

STATE OF INDIANA)	IN THE ALLEN CIRCUIT COURT
) SS:	
ALLEN COUNTY)	CAUSE NO. 02C01-1806-PL-000218
STEVEN D. GUYSE, on behalf of)	
himself and all others similarly situated,)	
Plaintiff,)	
)	
v.)	
)	
FORT FINANCIAL CREDIT UNION,)	
Defendant.)	

ORDER CERTIFYING CLASSES

The Court, having taken Plaintiff’s Motion for Class Certification (filed July 13, 2020) under advisement, now Orders as follows:

1. Plaintiff’s Motion for Class Certification is GRANTED.
2. This action shall be maintained as a class action in accordance with Ind. Trial Rule 23 pursuant to the following findings of fact and conclusions of law.
3. Class “A” is defined as persons who:
 - a. Financed a vehicle primarily for consumer use through Fort, or whose consumer loan contract or installment sales contract was assigned to Fort;
 - b. Had an address in the State of Indiana at the date of repossession notice;
 - c. From whom Fort, as secured party, repossessed the financed vehicle or ordered it repossessed on or after June 21, 2008; and
 - d. Who were sent a “Repossession Notice” that:
 - i. stated “If we get less money than you owe, you (will or will not as applicable – choose one) still owe us the difference”; or
 - ii. stated that the collateral will be sold “at a public or private sale”; or
 - iii. stated that there will be a “public sale” of collateral at “Fort Financial

- Credit Union, 3102 Spring St., Fort Wayne, IN” or other address that is a business address for Fort Financial; or
- iv. stated that there will be a “public sale” of collateral without describing the time and place of such public disposition; or
 - v. did not state “if you want us to explain to you in writing how we figured the amount that you owe,” nor otherwise advise that the borrower has the right to request an accounting
4. Class “C” consists of all members of Class “A” who:
- a. Were sent a Deficiency Notice from Fort:
 - i. That reflected “repossession expense” and “selling expense;” or
 - ii. Stated “Deficiency Balance, not including accrued interest.”
5. The Classes are so numerous that joinder is not practicable.
6. There are questions of law and/or fact common to the Classes, including:
- a. Whether Plaintiff and the Classes obtained vehicle financing through Fort and pledged the vehicle as collateral;
 - b. Whether Fort repossessed the financed vehicle or ordered it repossessed;
 - c. Whether Fort failed to send Repossession Notice in the form required under the Indiana UCC after repossessing a vehicle;
 - d. Whether Fort failed to send a Deficiency Notice required under the Indiana UCC in the form and order required; and
 - e. The uniform statutory damages provided for such non-compliance.
7. The claim of the named Plaintiff is typical of the Classes. Plaintiff’s claim as well as those of the Classes are based on the same legal theories—namely, whether Fort acted in a

commercially reasonable manner and sent post-repossession notices in the form required under the Indiana UCC. All members of the Classes financed motor vehicles through Fort and pledged their vehicles as collateral. Fort declared default on all. All members of the Classes were sent an improper substantially similar Repossession Notice, Deficiency Notice, both, or no notice at all. Defendant claims that the Repossession Notice did not violate state law. This is the same defense that Defendant would assert as against all members of the Class. The Plaintiff's claim and the defenses thereto are typical and are suitable for treatment as a class action.

8. Plaintiff will fairly and adequately protect the interests of the Class. Class Counsel collectively have decades of experience litigating consumer class actions and are adequate to protect the interests of Plaintiff and the Class in this litigation. Neither Plaintiff nor his counsel have any interests that are adverse to the interests of the Class.

9. The questions of law and/or fact common to the members of the Class predominate. Whether the form Repossession Notices and Deficiency Notices utilized by Defendant violate state law are predominating common questions, because they are the predicate liability issues that would necessarily have to be answered for Plaintiff and any Class Member to succeed, whether this case proceeds as a class action or on an individual basis. No individualized issues predominate. As these and other related questions are the focal point of this case, these common questions predominate over any questions likely to affect individual Class Members.

10. The prosecution of separate actions by individual members of the Class would not be cost-effective for such claimants, as the amounts at stake are not sufficient to economically justify individual litigation. The amount which may be recovered by individual Class Members is modest in relation to the expense and effort of proceeding with individual lawsuits.. Classwide resolution is efficient and economical, making this method superior to individual lawsuits.

11. Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making final declaratory relief appropriate with respect to the Class. *See* Ind. Trial Rule 23(B)(2). Defendant has utilized form Repossession Notices and Deficiency Notices that are alleged uniformly not to comply with Indiana law. Defendant has followed uniform procedures in connection with the issuance of their post-Repossession Notice and post-auction Deficiency Notice. Defendant has contended that its Repossession Notice and Deficiency Notice are proper with respect to all Class Members. Hence, Defendant's conduct has been generally applicable to the Class. If Plaintiff and the Class succeed, statutory damages may be awarded. Statutory damages are easily calculable across the Classes because it is based on a uniform formula—or a fixed amount—as set forth in the UCC and is incidental to the declaratory relief.

12. It is therefore ORDERED that this matter be certified as a class action pursuant to Ind. TR 23.

13. It is further ORDERED that Plaintiff, Steven Guyse is certified as Class Representative.

14. It is further ORDERED that R. William Jonas, Jr. of Hammerschmidt, Amaral and Jonas, M. Scott Barrett of Barrett Wylie, LLC, and Cary L. Flitter of Flitter Milz, P.C. shall serve as Class Counsel.

15. It is further ORDERED that Plaintiff shall submit to the Court a proposed form of Notice to the Class within fifteen (15) days of entry of this Order. The parties shall promptly confer in an effort to agree upon a suitable Notice. If agreement on form of Notice cannot be rendered after diligent effort, each side shall file a proposed form of Notice within fifteen (15) days and the opposing party shall have ten (10) days to set forth the specific objections to the other party's proposed Notice.

16. Within fifteen (15) days hereof, Defendant shall provide to Class Counsel a complete

class list in computer readable form with the last and best-known address(es) of each person meeting the definition of the Class as set forth above.

SO ORDERED this 16th day of October, 2020.



Thomas J. Felts
Judge, Allen Circuit Court

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