UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

GRACIE WHITE f/k/a GRACIE DORNEUS, Individually and on behalf of a class of persons similarly situated, Plaintiff, v. ALLY FINANCIAL INC., Defendant.	C.A. No. 3:18-CV-30143-MGM

PLAINTIFF'S MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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Introduction

Plaintiff Gracie White and Defendant Ally Financial, Inc. ("Ally") (collectively "the Parties") have agreed to a settlement that will fully resolve this class action. ECF # 118-1. The Court preliminarily approved the Settlement on June 30, 2021. ECF # 121. Class Members have been notified. No objections have been filed. No Class Member has opted out.

Under the proposed Settlement, Class Members' alleged deficiency debts to Ally, which total approximately $11 million, will be eliminated. Ally will establish a Cash Fund of $5,000,000 which will be used to compensate Class Members, and pay the costs of administration, attorneys' fees, and a service award, subject to Court approval. Ally will also request that the credit reporting agencies remove negative credit reporting related to Class Members' accounts for which Ally is waiving the deficiency balance. Class Members will receive these benefits automatically, no claim forms are necessary. No settlement funds will revert to Ally, but will instead be paid to a *cy pres* recipient agreed upon by the Parties and approved by the Court. As an added benefit, despite the fact that Ally has settled a nationwide class action that by its terms includes the claims raised here, the broader release of claims in that case (*Ally v. Haskins*, pending in Missouri state court) will not be enforced against *White* Class Members who will obtain the benefits of both this Settlement and *Haskins*.

The Settlement Agreement is now subject to final approval by the Court. All the relevant factors that support approval are met here. The Settlement provides significant relief, particularly given the risk of continued litigation, a risk that is particularly heightened because of the competing but less beneficial nationwide settlement in *Haskins*. The Settlement ensures that Class Members are compensated without delay and eliminates the risk of loss at trial or on appeal. Having litigated for three years, through a motion to remand, motions to dismiss, discovery, discovery motions, mediation, class certification, and motions practice addressing the

threat of the competing class action settlement, the Parties approached settlement fully apprised of the strengths and weaknesses of their respective claims and defenses. And the Settlement was negotiated at arm's length, first with the assistance of an experienced class action mediator, Brad Honoroff of The Mediation Group, and then through direct talks.

Ms. White now requests that the Court finalize its preliminary certification of the Settlement Class and finally approve the Settlement as fair, reasonable and adequate. A proposed order is attached as Exhibit 1.

I. Background

Factual Background

This class action challenges the notices Ally sent to Massachusetts borrowers after it repossessed their cars, and its calculation of deficiency balances. Specifically, the Second Amended Complaint (ECF ## 28-1, 33) ("Complaint") alleged that Ally's form notices are defective because they tell consumers that their deficiency liability will be calculated and collected using the automobile's *sale price* obtained at auction, while Massachusetts law requires that the borrower be given credit for the car's *fair market value.* Motor Vehicle Retail Installment Sales Act ("MVRISA"), M.G.L. c. 255B, § 20B(e)(1). Ms. White's Complaint alleged that Ally's notices violated the Massachusetts UCC, M.G.L. c. 106, § 9-614 (which requires an accurate explanation of the deficiency), and the MVRISA. As a result, the Complaint alleged that Ms. White and the Class were entitled to statutory damages, and were not liable for their alleged deficiency balances.

The facts of Ms. White's repossession are representative. In October 2018, Ally repossessed Ms. White's car. Following the repossession, Ally sent Ms. White a post-repossession notice advising her of its intent to sell the car. The notice also described her deficiency liability as follows: "The money that [Ally] get[s] from the sale (after paying our

costs) will reduce the amount you owe. If we get less money than you owe, you may still owe us the difference." Ally then sold Ms. White's car on December 3, 2018.

Procedural Background

This case was filed by James Randall on July 14, 2018 in Suffolk Superior Court. *See* ECF # 1. Ally then removed the action to this Court; Mr. Randall moved to remand; this Court denied the remand motion. ECF # 12. Ally subsequently filed a motion to dismiss the original complaint on grounds that, among other things, Vermont law applied to Mr. Randall's claim and that the Massachusetts Supreme Judicial Court's decision in *Williams v. Am. Honda Fin. Corp.*, 98 N.E.3d 169, 179-80 (Mass. 2018), which was issued on June 5, 2018, created new law and should not apply retroactively. ECF # 16. Mr. Randall opposed the motion. ECF # 18.

While the motion was pending, Mr. Randall moved to amend the complaint to add Gracie White as a named plaintiff, a motion the Court allowed. ECF # 31. Ally then filed a partial motion to dismiss and to strike class allegations, again arguing, among other things, that Randall's claim should be dismissed due to application of Vermont law and that the class claims that arose prior to the Supreme Judicial Court's ruling in *Williams* should be stricken. ECF # 35. On April 13, 2020, the Court entered an order allowing Ally's motion as to Randall, finding that Vermont law applied to his claim, but otherwise denied Ally's motion. ECF # 46. The Parties subsequently agreed to attempt to resolve this matter through an August 2020 mediation. Although the Parties made some progress at the mediation, it did not immediately yield an agreement.

Ally then moved to certify an interlocutory appeal of the Court's order on its motion to dismiss on grounds that *Williams* did not apply retroactively. In the alternative it sought to stay the case pending the Massachusetts Appeals Court's impending decision in *Dellorusso v. PNC*

Bank, N.A., No. 2019-P1327 (Mass. App. Ct. filed Sept. 9, 2019).[1] Ms. White opposed the motion, and the Court later denied it. ECF # 49.

Shortly after Ally filed its motion, Ms. White moved to certify the Class. ECF # 52. Ally also moved to amend its answer to assert a counterclaim against Ms. White for her alleged loan deficiency, which Ms. White opposed and the Court denied. ECF # 114. Ms. White filed a motion to compel discovery and Ally filed a motion for a protective order with respect to certain Rule 30(b)(6) topics – the Court allowed these motions in part. ECF # 113.

The Parties engaged in extensive discovery. Ms. White served a first set of written discovery requests consisting of interrogatories, document requests and requests for admission, and a second set of document requests. Ally served a first set of interrogatories and document requests on Ms. White, and then a set of requests for admission. The Parties responded to all written discovery requests. Ally also took Ms. White's deposition. And Ms. White, through counsel, took a Rule 30(b)(6) deposition of Ally, though the deposition was suspended because of a personal issue for the witness that arose during the deposition.

In the meantime, on March 17, 2021, Ally reached a nationwide class settlement in a Missouri state court case (the "*Haskins* Litigation"). Ms. White filed a motion to intervene in the *Haskins* Litigation on an emergency basis, requesting that the Missouri state court permit the putative class to intervene in Missouri. That motion was withdrawn upon the execution of the Settlement Agreement.

On April 29, 2021, the Court allowed Ms. White's motion for class certification, certifying a class comprised of "all Massachusetts consumers to whom Ally sent a notice,

[1] In *Dellorusso v. PNC Bank, N.A.*, No. 1877-cv-01475 (Mass. Super. Ct. May 3, 2019) (Dkt No. 35-1), the Superior Court ruled that the *Williams* decision only applied prospectively.

substantially similar to a notice received by the named Plaintiff, after the repossession of their vehicles on or after July 16, 2014, except for individuals whose vehicle sales contracts contained choice-of-law provisions selecting the law of a state other than Massachusetts." ECF # 112.

After the Court's ruling, the Parties agreed to attempt to resolve this Action and renewed settlement discussions. The Parties' negotiations resulted in the Agreement presently before the Court. Based on their review and analysis of the relevant facts and legal principles, Ms. White and her counsel believe that the terms and conditions of the Agreement are fair, reasonable, and adequate, and in the best interests of herself and the proposed Settlement Class. ECF # 118-2; Affidavit of Elizabeth Ryan, ¶ 14; ECF # 118-3, Declaration of Nicholas F. Ortiz, ¶ 7. Ally denies all liability, but has agreed to the Settlement to avoid continued costs and the risks of litigation.

II. Key Terms of the Settlement

The material terms of the Settlement include the following:

1. *Settlement Class:* The Settlement Class is composed of all Massachusetts Consumers to whom, during the Class Period, Ally sent a notice substantially similar to the kind of notice attached as Exhibit A to the Second Amended Complaint (i.e., a notice that did not use the term "fair market value") after the voluntary or involuntary repossession of Collateral.[2] Agreement, ¶ 3.1. The "Class Period" is the period from and

[2] Excluded from the Class is any Person (a) whose Covered Contract contained a choice-of-law provision selecting the law of a state or jurisdiction other than Massachusetts, (b) who filed a Chapter 7 bankruptcy petition after Ally sent a Post-Repossession Notice to the Person and whose bankruptcy case ended in a discharge during the Class Period, (c) who filed a Chapter 13 bankruptcy petition after Ally sent a Post-Repossession Notice to the Person and whose bankruptcy case is still pending as of the date of the Preliminary Approval Order or ended in a discharge during the Class Period, or (d) against whom Ally obtained a deficiency judgment during the Class Period.

after July 16, 2014, to and including the date of the Preliminary Approval Order. Agreement, ¶ 3.3.

2. *Relief for Settlement Class Members*:

(i) Ally will pay a total of $5 million (the "Cash Fund") to be used to make payments to Class Members, pay costs of notice and administration, pay any court approved attorneys' fees and expenses, and service award to the Plaintiff. Ally agreed to pay $50,000 of the total within 10 business days of preliminary approval, to be used for costs of class notice. The balance of $4,950,000 will be paid following the Effective Date.

(ii) Payments to Class Members will be calculated as follows. The balance of the Cash Fund after the payment of costs of notice and administration, service award, and attorneys' fees and expenses (the "Net Distributable Settlement Fund") shall be used to first pay refunds to Class Members who made payments towards the alleged deficiency debts, now agreed to be waived and forgiven. The remaining balance will be divided equally among all Class Members for damages;

(iii) All alleged deficiency balances for all settlement Class Members whose vehicles were voluntarily or involuntarily repossessed and disposed of on or before the date of the Preliminary Approval Order shall be waived and forgiven, a sum that is estimated to total approximately $11.1 million as of June 18, 2021; and

(iv) Ally will request that the credit reporting agencies Experian, Equifax, and TransUnion delete the reporting of settlement Class Members' Ally

accounts that are the subject of the deficiency balance waivers, by deleting the trade line for those accounts.

3. *Notice and Administration*: Upon preliminary approval, the Settlement Administrator sent notice to settlement Class Members by first class mail in accordance with the Agreement and the schedule contained in the Preliminary Approval Order. A copy of the Notice is attached as Ex. A to the Affidavit of Bailey Hughes ("Hughes' Aff."). Further information and key court documents were posted on the Settlement website. A toll-free number to call with questions was printed on every Notice. Ally served the notices required by CAFA.

4. *Attorneys' Fees and Expenses*: The Agreement provides that Class Counsel may petition the Court for an award of reasonable attorneys' fees and expenses consisting of up to $2.5 million, approximately 15.5% of the Gross Settlement Fund.[3] Agreement, ¶ 6.2. That petition was filed on September 14, 2021, ECF # 124, and was approved on October 5, 2021. ECF # 125.

5. *Incentive Award*: The Agreement provides that Ally will not oppose payment of an incentive award of $7,500 to Ms. White, to be paid from the Cash Fund and subject to Court approval. Ms. White petitioned for this award, and this Court approved the request on October 5, 2021. ECF # 125.

6. *Release*: Settlement Class Members will release all claims based on the identical factual predicate as that asserted in the Action, as further detailed in the Agreement.

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3 "Gross Settlement Fund" is the sum of the Cash Fund and the Gross Deficiency Waiver Amount. Agreement, ¶ 2.26. "Gross Deficiency Waiver Amount," in turn, refers to Ally's waiver of alleged deficiency balances that Ally's records reflect as outstanding as of the Effective Date. Agreement, ¶ 4.2.1.

III. Notice And Settlement Administration

A. Notice Reached 94% Of The Class; There Are No Objections And No Opt-Outs

Under Rule 23(e)(1), when approving a class action settlement, the district court "must direct notice in a reasonable manner to all class members who would be bound by the proposal." The Notice Plan approved by the Court here was implemented by the Parties. The Settlement Administrator, First Class Inc., mailed the Class Notice to 7,233 settlement Class Members (which includes some co-borrowers). Hughes Aff. ¶ 8. Only 386 Notices were returned for which no forwarding address was located. *Id*. ¶ 15. As a result, the mailing reached 6,847 Class Members, or 94% of the total.

The Notice is clear and straightforward, and it provided Class Members with enough information to evaluate whether to participate in the Settlement, as well as directions to the Settlement website, which provides detailed further information. *Id*. Ex. A; Settlement Agreement ¶ 11.1. The Notice advised settlement Class Members how to opt out (Notice ¶¶ 13, 18) and of their rights to object and requirements for doing so (Notice ¶ 18)—consistent with the 2018 Amendments to Rule 23(e). The Notice is adequate under Rule 23(c)(2).

The Settlement Administrator established a Settlement Website which contains key documents related to the litigation and the Settlement. Hughes Aff. ¶ 3. Both the website address, www.AllyMassClass.com, and the toll-free number for the Settlement Administrator were printed on all Notices. *Id*. Ex. A.

The reaction of the Class has been unanimous. There have been no objections to the Settlement, and no Class Members have opted out. *Id*. ¶¶ 15, 16.

B. Request for Approval of New Settlement Administrator

In the Preliminary Approval Order, the Court approved the appointment of First Class, Inc., to issue notice and administer the settlement. ECF # 121. As above, First Class has managed the notice program: issuing class notice, updating addresses, maintaining the settlement website and the toll-free settlement phone number, and has opened the QSF account. On October 22, 2021, Plaintiff's counsel was notified by First Class that it would not be able to complete the administration of the settlement, due to business reasons related to COVID. Since then, counsel has gotten estimates from two other settlement administrators to complete the work, and proposes to use American Legal Claim Services LLC, an experienced class action administrator, as the replacement administrator to issue checks and complete the administration of the Settlement. Plaintiff requests that the Court approve the appointment of American Legal Claim Services LLC.

IV. The Agreement Should Be Preliminarily Approved As Fair, Reasonable, And Adequate.

A. Standard And Process For Approval

Rule 23(e) requires court approval of a class action settlement. Approval typically involves a "two-stage procedure. First, the judge reviews the proposal preliminarily to determine whether it is sufficient to warrant public notice and a hearing. If so, the final decision on approval is made after the hearing." *Hochstadt v. Bos. Sci. Corp.*, 708 F. Supp. 2d 95, 106–07 (D. Mass. 2010) (citing *Nat'l Ass'n of Chain Drug Stores v. New England Carpenters Health Benefits Fund*, 582 F.3d 30, 44 (1st Cir. 2009), *and* Manual for Complex Litigation (Fourth) § 13.14). The Court granted preliminary approval, the first step, on June 30, 2021.

Before granting final approval, Rule 23(e)(2) requires that the court determine that the settlement is fair, reasonable and adequate, and therefore should be approved, by considering

whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> > (i) the costs, risks, and delay of trial and appeal;
> >
> > (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> >
> > (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> >
> > (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Id. (citing Fed. R. Civ. P. 23(e)).

Finally, the First Circuit has long recognized a strong public interest in favor of settling class actions. *See Lazar v. Pierce*, 757 F.2d 435, 439 (1st Cir. 1985) (citing the overriding public interest in favor of the voluntary settlement of disputes, particularly where class actions are involved …"). Here, consideration of all relevant factors demonstrates that the Settlement is fair, reasonable, and adequate, and should be finally approved.

1. The Class Representative and Class Counsel Have Adequately Represented The Class

The adequacy determination under Rule 23(e)(2)(A) looks to whether the representative parties will "fairly and adequately protect the interests of the class" and whether class counsel is "qualified, experienced and able to vigorously conduct the proposed litigation." *In re Nexium (Esomeprazole) Antitrust Litig.*, 296 F.R.D. 47, 53 (D. Mass. 2013); *accord In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 28 (E.D.N.Y. 2019) (considering adequacy requirement of newly amended Rule 23(e)(2) by looking to the interpretation of adequacy under Rule 23(a)); *see Amchem Products v. Windsor*, 521 U.S. 591

(1997) (courts look at whether representatives' interests are antagonistic to those of the class members). Where, as here, the injuries allegedly suffered by the named plaintiff are the same as those the class allegedly suffered, the adequacy requirement is usually satisfied. *Duhaime v. John Hancock Mutual Life Ins. Co.*, 177 F.R.D. 54, 63 (D. Mass. 1997).

Ms. White has loyally and competently represented the Class for three years of hard-fought litigation. If Ms. White was not ready and willing to serve as a class representative, the benefits provided by this Settlement would not be available for any Class Members. She participated in the discovery process, including by providing written discovery responses and documents, and by preparing for and sitting for a deposition. She has no interests that are antagonistic to or in conflict with the settlement Class.

In addition, Class Counsel are well-qualified and have vigorously prosecuted this class action. As described in their petition for attorneys' fees and costs, ECF # 124, they engaged in substantial discovery; litigated motions to dismiss, a request for interlocutory review, and discovery motions. They successfully moved for class certification, moved to intervene in the nationwide *Haskins* litigation to protect the unique claims of Massachusetts borrowers, and negotiated a settlement that protected those rights in the face of a broad release that on its face waived the Class's Massachusetts claims. Class Counsel are seasoned class action practitioners whose lengthy experience in consumer law and class action litigation is demonstrated by the declarations previously filed with this Court. *See* Declarations of Class Counsel in support of Motion for Attorneys' Fees, ECF ## 124-1, 124-2.

2. The Proposal Was Negotiated at Arm's Length

Rule 23(e)(2)(B) instructs the court to consider whether the proposed settlement was negotiated at arm's length. There is typically an initial presumption that a settlement is fair and reasonable when it was the result of arm's length negotiations between experienced, capable

counsel after meaningful discovery. *See, e.g.*, *Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 343 (D. Mass.), *aff'd*, 809 F.3d 78 (1st Cir. 2015) ("There is a presumption that a settlement is within the range of reasonableness when sufficient discovery has been provided and the parties have bargained at arms-length."); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. at 34-35.

The Parties first mediated their dispute in an August 2020 mediation before experienced class action mediator Brad Honoroff. That mediation did not yield an immediate deal, and the Parties resumed litigation. After more than nine months of additional litigation which featured various contested motions and written discovery and depositions, and in the face of a proposed settlement in the *Haskins* case that could release Class Members' claims, the Parties renewed their attempts to settle this case through direct negotiations. Through this process, the Parties approached their discussions with sufficient information to meaningfully evaluate any proposal, and engaged in extended, arm's-length negotiations. The negotiations were productive and substantive, and included discussions about the merits of Plaintiff's claims, the repossession notices and damages at issue, and the effect of the competing case. They ultimately resulted in the Settlement before this Court.

The Parties' adversarial position throughout the course of this litigation confirms that the Settlement was the result of an arm's-length negotiation conducted by experienced counsel and therefore should be found presumptively reasonable. *See, e.g.*, *Scott v. First American Title Ins. Co.*, No. 06–cv–286–J, 2008 WL 2563460, at *2-3 (D.N.H. June 24, 2008) (preliminarily approving class settlement, reasoning that filing and opposing two motions to dismiss and a motion to remand before reaching settlement reflected that the parties were "adversaries from [the litigation's] inception" and therefore that the agreement was reached through arms-length

negotiation).

3. The Class Relief Is Adequate

Rule 23(e)(2)(C) provides factors that guide the determination of what constitutes adequate relief, namely:

> (i) the costs, risks, and delay of trial and appeal;
>
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
>
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
>
> (iv) any agreement required to be identified under Rule 23(e)(3).

Rule 23(e)(2)(C). The proposed Settlement here provides significant, meaningful and immediate benefits to the settlement Class, while avoiding potentially years of delays and the risks inherent in all class action litigation if the case were to go to trial.

a) The Agreement provides significant benefits to the settlement Class

The Agreement will, if approved, reduce to zero approximately $11.1 million in alleged deficiency debts resulting from repossessions sales. This provides a real and substantial benefit to Class Members. Deficiency debts arising out of repossessions are burdensome, as already-cash-strapped debtors find themselves faced with efforts to collect often large deficiency balances, while leaving them without the vehicle they needed to earn a living. *See, e.g.*, *Purdie v. Ace Cash Express, Inc.*, No. Civ. A. 301CV1754L, 2003 WL 22976611, at *2 (N.D. Tex. Dec. 11, 2003) (debt relief was particularly significant benefit because "continued collection efforts for unpaid loans [were] an enormous source of strain and stress" on class members).

Ally has also agreed to request that the credit reporting agencies to which it reports delete the tradelines associated with Class Members' accounts on which Ally is waiving the deficiency balance, which will erase negative information (such as late payments and the repossession of their vehicles) and thus improve Class Members' credit history. *See, e.g., Whitaker v. Navy*

Federal Credit Union, No. RDB 09–cv–2288, 2010 WL 3928616, at *2 (D. Md. Oct. 4, 2010) (approving UCC class settlement, noting settlement benefits included creditor "releas[ing] its counterclaims for the deficiency balances remaining on the class members' accounts" and "contact[ing] the credit-reporting agencies and request[ing] that they rehabilitate the class members' credit report by deleting the information related to the loans at issue in this case" even though no cash payments were made to class members).

Finally, Ally will establish a Cash Fund of $5,000,000 to be used to make payments to settlement Class Members. These funds will pay back Class Members who made payments on the alleged deficiencies, and then any Net Distributable Settlement Fund balance remaining after those refunds, and Court approved deductions for fees and costs, will be divided equally among all Class Members. The Cash Fund is non-reversionary, ensuring that none of the money will be returned to Ally. After the Court approved attorneys' fees, administrative costs, and the service award are deducted from the Fund, a total of approximately $2,412,000 will be distributed to Class Members. Class Members who made payments on their deficiencies will receive an average refund payment of $1,800, and the average equal share payment to all Class Members will be approximately $200. Affidavit of Elizabeth Ryan, ¶ 4.

Ally also changed its post-repossession notices after this litigation commenced such that they now reference the "fair market value" language (the absence of which forms the basis of this litigation), a factor that weighs in favor of approving the Settlement. *Little-King v. Hayt Hayt & Landau*, No. 11–5621 (MAH), 2013 WL 4874349, at *10-11 (D.N.J. Sept. 10, 2013) (noting that defendant ceased using allegedly unlawful debt collection letter as factor militating in favor of approving settlement).

The relief offered by the Settlement is more than adequate, considering the cash

payments and debt relief, and taking into account the costs, risks, and delay that could result from a trial and appeals. *See, e.g., Gradie v. C.R. England, Inc.*, No. 2:16-cv-00768-DN, 2020 WL 6827783, at *10 (D. Utah Nov. 11, 2020) (in approving class settlement that provided "exceptional value to the Class," considering both debt relief and cash payments when calculating class members' average recovery).

The adequacy of the Settlement is underscored by comparison with the *Haskins* agreement, approved on September 8, 2021, which raised similar claims against Ally but provides less in benefits. For example, *Haskins* waives only a portion of its 500,000-member class's deficiency balances — on average $1,400 per class member — though it releases class members' claims to challenge those balances in full. *See* ECF # 106 at 4, and 106-1. In contrast, this Settlement waives all deficiency balances in full, a benefit that on average equals approximately $3,370. And the average *Haskins* cash payment to class members from the $87.5 million fund is $30, after payment of $71.2 million in attorneys' fees. *Haskins* Amended Final Approval Order, ¶ 16. The average payment here is $200 to $2,000. Finally, this Settlement does not require Class Members to choose which settlement to participate in or create any potentially confusing overlap. Instead, the Agreement negotiated allows Class Members in this Settlement to automatically receive the benefits of *both* Ms. White's settlement and *Haskins*.

b) The proposed method of distributing relief is effective: checks will be mailed automatically

Here, no claims forms are required. Instead, all settlement Class Members will automatically have their alleged deficiency balances eliminated and checks will be automatically mailed to them. Agreement, ¶¶ 15.6, 15.8. Payments to Class Members will be calculated as follows: (a) Class Members who made payments towards their deficiency balances after repossession will be entitled to a refund of those payments; and (b) any balance remaining after

those refunds will be divided equally among all Class Members. *Id*. ¶ 15.6. In addition, the Settlement Administrator will distribute Class Members' payments by mailing checks to their last known addresses, which have been provided by Ally, and updated as needed by the Settlement Administrator. *Id*. ¶ 15.8.

This method of distributing relief, by first class mail without the need for a claim, is effective and efficient and weighs in favor of granting settlement approval.

c) The costs, risks, and delay of trial and appeal are substantial

Another factor in evaluating the adequacy of class relief is the costs, risks, and delay of trial and appeal. Rule 23(e)(2)(C)(i). There are multiple tangible risks here.

First, this outcome of this case was and is threatened by the nationwide settlement in the *Haskins* Litigation. If this Settlement is not approved, Ally will take the position that the *Haskins* settlement encompasses the claims of nearly all of the Class Members in this case. Ms. White disagrees. However, if Ally were to prevail, most Class Members would only receive the benefits of the *Haskins* settlement rather than the additional benefits available here. This weighs heavily in favor of approving this Settlement.

Moreover, if the Court rejects this Settlement and Ms. White is successful in obtaining a judgment on the merits, a subsequent appeal by Ally will result in lengthy delays before Class Members receive anything at all. Instead, if approved by this Court, settlement Class Members will receive substantial benefits now, without the burden and risks of further litigation. *See, e.g.*, *Rolland v. Cellucci*, 191 F.R.D. 3, 10 (D. Mass 2000) (the certainty of recovery through settlement in contrast to the expense, length and uncertainty of litigation, is a strong argument in favor of settlement).

4. The Proposal Treats Settlement Class Members Equitably Relative To Each Other

The final Rule 23(e)(2) consideration asks courts whether the proposed settlement treats "class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D).

Here, the proposed settlement treats all settlement Class Members equally and fairly, and the process for receiving settlement funds is simple. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii), (D). Every identified settlement Class Member was sent Notice and an opportunity to opt out. Hughes Aff. ¶ 8; Agreement, ¶¶ 8.1, 15.8. All identified settlement Class Members who have a deficiency balance will have their balance eliminated, those who made deficiency payments will receive refunds, and any remaining sums will be paid equally to Class Members, all without the need to submit a claim form. *Id*. ¶ 15.8. If, after checks have been distributed, the amount remaining in the Settlement Fund (due to uncashed checks) exceeds $100,000, a second distribution will be made, distributing the remaining funds equally to Class Members who negotiated their initial checks. *Id.* ¶ 15.10. Any remaining sums thereafter will be distributed to an agreed-upon and Court-approved *cy pres* recipient. *Id*. The Plaintiff proposes the following three *cy pres* recipients to receive equal shares of any *cy pres* funds, each of which offers free transportation services or transit passes to individuals in need: Tasks for Transit (serving Central Massachusetts); Springfield Partners for Community Action Transportation Services (serving Springfield and surrounding towns); St. Francis House (serving Boston area). Ally does not oppose this request.

5. The Notice To Settlement Class Members Was Adequate

Settlement Class Members are entitled to notice of any proposed settlement and an opportunity to object or opt out before it is finally approved by the Court. Manual for Complex Litig. (Fourth), § 21.31. Under Rule 23(e)(1), when approving a class action settlement, the

district court "must direct notice in a reasonable manner to all class members who would be bound by the proposal."

Here, the method of notification was patently adequate. The Class Notice, attached as Exhibit A to the Hughes Affidavit, is clear and straightforward, provided settlement Class Members with enough information to evaluate whether to participate in the Settlement, as well as directions to the Settlement Website which included further information. Agreement, ¶¶ 2.42, 14.1. The Notice advised settlement Class Members of their rights to object and opt out and the requirements for doing so—consistent with the 2018 Amendments to Rule 23(e). The Settlement Administrator sent Notice by first class United States mail to each Class Member in accordance with the Settlement Agreement. Hughes Aff., ¶¶ 5 – 13; Agreement, ¶¶ 7.4, 14.1, 14.2.

This method of providing notice—direct first-class mail plus a settlement website—is more than adequate under Rule 23(c)(2). *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811 (1985) (individual mailed notice which clearly describes the case and class members' rights meets due process requirements).

6. The Factual Record Was Well Developed Through Independent Investigation And Discovery

Ultimately, to make a preliminary determination on the fairness of a proposed settlement agreement, there must be sufficient information to evaluate it. *Manual for Complex Litig. (Fourth)*, § 22.921; *Hays v. Eaton Grp. Att'ys, LLC*, No. CV 17-89-JWD-RLB, 2019 WL 427331, at *10–11 (M.D. La. Feb. 4, 2019) (evaluating proposed settlement under newly amended federal rules).

Here, this litigation has been ongoing for more than three years, and the Parties have strongly tested the merits through discovery and multiple motions and briefs, including a motion to remand, motions to dismiss, a motion to certify an interlocutory appeal to the First Circuit, a

motion to certify the class action, and motions to stay. As recited above, substantial discovery has been conducted, including exchanging requests for production, interrogatories, requests to admit, and depositions. Ally's counsel provided supplemental information in the course of discussions leading up to the settlement negotiations, including information about the size of the Class and class-wide damages, and Class Counsel has analyzed this data. The Settlement is the result of a very well-developed factual record.

V. The Class Should Be Certified For Settlement Purposes

The Court granted Ms. White's motion to certify the Class in this case on April 29, 2021. ECF # 112. On June 30, 2021, the Court conditionally certified the Settlement Class for settlement purposes when it granted preliminary approval of the Settlement. ECF # 121. For all of the reasons contained in the memorandum in support of preliminary approval, ECF # 119, which have not changed, the Settlement Class meets all requirements of Rules 23(a) and 23(b)(3), and should be finally certified for settlement purposes. The Settlement Class is sufficiently numerous because it includes approximately 7,233 individual settlement Class Members across 5,747 accounts, satisfies commonality because questions about whether Ally's notices violated Massachusetts's UCC, and the MVRISA are substantially identical among Class Members, satisfies typicality and adequacy because Ms. White's claims arise from the same facts as other settlement Class Members and she has no conflict with the Settlement Class. In addition, predominance is satisfied because the claims of Ms. White and the Class Members, and the circumstances under which these claims arise, are virtually identical and predominate over any individual issues.

VI. Conclusion

The proposed Agreement is fair, reasonable, and adequate. Ms. White requests that this Court approve the Agreement and enter the proposed order attached as Exhibit 1.

Dated: November 8, 2021

Respectfully submitted,

GRACIE WHITE f/k/a GRACIE DORNEUS,

By her attorneys,

/s/ Elizabeth Ryan

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CERTIFICATE OF SERVICE

I, Elizabeth Ryan, certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic File (NEF) on November 8, 2021.

/s/ Elizabeth Ryan
Elizabeth Ryan