

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

FILED

MAY 17 2022

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

ELECTRO SAVINGS CREDIT
UNION ASSIGNEE OF
JAY WOLFE TOYOTA SCION,

Counterclaim-Defendant,

v.

KRISTIE E. MORRIS, et al.

Counterclaimants.

Case No.: 17SL-AC27114-02

Division: 43

Preliminary Approval Order

WHEREAS, Kristie E. Morris, Amy Fletcher, and Scott Reichert (collectively, "Class Representatives") are asserting claims against Electro Savings Credit Union Assignee of Jay Wolfe Toyota Scion ("Credit Union") for alleged violations of Missouri Chapter 408, the Uniform Commercial Code, and common law, and seeking statutory damages and other relief for themselves and a class of persons similarly situated (the "Settlement Class" as defined in Exhibit 1 to the Motion for Preliminary Approval of Class Action Settlement.

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 with a secured collateralized loan or financing agreement with Credit Union and the collateral was repossessed in the period of January 7, 2013 to the present and were mailed a Notice of Our Plan to Sell Property and/or a Personal Property Letter ("presale notice") in the form of or substantially similar to the form mailed to Morris on March 7, 2017, or mailed to Reichert and Fletcher on May 10, 2018 and/or a post-sale notice in the form of or substantially similar to the notice mailed to Morris on July 20, 2017 or to

Reichert and Fletcher on July 27, 2018.

WHEREAS, Class Representatives, as members and representatives of the Settlement Class, and Credit Union have entered into a “Class Action Settlement Agreement and Release” dated May 12, 2022 (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 (and the capitalized terms in this Order are consistent with the Agreement).

3. Class Representatives and Credit Union have executed the Agreement to settle and resolve the Litigation 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 the "Settlement Class":

All persons with a secured collateralized loan or financing agreement with Credit Union for personal property and the collateral was repossessed in the period of January 7, 2013 to the present and were mailed a Notice of Our Plan to Sell Property and/or a Personal Property Letter ("presale notice") in the form of or substantially similar to the form mailed to Morris on March 7, 2017, or mailed to Reichert and Fletcher on May 10, 2018 and/or a post-sale notice in the form of or substantially similar to the notice mailed to Morris on July 20, 2017 or to Reichert and Fletcher on July 27, 2018. Excluded from the Settlement Class are (i) any person against whom Credit Union obtained a final deficiency judgment, (ii) any person who filed for bankruptcy after the date on their presale sale notices and whose bankruptcy ended in a discharge, (iii) subsequent to receipt of the presale or post-sale notice reached a written settlement releasing claims about the presale or post-sale notice, including a release of "any and all" claims or similar language; or (iv) has otherwise released any claims against Credit Union about the presale or post-sale notice

The Court finds as to the Settlement Class that:

- 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. Class Representatives' claims are typical of those of the members of the Settlement Class.
- d. Class Representatives 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 Credit Union.
- f. Credit Union must write off the claimed deficiency balances and

cease all collection efforts regarding the loans that have deficiency balances and 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 Kristie Morris, Amy Fletcher, and Scott Reichert as the Class Representatives of the Settlement Class, and Martin L. Daesch, Jesse B. Rochman, and Craig Richards of the law firm OnderLaw, LLC, as Class Counsel for the Settlement Class 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 Settlement 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 the timeframe provided by the Agreement. 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 that 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 Settlement 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. To be valid, the Request to Opt Out must be postmarked within 30 days after mailing of the Notice to class members. 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 *Electro Savings Credit Union Assignee of Jay Wolfe Toyota Scion v. Kristie E. Morris, et al.* Case

No. 17SL-AC27114-02. 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 five days before the Fairness Hearing (defined below), Class Counsel shall cause the Settlement 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 10:00 A.m. on August 9, 2022, at the at the Twenty-First Judicial Circuit, Division 43, 105 S. Central Avenue, Clayton, MO 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 Class Representatives on behalf 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 to the Settlement Class.

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 within 30 days after mailing of the class notice, with service upon Class Counsel and Credit Union's Counsel postmarked within 30 days

after mailing of the class notice. 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 that 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 "*Electro Savings Credit Union Assignee of Jay Wolfe Toyota Scion v. Kristie E. Morris, et al.*," Case No. 17SL-AC27114-02;" 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 Credit Union'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 costs or expenses by Class Counsel, and any applications for the payment of services rendered by Morris, Fletcher and Reichert as Representatives of the Settlement Class, shall be filed with the Clerk of the Court at least seven days prior to the Final Fairness Hearing. 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, costs, or expenses, shall file with the Clerk of Court and serve upon Class Counsel and Counterclaim Defendant's Counsel a written notice of appearance within 30 days after the mailing of class notice.

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, at least 20 days prior to the Final Fairness Hearing, such person has (a) filed with the Clerk of the Court a notice of such person's intention to appear and (b) served copies of such notice upon Class Counsel and Credit Union's Counsel.

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 Credit Union'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 Credit Union'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 Credit Union 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: 5-17-2022



Judge ~~Mondonna L. Ghasedi~~
Matt Hearne