

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

VIRGINIA IS FOR MOVERS, LLC, *et al.*,
individually and on behalf of all those
similarly situated,
Plaintiffs,

v.

Civil No. 1:23cv576 (DJN)

APPLE FEDERAL CREDIT UNION,
Defendant.

ORDER
(Preliminarily Approving Class Action Settlement and
Scheduling Final Approval Hearing)

This matter comes before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement. (ECF No. 71 ("Motion").) Plaintiffs Virginia is for Movers, LLC, and Abigail McAllister ("Plaintiffs"), individually and on behalf of the proposed Settlement Classes, and Defendant Apple Federal Credit Union ("Apple FCU") have entered into a Settlement Agreement and Release dated February 5, 2025 (ECF No. 71-1 (the "Agreement")), which is subject to review by the Court under Federal Rule of Civil Procedure 23(e). Plaintiffs' Motion seeks: (a) certification of the Settlement Classes for settlement purposes pursuant to Rule 23(a), 23(b)(3), and 23(e); (b) appointment of Class Representatives of the Settlement Classes; and (c) appointment of Plaintiffs' counsel as Class Counsel. Pursuant to Rule 23, Plaintiffs also seek an order preliminarily approving the Settlement in accordance with the Agreement and directing the issuance of Notice to the Settlement Classes as more fully described herein. The Settlement provides for Apple FCU to pay \$2,500,000 into a non-reversionary Settlement Fund and to forgive Uncollected Fees in exchange for a release. (ECF No. 71-1.).

Having reviewed Plaintiffs' Motion along with the Agreement and its exhibits and having conducted a hearing in this matter on February 19, 2025, the Court finds that substantial and efficient grounds for certification and preliminary approval exist and ORDERS the following:

1. For purposes of this Preliminary Approval Order, all capitalized words have the same meaning as they have in the Agreement.

2. **Settlement Class Certification:** Pursuant to Federal Rules of Civil Procedure Rules 23(a) and 23(b)(3), and for purposes of settlement only, the Action is hereby preliminarily certified as a class action on behalf of the following Settlement Classes:

APSN Fee Class: Members of Defendant who were assessed APSN Fees;

Regulation E Class: Members of Defendant who were assessed Regulation E Fees.

"APSN Fees" means overdraft fees that Defendant charged and did not refund on signature Point of Sale debit card transactions that posted to Class Member accounts from January 7, 2021 to March 31, 2024, where there was a sufficient available balance at the time that the transaction was authorized, but an insufficient available balance at the time that the transaction was paid.

(Agreement ¶ 1(b).) "Regulation E Fees" means overdraft fees that Defendant assessed and did not refund from April 28, 2022 to March 31, 2024 for debit card payments and ATM withdrawals or transfers. (*Id.* ¶ 1(v).)

3. Pursuant to Fed. R. Civ. P. 23(e), the terms of the Agreement are preliminarily approved and likely to be approved at the Final Approval Hearing, because

- (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 classes 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 classes, including the method of processing class-member claims, if required;

- (iii) the terms of any proposed award of attorneys' 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.

Fed. R. Civ. P. 23(e)(2).

4. **Settlement Class Findings:** The Court finds, for purposes of settlement only, and without any adjudication on the merits, that the prerequisites for certifying the Action as a class action under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure have been satisfied, and that the Court will likely certify the Settlement Classes at the final approval stage. As to Rule 23(a), the court finds that: (a) the number of Settlement Class Members is so numerous that joinder is impracticable; (b) there are questions of law and fact common to the Settlement Classes; (c) the claims of the proposed Class Representatives are typical of the claims of the Settlement Class Members; (d) the proposed Class Representatives and proposed Class Counsel have and will fairly and adequately represent the interests of the Settlement Classes.

5. The numerosity requirement is satisfied because joinder of all parties would be impracticable. *See* Fed. R. Civ. P. 23(a)(1). While “no specified number is needed to maintain a class action,” the size of the Settlement Classes here (thousands of people) unquestionably satisfies the numerosity requirements. *See, e.g., Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984).

6. Commonality is satisfied where at least one issue of law or fact is common to the class. *See Mr. Dee's Inc. v. Inmar, Inc.*, No. 23-2165, 2025 WL 467566, at *3 (4th Cir. Feb. 12, 2025); *see also* Fed. R. Civ. P. 23(a)(2). Here, common issues of fact and law include the nature of the fee practices and whether those practices violate Apple FCU's account contract. Resolution of those issues as to Plaintiffs will resolve them for the Settlement Classes as well and would rely largely on the same evidence as would be necessary to prove any other

Settlement Class Member's claims.

7. To satisfy the typicality analysis, the proposed class representative must show that he or she is "part of the class and possess[es] the same interest and suffer[ed] the same injury as the class members." *Lienhart v. Dryvit Sys., Inc.*, 255 F.3d 138, 146 (4th Cir. 2001); *see also* Fed. R. Civ. P. 23(a)(3). Typicality is satisfied if the proposed class representative's claims "fairly encompass those of the entire class, even if not identical." *Fisher v. Va. Elec. & Power Co.*, 217 F.R.D. 201, 212 (E.D. Va. 2003). Here, Plaintiffs appear to be typical, because their claims arise from Apple FCU's assessment of the same type of fees that Apple FCU allegedly collected from other Settlement Class Members.

8. Finally, the adequacy analysis requires the Court to find that the Class Representative and Class Counsel will "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Here, Plaintiffs vigorously pursued the Action so far and appear to be capable of continuing to do so. Further, Class Counsel appears qualified, competent and experienced in class action lawsuits and bank fee lawsuits in particular. Rule 23(a)(4) thus appears to be satisfied.

9. As to Rule 23(b)(3), the Court finds that questions of law and fact common to the Settlement Classes predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the Action, taking into consideration: (i) the lack of evidence of any intent among the Settlement Class Members to individually control the prosecution of separate actions; (ii) the parties' lack of awareness of any litigation concerning the controversy already begun by Settlement Class Members other than the proposed Class Representatives; (iii) the small size of the claims of many of the individual Settlement Class Members making the pursuit of individual actions cost

prohibitive for many Settlement Class Members; and (iv) the similarity of the Settlement Class Members' claims involving substantially identical proofs. *See* Fed. R. Civ. P. 23(b)(3).

10. The predominance inquiry tests whether the proposed class is “sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997); *see also Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 428 (4th Cir. 2003). The common questions of the legality of the challenged fee practices and Apple FCU's policies associated with the practices predominate over questions — if any — affecting only individual Settlement Class Members and Apple FCU. *See Jeffreys v. Comm'ns Workers of Am., AFL-CIO*, 212 F.R.D. 320, 323 (E.D. Va. 2003) (finding predominance satisfied where “[t]he question in each individual controversy” would be resolved according to the same legal inquiry). Predominance thus appears to be satisfied.

11. Superiority also appears to be satisfied because individual lawsuits are unlikely, and Class Counsel have represented that they are unaware of other pending individual litigation against Apple FCU involving the challenged fee practices. *See Droste v. Vert Capital Corp.*, No. 3:14-cv-467, 2015 WL 1526432, at *8 (E.D. Va. April 2, 2015) (factors to be considered are: (1) class members' interest in controlling the litigation, (2) the existence of related litigation, (3) the desirability of concentrating the litigation in one forum, and (4) manageability). Because this is a settlement, the Court need not consider manageability. *Amchem Prods.*, 521 U.S. at 593.

12. **Appointment of Class Representatives and Class Counsel:** The Court hereby finds and concludes pursuant to Rule 23, and for purposes of settlement only, that Plaintiffs Virginia is for Movers, LLC, and Abigail McAllister are adequate class representatives for the APSN Fee Class and Abigail McAllister is an adequate representative for the Regulation E Class and therefore certifies Plaintiffs as Class Representatives on behalf of the Settlement Classes.

13. In appointing class counsel, Rule 23(g) requires the Court to consider: (1) the work counsel has done in identifying or investigating potential claims in the action; (2) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (3) counsel's knowledge of applicable law; and (4) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A). The Court also may consider any other matter pertinent to counsel's ability to represent the class. Fed. R. Civ. P. 23(g)(1)(B). The Court finds that proposed Class Counsel from the law firms of Cohen and Malad, LLP, Stranch, Jennings & Garvey, PLLC, and Munro Byrd, P.C., have expended a significant amount of time, effort and expense investigating and litigating this case. It is clear from their experience that Class Counsel are skilled and knowledgeable concerning class-action practice. For purposes of the Settlement only, and pursuant to Federal Rule of Civil Procedure 23(a)(1), the Court therefore appoints Cohen and Malad, LLP, Stranch, Jennings & Garvey, PLLC, and Munro Byrd, P.C., as Class Counsel with respect to the Settlement.

14. **Preliminary Approval of the Settlement:** The Court hereby preliminarily approves the Settlement, as embodied in the Agreement, as being fair, reasonable, and adequate, and in the best interest of the named Plaintiffs and the Settlement Classes, subject to further consideration at the Final Approval Hearing to be conducted as described below. The Settlement meets the considerations set forth in Rule 23(e) and *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155 (4th Cir. 1991).

15. When evaluating the fairness of a settlement, the Court must evaluate the settlement against the following criteria: (1) the posture of the case at the time that the settlement was proposed; (2) the extent of discovery conducted; (3) the circumstances surrounding the negotiations; and (4) the experience of counsel. *In re Jiffy Lube*, 927 F.2d at

159. As to the posture of the case, it appears that this Settlement was reached after significant work was performed. Similarly, as to the extent of discovery, it appears that the case had advanced well into discovery, including depositions and expert discovery, allowing the parties to better evaluate the case. Thus, the first two fairness factors warrant preliminary approval.

16. The third factor, circumstances surrounding the negotiations, also supports preliminary approval. *See id.* The Settlement was negotiated with the assistance of a neutral third-party mediator and appears to be the result of extensive, arm's length negotiations between the parties after Class Counsel and Apple FCU's Counsel had investigated the claims, litigated them, and become familiar with the claims' strengths and weaknesses. *See, e.g., Bicking v. Mitchell Rubenstein & Assocs., P.C.*, 2011 WL 5325674, at *5 (E.D. Va. 2011) (finding settlement fair where it was reached "under the supervision and direction" of a Magistrate Judge). The Settlement appears not to be collusive, has no obvious defects and falls within the range of reasonableness.

17. Class Counsel intends to seek an award of one-third of the Value of the Settlement and a request for reimbursement of reasonable costs. The Agreement also authorizes Plaintiffs to seek service awards of \$15,000.00. The Court will defer ruling on these amounts until the Final Approval Hearing.

18. Accordingly, the Court preliminarily finds that the Settlement is fair.

19. In assessing the adequacy of the Settlement, the Court looks to: (1) the relative strength of the merits of the plaintiffs' claims; (2) the existence of any difficulties of proof or strong defenses that the plaintiffs will encounter at trial; (3) the anticipated duration and expense of additional litigation; (4) the solvency of the defendant and likelihood of recovery; and (5) the degree of opposition to the settlement. *In re Jiffy Lube*, 927 F.2d at 159. While the fifth factor

cannot be evaluated until after notice has been provided to the class, the first four factors appear satisfied.

20. The first and second factors, which are generally considered together, evaluate “how much the class sacrifices in settling a potentially strong case in light of how much the class gains in avoiding the uncertainty of a potentially difficult one.” *In re The Mills Corp. Securities Litig.*, 265 F.R.D. 246, 256 (E.D. Va. 2009). Here, it is clear that numerous factual and legal issues remain in dispute. Accordingly, the first two factors warrant preliminary approval.

21. The likely duration and expense of continued litigation are also substantial. Settlement will avoid “returning the case to this Court for class and merits discovery, class certification, summary judgment, trial, and further appeals,” favoring approval. *Solomon v. Am. Web Loan, Inc.*, 2020 WL 3490606, at *5 (E.D. Va. June 26, 2020).

22. Finally, while the parties do not contend that Apple FCU lacks financial resources, the fourth factor is “largely considered beside the point given the other factors weighing in favor of preliminary approval.” *Id.*

23. Accordingly, the Court preliminarily finds that the Settlement is adequate.

24. The Court hereby authorizes Class Counsel and Apple FCU’s counsel to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Agreement, including making, without the Court’s further approval, minor form or content changes to the Notice that they jointly agree are reasonable or necessary.

25. **Final Approval Hearing:** The Court will hold a Final Approval Hearing on June 17, 2025, at 2:00 p.m. The Final Approval Hearing is conducted for the following purposes: (a) to determine whether the proposed Settlement, on the terms and conditions provided for in the

Agreement, is fair, reasonable, and adequate, and should be approved by the Court; (b) to determine whether an order of Final Judgment should be entered on the Settlement; (c) to determine whether the proposed plan of allocation and distribution of the Settlement Fund is fair and reasonable and should be approved; (d) to determine whether any requested award of attorneys' fees and costs and expenses and service awards for the Class Representatives should be approved; and (e) to consider any other matters that may properly be brought before the Court in connection with the Settlement.

26. **Retention of Settlement Administrator and Manner of Notice:** Class Counsel may retain Verita Settlement Administration as the Settlement Administrator to supervise and administer the Notice Program, as well as the distribution of the Settlement Fund should the Court grant Final Approval. Notice of the Settlement and the Final Approval Hearing shall occur through the Settlement Administrator as follows:

a. Within 14 days after Preliminary Approval of the Settlement, at the direction of Class Counsel and Apple FCU's Counsel, the Settlement Administrator shall implement the Notice Program. Notice shall be provided through e-mail and postcard notice as set forth in the Settlement, and long form notice, which will be available on the Settlement Website.

b. For those Class Members who are not current accountholders with Defendant or who have not agreed to receive electronic notices regarding their accounts, and for those Class Members whose notices bounce back undelivered, the Settlement Administrator shall run the Settlement Class Members' addresses through the National Change of Address Database and shall re-mail the notice as appropriate, as well as perform reasonable address traces for all postcards that are returned as undeliverable.

c. The Settlement Administrator shall also create and maintain a Settlement Website.

d. In advance of the Final Approval Hearing, the Settlement Administrator shall prepare an affidavit confirming that the Notice Program was completed, confirming that the Class Action Fairness Act notice requirements have been met, describing how the Notice Program was completed, providing the names of each Settlement Class Member who timely opted out from the Settlement Class, and identifying Settlement Class Members who timely filed objections, as well as providing other information as may be necessary.

27. **Approval of Form and Content of Notice:** The Court approves, as to form and content, the notice program, substantially in the forms attached as Exhibits to the Settlement Agreement. The Court finds that the notice program: (a) constitutes the best notice practicable under the circumstances; (b) constitutes notice that is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the Release contained therein), and of their right to object to any aspect of the proposed Settlement, to exclude themselves from the Settlement Classes, and to appear at the Final Approval Hearing; (c) constitutes due, adequate and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (d) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, the Rules of this Court, and all other applicable law and rules. The date and time of the Final Approval Hearing shall be included in the E-mail and Postcard Notice and Long Form Notice, respectively, before they are sent or published.

28. **Dissemination of Notice:** The Court directs Class Counsel to disseminate the

Notice as set forth in the Settlement.

29. **Exclusion from the Settlement Classes:** The Class Notice shall provide that any member of the Settlement Classes who wishes to be excluded from the Settlement Classes must request exclusion in writing within the time and manner set forth in the Agreement.

30. Any Settlement Class Member who timely and validly requests exclusion from the Settlement Classes shall not be a Settlement Class Member, shall not be bound by the terms of the Settlement Agreement, and shall have no right to payment from the Settlement Fund. Any Settlement Class Member who does not timely and validly request to opt out shall be bound by the terms of this Agreement.

31. **Objections to the Settlement:** The Class Notice shall also provide that any Settlement Class Member who does not request exclusion from the Settlement Class may object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs and expenses and/or a service award to the Class Representatives. Objections to the Settlement, to the application for fees, costs, expenses and/or to the service award must be submitted in the time and manner set forth in the Agreement and Long Form Notice.

32. For an objection to be considered by the Court, the objection must also set forth:
- a. the Settlement Class Member's full name, address and current telephone number;
 - b. if the individual is represented by counsel, the name and telephone number of counsel;
 - c. all objections and the basis for any such objections stated with specificity, including a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;

- d. the identity of any witnesses the objector may call to testify;
- e. a listing of all exhibits the objector intends to introduce into evidence at the Final Approval Hearing, as well as true and correct copies of such exhibits; and
- f. a statement of whether the objector intends to appear at the Final Approval Hearing, either with or without counsel.

33. Class Counsel and/or Apple FCU may conduct limited discovery on any objector consistent with the Federal Rules of Civil Procedure.

34. Any Settlement Class Member who does not make an objection in the manner provided herein shall be deemed to have waived the right to object to any aspect of the Agreement and/or to Class Counsel's application for attorneys' fees, costs and expenses and/or a service award to the Class Representatives, and shall forever be barred and foreclosed from raising such objections in this or any other proceeding.

35. **Stay:** All pretrial proceedings in this action remain stayed and suspended until further order of this Court, except such actions as may be necessary to implement the Agreement and this Preliminary Approval Order.

36. **Supporting Papers:** Class Counsel shall file a brief in support of the proposed Settlement and their application for attorneys' fees, costs and expenses and/or a service award to the Class Representatives no later than 30 days after entry of this Order. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' Motion for Final Approval of the Settlement, and on Class Counsel's application for attorneys' fees, costs, and expenses, and for the Service Award for the Class Representative. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their

counsel) who object to the Settlement or to Class Counsel’s application for attorneys’ fees, costs, expenses, or the Service Award application, provided the objector submitted timely objections that meet all of the requirements listed in the Agreement and in this Order.

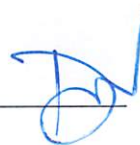
37. **Jurisdiction:** For the benefit of the Settlement Classes and to protect this Court’s jurisdiction, this Court retains continuing jurisdiction over the Settlement proceedings to ensure the effectuation thereof in accordance with the Agreement preliminarily approved herein and the related orders of this Court.

38. **Schedule:** The Court hereby sets the following schedule of events:

| Event | Deadline |
|--|----------------------------------|
| Deadline to Send Notice to Class Members | 14 days from entry of this Order |
| Deadline to file Motion for Attorneys’ Fees, Expenses, and Service Award | 30 days from entry of this Order |
| Opt-Out and Objection Deadline | 60 days from entry of this Order |
| Deadline to file Motion for final approval | 60 days from entry of this Order |
| Deadline to Respond to Objections | June 3, 2025 |
| Final Approval Hearing | June 17, 2025 at 2:00 p.m. |

Let the Clerk file a copy of this Order electronically and notify all counsel of record.

It is so ORDERED.

_____ /s/ 
 David J. Novak
 United States District Judge

Alexandria, Virginia
Dated: February 19, 2024