

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

Minnie Jackson,

Plaintiff,

v.

Missouri Credit Union,

Defendant.

Case No. 18BA-CV00665
Division 2

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 January 6, 2022 (the “Agreement”), the evidence and arguments of counsel as presented at the Fairness Hearing held on March 14, 2022, 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, ADJUDGED AND DECREED:

1. **Incorporation of Other Documents.** This Final Approval Order incorporates:

- a. The Agreement, filed with this Court on January 8, 2022; and
- b. The following exhibits to the Agreement: (i) Schedule A (Proposed Distribution Schedule of “Net Distributable Settlement Fund,” filed under seal); (ii) Exhibit A (Class Mail Notices) and (iii) Exhibit B (Long-Form notice available to the Class).

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 Class (as defined below) were given notice of and an opportunity to opt out of the Settlement, the Court has personal jurisdiction over all members of the Class. Because notice was sent to all Class Members according to a methodology that protected the interests of the parties and the 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 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 Class, to dismiss the Jackson's and the Class Members' claims against Missouri Credit Union ("MCU"), and to enter the accompanying Final Judgment.

3. **The Certified Class.** On April 17, 2021, the Court certified a class of consumers under Rule 52.08 defined as:

all consumers who executed a contract with a secured party located in Missouri; and who (1) MCU mailed a right-to-cure notice with the language, "Past Due Amount" and/or "Current Due Amount," as well as a presale notice after taking possession of their collateral on or after February 23, 2012; and/or (2) MCU mailed a post-sale notice after February 23, 2012 that did not state "future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency."¹

¹ The "Class" definition (*see* Amended Class Reply in Support of Class Certification at 8–9) referred to class members mailed right-to-cure or post-sale notices "with the same defects" as in *Missouri Credit Union v. Diaz*, 545 S.W.3d 856 (Mo. App. W.D. 2018). The definition above specifically identifies those "defects" for clarity.

Excluded from the Class are persons whom MCU 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.

4. **Class Notice.** The Court finds the notice to the Class (both the Class Mail Notice and Long-Form Notice available on the website set up by Class Administrator and upon request) and its distribution to the Class as implemented under the Agreement and the Preliminary Approval Order:

- a. Constituted the best practicable notice to the members of the Class under the circumstances of this Litigation;
- b. Constituted notice reasonably calculated, under the circumstances, to apprise the members of the Class of (i) the pendency of this Litigation and the proposed Settlement, (ii) their right to exclude themselves from the 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 Class; the fairness, reasonableness or adequacy of the Settlement as proposed; the adequacy of Jackson's and/or Class Counsel's representation of the 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 Class, and (v) the binding effect of the Orders and Judgment in the Litigation on all members of the Class who did not request exclusion;

- c. Constituted notice that was reasonable and constituted due, adequate, and sufficient notice 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 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 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 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. **Binding Effect.** The Agreement, this Final Approval Order and the accompanying Final Judgment shall be forever binding on Jackson, all the Class Members, and their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other person claiming by or through any or all of them. The Agreement, this 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.

8. **Releases.** The Class Members (*i.e.*, those members of the Class who did not timely opt out) shall be bound by the Release provided in Paragraph 5 of the Agreement, which is incorporated in this 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.

9. **Enforcement of Settlement.** 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.

10. **Claimed Deficiencies.** The Court has made an independent judicial investigation into the allegations and defenses of the parties. The Court holds that under Missouri law MCU accrued no deficiency balances for Jackson and the Class, and MCU cannot collect any deficiency against Jackson and members of the Class because the right to cure notices and post-sale notices sent by MCU to Jackson and members of the Class failed to comply with the Missouri UCC. *See Missouri Credit Union v. Diaz*, 545 S.W.3d 856 (2018); *Gateway Aviation, Inc. v. Cessna Aircraft Co.*, 577 S.W.2d 860 (Mo. App. 1978) (“any right to a deficiency accrues only after strict compliance with the relevant statutes”). MCU must write off the claimed deficiency balances and cease all collection efforts regarding the loans that are the subject of the Litigation.

11. **Class Representative Award to Jackson.** The Court awards \$10,000 to be paid from the Cash Fund to Jackson as an incentive award for her services as class representative in this Litigation.

12. **Class Relief.** As part of the Settlement, MCU will place \$1,800,000 into the Cash Fund for monetary recoveries for class members, attorney's fees, costs, and Jackson's incentive award. MCU has also agreed to write off \$3,860,215.08 in debt MCU claims the class members owe. *See* Agreement ¶ 1.25. MCU has also agreed to submit requests to credit bureaus Experian, Equifax, TransUnion, and Innovis to delete the class members' "tradelines" associated with their accounts subject to the Settlement. 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).² Each of the 521 class members will have their tradelines deleted from their credit reports. *See* Declaration of American Legal Claim Services LLC Regarding Due Diligence in Noticing at ¶¶ 4–6 (identifying 521 class members).

13. **Attorney's Fees and Expenses.** The Court approves and awards Class Counsel \$1,440,000 from the Cash Fund, which represents less than 14% of the Total Class Benefit after considering monetary relief, deficiency write-offs, and deletion of class members' negative credit tradelines. The Court also awards Class Counsel \$20,000 to reimburse expenses and costs, including payment to the Class Administrator. The Court specifically finds:

² *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).").

- a. The Court is acquainted with all the issues involved and the work performed by Class Counsel.
- b. Through their settlement negotiations, and by obtaining preliminary and final approval of the Settlement Agreement, Class Counsel and Jackson achieved exceptional results on behalf of the Class with the total quantifiable benefit conferred on the Class valued at approximately \$10,870,000, which is the sum of (1) \$1,800,000 in monetary relief, (2) \$3,860,000 in debt write-offs, and (3) \$5,210,000 in value for removal of class members negative tradelines from their credit reports.
- c. The issues involved were novel, complex, and justify the fee award.
- d. The demands of the settlement approval process and class administration forced Class Counsel to dedicate considerable resources to this lawsuit.
- e. Class Counsel are experienced and highly skilled class action and consumer litigators with a reputation justifying the fee award.
- f. The fee award is less than that granted in similar cases involving complex litigation or in the class-action context.
- g. The Agreement and Long-Form Notice informed the Class that Class Counsel would apply for fee awards in the amounts requested. No member of the Class has objected to such awards or the Settlement.

14. **No Other Payments**. The preceding paragraphs of this Final Approval Order preclude, without limitation, all claims for attorney's fees and expenses, costs or disbursements incurred by Class Counsel or any other counsel representing Jackson or the Class, or incurred by Jackson or the Class Members, or any of them, in connection with or

related in any manner to this Litigation, the Settlement of this Litigation, the administration of such Settlement, and/or the Released Claims, except to the extent otherwise specified in this Final Approval Order or the Agreement.

15. **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 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 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 Class or a 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 Settlement Fund, including presiding over any garnishment actions; and
- c. entering any other necessary Orders to protect and effectuate this Court's retention of continuing jurisdiction.

16. Separate Judgment. The Court will separately enter the accompanying Final Judgment.

IT IS SO ORDERED

Date: 3-14-22



Judge Jeff Harris

COURT SEAL OF



BOONE COUNTY