IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HUGH KELLY and CHRISTINE KELLY, individually and on behalf of all others similarly situated,	)	CIVIL ACTION
Plaintiffs,	)	CLASS ACTION
v.	)	Case No. 2:20-cv-03698
SANTANDER CONSUMER USA, INC.,	)	
Defendant.	)	

PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AGREEMENT, CERTIFICATION OF SETTLEMENT CLASS, APPROVAL OF ATTORNEY FEES AND COSTS, ENTRY OF FINAL JUDGMENT, AND DISMISSAL WITH PREJUDICE

AND NOW COME Plaintiffs, Hugh Kelly and Christine Kelly, by and through their undersigned counsel, who respectfully request that this Honorable Court enter a Final Approval Order in the form attached hereto: (i) granting Final approval of the Settlement Agreement and the Settlement of this action; (ii) Certifying, unconditionally, the Settlement Class as defined in the Settlement Agreement; (iii) Approving Class Counsel fees as requested; (iv) Approving Class Counsel Costs and Settlement Administration Costs incurred to date; (v) Approving the Incentive Awards to the Representative Plaintiffs; (vi) Requiring Defendant to undertake whatever steps are prescribed in the Settlement Agreement to request the removal of the tradelines from Settlement Class Members' credit reports; (vii) Requiring Defendant to Fund the Settlement, as specified in the Settlement Agreement; (viii) Entering final judgment in this matter; and; (ix) Dismissing the Released Claims with prejudice, leaving open the docket for administrative matters only.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent to all counsel of record on the date of filing via the Court's electronic court filing system (ECF).

SHENKAN INJURY LAWYERS, LLC.
/s/ Richard E. Shenkan
Richard E. Shenkan
Co-Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VINCENT SORACE, JOSEPH YERTY, TAMMY YERTY, JAMES ZARONSKY, LINDA ZARONSKY, VIKTOR STEVENSON, ASHLEY YATES, and KIMBERLY SOLOMON-ROBINSON, individually and on behalf of a class of similarly situated persons, Plaintiffs, v. WELLS FARGO BANK, N.A., Defendant.	)	CIVIL ACTION No. 2:20-CV-4318 Hon. Gerald J. Pappert

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR UNCONTESTED MOTION FOR FINAL APPROVAL OF SETTLEMENT AGREEMENT, CERTIFICATION OF SETTLEMENT CLASS, APPROVAL OF ATTORNEY FEES AND COSTS, ENTRY OF FINAL JUDGMENT, AND DISMISSAL WITH PREJUDICE

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[1] Class Counsel will immediately furnish any order or opinion upon request.

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Plaintiffs, Hugh Kelly and Christine Kelly (together, "Plaintiffs"), by and through their undersigned counsel, submit this Memorandum of Law in Support of their Uncontested Motion for Final Approval of Settlement Agreement, Certification of Settlement Class, Approval of Attorney Fees and Costs, Entry of Final Judgment, and Dismissal with Prejudice, stating as follows:

I. OVERVIEW

Plaintiffs Christine and Hugh Kelly, on their own behalf and on behalf of similarly situated consumers, have asserted claims against Defendant, Santander Consumer USA, Inc. ("SC"), under the Pennsylvania Uniform Commercial Code, 13 Pa.C.S. §§ 9601, *et. seq.* (the "UCC"), independently, and in *pari materia* with the Motor Vehicle Sales Finance Act, 12 Pa.C.S. § 6251 *et. seq.* (the "MVSFA").[1] The claims relate to SC's form "Post-Repossession Consumer Disclosure Notices" ("Notices of Repossession") that it sent to Plaintiffs and the putative class members after it repossessed their motor vehicles. Plaintiffs allege that SC systematically included an itemization in the Notices of Repossession for storage fees that were not incurred by SC and/or were not actual, reasonable, and necessary, failed to disclose certain fees on the Notices of Repossession, and assessed (or permitted third parties to assess) personal property fees as a condition for redeeming their vehicles that were not reasonable, actual, and necessary expenses incurred by SC. Plaintiffs alleged these practices rendered the redemption amounts listed on the form Notices of Repossession systematically inaccurate. Plaintiffs, on their own behalf and on behalf of the putative class members, sought statutory damages under 13 Pa.C.S. § 9625(b)(2) for SC's alleged violations of the UCC, independently, and *in pari materia* with the MVSFA.

[1] The MVSFA was originally found in Chapter 7 of Title 69 of Purdon's Statutes. In 2014, it was repealed and recodified in Chapter 62 of Title 12 of Pennsylvania Consolidated Statutes.

After a year of protracted litigation and just over another year of complicated settlement negotiations, Plaintiffs and SC (together the "Parties") reached an agreement to settle this case on a class wide basis, providing significant benefit to 48,108 (putative) class members (borrowers and co-borrowers) involving 37,477 unique loans (or accounts). Pursuant to the Settlement Agreement, attached hereto as **Exhibit 1**, SC has agreed:

(1) To pay a total of $14 million[2] into a Settlement Fund, which will be distributed to the Settlement Class Members on a per account basis after payment of Incentive Awards to the class representatives, payment of settlement administration costs, and payment of Attorneys' Fees and Expenses;

(2) To compromise Deficiency Balances in the amount of $269,204,45.05, with the exception of Settlement Class Members whose deficiency balances arose after a reinstatement – where the borrower paid the amount past due (plus repossession expenses) in order to have their vehicle returned to them – and then had their vehicle repossessed again after July 9, 2020 (the end of the class period).

(3) To request that the three major Credit Reporting Agencies delete the entire credit tradeline associated with all Settlement Class Members' Accounts (including all references to the alleged defaulted loan and repossession), to the extent SC submitted any tradeline information to them, and not to request that the Credit Reporting Agencies reinstate any of these tradelines;

(4) To have made a good faith effort to have ceased all collection efforts relating to the Deficiency Balances of Class Members upon Preliminary Approval; and,

(5) To return any payments made by Settlement Class Members towards their Deficiency Balances on or after final approval and the Effective Date.

On December 16, 2022 the Court granted Plaintiffs' Motion for Preliminary Settlement Approval, Conditional Certification of Settlement Classes, and Approval of Class Settlement Notice. ECF 91; ECF 94. Pursuant to Federal Rule of Civil Procedure 23(e), that Order (the "Preliminary Approval Order"), *inter alia*: (i) preliminarily approved the Parties' proposed

[2] The funds have been invested in treasury bills which, as of the date of the initial distribution, is expected to add an additional $450,000 to the settlement fund. See Affidavit of Dorothy Sue Merryman, **Exhibit 2**.

settlement in this action (the "Settlement"), as memorialized in the Settlement Agreement; (ii) preliminarily certified the Class for settlement purposes; (iii) preliminarily appointed Plaintiffs as class representatives of the Class; (iv) preliminarily appointed Plaintiffs' undersigned counsel as Class Counsel; (v) appointed Class-Settlement.com as the third-party Settlement Administrator; (vi) approved the short form and long form Class Notices informing Class Members of the Settlement and their rights in connection therewith; (vii) approved the method of dissemination of the short form and long form Class Notices; (viii) set the date for a hearing as to Final Approval of the Settlement, for October 17, 2023 – which was more recently rescheduled to October 18, 2023 (ECF 101); (ix) set the deadline for Class Members to request exclusion from the Class or to object to the Settlement for 60 days after the mailing date of the short form Class Notice (September 22, 2023); and, (x) stayed this Action pending Final Approval.

The Court approved Settlement Administrator established the settlement website and sent the Court approved Short Form Class Notice to the 48,108 Settlement Class Members on July 24, 2023. The deadline for Class Members to object to the settlement terms or opt-out of the settlement expired 60 days thereafter, on September 22, 2023. As of September 27, 2023, five class members, involving three accounts, who have opted out and there have been no objections.

Plaintiffs now move the Court, pursuant to Federal Rule of Civil Procedure 23(e), for an order in the form attached hereto (the "Final Approval Order"), *inter alia*: (i) granting final approval of the Settlement Agreement; (ii) certifying the Class; (iii) awarding the requested attorney fees and approving the reimbursement of counsel's expenses; (iv) approving the requested service awards to the Representative Plaintiffs; (v) entering final judgment; and (vi) dismissing this case with prejudice.

II. BACKGROUND

A. Procedural History

This case was filed in the Pennsylvania Court of Common Pleas for Philadelphia County on June 30, 2020 (ECF 1-7) and was removed to this Court on July 30, 2020. (ECF 1). SC sought to have the case dismissed (ECF 3) and Plaintiffs sought to have the case remanded to state court. (ECF 8; ECF 12; ECF 15; ECF 18). The Court denied Plaintiffs' Motion for Remand (ECF 20; ECF 21) and denied SC's Rule 12 Motion to Dismiss as moot after Plaintiffs filed their first Amended Complaint on March 9, 2021. (ECF 22; ECF 23). SC filed its Answer on March 18, 2021. The Court held a Rule 16 conference on May 4, 2021 and the Parties commenced discovery shortly thereafter. (ECF 26; ECF 27; See also, ECF 31-39).

For approximately five (5) months, the Parties engaged in discovery, including written discovery, third-party discovery by Plaintiff, and depositions of putative Class Members (See ECF 33-37; ECF 42-43), which involved multiple discovery disputes, multiple meet-and-confers, a Motion to Compel (ECF 44), and other extensive motion practice. (*Id.* See also, ECF 31-32; ECF 44, ECF 48-61). On September 30, 2021, the Parties filed a Joint Motion to Stay Litigation (ECF 60-63), which the Court granted on October 6, 2021. The Court granted several joint motions to extend the stay to allow the parties to continue their settlement dialogue to resolve the matter. (ECF 65, ECF 72, ECF 74, ECF 76, ECF 79, ECF 81, ECF 83, and ECF 85). Plaintiffs filed their Motion for Preliminary Settlement Approval, Conditional Certification of Settlement Classes, and Approval of Class Settlement Notice on December 5, 2022, which the Court granted on December 16, 2022. (ECF 91; ECF 94).

B. Plaintiffs' Claims and Positions in This Case

The UCC and MVSFA set forth very specific requirements for the Notices of Repossession that a creditor must provide to its borrower in connection with the repossession and resale of its collateral. It is Plaintiffs' position that the Notices of Repossession, which are sent immediately following a vehicle repossession, must comply with the UCC, independently, and in conjunction with the MVSFA *in pari materia*. Creditors are held to strict compliance with the post-repossession disclosure notice requirements of these statutes.

Pursuant to Pennsylvania statutory construction rules, "[s]tatutes or parts of statutes are *in pari materia* when they relate to the same persons or things or to the same class of persons or things." 1 Pa.C.S. §1932(a). "Statutes *in pari materia* shall be construed together, if possible, as one statute." 1 Pa.C.S. §1932(b). The UCC and MVSFA both set forth post-repossession disclosure notice requirements for secured parties who conduct self-help repossessions (other than by legal process with writ of replevin). These statutes relate to the same persons or things and/or to the same class of persons or things – i.e., debtors whose vehicles were repossessed outside the judicial process. Therefore, Plaintiffs maintain that these statutes are to be interpreted in *pari materia* and must be construed together.

Thirteen Pa.C.S. §9611 requires SC to send a reasonable, authenticated notification of disposition (i.e., a Notice of Repossession) following a vehicle repossession providing the borrower with information about the repossession and the approaching sale of collateral and their right to redeem the vehicle back. Moreover, 13 Pa.C.S. §9610(b) prohibits the sale of the collateral if the disposition is not reasonable, which includes all aspects of the disposition from repossession to sale, including the sending reasonable post-repossession disclosure notices ("Notice of Repossession"). The MVSFA, 12 Pa.C.S. § 6254, also requires that a Notice of Repossession be

sent to the borrower after their vehicle is repossessed. The required contents of the Notice of Repossession are set forth in the UCC at 13 Pa.C.S. § 9614 (which also incorporates § 9613), and in the MVSFA at 12 Pa.C.S. § 6254, in *pari materia* with the UCC.

Liability under the UCC does not require any showing of harm to the putative class members, or any reliance. Rather, "every noncompliance with the requirements of Part 6 in a consumer-goods transaction results in liability, regardless of any injury that may have resulted." Official Comment 4 to 13 Pa.C.S. § 9625 (Emphasis added). Further, the "notice requirement protects the debtor, and therefore should be construed strictly." *White & Summers, Uniform Commercial Code* § 34-12(b)(5th ed.). Moreover, 13 Pa.C.S. § 9625(a) states:

> **(a) Judicial orders concerning noncompliance.** If it is established that a secured party is not proceeding in accordance with this division, a court may order or restrain collection, enforcement or disposition of collateral on appropriate terms and conditions. (Emphasis added).

Plaintiffs claim, *inter alia*, that the uniform Notices of Repossession which SC sent to Plaintiffs and the putative class members included improper storage fees as an "expense," that SC did not actually incur. In turn, the redemption amounts stated in the Notices of Repossession were uniformly inflated. Plaintiffs also contend that the Notices of Repossession failed to list certain fees which customers would need to pay to redeem their repossessed vehicle. Plaintiffs asserted that these disclosure notice defects resulted in statutory violations which rendered the Notices of Repossession *per se* commercially unreasonable as a matter of law. Plaintiffs assert that any obligation arising from a deficiency balance is not owed. Plaintiffs allege that common factual patterns underlie Plaintiffs' claims and the claims of the members of the proposed Class, as SC mailed the same (or substantially similar) Notices of Repossession to Plaintiff and the Class Members, with the same alleged statutory violations. Plaintiffs further contend that any obligation arising from a deficiency balance is not owed.

C. SC's Defenses and Positions in this Case

For its part, SC denies, *inter alia*, that Plaintiffs' claims have merit or that their description of the applicable legal framework is correct. SC contends that the Notices of Repossession it sent to Plaintiffs and the putative class members complied in all respects with its statutory obligations, and denies all liability. SC further disputes that the MVSFA and UCC can or should be read *in pari materia* and denies that any aspect of the Notices of Repossession rendered the notices inadequate or caused the disposition of any Class Member's vehicle to be commercially unreasonable. SC also claims that it is entitled to pursue collection of the disputed deficiency balances and to retain any amounts paid toward them.

D. Class Counsel's Investigation and Discovery

The Court held a Rule 16 conference on May 4, 2021 and the parties commenced discovery shortly thereafter. (ECF 26; ECF 27; See also, ECF 31-39). Discovery was contentious and heavily litigated before the case was stayed. Plaintiffs served SC with their First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission on May 11, 2021. SC served its Objections and Responses to this discovery on June 11, 2021. After numerous meet-and-confer sessions and correspondence regarding alleged deficiencies in SC's discovery responses, Plaintiffs filed a Motion to Compel Discovery on August 24, 2021. (ECF 44). At that point, SC had produced approximately 1,000 pages of documents and a spreadsheet with certain class information for 38,920 Accounts. Plaintiffs also subpoenaed several third-party vendors that SC used in relation to its repossession practices. (See ECF 33-37).

Plaintiffs began scheduling depositions and serving subpoenas for same in August 2021. Plaintiffs sought to depose six individuals who Plaintiffs anticipated would have knowledge regarding (1) SC's computer systems and electronically stored information; (2) reinstatement and

redemption procedures; and, (3) fee and expense information relating to Santander's third-party vendors and the alleged illegal fees. The protocol and sequence of the depositions was then litigated. (See ECF 48-56, ECF 58). The Court granted in part and denied in part SC's Motion for a Protective Order and denied SC's Motion for Entry of Remote Deposition Protocol. (ECF 58). Thereafter, Plaintiffs' Counsel elicited testimony from a SC employee which allowed Plaintiffs' Counsel to further assess the claims and defenses, as well as class certification issues particularly with respect to the (alleged improper) daily storage fee of $25.00 itemized in the Notices of Repossession. Scheduling efforts were underway for the ESI deposition.

After Plaintiffs filed their Motion to Compel discovery, SC produced an additional (approximately) 2,000 pages of documents in September 2021. SC then filed its Response to Plaintiffs' Motion to Compel Discovery on September 21, 2021. Plaintiffs' Reply was due on October 12, 2021 (ECF 57); however, the parties filed a Joint Motion to Stay Litigation pending mediation (ECF 60-63) on September 30, 2021 (approximately two weeks after the deposition of Randy Bockenstedt, an SC employee). The Court granted the Motion to stay on October 6, 2021. (ECF 65). An additional (approximately) 3,500 pages of documents were produced by SC on November 24, 2021. In total, more than 6,500 pages of documents were produced, including form Notices of Repossession, contracts including arbitration provisions and class action waivers, policy and procedure manuals, and contracts between SC and its vendors. Through this discovery, Plaintiffs' counsel discovered enough information to evaluate the class's claims and the respective risks and benefits of the parties' claims and defenses sufficiently to engage a robust, productive mediation and settlement dialogue.

E. Settlement Negotiations

The Settlement Agreement is the product of extensive and vigorous arms-length negotiations between the parties including through an experienced and well-respected mediator, Professor (Emeritus) Eric D. Green of Resolutions, LLC. The Parties engaged in two mediation sessions with Professor Green on January 28, 2022 and February 8, 2022. After mediation, and countless telephone conferences (resulting in numerous drafts) over the course of a year to negotiate the detailed terms of the Settlement, the Parties made certain concessions and finally reached a settlement.

III. SUMMARY OF THE SETTLEMENT TERMS

The Parties have agreed to the terms of a Settlement Agreement, attached, to resolve the claims of all Class Members, and which would provide substantial benefits to them if final approval is granted. (**Exhibit 1**, Settlement Agreement). The key terms are set forth below.

A. The Class and Class Notice

Under the Settlement Agreement, the "Class" is defined as all SC customers: (1) who entered into a retail installment sales contract for the financing of the purchase of a Motor Vehicle; and, (2) from whom SC repossessed the vehicle or ordered it to be repossessed, causing a repossession to occur; and, (3) to whom SC[3] sent a Notice of Repossession to a Pennsylvania address at any time on or within the period commencing six years prior to the filing of the original complaint in this case, June 30, 2014, through July 9, 2020.[4]

At the preliminary approval stage, Plaintiffs advised the Court that SC's business records

[3] SC does business under other names, including Chrysler Capital. Certain Class Members may have received a Notice of Repossession on letterhead from Chrysler Capital. All Notices of Repossession at issue included reference to either Santander Consumer USA Inc. or Chrysler Capital.

[4] The Parties agreed in the Settlement that the class period would end on July 9, 2020 because SC modified its form Notices of Repossession used in Pennsylvania on this date.

as of June 6, 2021 indicated that there 49,927 class members involving 38,920 unique loans. Plaintiffs also advised the Court that, as part of the Settlement, SC agreed to use its best efforts to repurchase accounts that were sold to third parties for collection during a 120-day Repurchase Period following preliminary approval; that those accounts that SC could not repurchase would be excluded from the Settlement Class; and therefore, the class size and number of loans may decrease after the repurchase period. After completing its repurchase efforts and expiration of the repurchase period SC's business records reflect that the Class now consists of 48,108 class members involving 37,477 loans – a marginal decrease of 1,819 class members involving 1,443 loans from the time of preliminary approval.

After the expiration of the repurchase period, SC provided to the Court approved Settlement Administrator, Class-Settlement.com, a Notice List containing, *inter alia*, the following information for the 48,108 Settlement Class Members: (i) the last eight (8) digits of the Account number for each Account; (ii) the name(s) of the Class Member(s) associated with each Account; (iii) the last known mailing address for each Class Member; (iv) the Social Security Number for each Class Member; and (v) the total amount of the Deficiency Balance Compromise for each Account, as applicable, as of the date of the Preliminary Approval Order. (**Exhibit 1**, ¶ 3.1; **Exhibit 2**, Affidavit of Settlement Administrator ¶ 10).

Class-Settlement.com mailed the court approved Short Form Class Notice on July 24, 2023, which provided certain information and directed the Class Members to a website, www.NoticeClassAction.com. (**Exhibit 2A**, Exemplar Short Form Class Notice). There, Settlement Class Members could access copies of key case documents, including the Class Action Complaint, First Amended Class Action Complaint, Settlement Agreement, Preliminary Approval Order, and the Notice of Change in Final Approval Date. They could also obtain a personalized

copy of the Long Form Class Notice (**Exhibit 2B**, Exemplar Long Form Class Notice), which included information on the Class Member's Deficiency Balance, accessible only with the unique Username and Password printed on each Class Member's Short Form Class Notice. The Long Form Class Notice could also be mailed to the Class Member upon request. (**Exhibit 2**, ¶¶ 6, 8).

Class-Settlement.com sent the Short Form Class Notice to all 48,108 persons on the Class List by U.S. First Class Mail, after first comparing the addresses against the U.S. Postal Service's National Change of Address (NCOA) database. (*Id.,* ¶ 11). 8,980 Short Form Class Notices were returned as undeliverable as of September 27, 2023. A total of 2,040 of the returned items contained forwarding information, or additional address information was obtained via skip-tracing, and those items were remailed. (*Id.,* ¶ 12). If the settlement is approved, Class-Settlement.com will continue research efforts to attempt to locate the remaining members for purposes of sending checks to Class Members. (*Id.,* ¶ 13).

The class settlement website also lists contact information for Class Counsel and the Settlement Administrator, as well as information relating to the dates and deadlines relevant to the settlement. (*Id.,* ¶ 14). Members were also able to request a Spanish-language version of the Long Form Notice by contacting the Class Administrator or Class Counsel. (*Id.*). There were 1,843 visits to the settlement website and 307 unique Class Members contacted Class-Settlement.com via phone or email as of September 27, 2023, in order to ask questions about the settlement, to provide updated address information, or to report members who are deceased. (*Id.,* ¶ 15-16).

The deadline for Settlement Class members to object to the terms of the settlement or opt-out of the Class expired on September 22, 2023, 60 days after the mailing date of the Short Form Class Notice (which was mailed July 24, 2023). As of September 27, 2023, Class-Settlement has received four requests to opt-out of the settlement, and no objections to the settlement. (*Id.,* ¶ 17).

One of the Class Members who opt-outed has subsequently withdrawn his opt-out request, leaving three opt-out accounts. Two of the three remaining accounts where there was an opt-out request involved accounts that had co-borrowers – i.e. two class members for each of those accounts. This renders both Class Members in both accounts excluded from the Class according to the Long Form Notice, which states: "If your Account has more than one borrower, a request for exclusion by any one borrower will be deemed to be a request for exclusion by all borrowers on the Account." (*Id.*, ¶ 18, **Exhibit 2B**, Section 18). Accordingly, there are five class members, involving three accounts, who have opted out.

B. Monetary Relief

1. Settlement Payment

Following preliminary approval, SC deposited the sum of Fourteen Million Dollars ($14,000,000.00) into an interest-bearing Qualified Settlement Fund ("QSF") escrow account with the Settlement Administrator. Per Class Counsel's instruction and with approval of the Court, the Class Administrator has invested the $14 million payment in U.S. Treasury Bills. Approximately $350,000 in interest has already been earned, and Class Counsel expects another $100,000 in interest to be earned on another 8-week U.S. Treasury Bills before the fund is distributed, totaling approximately $450,000 in interest between preliminary approval and distribution of payments. (See **Exhibit 2**, ¶ 19).

From this QSF, the Settlement Administrator shall pay: (1) Attorneys' Fees and Expenses (within thirty days after the Effective Date or entry of an order approving attorneys' fees, whichever is later); (2) the costs associated with the Class Notice and administration of the Settlement; and, (3) an incentive award to the representative plaintiffs (as approved by the Court, within sixty days of the Effective Date). The remainder will be distributed to the Settlement Class

equally on a per-Account basis. If an Account has more than one borrower, the payment for the Account will be split equally among the co-borrowers (unless a co-borrower objects to an equal distribution).

The Settlement Agreement provides that settlement checks that are returned as undeliverable or not cashed within 60 days of the First Distribution will be voided, and those checks shall be reissued and re-sent (Second Distribution). Checks that are returned as undeliverable or not cashed within sixty days after the Second Distribution will be voided. Thereafter, if there is $100,000 or more remaining in the Settlement Fund, a Third Distribution will be made, on a per-account basis, to Settlement Class Members that cashed a check in the First Distribution or Second Distribution. The Third Distribution checks will be voided sixty days after the Third Distribution. If $100,000 or more still remains in the Settlement Fund, a Fourth Distribution will be made, on a per-account basis, to Settlement Class Members that cashed a check in the Third Distribution. The Settlement Agreement also gives the Settlement Administrator flexibility to reissue settlement checks on an individual basis, with the approval of Class Counsel (e.g., if a check is returned as undeliverable and the Settlement Administrator learns of the correct address), so long as individual checks reissued during the First and Second Distribution are voided prior to the Third Distribution, and individual checks reissued during the Third and Fourth Distribution are voided no later than sixty days after the Fourth Distribution. After the Fourth Distribution, any remainder will be paid to Cy Pres Recipients who the parties designated, subject to Court approval, as the Pennsylvania Bar Association Pro Bono Fund and the National Foundation for Credit Counseling, to be equally divided.

2. Compromise of Disputed Deficiency Balances through an Accord and Satisfaction

Upon the Effective Date, the parties agree that SC will compromise all Deficiency Balances on Settlement Class Members' Accounts concerning Notices of Repossession sent during the Class Period. (**Exhibit 1**, §§ 1.44, 1.5, 1.20, 1.51 and 1.52). It is the Parties' mutual intent that this Deficiency Balance Compromise will be by way of an accord and satisfaction. (*Id.*, § 4.3.2). The elements of an accord and satisfaction have been satisfied, as set forth below. This compromise will amount to $269,204,457.05 in benefit conferred on the Class. Additionally, SC has agreed not to issue IRS 1099-C forms to Settlement Class Members in relation to the Deficiency Balance Compromise, unless directed to by the IRS, the Court, or another government body. It is Plaintiffs' position that the elements of an accord and satisfaction have been satisfied by this compromise of the Deficiency Balances. See *Niles v. Metropolitan Casualty Insurance Co. of New York*, 317 Pa. 545, 177 A. 754 (1935); *King v. Boettcher*, 616 A.2d 57 (Pa. Commw. Ct. 1992) (setting forth the elements of an accord and satisfaction). Here, a good faith dispute existed as to the validity of the Deficiency Balances arising from the Class Members' retail installment contracts (**Exhibit 1**, §§ 1.20, 21.2) and arm's length and good faith negotiations occurred between SC's counsel and Class Counsel regarding the reasonable dispute over whether the debt was owed (See, *Id.* §§ 9.8, 21.2), resulting in monetary and other consideration paid by SC in exchange for the full settlement of any and all claims against the borrowers relating to the disputed Deficiency Balances. (See, *Id.*, §§1.43, 10.2.1-10.2.3). The Deficiency Balances are disputed liabilities that are being fully compromised by way of an accord and satisfaction. (See *Id.*, §§ 1.20, 1.21, 4.3.2).

While the long form Class Notice that is available on the settlement website (referenced in the short form Class Notice) clearly states the Class Member should consult a tax professional

about the taxability of the Deficiency Balance Compromise,[5] there are good grounds to contest any tax assessment due to the "contested liability doctrine" and the accord and satisfaction language of this settlement. Particularly, because the parties had a good faith dispute concerning SC's right to pursue collection of these (disputed) deficiency balances, Plaintiffs contend that the compromise of this disputed deficiency balance should not be deemed taxable income pursuant to the "contested liability" doctrine. See, *Zarin v. Commissioner of Internal Revenue*, 916 F.2d 110 (3d Cir. 1990).

3. Compromise of Deficiency Judgements

The Settlement Agreement states that as of October 25, 2022, SC is not aware of any deficiency judgments or arbitration awards in its favor against any Class Member and does not intend to initiate any such claim for a deficiency judgment or award against any Class Member. However, if it is discovered that such a deficiency judgment or arbitration award exists, then SC will work collaboratively with Class Counsel to move the appropriate court to vacate such judgment(s) and expunge the docket.

4. Agreement to have Made a Good Faith Effort to Cease Collection Activities After Preliminary Approval, and to Return Payments Made After Final Approval and the Effective Date Occur

SC agreed that upon the date the Court enters a Preliminary Approval Order, it will voluntarily cease all collection efforts related to Class Members' Deficiency Balances, and will cease all efforts regarding any deficiency lawsuits or arbitrations against Class Members asserting

[5] The Court approved Long Form Class Notice states: **Will this affect my taxes? We cannot give you a definitive answer in this Notice.** A Deficiency Balance Compromise in an amount of $600.00 or more may result in the issuance of IRS Form 1099C. You should consult a tax professional regarding tax implications because all situations are unique. The parties have intended to compromise the Deficiency Balances by way of accord and satisfaction, and, if finally approved by the Court, will evidence the resolution of a good faith dispute. Under the "contested liability doctrine," you may not be liable to pay any tax. It is most prudent to consult your tax professional about your unique tax situation. (**Exhibit 2B**, § 13; Emphasis in original).

Released SC Claims.[6] (**Exhibit 1**, §§ 4.3.4). SC further agreed to return to the Settlement Class Members any payments the Settlement Class Members make toward their disputed Deficiency Balance on or after the Effective Date, ("Post Approval Payments").

C. Non-Monetary Relief – Requests for Deletion of Tradelines

The settlement also provides valuable relief other than a cash payment and compromise of the deficiency balances. No later than sixty (60) days after the Effective Date, SC will submit a request to the Credit Reporting Agencies (Experian, TransUnion, and Equifax), as well as any other Credit Reporting Agency SC reports to, for the deletion of the entire tradelines associated with the Settlement Class Members' Accounts to the extent SC submitted any tradeline information to the Credit Reporting Agencies. Sixty (60) days later, Class Counsel or a Class Member can submit a request to SC for SC to make a second request for the deletion of the tradeline for any Account where a Credit Reporting Agency has not deleted the tradeline, and SC will make a second request for deletion of the credit tradeline.

D. Releases

In exchange for the consideration set forth in the Settlement Agreement, the Class Releasors, shall release the SC Releasees from, and covenant not to sue, the SC Releasees in connection with, any and all Released Class Claims.[7] The Releases will not apply to any Class

[6] According to a Class Member, SC contacted her in an attempt to collect a debt. Class Counsel promptly raised this matter with SC's counsel to inquire whether collection efforts were, indeed, stopped. During the meet-and-confer session on October 2, 2023 and by letter dated October 3, 2023, SC's counsel assured the undersigned that the SC had fulfilled its obligation to voluntarily cease its collection efforts after preliminary approval in accordance with Section 4.3.4 of the Settlement Agreement and that the collection efforts as relating to the Class Member in question was just an anomaly, a "one off."

[7] Any and all claims, defenses, demands, actions, causes of action, offsets, setoffs, suits, damages, lawsuits, costs, relief for contempt, losses, attorneys' fees, expenses, or liabilities of any kind whatsoever in law or in equity, for any relief whatsoever, including monetary, sanctions or damage for contempt, injunctive, or declaratory relief, rescission, general, compensatory, special, liquidated, indirect, incidental, consequential, or punitive damages, as well as any and all claims for treble damages, penalties, interest, attorneys' fees,

Member who properly excludes themselves from the Settlement Class.

Likewise, SC shall release the Class Releasees of and from all Released SC Claims.[8]

E. Settlement Administration

The Settlement Agreement sets forth in detail the agreed upon class settlement procedures, including, *inter alia*, for: (i) the manner of notifying the Class Members of the Settlement and their rights (ii) the manner, form, and timing for Class Members to object to the Settlement or request exclusion from the Class; (iii) final approval; and, (v) distribution of the Settlement Fund.

IV. ARGUMENT

A. Final Approval of the Settlement Agreement Should be Granted

This Court has preliminarily determined that class certification appears appropriate for settlement purposes and has preliminarily approved the Agreement. (ECF 94). The Settlement

costs, or expenses, whether a known or Unknown Claim, suspected or unsuspected, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, that in any way concern, arise out of, or relate to (1) allegations that were or could have been asserted in the Complaint against SC relating to the Settlement Class Members' Accounts; or (2) any claim regarding or relating to the Notice of Repossession or any claim relating to the repossession or disposition of the Settlement Class Member's vehicles. The Released Class Claims do not include (a) claims arising out of the failure of any Party to perform in conformity the terms of this Agreement; (b) claims relating to any other loan or account not encompassed by this Action, including any Sold Account; or (c) claims or defenses arising from any repossession after the Class Period.

[8] Any and all claims, defenses, demands, actions, causes of action, offsets, setoffs, suits, damages, lawsuits, costs, relief for contempt, losses, attorneys' fees, expenses, or liabilities of any kind whatsoever in law or in equity, for any relief whatsoever, including monetary, sanctions or damage for contempt, injunctive, or declaratory relief, rescission, general, compensatory, special, liquidated, indirect, incidental, consequential, or punitive damages, as well as any and all claims for treble damages, penalties, interest, attorneys' fees, costs, or expenses, whether known or unknown, suspected or unsuspected, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, that (1) SC could have asserted in the Litigation that arise out of or relate to the Account; or (2) any claim regarding or relating to the Notice of Repossession or any claim relating to the repossession or disposition of the Settlement Class Member's vehicles, including collection of Settlement Class Members' Deficiency Balances that SC is fully compromising as part of this Agreement. The Released SC Claims do not include (a) claims arising out of the failure of any Party to perform in conformity the terms of this Agreement; (b) claims relating to any loan or account not encompassed by this Action, including any Sold Account; or (c) claims or defenses arising from any repossession after the Class Period. Nothing in this definition shall be construed as a limitation on SC from accepting payment by a Class Member, repossessing vehicles, or administering collections on Accounts that were reinstated and do not have a Deficiency Balance.

presented for the Court's consideration is fair, reasonable, and adequate, and warrants final approval. It follows significant informal investigation by Class Counsel, formal discovery, over a year of hard-fought litigation, and is the product of approximately one year of intense settlement negotiations to resolve numerous complicated, contentious issues.

1. Legal Standard for Final Approval

Fed. R. Civ. P. Rule 23(e) requires a district court to approve any settlement of a certified class before the settlement becomes final. The purpose of Rule 23(e) is to protect the unnamed members of the class. *In re Warfarin Sodium Antitrust Litig.,* 391 F.3d 516, 534 (3d Cir.2004). Under Rule 23(e), a district court acts as a fiduciary, guarding the claims and rights of the absent class members. *In re AT & T Corp.,* 455 F.3d 160, 175 (3d Cir.2006); *In re General Motors Corp. Pick–Up Truck Fuel Tank Prods. Liability Litig.,* 55 F.3d 768, 782 (3d Cir. 1995). However, it is also well-established that there is an overriding public interest in settling and quieting litigation in Federal courts. There is a "strong presumption in favor of voluntary settlement agreements" that the Third Circuit has "explicitly recognized with approval." *Ehrheart*, 609 F.3d at 594, *citing Pennwalt Corp. v. Plough*, 676 F.2d 77, 79-80 (3d Cir. 1982). This presumption is "especially strong in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation. *Ehrheart,* 609 F.3d at 595; *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d at 784. The strong judicial policy in favor of class action settlement "contemplates a circumscribed role for the district courts in settlement review and approval proceedings." *Id.*

In evaluating a class action settlement under Rule 23(e), a district court determines whether the settlement is fundamentally fair, reasonable, and adequate. *Fed. R. Civ. P. 23 (e)(2). See also, Ehrheart v. Verizon Wireless*, 609 F.3d 590, 592-93 (3d Cir. 2010); *In re Warfarin*

Sodium Antitrust Litig., 391 F.3d 516, 534 (3d Cir. 2004)). A presumption of fairness, adequacy, and reasonableness attaches where: (1) the settlement negotiations occurred at arm's length; (2) there was sufficient discovery (either formal or informal); (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected. *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d at 535; *In re Cendant Corp. Litig*., 264 F.3d 201, 232, footnote 18 (3d Cir. 2001); *In re Nat. Football League Players' Concussion Injury Litig.,* 307 F.R.D. 351, 387 (E.D. Pa. 2015) (citing cases).

The substance of a proposed class action settlement is evaluated by applying the (mandatory) factors set forth in *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975), and applying the (permissive) factors set forth in *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283 (3d Cir. 1998) and *In re Baby Prod. Antitrust Litig.*, 708 F.3d 163 (3d Cir. 2013), where applicable. See *In re Google Inc. Cookie Placement Consumer Privacy Litig.*, 934 F.3d 316, 329 (3d Cir. 2019); *Ward v. Flagship Credit Acceptance LLC*, 2020 WL 759389, at *11 (E.D. Pa., 2020); *In re Comcast Corp. Set-Top Cable Television Box Antitrust Litig.*, 2019 WL 4645331, at *11 (E.D. Pa., 2019).

In *Girsh*, the Third Circuit set forth the following specific factors that a court must consider in determining whether a settlement is fair, reasonable, and adequate:

(a) the complexity, expense and likely duration of the litigation;

(b) the reaction of the class to the settlement;

(c) the stage of the proceedings and the amount of discovery completed;

(d) the risks of establishing liability;

(e) the risks of establishing damages;

(f) the risk of maintaining the class action through the trial;

(g) the ability of the defendants to withstand a greater judgment;

(h) the range of reasonableness of the settlement fund in light of the best possible recovery; and,

(i) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Girsh, 521 F.2d at 157; *In re Nat. Football League Players' Concussion Inj. Litig*., 307 F.R.D. 351, 388 (E.D. Pa. 2015) (citing *Girsh*), *aff'd*,821 F.3d 410 (3d Cir. 2016).

After *Girsh*, the Third Circuit has suggested additional factors to consider, whether: (a) the pleadings, settlement negotiations, and the class certification motion have developed the underlying substantive issues such that all parties may assess the merits of the claims and defenses; (b) members of the Class have had a sufficient opportunity to opt out of the settlement; (c) the awards to the Representative Plaintiffs are fair, adequate and reasonable; and (d) the procedures for processing the individual claims under the settlement are fair and reasonable. *In re Prudential Sales Prac. Litig.*, 148 F.3d 283, 323 (3d Cir. 1998); *In re NFL Players*, 307 F.R.D. at 395-96.

In *Baby Products*, the Third Circuit articulated another consideration for evaluating a settlement: "the degree of direct benefit provided to the class." *In re Baby Prod. Antitrust Litig.*, 708 F.3d at 174. In making this determination, the Court may consider the number of individual awards compared to both the number of claims and the estimated number of class members, the size of the individual awards compared to claimants' estimated damages, and the claims process used to determine individual awards. *Id.* In *Baby Products*, the Court also noted that "[t]he role of a district court [in evaluating a class action settlement] is not to determine whether the settlement is the fairest possible resolution – a task particularly ill-advised given that the likelihood of success at trial (on which all settlements are based) can only be estimated imperfectly. The Court must determine whether the compromises reflected in the settlement…are fair, reasonable, and adequate

when considered from the perspective of the class as a whole." *In re Baby Prod. Antitrust Litig.*, 708 F.3d at 173–74 (3d Cir. 2013).

Federal Rule 23(e)(2), which went into effect December 1, 2018, enumerates similar factors.[9] This Rule states:

> (e) SETTLEMENT, VOLUNTARY DISMISSAL, OR COMPROMISE. The claims, issues, or defenses of a certified class – or a class proposed to be certified for purposes of settlement – may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:
>
> …
>
> (2) *Approval of the Proposal*. If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:
>
> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> (i) the costs, risks, and delay of trial and appeal;
>
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
>
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
>
> (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. Rule 23(e)(2)

[9] In *Ward v. Flagship Credit Acceptance LLC*, the Court explained that "[t]he Third Circuit's instruction to apply the *Girsh* factors, *Prudential* considerations, and *Baby Products* considerations postdates the 2018 amendments to Rule 23. Accordingly, the Court will adhere to this direction and analyze the fairness, reasonableness, and adequacy of the proposed settlement under the Third Circuit's framework, recognizing that this analysis addresses the 'core concerns' identified in Rule 23(e)(2)." *Ward v. Flagship Credit Acceptance LLC*, 2020 WL 759389, at *11, footnote 18 (E.D. Pa., 2020), citing *In re Google Inc. Cookie Placement Consumer Privacy Litig.*, 934 F.3d 316, 329 (3d Cir. 2019); *In re Comcast Corp. Set-Top Cable Television Box Antitrust Litig.*, 2019 WL 4645331, at *11 (E.D. Pa., 2019).

2. Analysis of the *Girsh* and Rule 23(e)(2) Factors

An evaluation of the relevant factors demonstrates that the settlement here fits well within the range of reasonableness and should be approved.

(a) The Complexity, Expense and Likely Duration of the Litigation

The first factor captures the probable costs, in both time and money, of continued litigation. *In re NFL Players*, 821 F.3d 410, 436-37 (3d Cir. 2016). Had this case continued, Plaintiffs would have had to undergo the significant expense of continued discovery, the uncertainty of the pending discovery motion, and the risks associated with a contested class certification motion, dispositive motions, trial, and, potentially, an appeal. The Settlement avoids all of these uncertainties while delivering very substantive relief to 48,108 class members. Early settlement of this action provides Settlement Class Members with a cash benefit, a comprehensive, full credit tradeline expungement benefit, and the full compromise of the Settlement Class Members' disputed Deficiency Balances of $269,204,457.05.

Significantly, the UCC makes no specific, express provision for credit expungement to ameliorate a credit injury, although Plaintiffs assert that such relief is clearly permitted under the UCC's equity provisions (13 Pa.C.S. §1103(b)). Additionally, a settlement allows the parties to negotiate the terms of the settlement to favorably consider the potential tax liability issue pertaining to the consumers (i.e., compromise of the disputed Deficiency Balances by way of an accord and satisfaction). Whether the Court, however, would adjudicate that the (disputed) Deficiency Balances should be compromised or otherwise uncollectible is not beyond challenge if the case were to proceed. The Settlement avoids the potential risks with respect to these legal determinations as well.

(b) The Reaction of the Class to the Settlement

The Opt-Out Deadline and Objection Deadline was September 22, 2023. The Settlement has been well received by the Class. No class members have filed objections, and only five class members (involving three accounts) have opted out. The Class Members had sufficient opportunity to object or opt-out, as they were given 60 days from the Short Form Class Notice mailing date.

(c) The Stage of the Proceedings and Amount of Discovery Completed

Plaintiffs' Counsel, Richard Shenkan, who has significant experience in these types of cases (including settling a number of class actions with similar Notice of Repossession violation claims), conducted considerable pre-complaint investigation and, after filing, engaged in formal and informal discovery to further investigate this case. This case was heavily litigated for over one year before successfully convincing the Defendant to open settlement dialogue with the aid of a mediator on a class-wide basis.

In this regard, Plaintiffs served written discovery in May 2021. SC served its Objections and Responses in June 2021. After attempting, unsuccessfully, to resolve a variety of discovery deficiencies, Plaintiffs filed a Motion to Compel Discovery on August 24, 2021. (ECF 44). At that point, SC had produced approximately 1,000 pages of documents and a spreadsheet with certain class information for 38,920 Accounts. Plaintiffs also engaged in third-party discovery with several third-party vendors that SC used in relation to its repossession practices, who made various objections but, some of which, ultimately produced responsive documents. SC produced an additional (approximately) 2,000 combined pages of documents in productions made on September 9, 2021, and September 17, 2021. In total, more than 6,500 pages of documents were produced, excluding hundreds of pages of spreadsheet information.

Moreover, Plaintiffs sought to depose several current and past employees of SC. After

litigating SC's Motion for a Protective Order, which the Court granted in part and denied in part, Plaintiffs proceeded with the deposition of SC's Senior Director of Collections and Recovery Operations, Randy Bockenstedt, on September 14, 2021. Approximately two weeks later, the parties filed their Joint Motion to Stay the case in order to discuss settlement. Plaintiffs' claims are predominantly focused on defects in form notices, and this deposition, coupled with the more than 6,500 documents produced, provided a sufficient platform for Plaintiffs' Counsel to assess and appreciate the legal issues/hurdles, the strengths and weaknesses of the claims on the merits (and for class certification), and the potential value of the claims in consideration of these factors, and to evaluate the outcome of a trial on the merits of liability and damages. *See In re NFL Players*, 821 F.3d at 439 ("What matters is not the amount or type of discovery class counsel pursued, but whether they had developed enough information about the case to appreciate sufficiently the value of the claims."). *See also, In re Prudential Insurance Co*., 148 F.3d 283, 319 (3d Cir. 1998).

(d) and (e) The Risks of Establishing Liability and Damages

The fourth and fifth *Girsh* factors survey the possible risks of litigation in order to balance the likelihood of success and the potential damage award if the case were taken to trial against the benefits of an immediate settlement. *In re Prudential Insurance Co*., 148 F.3d 283, 319 (3d Cir. 1998). While Plaintiffs submit that they have a strong case, SC vigorously disputes Plaintiffs' claims.

Additionally, while the statutory minimum damages flowing from such a liability finding would be straightforward and easy to calculate, the additional equitable remedies requested by Plaintiffs – including the requests for deletion of the credit tradelines – while well-founded in Plaintiffs' view, have yet to be the subject of any decisional appellate authority in Pennsylvania or the Third Circuit. This factor, therefore, strongly counsels in favor of preliminarily approving the

Settlement, which provides for these equitable remedies.

(f) The Risk of Maintaining the Class Action through the Trial

Because the Settlement avoids the risk of obtaining and keeping class certification through trial, this factor weighs in favor of the Settlement, although as the Third Circuit has noted, it bears little consideration in this context. See *In re NFL Players*, 821 F.3d at 440: "In a settlement class, this factor becomes essentially 'toothless' because "`a district court need not inquire whether the case, if tried, would present intractable management problems[,] ... for the proposal is that there should be no trial.' *Prudential*, 148 F.3d at 321 (quoting *Amchem*, 521 U.S. at 620, 117 S.Ct. 2231)."

This Court made a preliminary determination on class certification for purposes of preliminary approval (ECF No. 94). Plaintiffs believe each of the elements for class certification under Rule 23 are readily met here, that the Class could have been certified even if contested, and that the Class should be finally certified here for settlement. However, SC challenged the certification of the classes during litigation. Settlement eliminates the need to litigate the issue of class certification. While Plaintiffs believe they have the better of these arguments, this *Girsh* factor favors approval of the Settlement because it avoids the potential risk of failing to obtain initial class certification and failing to maintain same through trial.

(g) The Ability of the Defendant to Withstand a Greater Judgment

The seventh *Girsh* factor considers "whether the defendants could withstand a judgment for an amount significantly greater than the settlement." *In re Warfarin*, 391 F.3d at 537-38. Plaintiffs have no reason to believe that SC could not withstand a judgment greater than the proposed Settlement, but in light of the other factors, this does not counsel against a favorable settlement. *See Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 323 (3d Cir. 2011) ("in any class

action against a large corporation, the defendant entity is likely to be able to withstand a more substantial judgment").

(h) and (i) The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and All the Attendant Risks of Litigation

In re NFL Players, 821 F.3d at 440, the Third Circuit has explained that "[i]n evaluating the eighth and ninth *Girsh* factors, [the Court asks] whether the settlement represents a good value for a weak case or a poor value for a strong case. The factors test two sides of the same coin: reasonableness in light of the best possible recovery and reasonableness in light of the risks the parties would face if the case went to trial." At the same time, the Court must "guard against demanding too large a settlement based on its view of the merits of the litigation; after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution." *Sullivan*, 667 F.3d at 324 (*quoting In re General Motors*, 55 F.3d at 806).

The Settlement provides substantial relief to the Settlement Class Members. The full compromise of $269,204,457.05 in (disputed) Deficiency Balances is an important monetary component of the Settlement in addition to the substantial cash payment. Indeed, SC not only disputes Plaintiffs' demand to compromise the disputed Deficiency Balances, SC contends that even if Plaintiffs establish SC's liability under the UCC, SC, nonetheless, has the right to a setoff of the Class Members' Deficiency Balances against any monetary recovery awarded to the Class Members. The credit repair is also valuable, albeit difficult to quantify. The cash amount in the QSF of approximately $14,450,000.00 – $14 million cash settlement payment, plus approximately $450,000.00 in interest earned in the investments in U.S. Treasury Bills, the full compromise of $269,204,457.05 in the disputed Deficiency Balances, and the value of the fully exhaustive credit reparation (removal of 100% of the credit tradeline) – with a potential value of somewhere between

$14,450,000.00 and $481,080,000.00 (discussed below) – totals between $298,104,457.05 and $764,734,457.05.

The Settlement offers valuable non-monetary relief to the Class Members, including SC's agreement to request the complete deletion of the credit tradelines associated with the Class Members' subject Accounts, which show both the alleged default (including an unfavorable payment history) *and* all reference to the subject repossession (and the negative impact of same).

It cannot be underestimated how an adverse report lowers credit scores and can negatively affect the class member's cost of credit and even their access to housing, insurance, and employment. Moreover, while SC is not aware of any actions against Class Members relating to deficiency balances, SC agrees to work collaboratively with Class Counsel to investigate, vacate, and expunge all deficiency judgments, if any award, judgment, or action is discovered.

As noted above, while Plaintiffs believe they have a legitimate basis to seek such equitable relief based on the alleged statutory and common law violations at issue, the Third Circuit has yet to make a pronouncement whether Plaintiffs could obtain such relief if they litigated their claims to decision.

It is likely that most Class Members will benefit significantly from credit repair by the requested deletion of the negative SC tradeline including any information pertaining to repossession, an unfavorable payment history, a charge off; and/or a (disputed) deficiency balances. This benefit will likely result in significantly better credit terms and conditions, including lower interest rates and a highly improved access to credit. It eliminates all Santander negative information that could adversely impact security clearances, employment opportunities, insurance rates, and housing opportunities. *See* Lea Shepard, *Seeking Solutions to Financial History Discrimination,* 46 Conn. L. Rev. 993, (2014). Further, it eliminates any tendencies for Class

Members to simply not apply for credit because of a perception that their credit application would be rejected because of negative credit information relating to the default and repossession of their vehicles by SC.

Courts have opined that the value of this credit repair through the tradeline deletion should be at least equal to the cash component of the settlement, here $14,000,000.00 which at the time of distribution of payments to Class Members will have increased to $14,450,000.00 due to investment in this case. See e.g., *Ciccarone v. B.J. Marchese, Inc.*, 2004 WL 2966932 at *10 (E.D. Pa., 2004); *Dudo, et* al., v. *Capital One Auto Finance*, 296-2020 (Jefferson County CCP 2020). Thus, under this approach the value of the credit repair would be $14,450,000.00. However, other Courts have opined that the value of this credit repair should be an amount up to $10,000 per class member.[10] As there are 48,108 (putative) class members in the present case, under this approach the credit tradeline deletion may be worth up to $481,080,000.00.

Additionally, documents produced during the discovery process revealed that SC employed several forms executed by some putative class members which contained an arbitration

[10] *See Universal Credit Acceptance, Inc. v. Myers*, No. 15JE-AC05976-01 (Mo. Cir. Feb. 8, 2021); *see also Anheuser Busch Employees' Credit Union v. Wells*, Case No. 1522-AC09263-01 (Mo. Cir. July 10, 2018), and *Jackson v. Missouri Credit Union*, Case No. 18BA-CV0665 (Mo. Cir. March 14, 2022) (which called the $10,000 a "conservative" valuation). As summarized by the Court in *Jackson, supra*:

> *Myers* and *Wells* were similar class actions based on the same types of violations (UCC notices) and remedies sought (statutory damages, deletion of negative credit tradeline, deficiency waiver). A credit damages expert estimated the benefit of having the negative auto loan tradeline deleted from the class members' credit reports, using an "ultraconservative estimate," equated to $10,000 per class member. The courts took the estimated credit benefits of $10,000 per class member into account when it calculated the aggregate benefits conferred to the class. See, e.g., *Myers*, No. 15JE-AC05976-01 at 9 n. 1 ("Using an estimate of $ 10,000 in benefit conferred to each class member for deleting their tradeline from their credit reports, the Settlement Class also receives a benefit of approximately $77,010,000 ($10,000 per each of the 7,701 identified class members).")

Id., fn. 2. A copy of the final approval order in *Jackson, supra*, and its referenced affidavit are attached as **Exhibit 3**.

provision and class action waiver. While Plaintiffs maintain that these arbitration clauses and class action waivers are unenforceable for a variety of reasons, SC maintains that these provisions are enforceable and would, essentially, gut the putative class. The Settlement avoids the risks to each party of having to litigate the enforceability of these provisions and any potential impact on class certification issues these provisions may or may not pose. *See In re Comcast Corp. Set-Top Cable Television Box Antitrust Litig.*, 333 F.R.D. 364, 384 (E.D. Pa. 2019) (noting that avoiding the potential for arbitration is a factor to consider in evaluating the eighth and ninth *Girsh* factors). *National Football League*, 821 F.3d at 440 (noting the significant litigation risk because the Plaintiffs could have been left pursuing claims in arbitration or may not receive any recovery).

The substantial monetary and non-monetary relief offered in the Settlement, when contrasted to the risks of litigation – both with respect to the merits of Plaintiffs' claims and SC's defenses and with respect to class certification – weigh heavily in favor of final approval of the Settlement.

3. Additional Factors

The procedure for processing individual claims under the Settlement is fair and reasonable. All Settlement Class Members will receive a cash payment (which will be the same amount per Account), all Settlement Class Members will receive deletion of their credit tradelines, and those class members with Deficiency Balances arising from repossessions prior to the end of the Class Period will have those fully compromised. Although the cash payment to the Settlement Class Members is less than the minimum statutory damages they could receive, this is more than offset by the facts that: (1) an individual claimant would not be certain of prevailing in an individual action; (2) may be subject to claims of setoff or recoupment by SC for any Deficiency Balance the claimant purportedly owed (which would greatly reduce any recovery), while under the current

proposed Settlement, Settlement Class Members will not have their recovery set-off by their purported Deficiency Balance, but are having those disputed Deficiency Balances fully compromised by way of an accord and satisfaction which should eliminate any potential tax burden; and, (3) Settlement Class Members will also receive the benefit of SC's request to be made to all the major credit bureaus for the deletion of their credit tradeline, which is an equitable remedy they would not be assured of receiving in an individual action.

B. The Settlement Class Should Be Certified.

Plaintiffs' arguments for class certification **were** set forth **i**n Plaintiffs' Memorandum of Law in Support of Their Motion for Preliminary Settlement Approval, Conditional Certification of Settlement Class, and Approval of Class Settlement Notice. Due to the length, Plaintiffs will not repeat those arguments here, but will incorporate them by reference and believe that the facts and issues discussed herein demonstrate that the class certification requirements of Fed. R. Civ. P. Rule 23 have been clearly satisfied. The only new factor to be addressed is the response of the Class to the Class Notice which has been overwhelmingly favorable. As noted above, no class member has objected and only four (4) class members have opted out. This factor, of course, supports the grant of certification for purposes of implementing the instant Settlement.

Class Counsel highly recommends the approval of the Settlement by the Court and its acceptance by the Class Members. Plaintiffs' counsel has considerable experience engaging in this type of class litigation, has routinely certified other similar classes (as summarized below), and has evaluated the strengths and weaknesses of the claims and the concomitant terms of the settlement relative to other similar cases and enthusiastically endorses this settlement

C. Class Counsel's Requested Fees are Reasonable and Should Be Approved and Class Counsel's expenses were Reasonable and Should be Reimbursed

1. The Equitable Foundation for Award of Attorneys' Fees in Representative Actions

The United States Supreme Court has long held that one who successfully pursues a lawsuit that creates a common fund is entitled to reasonable compensation from the fund. *Trustees v. Greenough*, 105 U.S. 527 (1882). *See also Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The Third Circuit favors the percentage-of-recovery method for calculating attorney's fees in common fund cases. It has explained that "[t]he percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.'" *In re AT&T Corp.*, 455 F.3d 160, 164 (3d Cir. 2006); See also, *In re Rite Aid Corp. Sec. Litig*., 396 F.3d 294, 300 (3d Cir. 2005); *In re Cendant Corp. Prides Litig.*, 243 F.3d 722, 734 (3d Cir. 2001); *Cullen v. Whitman Medical Corporation*, 197 F.R.D. 136, 147 (E.D. Pa. 2000); *In re Prudential Ins. Co. America Sales Litig*., 148 F.3d 283, 312 (3d Cir. 1998). And courts have long recognized that the attorneys' contingent risk is an important factor in determining the fee award. *See Florin v. Nationsbank of Georgia, N.A.*, 34 F.3d 560, 565 (7th Cir. 1994); *Gaskill*, 160 F.3d at 363. The importance of contingent fee-based litigation is particularly evident in the context of consumer protection cases such as this one. The Courts have consistently recognized the value of private litigation as a necessary and desirable tool to assure the effective enforcement of the consumer protection, securities, and antitrust laws. *See, e.g., Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997); *In re Constar Int'l Inc. Sec. Litig.*, 585 F.3d 774, 781 (3d Cir. 2009); *See also Perry*, 229 F.R.D. at 123 (many consumer claims would be ignored but for the consumer class action.)

2. The *Gunter* Factors

The Third Circuit set forth the factors for the district court's fee-award consideration, in *Gunter v. Ridgewood Energy Corp.*,223 F.3d 190, 195 (3d Cir. 2000) (overturning a decision that reduced to 18% a requested fee of 25% of the recovered fund). Notably, the *Gunter* factors "need not be applied in a formulaic way because each case is different, and in certain cases, one factor may outweigh the rest." *Wallace*, 2015 WL 9268445, *17. The *Gunter* factors include the size of the fund created and number of persons benefiting from the settlement; the presence/absence of substantial objections to the fee; the skill of plaintiffs' counsel; the complexity and duration of the litigation; the risk of nonpayment; the amount of time devoted to the litigation; and awards in similar cases. *Gunter*, 223 F.3d at 195. As described below, analysis of the *Gunter* factors supports the requested fee of $5.6 million, plus reimbursement of litigation expenses, to date, in the amount of $30,186.77.[11]

(a) The size and nature of the common fund created, and the number of persons benefited

As stated above, this settlement provides a cash payment of $14 million (which will increase by the time of distribution of the QSF to $14,450,000 due to investment, as explained above) and the compromise of $269,204,45.05 in Deficiency Balances for the class, plus valuable credit repair, for 48,108 Settlement Class Members. After the proposed attorneys' fees of $5,600,000 and the estimated settlement administrator expenses of $142,700 are deducted from the $14,450,000 QSF, the remaining $8,707,300 will be distributed to class members on a per-account basis over the 37,477 accounts. Thus, the benefits conferred entail, *inter alia*, ***approximately $232 to be paid on a per account basis; the compromise of Deficiency Balances;***

[11] Though considerable, all expenses associated with Westlaw research will be absorbed as an overhead expense and not billed as a cost advanced.

and full credit repair reparation. In short, Class Counsel highly endorse this settlement as these aggregate benefits are exceptional.

(b) The absence of objections to the request for fees supports approval

The second factor focuses on the reaction of the Class to the requested attorney fees. The "absence of large numbers of objections mitigates against reducing fee awards." *Perry*, 229 F.R.D. at 123-24; *In re Diet Drugs Prod. Liab. Litig.*, 553 F. Supp. 2d 442, 473 (E.D. Pa. 2008) (dearth of objections "signifies that the requested award has been viewed by interested parties to this action as fair"); See *also, In re Rite Aid,* 396 F.3d at 305 (affirming district court's finding that the filing of but two objections weighed in favor of awarding fee). The Class Notice stated that Class Counsel would apply for an award of fees out of the settlement proceeds of up to $5.6 million (See **Exhibit 2B**). There were no objections in this Case. Only five class members have opted out (involving three accounts). The lack of any objection to fees favors approval of the attorney fees sought here.

(c) The Skill and Efficiency of Class Counsel

The "single clearest factor reflecting the quality of Class Counsels' services to the Class are the results obtained." *In re Flonase Antitrust Litig*., 291 F.R.D. 93, 104 (E.D. Pa. 2013). The skill and efficiency of Plaintiffs' counsel is "measured by the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel." *In re Ikon, supra, at* 194. The goal under our Circuit's precedent is to ensure "that competent counsel continue to undertake risky, complex and novel litigation" for the benefit of large numbers of class members who might otherwise lack reasonable access to justice. *Gunter, supra*, at 198.

Hon. Lawrence F. Stengel (Ret.), former Chief Judge for the United States District Court for the Eastern District of Pennsylvania, is a shareholder at Saxton & Stump and focuses his practice on internal investigations, arbitrations and mediations, monitorships and receiverships. Judge Stengel has decades of experience in multiple types of litigation. As Co-Chair of the firm's Investigations and Criminal Defense practice, he leads a team of attorneys who conduct fair and thorough internal investigations for corporations, educational institutions, governmental agencies, municipalities and other organizations across the country. Recent notable matters include:

- Special Investigator in the National Football League's (NFL) Concussion Settlement program;
- Chair of the Independent Oversight Committee for the Archdiocese of Philadelphia's Independent Reconciliation and Reparations Program (IRRP); and,
- Special Master in complex civil cases in the United States District Court for the Eastern District of Pennsylvania and for the District of Delaware.

Attorney Shenkan regularly engages in consumer class litigation and other complex litigation similar to the present case and has dedicated substantial resources thereto, serving as class counsel in numerous ***certified*** consumer post-repossession disclosure notice class actions, including: *Sorace, et. al. v. Wells Fargo Bank, N.A.*, E.D. Pa. Case No. 2:20-cv-4318-GJP, *Flynn, et. al., v Manufacturers and Traders Trust Company a/k/a M&T Bank,* E.D. Pa. Case No. 2:17-cv-04806-WB, *Langer, et al., v. Capital One Auto Finance*, E.D. Pa. Case No. 2:16-cv-06130-HB, *Maszgay, et al., v. First Commonwealth Bank,* Jefferson County Case No. 686-2015, *Hughes v. Nationwide,* Lawrence County Case No. 10557-2020, *Cruz v. Citadel*, Philadelphia County Case No. 200501167, *Cooley, et al. v. FNB, et al.*, Lawrence County Case No. 10010-2003, *Antonik, et al v. First National Community Bank, et al.*, Lackawanna County Case No. 2013-cv-4438, *Ryan, et. al., v. Tidewater, Philadelphia County Case No.* 170903529, *Dudo, et* al., v. *Capital One Auto*

Finance, Jefferson County Case No. 296-2020. He has also served as class counsel in several TCPA class actions, including: *Mauthe v. ITG*, E.D. Pa. Case No. 5:18-cv-01968; *Mauthe v. Spreemo*, E.D. Pa. Case No. 18-cv-1902, *Mauthe v. Versa Cardio, LLC*., E.D. Pa. Case No. 5:16-cv-00570-JLS, *Conner v. Optum360, LLC.*, E.D. Pa. Case No. 2:17-cv-01642, and *Conner v. Carepoint Medical Solutions, LLC*., W.D. Pa. Case No. 2:16-cv-01436-NBF.

In *Hughes v. Nationwide Trust Company, FSB, formerly known as Nationwide Bank*, 10557-2020 (Lawrence County, CCP. March 8, 2022), the Court recognized that Mr. Shenkan for litigating and certifying the first post-repossession disclosure case in Pennsylvania stating:

> Indeed, *Cooley*, *supra*., a class action litigated for years in this Court before a certified settlement, paved the way for the legal concepts that have been replicated in Pennsylvania thereafter in a variety of similar UCC defective post-repossession consumer disclosure notice cases. … Here, Mr. Shenkan pursued this complicated claim with persistency and skill, and in a zealous manner for his clients. His extra efforts to pursue discovery and revise pleadings are recognized by this Court as laudable.

Hughes, *supra*., Preliminary Approval Order, p. 7-8.

In the final approval order dated October 1, 2020 in *Ryan v. Tidewater Finance Company*, No. 20092996 (Sept. Term 2017) the Court commented:

> Class Counsel Richard Shenkan, Esquire has demonstrated distinguished legal ability. He is committed to an orderly and responsible administration of the Settlement Agreement.

In *Maszgay, supra.* President Judge John Foradora described Mr. Shenkan's qualifications as follows:

> Plaintiffs' counsel, Richard Shenkan, is a well-qualified litigator with over 20 years of experience and has served as class counsel in other consumer class cases throughout Pennsylvania." *Maszgay, supra*, slip op. at 7. The Jefferson County Court further stated: "This case presented novel, complex issues and Class Counsel effectuated an excellent recovery for the Class through his perseverance and skill.

Class Counsel's experience and skill are also evident in the very effective and efficient prosecution of the claims, including the substantial settlement, against well-matched, well-financed opponents. *See In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000) (recognizing as a "significant factor" the "quality of representation").

In the present case, Class Counsel negotiated a significant settlement for the Class, with many moving and complicated parts, including tax issues relating to the full compromise of the $269,204,457.05 in disputed Deficiency Balances via an accord and satisfaction. Class Counsel has obtained very substantial and definite monetary benefits for 48,108 Class Members (Pennsylvania consumers) in a judicially efficient and highly practical manner despite SC's significant defenses. In the absence of this litigation, most of the Class Members would have lacked any reasonable access to legal representation to pursue their relatively modest statutory claims under the UCC, or the wherewithal to defend potential deficiency actions and the negative attendant credit damages resultant thereto. Moreover, Class Counsel effectuated this tremendous relief despite the widespread arbitration provisions and class action waivers which, if litigated further, might have substantially caused the considerable reduction in the class size and recovery.

(d) The complexity and duration of the litigation

Complexity and duration of the litigation is another factor the Court considers in analyzing Class Counsel fees. *See In re General Motors*, 55 F.3d at 821. By almost any standard, this was very complex litigation. Because this was a class action, it necessarily involved an additional array of substantive and procedural issues related to class certification as an overlay to the underlying substantive legal issues. This matter involved difficult issues of statutory interpretation dealing with the interaction of the Pennsylvania Uniform Commercial Code and the Motor Vehicle Sales

Finance Act. Further complicating this case, were the potential income tax issues relating to any settlement or award received by Plaintiffs and class members.

The effort to forge a settlement that combined a substantial cash recovery with a full compromise of disputed debts and 100% credit report reparation was not simple and, in some ways, added a complexity for an otherwise "litigation only" defense approach. It is also noteworthy that final approval does not end the complexities (or work) to be faced by Class Counsel. Class Counsel will undoubtedly deal with future communications from Class Members related to the settlement, possibly for such things as non-receipt of checks, credit report tradelines not deleted, judgments not satisfied, and other anticipated similar wind-down matters.

(e) The risk of nonpayment

Class Counsel undertook this action on an entirely contingent fee basis, assuming a substantial risk that counsel would have to devote a significant amount of time and incur expenses in prosecuting this action without any assurance of being compensated for the efforts or reimbursed for the costs incurred. Indeed, Class Counsel has not been compensated for any of the time or efforts since this matter was filed, while expending over $30,000.00 in costs for filing fees, mediation fees, air travel, depositions and the like. As recognized by this Court, where class counsel incurs thousands of dollars in costs and expenses while facing the risk of not being reimbursed[,] "[t]he risk of nonpayment…weighs in favor of granting the requested fee award." *Wallace*, 2015 WL 9268445 at *19. The Courts in this Circuit take into account that counsel prosecuted the case on a contingent fee basis. This risk is a significant factor to be considered in determining the fee, as these hours were expended without any guarantee of success. *O'Rourke v. Healthdyne, Inc*. 1986 WL 923, at *2 (E.D. Pa. Jan. 16, 1986). This factor certainly favors the requested attorney fee.

While Plaintiffs remain confident in the strength of their case, and of their ability to prove

damages, this action (and indeed all litigation) involves substantial risks and the ultimate outcome cannot be predicted with certainty, particularly in a case such as this, which was novel in many ways. Accordingly, the risk of non-payment in this case weigh in favor of approving the fees sought in this Motion.

(f) Awards in other class actions

The attorney fees requested represent a little more than the 33 and 1/3%, that is commonly discussed by Courts, of the cash that will be in the settlement fund at the time of distribution (here approximately 38.7%). However, these requested fees represent approximately only 2% of the quantifiable portions of the settlement consideration – i.e., the $14 million cash payment plus approximately $450,000.00 in interest, plus the compromise of $269,204,457.05 in disputed Deficiency Balances (totaling $283,654,457.05 in benefit conferred, not including the potential value of credit repair to the class members). If the value of credit repair is considered, the attorney fees requested represent approximately 1.9% of the total benefit conferred if such credit repair is valued at $14,450,000.00 (equal to the cash component of the settlement consideration pursuant to *Ciccarone v. B.J. Marchese, Inc.*, supra) and less than 1% of the total benefit conferred if such credit repair is valued at $481,080,000.00 ($10,000 per class member pursuant to *Jackson v. Missouri Credit Union, supra*.).

Attorneys' fees of 30-40% of the benefit obtained on behalf of the class is within the approved range in class actions. *Gaskill v. Gordon*, 160 F.3d 361 (7th Cir. 1998) (awarding 38% of the common fund as fees); *Taubenfeld v. Aon Corp.*, 415 F.3d 597 (7th Cir. 2005) (approving award of fees equal to 30% of $7.25 million settlement plus $111,054.06 in expenses and citing with approval a submission showing thirteen cases with awards of 30-39% in common fund cases); *Grier v. Chase Manhattan Automotive Finance Co*., 2000 2000 WL 175126 (E.D. Pa.) (awarding

fees of 33 and 1/3% of settlement fund, noting that because common fund is relatively small, it is appropriate to award a higher percentage than in cases resulting in substantially larger funds); *In Re Greenwich Pharm. Sec. Lit.,* 1995 WL 251293 (E.D. Pa. 1995) (approving fee of 33% as appropriate in settlement of $4.375 million, noting that in smaller cases a fee award of 33% does not present the danger of providing plaintiff's counsel with the windfall that would accompany a mega-fund of, for example, $100 million.).

3. Plaintiff's requested fee is an appropriate percentage of the recovery and the request for reimbursement of costs is reasonable

Plaintiffs submit that the most suitable analysis of the reasonableness of their requested attorney fee does not focus on only the cash portion of the benefit provided to the class by the Settlement, but on the totality of the wide-scoped benefits. In valuing a settlement, courts routinely consider credits in addition to cash. S*ee Cullen, supra*., at 147 (including cash and student loan debt compromise in valuing common fund settlement for purposes of determining reasonable attorney's fees on a percentage of recovery method); *Perod v. McKenzie Check Advance of Pennsylvania, LLC*., No. 98-CV-6787 (E.D. Pa. 2000) (valuing compromise of payday loan obligations as a component to determine attorney fee percentage in common fund settlement). *Follansbee v. Discover Fin. Servs., Inc.,* 2000 WL 804690, at *2 (N.D. Ill., 2000) (valuing settlement to include debt compromise and account credits, and evaluating fee against that value); *In re Lloyd's Am. Trust Fund Litig.*, 2002 WL 31663577, at *26 (S.D.N.Y., 2002) ("Because this case is a common fund case, I find that the percentage of-recovery method provides a more appropriate basis for evaluating counsel's fee petition."). *Cullen,* at 147. In *Cullen,* the United States District Court for the Eastern District of Pennsylvania explained: "The settlement fund in this case involves cash and forgiveness of debt. There is no question that the $5.97 million in cash is appropriately considered in determining the value of the settlement. The relevant issue is the

appropriate value of the $1.3 million in loan forgiveness." *Id.* Having thus framed the issue, the court concluded:

> Debt forgiveness for students who are already delinquent in paying back their loans arguably does not have the same value as cash in hand. In addition to the debt forgiveness, however, students credit reports will be cleared of this default. Moreover, the fee sought by class counsel is based solely upon the cash and debt forgiveness and does not include the non-monetary benefits to the class. The non-monetary relief includes appointment of an ombudsman by the court and other remedial measures to provide future students with a better educational experience at UTS. Therefore, I find it reasonable to include debt forgiveness in the total settlement value.

Id. Emphasis added.

Furthermore, SC modified its Notice of Repossession used in Pennsylvania on July 9, 2020. Incidental and non-monetary benefits of a lawsuit, such as a change in policy, may be relevant to determining whether a requested attorney fee is reasonable. *Leverage v. Traeger Pellet Grills, LLC*, 2017 WL 6405619, at *6 (N.D. Cal. Dec. 15, 2017)("Plaintiffs point out that this case has resulted in changes to Defendants' employment practices, including the discontinuation of the 5% withholding, the hiring of Brand Ambassadors as full-time regular employees, and the payment of a salary during the first ten weeks…While not a part of the Settlement Agreement, such changes benefit both current and future employees, which also highlights the work Class Counsel has performed in this case… 'Incidental or non-monetary benefits conferred by the litigation are a relevant circumstance'. The Court concludes that under the percentage method, the attorney's fees requested is reasonable." quoting *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1049-50 (9th Cir. 2002)); *See also, Lonardo v. Travelers Indem. Co*., 706 F. Supp. 2d 766, 795-96 (N.D. Ohio 2010)("As noted above, the Court must ensure that Class Counsel is fairly compensated in order to facilitate the goal of class actions – i.e., to provide a vehicle for collective action to pursue redress for tortious conduct that it is not feasible for an individual litigant to pursue…[A]s a result

of this litigation, Travelers eliminated their practice of selling identical policies for different prices and the Settlement Agreement enjoins Travelers from reinstating that practice for at least three years…Accordingly, the requested 1.3 multiplier is justified based on this factor.")

Furthermore, the fee agreement between counsel and each of the Representative Plaintiffs provides for a fee equal to 40% of the total benefit conferred upon the class.[12] Plaintiffs believe that the request for an award of fees to Class Counsel in the sum of $5.6 million to be paid to Class Counsel is fair and reasonable in light of all the relevant factors to be considered.

Class Counsel's expenses total $30,186.77 to date, which is reasonable for such a complex litigation, for which reimbursement is respectfully requested. Additional expenses are anticipated and will be submitted to the Court for approval.

V. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that this Court enter an Order, giving final approval to the Settlement Agreement, certifying the Settlement Class, awarding Plaintiffs the requested attorney fees and approving the reimbursement of counsel's expenses, approving the requested service awards to the Representative Plaintiffs, entering a final judgment, and dismissing this case with prejudice subject only to administrative matters.[13]

Respectfully submitted,

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Co-Counsel for Plaintiffs

[12] *See, Edwards v. Alaska Pulp Corp.,* 920 P.2d 751, 758 footnote 15 (Alaska 1996) (courts may consider, but should not be bound by the percentage in a contingency fee arrangement).

[13] Class Counsel will be prepared to provide any supplemental information this Court requires to determine the reasonableness of any aspect of this Settlement, including an affidavit supporting time devoted to case.

CERTIFICATE OF SERVICE

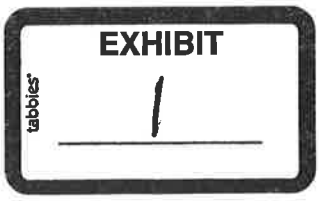
I certify that a copy of the foregoing was sent to all counsel of record on the date of filing via the Court's electronic court filing system (ECF).

SHENKAN INJURY LAWYERS, LLC.
/s/ Richard E. Shenkan
Richard E. Shenkan
Co-Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HUGH and CHRISTINE KELLY, individually and on behalf of all others similarly situated, Plaintiffs, v. SANTANDER CONSUMER USA INC., Defendant.	Civil Action No. 2:20-cv-03698-MMB

SETTLEMENT AGREEMENT AND RELEASE



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SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is entered into by and between (i) Plaintiffs Christine Kelly and Hugh Kelly, individually and as class representatives on behalf of the Settlement Class, and (ii) Defendant Santander Consumer USA Inc. ("SC"). The Parties intend and agree to resolve, discharge, and settle fully, finally, and forever certain claims of the Settlement Class asserted in the class action captioned *Kelly v. Santander Consumer USA Inc.*, Civil Action 2:20-cv-3698, pending in the United States District Court for the Eastern District of Pennsylvania, subject to approval of the Court.

RECITALS

A. On or about June 30, 2020, Class Representatives Christine Kelly and Hugh Kelly ("the Kellys") filed a complaint in the Court of Common Pleas of Philadelphia County, Pennsylvania (the "State Court Action") alleging SC engaged in unlawful acts in connection with the repossession of their vehicle purchased as part of a consumer transaction in violation of the Pennsylvania Uniform Commercial Code ("PUCC") and the Pennsylvania Motor Vehicle Sales Finance Act ("MVSFA").

B. On or about July 30, 2020, SC removed the State Court Action to the Eastern District of Pennsylvania pursuant to the Class Action Fairness Act ("CAFA"). ECF 1. It simultaneously filed a partial motion to dismiss and to strike immaterial or impertinent portions of the Class Action Complaint (the "Partial Motion to Dismiss"). ECF 3.

C. On or about August 6, 2020, the Kellys filed a motion to remand the case back to state court (the "Motion to Remand") as well as a motion to stay the briefing on

the Partial Motion to Dismiss pending a decision on its Motion to Remand. ECF 8, 9. The Parties stipulated to staying briefing on the Partial Motion to Dismiss and extended the briefing schedule on the Motion to Remand, which the Court approved. ECF 10, 11.

D. On or about February 10, 2021, the Court denied the Motion to Remand, finding that the Court had subject matter jurisdiction over the claims of the Kellys and the putative class pursuant to CAFA. ECF 20, 21.

E. On or about March 9, 2021, the Kellys filed a First Amended Class Action Complaint (the "FAC" or "Complaint"), which mooted SC's Partial Motion to Dismiss. *See* ECF 22, 23.

F. On or about March 18, 2021, SC filed its Answer and Affirmative Defenses to the Complaint. ECF 24.

G. On or about May 4, 2021, the Parties began conducting discovery per the Court's order following the Fed. R. Civ. P. 16 conference earlier that day. ECF 28.

H. On or about August 5, 2021, the Court entered a scheduling order setting deadlines for discovery, dispositive motions, Plaintiffs' class certification motion, and pre-trial matters. ECF 40.

I. On August 24, 2021, Plaintiffs filed an Omnibus Motion: (1) to Compel Discovery and Rule 26(a) Disclosures; and, (2) for Leave to Take Preliminary Rule 30(B)(6) Deposition Limited to Electronic Discovery Issues and Burdensome Objections (ECF 44) and corresponding brief (ECF 44-1).

J. On September 3, 2021, Defendant filed a Motion for Protective Order as to Plaintiffs' Deposition Subpoena to Kelly Neptune and Notices of Videotaped Deposition of Missi Palmore and Tony Angelone. (ECF 48).

K. Also, on September 3, 2021, Defendant filed a Motion for Entry of Remote Deposition Protocol and respective brief and supplemental memorandum (ECF 49 and 52).

L. On September 7, 2021, Plaintiffs filed a Response to Defendant's Motion for Entry of Remote Deposition Protocol and brief, corresponding notice, and memorandum (ECF 50-51, 54, and 55).

M. On September 8, 2021, the Court issued an Order regarding the Defendant's Motions for Protective Order.

N. On September 21, 2021, Defendants filed a Response to Plaintiffs' Motion to Compel Discovery (ECF 60-61).

O. By Stipulation and Order, Plaintiffs' Reply to Defendant's Response was due on or before October 12, 2021.

P. Third party discovery motions include an Objection to Subpoena (ECF 33) and two Motions to Quash Subpoena (ECF 34 and 37).

Q. The Parties filed a Joint Motion to Stay Litigation Pending Mediation and to Extend Case Schedule on September 30, 2021 (ECF 63), which the Court granted on October 6, 2021 (ECF 65), a First Joint Motion to Extend Stay on December 7, 2021 (ECF 70), which the Court granted on December 9, 2021 (ECF 71), a Joint Status Report and Request to Extend Deadlines by 14 Days on January 31, 2022 (ECF 73), which the Court granted on February 7, 2022 (ECF 74), and a Joint Status Report and Request to Continue

Stay on February 11, 2022 (ECF 75), which the Court granted on February 22, 2022 (ECF 76) and stayed the litigation through April 11, 2022. The Parties filed a Joint Motion to Continue Stay of Litigation on April 8, 2022 (ECF 78), which the Court granted on April 13, 2022 (ECF 79). The Parties filed a Joint Motion to Continue Stay of Litigation on June 13, 2022 (ECF 80), which the Court granted on June 15, 2022, extending the stay through and including August 15, 2022 (ECF 81). The Parties filed a Joint Motion to Continue Stay of Litigation on August 15, 2022 (ECF 82), which the Court granted on August 16, 2022, extending the stay through and including October 14, 2022 (ECF 83). Plaintiffs filed a Motion to Continue Stay of Litigation for 21-Days on October 14, 2022 (ECF 84), which the Court granted on October 19, 2022, extending the stay through and including November 4, 2022 (ECF 85).

R. The Parties engaged in an all-day mediation with mediator Eric Green of Resolutions, LLC on January 28, 2022, and engaged in a follow up mediation on February 8, 2022.

S. Before the stay was entered, the Parties were exchanging written discovery in this matter and had been conducting depositions.

T. Based upon their discovery, investigation, and evaluation of the facts and law relating to the matters in the pleadings, mediation before Mr. Green, and successful settlement discussions through Mr. Green, the Parties have agreed to settle this Action pursuant to the provisions of this Agreement.

U. SC has denied and continues to deny each and every allegation of liability, wrongdoing, and damages, as it contends it has substantial factual and legal defenses to all

claims and class allegations asserted in the Complaint. SC has always maintained, and continues to maintain, that it has acted in accordance with governing law. The Kellys likewise maintain the strength of their positions. This Agreement shall in no event be construed as, or deemed to be evidence of, an admission or concession on the part of the Parties with respect to any claim by any Class Member, any fault, liability, wrongdoing or damage, or any defense by SC. The Parties, nonetheless, have concluded that continuing to defend against the Action would be protracted, expensive, and disruptive to their business and/or lives. They, therefore, have decided that it is desirable to fully and finally settle the Action on the terms and conditions set forth herein to avoid the further expense, inconvenience, and distraction of the Action and to dispel any related uncertainty.

V. By this Agreement, and recognizing the consideration provided for under this Agreement, the Class Representatives and Class Counsel intend to fully and finally resolve the remaining claims against SC in connection with the Action, as more fully set forth herein.

W. The Class Representatives and Class Counsel recognize the expense and length of proceedings necessary to continue the litigation through further discovery, motion practice, trial, and any possible appeals. They have taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation, and have reviewed sufficient information (provided formally and for settlement purposes) to evaluate respective strengths and weaknesses of their respective claims and defenses. They are also aware of the burdens of proof necessary to establish liability and damages for the claims alleged in the Action and the defenses thereto. Based upon their

evaluation, the Class Representatives and Class Counsel have determined that the settlement set forth in the Agreement is in the best interests of the Class Representatives and the Settlement Class and is fair, adequate and reasonable, based upon the following substantial benefits that the settlement bestows upon the Settlement Class:

i. For all Settlement Class Members, SC will fully compromise all Deficiency Balances on their SC accounts, which is estimated to be approximately One Hundred and Thirty-Seven Million Dollars ($137,000,000);[1]

ii. SC will pay a total of Fourteen Million Dollars ($14,000,000), non-reverter, into a Settlement Fund for the benefit of the Settlement Class and for the purposes of implementing this Settlement, which will be used, *inter alia*, to provide monetary relief to Settlement Class Members, as described below, to pay an Incentive Payment to the Class Representatives, as approved by the Court, and to pay for fees and expenses of the Settlement Administrator and Class Counsel, with any remaining funds, if any, to be distributed to the *Cy Pres* Recipient(s);

iii. SC will request that the Credit Reporting Agencies, Equifax, Experian, TransUnion, and any other reporting agencies SC reports to, fully delete the reporting of the Settlement Class Members' Accounts that are the subject of this Action;

iv. The Settlement Administrator's costs associated with disseminating the Class Notice, setting up a Settlement Website, distributing funds, and any escrow, administrative and/or bank related fees and costs associated with the Settlement Administrator's duties will be paid out of the Settlement Fund.

X. This Agreement and all associated exhibits or attachments are made for the sole purpose of attempting to consummate Settlement of this Action on a class-wide basis. This Agreement and the Settlement it evidences are made in compromise of disputed

[1] This figure is expected to be reduced, modestly, due to Sold Accounts. *See* Sections 1.51, 4.2.

claims. Because the Action is pled as a class action, this Settlement must receive preliminary and final approval by the Court. Accordingly, the Class Representatives and SC enter into this Agreement and associated Settlement on a conditional basis. In the event that SC or the Class Representatives exercise a right herein to terminate or rescind this Agreement, the Court does not execute and file the Order Granting Final Approval of Settlement, or the associated Judgment does not become Final for any reason, this Agreement shall be deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever by anyone, and the negotiation, terms, and entry of the Agreement shall remain subject to the provisions of Federal Rule of Evidence 408, any and all state statutes of a similar nature, and the mediation privilege.

Y. The Parties expressly reserve all rights, claims and defenses and do not waive any such rights, claims or defenses in the event that the Agreement is not approved for any reason. The Parties agree that they each retain and reserve all rights and agree not to take a position to the contrary. The Class Representatives and Class Counsel agree not to argue or present any argument, and hereby waive any argument, that SC could not contest class certification and/or proceeding collectively on any grounds if the Action were to proceed or that this Agreement is evidence of or constitutes an admission that class certification may be appropriate.

1. Definitions.

As used in all parts of this Agreement, including the recitals above, and the exhibits hereto, the following terms have the meanings specified below:

1.1. "Action" means the case originally filed in the Court of Common Pleas of Philadelphia County, Pennsylvania, which was removed to the United States District Court for the Eastern District of Pennsylvania on or about July 30, 2020, Case No. 2:20-cv-03698-MMB, entitled *Kelly v. Santander Consumer USA Inc.*

1.2. "Account" or "Accounts" means each Settlement Class Member's account owned by SC related to the financing of his/her/their vehicle(s), which were subsequently repossessed, and which are the subject of this Action. This term includes those Accounts which SC re-purchased or re-acquired from a debt buyer/collector but excludes Sold Accounts, as defined herein.[2]

1.3. "Agreement" or "Settlement Agreement" means this Settlement Agreement and Release and all of its attachments and exhibits, which the Class Representatives and SC understand and agree sets forth all material terms and conditions of the Settlement of the Action between them and which is subject to Court approval. It is understood and agreed that the Parties' obligations under this Agreement are conditioned on, *inter alia*, the occurrence of the Effective Date and other conditions set forth in this Agreement.

1.4. "Attorneys' Fees and Expenses" means such funds as may be awarded to Class Counsel pursuant to Section 15 of the Agreement for the compensation and expense reimbursement incurred in connection with the Action.

1.5. "Class" means all SC customers:

[2] Note that the non-capitalized term "account(s)" used in this Agreement is not subject to this definition.

(a) who entered into a retail installment sales contract for the financing of the purchase of a Motor Vehicle; and,

(b) from whom SC, repossessed the vehicle or ordered it to be repossessed, causing a repossession to occur; and,

(c) to whom SC[3] sent a Notice of Repossession to a Pennsylvania address at any time on or within the period commencing six years prior to the filing of the original complaint in this action through July 9, 2020.

1.6. "Class Counsel" means, Richard Shenkan, Esq. of Shenkan Injury Lawyers, LLC and Lawrence F. Stengel, Esq. of Saxton & Stump, LLC.

1.7. "Class Member(s)" or "Member(s) of the Class" means any member of the Class according to the Class definition herein.

1.8. "Class Opt-Out" and "Mass Opt-Out" mean a document purporting to represent more than one Class Member's intent to Opt-Out of this Settlement.

1.9. "Class Period" means June 30, 2014 through and including July 9, 2020.

1.10. "Class Representatives" means Christine Kelly and Hugh Kelly, the named plaintiffs and proposed class representatives in the Action identified in the first Section of this Agreement. Christine Kelly and Hugh Kelly shall also be treated as Class Members, as applicable, where that term is used.

[3] SC does business under other names, including Chrysler Capital. Certain Class Members may have received a Notice of Repossession on letterhead from Chrysler Capital. All Notices of Repossession at issue included reference to either Santander Consumer USA Inc. or Chrysler Capital.

1.11. "Class Releasors" means the Class Representatives, all Settlement Class Members, and each of their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other person claiming by or through any or all of them.

1.12. "Class Releasees" means the Class Representatives, all Settlement Class Members, and each of their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other person claiming by or through any or all of them.

1.13. "Collector(s)" means any third party to whom SC sold, assigned, and/or otherwise transferred any Class Member(s)' Account(s).

1.14. "Complaint" means the operative First Amended Class Action Complaint filed by the Class Representatives in the Action.

1.15. "Consumer Credit Report" refers to an individual's credit report as issued by any of the three major Credit Reporting Agencies.

1.16. "Court" means the United States District Court for the Eastern District of Pennsylvania.

1.17. "Credit Reporting Agency" or "Credit Reporting Agencies" or "Credit Bureau" refers to TransUnion, Experian, Equifax, and any other credit reporting agency to which SC reports.

1.18. "Cy Pres Recipient(s)" are the Pennsylvania Bar Foundation Pro Bono Fund and the National Foundation for Credit Counseling. Any cy pres funds shall be equally divided.

1.19. "Defendant" refers to SC.

1.20. "Deficiency Balance" for purposes of this Settlement, means the Account balance remaining after the repossession and disposition of a Settlement Class Member's vehicle, after crediting the Class Member's Account with the sale price of the vehicle and including all interest and other charges, as reflected in the class data shared with Class Counsel on August 6, 2021 at Bates number Santander-Kelly-001072 which will be supplemented in the Notice List. This excludes any balance on an Account where the Class Member reinstated their Account and continues to have possession of the repossessed vehicle as of the Expiration of the Repurchase Period or arising from any repossession after July 9, 2020. The Parties agree that the Deficiency Balances for all Settlement Class Members are disputed and that claims and defenses of SC and the Settlement Class Member which arise from any repossession after the Class Period are not affected by this Settlement.

1.21. "Deficiency Balance Compromise" refers to the compromise of a Settlement Class Member's Deficiency Balance, (which includes Account balances which were sold and/or assigned to Collectors, and which were repurchased or reacquired by SC), which is considered a disputed debt by the Parties.

1.22. "Defense Counsel" shall mean Defendant's counsel of record in the Action.

1.23. "Distribution Date" means the date when the Settlement Administrator commences distribution from the Settlement Fund to Class Members, which shall be no more than sixty (60) days after the Effective Date.

1.24. "Effective Date" means the date when all of the conditions set forth in Section 2 have occurred, provided, however, that neither Party has exercised its right of termination under Section 13 of this Agreement.

1.25. "Final" means five (5) business days after the latest of: (i) the date of final affirmance on an appeal of the Judgment; (ii) the date of final dismissal with prejudice of the last pending appeal from the Judgment; (iii) if no appeal is filed, the expiration of the date of the time for the filing or noticing any form of valid appeal or writ review from the Judgment. If the Judgment is set aside, modified, or overturned by any court including on appeal and is not fully reinstated on appeal, the Judgment shall not become final.

1.26. "Final Approval Hearing" means a hearing set by the Court to take place on or about the date which is at least twenty-one (21) days after the Opt-Out Deadline for the purpose of:

(i) Determining the fairness, adequacy and reasonableness of the Agreement and associated Settlement pursuant to class action procedures and requirements;

(ii) Determining the good faith of the Agreement and associated Settlement; and

(iii) Entering Judgment.

1.27. "Final Approval Order," "Order of Final Approval," and "Order Granting Final Approval of Settlement" shall mean an order to be entered by the Court granting final approval to this Settlement and entering a final judgment. The parties agree to submit **Exhibit 3** to the Court as their proposed Final Approval Order.

1.28. "First Distribution" means the first distribution of the Settlement Fund to Settlement Class Members as set forth in Section 6.1.1. The amount of the First Distribution for each Account is based on the Settlement Fund amount of $14,000,000, less Attorneys' Fees and Expenses, Settlement Administration Costs, and Incentive Payments, and divided by the number of Accounts.[4]

1.29. "Fourth Distribution" means the issuance of checks to each of the Settlement Class Members who are eligible for same pursuant to Section 6.1.4, as well as the mailing of same to any address that the Settlement Administrator reasonably believes to be valid.

1.30. "Judgment" means the Final Approval Order and judgment to be rendered by the Court pursuant to this Agreement. The parties agree to submit **Exhibit 3** to the Court as their proposed Final Approval Order.

1.31. "Notice" or "Class Notice" means a notice entitled "Notice of Proposed Settlement of Class Action" to be approved by the Court, substantially in the form attached hereto as **Exhibit 1**, and mailed by the Settlement Administrator to potential Settlement Class Members.

1.32. "Notice Approval Date" means the date of the Preliminary Approval Order when the Court approves the Notice.

[4] For illustrative purposes only, if Attorneys' Fees, Expenses, Settlement Administrative Costs, and Incentive Payments are $6,000,000, and if there are 40,000 Accounts, then the First Distribution will be $200 for each Account.

1.33. "Notice List" means a list, to be treated as Confidential pursuant to the terms of the Protective Order, containing the information set forth in Section 3.1.

1.34. The "Notice Mailing Date" shall be a date no later than ninety (90) days after SC provides the Settlement Administrator with the Notice List, when the Notice is mailed to the individuals on the Notice List.

1.35. "Notice of Repossession" means the notice SC sent a putative Class Member between June 30, 2014 and July 9, 2020 that (i) listed an amount (other than $0) for "Storage expenses incurred through date of this Notice", and/or, (ii) was a form notice with an identification of the form number, including, but not limited to, "PA-NOI-420", "PA-NOI-450", or "PA-NOI-420_2799_050713."

1.36. "Objection Deadline" means the date identified in the Preliminary Approval Order and Class Notice by which a Settlement Class Member must serve written objections to the Settlement, if any, in accordance with Section 12 of this Agreement to be able to object to the Settlement. The Objection Deadline shall be sixty (60) days after the Notice Mailing Date.

1.37. "Opt-Out Deadline" means the date identified in the Preliminary Approval Order and Class Notice by which a Request to Opt Out must be filed or submitted in writing to the Settlement Administrator in accordance with Section 11 of this Agreement in order for a person who would otherwise fall within the definition of Settlement Class to be excluded from the Settlement Class. The Opt-Out Deadline shall be sixty (60) days after the Notice Mailing Date.

1.38. "Parties" means the Class Representatives, on behalf of themselves and all Members of the Settlement Class, Class Counsel, and SC and its counsel.

1.39. "Post-Approval Payments" means any monies paid to SC by any Settlement Class Member on or after the Effective Date toward the Settlement Class Member's Deficiency Balance which is being compromised.

1.40. "Preliminary Approval Order" shall mean a proposed order for the Court to consider executing entitled "Order Preliminarily Approving Settlement and Providing for Notice". The parties agree to submit **Exhibit 2** to the Court as their proposed Preliminary Approval Order.

1.41. "Protective Order" shall mean the Protective Order entered in the Action by Judge Michael Baylson on June 30, 2021.

1.42. "Released Class Claims" means any and all claims, defenses, demands, actions, causes of action, offsets, setoffs, suits, damages, lawsuits, costs, relief for contempt, losses, attorneys' fees, expenses, or liabilities of any kind whatsoever in law or in equity, for any relief whatsoever, including monetary, sanctions or damage for contempt, injunctive, or declaratory relief, rescission, general, compensatory, special, liquidated, indirect, incidental, consequential, or punitive damages, as well as any and all claims for treble damages, penalties, interest, attorneys' fees, costs, or expenses, whether a known or Unknown Claim, suspected or unsuspected, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, that in any way concern, arise out of, or relate to (1) allegations that were or could have been asserted in the Complaint against SC relating to the Settlement Class Members' Accounts; or (2) any claim regarding or relating

to the Notice of Repossession or any claim relating to the repossession or disposition of the Settlement Class Member's vehicles. The Released Class Claims do not include (a) claims arising out of the failure of any Party to perform in conformity the terms of this Agreement; (b) claims relating to any other loan or account not encompassed by the Action, including any Sold Account; or (c) claims or defenses arising from any repossession after the Class Period.

1.43. "Released SC Claims" means any and all claims, defenses, demands, actions, causes of action, offsets, setoffs, suits, damages, lawsuits, costs, relief for contempt, losses, attorneys' fees, expenses, or liabilities of any kind whatsoever in law or in equity, for any relief whatsoever, including monetary, sanctions or damage for contempt, injunctive, or declaratory relief, rescission, general, compensatory, special, liquidated, indirect, incidental, consequential, or punitive damages, as well as any and all claims for treble damages, penalties, interest, attorneys' fees, costs, or expenses, whether known or unknown, suspected or unsuspected, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, that (1) SC could have asserted in the Action that arise out of or relate to the Account; or (2) any claim regarding or relating to the Notice of Repossession or any claim relating to the repossession or disposition of the Settlement Class Member's vehicles, including collection of Settlement Class Members' Deficiency Balances that SC is fully compromising as part of this Agreement. The Released SC Claims do not include (a) claims arising out of the failure of any Party to perform in conformity the terms of this Agreement; (b) claims relating to any loan or account not encompassed by this Action, including any Sold Account; or (c) claims or

defenses arising from any repossession after the Class Period. Nothing in this definition shall be construed as a limitation on SC from accepting payment by a Class Member, repossessing vehicles, or administering collections on Accounts that were reinstated and do not have a Deficiency Balance.

1.44. "Repurchase Period" means a time period ending no later than one hundred twenty (120) days after the Preliminary Approval Order during which SC shall use its best efforts to attempt to repurchase or re-acquire all rights, title, and interest to Class Member(s)' accounts which it sold, assigned, or transferred to any Collector(s).

1.45. "SC Releasees," "the SC Releasees," or "the Released SC Parties" means (1) SC; (2) each of SC's past, present, or future subsidiaries, parent companies, divisions, affiliates, partners or any other organization units of any kind doing business under their names, or doing business under any other names, or any entity now or in the past controlled by, controlling, or under the common control with any of the foregoing and doing business under any other names, and each and all of their respective affiliates and subsidiaries, and each of their respective predecessors, successors, and assigns; and (3) each of the present and former officers, directors, partners, shareholders, agents, employees, attorneys (including any consultants hired by counsel), advisors, independent contractors, representatives, beneficial owners, insurers, accountants, heirs, executors, and administrators, and each of their respective predecessors, successors, and assigns of any person or entities in subparts (1) or (2) hereof. This definition does not include any Collector, debt buyer, and/or other entity who was the purchaser or assignee of any Sold Account, including if they are or become subsidiaries, divisions, affiliates, or partners of

SC. By way of illustration, if SC is not able to repurchase any account which it sold, assigned, or transferred to a Collector, debt buyer, and/or other entity who was the purchaser or assignee of any Sold Account during the Repurchase Period, then that Collector, debt buyer or other entity is not included in this definition with respect only as to those accounts that could not be repurchased.

1.46. "Second Distribution" means the re-issuance of checks to each of the Settlement Class Members whose checks from the First Distribution were voided by the Settlement Administrator because they were returned as undeliverable or remained uncashed upon expiration of the sixty (60) day period following the date of the First Distribution, as well as the mailing of same to any address that the Settlement Administrator reasonably believes to be valid.

1.47. "Request to Opt-Out" means the signed, written request from a Class Member who seeks to exclude himself/herself from the Settlement Class and that complies with the requirements set forth in Section 11 of this Agreement.

1.48. "RISC" means a motor vehicle retail installment sales contract for the purchase of a motor vehicle entered into by a Settlement Class Member.

1.49. "Settlement" means the settlement terms set forth in this Agreement.

1.50. "Settlement Administrator" means Class-Settlement.com, which will act as the Settlement Administrator and assist with implementing and effectuating the terms of this Agreement, or another settlement administrator approved by the Court.

1.51. "Settlement Class" means the collective group of all of the Class Members who do not properly and timely exclude themselves from a Settlement, and thus means the

collective group of all of the Class Members who will become bound by the Judgment when the Effective Date occurs.

1.52. "Settlement Class Member" or "Member of the Settlement Class" means any person who is a member of the Settlement Class.

1.53. "Settlement Fund" means the Fourteen Million Dollars ($14,000,000) that SC shall pay pursuant to Section 4 of the Agreement. The Settlement Fund is for the benefit of the Settlement Class and will be used to pay Class Members, the Incentive Awards, Attorneys' Fees and Expenses, and all costs of settlement administration. Under no circumstances shall SC's total financial obligation relating to the Settlement exceed Fourteen Million Dollars ($14,000,000).

1.54. "Settlement Website" means the website to be established by the Settlement Administrator as set forth in Section 8.

1.55. "Sold Account" means those Class Member Accounts at SC that have been sold to a third party and which Account has not been re-purchased or re-acquired by SC as of the date SC provides the Settlement Administrator with the Notice List, as required by Section 3.1.

1.56. "Third Distribution" means the issuance of checks to each of the Settlement Class Members who are eligible for same pursuant to Section 6.1.3, as well as the mailing of same to any address that the Settlement Administrator reasonably believes to be valid.

1.57. "Unknown Claims" mean any Released Class Claims which any Class Releasor does not know or suspect to exist in their favor at the time of the entry of the Judgment, and which, if known by them might have affected their settlement with and

release of the Class Releasees, or might have affected a Class Member's decision to opt out of the Settlement Class or to object to this Settlement. With respect to any and all Released Class Claims, the Parties stipulate and agree that, upon the Effective Date, the Class Representatives and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment to the fullest extent allowed by law, expressly waived the provisions, rights, and benefits of any statute or principle of common law which provides that general releases do not extend to claims which the debtor does not know or suspect exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the creditor. Each Class Releasor may hereafter discover facts in addition to or different from those which he or she now knows or believes to be true with respect to the subject matter of the Released Class Claims, but the Class Releasors, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released to the fullest extent allowed by law any and all Released Class Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which existed at any time during the Class Period, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, contract, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Class Representatives acknowledge, and the Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the

foregoing waiver was separately bargained for and a material term of the Settlement of which this release is a part.

1.58. The plural of any defined term includes the singular, and the singular of any defined term includes the plural.

1.59. Other terms are defined in the text of this Agreement and shall have the meaning given to those terms in the text. In all documents related to the Settlement, capitalized terms shall have the meanings given to them in this Agreement.

2. Conditions and Effectiveness of Agreement.

2.1. This Agreement is expressly contingent upon the satisfaction, in full, of the material conditions set forth below. The Effective Date of this Agreement shall be the date when all of the following actions and events listed below have occurred.

2.2. By signing this Agreement, SC represents and warrants that as of June 6, 2021, to the best of SC's knowledge, information, and belief, according to SC's business records, assuming all accounts of putative Class Members that were sold are successfully repurchased/reacquired, (a) there are 38,920 unique loans of Class Members which are the subject of this litigation, including accounts which SC has sold or assigned to a Collector(s); (b) there are 49,927 (putative) Class Members; and, (c) the total amount of Deficiency Balances for the unique loans is $136,888,647.96. See "Sold Accounts," as defined above and Section 3.1. This information was derived from a computer query of SC's records perform on or around June 6, 2021, the results of which were provided to Class Counsel prior to settlement. SC agrees to update the information in this Paragraph,

by way of a letter from SC's counsel, when it transmits the Notice List to the Settlement Administrator pursuant to Section 7.3.

2.3. Class Action Fairness Act. This Settlement shall be administered as if governed by 28 U.S.C. § 1715. The Defendant shall direct the Settlement Administrator to prepare and send the notices required by 28 U.S.C. § 1715 to all appropriate federal and state officials within ten (10) days after the Motion for Preliminary Approval is filed, but in no event shall the Final Approval Hearing take place prior to the provision of effective notices and the expiration of the statutory time. The cost in connection with the Settlement Administrator's services to prepare and send the CAFA notices shall be paid from the Settlement Fund. The Settlement Administrator shall provide the CAFA notice to Class Counsel. The Final Approval Order shall make a finding that 28 U.S.C. § 1715 was complied with fully.

2.4. Court Approval. The Court approves this Agreement in accordance with the following steps:

2.4.1. Motion for Preliminary Approval. Class Counsel shall provide a draft of the Motion for Preliminary Approval at least four (4) business days before filing, and thereafter shall engage with Defense Counsel in a good faith consultation prior to filing. Class Counsel will present a Motion for Preliminary Approval to the Court within twenty (20) days of execution of this Agreement including the Class Notice, in substantially the form of **Exhibit 1** hereto, and the Preliminary Approval Order, in substantially the form of **Exhibit 2** hereto.

2.4.2. Certification of Class for Settlement Purposes. In connection with the proceedings for Preliminary and Final Approval, the Class Representatives shall seek orders (Preliminary and Final, respectively) certifying the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure for purposes of this Settlement only.

2.4.3. Entry of Preliminary Approval Order. The Court shall enter a Preliminary Approval Order, which shall among other things:

a. Preliminarily certify the proposed Class under Rule 23 of the Federal Rules of Civil Procedure for settlement purposes only;

b. Preliminarily approve this Agreement as fair, reasonable and adequate under Rule 23 of the Federal Rules of Civil Procedure subject to final determination by the Court;

c. Approve the appointment of the Class Representatives as representative of the Class for the Settlement and the appointment of Class Counsel;

d. Approve Class-Settlement.com, or another administrator of the Court's choosing, as the Settlement Administrator, permitted to handle the mailing and processing of all notices, checks, and the disposition of the Settlement Fund;

e. Approve a form of Notice substantially in the form of **Exhibit 1** to be sent to the individuals on the Notice List;

f. Provide for the Repurchase Period;

g. Order SC to provide the Notice List within sixty (60) days of the expiration of the Repurchase Period;

h. Direct the Settlement Administrator to mail the Notice to each individual on the Notice List by first-class mail no later than sixty (60) days after SC provides the Settlement Administrator with the Notice List;

i. Schedule a Final Approval Hearing on final approval of this Settlement;

j. Establish a procedure for Members of the Class to exclude themselves and set a date, approximately sixty (60) days after the Settlement Administrator sends the Class Notice, after which no Member of the Class shall be allowed to opt out of the Settlement and shall be bound to the terms of the Settlement, absent court approval;

k. Establish a procedure for Settlement Class Members to appear and/or object to the Settlement and set a date, approximately sixty (60) days after the Settlement Administrator sends the Class Notice, after which no Settlement Class Member shall be allowed to object, absent court approval;

l. Stay all proceedings in the Action against the Defendant, other than proceedings as may be necessary to carry out the terms and conditions of the Agreement;

m. Contain such other and further provisions consistent with the terms and provisions of this Agreement as the Court may deem advisable; and

n. Authorize the Parties to take all necessary and appropriate steps to establish the means necessary to implement the terms of this Agreement.

2.5. Class Notice. The Settlement Administrator shall cause the Class Notice to be mailed pursuant to the Preliminary Approval Order and the terms of this Agreement. After entry of the Preliminary Approval Order and expiration of the Repurchase Period,

SC agrees to re-run the class data to finalize the number of class members and the total number of unique loans and Deficiency Balances to be compromised in order to finalize the Notice List to which the Settlement Administrator will send Notice. The Parties agree and acknowledge that any decrease to the Class size that may result from this process is not a substantial change under this Agreement. The Parties reasonably anticipate that, in no event, will the number of Accounts exceed more than 39,920 after the class data is re-run pursuant Section 3.1 below.

2.6. The Settlement Administrator, who shall execute and be bound by the Protective Order, shall use this Confidential Information only to effectuate the settlement of this Action.

2.7. The Parties agree to respond within a reasonable period of time to reasonable inquiries from the Settlement Administrator.

2.8. Order of Final Approval and Judgment. The Court shall enter the Order of Final Approval, which shall among other things:

a. Find that (i) the Court has personal jurisdiction over the Settlement Class Members, (ii) the Court has jurisdiction over the claims asserted in the Action, and (iii) venue is proper;

b. Finally approve the Settlement;

c. Finally certify the Settlement Class for settlement purposes only;

d. Find that the form and means of disseminating the Class Notice complied with all laws, including, but not limited to, the Due Process Clause of the United

States Constitution, and find that the Parties and procedures used complied with federal law so as to give full effect to the Settlement;

e. Enter Final Judgment with respect to the Released Class Claims of all Settlement Class Members and dismiss the Released Class Claims with prejudice, keeping the Action open only for purposes of the implementation of the terms of this settlement, including orderly administration;

f. Make the Releases in Section 10 of this Agreement effective as of the date of the Final Judgment;

g. Find that, by operation of the entry of the Judgment, the Class Representatives and all of the Settlement Class Members shall be deemed to have forever released, relinquished, and discharged the SC Releasees from any and all Released Class Claims;

h. Find that, by operation of the entry of the Judgment, SC shall be deemed to have forever released, relinquished, and discharged the Class Releasees from any and all Released SC Claims;

i. Require SC to make an initial request for deletion of tradelines within sixty (60) days from entry of the Final Approval Order, as defined in Section 4.5;

j. Authorize the Parties to implement the terms of this Agreement;

k. Retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Agreement, the Final Judgment, and for any other necessary purpose; and

l. Issue related orders to effectuate the Final Approval of the Settlement and its implementation.

2.9. No Injunctive Relief. The Final Approval Order and Judgment shall not provide for any injunctive relief against either Party.

2.10. Finality of Judgment. The Final Approval Order has become Final, including expiration of the time for filing any appeal or other form of objection to the Final Approval Order, full and final resolution of any appeal or objection that may be filed, and expiration of the time for seeking review of that disposition through an appeal, *en banc* hearing, or higher level of review.

3. Identification of Class Members and Notice List.

3.1. Within sixty (60) days of expiration of the Repurchase Period, SC shall provide to the Settlement Administrator the Notice List, in Excel spreadsheet format containing the following information: (i) the last eight (8) digits of the Account number for each Account; (ii) the name(s) of the Class Member(s) associated with each Account; (iii) the last known mailing address for each Class Member; (iv) the Social Security Number for each Class Member; and, (v) the total amount of the Deficiency Balance Compromise for each Account, as applicable, as of the date of the Preliminary Approval Order; (vi) the deficiency balances for Class Members who will not receive a Deficiency Balance Compromise; (vii) the financed amount; and, (vii) finance charge amount for each loan. Class Counsel will be provided with a version of the Notice List that does not include Social Security Numbers. Defense Counsel shall provide with the Notice List a letter

containing a representation and warranty that the Notice List is accurate to the best of SC's knowledge, information, and belief.

3.2. SC is providing the information set forth in Section 3.1, including the Class Members' Social Security Numbers, for legitimate business purposes and only for purposes of the Settlement of this Action.

3.3. The Settlement Administrator shall review, verify, and, if applicable, update the Class Member mailing addresses in the spreadsheets provided by SC pursuant to Section 3.1 through the United States Postal Service Coding Accuracy Support System ("CASS") and National Change of Address ("NCOA") database and/or through the Accurint and/or Westlaw databases or another equivalent database prior to the sending of the Class Notice and as updated information is needed or obtained.

4. Settlement Consideration.

4.1. In consideration for the Class Releases set forth in Section 10, SC will provide the following benefits.

4.2. Repurchase of Accounts. No later than the expiration of the Repurchase Period, SC agrees to use its best efforts to attempt to repurchase or re-acquire all rights, title, and interest to Class Member(s)' subject auto loan accounts which it had previously sold, assigned, or transferred to a Collector.

4.3. Compromise of Deficiency Balances.

4.3.1. Upon the Effective Date (*i.e.*, thirty-five (35) days after Final Approval), SC agrees to compromise Deficiency Balances, where applicable, alleged to be owed by each Settlement Class Member.

4.3.2. It is the Parties' mutual intent to compromise the Deficiency Balances by way of an accord and satisfaction. While the Parties acknowledge that, to date, there has not been any judicial determination that the compromise of the Deficiency Balances constitutes an accord and satisfaction, the Parties do not have any objection to Plaintiffs requesting such a determination or for the Court to issue such a determination, for purposes of effectuating this Settlement. In the event the IRS, a court, or any other regulating or governing body deem the Parties' intended accord and satisfaction invalid, this Settlement Agreement shall nonetheless remain in full force and effect and the other benefits or payments due, or to become due, shall not be increased or changed, nor shall such a determination provide any basis for the Parties to terminate this Agreement.

4.3.3. SC represents and warrants that, as of October 25, 2022, it is not aware of any deficiency judgments or arbitration awards in its favor against any Class Member nor does it intend to initiate any such claim for a deficiency judgment or award against any Class Member. However, if it is discovered that such a deficiency judgment(s) or arbitration award(s) exist as against any Class Member(s), then such information will not result in a breach of this agreement. Rather, such information will only result in SC's obligation to reasonably work collaboratively with Class Counsel to promptly investigate the veracity of such information and, as necessary, take all reasonable steps to cooperate with Class Counsel to move the appropriate court to vacate such a deficiency judgment(s) and to expunge the docket.

4.3.4. Cessation of Collection Efforts. Immediately upon entry of the Preliminary Approval Date, Santander voluntarily agrees to cease all collection efforts

relating to the Deficiency Balances of Class Members, and immediately cease all efforts regarding any deficiency lawsuit(s) or arbitrations against Class Members asserting any Released SC Claims. This provision is not governed by a court order enjoining any such collection efforts, but rather is a volitional act by SC to ensure, *inter alia*, that Class Members are not adversely affected by the lapse in time occasioned by the 120-day Repurchase Period. If any Class Member or Class Counsel become aware of collection efforts by SC on a Deficiency Balance after Preliminary Approval and before the Effective Date, the Class Member or Class Counsel shall notify Defense Counsel in writing of the collection effort and sufficiently identify the Account at issue. SC shall have the right to cure any non-compliance within fourteen (14) days after receiving written notice and any cured collection effort will not be considered a breach of this Agreement.

4.4. Monetary Relief.

4.4.1. Within thirty (30) days after the Court's entry of the Preliminary Approval Order, SC will fund the Settlement Fund by depositing the sum of Fourteen Million Dollars ($14,000,000) into an escrow account (*i.e.*, via a wire or check) with the Settlement Administrator, the terms of which shall be subject to SC's approval. The account may, though is not required to, bear interest.

4.4.2. The Settlement Administrator's costs associated with disseminating the Class Notice, the Settlement Website, distributing checks to Settlement Class Members, and any escrow, administrative and/or bank related fees and costs associated with the Settlement Administrator's distribution of payments shall be paid out of the Settlement Fund.

4.4.3. After deducting Attorneys' Fees and Expenses, Settlement Administration Costs, and Incentive Payments from the Settlement Fund, the Settlement Fund shall initially be distributed equally on a per-Account basis (the "First Distribution") as set forth in Section 6.1. If there are co-borrowers on an Account, the First Distribution shall be split equally among those Settlement Class Members that are co-borrowers on the Account, unless they file an objection to the equal division pursuant to the procedures set forth in the Class Notice or as otherwise directed by the Court.

4.4.4. Under no circumstances shall SC's total payment obligation under the Settlement Agreement exceed Fourteen Million Dollars ($14,000,000).

4.5. Request for Deletion of Tradelines.

4.5.1. No later than sixty (60) days after the Effective Date, SC shall submit a request to the Credit Reporting Agencies for the deletion of the entire tradelines associated with any Settlement Class Members' Accounts, to the extent SC submitted any tradeline information to the Credit Reporting Agencies. After the Effective Date, SC agrees not to request that the Credit Reporting Agencies reinstate any Class Member's tradeline that it has agreed to request be deleted pursuant to this Agreement. If, after one hundred twenty (120) days after the Effective Date, a request is made by Class Counsel or a Settlement Class Member to re-submit a deletion request to any Credit Bureau because their tradeline has not been removed, SC agrees to re-submit a deletion request for that Settlement Class Member within thirty (30) days. Notice for the resubmission request should be made to SC's counsel as listed in Section 20 below. The resubmission request will include the name of the Settlement Class Member, their account number or if the

Settlement Class Member does not know their account number, other identifying information such as their Social Security Number, and a reasonable basis for the request (*e.g.*, that the Settlement Class Member looked up their credit report 120 days or more after the Effective Date and the tradeline still appears on the report). SC agrees to submit up to two (2) requests for the deletion of a Settlement Class Member's tradeline. However, Class Members acknowledge that the credit reporting agencies are separate entities from SC, and it is the Class Members' responsibility to contact the credit reporting agencies to verify that they have taken action consistent with the request of SC, and that no cause of action can or will be stated, including any for breach of this Agreement against SC, in the event any credit reporting agency fails to so amend Class Member's credit history. Upon completion of the Second Request, SC shall have no further obligations under this Section.

4.5.2. Nothing in this Section is an admission either about SC's current or past practices, or an admission that the terms are mandated by law or another requirement.

4.5.3. The relief set forth in this Section shall not operate as an injunction or otherwise provide any Class Member or governmental official or agency, or any other person or entity with any right or power to seek direct enforcement of its terms. Settlement Class Member may seek relief from the Court as to the breach of the terms of the Settlement Agreement if, and only if, SC fails to make the deletion request set forth in Section 4.5.1.

4.6. Tax Treatment.

4.6.1. This Agreement is enforceable regardless of its tax consequences. The Parties understand and agree that this Agreement reflects the settlement of disputed legal claims. The Parties and the Settlement Administrator make no representations

regarding the Agreement's tax consequences. Settlement Class Members will be solely responsible for the reporting and payment of any federal, state, and/or local income or other tax or any other withholdings, if any, on any of the payments made pursuant to the Settlement. SC makes no representations as to the taxability of any portions of the benefits provided to Settlement Class Members herein.

4.6.2. SC agrees not to issue IRS Forms 1099-C to Class Members or the IRS for the Deficiency Balance Compromise. However, if the IRS, the Court, or any other regulating or governing body provides a directive to SC to issue Forms 1099-C in connection with the Deficiency Balance Compromises, SC will comply with the directive(s) of the IRS, a court, or any other regulating or government body. In such event, SC shall, within fourteen (14) days of receipt of any such directive, provide to Class Counsel a copy of any such directive(s).

4.6.3. Within fourteen (14) days of issuance of any Forms 1099-C to Class Members or the IRS by SC or its agent (whether by error or at the directive of the IRS, a court, or any other regulating or government body), SC shall provide copies of any Forms 1099-C to Class Counsel.

4.7. Disputes Relating to Issuance of 1099-Cs.

4.7.1. To the extent that Class Counsel believes that, notwithstanding the terms of this Agreement, SC inadvertently issued a 1099-C to a Class Member(s) relating to a Deficiency Balance Compromise, Class Counsel shall provide written notice to Defense Counsel and a copy of all non-privileged documents, including any correspondence relating to the issuance of the 1099-C, together with the basis why Class

Counsel contends that the 1099-C should not have been issued. Following such notice, SC shall notify the IRS within thirty (30) days that the 1099-C was issued in error, providing a copy of such correspondence to Class Counsel.

4.7.2. SC agrees to reasonably cooperate with Class Members, Class Counsel, and the Settlement Administrator to validate that the Deficiency Balance Compromises were, indeed, fully compromised by SC (which, for purposes of this Agreement, shall mean that, as of June 6, 2021, SC's business records reflect that Class Members had deficiencies on their accounts totaling $136,888,647.96, and that, as a result of the Final Approval, SC will ensure the Deficiency Balance on all Settlement Class Member Accounts reflects a $0 balance and the Settlement Class Member will not have any further obligations under the account). If the IRS requests payment of taxes in connection with any of the benefits of the Deficiency Balance Compromises by any Class Member, SC, will not take any position as to whether any tax is (or is not) owed by the Class Member; however, SC, will not object if Class Counsel requests that the Court adjudicate such taxability. For the avoidance of doubt, if the IRS the Court, or any other regulating or governing body requests or requires that SC issue a 1099, SC will do so, and such issuance of a 1099 shall not be deemed to be "taking a position" on whether tax is (or is not) owed by the Class Member, nor shall it be a violation of this Agreement.

4.8. SC shall return any Post-Approval Payments made on or after the Effective Date.

5. Qualified Settlement Fund.

5.1. The Settlement Fund shall constitute a "qualified settlement fund" ("QSF") within the meaning of Treasury Regulation § 1.46B-1 promulgated under § 468B of the Internal Revenue Code of 1986 as amended. The Settlement Administrator shall be the "administrator" within the meaning of Treasury Regulation § 1.468B-2(k)(3).

5.2. Upon or before establishment of the QSF, the Settlement Administrator shall apply for an employer identification number for the QSF utilizing Internal Revenue Service Form SS-4 and in accordance with Treasury Regulation § 1.468B-2(k)(4), and shall provide SC with that employer identification number on a properly completed and signed IRS Form W-9.

5.3. If requested by either SC or the Settlement Administrator, the Settlement Administrator and SC shall fully cooperate in filing a relation-back election under Treasury Regulation § 1.468B-1 (j)(2) to treat the QSF as coming into existence as a settlement fund as of the earliest possible date.

5.4. Following its remittances of the Settlement Fund monies as described in Section 4.4.1 of this Agreement, SC shall have no responsibility, financial obligation or liability whatsoever with respect to the notifications to the Class required hereunder, the processing of opt out letters, payments to the Settlement Class Members, payments to the Class Representatives, payment of Class Counsel's Attorneys' Fees and Expenses, investment of QSF funds, payment of federal, state, and local income, employment, unemployment, excise, and any other taxes, penalties, interest or other charges related to taxes imposed on the QSF or its disbursements, payment of the administrative, legal,

accounting, or other costs occasioned by the use or administration of the QSF, since it is agreed that such deposits shall fully discharge SC's obligation to the Class Representative, Settlement Class Members, Class Counsel and expenses of administration with respect to the disposition of the Settlement Fund.

5.5. The Settlement Administrator shall file or cause to be filed, on behalf of the QSF, all required federal, state, and local tax returns, information returns, including, but not limited to, as applicable, any Form 1099-series return, any tax withholdings statements, and otherwise in accordance with the provisions of Treasury Regulation § 1.468B-2(k)(l) and Treasury Regulation § l.468B-2(1)(2). Any contract, agreement or understanding with the Settlement Administrator relating to the QSF shall require the Settlement Administrator or its agent to file or cause to be filed, on behalf of the QSF, all required federal, state, and local tax returns, information returns, including, but not limited to, as applicable, any Form 1099-series return, and any tax withholdings statements, in accordance with the provisions of Treasury Regulation § 1.468B-2(k)(1) and Treasury Regulation § l.468B-2(1)(2). The Settlement Administrator may, if necessary, secure the advice of a certified public accounting firm in connection with its duties and tax issues arising hereunder, an expense to be paid from the Settlement Fund.

6. Payments from the Settlement Fund.

6.1. Payments to Class Members.

6.1.1. On a date no later than sixty (60) days after the Effective Date, and using the updated Notice List as set forth in Section 3.1, the Settlement Fund (less the Attorneys' Fees and Expenses, Settlement Administration Costs, and Incentive Payments)

shall first be distributed equally to the Settlement Class Members on a per-Account basis (the "First Distribution"). If there are co-borrowers on an Account, the First Distribution shall be split equally among those Settlement Class Members that are co-borrowers on the Account, unless they file an objection to the equal division pursuant to the procedures set forth in the Class Notice or as otherwise directed by the Court.

6.1.2. Upon expiration of the sixty (60) day period following the date of the First Distribution, the Settlement Administrator shall void the checks of Settlement Class Members that were returned as undeliverable or remain uncashed on that date. Within fourteen (14) days thereafter, the Settlement Administrator shall make the Second Distribution to each of these Settlement Class Members whose checks were voided by mailing (re-issued) checks to an address that the Settlement Administrator reasonably believes to be valid.

6.1.3. Upon expiration of the sixty (60) day period following the date of the Second Distribution, the Settlement Administrator shall void the checks of Settlement Class Members from the Second Distribution that were returned as undeliverable or remain uncashed on that date. Within fourteen (14) days thereafter, if there is $100,000 or more remaining in the Settlement Fund, the Settlement Administrator shall make the Third Distribution. The Third Distribution shall be made only to those Settlement Class Members that cashed a check in the First Distribution or the Second Distribution; those Settlement Class Members whose checks from the Second Distribution were voided shall be automatically rendered ineligible to share in and shall be excluded from the Third and Fourth Distribution, if they are made. If applicable, the Third Distribution shall be made

on a per-Account basis, by taking the amount remaining in the Settlement Fund divided by the number of Accounts eligible to share in the Third Distribution. The Third Distribution payment to a particular Account shall be split equally among the Settlement Class Members that are co-borrowers on that Account that is eligible for a check in the Third Distribution, unless they file an objection to the equal division pursuant to the procedures set forth in the Class Notice or as otherwise directed by the Court.

6.1.4. Upon expiration of the sixty (60) day period following the date of the Third Distribution, if one is made, the Settlement Administrator shall void the checks of Settlement Class Members from the Third Distribution that were returned as undeliverable or remain uncashed on that date. Within fourteen (14) days thereafter, if there is $100,000 or more remaining in the Settlement Fund, the Settlement Administrator shall make the Fourth Distribution. The Fourth Distribution shall be made only to those Settlement Class Members that cashed a check in the Third Distribution; those Settlement Class Members whose checks from the Third Distribution were voided shall be automatically rendered ineligible to share in and shall be excluded from the Fourth Distribution, if one is made. If applicable, the Fourth Distribution shall be made on a per-Account basis, by taking the amount remaining in the Settlement Fund divided by the number of Accounts eligible to share in the Fourth Distribution. The Fourth Distribution payment to a particular Account shall be split equally among the Settlement Class Members that are co-borrowers on the Account that is eligible for a check in the Fourth Distribution, unless they file an objection to the equal division pursuant to the procedures set forth in the Class Notice or as otherwise directed by the Court.

6.1.5. After the aforesaid distributions, neither the Settlement Administrator nor SC shall have any further obligation to locate any Settlement Class Member or to make any further distribution to Settlement Class Members, absent Court order.

6.1.6. Notwithstanding the foregoing, the Settlement Administrator may reissue settlement checks, on an individual basis, with the approval of Class Counsel. The Settlement Administrator shall, however, maintain the priority of payments whereby: (a) replacement settlement payments for the First Distribution and Second Distribution may be reissued so long as the re-issued settlement payments, if uncashed, are voided prior to the Third Distribution; (b) replacement settlement payments for the Third Distribution and Fourth Distribution may be reissued, so long as the re-issued settlement payments, if uncashed, are voided no later than sixty days following the Fourth Distribution. All checks shall be void sixty (60) days after the Fourth Distribution. The Settlement Administrator shall notify counsel in writing within fourteen (14) days after the last of the aforesaid distributions of the number of Settlement Class Members who were sent checks, the number of Settlement Class members who did not cash their checks, the number of outstanding checks and respective amounts, the total dollar amount of the checks distributed by the Settlement Administrator, and an accounting of the Settlement Fund.

6.1.7. SC represents and warrants that, as of the date of this Agreement, it owns the Account of Class Representatives Hugh and Christine Kelly.

6.2. Upon expiration of the sixty (60) day period following the date of the Fourth Distribution, if one is made, the Settlement Administrator shall void the checks of

Settlement Class Members from the Fourth Distribution that were returned as undeliverable or remain uncashed on that date.

6.3. Incentive Awards to Class Representatives and Payments to Individuals. Class Counsel shall be entitled, subject to Court approval, to apply to the Court for an incentive award to the Class Representatives in an amount not to exceed $15,000 ("Incentive Awards"). SC will take no position on Class Counsel's request for these Incentive Awards and Payments. Within sixty (60) days of the Effective Date and upon the Class Representatives' and Individuals' submission of a Form W-9 to the Settlement Administrator, subject to Court approval, the Settlement Administrator shall remit Incentive Awards to the Class Representatives and Payments to the Individuals.

6.4. Cy Pres. Upon expiration of the sixty (60) day period following the last of the following to occur: (1) the Second Distribution, if the Settlement Fund does not exceed $100,000 following that distribution; (2) the Third Distribution, if the Settlement Fund does not exceed $100,000 following that distribution; or (3) the Fourth Distribution, the Settlement Administrator shall void the checks of Settlement Class Members from the last distribution that were returned as undeliverable or remain uncashed on that date. Within fourteen (14) days thereafter, a payment of the remaining balance of the Settlement Fund shall be made to the Cy Pres Recipient(s).

7. Retention and Duties of Settlement Administrator.

7.1. The Settlement Administrator shall administer the Settlement pursuant to the terms of this Agreement. The Settlement Administrator shall be responsible for (i) administering the Class Notice (including data standardization and de-duplication of the

Notice List including updating addresses through NCOA, reasonable efforts to update addresses for undeliverable notices, and printing and mailing the Class Notice), (ii) sending the CAFA notice as required by 28 U.S.C. § 1715, (iii) creating and hosting the Settlement Website with downloadable forms (as necessary) and case information, (iv) administering a question/answer interactive component with live reception (potentially), (v) deploying and operating a toll-free contact center to field inquiries from Class Members, (vi) obtaining and furnishing documents to effectuate this Settlement, (vii) answering questions posed by Class Members, Class Counsel, and Defense Counsel, (viii) paying the Incentive Payments to the Class Representatives, and (ix) distributing payments to Settlement Class Members. The Settlement Administrator shall also be responsible for additional tasks the Parties jointly agree are necessary to accomplish administration of the Settlement.

7.2. The Settlement Administrator shall not have any duties with respect to settlement administration apart from those expressly provided for or contemplated in this Agreement. SC shall not be responsible for any costs of the Settlement Administrator for additional services provided outside the scope of this Settlement Agreement.

7.3. SC, Defense Counsel, and Class Counsel will coordinate with the Settlement Administrator to provide Notice to the Settlement Class, as provided in this Settlement Agreement. Because the information about Settlement Class Members that will be provided to the Settlement Administrator will consist of confidential information, non-public personal information, and other information protected by privacy laws, the Settlement Administrator will execute a non-disclosure agreement as set forth in the Protective Order (ECF 32) and will take all reasonable steps to ensure that any information

provided to it by SC will be used solely for the purpose of effecting this Settlement and otherwise shall comply with SC vendor and information security requirements. Social Security Numbers will not be shared with Class Counsel or the Class Representatives. The Settlement Administrator shall administer the Settlement in accordance with the terms of this Settlement Agreement and, without limiting the foregoing, shall treat any and all documents, communications and other information and materials received in connection with the administration of the Settlement as confidential and shall not disclose any or all such documents, communications, or other information to any person or entity except as provided for in this Settlement Agreement or by court order.

7.4. The Settlement Administrator shall complete and provide to SC a W-9 form and any other tax-related forms that SC may request prior to SC funding Settlement.

8. Notice to the Class and Settlement Website.

8.1. Subject to the Court's approval, the form of Class Notice shall be substantially in the form of **Exhibit 1** attached hereto.

8.2. As required in Section 3.1, SC shall provide the Notice List to the Settlement Administrator.

8.3. If the Court provides authorization to send the Class Notice to the individuals on the Notice List and approves the Class Notice, the Settlement Administrator shall mail the Notice to the individuals on the Notice List via first class mail through the United States Postal Service, postage pre-paid, no later than the Notice Mailing Date. The Agreement and Notice shall also be posted on the Settlement Website, as outlined in this Section.

8.4. Following the mailing of the Class Notice, the Settlement Administrator shall provide counsel with written confirmation of the mailing.

8.5. Unless the Settlement Administrator receives a Class Notice returned from the United States Postal Service for reasons discussed below in this Paragraph, that Class Notice shall be deemed mailed and received by the individual to whom it was sent five (5) days after mailing. In the event that subsequent to the first mailing of a Class Notice, and prior to seven (7) days before the Opt-Out Deadline, the Notice is returned to the Settlement Administrator by the United States Postal Service with a forwarding address for the recipient, the Settlement Administrator shall re-mail the notice to that address, and the Notice will be deemed mailed at that point. The Class Notice shall be deemed received by the individual once it is mailed for the second time. Nothing in this Paragraph shall be construed to extend the Opt-Out Deadline for any Class Member. In the event there is a late opt-out request due to a returned Class Notice due to an address error, then the Settlement Administrator shall immediately notify Defense Counsel and Class Counsel who shall confer on the most efficient means to proceed, involving the Court if necessary.

8.6. Within thirty (30) days of the Notice Mailing Date, the Settlement Administrator, upon the approval of the Court to file under seal pursuant to the Protective Order (to protect the names, addresses, and other personal information of Class members), will cause to be filed with the Court a list of the names and addresses of all Class Members to whom the Class Notice was sent.

8.7. No later than the Notice Mailing Date, the Settlement Administrator shall establish the Settlement Website, which shall contain copies of this Agreement and

Exhibits including the Class Notice as well as the Complaint, the Preliminary Approval Order, applications for Attorneys' Fees and Expenses and Incentive Payments, and the Final Approval Order. The Settlement Website shall remain open and accessible until at least sixty (60) days following entry of the Final Approval Order.

9. Representations and Warranties.

9.1. The Class Representatives represent and warrant that they have not assigned or otherwise transferred any interest in any of the Released Class Claims against any of the SC Releasees, and further covenant that they will not assign or otherwise transfer any interest in any of the Class Representatives' Released Class Claims.

9.2. The Class Representatives represent and warrant that they will have no surviving claim or cause of action against any of the SC Releasees with respect to any of the Released Class Claims, following a Final Approval Order that incorporates this Agreement.

9.3. SC represents and warrants that, if it serviced any of the Accounts for a third party which it did not own at any time, it has all rights, title, and interest in the Account as of the date of the execution of this Agreement.

9.4. SC represents and warrants that either SC or Chrysler Capital were listed as the creditor in the Notices of Repossession sent to Class Members.

9.5. SC represents and warrants the accuracy of the information in Section 3.1 above.

9.6. SC represents and warrants that it will have no surviving claim or cause of action against any of the Class Releasees with respect to any of the Released SC Claims, following a Final Approval Order that incorporates this Agreement.

9.7. These parties' representations and warranties are made in good faith and any *de minimis* violation(s) which becomes known shall not be deemed as a material breach of this Agreement.

9.8. The Parties, and each of them on his, her, or its own behalf only, represent and warrant that they are voluntarily entering into the Settlement Agreement as a result of arm's-length negotiations and mediation among their counsel and before Eric Green, that in executing the Settlement Agreement, they are relying solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently selected counsel and Eric Green, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof; and that, except as provided herein, they have not been influenced to any extent whatsoever in executing the Settlement Agreement by representations, statements or omissions pertaining to any of the foregoing matters by any Party or by any person representing any party to the Settlement Agreement. Each of the parties assumes the risk of mistake as to facts or law.

10. Releases.

10.1. Release by Class Representatives and Class Members.

10.1.1. On the Effective Date, Class Releasors, including but not limited to the Class Representatives, on their own behalf and on behalf of each Settlement Class

Member, by operation of this Release and the Judgment set forth in the Order of Final Approval, do hereby and shall be deemed to have fully, finally, conclusively, irrevocably, and forever released, settled, compromised, relinquished, and discharged any and all of the SC Releasees of and from any and all Released Class Claims.

10.1.2. The Class Releasors acknowledge and agree that they are aware that they may hereafter discover material or immaterial facts in addition to or different from those which they now know or believe to be true (or may be true) with respect to the subject matter of this Release, that it is possible that unknown facts, losses or claims exist, and that known losses may have been underestimated in amount or severity. This was explicitly taken into account in connection with this Agreement. It is the Releasors' intention to, and they do hereby, upon the Effective Date of this Agreement, fully, finally, and forever settle and release each and every one of the SC Releasees from each and every Released Class Claim.

10.1.3. Subject to Court approval, each Settlement Class Member shall be bound by this Agreement and all of their Released Class Claims shall be dismissed with prejudice and released even if they never received actual, prior notice of the Action or its Settlement in the form of the Notice or otherwise. The Release and agreements contained in this Section 10 shall apply to and bind all Settlement Class Members, including those Settlement Class Members whose Notices are returned as undeliverable, and those for whom no current address can be found, if any.

10.2. Release by SC.

10.2.1. On the Effective Date, SC, by operation of this Release and the Judgment set forth in the Order of Final Approval, hereby and shall be deemed to have fully, finally, conclusively, irrevocably, and forever released, settled, compromised, relinquished, and discharged any and all of the Class Releasees of and from any and all Released SC Claims.

10.2.2. SC acknowledges and agrees that it is aware that it may hereafter discover material or immaterial facts in addition to or different from those which it now knows or believes to be true with respect to the subject matter of this Release, that it is possible that unknown facts, losses or claims exist, and that known losses may have been underestimated in amount or severity. This was explicitly taken into account in connection with this Agreement. It is SC's intention to, and it does hereby, upon the Effective Date of this Agreement, fully, finally, and forever settle and release each and every one of the Class Releasees from each and every Released SC Claims.

10.3. On the Effective Date, Class Releasors hereby release the SC Releasees from each and every Released Class Claim, and SC hereby releases the Class Releasees from each and every Released SC Claim.

10.4. Promptly after the Effective Date, Settlement Class Members shall dismiss with prejudice all claims, actions or proceedings that are released pursuant to this Agreement. In the event any such actions or proceedings are not dismissed and SC learns of the action, SC may provide notice to the Settlement Class Member of this Settlement and request dismissal of the action.

10.5. The Class Releasors, including but not limited to the Class Representatives, on their own behalf and on behalf of each Settlement Class Member, expressly acknowledge that they are familiar with and, upon entry of the Final Approval Order in this Settlement, waive and release with respect to the Released Class Claims any and all provisions, rights, and benefits conferred by any of the following:

10.5.1. Section 1542 of the Civil Code of the State of California, which states that:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.";

10.5.2. any law of any and all equivalent, similar, or comparable federal or state rules, regulations, laws, or principles of law of any other jurisdiction that may be applicable herein; and/or

10.5.3. any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth in the Agreement.

11. <u>Opt Out Rights.</u>

11.1. A Class Member who wishes to be excluded from the Settlement Class must do so in writing. To opt out, the Class Member must comply with the procedures and deadlines in this Agreement, the Class Notice, and any Court order entered in this case.

11.2. In order to opt out, the Class Member must complete and send to the Settlement Administrator, at the mailing address or email address listed in the Class Notice and on the Settlement Website for this Settlement, a Request to opt out that is postmarked or emailed no later than the Opt-Out Deadline, as specified in the Class Notice. The Request to opt out must: (a) identify the case name; (b) identify the name and address of the person requesting exclusion; (c) be personally signed by the person(s) requesting exclusion; and (d) contain a statement that indicates a desire to be excluded from the Settlement Class, such as "I hereby request that I be excluded from the proposed Settlement Class in the Action." Mass Opt-Outs and Class Opt-Outs shall be void.

11.3. Any Class Member who does not opt out of the Settlement in the manner described herein shall be deemed to be part of the Settlement Class upon the expiration of the Opt-Out Deadline, and shall be bound by all subsequent proceedings, orders, and judgments.

11.4. Any Class Member who desires to opt out must take timely affirmative written action pursuant to this Section, even if the person desiring to opt out of the Class (a) files or has filed a separate action against any of the SC Releasees, or (b) is, or becomes, a putative or actual class member in any other class action filed against any of the SC Releasees.

11.5. Any Class Member who properly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments relating to the Settlement; (b) be entitled to relief under, or be affected by, the Agreement; (c) gain any rights by virtue of the Agreement; or (d) be entitled to object to any aspect of the Settlement.

11.6. The Settlement Administrator shall provide Class Counsel and Defense Counsel with a list of all timely Requests to Opt Out within seven (7) business days after the Opt-Out Deadline.

11.7. Notwithstanding the foregoing, a Class Member shall have the right to revoke a properly and timely submitted request for exclusion if a notice of the Class Member's election to revoke his or her exclusion is sent to the Settlement Administrator, postmarked on or before the Opt-Out Deadline.

12. Objections

12.1. Overview. Any Class Member may object to the Settlement. To object, the Settlement Class Member must comply with the procedures and deadlines in this Agreement and any Court order entered in this case.

12.2. Process. Any Class Member who wishes to object to the Settlement must do so in writing on or before the Objection Deadline, as specified in the Class Notice and Preliminary Approval Order. The written objection must be sent to the Settlement Administrator no later than the Objection Deadline.

12.3. Form of Objection. The requirements to assert a valid written objection shall be set forth in the Class Notice and on the Settlement Website, and, to be valid, the written objection must include: (a) the case name; (b) the name, address, telephone number of the Class Member objecting and, if represented by counsel, of his/her counsel; and (c) the basis for objection.

12.4. Within seven (7) business days of the Objection Deadline, the Settlement Administrator shall provide a report to the Court setting forth a list of Objections that meet

the above guidelines, along with a copy of all Objections. The Court shall have the ultimate determination of whether an Objection has been appropriately made.

12.5. Any Settlement Class Member who does not make his or her objection in the manner provided in this Section shall be deemed to have waived such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement as incorporated in the Agreement, and to the award of Attorneys' Fees and Expenses to Class Counsel and the payment of an Incentive Award to the Class Representative, unless otherwise ordered by the Court.

12.6. Appearance. Subject to approval of the Court, any Class Member who files and serves a written objection in accordance with this Section and the Class Notice may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable.

13. Termination.

13.1. In the event that the Settlement set forth in this Agreement is not approved without changes by the Court or, if one of the conditions upon which the Agreement is based is not satisfied, or if the Court determines that it lacks jurisdiction to approve the Settlement, or if there is a court order from another court that takes jurisdiction over some or all of the Claims, or if there is a regulator determination that frustrates the purpose of and protection of the Settlement, or in the event that the Effective Date does not occur, no further payments shall be made by SC to anyone in accordance with the terms of this

Agreement, the Parties will bear their own costs and fees with regard to the efforts to obtain Court approval, and this Agreement shall be deemed null and void with no effect on the Action whatsoever. In the event the Court awards Class Counsel less than requested in Attorneys' Fees and Expenses, this Settlement Agreement shall nonetheless remain in full force and effect.

13.2. Failure of the Court to enter a Preliminary Approval Order that includes the provisions in Section 2.4.3 or to enter a Final Approval Order that includes the provisions in Section 2.8, will be grounds for SC or the Class Representatives to terminate the Settlement and the terms of this Agreement. If any material portion of the Agreement or the Order of Final Approval is vacated, modified, or otherwise altered on appeal, SC or the Class Representatives may, in their sole discretion, within fourteen (14) calendar days of such appellate ruling, declare that the Agreement has failed to become effective, and in such circumstances the Agreement shall cease to be of any force and effect.

13.3. In the event that 2% or more Class Members exclude themselves from the Settlement Class, SC shall have the absolute discretionary right (but not the obligation) to terminate this Settlement and Agreement and in such case, each and every one of SC's obligations under this Agreement shall cease to be of any force and effect, and this Agreement and any orders entered into in connection therewith shall be vacated, rescinded, cancelled, and annulled (except for any provision included in the Preliminary Approval Order substantially similar to Paragraph 20 of the Preliminary Approval Order attached as **Exhibit 2**). If SC exercises this option, the Parties shall return to the status quo in the Action as if the Parties had not entered into this Agreement. In addition, in such event, the

Agreement and all negotiations, Court orders, and proceedings relating thereto shall be without prejudice to the rights of the Parties, and each of them, and evidence relating to the Agreement and all negotiations shall not be admissible or discoverable in the Action or in any other proceeding. SC must exercise this option pursuant to this Paragraph within ten (10) days after receiving the Opt-Out List and at least three (3) days prior to the Final Approval Hearing, by giving written notice of such exercise to Class Counsel.

13.4. If one of the Parties exercises a right herein to terminate or rescind this Agreement or this Agreement is not approved by the Court pursuant to the proposed Order of Final Approval, this Agreement, the conditional Class certification provided herein, the Settlement proposed herein (including any modifications made with the consent of the Parties), and any action taken or to be taken in connection therewith shall be terminated and shall become null and void and have no further force or effect, the Preliminary Approval Order shall be vacated (except for any provision included in the Preliminary Approval Order substantially similar to Paragraph 20 of the Preliminary Approval Order attached as **Exhibit 2**, which provides that the Settlement shall not be construed as an admission of liability, among other things), the Parties shall be restored to their respective positions existing prior to the execution of this Agreement, and the Parties' rights and obligations with respect to the use of this Agreement and the Settlement contemplated hereby will be subject to Section 17 hereof. In addition, neither this Agreement, the preliminary certification of the Class, the Preliminary Approval Order, nor any other document in any way relating to any of the foregoing, shall be relied on, referred to, or used by anyone in any way for any purpose in connection with any further proceedings in

this Action and/or any action, lawsuit, arbitration, or proceeding involving a Released Claim.

14. Certification of Settlement Class for Settlement Purposes.

14.1. After the Preliminary Approval Order and no later than seven (7) days before the Final Approval Hearing or as otherwise ordered by the Court, the Class Representatives shall move for Final Approval of the Settlement and entry of Final Judgment and shall request that the preliminary certification of the Settlement Class for Settlement purposes be made final. Class Counsel shall provide a draft of the Motion for Final Approval at least four (4) business days before filing, and thereafter shall engage with Defense Counsel in a good faith consultation prior to filing. Any responsive papers shall be filed and served no later than seven (7) calendar days prior to the Final Approval Hearing.

14.2. If the Settlement is not granted final approval and a Final Approval Order is not entered that includes the provisions identified in Section 2.8, the certification of the above-described Settlement Class shall be automatically vacated and shall not constitute evidence or a binding determination that the requirements for certification of a class for any other purposes in this or any other action can be or have been satisfied. In such circumstances, SC reserves and shall have all rights to challenge certification of a Settlement Class or any other class for any other purpose in the Action or any other action on all available grounds as if no Settlement Class had been certified.

15. Attorneys' Fees and Litigation Costs

15.1. SC takes no position on Class Counsel's common fund request of attorneys' fees not to exceed $5,600,000.00 and reimbursement of expenses not to exceed $150,000.00.

15.2. Class Counsel shall request attorneys' fees and reimbursement of expenses as part of its Motion for Final Approval. Class Counsel agree that the amounts of such costs and fees awarded shall compensate them for all legal work in the Action up to and including the date of Final Judgment, including any appeal of the Judgment, as well as for all legal work and costs that may be incurred in the Action after the date of Final Judgment. In the event the Court awards Class Counsel less than requested in Attorneys' Fees and Expenses, this Settlement Agreement shall nonetheless remain in full force and effect and the other benefits or payments due or to become due shall not be increased or changed.

15.3. Neither SC nor the SC Releasees shall have any responsibility for any Attorney's Fees and Expenses submitted by Class Counsel. The grant, denial, or disallowance by the Court of, the request for Attorneys' Fees and Expenses or any appeal from any order related to the requested Attorneys' Fees and Expenses or reversal or modification thereof, will not operate to terminate or cancel this Agreement, or affect or delay the Finality of Judgment approving the Agreement and the Settlement, except as provided for in Section 13.

15.4. Within thirty (30) days after the Effective Date or entry of the order approving attorneys' fees (whichever is later), the Settlement Administrator shall make payment of the Attorneys' Fees and Expenses awarded by the Court to Class Counsel from

the Settlement Fund, pursuant to payment instructions in writing from Class Counsel.[5] In accepting this payment, the Class Representatives and Class Counsel, on behalf of themselves and all Settlement Class Members, acknowledge that the payment and method of payment under this Agreement are in full satisfaction of any and all claims, rights, and demands that Class Counsel, the Class Representative, or the Settlement Class had, have, or may claim to have in the future for attorneys' fees, costs, expenses, or any other payment in connection with this Action or this Agreement. SC shall have no responsibility for allocation or distribution of the award among Class Counsel.

15.5. A Form 1099 for this payment may be filed by the Settlement Administrator. Class Counsel shall cooperate with Settlement Administrator to provide all information necessary to process the payment including completing any requested tax forms (e.g., IRS Form W-9 and applicable tax identification numbers). SC shall have no responsibility for, and no liability whatsoever with respect to, any tax obligations or any allocation among the Class Representatives and Class Counsel, and/or any other person who may assert some claim thereto, of any award or payment made in this Action or pursuant to this Agreement, including but not limited to any award or payment pursuant to this Section 15. Class Counsel and the Class Representatives shall alone be responsible for the reporting and payment of any federal, state, and/or local income or other form of tax on any payment made pursuant to this Section 15. No party shall be deemed the prevailing party for any other purposes of the Action.

[5] SC does not object to Attorneys' Fees to be paid, in whole or in part, in the form of a structured annuity or as deferred compensation.

16. Stay of Discovery and Other Proceedings.

16.1. To the extent the Action has not already been stayed by the Court, upon execution of this Agreement, the Parties shall discontinue all discovery activity or related proceedings in the Action.

17. Return/Destruction of Discovery Materials

17.1. The Parties agree that the terms of the Protective Order govern the dealings of the Parties with respect to materials produced in discovery in this Action and shall continue in force after the Effective Date of the Settlement. Accordingly, within one hundred eighty (180) days of the Effective Date, the Parties and their counsel of record, and any consultants or experts retained by the Parties or their counsel of record, shall use their best efforts to locate all Confidential Information (as the term is defined in the Protective Order) produced in the Action and return such Confidential Information to counsel of record for the producing party or destroy all originals or reproductions (whether in electronic, hard copy, or other form) of the Confidential Information.

17.2. Within one hundred eighty (180) days of the Effective Date, counsel of record shall make written certification that they have used their best efforts to search for all Confidential Information, that they have instructed the Class Representatives, Defendants, and all consultants or experts to return or destroy Confidential Information, and that, to the best of their knowledge, they have retained no originals or copies of any Confidential Information. The Parties acknowledge that their duty to return or destroy all Confidential Information is a continuing duty and the Parties agree to return or destroy any such information found in the future.

17.3. Notwithstanding this Section, the Parties, their counsel, experts, and consultants shall be excused from any duty to destroy their own work product.

17.4. Notwithstanding this Section, the Parties shall be excused from any duty to return or destroy Confidential Information to the extent necessary to comply with outstanding court orders or with judicial and non-judicial subpoenas, civil investigative demands or other compulsory process.

17.5. The Court shall retain jurisdiction to ensure compliance with the Protective Order.

18. Media and Confidentiality

18.1. The Parties, including their counsel, agree that the terms of this Settlement shall remain confidential and not be disclosed by any party until the Settlement Agreement is filed in connection with the Motion for Preliminary Approval.

18.2. The Parties, including their counsel, agree that they shall not at any time publish or issue a press release including but not limited to the media or on the Internet concerning the Settlement. The Parties further agree that they shall not make any statement, with or without attribution, in response to any media inquiries concerning the Action, SC or the Settlement. In response to any such inquiries, the Parties shall refer the inquiring media to the papers filed on the court docket.

18.3. Class Counsel and Class Representatives agree not to make any direct written solicitations to Class Members to make claims, opt out of the Settlement or object to the Settlement, unless approved by SC in writing. Nothing in this Settlement Agreement is intended to restrict Class Counsel's ability to communicate with and/or advise Class

Counsel's clients, including individual Settlement Class Members or individuals on the Notice List, or otherwise restrict Class Counsel's ability to represent anyone.

18.4. Plaintiffs shall not publicly disparage or encourage any Class Member to publicly disparage: (i) SC; (ii) the SC Releasees; (iii) any of SC's representatives; (iv) SC's conduct relating to this Agreement, the Settlement, the Action, the Accounts that are the subject of the Settlement, the Notices of Repossession, or the Deficiency Balances; or (v) SC's policies, procedures, and practices related to the repossession of motor vehicles, the issuance of Notices of Repossession, the disposition of repossessed motor vehicles or deficiency balances. Plaintiffs and Class Counsel agree not to make any direct written solicitations to Class Members to opt out or object to the Settlement. No Party nor their counsel shall seek any media attention relating to this Settlement, and if any request by the media is sought, will decline to comment. If any disparaging statement is made in violation of this Paragraph, upon notice from SC, the party who made the disparaging statement shall provide SC with a written and signed statement fully retracting the Disparaging Statement within seven (7) days.

18.5. Nothing in this Agreement is intended to, or shall be construed to, prevent or inhibit Class Counsel from providing legal advice/services to Class Counsel's clients including Plaintiffs and, after the Preliminary Approval Date, any other Class Members, nor to impair Class Counsel's rights and duties pursuant to the Rules of Professional Responsibility.

19. Right to Cure.

19.1. The Parties, Class Counsel, and Defense Counsel agree to reasonably cooperate to comply with the terms of this Agreement. If any Party fails to comply with a term or conditions of this Agreement, the Party shall have the right to cure such non-compliance within fourteen (14) days after receiving written notice by the other Party. No Party shall commence legal action or seek intervention by the Court with respect to another Party's failure to comply with the terms or conditions of this Agreement without first providing written notice and an opportunity for the other party to cure the non-compliance(s). Thereafter, the Parties agree to reasonably cooperate with each other to cure any breach.

20. Notices

20.1. All notices (other than the Class Notice) required by the Agreement shall be made in writing and communicated by mail or email to the following addresses:

All notices to Class Counsel shall be sent to Class Counsel c/o:

Richard Shenkan
SHENKAN INJURY LAWYERS, LLC
6550 Lakeshore St.
West Bloomfield, MI 48323
Telephone: 412-716-5800
Facsimile: 888-769-1774
Email: rshenkan@shenkanlaw.com

All notices to Defense Counsel shall be sent to Defense Counsel c/o:

K. Issac deVyver
Benjamin J. Sitter
Katelyn M. Fox
MCGUIREWOODS LLP
260 Forbes Avenue, Suite 1800
Pittsburgh, Pennsylvania 15222

kdevyver@mcguirewoods.com
bsitter@mcguirewoods.com
kfox@mcguirewoods.com

21. Miscellaneous Provisions

21.1. Cooperation. The Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effect and implement all terms and conditions of the Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of the Agreement.

21.2. No Admission. The Agreement compromises claims which are contested in good faith, and it shall not be deemed an admission by any of the Parties as to the merits of any claim or defense. The Parties agree that the amounts paid in Settlement and the other terms of the Agreement were negotiated in good faith by the Parties and at arm's length and reflect a Settlement that was reached voluntarily after consultation with competent legal counsel. Neither the Agreement nor the Settlement, nor any act performed or document executed pursuant to, or in furtherance of, the Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the SC Releasees or Class Releasees, or any of them; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the SC Releasees or Class Releasees, or any of them, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. If the Court does not grant Final Approval or if this Agreement otherwise becomes invalid, the Class Representatives and Class Counsel agree not to argue or present any argument, and hereby waive any argument, that SC could not contest (or is

estopped from contesting) class certification and/or proceeding collectively on any grounds. In such an instance, this Agreement shall not be deemed an admission by, or ground for estoppel against, SC that class certification and/or proceeding collectively in the Action is proper or cannot be contested on any grounds.

21.3. Exhibits. All of the exhibits to the Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

21.4. Amendment/Modification. The Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest. The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement. Class Counsel, on behalf of the Class, are expressly authorized by the Class Representatives to take all appropriate action required or permitted to be taken by the Class pursuant to the Agreement to effect its terms, and also are expressly authorized to enter into any modifications or amendments to the Agreement on behalf of the Class which they deem appropriate.

21.5. Entire Agreement. The Agreement and the related documents entered at this time of this Agreement or referenced herein constitute the entire agreement among the Parties hereto concerning the Settlement of the Action. No representations, warranties, or inducements have been made to any party concerning the Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. Except as otherwise provided herein, each party shall bear its own costs and attorneys' fees.

21.6. Authority. Each person executing the Agreement or any of its exhibits on behalf of any Party hereto hereby warrants that such person has the full authority to do so.

21.7. Counterparts. The Agreement may be executed in one or more counterparts, including by signature transmitted by facsimile or by email in PDF format. All executed counterparts and each of them shall be deemed to be one and the same instrument.

21.8. Successors and Assigns. The Agreement shall be binding upon, and inures to the benefit of, the heirs, executors, successors, and assigns of the Parties hereto; but this Agreement is not designed to and does not create any third-party beneficiaries.

21.9. No Third-Party Rights or Beneficiaries. Except as expressly provided for herein, no government agency or official can claim any rights under this Agreement or Settlement, whether with respect to the conduct that is the subject of the Releases, the consideration in Section 4, or the funds (or remainder of funds) paid or used in the Settlement. There are no third-party beneficiaries created or implied.

21.10. Jurisdiction. The Court shall retain jurisdiction with respect to implementation, enforcement, and interpretation of the terms of the Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement.

21.11. Governing Law. The Agreement and the exhibits hereto shall be considered to have been negotiated, executed, and delivered, and to have been wholly performed, in the Commonwealth of Pennsylvania, and the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with, and governed by, the

internal, substantive laws of the Commonwealth of Pennsylvania without giving effect to any state's or that Commonwealth's choice of law principles, to the extent applicable.

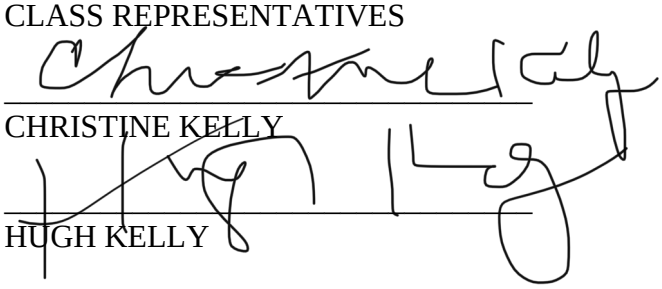
21.12. Drafting. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either party. No party shall be deemed the drafter of this Agreement. The Parties acknowledge that the terms of the Agreement are contractual and are the product of negotiations between the Parties and their counsel. Each party and their counsel cooperated in the drafting and preparation of the Agreement. In any construction to be made of the Agreement, the Agreement shall not be construed against any party and the canon of contract interpretation to the contrary shall not be applied.

21.13. Recitals. The recitals set forth above shall be and hereby are terms of this Agreement as if set forth herein. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

21.14. No Collateral Attack. The Settlement Agreement shall not be subject to collateral attack by any Settlement Class Member or any recipient of notices of the Settlement after the Final Judgment is entered.

Dated: November 18, 2022

CLASS REPRESENTATIVES



CHRISTINE KELLY

HUGH KELLY

Dated: December 5, 2022

SANTANDER CONSUMER USA INC.

By: _____

Name: Jason Miller

Title: Sr. Dir. Litigation

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HUGH KELLY and CHRISTINE KELLY, individually and on behalf of all others similarly situated,	CIVIL ACTION
Plaintiffs,	CLASS ACTION
v.	Case No. 2:20-cv-03698
SANTANDER CONSUMER USA, INC.,	
Defendant.	

DECLARATION OF DOROTHY SUE MERRYMAN

I, Dorothy Sue Merryman, declare and attest to the following:

1. I have personal knowledge of the facts stated in this declaration and can competently testify to the same.

2. I am a Senior Project Manager for Class-Settlement.com ("Class-Settlement").

3. Class-Settlement provides claims administration services, including class notification and settlement distribution.

4. At the request of Class Counsel, I coordinated the distribution of the Notice in this matter and have knowledge of what work was performed.

5. An exemplar of the Short Form Class Notice that was approved by the Parties and the Court is attached hereto as **Exhibit A**.

6. The Short Form Class Notice provided general information about the case and settlement, and directed the Class Members to a settlement website, www.NoticeClassAction.com, and advised the Class Members that the more detailed Long Form Class Notice was available for download at the website, or could be mailed to the Class Member

upon request.

7. An exemplar of the Long Form Class Notice that was approved by the Parties and the Court is attached hereto as **Exhibit B.**

8. Each Short Form Class Notice also included a unique user ID and password to securely access the amount of their Deficiency Balance, as stated on the Long Form Class Notice.

9. At www.NoticeClassAction.com, Settlement Class Members can also access copies of key case documents, including the Class Action Complaint, First Amended Class Action Complaint, Settlement Agreement, Preliminary Approval Order, the Notice of Change in Final Approval Date, as well as a Spanish-language version of the Short Form Class Notice ("Aviso Abreviado para Miembros del Groupo de Demandantes").

10. Santander's Counsel provided me a list (the "Notice List") containing the following information: (i) the last eight (8) digits of the Account number for each Account; (ii) the name(s) of the Class Member(s) associated with each Account; (iii) the last known mailing address for each Class Member; (iv) the Social Security Number for each Class Member; and (v) the total amount of the Deficiency Balance Compromise for each Account, if applicable, as of the date of the Preliminary Approval Order, totaling $269,204,457.05.

11. Class-Settlement.com sent the Short Form Class Notice to all 48,108 persons on the Notice List by U.S. First Class Mail, on July 24, 2023, after first comparing the addresses against the U.S. Postal Service's National Change of Address (NCOA) database.

12. Of the 48,108 Short Form Class Notices that were mailed, 8,980 Short Form Class Notices were returned as undeliverable as of October 4, 2023. A total of 2,040 of the returned items contained forwarding information, or additional address information was obtained via

skip-tracing, and those items were remailed. Of those 2,040 remailed notices, 55 were returned a second time.

13. If the settlement is approved, Class-Settlement will continue research efforts to attempt to locate the remaining members for purposes of sending checks to Class Members.

14. The class settlement website also lists contact information for Class Counsel and the Settlement Administrator, as well as information relating to the dates and deadlines relevant to the settlement. Members were also able to request a Spanish-language version of the Long Form Notice by contacting the Class Administrator or Class Counsel.

15. There were 309 unique Class Members that contacted Class-Settlement via phone or email as of October 4, 2023, in order to ask questions about the settlement, to provide updated address information, or to report members who are deceased.

16. There were 1,849 visits to the settlement website as of October 4, 2023.

17. As of October 4, 2023, Class-Settlement has received four requests to opt-out of the settlement, and no objections to the settlement.

18. One Class Member who originally opted out of the settlement has subsequently elected to withdraw his request, leaving three remaining opt-outs. Two of these remaining opt outs involve an account with two class members listed as co-borrowers. The Long Form Notice specifies the following: "If your Account has more than one borrower, a request for exclusion by any one borrower will be deemed to be a request for exclusion by all borrowers on the Account." (Exhibit B, Section 18). Therefore, both Class Members who are borrowers on the account for which the opt out request was submitted are excluded from the Class, which results in a total of five class members being excluded from the settlement.

19. Following preliminary approval, and at the direction of Attorney Shenkan, the $14,000,000 in settlement funds were invested into United States Treasury Bills with a duration of 26 weeks. Upon maturity, and again at the direction of Attorney Shenkan, the funds and additional interest earned to date, representing a total of $14,350.000, were reinvested into Treasury Bills with an 8 week maturity. If held to maturity, these T-Bills are expected to yield additional interest in the amount of approximately $100,000.00.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on: October 4, 2023

Dorothy Sue Merryman

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HUGH and CHRISTINE KELLY, individually and on behalf of all others similarly situated, Plaintiffs, v. SANTANDER CONSUMER USA INC., Defendant.	Civil Action No. 2:20-cv-03698-MMB

Short Form Notice to Class Members

This "short form" notification concerns a proposed class action settlement affecting individuals who took out car loans with Santander Consumer USA ("Santander" or "Defendant") and their vehicles were repossessed in Pennsylvania. You are receiving this notification because the records of Santander indicate that you may be a class member entitled to cash and non-cash awards if you satisfy all of the following conditions:

a) You entered into a retail installment sales contract for the financing of a purchase of a motor vehicle; and
b) Santander Consumer USA repossessed the motor vehicle or ordered it to be repossessed, causing a repossession to occur; and
c) Santander sent you a Notice of Repossession to a Pennsylvania address at any time on or within the period commencing June 30, 2014 through July 9, 2020.

This notifies the approximately 49,000 class members that the above captioned litigation has been settled, pending court approval. The settlement consists of $14,000,000.00 to be paid by Santander, to be distributed to the class, after court approved deductions, and will be

conservatively invested in United States Government securities to earn interest, pending final determination by the Court concerning the request that this settlement be approved.

The full details of the proposed settlement and the procedures that the Court must follow pursuant to Rule 23 of the Federal Rules of Civil Procedure are set forth in the full notice which can be found on the website identified below, or will be mailed to you by first class mail or sent to you by email upon your request to Class Counsel or the Settlement Administrator (contact information below).

This notice is being sent because the Court has given preliminary approval of the settlement, pending receipt of any objections and opt-outs as described below.

If the Court gives a final approval of the settlement, the net cash will be distributed on a per-account basis to all class members who have not opted out, and non-cash awards (summarized below) will be made similarly to all those class members entitled to non-cash awards and who have not opted out.

If the Court gives final approval of the settlement, the final amount to be distributed to the class will be reduced by the cost of administering the settlement, the amount of the incentive awards awarded by the Court to the class representatives, and the amount of attorney's fees and expenses awarded by the Court to Class Counsel.

The non-cash awards can be summarized as follows:

Elimination of deficiency balances arising from the post-repossession disclosure notices at issue in this case by an accord and satisfaction and any deficiency judgments or arbitration awards against any class member (who has not opted out), cessation of collection activities and return of post-approval payments and requesting third party credit reporting agencies to delete tradelines associated with class members' accounts.

The settlement will release claims against the Defendant, Santander Consumer USA Inc., with some exceptions as set forth in the Settlement Agreement. If the settlement is approved by

the Judge, class members will be entitled to a share of the net monetary fund on a per-account basis and to the non-monetary awards.

A hearing will be held on **Tuesday, October 17, 2023** at **2:30 p.m.** before the Honorable Michael M. Baylson at the United State District Court, Eastern District of Pennsylvania, Courtroom 3-A, James A. Byrne Courthouse, 601 Market Street, Philadelphia, PA 19106, per details that will be made publicly available on the settlement website: www.noticeclassaction.com. The purpose of the hearing is to determine whether the proposed settlement should be finally approved, and whether the allocation of cash and other settlement terms, including the payment of attorney fees and costs, should be approved by the Court as fair and reasonable.

Please consult the detailed notice included in this communication for additional information.[1] This notice is being sent by first class mail to all individuals who Santander's records indicate may be members of the class. You have the following options:

a) Do nothing, in which event you will be considered as a member of the class entitled to your share of any awards, cash or non-cash, assuming the settlement is finally approved/

b) You may submit an objection to the settlement by submitting a written document in the form as detailed in the Class Notice, which must be mailed to the Settlement Administrator by **September 22, 2023**.

c) You may "opt out" of the settlement, in which event you will no longer be a member of the settlement class and will retain your individual right to file a claim against Santander in a court of record, according to law, by submitting a written document in the form as detailed in the Class Notice, which must be mailed to the Settlement Administrator by **September 22, 2023**.

d) If you have any questions about this communication, you may consult your own attorney or communicate with Class Counsel, whose contact information is listed below.

[1] To the extent there is any conflict between this summary notice and the detailed notice, the detailed notice controls.

e) If you have recently moved, or intend to move before there is a final decision on the settlement, you should send a written notice of your new address/contact information to the Settlement Administrator or Class Counsel, at the email/address below.

SHENKAN INJURY LAWYERS, LLC

/s/ Richard E. Shenkan
Richard E. Shenkan

Class Counsel
Attorney Richard Shenkan
Shenkan Injury Lawyers, LLC.
P.O. Box 7255
New Castle, PA 16107
info@creditinjury.com
Fax No: 1-888-760-1774
Phone No: 1-800-411-1770

Settlement Administrator
Santander Class Action
P.O. Box: 9009
Hicksville, NY 11802-9009
info@noticeclassaction.com
Fax No:1-800-972-1908
Phone No: 1-800-490-9287

You may access the Settlement Website at
www.noticeclassaction.com
or by using the camera on your mobile device to scan this QR code:

Then enter,
USERNAME: 12345678
PASSWORD: hotdogbun

Santander Class Action Settlement
www.noticeclassaction.com
PO Box 9009
Hicksville, NY 11802-9009

12345678

NAME
COMPANY
123 STREET ADDRESS RD
ANYTOWN, US 12345-6789

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT REGARDING SANTANDER CONSUMER USA INC.

RE: Case No. 2:20-cv-03698-MMB; Hugh Kelly and Christine Kelly, individually and on behalf of all others similarly situated v. Santander Consumer USA Inc.

A Court has authorized this Notice. This is not a solicitation from a lawyer. You are receiving this Notice because you may be a class member for purposes of a proposed Settlement. Your rights may be affected. Please read this Notice carefully.

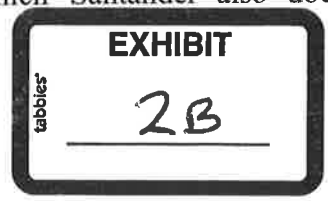
WHY HAVE YOU BEEN SENT THIS NOTICE

The class action lawsuit referenced herein, *Hugh Kelly and Christine Kelly, individually and on behalf of all others similarly situated v. Santander Consumer USA Inc.*, Case No. 2:20-cv-03698-MMB (the "Lawsuit"), is pending before the Honorable Michael Baylson in the United States District Court for the Eastern District of Pennsylvania. The parties to the Lawsuit have reached a proposed settlement (the "Settlement").

The Settlement, if approved by the Court, will resolve the Lawsuit filed by Hugh Kelly and Christine Kelly ("Plaintiffs") against Defendant Santander Consumer USA Inc., ("Santander") over whether Santander complied with the Pennsylvania Uniform Commercial Code ("UCC"), independently, and in conjunction with the Pennsylvania Motor Vehicle Sales Finance Act ("MVSFA"). The violations alleged by Plaintiffs relate to statutory disclosure notices which Santander must send to vehicle loan borrowers after their vehicle was repossessed. Santander denies and disputes the claims asserted in the Lawsuit. The Settlement avoids the costs and risks associated with proceeding with the Lawsuit.

The Settlement defines the "Class"[1] as all Santander customers: (a) who entered into a retail installment sales contract for the financing of the purchase of a Motor Vehicle; and, (b) from whom Santander repossessed the vehicle or ordered it to be repossessed, causing a repossession to occur; and, (c) to whom Santander sent a Notice of Repossession to a Pennsylvania address from June 30, 2014 through and including July 9, 2020. ("Class Member(s)" or "Member(s) of the Class"). You may have received a post-repossession consumer disclosure notice ("Notice of Repossession") from either Santander or Chrysler Capital, a name under which Santander also does business.

Text



[1] Capitalized Terms are defined in the Settlement Agreement, a copy of which can be accessed at www.NoticeClassAction.com..

The Class Period is the time period when Santander sent a Notice of Repossession to Class Members, commencing June 30, 2014 through and including July 9, 2020, the date Santander revised its Notices of Repossession. Although the claims in this case involve only the Notices of Repossession sent between June 30, 2014 and July 9, 2020, Settlement Class Members will release all claims related to their Account that they may have through the date of preliminary approval, except for claims arising from any subsequent repossession after July 9, 2020. According to Santander's records, you are a Class Member. If you do not exclude yourself ("Opt-Out") from the Settlement as discussed herein, then you will be subject to and bound by the terms of the Settlement ("Settlement "Class Member"). Accordingly, please read this Notice carefully.

Under the Settlement, Santander will provide a gross settlement payment of $14 million to a Settlement Fund to be used to pay (i) a settlement payment to each Settlement Class Member, (ii) administrative costs, (iii) class counsel's attorney fees and expenses, and (iv) an incentive payment to the representative Plaintiffs.

Santander will also compromise deficiency balances that it claims are presently owed on the Settlement Class Members' Accounts, except if the disputed deficiency balance arose as a result of a subsequent repossession for which Santander sent a Notice of Repossession to the Settlement Class Member after July 9, 2020. According to Santander's business records, the total amount of the deficiency balances of all Settlement Class Members, as of June 14, 2023 totals $269,204,457.05. Any disputed deficiency balance to be compromised regarding your account is set forth below:

Name's

Debt that Santander's Records Show is Due and Owing, is $0,000.00

which:

| ✔ | will be Fully Compromised (no longer due) as Part of this Settlement.

| | will NOT be affected by this Settlement.

Santander will also request that the three major credit reporting agencies Experian, TransUnion, and Equifax, and any other credit reporting agencies SC reports to, delete the credit reporting trade lines for Settlement Class Members' Accounts. In exchange, Santander and each Class Member will release each other from liability (or potential liability), in connection with the Class Member's Account, as more fully set forth in the Settlement Agreement. The Settlement Agreement can be reviewed at www.NoticeClassAction.com.

SUMMARY OF SETTLEMENT BENEFITS & YOUR OPTIONS

The Settlement will provide several benefits to the Class Members.

Settlement Payments

The amount remaining in the Settlement Fund, after payment of attorney fees and expenses, incentive awards, and administrative fees, will be divided equally among the Accounts. This will result in a settlement payment of approximately $207.11 per Account. Settlement payments on Accounts with more than one borrower will be split evenly among the co-borrowers unless requested otherwise as set forth below. Note that if you were to exclude yourself from the Settlement and pursue the claims made in this Class Action in your own individual lawsuit or arbitration and assuming you ultimately prevailed, you would be entitled to receive either actual damages, for any actual damages you can prove, or (if you purchased the repossessed vehicle for consumer use) minimum statutory damages. Your minimum statutory damages are computed by adding the credit service charge (finance charge) plus 10% of the principal amount of your loan.[2] These figures are listed in the retail installment sales contract pertaining to the financing of your purchase of the vehicle which was repossessed. Santander also claims that any damages, actual or statutory, should be decreased by the amount of your deficiency balance. If you have questions regarding this calculation as it applies to you, please contact Class Counsel. See Section 6 below for contact information.

Deficiency Balance Compromise

The balance remaining after a repossession and disposition of a debtor's vehicle, after crediting the debtor's account with the sale price of the vehicle and including all interest and other charges, is called a deficiency balance. The parties have a good faith dispute as to the validity of the deficiency balances in this case and have entered into a settlement agreement after months long, arms-length negotiations. In connection with the Settlement, Santander has agreed to compromise the disputed deficiency balances (the "Deficiency Balances Compromise") it claims are presently due and owing by the Settlement Class Members deficiency balances will no longer be due and owing because SC will agree to compromise this disputed debt. This Deficiency Balance Compromise does not apply to deficiency balances which arose after a subsequent repossession for which Santander sent a Notice of Repossession after July 9, 2020. If you do not exclude yourself from the Class and the Settlement is granted final approval, any payments you make after the Effective Date towards a deficiency balance will be returned by Santander. If you reinstated your loan and remain in possession of the vehicle or your deficiency balance arose after a subsequent repossession for which Santander sent a Notice of Repossession after July 9, 2020 then any balance which Santander shows as due and owing is not affected by this Settlement.

Name's

Debt that Santander's Records Show is Due and Owing, is $0,000.00

which:

| ✔ **will be Fully Compromised (no longer due) as Part of this Settlement.**

| | **will NOT be affected by this Settlement.**

Request to Delete Credit Reporting

Santander has agreed to submit requests to the three major credit reporting agencies – Experian, Equifax, and TransUnion – to delete the credit reporting tradelines related to Settlement Class Members Accounts, and not to report further information to any credit reporting agencies regarding any Settlement Class Members' Accounts.

Your Options

At this time, you are assumed to be a Class Member who is participating in the Settlement. Therefore, your rights will be affected even if you do nothing. Please read this Notice carefully. The following page provides a short summary of the actions you can take and the results of those actions. If you want to have a detailed discussion regarding your specific situation or have other questions or concerns, you may contact Class Counsel at 1-800-411-1770.

[2] 13 Pa.C.S. 9625(c)(2) provides that, for consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with Chapter 9 "may recover for that failure in any event an amount not less than the credit service charge plus 10% of the principal amount of the obligation or the time price differential plus 10% of the cash price." If you have questions regarding this calculation as it applies to you, please contact Class Counsel. See Section 6 below for contact information.

YOUR ACTION	RESULT OF THAT ACTION
DO NOTHING	You remain in the Settlement. If the Settlement is approved, you will receive the benefits summarized in this notice. In exchange, you give up the right to sue Santander for matters concerning your Account and the repossession and sale of your vehicle as set forth in the Settlement Agreement. If, however, you reinstated your account and recovered your repossessed vehicle and SC subsequently repossessed your vehicle after July 9, 2020, then all claims and defenses you and SC have arising from the subsequent repossession are unaffected by this settlement.
ASK TO BE EXCLUDED	You are removed from the Settlement. You will not receive the benefits summarized in this notice. However, this is the only option that allows you to pursue (or continue) your own lawsuit or arbitration, or to participate in any other lawsuit or arbitration against Santander concerning the repossession and sale of your vehicle or any other claims relating to the subject Account with Santander. The deadline for you to submit your signed request to be excluded is **September 22, 2023**, so you must act promptly. If you exclude yourself from the Settlement, then the Settlement will not impact you, and therefore, you have no right to object to the Settlement. If you exclude yourself so that you can pursue your own individual lawsuit against Santander and you executed an arbitration agreement, Santander may attempt to enforce the arbitration agreement to require you to submit your claims through arbitration.
OBJECT TO SETTLEMENT	If you object to the Settlement, you are still in the Settlement, but you have notified the Court in writing that you do not like the Settlement and the reason(s) why. The deadline for you to submit a signed objection is **September 22, 2023**, so you must act promptly. See Paragraph **23** below. If you exclude yourself from the Settlement, then the Settlement will not impact you, and therefore, you have no right to object to the Settlement.
REQUEST ALTERNATIVE ALLOCATION OF SETTLEMENT PAYMENTS (CO-BORROWERS ONLY)	If you are a co-borrower, you may also request an alternative allocation of the settlement rather than the equal allocation of the Settlement payment between co-borrowers on an account. This is not the same as objecting to the Settlement and you will still be a part of the Settlement. The deadline for you to submit a request an alternative division to the equal payment allocation is **September 22, 2023**, so you must act promptly. See Paragraph **24** below.
GO TO THE HEARING WHERE THE COURT CONSIDERS WHETHER TO APPROVE THE SETTLEMENT	You are still in the Settlement and get the benefits of the Settlement, if approved by the Court. You do not need to attend the hearing to get the benefits of the Settlement, but you are invited to attend and will be afforded an opportunity to speak in Court about the fairness of the Settlement (should you choose to do so) or, if applicable, why any belatedly submitted objection or request for exclusion should be considered. If you object to the settlement, you need to state in your objection your intention to appear at the fairness hearing. See Paragraph **24** below.

WHAT THIS NOTICE CONTAINS

* *

BASIC INFORMATION

1. Why is there a Notice?

A Court has authorized this Notice because you have a right to know about the proposed Settlement and your options. In summary fashion, this Notice explains the Lawsuit, the key terms of the proposed Settlement and your legal rights. If the Court approves the Settlement, after any appeals are resolved, the Settlement Administrator will make the Settlement payments to Settlement Class Members, and Santander will provide the relief described in this Notice.

2. What is this Lawsuit About?

The Plaintiffs have claimed that Santander violated the Pennsylvania Uniform Commercial Code (UCC) independently and in conjunction with the Pennsylvania Motor Vehicle Sales Finance Act (MVSFA) by failing to send its borrowers proper Notices of Repossession after Santander repossessed Class Members motor vehicles. Plaintiffs, on their own behalf and on behalf of the Class Members, sought to recover statutory damages and certain declaratory, injunctive, and equitable relief, including the compromise of deficiency balances on Class Members' Accounts which Santander contends is presently due and owing, the request for expungement of all references to the repossessions

and Accounts on Class Members' credit reports, the return of monies paid towards the disputed deficiency balances, and the cessation of collection efforts for all Class Members relating to their Accounts. Santander, on the other hand, contends that the notices it sent to Plaintiffs and the Class Members complied in all respects with its statutory obligations and denies all liability. Santander further contends that it is entitled to pursue collection of the deficiency balances and asserts other defenses. These issues have not yet been decided by the Court, and, if the Settlement is approved, these issues will not be resolved on the merits. Instead, all Settlement Class Members, on a per Account basis, will be accorded the same pro rata amount after attorney fees, reimbursement of expenses, payment of incentive awards, and administrative costs are made.

3. Why is this a Class Action?

In a class action, one or more people called "representative plaintiffs" sue on behalf of themselves and other people with similar claims. All these people together are the "class." In this Lawsuit, the Plaintiffs, Hugh Kelly and Christine Kelly, are the Representative Plaintiffs. If this Settlement is approved, the Settlement will resolve the claims of all Class Members except for those individuals who exclude themselves from the class or pursue a claim that is expressly preserved by the Settlement Agreement.

4. Why is there a Settlement?

The Court has not decided in favor of the Plaintiffs or Santander. Instead, both sides have agreed to a Settlement. By agreeing to the Settlement, both sides avoid the cost and risk of a trial, and the individuals affected may decide whether to participate in the Settlement. Class Counsel recommends the Settlement. Without a settlement, there would continue to be a dispute concerning class certification and disputes concerning liability and damages that would need to be determined at trial. A trial could result in a greater benefit to Class Members, a smaller benefit to Class Members, or no benefit to Class Members, and potentially could result in Class Members being held liable for the deficiency balances which, though disputed, Santander claims are owed. This Settlement provides substantial benefits, including monetary settlement payments, the compromise of the disputed deficiency balances, and requests to the credit reporting agencies to delete the Settlement Class Members' trade lines related to the subject Accounts with Santander. The Settlement does not mean that Santander did anything wrong.

WHO IS IN THE SETTLEMENT?

If you received this Notice in the mail, Santander's records indicate you are a Class Member and are included in this Settlement unless you exclude yourself. Even if you did not receive this Notice or in a timely fashion, you may still be a Class Member and included in this Settlement, as described below.

5. How do I know if I am part of the Settlement?

You are included in the Settlement if you fall within the definition of the Class, as set forth in the Settlement, and do not exclude yourself from the Settlement (see below for where Settlement can be reviewed).

6. What if I am not sure whether I am included in the Settlement?

If you are not sure whether you are included in the Settlement, you may call Class Counsel at 1-800-411-1770, or write Class Counsel or the Settlement Administrator at the following address/email address, with questions.

Attorney Richard Shenkan
Shenkan Injury Lawyers, LLC.
P.O. Box 7255
New Castle, PA 16107
info@creditinjury.com
Fax No: 1-888-760-1774
Phone No: 1-800-411-1770

Settlement Administrator
Santander Class Action
P.O. Box: 9009
Hicksville, NY 11802-9009
info@noticeclassaction.com
Fax No:1-800-972-1908
Phone No: 1-800-490-9287

THE SETTLEMENT BENEFITS

7. What does the Settlement provide?

If the Settlement is approved and becomes final, it will provide, among other things, the following benefits to the Settlement Class Members (*i.e.*, Class Members who do not exclude themselves from the Settlement):

- Settlement payments (see Question **8**);
- The compromise of the Settlement Class Members' deficiency balances (see Question **9**); and
- Requests to the credit reporting agencies to delete the credit trade lines associated with the Settlement Class Members' Accounts that had or has a deficiency balance (see Question **10**).

More details are in the Settlement Agreement, which is available to review at NoticeClassAction.com.

8. What is the Settlement payment?

A cash payment will be sent to each Class Member that has not excluded themselves. The Settlement payment will be distributed in equal payments to the Settlement Class Members, on a pro rata, per Account

basis, after attorney fees, reimbursement of expenses, payment of incentive awards, and administrative costs are deducted from the Settlement Fund. If there are co-borrowers on an Account, the payment will be split between the co-borrowers, unless requested otherwise (see Question 24). When you receive your Settlement payment, you should cash the check immediately. ***If you do not promptly cash any settlement check, your share of the Settlement may be paid to a charity.***

9. What is the benefit of the compromise regarding the contested liability of the deficiency balances?

If Santander sold (or otherwise disposed of) your repossessed vehicle and the amount of the sale or disposition did not cover the amount that you purportedly owed on the loan, then you may owe Santander a deficiency balance. Plaintiffs dispute that any deficiency balance is owed by any Class Member, while Santander claims that deficiency balances are owed. As part of the Settlement, Santander has agreed to compromise the Settlement Class Members' deficiency balances, except if the deficiency balance arose after a subsequent repossession in which Santander sent a Notice of Repossession to the Settlement Class Member after July 9, 2020. If this is an amount of $600.00 or more, it may result in the issuance of IRS Form 1099C.

Example: At the time Santander sold Amanda's repossessed vehicle, she owed $10,000 on her loan. Santander incurred $250 to repossess her vehicle and $250 to sell the vehicle. Amanda's vehicle sold for $6,000 at auction. Amanda's deficiency balance would be $4,500.

Calculation

[($10,000 + $250 + $250)	-	($6,000)]	=	$4,500
Total amount owed by Amanda		Amount from vehicle sale		Deficiency Balance

A deficiency balance only arises after a vehicle has been sold or otherwise disposed of. As such, if you got your vehicle back after it was repossessed (*i.e.*, if you redeemed your vehicle or reinstated your loan with Santander) and your vehicle was not subsequently repossessed and sold, you do not have a deficiency balance and your loan balance will not be compromised as a result of the Settlement. Any balance remaining on your Account will continue to be due and owing to Santander.

Also, the parties have agreed that, subject to final approval, an accord and satisfaction has occurred and that this compromise is a resolution of a contested liability and good faith dispute between the parties as to Santander's legal rights to collect on the disputed deficiency balances.

10. What is the credit reporting benefit?

As part of the Settlement, Santander will ask Experian, Equifax, and TransUnion to delete the credit tradeline associated with the Settlement Class Members' Accounts, and not to report further information to any credit reporting agencies regarding any Settlement Class Members' Accounts. It is likely that your credit score will increase as a result of this benefit; however, there is no guarantee as to this positive effect.

11. When will I receive my benefits?

Settlement Class Members will receive their benefits after the Court grants final approval of the Settlement (see Question **26**) and after any appeals are resolved. If there are appeals, resolving them can take time. Please be patient.

12. What am I giving up if I do not exclude myself from the Settlement?

If you do not exclude yourself from the Settlement you will become a Settlement Class Member and you will give up your right to sue or arbitrate against (or continue a lawsuit or arbitration against) Santander for the claims made in this Class Action and any other claims you may have relating to the subject Account. This includes, but is not limited to, repossession related claims seeking actual or statutory minimum damages. Note, however, that if you opt-out of this lawsuit to pursue, or are pursuing, the claims made in this Class Action in your own individual lawsuit or arbitration and prevail as to liability, it is not clear whether you would be entitled to all of the benefits in this lawsuit (including the full compromise of a deficiency balance and the tradeline deletion request, as the Parties have a dispute as to whether these remedies are available if violation(s) are proven). The claims which are released are set forth in the Settlement Agreement. The full Settlement Agreement as well as the class action complaint are available for review at www.NoticeClassAction.com. You are encouraged to review these documents for a full description of the claims of this lawsuit and the terms of this settlement.

13. Will this affect my taxes?

We cannot give you a definitive answer in this Notice. A Deficiency Balance Compromise in an amount of $600.00 or more may result in the issuance of IRS Form 1099C. You should consult a tax professional regarding tax implications because all situations are unique. The parties have intended to compromise the deficiency balances by way of accord and satisfaction, and, if finally approved by the Court, will evidence the resolution of a good faith dispute. Under the "contested liability doctrine," you may not be liable to pay any tax. It is most prudent to consult your tax professional about your unique tax situation.

You are urged to consult with a tax professional regarding the benefits and tax implications of this Settlement.

14. What happens if this notice is addressed to a Class Member that has passed away?

If proper documentation of the death of the Class Member is sent to the Settlement Administrator within sixty (60) days of the date of this Notice, a check will be issued (or re-issued) to the Class Member's estate or next of kin, or as otherwise may be applicable. If the Class Member is deceased, please send a copy of the death certificate to the Settlement Administrator or Class Counsel at the address listed in Question **6** above.

15. What happens if this debt was discharged in or is presently included in a bankruptcy?

If the loan obligation was discharged in bankruptcy (yours and/or your co-borrower's bankruptcy) or is presently part of a bankruptcy proceeding, then you should consult a bankruptcy attorney regarding this matter. You may have an obligation to notify the bankruptcy trustee regarding the cash payment and other benefits you are expected to receive. The law at issue in this case (13 Pa. C.S. § 9625 footnote 4) permits you to obtain minimum statutory damages regardless of whether or not you suffered an injury. Furthermore, the equitable benefits such as the credit reparation relating to the deletion of the credit tradeline constitute permissible equitable relief pursuant to 13 Pa. C.S. §1103 and §9625(a). You are urged to consult a bankruptcy attorney regarding your situation.

16. What happens if I voluntarily surrendered my vehicle, redeemed my vehicle, or reinstated my account?

Because the lawsuit challenges the content of the Notice of Repossession and is not based on actual harm you may have suffered, you are a Class Member and will receive the benefits available under this Settlement as described herein even if you voluntarily surrendered your vehicle or redeemed your vehicle. If you reinstated your loan with Santander and your vehicle was subsequently repossessed again after July 9, 2020 and a deficiency balance resulted after it was sold, you will receive the benefits described herein with the exception of the Deficiency Balance Compromise.

HOW TO GET BENEFITS

17. Do I need to do anything to get the settlement payment, the credit reporting benefit or the Deficiency Balance Compromise?

No. If the Court approves the Settlement, you do not need to do anything further in order to remain a part of the Settlement and receive the benefits described herein, as applicable to you.

EXCLUDING YOURSELF FROM THE SETTLEMENT

IF YOU DO NOT WANT THE BENEFITS OF THIS SETTLEMENT, AND YOU INSTEAD WANT TO KEEP THE RIGHT TO SUE OR ARBITRATE AGAINST SANTANDER (OR CONTINUE A LAWSUIT OR ARBITRATION AGAINST SANTANDER) RELATING TO YOUR ACCOUNT, YOU MUST EXCLUDE YOURSELF (OR "OPT-OUT") OF THE SETTLEMENT.

18. How do I exclude myself from the Settlement?

In order to exclude yourself, send a letter that clearly states that you want to be excluded (*i.e.*, opt out) from the Settlement. This letter must:

- Identify the case name;
- State the full name and address of the person(s) requesting exclusion;
- Be personally signed by the person(s) requesting exclusion;
- Contain a statement that indicates a desire to be excluded from the Settlement Class, such as "I hereby request that I be excluded from the proposed Settlement Class in the Action."; andIf available, include your email and telephone number.

If your Account has more than one borrower, a request for exclusion by any one borrower will be deemed to be a request for exclusion by all borrowers on the Account. You must send a written exclusion request to the Settlement Administrator at PO Box 9009, Hicksville, NY 11802-9009 or by email at Info@NoticeClassAction. The exclusion request must be postmarked or emailed no later than **September 22, 2023**. If you exclude yourself so that you can pursue your own individual lawsuit against Santander and you executed an arbitration agreement in relation to your motor vehicle loan, Santander may attempt to enforce the agreement to require you to submit your claims through arbitration.

19. If I do not exclude myself, can I sue Santander or arbitrate against Santander for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Santander or arbitrate against Santander for claims relating to the subject Account. If you have a pending lawsuit or arbitration, speak to your lawyer in that case immediately because your legal rights may be adversely affected by this Settlement. You must exclude yourself from this Settlement in order to start or to continue your own lawsuit or arbitration for claims relating to your Account. Your rights may be affected by this Settlement. The full Settlement

Agreement is available to review at www.NoticeClassAction.com. See also, Section 12, above.

20. If I exclude myself, can I still benefit from this Settlement?

No. If you exclude yourself, you will not receive any money as a result of the Settlement, the credit reporting benefit, or the Deficiency Balance Compromise, or any other benefit in connection with the Settlement.

THE LAWYERS REPRESENTING YOU

21. Do I have a lawyer in the case?

Yes. The Court has approved Richard Shenkan, Shenkan Injury Lawyers, LLC., and Lawrence F. Stengel of Saxton and Stump to represent the Class. These lawyers and law firms are called "Class Counsel." You will not be charged individually for their legal services; rather, Class Counsels' fees will be paid from the Settlement Fund with the approval of the Court. If you want to be represented by your own lawyer, you may hire one at your own expense. Class Counsel's contact information is listed in Question 6 above. You can speak with Class Counsel at no charge about this case.

22. How will the lawyers be paid?

Class Counsel will request that the Court award attorneys' fees of $5,600,000.00 and reimbursement of expenses not to exceed $150,000.00. Attorneys' fee in this amount represents less 15% of the value of the aggregate benefit conferred including the Deficiency Balance Compromise. The value of the requests for credit tradeline removal will vary based upon each Settlement Class Member; however, these are significant additional benefits. The attorney fees and expenses awarded by the Court, including payment to the Settlement Administrator, will be paid out of the $14 Million Dollar Settlement Fund. Class Counsel will also request incentive awards not to exceed $15,000 for each Representative Plaintiff. The total incentive awards and payments will not exceed $30,000.00. The Court could decide to award less than the amounts requested for fees, costs, and service payment.

OBJECTING TO THE SETTLEMENT, OR, FOR CO-BORROWERS, REQUESTING AN ALTERNATIVE ALLOCATION OF THE SETTLEMENT PAYMENT

23. How do I tell the Court if I do not like the Settlement?

If you are a Settlement Class Member (*i.e.*, you are not excluding yourself from the Settlement), you can object to the Settlement if you do not 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 do so, you must timely send a letter to the Settlement Administrator to the mailing address set forth in Question **6** above. The objection must be postmarked or emailed no later than **September 22, 2023**, sixty (60) days from the date this Notice was mailed to you. The letter must include the following:

- The case name;
- Your full name, address, and, and telephone number;
- If you are represented by counsel, the name, address, and telephone number of your counsel;
- The reason why you object to the Settlement; and
- Your signature.

If the objection is filed with the Court, the filing needs to conform to filing requirements and must include the case name and number.

24. If I am a co-borrower, can I request an alternate allocation to the equal division of the settlement payment as between both co-borrowers?

Yes. To do so, you (and your co-borrower, if they agree) must timely send a letter to the Settlement Administrator to the mailing address set forth in Question **6** above. The request must be postmarked no later than sixty (60) days from the date this Notice was mailed to you. The letter must include the following:

- A statement that you are a co-borrower and that you (and your co-borrower on the account, if they agree) request an alternative allocation of the settlement payment, rather than an equal division among co-borrowers;
- A description of how you want the payment to be made and the reason;
- The full name, address, email address (if available), and telephone number of each co-borrower; and
- The signature of at least one co-borrower.

25. What is the difference between objecting and asking to be excluded?

Objecting to the Settlement is informing the Court that you do not like something about the Settlement, and that you, for a clearly stated reason, do not want the Settlement to be approved or that you object to a particular part of the Settlement. You can object only if you do not exclude yourself from the Settlement. Excluding yourself is informing the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

THE COURT'S FAIRNESS HEARING

26. When, where, and how will the Court decide whether to approve the Settlement?

The Court will hold a fairness hearing on Tuesday, October 17, 2023, at 2:30 p.m. in Courtroom Courtroom 3A, at the United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Philadelphia, PA 19106. The hearing may be moved to a different date or time, or be held via videoconference or telephone conference, without additional notice (including a sooner date). Therefore, if you are planning on attending the fairness hearing, it is a good idea to confirm in advance that the date and time of the hearing has not changed. Additionally, in light of the restrictions necessitated by the COVID-19 pandemic, the Court, in its discretion, may change the mode or manner of the hearing. You may confirm this information by checking the Class Action settlement website at www.NoticeClassAction.com or by calling 1-800-490-9287. At this fairness hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them and will listen to Settlement Class Members who ask to speak at the hearing. Similarly, if you are a co-borrower and request an alternative to the equal division of the settlement payment, the Court will decide these matters as well at the hearing, unless you are able to resolve your differences amongst yourself and your co-borrower with the assistance of Class Counsel. The Court may also decide several other aspects of the Settlement including how much to pay the Representative Plaintiffs for their incentive award and Class Counsel for their services and expenses. Following the hearing, the Court will decide whether to approve the Settlement. It is unknown how long the Court's decision will take. Please be patient.

27. Do I have to attend the fairness hearing?

No, but you are welcome to come at your own expense. Class Counsel will answer questions the Court may have. If you timely filed your written objection the Court will consider it. You do not have to come to Court to talk about it, but you may. You may also pay your own lawyer to attend, but it is not required.

28. May I speak at the hearing?

Yes. Any Settlement Class Member may speak at the fairness hearing, but you are not required to do so.

GETTING MORE INFORMATION

29. How do I get more information?

This notice briefly summarizes the key aspects of the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement and other important case documents at www.NoticeClassAction.com. You may contact Class Counsel with questions at 1-800-411-1770 or rshenkan@shenkanlaw.com or the Settlement Administrator at 1-800-490-9287 or Info@NoticeClassAction.com. You should **not** contact Santander or the Court.

THIRTEENTH JUDICIAL CIRCUIT COURT
BOONE COUNTY, MISSOURI

Minnie Jackson,

Plaintiff,

v.

Missouri Credit Union,

Defendant.

Case No. 18BA-CV00665
Division 2

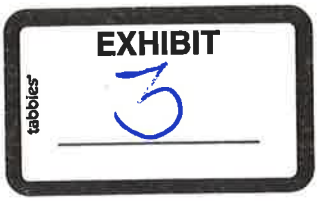
Final Approval Order

Upon careful review, consideration of the record, and making an independent judicial investigation into the allegations and defenses of the parties, the "Class Action Settlement Agreement and Release" dated January 6, 2022 (the "Agreement"), the evidence and arguments of counsel as presented at the Fairness Hearing held on March 14, 2022, the memoranda filed with this Court, and all other filings for the parties' settlement as memorialized in the Agreement (the "Settlement"); and for good cause shown, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Incorporation of Other Documents**. This Final Approval Order incorporates:

a. The Agreement, filed with this Court on January 8, 2022; and

b. The following exhibits to the Agreement: (i) Schedule A (Proposed Distribution Schedule of "Net Distributable Settlement Fund," filed under seal); (ii) Exhibit A (Class Mail Notices) and (iii) Exhibit B (Long-Form notice available to the Class).



Unless otherwise provided, all capitalized terms in this Final Approval Order have the same meaning as those terms in the Agreement.

2. **Jurisdiction**. Because adequate notice was disseminated and all potential members of the Class (as defined below) were given notice of and an opportunity to opt out of the Settlement, the Court has personal jurisdiction over all members of the Class. Because notice was sent to all Class Members according to a methodology that protected the interests of the parties and the Class Members and that provided the best notice practicable under the circumstances in compliance with Missouri Supreme Court Rule 52.08, due-process requirements, and any other legal requirements, the Court's jurisdiction extends even to Class Members who might not have received actual notice of the Settlement. The Court also has subject-matter jurisdiction over this case (the "Litigation"), including, without limitation, jurisdiction to approve the proposed Settlement, to grant final certification of the Class, to dismiss the Jackson's and the Class Members' claims against Missouri Credit Union ("MCU"), and to enter the accompanying Final Judgment.

3. **The Certified Class**. On April 17, 2021, the Court certified a class of consumers under Rule 52.08 defined as:

> all consumers who executed a contract with a secured party located in Missouri; and who (1) MCU mailed a right-to-cure notice with the language, "Past Due Amount" and/or "Current Due Amount," as well as a presale notice after taking possession of their collateral on or after February 23, 2012; and/or (2) MCU mailed a post-sale notice after February 23, 2012 that did not state "future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency."[1]

[1] The "Class" definition (*see* Amended Class Reply in Support of Class Certification at 8–9) referred to class members mailed right-to-cure or post-sale notices "with the same defects" as in *Missouri Credit Union v. Diaz*, 545 S.W.3d 856 (Mo. App. W.D. 2018). The definition above specifically identifies those "defects" for clarity.

Excluded from the Class are persons whom MCU has obtained a final deficiency judgment or who filed for bankruptcy after the date on their presale notice and whose bankruptcy ended in discharge rather than dismissal.

4. **Class Notice**. The Court finds the notice to the Class (both the Class Mail Notice and Long-Form Notice available on the website set up by Class Administrator and upon request) and its distribution to the Class as implemented under the Agreement and the Preliminary Approval Order:

a. Constituted the best practicable notice to the members of the Class under the circumstances of this Litigation;

b. Constituted notice reasonably calculated, under the circumstances, to apprise the members of the Class of (i) the pendency of this Litigation and the proposed Settlement, (ii) their right to exclude themselves from the Class and the proposed Settlement, (iii) their right to object to any aspect of the proposed Settlement (including, but not limited to: final certification of the Class; the fairness, reasonableness or adequacy of the Settlement as proposed; the adequacy of Jackson's and/or Class Counsel's representation of the Class; the proposed awards of attorney's fees and expenses; and the proposed incentive award), (iv) their right to appear at the Fairness Hearing if they did not exclude themselves from the Class, and (v) the binding effect of the Orders and Judgment in the Litigation on all members of the Class who did not request exclusion;

c. Constituted notice that was reasonable and constituted due, adequate, and sufficient notice to all persons and entities entitled to be provided with notice; and

d. Constituted notice that fully satisfied the Rule 52.08, due process, and any other applicable law.

5. **Opt-Outs and Objections.** No member of the certified class exercised his or her right to opt-out of the Settlement or object to the Settlement.

6. **Final Settlement Approval**. The terms and provisions of the Agreement, including all exhibits, have been entered in good faith through arm's length negotiations, and not as the result of fraud or collusion. The Agreement is fully and finally approved as fair, reasonable and adequate as to, and in the best interests of, each of the Parties and the Class Members, and in full compliance with all requirements of the laws of Missouri, the United States Constitution (including the Due Process Clause), and any other applicable law. The Parties are directed to implement and consummate the Agreement according to its terms and provisions.

7. **Binding Effect**. The Agreement, this Final Approval Order and the accompanying Final Judgment shall be forever binding on Jackson, all the Class Members, and their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other person claiming by or through any or all of them. The Agreement, this Order and the accompanying Final Judgment shall have *res judicata* and other preclusive effect as to the "Releasors" for the "Released Claims" as against the "Released Persons," all as defined in the Agreement.

8. **Releases**. The Class Members (*i.e.*, those members of the Class who did not timely opt out) shall be bound by the Release provided in Paragraph 5 of the Agreement, which is incorporated in this Order, regardless of whether such persons received any compensation under the Agreement or Settlement. The Releases are effective as of the date of this Final Approval Order and the accompanying Final Judgment. The Court expressly adopts all defined terms in the Agreement.

9. **Enforcement of Settlement.** Nothing in this Final Approval Order or the accompanying Final Judgment shall preclude any action by any Party to enforce the terms of the Agreement.

10. **Claimed Deficiencies.** The Court has made an independent judicial investigation into the allegations and defenses of the parties. The Court holds that under Missouri law MCU accrued no deficiency balances for Jackson and the Class, and MCU cannot collect any deficiency against Jackson and members of the Class because the right to cure notices and post-sale notices sent by MCU to Jackson and members of the Class failed to comply with the Missouri UCC. *See Missouri Credit Union v. Diaz*, 545 S.W.3d 856 (2018); *Gateway Aviation, Inc. v. Cessna Aircraft Co.*, 577 S.W.2d 860 (Mo. App. 1978) ("any right to a deficiency accrues only after strict compliance with the relevant statutes"). MCU must write off the claimed deficiency balances and cease all collection efforts regarding the loans that are the subject of the Litigation.

11. **Class Representative Award to Jackson.** The Court awards $10,000 to be paid from the Cash Fund to Jackson as an incentive award for her services as class representative in this Litigation.

12. **Class Relief.** As part of the Settlement, MCU will place $1,800,000 into the Cash Fund for monetary recoveries for class members, attorney's fees, costs, and Jackson's incentive award. MCU has also agreed to write off $3.860,215.08 in debt MCU claims the class members owe. *See* Agreement ¶ 1.25. MCU has also agreed to submit requests to credit bureaus Experian, Equifax, TransUnion, and Innovis to delete the class members' "tradelines" associated with their accounts subject to the Settlement. Missouri courts have assigned a "conservative" value of $10,000 per class member for getting these tradelines removed from their credit reports. *See Universal Credit Acceptance, Inc. v. Myers*, No. 15JE-AC05976-01 (Mo. Cir. Feb. 8, 2021); *see also Anheuser Busch Employees' Credit Union v. Wells*, Case No. 1522-AC09263-01 (Mo. Cir. July 10, 2018).[2] Each of the 521 class members will have their tradelines deleted from their credit reports. *See* Declaration of American Legal Claim Services LLC Regarding Due Diligence in Noticing at ¶¶ 4–6 (identifying 521 class members).

13. **Attorney's Fees and Expenses.** The Court approves and awards Class Counsel $1,440,000 from the Cash Fund, which represents less than 14% of the Total Class Benefit after considering monetary relief, deficiency write-offs, and deletion of class members' negative credit tradelines. The Court also awards Class Counsel $20,000 to reimburse expenses and costs, including payment to the Class Administrator. The Court specifically finds:

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[2] *Myers* and *Wells* were similar class actions based on the same types of violations (UCC notices) and remedies sought (statutory damages, deletion of negative credit tradeline, deficiency waiver). A credit damages expert estimated the benefit of having the negative auto loan tradeline deleted from the class members' credit reports, using an "ultra-conservative estimate," equated to $10,000 per class member. The courts took the estimated credit benefits of $10,000 per class member into account when it calculated the aggregate benefits conferred to the class. *See, e.g., Myers*, No. 15JE-AC05976-01 at 9 n. 1 ("Using an estimate of $10,000 in benefit conferred to each class member for deleting their tradeline from their credit reports, the Settlement Class also receives a benefit of approximately $77,010,000 ($10,000 per each of the 7,701 identified class members).").

a. The Court is acquainted with all the issues involved and the work performed by Class Counsel.

b. Through their settlement negotiations, and by obtaining preliminary and final approval of the Settlement Agreement, Class Counsel and Jackson achieved exceptional results on behalf of the Class with the total quantifiable benefit conferred on the Class valued at approximately $10,870,000, which is the sum of (1) $1,800,000 in monetary relief, (2) $3,860,000 in debt write-offs, and (3) $5,210,000 in value for removal of class members negative tradelines from their credit reports.

c. The issues involved were novel, complex, and justify the fee award.

d. The demands of the settlement approval process and class administration forced Class Counsel to dedicate considerable resources to this lawsuit.

e. Class Counsel are experienced and highly skilled class action and consumer litigators with a reputation justifying the fee award.

f. The fee award is less than that granted in similar cases involving complex litigation or in the class-action context.

g. The Agreement and Long-Form Notice informed the Class that Class Counsel would apply for fee awards in the amounts requested. No member of the Class has objected to such awards or the Settlement.

14. **No Other Payments**. The preceding paragraphs of this Final Approval Order preclude, without limitation, all claims for attorney's fees and expenses, costs or disbursements incurred by Class Counsel or any other counsel representing Jackson or the Class, or incurred by Jackson or the Class Members, or any of them, in connection with or

related in any manner to this Litigation, the Settlement of this Litigation, the administration of such Settlement, and/or the Released Claims, except to the extent otherwise specified in this Final Approval Order or the Agreement.

15. **Retention of Jurisdiction.** The Court has jurisdiction to enter this Final Approval Order and the accompanying Final Judgment. Without affecting the finality of this Final Approval Order and the accompanying Final Judgment, this Court expressly retains jurisdiction on all matters relating to the administration and enforcement of the Agreement and Settlement and of this Final Approval Order and the accompanying Final Judgment, and for any other necessary purpose as permitted by law, including, without limitation:

a. enforcing the terms and conditions of the Agreement and Settlement and resolving any disputes, claims or causes of action that, in whole or in part, are related to the administration and/or enforcement of the Agreement, Settlement, this Final Approval Order or the Final Judgment (including, without limitation, whether a person is or is not a member of the Class or a Class Member; and whether any claim or cause of action is or is not barred by this Final Approval Order and the Final Judgment);

b. entering such additional Orders as may be necessary or appropriate to protect or effectuate the Court's Final Approval Order and the Final Judgment and/or to ensure the fair and orderly administration of the Settlement and distribution of the Settlement Fund, including presiding over any garnishment actions; and

c. entering any other necessary Orders to protect and effectuate this Court's retention of continuing jurisdiction.

16. **Separate Judgment.** The Court will separately enter the accompanying Final Judgment.

IT IS SO ORDERED

Date: 3-14-22

Judge Jeff Harris

COURT SEAL OF

BOONE COUNTY