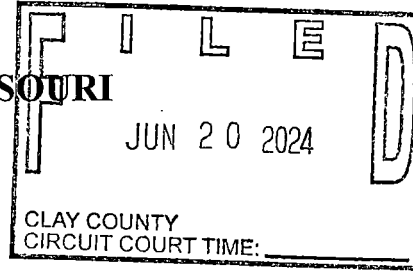


IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI



Automobile Acceptance Corp.,  
Plaintiff/Counterclaim-Defendant,

v.

Eugene Jerome Nichols,  
Defendant/Counterclaimant.

Case No.: 15CY-CV07631-01  
Division II

**Final Approval Order**

Upon careful review, consideration of the record, and making an independent judicial investigation into the allegations and defenses of the parties, the “Class Action Settlement Agreement and Release” filed November 16, 2023 (the “Agreement”), the evidence and comments of counsel as presented at the Fairness Hearing held on June 20, 2024, the memoranda filed with this Court, and all other filings for the parties’ settlement as memorialized in the Agreement (the “Settlement”); and for good cause shown, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Incorporation of Other Documents.** This Final Approval Order incorporates:
  - a. The Agreement, filed with this Court on November 16, 2023; and
  - b. The following exhibits to the Agreement: (i) Exhibit A (Class Mail Notice) and (ii) Exhibit B (Long-Form Notice available to the Class).

Unless otherwise provided, all capitalized terms in this Final Approval Order have the same meaning as those terms in the Agreement.

2. **Jurisdiction.** Because adequate notice was disseminated and all potential members of the Class (as defined below) were sent notice of and an opportunity to opt out of the Settlement, the Court has personal jurisdiction over all members of the Class. The Court has subject matter

jurisdiction over the Litigation, including, without limitation, jurisdiction to approve the proposed Settlement, to grant final certification of the Class, and to enter the accompanying Final Judgment.

3. **The Certified Class.** On October 3, 2022, the Court certified a class of consumers under Rule 52.08 defined as:

All persons to whom AAC mailed the form pre-sale notice or post-sale notice that was also mailed to Plaintiff. Excluded from the certified class are all persons: (1) against whom AAC has obtained a final deficiency judgment; (2) who filed for bankruptcy after the date on their pre-sale notice and whose bankruptcy ended in discharge rather than dismissal; and (3) to whom AAC issued its form pre-sale or post-sale notices prior to the date of August 8, 2010.

4. **Class Notice.** The Court finds the Class Mail Notices (both the Class Mail Notices and long form notice available on the website or upon request) and its distribution to the Class as implemented under the Agreement and the Preliminary Approval Order:

a. Constituted the best practicable notice to the members of the Class under the circumstances of this Litigation;

b. Constituted notice reasonably calculated, under the circumstances, to apprise the members of the Class of (i) the pendency of this Litigation and the proposed Settlement, (ii) their right to exclude themselves from the Class and the proposed Settlement, (iii) their right to object to any aspect of the proposed Settlement (including, but not limited to: final certification of the Class; the fairness, reasonableness or adequacy of the Settlement as proposed; the adequacy of Class Representatives and/or Class Counsel's representation of the Class; the proposed awards of attorneys' fees and expenses; and the proposed incentive award), (iv) their right to appear at the Fairness Hearing if they did not exclude themselves from the Class, and (v) the binding effect of the Orders and Judgment in the Litigation on all members of the Class who did not request exclusion;

c. Constituted notice that was reasonable and constituted due, adequate, and sufficient notice to all persons and entities entitled to be provided with notice; and

d. Constituted notice that fully satisfied the Missouri Rules of Civil Procedure 52.08, due process, and any other applicable law.

5. **Opt-Outs and Objections.** No member of the certified class exercised his or her right to optout of the Settlement or object to the Settlement.

6. **Final Settlement Approval.** The terms and provisions of the Agreement, including all exhibits, have been entered in good faith through arm's length negotiations, and not as the result of fraud or collusion. The Agreement is fully and finally approved as fair, reasonable and adequate as to, and in the best interests of, each of the Parties and the Class Members, and in full compliance with all requirements of the laws of Missouri, the United States Constitution (including the Due Process Clause), and any other applicable law. The Parties are directed to implement and consummate the Agreement according to its terms and provisions.

7. **Damages.** AAC has agreed not to contest a judgment being entered against it in an amount to be determined by the Court. However, no amount over \$2,000,000 may be satisfied from AAC's assets for its obligations required under this Agreement and any remaining amount may only be satisfied from AAC's other insurers, or its insurance agents or insurance brokers, besides Auto Owners or QBE. *See* Agreement ¶ 3.16. Damages will be decided at a later date.

8. **Assignment of Claims.** AAC assigns to Nichols and the Class all its rights under all insurance policies (other than insurance policies with Auto Owners or QBE) that may cover the Class Members' claims. *See* Agreement ¶ 3.16. Class Counsel may pursue recovery against AAC's insurers (other than Auto Owners or QBE), agents, and brokers, and attempt to recover against any effective insurance policies. Any recovery from the insurers, agents, or brokers will add to the

benefits made available to the Class under the Agreement. Class Members will receive funds from any recovery from the insurers after attorneys' fees and costs awarded by the Court are deducted. Nichols and the Class are granted leave to file any pleadings they wish related to Paragraphs 7 and 8 of this Final Approval Order.

9. **Binding Effect.** The Agreement, this Final Approval Order and the accompanying Final Judgment shall be forever binding on Class Representative, all the Class Members, and their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other person claiming by or through any or all of them. The Agreement, this Order and the accompanying Final Judgment shall have *res judicata* and other preclusive effect as to the "Releasers" for the "Released Claims" as against the "Released Persons," all as defined in the Agreement.

10. **Releases.** The Class Members (*i.e.*, those members of the Class who did not timely opt out) shall be bound by the Release provided in Paragraph 5 of the Agreement, which is incorporated in this Order, regardless of whether such persons received any compensation under the Agreement or Settlement. The Releases are effective as of the date of this Final Approval Order and the accompanying Final Judgment. The Court expressly adopts all defined terms in the Agreement.

11. **Enforcement of Settlement.** Nothing in this Final Approval Order or the accompanying Final Judgment shall preclude any action by any Party to enforce the terms of the Agreement.

12. **Claimed Deficiencies.** The Court has made an independent judicial investigation into the allegations and defenses of the parties. The Court finds AAC accrued no deficiency balances for Nichols and the Class, and AAC cannot collect any alleged deficiency balances

against Nichols and members of the Class. AAC must write off the claimed deficiency balances and cease all collection efforts regarding the loans of Nichols and the Class.

13. **Class Representatives Award.** The Court awards \$20,000 to be paid from the Cash Fund to Class Representative as an incentive award for his services as class representative in this Litigation.

14. **Class Relief.** As part of the Agreement, AAC will place \$2,000,000 into the Cash Fund for monetary recoveries for class members, attorneys' fees, costs, and Class Representative's incentive award. AAC has also agreed to write off \$11,630,000 in debt AAC claims the Class Members owe. *See* Agreement ¶ 3.11. AAC has also agreed to submit requests to credit bureaus Experian, Equifax, TransUnion, and Innovis to delete the Class Members' "tradelines" associated with their accounts subject to the Settlement. *See* Agreement ¶ 3.12. Missouri courts have assigned a "conservative" value of \$10,000 per class member for getting these tradelines removed from their credit reports. *See Universal Credit Acceptance, Inc. v. Myers*, Case No. 15JE-AC05976-01 (Mo. Cir. Feb. 8, 2021); *see also Anheuser Busch Employees' Credit Union v. Wells*, Case No. 1522-AC09263-01 (Mo. Cir. July 10, 2018).<sup>1</sup>

15. **Attorneys' Fees and Expenses.** The Court approves and awards Class Counsel from the Cash Fund \$40,000 for reimbursement of litigation costs and expenses and \$1,600,000 in attorneys' fees, which represents less than 5% of the Total Class Benefit after considering monetary relief, deficiency write-offs, and deletion of Class Members' negative credit tradelines.

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<sup>1</sup> *Wells* and *Myers* are similar class actions based on the same types of violations (UCC notices) and remedies sought (statutory damages, deletion of negative credit tradeline, deficiency waiver). A credit damages expert estimated the benefit of having the negative auto loan tradeline deleted from the class members' credit reports, using an "ultra-conservative estimate," equated to \$10,000 per class member. The courts took the estimated credit benefits of \$10,000 per class member into account when it calculated the aggregate benefits conferred to the class. *See, e.g., Myers*, No. 15JE-AC05976-01 at 9 n. 1 ("Using an estimate of \$10,000 in benefit conferred to each class member for deleting their tradeline from their credit reports, the Class also receives a benefit of approximately \$77,010,000 (\$10,000 per each of the 7,701 identified class members).").

See *Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 267 (Mo. App. E.D. 2011). Although *Bachman* approved an award of 35% of the total benefits and 81% of the monetary benefits, *id.* at 264-65, 267, Class Counsel’s requested fee award in this case is a substantially lower percentage of *both*. The monetary benefits (cash plus the elimination of deficiency balances) are about \$13.63 million. The Agreement also provides injunctive relief by requiring AAC to delete negative information on credit reports, which is a properly considered component of the common fund in assessing Class Counsel’s percentage fee. See, e.g., *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003) (“[C]ourts should consider the value of the injunctive relief obtained as a ‘relevant circumstance’ in determining what percentage of the common fund class counsel should receive as attorneys’ fees.”). The Court finds the value of the benefit to Class Members’ credit reports is over \$24.66 million. The debt relief the Class Members are receiving is significant—in that it effectively eradicates deficiency balances hanging over them—and the credit repair, supported by expert testimony and valuation, is important too. Courts have approved fee percentages equal to or greater than the request here when the facts and circumstances justify it, and the facts and circumstances clearly justify it:

- a. The Court is acquainted with all the issues involved and the work performed by Class Counsel.
- b. The result achieved is exceptional. “One consideration in determining the amount of attorneys’ fees is the result achieved.” *Berry v. Volkswagen Grp. of Am., Inc.*, 397 S.W.3d 425, 431 (Mo. banc 2013). This is considered “the most critical factor[.]” *Trout v. State*, 269 S.W.3d 484, 488 (Mo. App. W.D. 2008) (quotation mark omitted). Through their settlement negotiations, and by obtaining preliminary and final approval of the Settlement Agreement, Class Counsel and Nichols achieved exceptional results

on behalf of the Class, with the total quantifiable benefit conferred on the Class valued at approximately \$38,290,000, which is the sum of (1) \$2,000,000 in monetary relief, (2) \$11,6300,000 in debt write-offs, and (3) \$24,660,000 in value for removal of Class Members' negative tradelines from their credit reports.

- c. The fee request is within the market rates customarily charged in Missouri. Another factor this Court may consider is the "rates customarily charged by the attorneys involved in the case and by other attorneys in the community for similar services[.]" *Berry*, 397 S.W.3d at 431. This factor essentially allows the Court to mimic the market because the Supreme Court of Missouri held the Court should "ensure a market fee that compensated class counsel for taking this case in lieu of working less risky cases on an hourly basis." *Id.* at 433. Contingency fees in the 30% to 40% range, and even as high as 50%, are common in Missouri. *See, e.g., Hervey v. Missouri Dep't of Corr.*, 379 S.W.3d 156, 165 (Mo. banc 2012) (referencing a 50% contingent-fee contract); *Tobin v. Jerry*, 243 S.W.3d 437, 439-44 (Mo. App. E.D. 2007) (33.33%–40% contingent fee); *Dominion Home Owners Ass'n v. Martin*, 953 S.W.2d 178, 182-83 (Mo. App. W.D. 1997) (40% contingent fee but no abuse of discretion where trial court awarded more than 40%); *Int'l Materials Corp. v. Sun Corp.*, 824 S.W.2d 890, 891–92 (Mo. banc 1992) (referencing contingent-fee agreements with varying percentages of 40%, 45%, and 50%). Class Counsel's customary contingency fee agreement, and their fee agreement with the Class Representative, is in line with these examples above, the market rate in Missouri, and elsewhere. It provides for attorneys' fees equal to 40% of the benefits conferred on the client, including money, elimination of deficiencies, and deletion of negative information from credit reports if secured before trial and 50%

thereafter. The contingency fee agreement here is also like those used by both sophisticated and unsophisticated clients in the market. The “market fee that compensate[s] class counsel for taking this case in lieu of working less risky cases on an hourly basis,” *Berry*, 397 S.W.3d at 433, is equal to the fee requested.

- d. The issues involved were novel, complex, and justify the fee award. This Court may also consider the “the complexity of the issues[.]” *Bachman*, 344 S.W.3d at 267. This lawsuit wasn’t an ordinary consumer lawsuit. The factual and legal issues presented by this class action were novel and complex. This case also began in a *defensive* posture and then, effectively, turned Nichols into a class representative plaintiff. This is a rare procedural format from which a class action would arise and speaks to Class Counsel’s creativity in pursuing this harm. Moreover, Class Counsel demonstrated a mastery of the UCC.
- e. The “risks” to which Class Counsel were exposed is another factor this Court may consider. *Bachman*, 344 S.W.3d at 267. “In assessing this factor, courts consider the defendant’s ability to withstand an adverse judgment and the risks of establishing liability at trial.” *Cosgrove v. Citizens Auto. Fin., Inc.*, 2011 WL 3740809, at \*9 (E.D. Pa. Aug. 25, 2011). Class Counsel “accepted this representation solely on a contingent fee basis,” which means they “assumed the risk of receiving no compensation for the time invested or reimbursement for expenses advanced if [the Class’s] claim did not succeed. This risk was substantial, not only because of the difficulty in prevailing on such a claim, but also because the necessary investment of time and resources likely would be substantial given [AAC’s] tenacious defense[.]” *Zweig v. Metropolitan St. Louis Sewer Dist.*, 412 S.W.3d 223, 250 (Mo. banc 2013). Class Counsel achieved

these remarkable results while shouldering the risk of litigating against AAC, yet they did so in a lean fashion without enlisting other law firms to share the risk. Awarding a higher fee for higher risk is simply common sense: doing so both rewards counsel for excellent success and incentivizes them to undertake socially valuable litigation in the future. This factor weighs heavily in favor of the requested fee award. *Tussey v. ABB, Inc.*, 2019 WL 3859763, at \*4 (W.D. Mo. Aug. 16, 2019) (“Unquestionably, with high-risk and high-cost cases such as this, contingency fee arrangements are the ‘key to the courthouse’ for individuals taking on a large corporation. Courts in this Circuit and this District have frequently awarded attorney fees of 33 1/3%–36% of a common fund.”)

- f. Another factor the Court may consider is “the experience, reputation, and skill of the attorneys involved.” *Bachman*, 344 S.W.3d at 267; *see Berry*, 397 S.W.3d at 431 (“the degree of professional ability required” and “the vigor of the opposition” are factors a court “may” consider). “Complex class actions require unique legal skills and abilities.” *Zubia v. Shamrock Foods Co.*, 2017 WL 10541431, at \*17 (C.D. Cal. Dec. 21, 2017) (internal quotation marks omitted). Class Counsel is highly experienced, having successfully litigated other class actions, and is actively involved in litigating many other consumer class actions like this one. The Court agrees with the court in the *Trimble* case, which found that: “Class Counsel is experienced and highly skilled in class action and consumer litigation with a reputation justifying the fee award. Class Counsel has also submitted high-quality work to the Court throughout the litigation, and they pursued the case vigorously against skilled and experienced opposing counsel.” *Vantage Credit Union v. Trimble*, 1011-CV08076 (Mo. Cir. Mar. 22, 2013).

- g. The fee award is less than that granted in similar cases involving complex litigation or in the class-action context.
- h. The Agreement and Long-Form Notice informed the Class that Class Counsel would apply for fee awards in the amounts requested. No member of the Class has objected to such awards or the Settlement.

16. **No Other Payments.** The preceding paragraphs of this Final Approval Order preclude, without limitation, all claims for attorneys' fees and expenses, costs or disbursements incurred by Class Counsel or any other counsel representing Class Representative or the Class, or incurred by Class Representative or the Class Members, or any of them, in connection with or related in any manner to this Litigation, the Settlement of this Litigation, the administration of such Settlement, and/or the Released Claims, except to the extent otherwise specified in this Final Approval Order or the Agreement.

17. **Retention of Jurisdiction.** The Court has jurisdiction to enter this Final Approval Order and the accompanying Final Judgment. Without affecting the finality of this Final Approval Order and the accompanying Final Judgment, this Court expressly retains jurisdiction on all matters relating to the administration and enforcement of the Agreement and Settlement and of this Final Approval Order and the accompanying Final Judgment, and for any other necessary purpose as permitted by law, including, without limitation:

- a. enforcing the terms and conditions of the Agreement and Settlement and resolving any disputes, claims or causes of action that, in whole or in part, are related to the administration and/or enforcement of the Agreement, Settlement, this Final Approval Order or the Final Judgment (including, without limitation, whether a person is or is not a

member of the Class or a Class Member; and whether any claim or cause of action is or is not barred by this Final Approval Order and the Final Judgment);

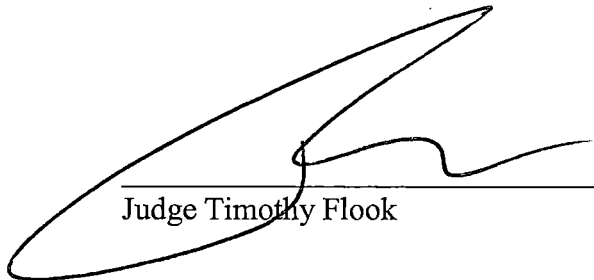
b. entering such additional Orders as may be necessary or appropriate to protect or effectuate the Court's Final Approval Order and the Final Judgment and/or to ensure the fair and orderly administration of the Settlement and distribution of the Settlement Fund, including presiding over any garnishment actions; and

c. entering any other necessary Orders to protect and effectuate this Court's retention of continuing jurisdiction.

18. **Separate Judgment.** The Court will separately enter the accompanying Final Judgment.

**IT IS SO ORDERED.**

Date: 6/20/24

  
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Judge Timothy Flook