SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

EBONI WASHINGTON, Plaintiff, v. NAVY FEDERAL CREDIT UNION, Defendant.	Case No.: 2019 CA 005735 B Judge Jason Park Fairness Hearing: 10/30/2020

ORDER

This matter is before the Court on the plaintiff's consent motion for preliminary approval of class action settlement. For the reasons discussed below, the Court grants the motion.

BACKGROUND

On August 30, 2019, the plaintiff, Eboni Washington, commenced this putative class action against the defendant, Navy Federal Credit Union ("Navy Federal"), asserting class claims on behalf of herself and a putative class of those similarly situated for alleged violations of the D.C. Consumer Protection and Procedures Act ("CPPA"), D.C. Code §§ 28-3901 *et seq.* According to the complaint, the defendant violated the CPPA and its implementing regulations by, *inter alia*, failing to provide written notification to debtors disclosing the amounts due and payable, the defendant's intent to sell their vehicles through a public auction, the time of place of the public disposition of their repossessed vehicles, and the address where the vehicles were stored. The plaintiff further alleges that the defendant caused class members' vehicles to be stored outside of the District less than fifteen days after written notice of their vehicles' repossession and conditioned redemption of the vehicles on the payment of repossession fees in excess of $100, in violation of the CPPA and its regulations.

In March 2020, the parties participated in a multi-day virtual mediation "facilitated by Jonathan Marks, a national recognized class action mediator. The mediation concluded with an agreement in principle and signed term sheet on March 26, 2020." Pl.'s Mot. for Prelim. Approval of Class Action Settlement ("Pl.'s Mot.") at 3. "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*. On May 7, 2020, the plaintiff filed a consent motion for preliminary approval of class action settlement. *See generally id.* This Court held a hearing on June 19, 2020, during which the parties addressed the Court's inquiries regarding the terms of the proposed settlement.

ANALYSIS

I. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION SETTLEMENTS

"Court approval of a class action settlement proceeds in two stages." *Rapuano v. Trs. of Dartmouth Coll.*, 2020 U.S. Dist. LEXIS 14634, *2-3 (D.N.H. Jan. 29, 2020) (citing 4 William B. Rubenstein, *Newberg on Class Actions* § 13.10 (5th ed. 2019)). "First, the parties present a proposed settlement to the court for 'preliminary approval' and ask the court to make a preliminary determination regarding class certification." *Id.* at *3 (citing Rubenstein, *supra*, § 13.10). "At this preliminary stage, the court must determine whether it 'will likely be able to': (1) certify the class for purposes of judgment on the proposed settlement; and (2) approve the settlement proposal under Rule 23(e)(2)." *Id.* (citing Fed. R. Civ. P. 23(e)(1)(B)); *see also* D.C. Super. Ct. Civ. R. 23(e)(1)(B). "If the court is satisfied on both inquiries, the court should 'direct notice in a reasonable manner to all class members who would be bound' by the proposed settlement." *Rapuano*, 2020 U.S. Dist. LEXIS 14634, at *3; *see also* D.C. Super. Ct. Civ. R. 23(e)(1)(B). "After notice to the class, the court holds a fairness hearing at which class members may appear to support

or object to the proposed settlement." *Rapuano*, 2020 U.S. Dist. LEXIS 14634, at *3 (citing Rubenstein, *supra*, § 13.10); *see also* D.C. Super. Ct. Civ. R. 23(e)(2).

Before recent amendments, Rule 23(e) permitted the courts to grant preliminary approval to a settlement so long as it appeared "to fall within the range of possible approval and d[id] not disclose grounds to doubt its fairness or other obvious deficiencies," *Richardson v. L'Oréal USA, Inc.*, 951 F. Supp. 2d 104, 106 (D.D.C. 2013). The amended rule, however, requires a preliminary determination that the court "will likely be able to" certify the class and find that the proposed settlement is fair, reasonable and adequate. *See Rapuano*, 2020 U.S. Dist. LEXIS 14634, at *3. This "likelihood" standard "demands a searching—not a relaxed—inquiry" and the decision to preliminarily approve a settlement "should be based on a solid record supporting the conclusion that the proposed settlement will likely earn final approval after notice and an opportunity to object." *Id.* (citing Fed. R. Civ. P. 23, adv. Comm. Note); *accord In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 28 (E.D.N.Y. 2019).

A court may grant final approval only after holding a fairness hearing and finding that the settlement is fair, reasonable and adequate under Rule 23(e). *Lamb v. Bitech, Inc.*, 2013 U.S. Dist. LEXIS 109875, at *10 (N.D. Cal. Aug. 5, 2013). "To make the ultimate determination of whether a settlement is fair, reasonable and adequate requires evaluating several factors, including the strength of plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement." *Id.*; *see also* D.C. Super. Ct. Civ. R. 23(e)(2).

II. DISCUSSION

A. The Court Will Likely Be Able to Approve the Settlement

Based on the representations made by the parties in the consent motion for preliminary approval and at the June 19, 2020 hearing on that motion, the Court finds that it will likely be able to find that the proposed settlement is fair, reasonable, and adequate. The Court notes that the proposed settlement appears to be the product of serious, informed, non-collusive negotiations undertaken by experienced counsel. The parties engaged in these negotiations after substantial written discovery gave counsel "sufficient information . . . to reasonably assess the risks of litigation vis-à-vis the probability of success and range of recovery." *See Richardson*, 951 F. Supp. 2d at 107 (quotation and citation omitted). "Settlements that follow sufficient discovery and genuine arms-length negotiation are presumed fair." *Lamb*, 2013 U.S. Dist. LEXIS 109875, at *11. "Absent fraud or collusion, [courts] should be hesitant to substitute [their] judgment for that of the parties who negotiated the settlement." *Tiro v. Public House Invs., LLC*, 2013 U.S. Dist. LEXIS 72826, at *9 (S.D.N.Y. May 22, 2013). The participation of an experienced mediator further supports the conclusion that the proposed settlement is not collusive. *See id*. ("A settlement . . . reached with the help of third-party neutrals enjoys a presumption that the settlement achieved meets the requirements of due process.") (quotation and citation omitted).

The Court also concludes that it will likely be able to find that the proposed settlement is adequate in relation to the strength of the case. The proposed 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 CPPA. These terms are comparable to amounts obtained by plaintiffs in prior repossession cases against credit unions. *See, e.g., Carr v. Transit Employees Federal Credit Union*, Case No.

2017 CA 008613; *Hawkins v. Transit Employees Federal Credit Union*, Case No. 2012 CA 007335 B. Importantly, the proposed settlement also provides for prospective injunctive relief, pursuant to which the defendant will modify its practices to ensure compliance with District of Columbia law. The proposed settlement further prohibits the defendant from taking further collection action on the deficiency balances for those class members whose vehicles were sold in a public auction despite notice that they would be disposed of via a private sale. The proposed settlement requires the defendant to request deletion of the three major credit bureau's tradelines associated with any class member's auto loan account subject to this litigation. By agreement, the Court will maintain jurisdiction over this matter for three years to address any violations of the agreement's terms.

Proceeding with the litigation would expose both parties to substantial risks and substantial costs, in terms of both time and money, and both sides recognize that the class members might not prevail if they do not settle, and that continued litigation would substantially delay any potential recovery, quite possibly by years. In light of the relatively immediate benefits to the class members, the limited amount of any potential total recovery for the class, the complexity and expense of further litigation, the risk and delay inherent in further litigation, and some uncertainty of collecting a larger judgment obtained on behalf of the class, the Court finds that it will likely be able to conclude that the settlement is adequate in relation to the strengths of the case.

The Court has not identified any other obvious deficiencies in the proposed settlement. The proposed service award of $7,500 to Ms. Washington does not appear to be unreasonable and was negotiated only after the parties had agreed to all other terms. The proposed maximum award of $266,666.66 and $11,346.50, for attorney fees, costs, and expenses represents one-third of the monetary settlement sum and is consistent with fees approved in other cases. *See, e.g.*, *Radosti v.*

Envision EMI, LLC, 760 F. Supp. 2d 73, 78 (D.D.C. 2011). The fees for the class action administrator appear reasonable in light of the services that the administrator will provide.

For these reasons, the Court preliminarily finds that the proposed settlement is fair, reasonable, and adequate and that it will likely to be able to approve the settlement after notice and an opportunity to object.

B. The Court Will Likely Be Able to Certify the Class

The Court preliminarily finds that the action satisfies the applicable prerequisites for class action treatment under D.C. Super. Ct. Civ. R. 23:[1]

a. With approximately 243 settlement class members identified by counsel, the class members are numerous enough that joinder of all of them is impracticable.

b. There are questions of law and fact common to the class members, which predominate over any individual questions.

c. The claims of the plaintiff are typical of the claims of the class members because they arise from the same events, practices, or conduct and are based on the same basic legal theory.

d. The plaintiff and class counsel have fairly and adequately represented and protected the interests of all of the class members.

e. Class treatment of these claims will be efficient and manageable, thereby achieving an appreciable measure of judicial economy, and a class action is superior to the other available methods for a fair and efficient adjudication of this controversy.

[1] The Court has jurisdiction over the subject matter of this action and over the settling parties. *See* D.C. Code §§ 11-921; 28-3905(k)(2).

III. ORDER

Based on these preliminary findings, the Court orders that:

1. **Settlement classes**. Pursuant to Rule 23(b)(3), the action is preliminarily certified, for settlement purposes only, as a class action on behalf of the following classes with respect to the following claims:

- **Deficient Notice 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.

2. **Class Representatives and Class Counsel Appointment**. The Court preliminarily certifies the plaintiff, Eboni L. Washington, as the Class Representative. The Court preliminarily approves Migliaccio & Rathod LLP as Class Counsel.

3. **The Third-Party Class Action Administrator**. Pursuant to the terms of the settlement agreement, and subject to preliminary approval of the proposed settlement, Navy Federal has retained RG/2 Claims Administration as third-party administrator (the "Class Administrator") to assist in the administration of the settlement and the notification to class members. Navy Federal shall be responsible for all costs and expense for the Class Administrator, which shall be paid in accordance with the terms of the Agreement. The Class Administrator shall be responsible for mailing the approved class action notices and settlement checks to the class members.

4. **Notice**. The Court approves the form and substance of the written notice of class action settlement ("Notice"), attached to the Agreement as Exhibit A, with the modification discussed during the June 19, 2019 hearing. The proposed form and method for notifying the class members of the settlement and its terms and conditions satisfy the requirements of Rule 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all persons and entities entitled to the notice. The proposed notice is reasonably designed to advise the class members of their rights. In accordance with the Agreement, the Class Administrator shall cause the completed notices to be mailed to the class members as expeditiously as possible, but no later than ten days after the Court dockets this Order. As discussed during the June 19, 2019 hearing, the Notice shall advise potential class members that the fairness hearing may be held by video- or tele-conference, and that instructions for attending the remote hearing will be posted to the website maintained by the Class Action Administrator or by contacting the chambers of Judge Park at 202-879-1885.

5. Objections and Opt-Outs

a. Class members are not required to appear at the Fairness Hearing or take any other action to indicate their approval of the proposed class action settlement. In the event that this Court grants final approval of this settlement, the Final Order and Judgment, whether favorable or not, shall include all class members who do not request exclusion.

b. Each class member who wishes to be heard at the Fairness Hearing or otherwise object to the proposed settlement may appear with or without a lawyer and must file with the Court, and serve copies on Class Counsel and Defendant's Counsel, a signed, written submission (1) indicating his or her intention to object, (2) stating the name ("*Eboni L. Washington v. Navy Federal Credit Union*") and docket number of this case (Case No. 2019 CA 005735 B), as well as his or her (a) full name, (b) address, (c) telephone number, and (d) email address (if applicable), (3) setting forth each objection and the basis therefore, and (4) indicating whether he or she intends to appear at the Fairness Hearing. **All such submissions must be filed with the Court and served on Class Counsel and Defendant's counsel no later than September 11, 2020.**

c. Similarly, each Class Member wishing to exclude himself or herself from the proposed Class Action Settlement must provide a signed writing ("Opt-Out Request") to the Class Administrator per the terms of the Notice specifically stating that he or she wants to be excluded from the Settlement Class(es) and stating the Class Member's (a) full name, (b) address, (c) telephone number, and (d) email address (if applicable). **All Opt-Out Requests must be postmarked no later than September 11, 2020.**

d. Submissions by the Parties, including memoranda in support of the proposed settlement and responses to any objections, shall be filed with the Court no later than seven days before the Fairness Hearing.

6. **Effectiveness**. The Agreement shall be null and void if any of the following occur:

a. the Court refuses to finally approve this Settlement or any material part of it;

b. the Court requires a notice program in addition to or substantially different from that set forth in the Agreement;

c. the Court orders Navy Federal to pay attorney fees with respect to the litigation, other than as provided herein;

d. the Court orders Navy Federal to pay, with respect to the litigation, any amount above the contribution to the Settlement Funds, other than as provided in the Agreement;

e. the Court declines to enter the Judgment in any material respect;

f. more than ten putative class members opt out of any Settlement Class; or

g. the Judgment is reversed, vacated, or modified in any material respect by the District of Columbia Court of Appeals, the United States Supreme Court, or other adverse action is taken by any other trial court or appellate court in any jurisdiction.

If the Agreement is voided under this Paragraph 6 of this Order, then the Agreement shall be of no force and effect and the parties' rights and defenses shall be restored, without prejudice, to their respective positions as if the Agreement had never been executed and this Order never entered.

7. **Fairness Hearing and Final Approval**. The Court will conduct a remote Fairness Hearing at 10:30 a.m. on October 30, 2020, in Courtroom 519. Should the hearing be held

remotely, instructions for accessing the hearing will be emailed to counsel prior to the hearing. The hearing will serve as an opportunity for the Court to review and rule upon the following issues:

a. Whether this action satisfies the applicable prerequisites for class action treatment for settlement purposes under Rule 23;

b. Whether the proposed settlement is fundamentally fair, reasonable, adequate, and in the best interest of the class members and should be approved by the Court;

c. Whether the Final Order and Judgment, as provided under the Agreement, should be entered, dismissing this action with prejudice and releasing the Released Claims against the Released Parties; and

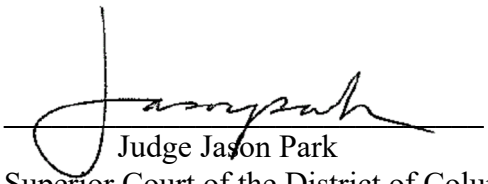
d. To discuss and review other issues as the Court deems appropriate.

The Fairness Hearing may be postponed, adjourned, transferred, or continued without further notice to the class members.

8. **Distribution of Class Funds**. If the Court grants final approval of the proposed settlement, the Class Administrator shall issue the first round of settlement checks ("First Round Checks"), as provided for by the Agreement and as expeditiously as possible, but no later than ten days after the Effective Date of the final approval. The Class Administrator will thereafter verify that the First Round Checks were mailed. In the event that a second round of settlement checks ("Second Round Checks") is necessary, per the terms of the Agreement, the Class Administrator shall issue the second round of settlement checks ("Second Round Checks") within 30 days of expiration of the First Round Checks. The Class Administrator will thereafter verify that the Second Round Checks were mailed.

9. **Continuing jurisdiction**. The Court retains continuing and exclusive jurisdiction over the action to consider all further matters arising out of or connected with the settlement, including the administration and enforcement of the Agreement.

SO ORDERED.



Judge Jason Park
Superior Court of the District of Columbia

Date: July 7, 2020

Copies to Counsel of Record via CaseFileXpress.