UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN C. RAYBURN,

Plaintiff,

Case No. 2:18-cv-1534
JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Kimberly A. Jolson

v.

SANTANDER CONSUMER USA INC., *et. al.*,

Defendants.

OPINION AND ORDER

This matter is before the Court on Plaintiff John C. Rayburn's (Plaintiff) Unopposed Motion for Preliminary Approval of Class Action Settlement Agreement and Release, Certification of the Class Settlement, Appointment of Plaintiff's Counsel as Class Counsel and Approval of Plan of Notice. (ECF No. 50). The proposed settlement is between Plaintiff and Santander Consumer USA INC. (Defendant or SC). For the reasons that follow, the Court **GRANTS** the Plaintiff's motion (ECF No. 50). The Court will retain jurisdiction over the settlement proceedings.

I. Background

Plaintiff filed an Amended Complaint on behalf of himself and other similarly situated individuals against Santander Consumer USA Inc., Anthony Staffino, and Staffino Chevrolet, Inc. alleging violations of CSPA, RISA and the OUCC, as well as breach of contract. (*See* ECF No. 6). The case was later removed to this Court. (ECF No. 1). The claims against Defendant Santander Consumer USA Inc. center around notices sent to consumers in connection with the repossession of their vehicles, which Plaintiff alleged were insufficient. Defendant denied that its notices were defective or that it violated any provisions of law and challenged the appropriateness of this case for class treatment.

The parties participated in various sessions of mediated conducted by retired Judge Morton Denlow, as well as informal settlement discussions between counsel. (ECF No. 50 at 10–11). These sessions and discussions bore fruit, and Plaintiff now moves *inter alia* for preliminary approval of their settlement agreement. (*Id.*).

II. Analysis

According to the Settlement Agreement, the Settlement Class includes every Ohio resident who:

> (1) purchased a motor vehicle during the period from January 1, 2013 to the date the Court certifies and finally approves the class for settlement purposes only; (2) as part of the purchase transaction, entered into a RISC where the RISC was assigned to SC; (3) where SC repossessed the vehicle and sent, subsequent to the repossession, a "Notice of Our Plan to Sell Property" Letter; and (4) where the "Notice of Our Plan to Sell Property" Letter had a vehicle sale date that included the phrase "on or after." The Class expressly excludes any person who is eligible for a Deficiency Balance Waiver in connection with the State AG Actions, unless that individual is also a Cash Refund Eligible Settlement Class Member.

(ECF No. 50-1, at 7). The Settlement agrees for Defendant to waive all deficiency balances belonging to settlement class members (totaling approximately $333,000,000), for Defendant to pay $1,900,000 into a settlement fund which will be distributed pro rata to class members who made payments to SC exceeding $100 after their vehicles were repossessed (as well as an incentive payment to the class representative subject to Court approval), and for Defendant to request to the credit reporting agencies that they delete related reports made by Defendant. (*Id.* at 4). Defendant also agrees to pay the costs of the settlement's administration up to $65,000, as well as up to $2,500,000 in Attorney's fees and expenses subject to Court approval. (*Id.* at 4–5).

The Settlement Agreement also sets forth a plan for notice and administration, which will include, among other things, the mailing of notice to identified class members, the creation of an

informational website, and the creation of a toll-free call center. (ECF No. 50 at 5). The notice will inform members of their right to opt-out, as well as the opt-out deadline. (*Id.* at 6–7).

For good cause shown, the Court preliminarily approves the proposed Settlement Agreement and finds that the form and contents of the proposed notice and the parties' proposed methods of providing notice to class members comply with Federal Rule of Civil Procedure 23(e) and Due Process.

Rule 23(e)(1) requires the parties to "provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class," which turns on a determination as to whether the Court will likely be able to approve the proposal under Rule 23(e)(2) and certify the class for purposes of judgment on the proposal. Fed. R. Civ. P. 23(e)(1). The Court must make a preliminary fairness evaluation based on the overall "fairness, reasonableness, and adequacy" of the settlement. *Olden v. LaFarge Corp.*, 472 F. Supp. 2d 922, 928 (E.D. Mich. 2007) (quoting Manual for Complex Litigation § 21.632-.633 (4th ed.)).

A. Fairness, Reasonableness, and Adequacy of Settlement

To determine whether a settlement is "fair, reasonable, and adequate," the Court balances the following factors: "(1) the risk of fraud or collusion; (2) the complexity, expense, and likely duration of the litigation; (3) the amount of discovery completed; (4) the likelihood of success on the merits; (5) the opinion of class counsel and representatives; (6) the reaction of absent class members; and (7) public interest in the settlement." *Vigna v. Emery Fed. Credit Union*, No. 1:15-CV-51, 2016 U.S. Dist. LEXIS 166605, 2016 WL 7034237, at *3 (S.D. Ohio Dec. 2, 2016). At the preliminary approval stage, however, the Court need not make a determination as to every factor, but rather should grant preliminary approval of a settlement 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 with the range of possible approval." *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 985, 1015 (S.D. Ohio 2001) (quoting Manual for Complex Litig. § 30.44 (2d ed. 1985)).

Plaintiff has demonstrated that the proposed Settlement is fair, reasonable, and adequate. Plaintiff maintains that the negotiations were conducted at arm's length and the Court finds no reason to believe the settlement involves collusion. (ECF No. 50 at 10). Class counsel states they have substantial experience in consumer class actions and unfair business practices litigation, and that they conducted sufficient investigation to evaluate the merits of the case and the value of potential recover. (*Id.* at 10). The Court gives weight to experienced counsel's judgement that settlement is appropriate. *See Ostendorf v. Grange Indem. Ins. Co.*, Case No. 2:19-cv-1147, 2020 U.S. Dist LEXIS 163391 at *7, 2020 WL 5366380 (S.D. Ohio Sep. 8, 2020). Therefore, the Court finds Plaintiff has demonstrated the proposed settlement appears fair, adequate, and reasonable, and is likely to meet the final approval requirements of Rule 23(e)(2).

B. Class Certification

Plaintiff next requests, unopposed, that the Court provisionally certify a proposed settlement class for settlement purposes only. Pursuant to Rule 23(a): "One or more members of a class may sue or be sued as representative parties on behalf of all members only if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). The proposed settlement class was previously defined at the start of this analysis.

First, numerosity. The settlement class includes approximately 49,000 individuals. Classes made up of far fewer members have been recognized to satisfy the numerosity requirement. *See Basile v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 105 F.R.D. 506 (S.D. Ohio 1985) (as few as 23 class members may be sufficient); *see also Warner v. Waste Management, Inc.*, 36 Ohio St. 3d 91, 97 (1988) (noting that classes with as few as 40 members satisfy the numerosity requirement). This Court has no trouble concluding that the proposed class is sufficiently numerous such that joinder of all members is impractical. *See Daffin v. Ford Motor Co.*, 458 F3d 549, 552 (6th Cir. 2006).

Second, commonality. The claims of the proposed settlement class all raise a common issue of law under the same or similar facts. All class members had their vehicles repossessed by Defendant and received the same or similar post-repossession notices. There are no disparate questions of law or fact affecting the claims of class members. And, the proposed Settlement Agreement provides class members' claims with uniform treatment. The Court is satisfied that the class members have "suffered the same injury" such that their claims are capable of class-wide resolution. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 339-40, 131 S. Ct. 2541, 180 L. Ed. 2d 374 (2011).

Third, typicality. Named Plaintiff has demonstrated that his claim is typical of the claims affecting the larger class. *See Daffin*, 458 F.3d at 552. Therefore, the Court finds the typicality requirement satisfied.

Fourth, adequacy. The Court finds the representative party is likely to fairly and adequately represent the interests of the class as a whole. Plaintiff has demonstrated she has common interests with the unnamed class members and class counsel has provided evidence they are qualified to represent the interests of the class. *See id.* at 553.

Once the Court finds the above elements for class certification have been met, the Court must then determine that "common issues predominate and class treatment is the superior method of adjudication." *Id.* at 554. Only then may the Court certify the class. Plaintiff has demonstrated that common issues predominate. Plaintiff has also demonstrated that class treatment is the superior method of adjudication, as class treatment will eliminate the burden of litigating the individual disputed claims and will conserve judicial resources. Therefore, the Court concludes that common issues predominate and the proposed Settlement Class is the superior method of adjudication.

For these reasons, the Court finds that it likely will approve class certification for settlement purposes at the final approval stage, and provisionally approves class certification accordingly.

C. Appointment of Class Counsel

The Court finds Plaintiff's counsel should be appointed as class counsel under Fed. R. Civ. P. 23(g), given that counsel have demonstrated they investigated and litigated Plaintiff's claims, engaged in extensive negotiations, are experienced with similar class action litigation, and have been appointed class counsel in many class actions. (*See* ECF No. 50, Ex. B; ECF No. 50, Ex. C).

III. Conclusion

For the reasons stated above, the Court **GRANTS** Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement Agreement and Release, Certification of the Class Settlement, Appointment of Plaintiff's Counsel as Class Counsel and Approval of Plan of Notice. (ECF No. 50).

The Court has reviewed the proposed Plan of Notice in Section 7 of the Settlement Agreement, **APPROVES** the Notices for purposes of notifying the Settlement Class as to the Proposed Settlement, and **DIRECTS** the Settlement Administrator to effectuate Notice to the

Settlement Class in accordance with the Plan of Notice. Any person falling within the definition of the Settlement Class may opt out from the Settlement Class pursuant to Section 11 of the Settlement Agreement, or object to the Settlement pursuant to Section 12 of the Settlement Agreement. The Court **APPOINTS** the proposed class counsel to act on behalf of the Settlement Class and the Class Representative with respect to the Settlement. The Court **DIRECTS** the parties to file with the Court a suggested week that would be appropriate to schedule the hearing forthwith.

IT IS SO ORDERED.

10/28/2020
DATE

s/Edmund A. Sargus, Jr.
EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE