

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN CIRCUIT COURT
CAUSE NO. 02C01-1806-PL-000218

STEVEN D. GUYSE,)
on behalf of himself and all others)
similarly situated,)
)
PLAINTIFF)
)
VS.)
)
FORT FINANCIAL CREDIT UNION,)
)
DEFENDANT)

**DEFENDANT'S ANSWER TO
PLAINTIFF'S SECOND AMENDED CLASS ACTION COMPLAINT**

Comes now Defendant Fort Financial Credit Union ("Fort") and, for answer to Plaintiff's Second Amended Class Action Complaint, verifies and states as follows:

I. INTRODUCTION

1. This is a consumer protection class action against a vehicle lender to redress the systemic violations of the Uniform Commercial Code, ("UCC"), as adopted in Indiana, Ind. Code 26-1-9.1-601 et seq. The UCC requires secured parties who choose self-help repossession to act in a commercially reasonable manner and strictly comply with the statutory process. This includes providing consumers with proper statutory notices when repossessing and disposing of a financed vehicle.

ANSWER: Fort Financial admits that the Class Action Complaint purports to bring a class action under the Indiana version of the UCC, but denies the remaining allegations in paragraph 1 of the Plaintiff's Complaint.

2. Fort regularly finances the purchase of motor vehicles for consumer use in Indiana. When Fort believes that a consumer has defaulted on a secured vehicle loan, it repossesses and then sells the vehicle.

ANSWER: Fort Financial admits that it finances the purchase of motor vehicles for consumer use in Indiana and that, at times, Fort Financial repossesses and sells vehicles upon default. Fort Financial denies the remaining allegations contained in paragraph 2 of the Plaintiff's Complaint.

3. In the course of repossession, Fort failed to provide Guyse and the classes he seeks to represent with proper notice of repossession of collateral and proper notice of deficiency as required by the UCC.

ANSWER: Fort Financial denies the allegations contained in paragraph 3 of the Plaintiff's Complaint.

4. Because self-help repossession is done without judicial authorization or oversight, the UCC requires secured creditors like Fort to adhere strictly to the statutory requirements including the notice requirements. Failure to provide proper notice of disposition of repossessed consumer goods and failure to provide a proper deficiency notice are violations of the UCC that yield uniform statutory minimum damages for Plaintiff and the Classes he seeks to represent.

ANSWER: Fort Financial denies the allegations contained in paragraph 4 of the Plaintiff's Complaint.

II. PARTIES

5. Guyse is a consumer borrower who resides in Allen County, Indiana.

ANSWER: Fort Financial is without sufficient knowledge or information to form a belief as to the truth or allegations contained in paragraph 5 of the Plaintiff's Complaint and, therefore, denies the same.

6. Fort is a credit union having its principal place of business in Fort Wayne, Allen County, Indiana.

ANSWER: Fort Financial admits the allegations contained in paragraph 6 of the Plaintiff's Complaint.

III. JURISDICTION AND VENUE

7. This Court has jurisdiction over Fort pursuant to Ind. Trial Rule 4.4 because Fort is authorized to do business in and transacts business here. Under Ind. Trial Rule 75, preferred venue is Allen County.

ANSWER: Fort Financial admits the allegations contained in paragraph 7 of the Plaintiff's Complaint.

IV. STATEMENT OF CLAIM **Guyse**

8. On or about May 1, 2012, Guyse purchased and financed a 2004 Nissan Armada through ITT Employees Federal Credit Union, a predecessor in interest of Fort, who took a security interest in the vehicle. To finance the transaction, he executed the Closed-End Consumer Note, Truth-in-Lending Disclosure, Loan and Security Agreement, a copy of which is attached as **Exhibit "A."**

ANSWER: Fort Financial admits the allegations contained in paragraph 8 of the Plaintiff's Complaint.

9. On or about May 22, 2014, ITT Employees Federal Credit Union merged with Fort Financial.

ANSWER: Fort Financial admits the allegations contained in paragraph 9 of the Plaintiff's Complaint.

10. The Closed-End Consumer Note, Truth-in-Lending Disclosure, Loan and Security Agreement required Guyse to make 54 monthly payments, including interest at 14.39% per annum.

ANSWER: Fort Financial admits the allegations contained in paragraph 10 of the Plaintiff's Complaint.

11. The amount financed was \$15,081.80.

ANSWER: Fort Financial admits the allegations contained in paragraph 11 of the Plaintiff's Complaint.

12. The finance charge was \$5,501.59.

ANSWER: Fort Financial admits the allegations contained in paragraph 12 of the Plaintiff's Complaint.

13. Guyse lost his job when ITT moved from Ft. Wayne to Rochester, N.Y., and on or about March 23, 2017, Fort as the secured party (successor by merger to the ITT Employees Federal Credit Union Loan) and through its agent repossessed Guyse's vehicle though the remaining balance was only about \$1,500.00.

ANSWER: Fort Financial admits that Guyse's vehicle was repossessed on or about March 23, 2017, and that the remaining balance due on that date was \$1,435.59. Fort Financial is without information as to the remaining allegations contained in paragraph 13 of the Plaintiff's Complaint and, therefore, denies the same.

14. Indiana law requires a prompt post-repossession notice to the borrower advising of the repossession, that the borrower can redeem (or get his vehicle back) within a reasonable period of time after the repossession notice, the method of intended disposition, whether the Debtor may be liable for deficiency or entitled to a surplus, that the borrower has a right to request an accounting, and other information.

ANSWER: The allegations contained in paragraph 14 of the Plaintiff's Complaint

contain legal conclusions to which no response is required. To the extent a response is required, Fort Financial admits that the Indiana UCC and relevant case law provide a procedure for post-repossession notice to the borrower and related information. To the extent that paragraph 14 alleges that Fort Financial violated any Indiana statutory or case law, Fort Financial denies the remaining allegations contained in paragraph 14 of the Plaintiff's Complaint.

15. Fort sent Guyse a letter dated March 23, 2017, entitled "Notice of Our Plan to Sell property." This letter is referred to herein as the "Repossession Notice." A true and accurate copy of the Repossession Notice is attached hereto as **Exhibit "B."**

ANSWER: Fort Financial admits the allegations contained in paragraph 15 of the Plaintiff's Complaint.

16. The Repossession Notice fails to provide a description of liability for a deficiency in the event the action proceeds do not satisfy the unpaid loan balance. The Indiana UCC requires such as disclosure, Ind. Code 26-1-9.1-614.

ANSWER: Fort Financial denies the allegations contained in paragraph 16 of the Plaintiff's Complaint.

17. The Repossession Notice says Fort "will sell 2004 Nissan Armada VIN 5N1AA08B54N706263, at private sale sometime after April 6, 2017."

ANSWER: Fort Financial admits the allegations contained in paragraph 17 of the Plaintiff's Complaint.

18. Fort sent Repossession Notices to Guyse and to other members of the Classes that failed to accurately convey the information and disclosures required to be described to consumer borrowers by the Indiana UCC.

ANSWER: Fort Financial denies the allegations contained in paragraph 18 of the Plaintiff's Complaint.

GOVERNING LAW

19. Article 9 of the UCC, Ind. Code 26-1-9.1-601 et. seq., governs the financing and repossession of motor vehicles in Indiana.

ANSWER: The allegations contained in paragraph 19 of the Plaintiff's Complaint contain legal conclusions to which no response is required. To the extent a response is required, Fort Financial admits the allegations contained in paragraph 19 of the Plaintiff's Complaint to the extent that they are consistent with the language of Indiana's version of the UCC and relevant case law interpreting the same. To the extent paragraph 19 contends that Fort Financial violated Indiana law, Fort Financial denies the remaining allegations contained in paragraph 19 of the Plaintiff's Complaint.

20. Under the UCC, "every aspect of a disposition of collateral ... must be commercially reasonable." Ind. Code 26-1-9.1-610. This includes post-repossession notice.

ANSWER: The allegations contained in paragraph 20 of the Plaintiff's Complaint contain legal conclusions to which no response is required. To the extent a response is required, Fort Financial admits the allegations contained in paragraph 20 of the Plaintiff's Complaint to the extent that they are consistent with the language of Indiana's version of the UCC and relevant case law interpreting the same. To the extent paragraph 20 contends that Fort Financial violated Indiana law, Fort Financial denies the remaining allegations contained in paragraph 20 of the Plaintiff's Complaint.

21. To comply with Indiana's UCC, FoLi was required to provide "reasonable authenticated notification disposition" of the collateral ("Repossession Notice") containing important mandatory information about the repossession and approaching sale of the collateral. Ind. Code 26-1-9.1-611; Ind. Code 26-1-9.1-614 (consumer goods).

ANSWER: The allegations contained in paragraph 21 of the Plaintiff's Complaint contain legal conclusions to which no response is required. To the extent a response is required, Fort Financial admits the allegations contained in paragraph 21 of the Plaintiff's Complaint to the extent that they are consistent with the language of Indiana's version of the UCC and relevant case law interpreting the same. To the extent paragraph 21 contends that Fort Financial violated Indiana law, Fort Financial denies the remaining allegations contained in paragraph 21 of the Plaintiff's Complaint.

FORT'S REPOSSESSION NOTICE

22. Fort's Repossession Notices failed to provide proper and reasonable notification of disposition to Guyse and the classes of Indiana borrowers he seeks to represent by:

- (a) Failing to describe the borrower's liability for any deficiency; or
- (b) Failing to state whether the sale would be public or private sale; or
- (c) Failing to state the right to request an accounting; or
- (d) Mis-identifying the location of any public auction; or
- (e) Omitting to state the time of any public auction.

ANSWER: Fort Financial denies the allegations contained in paragraph 22 of the Plaintiff's Complaint.

23. In the course of the repossession and disposition process, Fort did not act in a commercially reasonable manner toward Guyse and the Class because it failed to provide adequate notice of its plan to sell the collateral. Ind. Code 26-1-9.1-610,611-614.

ANSWER: Fort Financial denies the allegations contained in paragraph 23 of the Plaintiff's Complaint.

FORT'S DEFICIENCY NOTICE

24. After repossession and sale of Guyse's vehicle, Fort sent him a letter purporting to contain a "breakdown of the sale and the remaining deficiency balance you still owe."

This letter, dated July 31, 2017, is referred to herein as the "Deficiency Notice." A true and accurate copy of the Deficiency Notice is attached as **Exhibit "C."**

ANSWER: Fort Financial admits the allegations contained in paragraph 24 of

Plaintiff's Complaint.

25. Ind. Code 26-1-9.1-616 (c), entitled Explanation of Calculation of Surplus or Deficiency requires the Deficiency Notice to "provide the following information in the following order:"

- (1) the aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:
 - (A) if the secured party takes or receives possession of the collateral after default, not more than thirty-five (35) days before the secured party takes or receives possession; or
 - (B) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five (35) days before the disposition;
- (2) the amount of proceeds of the disposition;
- (3) the aggregate amount of the obligations after deducting the amount of proceeds;
- (4) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral that are known to the secured party and relate to the current disposition;
- (5) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and that are not reflected in the amount in paragraph (1); and
- (6) the amount of the surplus or deficiency.

ANSWER: The allegations contained in paragraph 25 of the Plaintiff's Complaint contain legal conclusions to which no response is required. To the extent a response is required, Fort Financial admits the allegations contained in paragraph 25 of the Plaintiff's Complaint to the extent that they are consistent with the language of Indiana's version of the UCC and relevant case law interpreting the same. To the extent paragraph 25 contends that Fort Financial violated Indiana law, Fort Financial denies the remaining allegations contained in paragraph 25 of the Plaintiff's Complaint.

26. Fort's Deficiency Notice failed to provide to Guyse and the members of the Deficiency Notice classes the information required, and in the order mandated by

the statute, as follows:

- a. Though the form Deficiency Notice provides line items for "title expense" and "detailing expense," specific charges for those items were combined with other charges under "Repo Expense" and "Selling Expense."
- b. The amount of proceeds of the disposition was listed not separately as required by Ind. Code 26-1-9.1-616 (c)(2), but comingled with other refund items required to be disclosed in Ind. Code 26-1-9.1-616 (c)(S).

ANSWER: Fort Financial denies the allegations contained in paragraph 26 of the Plaintiff's Complaint.

27. The Deficiency Balance was not set forth as required by Ind. Code 26-1-9.1-616 (c)(6). Instead, Fort listed "Deficiency Balance, Not Including Accrued Interest." This is confusing and non-compliant.

ANSWER: Fort Financial denies the allegations contained in paragraph 27 of the Plaintiff's Complaint.

28. Upon information and belief, Fo1i's Deficiency Notice is indicative of a pattern or practice of non-compliance with Ind. Code 26-1-9.1-616 (c).

ANSWER: Fort Financial denies the allegations contained in paragraph 28 of the Plaintiff's Complaint.

STATUTORY DAMAGES FORMULA
NOTICE OF REPOSSESSION

29. Ind. Code 26-1-9.1-625(c)(2) provides minimum damages for Fort's failure to follow the Code's requirements upon repossession, such as the defective Repossession Notice. The Statute allows consumer borrowers such as Guyse and the Repossession Notice

classes he seeks to represent to recover "in any event" minimum damages of "not less than" the finance charge plus 10% of the Amount Financed.

ANSWER: The allegations contained in paragraph 29 of the Plaintiff's Complaint contain legal conclusions to which no response is required. To the extent a response is required, Fort Financial admits the allegations contained in paragraph 29 of the Plaintiff's Complaint to the extent that they are consistent with the language of Indiana's version of the UCC and relevant case law interpreting the same. To the extent paragraph 29 contends that Fort Financial violated Indiana law, Fort Financial denies the remaining allegations contained in paragraph 29 of the Plaintiff's Complaint.

30. The statutory damages are derived from a simple, straightforward and uniform arithmetic calculation.

ANSWER: Fort Financial denies the allegations contained in paragraph 30 of the Plaintiff's Complaint.

31. The two figures needed for the statutory damage calculation are generally determinable from the face of the consumer's loan contract or Retail Installment Sale Contract (RISC).

ANSWER: Fort Financial denies the allegations contained in paragraph 31 of the Plaintiff's Complaint.

32. For example, in Guyse's case, the statutory minimum damages are computed by adding \$5,501.59 (the finance charge) plus \$1,508.18 (the Amount Financed \$15,081.80 x 10%) = \$7,009.77.

ANSWER: Fort Financial denies the allegations contained in paragraph 32 of the Plaintiff's Complaint.

33. Under Ind. Code 24-4.6-1-101, Guyse and the Classes are entitled to interest at the rate of 8% on the amount of statutory damages from the date of the notices to the date of judgment.

ANSWER: The allegations contained in paragraph 33 of the Plaintiff's Complaint contain legal conclusions to which no response is required. To the extent a response is required, Fort Financial admits the allegations contained in paragraph 33 of the Plaintiff's Complaint to the extent that they are consistent with the language of Indiana's version of the UCC and relevant case law interpreting the same. To the extent paragraph 33 contends that Fort Financial violated Indiana law, Fort Financial denies the remaining allegations contained in paragraph 33 of the Plaintiff's Complaint.

STATUTORY DAMAGES FORMULA
NOTICE OF DEFICIENCY

34. Ind. Code 26-1-9.1-616 (e) provides that where, as here, a secured party has engaged in a pattern or practice of noncompliance, the borrower may recover the sum of \$500.00.

ANSWER: The allegations contained in paragraph 34 of the Plaintiff's Complaint contain legal conclusions to which no response is required. To the extent a response is required, Fort Financial admits the allegations contained in paragraph 34 of the Plaintiff's Complaint to the extent that they are consistent with the language of Indiana's version of the UCC and relevant case law interpreting the same. To the extent paragraph 34 contends that Fort Financial violated Indiana law, Fort Financial denies the remaining allegations contained in paragraph 34 of the Plaintiff's Complaint.

35. Guyse and members of the Deficiency Notice Classes he seeks to represent are entitled to recover the sum of \$500.00 as a result of Fort's pattern of noncompliance with Ind. Code 26-1-9.1-616.

ANSWER: The allegations contained in paragraph 35 of the Plaintiff's Complaint contain legal conclusions to which no response is required. To the extent a response is required, Fort Financial admits the allegations contained in paragraph 35 of the Plaintiff's Complaint to the extent that they are consistent with the language of Indiana's version of the UCC and relevant case law interpreting the same. To the extent paragraph 35 contends that Fort Financial violated Indiana law, Fort Financial denies the remaining allegations contained in paragraph 35 of the Plaintiff's Complaint.

V. CLASS ALLEGATIONS
INDIANA REPOSSESSION NOTICE CLASS (Class "A")

36. Guyse brings this action pursuant to Ind. Trial Rule 23 on behalf of the Repossession Classes, which consists of all 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:
 - (1) stated "If we get less money than you owe, you (will or will not as applicable - choose one) still owe us the difference"; or
 - (2) stated that the collateral will be sold "at a public or private sale"; or
 - (3) 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
 - (4) stated that there will be a "public sale" of collateral without describing the time and place of such public disposition; or
 - (5) 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.

ANSWER: Fort Financial admits that Guyse purports to bring this lawsuit on behalf of a class pursuant to Indiana Trial Rule 23, but denies the remaining allegations contained in paragraph 36 of the Plaintiff's Complaint.

REGIONAL REPOSSESSION NOTICE CLASS (CLASS "B")

37. Class B consists of all members of Class "A" whose home address, according to the Repossession Notice sent by Fort, is within the counties of Allen, DeKalb, Noble, Whitley, Huntington, Wells, and Adams.

ANSWER: Fort Financial admits that Guyse purports to bring this lawsuit on behalf of a class pursuant to Indiana Trial Rule 23, but denies the remaining allegations contained in paragraph 37 of the Plaintiff's Complaint.

INDIANA DEFICIENCY NOTICE CLASS (CLASS "C")

38. Guyse also brings this class on behalf of the Indiana Deficiency Notice Class which consists of members of the Repossession Notice Class "A" who:

- (a) Were sent a Deficiency Notice from Fort:
 - (1) That reflected "repossession expense" and "selling expense;" or
 - (2) Stated "Deficiency Balance, not including accrued interest."

ANSWER: Fort Financial admits that Guyse purports to bring this lawsuit on behalf of a class pursuant to Indiana Trial Rule 23, but denies the remaining allegations contained in paragraph 38 of the Plaintiff's Complaint.

REGIONAL DEFICIENCY NOTICE CLASS (CLASS "D")

39. Guyse also brings this class on behalf of the Regional Deficiency Notice Class which consists of members of the Repossession Notice Class "B" who:

- (a) Were sent a Deficiency Notice from Fort:
 - (1) That reflected "repossession expense" and "selling expense;" or
 - (2) Stated "Deficiency Balance, not including accrued interest."

ANSWER: Fort Financial admits that Guyse purports to bring this lawsuit on behalf

of a class pursuant to Indiana Trial Rule 23, but denies the remaining allegations contained in paragraph 39 of the Plaintiff's Complaint.

CLASS TREATMENT IS APPROPRIATE

40. The Class period commences June 21, 2008.

ANSWER: Fort Financial denies the allegations contained in paragraph 40 of the Plaintiff's Complaint.

41. The size of the Classes is in the hundreds. Joinder of all members is impractical. This matter involves substantially similar form notices sent to consumers in Indiana over more than a ten-year period.

ANSWER: Fort Financial denies the allegations contained in paragraph 41 of the Plaintiff's Complaint.

42. The members of the Classes are readily ascertainable by a review of Fort's own records of vehicles financed and vehicles repossessed, or from records of Fort vendors.

ANSWER: Fort Financial denies the allegations contained in paragraph 42 of the Plaintiff's Complaint.

43. There are questions of law and fact common to the class which predominate over any questions affecting only individual members of the Classes. Such common questions include:

- (a) Whether Guyse and the Classes obtained motor 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 a Repossession Notice in the form and

manner required under the UCC after repossessing a vehicle;

- (d) Whether Fort failed to send a Deficiency Notice required under the UCC in the form and in the order required; and
- (e) The uniform statutory damages provided for such misconduct.

ANSWER: Fort Financial denies the allegations contained in paragraph 43 of the Plaintiff's Complaint.

44. Guyse's claims are typical of those of the Classes. All are based on the same factual basis and legal theories. All members of the Classes financed motor vehicles through Fort and pledge their vehicles as collateral. Fort declared default on all. All members of the Classes were sent an improper Repossession Notice, improper Deficiency Notice, both, or no Notice at all.

ANSWER: Fort Financial denies the allegations contained in paragraph 44 of the Plaintiff's Complaint.

45. Guyse will fairly and adequately represent the interests of the Classes. Guyse has no interest adverse to the interests of the Classes. Counsel retained for Guyse and the Classes are experienced in handling consumer class action and other complex commercial litigation. Guyse's claims are the same as those of the claims of the Classes, which all arise from the same operative facts and are based on the same legal theories.

ANSWER: Fort Financial denies the allegations contained in paragraph 45 of the Plaintiff's Complaint.

46. The questions of law and fact common to the Classes predominate over any questions affecting only individual members.

ANSWER: Fort Financial denies the allegations contained in paragraph 46 of the Plaintiff's Complaint.

47. Fort has acted on grounds that are generally applicable to the entire class, making declaratory and injunctive relief an appropriate remedy.

ANSWER: Fort Financial denies the allegations contained in paragraph 47 of the Plaintiff's Complaint.

48. This class action provides a fair and efficient method for adjudication of the controversy.

ANSWER: Fort Financial denies the allegations contained in paragraph 48 of the Plaintiff's Complaint.

49. The members of the Classes are consumer debtors who may be unable to locate or afford to hire lawyers, particularly in light of the modest size of any individual recovery, the absence of statutory counsel fees, and the specialized nature of the law of secured transactions and motor vehicle finance regulation.

ANSWER: Fort Financial denies the allegations contained in paragraph 49 of the Plaintiff's Complaint.

50. The size of the Classes, and any trial, would be readily manageable.

ANSWER: Fort Financial denies the allegations contained in paragraph 50 of the Plaintiff's Complaint.

COUNT I
INDIANA UNIFORM COMMERCIAL CODE
CLASS CLAIM FORREPOSSESSION NOTICE

51. Guyse repeats all of the allegations above as if fully set forth herein.

ANSWER: Fort Financial reasserts all of the denials and defenses set forth above as if fully set forth herein.

52. Fort violated Ind. Code 26-1-9.1-610 through 614 by failing to act in a

commercially reasonable manner in failing to provide proper Repossession Notice.

ANSWER: Fort Financial denies the allegations contained in paragraph 52 of the Plaintiff's Complaint.

53. Guyse, the Indiana Repossession Notice Class (Class 'A'), and the Regional Repossession Notice Class (Class 'B') are entitled to recover, in any event, statutory minimum damages provided by Ind. Code 26-9.1-625(c)(2).

ANSWER: Fort Financial denies the allegations contained in paragraph 53 of the Plaintiff's Complaint.

COUNT II
INDIANA UNIFORM COMMERCIAL CODE
SUBCLASS CLAIM FOR DEFICIENCY NOTICE

54. Plaintiff repeats all of the allegation as if fully set forth herein.

ANSWER: Fort Financial reasserts all of the denials and defenses set forth above as if fully set forth herein.

55. Fort violated Ind. Code 26-1-9.1-616 by failing to provide proper Deficiency Notice.

ANSWER: Fort Financial denies the allegations contained in paragraph 55 of the Plaintiff's Complaint.

56. Foli's actions were part of a pattern or practice of noncompliance with Indiana's UCC.

ANSWER: Fort Financial denies the allegations contained in paragraph 56 of the Plaintiff's Complaint.

57. Guyse, the Indiana Deficiency Notice Class (Class 'C'), and the Regional Deficiency Notice Class (Class 'D') are entitled to damages of \$500 each as provided by

Ind. Code 26-9.1-625(e).

ANSWER: Fort Financial denies the allegations contained in paragraph 57 of the Plaintiff's Complaint.

WHEREFORE, Defendant Fort Financial Credit Union, by counsel, prays that Plaintiff take nothing by way of his Complaint, that judgment be entered in favor of the Defendant and against the Plaintiff on all of Plaintiff's claims, for costs and for all other appropriate relief.

Respectfully Submitted,

HALLER & COLVIN, P.C.

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**BY: /s/ J. Spencer Feighner
J. SPENCER FEIGNER, #27099-02**

AFFIRMATIVE DEFENSES

1. The Plaintiff's Complaint fails to state a claim upon which relief can be granted and the Complaint should be dismissed pursuant to Indiana Trial Rule 12(B)(6).
2. The Plaintiff lacks standing to bring some or all of these claims.
3. This case is not appropriate for class certification and all class allegations should be stricken.
4. The Plaintiff's claims and the claims of any putative class members may be barred, in whole or in part, by the statute of limitations and by the doctrine of laches.

5. The Plaintiff's claims and the claims of putative class members may be barred, in whole or in part, due to the Plaintiff and putative class members' failure to bring any compulsory counterclaims in prior litigation. *See* Indiana Trial Rule 12(B)(8).

6. The claims of the Plaintiff and putative class members may be barred by the doctrine of *res judicata*.

7. The claims of some of the Plaintiff and putative class members may be barred by the doctrines of waiver, settlement, release and/or accord and satisfaction.

8. The claims of some of the Plaintiff and/or putative class members may be barred based on their commencement of bankruptcy proceedings as a debtor under Chapters 7, 11, 12 or 13 of the United States Bankruptcy Code.

9. The Plaintiff's claim and the claims of putative class members are subject to right of setoff arising from defaults on loan contracts and other breaches of those contracts.

10. The Plaintiff's claim and the claims of any putative class members are barred to the extent those individuals failed to mitigate their damages.

11. Fort Financial substantially complied with all statutory and/or contractual requirements.

12. In all respects, the repossession and sale of vehicles by Fort Financial and their agents were commercially reasonable and did not violate any provision of Indiana's Uniform Commercial Code.

13. Discovery is ongoing and this matter has not been certified as a class action. Fort Financial, therefore, reserves the right to assert any additional defenses, counterclaims, or plead additional matters as may be necessary as a result of further discovery in this matter.

WHEREFORE, Defendant Fort Financial Credit Union, by counsel, prays that Plaintiff take nothing by way of his Complaint, that judgment be entered in favor of the Defendant and against the Plaintiff on all of Plaintiff's claims, for costs and for all other appropriate relief.

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BY: /s/ J. Spencer Feighner
J. SPENCER FEIGHNER, #27099-02

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22nd day of June 2020 a copy of the above and foregoing Answer to Complaint was served on the following parties electronically by using the Court's IEFS System or U.S. mail, prepaid delivery, for the parties not registered, to:

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