

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

Preliminary Approval Order

WHEREAS, Eugene Nichols ("Class Representative") is asserting claims against Automobile Acceptance Corporation Inc. ("AAC") for alleged violations of the Uniform Commercial Code, and seeking statutory damages and other relief for himself and a class of persons similarly situated (the "Class") as certified by this Court on October 3, 2022, and defined in Exhibit 1 to the Joint Motion for Preliminary Approval of Class Action Settlement.

WHEREAS, the Parties stipulate to a Class¹, pending preliminary and final approval by the Circuit Court for Clay County, Missouri, comprising and defined all persons to whom AAC mailed the form pre-sale notice or post-sale notice that was also mailed to Plaintiff. Excluded from the 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.

WHEREAS, Class Representative, as member and representative of the Class, and AAC have entered into a "Class Action Settlement Agreement and Release" dated 7/27/23, 2023 (the

¹ This Court granted Counterclaimants motion for class certification by Order on October 3, 2022. The "Class Members" as defined in the Order are the same members that comprise the Class in this Settlement except that the "Class" excludes anyone only mailed a pre-sale or post-sale notice prior to August 8, 2010.

“Agreement”), which memorializes the Parties’ negotiated and agreed-upon settlement as between AAC and the proposed Class, subject to the approval of the Court (“the Settlement”).

WHEREAS, the Parties have filed a *Joint Motion for Preliminary Approval of Class Action Settlement* with the Court.

NOW THEREFORE, upon careful consideration of the *Joint Motion for Preliminary Approval of Class Action Settlement*, and after reviewing the Agreement and making an independent judicial investigation into the allegations and defenses of the parties, and for good cause shown, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Under Missouri Supreme Court Rule 52.08, the Agreement and the Settlement are approved preliminarily as fair, reasonable and adequate to the Class as defined in the Agreement, subject to further consideration at the Fairness Hearing described in Paragraph 14 of this Order.

2. The definitions in the Agreement are incorporated by reference into this Order (and the capitalized terms in this Order are consistent with the Agreement).

3. Class Representative and AAC have executed the Agreement to settle and resolve the Litigation between them and the Class, subject to approval of the Court.

4. This Court certified the Class on October 3, 2022, under Missouri Supreme Court Rule 52.08, finding the following class of persons as the “Class”:

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, 2010.²

² In the Amended Class Certification Order, the Court only excluded class members mailed a pre-sale or post-sale notice before August 6, 2008. However, based on the six-year statute of limitations and the fact Nichols filed the class action counterclaim on August 8, 2016, the Parties’ have stipulated that the Class must exclude anyone only mailed notices prior to August 8, 2010. The Court agrees this is the proper date for determining class membership.

The Court is informed that the Settlement Agreement adopts the Court's class definition as set forth in its Order granting class certification so all findings made by the Court in the Order apply to this Class.

5. AAC must cease all collection efforts regarding the loans that have deficiency balances and are the subject of the Litigation.

6. For this preliminary approval, and for all matters relating to the Settlement and the Litigation, the Court appoints Eugene Nichols as the Class Representative of the Class, and Martin L. Daesch, sole member of MLD Law Firm, LLC; Jesse B. Rochman, sole member of JBR Law, LLC; Craig W. Richards of OnderLaw LLC; and OnderLaw, LLC, as Class Counsel for the Class until further order of the Court.

7. By this Order, the Court exercises subject-matter and personal jurisdiction over the Class to evaluate the final certification of the Class and the fairness and adequacy of the Settlement.

8. The Class Mail Notice and Long-Form Notice, as set forth in **Exhibits A and B** to the Agreement, are approved.

9. The Class Mail Notice in a form substantially the same as set forth in Exhibit A to the Agreement shall be mailed by the Settlement Administrator by first-class mail, postage prepaid, to all members of the Class (as identified on **Exhibit C** of the Agreement). Such mailing shall be made within the timeframe provided by the Agreement. The Long-Form Notice in a form substantially the same as set forth in **Exhibit B** to the Agreement shall be available to members of the Class on a website and mailed by first-class mail, postage prepaid, to Class Members upon their request.

10. The Agreement contemplates a notice methodology that protects the interests of the Parties and the Class and provides the best notice practicable under the circumstances and is

reasonably calculated to apprise the Class Members of the pendency of the Litigation and proposed Settlement, the Agreement, and their right to opt out and exclude themselves from or object to the proposed Settlement. In addition, the Court finds that the notice methodology is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice of the proposed Settlement and meets all requirements of law, including, but not limited to, Missouri Supreme Court Rule 52.08 and the Due Process Clause of the Fourteenth Amendment of the United States Constitution and the Missouri Constitution.

11. Prior to the Fairness Hearing, Class Counsel shall cause the Settlement Administrator to serve and file a sworn statement of a person with knowledge, evidencing compliance with this Order concerning the mailing of the Class Mail Notice.

12. Any member of the Class desiring exclusion from the Class shall mail a request to opt out ("Request to Opt Out") to the Settlement Administrator. To be valid, the Request to Opt Out must be postmarked within 30 days after mailing of the Notice to class members. Such Request to Opt Out shall include: (a) the name, address, telephone number, and last four digits of the Social Security Number of the Class Member; (b) a statement that the Class Member and all other borrowers named on the Class Member's Retail Installment Contract and Security Agreement or governing loan agreement are seeking exclusion from or to opt out of the Settlement; (c) the signature of each person who was a party to the Retail Installment Contract and Security Agreement or governing loan agreement that is the subject of this Litigation (unless any such person shall be deceased); and (d) a reference to *Automobile Acceptance Corp. v Eugene Nichols*, Case No. 15CY-CV07631-01. Any member of the Class who does not properly and timely request exclusion or to opt out from the Class shall be included in the Class and be bound by any judgment entered with respect to the Class.

13. Within five days before the Fairness Hearing (defined below), Class Counsel shall cause the Settlement Administrator to file with the Court a sworn statement listing those persons (by reference to the unique identifier and last four digits of the person's Social Security Number—as provided on **Exhibit C** to the Agreement) who submitted timely Requests to Opt Out. The originals of all Requests to Opt Out shall be retained by the Parties.

14. A hearing (the "Fairness Hearing") shall be held before the undersigned at Jan, on Feb. 26, 2023, at the Seventh Judicial Circuit of Clay County, Missouri, 11 S Water St Off, Liberty, MO 64068. At the Fairness Hearing, the Court will consider: (a) the fairness, reasonableness, and adequacy of the Settlement; (b) the entry of any final order or judgment with respect to the Class; (c) the application for an incentive award for the services rendered by Class Representative on behalf of the Class; (d) the application for attorney's fees and for reimbursement of expenses by Class Counsel; and (e) other related matters. The Fairness Hearing may be postponed, adjourned or continued by the Court without further notice to the Class.

15. To be considered at the Fairness Hearing, any person desiring to file an objection or other comment on the Settlement shall be required to file all such objections and comments and all supporting pleadings prior to or during the Fairness Hearing, with service upon Class Counsel and AAC's Counsel filed prior to the hearing. Any Class Member's objection must be in writing and shall specifically include:

- (i) The name, address, telephone number, facsimile number (if available), email address (if available) and last four digits of the Social Security Number of the Class Member filing the objection;
- (ii) A statement of each objection asserted;
- (iii) A detailed description of the facts underlying each objection;
- (iv) Any loan documents in the possession or control of the objector and relied upon by the objector as a basis for the objection;

- (v) If the objector is represented by counsel, the name, address, telephone number, facsimile number (if available) and email address (if available) of the counsel, and a detailed description of the legal authorities supporting each objection;
- (vi) If the objector plans to utilize expert opinion and/or testimony as part of the objection(s), a written expert report from all proposed experts that outlines each of the expert's opinions and the factual and substantive bases thereof;
- (vii) If the objector plans to call a witness or present other evidence at the hearing, the objector must state the identity of the witness and identify any documentary evidence by attaching the documents to the objection, and the objector must provide any other evidence that the objector intends to present;
- (viii) A statement of whether the objector intends to appear at the hearing;
- (ix) A copy of any exhibits which the objector may offer during the hearing;
- (x) A reference to "*Automobile Acceptance Corp. v Eugene Nichols*, Case No. 15CY-CV07631-01;" and
- (xi) A certification under 28 U.S.C § 1746 or similar state law in substantially the following form: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

No Objection to or other comment concerning the Settlement shall be heard after the Fairness Hearing. Class Counsel and AAC's Counsel shall promptly furnish each other with copies of all objections or written requests to opt out that come into their possession.

16. Any Class Member who does not make his or her objection at the Fairness Hearing, or prior to the Fairness Hearing, shall be deemed to have waived any such objection and shall forever be foreclosed from making any objection to the Settlement, including but not limited to, the propriety of class certification, the adequacy of any notice, or the fairness, adequacy or reasonableness of the Settlement. The procedures and requirements for filing objections to the Agreement and Settlement should ensure the efficient administration of justice and the orderly presentation of any Class Members' objections to the Agreement, in accordance with such Class Members' due process rights. Objectors who fail to properly or timely file their objections with

the Clerk of the Court with the required information and documentation set forth above, or fail to serve them as provided above, shall not have their objections be considered by the Court.

17. Submissions of the Parties relative to the Settlement, including memoranda to support the Settlement, applications for attorney's fees and reimbursement of costs or expenses by Class Counsel, and any applications for the payment of services rendered by Nichols as Representative of the Class, shall be filed with the Clerk of the Court at least seven days prior to the Final Fairness Hearing. Any attorney hired by a Class Member at the Class Member's expense to object to the Settlement, or to any application for an incentive award or for an award of attorney's fees, costs, or expenses, shall file with the Clerk of Court and serve upon Class Counsel and Counterclaim Defendant's Counsel a written notice of appearance within 30 days after the mailing of class notice.

18. Any Class Member may appear at the Fairness Hearing in person, or by counsel if an appearance is filed and served as provided in the Long Form Notice, and such person will be heard to the extent allowed by the Court.

19. All other events contemplated under the Agreement to occur after entry of this Order and before the Fairness Hearing shall be governed by the Agreement and the Class Mail Notice, to the extent not inconsistent with this Order. Class Counsel and AAC's Counsel shall take such further actions as required by the Agreement.

20. The Parties shall be authorized to make nonmaterial changes to the Class Mail Notice and Long-Form Notice if Class Counsel and AAC's Counsel agree.

21. All claims against and motions in the Litigation, other than such as may be necessary to carry out the terms and conditions of the Agreement or the responsibilities related or incidental thereto, are stayed and suspended until further order of this Court.

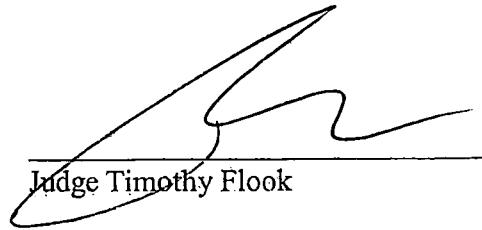
22. The "Released Claims" of the "Releasers" as against the "Released Persons," all as defined in the Agreement, other than such as may be necessary to carry out the terms and conditions of the Agreement or the responsibilities related or incidental thereto, are stayed and suspended until further order of this Court.

23. If Final Approval of the Settlement does not occur, or if the Settlement is rescinded or terminated, the Settlement and all proceedings had in connection therewith shall be null and void and without prejudice to the rights of the Parties before the Settlement was executed and made, and all Orders issued for the Settlement shall be vacated, except the Courts certification Order of October 3, 2022 shall not be vacated unless specifically ordered by this Court.

24. Entering into or carrying out the Agreement, and any negotiations or proceedings related to it, shall not be construed as, or deemed evidence of, an admission or concession regarding any claims or defenses alleged or asserted, or any factual or legal assertions in the Litigation, and shall not be offered or received in evidence in any action or proceeding against any party in any court, administrative agency or other tribunal for any purpose, except in a proceeding to enforce this Order and the Agreement, or to prove or show that a compromise in settlement of the Released Claims per the Agreement was reached; provided, however, this Order and the Agreement may be filed in any action filed against or by AAC or any Released Person to support a defense of *res judicata*, collateral estoppel, release, waiver, good faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim. The Parties expressly reserve all rights and defenses to all claims and causes of action and waive no such rights or defenses if the Agreement is not approved or fails to become effective for any reason.

IT IS SO ORDERED.

Date: 11/17/23



Judge Timothy Flook