

CLASS ACTION SETTLEMENT AGREEMENT

This class action settlement agreement (this “Agreement”) is entered as of March 24, 2020, by and between Plaintiff Christopher Morgan (“Plaintiff”), individually and on behalf of the class defined herein, and Defendant On Deck Capital, Inc. (“Defendant”). Plaintiff and Defendant are collectively referred to as the “Parties.”

RECITALS

A. On July 10, 2017, Plaintiff filed his class action complaint against Defendant in the United States District Court for the Western District of Virginia, styled *Morgan v. On Deck Capital, Inc.*, No. 3:17-cv-00045 (the “Civil Action”), which alleged, among other things, that Defendant made calls to Plaintiff and class members’ cell phones in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”);

B. Defendant denies, and has at all times denied, any liability or wrongdoing; and

C. The Parties desire to settle their differences and resolve all claims which were actually made, attempted to be made, or that could have been made, arising from or in any way related to the Civil Action; and this Agreement is intended to set out the terms and conditions of that negotiated settlement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth below and for other good and valuable consideration, the receipt and adequacy of which are acknowledged by all of the undersigned, and all of the undersigned, intending to be legally bound, subject to court approval, hereby agree to the following terms and conditions:

AGREEMENT

1. DEFINITIONS

As used in this Agreement, the following terms have the meanings specified below:

a. “**Claim Form**” means the claim form that will be posted to the Settlement Website and included in the Post Card Notice, which can be filled out by Settlement Class Members and submitted by U.S. Mail or online, in substantially the form as that attached hereto as Exhibit 1.

b. **“Class List”** means the list Defendant will make reasonable efforts to prepare pursuant to Section 7(b) of this Agreement.

c. **“Claim Period”** begins the date the first parcel or email comprising the Class Notice is sent, and ends ninety days later.

d. **“Class Counsel”** means:

Michael B. Hissam
Ryan M. Donovan
Andrew C. Robey
HISSAM FORMAN DONOVAN RITCHIE PLLC
P.O. Box 3983
Charleston, WV 25339

e. **“Class Notice”** means the notice of this Agreement and Final Approval Hearing, which is detailed in Section 4 of this Agreement. Class Notice includes, without limitation, mail notice, email notice, and online notice.

f. **“Class Representative”** means Christopher Morgan.

g. **“Court”** means the United States District Court for the Western District of Virginia.

h. **“Defense Counsel”** means:

John C. Lynch
David M. Gettings
TROUTMAN SANDERS LLP
222 Central Park Avenue, Suite 2000
Virginia Beach, Virginia 23462

i. **“Effective Date”** means the date five business days following the later of the following events: (i) the date upon which the time expires for filing a notice of appeal of the Court’s Final Approval Order and Judgment, with no appeals having been filed; or (ii) if there is an appeal or appeals of the Final Approval Order and Judgment, five business days after the date of entry of an order affirming the Final Approval Order and Judgment without material

modification, and the time for review of that order has run, or entry of an order dismissing the appeal(s).

j. **“Fee Award”** means the total amount of attorneys’ fees and reimbursement of expenses awarded by the Court to Class Counsel.

k. **“Final Approval Hearing”** means the hearing before the Court where the Parties will request that the Court enter the Final Approval Order and Judgment, approve this Agreement, and approve the Fee Award and the Incentive Awards to the Class Representative.

l. **“Final Approval Order and Judgment”** means a document substantially in the form of Exhibit 3 or in such form as may be ordered by the Court, to be entered by the Court following the Final Approval Hearing.

m. **“Incentive Award”** means any amount the Court awards to Plaintiff to recognize his efforts and risks in prosecuting this litigation on behalf of the Settlement Class.

n. **“Long Form Notice”** means a document substantially in the form of Exhibit 4 or in such form as may be ordered by the Court.

o. **“Notice Deadline”** means the deadline for the Settlement Administrator to commence notice by mailing, emailing, or posting the Class Notice pursuant to the Notice Plan. The Notice Deadline will be thirty days following entry of the Preliminary Approval Order.

p. **“Notice Plan”** means the plan for disseminating notice of this Agreement and of the Final Approval Hearing to members of the Settlement Class, as developed by the Settlement Administrator and approved by the Parties, and set forth in greater detail in Section 4 herein.

q. **“Objection/Exclusion Deadline”** means the date by which (1) a written objection to this Agreement, or (2) a written request for exclusion, must be postmarked. The Objection/Exclusion Deadline is ninety days after the Notice Deadline.

r. **“Phone Calls”** means telephone calls (i) initiated by Defendant; (ii) during the period July 10, 2013 through the date of the Preliminary Approval Order; (iii) using a telephone

manufactured by Five9; (iv) to individuals identified in calling records produced by Defendant pursuant to Section 7(b).

s. **“Post Card Notice”** means a document substantially in the form of Exhibit 5 or in such form as may be ordered by the Court.

t. **“Preliminary Approval Order”** means the document substantially in the form of Exhibit 2 or such other order as may be entered by the Court for purposes of preliminarily approving this Agreement.

u. **“Released Claims”** means any and all claims, rights, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys’ fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law, or equity, whether known or unknown, suspected, or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory, as of the date of the Final Approval Order and Judgment, that were alleged or could have been alleged in the Civil Action, that arose out of or relate in any way to the Phone Calls. The Released Claims include, but are not limited to, all claims under the TCPA and its associated regulations, analogous state law claims, and claims arising under Federal law related to phone calls.

v. **“Released Parties”** means Defendant On Deck Capital, Inc. and all of its present or former predecessors, successors, parent entity, subsidiaries, and all of its respective officers, directors, partners, members, principals, insurers, insureds, employees, shareholders, attorneys, servants, and assigns.

w. **“Releasing Parties”** means: (a) Plaintiff; (b) Settlement Class Members; and (3) their respective present, former or subsequent assigns, heirs, successors, predecessors, parents, subsidiaries, officers, directors, shareholders, members, managers, partners, principals, representatives, agents, employees and anyone working on their behalf.

x. **“Settlement”** means the compromise and settlement described in this Agreement.

y. **“Settlement Administration Expenses”** means the expenses incurred by the Settlement Administrator in administering the Notice Plan approved by the Court, processing claims, and mailing checks for Settlement Class Members. Settlement Administration Expenses shall be paid from the Settlement Fund.

z. **“Settlement Administrator”** means the independent company that the Parties select and the Court approves to notify the Settlement Class of the Settlement as described in Section 4 of this Agreement, and administer this Settlement.

aa. **“Settlement Class”** means the individuals identified in calling records produced by Defendant pursuant to Section 7(b).

bb. **“Settlement Class Member”** means any person who is included within the definition of the Settlement Class and who has not submitted a valid request for exclusion.

cc. **“Settlement Class Recovery”** means the amount of the Settlement Fund available for distribution to Settlement Class Members who submit timely and valid claims, after payment of Settlement Administration Expenses, the Fee Award to Class Counsel and any approved Incentive Award to the Class Representative.

dd. **“Settlement Fund”** means the fund created in Section 2(a).

ee. **“Settlement Website”** means the website to be created by the Settlement Administrator containing full details and information about the Settlement, including this Agreement and the Class Notice, and to receive online claims.

ff. **“Toll-Free Telephone Number”** means the telephone number the Settlement Administrator will establish pursuant to the Notice Plan referenced in Section 4 herein.

2. SETTLEMENT RELIEF

a. **Settlement Fund.** Defendant agrees to pay into a settlement fund to be created and maintained by the Settlement Administrator, the amount of \$3,090,000, in total and complete satisfaction of all obligations under this Agreement. The Settlement Fund will be used to pay the claims of Settlement Class Members under this Agreement, Settlement Administration Expenses,

any Incentive Award to the Class Representative, and any Fee Award to Class Counsel. Under no circumstances will Defendant have any payment obligations under this Agreement that exceed the \$3,090,000 referenced above.

b. Funding of Settlement Fund. Defendant will make payments to the Settlement Fund as follows:

i. Within ten days of entry of the Preliminary Approval Order, Defendant shall transfer an amount not to exceed \$40,000 to the Settlement Administrator (via wire instructions to be provided by the Settlement Administrator) to be used for upfront notice and administrative costs that are necessary for the Settlement Administrator to incur before entry of the Final Approval Order and Judgment. The Settlement Administrator shall provide Defendant with a specific estimate of those upfront fees at least fourteen days prior to the date those funds are needed. In calculating – and ultimately spending – those upfront fees, the Settlement Administrator shall only undertake notice and administration tasks that are absolutely necessary prior to the entry of a Final Approval Order and Judgment. After that upfront payment of administration costs, the Settlement Administrator shall bill Defendant monthly for any reasonable and necessary additional costs of settlement administration, until such time as the Settlement Fund is established. The Settlement Administrator shall maintain a detailed accounting of funds Defendant provides in connection with Settlement Administration Expenses and the manner in which they were spent (if at all). If the Effective Date does not occur for any reason, all funds that Defendant has paid that remain unspent will be returned to Defendant.

ii. Defendant shall receive a credit for all funds provided to the Settlement Administrator as part of the upfront payment(s) referenced above. This credit shall be deducted from the total amount Defendant agreed to contribute to the Settlement Fund referenced in Section 2(a). By ten (10) days after the Effective Date or December 15, 2020, whichever occurs later, Defendant will transfer the balance of the Settlement Fund to the Settlement Administrator. For purpose of clarity, the earliest date upon which OnDeck can be required to make this transfer is December 15, 2020. The Settlement Administrator will hold in escrow all funds not used to pay upfront notice and administration costs, until such time as the Settlement Administrator is authorized to pay those funds pursuant to this Agreement or as otherwise ordered by the Court.

c. Payments to Settlement Class Members

i. As soon as practicable, but no later than thirty (30) days after OnDeck transfers the balance of the Settlement Fund pursuant to Section 2(b)ii, the Settlement Administrator shall pay to each Settlement Class Member who submits a valid and timely Claim Form a *pro rata* share of the Settlement Fund, after deducting the amount of the Fee Award, any Incentive Award to the Class Representative, Settlement Administration Expenses, and such other expenditures as may be authorized by the Court. Such payments shall be mailed to Settlement Class Members via first class mail. Every Settlement Class Member who submits a valid and timely claim will receive the same *pro rata* payment on a claim, regardless of how many calls that Settlement Class Member claims to have received.

ii. All payments issued to Settlement Class Members will state on the face of the check that the check will become void unless cashed within ninety days after the date of issuance.

iii. If any checks to the Settlement Class Members remain uncashed after the void date – and the collective amount of those checks allow for a second distribution of at least \$4.00 to each Settlement Class Member who cashed a check from the first distribution – then the Settlement Administrator shall distribute the funds associated with those uncashed checks, on a *pro rata* basis, to those Settlement Class Members who cashed a check from the first distribution. Any remaining funds after the second distribution referenced above, or if the second distribution is not triggered, shall be distributed as a *cy pres* award to such organization(s) as the Parties may agree, as approved by the Court.

3. RELEASE OF CLAIMS

a. Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties.

b. The Parties intend that this Agreement will fully and finally dispose of Plaintiff's claims against Defendant, which shall be dismissed with prejudice, along with any and all Released Claims against the Released Parties.

c. Upon the Effective Date, Plaintiff and Settlement Class Members shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides or similarly provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

d. Plaintiff and Settlement Class Members may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Released Claims. Regardless, upon the Effective Date, Plaintiff and Settlement Class Members shall be deemed to have, and by operation of the Final Approval Order and Judgment, shall have, fully, finally, and forever settled and released any and all of the Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. However, this Agreement is not intended to and does not prohibit a Settlement Class Member from responding to inquiries posited by federal, state or local agencies and/or law enforcement, even if the inquiries relate to the Released Claims.

4. NOTICE TO THE CLASS

a. By the Notice Deadline, the Settlement Administrator shall: (1) cause the Class Notice, discussed below, to be sent or otherwise disseminated to Settlement Class Members; (2) establish the Settlement Website, discussed below; and (3) establish the Toll-Free Telephone Number, discussed below. The Parties agree that the Class Notice shall comport with Rule 23 of the Federal Rules of Civil Procedure, and be effectuated pursuant to the Notice Plan set forth in

Section 4(b), the costs of which shall be deemed part of the Settlement Administration Expenses, and which shall be paid from the Settlement Fund. The Parties expressly agree that the upfront costs of the Notice Plan shall be paid from the initial payment provided for in Section 2(b), and that once incurred, such out-of-pocket costs that the Settlement Administrator has already spent, shall not be refundable in the event of termination of this Settlement or the failure of this Settlement to become effective.

b. The Notice Plan, which was developed in consultation with the Settlement Administrator, consists of the following:

i. **Provision of the Class List:** Within ten days of the full execution of this Agreement, Defendant shall provide to the Settlement Administrator the Class List referenced in Section 7(b) of this Agreement. With that Class List, the Settlement Administrator shall execute the steps of this Notice Plan.

ii. **Email Notice:** The Settlement Administrator shall send an electronic version of the Long Form Notice to individuals on the Class List for whom the Settlement Administrator has a valid email address.

iii. **First Class Mail Notice:** For Settlement Class Members who are not associated with valid email addresses on the Class List, the Settlement Administrator shall mail a Post Card Notice to those individuals via United States Postal Service First Class Mail.

iv. **Re-mailing Email Notice:** For Settlement Class Members to whom the Settlement Administrator initially sends an email, but for whom the email is returned as undeliverable, the Settlement Administrator shall send a Post Card Notice via United States Postal Service First Class Mail within five business days of receipt of the undeliverable notice.

v. **Re-mailing Mail Notice to Updated Address:** For Settlement Class Members to whom the Settlement Administrator sends a Post Card Notice, but for whom the notice is returned as undeliverable without a forwarding address, the Settlement Administrator shall send a Post Card Notice via United States Postal Service First Class Mail within five business days of receipt of the undeliverable notice to any updated address the Settlement Administrator is able to

locate pursuant to Section 4(b)(vii). The Settlement Administrator may also perform skip tracing for returned mail.

vi. **Forwarding Mail Notice:** For Settlement Class Members to whom the Settlement Administrator sends a Post Card Notice, but for whom the notice is returned as undeliverable with a forwarding address, the Settlement Administrator shall send a Post Card Notice via United States Postal Service First Class Mail within five business days of receipt of the undeliverable notice to that forwarding address.

vii. **Address Confirmation:** For all individuals to whom the Settlement Administrator is to mail documents as part of this Notice Plan, the Settlement Administrator shall confirm or update the last known addresses of the individuals on the Class List as follows: (a) the Settlement Administrator will check each address against the United States Post Office National Change of Address Database before the initial mailing; (b) the Settlement Administrator will conduct a reasonable search to locate an updated address for any person in the Settlement Class whose notice is returned as undeliverable; (c) the Settlement Administrator shall update addresses based on any forwarding information received from the United States Postal Service; and, (d) the Settlement Administrator shall update addresses based on any requests received from persons in the Settlement Class.

viii. **Toll-Free Telephone Number:** The Settlement Administrator shall set up a toll-free telephone number for receiving toll-free calls related to the Settlement. That telephone number shall be maintained until thirty (30) days after the Claims Period ends. After that time, and for a period of ninety (90) days thereafter, a recording will advise any caller to the toll-free telephone number that the Claims Period has ended and the details regarding the Settlement may be reviewed on the related Settlement Website.

ix. **Settlement Website:** The Settlement Administrator shall maintain and administer a dedicated settlement website containing class information and related documents, along with information necessary to file a claim, and an electronic version of the Claim Form that Settlement Class Members can download, complete and submit electronically or by mail. At a minimum, the documents on the settlement website shall include the Settlement Agreement and attached exhibits, the Long Form Notice, a Claim Form, the operative complaint, and when filed,

the Final Approval Order and Judgment. The Settlement Website shall remain operative until the date of the *cy pres* distribution (if any).

c. The Class Notice shall advise Settlement Class Members of their right to object. Any member of the Settlement Class may object to this Agreement by sending to the Court and the Settlement Administrator a written statement that includes the following: (1) his or her full name; (2) his or her address; (3) the telephone number where he or she may be contacted; (4) the telephone number(s) that he or she maintains were called; (5) all grounds for the objection, with specificity and with factual and legal support for each stated ground; (6) the identity of any witnesses he or she may call to testify; (7) copies of any exhibits that he or she intends to introduce into evidence at the Final Approval Hearing; (8) a statement of the identity (including name, address, law firm, phone number and email) of any lawyer who will be representing the individual with respect to any objection; (9) a statement of whether he or she intends to appear at the Final Approval Hearing with or without counsel; and (10) a statement as to whether the objection applies only to the objector, a specific subset of the Settlement Class, or the entire Settlement Class. Such objection must be filed with the Court and sent to the Settlement Administrator with a postmark date on or before the Objection/Exclusion Deadline. The Settlement Administrator shall forward any objections received to counsel for the Parties within three business days of receipt.

d. Any Settlement Class Member who fails to timely file a written objection in accordance with the terms of this sub-section by the Objection/Exclusion Deadline shall not be permitted to object to this Agreement at the Final Approval Hearing. Such a member shall be foreclosed from seeking any review of this Agreement by appeal or other means and shall be deemed to have waived his or her objections and be forever barred from making any such objections.

e. The Class Notice shall also advise Settlement Class Members of their right to request exclusion. Any member of the Settlement Class may request to be excluded (“opt-out”) from the Settlement Class by sending, by First Class Mail, a written request for exclusion to the Settlement Administrator postmarked on or before the Objection/Exclusion Deadline. The request for exclusion must include: (1) the member’s full name, address, and telephone number where he or she may be contacted; (2) the telephone number(s) on which he or she maintains he or she was

called; and (3) a statement that the member of the Settlement Class submitting the request wishes to be excluded from the Settlement of this litigation. The request for exclusion must be personally signed by the member of the Settlement Class submitting the request. A request to be excluded that does not include all of the foregoing information, that is not sent to the Settlement Administrator, that is not postmarked by the Objection/Exclusion Deadline, or that is not personally signed, shall be invalid. Any person submitting an invalid request shall continue to be a Settlement Class Member and shall be bound as a Settlement Class Member by this Agreement, if approved. If a member of the Settlement Class submits both a Claim Form and a request for exclusion, the former shall govern and any request for exclusion will be treated as having been withdrawn. The Settlement Administrator shall provide to the Parties a list of those members of the Settlement Class who have requested exclusion each week with its weekly reports, along with copies of each request received. The Settlement Administrator shall provide the Parties' counsel with a final list of everyone who has requested exclusion – divided between those individuals who made valid or invalid requests – no later than five business days after the Objection/Exclusion Deadline.

f. Any member of the Settlement Class who submits a valid exclusion request shall not: (i) be bound by the Final Approval Order and Judgment; (ii) be entitled to relief under this Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. So-called “mass” or “class” opt-outs shall not be allowed.

5. CLAIMS PROCESS

a. A Settlement Class Member must submit a Claim Form in order to make a claim, either by mail or online. To be valid, the Claim Form must contain: (1) the full name, mailing address of the Settlement Class Member; (2) the telephone number at which he or she can be reached; (3) the telephone number(s) on which the Settlement Class Member maintains he or she received the Phone Calls from or on behalf of Defendant; (4) the signature of the Settlement Class Member, verifying that the information on the form is accurate and that the Settlement Class Member received allegedly unlawful calls from Defendant; and (5) where applicable, any unique identification code contained in that Settlement Class Member's Class Notice. Claim Forms submitted by mail must be postmarked by the last day of the Claim Period. Claim Forms submitted

through the Settlement Website must be submitted on or before the last day of the Claim Period. Claim forms submitted online shall allow for electronic signature.

b. No later than fifteen days after the close of the Claim Period, the Settlement Administrator will review each claim that is submitted within the Claim Period. If the claim is timely, sets forth the information required in Section 5(a), is signed (by written or electronic signature), and is not duplicative of a previously-approved claim, then the Settlement Administrator will approve the claim. If a claim is denied as deficient in that it lacks a signature or any of the information required in Section 5(a), the Settlement Administrator will provide the Settlement Class Member with an opportunity to cure the deficiency by sending an email or letter describing the deficiency and informing the Settlement Class Member that he or she has fourteen days to correct the issue. The Settlement Administrator will provide reports weekly to the Parties' counsel on the number of claims that are received, the number that were denied, the number found to be deficient, and the number that were approved. If there are any disputes over the validity of a claim, the Parties' counsel will attempt to resolve such disputes between themselves, and if not successful, the disputes will be promptly presented to the Court for resolution.

c. Each Settlement Class Member is entitled to make only a single claim, regardless of the number of calls received.

6. SETTLEMENT ADMINISTRATION

a. The Settlement Administrator retained by Plaintiff's Counsel shall have the following duties:

i. Prepare the Class Notice(s) in substantially the form as those attached to this Agreement as approved by the Court;

ii. Implement the Notice Plan set forth in Section 4 above;

iii. Create and maintain the Settlement Website;

iv. Process, log, and review claims for deficiencies and/or fraud, and address deficiencies with claimants providing them with an opportunity to cure, as provided for in Section 5(b);

v. Calculate Settlement Class Member *pro rata* distributions and distribute checks to Settlement Class Members who submit valid claims, maintain a bank account to contain the Settlement Fund, maintain all required records, make a second distribution as provided for in Section 2(c)(iii), if necessary, and distribute any funds remaining from uncashed checks to the *cy pres* recipient.

vi. Provide the Parties with weekly reports regarding the status of the Notice Plan, the number of claims, exclusion requests, and objections received;

vii. Maintain copies of exclusion requests and objections;

viii. Process, log, and review objections and requests for exclusion for deficiencies and/or fraud; and

ix. Provide declarations to the Court in support of preliminary and final settlement approval.

b. The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Agreement by completing its duties in a reasonable, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law and in accordance with its normal business practices, including but not limited to a summary of work performed by the Settlement Administrator, and an accounting of all amounts paid from the Settlement Fund to Settlement Class Members. Such records will be provided to Class Counsel and Defense Counsel at least ten days before the deadline for the motion for final approval.

c. In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Settlement Class Member.

d. The Settlement Administrator, with approval by the Parties, shall be responsible for compliance with the applicable provisions of the Class Action Fairness Act (“CAFA”), including the notice requirements in 28 U.S.C. § 1715.

e. As soon as practicable after the conclusion of the Settlement Administrator's obligations to provide notice and administer the Settlement, the Settlement Administrator shall provide Class Counsel and Defense Counsel with an appropriate declaration outlining compliance with those obligations.

7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER AND JUDGMENT

a. The Parties will jointly and promptly move the Court to stay all proceedings in the Civil Action.

b. Within ten days of the full execution of this Agreement, Defendant will make reasonable efforts to determine, from its own records, the unique telephone numbers and associated individuals whose information Defendant received through its purchased lead channel and to whom Phone Calls were made. A list of these unique telephone numbers and associated individuals shall be transmitted by Defendant to the Settlement Administrator along with any physical addresses and email addresses in Defendant's records pertaining to these individuals.

c. Within seven days of the transmission provided for in Section 7(b), Plaintiff shall submit this Agreement together with its exhibits to the Court and shall move the Court for entry of the Preliminary Approval Order, which shall, among other things, preliminarily approve this Agreement, set a date for a Final Approval Hearing, which shall be scheduled no earlier than one hundred and fifty days after entry of the Preliminary Approval Order, in order to comply with the requirements of CAFA, or such other time as the Court shall approve, and approve the Class Notice for dissemination in accordance with the Notice Plan.

d. For sixty days after the entry of the Preliminary Approval Order, Plaintiff shall be entitled to conduct reasonable and mutually agreeable confirmatory discovery concerning the number of Settlement Class Members and the determination of their identities. The Parties shall work cooperatively to complete this discovery in a timely and efficient manner.

e. No later than fourteen (14) days before the Final Approval Hearing, Class Counsel shall submit to the Court a memorandum containing evidence and legal argument to support the Final Approval Order and Judgment, which shall (among other things):

i. find that the Court is able to exercise the requisite personal jurisdiction and subject matter jurisdiction in order to approve this Agreement, including all exhibits hereto;

ii. grant final approval of this Agreement and likewise approve the Settlement as fair, reasonable, adequate, and in the best interests of Settlement Class Members; direct the Parties and their counsel to implement this Agreement according to its terms and provisions; and declare this Agreement to be binding on, and have preclusive effect on, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and the Releasing Parties;

iii. find that the Notice Plan implemented pursuant to this Agreement (1) constituted the best practicable notice under the circumstances; (2) constituted notice that is reasonably calculated to apprise members of the Settlement Class of the pendency of this litigation, their right to object to or exclude themselves from the proposed Settlement, and to appear at the Final Approval Hearing; (3) is reasonable and constitutes due, adequate, and sufficient notice to all entities and individuals entitled to receive notice; and (4) meets all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court;

iv. find that the Class Representative and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing this Agreement;

v. dismiss Defendant from the action (including, without limitation, all individual claims, Settlement Class Member claims and Released Claims asserted therein against the Released Parties) with prejudice, without fees or costs to either Defendant or Plaintiff except as expressly provided in this Agreement;

vi. permanently enjoin each and every Settlement Class Member from bringing, joining, or continuing to prosecute any Released Claim against Defendant or the Released Parties;

vii. approve and incorporate the releases set forth herein and forever discharge the Released Parties from the Released Claims;

viii. without affecting the finality of the Final Approval Order and Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of this Agreement and the Final Approval Order and Judgment, and for any other necessary purpose; and

ix. set forth any other provisions, as the Court deems necessary and just.

8. CLASS COUNSEL'S FEE AWARD AND PLAINTIFF'S INCENTIVE AWARDS

a. Class Counsel shall apply to the Court for the Fee Award of up to one-third of the Settlement Fund, plus out-of-pocket costs incurred by Class Counsel in this litigation. If the Fee Award entered by the Court is less than that sought by Class Counsel, the difference will become part of the Settlement Class Recovery. If the Fee Award entered by the Court is less than that sought by Class Counsel, that will not limit the enforceability of the Settlement.

b. Class Counsel shall file their motion for attorney's fees and litigation costs or expenses thirty days before the Exclusion/Objection deadline. Class Counsel shall post their fee petition to the Settlement Website within twenty-four hours of filing the fee petition with the Court.

c. The Settlement Administrator shall pay the amount of the Fee Award approved by the Court to Class Counsel, from the Settlement Fund and subject to the terms of this Agreement, no later than five days after OnDeck transfers the balance of the Settlement Fund pursuant to Section 2(b)ii.

d. Class Counsel shall apply to the Court for an Incentive Award for the Class Representative in the amount of \$15,000, to be approved by the Court in its sole discretion. If the Incentive Award entered by the Court is less than that sought by the Class Representative, that will not limit the enforceability of the Settlement.

e. The Incentive Award, if approved by the Court, shall be paid by the Settlement Administrator from the Settlement Fund, no later than five days after OnDeck transfers the balance of the Settlement Fund pursuant to Section 2(b)ii.

f. Class Counsel and the Class Representative shall provide properly-completed W-9 forms pertaining to each of them no later than ten (10) business days prior to the payment dates

referenced above. The Settlement Administrator has no obligation to distribute the Fee Award and Incentive Award until receipt of those forms.

9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION

a. This Agreement shall not become effective unless and until each of the following events has occurred:

i. This Agreement has been signed by Plaintiff, Defendant, and Class Counsel;

ii. The Court has entered the Preliminary Approval Order;

iii. The Court has entered the Final Approval Order and Judgment, following notice to the Settlement Class and a Final Approval Hearing, or a final approval order and judgment substantially consistent with this Agreement; and

iv. All appeals have been resolved or the time for filing any appeal has run.

b. If this Agreement is terminated or is not approved by the Court, or an order approving this Agreement is reversed on appeal, the Parties shall be restored to their respective positions as of the date of the signing of this Agreement. In such event, any Final Approval Order and Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the litigation as if this Agreement had never been entered into. If the termination or failure to become effective occurs before the Preliminary Approval Order is entered, the Parties agree that Defendant shall have no obligation to make any payment to the Settlement Administrator and that any sums on deposit with the Settlement Administrator shall be returned to Defendant. If the termination or failure to be approved occurs after the upfront payment, provided for in Section 2(b) above, has been made to the Settlement Administrator and charges have been incurred, then any sums not already expended upon notice at the time of the termination or failure to be approved shall be returned to Defendant.

10. DEFENDANT’S OPTION TO TERMINATE

Defendant has the option to terminate this Agreement and thereby render this Agreement null and void, at its complete discretion, if (a) the Court fails to give preliminary approval to any material terms of the Agreement or any material aspect of the Settlement, or fails to give final approval to any material terms of the Agreement or any material aspect of the Settlement; (b) the number of valid and timely requests for exclusion (opt-outs) by individuals who are sent Class Notice as provided in Section 4(b)(ii) is three hundred and seventy-five (375) or more; (c) an appellate court reverses the Court’s granting of final approval to any material terms of the Agreement or any material aspect of the Settlement; (d) Plaintiff or Class Counsel commit a material breach of any terms of the Agreement or any aspect of the Settlement before entry of the Final Approval Order and Judgment; or (e) upon such other grounds as may be agreed to by the Parties or permitted by the Court. If Defendant exercises its option pursuant to Section 10(b), Defendant shall communicate its option to terminate in writing to Class Counsel within seven days after receiving a report of the numbers of opt-outs certified by the Settlement Administrator following the last date for members of the Settlement Class to opt-out.

Defendant agrees that it will not initiate contact with any Class Member concerning the Civil Action or the proposed Settlement thereof without the prior consent of Class Counsel, nor will Defendant initiate, facilitate, acquiesce or otherwise participate in any effort to encourage any Class Member or group of Class Members to opt-out of the proposed Settlement. Defendant will not settle any claims with any Class Member who opts out of the Settlement until after the Settlement is approved or rejected by the Court. Defendant will provide notice to Class Counsel via email or phone if a Class Member contacts Defendant for the purpose of discussing the Civil Action.

11. NO ADMISSION OF LIABILITY

It is specifically understood and agreed that this Agreement does not constitute and is not to be construed as an admission by Defendant of: (a) any fact or liability; (b) any violation of any federal, state, local or common law, statute, policy or regulation, including but not limited to the TCPA and all other Released Claims; and (c) the commission by Defendant of any other actionable wrong. Further, Defendant disputes that a class would be manageable or that common issues

predominate over individual ones, and further denies that a litigation class properly could be certified on the claims asserted in the Civil Action. However, solely for purposes of avoiding the expense and inconvenience of further litigation, Defendant does not oppose the certification for settlement purposes only of the Settlement Class. If the Settlement is not finally approved by the Court for any reason whatsoever, the certification of the Settlement Class will be void, and no doctrine of waiver, estoppel or preclusion will be asserted in any proceedings in the Civil Action or other pending or future actions. No agreements made by or entered into by Defendant in connection with the Settlement may be used by Plaintiff, any person in the Settlement Class, or any other person, to establish any of the elements of class certification in any litigated certification proceedings, whether in this Action or any other judicial proceeding.

12. MISCELLANEOUS PROVISIONS

a. The Parties (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement. Class Counsel and Defense Counsel agree to cooperate with one another in seeking Court approval of the Preliminary Approval Order, this Agreement, and the Final Approval Order and Judgment, and to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of this Agreement.

b. The Parties intend this Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims and the Civil Action.

c. The Parties have relied upon the advice and representation of their respective counsel concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully this Agreement and have been fully advised as to its legal effect by their respective counsel and intend to be legally bound by the same.

d. The Settlement and this Agreement represent a negotiated compromise, and regardless whether the Effective Date occurs or this Agreement is terminated, neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement:

i. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission, concession, or evidence of the validity of any Released Claims, the truth of any fact alleged by the Class Representative, the deficiency of any defense that has been or could have been asserted in the litigation, the violation of any law or statute, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

ii. is, may be deemed, or shall be construed against Plaintiff and the Settlement Class, or each or any of them, or against the Released Parties, or each or any of them, as an admission, concession, or evidence that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

iii. is, may be deemed, or shall be construed against Plaintiff and the Settlement Class, or each or any of them, or against the Released Parties, or each or any of them, as an admission, concession, or evidence that any of Plaintiff's or the Settlement Class's claims are with or without merit or that damages recoverable in the action would have exceeded or would have been less than any particular amount.

e. Unless the context of this Agreement requires otherwise, the plural includes the singular, the singular includes the plural, and "including" has the inclusive meaning of "including without limitation." The words "hereof", "herein", "hereby", "hereunder", and other similar terms of this Agreement refer to this Agreement as a whole and not exclusively to any particular provision of this Agreement. All pronouns and any variations thereof will be deemed to refer to masculine, feminine, or neuter, singular, or plural, as the identity of the person or persons may require.

f. The time periods and dates described herein are subject to Court approval and may be modified upon order of the Court or written stipulation of the Parties.

g. The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

h. Except as otherwise provided herein, each Party shall bear its own costs and attorneys' fees.

i. Each counsel or Party executing this Agreement, any of its Exhibits, or any related settlement documents on behalf of any party hereto hereby warrants and represents that such party has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to this Agreement to effectuate its terms.

j. This Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or scanned and e-mailed signatures shall be treated as original signatures and shall be binding.

k. Neither this Agreement nor any of its provisions nor any of the referenced documents (including but not limited to drafts of this Agreement, the Preliminary Approval Order or the Final Judgment and Order), negotiations, or proceedings relating in any way to the Settlement shall be construed as or deemed to be evidence of an admission or concession by any person, including the Defendant; and shall not be offered or received in evidence, or subject to discovery, in this or any other action except in proceedings brought to enforce the terms of this Agreement or except as may be required expressly by law or court order. The provisions of this Section shall be binding regardless of whether this Agreement is approved by the Court, is terminated, or otherwise fails to become effective or whether the Settlement is rendered void for any reason.

l. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

m. This Agreement is deemed to have been prepared by counsel for all Parties, as a result of arms' length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one party than another.

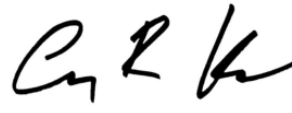
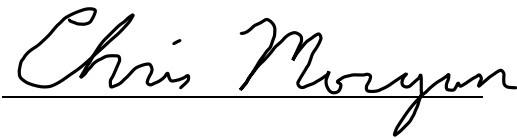
n. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

o. The Parties agree that the Court will retain jurisdiction over any disputes regarding the interpretation or implementation of this Agreement and the settlement memorialized herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement between Christopher Morgan, individually and on behalf of the class defined herein, and On Deck Capital, Inc., to be executed.

CHRISTOPHER MORGAN, individually
and on behalf of the class defined herein

ON DECK CAPITAL, INC.



3/24/2020
Date

March 24, 2020
Date

By: Cory Kampfer

Its: Chief Operations Officer and Chief
Legal Officer

Approved as to Form and Content:


Ryan Donovan
Class Counsel