

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

JOHN TAYLOR, on behalf of himself and
others similarly situated,

Plaintiff,

v.

TIMEPAYMENT CORPORATION,

Defendant.

Civil Action No. 3:18-cv-00378-MHL

**ORDER OF PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

WHEREAS, this Court has been advised that the parties to this action, John Taylor (“Plaintiff” or “Class Representative”) and TimePayment Corp. (“Defendant”), through their respective counsel, have agreed, subject to Court approval following notice to the Settlement Class Members and a hearing, to settle the above-captioned lawsuit (“Lawsuit”) upon the terms and conditions set forth in the Class Action Settlement Agreement and Release (“Settlement Agreement”), which has been filed with the Court, and the Court deeming that the definitions set forth in the Settlement Agreement are hereby incorporated by reference (with capitalized terms as set forth in the Settlement Agreement);

NOW, THEREFORE, based upon the Settlement Agreement and all of the files, records, and proceedings herein, and it appearing to this Court that, upon preliminary examination, the proposed settlement appears fair, reasonable, and adequate, and that a hearing should and will be held on February 21, 2020 after notice to the Settlement Class Members, to confirm that the proposed settlement is fair, reasonable, and adequate, and to determine whether a Final Order and Judgment should be entered in this Lawsuit:

IT IS HEREBY ORDERED:

This Court has jurisdiction over the subject matter of the Lawsuit and over all settling parties hereto.

In compliance with the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d), 1453, and 1711-1715, First Class, Inc.—the designated Class Administrator—will cause to be served, on behalf of Defendant, written notice of the proposed class settlement on the United States Attorney General and the Attorneys General of each state.

For purposes of settlement only, and pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, the Lawsuit is hereby preliminarily certified as a class action on behalf of the following classes of plaintiffs (“Settlement Class Members”) with respect to the claims asserted in the Lawsuit:

Nationwide Settlement Class: All persons (a) with an address in the United States (b) who signed a Consumer Equipment Lease or had a payment obligation with TimePayment Corp. thereunder (c) between June 1, 2017 and January 31, 2019, or (d) who are members of the Virginia Settlement Class.

Virginia Settlement Class: All persons (a) with an address in Virginia (b) who signed a Consumer Equipment Lease or had a payment obligation with TimePayment Corp. thereunder (c) between June 4, 2016 and September 13, 2019.

Defendant represents that there are 35,028 Nationwide Settlement Class Members and 847 Virginia Settlement Class Members, including Plaintiff.

Pursuant to Rule 23, the Court appoints John Taylor as the Class Representative of the Nationwide Settlement Class and the Virginia Settlement Class. The Court also appoints Jesse S. Johnson and Michael L. Greenwald of Greenwald Davidson Radbil PLLC as Class Counsel. *See Baldwin v. Glasser & Glasser, P.L.C.*, No. 15-490, 2015 WL 7769207 (E.D. Va. Dec. 1, 2015) (Hudson, J.) (preliminarily approving class settlement under the Fair Debt Collection Practices Act (“FDCPA”) and appointing Greenwald Davidson Radbil PLLC class counsel); *see also*

Spencer v. #1 A LifeSafer of Ariz., LLC, No. 18-2225, 2019 WL 1034451 (D. Ariz. Mar. 4, 2019) (appointing Greenwald Davidson Radbil PLLC class counsel in action under the Consumer Leasing Act (“CLA”).

For purposes of settlement only, this Court preliminarily finds that the Lawsuit satisfies the applicable prerequisites for class action treatment under Rule 23, namely:

- A. The Settlement Class Members are so numerous that joinder of all of them in the Lawsuit is impracticable;
- B. There are questions of law and fact common to the Settlement Class Members, which predominate over any individual questions;
- C. The claims of the Plaintiff are typical of the claims of the Settlement Class Members;
- D. The Plaintiff and Class Counsel have fairly and adequately represented and protected the interests of all Settlement Class Members; and
- E. Class treatment of these claims will be efficient and manageable, thereby achieving an appreciable measure of judicial economy, and a class action is superior to other available methods for a fair and efficient adjudication of this controversy.

See Decohen v. Abbasi, LLC, 299 F.R.D. 469, 477-78 (D. Md. 2014) (approving class action settlement).

This Court preliminarily finds that the settlement of the Lawsuit, on the terms and conditions set forth in the Settlement Agreement, is in all respects fundamentally fair, reasonable, adequate, and in the best interest of the Settlement Class Members, especially in light of (i) the benefits to the Settlement Class Members; (ii) the strengths and weaknesses of Plaintiff’s case; (iii) the anticipated duration and expense of additional litigation; (iv) the risk and delay inherent

in possible appeals; (v) the risk of collecting any judgment obtained on behalf of the Settlement Class Members; (vi) the limited amount of any potential total recovery for the Settlement Class Members, given the cap on statutory damages for claims brought pursuant to the CLA and TILA; and (vii) the opinion of Class Counsel, who are highly experienced in this area of class action litigation. *See In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 159 (4th Cir. 1991).

A third-party class administrator acceptable to the parties will administer the settlement and notification to Settlement Class Members. The class administrator will be responsible for mailing the approved class action notice and settlement checks to the Settlement Class Members. The costs of administration will be paid from the Nationwide Settlement Fund. Upon the recommendation of the Parties, this Court hereby appoints the following class administrator: First Class, Inc.

This Court approves the form and substance of the Direct Mail Notices of Class Action Settlement, attached to the Settlement Agreement as Exhibits C and D. The proposed form and method for notifying the Settlement Class Members of the settlement and its terms and conditions meet the requirements of Rule 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all persons and entities entitled to the notice. This Court finds that the proposed notice is clearly designed to advise the Settlement Class Members of their rights. In accordance with the Settlement Agreement, the class administrator will mail the notice to the Settlement Class Members as expeditiously as possible, but in no event later than 30 days after the Court's entry of this order, *i.e.*, **no later than November 28**, 2019. The class administrator will confirm, and if necessary, update the addresses for the Settlement Class Members through standard methodology that the class administrator currently uses to update addresses.

Class Counsel's petition for an award of attorneys' fees and reimbursement of costs and expenses must be filed with the Court within 45 days after the deadline for dissemination of class notice, *i.e.*, no later than January 13, 2020. Opposition briefs to any petition for an award of attorneys' fees and reimbursement of costs and expenses must be filed no later than 21 days thereafter, *i.e.*, no later than February 3, 2020. Reply memoranda in support of the foregoing must be filed with the Court no later than 14 days after the filing of any opposition brief.

Any Settlement Class Member who wishes to receive a pro-rata portion of the Nationwide Settlement Fund or Virginia Settlement Fund must send a valid, timely claim form to First Class, Inc. with a postmark date no later than 75 days after the Court's entry of this order, *i.e.*, no later than January 13, 2020.

Any Settlement Class Member who desires to be excluded from the class must send a written request for exclusion to First Class, Inc. with a postmark date no later than 75 days after the Court's entry of this order, *i.e.*, no later than January 13, 2020. To be effective, the written request for exclusion must state the Settlement Class Member's full name, address, telephone number, and email address (if available), along with a signed statement that the Settlement Class Member wishes to be excluded. Any Settlement Class Member who submits a valid and timely request for exclusion will not be bound by the terms of the Settlement Agreement.

Any Settlement Class Member who intends to object to the fairness of this settlement must file a written objection with the Court within 75 days after the Court's entry of this order, *i.e.*, no later than January 13, 2020. Further, any such Settlement Class Member must, within the same time period, provide a copy of the written objection to Class Counsel, attention: Jesse S. Johnson, Greenwald Davidson Radbil PLLC, 7601 N. Federal Highway, Suite A-230,

Boca Raton, FL 33487; and Counsel for Defendant, Charles K. Seyfarth, O'Hagan Meyer, 411 E. Franklin Street, Suite 500, Richmond, Virginia 23219.

To be effective, a notice of intent to object to the Settlement must:

- A. Contain a heading which includes the name of the case and case number;
- B. Provide the name, address, telephone number, and email address (if available) of the Settlement Class Member filing the objection;
- C. Be filed with the Clerk of the Court no later than 75 days after the Court preliminarily approves the settlement;
- D. Be sent to Class Counsel and counsel for Defendant at the addresses designated in the Notice by first-class mail, postmarked no later than 75 days after the Court preliminarily approves the settlement;
- E. Contain the name, address, bar number, and telephone number of the objecting Class Member's counsel, if represented by an attorney. If the Settlement Class Member is represented by an attorney, he/she or it must comply with all applicable laws and rules for filing pleadings and documents in the U.S. District Court for the Eastern District of Virginia;
- F. Provide documentation establishing that he or she is a Settlement Class Member; and
- G. Contain a statement of the specific basis for each objection.

Any Settlement Class Member who has timely filed an objection may appear at the Final Fairness Hearing, in person or by counsel, to be heard to the extent allowed by the Court, applying applicable law, in opposition to the fairness, reasonableness and adequacy of the Settlement, and on the application for an award of attorneys' fees, costs, and expenses.

Upon final approval from the Court, the class administrator will mail a settlement check to each Settlement Class Member who submits a valid, timely claim form. Each participating Nationwide Settlement Class Member will receive a pro-rata portion of the \$175,000 Nationwide Settlement Fund, after deducting the costs and expenses of class notice and settlement administration, and \$1,000 for the Class Representative's service award. Additionally, each participating Virginia Settlement Class Member will receive a pro-rata portion of the \$50,000 Virginia Settlement Fund, after deducting \$2,000 for the Class Representative's service award. Thus, in addition to his pro-rata shares of the Nationwide and Virginia Settlement Funds, the Class Representative will be paid a total of \$3,000 in recognition of his service to the Settlement Class Members.

The Court will conduct a hearing on February 21, 2020, ^{at 11:00 a.m.} at the United States District Court for the Eastern District of Virginia, 701 East Broad Street, Richmond, Virginia 23219, to review and rule upon the following issues:

- A. Whether this action satisfies the applicable prerequisites for class action treatment for settlement purposes under Rule 23;
- B. Whether the proposed settlement is fundamentally fair, reasonable, adequate, and in the best interest of the Settlement Class Members and should be approved by the Court;
- C. Whether a Final Order and Judgment, as provided under the Settlement Agreement, should be entered, dismissing the Lawsuit with prejudice and releasing the Released Claims against the Released Parties; and
- D. Any other issues as the Court deems appropriate.

Attendance by Settlement Class Members at the Final Fairness Hearing is not necessary.

Settlement Class Members need not appear at the hearing or take any other action to indicate their approval of the proposed class action settlement. Settlement Class Members wishing to be heard are, however, required to appear at the Final Fairness Hearing. The Final Fairness Hearing may be postponed, adjourned, transferred, or continued without further notice to the Settlement Class Members.

Submissions by the Parties in support of the settlement, including memoranda in support of final approval of the proposed settlement, and responses to any objections, must be filed with the Court no later than 28 days prior to the Final Fairness Hearing, *i.e.*, **no later than January 24**, 2020. Opposition briefs to any of the foregoing must be filed no later than 14 days prior to the Final Fairness Hearing, *i.e.*, **no later than February 7**, 2020. Reply memoranda in support of the foregoing must be filed with the Court no later than 7 days prior to the Final Fairness Hearing, *i.e.*, **no later than February 14**, 2020.

The Settlement Agreement and this Order will be null and void if any of the following occur:

- A. The Settlement Agreement is terminated by any of the Parties for cause, or any specified material condition to the settlement set forth in the Settlement Agreement is not satisfied and the satisfaction of such condition is not waived in writing by the Parties;
- B. The Court rejects any material component of the Settlement Agreement, including any amendment thereto approved by the Parties; or
- C. The Court approves the Settlement Agreement, including any amendment thereto approved by the Parties, but such approval is reversed on appeal and such reversal becomes final by lapse of time or otherwise.

If the Settlement Agreement and/or this order are voided, then the Settlement Agreement will be of no force and effect, and the Parties' rights and defenses will be restored, without prejudice, to their respective positions as if the Settlement Agreement had never been executed and this order never entered.


The Court retains continuing and exclusive jurisdiction over the action to consider all further matters arising out of or connected with the settlement, including the administration and enforcement of the Settlement Agreement.

The Court sets the following schedule:

<u>Date</u>	<u>Event</u>
<u>October 29, 2019</u>	Preliminary Approval Order Entered
<u>November 28, 2019</u>	Direct Mail Notice Sent (30 days after Preliminary Approval Order entered)
<u>January 13, 2020</u>	Filing of Class Counsel's Petition for Attorneys' Fees, Costs, and Expenses (45 days after deadline for dissemination of Direct Mail Notice)
<u>January 13, 2020</u>	Deadline to Submit Claim Form, Send Exclusion, or File Objection (75 days after entry of Preliminary Approval Order)
<u>January 24, 2020</u>	Filing of Motion for Final Approval and Responses to Any Objections (28 days before Final Fairness Hearing)
<u>February 7, 2020</u>	Opposition, if any, to Final Approval (14 days before Final Fairness Hearing)
<u>February 14, 2020</u>	Reply in support of Final Approval (7 days before Final Fairness Hearing)
<u>February 21, 2020</u> <u>@ 11:00 a.m.</u>	Final Fairness Hearing Held

IT IS SO ORDERED.

Dated: 10/29/2019

/s/ 
M. Hannah Lauck
United States District Judge

The Honorable M. Hannah Lauck
United States District Judge