STATE OF CONNECTICUT

Docket No. X10-UWY-CV-19-6070786 S

MUTUAL SECURITY CREDIT UNION	:	SUPERIOR COURT
v.	:	COMPLEX LITIGATION DOCKET AT WATERBURY
MIRANDA HARDY	:	MAY 23, 2024

MEMORANDUM OF DECISION RE
MOTION FOR CLASS CERTIFICATION (No. 142)

STATEMENT OF THE CASE

I

The plaintiff, Mutual Security Credit Union, instituted this action by a complaint made returnable to the court on October 8, 2019. The complaint, which was brought in a single count, sought to recover damages against the defendant, Miranda Hardy, in connection with her alleged default under a retail installment contract (contract) for an automobile loan on a 2012 Nissan Altima (vehicle). Although the original parties to the contract were the defendant and Apple Automotive, LLC, of Wallingford, Connecticut (Apple), on the same date as the contract was executed, Apple "assigned the . . . account over to the [p]laintiff, . . . [and the plaintiff,] . . . is now the holder of the agreement." Complaint, paragraphs 1-3.

The plaintiff contends that "[o]n or about November 7, 2016, the [d]efendant defaulted on the [contract] and the vehicle was repossessed. When the [d]efendant . . . failed to cure the default in the time allowed, the [p]laintiff caused the vehicle to

be sold at auction." Id., paragraphs 5-6. According to the complaint, the defendant owes the plaintiff the balance due on the account, including interest, totaling $10,697.11, plus additional interest, late charges, and reasonable attorney's fees. Id., paragraph 7.

Following her appearance in this action, on February 18, 2020, the defendant filed an answer, special defenses, and counterclaims.[1] See Docket Entry No. 102. The counterclaims are brought in two counts, alleging violations of (1) Connecticut's Retail Installment Sales Financing Act, General Statutes § 36a-770 et seq. (RISFA) and (2) Article 9 of the Uniform Commercial Code ("Secured Transactions"), as adopted in Connecticut, General Statutes § 42a-9-101 et seq. (Article 9).[2]

More specifically, in her original counterclaims, the defendant alleges that the plaintiff is a Connecticut-based financial lender. The defendant further alleges that she signed a consumer credit contract for the vehicle, which was a "motor vehicle" as defined by § 36a-770 (c) (10), and that the vehicle was purchased primarily for personal or family use. The defendant claims that she is a "consumer debtor" or

[1] Although the defendant is also a counterclaim plaintiff, and the defendant's counterclaims are at issue in this motion, for the sake of clarity, the court will refer to her herein as "the defendant."

[2] Section 42a-9-101 reads: "This article may be cited as 'Uniform Commercial Code—Secured Transactions.'"

"consumer obligor"—as defined by General Statutes §§ 42a-9-102 (22),[3] (25),[4] respectively—in a "consumer-goods transaction," as defined by § 42a-9-102 (24).[5] The defendant further alleges that the contract was executed in Connecticut, that the price of the vehicle exceeded $4,000, and that she is a "retail buyer," as defined by § 36a-770 (11).[6]

The defendant goes on to claim that the plaintiff (or someone at its direction) disposed of the vehicle "after failing to comply with" RISFA and/or Article 9. In the first count, the defendant asserts that the plaintiff failed to comply with RISFA's notice requirements, as set forth in General Statutes § 36a-785.[7] In the second count,

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[3] " 'Consumer debtor' means a debtor in a consumer transaction."

[4] " 'Consumer obligor' means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family or household purposes."

[5] " 'Consumer-goods transaction' means a consumer transaction in which: (A) An individual incurs an obligation primarily for personal, family or household purposes; and (B) A security interest in consumer goods secures the obligation."

[6] " 'Retail buyer' means a person who buys or agrees to buy one or more articles of goods from a retail seller not for the purpose of resale or lease to others in the course of business and who executes a retail installment contract or an installment loan contract in connection therewith."

[7] Section 36a-785 reads, at subsections (b) and (c): "Notice of intention to repossess. Not less than ten days prior to the retaking, the holder of such contract may serve upon the retail buyer, personally or by registered or certified mail, a notice of intention to retake the goods on account of the retail buyer's default. The notice shall state that the retail buyer is in default and the period at the end of which such goods will be retaken, and designate (1) the obligations required to be performed in order to cure the default, including the dollar amount of any required payment, and (2) the date by which such obligations must be performed. The notice shall briefly and clearly state the retail buyer's rights under this subsection in the event such goods are retaken. In the case of repossession of any motor vehicle, the notice shall inform the retail buyer that he or she is responsible for removing all of his or her personal

property from the motor vehicle prior to the date such repossession can take place. If the notice is so served and the retail buyer does not perform the conditions and provisions required under the contract to cure the default before the day set for retaking, the holder of the contract may retake such goods and hold such goods subject to the provisions of subsections (d), (e), (f), (g) and (h) of this section regarding resale, but without any right of redemption.

"(c) Redemption. If the holder of such contract does not give the notice of intention to retake, described in subsection (b) of this section, the holder shall retain such goods for fifteen days after the retaking within the state in which such goods were located when retaken. During such period the retail buyer, upon payment or tender of the unaccelerated amount due under such contract at the time of retaking and interest, or upon performance or tender of performance of such other condition as may be named in such contract as precedent to the retail buyer's continued possession of such goods, or upon performance or tender of performance of any other promise for the breach of which such goods were retaken, and upon payment of the actual and reasonable expenses of any retaking and storing, may redeem such goods and become entitled to take possession of such goods and to continue in the performance of such contract as if no default had occurred. The holder of such contract shall, not later than three days after the date of the retaking, furnish or mail, by registered or certified mail, to the last-known address of the retail buyer, a written statement indicating (1) the unaccelerated sum due under such contract and the actual and reasonable expense of any retaking and storing, and (2) in the case of repossession of any motor vehicle, the holder of such contract shall also, not later than three days after the date of the retaking, and without regard to whether notice of intention to retake was given to the buyer, send a written notice (A) that the buyer is responsible for retrieving items of personal property that may have been left in the motor vehicle, other than items that may have been turned over to law enforcement, (B) that such property, if any, will be available for retrieval for at least sixty days after the date on which the motor vehicle was repossessed, unless the holder of the contract specifies, or the terms of the contract specify a date at least sixty days after the repossession after which the buyer may no longer retrieve the property, and (C) the contact and business hours information that the buyer can use to make arrangements for retrieval of the property. If the buyer retrieves some or all of the personal property more than fifteen days after the date on which the motor vehicle was repossessed, the holder of the contract, or an agent thereof maintaining custody of the personal property, may charge the buyer a reasonable storage fee not to exceed twenty-five dollars. Failure to furnish or mail such statement as required by this section shall result in forfeiture of the holder's right to claim payment for the actual and reasonable expenses of retaking and storage, and the holder shall be liable for the actual damages suffered because of such failure. If such goods are perishable so that retention for fifteen days under this subsection would result in their destruction or substantial injury, the

the defendant contends that the plaintiff failed to sell the vehicle in a commercially reasonable manner, in violation of General Statutes § 42a-9-610,[8] and in addition, that it did not provide reasonable authenticated notice of disposition, as required by General Statutes §§ 42a-9-611[9] and 42a-9-614.[10] The defendant claims that the plaintiff violated §§ 42a-9-611 and 42a-9-614 by failing to provide notice in the form and manner required by Article 9, before disposing of the vehicle, and further, that it violated General Statutes § 42a-9-616[11] by not sending a proper post-sale explanation of the defendant's purported deficiency. Additional facts are recited below, as necessary.

As a result of the foregoing, the defendant alleges, inter alia, that she suffered actual damages, including the loss of use of tangible property and the costs associated with alternative transportation, the inability to obtain (or the increased costs of) alternative financing, and harm to her credit worthiness, credit standing and

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provisions of this subsection shall not apply and the holder of the contract may resell the goods immediately upon such retaking."

[8] Section 42a-9-610 (b) reads, in part: "Every aspect of a disposition of collateral, including the method, manner, time, place and other terms, must be commercially reasonable."

[9] Section 42a-9-611 (b) reads: "Except as otherwise provided in subsection (d), a secured party that disposes of collateral under section 42a-9-610 shall send to the persons specified in subsection (c) a reasonable authenticated notification of disposition."

[10] Section 42a-9-614 is entitled, "Contents and form of notification before disposition of collateral: Consumer-goods transaction."

[11] Section 42a-9-616 is entitled, "Explanation of calculation of surplus or deficiency."

capacity, character, and general reputation. The plaintiff seeks damages pursuant to RISFA and Article 9,[12] as well as a reasonable attorney's fee under General Statutes § 42-150bb,[13] an order that no deficiency is owing, and an injunction compelling the plaintiff to request the removal of any adverse credit information reported on her consumer credit reports.

II

Approximately one year after the filing of the counterclaims, on February 8, 2021, the defendant filed a request for leave to amend to add class allegations. See Docket Entry No. 104.[14] In the class allegations, the plaintiff asserts that she "seeks

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[12] Section 42a-9-625, entitled, "Remedies for secured party's failure to comply with this article," reads, in part, as follows: "(a) If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain collection, enforcement or disposition of collateral on appropriate terms and conditions. (b) Subject to subsections (c), (d) and (f), a person is liable for damages in the amount of any loss caused by failure to comply with this article. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing. . . . (c) . . . (2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten per cent of the cash price. . . . (e) In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in the file record, as applicable, may recover five hundred dollars in each case from a person that: . . . (5) Fails to comply with subsection (b) of section 42a-9-616."

[13] Section 42-150bb reads, in part, that "[w]henever any contract or lease entered into on or after October 1, 1979, to which a consumer is a party, provides for the attorney's fee of the commercial party to be paid by the consumer, an attorney's fee shall be awarded as a matter of law to the consumer who successfully prosecutes or defends an action or a counterclaim based upon the contract or lease."

[14] While the plaintiff filed an objection to the defendant's request for leave to amend, that objection was filed two days *after* the expiration of the fifteen-day period for filing

to represent two classes of consumers who had their motor vehicles, boats, or other collateral repossessed and sold by [the plaintiff] without sending the notices required by Connecticut law." The two classes of consumers are consumers (1) "to which the UCC applies" (the UCC Class) and (2) "to which RISFA applies," (the RISFA Class) the defendant noting that "[m]any members of the RISFA class are also members of the UCC class (and vice versa)."

The defendant asserts that the UCC Class is comprised of all consumers within the statute of limitations: "(a) who are named as borrowers or buyers on a loan or financing agreement with [the plaintiff], assigned to [the plaintiff], or owned by [the plaintiff]; (b) whose loan or financing agreement was secured by a motor vehicle, boat, or other property, as collateral; (c) whose collateral was taken possession of by [the plaintiff] or its agent; and (d) whose collateral was sold by [the plaintiff] or its agent." The defendant claims that the UCC Class includes enough individuals to make joinder impracticable, that they share common claims that require resolution of the same question, namely, "did [the plaintiff] comply with the UCC in taking possession of and selling the UCC Class members' collateral?"

With respect to the RISFA Class, the defendant contends that it consists of all individuals within the statute of limitations: "(a) who are retail buyers who purchased a motor vehicle or boat pursuant to installment loan contracts or installment sales contracts that were executed within the state of Connecticut and which were

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such an objection, as established by Practice Book § 10-60 (a) (3). As a result, the amended complaint containing class allegations was "deemed to have been filed by consent of the adverse party." Id.

subsequently held by [the plaintiff]; (b) whose installment loan contract or retail installment sale contract shows the price of the motor vehicle or boat exceeded . . . . $4000; (c) whose installment loan contract or retail installment sale contract was for a boat or a motor vehicle that had an aggregate cash price of $50,000 or less; (d) whose motor vehicle or boat was taken possession of by [the plaintiff] or its agents; and (e) whose motor vehicle or boat was sold by [the plaintiff] or its agents." The defendant claims that the RISFA Class includes enough individuals to make joinder impracticable, that they share common claims that require resolution of the same question, namely, "did [the plaintiff] comply with RISFA in taking possession of and selling the RISFA Class members' motor vehicles?"

Based on these and other putative class allegations, the defendant asserts four counts against the plaintiff for violations of the UCC (first and second counts), RISFA (third count), and the Connecticut Unfair Trade Practices Act, General Statutes § 42-110a et seq. (CUTPA) (fourth count). In the first count, the defendant claims that the plaintiff failed to provide a "reasonable authenticated notice of disposition" to the defendant and UCC Class members, prior to selling their vehicles, as required by §§ 42a-9-611 and 42a-9-614; failed to provide a presale notice to the defendant and the UCC Class members that accurately stated what was necessary to redeem their collateral under General Statutes § 42a-9-623;[15] and violated § 42a-9-623 by varying

[15] General Statutes § 42a-9-623 reads as follows: "(a) A debtor, any secondary obligor or any other secured party or lienholder may redeem collateral. (b) To redeem collateral, a person shall tender: (1) Fulfillment of all obligations secured by the collateral; and (2) The reasonable expenses and attorney's fees described in subdivision (1) of subsection (a) of section 42a-9-615. (c) A redemption may occur at

the defendant and UCC Class members' "unwaivable, non-variable right to redeem the property." In the second count, the defendant alleges that the plaintiff violated § 42a-9-616 by failing to send the defendant and UCC Class members post-sale notices in substantial compliance with that statute. In the third count, the defendant asserts that the plaintiff violated the presale notice requirements of RISFA, set forth in § 36a-785 (b)-(c), by failing to provide the defendant and RISFA Class members with mandated presale notices. Finally, in the fourth count, the defendant alleges that the plaintiff violated CUTPA by misrepresenting the amounts needed to pay for repossession expenses, which expenses exceeded the amount permitted by the UCC or RISFA; and demanded that repossession expenses be paid in excess of what the plaintiff incurred, which expenses exceed a reasonable amount.[16]

Based on these claims, the defendant seeks damages for herself and on behalf of the UCC Class pursuant to § 42a-9-625 (c) (2) ("an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price") and (e) ($500); damages for herself and the RISFA Class pursuant to § 36a-785 (i) ("the retail buyer may recover from the holder of the contract such retail buyer's actual damages, if any, and in no event less than one-fourth of the sum of all payments which have been made under

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any time before a secured party: (1) Has collected collateral under section 42a-9-607; (2) Has disposed of collateral or entered into a contract for its disposition under section 42a-9-610; or (3) Has accepted collateral in full or partial satisfaction of the obligation it secures under section 42a-9-622."

[16] The defendant's CUTPA claims appeared for the first time in her pleading dated February 8, 2021 (Docket Entry No. 104).

the contract"); attorney's fees under § 42-150bb; actual and punitive damages, as well as attorney's fees, under CUTPA; and declaratory and injunctive relief.

Approximately two months after the filing of the amended counterclaims, the plaintiff withdrew its claim against the defendant. See Docket Entry No. 108.00.

III

On August 1, 2023, the defendant filed a motion for class certification, asking the court to certify the UCC and RISFA Classes. See Docket Entry No. 142. In its motion, the defendant simplified the proposed definition of the putative UCC Class as follows: "The UCC Class comprises all individuals who were mailed a presale notice by [the plaintiff] on or after February 8, 2015." The defendant defines the putative RISFA Class in essentially the same manner as alleged in the amended counterclaims. In her motion for class certification, the defendant argues that this case turns on the plaintiff's issuance of legally noncompliant notices to individual consumers, in the context of vehicle repossession—a process well known to be frequently abused—and further, that all requirements of class certification are met here, including numerosity, commonality, typicality, adequacy of representation, predominance, and superiority. See Docket Entry No. 143.

The plaintiff objected to the motion for class certification by an opposition brief dated October 2, 2023. See Docket Entry No. 146. In that objection, the plaintiff contended that, other than numerosity, the requirements for certifying a class action have not been met, emphasizing in particular its view that the predominance factor is not satisfied. Oral argument was held initially on December 4, 2023. Thereafter,

the parties requested, and the court directed, supplemental briefing and argument on the correct statute of limitations to apply to the putative claims brought by the defendant on behalf of the UCC and RISFA Classes. See Order dated January 24, 2024; Docket Entry No. 142.10. The parties filed supplemental briefs on February 16, 2024; see Docket Entry Nos. 150 and 151; and oral argument resumed and concluded on March 11, 2024, on which date the court took these matters under advisement.

DISCUSSION

I

" 'The modern class action is a procedural device that was adopted seeking to achieve economies of time, effort and expense, uniformity of decisions, the promotion of efficiency and fairness in handling large numbers of similar claims.' 1 J. McLaughlin, McLaughlin on Class Actions (20th Ed. 2023) § 1:1." *Farias* v. *Rodriguez*, Superior Court, judicial district of Hartford, Complex Litigation Docket, Docket No. X07-CV-22-6163464-S (December 29, 2023, *Noble, J.*). As stated by our Supreme Court in *Standard Petroleum Co.* v. *Faugno Acquisition, LLC*, 330 Conn. 40, 47-48, 191 A.3d 147 (2018), "[t]he rules of practice set forth a two step process for trial courts to follow in determining whether an action or claim qualifies for class action status. First, a court must ascertain whether the four prerequisites to a class action, as specified in Practice Book § 9-7, are satisfied.[17] These prerequisites are: (1)

[17] Practice Book § 9-7, entitled, "Class Actions; Prerequisites to Class Actions," reads: "One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is

numerosity—that the class is too numerous to make joinder of all members feasible; (2) commonality—that the members have similar claims of law and fact; (3) typicality—that the [representative] plaintiffs' claims are typical of the claims of the class; and (4) adequacy of representation—that the interests of the class are protected adequately. . . .

"Second, if the foregoing criteria are satisfied, the court then must evaluate whether the certification requirements of Practice Book § 9-8 [3] are satisfied.[18] These requirements are: (1) predominance—that questions of law or fact common to the members of the class predominate over any questions affecting only individual members; and (2) superiority—that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. . . .

"It is the class action proponent's burden to prove that all of the requirements have been met. . . . To determine whether that burden has been met, we have followed

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impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class."

[18] Practice Book § 9-8, entitled, "—Class Actions Maintainable," reads, in part: "An action may be maintained as a class action if the prerequisites of Section 9-7 are satisfied, and in addition: . . . (3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in a particular forum; [and] (D) the difficulties likely to be encountered in the management of class action."

the lead of the federal courts . . . directing our trial courts to undertake a rigorous analysis. . . . [B]ecause our class certification requirements are similar to those embodied in rule 23 of the Federal Rules of Civil Procedure, and our jurisprudence governing class actions is relatively undeveloped, we look to federal case law for guidance in construing the provisions of Practice Book §§ 9-7 and 9-8' " (Citations omitted; internal quotation marks omitted.) "Once . . . there has been a preliminary legal showing [that the class action requirements] have been met, it is the defendant's burden to demonstrate otherwise." *Peruta* v. *Outback Steakhouse of Florida, Inc.*, 50 Conn. Supp. 51, 54, 913 A.2d 1160 (2006).

As stated by the court in *Standard Petroleum*, "[a] rigorous analysis ordinarily involves looking beyond the allegations of the plaintiff's complaint. The rigorous-analysis requirement means that a class is not maintainable merely because the complaint parrots the legal requirements of the class action rule. . . . In applying the criteria for certification of a class action, the [trial] court must take the substantive allegations in the complaint as true, and consider the remaining pleadings, discovery, including interrogatory answers, relevant documents, and depositions, and any other pertinent evidence in a light favorable to the plaintiff. However, a trial court is not required to accept as true bare assertions in the complaint that class-certification prerequisites were met. . . . Class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff's cause of action." (Internal quotation marks omitted.) *Standard Petroleum Co.* v. *Faugno Acquisition, LLC*, supra, 330 Conn. 49. "In determining the propriety of a class action

. . . the question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of [the class action rules] are met." (Internal quotation marks omitted.) Id., 50; see also *Butto* v. *Collecto Inc.*, 290 F.R.D. 372, 379 (E.D.N.Y. 2013) ("[A] motion for class certification is not an occasion for examination of the merits of the case.").

"[A]lthough a rigorous analysis of these requirements may entail consideration of various factors, such an analysis does not require the court to assign weight to any of the criteria listed, or to make written findings as to each factor, but merely requires the court to weigh and consider the factors and come to a reasoned conclusion as to whether a class action should be permitted for a fair adjudication of the controversy. . . . The trial court . . . possesses broad discretion to control proceedings and frame issues for consideration under [the rule]." (Citation omitted; internal quotation marks omitted.) *Standard Petroleum Co.* v. *Faugno Acquisition, LLC*, supra, 330 Conn. 50. Finally, "[a]lthough no party has a right to proceed via the class mechanism . . . doubts regarding the propriety of class certification should be resolved in favor of certification." (Internal quotation marks omitted.) Id.

II

With the foregoing principles in mind, the court turns to a consideration of the two step process outlined in *Standard Petroleum*, under Practice Book §§ 9-7 and 9-8 (3), respectively.

A

i

Numerosity

The first prerequisite of § 9-7 is that "the class is so numerous that joinder of all members is impracticable." Practice Book § 9-7 (1). "[A] proper determination of numerosity is not through application of any rigid formula, but rather, by a flexible inquiry taking into account the entirety of a particular action. There is no magic number for determining whether, in a particular case, joinder of all putative parties will be impracticable. . . . [Rather] [t]he issue is one to be resolved in light of the facts and circumstances of the case. . . . Furthermore, [t]he numerosity requirement . . . does not mandate that joinder of all parties be impossible—only that the difficulty or inconvenience of joining all members of the class make use of the class action appropriate. . . . While there is no magic number, federal courts typically presume numerosity at forty members." (Citation omitted; internal quotation marks omitted.) *Drummer* v. *State*, Superior Court, judicial district of Middlesex, Docket No. CV-18-5010661-S (July 3, 2023, *Domnarski, J.T.R.*); see also *Martinez* v. *Avantus, LLC*, 343 F.R.D. 254, 264 (D. Conn. 2023) ("Numerosity is presumed for a class in excess of forty members.").[19]

[19] Other factors relevant to numerosity may include "(i) judicial economy, (ii) geographic dispersion, (iii) the financial resources of class members, (iv) their ability to sue separately, and (v) requests for injunctive relief that would involve future class members." (Internal quotation marks omitted.) *Collier* v. *Adar Hartford Realty, LLC*, Superior Court, judicial district of Hartford, Complex Litigation Docket, Docket No. X07-CV-19-6115255-S (November 21, 2022, *Noble, J.*).

In this case, the defendant argues that, based on documents produced by the plaintiff to the defendant in discovery, "[t]here were at least 247 instances in which [the plaintiff] mailed . . . a presale notice like [the defendant's] and then sold their vehicle . . . ." Def. Memo. in Supp. of Mot. for Class Certification (Docket Entry No. 143), pp. 21-22. Moreover, the plaintiff's discovery responses demonstrate that the plaintiff "repossessed and sold approximately 325 cars between late 2015 to May 2, 2022." (Brackets omitted; internal quotation marks omitted.) Id., p. 22. Thus, "at least 325 accounts would have been sent a pre and post-sale notice with one of the deficiencies [alleged] . . . . [and the plaintiff] has identified well over 200 consumers in both [c]lasses." Id., p. 23. Given the foregoing numbers, which are well in excess of forty, as well as the plaintiff's express concession that the element of numerosity is met in this case,[20] the court finds that the numerosity requirement is satisfied. See *Peruta* v. *Outback Steakhouse of Florida, Inc.*, supra, 50 Conn. Supp. 54 ("Counsel's estimate of class size [200-300] suggests the impracticality of joinder and, thus, the existence of a class.").

ii

Commonality

Practice Book § 9-7 (2) requires that "there are questions of law or fact common to the class . . . ." "Commonality is easily satisfied because there need only be one question common to the class . . . the resolution of which will advance the litigation."

[20] See Pl. Memo. in Opp. to Mot. for Class Certification (Docket Entry No. 146), p. 12 ("[The plaintiff] concedes that the element of numerosity is met in this matter.").

(Internal quotation marks omitted.) *Standard Petroleum Co.* v. *Faugno Acquisition, LLC*, supra, 330 Conn. 54; see also *Hanks* v. *Lincoln Life & Annuity Company of New York*, 330 F.R.D. 374, 379 (S.D.N.Y. 2019) (commonality requirement "has been characterized as a low hurdle" [internal quotation marks omitted]). "[M]ost courts have held that factual variations among class members will not prevent a finding of commonality." (Internal quotation marks omitted.) *Rodriguez* v. *Kaiaffa*, *LLC*, 337 Conn. 248, 270, 253 A.3d 13 (2020).

Here, the "low hurdle" of commonality is met because there are questions of fact and law common to each class, namely, whether the form notices used by the plaintiff complied with the mandatory requirements of the UCC and RISFA. More specifically, and as to the proposed UCC Class, at issue is whether the form notices issued by the plaintiff provided notice of disposition as provided by §§ 42a-9-611 and 42a-9-614, and provided post-sale notices in substantial compliance with § 42a-9-616; and whether the plaintiff issued presale notices as required by § 42a-9-623. As for the putative RISFA Class, the question is whether the plaintiff violated § 36a-785 (b)-(c) by failing to provide the class with presale notices in compliance with the provisions of that statute. Finally, the defendant claims that the plaintiff violated CUTPA by misrepresenting the amount of repossession expenses, which expenses were unreasonable and exceeded the amounts actually incurred.

"Where the same conduct or practice by the same [party] gives rise to the same kind of claims from all class members, there is a common question. . . . *Claims arising from interpretations of a form . . . appear to present the classic case for treatment as a*

class action." (Citation omitted; emphasis added; internal quotation marks omitted.) *Hanks* v. *Lincoln Life & Annuity Company of New York*, supra, 330 F.R.D. 379-80. Or, as stated by the court in *Yazzie* v. *Gurley Motor Co*., United States District Court, Docket No. 14-555 (JAP/SCY) (D.N.M. October 30, 2015)—a case involving a motion for class certification based on claimed UCC violations in connection with the repossession of a motor vehicle—"it is clear that the legality of . . . [the] use of the challenged standardized forms to communicate with . . . consumers can be resolved in one stroke. The [c]ourt, therefore, concludes that both proposed classes have common claims . . . ." See also *Peruta* v. *Outback Steakhouse of Florida, Inc*., supra, 50 Conn. Supp. 55 ("[W]here . . . it is asserted that the violations affected all [putative class members], a claim the court is bound to accept as true for certification purposes, the commonality requirement is satisfied."). The commonality requirement is met here.

iii

Typicality

The requirement of typicality is satisfied when "the claims or defenses of the representative parties are typical of the claims or defenses of the class . . . ." Practice Book § 9-7 (3). "Typicality requires that the disputed issue of law or fact occupy essentially the same degree of centrality to the named plaintiff's claim as to that of other members of the proposed class. . . . [A] common thread running through the various components of typicality . . . is the interest in ensuring that the class representative's interests and incentives will be generally aligned with those of the

class as a whole. [T]he mere existence of individualized factual questions with respect to the class representative's claim will not bar class certification . . . ." (Citations omitted; internal quotation marks omitted.) *Standard Petroleum Co.* v. *Faugno Acquisition, LLC*, supra, 330 Conn. 55. "As is often stated, the commonality and typicality requirements tend to merge." *Konikowski* v. *Stephen Cadillac GMC, Inc.*, Superior Court, judicial district of Hartford, Complex Litigation Docket, Docket No. X03-CV-17-6078564-S (December 27, 2017, *Moll, J.*) (65 Conn. L. Rptr. 634, 638). This is because both requirements "serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *General Telephone Co. of Southwest* v. *Falcon*, 457 U.S. 147, 157 n.13, 102 S. Ct. 2364, 72 L. Ed. 2d 740 (1982).

In this case, all putative UCC Class members were allegedly subject to receiving presale and post-sale notices violative of the UCC, and all proposed RISFA Class members purportedly received notices violative of RISFA. Moreover, all putative class members were allegedly subject to the conduct the defendant claims violates CUTPA. Thus, issues of fact and law occupy the same degree of centrality to the defendant as to the other members of the putative classes.

In arguing that the typicality requirement is not met here, the plaintiff contends that the defendant is not "typical" of the proposed classes because in her deposition, she did not recall receiving the notices at issue. The court rejects this

argument, in light of the fact that the plaintiff has admitted to *sending* the notices in question to the defendant. The fact that the defendant does not remember receiving the notices, while other class members may recall receiving them, does not defeat typicality, insofar as the central thread of the case will be whether the notices—which the plaintiff was legally bound to provide and admittedly sent—comply with statutory requirements pertaining to such notices. The typicality requirement is satisfied.

iv

Adequacy of Representation

Finally, Practice Book § 9-7 (4) requires that "the representative parties will fairly and adequately protect the interests of the class." "The adequacy-of-representation requirement addresses concerns about the competency of class counsel and conflicts of interest. . . . The two factors that are . . . recognized as the basic guidelines for the adequacy-of-representation prerequisite are . . . (1) absence of conflict and (2) assurance of vigorous prosecution. . . . The adequacy requirement is met when the representatives: (1) have common interests with the unnamed class members; and (2) will vigorously prosecute the class action through qualified counsel." (Brackets omitted; citations omitted; internal quotation marks omitted.) *Collins* v. *Anthem Health Plans, Inc*., 275 Conn. 309, 326, 880 A.2d 106 (2005).

The plaintiff does not argue that any conflict exists as between the defendant and putative class members, and the plaintiff concedes that defendant's counsel is qualified to represent adequately the proposed classes in this matter. See Pl. Memo. in Opp. to Mot. for Class Certification (Docket Entry No. 146), p. 16 ("[The plaintiff]

does not dispute the qualifications of [the defendant's] counsel for adequacy of representation . . . .") In arguing that adequacy of representation has not been met, the plaintiff relies again on the defendant's deposition testimony, to the effect that she does not recall receiving the subject notices. Based on this testimony, the plaintiff argues that the defendant has " 'so little knowledge of and involvement in the class action that [the defendant] would be unable or unwilling to protect the interests of the class against the possibly competing interests of the attorneys.' " Id. (citing *Maywalt* v. *Parker & Parsley Petroleum Co.*, 67 F.3d 1072, 1077-78 [2d Cir. 1995]). This argument is belied by the defendant's active participation in discovery to date. Moreover, and as noted by the plaintiff in its own brief, "[i]n the Second Circuit, the standard [for adequacy of representation] is not high: 'a general knowledge is sufficient to show adequacy.' " Id. (citing *Fort Worth Employees' Retirement Fund* v. *J.P. Morgan Chase & Co.*, 301 F.R.D. 116, 134 [S.D.N.Y. 2014]). As the defendant demonstrates a general knowledge of the basis and nature of the claims at issue, the requirement of adequacy of representation is satisfied, subject to the court's analysis of the impact of the applicable statute of limitations on the defendant's ability to adequately protect the interests of the proposed UCC and RISFA Classes, addressed in Sections III and IV, below.

B

Having found that all of the elements of Practice Book § 9-7 have been met, subject to issues pertaining to the applicable statute of limitations affecting the

adequacy of representation under Practice Book § 9-7 (4), the court turns to the requirements of Practice Book § 9-8 (3).

i

Predominance

In order to maintain a class action, the court must find that "questions of law or fact common to the members of the class *predominate* over any questions affecting only individual members . . . ." (Emphasis added.) Practice Book § 9-8 (3). "Predominance shares important characteristics with the commonality query, such as the commonality of questions of law or fact, but requires more stringent analysis. [T]he commonality prerequisite simply requires the existence of a question of law or fact that is common to the class . . . . [T]he predominance criterion is far more demanding in that it requires a probing inquiry to determine whether the common issues that are subject to generalized proof are more substantial than the issues subject only to individualized proof." (Internal quotation marks omitted.) *Gonzalez* v. *E&J Enterprises, LLC*, Superior Court, judicial district of Hartford, Complex Litigation Docket, Docket No. X07-CV-21-6146464-S (September 22, 2023, *Noble, J.*) (citing *Ahmad* v. *Yale-New Haven Hospital*, 104 Conn. App. 380, 390-91, 933 A.2d 1208 [2007]); see also *In re Namenda Indirect Purchaser Antitrust Litigation*, 338 F.R.D. 527, 550 (S.D.N.Y. 2021) ("The predominance inquiry is similar to that of commonality . . . but the standard is far more demanding." [Internal quotation marks omitted.] [citing *Amchem Products, Inc.* v. *Windsor*, 521 U.S. 591, 623-24, 117 S. Ct. 2231, 138 L. Ed. 2d 698 [1997]). Because the standard is "far more demanding," it is

not surprising that the plaintiff focuses much of its attention on the predominance requirement, arguing that it is not satisfied here.

"[C]lass-wide issues predominate if resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof. . . . In order to determine whether common questions predominate, [a court must] . . . examine the [causes] of action asserted in the complaint on behalf of the putative class. . . . Whether an issue predominates can only be determined after considering what value the resolution of the class-wide issue will have in each class member's underlying cause of action. . . . Common issues of fact and law predominate if they ha[ve] a direct impact on every class member's effort to establish liability and on every class member's entitlement to . . . relief. . . . [When], after adjudication of the [class-wide] issues, [the] plaintiffs must still introduce a great deal of individualized proof or argue a number of individualized legal points to establish most or all of the elements of their individual[ized] claims, such claims are not suitable for class certification . . . . [When] cases [involve] individualized damages . . . [and those] damages can be computed according to some formula, statistical analysis, or other easy or essentially mechanical methods, the fact that damages must be calculated on an individual basis is no impediment to class certification. . . . It is primarily when there are significant individualized questions going to liability that the need for individualized assessments of damages is enough to preclude [class] certification. . . . These

standards inform us that a court should engage in a three part inquiry to determine whether common questions of law or fact predominate in any given case. First, the court should review the elements of the causes of action that the plaintiffs seek to assert on behalf of the putative class. . . . Second, the court should determine whether generalized evidence could be offered to prove those elements on a class-wide basis or whether individualized proof will be needed to establish each class member's entitlement to monetary or injunctive relief. . . . Third, the court should weigh the common issues that are subject to generalized proof against the issues requiring individualized proof in order to determine which predominate. . . . Only when common questions or law or fact will be the object of most of the efforts of the litigants and the court will the predominance test be satisfied." (Internal quotation marks omitted.) *Standard Petroleum Co.* v. *Faugno Acquisition, LLC*, supra, 330 Conn. 60-61.

First, and as to the proposed UCC Class, in the first count, the elements of the causes of action include: (1) disposition of collateral by a secured party after default; General Statutes § 42a-9-610; (2) failure to provide proper notification of disposition to the debtor, prior to the sale of the debtor's vehicle; §§ 42a-9-611 and 42a-9-614; (3) violation of the debtor's right to redeem collateral; § 42a-9-623; and (4) damages, as provided by Article 9; § 42a-9-625.

As to the second count, claiming inadequate post-sale notice, a claimant must prove (1) that the claimant is entitled to an "explanation" from a secured party, pursuant to § 42a-9-616; and (2) that the secured party failed to send an "explanation"

in compliance with the provisions of § 42a-9-616, thereby allowing the defendant to recover statutory damages ($500) pursuant to § 42a-625 (e) (5).

As for the third count under RISFA, a claimant must prove noncompliance with the presale notice provisions of § 36a-785 (b) and (c), thereby entitling the claimant to statutory damages as provided by § 36a-785 (i).

Finally, under the fourth count, alleging violations of CUTPA, General Statutes § 42–110b (a) provides: "No person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." In determining whether or not the conduct at issue constitutes an unfair or deceptive trade practice, Connecticut applies the so-called "cigarette rule,"[21] which requires the court to consider: "(1) [w]hether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise—whether, in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers . . . . All three criteria do not need to be satisfied to support a finding of unfairness. A practice may be unfair because of

[21] As noted by our Supreme Court, "the federal courts have abandoned [the cigarette rule] in favor of a more stringent test known as the substantial unjustified injury test. See 15 U.S.C. § 45 (n) (2012)." *Artie's Auto Body, Inc.* v. *Hartford Fire Insurance Co.*, 317 Conn. 602, 622 n.13, 119 A.3d 1139 (2015). However, as "the legislature has given no indication that it disapproves of our continued use of the cigarette rule as the standard for determining unfairness under CUTPA"; id.; that test continues to be applied by the Connecticut courts in the context of CUTPA claims. See, e.g., *Gianetti* v. *Neigher*, 214 Conn. App. 394, 451, 280 A.3d 555, cert. denied, 345 Conn. 963, 285 A.3d 390 (2022).

the degree to which it meets one of the criteria or because to a lesser extent it meets all three." (Citations omitted; internal quotation marks omitted.) *Jacobs* v. *Healey Ford-Subaru, Inc.,* 231 Conn. 707, 725, 652 A.2d 496 (1995); accord *Landmark Investment Group, LLC* v. *CALCO Construction & Development Co.,* 318 Conn. 847, 880-81, 124 A.3d 847 (2015).

In light of the foregoing, the court has little difficulty concluding that generalized evidence could be offered to prove the elements of the defendant's counterclaims, on a class-wide basis, with respect to the UCC and RISFA Classes, and further, that the common issues subject to generalized proof would predominate over those of individualized proof. As to all of the counts, liability is based on the language of identical or substantially similar presale and post-sale notices issued by the plaintiff. Thus, generalized evidence can be offered to determine whether the notices satisfy the requirements of the UCC and RISFA, which issues predominate over any individualized differences that may exist as between class members. See, e.g., *McKeage* v. *TMBC, LLC*, 847 F.3d 992, 999 (8th Cir. 2017) ("Although the documents [the defendant] prepared for individual customers varied at times, the district court correctly determined that the variety of services and the differences between contracts were not distinct enough to decertify the case as a class action."), cert. denied, 584 U.S. 993, 138 S. Ct. 2026, 201 L. Ed. 2d 278 (2018). Furthermore, individualized differences with respect to damages do not necessarily defeat predominance. As just noted, "[w]hen cases [involve] individualized damages . . . [and those] damages can be computed according to some formula, statistical analysis, or

other easy or essentially mechanical methods, the fact that damages must be calculated on an individual basis is no impediment to class certification. . . . It is primarily when there are significant individualized questions going to liability that the need for individualized assessments of damages is enough to preclude [class] certification." (Internal quotation marks omitted.) *Standard Petroleum Co.* v. *Faugno Acquisition, LLC*, supra, 330 Conn. 61. In this case, damages are amenable to mechanical calculation and significant individualized questions going to liability do not exist; rather, common questions of liability—namely, whether the plaintiff's presale and post-sale notices complied with statutory directives—predominate.

Moreover, finding that the three-part inquiry of the predominance is satisfied in this case comports with authorities endorsing the class action mechanism to resolve the legal propriety of particular forms. "[C]ases regarding the legality of standardized documents and practices often result in the predomination of common questions of law or fact and are, therefore, generally appropriate for resolution by class action." (Internal quotation marks omitted.) *Sykes* v. *Mel Harris & Associates, LLC*, 285 F.R.D. 279, 293 (S.D.N.Y. 2012), aff'd, 780 F.3d 70 (2d Cir. 2015). As stated by one legal commentator, "[t]here are situations in numerous substantive contexts in which even the most aggressive class action naysayers will not be able to conclude 'certification denied.' One can think of many such contexts—for example, claims based on . . . a common document or a uniform business . . . practice." Arthur R. Miller, "The Preservation and Rejuvenation of Aggregate Litigation: A Systemic Imperative," 64 Emory L.J. 293, 307-08 (2014); see also *McKeage* v. *TMBC, LLC*,

supra, 847 F.3d 999 ("[I]t was [the defendant's] corporate policy to require all customers to sign the standard form contract governed by Missouri law. Thus, this case presented a classic case for treatment as a class action." [Internal quotation marks omitted.]).

A finding of predominance is even more compelling in the context of this case, which involves the application of our consumer protection statutes to form documents. As observed by one court, "many consumer protection statutes, such as . . . the UCC, provide heightened safeguards for individuals who purchase goods primarily for personal, family, or household use. Courts have recognized that the class action mechanism is well-suited to address technical violations of these statutes because class actions are designed to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights." (Internal quotation marks omitted.) *Yazzie* v. *Gurley Motor Co.*, supra, United States District Court, Docket No. 14-555 (JAP/SCY) (citing *Mace* v. *Van Ru Credit Corp.*, 109 F.3d 338, 344 [7th Cir. 1997]). A finding of predominance is consistent with our Supreme Court's observation that "[r]epossession statutes are enacted to protect the consumer from well documented repossession abuses and to encourage and promote compliance with the laws that govern such actions." *Jacobs* v. *Healey Ford-Subaru, Inc.*, supra, 231 Conn. 722. The predominance factor is satisfied.

ii

Superiority

Finally, in order to grant class certification, the court must conclude that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Practice Book § 9-8 (3). 'The superiority question asks whether the class action device . . . [is] superior to other methods available for a fair and efficient adjudication of the controversy." (Internal quotation marks omitted.) *Gonzalez* v. *E&J Enterprises, LLC*, supra, Superior Court, Docket No. X07-CV-21-6146464-S. "Superiority . . . is intertwined with the predominance requirement. . . . If the predominance criterion is satisfied, courts generally will find that the class action is a superior mechanism even if it presents management difficulties." (Citation omitted; internal quotation marks omitted.) *Standard Petroleum Co.* v. *Faugno Acquisition, LLC*, supra, 330 Conn. 74; accord *Gonzalez* v. *E&J Enterprises, LLC*, supra, Superior Court, Docket No. X07-CV-21-6146464-S ("If plaintiffs satisfy predominance, courts typically hold that they established superiority."). "Once predominance is determined, considerations of superiority and manageability should fall into their logical place." (Internal quotation marks omitted.) *Diaz* v. *Griffin Health Services Corp.*, Superior Court, judicial district of Waterbury, Complex Litigation Docket, Docket No. X01-CV-15-6029965-S (November 23, 2020, *Lager, J.*).

Echoing themes addressed in the discussion of predominance above, one court has noted, in discussing the superiority requirement, that "[a]ggregation of the

proposed class member[s'] consumer protection claims will achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated. . . . Because class members' claims are small, certification provides an added benefit: it offers a mechanism of relief for those who would otherwise be without effective strength to bring their opponents into court. . . . Finally, certification will ensure that consumers learn about their rights and share in financial recovery, if any, for [the defendants'] alleged violation of these rights." (Citations omitted; internal quotation marks omitted.) *Yazzie* v. *Gurley Motor Co*., supra, United States District Court, Docket No. 14-555 (JAP/SCY).

Put another way, the requirement of superiority is met here because "[s]eparate actions would produce considerable duplication of effort, increase the cost of litigation, create the risk of inconsistent results for parties who are similarly situated, and consume judicial resources to wasteful levels . . . ." *In re Playmobil Antitrust Litigation*, 35 F. Supp. 2d 231, 248 (E.D.N.Y. 1998). Moreover, "[c]lass actions . . . may permit . . . plaintiffs to pool claims which would be uneconomical to litigate individually." *Phillips Petroleum Co*. v. *Shutts*, 472 U.S. 797, 809, 105 S. Ct. 2965, 86 L. Ed. 2d 628 (1985). As stated by the United States Supreme Court, "[w]here it is not economically feasible to obtain relief within the traditional framework of a multiplicity of small individual suits for damages, aggrieved persons may be without any effective redress unless they may employ the class-action device." *Deposit Guaranty National Bank* v. *Roper*, 445 U.S. 326, 339, 100 S. Ct. 1166, 63 L. Ed. 2d. 427 (1980). The requirement of superiority is met.

III

A

The court turns to the appropriate statute of limitations to apply to the legal claims asserted by the defendant. It is appropriate to consider issues pertaining to the statute of limitations at the class certification stage. First, determining the appropriate statute of limitations to apply is relevant to the court's definition of the putative classes. See *Burton* v. *Mountain West Farm Bureau Mutual Insurance Co*., 214 F.R.D. 598, 609 (D. Mont. 2003) ("[C]onsideration of the statute of limitations is necessary to defining the boundaries of the class."); see also *State Employees' Assn. of New Hampshire, Inc.* v. *Belknap County*, 122 N.H. 614, 624, 448 A.2d 969 (1982) ("In defining the scope of the proper class, courts consider numerous factors, including the identifiability and manageability of the class, the standing of the members, *the existence of any statute of limitations difficulties*, as well as the similarity of the issues raised and the relief sought." [Emphasis added.]). Second, the application of a statute of limitation may affect a putative class representative's ability to adequately represent a class under Practice Book § 9-7 (4). As observed by the Third Circuit, a trial court "may consider whether named plaintiffs' claims may fail because of a statute-of-limitations defense when deciding if the named plaintiffs can adequately represent absent class members whose claims do not suffer from timeliness problems." (Internal quotation marks omitted.) *Dockery* v. *Heretick*, Docket No. 21-2753, 2022 WL 14810015, *3 (3d Cir. October 26, 2022) (citing *In re Community Bank of Northern Virginia*, 622 F.3d 275, 295 [3d Cir. 2010]). As stated by Justice Ginsburg

in *China Agritech, Inc.* v. *Resh*, 584 U.S. 732, 743, 138 S. Ct. 1800, 201 L. Ed. 2d 123 (2018), "[a] would-be class representative who commences suit after expiration of the limitation period . . . can hardly qualify as diligent in asserting claims and pursuing relief." In the parlance of Connecticut law, a class representative whose claims are time-barred cannot "vigorously prosecute" an action on behalf of class, as required by § 9-7 (4). See *Collins* v. *Anthem Health Plans, Inc.*, supra, 275 Conn. 326. With these considerations in mind, the court addresses the correct statute of limitations to apply to the defendant's counterclaims.

B

Connecticut does not have a statute of limitations expressly applicable to claims asserted under Article 9 of the UCC.[22] This is not surprising, as "Article 9 of the UCC does not contain a statute of limitations." *Cubler* v. *TruMark Financial Credit Union*, 83 A.3d 235, 238 n.3 (Pa. Super. 2013); see also *First National Bank in Albuquerque* v. *Chase*, 118 N.M. 783, 784, 887 P.2d 1250 (1994) ("Article 9 of the U.C.C. . . . has no statute of limitations . . . ."). "The absence of a statute of limitations in Article 9 . . . of the Uniform Commercial Code which generally governs secured transactions has given rise to disputes as to whether the security aspects of sales contracts should be governed by § 2-725, which is the statute of limitations provided in Article 2 of the Code governing sales generally, or whether some other statute of limitations provided elsewhere under state law should be applied." *First of America Bank* v. *Thompson*, 217 Mich. App. 581, 588, 552 N.W.2d 516 (1996); see also *In re*

[22] Similarly, RISFA does not contain a statute of limitations.

Winer, 39 B.R. 504, 509 (Bankr. S.D.N.Y. 1984) ("[T]he absence of a statute of limitations governing . . . transactions under Article 9 has given rise to disputes as to whether the four year period of U.C.C. § 2-725 or some other statute of limitations should apply in this context."). "The statute of limitations applicable to a claim under the remedy provisions of Article 9 [UCC 9-625] is, according to some courts, the statute of limitations in the Uniform Commercial Code[23] . . . or, according to other courts, the statute of limitations applicable to contract actions or covenants; or, where one exists, the limitations period applicable to breach of a statutory duty." (Footnotes omitted.) 68A Am. Jur. 2d, Secured Transactions § 609 (2024).

The court must apply a statute of limitations to the counterclaims asserted here. "Public policy generally supports the limitation of a cause of action in order to grant some degree of certainty to litigants. . . . The purpose of [a] statute of limitation[s] . . . is . . . to (1) prevent the unexpected enforcement of stale and fraudulent claims by allowing persons after the lapse of a reasonable time, to plan their affairs with a reasonable degree of certainty, free from the disruptive burden of

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[23] That is, the four-year statute of limitations set forth in Article 2 of the UCC, General Statutes § 42a-2-725, ("Statute of limitations in contracts for sale"). Several courts have applied this statute to deficiency claims arising under Article 9 of the UCC. See, e.g., *First of America Bank* v. *Thompson*, supra, 217 Mich. App. 590 ("The UCC's four-year limitation period has been applied by other courts under similar circumstances."); *First National Bank in Albuquerque* v. *Chase*, supra, 118 N.M. 786 ("[W]e hold that Section [2-725] sets out the appropriate statute of limitations . . . ."); *Coastal Federal Credit Union* v. *Brown*, 417 S.C. 544, 550-51, 790 S.E.2d 417 (2016), cert. dismissed, 423 S.C. 251, 814 S.E.2d 495 (2018); *DaimlerChrysler Services North America, LLC* v. *Ouimette*, 175 Vt. 316, 321, 830 A.2d 38 (2003) ("[Section 2-725] sets out the appropriate statute of limitations for deficiency actions on retail installment sales contracts."). In this case, the parties do not argue that § 42a-2-725 is the applicable statute.

protracted and unknown potential liability, and (2) to aid in the search for truth that may be impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents or otherwise. . . . Therefore, when a statute includes no express statute of limitations, we should not simply assume that there is no limitation period. Instead, we borrow the most suitable statute of limitations on the basis of the nature of the cause of action or of the right sued upon." (Emphasis omitted; internal quotation marks omitted.) *Bouchard* v. *State Employees Retirement Commission*, 328 Conn. 345, 359–60, 178 A.3d 1023 (2018).

In this case, the defendant urges the court to apply Connecticut's six-year statute of limitations applicable to breach of contract claims, General Statutes § 52-576.[24] In doing so, the defendant argues that, although the class action allegations involve the alleged legal inadequacy of notices issued by the plaintiff, "the obligation to send the notices and the formula for calculating the post-repossession deficiency were both set out in the [c]ontract." (Internal quotation marks omitted.) Def. Suppl. Memo. dated February 16, 2024 (Docket Entry No. 151), p. 4. In addition, the defendant cites out-of-state case law from jurisdictions applying breach of contract statutes of limitation to claims under Article 9. Id.

[24] Section 52-576, entitled, "Actions for account or on simple or implied contracts," reads, in part: "(a) No action for an account, or on any simple or implied contract, or on any contract in writing, shall be brought but within six years after the right of action accrues . . . ."

By contrast, and although referring in its brief to the three-year statute of limitations applicable to torts, General Statutes § 52-577,[25] the plaintiff asks the court to apply the one-year statute of limitations set forth in § 52-585 ("Suit for forfeiture on penal statute limited to one year"), which reads, in part: "No suit for any forfeiture upon any penal statute shall be brought but within one year next after the commission of the offense." As observed by the Second Circuit, "the fact that [§ 52-585] speaks in terms of 'penal statutes' does not mean that it applies only to forfeiture actions brought pursuant to a criminal statute. Connecticut deems a statute 'penal' if it 'impos[es] punishment for an offense against the state.' . . . An 'offense against the state' includes more than criminal statutes, and *a statute can be 'penal' even though it is enforced by private citizens.*" (Citations omitted; emphasis added.) *Brown* v. *Rawlings Financial Services, LLC*, 868 F.3d 126, 130 (2d Cir. 2017).

For the reasons that follow, the court rejects the defendant's position that the court should apply § 52-576; the court agrees with the plaintiff that § 52-585 governs the plaintiffs' UCC and RISFA counterclaims.

C

To begin, the court does not find that the breach of contract statute of limitations is applicable here. "Generally, [w]hether a plaintiff's cause of action is one for [tort or contract] depends upon the definition of [those terms] and the allegations of the complaint. . . . [T]he fundamental difference between tort and

[25] Section 52-577, entitled, "Action founded upon a tort," provides: "No action founded upon a tort shall be brought but within three years from the date of the act or omission complained of."

contract lies in the nature of the interests protected. . . . The duties of conduct which give rise to a [tort action] are imposed by the law, and are based primarily upon social policy, and not necessarily upon the will or intention of the parties. . . . [W]hen a plaintiff seeks to recover damages for the breach of a statutory duty, such an action sounds in tort. . . . On the other hand, [c]ontract actions are created to protect the interest in having promises performed. Contract obligations are imposed because of [the] conduct of parties manifesting consent, and are owed only to the specific individuals named in the contract. . . . In short, [a]n action in contract for the breach of a duty arising out of a contract; an action in tort is for a breach of duty imposed by law." (Citations omitted; internal quotation marks omitted.) *Canner* v. *Governor's Ridge Assn., Inc.*, 210 Conn. App. 632, 642-43, 270 A.3d 694 (2022), rev'd on other grounds, 348 Conn. 726, 311 A.3d 173 (2024).

In this case, the defendant, as putative representative of the UCC and RISFA Classes, asks the court to impose liability on the plaintiff that is created by statute, namely, the provisions of Article 9 and RISFA. This liability is not owed simply because of an agreement entered into by parties to a contract; rather, it arises independently, as a result of the breach of a duty created by law, as set forth in Article 9 and RISFA. See, e.g., *Bellemare* v. *Wachovia Mortgage Corp.*, 284 Conn. 193, 200, 931 A.2d 916 (2007) (in discussing damages prescribed by General Statutes § 49-8, noting that "[i]n the present case, although the existence of a mortgage suggests that the plaintiff's claim sounds in contract, the duty that allegedly was breached was created by statute"*);* see also *First of America Bank* v. *Thompson*, supra, 217 Mich.

App. 588-93 (refusing to apply breach of contract statute of limitations to claim under Article 9 of the UCC).

The court agrees with the plaintiff's contention that the one-year limitation period of § 52-585, which applies to suits for forfeitures upon any "penal statue," governs the defendant's UCC and RISFA claims. While at least one court has taken the position that the damages provisions of Section 9-625 of the UCC are remedial, not punitive; see *Cubler* v. *TruMark Financial Credit Union*, supra, 83 A.3d 239-42; and while both the UCC and RISFA allow for the recovery of damages that could fairly be described as both "penal" and "remedial,"[26] our Supreme Court has characterized § 42a-9-625 as punitive in nature. Thus, in *Jacobs* v. *Healy Ford-Subaru, Inc.*, supra, 231 Conn. 723-24, the court held: "The Uniform Commercial Code's drafters included the *statutory penalty* for consumer goods in Section [9-625,][27]

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[26] As observed by the court in *Ralph Durante & WA445 Associates, LLC* v. *Cody*, Superior Court, judicial district of New Haven, Docket No. CV-20-6106534-S (September 29, 2023, *Stewart, J.*), "[a] statute may partake of the nature both of a remedial and of a penal statute." (Citing *Dubreuil* v. *Waterman*, 84 Conn. 47, 51, 78 A. 721 [1911]). The provisions of Article 9 at issue, which appear at § 42a-9-625, are not purely "penal"—rather, these remedies allow a claimant to recover for "the amount of any loss caused by the failure to comply with this article;" § 42a-9-625 (a); as well as an "amount not less than the credit service charge plus ten per cent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price." Id. Similarly, RISFA allows for a retail buyer to recover from the holder of the contract the retail buyer's "actual damages, if any . . . ." § 36a-785 (i).

[27] At the time *Jacobs* was decided, UCC § 9-507 allowed a "debtor a right to recover from a secured party any loss caused by a failure to comply with the provisions of the code regarding the disposal of collateral and if the collateral [was] consumer goods, minimum damages are provided for," thereby corresponding to the current UCC § 9-625. See *Jacobs* v. *Healy Ford-Subaru, Inc.*, supra, 231 Conn. 720 n. 18; see also *Hernandez* v. *Apple Auto Wholesalers of Waterbury, LLC*, 338 Conn. 803, 838, 259 A.3d 1157 (2021) ("In *Jacobs*, the issue before the court was whether [a car dealer], who has violated General Statutes [(Rev. to 1989)] § 42-98 [now § 36a-785] of the

because they believed that compensatory damages would not be a sufficient deterrent in the average consumer case. . . . They intended that the statute would provide the minimum recovery for consumers who prove that a secured party did not proceed in accordance with the Uniform Commercial Code. . . . The purpose of UCC [§ 9-625] is to encourage creditors to comply . . . or face the consequences of noncompliance. We agree with the view that the drafters created *a statutory penalty in UCC [§ 9-625]* to up the ante for those who would abuse the consumer because in most cases, compensatory damages are 'an insufficient deterrent to creditor misbehavior in nickel and dime consumer transactions where such damage will amount to very little . . . .' *The penalty* evinces a strong policy by the UCC drafters and our Legislature that the best protection for consumers is creditor compliance . . . . *A flat penalty* for noncompliance is the means chosen by the framers of the UCC and our Legislature to ensure that creditors take careful steps to comply with [the] default provisions. . . . Under the facts of this case, the remedy afforded by the UCC is the only real deterrent. It is irrelevant that *the penalty* bears little or no relation to the actual loss." (Citations omitted; emphasis added; internal quotation marks omitted.)

In addition to our Supreme Court's characterization of the subject UCC remedies as a "penalty," the court concludes that § 52-585 is the most suitable statute to apply, based on the nature of the claims asserted under Article 9 and RISFA.

Retail Installment Sales Financing Act (RIFSA) and General Statutes [(Rev. to 1989)] § 42a-9-504 [now § 42a-9-610] of the Uniform Commercial Code (UCC) [by unlawfully repossessing a vehicle], must pay damages under each statute to the injured plaintiff." [Internal quotation marks omitted.]).

Again, while these statutes contain both penal and remedial provisions, their purpose is primarily penal, as evidenced by the fact that parties asserting claims under those statutes (1) typically have little or no actual damages and (2) the statutes impose minimum monetary damages in order to encourage compliance with statutory mandates. *Jacobs* v. *Healy Ford-Subaru, Inc.*, supra, 231 Conn. 724 (observing that "compensatory damages are an insufficient deterrent to creditor misbehavior in nickel and dime consumer transactions" and that "the remedy afforded by the UCC is the only real deterrent. It is irrelevant that the penalty bears little or no relation to the actual loss." [Citation omitted; internal quotation marks omitted.]); see also 4 White, Summers, & Hillman, Uniform Commercial Code (6th Ed.) § 34:43 ("Section 9-625 (c) (2) carries forward the 10% *punitive damage* rule from the former Article 9. . . . The argument in favor of *punitive damages* is that the dollar amounts are so small in consumer transactions that an unscrupulous creditor might find it economically sensible routinely to violate Part 6 of Article 9 in consumer cases. The *punitive damages* in (c) (2) make that behavior more costly and may deter such a creditor. . . . Subsections 9-625 (e) and (f) have additional, but more limited, *punitive damage* rules." [Footnotes omitted; emphasis added.]). Moreover, the court declines to apply one statute of limitation to the "penal" remedies available under §§ 42a-9-625 and 36a-785, while applying another to the "remedial" provisions of those statutes. See, e.g., *Bellemare* v. *Wachovia Mortgage Corp.*, supra, 284 Conn. 202 ("Applying multiple statutes of limitation to a singular duty created by statute is an odd result, one that we generally attempt to avoid.").

The court's conclusion that § 52-585 is applicable to the remedies provided by § 42a-9-625 and RISFA must be contrasted with the decision of our Supreme Court in *Bellemare*. In *Bellemare*, the court considered which of several statutes of limitations should be applied to a claim under § 49-8 (c), which allows for the imposition of liability on a mortgagee for "failing to provide a release of mortgage within sixty days of the satisfaction of the underlying debt." *Bellemare* v. *Wachovia Mortgage Corp*., supra, 284 Conn. 198. More specifically, § 49-8 (c) imposes liability "for damages to any person aggrieved at the rate of two hundred dollars for each week after the expiration of such sixty days up to a maximum of five thousand dollars or in an amount equal to the loss sustained by such aggrieved person as a result of the failure of the mortgagee or plaintiff or the plaintiff's attorney to execute and deliver a release, whichever is greater, plus costs and reasonable attorney's fees."

The *Bellemare* court characterized § 49-8 (c) as "analogous to a penalty provision" and affirmed both the trial court and Appellate Court in applying the three-year statute of limitations period of § 52-577 to claims arising under § 49-8 (c). However, in applying § 52-577 to a statute it compared to a "penalty provision," the court in *Bellemare* emphasized the similarity between § 49-8 (c) and the *tort* of slander of title. Id., 202 ("[T]he cause of action created by § 49-8 is *akin to an action for slander of title*." [Emphasis added.]); see also *Laznovsky* v. *Furdanowicz*, 22 Conn. Supp. 297, 300, 170 A.2d 734 (1961) (noting that § 52-577 is applicable to Dram Shop Act claims and observing that, "[w]hile it may be said that in one sense the [Dram Shop Act] is penal, nevertheless it is primarily remedial because it gives a remedy enforceable by

an individual in a civil action and allows the recovery of damages *in an amount commensurate with the injuries suffered*." [Empasis added; internal quotation marks omitted.]). By contrast with *Bellemare*, the claims under Article 9 and RISFA at issue here cannot be characterized as being "akin" to a tort subject to the limitations provisions of § 52-577, and the parties do not advance any such argument here. Rather, the remedies provided by § 42a-9-625 and RISFA, which are creations of statute, are primarily penal.

The court's application of the one-year limitations period of § 52-585 is consistent with the District Court's analysis in *Beard* v. *Vanderbilt Mortgage & Finance, Inc*., United States District Court, Docket No. 3:07-0934 (RLE) (M.D. Tenn. June 2, 2008). In *Beard*, the defendant argued that Tennessee's version of UCC § 9-625 was "governed by the one-year statute of limitations in Tenn. Code Ann. § 28-3-104 (a) (4) applicable to '[a]ctions for statutory penalties.' " In agreeing with the defendant and applying Tennessee's one-year statute governing actions for statutory penalties, the District Court relied, in part, on the Tennessee Court of Appeals' characterization of UCC § 9-625 (c) (2) as a "statutory penalty"—similar to our Supreme Court's characterization of the statute in *Jacobs*. Id. The *Beard* court went on to reject the plaintiff's assertion that "the primary purpose of [UCC § 9-625 (c) (2)] is remedial, not penal." In doing so, the *Beard* court stated that it "cannot agree with the [p]laintiff that [UCC § 9-625 (c) (2)] is primarily remedial in light of the Tennessee Court of Appeals cases describing that section as a 'statutory penalty' and relying on cases . . . [holding] that the UCC statute 'includes a consumer goods remedy in the

nature of a penalty, legislatively adopted to discourage noncompliance by creditors.' " (Citation omitted; internal quotation marks omitted.); see also *Brown* v. *Rawlings Financial Services, LLC*, supra, 868 F.3d 128-32 (the Second Circuit applying § 52-585 to claims brought pursuant to § 502 (c) (1) of ERISA, observing that § 502 (c) (1) damages are "creatures of statute" and "punitive" in nature, and do not require "that a plaintiff demonstrate actual damage").[28]

IV

Applying the one-year statute of limitations to the UCC and RISFA claims alleged by the defendant, the court concludes that the defendant's UCC and RISFA counterclaims are time barred. As noted by the plaintiff, the presale notice at issue was sent to the defendant on November 10, 2016; the post-sale notice of sale issued on August 14, 2017. The defendant did not assert counterclaims, on her own behalf, until February 18, 2020 (Docket Entry No. 102), and on behalf of the putative UCC and RISFA Classes, until February 8, 2021. As a result, the defendant's claims were brought well over one year "after the commission of the offense." § 52-585. As the defendant's UCC and RISFA counterclaims are time barred, and to the extent these claims also constitute the basis for her CUTPA counterclaim, the defendant cannot

[28] Here, it bears observing that the limitations period applicable to claims brought under the federal Fair Debt Collection Practices Act and the Connecticut Creditors' Collection Practices Act is also one year. See 15 U.S.C. § 1692k (d) ("An action to enforce liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs."); General Statutes § 36a-648 (d) ("An action to enforce liability under this section may be brought in any court of competent jurisdiction not later than one year after the date on which the violation occurs.").

"fairly and adequately protect the interests" of the proposed UCC and RISFA Classes, as required by Practice Book § 9-7 (4).[29]

CONCLUSION

For the foregoing reasons, the defendant's motion for class certification (No. 142) is DENIED.

PIERSON, J.

[29] To the extent the defendant's CUTPA counterclaim stands independently of the UCC and RISFA counterclaims, it is also time barred, as it was first brought in February 2021, more than three years after the alleged violations that occurred in 2016 and 2017. See General Statutes § 42-110g (f) ("An action under this section may not be brought more than three years after the occurrence of a violation of this chapter.").