STATE OF NORTH CAROLINA COUNTY OF JONES	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION FILE No.: 21 CvS 134-510
CAROLINA LEASE MANAGEMENT GROUP, LLC, Plaintiff, v. CHARLES GREENE, Defendant. _____ CHARLES D. GREENE, *on behalf of himself and all others similarly situated,* Counterclaimant, v. CAROLINA LEASE MANAGEMENT GROUP, LLC, Counterclaim Defendant.	**MEMORANDUM IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFYING THE CLASS FOR PURPOSES OF SETTLEMENT, AND DIRECTING NOTICE TO THE CLASS**

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MEMORANDUM OF LAW SUPPORTING PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CLASS CERTIFICATION, AND NOTICE TO THE CLASS

Defendant and Counterclaim Plaintiff Charles Greene[1] (hereinafter "Plaintiff" or "Mr. Greene"), through counsel, submits this Memorandum Supporting Plaintiff's Unopposed Motion for Order Granting Preliminary Approval of Class Action Settlement, Certifying the Class for Settlement Purposes, and Directing Notice to the Class ("Motion"). A copy of this Memorandum has been provided to counsel for Carolina Lease Management Group, LLC ("CLMG"), who does not express any objection.

I. INTRODUCTION

Mr. Greene seeks conditional certification of a settlement class and preliminary approval of the proposed settlement attached as Exhibit 1 to Plaintiff's motion previously filed with the Court. Should this Court conditionally certify the settlement class and finally approve the settlement herein, this will resolve the above-captioned action along with a sister action pending in the United States District Court for the Eastern District of North Carolina, *Bland, et al. v. Carolina Lease Management Group, LLC, et al.,* No.4:22-CV-33-BO. The Settlement Agreement ("Settlement Agreement"), attached to Plaintiff's motion as Exhibit 1, requires both courts to approve the respective settlements. If not, the Settlement

[1] Throughout this litigation, the Court and the parties have referred to the parties in their traditional litigation roles in that Defendant and Counterclaim Plaintiff Charles Greene will be referred to as "Plaintiff" and Plaintiff and Counterclaim Defendant Carolina Lease Management Group, LLC, will be referred to as "Defendant" though the actual roles are reversed.

Agreement is vacated and the parties return to their pre-settlement litigation posture.

As this Court will recall, this case arose out of rent-to-own "Rental Purchase Agreements and Disclosure Statements" ("Contracts") by which Plaintiff could purchase a portable storage shed by making a certain number of payments but, according to the terms of the Contract, was not obligated to make all payments and could return the personal property and the prior payments would be deemed "rental payments." In response to the Small Claims Action filed by CLMG against Mr. Greene, Mr. Greene's class counterclaim alleged that CLMG's Contracts consistently charged illegal rates of interest that violated North Carolina's Retail Installment Sales Act and that CLMG violated North Carolina's Unfair Trade Practices Act and its Debt Collection Act by collecting on these Contracts.

The Settlement Agreement resolves two actions now pending: this action before this Court (the *Greene* action) and a sister action pending in federal court (the *Bland* action). Both cases raise essentially the same issues, but the *Greene* class period begins approximately one year earlier than the *Bland* action's class period and *Greene* was filed as a class counterclaim. Settlement Agreement at 2-3, 7 ¶ 3, 9-10 ¶ 20. The plaintiffs in the *Bland* action are represented by the same counsel as Mr. Greene in the present action. All four plaintiffs in both actions have signed the same Settlement Agreement. Further, the court in the *Bland* action has issued an order granting preliminary approval of the class action settlement,

certifying the class for purposes of settlement, and directing notice to the class. *See* Exhibit 3 attached to Motion for Preliminary Approval.

Under the Settlement, Defendants CLMG and CTH Rentals, LLC ("CTH") (collectively, "Settling Defendants"[2]) will pay a total of $8,000,000.00 to settle both cases. This sum is divided between the two cases in direct proportion to the amount each class paid to CLMG during the respective class periods. For this action, $1,001,671.13 will be paid into a Settlement Fund for distribution to the 3933 *Greene* Class Members, settlement administration expenses, Class Counsel attorneys' fees, costs, and expenses, and service awards to Plaintiff, as approved by the Court. The Settlement Fund will provide a substantial monetary benefit to each Class Member, the vast majority of whom (all but 40 individuals) will also receive payments as members of the *Bland* Class. The average payment for the brief Class Period in *Greene* will exceed $160 per member; the average payment for the longer *Bland* Class Period will exceed $600 per member. Additionally, Defendant CLMG has agreed to provide significant non-monetary relief to the Class Members by waiving $669,522.33 between both classes that remained unpaid under the Class Members' Agreements, canceling any judgments for money damages or writs of possession entered against a Class Member, and allowing all storage buildings to remain in the possession of Class Members with no further payment.

As detailed herein, the terms of the Settlement are fair, adequate, and reasonable. The proposed Settlement Class meets all of the requirements for

[2] CTH Rentals, LLC is not a party in this action. As a result, "Settling Defendants" refers to Carolina Lease Management Group, LLC for this action.

certification for settlement purposes and the proposed class notice provides the best practicable notice under the circumstances in accordance with *Crow v. Citicorp. Accept. Co.,* 319 N.C. 274, 283, 354 S.E.2d 459, 466 (1987) (suggesting that notice complying with Fed. R. Civ. P. 23(c)(2) is adequate); G. Gray Wilson, *North Carolina Civil Procedure*, Ch. 23, § 23-4 (Matthew Bender). Accordingly, Plaintiff respectfully requests this Court to:

(i) find it probable that the proposed settlement will be approved under N.C. R. Civ. P. 23(c);

(ii) certify the Settlement Class for purposes of the Settlement;

(iii) approve the proposed form, content, and method of delivering notice to the Class as set out in the Settlement Agreement;

(iv) schedule a hearing to consider final approval of the proposed Settlement, as well as approval of attorneys' fees, costs, and a service award to the Class Representative.

II. STATEMENT OF THE CASE

A. History of the Litigation

On January 13, 2021, CLMG filed a complaint in the District Court for Jones County--Small Claims Division to recover possession of personal property that CLMG alleged was the subject of a rent-to-own agreement and on which Mr. Greene had defaulted on payments. Before the magistrate, judgment for possession of the property was entered against Mr. Greene and he timely appealed that decision to the District Court for Jones County. Mr. Greene filed an answer and counterclaim against CLMG on March 8, 2021. On April 8, 2021, Mr. Greene file an amended answer and class counterclaim in this case alleging violations of North Carolina's

Retail Installment Sales Act (RISA), unfair trade practices, and violations of North Carolina's debt collection act. By consent order, this case was transferred to the Superior Court for Jones County. The North Carolina Supreme Court subsequently designated this case as an exceptional case under Rule 2.1 of the General Rules of Practice by order dated October 4, 2021, and appointed Judge Marvin K. Blount to preside over this case.

A sister class action case, *Bland, et al. v. Carolina Lease Management Group, LLC, CTH Rentals, LLC, and Old Hickory Buildings, LLC,* was filed in the Superior Court for Craven County, Case No. 22 CvS 306, on March 10, 2022, and raised the same issues but included two additional defendants. Plaintiffs in the *Bland* case are represented by the same counsel as in this case. Before Plaintiffs' counsel could seek to have the *Bland* action consolidated with this case, it was removed to the United States District Court for the Eastern District of North Carolina, No. 4:22-CV-33-BO.

In the class counterclaim in this case, Mr. Greene alleged that Carolina Lease Management Group, LLC utilized form rent-to-own contracts that are consumer credit sale agreements under North Carolina's Retail Installment Sales Act; that these contracts charged greater interest than allowed under RISA; that CLMG engaged in Unfair Trade Practices under Chapter 75 of North Carolina's General Statutes; and that CLMG violated North Carolina's Debt Collection Act, Chapter 75, Article Two, by seeking to collect more under the rent-to-own contracts than it may legally collect. CLMG timely filed a response to Greene's amended class counterclaim.

On May 23, 2022, Mr. Greene sought certification of a class of persons who had entered into contracts with CLMG and had been subject to the same practices as he had. On June 20, 2022, CLMG filed a motion for summary judgment contending that Mr. Greene's claim was barred by the statute of limitations. Mr. Greene filed opposing affidavits to CLMG's summary judgment motion and, on September 9, 2022, filed a Motion for Partial Summary Judgment on the issue of liability on the claims he raised.

A hearing was held on October 27, 2022, on CLMG's motion for summary judgment and on Mr. Greene's Motion for Class Certification. During that hearing, the Court denied CLMG's summary judgment motion from the bench, but no written order has been entered. On Mr. Greene's Motion for Class Certification, the Court indicated that it was inclined to grant certification but wanted to know more about the proposed class representative. The Court adjourned the hearing to allow CLMG to depose Mr. Greene as to his suitability to act as the class representative.

On October 28, 2022, the United States District Court for the Eastern District of North Carolina entered an order dismissing the *Bland* case on the statute of limitations grounds. On November 3, 2022, CLMG filed a motion to reconsider this Court's bench ruling on its summary judgment motion based on the federal district court's order. On November 4, 2022, CLMG also sought to dismiss its claim for a writ of possession against Mr. Greene.

A hearing was held on February 13, 2023, on CLMG's Motion for Reconsideration, Mr. Greene's Motion for Class Certification, and other motions.

During the hearing, CLMG proffered the *Bland* court's opinion as additional authority in support of this Court reconsidering its earlier ruling. Mr. Greene countered that the *Bland* plaintiffs were seeking reconsideration of the *Bland* court's order of dismissal and that the *Greene* court was not required to follow the *Bland* court's ruling. The Court reiterated that CLMG's Motion for Summary Judgment was denied; a written order has not yet been entered. The parties discussed the class certification issues including revising the class definition so that this matter may proceed. The Court allowed the parties to submit additional briefs with regards to class certification. This briefing was finalized as of March 10, 2023. On March 30, 2023, the *Bland* court denied the *Bland* plaintiffs' Rule 59/60 motion, and the *Bland* plaintiffs entered a Notice of Appeal on March 31, 2023. Thereafter, no other action was taken in this case largely due to the pending *Bland* appeal.

On May 7, 2024, the United States Court of Appeals for the Fourth Circuit reversed the district court's decision in *Bland.* Shortly after the *Bland* decision, Mr. Greene's counsel communicated with this Court with regards to their request for written orders on class certification and denial of CLMG's summary judgment motion. Several conferences were held with the Court in order to move this case toward certification.

B. Discovery Among the Parties

While the parties in this case were engaged in motions practice, the parties also engaged in extensive discovery. Counsel for Greene submitted several sets of written discovery to CLMG. CLMG resisted Mr. Greene's discovery requests. Mr.

Greene deposed CLMG's local representative. After a lengthy negotiation was unsuccessful, Plaintiff moved to compel discovery from CLMG on October 11, 2024. The Motion to Compel Discovery has not been heard by this Court, but the parties were also engaged in extensive discovery in the *Bland* case after which led to the production of thousands of pages of documentation. Additionally, in the *Bland* case, counsel traveled to Nashville, Tennessee, and deposed each of the three corporate representatives along with individuals affiliated with CLMG and the other *Bland* defendants.

Counsel for the *Bland* plaintiffs also retained Diana M. Connor of The Brattle Group to serve as an expert for that case and for the *Greene* case. Ms. Connor is a CPA with expertise in accounting, financial reporting, and economic damages calculations. She calculated the effective interest rates charged by CLMG; estimated actual damages incurred by consumers who entered into these rent-to-own contracts with CLMG; and developed a methodology for calculating damages on a class-wide basis. Ms. Connor's review demonstrated that CLMG's Contracts exceeded the interest rate permitted by North Carolina law and that damages could be calculated on a class-wide basis. An expert report was prepared in the *Bland* case and provided to CLMG. A report using the same methodology would also be used in this case. The parties reached the Settlement for both of these cases shortly before Ms. Connor's scheduled deposition in San Francisco, California.

C. Settlement Negotiations

Because this case is intimately tied with the *Bland* case, the negotiations in the *Bland* case were also negotiations to resolve this case. The parties to both cases have treated the cases as two components of the same claims.

After the Court of Appeals reversed the dismissal of the *Bland* action, the *Bland* court ordered the Parties to participate in a mediated settlement conference. The parties selected Jacqueline Clare, a well-respected third-party mediator well-versed in consumer claims. As part of the mediation process, both sides submitted detailed and comprehensive mediation statements.

On February 12, 2025, the parties engaged in a videoconference mediation. During the mediation, proffered settlement offers were rejected and the three-hour mediation session resulted in an impasse.

After the mediation impasse, the parties continued with depositions and additional discovery. While counsel were deposing CLMG's and other corporate representatives and witnesses, meaningful settlement negotiations commenced directly among counsel. After several days of negotiating among the parties' counsel, the negotiations resulted in the finalized Settlement Agreement.

III. THE SETTLEMENT TERMS

A. General Terms of the Settlement Agreement

The proposed settlement is fair, reasonable, and adequate because it directly addresses the practices identified in the litigation and provides substantial benefits to the Settlement Class Members. The Settlement establishes an $8 million

Settlement Fund allocated proportionately between the *Greene* and *Bland* Classes, as detailed further below.

The Settlement also provides non-monetary relief to the Settlement Class Members. Settling Defendants will stop any collection attempts on any debt arising out of the rent-to-own agreements, waive any claim that a Settlement Class Member might still owe a balance, and cancel any judgments that have been entered against a Settlement Class Member stemming from any actions CLMG has instituted against Settlement Class Members.

B. The Settlement Class

The Settlement Class is defined as follows:

> All persons residing in North Carolina who entered into a "Rental Purchase and Disclosure Statement" with Carolina Lease Management Group, LLC, for personal property in a form substantially similar to the form contracts that Carolina Lease Management Group, LLC entered into with Charles Greene (exemplar attached as Exhibit D to the Settlement Agreement), and from whom Carolina Lease Management Group, LLC sought to collect payments on such an Agreement on or after April 8, 2017, and prior to March 10, 2018.
>
> Any Judge or Magistrate presiding over this action and members of their families are excluded from this definition.

The class period begins four years prior to the filing of this counterclaim action because debt collection claims under North Carolina's Debt Collection Act are governed by a four-year statute of limitations. It ends on March 10, 2018, because that is the start date for the *Bland* class; this ensures that the classes are not duplicative and that members of each class receive appropriate, proportionate relief.

Other than the different time periods, the proposed settlement class definition in this case is identical to the one preliminarily approved in *Bland*.[3]

Although this class definition differs slightly from that proposed previously, this is not problematic. It is well-established that federal courts have discretion to modify proposed class definitions as appropriate. *See Lorenzo v. Prime Communications, L.P.*, No. 5:12-CV-69-H, 2018 WL 1535476, at *2 (E.D.N.C. March 29, 2018) ("Courts have the discretion to modify class definitions as needed . . .") (citations omitted); *Newberg and Rubenstein on Class Actions* § 7:27 (6th ed.). Though differences exist between North Carolina's Rule 23 and the federal rule, the reasoning in federal class action cases can be instructive even though North Carolina's Rule 23 is quite different from the federal rule. *Ehrenhaus v. Baker*, 216 N.C. App. 59, 70, 717 S.E.2d 9, 17 (2011) (citations omitted); G. Gray Wilson, *North Carolina Civil Procedure,* Ch. 1, § 1-2 (Matthew Bender). As such, the North Carolina courts likely possess the inherent authority to modify a class definition as

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[3] The Class Definition for the *Bland* action is:

> All persons residing in North Carolina who entered into a "Rental Purchase and Disclosure Statement" with Carolina Lease Management Group, LLC, for personal property in a form substantially similar to the form contracts that Carolina Lease Management Group, LLC entered into with Hank Bland, Kendell Jackson, and Luetta Inniss (exemplar attached as Exhibit A to the Settlement Agreement) and from whom Carolina Lease Management Group, LLC sought to collect payments on such an Agreement on or after March 10, 2018.
>
> Any Judge or Magistrate presiding over this action and members of their families are excluded from this definition.

Settlement Agreement at 7, Art. II, ¶ 3.

appropriate along with their federal counterparts, particularly when the modification is by agreement of the parties.

C. Settlement Benefits

With regards to the proposed Settlement, and the releases discussed below, Settling Defendants have agreed to establish a Settlement Fund to make substantial cash payments to Settlement Class Members and to provide substantive non-monetary relief.

1. The Settlement Fund

Within seven calendar days of the entry of the Preliminary Approval Order, Defendant will establish a *Greene* Settlement Fund in the total amount of $1,001,671.13.

a. How the Funds Were Allocated Between the Two Classes

The Settlement Agreement provides that CLMG will issue two checks to the Settlement Administrator—one for the *Greene* Class herein and one for the *Bland* Class in the federal court case. Per the Settlement Agreement, $1,001,671.13 is allocated to the *Greene* Settlement Class Members and $6,998,328.87 is allocated to the *Bland* Settlement Class Members. (The latter has been paid and deposited in the Settlement Administrator's trust account, in light of that court's order preliminarily approving the settlement.) The allocation is based on the percentage of the amount collected by the Settling Defendants during the relevant Class Periods. CLMG's records, provided to Plaintiff's counsel, show that the *Bland* Class Members paid approximately 87.5% of the total money collected over both class

periods and the *Greene* Class Members paid approximately 12.5% of the total. The overwhelming majority of people in the *Greene* Class are also in the *Bland* Class, and will receive checks from both Settlements.

b. Class Member Payments

All Settlement Class Members are eligible to receive payment from the Settlement Fund and need not do anything to receive payment. Payments to Settlement Class Members will be determined *pro-rata* based on the amount that each Class Member paid on the account during the Class Period. For accounts with more than one obligor, the account will be entitled to one cash payment made payable to both obligors.

Additionally, if a person is a member of both the *Greene* and the *Bland* Classes, that is, the person made payments during both Class Periods, that Class Member will receive *pro-rata* distributions from both Settlement Funds. Mr. Greene (as well as nearly all *Greene* class members) is a member of both classes (but is only representing the members of the *Greene* class). On average, Class Members will receive approximately $160 each for payments made during the several months of the *Greene* Class Period, and over $600 each for payments made over the longer *Bland* Class Period.

c. Attorneys' Fees and Costs

The Settlement Agreement provides that, for the purposes of settlement, Plaintiff will request the Court to appoint Adrian M. Lapas of Lapas Law Offices, PLLC, and Charles M. Delbaum and Jennifer S. Wagner, both of National

Consumer Law Center, as Class Counsel. Counsel will submit a motion for an award of attorneys' fees and costs for no more than one-third of the Settlement fund, which CLMG will not oppose.

d. Service Awards to Plaintiff

The Settlement contemplates that Plaintiff Charles Greene will be appointed as Class Representative for the purposes of settlement. Plaintiff will request, and CLMG will not oppose, a Class Representative service award not to exceed $10,000 for Mr. Greene's service to the Settlement Class. Class Counsel will submit this request to the Court at the same time as Class Counsel's fee petition, prior to the deadline for members of the Settlement Class to object to the Settlement.

e. Costs of Notice and Administration

The costs of notice and administration of the Settlement will be paid out of the Settlement Fund. Subject to the Court's approval, American Legal Claims Services, LLC, will act as the Settlement Administrator. The Settlement Administrator will perform all tasks specified and assigned to it in the Settlement, including administering the Notice Program as set out in the Settlement Agreement. The Settlement Administrator was selected as the lowest cost option who would provide effective notice and claims services after soliciting bids from several alternative companies. The anticipated cost for administering the Settlement for the *Greene* Settlement Class is $17,283.00.

f. No Reverter

No portion of the Settlement Fund reverts to Defendants. Subject to Court approval, any funds remaining ninety (90) days after the final distribution will be distributed in accordance with Section 1-267.10 of the North Carolina General Statutes.

2. *Non-monetary Benefits*

In addition to the Settlement Fund payments, the Agreement provides significant non-monetary relief to the Settlement Class Members. Prior to and even while this action has been pending, CLMG sought to collect amounts from the Settlement Class Members based on alleged breaches of the rent-to-own agreements and money judgments were entered against Settlement Class Members. As part of this Agreement, CLMG is cancelling any debt it contends was owed to it arising out of the rent-to-own agreements and relinquishing any claim it may have on the storage sheds belonging to the Class Members. As such, for Class Members who still owed money for their storage sheds, that debt will be eliminated. CLMG will cancel any non-satisfied judgments obtained against Settlement Class Members. Between both the *Greene* and *Bland* classes, $669,522.33 in debt will be cancelled and those Class Members will have no further liability and will be permitted to retain ownership of storage buildings with no further payments. This non-monetary relief is also a significant benefit to Settlement Class Members.

D. Releases

Article XI of the Settlement Agreement sets out that all claims that have been asserted in this action are released by the Settlement Class Members. Settlement Class Members who do not request exclusion or opt-out from the Settlement Class will release claims that were raised in the instant action, but no others.

E. Administration of Notice and Claims

The Settlement Agreement specifies a notice program by which the Settlement Administrator will issue notices directly to the Settlement Class Members to inform them of the Settlement and their rights. Members of the Class will receive notice by first-class mail.

The primary form of notice for the Settlement will be first-class mail because Settling Defendants' records contain mailing addresses for Settlement Class Members. The Settlement Administrator will conduct a national change-of-address search for all potential Settlement Class Members before the initial mailing. An address locator search will be performed on the notices returned as undeliverable.

Additionally, the Settlement Administrator will establish and maintain an informational website regarding the Settlement. The website link will be identified in the Class Notice. The Settlement Website will include the Amended Class Action Counterclaim, key pleadings, the Settlement Agreement and all Exhibits thereto, the Preliminary Approval Order, the Class Notice, and any other material agreed to by the parties or required by the Court. The Settlement Website will also have an

agreed "Frequently Asked Questions" section. The Settlement Website will allow Class Members to update their address and contact information and request electronic payments rather than payment by paper check, if so desired.

F. Exclusions and Objections

Settlement Class Members may request exclusion from the Settlement by sending a written request to the Settlement Administrator at the address designated in the Class Notice. The request for exclusion must be postmarked no later than fifteen days before the Fairness Hearing.

Any Settlement Class Member who has not opted out may submit a written objection to the Settlement Agreement. Appropriate documents must be filed with the Court no later than twenty-one (21) days before the date scheduled for the Fairness Hearing. The Class Notice will specify the information necessary for a valid objection to the Settlement.

G. Deadlines Contemplated by the Settlement Agreement

Should the Court order that Notice be directed to the Settlement Class, the following table sets out the deadlines proposed in the Settlement Agreement:

EVENT	PROPOSED DEADLINE
Deadline for mailing Notice	14 days following entry of the Preliminary Approval Order (the "Notice Deadline")
Defendants pay $1,001,671.13 to the *Greene* Settlement Fund	7 days following entry of the Preliminary Approval Order
Fee Petition & Motion for Service Award filed	35 days prior to Final Approval Hearing
Deadline to object to Settlement	21 days prior to Fairness Hearing Date (the "Objection Deadline")

Deadline to opt-out or request exclusion from Settlement	15 days prior to Fairness Hearing (the "Opt-Out" Deadline
Motion for Final Approval of the Settlement filed with the Court	14 days prior to the Final Approval Hearing
Final Approval Hearing	Date selected by the Court
Effective Date	3 business days after the last of the following has occurred: (a) Final Approval Order entered and no motion to alter/amend is timely filed; (b) Final Approval Order entered and no appeal is timely filed; (c) if a motion to alter/amend or an appeal is filed, the determination of such motion on appeal.

IV. ARGUMENT IN FAVOR OF CONDITIONALLY CERTIFYING THE CLASS AND GRANTING PRELIMINARY APPROVAL OF THE CLASS SETTLEMENT.

It is long settled that "compromises of disputed claims are favored by the courts." *Williams v. First Nat'l Bank of Pauls Valley*, 216 U.S. 582, 585 (1910); *Fisher v. John L. Roper Lumber Co.,* 183 N.C. 485, 111 S.E. 857, 859 (1922); *North Carolina Baptist Hospitals, Inc. v. Mitchell*, 323 N.C. 528, 533, 374 S.E.2d 844, 846 (1988). "This preference for settlement applies to class actions." *Ehrenhaus v. Baker*, 216 N.C. App. 59, 72, 717 S.E.2d 9, 19 (2011). But, due to the unique due process concerns implicated by binding a group of individuals not before the court, the parties may not settle a class action without court approval. N.C. R. Civ. P. 23(c); *Ehrenhaus v. Baker,* 216 N.C. App. 59, 72, 717 S.E.2d 9, 19 (2011).

As such, a trial court should follow the two-step procedure generally employed by the federal courts when evaluating a class action settlement. *Ehrenhaus v. Baker*, 216 N.C. App. 59, 73, 717 S.E.2d 9, 19 (2011). In doing so, the trial court should first conduct a "preliminary approval or pre-notification hearing to determine whether the proposed settlement is 'within the range of possible approval' or, in other words, whether there is 'probable cause' to notify the class of the proposed settlement." *Id.* (quoting *Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* 855 F. Supp. 825, 827 (E.D.N.C. 1994)); *In re PokerTek*, No. 14 CVS 10579, 2015 WL 270210, at *5 (N.C. Super. Jan. 22, 2015); *Bennett v. Com. Coll. of Asheboro, Inc.*, No. 15 CVS 7444, 2016 WL 1118739, at *2 (N.C. Super. Mar. 22, 2016); *Chambers v. Moses H. Cone Mem'l Hosp.*, No. 12 CVS 6126, 2022 WL 11147910, at *2 (N.C. Super. Oct. 19, 2022). If the trial court grants preliminary approval, "notice is sent to the class, [and] the court later conducts a 'fairness hearing, at which all interested parties are afforded an opportunity to be heard on the proposed settlement." *Ehrenhaus*, 216 N.C. App. at 73, 717 S.E.2d at 19 (2011).

In this case, Mr. Greene submits that the proposed settlement class should be conditionally certified because the requirements of Rule 23 of the North Carolina Rules of Civil Procedure are satisfied and notice should be directed to the class informing the class of the settlement because the proposed settlement is fair, reasonable, and adequate.

A. The Settlement Class Meets Rule 23 Standards and Should be Conditionally Certified for Settlement Purposes

In order to certify a class under Rule 23, the moving party must establish:

(1) the existence of a class (i.e. that shared issues of law or fact predominate over individual issues);

(2) the named representative(s) are adequate representatives (i.e. they will fairly and adequately represent the class, there is no conflict of interest between the named representative(s) and the class, there is no conflict of interest between named representatives and the class, and the named parties have a genuine personal interest in the outcome of the case);

(3) class members are so numerous that joinder is impractical;

(4) adequate notice can be given to the class; and

(5) a class action is superior to individual actions.

Crow v. Citicorp. Acceptance Co., 319 N.C. 274, 282, 354 S.E.2d 459, 465 (1987); *Faulkenbury v. Teachers' & State Emps.' Ret. Sys.,* 345 N.C. 683, 697, 483 S.E.2d 422, 431 (1997). These class action certification requirements are properly considered when determining whether to certify a class for settlement purposes. *See, e.g., Elliott v. KB Home N. Carolina, Inc.,* No. 08-CvS 21190, 2017 WL 1499938, at *2 (N.C. Super. Apr. 17, 2017); *Moss v. Towell,* No. 16 CvS 11038, 2018 WL 1189088, at *3 (N.C. Super. Mar. 6, 2018).

1. Existence of a Class

A proper class exists when the named and unnamed members each have an interest in either the same issue of law or of fact, and that issue predominates over issues affecting only individual class members. *McMillan v. Blue Ridge Companies, Inc.*, 379 N.C. 488, 492, 866 S.E.2d 700, 704 (2021). In the present case, Plaintiff has established that multiple common issues of law and fact are shared by Mr. Greene and the unnamed class members. As alleged in Mr. Greene's Amended Class

Counterclaim and Motion for Class Certification, common issues of law or fact include the following:

1) Is the form contract to purchase a storage shed entered into between Mr. Greene and CLMG a "consumer credit sale" under North Carolina's Retail Installment Act (NCRISA)?

2) Does CLMG charge interest or a finance charge greater than what is legally permitted under NCRISA?

3) Do CLMG's demands for money pursuant to a contract that violates NCRISA constitute debt collection violations under Chapter 75, Article Two of the General Statutes?

See Am. Ans. & Class Counterclaim ¶ 32; Mot. for Class Certification ¶ 8 (May 23, 2022). Moreover, the United States District Court for the Eastern District of North Carolina has certified for settlement purposes the exact class proposed by Plaintiff herein, except that the class proposed here covers debt collection activity from April 8, 2017, through March 9, 2018, and the *Bland* class covers the time period from March, 10, 2018, through the present.

Plaintiff previously moved for class certification by motion filed on May 23, 2022. As an exhibit to that motion, Plaintiff included a stipulation from CLMG that over 100 contracts existed for the lease/purchase of personal property between CLMG and consumers residing in North Carolina similar in form to Mr. Greene's contract. As indicated in the Settlement Agreement, there are in fact 3,933 class members who had entered into contracts like Mr. Greene's with CLMG and who were subjected to debt collection activity within the proposed class period. Each class member must have the above-listed common questions of law and fact

answered in the affirmative to prevail on a claim asserted against CLMG, so those issues predominate over individual issues, thus establishing a class.

Plaintiff has demonstrated the existence of a class of people that have an interest in the same issue of law or of fact which predominate over issues affecting individual class members capable of resolution "in one stroke." *Dewalt v. Hooks,* 382 N.C. 340, 344, 879 S.E.2d 179, 183 (2022) (citing *Wal-Mart Stores, Inc. v. Dukes,* 564 U.S. 338, 350, 131 S.Ct. 2541, 180 L.Ed.2d 374 (2011); *Fisher v. Flue-Cured Tobacco Coop. Stabilization Corp.*, 369 N.C. 202, 209, 794 S.E.2d 699, 703 (2016).

2. Numerosity and Impracticality.

In the present case, the Settlement Class is sufficiently numerous. Rule 23(a) requires that a class be "so numerous as to make it impracticable to bring them all before the court." N.C. R. Civ. P. 23(a). The North Carolina Supreme Court has stated that "[i]t is not necessary that they demonstrate the impossibility of joining class members, but [the plaintiff] must demonstrate substantial difficulty or inconvenience in joining all members of the class." *Crow v. Citicorp Accept. Co.*, *supra*, 319 N.C. 274, 283, 354 S.E.2d 459, 466 (1987); G. Gray Wilson, *North Carolina Civil Procedure*, Ch. 23, § 23-3 (Matthew Bender).

According to information provided by CLMG during the course of settlement discussions, for the *Greene* class, there are 3,933 members. While no set number is required to maintain a class action, a class of 14 members was allowed to proceed in *English v. Holden Beach Realty Corp.,* 41 N.C. App. 1, 10, 254 S.E.2d 223, 231, *cert. denied* 297 N.C. 609, 257 S.E.2d 217 (1979) *overruled on other grounds Crow v.*

Citicorp Accept. Co., *supra*, 319 N.C. 274, 283, 354 S.E.2d 459, 466 (1987). It can hardly be questioned that 3,933 class members is sufficient to satisfy the numerosity requirement of Rule 23(a).

Moreover, records from the Administrative Office of the Courts as well as from CLMG indicate that class members are located all over the state of North Carolina. As such, joinder of all putative parties in a direct action as opposed to a class action would entail substantial difficulty and inconvenience not only for the court but for the consumers as well. Consolidating numerous cases in one action in one location would require consumers to travel possibly hundreds of miles to attend court hearings or other matters related to the case along with the attendant expenses. As such, joinder of all persons who may have a claim against CLMG would be cumbersome, impractical and ineffective.

Plaintiff Greene has demonstrated that the numerosity and impracticality requirements of Rule 23(a) are met and support certifying this case as a class action for settlement purposes.

3. Adequacy of Representative.

Rule 23(a) requires that anyone who litigates on behalf of a class must "fairly insure the adequate representation of all." In this case, Mr. Greene has no conflict of interest with the members of the class. His claim is essentially the same as the unnamed class members' claims: namely, that CLMG sought to collect sums that it was not entitled to collect in violation of North Carolina's debt collection act because the contract violated North Carolina's RISA. He was sued in a replevin action by

CLMG for the storage shed he was purchasing from CLMG, so Mr. Greene has a genuine personal interest in the outcome of this case. Additionally, his claim will be treated as every other class member's claim through this settlement. As such, there are no fundamental conflicts between the named Plaintiff and other class members.

As befits a class representative, he has actively participated in the litigation. Mr. Greene has met with counsel on numerous occasions to discuss the facts and legal issues of the case. Mr. Greene attended the initial court hearing held in this case in March 2021, and he attended the class certification hearing held on February 13, 2023. He has been very attentive to any requests for additional information relevant to his own claims and that of the class members. Moreover, Mr. Greene has put the interests of the class members ahead of his own, as detailed in his affidavit filed with this Court on October 10, 2022.

4. *The Proposed Class Notice Form and Plan Satisfy the Requirements of this Court.*

Though not specifically stated in Rule 23, adequate notice of the class action must be given to the class members. *Crow v. Citicorp Accept. Co.*, 319 N.C. 274, 283, 354 S.E.2d 459, 466 (1987). This is true of a conditional certification for purposes of settlement under Rule 23(c). N.C. R. Civ. P. 23(c). The manner and form of notice is left to the discretion of the trial court but the trial court should require "the best notice practical under the circumstances, including notice to all members who can be identified with reasonable efforts, although it need not comply with the formalities of service of process." *Crow v. Citicorp. Acceptance Co.*, 319 N.C. 274,

283-84, 354 S.E.2d 459, 466 (1987); *see also Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 173 (1974).

In this action as well as the *Bland* action, Settling Defendants have records detailing the mailing addresses of the Class Members. At the commencement of the Notice Period, the Settlement Administrator will execute the Notice Plan specified in the Agreement which satisfies due process concerns.

All class members will be sent a postcard explaining the gist of the settlement and directing them to a website (via QR Code) for more complete information, including the long-form notice, the Agreement, and case documents. This postcard notice is attached to the Settlement Agreement as the last two pages of Exhibit C. Class members are generally more likely to notice and read postcard notices than long-form notices that arrive in an envelope which may be discarded as junk mail. For each postcard Class Notice returned to the Settlement Administrator without forwarding addresses, the Settlement Administrator will use publicly available databases as practicable to update addresses for the members of the Settlement Class and will re-mail the Class Notice to those Settlement Class Members who can be located. The Settlement Administrator will set up a Settlement website which will host relevant case documents, such as the Amended Answer and Counterclaim and this Motion, as well as information for Settlement Class Members who have any questions about the settlement. A toll-free number will also be established with recorded information about the settlement for Class

Members who may have literacy or other barriers to understanding the written notice.

The proposed Notice, Exhibit C to the Settlement Agreement, provides clear, accurate information as to: (1) a summary of the complaint and the nature and principal terms of the Settlement; (2) the definitions of the Settlement Class; (3) the claims alleged; (4) the procedures and deadlines for opting-out of the proposed Settlement or submitting objections and the date, time, and place of the Final Approval Hearing; and (5) the consequences of taking or foregoing the options available to Class Members. The proposed Notice will also inform Class Members about the class representative service awards and attorneys' fees and costs that may be sought by Plaintiffs' Counsel and the identities and contact information for Class Counsel, Counsel for Defendant, and the Court.

The Notice Program complies with the standards of fairness, completeness, and neutrality required of a settlement class notice disseminated under the authority of the Court.

5. Certification for Settlement Purposes is Superior

Finally, with the above requirements satisfied, the trial court must consider whether a class action is superior to other available methods for the adjudication of the controversy. G. Gray Wilson, *North Carolina Civil Procedure*, Ch. 23, § 23-5 (Matthew Bender). The North Carolina Supreme Court has noted that "[c]lass actions should be permitted where they are likely to serve useful purposes such as

preventing a multiplicity of suits or inconsistent results." *McMillan v. Blue Ridge Companies, Inc.*, 379 N.C. 488, 499, 866 S.E.2d 700, 709 (2021).

In *Bland*, the sister case pending before the United States District Court for the Eastern District of North Carolina, that court has concluded that resolving this matter through a class action settlement is superior than a multitude of lawsuits. Federal Rule 23(b) specifies four enumerated factors for a court to consider and are useful for consideration here. Those factors are:

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
> (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
> (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3).

As to the first factor, there has been no interest among individual Class Members in bringing individual affirmative actions. As one Court noted:

> Such individualized lawsuits would be financially burdensome and many plaintiffs may not have the means or ability to prosecute their claims separately. On the other hand, the advantages of determining the common issues by means of a class action are evident, as all employees in the class could finalize their claims in one proceeding rather than in hundreds of individual suits.

Romero v. Mountaire Farms, Inc., 796 F.Supp.2d 700, 716-17 (E.D.N.C. 2011). Further, Class Members may be unaware of their rights as to the claims raised by Plaintiff or unable to locate counsel willing to pursue their claims. As such, absent Class Members have an interest in Plaintiff pursuing these claims on a representative basis thus satisfying the first factor.

As for the second factor, neither Plaintiff nor Defendant are aware of other individual actions raising the legal issues presented in this case. The *Bland* class case is being settled simultaneously with this case. The settlement of both cases is contingent upon each court in which the actions are pending approving the respective settlements. *Settlement Agreement*, Article XIII ¶ I. Based on the lack of other cases raising the same or similar issues, the second factor supporting class certification is satisfied.

As to factor three, Plaintiff resides in Jones County and the issues raised by Plaintiff are limited to issues of state law that only affect persons who lived in North Carolina when they entered into a rent-to-own agreement with CLMG. It is believed that the vast majority of Class Members continue to reside in North Carolina so that this Court is an appropriate forum to resolve these issues. Finally, because this action arises from Defendant's standard form contracts for the lease of personal property and common collection activities, it presents a quintessential case suitable for aggregate treatment.

B. Appointment of Class Counsel

North Carolina's Rule 23 does not contain a provision pertaining to the appointment of counsel. The court may look to federal Rule 23(g). In determining whether to appoint counsel to represent the class, courts consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;
(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class[.]

Fed. R. Civ. P. 23(g)(1)(A). As shown in the declarations of Adrian M. Lapas, Charles M. Delbaum, and Jennifer S. Wagner, attached as Exhibits 2A, 2B, 2C to the Motion, proposed class counsel satisfy the requirements for class counsel.

C. The Proposed Settlement is Fair, Adequate, and Reasonable

When presented with a proposed class action settlement under Rule 23(c), a trial court should follow the two-step procedure generally employed by the federal courts—preliminary approval, if appropriate, followed by a fairness hearing after notice to the class. *Ehrenhaus v. Baker*, 216 N.C. App. 59, 73, 717 S.E.2d 9, 19 (2011). At the preliminary approval stage, the settlement must be "within the range of possible approval or, in other words, . . . there [must be] probable cause to notify the class of the proposed settlement." *Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* 855 F.Supp. 825, 827 (E.D.N.C. 1994) (citations omitted). The proposed Settlement warrants preliminary judicial approval as it is fair, adequate and reasonable.

The fairness analysis is intended primarily to ensure that a "settlement [is] reached as a result of good-faith bargaining at arm's length, without collusion." *1988 Trust for Allen Children Dated 8/8/88 v. Banner Life Ins. Co.,* 28 F.4th 513, 521 (4th Cir. 2022); *Berry v. Shulman*, 807 F.3d 600, 614 (4th Cir. 2015). Here, there is no hint of collusion. The proposed Settlement is the product of substantial good faith negotiations between informed counsel and reached after extensive litigation in this case and in the *Bland* case.

Moreover, in following *Ehrenhaus'* direction to generally follow the federal courts in assessing a class action settlement, the Settlement Agreement herein also satisfies the United States Court of Appeals for the Fourth Circuit's test of adequacy. In considering a settlement's adequacy, courts in the Fourth Circuit weighs the settlement amount recovered against:

> (1) The relative strength of the plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial; (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement.

In re Lumber Liquidators, 952 F.3d 471, 484 (4th Cir. 2020); *Horton,* 855 F. Supp. at 828. These factors weigh heavily in favor of finding the proposed Settlement adequate.

1. Strengths of Plaintiff's Case and Consideration of Defendant's Defenses Weigh in Favor of the Settlement

While Plaintiff Greene believes strongly in his case, continued litigation poses risks that cannot be disregarded. Plaintiff raised claims under North Carolina's RISA, and related claims under the Unfair and Deceptive Trade Practices Act (UDTPA) and Debt Collection Act (DCA), most of which have not been litigated in the state or federal courts. At the time of settlement, Plaintiff's Motion for Class Certification had been pending before the court without written disposition for over two years. Additionally, this Court has not yet entered a written ruling on whether the Plaintiff's UDTPA claim is time-barred or not or whether the contracts are illegal and/or void under RISA. These issues will also necessarily

affect Plaintiff's debt collection claim and that of the class. CLMG also raised an issue of Mr. Greene's capacity to serve as a class representative for claims that may or may not be barred by the applicable statute of limitations. Finally, in the *Bland* matter, CLMG filed a motion for judgment on the pleadings shortly before this settlement was reached. It is anticipated that CLMG would file a similar motion in the *Greene* matter pursuing additional defenses not previously raised.

2. Anticipated Duration and Expense of Continued Litigation

This case has been pending as a class counterclaim since April 2021. Should this case continue, as an initial matter, either party has the right to appeal the granting or denial of class certification directly to the North Carolina Supreme Court. N.C. Gen. Stat § 7A-27. That alone would likely tack on an additional two years to a case that has already been pending for over four years.

Additionally, Plaintiff Greene would then face additional dispositive motions and trial. After a judgment, it is anticipated that the losing party would appeal. This case would thus be likely to continue for several years and with significant cost to the parties. During this time, Class Members will become more difficult to locate and the value of any available relief would be reduced.

As courts have recognized, "[t]here is a strong judicial policy in favor of settlement, in order to conserve scare resources that would otherwise be devoted to protracted litigation." *Covarrubias v. Capt. Charlie's Seafood, Inc.*, 2:10-CV-10-F, 2011 WL 2690531, at *2 (E.D.N.C. July 6, 2011). Plaintiffs submit that the

anticipated duration and expense of continued litigation supports the adequacy of the settlement.

3. Defendants' Solvency and Degree of Opposition to Settlement

At this point, Settling Defendants' solvency is a neutral factor. Based on representations of the parties, the settlement can be funded, and CLMG has already funded nearly $7 million in the *Bland* case. However, CLMG is a closely held LLC and continued litigation will possibly impair its ability to fund a class-wide judgment.

Plaintiff does not anticipate opposition to the Settlement. The Settlement Agreement, if approved, will provide substantial benefits to the Class Members. Under the Settlement, eligible Class Members are assured payment from a Settlement Fund of $1,001,671.13 as relief for payments they made over the course of several months eight years ago. The vast majority of Class Members will receive payments averaging over $600 from the *Bland* Class and over $160 from the *Greene* Class. The Settlement further provides that Settling Defendants will discontinue any collection activities including any attempts at repossession and cancelling any monetary judgments obtained against Class Members. This Settlement would put money in Settlement Class Members' pockets much sooner than continued litigation and is attuned to the alleged specific harm caused to the Settlement Class—payment on illegal contracts.

Given the litigation risks and the complexity of the underlying issues, the proposed Settlement ensures an immediate and meaningful recovery. Plaintiff and

his counsel respectfully submit that the proposed Settlement is fair, reasonable, and adequate so that notice of the Settlement should be sent to the Settlement Class and final approval set for a fairness hearing.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court

(i) preliminarily approve the proposed Settlement Agreement pursuant to Rule 23(c), finding that the terms of the Agreement appear to be fair, reasonable and adequate as to the Class;

(ii) conditionally certify the proposed Settlement Class;

(iii) approve the proposed form and method of Class Notice as consistent with due process and sufficient under Rule 23;

(iv) establish requirements for objections to the Agreement as set forth in the Agreement Article VI;

(v) approve the opt out procedure as set forth in Agreement Article VI.9;

(vi) set a deadline for filing Plaintiffs' motion for attorneys' fees, costs, and service awards;

(vii) schedule a fairness hearing to consider final approval of the proposed Settlement and approval of attorneys' fees, costs, and service awards for the class representatives.

Respectfully submitted, this the 18th day of August, 2025.

LAPAS LAW OFFICES, PLLC

By: *s/ Adrian M. Lapas*
Adrian M. Lapas
Attorney for Plaintiffs
Post Office Box 10688
Goldsboro, NC 27532
Telephone: (919) 583-5400
Facsimile: (919) 882-1777
N.C. State Bar No.: 20022
Email: adrian@lapaslaw.com

NATIONAL CONSUMER LAW CENTER

By: *s/ Jennifer S. Wagner*
Jennifer S. Wagner
W.V. Bar No. 10639
Email: jwagner@nclc.org

By: *s/ Charles M. Delbaum*
Charles M. Delbaum
Mass. Bar No. 543225
Email: cdelbaum@nclc.org
7 Winthrop Square
Boston, MA 02110
Telephone: (617) 226 0313
Facsimile: (617) 542-8028

CERTIFICATE OF SERVICE

The undersigned does hereby certify that the foregoing PLAINTIFFS' UNOPPOSED MOTION FOR ORDER CERTIFYING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFYING THE CLASS FOR PURPOSES OF SETTLEMENT AND DIRECTING NOTICE TO CLASS was served by, unless an alternative method is specified below, by depositing a copy of the foregoing in the care and custody of the United States Postal Service, first-class postage pre-paid, and addressed to the parties or counsel for the parties below:

Mr. Jonathan Williams
Mr. Craig Martin
Cedar Grove Law
Post Office Box 1389
Hillsborough, NC 27278
(Via email per counsel's request)

This the 18th day of August, 2025.

LAPAS LAW OFFICES, PLLC

By: *s/ Adrian M. Lapas*
Adrian M. Lapas
Attorney for Plaintiffs