



TCU violated certain notice requirements under Indiana's Uniform Commercial Code ("UCC") when repossessing vehicles from its members. Plaintiff Waddell sought a Court order declaring that TCU's notices violated the UCC and further sought to recover money damages on behalf of Class Members that received the deficient notices. TCU raised multiple defenses against the Plaintiffs' claims and further asserted conditional Counterclaims and rights of set-off.

The Court determined that the Lawsuit could be maintained as a class action under Rule 23 of the Indiana Rules of Trial Procedure for the purposes of determining whether TCU's notices violated Indiana law, but not for the purposes of awarding money damages. (Order on Pl's Motion for Class Certification, filed January 23, 2017). The Court subsequently adjudicated the merits of the Lawsuit, determining that (a) a Repossession Notice utilized by TCU from May 21, 2005 until approximately February 1, 2010 did not comply with Indiana law because it did not state that the member is entitled to an accounting of the unpaid indebtedness and the charge, if any, for an accounting; (b) a Repossession Notice utilized by TCU from approximately February 1, 2010 until October 1, 2016 did not comply with Indiana law because it incorrectly stated that (i) the member's vehicle would be sold at a "private sale" and the vehicle was actually sold at a public auction and (ii) "you will or will not, as applicable, still owe us the difference" for any deficiency resulting from the sale of the vehicle; (c) the deficiency notice in use by TCU did not violate Indiana law, (Order on Cross-Motion for Summary Judgment, filed January 19, 2018). Litigation over other merits issues, and renewed motions for class action certification on contest have followed.

## 2. Settlement Agreement

The parties have entered into a Class Action Settlement Agreement (“Settlement Agreement”) dated January 3, 2020. The Settlement Agreement has been submitted to the Court for preliminary approval pursuant to T. R. 23(E).

## 3. The Class, Class Representatives, and Class Counsel.

a) By Order and Opinion dated January 23, 2017, the Court certified a class for declaratory relief under T.R. 23(B)(1) defined as all persons:

- (1) Who at any time during the Class Period May 20, 2005 to October 1, 2016<sup>1</sup>;
- (2) While an Indiana resident, were sent a Repossession Notice by TCU that:
  - (a) stated “you will or will not, as applicable, still owe us the difference”; or
  - (b) stated that the vehicle would be sold at a private sale; or
  - (c) did not state that the borrower is entitled to an accounting of the unpaid indebtedness and the charge, if any, for an accounting.

b) Jeffrey A. Musselman has previously been appointed a representative of the Class. Steven M. Waddell is now also appointed as a representative of the Class for the purposes of this settlement, with Musselman and Waddell collectively referred to as “Representative Plaintiffs.”

c) R. William Jonas, Jr. and HAMMERSCHMIDT AMARAL & JONAS of South Bend, IN, M. Scott Barrett and BARRETT WYLIE, LLC of Bloomington, IN; and Cary L. Flitter (admitted *pro hac vice*) and FLITTER MILZ, P.C. of Narberth, PA (collectively, “Class Counsel”) have

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<sup>1</sup> The January 23, 2017 Order fixed a Class Period end date as of the date of that Order. This instant Order supercedes and modifies the Class definition to the extent of fixing the Class Period end date, on consent, at October 1, 2016.

previously been approved and appointed as Class Counsel and are reappointed and approved as Class Counsel for the purposes of this settlement.

**4. Findings Regarding Proposed Settlement.** The Court finds that: (a) the proposed settlement resulted from extensive arm's-length negotiations. The proposed settlement was reached only after four years of litigation, review by Class Counsel of thousands of documents and tens of thousands of data points pertaining to the Class, multiple depositions, copious motion practice, participation in weeks of informal settlement negotiations between counsel, a mediation with a retired judge, a decision on contested class certification, and a decision on the merits of Plaintiffs' claims; (b) the proposed settlement of this action provides, on preliminary review, for forgiveness of alleged Deficiency Balances in an amount of approximately \$46 million, satisfaction of judgments taken upon certain Deficiency Balances against some Class Members, as well as equitable-type relief in correction of Class Member credit reports; and (c) the proposed settlement appears, on preliminary determination, to be reasonable, adequate, and sufficient to warrant providing notice of this action and the proposed settlement to the Class Members, and holding a final hearing on the proposed settlement.

**5. Final Approval Hearing.** A Final Approval Hearing will be held on April 28, 2020, at 1:00 P.M. in Courtroom 109, Civil Division Courthouse 1, 101 S. Main Street, South Bend, IN 46601, to determine:

- a) Whether the proposed settlement should be finally approved as fair, reasonable, and adequate;
- b) The propriety of any objection and the identity of any opt-outs;
- c) Whether this action should be dismissed with prejudice pursuant to the terms of the settlement;

d) Whether Class Members should be bound by the release set forth in the proposed settlement; and,

e) Whether Plaintiffs' application for an award of Class Counsel fees and litigation expenses and Representative Plaintiffs' application for service awards should be approved.

Plaintiffs' motion for final approval, for approval of Class Representative service awards, and for an award of Class Counsel fees and litigation expenses shall be filed at least fourteen days before the Final Approval Hearing.

**6. Pre-Hearing Notices to Class Members.** As provided in the Settlement Agreement, an independent, third-party class action administrator, American Legal Claims Services, LLC (the "Settlement Administrator"), shall provide Class Members with notice in the manner set forth below in ¶ 7. By accepting this assignment, the Settlement Administrator subjects itself to this Court's jurisdiction.

**7. a) Notice by Mail.** The Court has received a proposed form of Notice, agreeable to the parties, attached as Exhibit B to the Settlement Agreement, Exhibit 1 to the instant Motion for Preliminary Approval. The Settlement Administrator shall mail the approved Class Notice (with proper dates filled in) to the last known address of each potential Class Member as reflected on the TCU's current and reasonably accessible records, and updated by the Administrator using the Postal Service National Change of Address database, and/or the Accurint database or other equivalent database, as necessary. The Class Notice shall be sent by first-class mail, postage prepaid, no later than forty days following the entry of this order;

**b) Notice by Newspaper Publication.** The Settlement Administrator shall cause a summary class notice (in a format appended to Plaintiffs' Motion for Preliminary Approval as Exhibit 4) to be published on two separate occasions, at least one week apart, on different days

of the week, in the Indianapolis Star, the South Bend Tribune, the Times of Northwest Indiana and the Ft. Wayne Journal Gazette, with the first notice to be published on or about the date that the Notice of class action settlement is mailed by the administrator;

c) **Notice by Social Media.** The Settlement Administrator shall provide targeted Facebook notification to a custom-focused audience utilizing the member information provided by TCU to the Settlement Administrator;

d) **Notice by Website Created for this Case.** The Settlement Administrator shall cause a summary class notice (in a format approved by counsel and the court) to be published with the Settlement Agreement and Motion for Preliminary Approval and Order of Preliminary Approval on an informational webpage that will reside on the Settlement Administrator's website.

**8. Proof of Mailing.** At least twenty-eight (28) days before the Final Approval Hearing, the Settlement Administrator shall submit to Class Counsel and TCU's counsel an affidavit of mailing of the Class Notice. The affidavit shall set forth the steps taken to provide due and proper notice and include a list of the persons who have requested exclusion from the Class and a list of any persons who have filed an objection to the proposed settlement.

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

request exclusion may object to the settlement and, if he or she desires, enter an appearance personally or through counsel.

The Court further finds that the proposed Class Notice is written in plain English and is readily understandable. In sum, the Court finds that the proposed notice and the methodology for giving notice are reasonable, that they together constitute due and sufficient notice to all persons entitled to notice, and that they meet the requirements of the Indiana Rules of Trial Procedure, the United States Constitution (including the Due Process Clause), and other applicable law. The Court further finds that disclosure of any social security numbers concerning Class Members to the Settlement Administrator may be necessary for implementing the proposed notice program, and authorizes TCU or their designee to disclose such data to the Settlement Administrator. Class Counsel advises that it does not require or request social security numbers of Class Members.

**10. Exclusion from Class.** Any Class Member who wishes to be excluded from the Class must send a written request for exclusion to the Settlement Administrator at the address provided in the Class Notice. Any such exclusion request must be sent by first-class mail, postage prepaid, and must be postmarked no later than a date forty-two days after the Class Notice is mailed. The request for exclusion shall (i) set forth the Class Member's full name, current address, telephone number, and email address if available; (ii) contain the signatures of each Class Member obligated on the motor vehicle loan or installment sale agreement; and (iii) state an intent of all signatories to the loan or finance agreement not to participate in the settlement. If the proposed settlement is finally approved, any Class Member who has not submitted a timely, written request for exclusion from the Class shall be bound by all subsequent proceedings, orders, and judgments in this action.

**11. Objections and Appearances.**

a) **Written Objections.** Any Class Member who does not file a timely, written request for exclusion and who complies with the requirements of this paragraph may object to any aspect of the proposed settlement. A Class Member may assert such objection either on his or her own or through an attorney hired at his or her expense. To object, the Class Member must file an objection saying that he or she objects to the settlement, and why the objector thinks the Court should not approve the settlement. The objection must include the name, address, telephone number, email address if available, and signature of the objector. The objection must be docketed with the Court and mailed to the address below no later than forty-two days from mailing of the Class Notice.

**Settlement Administrator**  
*Musselman v. TCU Class Settlement*  
c/o American Legal Claims Services, LLC  
P.O. Box 23650  
Jacksonville, FL 32241-3650

b) **Other Objections.** Any Class Member who does not timely file with the Court and serve a written objection complying with the terms of this paragraph shall be deemed to have waived any objection, and shall be foreclosed from raising any objection to the settlement. Any untimely objection shall be barred, absent extraordinary circumstances.

c) **Notice of Appearance.** If a Class Member retains an attorney, the attorney must file a notice of appearance with the Office of the Clerk, and contemporaneously deliver a copy to TCU's counsel and to Class Counsel.

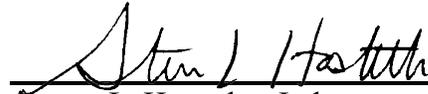
d) **Appearance at Final Approval Hearing.** Any Class Member who files and serves a timely written objection pursuant to this Order and complies with the requirements of this paragraph may also appear and be heard at the Final Approval Hearing either in person or

through counsel retained at the Class Member's expense. Class Members or their attorneys intending to appear and be heard at the Final Approval Hearing must deliver to the Court, TCU's counsel, and Class Counsel a notice of intention to appear, setting forth the basis for the objection and any documents or legal memoranda in support of the objection. Such notices of intention to appear and any documents or legal memoranda must be postmarked no later than forty-two days from mailing of the Class Notice. Any Class Member who does not timely file and serve a notice of intention to appear and supporting documents pursuant to the terms of this paragraph shall not be permitted to appear and be heard at the Final Approval Hearing, absent extraordinary circumstances.

**12. Termination of Settlement.** This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order if (a) the proposed settlement is not finally approved by the Court, or does not become final, pursuant to the terms of the Settlement Agreement; or (b) the proposed settlement is terminated in accordance with the Settlement Agreement or does not become effective as required by the terms of the Settlement Agreement for any other reason. If that happens, the proposed settlement and Settlement Agreement shall become null and void and be of no further force and effect (except as expressly provided in the Settlement Agreement), and neither the Settlement Agreement nor this Order shall prejudice any party.

**13. Continuance of Hearing.** The Court reserves the right to continue the Final Approval Hearing without further written notice to the absent Class Members, except those who filed timely objections shall be provided with written notice of any continuance.

SO ORDERED this 9th of January, 2020.

  
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Steven L. Hostetler, Judge  
St. Joseph Superior Court



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