

**THIRTEENTH JUDICIAL CIRCUIT COURT  
BOONE COUNTY, MISSOURI**

Minnie Jackson,

Plaintiff,

v.

Missouri Credit Union,

Defendant.

Case No. 18BA-CV00665  
Division 2

**Application for Award of Attorney’s Fees, Expenses  
and Incentive Payment to the Class Representative**

This litigation received preliminary approval of a settlement conferring benefits upon the class exceeding \$5,600,000 including \$1,800,000 in money, approximately \$3,860,000 in write-offs of deficiency balances (and interest on those amounts), and the deletion of negative information from Class Members’<sup>1</sup> credit reports regarding these deficiencies valued at over \$5,210,000.<sup>2</sup> As contemplated by the Class Action Settlement Agreement and Release (the “Agreement”) and notice given to the Class,

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<sup>1</sup> Capitalized terms shall have the meaning ascribed to them in this Court’s Preliminary Approval Order entered on January 21, 2022, which incorporates the defined terms of the Agreement.

<sup>2</sup> See A.W. Pickel Affidavit attached ¶ 10–11 (assigning an “ultra-conservative estimate of \$10,000” in value per class member in a similar UCC bad notice class action: *Anheuser Busch Employees’ Credit Union v. Wells*, Case No. 1522-AC09263-01 (Mo. Cir. July 10, 2018); see also *Universal Credit Acceptance, Inc. v. Myers*, No. 15JE-AC05976-01 (Mo. Cir. Feb. 8, 2021) (same). *Jackson* 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 Class also receives a benefit of approximately \$77,010,000 (\$10,000 per each of the 7,701 identified class members).”).

Class Counsel requests an award of \$1,440,000 in attorney's fees, \$20,000 for reimbursement of litigation costs and expenses, and an incentive award to the Class Representative of \$10,000. After accounting for the benefits acquired on the Class's behalf, deficiency write-offs and monetary awards of approximately \$5,660,215.08 (see Agreement ¶4.3) and \$5,210,000 for improved credit value resulting from removal of derogatory information their credit reports (see footnote 2), the requested award of \$1,440,000 in attorney's fees represents less than 14% of the actual benefit conferred upon the Class Members<sup>3</sup> and is significantly lower than awards considered reasonable for complex class action litigation, such as this. *Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 267 (Mo. App. E.D. 2011) (citing with approval a case "noting that in a study of 289 settlements ranging from under \$1 million to \$50 million, the average attorney's fees percentage is 31.71%, and the median is one-third"). The awards for expenses and incentive payments are also reasonable.

#### **A. Legal Standard**

The trial court's award of attorney's fees is given "great deference...because the trial court is considered an expert at awarding attorney's fees, and may do so at its discretion." *Bachman*, 344 S.W.3d at 267 (internal quotes and alterations omitted). This discretion will "not be reversed unless the amount awarded is arbitrarily arrived at or is so unreasonable as to indicate indifference and a lack of proper judicial consideration." *Realty Res., Inc. v. True Docugraphics, Inc.*, 312 S.W.3d 393, 400 (Mo. App. E.D. 2010).

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<sup>3</sup> \$1,440,000 in fees divided by \$10,870,000 in benefits conferred to class members equals 13.2%.

Although not exhaustive, factors to be considered by the trial court in determining whether the requested fees are reasonable include: (1) the benefit conferred on the Class Members, (2) the complexity of the issues, (3) the case duration, (4) the risks to which Class Counsel were exposed, (5) the experience, reputation, and skill of the attorneys, (6) awards in similar cases, and (7) reaction of the Class. *Bachman*, 344 S.W.3d at 267. These factors all weigh heavily for finding the requested fee award reasonable.

**B. The requested attorney’s fee award is fair and reasonable.**

Missouri Credit Union (“MCU”) has agreed not to contest the attorney’s fees and expenses as requested by this application. This agreement should enjoy a presumption of fairness and reasonableness. *Cohn v. Nelson*, 375 F.Supp.2d 844, 861 (E.D. Mo. 2005); *Heilman v. Perfection Corp.*, 93 F.Supp.2d 1311, 1312 (W.D. Mo. 2000) (“It would be inappropriately intrusive, in my judgment, for the court to impose its idea of socially-desirable fees on the parties under the circumstances—and could well result in wasteful satellite litigation in the Court of Appeals if I were to do so.”); *see also Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) (holding that an agreed-to fee is an ideal situation because “[a] request for attorney’s fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee.”).

The fees and expenses awarded in *Bachman* and approved by the appellate court confirm the fees and expenses here are fair and reasonable. *Bachman* involved a settlement of a class action against A.G. Edwards for breach of fiduciary duty and unjust enrichment. 344 S.W.3d at 263. After four years of litigating the case, the parties settled where:

A.G. Edwards agreed to pay \$26,000,000 in cash and to issue \$34,000,000 in vouchers. In particular, under the terms of the settlement: the subclass of former accounts, approximately 293,820, is entitled to \$6,000,000 in cash (\$20.42 for each former account); the subclass of current accounts, approximately 1,379,105, is entitled to \$34,000,000 in vouchers to offset against certain fees (three vouchers with a total face value of \$24.65 for each current account); class counsel will receive up to \$21,000,000 cash in attorneys' fees and \$600,000 cash in expenses....

*Id.* at 263–265. In *Bachman*, the total benefit being conferred upon the class was \$60,000,000, and class counsel requested \$21,000,000 in attorney's fees and \$600,000 in expenses from the \$26,000,000 cash fund. The requested award of attorney's fees in *Bachman* represented 35% of the total benefit conferred upon the class and 84% of the cash benefits. The trial court (the Hon. Angela T. Quigless) approved the requested attorney's fees. *Id.* at 265.

The appellate court affirmed the trial court's award of attorney fees because it could not "say the fee awarded was arbitrary, unreasonable, or an abuse of discretion. In addition, in cases involving complex litigation or in the class action context, a one-third contingent fee award is not unreasonable." *Id.* at 267. "The Missouri Supreme Court allowed the [*Bachman*] opinion to stand as authority by denying transfer of the case from the court of appeals. The [*Bachman*] case is, thus, the best evidence of Missouri law." *Washington v. Countrywide Home Loans, Inc.*, 655 F.3d 869, 873 (8th Cir. 2011).

Although *Bachman* approved an award of 35% of the total benefits, Class Counsel is requesting less than 14% of the benefit conferred on the Class. The percentage of attorney's fees requested here is much lower than the average fee percentage of 31.71% and the median one-third routinely awarded. *Bachman*, 344 S.W.3d at 267.

The fairness and reasonableness of Class Counsel's requested fees is further confirmed by a review of the factors.

*1. The benefit conferred on the class.*

This factor perhaps best substantiates the reasonableness of the requested fee awards. This factor should be weighed more heavily than the others in determining the reasonableness of the award. While the other factors are important and weigh for the requested award, the recovery is of primary importance because that is the true benefit to the class. *Manual for Complex Litigation, Fourth*, § 21.71 at 336 (2004).

The results speak for themselves. This is not the typical "coupon" class action, involving a *de minimus* recovery for the members of the class via a settlement agreement that provides class counsel with an exorbitant fee. Instead, Class Counsel negotiated a settlement awarding approximately 521 class members monetary damages, debt relief, and elimination of damage to credit.

The deletion of negative credit reporting/tradelines from the Class Members' credit reports regarding the deficiency balances is a very substantial benefit to the Class. It is indisputable this benefit is of great value to the Class. The credit rating not only affects whether a class member can borrow money and at an attractive rate, but it can affect everything from phone and cable hookups, insurance rates, and even employment opportunities. The value of a better credit rating cannot be overstated.

In a similar class action settlement<sup>4</sup> based on the same types of violations (UCC notices) and remedies sought (statutory damages, deletion of negative credit

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<sup>4</sup> *Anheuser Busch Employees' Credit Union v. Wells*, Case No. 1522-AC09263-01 (Mo. Cir. July 10, 2018).

tradelines, 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. *See supra Myers and Wells*. The court took the estimated credit benefits of \$10,000 per class member into account when it calculated the aggregate benefits conferred to the class.<sup>5</sup> The parties identified and mailed class notice to 521 class members. (*See Declaration of American Legal Claim Services LLC Regarding Due Diligence in Noticing at ¶¶ 4–6*). Using an "ultra-conservative estimate" of \$10,000 in credit benefits, the Class Settlement confers more than \$5,210,000 in credit score value to the Class.

Class Counsel obtained exceptional results on behalf of the Class in both monetary and non-monetary benefits. This factor, therefore, weighs heavily for the requested fee award.

### *2. The complexity of the issues.*

This lawsuit was not an ordinary consumer lawsuit. The factual and legal issues presented by this class action were novel and complex and had to be resolved by the court of appeals. These issues include, Missouri class action jurisprudence, insurance coverage, legal sufficiency of presale notices and post-sale notices under the Uniform Commercial Code ("UCC"), effect of cases construing prior revisions of the UCC, and the nuanced interplay of the UCC with Chapters 365 (Motor Vehicle Time Sales Law) and 408 (related to Legal Tender and Interest). This factor, therefore, strongly supports the requested fee award.

### *3. The duration of the case.*

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<sup>5</sup> *See id.*, *Wells* Final Approval Order (Entered July 10, 2018).

This lawsuit began on February 23, 2018, which means it has been ongoing for over four years. Class Counsel: (i) extensively briefed motions for Jackson and other putative class members; (ii) conducted extensive discovery; (iii) obtained class certification (iv) successfully opposed MCU's attempts to vacate the class certification order before the court of appeals (WD84498) and the Supreme Court (SC99141); (v) negotiated a settlement between after multiple formal mediation sessions with the Honorable Judge Michael David; and (vi) obtained preliminary approval of a settlement providing extraordinary benefits for the Class.

Class Counsel's work is not done either. Class Counsel must do additional work to obtain final approval of the Settlement; disburse payments to Class Members; and assist in the administration of the settlement. Given the time Class Counsel has expended and the significant additional work ahead, the requested fee award is reasonable.

*4. Class Counsel was exposed to significant risks.*

"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. Finance, Inc.*, 2011 WL 3740809, \*9 (E.D. Pa. 2011). Establishing liability, whether at trial or ultimately on appeal, was not guaranteed. Even if a judgment was obtained, it is uncertain whether MCU would pay it. Despite these risks, Class Counsel continued to represent Jackson on a contingent fee basis and advance the costs of litigation. This factor weighs for the award. *See id.* (noting that a contingent fee arrangement adds to the risk of nonpayment).

*5. Class Counsel is experienced, skilled and reputable.*

“The skill and efficiency of class counsel is measured by the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the . . . experience and expertise of the counsel, the skill . . . with which counsel prosecuted the case and the performance . . . of opposing counsel.” *Bredbenner v. Liberty Travel, Inc.*, 2011 WL 1344745, \*15 (D.N.J. 2011). Here, Class Counsel obtained substantial benefits for many consumers after obtaining approval of the Agreement. Class Counsel is highly experienced, having successfully litigated other class actions and is actively involved in litigating many other consumer class actions similar to this one. A Missouri trial judge had this to say about Class Counsel in a similar case: “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).

Like *Trimble*, Class Counsel has also submitted high-quality work to the Court throughout this litigation and pursued the case vigorously against skilled and experienced opposing counsel. “These factors weigh in favor of the award.” *Cosgrove*, 2011 WL 3740809 at \*9.

#### 6. Awards in similar cases.

The award requested here is less than the award in *Bachman*. *Bachman*, 344 S.W.3d at 267 (citing *In re Rite Aid Corp. Secs. Litig.*, 146 F.Supp.2d 706, 735 (E.D. Pa. 2001) (noting that in a study of 289 settlements ranging from under \$1 million to \$50 million, the average attorney’s fees percentage is 31.71%, and the median is one-



third); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (no abuse of discretion in awarding 36% of \$3.5 million recovery to class counsel). Therefore, Class Counsel's request is well-below the range often approved, and this factor weighs for finding the requested fee award reasonable.

**7. Reaction of class members.**

The Agreement and Long-Form Notice informed the Class that Class Counsel would apply for a fee award in the amount requested. No member of the Class has objected to such an award or the settlement. "The absence of large numbers of objections mitigates against reducing fee awards." *In re Cendant Corp.*, 232 F. Supp. 2d 327, 337 (D. N.J. 2002). This factor weighs for approving the requested fee award.

Therefore, Class Counsel should be awarded \$1,440,000 in attorney's fees because that amount is reasonable to compensate Class Counsel for the settlement they achieved and the work that lies ahead.

**C. The requested incentive award is reasonable.**

Class Counsel is requesting an incentive award for the Class Representative of \$10,000. The Class Representative stayed involved at every step of the litigation and the settlement negotiations:

The interests of the Class, such as here, are better served when they are presented by vigilant, competent and independent class representatives who actively monitor class counsel and the conduct of the litigation. Moreover, where lawyers are rewarded for their risk and efforts on behalf of a class, but class representatives are not, there is little incentive for class representatives to serve as active client participants in the litigation, thus negating the "adequate representation" safeguard....

*Allapattah Services, Inc. v. Exxon Corp.*, 454 F. Supp.2d 1185, 1221-22 (S.D. Fla. 2006). Jackson has been representing, working for, and expending some of her own

money for the class since this litigation started. She has maintained consistent contact and communication with Class Counsel and has taken time out of her personal life to review and respond to numerous correspondence regarding the case. Jackson has thoughtfully evaluated the proposed settlement with counsel to ensure fair, adequate, and vigorous representation of the Class. *McDonough v. Toys R Us, Inc.*, 2011 WL 6425116, \*17 (E.D. Pa. 2011) (approving incentive award, noting that plaintiffs “kept informed of the litigation and communicated with class counsel as necessary to assist with the effective prosecution of the case”); *Manual for Complex Litigation*, §21.62 n.971 (4th ed. 2004) (incentive awards may be “merited for time spent meeting with class members, monitoring cases, or responding to discovery”).

The Class received notice of the proposed incentive award. No member of the Class has objected to the requested incentive award. Therefore, the requested incentive award is entirely fair and reasonable. *In re Dun & Bradstreet Credit Serv. Customer Litig.*, 130 F.R.D. 366 (S.D. Ohio 1990) (two named plaintiffs received \$55,000 and three named plaintiffs received \$35,000). *Cf. Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (finding that requested incentive award of \$100,000 was excessive based on actual time spent on case, and instead awarding \$50,000).

#### **D. Conclusion**

After considering the relevant factors and case law, Class Counsel should be awarded attorney’s fees totaling \$1,440,000. Class Counsel should also be awarded \$20,000 for litigation costs expended over four years of litigation. Jackson should receive an incentive award of \$10,000 because of her representation of the Class and

the exceptional benefits she obtained for them.

Respectfully Submitted,

**ONDERLAW, LLC**

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**Certificate of Service**

I certify on March 11, 2022, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all attorneys of record.

/s/ Craig Richards