

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") signed by Fort's representative on March 31, 2023 and by Guyse on April 1, 2023 and deemed by the parties as effective as of April 17, 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 August 24, 2023, beginning at 9:00 a.m. in the Allen Circuit Courtroom, 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 June 29, 2023.

Settlement Administrator
Fort Repo Class Action
c/o American Legal Claims Service
P.O. Box 23698

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 June 29, 2023. 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 28th of April, 2023.



Ashley N. Hand, Magistrate
Allen Circuit Court