

STATE OF INDIANA )

) SS:

ALLEN COUNTY )

ALLEN COUNTY CIRCUIT COURT

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. )

**CLASS ACTION SETTLEMENT**

**AGREEMENT AND RELEASE**




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## CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

 Subject to final approval by the Court and in exchange for the good and valuable consideration set forth herein, this Class Action Settlement Agreement and Release dated as of ~~March~~ <sup>April 17</sup> \_\_\_\_\_, 2023 is entered into by and between Plaintiff Steven D. Guyse (the “Class Representative” or “Plaintiff”), on behalf of himself and the Class Members (as defined at ¶ 1.03 *infra*), and Fort Financial Credit Union (“Fort”) (as defined at ¶ 1.07 *infra*), intending that as among the Parties, including all Class Members, the Lawsuit and the Settled Claims shall be fully and finally compromised, settled, and released, and the Lawsuit shall be dismissed with prejudice as to all Parties and Released Persons upon the terms and conditions set forth below.

### **RECITALS**

1. On June 21, 2018, a Class Action Complaint was filed in the Allen County Circuit Court in a matter captioned *Steven D. Guyse v. Fort Financial Credit Union*, Cause No. 02C01-1806-PL-000218 (the “Lawsuit”), which alleged violations of Indiana’s Uniform Commercial Code (the “UCC”) with respect to certain repossession practices.

2. On or about June 1, 2020, Plaintiff filed a Second Amended Class Complaint alleging two classes based on violations of the UCC in connection with the use of the post-repossession and post-sale notices.

3. Fort asserted numerous affirmative defenses to the claims alleged by the Plaintiff, including, among others, that claims of some Class Members are barred due to *res judicata*, judicial estoppel, the right of set-off, and waiver/release. Fort further asserted conditional counterclaims against all Class Members not previously sued to recover deficiencies, including interest and attorneys’ fees.

4. After the Parties engaged in copious discovery, including document production and



depositions, the Plaintiff sought certification of a ten-year class for declaratory relief and recovery of statutory damages pursuant to Ind. Code § 26-1-9.1-625. On October 16, 2020, the Court entered an order (“Class Certification Order”) certifying a class for damages and declaratory relief under Ind. R. Trial P. 23(B). Fort moved for reconsideration of the Class Certification Order, which was granted in part and denied in part, allowing Plaintiff to proceed with a damages class only, but not a declaratory relief class.

5. On December 1, 2020, Plaintiff moved for summary judgment on whether Fort’s notices complied with Article 9 of the UCC. On August 5, 2021, the Court issued an Order determining that Fort’s notices failed to comply with UCC requirements (“Merits Order”).

6. On February 12, 2021, Fort filed a Motion for Leave to File Conditional Counterclaim. Plaintiff opposed. By Order dated September 3, 2021, the Court granted Fort’s Motion for Leave. Plaintiff filed a Reply to the Conditional Counterclaim on September 3, 2021.

7. On September 27, 2021, Fort moved to stay proceedings pending discovery. Plaintiff opposed. By Order dated September 30, 2021, the Court denied Fort’s Motion.

8. In 2021, the parties cross-moved for summary judgment on damages. Plaintiff also filed motions to strike. By Order dated April 20, 2022, the Court denied Plaintiff’s Motion for Summary Judgment and, for the most part, Plaintiff’s Motions to Strike, and it granted Fort’s Motion for Summary Judgment, in part.

9. Another period of pretrial discovery ensued, and Fort produced thousands of pages of loan files and other records pertaining to the Class and its affirmative defenses.

10. Trial was scheduled for April 2022.

11. Before proceeding to trial, the parties agreed to mediate through an experienced mediation provider, John Van Winkle of VAN WINKLE BATEN. The mediation was unsuccessful

to the extent it did not produce a settlement through the mediator. However, in the days that followed, the Parties were able to reach a settlement in principle to be further memorialized in this Agreement and presented to the Court for approval.

12. The Parties intend to urge approval of this Settlement Agreement by the Court after consideration of the Class Certification Order, the Merits Order, and the following substantial benefits that the settlement bestows upon the Class (and as further described below):

- (i) Fort will pay the sum of two million one hundred thousand dollars (\$2,100,000.00) to create a Settlement Fund that will be used to provide monetary relief to Class Members, to pay Class Counsel's approved fees and expenses, to pay an approved class representative service award, and to pay the costs of Class Notice and administration of the Settlement, all as approved by the Court; and,
- (ii) Fort will make a request or cause its designee—an entity which shall have full authority to act on behalf of Fort—to make a request to Experian, Equifax, TransUnion, Innovis, and any other consumer reporting agency as that term is defined by 15 U.S.C. § 1681a(f) (the “Credit Reporting Agencies” to which Fort reported information regarding a Class Member’s credit file within seven and one-half years of the Effective Date, to delete entirely any trade line from Class Members’ credit files relating to the finance agreements at issue in the Lawsuit in the manner set forth in Section 2.09 below.<sup>1</sup>

13. Class Counsel has fully analyzed the merits of the Parties’ contentions and this settlement as it affects all Parties, including the individual Class Members. Class Counsel has

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<sup>1</sup> The period of 7.5 years is designed to capture all potential negative reporting on delinquencies concerning the Secured Obligations, which are otherwise removed from a credit file seven years after first reported delinquency. 15 U.S.C. § 1681c(a)(5).

deposed Fort's designee twice, reviewed thousands of pages of loan files and datapoints, catalogued this copious data, and retained a Certified Fraud Examiner and Certified Insolvency & Restructuring Advisor to review and analyze this data. After taking into account the foregoing along with the substantial risks of continued litigation, Class Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and equitable, and that this settlement of the Lawsuit is in the best interests of the Class.

14. For the purposes of avoiding the burden, expense, and uncertainty of continuing, and for the purpose of putting to rest the controversies engendered by the Lawsuit, the Parties desire to settle the Lawsuit on the terms and conditions set forth in this Agreement.

**NOW THEREFORE**, intending to be legally bound and in consideration of the covenants and agreements set forth in this Agreement, the Class Representative, the Class, and Fort agree to the settlement of the Lawsuit, subject to Court approval, as follows:

**I. DEFINITIONS**

1.01. "Agreement" and "Settlement Agreement" mean this Class Action Settlement Agreement and Release.

1.02. "Cash Payment Eligible Class Members" means Class Members whose Class Notice is not returned as undeliverable within the meaning of ¶ 4.02.

1.03. "Class" pursuant to the Class Certification Order and this Agreement means all persons who at any time during the Class Period (defined as June 21, 2008 through October 16, 2020) and while they were Indiana residents, were sent one or more of the following Repossession Notices from Fort: (a) a Repossession Notice that stated "you (will or will not, as applicable – choose one) still owe us the difference"; (b) a Repossession Notice that stated that their vehicle would be sold at a "private or public sale"; and/or (c) a Repossession Notice that stated there would

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 (d) stated that there will be a “public sale” of collateral without describing the time or place of such public disposition, or (e) did not state “if you want us to explain to you in writing how we figured the amount you owe,” nor otherwise advise that the borrower has a right to request an accounting.

1.04. “Class Members” means those persons who, along with the Class Representatives, comprise the “Class” as defined in Section 1.02 and who did not already timely exclude themselves from the Class.

1.05. “Class Counsel” means Cary L. Flitter and Jody T. López-Jacobs of FLITTER MILZ, P.C.; M. Scott Barrett of BARRETT WYLIE, LLC; and R. William Jonas, Jr. of MAY OBERFELL & LORBER; and Doug Adelsperger of ADELSPERGER LAW OFFICES, LLC.

1.06. “Class Notice” means notice of the Settlement Agreement sent to Class Members pursuant to section 4.02 of this Agreement.

1.07. “Class Period” means the period from June 21, 2008 through October 16, 2020.

1.08. “Fort” means Fort Financial Credit Union, its owners, affiliates, subsidiaries, parent companies, and/or divisions, and all of its respective officers, members, directors, and employees.

1.09. “Deficiency Balance” means the disputed account balance allegedly remaining after the repossession and disposition of a Class Member’s financed vehicle and the application of the proceeds of the sale to that person’s account, plus the accrued interest and other charges, minus any payments made by a Class Member post-repossession (excluding payments made by Class Members who reinstated their account and had their repossessed vehicle returned, unless that vehicle was subsequently repossessed again and sold).

1.10. “Distribution Date” means the date fourteen (14) days after the Effective Date and



is the date on or about which the checks shall be mailed to Class Members.

1.11. "Effective Date" means the date after the entry by the Court of the Final Order Approving Class Action Settlement (the "Final Approval Order") and (a) when the applicable period for the filing of a notice of appeal has expired without an appeal having been filed; or (b) if an appeal is taken, upon entry of an order affirming the Final Approval Order and when the applicable period for the initiation of any further appeal of the affirmance of the Final Approval Order has expired without a further appeal or petition for review having been filed.

1.12. "Lawsuit" means *Steven D. Guyse, on behalf of himself and all others similarly situated v. Fort Financial Credit Union*, commenced in Allen Circuit Court as Cause No. 02C01-1806-PL-000218.

1.13. "Net Fund" means the proceeds of the Settlement Fund after the deduction of approved Class Counsel fees and expenses, approved class representative service awards, and administrative costs.

1.14. "Parties" means the Class Representative, the Class, and Fort.

1.15. "Preliminary Approval" of this Agreement means that the Court has entered an order preliminarily approving the class settlement and directing the issuance of notice.

1.16. "Released Persons" means Fort and all of its respective current and former affiliates, managers, investors, advisors, owners, related companies, parents, subsidiaries, trustees, servicers, officers, directors, members, agents, employees, contractors, subcontractors, insurers, coinsurers, reinsurers, attorneys, predecessors, and successors.

1.17. "Secured Obligation" means a retail installment sales agreement or comparable vehicle finance transaction to which a Class Member and Fort are a party or an assignee of a party where the financed vehicle collateralizing the transaction was repossessed during the Class Period.



1.18. "Settled Claims" means all claims, demands, actions, causes of action, rights, offsets, suits, damages, lawsuits, liens, costs, losses, expenses, or liabilities of any kind whatsoever, for any relief whatsoever, including monetary, injunctive, or declaratory relief, rescission, general, special, statutory, and punitive damages, as well as any claims for treble damages, penalties, attorneys' fees, costs, or expenses, whether known or unknown, suspected or unsuspected, contingent or vested, which any Class Member has had, now has, or will ever have relating to the Class Member's motor vehicle loan with Fort from which that Class Member's claim arose, the repossession of any Class Member's motor vehicle by Fort or its designees, or the Class Member's vehicle loan account with Fort. This includes any alleged representations, misrepresentations, disclosures or incorrect disclosures, failures to disclose, acts or omissions, deceptions, acts of unconscionability, unjust enrichment, unfair business practices, breaches of contract, conspiracy, or violations of any unfair or deceptive trade practice statute, whether federal, state, or local, and specifically including, without limitation, the Indiana Commercial Code or any implementing regulations related to repossession practices, repossession collection efforts, and any alleged damages or losses incurred in connection with the repossession or surrender of vehicles or the sale of any repossessed or surrendered vehicles that are the subject of the Lawsuit. The term "Settled Claims" does not include any claims for personal injuries; nor claims arising from other accounts or lending relationships among the parties apart from the Secured Obligations at issue in the Litigation. Fort represents that there are currently no pending claims by Class Members arising under the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227, or the Servicemembers Civil Relief Act, 50 U.S.C. § 3901.

1.19. "Settlement Administrator" means American Legal Claims Services, LLC, an independent class action settlement administration company retained for purposes of administering

the Settlement Agreement, or such other administrator as the Parties, through counsel, shall agree upon. The responsibilities of the Settlement Administrator shall be those set forth herein as to notice and administration.

1.20. "Settlement Fund" or "QSF" means the amount of two million one hundred thousand dollars (\$2,100,000.00) provided by Fort to the Settlement Administrator. The Settlement Fund may not be commingled with any other funds; it may be held in cash, cash equivalents, certificates of deposit, or instruments insured by an arm of or backed by the United States government.

1.21. As used in this Agreement, the plural of any defined term includes the singular, and vice versa.

## **II. GENERAL TERMS OF THE SETTLEMENT**

### **2.01. Conditional Nature of Agreement.**

This Agreement, including all associated exhibits and attachments, is made for the sole purpose of attempting to consummate a settlement of the Lawsuit on a class-wide basis. The Agreement is made in compromise of disputed claims. The Agreement is intended by the Parties to fully, finally, and forever resolve the Settled Claims subject to the terms and conditions set forth in this Agreement. Because this Settlement Agreement resolves a class action on a class-wide basis, it must receive preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis that is subject to the final approval of the Court.

### **2.02. Effect of Disapproval.**

If the Court does not enter the Final Approval Order, or the Settlement Agreement does not become final for any reason, this Agreement shall be of no force or effect, Fort will be refunded the full Settlement Fund (less expenses incurred by the Settlement Administrator), and the Parties

will confer in good faith to secure new trial dates as soon as reasonably practicable on the Court and the Parties' and their respective counsel's schedules.

2.03. Acknowledgement and Reservation of Rights.

(a) Fort acknowledges that the Court certified a Class for damages and subsequently ruled in favor of the Class on Fort's liability (excluding its counterclaim and defenses). As further consideration for entering into this Agreement, as it relates to the Class Members, Fort accepts these rulings and agrees to the relief provided in paragraphs 2.10 - 2.12 on this basis. Except as necessary in a proceeding to enforce this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any proceeding to establish any liability or admission on the part of Fort or any Released Persons or to establish any violation of federal, state, local, or other applicable law except as set forth in the Merits Order. The Parties agree and represent that if the Court does not approve the Agreement, or any appellate court disapproves of the Agreement in any way that prevents the Agreement from becoming final and effective, no Party will use or attempt to use any conduct or statement of any other Party in connection with this Agreement, including any effort to seek approval of the settlement, to affect or prejudice any other Party's rights in any ensuing litigation.

(b) Fort has agreed to resolve the Lawsuit through this Agreement, but to the extent this Agreement is deemed void or the Effective Date does not occur, the Parties do not waive, but rather expressly reserve, all rights to challenge all claims and allegations in the Lawsuit upon all procedural and factual grounds, including without limitation the ability to challenge class action treatment on any grounds. The Parties expressly reserve all rights and defenses as to any claims and do not waive any such rights or defenses if the Agreement is not approved for any reason.

(c) If this Agreement terminates pursuant to its terms without final approval, the

Lawsuit shall revert to its status as it existed immediately before the execution of the Agreement, including return of the Settlement Fund (less expenses incurred by the Settlement Administrator) to Fort as set forth in Section 2.02 above.

2.04. Class Certification.

Pursuant to the Class Certification Order, the Class has been certified and Cary L. Flitter of FLITTER MILZ, P.C., M. Scott Barrett of BARRETT WYLIE, LLC, and R. William Jonas, Jr. of MAY OBERFELL & LORBER have been appointed as Class Counsel. Doug Adelsperger of ADELSPERGER LAW OFFICES, LLC shall also be approved as Class Counsel. The Court has appointed Mr. Guyse as Class Representative.

2.05. Proposed Order for Preliminary Approval.

In connection with the application for Preliminary Approval of this Agreement, the parties shall submit to the Court a proposed order in the form attached as Exhibit A.

2.06. Monetary Relief to Class Members.

(a) Within fourteen (14) days following the entry of an order granting Preliminary Approval, Fort will issue or cause to be issued one or more checks (or other commercially acceptable method of transferring funds) to the Settlement Administrator in the amount of \$2,100,000.00, payable to the order of "Guyse v. Fort Financial Credit Union Settlement Fund" for deposit into Huntington Bank.

Under no circumstances shall Fort be required to pay an amount in excess of \$2,100,000.00 in connection with this Settlement. The Settlement Fund shall be used solely for purposes of implementing this Agreement, which will be used to provide monetary relief to Cash Payment Eligible Class Members, to pay Class Counsel's attorney fees and expenses as approved by the



Court, to pay any approved class representative service award, and to pay for costs of notice and administration.

(b) Class Relief. Cash Payment Eligible Class Members shall be entitled to their respective share of the Settlement Fund after the deduction of approved Class Counsel fees and expenses, approved class representative service awards, and administrative costs (yielding the "Net Fund"). The Net Fund will be distributed on a pro rata basis to all Cash Payment Eligible Class Members based on the proportion of their statutory damages. If two or more Cash Payment Eligible Class Members share a single Secured Obligation (e.g., if there are co-borrowers), those individuals shall be entitled to a single recovery per repossessed vehicle. If a Cash Payment Eligible Class Member had more than one vehicle repossessed, such member shall be entitled to a separate recovery for each Secured Obligation. Any Cash Payment Eligible Class Member who had the same vehicle repossessed more than once shall be entitled to only one recovery per vehicle, not per repossession. If there are co-obligors, the check(s) may be payable jointly, but upon request from one of the co-obligors and the return of the original check(s), new checks may be issued, payable to each individually for half of the sum otherwise payable.

(c) Illustration. By way of illustration, if the Court approves Class Counsel fees and litigation expenses in the sum of \$840,000.00 and \$100,000.00, administrative expenses of \$35,000.00, and a class representative service award of \$12,500.00, the Net Fund will be \$1,112,500.00. The average payment for each of the approximately 810 Secured Obligations in the Class is approximately \$1,375. However, each Class Member will receive their pro rata share of the Net Fund based on their share of statutory damages under Ind. Code § 26-1-9.1-625(c), and such amount will be stated in their class action notice.



(d) Timing of Payment. On or about the Distribution Date, the Settlement Administrator shall mail a check to each Cash Payment Eligible Class Member at their original address or any updated address obtained pursuant to ¶¶ 3.02 or 4.02.

2.07. Class Administrator.

The Settlement Administrator shall, among other things, print, stuff, and mail class notice; handle return-notice issues and remailings; handle any other publication that may be needed; receive objections from class members; handle basic inquiries from class members; create and maintain a website and toll-free 800 number to handle class member inquiries; and prepare such affidavits as are necessary from time to time concerning the administration of notice and the case as may be needed by counsel or the Court. The expense of Class Notice and the Settlement Administrator shall be paid through the Fund.

2.08. Identification of Class Members.

Fort represents that to the best of its knowledge and based on its review of records of customer accounts, there are approximately 810 secured obligations in the class, representing approximately 1,007 Class Members. Within 14 days of signing the Settlement Agreement, Fort will provide to the Settlement Administrator an updated list of addresses for Class Members and co-obligors.

2.09. Credit Reporting and Collections.

(a) Not later than ninety (90) days after the Effective Date, for each Class Member for whom Fort has furnished information to Credit Reporting Agencies regarding Deficiency Balances on the Secured Obligations, Fort or its designee will request that the Credit Reporting Agencies to which Fort reports delete the trade line regarding reporting on the Secured Obligation. If Fort is advised that a trade line is not deleted, it will make a second request or cause its designee to make

a second request that the trade line be deleted. After Fort has made the requests to the Credit Reporting Agencies described above, if a Class Member disputes a Fort trade line with one or more credit bureaus, Fort shall not respond to the credit bureau's request for verification. Fort shall have no further obligation with respect to deletion of trade lines.

(b) The parties further acknowledge that the Credit Reporting Agencies are separate entities from Fort, and that no cause of action can or will be stated, including for breach of this Settlement Agreement, if any Credit Reporting Agency fails to amend the Class Members' credit history despite a request from Fort, so long as Fort performs its obligations in Section 2.09(a). The Class Members also expressly acknowledge that they understand the limitations of Fort in this regard, and that any action, inaction, omission, or error by the Credit Reporting Agencies is not and shall not be attributable to Fort in any way and shall not constitute a breach of this Agreement. Fort shall not be liable to any Class Member under the Fair Credit Reporting Act, 15 U.S.C. § 1681, or similar law for actions taken in connection with requesting deletion of any Class Member's trade line as provided in this Agreement.

2.10. Cease and Desist Collection.

Fort shall, effective with the signing of the Settlement Agreement, promptly discontinue all collection activities, or to the extent Fort assigned any claims to a third party for collection, direct the third party to discontinue all collection activities, with respect to the Deficiency Balances of Class Members. This obligation shall not apply if this Agreement is terminated for any reason, without final approval. Fort represents that it is not aware of any claims that have been sold relating to any Deficiency Balance.

2.11. Covenant Not to Sue or Prosecute.

Fort has asserted a Conditional Counterclaim against certain Class Members for Deficiency

Balances, totaling to approximately \$3.7 million. Fort covenants upon execution of this Agreement not to file or prosecute any lawsuit seeking a Deficiency Balance against any Class Member related to a Secured Obligation subject to this Settlement Agreement, including its Conditional Counterclaim. Nothing in this paragraph limits Fort from pursuing a lawsuit related to claims, including claims for deficiency balances, arising from loans and agreements not subject to this Settlement Agreement, such as repossessions that occur after the Class Period, or other obligations not involving a Class Member's Secured Obligation.

2.12. Satisfaction of Monetary Judgments Against Class Members.

Beginning within forty-five (45) days of the Effective Date and to be completed not more than sixty (60) days after the Effective Date, Fort will file with the applicable Court any documents necessary to show as satisfied and release judgments entered against Class Members.

2.13. Attorneys' Fees.

Class Counsel intends to apply for an award of attorneys' fees and expenses in the amount of \$840,000.00 and litigation expenses of up to \$100,000.00. These sums shall be paid out of the Settlement Fund and under no circumstances will Class Counsel attorney fees and expenses exceed the above amounts. Fort shall take no position on Plaintiff's request for Class Counsel fees and expense reimbursements set forth above. The amount of Class Counsel fees and expenses are subject to Court approval. Class Counsel fees approved by the Court shall also serve as compensation to Class Counsel for addressing ongoing and future Class Member inquiries concerning their repossession, deficiency balance, and trade line credit reporting after final approval. Class Counsel fees and expenses approved by the Court shall be paid within fourteen (14) days after the Effective Date, and after presentment to the Settlement Administrator of a current executed W-9.

2.14. Individual Service Award.

The Class Representative may apply for a service award in the amount of \$12,500.00. Any service award shall be paid from the Settlement Fund. Fort shall take no position on this request. The amount of any such award is subject to Court approval. The approved service award shall be forwarded to Class Counsel by the Settlement Administrator within fourteen (14) days of the Effective Date, upon the Settlement Administrator's receipt of an executed Form W-9 from the Class Representative. This service award is in addition to Plaintiff's entitlement to the settlement benefits provided to all Class Members under this Agreement.

2.15. Confidentiality and Public Disclosure of Settlement Terms. Until the filing of the papers in Court for Preliminary Approval, the Parties and counsel agree to maintain the confidentiality of this Settlement Agreement and its terms, except as necessary to disclose information to a spouse, attorney, or tax professional. At no time, whether before or after entry of a Final Approval Order, shall the Parties or their counsel contact the media to issue any press release or seek similar publicity of the Settlement.

**III. ADMINISTRATION OF THE SETTLEMENT**

3.01. Costs of Administration.

Costs of providing notice to the Class of the settlement of the Litigation, administering this Agreement, and making the cash payments and distributions required under this Agreement, shall be paid from the Settlement Fund. The Settlement Administrator, American Legal Claims Services, LLC of Jacksonville, FL, shall administer the settlement in accordance with the terms of this Settlement Agreement. The Settlement Administrator shall promptly respond to all queries from Fort and Class Counsel about the calculations and payments called for by this Agreement.



The Settlement Administrator shall provide a quote that shall not exceed \$35,000.00 for all services (assuming \$25,000.00 for services through the initial distribution, and \$10,000.00 for the second distribution, if any).

3.02. Treatment of Class Members Who Have Moved or Died.

For Class Members whose checks mailed pursuant to ¶ 2.06 are returned by the U.S. Postal Service for lack of current correct address, the Settlement Administrator shall seek an address correction via a Social Security number search through the Accurant database, or other equivalent database, and the checks for those Class Members will be resent to any subsequently obtained addresses. The Settlement Administrator may in its discretion employ skip-trace or other location tools. If the Settlement Administrator receives notice that a Class Member is deceased, the Settlement Administrator will, upon receipt of proper notification and documentation within thirty (30) days of that notice, make any payment due to the Class Member's estate. "Proper notification and documentation" means, in the discretion of the Settlement Administrator, a death certificate, or a copy of the official filings appointing an executor, administrator, or other personal representative of the estate along with the name and address of such executor, administrator, or personal representative. Any payment to or on behalf of an estate must be made not later than ninety (90) days after the Distribution Date.

3.03. Returned Notices.

Checks to Class Members shall be good for ninety (90) days from the date the check is mailed, and that "stale date" shall be stated on the check. Approximately sixty (60) days after mailing settlement checks, the administrator shall send a "reminder letter" to each Cash Payment Eligible Class Member who has not cashed or negotiated the settlement check, advising that the check will go stale in approximately thirty (30) more days and urging the Class Member to act



promptly to negotiate their check. Class Members who are not located or whose checks are not cleared within ninety (90) days after the mailing of the check shall be ineligible to share in the Settlement Fund, but shall be eligible for the non-cash benefits of this settlement.

3.04. Second Distribution.

If, after the check stale date, there remains in the account a balance of \$50,000.00 or more, there shall be a second distribution. From that remaining balance, reasonable administration and notice costs for the second distribution shall be paid per ¶ 3.01 above. The balance then remaining shall be allocated on a per capita basis among each Class Member who negotiated the first mailed check.

By way of illustration, if there remains after the first distribution \$50,000.00, and 800 Class Members representing 800 Secured Obligations cashed the initial checks; and the administration cost of the Second Distribution is (up to) \$10,000.00, then \$40,000.00 is available for the Second Distribution. From that *res*, the net redistribution would be approximately \$50.00 for each of the 800 Class Members.

If a second distribution is called for by this Agreement, the Settlement Administrator shall mail checks no later than one hundred ten (110) days after the Distribution Date. Checks mailed in a Second Distribution shall be marked as valid for a period of forty-five (45) days from mailing.

3.05. Notification to Class Counsel.

Approximately one hundred (100) days after the Distribution Date, the Settlement Administrator shall notify Class Counsel and Fort's counsel in writing of the number of Class Members, the number of Class Members to whom checks were sent, the number of Class Members who did not cash the checks, the total dollar amount of the checks distributed, the total dollar

amount of uncashed checks, and the remaining balance of the Settlement Fund, accounting for interest (if any), bank fees, and other administration expenses.

If there is a Second Distribution hereunder, the Administrator shall provide a supplemental affidavit approximately sixty (60) days after the Second Distribution with the same detail provided.

3.06. Residual Funds/ Cy Pres.

If a balance remains sixty (60) days after a Second Distribution, or if less than \$50,000.00 remains one hundred (100) days after the initial distribution, that remaining balance is deemed "Residual Funds." Pursuant to Trial Rule 23(F), 50% of the Residual Funds will be disbursed to the Indiana Bar Foundation to support the activities and programs of the Coalition for Court Access. The remaining 50% of the Residual Funds will be distributed to Junior Achievement of Northeast Indiana for consumer credit education and financial literacy programs.

If there is no second distribution, the Settlement Administrator shall deliver the checks payable to the *cy pres* recipients to Class Counsel for distribution to the recipient organization within one hundred twenty (120) days of the initial distribution. If there is a second distribution, such checks shall be delivered within seventy (70) days of the second distribution. The letter enclosing delivery of the *cy pres* checks to the recipients shall be copied to Counsel for Fort. Promptly after the *cy pres* checks have cleared, the Settlement Administrator shall close the bank account.

Under no circumstances (other than termination of this Agreement) shall any of the money in the Settlement Fund revert to Fort.

3.07. Certification of Distribution.

Within ten (10) days after the final distribution of all portions of the Settlement Fund, the Settlement Administrator shall provide to all counsel an affidavit attesting that the distributions

provided for by this Agreement have all been timely made. Within fourteen (14) days of receipt of the affidavit, Class Counsel shall docket such affidavit and any other appropriate case-closing affidavit.

#### IV. CLASS SETTLEMENT PROCEDURES

##### 4.01. Motion for Preliminary Approval.

Class Counsel shall file a motion for Preliminary Approval of the proposed settlement within fourteen (14) days of execution of this Agreement by all Parties. Fort agrees not to oppose, except as allowed in this Agreement, the entry of an order of Preliminary Approval in the form annexed as Exhibit A, providing, among other things:

(a) That the settlement appears to be within the range of reasonableness and that notice of the proposed settlement should be given to the Class.

(b) That the requirements for certification of a Class for settlement purposes have been satisfied pursuant to the Class Certification Order.

(c) That the notice of proposed class action settlement substantially in the form attached as Exhibit B is approved by the Court; and that the provision of Class Notice in the manner and form set forth in the Order meets all the requirements of Ind. R. Trial P. 23 and any other applicable law, constitutes the best notice practicable under the particular circumstances of this case, and shall constitute sufficient notice to all persons entitled to it.

(d) That deadlines shall be established for mailing Class Notices, filing any objections, and filing any papers in connection with the Final Approval Hearing and the consideration of the approval or disapproval of the Settlement Agreement.

(e) That any objections by Class Members to: (i) the proposed settlement, or (ii) the entry of the Final Approval Order, shall be heard and any papers submitted in support of such

objections shall be considered by the Court at the Final Approval Hearing only if, on or before a date (or dates) specified in the Class Notice and the Preliminary Approval Order, the objector files with the Court a notice of his or her intention to appear, and states the basis for such objections. Any objection shall be postmarked or electronically filed with the Clerk on or before the date specified in the Class Notice, which shall be forty-two (42) days from the date of the initial mailing of the Class Notice. The objector shall mail copies of any objection to Class Counsel and counsel for Fort and the Settlement Administrator.

(f) That Plaintiff's motion for final approval, for approval of a service award for the Class Representative, and for an award of Class Counsel fees and expenses, shall be filed at least fourteen (14) days before the Final Approval Hearing.

(g) That the Preliminary Approval Order substantially in the form of Exhibit A to the Settlement Agreement is approved.

(h) That a hearing or hearings ("Final Approval Hearing") shall be held before the Court, at the time and date to be set by the Court, to consider whether the proposed settlement—including the payment of Class Counsel's attorneys' fees, the reimbursement of expenses, and the class representative service award—is fair, reasonable, and adequate and should be approved by the Court, and whether the judgment approving the settlement and dismissing the Lawsuit on the merits and with prejudice against the Class Members should be entered, and to consider such other matters as may properly come before the Court in connection with the Final Approval Hearing.

(i) That the Final Approval Hearing may, from time to time and without further notice to the Class (except those who filed timely objections), be continued or adjourned by order of the Court.



(j) That all Class Members will be bound by the Final Approval Order.

4.02. Notice of Class Settlement.

(a) Subject to the Court's approval, the Parties agree that notice to the Class Members shall be given by the Settlement Administrator in the form attached hereto as Exhibit B within twenty (20) days after Preliminary Approval in the following manner: (a) Fort shall supply an updated address list of the Class Members (including co-obligors), and the Settlement Administrator shall update the address list as set forth in paragraph 3.02; (b) the Settlement Administrator shall mail the notice as approved by the Court by first-class United States mail to the updated addresses; (c) if a mailed notice is returned, the Settlement Administrator will re-mail it as set forth in paragraph 3.03. If a notice is returned after an address update and re-mailing, and no current address is reasonably available to the Administrator, the notice shall be deemed "undeliverable."

(b) The Settlement Administrator shall cause a summary class notice (in a format approved by counsel and the court) to be published on an informational webpage that will reside on the Settlement Administrator's website.

(c) At least twenty-eight (28) days before the Final Approval Hearing, the Settlement Administrator shall submit to Class Counsel and Fort's counsel an affidavit of mailing of the Class Notice. The affidavit shall set forth the steps taken to provide due and proper notice and include a list of the persons who have filed an objection to the proposed settlement.

4.03. Opting Out.

(a) As the Class was already afforded an opportunity to opt out of this Class Action, there will not be an additional opt out period.

4.04. Order and Final Judgment.



Before the Final Approval Hearing, Plaintiff shall request, with Fort's concurrence, that the Court approve the settlement and enter judgment in accordance with this Agreement, substantially in the form attached as Exhibit C.

4.05. Settlement Administrator.

The Settlement Administrator shall, by virtue of its voluntary appointment, deem itself subject to the jurisdiction of the Court for purposes of its administration of the settlement and the Lawsuit.

V. RELEASE

5.01. Release as to the Class.

On the Effective Date, the Class Members, by operation of this Release and the Final Approval Order, fully, finally, and forever release and discharge all of the Released Persons from all Settled Claims and, without further action by any person, shall be deemed (a) to have consented to the dismissal with prejudice of all Settled Claims; (b) to have released and forever discharged all Settled Claims; and (c) to be forever barred and enjoined from instituting or further prosecuting, in any forum whatsoever, including but not limited to any state, federal, or foreign court or regulatory agency, any Settled Claim.

5.02. Unknown Claims or Losses.

The Class Representatives and Fort expressly understand and acknowledge that it is possible that unknown losses or claims exist or that present losses may have been underestimated in amount or severity. The Class Representatives and Fort explicitly took that possibility into account in entering into this Agreement, and a portion of the consideration and the mutual covenants contained in this Agreement, having been bargained for between the Class Representatives and Fort with the knowledge of the possibility of such losses or claims, was given

in exchange for a full discharge of all such losses or claims.

5.03. Release Summary.

On the Effective Date, the Class Members shall be deemed to have covenanted and agreed that, upon Fort's compliance with the terms of this Agreement: (a) Class Members shall be forever barred from instituting, maintaining, or prosecuting against Fort or the Released Persons any Settled Claim; and (b) Fort and any Released Persons shall be forever released and discharged from any and all liability with respect to any Settled Claim.

**VI. QUALIFIED SETTLEMENT FUND**

6.01. Definition.

The Settlement Fund shall constitute a Qualified Settlement Fund ("QSF") within the meaning of Treasury Regulation § 1.468B-1 promulgated under § 468B of the Internal Revenue Code of 1986, as amended. The Settlement Administrator shall be the "administrator" within the meaning of Treasury Regulation § 1.468B-2(k).

6.02. Employer Identification Number.

Upon or before establishment of the QSF, the Settlement Administrator shall apply for an employer identification number for the QSF utilizing Internal Revenue Service Form SS-4 and in accordance with Treasury Regulation § 1.468B-2(k)(4).

6.03. Relation-Back.

Fort and the Settlement Administrator shall fully cooperate in filing a relation-back election under Treasury Regulation § 1.468B-1(j)(2) to treat the QSF as coming into existence as a settlement fund as of the earliest possible date.

6.04. Fort's Obligations After Making Deposits.

After making the payments described in ¶ 2.06, Fort shall have no responsibility, obligation, or liability with respect to: (a) the notifications to the Class Members (except to provide

its best and latest location data); (b) the processing of claims; (c) the allowance or disallowance of claims by Class Members; (d) payments to Class Counsel; (e) investment of QSF funds; (f) payment of federal, state, and local income, employment, unemployment, excise, and any other taxes, penalties, interest, or other charges related to taxes imposed on the QSF or its disbursements; (g) payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the QSF.

6.05. Administration Tax Obligations.

The Settlement Administrator shall file or cause to be filed, on behalf of the QSF, all required federal, state, and local tax returns, information returns, including any Form 1099-series return and tax withholdings statements, in accordance with the provisions of Treasury Reg. § 1.468B-2(k)(1) and Treasury Reg. § 1.468B-2(l)(2)(ii). Any contract with the Settlement Administrator relating to the QSF shall require the Settlement Administrator to undertake these tasks.

**VII. MISCELLANEOUS PROVISIONS**

7.01. Parties to Use Best Efforts to Effectuate Settlement.

The Parties' counsel shall use their best efforts to cause the Court to give Preliminary Approval to this Agreement as promptly as practicable, to take all steps contemplated by this Agreement, to effectuate the settlement on the stated terms and conditions, and to obtain approval of this Agreement.

7.02. Choice of Law and Venue.

This Agreement is intended to and shall be governed by the laws of the state of Indiana without regard to its conflict of laws rules. This Agreement shall be enforced in the Allen Circuit Court, Indiana. Fort and Class Members waive any objection that any such party may have or hereafter may have to the personal jurisdiction or venue of any such action.

7.03. Entire Agreement.

The terms and conditions set forth in this Agreement constitute the complete and exclusive statement of the agreement between the Parties relating to the subject matter of this Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement constitutes the complete and exclusive statement of these terms as between the Parties and that no extrinsic evidence may be introduced in any judicial proceeding, if any, involving the meaning of this Agreement.

7.04. Modification Only in Writing.

This Agreement may be amended only in a writing signed by the Parties or counsel for all Parties. This Agreement may not be orally amended.

7.05. No Ambiguity to be Construed in Favor of Any Party.

The determination of the terms of, and the drafting of, this Agreement has been by mutual agreement after negotiation, with consideration by and participation of all Parties. Accordingly, no ambiguity shall be construed in favor of or against any of the Parties.

7.06. Successors.

This Agreement shall be binding upon, and inure to the benefit of, the respective heirs, successors, and assigns of the Parties.

7.07. Waivers.

The waiver by one Party of any provisions or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

7.08. Counterparts.

This Agreement shall become effective upon its execution by all of the undersigned. The



Parties may execute this Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

7.09 Retention of Jurisdiction.

The Court shall retain jurisdiction over the interpretation, effectuation, and implementation of this Agreement and all orders entered in connection therewith; the Parties and their attorneys submit to the jurisdiction of the Court.

7.10 Taxes.

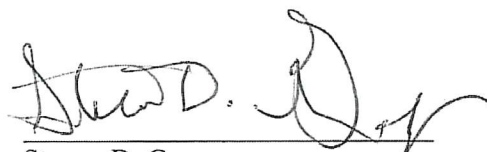
(a) The Parties and their counsel have provided no tax advice with respect to the terms of this settlement. In all events Fort shall have no liability or responsibility for any potential tax liability incurred by any Class Member or Class Representative arising from cancellation of indebtedness, nor any taxes, penalties, interest, or any other charges related to taxes.

(b) Fort shall not issue any IRS forms, including, but not limited to IRS Form 1099C, IRS Form 1099-MISC, or any comparable IRS tax form related to debt cancellation to any Class Member as a result of the relief provided herein. The Class Members dispute and contest any liability with respect to the Deficiency Balances as evidenced by the pleadings and papers filed in the Lawsuit, and the Class Members contend that as a result of the liability determination in the Merits Order, the disposition of Class Member vehicles presumptively satisfied any Deficiency Balance under prevailing Indiana law.

The undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

AGREED TO AND ACCEPTED:  
*Class Representative*

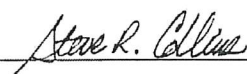
Dated: 4-1-2023

  
Steven D. Guyse

AGREED TO AND ACCEPTED:  
*Fort Financial Credit Union*

Dated: 3/31/2023

Fort Financial Credit Union

By: 

Name: Steve R. Collins

Title: President & CEO



# **EXHIBIT "A"**

|  |       |                                |
|--|-------|--------------------------------|
| STATE OF INDIANA                           | )     | ALLEN COUNTY 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 OF PRELIMINARY APPROVAL OF CLASS SETTLEMENT AND  
DIRECTING THE ISSUANCE OF NOTICE TO THE CLASS**

This matter comes before the Court on the Motion for Preliminary Approval of Settlement Agreement filed by Plaintiff Steven D. Guyse ("Guyse" or "Plaintiff"), on behalf of himself and all others similarly situated, and Defendant Fort Financial Credit Union ("Fort" or "Defendant"). Having reviewed the Class Action Settlement Agreement and Release, having read Plaintiff's Motion and Brief seeking Preliminary Approval of Class Settlement and for the Issuance of Notice to the Class, having been advised that Fort does not oppose the relief requested, having convened a preliminary approval hearing on April. 27, 2023, via ZOOM Platform where the Court heard the arguments of all counsel, and based specifically upon the facts and circumstances at issue in the present case pursuant to T.R. 23(E), the Court now ORDERS as follows:

**1. Summary of Claims and Defenses:**

Guyse asserted claims in the Lawsuit on behalf of the Class Members alleging that Fort violated certain notice requirements under Indiana's Uniform Commercial Code ("UCC") when repossessing vehicles from its members. Guyse sought a Court order declaring that Fort's notices violated the UCC and further sought to recover money damages on behalf of Class



Members that were sent the deficient notices. Fort raised multiple defenses against the Plaintiffs' claims and further asserted a Conditional Counterclaim and rights of set-off, totaling to approximately \$3.7 million.

The Court determined that the Lawsuit could be maintained as a class action under Rule 23(B)(3) of the Indiana Rules of Trial Procedure for the purposes of awarding money damages. (Order Granting Class Certification, filed October 16, 2020). Notice of the Class Action was mailed to Class Members. The Court subsequently adjudicated the merits of the Lawsuit, determining that Fort's notices failed to comply with the UCC (Order on Cross-Motions for Summary Judgment, filed August 5, 2021). Litigation over damages issues followed.

## **2. Settlement Agreement**

The parties have entered into a Class Action Settlement Agreement ("Settlement Agreement") dated \_\_\_\_\_, 2023. The Settlement Agreement has been submitted to the Court for preliminary approval pursuant to T. R. 23(E).

## **3. The Class, Class Representatives, and Class Counsel.**

- a) By Order and Opinion dated October 16, 2020, the Court certified a class for damages under T.R. 23(B)(3) defined as all persons who at any time during the Class Period (defined as June 21, 2008 through October 16, 2020) and while they were Indiana residents, were sent one or more of the following Repossession Notices from Fort: (a) a Repossession Notice that stated "you (will or will not, as applicable – choose one) still owe us the difference"; (b) a Repossession Notice that stated that their vehicle would be sold at a "private or public sale"; and/or (c) a Repossession Notice that stated there would 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 (d) stated that there will be a “public sale” of collateral without describing the time or place of such public disposition, or (e) did not state “if you want us to explain to you in writing how we figured the amount you owe,” nor otherwise advise that the borrower has a right to request an accounting.

b) This Court has already approved the following as Class Counsel: Cary L. Flitter of FLITTER MILZ, P.C.; M. Scott Barrett of BARRETT WYLIE, LLC; and R. William Jonas, Jr. of MAY OBERFELL & LORBER. The Court now also approves Jody T. López-Jacobs FLITTER MILZ, P.C. (admitted *pro hac vice*) and Doug Adelsperger of ADELSPERGER LAW OFFICES, LLC as Class Counsel. Class Counsel are hereby appointed and approved for the purposes of this settlement.

**4. Findings Regarding Proposed Settlement.** The Court finds that: (a) the proposed settlement resulted from extensive arm’s-length negotiations. The proposed settlement was reached only after nearly five years of litigation, review by Class Counsel of thousands of documents and tens of thousands of data points pertaining to the Class, multiple depositions, copious motion practice, a decision on contested class certification, a decision on the merits of Plaintiff’s claims, and a mediation with a professional mediation service VAN WINKLE BATEN in December 2022; (b) the proposed settlement of this action provides, on preliminary review, for a Settlement Fund of \$2,100,000 from which, if class counsel fees and the requested service award are approved as presented, will yield substantial monetary payments to Class Members averaging approximately \$1,375 per secured obligation, satisfaction of judgments taken upon certain Deficiency Balances against some Class Members, the ceasing of all collections or prosecution of cases on the Deficiency Balances claimed by Fort (totaling to over \$3.7 million), as well as

equitable-type relief in correction of Class Member credit reports; and (c) the proposed settlement appears, on preliminary determination, to be reasonable, adequate, and sufficient to warrant providing notice of the proposed settlement to the Class Members, and holding a final hearing on the proposed settlement.

**5. Final Approval Hearing.** A Final Approval Hearing will be held in person on \_\_\_\_\_, 2023, beginning at \_\_\_\_\_ o'clock \_\_\_\_\_ in Courtroom \_\_\_\_\_, Allen Circuit Court, 715 S. Calhoun St., Fort Wayne, IN 46802, to determine:

- a) Whether the proposed settlement should be finally approved as fair, reasonable, and adequate;
- b) The propriety of any objection;
- c) Whether this action should be dismissed with prejudice pursuant to the terms of the settlement;
- d) Whether Class Members should be bound by the release set forth in the proposed settlement; and,
- e) Whether Plaintiff's application for an award of Class Counsel fees and litigation expenses and Plaintiff's application for a service award should be approved.

Plaintiff's motion for final approval, for approval of a Class Representative service award, and for an award of Class Counsel fees and litigation expenses shall be filed at least fourteen days before the Final Approval Hearing.

**6. Pre-Hearing Notices to Class Members.** As provided in the Settlement Agreement, an independent, third-party class action administrator, American Legal Claims Services, LLC (the "Settlement Administrator"), shall provide Class Members with notice in the manner set forth below in ¶ 7. By accepting this assignment, the Settlement Administrator

subjects itself to this Court's jurisdiction.

7. **Notice by Mail.** The Court has received a proposed form of Notice, agreeable to the parties, attached as Exhibit B to the Settlement Agreement, Exhibit 1 to the instant Motion for Preliminary Approval. The Settlement Administrator shall mail the approved Class Notice (with proper dates filled in) to the last known address of each potential Class Member as reflected on the Fort's current and reasonably accessible records, and as updated by the Administrator. The Class Notice shall be sent by first-class mail, postage prepaid, no later than 14 days following the entry of this order;

8. **Notice by Website Created for this Case.** The Settlement Administrator shall publish on a website created for this case a copy of the Class Notice, the Settlement Agreement, Motion for Preliminary Approval, and the Order of Preliminary Approval.

9. **Proof of Mailing.** At least twenty-eight (28) days before the Final Approval Hearing, the Settlement Administrator shall submit to Class Counsel and Fort's counsel an affidavit of mailing of the Class Notice. The affidavit shall set forth the steps taken to provide due and proper notice and include a list of the persons who have requested exclusion from the Class and a list of any persons who have filed an objection to the proposed settlement.

10. **Findings Concerning Notice.** The Court finds that notice in the form and manner provided in this order is the best practicable notice and is reasonably calculated, under the circumstances, to apprise Class Members (i) of the terms and benefits of proposed settlement of this action, (ii) the dates by which to act; (iii) that any judgment, whether favorable or not, will bind all Class Members, and (iv) that any Class Member may object to the settlement and, if he or she desires, enter an appearance personally or through counsel.



The Court further finds that the proposed Class Notice is written in plain English and is readily understandable. In sum, the Court finds that the proposed notice and the methodology for giving notice are reasonable, that they together constitute due and sufficient notice to all persons entitled to notice, and that they meet the requirements of the Indiana Rules of Trial Procedure, the United States Constitution (including the Due Process Clause), and other applicable law. The Court further finds that disclosure of any social security numbers concerning Class Members to the Settlement Administrator (only) may be necessary for implementing the proposed notice program and authorizes Fort or their designee to disclose such data to the Settlement Administrator. Class Counsel advises that it does not require or request social security numbers of Class Members.

**11. Objections and Appearances.**

a) **Written Objections.** Any Class Member who complies with the requirements of this paragraph and wishes to object, may object to any aspect of the proposed settlement. A Class Member may assert such objection either on his or her own or through an attorney hired at his or her expense. To object, the Class Member must file an objection saying that he or she objects to the settlement, and why the objector thinks the Court should not approve the settlement. The objection must include the name, address, telephone number, email address if available, and signature of the objector. The objection and any documents upon which the objector relies must be docketed with the Court and mailed to the address below no later than \_\_\_\_\_, 2023, [forty-two days from mailing of the Class Notice].

**Settlement Administrator**  
Fort Repo Class Action  
c/o American Legal Claims Service  
P.O. Box 23698  
Jacksonville, FL 32241

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

b) **Notice of Appearance.** If a Class Member retains an attorney, the attorney must file a notice of appearance with the Office of the Clerk, and contemporaneously deliver a copy to Fort's counsel and to Class Counsel.

c) **Appearance at Final Approval Hearing.** Any Class Member who files and serves a timely written objection pursuant to 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, Fort's counsel, and Class Counsel a notice of intention to appear, setting forth the basis for the objection and any documents or legal memoranda in support of the objection. Such notices of intention to appear and any documents or legal memoranda must be postmarked no later than [forty-two days from Notice date]. Any Class Member who does not timely file and serve a notice of intention to appear and supporting documents pursuant to the terms of this paragraph shall not be permitted to appear and be heard at the Final Approval Hearing absent extraordinary circumstances.

**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. If that happens, the proposed settlement and Settlement Agreement shall become null and void and be of no further force and effect (except as expressly provided in the Settlement Agreement), and neither the Settlement Agreement nor this Order shall prejudice any party.

**13. Continuance of Hearing.** The Court reserves the right to continue the Final Approval Hearing without further written notice to the absent Class Members, except those who filed timely objections shall be provided with written notice of any continuance.

SO ORDERED this \_\_\_\_\_ of \_\_\_\_\_, 2023.

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Judge Wendy W. Davis  
Allen Circuit Court

# **EXHIBIT "B"**



|  |       |                                |
|--|-------|--------------------------------|
| STATE OF INDIANA                           | )     | ALLEN COUNTY 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.                                 | )     |                                |

### **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

**You may be entitled to receive a settlement payment and to have your credit report modified in connection with a class action settlement with Fort Financial Credit Union.**

**You have been identified as a person who had a vehicle repossessed by Fort Financial Credit Union from June 21, 2008 through October 16, 2020.**

*An Indiana Court has authorized this notice.  
This is not a solicitation from a lawyer.  
You are not being sued.*

- **You do not need to take any action to receive the benefits of the settlement. Read this notice carefully.**
- This settlement resolves a lawsuit over whether Fort Financial Credit Union ("Fort") sent borrowers proper notice of their rights after vehicle repossession.
- Fort disputes the claims asserted in the Litigation. The parties disagree about whether any money (and if so, how much) could have been awarded to you if the Plaintiff were to prevail at trial. The settlement avoids the costs and risks to members of the Class like you from continuing with the lawsuit, and provides relief to the Class.
- This settlement will: (a) provide a gross fund of \$2,100,000 to be distributed to Class Members after payment of administrative costs, Class Counsel fees and expenses, and a service award to Plaintiff; and (b) require Fort to request that the credit reporting agencies delete the credit reporting of your vehicle loan history, all in accordance with the proposed Class Action Settlement Agreement.<sup>1</sup>
- Your rights are affected whether you act or not.

| Your Legal Rights and Options in this Settlement |   |
|--|---|
| <b>Do Nothing</b>                                | If the settlement is approved by the Court as presented, Fort will request the credit reporting agencies to delete your vehicle |

<sup>1</sup> Capitalized terms not defined herein shall have the meaning set forth in the Class Action Settlement Agreement and Release, a copy of which is available on the website, [www.FortRepoClassAction.com](http://www.FortRepoClassAction.com).

|                          |   |
|--------------------------|---|
|                          | loan history from your credit report. You will also be paid a proportionate share of the net settlement proceeds, <b>approximately [XXXXX]</b> . You will also be giving up any claims relating to the financing or repossession of your vehicle. |
| <b>Object</b>            | Write to the Court about why you don't like the settlement and do not want it approved. Act by [DATE].  |
| <b>Go to the Hearing</b> | Ask to speak in Court about the fairness of the settlement on [DATE].   |

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.
- For more information or to review key documents or the class action settlement agreement, you can visit [www.FortRepoClassAction.com](http://www.FortRepoClassAction.com).

### 1. Why did I get this notice?

The Court approved this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve the settlement. If the Court approves it, and if objections and appeals (if any) are resolved, then the payments and other benefits of settlement will proceed.

The case is pending in the Allen County Circuit Court, Indiana, and the case is known as *Steven D. Guyse, on behalf of himself and all others similarly situated v. Fort Financial Credit Union*, Cause No. 02C01-1806-PL-000218. The person suing (the Plaintiff) is Steven D. Guyse. He is also called the "Class Representative." The company being sued, Fort Financial Credit Union, is called the Defendant, or "Fort."

This case was earlier certified as a class action and Notice was previously mailed to you. You are now being advised of a proposed settlement of this case.

Fort's records reflect that you and any co-borrower on your vehicle loan were sent one or more notices from Fort following the repossession of your vehicle between June 21, 2008 and October 16, 2020. Fort's alleged conduct post-repossession, including its use of these notices forms the basis for this lawsuit.

### 2. What is this lawsuit about?

This lawsuit is about whether Fort provided consumers with proper notice of their rights after repossession of the consumer's vehicle and again after any auction sale of the vehicle. This lawsuit does not concern itself with the reasons for any default such as a failure to make payment under the loan agreement.

Fort denies that it violated any law, and Fort asserts that it satisfied all of the legal requirements as to its notices. The Court, however, has determined that Fort's notices violate the law. Fort also asserts other defenses. Fort further contends that many of the members of the Class owe Fort

money for balances still due on their accounts following the sale of their repossessed vehicles at auction, called a "deficiency." Fort has filed a Conditional Counterclaim for its claimed deficiencies, totaling to approximately \$3.7 million. This settlement would also resolve Fort's Conditional Counterclaim, meaning that no Class Member would owe a deficiency balance.

### **3. Why is there a settlement?**

Plaintiff believes the Class might have won more money than the settlement amount had the case gone to trial, but substantial delays and risks would have occurred. Fort believes that the claims asserted in the case are without substantial merit, and that the Plaintiff may have recovered substantially less if there had been a trial. But, there has been no trial. Instead, both sides agreed to a settlement. That way, they avoid delay and the cost of a trial and appeal, and class members like yourself will get compensation and other settlement benefits promptly. The Class Representative and his attorneys think the settlement is best for all Class Members.

## **THE SETTLEMENT BENEFITS – WHAT YOU GET**

### **4. What does the settlement provide for me?**

- Cash Component:
  - Fort has agreed to create a Settlement Fund of \$2,100,000.00. Approved administrative costs, Class Counsel fees and expenses, and a service award for the Class Representative, as approved by the Court, will be paid from that fund. The Net Fund that remains will be distributed to the members of the Class.
  - If the Court approves the Settlement as requested, all class members will be entitled to a payment unless there were multiple borrowers in which case you will share this amount equally with the co-borrower. In your case, your payment would be approximately XXXXXX.
- Credit Reporting Relief: Fort will request that the credit reporting agencies update your credit report to remove any tradeline – that is any reference to the Fort vehicle loan contract or repossession. Details about how and when this will be done, and limits on Fort's obligation to provide credit reporting relief are spelled out further in the Class Action Settlement Agreement and Release.

### **5. Do I need to do anything to get a payment or the credit reporting benefit?**

No. You do not need to do anything further to remain in the Class. You will get a payment and any credit reporting benefit automatically, assuming court approval of this Settlement.

### **6. How will the lawyers and Representative Plaintiff be paid?**

As part of the class settlement, Plaintiff will ask the court to approve a \$12,500 service award to Plaintiff for his time and effort in bringing this case. Plaintiff will ask the Court to approve a payment out of the settlement fund in the amount of \$840,000 for Class Counsel fees and up to \$100,000 for reimbursement of expenses. The fees would pay Class Counsel for investigating the

facts, litigating the case, filing legal papers with the Court, appearing in Court, negotiating settlement, and oversight of future implementation of the settlement, including fielding inquiries from Class Members. Class Counsel has not been paid for its time or services since this case was originally filed in June 2018. The Court could award less than this amount.

#### **7. How do I tell the Court that I don't like the settlement?**

You can object to the settlement if you don't like any part of it. You should state why you object and why you think the Court should not approve the settlement. The Court will consider your views. To object, you must file an objection, or send a letter saying that you object to the settlement in *Steven D. Guyse v. Fort Financial Credit Union*, Cause No. 02C01-1806-PL-000218. Please be sure to include your name, address, email address (if available), telephone number, your signature, and the reasons you object to the settlement. Mail and file the objection with the Allen Circuit Court, 715 S. Calhoun St., Room 300, Fort Wayne, IN 46802, and you must send copies of your objection, along with any supporting documents, to all three places listed in below, postmarked no later than XXXX, XXX, 2023.

##### **Settlement Administrator**

Fort Repo Class Action  
c/o American Legal Claims Service  
P.O. Box 23698  
Jacksonville, FL 32241

##### **Class Counsel**

R. William Jonas, Esq.  
MAY OBERFELL LORBER  
4100 Edison Lakes  
Parkway, Suite 100  
Mishawaka, IN 46545

##### **Defense Counsel**

Kevin J. Mitchell, Esq.  
MITCHELL LITIGATION &  
ADVOCACY  
111 W. Berry St. Suite 211  
Ft. Wayne, IN 46802

#### **THE COURT'S FAIRNESS HEARING**

#### **8. When is the hearing on final approval of the proposed settlement?**

The Court will hold a hearing on XXXXXXXXXX, 2023 at XXX .M. at the Allen Circuit Court, 715 S. Calhoun St., Room 300, Fort Wayne, IN 46802 to decide whether to approve the settlement. If the Court approves the settlement after hearing, there may be appeals. You may attend and you may ask to speak, but you don't have to, and attendance is not required or expected unless you advise that you intend to appear or have your lawyer appear. It is always uncertain whether there will be an appeal and if so, when it will be resolved. Resolving an appeal can take time, often well more than a year. Please be patient.

In the event that the Final Hearing cannot be held at the date, time or place stated above because of unforeseen events such as an increase in COVID-19 cases, then the Settlement website will be updated to identify the location, time and manner of the Final Hearing. The Court may elect to hold the Final Hearing virtually via a computer link using a Zoom or Microsoft Teams platform. In this event, the Settlement website shall be updated to explain how you can attend the Final Hearing using a Zoom or Microsoft Teams link on your computer. Please check the Settlement



website at [www.FortRepoClassAction.com](http://www.FortRepoClassAction.com) to confirm the time, place and manner of the Final Hearing.

**9. Do I have to come to the hearing?**

No. Class Counsel will answer any questions the Court may have. But you are welcome to come at your own expense. If you file an objection, you don't have to come to Court to talk about it, but you may. As long as you properly mailed (or electronically filed) your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, if you wish.

**10. May I speak at the hearing?**

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you or your lawyer must send a letter stating that it is your "Notice of Intention to Appear in *Steven D. Guyse v. Fort Financial Credit Union*, Cause No. 02C01-1806-PL-000218." Your Notice of Intention to Appear must be filed or mailed so as to be filed with the Court no later than [DATE] and be sent to the addresses specified in Section 7.

**GETTING MORE INFORMATION**

**11. Are there more details about the settlement?**

This notice summarizes the proposed settlement. The pleadings and other records in this litigation, including a copy of the Settlement Agreement, may be examined at any time during regular office hours at the Allen Circuit Court, 715 S. Calhoun St., Room 300, Fort Wayne, IN 46802. These documents will also appear on a website created for this case: [www.FortRepoClassAction.com](http://www.FortRepoClassAction.com).

You may visit the Court's website at <https://public.courts.in.gov/> or the case website [www.FortRepoClassAction.com](http://www.FortRepoClassAction.com) and search for any opinions or significant orders issued in the case. If you have further questions or need a copy of a document filed in the case, you may contact Plaintiff's counsel:

R. William Jonas, Jr.  
MAY OBERFELL & LORBER  
4100 Edison Lakes Parkway, Suite 100  
Mishawaka, IN 46545  
Tel: 574-243-4100

**IF YOU HAVE QUESTIONS, PLEASE CALL CLASS COUNSEL.**

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE CASE TO THE CLERK OF THE COURT, TO THE JUDGE, OR TO DEFENSE COUNSEL.**

# **EXHIBIT "C"**

|  |       |                                |
|--|-------|--------------------------------|
| STATE OF INDIANA                           | )     | ALLEN COUNTY 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 GRANTING FINAL APPROVAL OF  
CLASS SETTLEMENT, AND FOR JUDGMENT AND DISMISSAL**

WHEREAS, Steven D. Guyse (the “Class Representative” or “Plaintiff”), on behalf of himself and the Certified Class, and Fort Financial Credit Union (“Defendant” or “Fort”), Defendant in the above-captioned action (the “Action”), have entered into, and filed with the Court, a Class Action Settlement Agreement and Release (the “Settlement Agreement”);

WHEREAS, the Court on \_\_\_\_\_, 2023, entered an order preliminarily approving the class settlement and approving the issuance of notice (“Preliminary Approval Order”) (Doc. No. \_\_\_\_);

WHEREAS, on \_\_\_\_\_, 2023, beginning at \_\_\_\_\_ o’clock \_\_\_\_\_ in Courtroom \_\_\_\_\_, Allen Circuit Court, 715 S. Calhoun St., Fort Wayne, IN 46802, this Court held a hearing to consider, among other things: (i) whether the settlement reflected in the Settlement Agreement should be approved as fair, reasonable, adequate, and in the best interests of Class Members; (ii) whether final judgment should be entered dismissing the claims of the Class Members with prejudice and on the merits, as required by the Settlement Agreement; (iii) Plaintiff’s application for a Class Representative service award; and (iv) Plaintiff’s request for an award of Class Counsel fees and expenses;

WHEREAS, based on the foregoing, having heard the statements of counsel for the Parties and of such persons who chose to appear at the final approval hearing, having considered the records and proceedings in the action, including specifically the Settlement Agreement and the exhibits appended to it, the memoranda and other papers filed in support of final approval, and any objections or comments relating to objections to the proposed settlement;

THE COURT HEREBY FINDS AND ORDERS:

1. **Notice to the Class:** Notice to the Class has been provided by the Settlement Administrator pursuant to this Court's Preliminary Approval Order, as attested to by the affidavit of the Settlement Administrator. The notice given to members of the Class by first class mail and by posting the Settlement Agreement and Class Notice to the website constituted due and sufficient notice of the settlement and the matters set forth in the notices to all persons entitled to receive notice, and fully satisfies the requirements of due process and the Indiana Rules of Trial Procedure.

2. **Settlement Approved:** The proposed settlement set forth in the Settlement Agreement, a copy of which was filed with the Motion for Preliminary Approval, is fair, reasonable, adequate and in the best interests of the Class. The terms in this order shall be interpreted in accordance with the definitions in the Settlement Agreement. All aspects of the Settlement Agreement are approved.

3. **Class Counsel Fees and Expenses.** The Court has reviewed the application for Class Counsel fees and expenses, and the documentation submitted in support. The Court finds that the settlement provides for Defendant to cause the removal of negative credit reporting on Class Members' credit reports and to make settlement payments that average to approximately \$1,375. Additionally, the dismissal of Fort's Conditional Counterclaim adds value to the settlement, as Fort has represented that Class Members owe over \$3.7 million in deficiency

balances. As such, the aggregate monetary value of this settlement, before credit report correction, is approximately \$5.8 million.

The request for award of fees and expenses to Class Counsel in the sum of \$840,000 and \$100,000 respectively is approved as fair and reasonable in light of all relevant factors. Litigation expenses of Class Counsel have been adequately documented and appear reasonable and necessary for effective prosecution of the case. Class Counsel may allocate fees and allowed litigation expenses *inter se* as they deem appropriate.

A Class Representative service award is approved in the sum of \$12,500 for Plaintiff Guyse.

**4. Dismissal and Related Matters:**

a. The claims of all Class Members are hereby dismissed with prejudice, on the merits and without costs to any party.

b. The Class Representative, on his own behalf and on behalf of each Class Member, by operation of the release in the Settlement Agreement and this judgment, has fully, finally, and forever released and discharged with prejudice the Released Persons of and from all Settled Claims, and shall be forever barred and enjoined from instituting or further prosecuting, in any forum, including any state or federal court or arbitration, administrative or other proceeding, any Settled Claim.

c. The Class Representative, on his own behalf and on behalf of each Class Member, has acknowledged that he is aware that he may later discover facts in addition to or different from those which he now knows or believes to be true with respect to the subject matter of the Release, but that it is his intention to, and he is hereby deemed, upon the Effective Date of the Settlement Agreement, to fully, finally and forever settle and release the Released Persons from



all Settled Claims, known or unknown, suspected or unsuspected, contingent or matured, which now exist, may hereafter exist, or may heretofore have existed, without regard to the subsequent discovery or existence of such different or additional facts.

d. In light of the notice given to the Class Members, the Plaintiff and all Class Members who did not exclude themselves shall be bound by the Settlement Agreement and all of their Settled Claims shall be dismissed with prejudice and released.

7. **Continuing Jurisdiction.** Consummation of the settlement shall proceed as described in the Settlement Agreement and, without disturbing the final and appealable nature of this order and judgment, the Court hereby specifically retains jurisdiction of this matter, to the extent permitted by law, to resolve any disputes which may arise in the implementation of the Settlement Agreement or the implementation of this Final Judgment and Order. The Court retains continuing jurisdiction for purposes of supervising the implementation of the Settlement Agreement and supervising the distribution and allocation of the Settlement Fund.

Final judgment is entered. This judgment is final and appealable. The Clerk of the Court shall mark this case as closed.

BY THE COURT:

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