

NICOLE LUNDY, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

DIAMOND CREDIT UNION,

Defendant.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

APRIL TERM, 2021
NO. 1154

CLASS ACTION

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

You may be entitled to receive a settlement payment and elimination of any Deficiency Balance in connection with a class action against Diamond Credit Union

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

- This settlement resolves a lawsuit over whether Diamond Credit Union (“Diamond”) sent borrowers proper notice of their rights after vehicle repossession.
- Diamond denies and disputes the claims asserted in the Litigation. The parties disagree about whether any money (and if so, how much) could have been awarded to you if the Plaintiff were to prevail at trial. The settlement avoids the costs and risks to members of the Class like you from continuing with the lawsuit, and provides relief to the Class.
- This settlement will: (a) provide a gross fund of \$2,100,000 to be distributed to Class Members after payment of administrative costs, Class Counsel fees and costs, and a service award to Plaintiff; (b) eliminate Disputed Deficiency Balances of approximately \$2,990,000; and (c) require Diamond to request credit reporting agencies to delete your auto loan history from your credit report, in accordance with the proposed Class Action Settlement Agreement.
- Your rights are affected whether you act or not. Read this notice carefully.

Your Legal Rights and Options in this Settlement:

Do Nothing	If the settlement is approved by the Court as presented, any post-auction deficiency balance will be eliminated unless you got your vehicle back, and Diamond will request the credit reporting agencies to delete your loan history from your credit report. You will also be paid a proportionate share of the net settlement proceeds, which for you comes to approximately <<Amount>>.
Exclude Yourself	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Diamond concerning repossession or financing of your vehicle. Act by June 5, 2023.
Object	Write to the Court about why you don’t like the settlement and do not want it approved. Act by June 5, 2023.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement on July 14, 2023.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.
- For more information or to review key documents or the Class Action Settlement Agreement, you can visit www.DiamondCreditUnionRepoSettlement.com.

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BASIC INFORMATION

1. Why did I get this notice package?

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

The Court in charge of the case is the Court of Common Pleas of Philadelphia County, Pennsylvania, and the case is known as *Nicole Lundy, individually and on behalf of all others similarly situated v. Diamond Credit Union*, April Term 2021, No. 1154. The person suing is Nicole Lundy, the Plaintiff (also called “Class Representative”) and the company being sued, Diamond Credit Union, is called the Defendant, or “Diamond.”

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible, and how to get them.

Diamond’s records reflect that you and any co-borrower on your vehicle loan were sent a notice from Diamond following the repossession of your vehicle between April 15, 2015 through August 9, 2021. Diamond’s conduct post-repossession, including its use of these notices forms the basis for this lawsuit.

2. What is this lawsuit about?

The lawsuit claims that Diamond violated Pennsylvania’s Uniform Commercial Code by failing to send its borrowers in Pennsylvania proper notice of disposition of collateral (“Repossession Notice”) after repossession of their vehicle(s). Specifically, Plaintiff asserts on behalf of herself and a class of borrowers that the Repossession Notice sent by Diamond failed to advise of the right to an accounting.

Diamond denies that its disclosures violated any law, and Diamond asserts that it satisfied all of the legal requirements as to its notices. Diamond asserts other defenses. Diamond further contends that many of the members of the Class owe Diamond money for balances still due on their accounts following the sale of their repossessed vehicle(s) at auction.

3. Why is this a class action?

In a class action, one or more people called Class Representatives (in this case Nicole Lundy) sue on behalf of all people who have similar claims. All these people are “Class Members,” and grouped together are a “Class.” One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. Diamond has challenged whether this case should proceed as a class action but has agreed not to oppose this case proceeding as a class for settlement purposes only.

4. Why is there a settlement?

Plaintiff believes the Class might have won more money than the settlement amount had the case gone to trial, but substantial delays and risks would have occurred, including the risk of the case not being certified as a class. Diamond believes that the claims asserted in the case are without substantial merit, and that the Plaintiff may have recovered nothing if there had been a trial. But, there has been no trial. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial and appeal, and class members like yourself will get compensation and other settlement benefits promptly. The Class Representative and her attorneys think the settlement is best for all Class Members.

WHO IS IN THE SETTLEMENT

5. How do I know that I am part of the settlement?

If you received this Notice in the mail, Diamond's records reflect that you are part of the Class. The Court has preliminarily certified the Class, which includes those borrowers who were sent certain notices after their vehicle was repossessed.

THE SETTLEMENT BENEFITS – WHAT YOU GET

6. What does the settlement provide for me?

- Cash Component:
 - o Diamond has agreed to create a Settlement Fund of \$2,100,000. Approved administrative costs, Class Counsel fees and expenses, and a service award for the Class Representative will be paid from that fund. The Net Fund that remains will be distributed to the members of the Class.
 - o If fees and expenses are allowed as requested, it is expected that your cash payment will be approximately <<Amount>>, unless there were multiple borrowers on your loan in which case you will receive a portion of this amount.
 - o If after the first distribution of checks to the Class more than \$50,000 remains in the Net Fund (from uncashed or undistributable checks), there will be a second distribution of checks to the Class. A balance remaining after the second distribution will be paid to *cy pres* beneficiaries, Pennsylvania Interest on Lawyers Trust Account ("IOLTA"), Legal Aid of Southeastern Pennsylvania and Berks Community Action Program, for consumer uses.
- Credit Reporting Relief: Unless you reinstated your loan, Diamond will request that the credit reporting agencies update your credit report to remove any reference to the Diamond auto loan contract. Details about how and when this will be done, and limits on Diamond's obligation to provide credit reporting relief are spelled out further in the Settlement Agreement.
- Elimination of Disputed Deficiency Balance: If you have been advised by Diamond that there is a shortfall after the auction of your repossessed vehicle, that balance claimed due is called a "Deficiency Balance." Diamond's right to these Deficiency Balances is disputed by the parties. Unless you elect otherwise, any Disputed Deficiency Balance on your vehicle loan will be eliminated as a result of this settlement. The average Disputed Deficiency Balance claimed due is around \$7,500. Yours could be more or less than this amount. You will not receive this relief if you got your car back (redeemed or reinstated) after the repossession. If you want to know if you have any Deficiency Balance or the amount, you can call the Settlement Administrator at (833) 215-9289 or Class Counsel at (888) 668-1225. NOTE: *see Tax Implications* in Section 7 below. You can choose not to have your Disputed Deficiency Balance eliminated as a result of this settlement by submitting the enclosed Election Not to Accept Compromise of Disputed Deficiency Balance.

TAX IMPLICATIONS

7. Tax Implications

This settlement has potential tax implications for you. The Settlement Administrator plans to issue IRS 1099-series forms for cash payments over \$600. You may be required to furnish your Social Security Number to the administrator as a condition of payment of settlement proceeds over \$600.

If you accept the elimination of your Disputed Deficiency Balance, Diamond might issue to you an IRS 1099c form for the amount of the Disputed Deficiency Balance eliminated. This could result in your having to declare income in that amount on your next tax return and pay tax on all or some of that amount! You should consult your tax advisor to help decide if agreeing to the elimination of your Disputed Deficiency Balance is right for you.

HOW YOU GET THE BENEFITS OF THE SETTLEMENT

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

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

9. Do I need to do anything to have my outstanding debt eliminated?

No. Any outstanding debt remaining after the auction of your repossessed vehicle will automatically be eliminated upon final approval of the settlement by the Court unless you tell us you do not want your debt eliminated. If you **do not want** your Disputed Deficiency Balance to be eliminated, please read these instructions carefully, fill out the Election Not To Accept Compromise of Disputed Deficiency Balance form, and mail it postmarked no later than **June 5, 2023** to:

Lundy v. Diamond Credit Union
c/o Settlement Administrator
P.O. Box 16
West Point, PA 19486

If you have already been sued and there is a legal judgment against you relating to your Disputed Deficiency Balance, Diamond will inform the Court that you have resolved the issue and will satisfy the judgment. If you do not know if you have any Disputed Deficiency Balance, you can call the Settlement Administrator at (833) 215-9289 or Class Counsel at (888) 668-1225 to inquire or to find out the amount of your Disputed Deficiency Balance.

10. When is the hearing on final approval of the proposed settlement?

The Court will hold a hearing on **July 14, 2023** at 9:00 a.m. in Courtroom 630, City Hall, Philadelphia, PA to decide whether to approve the settlement. If the Court approves the settlement after the hearing, there may be appeals. It is always uncertain whether there will be an appeal and if so, when it will be resolved. Resolving an appeal can take time, often well more than a year. Please be patient.

11. What am I giving up to get a payment or stay in the Class?

Unless you exclude yourself, you will stay in the Class, and that means that you can't sue, continue to sue, or be part of any other lawsuit against Diamond related to your repossessed motor vehicle. It also means that the Court's orders will apply to you and legally bind you. Unless you "opt-out" or exclude yourself from this case, you will automatically be deemed to have agreed to a "Release of Claims" which describes exactly the legal claims that you give up if you remain in the Class. The specific language of the release is set forth in the Settlement Agreement, which can be found on the website: www.DiamondCreditUnionRepoSettlement.com.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment or other benefits from this settlement but you want to keep the right to sue or continue to sue Diamond on your own about any of the subjects or issues set forth in the paragraph above, then you must take steps to get out. This is called excluding yourself – sometimes referred to as "opting out" of the Class.

12. How do I get out of the settlement?

To exclude yourself from the settlement, you must send a letter to the Settlement Administrator, with copies to counsel, by mail (first class, postage pre-paid) saying that you, as well as any and all other person(s) who signed your vehicle loan, want to be excluded from *Nicole Lundy, individually and on behalf of all others similarly situated v. Diamond Credit Union*, April Term 2021, No. 1154. Be sure to include your name, address, email (if available), telephone number and your signature. Mail your exclusion request postmarked no later than **June 5, 2023** to all three of the different addresses below.

Settlement Administrator

Lundy v. Diamond Credit Union
c/o Settlement Administrator
P.O. Box 16
West Point, PA 19486

Class Counsel

Cary L. Flitter, Esq.
Jody T. López-Jacobs, Esq.
FLITTER MILZ, P.C.
450 N. Narberth Ave, Ste 101
Narberth, PA 19072

Defense Counsel

Geralyn M. Passaro, Esq.
LITCHFIELD CAVO, LLP
600 Corporate Dr, Ste 600
Ft. Lauderdale, FL 33334

13. If I don't exclude myself, can I sue Diamond for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Diamond for the claims that this settlement resolves. If you have a pending lawsuit, speak to your lawyer in that case immediately. You must exclude yourself from this Class to continue your own lawsuit.

14. If I exclude myself, can I get money from this settlement?

No. If you exclude yourself, you will not receive any money from this lawsuit or settlement, credit report deletion, elimination of any Disputed Deficiency Balance, or other relief that this class settlement provides.

THE LAWYERS REPRESENTING YOU

15. Do I have a lawyer in this case?

The Court has approved the law firm of Flitter Milz, P.C., in Narberth, PA to represent you and other Class Members. The lawyers at this firm are called Class Counsel. You will not be charged individually for these lawyers. If you want to be represented by your own lawyer, you may hire a firm at your own expense.

16. How will the lawyers and Representative Plaintiff be paid?

As part of the class settlement, Plaintiff will ask the Court to approve a \$15,000 service award for her time and effort in bringing this case. Plaintiff will ask the Court to approve a payment out of the Settlement Fund in the amount of \$840,000 for Class Counsel fees and up to \$7,500 for reimbursement of expenses. The fees would pay Class Counsel for investigating the facts, litigating the case, negotiating the settlement, filing legal papers with the Court, and oversight of future implementation of the settlement, including fielding inquiries from Class Members. Class Counsel has not been paid for its time or services since this case was originally filed in April 2021. The Court could award less than this amount.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

17. How do I tell the Court that I don't like the settlement?

If you are a Class Member, you can object to the settlement if you don't like any part of it. You should state why you object and why you think the Court should not approve the settlement. The Court will consider your views. To object, you must send a letter to the Settlement Administrator and to counsel at the three different addresses listed in Section 12 above, on or before **June 5, 2023**, saying that you object to the settlement in *Nicole Lundy, individually and on behalf of all others similarly situated v. Diamond Credit Union*, April Term 2021, No. 1154, and the letter should include your name, address, email address (if available), telephone number, your signature, and the reasons you object to the settlement.

18. What's the difference between objecting and excluding?

Objecting is telling the Court that you don't like something about the settlement, and that you, for that reason, want the settlement not to be approved. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to, and attendance is not required or expected unless you advise that you intend to appear or have your lawyer appear.

19. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing on **July 14, 2023** at 9:00 a.m. in Courtroom 630, City Hall, Philadelphia, PA. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate and meets the test for class action settlements. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may also determine the Class Representative Service Award and Class Counsel fees and expenses. Following the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

20. Do I have to come to the hearing?

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

21. May I speak at the hearing?

If you serve a timely, written objection pursuant to the terms of paragraph 17 of this Notice, you may appear and be heard at the Final Approval Hearing either in person or through counsel retained at your own expense. If you hire an attorney to represent you, the attorney must file a notice of appearance with the Office of Judicial Records and deliver a copy of that notice to Defendant's counsel and to Class Counsel.

IF YOU DO NOTHING

22. What happens if I do nothing at all?

If you do not exclude yourself and the Court finally approves the settlement, you will receive a settlement payment(s), elimination of your Disputed Deficiency Balance (if any), and credit reporting relief as provided in the Class Action Settlement Agreement. If you do not want your Disputed Deficiency Balance eliminated you must elect in writing by returning the enclosed Form postmarked no later than **June 5, 2023**.

GETTING MORE INFORMATION

23. Are there more details about the settlement?

This notice summarizes the proposed settlement. The pleadings and other records in this litigation, including a copy of the Settlement Agreement, may be examined at any time during regular office hours at the Office of Judicial Records, City Hall, Philadelphia, PA. These documents will also appear on a [website](#) created for this case:

www.DiamondCreditUnionRepoSettlement.com.

You may also call or write to the following:

**Lundy v. Diamond Credit Union
c/o Settlement Administrator
P.O. Box 16
West Point, PA 19486
(833) 215-9289**

Or

**Class Counsel
FLITTER MILZ, P.C.
450 N. Narberth Avenue, Suite 101
Narberth, PA 19072
(888) 668-1225**

Please **do not** call the Court, Diamond, or Diamond's counsel.