IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

LISA VANDEBOE, individually, and on behalf of all others similarly situated, **Plaintiff,** **v.** **UPP GLOBAL, LLC d/b/a FLORIDA PARKING CO.,** **Defendant.**	**Case No: 24-001908-CI** **CLASS ACTION**

ORDER CERTIFYING SETTLEMENT CLASS AND GRANTING PRELIMINARY APPROVAL TO PROPOSED CLASS ACTION SETTLEMENT

THIS CAUSE came before the Court on the Unopposed Motion filed by Lisa VanDeBoe, individually and on behalf of all others similarly situated, ("VanDeBoe" or "Plaintiff"), seeking an order certifying a settlement class and preliminarily approving the terms of the proposed settlement between Plaintiff and Defendant UPP Global, LLC d/b/a Florida Parking Co. ("UPP" or "Defendant"). The Court has reviewed the pleadings, motion and supporting materials submitted by the parties, and being otherwise advised in the premises, finds and orders as follows:

THE CLASS SETTLEMENT APPROVAL PROCESS

To certify a class action for settlement purposes, a court must first determine that all the requirements for class certification set forth in Rule 1.220(a), Fla. R. Civ. P., and at least one of the requirements of subdivision of Rule 1.220(b), are satisfied. *See Amchem Products, Inc. v. Windsor,* 521 U.S. 591, 620-20 (1997) (explaining that a settlement class must satisfy the requirements of numerosity, commonality, typicality, and adequacy of representation, as well as predominance and superiority).

Once the Settlement Class is determined to meet the requirements for class certification pursuant to Rule 1.220, the Court's analysis turns to the terms of the proposed settlement. *Grosso v. Fidelity National Title Ins. Co.,* 983 So.2d 1165, 1170 (Fla. 3d DCA 2008). The approval of a class action settlement as fair, adequate, and reasonable is a two-step process. First, the Court must determine whether the proposed settlement terms fall within the range of reasonableness such preliminary approval is warranted. Second, after notice is given to the class, the Court must evaluate whether final approval is warranted. *See Manual for Complex Litigation*, Third, § 30.41, at 236-37 (1995).

I. FACTUAL BACKGROUND

This is a class action for alleged violations of Florida's Consumer Collection Practices Act, Fla. Stat. § 559, *et seq.* ("FCCPA") in connection with parking "Citations" issued by Defendant. Defendant owns and/or operates several private parking lots within the State of Florida which allow individuals to park in the lots in exchange for payment. If individuals park in Defendant's parking lots without paying, or if individuals overstayed the time for which they paid, Defendant issued notices for payment which assessed fees. ("Notices"). Plaintiff's class action alleged that the Notices violated the FCCPA because they contained misrepresentations regarding the consequences of failure to pay and because the use of the words "Citation" and "fine" gave the appearance that the Notice may have been issued by or affiliated with a governmental entity.

On July 29, 2023, Plaintiff Vandeboe parked in a private parking lot located in Treasure Island, Florida that was operated by the Defendant. Plaintiff paid the maximum available time for several hours of parking and left her vehicle in the private parking lot overnight. She returned the next morning to find Defendant's parking notice on the windshield of her vehicle. The Notice was titled "Citation" and included a "Fine" of $63. The Notice also claimed that an unpaid notice may

affect her credit rating, vehicle registration, license renewal, and ability to rent a vehicle. (Complaint at ¶¶ 17- 21).

By making these threats upon consumers, Plaintiff alleged that Defendant violated the FCCPA, Fla. Stat. § 559.72, including:

a. "Simulate in any manner a law enforcement officer or a representative of any governmental agency." (Fla. Stat. § 559.72(1));

b. "Willfully communicate with the debtor or any member of her or his family with such frequency as can reasonably be expected to harass the debtor or any member of her or his family, or willfully engage in other conduct which can reasonably be expected to abuse or harass the debtor or any member of her or his family." (Fla. Stat. § 559.72(7);

c. "Claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist." (Fla. Stat. § 559.72(9); and

d. "Use a communication that simulates in any manner legal or judicial process or that gives the appearance of being authorized, issued, or approved by a government, governmental agency, or attorney at law, when it is not." (Fla. Stat. § 559.72(10)).

The initial Complaint also included a FDUTPA claim alleging that these same representations were an unfair and deceptive trade practice. This Court dismissed that claim based on arguments made in Defendant's motion to dismiss.

II. CONCLUSIONS OF LAW REGARDING CLASS CERTIFICATION

For settlement purposes only, and based upon the Court's review of the Agreement and Plaintiff's Unopposed Motion for Preliminary Approval, pursuant to Fla. R. Civ. P. 1.220(a) and

(b)(3), the Court hereby certifies the following settlement classes (collectively the "Settlement Class"):

> All persons in the State of Florida who paid Defendant for a parking Notice issued between April 30, 2022 and April 30, 2025.

Based on a review of Defendant's business records, there are 23,423 Settlement Class Members.

A. Numerosity

The first prerequisite for class certification under Rule 1.220(a) is numerosity, which requires that members of the class be so numerous that "separate joinder of each member is impracticable." Fla. R. Civ. P. 1.220(a)(1). There is no minimum or maximum number of class members to satisfy the numerosity requirement. However, classes as small as twenty-five (25) have satisfied the numerosity requirements. *See Terry L. Braun, P.A. v. Campbell*, 827 So. 2d 261, 264 (Fla. 5th DCA 2002) (Court held that class of 25 to 31 individuals met numerosity requirement).

For purposes of approving the Settlement Agreement and certifying the Settlement Class only, the Court finds that joinder of 23,423 persons to this action would be impractical. Accordingly, this first requirement is satisfied.

B. Commonality

According to the Florida Supreme Court, the "primary concern" in the consideration of the commonality requirement of subdivision (a)(2) is "whether the representative's claim arises from the same practice or course of conduct that gave rise to the remaining claims and whether the claims are based on the same legal theory." *Sosa v. Safeway Premium Finance Co.*, 73 So. 3d 91, 103 (Fla. 2011).

The Court finds that the commonality requirement is satisfied, for purposes of approving the Settlement Agreement and certifying the Settlement Class only, in that all members of the

Settlement Class were subject to the common business practice at issue, which is D Defendant's practice of issuing Notices that make the false threat of detrimental effects on credit rating, vehicle registration, license renewal, and ability to rent a vehicle if the Notice is not paid. And, the Notices all include the same "Citation" and "Fine" language which Plaintiff alleges indicates governmental affiliation or approval in violation of the FCCPA. Because the language contained within the Notices are uniform throughout the class period, the legal claims apply to all class members. The questions of law and fact that are common to the Class include, but are not limited to:

(a) Whether Defendant's parking Notices are uniform in all relevant aspects for all Class members;

(b) Whether Defendant's Notice improperly implies authority or approval by a governmental agency;

Whether Defendant's parking citation threatens that unpaid parking citations may affect Class Members' credit rating, vehicle registration, license renewal or ability to rent a vehicle.

Regardless of whether the Plaintiff or Defendant are ultimately correct, for purposes of approving the Settlement Agreement and certifying the Settlement Class only, the issue is common to all class members.

C. <u>Typicality</u>

"The test for typicality focuses generally on the similarities between the class representative and the putative class members." *See Sosa,* 73 So. 3d at 114 (the court characterized the "key inquiry" as addressing "whether the class representative possesses the same legal interest and has endured the same legal injury as the class members.") (*citing Morgan v. Coats*, 33 So. 3d at 65).

The claims alleged by Plaintiff are typical of the claims of the Class Members. Plaintiff is a Florida resident, who paid to park in a parking lot operated by Defendant. Plaintiff received a standard form Notice the following morning which made the representations that are alleged to violate the FCCPA. She paid the $63 Fee because of the threats made in the Notice. Similarly, all class members received and paid the same Notice. Accordingly, Plaintiff is typical of the class members she seeks to represent and there is nothing peculiar about Plaintiff's experience that makes her different from other members of the class. Because Plaintiff possesses the same legal interest and has endured the same alleged legal injury as the other members of the class, the typicality requirement of Rule 1.220(a) is also satisfied.

D. Adequacy

To grant class certification, a trial court must determine that "the representative party can fairly and adequately protect and represent the interests of each member of the class." Fla. R. Civ. P. 1.220(a)(4). A trial court's inquiry concerning whether the adequacy requirement is satisfied contains two prongs. *Sosa*, 73 So. 3d at 115 (Fla. 2011). The first prong concerns the qualifications, experience, and ability of class counsel to conduct the litigation. *Id.* The second prong pertains to whether the class representatives' interests are antagonistic to the interests of the class members. *Id.*

The Court finds that Plaintiff has no interests antagonistic to the class she seeks to represent and that Class Counsel is experienced in litigating class action cases such as this. Accordingly, the adequacy requirement is satisfied for purposes of preliminarily approving the Settlement Agreement and certifying the Settlement Class only.

E. Rule 1.220(b) Requirements

In addition to the four requirements of Rule 1.220(a), the proponent of class certification must satisfy one of the three subdivisions of Rule 1.220(b). *See* Fla. R. Civ. P. 1.220(b) (stating that a party may maintain a claim or defense on behalf of a class if it satisfies Rule 1.220(a) and 1.220(b)). Rule 1.220(b)(3) provides in pertinent part:

> The claim or defense is not maintainable under either subdivision (b)(1) or (b)(2), but the questions of law or fact common to the claim or defense of the representative party and the claim or defense of each member of the class predominate over any questions of law or fact affecting only individual members of the class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy.

(Emphasis added). Generally, courts view the Rule 1.220(b)(3) analysis in two parts: predominance and superiority.

The Court also finds that the requirements of Rule 1.220(b)(3) have been satisfied, for the purposes of approving the Settlement Agreement and certifying the Settlement Class. In particular, the Court finds that the predominating issue is whether Defendant engaged in a common course of conduct, or common practice, of issuing standard form parking Notices to customers that violated the FCCPA. The legality of this common course of conduct by Defendant will be decided the same for all class members. Therefore, for purposes of preliminarily approving the Settlement Agreement and certifying the Settlement Class, the facts of this matter satisfy the predominance requirement of Rule 1.220(b)(3).

The Court also finds that class treatment via a class-wide settlement is superior to individual litigation of the claims of each putative class member. In particular, the Court notes that the small amounts of individual damages effectively preclude individual actions seeking relief for the alleged overcharges at issue. Even if class members were able to find counsel to represent them, most are wholly unaware that they have claims.

Thus, for purposes of preliminarily approving the Settlement Agreement and certifying the Settlement Class only, this Court finds that all of the requirements for Class Certification pursuant to Rule 1.220(a) and (b)(3) are satisfied and the Motion for Certification of the settlement class will be **GRANTED**, for settlement purposes only.

III. CONCLUSIONS OF LAW REGARDING THE FAIRNESS OF THE SETTLEMENT TERMS

When determining whether to grant preliminary approval to a class action settlement, the court must first certify the class for settlement purposes, and then consider the fairness of the settlement. *See e.g., Grosso v. Fidelity Nat'l Title Ins. Co.*, 983 So.2d 1165, 1170 (Fla. 3d DCA 2008). Having certified the class for purposes of this settlement, the Court shall now consider the fairness of the settlement.

To approve a class action settlement, the court must find that the agreement was fair, reasonable, and adequate. *Grosso,* 983 So. 2d at 1173-74 (Fla. Dist. Ct. (*citing* Fed. R. Civ. P. 23(e)(1)(C)), and *Ramos v. Philip Morris Cos.,* 743 So.2d 24, 31 (Fla. 3d DCA 1999)). The factors that should be considered in making this determination include: (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risk of establishing liability; (5) the risk of establishing damages; (6) the risk of maintaining a class action; (7) the ability of the defendant to withstand a greater judgment; (8) the reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation. *Id.* (*citing Bennett v. Behring Corp.,* 737 F.2d 982, 986 (11th Cir.1984)).

Under the terms of the proposed Settlement, Defendant will create a $650,000 non-reversionary Common Fund, which is to be used to cover all costs of this Settlement including Settlement Payments to Class Members, Notice, Administration, Class Representative Award,

Attorney Fees and Litigation costs. From the fund, each Paid Parking Class Member that does not opt out will automatically receive a Settlement Payment equal to approximately 70% of their Notice payment equaling $44. Each Unpaid Parking Class member will automatically receive a Settlement Payment equal to approximately 25% of their Notice payment equaling $15.75. This reduced settlement payment to the Unpaid Parking Class is to account for the fact that they never paid to park in the first place. The Court finds that these settlement amounts appear to be fair and reasonable given the claims at issue.

The $10,000 class representative award to Plaintiff VanDeBoe also appears to be reasonable in light of the time and effort expended by the Plaintiff in representing the Settlement Class. In *Altamonte Springs Imaging, L.C. v. State Farm Mut. Auto. Ins. Co.*, 12 So.3d 850 (Fla.3rd DCA 2009), the Court of Appeals affirmed a $10,000 award to the named Plaintiff in another class action as "reasonable." Id. at 857.

This Court also finds that the requested attorney fees appear to be reasonable as 30% of the Common Fund generated on behalf of the Settlement Class. This amount is well within the percentages long approved by in similar class actions. See, *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 775 (11th Cir. 1991)(holding that awards between 25% and 30% are the "bench mark" for common fund class action settlements). "There is no hard and fast rule mandating a certain percentage of a common fund which may be awarded as a fee because the amount of any fee must be determined upon the facts of each case." *In re Sunbeam Sec. Litig*., 176 F. Supp. 2d 1323, 1333 (S.D. Fla. 2001) (quoting *Camden I*, 946 F.2d at 774).

Therefore, the Court finds that the Settlement Agreement, when viewed in light of the *Bennett* factors, falls within the range of reasonableness such that Preliminary Approval of the Settlement is warranted, and Notice should be issued to the class.

IV. CONCLUSIONS OF LAW REGARDING THE PROPOSED NOTICE TO THE SETTLEMENT CLASS

Notice to the class must be given before entry of judgment in order to allow class members the opportunity to either participate in the proceedings, or to opt out of the proceedings. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-176 (1974) (notice and opportunity to opt out required by due process). Florida Rule of Civil Procedure 1.220 dictates that, "the notice shall inform each member of the class that (A) any member of the class who files a statement with the court by the date specified in the notice asking to be excluded shall be excluded from the class, (B) the judgment, whether favorable or not, will include all members who do not request exclusion, and (C) any member who does not request exclusion may make a separate appearance within the time specified in the notice." Fla. R. Civ. Pro. 1.220.

The proposed Notice provided to the Court in advance of the hearing on Plaintiff's Unopposed Motion for Preliminary Approval explains the terms of the Settlement, provides instructions for how to opt-out of the Settlement Class, and explains the legal ramifications of staying a Settlement Class Member. The Notice also informs the class that they may appear through their own counsel and or object to the terms of the Settlement. Accordingly, this Court finds that the proposed Notice meets the requirements of Rule 1.220 and due process

Based on the above findings of fact and law, it is, therefore,

ORDERED:

1. This action is certified, as set forth above, pursuant to Florida Rule of Civil Procedure 1.220(a) and (b)(3).

2. The Court hereby appoints Lisa VanDeBoe as class representative of the Settlement Class, and appoints Janet R. Varnell, Brian W. Warwick, Esq., Christopher J.

Brochu, Esq., Jeffrey L. Newsome, Esq. and Pamela G. Levinson, Esq. of the law firm Varnell & Warwick, P.A., to act as Counsel for the Settlement Class.

3. A Final Settlement Fairness Hearing is scheduled for _____(Insert Date and Time), and that hearing will address the following issues:

a. whether the proposed Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class, and whether the Settlement should be finally approved by the Court;

b. whether Final Judgment as provided under the Settlement Agreement should be entered dismissing the Complaint filed in this action with prejudice;

c. whether to approve the awards to Plaintiff VanDeBoe and Class Counsel of the incentive award and attorneys' fees and costs that have been negotiated by the parties; and

d. to rule upon such other matters as the Court may deem appropriate.

4. The Court approves the form, substance, and requirements of the Notice of Settlement (the "Notice") submitted by the parties. The form of the Notice, and method set forth herein of notifying the Settlement Class of the Settlement and its terms and conditions, meets the requirements of the Florida Rules of Civil Procedure and due process, constitutes the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto. The Settlement Administrator shall cause the Notice to be mailed to the Settlement Class Members as set forth in the Settlement Agreement.

5. Class Counsel is authorized to represent and act on behalf of the Settlement Class with respect to all acts required by the Settlement Agreement or such other acts which are reasonably necessary to consummate the spirit of the proposed Agreement.

6. All litigation, including discovery, other than further proceedings with respect to the Settlement, is stayed until further order of this Court.

7. Any Settlement Class Member may opt out by utilizing the procedures outlined in the Notice. The parties shall file a list of any Class Members who have timely and properly opted out of the Settlement with the Court prior to the Fairness Hearing.

8. Any Settlement Class Member may appear and show cause why the proposed Settlement of this action embodied in the Settlement Agreement should not be approved as fair, reasonable, and adequate, or why a judgment should or should not be entered thereon, or why the incentive award to the Plaintiff should not be made, or why attorneys' fees or costs should not be awarded as provided in the Settlement Agreement; provided, however, that no Settlement Class Member or any other person, shall be heard or entitled to contest the approval of the proposed Settlement, or, if approved, the Judgment to be entered thereon, unless on or before fourteen (14) days prior to the Fairness Hearing, that person has caused to be filed written objections in the manner and form outlined in the Settlement Agreement, stating all supporting bases and reasons with:

Clerk of the Circuit Court
Circuit Civil
Clearwater Pinellas County Courthouse
315 Court Street
Clearwater, FL 33756

and has served copies of all such papers at the same time upon the following by first-class mail, in accordance with the requirements of the Settlement Agreement:

Class Counsel

Brian W. Warwick
Christopher J. Brochu
Varnell & Warwick, P.A.
400 N. Shaley Drive, Suite 1900
Tampa, Florida 33602

Counsel for Defendants

Joseph P. Kenny
WEBER, CRABB & WEIN, P.A.
5453 Central Avenue
St. Petersburg, FL 33710

Tom K. Schulte
HUNTON ANDREWS KURTH LLP
333 S.E. 2nd Avenue, Suite 2400
Miami, Florida 33131

Attendance at the Fairness Hearing is not necessary in order for the objection to be considered by the Court; however, persons wishing to be heard orally in opposition to the approval of the Settlement are required to indicate in their written objection their intention to appear at the hearing. All written objections shall conform to the requirements of the Settlement Agreement and shall indicate the basis upon which the person submitting the objections claims to be a member of the Settlement Class and shall clearly identify any and all witnesses, documents and other evidence of any kind that are to be presented at the Fairness Hearing in connection with such objections and shall further set forth the substance of any testimony to be given by such witnesses.

Any Settlement Class Member who does not make an objection in the manner provided in the preceding paragraph of this Order shall be deemed to have waived such objection and shall forever be foreclosed from making any objections to the fairness, adequacy, or reasonableness of the Settlement.

The foregoing certification of the Settlement Class is solely for the purpose of effectuating the Settlement. If the Settlement is not consummated for any reason, the foregoing conditional certification of the Settlement Class and appointment of the Class Representative and Class Counsel shall be void and of no further effect and the parties shall be returned to the positions each occupied prior to entry of this Order without prejudice to any factual or legal argument any party may have asserted in this Action.

This Settlement and all negotiations, proceedings, documents prepared and statements made in connection with this Settlement shall be without prejudice to any party and shall not be admissible into evidence, and shall not be deemed or construed to be an admission or confession by any party, or any member of the Settlement Class, of any fact, matter or proposition of law, and shall not be used in any manner for any purpose.

DONE AND ORDERED in Chambers in Clearwater, Pinellas County, Florida this _____ day of _____, 2025.

Electronically Conformed 8/11/2025
Patricia Muscarella

Judge Patricia A. Muscarella