

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

TD AUTO FINANCE, LLC,)	
)	
Plaintiff/Counterclaim-Defendant,)	
)	Cause No. 18SL-AC06637-01
v.)	
)	
MICHELLE BEDROSIAN,)	
)	
Defendant/Counterclaimant.)	
)	
)	

FILED 09/20/22 JOAN M. GILMER CIRCUIT CLERK ST. LOUIS COUNTY, MO

**ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR
NOTICE**

WHEREAS, the above-entitled action is pending before this Court (the “Action”);

WHEREAS, the parties having made application, pursuant to Missouri Rule of Civil Procedure 52.08(e), for an order approving settlement of this Action, in accordance with the Settlement Agreement and Release dated August 29, 2022, (the “Agreement”), which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the Action and for dismissal of the Action with prejudice upon the terms and conditions set forth therein; and the Court having read and considered the Agreement and the exhibits annexed thereto;

WHEREAS, all defined terms herein have the same meanings as set forth in the Agreement;

WHEREAS, on September 20, 2022, a hearing was held on the motion of Defendant/Counterclaimant to (1) conditionally certify the Settlement Class; (2) preliminarily approve the parties’ proposed class action settlement; (3) appoint Defendant/Counterclaimant Michelle Bedrosian as the Class Representative, her counsel as Class Counsel, and RG/2 Claims

Administration LLC as Settlement Administrator; (4) set the deadlines for written exclusions or objections to the Agreement; (5) approve the form of Notice to the Settlement Class; and (6) schedule a hearing on the final approval of the Agreement for February 21, 2023 (the “Preliminary Approval Motion”).

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Nature of Action. Defendant/Counterclaimant alleges that Plaintiff Counterclaim-Defendant TD Auto Finance, LLC, n/k/a TD Bank, N.A. (“TDAF”) engaged in unlawful acts in connection with the repossession and sale of her Vehicle purchased as part of a consumer transaction in violation of the Uniform Commercial Code (“UCC”). In particular, Defendant/Counterclaimant alleged that the notices mailed to her before and after the disposition of her Vehicle by TDAF, the “pre-sale notice” and “post-sale notice,” respectively, were misleading or otherwise unreasonable in violation of RSMo § 400.9-611 to § 400.9-616. Defendant/Counterclaimant also alleged that TDAF violated RSMo § 408.553, and therefore the UCC, by charging her interest after default but before a final judgment.

TDAF disputes and denies all of Defendant/Counterclaimant’s claims. TDAF contends that it has fully complied with all applicable laws at issue in this matter.

2. Settlement. Defendant/Counterclaimant Michelle Bedrosian (the “Class Representative”), individually and as Class Representative on behalf of the Class, and TDAF (collectively, the “Parties”) have negotiated a potential settlement to the Action to avoid the expense, uncertainties, and burden of protracted litigation, and to resolve the Released Claims (as defined in the Agreement) against TDAF and the Releasees.

3. Review. At the preliminary approval stage, the Court’s task is to evaluate whether the settlement is within the “range of reasonableness.” 4 Newberg on Class Actions § 11.26 (4th

ed. 2010). In determining whether class action settlements should be approved, “[c]ourts judge the fairness of a proposed compromise by weighing the plaintiff’s likelihood of success on the merits against the amount and form of the relief offered in the settlement. [Citation omitted] . . . They do not decide the merits of the case or resolve unsettled legal questions.” *Carson v. American Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981). To determine if a class action settlement is “fair, reasonable, and adequate,” the court should consider and balance five factors: “(1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of proceedings and the amount of discovery completed; (4) the probability of plaintiffs’ success on the merits; (5) the range of possible recovery; and (6) the opinions of class counsel, class representatives, and absent class members.” *See State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 378 (Mo. Ct. App. 1997) (citing *Ahearn v. Fibreboard Corp.*, 162 F.R.D. 505, 528 (E.D. Tex. 1995) (applying factors from *Reed v. General Motors Corp.*, 703 F.2d 170 (5th Cir. 1983)). Absent evidence to the contrary, there is a “presumpti[on] [of] validity of class settlement agreements negotiated at arm’s length[.]” *Claxton v. Kum & Go, L.C.*, No. 6:14-CV-03385-MDH, 2015 WL 3648776, at *6 (W.D. Mo. June 11, 2015). Settlement negotiations that involve arm’s length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. *See Manual for Complex Litigation*, Third, § 30.42 (West 1995) (“A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arms’-length negotiations between experienced, capable counsel after meaningful discovery.”) (internal quotation marks omitted).

The Court has carefully reviewed the Agreement, including the plan of allocation and the release of claims, as well as the files, records, and proceedings to date in the Action. The terms and conditions in the Agreement are hereby incorporated as though fully set forth in this Order,

and, unless otherwise indicated, capitalized items in this Order shall have the meanings attributed to them in the Agreement.

4. Jurisdiction. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Members of the Class, and venue in this Court is proper.

5. Preliminary Approval. Based on the review the Court has conducted, as set forth in paragraph 3, the Court does hereby preliminarily approve the Agreement and the Settlement set forth therein as fair, reasonable, and adequate, subject to further consideration at the Final Approval Hearing described below. The Court finds on a preliminary basis that the Settlement as set forth in the Agreement falls within the range of reasonableness and was the product of informed, good-faith, arms'-length negotiations between the Parties and their counsel, and therefore meets the requirements for preliminary approval. The Court finds and concludes that the assistance of an experienced mediator in the settlement process supports the finding that the Settlement is non-collusive.

6. Settlement Class. The Court conditionally certifies, for settlement purposes only (and for no other purpose and with no other effect upon the Action, including no effect upon the Action should the Agreement not receive Final Approval or should the Effective Date not occur), a class defined as the collective group of consumers who:

- a. purchased a motor vehicle from a dealer in Missouri or had a Missouri address at or around the time of repossession of the motor vehicle;
- b. as part of the purchase transaction entered into a RISC where the RISC was assigned to TDAF; and
- c. from May 30, 2012 to the date of entry of the Preliminary Approval Order were mailed a "Notice After Repossession or Voluntary Surrender" and/or "Deficiency Notice Letter" by TDAF.

The Class does not include any individual who validly opts out of the Settlement pursuant to the procedures set forth herein.

7. Designation of Class Representative and Class Counsel. The Court finds and concludes that the Class Representative Michelle Bedrosian has claims typical of and is an adequate representative of the Settlement Class she proposes to represent. The Court hereby appoints Michelle Bedrosian as the Class Representative for the Settlement Class. The Court finds and concludes that Martin L. Daesch, Jesse B. Rochman, and Craig W. Richards of The Onder Law Firm have extensive experience and expertise in prosecuting consumer class actions. The Court hereby appoints Mr. Daesch, Mr. Rochman, and Mr. Richards as Class Counsel.

8. Final Approval Hearing. A hearing (the “Final Approval Hearing”) shall be held before this Court on February 21, 2023, at 10 a.m., at the Twenty-First Judicial Circuit Courthouse, 105 South Central Avenue, Clayton, Missouri 63105 to determine, among other things: (i) whether the proposed Settlement of the Action on the terms and conditions set forth in the Agreement is fair, reasonable, and adequate to the Class and should be approved by the Court; (ii) whether a Judgment as provided in Paragraph 1.23 of the Agreement should be entered; (iii) whether Settlement Class Members should be bound by the Release set forth in the Agreement; (iv) any amount of fees and expenses that should be awarded to Class Counsel and any award to the Class Representative for her representation and service to the Class; (v) to consider any Settlement Class Member’s objections to the Settlement and/or any application of Class Counsel for payment or reimbursement of attorney’s fees, costs, and expenses and any application for an award to the Class Representative; and (vi) to rule upon such other matters as the Court may deem appropriate. The Court may hold the Final Approval Hearing by video conference or telephone. The Parties shall include the date of the Final Approval Hearing in the Notice to be mailed to the Settlement Class.

9. Class Notice. The Court approves the form, substance, and requirements of the Mail Notice and Class Notice (collectively, the “Notice”) annexed hereto as **Exhibits 1-A and 1-B**. The Court further finds that the form, content, and distribution of the Notice, substantially in the manner and form set forth in Paragraph 9 of this Order, meets the requirements of Rule 52.08 of the Missouri Rules of Civil Procedure and due process. The Notice fairly, plainly, accurately, and reasonably informs potential Class Members of appropriate information about: (1) the nature of this action, the definition of the Settlement Class, the identity of Class Counsel, and the essential terms of the Settlement, including the plan of allocation for the monetary and other relief, and includes the address for a website maintained by the Settlement Administrator that has links to the notice, motions for approval and for attorney’s fees, and any other important documents in this case; (2) Class Representative’s forthcoming application for the Class Representative’s Incentive Award and Class Counsel’s attorneys’ fees and costs award; (3) how the Settlement Class Members’ pro rata share of the Settlement Fund will be calculated and distributed; (4) this Court’s procedures for final approval of the Settlement; (5) how to Opt-Out or Object to the Settlement; (6) how to obtain additional information regarding this Action and the Settlement, including instructions on how to access the case docket via Missouri’s Case.net or in person at the Courthouse; and (7) the date of the Final Approval Hearing and that the date may change without further notice to the Settlement Class, and that Class Members may check the settlement website or the Court’s Case.net to confirm that the date has not been changed.

The Court further finds and concludes that the proposed plan for distributing the Notice likewise is a reasonable method calculated to reach all individuals who would be bound by the Settlement. Under this plan, prior to distributing the Notice and after receiving a Notice List from TDAF, the Settlement Administrator will update addresses through NCOA. After the Settlement

Administrator updates the Settlement Class's addresses, the Mail Notice will be sent out via first-class mail and the Class Notice will be sent via email to the Settlement Class Members who have an email address on file that is reasonably accessible by TDAF. No later than the mailing of the Mail Notice, the Class Notice will be posted to the Settlement Website. There is no additional method of distribution that is cost-effective and would be reasonably likely to notify potential Class Members who may not receive notice under this proposed distribution plan.

The Court hereby concludes that the proposed Notice and Notice plan are the best practicable under the circumstances and are reasonably calculated, under all the circumstances, to apprise potential Class Members of the pendency of the Action, to apprise persons who would otherwise fall within the definition of the Class of their right to exclude themselves from the proposed Class, and to apprise Class Members of their right to object to the proposed Settlement and their right to appear at the Final Approval Hearing. The Court further finds that the Notice constitutes due and sufficient notice to all persons entitled thereto.

10. Settlement Administrator. The Court approves the appointment of RG/2 Claims Administration LLC to supervise and administer the notice procedure as more fully set forth below:

a. No later than sixty (60) days from the entry of this Order (the "Notice Mailing Date"), the Settlement Administrator shall cause a copy of the Mail Notice, substantially in the form annexed as **Exhibit 1-A** hereto, to be mailed by first class U.S. mail to the last known mailing address of each individual on the Notice List, after being updated by the Settlement Administrator using NCOA;

b. No later than the Notice Mailing Date, the Settlement Administrator shall also send the Class Notice via email to the Settlement Class Members who have an email address on file that is reasonably accessible by TDAF.

c. No later than the Notice Mailing Date, the Settlement Administrator shall establish a website at [www.\[ADD\].com](http://www.[ADD].com), and shall post on the website the Agreement and Exhibits, including the Class Notice substantially in the form annexed as **Exhibit 1-B** hereto, as well as the Counterclaim, this Preliminary Approval Order, applications for attorneys' fees and class representative Incentive Payment, the Final Approval Order, and the operative Complaint in this Action;

d. Following the mailing of the Mail Notice, the Settlement Administrator shall provide counsel with written confirmation of the mailing and publication via website;

e. The Settlement Administrator shall otherwise carry out its duties as set forth in Section 6 of the Agreement.

11. Exclusion from the Class. Any Class Member may, upon request, be excluded from the Class. Any such Class Member must submit a written Request to Opt Out, postmarked no later than sixty (60) days before the Final Approval Hearing. To be valid, the Request to Opt Out must: (a) identify the case name; (b) identify the name and address of the person requesting exclusion; (c) be personally signed by the person requesting exclusion; and (d) contain a statement that indicates a desire to be excluded from the Settlement Class, such as "I hereby request that I be excluded from the proposed Settlement Class in the Action," as set forth in Section 11 of the Agreement. All Class Members who submit valid, verified, and timely Requests to Opt Out in the manner set forth in this Paragraph shall have no rights under the Agreement and shall not be bound by the Agreement or any Final Judgment. Mass or class opt outs shall not be allowed. A Class

Member who desires to opt out must make timely affirmative written action pursuant to this Order and the Agreement, even if the person desiring to opt out of the Class (a) files or has filed a separate action against any of the Released Parties, or (b) is, or becomes, a putative class member in any other class action filed against any of the Released Parties.

12. Copies of Requests to Opt Out. The Settlement Administrator shall provide Class Counsel and TDAF's Counsel with a list of all timely Requests to Opt Out within seven (7) business days after the Opt Out Deadline.

13. Entry of Appearance. Any member of the Class who does not exclude himself or herself from the Settlement Class may enter an appearance in the Action, at his or her own expense, individually or through counsel of his or her own choice. If he or she does not enter an appearance, he or she will be represented by Class Counsel.

14. Binding Effect on Class. All Class Members who do not exclude themselves from the Settlement Class by properly and timely submitting a Request to Opt Out shall be bound by all determinations and judgments in the Action concerning the Settlement, whether favorable or unfavorable to the Class.

15. Refusal of Waiver of Deficiency Balance. Each Settlement Class Member shall have the option to refuse waiver of the Deficiency Balance that TDAF claims is due. In order to refuse the Deficiency Balance Waiver, the Class Member must complete and send to the Settlement Administrator, at the address listed in the Class Notice and on the Settlement Website for this Settlement, a Refusal of Deficiency Balance Waiver that is postmarked no later than thirty (30) days after the Notice Mailing Date. The Refusal of Deficiency Balance must: (a) identify the case name; (b) identify the name and address of the person requesting refusal; (c) be personally signed by the person requesting refusal; and (d) contain a statement that indicates a desire to be

included in the Settlement Class, but to refuse the Deficiency Balance Waiver, such as “I hereby request that I be included in the proposed Settlement Class in the Action, however I do not want TDAF to eliminate any Deficiency Balance on my Account.” A Refusal of Deficiency Balance Waiver can be accomplished by sending a letter as instructed in the Agreement and on the Settlement Website. All borrowers, including co-borrowers, must timely execute the Refusal of Deficiency Balance Waiver pursuant to this Paragraph in order to refuse the Waiver of the Deficiency Balance associated with that particular Account. Within forty-five (45) days of the Notice Mailing Date, the Settlement Administrator shall forward copies of all Refusal of Waiver of Deficiency Balance notices received to counsel as identified Paragraph 19 of the Agreement. Any Class Member that elects to not receive a Deficiency Balance Waiver is still otherwise bound by the terms of the Agreement based on the good and valuable consideration provided.

16. Objections. Any Class Member who does not timely and validly exclude himself or herself from the Settlement Class may appear and show cause, if he or she has any reason why the proposed Settlement of the Action should not be approved as fair, reasonable, and adequate, why a Final Judgment should not be entered thereon, why Attorneys’ Fees and Expenses should not be awarded to Class Counsel, or why an award should not be made to the Class Representative; provided, however, that no Class Member shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if approved, the Final Judgment to be entered thereon approving the same, or any attorney’s fees and expenses to be awarded to Class Counsel or award made to the Class Representative, unless a written objection is filed with the Circuit Clerk of the Twenty-First Judicial Circuit Court, St. Louis County, Missouri, 105 South Central Avenue, Clayton, Missouri 63105, and mailed (with the requisite postmark) to Class Counsel and TDAF’s counsel (at the addresses identified in Section 19 of the Agreement), no later than sixty (60) days

before the Final Approval Hearing. To be valid, the written objection must include: (a) the case name and number; (b) the name, address, telephone number of the Settlement Class Member objecting and, if represented by counsel, of his/her counsel; (c) the basis for objection; and (d) a statement of whether he/she intends to appear at the Final Approval Hearing, either with or without counsel. If a party to the RISC or governing loan agreement is deceased, a copy of the death certificate for such person shall be submitted with the objection.

Within seven (7) business days of the Objection Deadline, the Settlement Administrator shall provide a report to the Court setting forth a list of Objections that meet the above guidelines. The Court shall have the ultimate determination of whether an Objection has been appropriately made. Any Settlement Class Member who does not make his or her objection in the manner provided in this Section shall be deemed to have waived such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement as incorporated in the Agreement, and to the award of Attorney's Fees and Expenses to Class Counsel and the payment of an Incentive Award to the Class Representative, unless otherwise ordered by the Court.

17. Appearance of Objectors at Final Approval Hearing. Any Settlement Class Member who files and serves a written objection in accordance with Paragraph 16 of this Order may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement would not be approved as fair, adequate, and reasonable, but only if the objector files with the Circuit Clerk a notice of intention to appear at the Final Approval Hearing and serves the same on all counsel designated in the Class Notice by the Objection Deadline ("Notice of Intention to Appear"). The Notice of Intention to Appear must include copies

of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in the Agreement and Class Notice shall not be entitled to appear at the Final Approval Hearing and raise any objections.

18. Service of Motion for Final Approval. The motion in support of final approval of the Settlement shall be filed and served no later than fifteen (15) days prior to the Final Approval Hearing and any responsive papers filed by Settlement Class Members (or their attorneys) shall be filed and served no later than seven (7) calendar days prior to the Final Approval Hearing.

19. Fees, Expenses, and Awards. Class Counsel's application for Attorneys' Fees and Expenses shall be filed and served no later than ten (10) calendar days prior to the Final Approval Hearing. Neither TDAF nor the Releasees shall have any responsibility for any application for Attorney's Fees and Expenses submitted by Class Counsel, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement. At or after the Final Approval Hearing, the Court shall determine whether any application for Attorney's Fees and Expenses, and any award to the Class Representative for her service to the Class, should be approved.

20. Releases. If the Settlement is finally approved, the Releasers shall release the Releasees from the Released Claims.

21. Use of Order. Neither this Order, the fact that settlement was reached and filed, the Agreement, nor any other related negotiations, statements, or proceedings shall be construed as, offered as, admitted as, received as, used as, or deemed to be an admission or concession of liability or wrongdoing whatsoever or breach of any duty on the part of TDAF. This Order is not

a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. In no event shall this Order, the fact that a settlement was reached, the Agreement, or any of its provisions or any negotiations, statements, or proceedings relating to in any way be used, offered, admitted, or referred to in the Action, in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding, by any person or entity, except by the Parties and only by the Parties in a proceeding to enforce the Agreement.

22. Continuance of Final Approval Hearing. The Court reserves the right to continue the date of the Final Approval Hearing without further notice to the Members of the Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class.

23. Stay of Proceedings. All proceedings in this Action are stayed until further Order of this Court, except as may be necessary to implement the Settlement or comply with the terms of the Agreement.

24. Preliminary Injunction. Pending final determination of whether the Settlement should be approved, and upon expiration of the Opt-Out Deadline, all Class Members who do not timely and validly exclude themselves from the Settlement Class, and each of them, and anyone who purports to act on their behalf, are preliminarily enjoined from directly or indirectly maintaining, commencing, prosecuting, or pursuing directly, representatively, or in any other capacity, any Released Claim subsumed and covered by the Release in the Agreement, including in any court or arbitration forum.

25. Termination of Settlement. If: (a) the Agreement is terminated as provided in Section 13 of the Agreement; or (b) any specified material term or condition of the Settlement as

set forth in the Agreement is not satisfied as provided in Section 13 of the Agreement, then this Order may not be introduced as evidence or referred to in any actions or proceedings by any person or entity and shall be treated as vacated, *nunc pro tunc* (except Paragraph 21 of this Order shall remain in effect), and each party shall be restored to his, her, or its respective position in this Action as its existed prior to the execution of the Agreement.

26. No Merits Determination. By entering this Order, the Court does not make any determination as to the merits of this Action.

27. Authority. The Court hereby authorizes the Parties to take such further steps as necessary and appropriate to establish the means necessary to implement the terms of the Agreement.

28. Jurisdiction. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Agreement and the Settlement.

IT IS SO ORDERED.

DATED: 9/20/22



THE HONORABLE MONDONNA L. GHASEDI