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

GEORGE HENGLE, *et al., on behalf of themselves and all others similarly situated,*

Plaintiffs,

v. Case No: 3:19-cv-250-DJN

SCOTT ASNER, *et al*,

Defendants.

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

Plaintiffs George Hengle, Sherry Blackburn, Willie Rose, Elwood Bumbray, Tiffani Myers, Steven Pike, Sue Collins, Lawrence Mwethuku, Regina Nolte, and Jo Ann Falash ("Plaintiffs"), on behalf of themselves and the Settlement Class Members, by counsel, submit this Memorandum in Support of Motion for Preliminary Approval of the Class Settlement.

I. INTRODUCTION

This case arises from the making and collection of high interest loans from online lending companies named Golden Valley Lending, Silver Cloud Financial, Majestic Lake Financial, and Mountain Summit Financial (the "Tribal Lending Entities"). The Tribal Lending Entities were formed by the Habematolel Pomo of Upper Lake, a federally recognized Native American tribe. Because tribal businesses may have been entitled to immunity as arms of a tribe, this case proceeded against the Tribal Council of the Habematolel Pomo of Upper Lake. In addition, Plaintiffs sued several of the Tribal Lending Entities' non-tribal business partners, namely Joshua Landy and Scott Asner.

As soon as Plaintiffs filed this case in April 2019, Defendants vigorously defended against it, including by filing motions to dismiss that raised complex and novel issues of sovereign

immunity and enforceability of tribal choice of law provisions. The Court denied those motions in an extensive opinion—spanning 108 pages—that addressed several matters of first impression in this District and the Fourth Circuit, including: (1) whether sovereign immunity extends to suits seeking to enjoin violations of state law; (2) whether online loans constitute off the reservation activity subject to state law; and (3) the enforceability of tribal choice of law provisions. *Hengle v. Asner*, 433 F. Supp. 3d 825 (E.D. Va. 2020). Defendants then appealed that decision to the United States Court of Appeals for the Fourth Circuit, which affirmed this Court's decision. *Hengle v. Treppa*, 19 F.4th 324, 345 (4th Cir. 2021). After that decision, the Fourth Circuit denied Defendants' request to stay the mandate, and the Supreme Court denied their request to stay the case pending their petitions for writs of certiorari. *Treppa v. Hengle*, No. 21A237, 595 U.S. __ (Jan 10. 2022) ("The application for stay presented to The Chief Justice and by him referred to the Court is denied.").

After more than three years of extensive litigation, Plaintiffs and Defendants entered into a Stipulation and Agreement of Settlement ("Settlement Agreement"), which the parties have attached to the Motion for Preliminary Approval. The proposed settlement affords significant to relief to class members, including: (1) $450 million of debt cancellation; and (2) creation of a $39 million common fund to be distributed to consumers who repaid unlawful amounts. (Settlement Agreement §§ 3.4.a.1; 3.4.b.1.) Put differently, the proposed settlement provides almost half a billion dollar of benefits to class members—without accounting for other valuable consideration, like deletion of any negative credit reporting associated with the loans. This relief is similar to other trailblazing settlements approved by this Court.[1] And critically, the proposed settlement does

[1] *See Gibbs v. TCV, V, LLP*, No. 3:19-cv-00789, Dkt. 95 (E.D. Va. Mar. 29, 2021) (granting final approval of a class settlement resulting in: result in: (1) the creation of a settlement fund in the amount of $50,050,000.00; and (2) cancellation of approximately $383,000,000.00 in debts);

not release valuable claims against other alleged co-conspirators, who have been sued in related litigation now pending before this Court.

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. A final motion and proposed order supporting the fairness of the proposed class action settlement will be submitted: (1) after Settlement Class Members have received notice providing them an opportunity to object or opt-out; and (2) before the Court's Final Approval Hearing. For the reasons explained below, the proposed class action settlement is reasonable, fair, and adequate, and the Court should preliminarily approve it.

II. SETTLEMENT TERMS

a. The Settlement Class

Under the Settlement Agreement, the parties agreed to resolve the claims of a nationwide class ("Settlement Class") defined as:

> All consumers residing within the United States who executed loan agreements with Golden Valley Lending, Inc., Silver Cloud Financial, Inc., Majestic Lake Financial, Inc., or prior to February 1, 2021, with Mountain Summit Financial, Inc.

(Settlement Agreement § 3.2.) Based on a review of the Tribe's records, the Tribal Officials estimate that the Settlement Class consists of approximately 555,000 Settlement Class Members.

b. Consideration to the Settlement Class

The proposed class action settlement provides significant and meaningful debt relief and cash payments to consumers nationwide. Plaintiffs achieved the proposed settlement even though

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Gibbs v. Plain Green, LLC, No. 3:17-cv-495, Dkt. 141 (E.D. Va. Dec. 13, 2019) (granting final approval of a class settlement resulting in: result in: (1) the creation of a settlement fund in the amount of $53,000,000; and (2) cancellation of approximately $380,000,000.00 in debts).

several defendants moved to dismiss the case, appealed various issues to the Fourth Circuit, and commenced the certiorari process before the Supreme Court. Plaintiffs also recognized that Defendants are individuals, whose financial situations could pose a threat to both the options and resources available for class settlement. Despite this obstacle, Plaintiffs negotiated a settlement that will provide substantial financial benefit to consumers nationwide.

First, the Tribal Officials will eliminate the balance due on all outstanding loans on the basis that the debts are disputed. (Settlement Agreement § 3.4.a.1.) The Tribal Officials estimate that this will result in the cancellation of approximately $450 million in outstanding loans. (*Id.*)

Second, the Tribal Officials will not sell, transfer, or assign for collection any outstanding loans. (*Id.* § 3.4.a.ii.) The Tribal Officials have also ceased all collection activity on the loans. (*Id.*) In the event any funds are collected after March 3, 2022, the Tribal Officials will remit those funds back to the borrower from whom they were collected. (*Id.*)

Third, the Tribal Officials will request deletion of any negative tradelines for loans in the name of the Tribal Officials or the Tribal Corporations. (*Id.* § 3.4.a.iv.)

Fourth, the Tribal Officials will pay the costs of notice and administration separately from the settlement fund—almost $1 million. (*Id.* § 3.4.b.ii.) The Tribal Officials will also contribute $75,000 to pay any service awards that the Court may award at Final Approval. (*Id.*)

Fifth, Defendants Landy, Asner, Gortenburg, and Vittor will make monetary payments collectively totaling $39,000,000.00, which will be distributed to the Settlement Class Members. (*Id.* § 3.4.b.i.) As outlined in the Settlement Agreement, the payments will be allocated using a

tiered formula after payment of service awards to Plaintiffs,[2] attorneys' fees, and costs as approved by this Court:

> Tier 1: The dollar amount of all payments made by each Settlement Class Member in Arizona, Arkansas, Colorado, Connecticut, Idaho, Illinois, Indiana, Kansas, Kentucky, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, South Dakota, Vermont, Virginia, and Wisconsin so long as the Settlement Class Member paid the principal amount of his or her loan.
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> Tier 2: The dollar amount of payments made above the legal interest limits if the original principal amount was repaid and if the Settlement Class Member resided in Alabama, Alaska, California, Delaware, Florida, Georgia, Hawaii, Iowa, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Washington, Washington D.C., West Virginia, or Wyoming at the time the Settlement Class Member took out the loan; and
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> Tier 3: Settlement Class Members in Nevada and Utah will not receive cash payments.

Settlement Class Members in Tier 1 or Tier 2 who repaid the principal amount borrowed will receive a cash award based on a *pro rata* calculation rounded down to the nearest cent. (*Id.* § 3.4.b.v.1.) In the event any Settlement Class Member took out more than one loan during the class period, his or her claim amount will be calculated by determining the claim amount for each loan and adding them together. (*Id.* § 3.4.b.iv.)

The relief provided by the proposed class action settlement is significant. Most consumers will receive a cash payment, and many will benefit from debt relief. They will receive this consideration without needing to submit a claim form, proving any harm, or taking any affirmative action.

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[2] This tiered formula has been approved by the Court in several other similar cases. *See, e.g.*, *Gibbs v. TCV, V, LLP*, No. 3:19-cv-00789, Dkt. 95 (E.D. Va. Mar. 29, 2021) (Final Approval Order); *Gibbs v. Plain Green, LLC*, No. 3:17-cv-495, Dkt. 141 (E.D. Va. Dec. 13, 2019) (Final Approval Order). *See generally Turner v. ZestFinance, Inc.,* No. 3:19-cv-293 (E.D. Va.).

c. Class Action Fairness Notice

Defendants will provide notice of the proposed settlement under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 ("CAFA"). 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 § 5.4.d.) 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. Attorneys' Fees, Costs, and Service Awards

Class Counsel will apply for attorneys' fees and costs in an amount approved by the Court, but not to exceed $13,000,000, or one-third of the monetary consideration paid by Defendants Landy, Asner, Gortenburg, and Vittor. (*Id.* § 3.6.) Plaintiffs also will apply for a service award of $10,000 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.

e. Release of Claims

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

> **The Tribal Officials.** Each Plaintiff and each Settlement Class Member, on behalf of themselves and their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, shall have fully, finally, and forever released the Tribal Released Parties, in their individual and official capacities, of any and all rights, duties, obligations, demands, actions, causes of action, liabilities, claims, grievances, suits, losses, damages, costs, fees, expenses, and controversies, whether arising under local, state, tribal, foreign, territorial or federal law (including, without limitation, under any consumer protection or unfair and deceptive practices laws) or equity, whether by constitution, statute, rule, regulation, any regulatory promulgation, contract, tort, common law, or any other theory of action, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, matured or un-matured, contingent or fixed, accrued or unaccrued, punitive or

compensatory, choate or inchoate, liquidated or unliquidated, based on any fact known or unknown that could have been brought against them by Settlement Class Members related in any way to the loans described in subsection 1(a) above (the "Releases").

Landy Released Parties. Each Plaintiff and each Settlement Class Member, on behalf of themselves and their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, shall have fully, finally and forever released and discharged the Landy Released Parties from any and all rights, duties, obligations, demands, actions, causes of action, liabilities, claims, grievances, suits, losses, damages, costs, fees, expenses, and controversies, whether arising under local, state, tribal, foreign, territorial or federal law (including, without limitation, under any consumer protection or unfair and deceptive practices laws) or equity, whether by constitution, statute, rule, regulation, any regulatory promulgation, contract, tort, common law, or any other theory of action, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, matured or un-matured, contingent or fixed, accrued or unaccrued, punitive or compensatory, choate or inchoate, liquidated or unliquidated, based on any fact known or unknown, including without limitation those that arise out of or relate in any way to any or all of the claims, causes of action, acts, omissions, facts, matters, transactions, or occurrences that were or could have been directly or indirectly alleged, described, set forth, referred to, or asserted in the Action, as well as including any claims known or unknown that each Settlement Class Member has or ever had against the Landy Released Parties.

Asner/Gortenburg Released Parties. Each Plaintiff and each Settlement Class Member, on behalf of themselves and their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, shall have, fully, finally, and forever released and discharged the Asner/Gortenburg Released Parties from any and all rights, duties, obligations, demands, actions, causes of action, liabilities, claims, grievances, suits, losses, damages, costs, fees, expenses, and controversies, whether arising under local, state, tribal, foreign, territorial or federal law (including, without limitation, under any consumer protection or unfair and deceptive practices laws) or equity, whether by constitution, statute, rule, regulation, any regulatory promulgation, contract, tort, common law, or any other theory of action, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, matured or un-matured, contingent or fixed, accrued or unaccrued, punitive or compensatory, choate or inchoate, liquidated or unliquidated, based on any fact known or unknown, including without limitation those that arise out of or relate in any way to any or all of the claims, causes of action, acts, omissions, facts, matters, transactions, or occurrences that were or could have been directly or indirectly alleged, described, set forth, referred to, or asserted in the Action, as well as including any claims known or unknown that each Settlement Class Member has or ever had against the Asner/Gortenburg Released Parties.

> **Vittor Released Parties.** Each Plaintiff and each Settlement Class Member, on behalf of themselves and their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, shall have, fully, finally, and forever released and discharged the Vittor Released Parties from any and all rights, duties, obligations, demands, actions, causes of action, liabilities, claims, grievances, suits, losses, damages, costs, fees, expenses, and controversies, whether arising under local, state, tribal, foreign, territorial or federal law (including, without limitation, under any consumer protection or unfair and deceptive practices laws) or equity, whether by constitution, statute, rule, regulation, any regulatory promulgation, contract, tort, common law, or any other theory of action, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, matured or un-matured, contingent of fixed, accrued or unaccrued, punitive or compensatory, choate or inchoate, liquidated or unliquidated, based on any fact known or unknown, including without limitation those that arise out of or relate in any way to any or all of the claims, causes of action, acts, omissions, facts, matters, transactions, or occurrences that were or could have been directly or indirectly alleged, described, set forth, referred to, or asserted in the Action or the New Litigation, as well as including any claims known or unknown that each Settlement Class Member has or ever had against the Vittor Released Parties.

(*Id.* § 4.1.)

f. Notice and Exclusions

Class notice will be a combination of email notice to verified email addresses or U.S Mail to each Settlement Class Member. If approved by the Court, the Class Administrator, American Legal Claims Services, will first email direct notice to Settlement Class Members at the most recent email address shown in the Tribal Officials' electronic records, as maintained in the ordinary course of business, for each loan at issue. (*Id.* § 5.3.a.) If email notice results in a bounce-back email, direct notice will be mailed to Settlement Class Members via first class mail. (*Id.* § 5.3.b.) Prior to mailing, the Class Administrator will run mailing addresses once through the NCOA or any other postal address verification database that the Administrator deems proper. (*Id.*) Returned direct notices will be re-mailed if they are returned within twenty days of the postmark date and contain a forwarding address. (*Id.*) Additionally, the Class Administrator will establish and maintain a website on which pertinent information will be made available to Settlement Class

Members, including the Class Action Complaint; the Settlement Agreement; any motions and memoranda seeking approval of the proposed class action settlement, approval of attorneys' fees and costs, or approval of service awards; and any orders of this Court relating to the proposed class action settlement. (*Id.* § 5.3.c.)

Any Settlement Class Member who wants to be excluded from the class must advise the Class Administrator in writing, and his or her 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 Settlement 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 also must be signed by the Settlement Class Member. Requests for exclusion that do not comply with any of the foregoing requirements are invalid.

III. ARGUMENT

a. Certification Standard

Courts within the Fourth Circuit favor 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 observed in *Stone*:

> 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 (3d Cir. 1995) (collecting cases). A court may grant preliminary approval of a class action where the proposed class 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 that a settlement class should be certified, it then should 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, class members 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.*

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 Rule 23's requirements, 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 class's interests. Fed. R. Civ. P. 23(a).

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

b. The Settlement Class Meets the Certification Elements

i. The Settlement Class satisfies Rule 23(a)

1. 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) (holding 18 class members sufficient).

The numerosity requirement is easily met here. As detailed above, there are around 555,000 Settlement Class Members, 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).

2. 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, the Settlement Class Members 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 all class members. The theories of liability as to the 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).

3. 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 "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. Thus, 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 Fed. R. Civ. P. 23(a)(3)).

4. 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 effectively has handled several consumer-protection and complex class actions, typically as lead or co-lead counsel. *See, e.g.*, *Clark v. Trans Union, LLC*, No. 3:15-cv-391, 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."); *Campos-Carranza v. Credit Plus, Inc.*, No. 1:16-cv-120, ECF No. 80 at 5:3-7 (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) ("[T]he 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."); *Manuel v. Wells Fargo Bank, Nat'l Ass'n*, No. 3:14-cv-238, 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."); *Dreher v. Experian Info. Sols., Inc.*, No. 3:11-cv-624, 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."); *Burke v. Seterus, Inc.*, No. 3:16-cv-785, ECF No. 41 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. 3:12-cv-902 (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*, No. 3:10-cv-107, 2011 WL 1226025, at *10 (E.D. Va. Mar. 30, 2011) ("[T]he 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."); *see also* Declaration of Leonard A. Bennett ¶¶ 16-19 (attached as Ex. 1); Declaration of Kristi Kelly ¶¶ 12–13 (attached as Ex. 2).

Plaintiffs have no antagonistic or conflicting interests with the Settlement Class Members. Plaintiffs and the Settlement Class Members alike seek monetary relief for Defendants' allegedly unlawful actions. Plaintiffs are members of the Settlement Class. Considering the identity of claims, there is no potential for conflicting interests. Plaintiffs also have been very active here, including reviewing and responding to discovery and staying abreast of the case throughout the appeal process and participating in settlement efforts. (*See* Ex. 2, Kelly Decl. ¶¶ 14–15.) As a result, the Settlement Class Members are adequately represented to meet Rule 23's requirements.

ii. The Settlement Class satisfies Rule 23(b)(3)

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).

1. 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.

2. 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.[3] *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).

[3] 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. Thus, this criterion is not material to the Court's analysis in this posture.

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. And the Settlement Class Members' individual claims are small, thus providing little incentive for individual litigation. *See 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))).

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 proposed class action 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

After the analysis of the Rule 23(a) and (b) elements, the Court should 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 Federal Rule of Civil Procedure 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 proposed class action settlement.

i. 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 conducted over three years. As discussed above, Plaintiffs conducted significant discovery into the lending enterprise, completed extensive briefing before this Court and the Fourth Circuit, and thoroughly investigated the facts and claims at issue.

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 also have been involved in arm's-length negotiations of this settlement since late 2021. These settlement negotiations have involved dozens of exchanges, countless phone calls, and settlement conferences before the Honorable Mark R. Colombell, United States Magistrate Judge, and mediator Nancy F. Lesser.

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.

ii. The settlement is adequate and reasonable

In assessing the adequacy of the proposed class action 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.

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

While Class Counsel firmly believes in the merits of Plaintiffs' claims, establishing liability on the claims at issue is not at all a certainty. Among other things, Defendants had petitioned the Supreme Court for certiorari on the issue of arbitration and sovereign immunity.

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

2. Anticipated length 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. Thus, the likelihood of substantial future costs favors approving the proposed class action settlement.

Even more importantly, the long delay threatened by continued litigation, continued appeals, and any final appeals would prevent the imminent payment to Settlement Class Members. This case already has been pending for approximately three years, and significant and time-consuming events still remain, including the Supreme Court's certiorari decision, as well as trial and other anticipated appeals.

3. The solvency of Defendants and the likelihood of recovery.

Although Defendants are solvent, the likelihood of a substantial recovery beyond the amount in the Settlement Fund is uncertain. As highly sophisticated individuals, Defendants would have made collection of any judgment extremely difficult with various estate planning maneuvers and asset avoidance devices. Moreover, while all cases carry potential for uncertain outcomes, RICO cases particularly are complex and difficult to prove, especially on a class-wide basis. And even if successful at trial, uncertainty exists on 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); *see also Hughes Tool Company v. Trans World Airlines*, 409 U.S. 363 (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 proposed class action 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 these requirements. (Settlement Agreement § 5.3.)

The proposed notice program will provide individual direct notice. Under the Settlement Agreement, to accomplish the contemplated class notice, the Class Administrator will first email direct notice to Settlement Class Members at the most recent email address shown in the Tribal Officials' electronic records, as maintained in the ordinary course of business, for each loan at issue. (*Id.* § 5.3.a.) If email notice results in a bounce-back email, direct notice will be mailed to Settlement Class Members via first class mail and returned direct notices will be re-mailed if they are returned within twenty days of the postmark date and contain a forwarding address. (*Id.* § 5.3.b.) The Class Administrator also will establish and maintain a website on which pertinent information will be made available to Settlement Class Members, including the operative complaint; the Settlement Agreement; any motions and memoranda seeking approval of the proposed class action settlement, approval of attorneys' fees and costs, or approval of service awards; and any orders of this Court relating to the proposed class action settlement. (*Id.* § 5.3.c.)

The Settlement's robust notice and administration plan will ensure the most Settlement Class Members receive the payments to which they are entitled. Class Notice will be sent in accordance with Federal Rule of Civil Procedure 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* Manual for Complex Litigation § 21.311; *see also Henggeler v. Brumbaugh & Quandahl P.C.*, No. 8:11-cv-334, 2013 WL 5881422, at *5 (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. The Notices and Notice Plan should be approved by the Court.

IV. CONCLUSION

The proposed class action settlement is an excellent result considering the circumstances of the litigation and strength of Plaintiffs' case. The terms of the proposed class action 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 the Motion for Preliminary Approval; (3) orders that the Proposed Notice be immediately mailed to Settlement Class Members; (4) approves the appointment of American

Legal Claims Services as the Class 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,
PLAINTIFFS

/s/ Kristi C. Kelly

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Counsel for Plaintiffs

Exhibit 1

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

GEORGE HENGLE, *et al., on behalf of themselves and all others similarly situated,*

Plaintiffs,

v.

Case No: 3:19-cv-250-DJN

SCOTT ASNER, *et al*,

Defendants.

DECLARATION OF LEONARD A. BENNETT IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, Leonard A. Bennett, hereby declare the following:

1. My name is Leonard A. Bennett. I am over 21 years of age, of sound mind, capable of executing this Declaration in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, and have personal knowledge of the facts stated herein, and they are all true and correct.

Consumer Litigation Associates, P.C.

2. I am one of the attorneys working on behalf of the Plaintiffs and the Class in the above-styled litigation, and I am an attorney and principal of the law firm of Consumer Litigation Associates, P.C., a six-attorney law firm with offices in Hampton Roads, Richmond, Harrisonburg and Alexandria, Virginia. My primary office is at 763 J. Clyde Morris Boulevard, Suite 1-A, Newport News, Virginia 23601. I submit this Declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

3. Since 1994, I have been and presently am a member in good standing of the Bar of

the highest court of the Commonwealth of Virginia, where I regularly practice law. Additionally, since 1995, I have been a member in good standing of the Bar of the highest court of the State of North Carolina.

4. I have also been admitted to practice before and am presently admitted to numerous other federal courts. I have also been admitted to or by *pro hac vice* in United States District Courts including Alabama, Arizona, California, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Nevada, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Washington, West Virginia, Wisconsin, Wyoming, and the District of Columbia.

5. I was selected as the 2017 Consumer Lawyer of the Year by the National Association of Consumer Advocates.

6. Since 1996, my practice has been limited to consumer protection litigation. While my experience representing consumers has come within several areas, with nearly all of my litigation experience in Federal court.

7. Since 2001, I have been asked to and did speak at numerous CLE programs, seminars and events in the area of Consumer Protection litigation.[1]

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[1] NCLC 2021 Mortgage Conference, Credit Reporting Issues in Mortgage Cases, June 25, 2021; NACA Online Spring Training 2021, COVID and Post-COVID Issues in FCRA Litigation, April 30, 2021; NCLC 2020 Consumer Rights Litigation Conference, Discovery in FCRA Cases, November 18, 2020; NACA Webinar, Understanding the Metro 2 Reporting Format, September 24, 2020; NCLC 2021 Mortgage Conference, Credit Reporting Issues in Mortgage Cases, June 25, 2021; NACA Online Spring Training 2020, Dealing with FCRA Paradigm Shifts: New Equifax Defense and COVID-19 Challenges, May 11, 2020; NACA Webinar, Virtual Depositions, March 31, 2020; National Consumer Law Center, Consumer Rights Conference, Denver, Colorado (November 2018); Military U.S. Navy Legal Assistance, Consumer Awareness, Buying, Financing and Owning an Automobile (July 2018); Practicing Law Institute (PLI), 23rd Annual Consumer Financial Services Institute, April 2018; National Consumer Law Center, Consumer Rights Conference, Washington, D.C., Speaker (November 2017); National Consumer Law Center, Consumer Rights Conference, Anaheim, California, Speaker for Multiple Sessions (October 2016); Fair Debt Collection Practices Act/Fair Credit Reporting Act, Norfolk and Portsmouth, VA Bar Association (October 29, 2015); National Consumer Law Center, Consumer Rights Conference, Washington, D.C., Speaker for Multiple Sessions (November 2013); National Consumer Law Center, Fair Debt Collection Practices Act Conference, Fair Credit

8. I testified before the United States House Financial Services Committee on multiple occasions. In 2014, I spoke before the Consumer Financial Protection Bureau Consumer Advisory Board.

9. I have also served on a Federal Trade Commission Round Table and Governor Kaine's Virginia Protecting Consumer Privacy Working Group all within this field. I was recently on the Board of Directors of the National Association of Consumer Advocates, and am on the Partners Council of the National Consumer Law Center, on the Board of Directors for Public Justice and the Advisory Council of the Virginia Poverty Law Center.

10. I have been named as a multi-year Super Lawyer, a Law Dragon Top 500 Plaintiffs'

Reporting Act Claims Against Debt Buyers, March 2013; National Association of Consumer Advocates, Webinar CLE: FCRA Dispute Process, December 2012; Rossdale CLE, Fair Credit Reporting Act (August 2012); Virginia Trial Lawyers Association, Advocacy Seminar - October, 2011; National Association of Consumer Advocates, Fair Credit Reporting Act National Conference - Memphis, TN, May 2011; Stafford Publications CLE, National Webinar, "FCRA and FACTA Class Actions: Leveraging New Developments in Certification, Damages and Preemption" (April 2011); National Consumer Law Center, National Consumer Rights Conference, Boston, Speaker for Multiple Sessions, November, 2010; Virginia State Bar, Telephone and Webinar Course, Virginia, 2009; "What's Going On Here? Surging Consumer Litigation - Including Class Actions in State and Federal Court"; National Association of Consumer Advocates, Fair Credit Reporting Act National Conference, Chicago, IL, May 2009; National Consumer Law Center, National Consumer Rights Conference, Philadelphia, Speaker for Multiple Sessions, November 2009; National Consumer Law Center, National Consumer Rights Conference, Portland, OR, Speaker for Multiple Sessions, November 2008; Washington State Bar, Consumer Law CLE, Speaker, September 2008; Washington State Bar, Consumer Law CLE, Speaker, July 2007; House Financial Services Committee, June 2007; National Consumer Law Center, National Consumer Rights Conference, Washington, D.C., Speaker for Multiple Sessions, November 2007; National Association of Consumer Advocates, Fair Credit Reporting Act National Conference; Denver, Colorado, May 2007, Multiple Panels; U.S. Army JAG School, Charlottesville, Virginia, Consumer Law Course Instructor, May 2007; Georgia State Bar, Consumer Law CLE, Speaker, March 2007; Contributing Author, Fair Credit Reporting Act, Sixth Edition, National Consumer Law Center, 2006; National Consumer Law Center, National Consumer Rights Conference, Miami, FL, Speaker for Multiple Sessions, November 2006; Texas State Bar, Consumer Law CLE, Speaker, October 2006 Federal Claims in Auto fraud Litigation; Santa Clara University Law School, Course, March 2006; Fair Credit Reporting Act; Widener University Law School, Course, March 2006 Fair Credit Reporting Act; United States Navy, Navy Legal Services, Norfolk, Virginia, April 2006 Auto Fraud; Missouri State Bar CLE, Oklahoma City, Oklahoma; Identity Theft; National Consumer Law Center, National Consumer Rights Conference, Boston, Mass, Multiple panels; National Association of Consumer Advocates, Fair Credit Reporting Act National Conference, New Orleans, Louisiana (May 2005), Multiple Panels; United States Navy, Naval Justice School (JAG Training), Newport , Rhode Island, Consumer Law; American Bar Association, Telephone Seminar; Changing Faces of Consumer Law, National Consumer Law Center, National Consumer Rights Conference, Boston, Mass; Fair Credit Reporting Act Experts Panel; and ABCs of the Fair Credit Reporting Act; National Association of Consumer Advocates, Fair Credit Reporting Act National Conference, Chicago, Illinois; Multiple Panels; Oklahoma State Bar CLE, Oklahoma City, Oklahoma, Identity Theft; Virginia State Bar, Telephone Seminar, Identity Theft; United States Navy, Naval Justice School (JAG Training), Newport, Rhode Island, Consumer Law; United States Navy, Navy Legal Services, Norfolk, Virginia, Auto Fraud; Virginia State Bar, Richmond and Fairfax, Virginia, Consumer Protection Law; Michigan State Bar, Consumer Law Section, Ann Arbor, Michigan, *Keynote Speaker.*

Attorney, to Best Lawyers in America and a Virginia Leader in the Law.

11. In 2019 and 2020, my firm earned the Nation Law Journal's Elite Trial Lawyers Award for top firm in Financial Products class action litigation.

12. In 2019, our firm, Consumer Litigation Associates, was the co-recipient of the Virginia State Bar's Frankie Muse Freeman Organizational Pro Bono Award.

13. My firm has been selected by U.S. NEWS & WORLD REPORT Best Law Firm, First Tier Nationwide.

14. I was and am one of the contributing authors of the leading and comprehensive treatises published by National Consumer Law Center and used by judges and advocates nationally.

Consumer Litigation Associates, P.C.'s Experience

15. I have substantial experience in complex litigation, including class action cases, prosecuted in Federal court.

16. I have litigated scores of class action cases based on consumer protection claims in the past two decades. In each of the class cases, when asked to do so by either contested or uncontested motion, the court found me to be adequate class counsel. In each of these, I served in a lead or executive committee counsel role. Just a few of comparable cases include, by example only: *Pitt v. K-Mart Corp*, 3:11-cv-697 (E.D. Va.); *Ryals v. HireRight Sols., Inc.*, 3:09-cv-625 (E.D. Va.); *White v. Experian Info. Sols. Inc.,* 8:05-cv-01070 (C.D. Cal.); *Teagle v. LexisNexis Screening Sols., Inc.*, 1:11-cv-1280 (N.D. Ga.); *Roe v. Intellicorp*, 1:12-cv-02288 (N.D. Ohio); *White v. CRST*, 1:11-cv-2615 (N.D. Ohio); *Williams v. LexisNexis Risk Mgmt.*, 3:06-cv-241 (E.D. Va.); *Goode v. LexisNexis*, 11-cv-2950 (E.D. Pa.); *Beverly v. Wal-Mart Stores, Inc.*, 3:07-cv-469 (E.D. Va.); *Berry v. LexisNexis Risk & Info. Analytical Group*, 3:11-cv-754 (E.D. Va.); *Stinson v.*

Advance Auto Parts, Inc., (W.D. Va.); *Black v. Winn-Dixie Stores, Inc*., 3:09-cv-502 (M.D. Fla.); *Cappetta v. GC Servs. LP*, 3:08-cv-288-JRS (E.D. Va.); *Henderson v. Verifications, Inc*., 3:11-cv-514 (E.D. Va.): *Harris v. US Physical Therapy, Inc.*, 2:10-cv-1508 (D. Nev.); *Domonoske v. Bank of Am., N.A*., 5:08-cv-66 (W.D. Va.); *Smith v. Telecris Biotherapeutics, Inc*., 1:09-cv-153 (M.D.N.C.); *Daily v. NCO Fin.*, 3:09-cv-31 (E.D. Va.); *Lengrand v. Wellpoint*, 3:11-cv-333 (E.D. Va.); *Burke v. Shapiro, Brown & Alt, LLP*, No. 3:14-cv-838 (DJN) (E.D. Va.); *Ridenour v. Multi-Color Corp.*, No. 2:15-cv-41-MSD-DEM (E.D. Va.); *Manuel v. Wells Fargo Nat'l Ass'n*, No. 3:14-cv-238 (E.D. Va.); *Thomas v. FTS USA, LLC*, No. 3:13-cv-825-REP (E.D. Va.); *Milbourne v. JRK Residential Am., Inc.*, No. 3:12-cv-861-REP (E.D. Va.): *Hall v. Vitran Express, Inc*., No. 1:09- cv-00800 (N.D. Ohio); *Anderson v. Signix, Inc*., No. 3:08-CV-570 (E.D. Va.); *Reardon v. Closetmaid,* No. 2:08-cv-1730 (W.D. Pa.); *Bell v. U.S. Express, Inc*., l:11-CV- 181 (E.D. Tenn.); *Goode v. First Advantage LNS Screening Sols., Inc.*, 2:11-cv-2950 (E.D. Pa.) *Ellis v. Swift Transp. Co. of Az.*, 3:13-cv-473 (E.D. Va.); *Edwards v. Horizon Staffing, Inc.*, No. 1:13-cv-3002 (N.D. Ga.); *Shami v. Middle E. Broadcasting, Inc.,* 1:13-cv-467 (E.D. Va.); *Marcum v. Dolgencorp*, 3:12-cv-108 (E.D. Va.); *Wyatt v. SunTrust Bank*, 3:13-cv-662 (E.D. Va.); *Henderson v. HRPlus*, No. 3:14-cv-82 (E.D. Va.); *Henderson v. Backgroundchecks.com*, 3:13-cv- 29 (E.D. Va.); *Henderson v. Acxiom Risk Sols.*, 3:12-cv-589 (E.D. Va.); *Ryals v. Strategic Screening Sols., Inc.*, 3:14-cv-00643-REP (E.D. Va.); *Thomas v. First Advantage Screening Solutions, Inc.*, 1:13-cv-04161-CC-LTW (N.D. Ga.); *Smith v. Harbor Freight Tools USA, Inc.*, No. 2:13-cv-06262-JFW-VBK (C.D. Cal.); *Smith v. ResCare*, 3:13-cv-5211 (S.D. W. Va.); *Oliver v. FirstPoint, Inc.*, No. 1:14-cv-517 (M.D.N.C.); *Blocker v. Marshalls of MA, Inc.*, No. 1:14-cv- 01940-ABJ; *Brown v. Lowe's Cos., Inc.*, 5:13-cv-79 (W.D.N.C); *Reese v. Stern & Eisenberg Mid- Atlantic*, 3:16-cv-496-REP (E.D. Va.); *Hayes v. Delbert Servs. Corp.*, No. 3:14-cv-258-JAG (E.D. Va.); *Soutter v.*

Equifax Info. Servs., LLC, 3:10-cv-107 (E.D. Va.); *Fariasantos v. Rosenberg & Assocs., LLC*, 3:13-cv-543 (E.D. Va.); *James v. Experian Info. Sols., Inc.*, 3:12-cv-902 (E.D. Va.); *Goodrow v. Friedman & MacFadyen, P.A.*, 3:11-cv-20 (E.D. Va.); *Witt v. CoreLogic SafeRent, LLC*, 3:15-cv-386 (E.D. Va.); *Henderson v. CoreLogic Nat'l Background Data, LLC*, 3:12-cv-97 (E.D. Va.); *Smith v. Sterling Infosystems, Inc.*, 1:16-cv-714 (N.D. Ohio).

17. I have extensive experience litigating class actions in the Eastern District of Virginia. As this Court is well aware, practicing in this district requires an intimate knowledge of the rules and procedures unique to the district. The ABA's Committee on Commercial and Business Litigation advises that the "'Rocket Docket' is a potential trap for the uninitiated" and recommends that "visiting litigants and lawyers alike would be well advised to retain experienced lead or local counsel to help them safely navigate the Rocket Docket." *A Winning Motions Practice in the Rocket Docket*, Vol. 10, No. 4 (Summer 2009). Having practiced in this division and district for over 20 years, and having appeared in over 900 cases in this district, I am well versed in the rules and procedures unique to this district. In addition to the sheer volume of cases I have handled, I have also appeared in numerous complex class action cases brought in this district. *See, e.g.*, *Witt v. CoreLogic SafeRent, LLC*, 3:15-cv-386 (E.D. Va.); *Henderson v. CoreLogic Nat'l Background Data, LLC*, 3:12-cv-97 (E.D. Va.); *Hayes v. Delbert Servs. Corp.*, No. 3:14-cv-258-JAG (E.D. Va.); *Soutter v. Equifax Info. Servs., LLC*, 3:10-cv-107 (E.D. Va.); *Ridenour v. Multi-Color Corp.*, No. 2:15-cv-41-MSD-DEM (E.D. Va.).

18. Regarding the particular claims and area of law at issue here, I have additional, focused expertise. I have been co-lead in multiple, successful actions brought against tribal payday lending schemes as in this case. For example, I was Co-Lead Counsel, and appointed Class Counsel by the Eastern District of Virginia in *Hayes v. Delbert Services Corp.,* No. 3:14-cv-259-JAG (E.D.

Va.). That case, in which the Attorney General of Virginia intervened, alleged similar claims against a group of payday lenders structured in much the same way as Defendants here. Together with the Attorney General, we resolved the claims of 17,000 Virginia consumers who, like Plaintiffs and Class Members here, were victimized by an illegal tribal-lending scheme. The settlement in *Hayes* (1) eliminated all outstanding loans for class members, (2) required the defendants to create a $9.4 million settlement fund for the benefit of class members (attorneys' fees were separately paid by defendants), (3) required the defendants to cease reporting to the Big 3 consumer reporting agencies the status of any loans, (4) released judgments and provide other relief relating to class members' loans, (5) stopped defendants from charging more than 12% interest (the legal limit for interest under Virginia law without a license to lend in the Commonwealth), and (6) initiated new lending practices for defendants to make loans to Virginians. (*See Hayes* Doc. 186 at 4-5). In other words, settlement was a near, total victory for class members.

19. I have also been co-lead in multiple, successful actions brought against other major players in the tribal lending industry. *See Gibbs v. Rees*, Case No. 3:20-cv-717 (E.D. Va.); *Turnage, et al. v. Clarity Services, Inc.,* Case No. 3:14-cv-760 (E.D. Va.); *Pettus, et al. v. The Servicing Company, LLC,* et al., Case No. 3:15-cv-00479 (E.D. Va.); and *Jensen, et al. v. Clarity Services, Inc.,* et al., Case No. 3:16-cv-00312 (E.D. Va.).

20. Craig C. Marchiando, a partner at my Firm, also practices exclusively in the field of consumer protection litigation. He is among the most experienced attorneys in the nation in this highly-specialized field of Fair Credit Reporting Act class action litigation. Mr. Marchiando graduated from South Texas College of Law *cum laude* in 2004, served a one-year appellate clerkship before moving to private practice, and was named a Texas Super Lawyers Rising Star in

class action and mass tort litigation in 2013 and 2014. He is licensed to practice in California, Florida, Texas, and Virginia.

21. Mr. Marchiando joined Consumer Litigation Associates in 2015. Since joining CLA, Mr. Marchiando has focused his practice on federal consumer protection law and class actions, representing consumers in cases against banks, mortgage companies, consumer reporting agencies, and debt collectors. He is a member of the National Association of Consumer Advocates and a member in good standing of the bars of multiple federal district and appellate courts. He has represented consumers in more than 100 federal cases, including more than thirty class actions.

22. Kevin A. Dillon, an attorney at my firm, also practices exclusively in the field of consumer protection litigation with a focus on debt collection abuses. Mr. Dillon graduated from Northeastern University School of Law in 2018. Mr. Dillon clerked for the Honorable Justice Cleo E. Powell of the Virginia Supreme Court. He served as a member of Law Review and was a founding member of the Law and Information Society as well as a member of the National Lawyers Guild. He is licensed to practice in Virginia.

23. The primary paralegals that worked for our firm in this case are experienced in the field of consumer protection and the legal field generally. Donna Winters and Vicki Ward Crissman have been legal assistants and then paralegals for more than thirty years each. Both have been with me practically since I began my practice and have deep understanding of class action litigation.

24. As a result of this settlement over 550,000 consumers will receive a benefit, either in the form of cancellation of over $450 million in outstanding debt, removal of derogatory tradelines or repayment of amounts paid in excess of their respective state laws. The monetary payment of $39 million will provide real, meaningful relief for these individuals.

25. The settlement in this case was hard fought to say the least. It was informed by significant written and third-party discovery, and motions practice that was affirmed by the Fourth Circuit. The robust discovery and litigation allowed the parties to thoroughly investigate and understand the claims and defenses in this litigation.

26. The settlement itself was obtained after numerous informal settlement exchanges and phone calls, one settlement conferences with United States Magistrate Judge Colombell, and significant settlement work and sessions with private mediator Nancy Lesser.

27. Given the circumstances and taking into account the risk and expense—and most importantly, delay—of further litigation, the settlement provides significant cash relief for consumers. I endorse the settlement as fair and adequate and would urge the Court to preliminarily approve the settlement.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

DATED: April 25, 2022, Newport News, Virginia

Leonard A. Bennett, Esq.

Exhibit 2

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

GEORGE HENGLE, *et al., on behalf of themselves and all others similarly situated,*

Plaintiffs,

v. Case No: 3:19-cv-250-DJN

SCOTT ASNER, *et al*,

Defendants.

DECLARATION OF KRISTI C. KELLY

I, Kristi C. Kelly declare:

1. My name is Kristi C. Kelly. I am over 21 years of age, of sound mind, capable of executing this declaration, and have personal knowledge of the facts stated herein, and they are all true and correct.

2. I am one of the attorneys working on behalf of Plaintiffs in the above-styled litigation, and I am a founder and a partner of Kelly Guzzo, PLC, a law firm located at 3925 Chain Bridge Road, Suite 202, Fairfax, Virginia 22030. Prior to January 15, 2014, I was an attorney and equity partner at Surovell Isaacs Petersen & Levy, PLC, a nineteen-attorney law firm with offices in Fairfax, Virginia. My primary office was located at 4010 University Drive, Suite 200, Fairfax, Virginia 22030. I also worked for Legal Services of Northern Virginia focusing exclusively on housing and consumer law for approximately three years prior to Surovell Isaacs Petersen & Levy, PLC.

3. Since 2006, I have been and presently am a member in good standing of the Bar of the highest court of the Commonwealth of Virginia, where I regularly practice law. Since 2007, I have been and presently am a member in good standing of the Bar of the highest courts of the

District of Columbia and since 2014 of Maryland. I am also admitted in the United States District Courts for the District of Columbia and Maryland.

4. I have taught numerous Continuing Legal Education programs for other attorneys and for various legal aid organizations, state and local bar associations, and other groups focused on consumer law, such as the National Consumer Law Center, the Consumer Federation of America, the National Council of Higher Education, and the National Association of Consumer Advocates. I have taught courses about mortgage servicing abuses, landlord tenant defense, dealing with debt collectors, credit reporting, defenses to foreclosure, discovery in federal court, resolving cases, and internet lending. I also served as a panelist for the Consumer Financial Protection Bureau and Federal Trade Commission on the issue of credit reporting.

5. My peers have recognized me as a Super Lawyer and Rising Star consistently for the past ten years. Additionally, I was selected to be a member of the Virginia Lawyers Weekly "Leader in the Law," class of 2014, and Influential Women in the Law, class of 2020. I serve on the Board of Directors for the Legal Aid Justice Center and Virginia Poverty Law Center. I am a former State Chair for Virginia of the National Association of Consumer Advocates and am currently a member of the Partners' Council for the National Consumer Law Center and Board of Directors of the National Association of Consumer Advocates.

6. I have also been appointed to the Merit Selection Panel for recommendations for the Magistrate Judge vacancies by the United States District Court Eastern District of Virginia, in both the Richmond and Alexandria Divisions.

7. I have significant experience representing consumers in litigation under the Federal Consumer Credit Protection Act, 15 U.S.C. § 1601, *et seq.*, and in particular the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.*, the Equal Credit Opportunity Act, 15 U.S.C. § 1691, *et*

seq., the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605, *et seq.*, and the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq*.

8. My law firm is committed to representing the most vulnerable—and often most overlooked—consumers. We work with various legal aid organizations to help identify areas of need, where our firm can "step up" and meet those needs through class action litigation or pro bono work. Many of these cases seek remedies for credit reporting errors or lending abuses. Kelly Guzzo was the co-recipient of the 2019 Frankie Muse Freeman Organizational Pro Bono Award by the Virginia State Bar Association.

9. As far back as 2009, I have worked with Virginia's General Assembly to fight predatory loans, including by helping to pass the Payday Loan Act, and more recently by working with various stakeholders to close various perceived loopholes for online loans, including lines of credit. My firm is regularly consulted by legislators, state attorneys general, government actors, national nonprofit organizations, and other private lawyers for assistance and advice on litigating cases in the internet lending sphere.

10. As far back as 2014, we realized that high-cost online lending was creating problems for many low-income Virginia consumers. In our research and through litigation, we learned that Virginia was a prime target for these predatory loans due to perceived lending loopholes, lack of government enforcement, and high need. Through discovery in our litigation, we learned that despite having just 3.6% of the United States' population, Virginia is routinely in the top five states of outstanding loans and amounts paid. Due to the litigation identified below, however, most high-cost online lenders will no longer take the risk of lending in Virginia.

11. I have litigated numerous cases related to abusive lending enterprises for violations of usury laws, the Fair Credit Reporting Act, the Equal Credit Opportunity Act, the Electronic Fund Transfer Act, and the Racketeer Influenced and Corrupt Organizations Act, many of which

have resulted the in the cancellation of loans, removal of tradelines, and refunds issued to consumers. *See, e.g.*, *Hayes v. Delbert Services Corp.,* No. 3:14-cv-258 (E.D. Va.); *Gillison v Lead Express, Inc.,* No. 3:16-cv-041 (E.D. Va.); *White v. CashCall, Inc.,* No. 3:16-cv-311 (E.D. Va.*)*; *Turner v. ZestFinance, Inc.,* No. 3:19-cv-293 (E.D. Va.)*; Gillam, v. Koetting,* Case No. 3:18-cv-473 (E.D. Va.); *Inscho v. Johnson,* No. 1:17-cv-674 (E.D. Va.)*; Ashford v. Advance 'Til Payday, Inc.,* No. 3:15-cv-735 (E.D. Va.); *Kirksey v. Sky Group USA,* No. 1:17-cv-535 (E.D. Va.)*, Montgomery v. IEG Holdings Corporation,* No. 7:17-cv-180 (W.D. Va.); *Turnage v. Clarity Services, Inc.,* No. 3:14-cv-760 (E.D. Va.); *Pettus v. The Servicing Company, LLC,* No. 3:15-cv-00479 (E.D. Va.); *Turnage v. Fair Dinkum, LLC,* No. 3:15-cv-616 (E.D. Va.); *Jensen v. Clarity Services, Inc.,* No. 3:16-cv-00312 (E.D. Va.); *Jensen v FactorTrust, Inc.,* No. 3:17-cv-00181 (E.D. Va.); *Kirksey v. TrueAccord Corp.,* No. 1:17-cv-1190 (E.D. Va.); *White v. Experian Information Solutions, Inc.,* No. 3:16-cv-310 (E.D. Va.); *White v Chexsystems, Inc.,* No. 1:17-cv-00540 (E.D. Va.); *Hunter v. NHCash.com, LLC,* No. 3:17-cv-00348 (E.D. Va.); *Johnson v. LTF Financial,* No. 3:17-cv-00655 (E.D. Va.); *Wiley v. Jardine,* No. 3:17-cv-011 (E.D. Va.); *Heath v. Trans Union, LLC*, No. 3:18-cv-720 (E.D. Va.); *Williams, et al., v. Big Picture Loans, LLC,* No. 3:17-cv-461 (E.D. Va.)*; Gibbs v. Rees,* No. 3:17-cv-386 (E.D. Va.)*; Gibbs v. Plain Green, LLC,* No. 3:17-cv-495 (E.D. Va.)*; Gilliam v. Riverside Alpha Group, Inc.,* No. 3:17-cv-575 (E.D. Va); *Gilliam v. BB&T,* No. 3:17-cv-722 (E.D. Va.); *Winchell v. Lexis Nexis Risk Solutions FL, Inc.,* No. 3:18-cv-47 (E.D. Va.), in addition to numerous individual cases in state courts and other matters that were resolved without having to file a lawsuit.

12. My firm has litigated hundreds of consumer protection lawsuits in courts across the country. Several courts have recognized Kelly Guzzo's skill in the consumer protection arena. *See, e.g.*, *Campos-Carranza v. Credit Plus, Inc.*, No. 16-cv-120, Final Approval Hr'g Trans. at 5:3-7 (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."); *Ceccone v. Equifax Info. Servs. LLC*, No. 13-1314, 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. 11-00624, 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."); *Burke v. Seterus, Inc.*, No. 16-cv-785, Fairness Hr'g Tr. 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.").

13. In each consumer protection class action the Court found me to be adequate class counsel. *See Tsvetovat, v. Segan, Mason, & Mason, PC,* No. 1:12-cv-510 (E.D. Va.); *Conley v. First Tennessee Bank*, No. 1:10-cv-1247 (E.D. Va.); *Dreher v. Experian Information Solutions, Inc.*, No. 3:11-cv-624 (E.D. Va.); *Shami v. Middle East Broadcast Network*, No. 1:13-cv-467 (E.D. Va.); *Goodrow v. Friedman & MacFadyen*, No. 3:11-cv-20 (E.D.Va.); *Kelly v. Nationstar*, No. 3:13-cv-311 (E.D. Va.); *Thomas v. Wittstadt*, Case No. 3:12-cv-450 (E.D. Va.); *Fariasantos v. Rosenberg & Associates, LLC*, No. 3:13-cv-543 (E.D. Va.); *Morgan v. McCabe Weisberg & Conway, LLC*, No. 3:14-cv-695 (E.D. Va.); *Burke v. Shapiro, Brown & Alt, LLP*, No. 3:14-cv-838 (E.D. Va.); *Bartlow v Medical Facilities of America, Inc.,* No. 3:16-cv-573 (E.D. Va.); *Blocker v. Marshalls of MA, Inc.,* Case No. 1:14-cv-1940 (D.D.C.); *Ceccone v. Equifax Info. Servs., LLC*, No. 1:13-cv-1314 (D.D.C.); *Jenkins v. Equifax Info. Servs., LLC*, No. 1:15-cv-443 (E.D. Va.); *Ridenour v. Multi-Color Corporation,* No. 2:15-cv-00041 (E.D. Va.); *Hayes v. Delbert Services Corp.,* No. 3:14-cv-258 (E.D. Va.); *Campos-Carranza v. Credit Plus, Inc.,* No. 1:16-cv-120 (E.D.

Va.); *Jenkins v. Realpage, Inc.*, No. 2:15-cv-1520 (E.D. Pa.); *Kelly v. First Advantage Background Services, Corp.*, No. 3:15-cv-5813 (D.N.J.); *Burke v. Seterus, Inc.,* No. 3:16-cv-785 (E.D. Va.); *Williams v. Corelogic Rental Property Solutions, LLC,* No. 8:16-cv-58 (D. Md.); *Clark v. Trans Union, LLC*, No. 3:15-cv-391 (E.D. Va.); *Clark v. Experian Information Solutions, Inc.*, No. 3:16-cv-32 (E.D. Va.); *Thomas v. Equifax Info. Servs., LLC*, No. 3:18-cv-684 (E.D. Va.); *Heath v. Trans Union, LLC*, No. 3:18-cv-720 (E.D. Va.), *Turner, v. ZestFinance, Inc.,* No. 3:19-cv-293 (E.D. Va.); *Galloway v. Williams*, No. 3:19-cv-470 (E.D. Va. Dec. 18, 2020); *Gibbs v. TCV V, LP*, No. 3:19-cv-789 (E.D. Va.); *Gibbs v. Rees*, No. 3:20-cv-717 (E.D. Va.); *Pang v. Credit Plus, Inc.,* No. 1:20-cv-122 (D. Md.); *Brown v. RP On-Site, LLC,* No. 1:20-cv-482 (E.D. Va.); and *Brown v. Corelogic Rental Property Solutions, LLC,* No. 3:20-cv-363 (E.D. Va.).

14. Kelly Guzzo, PLC was aware of this lending enterprise for many years prior to the filing of this lawsuit in 2019. Kelly Guzzo tracked the Consumer Financial Protection Bureau litigation in the Northern District of Illinois since it was filed April 2017. When that litigation was dismissed due to a change in the administration's priorities, Kelly Guzzo began actively working on bringing this litigation. As a result of this settlement more than 550,000 consumers will receive a benefit, either in the form of cancellation of over $450 million in outstanding debt, removal of derogatory tradelines, or repayment of amounts paid in excess of their respective state laws. The $39 million monetary payment will provide real, meaningful relief for these individuals.

15. The settlement in this case was hard fought to say the least. It was informed by significant written and third-party discovery, and motions practice, including a decision that was affirmed by the Fourth Circuit. The robust discovery and litigation allowed the parties to thoroughly investigate and understand the claims and defenses in this litigation.

16. The settlement itself was obtained after numerous informal settlement exchanges and phone calls, settlement conferences with United States Magistrate Judge Colombell, and

settlement conferences with private mediator Nancy Lesser, as well as numerous follow ups and exchanges after those mediations.

17. Given the circumstances and taking into account the risk and expense—and most importantly, delay—of further litigation, the settlement provides significant cash relief for consumers. I endorse the settlement as fair and adequate and would urge the Court to preliminarily approve the settlement.

I declare under penalty of perjury of the laws of the United States that the foregoing is correct.

Signed this 25th day of April, 2022.

/s/ Kristi C. Kelly
Kristi C. Kelly