

\*UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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DANIELLE WELLINGTON,  
Individually and on Behalf of  
All Others Similarly Situated,

Plaintiff,

-v-

5:20-CV-1367 (LEAD)

EMPOWER FEDERAL CREDIT  
UNION, and DOES 1 through 5,

Defendants.

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DIANNA CONLEY, on  
behalf of herself and all  
others similarly situated,

Plaintiff,

-v-

5:21-CV-566 (MEMBER)

EMPOWER FEDERAL  
CREDIT UNION,

Defendant.

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DAVID N. HURD  
United States District Judge

**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION  
SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS**

On November 4, 2020, plaintiff Danielle Wellington (“Wellington”), an accountholder at defendant Empower Federal Credit Union (“Empower”), filed this putative class action against Empower and Jane Does 1 through 5 (collectively “defendants”). According to the complaint, defendants violated certain disclosure requirements governing the imposition of overdraft fees.

On February 2, 2021, Empower moved under Federal Rule of Civil Procedure (“Rule”) 12(b)(6) to dismiss Wellington’s complaint. That motion was denied on April 13, 2021. *Wellington v. Empower Fed. Credit Union*, 533 F. Supp. 3d 64 (N.D.N.Y.). After defendants answered the complaint, Dkt. No. 26, Wellington’s case was consolidated with a similar class action filed by plaintiff Dianna Conley (“Conley”), another accountholder at Empower, Dkt. No. 36.

The parties soon reached a settlement in both matters.<sup>1</sup> Dkt. No. 42. On June 27, 2022, Wellington and Conley (collectively “plaintiffs”) moved under Rule 23 for preliminary approval of the settlement agreement. Dkt. Nos. 66.

Upon review of plaintiffs’ memorandum of law and supporting documentation, it is

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<sup>1</sup> The parties also settled a third putative class action that had not been consolidated. *Bailey v. Empower Fed. Credit Union*, 3:21-CV-843. That action was voluntarily dismissed in light of the settlement on November 8, 2021. *See id.*

ORDERED that

1. The motion for preliminary approval of the class action settlement is GRANTED;

2. The Court FINDS on a preliminary basis that the class as defined in the Settlement Agreement<sup>2</sup> (“Settlement Class”) meets the requirements for certification of a settlement class under the Federal Rules of Civil Procedure and applicable case law;

3. The Court FINDS that the Settlement Agreement meets the requirements for preliminary approval, and in particular falls within the range of reasonableness and potential for final approval, appears to be reasonable in light of the risk inherent in continuing with this litigation, is a non-reversionary settlement where no money will be returned to the Defendant, and was arrived at after an arms’ length negotiation involving experience counsel;

4. The Settlement Class is PROVISIONALLY CERTIFIED as consisting of the following class: the “Sufficient Funds Class,” which is defined as those members of Defendant who, from April 27, 2015 through September 24, 2021, were assessed an overdraft fee when the account had a positive actual

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<sup>2</sup> The Settlement Agreement is attached as Exhibit A to the Kusel Declaration. Dkt. No. 66-3.

balance at the time of the posting of the transaction; *i.e.*, a “Sufficient Funds Overdraft Charge,” and such fees were not refunded by Defendant;

5. Danielle Wellington and Dianna Conley are PROVISIONALLY APPOINTED as the Class Representatives;

6. The lower bidder of Epiq Class Action & Claims Solutions, Inc. or KCC LLC shall be APPOINTED as the Claims Administrator under the terms of the Settlement Agreement;

7. Counsel for the Settlement Class, Richard D. McCune and Elaine S. Kusel of McCune Wright Arevalo LLP, and Joseph Marches of Bursor & Fisher, P.A., are qualified, experienced, and skilled attorneys capable of adequately representing the Settlement Class and are therefore PROVISIONALLY APPROVED as Class Counsel;

8. This certification of a preliminary Settlement Class is for settlement purposes only and is without prejudice to the rights of Defendant to oppose class certification in the event the settlement is not approved or not implemented;

9. The methods of giving class notice prescribed in the Settlement Agreement meet the requirements of the Federal Rules of Civil Procedure and due process, are the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto;

10. For the purposes stated and defined in the Settlement Agreement, the relevant dates and deadlines shall be set as follows:

(a) Within thirty days of the date of this Order, the Claims Administrator shall send notice and the website must go live;

(b) Thirty days after the Claims Administrator sends Notice shall be the last day to opt out;

(c) Thirty-five days after the Claims Administrator sends Notice shall be the date on which the motion for final approval and attorneys' fees is filed with the Court;

(d) Fifteen days after the motion for final approval is filed shall be the last day on which to object;

(e) Ten days after the last day on which to object shall be the last day to file responses to any objections;

(f) Ten days after the last day on which to object shall be the date on which class counsel and defendants file replies in support of the motion for final approval and fees;

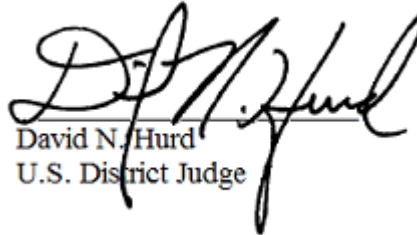
(g) Twenty days after the last day to object shall be the date on which the Court holds a final approval hearing;

(h) Thirty days after the time to cash checks has expired shall be the date on which the Claims Administrator shall file a final report;

11. The Court APPROVES AND ADOPTS the procedures, deadlines, and manner governing all requests to be excluded from the Class, or for objecting to the proposed settlement, as provided for in the Settlement Agreement; and

12. All costs incurred in connection with providing notice and settlement administration services to the Class Members shall be paid from the Settlement Fund.

IT IS SO ORDERED.



David N. Hurd  
U.S. District Judge

Dated: July 19, 2022  
Utica, New York.