

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

CECIL E. HOPKINS,

individually, and on behalf of a Class of all
others similarly situated,

Plaintiff,

Case No. 08-5052-CV-SW-GAF

vs.

KANSAS TEACHERS COMMUNITY
CREDIT UNION,

Defendant

vs.

MARATHON ROTHSCHILD CREDIT
UNION, et al.,

Third Party Defendants.

**ORDER FINALLY APPROVING CLASS ACTION
SETTLEMENT AND CERTIFYING A CLASS FOR SETTLEMENT PURPOSES**

Upon careful review and consideration of the Parties' Settlement Agreement and Release dated February 4, 2011 (the "Agreement"), the evidence and arguments of counsel as presented at the Fairness Hearing held on May 19, 2011, the memoranda filed with this Court, and all other filings in connection with the Parties' settlement as memorialized in the Agreement (the "Settlement"); and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. **Incorporation of Other Documents.** This Order incorporates and makes the following a part hereof:

- a. The Agreement, filed with this Court on or about February 4, 2011; 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 Notice); (iii) Exhibit B (Proposed Order Preliminarily Approving the Class Action

Settlement); (iv) Exhibit C (Proposed Revised Order Finally Approving the Class Action Settlement and Certifying a Class for Settlement Purposes); (v) Exhibit D (Proposed Revised Final Judgment); and (vi) Exhibit E (list of members of the Settlement Class, filed under seal).

Unless otherwise provided herein, all capitalized terms in this Order shall have the same meaning as those terms in the Agreement.

2. **Jurisdiction.** Because adequate notice was disseminated and all potential members of the Settlement 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 Settlement Class. The Court has subject matter jurisdiction over the Litigation, including, without limitation, jurisdiction to approve the proposed Settlement, to grant final certification of the Settlement Class, and to dismiss the Litigation against Kansas Teachers Community Credit Union with prejudice.

3. **Final Class Certification.** The Settlement Class, which this Court previously certified preliminarily, is hereby finally certified for settlement purposes under Federal Rule 23, the Court finding that the Settlement Class fully satisfies all of the applicable requirements of Federal Rule 23 and due process. The Settlement Class is defined as follows:

Those persons who:

- (1) Obtained a motor vehicle loan or financing from Kansas Teachers Community Credit Union in conjunction with a “Portfolio Management Program” administered by Centrix Financial, LLC; and
- (2) Who obtained a Missouri Certificate of Title for that motor vehicle identifying Kansas Teachers Community Credit Union as the lienholder; and
- (3) Had said motor vehicle repossessed.

4. No members of the Settlement Class timely requested to be excluded from or “opted out” of the Settlement Class.

5. **Adequacy of Representation.** There are no apparent conflicts of interest between Plaintiff Cecil E. Hopkins and the Settlement Class, or among the members of the Settlement Class, and Plaintiff Hopkins and Plaintiff’s counsel will fairly and adequately

represent and protect the interests of the Settlement Class. Accordingly, the Named Plaintiff Cecil E. Hopkins and his counsel, R. Frederick Walters, Kip D. Richards, J. Michael Vaughan, and Garrett M. Hodes of the law firm Walters Bender Strohbehn & Vaughan, P.C. (“Plaintiffs’ Counsel” or “Class Counsel”), have satisfied the requirements of Federal Rule 23 and are hereby appointed and approved as representatives of the Settlement Class and Counsel for the Settlement Class, respectively.

6. **Class Notice.** The Court finds that the Class Mail Notice and its distribution to the Settlement Class as implemented pursuant to the Agreement and the Preliminary Approval Order:

- a. Constituted the best practicable notice to the members of the Settlement Class under the circumstances of this Litigation;
- b. Constituted notice that was reasonably calculated, under the circumstances, to apprise the members of the Settlement Class of (i) the pendency of this Litigation and the proposed Settlement, (ii) their right to exclude themselves from the Settlement Class and the proposed Settlement, (iii) their right to object to any aspect of the proposed Settlement (including, but not limited to, the following: final certification of the Settlement Class; the fairness, reasonableness or adequacy of the Settlement as proposed; the adequacy of the Plaintiff Cecil Hopkins’ and/or Class Counsel’s representation of the Settlement 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 Settlement Class, and (v) the binding effect of the Orders and Judgment in the Litigation on all members of the Settlement 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 requirements of Federal Rule 23, due process, and any other applicable law.

7. **Final Settlement Approval.** The terms and provisions of the Agreement, including all exhibits, have been entered into in good faith and as a result of arm's length negotiations, and 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 Settlement Class Members, and in full compliance with all applicable requirements of the laws of the state of Missouri, the United States Constitution (including the Due Process Clause), and any other applicable law. The Parties are hereby directed to implement and consummate the Agreement according to its terms and provisions.

8. **Binding Effect.** The terms of the Agreement, this Order and the accompanying Final Judgment shall be forever binding on Plaintiff Cecil E. Hopkins and all of the Settlement Class Members, as well as their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other person claiming by or through any or all of them. The terms of 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.

9. **Releases.** The Settlement Class Members (*i.e.*, those members of the Settlement Class who did not timely opt out) shall be bound by the Release provided in Paragraph 6 of the Agreement, which is incorporated herein in all respects, 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 paragraph 6 of the Agreement, including but not limited to, the definition of the claims covered by the Release (which is set forth at Paragraph 2.20 of the Agreement).

10. **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.

11. **Additional Payment to Plaintiff Hopkins .** The Court hereby awards

\$17,500.00 be paid from the Gross Cash Fund to Plaintiff Cecil E. Hopkins as an incentive award for his services as representative plaintiff in this Litigation.

12. **Attorney's Fees and Expenses.** Plaintiffs' Counsel are awarded \$19,631.62 from the Gross Cash Fund representing an allocated share of the litigation expenses and court costs that Plaintiffs' Counsel has incurred and advanced as of April 30, 2011 in connection with the Litigation and the Settlement, which shall be deducted from the Gross Cash Fund as defined in the Agreement. In addition, the Court awards Plaintiffs' Counsel attorney's fees of \$800,000.00, representing 30.4% of the "Gross Settlement Fund" as defined in the Agreement, which award is to be deducted from the Gross Cash Fund. The Court finds and concludes that each of the above awards to Plaintiff's Counsel for work and services in this case and in connection with the Settlement is reasonable. The Court finds and concludes that the award of such attorneys' fees and expenses to Plaintiffs' Counsel for their work in this case is reasonable for the reasons stated in *Plaintiffs' Application for Award of Attorneys' Fees, Litigation Expenses and Court Costs*. In making these awards the Court finds as follows:

- a. The time and labor required to obtain this settlement was extensive. More than 2,000 hours of work were required by Plaintiff's Counsel and persons working for them during the prosecution of this matter. This work included, among other things, the substantial efforts of Plaintiff's Counsel to develop the factual information and evidence necessary to establish Defendant's liability to each of the Class members and to establish their individual damages and penalty claims. The Court's file reflects extensive motion practice on complex legal and procedural issues, preparation of detailed electronic data and damages methodologies, and numerous certification and class management issues. The hourly rates for Plaintiff's Counsel are approved as reasonable for this type of matter.
- b. The legal issues in this case were complex, novel and difficult. This factor is further borne out and illustrated by the significant and

voluminous legal memoranda and briefing in this matter.

- c. The skill required of Plaintiff's Counsel was high in this case. Both the substantive and procedural aspects of this case were more complex than usual.
- d. Because of the volume of work required on this matter, Plaintiff's Counsel was by choice precluded from taking on other matters and was committed to dedicate extensive resources to the matter. In addition, given the volume of work and the risks engendered by this type of litigation, this lawsuit may have been undesirable to other attorneys. Plaintiff's Counsel fulfilled their obligations herein with dedication and persistence for the length of time necessary to obtain this Settlement.
- e. The results obtained for the Class were exceptional in light of the risks posed by the assertions of the Defendant to the Class members' claims.
- f. The fee in this case was contingent. Plaintiff's Counsel would have received no fee had they not been successful. In addition, Plaintiff's Counsel risked large amounts of expenses and advances on the successful outcome of this matter. There were substantial risks to Plaintiff's Counsel in the prosecution of this matter.
- g. Plaintiff's Counsel's experience, reputation and ability played a significant factor in obtaining the class settlement. Less experienced or able counsel would have likely achieved a lesser result or perhaps no result at all. In addition, the Defendant was at all times represented by skilled and experienced defense attorneys.
- h. No member of the Class has objected to any aspect of the settlement and no members of the Class have timely opted out or excluded themselves from the Class. The reaction of the Class to the Settlement has been favorable to say the least.

- i. With respect to the common fund recovery, a division between the Settlement Class and Plaintiff's Counsel, respectively, is approved as reasonable.
- j. The litigation costs and expenses are reasonable and equitable for a matter of this complexity and duration.

Given the factors to be considered in making and approving such awards including, among others, those listed above and the nature and extent of the legal work provided by Plaintiffs' Counsel, and the extraordinary results obtained for the Settlement Class in this particular action, the awards of attorneys' fees and litigation expenses are approved as reasonable. Such attorneys' fees and expenses shall be paid subject to the conditions set forth in the Agreement.

11. **No Other Payments.** The preceding paragraphs of this Final Approval Order cover, without limitation, any and all claims for attorney's fees and expenses, costs or disbursements incurred by Plaintiff's Counsel or any other counsel representing Plaintiff Cecil E. Hopkins or the Settlement Class, or incurred by Plaintiff Hopkins or the Settlement 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.

12. **Retention of Jurisdiction.** The Court has jurisdiction to enter this Final Approval Order and the accompanying Final Judgment. Without in any way affecting the finality of this Final Approval Order and the accompanying Final Judgment, this Court expressly retains jurisdiction as to 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 Settlement Class or a Settlement 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; and
- c. entering any other necessary or appropriate Orders to protect and effectuate this Court's retention of continuing jurisdiction.

13. **No Admissions.** Neither this Final Approval Order, nor the accompanying Final Judgment, nor the Agreement, nor any of its terms or provisions, nor any of the negotiations between the Parties or their counsel, nor any action taken to carry out this Order or the Final Judgment, is, may be construed as, or may be used as an admission or concession by or against any of the Parties or the Released Persons of the validity of any claim or liability, any alleged violation or failure to comply with any law, any alleged breach of contract, any legal or factual argument, contention or assertion. Entering into or carrying out the Agreement, and any negotiations or proceedings related to it, shall not in any event be construed as, or deemed evidence of, an admission or concession as to Defendant Kansas Teachers Community Credit Union's denials, defenses, factual or legal positions, 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 whatsoever, except as necessary in a proceeding to enforce the terms of this Order and the Agreement or to prove or show that a compromise in settlement of the Released Claims per the Agreement, in fact, was reached; provided, however, that this Order and the Agreement may be filed in any action against or by Kansas Teachers Community Credit Union or the Released Persons 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.

14. **Dismissal of Litigation Against Kansas Teachers Community Credit Union.**

The Litigation against Kansas Teachers Community Credit Union, including all individual and class claims is dismissed with prejudice as to Plaintiff Cecil E. Hopkins and the Settlement Class Members, without fees or costs to any party, except as otherwise provided in this Order and the Final Judgment.

15. **Separate Judgment.** The Court will separately enter the accompanying Final Judgment.

IT IS SO ORDERED

s/ Gary A. Fenner
Gary A. Fenner, Judge
United States District Court

DATED: May 19, 2011