

CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSOURI

Ally Financial Inc.,)
)
 Plaintiff,)
)
 v.)
)
 Alberta Haskins and,)
 David Duncan,)
)
 Defendants.)

Case No. 16JE-AC01713-01

Division: 13

FILED
NOV 25 2019

MICHAEL E. REUTER
CIRCUIT CLERK

ORDER:

1. Ally's Motion to Decertify is **DENIED**. A central aspect of this class action is a determination of whether Ally violated any statutory provisions under the UCC governing redemption and its form UCC notices. The claims asserted here "present a classic case for treatment as a class action." *State ex rel. Gen. Credit Acceptance Co., LLC v. Vincent*, No. SC97175, 2019 WL 1446936, at *2 (Mo. banc Apr. 2, 2019) ("*GCAC*"). However, the Supreme Court found problems with the class definition in *GCAC* as it was "presently defined" because it included "large numbers of individual claims precluded by final deficiency judgments or estopped by their failure to disclose the claims in bankruptcy." *Id.* at 1. *GCAC*, 2019 WL 1446936, at *1. Ally alleges the same problems in *GCAC* exist here. Class Representatives contend the problems in *GCAC* don't exist here because Ally failed to produce sufficient evidence to show the classes include "large numbers of individual claims precluded by final deficiency judgments or estopped by their failure to disclose the claims in bankruptcy." Without conceding there are problems with the class definitions as presently defined, Class Representatives have agreed to exclude all persons: against whom Ally has obtained a deficiency judgment; who filed for Chapter 7 bankruptcy after the date on the presale notice and whose bankruptcy ended in discharge rather than dismissal; and who filed for Chapter 13 bankruptcy

pending after the date on the presale notice and whose bankruptcy is still pending or ended in discharge rather than dismissal. With these modifications, *GCAC* supports certification, not decertification.

2. Modification is the appropriate remedy, not decertification. *Id.* at *5 (“The overly broad class definition is not necessarily fatal, because an overly broad “class definition may be modified consistent with the precepts of ... Rule 52.08 in order to remove the uninjured putative members.”); *see also* *Messner v. Northshore University HealthSystem*, 669 F.3d 802, 825 (7th Cir. 2012) (“Defining a class so as to avoid, on one hand, being over-inclusive and, on the other hand, the fail-safe problem is more of an art than a science. Either problem can and often should be solved by refining the class definition rather than by flatly denying class certification on that basis.”); *In re Nexium Antitrust Litigation*, 777 F.3d 9, 22 (1st Cir. 2015) (same). The Court rejects Ally’s arguments for decertification. However, the Court makes these modifications to the class definitions:

Class 1:

All persons within the class period in Exhibit A to this Order:

- a. who are named as borrowers or buyers on a loan or financing agreement with Ally, assigned to Ally or owned by Ally;
- b. whose loan or financing agreement was secured by collateral;
- c. whose collateral was repossessed, voluntarily or involuntarily; and
- d. whose collateral was disposed.

Class 2:

All persons:

- a. who obtained a Missouri Certificate of Title for a motor vehicle identifying Ally as the lienholder, or who are named as borrowers or buyers with a Missouri address on a loan or financing agreement with Ally, assigned to Ally or owned by Ally;

- b. whose loan or financing agreement was secured by a motor vehicle or other collateral;
- c. whose motor vehicle or other collateral was repossessed, involuntarily or voluntarily;
and
- d. whose motor vehicle or other collateral was disposed from June 17, 2010, through
the present.


Excluded from Class 1 and Class 2 are all persons: against whom Ally has obtained a deficiency judgment; who filed for Chapter 7 bankruptcy after the date on their presale notice and whose bankruptcy ended in discharge rather than dismissal; and who filed for Chapter 13 bankruptcy pending after the date in the presale notice and whose bankruptcy is still pending or ended in discharge rather than dismissal. Under Paragraph 5 of this Order, Ally must identify everyone on the class list who falls within these exclusions within 30 days after this Order. Everyone on the class list (including supplements to it) submitted by Ally that is not identified as being within these exclusions are properly within Class 1 and Class 2 and cannot later be excluded based on res judicata or estoppel.

3. Class Representative's Motion to Compel is **GRANTED** in part and **DENIED** in part without prejudice. The Court orders Ally to produce its "policy and procedures" and "process and policy" Ally follows in handling the class member's accounts. Ally's status report states it expects to produce these documents by May 17, 2019. The Court orders Ally to supplement the class list with the presale notice date and disposition date for each class member. The Court orders Ally to identify any past or pending class actions regarding its presale or post-sale notices, and produce any settlements or judgments resulting from the identified class actions. Ally's status report states its database includes information for bankruptcy regarding the case number, date of the filing, whether there was a discharge in the case or it was dismissed, and whether the filing was a chapter 7 or 13. The Court orders Ally to supplement the class list with this information regarding bankruptcies for

each class member. Ally must identify all persons on the class list (and any supplements to it) whom Ally asserts: has deficiency judgment them; who filed for Chapter 7 bankruptcy after the date on their presale notice and whose bankruptcy ended in discharge rather than dismissal; and who filed for Chapter 13 bankruptcy pending after the date in the presale notice and whose bankruptcy is still pending or ended in discharge rather than dismissal. The remainder of the Motion to Compel is denied without prejudice. Ally must comply with this Paragraph within 45 days after this Order.

SO ORDERED:

November 25, 2019
Dated


Judge Katherine M. Hardy-Senkel