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2 NOT FOR PUBLICATION

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Aaleon Akins,

10 Plaintiff,

11 v.

12 Seidberg Law Offices PC,

13 Defendant.

No. CV-18-00954-PHX-DJH

ORDER

14
15 Pending before the Court is the parties' Joint Motion for Class Certification and
16 Final Approval of Class Action Settlement (Doc. 32).

17 **I. BACKGROUND**

18 On September 24, 2018, after arms-length negotiations, Plaintiff and Defendant
19 entered into a Class Action Settlement Agreement ("Agreement"), which is subject to
20 review under Federal Rule of Civil Procedure 23. On October 2, 2018,¹ the parties filed
21 the Agreement, together with their Joint Motion for Conditional Certification and
22 Preliminary Approval of Class Action Agreement ("Preliminary Approval Motion").
23 (Doc. 26). Within ten days of filing the proposed settlement with the Court, Defendant
24 complied with the requirements of 28 U.S.C. § 1715, and notified the appropriate state and
25 federal officials. (Doc. 32-3). On October 23, 2018, upon consideration of the Preliminary

26 ¹ The parties initially lodged their Preliminary Approval Motion (Doc. 24) on September
27 25, 2018, awaiting Court approval to file an overlength motion. (Doc. 23). The Court
28 granted the parties' motion to file an overlength Preliminary Approval Motion on
October 1, 2018, and directed the Clerk of the Court to file the lodged Preliminary
Approval Motion. (Doc. 25). Accordingly, the parties' Preliminary Approval Motion,
originally lodged (Doc. 24) was filed on October 2, 2018. (Doc. 26).

1 Approval Motion and the record, the Court entered an Order conditionally granting class
2 certification and preliminary approval of the settlement (“Preliminary Approval Order”).
3 (Doc. 27). Pursuant to the Preliminary Approval Order, the Court preliminarily approved
4 the proposed settlement agreement, approved the form of the notice to class members, and
5 set the date and time of the Fairness Hearing.

6 On March 14, 2019, the parties filed their Joint Motion for Class Certification and
7 Final Approval of Class Action Settlement (“Final Approval Motion”) (Doc. 32). The
8 Final Fairness Hearing was held on March 14, 2019, pursuant to Rule 23 to determine
9 whether the proposed settlement is fundamentally fair, reasonable, adequate, and in the
10 best interest of the Class Members and should be fully and finally approved by the Court.
11 (Doc. 33). Pursuant to the Court’s direction at the Fairness Hearing, on March 28, 2019,
12 the parties submitted a Stipulation and Addendum to the Class Action Settlement
13 Agreement (“Addendum”). (Doc. 34).

14 **II. Discussion**

15 The Court has read and considered the Agreement, Final Approval Motion,
16 Addendum, and the record as a whole and makes the following findings.

17 **A. Class Certification**

18 Final approval of a class action settlement requires, as a threshold matter, an
19 assessment of whether the class satisfies the requirements of Federal Rule of Civil
20 Procedure 23(a) and (b). *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019–1022 (9th Cir.
21 1998). Because no facts that would affect these requirements have changed since the Court
22 preliminarily approved the class on October 23, 2018, this Order incorporates by reference
23 its prior analysis under Rules 23(a) and (b) as set forth in the order granting preliminary
24 approval. (Doc. 27). Accordingly, class certification is granted.

25 **B. Settlement Agreement**

26 The Court finds that adequate notice was sent to the settlement class members as
27 required in Preliminary Approval Motion (Doc. 27) and no members objected or requested
28 to be excluded from the class. (Doc. 31 at 2). The Court further finds that the settlement

1 of this matter, on the terms and conditions set forth in the Agreement, is in all respects
2 fundamentally fair, reasonable, adequate, and in the best interest of the Class Members,
3 especially in light of the benefits to the Class Members; the strength of the Plaintiff's
4 alleged claims; the strength of Defendant's alleged defenses; the complexity, expense, and
5 probable duration of further litigation; the risk and delay inherent in possible appeals; the
6 risk of collecting any judgment obtained on behalf of the Class; and the limited amount of
7 any potential total recovery for the Class.

8 At the Fairness Hearing, the Court expressed hesitation regarding the scope of
9 Plaintiff's release of claims; however, based on the Addendum and the record as a whole,
10 the Court is satisfied that Plaintiff understands the scope her released claims, which
11 includes her claims against Defendant and against Ford Motor Credit. (Docs. 32-2,
12 34 at 2). Thus, the Court finds the settlement is fair, reasonable, adequate, and in the best
13 interests of the settlement class.

14 Accordingly,

15 **IT IS ORDERED:**

16 1. Jurisdiction: The Court has jurisdiction over the subject matter of the Lawsuit
17 and over all settling parties hereto.

18 2. Class Members: Pursuant to Rule 23(b)(3), the Lawsuit is hereby certified as
19 a class action on behalf of all individuals with an Arizona address to whom during the
20 period from March 27, 2017, through October 23, 2018, Defendant sent a letter
21 substantially similar to Exhibit B to Plaintiff's Complaint and whose letter was not returned
22 as undeliverable. Excluded from the Class are:

- 23 a. any person who is already subject to an existing signed general release
24 that covers Seidberg Law Offices, P.C.;
- 25 b. any person who is deceased as of the date of preliminary certification;
- 26 c. any person who has filed for bankruptcy protection under Title 11 of
27 the United States Code on or after the start of the class period; and
- 28 d. any class member who timely mails a request for exclusion.

1 3. Class Representative and Class Counsel Appointment: Pursuant to Rule 23,
2 the Court certifies Plaintiff Aaleon Akins as the Class Representative and Russell S.
3 Thompson IV and David N. McDevitt as Class Counsel for the Class Members.

4 4. Class Notice and Claim Form: Class action notices and claim forms were
5 mailed to all of the Class Members. The form and method for notifying the Class Members
6 of the settlement and its terms and conditions satisfied the requirements of Rule 23(c)(2)(B)
7 and due process, and constituted the best notice practicable under the circumstances. The
8 Court finds that the proposed notice was clearly designed to advise the Class Members of
9 their rights.

10 5. Class Certification: The Court finds that the Lawsuit satisfies the applicable
11 prerequisites for class action treatment under Rule 23, namely:

- 12 a. the Class Members are so numerous that joinder of all of them in the
13 Lawsuit is impracticable;
- 14 b. there are questions of law and fact common to the Class Members,
15 which predominate over any individual questions;
- 16 c. the claims of the Plaintiff are typical of the claims of the Class
17 Members;
- 18 d. the Plaintiff and Class Counsel have fairly and adequately
19 represented and protected the interests of all of the Class Members;
20 and
- 21 e. Class treatment of these claims will be efficient and manageable,
22 thereby achieving an appreciable measure of judicial economy, and
23 a class action is superior to other available methods for a fair and
24 efficient adjudication of this controversy.

25 6. Fairness: The Court finds that the settlement of the Lawsuit, on the terms and
26 conditions set forth in the Agreement and as set forth below, is in all respects fundamentally
27 fair, reasonable, adequate, and in the best interest of the Class Members, especially in light
28 of the benefits to the Class Members; the strength of the Plaintiff's alleged claims; the

1 strength of Defendant's alleged defenses; the complexity, expense, and probable duration
2 of further litigation; the risk and delay inherent in possible appeals; the risk of collecting
3 any judgment obtained on behalf of the Class; the limited amount of any potential total
4 recovery for the Class; and the fact that Defendant is paying to the Class as much or more
5 than the maximum statutory damages provided by law.

6 7. Agreement Terms: The Agreement, which is on file in this case shall be
7 deemed incorporated herein, and the proposed settlement set forth in the Agreement is
8 finally approved and shall be consummated in accordance with the terms and provisions
9 thereof, except as amended by any order issued by this Court. The material terms of the
10 Settlement include, but are not limited to, the following:

- 11 a. Defendant shall pay Plaintiff \$1,000 in statutory damages;
- 12 b. Defendant shall pay Plaintiff an additional \$1,000 in compensation
13 for her service as Class Representative; and
- 14 c. Defendant shall pay to the class administrator the total sum of
15 \$4,000.00. The class administrator shall distribute such funds equally
16 among all members of the Class. The checks to class members shall
17 be distributed as provided for in the Agreement.

18 8. Objections and Exclusions: The Class Members were given a fair and
19 reasonable opportunity to object to the settlement. No Class Member objected to the
20 settlement. The Class Members who made valid and timely requests for exclusion are
21 excluded from the class and settlement and are not bound by this Order. No other Class
22 Member is excluded. This order is binding on all Class Members.

23 9. Release of Claims and Dismissal of Lawsuit. The individual and class
24 Releases set forth in the Agreement are hereby approved. Pursuant to the release contained
25 in the Agreement, the Released Claims are hereby compromised, settled, released,
26 discharged, and dismissed with prejudice by these proceedings and this Order. Plaintiff,
27 the Class Members, and all of their heirs, executors, administrators, successors, assigns,
28 and any person or entity acting for, on behalf of, or for the benefit of any such persons are

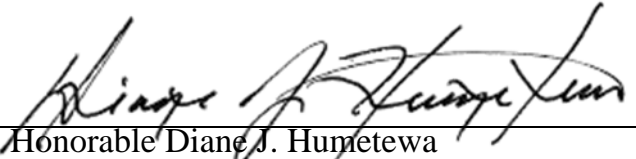
1 hereby permanently enjoined from suing upon, pursuing, or demanding any legal or
2 equitable relief for any of the Released Claims, save and except for the compensation set
3 forth above. With the exception of the foregoing injunction all other claims in this Lawsuit
4 are hereby dismissed with prejudice. This Order, the Agreement, and the existence and
5 nature of the Settlement are not, and shall not be construed as, an admission by Defendant
6 of any liability or wrongdoing in this or in any other proceeding.

7 10. Miscellaneous: The Court hereby retains continuing and exclusive
8 jurisdiction over the parties and all matters relating to the Lawsuit and/or Agreement,
9 including the administration, interpretation, construction, effectuation, enforcement, and
10 consummation of the settlement and this Order.

11 **IT IS FURTHER ORDERED** that that the Joint Motion for Class Certification
12 and Final Approval of Class Action Settlement (Doc. 32) is **GRANTED**. The parties and
13 settlement administrator are directed to implement this Order and the Agreement in
14 accordance with the terms of the Agreement and this Order.

15 **IT IS FINALLY ORDERED** that the Clerk is respectfully directed to terminate
16 this action.

17 Dated this 20th day of May, 2019.

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21 Honorable Diane J. Humetewa
22 United States District Judge
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