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**IN THE UNITED STATES COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

TOM KOWA, on behalf of himself and a class of all  
other persons similarly situated,

Plaintiff,

-vs-

THE AUTO CLUB GROUP,  
a/k/a AAA Chicago,  
a/k/a Chicago Motor Club,

Defendant.

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) Case No. 1:11-cv-07476  
) Judge: Harry D. Leinenweber  
) Magistrate Judge: Maria Valdez  
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**[PROPOSED] FINAL ORDER AND JUDGMENT APPROVING SETTLEMENT**

Plaintiff, Tom Kowa, on behalf of himself and a class of all other persons similarly situated and Defendant The Auto Club Group entered into a Settlement Agreement to fully and finally resolve Plaintiff's claims against Defendants. [ECF Dkt. No. 61-1]. On November 13, 2013, the Court entered an Order preliminarily approving the settlement. [ECF Dkt. No. 65]. On April 16, 2014, Plaintiff and Defendant each filed a Motion for Final Approval of Settlement. On April 30, 2014, the Court held a final fairness hearing.

Upon consideration of the documents submitted to this Court to date, oral argument, and the Parties' Settlement Agreement [ECF Dkt. No. 61-1], it is hereby ordered that Plaintiff's Motion for Final Approval of Class Action Settlement, Award of Attorneys' Fees and Representative Payment be, and is, **GRANTED**.

The Court further makes the following findings and rulings:

1. The Court has and retains personal jurisdiction over Plaintiff and all Settlement Class Members and that the Court has subject matter jurisdiction to approve this Settlement and Settlement Agreement and all exhibits thereto.

2. The case was commenced in this Court on October 21, 2011 by Plaintiff Tom Kowa. [ECF Dkt. No. 1].

3. On December 20, 2011, Defendant filed its answer and affirmative defenses to the Complaint. [ECF Dkt. No. 16].

4. On March 1, 2013, Plaintiff filed his Memorandum of Law in Support of his Motion for Class Certification. [ECF Dkt. No. 43].

5. On April 22, 2013, the Court entered a temporary stay of the matter and referred it for proceedings related to a mediation and settlement conference. [ECF Dkt. No. 53].

6. On June 7, 2013, the parties participated in a full-day mediation with Magistrate Judge Edward A. Bobrick (Ret.). As a result of the mediation, the parties agreed in principle to settle Plaintiff's claims. Thereafter, the parties continued negotiating to reach final resolution.

7. On November 4, 2013, the parties entered into a written settlement agreement. [ECF Dkt. No. 61-1].

8. On November 13, 2013, this Court entered a Preliminary Approval Order certifying a class, appointing class counsel, and preliminarily approving the settlement agreement. [ECF Dkt. No. 65]. In the Order, the Court: (1) granted preliminary approval of the proposed settlement after finding that it was within the applicable range of fairness and reasonableness; (2) conditionally certified a Class for settlement purposes; (3) appointed class counsel for the Class; (4) approved the proposed form of mailed notice to the Class, to be directed to the last known address of each Class member by first-class mail, postage prepaid, by January 13, 2014; and (5) set a March 14, 2014 deadline for objections or requests for exclusions from the proposed settlement.

9. On April 16, 2014, Plaintiff filed a Motion for Final Approval of Settlement.

10. This Final Order and Judgment Approving Settlement incorporates by reference the definitions in the Settlement Agreement, and terms used herein shall have the same meanings as set forth in the Settlement Agreement. The Settlement Agreement is adopted by the Court and made part of this Order as if set out in full herein.

11. The Settlement Class this Court provisionally certified in the Preliminary Approval Order is hereby finally certified for the purposes of settlement only. The Settlement Class is defined as follows:

Settlement Class: All Persons who, at any time between November 1, 2005 and the Preliminary Approval Date, renewed their memberships with ACG or an ACG Club and paid their renewal membership dues more than 15 days after expiration of their prior memberships, but whose new membership terms were deemed by ACG or an ACG Club to have begun on their prior expiration date.

Specifically excluded are the following Persons:

- (i) ACG and its subsidiaries and affiliates, employees, officers, directors, agents and representatives and their family members;
- (ii) Class Counsel;
- (iii) The judges who have presided over the Litigation; and
- (iv) All Persons who have timely elected to become Opt Outs from the Settlement Class in accordance with the Court's orders.

12. Pursuant to Federal Rule of Civil Procedure 23, and for purposes of settlement only, the Court makes the following findings of fact and conclusions of law:

- (a) The Settlement Class is sufficiently definite;
- (b) The Settlement Class is so numerous that joinder of all members of the Settlement Class is impracticable;
- (c) There are questions of law and/or fact common within the Settlement Class;
- (d) Plaintiff's claims are typical of the claims of the members of the Settlement Class;

(e) Plaintiff and his counsel have and will fairly and adequately represent and protect the interests of the Settlement Class;

(f) Plaintiff's interests do not conflict with the interests of the Settlement Class in the maintenance of this action;

(g) The questions of law and/or fact common to the Settlement Class predominate over the questions affecting only individual members of the Settlement; and

(h) Certification of the Settlement Class is superior to other available methods for the fair and efficient adjudication of this controversy.

13. This action is properly maintained as a class action pursuant to Federal Rule of Civil Procedure 23, and Plaintiff and Class Counsel fairly and adequately have and will represent the interests of the Settlement Class for the purposes of entering into and implementing the Settlement and Settlement Agreement.

14. Pursuant to Federal Rule of Civil Procedure 23(e), this Court hereby approves the settlement set forth in the Settlement Agreement and finds that said Settlement Agreement is, in all respects, fair, reasonable and adequate and is consistent and in compliance with all requirements of due process and applicable law and in the best interests of all Parties and directs the Parties and their counsel to implement and consummate this Settlement Agreement in accordance with its terms and provisions.

15. As a result of the Settlement Agreement, all Class Members receive significant benefits. The Settlement provides the following relief to the Settlement Class:

- A. Settlement Class Members who are current members with ACG or an ACG Club will receive thirteen (13) months of membership, as opposed to twelve (12) months of membership, upon their first renewal with ACG or an ACG Club after the Effective Date. Settlement Class Members who are former members with ACG or an ACG Club are entitled to receive the same benefit as current members, provided that they first re-enroll with ACG or an ACG

Club within two (2) years of the Effective Date. Former members who are re-enrolling in order to receive the benefits of this Settlement will not be charged a new member fee at the time of their re-enrollment.

B. ACG will amend the disclosures in its Membership Handbook and Renewal Notices as follows:

- a. Within six (6) months of the Effective Date and for a period of two (2) years thereafter, ACG and all ACG Clubs will include the following disclosure on the page of the Membership Handbook entitled "Renewing Your Membership:" "Prior to the expiration of your membership, you will receive one or more renewal notices. These notices will state the term of your next membership period, the names of the primary and associate members and the total dues to be paid. To renew your membership, please remit your dues before your current membership expires. If you pay your membership renewal within 60 days after expiration of your current membership term, your renewed membership will expire one year after the current term expires. If you pay your membership renewal more than 60 days after your current term expires, your new term will begin when payment is received and will expire no less than one year from the day payment is received."
- b. Within six (6) months of the Effective Date and for a period of two (2) years thereafter, ACG and all ACG Clubs will include the following disclosure on the front of their Renewal Notices in 10-point type: "If you pay your membership renewal within 60 days after expiration of your current membership term, your renewed membership will expire one year after the current term expires. For renewal, cancellation and refund policies, please see AAA.com."

16. The Court holds that notice provisions set forth under the Class Action Fairness Act, 28 U.S.C. § 1715, were complied with in this case. No communications from regulators have been received by the parties or this Court in response to that notice. The parties also have provided notice in a manner consistent with the Court's Preliminary Approval Order granting the parties' Motion for Preliminary Approval of Class Action Settlement and as set forth in the Settlement Agreement. The notice, as implemented, met the requirements of Rule 23 and due process and was the best notice practicable under the circumstances. The notice was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency

of the action, the terms of the Settlement, and their right to appear, object to, or exclude themselves from the Settlement. Further, the notice was reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice. Epiq Systems was retained to assist in disseminating notice in accordance with the terms of the settlement agreement and the Court's order granting the parties' motion for preliminary approval of class action settlement. It is apparent from the Declaration of Richard Bithell, Senior Project Manager for Epiq Systems, that the notice was properly implemented and effective. The Claims Administrator mailed notices, via First Class Mail, to 1,544,414 class members at their last known addresses. Notice of the proposed settlement was received by 1,537,068 out of 1,544,414 total class members, which is 99.5% of the class. The deadline to opt-out or object to the Settlement was March 14, 2014.

17. The Court finds that no further or additional notice is required. As outlined above, the notice undertaken by the parties satisfied all statutory, Rule 23 and due process requirements.

18. There have been 118 members of the Settlement Class opted out of the Settlement, totaling less than 1% of the Settlement Class. Of the 118 members of the Settlement Class who have opted out of the Settlement, 62 were timely and valid. The persons identified on Exhibit 1 have timely and validly requested exclusion from the Settlement Class and; therefore, they are excluded. Those persons not included in or bound by this Order may individually pursue claims (if any) against Defendant.

19. The Court received 7 written objections to the Settlement Agreement: (1) Clinton A. Krislov; (2) Michael W. Spangler; (3) Kai Brost; (4) Beth A. McCourtney; (5) Tina Peete; (6) Alfonso Poole; and (7) Angela Gagan. The Court holds that Clinton A. Krislov is not a member of the Settlement Class; therefore, he lacks standing to object to the Settlement. In addition, upon careful review of the Settlement Agreement, and consideration of all objections, the Court has

determined that none of the objections warrants disapproval of the settlement and hereby rejects and overrules all objections in this case. After consideration of all relevant factors, *see, e.g., Synfuel Tech., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006), including *inter alia*, (a) the strength of plaintiffs' case compared to the amount of defendants' settlement offer; (b) an assessment of the likely complexity, length and expense of the litigation; (c) an evaluation of the amount of opposition to settlement among affected parties; (d) the opinion of competent counsel; and (e) the stage of the proceedings and the amount of discovery completed at the time of settlement, the Court finds that the Settlement Agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and taken as a whole is fair, reasonable and adequate to all concerned.

20. Based on the declarations submitted by Class Counsel describing their qualifications, as well as the Court's observations during hearings held in this case, the Court finds that Class Counsel is well-qualified and competent in the area of complex litigation and nationwide class actions.

21. Based upon the duration of this litigation and the Class Representative's participation, the Court finds the compensation requested by the Class Representative, Tom Kowa, is reasonable. The Court awards Tom Kowa \$5,000 as compensation for being a Class Representative.

22. In addressing Class Counsels' application for an award of attorneys' fees, the Court has considered the affidavit and declarations of Class Counsel, and other submissions regarding that request. The Court has carefully considered relevant factors in determining the reasonableness of the fee, including the following: (1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite to properly perform the legal

services; (2) the likelihood that acceptance of the particular employment will preclude other employment by the lawyers or their law firms; (3) the fee customarily charged for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

23. The Court finds the attorneys' fees are fair and reasonable, given the results achieved, the complexities of the case and skill required of counsel, the contingent nature of the fee, the reaction of the Class, and the fact that the attorneys' fees are being paid by Defendant separate and apart from any relief to the Class Members. In addition, the Court finds that the hourly rates charged by Class Counsel are within the realm of prevailing market rates in the relevant community. Accordingly, the Court hereby grants the request and awards Class Counsel attorneys' fees and costs in the amount of \$750,000.

24. This Settlement Agreement and the Final Order and Judgment to be binding on and to have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings encompassed by the Release maintained by or on behalf of Plaintiff, Class Counsel and their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, assigns and all persons acting for or on their behalf, shall be deemed to have, and by operation of this Final Approval Order they shall have, fully, finally and forever released ACG and the Released Parties from all Released Claims, as more fully set forth in the Settlement Agreement.

25. Plaintiff and the Settlement Class have conclusively compromised, settled, dismissed and released any and all Released Claims against ACG and the Released Parties. The



Court hereby dismisses the Litigation now pending before the Court on the merits and with prejudice and without fees or costs except as provided herein, in accordance with the terms of the Final Order and Judgment as set forth herein.

26. Neither the Settlement Agreement nor the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of Defendant, or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendant in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Defendant may file the Settlement Agreement and/or the Judgment from this action in any other action that may be brought against it arising out of the claims asserted or which could have been asserted in this action in order to support a defense or counterclaim based on any applicable principles or *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

27. This Final Order and Judgment bars and permanently enjoins all Settlement Class Members who have not been properly excluded from the Settlement Class from (a) filing, commencing, prosecuting, intervening in or participating (as class members or otherwise) in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation or the Released Claims and (b) organizing Settlement Class Members who have not been excluded from the class into a separate class for purposes of pursuing as a purported class action any lawsuit or arbitration or other proceeding (including by

seeking to amend a pending Complaint to include class allegations or seeking class certification in a pending action) based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation or the Released Claims, except that Settlement Class Members are not precluded from participating in any investigation or suit initiated by a state or federal agency.

28. The Parties are authorized, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of this Agreement and all Exhibits hereto as (a) shall be consistent in all material respects with the Final Order and Judgment and (b) do not limit the rights of the Parties or Settlement Class Members.

29. Without affecting the finality of the Final Order and Judgment for purposes of appeal, reserves jurisdiction over ACG, Plaintiff, Class Counsel and the Settlement Class Members as to all matters relating to the administration, consummation, enforcement and interpretation of the terms of the Settlement and Final Order and Judgment and for any other necessary purposes.

30. There being no just reason for delay, the Clerk is directed to enter this Final Order and Judgment forthwith. This Action, including all individual claims and Class claims resolved by it, with the exclusion of those individuals identified in Exhibit 1, is hereby dismissed with prejudice against Defendant and all Class members, without fees or costs except as otherwise provided by this Court in this Final Order and Judgment.

Dated: 4/30/2014

Entered: 

Honorable Judge Harry D. Leinenweber