

FILED
08 JAN 2020 02:43 pm
Civil Administration
E. MEENAN

DOCKETED

CODEY FARLEY, individually and on
behalf of all others similarly situated,
Plaintiff

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

JAN 21 2020

vs.

PENNSYLVANIA STATE EMPLOYEES
CREDIT UNION

JUNE TERM, 2017

NO. 001889

R. POSTELL
COMMERCE PROGRAM

Defendant.

CLASS ACTION

**ORDER CERTIFYING SETTLEMENT CLASS, PRELIMINARILY
APPROVING CLASS SETTLEMENT AND DIRECTING THE
ISSUANCE OF NOTICE TO THE CLASS**

RECEIVED
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ROOM 521

AND NOW, this 17th day of January, 2020, the Court finds and Orders:

This Court has before it a proposed class action settlement. Having reviewed the Class Action Settlement Agreement and Release, which was filed of record as an exhibit to the Motion for Preliminary Approval (docketed 1/8/2020 and incorporated herein by reference) (the "Settlement Agreement"), having read the Plaintiff's Motion for Preliminary Approval, having been advised that Defendant joins in the relief requested, and based specifically upon the facts and circumstances at issue in the present case, the Court finds and ORDERS as follows:

1. Summary of Claims and Defenses:

The lawsuit claims that Pennsylvania State Employees Credit Union ("PSECU" or "Defendant") violated Pennsylvania's Uniform Commercial Code ("UCC") by failing to send borrowers in Pennsylvania (a) proper notices of disposition of collateral ("Repossession Notices") after repossession of their vehicle(s), and (b) proper explanations of calculation of deficiency ("Deficiency Notices") after the sale of the vehicles. Plaintiff asserts on behalf of himself and a class of borrowers ("Class A") that the Repossession Notices sent by PSECU misstate the amount needed to redeem, misrepresent the time period the borrower has to redeem the vehicle, and fail to adequately disclose the right to request an accounting of the unpaid indebtedness. 13 Pa. C.S. §§ 9611, 9614; *Cubler v. TruMark Fin. Credit Union*, 83 A.3d 235, 237 (Pa. Super. 2013).

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Control No.: 20011107

Plaintiff also asserts on behalf of himself and a class of borrowers (“Class B”) that the Deficiency Notices fail to provide the statutorily mandated explanation of how PSECU calculated a deficiency. 13 Pa. C.S. § 9616.

PSECU disputes Plaintiff’s legal entitlement to any relief under the UCC and maintains that its Repossession Notices and Deficiency Notices are legally compliant. PSECU further asserts defenses to the Second Amended Complaint and maintains that the matter would not meet the requirements for class certification if contested.

2. Class Findings for Settlement Purposes.

- (a) The numerosity requirement of Pa. R. Civ. P. 1702(1) is satisfied because Class A and Class B consist of approximately 8021 and 3962 Pennsylvania borrowers respectively. Thus, the Classes are so numerous that joinder would be impracticable.
- (b) The commonality requirement of Pa. R. Civ. P. 1702(2) is satisfied because members of the Classes share at least one common factual or legal issue, *i.e.*:
 - (i) Whether Plaintiff and the Classes obtained motor vehicle financing through PSECU and pledged the vehicle as collateral;
 - (ii) Whether PSECU repossessed the financed vehicle or ordered it repossessed;
 - (iii) Whether PSECU sent the notices of disposition of collateral required under the UCC after repossessing a vehicle;
 - (iv) Whether PSECU sent the notice of disposition of collateral in the form required under the UCC and Pennsylvania law after repossessing a vehicle;

(v) Whether PSECU sent an explanation of surplus or deficiency in the form required by the UCC;

(vi) Whether any failure to send the required explanation of deficiency was part of a pattern consistent with a practice of non-compliance; and

(vii) The statutory damages available for any alleged violations of the UCC.

(c) The typicality requirement of Pa. R. Civ. P. 1702(3) is satisfied because Defendant sent form Repossession Notices and Deficiency Notices to Plaintiff and other members of the Classes. Plaintiff asserts that the form Repossession Notices and Deficiency Notices utilized by Defendant fail to comply with state law. These are the same claims that all other members of the Classes possess.

(d) The adequacy requirement of Pa. R. Civ. P. 1702(4) is satisfied in that (i) the interests of the Representative Plaintiff Farley and the nature of his claims are consistent with those of all members of the Classes, (ii) there appear to be no conflicts between or among the Representative Plaintiff and the Class Members, and (iii) Mr. Farley and the Class Members are represented by qualified, experienced counsel who often have been certified as Class Counsel in similar matters in this Court and other courts.

(e) The requirements of Pa. R. Civ. P. 1702(5) and 1708 are met, in that: a Class Action for settlement purposes provides a fair and efficient method for the resolution of the controversy.

(f) Common issues of law and fact alleged by Plaintiff predominate over any potential individual issues, including the alleged common issue of whether form notices sent by Defendant post-repossession comply with the provisions of one Pennsylvania statute's requirement of "commercially reasonable" notice of disposition or of deficiency. Pa. R. Civ. P. 1708(a)(1).

(g) In making these preliminary findings, the Court has also given consideration to, among other factors: (i) the interests of Class Members in individually controlling the prosecution of separate actions for modest sums; (ii) the extent and nature of any litigation concerning these claims already commenced (none has been identified); (iii) the desirability of concentrating the litigation of the claims in this forum; (iv) the impracticability or inefficiency of prosecuting or defending separate actions. Pa. R. Civ. P. 1708(a)–(c).

(h) Because this action is being settled rather than litigated, the Court need not consider manageability issues that might be presented by the trial of a class action involving the issues in this case.

3. The Class, Class Representative, and Class Counsel.

(a) Class A is defined as All Persons:

- (i) who purchased a motor vehicle as a consumer good;
- (ii) who financed the vehicle purchase through PSECU, or whose vehicle loan or Retail Installment Sales Contract was later assigned to PSECU;
- (iii) from whom PSECU, as secured party, repossessed the vehicle or ordered it repossessed;
- (iv) who had a Pennsylvania address as of the date of repossession; and
- (v) who were not sent a post-repossession notice which stated that the borrower had a right to redeem the property any time before the secured party sells or disposes of the vehicle; or
- (vi) who were not sent a post-repossession notice which stated that the borrower is entitled to an accounting of the unpaid indebtedness and the charge, if

any, for an accounting, or stated “if you want us to explain to you in writing how we have figured the amount that you owe us ...”; or

(vii) who were sent a post-repossession notice that included lump-sum “storage fees” as part of the amount that must be paid to redeem the collateral;

(viii) in the period from June 16, 2011, through December 31, 2017.

(b) Class B is defined as All Persons:

(i) who financed a motor vehicle primarily for consumer use through PSECU or whose loan contract or installment sales contract was assigned to PSECU;

(ii) who had a Pennsylvania address as of the date of repossession;

(iii) from whom PSECU, as secured party, repossessed the vehicle, or ordered it repossessed;

(iv) whose vehicle was sold or auctioned by PSECU, but leaving a surplus or claimed deficiency balance; and

(v) who were sent an explanation of the alleged deficiency or surplus that failed to:

(A) state that future debits, credits, charges, including additional credit service charges or interest, rebates and expenses may affect the amount of the surplus or deficiency; and

(B) provide in the following order:

(1) the aggregate amount of the obligation secured by the security interest under which the disposition was made, and if the

amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, and a calculation thereof;

(2) the amount of proceeds of the disposition;

(3) the aggregate amount of the obligations after deducting the amount of the proceeds;

(4) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing and disposing of the collateral and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) the amount, in the aggregate or by type and types of credits, including rebate of interest or credit service charges, to which the obligor is known to be entitled; and

(6) the amount of the surplus or deficiency.

(vi) in the period from June 16, 2011 through December 31, 2017.

(c) Codey Farley is appointed representative of the Class ("Representative Plaintiff").

(d) Cary L. Flitter, Andrew M. Milz, Jody Thomas López-Jacobs, and the firm of Flitter Milz, P.C. are appointed as Class Counsel.

4. Findings Regarding Proposed Settlement. The Court finds that the proposed Settlement:

(a) resulted from extensive arm's-length negotiations and was concluded after over two years of litigation, motion practice, multiple depositions, review by Class Counsel

of thousands of documents and data points pertaining to the Class, and formal mediation with a retired judge;

- (b) involves direct and substantial cash payments to Class Members, forgiveness of substantial deficiency balances allegedly owed by Class Members to PSECU, as well as credit reporting relief; and
- (c) appears *prima facie* fair, reasonable, and adequate to warrant sending notice of this action and the proposed settlement to the Class Members and holding a final hearing on the proposed settlement.

5. Final Approval Hearing. A hearing (the “Final Approval Hearing”) will be held on Apr. 27, 2020, at 10:00 A. M. in Courtroom 630, City Hall, Philadelphia, PA, to determine:

- (a) Whether the proposed settlement of this action should be finally approved as fair, reasonable and adequate;
- (b) Whether this action should be dismissed with prejudice pursuant to the terms of the settlement;
- (c) Whether Class Members should be bound by the release set forth in the proposed settlement; and
- (d) Whether Plaintiff’s application for an award of attorneys’ fees and expenses to Class Counsel, and for an individual service award, should be approved.

6. Pre-Hearing Notices to Class Members. Subject to the terms of the Settlement Agreement, an independent, third-party class action administrator, American Legal Claim Services, LLC (the “Settlement Administrator”) shall provide Class Members with notice in the

manner set forth below and in the Settlement Agreement. By accepting this assignment, the Settlement Administrator subjects itself to this Court's jurisdiction.

7. **Notice by Mail.** The Settlement Administrator shall mail the Class Notice (with proper dates filled in) substantially in the form filed with this Court as Exhibit C to the Settlement Agreement to the last-known address of each potential Class Member as reflected on Defendant's current and reasonably accessible records, or such other, more current address as the Settlement Administrator sees fit, pursuant to the terms of the Settlement Agreement. The Class Notice shall be sent by first-class mail, postage prepaid. PSECU shall furnish its final class list, including co-borrowers, to the Administrator within twenty (20) days hereof; the Administrator shall cause Notice to be mailed within 34 days hereof.

8. **Proof of Mailing.** At least twenty-four days prior to the Final Approval Hearing, the Settlement Administrator shall submit to Class Counsel an affidavit of mailing of the Class Notice, identifying any Class Members who have validly objected to or requested exclusion from the Settlement Agreement. Class Counsel shall file the affidavit along with Plaintiff's motion for final approval.

9. **Findings Concerning Notice.** The Court finds that the Class Notice is the best practicable notice and is reasonably calculated, under the circumstances, to apprise the Class Members (i) of the settlement of this action, (ii) of their right to exclude themselves from the Class and the proposed settlement, (iii) that any judgment, whether favorable or not, will bind all Class Members who do not request exclusion, and (iv) that any Class Member who does not request exclusion may object to the settlement and enter an appearance personally or through counsel.

The Court further finds that the Class Notice proposed and submitted as an exhibit to the Motion for Preliminary Approval is written in plain English and is readily understandable. In sum,

the Court finds that the proposed notice and methodology for giving notice and the forty-two (42) day period to act are reasonable, that they constitute due, adequate, and sufficient notice to all persons entitled to be provided with notice, and that they meet the requirements of Pennsylvania Rules of Civil Procedure 1714 and the United States Constitution (including the Due Process Clause).

10. Exclusion from Class. Any Class Member who wishes to be excluded from the Class must send a written request for exclusion to the Settlement Administrator (with copies to Class Counsel and Defense counsel) at the addresses provided in the Settlement Class Notice. Any such exclusion request must be sent by first-class mail, postage prepaid, and must be postmarked no later than a date forty-two (42) days after the date the Notice is mailed by the Administrator. If the proposed settlement is approved, any Class Member who has not submitted a timely, written request for exclusion from the Class shall be bound by all subsequent proceedings, orders, and judgments in this action.

11. Objections and Appearances.

(a) **Written Objections.** Any Class Member who does not submit a written request for exclusion and who complies with the requirements of this paragraph may object to any aspect of the proposed settlement, including the fairness, reasonableness, or adequacy of the proposed settlement, the adequacy of the Class's representation by the Representative Plaintiff or Class Counsel, the award of attorneys' fees and expenses, and/or the individual service award to the Representative Plaintiff. A Class Member may assert such objections independently or through an attorney hired at their own expense. To object, a Class Member must send a letter or file a pleading saying that he or she objects to the settlement in *Codey Farley, individually and on behalf of all others similarly situated*

v. Pennsylvania State Employees Credit Union, June Term, 2017, No. 001889. Any objection should state the reasons for the objection and why the objector thinks the Court should not approve the settlement. The objection must also include the name, address, telephone number, email address (if available), and signature of the objecting Class Member. The objection should be filed with the Office of Judicial Records – Civil – Court of Common Pleas of Philadelphia County Room 284, City Hall, Philadelphia, PA 19107, with copies mailed to Class Counsel and Defense Counsel below, postmarked no later than forty (42) days from the date of the mailing of the Notice.

Settlement Administrator

Farley v. PSECU Class
Settlement
P.O. Box 23648
Jacksonville, FL 32241

Class Counsel

Cary L. Flitter, Esq.
FLITTER MILZ, P.C.
450 N. Narberth Avenue
Suite 101
Narberth, PA 19072

Defense Counsel

Kimberly M. Colonna,
Esq.
MCNEES WALLACE &
NURICK, LLC
100 Pine Street
Harrisburg, PA 17101

(b) **Other Objections.** Any Class Member who does not timely file with the Court and serve a written objection complying with the terms of this paragraph shall be deemed to have waived any objection, and shall be foreclosed from raising any objection to the settlement. Any untimely objection shall be barred, absent extraordinary circumstances.

(c) **Notice of Appearance.** If a Class Member hires an attorney to represent him or her, the attorney must file a notice of appearance with the Office of Judicial Records - Civil, and deliver a copy of that notice to Defendant's counsel and to Class Counsel, at the addresses set forth in paragraph 11(a) of this Order. Such counsel must receive any such notices of appearance contemporaneously with submission to the Court.

(d) **Appearance at Final Approval Hearing.** Any Class Member who files and serves a timely, written objection pursuant to the terms of paragraph 11 of this Order and complies with the requirements of this paragraph may also appear and be heard at the Final Approval Hearing either in person or through counsel retained at the Class Member's expense. Class Members or their attorneys intending to appear and be heard at the Final Approval Hearing must deliver to the Court, the Settlement Administrator, Defendant's counsel and Class Counsel, at the addresses specified in paragraph 11(a) of this Order, a notice of intention to appear, setting forth the case number, the name, address, and telephone number of the Class Member, and the name of the Class Member's attorney (if applicable). Notices of intention to appear must be postmarked no later than forty-two (42) days from the date of the mailing of the Notice. Any Class Member who does not timely file and serve a notice of intention to appear pursuant to the terms of this paragraph shall not be permitted to appear and be heard at the Final Approval Hearing, absent extraordinary circumstances.

12. Termination of Settlement. This Order shall become null and void, and shall be without prejudice to the rights of the parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if, pursuant to the terms of the Settlement Agreement, the proposed settlement: (a) is not finally approved by the Court or does not become final; or (b) is terminated or does not become effective. In such event, the proposed settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor this Order shall prejudice either party.

13. Use of Order. This Order shall not be construed or used as an admission, concession, or finding by or against Defendant of any fault, wrongdoing, breach, or liability, or of

the appropriateness or permissibility of certifying a class on contest, or for any purpose other than settlement. Nor shall the Order be construed or used as an admission, concession, or finding by or against Plaintiff or the Class Members that their claims lack merit or that the relief requested in their pleadings is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims.

14. Continuance of Hearing. The Court reserves the right to continue the Final Approval Hearing without further written notice, except that notice of any continuance shall be provided to any Class Member, or their counsel, who has filed an objection.

BY THE COURT:



J.