

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

FREDIS ANTONIO HERNANDEZ, *on behalf of
himself and all similarly situated individuals,*

Plaintiff,

v.

DYCK-O'NEAL, INC.,

Defendant.

Civil Action No. 1:23-cv-1029-AJT-IDD

**ORDER PRELIMINARILY APPROVING
SETTLEMENT AND DIRECTING NOTICE TO CLASS**

The Court, having reviewed the Settlement Agreement entered by the Parties, hereby orders that:

1. The Court has considered the proposed settlement of the class claims asserted in the above-captioned action on behalf of the proposed Settlement Class defined as:¹

All consumers: (1) with a non-performing mortgage loan owned by Defendant as of January 1, 2024; (2) to whom Defendant caused written correspondence to be sent in the one year predating the filing of the lawsuit; (3) that contained a demand for payment that included a late fee or interest assessed by Defendant for time periods when the consumer did not receive monthly statements.

2. The Settlement Agreement filed by the Parties appears, upon preliminary review, to be fair, reasonable, and adequate to the Settlement Class. The Settlement results in payments of approximately \$282.57 to each Class Member from the Statutory Damages Amount. The Settlement will also result in the cancellation of approximately \$10,893,696 in debt among 283 Settlement Class Members, and will reallocate approximately \$426,818 in interest already

¹ Defined terms used in this Order have the same meaning provided in the Settlement Agreement.

collected from Class Members to the principal balances of their loans. Accordingly, the proposed settlement therein is preliminary approved, pending a Final Approval Hearing, as provided for herein.

3. The prerequisites to a class action under Fed. R. Civ. P. 23(a) have been preliminarily satisfied, for settlement purposes only, in that:

- a. The Settlement Class consists of approximately 283 members;
- b. The claims of the Named Plaintiff are typical of those of the other members of the Settlement Class;
- c. There are questions of fact and law that are common to all members of the Settlement Class; and
- d. The Named Plaintiff will fairly and adequately protect the interests of the Settlement Class and has retained Class Counsel experienced in consumer class action litigation who have, and will continue to, adequately represent the Settlement Class.

4. For settlement purposes only, the Court finds that this action is preliminarily maintainable as a class action under Fed. R. Civ. P. 23(b)(3) because (1) a class action is a fair and efficient adjudication of this controversy; and (2) questions of fact and law common to the members of the Settlement Class predominate over any questions affecting only individual members.

5. If the Settlement Agreement is not finally approved, is not upheld on appeal, or is otherwise terminated for any reason before the Effective Date, the Settlement Class shall be decertified, the Settlement Agreement and all negotiations, proceedings, and documents prepared, and statements made in connection therewith, shall be without prejudice to any Party and shall not

be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law; and all Parties shall stand in the same procedural position as if the Settlement Agreement had not been negotiated, made, or filed with the Court. In that event, this Order shall not have any precedential effect with respect to a litigated class certification motion.

6. The Court appoints Fredis Antonio Hernandez as Class Representative. The Court also appoints Kristi C. Kelly, Casey Nash, Pat McNichol, and Matthew Rosendahl of Kelly Guzzo PLC as counsel for the Class (“Class Counsel”). The Court also approves American Legal Claims Services, LLC as the Settlement Administrator.

7. The Court will hold a Final Approval Hearing pursuant to Fed. R. Civ. P. 23(e) on August 28, 2024, at 10:00 a.m. (*more than 120 days after entry of this Order*) at the United States District Court for the Eastern District of Virginia, Albert V. Bryan U.S. Courthouse, 401 Courthouse Square, Alexandria, Virginia 22314, for the following purposes:

- a. To determine whether the proposed settlement is fair, reasonable, and adequate and should be granted final approval by the Court;
- b. To determine whether a final judgment should be entered dismissing the claims of the Settlement Class with prejudice, as required by the Settlement Agreement;
- c. To consider the application of Class Counsel for an award of attorneys’ fees, costs, and for a service award to the Class Representative; and
- d. To rule upon other such matters as the Court may deem appropriate.

8. Defendant is to provide the Class List, and the Settlement Administrator is to implement the Notice Plan, in accordance with the Settlement Agreement’s terms and timelines. Pursuant to the Settlement Agreement, the Administrator will provide a declaration to be filed with the Court attesting to the implementation of the Notice Plan prior to the Final Approval Hearing.

To the extent the Parties or Settlement Administrator determine that ministerial changes to the Notice Plan are necessary before disseminating notice to the Settlement Class Members, they may make such changes without further application to the Court.

9. The Court finds the Notice Plan to fully satisfy the requirements of Fed. R. Civ. P. 23 and due process, constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

10. If a Settlement Class Member chooses to opt out of the Class, such Class Member is required to submit a written request for exclusion to the Settlement Administrator by mail, postmarked on or before the date specified in the Class Notice, which shall be no later than sixty (60) days following the initial mailing of the Class Notice. The request must state “I do not want to be part of the Settlement Class in *Hernandez v. Dyck-O’Neal*,” or words to that effect, and must be signed, dated, and include the individual’s name, address, and phone number. A Settlement Class Member who timely submits an opt-out using the procedure identified above shall be excluded from the Settlement Class for any and all purposes. Following the deadline, the Settlement Administrator shall prepare a declaration listing all of the valid opt-outs received and shall provide the declaration and list to Class Counsel, who will then report the names appearing on this list to the Court before the Final Approval Hearing.

11. A Settlement Class Member who does not timely submit a request for exclusion shall be bound by all subsequent proceedings, orders, and judgments in this action.

12. Any Settlement Class Member who wishes for any objection to be considered, must file a written notice of objection to be postmarked within sixty (60) days after the date of initial mailing of the Class Notice and Claim Form. The objection must include the following: (1) the Settlement Class Member’s full name, address and current telephone number; (2) if the individual

is represented by counsel, the name and telephone number of counsel; (3) all objections and the basis for any such objections stated with specificity, including a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (4) the identity of any witnesses the objector may call to testify; (5) a listing of all exhibits the objector intends to introduce into evidence at the Final Approval Hearing, as well as true and correct copies of such exhibits; (6) a statement of whether the objector intends to appear at the Final Approval Hearing, either with or without counsel; and (7) the objector's signature and a notation that it is for "*Hernandez v. Dyck-O'Neal, Inc.*, Civil Action No. 1:23-cv-1029 (E.D. Va.)."

13. Any Settlement Class Member who fails to timely file and serve a written objection pursuant to the terms of this Order and the Settlement Agreement shall not be permitted to object to the approval of the settlement or the Settlement Agreement and shall be foreclosed from seeking any review of the settlement or the terms of the Settlement Agreement by appeal or other means.

14. All briefs, memoranda, petitions and affidavits to be filed in support for an individual award to the Class Representative and for an award of attorney's fees and costs shall be filed not later than fourteen (14) days before the Opt-Out & Objections Deadline.

15. All briefs, memoranda, petitions and affidavits to be filed in support of final approval of the settlement shall be filed not later than fourteen (14) days before the Final Approval Hearing.

16. Neither this Order nor the Settlement Agreement shall be construed or used as an admission or concession by or against the Defendant or any of the Released Parties of any fault, omission, liability, or wrongdoing, or the validity of any of the Released Claims. This Order is not a finding of the validity or invalidity of any claims in this lawsuit or a determination of any wrongdoing by the Defendant or any of the Released Parties. The preliminary approval of the

Settlement Agreement does not constitute any opinion, position, or determination of this Court, one way or the other, as to the merits of the claims and defenses of Plaintiff, the Settlement Class Members, or the Defendant.

17. The Court retains exclusive jurisdiction over this action to consider all further matters arising out of or connected with the Settlement Agreement.

It is so ORDERED.

April 1, 2024
Alexandria, Virginia



Anthony J. Trenga
Senior U.S. District Judge