



To Plaintiffs **Filed and Attested by the**  
 You are hereby notified to file a written **Office of Judicial Records**  
 response to the enclosed copy and file **26 APR 2022 09:22 am**  
 Matter within twenty (20) days of this **G. IMPERATO**  
 hereof, or a judgment may be entered against  
 you.

/s/ Robert L. Sanzo,  
*Counsel for Defendant, Diamond Credit*  
*Union*

**LITCHFIELD CAVO LLP**  
 By: Robert L. Sanzo, Esquire  
 I.D. No. 70587  
 Suite 1220  
 1515 Market Street  
 Philadelphia, PA 19102  
 215-557-0111

Attorneys for Defendant,  
 Diamond Credit Union

NICOLE LUNDY, individually and on behalf	:	PHILADELPHIA COUNTY
of all others similarly situated,	:	COURT OF COMMON PLEAS
	:	
Plaintiff,	:	No. 210401154
	:	
v.	:	
	:	
DIAMOND CREDIT UNION	:	
	:	
Defendant.	:	
	:	
	:	
	:	
	:	
	:	
	:	

**ANSWER AND NEW MATTER**

AND NOW, comes Defendant, Diamond Credit Union (hereinafter “Defendant”), by and through its attorney Litchfield Cavo LLP and Robert L. Sanzo, Esquire and files the following Answer and New Matter to Plaintiff’s Complaint averring as follows:

**I. INTRODUCTION**

1. The allegations contained in Paragraph 1 of Plaintiff’s Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations

are denied. By way of further response, it is denied that Defendant failed to provide consumers with proper notice when repossessing and reselling a financed vehicle.

2. The allegations contained in Paragraph 2 are denied and strict proof is demanded.

3. The allegations contained in Paragraph 3 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

4. The allegations contained in Paragraph 4 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

## **II. PARTIES**

5. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of Plaintiff's Complaint. Said allegations are denied and strict proof is demanded.

6. The allegations contained in Paragraph 6 are denied and strict proof is demanded.

7. The allegations contained in Paragraph 7 are denied and strict proof is demanded.

8. The allegations contained in Paragraph 7 are denied and strict proof is demanded.

## **III. STATEMENT OF CLAIM**

9. Admitted.

10. Admitted.

11. Admitted.

12. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of Plaintiff's Complaint. Said allegations are denied and strict proof is demanded.

13. Admitted.

14. Admitted.

15. The allegations contained in Paragraph 15 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

16. Admitted.

17. The allegations contained in Paragraph 17 are denied and strict proof is demanded.

18. The allegations contained in Paragraph 18 are denied and strict proof is demanded.

19. The allegations contained in Paragraph 19 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

20. The allegations contained in Paragraph 20 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

21. The allegations contained in Paragraph 21 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

22. The allegations contained in Paragraph 22 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

23. The allegations contained in Paragraph 23 are denied and strict proof is demanded.

24. The allegations contained in Paragraph 24 are denied and strict proof is demanded.

25. The allegations contained in Paragraph 25 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

26. The allegations contained in Paragraph 26 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

#### **IV. CLASS ALLEGATIONS**

27. The allegations contained in Paragraph 27 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

28. The allegations contained in Paragraph 28 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

29. The allegations contained in Paragraph 29 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

30. The allegations contained in Paragraph 30 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

31. The allegations contained in Paragraph 31 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

32. The allegations contained in Paragraph 32 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

33. The allegations contained in Paragraph 33 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

34. The allegations contained in Paragraph 34 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

35. The allegations contained in Paragraph 35 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

36. The allegations contained in Paragraph 36 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

37. The allegations contained in Paragraph 37 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

38. The allegations contained in Paragraph 38 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

39. The allegations contained in Paragraph 39 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

**COUNT I – UNIFORM COMMERCIAL CODE**

40. Defendant incorporates by reference Paragraphs 1 through 39 above, as if same were more fully set forth herein.

41. The allegations contained in Paragraph 41 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

42. The allegations contained in Paragraph 42 of Plaintiff's Complaint are conclusions of law to which no response is required. To the extent that a response is required, said allegations are denied.

**WHEREFORE**, Defendant, Diamond Credit Union, demands judgment in its favor and against all other parties, together with the cost of suit.

**NEW MATTER**

43. Defendant incorporates by reference Paragraphs 1 through 42 above, as if same were more fully set forth herein.

44. The Complaint, and each purported cause of action alleged therein, fails to state facts sufficient to constitute a claim against Defendant.

45. Plaintiff's claims and the claims of any punitive class members are barred, in whole, or in part, by the applicable statute of limitations.

46. The Complaint is barred because Plaintiff lacks standing to sue Defendant for the causes of actions pled in the Complaint.

47. Plaintiff's claims are barred, in whole, or in part, by the doctrine of unclean hands.

48. Plaintiff's attempt to pursue a collective action fails because independent and individual analysis of Plaintiff's claims, of the claims of each punitive class member, and of Defendant's defenses will be required.

49. Plaintiff is not entitled to conditional or final certification of the punitive class or to court facilitated notice because Plaintiff has not defined the class it purports to represent clearly, unambiguously and/or objectively; Plaintiff cannot adequately represent the interest of the purported class; and/or Plaintiff is not similarly situated to those it purports to represent.

50. Plaintiff's claims and the claims of any punitive class members are barred, in whole or in part, by the doctrine of waiver, estoppel and laches.

51. This Complaint is barred in whole or in part, because if Plaintiff's action is allowed to continue, there is a substantial potential for harm given the unique and individual issues of fact that will predominate adjudication of Plaintiff's claims.

52. The purported claims made by a plaintiff and members of the punitive class and general public on whose behalf plaintiff purports to sue are barred because they have not suffered injury-in-fact as a result of any alleged action of Defendant and cannot prove a concrete and particularized injury which is traceable to Defendant's alleged conduct and judicially redressable.

53. All claims in the Complaint are barred by the doctrine de minimis non curat lex.

54. This case is not appropriate for certification of a class action based on the facts alleged and the applicable law, including the lack of commonality, typicality, and adequacy, and thus all class allegations should be dismissed or stricken.

55. This class is not appropriate for class certification based on the facts alleged and the applicable law because the causes alleged lack commonality, typicality, and adequacy and because prosecuting separate actions would not create a risk of incompatible standards.

56. This case is not appropriate for class certification based on the facts alleged and the applicable law because the causes alleged lack commonality, typicality, and adequacy and because prosecuting separate actions would not create a risk that adjudications to individual class members would be dispositive or substantially impair the interest of nonparties.

57. This class is not appropriate for class certification based on the facts alleged and the applicable law because the classes alleged lack commonality, typicality and adequacy and because Defendant has not acted on grounds that apply generally to the proposed class.

58. This case is not appropriate for class certification based on the facts alleged and the applicable law because the classes predominately seek monetary relief.

59. This case is not appropriate for class because the classes alleged lack commonality, typicality and adequacy, are unmanageable, and neither questions of law nor facts predominate over individual issues and because a class action is not superior to other available methods for fairly and efficiently adjudicating the controversy.

60. Plaintiff's injuries and/or harm as alleged are superficial and abstract, none of which rise to the level of a concrete harm.

61. Defendant believes, and therefore avers that it complied with all applicable statutory requirements.

62. Any damages to which Plaintiff and/or putative class members might be entitled must be set-off or recouped against their liability to Defendant. These amounts include all amounts past due at the time of the repossession, the costs of repossession, any remaining deficiency, and all other amounts owed to Defendant.

63. The claims of one or more members of the putative class are precluded or should be dismissed because such individuals were, or are currently, parties to bankruptcy proceedings before other courts.



64. The claims of the Plaintiff, and/or members of the putative class, are defeated in whole or in part because Defendant sold the vehicles and repossessed the vehicles in a commercially reasonable manner.

65. The claims of one or more of the members of the putative class are defeated in whole or in part because Defendant and the notices complained of actually or substantially complied with all applicable common law, statutory laws, and all other laws.

66. The claims of one or more of the members of the putative class are defeated in whole or in part because the Plaintiff and/or members of the putative class failed to mitigate their damages.

67. The claims of the Plaintiff and/or members of the putative class are barred because the vehicles were, in fact, redeemed, or purchased by the Plaintiff and/or members of the putative classes, or such Plaintiff and/or members of the putative class reinstated their contract.

68. Plaintiff's allegations regarding the deficiency notices are not a legally cognizable claim.

69. Defendant reserves the right to amend or supplement its affirmative defenses to include defenses that may be applicable to other individuals who may be represented in this action. Defendant also reserves the right to amend or supplement its affirmative defenses to include defenses of which it is not presently aware.

Respectfully submitted,

LITCHFIELD CAVO LLP

By: /s/ Robert L. Sanzo,  
Robert L. Sanzo, Esquire  
Attorney for Defendant,  
Diamond Credit Union

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

NICOLE LUNDY, individually and on behalf of all others similarly situated,	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
	:	
Plaintiff,	:	No. 210401154
	:	
v.	:	
	:	
DIAMOND CREDIT UNION	:	
	:	
Defendant.	:	
	:	
	:	

VERIFICATION

I verify that the statements made in the foregoing Answer and New Matter are true and correct to the best of my knowledge, information, and belief and are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

4/14/22  
Date

John M. Tymergood, SVP/CLO  
Duly authorized representative of  
Diamond Credit Union

**CERTIFICATE OF SERVICE**

I, Robert L. Sanzo, Esquire, and GERALYN M. PASSARO, Esquire, *Pro Hac Vice*, do hereby certify that on April 20, 2022, I have served a true and correct copy of the via the court's electronic filing system on the following counsel of record:

Cary L. Flitter, Esquire  
Andrew M. Milz, Esquire  
Jody Thomas Lopez-Jacobs, Esquire  
Flitter Milz, P.C.  
450 North Narberth Avenue, Suite 101  
Narberth, PA 19072

Robert L. Sanzo  
Robert L. Sanzo, Esquire