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21 DEC 2022 01:37 pm  
Civil Administration  
D. KIM

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

Plaintiff,

vs.

DIAMOND CREDIT UNION,

Defendant.

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

APRIL TERM, 2021

NO. 1154

CLASS ACTION

DOCKETED

APR - 8 2023

H. POSTELL  
COMMERCE PROGRAM

**ORDER CERTIFYING SETTLEMENT CLASS, PRELIMINARILY  
APPROVING CLASS SETTLEMENT AND DIRECTING THE  
ISSUANCE OF NOTICE TO THE CLASS**

AND NOW, this 30<sup>th</sup> day of March, 2023, the Court finds and Orders:

This Court has before it a proposed class action settlement. Having reviewed the Class Action Settlement Agreement and Release, which was filed of record as an exhibit to the Motion for Preliminary Approval (docketed 12/21/2022 and incorporated herein by reference) (the "Settlement Agreement"), having read the Plaintiff's Motion for Preliminary Approval, having been advised that Defendant joins in the relief requested, and based specifically upon the facts and circumstances at issue in the present case, the Court finds and ORDERS as follows:

**1. Summary of Claims and Defenses:**

The lawsuit claims that Diamond Credit Union ("Diamond" or "Defendant") violated Pennsylvania's Uniform Commercial Code ("UCC") by failing to send borrowers in Pennsylvania proper notices of disposition of collateral ("Repossession Notices") after repossession of their vehicle(s). Plaintiff asserts on behalf of herself and a class of borrowers (the "Class") that the Repossession Notices sent by Diamond fail to advise of the right to an accounting, violating 13 Pa.C.S. §§ 9611, 9614.

Diamond disputes Plaintiff's legal entitlement to any relief under the UCC and maintains that its Repossession Notices are legally compliant. Diamond further asserts defenses to the

210401154-Lundy Vs Diamond Credit Union



21040115400082

Case ID: 210401154  
Control No.: 22124337

Complaint and maintains that the matter would not meet the requirements for class certification if contested, but Diamond consents to this Settlement Class and preliminary approval.

**2. Class Findings for Settlement Purposes.**

(a) The numerosity requirement of Pa. R. Civ. P. 1702(1) is satisfied because the Class consists of over 552 Pennsylvania borrowers. Thus, the Class is so numerous that joinder would be impracticable.

(b) The commonality requirement of Pa. R. Civ. P. 1702(2) is satisfied because members of the Class share at least one common factual or legal issue, *i.e.*:

(i) Whether Plaintiff and the class obtained motor vehicle financing through the Credit Union and pledged the vehicle as collateral;

(ii) Whether the Credit Union repossessed the financed vehicle or ordered it repossessed;

(iii) Whether the Credit Union failed to send the Repossession Notice in the form and manner required under Pennsylvania law after repossessing a vehicle; and;

(iv) The uniform statutory damages provided for such misconduct.

(c) The typicality requirement of Pa. R. Civ. P. 1702(3) is satisfied because Defendant sent form Repossession Notice to Plaintiff and other members of the Class. Plaintiff asserts that the form Repossession Notice utilized by Defendant fails to comply with state law. These are the same claims that all other members of the Class possess.

(d) The adequacy requirement of Pa. R. Civ. P. 1702(4) is satisfied in that (i) the interests of the Representative Plaintiff Lundy and the nature of her claims are consistent with those of all members of the Class, (ii) there appear to be no conflicts

between or among the Representative Plaintiff and the Class Members, and (iii) Mrs. Lundy and the Class Members are represented by qualified, experienced counsel who often have been certified as Class Counsel in similar matters.

(e) The requirements of Pa. R. Civ. P. 1702(5) and 1708 are met, in that a Class Action for settlement purposes provides a fair and efficient method for the resolution of the controversy.

(f) Common issues of law and fact alleged by Plaintiff predominate over any potential individualized issues, including the alleged common issue of whether form notice sent by Defendant post-repossession comply with the provisions of one Pennsylvania statute's requirement of "commercially reasonable" notice of disposition or of deficiency. Pa. R. Civ. P. 1708(a)(1). There are no potential individualized issues such as reliance or causation.

(g) In making these preliminary findings, the Court has also given consideration to, among other factors: (i) the interests of Class Members in individually controlling the prosecution of separate actions for modest sums; (ii) the extent and nature of any litigation concerning these claims already commenced (none has been identified); (iii) the desirability of concentrating the litigation of the claims in this forum; (iv) the impracticability or inefficiency of prosecuting or defending separate actions. Pa. R. Civ. P. 1708(a)–(c).

(h) Because this action is being settled rather than litigated, the Court need not consider manageability issues that might be presented by the trial of a class action involving the issues in this case.

**3. The Class, Class Representative, and Class Counsel.**

(a) The Repossession Notice Class is defined as All Persons:

(i) who purchased any vehicle as a consumer good;

(ii) who financed the vehicle purchase through Diamond, or whose vehicle loan agreement or installment sale contract was later assigned to Diamond;

(iii) from whom Diamond, as secured party, repossessed the vehicle or ordered it repossessed;

(iv) who had a Pennsylvania address as of the date of repossession, as depicted in the Repossession Notice;

(v) in the period commencing April 15, 2015 through August 9, 2021.

(b) Nicole Lundy is appointed representative of the Class (“Representative Plaintiff”).

(c) Cary L. Flitter, Andrew M. Milz, Jody Thomas López-Jacobs along with the law firm of Flitter Milz, P.C. are approved as Class Counsel.

**4. Findings Regarding Proposed Settlement.** The Court finds that the proposed Settlement:

(a) resulted from extensive arm’s-length negotiations and was concluded after a year of litigation, depositions, and review by Class Counsel of hundreds of documents and data points pertaining to the Class;

(b) involves direct and substantial cash payments to Class Members, elimination of substantial Disputed Deficiency Balances allegedly owed by Class Members to Diamond, as well as credit reporting and other relief; and

- (c) appears *prima facie* fair, reasonable, and adequate to warrant sending notice of this action and the proposed settlement to the Class Members and holding a final hearing on the proposed settlement;
- (d) as agreed upon by the parties, except for Class Members who have properly submitted an Election Not to Accept Compromise of Disputed Deficiency Balance, Diamond's elimination of the Disputed Deficiency Balances as part of this Settlement constitutes a bona fide accord and satisfaction. Plaintiff's and the Class Members' release of their claims for statutory damages, which is a greater dollar amount than the anticipated benefits they will receive in this Settlement, is a clear and unequivocal offer of payment in full satisfaction of the Disputed Deficiency Balances. This full satisfaction, which will be accepted and retained by Diamond as part of this Settlement, constitutes accord and satisfaction.

5. **Final Approval Hearing.** A hearing (the "Final Approval Hearing") will be held on July 14, 2023, at 9:00 A, M. in Courtroom 630, City Hall, Philadelphia, PA, to determine:

- (a) Whether the proposed settlement of this action should be finally approved as fair, reasonable and adequate;
- (b) Whether this action should be dismissed with prejudice pursuant to the terms of the settlement;
- (c) Whether Class Members should be bound by the release set forth in the proposed settlement; and
- (d) Whether Plaintiff's application for an award of attorneys' fees and expenses to Class Counsel, and for an individual service award, should be approved.

**6. Pre-Hearing Notices to Class Members.** Subject to the terms of the Settlement Agreement, an independent, third-party class action administrator, Continental Data Logix, LLC, of Lansdale, PA (the “Settlement Administrator”) shall provide Class Members with notice in the manner set forth below and in the Settlement Agreement. By accepting this assignment, the Settlement Administrator subjects itself to this Court’s jurisdiction.

**7. Notice by Mail.** The Settlement Administrator shall mail the Class Notice (with proper data filled in) substantially in the form filed with this Court as Exhibit C to the Settlement Agreement to the last-known address of each potential Class Member as reflected on Defendant’s current and reasonably accessible records, or such other, more current address as the Settlement Administrator sees fit, pursuant to the terms of the Settlement Agreement. The Class Notice shall be sent by first-class mail, postage prepaid. Diamond shall furnish its final class list, including co-borrowers, to the Administrator within twenty (10) days hereof; the Administrator shall cause Notice to be mailed within 20 days hereof.

**8. Proof of Mailing.** At least twenty-four days prior to the Final Approval Hearing, the Settlement Administrator shall submit to Class Counsel an affidavit of mailing of the Class Notice, identifying any Class Members who have validly objected to or requested exclusion from the Settlement Agreement. Class Counsel shall file the affidavit along with Plaintiff’s motion for final approval.

**9. Findings Concerning Notice.** The Court finds that the Class Notice is the best practicable notice and is reasonably calculated, under the circumstances, to apprise the Class Members (i) of the settlement of this action, (ii) of their right to exclude themselves from the Class and the proposed settlement, (iii) that any judgment, whether favorable or not, will bind all Class Members who do not request exclusion, and (iv) that any Class Member who does not request

exclusion may object to the settlement and enter an appearance personally or through counsel. The Notice and other case records, including the pleadings and the Settlement Agreement, will be made available to the Class via a website created for this case, [www.DiamondCreditUnionRepoSettlement.com](http://www.DiamondCreditUnionRepoSettlement.com).

The Court further finds that the Class Notice proposed and submitted as an exhibit to the Motion for Preliminary Approval is written in plain English and is readily understandable. In sum, the Court finds that the proposed notice and methodology for giving notice and the forty-two (42) day period to act are reasonable, that they constitute due, adequate, and sufficient notice to all persons entitled to be provided with notice, and meet the requirements of Pennsylvania Rules of Civil Procedure 1714 and the United States Constitution (including the Due Process Clause) and any other applicable law.

**10. Exclusion from Class.** Any Class Member who wishes to be excluded from the Class must send a written request for exclusion to the Settlement Administrator (with copies to Class Counsel and Defense counsel) at the addresses provided in the Settlement Class Notice. Any such exclusion request must be sent by first-class mail, postage prepaid, and must be postmarked no later than a date forty-two (42) days after the date the Notice is mailed by the Administrator. If the proposed settlement is approved, any Class Member who has not submitted a timely, written request for exclusion from the Class shall be bound by all subsequent proceedings, orders, and judgments in this action.

**11. Objections and Appearances.**

(a) **Written Objections.** Any Class Member who does not submit a written request for exclusion and who complies with the requirements of this paragraph may object to any aspect of the proposed settlement, including the fairness, reasonableness, or

adequacy of the proposed settlement, the adequacy of the Class's representation by the Representative Plaintiff or Class Counsel, the award of attorneys' fees and expenses, and/or the individual service award to the Representative Plaintiff. A Class Member may assert such objections independently or through an attorney hired at their own expense. To object, a Class Member must send a letter or file a pleading saying that he or she objects to the settlement in *Nicole Lundy, individually and on behalf of all others similarly situated v. Diamond Credit Union*, April Term 2021, No. 1154. Any objection should state the reasons for the objection and why the objector thinks the Court should not approve the settlement. The objection must also include the name, address, telephone number, email address (if available), and signature of the objecting Class Member. The objection should be filed with the Office of Judicial Records – Civil – Court of Common Pleas of Philadelphia County, Room 284, City Hall, Philadelphia, PA 19107, with copies mailed to Class Counsel and Defense Counsel below, filed no later than forty (42) days from the date of the mailing of the Notice.

<b>Settlement Administrator</b>	<b>Class Counsel</b>	<b>Defense Counsel</b>
Lundy v. Diamond Credit Union Class Settlement c/o Settlement Administrator PO Box 16 West Point, PA 19486	Cary L. Flitter, Esq. FLITTER MILZ, P.C. 450 N. Narberth Avenue Suite 101 Narberth, PA 19072	Geralyn M. Passaro, Esq. LITCHFIELD CAVO, LLP 600 Corporate Dr, Ste 600 Ft. Lauderdale, FL 33334

(b) **Other Objections.** 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.



(c) **Notice of Appearance.** If a Class Member hires an attorney to represent him or her, the attorney must file a notice of appearance with the Office of Judicial Records – Civil, and deliver a copy of that notice to Defendant’s counsel and to Class Counsel, at the addresses set forth in paragraph 11(a) of this Order. Such counsel must receive any such notices of appearance contemporaneously with submission to the Court.

(d) **Appearance at Final Approval Hearing.** Any Class Member who files and serves a timely, written objection pursuant to the terms of paragraph 11 of 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, the Settlement Administrator, Defendant’s counsel and Class Counsel, at the addresses specified in paragraph 11(a) of this Order, a notice of intention to appear, setting forth the case number, the name, address, and telephone number of the Class Member, and the name of the Class Member’s attorney (if applicable), and any documents the objector may use at the hearing. Notices of intention to appear must be postmarked or electronically filed no later than forty-two (42) days from the date of the mailing of the Notice. Any Class Member who does not timely file and serve a notice of intention to appear pursuant to the terms of this paragraph shall not be permitted to appear and be heard at the Final Approval Hearing, absent extraordinary circumstances.

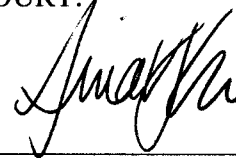
**12. Termination of Settlement.** This Order shall become null and void, and shall be without prejudice to the rights of the parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if, pursuant to the terms of the

Settlement Agreement, the proposed settlement: (a) is not finally approved by the Court or does not become final; or (b) is terminated or does not become effective. In such event, the proposed settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor this Order shall prejudice either party.

**13. Use of Order.** This Order shall not be construed or used as an admission, concession, or finding by or against Defendant of any fault, wrongdoing, breach, or liability, or of the appropriateness or permissibility of certifying a class on contest, or for any purpose other than settlement. Nor shall the Order be construed or used as an admission, concession, or finding by or against Plaintiff or the Class Members that their claims lack merit or that the relief requested in their pleadings is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims.

**14. Continuance of Hearing.** The Court reserves the right to continue the Final Approval Hearing without further written notice, except that notice of any continuance shall be provided to any Class Member, or their counsel, who has filed an objection.

BY THE COURT:



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J.