

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

FILED
LYCOMING COUNTY
2023 APR 14 PM 1:21
THOMAS O. HEAP
PROTHONOTARY

**ORDER CERTIFYING SETTLEMENT CLASS, PRELIMINARILY
APPROVING CLASS SETTLEMENT AND DIRECTING THE
ISSUANCE OF NOTICE TO THE CLASS**

AND NOW, this 14th day of April, 2023, the Court finds and Orders:

This Court has before it a proposed class action settlement. Having reviewed the Class Action Settlement Agreement and Release, which was filed of record as an exhibit to the Motion for Preliminary Approval and is incorporated herein by reference (the "Settlement Agreement"), having read the Plaintiffs' Motion for Preliminary Approval, having been advised that Defendants join in the relief requested, and based specifically upon the facts and circumstances at issue in the present case, the Court hereby ORDERS as follows:

1. Summary of the Case:

The lawsuit claims that Brenner Car Credit, LLC and Paxton Securities Co. (hereinafter referred to as "Brenner" or "Defendants") violated the Uniform Commercial Code ("UCC") of Pennsylvania by failing to send borrowers in Pennsylvania proper notice of disposition of collateral ("Repossession Notice") after repossession of their vehicle(s). Plaintiffs assert on behalf of themselves and the Class that the Repossession Notice sent by Brenner failed to provide proper and commercially reasonable notification of disposition to Plaintiffs and the Class of borrowers they seek to represent, by:

- (a) failing to state that the repossessed vehicle can be reclaimed by paying the total amount due any time before sale;
- (b) failing to state the method of intended disposition;
- (c) failing to state the time of any public disposition; and,
- (d) failing to describe the secured party.

Defendants dispute and deny Plaintiffs' legal entitlement to relief under the UCC.

2. Class Findings.

a) The numerosity requirement of Pa. R. Civ. P. 1702(1) is satisfied because the Class consists of approximately 3045 Pennsylvania consumers. Thus, the Class is so numerous that joinder would be impracticable.

b) The commonality requirement of Pa. R. Civ. P. 1702(2) is satisfied because members of the Class share at least one common factual or legal issue, *i.e.*:

- (i) whether Plaintiffs and the Class obtained consumer vehicle financing through Brenner and pledged the vehicle as collateral;
- (ii) whether Brenner repossessed the financed vehicle or ordered it repossessed;
- (iii) whether Brenner failed to send the notice of disposition of collateral required under the UCC after repossessing a vehicle;
- (iv) whether Brenner failed to send the notice of disposition in the form and manner required under the UCC in Pennsylvania after repossessing a vehicle; and
- (v) the uniform statutory damages provided in any event for such misconduct.

c) The typicality requirement of Pa. R. Civ. P. 1702(3) is satisfied because Plaintiffs seek to obtain a determination that Defendants engaged in uniform misconduct against members

of the Class. All Class Members were Pennsylvania consumer obligors to Brenner who allegedly were not provided a proper Repossession Notice.

d) The adequacy requirement of Pa. R. Civ. P. 1702(4) is satisfied in that (i) the interests of the Representative Plaintiffs Zentner and Kivett and the nature of their claims are consistent with those of all members of the Class, (ii) there appear to be no conflicts between or among the Representative Plaintiffs and the Class Members, and (iii) the Representative Plaintiffs and the Class Members are represented by qualified, experienced counsel who have often been certified as Class Counsel in similar matters.

e) The requirements of Pa. R. Civ. P. 1702(5) and 1708 are met, in that: a Class Action for settlement purposes provides a fair and efficient method for the resolution of the controversy.

f) Common issues of law and fact alleged by Plaintiffs predominate over any potential individual issues, including the alleged common issue of whether form letters sent by Defendants post-repossession comply with the provisions of one Pennsylvania statute's requirement of "commercially reasonable" notice of disposition. Pa. R. Civ. P. 1708(a)(1).

g) In making these preliminary findings, the Court has also given consideration to, among other factors: (i) the interests of Class Members in individually controlling the prosecution of separate actions for modest sums; (ii) the extent and nature of any litigation concerning these claims already commenced (none has been identified); (iii) the desirability of concentrating the litigation of the claims in this forum; (iv) the impracticability or inefficiency of prosecuting or defending separate actions. Pa. R. Civ. P. 1708(a)-(c).

h) Because this action is being settled rather than litigated, the Court need not consider manageability issues that might be presented by the trial of a class action involving the issues in this case. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

3. The Class, Class Representatives and Class Counsel.

a) The "Class" is defined as all persons who purchased and financed a motor vehicle for consumer use; who financed the vehicle purchase through Brenner, or whose installment sales contract was assigned to Brenner or Paxton; from whom Brenner and/or Paxton, as secured party(ies), repossessed the vehicle or ordered it repossessed; who had a Pennsylvania address as of the date of repossession; in the period commencing December 11, 2014 to December 31, 2020;

b) Nicole Zentner and Andrew Kivette are appointed representative of the Class ("Representative Plaintiffs").

c) Cary L. Flitter, Andrew M. Milz, and Jody T. López-Jacobs and the firm of Flitter Milz, P.C. and Thomas Waffenschmidt and the Waffenschmidt Law Firm are appointed as Class Counsel.

4. Findings Regarding Proposed Settlement. The Court finds that: (a) the proposed settlement resulted from extensive arm's-length negotiations. The proposed Settlement was concluded after over two years of litigation, appeals to the Superior and Supreme Courts of Pennsylvania, copious discovery, and participation in weeks of informal settlement negotiations between counsel; (b) the proposed settlement of this action involves direct and substantial cash payments to Class Members, the agreement not to collect Deficiency Balances, as well as equitable-type relief in correction of credit reports; and (c) the proposed settlement evidenced by the Settlement Agreement appears *prima facie* fair, reasonable and adequate to warrant sending

notice of this action and the proposed settlement to the Class Members and holding a final hearing on the proposed settlement.

The extinguishment of the disputed Deficiency Balances as part of this Settlement constitutes a bona fide accord and satisfaction. Plaintiffs' and Class Members' release of their claims for statutory damages, which is a greater dollar amount than the anticipated benefits they will receive in this Settlement, is a clear and unequivocal offer of payment in full satisfaction of the disputed Deficiency Balances. This full satisfaction, which will be accepted and retained by Brenner as part of this Settlement, constitutes accord and satisfaction.

5. Final Approval Hearing. A hearing (the "Final Approval Hearing") will be held on August 14, 2023, ^{at 1:30 p.m.} in the Court of Common Pleas of Lycoming County, Courtroom #3, 48 W. 3rd Street, Williamsport, PA 17701 to determine:

- a) Whether the proposed settlement of this action should be finally approved as fair, reasonable and adequate;
- b) Whether this action should be dismissed with prejudice pursuant to the terms of the settlement;
- c) Whether Class Members should be bound by the release set forth in the proposed settlement; and
- d) Whether Plaintiffs' application for an award of attorneys' fees and expenses to Class Counsel, and the Class Representatives' application for individual service awards, should be approved.

6. Pre-Hearing Notices to Class Members. Subject to the terms of the Settlement Agreement, an independent, third-party class action administrator, Continental DataLogix (the

"Settlement Administrator") shall provide Class Members with notice in the manner set forth below.

7. **Notice by Mail.** The Settlement Administrator shall mail the Class Notice (with proper dates filled in) substantially in the form filed with this Court as Exhibit B to the Settlement Agreement to the last-known address of each potential Class Member as reflected on Defendants' current and reasonably accessible records, or such other, more current address as the administrator sees fit, pursuant to the terms of the Settlement Agreement. The Class Notice shall be sent by first-class mail, postage prepaid, no later than thirty (30) days following entry of this Order approving Class Notice.

8. **Proof of Mailing.** Twenty days before the Final Approval Hearing, the Settlement Administrator shall submit to Class Counsel an affidavit of mailing of the Class Notice. Class Counsel shall docket the affidavit promptly.

9. **Findings Concerning Notice.** The Court finds that the Class Notice is the best practicable notice and is reasonably calculated, under the circumstances, to apprise the Class Members (i) of the settlement of this action, (ii) of their right to exclude themselves from the Class and the proposed settlement, (iii) that any judgment, whether favorable or not, will bind all Class Members who do not request exclusion, and (iv) that any Class Member who does not request exclusion may object to the settlement and, if he or she desires, enter an appearance personally or through counsel.

The Court further finds that the Class Notice proposed and submitted as an exhibit to the Motion for Preliminary Approval is written in plain English and is readily understandable by Class Members. In sum, the Court finds that the proposed notice and methodology for giving notice and the 40-day period to act are reasonable, that they constitute due, adequate, and sufficient notice to

all persons entitled to be provided with notice, and that they meet the requirements of the Pennsylvania Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Rules of this Court, and other applicable law.

10. Exclusion from Class. Any Class Member who wishes to be excluded from the Class must send a written request for exclusion to the Settlement Administrator (with copies to counsel) at the addresses provided in the Class Notice. Any such exclusion request must be sent by first-class mail, postage prepaid, and must be postmarked no later than a date forty (40) days after the date the Notice is mailed by the Administrator. If the proposed settlement is approved, any Class Member who has not submitted a timely, written request for exclusion from the Class shall be bound by all subsequent proceedings, orders and judgments in this action.

11. Objections and Appearances.

a) **Written Objections.** Any Class Member who does not file a timely, written request for exclusion and who complies with the requirements of this paragraph may object to any aspect of the proposed settlement, including the fairness, reasonableness or adequacy of the proposed settlement, the adequacy of the Class's representation by the Class Representatives or Class Counsel, the award of attorneys' fees and expenses, and/or the individual service awards to the Class Representatives. A Class Member may assert such objections either on his or her own or through an attorney hired at his or her expense. Any objection shall state the objector's name, address, telephone number, email address (if applicable), and signature; state that he or she objects to the settlement in *Nicole Zentner and Andrew Kivett v. Brenner Car Credit and Paxton Securities Co.*, *Lycoming Court of Common Pleas* Docket No. 20-1193; and state the reasons for the objection, including why the objector thinks the Court should not approve the settlement. The objection shall be filed with the Prothonotary, Court of Common Pleas of Lycoming County, 48

W. 3rd Street, Williamsport, PA 17701, with copies mailed to the three different places below, postmarked no later than forty (40) days from the date of the Notice.

Court	Class Counsel	Defense Counsel
Class Administrator	Cary L. Flitter, Esq.	Martin C. Bryce, Jr., Esq.
Zentner v. Brenner	Andrew M. Milz, Esq.	BALLARD SPAHR, LLP
[ADDRESS]	Jody T. López-Jacobs, Esq.	1735 Market Street
[ADDRESS]	FLITTER MILZ, P.C.	51 st Floor
	450 N. Narberth Ave, Ste. 101	Philadelphia, PA 19103-7599
	Narberth, PA 19072	

b) **Other Objections.** Any Class Member who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived and shall be foreclosed from raising any objection to the settlement. Any untimely objection shall be barred, absent extraordinary circumstances.

c) **Notice of Appearance.** If a Class Member hires an attorney to represent him or her, the attorney must file a notice of appearance with the Office of the Prothonotary, and deliver a copy of that notice to Defendants' counsel and to Class Counsel, at the addresses set forth in paragraph 11(a) of this Order.

d) **Appearance at Final Approval Hearing.** Any Class Member who files and serves a timely, written objection pursuant to the terms of paragraph 11 of this Order and complies with the requirements of this paragraph may also appear and be heard at the Final Approval Hearing either in person or through counsel retained at the Class Member's expense. Class Members or their attorneys intending to appear and be heard at the Final Approval Hearing must deliver to the Court, and to Settlement Administrator, Defendants' counsel and Class Counsel, at the addresses specified in paragraph 11(a) of this Order, a notice of intention to appear, setting forth the case number and the name, address and telephone number of the Class Member (and, if applicable, the name of the Class Member's attorney). Notices of intention to appear must be postmarked no later

than forty (40) days from the date of the mailing of the Notice, and, if possible, filed electronically with the Prothonotary. Any Class Member who does not timely file and serve a notice of intention to appear pursuant to the terms of this paragraph shall not be permitted to appear and be heard at the Final Approval Hearing, except for good cause shown.

12. Termination of Settlement. This Order shall become null and void, and shall be without prejudice to the rights of the parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if (a) the proposed settlement is not finally approved by the Court, or does not become final, pursuant to the terms of the Settlement Agreement; or (b) the proposed settlement is terminated in accordance with the Settlement Agreement or does not become effective as required by the terms of the Settlement Agreement for any other reason. In such event, the proposed settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor this Order, shall prejudice either party.

13. Use of Order. This Order shall not be construed or used as an admission, concession, or finding by or against Defendants of any fault, wrongdoing, breach or liability, or of the appropriateness or permissibility of certifying a class on contest or for any purpose other than settlement. Nor shall the Order be construed or used as an admission, concession, or finding by or against Plaintiffs or the Class Members that their claims lack merit or that the relief requested in their pleadings is inappropriate, improper or unavailable, or as a waiver by any party of any defenses or claims she or it may have.

14. **Continuance of Hearing.** The Court reserves the right to continue the Final Approval Hearing without further written notice.

BY THE COURT:

Ryan M. Uss J.

cc: Andrew M. Milz, Esq.
Thomas Waffenschmidt, Esq.
Martin C. Bryce Jr., Esq.