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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MARY PERKS, et al.,

Plaintiffs,

v.

ACTIVEHOURS, INC.,

Defendant.

No. 19-cv-05543-BLF

**ORDER GRANTING PLAINTIFFS’
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND FOR
CERTIFICATION OF A SETTLEMENT
CLASS**

1 **A. Introduction**

2 Plaintiffs Mary Perks and Stanley Alexander, together with Defendant Activehours, Inc.
3 (d/b/a and hereinafter “Earnin”), entered into a Settlement Agreement on behalf of themselves
4 and a proposed class of similarly situated consumers. The Plaintiffs moved for an order (1)
5 preliminarily approving the terms of the Settlement as fair, adequate, and reasonable; (2)
6 provisionally certifying the Settlement Class pursuant to Federal Rule of Civil Procedure
7 23(b)(3) and (e) for settlement purposes only; (3) approving the Notice Program and approving
8 the form and content of the Notice; (4) approving the procedures set forth in Section VII for
9 Settlement Class Members to exclude themselves from the Settlement Class or to object to the
10 Settlement; (5) staying the Action or otherwise adjourning litigation deadlines pending Final
11 Approval of the Settlement; (6) staying, pending Final Approval of the Settlement, any actions
12 brought by Settlement Class Members concerning a Released Claim; and (7) scheduling a Final
13 Approval hearing for a time and date convenient for the Court.

14 IT IS HEREBY ORDERED AS FOLLOWS:

15 The Court finds that it has jurisdiction over this action, the parties, and all Settlement
16 Class members for purposes of settlement under 28 U.S.C. § 1332(d). Having considered the
17 motion and any responses thereto, and having held a hearing on preliminary approval, the Court
18 HEREBY GRANTS Plaintiffs’ motion.

19 All capitalized terms in this Order have the same meaning as in the Parties’ Settlement
20 Agreement, or “Settlement.”

21 **B. The Settlement Terms**

22 The proposed Settlement Class consists of approximately 273,073 Earnin users who
23 incurred at least one overdraft fee or insufficient funds event fee charged by a bank that the bank
24 attributed to a withdrawal from Earnin between September 3, 2015 to May 28, 2020.

25 Per the Settlement Agreement’s terms and in exchange for a release of Settlement Class
26 Members’ claims, Earnin will provide three million dollars (\$3,000,000.00) in total monetary
27 relief to fund the Settlement that will be borne by Defendant, and out of which will be paid the
28 Settlement Relief (*see* Section IV of the Settlement Agreement), the costs of the Settlement

1 Administrator (*see* Section IV of the Settlement Agreement), any attorney’s fees awarded Class
2 Counsel by this Court after motion (*see* Section XI of the Settlement Agreement), and any
3 service awards the Court grants the Named Plaintiffs (*see* Section XI of the Settlement
4 Agreement).

5 With respect to Settlement Class Members whose accounts have been temporarily
6 suspended due to nonpayment of cash outs, Defendant through the Class Settlement process shall
7 allow such Settlement Class Members to use Earnin Express (subject to account onboarding
8 requirements, including federal law), and until an aggregate amount of \$9.5 million is forgiven
9 across such suspended Settlement Class Members, these such Settlement Class Members shall
10 not be required to repay previously unpaid cash outs as a part of the application to Earnin
11 Express, with such forgiveness occurring automatically upon completion of the onboarding
12 process to Earnin Express.

13 By agreeing to the Settlement, Earnin does not concede the merits of Settlement Class
14 Members’ claims. For the avoidance of doubt, no term of the Settlement Agreement or any part
15 of the parties’ settlement discussions, negotiations or documentation (including any briefs filed in
16 support of preliminary or final approval of the Settlement) shall be deemed an admission or
17 concession by any party regarding the validity of any Released Claim or the propriety of
18 certifying any class against Defendants, or be deemed an admission or concession by any party
19 regarding the truth or falsity of any facts alleged in the Action or the availability or lack of
20 availability of any defense to the Released Claims.

21 The Settlement also permits the Named Plaintiffs and Class Counsel to request service
22 awards of up to \$2,500 for each Named Plaintiffs, and for the payment of Class Counsel’s fees
23 and costs, not to exceed 30% of the Settlement Amount.

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1 **C. Certification of the Settlement Class**

2 Plaintiffs propose the following Settlement Class:

3 All consumers who incurred an overdraft fee or insufficient funds
4 event fee that a bank attributed to an Earnin withdrawal, beginning
5 on September 3, 2015 through May 28, 2020.

6 The Court preliminarily finds, for purposes of settlement only, that the proposed
7 Settlement Class meets the numerosity requirement of Rule 23(a)(1) such that joinder would be
8 impractical; that there are questions of law and fact common to the Settlement Class as required
9 by Rule 23(a)(2); that these common questions predominate over individual questions as
10 required by Rule 23(b)(3); that the claims of the proposed Settlement Class Representatives are
11 typical of the claims of the Class under Rule 23(a)(3); and that resolution of Settlement Class
12 Members' claims in a class action is the superior method for fair and efficient adjudication under
13 Rule 23(b)(3).

14 In addition, the Court preliminarily finds that the Class Counsel and Named Plaintiffs will
15 fairly and adequately represent the interests of the Class under Rule 23(a)(4), have done so, and
16 are adequate under Rule 23(g)(1) and (4). The Court further finds that Class Counsel have
17 substantial experience in litigating and settling consumer class actions. The Court therefore
18 appoints Class Counsel as settlement counsel for the class and appoints Jeffrey Kalief, Lynn A.
19 Toops, and Alison E. Chase as lead counsel for the settlement class. The Court also appoints the
20 Named Plaintiffs as Settlement Class Representatives.

21 **D. The Settlement Merits Preliminary Approval.**

22 The Court preliminarily finds that this Settlement complies with the Northern District of
23 California's *Procedural Guidance for Class Action Settlements* and that the Court "will likely be
24 able to" grant final approval to the Settlement. *See* Fed. R. Civ. P. 23(e)(1)(B).

25 Specifically, the Court finds that the Settlement's provisions for consideration consisting
26 of a \$3 million Settlement Amount, and up to \$9.5 million in credits for Settlement Class
27 Members for the sole purpose of repaying unpaid cash outs in order to begin the onboarding
28 process for Earnin Express, and injunctive relief are likely to be approved as fair, adequate, and

1 reasonable compensation to Settlement Class Members in exchange for their release of claims
2 against Earnin, taking into account the costs, risks, and delay of trial and appeal; the
3 effectiveness of the Settlement's proposed payment process; the Settlement's terms regarding the
4 award of attorney's fees; and agreement required to be identified under Rule 23(e)(3).

5 Based on the information provided by the Parties, the Court further preliminarily finds that
6 the Named Plaintiffs and Class Counsel have adequately represented Settlement Class Members;
7 that the Parties negotiated the Settlement at arms-length with the assistance of a neutral mediator;
8 and that the Settlement treats class members equitably relative to each other.

9 **E. Approval of Notice and Settlement Administration**

10 The Court finds that the proposed Notice Program, including direct e-mail notice, a
11 Settlement Website, and forms of notice, fully satisfy Rule 23 of the Federal Rules of Civil
12 Procedure, the requirements of due process, and Northern District of California's Procedural
13 Guidance for Class Action Settlements.

14 Specifically, the Court further find that the Notice and the Notice Program adequately
15 advise the Settlement Class about:

- 16 A. The class action;
- 17 B. The terms of the proposed Settlement, the benefits available to each
18 Settlement Class Member, and proposed fees and costs to Class Counsel;
- 19 C. Each Settlement Class Member's right to object or opt out of the settlement,
20 and the timing and procedures for doing so;
- 21 D. Preliminary court approval of the proposed Settlement; and
- 22 E. The date of the Fairness Hearing as well as the rights of Settlement Class
23 Members to file documentation in support of or in opposition to and appear in connection
24 with said hearing.
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1 The Court also finds that the costs associated with the Notice Program described above
2 and the estimated costs of administering the Settlement are fair and reasonable.

3 The Court approves KCC LLC & RicePoint Administration (“KCC”) to act as the
4 Settlement Administrator.

5 **F. Procedures for Final Approval**

6 **1. Final Fairness Hearing**

7 The Fairness Hearing shall take place on March 25, 2021, at 9:00 a.m. at the United States
8 District Court for the Northern District of California, United States Courthouse, 450 Golden Gate
9 Avenue, San Francisco, California 94102, before the Honorable Beth Labson Freeman, to
10 determine whether the proposed Settlement is fair, reasonable, and adequate and should receive
11 the Court’s final approval.

12 The Court adopts the following deadlines from the Settlement:

Date	Event
August 6, 2020 (or no more than 10 days from the filing of the motion for preliminary approval)	Defendants shall serve a notice of the proposed Settlement on appropriate state officials per CAFA.
November 30, 2020 (30 days after Preliminary Approval Order is entered, adjusted to Monday following expiration of 30 day period)	Notice Deadline
December 7, 2020 (No more than 7 days after the Notice Deadline)	Settlement Administrator shall provide Parties with confirmation of completion of E-Mail Notice Program and posting of Notice on the Settlement Website.
January 29, 2021 (60 days after the Notice Deadline)	Objection and Opt-Out Deadline
February 19, 2021 (No later than 21 days after the Objection Deadline)	Deadline for Plaintiffs to file Motion for Final Approval and for attorneys’ fees, costs, and expenses.
March 11, 2021 (No later than 14 days prior to Final Approval Hearing)	Parties shall file responses to any objections, and replies in support of final approval.
March 15, 2021 (No more than 10 days prior to Final Approval Hearing)	Deadline for Parties to file with the Court the opt-out notices and list of excluded individuals provided by the Settlement Administrator.
March 25, 2021, 9:00 a.m. (no earlier than 90 days after the CAFA Notices are mailed)	Final Approval Hearing

1 **2. Deadline and Procedures for Exclusions and Objections**

2 The Court approves the Settlement’s procedures for Settlement Class Members to exclude
3 themselves from or object to the Settlement.

4 *Exclusions:* The Court finds that the Settlement’s exclusion procedures require only the
5 information needed to opt out of the Settlement and no extraneous information. Requests by
6 Settlement Class Members must therefore comply with the requirements set forth in the
7 Settlement and must be postmarked no later than the Opt-Out Deadline, as specified in the
8 Notice. Only one individual may be excluded from the Settlement Class per each written
9 notification or exclusion form. No group opt-outs from the Settlement Class shall be permitted.
10 Any Settlement Class Member who does not timely and validly exclude himself or herself shall
11 be bound by the terms of the Settlement

12 *Objections:* Objections by Settlement Class Members (who do not timely elect to exclude
13 themselves from the Class) must comply with the requirements set forth in the Settlement and
14 with Federal Rule of Civil Procedure 23(e)(5). The Court will consider any such valid objections
15 if filed in writing with the clerk by the Objection Deadline provided in the Notice.

16 At the Fairness Hearing, and subject to this District’s orders regarding the COVID-19
17 pandemic, Settlement Class Members (who do not timely elect to exclude themselves from the
18 Class) may be heard orally in support of or in opposition to the Settlement, provided each such
19 person file with the clerk not later than two weeks before the Fairness Hearing a written
20 notification of his or her desire to appear personally. Failure to comply with the notification
21 requirement may be excused upon a showing of good cause.

22 The deadlines set forth in this Preliminary Approval Order, including, but not limited to,
23 adjourning the Fairness Hearing, may be extended by Order of the Court, for good cause shown,
24 without further notice to the Settlement Class Members, except that notice of any such
25 extensions shall be included on the Settlement Website. Settlement Class Members should check
26 the Settlement Website regularly for updates and further details regarding extensions of these
27 deadlines.

1 If, for any reason, the Court does not execute and file an Order of Final Approval, or if the
2 Effective Date does not occur for any reason whatsoever, the proposed Settlement and the
3 proposed Settlement subject of this Order and all evidence and proceedings had in connection
4 therewith, shall be without prejudice to the status quo ante rights of the parties to the litigation as
5 more specifically set forth in the Settlement.

6 Class Counsel, Defendants' counsel, and the Settlement Administrator are hereby
7 authorized to use all reasonable procedures in connection with approval and administration of the
8 Settlement that are not materially inconsistent with this Order or the Settlement, including
9 making, without further approval of the Court, minor changes to the Settlement, to the form or
10 content of the Notice, or to any other exhibits that the Parties jointly agree are reasonable or
11 necessary.

12 **G. Conclusion**

13 In summary, the Court:

- 14 • preliminarily approves the terms of the Settlement as fair, adequate, and
15 reasonable;
 - 16 • provisionally certifies the Settlement Class pursuant to Federal Rule of Civil
17 Procedure 23(b)(3) and (e) for settlement purposes only;
 - 18 • approves the proposed Notice Program and the form and content of the Notice;
 - 19 • approves the Settlement's procedures for Class Members to exclude themselves
20 from the Settlement Class or to object to the Settlement;
 - 21 • stays any pending deadlines, except those necessary to carry out the terms of the
22 Settlement, pending Final Approval of the Settlement;
 - 23 • stays, pending Final Approval of the Settlement, any actions brought by
24 Settlement Class Members concerning a Released Claim;
 - 25 • schedules a Final Approval hearing for March 25, 2021 at 9:00 a.m.
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1 The Court shall maintain continuing and exclusive jurisdiction and independent case
2 management authority under Federal Rule of Civil Procedure 23 regarding the general operation
3 of the Settlement's notice and claims program and those appointed to implement and oversee it.
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5 **IT IS SO ORDERED.**

6 DATED: October 30, 2020


7 THE HONORABLE BETH LABSON FREEMAN
8 UNITED STATES DISTRICT COURT JUDGE
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