IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

DARLENE GIBBS, *et al., on behalf of themselves and all individuals similarly situated*

Plaintiffs,

v. Civil Action No. 3:18-cv-676 (MHL)

MIKE STINSON, *et al.,*

Defendants.

DARLENE GIBBS, *et al.*, *on behalf of themselves and all individuals similarly situated*,

Plaintiffs,

v. Civil No: 3:20-cv-00632 (MHL)

ELEVATE CREDIT, INC.,

Defendant.

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs Darlene Gibbs, Stephanie Edwards, Lula Williams, Patrick Inscho, Lawrence Mwethuku, George Hengle, Tamara Price, Sharon Burney, Chastity McNeil, Kimetra Brice, Earl Browne, Jill Novorot, and Alicia Patterson ("Plaintiffs"), on behalf of themselves and the Settlement Class Members, by Counsel, submit this Memorandum in support of their Motion for Preliminary Approval of the Class Settlement.

I. INTRODUCTION

This case related to a complex lending enterprise alleged to have violated state and federal laws by making online short-term loans with triple-digit interest rates. As the Court is aware, it has already approved two groundbreaking class settlements related to the lending enterprise. The first resulted in Think Finance and others: (1) repaying over $53 million dollars in cash; and (2) forgiving more than $380 million dollars of debt owed by consumers who took out loans with Plain Green, Great Plains, and MobiLoans. *See generally* Order, *Gibbs v. Plain Green*, *LLC*, Case No. 3:17-cv-495 (E.D. Va. Dec. 13, 2019), ECF No. 141 (granting final approval of the class settlement) and Order, *In re Think Finance, LLC*, Case No. 17-33964 (Bankr. N.D. Tex. Dec. 6, 2019), ECF No. 1673.[1] The second set of settlements, approved last year, resulted in: (1) Sequoia, TCV, and former CEO Ken Rees repaying another $57.3 million to class members; and (2) an associated debt collector canceling nearly $383 million of debt from these predatory loans. Order at 5, *Gibbs v. TCV V, L.P.*, No. 3:19-cv-00789-MHL (E.D. Va. Mar. 29, 2021), ECF No. 95; and Order, *Gibbs v. Rees*, No. 3:20-cv-00717-MHL (E.D. Va. Mar. 26, 2021), ECF No. 68.

Although the largest of its kind in this industry, these prior settlements did not resolve or release all claims surrounding Think Finance and the tribal lenders. Instead, Plaintiffs and their counsel have continued to press litigation against others involved in the alleged lending enterprise—insisting that they refund their ill-gotten gains. Other than one final case against an alleged co-conspirator,[2] this is the final chapter of this litigation. If approved, this settlement will create an

[1] *see also* David Rees, *Historic settlement sees online lenders wiping out $380 million in debt. Virginians led the way*, The Virginian Pilot, available at https://www.pilotonline.com/business/consumer/dp-nw-online-lender-settlement-20191212-n7khtxn7tbbsbauzirehwmpgly-story.html. (last visited Feb. 2, 2022)

additional fund of $44.5 million for class members and resolve multiple class actions, as well as adversary proceedings filed in the bankruptcy proceedings in Texas.

This settlement encompasses the claims against Michael and Linda Stinson, Stephen J. Shaper, 7HBF No. 2, Ltd., and Startup Capital Ventures, L.P., (collectively, the "Shareholder Defendants"), and Elevate Credit, Inc. ("Elevate").[3] While these cases all arose from the same alleged illegal lending enterprises, there were different theories of liability involved, and the cases proceeded differently.

Plaintiffs filed class actions in this Court and in the Northern District of California against the Shareholder Defendants, largely based on their ownership of Think Finance, a closely held company. As part of this small company's inner circle, Plaintiffs alleged that they appointed the board of directors, were apprised of and involved in the company's key business decisions, including spearheading its tribal lending model. *See, e.g.*, *Gibbs v. Stinson,* No. 3:18-cv-00676 (E.D. Va. filed Oct. 4, 2018); *Brice v. Stinson*, No. 3:19-cv-1481 (N.D. Ca. filed Mar. 21, 2019). Both cases have been heavily litigated, involving multiple motions to dismiss, motions to compel arbitration, motions for class certification, motions to compel discovery, and multiple appeals to both the Fourth Circuit and Ninth Circuit. The parties have also engaged in three settlement conferences: two in California and one before Magistrate Judge Colombell.

As to Elevate, Plaintiffs filed a class action in the Eastern District of Virginia, alleging that it continued to assist Think Finance's operations despite a corporate spinoff in May 2014. Am. Compl., *Gibbs v. Elevate Credit, Inc.*, No. 3:20-cv-00632-MHL (E.D. Va. Sep. 15, 2020), ECF No.

[3] This settlement does not include Stephen Haynes, Haynes Investments, LLC, or Sovereign Business Solutions.

5. The Amended Complaint alleges that "[b]ecause many Think Finance employees with institutional knowledge of and involvement in the company's rent-a-tribe lending business were quickly transferred to Elevate, Think Finance required and depended on continued involvement by Elevate and its employees in operating its rent-a-tribe lending business, which involvement was freely and often provided." *See, e.g.*, Am. Compl. ¶ 134. Ultimately, the parties were able to resolve the case with the assistance of Magistrate Judge Colombell, as well as the hotly-contested claims brought by the Think Finance Litigation Trust against Elevate in the United States Bankruptcy Court in the Northern District of Texas. *Think Finance Litigation Trust v. Elevate Credit, Inc. (In re Think Finance, LLC)*, Ch. 11 Case No. 17-33964, Adv. No. 3:20-ap-03099 (Bankr. N.D. Tex. filed Aug. 14, 2020).

After over three years of litigation, Plaintiffs, the ShareholderDefendants, and Elevate entered into a Class Action Settlement Agreement and Release ("Settlement Agreement"), which is attached to the Motion for Preliminary Approval. This proposed settlement involves the same class members who have already benefited from the prior Think Finance settlements. The Settlement Agreement settles all claims pled against Defendants and the claims raised against Defendants and Released Parties in the adversary proceedings in the Think Finance Bankruptcy in the Northern District of Texas. *Think Finance Litigation Trust v. Gann (In re Think Finance, LLC)*, Ch. 11 Case No. 17-33964, Adv. No. 3:19-ap-03201 (Bankr. N.D. Tex. filed Oct. 31, 2019); *Think Finance Litigation Trust v. Elevate Credit, Inc. (In re Think Finance, LLC)*, Ch. 11 Case No. 17-33964, Adv. No. 3:20-ap-03099 (Bankr. N.D. Tex. filed Aug. 14, 2020).

Under Federal Rule of Civil Procedure 23, Plaintiffs and Defendants now seek preliminary approval of the proposed class action settlement. The Parties request that the Court preliminarily

certify the proposed Class and the proposed class settlement by entering the proposed Order of Preliminary Approval of Class Action Settlement.[4] A final motion and proposed order supporting the fairness of the proposed settlement will be submitted after members of the Settlement Class have received notice and have had a chance to object or opt-out, and before the Court's Final Approval Hearing. For the reasons explained below, the proposed settlement is reasonable, fair, and adequate, and the Court should preliminarily approve it.

II. CLAIMS TO BE SETTLED AND PLAINTIFF'S INVESTIGATION

To understand the context of this settlement, one must understand the history of litigation surrounding the loans at issue. Nearly five years ago, Plaintiffs filed the first of several related actions against Think Finance, its former chief executive officer, and its wholly-owned subsidiaries. *See Gibbs v. Rees*, Case No. 3:17-cv-386-MHL (E.D. Va.) (*Gibbs I*). In that case, Plaintiffs alleged that Think Finance's lending operation constituted an illegal lending enterprise, which originated high-interest loans through entities formed under tribal law to try to evade state and federal laws.

After filing their case against Think Finance, Plaintiffs then sued the tribal lending entities, Plain Green and Great Plains. *See Gibbs v. Plain Green, LLC*, Case No. 3:17-cv-495 (E.D. Va.) (*Gibbs II*). During *Gibbs I*, Plaintiffs obtained extensive discovery, prompting the filing of several cases against other co-conspirators involved in this nationwide scheme. *See Gibbs v. Haynes Investments, LLC*, Case No. 3:18-cv-00048 (E.D. Va.) (*Gibbs III*); *Gibbs v. Curry*, 3:18-cv-654 (E.D. Va.) (*Gibbs IV*). Through the discovery obtained in the other cases, Plaintiffs were also able to identify claims against Think Finance's shareholders, including the Shareholder Defendants, and

[4] All capitalized terms used here have the meanings set forth in this memorandum or in the Settlement Agreement.

they filed the first component of this case on October 4, 2018. *Gibbs v. Stinson*, Case No. 3:18-cv-00676-MHL (E.D. Va.). Plaintiffs also uncovered information establish Elevate's role in the illegal lending enterprise, which led to Plaintiffs' filing of that lawsuit on Sep. 15, 2020. *Gibbs v. Elevate Credit, Inc.*, No. 3:20-cv-00632-MHL (E.D. Va.).

Each of these cases has revolved around the same basic facts and alleged violations, including the Racketeer Influenced and Corrupt Organizations Act and various state law claims based on the usurious loans made to Plaintiffs and other consumers. Generally, Plaintiffs alleged that their loans violated state laws (and thus RICO) by charging excessive interest rates. Throughout these cases, the Parties have engaged in substantial discovery and motions practice, including the production of over a million pages of documents and over forty depositions of witnesses. In sum, the Parties have fully discovered the facts and defenses at issue in the case.

Although Plaintiffs managed to achieve substantial settlements with Think Finance and others, Plaintiffs refused to release their claims against remaining Defendants without significant consideration. Because of this, these Defendants were not included in the prior settlements and, instead, significant litigation continued against them. Defendants have vigorously denied Plaintiffs' allegations, disputed that state and federal law applied to the loans, disputed that the Plaintiffs' claims properly stated an offense, contested the Court's personal jurisdiction, and raised other legal defenses, including to class certification. *See, e.g.*, *Gibbs v. Stinson*, 421 F. Supp. 3d 267, 277–78 (E.D. Va. 2019), *aff'd*, 966 F.3d 286 (4th Cir. 2020); *see also Brice v. 7HBF No. 2, Ltd.*, 2019 WL 5684529, at *1 (N.D. Cal. Nov. 1, 2019), *rev'd*, 859 Fed. App'x 31 (9th Cir. 2021); *Gibbs v. Elevate Credit, Inc.*, No. 3:20-cv-00632-MHL (E.D. Va. Sep. 30, 2021) (denying Defendants' motions to

dismiss). As part of these efforts, the parties have litigated before this Court, the Northern District of California, the Fourth Circuit (twice), and the Ninth Circuit (twice).

Although Defendants did not concede liability, this Settlement reflects that they felt vulnerable to a potential finding that they could have liability under the various theories alleged in these cases. Similarly, Plaintiffs were motivated to obtain significant and immediate relief for consumers and avoid substantial litigation risks and uncertainties, especially considering the unique theories of liability and potential collection issues. As a result, after significant settlement and litigation efforts, the Parties have arrived at the proposed Settlement, which resolves all the claims raised in the multiple forums against the Defendants. Defendants deny liability and that a class is appropriate for Rule 23 certification on the claims asserted here, but Defendants do not oppose the certification of the Settlement Class for resolving this action.

III. TERMS OF SETTLEMENT

A. The Settlement Class

Under the Settlement Agreement, the Parties agreed to resolve the claims for the same class previously certified by this Court. Just like the prior settlements,[5] the Settlement Agreement proposes to resolve the claims of a nationwide class ("Settlement Class") defined as:

> All persons within the United States to whom Great Plains Lending, LLC has lent money; all persons within the United States to whom Plain Green, LLC lent money prior to June 1, 2016; and all persons within the United States to whom MobiLoans, LLC lent money prior to May 6, 2017.

[5] Order, *Gibbs v. Plain Green, LLC*, Case No. 3:17-cv-495 (E.D. Va. Dec. 13, 2019), ECF No. 141; Order, *In re Think Finance, LLC*, Case No. 17-33964 (N.D. Tex. Dec. 6, 2019), ECF No. 1673.

(Settlement Agreement, § 3.2.) Based on the prior class list produced by Think Finance and the tribal lenders, the Settlement Class consists of around 1,037,091 individual consumers.

B. Consideration Provided to the Settlement Class under the Settlement Agreement

The proposed Settlement provides significant and meaningful relief to consumers nationwide in the form of cash payments, as well as injunctive relief that Elevate will not provide any support to Think Finance or its related entities. Plaintiffs achieved the proposed settlement even though the Ninth Circuit recently compelled arbitration of the claims and despite various trial and merits obstacles in *Gibbs v. Stinson* and *Brice v. Stinson*. Plaintiffs also recognized that Defendants are mostly individuals, threatening both the options and resources available for Class Settlement. In any event, Plaintiffs negotiated a settlement structure that will provide real financial benefit to consumers nationwide.

First, Defendants are making a monetary payment totaling $44,530,000.00, which will be distributed to the Class Members. As outlined in the Settlement Agreement, the payments will be allocated using a tiered formula:

- Tier 1: All payments made by Settlement Class Members in Arizona, Arkansas, Colorado, Connecticut, Idaho, Illinois, Indiana, Kansas, Kentucky, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, Ohio, South Dakota, Vermont, Virginia, and Wisconsin so long as the Settlement Class Member paid the principal amount of his or her loan.

- Tier 2: Payments made above the legal limits for Settlement Class Members in Alabama, Alaska, California, Delaware, Florida, Georgia, Hawaii, Iowa, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Washington, West Virginia, Washington D.C., and Wyoming.

- Tier 3: Settlement Class Members in Nevada and Utah will not receive cash payments.

(Settlement Agreement, § 3.4.a.v.)

For injunctive relief, Elevate has agreed to cease providing any services to Think Finance, LLC, Think Finance SPV, LLC, Financial U, LLC, TC Loan Services, LLC, Tailwind Marketing, LLC TC Administrative Services, LLC, and TC Decision Services, LLC, or their successors-in-interest including, but not limited to, any services like the Data Sharing and Support Agreement, the Employee Matters Agreement, and the Shared Services Agreement. (*Id.* § 3.7.)

The relief provided by the Settlement is significant. Most consumers will receive a cash payment. This settlement also helps protect consumers against future predatory lending by preventing Elevate from working with Think Finance entities. These benefits will be provided to Class Members without the need to submit a claim form, proving any harm, or taking any affirmative action.[6]

C. The Required Class Action Fairness Notice.

Defendants will provide notice of the proposed settlement under the Class Action Fairness Act of 2005 ("CAFA"). 28 U.S.C. § 1715. The CAFA Notice will be sent to the Attorney General of the United States and to the attorneys general of all states and the District of Columbia and all U.S. territories. (Settlement Agreement § 3.9.) To account for the deadlines under governing law, the Parties request that the Court schedule the Final Approval Hearing at least 90 days after the CAFA Notice is mailed.

D. Attorney's Fees and expenses; Service Award

Class Counsel will apply for attorneys' fees and costs in an amount approved by the Court, but not to exceed fifteen percent of the Monetary Consideration paid by Elevate and one-third of the

[6] Class members who never cashed their checks from previous Think Finance settlements will need to submit a request.

Monetary Consideration paid by the other Defendants.[7] (*Id.* § 3.6.) Plaintiffs will also apply for a service award of up to $20,000 each for their role as Class Representatives to compensate them for their efforts in prosecuting this case including retaining counsel, assisting in discovery (including depositions), and trial preparation. Defendants have agreed not to oppose the application for the service award, which will be paid out of the Monetary Consideration portion of the Settlement. (*Id.* § 3.5.) Each Named Plaintiff will only receive one service award, even if they had claims in each of the three lawsuits.

E. Release of Claims

In return for this consideration, Class Members will provide the following release to the Released Parties:

> Upon the Effective Date, each Named Plaintiff and each Settlement Class Member, on behalf of themselves and their respective heirs, officers, directors, agents, employees, attorneys, successors, affiliates, and assigns, shall be deemed to have, and by operation of the Judgment shall have, fully released and forever discharged Elevate, SCV, John Dean, Robert Rees, Amy Young, Linda Stinson, Michael Stinson, Hannah S. Head, Molly M. West, Tod A. Stinson, Tyler W.K. Head, Jeff S. West, Jill Stinson, Corbett Capital, LLC, and Buckaroo Art, LLC, The Tyler W.K. Head Trust dated March 20, 2014, the Linda and Mike Stinson Irrevocable Asset Trust dated December 2, 2009, the Stinson 2009 Grantor Retained Annuity Trust Startup Capital Ventures, L.P., Startup Capital Ventures Management, LLC, Startup Capital Ventures LLC, Stephen J. Shaper, Sue Shaper, Shaper Family Partnership No. 1, Ltd., the Stephen and Sue Shaper Descendants Trust U/T/A Dated Dec 7, 2012, ShaperGP, LLC, and Middlemarch Capital Corp.), and 7HBF No. 2, Ltd., 7HBF, Ltd., 7HBF Management Co., Ltd., John H. Harvison, John D. Harvison, Jason Harvison, Associated Properties-GP, LLC, HCT #2, LP, John H. Harvison, John H. Harvison Dynasty Trust, Glenda Sue Harvison, Glenda Sue Harvison Dynasty Trust, Jove Investments, Ltd., Harvison Family Irrevocable Trust, Randall W. Harvison, Randall W. Harvison Dynasty Trust, Kay L. Parker, Kay L. Parker Dynasty Trust, Michael G. Harvison, Michael G. Harvison Dynasty Trust, Hope E. Harvison Anthony, Hope Harvison Anthony

[7] The Litigation Trust's attorney will also be compensated from the settlement, but Class Counsel and the Litigation Trust have agreed that no more than one-third of Monetary Consideration will be used for payment of fees and costs.

> Dynasty Trust, Hollie B. Harvison, Hollie B. Harvison Dynasty Trust, Stacie Woodcock, and their subsidiaries, and each of their respective current and former officers, directors, agents, employees, attorneys, successors, affiliates, heirs, and assigns (collectively, the "Released Parties"), from any and all claims that were brought or could have been brought in the Actions whether arising under local, state, tribal or federal law (including, without limitation, under any consumer protection or unfair and deceptive practices laws), whether by constitution, statute, contract, common law, or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated. The "Released Parties" shall not include L. Stephen Haynes, Sovereign Business Solutions, and Haynes Investments, LLC.

(*Id.* § 4.1.)

F. Notice and Exclusions

The parties intend to follow the same notice procedures previously approved by this Court. As with the prior case, class notice will be a combination of email notice to verified email addresses or U.S Mail to each Settlement Class Member. The Class Administrator, Continenal DataLogix, LLC,[8] will try to identify current class member addresses and will use alternate forwarding addresses, where available, for any returned mail. (*Id.* § 5.3.a.) If an alternate address is located, the notice will be re-mailed to the Settlement Class Member at their new address. (*Id.*) Additionally, the Class Administrator will establish and maintain a website on which pertinent information will be made available to Class Members, including the Settlement Agreement, the Settlement Class Notice, the Preliminary Approval Order, the proposed Final Judgment, and, if not included in the Preliminary Approval Order, any court order setting a date and time for the Final Fairness Hearing. (*Id.* § 5.3.b.) The website will also include a portal through which any Settlement Class Member could determine whether he or she is eligible to receive a Cash Award. (*Id.*)

[8] Many of the individuals who administered the prior *Gibbs* settlements have moved companies and now work at Continenal DataLogix, LLC. As a result, the people handling the day-to-day aspect of the settlement administration will be the same as the previous settlements.

Any Class Member who wants to be excluded from the class must advise the Class Administrator in writing, and their opt-out request must be postmarked no later than the Opt-Out Deadline. (*Id.* § 7.2.) The Settlement Class Member's Opt-Out request must contain the Class Member's full name, address, and telephone number. (*Id.*) Further, the Settlement Class Member must include a statement in the written request that he or she wishes to be excluded from the Settlement Agreement. (*Id.*) The request must also be signed by the Settlement Class Member. Requests for exclusion that do not comply with any of the foregoing requirements are invalid.

IV. ARGUMENT

A. Elements of Certification for Settlement Class

There is a strong judicial policy within this Circuit favoring resolution of litigation before trial. *See, e.g.*, *S.C. Nat'l Bank v. Stone*, 749 F. Supp. 1419, 1423 (D.S.C. 1990) ("The voluntary resolution of litigation through settlement is strongly favored by the courts.") (citing *Williams v. First Nat'l Bank*, 216 U.S. 582 (1910)). Settlement spares the litigants the uncertainty, delay, and expense of a trial and appeals while reducing the burden on judicial resources. As the court in *Stone* observed:

> In the class action context in particular, there is an overriding public interest in favor of settlement. Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strains such litigation imposes upon already scarce judicial resources.

749 F. Supp. at 1423 (quoting *Armstrong v. Bd. of Sch. Dirs.*, 616 F.2d 305, 313 (7th Cir. 1980)).

Rule 23 permits courts to preliminarily certify a class to carry out a settlement of the case. *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liability Litig.*, 55 F.3d 768, 793-94 (3rd Cir. 1995) (collecting cases and authority). A court may grant preliminary approval of a class action

where the class proposed for settlement satisfies the four prerequisites of Rule 23(a) (*i.e.*, numerosity, commonality, typicality, and adequacy of representation), as well as one of the three subsections of Rule 23(b). *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997). If the Court determines a settlement class should be certified, the Court should then follow a three-step process before granting final approval of a proposed settlement. *Levell v. Monsanto Rsch. Corp*., 191 F.R.D. 543 (S.D. Ohio 2000).

First, the Court should preliminarily approve the proposed settlement. *Id.* at 547. Second, members of the class must be given notice of the proposed settlement. *Id.* Third, a final fairness hearing must be held, after which the Court should decide whether the proposed settlement is fair, adequate, and reasonable to the class as a whole, and consistent with the public interest. *Id.* This protects the class members' procedural due process rights and enables the Court to fulfill its role as the guardian for the class's interests. *Id.* Approval of a class action settlement is committed to the "sound discretion of the district courts to appraise the reasonableness of particular class-action settlements on a case-by-case basis, in light of the relevant circumstances." *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 663 (E.D. Va. 2001). Additionally, "there is a strong initial presumption that the compromise is fair and reasonable." *Id.*

B. Consideration of the Rule 23(a) and Rule 23(b) Elements

Rule 23 governs the certification of class actions. In considering a settlement at the preliminary approval stage, the first question for the Court is whether a settlement class satisfies the requirements set forth in Rule 23, and thus may be conditionally certified for settlement purposes. Under Rule 23(a), one or more members of a class may sue as representative parties on behalf of a class if: (1) the class is so numerous that joinder of all members is 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. FED. R. CIV. P. 23(a).

Here, the Parties have reached a proposed agreement on behalf of the Settlement Class, which should be certified.

1. The Class Meets all Rule 23(a) Requirements.

a. Numerosity

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." There is no set minimum number of potential class members that fulfills the numerosity requirement. *See Holsey v. Armour & Co.*, 743 F.2d 199, 217 (4th Cir. 1984). But where the class numbers 25 or more, joinder is usually impracticable. *Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass'n,* 375 F.2d 648, 653 (4th Cir. 1967) (18 class members sufficient).

The numerosity requirement is easily met here. As detailed above, there are around 1,037,091 members in the Settlement Class, including the named Plaintiffs. Joinder of this many individuals is neither possible nor practical, so the first prong of the certification test has been met. *See Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 425 (4th Cir. 2003).

b. Commonality

Rule 23(a)(2) requires that the court find that "there are questions of law or fact common to the class." FED. R. CIV. P. 23(a)(2). "Commonality is satisfied where there is one question of law or fact common to the class, and a class action will not be defeated solely because of some factual variances in individual grievances." *Jeffreys v. Commc'ns Workers of Am., AFL-CIO*, 212 F.R.D. 320, 322 (E.D. Va. 2003). And the common issue must be such that "determination of

its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id*. The standard is a liberal one that cannot be defeated by the mere existence of some factual variances in individual grievances among class members. *Id.* at 322; *Mitchell-Tracey v. United Gen. Title Ins. Co.*, 237 F.R.D. 551, 557 (D. Md. 2006) (finding that factual differences among class members will not necessarily preclude certification "if the class members share the same legal theory.").

Here, by definition, members of the Settlement Class share multiple questions of law and fact. The Settlement Class Members are alleged to be the subject of a practice in which the lending enterprise, in violation of federal and state law, charged usurious interest rates on consumer loans. The practices at issue for this claim are identical across Settlement Class Members. The theories of liability as to all Settlement Class Members therefore arise from the same practices and present basic questions of law and fact common to all members of the Settlement Class. *See* FED. R. CIV. P. 23(a).

c. Typicality

In the typicality analysis, "[a] class representative must be part of the class and possess the same interest and suffer the same injury as the class members." *Lienhart v. Dryvit Sys., Inc.,* 255 F.3d 138, 146 (4th Cir. 2001). "Nevertheless, the class representatives and the class members need not have identical factual and legal claims in all respects. The proposed class satisfies the typicality requirement if the class representatives assert claims that fairly encompass those of the entire class, even if not identical." *Fisher v. Va. Elec. & Power Co.,* 217 F.R.D. 201, 212 (E.D. Va. 2003). "The typicality requirement mandates that Plaintiffs show (1) that their interests are squarely aligned with the interests of the class members and (2) that their claims arise from the same events and are premised on the same legal theories as the claims of the class members."

Jeffreys, 212 F.R.D. at 322. Commonality and typicality tend to merge because both of them "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." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 n.5 (2011).

Plaintiffs' claims arise from Defendants' practices for consumer loans. As discussed in the previous section, these are the same claims advanced on behalf of the Settlement Class Members, and Plaintiffs are members of the Settlement Class. So in seeking to prove their claims, Plaintiffs will advance the claims of Settlement Class Members. This is the hallmark of typicality. *See Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2001) (citing Rule 23(a)(3)).

d. Adequacy of Representation

"Finally, under Rule 23(a)(4), the class representatives must adequately represent the interests of the class members, and legal counsel must be competent to litigate for the interests of the class." *Jeffreys,* 212 F.R.D. at 323. "Basic due process requires that the named plaintiffs possess undivided loyalties to absent class members." *Fisher*, 217 F.R.D. at 212 (citing *Broussard v. Meineke Disc. Muffler Shops,* 155 F.3d 331, 338 (4th Cir. 1998)).

The adequacy of representation requirement is met here. Plaintiffs understand and have accepted the obligations of a class representative, have adequately represented the interests of the putative class, and have retained experienced counsel who have handled many consumer-protection class actions. Plaintiffs' lead counsel has effectively handled several consumer-protection and complex class actions, typically as lead or co-lead counsel. *See, e.g.*, *Clark v. Trans Union, LLC*, No. 3:15CV391, 2017 WL 814252, at *13 (E.D. Va. Mar. 1, 2017) ("This Court echoes the

sentiments previously stated about Clark's counsel because they pertain here with equal vigor.") (citing *Manuel v. Wells Fargo Bank, Nat'l Ass'n*, No. 3:14cv238, 2016 WL 1070819, at *3 (E.D. Va. Mar. 15, 2016) ("[T]his Court would have difficulty overstating Class Counsel's experience in the area of FCRA class action litigation.")); Final Approval Hr'g Trans., *Campos-Carranza v. Credit Plus, Inc.*, Case No. 1:16-cv-120, at 5:3-7 (LMB/MSN) (E.D. Va. Feb. 17, 2017) ("I think this is an extremely, as I say, extremely fair, reasonable, and adequate settlement. Again, the claims -- and I think being generous on the time limit for the claims was also appropriate. So I have no difficulty in signing this order."); *Thomas v. FTS USA, LLC*, 312 F.R.D. 407, 420 (E.D. Va. 2016) ("the Court finds that Thomas'[s] counsel is qualified, experienced, and able to conduct this litigation so as to fully and adequately represent both classes. Counsel is experienced in class action work, as well as consumer protection issues, and has been approved by this Court and others as class counsel in numerous cases around the country."); *Ceccone v. Equifax Info. Servs. LLC*, No. 13-CV-1314 KBJ, 2016 WL 5107202, at *6 (D.D.C. Aug. 29, 2016) ("Given these qualifications, and in light of Class Counsel's conduct in court and throughout these proceeding, this Court concludes that Class Counsel is qualified to prosecute the interests of this class vigorously."); *Dreher v. Experian Info. Sols., Inc.*, No. 3:11-CV-00624-JAG, 2014 WL 2800766, at *2 (E.D. Va. June 19, 2014) ("Dreher's counsel is well-experienced in the arena of FCRA class action litigation."); Fairness Hr'g Tr., *Burke v. Seterus, Inc.*, 3:16-cv-785, at 9:19-22 (E.D. Va. 2017) ("Experience of counsel on both sides in this case is extraordinary. Ms. Kelly and Ms. Nash and their colleagues are here in this court all the time with these kinds of cases and do a good job on them."); *James v. Experian Info. Sols., Inc.*, No. 3:12CV902 (E.D. Va. Oct. 29, 2014) (ruling on final approval in open court and finding "experience of counsel on both sides is at the top level of representation in cases of this sort and, indeed, perhaps beyond

that"); *Soutter v. Equifax Info. Servs.*, *LLC*, 2011 U.S. Dist. LEXIS 34267, at *28 (E.D. Va. Mar. 30, 2011) ("the Court finds that Soutter's counsel is qualified, experienced, and able to conduct this litigation. Counsel is experienced in class action work, as well as consumer protection issues, and has been approved by this Court and others as Class Counsel in numerous cases."); Declaration of Leonard A. Bennett ¶¶ 16-22 (attached as Ex. A); Declaration of Kristi Kelly ¶¶ 11-13 (attached as Ex. B); Declaration of Anna Haac ¶¶ 5-6 (attached as Ex. C).

Plaintiffs have no antagonistic or conflicting interests with the Settlement Class Members. Both Plaintiffs and the Settlement Class Members seek monetary and injunctive relief for the Defendants' allegedly unlawful actions. The Plaintiffs are members of the Settlement Class. Considering the identity of claims, there is no potential for conflicting interests. The Plaintiffs have also been very active here, including some Plaintiffs reviewing and responding to discovery, preparing for and sitting for depositions, preparing for trial, and staying abreast of the case as well as settlement efforts. (*See* Ex. A, Bennett Decl. ¶ 29; Ex. C, Haac Decl. ¶ 8.)As a result, the Class is adequately represented to meet Rule 23's requirements.

2. The Class Also Satisfies Rule 23(b)(3)'s Requirements.

The proposed settlement contemplates permitting opt-outs under Rule 23(b)(3). An action may be maintained as a class action if the four Rule 23(a) elements described above are satisfied, and in addition, "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." FED. R. CIV. P. 23(b)(3).

a. Predominance

If the Settlement Class is to be certified under Rule 23(b)(3), the common issues of law and fact shared by the Settlement Class Members must "predominate" over individual issues. Rule 23(b)(3)'s predominance inquiry focuses on whether the proposed class is "sufficiently cohesive to warrant adjudication by representation." *Gariety v. Grant Thornton, LLP*, 368 F.3d 356, 362 (4th Cir. 2004); *Lienhart v. Dryvit Sys., Inc.,* 255 F.3d 138, 142 (4th Cir. 2001). This criterion is normally satisfied when there is an essential, common factual link between all class members and the defendants for which the law provides a remedy. *Talbott*, 191 F.R.D. 99, 105 (W.D. Va. 2000) (citing *Halverson v. Convenient FoodMart, Inc.*, 69 F.R.D. 331 (N.D. Ill. 1974)). And predominance exists where the resolution of class members' individual claims depends on examining common conduct by a defendant. *Jeffreys,* 212 F.R.D. at 323 (finding predominance because class members' claims were based on same acts by defendant and the determinative "question in each individual controversy" was common).

The predominance requirement is satisfied here because the essential factual and legal issues for the Settlement Class Members' claims are common and relate to alleged standardized practice. *Talbott*, 191 F.R.D. at 105 ("Here, common questions predominate because of the standardized nature of [defendant's] conduct."). Nothing more is necessary to satisfy predominance.

b. Superiority

Finally, the Court should determine whether a class action is superior to other methods for the fair and efficient adjudication of this controversy under Rule 23(b)(3). The factors to be considered here in determining the superiority of the class mechanism are: (1) the interest in controlling individual prosecutions; (2) the existence of other related litigation; (3) the desirability

of concentrating the litigation in one forum; and (4) manageability.[9] *Hewlett v. Premier Salons Int'l, Inc.*, 185 F.R.D. 211, 220 (D. Md. 1997); *accord Newsome v. Up To Date Laundry, Inc.*, 219 F.R.D. 356, 365 (D. Md. 2004).

Efficiency is the primary focus in determining whether a class action is indeed the superior method of adjudicating the controversy. *Talbott*, 191 F.R.D. at 106. In examining these factors, it is proper for a court to consider the "inability of the poor or uninformed to enforce their rights, and the improbability that large numbers of class members would possess the initiative to litigate individually." *Haynes v. Logan Furniture Mart, Inc.,* 503 F.2d 1161, 1165 (7th Cir. 1974).

In *Jeffreys*, for instance, the court found that because "the facts and issues involved are identical for all class members, class members have little incentive and few resources to pursue litigation on their own, the class members are dispersed over several states, and there are few manageability concerns, the class action is the best method of resolving the matter." 212 F.R.D. at 323. The same is true here. Common issues predominate in the Settlement Class. And the individual claims of the members of the Settlement Class are small, thus providing little incentive for individual litigation, and the members of the Settlement Class have few resources to pursue litigation on their own. *See also Amchem*, 521 U.S. at 617 ("The policy at the very core of the class action mechanism is 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.") (quoting *Mace v. Van Ru Credit Corp.,* 109 F.3d 338, 344 (7th Cir. 1997)).

[9] A trial court may disregard management issues in certifying a settlement class, but the proposed class must still satisfy the other requirements of Rule 23. *Amchem*, 521 U.S. at 620. So this criterion is not material to the Court's analysis in this posture.

A class action is superior to other available methods for the fair and efficient adjudication of the case because a class resolution of the issues described above outweighs the difficulties in management of separate, individual claims and allows access to the courts for those who might not gain such access standing alone, particularly given the small amount of the damage claims that would be available to individuals. Moreover, apart from the fact that the settlement allows a recovery of actual damages, certification permits individual claimants to opt-out and pursue their own actions separately if they believe they can recover more in an individual suit. Thus, both predominance and superiority are satisfied. For these reasons, the Court should conditionally certify the Settlement Class for settlement purposes.

C. The Settlement is Fair, Reasonable, and Adequate, and Should Be Preliminarily Approved.

After the analysis of the Rule 23(a) and (b) elements, the Court should then decide whether the proposed settlement is fair, reasonable, and adequate. Although pretrial settlement of class actions is favored, "Rule 23(e) provides that 'a class action shall not be dismissed without the approval of the court." *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991) (citations omitted). "To this end, 'the role of the Court reviewing the proposed settlement of a class action under Fed. R. Civ. P. 23(e) is to assure that the procedures followed meet the requirements of the Rule and . . . to examine the settlement for fairness and adequacy.'" *In re MicroStrategy*, 148 F. Supp. 2d at 663.

"[T]he Fourth Circuit [has] adopted a bifurcated analysis, separating the inquiry into a settlement's 'fairness' from the inquiry into a settlement's 'adequacy.'" *Id*. These safeguards ensure that "a proposed class has sufficient unity so that absent members can fairly be bound by decisions of class representatives." *Amchem*, 521 U.S. at 621; *see also In re Jiffy Lube*, 927 F.2d at 158 ("The

primary concern addressed by Rule 23(e) is the protection of class members who rights may not have been given adequate consideration during the settlement negotiations."). In this case, each set of factors supports approving the Settlement.

1. The Settlement is Fair.

When evaluating the fairness of a settlement, the Court should evaluate the settlement against these criteria: "(1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel." *In re Jiffy Lube*, 927 F.2d at 159. The fairness inquiry ensures that "the settlement was reached as a result of good-faith bargaining at arm's length, without collusion." *Id*. These factors point persuasively to the conclusion that the settlement here is fair.

The proposed settlement here was reached only after significant work was conducted in these cases. As discussed above, the Plaintiffs conducted significant discovery into the lending enterprise, completed extensive briefing, and thoroughly investigated the facts and claims at issue. In the related Think Finance litigation, there was a production of over a million pages of documents—much of which related to the claims against Think Finance's shareholders. In addition, Plaintiffs had the benefit of over forty depositions of critical witnesses involved in the lending businesses, which they took in the prior litigation. In addition, in both *Brice v. Stinson* and *Gibbs v. Stinson*, Plaintiffs litigated and survived multiple motions to dismiss, motions to compel arbitration, motions to transfer, conducted discovery, have certified statewide classes,[10] and litigated four separate appeals. In *Brice*, Plaintiffs were on the eve of trial with the Shareholder Defendants.

[10] While statewide classes have been certified, this settlement will provide for nationwide relief.

While *Gibbs v. Elevate* is a newer case, Plaintiffs there have still succeeded in defending against multiple motions to dismiss. Plaintiffs also had created leverage through their prior litigation such that Elevate knew what to reasonably expect with continued litigation.

This supports the conclusion that the posture of the action and the discovery conducted is such that the proposed settlement is fair, reasonable, and adequate. This action has been appropriately litigated by the Parties and sufficient discovery has been obtained by both Plaintiffs and Defendants to assess the strength of their respective claims and defenses. Courts have found that, where a settlement results from genuine arms'-length negotiations, there is a presumption that it is fair. *See*, *e.g.*, *City P'ship Co. v. Atlantic Acquisition Ltd. P'Ship*, 100 F.3d 1041, 1043 (1st Cir. 1996).

The parties have also been involved in arm's-length negotiations of this settlement since March 2020. These settlement negotiations have involved dozens of exchanges and countless phone calls, as well as settlement conferences both in the Northern District of California, and in this Court before Judge Colombell.

Finally, Plaintiffs' counsel is highly experienced in consumer class action litigation (especially as to these claims), and they endorse the settlement as fair and adequate under the circumstances. No counsel in this country have litigated as lead or co-lead more cases and achieved a higher amount of recovery for consumers than the present team of attorneys. Courts recognize that the opinion of experienced and informed counsel in favor of settlement should be afforded substantial consideration in determining whether a class settlement is fair and adequate. *See*, *e.g.*, *In re MicroStrategy*, 148 F. Supp. 2d at 665.

2. The Settlement Terms Are Adequate and Reasonable.

In assessing the adequacy of the Settlement, the Court should look to these factors: "(1) the relative strength of the plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement." *In re Jiffy Lube*, 927 F.2d at 159.

While it is too early to address the last factor, application of the other relevant factors confirms that the proposed settlement is adequate and should be preliminarily approved.

a. The relative strength of Plaintiffs' case and the difficulty proving liability

While Class Counsel firmly believe in the merits of Plaintiffs' claims, establishing liability on the claims at issue is not at all a certainty. Among other things, Defendants had several plausible merits defenses because Think Finance was the primary bad actor. Put differently, Defendants here never had a direct interaction with Plaintiffs or any class members. And although a class had been certified in *Gibbs v. Stinson*, Defendants had appealed this ruling, and the Fourth Circuit granted the Rule 23(f) petition. *7HBF No. 2, Ltd. v. Gibbs*, No. 21-280 (4th Cir. filed Oct. 29, 2021) (ECF No. 2-1). A loss on certification would mean that Class Members would receive nothing. And at a minimum, the Fourth Circuit's decision to grant the Rule 23(f) petition would have delayed this case for more than a year.

As noted, the Defendants have disputed Plaintiffs' claims since the inception of these cases and have raised several defenses to Plaintiffs' class claims. Given the Parties' arguments, the potential risks, and expenses associated with continued prosecution of the Lawsuit, the likelihood of

appeals, the certainty of delay, and the ultimate uncertainty of recovery through continued litigation, the proposed settlement is adequate.

b. Anticipated duration and expense of additional litigation

Aside from the potential that either side will lose at trial or on appeal, the Parties anticipate incurring substantial additional costs in pursuing this litigation further. The level of additional costs would significantly increase as the Parties continue to litigate here and in other jurisdictions. Thus, the likelihood of substantial future costs favors approving the proposed Settlement.

Even more importantly, the long delay threatened by continued litigation, continued appeals, and terminal appeal would prevent the imminent payment to Class Members. This earliest of the cases involved here has already been pending for over three years (and the broader cases for much longer), but significant and time-consuming events are still left, such as a contested motion for class certification in *Gibbs v. Elevate*, as well as trials in all three cases, pending interlocutory appeals, as well as anticipated appeals. Even in the Rocket Docket, it is hard to imagine that the Virginia cases would have been ready for trial before January 2024.

c. Solvency of the Defendants and the likelihood of recovery

Although the Defendants are solvent, the likelihood of a substantial recovery beyond the amount in the Settlement Fund is uncertain. As highly sophisticated companies and individuals, the Defendants here could have made collection of any judgment extremely difficult.[11] Moreover, while all cases carry potential for uncertain outcomes, RICO cases in particular are complex and difficult to prove, especially on a class-wide basis. And even if successful at trial, there is also uncertainty on

[11] The individual Defendants, because of the financial means to invest and participate in these companies, could also make collection difficult through various holding entities.

appeal. *See, e.g.*, *Dreher v. Experian Info. Sols., Inc.*, 856 F.3d 337, 340 (4th Cir. 2017) (vacating a class judgment of around $12 million and dismissing the case); *Anixter v. Home–Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of litigation); *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263 (2d Cir.1979) (reversing $87 million judgment after trial); *Trans World Airlines*, 409 U.S. 363, 93 S.Ct. 647, 34 L.Ed.2d 577 (1973) (reversing $145 million judgment after years of appeals and on a theory that defendant had not raised, or argued).

In any event, even assuming the ability to pay a judgment, "that should not preclude final approval of the proposed Settlement." *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 573 (E.D. Va. 2016) (citing *Henley v. FMC Corp*., 207 F. Supp. 2d 489, 494 (S.D.W. Va. 2002) ("[That factor] is largely beside the point given the other factors weighing in favor of a negotiated resolution."); *see also Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 480 (D. Md. 2014) ("Although Capital One could likely afford to pay a much larger judgment, because the other factors favor adequacy, this factor may be given less weight.").

In light of the foregoing and when considering the other factors, this factor supports approval of the Settlement.

D. The Proposed Notice and Notice Plan Satisfy Rule 23.

Following preliminary approval, the class members must be given notice about the nature of the settlement and of their rights. Rule 23(e)(1) requires that: "The court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Rule 23(c)(2)(B) sets forth the contents of a notice to be sent to members of a Rule 23(b)(3) class:

> For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice

> to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language: the nature of the action; the definition of the class certified; the class claims, issues, or defenses; that a class member may enter an appearance through an attorney if the member so desires; that the court will exclude from the class any member who requests exclusion; the time and manner for requesting exclusion; and the binding effect of a class judgment on members under Rule 23(c)(3).

The proposed Notice to the Settlement Class, which is an Exhibit to the Settlement Agreement, satisfies all of these requirements. (Settlement Agreement § 5.3.) As part of the prior settlement, the proposed Notice was reviewed and approved by Dr. Shannon Wheatman of Kinsella. Dr. Wheatman is an unparalleled expert in her field. She has designed the notice plan for over 500 complex settlements (including the unique notice program in *Berry v. LexisNexis Risk & Information Analytical Group*, Case No. 3:11-cv-754 (E.D. Va.)), which was challenged before and approved by the Fourth Circuit) and helped design the Federal Judicial Standards notice guidelines for class action settlements. Dr. Wheatman has authored many publications evaluating the most effective methodologies for achieving effective notice in class action settlements, and has been accepted as a testifying expert on class action notice in courts across the country. (*See* Declaration of Shannon Wheatman ¶¶ 2–3 (attached as Ex. D).)As stated in her declaration, the proposed Notice uses clear and concise language and will be easily understood by Class Members. (*Id*. ¶¶ 4 –6.)

The proposed notice program will provide individual direct notice. Under the Settlement Agreement, to accomplish the contemplated class notice, the Settlement Administrator will use the same class list and protocol established by the prior settlement. The Settlement Administrator will must transmit the approved class action notices, after it has electronically checked and updated Settlement Class Member addresses using its industry's best practices. If any of the mailed Class Notices are returned as undeliverable, the Class Administrator will try to locate alternate addresses

for any returned mail and will promptly re-mail the Settlement Class Notice. Apart from individual mailed notice, the Notice Plan also provides Settlement Class Members with access to a website. The website will have a portal allowing Settlement Class Members to determine eligibility for a Cash Award and will also contain all relevant Settlement documents, like the Settlement Agreement, the Class Notice, the Preliminary Approval Order, the proposed Final Judgment, and any court order about the scheduling of the Final Fairness Hearing.

The Settlement's robust notice and administration plan will ensure the most Class Members will receive the payments to which they are entitled. For all class members who have already cashed a previous Think Finance settlement check, there is no claim. Class Notice will be sent in accordance with Fed. R. Civ. P. 23(c) in the manner approved by the Court by a combination of email notice to verified email addresses or U.S. Mail to each Settlement Class Member identified on the Class List.

As the Manual for Complex Litigation recognizes, mail notice is the ideal method of informing class members of a class settlement where such members can be identified, while notice through an internet website is a supplemental means of providing notice. *See* MCL, § 21.311; *see also Henggeler v. Brumbaugh & Quandahl P.C., LLO*, 2013 U.S. Dist. LEXIS 155235, at *14–15 (D. Neb. Oct. 25, 2013) ("The court finds that the proposed notice is clearly designed to advise the class members of their rights. The Agreement provides for individual mailed notices to each of the class members. Individual notice is the best notice practicable.").

For these reasons, the proposed Notices and Notice Plan represent the "best notice that is practicable under the circumstances," and it therefore meets the notice requirements of Rule 23. For these reasons, the Notices and Notice Plan should be approved by the Court.

V. CONCLUSION

The Settlement is an excellent result considering the circumstances of the litigation and strength of Plaintiffs' case. The terms of the Settlement, as well as the circumstances of negotiations and its elimination of further costs caused by litigating this case through trial and appeal, satisfy the structures for preliminary approval.

For these reasons, Plaintiffs request that the Court issue an Order that: (1) grants preliminary approval to the Proposed Settlement; (2) approves of the Proposed Notice filed concurrently with this Motion; (3) orders that the Proposed Notice be immediately mailed to Class Members; (4) approves the appointment of Continenal DataLogix, LLC as the Settlement Administrator; and (5) sets the date of the Final Fairness Hearing at the Court's earliest availability, but no sooner than 120 days from the date of the granting of this Motion.

Respectfully submitted,
DARLENE GIBBS, et al.

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