NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

19-CVS-244

JAMES RICKENBAUGH and MARY RICKENBAUGH, Husband and Wife, Individually and on Behalf of all Others Similarly Situated,

Plaintiffs,

v.

POWER HOME SOLAR, LLC, a Delaware Limited Liability Company,

Defendant.

ORDER DISMISSING PUTATIVE CLASS ACTION

1. **THIS MATTER** is before the Court upon the parties' Consent Motion for Approval of Voluntary Dismissal (the "Motion") of the pre-certification class action complaint filed in the above-captioned case. (ECF No. 56.)

2. Having considered the Motion and the arguments of counsel at a status conference held concerning the Motion on 9 June 2022, at which all parties were represented by counsel, the Court hereby **GRANTS** the Motion, **APPROVES** the dismissal of this action as set forth below, and **DISMISSES** the action against Defendant with prejudice.

I.

BACKGROUND

3. Plaintiffs James Rickenbaugh and Mary Rickenbaugh ("Plaintiffs") filed this action on 7 January 2019, alleging claims both individually and on behalf of all

others similarly situated pursuant to Rule 23 of the North Carolina Rules of Civil Procedure ("Rule(s)") against Defendant Power Home Solar, LLC ("Defendant"), a solar panel company. (Class Action Compl., ECF No. 3.)

4. On 26 March 2019, Defendant moved the Court to dismiss the action or, in the alternative, to stay proceedings and compel bilateral arbitration under the arbitration clause of the parties' solar panel purchase and installation contract. (Def.'s Mot. Dismiss or, in Alternative, Compel Bilateral Arbitration and Stay Proceedings, ECF No. 15.)

5. On 20 December 2019, the Court entered an order staying the action and compelling arbitration ("December 2019 Order"). *Rickenbaugh v. Power Home Solar, LLC*, 2019 NCBC LEXIS 109, at *24 (N.C. Super. Ct. Dec. 20, 2019), ECF No. 36. The Court's December 2019 Order left the determination of whether the parties' contract permitted the arbitration of class claims to the parties' arbitrator.

6. Defendant filed a notice of appeal to the Supreme Court of North Carolina on 17 January 2020 appealing the Court's rulings in its December 2019 Order. (Notice of Appeal, ECF No. 37.)

7. On or about 12 February 2020, Plaintiffs filed their claims in arbitration against Defendant, again on behalf of themselves individually and all others similarly situated. Plaintiffs' claims before the American Arbitration Association were assigned the case number 01-20-0000-4984 (the "Arbitration").

8. The Supreme Court of North Carolina subsequently granted Defendant's petition for writ of supersedeas, staying the Arbitration.

9. On 15 June 2021, the Supreme Court of North Carolina allowed Plaintiffs' motion to dismiss Defendant's appeal and denied Defendant's petition for writ of certiorari.

10. On 8 November 2021, Defendant filed a petition for writ of certiorari with the Supreme Court of the United States. By letter dated 11 January 2022, the Supreme Court requested that Plaintiffs respond to Defendant's petition.

11. Shortly thereafter, the parties reached an agreement to settle their dispute. The parties' agreement provides for, among other terms, payment of a confidential sum to the named Plaintiffs in this action in exchange for the dismissal of Plaintiffs' claims, with prejudice.

12. Defendant has also entered into separate agreements with twenty-six non-party customers of Defendant who are represented by Plaintiffs' counsel (the "Represented Non-Parties"). Defendant's agreements with the Represented Non-Parties provide for a release of claims in exchange for payment to the Represented Non-Parties of a confidential sum. As with the parties' agreement, Defendant's agreements with the Represented Non-Parties are binding only on Defendant and the Represented Non-Parties and do not purport to bind any member of any class that could be certified in this action.

13. To date, no class has been certified either in this action or in the Arbitration.

14. On 23 May 2022, the parties' arbitrator entered an order approving the voluntary dismissal of the Arbitration. (Consent Mot. Approval Voluntary Dismissal, Ex. A, ECF No. 56.1.)

15. On 8 June 2022, the parties filed the Motion indicating that they had reached an agreement to settle this action and requesting that the Court approve the voluntary dismissal of this action pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (the "FAA"), the North Carolina Revised Uniform Arbitration Act, N.C.G.S § 1-569.1 *et seq*. (the "NCRUAA"), Rule 23(c), and the North Carolina Court of Appeals' decision in *Moody v. Sears Roebuck & Co.*, 191 N.C. App. 256 (2008) ("*Moody I*").

II.

ANALYSIS

16. This case was filed as a putative class action involving claims subject to an arbitration clause. As a result, several authorities apply to the review and approval of the case's dismissal, including the FAA, the NCRUAA, and Rule 23(c).

a. Confirmation of the Arbitrator's Dismissal of the Arbitration under the FAA and the NCRUAA

17. Both the FAA and the NCRUAA provide for the confirmation of arbitral awards, including awards dismissing claims, by courts of competent jurisdiction. *See* 9 U.S.C. § 9; *see also* N.C.G.S. § 1-569.22. Here, the parties' arbitration agreement specifically provides that "judgment upon the [arbitrator's] award rendered by any such arbitrator may be entered in any court having jurisdiction thereof." (Class Action Compl., Ex. A at 8, ECF No. 3.)

18. The arbitrator's dismissal of the parties' arbitration is an "award" within the meaning of 9 U.S.C. § 9 and N.C.G.S. § 1-569.22 because it represents the arbitrator's final disposition of the claims in arbitration. *See, e.g.*, *McKenzie v. SETA*

Corp., No. 99-1576, 2000 U.S. App. LEXIS 31353, at *1–2 (4th Cir. Dec. 8, 2000) (discussing district court's confirmation of arbitral award dismissing claims); *see also Maidman v. O'Brien*, 473 F. Supp. 25, 27 (S.D.N.Y. 1979) (confirming arbitral "award" dismissing claims by granting pre-answer motion to dismiss the claim as originally filed in an underlying lawsuit).

19. Arbitral awards are entitled to substantial deference and may only be vacated or modified in certain limited circumstances which are not present here. The Court therefore concludes that confirmation of the arbitrator's award dismissing the Arbitration is appropriate under 9 U.S.C. § 9 and Section 1-569.22.

b. Approval of the Dismissal under Rule 23(c)

20. As this action was filed as a putative class action, the provisions of Rule 23(c) also apply. Rule 23(c) provides that "[a] class action shall not be dismissed or compromised without the approval of the judge. In an action under this rule, notice of a proposed dismissal or compromise shall be given to all members of the class in such manner as the judge directs."

21. Where, as here, dismissal is sought before a class is certified, the North Carolina Court of Appeals has held that while Rule 23(c) does not require a party "to obtain judicial approval . . . before obtaining a voluntary dismissal of [a] class-action complaint," *Moody I*, 191 N.C. App. at 267, the Rule nonetheless requires the trial court to conduct a limited inquiry into the circumstances of a proposed pre-certification dismissal to determine: "(a) whether the parties have abused the class-action mechanism for personal gain, and (b) whether dismissal will prejudice absent

putative class members[,]" *id.* at 269–70. This limited inquiry ensures that "putative class members will not be prejudiced, procedurally or otherwise[.]" *Id.* at 256. In applying this inquiry to pre-certification class actions before this Court, the Court has required that counsel submit the following:

> (1) [a statement of] the reason for dismissal, (2) [a statement of] the personal gain received by the plaintiffs in any settlement, (3) a statement of any other material terms of the settlement, specifically including any terms which have the potential to impact class members, (4) a statement of any counsel fees paid to plaintiff's counsel by defendants, and (5) a statement of any agreement by plaintiff(s) restricting their ability to file other litigation against any defendant.

Moody v. Sears, Roebuck & Co., 2008 NCBC LEXIS 14, at *4 (N.C. Super. Ct. Aug. 6, 2008) ("*Moody II*").

22. The Court has also directed counsel to submit "a statement either detailing any potential prejudice to putative class members or representing to the Court that no prejudice exists," and observed that the Court will consider any "issues related to tolling of the statute of limitations." *Id.*

23. The Court has required this information where, as here, "the factual record has not been developed beyond [the pre-certification class action complaint's] allegations[,]" because the Court's review of these submissions is "necessary to 'provide the supervision and transparency encouraged by the Court of Appeals with respect to class action litigation.' " *Bennett v. Commercial Coll. of Asheboro*, 2016 NCBC LEXIS 24, at *5 (N.C. Super. Ct. Mar. 22, 2016) (quoting *Moody II*, 2008 NCBC LEXIS 14, at *10–11).

24. The Court thus turns to this required inquiry here.

25. Based on its review of the record and the Motion, the Court concludes that the parties have litigated this dispute in good faith since its filing on 7 January 2019, a period of more than three years, and that the parties have not abused the class-action mechanism for personal gain. "Abusive practices in class action litigation include defendants avoiding class action certification by buying off named plaintiffs or plaintiffs coercing unusually generous individual settlements from defendants." *Id.* at *5–6. The Court does not find these circumstances here.

26. To the extent that the parties have received any benefit (e.g., payment of a confidential settlement sum to Plaintiffs and a release of Plaintiffs' claims against Defendant), those benefits do not appear to have resulted from any abuse of the class-action mechanism. Although the terms of the parties' agreement are confidential, Plaintiffs' counsel has certified in the Motion that the funds to be paid to Plaintiffs per the parties' agreement are: (i) calculated using the same formula as the funds to be paid to the Represented Non-Parties; (ii) subject to deductions for attorney's fees, which are the same as the deductions for attorney's fees to be paid to the Represented Non-Parties; (iii) consistent with the amount that Plaintiffs may have received in the settlement or other disposition of any bilateral arbitration or litigation with Defendant; (iv) and will be paid in exchange for the dismissal with prejudice of Plaintiffs' claims in this action. These facts do not suggest that Plaintiffs coerced an unusually generous settlement or that Defendant sought to buy off Plaintiffs to avoid litigating the purported class action.

27. To the contrary, this case involves novel procedural issues of substantial complexity which, coupled with the risks inherent in any litigation, justified the parties' decision to resolve the case before many of those issues—including the arbitrability of class claims, the scope of the parties' arbitration clause, and the certifiability of a class—are finally decided.

28. Finally and significantly, the Court concludes that dismissal will not prejudice absent class members. The parties' agreement and Defendant's agreements with the Represented Non-Parties make clear that they do not bind any persons other than the parties to those agreements. No claim of any putative class member other than Plaintiffs and the Represented Non-Parties will be affected in any way by the dismissal of this action, except that any limitations period tolled by the commencement of this action will begin to run again as of the date of this Order.

29. For these reasons, the Court concludes that it is appropriate to approve the dismissal under Rule 23(c) and the North Carolina Court of Appeals' decision in *Moody I*.

c. The Parties' Stipulation and Agreement

30. The Court notes that the parties have submitted the Motion with the consent of both parties and subject to their stipulation and agreement that (i) nothing in this Order shall constitute or be interpreted to constitute any admission by Defendant that class wide relief is available under the arbitration provisions of any contract, and (ii) Defendant denies that class relief is available under any of its contracts or under the arbitration provisions contained in any of its contracts with

these claimants or any other potential claimants/customers (the "Stipulation and Agreement"). The Court concludes that the Stipulation and Agreement should be, and therefore is hereby determined to be, a valid and binding provision of this Order.

III.

CONCLUSION

31. **WHEREFORE**, for the reasons set forth above, the Court hereby:

a. **CONFIRMS** the arbitrator's award dismissing the Arbitration;

b. **CONCLUDES** that the settlement agreement is properly entered and not prejudicial to absent putative class members;

c. **ORDERS** that the Stipulation and Agreement is a valid and binding provision of this Order;

d. **APPROVES** the voluntary dismissal of this action; and

e. **DISMISSES** Plaintiffs' claims against Defendant in this action with prejudice.

SO ORDERED, this the 10th day of June, 2022.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge