

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

KAYLA HERNANDEZ, on behalf of herself
and others similarly situated,

Plaintiff,

v.

STATE ROAD AUTO SALES, INC.,

Defendant.

Civil Action No. 1:19-cv-11525-NMG

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

WHEREAS, this Court has been advised that the parties to this action, Kayla Hernandez (“Plaintiff” or “Class Representative”), and State Road Auto Sales, Inc. (“Defendant”), through their respective counsel, have agreed, subject to Court approval following notice to the 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 (“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 December 10, 2020 after notice to the 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 Attorney General of every state where any potential Class Member resides.

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 class of plaintiffs (“Class Members”) with respect to the claims asserted in the Lawsuit:

All persons (a) with an address in the United States (b) who signed a Closed End Motor Vehicle Lease with State Road Auto Sales, Inc. (c) between August 1, 2017 and March 31, 2019 (d) for a vehicle for personal, family, or household use.

Defendant represents that there are 940 potential Class Members, including Plaintiff.

Pursuant to Rule 23, the Court appoints Kayla Hernandez as the Class Representative. The Court also appoints James L. Davidson and Jesse S. Johnson of Greenwald Davidson Radbil PLLC as Class Counsel. *See Taylor v. TimePayment Corp.*, No. 18-378, ECF No. 60 (E.D. Va. Oct. 29, 2019) (appointing Greenwald Davidson Radbil PLLC (“GDR”) class counsel in action under the Consumer Leasing Act (“CLA”), Truth in Lending Act, and Virginia usury law); *Spencer v. #1 A LifeSafer of Ariz., LLC*, No. 18-2225, 2019 WL 1034451 (D. Ariz. Mar. 4, 2019) (appointing GDR class counsel in CLA litigation); *Sheean v. Convergent Outsourcing, Inc.*, No. 18-11532, ECF No.

59 (E.D. Mich. July 8, 2019) (appointing GDR class counsel for classes under the Telephone Consumer Protection Act (“TCPA”) and Fair Debt Collection Practices Act); *Knapper v. Cox Commc’ns, Inc.*, 329 F.R.D. 238 (D. Ariz. 2019) (appointing GDR class counsel in TCPA action).

This Court preliminarily finds that the Lawsuit satisfies the applicable prerequisites for class action treatment under Rule 23, namely:

- A. The 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 Class Members, which predominate over any individual questions;
- C. The claims of the Plaintiff are typical of the claims of the Class Members;
- D. The Plaintiff and Class Counsel have fairly and adequately represented and protected the interests of all 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.

Bussie v. Allmerica Fin. Corp., 50 F. Supp. 2d 59, 69-72 (D. Mass. 1999) (Gorton, J.) (confirming certification of settlement class in connection with final approval of 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 Class Members, especially in light of (i) the risk, complexity, expense, and delay associated with continued litigation; (ii) the benefits obtained for Class Members in comparison with the likely results at trial; (iii) the stage of the litigation and discovery completed in advance of settlement negotiations; and (iv) the quality of counsel who conducted those negotiations and litigation to date, who are highly experienced in this area of class action litigation. See *In re Celexa & Lexapro Mktg. & Sales Practices Litig.*, No. 09-2067, 2014 WL 4446464, at *5 (D. Mass. Sept. 8, 2014) (Gorton, J.).

The Court finds that the proposed class representative, Kayla Hernandez, is acceptable and appoints her for the purpose of entering into and implementing the Settlement.

A third-party class administrator acceptable to the parties will administer the settlement and notification to Class Members. The class administrator will be responsible for mailing the approved class action notice and settlement checks to the Class Members. The costs of administration will be paid separately from all other payments to Class Members, the Class Representative, or Class Counsel. Upon the recommendation of the parties, this Court hereby appoints the following class administrator: First Class, Inc. *See Hoffman v. Law Office of Fradkin & Weber, P.A.*, No. 19-163, 2019 WL 2723581, at *2 (D. Md. July 1, 2019) (appointing First Class, Inc. to administer class settlement); *Veness v. Heywood, Cari & Anderson, S.C.*, No. 17-338, 2017 WL 6759382, at *5 (W.D. Wisc. Dec. 29, 2017) (same); *Green v. Dressman Benzinger Lavelle, PSC*, No. 14-142, 2014 WL 4816698, at *2 (W.D. Ohio Sept. 18, 2014) (same).

This Court approves the form and substance of the Direct Mail Notice, attached to the Settlement Agreement as Exhibit C, as well as the Long-Form Notice, attached to the Settlement Agreement as Exhibit D, to be posted on Class Counsel's website. The proposed form and method for notifying the 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 notices are clearly designed to advise the Class Members of their rights. In accordance with the Settlement Agreement, the class administrator will mail the Direct Mail Notice to the Class Members as expeditiously as possible, but in no event later than 21 days after the Court's entry of this order, *i.e.*, **no later than** September 4, **2020**. The class administrator will confirm, and if necessary, update the addresses for the Class Members through standard methodology that the class administrator currently uses to update addresses.

Any Class Member who wishes to receive a pro-rata portion of the Settlement Fund must

send a valid, timely claim form to First Class, Inc. with a postmark date no later than 60 days after the Court's entry of this order, *i.e.*, **no later than** October 13, **2020**.

Any 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 60 days after the Court's entry of this order, *i.e.*, **no later than** October 13, **2020**. To be effective, the written request for exclusion must state the Class Member's full name, address, telephone number, and email address (if available), along with a statement that the Class Member wishes to be excluded. Any Class Member who submits a valid and timely request for exclusion will not be bound by the terms of the Settlement Agreement.

Any Class Member who intends to object to the fairness of this settlement must file a written objection with the Court within 60 days after the Court's entry of this order, *i.e.*, **no later than** October 13, **2020**. Further, any such 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, Patrick T. Matthews, Coastal Legal Affiliates, P.C., 251 Bank Street, Fall River, Massachusetts 02720.

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 Class Member filing the objection;
- (c) Be filed with the Clerk of the Court no later than 60 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 60 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 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 District of Massachusetts;

(f) Provide documentation establishing that he or she is a Class Member; and

(g) Contain a statement of the specific basis for each objection.

Any 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 Class Member who submits a valid, timely claim form. Each participating Class Member will receive a pro-rata portion of the \$18,000 Settlement Fund.

The Court will conduct a hearing on December 10, 2020 at the United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, Massachusetts 02210, 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 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 Class Members at the Final Fairness Hearing is not necessary. Class Members need not appear at the hearing or take any other action to indicate their approval of the proposed class action 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 Class Members.

Plaintiff's petition for an award of attorneys' fees and reimbursement of costs and expenses for Class Counsel must be filed with the Court within 45 days after the Court's entry of this order, *i.e.*, **no later than** September 28, 2020. 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** November 12, 2020.

Opposition briefs to any of the foregoing, including to Plaintiff's petition for attorneys' fees, costs, and expenses, must be filed no later than 14 days prior to the Final Fairness Hearing, *i.e.*, **no later than** November 27, 2020. Reply memoranda in support of the foregoing, including in support of Plaintiff's petition for attorneys' fees, costs, and expenses, must be filed with the Court no later than seven days prior to the Final Fairness Hearing, *i.e.*, **no later than** December 3, 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>Aug. 14, 2020</u>	Preliminary Approval Order Entered
<u>Sept. 4, 2020</u>	Direct Mail Notice Sent (21 days after Preliminary Approval Order entered)
<u>Sept 28, 2020</u>	Filing of Plaintiff's Petition for Attorneys' Fees, Costs, and Expenses (45 days after Preliminary Approval Order entered)
<u>Oct 13, 2020</u>	Deadline to Submit Claim Form, Send Exclusion, or File Objection (60 days after entry of Preliminary Approval Order)
<u>Nov. 12, 2020</u>	Filing of Motion for Final Approval and Responses to Any Objections (28 days before Final Fairness Hearing)
<u>Nov. 27, 2020</u>	Oppositions, if any, to Final Approval or to Plaintiff's Petition for Attorneys' Fees, Costs, and Expenses (14 days before Final Fairness)

Hearing)

Dec. 3, 2020

Replies in support of Final Approval and Plaintiff's Petition for Attorneys' Fees, Costs, and Expenses (7 days before Final Fairness Hearing)

12/10/20 @ 2:30 PM Final Fairness Hearing Held

Given the size of the award to the class, the Court will not approve the proposed attorneys' fees set forth in the "Class Action Agreement" submitted by defendant (Docket No. 27-1). Attorneys' fees will be determined at the appropriate time based upon the award to the class and the number of claims made.

IT IS SO ORDERED.

Dated: 8/14/20



The Honorable Nathaniel M. Gorton
United States District Judge