

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ALISON N. LEARY and TIMOTHY M. LEARY, Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. MCGOWEN ENTERPRISES, INC., Defendant.

Civil Action

No. 2:17-CV-02070-BMS

FILED
APR 17 2018
KATE BARKMAN, Clerk
By _____ Dep. Clerk

PROPOSED ORDER GRANTING PRELIMINARY APPROVAL OF CLASS SETTLEMENT AND PROVISIONAL SETTLEMENT CLASS CERTIFICATION

On _____ (month) _____ (day), 2018, this Court heard plaintiffs Alison N. Leary and Timothy M. Leary's ("Plaintiffs") motion for preliminary approval of class settlement and provisional settlement class certification under Rule 23 of the Federal Rules of Civil Procedure. This Court reviewed the motion, including the Settlement Agreement and Release ("Settlement Agreement"), and all attachments thereto. Based on this review and the findings below, the Court found good cause to grant the motion.¹

FINDINGS:

1. The Settlement Agreement appears to be the product of serious, informed, non-collusive negotiations and falls within the range of possible approval as fair, reasonable and adequate.

2. The Full Notice, Email Notice, Postcard Notice, and Claim Form (attached to the Settlement Agreement), and their manner of transmission, including through the use of the

¹ Capitalized terms in this Order, unless otherwise defined, have the same definitions as those terms in the Settlement Agreement.

Settlement Website and the toll-free number, comply with Rule 23 and due process because the notices and forms are reasonably calculated to adequately apprise class members of (i) the pending lawsuit, (ii) the proposed settlement, and (iii) their rights, including the right to either participate in the settlement, exclude themselves from the settlement, or object to the settlement.

3. The Settlement Class is so numerous that joinder of all Class Members is impracticable.

4. Plaintiffs' claims are typical of the Settlement Class's claims.

5. There are questions of law and fact common to the Settlement Class, which predominate over any questions affecting only individual Class Members.

6. Class Certification is superior to other available methods for the fair and efficient resolution of the controversy for settlement purposes.

7. Defendant McGowen Enterprises, Inc. ("MEI") filed a copy of the notice it gave on [Month] [Date], [Year] pursuant to 28 U.S.C. § 1715(b) and the notice complies with the requirements of 28 U.S.C. § 1715(b).

IT IS ORDERED THAT:

1. **Settlement Approval.** The Settlement Agreement, including the Full Notice, Email Notice, Postcard Notice, and Claim Form, attached to the Settlement Agreement as Exhibits B-E, are preliminarily approved.

2. **Provision of Class Notice.** MEI shall notify Class Members of the settlement in the manner specified under Section 3.3 of the Settlement Agreement.

3. **Claim for a Settlement Payment.** Class Members who want to receive a Settlement Payment under the Settlement Agreement must accurately complete and deliver a Claim Form to the Claims Administrator no later than seventy-five (75) calendar days after entry of this Order.

4. **Objection to Settlement.** Class Members who have not submitted a timely written exclusion request pursuant to paragraph 6 below and who want to object to the Settlement

Agreement must deliver a written objection to the Claims Administrator no later than seventy-five (75) calendar days after entry of this Order. The delivery date is deemed to be the date the objection is deposited in the U.S. Mail as evidenced by the postmark. The objection must include: (a) the name and case number of the Action (“*Leary v. MEI*, Case No. 17-cv-02070”); (b) the full name, address, and telephone number of the person objecting (email address is optional); (c) the words “Notice of Objection” or “Formal Objection”; (d) in clear and concise terms, the objection and legal and factual arguments supporting the objection; and (e) facts showing that the person objecting is a Class Member. The written objection must be signed and dated, and must include the following language immediately above the signature and date: “I declare under penalty of perjury under the laws of the United States of America that the foregoing statements regarding class membership are true and correct to the best of my knowledge.” Any Class Member who submits a written objection, as described in this paragraph, may appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member’s expense, to object to the Settlement Agreement. Class Members or their attorneys intending to make an appearance at the Fairness Hearing, however, must include on the timely and valid written objection a statement substantially similar to “Notice of Intention to Appear.” If the objecting Class Member intends to appear at the Fairness Hearing through counsel, he or she must also identify the attorney(s) representing the objector who will appear at the Fairness Hearing and include the attorney(s) name, address, and phone number (email is optional). If the objecting Class Member intends to request the Court to allow the Class Member to call witnesses at the Fairness Hearing, such request must be made in the Class Member’s written objection, which must also contain a list of any such witnesses and a summary of each witness’s expected testimony. Only Class Members who submit timely written objections including Notices of Intention to Appear may speak at the Fairness Hearing. If a Class Member makes an objection through an attorney, the Class Member will be responsible for his or her personal attorney’s fees and costs.

5. Failure to Object to Settlement. Class Members who fail to object to the Settlement Agreement in the manner specified above will: (1) be deemed to have waived their

right to object to the Settlement Agreement; (2) be foreclosed from objecting (whether by a subsequent objection, intervention, appeal, or any other process) to the Settlement Agreement; and (3) not be entitled to speak at the Fairness Hearing.

6. Requesting Exclusion. Class Members who want to be excluded from the settlement must send a letter or postcard to the Claims Administrator stating: (a) the name and case number of the Action (“*Leary v. MEI*, Case No. 17-cv-02070”); (b) the full name, address and telephone number of the person requesting exclusion (email address is optional); and (c) a statement that the person does not wish to participate in the Settlement, postmarked no later than seventy-five (75) calendar days after entry of this Order.

7. Provisional Certification for Settlement Purposes. For purposes of settlement, the Settlement Class is provisionally certified as: All consumers in the United States who, between May 5, 2013 and January 8, 2017, purchased a vehicle from Car Sense Inc. (now MEI) and accepted the Lifetime Engine Guarantee offered by Car Sense Inc.

8. Conditional Appointment of Class Representative and Class Counsel. For settlement purposes, plaintiffs Alison N. Leary and Timothy M. Leary are conditionally certified as the Settlement Class Representatives to implement the Parties’ settlement in accordance with the Settlement Agreement. Michael McKay with the law firm of Schneider Wallace Cottrell Konecky Wotkyns LLP is conditionally appointed as Class Counsel for settlement purposes. Plaintiffs and Class Counsel must fairly and adequately protect the Settlement Class’s interests.

9. Termination. If the Settlement Agreement terminates for any reason, the following will occur: (a) Class certification for settlement purposes will be automatically vacated; (b) Named Plaintiffs will revert to their prior status as putative class representatives; (c) Plaintiffs’ counsel will stop functioning as settlement Class Counsel, but will revert to prior status as putative class counsel; and (d) this Action will revert to its previous status in all respects as it existed immediately before the Parties executed the Settlement Agreement. This Order does not waive or otherwise impact the Parties’ rights or arguments regarding the propriety of class certification for any purpose other than settlement or regarding any trial of any claims in this Action.

10. **No Admissions.** Nothing in this Order is, or may be construed as, an admission or concession on any point of fact or law by or against any Party.

11. **Stay of Dates and Deadlines.** All pretrial and trial proceedings and deadlines are stayed and suspended until further notice from the Court, except for such actions as are necessary to implement the Settlement Agreement and this Order.

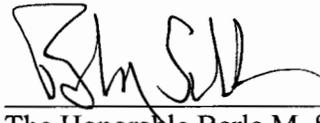
12. **CAFA Notice.** The Court finds that MEI has complied with 28 U.S.C. § 1715(b).

13. **Fairness Hearing.** On Oct (month) 2 (day), 2018, at 10⁰⁰ AM, this Court will hold a Fairness Hearing to determine whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate. Based on the date of this Order and the date of the Fairness Hearing, the following are the certain associated dates in this Settlement:

EVENT	TIMING	DATE
Last day for MEI, via the Claims Administrator, to send the Email Notice and the Postcard Notice, start operating the Settlement Website, and start operating the toll-free number	30 calendar days after entry of this order	
Last day for Plaintiff to file fee petition	61 calendar days after entry of this Order	
Last day for Class Members to file a claim, request exclusion, object to the Settlement, or submit a Notice of Intention to Appear at the Fairness Hearing	75 calendar days after entry of this Order	
Last day for parties to file briefs in support of the Final Order and Judgment	7 calendar days before the Fairness Hearing	

This Court may order the Fairness Hearing to be postponed, adjourned, or continued. If that occurs, the updated hearing date shall be posted on the Settlement Website, but other than the website posting, MEI will not be required to provide any additional notice to Class Members.

DATED: 4-17-18



The Honorable Berle M. Schiller
U.S. District Court Judge