

CHAD AND ROSE LOPER,
Individually and on behalf of a class of other
similarly situated,

Case No. 2021CV000427

Plaintiff,

v.

CREATIVE FINANCE INC.,

Defendant.

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (hereinafter the “**Settlement Agreement**”) is made by and between Plaintiffs, CHAD and ROSE LOPER (“**the LOPERS**” or “**Class Representatives**”), individually and on behalf of the Class and Class Members (as those terms are defined below), on the one hand, and Defendant, CREATIVE FINANCE INC. (“**CFI**”), on the other hand, through their respective counsel.

Throughout this Settlement Agreement, CFI, the Class Representatives, and Class Members may be referred to individually as a “**Party**,” or collectively as the “**Parties**.”

Background and Context

A. There is currently pending in the Circuit Court of Sauk County, Wisconsin (the “**Court**”), a lawsuit styled “*Chad and Rose Loper v. Creative Finance, Inc.*,” Case No. 2021CV000427” (the “**Action**”), in which the LOPERS, as putative Class Representatives, filed a Complaint asserting that CFI has violated certain alleged requirements of the Uniform Commercial Code, as codified in Wis. Stat §§409.610, 409.611, 409.614, 409.616, and 409.625. In particular, the Class Representatives filed claims on behalf of themselves and all other similarly situated consumers who, during the three (3) year period preceding the filing of the Complaint through the

Execution Date (the “Class Period”): (a) have or had a retail installment sales contract (“Loan Agreement”) held by CFI ; (b) had their motor vehicle repossessed in Wisconsin by CFI or its agents; (c) who have not obtained a discharge in bankruptcy applicable to any such Loan Agreement; and (d) to whom CFI sent a Notice of Sale which did not expressly inform the customer that CFI as the creditor was entitled to recover from the customer the deficiency, if any, remaining after deducting the fair market value of the collateral from the unpaid balance.

B. CFI disputes the claims asserted in the Action and denies any wrongdoing or liability in connection with the alleged violations set forth in the Action.

C. The Class Representatives, individually and on behalf of the Class Members, on the one hand, and CFI on the other, wish to amicably end and bring to rest the disputes and claims between them and to avoid protracted litigation that would ensue, in their respective best interests.

D. Counsel for the Parties have engaged in extensive arm’s-length negotiations prior to entering into this Settlement Agreement, including a day-long mediation in Madison, Wisconsin conducted before the Honorable David E. Jones (Ret.) of Resolute Systems, LLC in Madison, Wisconsin on August 19, 2022.

E. This Settlement Agreement sets forth the terms and conditions for a proposed settlement of the claims described more fully below.

F. The Class Representatives and Class Counsel believe that this Settlement Agreement, including its class notification procedures, is fair, reasonable and adequate; and agree to settle the Action, pursuant to the provisions of this Settlement Agreement, after considering such factors as the substantial benefits to the Class Representatives and the Class Members under the terms of this Settlement Agreement and the attendant risks and uncertainties of litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such

litigation, including (a) the uncertainty inherent in establishing any liability of CFI, (b) the uncertainty inherent in the various theories of damages, even if the Class Representatives prevailed in establishing the liability of CFI, and (c) the desirability of consummating this Settlement Agreement promptly in order to provide effective relief to the Class Representatives and the Class Members.

G. By reaching the settlement, CFI does not admit or concede any wrongdoing, liability or improper conduct of any nature in connection with any facts or claims that have been or could have been raised against it in the Action, or in any other forum. CFI considers it desirable for the Action to be settled and dismissed because the Settlement will: (a) avoid the continued expense of litigation; (b) make unnecessary resolution of the issues presented by the Action; and (c) finally put the Class Representatives' claims and the Class Members' claims, as well as the underlying matters, to rest without undue expense to the Parties, while reducing the burdens and uncertainties associated with protracted litigation of those claims.

Definitions

A. Rules of Definitions.

Unless otherwise indicated, defined terms include the plural as well as the singular. Any term herein defined by reference to a section of this Settlement Agreement shall have such meaning as set forth in this Settlement Agreement as of the Execution Date and, unless such meaning is expressly amended subsequently, such meaning shall remain in effect. Unless the context otherwise requires, a reference to any law or governmental regulation includes any amendment, modification or successor thereto; a reference to any Person includes its successors and assigns; the words "include," "includes" and "including" are not limiting and shall be deemed to be followed by the words "without limitation" whether or not in fact followed by such words or words

of like import; and the terms “hereof,” “herein,” “hereunder” and comparable terms refer to this entire Settlement Agreement with respect to which such terms are used and not to any particular article, section or other subsection or subdivision thereof.

B. Defined Terms.

As used in this Settlement Agreement, the following terms have the meanings specified below:

1. “Action” means that certain lawsuit styled *Chad and Rose Loper v. Creative Finance, Inc.*, which was filed in the Circuit Court for Sauk County, Wisconsin, and which was assigned Case No. 2021CV000427.

2. “Approval Hearing” means the hearing before the Court at which the Court determines, among other things: (1) the merits of any objections to the Settlement; (2) whether to approve in final this Settlement Agreement, pursuant to Wis. Stat. §803.08, as fair, reasonable, adequate, and in the best interests of the Class Members, and to authorize all acts necessary to consummate and effectuate the terms and conditions of this Settlement Agreement; (3) whether the Court should enter a Final Order approving the Settlement in final and dismissing the Action with prejudice; (4) the compensation of Class Counsel for attorney’s fees, court costs and litigation expenses; and (5) such other matters as the Court may deem necessary and appropriate.

3. “Class Administrator” or “Settlement Administrator” means American Legal Claim Services, LLC, P.O. Box 23650, Jacksonville, FL 32241.

4. “Class Counsel” means Robert W. Murphy, Esq., 440 Premier Circle, Suite 240, Charlottesville, Virginia 22901, and Matthew C. Lein, Esq, Lein Law Offices, 15692 Hwy. 63 North, PO Box 761, Hayward, Wisconsin 54843.

5. “Class” and “Class Members” mean the class of persons defined as follows:

All persons who during the three (3) year period preceding the filing of the Complaint through the Execution Date (a) have or had a retail installment sales contract ("Loan Agreement") held by CFI; and (b) had their motor vehicle repossessed in Wisconsin by CFI or its agents; and (c) who have not obtained a discharge in bankruptcy applicable to any such Loan Agreement; and (d) to whom CFI sent a Notice of Sale which did not expressly inform the customer that CFI as the creditor was entitled to recover from the customer the deficiency, if any, remaining after deducting the fair market value of the collateral from the unpaid balance.

CFI represents and warrants that the Class consists of approximately Eight Hundred Thirty-Five (835) accounts ("Class Size Warranty").

6. "Class List" means the list of Class Members by name, address, and account number, a redacted version of which is set forth in the attached Exhibit "A." The Class List shall not be filed in the public record but will be available for *in camera* review by the Court.

7. "Class Period" means December 2, 2018, through the Execution Date.

8. "Court" means the Circuit Court of Sauk County, Wisconsin, which presides over the Action.

9. "Deficiency Balance" means the account balance alleged due to CFI after the repossession and dispossession of a Class Member's vehicle and the application of the proceeds of the sale to that person's account, plus the accrued interest and other charges, minus any payments made by a Class Member post-repossession (excluding payments made by Class Members who reinstated their account and had their repossessed vehicle returned, unless that vehicle was subsequently repossessed again and sold).

10. "Execution Date" means the date of the last signature required to form the agreement embodied in this Settlement Agreement.

11. “Final Effective Date” means the date on which the Final Order and/or Final Judgment approving this Agreement becomes final. For purposes of this Agreement, the Final Effective Date will be:

a. The date on which the time to appeal therefrom has expired, if no appeal has been taken from the Final Order and/or Final Judgment; or

b. The date on which all appeals therefrom, including petitions for rehearing or re-argument, petitions for rehearing *en banc* and petitions for any other form of review, have been finally disposed of in a manner that affirms the Final Order or Final Judgment, if any appeal has been taken from the Final Order and/or Final Judgment; or

c. Any other date agreed to in writing by Class Counsel and CFI’s Counsel.

12. “Final Judgment” means the Court’s final judgment as described in Section 4 of this Agreement.

13. “Final Order” means the Court’s order approving the Settlement and this Agreement, as described in Section 4 of this Agreement.

14. “Law” means laws of every kind and nature, including, without limitation, statutory law, as well as case law and rules and regulations.

15. “Litigation” means all actions, claims and proceedings which were asserted in, or could have been asserted in, the Action.

16. “Notice of Sale” means any notification of default, repossession, or sale, including a notice of intent to dispose of a repossessed vehicle, and any notification explaining or demanding payment of a Deficiency Balance.

17. “Party” means any one of CFI, the Class Representatives, the Class, and Class Members. “Parties” refers collectively to every Party.

18. "Person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns.

19. "Released Claims" shall have the meaning set forth in Section 4.1.

20. "Released Person(s)" means CFI and its past, present, and future parent entities, subsidiary entities, and other affiliated entities (the term "affiliated entities" includes, but is not limited to, any entity controlling, controlled by, or under control with CFI, including but not limited to Easton Motors, Inc.), and all of their servants, predecessors, successors, spin-offs, assigns, holding companies, joint-ventures and joint-venturers, partnerships and partners, members, divisions, stockholders, bondholders, subsidiaries, related companies, affiliates, officers, directors, employees, associates, dealers, representatives, suppliers, vendors, advertisers, service providers, distributors and sub-distributors, agents, insurers, attorneys, administrators and advisors. The Parties expressly acknowledge that each of the foregoing is included as a Released Party even though not identified by name herein.

21. "Class Representatives" means the Lopers acting on behalf of themselves and on behalf of the Class and the Class Members.

22. "Settlement" means the settlement embodied in this Settlement Agreement.

23. "Settlement Benefits" shall mean the benefits set forth in Section 1.

Terms of Settlement

NOW THEREFORE, in light of the foregoing, which is incorporated herein and made a part hereof, and in consideration of the mutual promises, agreements and covenants contained herein, the sufficiency and receipt of which are hereby acknowledged, it is hereby stipulated and agreed, by, between and among the Parties, that the Action and the matters raised by it hereby will be settled, compromised, and dismissed on the merits and with prejudice on the following terms and conditions, subject to the approval of the Court:

1. Settlement Benefits

1.1 Future Conduct of CFI.

CFI agrees to:

(a) cease reporting any further adverse credit information on the consumer credit report of a Class Member with respect to a Class Member's Loan Agreement subject to this Settlement;

(b) with respect to Class Members as to whom adverse credit information with respect to any Loan Agreement within the scope of this Settlement Agreement has already been reported to a consumer or credit reporting agency by CFI, CFI shall undertake its best efforts to request the deletion of CFI's tradeline for that Loan Agreement. The Class Members acknowledge that the consumer or credit reporting agencies are separate and distinct from CFI and CFI can only request, but cannot guarantee, that the information will be deleted by the consumer or credit reporting agencies. The only remedy of the Class Members as to Released Parties for the failure of any consumer or credit reporting agencies to amend the consumer or credit report is to request in writing that CFI, again, request that its tradeline be deleted as to the relevant Loan Agreement, and CFI shall be under no obligation to otherwise contest the failure of the consumer or credit reporting agencies to amend the consumer or credit reports of the Class Members. No damages shall be recoverable from CFI for any consumer or credit reporting agency's failure to delete the

tradeline. The Class Members expressly acknowledge that they understand the limitations on CFI in this regard, and that any action, inaction, omission and/or error solely by the credit bureaus is not and shall not be attributable to CFI, in any way, and shall not constitute a breach of this Settlement Agreement. It shall be solely the obligation of the individual Class Members to review their respective credit reports with the consumer or credit reporting agencies to ensure that the consumer or credit reporting agencies have complied with CFI's request to delete the tradeline. CFI shall not be liable to any Class Members under the Fair Credit Reporting Act, 15 U.S.C. § 1681 or similar law for complying with this paragraph in correcting or requesting deletion of any Class Members' trade line; and

(c) cease collecting any alleged deficiencies under the Loan Agreements entered into by the Class Members with respect to the financing of a motor vehicle, provided that any deficiencies paid by Class Members prior to the date of this Settlement Agreement are not recoverable by Class Members, as provided in Section 1.3(a). In the event that CFI or its agents receive additional payments with respect to the waived Deficiency Balances of a Class Member encompassed within this Settlement Agreement after the Execution Date, CFI shall promptly return such payments to the Class Member upon CFI receiving notice of same.

1.2 Common Fund

(a) *General*

CFI shall issue a check in the amount of Four Hundred Seventy-Five Thousand Dollars (\$475,000.00) for the purpose of funding the Settlement ("**Settlement Fund**"), inclusive of all costs, fees, and other payments, including, but not limited to, the costs of notice and settlement administration, attorneys' fees, litigation expenses and costs, and class representative compensation. The Settlement Fund shall be deposited with the Settlement Administrator within ten (10) days of entry of the Preliminary Approval Order. The amount of \$475,000.00 is intended

to be a total and complete cap. In no event shall CFI, its insurers or any of the Released Parties, ever be liable for any amount whatsoever in excess of the Settlement Fund of \$475,000.00, regardless of any circumstance whatsoever.

(b) Settlement Payment

All attorney's fees to Class Counsel, litigation expenses, costs and any and all costs or expenses related to Settlement Administration, including the costs of notice, the fees and costs paid to the mediator, and the class representative incentive award, shall be deducted from the Settlement Fund to determine the "Net Settlement Fund." All Class Members who do not exclude themselves ("**Participating Class Members**") shall receive a settlement check issued by the Settlement Administrator ("**Settlement Check**"). The amount of the Settlement Check which shall be issued to Participating Class Members shall be determined by dividing the Net Settlement Fund by the total number of persons on the Class List. For purposes of issuance of Settlement Checks only, joint or co-obligors shall be treated as one person. Any Settlement Checks for Participating Class Members who are joint or co-obligors shall be issued jointly and shall be mailed to the last known address of the primary obligor.

(c) Class Representative Compensation. In addition to the benefits of the Class Members above, the Class Representatives shall receive the total sum of Ten Thousand Dollars (\$10,000.00) from the Settlement Fund, as and for an incentive award to the Class Representatives ("**Incentive Award**"). The Class Representatives must provide a form W-9 prior to having the Incentive Award processed and issued.

(d) Cy Pres.

Any funds remaining in the Settlement Fund after the payment of all approved class member claims, expenses, litigation costs, attorneys' fees, and other court-approved disbursements

shall constitute a *Cy Pres* Award. If any Class Members who have not opted out do not negotiate or cash their Settlement Check within ninety (90) days from the issuance, such funds shall be a *cy pres* award. In accordance with Wis. Stat. § 803.08(10)(b)(1), any *cy pres* award shall be distributed to the Wisconsin Trust Account Foundation, Inc. to support direct delivery of legal services to persons of limited means in non-criminal matters. The Settlement Administrator and/or Class Counsel agree to obtain funding letters from any recipient of funds from the *cy pres* award in which the recipient agrees not to use any such funds received hereunder to support affirmative claims of any kind against financial institutions.

1.3 Waiver of Deficiency:

(a) *General*

CFI agrees to cease collecting any alleged deficiencies and agrees to waive any Deficiency Balance arising under the Loan Agreements which are the subject of this Agreement for the respective Class Members as of the Execution Date. The waiver of deficiencies shall operate to reduce the alleged obligations of the Class Members on their respective Loan Agreements to \$0. However, CFI shall not be required to refund any amounts previously paid to CFI by any Class Member prior to the execution hereof. To the extent that a Class Member may have other loans, finance agreements, or lines of credit with CFI, those other loans, finance agreements or lines of credit are not subject to this Settlement Agreement and are excluded from any waiver. According to the calculations of CFI, based on its current books and records, the aggregate deficiencies owed by the Class Members is approximately Four Million Two Hundred Twenty-Six Thousand Two Hundred Thirty-Two and 72/100ths Dollars (\$4,226,232.72) in principal without accrued interest ("Waived Deficiencies"). The Parties recognize the Waived

Deficiencies are in dispute and nothing in this agreement shall be deemed to be a waiver or discharge of an undisputed debt or claim.

(b) Tax Treatment of Waiver

The Parties acknowledge that the Waived Deficiencies of the respective Class Members are disputed debts which the Class Representatives contend are discharged by operation of law and which CFI contends are enforceable. CFI agrees not to transmit to the Internal Revenue Service form 1099-C Cancellation of Debt tax report ("Form 1099-C") with respect to the discharge of deficiencies of any Class Member herein, unless required by the Internal Revenue Service or the regulators of CFI. The notice to the Class ("**Class Notice**") shall notify Class Members that CFI may issue a Form 1099-C if required by the Internal Revenue Service and shall also direct Class Members to seek the advice of a tax professional at the expense of the Class Member.

1.4 If Final Approval Not Granted:

In the event that this Settlement Agreement shall terminate pursuant to its terms without final approval, this Action shall revert to its status as existed immediately prior to the date of the execution of the Settlement Agreement, and any monies paid or advanced by CFI shall be returned to it within fourteen (14) days except for any funds advanced or due to the Settlement Administrator for services actually rendered under Section 6.

1.5 If this Agreement does not for any reason achieve a Final Effective Date or is otherwise rescinded, withdrawn, or abrogated before a Final Effective Date, then all amounts that have been paid by CFI out of the Settlement Fund pursuant to Section 1.2 above that are not necessary to pay Notice and Administrative Costs already incurred shall be returned to CFI.

1.6 Qualified Settlement Fund:

The Settlement Fund shall constitute a qualified settlement fund (“QSF”) within the meaning of Treasury Regulation Section 1.468B-1 promulgated under Section 468B of the Internal Revenue Code of 1986 as amended. The Settlement Administrator shall be the “administrator” within the meaning of Treasury Regulation § 1.468B-2(k)(3).

2. Mechanics of Preliminary Settlement Approval

2.1 Preliminary Settlement Approval: Upon execution of this Settlement Agreement, Class Counsel shall prepare and file a motion (“**Preliminary Approval Motion**”) requesting that the Court enter a jointly prepared Order of Preliminary Approval (“**Preliminary Approval Order**”), attached as Exhibit “B,” approving on a preliminary basis this Settlement Agreement.

2.2 Description of Preliminary Approval Order: The Preliminary Approval Order shall:

- (a) Temporarily and conditionally certify the Class for Settlement purposes only;
- (b) Provide that the Class Representatives and Class Counsel fairly and adequately represent and protect the interests of the Class Members;
- (c) Determine on a preliminary basis that the Settlement, including the identification, notification and class administration set forth in this Settlement Agreement, is fair, adequate and reasonable to the Class Members;
- (d) Stay all proceedings in the Action and enjoin the prosecution by Class Members who do not timely and validly exclude themselves from this Settlement of any non-filed or pending individual or class claims asserting any claim(s) encompassed by the claims released in Section 4.1;

(e) Approve, as being in compliance with the due process rights and other rights of Class Members, the plan of notice and class administration set forth herein, and the contents of the Notice of Pendency of Class Action, Proposed Settlement and Hearing (“Notice”), attached hereto as Exhibit “C”. The content of the Notice shall be agreed upon by the parties and subject to the approval of the Court;

(f) Provide a clearly disclosed right to object or request exclusion from the Class and the Settlement in the Notice, as set forth herein;

(g) Direct that Class Members will be notified of the terms of the proposed Settlement by mailing of the Notice to Class Members by the Class Administrator by first-class mail, postage prepaid, to their last known addresses as indicated in CFI’s records, by a date certain;

(h) Set the Approval Hearing to accomplish, among other things:

(1) Review and determine the merits of any objections to the Settlement;

(2) Determine whether to approve in final this Settlement Agreement, pursuant to Wis. Stat. §803.08, as fair, reasonable, adequate, and in the best interests of the Class and authorize all acts necessary to consummate and effectuate the terms and conditions of this Settlement Agreement;

(3) Determine whether the Court should enter a Final Approval Order in substantially the form attached as Exhibit “D” approving the Settlement in final and dismissing the Action with prejudice;

(4) Determine the reasonable attorney’s fees and costs of Class Counsel to be paid from the Class Fund; and

(5) Determine such other matters as the Court may deem necessary and appropriate.

2.3 Preparation of Class List: CFI shall prepare the Class List in Excel worksheet format and shall provide the name, last known address, social security number, account number, account balance and aggregate balance for all Class Members not otherwise excluded. The Parties acknowledge that the Class List contains confidential information which may not be disseminated to anyone other than the Settlement Administrator. Within ten (10) days of entry of the Order of Preliminary Approval, CFI shall provide the address data to the Settlement Administrator. The Settlement Administrator will process the addresses through the National Change of Address database, as well as a service such as Probe 260 or Lexis/Nexis Accurint to update address data. The costs for such address updating shall be included in the costs of Settlement Administration and thus shall be deducted from the Settlement Fund prior to calculation of the Net Settlement Fund or any Settlement Check.

2.4 Proof of Notice to Class Members: At least ten (10) days prior to the Approval Hearing, after mailing, the Settlement Administrator, through Class Counsel, shall file with the Court a notice of mailing of the Notice to the Class Members, detailing only the number of class Notices which were mailed to the Class Members, and identifying the number of persons who timely filed a written request for exclusion from the Settlement pursuant to Section 3.1, *infra*.

3. Objections and Exclusions

3.1 Exclusion and Objection Rights: As set forth in the Notice to Class Members:

(a) Any Class Member may be excluded from the Class by filing with the Court and serving counsel for CFI and the Class Representatives (all identified below) a written request for exclusion, which request for exclusion will contain the Class Member's name, current address,

the name and caption of this Action and signature. The written request for exclusion must be served and filed no later than twenty (20) days before the date of the Approval Hearing to be effective. A Class Member may opt-out on an individual basis only. So-called “mass” or “class” opt-outs, whether filed by third parties on behalf of a “mass” or “class” of Class Members or multiple Class Members where no personal statement has been signed by each and every individual Class Member, shall not be allowed.

(b) Any Class Member that chooses not to submit a written request for exclusion may, if he or she desires, object to the Settlement by filing with the Court and serving on counsel for CFI and the Class Representatives a written objection containing the Class Member’s name, current address, and the name and caption of this Action. The written objection must be filed with the Court and served on counsel no later than twenty (20) days before the date of the Approval Hearing.

(c) Any Class Member who has timely filed and served a written objection to the Settlement may enter an appearance at the Final Approval Hearing, either personally or through counsel; and

(d) All proceedings, orders and judgments, including the Final Approval Order entered in the Action, whether favorable or unfavorable to the Class Members, will be binding on all Class Members who have not validly excluded themselves from the Class, even if such Class Members have objected to the Settlement. Additionally, the Releases and Covenants Not to Sue contained in Section 4 of this Settlement Agreement will be binding on all Class Members who have not validly excluded themselves from the Class, even if such Class Members have objected to the Settlement.

3.2 Requests for Exclusion: Any Class Member who does not timely file an effective written request for exclusion in accordance with Section 3.1(a) shall be bound by all proceedings, orders, and judgments in the Action, including the Final Approval Order, even if such Class Member has pending, or subsequently initiates, litigation against CFI or any other Released Person relating to the Released Claims. A Class Member who chooses to be excluded from the Class will be excluded from the Class and therefore will be excluded from participation in the Settlement and, accordingly, will not be entitled to receive the Settlement Benefits for the Class.

3.3 Objections to Settlement: Any Class Member who has not filed a written request for exclusion from the Class and who wishes to object to the fairness, reasonableness or adequacy of this Settlement Agreement, the proposed Settlement or the amount of Attorneys' Fees and Expenses, must file with the Court and serve on counsel for CFI and the Class Representatives, within the time noted above, a written statement of their objection, stating the specific reason(s), if any, for each objection, including any legal support the Class Member wishes to bring to the Court's attention and proffering any evidence the Class Member wishes to introduce in support of their objection. Class Members may object either on their own or through an attorney hired at their own expense. If a Class Member hires an attorney to represent him or her, the attorney must:

- (a) File a notice of appearance with the Court no later than twenty (20) days prior to the date of the Approval Hearing; and
- (b) Serve a copy of such notice of appearance on counsel for CFI and the Class Representatives.

Any Class Member who fails to comply with the provisions for objecting to the Settlement shall waive and forfeit any and all rights he or she may have to appear separately and/or to object,

and shall be bound by all the terms of this Settlement Agreement and by all proceedings, orders and judgments in the Action, including the Final Approval Order.

Under no circumstances shall CFI, Class Counsel, the Class Representatives, or the Released Persons be responsible for paying any monies or other consideration to objectors and/or counsel for objectors under the terms of this Settlement Agreement or otherwise.

3.4 The Parties agree that if more than 10% of Class Members opt-out the Parties will have 21 days to determine whether to withdraw from the Settlement. The Parties agree that if any Party withdraws from the Settlement under the foregoing terms and conditions or the Class Settlement is not approved by the Court, this Settlement Agreement shall be null and void, and any order or judgment entered by the Court to further this Settlement shall be vacated *nunc pro tunc*, and that CFI shall have the right to contest the certification of a class and that this Settlement Agreement may not be used as evidence or otherwise be used in any court filing or proceeding.

4. Effect of Entry of Final Approval Order

4.1 Release and Covenant Not to Sue: In consideration of the Class Settlement, the Class Representatives and Class Members, on behalf of themselves and any other legal or natural persons who may claim by, through or under them, hereby agree that upon entry of a Final Approval Order they shall fully, finally and forever release, relinquish, remise, acquit, satisfy, waive, discharge, and hold harmless CFI and all other Released Persons from the following ("Released Claims"):

(a) Any and all actions, causes, claims, demands, suits, petitions, liabilities, rights, damages, and causes of action asserted in this Action or which could have been asserted in this Action based on the facts alleged in the Complaint in the action, including but not limited to, compensatory, exemplary, punitive, expert and/or attorney's fees or by multipliers, whether past,

present, or future, mature, or not yet mature, known or unknown, suspected or unsuspected, contingent or non-contingent, derivative or direct, asserted or un-asserted, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, or any other source; and

(b) Any and all actions, causes, claims or causes of action under Article 9, Part 6, Uniform Commercial Code and Wis. Stat. §421.101 *et seq.* of the Wisconsin Consumer Act;

(c) Any and all claims, demands, damages, causes of action or suits, whether known or unknown, seeking or relating to damages or other legal or equitable relief arising out of or in any way related to: (i) loans or finance agreements, including, but not limited to, the Loan Agreements, (ii) repossession, sale or deficiency notices sent by CFI which are the subject matter of the instant proceeding (iii) the collection and servicing of the related accounts, and/or (iv) the repossession or disposition of any collateral; and

(d) Notwithstanding the foregoing, under no circumstances shall the Released Claims extend to or include claims for personal or bodily injury or under the Servicemembers Civil Relief Act ("SCRA"), which the Class Members shall retain full rights to pursue. CFI represents that there are no claims for personal or bodily injury or under the SCRA that have been asserted against CFI by any Class Members as of the Execution Date.

4.2 Agreement Not to Sue: Without limiting the generality of any provision herein, the Class Representatives and Class Members hereby expressly agree that they, acting individually or together or as a representative of a class, shall not institute, maintain, prosecute, sue or assert, any action or proceeding against CFI or any other Released Persons, arising from or related in any way to any of the Released Claims and/or the Loan Agreement(s) which are the subject matter of the Action. CFI, and all other Released Persons, further expressly agree that they shall not institute,

maintain, prosecute, continue to prosecute, sue, or assert, in any action or proceeding, any claims against the Class Representatives or Class Members for any breach of a payment obligation of the Class Representatives or Class Member under any Loan Agreement which is the subject matter of the Action.

4.3 Release Covers Fees and Costs: Except as otherwise expressly provided herein, and without in any way limiting the scope of the foregoing Release and Covenant Not to Sue, the foregoing Release and Covenant Not to Sue covers, without limitation, any and all claims for attorneys' fees, expenses, costs or disbursements incurred by Class Counsel and any other counsel representing the Class Representatives or Class Members, or by the Class Representatives or the Class Members, or any of them, in connection with or related in any manner to the Action, the litigation of this Action, this Settlement Agreement, the Settlement and/or the administration of such Settlement.

4.4 Subsequent Discovery of Facts: In connection with this Release and Covenant Not to Sue, the Class Representatives and the Class Members acknowledge that they are aware that they may hereafter discover facts, actions, claims and causes of action, presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true with respect to the matters released herein. Nevertheless, it is the purpose of this Settlement Agreement and the intention of the Class Representatives and Class Members to settle and release such matters, and all actions, causes, causes of action and claims relating thereto, which exist, or might have existed (whether or not previously or currently asserted in any action) and the Release and Covenant Not to Sue shall remain in full force and effect despite any discovery by the Class Representatives or Class Members of new or additional facts, actions, claims and/or causes of action.

4.5 **Waiver:** The Class Representatives and Class Members expressly understand that certain federal or state laws, rights, rules, or legal principles, which may be or become applicable, may require different or additional modifications than those agreed to herein. The Class Representatives and Class Members hereby agree that the provisions of such laws are hereby knowingly and voluntarily forever waived and relinquished by the Class Representatives and Class Members, and the Class Representatives and Class Members hereby agree and acknowledge that this is an essential term of this Settlement Agreement.

4.6 **Final Resolution:** Nothing in this section is intended to limit the generality of the Release and Covenant Not to Sue set forth above. It is the purpose and intent of this Settlement Agreement that all claims, actions and causes of action by the Class Representatives and Class Members, including those alleging violations of Article 9, Part VI, of the Uniform Commercial Code, or the Wisconsin Consumer Act, as set forth in the Complaint and/or any claims relating in any way to the Loan Agreement(s) which are the subject matter of the Action, shall forever be barred. The doctrines of *res judicata* and collateral estoppel shall apply to all Class Members with respect to all issues of law and fact and matters of relief within the scope of all filed complaints in this Action, the Released Claims, and this Settlement Agreement. If a Person seeks, in a separate action or proceeding, relief that would be inconsistent with the terms of this Settlement Agreement, CFI or any Released Party may, by affidavit or otherwise in writing, advise the other Parties and the Court, or other forum in which such action or proceeding is brought, that such relief in that action or proceeding is unwarranted. If requested by CFI or any Released Party, the Class Representatives or Class Counsel shall also advise the Court, or other forum in which such action or proceeding is brought, in writing, that such relief in that action or proceeding is unwarranted. Provided that, since this Settlement Agreement provides for review by the Court, any of the Parties

hereto may recommend that matters raised in such separate action or proceeding should be submitted to the Court for resolution under the terms of this Settlement Agreement.

4.7 Failure to Receive Notice: The failure of any Class Member to receive Notice or any other document, as described in this Settlement Agreement, shall not be a basis for invalidating the Settlement, this Settlement Agreement, any order entered pursuant thereto, or any of the exhibits or documents referenced herein and/or attached hereto, and the Settlement shall, nevertheless, be binding, and the Final Approval Order effective in accordance with its terms.

4.8 California Civil Code Section 1542: Class Representatives expressly understand and acknowledge that they and all Class Members will be deemed by the Order of Final Approval and Judgment to acknowledge and waive Section 1542 of the Civil Code of the State of California, which provides that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Class Representatives and Class Members expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable or equivalent to Section 1542, to the fullest extent they may lawfully waive such rights.

4.9 Class Representatives represent and warrant that they are the sole and exclusive owners of all claims that they are releasing under this Agreement. Class Representatives further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action and that Class Representatives are not aware of anyone other than themselves

claiming any interest, in whole or in part, in the Action or in any benefits, proceeds or values under the Action. Class Members receiving payments from the Settlement Fund shall, by cashing the payment check, represent and warrant therein that they are the sole and exclusive owner of all claims that they are releasing under the Settlement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that such Class Member(s) are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds or values under the Action.

5. Attorney's Fees and Litigation Expenses to Class Counsel

5.1 General: Class Counsel shall be paid reasonable attorney's fees under the Common Fund/Common Benefit Doctrine ("Attorney Fee Award"), in addition to court costs, mediation fees and travel expenses ("Litigation Expense Reimbursement") from the Settlement Fund, subject to Court approval. CFI recognizes that the efforts of Class Counsel resulting in the form of credit amelioration, the Settlement Fund, and the Waived Deficiencies (collectively, the "Total Settlement Benefits") will benefit the Class and shall not object to any request by Class Counsel for an Attorney Fee Award that does not exceed twenty-five (25%) of the Total Settlement Benefits.

5.2 Payment: The Attorney Fee Award and Litigation Expense Reimbursement to Class Counsel shall be paid to Class Counsel from the Settlement Fund by wire to the Trust Account of Robert W. Murphy, Esquire, 440 Premier Circle, Suite 240, Charlottesville, Virginia, FEI No. 59-3211827, within ten (10) days from entry of the Final Approval Order. The inability to deliver a check to a Class Member shall not defeat the entitlement to fees and costs of Class

Counsel on account of that Class Member's recovery. Class Counsel shall each provide a form W-9 to CFI, or its insurer, and the Settlement Administrator prior to having the Settlement Administrator issue the award.

5.3 CFI shall have no liability or other responsibility for the allocation of the attorneys' fees and expenses among and between Class Counsel, and any other counsel for Class Representatives or Class Members, or with respect to the Incentive Award to the Class Representatives. In the event that any dispute arises relating to the allocation of the attorney's fees and expenses or the Incentive Award, then Class Counsel and Class Representatives agree that they are barred from suing or asserting any claim against CFI, and/or the Released Parties, related to or arising out of, in any way, the Attorney Fees Award, Litigation Expense Reimbursement or the Class Representatives Incentive Award.

5.4 CFI's payment of the Attorney Fee Award with Litigation Expense Reimbursement, through the Settlement Fund, as described in this Settlement Agreement, shall constitute full satisfaction of CFI's and/or the Released Parties' alleged obligation to pay any person, attorney, or law firm, for attorneys' fees, costs and expenses incurred on behalf of the Class Representatives and the Class Members, and shall relieve CFI and the Released Parties from any other claims or liability to pay any other attorney or law firm or person for any attorneys' fees, expenses and costs to which any person may claim to be entitled related to the Released Claims.

5.5 The Parties understand that Class Counsel intends to apply for an Attorney Fee Award and Litigation Expense Reimbursement from the Settlement Fund. The application for the Attorney Fee Award and Litigation Expense Reimbursement shall be considered by the Court independently of the approval of the Settlement and is not a condition of the Settlement. In the event that the Court (or the appellate court) awards less than the requested amount for an Attorney

Fee Award and Litigation Expense Reimbursement, only the finally approved amounts shall be paid and shall constitute full satisfaction of the obligation of this section.

6. Costs of Settlement Administration

6.1 General: Class Counsel shall enter into a contract with the Settlement Administrator through which all costs of settlement administration, distribution and class notice, shall be paid from the Settlement Fund (“Settlement Administration Expense”) prior to calculation of the Net Settlement Fund. The Settlement Administrator shall be responsible for providing notice to the Settlement Class, updating the class list, transmitting settlement papers, issuing payment checks, and all other tasks necessary and proper for the administration of the Settlement. The Notice shall inform the Class Members of the anticipated Settlement Administration Expense.

6.2 Deposit of Settlement Fund: The Settlement Fund shall be deposited with the Settlement Administrator by CFI within ten (10) days of entry of the Preliminary Approval Order. The Settlement Administrator is authorized to draw on the Settlement Fund to pay for the Settlement Administration Expense upon notice to the Parties.

6.3 Limitation: Settlement Administration Expenses do not include any attorneys’ fees, expenses, costs or disbursements incurred by Class Counsel and/or any other counsel representing the Class Representatives or Class Members, or by the Class Representatives or the Class Members, or any of them, in connection with or related in any manner to this Settlement Agreement, the Settlement and/or the administration of such Settlement, except as provided for herein.

6.4 Confidentiality Agreement. The Settlement Administrator shall sign a non-disclosure and confidentiality agreement which shall provide that the information provided to it by CFI and the Class Members shall be treated as confidential and shall be used only as required

by this Settlement Agreement. The Class List containing the names, addresses and other identifying information shall not be filed with the Court not provided to Class Counsel, except as provided herein.

7. Benefit of Representative Plaintiffs

7.1 Within ten (10) days after the entry of the Final Approval Order, the Settlement Administrator shall pay the Class Representatives the Incentive Award in the amount of Ten Thousand Dollars (\$10,000.00) in addition to the recovery of the Class Representatives as Members of the Class hereunder. The payment of the Incentive Award shall be made from the Settlement Fund by check made payable to the Class Representatives, and thereafter shall be distributed by Class Counsel to the Class Representatives. The Class Representatives shall provide a Form W-9 to the Settlement Administrator prior to having the Settlement Administrator issue the Incentive Award.

8. Issuance of Settlement Benefits to Class Members

8.1 Payment of Settlement Checks to Participating Class Members: Within thirty (30) days after entry of the Final Approval Order, the Class Administrator shall mail a Settlement Check from the Settlement Fund to each Participating Class Member at the best available address of the Participating Class Member, as described above. The Settlement Administrator shall issue a Form 1099-MISC tax report to all Participating Class Members who received payment through a Settlement Check in excess of \$600.00. In order to accomplish issuance of a 1099-MISC, CFI shall provide, solely to the Settlement Administrator, the social security number and last known mailing address for each Participating Class Member based on the information currently existing in the business records of CFI, after CFI is provided with the executed confidentiality agreement from the Settlement Administrator as provided in Section 6.4 above.

8.2 **No Liability for Joint Class Members:** The Parties shall not be liable or responsible for allocating or dividing the Settlement Benefits among Class Members who jointly are entitled to Settlement Benefits. In the event a Class Member is jointly entitled to Settlement Benefits with another Class Member, the Class Administrator shall mail a single Settlement Check made payable jointly to all such persons. Any such Settlement Check shall be mailed by the Class Administrator to the last known address of the primary obligor. Any dispute that arises between Class Members who are jointly entitled to Settlement Benefits shall be resolved solely between the contending Class Members, and such Class Members shall be prohibited from joining CFI, or any of the Released Parties, CFI's counsel, the Class Representatives, or the Class Representatives' counsel, in any action to apportion a distribution made pursuant to the Settlement.

8.3 **Limitation Period for Negotiation of Settlement Check:** The Class Members shall have ninety (90) days from the date of issuance of the Settlement Check to present such Settlement Check for payment ("Settlement Check Expiration Date"). After the Settlement Check Expiration Date, such Settlement Check shall be void, and of no further force and effect, and the Parties shall have no obligation to honor or reissue any further Settlement Check that is not presented for payment within said ninety (90) day period. Within ten (10) days after the Settlement Check Expiration Date, the Settlement Administrator shall notify Class Counsel and CFI's counsel in writing of the number of Class Members, the number of Class Members sent checks, the number of Class Members who did not cash the checks, the total dollar amount of the checks distributed, the total dollar amount of the uncashed checks, and the remaining balance of the Settlement Fund, accounting for interest (if any), bank fees, and similar expenses of the administration.

8.4 **Award:** Within thirty (30) days from the Settlement Check Expiration Date, all remaining sums shall be paid from the Settlement Fund as a *cy pres* award as provided in Section

1.2(d) above, subject to Court approval. The *cy pres* award shall be distributed by the Settlement Administrator.

8.5 Certification of Distribution: Within twenty (20) days after the final distribution of all portions of the Settlement Fund, the Settlement Administrator shall provide to Class Counsel an affidavit attesting to the Court that the distributions provided for by this Settlement Agreement have all been timely made and all funds fully and properly distributed and shall serve a copy on CFI's counsel.

9. Additional Terms

9.1 Strict Performance; No Waiver: Any failure by any of the Parties to insist upon the strict performance by any of the other Parties of any of the provisions of this Settlement Agreement shall not be deemed a waiver of any of the provisions of this Settlement Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Settlement Agreement.

9.2 Best Efforts: The Parties shall cooperate fully with each other and shall use their best efforts to obtain Court approval of this Settlement Agreement, and all of its terms and conditions in accordance thereto.

9.3 Arm's-Length Transaction: The Parties have negotiated all the terms and conditions of this Settlement Agreement at arm's-length. The exact wording, language, form and structure of the exhibits also have been negotiated at arm's-length. All terms, conditions, and exhibits in their exact form are material to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement Agreement.

9.4 Joint Participation: Each Party participated jointly in the drafting of this Settlement Agreement, and therefore the terms of this Settlement Agreement are not intended to be construed against any Party by virtue of draftsmanship.

9.5 Counterparts: This Settlement Agreement may be executed in several counterparts and delivered by facsimile or as a pdf attachment to an e-mail, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

9.6 Beneficiaries/Successors: This Settlement Agreement, and the Settlement contemplated herein, shall inure to the benefit of the Released Persons, as well as the Parties. The Parties each acknowledge that this Settlement Agreement is being entered into for the benefit, among others, of the other above-referenced Released Persons, and agree that the provisions of this Settlement Agreement may be enforced and relied upon by the Released Persons in their own right without the aid or participation of CFI, or any other signatory to this Settlement Agreement. The Released Persons are intended third-party beneficiaries of this Settlement Agreement. This Settlement Agreement shall be binding upon, and inure to the benefit of, the respective heirs, successors, and assigns of the Parties.

9.7 No Other Third-Party Beneficiaries: Except as set forth in the preceding section, this Settlement Agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation or undertaking established herein, to any third-party as a beneficiary to this Settlement Agreement.

9.8 Further Acts: Each of the Parties, upon the request of any other of the Parties hereto, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Settlement Agreement.

9.9 Captions: The captions or headings of the sections and paragraphs of this Settlement Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Settlement Agreement.

9.10 Governing Law/Venue: Any issue or matter related to or arising out of this Settlement Agreement, including, without limitation, the construction and interpretation of its terms that would be governed by state law shall be governed by and interpreted according to the substance and law of the State of Wisconsin, excluding its conflict of laws' provisions, and the Circuit Court for Sauk County, Wisconsin shall be the exclusive venue for any claims or actions arising from or related to this Agreement or the matters covered herein.

9.11 Notice: Except as otherwise set forth herein, whenever this Settlement Agreement requires or contemplates that the Parties, or any of them, shall or may give notice to the other, notice shall be provided as follows:

(a) If to the Class Representatives or Class Members, then to Robert W. Murphy, Esq., 440 Premier Circle, Unit 240, Charlottesville, Virginia 22901 and Matthew Lein, Esq., Lein Law Offices, 15692 Highway 63 North, PO Box 761, Hayward, Wisconsin 54843.

(b) If to CFI, then to: Andrew C. Gresik, Esq. and Michael D. Leffel, Esq, Foley & Lardner LLP, 150 East Gilman Street, Suite 5000, Madison, WI 53703-1482.

9.12 Computation of Time: All time periods set forth herein shall be computed in calendar days, unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Settlement Agreement or by order of Court, the day of the act, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, or, when the act to be done is the filing of a paper in court, a day in which weather or other conditions have

made the office of the Clerk of the Court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days. Each of the Parties reserves the right, subject to the Court's approval, to seek any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement, and to modify or supplement any notice contemplated hereunder.

9.13 Entire Agreement: Waiver, Modification, Amendment: No representations, warranties, or inducements have been made to any of the Parties to this Settlement Agreement, other than those representations, warranties, and covenants expressly set forth in this Settlement Agreement. This Settlement Agreement, and the exhibits attached hereto, constitute the entire agreement between the Parties with regard to the subject matter contained herein, and all prior negotiations and understandings between the Parties shall be deemed merged into this Settlement Agreement. No waiver, modification, or amendment of the terms of this Settlement Agreement, other than extensions of time agreed to by the Parties, made before or after the Court's approval of this Settlement Agreement, shall be valid or binding unless in writing, signed by all Parties, and then only to the extent set forth in such written waiver, modification, or amendment. Unless the Court orders that such a waiver, modification, or amendment of the terms of this Settlement Agreement materially affects the rights of the Settlement Class Members, no subsequent notice shall be required.

9.14 Settlement Not Evidence. This Settlement Agreement (whether or not the Settlement Agreement receives final approval), all exhibits, documents or instruments delivered pursuant to this Settlement Agreement, all statements, transactions or proceedings in connection with the negotiation, execution or implementation of this Settlement Agreement, are not intended to be and shall not be construed as or deemed to be evidence of any admission or concession by

CFI of any liability or wrongdoing or of the truth of any allegations in any complaint, and none of them shall be admissible in evidence for any such purpose in this or any other proceeding. The limitations set forth in this paragraph do not apply to use and/or disclosure by CFI or the Released Parties against the Class Members or third parties, including, without limitation, for purposes of supporting a defense, counterclaim, or claim of res judicata, collateral estoppel, release, good faith settlement, judgment bar, offset or reduction or any other theory or claim of issue preclusion or similar defense, counterclaim or claim. Whether or not the Settlement Agreement is finally approved by the Court, the Parties agree that the Settlement Agreement and exhibits shall not constitute evidence of the propriety of class certification for the purpose of litigation or for trial in this or any other case.

9.15 Attorneys Consulted: The Parties have fully discussed the terms of and meaning of the signing of this Settlement Agreement with their respective attorneys and fully understand all of the provisions and effects of this Settlement Agreement.

9.16 Force Majeure: No Party shall be responsible for any delay or failure in performing any part of this Agreement when it is caused by fire, flood, explosion, epidemic, pandemic, war, strike, embargo, government requirement, civil or military authority, act of God, act or omission of carriers or other similar causes beyond its control (collectively called "Condition"). If any such Condition occurs, the party delayed or unable to perform shall give immediate notice to the other party.

9.17 Waivers: The waiver by one Party of any provisions or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

9.18 No Solicitation of Publicity: The Class members and Class Counsel agree that there will be no publicity of the Settlement, and further agree not to issue any press release, convene any

press conference or otherwise initiate publicity or make any announcement with newspapers, publications, websites, social media, or other mass media regarding this Settlement.

9.19 No Opt Out Solicitation or Inducement: The Parties and Class Counsel agree that they shall take no action which would or might have the effect of inducing or encouraging any person included in the Class to seek exclusion from the Class.

9.20 Representations and Warranties: All counsel and Parties executing this Agreement and any of the related settlement documents represent and warrant that they have full authority to do so and that they have the authority to take the appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms. The Class Representatives and Class Counsel represent and warrant that they have not assigned an interest in any amounts they may receive under the Agreement to any person or entity not a party to this Agreement.

9.21 Execution: The parties may sign this Agreement electronically using a recognized platform such as DocuSign.

Defendant,
CREATIVE FINANCE, INC.:

By: DocuSigned by:
Chris Kern, Chief Legal Officer at Creative Finance
42291DFACE66495
Print Name: DocuSigned by:
Chris Kern, Chief Legal Officer at Creative Finance
42291DFACE66495
Title: DocuSigned by:
Chris Kern, Chief Legal Officer at Creative Finance
42291DFACE66495
Dated: 10/21/2022

Plaintiffs,
CHAD and ROSE LOPER:

Chad Loper
Chad E Loper (Oct 14, 2022 17:14 CDT)
CHAD LOPER
Dated: Oct 14, 2022

Rose Loper
Rose Loper (Oct 14, 2022 17:05 CDT)
ROSE LOPER
Dated: Oct 14, 2022

Class Counsel:

ROBERT W. MURPHY, ESQ.
440 Premier Circle
Suite 240
Charlottesville, Virginia 22901
rwmurphy@lawfirmmurphy.com

Robert Murphy
Robert Murphy (Oct 16, 2022 15:48 EDT)
Robert W. Murphy, Esq.
Florida Bar No.: 717223

Dated: Oct 16, 2022

LEIN LAW OFFICES
15692 Hwy 63 North
PO Box 761

Matthew C. Lein
Matthew C Lein (Oct 16, 2022 14:49 CDT)
Matthew C. Lein, Esq.
State Bar No. 1084028
mlein@leinlawoffices.com

Dated: Oct 16, 2022

EXHIBIT “A”-
Class List (Not
to Be Filed in
Public Record)

EXHIBIT “B”-
Preliminary
Approval Order

STATE OF WISCONSIN

CIRCUIT COURT

SAUK COUNTY

CHAD AND ROSE LOPER,
Individually and on behalf of a class of other
similarly situated,

Case No. 2021CV000427

Plaintiff,

v.

CREATIVE FINANCE INC.,

Defendant.

**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT AGREEMENT**

THIS CAUSE came before the Court on the Motion for Preliminary Approval of the Class Action Settlement Agreement filed herein by Plaintiffs, Chad and Rose Loper (“the Lopers”), individually and on behalf of all others similarly situated, with respect to the Class Action Settlement Agreement entered into with Defendant, Creative Finance, Inc. (“CFI”). The Court being fully advised in the premises of the proposed class settlement makes the following findings:

A. The Parties have entered into a Class Action Settlement Agreement (“Settlement Agreement”) on _____.

B. The Settlement Agreement has been submitted to the Court for approval pursuant to Wis. Stat. § 803.08(9).

C. The Parties agree that pursuant to Wisc. Stat. § 803.08, the Court may certify a class consisting of:

All persons who during the three (3) year period preceding the filing of the Complaint through the Execution Date of the Parties' Settlement Agreement (a) have or had a retail installment sales contract ("Loan Agreement") held by CFI; and (b) had their motor vehicle repossessed in Wisconsin by CFI or its agents; and (c) who have not obtained a discharge in bankruptcy applicable to any such Loan Agreement; and (d) to whom CFI sent a Notice of Sale which did not expressly inform the customer that CFI as the creditor was entitled to recover from the customer the deficiency, if any, remaining after deducting the fair market value of the collateral from the unpaid balance.

D. Pursuant to the Settlement Agreement, CFI has agreed:

1. To pay \$475,000.00 towards the establishment of a fund ("Settlement Fund") from which each participating Class Member will be paid their *pro rata* share after deduction for settlement administration expense, incentive award, attorneys' fees, costs and other litigation expense. CFI represents that the size of the Class is approximately 835 accounts.

2. To waive any deficiency arising from the Loan Agreements of the respective Class Members. According to the calculations of CFI based on its current books and records, the aggregate deficiencies owed by the Class Members is approximately \$4,226,232.72 in principal, exclusive of interest ("Waived Deficiencies").

3. To contact the consumer reporting agencies to request that trade-lines referencing information pertaining to the Loan Agreements subject to the Settlement Agreement be permanently removed for all Class Members, with no re-reporting of such information ("Credit Amelioration Program").

E. Class Counsel shall apply to the Court for an award of attorney's fees and litigation expenses, including court costs ("Attorney Fee Award"), in an amount not to exceed 25% of the value of the total settlement benefits, which includes the Settlement Fund, Waived Deficiencies and unknown value of the Credit Amelioration Program. CFI agrees not to object to any application for an Attorney Fee Award which does not exceed the aforementioned amount.

F. In light of the benefits to the Settlement Class, including the Settlement Fund, the Waiver of Deficiencies, and the Credit Amelioration Program, the Settlement Agreement is fair, reasonable and adequate to the Settlement Class.

IT IS HEREBY ORDERED THAT:

1. The Settlement Agreement is preliminarily approved.
2. The Court preliminarily certifies the Settlement Class pursuant to Wisc. Stat. § 803.08.
3. The Lopers are hereby appointed Class Representatives for the Settlement Class.
4. Robert W. Murphy, Esq. of the Law Office of Robert W. Murphy and Matthew C. Lein, Esq. of the Lien Law Offices are hereby appointed Class Counsel for the Settlement Class.
5. The names and addresses of all Class Members shall be provided by Defendant to the Settlement Administrator by [INSERT DATE].
6. Notice in the form of Exhibit “C” attached to the Class Action Settlement Agreement shall be mailed to Class Members by [INSERT DATE].
7. Class Counsel shall file the application for the Attorney Fee Award by [insert date].
8. All opt-outs, motions to intervene in, and objections to the proposed Class Action Settlement shall be made on or before [INSERT DATE].
9. The Final Approval Hearing will be conducted before the Honorable Wendy J.N. Klicko, Sauk County Court House, 510 Broadway, Baraboo, Wisconsin 53913, in Courtroom #_____ on _____, 202__, at _____ a.m./p.m. As a result of the effect of COVID-19 on court operations, the final approval hearing may occur telephonically or by Zoom.
10. This Order shall become null and void, and shall be without prejudice to the rights of the parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if (a) the proposed settlement is not finally approved by the Court, or does not become final, pursuant to the terms of the Class Action Settlement Agreement;

or (b) the proposed settlement is terminated in accordance with the Class Action Settlement Agreement or does not become effective as required by the terms of the Class Action Settlement Agreement for any other reason. In such event, the proposed settlement and Class Action Settlement Agreement shall become null and void and be of no further force and effect, and neither the Class Action Settlement Agreement nor this Order, shall prejudice any party.

11. This Order shall not be construed or used as an admission, concession, or finding by or against CFI of any fault, wrongdoing, breach, or liability, or of the appropriateness or permissibility of certifying a class on contest, or for any purpose other than settlement. Nor shall the Order be construed or used as an admission, concession, or finding by or against Plaintiffs or the Class Members that their claims lack merit or that the relief requested in their pleadings is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims.

EXHIBIT “C”-

Class Notice

IN THE CIRCUIT COURT OF SAUK COUNTY, WISCONSIN

CASE NO.: 2021CV000427

CHAD and ROSE LOPER
Individually and on behalf of a class
of others similarly situated,

Plaintiff

v.

CREATIVE FINANCE, INC.

Defendant

NOTICE OF PENDENCY OF CLASS ACTION,
PROPOSED SETTLEMENT AND HEARING

TO: Persons who during the three (3) year period preceding the filing of the Complaint through [insert Execution Date of Settlement Agreement] (a) have or had a retail installment sales contract (“Loan Agreement”) held by CFI; and (b) had their motor vehicle repossessed in Wisconsin by CFI or its agents; and (c) who have not obtained a discharge in bankruptcy applicable to any such Loan Agreement; and (d) to whom CFI sent a Notice of Sale which did not expressly inform the customer that CFI as the creditor was entitled to recover from the customer the deficiency, if any, remaining after deducting the fair market value of the collateral from the unpaid balance. (“Settlement Class”).

Please Read This Notice Carefully In Its Entirety
Your Rights May Be Affected By The Settlement
Of This Lawsuit Now Pending In This Court

BASIC INFORMATION

1. Why was this notice issued?

A court authorized this notice because you have a right to know about a Proposed Settlement of this proposed class action lawsuit brought against Creative Finance, Inc. (“CFI”) and about your options before the Court decides whether to give “final approval” to the Proposed Settlement. This notice explains the lawsuit, the Proposed Settlement, your legal rights, what benefits will be provided, and who will receive them.

This case is currently pending in the Circuit Court for Sauk County, Wisconsin and is known as *Chad and Rose Loper v. Creative Finance, Inc.*, Case No.: 2021CV000427.

2. What is this lawsuit about?

The lawsuit is about whether repossession notices and/or post-sale notices of CFI contained all of the information and disclosures required by Wisconsin law. Specifically, the lawsuit seeks damages for (i) violations of Wisc. Stat. §§ 409.610, 409.611, 409.613, 409.614, 409.616, and 409.625 of the Uniform Commercial Code; and the Wisconsin Consumer Act; and (ii) declaratory and injunctive relief.

CFI denies that its post-repossession notices are in violation of Wisconsin law and maintains that it did not act wrongfully or unlawfully. CFI contends that the claims of Chad and Rose Loper (hereinafter “Representative Plaintiffs”) have no merit and that, if the lawsuit proceeded, CFI would prevail at trial. In addition, CFI contends that certain members of the Class owe CFI money for balances still allegedly due on their accounts following the sale of their vehicle(s) at auction.

3. Why is this a class action?

The parties have agreed, and the Court has ordered that, for settlement purposes only, this lawsuit may be maintained as a class action under Wisc. Stat. § 803.08, subject to final approval at the conclusion of the settlement process. If the Proposed Settlement is not finally approved, or if any party withdraws from the Proposed Settlement, the lawsuit will return to the same status as before the Settlement Agreement was signed, and the Court will later determine if the case may proceed as a class action. CFI has challenged whether this case should proceed as a class action but has agreed not to oppose certification of a class for settlement purposes only.

4. How do I know if I am part of the Proposed Settlement?

The Proposed Settlement includes all persons who meet each and every one of the following criteria, namely persons who from December 2, 2018 to [insert Execution Date of Settlement Agreement] (a) have or had a finance agreement (“Loan Agreement”) held by CFI subject to the Wisconsin Consumer Act (Wis. Stat. §421.101 et seq.); and (b) had their motor vehicle repossessed in Wisconsin by CFI or its agents; and (c) who have not obtained a discharge in bankruptcy applicable to any such Loan Agreement; and (d) against whom CFI has not previously obtained a deficiency judgment arising from or related to a Loan Agreement; and (e) to whom CFI sent a Notice of Sale which Class Counsel has alleged violates the Uniform Commercial Code as set forth in the Plaintiff’s Complaint

You are receiving this Notice because it is believed that you meet the above criteria and that you are a member of the Class.

There are approximately 835 accounts contained in the Class.

5. Why is there a Proposed Settlement?

The parties arrived at the Proposed Settlement as a result of arms-length negotiations, including a day-long mediation conducted before the Honorable David E. Jones (Ret.). The parties reached the Proposed Settlement before the Court determined whether class certification was appropriate. The Proposed Settlement is a compromise of disputed claims and does not mean that any law was violated or that CFI did anything wrong.

4860-7832-6580.2

THE PROPOSED SETTLEMENT BENEFITS

6. What benefits does the Proposed Settlement provide?

The Proposed Settlement provides both equitable and monetary benefits (“Settlement Benefits”):

- CFI will waive all outstanding balances and/or deficiency balances allegedly owed in connection with the Loan Agreement of the Class Members whose personal property was sold by CFI following repossession. The aggregate of the outstanding balances and/or deficiency balances is estimated to total \$4,226,232.72 exclusive of interest. The waiver of such balances may have tax consequences to Class Members as discussed in Question 10 below.
- CFI shall cease reporting any further adverse credit information on the consumer report of Class Members with respect to any Loan Agreement subject to the instant settlement and will undertake its best efforts to request the deletion of CFI’s tradeline from the Class Members’ credit reports for that Loan Agreement.
- CFI shall make a payment of \$475,000.00 towards the establishment of a fund (“Settlement Fund”) for the payment of Settlement Benefits. From the Settlement Fund, the Class Administrator shall pay to each Class Member a check (“Settlement Check”) as and for statutory damages, fines or any other liability pursuant to Wis. Stat. §409.625, less a proportionate share for settlement administration expense, incentive award, and attorneys’ fees and costs (*see* Question 14). The Settlement Check will be sent to the address of the Class Member who is the primary obligor on the Loan Agreement.

Any payment due to you under the Settlement Agreement will be adjusted on a pro-rata basis to pay for court-approved attorneys’ fees and expenses of litigation (*see* Question 14).

Not less than fifty percent (50%) of any monies from the Settlement Fund that remain unclaimed or undistributed after 90 days from the date of distribution of Settlement Checks shall be distributed to the Wisconsin Trust Account Foundation, Inc. to support direct delivery of legal services to persons of limited means in non-criminal matters. The remainder of the monies from the Settlement Fund that remain unclaimed or undistributed after 90 days from the date of distribution of Settlement Checks shall be paid over to the Wisconsin Trust Account Foundation, Inc. to provide legal assistance to financially distressed individuals and families, subject to Court approval.

More details are in a document called the Class Action Settlement Agreement, which is available for your inspection at the Office of the Clerk of Circuit Court, Sauk County Court House, 510 Broadway, Baraboo, Wisconsin 53913, during normal business hours and on the website for the Class Settlement at www.//repoclass.com.

7. When will the Proposed Settlement go into effect?

The Court will hold a final approval hearing on _____, 202 at _____ a.m. to decide whether to approve the Proposed Settlement (*see* Question 17) including the request for attorneys’ fees and litigation

expenses (*see* Question 14). Even if the Court approves the Proposed Settlement, there could be appeals. The time for an appeal varies.

The Proposed Settlement becomes final and binding on the “Effective Date.” If no appeals are taken, the Effective Date is the date on which the Court approves the Proposed Settlement as final, subject to certain conditions. If an appeal is taken, the Effective Date is the date when all appeals are complete, and the Proposed Settlement becomes final.

The Proposed Settlement will go into effect on the Effective Date.

8. How does the Proposed Settlement affect my rights?

If the Proposed Settlement is finally approved, the Court will enter an order dismissing all claims against CFI with prejudice. Under the terms of the Proposed Settlement, you will release CFI with respect to the claims that were raised or could have been raised in the case. This means you cannot seek equitable relief or any type of monetary relief against CFI based on any claims related to or arising out of the repossession and sale of your personal property, the notices related to the same, and your Loan Agreement involved in this case. You will be giving up all such claims, whether or not you know about them. Notwithstanding the foregoing, under no circumstances will this release extend to or include claims under the Servicemembers Civil Relief Act.

Your interests as a member of the Class will be represented by the Representative Plaintiff and Class Counsel. You will not be billed for their services. Class Counsel will receive a fee only if the Court approves the Proposed Settlement, and the fee award will be set by the Court and paid from the Settlement Fund (*see* Question 14).

The Court’s order will apply to you even if you objected or have any other claim, lawsuit, or proceeding pending against CFI. If you have any questions about the release, you should consult with a lawyer.

9. If I do nothing, what am I giving up as part of the Proposed Settlement?

If you do nothing, you will be part of the Class. That means you cannot sue CFI over the claims settled in this case. It also means that all of the Court’s orders, including the release of claims and dismissal of the lawsuit with prejudice (*see* Question 8), will apply to you and legally bind you.

IMPORTANT INFORMATION CONCERNING TAX CONSEQUENCES OF PROPOSED SETTLEMENT

10. What are the tax consequences of the Settlement?

The waiver of deficiency balances of the respective Class Members involves disputed debts which the Representative Plaintiffs contend are discharged by operation of law and which CFI contends are enforceable.

CFI may issue a Form 1099-C tax report which will report as income to you any deficiency balance waived as a result of the settlement. For general information concerning the taxation of cancelled debt, please review <https://www.irs.gov/taxtopics/tc431>

As a result of the above, you may want to seek the advice of a tax professional if you have any questions concerning the taxation of settlement benefits and whether you should remove yourself from the Proposed Settlement pursuant to Question 12 below. Even if you remove yourself from the Proposed Settlement, CFI may nonetheless issue a Form 1099-C tax report which will report as income to you any deficiency balance that CFI may decide to waive.

GETTING MONEY FROM THE PROPOSED SETTLEMENT

11. How do I obtain money from the Proposed Settlement?

You do not have to do anything to obtain a Settlement Check. If the Court grants final approval of the settlement, a Settlement Check will be distributed from the Settlement Fund to all participating Class Members by mail. The amount of each Settlement Check will be reduced on a pro rata basis by the amount the Court determines that Class Counsel shall receive as compensation for the prosecution of the instant action, the incentive award to the Representative Plaintiffs, and certain expenses related to administering the Settlement (see Question 14 below).

EXCLUDING YOURSELF FROM THE PROPOSED SETTLEMENT

If you want to keep your right to sue CFI with respect to the notices you received relating to the repossession and sale of your personal property or with respect to any other claim settled in this lawsuit, you must take steps to remove yourself from the Proposed Settlement. This is called asking to be excluded from – or “opting out” of – the Class and the Proposed Settlement.

12. How do I remove myself from the Proposed Settlement?

If you choose to exclude yourself from the Class, you will not be bound by any order, judgment or settlement of the lawsuit. If you exclude yourself from the Class, you will not receive any benefits from this class action. You will retain and be free to pursue any claim against CFI based on the notice(s) you received related to the repossession and sale of your personal property or based on your Loan Agreement.

If you exclude yourself from the Class, CFI may still issue a 1099-C tax report which will report as income any deficiency balance waived as a result of the Settlement as described in Question 10 above.

To exclude yourself from the Proposed Settlement, you must mail a letter saying that you want to be excluded from the Class in *Loper v. Creative Finance, Inc.* You must include your full name, current mailing address, and telephone number, and the letter must be signed by you personally. An exclusion form has been included with this notice for your use. Your letter or exclusion form requesting exclusion must be mailed or otherwise delivered to the following addresses such that it is **received by _____, 202_____**.

Loper Class Action
Settlement Administrator
American Legal Claim Services, LLC
5985 Richard Street, Suite 3
Jacksonville, FL 32216

Robert W. Murphy, Esq.
Law Office of Robert W. Murphy
440 Premier Circle
Suite 240
Charlottesville, Virginia 22901

Matthew C. Lein, Esq.
Lein Law Offices
5692 Hwy 63 North
PO Box 761
Hayward, Wisconsin 54843

You cannot exclude yourself on the phone or by email.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

Yes. The Court has appointed Robert W. Murphy and Matthew C. Lein to represent you and the other Class Members in this case. Mr. Murphy and Mr. Lein are together called Class Counsel.

You will not be charged for representation by Class Counsel. Class Counsel's compensation will be paid from the Settlement Fund. If you want to be represented by another lawyer, you may hire one at your own expense.

14. How will the lawyers be paid? What will the Representative Plaintiff receive? What other expenses will be paid?

Class Counsel will ask the Court to approve attorneys' fees and litigation expenses to be paid from the Settlement Fund. Class Counsel will ask the Court to award attorneys' fees not to exceed \$300,000 ("Attorney Fees") and litigation expense not to exceed \$15,000 ("Attorney Costs"). Class Counsel contends that the total benefit of the settlement to the Class includes approximately \$4,226,232.72 in waived deficiencies exclusive of interest, the \$475,000.00 payment to the Settlement Fund, and the economic benefits attributable to the deletion of adverse information from the Class Members' credit reports.

Class Counsel will also ask the Court to approve an incentive award of \$10,000 ("Incentive Award") to be paid from the Settlement Fund to the Representative Plaintiffs for the time and resources they have spent helping Class Counsel on behalf of the whole Class, to be paid to the Representative Plaintiffs in addition to the Settlement Check. The Court may award less than the requested amount.

The cost of administering the Settlement (“Settlement Administration Expense”), including the expense of sending this Notice and any settlement checks, will be paid directly out of the Settlement Fund. The estimated cost of the Settlement Administration Expense is \$16,000.

No Class Member will owe or pay anything directly for the Attorney Fee Award, Attorney Costs and Incentive Award which will be paid from the Settlement Fund.

The Court must approve both the Attorney Fees and Attorney Costs for Class Counsel and the Incentive Award for the Representative Plaintiffs. The Court will conduct a hearing on attorney’s fees and litigation expenses at the same time of the final approval hearing.

The Attorney Fees, Attorney Costs, Incentive Award and Settlement Administration Expense (“Litigation Payments”) will be deducted from the Settlement Fund before the *pro rata* distribution of Settlement Checks. Based on the anticipated Litigation Payments, each Class Member who does not exclude themselves from the Settlement (“Participating Class Member”) should receive a Settlement Check for approximately \$160. Settlement Checks will be mailed to Participating Class Members shortly after the Effective Date (see Question 7 above).

OBJECTING TO THE PROPOSED SETTLEMENT

15. How do I tell the Court I don’t agree with the Proposed Settlement?

You may object to any part of the Proposed Settlement. To do so, you must file a written objection in the case of *Loper v. Creative Finance, Inc.*, Case No.: 2021CV000427. Any objection must set forth your full name, current mailing address and telephone number and must include: (a) a written statement explaining the reasons for your objection; (b) copies of any papers, briefs, or other documents you want to bring to the Court’s attention; (c) any evidence you wish to introduce in support of your objection; and (d) a statement of whether you or your lawyer will ask to appear at the final approval hearing to talk about your objections.

Your objection must be mailed or otherwise delivered to each of the following addresses so that it is **received** by _____, **202** _____:

Court	Settlement Administrator
Honorably Wendy J.N. Klicko Sauk County Courthouse 510 Broadway, Room ____ Baraboo, WI 53913	Loper Class Action Settlement Administrator American Legal Claim Services, LLC 5985 Richard Street, Suite 3 Jacksonville, FL 32216
Class Counsel	CFI's Counsel
Robert W. Murphy, Esq. Law Office of Robert W. Murphy 440 Premier Circle Suite 240 Charlottesville, Virginia 22901 Matthew C. Lein, Esq. Lein Law Offices 5692 Hwy 63 North PO Box 761 Hayward, Wisconsin 54843	Andrew C. Gresik, Esq., and Michael D. Leffel, Esq. Foley & Lardner LLP 150 East Gilman Street, Suite 5000 Madison, WI 53703-1482

If you or your lawyer asks to appear at the final approval hearing, in addition to providing the above information, you must include in your objection letter: (a) the points you wish to speak about at the hearing; (b) copies of documents you intend to rely upon at the hearing; (c) the amount of time you request for speaking at the hearing; and (d) whether you intend to have a lawyer speak on your behalf.

If you intend to have a lawyer present, your lawyer must file a written notice of appearance of counsel with the Court no later than _____, **202**.

16. What is the difference between objecting and asking to be excluded?

Objecting is simply telling the Court that you do not like something about the Proposed Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself from the Class, you have no basis to object because the case no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

17. When and where will the Court decide whether to approve the Proposed Settlement?

The Court will hold a final approval hearing to decide whether the Proposed Settlement is fair, reasonable, and adequate and should be granted final approval. The Court will also consider whether to award attorneys' fees and other expenses to Class Counsel, whether to provide an incentive award to the Representative

Plaintiff, and whether to enter a final judgment and dismiss the lawsuit. If there are objections, the Court will consider them. You may attend and you may ask to speak.

The final approval hearing will be on _____, **202** at ____ **a.m.**, before the Honorable Judge Wendy J.N. Klicko, Sauk County Courthouse, 510 Broadway, Room ____, Baraboo, WI 53913. The hearing may be rescheduled or continued without notice by the Court.

As a result of the effect of COVID-19 on court operations, the final approval hearing may occur telephonically or by Zoom. If you or your attorney plan to attend the hearing, please contact Class Counsel (see Question 20) prior to the hearing to obtain updated information, including a tollfree call-in number in the event of a telephonic hearing or log-in information in the event of a Zoom hearing.

The Proposed Settlement may be approved by the Court with modifications, and without further notice, if consented to by the Representative Plaintiff and CFI and their respective attorneys in accordance with the terms of the Settlement Agreement.

18. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. If you send a written objection, you do not have to come to the final approval hearing to talk about it. As long as you mailed your written objection on time and according to the Court's rules, the Court will consider it. You may also pay your own lawyer to attend the final approval hearing, but it is not necessary.

IF YOU DO NOTHING

19. What happens if I do nothing?

You have the right to do nothing. If you do nothing, you will remain part of the Class and you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against CFI about the claims in this case, ever again. You will receive all the Settlement Benefits described in Question 6 above. Further, the tax consequences of the Settlement described in Question 10 above will apply.

GETTING MORE INFORMATION

20. How do I get more information?

If you have any questions concerning the matters dealt with in this notice, please direct your inquiries to the following Class Counsel:

Robert W. Murphy, Esquire
440 Premier Circle
Suite 240
Charlottesville, Virginia 22901
Email: rwmurphy@lawfirmmurphy.com
Telephone: (954)763-8660

Matthew C. Lein, Esq.
P.O. Box 761
Hayward, Wisconsin 54843
Email: mlien@leinlawoffices.com
Telephone: (715) 634-4273

The pleadings and other records in this litigation are available and may be examined and copied during regular office hours at the Clerk of the Circuit Court, Sauk County Courthouse, 510 Broadway, Room ____, Baraboo, Wisconsin 53913 or on the website for the Class Settlement at www.//////////repoclass.com.

PLEASE DO NOT TELEPHONE THE CLERK'S OFFICE OR THE JUDGE'S CHAMBERS CONCERNING THIS NOTICE OR THIS CASE.

IMPORTANT DEADLINES:

1. **Submitting a Request for Exclusion Form:** If you want to exclude yourself from the Class, you must complete, sign and mail your Request for Exclusion Form to the Settlement Administrator. The Request for Exclusion Form must be postmarked by **[INSERT]**

2. **Objections to Settlement:** If you want to be object to the settlement (and you have not requested to be excluded), you must file your written objection with the Clerk of Court with a postmark date before **[INSERT]**

EXHIBIT “D”- Final Approval Order

STATE OF WISCONSIN

CIRCUIT COURT

SAUK COUNTY

CHAD AND ROSE LOPER,
Individually and on behalf of a class of other
similarly situated,

Case No. 2021CV000427

Plaintiff,

v.

CREATIVE FINANCE INC.,

Defendant.

FINAL APPROVAL ORDER

THIS CAUSE came before the Court on [INSERT DATE], on the Motion for Final Approval of Class Action Settlement Agreement between the Class Representatives, Chad and Rose Loper, individually and on behalf of all others similarly situated, and Defendant, Creative Finance, Inc. (“CFI”). Based on the record, the evidence and argument presented, the Court makes the following findings concerning the fairness, reasonableness and adequacy of the Class Settlement:

A. On or about _____, 2022, after a lengthy mediation and extensive settlement discussions, the respective parties entered into a Class Action Settlement Agreement (“Settlement Agreement”), which has been previously filed with the Court.

B. Upon review of the record and for the reasons set forth below, this Court hereby gives its final approval of the Class Action Settlement Agreement and finds the Settlement to be fair, reasonable and adequate.

C. The Court finds that the Class Members are receiving fair, reasonable and adequate Settlement Benefits pursuant to the Settlement Agreement in this action.

D. In its Order of Preliminary Approval, the Court preliminarily approved the Class Notice, and found that the proposed form and content of the Class Notice satisfied the requirements of due process as provided for in Wisc. Stat. § 803.08. The Court reaffirms that finding and holds that the best practical notice was given to Class Members.

E. Class Counsel timely caused the Class Notice to be mailed by first-class mail, postage prepaid, to each of the Class Members at their last known address. The Class Notice advised the Class Members of, among other things, the allegations of the claims by the Class Representatives, the terms of the proposed settlement, the requirements for exclusion from the settlement, objection to the proposed settlement, and the scheduled approval hearing. The Class Notice further identified Class Counsel and set forth that Class Counsel was seeking an award of attorney's fees and expenses, and that said attorney's fees and expenses would be deducted from the Settlement Fund. The Class Notice also set forth in full the claims released as part of the Settlement and advised such persons to read the Notice carefully because it would affect their rights if they failed to exclude themselves from the Settlement.

F. [insert] Class Members have requested to be excluded.

G. There are [insert] objections to the proposed Settlement.

H. The Court finds that the Class Members were given an opportunity to opt-out and were adequately represented by the Class Representatives and Class Counsel.

I. The Court must determine whether the proposed Settlement is "fair, adequate and reasonable and that it is not the product of collusion" between the parties. *See, Isby v. Bayh*, 75 F. 3rd 1191, 1199 (7th Cir. 1996); *Veness v. Heywood, Cari & Anderson, S.C.*, 2018 WL 4489277

(W.D. Wisc. May 17, 2018); *Behrens v. Landmark Credit Union*, 2018 WL 310629 (W.D. Wisc. June 26, 2019); *see also*, *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). In making this determination, the Court considers multiple factors:

- (1) the strength of plaintiffs' case compared to the amount of defendants' settlement offer;
- (2) an assessment of the likely complexity, length and expense of the litigation;
- (3) an evaluation of the amount of opposition to settlement among affected parties;
- (4) the opinion of competent counsel; and
- (5) the stage of the proceedings and the amount of discovery completed at the time of settlement.

J. In determining the adequacy of the proposed Settlement, the Court need not, and does not, decide the merits of the case. This Court has considered the submissions of the parties, which demonstrates a degree of uncertainty in Class Representatives prevailing in their claims. The Settlement Benefits set forth in the Settlement Agreement and noted above represent a significant benefit to the Class Members. Given the factual and legal obstacles standing in the way of a full recovery if this case were litigated to a conclusion, and the perils of maintaining an action through a final judgment or appeal, this Court finds that the Settlement provides for a reasonable and adequate recovery that is fair to all Class Members. If this case were to proceed without settlement, the resulting litigation would be complex, lengthy and expensive. The Settlement eliminates a substantial risk that the Class Members would walk away empty-handed after trial.

K. Further, CFI has defended this action vigorously and has indicated that it would continue to do so, absent settlement. Because of resulting motion practice, trial and appeals, it

could be a lengthy period before the Class Members would see any recovery even if they were to prevail on the merits, which would not produce a better recovery than they may have achieved in this Settlement.

L. The Parties negotiated the Settlement after a thorough review and analysis of the legal issues involved for nearly a year after the filing of the lawsuit. The facts demonstrate that the Class Representatives were sufficiently informed to negotiate, execute, and recommend approval of the Settlement. *See, e.g., Davies v. Continental Bank*, 122 F.R.D. 475, 479-80 (ED Pa.1996).

M. This Court may also consider the opinions of the participants, including Class Counsel. *Parker v. Anderson*, 667 F. 2d 1204, 1209 (5th Cir. 1984), cert. denied, 459 U.S. 828 (1985). Class Counsel has considerable experience in the prosecution of large and complex consumer class actions. Counsel for the Defendant is likewise experienced. This Court gives credence to the opinion of counsel, amply supported by the Court's independent review that this Settlement is a beneficial resolution of the class action claims.

N. In addition to finding that the terms of the proposed Settlement are fair, reasonable and adequate, the Court must determine there is no fraud or collusion between the parties or their counsel negotiating the settlement terms. *Bennett*, 737 F.2d 986; *Miller v. Republic National Life Insurance Company*, 559 F.2d 426, 428-29 (5th Cir. 1977). In this case, there is no suggestion of fraud or collusion between the parties. Furthermore, the terms of the Settlement, which were negotiated through mediation, make it clear that the process by which the Settlement was achieved was fair. *Miller*, 559 F.2d at 429.

O. Due to the efforts of Class Counsel, a class action consisting of 835 accounts has been certified for compensatory damages and equitable relief. The Class Action Settlement

Agreement negotiated by Class Counsel provides for a *pro rata* distribution to Class Members from a \$475,000.00 Settlement Fund after deduction of attorney's fees, costs, incentive award and administration expense ("Net Settlement Fund"), and the waiver and discharge of deficiencies against the Class Members in the principal sum of \$4,226,232.72, exclusive of interest.

P. The relief to the Class has significant value, both with respect to monetary compensation to the Class and other non-monetary benefits. In addition to the discharge of a significant deficiency obligation, each Class Member will have the benefit of improved credit upon possible clearance of their respective consumer reports. In sum, the monetary value of the common fund and results obtained by Class Counsel, on behalf of the Class, is believed by Class Counsel to be well in excess of \$4,3000,000.

Q. The terms of the Class Action Settlement Agreement, including all exhibits thereto, are fully and finally approved as fair, reasonable and adequate as to, and in the best interest of, the Class.

R. Through the Class Action Settlement Agreement, the parties agreed that Class Counsel would be paid reasonable attorney's fees under the common fund/benefit doctrine ("Attorney Fee Award"), together with litigation expenses, including court costs, mediation fees and travel expenses ("Litigation Expense Reimbursement").

S. As for the Attorney Fee Award, the request for \$_____ by Class Counsel is fair and reasonable compensation to Class Counsel in accordance with Wisc. Stat. § 803.08, and the factors set forth therein.

T. As for the Litigation Expense Reimbursement, Class Counsel has incurred litigation expenses, consisting of court costs, mediation fees and travel expenses totaling [INSERT] which the Court finds was necessary and reasonable in the representation of the Class.

U. Through the Class Action Settlement Agreement, the Parties agreed that the Class Representatives would receive, in addition to the class benefits, an incentive award of Ten Thousand Dollars (\$10,000.00) (“Class Representative Incentive Award”) for their efforts in obtaining the above-described benefits to the Class. The Court finds that such an award is reasonable and appropriate, in light of the results obtained.

Based on the foregoing, it is ORDERED AND ADJUDGED that:

1. The Class Action Settlement Agreement is hereby approved as final.
2. Without limiting any terms of the Class Action Settlement Agreement, including the release of claims as set forth in full in the Class Action Settlement Agreement, it is hereby ordered and adjudged that the terms of the Class Action Settlement Agreement and of this Final Approval Order shall forever be binding upon, and shall have preclusive effect (claim preclusion), in any and all pending and future lawsuits maintained by the Class Representatives and any and all other Class Members, as well as their heirs, executors, administrators, successors and assigns.
3. The Attorney’s Fee Award, the Litigation Expense Reimbursement, and the Class Representative Incentive Award shall be disbursed from the Settlement Fund in accordance with the provisions of the Class Action Settlement Agreement.
4. The Net Settlement Fund shall be disbursed to the Class Members in accordance with the provisions of the Class Action Settlement Agreement.
5. The claims of all members of the Class, except those Class Members who have excluded themselves from the Class pursuant to Section 3 of the Class Action Settlement Agreement, are hereby dismissed with prejudice, on the merits and without costs to any party. In light of the Notice given to the Class Members, the Plaintiffs and all Class Members shall be bound

by the Class Action Settlement Agreement and all of their Released Claims shall be dismissed with prejudice and released.

6. Neither this Final Approval Order, nor the Class Action Settlement Agreement (nor any other document referred to herein, nor any action taken to negotiate, effectuate, and implement the Class Action Settlement Agreement) is, may be construed as, or may be used as an admission or concession by or against any party hereto as to the validity or invalidity of any claim or defense, or of any actual or potential fault or liability, or of any lack of fault or liability. Additionally, neither the Class Action Settlement Agreement nor any negotiations, actions, or proceedings related to it, shall be offered, or received in evidence in any action or proceeding against any party hereto or CFI in any court, administrative agency, or other tribunal for any purpose whatsoever, except to enforce the provisions of this Final Approval Order and the Class Action Settlement Agreement.

7. Consummation of the Settlement shall proceed as described in the Class Action Settlement Agreement and the Court hereby retains jurisdiction in this matter in order to resolve any disputes which may arise in the implementation of the Class Action Settlement Agreement or the implementation of this Final Approval Order. The Court retains continuing jurisdiction for purposes of supervising the implementation of the Class Action Settlement Agreement and supervising the distribution of the Settlement Fund.

THIS ORDER IS A FINAL FOR PURPOSES OF APPEAL