

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

HELENE HADDAD, individually and on behalf of
all others similarly situated

Plaintiff,

CLASS ACTION

NO. GD-19-008596

v.

WEST-AIRCOMM FEDERAL CREDIT UNION
Defendant.

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

AND NOW, this 10th day of February, 2023, 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 ECR #35 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 West-Aircomm Federal Credit Union (“WAFCU” 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 herself and a class of borrowers (the “Class”) that the Repossession Notices sent by WAFCU fail to advise the borrower of (1) the method of intended disposition; (2) the borrower’s right to an

accounting of any unpaid indebtedness, and the charge (if any) for such accounting; and (3) a telephone number or mailing address from which additional information concerning the disposition and the secured obligation may be obtained. *See* 13 Pa. C.S. §§ 9611, 9614; *Cubler v. TruMark Fin. Credit Union*, 83 A.3d 235, 237 n.1 (Pa. Super. 2013). Plaintiff also asserts on behalf of herself and the Class that the Deficiency Notices fail to provide the statutorily mandated explanation of how WAFCU calculated a deficiency. 13 Pa. C.S. § 9616.

WAFCU disputes Plaintiff's legal entitlement to any relief under the UCC and maintains that its Repossession Notices and Deficiency Notices are legally compliant. WAFCU further asserts defenses to the Second Amended Complaint and maintains that the matter would not meet the requirements for class certification if contested, but WAFCU consents to this Settlement Class and preliminary approval.

2. Class Findings for Settlement Purposes.

- (a) The numerosity requirement of Pa. R. Civ. P. 1702(1) is satisfied because the Class consists of approximately 59 Pennsylvania borrowers. 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 motor vehicle financing through WAFCU and pledged the vehicle as collateral;
 - (ii) Whether WAFCU repossessed the financed vehicle or ordered it repossessed;
 - (iii) Whether WAFCU failed to send a proper notice of disposition of collateral required under the UCC after repossessing a vehicle;

(iv) The uniform statutory damages provided for such misconduct.

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

(d) The adequacy requirement of Pa. R. Civ. P. 1702(4) is satisfied in that (i) the interests of the Representative Plaintiff and the nature of her 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) Plaintiff and the Class Members are represented by qualified, experienced counsel who often have been 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 individualized 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). In actions such as this alleging failure to provide commercially reasonable notice, there are no potential individualized issues such as reliance or causation, and liability may be determined as a matter of law.

(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) The Class is defined as All Persons:

(i) who financed a motor vehicle as a consumer good through WAFCU or whose consumer loan contract or Retail Installment Sales Contract was assigned to WAFCU;

(ii) from whom WAFCU, as secured party, repossessed the financed vehicle, or ordered it repossessed;

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

(iv) in the period commencing June 13, 2013 through May 7, 2019.

(b) Helena Haddad is appointed and approved as the representative of the Class (“Representative Plaintiff”).

(c) Cary L. Flitter, Andrew M. Milz, Jody Thomas López-Jacobs along with the law firm of Flitter Milz, P.C., and Emily S. Gomez-Hayes from the Law Office of Emily Gomez, LLC, are appointed and approved 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 three years of litigation, motion practice, depositions, review by Class Counsel of hundreds of data points pertaining to the Class;
- (b) involves direct and substantial cash payments to Class Members 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 June 9, 2023, at 9:30 A.M. in Courtroom 820, City-County Building, 414 Grant Street, Pittsburgh, PA 15219 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 Claims

Services, LLC of Jacksonville, FL, (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 and Website. The Settlement Administrator shall mail the Class Notice (with proper dates filled in) substantially in the form filed with this Court as Exhibit B 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. Pursuant to the Settlement Agreement, WAFCU shall furnish its final class list, including co-borrowers, to the Administrator and Class Counsel within twenty (20) days hereof; the Administrator shall cause Notice to be mailed within 10 days of receipt.

The Settlement Administrator shall also create a website where the important case documents (the Amended Complaint, the Settlement Agreement, this Preliminary Approval Order, etc.) and deadlines may be viewed. The website shall appear in the Class Notice.

8. Proof of Mailing. At least twenty-four (24) 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 *Helena Haddad, individually and on behalf of all others similarly situated v. West-Aircomm Federal Credit Union*, GD-19-008596. 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 Department of Court Records, Civil/Family Division, City-County Building, 414 Grant Street, Pittsburgh, PA 15219, with copies mailed to Class Counsel and Defense Counsel below, filed no later than forty (42) days from the date of the mailing of the Notice.

Settlement Administrator
Haddad v. WAFUCU
Class Settlement
8021 Philips Hwy,
Jacksonville, FL 32256

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

Defense Counsel
Geraldyn Passaro, Esq.
LITCHFIELD CAVO, LLP
600 Corporate Dr, Ste 600
Ft. Lauderdale, FL 33334

(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, 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), and any documents the objector may use at the hearing. 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.

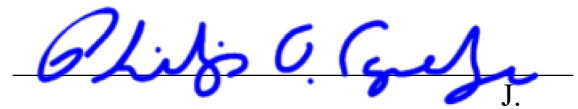
12. Termination of Settlement. This Order shall become null and void, and shall be without prejudice to the rights of the parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if, pursuant to the terms of

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:

A handwritten signature in blue ink, reading "Philip C. Greer", is written over a horizontal line. The signature is cursive and stylized. Below the line, the letter "J." is printed.