

STATE OF INDIANA	)	IN KOSCIUSKO SUPERIOR COURT
	) SS:	
KOSCIUSKO COUNTY	)	CAUSE NO. 43D04-2109-CC-000568
Notre Dame Federal Credit Union	)	
	)	
Plaintiff/Counterclaim-Defendant,	)	
	)	
v.	)	
	)	
David Dilley	)	
	)	
Defendant/Counterclaimant.	)	

**Preliminary Approval Order of Class Settlement**

WHEREAS, David Dilley (“Claimant”) is asserting claims against Notre Dame Federal Credit Union (the “Credit Union”) for alleged violations of Indiana’s Uniform Commercial Code and seeks damages and other relief for himself and a class of persons similarly situated;

WHEREAS, Claimant and the Credit Union (collectively, the “Parties”) stipulate to a Settlement Class for notice and settlement purposes only, pending preliminary and final approval by the Kosciusko County Superior Court, Indiana, comprising and defined as: “all persons to whom Credit Union mailed a presale notice or post-sale notice from February 11, 2012, to September 5, 2023” (“Settlement Class”);

WHEREAS, Claimant, as a member and representative of the Settlement Class, and the Credit Union have entered into a “Class Action Settlement Agreement and Release” fully executed as of December 10, 2024 (the “Settlement Agreement”), which memorializes the Parties’ negotiated and agreed-upon settlement as between them and a proposed Settlement Class, subject to the approval of the Court (“the Settlement”);

WHEREAS, the Parties have filed *Unopposed Motion for Preliminary Approval of Class Action Settlement* with the Court.

NOW THEREFORE, upon careful consideration of the *Unopposed Motion for Preliminary*

*Approval of Class Action Settlement*, and after reviewing the Settlement Agreement and for good cause shown after and independent judicial investigation, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Under Indiana T.R. 23, the Settlement Agreement and the Settlement are approved preliminarily as fair, reasonable and adequate to the Settlement Class because:

- a. all Settlement Class Members will have their deficiency balances (according to Credit Union's records) reduced to zero, protecting them from collection efforts and deficiency suits being filed against them;
- b. the Settlement will provide monetary benefits to the Settlement Class Members that they would unlikely realize, or even pursue, but for being a part of the Settlement Class; and
- c. the Settlement Class Members will receive valuable credit score improvement by having the account associated with the loan in which they defaulted and had their vehicle repossessed removed from their credit reports as stated in the Settlement Agreement.

2. The definitions in the Settlement Agreement are incorporated by reference into this Order (with capitalized terms in the Settlement Agreement).

3. Claimant and the Credit Union have executed the Settlement Agreement to settle and resolve the Litigation between the Parties and the proposed Settlement Class, subject to approval of the Court.

4. Upon review of the *Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement*, this Court preliminarily certifies for notice and settlement, under Indiana T.R. 23(B)(3), the Settlement Class.

5. The Court finds:
  - a. The Settlement Class is so numerous that joinder of all members is impracticable.
  - b. There are questions of law or fact common to the Settlement Class that predominate over questions affecting the members of the Settlement Class.
  - c. Claimant's claims are typical of those of the members of the Settlement Class.
  - d. Claimant and Class Counsel will fairly and adequately represent and protect the interests of the members of the proposed Settlement Class.
  - e. Certification of the Settlement Class as proposed is a superior and appropriate method for the fair and efficient adjudication of the controversies between the Settlement Class and the Credit Union.
  - f. The Credit Union must write off the claimed deficiency balances and cease all collection efforts regarding the loans that have deficiency balances and are the subject of the Litigation as stated in the Settlement Agreement.

6. For this preliminary approval, and for all matters relating to the Settlement and the Litigation, the Court appoints Claimant as Representative of the Settlement Class. The Court appoints as Class Counsel for the Settlement Class Jeffrey Gibson of the law firm Wagner Reese, LLP, and Martin L. Daesch, Jesse B. Rochman, and Craig W. Richards of OnderLaw, LLC.

7. The Court appoints American Legal Claims Services, Inc. as the Settlement Administrator.

8. By this Order, the Court exercises subject-matter and personal jurisdiction over the Settlement Class to evaluate the final certification of the Settlement Class and the fairness and adequacy of the Settlement.

9. The Class Mail Notice and Long-Form Notice, as set forth in **Exhibits A** and **B** to

the Settlement Agreement, are approved.

10. The Settlement Administrator shall mail a Class Mail Notice, by regular class mail, postage prepaid, to each Settlement Class Member. The Class Mail Notice mailed shall be in a form substantially the same as Exhibit A. Such mailing shall be made within the timeframe provided by the Settlement Agreement. The Long-Form Notice shall be in a form substantially the same as **Exhibit B** to the Settlement Agreement. Further, the Long-Form Notice shall be provided to members of the Settlement Class on a website and mailed by regular mail, postage prepaid, to Settlement Class Members upon their request.

11. The Settlement Agreement contemplates a notice methodology that protects the interests of the Parties and the Settlement Class and provides the best notice practicable under the circumstances. The notice methodology is also reasonably calculated to apprise the Settlement Class Members of the pendency of the Litigation and the proposed Settlement Agreement, as well as Settlement Class Members' right to opt out and exclude themselves from or object to the proposed Settlement. In addition, the Court finds that the notice methodology is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice of the proposed Settlement and meets all requirements of law, including, but not limited to, Indiana T.R. 23 and the Due Process Clause of the Fourteenth Amendment of the United States Constitution and the Indiana Constitution.

12. Prior to the Final Fairness Hearing, Class Counsel shall cause the Settlement Administrator to serve and file a sworn statement of a person with knowledge, evidencing compliance with this Order concerning the mailing of the Class Mail Notice.

13. Any member of the Settlement Class desiring exclusion from the Settlement Class shall mail a request to opt out ("Request to Opt Out") to the Settlement Administrator. To be valid,

the Request to Opt Out must be postmarked within 30 days after mailing of the Notice to class members. Such Request to Opt Out shall include: (a) the name, address, telephone number, and last four digits of the Social Security Number of the Settlement Class Member; (b) a statement that the Settlement Class Member and all other borrowers named on the Settlement Class Member's Retail Installment Contract and Security Agreement or governing loan agreement are seeking exclusion from or to opt out of the Settlement; (c) the signature of each person who was a party to the Retail Installment Contract and Security Agreement or governing loan agreement that is the subject of this Litigation (unless any such person shall be deceased, in which case the opt-out submission shall include a copy of such person's death certificate); and (d) a reference to *Notre Dame Federal Credit Union v. David Dilley*, Cause No. 43D04-2109-CC-000568.

14. Any member of the Settlement Class who does not properly and timely request exclusion or to opt out from the Settlement Class shall be included in the Settlement Class and be bound by any judgment entered with respect to the Class.

15. Within seven days before the Final Approval Fairness Hearing (defined below), Class Counsel shall cause the Settlement Administrator to file with the Court a sworn statement listing those persons (by reference to the unique identifier and last four digits of the person's Social Security Number—as provided by Credit Union to the Settlement Administrator in compliance with the Settlement Agreement) who submitted timely Requests to Opt Out. The originals of all Requests to Opt Out shall be retained by the Parties.

16. A final approval hearing (the "Fairness Hearing") shall be held before the undersigned at 1:30 p .m. on March 24 , **2025**, at the Kosciusko County Superior Court 4, in person.

At the Fairness Hearing, the Court will consider:

(a) the fairness, reasonableness, and adequacy of the Settlement; (b) the entry of any final order or

judgment with respect to the Settlement Class; (c) the application for an incentive award for the services rendered by Claimant as Representative of the Settlement Class; (d) the application for attorney's fees and for reimbursement of expenses by Class Counsel; and (e) other related matters. The Fairness Hearing may be postponed, adjourned or continued by the Court without further notice to the Settlement Class.

17. To be considered at the Fairness Hearing, any person desiring to file an objection or other comment on the Settlement shall be required to file all such objections and comments and all supporting pleadings within 30 days after mailing of the Class Mail Notice, with service upon Class Counsel and Credit Union's Counsel postmarked within 30 days after mailing of the Class Mail notice. Any Settlement Class Member's objection must be in writing and shall specifically include:

- (i) The name, address, telephone number, facsimile number (if available), email address (if available) and last four digits of the Social Security Number of the Settlement Class Member filing the objection;
- (ii) A statement of each objection asserted;
- (iii) A detailed description of the facts underlying each objection;
- (iv) Any loan documents in the possession or control of the objector and relied upon by the objector as a basis for the objection;
- (v) If the objector is represented by counsel, the name, address, telephone number, facsimile number (if available) and email address (if available) of the counsel, and a detailed description of the legal authorities supporting each objection;
- (vi) If the objector plans to utilize expert opinion and/or testimony as part of the objection(s), a written expert report from all proposed experts that outlines each of the expert's opinions and the factual and substantive bases thereof;
- (vii) If the objector plans to call a witness or present other evidence at the hearing, the objector must state the identity of the witness and identify any documentary evidence by attaching the documents to the objection, and the objector must provide any other evidence that the objector intends to present;

- (viii) A statement of whether the objector intends to appear at the hearing;
- (ix) A copy of any exhibits which the objector may offer during the hearing;
- (x) A reference to *Notre Dame Federal Credit Union v. David Dilley*, Cause No. 43D04-2109-CC-000568; and
- (xi) A certification under 28 U.S.C § 1746 or similar state law in substantially the following form: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)”.

No Objection to or other comment concerning the Settlement shall be heard unless timely filed under the guidelines specified above and in the Settlement Agreement. Class Counsel and the Credit Union’s Counsel shall promptly furnish each other with copies of all objections or written requests to opt out that come into their possession.

18. Any Settlement Class Member who does not make his or her objection in the manner provided in this Order shall be deemed to have waived any such objection and shall forever be foreclosed from making any objection to the Settlement, including but not limited to, the propriety of class certification, the adequacy of any notice, or the fairness, adequacy or reasonableness of the Settlement. The procedures and requirements for filing objections to the Settlement Agreement and Settlement should ensure the efficient administration of justice and the orderly presentation of any Settlement Class Members’ objections to the Settlement Agreement, in accordance with such Settlement Class Members’ due process rights. Objectors who fail to properly or timely file their objections with the Clerk of the Court with the required information and documentation set forth above, or fail to serve them as provided above, shall not be heard during any hearings, nor shall their objections be considered by the Court.

19. Submissions of the Parties relative to the Settlement, including memoranda to support the Settlement, applications for attorney’s fees and reimbursement of costs or expenses by

Class Counsel, and any applications for the payment of services rendered by Claimant, as Representative of the Settlement Class, shall be filed with the Clerk of the Court prior to the Final Fairness Hearing. Any attorney hired by a Settlement Class Member at the Settlement Class Member's expense to object to the Settlement, or to any application for an incentive award or for an award of attorney's fees, costs, or expenses, shall file with the Clerk of Court and serve upon Class Counsel and Credit Union's Counsel a written notice of appearance within 30 days after the mailing of class notice.

20. Any Settlement Class Member may appear at the Fairness Hearing in person, or by counsel if an appearance is filed and served as provided in the Long Form Notice, and such person will be heard to the extent allowed by the Court. No person shall be permitted to be heard unless, at least seven days prior to the Final Fairness Hearing, such person has (a) filed with the Clerk of the Court a notice of such person's intention to appear and (b) served copies of such notice upon Class Counsel and the Credit Union's Counsel.

21. All other events contemplated under the Settlement Agreement to occur after entry of this Order and before the Fairness Hearing shall be governed by the Settlement Agreement and the Class Mail Notice, to the extent not inconsistent with this Order. Class Counsel and the Credit Union's Counsel shall take such further actions as required by the Settlement Agreement.

22. The Parties shall be authorized to make nonmaterial changes to the Class Mail Notice and Long-Form Notice if Class Counsel and the Credit Union's Counsel agree.

23. All claims against and motions in the Litigation, other than such as may be necessary to carry out the terms and conditions of the Settlement Agreement or the responsibilities related or incidental thereto, are stayed and suspended until further order of this Court.

24. The "Released Claims" of the "Releasers" as against the "Released Persons," all as



defined in the Settlement Agreement, other than such as may be necessary to carry out the terms and conditions of the Settlement Agreement or the responsibilities related or incidental thereto, are stayed and suspended until further order of this Court.

25. If Final Approval of the Settlement does not occur, or if the Settlement is rescinded or terminated, the Settlement and all proceedings had in connection therewith shall be null and void and without prejudice to the rights of the Parties before the Settlement was executed and made, and all Orders issued for the Settlement shall be vacated.

26. Entering into or carrying out the Settlement Agreement, and any negotiations or proceedings related to it, shall not be construed as, or deemed evidence of, an admission or concession regarding any claims or defenses alleged or asserted, or any factual or legal assertions in the Litigation, and shall not be offered or received in evidence in any action or proceeding against any party in any court, administrative agency or other tribunal for any purpose, except in a proceeding to enforce this Order and the Settlement Agreement, or to prove or show that a compromise in settlement of the Released Claims per the Settlement Agreement was reached; provided, however, this Order and the Settlement Agreement may be filed in any action filed against or by the Credit Union or any Released Person to support a defense of *res judicata*, collateral estoppel, release, waiver, good faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim. The Parties expressly reserve all rights and defenses to all claims and causes of action and waive no such rights or defenses if the Settlement Agreement is not approved or fails to become effective for any reason.

SO ORDERED this December 18, 2024

  
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Judge, Kosciusko County Superior Court<sup>JH</sup>



Distribution to:

All IEFS-registered Counsel of Record