

 ORIGINAL



NICOLE ZENTNER, individually and on behalf of all others similarly situated,

ANDREW KIVETT, individually and on behalf of all others similarly situated,
Plaintiffs

vs.

BRENNER CAR CREDIT, LLC,

PAXTON SECURITIES CO.
Defendants.

COURT OF COMMON PLEAS
LYCOMING COUNTY

NO. 20-1193

CLASS ACTION

THOMAS D. HEAR
PROTHONOTARY &
CLERK OF COURTS

2023 AUG 14 PM 3: 51

FILED
LYCOMING COUNTY

ORDER FOR FINAL JUDGMENT AND DISMISSAL

WHEREAS, Nicole Zentner and Andrew Kivett, (the “Class Representatives” or “Plaintiffs”) on behalf of themselves and the Class Members, and Brenner Car Credit, LLC and Paxton Securities Co. (collectively “Brenner”), the Defendants in the above captioned action (the “Action”) have entered into and filed with the Court, a Class Action Settlement Agreement and Release (the “Settlement Agreement”);

WHEREAS, the Court on April 14, 2023 entered an Order Preliminarily Approving the Settlement (“Preliminary Approval Order”);

WHEREAS, on August 14, 2023, beginning at 1:30 o’clock p.m., the Court held a hearing to consider, among other things (i) whether the settlement reflected in the Settlement Agreement should be approved as fair, reasonable, adequate and in the best interests of the members of the Class; (ii) whether final judgment should be entered dismissing the claims of the members of the Class with prejudice and on the merits, as required by the Settlement Agreement; and (iii) whether to approve Plaintiffs’ application for Class Representative service awards, and Class Counsel’s petition or an award of Class Counsel fees, costs, and expenses from the common fund.

WHEREAS, based on the foregoing, having heard the statements of counsel for the parties and of such persons who chose to appear at the final approval hearing, having considered all of the

files, records and proceedings in the Action, including specifically the Settlement Agreement (and the exhibits appended thereto), the memoranda and other papers filed by the parties in support of final approval of the proposed settlement, Plaintiffs' request for the award of Class Representative service awards, and Plaintiffs' request for an award of Class Counsel fees and expenses;

WHEREAS, there have been zero (0) objections to the settlement and zero (0) Class Members have opted out.

THE COURT HEREBY FINDS, ORDERS AND ADJUDGES THAT:

1. **Notice to the Class:** Notice to the Class has been provided by the Settlement Administrator pursuant to this Court's Order of Preliminary Approval, as attested to by the Affidavit of the Settlement Administrator. The Notice given to members of the Class by first class mail, along with the creation of a website, constituted due and sufficient Notice of the settlement and the matters set forth in said Notices to all persons entitled to receive Notice, and fully satisfies the requirements of due process and Pa. R. Civ. P. 1712, 1714(c).

2. **Adequacy of Class Representative:** Plaintiffs Nicole Zentner and Andrew Kivett, as representatives of the Class, fairly and adequately represent the interests of the Class, such that the requirements of due process, the requirements of Pennsylvania law, and the requirements of Pa. R. Civ. P. 1709 have been satisfied.

3. **Adequacy of Class Counsel:** Cary L. Flitter, Andrew M. Milz, Jody Thomas López-Jacobs along with the law firm of Flitter Milz, P.C., and Thomas Waffenschmidt and The Waffenschmidt Firm have fairly and adequately represented the interests of the Class, such that the requirements of due process, the requirements of Pennsylvania law and the requirements of Pa. R. Civ. P. 1709 have been satisfied.

4. **Settlement Approved:** The proposed settlement set forth in the parties' Settlement Agreement, a copy of which was filed as Ex. "1" to the Motion for Final Approval, is fair, reasonable, adequate, and in the best interests of the Class. The terms in this Order shall be interpreted in accordance with the definitions in the Settlement Agreement. All aspects of the Settlement Agreement are approved. The Class Representatives' service awards are approved in the amount of \$15,000.00 to Nicole Zentner and \$15,000.00 to Andrew Kivett.

5. **Class Counsel Fees and Expenses:** The Court has reviewed the application for Class Counsel fees and expenses, and the documentation submitted in support. Consistent with the criteria set forth in Pa. R. Civ. P. 1717, and established Pennsylvania law providing for payment of reasonable counsel fees and expenses to Class Counsel from a common fund created for the benefit of the Class, the Court finds the cash payment of \$1,200,000, and equitable type relief in the correction of consumer credit reports of Class Members creates a common fund valued well in excess of \$1,200,000.

Class Counsel's request for fees and costs in the sum of \$480,000 and \$11,231.68 respectively are approved as fair and reasonable in light of the factors set forth in Pa. R. Civ. P. 1717, and in light of ongoing future services reasonably anticipated to be required to implement and oversee this settlement. Litigation expenses of Class Counsel have been adequately documented, and were reasonable and necessary for effective prosecution of the case. Counsel fees and expenses are both to be paid out of the Settlement Fund, as set forth in the Settlement Agreement.

6. **Dismissal and Related Matters:**

a. The claims of all members of the Class, as no (0) Class Members have excluded themselves from the Class pursuant to paragraph 4.03 of the Settlement Agreement, are hereby dismissed with prejudice, on the merits and without costs to any party.

b. Plaintiffs, on their own behalf and on behalf of each Class Member, by operation of this Release and the judgment, hereby shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged with prejudice any and all of the Released Persons of and from any and all Settled Claims, and shall be forever barred and enjoined from instituting or further prosecuting, in any forum, including but not limited to any state or federal court, any Settled Claim as defined in the Settlement Agreement.

c. On the Effective Date, Defendant shall be deemed to have released, settled, compromised, relinquished, and discharged with prejudice any such Deficiency Balance of Class Members arising from or related to the motor vehicle installment sale contracts at issue. Brenner is hereby enjoined from any further attempts to collect monies from Class Members on covered contracts. Notwithstanding the foregoing, this Release shall not apply to any Class Member who reinstated his contract or reclaimed and/or obtained the return of his vehicle following repossession and/or who does not have a Deficiency Balance.

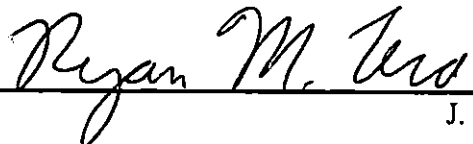
d. In light of the Notice given to the Class Members, the Plaintiffs and all Class Members shall be bound by the Settlement Agreement and all of their Settled Claims shall be dismissed with prejudice and released.

7. Cy Pres: The Court approves North Penn Legal Services as a *cy pres* beneficiary. All residual funds remaining after distribution of the Settlement Fund to Class Members and any remaining, as called for in the Settlement Agreement, shall be distributed by the Settlement Administrator accordingly: (A) 50% to Pennsylvania Interest on Lawyers Trust Account

("IOLTA") pursuant to Pa. R. Civ. P. 1716, eff. July 1, 2012, and (B) 50% to North Penn Legal Services as *cy pres* on behalf of the class. The *cy pres* fund shall be used for consumer purposes as set forth in the Class Action Settlement Agreement, ¶ 3.05.

8. **Continuing Jurisdiction:** Consummation of the settlement shall proceed as described in the Settlement Agreement and the Court hereby retains jurisdiction of this matter in order to resolve any disputes which may arise in the implementation of the Settlement Agreement or the implementation of this Final Judgment and Order. The Court retains continuing jurisdiction for purposes of supervising the implementation of the Settlement Agreement and supervising the distribution and allocation of the Settlement Fund. Final judgment shall be entered as provided herein.

BY THE COURT:



J.

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