

JOHNNIE BENEFIELD, individually and on behalf of all others similarly situated Plaintiff
vs.
ESSA BANCORP, INC., d/b/a ESSA BANK & TRUST Defendant.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

SEPTEMBER TERM, 2016

NO. 001381

CLASS ACTION

Benefield Vs Essa Banco-ORDER



16090138100084

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

AND NOW, this 18th day of January, 2018 , 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 January 18, 2018 and is 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 hereby ORDERS as follows:

1. Summary of Claims and Defenses:

The lawsuit claims that ESSA Bank & Trust (hereinafter referred to as "ESSA") violated Pennsylvania's Uniform Commercial Code ("UCC") by failing to send borrowers in Pennsylvania proper notice of disposition of collateral ("Repossession Notice") after repossession of their vehicle(s). Plaintiff asserts on behalf of himself and the Class that the Repossession Notice sent by ESSA impermissibly fails to give statutory notice about the length of time in which a Class Member can redeem his repossessed vehicle and fails to adequately to disclose the right to request an accounting of the unpaid indebtedness. 13 Pa. C.S. §§ 9611, 9614. Defendant disputes Plaintiff's legal entitlement to any relief under the UCC and maintains that its Repossession Notice

is legally compliant. ESSA further asserts counterclaims and defenses. Plaintiff disputes ESSA's counterclaims.

2. Class Findings.

a) The numerosity requirement of Pa. R. Civ. P. 1702(1) is satisfied because the Class numbers approximately 1,063 Pennsylvanians and approximately 810 financed vehicle transactions. Thus, the Class is so numerous that joinder would be impracticable.

b) The commonality requirement of Pa. R. Civ. P. 1702(2) is satisfied because members of the Class share at least one common factual or legal issue, *i.e.*, (i) whether Plaintiff and the Class obtained consumer vehicle financing through ESSA and pledged the vehicle as collateral; (ii) whether ESSA repossessed the financed vehicle or ordered it repossessed; (iii) whether ESSA failed to send a compliant notice of disposition of collateral required under the UCC after repossessing a vehicle; (iv) the statutory damages provided.

c) The typicality requirement of Pa. R. Civ. P. 1702(3) is satisfied because Plaintiff seeks to obtain a determination that ESSA uniformly sent members of the Class a Repossession Notice that did not fully comply with the requirements of the UCC. All Class Members were Pennsylvania consumer obligors to ESSA who allegedly were not provided a proper Repossession Notice.

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

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 letters sent by Defendant post-repossession comply with the provisions of one Pennsylvania statute's requirement of "commercially reasonable" notice of disposition. 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. *See McCall v. Drive Fin. Servs., LP*, No. 00005, 2010 WL 4150874 (C.C.P. Phila. June 8, 2010).

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

a) The Class is defined as all persons who:

(1) financed a motor vehicle as a consumer good through ESSA, or who financed a motor vehicle as a consumer good through a loan contract or installment sales contract which was thereafter assigned to ESSA;

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

(3) from whom ESSA, as secured party or authorized servicer, repossessed the financed vehicle, or ordered it repossessed;

(4) were not sent a Notice of Repossession which

(i) stated the consumer has a right to redeem the vehicle at any time before sale; or

(ii) stated that the debtor is entitled to an accounting of the unpaid indebtedness and the charge, if any, for such an accounting; or

(5) were sent no Notice of Repossession at all;

(6) from September 13, 2010 through October 5, 2017.

b) Johnnie Benefield is appointed representative of the Class ("Representative Plaintiff").

c) Cary L. Flitter, Andrew M. Milz, Jody Thomas López-Jacobs, and the firm of Flitter Milz, P.C. and Carlo Sabatini and the Sabatini Law Firm, LLC, are appointed as Class Counsel.

4. Findings Regarding Proposed Settlement. The Court finds that: (a) the proposed settlement resulted from extensive arm's-length negotiations. The proposed Settlement was concluded only after a year of litigation, review of hundreds of documents and thousands of data points pertaining to the Class, participation in weeks of informal settlement negotiations between counsel followed by a full mediation with a retired judge; (b) the proposed settlement of this action involves direct and substantial cash payments to Class Members, forgiveness of alleged Deficiency Balances, as well as equitable-type relief in correction of credit reports; and (c) the proposed settlement evidenced by the Settlement Agreement 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 April 2, 2018, at 10:00 A.M., in Courtroom 446, 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. 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 administrator sees fit, pursuant to the terms of the Settlement Agreement. The Class Notice shall be sent by first-class mail, postage prepaid, no later than thirty (30) days following the entry of this Order.

8. Proof of Mailing. Before the Final Approval Hearing, the Settlement Administrator shall submit to Class Counsel an affidavit of mailing of the Class Notice. Class Counsel shall docket the affidavit promptly.

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, if he or she desires, 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 40 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 the Pennsylvania Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Rules of this Court and other applicable law.

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 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 (40) 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 settlement award to the Representative Plaintiff. A Class Member may assert such objections either on his or her own or through an attorney hired at his or her expense. To object, a Class Member must send a letter addressed to the Office of Judicial Records - Civil saying that he or she objects to the settlement in *Johnnie Benefield, individually and on behalf of all others similarly situated v. ESSA Bancorp, Inc., d/b/a ESSA Bank & Trust*, September Term, 2016, No. 001381. Any objection should state the reasons for the objection and why the objector thinks the Court should not approve the settlement. The objection must include the name, address, telephone number, email address, if available, signature, and the reasons for the objection to the settlement. The objection should be filed with the Office of Judicial Records set forth below, with copies mailed to Class Counsel and Defense Counsel below, postmarked no later than forty (40) days from the date of the Notice.

Court
Office of Judicial
Records - Civil
Court of Common Pleas
of Philadelphia County
Room 284 , City Hall
Philadelphia, PA 19107

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

Defense Counsel
Ryan T. Becker, Esq.
FOX ROTHSCHILD, LLP
2000 Market Street
20th Floor
Philadelphia, PA 19103

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. 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, and to 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 and the name, address, and telephone number of the Class Member (and, if applicable, the name of the Class Member's attorney). Notices of intention to appear must be postmarked no later than forty (40) days from the date of the mailing of the Notice with the Office of Judicial Records. 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, except for good cause shown.

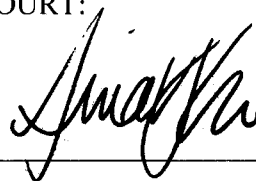
12. Termination of Settlement. This Order shall become null and void, and shall be without prejudice to the rights of the parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if (a) the proposed settlement

is not finally approved by the Court, or does not become final, pursuant to the terms of the Settlement Agreement; or (b) the proposed settlement is terminated in accordance with the Settlement Agreement or does not become effective as required by the terms of the Settlement Agreement for any other reason. 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 she or it may have.

14. Continuance of Hearing. The Court reserves the right to continue the Final Approval Hearing without further written notice.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J. [unclear]", written over a horizontal line.

J.