settlement Agreement ¶ 2.2(a). These terms were determined to be appropriate by Class Counsel only after an agreement had been reached on the

award to the Settlement Class and other terms of the Settlement Agreement. *See* Migliaccio Declaration ¶ 8.

3. Modification of Deficiency Judgments and Credit Reporting

In addition to their pro-rata distribution described above, for members of the Deficient Notification Class who received notice that their vehicle would be sold at a private sale but whose vehicle was actually to be sold at a public auction, Defendant will ensure that no further collection action is taken on any deficiency judgments. *See* Settlement Agreement ¶ 2.3(c).¹

The Class Notice will also inform this specific group of putative Class Members that a tradeline deletion request regarding the account at issue in this litigation will be made on their behalf unless they submit a form indicating that they do not want such a request made. Unless such class member submits this form within thirty (30) calendar days after entry of the Final Approval Order, Defendant will request deletion of the three major credit bureau's tradelines associated with the Class Member's auto loan account with Navy Federal that are the subject of this litigation. If within ninety (90) calendar days from the Court's entry of the Final Approval Order, a Class Member described in this paragraph determines that one or more of the credit bureaus has not complied with Defendant's request as set forth above, the class member will provide prompt written notice to Navy Federal with copies of any credit bureau reports to which the Class Member contends the trade line was not modified. Within thirty (30) days following receipt of such notice, Navy Federal will again request that the credit bureau(s) that have not updated the class member's credit reports delete the Account from their report.

¹ Excluded from this group will be those putative class members who (i) redeemed their repossessed vehicle the same day that Navy Federal received notice of repossession and (ii) whose repossessed vehicles were not registered in the District of Columbia.

4. Injunctive Relief

Prior to the Court's Final Approval of the Class Action Settlement, Navy Federal shall confirm that it has modified its repossession practices and procedures to ensure the following:

- 1) Navy Federal will ensure that post-repossession notifications accurately state the intended manner of disposition, including the time and place of a public sale as required by D.C. Code § 28:9-614;
- 2) Navy Federal will ensure that its repossession agents performing services for Navy Federal in D.C. comply with DCMR § 341.5;
- 3) For members of the Deficient Notification Class who received notice that their vehicle would be sold at a private sale but whose vehicle was actually to be sold at a public auction, Navy Federal will ensure that no further collection action will be taken on any deficiency judgments. This provision does not include those members of the Deficient Notification Class (i) who redeemed his/her repossessed vehicle the same day Navy Federal received notice of repossession and (ii) whose repossessed vehicles were not registered in D.C.;
- 4) Without affecting in any way the finality of the judgment, the Court reserves continuing and exclusive jurisdiction over the Parties, including all Settlement Class Members, related to the Settlement and the execution, consummation, administration, and enforcement of the terms of the Settlement Agreement;

See Settlement Agreement ¶ 2.3.

5. Class Counsel's Fees, Costs, and Expenses

Class Counsel will seek Court approval, at the final approval stage, of an award of attorneys' fees and costs for the action in the amount of two hundred sixty-six thousand, and six hundred sixty-six dollars and sixty-six cents (\$266,666.66) and eleven thousand, three hundred forty-six dollars and fifty cents (\$11,346.50) respectively, to be paid by Defendant. *See* Settlement Agreement ¶ 2.2(c). Class Counsel's request for attorneys' fees represents one-third (1/3) of the common fund. Notably, the fees and expenses were negotiated only after the Parties agreed to all other terms. Migliaccio Decl. ¶ 7.

6. Fee and Expenses of the Administration

The Parties will seek Court approval for the appointment of RG/2 as the Settlement Administrator. The Settlement Administrator has agreed to a fee cap of \$11,000. *See* Settlement Agreement ¶ 2.2(b).

F. EXCLUSIONS AND OBJECTIONS

Per the terms of the Settlement, any Class Member who desires to be excluded from the Class must send to Defendant's Counsel a written request for exclusion. The Parties request that the Court order that such exclusion requests be postmarked no later than sixty (60) days from the date on which the Court enters an Order of Preliminary Approval (the "Objection/Exclusion Deadline"). Defendant's Counsel shall thereafter provide a list identifying each Class Member who timely requested exclusion to Class Counsel. As further explained in the Settlement Agreement, persons who purport to opt-out of this Agreement as a group, on an aggregate basis, or as a class involving more than one Settlement Class Member shall not be considered valid opt-outs. *See* Settlement Agreement ¶ 3.3.

Similarly, any Class Member who wishes to object to the terms of the Settlement must mail a written objection to Class Counsel and Defendant's Counsel by the Objection/Exclusion Deadline, indicating (1) the legal and factual arguments supporting objection and (2) whether he or she intends to appear at the fairness hearing. Counsel for the parties will jointly file any objections and requests for exclusion they receive with the Court prior to the Fairness Hearing. *See* Settlement Agreement ¶ 3.2.

IV. ARGUMENT

Superior Court Rule 23(e) provides that "[a] class action shall not be ... compromised without approval by the Court, and notice of the proposed ... compromise shall be given to all members of the class in such manner as the Court directs." Super. Ct. R. 23(e). To certify a class for settlement

purposes only, this Court must first consider whether the proposed class meets the requirements of Superior Court Rule 23, “although the court need not determine whether the case, if tried, would present intractable management problems.” *Radosti v. Envision EMI, LLC*, 717 F. Supp. 2d 37, 50 (D.D.C. 2010) (referencing Fed. R. Civ. P. 23).² Although “[t]he Court should scrutinize the terms of the settlement carefully, ... the discretion of the Court to reject a settlement is restrained by the ‘principle of preference’ that encourages settlements.” *Stephens v. US Airways Grp., Inc.*, 102 F. Supp. 3d 222, 226 (D.D.C. 2015).

A. THE RULE 23(A) REQUIREMENTS ARE SATISFIED.

1. Numerosity

Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” In the District of Columbia, “[a]bsent unique circumstances, numerosity is satisfied when a proposed class has at least forty members.” *Coleman v. District of Columbia*, 306 F.R.D. 68, 76 (D.D.C. 2015) (quotation marks omitted).

There are two hundred forty-three (243) settlement class members in the Settlement Class. Joinder of this many individuals is impracticable, so sufficient numerosity exists. *See Aouatif Ait-Hamadi v. Ristorante La Perla*, No. 2016 CA 002467 B, 2017 D.C. Super. LEXIS 1, *9 (D.C. Super. Ct. Mar. 7, 2017).

2. Commonality

Rule 23(a)(2) requires that the court find that “that there are questions of law or fact common to the class.” Commonality is satisfied when “members of a proposed class have ‘suffered the same injury’ such that their claims depend upon the resolution of a ‘common contention.’” “is satisfied

² “[W]hen a federal rule and a local rule contain the same language, ‘we will look to federal court decisions interpreting the federal rule as persuasive authority in interpreting the local rule’” *Oparaugo v. Watts*, 884 A.2d 63, 69 n.1 (D.C. 2005) (quoting *Peddlers Square, Inc. v. Scheuermann*, 766 A.2d 551, 556 n.4 (D.C. 2001)). “[Superior Court] Rule 23 is identical to Federal Rule of Civil Procedure 23 except for certain changes in subsections (c)(1) and (c)(2)” Comments to Super. Ct. R. Civ. P. 23.

when there is at least one issue, the resolution of which would affect all or a significant number of the putative class members.” *Healthy Futures of Tex. v. HHS*, 326 F.R.D. 1, 7 (D.D.C. 2018) (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). And the common issue must be such that “determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc.*, 534 U.S. at 338. The standard is a liberal one that cannot be defeated by factual variances in individual grievances among class members. *See, e.g., Mitchell-Tracey v. United Gen. Title Ins. Co.*, 237 F.R.D. 551, 557 (D. Md. 2006).

This case involves common questions of fact and law. For the Settlement Classes, common questions of law and fact include whether Navy Federal (1) failed to inform account holders of the exact address where their repossessed vehicles were stored, (2) routinely stored towed vehicles outside of the District of Columbia or the state and county in which the consumer resides or the vehicle was located, (3) charged repossession fees in excess of \$100, or (4) whether Defendant is liable for damages under D.C. Code 28:9-625.

3. Typicality

To satisfy the typicality requirement, “the claims or defenses of the representative parties [must be] typical of the claims or defenses of the class” Super. Ct. Civ. R. 23(a)(3). When the representative’s claims “arise from the same events, practice, or conduct, and are based on the same legal theory as those of other class members, the typicality requirement is satisfied.” *In re Rail Freight Fuel Surcharge Antitrust Litig.*, 287 F.R.D. 1, 32 (D.D.C. 2012). The purpose of this requirement is to “ensure[] that the claims of the representative and absent class members are sufficiently similar so that the representatives’ acts are also acts on behalf of, and safeguard the interests of, the class.” *Julian Ford v. ChartOne, Inc.*, 908 A.2d 72, 86 (D.C. 2006) (quoting *Bynum v. District of Columbia*, 214 F.R.D. 27, 33 (D.D.C. 2003)). As long as this purpose is met,

then "[f]actual variations between the claims of class representatives and the claims of other class members . . . do not negate typicality." *Id.*

The typicality requirement is met here. Plaintiff's alleged injuries are the same as alleged on behalf of each class and arise from alleged patterns or practices of Navy Federal. The alleged conduct is typical of that experienced by members of each Settlement Class. Plaintiff's legal claims are typical of those of the Class as a whole because they apply the same legal theories to the same policies and practices.

4. Adequacy

Rule 23(a)(4) requires that a class representative "fairly and adequately protect the interest of the class." To assess adequacy, the Court generally examines whether: (1) the interests of the class representative are antagonistic to or in competition with the interests of the unnamed class members; (2) the class representative can "prosecute the interests of the class through qualified counsel." *Trombley*, 826 F. Supp. 2d at 193.

Plaintiff has no antagonistic or conflicting interests with the Class Members. Both Plaintiff and the Class Members seek statutory damages for Navy Federal's allegedly unlawful actions. As discussed above, Plaintiff is pursuing the same legal theories as the rest of the Class relating to the same course of Defendant's conduct. There is no potential for conflicting interests.

Moreover, Plaintiff has retained counsel competent and experienced in complex class action litigation and who have prosecuted the action vigorously. Plaintiff's Counsel has represented and obtained judgment or settlement on behalf of significant classes they have represented. *See* Migliaccio Decl. ¶ 9. Class Counsel have recovered millions of dollars for the classes they have represented. Class Counsel are qualified to represent the Class and will, along with Plaintiff, vigorously protect the interests of the Class.

B. THE RULE 23(B) REQUIREMENTS ARE SATISFIED.

“In addition to satisfying Rule 23(a)’s prerequisites, parties seeking class certification must show that the action is maintainable under Rule 23(b)(1), (2), or (3).” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997). The Parties seek certification pursuant to Rule 23(b)(3).

1. The Class Should Be Certified Under Rule 23(b)(3).

Rule 23(b)(3) actions may be permitted in “situations in which class-action treatment is not as clearly called for, but may nevertheless be convenient and desirable.” *Id.* at 615 (internal quotation marks omitted). To certify such a class, the court must find that “the questions of law or fact common to the members of the class *predominate* over any questions affecting only individual members, and that a class action is *superior* to other available methods for the fair and efficient adjudication of the controversy.” D.C. Sup. Ct. R. 23(b)(3) (emphasis added). Preliminary certification of the proposed class is appropriate under Rule 23(b)(3). The predominance and superiority factors are addressed below. “The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623.

To satisfy the commonality and predominance requirement, plaintiffs must show “questions of law or fact common to the class,” Super. Ct. Civ. R. 23(a)(2), that “predominate over any questions affecting only individual members” Super. Ct. Civ. R. 23(b)(3). “[T]he Commonality requirement is satisfied “by a single common issue,” and “courts have noted that it is often easily met.” *In re Rail Freight Fuel Surcharge Antitrust Litig.*, 287 F.R.D. at 31; *see also Taylor v. Dist. of Columbia Water & Sewer Auth.*, 241 F.R.D. 33, 37 (D.D.C. 2007). Not every issue of law or fact needs to be identical for each putative class member; it is sufficient that there is one issue whose resolution will affect a significant number of the putative class members. *Id.*; *see also Lindsay v. Gov’t Emples. Ins. Co.*, 251 F.R.D. 51, 55 (D.D.C. 2008). Common issues predominate over

individual issues where a plaintiff has alleged common courses of conduct on the part of a defendant. *See In re. Vitamins Antitrust Litig.*, 209 F.R.D. 251, 260 (D.D.C. 2002).

Here, proof of Navy Federal's liability for each alleged Settlement Class would be based on common policies and practices that applied universally to all class members. D.C. regulation requires a particularized notification to be sent to Class Members following Defendant's repossession of their vehicles. Moreover, since D.C. regulations clearly mandate whether a creditor may charge a "repossession fee" in excess of \$100 or a storage fee in excess of \$3 per day, the claims of the Settlement Class could largely be resolved on the basis of a common and predominant factual inquiry regarding whether Defendant, as a matter of practice, charged repossession fees in excess of \$100 and storage fees in excess of \$3 per day. Similarly, Defendant's records can easily be reviewed to confirm whether Class Members' vehicles were stored in a state and county that is different from the state and county where they reside. Because these factual questions predominate and have the potential to resolve the class claims, Rule 23(b)(3) requirements are met.

C. THE PROPOSED SETTLEMENT IS FUNDAMENTALLY FAIR, REASONABLE, AND ADEQUATE.

Rule 23(e) determines whether a court may approve a proposed settlement "after a hearing and on finding that it is fair, reasonable, and adequate. *Jane Doe 2 v. Georgetown Synagogue - Keshet Isr. Congregation*, No. 2014 CA 7644 B, 2018 D.C. Super. LEXIS 17, *14 (D.C. Super. Ct. Sept. 19, 2018). There is no single test "for determining whether a proposed class action settlement should be approved ..., and the relevant factors may vary depending on the circumstances." *In re. Lorazepam & Clorazepate Antitrust Litig. v. Mylan Labs.*, 205 F.R.D. 369, 375 (D.D.C. 2002). Generally, courts examine the following factors: "(1) whether the settlement is the result of arms-length negotiations; (2) the terms of the settlement in relation to the strengths of plaintiffs' case; (3)

the status of the litigation proceedings at the time of the settlement; (4) the reaction of the class; and (5) the opinion of experienced counsel.” *Jane Doe 2*, 2018 D.C. Super. Lexis 17 at *15.

1. The Proposed Settlement is Fair.

“A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery.” *Howard v. Liquidity Servs.*, 2018 U.S. Dist. LEXIS 172321, *14 (D.D.C. Oct. 5, 2018). The Settlement is the result of substantial arms-length negotiations and significant, substantive discovery. *See* Migliaccio Decl. ¶¶ 4, 5. Furthermore, Mediator Jonathan Marks actively assisted the Parties’ in resolving their differences across a virtual mediation that lasted multiple days. *See* Migliaccio Decl. ¶ 5.

The Settlement provides no preferential treatment for Plaintiff or other Class members. Although it provides for a service award to Ms. Washington, which is subject to the Court’s approval, this payment is respectively designed to separately compensate Plaintiff for her time and participation in the litigation.³ The award was negotiated only after the Parties agreed to all other terms. *See* Migliaccio Decl. ¶ 8.

The Settlement also provides for an award of attorneys’ fees and expenses to be paid out of the common fund. Plaintiff’s intended fee request, which was also only negotiated after the Parties agreed as to all other terms, will constitute one-third of the monetary settlement sum. This is consistent with fees approved in other cases. *See, e.g., Radosti v. Envision EMI, LLC*, 760 F. Supp.

³ Notably, in *Hawkins v. Transit Employees Federal Credit Union*, Civil Action No. 2012 CA 007335 B (hereafter known as “*Hawkins*”), which was an earlier case against a different credit union for violations similar to those at issue here, the named Plaintiff received \$37,500 to compensate her for her individual claims that were not included in the class action claims (plaintiffs’ counsel in *Hawkins* was the Honorable Steven N. Berk, prior to his appointment to the Superior Court). Similarly, in *Sonya O. Carr v. Transit Employees Federal Credit Union*, Civil Action No. 2017 CA 008613 B, the named representative, Ms. Carr received \$11,000 in exchange for the release of individual claims that were not included in the class action claims as well as an additional \$5,000 service award in recognition of her efforts as class representatives.

2d 73, 78 (D.D.C. 2011) (“A 33% award is consistent with the award in other common fund cases from this district.”); *Jane Doe 2*, 2018 D.C. Super. LEXIS 16 at *13 (“[P]ercentage-of-the-fund method is the appropriate mechanism for determining the attorneys['] fees award in common fund cases, [and may] range from fifteen to forty-five percent”).

2. The Proposed Settlement is Adequate in Relation to Strength of the Case.

The relative strengths of the proposed settlement and the case have been called the most important factor a court considers when evaluating a proposed settlement. *See, e.g., Blackman v. District of Columbia*, 454 F. Supp. 2d 1, 8 (D.D.C. 2006). The Court must evaluate the proposed relief against the relative strength of plaintiffs’ case, including their ability to obtain recovery at trial. *See Equal Rights Ctr. v. Wash. Metro. Area Transit*, 573 F. Supp. 2d 205, 211 (D.D.C. 2008) (citing *Thomas v. Albright*, 139 F.3d 227, 231 (D.C. Cir. 1988)).

a. The Benefits to Settlement Class Members

The Settlement provides for pro-rata distribution of the \$503,486.84 settlement fund, which will be divided between the 243 Class Members, providing each Class Member with *a minimum* recovery of \$748.12 per alleged violation of the Consumer Protection Procedures Act. This distribution will provide monetary relief per violation that is comparable or exceeds that obtained by the plaintiffs in previous repossession cases against credit unions.⁴ Additionally, the Settlement provides for prospective injunctive relief, a result that plaintiffs did not obtain as part of the settlement in *Hawkins*. Here, Navy Federal will modify its practices to ensure compliance with District of Columbia regulations. Moreover, the Settlement provides that Navy Federal will take no further collection action on the deficiency balances for a group of 67 Class Members whose vehicles

⁴ In *Carr v. Transit Employees Federal Credit Union*, No. 2017 CA 008613 B, the plaintiff obtained a settlement fund of \$115,126.98 that was divided between a class of 54 individuals, and a total recovery of \$1,046.60 per violation. Similarly, in *Hawkins*, the class of 178 individuals shared \$150,000, resulting in an average recovery of \$842.69 per class member.

were sold in a public auction despite notice that they would be disposed of via a private sale. The removal of these deficiency balances creates an additional benefit to the class of over \$828,000. By maintaining jurisdiction for three years, this Court will be in the position to address any violations of the agreement.

b. The Anticipated Duration and Expense of Additional Litigation

Aside from the potential that either side could lose at trial, the Parties anticipate incurring substantial additional costs if the litigation continues. Defendant has indicated its intent to file a motion for summary judgment and to appeal the Court's decision on its motion to dismiss. Even were Plaintiff to avoid the dismissal of any of her claims, the level of additional costs would significantly increase as Plaintiff's counsel begin their preparations to seek certification, obtain additional discovery, and conduct the trial. *See Migliaccio Decl.* ¶ 10. Both Plaintiff and Defendant must weight these costs since (a) the Plaintiff would bear them in the event that her claims were defeated and (b) Defendant might bear them in the event that Plaintiff and the putative class prevail on claims arising under the CPPA, which provides for fee-shifting.

c. The Solvency of the Defendant and the Likelihood of Recovery

Navy Federal is a viable credit union with substantial assets; however, by settling the case, Navy Federal is able to control its exposure to an adverse ruling and award of damages.

d. The Proposed Class Notice is the Best Notice Practicable.

The proposed settlement provides for individual, written notice to each Class Member. Before sending the written notice, Defendant and the class administrator will confirm and, if necessary, update the addresses for the Class Members. The proposed notice letter, Exhibit A, complies with both Rule 23(c)(2)(B) and (e)(1). Additionally, Class Counsel will maintain an Internet website that will enable Class Members to access the Notice and other pertinent documents and list critical dates; and provide relevant updates regarding the settlement and approval process.

e. **Reaction of the Class and Opinion of Plaintiff's Counsel.**

To date, Plaintiff's Counsel is unaware of any other actions initiated by putative class members, or any objections to the terms of the settlement from any putative class members. Furthermore, it is Plaintiff's Counsel experience that the settlement provides fair consideration for the release of claims raised against Defendant. *See* Migliaccio Decl. ¶ 7.

IV. PROPOSED SCHEDULE OF EVENTS

The Court's entry of the Preliminary Approval Order would, among other things, (1) certify the action as a class action for purposes of the settlement; (2) direct notice of the settlement to all members of the Settlement Classes; (3) schedule a hearing to consider whether the settlement should be approved as being fair, reasonable, and adequate. The parties respectfully request that the Preliminary Approval Order approve the proposed schedule attached as Exhibit 4.

V. CONCLUSION

Plaintiff respectfully requests that the Court (1) grant the consent motion, (2) enter the proposed Preliminary Approval Order preliminarily (a) certifying the proposed Settlement Class, (b) approving the proposed Settlement, (c) appointing Plaintiff as Class Representative for the Settlement Class, (d) appointing Plaintiff's Counsel as Class Counsel, (e) approving the form and manner of notice, (f) approving the procedures for Class Members to exclude themselves from the Settlement Class or object to the Settlement, (3) schedule a fairness hearing, and (4) stay all other deadlines in the case pending Final Approval.

Date: May 7, 2020

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing Memorandum in Support of Consent Motion for Preliminary Approval of Class Action Settlement was served on all counsel of record by operation of the Court's electronic filing system, File & Serve Xpress, this 7th day of May 2020 on all counsel of record, namely:

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