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

SHERRY BLACKBURN, *et al., on behalf of themselves and all others similarly situated,*

Plaintiffs,

v. Case No: 3:22-cv-146-DJN

A.C. ISRAEL ENTERPRISES, INC. d/b/a INGLESIDE INVESTORS, *et al*,

Defendants.

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

Plaintiffs Sherry Blackburn, Willie Rose, Elwood Bumbray, George Hengle, Regina Nolte, Jo Ann Falash, John Tucker, and Emily Murphy ("Plaintiffs"), on behalf of themselves and the Settlement Class Members, by counsel, submit this Memorandum in Support of their Motion for Preliminary Approval of the Class Settlement.

I. INTRODUCTION

This case arises from the making and collection of high-interest loans from online lending companies named Golden Valley Lending, Silver Cloud Financial, Majestic Lake Financial, and Mountain Summit Financial (the "Tribal Lending Entities" or "TLEs"). The TLEs were formed by the Habematolel Pomo of Upper Lake (the "Tribe"), a federally recognized Native American tribe. Four of the Plaintiffs here and four other consumers previously filed class action litigation against the Tribe's Executive Council and two non-tribal business partners, Scott Asner and Joshua Landy, behind the TLEs' operations. *See Hengle v. Asner*, No. 3:19-cv-250-DJN (E.D. Va.). Following an appeal to the Fourth Circuit that affirmed this Court's denial of the *Hengle* defendants' motions to compel arbitration and motions to dismiss, as well as a certiorari petition

to the Supreme Court, the *Hengle* litigation culminated in a nationwide class action settlement that included, among other relief: (1) $450 million of debt cancellation; and (2) creation of a $39 million common fund to be distributed to consumers who repaid unlawful amounts. *Id.*, ECF No. 185-1. The Court approved the *Hengle* settlement on October 25, 2022. *Id.*, ECF No. 230.

During the *Hengle* litigation, Plaintiffs discovered that several other non-tribal individuals and entities were involved in establishing, financing, supporting, and continuing the TLEs' lending enterprise. In return for their support, these individuals and entities reaped significant financial benefits. Thus, while the *Hengle* litigation remained pending, on March 15, 2022, Plaintiffs brought the instant action on behalf of themselves as individuals and all others similarly situated against Defendants, alleging claims under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961, *et seq.*, and state law. (Compl., ECF No. 1.) Specifically, Plaintiffs brought claims against eight groups of Defendants: (1) A.C. Israel Enterprises LLC d/b/a Ingleside Investors, Richard Investors, and Greg Warner (the "A.C. Israel Defendants"); (2) Ferrell Capital, LLC and Seville LTD (the "Seville Defendants"); (3) Monu Joseph, Joseph Investment, LLC, Joseph NPA Investment, LLC, and E Opportunities, LLC (the "Joseph Defendants"); (4) Skye, LLC ("Skye"); (5) Cabbage City, LLC ("Cabbage City"); (6) Benjamin Gravley, Signal Light, LLC, and Hvmken, LP (the "Gravley Defendants"); (7) George Kellner and Kellner Capital, LP (the "Kellner Defendants"); and (8) Amit Raizada, Spectrum Business Ventures, Inc., and Raizada Group, LLP (the "Raizada Defendants"). (Am. Compl., ECF No. 79.)

As soon as Plaintiffs filed this case, Defendants vigorously defended against it, including by filing nine motions to dismiss that challenged Plaintiffs' claims on statute of limitations grounds and for failure to state a claim. (ECF Nos. 95-96, 98, 101, 116, 145, 147, 149-150.) The Court denied those motions on July 24, 2023, finding that Plaintiffs had sufficiently alleged facts to

survive a limitations defense at this stage and that the allegations supported RICO and state law liability against all Defendants. (ECF No. 177.)

After over a year of litigation and over three years of litigation in the parallel *Hengle* case, which included decisions on significant questions of tribal sovereign immunity, the enforceability of state consumer protections, and RICO liability, Plaintiffs and Defendants entered into a Stipulation and Agreement of Settlement ("Settlement Agreement"), which the parties have attached to this Motion for Preliminary Approval. The proposed settlement affords significant, additional relief to the same class members from the *Hengle* litigation, namely: (1) the creation of a $25,535,929.00 million common fund to be distributed to consumers who repaid unlawful amounts; and (2) Defendants' agreement not to support the TLEs for at least three (3) years or to aide in the collection of any unlawful debts from the TLEs. (Settlement Agreement §§ 3.3.a-c.) This relief further builds on the significant, trailblazing relief approved by this Court for the same consumer class in *Hengle*, and it follows a recent trend of similar relief approved in this District.[1]

Under Federal Rule of Civil Procedure 23, Plaintiffs and Defendants now seek preliminary approval of the proposed class action settlement. The parties request that the Court preliminarily certify the proposed class and the proposed class settlement by entering the proposed Order of Preliminary Approval of Class Action Settlement. A final motion and proposed order supporting the fairness of the proposed class action settlement will be submitted: (1) after Settlement Class Members have received notice providing them an opportunity to object or opt-out; and (2) before

[1] *See Gibbs v. TCV, V, LLP*, No. 3:19-cv-00789, Dkt. 95 (E.D. Va. Mar. 29, 2021) (granting final approval of a class settlement resulting in: result in: (1) the creation of a settlement fund in the amount of $50,050,000.00; and (2) cancellation of approximately $383,000,000.00 in debts); *Gibbs v. Plain Green, LLC*, No. 3:17-cv-495, Dkt. 141 (E.D. Va. Dec. 13, 2019) (granting final approval of a class settlement resulting in: result in: (1) the creation of a settlement fund in the amount of $53,000,000; and (2) cancellation of approximately $380,000,000.00 in debts).

the Court's Final Fairness Hearing. For the reasons explained below, the proposed class action settlement is reasonable, fair, and adequate, and the Court should preliminarily approve it.

II. SETTLEMENT TERMS

a. The Settlement Class

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

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

(Settlement Agreement § 3.2.) This is the same Settlement Class that this Court approved in *Hengle*. No. 3:19-cv-260, ECF No. 230. Based on data provided in *Hengle*, Plaintiffs estimate that the Settlement Class comprises approximately 555,000 Settlement Class Members.

b. Consideration to the Settlement Class

The proposed class action settlement provides significant, additional cash payments to consumers nationwide. Plaintiffs achieved the proposed settlement even though several Defendants moved to dismiss the case and have continued to deny sufficient involvement in the alleged unlawful lending enterprise to be found liable. Plaintiffs also recognized that Defendants are mostly individuals and entities formed by those individuals, whose financial situations threaten the options and resources available for class settlement, as well as the collection of any ultimate judgment. Despite this obstacle, Plaintiffs negotiated a settlement that will provide a substantial, multi-million-dollar financial benefit to consumers nationwide, in addition to the significant benefits afforded to those consumers by the *Hengle* settlement.

Specifically, Defendants will make monetary payments collectively totaling $$25,535,929.00, which will be distributed to the Settlement Class Members. (Settlement Agreement § 3.3.a.) Of this total amount, the A.C. Israel Defendants will contribute $6 million;

the Seville Defendants will contribute $1.6 million; the Joseph Defendants will pay $3 million; Skye will pay $150,000; Cabbage City will pay $1,524,724.00; the Gravley Defendants will pay $60,000; the Kellner Defendants will pay $4,269,293.00, and have guaranteed the payment of an additional $5,431,912 from other investors; and the Raizada Defendants will pay a total of $3.5 million.

As outlined in the Settlement Agreement, payments from the Fund will be allocated using a tiered formula after payment of service awards to Plaintiffs,[2] attorneys' fees, and costs, as approved by this Court:

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

Settlement Class Members in Tier 1 or Tier 2 who repaid the principal amount borrowed will receive a cash award based on a *pro rata* calculation rounded down to the nearest cent. (*Id.*

[2] The Court approved this same tiered formula in *Hengle*. No. 3:19-cv-250-DJN, ECF No. 230 (E.D. Va. Oct. 25, 2022). Other courts in this District have also approved similar formulas. *See, e.g.*, *Gibbs v. TCV, V, LLP*, No. 3:19-cv-789, Dkt. 95 (E.D. Va. Mar. 29, 2021); *Gibbs v. Plain Green, LLC*, No. 3:17-cv-495, Dkt. 141 (E.D. Va. Dec. 13, 2019); *see also generally Turner v. ZestFinance, Inc.,* No. 3:19-cv-293 (E.D. Va.).

§ 3.4.b.iii.1.) In the event any Settlement Class Member took out more than one loan during the class period, his or her claim amount will be calculated by determining the claim amount for each loan and adding them together. (*Id.* § 3.3.b.ii.)

The relief provided by the proposed class action settlement is significant. Most consumers will receive a cash payment in addition to the cash payments made pursuant to the *Hengle* settlement, and many will benefit from Defendants' agreement to halt their support of the TLEs and the collection of any of the unlawful debts. Importantly, Class Members will receive payments without needing to submit a claim form, prove any harm, or take any affirmative action.

c. Class Action Fairness Notice

Defendants will provide notice of the proposed settlement under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 ("CAFA"). The CAFA Notice will be sent to the Attorney General of the United States and to the attorneys general of all states and the District of Columbia and all U.S. territories. (Settlement Agreement § 5.3.d.) To account for the deadlines under governing law, the parties request that the Court schedule the Final Approval Hearing at least 90 days after the CAFA Notice is mailed.

d. Attorneys' Fees, Costs, and Service Awards

Class Counsel will apply for attorneys' fees and costs in an amount approved by the Court, but not to exceed $8,511,967.00, or one-third of the monetary consideration paid by Defendants. (*Id.* § 3.5.) Plaintiffs also will apply for a service award of $15,000.00 each for their role as class representatives to compensate them for their efforts in prosecuting this case, including retaining counsel and assisting in motions practice and settlement.

e. Release of Claims

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

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

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

Gravley Released Parties. Each Plaintiff and each Settlement Class Member, on behalf of themselves and their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, shall have fully, finally and forever released and discharged the

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

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

Kellner Released Parties. Each Plaintiff and each Settlement Class Member, on behalf of themselves and their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, shall have fully, finally and forever released and discharged the Kellner Released Parties from any and all rights, duties, obligations, demands, actions, causes of action, liabilities, claims, grievances, suits, losses, damages, costs, fees, expenses, and controversies, whether arising under local, state, tribal, foreign, territorial or federal law (including, without limitation, under any consumer

protection or unfair and deceptive practices laws) or equity, whether by constitution, statute, rule, regulation, any regulatory promulgation, contract, tort, common law, or any other theory of action, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, matured or un-matured, contingent or fixed, accrued or unaccrued, punitive or compensatory, choate or inchoate, liquidated or unliquidated, based on any fact known or unknown, including without limitation those that arise out of or relate in any way to any or all of the claims, causes of action, acts, omissions, facts, matters, transactions, or occurrences that were or could have been directly or indirectly alleged, described, set forth, referred to, or asserted in the Action, as well as including any claims known or unknown that each Settlement Class Member has or ever had against the Kellner Released Parties.

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

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

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

(*Id.* § 4.1.)

f. Notice and Exclusions

Class notice will be a combination of email notice to verified email addresses or U.S Mail to each Settlement Class Member. If approved by the Court, the Settlement Administrator, American Legal Claims Services, will first email direct notice to Settlement Class Members at the most recent email address shown in the TLEs' electronic records, as maintained in the ordinary course of business, for each loan at issue. (*Id.* § 5.3.a.) If email notice results in a bounce-back email, direct notice will be mailed to Settlement Class Members via first class mail. (*Id.* § 5.3.b.) Prior to mailing, the Settlement Administrator will run mailing addresses once through the NCOA

or any other postal address verification database that the Administrator deems proper. (*Id.*) Returned direct notices will be re-mailed if they are returned within twenty days of the postmark date and contain a forwarding address. (*Id.*) Additionally, the Settlement Administrator will maintain and update the previous website, www.upperlakesettlement.com, on which pertinent information related to this settlement will be made available to Settlement Class Members, including the Class Action Complaint; the Settlement Agreement; any motions and memoranda seeking approval of the proposed class action settlement, approval of attorneys' fees and costs, or approval of service awards; and any orders of this Court relating to the proposed class action settlement. (*Id.* § 5.3.c.)

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

III. ARGUMENT

a. Certification Standard

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

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

749 F. Supp. at 1423 (quoting *Armstrong v. Bd. of Sch. Dirs.*, 616 F.2d 305, 313 (7th Cir. 1980)). Rule 23 permits courts to preliminarily certify a class to carry out a settlement of the case. *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liability Litig.*, 55 F.3d 768, 793–94 (3d Cir. 1995) (collecting cases). A court may grant preliminary approval of a class action where the proposed class satisfies the four prerequisites of Rule 23(a) (*i.e.*, numerosity, commonality, typicality, and adequacy of representation), as well as one of the three subsections of Rule 23(b). *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997). If the Court determines that a settlement class should be certified, it then should follow a three-step process before granting final approval of a proposed settlement. *Levell v. Monsanto Rsch. Corp.*, 191 F.R.D. 543 (S.D. Ohio 2000).

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

Rule 23 governs the certification of class actions. In considering a settlement at the preliminary approval stage, the first question for the Court is whether a settlement class satisfies Rule 23's requirements, and thus may be conditionally certified for settlement purposes. Under Rule 23(a), one or more members of a class may sue as representative parties on behalf of a class if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the class's interests. Fed. R. Civ. P. 23(a).

Here, the parties have reached a proposed agreement on behalf of the Settlement Class, which they respectfully request be preliminarily certified.

b. The Settlement Class Meets the Certification Elements

i. The Settlement Class satisfies Rule 23(a)

1. Numerosity

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

The numerosity requirement is easily met here. As detailed above, there are around 555,000 Settlement Class Members, including the named Plaintiffs. Joinder of this many individuals is neither possible nor practical, so the first prong of the certification test has been met. *See Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 425 (4th Cir. 2003). Indeed, this Court has already found joinder impracticable based on the same class as the one here. *See Hengle*, No.

3:19-cv-250-DJN, ECF No. 209, at ¶ 4 (E.D. Va. May 12, 2022) ("The Court finds . . . that the following requirements are met: (a) the number of Settlement Class Members is so numerous that joinder is impracticable . . . ."); *Id.*, ECF No. 230, at ¶ 4 (E.D. Va. Oct. 25, 2022) (reaffirming certification findings on final approval).

2. Commonality

Rule 23(a)(2) requires that the court find that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "Commonality is satisfied where there is one question of law or fact common to the class, and a class action will not be defeated solely because of some factual variances in individual grievances." *Jeffreys v. Commc'ns Workers of Am., AFL-CIO*, 212 F.R.D. 320, 322 (E.D. Va. 2003). And the common issue must be such that "determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* The standard is a liberal one that cannot be defeated by the mere existence of some factual variances in individual grievances among class members. *Id.* at 322; *Mitchell-Tracey v. United Gen. Title Ins. Co.*, 237 F.R.D. 551, 557 (D. Md. 2006) (finding that factual differences among class members will not necessarily preclude certification "if the class members share the same legal theory").

Here, by definition, the Settlement Class Members share multiple questions of law and fact. The Settlement Class Members are alleged to be the subject of a practice in which the lending enterprise, with Defendants' direct participation and support, charged usurious interest rates on consumer loans in violation of federal and state law. The practices at issue for this claim are identical across all class members. The theories of liability as to the Settlement Class Members therefore arise from the same practices and present basic questions of law and fact common to all members of the Settlement Class. *See* Fed. R. Civ. P. 23(a). As with numerosity, moreover, this Court has also already found that there are common questions of law and fact based on the same

class and nearly identical claims to those here. *See Hengle*, No. 3:19-cv-250-DJN, ECF No. 209, at ¶ 4 (E.D. Va. May 12, 2022) ("The Court finds . . . that the following requirements are met: . . . (b) there are questions of law and fact common to Settlement Class Members . . . ."); *Id.*, ECF No. 230, at ¶ 4 (E.D. Va. Oct. 25, 2022) (reaffirming certification findings on final approval); *see also Gibbs*, 2021 WL 4812451, at *13-14 (finding, on contested motion, that class of consumers raising RICO and state-law claims against TLEs presented common questions of law and fact).

3. Typicality

In the typicality analysis, "[a] class representative must be part of the class and possess the same interest and suffer the same injury as the class members." *Lienhart v. Dryvit Sys., Inc.*, 255 F.3d 138, 146 (4th Cir. 2001). "Nevertheless, the class representatives and the class members need not have identical factual and legal claims in all respects. The proposed class satisfies the typicality requirement if the class representatives assert claims that fairly encompass those of the entire class, even if not identical." *Fisher v. Va. Elec. & Power Co.*, 217 F.R.D. 201, 212 (E.D. Va. 2003). "The typicality requirement mandates that Plaintiffs show (1) that their interests are squarely aligned with the interests of the class members and (2) that their claims arise from the same events and are premised on the same legal theories as the claims of the class members." *Jeffreys*, 212 F.R.D. at 322. Commonality and typicality tend to merge because both "serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 n.5 (2011).

Plaintiffs' claims arise from Defendants' practices for consumer loans. As discussed in the previous section, these are the same claims advanced on behalf of the Settlement Class Members, and Plaintiffs are members. Thus, in seeking to prove their claims, Plaintiffs will advance the

claims of Settlement Class Members. This is the hallmark of typicality. *See Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2001) (citing Fed. R. Civ. P. 23(a)(3)). To remove any doubt, the Court has already found typicality among the same class based on the nearly identical claims raised in *Hengle*. *See* No. 3:19-cv-250-DJN, ECF No. 209, at ¶ 4 (E.D. Va. May 12, 2022) ("The Court finds . . . that the following requirements are met: . . . (c) Plaintiffs' claims are typical of the claims of the Settlement Class Members . . . ."); *Id.*, ECF No. 230, at ¶ 4 (E.D. Va. Oct. 25, 2022) (reaffirming certification findings on final approval).

4. Adequacy of Representation

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

The adequacy of representation requirement is met here. Plaintiffs understand and have accepted the obligations of a class representative, have adequately represented the interests of the putative class, and have retained experienced counsel who have handled many consumer-protection class actions. Plaintiffs' lead counsel—which is the same counsel approved by this Court in *Hengle* (No. 3:19-cv-250-DJN, ECF Nos. 209, 230)—handled several consumer-protection and complex class actions, typically as lead or co-lead counsel. *See, e.g.*, *Clark v. Trans Union, LLC*, No. 3:15-cv-391, 2017 WL 814252, at *13 (E.D. Va. Mar. 1, 2017) ("This Court echoes the sentiments previously stated about Clark's counsel because they pertain here with equal vigor."); *Campos-Carranza v. Credit Plus, Inc.*, No. 1:16-cv-120, ECF No. 80 at 5:3-7 (E.D. Va. Feb. 17, 2017) ("I think this is an extremely, as I say, extremely fair, reasonable, and adequate settlement. Again, the claims -- and I think being generous on the time limit for the claims was

also appropriate. So I have no difficulty in signing this order."); *Thomas v. FTS USA, LLC*, 312 F.R.D. 407, 420 (E.D. Va. 2016) ("[T]he Court finds that Thomas'[s] counsel is qualified, experienced, and able to conduct this litigation so as to fully and adequately represent both classes. Counsel is experienced in class action work, as well as consumer protection issues, and has been approved by this Court and others as class counsel in numerous cases around the country."); *Manuel v. Wells Fargo Bank, Nat'l Ass'n*, No. 3:14-cv-238, 2016 WL 1070819, at *3 (E.D. Va. Mar. 15, 2016) ("[T]his Court would have difficulty overstating Class Counsel's experience in the area of FCRA class action litigation."); *Dreher v. Experian Info. Sols., Inc.*, No. 3:11-cv-624, 2014 WL 2800766, at *2 (E.D. Va. June 19, 2014) ("Dreher's counsel is well-experienced in the arena of FCRA class action litigation."); *Burke v. Seterus, Inc.*, No. 3:16-cv-785, ECF No. 41 at 9:19-22 (E.D. Va. 2017) ("Experience of counsel on both sides in this case is extraordinary. Ms. Kelly and Ms. Nash and their colleagues are here in this court all the time with these kinds of cases and do a good job on them."); *James v. Experian Info. Sols., Inc.*, No. 3:12-cv-902 (E.D. Va. Oct. 29, 2014) (ruling on final approval in open court and finding "experience of counsel on both sides is at the top level of representation in cases of this sort and, indeed, perhaps beyond that"); *Soutter v. Equifax Info. Servs., LLC*, No. 3:10-cv-107, 2011 WL 1226025, at *10 (E.D. Va. Mar. 30, 2011) ("[T]he Court finds that Soutter's counsel is qualified, experienced, and able to conduct this litigation. Counsel is experienced in class action work, as well as consumer protection issues, and has been approved by this Court and others as Class Counsel in numerous cases."); *see also* Declaration of Kristi Kelly ("Kelly Decl.") ¶¶ 9-10 (attached as Ex. 1); Declaration of Leonard A. Bennett ("Bennett Decl.") ¶¶ 3-23 (attached as Ex. 2).

Plaintiffs have no antagonistic or conflicting interests with the Settlement Class Members. Plaintiffs and the Settlement Class Members alike seek monetary relief for Defendants' allegedly

unlawful actions. Plaintiffs are members of the Settlement Class. Considering the identity of claims, there is no potential for conflicting interests. Plaintiffs also have been very active here, including successfully responding to nine motions to dismiss and engaging in multiple rounds of settlement discussions. (*See* Ex. 1, Kelly Decl. ¶¶ 11-15.) As a result, the Settlement Class Members are adequately represented to meet Rule 23's requirements.

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

The proposed settlement contemplates permitting opt-outs under Rule 23(b)(3). An action may be maintained as a class action if the four Rule 23(a) elements described above are satisfied, and in addition, "the Court finds that the questions of law or fact common to the members of the Class predominate over any questions affecting only individual members, and that a Class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). This Court has already found these requirements satisfied based on the same class and nearly identical claims in *Hengle*. *See* No. 3:19-cv-250-DJN, ECF No. 209, at ¶ 4 (E.D. Va. May 12, 2022) ("The Court finds . . . that the following requirements are met: . . . (e) the questions of law and fact common to the Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; and (f) a class action provides a fair and efficient method for settling the controversy under the criteria set forth in Rule 23 and is superior to alternative means of resolving the claims and disputes at issue in this Action."); *Id.*, ECF No. 230, at ¶ 4 (E.D. Va. Oct. 25, 2022) (reaffirming certification findings). So too here.

1. Predominance

If the Settlement Class is to be certified under Rule 23(b)(3), the common issues of law and fact shared by the Settlement Class Members must "predominate" over individual issues. Rule 23(b)(3)'s predominance inquiry focuses on whether the proposed class is "sufficiently cohesive to warrant adjudication by representation." *Gariety v. Grant Thornton, LLP*, 368 F.3d 356, 362

(4th Cir. 2004); *Lienhart v. Dryvit Sys., Inc.*, 255 F.3d 138, 142 (4th Cir. 2001). This criterion is normally satisfied when there is an essential, common factual link between all class members and the defendants for which the law provides a remedy. *Talbott*, 191 F.R.D. 99, 105 (W.D. Va. 2000) (citing *Halverson v. Convenient FoodMart, Inc.*, 69 F.R.D. 331 (N.D. Ill. 1974)). And predominance exists where the resolution of class members' individual claims depends on examining common conduct by a defendant. *Jeffreys*, 212 F.R.D. at 323 (finding predominance because class members' claims were based on same acts by defendant and the determinative "question in each individual controversy" was common).

The predominance requirement is satisfied here because the essential factual and legal issues for the Settlement Class Members' claims are common and relate to alleged standardized practice. *Talbott*, 191 F.R.D. at 105 ("Here, common questions predominate because of the standardized nature of [defendant's] conduct."). Nothing more is necessary to satisfy predominance. Indeed, under nearly identical circumstances where, as here, a consumer class sued a non-tribal investor under RICO and for unjust enrichment, the Fourth Circuit has similarly found that common questions of law and fact predominate based on the standardized treatment of the Class and the common proof required to establish liability. *See Williams v. Martorello*, 59 F.4th 68, 85-92 (4th Cir. 2023); *see also Gibbs*, 2021 WL 4812451, at *16-20 (finding, on contested motion, that common questions of law and fact predominated under similar circumstances).

2. Superiority

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

of concentrating the litigation in one forum; and (4) manageability.[3] *Hewlett v. Premier Salons Int'l, Inc.*, 185 F.R.D. 211, 220 (D. Md. 1997); *accord Newsome v. Up To Date Laundry, Inc.*, 219 F.R.D. 356, 365 (D. Md. 2004).

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

In *Jeffreys*, for instance, the court found that because "the facts and issues involved are identical for all class members, class members have little incentive and few resources to pursue litigation on their own, the class members are dispersed over several states, and there are few manageability concerns, the class action is the best method of resolving the matter." 212 F.R.D. at 323. The same is true here. Common issues predominate. And the Settlement Class Members' individual claims are small, thus providing little incentive for individual litigation. *See Amchem*, 521 U.S. at 617 ("The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights." (quoting *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997))).

A class action is superior to other available methods for the fair and efficient adjudication of the case because a class resolution of the issues described above outweighs the difficulties in management of separate, individual claims and allows access to the courts for those who might

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

not gain such access standing alone, particularly given the small amount of the damage claims that would be available to individuals. Moreover, apart from the fact that the proposed class action settlement allows a recovery of actual damages, certification permits individual claimants to opt-out and pursue their own actions separately if they believe they can recover more in an individual suit. Thus, both predominance and superiority are satisfied. *See Gibbs*, 2021 WL 4812451, at *20 (Lauck, J.) (finding predominance and superiority satisfied under nearly identical circumstances on a contested class certification motion). For these reasons, the Court should conditionally certify the Settlement Class for settlement purposes.

c. The Settlement Satisfies the Requirements of Rule 23(e)(2)

"Rule 23(e) of the Federal Rules of Civil Procedure obliges parties to seek approval from the district court before settling a class-action lawsuit." *In re: Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Pracs. & Prod. Liab. Litig.*, 952 F.3d 471, 483 (4th Cir. 2020) (citing Fed. R. Civ. P. 23(e)). When a court "reviews a proposed class-action settlement, it acts as a fiduciary for the class." *1988 Tr. for Allen Child. Dated 8/8/88 v. Banner Life Ins. Co.*, 28 F.4th 513, 525 (4th Cir. 2022). "In fulfilling this role, the district court must conclude that a proposed settlement is 'fair, reasonable, and adequate,'" which are the three requirements established by Rule 23(e)(2) of the Federal Rules of Civil Procedure. *Id.* (citing Fed. R. Civ. P. 23(e)(2)). "In determining whether a settlement is fair, reasonable, and adequate," Rule 23(e)(2) requires the court to consider:

> (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 attorneys' fees, including timing of payments; and

(iv) any agreement required to be identified under Rule 23(e)(3);

(D) the proposal treats class members equitably relative to each other.

Galloway v. Williams, 2020 WL 7482191, at *4 (E.D. Va. 2020) (quoting Fed. R. Civ. P. 23(e)(2)). In making this assessment, district courts are provided with "considerable deference" because "the court 'is exposed to the litigants, and their strategies, position[s], and proofs, and is on the firing line and can evaluate the action accordingly.'" *Lumber Liquidators*, 952 F.3d at 484 (quoting *Joel A. v. Giuliani*, 218 F.3d 132, 139 (2d Cir. 2000)).

i. Plaintiff and Class Counsel Have Adequately Represented the Class.

Rule 23(e)(2)'s first factor examines whether "the class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). This assessment is "redundant of the requirements of Rule 23(a)(4) and Rule 23(g), respectively." *In re Flint Water Cases*, 571 F. Supp. 3d 746, 780 (E.D. Mich. 2021) (quoting Albert Conte & Herbert Newberg, *Newberg on Class Actions* § 13:48 (5th ed. June 2021 update)). Rule 23's adequacy requirements are met if: "(1) the named plaintiff has interests common with, and not antagonistic to, the Class'[s] interests; and (2) the plaintiff's attorney is qualified, experienced and generally able to conduct the litigation." *Gibbs v. Stinson*, 2021 WL 4812451, at *16 (E.D. Va. Oct. 14, 2021) (quoting *Milbourne v. JRK Residential Am., LLC*, 2014 WL 5529731, at *8 (E.D. Va. Oct. 31, 2014)).

This first factor is easily satisfied. Plaintiffs' interests and those of Class Members are fully aligned as they were all subjected to the same unlawful lending practices. *See, e.g.*, *Stinson*, 2021 WL 4812451, at *16 (finding that the plaintiffs were adequate because they had "no interests

antagonistic to the class's interest" and shared "identical interest of establishing Defendants' liability based on the same questions of law and fact").

Additionally, Class Counsel has been practicing in the field of consumer protection for more than 15 years, and they believe that this settlement stacks up very favorably when compared to other settlements over that time. (*See* Ex. 1, Kelly Decl. ¶¶ 3-10, 13-15; Ex. 2, Bennett Decl. ¶¶ 24-29.) This is particularly true when considering that the relief afforded by the Settlement in this case follows the substantial relief already awarded to the Class under the terms of the *Hengle* settlement. Courts recognize that the opinion of experienced and informed counsel in favor of settlement should be afforded substantial consideration in determining whether a class settlement is fair and adequate. *See*, *e.g.*, *In re MicroStrategy*, 148 F. Supp. 2d at 665.

Given the substantial relief afforded the proposed settlement—especially when contrasted against the risks associated with litigating this matter—it is fair and appropriate for approval. *See S.C. Nat'l Bank v. Stone*, 139 F.R.D. 335, 339 (D.S.C. 1991) (concluding fairness met where "discovery was largely completed as to all issues and parties," settlement discussions "were, at times, supervised by a magistrate judge and were hard fought and always adversarial," and those negotiations "were conducted by able counsel" with substantial experience).

ii. Negotiations Were at Arm's Length and Involved a Respected Mediator.

The second factor examines whether the settlement "was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B); *see also Flint Water Cases*, 571 F. Supp. 3d at 780 (explaining that the second factor requires courts to "consider whether the negotiations were conducted at arm's length with no evidence of collusion or fraud"). "Courts presume the absence of fraud or collusion unless there is evidence to the contrary." *Id.* (quoting *UAW v. Gen. Motors, Corp.*, 2006 WL 891151, at

*21 (E.D. Mich. Mar. 31, 2006)). Here, there is no evidence suggesting the presence of collusion or fraud between the parties.

To help confirm that negotiations were at arm's length, courts look at several other factors, including the presence of a mediator. As the leading class action treatise explains: "There appears to be no better evidence of [a truly adversarial bargaining process] than the presence of a third-party mediator." Conte & Newberg, *supra*, § 13:48; *see also Flint Water Cases*, 571 F. Supp. 3d at 780 ("highly experienced mediators" provide "ample protections in their roles"). Here, Plaintiffs and Defendants held several rounds of negotiations and appeared for several settlement conferences before the Honorable Mark R. Colombell, United States Magistrate Judge, to help reach the terms of their agreement. (*See* Kelly Decl. ¶ 14.) The involvement of Judge Colombell establishes that there was no collusion among the parties.

iii. The Relief Provided to the Class is Adequate.

Rule 23(e)(2)(C) requires the Court to consider whether the relief is adequate, considering:

> (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).

Fed. R. Civ. P. 23(e)(2)(C). These subfactors overlap with the factors that the Fourth Circuit has held are required to evaluate a class settlement's fairness, reasonableness, and adequacy. *Lumber Liquidators*, 952 F.3d at 484 n.8 (citing *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 159 (4th Cir. 1991)). An analysis of each factor shows that this settlement is fair, reasonable, and adequate.

The first Rule 23(e)(2)(C) sub-factor requires the Court to evaluate the settlement against the costs, risks, and delay of trial and appeal. This factor strongly supports approval of the settlement. While Class Counsel strongly believes in the strength of this case, they also acknowledge that there are substantial risks associated with continued litigation. Defendants have

disputed Plaintiffs' claims since the inception of this case and have raised several defenses, including thorny factual disputes over the degree and nature of their alleged involvement in the lending enterprise. Were the litigation to continue, Defendants would no doubt rely heavily on their defenses, which are largely subject to jury determination, to avoid liability. The Settlement avoids this significant cost, risk, and time by providing significant settlement benefits to the Class Members now.

Rule 23(e)(2)(C)'s second sub-factor requires the Court to evaluate the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims. Here, just as with the prior settlement (any multiple other similar settlements approved by this Court), Class Members will receive the cash benefits based on the unlawful amount repaid on their loans—without having to submit a claim form or any proof of their damages. Thus, cash payments will be automatically distributed. This is important because "[t]he use of objective criteria to determine settlement distribution is a hallmark of fairness." *Flint Water Cases*, 571 F. Supp. 3d at 781. Because an automatic cash payment is based on objective criteria and does not require any action by Class Members, this factor weighs strongly in favor of approving the settlement.

Rule 23(e)(2)(C)'s third sub-factor requires the Court to evaluate the request for attorneys' fees, including the timing of the request. The focus of this analysis is whether there are signs that "counsel sold out the class's claims at a low value in return for [a] high fee." Conte & Newberg, *supra*, § 13:54. There are no such indications here. As outlined above, there is no sign that Class Counsel left any money on the negotiating table. Instead, they have obtained over $25 million for automatic payments to Class Members who meet objective criteria, which is in addition to the $39

million in payments and $450 million in cancelled debt obtained for the same Class Members in *Hengle*. This is significant, additional consideration for the Class Members' claims.

It is also important to note that the attorneys' fee component of the settlement was negotiated under the supervision of Judge Colombell, who would notice if Class Counsel were compromising the class members' claims for their own benefit. *Flint Water Cases*, 571 F. Supp. 3d at 782. As to the timing of the attorney fee award request, "courts are to consider this to prevent situations in which the request for attorney fees is unknown and could upset the compensation to claimants at the time of final approval." *Id.* There is no such concern here as the proposed Notice to the Settlement Class will identify the requested attorneys' fees.

Finally, there are no agreements that need to be identified under Rule 23(e)(3).

iv. The Settlement Treats Class Members Equitably Related to Each Other.

The final factor under Rule 23(e)(2) requires a court to consider whether "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D) (emphasis added). This factor considers whether class members have been treated in a fair and impartial manner, but "[t]here is no requirement that all class members in a settlement be treated equally." *Swinton v. SquareTrade, Inc.*, 454 F. Supp. 3d 848, 876 (S.D. Iowa 2020) (emphasis in original) (citation omitted). And when considering this factor, a court "must balance the claims of those with potentially substantial damages with those with potentially minimal or insignificant damages." *Id.* (citation omitted).

The Settlement here achieves this balance. Although making an additional $25 million available to the Class in the form of cash payments, as in *Hengle*, the Settlement limits payments to only those Members who made unlawful payments on their loans based on the legal protections of their respective states of residence. The Settlement further awards payments on a *pro rata* basis

after considering the amount of each qualifying Class Member's payments above the lawful amount in their respective states. The Settlement thus maximizes the possible payout for Class Members who have suffered actual monetary harm, while preserving the class-wide cancellation of debt from *Hengle*. Moreover, all Class Members will obtain the benefit of Defendants' agreement to refrain from supporting the collection of the unlawful debts, regardless of whether any payments have been made on those debts. Class Members, therefore, will be treated equitably relative to each other.

d. The Proposed Notice and Notice Plan Satisfy Rule 23

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

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

The proposed Notice to the Settlement Class, which is an Exhibit to the Settlement Agreement, and the notice program for delivering that notice satisfy these requirements. (Settlement Agreement § 5.3.) Indeed, the Court in *Hengle* approved the same notice plan and a very similar notice to the one here. No. 3:19-cv-250-DJN, ECF No. 209, at ¶¶ 8-13.

As in *Hengle*, the proposed notice program here will provide individual direct notice. Under the Settlement Agreement, the Settlement Administrator will first email direct notice to each Settlement Class Member at his or her most recent email address shown in the TLEs' loan

records or as updated as a result of the *Hengle* settlement as maintained by the Administrator, as maintained in the ordinary course of business, for each loan at issue. (*Id.* §§ 3.3(b)(iii)(2), 5.3.a.) If email notice results in a bounce-back email, direct notice will be mailed to Settlement Class Members via first class mail and returned direct notices will be re-mailed if they are returned within twenty days of the postmark date and contain a forwarding address. (*Id.* § 5.3.b.) The Administrator also will update and continue to maintain the previous website, www.upperlakesettlement.com, on which pertinent information will be made available to Settlement Class Members, including the operative complaint; the Settlement Agreement; any motions and memoranda seeking approval of the proposed class action settlement, approval of attorneys' fees and costs, or approval of service awards; and any orders of this Court relating to the proposed class action settlement. (*Id.* § 5.3.c.)

The Settlement's robust notice and administration plan will ensure the most Settlement Class Members receive the payments to which they are entitled. Class Notice will be sent in accordance with Federal Rule of Civil Procedure 23(c) in the manner approved by the Court by a combination of email notice to verified email addresses or U.S. Mail to each Settlement Class Member identified on the Class List.

As the *Manual for Complex Litigation* recognizes, mail notice is the ideal method of informing class members of a class settlement where such members can be identified, while notice through an internet website is a supplemental means of providing notice. *See* Manual for Complex Litigation § 21.311; *see also Henggeler v. Brumbaugh & Quandahl P.C.*, No. 8:11-cv-334, 2013 WL 5881422, at *5 (D. Neb. Oct. 25, 2013) ("The court finds that the proposed notice is clearly designed to advise the class members of their rights. The Agreement provides for individual mailed notices to each of the class members. Individual notice is the best notice practicable.").

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

IV. CONCLUSION

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

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

Respectfully submitted,

PLAINTIFFS

/s/ Kristi C. Kelly

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

SHERRY BLACKBURN, *et al., on behalf of themselves and all others similarly situated,*

Plaintiffs,

v. Case No: 3:22-cv-146-DJN

A.C. ISRAEL ENTERPRISES, INC. d/b/a INGLESIDE INVESTORS, *et al*,

Defendants.

DECLARATION OF KRISTI C. KELLY

I, Kristi C. Kelly declare:

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

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

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

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

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

5. I have taught numerous Continuing Legal Education programs for other attorneys in the areas of consumer law, including mortgage servicing abuses, dormant second mortgages, landlord tenant defense, dealing with debt collectors, credit reporting, defenses to foreclosure, discovery in federal court, resolving cases, and internet lending. I have taught these courses for various legal aid organizations, state and local bar associations, the National Consumer Law Center, the Consumer Federation of America, the National Council of Higher Education, and the National Association of Consumer Advocates at its various conferences. I was also a panelist for the Consumer Financial Protection Bureau and Federal Trade Commission on the issue of credit reporting. I currently serve as an adjunct professor at George Mason University's Antonin Scalia Law School, where I co-teach a course on federal consumer litigation.

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

currently a member of the Partners' Council for the National Consumer Law Center and Board of Directors of the National Association of Consumer Advocates.

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

8. I have significant experience representing consumers in litigation under the Federal Consumer Credit Protection Act, 15 U.S.C. § 1601 *et seq.*, and in particular the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605 *et seq.*, and the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq*.

9. My firm has litigated hundreds of consumer protection lawsuits in courts across the country. Several courts have recognized Kelly Guzzo's skill in the consumer protection arena. *See, e.g.*, Final Approval Hr'g Tr., *Campos-Carranza v. Credit Plus, Inc.*, No. 16-cv-120, at 5:3–7 (E.D. Va. Feb. 17, 2017) ("I think this is an extremely, as I say, extremely fair, reasonable, and adequate settlement. Again, the claims – and I think being generous on the time limit for the claims was also appropriate. So I have no difficulty in signing this order."); *Ceccone v. Equifax Info. Servs. LLC*, No. 13-1314, 2016 WL 5107202, at *6 (D.D.C. Aug. 29, 2016) ("Given these qualifications, and in light of Class Counsel's conduct in court and throughout these proceeding, this Court concludes that Class Counsel is qualified to prosecute the interests of this class vigorously."); *Dreher v. Experian Info. Sols., Inc*., No. 11-00624, 2014 WL 2800766, at *2 (E.D. Va. June 19, 2014) ("Dreher's counsel is well- experienced in the arena of FCRA class action litigation."); Fairness Hr'g Tr., *Burke v. Seterus, Inc*., No. 16-cv-785, at 9:19–22 (E.D. Va. 2017) ("Experience of counsel on both sides in this case is extraordinary. Ms. Kelly and Ms. Nash and

their colleagues are here in this court all the time with these kinds of cases and do a good job on them.").

10. In each of the class cases where I have represented plaintiffs in a consumer protection case, including cases such as the instant case, the Court found me to be adequate class counsel. *See Tsvetovat, v. Segan, Mason, & Mason, PC,* No. 1:12-cv-510 (E.D. Va.); *Conley v. First Tennessee Bank*, No. 1:10-cv-1247 (E.D. Va.); *Dreher v. Experian Information Solutions, Inc.*, No. 3:11-cv-624 (E.D. Va.); *Shami v. Middle East Broadcast Network*, No. 1:13-cv-467 (E.D. Va.); *Goodrow v. Friedman & MacFadyen*, No. 3:11-cv-20 (E.D.Va.); *Kelly v. Nationstar*, Case No. 3:13-cv-311 (E.D. Va.); *Thomas v. Wittstadt*, No. 3:12-cv-450 (E.D. Va.); *Fariasantos v. Rosenberg & Associates, LLC*, No. 3:13-cv-543 (E.D. Va.); *Morgan v. McCabe Weisberg & Conway, LLC*, No. 3:14-cv-695 (E.D. Va.); *Burke v. Shapiro, Brown & Alt, LLP*, No. 3:14-cv-838 (E.D. Va.); *Bartlow, et al., v Medical Facilities of America, Inc.,* No. 3:16-cv-573 (E.D. Va.); *Blocker v. Marshalls of MA, Inc.,* No. 1:14-cv-1940 (D.D.C.); *Ceccone v. Equifax Info. Servs., LLC*, No. 1:13-cv-1314 (D.D.C.); *Jenkins v. Equifax Info. Servs., LLC*, No. 1:15-cv-443 (E.D. Va.); *Ridenour v. Multi-Color Corporation,* No. 2:15-cv-41 (E.D. Va.); *Hayes v. Delbert Services Corp.,* No. 3:14-cv-258 (E.D. Va.); *Campos-Carranza v. Credit Plus, Inc.,* No. 1:16-cv-120 (E.D. Va.); *Jenkins v. Realpage, Inc.*, No. 2:15-cv-1520 (E.D. Pa.); *Kelly v. First Advantage Background Services, Corp.*, No. 3:15-cv-5813 (D.N.J.); *Burke v. Seterus, Inc.,* No. 3:16-cv-785 (E.D. Va.); *Williams v. Corelogic Rental Property Solutions, LLC,* No. 8:16-cv-58 (D. Md.); *Clark v. Trans Union, LLC*, No. 3:15-cv-391 (E.D. Va.); *Clark v. Experian Information Solutions, Inc.*, No. 3:16-cv-32 (E.D. Va.); *Thomas v. Equifax Info. Servs., LLC*, No. 3:18-cv-684 (E.D. Va.); *Heath v. Trans Union, LLC*, No. 3:18-cv-720 (E.D. Va.), *Turner, v. ZestFinance, Inc.,* No. 3:19-cv-293 (E.D. Va.); *Galloway v. Williams*, No. 3:19-cv-470, 2020 WL 7482191, at *4 (E.D. Va. Dec. 18, 2020); *Gibbs v. TCV V, LP*, No. 3:19-cv-789 (E.D. Va.); *Gibbs v. Rees*, No. 3:20-cv-717 (E.D. Va.); *Pang*

v. Credit Plus, Inc., No. 1:20-cv-122 (D. Md.); *Brown v. RP On-Site, LLC,* No. 1:20-cv-482 (E.D. Va.); *Brown v. Corelogic Rental Property Solutions, LLC*, No. 3:20-cv-363 (E.D. Va.); *Hengle v. Asner,* No. 3:19-cv-250 (E.D. Va.); and *Hill-Green v. Experian Information Solutions, Inc.*, No. 3:19-cv-708 (E.D. Va.).

11. This case challenges Defendants' collection of unlawful debts through their usurious lending enterprise, alleging violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), and state law. The proposed Class Counsel first sued the tribal officials and primary non-tribal investors behind the lending operation in the related litigation, *Hengle v. Asner*, No. 3:19-cv-250, which resulted in a landmark settlement cancelling over $450 million in outstanding debt and $39 million in payments to Class Members who made payments in excess of their respective state laws. As part of the *Hengle* litigation, counsel discovered Defendants' involvement in the enterprise and, while *Hengle* was still pending, brought the instant action to obtain further relief for the Class.

12. The settlement in this case follows the hard-fought litigation in *Hengle*, which involved an appeal to the Fourth Circuit and a petition for certiorari to the Supreme Court. As in *Hengle*, Defendants here vigorously defended against Plaintiffs' claims, including raising several factual disputes over the nature and degree of their alleged involvement in the lending enterprise. These factual defenses inevitably carry risk before a jury, even before accounting for the likelihood of either side appealing a judgment.

13. The settlement here builds on the landmark settlement in *Hengle* by providing further monetary relief to the Settlement Class Members. It was informed by significant discovery, both from *Hengle* and specifically into Defendants' available assets and degree of involvement. It also comes after the detailed opinions of this Court and the Fourth Circuit regarding Defendants' likely liability and defenses.

14. The settlement itself was obtained through multiple rounds of pre-settlement discussions and document exchanges between the parties, as well as several settlement conferences before United States Magistrate Judge Mark R. Colombell. Judge Colombell assisted the parties in reaching an arm's-length agreement that accounted for the risks to both sides and involved substantial concessions, despite each side's strong belief in the strength of their positions.

15. There was significant work left to do in this case, including additional discovery, a contested class certification motion, expert witness practice, dispositive motions, and trial preparation, as well as likely appeals. The Settlement avoids the time and expense of that work. Given the significant consideration that the Settlement provides, especially in light of the settlement in *Hengle*, the outcome is outstanding. It provides additional, needed cash relief to the Settlement Class while avoiding the delay and risks of further litigation and the ultimate collection of any judgment. As a result, I endorse the settlement as fair and adequate and would urge the Court to preliminarily approve the settlement.

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

Signed this 23rd day of October 2023.

/s/ Kristi C. Kelly
Kristi C. Kelly

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

SHERRY BLACKBURN, *et al.*, *on behalf of themselves and all individuals similarly situated,*	:	
Plaintiffs,	:	Case No. 3:22-cv-146 (DJN)
v.	:	
A.C. ISRAEL ENTERPRISES, INC., d/b/a INGLESIDE INVESTORS, *et al.*,	:	
Defendants.	:	

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

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

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

Consumer Litigation Associates, P.C.

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

3. Since 1994, I have been and presently am a member in good standing of the Bar of the highest court of the Commonwealth of Virginia, where I regularly practice law. Additionally, since 1995, I have been a member in good standing of the Bar of the highest court of the State of North Carolina.

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

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

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

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

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

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

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

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

10. I have been named as a multi-year Super Lawyer, a Law Dragon Top 500 Plaintiffs' Attorney, to Best Lawyers in America and a Virginia Leader in the Law.

11. I am an Adjunct Professor at the Antonin Scalia Law School at George Mason University, teaching a 3L class titled FEDERAL CONSUMER PROTECTION LITIGATION.

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

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

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

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

Consumer Litigation Associates, P.C.'s Experience

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

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

White v. CRST, 1:11-cv-2615 (N.D. Ohio); *Williams v. LexisNexis Risk Mgmt.*, 3:06-cv-241 (E.D. Va.); *Goode v. LexisNexis*, 11-cv-2950 (E.D. Pa.); *Beverly v. Wal-Mart Stores, Inc.*, 3:07-cv-469 (E.D. Va.); *Berry v. LexisNexis Risk & Info. Analytical Group*, 3:11-cv-754 (E.D. Va.); *Stinson v. Advance Auto Parts, Inc.,* (W.D. Va.); *Black v. Winn-Dixie Stores, Inc*., 3:09-cv-502 (M.D. Fla.); *Cappetta v. GC Servs. LP*, 3:08-cv-288-JRS (E.D. Va.); *Henderson v. Verifications, Inc*., 3:11-cv-514 (E.D. Va.): *Harris v. US Physical Therapy, Inc.*, 2:10-cv-1508 (D. Nev.); *Domonoske v. Bank of Am., N.A*., 5:08-cv-66 (W.D. Va.); *Smith v. Telecris Biotherapeutics, Inc*., 1:09-cv-153 (M.D.N.C.); *Daily v. NCO Fin.*, 3:09-cv-31 (E.D. Va.); *Lengrand v. Wellpoint*, 3:11-cv-333 (E.D. Va.); *Burke v. Shapiro, Brown & Alt, LLP*, No. 3:14-cv-838 (DJN) (E.D. Va.); *Ridenour v. Multi-Color Corp.*, No. 2:15-cv-41-MSD-DEM (E.D. Va.); *Manuel v. Wells Fargo Nat'l Ass'n*, No. 3:14-cv-238 (E.D. Va.); *Thomas v. FTS USA, LLC*, No. 3:13-cv-825-REP (E.D. Va.); *Milbourne v. JRK Residential Am., Inc.*, No. 3:12-cv-861-REP (E.D. Va.): *Hall v. Vitran Express, Inc*., No. 1:09- cv-00800 (N.D. Ohio); *Anderson v. Signix, Inc*., No. 3:08-CV-570 (E.D. Va.); *Reardon v. Closetmaid,* No. 2:08-cv-1730 (W.D. Pa.); *Bell v. U.S. Express, Inc*., l:11-CV- 181 (E.D. Tenn.); *Goode v. First Advantage LNS Screening Sols., Inc.*, 2:11-cv-2950 (E.D. Pa.) *Ellis v. Swift Transp. Co. of Az.*, 3:13-cv-473 (E.D. Va.); *Edwards v. Horizon Staffing, Inc.*, No. 1:13-cv-3002 (N.D. Ga.); *Shami v. Middle E. Broadcasting, Inc.,* 1:13-cv-467 (E.D. Va.); *Marcum v. Dolgencorp*, 3:12-cv-108 (E.D. Va.); *Wyatt v. SunTrust Bank*, 3:13-cv-662 (E.D. Va.); *Henderson v. HRPlus*, No. 3:14-cv-82 (E.D. Va.); *Henderson v. Backgroundchecks.com*, 3:13-cv- 29 (E.D. Va.); *Henderson v. Acxiom Risk Sols.*, 3:12-cv-589 (E.D. Va.); *Ryals v. Strategic Screening Sols., Inc.*, 3:14-cv-00643-REP (E.D. Va.); *Thomas v. First Advantage Screening Solutions, Inc.*, 1:13-cv-04161-CC-LTW (N.D. Ga.); *Smith v. Harbor Freight Tools USA, Inc.*, No. 2:13-cv-06262-JFW-VBK (C.D. Cal.); *Smith v. ResCare*, 3:13-cv-5211 (S.D. W. Va.); *Oliver v. FirstPoint, Inc.*, No.

1:14-cv-517 (M.D.N.C.); *Blocker v. Marshalls of MA, Inc.*, No. 1:14-cv- 01940-ABJ; *Brown v. Lowe's Cos., Inc.*, 5:13-cv-79 (W.D.N.C); *Reese v. Stern & Eisenberg Mid- Atlantic*, 3:16-cv-496-REP (E.D. Va.); *Hayes v. Delbert Servs. Corp.*, No. 3:14-cv-258-JAG (E.D. Va.); *Soutter v. Equifax Info. Servs., LLC*, 3:10-cv-107 (E.D. Va.); *Fariasantos v. Rosenberg & Assocs., LLC*, 3:13-cv-543 (E.D. Va.); *James v. Experian Info. Sols., Inc.*, 3:12-cv-902 (E.D. Va.); *Goodrow v. Friedman & MacFadyen, P.A.*, 3:11-cv-20 (E.D. Va.); *Witt v. CoreLogic SafeRent, LLC*, 3:15-cv-386 (E.D. Va.); *Henderson v. CoreLogic Nat'l Background Data, LLC*, 3:12-cv-97 (E.D. Va.); *Smith v. Sterling Infosystems, Inc.*, 1:16-cv-714 (N.D. Ohio).

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

19. Regarding the particular claims and area of law at issue here, I have additional,

focused expertise. I have been co-lead in multiple, successful actions brought against tribal payday lending schemes as in this case. For example, I was Co-Lead Counsel, and appointed Class Counsel by the Eastern District of Virginia in *Hayes v. Delbert Services Corp.,* No. 3:14-cv-259-JAG (E.D. Va.). That case, in which the Attorney General of Virginia intervened, alleged similar claims against a group of payday lenders structured in much the same way as Defendants here. Together with the Attorney General, we resolved the claims of 17,000 Virginia consumers who, like Plaintiffs and Class Members here, were victimized by an illegal tribal-lending scheme. The settlement in *Hayes* (1) eliminated all outstanding loans for class members, (2) required the defendants to create a $9.4 million settlement fund for the benefit of class members (attorneys' fees were separately paid by defendants), (3) required the defendants to cease reporting to the Big 3 consumer reporting agencies the status of any loans, (4) released judgments and provide other relief relating to class members' loans, (5) stopped defendants from charging more than 12% interest (the legal limit for interest under Virginia law without a license to lend in the Commonwealth), and (6) initiated new lending practices for defendants to make loans to Virginians. (*See Hayes* Doc. 186 at 4-5). In other words, settlement was a near, total victory for class members.

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

21. Craig C. Marchiando, a partner at my Firm, also practices exclusively in the field of consumer protection litigation. He is among the most experienced attorneys in the nation in this

highly-specialized field consumer financial services class action litigation. Mr. Marchiando graduated from South Texas College of Law *cum laude* in 2004, served a one-year appellate clerkship before moving to private practice, and was named a Texas Super Lawyers Rising Star in class action and mass tort litigation in 2013 and 2014. He is licensed to practice in California, Florida, Texas, and Virginia.

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

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

24. As a result of this settlement consumers will receive cash payments in consideration for the settlement of their RICO and respective state law claims against Defendants for the usurious tribal lending payday loans more fully described in Plaintiffs' operative Complaint. No portion of the Settlement Fund will revert to Defendants. The monetary payment will provide real, meaningful relief for these individuals.

25. The settlement in this case was hard fought. It was informed by significant written

discovery from previous litigation, and motions practice. The Court considered an exhaustive set of factual and legal arguments. The robust knowledge we possessed because of significant discovery as to the same parties obtained in prior litigation allowed our team to thoroughly investigate and understand the claims and defenses in this litigation.

26. The settlement itself was obtained after numerous informal settlement exchanges and phone calls, and multiple settlement conferences with United States Magistrate Judge Colombell. Plaintiffs and our team were transparent with Judge Colombell. We conveyed both the strengths and weaknesses of Plaintiff's claims. And ultimately, his efforts helped force all sides to this settlement.

27. Defendants and related parties to this Settlement had one or both of these things in common. Most had less attenuated connections to the lending enterprise alleged in the case. Some were somewhat more remote investors. Others had contributed only modest amounts or received only modest returns. The second category of settling defendant included those who lacked significant resources to pay a much larger verdict or settlement.

28. In order to negotiate this matter, our team had to devise settlement and negotiation objectives and strategies for each separate Defendant. This effort was primarily led by Andrew Guzzo. I have appeared often in this Court and courthouse and have myself led and participated in the negotiation of countless class cases. Still, without exaggeration, I have yet to see any class counsel advocate in mediation and negotiation more effectively than Mr. Guzzo showed in this case. That success required a range of tone and tactical positions – strongarm in one point, conciliatory the next. I am certain that this Settlement is as fair and adequate as could be obtained in large part because of the effort of Mr. Guzzo.

29. Given the circumstances and taking into account the risk and expense—and most

importantly, delay—of further litigation, the settlement provides significant cash relief for consumers. I endorse the settlement as fair and adequate and would urge the Court to preliminarily approve the settlement.

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

DATED: October 23, 2023, Newport News, Virginia

Leonard A. Bennett, Esq.