

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARLYATOU DIALLO *on behalf of herself and
others similarly situated,*

Plaintiff,

v.

IMMEDIATE CREDIT RECOVERY, INC.,

Defendant.

No.: 18-cv-470(KAM)(SJB)

**~~PROPOSED~~ PRELIMINARY ORDER APPROVING SETTLEMENT, DIRECTING
NOTICE TO CLASS MEMBERS AND SCHEDULING FAIRNESS HEARING**

THIS MATTER presented for hearing before the Honorable Kiyoo A. Matsumoto, United States District Judge, in order for this Court to conduct a preliminary hearing to determine whether the proposed Settlement Agreement and Release of Claims ^{filed May 28, 2021} ~~dated [Date]~~ (“Settlement Agreement”) between Plaintiff Marlyatou Diallo (“Plaintiff”) and Immediate Credit Recovery, Inc. (the “Defendant”, “ICR”) is fair, reasonable and adequate, to provisionally certify the Settlement Class, to appoint Class Counsel and a Class Representative, and to schedule a Fairness Hearing;

AND THE COURT, having read and considered the Settlement Agreement and other papers submitted by counsel for the parties, having reviewed and considered Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (the “Motion”), the memorandum of law in support thereof and the declarations and exhibits attached thereto, oral arguments of counsel presented to the Court, and all papers filed and proceedings had herein, and for good cause appearing, the Court finds the following:

1. The settlement before the Court is between Plaintiff, the Class Members in the class proposed to be certified for settlement purposes, and the Defendant.

2. Defendant has denied any and all liability alleged in the Amended Complaint.

3. As a result of arm's-length negotiations, Class Counsel and Defendant's Counsel reached a settlement on behalf of Plaintiff and Defendant that provides, among other relief, monetary relief to the Class Members.

4. Plaintiff and Defendant now request preliminary approval of a Settlement Class pursuant to **Fed. R. Civ. P. 23(b)(3)**.

NOW, THEREFORE IT IS HEREBY ORDERED THAT:

5. The Motion for Preliminary Approval of the proposed settlement is GRANTED and Plaintiff and Defendant are hereby ordered to comply with the schedule as set forth in this Order.

6. The Court has jurisdiction over the subject matter of this matter and over Plaintiff and Defendant in this action.

7. Defendant has complied with the obligation to serve written notice of the proposed class settlement to the appropriate governmental representatives pursuant to the Class Action Fairness Act of 2005, **28 U.S.C. § 1715**, and the terms of the Settlement Agreement.

8. Pursuant to **Fed. R. Civ. P. 23(b)(3)**, the following Settlement Class and Subclasses preliminarily certified for purposes of final settlement:

Settlement Class:

All individuals who -- within the three years preceding commencement of this action (**ECF Doc. 1**) -- were sent a letter by ICR on behalf of New York City College of Technology, that sought collection of a balance that purported to include collection fees.

9. The following people who otherwise meet the Settlement Class definition are hereby excluded:

- (i) Any individual who now is, or ever has been, an officer of ICR as well as the spouses, parents, siblings and children of all such individuals; and
- (ii) Any Judge of the United States District Court for the Eastern District of New York, as well as his or her immediate family and staff.

10. The Court finds that, for the purpose of this Settlement (and without prejudice to any party in the event final approval is not granted), the requirements of Rule 23 of the Federal Rules of Civil Procedure are satisfied, and that a class action is an appropriate method for resolving the disputes in this litigation. Specifically, the Court finds that the Settlement Class satisfies the prerequisites for class certification under Rule 23 in that:

- a. The members of the above defined class, numbering approximately 7,008, are so numerous that joinder of all members is impracticable.
- b. There are questions of law and fact common to the Settlement Class.
- c. The claims of the Class Representatives (appointed below) are typical of the claims of the Settlement Class.
- d. The Class Representatives fairly and adequately represents the interests of the Settlement Class. There are no conflicts of interest between the Class Representatives and members of the Settlement Class.
- e. Questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members of the class.
- f. Certification of the Settlement Class is superior to other available methods for the fair and efficient adjudication of this controversy.

11. The Court finds that the Settlement, on the terms and conditions set forth in the Settlement Agreement (previously filed as ECF Document 69-1, ~~reattached here as Exhibit 1~~), is fundamentally fair, reasonable, adequate and is in the best interests of the Class Members, especially in light of the benefits achieved on behalf of them; the risk and delay inherent in

litigation; and the limited amount of any potential recovery that could be shared by the Class Members.

12. Pursuant to Fed. R. Civ. P. 23(a)(4) (and without prejudice to any party in the event final approval is not granted), the Court finds that Plaintiff Marlyatou Diallo fairly and adequately represents and protects the interests of the Settlement Class and appoints him as Settlement Class Representative.

13. Pursuant to Fed. R. Civ. P. 23(g) (and without prejudice to any party in the event final approval is not granted), the Court appoints Daniel Schlanger, Esq. and Evan Rothfarb, Esq. of Schlanger Law Group, LLP and Abel L. Pierre of Law Offices of Abel L. Pierre, P.C. to serve as Settlement Class Counsel. Msrs. Schlanger, Rothfarb and Pierre have investigated the claims, prosecuted the case, negotiated a fair and reasonable settlement, and have the experience, knowledge, and resources to represent the Settlement Class.

14. The Settlement Agreement provides in part for the Defendant to (1) provide monetary relief to each Class Member who does not exclude himself or herself from the Settlement; (2) pay the costs of administering the settlement; (3) pay reasonable attorneys' fees, costs and expenses; and (4) pay an amount to the Class Representatives as service payment and for a release of his individual claims, as provided by the Settlement Agreement.

15. The Court approves American Legal Claim Services LLC as the Settlement Administrator. The Settlement Administrator shall be responsible for administering the Settlement according to the terms set forth in the Settlement Agreement and as Ordered herein.

16. Pursuant to the procedures set forth in the Settlement Agreement, the Defendant provided Plaintiff with a full class list along with a supporting affidavit regarding the methodology used to

compile the list. The Parties have agreed that the 7,008 consumers disclosed in the verified class list are Class Members (inclusive of the Class Representative).

17. The costs of administering the Settlement, including but not limited to, printing the Notice, updating the database and mailing the Notice and, thereafter, issuing and mailing the settlement checks shall be paid by the Defendant pursuant to the terms of the Settlement Agreement.

18. The Court finds that the first-class mailing of the proposed form of Postcard Settlement Class Notice (“Postcard Notice”) ~~attached hereto as Exhibit 2~~ in the manner set forth herein and in the Settlement Agreement, in conjunction with the posting of the Long-Form Settlement Class Notice (“Long-Form Notice”) ~~attached hereto as Exhibit 3~~ (collectively the “Notice”) on the settlement website to be established pursuant to the Settlement Agreement, is the best notice practicable under the circumstances, consistent with due process of law, and constitutes due and sufficient notice of this Order to all persons entitled thereto and is in full compliance with the requirements of Fed. R. Civ. P. 23. The Court finds that mailing of the Postcard Notice in conjunction with the posting of the Long-Form Notice on the settlement website is the only notice required and that the Notice satisfies the requirements of due process and Federal Rule of Civil Procedure 23(c)(2)(B).

19. The Court finds that the Notice clearly states the procedures and deadlines for an individual to opt out of the class or to object to the Settlement.

20. The Settlement Administrator shall cause the Postcard Notice to be mailed to all Class Members in accordance with the terms of the Settlement Agreement ~~in substantially the same form as Exhibit 2~~, by no later than [^] and shall post the Long-Form Notice shall be posted to the settlement website on the same date.

September 6, 2021

21. By no later than sixty (60) days following the date of this Order, the Settlement Administrator shall provide to Class Counsel and counsel for Defendant one or more declarations attesting to compliance with the terms of this Order and the Settlement Agreement, including declarations stating that it properly mailed the Notice in accordance with the terms of this Order and as required by the Settlement Agreement and maintained a settlement website as provided for in the Settlement Agreement.

22. The moving parties shall file the Settlement Administrator’s declaration with the application for Final Approval.

23. Objections not conforming to the requirements set forth in the Notice shall be stricken and shall not be considered or heard by this Court. Requests for exclusion from the class not conforming to the requirements set forth in the Notice shall be deemed inadequate and shall not serve to exclude any individual from the class.

24. Plaintiff seeks Class Counsel’s fees and costs in the amount of \$ _____, and

fees not to exceed \$283,333.33 and reimbursement of approximately \$14,000 in litigation costs
Defendant does not oppose this request, so long as the reimbursement is for costs actually incurred or expected to be incurred and Class Counsel’s request for reasonable attorney’s fees is in an amount less than 1/3 of the Gross Settlement Fund.

25. A Fairness Hearing shall be held before this Court at 1:00 pm, on

Dec. 6, 2021 [INSERT A DATE NOT SOONER THAN 120 DAYS AFTER ENTRY OF THIS ORDER] in Courtroom ^{6C South} [AA] at the United States District Court, Eastern District of New York, 225

Cadman Plaza East, Brooklyn, New York 11201, on the proposed Settlement including: (a) whether to grant final approval to the Settlement as fair, reasonable, and adequate and issue an Order dismissing the Complaint with prejudice; (b) whether Class Counsel’s requested attorneys’ fees and costs is fair and reasonable and (c) whether to approve the service payment to Plaintiff. This hearing may be adjourned to a later date without further or prior notice by oral announcement by the Court or by written order.

26. Any Member of the Settlement Class may appear, in person or through counsel (at their own expense), at the aforementioned Fairness Hearing and be heard in support of or in opposition to the fairness, reasonableness and adequacy of the proposed Settlement, award of counsel fees, reimbursement of costs and expenses, and Class Representatives service fee provided, however, that no person shall be heard in opposition to the proposed Settlement or the award, and no paper or brief submitted by such person shall be received or considered by the Court unless such person has timely filed with the court a written objection and sent a copy to the Settlement Administrator in the manner described in the Notice.

27. In the event that the Settlement Agreement is not approved by the Court, or if approval of the Settlement Agreement, including the entry of the Order for Preliminary Approval or the Final Order and Judgment, is reversed or modified on appeal, or any one of the conditions precedent set forth in the Settlement Agreement is not met, then the Order for Preliminary Approval and the Final Order and Judgment, including, but not limited to, the conditional class certification entered to effectuate this Agreement, and all findings of fact and conclusions of law therein, shall be automatically dissolved *ab initio* without further order of the Court, and become null and void and of no force and effect, and in such event all *status quo ante* rights of Defendant to, among other things, (i) oppose any subsequent efforts by Plaintiff to certify this action as a class action, and (ii) all other defenses, rights, and positions shall in all respects be unaffected and preserved as shall those rights of Plaintiff and all Class Members.

IT IS SO ORDERED.

Date: July 8, 2021

/s/ Kiyoko A. Matsumoto
Hon. Kiyoko A. Matsumoto
United States District Judge