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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Robert J. Bonds, Circuit Court Judge
Deadre L. Jefferson, Circuit Court Judge
R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2026-000244
Case No. 2011-CP-10-07166

Otha M. Delaney, Octavia D. Watson, Alicia S. Alston and Paul McGuiggan, Jr., individually and on behalf of all others similarly situated as Co-Class Representatives.....Respondents/Appellants,

v.

First Financial of Charleston, Inc.....Appellant/Respondent.

AND

Otha M. Delaney, Octavia D. Watson, Alicia S. Alston and Paul McGuiggan, Jr., individually and on behalf of all others similarly situated as Co-Class Representatives .....Appellants,

v.

First Financial of Charleston, Inc.....Appellant/Respondent.

RESPONDENTS/APPELLANTS' INITIAL BRIEF IN RESPONSE TO FIRST FINANCIAL OF CHARLESTON, INC.'S APPEAL

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STATEMENT OF ISSUES ON APPEAL

STATEMENT OF THE CASE[1]

Introduction

This is a consumer class action case involving mandatory disclosures required under Article 9 of the South Carolina Uniform Commercial Code ("SCUCC," "UCC," or "Article 9"). Plaintiffs represent a class of South Carolina citizens whose rights under Article 9 were violated by FFC's failure to provide the mandatory disclosures, as determined by the circuit court. Defendant First Financial of Charleston, Inc. ("FFC") was required to make the mandatory disclosures for over a decade to hundreds of South Carolina citizens, again as determined by the circuit court. Because applicable Article 9 law is identical for each class member, and because FFC used "form documents" in an effort to meet its mandatory disclosures obligations, this case was certified as a class action.

Despite its age and long history, the central issue in this appeal is this: whether the form disclosure documents used by FFC and sent to the class comply with Article 9. All parties agree as to the applicable law, and all parties agree that the content of the "form documents" is not disputed. The applicable law consists only of a few paragraphs, and the form documents comprise only a few pages. Because a review of the applicable law compared to FFC's form disclosure documents reveals that the disclosures do not comply with mandatory provisions of Article 9, the circuit court properly granted summary judgment. This Court should affirm.

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[1] Respondents/Appellants ("Co-Class Representatives") also refer the Court to their Statement of the Case and Statement of Facts contained on pages one through fifteen of Co-Class Representatives' Initial Brief, filed July 13, 2026, in this consolidated appeal and incorporate those herein by reference.

FFC's Business and Article 9

FFC is a "sub-prime" lender who makes loans, or purchases loans already made, to underprivileged South Carolina citizens who are purchasing used cars for personal or household use. The interest rates on these loans "range anywhere from 24–29%."[2] (R. pp. __; Rule 30(b)(6) Deposition at pp. 91–93.) FFC describes the individuals they target for these high interest loans as people who have "credit situations" or "no credit." (*Id.* at 92.) The loans are secured by "collateral" by placing a lien on the title of each car purchased.

When FFC's customers have problems completing the payments required under the loans, FFC takes advantage of the remedies available to a "secured lender" under Article 9. Under Article 9, FFC is permitted to take extraordinary measures to quickly ensure that FFC can quickly protect its interest. Specifically, Article 9 expressly permits FFC to:

- without considering why a customer might be delayed in paying, why the customer might need their vehicle (medical appointment, school obligations, a wedding, a child's baptism, thanksgiving plans, etc.), what may be inside a customer's vehicle,[3] and without any court or other third party's permission or oversight, FFC is permitted to unilaterally "declare" the customer's loan account in default;
- repossess and seize the vehicle at any time and at any place FFC deems appropriate so long as FFC does not breach the peace;
- repair or improve the vehicle in any way FFC deems appropriate;

---

[2] From this business model, FFC has made millions of dollars in profit at the expense of underprivileged South Carolina residents and, as explained in this brief, while violating South Carolina laws designed to protect South Carolina residents.

[3] In the case of Mr. Delaney, he had a bible, a cell phone, two bottles of medicine, a box of tools, and a walking cane inside his vehicle when FFC repossessed his vehicle. (R. pp. __; Attachment to FFC's Amended Motion for Summary Judgment, "Repossessed Car Inventory List" App. 394.)

- sell the vehicle at a public auction, private sale, or keep the vehicle to satisfy the loan (under certain circumstances);
- take the proceeds from the sale and immediately deposit those proceeds into FFC's bank account; and
- go after the customer for any deficiency.

In the car-title loan business, the rights afforded to sub-prime lenders like FFC are well known to be extraordinary. *See e.g.*, National Consumer Law Center, Repossessions § 13.2.4.6 (9th ed. 2017) ("Article 9 [of the UCC] provides creditors with *an extraordinary remedy*: without the intervention of a court or supervision of a regulatory agency, creditors can declare a note in default, seize the consumer's property, sell it without supervision, and recover the deficiency." (emphasis added)); (R. pp. __; Ex. B to Mem. ISO Summ. J.). Recognizing the breadth of these powers, the Supreme Court of South Carolina has emphasized that secured creditors exercising Article 9 remedies must "scrupulously adhere to procedures contained in Article 9." *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 384, 534 S.E.2d 688, 694–95 (2000).

Because sub-prime lenders like FFC have such extraordinary, drastic, and permanent self-help remedies that can be exercised without oversight until a customer's property is seized and sold, and further because consumers who take out such loans have little knowledge of their rights and even fewer resources to enforce them, Article 9 mandates that two disclosures be made during the exercise of these self-help remedies: the pre-sale notice and the post-sale notice.

The Pre-Sale Notice

First, after FFC has repossessed a consumer's vehicle, but *before* the vehicle is sold or "disposed of" by FFC, subsection 36-9-611(b) of the SCUCC requires FFC to send a "reasonable authenticated notice of disposition" (a "pre-sale notice") to consumers. A pre-sale notice in a consumer goods transaction must contain eight distinct pieces of information. Five of these

requirements are incorporated by reference from section 36-9-613(1)(A)-(E), while three additional requirements are imposed specifically for the protection of consumers found in section 36-9-614(1)(B)-(D). Collectively, a pre-sale notice must:

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

Of the eight pieces of information required to be included, the following three are at issue in this case:

- the method of intended disposition;
- the statement that the debtor is entitled to an accounting; and
- the statement of the time and place of a public disposition or the time after which any other disposition is to be made.

Scrupulous Compliance

In a consumer goods transaction, failing to include *any* of these eight pieces of mandatory information renders a pre-sale notice "insufficient as a matter of law." 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*.") (emphasis added). It is well settled under South Carolina law that secured creditors exercising Article 9 remedies must "scrupulously adhere to procedures contained in Article 9." *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 384, 534 S.E.2d 688, 694–95 (2000) (citing *C.F. Garcia Enterprises v. Enterprise Ford Tractor*, 480 S.E.2d 497, 500 (Va. 1997) ("[W]hen a default occurs, a secured creditor is required to comply with Article 9 of the UCC in taking possession and selling the secured property.").

In this very case while resolving a prior appeal, the Supreme Court of South Carolina noted that "comment four to section 36-9-625(c)(2) states [the mandatory provisions applicable here are] '[] 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.'" *Delaney v. First Fin. of Charleston, Inc.*, 426 S.C. 607, 613 n.2, 829 S.E.2d 249, 251 n.2 (2019) (emphasis added)).

For a consumer goods pre-sale notice, the drafters of the UCC have made clear that the ignorance, intent, good faith, or reasonableness of the lender, and any other excuses the lender might make for non-compliance with the statute, are irrelevant. 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) (emphasis added)); 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*." (emphasis added)); 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." (emphasis added)). Finally, it is generally accepted that "[a]ny doubt as to compliance should be resolved in the debtor's favor. Any doubt about what constitutes strict compliance is resolved in the debtor's favor." Default and enforcement—Contents and form of notification before disposition of collateral: Consumer goods transaction, § 10:96, 20A1 Minn. Prac., Business Law Deskbook § 10:96.

Safe Harbor

Although strict compliance with the pre-sale notice requirements in Section 36-9-614 is required, compliance is not burdensome. 4 James J. White & Robert S. Summers, Uniform Commercial Code § 34-10 (4th ed. 1995 and Supp. 2001) ("The notice requirement is easy to understand and to apply."). In fact, the drafters of the UCC and the South Carolina General Assembly have made compliance literally as easy as cutting and pasting from the text of the statute. Specifically, "safe-harbor" form language is provided in the statute itself, with language that is legally sufficient as a matter of law. Secured creditors like FFC may copy and paste it verbatim into a pre-sale notice to ensure compliance. When a creditor uses the safe harbor language, its pre-sale notice is sufficient as a matter of law. S.C. Code Ann. § 36-9-614(3) ("The following form of notification, when completed, provides sufficient information."). Courts have found that creditors who choose not to use the safe-harbor language do so at their own peril. *See First Community Credit Union v. Levison*, 395 S.W.3d 571, 587 (Mo. App. E.D. 2013) ("[P]arties who fail to use the Safe Harbor Form do so at their peril."); *see also Parks v. CNAC-Joliet, Inc.*, 886 N.E.2d 376, 380–84 (Ill. 2008) (holding non-safe-harbor notice insufficient).

Minimum Mandatory Damages

Under subsection 36-9-625(b), a secured creditor who fails to comply with Article 9 is liable for "damages in the amount of any loss" caused by its noncompliance including but not limited to "loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing." But the Legislature went further in consumer-goods transactions, establishing a mandatory minimum recovery even where the consumer elects not to establish a financial loss. Specifically, subsection 36-9-625(c)(2) provides that a consumer may recover for a violation "*in any event an amount not less than*" the credit service charge plus ten percent of the principal amount of the obligation. (emphasis added). Thus, the General Assembly expressly recognized that the rights guaranteed to consumers under Article 9 are sufficiently important to warrant a statutory recovery even when a consumer chooses not to prove up actual damages. This deliberate legislative choice reflects the recognition that, in some cases, it may be difficult for consumers to prove readily quantifiable financial harm from a creditor's failure to provide the required notices, yet those violations undermine the very protections that make Article 9's extraordinary self-help remedies permissible. By establishing a mandatory minimum recovery independent of proven actual damages, the General Assembly made clear that compliance with Article 9's consumer protections is not optional and that creditors cannot escape accountability simply because a consumer may be unwilling or even unable prove a specific monetary loss. Indeed, the Supreme Court of South Carolina has expressly recognized that these statutory damages reflect the General Assembly's determination that ordinary compensatory damages in consumer repossession cases would be insufficient to ensure creditor compliance. *Crane v. Citicorp Nat'l Servs., Inc.*, 313 S.C. 70, 74–75, 437 S.E.2d 50, 53 (1993); *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 385, 534 S.E.2d 688, 695 (2000).

The Post-Sale Notice

If FFC elects to "dispose of" a consumer's vehicle by selling the vehicle, subsections 36-9-616(a) and (b) require FFC to send a "post-sale notice" to the consumer after a vehicle is sold. Like the statutes governing the pre-sale notice, section 36-9-616 lists the specific information that must be included in the post-sale notice. The same code section further dictates the *specific order* in which the specific information *must* be provided. 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*: . . . ." (emphasis added)). The failure to send a legally compliant post-sale notice results in damages of "five hundred dollars . . . ." *Id.* at (e)

Although subsection 36-9-616(d) contains a substantial compliance clause that excuses minor, non-misleading imperfections in a post-sale notice, the substantial compliance provision does not authorize secured creditors to disregard the mandatory informational requirements of subsection 36-9-616(c) or the mandate that the information required be provided "in the following order."

Article 9 Claims

From 2008 through 2021, FFC failed to send members of the Class a legally compliant pre-sale notice or a legally compliant post-sale notice.

Procedural History

Delaney filed this putative-class action on October 4, 2011, alleging that FFC was failing to comply with the mandatory disclosure requirements of Article 9. The initial complaint was dismissed on limitations grounds in 2013. (R. pp. __; App. 15–22, 41–56.) In 2019, the Supreme Court granted certiorari, reversed, and remanded to circuit court for further proceedings. *Delaney*, 426 S.C. at 613–16, 829 S.E.2d at 252–53.

In March of 2021, Delaney filed an amended complaint. (R. __.) On July 27, 2021, the circuit court granted Delaney's motion for class certification, relying in part on the fact that FFC uses "form documents"—changing only the customer names and financial data—when providing notice to customers before and after selling their vehicles. (R. pp. __.) The court found that class treatment is appropriate here pursuant to Rule 23, SCRCP, addressing numerosity, commonality, typicality, and adequacy of representation. (*Id.*) In sum, the circuit court found that the question of whether FFC's form documents comply with applicable provision of Article 9 presented identical questions of law and fact and therefore were tailor made for resolution on a class-wide basis. (R. pp. __.)

Subject to certain exceptions, the class certified by the court was similar but not identical to the class initially proposed in the amended complaint. The class certified by the circuit court included FFC customers who were mailed the defective notices challenged in the amended complaint and whose vehicles were sold "on or before October 3, 2008" through the date of the order "granting class certification [July 27, 2021]." (R. pp. __; Class Cert Order p. 2.) The class certification order further appointed Delaney as class representative. FFC sought reconsideration, which was denied.[4] (R. pp. __.)

In 2025, the parties filed cross-motions for summary judgment, both seeking summary resolution on a class wide basis on the substantive Article 9 disclosure claims. Delaney argued that the disclosures made to the class failed to comply with Article 9 as a matter of law, and FFC argued that the disclosures made to the class complied with Article 9 as a matter of law. Significantly, the class and FFC agreed that the Article 9 disclosure issues should be resolved on summary judgment grounds as a matter of law. (R. pp. __; Sept. 18, 2025 Order 1–3.)

[4] FFC further attempted to appeal class certification, which was dismissed, and certiorari was denied.

A hearing on the cross-motions for summary judgment was scheduled for May 1, 2025. Ten days before the hearing, FFC filed an amended motion for summary judgment. However, it was not until eight days before the scheduled hearing that FFC disclosed the factual and legal bases for that amendment. In its new, never before raised ground for summary judgment, FFC argued that Delaney was no longer an appropriate class representative. Significantly, FFC sought summary judgment on this ground as to the entire class.

In response to FFC raising its new ground, three other class members—Octavia Watson, Alicia Alston, and Paul McGuiggan—sought to intervene individually and as co-class representatives with Delaney. They argued that FFC's new ground for summary judgment was without merit, but out of an abundance of caution, moved to intervene to remedy any potential issue concerning Delaney's continued representation of the class. FFC opposed intervention and moved instead to decertify the Class. (*Id.* 3–4, 42–43.) Finally, Delaney also reminded the circuit court that a motion for sanctions was pending that also needed to be heard and resolved.

The circuit court declined to allow FFC's new summary judgment ground, the intervention motion, the motion to decertify the class, or the pending motion for sanctions to delay argument on the Article 9 disclosure claims and proceeded with hearing arguments on those claims at the May 1, 2025 hearing. As to the newly raised summary judgment ground, the motion to intervene, and the motion to decertify, the court allowed additional briefing and scheduled a hearing on these issues for August 13, 2025. (*Id.*)

On September 18, 2025, the circuit court granted summary judgment to the Class on each of their Article 9 claims related to the defective pre-sale and post-sale notice claims. (R. pp. __; Sept. 18, 2025 Order 1, 46.) The court also resolved FFC's arguments concerning Delaney's representation of the class and decertification. (*Id.* 4–46.) Thereafter, the court permitted Watson,

Alston, and McGuiggan to intervene and to serve as co-class representatives alongside Delaney. (R. p. __; Jan. 22, 2026 Order 1.)

On January 22, 2026, the court denied the Class's motion for sanctions, which was also appealed and now consolidated with this appeal.

On February 2, 2026, FFC appealed the following orders:

1. The July 27, 2021 Order granting class certification;
2. The August 19, 2021 Order denying FFC's Motion to Dismiss;
3. The November 8, 2021 Order denying reconsideration of the August 19, 2021 Order;
4. The February 17, 2022 Order denying reconsideration of class certification;
5. The August 20, 2025 Form 4 Order granting the Class's Motion for Summary Judgment, directing the Class to prepare a detailed order, denying FFC's Motion for Summary Judgment, denying FFC's Motion for Decertification, and directing the scheduling of the Motion to Intervene;
6. The September 18, 2025 Detailed Summary Judgment Order;
7. The January 22, 2026 Form 4 Order denying reconsideration of the September 18, 2025 order, granting the Motion to Intervene, and denying the Motion for Sanctions;

On April 9, 2026, Delaney, Watson, Alston, and McGuiggan appealed the January 22, 2026 order denying sanctions, and the March 10, 2026 order denying reconsideration of that order, which has been consolidated with this appeal and is addressed in separate briefing.

STANDARDS OF REVIEW

A circuit court's determination whether a class action should be decertified is reviewed for an abuse of discretion. *King v. Am. Gen. Fin., Inc.*, 386 S.C. 82, 88, 687 S.E.2d 321, 324 (2009) (applying the same abuse of discretion standard for determining whether a class should be certified to the question of whether a circuit court erred in decertifying a class). Reversal is warranted only when the circuit court abuses its discretion, including by applying an erroneous legal standard or making findings unsupported by the evidence.

This Court reviews the grant of summary judgment under the same standard applied by the circuit court under Rule 56, SCRCP. *Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023).

Questions of law are reviewed de novo. *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 109–10, 662 S.E.2d 40, 41 (2008). Because the contents of FFC's standardized notices are undisputed, whether those notices satisfy Article 9 presents a legal question subject to de novo review.

A circuit court's decision granting or denying intervention under Rule 24, SCRCP, is reviewed for abuse of discretion. *Ex parte Builders Mutual Insurance Co.*, 431 S.C. 93, 98, 847 S.E.2d 87, 90 (2020). An abuse of discretion occurs when the court's ruling is controlled by an error of law or lacks evidentiary support. *Id.*

ARGUMENT

I. The circuit court properly granted summary judgment in the Class's favor as to liability finding that the challenged notices fail to comply with Article 9.

A. The Pre-Sale Notice Requirements

Once FFC repossesses a vehicle, the SCUCC requires 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." *Id.* § 36-9-614 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
>
> (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).

As the circuit court correctly concluded, these disclosures serve important consumer-protection purposes. A debtor whose car has been repossessed must know if the collateral will be sold, and if so, how and when the collateral will be sold. The debtor also has the right to redeem before any sale. *Id.* § 36-9-623(c). A debtor also has the right to attend an auction, the potential consequences of failing to redeem, and the right to an accounting. These requirements are clear from the text of 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 are clear, unequivocal, and mandatory. To ensure they are followed the SCUCC provides for "minimal" mandatory damages that must be

awarded for each violation as a matter of law. *See Delaney*, 426 S.C. at 613 n.2, 829 S.E.2d at 251 n.2 ("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*." (emphasis added)); *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 384, 534 S.E.2d 688, 694–95 (2000) (secured creditors exercising Article 9 remedies must "scrupulously adhere to procedures contained in Article 9."); 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. S.C. Code Ann. § 36-9-614 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); *see also* 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*." (emphasis added)). 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. The Post-Sale Notice Requirements

If FFC elects to "dispose of" a consumer's vehicle by sale, the SCUCC imposes a further duty. Subsections 36-9-616(a)–(b) require FFC to send the consumer a post-sale notice setting out, in detail, the calculation of any surplus or deficiency with specific information. Importantly, the statute does not merely require the secured creditor to provide certain information; it expressly 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 . . . ." (emphasis added)). This requirement serves an obvious and important purpose. A post-sale explanation is intended to provide consumers with a clear, understandable accounting of what happened to their property and how the creditor calculated any remaining indebtedness. To accomplish that purpose, the General Assembly established a logical, step-by-step calculation that begins with the amount of the outstanding debt, identifies the proceeds received from selling the vehicle, subtracts those proceeds from the debt, accounts for additional expenses and credits, and concludes with the resulting surplus or deficiency. By requiring this information to be presented in the same sequence, the General Assembly ensured that consumers

could follow the calculation, understand how the creditor arrived at its final figure, and identify potential errors or improper charges. This protection is particularly important because the creditor exercises virtually complete control over the repossession and sale process and possesses the necessary financial information to determine whether the consumer owes additional money or is entitled to a surplus.

Nor is there anything unusual about the law requiring financial information to be presented in a particular format or sequence. Consumer protection laws frequently prescribe not only what information must be disclosed, but also how it must be presented to ensure that the information is understandable and useful to its intended recipient. For example, the federal Truth in Lending Act and its implementing Regulation Z prescribe standardized disclosures for mortgage transactions, including the organization, placement, and sequence of financial information. *See*, *e.g.*, 12 C.F.R. §§ 1026.37, 1026.38; *Mars v. Spartanburg Chrysler Plymouth, Inc.*, 713 F.2d 65, 67 (4th Cir. 1983) (reversing district court holding that violations of Regulation Z were only technical and there was no injury), *superseded by statute on other grounds*. The purpose of such requirements is straightforward: meaningful disclosure requires more than simply including the necessary numbers somewhere in a document. Information that is scattered, disorganized, or presented in a confusing sequence may be technically available yet practically useless to the consumer attempting to understand it. The same principle applies here. The General Assembly did not leave secured creditors free to devise their own methods of presenting post-sale notice information. Instead, it prescribed a straightforward sequence that enables consumers to understand and verify the financial consequences of the creditor's disposition of their property. To disregard that requirement as a mere technicality would deprive the General Assembly's express directive of its intended meaning and effect.

That information, and the order in which it *must* 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:

(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

(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;

(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;

(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 used a pre-sale notice that is referred to here 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 (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.

Description of Collateral: 2003 Chevrolet 1500 Vin# 1GCEC14X23Z296522

5025 Dorchester Road
Street Address

Charleston, SC 29418
City State Zip

Bob Lewis
By

(R. pp. __; App. 323–24.)

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 is referred to here as the "modified pre-sale notice":

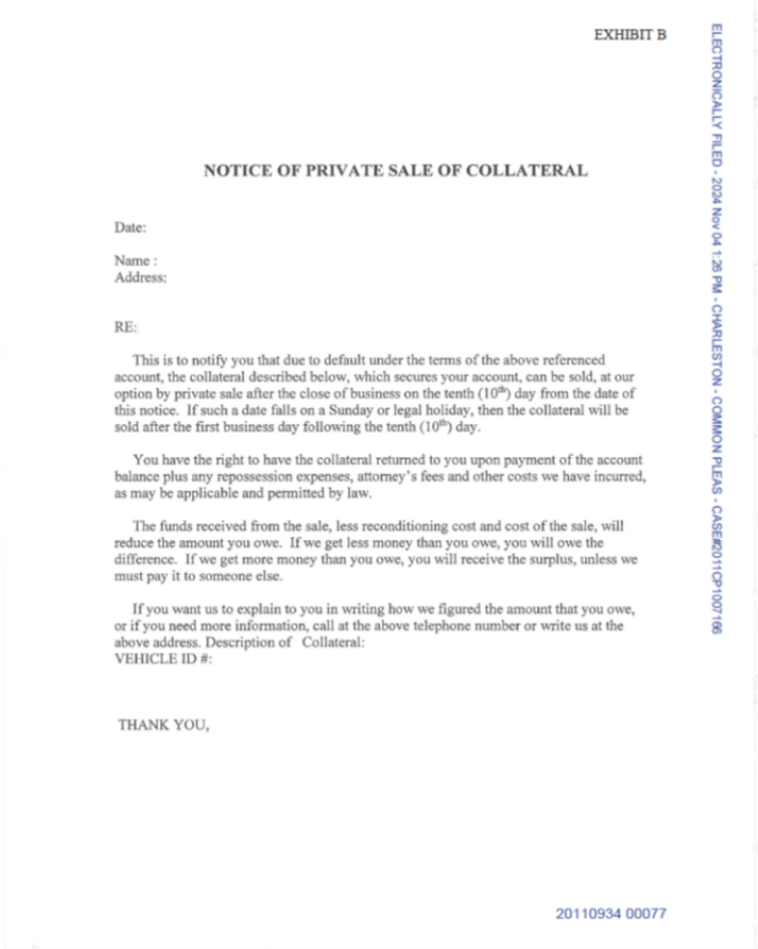

EXHIBIT B

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

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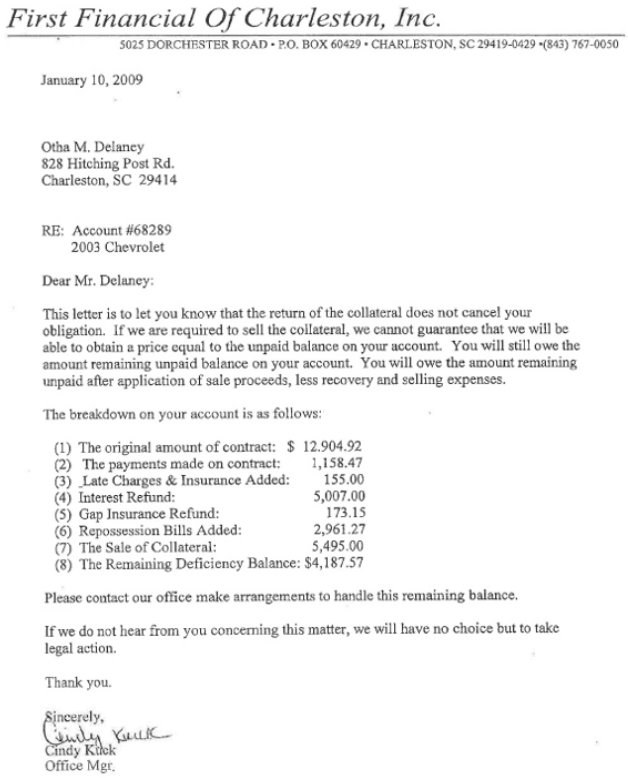
(R. pp. __; App. 324–25.)

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" [5]:



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,

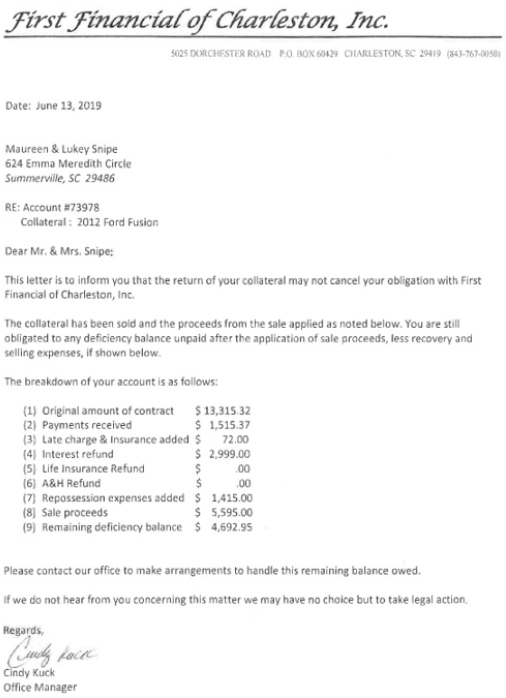
Cindy Kitek
Office Mgr.

(R. pp. __; App. 326, .)

F. FFC's Modified Post Sale Notice

When this lawsuit was originally filed in 2011, 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:

[5] FFC destroyed the pre-sale and post-sale notices that it sent consumers from October 2008 through January of 2012. However, the forms that FFC claims it used during this period are legally deficient for the reasons explained here.



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

(R. pp. __; App. 326, .)

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

The circuit court correctly concluded that the original pre-sale notice is insufficient as a matter of law. First, it failed to state the intended method of disposition. Subsection 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.

The uncertainty created by FFC's notices is particularly significant because Article 9 does not require secured creditors to sell repossessed vehicles. Rather, the Legislature expressly authorizes a creditor, under specified circumstances, to retain the vehicle in full satisfaction of the

indebtedness instead of selling it. See S.C. Code Ann. §§ 36-9-610, 36-9-620. Thus, repossession does not necessarily mean that a sale will occur at all, and the distinction between selling and not selling a vehicle, or having an option to sell a vehicle, is far from academic.

In any event, 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.[6]

Second, the notice failed to state the correct date "after which" disposition would occur. The notice stated that if the vehicle was sold, it would be sold "on the tenth (10th) day from the date of this notice." There is a good reason the statute requires that the date "after" a vehicle may be sold. For example, with Delaney, he was told his vehicle would be sold "on" May 12, 2008 or the next business day thereafter. However, FFC sold Delaney's vehicle eight months later, on January 10, 2009. Yet, Delaney had the right to redeem his vehicle any time before the vehicle was sold. FFC testified that the language used in the notice was intended to convey the message that you have ten days, and ten days only, to take action, which affirmatively misled the class members into believing their redemption rights expired within ten days, when in fact they are permitted under the Aticle 9 to redeem at any time before the vehicle is sold:

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[6] This case was vacated by agreement of the parties, and its reasoning remains sound. *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.")

> Q And is there anything on this form that says, you know, it might take us months to get it ready and get it auctioned and you can buy it back at any time prior to that?
>
> A No, it does not say they can buy it prior to that, no.
>
> Q I'm saying it does not inform the customer that they have the right to repurchase or redeem the vehicle or the account at any time before it's sold, correct?
>
> A It says they have ten days.
>
> Q I understand that. But I mean some of these vehicles we established have taken months for you to sell, correct?
>
> A I understand that also but it says you have ten days, so that means you have ten days to do something about it.
>
> Q I got ya. But if you don't act within ten days then you're out of luck?
>
> [Counsel for FFC]: Object to form.
>
> Q Right?
>
> [Counsel for FFC]: Same objection.
>
> THE WITNESS: That's correct.

(R. pp. __; 30(b)(6) Dep. Tr. pp. 86-87.) 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); see also S.C. Code 36-9-623 (c). FFC admits the notices conveyed a legally incorrect message, and further admits it was intended to convey that message.

Third, the original pre-sale notice failed to disclose entitlement to an accounting. The original pre-sale notice said nothing about a consumer's right to an accounting or the charge for one, in direct violation of subsections 36-9-613(1)(D) and 36-9-614(1)(A). The omission of this required disclosure renders the notice "insufficient as a matter of law." S.C. Code Ann. § 36-9-614, cmt. 2.

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

the "accounting" entitlement defect:

> Q Why did you revise the [pre-sale] 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.

(R. pp. __; Suppl. Mem. in Supp. of Pl.'s Mot. for Summ. J. & in Opp. to Def.'s Mot. for Summ. J. p. 20.) But the modification did not cure the defects. It still did not correct the failure to specify the method of disposition or to identify the date "after which" the vehicle would be sold. The statutory safe-harbor form, which FFC chose not to copy, would have avoided these violations entirely. *See* S.C. Code Ann. § 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 two fatal defects:

- no statement of the intended method of disposition; and
- no statement of the date "after which" disposition would occur.

Additionally, the original pre-sale notice did not provide the consumer with the statement of entitlement to an accounting, and the circuit court also found that the modified pre-sale notice similarly failed.

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. 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. The circuit court therefore did not err in granting summary judgment in the Class's favor.[7, 8]

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

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).

If the General Assembly had intended to permit secured creditors to present the required

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[7] FFC's references to Professor Lacy's opinion, who FFC never permitted to be deposed, do not alter the analysis. (FFC Initial Br. p. 34 n.22, pp. 40-41, nn.28–29.) Tellingly, Professor Lacy's notes themselves acknowledge, "First Financial has a *major problem*," and, "Argument that written explanation of deficiency was sufficient under 9-613(1)(D) *is weak*." (R. pp. ___; Lacy subpoena response (emphasis added).) In any event, the circuit court did not rely on Professor Lacy in its order granting the Class summary judgment, and FFC does not argue that the circuit court erred by not reply on Lacy's untested opinion. In any event, Lacy's improper, ostensible legal conclusions of the forms' sufficiency do not supply the required information the forms clearly omit. The Court itself must determine whether the forms comply with Article 9.

[8] Even apart from the circuit court's stated reasoning, this Court may affirm on any ground appearing in the Record on Appeal. Rule 220(c), SCACR. The Original Pre-Sale Notice is independently deficient because its statement that the collateral "can be sold, *at our option*, by private sale" is affirmatively misleading. FFC itself argued below that this language was appropriate because a debtor might exercise the right to redeem. (R. p. __; May 1, 2025 Hr'g Tr. p. 67.) But redemption is not an "option" belonging to FFC. Section 36-9-623 gives the debtor the right to redeem the collateral, upon tender of the secured obligation and allowable expenses, at any time before disposition. S.C. Code Ann. § 36-9-623(a)–(c). Thus, if a debtor timely tenders the amount necessary to redeem, FFC has no option to proceed with its contemplated sale—the debtor is entitled to the collateral back. Indeed, the circuit court identified this very problem at the hearing: "if you go to redeem it, you don't have an option to sell it. If they redeem it within the appropriate time, they get it back, right?" (R. p. __; *id.* at p. 115.) Describing that statutory right instead as something occurring "at our option" therefore seriously misstates who possesses the relevant choice.

financial information in any order they chose, there would have been no reason to include the words "in the following order" in § 36-9-616(c). Those words must be given meaning. Although subsection (d) excuses minor errors that are not seriously misleading and does not require any particular phrasing, it does not eliminate subsection (c)'s express requirement concerning the sequence of the calculation. Otherwise, the General Assembly's decision to prescribe that sequence would accomplish nothing. The distinction is between allowing reasonable flexibility in how required information is expressed and permitting creditors to disregard the very structure the General Assembly expressly required. The former is consistent with substantial compliance; the latter risks rendering the statutory sequencing requirement meaningless.

Any one violation of Subsections (c)(1)–(6) would entitle the Class to summary judgment as a matter of law.

The circuit court correctly determined that 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 subsection 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 or eighth. 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 direct violation of subsection 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

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[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.

(R. pp. __; 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 subsection 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. *Id.* § 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 subsection 36-9-616(c)(6).

In addition, 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.").

[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. (R. pp. __; 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.*)

Here, neither the original nor modified post-sale notices include the "specified date" used to 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.

Under Section 36-9-616(a)(1)(C), FFC "was required to alert [the consumer] 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).

Finally, the original post-sale notice misleadingly stated, "If we are required to sell your collateral," even though a 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). 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.

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

In summary, the Class is only required to show a single defect with the original post-sale notices for this Court to affirm the grant summary judgment in its 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, the Class is only required to show a single defect with the either post-sale notice for this Court to affirm the grant summary judgment in its 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;
- 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 the Court should affirm summary judgment for the Class on liability.

II. Any improper reliance on prior orders in granting summary judgment was cured by independent review and independent rulings.

FFC's argument about the effect of prior orders does not undermine summary judgment. Judge Bonds did not merely announce that earlier judges had ruled against FFC. He independently compared the notices with the statutory requirements and explained why they were deficient, expressly reaching the same result even if prior determinations were not binding. (R. pp. __; Sept. 18, 2025 Order 22–31.) Whether the earlier interlocutory rulings were binding, the independent grounds support affirmance. Rule 220(c), SCACR.

III. The circuit court correctly applied Rules 23(c), (d), and 25, SCRCP.

When FFC supplemented its motion for summary judgment days before the summary judgment hearing, FFC raised issues unique to Delaney related to Delaney's individual 2013 bankruptcy. Although those issues are unique to Delaney and have no apparent bearing on the claims of the remaining class members, FFC nevertheless attempted to use them as a basis for obtaining summary judgment *against the entire certified class*. This attempt fundamentally

contorts the nature of a certified class action and ignores the protections afforded to absent class members under Rule 23, SCRCP.

Once an action is certified as a class action, the litigation encompasses more than the individual claims of its named representative. The class members possess their own substantive claims, and the representative plaintiff prosecutes those claims on their behalf. Accordingly, a defense arising exclusively from the personal circumstances of a class representative (even if valid) does not, without more, provide a basis for extinguishing the independent claims of the remaining class members. Whatever effect Delaney's 2013 bankruptcy may ultimately have upon his individual right to recover, it does not establish that FFC complied with Article 9 when repossessing and disposing of thousands of other consumers' vehicles, nor does it provide a defense to the statutory claims of consumers who were not parties to Delaney's bankruptcy.

Indeed, Rule 23 expressly anticipates circumstances in which issues arise concerning a class representative's continued ability to represent the class. Rule 23(d)(2), SCRCP, authorizes the circuit court, "at any time," to impose terms necessary to "fairly and adequately protect the interest of the persons on whose behalf the action is brought." Rule 23(d)(3) likewise authorizes the court to impose additional conditions on representative parties when necessary to protect absent class members, including limiting the scope of a judgment to those who have been adequately represented. The Supreme Court of South Carolina has recognized that these provisions afford circuit courts continuing authority over the management of certified class actions and the protection of absent class members. *Salmonsen v. CGD, Inc.*, 377 S.C. 442, 661 S.E.2d 81 (2008); *Eldridge v. City of Greenwood*, 308 S.C. 125, 417 S.E.2d 532 (1992).

Rule 23(c) further reflects the importance of protecting absent class members by prohibiting the dismissal or compromise of a class action without judicial approval and court-directed notice. Although that provision does not prohibit summary judgment on a defense

applicable to the class as a whole, it reinforces the fundamental distinction between an individual's claim and the claims of the certified class. The claims of absent class members cannot simply be treated as extinguished because FFC identifies a defense peculiar to one representative. To allow FFC to obtain judgment against the entire class based solely on Delaney's bankruptcy would improperly elevate an individualized defense into a class-wide bar and defeat the very purpose of Rule 23.

FFC's belated presentation of this issue only underscores its improper use. FFC sought to spring Delaney's individual bankruptcy issue on the class and convince the court to grant class wide summary judgment eight days later. This was obviously done to prevent the class from having other class members intervene, or to prevent the court from taking steps to protect the absent class members, which is precisely what Rule 23 authorized the circuit court to do. Rather than permit FFC to use a defense peculiar to Delaney to avoid adjudication of the common statutory violations at issue, the court exercised its authority under Rule 23(d) to protect the certified class and ensure that any ruling concerning Delaney's bankruptcy is confined to the claims or representation issues actually affected by that proceeding.

In any event, at best, Delaney's individual interest in his claim was transferred to the bankruptcy trustee in 2013 when Delaney filed for bankruptcy. However, as more fully addressed below, Rule 25(c), SCRCP, expressly provides that "[i]n 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."

Finally, Rule 23(c) provides, "A class action shall not be dismissed or compromised 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[,]" and Rule 23(d) gives the court additional authority to, for example, "impose such terms as shall fairly and adequately protect

the interest of the persons on whose behalf the action is brought or defended." The circuit court properly relied on Rules 23(c) and (d) in rejecting FFC's summary judgment argument to protect the interests of the absent class members and ensure fairness.

IV. FFC abandoned any arguments regarding the class certification and the motion to dismiss the amended complaint.

While FFC stated it was appealing the July 27, 2021 Order granting class certification and the February 17, 2022 order denying reconsideration of that order, as well as the August 19, 2021 Order denying the motion to dismiss the amended complaint and the November 8, 2021 Order denying reconsideration, FFC advances no arguments in its brief regarding these four orders. An issue not addressed in a party's brief is deemed abandoned. Wright v. Craft, 372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006). Therefore, any argument that the circuit court abused its discretion in certifying the class, denying the motion to dismiss, or denying reconsideration of those orders is abandoned.

V. FFC's remaining arguments do not have merit.

a. The modified notices contain the same defects as the notices sent to Delaney, and only one defect is necessary to establish liability.

FFC argues that Delaney lacks standing to challenge the modified notices because he did not personally receive them. (FFC Br. 50–52). But this argument ignores that Delaney received notices containing the same statutory deficiencies as the modified notices. Indeed, the circuit court expressly found that the original and modified notices were substantially similar and that Delaney's claims were typical and representative of the class. (July 27, 2021 Class Certification Order at 6–7; Sept. 18, 2025 Order at 43–44). Delaney's ability to pursue class claims does not depend on his having personally received every version of FFC's standardized notices, and the

existence of minor differences between those forms does not defeat his ability to represent class members whose claims arise from the same statutory violations.

In any event, the modified notices contained several of the same deficiencies as the original notices, and the circuit court correctly determined that Delaney was adequate to represent all class members.

Finally, the intervenors received either the original or the modified notices, and their intervention cures any issue related to adequacy of representation.

b. Subsection 36-9-628(e) does not prohibit class actions.

FFC next argues that Section 36-9-628(e) bars class actions under Article 9. (FFC Br. 52). The circuit court correctly determined that provision merely prohibits more than one statutory minimum recovery *for any one secured obligation*; it does not prohibit class actions or limit FFC's liability to one recovery across hundreds of separate loans. *See Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 377, 595 S.E.2d 461, 465 (2004). Delaney and the class seek only one statutory minimum recovery per secured obligation, with any co-obligors sharing that recovery.

c. FFC's decertification arguments were identical to its summary judgment arguments and did not need to be separately noticed.

FFC argues that the circuit court erred in denying its motion to decertify the class because the motion was not separately noticed for hearing on August 13, 2025. This argument is without merit.

FFC's supplemental motion for summary judgment raised each and every argument that was also raised in its decertification. But this argument ignores the history of the proceedings and, more importantly, the actual text of FFC's motion for summary judgment. In fact, each of FFC's grounds in support of its decertification motion expressly relied upon arguments FFC's made in

support of summary judgment memorandum. Specifically, each ground for decertification stated in the headed of each argument, "as explained in FFC's Summary Judgment Memo," with footnote citations to the exact summary judgment memorandum pages. (R. pp.__; Mot. to Decertify pp. 4, 6-8.) FFC was well aware that these issues would be heard by the court on August 13, 2025, and its assertion to the contrary is disingenuous at best.

In any event, FFC identifies no prejudice resulting from the absence of a separately noticed hearing nor does it identify a single additional argument it would have advanced, or any evidence it was prevented from presenting. Under these circumstances, requiring a separately noticed hearing would serve no purpose other than to allow FFC to repeat arguments FFC made on August 13, 2025.

Accordingly, the circuit court did not err in rejecting the arguments made in support of decertification as those identical arguments were made in support of summary judgment.

d. Delaney's bankruptcy does not implicate standing, and FFC's bankruptcy related arguments were properly resolved by the circuit court.

FFC's bankruptcy argument begins from the wrong procedural premise. Delaney did not file bankruptcy, lose standing to pursue his claim, and then commence an action he did not have standing to commence. Delaney commenced this action in 2011. His Chapter 7 petition was filed in 2013, almost two years later. Thus, even accepting FFC's premise that Delaney's claim was transferred to his bankruptcy estate/trustee in 2013, this would only result in a transfer of interest related to the claim, not a loss of standing.[11]

The circuit court correctly concluded that South Carolina's procedural rules address that situation expressly. Rule 25(c), SCRCP, provides that, "[i]n case of *any transfer of interest*, the

[11] Accepting FFC's argument as true, the 2013 transfer occurred in 2013 would be unaffected by later bankruptcies.

action *may be continued by* or against *the original party*," unless the court directs substitution or joinder of the transferee. (emphasis added). Rule 25(e) goes further: substitution under Rule 25 may occur "either before or after judgment, or pending appeal." Those provisions exist precisely because a transfer of an interest during litigation does not cause the pending case to disappear.

Other courts have recognized the transfer-of-interest/real-party-in-interest in the bankruptcy context. In *Barger v. City of Cartersville*, the plaintiff filed bankruptcy after commencing her civil action, under those facts causing her claim to become property of the estate. The Eleventh Circuit nevertheless applied Rule 25(c), explaining that the trustee could succeed to the plaintiff's interest "from this point forward" rather than treating the intervening litigation as a nullity. 348 F.3d 1289, 1292–93 (11th Cir. 2003). Likewise, the Fourth Circuit has recognized that, when a pending claim becomes estate property, the trustee may assume prosecution, consent to prosecution by the debtor for the estate's benefit or decline to prosecute it. *Detrick v. Panalpina, Inc.*, 108 F.3d 529, 535–36 (4th Cir. 1997). Those authorities recognize that even when it is determined that a bankruptcy estate owns a claims because it was transferred, the estate's ownership does not converting a post-lawsuit bankruptcy into retroactive destruction of the pending lawsuit.

FFC's real-party-in-interest objection independently fails for another reason: it was not raised promptly. FFC never produced or otherwise indicated it was relying on Delaney's bankruptcy documents during discovery, yet its excuse for failing to produce them was that they were a matter of public record. If a matter of public record, FFC knew of the bankruptcy in 2013 and failed to raise it until 2025. The circuit court correctly determined that FFC could not rely on this premise to its benefit. (R. p. __; Order p. 8.)

South Carolina law distinguishes a real-party-in-interest objection from subject-matter jurisdiction. In *Bardoon Properties, N.V. v. Eidolon Corp.*, the Supreme Court held that whether

a plaintiff is the real party in interest "does not involve subject matter jurisdiction" and that the objection may be waived if it is not timely raised. 326 S.C. 166, 169–71, 485 S.E.2d 371, 373–74 (1997). The Court emphasized that such an objection exists for the defendant's protection and therefore must be asserted promptly.

Even accepting FFC's own chronology, it did not do so here. FFC says it learned of Delaney's bankruptcy during his July 2024 deposition. Yet FFC continued litigating the merits and filed its own motion for summary judgment on September 11, 2024, without asserting bankruptcy as a ground for judgment. It did not add the bankruptcy theories until April 20, 2025—approximately nine months after its claimed discovery and only days before the scheduled merits hearing. (R. pp. __; FFC Initial Br. 17; Sept. 18, 2025 Order 1–3.) Under *Bardoon*, FFC cannot transform a real-party objection it failed to raise promptly into a nonwaivable jurisdictional defect capable of undoing the proceedings that came before it.

That waiver disposes of FFC's real-party-in-interest objection. It does not, standing alone, dispose of FFC's separate argument under 11 U.S.C. § 362(a)(3), and the Court need not conflate the two. FFC concedes that subsection (a)(1), which stays proceedings "against the debtor," does not ordinarily stay an affirmative action brought by the debtor. Its actual contention is that Delaney exercised control over estate property in violation of subsection (a)(3). (FFC Initial Br. 9–12.)

But even that argument does not support the class-wide remedy FFC seeks. FFC's authorities establish, at most, that an estate-owned claim may require participation, approval, or action by the trustee. *In re Bailey*, for example, recognizes substitution or trustee approval as means of avoiding dismissal and further recognizes the bankruptcy court's authority, where appropriate, to annul the stay. 306 B.R. 391, 393–94 (Bankr. D.D.C. 2004). The problem identified in those cases is protection of the bankruptcy estate's ownership and control of its asset—not conferring a merits windfall on the civil defendant. And whatever interest Delaney's estate acquired in 2013, it

acquired no interest in the independent Article 9 claims belonging to Watson, Alston, McGuiggan, or the other consumers whose own vehicles were repossessed and whose own notices are challenged here.

FFC's related argument that Delaney's bankruptcy "mooted" the action before certification fares no better. A transfer of ownership is not an extinguishment of the underlying cause of action. Rule 25(c)'s very premise is that an action continues following a transfer of interest. If Delaney's interest became property of the estate, the controversy with FFC remained; the question became who was entitled to control or receive the proceeds of Delaney's claim. And Rule 25(e) expressly permits substitution even after judgment or while an appeal is pending. The appropriate response to any remaining ownership concern is therefore the party-management mechanism the rules provide—not retroactive erasure of an otherwise live controversy.

The same distinction answers FFC's reliance on the Certification Order's bankruptcy-discharge exclusion. Even assuming Delaney's discharge ultimately excludes him from the certified definition or prevents him from continuing as representative, that is a representative-specific problem. It does not establish that the other consumers ceased to possess their own Article 9 claims. As discussed below, those consumers responded to FFC's challenge by seeking intervention, providing the Court a direct means to protect the Class even if FFC is correct about Delaney's individual status.

Finally, judicial estoppel does not supply the class-wide judgment FFC seeks. Judge Bonds considered FFC's contention that Delaney intentionally concealed this litigation and concluded that the necessary factual inferences were disputed. (R. pp. __; Sept. 18, 2025 Order 13–14.) *Cothran v. Brown* requires an intentional effort to mislead the court, not merely the existence of inconsistent filings. 357 S.C. 210, 215–16, 592 S.E.2d 629, 632 (2004). And *Keathley v. Buddy Ayers Construction, Inc.*, No. 25-6, slip op. at 7–9 (U.S. June 11, 2026), rejects a mechanical

inference of intentional deception based solely on knowledge of the claim and a possible motive to conceal it.

The bankruptcy history does not compel FFC's preferred inference as a matter of law. Delaney's 2013 statement of financial affairs identified this lawsuit, although it described the action as dismissed; the 2016 bankruptcy was itself dismissed without a discharge; and the 2024 schedules were amended to identify the lawsuit, its asserted value, and counsel before FFC raised bankruptcy as a summary-judgment ground. (R. pp. __; App. 427, 480–81, 535–47.) At minimum, those circumstances permit competing inferences concerning intent, which could not properly be resolved in FFC's favor on its motion for summary judgment.

More fundamentally, any judicial estoppel based on Delaney's conduct would be personal to Delaney. Watson, Alston, McGuiggan, and the absent Class members made no representation in his bankruptcy cases, and their claims were never property of his estate. FFC therefore cannot transform disputed issues concerning Delaney's bankruptcy into judgment against an entire Class whose substantive claims are independent of his.

Accordingly, the 2013 bankruptcy did not extinguish the pending action. Rule 25 expressly accommodates the post-filing transfer FFC alleges; FFC waived its untimely real-party-in-interest objection; the automatic-stay issue does not justify class-wide nullification; and the bankruptcy court has provided a mechanism to protect any estate interest in Delaney's individual recovery. At most, the bankruptcy may require adjustment of Delaney's personal participation. It does not require reversal of the Class's liability judgment.

Finally, FFC's contention that Delaney is not a member of the Class rests on the wrong class definition. FFC looks principally to exclusionary language in the amended complaint, but once a class is certified, the operative class is the class defined by the certification order—not the class as previously pleaded. *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.").

Here, the certification order certified a class expressly defined by reference to consumers who received either the "Delaney Presale Notice" or the Revised Presale Notice, and the court expressly found that Delaney satisfied Rule 23's requirements to serve as the representative of that certified class. FFC cannot now use language from the complaint to rewrite the class that the circuit court actually certified. Judge Bonds correctly rejected this precise argument in the summary-judgment order, holding that "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." (R. pp. __; Order p. 38.) He further explained that FFC's reliance on the complaint's language had already been rejected at certification and that nothing material had changed permitting FFC to relitigate that issue. (*Id.* at pp. 38-39). Accordingly, FFC's premise that Delaney falls outside the Class is incorrect: the operative certification order appointed Delaney to represent the certified Class, and FFC cannot displace that judicially defined class by reverting to the definition in the complaint.

e. The bankruptcy court's order resolved any ostensible issue related to Delaney's bankruptcy.

In June of 2025, Delaney moved to reopen his 2013 bankruptcy estate. FFC nevertheless objected to reopening while continuing to argue in the state action that the estate's ownership required judgment in its favor. The result of that motion was the bankruptcy court entering an order on December 18, 2025, with agreement of all the parties, protecting the estate's interest in any individual recovery of Delaney while preserving the parties' rights and defenses in the state court litigation. The December 18, 2025 further provided that "any recovery by Debtor of funds in the State Court Litigation shall be held in trust by Debtor's counsel for the benefit of Debtor's estate"

and required Delaney to move to reopen the bankruptcy within thirty days of a financial recovery. (R. p. __); *In re Delaney*, No. 13-00446-jd (Order dated Dec. 18, 2025). The order therefore provides a mechanism to protect the estate's interest while the litigation proceeds, just as the circuit court ruled.

f. Intervention cures any issue with Delaney, and intervention was properly granted.

Even if FFC arguments have merit, that would merely establish the need for another representative, not a right to dismiss the entire Class's case. Three class members sought intervention before the liability ruling, and Judge Bonds granted their request. Their claims arise from their own transactions with FFC and are unaffected by Delaney's bankruptcy. (R. pp. __; Mot. to Intervene; Supp. Mot. to Intervene; Jan. 22, 2026 Order.)[12]

FFC's own authority confirms the point. *Bertrand v. Maram* explains that even when a representative's claim becomes moot before certification, dismissal is not required if "someone else intervenes to carry on as the representative." 495 F.3d 452, 455 (7th Cir. 2007). Here, the underlying claim was not extinguished by its asserted transfer to an estate, and other claimants have already appeared. Intervention does not require the Court to attribute Delaney's personal circumstances to the Class or discard the common adjudication on that account. *See also Ferguson*

[12] FFC acknowledged that if other class members intervened, it would make Delaney's bankruptcy arguments irrelevant:

> The Court: But the class itself would still go forward in state court.
>
> [FFC's counsel]: I think they'd go find another class representative in that case. They've acted like they said that's not going to be a problem. So again, I don't know why we're arguing so vociferously over $2,000 here.

(R. pp. ___); In re Delaney, 13-00446-jd (Bankr. D.S.C. filed July 25, 2025) (ECF 41).

v. Charleston Lincoln Mercury, Inc., 349 S.C. 558, 566, 564 S.E.2d 94, 98 (2002) ("We hold that where a single named plaintiff in a class action suit dies before class certification, the named plaintiff no longer adequately represents the class and the suit becomes moot, unless a suitable plaintiff intervenes."), *overruled on other grounds by Hughes on behalf of Est. of Hughes v. Bank of Am. Nat'l Ass'n*, 442 S.C. 113, 898 S.E.2d 102 (2024).

FFC argues that intervention required the applicants to concede that Delaney inadequately represented them. Rule 24 imposes no such pleading dilemma. The applicants could dispute FFC's claimed disqualification while seeking to protect their own interests should the Court accept it. If Delaney could not continue, their direct interests in the pending claims would be threatened by disposition without an adequate representative. Independently, Rule 24(b)(2) permits intervention when the applicants' claims share a question of law or fact with the pending action; it does not require a finding that an existing party is inadequate. These applicants sought to prosecute the same Article 9 claims concerning the same standardized notices. Their continued support for Delaney therefore did not foreclose permissive intervention.

Their interventions were timely in relation to the asserted threat to representation. FFC raised its bankruptcy grounds in April 2025; Watson and Alston applied on July 16, and McGuiggan joined on July 31, before the September liability ruling. They added no defendant or new liability theory. FFC's opposition identifies no change in the common proof occasioned by their participation. Any appropriate inquiry into their individual qualifications can be conducted without requiring the Class to begin the litigation again. (R. pp. __; Sept. 18, 2025 Order 1–4; FFC Initial Br. 52–54 & n.31.)

The remaining intervention objections concern matters that do not justify the relief FFC seeks. Its Rule 24(c) objection is that a separate pleading did not accompany the motions to intervene. But the motions and supporting affidavits identified the applicants' own transactions

and their request to prosecute the existing class claims. FFC's brief itself describes those claims and the requested representative status. (FFC Initial Br. 52–54 & n.30.) FFC identifies no prejudice because the claims were not repeated in an accompanying pleading. Any necessary direction to supply that pleading would enforce Rule 24(c) without undoing intervention. Rule 61, SCRCP.

FFC's Rule 23 argument likewise does not require undoing intervention or dismissing the Class. The existing certification findings concern the same defined class and the same standardized claims; adding representatives did not change those class-wide features. The Intervenors' own transactions supply the basis for examining their representative qualifications. They assert claims arising from FFC-financed vehicles, repossessions, and the challenged notices, and they seek the same determination of statutory compliance as the Class. (R. pp. __; Watson, Alston, and McGuiggan Affs.) FFC itself describes Alston's claim as involving the original notices and Watson's as involving the modified notices. (FFC Initial Br. 52.) Those claims bear directly on typicality, and their shared interest in establishing the forms' noncompliance supports adequacy rather than antagonism to the Class.[13]

Intervention nevertheless remains distinct from appointment as a class representative. If this Court concludes that the order requires additional express findings concerning an applicant's typicality or adequacy, it should direct the circuit court to make those findings. That would address the asserted deficiency without treating it as a failure of the Class's unchanged common characteristics or invalidating otherwise proper intervention. The intervenors' qualifications can be evaluated on their own evidence; FFC has shown no reason why a need for additional findings would require dismissal of the claims they seek to protect. Rule 23(a), (d), SCRCP.

g. The Supreme Court's disposition forecloses FFC's renewed remittitur

[13] Because the Intervenors have the exact same claims under the exact same law, any Rule 23 analysis was self-evident.

argument.

FFC presented its remittitur objection in moving to dismiss Delaney's petition for certiorari. The Supreme Court denied that motion as moot, granted certiorari, and then decided the merits, reversing the dismissal and remanding this case. (R. pp. __; App. 222, 246–52, 264.) *Delaney v. First Financial of Charleston, Inc.*, 426 S.C. 607, 829 S.E.2d 249 (2019). The circuit court, through multiple orders, has properly proceeded under that mandate. Had the Supreme Court agreed with FFC's argument, it would have granted the motion to dismiss the petition for writ of certiorari and would not have addressed the merits of the appeal. FFC cannot use this appeal to reinstate the dismissal the Supreme Court reversed.

CONCLUSION

The consumers in this case pledged their vehicles, not their statutory protections. Article 9 gave FFC extraordinary power to repossess and sell those vehicles but imposed corresponding duties to the people whose property it took. FFC exercised that power. Its standardized notices failed to fulfill those duties. The circuit court's judgment did not impose new obligations on FFC; it enforced the protections that accompanied FFC's remedies from the outset.

Nearly fifteen years after this action began, the Class still awaits relief. FFC's efforts to revisit old rulings and turn one representative's bankruptcy into a defeat for the entire Class should not obscure the straightforward statutory violations at the heart of this case. These consumers' claims arise from their own loans, their own repossessed vehicles, and FFC's notices to them. The circuit court properly resolved the common liability questions and allowed other class members to step forward when FFC challenged Delaney's continued representation. Those rulings preserve the consumers' rights without enlarging FFC's obligations.

FFC demands that its customers honor their obligations. The law requires FFC to honor its own. The Court should affirm the rulings challenged by FFC and remand for determination of the Class's relief to bring this almost fifteen-year-old case to its conclusion.

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October 13, 2026