

Court of Common Pleas of Philadelphia County  
Trial Division

**Civil Cover Sheet**

For Prothonotary Use Only (Docket Number)	
<b>APRIL 2021</b>	<b>001154</b>
E-Filing Number: 2104028386	

PLAINTIFF'S NAME NICOLE LUNDY	DEFENDANT'S NAME DIAMOND CREDIT UNION
----------------------------------	--

PLAINTIFF'S ADDRESS 812 DELTA AVENUE READING PA 19605	DEFENDANT'S ADDRESS 1600 MEDICAL DRIVE POTTSTOWN PA 19464
---	---

PLAINTIFF'S NAME	DEFENDANT'S NAME
------------------	------------------

PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS
---------------------	---------------------

PLAINTIFF'S NAME	DEFENDANT'S NAME
------------------	------------------

PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS
---------------------	---------------------

TOTAL NUMBER OF PLAINTIFFS 1	TOTAL NUMBER OF DEFENDANTS 1	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions
---------------------------------	---------------------------------	---

AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Mass Tort <input type="checkbox"/> Commerce <input type="checkbox"/> Settlement <input type="checkbox"/> Jury <input type="checkbox"/> Savings Action <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Minors <input type="checkbox"/> Non-Jury <input type="checkbox"/> Petition <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> W/D/Survival <input checked="" type="checkbox"/> Other: CLASS ACTION
--	---

CASE TYPE AND CODE C1 - CLASS ACTION
---

STATUTORY BASIS FOR CAUSE OF ACTION
-------------------------------------

RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)	<p style="text-align: center;"><b>FILED PRO PROTHY APR 15 2021 M. BRYANT</b></p>	IS CASE SUBJECT TO COORDINATION ORDER? YES    NO
--	--	---

**TO THE PROTHONOTARY:**  
Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: NICOLE LUNDY  
Papers may be served at the address set forth below.

NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY CARY L. FLITTER	ADDRESS FLITTER MILZ, P.C. 450 N. NARBERTH AVENUE SUITE 101 NARBERTH PA 19072
PHONE NUMBER (610) 822-0782	FAX NUMBER (610) 667-0552

SUPREME COURT IDENTIFICATION NO. 35047	E-MAIL ADDRESS cflitter@consumerslaw.com
---	---

SIGNATURE OF FILING ATTORNEY OR PARTY CARY FLITTER	DATE SUBMITTED Thursday, April 15, 2021, 10:22 am
---	--

FLITTER MILZ, P.C.  
BY: CARY L. FLITTER  
IDENTIFICATION NO. 35047  
ANDREW M. MILZ  
IDENTIFICATION NO. 207715  
JODY THOMAS LÓPEZ-JACOBS  
IDENTIFICATION NO. 320522  
450 North Narberth Avenue, Suite 101  
Narberth, PA 19072  
(610) 822-0782

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

Plaintiff,

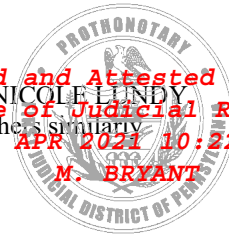
vs.

DIAMOND CREDIT UNION,

Defendant.

ATTORNEYS FOR PLAINTIFF NICOLE LUNDY  
individually and on behalf of all others similarly  
situated

Filed and Attested by the  
Office of Judicial Records  
15 APR 2021 10:22 am  
M. BRYANT



MAJOR NON-JURY CASE

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

NO.

CLASS ACTION

**TO THE DEFENDANT:**

**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 REFERRAL & INFORMATION 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:  
Philadelphia Bar Association  
One Reading Center  
Philadelphia, PA 19107  
(215) 238-1701

FLITTER MILZ, P.C.  
BY: CARY L. FLITTER  
IDENTIFICATION NO. 35047  
ANDREW M. MILZ  
IDENTIFICATION NO. 207715  
JODY THOMAS LÓPEZ-JACOBS  
IDENTIFICATION NO. 320522  
450 North Narberth Avenue, Suite 101  
Narberth, PA 19072  
(610) 822-0782

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

MAJOR NON-JURY CASE

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

Plaintiff,

vs.

DIAMOND CREDIT UNION,

Defendant.

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

NO.

CLASS ACTION

## **CLASS COMPLAINT**

### **I. INTRODUCTION**

1. This is a consumer class action brought against an automobile lender to redress systemic violations of Pennsylvania's Uniform Commercial Code ("UCC"), 13 Pa C.S. § 9601, et seq. The UCC requires secured parties who utilize self-help repossession to provide consumers with proper notice when repossessing and reselling a financed vehicle. Defendant has failed to do so.

2. Defendant Diamond Credit Union ("Credit Union"), regularly finances the purchase of automobiles in Pennsylvania. When the Credit Union believes that a consumer has defaulted on a secured vehicle loan, it repossesses and then resells the vehicle. In the course of so doing, the Credit Union failed to provide Plaintiff and the class with the proper notice of disposition of collateral required by Pennsylvania Law, including Pennsylvania's Uniform Commercial Code.

3. Because self-help repossession is conducted without judicial authorization or oversight, the UCC requires a secured creditor like Defendant to adhere strictly to the Code's notice requirements.

4. Failure to provide proper notice of disposition of repossessed consumer goods is a violation of the Code that provides statutory minimum damages for Plaintiff and the class of consumer borrowers she seeks to represent.

## **II. PARTIES**

5. Plaintiff Nicole Lundy ("Lundy") is an adult individual, consumer, and nurse practitioner who currently resides at 812 Delta Ave., Reading, PA 19605.

6. Defendant Diamond Credit Union is a Pennsylvania-chartered credit union with an office for the regular conduct of business at 1600 Medical Drive, Pottstown, PA 19464.

7. The Credit Union provides services and exclusive packages to its members and employer partners located in this county and elsewhere in the Commonwealth.

8. The Credit Union has entered into dozens of long-term mortgage loans secured by property situated in Philadelphia. The Credit Union has entered into membership agreements, and extended loans and other banking services with individuals residing in Philadelphia, and elsewhere in Pennsylvania.

## **III. STATEMENT OF CLAIM**

### **Ms. Lundy's Experience**

9. On or about September 4, 2018, Mrs. Lundy purchased a used 2016 Honda Odyssey ("Odyssey").

10. The Credit Union financed the transaction and took a security interest in the vehicle pursuant to Closed-End Note, Disclosure, Loan and Security Agreement dated September 4, 2018

providing for 66 installment payments toward the purchase of the Odyssey (hereinafter referred to as “Installment Agreement”).

11. Under the Installment Agreement, the Credit Union obtained a security interest in Odyssey purchased with the proceeds of the contract.

12. With her family income reduced due to the COVID-19 pandemic, Mrs. Lundy fell behind in her payments.

13. In or about November 2020, the Credit Union declared a default.

14. In November 2020, the Credit Union, as secured party, repossessed Ms. Lundy’s automobile or caused it to be repossessed.

15. Pennsylvania law requires a prompt post-repossession notice to the borrower, bearing specific disclosures.

16. On or about November 18, 2020, the Credit Union issued to Ms. Lundy a “Notice of Repossession [sic] and Intended Sale” (“Repossession Notice”).

17. The Repossession Notice does not meet the requirements of Pennsylvania law.

18. On information and belief, the Credit Union sent the same or a substantially similar form Repossession Notice to many consumers in Philadelphia and nearby counties.

**Governing Law for Repossession Notices**

19. Article 9 of the Uniform Commercial Code (“UCC”), 13 Pa. C.S. § 9601, et seq., governs the repossession of vehicles in Pennsylvania, as do other statutes.

20. Under the UCC, 13 Pa. C.S. § 9610, “[E]very aspect of a disposition of collateral ... must be commercially reasonable”. This requirement includes post-repossession notice.

21. Under the UCC, 13 Pa. C.S. §§ 9611, 9614, Defendant was required to provide “reasonable authenticated notification of disposition” of the collateral.

22. Under the UCC, 13 Pa. C.S. § 9623(c)(2) and other laws, a debtor may redeem collateral “at any time before the secured party... has disposed of collateral or entered into a contract for its disposition under section 9610.”

23. Defendant failed to provide proper and commercially reasonable notification of disposition to Plaintiff and the class of borrowers she seeks to represent.

24. In the course of the repossession and disposition process, Defendant did not act in a commercially reasonable manner toward Plaintiff and the class, and did not provide required or adequate notice of repossession.

**Statutory Damage Formula**

25. 13 Pa. C.S. § 9625(c)(2) provides for damages for a secured party’s failure to follow the proper procedures upon repossession. The statute allows a consumer debtor such as Plaintiff (and the putative class) to recover minimum damages of “not less than” the credit service charge plus 10% of the principal amount of the obligation. *Id.*

26. The statutory damages are derived from a straightforward and uniform arithmetic calculation.

**IV. CLASS ALLEGATIONS**

27. Plaintiff brings this action on her own behalf and on behalf of a class pursuant to Rules 1701-1717 of the Pennsylvania Rules of Civil Procedure.

28. Plaintiff proposes to define the “Repossession Notice Class” as All Persons:

- (a) who purchased a motor vehicle as a consumer good;
- (b) who financed the vehicle purchase through the Credit Union, or whose installment contract or finance agreement was later assigned to the Credit Union;
- (c) from whom the Credit Union, as secured party, repossessed the vehicle or ordered it repossessed; and

- (d) who had a Pennsylvania address as of the date of repossession;
- (e) in the period commencing six years prior to the filing of the Complaint in this action, through the date of class certification.

29. On information and belief, the class is so numerous that joinder of all members is impractical. This matter involves form notices sent out to consumers in Philadelphia and elsewhere in Pennsylvania.

30. There are questions of law or fact common to the class. These include:

- (a) Whether Plaintiff and the class obtained motor vehicle financing through the Credit Union and pledged the vehicle as collateral;
- (b) Whether the Credit Union repossessed the financed vehicle or ordered it repossessed;
- (c) Whether the Credit Union failed to send the Repossession Notice in the form and manner required under Pennsylvania law after repossessing a vehicle;
- (d) The uniform statutory damages provided for such misconduct;

31. The claim of Plaintiff is typical of those of the Repossession Notice Class. All are based on the same factual and legal theories. All class members financed automobiles through the Credit Union and pledged their vehicle as collateral. The Credit Union declared a default on all.

32. Plaintiff will fairly and adequately protect the interest of the class. Plaintiff has no interest antagonistic to those of the class.

33. Plaintiff's counsel is competent and experienced in consumer class actions in general and in UCC and repossession class actions specifically.

34. Defendant acted on grounds generally applicable to the class, thereby making final relief appropriate with respect to the class as a whole.

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

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

37. This class action provides a fair and efficient method for adjudication of the controversy.

38. 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.

39. The size of the class and any trial would be readily manageable.

**COUNT I**  
**UNIFORM COMMERCIAL CODE**

40. Plaintiff repeats the allegations set forth above as if the same were here set forth at length herein.

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

42. Defendant failed to act in a commercially reasonable manner toward Plaintiff and the class.

**WHEREFORE**, Plaintiff Nicole Lundy prays that this Court certify the matter as a class action and enter judgment for Plaintiff and the class members:

- (a) Awarding statutory damages to Plaintiff and the Repossession Notice Class as provided by the UCC, 13 Pa. C.S. § 9625(c);
- (b) Declaring that the Repossession Notices used by Defendant in respect to Plaintiff and the Class fails to comport with the provisions of Pennsylvania law;



- (c) For disgorgement of sums paid;
- (d) For interest and costs; and,
- (e) Granting such other and further relief as may be deemed just and proper.

Respectfully submitted:

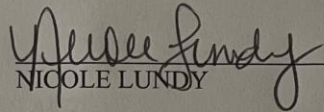
Date: 4/15/2021

*s/Cary L. Flitter* \_\_\_\_\_  
CARY L. FLITTER  
ANDREW M. MILZ  
JODY THOMAS LÓPEZ-JACOBS  
**FLITTER MILZ, P.C.**  
450 N. Narberth Avenue, Suite 101  
Narberth, PA 19072  
(610) 822-0782  
Email: [cfitter@consumerslaw.com](mailto:cfitter@consumerslaw.com)  
Email: [amilz@consumerslaw.com](mailto:amilz@consumerslaw.com)  
Email: [jlopez-jacobs@consumerslaw.com](mailto:jlopez-jacobs@consumerslaw.com)  
**Attorneys for Plaintiff and the Class**

**VERIFICATION**

I, NICOLE LUNDY, do hereby state that the statements contained in the Class Action Complaint are true and correct to the best of my knowledge, information, and belief. I make this statement with the knowledge that the statements contained herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

DATE: 3/27/21

  
NICOLE LUNDY