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MATTHEW L. CHIPEGO
CHARLENE K. MOWREY
CONSTANCE C. CHURCHILL
JOSEPH W. EWING
individually and on behalf of themselves and all other similarly
situated

Plaintiffs

v.
FIVE STAR BANK
and
FINANCIAL INSTITUTIONS, INC.

Defendants

ATTORNEYS FOR PLAINTIFFS



COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CIVIL ACTION

MAY TERM, 2017

NO. 002466

TO THE DEFENDANTS:

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERENCE SERVICE:
Philadelphia Bar Association
One Reading Center
Philadelphia, PA 19107
(215) 238-1701

ADVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plaza al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

SERVICIO DE REFERENCIA E INFORMACION LEGAL:
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607D Larkin Road
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and
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individually and on behalf of themselves and
all other similarly situated
Plaintiffs

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CLASS ACTION

MAY TERM, 2017

NO. 002466

v.

FIVE STAR BANK
55 N. Main Street
Warsaw, NY 14569
and
FINANCIAL INSTITUTIONS, INC.
220 Liberty Street
Warsaw, NY 14569

Defendants

AMENDED CLASS COMPLAINT

I. INTRODUCTION

1. This is a consumer class action brought against a vehicle lender to redress systemic violations of the Uniform Commercial Code (“UCC”), as adopted in Pennsylvania, 13 Pa C.S. § 9601, et seq. and New York, N.Y. UCC Law § 9-601 (McKinney). The UCC requires secured parties who utilize self-help repossession to act in a commercially reasonable manner. This includes providing consumers with proper statutory notices when repossessing and reselling a financed vehicle.

2. Defendant Five Star Bank (“Five Star” or “Bank”) regularly finances the purchase of motor vehicles for consumer use in Pennsylvania and New York. When the Bank believes that a consumer has defaulted on a secured vehicle loan, it repossesses and then re-sells the vehicle. In the course of so doing, the Bank failed to provide Plaintiffs and the Class with the proper notice of repossession of collateral required by the Uniform Commercial Code (“UCC”).

3. Because self-help repossession is effected without judicial authorization or oversight, the UCC requires secured creditors like Five Star to strictly adhere to the Code’s notice requirements. Failure to provide proper notice of disposition of repossessed consumer goods is a violation of the Code that yields uniform statutory minimum damages for Plaintiffs and the Classes they seek to represent.

II. PARTIES

4. Plaintiff Matthew L. Chipego (hereinafter “Chipego”) is a consumer and an adult individual who resides at 508 Bear Run Lane, Noxen, PA 18636.

5. Plaintiff Charlene K. Mowrey (hereinafter “Mowrey”) is a consumer and an adult individual who resides at 2706 Old Berwick Road, Bloomsburg, PA 17815.

6. Plaintiff Constance C. Churchill (hereinafter “Churchill”) is a consumer and an adult individual who resides at 607D Larkin Road, Derby, NY 14047.

7. Plaintiff Joseph W. Ewing (hereinafter “Ewing”) is a consumer and an adult individual who resides at 668 Northampton Street, Buffalo, NY 14211.

8. Defendant Five Star Bank (“Bank,” “Five Star,” or “FSB”) is a New York state chartered bank with a principal place of business in Warsaw, NY. The Bank finances the purchase of motor vehicles in both Pennsylvania and New York.

9. Defendant, Financial Institutions, Inc. (“FII”) is the publicly traded holding company for Defendant, FSB. FII has the right to control the actions of FSB.

III. STATEMENT OF CLAIM

Chipego’s Experience

10. On or about June 14, 2013, Plaintiff Chipego purchased and financed a 2011 Cadillac SRX automobile for personal use from Alexander Buick Cadillac GMC in Sunbury, PA.

11. The purchase money financing for Chipego’s vehicle purchase was provided by Five Star.

12. Five Star financed the purchase of Chipego’s car and took a security interest in the vehicle.

13. In Chipego's finance transaction, Five Star was the secured party, and monthly payments were made to Five Star.

14. Mr. Chipego fell behind on his monthly payments, and the Bank determined there was a default.

15. On or about November 18, 2016, the Bank, as the lender and secured party, repossessed Chipego's vehicle or ordered that it be repossessed.

16. Pennsylvania law requires a prompt post-repossession notice to the borrower advising of the repossession, that the borrower can redeem (or get his vehicle back) at any time before the expiration of 15 days from the date of the notice and up until sale, the method of intended disposition, whether the debtor may be liable for a deficiency or entitled to a surplus, that the borrower has the right to request an accounting, and other information. 13 Pa.C.S. §§ 9613–9614; *Cubler v. TruMark Fin. Credit Union*, 83 A.3d 235, 236 n.1 (Pa. Super. 2013).

17. By letter dated November 18, 2016, the Bank sent Mr. Chipego a Notice of Right to Redeem ("Repossession Notice").

18. The Repossession Notice does not state the method of intended disposition.

19. While stating the vehicle will be "sold," it does not state whether the car will be sold by public or private sale, as required by 13 Pa.C.S. § 9614(1)(i), incorporating 13 Pa.C.S. § 9613(1)(iii).

20. If sold by public sale, the Repossession Notice fails to state the date and place of any auction, as required by 13 Pa.C.S. § 9614(1)(i), incorporating 13 Pa.C.S. § 9613(1)(v).

21. The Repossession Notice does not advise the borrower that he is entitled to an accounting of any unpaid indebtedness, nor the charge (if any) for such an accounting, as required by 13 Pa.C.S. § 9614(1)(i), incorporating 13 Pa.C.S. § 9613(1)(iv).

22. The Notice lists lump-sum “storage costs” of \$350. Such sum was unincurred, and not due when notice was sent. The lump-sum improperly inflated the amount needed to redeem.

23. The Bank sent the same form Repossession Notice to many consumers across Pennsylvania.

Mowrey’s Experience

24. Like Mr. Chipego, Plaintiff Mowrey purchased and financed a 2011 Cadillac automobile for personal use from Alexander Buick Cadillac GMC in Sunbury, PA. Mowrey purchased the vehicle with Douglas Beachel as co-obligor. Mr. Beachel was, but no longer is, a named party plaintiff.

25. The purchase money financing for Mowrey’s vehicle purchase was provided by Five Star.

26. Five Star financed the purchase of the Cadillac and took a security interest in the vehicle.

27. In Mowrey’s finance transaction, the Bank was the secured party, and monthly payments were made to the Bank.

28. Mowrey fell behind on monthly payments, and the Bank determined there was a default.

29. On or about April 4, 2016 and again on December 3, 2016, the Bank, as the lender and secured party, repossessed Mowrey’s vehicle or ordered that it be repossessed.

30. Five Star sent Mowrey materially identical form Repossession Notices as those sent to Mr. Chipego.

31. The Notices sent by the Bank to Mowrey suffer from the same deficiencies as Chipego’s.

32. At some point after sending the Repossession Notice, the Bank sold Mowrey's vehicle at auction.

33. By letter dated January 17, 2017, Five Star informed Ms. Mowrey that after the car was sold, she still owed a \$12,565.24 deficiency balance.

34. The Deficiency Notice is improper and commercially unreasonable. The Deficiency Notice fails to itemize expenses and to correctly order the information to be given, as required by 13 Pa.C.S. § 9616(c).

35. Five Star sent substantially the same form Deficiency Notice to many consumers across Pennsylvania.

36. Five Star's failure to give proper explanation of deficiency is a pattern or consistent with a practice of non-compliance with the requirements of Pennsylvania law and Article 9 of the UCC.

Churchill's Experience

37. In 2010, Plaintiff, Constance Churchill purchased and financed a 2007 Dodge Dakota pickup truck for personal use from West Herr Dodge in Orchard Park, NY.

38. The purchase money financing for Churchill's vehicle purchase was provided by Defendant Five Star.

39. Defendant Bank financed the purchase of the Dodge and took a security interest in the vehicle.

40. In Churchill's finance transaction, the Bank was the secured party, and monthly payments were made to the Bank.

41. Plaintiff Churchill fell behind on her monthly payments, and the Bank determined there was a default.

42. On or about September 30, 2014, the Bank, as the lender and secured party, repossessed Churchill's Dodge automobile or ordered that it be repossessed.

43. New York law requires a prompt post-repossession notice to the borrower advising of the repossession and that the borrower can "redeem" (or get her car back) by paying past due payments and fees, the method of intended disposition, whether the debtor may be liable for a deficiency or entitled to a surplus, and other information. N.Y. UCC § 9-614(a)(1), incorporating N.Y. § UCC 9-613(a); N.Y. Gen. Oblig. Law § 7-401(2).

44. By letter dated October 1, 2014, the Bank sent Ms. Churchill a Notice of Right to Redeem ("Repossession Notice").

45. The Repossession Notice does not state the method of intended disposition.

46. While stating the vehicle will be sold, it does not state whether the car will be sold by public or private sale, as required by N.Y. UCC § 9-614(a)(1), incorporating N.Y. § UCC 9-613(a)(3).

47. If sold by public sale, the Repossession Notice fails to list the required statement of the date and place of any public sale or auction, as required by N.Y. UCC § 9-614(a)(1), incorporating N.Y. § UCC 9-613(a)(5).

48. The Repossession Notice does not advise the borrower that she is entitled to an accounting of any unpaid indebtedness, nor the charge (if any) for such an accounting, as required by N.Y. UCC § 9-614(a)(1), incorporating N.Y. § UCC 9-613(a)(4).

49. The Repossession Notice does not provide an itemized statement of the dollar amount needed to redeem, as required by N.Y. § UCC 9-611(b) and N.Y. Gen. Oblig. Law § 7-401(2). Instead, it conditions redemption of the vehicle on payment of undescribed and unincurred "estimated" expenses, or lump sum "storage costs" not yet incurred.

50. The Bank sent the same form Repossession Notice to many consumers across New York.

51. At some point after sending the Repossession Notice, the Bank sold Churchill's vehicle at auction.

52. By letter dated October 1, 2014, Five Star informed Ms. Churchill that after the car was sold, she still owed a \$4,079.62 deficiency balance.

53. The Deficiency Notice is improper and commercially unreasonable. The Deficiency Notice fails to itemize expenses and to correctly order the information to be given, as required by N.Y. UCC § 9-616(c).

54. Five Star sent substantially the same form Deficiency Notice to many consumers across New York.

55. Five Star's failure to give proper explanation of deficiency is a pattern or consistent with a practice of non-compliance with the requirements of New York law and Article 9 of the UCC.

Ewing's Experience

56. In 2012, Plaintiff, Joseph Ewing purchased and financed a 2010 Ford Taurus for personal use from Basil Ford of Cheektowaga, NY.

57. Defendant Five Star financed the purchase of Ewing's vehicle and took a security interest in it.

58. On or about November 14, 2013, the Bank, as the lender and secured party, repossessed Ewing's vehicle or ordered that it be repossessed.

59. By letter dated November 15, 2013, the Bank sent Ewing a form Repossession Notice which was materially identical to the one sent to Ms. Churchill. The Bank's Notice of Repossession to Mr. Ewing suffers from the same deficiencies as the Churchill notice.

60. At some point thereafter, Five Star sold Mr. Ewing's Ford at auction.

61. By letter dated January 7, 2014, Five Star informed Mr. Ewing that after the car was sold, he still owed a \$15,205.89 deficiency balance.

62. The Deficiency Notice is improper and commercially unreasonable. The Deficiency Notice fails to itemize or correctly order the information to be given, as required by N.Y. UCC § 9-616(c).

63. Five Star sent substantially the same form Deficiency Notice to hundreds of consumers across New York.

64. Five Star's failure to give proper explanation of deficiency is a pattern or consistent with a practice of non-compliance with the requirements of New York law and Article 9 of the UCC.

Governing Law

65. Article 9 of the Uniform Commercial Code ("UCC"), 13 Pa. C.S. § 9601; N.Y. UCC § 9-601 *et seq.* (McKinney), governs the secured financing of and repossession of motor vehicles in both Pennsylvania and New York.

66. Under the UCC, "[E]very aspect of a disposition of collateral ... must be commercially reasonable." 13 Pa. C.S. § 9610; N.Y. UCC § 9-610. This includes post-repossession notice.

Five Star's Repossession Notice is Non-Compliant

67. Under the UCC, the Bank was required to provide “reasonable authenticated notification of disposition” of the collateral containing important mandatory information about the repossession and approaching sale of the collateral. 13 Pa. C.S. §§ 9611, 9613, & 9614; N.Y. UCC §§ 9-611, 9-613, 9-614.

68. The Bank, in its form Repossession Notice, failed to provide proper and reasonable notification of disposition to Plaintiffs Chipego and Mowrey, and to the Class of Pennsylvania borrowers they seek to represent, by:

- (a) Failing to state the method of disposition, *viz.*, whether by public or private sale;
- (b) Failing to list the time and place of any public sale *i.e.*, auction of the vehicle; and
- (c) Failing to state that the debtor is entitled to an accounting of the unpaid indebtedness and the charge, if any, for such an accounting, or stated “if you want us to explain to you in writing how we have figured the amount that you owe us ...”; or
- (d) Listing a lump sum storage cost; or,
- (e) Failing to send any Repossession Notice at all.

69. The Bank’s Repossession Notice failed to provide proper and reasonable notification of disposition to Plaintiffs Churchill and Ewing and the Class of New York borrowers they seek to represent, by:

- (a) Failing to state the method of disposition, *viz.*, whether by public or private sale;
- (b) Failing to list the time and place of any public sale *i.e.*, auction of the vehicle; and
- (c) Failing to state that the debtor is entitled to an accounting of the unpaid indebtedness and the charge, if any, for such an

accounting, or stated “if you want us to explain to you in writing how we have figured the amount that you owe us ...”;

- (d) Failing to provide an itemized statement of the dollar amount needed to redeem, or stating that “estimated” expenses or lump sum storage cost must be paid to redeem; or
- (e) Failing to send any Repossession Notice at all.

70. In the course of the repossession and disposition process, the Bank did not act in a commercially reasonable manner toward Plaintiffs and the Class because it failed to provide the required or adequate notice of plan to sell the collateral. 13 Pa. C.S. §§ 9610, 9611, 9613, & 9614; N.Y. UCC §§ 9-610, 9-611, 9-613, & 9-614.

Five Star’s Deficiency Notice is Non-Compliant

71. If a deficiency remains after the sale of the vehicle, the UCC requires that a creditor send an explanation of the claimed deficiency. 13 Pa.C.S. § 9616; N.Y. UCC § 9-616.

72. The explanation of the claimed deficiency must be in writing and must provide certain specific information in a prescribed order. 13 Pa.C.S. § 9616(c); N.Y. UCC § 9-616(c).

73. The Code § 9616 requires that a post-sale Notice of Deficiency or Surplus:

- (a) state that future debits, credits, charges, including additional credit service charges or interest, rebates and expenses may affect the amount of the surplus or deficiency; and
- (b) “must provide the following information in the following order”:
 - (1) the aggregate amount of the obligation secured by the security interest under which the disposition was made, and if the amount reflects a rebate of unearned interests or credit service charge, an indication of that fact, and a calculation thereof;
 - (2) the amount of proceeds of the disposition;
 - (3) the aggregate amount of the obligations after deducting the amount of the 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 which 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 rebate of interest or credit service charges, to which the obligor is known to be entitled; and
- (6) the amount of the surplus or deficiency.

74. The Deficiency Notice sent to Plaintiff Mowrey and the putative Pennsylvania Class B fails to conform to the statutory requirement.

75. The Deficiency Notice sent to Plaintiffs Churchill and Ewing and the putative New York Class D fails to conform to the statutory requirement.

Statutory Damages Formula

76. The UCC, at 13 Pa. C.S. § 9625(c)(2), and N.Y. UCC § 9-625(c)(2), provides for damages for a secured party's failure to follow the proper procedures upon repossession. The statute allows consumer debtors such as the Plaintiffs (and the putative classes) to recover in any event minimum damages of not less than the credit service charge plus 10% of the principal amount of the obligation. *See* Comment 4 to § 9625.

77. The statutory damages are derived from a straightforward calculation.

78. For example, in Churchill's case, the statutory damages are computed by summing \$5,867.04 (credit service, or finance charge) + \$2,203.94 (10% of amount financed) = \$8,070.98.

79. A secured party who fails to send the appropriate explanation of a deficiency is liable for \$500.00 statutory damages if its noncompliance was part of a pattern or consistent with a practice of noncompliance. 13 Pa.C.S. § 9625(e)(5); N.Y. UCC § 9-625(e)(5).

IV. CLASS ALLEGATIONS

80. Plaintiffs bring this action on their own behalf and on behalf of four classes designated pursuant to Pa. R. Civ. P. 1701 et seq.

81. Plaintiffs Chipego, Mowrey, Churchill, and Ewing (“Representative Plaintiffs”) seek to be certified as representatives of the class.

Class A – Pennsylvania Consumers (Repossession Notice)

82. Plaintiffs Chipego and Mowrey propose to define Class A as All Persons:

- (a) who financed a vehicle primarily for consumer use through Five Star, or whose consumer loan contract or installment sales contract was assigned to Five Star;
- (b) who had a Pennsylvania address as of the date of repossession;
- (c) from whom the Bank, as secured party, repossessed the financed vehicle, or ordered it repossessed; and
- (d) who were sent a Notice of Right to Redeem (“Repossession Notice”) which:
 - 1. failed to state the method of disposition, *i.e.*, whether a public or private sale;
 - 2. failed to list the time and place of any public sale of the vehicle;
 - 3. failed to state either that the debtor is entitled to an accounting of the unpaid indebtedness and the charge, if any, for such an accounting, or “if you want us to explain to you in writing how we have figured the amount that you owe us ...”; or
 - 4. listed a lump sum “storage cost”
- (e) or, were sent no notice at all;
- (f) in the period commencing six years prior to the filing of the Class Complaint, through the date of class certification.

Class B – Pennsylvania Consumers (Deficiency Notice)

83. Plaintiff Mowrey proposes to define Class B as All Persons:
- (a) who financed a vehicle primarily for consumer use through Five Star, or whose consumer loan contract or installment sales contract was assigned to Five Star;
 - (b) who had a Pennsylvania address as of the date of repossession;
 - (c) from whom Five Star Bank, as secured party, repossessed the vehicle, or ordered it repossessed;
 - (d) whose vehicle was sold or auctioned by Five Star Bank, but leaving a surplus or claimed deficiency balance; and
 - (e) who were sent an explanation of the alleged deficiency or surplus (“Deficiency Notice”) that failed to:
 - (1) state that future debits, credits, charges, including additional credit service charges or interest, rebates and expenses may affect the amount of the surplus or deficiency; and/or
 - (2) provide in the following order:
 - (i) the aggregate amount of the obligation 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, and a calculation thereof;
 - (ii) the amount of proceeds of the disposition;
 - (iii) the aggregate amount of the obligations after deducting the amount of the proceeds;
 - (iv) 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 which are known to the secured party and relate to the current disposition;
 - (v) the amount, in the aggregate or by type and types of credits, including rebate of interest or credit service charges, to which the obligor is known to be entitled; and

- (vi) the amount of the surplus or deficiency.
- (f) or, were sent no Deficiency Notice at all;
- (g) in the period commencing six years prior to the filing of the Class Complaint, through the date of class certification.

Class C – New York Consumers (Repossession Notice)

84. Plaintiffs Churchill and Ewing propose to define Class C as All Persons:
- (a) who financed a vehicle primarily for consumer use through Five Star, or whose consumer loan contract or installment sales contract was assigned to Five Star;
 - (b) who had a New York address as of the date of repossession;
 - (c) from whom the Bank, as secured party, repossessed the financed vehicle, or ordered it repossessed; and
 - (d) who were sent a Notice of Right to Redeem (“Repossession Notice”) which failed to:
 - (1) state the method of disposition, *i.e.*, whether a public or private sale;
 - (2) list the time and place of any public sale of the vehicle;
 - (3) state either that the debtor is entitled to an accounting of the unpaid indebtedness and the charge, if any, for such an accounting or “if you want us to explain to you in writing how we have figured the amount that you owe us ...”;
 - (4) provide an itemized statement of the dollar amount needed to redeem, or stated that “estimated” expenses must be paid to redeem; or
 - (e) or, were sent no notice at all;
 - (f) in the period commencing six years prior to the filing of the Class Complaint, through the date of class certification.

Class D – New York Consumers (Deficiency Notice)

85. Plaintiffs Churchill and Ewing propose to define Class D as All Persons:
- (a) who financed a motor vehicle primarily for consumer use through Five Star Bank or whose loan contract or installment sales contract was assigned to Five Star Bank;
 - (b) who had a New York address as of the date of repossession;
 - (c) from whom Five Star Bank, as secured party, repossessed the vehicle, or ordered it repossessed;
 - (d) whose vehicle was sold or auctioned by Five Star Bank, but leaving a surplus or claimed deficiency balance; and
 - (e) who were sent an explanation of the alleged deficiency or surplus (“Deficiency Notice”) that failed to:
 - (1) state that future debits, credits, charges, including additional credit service charges or interest, rebates and expenses may affect the amount of the surplus or deficiency; and/or
 - (2) provide in the following order:
 - (i) the aggregate amount of the obligation 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, and a calculation thereof;
 - (ii) the amount of proceeds of the disposition;
 - (iii) the aggregate amount of the obligations after deducting the amount of the proceeds;
 - (iv) 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 which are known to the secured party and relate to the current disposition;
 - (v) the amount, in the aggregate or by type and types of credits, including rebate of interest or credit service charges, to which the obligor is known to be entitled; and

- (vi) the amount of the surplus or deficiency.
- (f) or, were sent no Deficiency Notice at all;
- (g) in the period commencing six years prior to the filing of the Class Complaint, through the date of class certification.

86. Each class numbers at least in the hundreds, and is so numerous that joinder of all members is impractical. This matter involves nearly identical form notices sent to consumers in Pennsylvania and New York.

87. The classes are readily ascertainable by review of the Bank's own records of financed vehicles, vehicles repossessed, and notices sent.

88. There are questions of law or fact common to each class. These include:

- (a) Whether Plaintiffs and the classes obtained motor vehicle financing through the Bank and pledged their vehicles as collateral;
- (b) Whether the Bank repossessed the financed vehicles or ordered them repossessed;
- (c) Whether the Bank failed to send the form notice of disposition of collateral required under the UCC after repossessing a vehicle;
- (d) Whether the Bank failed to send the form explanation of deficiency or surplus as required under the UCC after disposing of the repossessed vehicle;
- (e) The statutory damages provided for such misconduct.

89. The claims of the Representative Plaintiffs are typical of those of the classes. All are based on the same factual and legal theories. All class members financed automobiles through the Bank and pledged their vehicle as collateral. The Bank declared a default on all. All class members either were sent a form notice of right to redeem that carried or failed to carry certain disclosures, or were sent no notice of right to redeem at all. Plaintiff Mowrey and the putative class members in Class B were all sent a form explanation of deficiency or surplus that failed to

correctly itemize or explain the consumers' resulting liability, or were sent no deficiency notice at all. Plaintiffs Churchill and Ewing and the putative class members in Class D were all sent a form explanation of deficiency or surplus that failed to correctly itemize or explain the consumers' resulting liability, or were sent no deficiency notice at all.

90. Representative Plaintiffs will fairly and adequately protect the interests of the classes. Representative Plaintiffs have no interest antagonistic to those of the classes, nor any conflict.

91. Plaintiffs' counsel is competent and experienced in consumer class actions, and has the financial resources needed to litigate the matter vigorously.

92. The Bank has acted on grounds generally applicable to the classes, thereby making final relief appropriate with respect to the class as a whole.

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

94. The prosecution of several separate actions by the members of the classes would create a risk of inconsistent or varying adjudications.

95. This class action provides a fair and efficient method for adjudication of the controversy. Owing to the size of the classes and the legal theory, no difficulties in management are foreseen.

96. The class members 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, or expert fee reimbursement and the specialized nature of the law of secured transactions and motor vehicle finance regulation.

COUNT I
PENNSYLVANIA UNIFORM COMMERCIAL CODE
(CLASS A: REPOSSESSION NOTICE)

97. Plaintiffs repeat the allegations set forth above as if the same were set forth at length herein.

98. Five Star violated Pennsylvania's Uniform Commercial Code by failing to provide proper notice of disposition of collateral as set forth above.

99. Five Star failed to act in a commercially reasonable manner, 13 Pa. C.S. § 9610, 9611- 9614.

WHEREFORE, Plaintiffs Chipego and Mowrey pray that this Court certify the matter as a class action and enter judgment for Plaintiffs and Class A:

- (a) Awarding statutory damages to Plaintiffs Chipego and Mowrey, and to the class as provided by the UCC, 13 Pa. C.S. § 9625(c);
- (b) Awarding prejudgment interest;
- (c) Declaring that the repossession notices used by the Bank in respect to Plaintiffs Chipego, Mowrey, and Class A fail to comport with the provisions of the Pennsylvania UCC;
- (d) Granting such other and further relief as may be deemed just and proper.

COUNT II
PENNSYLVANIA UNIFORM COMMERCIAL CODE
(CLASS B: DEFICIENCY NOTICE)

100. Plaintiffs repeat the allegations set forth above as if the same were set forth at length herein.

101. Defendant Five Star violated New York's Uniform Commercial Code by failing to provide Mowrey and Class B a proper explanation of an alleged deficiency balance or surplus, as set forth above. 13 Pa.C.S. § 9616(b).

WHEREFORE, Plaintiff Mowrey prays that this Court enter judgment in her favor and for Class B against Five Star:

- (a) Awarding statutory damages of \$500 per class member as provided by the UCC, 13 Pa.C.S. § 9625(e)(5);
- (b) Awarding prejudgment interest;
- (c) Declaring that the Deficiency Notices used by the Bank in respect to Mowrey and Class B fail to comport with the provisions of the Pennsylvania UCC;
- (d) Granting such other and further relief as may be deemed just and proper.

COUNT III
NEW YORK UNIFORM COMMERCIAL CODE
(CLASS C: REPOSSESSION NOTICE)

102. Plaintiffs repeat the allegations set forth above as if the same were set forth at length herein.

103. Five Star violated New York's Uniform Commercial Code by failing to provide proper notice of disposition of collateral as set forth above.

104. Five Star failed to act in a commercially reasonable manner, N.Y. UCC §§ 9-610, 9-611, 9-613, & 9-614.

WHEREFORE, Plaintiffs Churchill and Ewing pray that this Court certify the matter as a class action and enter judgment for Plaintiffs Churchill, Ewing, and Class C:

- (a) Awarding statutory damages to Plaintiffs and to the class as provided by the UCC, N.Y. UCC § 9-625(c);
- (b) Awarding prejudgment interest;
- (c) Declaring that the repossession notice used by Defendant in respect to Plaintiffs Churchill, Ewing, and the New York Class C fails to comport with the provisions of New York law;

- (d) Granting such other and further relief as may be deemed just and proper.

COUNT IV
NEW YORK UNIFORM COMMERCIAL CODE
(CLASS D: DEFICIENCY NOTICE)

105. Plaintiffs repeat the allegations set forth above as if the same were set forth at length herein.

106. Defendant Five Star violated New York's Uniform Commercial Code by failing to provide proper explanation of an alleged deficiency balance or surplus. N.Y. UCC § 9-616(b).

WHEREFORE, Plaintiffs Churchill and Ewing pray that this Court certify the matter as a class action and enter judgment for Plaintiffs Churchill, Ewing, and Class D:

- (a) Awarding statutory damages of \$500 per class member as provided by N.Y. UCC § 9-625(e)(5).
- (b) Awarding prejudgment interest;
- (c) Declaring that the explanation of deficiency or surplus used by Defendant in respect to Plaintiffs Churchill, Ewing, and the New York Class D fails to comport with the provisions of New York law;
- (d) Granting such other and further relief as may be deemed just and proper.

Respectfully submitted:

DATE: 5/10/19

Docketed 8/1/19

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