

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

<p>In re: NYREE BELTON,</p> <p style="text-align: center;">Debtor,</p>	<p>Chapter 7</p> <p>Case No. 12-23037 (RDD)</p>
<p>NYREE BELTON,</p> <p style="text-align: center;">Debtor and Plaintiff on behalf of herself and all others similarly situated,</p> <p style="text-align: center;">v.</p> <p>GE CAPITAL CONSUMER LENDING, INC., A/K/A GE MONEY BANK</p> <p style="text-align: center;">Defendant.</p>	<p>Adv. Pro. No. 14-08223 (RDD)</p>

**ORDER PRELIMINARILY APPROVING SETTLEMENT  
AND PROVIDING FOR NOTICE**

WHEREAS, the above-captioned adversary proceeding (No. 14-08223 (RDD)) is pending before this Court (the “Action”);

WHEREAS, the Parties have reached a Settlement of the Action in accordance with the Settlement Agreement and Release dated October 5, 2021, a copy of which is attached as Exhibit A to the Motion for Preliminary Approval, dated October 5, 2021, under Fed. R. Civ. P. 23, as incorporated by Fed. R. Bankr. P. 7023 (the “Agreement”), which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the Action and for dismissal of the Action with prejudice upon the terms and conditions set forth therein (the “Settlement”); and the Court having read and considered the Agreement and the

exhibits annexed thereto;

WHEREAS, the Parties have agreed to seek preliminary approval of the Agreement and proposed Settlement from this Court, and, upon the entry of this Order, the Parties will file a motion to withdraw the reference of the Action under 28 U.S.C. § 157(d) with the United States District Court for the Southern District of New York (the “District Court”), so that the District Court may decide whether to approve this Settlement in accordance with Fed. R. Civ. P. 23(c);

WHEREAS, all capitalized terms herein that are not otherwise defined have the same meanings as set forth in the Agreement; and

WHEREAS, the Court after due and sufficient notice has reviewed the Agreement, and, being familiar with the issues raised in and the posture of the Action, has preliminarily and conditionally determined for purposes of Fed. R. Civ. P. 23(a)(1)-(4), (b)(3), (c)(2)(B) and (e) that the Settlement falls within the range of possible approval and is procedurally and substantively fair for purposes of preliminary approval hereunder, that the Class, Class Representative, and Class counsel can be conditionally approved for settlement purposes, and that the notice procedures set forth herein can be provisionally approved; and good and sufficient cause appearing,

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. **Settlement.** Plaintiff Nyree Belton, on behalf of herself and all members of the Class, and Defendant GE Capital Retail Bank, f/k/a GE Money Bank n/k/a Synchrony Bank (“GECRB”), have negotiated a Settlement to the Action to avoid the expense, uncertainties, and burden of protracted litigation, and to resolve the Released Claims (as defined in the Agreement) against GECRB and the Releasees.

2. **Review.** At the preliminary approval stage, the Court’s task is to evaluate whether the Settlement is within the “range of reasonableness.” 4 Newberg on Class Actions § 11.26 (4thed. 2010). “The court owes a duty to class members to ensure that the proposed settlement is ‘fair, reasonable and adequate.’” *In re Initial Public Offering Litig.*, 226 F.R.D. 186, 190 (S.D.N.Y. 2005) (quoting Fed. R. Civ. P. 23(e)(C)). “Ultimately, the approval of the proposed settlement is a matter of discretion for the trial court. In exercising that discretion, though, ‘it is axiomatic that the law encourages settlement of disputes.’” *Id.* (quoting *Bano v. Union Carbide Corp.*, 273 F.3d 120, 129 (2d Cir. 2001)). Settlement negotiations that involve arm’s length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. *See Manual for Complex Litigation*, Third, § 30.42 (West 1995) (“A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arms’-length negotiations between experienced, capable counsel after meaningful discovery.”) (internal quotation marks omitted). The Court has carefully reviewed the Agreement, as well as the files, records, and proceedings to date in the Action. The terms and conditions in the Agreement are hereby incorporated as though fully set forth in this Order, and, unless otherwise indicated, capitalized terms in this Order shall have the meanings attributed to them in the Agreement.

3. **Jurisdiction.** This Court and the District Court have jurisdiction over the subject matter of the Action and over all parties to the Action, including all Members of the Class, and venue in this Court is proper.

4. **Preliminary Approval.** The Court hereby preliminarily approves the Agreement and the Settlement set forth therein as fair, reasonable, and adequate, subject to further consideration at the Final Approval Hearing described below. The Court finds on a

preliminary basis that the Settlement as set forth in the Agreement falls within the range of reasonableness and was the product of informed, good-faith, arms'-length negotiations between the Parties and their counsel, and therefore meets the requirements for preliminary approval.

5. **Settlement Class.** The Court conditionally certifies, for settlement purposes only (and for no other purpose and with no other effect upon the Action, including no effect upon the Action should the Agreement not receive final approval or should the Effective Date not occur), a class defined as the collective group of those individuals who maintained a GEGRB Credit Card Account and whose debt related to that Credit Card Account was charged off and either: (i) sold to a Debt Buyer on or after January 1, 2008 through and including December 31, 2010 and who subsequently sought and obtained a discharge of the sold debt as a result of his/her bankruptcy under Chapter 7 of the Bankruptcy Code, on or after January 1, 2008 through and including March 31, 2011; or (ii) sold to a Debt Buyer on or after January 1, 2011 through and including March 31, 2015 and who subsequently sought and obtained a discharge of the sold debt as a result of his/her bankruptcy under Chapter 7 of the Bankruptcy Code, on or after January 1, 2011 through and including March 31, 2015. The Court finds, for settlement purposes only, that class certification under Fed. R. Civ. P. 23(b)(3) is appropriate in that, in the settlement context: (a) the Members of the Class are so numerous that joinder of all Class Members in the class action is impracticable; (b) there are questions of law and fact common to the Class which predominate over any individual question; (c) the claims of the Class Representative are typical of the claims of the Class; (d) the Class Representative and their counsel will fairly and adequately represent and protect the interests of the Class Members; (e) the Class is ascertainable; and (f) a class action is superior to other available

methods for the fair and efficient adjudication of the controversy.

6. **Designation of Class Representative and Class Counsel.** The Court appoints the Plaintiff Nyree Belton as Class Representative, and the law firms of Boies Schiller Flexner LLP and Charles Juntikka & Associates LLP as Class Counsel.

7. **Final Approval Hearing.** Within seven (7) days of the entry of this Order, the Parties shall file a motion to withdraw the reference of the Action and obtain a date for a hearing (the “Final Approval Hearing”) to be held before the District Court, at the United States District Court for the Southern District of New York, 300 Quarropas Street, White Plains, NY 10601. At the Final Approval Hearing, the District Court will determine, among other things: (i) whether the proposed Settlement of the Action on the terms and conditions provided for in the Agreement is fair, reasonable, and adequate to the Class and should be approved by the Court; (ii) whether a Judgment as provided in Paragraph 1.41 of the Agreement should be entered; (iii) whether Class Members should be bound by the Release set forth in the Agreement; and (iv) any amount of fees and expenses that should be awarded to Class Counsel and the amount of any incentive award to be awarded to the Class Representative.

8. **Class Notice.** The Court approves the form, substance and requirements of the notice of proposed settlement of class action and the claim forms annexed hereto as Exhibits 1-A (“Mail Notice”), 1-B (“Long Form Notice”), and 2 (“Claim Form”), respectively. The Court further finds that the form, content and mailing of the Mail Notice, substantially in the manner and form set forth in Paragraphs 9 and 10 of this Order, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process. The Court further finds that this is the best notice practicable under the circumstances and is reasonably calculated, under all the circumstances, to apprise potential Class Members of the pendency of the Action, to

apprise persons who would otherwise fall within the definition of the Class of their right to exclude himself or herself from the proposed Class, and to apprise Class Members of their right to object to the proposed Settlement and their right to appear at the Final Approval Hearing. The Court further finds that the Notice constitutes due and sufficient notice to all persons entitled thereto.

9. **Settlement Administrator.** Pursuant to Rule 53(c) of the Federal Rules of Civil Procedure, the Court appoints BrownGreer PLC (“Settlement Administrator”) to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below:

(a) No later than thirty (30) days from the entry of this Order (the “Mail Notice Deadline”), the Settlement Administrator shall cause a copy of the Mail Notice, substantially in the form annexed as Exhibit 1-A hereto, to be mailed by first class mail to each individual on the Notice List;

(b) No later than the Mail Notice Deadline, the Settlement Administrator shall establish a settlement website and shall post on the website the Agreement; the Long Form Notice, substantially and in the form annexed as Exhibit 1-B; and the Claim Form, substantially and in the form annexed as Exhibit 2;

(c) Following the mailing of the Mail Notice, the Settlement Administrator shall provide counsel with written confirmation of the mailing;

(d) The Settlement Administrator shall otherwise carry out its duties as set forth in Sections 6 and 7 of the Agreement; and

(e) The Settlement Administrator shall execute the Agreement of Confidentiality that is a part of the Stipulated Confidentiality Order in this matter that is

attached at Exhibit 5 of the Agreement. By this Order the Stipulated Confidentiality Order is entered and binding upon the parties, their counsel and the Settlement Administrator.

10. **Submission of Claim Forms.** Class Members who wish to receive a Claim Type 1 or Claim Type 2 payment under the Settlement shall complete, sign and return their Claim Forms in accordance with the instructions contained therein. Unless the Court orders otherwise, all Claim Forms must be submitted electronically or postmarked no later than sixty (60) days after the Mail Notice Deadline, or as the Bankruptcy Court may otherwise direct (the "Claim Deadline"). Any Class Member who does not timely and validly submit a Claim Form within the time provided shall be barred from receiving a Claim Type 1 or Claim Type 2 payment under the Settlement, unless otherwise ordered by the Court, but shall nevertheless be bound by any Final Judgment entered by the Court.

11. **Exclusion from the Class.** Any Class Member may, upon request, be excluded from the Class. Any such Class Member must submit a written Request to Opt Out no later than sixty (60) days after the Mail Notice Deadline, or as the Bankruptcy Court may otherwise direct (the "Opt-Out Deadline"). The written Request to Opt Out must be sent to the Settlement Administrator at the following address:

Belton v. GE Capital Settlement Program  
Settlement Administrator  
P.O. Box 26525  
Richmond, VA 23261

To be valid, the Request to Opt Out must include the Class Member's name, address, original signature, and a statement that indicated a desire to be excluded from the Settlement Class. All Class Members who submit valid and timely Requests to Opt Out in the manner set forth in this Paragraph shall have no rights under the Agreement, shall not receive a Settlement payment, and shall not be bound by the Agreement or any Final Judgment. Mass

or class opt outs shall not be allowed.

12. **Copies of Requests to Opt Out.** The Settlement Administrator shall provide Class Counsel and Defense Counsel with a list of all timely Requests to Opt Out within seven (7) business days after the Opt-Out Deadline.

13. **Entry of Appearance.** Any member of the Class who does not exclude himself or herself from the Settlement Class may enter an appearance in the Action, at his or her own expense, individually or through counsel of his or her own choice. If he or she does not enter an appearance, he or she will be represented by Class Counsel.

14. **Binding Effect on Class.** All Members who do not exclude themselves from the Settlement Class by properly and timely submitting an exclusion form shall be bound by all determinations and judgments in the Action concerning the Settlement, whether favorable or unfavorable to the Class.

15. **Objections.** Any Class Member who does not timely and validly exclude himself or herself from the Settlement Class may appear and show cause, if he or she has any reason why the proposed Settlement of the Action should not be approved as fair, reasonable and adequate, why a Final Judgment should not be entered thereon, why attorneys' fees and expenses should not be awarded to Class Counsel; provided, however, that no Class Member shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if approved, the Final Judgment to be entered thereon approving the same, or any attorneys' fees and expenses to be awarded to Class Counsel or award made to the Class Representative, unless a written objection is filed with the Clerk of the United States District Court for the Southern District of New York, 300 Quarropas Street, White Plains, NY 10601, by sixty (60) days after the Mail Notice Deadline, or as the District Court may otherwise direct



(the “Objection Deadline”). A copy of the objection must also be mailed to Class Counsel and Defense Counsel, postmarked on or before the Objection Deadline. To be valid, the objection must set forth, in clear and concise terms: (a) the case name and number (*Belton v. GE Capital Consumer Lending, Inc.*, Adv. Pro. No. 14-08223); (b) the name, address, and telephone number of the objector objecting and, if represented by counsel, of his or her counsel; (c) the basis for objection; and (d) a statement of whether the objector intends to appear at the Final Approval Hearing, either with or without counsel. Any Class Member who does not make his or her objection in the manner provided shall be deemed to have waived such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement as incorporated in the Agreement, and to the award of attorneys’ fees and expenses to Class Counsel and the payment of an award to the Class Representative for their representation of the Class, unless otherwise ordered by the Court.

16. **Appearance of Objectors at Final Approval Hearing.** Any Class Member who files and serves a written objection in accordance with Paragraph 15 of this Order may appear, in person or by counsel, at the Final Approval Hearing held by the District Court,<sup>1</sup> to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objector: (a) files with the Clerk of the Court a notice of intention to appear at the Final Approval Hearing by the Objection Deadline (“Notice of Intention to Appear”); and (b) serves the Notice of Intention to Appear on Class Counsel and Defense Counsel by the Objection Deadline. The Notice of Intention to Appear must include copies of

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<sup>1</sup> In-person appearance at the Final Approval Hearing shall be subject to any applicable restrictions on such appearance imposed by order of the District Court based on Covid-related health concerns.

any papers, exhibits, or other evidence that the objector will present to the District Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in the Agreement and Class Notice shall not be entitled to appear at the Final Approval Hearing and raise any objections.

17. **Service of Motion for Final Approval.** The motion in support of final approval of the Settlement and Class Counsel's application for Attorneys' Fees and Expenses and the Incentive Award shall be filed and served no later than fourteen (14) days prior to the Final Approval Hearing and any responsive papers shall be filed and served no later than seven (7) days prior to the Final Approval Hearing. The hearing for final approval set by the District Court shall take place on or about the date which is at least ninety (90) days after the provision of effective notices pursuant to CAFA (Class Action Fairness Act) as provided for in Section 2.3 of the Agreement.

18. **Fees, Expenses, and Awards.** Neither Defendant nor the Releasees shall have any responsibility for any application for Attorneys' Fees and Expenses or for an Incentive Award submitted by Class Counsel, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement. At or after the Final Approval Hearing, the District Court shall determine whether any application for Attorneys' Fees and Expenses, and any award to the Class Representative for their representation of the Class, should be approved.

19. **Releases.** If the Settlement is finally approved, the Releasors shall release the Releasees from all Released Claims.

20. **Use of Order.** Neither this Order, the fact that a settlement was reached and

filed, the Agreement, nor any related negotiations, statements, or proceedings shall be construed as, offered as, admitted as, received as, used as, or deemed to be an admission or concession of liability or wrongdoing whatsoever or breach of any duty on the part of Defendant. This Order is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. In no event shall this Order, the fact that a settlement was reached, the Agreement, or any of its provisions or any negotiations, statements, or proceedings relating to it in any way be used, offered, admitted, or referred to in the Action, in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding, by any person or entity, except by the Parties and only the Parties in a proceeding to enforce the Agreement.

21. **Adjournment of Final Approval Hearing.** This Court and the District Court reserve the right to adjourn the date of the Final Approval Hearing without further notice to the Members of the Class, and retain jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The District Court may approve the Settlement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class.

22. **Stay of Proceedings.** All proceedings in the Action are stayed until further Order of this Court, including all proceedings in the Belton Bankruptcy, including any examination by the United States Trustee, except as may be necessary to implement the Settlement or comply with the terms of the Agreement.

23. **Preliminary Injunction.** Pending final determination of whether the Settlement should be approved, and upon expiration of the Opt-Out Deadline, all Class Members who do not timely and validly exclude himself or herself from the Settlement Class,

and each of them, and anyone who purports to act on their behalf, are preliminarily enjoined from directly or indirectly maintaining, commencing, prosecuting, or pursuing directly, representatively, or in any other capacity, any Released Claim subsumed and covered by the Release in the Agreement, including in any court or arbitration forum.

24. **Termination of Settlement.** If: (a) the Agreement is terminated as provided in Section 13 of the Agreement; or (b) any specified material term or condition of the Settlement asset forth in the Agreement is not satisfied as provided in Section 13 of the Agreement, then this Order may not be introduced as evidence or referred to in any actions or proceedings by any person or entity and shall be treated as vacated, *nunc pro tunc* (except Paragraph 20 of this Order shall remain in effect), and each party shall be restored to his, her, or its respective position in this Action as it existed prior to the execution of the Agreement.

25. **No Merits Determination.** By entering this Order, the Court does not make any determination as to the merits of this case.

26. **Authority.** The Court hereby authorizes the Parties to take such further steps as necessary and appropriate to establish the means necessary to implement the terms of the Agreement.

Dated: White Plains, New York  
October 28, 2021

/s/Robert D. Drain  
THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE