

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

MARLYATOU DIALLO *on behalf of herself and
others similarly situated,*

Plaintiff,

v.

IMMEDIATE CREDIT RECOVERY, INC.,

Defendant.

No.: 18-cv-470(KAM)(SJB)

CLASS SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by Plaintiff Marlyatou Diallo (“Representative Plaintiff”), acting individually and on behalf of the Settlement Class defined below, and Defendant Immediate Credit Recovery, Inc. (“ICR”). This Settlement Agreement is subject to preliminary and final approval by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

I. RECITALS

1. On January 23, 2018, Representative Plaintiff filed a putative class action Complaint in the United States District Court for the Eastern District of New York, alleging that ICR violated the Fair Debt Collection Practices Act 15 U.S.C. § 1692, et seq. (“FDCPA”) state laws with respect to certain collection fees that Plaintiff contended were not owed. ECF Doc. 1.

2. The Complaint was subsequently amended. ECF Doc. 25.

3. Early informal and mediated settlement efforts were unsuccessful and the parties litigated the case extensively over the next several years, including extensive document discovery, party depositions, multiple third party depositions, numerous meet and confers regarding discovery issues and related evidentiary issues, and pre-motion letters and/or formal motion practice

regarding amendment of the complaint, merits issues, bifurcation of discovery and regarding multiple discovery/production issues, and multiple court appearances.

4. On March 15, 2021, the parties participated in a second mediation and, with the assistance of mediator James Ryan, Esq. of Cullen and Dykman LLP, the Parties -- after extensive negotiation -- reached a class settlement in principle, confirmed by a term sheet and by a notice of settlement filed with the Court (ECF Doc. 66). The settlement was reached after the mediator, with the benefit of briefing and input from both sides, made a mediator's proposal, which was accepted by the parties.

5. ICR has entered into this Agreement to resolve any and all controversies and disputes arising out of or relating to the allegations made in the Complaint, and to avoid the burden, risk and expense of further litigation. ICR does not in any way acknowledge, admit to or concede any of the allegations made in the Complaint, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Complaint, and maintains that it has a number of meritorious defenses to the claims. Nevertheless, ICR recognizes the risks and uncertainties inherent in litigation, the significant expense associated with defending class actions, the costs of any appeal, and the disruption to its business operations arising out of this litigation. It also recognizes the danger which a successful trial on class-wide claims might present to it. Accordingly, ICR believes that settlement is in its best interests. Nothing contained in this Agreement shall be used or construed as an admission of liability. This Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature other than to enforce the terms of this Agreement.

6. Representative Plaintiff has entered into this Agreement to avoid the risk, delay,

and uncertainty of continued litigation. Representative Plaintiff does not in any way concede the claims alleged in the Complaint lack merit or are subject to any valid defenses.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into and are an integral part of this Agreement, and in consideration of the mutual promises below, the Parties agree that the Action and all claims of the Representative Plaintiff and the proposed Settlement Class are settled, compromised, and dismissed on the merits and with prejudice as to ICR, subject to Court approval as required by Rule 23 of the Federal Rules of Civil Procedure, on the following terms and conditions:

II. TERMS OF THE SETTLEMENT

7. **Definitions:** As used in this Agreement, the following terms have the following meanings:
- a. “Action” means and refers to the action styled *Diallo et al. v. Immediate Credit Recovery, Inc.*, Civil Action No. 1:18-cv-00470-KAM-SJB (E.D.N.Y.).
 - b. “Class Counsel” or “Plaintiff’s Counsel” means Daniel Schlanger, Esq. and Evan Rothfarb, Esq. of Schlanger Law Group, LLP and Abel L. Pierre of Law Offices of Abel L. Pierre, P.C.
 - c. “Class Member List” means the list of individuals who are within the Settlement Class, as defined below and not otherwise excluded, that is to be compiled by ICR and provided to Class Counsel and the Settlement Administrator.
 - d. “Complaint” refers to the First Amended Complaint filed in the Action.
 - e. “Court” means the United States District Court for the Eastern District of New York.

- f. “Effective Date” means the earliest of (i) the date of Final Approval, if no Class Member objects to or intervenes in the Settlement; (ii) thirty (30) days after the date of Final Approval, if a Class Member objects to the Settlement but no appeal by a Class Member is filed; (iii) the date of the final affirmance on appeal, if a Class Member objects to the Settlement and an appeal is filed; or (iv) the final dismissal of any appeal.
- g. “Final Approval” means the order approving the Settlement and certifying the Settlement Class as final.
- h. “Fairness Hearing” refers to the hearing at which the Court shall:
 - i. determine whether to grant final approval to this Settlement;
 - ii. consider any timely objections to this Settlement and all responses thereto;
and
 - iii. consider requests for an incentive award to the Representative Plaintiff, and Class Counsel’s fees and expenses.
- i. “Notice of Proposed Class Action Settlement” means the notice to Settlement Class Members approved by the Court in the Preliminary Order.
- j. “Parties” means the Representative Plaintiff and ICR.
- k. “Person” means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government, or any political subdivision or agency thereof, and any business or legal entity and their spouses, former spouses, heirs, executors, administrators, predecessors, successors, representatives, agents, partners, and assignees.

- l. “Preliminary Approval Date” means the date the Court enters the Preliminary Order approving the Settlement.
- m. “Preliminary Order” means that certain order entered by the Court, preliminarily approving the Settlement, provisionally certifying the Settlement Class, and approving notice to Settlement Class Members.
- n. “Released Claims” means and includes any and all charges, complaints, claims, debts, liabilities, demands, obligations, costs, expenses, actions, and causes of action of every nature, character, and description, whether known or unknown, asserted or unasserted, suspected or unsuspected, fixed or contingent, pled in the Action or unpled in the Action, which Representative Plaintiff and those Settlement Class Members who do not opt-out now have, own or hold against ICR that arise out of a common nucleus of operative fact relating to Defendant’s charging of collection fees to members of the Settlement Class in the course of collecting debts or purported debts on behalf of New York City College of Technology.
- o. “Released Persons” means ICR and its past and present agents, directors, officers, employees, shareholders, members, managers, insurers, representatives, attorneys, predecessors, successors and assigns, parents and subsidiaries, divisions, and affiliates.
- p. “Representative Plaintiff” refers to Marlyatou Diallo.
- q. “Settlement” refers to the settlement, release, and final dismissal of claims contemplated by this Settlement Agreement.
- r. “Settlement Administrator” means American Legal Claim Services LLC.

- s. “Settlement Class”, “Class” and “Settlement Class Members” means only those persons included within the Settlement Class as defined below and who are not otherwise excluded.
- t. “Gross Settlement Fund” means the total sum of \$850,000.00 (eight hundred and fifty thousand dollars) that ICR will pay to settle the Litigation and obtain a release of all Released Claims as described herein.
- u. “Net Settlement Fund” shall mean the Gross Settlement Fund less all amounts approved by the Court with regard to Representative Plaintiff’s Incentive Award and Class Counsel’s attorney’s fees and costs, as set forth in more detail below.
- v. “ICR” means Immediate Credit Recovery, Inc.

8. **Conditional Class Certification.** For purposes of this Settlement only and its implementation, the Parties hereby stipulate and agree that this Action may be certified as a class action under Fed. R. Civ. P. 23(b)(3) in accordance with the terms of this Settlement Agreement. This stipulation and agreement is without prejudice to ICR’s right to contest class certification in the event this Settlement Agreement is not fully implemented in accordance with its terms. If this Settlement Agreement is not approved or otherwise fails to be fully implemented, ICR reserves all of its rights to object to any subsequent motion to certify a class in this Action and no representation or concession made in connection with the Settlement or in this Settlement Agreement shall be considered law of the case or an admission by ICR or give rise to any form of estoppel or waiver by ICR in this Action or any other proceeding. ICR does not agree to certification of the Settlement Class for any purpose other than to effectuate this Settlement Agreement. If this Settlement Agreement is approved, no representation or concession made in connection with the Settlement or in this Settlement Agreement shall be considered to have *res*

judicata or collateral estoppel effect against ICR or to be an admission by ICR or to give rise to any form of estoppel or waiver by ICR in any other proceeding.

9. **Settlement Class.**

A. The Settlement Class:

The Parties hereby stipulate and agree that the Settlement Class shall be defined as follows:

All individuals who -- within the three years preceding commencement of this action (ECF Doc. 1) -- were sent a letter by ICR on behalf of New York City College of Technology, that sought collection of a balance that purported to include collection fees.

B. Exclusions:

Excluded from the Settlement Class and all subclasses are: (i) Any individual who now is, or ever has been, an officer of ICR as well as the spouses, parents, siblings and children of all such individuals; (ii) Any Judge of the United States District Court for the Eastern District of New York, as well as his or her immediate family and staff.

10. **Class Counsel.** The Parties agree that Daniel A. Schlanger, Esq. and Evan S. Rothfarb of Schlanger Law Group LLP, and Abel S. Pierre of Law Offices of Abel S. Pierre, P.C. shall be appointed Class Counsel, without prejudice to ICR's right to contest the appointment as Class Counsel in the event that this Settlement Agreement is not fully implemented in accordance with its terms.

11. **Class Member List.**

- a. Within 7 days of execution of this Agreement, Class Counsel will – based on spreadsheets and account data produced by Defendant during the course of discovery – provide to ICR's counsel a Class List including all information necessary to calculate each Settlement Class Member's pro rata share of the Net Settlement Fund as well as all information necessary to effect notice, i.e. the Class

List. Within 10 days of receipt of this data, ICR shall confirm after reasonable inquiry and due diligence that it believes in good faith that the data constituting the Class List is materially accurate.

- b. ICR represents that the Settlement Class comprises of approximately seven thousand eight (7,008) individual consumers who meet the Settlement Class definition.
- c. Within 10 days of receipt of the proposed Class List, ICR will provide Class Counsel with a sworn affidavit generally describing the methodology and the work done to confirm the Class List.
- d. To the extent the parties have any dispute regarding the Class List, the Parties shall meet and confer. To the extent the Parties' meet and confer does not resolve any differences with regard to the Class List or the affidavit referenced above, the parties shall submit their dispute to the Court for a determination.
- e. Representative Plaintiff, Class Counsel, and the Settlement Administrator agree and acknowledge that the Class Member List contains certain confidential information and that the account information identified in the Class Member List constitutes confidential material. Therefore, Representative Plaintiff, Class Counsel, and the Settlement Administrator agree to treat the Class Member List as confidential and to use the Class Member List and the information contained therein solely for the purpose of providing the settlement benefits offered by this Settlement Agreement to Settlement Class Members and otherwise implementing the terms of this Settlement Agreement (including, if applicable, responding to any objections) and for no other purpose whatsoever. Except to the extent authorized

by this Settlement Agreement, Representative Plaintiff, Class Counsel, and the Settlement Administrator further agree not to disclose the Class Member List or any of the information contained in the Class Member List to Settlement Class Members or any third party, except pursuant to a valid subpoena. Class Counsel and the Settlement Administrator may, however, disclose to any individual Settlement Class Member information related to that Settlement Class Member's account contained on the Class Member List, and may disclose to any consumer who is not a Class Member and who inquires, that he or she is not on the Class List. Notwithstanding any contrary language contained in this Settlement Agreement, the provisions of this paragraph shall survive any termination or modification of this Settlement Agreement and shall continue to be binding regardless of whether or not the Settlement is fully implemented.

12. **Class Relief.**

a. **Creation of Gross Settlement Fund:** Subject to the approval and further order of the Court, ICR shall pay the sum of Eight Hundred Fifty Thousand Dollars (\$850,000.00) (the "Gross Settlement Fund") in settlement of all claims, inclusive of all relief to the class, as well as all attorney's fees and costs, and the Service Award to the Class Representative, but not including the cost of Class Administration. Specifically, the Gross Settlement Fund shall be used for the following purposes:

- payment and distribution of all Cash Awards to Settlement Class Members, pursuant to Section 12(d) hereof;
- payment of the Court-ordered Incentive Payment to the Representative,

Plaintiff, pursuant to Section 17 hereof; and

- payment of the Court-ordered award of Class Counsel's attorneys' fees, costs, and expenses pursuant to Section 26 hereof;

b. **Deposit of Gross Settlement Fund.** ICR shall transfer the Gross Settlement Fund to the Settlement Administrator (to be held in an interest bearing escrow account or a Qualified Settlement Fund/468B Settlement Trust) within fifteen (15) days after Final Approval. In the event the Settlement is not approved by the Court, this Agreement is terminated by either party as provided in Paragraph 23 of this Agreement or the Settlement is not fully implemented for any reason (other than any failure or refusal of ICR to abide by and implement in good faith its terms without legal justification, as determined by the Court) and ICR already transferred the Gross Settlement Fund to the Settlement Administrator, the Gross Settlement Fund (including accrued interest, if any), less expenses actually incurred by the Settlement Administrator or due and owing to the Settlement Administrator in connection with the Settlement, shall be refunded to ICR within two (2) business days.

c. **Calculation of the Net Settlement Fund.** Net Settlement Fund is equal to the Gross Settlement Fund plus any interest earned on that fund, less the following:

- the amount of the Court-ordered Service Award to the Representative Plaintiff;
- the amount of the Court-ordered award of Class Counsel's attorneys' fees, costs, and expenses.

d. **Distribution of the Net Settlement Fund:** The Net Settlement Fund shall be

distributed (by check) by the Settlement Class Administrator pro-rata to Settlement Class members based on each Settlement Class Members' alleged actual damages as determined by Class Counsel according to the data provided in the Settlement Class List. The parties agree that no Settlement Class Member shall receive less than \$50 and that to the extent that any Settlement Class Member's pro rata share, without adjustment, equals less than \$50, it shall be "grossed up" to \$50. Any such adjustment will not lead to an increase in the Gross Settlement Fund or Net Settlement Fund but rather will be addressed by adjusting the pro rata shares of the other Settlement Class Members.

- e. **Negotiation of Checks.** Each check issued pursuant to this Settlement Agreement shall be void if not negotiated within one hundred (100) days after its date of issue, and shall contain a legend to such effect. Checks that are not negotiated within one hundred (100) days after their date of issue shall not be reissued.
 - f. **Unclaimed Checks.** All payments that are unclaimed by Settlement Class Members, including all returned checks and all checks not cashed within one hundred (100) days after the date of issue, shall revert to the Net Settlement Fund.
 - g. **Nonmonetary Relief.** With regard to any members of the Settlement Class who still have balances allegedly owed to New York City College of Technology: ICR to adjust those balances so as to remove collection fees.
13. **Settlement Administrator.**
- a. The Settlement Administrator shall execute a retainer agreement that shall provide, among other things, that the Settlement Administrator shall be bound by and shall perform the obligations imposed on it under the terms of this Agreement.

- b. The Settlement Administrator shall be subject to the jurisdiction of the Court with respect to the administration of this Agreement.
- c. The Settlement Administrator shall keep all information regarding Class Members confidential except as otherwise provided herein. All data created and/or obtained and maintained by the Settlement Administrator pursuant to this Agreement shall be destroyed fifteen (15) months after the Effective Date.
- d. The Settlement Administrator will be responsible for administering the Settlement including:
 - i. effecting notice to the Settlement Class in a form and manner approved by the Court;
 - ii. conducting appropriate research, using a competent information broker on the Internet, the United States Postal Service Change of Address Database and/or a recognized credit bureau to ensure that any mailed notice which is returned for the reason that the address is incorrect will be corrected and a second notice sent;
 - iii. opening an account at a bank with accounts insured by the FDIC for the deposit of the Gross Settlement Fund and for disbursing all funds from the Gross Settlement Fund in accordance with this Agreement;
 - iv. maintaining a post office box address to receive inquiries with respect to the Settlement for a period of two hundred eighty days (280) after the Preliminary Approval Date or one hundred ninety (190) days from the Effective Date, whichever is longer;
 - v. preparing reports regarding the mailed notices, as directed by the Parties'

counsel and the Court;

- vi. accepting and reporting on written notice(s) to opt-out of the Settlement;
- vii. creating and maintaining a website regarding the Settlement including basic information regarding the Settlement and links to, inter alia, the Settlement Agreement, Preliminary Order, Final Order and Class Notice.
- viii. creating and maintaining an automated toll-free line providing basic information regarding the Settlement and instructions for obtaining relevant documents (e.g. copies of the Settlement Agreement, Preliminary Order, Final Order and Class Notice.)
- ix. such other duties as directed by the Parties, provided that any modification of the duties referenced in subparts (i) – (viii) of this Paragraph must be mutually agreed to by the Parties.

14. **Cost of Notice and Administration of Settlement.** ICR shall pay all costs related to the administration of this Settlement Agreement and the costs related to the Settlement Administrator for effecting notice to the Settlement Class and distributing the Gross Settlement Fund. ICR's payment of these costs shall be in addition to its payment of the Gross Settlement Fund.

15. **Cy Pres.** A *Cy Pres* fund will be created which includes any residue of the Net Settlement Fund remaining for any reason, including checks that are not negotiated or are returned and remain undeliverable after one hundred (100) days following the mailing of the checks to Class Members under Paragraph 13(d) of this Settlement Agreement. The *cy pres* fund shall be donated to the National Consumer Law Center and are designated for activities related to the organization's Student Borrower Assistance Project. The *Cy Pres* funds shall be remitted by the

Settlement Administrator to Schlanger Law Group Settlement Trust (EIN 26-1361315) – which represents a qualified settlement fund within the meaning of 1.468b of the Internal Revenue Code (“SLG Settlement Trust”) -- with the words “cy pres award in Diallo v ICR” written in the memo field of the check -- within one hundred and thirty (130) days after the checks are mailed to the Class Members pursuant to Paragraph 12(a) of this Settlement Agreement. Class Counsel shall provide proof of disbursement to the *Cy Pres* recipient to ICR’s counsel.

16. **Full and Final Settlement.** Each Party agrees that the Action is being voluntarily settled after consultation with experienced legal counsel of their own choosing and that terms of the Settlement Agreement were negotiated at arm’s length and in good faith. It is the intent and purpose of this Settlement Agreement to effect a full and final settlement of the Released Claims. In order to effectuate that purpose, the Parties agree to cooperate with one another and with the Settlement Administrator and use their best efforts to obtain Court approval of the Settlement and this Settlement Agreement.

17. **Incentive Payment.** Within fifteen (15) days after the Effective Date, the Settlement Administrator shall disburse Ten Thousand Dollars (\$10,000.00), constituting the Representative Plaintiff’s incentive payment out of the Gross Settlement Fund. Payment shall be by check payable to SLG Settlement Trust with the words “M. Diallo Incentive Payment” in the memo field.

18. **Releases.**

- a. Upon the Effective Date and without any further action by the Court or by any Party to this Settlement Agreement, Representative Plaintiff, on behalf of herself and all of her respective past, present and future predecessors, successors, assigns, devisees, relatives, heirs, legatees, and agents, and each of the Settlement Class

Members, who do not opt-out of the Settlement, including their respective past, present and future predecessors, successors, assigns, devisees, relatives, heirs, legatees, insurers and agents, shall be deemed to, and shall in fact, have remised, released and forever discharged any and all Released Claims, which they, or any of them, had or has or may in the future have or claim to have against the Released Persons.

- b. In addition, the Representative Plaintiff and ICR hereby enter into the General Mutual Releases attached hereto as Exhibit D.

III. PROCEDURES FOR EFFECTUATING SETTLEMENT

19. **Cooperation.** ICR and Class Counsel shall reasonably cooperate with each other to implement and monitor all aspects of this Settlement Agreement.

20. **The Motion for Preliminary Approval.** Representative Plaintiff shall move the Court on consent for an order preliminarily approving the settlement and providing notice of the Settlement through a Court-approved notice plan which shall include the mailing of the Notice of Proposed Class Action Settlement to the members of the Settlement Class. With regard to the motion for preliminary approval, the Parties shall submit, *inter alia*, the proposed preliminary order attached hereto as Exhibit A and the Proposed Postcard Settlement Class Notice (“Postcard Notice”) attached hereto as Exhibit B-1 and the Long-Form Settlement Class Notice attached hereto as Exhibit B-2 (collectively the “Notice”). Mailing of the Postcard Notice shall be accomplished no later than sixty days (60) days after the Preliminary Approval Date, unless a dispute arises as a result of the confirmatory discovery authorized in Paragraph 14 of this Agreement and that dispute requires the assistance of the Court for resolution. In such event, the Postcard Notice shall be mailed no later than thirty (30) days after the dispute is resolved.

21. **Right to Opt Out from Settlement.**

- a. Any Settlement Class Member may elect to be excluded from this Settlement and from the Settlement by opting out of the Settlement. Any Settlement Class Member who desires to be excluded from the Settlement must give written notice of the election to be excluded to the Settlement Administrator at the address listed in the Notice of Proposed Class Action Settlement, which must be received by the Settlement Administrator no later than the deadline set by the Court, which shall not be more than seventy (70) days after the date the Notice of Proposed Class Action Settlement is mailed to the Settlement Class, or as otherwise ordered by the Court. Requests for exclusion must be signed by the person requesting exclusion from the Settlement and must include the requestor's full name, current address, telephone number and a statement that the requestor seeking to be excluded from the Settlement Class wishes to opt-out of the Settlement.
- b. The Settlement Administrator shall maintain the written notice(s) mailed to the Settlement Administrator pursuant to Paragraph 13(d)(vi) and a list of persons who have excluded themselves and shall provide such written notice(s) and list to ICR's Counsel and Class Counsel at least five (5) days prior to the date Class Counsel is required to file the Motion for Final Approval. The Settlement Administrator shall retain the originals of all written notices requesting to be excluded from the Settlement (including the envelopes with the postmarks).

22. **Right to Object to the Settlement.** Any Settlement Class Member shall have the right to object to the Settlement by filing a written objection with the Court at the address listed in the Notice of Proposed Class Action Settlement and by mailing a copy thereof to the Settlement

Administrator, not later than the deadline established by the Court, which shall not be more than seventy (70) days after the date the Notice of Proposed Class Action Settlement is mailed to the Settlement Class, or as otherwise ordered by the Court. All Objections must be signed by the person(s) making the objection, or an attorney or legal guardian authorized to act on their behalf, and must set forth in detail each component of the Settlement to which they object, the reasons for each such objection, and any legal authority that they wish the Court to consider in support thereof. Objections must also include the objector's full name, current address, telephone number and whether he or she intends to appear at the Fairness Hearing, at which time their objections will be considered, if not previously withdrawn.

IV. CONDITIONS OF SETTLEMENT

23. **Approval of the Court.** This Agreement is subject to final approval by the Court. In connection with the Representative Plaintiff's motion for final approval, the Representative Plaintiff shall submit the proposed final approval order attached hereto as Exhibit C. If the Court does not approve this Settlement Agreement or enter the Orders requested herein (or materially similar orders), or if the Court enters the judgment provided for herein but either the judgment is materially modified or reversed upon appellate review, then this Settlement Agreement shall be canceled and terminated, unless counsel for both sides, within fourteen (14) days from the receipt of a ruling or written notice of circumstances giving rise to termination, agree in writing to proceed with this Settlement Agreement.

24. **Termination of Agreement.** This Settlement Agreement shall terminate:

- a. Automatically if the Court fails to approve the Settlement Agreement;

- b. At the option of either Representative Plaintiff or ICR if the Court or any other court materially modifies (or proposes to modify) this Settlement Agreement as a condition to approval of the Settlement.

25. **Effect of Termination of Agreement.** If this Settlement Agreement is terminated or canceled as set forth, the Parties shall be deemed to have reverted to their respective status as of March 15, 2021, and they shall proceed in all respects as if this Agreement had not been executed and the related orders had not been entered, preserving in that event all of their respective claims and defenses in this case.

V. APPLICATION FOR ATTORNEY'S FEES, COSTS AND DISBURSEMENTS

26. **Class Counsel Attorney Fees and Costs.**

- a. ICR shall not oppose or comment negatively to a request by Class Counsel for reimbursement of costs actually incurred or expected to be incurred and for reasonable attorney's fees, so long as Class Counsel's request for attorney's fees is in an amount less than one-third of the Gross Settlement Fund. All Court-approved attorney's fees, costs and disbursements on behalf of or by Class Counsel shall be paid out of the Gross Settlement Fund. ICR shall not be liable for any fees, costs or disbursements of Class Counsel apart from what is paid pursuant to this Agreement unless Representative Plaintiff is required to bring an action to enforce the terms of this Settlement Agreement and prevails in such action.
- b. Approval by the Court of Class Counsel's request for attorneys' fees and costs of litigation shall not be a precondition to approval of the Settlement or dismissal of the Action in accordance with this Settlement. Neither Representative Plaintiff, Class Counsel, nor ICR may cancel or terminate the Settlement based on the

Court's or any appellate courts' ruling with respect to fees, expenses and disbursements. Any appeal relating to Class Counsel's request for attorneys' fees and costs of litigation will not affect the finality of the Settlement, the entry of the dismissal order (beyond any modification of a standard dismissal order necessary to effectuate implementation of all other aspects of the Settlement during the pendency of any litigation regarding fees and costs) or the releases provided herein. Class Counsel's request for attorneys' fees and costs of litigation may be considered separately from the Settlement.

- c. The Settlement Administrator shall, within 10 days of the Effective Date, disburse the amount approved by the Court for Class Counsel's fees and costs, payable to SLG Settlement Trust with the words "Diallo v ICR – Counsel Fees and Costs" in the memo.

27. **Costs.** Except as otherwise provided in this Settlement Agreement, each Party shall bear its own costs.

VI. MISCELLANEOUS PROVISIONS

28. **CAFA Notice.** ICR shall be responsible for serving the requisite CAFA Notice within ten (10) days after the filing of the motion to preliminarily approve the Settlement.

29. **No Admission of Liability.** This Settlement Agreement, whether or not approved, or whether or not a final judgment is entered, and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by ICR, or of the truth of any of the claims or allegations made in the Action. Neither this Settlement Agreement, nor any of its terms, nor any of the negotiations or proceedings connected with it, shall be offered as evidence

or received in evidence in any pending or future action or proceeding of any type whatsoever to establish any liability or admission by ICR.

30. **Amendments.** This Settlement Agreement may be amended or modified only by a written instrument signed by Class Counsel and ICR or its attorneys.

31. **Entire Agreement.** This Settlement Agreement constitutes the entire agreement among the Parties with respect to the subject matter of this Settlement Agreement and supersedes all prior negotiations, communications, and agreements between the Parties. No Party has entered into this Settlement Agreement in reliance upon any representations, warranties or inducements outside this Settlement Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents.

32. **Extensions of Time.** The Parties may request that the Court allow reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

33. **Class Counsel's Authority.** Class Counsel, on behalf of the Representative Plaintiff, is expressly authorized to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to this Settlement Agreement to effectuate its terms, and is also expressly authorized to enter into any modifications or amendments to this Settlement Agreement on behalf of the Settlement Class.

34. **Counterparts and Facsimiles.** This Settlement Agreement may be executed in one or more counterparts and facsimile signatures shall be deemed to operate as original signatures. A full, executed copy of this Settlement Agreement, including all Exhibits shall be filed with the Court as an Exhibit to the motion for preliminary approval.

35. **Binding Nature.** This Settlement Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties.

36. **Construing the Agreement.** This Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been drafted initially by counsel for one of the Parties. It is acknowledged that all Parties have contributed substantially to the preparation of this Settlement Agreement.

37. **Applicable Law.** All the terms of this Settlement Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, exclusive of choice of law principles, and applicable federal law.

38. **Headings.** The captions and paragraph headings employed in this Settlement Agreement are for convenience only, are not part of the Settlement Agreement, and shall not be used in construing or interpreting the Agreement.

39. **Jurisdiction.** The Parties submit to the jurisdiction of the United States District Court for the Eastern District of New York for the purpose of implementing this Settlement Agreement and further consent and submit to the jurisdiction of this Court following the Effective Date over any disputes which later arise in connection with this Settlement Agreement or actions taken pursuant to the Settlement Agreement.

40. **Notification.** Any notice to be given to Class Counsel and/or Representative Plaintiff shall be sent by either first class mail, postage prepaid, or email as follows:

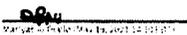
Daniel A. Schlanger, Esq.
Evan Rothfarb, Esq.
Schlanger Law Group LLP
333 Fairview Avenue
Westwood, NJ 07675
dschlanger@consumerprotection.net
erothfarb@consumerprotection.net

Any notice to be given to ICR under the terms of this Agreement shall be sent by either first class mail, postage prepaid, or email:

Richard J. Perr
Kaufman Dolowich & Voluck, LLP
Four Penn Center
1600 John F. Kennedy Blvd.
Suite 1030
Philadelphia, PA 19103
rperr@kdvlaw.com

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed by authorized individuals.

FOR REPRESENTATIVE PLAINTIFF: DEFENDANT IMMEDIATE CREDIT RECOVERY, INC.

By: 
Marlyatou Diallo

By: _____
Name: _____
Title: _____

Date: May 19, 2021

Date: _____

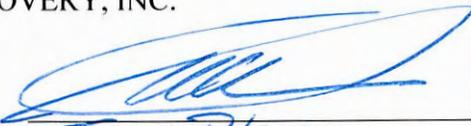
Richard J. Perr
Kaufman Dolowich & Voluck, LLP
Four Penn Center
1600 John F. Kennedy Blvd.
Suite 1030
Philadelphia, PA 19103
rperr@kdvlaw.com

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed by authorized individuals.

FOR REPRESENTATIVE PLAINTIFF:

DEFENDANT IMMEDIATE CREDIT RECOVERY, INC.

By: _____
Marlyatou Diallo

By: 
Name: JUAN BLANCO
Title: C.E.O.

Date: _____

Date: 5/13/21