

**TWENTY-FIRST JUDICIAL CIRCUIT COURT
ST. LOUIS COUNTY, MISSOURI**

TD AUTO FINANCE, LLC,

Plaintiff/Counterclaim-Defendant,

v.

MICHELLE BEDROSIAN,

Defendant/Counterclaimant.

Case No. 18SL-AC06637-01

Motion for Preliminary Approval of Class Action Settlement

Defendant/Counterclaimant Michelle Bedrosian (“Class Representative”), respectfully moves this Court to enter an order preliminarily approving the proposed Class¹ and Settlement Agreement (attached as Exhibit 1) as fair, reasonable, and adequate under Missouri Supreme Court Rule 52.08, and direct notice to the Settlement Class as provided for in the Agreement.

1. Certification of a class action is governed by Rule 52.08. “Rule 52.08(a) provides a class will be certified only if [the moving party] shows, as defined by the [moving party] or as modified by the court:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

Green v. Weber, Inc., 254 S.W.3d 874, 877 (Mo. banc 2008) (citing Rule 52.08(a)). “These requirements are commonly referred to as numerosity, commonality, typicality, and adequacy.” *Hope v. Nissan North America, Inc.*, 353 S.W.3d 68, 74 (Mo. App. 2011).

2. “If these four prerequisites are met, the court will certify a class if [the moving party] also shows that the class falls within one of the categories set out in Rule 52.08(b).” *Green*, 254 S.W.3d at 877. Rule 52.08(b)(3), the rule under which Class Representative seeks to certify the Class, “allows a lawsuit to proceed as a class action if the court finds that common questions

¹ Unless defined otherwise in this Motion, all capitalized terms have the meaning ascribed to them in the Settlement Agreement attached as Exhibit 1.

of law or fact ‘predominate over any questions affecting only individual members’ [predominance] and that ‘a class action is superior to other available methods for the fair and efficient adjudication of the controversy [superiority].’” *Craft v. Philip Morris Cos.*, 190 S.W.3d 368, 379 (Mo. App. 2005).

3. The “determination of class certification is based primarily upon the allegations in the petition.” *Elesa v. U.S. Eng’g Co.*, 463 S.W.3d 409, 417 (Mo. App. 2015). The “Missouri Supreme Court specifically rejected the argument that the court must hold a full evidentiary hearing before determining class certification.” *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 380 (Mo. App. 1997). The Court may resolve the issue based on the briefs or other evidence submitted by the parties. *Id.*

4. In “making its preliminary determination, the court is only considering whether there is ‘probable cause’ to believe that the class can be certified for the purposes of settlement; it is not making a determination as to whether the case could be maintained as a class action if the settlement fell through and litigation were required, nor is it making a final determination of certification for purposes of settlement.” *Chadwick*, 956 S.W.2d at 384. The “goal of preliminary approval is for a court to determine whether notice of the proposed settlement should be sent to the class, not to make a final determination of the settlement's fairness.” Newberg on Class Actions § 13:13 (5th ed.). This is because “there would be no point in the trial court making a final determination of fairness before receiving objections and other input from absent class members, and its decision on the merits of certification may be affected by the number and kind of objections and the number of opt-outs made or claims filed by the absent class members.” *Chadwick*, 956 S.W.2d at 383.

5. Here, the allegations in Class Representative’s counterclaims, this motion, and the attached exhibits demonstrate the case should be certified for the purposes of settlement, and at the very minimum there is “probable cause” to believe that the Class can be certified for the purposes of settlement.

6. **Numerosity.** Rule 52.08(a)(1) requires the class to be “so numerous that joinder of all members is impracticable.” Mo. R. Civ. P. 52.08(a)(1). The record shows the Settlement Class is sufficiently numerous. *Frank v. Enviro-Tech Servs.*, 577 S.W.3d 163, 168 (Mo. App. 2019) (“our Court has said that generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the numerosity requirement has been met”); *Dale v. DaimlerChrysler*

Corp., 204 S.W.3d 151, 168 (Mo. App. 2006) (noting classes with 18, 19, 25, and 29 members was enough). Numerosity is satisfied.

7. **Commonality.** Rule 52.08(a)(2) requires “there are questions of law or fact common to the class.” A single common issue may satisfy this requirement. *Dale*, 204 S.W.3d at 175 (“a single common issue may be the overriding one in the litigation, despite the fact that the suit also entails numerous remaining individual questions.”). The common issue “need not be dispositive of the controversy or even be determinative of the liability issues involved.” *Id.* The Supreme Court noted claims like the ones asserted here are ideal for class treatment. *State ex rel. Gen. Credit Acceptance Co., LLC v. Vincent*, 570 S.W.3d 42, 47 (Mo. banc 2019) (“*GCAC*”). As in *GCAC*, the Settlement Class claims are based on interpreting alleged form UCC notices regarding presale and post-sale notices of disposition of the collateral. A central aspect of Class Representative’s class action is whether TDAF violated any statutory provisions governing its alleged form UCC notices. This is a classic case for class treatment. *Id.* If predominance is satisfied, commonality is satisfied because the “common-question-predominance requirement of Rule 52.08(b)(3) is far more demanding than the commonality prerequisite of Rule 52.08(a)(2).” *Dale*, 204 S.W.3d at 175. Commonality is satisfied.

8. **Typicality.** Rule 52.08(a)(3) requires “the claims ... of the representative parties are typical of the claims ... of the class.” The Supreme Court explained to “satisfy the typicality requirement, the class representative ‘must be a part of the class and possess the same interest and suffer the same injury as the class members.’” *GCAC*, 570 S.W.3d at 47. “The burden of demonstrating typicality is fairly easily met so long as other class members have claims similar to the named plaintiff.” *Dale*, 204 S.W.3d at 169. Class Representative is “a part of the class” because she fits the class definition. *Hayes v. Wal-Mart Stores, Inc.*, 725 F.3d 349, 360 (3d Cir. 2013) (“It is axiomatic that the lead plaintiff must fit the class definition. Plaintiffs cannot represent a class of whom they are not a part.”). Class Representative also “possess[es] the same interest and suffer[ed] the same injury as the class members.” *GCAC*, 570 S.W.3d at 47. This test is met, and typicality is satisfied, when all the claims arise from the same event or course of conduct of the defendant and provide the same legal or remedial theory. *Elsea*, 463 S.W.3d at 420 (finding the “circuit court abused its discretion in finding that the typicality requirement was not met” because “the circuit court fail[ed] to recognize that *all* of the claims arise from the same event or course of conduct of the *defendant*.”). All the Class Members’ claims arise from the same event or course of

conduct of TDAF: the mailing of alleged form UCC notices regarding the presale and post-sale notices of disposition of the collateral. All Class Members seek the same legal remedy: statutory damages provided by § 400.9-625(c)(2), damages under § 400.9-625(e)(5), prejudgment interest, injunctive relief, and attorney's fees.

9. **Adequacy.** Rule 52.08(a)(4) requires a finding “the representative parties will fairly and adequately protect the interests of the class.” Rule 52.08(a)(4). The adequacy requirement “applies both to the named class representatives and to class counsel.” *Vandyne v. Allied Mortg. Capital Corp.*, 242 S.W.3d 695, 698 (Mo. banc 2008). “In determining whether the adequacy prerequisite is satisfied as to a class representative, the circuit court must consider whether the named representative has, or may develop during the course of litigation, any conflicts of interest that will adversely affect the interests of the class.” *Id.* Class Representative has no interests antagonistic to the other Class Members. The interests of Class Representative and the Class Members are aligned, if not identical. Resolution of questions favorable to Class Representative’s claim will be favorable to the Class; Class Representative and the Class seek the same form of relief for the same alleged conduct. Class Representative has retained competent counsel with experience in class action litigation, especially consumer class action litigation in Missouri courts. Adequacy is satisfied.

10. **Predominance.** Rule 52.08(b)(3) requires the Court to find “questions of law or fact common to the members of the class predominate over any questions affecting only individual members.” The Supreme Court held cases like this satisfy the predominance requirement because “common liability issues predominate[.]” *GCAC*, 570 S.W.3d at 47. Predominance is satisfied.

11. **Superiority.** Rule 52.08(b)(3) also requires the Court to find “that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Mo. R. Civ. P. 52.08(b)(3). Rule 52.08(b)(3) lists four factors pertinent to the finding of superiority:

- (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;
- (D) the difficulties likely to be encountered in the management of a class action.

All four factors weigh in favor of finding the superiority requirement is satisfied here. A class action is superior to more than a thousand individual actions involving the same alleged form documents and uniform business practices. Absent a class action, there is little likelihood Class Members will know they have any claims against TDAF like the claims being advanced. The class action device provides an effective procedural tool for advancing and enforcing the important public policy considerations underlying the consumer protection statutes Class Representative seeks to invoke, both for herself and for the Class. “The primary focus of the superiority analysis is the efficiency of the class action over other available methods of adjudication. The analysis permits consideration of the improbability that large numbers of class members would possess the initiative to litigate individually.” *Hootselle v. Missouri Dep't of Corr.*, 624 S.W.3d 123, 134 (Mo. banc 2021). As in *Hootselle*, the superiority requirement is met because the alternative to certification would create the need for more than a thousand individual actions to decide identical issues—among consumers that likely lack the resources or initiative to litigate individually. Here, the benefits of class adjudication outweigh any potential costs.

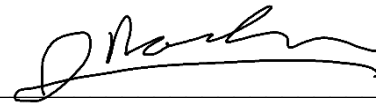
12. “[C]lass certification [is] proper given that there [is] a simple set of facts common to all class members applying the same legal theory under a uniform [] law where [minimum] damages are statutorily set....” *Karen S. Little, L.L.C., v. Drury Inns, Inc.*, 306 S.W.3d 577, 584 (Mo. App. 2010).

WHEREFORE, the parties respectfully request the Court enter a preliminary approval order identical or substantially identical to the preliminary approval order attached as Exhibit 2 to the Agreement in which the Court: (a) preliminarily certifies the proposed Class; (b) preliminarily approves the Agreement as fair, reasonable, and adequate; (c) appoints Defendant/Counterclaimant Michelle Bedrosian as the Class Representative, her counsel as Class Counsel, and RG/2 Claims Administration LLC as Settlement Administrator; (d) approves a Mail Notice substantially in the form of Exhibit 1-A to the Agreement to be mailed to individuals on the Notice List and Class Notice substantially similar to the form attached as Exhibit 1-B to the Agreement to be posted on the Settlement Website; (e) directs the Settlement Administrator, promptly after entry by the Court of the Preliminary Approval Order, to mail the Notice to each individual on the Notice List by first-class mail; (f) schedules a hearing for final approval of the Agreement; (g) sets dates for a final fairness hearing, the parties’ submissions relative to the Settlement, including applications for payment of services to Class Representative, payment of

attorney's fees, reimbursement of expenses by Class Counsel and for members of the Settlement Class to exclude themselves (opt-out), object and/or appear at the fairness hearing; and (h) for such other and further provisions consistent with the terms and provisions of the Agreement as the Court may deem advisable.

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Certificate of Service

I certify on August 29, 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.

