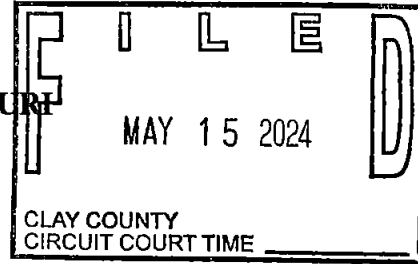


IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI



NICHOLAS FINANCIAL, INC.

Plaintiff/Counterclaim-Defendant,

v

JEREMIAH T GROSS,

Defendant/Counterclaimant

Case No. 21CY-CV02148-02

Division 9

**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 dated February 20, 2024 (the “Agreement”), the evidence and arguments of counsel as presented at the Fairness Hearing held on May 15, 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:

1. **Incorporation of Other Documents** This Final Approval Order incorporates:
  - a The Agreement, filed with this Court on February 21, 2024; and
  - b The following exhibits to the Agreement (i) Exhibit A (Class Mail Notices), (ii) Exhibit B (Long-Form notice available to the Class), and corrected Exhibit C (Certain Insurance Companies and Policies).

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 Settlement Class (as defined below) were given notice of and an opportunity to opt out of the Settlement, the Court has personal jurisdiction over all Settlement Class Members. Because notice was sent to all Settlement Class Members according to a methodology that protected the interests of

the Parties and the Settlement Class Members and that provided the best notice practicable under the circumstances in compliance with Missouri Supreme Court Rule 52.08, due process requirements, and any other legal requirements, the Court's jurisdiction extends even to Settlement Class Members who might not have received actual notice of the Settlement. The Court also has subject-matter jurisdiction over this case (the "Litigation"), including, without limitation, jurisdiction to approve the proposed Settlement, to grant final certification of the Settlement Class, and to enter the accompanying Final Judgment.

3. **The Settlement Class** On February 21, 2024, the Court preliminarily certified a class of consumers under Rule 52.08 defined as

All persons to whom NFI mailed a presale notice or post-sale explanation between April 1, 2016 and December 1, 2022, except for those persons (a) against whom NFI has obtained a final deficiency judgment, (b) who filed for bankruptcy after the date on which NFI sold their collateral and whose bankruptcy ended in discharge rather than dismissal, and (c) whose loans were sold, conveyed, assigned, or otherwise transferred by NFI prior to February 21, 2024.

4. **Class Notice**. Class notice was mailed to all 17,668 Settlement Class Members. Of those class notices, 553 were deemed undeliverable (3.13%). The Court finds the notice to the Settlement Class (both the Class Mail Notice and Long-Form Notice available on the website set up by the Settlement Administrator and upon request) and its distribution to the Settlement Class as implemented under the Agreement and the Preliminary Approval Order:

- a. Constituted the best practicable notice to the Settlement Class Members under the circumstances of this Litigation,
- b. Constituted notice reasonably calculated, under the circumstances, to apprise the Settlement Class Members of (i) the pendency of this Litigation and the proposed Settlement, (ii) their right to exclude themselves from the Settlement 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 Settlement Class, the fairness,

reasonableness, or adequacy of the Settlement as proposed, the adequacy of Gross's and/or Class Counsel's representation of the Settlement Class; the proposed awards of attorney's 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 Settlement Class, and (v) the binding effect of the Preliminary Approval Order, this Final Approval Order, and the Final Judgment on all Settlement Class Members who did not request exclusion,

- c. Constituted notice that was reasonable, adequate, and sufficient to all persons and entities entitled to be provided with notice, and
- d. Constituted notice that fully satisfied the Rule 52.08, due process, and any other applicable law.

5. **Opt-Outs and Objections.** No member of the certified Settlement Class exercised his or her right to opt out 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 into 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 Settlement 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.** NFI has agreed not to contest a judgment being entered against it in an amount to be determined by the Court. However, no amount over \$750,000 may be satisfied from NFI's assets or from its insurer, Gemini Insurance Company ("Gemini"), for its obligations required under the Agreement, and any remaining amount may only be satisfied from NFI's Insurers and

Insurance Agents as defined in the Agreement, other than Gemini. See Agreement ¶ 3 15 Damages will be decided at a later date

8 **Assignment of Claims** NFI assigns to Gross and the Settlement Class all its claims and rights to seek payment of the Judgment under all insurance policies identified on Exhibit C hereto and any other insurance policies in effect between April 1, 2016 and December 1, 2022, that may cover the Settlement Class Members' claims (other than insurance policies issued by Gemini, which are specifically excluded from this assignment) See Agreement ¶¶ 1 11, 3 15 Class Counsel may pursue recovery against NFI's Insurers and Insurance Agents, other than Gemini, and attempt to recover against any effective Policies Any recovery from the Insurers and/or Insurance Agents will add to the benefits made available to the Settlement Class under the Agreement Settlement Class Members will receive funds from any recovery under Paragraph 3 15 of the Agreement and this Paragraph after attorneys' fees and costs awarded by the Court are deducted Gross and the Settlement 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 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 This Order resolves a distinct judicial unit between the parties and is final for purposes of appeal, for which there shall be no just reason for delay.

10 **Releases** The Settlement Class Members (*i.e.*, those members of the Settlement Class who did not timely opt out) shall be bound by the Releases provided in Paragraph 5 of the Agreement, which is incorporated in this Final Approval 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** Except as expressly stated herein and/or in the accompanying Final Judgment, 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 that NFI accrued no deficiency balances for Gross and the Settlement Class, and NFI cannot collect any alleged deficiency balances against Gross and members of the Settlement Class. NFI must write off the claimed deficiency balances and cease all collection efforts regarding the loans of Gross and the Settlement Class.

13. **Class Representative Award to Gross** The Court awards \$10,000 to be paid from the Cash Fund to Gross as an incentive award for his services as Class Representative in this Litigation

14. **Class Relief** As part of the Settlement, NFI will cause Gemini to place \$750,000 into the Cash Fund for monetary recoveries for Settlement Class Members, attorney's fees, costs, administration, and Gross's incentive award. NFI has also agreed to write off an estimated \$86,100,000 in debt NFI claims the Settlement Class Members owe. *See* Agreement ¶¶ 16, 110, 311. NFI has also agreed to submit requests to credit bureaus Experian, Equifax, TransUnion, and Innovis to delete the Settlement Class Members' "tradelines" associated with their accounts subject to the Settlement. *See* Agreement ¶ 312. 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*, 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 Attorney's Fees and Expenses. The Court approves and awards Class Counsel \$600,000 from the Cash Fund, which represents approximately 2.3% of the Total Class Benefit after considering monetary relief, deficiency write-offs, and deletion of Settlement Class Members' negative credit tradelines. *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 \$87 million The Agreement also provides injunctive relief by requiring NFI 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 Settlement Class Members' credit reports is over \$176 million. The debt relief the Settlement 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 in Paragraph 16 clearly justify it

16. The Court specifically finds

a. The Court is acquainted with all the issues involved and the work performed by Class Counsel

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<sup>1</sup> *Myers* and *Wells* were 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 Settlement Class also receives a benefit of approximately \$77,010,000 (\$10,000 per each of the 7,701 identified class members)”)

- 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 Gross achieved exceptional results on behalf of the Settlement Class, with the total quantifiable benefit conferred on the Settlement Class valued at approximately \$263,530,000, which is the sum of (1) \$750,000 in monetary relief, (2) \$86,100,000 in debt write-offs, and (3) \$176,680,000 in value for removal of Settlement 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 attorney's 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 Gross 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 Settlement 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 [NFI'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 NFI, represented by one of the largest law firms in the country, 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 also 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 Settlement Class that Class Counsel would apply for fee awards in the amounts requested. No member of the Settlement Class has objected to such awards or the Settlement.

The Court also awards Class Counsel \$50,000 to reimburse expenses and costs, including payment to the Class Administrator

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 to determine and assess damages pursuant to Paragraphs 7 and 8 of this Order, and 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

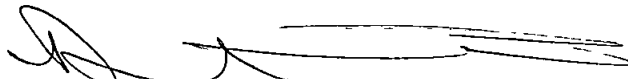
- a. Enforcing the terms and conditions of the Agreement and Settlement and resolving any disputes, claims, or causes of action between the parties to this Litigation that, in whole or in part, are related to the administration and/or enforcement of the Agreement, Settlement, this Final Approval Order, or the Final Judgment (including, without limitation, whether a person is or is not a member of the Settlement Class or a Settlement 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 Cash Fund, including any claims between parties to this Litigation and 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. 5-15-24

  
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Judge Daniel L. White