

IN THE CIRCUIT COURT OF WAYNE COUNTY, WEST VIRGINIA

JAMES F. PAULEY, on behalf of himself,)
and all others similarly situated,)
)
Plaintiff,)
)
vs.)
)
HERTZ GLOBAL HOLDINGS, INC., a)
Delaware corporation, HERTZ INVESTORS,)
INC., a Delaware corporation, THE HERTZ)
CORPORATION, a Delaware corporation, dba)
HERTZ RENT-A-CAR, and DOLLAR)
THRIFTY AUTOMOTIVE GROUP, INC., a)
Delaware corporation, dba THRIFTY CAR)
RENTAL and DOLLAR RENT A CAR,)
)
Defendants.)

CIVIL ACTION NO. 13-C-236
Hon. Darrell Pratt

FILED
CIRCUIT CLERK'S OFFICE
2017 AUG 29 PM 2:55
WAYNE COUNTY, WV
BY mm

PRELIMINARY APPROVAL ORDER

WHEREAS, Plaintiff James F. Pauley has filed an unopposed Motion for Preliminary Approval of a Class Settlement (the "Motion");

WHEREAS, the Motion attaches and incorporates a Settlement Agreement¹ (the "Settlement Agreement") that, together with the exhibits thereto, sets forth the terms and conditions for the settlement of claims, on a class wide basis, against The Hertz Corporation ("Hertz"), and other Released Parties; and

WHEREAS, the Court having carefully considered the Motion and the Settlement Agreement, and all of the files, records, and proceedings herein, and the Court determining upon preliminary examination that the Settlement Agreement appears to be fair, reasonable and adequate, and that the proposed plan of notice to the Notice Population is the best notice practicable under the circumstances and consistent with requirements of due process and West Virginia Rule

¹ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Settlement Agreement.

of Civil Procedure 23, and that a hearing should and will be held after notice to the Notice Population to confirm that the Settlement Agreement is fair, reasonable, and adequate, and to determine whether this Court should enter a judgment approving the Settlement and an order of dismissal of this action based upon the Settlement Agreement;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. For purposes of settlement only, the Court has jurisdiction over the subject matter of this action and personal jurisdiction over all of the members of the Settlement Class.

Certification of Settlement Class

2. Under Rule 23 of the West Virginia Rules of Civil Procedure, and for purposes of settlement only, a "Settlement Class" is preliminarily certified, consisting of the following class:

All persons who (a) rented a vehicle in the United States from Hertz; (b) were invoiced between April 1, 2008 and April 30, 2017 for an administrative or handling fee relating to a parking ticket and/or notice of violation issued to the rental vehicle; (c) paid the administrative or handling fee; (d) paid the amount due for the parking ticket or notice of violation on or before the due date; and (e) did not receive any form of refund or adjustment of the administrative or handling fee.

The following persons and entities are excluded from the Settlement Class: Defendants, any parent, subsidiary, or affiliate of any of the Defendants, the officers, directors, agents, servants, or employees of any of the foregoing as of the entry of the Preliminary Approval Order, Class Counsel, the Notice Consultant, the Settlement Administrator, and any judge presiding over the Action.

3. All Persons who are members of the Settlement Class who have not submitted a timely request for exclusion are referred to collectively "Settlement Class Members" or individually as a "Settlement Class Member."

4. For purposes of settlement only, the Court finds that the prerequisites for a class action under West Virginia Rule of Civil Procedure 23 have been preliminarily satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class Members;

(c) the claims of the class representative are typical of the claims of the Settlement Class Members; (d) the class representative will fairly and adequately represent the interests of the Settlement Class Members; (e) questions of law and fact common to the Settlement Class Members predominate over any questions affecting only individual Settlement Class Members; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The Court further finds, for purposes of settlement only, that: (i) Settlement Class Members have a limited interest in individually prosecuting the claims at issue; (ii) the Court is satisfied with Plaintiff's counsel's representation that they are unaware of any other litigation commenced regarding the claims at issue by members of the Settlement Class; (iii) it is desirable to concentrate the claims in this forum; and (iv) it is unlikely that there will be difficulties encountered in administering this Settlement.

5. Under West Virginia Rule of Civil Procedure 23, and for settlement purposes only, Plaintiff James F. Pauley is hereby appointed Class Representative and the following are hereby appointed as Class Counsel:

Anthony J. Majestro
POWELL & MAJESTRO, PLLC
405 Capitol Street, Suite P1200
Charleston, West Virginia 25301
(304) 346-2889

and

Timothy C. Bailey
BAILEY, JAVINS & CARTER, LC
213 Hale Street
P.O. Box 3712
Charleston, West Virginia 25337
(304) 932-4639

Notice and Administration

6. The Court hereby approves of Dahl Administration, LLC to perform the functions and duties of the Settlement Administrator set forth in the Settlement Agreement – including effectuating the Notice Plan, providing Notice to the Notice Population, and reviewing submitted Claim Forms to determine whether they are valid and approved – and to provide such other administration services as are reasonably necessary to facilitate the completion of the Settlement.

7. The Court has carefully considered the Notice Plan set forth in the Settlement Agreement. The Court finds that the Notice Plan constitutes the best notice practicable under the circumstances, and satisfies fully the requirements of Rule 23 of the West Virginia Rules of Civil Procedure, the requirements of due process and any other applicable law, such that the terms of the Settlement Agreement, the releases provided for therein, and this Court's final judgment will be binding on all Settlement Class Members.

8. The Court hereby approves the Notice Plan and the form, content, and requirements of the Notice described in and attached as exhibits to the Settlement Agreement. The Settlement Administrator shall cause the Notice Plan to be completed on or before September 1, 2017. Class Counsel shall, prior to the Final Approval Hearing, file with the Court a declaration executed by the Settlement Administrator attesting to the timely completion of the Notice Plan.

9. Settlement Class Members who wish to receive benefits under the Settlement Agreement must complete and submit a Claim Form in accordance with the instructions provided on such form. The Court hereby approves as to form and content the Claim Form attached to the Settlement Agreement. All Claim Forms must be postmarked or received by the Settlement Administrator by no later than November 30, 2017.

10. All costs of providing Notice to the Settlement Class, processing Claim Forms, and

administering distributions from the Settlement Funding shall be paid out of the Settlement Funding, as provided by the Settlement Agreement.

Exclusion and “Opt-Outs”

11. Each and every member of the Settlement Class shall be bound by all determinations and orders pertaining to the Settlement, including the release of all claims to the extent set forth in the Settlement Agreement, unless such persons request exclusion from the Settlement in a timely and proper manner, as hereinafter provided.

12. A member of the Settlement Class wishing to request exclusion (or “opt-out”) from the Settlement shall mail the request in written form, by first class mail, postage prepaid, and postmarked no later than November 1, 2017, to the Settlement Administrator at the address specified in the Notice. In the written request for exclusion, the member of the Settlement Class must state his or her full name, address, and telephone numbers. Further, the written request for exclusion must include a statement that the member of the Settlement Class submitting the request wishes to be excluded from the Settlement, and the personal signature of the member of the Settlement Class submitting the request. The request for exclusion shall not be effective unless the request for exclusion provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court. No member of the Settlement Class, or any person acting on behalf of or in concert or in participation with a member of the Settlement Class, may request exclusion of any other member of the Settlement Class from the Settlement.

13. Members of the Settlement Class who timely request exclusion from the Settlement will relinquish their rights to benefits under the Settlement and will not release any claims against Defendants or any of the other Released Parties.

14. All Settlement Class Members who do not timely and validly request exclusion

shall be so bound by all terms of the Settlement Agreement and by the Final Approval Order and Judgment even if they have previously initiated or subsequently initiate individual litigation or other proceedings against Defendants or any of the other Released Parties.

15. The Settlement Administrator will promptly provide all Parties with copies of any exclusion requests, and Plaintiff shall file a list of all persons who have validly opted-out of the Settlement with the Court prior to the Final Approval Hearing.

Objections

16. Any Settlement Class Member who does not file a timely request for exclusion, but who wishes to object to approval of the proposed Settlement, or to the award of attorneys' fees and expenses, must mail to the Settlement Administrator, Class Counsel, and Hertz Counsel, at the addresses identified in the Notice, a written statement that includes: his or her full name; address; telephone number; all grounds for the objection, with factual and legal support for each stated ground; the identity of any witnesses he or she may call to testify; copies of any exhibits that he or she intends to introduce into evidence at the Final Approval Hearing; the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case; the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the counsel or the firm has made such objection, and a copy of any orders related to or ruling upon counsel's or the firm's prior such objections that were issued by the trial and appellate courts in each listed case; and a statement of whether he or she intends to appear at the Final Approval

Hearing with or without counsel. The Settlement Administrator shall cause to be filed with the Court on November 6, 2017 any objections that it has received as of that date. The Court will consider objections to the Settlement and/or to the award of attorneys' fees and expenses only if such objections and any supporting papers are mailed to the Settlement Administrator, Class Counsel, and Hertz Counsel, and postmarked on or before November 1, 2017.

17. A Settlement Class Member who has timely filed a written objection as set forth above may appear at the Final Approval Hearing in person or through counsel to be heard orally regarding their objection. It is not necessary, however, for a Settlement Class Member who has filed a timely objection to appear at the Final Approval Hearing. No Settlement Class Member wishing to be heard orally in opposition to the approval of the Settlement and/or the request for attorneys' fees and expenses will be heard unless that person has submitted a timely written objection as set forth above. No non-party, including members of the Settlement Class who have timely opted-out of the Settlement, will be heard at the Final Approval Hearing.

18. Any member of the Settlement Class who does not opt out or make an objection to the Settlement in the manner provided herein shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Final Approval Order and Judgment.

Final Approval Hearing

19. The West Virginia Rule of Civil Procedure 23 Final Approval Hearing is hereby scheduled to be held before the Court on November 16, 2017 at 9:00 am for the following purposes:

- (a) to finally determine whether the applicable prerequisites for settlement class action treatment under West Virginia Rule of Civil Procedure 23 are met;

(b) to determine whether the Settlement is fair, reasonable and adequate, and should be approved by the Court;

(c) to determine whether the judgment as provided under the Settlement Agreement should be entered, including a bar order prohibiting Settlement Class Members from further pursuing claims released in the Settlement Agreement;

(d) to consider the application for an award of attorneys' fees and expenses of Class Counsel;

(e) to consider the distribution of the Settlement Benefits under the terms of the Settlement Agreement; and

(f) to rule upon such other matters as the Court may deem appropriate.

20. On or before November 3, 2017, Class Counsel shall file and serve any application for an award of attorneys' fees and expenses.

21. On or before November 3, 2017, Class Counsel shall file and serve a motion for final approval. The Final Approval Hearing may be postponed, adjourned, transferred or continued by order of the Court without further notice to the Settlement Class. At, or following, the Final Approval Hearing, the Court may enter a Final Approval Order and Judgment in accordance with the Settlement Agreement that will adjudicate the rights of all class members.

22. For clarity, the deadlines the Parties shall adhere to are as follows:

Class Notice Emailed or Mailed by:	<u>September 1, 2017</u>
Class Counsel Fee Application:	<u>November 3, 2017</u>
Objection/Exclusion:	<u>November 1, 2017</u>
Claim Deadline:	<u>November 30, 2017</u>
Final Approval Hearing:	<u>November 16, 2017 at 9:00 am</u>

23. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

Further Matters

24. All discovery and other pretrial proceedings in the Action as between the Plaintiff and Defendants are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Settlement Agreement and this Order.

25. In the event that the Settlement Agreement is terminated under the terms of the Settlement Agreement, or for any reason whatsoever the approval of it does not become final and no longer subject to appeal, then: (i) the Settlement Agreement shall be null and void, including any provisions related to the award of attorneys' fees and expenses, and shall have no further force and effect with respect to any party in this Action, and shall not be used in this Action or in any other proceeding for any purpose; (ii) all negotiations, proceedings, documents prepared, and statements made in connection therewith shall be without prejudice to any person or party hereto, shall not be deemed or construed to be an admission by any party of any act, matter, or proposition, and shall not be used in any manner or for any purpose in any subsequent proceeding in this Action or in any other action in any court or other proceeding, provided, however, that the termination of the Settlement Agreement shall not shield from subsequent discovery any factual information provided in connection with the negotiation of this Settlement Agreement that would ordinarily be discoverable but for the attempted settlement; (iii) this Order shall be vacated and of no further force or effect whatsoever, as if it had never been entered; and (iv) any party may elect to move the Court to implement the provisions of this paragraph, and none of the non-moving parties (or their counsel) shall oppose any such motion.

26. The Court retains jurisdiction to consider all further matters arising out of or connected with the Settlement.

DATED: August ^{29th}, 2017





A COPY TESTE
Milton J. Ferguson II Clerk
By mf Deputy