

**IN THE COURT OF COMMON PLEAS FOR
JEFFERSON COUNTY, PENNSYLVANIA**

MICHAEL DUDO, et al.,)	
)	CIVIL ACTION
Plaintiffs,)	
)	
v.)	No. 296-2020-CD
)	
CAPITAL ONE, N.A., d/b/a CAPITAL ONE)	
AUTO FINANCE,)	
)	
Defendant)	

ORDER

AND NOW, this 9th day of April, 2020, upon consideration of Plaintiffs' Uncontested Motion for Preliminary Settlement Approval, Conditional Certification of Settlement Class, and Approval of Class Settlement Notice (the "Motion"), it is hereby ORDERED that the Motion is GRANTED. It is further ORDERED as follows:

1. **Summary of Claims.** Plaintiffs, Michael Dudo, Danielle Dudo, Gwendolyn Terrell, Scott Clark, individually and as Administrator of the Estate of Lisa Clark, Robert Arquillo, James Dwyer, Anthony Wagner, and Constance Wagner, bring this action against Defendant, Capital One, N.A., d/b/a Capital One Auto Finance ("COAF"), asserting claims on their own behalf and on behalf of similarly-situated Pennsylvania consumer auto loan borrowers, arising from COAF's practices with respect to sending post-repossession notices informing Pennsylvania consumer borrowers of the repossession of their motor vehicles and COAF's intention to dispose of the repossessed motor vehicles ("Post-Repossession Notices") and disposing of repossessed motor vehicles through sales at an auction facility in Mercer, Pennsylvania operated by Automobile Dealer Exchange Services of America ("ADESA

Mercer”). Plaintiffs allege that COAF’s practices with respect to sending Post-Repossession Notices violated the Pennsylvania Uniform Commercial Code, 13 Pa. C.S. § 9601, *et seq.* (the “UCC”) and seek statutory damages under 13 Pa. C.S. § 9625(c)(2), on their own behalf and on behalf of the putative class members. Plaintiffs, on their own behalf and on behalf of the putative class members, also dispute the deficiency balances that COAF claims remain due and owing following the sales of Plaintiffs’ and the putative class members’ repossessed motor vehicles (the “Disputed Deficiency Balances”). COAF, on the other hand, denies that it violated the UCC, denies any liability to Plaintiffs or any putative class members, and asserts that it is entitled to pursue collection of the Disputed Deficiency Balances.

2. Proposed Settlement. Plaintiffs and COAF (the “Parties”) have agreed, subject to approval by the Court, to resolve this action on a class-wide basis in accordance with the terms of an executed Class Action Settlement Agreement and Release (the “Settlement Agreement”), a copy of which was attached as Exhibit 1 to the Motion.¹ Pursuant to the Settlement Agreement, in exchange for a release of the claims of Plaintiffs and the Class Members, as set forth in the Settlement Agreement, COAF, without admitting any liability, agrees to: (i) make a gross settlement payment to the Class in the aggregate sum of \$7,500,000.00; (ii) compromise and extinguish the Disputed Deficiency Balances on Plaintiffs’ and the Class Members’ Auto Loans by way of an accord and satisfaction; (iii) vacate or mark satisfied any unsatisfied deficiency judgments against the Class Members; (iv) request that the Credit Reporting Agencies delete the trade lines associated with Plaintiffs’ and the Class Members’ Auto Loans; and (v) return to the Class Members the Post-Stay Payments they made toward their Disputed

¹ Unless defined herein, all capitalized terms in this Order shall have the meanings ascribed to them in the Settlement Agreement. The Settlement Agreement, including its exhibits, is incorporated by reference in this Order.

Deficiency Balances on or after March 26, 2018, the last day of the agreed Class Period.

3. **Preliminary Settlement Approval.** The Court preliminarily finds that the Settlement between the Parties, as memorialized in the Settlement Agreement, is fair, adequate, in the best interests of the Class Members, and within the range of reasonableness for preliminary settlement approval. The Court finds that: (a) the Settlement resulted from arm's length negotiations; and (b) the Settlement is sufficiently reasonable to warrant notice of the Settlement to the Class Members and a full hearing on the approval of the Settlement.

4. **Conditional Class Certification.** Pursuant to Pa. R.C.P. No. 1710, the Court conditionally certifies, for settlement purposes only, the following class (the "Class"):

All Borrowers (i) who entered into an Auto Loan; (ii) whose motor vehicle was repossessed by COAF; (iii) whose mailing address or whose co-obligor's mailing address at the time of the repossession of the vehicle, according to COAF's business records, was in Pennsylvania; (iv) to whom COAF sent a Post-Repossession Notice advising that the repossessed vehicle would be sold at a "private sale"; (v) whose repossessed vehicle was offered for sale at ADESA Mercer during the time period between December 31, 2012 and March 26, 2018, inclusive; and (vi) who is not a member of Class 1 in the class action settlement in *Langer v. Capital One Auto Finance*, No. 2:16-cv-06130-HB (E.D. Pa.).

5. **Findings as to the Class.** The Court preliminarily finds, for settlement purposes only, that:

- (a) The Class appears to be so numerous that joinder of all members is impracticable, as required by Pa. R.C.P. No. 1702(1);
- (b) There appear to be questions of law or fact common to the Class for the purposes of determining whether the Settlement should be approved, as required by Pa. R.C.P. No. 1702(2);
- (c) Plaintiffs' claims appear to be typical of the Class claims being resolved through the Settlement, as required by Pa. R.C.P. No. 1702(3);
- (d) Plaintiffs appear to be capable of fairly and adequately protecting the interests of the Class in connection with the proposed Settlement, as required by Pa. R.C.P. No. 1702(4) and taking into consideration all of the

factors set forth in Pa. R.C.P. No. 1709;

- (e) Certifying the Class for settlement purposes provides a fair and efficient method for resolving the parties' controversy in this action, as required by Pa. R.C.P. No. 1702(5);
- (f) Common questions of law and fact appear to predominate over questions affecting only individual Class members, as required by Pa. R.C.P. No. 1708(a)(1);
- (g) Certification of the Class appears to be superior to other available methods for the fair and efficient resolution of the Class claims, taking into consideration all of the factors set forth in Pa. R.C.P. No. 1708(a); and,
- (h) Class Counsel Richard Shenkan is an experienced class action litigator who has competently handled similar class claims in an effective manner thereby satisfying the competency criterium of Pa. R.C.P. No. 1709.

6. Findings as to the Compromise and Extinguishment of the Disputed

Deficiency Balances in an Accord and Satisfaction. Pursuant to the Settlement, COAF shall permanently extinguish the Disputed Deficiency Balances of the Class Members (excluding those Class Members whose requests for exclusion are approved by the Court). The Parties acknowledge and agree, and the Court finds, that the Disputed Deficiency Balances are disputed liabilities, with the Parties having a good faith dispute concerning COAF's right to pursue collection of the Disputed Deficiency Balances. Plaintiffs contend, and the Court finds, that the Parties' agreement to compromise and extinguish the Disputed Deficiency Balances constitutes a bona fide accord and satisfaction under Pennsylvania law, *see King v. Boettcher*, 616 A.2d 57, 62 (Pa. Commw. Ct. 1992) (setting forth elements of an accord and satisfaction), not the cancellation or discharge of indebtedness, and that, under *Zarin v. Commissioner of Internal Revenue*, 916 F.2d 110 (3d Cir. 1990), the compromise and extinguishment of the Disputed Deficiency Balances by way of an accord and satisfaction do not result in taxable income to the Class Members.

7. **Preliminary Appointment of Class Representatives and Class Counsel.** For settlement purposes only, the Court preliminarily appoints Plaintiffs as the class representatives for the Class and preliminarily appoints Richard Shenkan and Shenkan Injury Lawyers, LLC, as class counsel for the Class. The Court preliminarily finds that Plaintiffs and Class Counsel have and will fairly and adequately represent the interests of the Class Members with respect to the Settlement. Plaintiffs and Class Counsel, on behalf of the Class, are authorized to take all appropriate actions required and permitted to be taken by the Settlement Agreement to effectuate its terms.

8. **Appointment of Settlement Administrator.** BrownGreer PLC is appointed as the third-party administrator (the “Settlement Administrator”) to assist in the administration of the Settlement and the notification to the Class Members, as set forth in the Settlement Agreement. The Settlement Administrator shall be bound by the terms of this Order, including the confidentiality provisions set forth herein, and subject to the jurisdiction of the Court for the purposes of this action and the Settlement.

9. **Protection of Confidential Information.** The Court finds that it is necessary for COAF to disclose to Class Counsel and the Settlement Administrator confidential class data, including the names, addresses, telephone numbers, email addresses, and Social Security Numbers of the Class Members, as well as information regarding the Class Members’ Auto Loan Accounts (“Confidential Information”). Class Counsel and the Settlement Administrator shall: (i) maintain the confidentiality of any Confidential Information disclosed by COAF in connection with the administration of the Settlement; (ii) use any Confidential Information disclosed by COAF in connection with the administration of the Settlement solely for the purposes of administering the Settlement, representing the Class Members in connection with the

Settlement, and not for any other purpose; (iii) refrain from disclosing any Confidential Information disclosed by COAF in connection with the administration of the Settlement to anyone other than Class Counsel, Defense Counsel, the Settlement Administrator, or their respective employees assisting in the administration of the Settlement; and (iv) take reasonable steps to secure and protect from unauthorized disclosure any Confidential Information disclosed by COAF in connection with the administration of the Settlement. Nothing in this Order is intended to, or shall be construed to, prevent or inhibit Class Counsel from providing legal advice to Plaintiffs or the Class Members.

10. **Approval of Manner and Form of Proposed Class Notice.** The Court approves the proposed Class Notice attached as Exhibit C to the Settlement Agreement and the proposed manner of mailing the Class Notice, as set forth in the Settlement Agreement, finding that the Class Notice fully satisfies the requirements of Due Process, the applicable requirements of the Pennsylvania Rules of Civil Procedure, and Class Counsel's obligations to Class Members, and constitutes reasonable and sufficient notice to all Class Members, as practicable under the circumstances. The Class Notice shall be sent by the Settlement Administrator to the Class Members by first-class U.S. mail, postage prepaid, not later than forty-five (45) days following the entry of this Order.

11. **Qualified Settlement Fund.** Class Counsel and/or the Settlement Administrator is/are authorized to establish the Settlement Account, at a federally-insured financial institution to be selected by Class Counsel, which satisfies the requirements to be a "Qualified Settlement Fund" within the meaning of Treasury Regulation Section 1.468B-1, promulgated under Section 468B of the Internal Revenue Code of 1986, as amended. As set forth in the Settlement Agreement, the Settlement Administrator will administer the Settlement Fund and will be the

“Administrator” of this Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3). Class Counsel and/or the Settlement Administrator shall establish the Qualified Settlement Fund in accordance with the terms of the Settlement Agreement.

12. Class Members’ Right to Object to the Settlement. As set forth in the Settlement Agreement and the proposed Class Notice, all Class Members have the right to object to the Settlement, by sending a written objection to the Settlement Administrator in accordance with the Class Notice. As set forth in the Class Notice, written objections to the Settlement must be post-marked no later than forty-five (45) days after the date of the Class Notice. Class Counsel shall file copies of all written objections to the Settlement with Plaintiffs’ motion for final approval of the Settlement in advance of the final approval hearing, redacting the name, address, or other personally identifiable information of the objector.

13. Class Members’ Right to Request Exclusion from the Class. As set forth in the Settlement Agreement and the proposed Class Notice, all Class Members have the right to request exclusion from the Class by sending a written request for exclusion to the Settlement Administrator in accordance with the Class Notice. Any written request for exclusion must: (i) set forth the Class Member’s full name, current address, telephone number and email address, if available, (ii) contain the signatures of any Class Member (or his or her guardian, administrator, or executor) obligated on the Class Member’s Auto Loan, and (iii) state the intent of all signatory(ies) not to participate in the Settlement. As set forth in the Class Notice, written requests for exclusion from the Class must be post-marked no later than forty-five (45) days after the date of the Class Notice. In accordance with Pa. R.C.P. No. 1711(a), Class Members who do not timely exclude themselves from the Class in accordance with the Class Notice shall be bound by the Court’s Order finally approving the Settlement, if final approval is granted. Class

Counsel shall file copies of all written requests for exclusion from the Class with Plaintiffs' motion for final approval of the Settlement in advance of the final approval hearing.

14. **Final Approval Hearing.** A final approval hearing with respect to the Settlement (the "Final Approval Hearing") shall take place before the Court in Courtroom A30, Jefferson County Courthouse, 200 Main Street, Brookville, PA 15825, on July 6, 2020, at 3:00 pm. At the Final Approval Hearing the Court will consider, *inter alia*: (i) whether the Settlement is fair and reasonable; (ii) whether the Class Counsel Fees are fair and reasonable; (iii) whether the Class Counsel Costs are fair and reasonable; (iv) whether the Settlement Administration Costs are fair and reasonable; (v) whether the Incentive Awards are fair and reasonable; and (vi) whether the Final Approval Order, dismissing the Action on the merits and with prejudice as to the Class Members who did not timely excluded themselves from the Class, should be entered. The Court will also hear and consider any properly lodged objections to the Settlement by any Class Member. Any Class Member may appear and be heard at the Final Approval Hearing, either in person or through counsel retained at the Class Member's expense. The Final Approval Hearing may be postponed, adjourned, or rescheduled by Order of the Court without further notice to the Class Members. In light of the restrictions necessitated by the COVID-19 pandemic, the Court, in its discretion, may change the mode or manner of the hearing (e.g., holding the hearing via Internet videoconference or telephone conference).

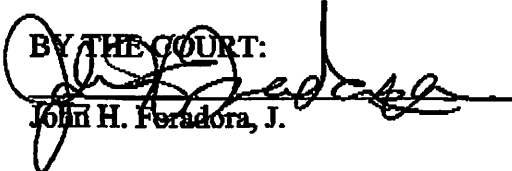
15. **Motion for Final Approval.** Before the Final Approval Hearing, Plaintiffs shall file a Motion for Final Approval seeking a Final Approval Order in accordance with the Settlement Agreement, approving the Agreement as final, fair, reasonable, adequate, and binding on all Class Members who have not excluded themselves from the Class and ordering that the Settlement Fund be distributed in accordance with the Settlement Agreement and that the

additional class relief be conferred to the eligible Class Members in accordance with the Settlement Agreement. The Motion for Final Approval shall include Class Counsel's application for a common fund award of Class Counsel Fees, Class Counsel Costs, Settlement Administration Costs, and Plaintiffs' Incentive Awards.

16. **Stay of Proceedings.** All proceedings in this action are stayed pending final approval of the Settlement, except as may be necessary to implement the Settlement or to comply with the terms of the Settlement Agreement.

17. **Effect of Termination.** If the Settlement Agreement is terminated or is not consummated for any reason, or if Final Approval is not obtained, this Order, including the preliminary approval of the Settlement, the conditional certification of the Class, the preliminary appointment of Plaintiffs as class representatives, and the preliminary appointment of Class Counsel, shall be deemed void and of no effect, except as to the confidentiality provisions set forth in ¶ 9 hereof, and this action shall proceed as though such approval, certification, and appointments never occurred, with the Parties reserving all rights, including with respect to class certification. Further, in such event, neither the Settlement Agreement, the Motion, this Order, nor any documents related thereto shall be referred to or used by any Party to establish liability, damages, or class certification or for any other purpose.

18. **Retention of Jurisdiction.** The Court retains jurisdiction to consider all further applications arising out of or related to the Settlement Agreement. The Court may approve or modify the Settlement without further notice to the Class Members.

BY THE COURT:

John H. Peradara, J.

cc. Richard Shenkan, Esq. (via fax @ 1-888-769-1779) for Plaintiffs.
Joseph Kelleher, Esq. (via fax @ 1-215-564-8120) for Capital One, N.A.