

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

Richmond Division

ASHLEY TURNER, *on behalf
of herself and all others similarly
situated*,
Plaintiff,

v.

Civil No. 3:21cv30 (DJN)

FABER & BRAND, LLC, *et al.*,
Defendants.

ORDER
(Preliminarily Approving Settlement and Directing Notice to Class)

This matter comes before the Court on the parties' Joint Motion for Class Certification and Preliminary Approval of Class Settlement (ECF No. 50). The Settlement Agreement has been filed with the Court as Exhibit 1 (ECF No. 51-1) to the Memorandum in Support of Joint Motion for Class Certification and Preliminary Approval of Class Settlement (ECF No. 50), and the definitions and terms set forth in the Settlement Agreement are incorporated herein by reference. A Final Fairness Hearing will be held on December 20, 2021, at 11:00 a.m., after notice to the proposed Settlement Class Members, to confirm that the proposed Settlement is fair, reasonable, and adequate; and to determine whether a Final Approval Order should be entered in this matter.

Therefore, it is hereby ORDERED:

1. The Court has considered the proposed settlement of the claims by a class of consumers defined as follows (the "Settlement Class"):

All natural persons who were or are Virginia residents who received by U.S. Mail an application for Warrant In Debt, Virginia Supreme Court form DC-412, DC-414, DC-428, in the form of Exhibit A attached to the Amended Complaint in the

Class Action, listing as Plaintiff Petersburg Hospital Company, LLC d/b/a Southside Regional Medical Center, represented by Faber & Brand, LLC, that asserted a matter was to be heard on a date certain, when no hearing was set by the General District Court for the defendant named in the Warrant in Debt as a defendant, during the period January 19, 2020 to January 19, 2021.

2. The Settlement Agreement entered between the parties appears, upon preliminary review, to be fair, reasonable, and adequate to the Settlement Class. Accordingly, for settlement purposes only, the proposed settlement is hereby PRELIMINARILY APPROVED, pending a Final Approval Hearing, as provided for herein.

3. The prerequisites to a class action under Fed. R. Civ. P. 23(a) have been preliminarily satisfied, for settlement purposes only, in that:

- (a) the Settlement Class consists of approximately 342 members;
- (b) the claims of the Named Plaintiff are typical of those of the other members of the Settlement Class;
- (c) there are questions of fact and law that are common to all members of the Settlement Class; and
- (d) the Named Plaintiff will fairly and adequately protect the interests of the Settlement Class and has retained Class Counsel experienced in consumer class action litigation who have and will continue to adequately represent the Settlement Class.

4. For settlement purposes only, the Court finds that this action is preliminarily maintainable as a class action under Fed. R. Civ. P. 23(b)(3) because: (1) a class action is a fair and efficient adjudication of this controversy; and (2) questions of fact and law common to the members of the Settlement Class predominate over any questions affecting only individual members.

5. If the Settlement Agreement is not finally approved, is not upheld on appeal, or is otherwise terminated for any reason before the Effective Date, then the Settlement Class shall be decertified; the Settlement Agreement and all negotiations, proceedings, and documents prepared, and statements made in connection therewith, shall be without prejudice to any Party and shall not be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law; and all Parties shall stand in the same procedural position as if the Settlement Agreement had not been negotiated, made, or filed with the Court.

6. The Court appoints Ashley Turner as the class representative. The Court also appoints Dale W. Pittman, of The Law Office of Dale W. Pittman, P.C., and Thomas D. Domonoske, of Consumer Litigation Associates, P.C., as counsel for the Settlement Class (“Class Counsel”).

7. The Court appoints American Legal Claims Services, LLC, as the Settlement Administrator.

8. The Court will hold a Final Approval Hearing pursuant to Fed. R. Civ. P. 23(e) on December 20, 2021, at the United States District Court, Eastern District of Virginia, at 701 E. Broad St., Richmond, Virginia 23219, at 11:00 a.m., for the following purposes:

- (a) To determine whether the proposed settlement is fair, reasonable, and adequate and should be granted final approval by the Court;
- (b) To determine whether a final judgment should be entered dismissing the claims of the Settlement Class with prejudice, as required by the Settlement Agreement;
- (c) To consider the application of Class Counsel for an award of attorney’s fees, costs, and expenses, and for a service award to the class representative; and
- (d) To rule upon other such matters as the Court may deem appropriate.

9. (a) As is provided in the Settlement Agreement, Class Counsel and Defendant shall provide a Class List of the Settlement Class Members to the Settlement Administrator, who shall send the agreed upon Notice to the Settlement Class Members no later than 30 days after the date of this Order. The Court also approves the parties' Notice, which is attached to the Settlement Agreement. To the extent the parties or Settlement Administrator determine that ministerial changes to the Notices are necessary before disseminating the Settlement Class Members, they may make such changes without further application to the Court.

(b) Not later than forty-five (45) days before the Final Approval Hearing, the Settlement Administrator will cause a declaration to be filed with the Court that the Notice described above was given as required herein.

10. The Court finds this manner of giving notice fully satisfies the requirements of Fed. R. Civ. P. 23 and due process, constitutes the best notice practicable under the circumstances, including its use of individual mailed notice to all members, and shall constitute due and sufficient notice to all persons entitled thereto.

11. If a Settlement Class Member chooses to opt-out of the class, such class member is required to submit a request for exclusion to the Settlement Administrator, post-marked on or before 60 days following the mailing of the Notice. The class member's exclusion request must contain the class member's original signature, name, address, telephone number, and a specific statement that the class member wants to be excluded from the Settlement. A Class Member who submits a valid request for exclusion using the procedure identified above shall be excluded from the class for any and all purposes. The Administrator shall provide Class Counsel and Defense Counsel with the complete list of all persons who have properly opted out of the Settlement together with copies of the opt out requests within seven (7) business days after the deadline for

submission of requests for exclusion from the Settlement, and Class Counsel shall then file the same with this Court.

12. A Settlement Class Member who does not file a timely request for exclusion, or otherwise does not follow the procedure described in the Settlement Agreement, shall be bound by all subsequent proceedings, orders, and judgments in this action.

13. (a) Any Settlement Class Member who wishes to be heard orally at the Final Approval Hearing, and/or who wishes for any objection to be considered, must file a written notice of objection to be filed within ninety (90) days after Preliminary Approval. The notice of objection shall be sent by First Class United States Mail to the Court and Class Counsel and Defense Counsel.

(b) The objection must include the following: (1) the name of this lawsuit (*Ashley Turner v. Faber & Brand, LLC, et al., Case No. 3:21cv30*); (2) the objector's full name, current address and telephone number; (3) the reasons for the objection to the settlement; and (4) the objector's signature. Any Class Member who fails to timely file and serve a written objection pursuant to the terms of this paragraph shall not be permitted to object to the approval of the settlement or the Settlement Agreement and shall be foreclosed from seeking any review of the settlement or the terms of the Settlement Agreement by appeal or other means.

14. Class Counsel shall be prepared to discuss with the Court all objections that have been timely filed.

15. All briefs, memoranda, petitions and affidavits to be filed in support in support of Class Counsel's application for fees, costs and expenses shall be filed on or before seventy-six (76) days from the date of this Order.

16. Neither this Preliminary Approval Order, nor the Settlement Agreement, shall be construed or used as an admission or concession by or against the Defendant or any of the Released Parties of any fault, omission, liability, or wrongdoing, or the validity of any of the Settlement Released Claims. This Preliminary Approval Order is not a finding of the validity or invalidity of any claims in this lawsuit or a determination of any wrongdoing by the Defendant or any of the Released Parties. The preliminary approval of the Settlement Agreement does not constitute any opinion, position, or determination of this Court, one way or the other, as to the merits of the claims and defenses of Plaintiff, the Settlement Class Members, or the Defendant.

17. Pending final determination of whether the Settlement should be approved, Plaintiff, all Settlement Class Members and any person or entity allegedly acting on behalf of Settlement Class Members, either directly, representatively or in any other capacity, are preliminary enjoined from commencing or prosecuting against the Defendants any action or proceeding in any court or tribunal asserting any of the Released Claims; provided, however, that this injunction shall not apply to individual claims of anyone who timely excludes themselves from the Settlement in a manner that complies with Paragraph 11 above. This injunction is necessary to protect and effectuate the Settlement, this Order, and this Court's flexibility and authority to effectuate the Settlement and to enter Judgment when appropriate and is ordered in aid of this Court's jurisdiction and to protect its judgments.

18. The Court retains exclusive jurisdiction over this action to consider all further matters arising out of or connected with the Settlement Agreement.

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

Richmond, Virginia

Dated: September 2, 2021