



NOTICE TO PLEAD *Filed and Attested by the Office of Judicial Records*
TO THE PLAINTIFF: *26 AUG 2019 11:03 am*
 You are hereby notified to file a written response to the enclosed New Matter and Counterclaims within twenty (20) days from the date of service hereof or a judgment may be entered against you.

/s/ John P. McShea
 John P. McShea, Attorney for Defendants

McSHEA LAW FIRM, P.C.
 By: John P. McShea
 Pa. Identification No. 34562
 Centre Square, West Tower
 1500 Market Street, 40th Floor
 Philadelphia, PA 19102-2100
 215-599-0800
 jmchsea@mcshealawfirm.com

Attorney for Defendants

 MATTHEW L. CHIPEGO,
 CHARLENE K. MOWREY,
 CONSTANCE C. CHURCHILL and
 JOSEPH W. EWING,

 Plaintiffs,

 v.

 FIVE STAR BANK and
 FINANCIAL INSTITUTIONS, INC.,

 Defendants.

COURT OF COMMON PLEAS
 PHILADELPHIA COUNTY
 TRIAL DIVISION – CIVIL

 MAY TERM, 2017

 NO. 002466

ANSWER TO PLAINTIFFS’ AMENDED CLASS COMPLAINT WITH NEW MATTER AND COUNTERCLAIMS

Defendants, Five Star Bank and Financial Institutions, Inc., by and through their undersigned counsel, as their Answer, New Matter, and Counterclaims to the Amended Class Complaint, state as follows:

ANSWER

I. INTRODUCTION

1. This is a consumer class action brought against a vehicle lender to redress systemic violations of the Uniform Commercial Code (“UCC”), as adopted in Pennsylvania, 13 Pa C.S. § 9601, et

seq. and New York, N.Y. UCC Law § 9-601 (McKinney). The UCC requires secured parties who utilize self-help repossession to act in a commercially reasonable manner. This includes providing consumers with proper statutory notices when repossessing and reselling a financed vehicle.

RESPONSE TO 1: Defendants admit the complaint attempts to allege a class action against Defendants based on alleged violations of Pennsylvania Statute 13 Pa C.S. § 9601, et seq. and New York Statute UCC § 9-601 et seq. The remaining allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, all remaining allegations are denied.

2. Defendant Five Star Bank (“Five Star” or “Bank”) regularly finances the purchase of motor vehicles for consumer use in Pennsylvania and New York. When the Bank believes that a consumer has defaulted on a secured vehicle loan, it repossesses and then re-sells the vehicle. In the course of so doing, the Bank failed to provide Plaintiffs and the Class with the proper notice of repossession of collateral required by the Uniform Commercial Code (“UCC”).

RESPONSE TO 2: Five Star Bank admits that it purchases and is assigned motor vehicle retail installment sale contracts in Pennsylvania and New York, and that it directly finances vehicle purchases in New York. Five Star Bank admits that there have been instances where consumers have defaulted on loans secured by motor vehicles, that vehicles have been repossessed in Pennsylvania and New York, and that Five Star Bank has provided notices in connection with those repossessions. The remaining allegations state conclusions which falsely assume common and typical facts and law. For example, many motor vehicles that are repossessed are not sold, the documents related to the financing of the motor vehicles are different, the persons whom Plaintiffs attempt to define as the “Class” (or classes) are not common or typical, the notices sent to the Plaintiffs and the persons whom the Plaintiffs attempt to define as the “Class” (or classes) are different, and the applicable laws enacted in New York and Pennsylvania are different and/or have been applied differently in those states. To the extent any further answer is required, Defendants deny the remaining allegations contained in this paragraph.

3. Because self-help repossession is effected without judicial authorization or oversight, the UCC requires secured creditors like Five Star to strictly adhere to the Code’s notice requirements. Failure to provide proper notice of disposition of repossessed consumer goods is a violation of the Code that yields uniform statutory minimum damages for Plaintiffs and the Classes they seek to represent.

RESPONSE TO 3: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

II. PARTIES

4. Plaintiff Matthew L. Chipego (hereinafter “Chipego”) is a consumer and an adult individual who resides at 508 Bear Run Lane, Noxen, PA 18636.

RESPONSE TO 4: After reasonable investigation, Defendants lack sufficient knowledge or information as to the allegations contained in this paragraph and therefore deny the same.

5. Plaintiff, Charlene K. Mowrey (hereinafter “Mowrey”) is a consumer and an adult individual who resides at 2706 Old Berwick Road, Bloomsburg, PA 17815.

RESPONSE TO 5: After reasonable investigation, Defendants lack sufficient knowledge or information as to the allegations contained in this paragraph and therefore deny the same.

6. Plaintiff Constance C. Churchill (hereinafter “Churchill”) is a consumer and an adult individual who resides at 607D Larkin Road, Derby, NY 14047.

RESPONSE TO 6: After reasonable investigation, Defendants lack sufficient knowledge or information as to the allegations contained in this paragraph and therefore deny the same.

7. Plaintiff Joseph W. Ewing (hereinafter “Ewing”) is a consumer and an adult individual who resides at 668 Northampton Street, Buffalo, NY 14211.

RESPONSE TO 7: After reasonable investigation, Defendants lack sufficient knowledge or information as to the allegations contained in this paragraph and therefore deny the same.

8. Defendant Five Star Bank (“Bank,” “Five Star,” or “FSB”) is a New York state chartered bank with a principal place of business in Warsaw, NY. The Bank finances the purchase of motor vehicles in both Pennsylvania and New York.

RESPONSE TO 8: Five Star Bank admits that it is a New York State Chartered Bank with a principal place of business in Warsaw, New York. Five Star Bank admits it purchases and is assigned motor vehicle retail installment sale contracts in Pennsylvania and New York and thereby indirectly finances the purchases of those vehicles and that it also directly finances the purchase of motor vehicles in New York. Five Star Bank denies any remaining allegations contained in this paragraph.

9. Defendant Financial Institutions, Inc. (“FII”) is the publicly traded holding company for Defendant, FSB. FII has the right to control the actions of FSB.

RESPONSE TO 9: Financial Institutions, Inc. (“FII”) denies the allegations contained in this paragraph, except admits that FII is a bank holding company with a principal place of business in Warsaw, NY.

III. STATEMENT OF CLAIM

Chipego’s Experience

10. On or about June 14, 2013, Plaintiff Chipego purchased and financed a 2011 Cadillac SRX automobile for personal use from Alexander Buick Cadillac GMC in Sunbury, PA.

RESPONSE TO 10: Defendants admit that Chipego purchased a Cadillac SRX from Alexander Buick Cadillac GMC in Sunbury, PA pursuant to a Motor Vehicle Installment Sale Contract and that the contract was assigned to Five Star Bank. After reasonable investigation, Defendants lack sufficient knowledge or information as to whether it was for personal use and therefore deny the same. Defendants deny any remaining allegations contained in this paragraph.

11. The purchase money financing for Chipego's vehicle purchase was provided by Five Star.

RESPONSE TO 11: Defendants deny the allegations contained in this paragraph, except admit that Five Star Bank provided purchase money financing and possesses a purchase money security interest in Chipego's vehicle through the purchase of a Motor Vehicle Installment Sales Contract.

12. Five Star financed the purchase of Chipego's car and took a security interest in the vehicle.

RESPONSE TO 12: Defendants deny the allegations contained in this paragraph, except admit that Five Star Bank provided purchase money financing and possesses a purchase money security interest in Chipego's vehicle through the purchase of a Motor Vehicle Installment Sales Contract.

13. In Chipego's finance transaction, Five Star was the secured party, and monthly payments were made to Five Star.

RESPONSE TO 13: Defendants deny the allegations contained in this paragraph, except admit that Five Star Bank provided purchase money financing and possesses a purchase money security interest in Chipego's vehicle through the purchase of a Motor Vehicle Installment Sales Contract. Defendants also admit certain payments were made to Five Star Bank but deny that all payments were made as required.

14. Mr. Chipego fell behind on his monthly payments, and the Bank determined there was a default.

RESPONSE TO 14: Defendants deny the allegations contained in this paragraph, except admit that Chipego failed to pay as required and that he was in default of his obligations to Five Star Bank.

15. On or about November 18, 2016, the Bank, as the lender and secured party, repossessed Chipego's vehicle or ordered that it be repossessed.

RESPONSE TO 15: Defendants deny the allegations contained in this paragraph, except admit that Five Star Bank, as the lender and secured party, repossessed Chipego's vehicle or ordered that it be repossessed.

16. Pennsylvania law requires a prompt post-repossession notice to the borrower advising of the repossession, that the borrower can redeem (or get his vehicle back) at any time before the expiration of 15 days from the date of the notice and up until sale, the method of intended disposition, whether the debtor may be liable for a deficiency or entitled to a surplus, that the borrower has the right to request an

accounting, and other information. 13 Pa.C.S. §§ 9613-9614; *Cubler v. TruMark Fin. Credit Union*, 83 A.3d 235, 236 n.1 (Pa. Super. 2013).

RESPONSE TO 16: The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

17. By letter dated November 18, 2016, the Bank sent Mr. Chipego a Notice of Right to Redeem (“Repossession Notice”).

RESPONSE TO 17: Defendants deny the allegations contained in this paragraph, except admit that, by letter dated November 18, 2016, Five Star Bank sent Mr. Chipego a Notice of Right to Redeem.

18. The Repossession Notice does not state the method of intended disposition.

RESPONSE TO 18: The allegations in this paragraph incompletely or incorrectly characterize a written document and its context and state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

19. While stating the vehicle will be “sold,” it does not state whether the car will be sold by public or private sale, as required by 13 Pa.C.S. § 9614(1)(i), incorporating 13 Pa.C.S. § 9613(1)(iii).

RESPONSE TO 19: The allegations in this paragraph incompletely or incorrectly characterize a written document and its context and state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

20. If sold by public sale, the Repossession Notice fails to state the date and place of any auction, as required by 13 Pa.C.S. § 9614(1)(i), incorporating 13 Pa.C.S. § 9613(1)(v).

RESPONSE TO 20: Defendants deny that the vehicle was sold at a public sale or that the Notice of Right to Redeem states that it will be sold at a public sale or public auction. The remaining allegations in this paragraph incompletely or incorrectly characterize a written document and its context and state legal conclusions to which no response is required. To the extent a response is required, the remaining allegations are denied.

21. The Repossession Notice does not advise the borrower that he is entitled to an accounting of any unpaid indebtedness, nor the charge (if any) for such an accounting, as required by 13 Pa.C.S. § 9614(1)(i), incorporating 13 Pa.C.S. § 9613(1)(iv).

RESPONSE TO 21: The Notice of Right to Redeem provided an actual accounting of unpaid indebtedness at no charge to Chipego. The remaining allegations in this paragraph incompletely or incorrectly characterize a written document and its context and state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

22. The Notice lists lump-sum “storage costs” of \$350. Such sum was unincurred, and not due when notice was sent. The lump-sum improperly inflated the amount needed to redeem.

RESPONSE TO 22: Defendants deny the allegations contained in this paragraph, except admit that Five Star Bank sent Notices of Right to Redeem which included a line item titled “storage costs.”

23. The Bank sent the same form Repossession Notice to many consumers across Pennsylvania.

RESPONSE TO 23: Defendants deny the allegations contained in this paragraph, except admit that Five Star Bank sent Notices of Right to Redeem which originated from the same form to other persons in Pennsylvania. After reasonable investigation, Defendants lack sufficient knowledge or information sufficient to know whether the notices, when sent, were sent to persons who were presently “consumers” or that the motor vehicles referenced in the notices were “consumer goods” at the time when sent, and therefore deny the remaining allegations.

Mowrey’s Experience

24. Like Mr. Chipego, Plaintiff Mowrey purchased and financed a 2011 Cadillac automobile for personal use from Alexander Buick Cadillac GMC in Sunbury, PA. Mowrey purchased the vehicle with Douglas Beachel as co-obligor. Mr. Beachel was, but no longer is, a named party plaintiff.

RESPONSE TO 24: Defendants deny that the facts related to Mowrey are common to the facts related to Chipego. Defendants admit that Mowrey purchased a Cadillac Escalade ESV from Alexander Buick Cadillac GMC in Sunbury, PA pursuant to a Motor Vehicle Installment Sale Contract with Douglas Beachel as co-obligator and that the contract was assigned to Five Star Bank. Defendants also admit that Mr. Beachel was listed as a plaintiff in the caption of the initial complaint filed by Plaintiff in this action. After reasonable investigation, Defendants lack sufficient knowledge or information as to whether it was for personal use and therefore deny the same.

25. The purchase money financing for Mowrey’s vehicle purchase was provided by Five Star.

RESPONSE TO 25: Defendants deny the allegations contained in this paragraph, except admit that Five Star Bank provided purchase money financing and possesses a purchase money security interest in Mowrey’s vehicle through the purchase of a Motor Vehicle Installment Sales Contract.

26. Five Star financed the purchase of the Cadillac and took a security interest in the vehicle.

RESPONSE TO 26: Defendants deny the allegations contained in this paragraph, except admit that Five Star Bank provided purchase money financing and possesses a purchase money security interest in Mowrey’s vehicle through the purchase of a Motor Vehicle Installment Contract.

27. In Mowrey’s finance transaction, the Bank was the secured party, and monthly payments were made to the Bank.

RESPONSE TO 27: Defendants deny the allegations contained in this paragraph, except admit that Five Star Bank provided purchase money financing and possesses a purchase money security interest in Mowrey's vehicle through the purchase of a Motor Vehicle Installment Contract. Defendants also admit that certain payments were made to Five Star Bank but deny that all payments were made as required.

28. Mowrey fell behind on monthly payments, and the Bank determined there was a default.

RESPONSE TO 28: Defendants deny the allegations contained in this paragraph, except admit that Mowrey failed to pay as required and was in default of her obligations to Five Star Bank.

29. On or about April 4, 2016 and again on December 3, 2016, the Bank, as the lender and secured party, repossessed Mowrey's vehicle or ordered that it be repossessed.

RESPONSE TO 29: Defendants deny the allegations contained in this paragraph, except admit that Five Star Bank, as the lender and secured party, repossessed Mowrey's vehicle or ordered that it be repossessed.

30. Five Star sent Mowrey a materially identical form Repossession Notices as those sent to Mr. Chipego.

RESPONSE TO 30: Defendants deny that they sent the identical Notice of Right to Redeem as Five Star Bank sent to Mr. Chipego but admit that Five Star Bank sent a Notice of Right to Redeem to Mowrey which originated from the same form as the Notice of Right to Redeem it sent to Chipego. The remaining allegations in this paragraph incompletely or incorrectly characterize a written document and its context and state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

31. The Notices sent by the Bank to Mowrey suffer from the same deficiencies as Chipego's.

RESPONSE TO 31: The allegations in this paragraph incompletely or incorrectly characterize a written document and its context and state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

32. At some point after sending the Repossession Notice, the Bank sold Mowrey's vehicle at auction.

RESPONSE TO 32: Defendants deny the allegations contained in this paragraph, except admit that, at some point thereafter, Mowrey's vehicle was sold at auction.

33. By letter dated January 17, 2017, Five Star informed Ms. Mowrey that after the car was sold, she still owed a \$12,565.24 deficiency balance.

RESPONSE TO 33: Defendants admit the allegations contained in this paragraph.

34. The Deficiency Notice is improper and commercially unreasonable. The Deficiency Notice fails to itemize expenses and to correctly order the information to be given, as required by 13 Pa.C.S. § 9616(c).

RESPONSE TO 34: The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

35. Five Star sent substantially the same form Deficiency Notice to many consumers across Pennsylvania.

RESPONSE TO 35: Defendants deny the allegations contained in this paragraph.

36. Five Star's failure to give proper explanation of deficiency is a pattern or consistent with a practice of non-compliance with the requirements of Pennsylvania law and Article 9 of the UCC.

RESPONSE TO 36: The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

Churchill's Experience

37. In 2010, Plaintiff, Constance Churchill purchased and financed a 2007 Dodge Dakota pickup truck for personal use from West Herr Dodge in Orchard Park, NY.

RESPONSE TO 37: Defendants admit that Churchill purchased a Dodge Dakota from West Herr Dodge in Orchard Park, NY pursuant to a Motor Vehicle Retail Installment Contract and that the contract was assigned to Five Star Bank. After reasonable investigation, Defendants lack sufficient knowledge or information as to whether it was for personal use and therefore denies the same. Defendants deny any remaining allegations contained in this paragraph.

38. The purchase money financing for Churchill's vehicle purchase was provided by Defendant Five Star.

RESPONSE TO 38: Defendants deny the allegations contained in this paragraph, except admit that Five Star Bank provided purchase money financing and possesses a purchase money security interest in Churchill's vehicle through the purchase of a Motor Vehicle Retail Installment Sales contract.

39. Defendant Bank financed the purchase of the Dodge and took a security interest in the vehicle.

RESPONSE TO 39: Defendants deny the allegations contained in this paragraph, except admit that Five Star Bank provided purchase money financing and possesses a purchase money security interest in Churchill's vehicle through the purchase of a Motor Vehicle Retail Installment Sales contract.

40. In Churchill's finance transaction, the Bank was the secured party, and monthly payments were made to the Bank.

RESPONSE TO 40: Defendants deny the allegations contained in this paragraph, except admit that Five Star Bank provided purchase money financing and possesses a purchase money security interest in Churchill's vehicle through the purchase of a Motor Vehicle Retail Installment Sales contract. Defendants admit that certain payments were made to Five Star Bank but deny that all payments were made as required.

41. Plaintiff Churchill fell behind on her monthly payments, and the Bank determined there was a default.

RESPONSE TO 41: Defendants deny the allegations contained in this paragraph, except admit that Churchill failed to pay as required and was in default of her obligations to Five Star Bank.

42. On or about September 30, 2014, the Bank, as the lender and secured party, repossessed Churchill's Dodge automobile or ordered that it be repossessed.

RESPONSE TO 42: Defendants deny the allegations contained in this paragraph, except admit that on or about September 30, 2014 Five Star Bank, as the lender and secured party, repossessed Churchill's Dodge automobile or ordered that it be repossessed.

43. New York law requires a prompt post-repossession notice to the borrower advising of the repossession and that the borrower can "redeem" (or get her car back) by paying past due payments and fees, the method of intended disposition, whether the debtor may be liable for a deficiency or entitled to a surplus, and other information. N.Y. UCC § 9-614(a)(1), incorporating N.Y. § UCC 9-613(a); N.Y. Gen. Oblig. Law § 7-401(2).

RESPONSE TO 43: The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

44. By letter dated October 1, 2014, the Bank sent Ms. Churchill a Notice of Right to Redeem ("Repossession Notice").

RESPONSE TO 44: Defendants deny the allegations contained in this paragraph, except admit that Five Star Bank, by letter dated October 1, 2014, sent Ms. Churchill a Notice of Right to Redeem.

45. The Repossession Notice does not state the method of intended disposition.

RESPONSE TO 45: The allegations in this paragraph incompletely or incorrectly characterize a written document and its context and state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

46. While stating the vehicle will be sold, it does not state whether the car will be sold by public or private sale, as required by N.Y. UCC § 9-614(a)(1), incorporating N.Y. § UCC 9613(a)(3).

RESPONSE TO 46: The allegations in this paragraph incompletely or incorrectly characterize a written document and its context and state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

47. If sold by public sale, the Repossession Notice fails to list the required statement of the date and place of any public sale or auction, as required by N.Y. UCC § 9-614(a)(1), incorporating N.Y. § UCC 9-613(a)(5).

RESPONSE TO 47: Defendants deny that the vehicle was sold at a public sale or that the Notice of Right to Redeem states that it will be sold at a public sale. The remaining allegations in this paragraph incompletely or incorrectly characterize a written document and its context and state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

48. The Repossession Notice does not advise the borrower that she is entitled to an accounting of any unpaid indebtedness, nor the charge (if any) for such an accounting, as required by N.Y. UCC § 9-614(a)(1), incorporating N.Y. § UCC 9-613(a)(4).

RESPONSE TO 48: The allegations in this paragraph incompletely or incorrectly characterize a written document and its context and state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

49. The Repossession Notice does not provide an itemized statement of the dollar amount needed to redeem, as required by N.Y. § UCC 9-611(b) and N.Y. Gen. Oblig. Law § 7-401(2). Instead, it conditions redemption of the vehicle on payment of undescribed and unincurred “estimated” expenses, or lump sum “storage costs” not yet incurred.

RESPONSE TO 49: The allegations in this paragraph incompletely or incorrectly characterize a written document and its context and state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

50. The Bank sent the same form Repossession Notice to many consumers across New York.

RESPONSE TO 50: Defendants deny that they sent the same Notice of Right to Redeem to many consumers across New York but admit that Five Star Bank sent Notices of Right to Redeem which originated from the same form to other persons in New York. After reasonable investigation, Defendants lack sufficient knowledge or information to know whether the notices, when sent, were sent to persons who were presently “consumers” or that the motor vehicles referenced in the notices were “consumer goods” at that time when sent, and therefore deny the remaining allegations.

51. At some point after sending the Repossession Notice, the Bank sold Churchill's vehicle at auction.

RESPONSE TO 51: Defendants deny the allegations contained in this paragraph, except admit that, at some point thereafter, Churchill's vehicle was sold at auction.

52. By letter dated October 1, 2014, Five Star informed Ms. Churchill that after the car was sold, she still owed a \$4,079.62 deficiency balance.

RESPONSE TO 52: Defendants admit the allegations contained in this paragraph.

53. The Deficiency notice is improper and commercially unreasonable. The deficiency Notice fails to itemize expenses and to correctly order the information to be given, as required by N.Y. UCC § 9-616(c).

RESPONSE TO 53: The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

54. Five Star sent substantially the same form Deficiency Notice to many consumers across New York.

RESPONSE TO 54: Defendants deny the allegations contained in this paragraph.

55. Five Star's failure to give proper explanation of deficiency is a pattern or consistent with a practice of non-compliance with the requirements of New York law and Article 9 of the UCC.

RESPONSE TO 55: The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

Ewing's Experience

56. In 2012, Plaintiff, Joseph Ewing purchased and financed a 2010 Ford Taurus for personal use from Basil Ford of Cheektowaga, NY.

RESPONSE TO 56: Defendants admit Ewing purchased a Ford Taurus from Basil Ford of Cheektowaga, NY pursuant to a Motor Vehicle Retail Installment Contract and that the contract was assigned to Five Star Bank. After reasonable investigation, Defendants lack sufficient knowledge or information as to whether it was for personal use and therefore deny the same. Defendants deny any remaining allegations contained in this paragraph.

57. Defendant Five Star financed the purchase of Ewing's vehicle and took a security interest in it.

RESPONSE TO 57: Defendants deny the allegations contained in this paragraph, except admit that Five Star Bank provided purchase money financing and possesses a purchase money security interest in Ewing's vehicle through the purchase of a Motor Vehicle Retail Installment Contract.

58. On or about November 14, 2013, the Bank, as the lender and secured party, repossessed Ewing's vehicle or ordered that it be repossessed.

RESPONSE TO 58: Defendants deny the allegations contained in this paragraph, except admit that on or about November 14, 2013, Five Star Bank, as the lender and secured party, repossessed Ewing's vehicle or ordered that it be repossessed.

59. By letter dated November 15, 2013, the Bank sent Ewing a form Repossession Notice which was materially identical to the one sent to Ms. Churchill. The Bank's Notice of Repossession to Mr. Ewing suffers from the same deficiencies as the Churchill notice.

RESPONSE TO 59: Defendants deny the allegations contained in this paragraph, except admit that Five Star Bank sent a Notice of Right to Redeem to Ewing which originated from the same form as the Notice of Right to Redeem it sent to Churchill. Defendants admit that Five Star Bank sent Ewing a Notice of Right to Redeem on or about November 15, 2013. The remaining allegations in this paragraph incompletely and incorrectly characterize a written document and its context and state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

60. At some point thereafter, Five Star sold Mr. Ewing's Ford at auction.

RESPONSE TO 60: Defendants deny the allegations contained in this paragraph, except admit that, at some point thereafter, Ewing's vehicle was sold at auction.

61. By letter dated January 7, 2014, Five Star informed Mr. Ewing that after the car was sold, he still owed a \$15,205.89 deficiency balance.

RESPONSE TO 61: Defendants admit the allegations contained in this paragraph.

62. The Deficiency Notice is improper and commercially unreasonable. The Deficiency Notice fails to itemize or correctly order the information to be given, as required by N.Y. UCC § 9-616(c).

RESPONSE TO 62: The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

63. Five Star sent substantially the same for Deficiency Notice to hundreds of consumers across New York.

RESPONSE TO 63: Defendants deny the allegations contained in this paragraph.

64. Five Star's failure to give proper explanation of deficiency is a pattern or consistent with a practice of non-compliance with the requirements of New York law and Article 9 of the UCC.

RESPONSE TO 64: The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

Governing Law

65. Article 9 of the Uniform Commercial Code ("UCC"), 13 Pa. C.S. § 9601; N.Y. UCC Law § 9-601 *et seq.* (McKinney), governs the secured financing of and repossession of motor vehicles in both Pennsylvania and New York.

RESPONSE TO 65: The compound allegations in this paragraph, referencing two separate statutes that are interpreted differently by the state courts in New York and Pennsylvania, state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

66. Under the UCC, "[E]very aspect of a disposition of collateral ... must be commercially reasonable." 13 Pa. C.S. § 9610; N.Y. UCC § 9-610. This includes post-repossession notice.

RESPONSE TO 66: The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

Five Star's Repossession Notice is Non-Compliant

67. Under the UCC, the Bank was required to provide "reasonable authenticated notification of disposition" of the collateral containing important mandatory information about the repossession and approaching sale of the collateral. 13 Pa. C.S. §§ 9611, 9613, & 9614; N.Y. UCC §§ 9-611, 9-613, 9-614.

RESPONSE TO 67: The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

68. The Bank, in its form Repossession Notice, failed to provide proper and reasonable notification of disposition to Plaintiffs Chipego and Mowrey, and to the Class of Pennsylvania borrowers they seek to represent, by:

- (a) Failing to state the method of disposition, *viz.*, whether by public or private sale;
- (b) Failing to list the time and place of any public sale *i.e.*, auction of the vehicle; and

- (c) Failing to state that the debtor is entitled to an accounting of the unpaid indebtedness and the charge, if any, for such an accounting, or stated “if you want us to explain to you in writing how we have figured the amount that you owe us ...”; or
- (d) Listing a lump sum storage cost; or,
- (e) Failing to send any Repossession Notice at all.

RESPONSE TO 68: The allegations in this paragraph incompletely or incorrectly characterize a written document and its context and state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

69. The Bank’s Repossession Notice failed to provide proper and reasonable notification of disposition to Plaintiffs Churchill and Ewing and the Class of New York borrowers they seek to represent, by:

- (a) Failing to state the method of disposition, *viz.*, whether by public or private sale;
- (b) Failing to list the time and place of any public sale *i.e.*, auction of the vehicle; and
- (c) Failing to state that the debtor is entitled to an accounting of the unpaid indebtedness and the charge, if any, for such an accounting, or stated “if you want us to explain to you in writing how we have figured the amount that you owe us ...”; or
- (d) Failing to provide an itemized statement of the dollar amount needed to redeem, or stating that “estimated” expenses or lump sum storage cost must be paid to redeem; or
- (e) Failing to send any Repossession Notice at all.

RESPONSE TO 69: The allegations in this paragraph incompletely or incorrectly characterize a written document and its context and state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

70. In the course of the repossession and disposition process, the Bank did not act in a commercially reasonable manner toward Plaintiffs and the Class because it failed to provide the required or adequate notice of plan to sell the collateral. 13 Pa. C.S. §§ 9610, 9611, 9613, & 9614; N.Y. UCC §§ 9-610, 9-611, 9-613, & 9-614.

RESPONSE TO 70: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

Five Star's Deficiency Notice is Non-Compliant

71. If a deficiency remains after the sale of the vehicle, the UCC requires that a creditor send an explanation of the claimed deficiency. 13 Pa.C.S. § 9616; N.Y. UCC § 9-616.

RESPONSE TO 71: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

72. The explanation of the claimed deficiency must be in writing and must provide certain specific information in a prescribed order. 13 Pa.C.S. § 96169(c); N.Y. UCC § 9-616(c).

RESPONSE TO 72: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

73. The Code § 9616 requires that a post-sale Notice of Deficiency or Surplus:

- (a) state that future debits, credits, charges, including additional credit service charges or interest, rebates and expenses may affect the amount of the surplus or deficiency; and
- (b) “must provide the following information in the following order”:
 - (1) the aggregate amount of the obligation secured by the security interest under which the disposition was made, and if the amount reflects a rebate of unearned interests or credit service charge, an indication of that fact, and a calculation thereof;
 - (2) the amount of proceeds of the disposition;
 - (3) the aggregate amount of the obligations after deducting the amount of the proceeds;
 - (4) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing and disposing of the collateral and attorney’s fees secured by the collateral which are known to the secured party and relate to the current disposition;
 - (5) the amount, in the aggregate or by type and types of credits, including rebate of interest or credit service charges, to which the obligor is known to be entitled; and
 - (6) the amount of the surplus or deficiency.

RESPONSE TO 73: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

74. The Deficiency Notice sent to Plaintiff Mowrey and the putative Pennsylvania Class B fails to conform to the statutory requirement.

RESPONSE TO 74: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

75. The Deficiency Notice sent to Plaintiffs Churchill and Ewing and the putative New York Class D fails to conform to the statutory requirement.

RESPONSE TO 75: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

Statutory Damages Formula

76. The UCC, at 13 Pa. C.S. § 9625(c)(2), and N.Y. UCC Law § 9-625(c)(2), provides for damages for a secured party's failure to follow the proper procedures upon repossession. The statute allows consumer debtors such as the Plaintiffs (and the putative classes) to recover in any event minimum damages of not less than the credit service charge plus 10% of the principal amount of the obligation. *See* Comment 4 to § 9625.

RESPONSE TO 76: The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, these allegations are denied.

77. The statutory damages are derived from a straightforward calculation.

RESPONSE TO 77: Defendants deny the allegations contained in this paragraph.

78. For example, in Churchill's case, the statutory damages are computed by summing \$5,867.04 (credit service, or finance charge) + \$2,203.94 (10% of amount financed) = \$8,070.98.

RESPONSE TO 78: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, these allegations are denied.

79. A secured party who fails to send the appropriate explanation of a deficiency is liable for \$500.00 statutory damages if its noncompliance was part of a pattern or consistent with a practice of noncompliance. 13 Pa.C.S. §9625(e)(5); N.Y. UCC § 9-625(e)(5).

RESPONSE TO 79: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

IV. CLASS ALLEGATIONS

80. Plaintiffs bring this action on their own behalf and on behalf of four classes designated pursuant to Pa. R. Civ. P. 1701 et seq.

RESPONSE TO 80: Defendants admit that Plaintiffs are attempting to bring this action on their own behalf and on behalf of four classes. Defendants deny that any classes are appropriately designed and that any class is appropriate or warranted.

81. Plaintiffs Chipego, Mowrey, Churchill, and Ewing (“Representative Plaintiffs”) seek to be certified as representatives of the class.

RESPONSE TO 81: Defendants admit that Plaintiff are seeking to be certified as representatives of the class. Defendants deny that Representative Plaintiffs are appropriate representatives or that any class is appropriate or warranted.

Class A — Pennsylvania Consumers

82. Plaintiffs Chipego and Mowrey propose to define Class A as All Persons:

- (a) who financed a vehicle primarily for consumer use through Five Star, or whose consumer loan contract or installment sales contract was assigned to Five Star;
- (b) who had a Pennsylvania address as of the date of repossession;
- (c) from whom the Bank, as secured party, repossessed the financed vehicle, or ordered it repossessed; and
- (d) who were sent a Notice of Right to Redeem (“Repossession Notice”) which :
 - (1) failed to state the method of disposition, *i.e.*, whether a public or private sale;
 - (2) failed to list the time and place of any public sale of the vehicle;
 - (3) failed to state either that the debtor is entitled to an accounting of the unpaid indebtedness and the charge, if any, for such an accounting, or “if you want us to explain to you in writing how we have figured the amount that you owe us ...”; or
 - (4) listed a lump sum “storage cost”
- (e) or, were sent no notice at all;
- (f) in the period commencing six years prior to the filing of the Complaint, through the date of class certification.

RESPONSE TO 82: Defendants admit that Plaintiffs are proposing four classes but deny that any class is appropriate or warranted and deny any remaining allegations.

Class B — Pennsylvania Consumers (Deficiency Notice)

83. Plaintiff Mowrey proposes to define Class B as All Persons:
- (a) who financed a vehicle primarily for consumer use through Five Star, or whose consumer loan contract or installment sales contract was assigned to Five Star;
 - (b) who had a Pennsylvania address as of the date of repossession;
 - (c) from whom Five Star Bank, as secured party, repossessed the vehicle, or ordered it repossessed;
 - (d) whose vehicle was sold or auctioned by Five Star Bank, but leaving a surplus or claimed deficiency balance; and
 - (e) who were sent an explanation of the alleged deficiency or surplus (“Deficiency Notice”) that failed to:
 - (1) state that the future debits, credits, charges, including additional credit service charges or interest, rebates and expenses may affect the amount of the surplus or deficiency; and/or
 - (2) provide in the following order:
 - (i) the aggregate amount of the obligation secured by the security interest under which the disposition was made and if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, and a calculation thereof;
 - (ii) the amount of proceeds of the disposition;
 - (iii) the aggregate amount of the obligations after deducting the amount of the proceeds;
 - (iv) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing and disposing of the collateral and attorney’s fees secured by the collateral which are known to the secured party and relate to the current disposition;
 - (v) the amount, in the aggregate or by type and types of credits, including rebate of interest or credit service charges, to which the obligor is known to be entitled; and
 - (vi) the amount of the surplus or deficiency,
 - (f) or, were sent no Deficiency Notice at all;
 - (g) in the period commencing six years prior to the filing of the Class Complaint, through the date of class certification.

RESPONSE TO 83: Defendants admit that Plaintiffs are proposing four classes but deny that any class is appropriate or warranted and deny any remaining allegations.

Class C — New York Consumers (Repossession Notice)

84. Plaintiffs Churchill and Ewing propose to define Class C as All Persons:
- (a) who financed a vehicle primarily for consumer use through Five Star, or whose consumer loan contract or installment sales contract was assigned to Five Star;
 - (b) who had a New York address as of the date of repossession;
 - (c) from whom the Bank, as secured party, repossessed the financed vehicle, or ordered it repossessed; and
 - (d) who were sent a Notice of Right to Redeem (“Repossession Notice”) which failed to:
 - (1) state the method of disposition, *i.e.*, whether a public or private sale;
 - (2) list the time and place of any public sale of the vehicle;
 - (3) state either that the debtor is entitled to an accounting of the unpaid indebtedness and the charge, if any, for such an accounting or “if you want us to explain to you in writing how we have figured the amount that you owe us ...”;
 - (4) provide an itemized statement of the dollar amount needed to redeem or stated that “estimated” expenses must be paid to redeem; or
 - (e) or, were sent no notice at all;
 - (f) in the period commencing six years prior to the filing of the Class Complaint, through the date of class certification.

RESPONSE TO 84: Defendants admit that Plaintiffs are proposing four classes but deny that any class is appropriate or warranted and deny any remaining allegations.

Class D — New York Consumers (Deficiency Notice)

85. Plaintiff Churchill and Ewing propose to define Class D as All Persons:
- (a) who financed a vehicle primarily for consumer use through Five star, or whose loan contract or installment sales contract was assigned to Five Star Bank;
 - (b) who had a New York address as of the date of repossession;
 - (c) from whom Five Star Bank, as secured party, repossessed the vehicle, or ordered it repossessed;
 - (d) whose vehicle was sold or auctioned by Five Star Bank, but leaving a surplus or claimed deficiency balance; and

- (e) who were sent an explanation of the alleged deficiency or surplus (“Deficiency Notice”) that failed to:
 - (1) state that the future debits, credits, charges, including additional credit service charges or interest, rebates and expenses may affect the amount of the surplus or deficiency; and/or
 - (2) provide in the following order:
 - (i) the aggregate amount of the obligation secured by the security interest under which the disposition was made and if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, and a calculation thereof;
 - (ii) the amount of proceeds of the disposition;
 - (iii) the aggregate amount of the obligations after deducting the amount of the proceeds;
 - (iv) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing and disposing of the collateral and attorney’s fees secured by the collateral which are known to the secured party and relate to the current disposition;
 - (v) the amount, in the aggregate or by type and types of credits, including rebate of interest or credit service charges, to which the obligor is known to be entitled; and
 - (vi) the amount of the surplus or deficiency,
- (f) or, were sent no Deficiency Notice at all;
- (g) in the period commencing six years prior to the filing of the Class Complaint, through the date of class certification.

RESPONSE TO 85: Defendants admit that Plaintiffs are proposing four classes but deny that any class is appropriate or warranted and deny any remaining allegations.

86. Each class numbers at least in the hundreds, and is so numerous that joinder of all members is impractical. This matter involves nearly identical form notices sent to consumers in Pennsylvania and New York.

RESPONSE TO 86: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

87. The classes are readily ascertainable by review of the Bank's own records of financed vehicles, vehicles repossessed, and notices sent.

RESPONSE TO 87: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

88. There are questions of law or fact common to each class. These include:

- (a) Whether Plaintiffs and the classes obtained motor vehicle financing through the Bank and pledged their vehicles as collateral;
- (b) Whether the Bank repossessed the financed vehicles or ordered them repossessed;
- (c) Whether the Bank failed to send the form notice of disposition of collateral required under the UCC after repossessing a vehicle;
- (d) Whether the Bank failed to send the form explanation of deficiency or surplus as required under the UCC after disposing of the repossessed vehicle;
- (e) The statutory damages provided for such misconduct,

RESPONSE TO 88: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

89. The claims of the Representative Plaintiffs are typical of those of the classes. All are based on the same factual and legal theories. All class members financed automobiles through the Bank and pledged their vehicle as collateral. The Bank declared a default on all. All class members either were sent a form notice of right to redeem that carried or failed to carry certain disclosures, or were sent no notice of right to redeem at all. Plaintiff Mowrey and the putative class members in Class B were all sent a form explanation of deficiency or surplus that failed to correctly itemize or explain the consumers' resulting liability, or were sent no deficiency notice at all. Plaintiffs Churchill and Ewing and the putative class members in Class D were all sent a form explanation of deficiency or surplus that failed to correctly itemize or explain the consumers' resulting liability, or were sent no deficiency notice at all.

RESPONSE TO 89: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

90. Representative Plaintiffs will fairly and adequately protect the interests of the classes.

Representative Plaintiffs have no interest antagonistic to those of the classes, nor any conflict.

RESPONSE TO 90: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

91. Plaintiffs' counsel is competent and experienced in consumer class actions, and has the financial resources needed to litigate the matter vigorously.

RESPONSE TO 91: After reasonable investigation, Defendants lack sufficient knowledge or information as to the allegations contained in this paragraph and therefore denies them.

92. The Bank has acted on grounds generally applicable to the classes, thereby making final relief appropriate with respect to the class as a whole.

RESPONSE TO 92: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

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

RESPONSE TO 93: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

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

RESPONSE TO 94: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

95. This class action provides a fair and efficient method for adjudication of the controversy. Owing to the size of the classes and the legal theory, no difficulties in management are foreseen.

RESPONSE TO 95: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

96. The class members are consumer debtors who may be unable to locate or afford to hire lawyers, particularly in light of the modest size of any individual recovery, the absence of statutory counsel

fees, or expert fee reimbursement and the specialized nature of the law of secured transactions and motor vehicle finance regulation.

RESPONSE TO 96: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

COUNT I
PENNSYLVANIA UNIFORM COMMERCIAL CODE
(CLASS A: REPOSSESSION NOTICE)

97. Plaintiffs repeat the allegations set forth above as if the same were set forth at length herein.

RESPONSE TO 97: Defendants repeat their responses set forth above as if the same were set forth at length herein.

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

RESPONSE TO 98: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

99. Five Star failed to act in a commercially reasonable manner, 13 Pa. C.S. § 9610, 9611-9614.

WHEREFORE, Plaintiffs Chipego and Mowrey pray that this Court Certify the matter as a class action and enter judgment for Plaintiffs and Class A:

- (a) Awarding statutory damages to Plaintiffs Chipego and Mowrey, and to the class as provided by the UCC, 13 Pa. C.S. § 9625(c);
- (b) Awarding prejudgment interest;
- (c) Declaring that the repossession notices used by the Bank in respect to Plaintiffs Chipego, Mowrey, and Class A fail to comport with the provisions of the Pennsylvania UCC;
- (d) Granting such other and further relief as may be deemed just and proper.

RESPONSE TO 99: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

COUNT II
PENNSYLVANIA UNIFORM COMMERCIAL CODE
(CLASS B: DEFICIENCY NOTICE)

100. Plaintiffs repeat the allegations set forth above as if the same were set forth at length herein.

RESPONSE TO 100: Defendants repeat their responses set forth above as if the same were set forth at length herein.

101. Defendant Five Star violated New York's Uniform Commercial Code by failing to provide Mowrey and Class B a proper explanation of an alleged deficiency balance or surplus, as set forth above. 13 Pa.C.S. § 9616(b).

WHEREFORE, Plaintiffs Mowrey prays that this Court enter judgment in her favor and for Class B against Five Star:

- (a) Awarding statutory damages of \$500 per class member as provided by the UCC, 13 Pa.C.S. § 9625(e)(5);
- (b) Awarding prejudgment interest;
- (c) Declaring that the Deficiency Notices used by the Bank in respect to Mowrey and Class B fail to comport with the provisions of the Pennsylvania UCC;
- (d) Granting such other and further relief as may be deemed just and proper.

RESPONSE TO 101: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

COUNT III
NEW YORK UNIFORM COMMERCIAL CODE
(CLASS C: REPOSSESSION NOTICE)

102. Plaintiffs repeat the allegations set forth above as if the same were set forth at length herein.

RESPONSE TO 102: Defendants repeat their responses set forth above as if the same were set forth at length herein.

103. Five Star violated New York's Uniform Commercial Code by failing to provide proper notice of disposition of collateral as set forth above.

RESPONSE TO 103: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

104. Five Star failed to act in a commercially reasonable manner, N.Y. UCC §§ 9-610, 9-611, 9-613, & 9-614.

WHEREFORE, Plaintiffs Churchill and Ewing pray that this Court certify the matter as a class action and enter judgment for Plaintiffs Churchill, Ewing, and Class C:

- (a) Awarding statutory damages to Plaintiffs and to the class as provided by the UCC, N.Y. UCC § 9-625(c);
- (b) Awarding prejudgment interest;
- (c) Declaring that the repossession notice used by Defendant in respect to Plaintiffs Churchill, Ewing, and the New York Class C fails to comport with the provisions of New York law;
- (d) Granting such other and further relief as may be deemed just and proper.

RESPONSE TO 104: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

COUNT IV
NEW YORK UNIFORM COMMERCIAL CODE
(CLASS D: DEFICIENCY NOTICE)

105. Plaintiffs repeat the allegations set forth above as if the same were set forth at length herein.

RESPONSE TO 105: Defendants repeat their responses set forth above as if the same were set forth at length herein.

106. Defendant Five Star violated New York's Uniform Commercial Code by failing to provide proper explanation of an alleged deficiency balance or surplus. N.Y. UCC § 9-616(b).

WHEREFORE, Plaintiffs Churchill and Ewing pray that this Court certify the matter as a class action and enter judgment for Plaintiffs Churchill, Ewing, and Class D:

- (a) Awarding statutory damages of \$500 per class member as provided by N.Y. UCC § 9-625(e)(5).
- (b) Awarding prejudgment interest;
- (c) Declaring that the explanation of deficiency or surplus used by Defendant in respect to Plaintiffs Churchill, Ewing, and the New York Class D fails to comport with the provisions of New York law;
- (d) Granting such other and further relief as may be deemed just and proper.

RESPONSE TO 106: The allegations contained in this paragraph state legal conclusions to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

NEW MATTER

Defendants reserve the right to amend their Answer and to allege additional New Matter allegations as they become known. Without alleging or admitting that it bears the burden of proof and/or persuasion as to any of the following defenses, and without assuming the burden of proof or persuasion as to any matters as to which Plaintiffs bear the burden of proof or persuasion, Defendants assert the following New Matter:

1. Plaintiffs' Amended Class Complaint fails to state a claim upon which relief can be granted and should be dismissed.

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

3. The claims of one or more Plaintiff and/or member of the putative classes are barred by the applicable statutes of limitation and/or the doctrine of laches.

4. The claims of one or more Plaintiff and/or member of the putative classes are precluded because of lack of standing.

5. The claims of one or more Plaintiff and/or member of the putative classes are barred to the extent that Plaintiffs have not suffered any actual or concrete damages caused by Defendants.

6. The claims of one or more Plaintiff and/or member of the putative classes are precluded because Defendants did not know how to communicate with such individuals.

7. The claims of one or more Plaintiff and/or member of the putative classes are precluded because Defendants reasonably believed that the relevant transactions were not consumer good transactions.

8. The claims of one or more Plaintiff and/or member of the putative classes are barred by res judicata and/or collateral estoppel.

9. The claims of one or more Plaintiff and/or member of the putative classes are barred by the doctrine of unclean hands, including but not limited to, inequitable or otherwise wrongful conduct including omissions and other misconduct in connection with the application/financing process.

10. The claims of one or more Plaintiff and/or member of the putative classes are precluded by the defense of release, accord and satisfaction, or compromise and settlement.

11. The claims of one or more Plaintiff and/or member of the putative classes are precluded on the basis of prior representations or submissions made by such individuals in other legal proceedings.

12. The claims of one or more Plaintiff and/or member of the putative classes are precluded or should be dismissed because such individuals were, or are currently, parties to bankruptcy proceedings before other courts.

13. The claims of one or more Plaintiff and/or member, of the putative classes are defeated in whole or in part because Five Star Bank sold the vehicles in a commercially reasonable manner.

14. The claims of one or more Plaintiff and/or member of the putative classes are defeated in whole or in part because additional notice(s), either written or verbal, were provided which would defeat any and all claims.

15. The claims of one or more Plaintiff and/or member of the putative classes are defeated in whole or in part because Defendants and notices complained of actually or substantially complied with all applicable common law, statutory laws, and all other laws as applied by the applicable states.

16. The claims of one or more Plaintiff and/or member of the putative classes are defeated in whole or in part by the doctrines of consent, waiver, and/or estoppel.

17. The claims of one or more Plaintiff and/or member of the putative classes are defeated in whole or in part because the Plaintiffs failed to mitigate their damages.

18. The claims of one or more Plaintiff and/or member of the putative classes are barred because the vehicles were, in fact, redeemed, or purchased by the Plaintiffs and/or members of the putative classes, or such Plaintiffs and/or members of the putative classes reinstated their Motor Vehicle Installment Sale Contract, Retail Instalment Contract or loan agreement.

19. The claims are not subject to resolution on a class basis and are not suitable for class certification because the requirements of the Pennsylvania Rule of Civil Procedure 1701 et seq. are not satisfied. Facts and issues precluding class certification include lack of commonality as to questions of law and fact and a lack of typicality as to the claims of the putative classes including but not limited to the following: (1) the applicable laws enacted in New York and Pennsylvania (which Plaintiffs allege have been violated) are different and/or have been interpreted and applied differently by the courts of those states; (2) claims of certain Plaintiffs and other putative classes members are barred by applicable statutes of limitations; (3) there are members of the putative classes who refused delivery of, or otherwise did not accept delivery of, notices and other attempts at written communication; (4) there are members of the putative classes who have been or are currently involved in bankruptcy proceedings; (5) members of the putative classes have different amounts of alleged statutory damages and different deficiency balances that, in the event liability were established, would require proof and calculations; (6) certain members of the putative classes purchased motor vehicles for commercial rather than consumer purposes; (7) members of the putative classes received different notices and entered into different contracts; and (8) other facts and law which are not common or typical. In addition, Plaintiffs may not maintain this action as a class action because of lack of numerosity in Pennsylvania and the fact that the entire amount in controversy in the state of Pennsylvania does not aggregate to more than \$5,000,000.

20. This court lacks personal jurisdiction over the Defendants.

21. Venue in this court is improper.

22. Defendants reserve the right to assert New Matter allegations as they may become available and apparent during discovery.

Wherefore, Defendants request that judgment be entered in their favor and against Plaintiffs and that the Court grant Defendants such legal and equitable relief deemed appropriate.

FIVE STAR BANK'S COUNTERCLAIMS¹

Five Star Bank, as to its counterclaims, states as follows:

INTRODUCTION

1. The Plaintiffs all received “indirect” loans from Five Star Bank. Specifically, the Plaintiffs all purchased motor vehicles through retail installment contracts which were assigned to Five Star Bank. The motor vehicles were collateral for the loans.

2. When the Plaintiffs failed to make payments due pursuant to the loans or otherwise defaulted, Five Star Bank exercised its rights, repossessed or caused motor vehicles to be repossessed, and in appropriate circumstances sold the vehicles.

3. The Plaintiffs do not allege that any repossession or sale violated their agreements with Five Star Bank. The Plaintiffs simply allege various notices provided to them during this process were technically defective. By these counterclaims, Five Star Bank seeks to recover, recoup and/or set-off the amounts due to it arising out of this process.

PARTIES

4. Counter-Plaintiff Five Star Bank is a New York State Chartered Bank with a principal place of business in Warsaw, NY. Five Star Bank purchases and receives assignment of motor vehicle installment contracts in connection with financing the purchase of motor vehicles in both Pennsylvania and New York.

5. According to Plaintiffs’ allegations, Matthew L. Chipego (hereinafter “Chipego”) is an adult individual who resides at 508 Bear Run Lane, Noxen, PA 18636.

6. According to Plaintiffs’ allegations, Charlene Mowrey (hereinafter “Mowrey”) is an adult individual who resides at 2706 Old Berwick Road, Bloomsburg, PA 17815.

¹ Five Star Bank’s counterclaims are asserted against three of the four named Plaintiffs and conditionally against all members of any potential certified class to the extent some or all of those individuals are eventually made parties to this lawsuit through a class certification order. Five Star Bank intends to object to certification of the proposed classes. However, if any class is certified, Five Star Bank also reserves the right to assert additional counterclaims against the members of any certified class.

7. According to Plaintiffs' allegations, Constance C, Churchill (hereinafter "Churchill") is an adult individual who resides at 607D Larkin Road, Derby, NY 14047.

8. According to Plaintiffs' allegations, Joseph W, Ewing (hereinafter "Ewing") is an adult individual who resides at 668 Northampton Street, Buffalo, NY 14211.

FACTUAL BACKGROUND

9. The Amended Class Complaint alleges that Defendants violated various provisions of the Uniform Commercial Code as adopted in Pennsylvania and New York with respect to notices sent after repossession of Plaintiffs' motor vehicles after they defaulted on their loans. In reality, it is Plaintiffs who are liable to Five Star Bank pursuant to the UCC and otherwise.

COUNT I: UNIFORM COMMERCIAL CODE **(Mowrey)**

10. Five Star Bank incorporates paragraphs 1 through 9 above as if fully set forth herein.

11. Even if the Uniform Commercial Code is applied in the manner requested by the Plaintiffs, the Uniform Commercial Code as adopted in Pennsylvania provides that an obligor is liable for any deficiency remaining after the disposition of collateral after default. 13 Pa. C.S. § 615(d)(2).

12. After Mowrey's vehicle was sold and the net proceeds of sale and all other credits due to Mowrey are applied, there remains a deficiency balance of \$11,447.07 (plus late charges, repossession fees, accrued interest and costs of collection) owed by Mowrey.

13. Five Star Bank is entitled to a set-off, recoupment, or judgment against Mowrey and all members of any certified class in the amount of any such deficiency.

Wherefore, Five Star Bank respectfully requests that the Court set-off, recoup, or enter judgment against Mowrey (and all members of any certified class) in the amount of any deficiency owed to Five Star Bank including principal, interest, late charges, repossession fees, costs of collection, and all other relief this court deems just.

COUNT II: UNIFORM COMMERCIAL CODE **(Churchill)**

14. Five Star Bank incorporates paragraphs 1 through 13 above as if fully set forth herein.

15. Even if the Uniform Commercial Code is applied in the manner requested by the Plaintiffs, the Uniform Commercial Code as adopted in New York provides that an obligor is liable for any deficiency remaining after the disposition of collateral after default. N.Y. U.C.C. Law § 9-615(d)(2).

16. After Churchill's vehicle was sold and the net proceeds of sale and all other credits due to Churchill are applied, there remains a deficiency balance of \$3,368.29 (plus late charges, repossession fees, accrued interest and costs of collection) owed by Churchill.

17. Five Star Bank is entitled to a set-off, recoupment, or judgment against Churchill and all members of any certified class in the amount of any such deficiency.

Wherefore, Five Star Bank respectfully requests that the Court set-off, recoup, or enter judgment against Churchill (and all members of any certified class) in the amount of any deficiency owed to Five Star Bank including principal, interest, late charges, repossession fees, costs of collection, and all other relief this court deems just.

COUNT III: UNIFORM COMMERCIAL CODE
(Ewing)

18. Five Star Bank incorporates paragraphs 1 through 17 above as if fully set forth herein.

19. Even if the Uniform Commercial Code is applied in the manner requested by Plaintiffs, the Uniform Commercial Code as adopted in New York provides that an obligor is liable for any deficiency remaining after the disposition of collateral after default. N.Y. U.C.C. Law §9-615(d)(2).

20. After Ewing's vehicle was sold and the net proceeds of sale and all other credits due to Ewing are applied, there remains a deficiency balance of \$13,607.58 (plus late charges, repossession fees, accrued interest and costs of collection) owed by Ewing.

21. Five Star Bank is entitled to a set-off, recoupment, or judgment against Ewing and all members of any certified class in the amount of any such deficiency.

Wherefore, Five Star Bank respectfully requests that the Court set-off, recoup, or enter judgment against Ewing (and all members of any certified class) in the amount of any deficiency owed to Five Star

Bank including principal, interest, late charges, repossession fees, costs of collection, and all other relief this court deems just.

COUNT IV: BREACH OF CONTRACT
(Mowrey)

22. Five Star Bank incorporates paragraphs 1 through 21 above as if fully set forth herein.

23. On or about February 6, 2015, Mowrey entered into a Motor Vehicle Installment Sale Contract for the purchase of a Cadillac GMC.

24. Pursuant to its terms, the contract was assigned to Five Star Bank and Five Star Bank was granted a security interest in the vehicle and a right to repossess the vehicle in the event of a default.

25. Under the terms of the contract, Mowrey was required to make monthly payments in the amount of \$727.95 to Five Star Bank.

26. Mowrey failed to pay as required and/or otherwise was in default under the terms of the contract.

27. As a result, Five Star Bank caused the vehicle to be repossessed.

28. On April 4, 2016, Five Star Bank sent a Notice of Rights to Redeem to Mowrey but Mowrey failed to redeem.

29. The vehicle was sold and after giving credit to Mowrey for all payments made, the proceeds of sale, and all other credits due, there remains a balance due and owing of \$11,447.07 plus late charges, repossession fees, accrued interest, costs of collection and all other relief this court deems just.

Wherefore, Five Star Bank respectfully requests that the Court enter judgment against Mowrey in the amount of \$11,447.07 plus late charges, repossession fees, accrued interest, costs of collection and all other relief this court deems just.

COUNT V: BREACH OF CONTRACT
(Churchill)

30. Five Star Bank incorporates paragraphs 1 through 29 above as if fully set forth herein.

31. On or about July 16, 2010, Churchill entered into a Retail Instalment Contract for the purchase of a Dodge Dakota.

32. Pursuant to its terms, the contract was assigned to Five Star Bank and Five Star Bank was granted a security interest in the vehicle and a right to repossess the vehicle in the event of a default.

33. Under the terms of the contract, Churchill was required to make monthly payments in the amount of \$387.59 to Five Star Bank.

34. Churchill failed to pay as required and/or otherwise was in default under the terms of the contract.

35. As a result, Five Star Bank caused the vehicle to be repossessed.

36. On October 1, 2014, Five Star Bank sent a Notice of Rights to Redeem to Churchill but Churchill failed to redeem.

37. The vehicle was sold and after giving credit to Churchill for all payments made, the proceeds of sale, and all other credits due, there remains a balance due and owing of \$3,368.29 plus late charges, repossession fees, accrued interest, costs of collection and all other relief this court deems just.

Wherefore, Five Star Bank respectfully request that the Court enter judgment against Churchill in the amount of \$3,368.29 plus late charges, repossession fees, accrued interest, costs of collection and all other relief this court deems just.

COUNT VI: BREACH OF CONTRACT

(Ewing)

38. Five Star Bank incorporates paragraphs 1 through 37 above as if fully set forth herein.

39. On or about October 11, 2012, Ewing entered into a Retail Installment Contract for the purchase of a Ford Taurus.

40. Pursuant to its terms, the contract was assigned to Five Star Bank and Five Star Bank was granted a security interest in the vehicle and a right to repossess the vehicle in the event of a default.

41. Under the terms of the contract, Ewing was required to make monthly payments in the amount of \$528.29 to Five Star Bank.

42. Ewing failed to pay as required and/or otherwise was in default under the terms of the contract.

43. As a result, Five Star Bank caused the vehicle to be repossessed.

44. On November 15, 2013, Five Star Bank sent a Notice of Rights to Redeem to Ewing but Ewing failed to redeem.

45. The vehicle was sold and after giving credit to Ewing for all payments made, the proceeds of sale, and all other credits due, there remains a balance due and owing of \$13,607.58 plus late charges, repossession fees, accrued interest, costs of collection and all other relief this court deems just.

Wherefore, Five Star Bank respectfully request that the Court enter judgment against Ewing in the amount of \$13,607.58 plus late charges, repossession fees, accrued interest, costs of collection and all other relief this court deems just.

Dated: August 26, 2019

Respectfully submitted,

/s/ John P. McShea

John P. McShea, Esq.
McShea Law Firm, P.C.
Centre Square West, 40th Floor
1500 Market Street
Philadelphia, PA 19102
Telephone: 215-599-0800
Email: jmcshea@mcshealawfirm.com

Pro Hac Vice Counsel:
Jerauld E. Brydges, Esq.
Lauren R. Mendolera, Esq.
Harter Secrest & Emery LLP
1600 Bausch and Lomb Place
Rochester, NY 14604-2711
Telephone: 585.232.6500
Email: jbrydges@hseilaw.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August 2019, a true and correct copy of the foregoing Answer to Plaintiffs' Amended Class Complaint With New Matter and Counterclaims was filed via electronic case filing and served *via electronic case filing* and *electronic mail* upon all counsel of record.

/s/ John P. McShea
John P. McShea