

FILED
02-27-2023
Sauk County WI
Circuit Court
2021CV000427

DATE SIGNED: February 27, 2023

Electronically signed by Wendy J.N. Klicko
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT

SAUK COUNTY

CHAD AND ROSE LOPER,
Individually and on behalf of a class of other
similarly situated,

Case No. 2021CV000427

Plaintiff,

v.

CREATIVE FINANCE INC.,

Defendant.

FINAL APPROVAL ORDER

THIS CAUSE came before the Court on February 27, 2023, on the Motion for Final Approval of Class Action Settlement Agreement between the Class Representatives, Chad and Rose Loper, individually and on behalf of all others similarly situated, and Defendant, Creative Finance, Inc. (“CFI”). Based on the record, the evidence and argument presented, the Court makes the following findings concerning the fairness, reasonableness and adequacy of the Class Settlement:

A. On or about October 21, 2022, after a lengthy mediation and extensive settlement discussions, the respective parties entered into a Class Action Settlement Agreement (“Settlement Agreement”), which has been previously filed with the Court.

B. Upon review of the record and for the reasons set forth below, this Court hereby gives its final approval of the Class Action Settlement Agreement and finds the Settlement to be fair, reasonable and adequate.

C. The Court finds that the Class Members are receiving fair, reasonable and adequate Settlement Benefits pursuant to the Settlement Agreement in this action.

D. In its Order of Preliminary Approval, the Court preliminarily approved the Class Notice, and found that the proposed form and content of the Class Notice satisfied the requirements of due process as provided for in Wisc. Stat. § 803.08. The Court reaffirms that finding and holds that the best practical notice was given to Class Members.

E. Class Counsel timely caused the Class Notice to be mailed by first-class mail, postage prepaid, to each of the Class Members at their last known address. The Class Notice advised the Class Members of, among other things, the allegations of the claims by the Class Representatives, the terms of the proposed settlement, the requirements for exclusion from the settlement, objection to the proposed settlement, and the scheduled approval hearing. The Class Notice further identified Class Counsel and set forth that Class Counsel was seeking an award of attorney's fees and expenses, and that said attorney's fees and expenses would be deducted from the Settlement Fund. The Class Notice also set forth in full the claims released as part of the Settlement and advised such persons to read the Notice carefully because it would affect their rights if they failed to exclude themselves from the Settlement.

F. The four Class Members who have requested to be excluded are:

Rachel Pingel

Carol Johnson

Austin Adams

Joe Gruber

G. There are no objections to the proposed Settlement.

H. The Court finds that the Class Members were given an opportunity to opt-out and were adequately represented by the Class Representatives and Class Counsel.

I. The Court must determine whether the proposed Settlement is “fair, adequate and reasonable and that it is not the product of collusion” between the parties. *See, Isby v. Bayh*, 75 F. 3rd 1191, 1199 (7th Cir. 1996); *Veness v. Heywood, Cari & Anderson, S.C.*, 2018 WL 4489277 (W.D. Wisc. May 17, 2018); *Behrens v. Landmark Credit Union*, 2018 WL 310629 (W.D. Wisc. June 26, 2019); *see also, Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). In making this determination, the Court considers multiple factors:

- (1) the strength of plaintiffs’ case compared to the amount of defendants’ settlement offer;
- (2) an assessment of the likely complexity, length and expense of the litigation;
- (3) an evaluation of the amount of opposition to settlement among affected parties;
- (4) the opinion of competent counsel; and
- (5) the stage of the proceedings and the amount of discovery completed at the time of settlement.

J. In determining the adequacy of the proposed Settlement, the Court need not, and does not, decide the merits of the case. This Court has considered the submissions of the parties, which demonstrates a degree of uncertainty in Class Representatives prevailing in their claims. The Settlement Benefits set forth in the Settlement Agreement and noted above represent a significant benefit to the Class

Members. Given the factual and legal obstacles standing in the way of a full recovery if this case were litigated to a conclusion, and the perils of maintaining an action through a final judgment or appeal, this Court finds that the Settlement provides for a reasonable and adequate recovery that is fair to all Class Members. If this case were to proceed without settlement, the resulting litigation would be complex, lengthy and expensive. The Settlement eliminates a substantial risk that the Class Members would walk away empty-handed after trial.

K. Further, CFI has defended this action vigorously and has indicated that it would continue to do so, absent settlement. Because of resulting motion practice, trial and appeals, it could be a lengthy period before the Class Members would see any recovery even if they were to prevail on the merits, which would not produce a better recovery than they may have achieved in this Settlement.

L. The Parties negotiated the Settlement after a thorough review and analysis of the legal issues involved for nearly a year after the filing of the lawsuit. The facts demonstrate that the Class Representatives were sufficiently informed to negotiate, execute, and recommend approval of the Settlement. *See, e.g., Davies v. Continental Bank*, 122 F.R.D. 475, 479-80 (ED Pa.1996).

M. This Court may also consider the opinions of the participants, including Class Counsel. *Parker v. Anderson*, 667 F. 2d 1204, 1209 (5th Cir. 1984), cert. denied, 459 U.S. 828 (1985). Class Counsel has considerable experience in the prosecution of large and complex consumer class actions. Counsel for the Defendant is likewise experienced. This Court gives credence to the opinion of counsel, amply supported by the Court's independent review that this Settlement is a beneficial resolution of the class action claims.

N. In addition to finding that the terms of the proposed Settlement are fair, reasonable and adequate, the Court must determine there is no fraud or collusion between the parties or their counsel negotiating the settlement terms. *Bennett*, 737 F.2d 986; *Miller v. Republic National Life Insurance Company*, 559 F.2d 426, 428-29 (5th Cir. 1977). In this case, there is no suggestion of fraud or collusion between the parties. Furthermore, the terms of the Settlement, which were negotiated through mediation, make it clear that the process by which the Settlement was achieved was fair. *Miller*, 559 F.2d at 429.

O. Due to the efforts of Class Counsel, a class action consisting of 835 accounts has been certified for compensatory damages and equitable relief. The Class Action Settlement Agreement negotiated by Class Counsel provides for a *pro rata* distribution to Class Members from a \$475,000.00 Settlement Fund after deduction of attorney's fees, costs, incentive award and administration expense ("Net Settlement Fund"), and the waiver and discharge of deficiencies against the Class Members in the principal sum of \$4,226,232.72, exclusive of interest.

P. The relief to the Class has significant value, both with respect to monetary compensation to the Class and other non-monetary benefits. In addition to the discharge of a significant deficiency obligation, each Class Member will have the benefit of improved credit upon possible clearance of their respective consumer reports. In sum, the monetary value of the common fund and results obtained by Class Counsel, on behalf of the Class, is believed by Class Counsel to be well in excess of \$9,400,000.

Q. The terms of the Class Action Settlement Agreement, including all exhibits thereto, are fully and finally approved as fair, reasonable, and adequate as to, and in the best interest of, the Class.

R. Through the Class Action Settlement Agreement, the parties agreed that Class Counsel would be paid reasonable attorney's fees under the common fund/benefit doctrine ("Attorney Fee Award"), together with litigation expenses, including court costs, mediation fees and travel expenses ("Litigation Expense Reimbursement").

S. As for the Attorney Fee Award, the request for \$300,000.00 by Class Counsel is fair and reasonable compensation to Class Counsel in accordance with Wisc. Stat. § 803.08, and the factors set forth therein.

T. As for the Litigation Expense Reimbursement, Class Counsel has incurred litigation expenses, consisting of court costs, mediation fees and travel expenses totaling \$6,843.64 which the Court finds was necessary and reasonable in the representation of the Class.

U. Through the Class Action Settlement Agreement, the Parties agreed that the Class Representatives would receive, in addition to the class benefits, an incentive award of Ten Thousand Dollars (\$10,000.00) ("Class Representative Incentive Award") for their efforts in obtaining the above-described benefits to the Class. The Court finds that such an award is reasonable and appropriate, in light of the results obtained.

Based on the foregoing, it is ORDERED AND ADJUDGED that:

1. The Class Action Settlement Agreement is hereby approved as final.
2. Without limiting any terms of the Class Action Settlement Agreement, including the release of claims as set forth in full in the Class Action Settlement Agreement, it is hereby ordered and adjudged that the terms of the Class Action Settlement Agreement and of this Final Approval Order shall forever be binding upon, and shall have preclusive effect (claim preclusion), in any and all pending and future

lawsuits maintained by the Class Representatives and any and all other Class Members, as well as their heirs, executors, administrators, successors and assigns.

3. The Attorney's Fee Award, the Litigation Expense Reimbursement, and the Class Representative Incentive Award shall be disbursed from the Settlement Fund in accordance with the provisions of the Class Action Settlement Agreement.

4. The Net Settlement Fund shall be disbursed to the Class Members in accordance with the provisions of the Class Action Settlement Agreement.

5. The claims of all members of the Class, except those Class Members who have excluded themselves from the Class pursuant to Section 3 of the Class Action Settlement Agreement, are hereby dismissed with prejudice, on the merits and without costs to any party. In light of the Notice given to the Class Members, the Plaintiffs and all Class Members shall be bound by the Class Action Settlement Agreement and all of their Released Claims shall be dismissed with prejudice and released.

6. Neither this Final Approval Order, nor the Class Action Settlement Agreement (nor any other document referred to herein, nor any action taken to negotiate, effectuate, and implement the Class Action Settlement Agreement) is, may be construed as, or may be used as an admission or concession by or against any party hereto as to the validity or invalidity of any claim or defense, or of any actual or potential fault or liability, or of any lack of fault or liability. Additionally, neither the Class Action Settlement Agreement nor any negotiations, actions, or proceedings related to it, shall be offered, or received in evidence in any action or proceeding against any party hereto or CFI in any court, administrative agency, or other tribunal for any purpose whatsoever, except to enforce the provisions of this Final Approval Order and the Class Action Settlement Agreement.

7. Consummation of the Settlement shall proceed as described in the Class Action Settlement Agreement and the Court hereby retains jurisdiction in this matter in order to resolve any disputes which may arise in the implementation of the Class Action Settlement Agreement or the implementation of this Final Approval Order. The Court retains continuing jurisdiction for purposes of supervising the implementation of the Class Action Settlement Agreement and supervising the distribution of the Settlement Fund.

THIS ORDER IS A FINAL FOR PURPOSES OF APPEAL