

**TWENTY-THIRD JUDICIAL CIRCUIT COURT
JEFFERSON COUNTY, MISSOURI**

Ally Financial Inc.,

Plaintiff/Counterclaim-Defendant,

v.

Alberta Haskins and David Duncan,

Class Representatives.

Case No. 16JE-AC01713-01

**Application for Award of Attorney’s Fees, Expenses and
Incentive Payment to the Class Representative**

This litigation received preliminary approval of a settlement conferring benefits upon the class exceeding \$787,500,000 including \$87,500,000 in money, \$700,000,000 in write-offs of deficiency balances, cessation of late fees and interest on all Class Member’s accounts, and the deletion of negative information from Settlement Class Members’¹ credit reports regarding these deficiencies, which has been valued at a minimum of \$10,000 per Class Member. As contemplated by the Agreement and notice given to the Settlement Class, Class Counsel requests an award of attorney’s fees of \$70,000,000, costs and expenses of up to \$1,200,000,² and an incentive award of \$20,000 to each Class Representative. The requested award of attorney’s

¹ Capitalized terms shall have the meaning ascribed to them in this Court’s Preliminary Approval Order entered on March 19, 2021, which incorporates the defined terms of the Agreement.

² To date, Class Counsel has spent nearly \$1,000,000 in costs and expenses in this case. Class Counsel also anticipates a substantial amount of future costs and expenses, especially costs and expenses related to additional administrative costs (e.g., re-mailing class notices when the initial notice is returned undeliverable and trying to locate class members whose address information is not current).

fees represents less than 10% of the actual benefit conferred upon the Settlement Class Members and is lower than awards considered reasonable for complex class action litigation, such as this. *Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 267 (Mo. App. E.D. 2011) (citing with approval a case “noting that in a study of 289 settlements ranging from under \$1 million to \$50 million, the average attorney’s fees percentage is 31.71%, and the median is one-third”). The awards for expenses and incentive payments are also reasonable.

A. Legal Standard

The trial court’s award of attorney’s fees is given “great deference...because the trial court is considered an expert at awarding attorney’s fees, and may do so at its discretion.” *Bachman*, 344 S.W.3d at 267 (internal quotes and alterations omitted). This discretion will “not be reversed unless the amount awarded is arbitrarily arrived at or is so unreasonable as to indicate indifference and a lack of proper judicial consideration.” *Realty Res., Inc. v. True Docugraphics, Inc.*, 312 S.W.3d 393, 400 (Mo. App. E.D. 2010).

Although not exhaustive, factors to be considered by the trial court in determining whether the requested fees are reasonable include: (1) the benefit conferred on the Settlement Class Members (2) the complexity of the issues, (3) the case duration (4) the risks to which Class Counsel were exposed, (5) the experience, reputation, and skill of the attorneys, (6) awards in similar cases, and (7) reaction of the Settlement Class. *Bachman*, 344 S.W.3d at 267. These factors all weigh heavily for finding the requested fee award reasonable.

B. The requested attorney’s fee award is fair and reasonable.

Ally Financial, Inc. (“Ally”) has agreed not to contest the attorney’s fees and expenses as requested by this application. This agreement should enjoy a presumption of fairness and reasonableness. *Cohn v. Nelson*, 375 F.Supp.2d 844, 861 (E.D. Mo. 2005); *Heilman v. Perfection Corp.*, 93 F.Supp.2d 1311, 1312 (W.D. Mo. 2000) (“It would be inappropriately intrusive, in my judgment, for the court to impose its idea of socially-desirable fees on the parties under the circumstances—and could well result in wasteful satellite litigation in the Court of Appeals if I were to do so.”); *see also Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) (holding that an agreed-to fee is an ideal situation because “[a] request for attorney’s fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee.”).

The fees and expenses awarded in *Bachman* and approved by the appellate court confirm the fees and expenses here are fair and reasonable. *Bachman* involved a settlement of a class action against A.G. Edwards for breach of fiduciary duty and unjust enrichment. 344 S.W.3d at 263. After four years of litigating the case, the parties settled where:

A.G. Edwards agreed to pay \$26,000,000 in cash and to issue \$34,000,000 in vouchers. In particular, under the terms of the settlement: the subclass of former accounts, approximately 293,820, is entitled to \$6,000,000 in cash (\$20.42 for each former account); the subclass of current accounts, approximately 1,379,105, is entitled to \$34,000,000 in vouchers to offset against certain fees (three vouchers with a total face value of \$24.65 for each current account); class counsel will receive up to \$21,000,000 cash in attorneys’ fees and \$600,000 cash in expenses....

Id. at 263–265. The total benefit being conferred upon the class was

\$60,000,000, and class counsel requested \$21,000,000 in attorney's fees and \$600,000 in expenses from the \$26,000,000 cash fund. The requested award of attorney's fees in *Bachman* represented 35% of the total benefit conferred upon the class and 84% of the cash benefits. The trial court approved the requested attorney's fees. *Id.* at 265.

The appellate court affirmed the trial court's award of attorney fees because it could not "say the fee awarded was arbitrary, unreasonable, or an abuse of discretion. In addition, in cases involving complex litigation or in the class action context, a one-third contingent fee award is not unreasonable." *Id.* at 267. "The Missouri Supreme Court allowed the [*Bachman*] opinion to stand as authority by denying transfer of the case from the court of appeals. The [*Bachman*] case is, thus, the best evidence of Missouri law." *Washington v. Countrywide Home Loans, Inc.*, 655 F.3d 869, 873 (8th Cir. 2011).

Although *Bachman* approved an award of 35% of the total benefits, Class Counsel is requesting less than 10% of the total benefits. This is substantially lower than the average fee percentage of 31.71% and the median one-third routinely awarded. *Bachman*, 344 S.W.3d at 267. The fairness and reasonableness of Class Counsel's requested fees is further confirmed by a review of the factors.

1. The benefit conferred on the class.

This factor perhaps best substantiates the reasonableness of the requested fee awards. This factor should be given weight greater than others in determining the reasonableness of the award. While the other factors are

important and weigh for the requested award, the recovery is of primary importance because that is the true benefit to the class. *Manual for Complex Litigation, Fourth*, § 21.71 at 336 (2004).

The results speak for themselves. This is not the typical “coupon” class action, involving a *de minimus* recovery for the members of the class via a settlement agreement that provides class counsel with an exorbitant fee. Instead, Class Counsel negotiated a settlement awarding over 500,000 class members monetary damages, debt relief, cessation of interest and late fees, and elimination of damage to credit.

The deletion of negative credit reporting/trade lines from the Settlement Class Members’ credit reports regarding the deficiency balances is a very substantial benefit to the Settlement Class. It is indisputable this benefit is of great value to the Settlement Class. The credit rating not only affects whether a class member can borrow money and at an attractive rate, but it can affect everything from phone and cable hookups, insurance rates, housing options, and even employment opportunities. The value of a better credit rating cannot be overstated.

Class Counsel obtained exceptional results on behalf of the Settlement Class in both monetary and non-monetary benefits. This factor, therefore, weighs heavily for the requested fee award.

2. The complexity of the issues.

This lawsuit was not an ordinary consumer lawsuit. The factual and legal issues presented by this class action were novel and complex. These issues

include, nationwide class action jurisprudence, legal sufficiency of presale notices under the Uniform Commercial Code (“UCC”), effect of cases construing prior revisions of the UCC, and the nuanced interplay of the UCC with Chapters 365 (Motor Vehicle Time Sales Law) and 408 (related to Legal Tender and Interest). This factor, therefore, strongly supports the requested fee award.

3. The duration of the case.

This lawsuit began on March 3, 2016, which means it has been ongoing for over five years. Class Counsel: (i) extensively briefed motions for Haskins and Duncan, and other putative class representatives; (ii) conducted discovery; (iii) negotiated a settlement between Haskins and Duncan and Ally for the class; and (v) obtained preliminary approval of a settlement providing extraordinary benefits for the Settlement Class. Class Counsel’s work is not done either. Class Counsel must do additional work to obtain final approval of the Settlement; disburse payments to Settlement Class Members; and assist in the administration of the settlement. Given the time Class Counsel has expended and the significant additional work ahead, the requested fee award is reasonable.

4. Class Counsel was exposed to significant risks.

“In assessing this factor, courts consider the defendant’s ability to withstand an adverse judgment and the risks of establishing liability at trial.” *Cosgrove v. Citizens Auto. Finance, Inc.*, 2011 WL 3740809, *9 (E.D. Pa. 2011). Establishing liability, whether at trial or ultimately on appeal, was not

guaranteed. Even if a judgment was obtained, it is uncertain whether Ally would pay it. Despite these risks, Class Counsel continued to represent Haskins and Duncan on a contingent fee basis and advance the costs of litigation. Class Counsel's willingness to continuously pursue relief for the Settlement Class without any assurance it would receive any attorneys' fees (despite bearing substantial expenses over five years of litigation) further supports the requested award. *See id.* (noting that a contingent fee arrangement adds to the risk of nonpayment).

5. Class Counsel is experienced, skilled and reputable.

"The skill and efficiency of class counsel is measured by the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the . . . experience and expertise of the counsel, the skill . . . with which counsel prosecuted the case and the performance . . . of opposing counsel." *Bredbenner v. Liberty Travel, Inc.*, 2011 WL 1344745, *15 (D.N.J. 2011). Here, Class Counsel obtained substantial benefits for hundreds of thousands of consumers after obtaining approval of the Agreement. Class Counsel is highly experienced, having successfully litigated other class actions and is actively involved in litigating many other consumer class actions similar to this one. A Missouri trial judge had this to say about Class Counsel in a similar case: "Class Counsel is experienced and highly skilled in class action and consumer litigation with a reputation justifying the fee award. Class Counsel has also submitted high-quality work to the Court throughout the litigation, and they pursued the case vigorously against skilled and experienced opposing counsel."

Vantage Credit Union v. Trimble, 1011-CV08076 (Mo. Cir. Mar. 22, 2013).

Like *Trimble*, Class Counsel has also submitted high-quality work to the Court throughout this litigation and pursued the case vigorously against skilled and experienced opposing counsel. “These factors weigh in favor of the award.” *Cosgrove*, 2011 WL 3740809 at *9.

6. Awards in similar cases.

The award requested here is less than the award in *Bachman*. *Bachman*, 344 S.W.3d at 267 (citing *In re Rite Aid Corp. Secs. Litig.*, 146 F.Supp.2d 706, 735 (E.D. Pa. 2001) (noting that in a study of 289 settlements ranging from under \$1 million to \$50 million, the average attorney’s fees percentage is 31.71%, and the median is one-third); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir.2002) (no abuse of discretion in awarding 36% of \$3.5 million recovery to class counsel)). Therefore, Class Counsel’s request is well-below the range often approved, and this factor weighs for finding the requested fee award reasonable.

C. The requested incentive award is reasonable.

Class Counsel is requesting an incentive award for each Class Representative for \$20,000. The Class Representatives stayed involved at every step:

The interests of the Class, such as here, are better served when they are presented by vigilant, competent and independent class representatives who actively monitor class counsel and the conduct of the litigation. Moreover, where lawyers are rewarded for their risk and efforts on behalf of a class, but class representatives are not, there is little incentive for class representatives to serve as active client participants in the litigation, thus negating the “adequate representation” safeguard....

Allapattah Services, Inc. v. Exxon Corp., 454 F. Supp.2d 1185, 1221-22 (S.D. Fla. 2006). Haskins and Duncan have been representing, working for, and expending some of their own money for the class since this litigation started. They have maintained consistent contact and communication with Class Counsel and have taken time out of their personal lives to review and respond to numerous correspondence regarding the case and proceedings, e.g., providing answers to interrogatories propounded by Ally, and producing documents and other information requested in discovery. Haskins and Duncan have thoughtfully evaluated the proposed settlement with counsel to ensure fair, adequate, and vigorous representation of the Settlement Class. *McDonough v. Toys R Us, Inc.*, 2011 WL 6425116, *17 (E.D. Pa. 2011) (approving incentive award, noting that plaintiffs “kept informed of the litigation and communicated with class counsel as necessary to assist with the effective prosecution of the case”); *Manual for Complex Litigation*, §21.62 n.971 (4th ed. 2004) (incentive awards may be “merited for time spent meeting with class members, monitoring cases, or responding to discovery”).

D. Conclusion

Class Counsel should be awarded attorney’s fees totaling \$70,000,000, as fair and reasonable because of the factors and the case law. Class Counsel should be awarded up to \$1,200,000 for costs and expenses, which included the cost of mailing more than 500,000 class notices to Settlement Class Members. Haskins and Duncan should be awarded an incentive award of \$20,000,

respectively, because of their representation of the Settlement Class and the exceptional benefits Class Representatives obtained for the Settlement Class.

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Certificate of Service

I certify on June 28, 2021, 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.

/s/ Martin L. Daesch