

TWENTY-FIRST JUDICIAL CIRCUIT COURT
ST. LOUIS COUNTY, MISSOURI

FILED

NOV 21 7 2023

-JOAN M GILM
CIRCUIT CLERK, ST. LOUIS MO

LOU BUDKE'S ARROW
FINANCE COMPANY,

Plaintiff/Counterclaim-Defendant,

v.

RICHARD KYLES,

Defendant/Counterclaimant.

Case No. 15SL-AC29334-01
Division 31-M

Preliminary Approval Order

WHEREAS, Richard Kyles ("Kyles") is asserting claims against Lou Budke's Arrow Finance Company ("Lou Budke") for alleged violations of Missouri Chapter 408, the Uniform Commercial Code, and common law, and seeks statutory damages and other relief for himself and a class of persons similarly situated who obtained a secured collateralized loan or financing from Lou Budke where the collateral was repossessed.

WHEREAS, the Parties stipulate to a Settlement Class, pending preliminary and final approval by the Circuit Court of St. Louis County, Missouri, comprising and defined as all persons to whom Lou Budke has mailed a pre-sale notice or a post-sale notice.

WHEREAS, Kyles, as a member and representative of the Settlement Class, and Lou Budke have entered into a "Class Action Settlement Agreement and Release" dated October 30, 2023 (the "Agreement"), which memorializes the Parties' negotiated and agreed-upon settlement as between them and a proposed Settlement Class, subject to the approval of the Court ("the Settlement").

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

NOW THEREFORE, upon careful consideration of the *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 Settlement Class as defined in the Agreement, subject to further consideration at the Fairness Hearing described in Paragraph 13 of this Order.

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

3. Kyles and Lou Budke have executed the Agreement to settle and resolve the Litigation as between them and the proposed Settlement Class, subject to approval of the Court.

4. Upon review of the *Motion for Preliminary Approval of Proposed Class Action Settlement*, this Court preliminarily certifies, under Missouri Supreme Court Rule 52.08, the following class of persons as a settlement class (the "Settlement Class"):

All persons to whom Lou Budke mailed a presale notice or a post-sale notice.

Excluded from the class are persons whom Lou Budke has obtained a final deficiency judgment or who filed for bankruptcy after the date on their presale notice and whose bankruptcy ended in discharge rather than dismissal.

The Court finds:

a. The Settlement Class is so numerous that joinder of all members is impracticable.

- b. There are questions of law or fact common to the Settlement Class that predominate over questions affecting only individual members of the Settlement Class.
- c. Kyles's claims are typical of those of the members of the Settlement Class.
- d. Kyles and Class Counsel will fairly and adequately represent and protect the interests of the members of the proposed Settlement Class.
- e. Certification of the Settlement Class as proposed is a superior and appropriate method for the fair and efficient adjudication of the controversies between the Settlement Class and Lou Budke.
- f. Under Missouri law, Lou Budke accrued no deficiency balances for Kyles and the Settlement Class and Lou Budke cannot collect any deficiency judgment against Kyles and members of the Settlement Class because the presale notices sent by Lou Budke to Kyles and members of the Settlement Class failed to comply with the Missouri UCC. *Show-Me Credit Union v. Mosley*, 541 S.W.3d 28 (Mo. App. 2018) ("any right to a deficiency accrues only after strict compliance with the relevant statutes"). Lou Budke must write off the claimed deficiency balances and cease all collection efforts regarding the loans that are the subject of the Litigation.
5. For this preliminary approval, and for all matters relating to the Settlement and the Litigation, the Court appoints Kyles as Representative of the Settlement Class and Martin L. Daesch, Jesse B. Rochman, and Craig W. Richards of the law firm OnderLaw, LLC, as Counsel for the Settlement Class ("Class Counsel") until further

order of the Court.

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

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

8. The Class Mail Notice, in a form substantially the same as that set forth in Exhibit A to the Agreement, shall be mailed by the Administrator by first-class mail, postage prepaid, to all members of the Settlement Class (as identified on Exhibit C of the Agreement). Such mailing shall be made within 10 business days after entry of this Preliminary Approval Order. The Long-Form Notice, in a form substantially the same as that set forth in Exhibit B to the Agreement, shall be provided to members of the Settlement Class on a website and mailed by first-class mail, postage prepaid, to Settlement Class Members upon their request.

9. The Agreement contemplates a notice methodology that protects the interests of the Parties and the Settlement Class and provides the best notice practicable under the circumstances and is reasonably calculated to apprise the Settlement 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 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.

10. Prior to the Fairness Hearing, Class Counsel shall cause the 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.

11. Any member of the Settlement Class desiring exclusion from the Settlement Class shall mail a request to opt out ("Request to Opt Out") to the Settlement Administrator at American Legal Claim Services, LLC at the address identified in the Long-Form Notice. To be valid, the Request to Opt Out must be postmarked by

1/19/24 Such Request to Opt Out shall include: (a) the name, address, telephone number, and last four digits of the Social Security Number of the Settlement Class Member; (b) a statement that the Settlement Class Member and all other borrowers named on the Settlement 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, in which case the opt-out submission shall include a copy of such person's death certificate); and (d) a reference to *Lou Budke's Arrow Finance Co. v. Richard Kyles*, Case No. 15SL-AC29334-01. Any member of the Settlement Class who does not properly and timely request exclusion or to opt out from the Settlement Class shall be included in the Settlement Class and be bound by any judgment entered with respect to the Class.

12. Within a reasonable period after the deadline for submitting Requests to Opt Out, but before the Fairness Hearing (defined below), Class Counsel shall cause the

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.

13. A hearing (the "Fairness Hearing") shall be held before the undersigned at 10 AM on 1/29/24, at the Twenty-First Judicial Circuit, 105 S Central Ave., Clayton, Missouri 63105. 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 Settlement Class; (c) the application for an incentive award for the services rendered by Kyles as Representative of the Settlement 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.

14. 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 by 1/19/24, with service upon Class Counsel and Counterclaim Defendant's Counsel postmarked by 1/19/24. Any Settlement 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 Settlement 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 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 "*Lou Budke's Arrow Finance Company v. Richard Kyles*, Case No. 15SL-AC29334-01;" 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 unless timely filed under the guidelines specified above and in the Agreement. Class Counsel and Lou Budke's Counsel shall promptly furnish each other with copies of all objections or written requests to opt out that come into their possession.

15. Any Settlement Class Member who does not make his or her objection in the manner provided in this Order 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 Settlement Class Members' objections to the Agreement, in accordance with such Settlement 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 be heard during any hearings, nor shall their objections be considered by the Court.

16. Submissions of the Parties relative to the Settlement, including memoranda to support the Settlement, applications for attorney's fees and reimbursement of expenses by Class Counsel, and any applications for the payment of services rendered by Kyles, as Representative of the Settlement Class, shall be filed with the Clerk of the Court by (/ / 9/. Any attorney hired by a Settlement Class Member at the Settlement 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 or expenses shall file with the Clerk of Court and serve upon Class Counsel and Defendant's Counsel a written notice of appearance no later than {LJ.b zerclaim f.

17. Any Settlement 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. No person shall be permitted to be heard unless, by 1/Jy, such person has (a) filed with the Clerk of the Court a notice of such person's intention to appear; (b) served copies of such notice upon Class Counsel and Lou Budke's Counsel; and (c) complied with all

prerequisites as set forth herein to be heard.

18. 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 Lou Budke's Counsel shall take such further actions as required by the Agreement.

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

20. 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.

21. 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.

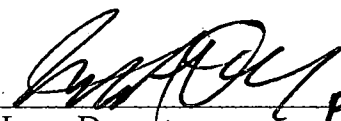
22. If Final Approval of the Settlement does not occur, or if the Settlement is rescinded or terminated, the Settlement and all proceedings had in connection therewith shall be null and void and without prejudice to the rights of the Parties before the Settlement was executed and made, and all Orders issued for the Settlement shall be vacated.

23. 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 Lou Budke 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: 11/27/23



Judge Jason Denney *pin 31*