

NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23 CVS 5934

TIMOTHY MCQUEEN and CARLA
WALTERS, individually and on behalf of those
similarly situated,

Plaintiffs,

v.

AUTOMONEY, INC. and AUTO MONEY
NORTH, LLC,

Defendants.

**PETITION FOR ATTORNEYS' FEES
AND FOR AN INCENTIVE AWARD
FOR PLAINTIFFS**

NOW COMES Brown, Faucher, Peraldo & Benson, PLLC (“Greensboro Law Center”)(“Class Counsel”) and hereby respectfully petitions the Court for an award of fees and for incentive awards to class representatives Timothy McQueen and Carla Walters. In support of this Petition Class Counsel shows unto the Court the following:

In the event that the Court gives its final approval to the proposed settlement, the plaintiffs at their “own expense [will have] maintained a successful suit” that created a fund in which others will share with the named plaintiffs. *Cauble v. City of Asheville*, 66 N.C. App. 537, 311 S.E.2d 889, 894 (1984). Accordingly, the fees and expenses are appropriately drawn from the class recovery. *See, e.g., In re Wachovia Shareholders Litig.*, 168 N.C. App. 135, 607 S.E.2d 48, 50, *disc. rev. denied*, 359 N.C. 411, 613 S.E.2d 25 (2005); *Cauble v. City of Asheville, supra*, 311 S.E.2d at 894; *Bailey v. State*, 348 N.C. 130, 500 S.E.2d 54, 71 (1998); *Faulkenbury v. Teachers' and State Employees' Retirement Systems of North Carolina*, 345 N.C. 683, 483 S.E.2d 422, 431 (1997); *Horner v. Chamber of Commerce*, 236 N.C. 96, 97, 72 S.E.2d 21, 22

(1952). *See also Hoke County Bd. of Educ. v. State*, 198 N.C. App. 274, 281, 679 S.E.2d 512, 518 (2009) (“the ‘common fund doctrine’ serves as an exception to the general rule that every litigant is responsible for his or her own attorney’s fees” (citations omitted)). Here, Class Counsel seek an attorneys’ fee in the amount of one third of the \$3,000,000.00 Settlement Fund. AutoMoney does not oppose this fee request.

Being filed contemporaneously with this Petition is the Affidavit of Jeffrey K. Peraldo setting forth in detail both the efforts and time the Greensboro Law Center has devoted to this litigation for the benefit of the class member and the expenses the Greensboro Law Center has incurred to date. In summary support of this Petition, and as discussed in detail in the Affidavit of Jeffrey K. Peraldo, Class Counsel show the Court as follows:

1. The legal work for the now conditionally certified settlement class began in 2018 when certain of AutoMoney’s borrowers retained the Greensboro Law Center to pursue AutoMoney for the recovery of monetary damages for AutoMoney’s violations of the North Carolina Consumer Finance Act, N.C.G.S §53-164, *et seq.*, the North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S §75-1.1, *et seq.* and, alternatively, the North Carolina Usury Statute, N.C.G.S §24-1, *et seq.* AutoMoney initially wished to explore settlement of those claims and the parties entered into a tolling agreement to enable the parties’ settlement negotiations. During the course of those negotiations, AutoMoney abruptly withdrew settlement offers that were on the table and filed suit against one of its borrowers, Deirdre Booker Pippins, in federal court in South Carolina (*AutoMoney, Inc. v. Deirdre Booker Pippins, D.S.C. No. 2:19-cv-02217*) and

attempted to assert constitutional challenges to the North Carolina statutes identified, *supra*.

2. The *Pippins* action (which was eventually settled) was one of numerous South Carolina state and federal actions AutoMoney initiated against its North Carolina Borrowers who were being represented by the Greensboro Law Center. In addition to the *Pippins* case, AutoMoney filed four (4) other federal court actions seeking the same constitutional relief it sought in *Pippins*. AutoMoney also filed thirteen (13) South Carolina state court cases against its North Carolina borrowers in which it brought constitutional challenges to the identified North Carolina consumer lending and protection statutes. In every one of those cases Class Counsel, through Drew Brown who is admitted to both the state and federal bars of South Carolina, entered appearances on behalf of their North Carolina Borrower clients and filed responsive pleadings. In many of those cases Class Counsel appeared either in person or remotely in the state and federal courts of South Carolina on behalf of their North Carolina Borrower clients to successfully argue for either the dismissal or stay of those cases because of the pending North Carolina litigation involving AutoMoney. Class Counsel also retained, at their own expense, local counsel to assist in the representation of the North Carolina Borrower clients. The work of Class Counsel in those cases and the expenses they incurred in defense of those AutoMoney-initiated South Carolina cases are discussed in detail in the Affidavit of Jeffrey K. Peraldo.
3. Of particular significance is *AutoMoney North, LLC v. Walters, et al.* (D.S.C. No. 7:23-cv-02952), a South Carolina federal court case AutoMoney filed against four

of its North Carolina Borrowers seeking both a declaration that the North Carolina consumer lending and protection statutes at issue in the Rule 2.1 litigation are unconstitutional and a monetary judgment against one of the borrower defendants. Drew Brown appeared as counsel for the North Carolina Borrower defendants and the Greensboro Law Center, at its own expense, retained local counsel. Among their other legal work, Class Counsel prepared and filed a responsive pleading and counterclaim, engaged in significant motion practice seeking either the dismissal or stay of the case, served and responded to written discovery, prepared the clients for and defended the depositions of the North Carolina Borrower defendants and took the Rule 30(b)(6) deposition of AutoMoney and depositions of AutoMoney employees. The State of North Carolina intervened as a matter of right in that case to defend the constitutionality of the North Carolina statutes at issue and Class Counsel worked with the North Carolina Attorney General's office to defend those statutes. Class Counsel also participated in a mediation in South Carolina that initiated the settlement discussions that have produced the Class Action Settlement that has now been preliminarily approved by this Court. The work of Class Counsel in *AutoMoney North, LLC v. Walters, et al.* is discussed in detail in the Affidavit of Jeffrey K. Peraldo.

4. Also, in 2019 Class Counsel, on behalf of the hundreds of AutoMoney North Carolina Borrowers they represented, all of whom are Class Members, began filing civil actions across North Carolina in numerous counties. In total, forty-eight civil actions were filed and forty-five of those cases comprise the Rule 2.1 litigation now before this Court.

AutoMoney has, to date, vigorously defended against all of those cases. AutoMoney removed three of the initial cases to the Middle District of North Carolina which necessitated considerable - and successful - motion practice on the part of Class Counsel to have the cases remanded to the North Carolina state courts. This work is discussed in the Affidavit of Jeffrey K. Peraldo.

In all of the cases AutoMoney moved for the dismissal of the actions for lack of personal jurisdiction and for a failure to state North Carolina state law claims on the basis of a South Carolina choice-of-law provision AutoMoney includes in its loan agreements. In certain cases AutoMoney sought dismissal for improper venue on the basis of a forum selection clause. The first cases that came on for hearing were the cases that have been identified in the Rule 2.1 litigation as the "remand cases." After extensive briefing, these motions were heard by five different Superior Court Judges, all of whom denied AutoMoney the relief it sought. AutoMoney appealed as a matter of right to the NCCOA on the denial of its personal jurisdiction defense and by way of a petition for a writ of certiorari sought interlocutory review of the denial of its Rule 12(b)(6) choice-of-law defense. The NCCOA heard oral arguments on AutoMoney's defenses and affirmed the trial court rulings across the board. AutoMoney sought discretionary review by the Supreme Court of North Carolina, which was denied. All of the work performed by Class Counsel in the "remand cases" is discussed in detail in the Affidavit of Jeffrey K. Peraldo, including the work Class Counsel performed in those cases on remand from the NCCOA. Subsequently, AutoMoney also sought dismissal on personal jurisdiction, venue and choice-of-law grounds in

Hughes, et al. v. Auto Money, Inc., et al. (Gaston County 22 CVS 973) After extensive briefing, AutoMoney's motions came on to be heard by Superior Court Judge Robert C. Ervin, who denied AutoMoney's motions to dismiss.

In another case, *Archie, et al. v. AutoMoney, Inc., et al.* (Guilford County 22 CVS 7019), AutoMoney's refusal to fully respond to discovery required Class Counsel to move for, and brief and orally argue, a motion to compel, which motion was allowed in full by the Guilford County Superior Court.

In all of the North Carolina cases Class Counsel have filed against AutoMoney Class Counsel have prepared and served written seventy-three (73) sets of written discovery, both merits based and jurisdictional. In July, 2024, Class Counsel began work on client responses to the jurisdictional discovery AutoMoney served on the non-remand plaintiffs and, for that purpose, had obtained affidavits and declarations from forty one (41) of those plaintiffs prior to an agreement being reached with AutoMoney in August, 2024 to stay the deadlines in the cases in order that the parties could pursue the settlement discussions that resulted in the now preliminarily approved Class Action Settlement. Class Counsel have taken the Rule 30(b)(6) depositions of AutoMoney, the deposition of one of AutoMoney's owners, Linda Derbyshire, and they have deposed AutoMoney's expert witness. Class Counsel have prepared for and defended AutoMoney's deposition of the North Carolina Borrower's expert on the values of motor vehicles that had been repossessed by AutoMoney. Class Counsel have answered twenty-four sets of written discovery AutoMoney served on certain of its North Carolina borrowers and they have prepared clients for and defended nine (9)

depositions AutoMoney has taken of its North Carolina borrowers. Class Counsel have also prepared for and participated in several mediations - some successful, some not – in both the North Carolina state courts cases and in Auto Money North, LLC’s Chapter 11 case. All of this work is described in detail in the Affidavit of Jeffrey K. Peraldo.

Class Counsel also conducted extensive third party investigations bearing upon AutoMoney’s in-state lending activities and its violations of the North Carolina consumer lending and protection statutes at issue in this litigation. Class Counsel tracked down and interviewed former AutoMoney employees and secured their affidavits. Class Counsel interviewed and obtained affidavits from scores of North Carolina borrowers that address AutoMoney’s in-state lending activities and violations of North Carolina lending and consumer protection laws. They secured verified historical versions of AutoMoney’s website. They obtained verified proof of AutoMoney’s in-state published advertising. They investigated and secured proof from NCDMV of the number of liens AutoMoney has placed against North Carolina issued motor vehicle titles. Class Counsel obtained verified proof of AutoMoney’s receipt of millions of dollars in loan payments from North Carolina. All of this work is discussed in the Affidavit of Jeffrey K. Peraldo.

5. In 2019, the owners of AutoMoney, John and Linda Derbyshire, created a new lending entity known as Auto Money North, LLC and purported to assign to it all of the loan making stores, and their associated assets and liabilities, that AutoMoney, Inc. had set up along the North Carolina-South Carolina border. In

December 2022, Auto Money North, LLC filed a Chapter 11 bankruptcy petition in the District of South Carolina (*In Re: Auto Money North, LLC*, No. 22-03309 Bankr. D.S.C) and it immediately filed two adversary proceedings against the several hundred North Carolina borrower clients of Class Counsel – all class members - who had predatory lending actions pending against it in North Carolina. In those adversary proceedings Auto Money North, LLC unsuccessfully sought: an injunction halting the North Carolina litigation involving AutoMoney, Inc. and a declaration of the bankruptcy court that the North Carolina consumer lending and protection statutes at issue in the North Carolina litigation were being applied to AutoMoney’s Carolina lending activities in a constitutionally impermissible manner. In addition to (successfully) defending against those adversary proceedings, Class Counsel were called upon to file six hundred twenty (620) proofs of claims in that Chapter 11 case and then defend those claims on a case-by-case basis against Auto Money North LLC’s constitutional challenges to those claims. Drew Brown appeared as counsel in that Chapter 11 case and James Faucher and Jeff Peraldo were admitted *pro hac vice*. Class Counsel also retained at their own expense experienced bankruptcy counsel, including local counsel, to advise and assist them in their representation of their North Carolina Borrower clients in Auto Money North, LLC’s bankruptcy case. The considerable work Class Counsel performed in this Chapter 11 case, and the expenses they incurred, are discussed in the Affidavit of Jeffrey K. Peraldo.

6. Beginning in 2024 the Chief Justice of the Supreme Court designated all of the North Carolina AutoMoney cases as exceptional pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts and has assigned the Honorable Paul Ridgeway of Wake County to preside over the action. In addition to the efforts of Class Counsel – in conjunction with counsel for AutoMoney – to secure the 2.1 designation for all of the pending AutoMoney North Carolina cases, Class Counsel have, among other things, prepared summary judgment briefing with supporting evidence in the remand cases, prepared the North Carolina Borrowers response to AutoMoney’s cross-motion for summary judgment, briefed and successfully argued a motion to compel for the benefit of the remand plaintiffs’ cases and served and began answering the parties’ respective jurisdictional discovery in the remaining cases. These efforts are discussed in the Affidavit of Jeffrey K. Peraldo.
7. In July, 2024 and August, 2024 the parties participated in a mediated settlement conference and an agreement – subject to final Court approval – to settle this case as a class action settlement was reached. The agreement calls for the establishment of a \$3,000,0000 settlement fund, the return of interest payments, and where applicable the return the proceeds of the sales of repossessed motor vehicles, both in amount to be determined by the Claims Administrator at the conclusion of the Claims Deadline, the forgiveness of any outstanding debts and the return of motor vehicle titles of all class members who do not opt out and a commitment by AutoMoney to refrain from any further lending to North Carolina residents and to refrain from any further use of the NCDMV for lien purposes.

Class Counsel believe this is an excellent result for the Class Members and the citizens of North Carolina. The office of the North Carolina Attorney General supports this settlement.

8. In connection with the preliminarily approved Class Action Settlement, Class Counsel, through lead attorney Drew Brown, have expended numerous hours in negotiations and discussion concerning the class action settlement framework, settlement administration and the necessary class action settlement documentation and forms. This work is discussed in detail in the Affidavit of Jeffrey Peraldo.
9. Class Counsel are experienced litigators. Jeff Peraldo has been practicing law continuously since 1990. Drew Brown has been practicing continuously law since 2002. James Faucher has been practicing law continuously since 2003. All have been engaged in many complex civil cases. The courts have historically used a lodestar analysis, which involves a computation of hours spent by counsel on the case multiplied by the prevailing hourly rate in the community for similar non-contingent work. More recently, courts often use the lodestar analysis to confirm the reasonableness of the percentage-of-the-fund approach. *See NEWBERG ON CLASS ACTIONS, supra* § 14:7 at 581 (“Perhaps to avoid criticism and to create a clear record for appeal, courts sometimes justify percentage of fund awards using a lodestar/multiplier analysis”). The lodestar fee thus computed is usually enhanced by a multiplier to reward counsel for a variety of factors involved in the case, such as risk. Here, the lodestar analysis provides strong support for the requested fee. Class Counsel have thus far, with zero guarantee of any attorneys’ fees, spent at least 3376.50 hours of attorney time on all of the

AutoMoney cases, both in North Carolina and in South Carolina, for the benefit of their clients, all of whom are class members. Their legal assistant has thus far spent 285 hours. Since 2018 Mr. Brown's hourly rate has been and remains \$500.00 per hour. The hourly rate of Mr. Faucher and Mr. Peraldo in 2018 was \$350.00 per hour and has been increased since 2018 to their current rate of \$450.00 per hour. The firm's legal assistant rate has been and remains \$150.00 per hour. Using a blended rate of \$450.00 per hour, Class Counsel to date have incurred at least \$1,562,175.00 in legal fees.

10. The requested fee is not a clearly excessive fee under the factors set forth in RPC 1.5.
11. Class Counsel have also, and at their own expense, associated outside counsel in both North Carolina and South Carolina to assist in the South Carolina federal and state cases that AutoMoney initiated, including AutoMoney's Chapter 11 bankruptcy case.
12. The Class Action Settlement would not have been possible without the commitment of Plaintiffs Timothy McQueen and Carla Walters to serve as Class Representatives, both of whom engaged in considerable litigation, written discovery, depositions and mediation in the South Carolina federal court action AutoMoney filed against them. The class is indebted to them. The petition for an incentive award to each of them in the amount of \$2500.00 is very modest considering their investment of time, risks, travel to depositions and participation in a mediated settlement conference.

13. Upon the agreement of the parties to settle all claims of the clients of Class Counsel as a proposed Class Action Settlement, Class Counsel associated Greensboro attorney John Bloss of the law firm Higgins Benjamin, PLLC to advise and assist with the legal work required for securing Court approval of the settlement class, securing preliminary Court approval of the Class Settlement, securing Court approval of the Settlement Notice and Claims Form and securing final Court Approval of the Class Action Settlement. Mr. Bloss will prepare and submit to the Court his affidavit detailing his efforts and hours incurred thus far in this action and will be paid from the attorneys' fee award being requested in this Petition.

14. As shown by the Class Action Settlement Agreement that has been preliminarily approved by the Court, AutoMoney does not oppose this Petition.

Wherefore, the undersigned, for their law firm and for Timothy McQueen and Carla Walters do hereby respectfully request the Court to allow an attorneys' fee award of one third of the \$3,000,000 Class Action Settlement Fund in the amount of \$1,000,000.00 and an incentive award to Timothy McQueen and Carla Walters in the amount of \$2500.00 each.

This is the 1st day of November, 2024.



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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document upon the parties to this above-captioned action, or their counsel by email and by mailing a copy thereof via U.S.P.S. First-Class Mail, postage prepaid and addressed as follows:

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This is the 1st day of November, 2024.



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