

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Northern Division - Baltimore**

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

2013 OCT 29 P 3:24

CLERK'S OFFICE
AT BALTIMORE

BY  DEPUTY

DEANNA DRISCOLL,)
Personal Representative of the Estate of)
Dale Driscoll, individually and on behalf of)
itself and others similarly situated,)
)
Plaintiff,)
)
v.)
)
NAVY FEDERAL CREDIT UNION,)
a federal credit union,)
)
Defendant.)

Case No. 1:13-cv-00137-BPG

ORDER APPROVING SETTLEMENT

The Court has (1) reviewed and considered the terms and conditions of the proposed Settlement as set forth in the Stipulation of Settlement ("Stipulation") dated June 20, 2013; (2) reviewed and considered the application of Class Counsel for an award of attorneys' fees, costs, expenses, and a class representative incentive award; (3) held a Fairness Hearing after being satisfied that notice to the Settlement Class has been provided in accordance with the Court's Order Granting Preliminary Approval to Proposed Class Settlement entered on June 24, 2013 (the "Preliminary Approval Order"); (4) taken into account any objections submitted prior to the Fairness Hearing in accordance with the Preliminary Approval Order, and the presentations and other proceedings at the Fairness Hearing; (5) considered the Settlement in the context of all prior proceedings had in this litigation. Accordingly, the Court enters the following FINDINGS and CONCLUSIONS:

A. Capitalized terms used in this Order that are not otherwise defined herein shall have the meaning assigned to them in the Stipulation.

B. The Court has subject matter jurisdiction over this Lawsuit and all acts within this Lawsuit, and over all the parties to this Lawsuit, including all members of the Settlement Class.

C. The Settlement Class conditionally certified in the Preliminary Approval Order has been appropriately certified for settlement purposes. Class Counsel and the Class Representative have fairly and adequately represented the Settlement Class for purposes of entering into and implementing the Settlement.

D. The notice to putative Settlement Class Members was comprised of individual mailed notice to all Settlement Class Members. The Court finds that this notice (i) constituted the best notice practicable under the circumstances, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise the putative Settlement Class Members of the pendency of the Lawsuit, and of their right to object and to appear at the Fairness Hearing or to exclude themselves from the Settlement, (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice, and (iv) fully complied with due process principles and Federal Rule of Civil Procedure 23.

E. The Court has held a Fairness Hearing to consider the fairness, reasonableness, and adequacy of the Settlement; has been advised of all objections to the Settlement; and has given fair consideration to such objections.

F. The Settlement is the product of good faith, arm's length negotiations between the Class Representative and Class Counsel, on the one hand, and Navy Federal and its counsel, on the other hand.

G. The Settlement, as provided for in the Stipulation, is in all respects fair, reasonable, adequate, and proper, and in the best interest of the Settlement Class. In reaching this conclusion, the Court considered a number of factors, including: (i) an assessment of the likelihood that the Settlement Class would prevail at trial; (ii) the range of possible recoveries available to the Settlement Class Members, including the limitations on statutory damages and Navy Federal's potential counterclaims; (iii) the consideration provided pursuant to the Settlement, as compared to the range of possible recovery discounted for the inherent risk of litigation, including the risk of maintaining a class through trial; (iv) the complexity, duration, and expense of such litigation in the absence of a settlement; (v) the nature and extent of any objections to the Settlement; and (vi) the stage of the proceedings at which the Settlement was reached. *See, e.g., Scardaletti v. Debarr*, 43 Fed. Appx. 525 (4th Cir. 2001).

H. Only one objection to the Settlement was filed. The Court has carefully considered that objection and overrules and denies it in all respects.

I. A list of those putative Settlement Class Members who have timely elected to opt out of the Settlement and the Settlement Class, and who are therefore not bound by the Settlement, the provisions of the Stipulation, this Order and the Final Judgment to be entered by the Clerk of the Court hereon, has been submitted to the Court in the Declaration of Thomas R. Waskom, filed in advance of the Fairness Hearing. That list is attached as Exhibit A to this Order. All Settlement Class Members (as permanently certified below) shall be subject to all of the provisions of the Settlement, the Stipulation, this Order, and Final Judgment to be entered by the Clerk of the Court.

On the basis of the foregoing findings and conclusions, as well as the submissions and proceedings referred to above, NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

Certification of Class and Approval of Settlement

1. The Settlement and the Stipulation are hereby approved as fair, reasonable, adequate, and in the best interests of the Settlement Class, and the requirements of due process and Federal Rule of Civil Procedure 23 have been satisfied. The objections to the Settlement are overruled and denied in all respects. The parties are ordered and directed to comply with the terms and provisions of the Stipulation.

2. The Court having found that each of the elements of Federal Rules of Civil Procedure 23(a) and 23(b)(3) are satisfied, for purposes of settlement only, the Settlement Class is permanently certified pursuant to Federal Rule of Civil Procedure 23, on behalf of the following persons:

all persons who held both depository accounts and credit card accounts with Navy Federal from whom Navy Federal withdrew funds from the depository account(s) to be applied to their credit card accounts from January 11, 2012 through April 30, 2013.

The putative Settlement Class Members identified on the list submitted to the Court and included on Exhibit A as having timely and properly elected to opt out from the Settlement and the Settlement Class are hereby excluded from the Settlement Class and shall not be entitled to any of the benefits afforded to the Settlement Class Members under the Stipulation. The Court readopts and incorporates herein by reference its preliminary conclusions as to the satisfaction of Rules 23(a) and (b)(3) set forth in the Preliminary Approval Order and notes again that because this certification of the Class is in connection

with the Settlement rather than litigation, the Court need not address any issues of manageability that may be presented by certification of the nationwide class proposed in the Settlement.

3. For purposes of Settlement only, Plaintiff is certified as representative of the Settlement Class and Class Counsel is appointed counsel to the Settlement Class. The Court concludes that Class Counsel and the Class Representative have fairly and adequately represented the Settlement Class with respect to the Settlement and the Stipulation.

4. Notwithstanding the certification of the foregoing Settlement Class and appointment of the Class Representative for purposes of effecting the Settlement, if this Order is reversed on appeal or the Stipulation is terminated or is not consummated for any reason, the foregoing certification of the Settlement Class and appointment of the Class Representative shall be void and of no further effect, and the parties to the proposed Settlement shall be returned to the status each occupied before entry of this Order without prejudice to any legal argument that any of the parties to the Stipulation might have asserted but for the Stipulation.

Release and Injunctions Against Released Claims

5. Plaintiff and each of the other Settlement Class Members, jointly and severally, fully release and discharge Navy Federal and Released Parties from any and all claims, judgments, liens, losses, debts, liabilities, demands, obligations, guarantees, penalties, costs, expenses, attorneys' fees, damages, indemnities, actions, causes of action, and obligations of every kind and nature in law, equity or otherwise, known or unknown, suspected or unsuspected, disclosed or undisclosed, contingent or accrued, arising out of or in any way relating to the dispute which is the subject of the Lawsuit or which could have

been asserted in the Lawsuit based on the facts alleged, whether in contract, tort, local law, or violation of any state or federal statute, rule or regulation, arising out of, concerning, or in connection with any act or omission by or on the part of Released Parties, including, without limitation, claims for violation of the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.* based on the facts or circumstances alleged in the Lawsuit. Released Claims include any unknown claims that members of the Settlement Class do not know or suspect to exist in their favor, which if known by them, might have affected this Stipulation with Navy Federal and release of Released Parties.

6. The Settlement Class Members are permanently enjoined from filing, commencing, prosecuting, intervening in, participating in as class members or otherwise, or receiving any benefits or other relief from, any other lawsuit in any state, territorial or federal court, or any arbitration or administrative or regulatory or other proceeding in any jurisdiction, which asserts claims based on or in any way related to the Released Claims. In addition, Settlement Class Members are enjoined from asserting as a defense, including as a set-off or for any other purpose, any argument that if raised as an independent claim would be a Released Claim. This injunction does not affect in any way the regulatory authority of any state or federal agency, nor does it prevent Settlement Class Members from cooperating with state or federal regulators or participating in any action brought by a regulator.

7. With respect to the Released Claims, Plaintiff and all Settlement Class Members agree that they are expressly waiving and relinquishing to the fullest extent permitted by law (a) the provisions rights and benefits conferred by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

and (b) any law of any state of the United States, federal law, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code.

8. Notwithstanding any other provision of the Settlement Agreement or this Order, Plaintiff and Settlement Class Members expressly agree that Navy Federal does not release any claims it may have against any Settlement Class Member for collection of any debt that is owed by a Settlement Class Member to Navy Federal. To the contrary, Navy Federal expressly reserves all such claims, and Settlement Class Members hereby agree that Settlement of this Lawsuit and this Settlement Agreement do not constitute res judicata, collateral estoppel or have any preclusive effect whatsoever on Navy Federal's claims for collection of debts regardless of when such claims arose. In other words, notwithstanding the Settlement, the Agreement, this Order, or any provision in the Agreement or this Order, the Parties agree that Navy Federal retains all claims against Settlement Class Members it now has or may have in the future to recover payment of any monies owed to it by Settlement Class Members.

Applications for Attorneys' Fees, Costs, and Expenses and
Representative Plaintiff Incentive Award

9. The Court has reviewed the application for an award of fees, costs, and expenses submitted by Class Counsel and the exhibits, memoranda of law, and other materials submitted in support of that application. The Court recognizes that Navy Federal has not opposed the application for class representative incentive award of \$4,500 to be paid by Navy Federal. This agreement is in addition to the other relief to be provided to

Class Members under the Agreement. On the basis of its review of the foregoing, the Court finds that an incentive award of \$4,500 is appropriate to be paid by Navy Federal in accordance with the terms of the Stipulation. Class Counsel's request for attorneys' fees and expenses is fair, reasonable, and appropriate and hereby awards fees and expenses to Class Counsel in the aggregate amount of \$^{260,350}_____, to be paid by Navy Federal in accordance with the terms of the Stipulation.

Other Provisions

10. Neither the Stipulation nor any provision therein, nor any negotiations, statements or proceedings in connection therewith shall be construed as, or be deemed to be evidence of, an admission or concession on the part of the Plaintiff, and any Settlement Class Member, Navy Federal, or any other person of any liability or wrongdoing by them, or that the claims and defenses that have been, or could have been, asserted in the Lawsuit are or are not meritorious, and this Order, the Stipulation or any such communications shall not be offered or received in evidence in any action or proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that Plaintiff, any Settlement Class Member, or any other person has suffered any damage; *provided, however*, that the Stipulation, this Order, and the Final Judgment to be entered thereon may be filed in any action by Navy Federal or Settlement Class Members seeking to enforce the Stipulation or the Final Judgment by injunctive or other relief, or to assert defenses including, but not limited to, *res judicata*, collateral estoppel, release, good faith settlement, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim. The Stipulation's terms shall be forever binding on, and shall have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings as to

Released Claims and other prohibitions set forth in this Order that are maintained by, or on behalf of, the Settlement Class Members or any other person subject to the provisions of this Order.

11. In the event the Stipulation does not become effective or is canceled or terminated in accordance with the terms and provisions of the Stipulation, then this Order and the Final Judgment shall be rendered null and void and be vacated and all orders entered in connection therewith by this Court shall be rendered null and void.

Entry of Judgment; Continuing Jurisdiction

12. The Clerk of the Court is directed to enter the Final Judgment in the form attached to this Order dismissing all Released Claims with prejudice as to Navy Federal.

13. Without in any way affecting the finality of this Order and the Final Judgment, this Court hereby retains jurisdiction as to all matters relating to (a) the interpretation, administration, and consummation of the Stipulation and (b) the enforcement of the injunctions described in paragraph 6 of this Order.

SO ORDERED this 29TH day of October 2013.



Hon. Beth P. Gesner
United States Magistrate Judge