UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

ROYCE SOLOMON, et al., individually and on behalf of all others similarly situated,

Plaintiffs,

v.

AMERICAN WEB LOAN, INC., et al.,

Defendants.

Civil Action No. 4:17-cv-0145-HCM-RJK

CLASS ACTION

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

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Plaintiffs Royce Solomon, Jodi Belleci, Michael Littlejohn, and Giulianna Lomaglio, on behalf of themselves and the proposed Settlement Class[1] (collectively, "Plaintiffs" or the "Settlement Class Representatives"), respectfully submit this Memorandum in Support of their Motion for Preliminary Approval of Class Settlement.

I. PRELIMINARY STATEMENT

After more than two years of extensive and hard-fought litigation, all Parties have reached an agreement to settle this Action. As detailed in the Settlement Agreement, in exchange for Total Settlement Value of $141 million, comprised of a $65 million cash payment and $76 million in loan cancellation, as well as other substantial injunctive and non-monetary relief for the benefit of Settlement Class Members, the Settlement will release all Released Parties from all Released Claims. The Settlement was reached following extensive arm's length negotiations conducted under the supervision of one of the nation's preeminent mediators, the Honorable Layn R. Phillips (ret.) ("Judge Phillips").

Although Plaintiffs and Class Counsel are confident in the merits of this Action, they recognize the substantial risks associated with further litigation of the issues currently before the Fourth Circuit on appeal, as well as the substantial risks and delays associated with continuing to litigate this Action through trial and further appeals. For the reasons stated herein, the Settlement is a highly favorable result for the Settlement Class, satisfies the standards governing preliminary approval of a class action settlement under Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 23(e), and is well within the range of fairness, reasonableness, and adequacy so as to warrant the Court's preliminary approval and authorization to disseminate Notice of the Settlement to

[1] Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Settlement Agreement dated April 14, 2020 (the "Settlement Agreement"), attached as Exhibit A.

Settlement Class Members to inform them of their rights under the Settlement.

Plaintiffs therefore respectfully request that this Court enter the Proposed Preliminary Approval Order Pursuant to Fed. R. Civ. P. 23(e). The Proposed Preliminary Approval Order would, among other things: (i) grant preliminary approval of the Settlement as fair, reasonable, and adequate; (ii) certify the Settlement Class pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure; (iii) appoint the Class Administrator selected by Class Counsel to administer the Settlement and assist with its implementation; (iv) direct that Class Members be given notice of the pendency and Settlement of this Action; (v) establish procedures and deadlines for persons to request exclusion from the Settlement Class or to object to the terms of the Settlement; and (vi) schedule a Final Approval Hearing to consider the fairness, reasonableness, and adequacy of the Settlement and to consider Class Counsel's request for an award of attorneys' fees and expenses and payment of Service Awards to the Settlement Class Representatives.

II. FACTUAL BACKGROUND

A. Procedural History

On December 15, 2017, after an extensive, eleven-month investigation, Plaintiffs filed an initial 76-page, 233-paragraph, nationwide class action complaint, setting forth claims under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § § 1962(c) and (d); the Electronic Funds Transfer Act, 15 U.S.C. § 1693k(1); the Truth in Lending Act, 15 U.S.C. § 1638(a); and the common law doctrine of unjust enrichment. *See* ECF No. 1. On March 9, 2018, after nearly three months of continued investigation, Plaintiffs filed an amended complaint with 43 paragraphs of additional factual allegations against certain Defendants. *See* ECF No. 41.

On April 8-9, 2018, Defendants filed thirteen motions in response to the Amended Complaint, including motions to compel arbitration, motions to dismiss for lack of subject matter jurisdiction, motions to dismiss for failure to state a claim, a motion to dismiss for lack of personal

jurisdiction, a motion to dismiss for failure to join an indispensable party, and a motion to transfer to the Western District of Oklahoma. *See* ECF Nos. 62-87. On June 8, 2018, Plaintiffs filed hundreds of pages of briefing in opposition to Defendants' motions. Those motions became fully briefed on July 9, 2018. *See* ECF Nos. 109-115.

On August 2, 2018, the Court held a status conference and ordered jurisdictional and venue discovery and supplemental briefing on the motions to dismiss for lack of subject matter jurisdiction (premised on tribal sovereign immunity) and the motion to transfer venue.

In November and December 2018, after conducting the Court-ordered jurisdictional discovery, the Parties filed supplemental briefs with hundreds of exhibits in connection with Defendants' motions to dismiss for lack of subject matter jurisdiction. *See* ECF Nos. 221-226, 231-232, 235, 245-246, 248-252, 256-262, 264-268, 272-287, 297-298, 309-310, 314-324.

On February 5, 2019, the Court held an evidentiary hearing that included live testimony from John Shotton, Chairman of the Otoe-Missouria Tribe of Indians, and Defendant Mark Curry. On February 6, 2019, the Court heard oral argument on Defendants' motions, denied those motions from the bench (except for the motions to dismiss filed by Middlemarch and another Defendant; Plaintiffs were granted leave to amend), and set a trial date of November 4, 2019. Also on February 6, 2019, Plaintiffs filed a motion for class certification, pursuant to the scheduling order in effect at the time, seeking certification of a nationwide class of AWL borrowers. *See* ECF Nos. 342-344.

On February 19, 2019, Defendants AWL, MacFarlane, Curry, and SOL filed notices of appeal from the Court's denial of their motions to dismiss for lack of subject matter jurisdiction and to compel arbitration. *See* ECF Nos. 358-359.

On March 22, 2019, the Court issued two written Opinions and Orders further documenting its rulings at the February 6, 2019 motions hearing. *See* ECF Nos. 389, 390.

In the Fourth Circuit, the Parties fully briefed Defendants' appeals by November 21, 2019. Shortly before Defendants filed their opening brief in the Fourth Circuit, on July 3, 2019, the Fourth Circuit issued its opinion in the class action lawsuit *Williams v. Big Picture Loans, LLC*, 929 F.3d 170 (4th Cir. 2019) ("*Big Picture*"), holding, *inter alia*, that a Native American-owned online lender and a related tribally-owned entity were immune from suit as "arms of the Tribe."

B. Mediation and Proposed Settlement

While Defendants' appeals were pending, the Parties agreed to engage Judge Phillips, a well-respected and highly experienced mediator. On July 29 and 31, 2019, after Defendants filed their opening brief in the Fourth Circuit, and after the Parties exchanged detailed mediation statements, the Parties engaged in extensive, arm's length negotiations before Judge Phillips. *See* Declaration of Former U.S. District Judge Layn R. Phillips In Support Of Motion For Preliminary Approval ("Phillips Decl.), attached as Exhibit B. While those mediation sessions were productive, the Parties were unable to resolve the Action. *Id.* at 3-4. The Parties renewed their efforts to resolve the Action and, on November 8, 2019, participated in an additional mediation session with Judge Phillips. *Id.* at 4. On that date, the Parties engaged in further lengthy, arm's-length negotiations, reached an agreement in principle to settle, and entered into a term sheet setting forth material deal points associated with the resolution of the Action. *Id.* Judge Phillips is willing to answer any questions the Court may have, including *ex parte*, concerning the mediation process and Judge Phillips's view of the litigation risks facing both sides. *Id.* at 5.

The Settlement provides for the release of the Released Parties from the Released Claims in exchange for $141 million in Total Settlement Value, comprised of $65 million in cash to be paid into an interest-bearing escrow account in four installments through April 30, 2021, and $76

million in the cancellation (as disputed debts) of over 39,000 loans in AWL's Collection Portfolio, as listed in Exhibit 6 to the Settlement Agreement, and several valuable Non-Monetary Benefits. *See* Settlement Agreement at III(a) and (b). The following Non-Monetary Benefits included in the Settlement will provide substantial economic and non-economic relief for the Settlement Class: (i) Curry shall leave the business of AWL in all managerial and operational capacities on or before December 28, 2020, including resigning from his position as CEO and Director of AWL on or before the date of the Preliminary Approval Order; (ii) AWL shall request that the credit reporting agency Clarity Services delete any negative credit reporting information regarding loans set forth in the Collection Portfolio; (iii) AWL shall not sell personal information obtained from any Settlement Class Member except as may be required for debt collection; (iv) AWL shall disclose key loan terms including interest rates and payment schedules to borrowers; and (v) AWL shall make other changes to its loan agreements to comply with federal law. *See* Settlement Agreement at III(a). Pursuant to records received from Defendants on December 27, 2019 in anticipation of providing Notice of the Settlement to Settlement Class Members, the Settlement Class is comprised of at least 576,000 members.

If the Settlement is approved, the Net Monetary Consideration will be distributed within sixty days of the Effective Date of the Settlement *automatically*, on a *pro rata* basis, to all Settlement Class Members eligible to receive a Cash Award. Also, the outstanding balance of any Settlement Class Member's loan that is in the AWL Collection Portfolio will be automatically cancelled as disputed debt and adjusted to a zero balance. For any Settlement Class Member who took out his or her AWL loan prior to January 1, 2012 and for whom Defendants have no documents or data to verify such person's status as a Settlement Class Member, a distribution from the Net Monetary Consideration will be made only after such Settlement Class Member submits a

timely and valid Proof of Claim in accordance with the procedures described in the Settlement Agreement and Notice and authorized by order of the Court.

III. ARGUMENT

A. The Proposed Settlement is Fair, Reasonable, and Adequate and Should be Preliminarily Approved

"There is a strong judicial policy in favor of settlement to conserve scarce resources that would otherwise be devoted to protracted litigation." *Robinson v. Carolina First Bank NA*, No. 7:18-cv-02927-JDA, 2019 WL 719031, at *8 (D.S.C. Feb. 14, 2019) (citing *In re Jiffy Lube Sec. Litig.,* 927 F.2d 155, 158-59 (4th Cir. 1991) and *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 663 (E.D. Va. 2001)); *see also Gould v. Alleco, Inc.*, 883 F.2d 281, 284 (4th Cir. 1989) (the analysis begins with "the unassailable premise that settlements are to be encouraged"). Settlement is particularly favored "in the class action context." *West v. Cont'l Auto., Inc.*, No. 3:16-cv-00502-FDW-DSC, 2018 WL 1146642, at *3 (W.D.N.C. Feb. 5, 2018); *see also S. Carolina Nat. Bank v. Stone*, 749 F. Supp. 1419, 1428 (D.S.C. 1990) ("[S]ettlement classes have proved to be quite useful in resolving major class action disputes. … [M]ost courts have recognized their utility and have authorized the parties to seek to compromise their differences including class action issues through this means.") (citation omitted). Consistent with this judicial policy, "there is a strong initial presumption that the compromise is fair and reasonable." *MicroStrategy*, 148 F. Supp. 2d at 663 (citation omitted).

Federal Rule of Civil Procedure 23(e) requires court approval of a proposed class action settlement upon a finding that the settlement is "fair, reasonable, and adequate." *See* Fed. R. Civ. P. 23(e)(2); *see also Jiffy Lube*, 927 F.2d at 158. Under the December 1, 2018 amendments to Rule 23(e), the preliminary approval process requires the Court to assess whether the parties have shown that "the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii)

certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B). Rule 23(e)(2) provides:

> (2) *Approval of the Proposal*. If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:
>
> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> (i) the costs, risks, and delay of trial and appeal;
>
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
>
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
>
> (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

The Advisory Committee Notes to the December 2018 amendments to Rule 23(e) indicate that the amendments were meant to codify, not displace, the existing preliminary approval process that is customary in class action settlements in each circuit. *See* 2018 Advisory Committee Notes to Fed R. Civ. P. 23(e)(2). Therefore, the new Rule 23(e) factors do not replace the "*Jiffy Lube* factors" traditionally considered in the Fourth Circuit when evaluating the procedural and substantive fairness of a settlement during the preliminary approval process. Indeed, the Rule 23(e)(2)(A)-(B) considerations overlap with the first inquiry under the *Jiffy Lube* analysis, which first examines the procedural "fairness" of the settlement: whether it "was reached as a result of good-faith bargaining at arm's length, without collusion, on the basis of (1) the posture of the case

at the time [the] settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the [settlement] negotiations, and (4) the experience of plaintiffs' counsel." *Jiffy Lube*, 927 F.2d at 158-59.

Similarly, the Rule 23(e)(2)(C)-(D) considerations are generally consistent with the approach to assessing the "adequacy" of the settlement under the second part of the *Jiffy Lube* analysis. Doing so requires considering: "(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." *Jiffy Lube*, 927 F.2d at 159.

Further, the Rule 23(e)(1)(B)(ii) preliminary determination of whether the Court likely will be able to certify the Settlement Class for purposes of judgment is consistent with long-standing Supreme Court authority that provides for the preliminary certification of a settlement class where the proposed settlement class satisfies the threshold requirements of Rule 23(a) (numerosity, commonality, typicality, and adequacy of representation) and Rule 23(b)(1), (2), or (3). *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613-14 (1997).

1. The Settlement Is Fair Because It Was Achieved Through Extensive, Arm's-Length Negotiations With The Assistance Of A Highly Respected And Experienced Mediator

The fairness analysis under *Jiffy Lube* is intended to confirm that a settlement was fair and "reached as a result of good-faith bargaining at arm's length, without collusion." 927 F.2d at 158-59. This is consistent with the Rule 23(e)(2)(A)-(B) considerations of the adequacy of the representation of the class and whether the settlement was negotiated at arm's length. Each of the *Jiffy Lube* fairness factors weighs in favor of a preliminary finding that the Settlement is fair.

a) The Posture Of The Proceedings

"Considering the posture of the case at the time of settlement allows the Court to determine whether the case has progressed far enough to dispel any wariness of possible collusion among the settling parties." *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 571 (E.D. Va. 2016) (citation and internal quotation marks omitted).

This Action has undoubtedly progressed far enough to dispel any notion of collusion among the Parties. Plaintiffs and their counsel filed two amended complaints and vigorously contested thirteen motions to dismiss, compel arbitration, and transfer venue. In addition, the Parties engaged in substantial jurisdictional discovery and submitted extensive supplemental briefing on perhaps the most critical issue in the case: whether Defendants AWL, MacFarlane, Curry, and SOL are immune from suit. The Court also conducted an evidentiary hearing on the immunity issue with live testimony from two key witnesses and held a further session of oral argument on Defendants' motions. Plaintiffs also filed a motion for class certification under the then-operative scheduling order. Moreover, the Parties completed extensive appellate briefing on crucial threshold issues of tribal sovereign immunity and arbitration. The posture of this Action at the time of Settlement therefore weighs strongly in favor of preliminary approval.

b) The Extent Of Discovery

This factor "enables the Court to ensure that the case is well-enough developed for Class Counsel and . . . Plaintiffs alike to appreciate the full landscape of their case when agreeing to enter into th[e] Settlement." *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 254 (E.D. Va. 2009). "[S]ignificant discovery, … [that] clarifie[s] plaintiffs' previous understanding of the strength and weakness of their claims and afford[s] the ability to confirm the fairness, reasonableness, and adequacy of the proposed . . . settlement" will suffice. *MicroStrategy*, 148 F. Supp. 2d at 664 (footnote omitted). Even substantial fact-finding from investigating and litigating

plaintiffs' claims may be adequate. *See*, *e.g.*, *Brown*, 318 F.RD. at 572 (discovery factor satisfied where class counsel "conducted a rigorous investigation of the claims before filing the Complaint and Amended Complaint."); *In re NeuStar Inc. Sec. Litig.*, No. 1:14-cv-885 (JCC/TRJ), 2015 WL 5674798, at *10 (E.D. Va. Sept. 23, 2015) ("Although this case never reached fact or class discovery proceedings, Lead Counsel represents that it has a thorough understanding of the strengths and weaknesses of its claims against Defendants after almost two years of investigation and litigation.") (internal quotation marks omitted).

Here, Class Counsel conducted an eleven-month investigation before filing the initial 76-page, 233-paragraph Class Action Complaint. After filing the Complaint, Class Counsel continued to rigorously investigate Plaintiffs' claims for three additional months, resulting in an Amended Complaint with 43 additional paragraphs of factual allegations. The extensive jurisdictional discovery in this Action further clarified Plaintiffs' and Class Counsel's understanding of the strengths and weaknesses of their case, particularly in connection with the critical issue of tribal sovereign immunity. In addition, two years of vigorously litigating legal and factual matters concerning the tribal immunity and arbitration issues, including fulsome briefing in the Fourth Circuit, provided Plaintiffs with a deep understanding of the strengths and weaknesses of their claims – before and after the Fourth Circuit's ruling in *Big Picture*, which altered the landscape on "arm-of-the-tribe" immunity in this Circuit. Accordingly, the extent of discovery weighs in favor of preliminary approval.

c) The Circumstances Surrounding The Settlement Negotiations

This factor assesses whether the Settlement is the product of adversarial, arm's-length negotiations. *See MicroStrategy*, 148 F. Supp. 2d at 665. Use of a professional mediator evidences an arm's length negotiation and weighs in favor of preliminary approval. *See, e.g.*, *Brown*, 318 F.R.D. at 571–72; *NeuStar*, 2015 WL 5674798, at *11. Engaging in "numerous meetings and

extensive and intensive discussions" also supports a finding that a settlement was negotiated at arm's length. *MicroStrategy*, 148 F. Supp. 2d at 665. Both occurred here.

While Defendants' appeal was pending, the Parties engaged Judge Phillips, one of the country's top mediators. *See* Phillips Decl. at 1-5. The Parties filed comprehensive opening and reply mediation statements, along with dozens of exhibits, and each responded to a confidential list of detailed written questions posed by Judge Phillips. *See id.* at 3-4. Moreover, the Parties participated in three, intensive, full-day mediation sessions and numerous telephonic conferences over the course of four months, during which time the Parties continued to vigorously litigate Defendants' appeal in the Fourth Circuit. *See id.* at 3-5. Thus, the circumstances surrounding the Settlement negotiations weigh in favor of preliminary approval.

d) The Experience Of Class Counsel

This factor looks to the experience of Class Counsel to determine whether they have the experience and ability to effectively represent the Class's interests. *MicroStrategy*, 148 F. Supp. 2d at 665.

Class Counsel is highly experienced in class action litigation, including other nationwide RICO class actions brought against participants in similar Native American-affiliated online lending schemes. *See* Declaration of Kathleen M. Donovan-Maher, Declaration of Matthew B. Byrne, and Declaration of David W. Thomas, filed as Exhibits C, D and E. Class Counsel has litigated actions involving similar tribal sovereign immunity and arbitration issues in multiple fora, including federal district courts, a federal bankruptcy court, and the U.S. Court of Appeals for the Second Circuit. *See Gingras v. Think Finance, Inc., et al.,* 922 F.3d 112 (2d Cir. 2019), *cert. denied*, __U.S. __, 140 S. Ct. 856 (Jan. 13, 2020); *Gingras v. Rosette, et al.*, No. 5:15-cv-101 (D. Vt.); *Gingras v. Victory Park Capital Advisors, LLC, et al.*, No. 5:17-cv-233 (D. Vt.); *Granger v. Great Plains Lending, LLC, et al.*, No. 1:18-cv-112 (M.D.N.C.); *In re Think Finance, LLC, et al*.,

No. 17-33964-hdh11 (Bankr. N. D. Tex.). Moreover, Class Counsel has decades of experience in both complex class action litigation and in cases involving conflicts between sovereigns. *See* Exhibits C, D and E. Indeed, in appointing Class Counsel to serve as Interim Co-Lead Class Counsel, this Court noted that Class Counsel "has extensive experience handling class actions, including the two nationwide 'rent-a-tribe' class actions on which [they] presently serve as co-lead class counsel." ECF No. 180 at 10. Accordingly, the experience of Class Counsel weighs in favor of preliminary approval.

2. The Settlement Is Substantively Fair, Reasonable, And Adequate

In assessing whether a settlement is substantively fair, reasonable, and adequate at the preliminary approval stage, courts in the Fourth Circuit look to four of the *Jiffy Lube* adequacy 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, [and] (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment." *Jiffy Lube*, 927 F.2d at 159. The first four *Jiffy Lube* factors weigh in favor of preliminary approval.[2]

a) Relative Strength Of Plaintiffs' Case And Strong Defenses

"The first and second factors addressing the adequacy of a settlement require the Court to examine how much the class sacrifices in settling a potentially strong case in light of how much the class gains in avoiding the uncertainty of a potentially difficult case." *Brown*, 318 F.R.D. at 573 (internal quotation marks omitted). While Plaintiffs believe that they have a strong case on

[2] The fifth *Jiffy Lube* adequacy factor, "the degree of opposition to the settlement," 927 F.2d at 159, is premature at the preliminary approval stage because the Settlement Class has not yet received Notice of the Settlement. As Notice will be provided to Settlement Class Members, with instructions for the communication of any objections to the Settlement after the Court grants preliminary approval, this factor will be a consideration at the Final Approval Hearing.

the merits, the AWL Defendants in this Action – AWL, MacFarlane, Curry, and SOL – have vigorously disputed Plaintiffs' ability to sue them in the first instance under the doctrine of tribal sovereign immunity. All Defendants further maintain that the arbitration provisions in Plaintiffs' loan agreements bar this Action in its entirety. These "substantial hurdles for Plaintiffs to overcome that could have precluded any recovery at all[]" weigh in favor of preliminary approval. *Funkhouser v. City of Portsmouth, Virginia*, No. 2:13CV520, 2015 WL 12826461, at *2 (E.D. Va. Mar. 18, 2015).

Defendants' currently pending appeals on tribal immunity and arbitration create substantial uncertainty and risk to Plaintiffs' ability to prevail on the merits and secure a recovery. Particularly in light of the Fourth Circuit's recent ruling in *Big Picture*, the court of appeals could conclude that the standard for "arm-of-the-tribe" immunity articulated in *Big Picture* requires reversal of this Court's prior rulings and a finding that AWL, MacFarlane, Curry, and SOL are immune from suit. Such uncertainty and risk weighs in favor of preliminary approval.

Defendants have also vigorously challenged the merits of Plaintiffs' claims from the inception of this Action. For example, Defendants dispute: (1) that AWL loans constitute unlawful debts under RICO; and (2) that Plaintiffs can demonstrate a RICO enterprise. Certain Defendants separately dispute their liability as participants in the alleged RICO enterprise and/or as RICO co-conspirators. While Plaintiffs prevailed thus far in the face of these contentions at the motion to dismiss stage, facing these challenges again at summary judgment, trial, and in further appeals creates additional uncertainty and risk that weighs in favor of preliminary approval.

b) Duration And Expense Of Further Litigation

"The third *Jiffy Lube* 'adequacy' factor asks the Court to weigh the settlement in consideration of the substantial time and expense litigation of this sort would entail if a settlement was not reached." *Mills*, 265 F.R.D. at 256. This factor is based on a sound policy of conserving

the resources of the Court and the certainty that unnecessary and unwarranted expenditure of resources and time benefit[s] all parties." *Id.* The contentious and lengthy litigation of this Action to date suggests that further litigation would be similarly lengthy and costly. *See id.* at 256-57; *Brown*, 318 F.R.D. at 573.

As described above, the Parties have engaged in extensive and contentious litigation to date related to, among other things, Defendants' numerous motions to dismiss and to compel arbitration, jurisdictional discovery, and Defendants' appeals. Further proceedings in this Action—including the conclusion of Defendants' interlocutory appeals before returning to this Court for class and merits discovery, class certification, summary judgment, trial, and further appeals—will undoubtedly be costly, time consuming, and delay the much-needed relief that the Settlement provides to the Settlement Class Members. This factor therefore weighs in favor of preliminary approval.

c) Solvency And Recovery On Judgment

While there is no current indication that Defendants are at risk of insolvency, the primary actors in the alleged unlawful lending enterprise – Curry, AWL, MacFarlane/Red Stone, and SOL – are not large, multinational corporations, but rather an individual and private, or tribally-owned entities with finite resources, and would not be able to withstand a judgment of the full amount of damages in this Action.

The uncertainty of recovery in the face of further proceedings "provides a necessary backdrop" when considering this factor, as does "the maxim that inherent in compromise is a yielding of absolutes and an abandoning of the highest hopes." *Mills*, 265 F.R.D. at 257 (citation and internal quotation marks omitted). Thus, this factor weighs in favor of preliminary approval.

3. The Rule 23(e)(2) Factors That Do Not Overlap With The *Jiffy Lube* Factors Support Preliminary Approval Of The Settlement[3]

a) Rule 23(e)(2)(A) – Class Representatives And Class Counsel Have Adequately Represented The Settlement Class

Plaintiffs each share the same interest as the Settlement Class in prosecuting this Action to ensure the greatest possible recovery from Defendants. Plaintiffs are part of the Settlement Class and suffered the same injuries as other Settlement Class Members: monetary losses associated with the payment of allegedly unlawful interest on loans issued in the name of AWL. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348-49 (2011) (the "class representative must be part of the class and possess the same interest and suffer the same injury as the class members) (citation and internal quotation marks omitted). Further, as noted herein, Class Counsel have demonstrated that they are qualified, experienced, and able to conduct the litigation and supervise the Settlement. The Rule 23(e)(2)(A) factor supports preliminary approval of the Settlement.

b) Rule 23(e)(2)(C)(ii) – The Relief To Be Provided To The Class Is Adequate, Taking Into Account The Effectiveness Of Distributing Relief To The Settlement Class

As part of the adequacy analysis, Rule 23(e)(2)(C)(ii) requires the Court to look to "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." Fed. R. Civ. P. 23(e)(2)(C)(ii). The proposed "claims processing method should deter or defeat unjustified claims," but should not be "unduly demanding" on potential claimants. 2018 Advisory Committee Notes to Fed R. Civ. P. 23(e)(2).

[3] The Rule 23(e)(2)(B) factor ("the proposal was negotiated at arm's length") is addressed above in the discussion of the *Jiffy Lube* fairness factors. The Rule 23(e)(2)(C)(i) factor ("the costs, risks, and delay of trial and appeal") is addressed above in the discussion of the *Jiffy Lube* adequacy factors. The Rule 23(e)(2)(C)(iv) factor (requiring identification of any additional agreements made in connection with the settlement proposal) does not apply as there are no such agreements between the Parties here.

Here, the Settlement provides that Settlement Class Members whose loans were issued between January 1, 2012, and the date the Preliminary Approval Order is entered, will automatically receive a *pro rata* Cash Award based on the total amount of interest paid above the principal amount of the loan. Because AWL maintained information about each Settlement Class Member and his or her loan(s) issued during the period January 1, 2012 and the date the Preliminary Approval Order is entered, including each borrower's contact information, the principal amount of each loan, and the total amount of principal and interest payments received, Settlement Class Members during that period need not submit claims or provide supporting documentation to receive a Cash Award.

With respect to Settlement Class Members whose AWL loans were issued between February 10, 2010 and December 31, 2011, for whom AWL has maintained no personal identifying information or contact information, they shall receive a flat $20 Cash Award provided they submit to the Settlement Class Administrator: (1) a completed and signed Claim Form; (2) and one of the following forms documenting that he or she received an AWL loan: (a) a copy of the original loan agreement; (b) a copy of a bank statement evidencing the receipt of an AWL loan or a withdrawal made in connection with such loan; or (c) an email from AWL indicating that the borrower's loan application was approved and that funds were to be released to him or her.

With respect to Settlement Class Members whose AWL loans were issued between February 10, 2010 and December 31, 2011, they shall receive a *pro rata* Cash Award based on the total amount of interest paid above the principal amount of the loan, provided they submit to the Class Administrator all of the following documentation: (1) a completed and signed Claim Form; (2) a copy of the original loan agreement; and (3) copies of bank statements showing payments

made in connection with the AWL loan that exceed the principal amount of the loan stated on the loan agreement.

For any Settlement Class Member whose loan is listed in the AWL Collection Portfolio, Exhibit 6 to the Settlement Agreement, the cancellation of such loan(s) will be automatic and not require the submission of a proof of claim form or supporting documentation by the Settlement Class Member. AWL shall submit to the Court by April 29, 2020 an updated Exhibit 6, to include additional loans to additional borrowers and reflect a total Collection Portfolio value of at least $76 Million.

Class Counsel, having consulted with the proposed Settlement Class Administrator, A.B. Data, Ltd., respectfully submits that the proposed plan of distribution is the most fair, reasonable, and adequate method of equitably allocating the Net Monetary Consideration to the Settlement Class based on the amount of unlawful interest paid on Settlement Class Members' AWL loans.

c) Rule 23(e)(2)(C)(iii) – The Relief To Be Provided To The Class Is Adequate, Taking Into Account Any Proposed Award Of Attorneys' Fees

Rule 23(e)(2)(C)(iii) requires that the Court, as part of its overall analysis of the adequacy of the Settlement, consider "the terms of any proposed award of attorney's fees, including [the] timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii). Under the terms of the Settlement Agreement and as described in the proposed Notice to be provided to Settlement Class Members, Class Counsel will apply for an award of attorneys' fees and reimbursement of costs not to exceed 33% of the Total Settlement Value. As provided in the Settlement Agreement, and consistent with the structuring of attorneys' fees payments that is often permitted in large, complex class action settlements, 50% of the amount of attorneys' fees awarded would be paid upon the Court's entry of the Final Approval Order and Judgment, with payment of the balance of the attorneys' fees paid on the Effective Date. *See* Settlement Agreement at IV(a). Moreover, no interest will accrue on

any award of attorneys' fees and interest earned on funds in the Escrow Account will be distributed to the Settlement Class.

d) Rule 23(e)(2)(D) – The Proposal Treats Class Members Equitably Relative To Each Other

The Rule 23(e)(2)(D) factor seeks to address a potential concern that some class action settlements may treat some class members inequitably, including "whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." 2018 Advisory Committee Notes to Fed R. Civ. P. 23(e)(2). The proposed distribution of the Net Monetary Consideration is detailed above at pages 16-17. In addition, all Settlement Class Members will receive the benefit of the injunctive and other Non-Monetary Benefits under the Settlement. Moreover, all Settlement Class Members whose loans are held in the AWL "Collection Portfolio" will obtain the benefit of cancellation of their outstanding loan balance as disputed debt. Further, the Releases treat all Settlement Class Members equitably relative to one another. Subject to Court approval, all Settlement Class Members will be giving Defendants identical releases tied to the identical theory of liability asserted in the Action.

B. Certification Of The Settlement Class Is Appropriate

Rule 23(e) requires that the Parties demonstrate that this Court "will likely be able to … certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B)(ii). The standard for class certification for settlement purposes is less stringent than for litigation purposes. *See* 2018 Advisory Committee Notes to Fed R. Civ. P. 23(e)(1).

Certification of a settlement class requires that the proposed class satisfy the requirements of Federal Rule of Civil Procedure 23. "First, the class must comply with the four prerequisites

established in Rule 23(a): (1) numerosity of parties; (2) commonality of factual and legal issues; (3) typicality of claims and defenses of class representatives; and (4) adequacy of representation." *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 423 (4th Cir. 2003) (citing Fed. R. Civ. P. 23(a)). "Second, the class action must fall within one of the three categories enumerated in Rule 23(b)." *Id.* (citing Fed. R. Civ. P. 23(b)). Here, Plaintiffs assert that the requirements of Rules 23(a) and 23(b) are met, and Defendants do not oppose certification (for settlement purposes only) of the Settlement Class under Rule 23(a) and Rule 23(b)(3), "which requires that common issues predominate over individual ones and that a class action be superior to other available methods of adjudication." *Id.*

1. The Settlement Class Satisfies The Requirements Of Rule 23(a)

a) Settlement Class Members Are Too Numerous To Be Joined

Rule 23(a)(1) is satisfied where "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "No specified number is needed to maintain a class action." *Branch v. Gov't Employees Ins. Co.*, 323 F.R.D. 539, 546 (E.D. Va. 2018) (finding a class of 400 to be sufficiently numerous); William B. Rubenstein, 1 *Newberg on Class Actions*, § 3:12 (generally a class of more than 40 satisfies the numerosity requirement) (5th ed. 2018. Here, there can be no doubt that the Settlement Class is sufficiently numerous. According to the borrower data provided by AWL to date, there will be more than 576,000 Settlement Class Members geographically dispersed throughout the country. *See* Declaration of Eric Schachter ("Schachter Decl."), attached as Exhibit F. Joinder is therefore impracticable and Rule 23(a)(1) is satisfied.

b) There Are Common Questions Of Law And Fact

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "Although the rule speaks in terms of common questions, what matters to class certification . . . [is] the capacity of a classwide proceeding to generate common *answers* apt

to drive the resolution of the litigation." *EQT Prod. Co. v. Adair*, 764 F.3d 347, 360 (4th Cir. 2014) (internal quotation marks omitted) (quoting *Wal-Mart*, 564 U.S. at 350). "Minor factual variances do not prevent a plaintiff from showing commonality as long as the claims arise from the same set of facts and the putative class members rely on the same legal theory." *Branch*, 323 F.R.D. at 546 (internal quotation marks omitted) (quoting *Brown*, 318 F.R.D. at 567).

This Action presents numerous common questions of both law and fact that can be resolved on a classwide basis. Common questions include but are not limited to: (i) whether Defendants were associated with the alleged RICO enterprise defined in the Amended Complaint, *see* Am. Compl. ¶ 211; *Robinson v. Fountainhead Title Grp. Corp.*, 257 F.R.D. 92, 94 (D. Md. 2009); (ii) whether Defendants embraced the unlawful objective of the enterprise (*i.e.,* collection of unlawful debt); and (iii) whether Defendants participated in the operation, management, and/or control over the RICO enterprise. Commonality is further satisfied because the loans issued to Settlement Class Members were subject to loan agreements with virtually identical terms. *See Robinson*, 257 F.R.D. at 94; *Health Plan of Upper Ohio Valley, Inc. v. DeGarmo*, No. 5:93CV7, 1996 WL 780508, at *5 (N.D.W. Va. Oct. 28, 1996).

c) Plaintiffs' Claims Are Typical Of The Settlement Class

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Typicality requires that "a class representative must be part of the class and possess the same interest and suffer the same injury as the class members." *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2006); *see also* Rubenstein, 1 *Newburg on Class Actions*, at § 3:29 ("The test for typicality is not demanding and focuses on the similarity between the named plaintiffs' legal and remedial theories and the theories of those whom they purport to represent.") (citation and internal quotation marks omitted). Thus, the "plaintiff's claim cannot be so different from the claims of absent class members that their

claims will not be advanced by plaintiff's proof of his own individual claim." *Deiter*, 436 F.3d at 466-67. Typicality does not require "that the plaintiff's claim and the claims of class members be perfectly identical or perfectly aligned." *Id.* at 467.

Plaintiffs are members of the Settlement Class and possess the same interests and suffered the same alleged injury as each Settlement Class Member through Defendants' uniform course of conduct. Plaintiffs allege that they and all Settlement Class Members took out one or more loans with virtually identical terms at an unlawfully high interest rate. *See Purdie v. Ace Cash Express, Inc.*, No. CIV.A. 301CV1754L, 2003 WL 22976611, at *3 (N.D. Tex. Dec. 11, 2003); *Chisolm v. TranSouth Fin. Corp.*, 184 F.R.D. 556, 564 (E.D. Va. 1999). Plaintiffs further allege that they did not see the material terms of their loan agreements during the loan application process and that nearly identical loan agreements conditioned issuing loans to consumer borrowers on the use of recurring preauthorized electronic fund transfers. Thus, typicality is satisfied.

d) Plaintiffs Will Fairly And Adequately Protect The Interests Of The Settlement Class

Rule 23(a)(4) requires that the "representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Rule 23(g)(4) requires that "class counsel [will] fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(4). Adequacy is satisfied "if the named plaintiff does not have interests antagonistic to those of the class[,] and . . . plaintiff's attorneys are qualified, experienced, and generally able to conduct the litigation." *Branch*, 323 F.R.D. at 549 (alternation in original) (internal quotation marks omitted) (quoting *Brown*, 318 F.R.D. at 567).

Here, Plaintiffs and the Settlement Class share the same legal claims under the same set of core facts and have the same interest in holding Defendants accountable for their respective roles in the alleged unlawful lending scheme. There are also no conflicts of interest between Class

Counsel and the Settlement Class. Class Counsel has vigorously prosecuted this Action on behalf of the Class for over two years.

Moreover, Class Counsel has decades of experience in complex, nationwide class actions. *See* Exhibits C, D and E. Indeed, this Court previously appointed Berman Tabacco and Gravel & Shea, to serve as Interim Co-Lead Class Counsel, finding they: (1) "conducted extensive research identifying and investigating" this action "and regarding the national class as a whole"; (2) have "extensive experience handling class actions," including two other "nationwide 'rent-a-tribe' class actions"; (3) "are knowledgeable of the applicable law"; and (4) "will commit sufficient resources to represent the . . . nationwide class." ECF No. 193 at 10. Class Counsel has, in fact, demonstrated the quality of their representation of the Settlement Class and has committed substantial resources to vigorously prosecute this Action both in this Court and in the Fourth Circuit. Thus, adequacy is satisfied.

2. The Settlement Class Satisfies The Requirements Of Rule 23(b)(3)

Rule 23(b)(3) is satisfied when "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

a) Common Legal And Factual Questions Predominate

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. "Critically, Rule 23(b)(3)'s commonality-predominance test is qualitative rather than quantitative." *Stillmock v. Weis Markets, Inc.*, 385 F. App'x 267, 273 (4th Cir. 2010). "In other words, Rule 23(b)(3) compares the quality of the common questions to those of the noncommon questions." *Soutter v. Equifax Info. Servs.*, LLC, 307 F.R.D. 183, 214 (E.D. Va. 2015) (citation and internal quotation

marks omitted). "If the qualitatively overarching issue in the litigation is common, a class may be certified notwithstanding the need to resolve individualized issues." *Id.*

Courts find predominance satisfied where a single, allegedly unlawful scheme is subject to common proof. *See, e.g.*, *Robinson*, 257 F.R.D. at 94; *Chisolm*, 184 F.R.D. at 565. Here, Plaintiffs allege a single scheme by Defendants to issue unlawful, high interest loans. This is the "qualitatively overarching issue" in this Action. *Soutter*, 307 F.R.D. at 214. There are no individualized questions at issue in Defendants' alleged common scheme. Thus, predominance is satisfied.

b) A Class Action Is Superior To Other Methods Of Adjudication

The Rule 23(b)(3) superiority test requires that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). "In adding . . . 'superiority' to the qualification-for-certification list, the Advisory Committee sought to cover cases 'in which a class action would achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.'" *Amchem*, 521 U.S. at 615 (second ellipsis in original) (citation omitted). "In determining whether the class action mechanism is truly superior the court should consider the class members' interest in individually controlling the prosecution or defense of separate actions; the extent and nature of any litigation concerning the controversy already begun by or against class members; the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and the likely difficulties in managing the class action." *Thomas v. FTS USA, LLC*, 312 F.R.D. 407, 425 (E.D. Va. 2016) (internal quotation marks omitted) (quoting Fed. R. Civ. P. 23(b)(e)(A)-(D)).

Applying Rule 23(b)(3) superiority factors to this Action makes clear that the class action mechanism is the superior method of adjudication. There is no indication that any Settlement

Class Member wishes to pursue one or more individual actions.[4] To the extent any Settlement Class Member wishes to pursue their own individual action, they can do so by opting out of the Settlement. *See Thomas*, 312 F.R.D. at 426.

Concentrating Settlement Class Members' claims in this forum is desirable because there are over 576,000 Settlement Class Members who are dispersed throughout the United States. *See id.*; *In re Processed Egg Prod. Antitrust Litig.*, 312 F.R.D. 171, 203-04 (E.D. Pa. 2015), *appeal docketed*, No. 19-1188 (3d Cir. Jan. 25, 2019). Indeed, there is no practical alternative way to resolve this matter other than through nationwide class adjudication. Potentially more than half a million individual suits would unquestionably be costly, unwieldy, and pose a risk of inconsistent rulings. A single nationwide class settlement resolving the Settlement Class's claims is far more sensible. In addition, many, if not most, of the putative class members are low-to-moderate income consumers who lack the means or incentive to bring an individual suit claiming potentially small individual damages, particularly where, as here, pursuing that suit involves complex questions of sovereign immunity, arbitration, and RICO liability. *See Talbott v. GC Servs. Ltd. P'ship*, 191 F.R.D. 99, 106 (W.D. Va. 2000).

Finally, resolving this Action as a class action will not be unmanageable because common questions of law and fact predominate this matter. *See Thomas*, 312 F.R.D. at 426; *see also Amchem*, 520 U.S. at 620 (noting that, in settlement context, a district court need not weigh

[4] Previously, there were three other, later-filed actions concerning the identical alleged misconduct in this Action: two in this Court, *Hengle, et al. v. Curry, et al.*, No. 4:18-cv-75 (E.D. Va.) and *Glatt, et al. v. Curry, et al.*, 4:18-cv-101 (E.D. Va.), and one in the Eastern District of Pennsylvania, *Williams et al. v. Red Stone, Inc.*, 2:18-cv-02747 (E.D. Pa.). All three were brought as class actions, not individual actions. After the Court appointed Interim Co-Lead Class Counsel, the *Hengle* and *Glatt* plaintiffs dismissed their claims. *See* ECF Nos. 210, 214. *Williams* asserts federal RICO claims and Pennsylvania state law claims on behalf of a class of Pennsylvania-only consumers that is entirely subsumed by the nationwide class in this first-filed Action.

concerns about "intractable management problems" since the matter is, in fact, being settled). Thus, superiority is satisfied, and the Court should preliminarily certify the Settlement Class for settlement purposes.

C. Notice To The Settlement Class Should Be Approved

Under Rule 23(e)(1), the Court "must direct notice in a reasonable manner to all class members who would be bound by the propos[ed settlement]." Fed. R. Civ. P. 23(e)(1)(B). Where, as here, notice is to be provided to a settlement class certified under Rule 23(b)(3), the Court is required to "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." Fed. R. Civ. P. 23(c)(2)(B). As clarified in the December 2018 amendments to Rule 23, the best notice practicable under the circumstances can be accomplished by providing notice through "electronic means" or other appropriate means. *Id*. Here, the proposed form and manner of Notice satisfy these requirements and otherwise conforms to the standards of Rule 23(c)(2)(B).

Here, there will be direct, individual notice sent to each of the more than 576,000 Settlement Class Members (plus any individuals who have become a Settlement Class Member since December 27, 2019) who are identified in AWL's records as having taken out an AWL loan. Settlement Class Members will receive the Notice at a verified email address used in connection with their AWL loan(s) (or, if the email address is no longer valid and an alternative email address is not available, via U.S. mail at a verified mailing address), in accordance with Rule 23(c)(2)(B). *See* Schachter Decl. at ¶ 7. AWL has provided (and will continue to provide) all necessary personally identifying information to effectuate individual notice, and the Settlement Class Administrator will use best practices to identify current email and/or mailing addresses of Settlement Class Members and transmit notice to them. To the extent any email or mail Notice is returned as undeliverable, the Settlement Class Administrator will attempt to locate alternate

addresses and promptly re-mail the Notice. Settlement Class Members will also be able to access the case specific website, www.AWLSettlement.com, where they can download and/or request hard copies of the Notice and other information about the Action and Settlement. *See* Schachter Decl. at ¶ 13. In addition to the direct provision of Notice, a supplemental Digital Publication Notice will also be published using state-of-the-art targeting of social media and other internet-based means to alert potential Settlement Class Members of the Settlement and direct them to the Settlement Website for more information. *See id*. at ¶¶ 6,8. The Settlement Website will include a portal through which Settlement Class Members can determine if he or she is eligible to receive a Cash Award or is among those whose loans are included in the Collections Portfolio and being cancelled as disputed debt. The use of email and supplemental Digital Publication Notice is particularly appropriate here where Settlement Class Members took out their AWL loans entirely over the internet and thus are highly familiar with email and other "online" or internet-based communications and technology. *See id*. at ¶¶ 6, 10. For the approximately 39,000 Settlement Class Members whose loans are being cancelled as disputed debt pursuant to the terms of the Settlement Agreement, the Collections Portfolio Notice will be sent to each affected Settlement Class Member within 60 days of the Effective Date. *See id*. at ¶ 9.

The Settlement's robust Notice program will ensure that the maximum number of Settlement Class Members receive Notice of the Settlement and their rights thereunder, including with respect to Settlement Class Members' potential eligibility for a Cash Award or loan cancellation, as well as various Non-Monetary Benefits. The Manual for Complex Litigation recognizes that direct notice is the ideal method of informing class members of a class settlement where such members can be identified, and that a website is an appropriate supplemental means of providing notice. *See* Manual Complex Lit. § 21.312 (4th ed. 2019)

Consequently, the proposed Notice program satisfies Rule 23 and should be approved.

IV. PROPOSED SCHEDULE OF SETTLEMENT EVENTS

Plaintiffs respectfully propose the schedule set forth below for Settlement-related events. The timing of events is determined by the date the Preliminary Approval Order is entered and the date the Settlement Fairness Hearing is scheduled. If the Court grants preliminary approval as requested, the only date the Court need schedule is the date for the Final Approval Hearing. The remaining dates set forth below will be based thereon, as set forth in the proposed Preliminary Approval Order.

If the Court agrees with the proposed schedule, Plaintiffs request that the Court schedule the Final Approval Hearing for a date 110 calendar days after entry of the Preliminary Approval Order, or at the Court's earliest convenience thereafter. Thus, if the Court enters the Preliminary Approval Order by Thursday, April 23, 2020, Plaintiffs request that the Final Approval Hearing be scheduled for Tuesday, August 11, 2020 or as soon thereafter as possible. The actual proposed dates stated in the schedule below are based on the Court's entry of the Preliminary Approval Order by April 23, 2020 and the Court setting the Settlement Fairness Hearing for August 11, 2020.

Event	**Proposed Timing**
Deadline for providing Notice to Settlement Class Members (the "Notice Date"). *See* Preliminary Approval Order ¶ 13.	Friday, May 1, 2020 No later than 10 days after entry of the Preliminary Approval Order
Deadline for Settlement Class Administrator to establish a toll-free telephone number to field inquiries from Settlement Class Members. *See* Preliminary Approval Order ¶ 14.	Friday, May 22, 2020 No later than 30 days after entry of the Preliminary Approval Order

Event	**Proposed Timing**
Deadline for submission of requests for exclusion. *See* Preliminary Approval Order ¶¶ 17-18.	Friday, June 5, 2020 45 days after entry of the Preliminary Approval Order
Deadline for filing of papers in support of final approval of the Settlement and Settlement Class Counsel's application for attorneys' fees and expenses. *See* Preliminary Approval Order ¶ 33.	Friday, June 26, 2020 No later than 45 days prior to the Final Approval hearing
Deadline to file written objections. *See* Preliminary Approval Order ¶ 24.	Friday, July 10, 2020 No later than 30 days before the Final Approval Hearing
Deadline for Settlement Class Administrator to file affidavit or declaration regarding Notice program. *See* Preliminary Approval Order ¶ 15.	Tuesday, July 21, 2020 No later than 21 days prior to the Final Approval Hearing
Deadline to file responses to objections, if any. *See* Preliminary Approval Order ¶ 33.	Tuesday, July 28, 2020 No later than 14 days prior to the Final Approval Hearing
Deadline for counsel for any objector to file a Notice of Appearance. *See* Preliminary Approval Order ¶ 29.	Tuesday, July 28, 2020 No later than 14 days prior to the Final Approval Hearing
Final Approval Hearing.	Tuesday, August 11, 2020 110 days after the Notice Date
Deadline to submit claims for Settlement Class Members who took out loans between February 10, 2010 and December 31, 2011.	Friday, August 21, 2020 120 days after the Notice Date

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter the Proposed Preliminary Approval Order submitted herewith and (1) find, preliminarily, that the Settlement is fair, reasonable, and adequate, (2) certify the Settlement Class for settlement purposes, (3)

authorize Notice of the Settlement to Settlement Class Members, and (4) set a date for the Final Approval Hearing.

DATED: April 16, 2020

MICHIEHAMLETT

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of April, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to all counsel of record.

/s/ David W. Thomas
David W. Thomas, Esq.