

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NICKOYA HOYTE, *et al.*,

Plaintiffs,

v.

**GOVERNMENT OF THE
DISTRICT OF COLUMBIA,**

Defendant.

Civil Action No. 13-569 (CRC)

PRELIMINARY ORDER OF APPROVAL AND SETTLEMENT

Upon consideration of the Joint Motion for Preliminary Approval of Class Action Settlement (“Motion for Preliminary Approval”), and the exhibits attached, including the Settlement Agreement reached between the named Plaintiffs, individually and as representatives of the classes conditionally certified by this Order, and the Government of the District of Columbia (the “District”),

IT IS HEREBY ORDERED:

I. Preliminary Approval of Settlement

This Order (the “Preliminary Approval Order”) incorporates by reference the definitions in the Settlement Agreement, and all capitalized terms shall have the same meanings set forth in the Settlement Agreement.

1. The Court has jurisdiction over the subject matter of the Lawsuit, the Parties, and all members of the Classes.

2. The Settlement is preliminarily approved, subject to further consideration at the Final Approval and Fairness Hearing provided for below. The Court preliminarily finds that the Settlement terms are within the range of a fair, reasonable, and adequate settlement and in the

best interests of each Class as a whole, such that final approval of the Settlement and Request for Attorney's Fees and Costs may be appropriate, following notice to the Classes and a Fairness Hearing. Further, the Court preliminarily finds that the terms of the Settlement Agreement satisfy the requirements of Federal Rule of Civil Procedure 23(e) and due process.

3. The Court approves the notices and forms that have been filed to be used in substantially the same form for notice, claims, and opt outs.

II. Class Definitions

4. The Court preliminarily approves the Settlement Class Definitions as follows:

Vehicle Forfeiture Class:

Each person (1) whose vehicle was seized and retained for civil forfeiture by the District at any point between April 25, 2010 and June 15, 2015; or (2) whose vehicle was seized for civil forfeiture by the District before that period but remained in the District's custody during some or all of that period; and (3) who did not receive a post-seizure hearing within thirty (30) days of the seizure (or within 15 days if the vehicle was not classified as evidence in the District's EvidenceOnQ database); provided that (4) each person whose vehicle was seized for civil forfeiture was, at the time of seizure, the owner of the vehicle.

Forfeiture Notice Class:

Each person who meets the following criteria: (1) the Metropolitan Police Department seized his or her currency for civil forfeiture or a forfeiture determination at any point between April 25, 2010 and June 15, 2015 and it is still in the possession of the District; (2) there is no notation that forfeiture notice was provided to the person in the EvidenceOnQ database notes fields; (3) if there is a notation that forfeiture notice was provided to the person in the EvidenceOnQ database notes fields, any forfeiture notice was not provided to the person within one year after seizure; and (4) the person's claim was not released by the Settlement Agreement in Hardy v. District of Columbia, No. 09-1062 (CRC), as amended in Hardy v. District of Columbia, 49 F. Supp. 3d 48 (D.D.C. 2014) (final approval order).

5. The Court preliminarily finds that there is sufficient and reasonable justification for modifying the definitions of the Classes from the definitions the Court issued in its Order defining the Classes. See Oct. 26, 2017 Order [159]. The changes make the case more

administratively feasible and are consistent with well-reasoned caselaw. See, e.g., Fonder v. Sheriff of Kankakee Cty., 823 F.3d 1144, 1147 (7th Cir. 2016). Therefore, the class definitions will be revised to reflect the tentative rulings of the Court and the terms of the Settlement Agreement.

6. The changes do not affect the Court's prior analysis and reasoning supporting Rule 23(b)(3) class certification, and the Court adopts its prior Rule 23 analysis in preliminarily approving the Settlement Class Definitions.

7. If final approval does not result from the parties' Settlement, the Settlement Class Definitions will be vacated without further action by the Court, without prejudice to the parties to request and oppose revisions to the Class Definitions as they might otherwise do without this Settlement.

III. Class Representatives and Class Counsel

8. The Court appoints Nickoya Hoyte, Kelly Hughes, Steven May, Romona Person, Dorian Urquart, Shanita Washington and Tanisha Williams as Class representatives for the Vehicle Forfeiture Class.

9. The Court appoints Jarrett Acey, Julius Gordon, Marilyn Langly, Terrence Thomas and Shane Lucas as Class representatives for the Forfeiture Notice Class.

10. William Claiborne and Bennett B. Borden are appointed as Class Counsel. Class Counsel are authorized to act on behalf of the Classes with respect to all acts reasonably necessary to consummate the Settlement.

IV. Deadlines for Notice and Claims Period

11. Except as may be modified by the Court, the following deadlines shall apply:

Within 10 days after entry of this Order ¹	District shall provide the Settlement Agreement Database to Class Counsel and Class Administrator
Within 30 days after entry of this Order	The District shall wire \$12,330.00 to Class Counsel William Claiborne's trust account for payment to the Class Administrator
Within 45 days after entry of this order	Initial Notice: <ul style="list-style-type: none"> • Mailing Notice and Claim and Release Forms • Publishing Summary Notice • Posting Notice and Claim and Release Forms on Metropolitan Police Department website • Sending Notice and blank Claim and Release Form to Superior Court Trial Lawyers' Association email list • Launching of website by Class Administrator
Within 30 days after the last day of mailing Notice and Claim and Release Forms	Filing of Plaintiffs' Motion for Award of Attorney's Fees and Costs
Within 45 days after the last day of mailing Notice and Claim and Release Form	Opt-Outs and Objections filed or received
Within 120 days after the last day of mailing Notice and Claim and Release Form	Claims received
At least 75 days after the last day of mailing Notice and Claim and Release Forms	Final Approval and Fairness Hearing

12. In the event that Class Notice is not mailed and initially published within the time specified above, the subsequent dates will be deferred for the number of additional days before

¹ Any deadline in this schedule that falls on a non-business day shall be continued until the next business day.

such notice occurs without the need for additional court approval. However, the Court must approve any change of the date of the Final Approval Hearing.

13. The Court may approve the Settlement with such modifications and amend these dates as may be agreed to by the Parties, without further mailed notice to Class Members.

V. Notice

14. The Court finds that the following proposed notice procedures set forth in the Settlement, and the form of notices attached as exhibits, satisfy due process, the requirements of Federal Rule of Civil Procedure 23, and the Class Action Fairness Act.

15. The Court directs that the Class Notice be provided to the members of the Class substantially in the manner specified in the Settlement Agreement and substantially in the form as attached as Exhibit B to the Settlement Agreement, provided that the Parties, by agreement, may revise the Class Notice in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy, and may adjust the layout of the Notice for clarity and efficient mailing.

VI. Class Administrator

16. JND Legal Administration (“JND”) is approved and designated as the Class Administrator. JND shall be hired by Class Counsel from the funds paid by the District, up to \$48,879.00, as set forth in the Settlement.

VII. Procedures for Claims, Objections, and Opt-Outs

17. Opt-Outs must be sent to and received by the Class Administrator within the deadline set forth above.

18. Claims, Claim and Release Forms, and any supporting documents the Claimant wishes to be considered must be received by the Class Administrator within the deadline set

forth above. The Court approves the claims procedures set forth in the Settlement.

19. Objections to Settlement must be filed with the Court within the deadline set forth above and served on counsel of record. The objection must be in writing, must include the case name and number, the objector's name, address, telephone number (if any, or attorney's telephone), and email (if any, or attorney's email); a brief explanation of the reason for objection; be signed by the objector or his or her attorney; and include any documents the objector wishes to be considered in support of the objection. If the objector also wishes to testify and/or present evidence at the fairness hearing, the objection must so state, and identify each witness and document to be presented, together with a summary of the testimony expected from each witness. Such documents also must be served on counsel of record. Whether to permit such testimony or the presentation of such evidence rests in the discretion of the Court. Any Opposition or Response to Objections (including to objections to award of attorney's fees and costs) must be filed no later than 30 days before the Final Fairness Hearing.

20. Upon Final Approval, Class Members who do not opt out will be bound by the Settlement and Release in this case.

VIII. Final Fairness Hearing

21. All other pretrial proceedings in this action are stayed and suspended, except such proceedings as are provided for in the Settlement or which may be necessary to implement the terms of the Settlement or this Order.

22. The Court's preliminary approval of the Settlement shall be subject to further consideration at a hearing to be held before this Court on March 9, 2021 at 10:00 AM (the "Fairness Hearing"). The Court will determine at or following the Fairness Hearing whether the proposed

settlement is fair, reasonable, and adequate and should be finally approved by the Court. The date and time of the Fairness Hearing shall be set forth in the Class Notice.

23. By no later than 15 days prior to the Fairness Hearing, Class Counsel and counsel for the Defendant shall file with the Court any papers in support of final approval of the settlement.

24. The Court reserves the right to adjourn the Fairness Hearing from time to time without further notice by adjournment announced in open court and to rule upon the settlement at any time after the Fairness Hearing.

25. The Court may approve the Settlement, with such modifications as may be agreed to by the Parties, without further notice to Class Members.

26. If for any reason the Settlement is not finally approved by the Court or otherwise does not become effective, this Order shall be rendered null and void and shall be vacated *nunc pro tunc*, the Parties will revert to the positions they occupied prior to the execution of the Settlement (except as provided in Paragraph 42 of the Settlement Agreement), and all proceedings in connection with the Settlement shall be without prejudice to the status quo ante rights of the Parties to the Litigation. In this event, the Parties expressly do not waive, and will not be construed to have waived, any claims, arguments, objections, and/or defenses.

IT IS SO ORDERED.

Christopher R. Cooper
United States District Judge

DATE: October 6, 2020