

- No reversion of any part of the Settlement Fund to Defendant Star Financial Group, Inc. (“STAR”)

The Settlement is the result of arm’s-length negotiations overseen by a neutral mediator, represents an excellent result for the Settlement Class, and is well within the range of a fair, reasonable, and adequate compromise. The Court previously granted preliminary approval to the Settlement on August 5, 2024, finding the Settlement to be within the range of a fair, reasonable, and adequate compromise. Notice was then issued to the over 22,000 Class Members and not a single Class Member chose to object to or opt out of the Settlement, which confirms the Court’s preliminary determination that the Settlement is fair, reasonable, and adequate. *See* Declaration of Karen Rogan Re: Notice Procedures (“Rogan Decl.”) ¶¶ 2–13. The Court should, therefore, enter the agreed Final Approval Order, so that the Settlement can become effective and Class Members can receive its benefits.

FACTS

I. Plaintiffs sue STAR in a class action for overdraft fee practices.

On March 18, 2021, Plaintiffs Cliff and Wendy Decker filed a Class Action Complaint in this Court, alleging claims on behalf of a class of consumers for breach of contract, including breach of the

covenant of good faith and fair dealing, unjust enrichment, and violations of the Indiana Deceptive Consumer Sales Act for STAR's alleged assessment of overdraft fees on transactions that authorized positive and settled negative.

II. STAR moves to compel arbitration, which the Indiana Supreme Court eventually rejects.

On April 12, 2021, STAR filed its Motion to Compel Arbitration and to Dismiss Plaintiffs' Complaint and its memorandum in support. After the parties fully briefed the motion, the Court heard argument and granted the motion on September 10, 2021.

Plaintiffs then appealed to the Indiana Supreme Court, which reversed on April 20, 2022.

STAR then petitioned the Indiana Supreme Court for transfer, which was granted on September 1, 2022. On November 3, 2022, the Indiana Supreme Court conducted oral argument and on March 21, 2023, the Indiana Supreme Court entered its opinion reversing the order compelling arbitration and remanding the matter for further proceedings.

III. STAR moves to dismiss, which this Court denies, and the parties then engage in discovery.

On May 19, 2023, STAR filed its Motion to Dismiss Pursuant to Trial Rules 12(B)(6) and 9(B). After full briefing by the parties, on August 31, 2023, the Court conducted a hearing on the motion and on October 5, 2023, the Court entered its Order Denying Motion to Dismiss. On October 27, 2023, STAR filed its Answer to Class Action Complaint.

The Parties also engaged in discovery including interrogatories served on STAR by Plaintiffs and interrogatories served on Plaintiffs by STAR. Plaintiffs also produced more than 600 pages of documents in response to STAR's requests for production, and STAR produced more than 2,400 pages of documents in response to Plaintiffs' requests for production.

IV. The parties mediate with a third-party neutral and ultimately reach the proposed Settlement.

On April 10, 2024, the parties attended mediation with John Trimble, Esq. of Lewis Wagner LLP. The parties did not reach an agreed resolution at the mediation but continued to work with Mr. Trimble in an effort to resolve this matter.

The parties ultimately reached an agreement in principle to settle the litigation on a class-wide basis. Under the terms of the Settlement, Defendant agreed to pay \$2,500,000 in cash into a Settlement Fund and to forgive 1,287,974.17 in debt. After Court-approved fees and expenses, the Net Settlement Fund will be distributed directly to the Class Members pro rata based on the amount of overdraft that each Class Member was charged. Class Members with accounts at Defendant will receive a credit to their account, and Class Members who no longer have accounts will be mailed a check. Any uncollected funds will not revert to Defendant but will be paid on a *cy pres* basis under Trial Rule 23(F) to the Indiana Bar Foundation to support the activities and programs of the Indiana Pro Bono Commission and to Junior Achievement of Northern Indiana.

V. The Court grants preliminary approval to the Settlement.

On August 5, 2024, the Court granted preliminary approval to the Settlement, finding it to be within the range of a fair, reasonable, and adequate compromise. Notice was then issued to the Class Members, and no Class Member objects to or chose to opt out of the Settlement.

Rogan Decl. ¶¶ 2–13.

DISCUSSION

I. The Court should grant final approval because the Settlement is a fair, reasonable, and adequate compromise, to which no party or Class Member objects.

Under Indiana Trial Rule 23(E), a class action may only be settled with court approval. “A trial court’s approval of a class action settlement as fair is a two step process.” *Hefty v. All Other Members of the Certified Settlement Class*, 680 N.E.2d 843, 851 (Ind. 1997).

First, a court determines whether a class can be certified under Indiana Trial Rule 23(E) for settlement purposes and whether, on a preliminary basis, the proposed settlement seems within the range of a fair, reasonable, and adequate compromise. *See id.* If both requirements are met, the court grants preliminary approval. *Id.* As part of granting preliminary approval, the court: (a) certifies the settlement class(es); (b) sets deadlines for class members to object to, or opt out of, the settlement; (c) sets a hearing date to consider final approval of the settlement; and (d) approves and directs that notice of the settlement be provided to the class members by the settlement administrator.

Second, at the final approval hearing, after class members have had a chance to voice objections to the settlement (if any), the court decides whether to grant final approval. If the court grants final

approval, then the settlement becomes effective, the benefits provided by the settlement are distributed to the class members, and the litigation is resolved by entry of judgment on the settlement.

Here, the Court previously granted preliminary approval and certified the Settlement Class. And, after notice was sent to Class Members, their response was uniformly positive—not a single Class Member opted out of or objected to the Settlement. Rogan Decl. ¶¶ 2–13. The Court should, therefore, grant final approval.

In *Hefty*, the Indiana Supreme Court suggested a few basic questions to help determine if a settlement is fair and suitable for approval:

Does the settlement provide significantly less relief than what seems appropriate in light of discovery? Does the settlement exclude significant claims pursued in the complaint? Was the settlement agreement reached after little or no discovery? Did the settlement negotiations concerning class compensation and attorneys’ fees occur at the same time?

Hefty, 680 N.E.2d at 851. Importantly, however, “[w]hen analyzing whether a proposed settlement is fair, reasonable, and adequate, courts ‘should refrain from resolving the merits of the controversy or making a precise determination of the parties’ respective legal rights.’” *In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 346

(N.D. Ill. 2010) (citing *E.E.O.C. v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889 (7th Cir. 1985)). And in evaluating a proposed settlement, a court must keep in mind that “Indiana strongly favors settlement agreements.” *Goldberg v. Farno*, 953 N.E.2d 1244, 1252 (Ind. Ct. App. 2011).

The terms of the Settlement are fundamentally fair, reasonable and adequate under *Hefty*. The Settlement includes significant benefits including a \$2,500,000 non-reversionary cash fund, and significant debt relief. The Settlement was also reached only after factual investigation, discovery, and years of litigation. And the Settlement is the product of arm’s-length negotiations overseen by an experienced mediator, John C. Trimble, Esq. The discussion of attorneys’ fees did not occur until after the parties agreed to the material terms of compensation to the Settlement Class, the requested fees are the standard one-third contingent fee, and any award of fees will be subject to Court approval at the final hearing. Finally, the reaction of the Class Members has been uniformly positive as no Class Member opted out or objected. Rogan Decl. ¶¶ 2–13. Thus, each of the *Hefty* factors support the

commonsense conclusion that the Settlement is a fair, reasonable, and adequate compromise, and the Court should grant final approval.

CONCLUSION

For the reasons set forth above, the Court should enter the tendered, agreed Final Approval Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5th day of November, 2024, a true and correct copy of the foregoing Memorandum in Support of Unopposed Motion for Final Approval of Class Action Settlement was served to all counsel of record by the Indiana E-Filing System, or other acceptable means of service, as follows:

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