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**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

HERMAN RAGLAND  
Plaintiff

Case No: CV-22-968540

Judge: DEENA R CALABRESE

MAZDA FINANCIAL SERVICES  
Defendant

**JOURNAL ENTRY**

96 DISP.OTHER - FINAL

FINAL SETTLEMENT APPROVAL ORDER AND FINAL JUDGMENT.

OSJ.

COURT COST ASSESSED AS DIRECTED.

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER  
PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL  
PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

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Judge Signature

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Date

2024 JAN -4 A 8:46  
CLERK OF COURTS  
CUYAHOGA COUNTY

**FILED**

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

HERMAN RAGLAND,	)	CASE NO. CV-22-968540
	)	
Plaintiff,	)	JUDGE DEENA R. CALABRESE
v.	)	
	)	<b><u>FINAL SETTLEMENT APPROVAL</u></b>
MAZDA FINANCIAL SERVICES,	)	<b><u>ORDER AND FINAL JUDGMENT</u></b>
	)	
Defendants.	)	
	)	

This matter is before the Court on the Motion for Final Approval of Proposed Settlement and Final Certification of the Class filed by Plaintiff Herman Ragland (“Class Representative” or “Plaintiff”) and Defendant Mazda Financial Services (“MFS”), which seeks approval of a class action settlement between Plaintiff and MFS under Ohio Rule of Civil Procedure 23(E), and the unopposed Motion for Order Awarding Attorneys’ Fees and Costs and Incentive Payment to the Class Representative filed by Plaintiff.

This Court recognizes that settlement of class actions is generally favored and encouraged. *Sutherland v. ITT Residential Capital Corp.*, 122 Ohio App.3d 526, 536, 702 N.E.2d 436, 443 (6th Dist.1997) citing *State ex rel. Wright v. Weyandt* (1977), 50 Ohio St.2d 194, 4 O.O.3d 383, 363 N.E.2d 1387. However, it is the duty of the Court to assure that the settlement of a class action is reasonable and fair to absent class members and is not the subject of collusion between the parties. Ohio Rule of Civil Procedure 23(E) provides important protections for class members and establishes requirements for the approval of a proposed class action settlement:

- A. Members of the class must be given notice in a reasonable manner of the proposed settlement;
- B. The parties seeking approval must file a statement identifying any agreement made in connection with the proposed settlement;

- C. Any class member may object to the proposed settlement; and
- D. A court may only approve a settlement after a fairness hearing and only upon a finding that the proposed settlement is fair, reasonable, and adequate.

The first three steps have been satisfied. The Parties filed a Motion for Preliminary Approval of Class Action Settlement, which included a copy of the Settlement Agreement,<sup>1</sup> and the Court granted preliminarily approval of the proposed settlement by Order entered on September 25 2023 (the “Preliminary Approval Order”). Pursuant to the terms of the Preliminary Approval Order and the Settlement Agreement, the Settlement Class Members were sent notices of the proposed settlement by First Class Mail. The Court finds that the notices were provided in a reasonable manner and were the best notices practicable under the circumstances. The Class Notices informed the Settlement Class Members of their opportunity to object to the proposed settlement or to exclude themselves from the Settlement Class and provided procedures for objection and exclusion. This Court has received evidence, reviewed the papers filed in support of the Motion, including the Settlement Agreement and Exhibits thereto, memoranda, and supporting declarations, reviewed any written objections to the proposed settlement, and heard arguments of counsel for the parties. In addition, the Court conducted a fairness hearing on December 15, 2023. The only remaining step is for this Court to decide whether the settlement is fair, reasonable, and adequate pursuant to Ohio Rule of Civil Procedure 23(E)(2).

#### **I. SETTLEMENT APPROVAL**

The determination of whether a proposed class settlement is fair, reasonable, and adequate requires the Court to consider and balance several factors, which include:

1. Plaintiff’s likelihood of ultimate success on the merits balanced against the amount and form of relief offered in settlement;

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<sup>1</sup> The Settlement Agreement between the parties is attached hereto as Exhibit 1 and incorporated herein. All defined terms in the Settlement Agreement shall have the same meaning herein as in the Settlement Agreement itself.

2. The complexity, expense and likely duration of the litigation;
3. The stage of the proceedings and the amount of discovery completed;
4. The judgment of experienced trial counsel;
5. The nature of the negotiations;
6. The objections raised by the class members; and
7. The public interest.

*In re Telectronics Pacing Sys. Inc.*, 137 F. Supp. 2d 985, 1009 (S.D. Ohio 2001); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 245 (S.D. Ohio 1991) *see also Shock, v. Advantage Bank*, 2005 WL 5574248 (Montgomery C.C.P. 2005) *citing Beder v Cleveland Browns, Inc.* (Cuyahoga C.C.P. 2001), 114 Ohio Misc. 2d 26. 28.

**A. The Likelihood of Ultimate Success on the Merits**

“The most important of the factors to be considered in reviewing a settlement is the probability of success on the merits.” *In re General Tire & Rubber Co. Sec. Litig.*, 726 F.2d 1075, 1086 (6th Cir. 1984).<sup>2</sup> In this instance, Mr. Ragland’s claims are premised on allegations that the standard forms MFS used in post-repossession notices for the six years preceding the filing of the instant action violated provisions of RISA and the Ohio UCC. R.C. § 1317.12 specifically limits the amounts and types of expenses allowed to be included in the reinstatement. R.C. § 1317.16 requires notifying the debtor of the minimum bid price, time and place of public sale. R.C. § 1309.613/614 requires that a debtor, for the public sale of collateral, be notified of the day, date,

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<sup>2</sup> Ohio Civ.R. 23, is nearly identical to Fed.R.Civ.P. 23.” *Lucio v. Safe Auto Ins. Co.*, 183 Ohio App.3d 849, 2009-Ohio-4816, 919 N.E.2d 260, ¶ 13 (7th Dist.). Accordingly, Ohio courts may look to federal court precedent concerning Fed.R.Civ.P. 23 when presented with class action issues based upon Civ.R. 23. *See, e.g., Stammco, L.L.C. v. United Tel. Co. of Ohio*, 136 Ohio St.3d 231, 2013-Ohio-3019, 994 N.E.2d 408, ¶ 18 (“[F]ederal law interpreting a federal rule, while not controlling, is persuasive in interpreting a similar Ohio rule.”); *Hupp v. Beck Energy Corp.*, 2014-Ohio-4255, 20 N.E.3d 732, ¶ 33 (7th Dist.), *aff’d sub nom. State ex rel. Claugus Family Farm, L.P. v. Seventh Dist. Court of Appeals*, 145 Ohio St.3d 180, 2016-Ohio-178, 47 N.E.3d 836, ¶ 33 (2016).

time and place of sale. Mr. Ragland asserts that alleged violations of RISA and the UCC provisions bar recovery of any deficiency balances.

In addition to damages, Mr. Ragland's Class Action Complaint sought a declaration that MFS' acts and practices—namely, its alleged violations of the UCC and RISA—were unlawful. The Complaint also sought an injunction to prohibit MFS from continuing to engage in these practices and requiring that MFS remove adverse credit information previously reported to credit reporting organizations; refrain from collecting any deficiency balances of class members whose balances were overstated to the credit reporting agencies; as well as attorneys' fees, costs, and expenses.

MFS believes Plaintiff's claims are without merit. However, even if the claims asserted by Plaintiff had value, MFS alleges that it would be entitled to an offset for amounts owed by Plaintiff and the Settlement Class Members. Therefore, due to the existence of uncertainties inherent in Plaintiff's claims and the risk to the class should MFS prevail, recovery by Plaintiff and the Settlement Class is uncertain. This factor weighs in favor of approval of the proposed settlement.

**B. The Amount and Form of Relief Offered in Settlement**

The relief to the Settlement Class provided in the Agreement is the elimination of the Deficiency Balance for each of the Settlement Class Members and the deletion of MFS' tradelines on Class Members credit reports with the three major credit reporting agencies.

Specifically, under the Settlement Agreement, the following relief shall be made to Settlement Class Members:

(a) MFS will deposit the total amount of One-Hundred and Thirty-Eight Thousand Dollars (\$138,000.00) into the account(s) identified by the Settlement Administrator. This account or accounts and the amounts deposited therein by MFS shall constitute the "Settlement Fund."

(b) MFS shall waive any Deficiency Balance on the Settlement Class Accounts of Settlement Class Members as of the Effective Date and Settlement Class Members shall have no obligation to pay the Deficiency Balance. Mr. Ragland asserts that MFS' agreement and decision to forgo collection of the alleged deficiency balances of Settlement Class Members is based upon the operation of state law. The value of this relief is \$452,727.68.

(c) MFS shall cause to be transmitted electronically or by mail a request to Equifax, Experian and TransUnion to delete any reference to the Settlement Class Members that reflect a deficiency balance as of the Final Approval Date.

Thus, the settlement provides valuable relief to each Settlement Class Member. This is especially true because if MFS were to prevail, Plaintiff and the class would receive nothing and could potentially still be obligated to MFS on the Deficiency Balances. Furthermore, it is possible that even if Plaintiff prevails, that class members could still owe a deficiency amount to MFS to the extent the deficiency balance exceeds the damages and penalty available to members of the class. Thus, balanced against the possibility that the Settlement Class Members could receive nothing by going forward on the merits of their claims, this factor weighs in favor of approving the proposed settlement.

C. **Complexity, Expense, and Likely Duration of the Litigation**

In general, “[m]ost class actions are inherently complex and settlement avoids the costs, delays, and multitude of other problems associated with them.” *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d at 1013 (quoting *In re Austrian & German Bank Holocaust Litig.*, 80 F.Supp. 2d 164, 174 (S.D.N.Y. 2000)); *see also Gattozzi v. Sheehan*, 2016-Ohio-5230, 57 N.E.3d 1187, ¶ 38 (8th Dist.), appeal not allowed, 148 Ohio St.3d 1443, 2017-Ohio-1427, 72 N.E.3d 657, ¶ 38 (2017). Here, the difficulty the Settlement Class Members would encounter in proving its claims,

the substantial litigation expenses which would be incurred, the time delays inherent in the trial of a class action, and the expected appeal that would follow, justify the Court's approval of the proposed settlement. In addition, the possibility of a future recovery of an amount that could be greater than the amount of the proposed settlement may be less valuable to the class than receiving the benefit provided for now. *See Brotherton v. Cleveland*, 141 F. Supp. 2d 894, 903 (S.D. Ohio 2001). This factor also favors approval of the proposed settlement in that the settlement provides substantial benefit for the class without the attendant expense, delay, and uncertainty of trial and appeal.

D. **Stage of the Proceedings and the Amount of Discovery Completed**

The proposed settlement was reached after a year of litigation and negotiation. Over that period, the parties have engaged in both formal discovery and informal discovery. Plaintiff and MFS have been afforded ample opportunity to conduct the discovery needed to become knowledgeable about the legal and factual issues involved in this matter and to ascertain both the strengths and weaknesses of their relative cases. The parties' well-informed decision to settle, and the fact that the settlement was reached after a lengthy period of negotiation, weighs in favor of approving the settlement.

E. **Judgment of Experienced Trial Counsel**

In the instant case, both Plaintiff's and MFS' counsel are highly experienced practitioners in the field of complex class actions. Counsel for both sides urge final approval of the proposed settlement based upon their experience, their knowledge of the strengths and weaknesses of the case, their analysis of the discovery reviewed to date, the likely recovery at trial and on appeal, and other factors considered in evaluating the proposed class action settlement. The Court is aware that the proposed settlement was negotiated vigorously at arm's length between parties that were

clearly adverse. It is therefore evident that this factor weighs heavily in favor of approving the proposed settlement.

F. **Nature of the Negotiations**

In the case at bar, the proposed settlement was negotiated in an adversarial manner after substantial factual investigation and intensive legal analysis by the Parties' counsel. Both parties to the negotiations vigorously attempted to secure the most desirable conclusion for their respective clients. Settlement proposals were exchanged back and forth between the parties on numerous occasions in an attempt to resolve the key issues. This process resulted in a fair, reasonable, and adequate settlement. As a result, the Court concludes that the proposed settlement was reached in good faith. This factor weighs in favor of approving the proposed settlement.

G. **Objections Raised by the Class Members**

There are 49 Settlement Class Accounts included in this settlement. The Settlement Class Members obligated on those accounts were each mailed notice of the settlement at their last known address. None of the Settlement Class Members who received notice objected to the settlement. The proposed settlement is therefore supported by the Settlement Class Members who received notice. This factor weighs in favor of approving the proposed settlement.

H. **Public Interest**

While this case is not of general public interest, there is certainly a public interest in settlement of disputed cases that require substantial judicial resources to supervise and resolve. In the instant case, the proposed settlement ends potentially long and protracted litigation and frees the Court's valuable judicial resources. *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 372 (S.D. Ohio 1990); *see also N. Coast Cable Co. v. Howley*, 8th Dist. Cuyahoga No. 64785, 1994 WL 78085, \*4. The Court concludes that this factor weighs in favor of approving the proposed Settlement because the public interest is served by resolution of this action.



## II. CLASS CERTIFICATION

The Court must now consider final certification of the class for settlement. Pursuant to Ohio Rule of Civil Procedure 23(B)(3), the Court granted conditional certification of the following class of Ohio consumers on September 25, 2023:

All persons: (1) who purchased a motor vehicle, in Ohio primarily for personal, family, and/or household use by entering into a Retail Installment Sales Contract; (2) whose Retail Installment Sales Contract was assigned to MFS; (3) whose motor vehicle securing the Retail Installment Sales Contract was repossessed on or behalf of MFS, or voluntarily surrendered, in the state of Ohio; (4) who were sent one or more Post-Repossession Notices (contained in one or more documents or combined) by or on behalf of MFS between September 9, 2016 and the date of execution of the Settlement Agreement; (5) whose motor vehicle was either disposed of by or on behalf of MFS or their Retail Installment Sales Contract was otherwise not reinstated; and (6) who had a Deficiency Balance in their Settlement Class Account on the date of execution of the Settlement Agreement. In its order granting conditional class certification, the Court also approved Plaintiff as the representative of the class and appointed Class Counsel.

The Court confirms its previous findings that the prerequisites for a class action under Ohio Rule of Civil Procedure 23(B)(3) have been satisfied in that: (i) the class members are so numerous that joinder of all class members is impracticable; (ii) there are questions of law and fact common to the members of the class; (iii) the claims of Plaintiff are typical of the claims of the class members; (iv) Plaintiff will fairly and adequately represent the interests of the class; (v) the questions of law and fact common to the class members predominate over any questions affecting only individual class members; and (vi) certifying a class is superior to other available methods for the fair and efficient adjudication of the controversy.

### **III. ATTORNEYS' FEES, COSTS, AND INCENTIVE PAYMENTS**

The Settlement Agreement provides that Class Counsel may seek from the Settlement Fund approximately \$130,500.00 in attorneys' fees, costs, and expenses. Class Counsel intends to apply for such an award and MFS has agreed not object to this request. The amount is approximately 22% of the total value of relief to the class and does not reduce the amounts payable to the class as described above. This award was negotiated only after a conditional agreement on relief to the class was reached.

The Settlement Agreement also provides that MFS will pay an incentive award to the Class Representative, Mr. Ragland, of \$7,500.00, payable from the Settlement Fund, for serving as class representative. Mr. Ragland asserts that this is a fair amount, considering his extensive patience, loyalty to the class, and extensive time spent fulfilling his duties, including reviewing filings, discussing the facts with counsel, staying abreast of developments, and numerous telephone conversations while this case has been pending. This award was negotiated only after a conditional agreement on relief to the class was reached.

### **IV. DISPOSITION**

For the foregoing reasons, the Court GRANTS the Motion for Final Approval of Proposed Settlement and Final Certification of the Class and Plaintiff's Motion for Order Awarding Attorneys' Fees and Costs and Incentive Payment to the Class Representative.

Accordingly, IT IS HEREBY ORDERED AND DECREED—

1. The Court has jurisdiction over the subject matter of this litigation and over all Parties to this Action, including all Settlement Class Members as such term is defined in the Settlement Agreement and below in paragraph 8.

2. The Court has determined that the Class Notice given to the Settlement Class Members fully and accurately informed them of all material elements of the proposed Settlement and constituted valid, due, and sufficient notice to all Settlement Class Members.

3. Persons who made timely and valid requests for exclusion would be excluded from the Settlement Class and not be bound by the Final Settlement Approval Order and Final Judgment. One person requested exclusion.

4. The Court finally approves the Settlement of this Action in accordance with the terms of the Settlement Agreement and finds that the Settlement is fair, reasonable, and adequate in all respects.

5. The Court orders the Parties to the Settlement Agreement to perform their obligations pursuant to its terms.

6. The Court orders that this Action and all claims and causes of action asserted herein are dismissed on the merits and with prejudice as to all Settlement Class Members.

7. The Court adjudges that the Class Representative and all Settlement Class Members who were mailed the Notice shall, to the extent provided by the Settlement Agreement, conclusively be deemed to have released and discharged MFS from liability as provided in Section III ("Releases") of the Settlement Agreement.

8. With respect to the certification of the Settlement Class, this Order supersedes the Court's September 25, 2023 Preliminary Approval Order. For purposes of this Settlement, the Settlement Class is defined as all Persons:(1) who purchased a motor vehicle, in Ohio primarily for personal, family, and/or household use by entering into a Retail Installment Sales Contract; (2) whose Retail Installment Sales Contract was assigned to MFS; (3) whose motor vehicle securing the Retail Installment Sales Contract was repossessed on or behalf of MFS, or voluntarily

surrendered, in the state of Ohio; (4) who were sent one or more Post-Repossession Notices (contained in one or more documents or combined) by or on behalf of MFS between September 9, 2016 and the date of execution of the Settlement Agreement; (5) whose motor vehicle was either disposed of by or on behalf of MFS or their Retail Installment Sales Contract was otherwise not reinstated; and (6) who had a Deficiency Balance in their Settlement Class Account on the date of execution of the Settlement Agreement..

6. Without affecting the finality of this Order and Final Judgment, the Court retains jurisdiction over (a) implementation and enforcement of the Settlement Agreement and Final Judgment, (b) any other action necessary to conclude this Settlement and implement the Settlement Agreement, and (c) the enforcement, construction, and interpretation of the Settlement Agreement.

7. The Court approves the Class Counsel's attorneys' fee and expenses in the amount of \$130,500.00.

8. The Court approves the Class Representative Incentive Award in the amount of \$7,500.00 for Herman Ragland.

9. Neither this Order and Final Judgment nor the Settlement Agreement is an admission or concession by MFS of any fault, omission, liability, or wrongdoing. This Order and Final Judgment is not a finding of the validity or invalidity of any claims in this action or a determination of wrongdoing by MFS. The final approval of the Settlement Agreement does not constitute any opinion, position, or determination of this Court, one way or the other, as to the merits of the claims and defenses of Plaintiff or the Settlement Class Members.

10. The Court finds that no just reason exists for delay in entering this Final Settlement Approval Order and Final Judgment. Accordingly, the Clerk of Court is hereby directed forthwith to enter this Final Settlement Approval Order and Final Judgment.

BY ORDER OF THE COURT.

Dated: 1-3-24

  
THE HONORABLE JUDGE  
DEENA R. CALABRESE