STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON OTHA DELANEY, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, Plaintiff, v. FIRST FINANCIAL OF CHARLESTON, INC., Defendant.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO. 2011-CP-10-07166 **ORDER**

This matter is before the Court on the parties' cross motions for summary judgment as to liability: Plaintiff's Motion for Summary Judgment filed August 6, 2024, and argued May 21, 2025; and Defendant's Motion for Summary Judgment filed September 11, 2024, amended April 20, 2025, and argued August 13, 2025. Having carefully reviewed the extensive briefing, the undisputed evidentiary record, and arguments of counsel, the Court concludes that Plaintiff's motion must be GRANTED and Defendant's motions must be DENIED.

Background

On February 11, 2025, the Chief Administrative Judge for Ninth Judicial Circuit designated this matter as complex and assigned it to the undersigned to preside with exclusive jurisdiction through final disposition. The undersigned held a status conference on March 4, 2025, and with the consent of the parties, scheduled the cross motions for summary judgment to be heard on May 1, 2025.

On April 20, 2025, Defendant filed an "Amended Motion for Summary Judgment," which asserted two additional grounds ("Mr. Delaney lacks standing to pursue the claims he asserts in this case, and under the language of the operative complaint, he is not a member of the class he

purports to represent," and "Mr. Delaney should be judicially estopped from pursuing this lawsuit against FFC.") in support of its Motion for Summary Judgment ("Additional Grounds"). Defendant filed a brief supporting the Additional Grounds on April 22, 2025, which was eight days before the scheduled hearing. Plaintiff objected to the two Additional Grounds being heard on May 1, 2025, because Plaintiff had not received sufficient notice before the May 1, 2025 hearing. By email dated April 24, 2025, Defendant claimed that the Additional Grounds should be heard "in full" on May 1, 2025. The Court convened a further status conference to decide whether Defendant's Additional Grounds would be heard on May 1, 2025, and ruled that the Additional Grounds would not be heard on May 1, 2025.

As to the original grounds in Plaintiff's August 6, 2024, and Defendant's September 11, 2024 cross motions for summary judgment, both parties agreed that the substantive issues under the South Carolina Uniform Commercial Code ("SCUCC") presented in the cross motions were ripe for resolution by summary judgment.

On May 1, 2025, the Court heard the matters in the cross motions for summary judgment. Present for Plaintiff were J. Ashley Twombley and Thomas Iandoli, and present for Defendant were Russ Hines and Mandi Dudgeon. At the May 1, 2025 hearing, both parties made arguments on the SCUCC issues, and the Court engaged counsel with questions, reviewed the record, and took the motions under advisement. Ultimately, the Court scheduled a follow-up hearing on August 13, 2025, to hear Defendant's two Additional Grounds.

The Additional Grounds in Defendant's Amended Motion for Summary Judgment involve a 2013 bankruptcy filed by the named class representative, Otha Delaney ("Delaney" or "Plaintiff"). Defendant argues that, because Delaney did not properly disclose the existence of this lawsuit as a potential asset of his 2013 bankruptcy, the lawsuit was transferred to Delaney's 2013

bankruptcy estate and now can only be administered or pursued by the bankruptcy trustee. Defendant argues these issues call into question Delaney's ability to represent the class because they call into question his ability to participate in any class financial recovery, and further, his right to prosecute this class action lawsuit. Delaney opposes Defendant's Amended Motion for several reasons discussed below.

Between the May 1, 2025, hearing and the August 13, 2025, follow-up hearing, more activity occurred. First, presumably in response to Defendant's Amended Summary Judgment arguments related to Delaney individually, Plaintiff and three other individuals filed a Motion to Intervene and a Supplement to the Motion to Intervene on July 16, 2025, and July 31, 2025, respectively. These motions, brought jointly by Delaney and three other individuals who argue they are members of the class, seek to intervene in this action if necessary to cure any problems that might arise with Delaney continuing to serve as the sole class representative.

Second, on July 25, 2025, Defendant also filed a Motion to Decertify the Class. Like the Motions to Intervene, the Class Decertification motion further tries to address Delaney's adequacy to serve as class representative given his 2013 bankruptcy. Defendant's counsel had represented it would file such motion in response to Plaintiff's suggestion that the Additional Grounds were not proper on summary judgment grounds.

Third, on June 5, 2025, Delaney moved to reopen his 2013 bankruptcy. He explained that after fourteen years of state court litigation in this matter, the accuracy of his 2013 disclosure of the lawsuit had only recently been questioned—less than forty-five days before the scheduled summary judgment hearing. Delaney sought to reopen so that his interest in this lawsuit could be correctly listed, exemptions asserted, and any trustee interest addressed.

On August 13, 2025, the Court heard arguments from the parties on Defendant's Additional Grounds. Present for that hearing were Ashley Twombley and Thomas Iandoli for Plaintiff and the proposed intervenors, and present for Defendant were Russ Hines and Mandi Dudgeon.

On August 20, 2025, the Court issued a Form 4 order, memorializing its rulings on the cross motions for summary judgment heard on May 1, 2025, and the Additional Grounds raised by Defendant, and directing Plaintiff to submit a detailed order. On September 2, 2025, Defendant moved to reconsider that Form 4 Order even though the more detailed order the Court ordered would be entered in the future had not yet been filed.

Analysis

In this fourteen-year-old case, the parties move for summary judgment on liability under the SCUCC. The claims concern Article 9 and the notices Defendant was required to send before and after disposing of repossessed vehicles. The parties agree there are no disputed issues of material fact; the questions these issues raise are ones of law.

Specifically, both sides agree that Defendant used standardized form notices for all class members and that the governing provisions of the SCUCC control. The task for the Court is to compare those notices with the statutory requirements and determine whether they comply.

Although Part V of this Order addresses the merits of those issues, the Court first considers Defendant's Additional Grounds raised in its Amended Motion for Summary Judgment.

I. Defendant's "standing" arguments do not justify resolution in its favor.

Defendant seeks summary judgment as to the certified class on the theory that Plaintiff lacks "standing." It points to Mr. Delaney's 2013 Chapter 7 bankruptcy—filed two years ***after*** this action commenced—and asserts he failed to properly disclose and describe this lawsuit in his bankruptcy schedules. From that premise, Defendant contends Delaney lost standing to pursue his

individual claims and, further, that he is excluded from the class under the operative class definition.

The Court addresses that contention first. Defendant's position implicates three distinct doctrines: (1) standing, (2) the real-party-in-interest requirement, and (3) transfer of interest to a bankruptcy estate.[1] Though related, they are not interchangeable. Each must be analyzed separately to determine whether, and to what extent, they affect Delaney's ability to proceed as class representative.

A. Standing

"Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." *Pres. Soc'y of Charleston v. S.C. Dep't of Health & Env't Control*, 430 S.C. 200, 209, 845 S.E.2d 481, 486 (2020). It is "a fundamental requirement in *instituting* an action." *Id.* (emphasis added). In South Carolina, standing may be conferred in three ways: (1) by statute, (2) under constitutional principles, or (3) through the "public importance" exception. *Id.* at 209–10, 845 S.E.2d at 486.

First, Defendant does not contest Delaney's statutory standing under the SCUCC. The statute grants UCC debtors the right to sue for violations, to recover damages, and to seek injunctive relief. *See* S.C. Code Ann. §§ 36-1-305, 36-9-601 et seq.; *see also* § 36-9-625(e);

[1] Rule 17, SCRCP, bars dismissal on the ground that an action is not prosecuted in the name of the real party in interest until a reasonable time has been afforded for ratification, joinder, or substitution. That rule, however, contemplates transfers of interest occurring *before* the commencement of an action. *Bryant v. Waste Mgmt., Inc.*, 342 S.C. 159, 164 n.2, 536 S.E.2d 380, 382 n.2 (Ct. App. 2000). By contrast, Rule 25(c) governs transfers that occur *during* the pendency of an action, and it vests the Court with discretion to permit the case to continue in the name of the original party. Applying Rule 25 here, there is no basis to decertify the class or grant summary judgment at FFC's request. The Court also notes that the former Chapter 7 trustee is aware of this action but has not appeared to object to its continuation in Plaintiff's name. Moreover, Plaintiff has represented that he has reserved the issue of any personal recovery for later determination.

Singleton v. Stokes Motors, Inc., 358 S.C. 369, 375, 595 S.E.2d 461, 464 (2004). Because Delaney is a UCC debtor, he has statutory standing to bring these claims. That alone is sufficient to defeat Defendant's motion on this ground.

Second, Defendant invokes principles of Article III standing. But "the concept of Article III standing as applied in the federal courts does not limit a state's ability to statutorily formulate standing criteria." *Pres. Soc'y of Charleston*, 430 S.C. at 210–11, 845 S.E.2d at 486. When standing is statutorily conferred, constitutional standing need not be established. *Id.* at 211, 845 S.E.2d at 486–87. Because Delaney's statutory standing is undisputed, Defendant's argument fails at the threshold.

Even so, Delaney satisfies constitutional standing. The inquiry focuses on whether the plaintiff "had the requisite stake in the outcome when the suit was filed." *Davis v. FEC*, 554 U.S. 724, 734 (2008). To meet that test, a litigant must allege "a distinct injury at the hands of [the defendant], traceable to [its] conduct, and redressable by a favorable decision." *Martineau v. Wier*, 934 F.3d 385, 391 (4th Cir. 2019); *see also ATC S., Inc. v. Charleston Cnty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). When Delaney filed suit in 2011, he alleged a concrete injury caused by FFC and redressable under the SCUCC. That is enough.

The Fourth Circuit's decision in *Martineau* is instructive. There, the plaintiff filed for Chapter 7 bankruptcy without disclosing a potential tort claim. After discharge and after her bankruptcy had concluded, she filed the tort suit. The district court dismissed for lack of standing, holding that only the trustee could pursue the claim. The Fourth Circuit reversed, calling the decision a "critical error" born of conflating standing with the real-party-in-interest doctrine. *Martineau*, 934 F.3d at 391. Applying the familiar three-part test—injury, causation,

redressability—the court concluded that Martineau "unquestionably" had standing when she filed. *Id.*

The same conclusion follows here for even stronger reasons. Defendant does not argue that Delaney lacked standing in 2011, and of course, Delaney did not file bankruptcy until two years later. In any event, applying that test, Delaney unquestionably had constitutional standing when this action commenced in 2011, and nothing in the record has divested him of it.

B. Real Party in Interest

Although Defendant does not expressly argue that Delaney is not the real party in interest, the Court construes the Amended Motion as raising that contention.

Delaney acknowledges that his claim may have become property of the bankruptcy estate in 2013. But that issue remains unresolved in the bankruptcy court. Even if the claim did transfer, exemptions or abandonment could restore the claim to Delaney. And, as Plaintiff notes, the 2024 bankruptcy trustee in fact abandoned any interest in the claim back to Delaney.[2]

Assuming a transfer occurred in 2013, Rule 17, SCRCP, would not justify dismissal. By its terms, Rule 17 provides:

> No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for ratification *of commencement of the action* by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action *had been commenced* in the name of the real party in interest.

[2] In fact, it was represented to this Court that, when Delaney again filed for bankruptcy in 2024, the bankruptcy trustee abandoned back to Delaney any interest in this lawsuit, despite the fact that Delaney disclosed that this case has been certified as a class action and that Delaney alleged that his damages had grown, based upon pre-judgment interest, from approximately $5,300 in 2011 to $20,000.

The plain text of Rule 17 forecloses dismissal at this stage. Defendant seeks the opposite of what Rule 17 prescribes.

More fundamentally, Rule 17 addresses whether the action was properly *commenced*. Here, Delaney was unquestionably the real party in interest when this case was filed in 2011, and Defendant does not contend otherwise. The alleged transfer occurred two years later. Rule 17 does not retroactively transform a post-filing transfer into a fatal defect in the commencement of the action.

In any event, the Court finds that Defendant has waived this objection. A challenge to real-party-in-interest status "must be made promptly or the court may conclude the point has been waived." *Bardoon Properties, NV v. Eidolon Corp.*, 326 S.C. 166, 169, 485 S.E.2d 371, 373 (1997). Defendant waited nearly fourteen years after the case was filed, and more than a decade after the bankruptcy was filed, before raising the issue. Defendant points to the public availability of the bankruptcy filings as an excuse for not producing them in discovery, but that same public availability undercuts any claim of diligence. Having failed to raise the issue in a timely manner, Defendant has waived it.

C. Transfer of Interest

The Court concludes that Defendant's argument is best resolved by Rule 25(c), SCRCP, which provides:

> **(c) Transfer of Interest.** In case of *any* transfer of interest, the action *may be continued by* or against *the original party*, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

(emphasis added). Rule 25 thus gives the Court discretion. The action may proceed in the name of the original party, here Delaney. Or, if the Court deems appropriate, it may substitute or join the

transferee. Rule 25(e) underscores the breadth of that discretion, permitting substitution "either before or after judgment, or pending appeal, by the appellate court." These provisions reflect a flexible and pragmatic approach, empowering courts to cure potential defects without cutting short litigation. *Bryant v. Waste Mgmt., Inc.*, 342 S.C. 159, 165, 536 S.E.2d 380, 383 (2000) ("A trial court has the sound discretion to substitute parties when some act has affected the capacity of a named party to be sued, and its decision will not be reversed on appeal absent a showing of an abuse of discretion."). Nothing in the text or purpose of the Rule suggests that summary judgment in favor of a defendant is appropriate simply because a plaintiff's interest may have been transferred years after the litigation began—particularly where the ostensible transferee has not asked the Court to act.

That is the situation here. The Court has been advised that Delaney has moved to reopen his 2013 bankruptcy to permit the trustee to participate should the trustee choose to do so. The trustee is aware of this case and, according to Plaintiff, supports Delaney's efforts. Defendant has offered no evidence to the contrary. On this record, the Court exercises its discretion to allow Delaney to continue this action as the original party.

This conclusion is reinforced by the class action posture of the case. Delaney is not only pursuing his claim, but also he was appointed class representative by this Court's order of July 27, 2021 to represent the interests of the absent class members. His counsel was appointed as class counsel in the same order. As the United States Supreme Court has observed, "[a]n action brought on behalf of a class does not become moot upon expiration of the named plaintiff's substantive claim." *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 404 (1980). So too in *Sosna v. Iowa*, 419 U.S. 393, 401 (1975), the Court explained that even if the controversy ceases for the named plaintiff, it "remains very much alive for the class of persons she has been certified to represent."

The same principle governs here: the continuation of the class's claims does not hinge on the individual circumstances of Mr. Delaney, irrespective of whether Delaney's individual claim is later determined to have become impaired. *See also* 32B Am. Jur. 2d Federal Courts § 1481 (the standing of the representative at the inception of the case suffices to permit continuation of the class action despite subsequent developments in the representative's individual claim).

II. The Court rejects Defendant's suggestion, raised at the hearing on August 13, 2025, that a bankruptcy stay prohibits this Court from ruling on these matters.

On August 13, 2025, two months after Delaney moved the bankruptcy court to reopen his estate and one day before the Court was scheduled to hear Defendant's Additional Grounds, Defendant sent the Court an email asserting Defendant was "prepared to argue the Motion for Summary Judgment tomorrow," but noting Delaney's June 5, 2025 filing to re-open his bankruptcy estate. Defendant further argued that because Delaney's claims remain property of the bankruptcy estate, the automatic stay under 11 U.S.C. § 362(a)(3) "remains," and that Defendant was "concerned that the Court's jurisdiction to proceed is undermined." Defendant, however, filed no motion seeking such relief in this Court, nor has it sought relief in the bankruptcy court. That omission is telling. And Defendant's email contradicts its pending requests that this Court grant summary judgment and consider the new Additional Grounds supporting summary judgment and its motion decertify the class and the motion reconsider the Court's rulings.

The law is clear. "[S]tate courts have concurrent jurisdiction to determine whether the automatic stay applies in a particular state court proceeding." *In re Garcia*, 553 B.R. 1, 12 (Bankr. D.P.R. 2016). By its terms, § 362 stays only proceedings ***against*** the debtor; it does not bar actions brought ***by*** the debtor that may inure to the benefit of the estate. *Carley Capital Grp. v. Fireman's Fund Ins. Co.*, 889 F.2d 1126, 1127 (D.C. Cir. 1989). The Seventh Circuit put the matter plainly:

"the automatic stay is inapplicable to suits *by* the bankrupt[.]" *Martin-Trigona v. Champion Fed. Sav. & Loan Ass'n*, 892 F.2d 575, 577 (7th Cir. 1989).

Given the age of this case, Defendant's failure to raise Delaney's bankruptcy until twelve years after the filing, its omission of this issue from its original summary judgment motion, its omission from its Additional Grounds, and the controlling authority just cited, the Court holds that § 362 does not bar these proceedings. Defendant's reliance on the automatic stay does not justify dismissal or summary judgment or otherwise impact Delaney's ability to move forward on behalf of the class.

III. Defendant's Amended Motion for Summary Judgment is barred by Rule 23, SCRCP.

Plaintiff contends that, whatever the merits of Defendant's arguments, the case cannot be dismissed by summary judgment without violating Rule 23, SCRCP, and the settled law of class actions. The Court agrees.

Rule 23, SCRCP, governs "class actions." This case has been certified as a class since July 27, 2021. Rule 23(c) speaks directly to dismissal: "A class action shall not be dismissed . . . without the approval of the court, and notice of the proposed dismissal or compromise *shall be given to all members of the class* in such manner as the court directs." The commentary to that rule explains the reason—"to protect the rights of all members of the class." The Supreme Court of South Carolina has likewise recognized that "[w]ithout question, due process requires that absent class plaintiffs be given notice." *Hospitality Mgmt. Assocs., Inc. v. Shell Oil Co.*, 356 S.C. 644, 662, 591 S.E.2d 611, 620 (2004). And due process requires not only notice but also "adequate representation . . . protected by the adoption of the appropriate procedures by the certifying court." *Id.*

Rule 23(d) reinforces the point. It gives the Court authority to take steps necessary "to protect the interests of absent persons," to impose terms that "fairly and adequately protect" those

interests, and to direct that notice be given "of entry of judgment, or any other proceedings in the action," including notice that absent persons "may come in and present claims and defenses if they so desire." These provisions leave no doubt about the Court's duty: the rights of absent class members must be safeguarded at every stage.

That duty is not theoretical. Rule 23 contemplates intervention by other class members to preserve the class's claims when questions arise about a named plaintiff. *See* 1 Newberg & Rubenstein on Class Actions § 2:17 (6th ed.). That is the situation here. Before the hearing on Defendant's Additional Grounds, three class members moved to intervene, expressly seeking to assume representation should the Court question Delaney's adequacy. What commentators describe as hypothetical—the possibility that absent members would step forward to protect the class—is now the situation squarely before the Court. To dismiss the case despite pending motions to intervene would impair, if not extinguish, the very rights Rule 23 is designed to protect.

The lesson is plain. In class actions, trial courts are not to treat claims as belonging only to the named plaintiff. The rights of absent members are also at stake, and the rules are structured to protect those rights through notice, substitution, and intervention. Dismissal on grounds unique to the representative plaintiff, without notice or opportunity for absent members to act, would invert that structure. It would delay, impede, and potentially resolve the class's rights without their knowledge and deprive them of the chance to cure any defect. Nothing in Rule 23 or in due process permits such a result. And Defendant has offered no reason—let alone a compelling one—why such a drastic and unfair outcome should be imposed here.[3]

[3] As discussed below, the record reflects that from at least 2008 through 2021 Defendant failed to comply with the SCUCC's minimum disclosure requirements. Yet Defendant did not raise the arguments it now presses until a week before the scheduled hearing on the cross motions for summary judgment. To grant dismissal on such grounds would elevate form over substance in a

IV. Issues of fact also defeat Defendant's Additional Grounds for summary judgment.

There are additional reasons why Defendant's two Additional Grounds cannot prevail. As a matter of law, they fail as discussed above. But even assuming Defendant's legal premises were sound, its arguments would still fail on summary judgment.

The rules governing summary judgment set strict boundaries. "The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder." *Meier v. Burnsed*, 438 S.C. 362, 369, 882 S.E.2d 863, 866 (Ct. App. 2022), *aff'd as modified sub nom. Est. of Meier by & through Meier v. Burnsed*, 445 S.C. 288, 914 S.E.2d 130 (2025). Summary judgment is appropriate only when "there is no genuine issue as to any material fact and [] the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP.

Here, both parties agree that the merits of Defendant's compliance with the SCUCC are ripe for resolution as a matter of law. But Defendant's Additional Grounds are of a different character. They depend on disputed facts, and summary judgment is therefore inappropriate.

Defendant's arguments rest on a chain of factual assertions: whether Delaney was required in 2013 to disclose this lawsuit in his bankruptcy filings, and if so, in what form and at what place; whether he accurately described the procedural posture of this case; whether the trustee could have administered or abandoned the case had disclosure been different; whether nondisclosure left the claim within the estate; and whether Delaney acted with "intentional omission" so as to mislead the trustee and preserve the claim for himself. Defendant further claims the trustee "accepted" Delaney's filings and that Delaney "benefited" from misrepresentation by receiving a discharge.

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manner inconsistent with the objectives of the SCUCC and the broader principles of South Carolina law.

(Def.'s Mem. in Supp. of its Am. Mot. for Summ. J. and in Opp. to Pl.'s Mot. for Summ. J. p. 26–27).

Each step in this argument turns on questions of fact. The record does not show what role Delaney himself played in completing the bankruptcy paperwork, which appears to have been prepared by bankruptcy counsel. Nor has Defendant demonstrated Delaney's actual knowledge of the case's posture at the time. In 2013, a motion to dismiss had been pending for approximately a year, and had already been heard by this Court; dismissal followed soon after. Whether Delaney—who is not a bankruptcy lawyer—understood how to disclose that posture to the bankruptcy court cannot be resolved on this record. These uncertainties bear directly on intent, knowledge, and the proper characterization of the filings. They are quintessential factual issues, not questions for summary judgment.

Thus, Defendant's Additional Grounds fail as a matter of law, and for want of undisputed fact. Summary judgment in its favor is unavailable.

V. Plaintiff's August 6, 2024 Motion for Summary Judgment is GRANTED, and Defendant's September 11, 2024 Motion for Summary Judgment is DENIED.

As to liability under the SCUCC, the parties have filed cross motions for summary judgment. Both agree that the issues are ripe for resolution, and the Court concurs. *United Servs. Auto. Ass'n v. Pickens*, 434 S.C. 60, 64, 862 S.E.2d 442, 444 (2021) ("When parties file cross-motions for summary judgment, the issue is decided as a matter of law."). Deciding these motions requires no weighing of disputed facts. It requires only a comparison of the standardized notices Defendant used in an effort to comply with the SCUCC against the disclosure requirements mandated by the SCUCC.

The governing principles are straightforward. Defendant is a secured creditor of consumers—here, the class members—whose vehicles it repossessed. Upon repossession, and

before disposition, the SCUCC required Defendant to provide written notifications containing specified information. *See* S.C. Code Ann. §§ 36-9-614, -616. The forms Defendant used were brief; the statutory requirements they were meant to satisfy are equally concise. The task, therefore, is mechanical: to lay the notices beside the statute and determine whether they include what the law requires.

That comparison reveals defects. The notices omit mandatory content and misstate other required information. Because compliance with the SCUCC's notice provisions is required and strict, those deficiencies establish liability as a matter of law. Plaintiff and the class are therefore entitled to summary judgment on liability.

A. Pre-Sale Notice Requirements

Once FFC repossessed a vehicle, the SCUCC required it to provide the debtor with a "reasonable authenticated notification of disposition" before any sale. S.C. Code Ann. § 36-9-611(b). Section 36-9-614 specifies eight distinct disclosures that must be included in a pre-sale notice in consumer-goods transactions. *See id.* § 36-9-614(1); *id*. § 36-9-614 reporter's cmt. (§ 36-9-614(1) incorporates five disclosures from § 36-9-613(1) and adds three more). Failure to include any one of these required items renders the notice "insufficient as a matter of law." UCC § 9-614 cmt. 2; *Am. Gen. Fin. Servs., Inc. v. Woods-Witcher*, 669 S.E.2d 709, 711 (Ga. Ct. App. 2008).

The eight required disclosures are:

> (A) the information specified in Section 36-9-613(1) ["(A) describes the debtor and the secured party; (B) describes the collateral that is the subject of the intended disposition; (C) states the method of intended disposition; (D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and (E) states the time and place of a public disposition or the time after which any other disposition is to be made."];
>
> (B) a description of any liability for a deficiency of the person to which the notification is sent;

> (C) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 36-9-623 is available; and
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> (D) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

S.C. Code Ann. § 36-9-614(1).

These disclosures serve important consumer-protection purposes. A debtor whose car has been repossessed must know how and when the collateral will be sold, the right to redeem before sale, the right to attend an auction, the potential consequences of failing to redeem, and the right to an accounting. This is clear from the text of these provisions. Without this information, the debtor cannot meaningfully exercise rights conferred by Article 9.

To facilitate compliance, the General Assembly provided a model "safe-harbor" form. S.C. Code Ann. § 36-9-614(3). A secured party that copies, pastes, and properly completes the statutory form is deemed to have satisfied the law. Courts have emphasized that creditors who depart from the safe-harbor form "do so at their peril." *First Cmty. Credit Union v. Levison*, 395 S.W.3d 571, 587 (Mo. App. E.D. 2013).

These laws are part of the *Uniform* Commercial Code and have been adopted, at least in all relevant parts, in all fifty states. The provisions of the UCC and the SCUCC are clear, unequivocal, and mandatory. To ensure they are followed, the UCC, and the SCUCC, provide for "minimal" mandatory damages that must be awarded for each violation as a matter of law. *See Delaney v. First Financial of Charleston, Inc.*, 426 S.C. 607, 613 n.2, 829 S.E.2d 249, 251 n.2 (2019) ("We note that comment four to section 36-9-625(c)(2) states this provision 'is designed to ensure that every noncompliance with the requirements of Part 6 [sections 36-9-601 to -635] in a consumer-goods transaction results in liability, regardless of any injury that may have resulted.'"). The statutory scheme is mandatory. The General Assembly and the drafters of the UCC designed

Article 9 to impose strict compliance, not substantial compliance. Liability attaches regardless of good faith, intent, or prejudice. S.C. Code Ann. § 36-9-614 cmt.2 ("A notification that lacks any of the information set forth in paragraph (1) is insufficient as a matter of law."); 68A Am. Jur. 2d Secured Transactions § 536 ("The rules are mandatory and apply irrespective of intent, good faith, or other excuses lenders might argue. In a consumer transaction, a notification that lacks any of the prescribed information is insufficient as a matter of law, and indeed, a creditor in a consumer transaction is held to strict compliance with the presale notice requirements." (internal footnotes omitted)); Joseph S. Murray, IV, *South Carolina's Public Sale Procedures Under the Uniform Commercial Code Revised Article 9-Secured Transactions*, 55 S.C. L. Rev. 501, 510 (2004) ("[A] court should require a notice to conform to South Carolina Code section 36-9-614 without any error, regardless of how small the error is or if the error causes any harm.").

The statute's structure is telling. In a non-consumer case, the sufficiency of a notice may sometimes present a question of fact, but in consumer cases the absence of any required item defeats the notice as a matter of law. UCC § 9-614 cmt. 2; *Coxall v. Clover Com. Corp.*, 781 N.Y.S.2d 567, 573 (Civ. Ct. 2004); *compare* S.C. Code Ann. § 36-9-613 (statute providing notice requirements for *non-consumer goods transactions*, and stating: "The contents of a notification providing substantially the information specified in item (1) are sufficient, even if the notification includes: (A) information not specified by that item; or (B) minor errors that are not seriously misleading.") *with* S.C. Code Ann. § 36-9-614 (statute providing notice requirements for consumer goods transactions and omitting a similar provision protecting creditors from liability). That contrast is deliberate. The drafters and the General Assembly knew how to write a substantial-compliance standard, and they chose not to adopt one here. To the contrary, the General Assembly has mandated that matters such as those here be decided as a matter of law.

B. Post-Sale Notice Requirements

If FFC elected to "dispose of" a consumer's vehicle by sale, the SCUCC imposed a further duty. Section 36-9-616(a)–(b) required FFC to send the consumer a post-sale notice setting out, in detail, the calculation of any surplus or deficiency. The statute does not merely require the secured party to provide information; it requires that the information be presented in a prescribed sequence. *See* S.C. Code Ann. § 36-9-616(c) ("To comply with subsection (a)(1)(B), a writing must provide the following information in the following order . . . .").

That information, and the order in which it is to be provided, is as follows:

> (1) the aggregate amount of obligations 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, calculated as of a specified date:
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> (A) if the secured party takes or receives possession of the collateral after default, not more than thirty-five days before the secured party takes or receives possession; or
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> (B) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five days before the disposition;
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> (2) the amount of proceeds of the disposition;
>
> (3) the aggregate amount of the obligations after deducting the amount of 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;
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> (5) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in item (1); and
>
> (6) the amount of the surplus or deficiency.

S.C. Code Ann. 36-9-616(c)(1)–(6).

Specifically, there are four notices in this case. They include *two **pre***-sale notices and *two **post***-sale notices.

C. FFC's Original Pre-Sale Notice

From October 4, 2008, through October 4, 2011, FFC concedes it used a pre-sale notice that this Order refers to as the "original pre-sale notice," which is a two-page document:

RE: Account # 68289

Dear Mr. Delaney,

It is important for you to know that the return of the collateral does not cancel your obligation. If we are required to sell the collateral, we cannot guarantee that we will be able to obtain a price equal to the unpaid balance on your account. You will still owe the amount remaining unpaid balance on your account. You will owe the amount remaining unpaid after application of sale proceeds, less recovery and selling expenses.

Your immediate action on any one of the following alternatives will be to your advantage and may save you further expenses in the settlement of your account.

1. Contact our office and endeavor to redeem the collateral on a basis that would be mutually satisfactory.
2. Refinance your account through your bank, credit union, or another finance company.
3. Find someone who would be acceptable and interested in taking over your obligation and contract.
4. Assist us in finding a buyer to obtain the best possible price.

If acceptable arrangements cannot be made on this matter within the time specified in the attached notice of sale, we will proceed with the sale of this collateral.

Please help yourself by helping us to arrive at a satisfactory solution now.

Very truly yours,

Bob Lewis

ATTACHED: Notice form specifying the date collateral will be sold.

NOTICE OF PRIVATE SALE OF COLLATERAL

(CERTIFIED MAIL, RETURN RECEIPT REQUESTED May 2, 2008

Otha Delaney
828 Hitching Post Road
Charleston, SC 29414

Re: Account # 68289

Dear Mr. Delaney,

This is to notify you that due to default under the terms of the above referenced account, the collateral described below, which secures your account, can be sold, at our option by private sale after the close of business on the tenth (10^{th}) day from the date of this notice. If such a date falls on a Sunday or legal holiday, then the collateral will be sold after the first business day following the tenth (10^{th}) day.

You have the right to have the collateral returned to you upon payment of the account balance plus any repossession expenses, attorney's fees and other costs we have incurred, as may be applicable and permitted by law.

Description of Collateral: 2003 Chevrolet 1500 Vin# 1GCEC14X23Z296522

5025 Dorchester Road
Street Address

Charleston, SC 29418
City State Zip

Bob Lewis
By

D. FFC's Modified Pre-Sale Notice

In October of 2011, after this suit was filed and served, FFC concedes it slightly modified the original pre-sale notice by adding two new sentences and began using what this Order refers to as the "modified pre-sale notice":

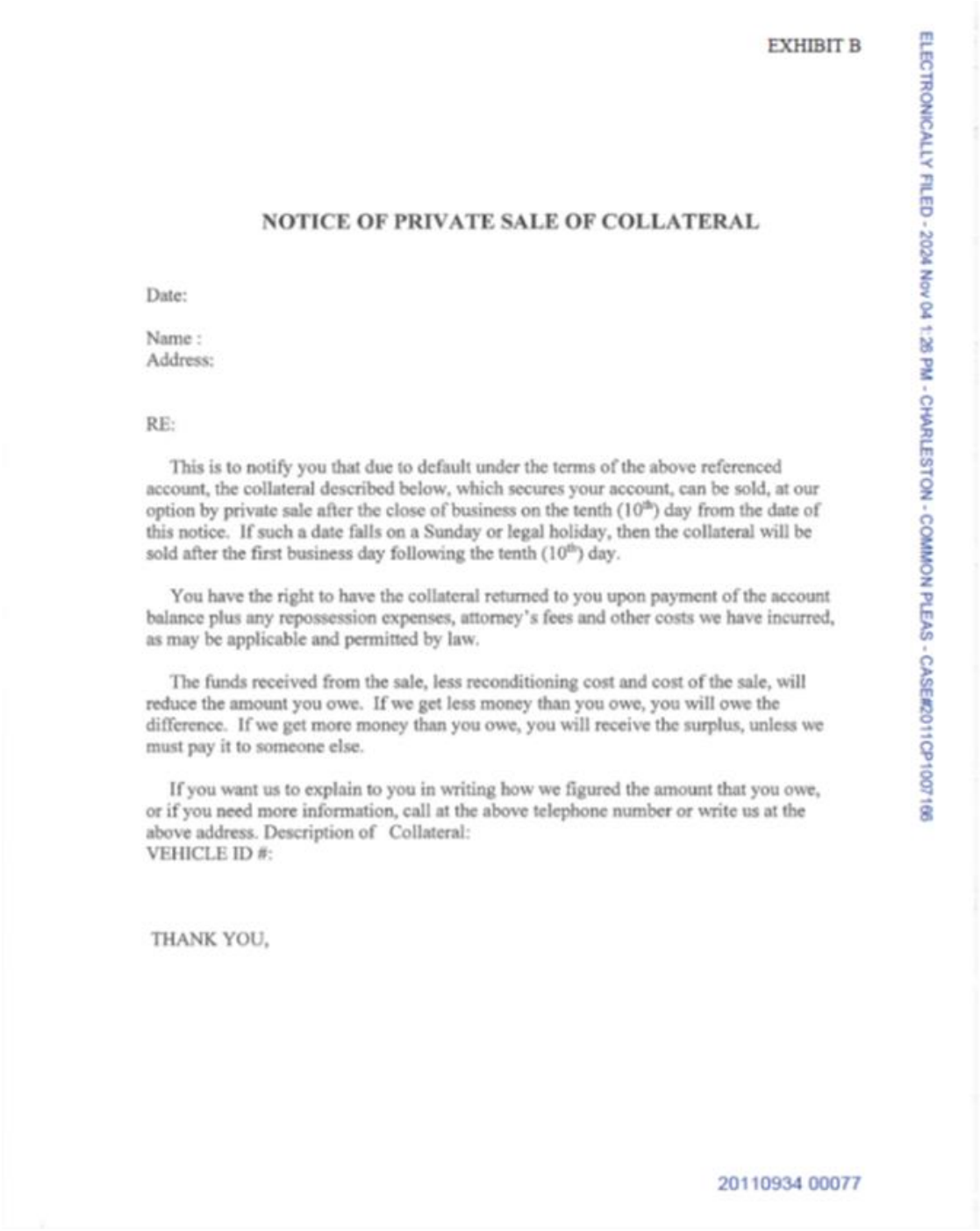

EXHIBIT B

NOTICE OF PRIVATE SALE OF COLLATERAL

Date:

Name :
Address:

RE:

This is to notify you that due to default under the terms of the above referenced account, the collateral described below, which secures your account, can be sold, at our option by private sale after the close of business on the tenth (10th) day from the date of this notice. If such a date falls on a Sunday or legal holiday, then the collateral will be sold after the first business day following the tenth (10th) day.

You have the right to have the collateral returned to you upon payment of the account balance plus any repossession expenses, attorney's fees and other costs we have incurred, as may be applicable and permitted by law.

The funds received from the sale, less reconditioning cost and cost of the sale, will reduce the amount you owe. If we get less money than you owe, you will owe the difference. If we get more money than you owe, you will receive the surplus, unless we must pay it to someone else.

If you want us to explain to you in writing how we figured the amount that you owe, or if you need more information, call at the above telephone number or write us at the above address. Description of Collateral:
VEHICLE ID #:

THANK YOU,

20110934 00077

E. FFC's Original Post-sale Notice

From October 4, 2008, through October 4, 2011, FFC claims that it used the "original post-sale notice" [4]:

First Financial Of Charleston, Inc.

5025 DORCHESTER ROAD • P.O. BOX 60429 • CHARLESTON, SC 29419-0429 •(843) 767-0050

January 10, 2009

Otha M. Delaney
828 Hitching Post Rd.
Charleston, SC 29414

RE: Account #68289
2003 Chevrolet

Dear Mr. Delaney:

This letter is to let you know that the return of the collateral does not cancel your obligation. If we are required to sell the collateral, we cannot guarantee that we will be able to obtain a price equal to the unpaid balance on your account. You will still owe the amount remaining unpaid balance on your account. You will owe the amount remaining unpaid after application of sale proceeds, less recovery and selling expenses.

The breakdown on your account is as follows:

(1)	The original amount of contract:	$ 12.904.92
(2)	The payments made on contract:	1,158.47
(3)	Late Charges & Insurance Added:	155.00
(4)	Interest Refund:	5,007.00
(5)	Gap Insurance Refund:	173.15
(6)	Repossession Bills Added:	2,961.27
(7)	The Sale of Collateral:	5,495.00
(8)	The Remaining Deficiency Balance:	$4,187.57

Please contact our office make arrangements to handle this remaining balance.

If we do not hear from you concerning this matter, we will have no choice but to take legal action.

Thank you.

Sincerely,
Cindy Kuck
Office Mgr.

[4] As explained in Plaintiff's pending motion for sanctions, FCC allegedly destroyed the pre-sale and post-sale notices that it sent consumers from October 2008 through January of 2012. However, even the forms that FCC claims that it used during this period are legally deficient for the reasons explained in this Order.

F. FFC's Modified Post Sale Notice

When this lawsuit was filed, FFC concedes it modified the post-sale notice and began using the "modified post-sale notice." These, too, are the same except that FFC made a slight change to the modified post-sale notice:

First Financial of Charleston, Inc.

5025 DORCHESTER ROAD P.O. BOX 60429 CHARLESTON, SC 29419 (843-767-0050)

Date: June 13, 2019

Maureen & Lukey Snipe
624 Emma Meredith Circle
Summerville, SC 29486

RE: Account #73978
Collateral : 2012 Ford Fusion

Dear Mr. & Mrs. Snipe:

This letter is to inform you that the return of your collateral may not cancel your obligation with First Financial of Charleston, Inc.

The collateral has been sold and the proceeds from the sale applied as noted below. You are still obligated to any deficiency balance unpaid after the application of sale proceeds, less recovery and selling expenses, if shown below.

The breakdown of your account is as follows:

(1)	Original amount of contract	$ 13,315.32
(2)	Payments received	$ 1,515.37
(3)	Late charge & Insurance added	$ 72.00
(4)	Interest refund	$ 2,999.00
(5)	Life Insurance Refund	$ .00
(6)	A&H Refund	$ .00
(7)	Repossession expenses added	$ 1,415.00
(8)	Sale proceeds	$ 5,595.00
(9)	Remaining deficiency balance	$ 4,692.95

Please contact our office to make arrangements to handle this remaining balance owed.

If we do not hear from you concerning this matter we may have no choice but to take legal action.

Regards,

Cindy Kuck
Office Manager

G. The original and modified pre-sale notices do not include the disclosures required by the SCUCC.

This Court has already examined FFC's original pre-sale notice and held it deficient under the SCUCC. (Order Den. Mot. to Dismiss Am. Compl. 11–12.) Nothing relevant or material has changed since that ruling, and the undersigned is not permitted to overrule another circuit judge who has ruled on the same issue, involving the same facts and law, as is now before this Court. *See, e.g.*, *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986) ("One Circuit Court Judge does not have the authority to set aside the order of another."); *Rice v. Doe*, 442 S.C. 160, 165, 898 S.E.2d 127, 129 (2024) ("Under our system of rotating judges through the State, circuit and family court judges often confront situations in which another judge made a ruling that might or might not be final. If the prior ruling addresses a substantive point of law, or if nothing of significance has changed, the second judge should consider the previous judge's ruling to be final."). Nevertheless, even if the prior determination were not binding, the Court independently reaches the same conclusion and incorporates the Order Denying the Motion to Dismiss the Amended Complaint.

Three defects render the original pre-sale notice insufficient as a matter of law:

i. **Failure to state the intended method of disposition.** Section 36-9-613(1)(C) requires that the notice "state[] the method of intended disposition." FFC's notice did not do so. Instead, it told consumers the collateral "can be sold, at our option by private sale," and elsewhere referred to what would happen "if we are required to sell the collateral." This language does not affirmatively state an intended method of disposition; it merely lists hypothetical "options," including the option not to sell at all. Such phrasing leaves the consumer guessing whether a private sale, a public sale, or no sale will occur—an ambiguity that is more misleading than silence. A

notice that "does not convey the message that the property is to be or will be sold" is deficient. *Gen. Motors Acceptance Corp. v. Carter*, 290 S.C. 216, 218, 349 S.E.2d 342, 343 (1986) (vacated by agreement). "The tenor of the letter is not that there is an intended sale but that there may be a sale and if there is a sale GMAC has certain rights. The notice falls short of complying . . . in that it fails to indicate an intent to sell. And we so hold." *Id*. at 290 S.C. at 220, 349 S.E.2d at 344.[5]

ii. **Failure to state the correct date "after which" disposition would occur.** The notice stated the vehicle would be sold privately "on the tenth (10th) day from the date of this notice," May 12, 2008. Yet FFC sold Delaney's vehicle eight months later, on January 10, 2009. A notice must be correct "in all the required information." 4 J.J. White & R.S. Summers, *Uniform Commercial Code* § 34-12, at 489 (6th ed. 2010). At best, this language was ambiguous; at worst, it affirmatively misled the class members into believing their redemption rights expired within ten days, when in fact they extended for months.[6]

iii. **Failure to disclose the debtor's entitlement to an accounting.** The modified pre-sale notice said nothing about Delaney's right to an accounting or the charge for one, in direct violation of §§ 36-9-613(1)(D) and 36-9-614(1)(A). The omission of this

[5] FFC asserts that this vacated opinion has no precedential value. Assuming that to be true, the Court still finds it persuasive. It is also noteworthy that the secured party settled the case following the entry of the opinion, and the settlement was contingency upon the opinion being vacated. *See Gen. Motors Acceptance Corp. v. Carter*, 293 S.C. 466, 466, 361 S.E.2d 620 (Ct. App. 1987) ("Counsel in the above case have filed a joint Petition requesting this Court to vacate its opinion, based on the fact that the parties have settled the case contingent upon the vacation of the Opinion of the Court of Appeals . . . . Opinion No. 0777, filed by the Court of Appeals on August 18, 1986 . . . is hereby vacated.")

[6] Not only do these notices provide factually incorrect information; they provide factually incorrect information that FCC concedes is intended to communicate to a class member that he or she has lost his or her right to redeem long before that right is actually lost.

required disclosure renders the notice "insufficient as a matter of law." § 36-9-614, cmt. 2.

The record confirms these deficiencies were not isolated. FFC concedes that, between October 2008 and October 2011, it sent form notices identical to Delaney's to every class member. Changing only the names, account numbers, and vehicle information, FFC repeated the same statutory violations across the class.

FFC later modified its form to add the phrase, "If you want us to explain to you in writing how we figured the amount that you owe . . . ." FFC admitted this change was an attempt to cure its defective notices.[7] But the modification did not cure the defects. It still failed to tell consumers they were *entitled* to an accounting, as the statute requires.[8] Nor did it correct the failure to specify the method of disposition or to identify the date "after which" the vehicle would be sold. The

[7] FFC provided sworn testimony:

> Q. Why did you revise the notice after October of 2011 [the date of the original lawsuit], why did you make changes to them?
>
> A. Well we would determine that we were leaving out three words I believe it was in that notice and so we had it revised.
>
> Q. What three words were you leaving out?
>
> A. We'll send an accounting I believe is what the terminology was or something similar to that.

(Suppl. Mem. in Supp. of Pl.'s Mot. for Summ. J. & in Opp. to Def.'s Mot. for Summ. J. p. 20.)

[8] Again, FFC's intent, mistake, or error are irrelevant to the strict compliance analysis. 68A Am. Jur. 2d Secured Transactions § 536 ("The rules are mandatory and apply irrespective of intent, good faith, or other excuses lenders might argue. In a consumer transaction, a notification that lacks any of the prescribed information is insufficient as a matter of law, and indeed, a creditor in a consumer transaction is held to strict compliance with the presale notice requirements. Thus, where the notification sent to the consumer does not state that the consumer is entitled to an accounting of the unpaid indebtedness or the charge, if any, for an accounting, it is insufficient.") (internal footnotes omitted); *see also Yazzie v. Gurley Motor Co.*, 2016 WL 7477770 (D.N.M. March 8, 2016) (finding the creditor's presale notice "violated the provisions of the New Mexico UCC" by failing to "state that the debtor is entitled to an accounting of the unpaid indebtedness and state the charge, if any, for an accounting.").

statutory safe-harbor form, which FFC chose not to copy, would have avoided these violations entirely. *See* § 36-9-614(3) ("The following form of notification, when completed, provides sufficient information.").

Thus, whether viewed through the lens of the original form or its modified successor, FFC's pre-sale notices suffered from three fatal defects:

- no notice of *entitlement* to an accounting;
- no statement of the intended method of disposition; and
- no statement of the date "after which" disposition would occur.

Under controlling law, the omission of even one of these mandatory items is dispositive. *See* 68A Am. Jur. 2d Secured Transactions § 536; *Delaney*, 426 S.C. at 613 n.2, 829 S.E.2d at 251 n.2 (2019). Here, the notices omitted all three. Summary judgment in Plaintiff's favor on liability is therefore compelled. Compliance with these consumer-protection provisions is not optional, and the defects here strike at the heart of the statutory safeguards Article 9 was designed to ensure. Plaintiff is granted summary judgment on liability as to the pre-sale notices.

H. The mandatory information required by Subsection -616(c) is not included in the original or modified post-sale notices.

This Court has already examined FFC's original and modified post-sale notices and held them deficient under the SCUCC. (Order Den. Mot. to Dismiss Am. Compl. 13–14.) Nothing material has changed since that ruling, and the undersigned is not permitted to overrule another circuit judge who has ruled on the same issue, involving the same facts and law, that is now before this Court. Nevertheless, even if the prior determination were not binding, the Court independently reaches the same conclusion and incorporates the Order Denying the Motion to Dismiss the Amended Complaint.

Section 36-9-616 requires secured parties to provide post-sale notices containing six enumerated categories of information, in the precise statutory order, and "calculated as of a specified date." S.C. Code Ann. § 36-9-616(c)(1)–(6). The notice must also alert the consumer that the stated deficiency balance may change due to future debits or credits. *Id*. § 36-9-616(a)(1)(C). Accuracy in both content and sequencing is mandatory. *See Mo. Credit Union v. Diaz*, 545 S.W.3d 856, 863 (Mo. Ct. App. 2018) (failure to alert debtor to future changes constitutes a violation). Any one violation of Subsections (c)(1)–(6) would entitle Plaintiff and the Class to summary judgment as a matter of law.

The record shows FFC's post-sale notices failed on nearly every statutory requirement:

i. **Aggregate Obligations** — The post-sale notices failed to state the aggregate amount of obligations secured as required by § 36-9-616(c)(1). As the comments explain, a secured party has two options in specifying the aggregate amount of obligations secured by the security interest: "The secured party may include these rebates in the aggregate amount of obligations secured, under subsection (c)(1), or [alternatively] may include them with other types of rebates and credits under subsection (c)(5)." *Id.* at cmt. "Subsection (c) contains the requirements for how a calculation of a surplus or deficiency must be explained in order to satisfy subsection (a)(1)(B)." *Id.* Here, using the figures from Delaney's post-sale notice as an example, the correct figure was either $11,746.45 or $6,894.45 (depending on whether rebates were included). FFC stated neither. In fact, in the form

documents used by FFC and corresponding calculations provided, neither figure is included in either the original or modified post-sale-notice.[9]

ii. **Proceeds of Disposition** — Rather than listing the proceeds second, FFC placed them seventh. The statute's likely rationale for placing this item second is that it helps a consumer understand the big picture: the aggregate amount of the secured obligations before the sale (item 1), the proceeds produced by the sale (item 2), and the aggregate amount still owing after the sale (item 3). But regardless of the rationale, FFC's post-sale notices contravene the statute's command that the information appear in the required order.

iii. **Obligations After Deducting Proceeds** — The original and modified post-sale notice omitted altogether the aggregate obligations net of sale proceeds, in violation of § 36-9-616(c)(3).

iv. **Expenses** — This subsection allows FFC to choose to disclose expenses either in the aggregate or by type; but, in either event, FFC must still disclose the type of expenses included. In both the original and modified post-sale notices, the

[9] During its deposition, FFC admitted that the aggregate amount of the obligations owed is not provided at all, and certainly not provided first as required:

Q. The aggregate amount of the obligation secured by the security interest at the time of the disposition?

A. No, that is not on there nor should it be on there.

Q. Okay, I understand. That's all I'm trying to establish.

A. Okay.

Q. And certainly that first number listed is not the aggregate amount of obligation secured by the security interest, correct?

A. Correct.

(Suppl. Mem. in Supp. of Pl.'s Mot. for Summ. J. & in Opp. to Def.'s Mot. for Summ. J. p. 33.)

expenses are set forth in two items (three and six) and are improperly separated by two items (four and five) that relate to credits. Neither complies with the law and both failed to disclose the expenses as required by § 36-9-616(c)(4).[10]

v. **Credits** — Although FFC listed some credits in its original and modified post-sale notice (e.g., life insurance refunds), they were scattered and not grouped together as the statute requires. § 36-9-616(c)(5).

vi. **Surplus or Deficiency** — The deficiency amount in the original and modified post-sale notice appeared as item eight, not sixth, violating § 36-9-616(c)(6).

vii. **Specified Date** — The SCUCC requires all post-sale notices to be "calculated as of a specified date." S.C. Code Ann. § 36-9-616(c)(1). The comments to this Section indicate that the creditor must specify this date in the post-sale notice. S.C. Code Ann. § 36-9-616 cmt ("Subsection (c) contains the requirements for how a calculation of a surplus or deficiency must be explained in order to satisfy subsection (a)(1)(B)."); see also § 9-616 FORM 1. Explanation of Calculation of Surplus/Deficiency, 28A N.J. Prac., Uniform Commercial Code Forms § 9-616 FORM 1 (3d ed.) ("The first item of information is also required to state the date as of which the aggregate amount was calculated . . . since, depending upon the terms of the debt instrument, interest may accrue daily."). Here, neither the original nor modified post-sale notices include the "specified date" used to

[10] Moreover, according to FFC, it has a verbal contract with a third-party vehicle seller who takes either $500 or $1,000 from the sale price as a fee for selling the vehicle, depending on the amount for which the vehicle sells. (Suppl. Mem. in Supp. of Pl.'s Mot. for Summ. J. & in Opp. to Def.'s Mot. for Summ. J. p. 34 ("After he took his fee out we have -- generally we will have a contract with them for -- a verbal contract for 500 or a thousand, depending on the amount of the vehicle, how long it's been there, that type of thing.").) As FFC concedes, this figure is not on the original or modified post-sale notice: "That form wouldn't have that on there." (*Id.*)

complete the calculations provided, leaving consumers unable to verify accuracy of any stated in the notice. While both versions of the notice include the date the notice was mailed, neither version of the notice indicates that the mailing date is the "specified date" used for purposes of calculating the deficiency. Thus, both the original post-sale notice and the modified post-sale notice are deficient as a matter of law.

viii. **Future Debits and Credits** — Under Section 36-9-616(a)(1)(C), FFC "was required to alert [the class] to the prospect that the deficiency would be altered by future charges and refunds." *Diaz*, 545 S.W.3d at 863. Neither version warned consumers that future debits, credits, or rebates could alter the deficiency balance, as mandated by § 36-9-616(a)(1)(C).

ix. **Sale Status** — The original post-sale notice misleadingly stated, "If we are required to sell your collateral," even though the sale had already occurred. Providing incorrect information violates the command that notices be correct "in all the required information." 4 J.J. White & R.S. Summers, *Uniform Commercial Code* § 34-12, at 489 (6th ed. 2010).[11]

[11] When asked why the post-sale notice states, "If we are required to sell your vehicle," even though the vehicle had already been sold, FFC could not explain:

Q. Okay. Now, it says here -- I just got a couple questions for you -- it says if we are required to sell the collateral. Do you see that?

A. Yes, I see that.

Q. Okay. But I mean you would agree with me by this point you have already sold the collateral, had you not?

A. Yes.

Q. Okay. Do you know why you -- why do you put in the post-sale notice if we are required to sell the collateral?

A. I don't know why.

In summary, Plaintiff is only required to show a single defect with the original post-sale notices for this Court to grant summary judgment in his favor. As shown above, the original post-sale notice has several defects:

Original Post-sale Notice

- Improper calculation of aggregate amount;
- Improper placement of amount of proceeds;
- Failure to list aggregate amount after deducting proceeds;
- Improper placement and separation of types of expenses;
- Improper placement and separation of types of credits;
- Improper placement of amount of surplus or deficiency;
- Failure to provide a specified date used for calculations;
- Failure to alert that future debits and credits may affect deficiency balances; and
- Falsely suggested the collateral had not been sold.

Again, Plaintiff is only required to show a single defect with the either post-sale notice for this Court to grant summary judgment in his favor. As discussed above, the modified post-sale notice has the same defects, except it no longer calls into question whether a vehicle has been sold:

The Modified Post-sale Notice:

- Improper calculation of aggregate amount;
- Improper placement of amount of proceeds;
- Failure to list aggregate amount after deducting proceeds;
- Improper placement and separation of types of expenses;

(Suppl. Mem. in Supp. of Pl.'s Mot. for Summ. J. & in Opp. to Def.'s Mot. for Summ. J. p. 36.)

- Improper placement and separation of types of credits;
- Improper placement of amount of surplus or deficiency;
- Failure to provide a specified date used for calculations; and
- Failure to alert that future debits and credits may affect deficiency balances.

A single omission is fatal; here, FFC's notices contain multiple, compounding defects. Both the original and modified post-sale notices are therefore legally insufficient, and summary judgment for Plaintiff on liability is compelled. For these reasons, the Court rules as a matter of law that FFC's post-sale notices are legally deficient and grants Plaintiff summary judgment as to liability.

VI. FFC's arguments in favor of its summary judgment motion and in opposition to Plaintiff's summary judgment motion are misplaced.

A. The notices are legally insufficient not because they fail to use a "particular phrasing," but rather because they do not provide required information and do not provide required information in the required sequence.

FFC argues that its original and modified pre-sale notices complied with the SCUCC because "a particular phrasing of the notification is not required." S.C. Code Ann. § 36-9-613(1)(E); (Def.'s Mot. for Summ. J. 7–10.). It further contends the notices sufficiently and "politely" invited Plaintiff to resolve his delinquency. (*Id.* at 7.) The Court disagrees.

The defect is not one of wording. It is one of substance. South Carolina law requires that pre-sale and post-sale notices contain specific, enumerated information, and—when post-sale notices are at issue—that the information be presented in the statutory sequence. *See* S.C. Code Ann. § 36-9-614 cmt. ("A notification that lacks any of the information set forth in paragraph (1) is insufficient as a matter of law."); § 36-9-616(c) ("To comply with subsection (a)(1)(B), a writing must provide the following information in the following order: . . . ."). These mandates are unequivocal. They do not permit substitution of "polite invitations" for required disclosures.

Other courts applying these same provisions agree. *States Res. Corp. v. Gregory*, 339 S.W.3d 591, 597 (Mo. Ct. App. 2011) ("While we acknowledge the statute does not require a 'particular phrasing of the notification,' a notification that lacks any of the information set forth in [the statute] is insufficient as a matter of law."). Accepting FFC's argument would collapse statutory requirements into mere suggestions, stripping them of force and rendering parts of the statute meaningless. *See Florence Cty. Democratic Party v. Florence Cty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012) (statutes must be construed to give effect to every word, not to render portions meaningless).

FFC also invokes the canon against absurd results. (Def.'s Mot. for Summ. J. 7–8 (citing *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000).) But there is nothing "absurd" about enforcing the SCUCC's plain text. To the contrary, holding FFC to the disclosure requirements is precisely the outcome the UCC contemplates. *See Gregory*, 339 S.W.3d at 597. The General Assembly adopted these provisions with strict-liability consequences. The Court will not dilute that command.

B. Subsection 36-9-628(e) is not applicable to the Class's Claims.

FFC contends that all class claims regarding the pre-sale notices are barred by Subsection 36-9-628(e). (Def.'s Mot. for Summ. J. 11.) The Court disagrees.

In its rejected petition for a writ of certiorari to the Supreme Court of South Carolina, FFC conceded that its Subsection 36-9-628(e) argument had already been decided against it by the circuit court and would be "gone for good" absent intervention by the Supreme Court. The Supreme Court denied the writ on August 10, 2023. By FFC's own admission, the issue is "gone for good."

To the extent the issue is not gone for good, Defendant's argument fails. This Court has already analyzed Subsection 36-9-628(e) and rejected Defendant's interpretation. (Order Den. Def.'s Mot. to Dismiss Am. Compl. pp. 9–10.) Nothing material has changed since that ruling, and the undersigned is not permitted to overrule another circuit judge who has ruled on an issue involving the same facts and law, as is now before this Court. Nevertheless, even if the prior determination were not binding, the Court independently reaches the same conclusion and incorporates the Order Denying the Motion to Dismiss the Amended Complaint.

Defendant's construction implies that Subsection 36-9-628(e) bars all class actions under Subsection 36-9-625(c)(2). But the statute's text does not support the same. Had the General Assembly intended to bar such actions, it knew how to say so, "especially when it has chosen to expressly bar class action litigation in other areas." *Grazia v. Saxton*, 390 S.C. 573, 576, 702 S.E.2d 888, 890 (2010). Other legislatures have adopted such non-uniform amendments to procedurally bar class actions filed in those states. *See, e.g.*, 810 ILCS 5/9-625 (Illinois amendment limiting recovery to "any individual action"). South Carolina did not.

Subsection 36-9-628(e) serves a narrower purpose: to prevent multiple recoveries arising out of a single secured obligation by co-debtors or guarantors. *See Singleton*, 358 S.C. at 377, 595 S.E.2d at 465 (explaining that Subsection 36-9-628(e) "effectively overrules the *Crane* holding with respect to recovery of statutory minimum damages," where multiple guarantors (co-signors) to one transaction each sought recovery). Here, each class member's account constitutes a distinct "secured obligation;" co-debtors share a single recovery on that obligation.

Each class member seeks one recovery under Subsection 36-9-625(c)(2) for his or her own secured obligation. Co-debtors must share a single award. Accordingly, Subsection 36-9-628(e) poses no bar to this action.

C. Individuals who received the modified pre-sale notice are part of the certified class and have standing to pursue their claims.

FFC next contends that Plaintiff lacks standing to challenge the modified pre-sale notice. (Def.'s Mot. for Summ. J. 12.) The Court disagrees.

Class representatives are not required to possess standing to press every claim of absent class members. By design, the class action mechanism under Rule 23 authorizes named plaintiffs to litigate on behalf of unnamed members whose injuries the representative could not individually assert. As the Second Circuit explained:

> [T]he obvious truth [is] that class actions necessarily involve plaintiffs litigating injuries that they themselves would not have standing to litigate . . . Since class action plaintiffs are not required to have individual standing to press any of the claims belonging to their unnamed class members, it makes little sense to dismiss the state law claims of unnamed class members for want of standing when there was no requirement that the named plaintiffs have individual standing to bring those claims in the first place.

Langan v. Johnson & Johnson Consumer Companies, Inc., 897 F.3d 88, 97 (2d Cir. 2018). *Langan* underscores that such arguments do not implicate standing at all. They instead go to the class action requirements under Rule 23. *Id.*[12]

Moreover, this issue has already been decided. In certifying the class, this Court expressly found Rule 23's requirements satisfied, notwithstanding variations in the form notices. (Order Granting Pl.'s Mot. for Class Certification at 6 (finding "common determinative issues are sufficiently central to justify the class certification") (quoting *Hensley v. S.C. Dep't of Soc. Servs.*, 429 S.C. 144, 153, 838 S.E.2d 510, 514 (2020))). Having resolved that question at certification, it

[12] Unlike federal law, South Carolina law does not have a "predominance" requirement that is separate from the commonality requirement. *Compare* Rule 23(b)(3), FRCP, *with* Rule 23(a), SCRCP.

is improper for FFC to attempt to relitigate it at summary judgment, especially when nothing has changed in the interim.

Nor would such an argument succeed. Courts routinely uphold certification where minor variations in contractual language or notice forms do not defeat class treatment. *See, e.g.*, *McKeage v. TMBC, LLC*, 847 F.3d 992, 999 (8th Cir. 2017) (holding that variations in customer documents did not undermine predominance); *Hopkins v. Kan. Teachers Cmty. Credit Union*, 265 F.R.D. 483, 488–90 (W.D. Mo. 2010) (certifying UCC notice claims despite multiple versions of notices, because the sufficiency of each was a legal issue common to the class). That is especially true here where the two presale notices share one or more defects, which is why this Court previously found typicality satisfied notwithstanding minor form variations; that finding controls here.

Accordingly, Plaintiff may pursue claims on behalf of absent class members sent the modified pre-sale notices, and FFC's standing challenge fails as a matter of law.

D. No class member's claim is barred by the statute of limitations, and the certified class is defined to ensure every class member's claim is timely.

FFC argues that all class claims that accrued three or more years before the Amended Complaint was filed are barred by the three-year statute of limitations. (Def.'s Mot. for Summ. J. 13.). The Court disagrees.

Plaintiff filed the original class complaint on October 4, 2011, alleging that FFC mailed its consumer-debtors legally deficient notices. After the matter was returned from the appellate courts, and with FFC's consent, Plaintiff filed an Amended Complaint on March 19, 2021, again alleging that FFC mailed legally deficient notices. The filing of the Amended Complaint does not restart the statute of limitations clock; under long-settled law, the timely filing of a class action tolls the statute of limitations for all asserted class members.

The United States Supreme Court has made this principle explicit: "[T]he timely filing of a class action tolls the applicable statute of limitations for all persons encompassed by the class complaint." *China Agritech, Inc. v. Resh*, 584 U.S. 732, 732 (2018) (citing *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 554 (1974)). Once tolled, the limitations period remains suspended until class certification is denied. *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 354 (1983). Here, class certification was never denied—it was granted. Accordingly, the limitations period remains tolled for all class members.

Even if the erroneous dismissal order were construed as a denial of certification—which it was not—the subsequent reversal by the Supreme Court "relate[s] back to the time of the original motion . . . for the purposes of tolling the statute of limitations on the claims of the class members." *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 359 n.3 (1980).

This Court has already considered and rejected FFC's limitations argument in denying its prior motion to dismiss. (Order Den. Def.'s Revised Mot. to Dismiss at 7–8.) Nothing material has changed. Again, the undersigned is not permitted to overrule another circuit judge who has ruled on the same issue involving the same facts and law as is now before this Court. Under controlling Supreme Court precedent, FFC's statute of limitations defense fails as a matter of law.

E. Plaintiff's post-sale-notice claims are timely.

FFC argues that Plaintiff's post-sale notice claim is barred by the three-year statute of limitations because it first appeared in the Amended Complaint. (Def.'s Mot. for Summ. J. 10.) The Court disagrees.

The Court has already rejected this argument:

> FFC also asks the Court to dismiss Count II of Delaney's Amended Complaint (UCC post-sale notice claim) because Delaney asserted no post-sale notice allegations in his original complaint, and thus, "the Amended Complaint does not relate back to the date of the Original Complaint." *See* [FFC's] Memorandum in

> Support [of Motion to Dismiss] at 22. The Court disagrees. The post-sale notice claims asserted in the Amended Complaint relate back to the original complaint because the addition of the post-sale notice claims arose out of the same loan agreements as the presale notice claims and FFC's standard repossession practices and compliance with the UCC. *See Patton v. Miller*, 420 S.C. 471, 496, 804 S.E.2d 252 (2017) ("The test ... under Rule 15(c) ... is ... whether the claim ... asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth in the original pleading[.]").

(Order Den. Def.'s Revised Mot. to Dismiss p. 8.)

Under Rule 15(c), SCRCP, the controlling test is whether the amended claim "arose out of the conduct, transaction, or occurrence set forth in the original pleading." *Patton*, 420 S.C. at 496. Here, both the pre- and post-sale notice claims arise from the same nucleus of operative facts: FFC's repossession of consumer vehicles and its issuance of standardized notices to debtors. Because the amended claims arise out of the same transactions alleged in 2011, they relate back and are timely as a matter of law.

Accordingly, this Court is constrained to deny FFC summary judgment on statute of limitations grounds. Even if law-of-the-case principles did not apply, the Court independently finds—and reaffirms—that Plaintiff's and the Class's post-sale notice claims are timely under Rule 15(c).

F. Plaintiff is a member of the class the Court appointed him to represent because the order granting class certification defines the class, not the complaint.

In its Amended Motion for Summary Judgment (and again in its Motion to Decertify, addressed below), FFC argues that "under the language of the operative complaint, [Plaintiff] is not a member of the class he purports to represent." This argument has already been rejected. When the Court certified the class, it considered—and squarely rejected—FFC's reliance on the complaint's original language. (*See* Def.'s Mem. in Opp. to Pl.'s Mot. for Class Certification p. 10 ("The Subject Motion is procedurally improper, as it is based on the Original Complaint, which is

no longer operative.").) Nothing material has changed since, and the issue cannot now be relitigated on the same facts and law to a different circuit court judge.

In any event, the governing principle is clear: the class is defined by the order granting certification, not by the pleadings. *See* 32B Am. Jur. 2d Federal Courts § 1494 ("On a motion for class action certification, the court has a duty to ensure that the class is properly constituted and has broad discretion to modify a class definition as appropriate to provide the necessary precision.").

Equally unavailing is FFC's contention that any perceived issue with the class definition requires decertification. That is not the law. The accepted remedy is amendment, not decertification. *Id.* ("Leave to amend the complaint in a class action to redefine the class is to be freely given, except where prejudice may result to either the defendants or to those persons dropped from the class.").

Accordingly, FFC's class-definition challenge fails.

G. This Court also already rejected FFC's other arguments regarding its post-sale notices.

This Court has already considered—and rejected—the very arguments FFC now advances again at summary judgment.

In opposing the Amended Complaint, FFC argued that Delaney failed to state a post-sale notice claim under Section 36-9-616 because: (1) its notices were not "seriously misleading," and (2) Delaney admitted FFC did not intentionally violate the UCC and therefore could not show a pattern or practice of noncompliance. The Court rejected both assertions. (Order Den. Def.'s Mot. to Dismiss Am. Compl. pp. 12–14.)

First, the "seriously misleading" standard in Subsection 36-9-616(d) applies only where a notice "substantially complies" with subsection (a). It does not save a notice, like FFC's, that omits

mandatory information, mis-orders the required disclosures, and fails to advise consumers that their deficiency balance may change with future debits, credits, or refunds. A notice that does not substantially comply cannot be insulated by the "seriously misleading" language.

Second, FFC's focus on "intent" misses the mark. Whether FFC acted in bad faith or by mistake is irrelevant. What matters is that FFC repeatedly used the same form post-sale notices for over a decade. That practice itself establishes the "pattern" of noncompliance the statute contemplates.

The record confirms these defects. Exhibits C and E to the Amended Complaint demonstrate that FFC's post-sale notices did not provide the information required by Subsection 36-9-616(c)(3), failed to follow the statutory sequence, and omitted the mandatory disclosure that deficiency balances may be affected by future charges or credits. These failures render the notices legally insufficient.

Because this Court has already ruled on these issues, the law-of-the-case doctrine alone requires denial of FFC's motion. Nevertheless, even if the prior determinations were not binding, the Court independently reaffirms the same conclusion: FFC's post-sale notices are legally deficient as a matter of law.

H. The Supreme Court of South Carolina and this Court correctly rejected FFC's jurisdictional challenge.

Finally, FFC asks this Court to overrule the Supreme Court of South Carolina and declare that the Court lacked jurisdiction to issue its 2019 opinion in *Delaney v. First Financial of Charleston, Inc.*, 426 S.C. 607, 829 S.E.2d 249 (2019). (Def.'s Mot. for Summ. J. 3–4.) The Court disagrees.

FFC raised this precise challenge to the Supreme Court in 2018, when it moved to dismiss Plaintiff's petition for a writ of certiorari. There, FFC contended that once the court of appeals

issued its remittitur in 2016, jurisdiction "ended" and could not be "reacquired." (Resp't's Mot. to Dismiss Pet. for Writ of Cert. p. 6.) The Supreme Court flatly rejected that position, denied the motion, and granted the petition. *See Delaney v. First Fin. of Charleston, Inc.*, Appellate Case No. 2017-000683 (S.C. Sup. Ct. Mar. 28, 2018) (order granting certiorari and denying motion to dismiss as moot). The Supreme Court then issued its 2019 opinion reversing the circuit court.

That determination of jurisdiction is binding. This Court, a court of original jurisdiction, lacks authority to revisit, much less overturn, a ruling of the Supreme Court of South Carolina. *See* S.C. Const. art. V, § 11 (vesting the circuit court with original jurisdiction "except those cases in which exclusive jurisdiction shall be given to inferior courts"). Once the Supreme Court exercised its jurisdiction and issued a final opinion, the matter was settled.

Accordingly, FFC's renewed jurisdictional argument is not only meritless, but procedurally impermissible. This Court has no power to disregard the Supreme Court's express holding.

VII. Defendant's July 25, 2025, Motion to Decertify the Class is DENIED.

As a preliminary matter, in its recently filed Motion to Reconsider,[13] FFC argues that its motion "was not noticed to be before the Court on August 13, 2025, and was not argued." In

[13] On the evening of September 2, 2025, Defendant filed a motion to reconsider this Court's August 20, 2025, Form 4 Order, which outlined the Court's rulings and instructed Plaintiff to provide (a) detailed order(s).

Our courts have reasoned that, "A final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution." *Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017) (citing *Good v. Hartford Acc. & Indem. Co.*, 201 S.C. 32, 41–42, 21 S.E.2d 209, 212 (1942)). Further, "[a]n order . . . leaving open the possibility of further action by the trial court before the rights of the parties are resolved, is interlocutory." *Id.* (citing *Ex parte Wilson*, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005)). A Form 4 order is also not a final order if it specifies a more formal order will follow or instructs a party to prepare a final order. *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 605, 567 S.E.2d 514, 518 (Ct. App. 2002) ("***IF*** the Form 4 order is ***NOT*** efficacious as a final order, the circuit court will specifically and with certitude signify: (1) a more formal order will be filed; ***OR*** (2) the final order will be prepared by Attorney; _____ ***OR*** (3) through the use of words and phrases what action will follow."); *see also Metts v. Mims*, 682 S.E.2d 813, 817, 384 S.C. 491, 499 (2009) (citing *Culbertson v. Clemens*, 322

support, FFC cites a staff scheduling email from this Court stating, "We have the Summary Judgment hearing scheduled in this case for Hampton County on 8/13 at 10:00 AM."

That argument misstates the record. FFC represented that it would file a motion to decertify after Plaintiff questioned FFC's ability to obtain the relief it sought through summary judgment. FFC then filed its motion on July 25, 2025—more than ten days before the August 13 hearing—and never raised any concern with the Court about when the motion would be heard. More importantly, the arguments in the Motion to Decertify are materially identical to those in FFC's Amended Motion for Summary Judgment. In fact, each heading in the decertification motion expressly states, "as explained in FFC's Summary Judgment Memo" and cites the corresponding page of that memorandum.

Although premature, the Motion to Reconsider highlights that FFC's decertification and summary judgment arguments substantially overlap. This Court construes them together and heard FFC on those arguments at the August 13 hearing. In the interest of judicial economy—particularly in this fourteen-year-old case that has been pending since 2011—the Court properly rules on the arguments that underpin the Motion to Decertify now, as they are the same as those that underpin its arguments in favor of summary judgment.

In its motion, FFC argues that Plaintiff Otha Delaney lacks standing and fails to meet typicality and adequacy requirements under Rule 23 due to his prior bankruptcy. (Mot. to Decertify

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S.C. 20, 23, 471 S.E.2d 163, 164 (1996)) ("The Form 4 order . . . specifically indicated a formal order would follow. Therefore, this form order was not in any way final.")

At the time this Court issued the Form 4 Order, there was not "nothing to do but enforce the judgment" because this Court had not yet substantively ruled on the motions and instructed Plaintiff to submit a detailed order. Inherently, further action by this Court is needed until the rights of the movants on their motions are resolved and this Order is entered. Additionally, the Form 4 order specifically directed Plaintiff's counsel to prepare a detailed order. Therefore, the September 2, 2025 Motion to Reconsider is denied without prejudice because it is premature. Defendant should refile a proper motion with upon receipt of this Order.

pp. 4–5.) FFC further asserts that Delaney is not a member of the class he purports to represent; that Subsection 36-9-628(e) bars class treatment; and that Delaney lacks standing to challenge the revised pre-sale notice. (Mot. to Decertify pp. 6–11.) The Court has carefully considered each of these arguments and concludes they either lack merit or have already been rejected in prior orders or are independently addressed above.

FFC further contends that (1) Delaney is not a member of the class he represents (Mot. to Decertify p. 6), (2) his claims are not amenable to class treatment (*id.* at p. 7), and (3) he lacks standing to challenge deficiencies in the revised pre-sale notice (*id.* at p. 8). The Court need not revisit these arguments. Again, prior judges of this Court have already ruled on them—more than once—and nothing has changed that would warrant re-addressing them. Nevertheless, the Court notes briefly why the arguments again fail.

First, FFC's class-definition argument was already considered and rejected, as explained above. The operative class definition is set by the certification order, not the pleadings.

Second, FFC's reliance on Subsection 36-9-628(e) to defeat class treatment has already been squarely—and repeatedly—rejected as explained above.

Third, FFC's argument that Delaney lacks standing to challenge the revised pre-sale and post-sale notices has also been repeatedly rejected. The Court found that all class members received one of two substantially similar pre-sale and post-sale templates, and that Delaney's claims were typical and representative of those of the class. (Order Granting Class Certification p. 7.) Delaney therefore has standing to pursue claims arising from both forms on behalf of the class.

Finally, when FFC appealed the denial of its motion to dismiss, it conceded these issues presented pure questions of statutory interpretation. The Court of Appeals and the Supreme Court

rejected FFC's attempts to overturn this Court's rulings. FFC has lost these arguments on the merits and on appeal.

In sum, these issues have already been decided as matters of law. Nothing new has transpired that would justify a different result. FFC's recycled arguments are foreclosed.

VIII. The remaining motions shall be heard during the week of September 28, 2025.

Plaintiff filed a motion for sanctions on August 6, 2024, which remains pending. As noted earlier in this Order, Plaintiff and the proposed intervenors filed a Motion to Intervene on July 16, 2025, followed by a Supplement to that motion on July 31, 2025. The Court will hear argument on both the Motion for Sanctions and the Motion to Intervene (and Supplement) during the week of September 28, 2025.

Conclusion

For more than a decade, this case has tested the resilience of the parties, the persistence of the courts, and the clarity of the Uniform Commercial Code. At long last, the question is now resolved. The notices FFC used were legally deficient, and liability under the SCUCC is established as a matter of law. Compliance with consumer-protection statutes is not optional, and this Court will not dilute the strict safeguards chosen by the General Assembly.

Plaintiff's Motion for Summary Judgment (filed Aug. 6, 2024) is GRANTED as to liability. Defendant's Motion for Summary Judgment (filed Sept. 11, 2024 and amended Apr. 20, 2025) and Motion to Decertify (filed July 25, 2025) are DENIED. The Court shall hear the Motion for Sanctions (filed Aug. 6, 2024) and the Motion to Intervene (filed July 16, 2025) and Supplement (filed July 31, 2025) for hearing during the week of September 28, 2025, specifically on [date to be inserted by the Court]. To the extent Defendant raised arguments not specifically addressed in this Order, those arguments have been considered and are rejected.

IT IS SO ORDERED.

Charleston Common Pleas

Case Caption: Otha Delaney VS First Financial Of Charleston Inc

Case Number: 2011CP1007166

Type: Order/Summary Judgment

So Ordered

s/ Robert Bonds, 2770