

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

FREDIS ANTONIO HERNANDEZ, *on behalf of  
himself and all similarly situated individuals,*

Plaintiff,

v.

Civil Action No. 1:23-cv-1029-AJT-IDD

DYCK-O'NEAL, INC.,

Defendant.

**PLAINTIFF'S UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiff Fredis Antonio Hernandez, on behalf of himself and the Settlement Class Members, and under Fed. R. Civ. P. 23, hereby moves the Court for preliminary approval of the class action settlement for the reasons outlined in his contemporaneously filed memorandum of law. The proposed Settlement Agreement (which includes a proposed preliminary approval order) is attached as Exhibit 1.

Respectfully submitted,

**FREDIS ANTONIO HERNANDEZ**

/s/ Kristi C. Kelly

Kristi C. Kelly, VSB #72791

Casey S. Nash, VSB #84261

J. Patrick McNichol, VSB #92699

Matthew G. Rosendahl, VSB #93738

KELLY GUZZO, PLC

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*Counsel for Plaintiff*

# Exhibit 1

**IN THE UNITED STATES DISTRICT COURT  
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FREDIS ANTONIO HERNANDEZ, *on behalf of  
himself and all similarly situated individuals,*

Plaintiff,

v.

DYCK-O'NEAL, INC.,

Defendant.

Civil Action No. 1:23-cv-1029-AJT-IDD

**SETTLEMENT AGREEMENT & RELEASE**

This Settlement Agreement and Release (“Settlement Agreement”) is made and entered into by the Parties, in the above-captioned matter, pending in the United States District Court for the Eastern District of Virginia, and is subject to Court approval pursuant to Rule 23 of the Federal Rules of Civil Procedure.

**RECITALS**

WHEREAS, on August 3, 2023, Plaintiff Fredis Antonio Hernandez (“Plaintiff”) filed his complaint (“Complaint”) against Dyck-O’Neal, Inc. (“Defendant” or “DONI”), alleging that Defendant had violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692e (“FDCPA”) by making false and misleading representations about the amount owed by him and a class of similarly situated consumers on mortgage debts. Specifically, Plaintiff alleged that Defendant misrepresented the amount owed by Plaintiff and others by retroactively assessing interest and fees for periods in which neither Defendant nor any predecessor-in-interest provided periodic statements to Plaintiff and similarly situated consumers.

WHEREAS Plaintiff further alleged on an individual basis that Defendant violated the FDCPA, 15 U.S.C. § 1692f(6), by threatening to take nonjudicial action to effect dispossession of Plaintiff's property when Defendant had no present right to possession of the property because it failed to provide a notice to Plaintiff that complied with Va. Code § 55.1-321.

WHEREAS Plaintiff alleged on an individual basis that Defendant breached the terms of the Deed of Trust securing Plaintiff's second mortgage against his property by failing to provide a proper notice of default that specified how he could cure the alleged default on his loan.

WHEREAS, on January 24, 2024, Plaintiff filed an Amended Complaint that asserted the same claims as the original Complaint and asserted an additional claim for declaratory relief on behalf of Plaintiff and a class of similarly situated consumers that all interest and fees for periods in which Defendant or its predecessors-in-interest failed to provide periodic statements are waived and/or unenforceable.

WHEREAS Defendant denies each and every one of the allegations of wrongful conduct and damages made in the Complaint and the Amended Complaint, has asserted numerous defenses to Plaintiff's claims, disclaims any wrongdoing or liability whatsoever, and denies that this matter satisfies the requirements to be tried as a class action under Rule 23 of the Federal Rules of Civil Procedure.

WHEREAS this Settlement Agreement has been reached after the Parties exchanged discovery, documents, testimony, and information relevant to Plaintiff's claims, and it is the product of sustained, arms'-length settlement negotiations, including settlement conferences before the Court.

WHEREAS Plaintiff and Defendant recognize that the outcome of this matter is uncertain, and that a final resolution through the litigation process would require protracted adversarial

litigation, and appeals, substantial risk and expense, the distraction and diversion of Defendant's personnel and resources, and Plaintiff and Defendant have agreed to resolve this matter as a settlement class action according to the terms of this Settlement Agreement.

WHEREAS the Parties believe that this Settlement Agreement is fair, reasonable, and adequate in resolving the litigation because it (1) provides for certification of the Settlement Class, even though the Court has not yet determined whether Plaintiff's claims could properly be brought as a class action, and Defendant maintains that certification of any class for trial purposes would not be proper under Fed. R. Civ. P. 23; (2) provides for automatic monetary payments to the Settlement Class Members (defined below); (3) provides that Defendant will not to charge interest on any Class Member's loans going forward and will reallocate interest amounts already received from Class Members to the principal balance of their loans, if any principal balance remains on those loans; (4) provides for payment of the costs of notice and administration of the Settlement by Defendant separate from the Statutory Damages Amount; and (5) provides this relief to the Settlement Class in exchange for releases tailored to the specific claims made in this case.

NOW THEREFORE, without any admission or concession on the part of any Party of lack of merit to any claim or defense put forth in this Litigation, it is hereby stipulated and agreed by the undersigned that this matter and all claims of the Settlement Class be settled, compromised, and dismissed on the merits and with prejudice, subject to Court approval, on the terms and conditions set forth herein.

The recitals above are true and accurate and are incorporated as part of this Settlement Agreement.

## DEFINITIONS

For the purposes of this Settlement Agreement, including the Recitals above, the following terms have the following meanings:

- 1.1. “Agreement” or “Settlement” means this Settlement Agreement.
- 1.2. “Cancelled Debt” means the debt that will be canceled pursuant to Paragraph 4.2(a), which is estimated to be approximately [\$10,893,696] and include approximately 283 putative members of the Settlement Class.
- 1.3. “Class Counsel” means Kelly Guzzo PLC.
- 1.4. “Class List” or “List” mean the list of Settlement Class Members, including individuals who may ultimately opt-out, that will be generated by Defendant as described below.
- 1.5. “Class Notice” means the notice that will be provided pursuant to Paragraphs 3.2 – 3.2.7, attached hereto as **Exhibit A**, subject to Court approval, which the Settlement Administrator will mail, via U.S. mail, to each Settlement Class Member on the Class List.
- 1.6. “Complaint” means the Verified Complaint filed on August 3, 2023, and the Amended Complaint filed on January 24, 2024.
- 1.7. “Court” means the United States District for the Eastern District of Virginia where this litigation is pending.
- 1.8. “Defendant” or “DONI” means Dyck-O’Neal, Inc.
- 1.9. “Effective Date” means the date that the Final Judgment becomes final for all purposes because either (i) the Court has entered the Final Approval Order and there were no objections; (ii) an objection was filed, the Court has entered the Final Approval Order notwithstanding any objection, no appeal has been filed in accordance with Fed. R. App. P. 4(a), and the time within which an appeal may be noticed and filed has lapsed; or (iii) if a timely appeal has been filed, the

appeal is finally resolved, with no possibility of further appellate or other review, resulting in final judicial approval of this Settlement.

1.10. “Final Judgment and Order” or “Final Judgment” means the Court’s order granting final approval of this Settlement, which shall be proposed in a format substantially similar to the order attached as **Exhibit C**.

1.11. “Litigation” means the case styled as *Hernandez v. Dyck-O’Neal, Inc.*, No. 1:23-cv-1029-AJT-IDD (E.D. Va.).

1.12. “Plaintiff” or “Class Representative” means Fredis Antonio Hernandez.

1.13. “Statutory Damages Amount” means \$79,067.42, which is the total amount from which the Settlement Class Members will be paid with respect to the settlement obtained on behalf of the Settlement Class. The Statutory Damages Amount does not include payments made by Defendant for notice and administration of the Settlement or for attorneys’ fees and costs or a Service Award to Plaintiff, as approved by the Court.

1.14. “Settlement Fund” means the fund that the Settlement Administrator will establish to receive the Statutory Damages Amount. The Settlement Administrator will maintain the fund as a Qualified Settlement Fund for federal tax purposes pursuant to Treas. Reg. § 1.468B-1. The Settlement Administrator, on behalf of the Settlement Class, shall be responsible for all administrative, accounting and tax compliance activities in connection with the Settlement Fund, including any filing necessary to obtain Qualified Settlement Fund status pursuant to Treas. Reg. § 1.468B-1. Defendant shall provide to the Settlement Administrator any documentation reasonably requested to facilitate the obtaining of Qualified Settlement Fund status. The Settlement Fund will either not accrue interest or, if interest accrues, all interest must be paid into the Settlement Fund itself.



1.15. “Opt-Out & Objections Deadline” means the date the Court establishes as the deadline by which any Settlement Class Members must mail and postmark a written notice of their intent to opt out of the Settlement, and by which objections to the preliminarily approved Settlement must be postmarked and mailed, or otherwise filed with the Court, with copies provided to Parties’ counsel. The Parties shall jointly request that this date be sixty (60) days from the initial dissemination of notice.

1.16. “Parties” means Plaintiff, Fredis Antonio Hernandez, and Defendant, Dyck-O’Neal, Inc.

1.17. “Preliminary Approval” means the Court’s order substantially similar to the form attached hereto as **Exhibit B**, certifying the proposed Settlement Class, for settlement purposes only, preliminarily approving the proposed Settlement as fair, reasonable and adequate, approving and directing the distribution of notices, appointing Settlement Administrator, and appointing Class Counsel.

1.18. “Released Parties” means the Defendant its present and former parents and subsidiaries. “Released Parties” explicitly does not include Experian, Equifax, TransUnion, or a foreclosure law firm, including Tromberg, Morris Poulin, PLLC.

1.19. “Service Award” means the one-time payment to the Plaintiff, for the time and resources that he has put into representing the Settlement Class, as set forth in Paragraph 4.3 and approved by the Court.

1.20. “Settlement Administrator” means American Legal Claims Services, LLC, the third-party settlement administrator who will mail the Class Notice, send the notice required by the Class Action Fairness Act (28 U.S.C. § 1715) (if Defendant elects to use the Administrator for that purpose), establish the Settlement Website, maintain the Class List, receive and track opt-outs and objections, and if finally approved, mail payments to Settlement Class Members.

1.21. “Settlement Class” means the class proposed to be certified for settlement purposes only as part of this Agreement, defined as:

All consumers: (1) with a non-performing mortgage loan owned by Defendant as of January 1, 2024; (2) to whom Defendant caused written correspondence to be sent in the one year predating the filing of the lawsuit; (3) that contained a demand for payment that included a late fee or interest assessed by Defendant for time periods when the consumer did not receive monthly statements.

1.22. “Settlement Class Members” means members of the Settlement Class.

1.23. Settlement Website means the internet website to be established by the Settlement Administrator, as discussed in Paragraph 3.2.3.

### **PRELIMINARY APPROVAL**

2.1. **Preliminary Approval Order.** By no later than March 25, 2024, Plaintiff shall file with the Court a motion for Preliminary Approval of the proposed Settlement. The motion must seek entry of an order (in a form substantially similar to Exhibit B) that would, for settlement purposes only:

- a) preliminarily approve this Settlement Agreement;
- b) certify a conditional settlement class under Federal Rule of Civil Procedure, Rule 23(b)(3), composed of the Settlement Class Members;
- c) appoint Plaintiff and Class Counsel to represent the Settlement Class;
- d) approve the proposed Class Notice plan; and
- e) appoint the Settlement Administrator.

2.2. **Class Certification for Settlement Purposes Only.** Defendant contends that this Litigation, and the respective class alleged therein, could not be certified as a class action under Federal Rule of Civil Procedure 23 for trial purposes. Nothing in this Settlement Agreement may be construed as an admission by Defendant that this Litigation or any similar case is amenable to

class certification for trial purposes. Furthermore, nothing in this Settlement Agreement prevents Defendant from opposing class certification or seeking de-certification of the Settlement Class if final approval of this Settlement Agreement is not obtained, or not upheld on appeal, including review by the United States Supreme Court, for any reason, or if any of the conditions exist that permit Defendant to terminate this Settlement Agreement in accordance with the terms below.

### **SETTLEMENT CLASS**

3.1. **Class Definition.** For purposes of settlement only, and upon the express terms and conditions set forth in this Settlement Agreement, the Parties agree to seek certification of the Settlement Class as defined in Paragraph 1.20 above. The Settlement Class does not include Defendant's officers, directors, and employees, Parties' counsel, any judge overseeing or considering the approval of the Settlement, together with members of their immediate family and any judicial staff. There are an estimated 283 Settlement Class Members through February 29, 2024, although Defendant is in the process of updating this data consistent with the time period in the class definition above.

3.2. **Notice Plan.**

3.2.1. **Class List.** Within fourteen (14) days after entry of the Preliminary Approval Order, Defendant shall provide the Class List to Class Counsel and the Settlement Administrator, which will include the most recent name and mailing address that was provided to Defendant for the Settlement Class Member and that has been maintained or updated by Defendant in the ordinary course of its business. The Settlement Administrator shall update these addresses via the USPS

National Change of Address system, or any other appropriate database regularly used by the Settlement Administrator for updating mailing addresses, prior to mailing the Class Notice.

3.2.2. **Class Notice.** The Settlement Administrator shall mail via U.S. mail, postage paid, the Class, attached as Exhibit A, subject to the Court's approval, to all Settlement Class Members on the Class List within fourteen (14) days of receipt of the List. If it is feasible and cost effective, the Settlement Administrator can also email the Class Notice to Settlement Class Members. For up to forty-five (45) days following the initial mailing of the Class Notice, the Settlement Administrator shall re-mail the Class Notice via U.S. Mail, postage prepaid, to those Settlement Class Members whose mailings were returned as undeliverable to the extent an alternative mailing address can be reasonably located using one of the two methods set forth below. The Settlement Administrator shall first attempt to re-mail the mailings to the extent that it received an address change notification from the U.S. Postal Service. If an address change notification form is not provided by the U.S. Postal Service, the Settlement Administrator may attempt to obtain an updated address using reasonable and appropriate methods to locate an updated address. After the forty-five (45) re-mailing period, the Settlement Administrator shall send to Plaintiff and Defendant a list of each Class Notice returned as undeliverable. No later than fourteen (14) days before the Final Approval Hearing in this Litigation, the Settlement Administrator shall file proof of the mailing of the Class Notice with the Court.

The Class Notice explains to the Settlement Class Members their rights to receive automatic payment from the Statutory Damages Amount or to opt out of or object to the Settlement, and the deadlines by which to exercise those rights. They also summarize the benefits provided in the form of Cancelled Debt, a prohibition on assessing interest on the mortgage loan in the future, and the claims to be released if the Class Member does not opt out. The mailed Class

Notice will also direct Settlement Class Members to the Settlement Website for further information.

**3.2.3. Settlement Website.** The Settlement Administrator shall create and maintain the Settlement Website to be activated no later than five (5) days prior to the mailing of the Class Notice described above. The Settlement Administrator's responsibilities include securing an appropriate URL on which the Parties mutually agree. The Settlement Website will host important settlement documents, such as the Complaint, the Class Notice (substantially in the form attached as Exhibit A), the Settlement Agreement, and the Preliminary Approval Order. In addition, the Settlement Website will include procedural information regarding the status of the Court-approval process, such as an announcement regarding when the Final Approval Hearing is scheduled, when the Final Judgment and Order has been entered, when the Effective Date is expected or has been reached, and when payments likely will be mailed.

The Settlement Administrator will terminate the Settlement Website either: (1) one hundred and eighty (180) days after the Effective Date; or (2) thirty (30) days after the date on which the Settlement is terminated or otherwise not approved by a court.

**3.2.4. Costs and Expenses.** Defendant will pay to the Settlement Administrator all costs necessary to effectuate the Settlement Class Notice Plan and the administration of the Settlement. The Settlement Administrator shall refund to Defendant any amounts not used by the Settlement Administrator for these purposes no later than thirty (30) days after the Effective Date or the date of the Settlement being terminated or otherwise not approved, whichever is earlier.

**3.2.5. Class Action Fairness Act ("CAFA") Notice.** Defendant shall serve notice of the settlement that meets the requirements of CAFA, 28 U.S.C. § 1715, on the appropriate federal and state officials not later than ten (10) days after the filing of this Settlement Agreement with the

Court. Before the Court's Final Approval Hearing, Defendant shall file with the Court a certification of the date upon which the CAFA Notice was served.

**3.2.6. Opt-Outs.** All individuals on the Class List may opt out of the Settlement Class by submitting a valid request for exclusion. All opt-outs must be submitted by mail, in writing, addressed to the Settlement Administrator. The postmark deadline for requests for exclusion is sixty (60) days from the initial mailing of Class Notice. To be valid, the written request must state: "I do not want to be part of the Settlement Class in *Hernandez v. Dyck-O'Neal*," or contain words to that effect. It must be signed and include the name of the individual on the Class List making the request, along with name, address, and phone number.

The Settlement Administrator shall provide copies of opt-outs received to the Parties no later than three (3) days after they are received by the Settlement Administrator. No later than fourteen (14) days before the Final Approval Hearing, the Settlement Administrator shall provide to Class Counsel, who shall file it with the Court, a declaration verifying that notice has been provided to the Settlement Class as set forth herein and listing all of the valid opt-outs received.

All individuals on the Class List who timely submit a valid opt-out will exclude themselves from the Settlement Class and preserve their ability to independently pursue, at their own expense, any individual, non-class, non-representative claims he or she claims to have against Defendant. Any such individual on the Class List who so opts out will not be bound by further orders or judgments in the Litigation as they relate to the Settlement Class. In the event of ambiguity as to whether someone has requested to be excluded, the individual shall be deemed not to have requested exclusion pursuant to this Section. No person who has opted out of the Settlement Class may object to any part of this Settlement Agreement.

3.2.7. **Objections.** All Settlement Class Members who do not opt-out in accordance with the terms above and who intend to object to the Settlement must file the objection with the Court, and serve copies on counsel for the Parties, no later than sixty (60) days following the initial mailing of Class Notice. The objection must include the following: (1) the Settlement Class Member's full name, address and current telephone number; (2) if the individual is represented by counsel, the name and telephone number of counsel, if counsel intends to submit a request for fees and all factual and legal support for that request; (3) all objections and the basis for any such objections stated with specificity, including a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (4) the identity of any witnesses the objector may call to testify; (5) a listing of all exhibits the objector intends to introduce into evidence at the Final Approval Hearing, as well as true and correct copies of such exhibits; (6) a statement of whether the objector intends to appear at the Final Approval Hearing, either with or without counsel; and (7) the objector's signature and a notation that it is for "*Hernandez v. Dyck-O'Neal, Inc.*, Civil Action No. 1:23-cv-1029 (E.D. Va.)."

Any Settlement Class Member who fails to timely file and serve a written objection pursuant to this Paragraph may not object to the approval of the Settlement or this Settlement Agreement and will be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

#### **SETTLEMENT CONSIDERATION**

4.1. **Monetary Relief.** Defendant shall deposit the Statutory Damages Amount into the Settlement Fund within fourteen (14) days of the Effective Date. As set out in Paragraph 4.5, the Settlement Administrator will distribute the Statutory Damages Amount *pro rata* to all Settlement Class Members, excluding valid opt-outs, upon final approval of the Settlement.

4.2. **Prospective Relief.**

(a) Upon the Effective Date, Defendant agrees that it will cancel all retroactively assessed interest and any late charges or fees associated therewith. Defendant acknowledges that the cancelled debt is disputed debt and will not issue an IRS Form 1099 to any Settlement Class Member. Defendant further agrees that it will not assign, sell, or transfer any of the cancelled debt. It is estimated that the amount of cancelled debt is [\$10,893,696] and includes approximately 283 putative members of the Settlement Class.

(b) Upon the Effective Date, Defendant agrees that for those Settlement Class Members that paid interest on the loans prior to this Settlement Agreement, it will re-allocate this amount of interest to the Settlement Class Members' principal loan balance. It is estimated that the amount of interest paid by Settlement Class Members that will be re-allocated to principal is approximately \$426,818.00.

(c) Upon the Effective Date, for each Settlement Class Member, Defendant agrees not to assess, attempt to collect, or collect any additional interest against each Class Member's loan into the future. Defendant further agrees it will not sell any of the Settlement Class Members' loans in the future.

4.3. **Settlement Class Release.** Upon the Effective Date, each Settlement Class Member, on behalf of themselves and their respective spouses, heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors, assigns, and all those acting or purporting to act on their behalf, acknowledge full satisfaction of, and shall be conclusively deemed to have fully, finally, and forever settled, released, and discharged all the Released Parties of and from all claims, arising before the Effective Date for the attempted collection, or collection by Defendant



of interest or fees on a non-performing mortgage loan for periods in which Defendant or a predecessor-in-interest did not provide periodic statements, including but not limited to claims under 15 U.S.C. § 1692e (“Released Claims”). Subject to the Court’s approval, the Settlement Class Members are bound by this Settlement Agreement and their claims at issue in the case will be dismissed with prejudice and released as against the Released Parties, even if they never received actual notice of the Settlement prior to the hearing for final approval of the Settlement.

The Release does not include claims that the Settlement Class Members have or may have against Equifax, Experian, Trans Union, or any foreclosure law firm, including Tromberg, Morris Poulin, PLLC.

**4.4. Attorneys’ Fees, Service Awards, Costs, and Other Expenses.** No later than fourteen (14) days prior to the Opt-Out & Objections Deadline, Class Counsel shall make an application to the Court for an award of attorneys’ fees, costs, and other expenses for their representation of the Settlement Class. This application will be posted to the Settlement Website within one day of filing with the Court.

Unless the Parties otherwise stipulate and agree, Defendant shall have the right oppose or object to the application by Class Counsel for attorneys’ fees and costs. The award Class Counsel seeks will include all reasonable fees, costs, and other expenses for all attorneys (and their employees, consultants, experts, and other agents) who performed work in connection with the Litigation of the claims on behalf of the Settlement Class Members. Any attorneys’ fees and costs that the Court awards will be owed and paid by Defendant to Class Counsel directly, and no amounts from the Statutory Damages Amount may be used to pay, or may be used as a credit against, any awarded fees and costs.

No later than fourteen (14) days prior to the Opt-Out & Objections Deadline, Plaintiff shall make an application to the Court for approval of a Service Award of \$5,000. Defendant shall not oppose a Service Award of \$5,000 for Plaintiff. Any Service Award approved by the Court will be paid by Defendant into the Settlement Fund within fourteen (14) days of the Effective Date. No amounts from the Statutory Damages Amount may be used to pay, or may be used as a credit against, the Service Award. The Settlement Administrator shall be responsible for mailing the Service Award to the Plaintiff on the same timetable established in Paragraph 4.5.

The applications for attorneys' fees and a Service Award, and any and all matters related thereto, are not part of the Settlement Agreement, and the Court should consider them separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement Agreement. Plaintiff and Class Counsel acknowledge that this Settlement Agreement is not conditioned on the Court's approval of attorneys' fees or a Service Award in the requested amounts or in any amount whatsoever. The Court's ruling on the application or applications for such amounts will not operate to terminate or cancel the Settlement Agreement.

**4.5. Payment Schedule.** Within fourteen (14) days of the receipt of the Statutory Damages Amount from Defendant, the Settlement Administrator will allocate the Statutory Damages Amount from the Settlement Fund and mail equal payments to the remaining Settlement Class Members, after excluding valid opt-outs, via U.S. mail. The payment notices accompanying the payment check will notify the recipients that the checks must be cashed within ninety (90) days from the date on the payment notice (the "stale date") and that the enclosed check will not be valid after that date. If any checks issued to Settlement Class Members remain uncashed after the stale date referenced above, and if the collective amount of those uncashed checks allows for a second distribution of at least twenty-five dollars (\$25) to any Settlement Class Member, then the

Settlement Administrator shall distribute the funds associated with those uncashed checks on a *pro rata* basis to those Settlement Class Members who cashed a check from the previous distribution. The payment notices accompanying these checks will notify the recipients that the checks must be cashed within ninety (90) days from the date on the payment notice and that the enclosed check will not be valid after that date.

The Settlement Administrator shall direct any funds that remain in the Settlement Fund after the stale date of this second distribution, or if this second distribution never occurs because of insufficient funds after the first distribution, Virginia Poverty Law Center as *cy pres* recipient.

### **ENTRY OF FINAL JUDGMENT AND ORDER**

5.1. The Parties shall jointly seek entry by the Court of a Final Judgment and Order in the form of **Exhibit C** hereto, which includes the following provisions (among others):

- a) granting final approval of this Settlement Agreement, and directing its implementation pursuant to its terms and conditions;
- b) ruling on Class Counsel's applications for attorneys' fees, costs, and other expenses;
- d) discharging and releasing the Released Parties, and each of them, from the Settlement Class Released Claims;
- e) permanently barring and enjoining all Settlement Class Members from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit that asserts Released Claims;
- f) directing that the Litigation be dismissed with prejudice and without costs;
- g) stating pursuant to Federal Rules of Civil Procedure, Rule 54(b) that there is no just reason for delay and directing that the Final Judgment and Order is a final, appealable order; and

h) reserving to the Court continuing and exclusive jurisdiction over the Parties with respect to the Settlement Agreement and the Final Judgment and Order as provided below.

### **MISCELLANEOUS PROVISIONS**

6.1. **Termination.** Defendant's willingness to settle this Litigation on a class-action basis and to agree to the accompanying certification of the Settlement Class is dependent upon achieving finality in this Litigation and the desire to avoid the expense of this and other litigation. Consequently, Defendant may terminate this Settlement Agreement, declare it null and void, and have no further obligations under this Settlement Agreement to Plaintiff or Settlement Class Members if any of the following conditions subsequent occurs: (a) the Parties fail to obtain and maintain preliminary approval of the proposed Settlement; (b) more than fifty (50) individuals on the Class List opt-out of the proposed Settlement; (c) the Court fails to enter a final order consistent with the provisions of this Settlement Agreement; (d) the settlement of the Settlement Class is not upheld on appeal, including review by the United States Supreme Court; (e) the Effective Date does not occur for any reason, including but not limited to the entry of an order by any court that would require either material modification or termination of the Settlement Agreement; or (f) Plaintiff or Class Counsel commit a material breach of the Settlement Agreement before entry of the Final Judgment and Order.

The failure of the Court or any appellate court to approve in full the request by Class Counsel for attorneys' fees, costs, and other expenses would not be grounds for Plaintiff, Defendant, the Settlement Class, or Class Counsel to cancel or terminate this Settlement Agreement. The failure of the Court or any appellate court to approve in full the request of Plaintiff for his Service Award would not be grounds to terminate this Settlement Agreement.

If the Settlement Agreement is not finally approved, is not upheld on appeal, or is otherwise terminated for any reason before the Effective Date, then the Court shall decertify the Settlement Class; the Settlement Agreement and all negotiations, proceedings, and documents prepared, and statements made in connection therewith, will be without prejudice to any Party and may not be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law; and all Parties would stand in the same procedural position as if the Settlement Agreement had not been negotiated, made, or filed with the Court.

6.2. **Best Efforts to Obtain Court Approval.** Plaintiff and Defendant, and the Parties' counsel, agree to use their best efforts to obtain Court approval of this Settlement Agreement.

6.3. **Court's Jurisdiction.** The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement. The Court also shall retain exclusive jurisdiction: (1) over any subsequent claim against Defendant related to a Settlement Class Member's Released Claims; and (2) over any determination of whether a subsequent lawsuit is released by the Settlement Agreement. Any such subsequent lawsuit against Defendant necessarily raises the threshold issue of whether the plaintiff in such suit is a member of the Settlement Class in this Litigation such that his or her subsequent suit is prohibited under the terms of this Settlement Agreement.

6.4. **Settlement Notices.** Except for the Notice Plan, as provided for above, all other notices or formal communications under this Settlement Agreement must be in writing and given: (1) by hand delivery; (2) by registered or certified mail, return receipt requested, postage pre-paid; or (3) by overnight courier to counsel for the Party to whom notice is directed at the following addresses:

For Plaintiff and the Settlement Class:

Kristi Cahoon Kelly  
KELLY GUZZO, PLC

3925 Chain Bridge Road, Suite 202  
Fairfax, VA 22030

For Defendant:  
Dale Golden Esq.  
Sangeeta Spengler Esq.  
410 South Ware Boulevard  
Suite 806  
Tampa, FL 33619

Counsel may designate a change of the person to receive notice or a change of address, from time to time, by giving notice to all Parties in the manner described in this Section.

6.5. **Construction.** None of the Parties to this Settlement Agreement are the primary drafter of this Settlement Agreement or any provision hereof for the purpose of any rule of interpretation or construction that might cause any provision to be construed against the drafter.

Except as otherwise stated herein, each substantive term of this Agreement is a material term that the Parties have relied upon in making this Agreement. If the Court does not approve any substantive term, or if the Court effects a material change to the Agreement then the entire Agreement will be, at the Parties' discretion, void and unenforceable. Where this Agreement states that a term is not material, then the Court's refusal to approve that term leaves all the other terms of the Agreement in effect. Before declaring any provision of this Agreement invalid, the Parties intend that the Court first attempt to construe the provision to the fullest extent possible so as to render all provisions of this Agreement enforceable.

This Agreement includes the terms set forth in each attached exhibit. Each exhibit to this Agreement is an integral part of it.

The headings within this Agreement appear for the convenience of reference only and do not affect the construction or interpretation of any part of this Agreement.

This Settlement Agreement may not be modified except by a writing executed by all the Parties.

6.6. **Execution in Counterparts.** Plaintiff, Class Counsel, Defendant, and Defendant's counsel may execute this Settlement Agreement in counterparts, and the execution of counterparts shall have the same effect as if all Parties had signed the same instrument.

A Party may sign and deliver this Agreement by signing on the designated signature block and transmitting that signature page via facsimile or as an attachment to an email to counsel for the other Party. Any such signature shall be deemed an original for purposes of this Agreement and will be binding upon the Party who transmits the signature page.

This Settlement Agreement shall not be deemed executed until signed by Plaintiff, by all Class Counsel, and by counsel for and representatives of Defendant. The signatories hereto represent that they are fully authorized to bind the Parties to all terms of this Agreement. The Parties agree that the Settlement Class Members are so numerous that it is impossible or impractical to have each Class Member execute this Agreement. This Agreement may be executed on behalf of the Settlement Class Members by the Class Representative.

[Signatures on Following Page]



Fredis Antonio Hernandez

By: \_\_\_\_\_  
On behalf of Dyck-O'Neal, Inc.

Title: \_\_\_\_\_

Date: 03-25-24

Date: \_\_\_\_\_



By \_\_\_\_\_  
Kristi C. Kelly, VSB #72791  
Casey S. Nash, VSB #84261  
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*Counsel for Defendant Dyck-O'Neal, Inc.*



\_\_\_\_\_  
Fredis Antonio Hernandez

By:   
\_\_\_\_\_  
On behalf of Dyck-O'Neal, Inc.

Title: Executive Vice President

Date: \_\_\_\_\_

Date: 03-25-2024

By \_\_\_\_\_  
Kristi C. Kelly, VSB #72791  
Casey S. Nash, VSB #84261  
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*Counsel for Defendant Dyck-O'Neal, Inc.*

# Exhibit A



United States District Court for Eastern District of Virginia

*Hernandez v. Dyck-O'Neal, Inc.*

Case No. 1:23-cv-1029-AJT-IDD

## **Class Action Settlement Notice**

*Authorized by the U.S. District Court*

---

### **A proposed class action settlement may affect your rights.**

You are not being sued.

This notice explains the Settlement, the Settlement Class, and your legal rights and options.

Please read the entire notice carefully.

You should:

1. Read this notice.
2. If you do not want to remain in the Class, submit an opt-out request by **[DATE]**.

Important things to know:

- If you remain in the Settlement Class and the Court approves the Settlement, you will receive a monetary payment.
- If you take no action, you will still be bound the Settlement and its releases.
- You can learn more at: [www.\[ \].com](http://www.[ ].com).

## TABLE OF CONTENTS

About This Notice .....	X
Why did I get this notice?.....	X
What do I do next?.....	X
Your Legal Rights & Options.....	X
What are the most important dates?.....	X
Learning About the Lawsuit & Settlement .....	X
What is This Lawsuit About?.....	X
What Can I Get Out of The Settlement?.....	X
Who Are The Attorneys Representing The Class And How Will They be Paid?.....	X
Deciding What You Want to Do?.....	X
What are my options?.....	X
Doing Nothing?.....	X
What Are The Consequences of Doing Nothing?.....	X
Opting Out?.....	X
What Happens if I Opt Out of The Class?.....	X
How do I Opt Out?.....	X
Objecting to the Settlement.....	X
What Happens if I Object to The Settlement?.....	X
How Do I Object to The Settlement?.....	X
Additional Information?.....	X
When And Where Will The Court Decide Whether to Approve The Settlement?.....	X
Where Can I Get Additional Information?.....	X

**About This Notice**

**Why did I get a notice?**

If you are receiving this Notice, you have been identified as a potential member of the Settlement Class in this lawsuit. Specifically, Defendant’s records indicate that you have a mortgage loan owned by Defendant on which it has attempted to collect or collected interest and late fees for periods in which you were not sent periodic statements regarding the loan. As a Settlement Class Member, you are eligible to receive a payment as part of this class action Settlement, as well as the additional debt relief described below.

What is a class action lawsuit?

A class action is a lawsuit in which one or more people sue on behalf of a larger group, called the Class.

This Notice describes your rights. Please review it carefully.

**What do I do next?**

**Your Legal Rights & Options:**

<b>DO NOTHING</b>	If you do nothing, you will receive a settlement payment and the other relief described in this Notice and you will be bound by the Court’s decisions regarding the Settlement. You will not be able to pursue any potential claims against the Defendant that have been released as part of the Settlement. Review the full release at <a href="http://www.[] .com">www.[] .com</a> .
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT</b>	You can opt out of the Settlement if you want to maintain any legal rights you may have against Defendant. But if you opt out, you will not receive a settlement payment or other relief provided under the Settlement if the Court grants final approval. To opt out from the Settlement, you must send a written request addressed to the Settlement Administrator and state that you wish to be excluded from the Settlement and include the information discussed in more detail in this Notice. The opt-out deadline is <b>[date]</b> .
<b>OBJECT TO THE SETTLEMENT</b>	You have the right to write to the Court to object to the Settlement if you believe it is unfair. You would remain a part of the Class and be bound by the Court’s decisions regarding the Settlement. The objection deadline is <b>[date]</b> .

Read on to understand the specifics of the Settlement and what each choice would mean for you. The Court still has to decide whether to grant final approval of the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved.

**What are the most important dates?**

The Court has scheduled a final approval hearing for **[date]**. If there are no appeals, checks will be sent approximately 35 days after the Court finally approves the Settlement. Your deadline to opt out of the Settlement, or to object to the Settlement, is **[date]**.

Questions? Please visit [www.\[xx\].com](http://www.[xx].com) for more information.  
Para una notificacion en Espanol, llamar o visitar nuestro sitio web.

## **Learning About the Lawsuit and the Settlement**

### **What is this Lawsuit About?**

Plaintiff Fredis Antonio Hernandez (“Plaintiff”) filed a class action lawsuit in federal court against Dyck-O’Neal, Inc. (“Defendant” or “DONI”) alleging that Defendant violated the Fair Debt Collection Practices Act (“FDCPA”) by representing to Plaintiffs and other class members that they owed interest and fees on mortgage loans for periods in which Defendant or prior owners or servicers of the loans had not sent monthly statements. The law requires that a debt collector, like Defendant, not make material misrepresentations in the attempted collection or collection of a consumer debt such as a mortgage. Plaintiff alleged that Defendant violated the law by misrepresenting the amounts owed by him and the other class members.

Defendant denies that it did anything wrong or that it violated any laws. Defendant maintains that it had the right to assess, attempt to collect, and collect interest and fees for periods in which it or a prior owner or servicer of the mortgages failed to send monthly statements. The Court has not decided that Defendant violated the FDCPA. Nor has the Court made any determination that this lawsuit should proceed as a class action, as opposed to an individual claim brought by Plaintiff. This Notice should not be interpreted as an expression of the Court’s opinion on which side is right or wrong. If the parties had not reached a settlement, Defendant would have vigorously defended the lawsuit and asked for a ruling in its favor.

Within the Settlement, you are a member of the “Settlement Class.” The Settlement Class is all consumers: (1) with a non-performing mortgage loan owned by Defendant as of January 1, 2024; (2) to whom Defendant caused written correspondence to be sent in the one year predating the filing of the lawsuit; (3) that contained a demand for payment that included a late fee or interest assessed by Defendant for time periods when the consumer did not receive monthly statements.

### **What Can I Get Out of the Settlement?**

Cash Payments. A \$79,967.42 Statutory Damages Amount will be used to make cash payments to the Class.

If the Settlement is approved in full, the Settlement Class Members who do not opt out of the Settlement will receive equal settlement payments from the Statutory Damages Amount.

Depending on the final number of Settlement Class Members who do not opt out, it is estimated that each eligible Settlement Class Member will receive approximately \$282.57.

Cancellation of Interest and Other Debt Relief. Defendant has also agreed to cancel all retroactively assessed interest and fees associated with each Settlement Class Member’s loan and not to collect or attempt to collect any additional interest against each Class Member’s loan in the future. The total debt cancelled is approximately \$10,893,696. Defendant will also reallocate approximately \$426,818 in interest payments received from Class Members as of the date of final approval of the Settlement to the principal balance of the Class Members’ mortgage loans.

If the Settlement is approved and you do not opt out, the principal balance of your loan will be approximately [INSERT] and the total amount of cancelled interest will be approximately [INSERT].

Questions? Please visit [www.\[xx\].com](http://www.[xx].com) for more information.  
Para una notificacion en Espanol, llamar o visitar nuestro sitio web.

**Who Are the Attorneys Representing the Class and How Will They be Paid?**

The Court has approved lawyers to represent the Settlement Class (“Class Counsel”). If you prefer to hire your own attorney to represent you in this case, you may do so at your own expense. The attorneys who have been appointed by the Court to represent the Settlement Class are:

Kristi C. Kelly  
Casey S. Nash  
J. Pat McNichol  
Matthew G. Rosendahl  
Kelly Guzzo PLC  
3925 Chain Bridge, Suite 202  
Fairfax, VA 22030

You will not be charged for these lawyers. Subject to Court approval, Class Counsel will seek attorneys’ fees and costs that will be paid by Defendant separately. Class Counsel may also seek a service award in an amount not to exceed \$5,000 to be paid to Plaintiff for his services in representing the Settlement Class. The attorneys’ fees, costs, service award, and settlement administration expenses will be paid by Defendant separately from the \$79,967.42 Statutory Damages Amount and will therefore not affect the payment you could receive under the Settlement.

[Continue to Next Page]

**Deciding What You Want to Do**

**What Are My Options?**

You have three options. You can (1) do nothing, (2) exclude yourself (in other words, “opt out”) from the Settlement, or (3) object to the Settlement.

This chart shows the consequences of selecting each option:

	<b>Do nothing</b>	<b>Opt Out of the Class</b>	<b>Object to the Settlement</b>
<b>Am I bound by the terms of the Class if I...</b>	Yes	No	Yes
<b>Will I be able to receive money in the Settlement if I ...</b>	Yes	No	Yes

Your options and rights are explained in the following sections, along with the steps you must take if you wish to opt out or object.

**Staying in the Class**

**What Are the Consequences of Doing Nothing?**

If you do nothing, you will remain in the Settlement Class and be bound by the Court’s orders. You will also receive an automatic payment as described above following approval by the Court of the Settlement.

You will not be able to pursue claims against Defendant that are covered by the Settlement’s release. All the Court’s decisions regarding the Settlement will apply to you and you will be bound by any judgment entered.

**Opting Out**

**What Happens if I Opt Out of The Class?**

If you exclude yourself from the Class, you will not receive any money from the Settlement. You will not be bound by any of the Court’s orders regarding the Class, or any judgment or release entered regarding the Class. You will retain any legal rights you may have against Defendant. You will be responsible for the fees and costs of any services provided by your own lawyer.

**How Do I Opt Out?**

If you wish to be excluded (or “opt out” of the class), you must mail a written request for exclusion addressed to the Settlement Administrator at [address]. Your request for exclusion must be in writing, signed by you, and postmarked on or before [date]. The request must state: “I do not want to be part of the Settlement Class in *Hernandez v. Dyck-O’Neal*.” The request must also be dated and include your name, address, and telephone number. If you have a new address, please also inform the Administrator of the new address so they can update the appropriate records. If you exclude yourself, you are not eligible to receive a payment.

Questions? Please visit [www.\[xx\].com](http://www.[xx].com) for more information.  
 Para una notificacion en Espanol, llamar o visitar nuestro sitio web.



## **Objecting to the Settlement**

### **What Happens if I Object to the Settlement?**

If you object according to the steps below, the Court will consider your objection. If it overrules your objection and approves the Settlement, you will be bound by the Court's decision, and you will remain a part of the Class and receive a payment.

### **How Do I Object to the Settlement?**

You may object to all or part of the Settlement if you think it is not fair, reasonable and/or adequate. To object, you must file with the Court, and send copies to the parties' counsel, a written explanation of the reasons you think that the Court should not approve the Settlement. Be sure to sign the letter and include your name, address, and current phone number, and the basis of your objection including any documentation, and include a notation that it is for "*Hernandez v. Dyck-O'Neal, Inc.*, Civil Action No. 1:23-cv-1029 (E.D. Va.)." The deadline to file an objection is [date]. If you are represented by counsel in your objection, include that attorney's information.

## **Additional Information**

### **When and Where Will the Court Decide Whether to Approve the Settlement?**

The Court will hold a final approval hearing on [redacted], at [redacted].m. before the Honorable Anthony J. Trenga, in the United States District Court for the Eastern District of Virginia, Albert V. Bryan U.S. Courthouse, 401 Courthouse Square, Alexandria, Virginia 22314. At the final approval hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and adequate. The Court will also hear objections to the Settlement, if any. We do not know how long the Court will take to make its decision after the hearing. In addition, the hearing may be continued at any time by the Court without further notice to you. You should check the website [www.\[xx\].com](http://www.[xx].com) after [redacted], to confirm the hearing date, the court approval process, and the Effective Date of the Settlement.

You do not have to appear at the final approval hearing to be eligible to receive a monetary payout. If the Court approves the Settlement, the Court's judgment as to the Settlement Class will be binding on all Settlement Class Members who do not validly exclude themselves.

### **Where Can I Get Additional Information?**

This notice is only a summary of the proposed settlement. You can review more details about the proposed settlement and access additional documents, including the Complaint and the full Settlement Agreement, at the Settlement Website ([www.\[xx\].com](http://www.[xx].com)).

# Exhibit B

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

FREDIS ANTONIO HERNANDEZ, *on behalf of  
himself and all similarly situated individuals,*

Plaintiff,

v.

DYCK-O'NEAL, INC.,

Defendant.

Civil Action No. 1:23-cv-1029-AJT-IDD

**ORDER PRELIMINARILY APPROVING  
SETTLEMENT AND DIRECTING NOTICE TO CLASS**

The Court, having reviewed the Settlement Agreement entered by the Parties, hereby orders that:

1. The Court has considered the proposed settlement of the class claims asserted in the above-captioned action on behalf of the proposed Settlement Class defined as:<sup>1</sup>

All consumers: (1) with a non-performing mortgage loan owned by Defendant as of January 1, 2024; (2) to whom Defendant caused written correspondence to be sent in the one year predating the filing of the lawsuit; (3) that contained a demand for payment that included a late fee or interest assessed by Defendant for time periods when the consumer did not receive monthly statements.

2. The Settlement Agreement filed by the Parties appears, upon preliminary review, to be fair, reasonable, and adequate to the Settlement Class. The Settlement results in payments of approximately \$282.57 to each Class Member from the Statutory Damages Amount. The Settlement will also result in the cancellation of approximately \$10,893,696 in debt among 283 Settlement Class Members, and will reallocate approximately \$426,818 in interest already

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<sup>1</sup> Defined terms used in this Order have the same meaning provided in the Settlement Agreement.

collected from Class Members to the principal balances of their loans. Accordingly, the proposed settlement therein is preliminary approved, pending a Final Approval Hearing, as provided for herein.

3. The prerequisites to a class action under Fed. R. Civ. P. 23(a) have been preliminarily satisfied, for settlement purposes only, in that:

- a. The Settlement Class consists of approximately 283 members;
- b. The claims of the Named Plaintiff are typical of those of the other members of the Settlement Class;
- c. There are questions of fact and law that are common to all members of the Settlement Class; and
- d. The Named Plaintiff will fairly and adequately protect the interests of the Settlement Class and has retained Class Counsel experienced in consumer class action litigation who have, and will continue to, adequately represent the Settlement Class.

4. For settlement purposes only, the Court finds that this action is preliminarily maintainable as a class action under Fed. R. Civ. P. 23(b)(3) because (1) a class action is a fair and efficient adjudication of this controversy; and (2) questions of fact and law common to the members of the Settlement Class predominate over any questions affecting only individual members.

5. If the Settlement Agreement is not finally approved, is not upheld on appeal, or is otherwise terminated for any reason before the Effective Date, the Settlement Class shall be decertified, the Settlement Agreement and all negotiations, proceedings, and documents prepared, and statements made in connection therewith, shall be without prejudice to any Party and shall not

be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law; and all Parties shall stand in the same procedural position as if the Settlement Agreement had not been negotiated, made, or filed with the Court. In that event, this Order shall not have any precedential effect with respect to a litigated class certification motion.

6. The Court appoints Fredis Antonio Hernandez as Class Representative. The Court also appoints Kristi C. Kelly, Casey Nash, Pat McNichol, and Matthew Rosendahl of Kelly Guzzo PLC as counsel for the Class (“Class Counsel”). The Court also approves American Legal Claims Services, LLC as the Settlement Administrator.

7. The Court will hold a Final Approval Hearing pursuant to Fed. R. Civ. P. 23(e) on \_\_\_\_\_, 2024, at \_\_\_\_ .m. (*at least 120 days after entry of this Order*) at the United States District Court for the Eastern District of Virginia, Albert V. Bryan U.S. Courthouse, 401 Courthouse Square, Alexandria, Virginia 22314, for the following purposes:

- a. To determine whether the proposed settlement is fair, reasonable, and adequate and should be granted final approval by the Court;
- b. To determine whether a final judgment should be entered dismissing the claims of the Settlement Class with prejudice, as required by the Settlement Agreement;
- c. To consider the application of Class Counsel for an award of attorneys’ fees, costs, and for a service award to the Class Representative; and
- d. To rule upon other such matters as the Court may deem appropriate.

8. Defendant is to provide the Class List, and the Settlement Administrator is to implement the Notice Plan, in accordance with the Settlement Agreement’s terms and timelines. Pursuant to the Settlement Agreement, the Administrator will provide a declaration to be filed with the Court attesting to the implementation of the Notice Plan prior to the Final Approval Hearing.

To the extent the Parties or Settlement Administrator determine that ministerial changes to the Notice Plan are necessary before disseminating notice to the Settlement Class Members, they may make such changes without further application to the Court.

9. The Court finds the Notice Plan to fully satisfy the requirements of Fed. R. Civ. P. 23 and due process, constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

10. If a Settlement Class Member chooses to opt out of the Class, such Class Member is required to submit a written request for exclusion to the Settlement Administrator by mail, postmarked on or before the date specified in the Class Notice, which shall be no later than sixty (60) days following the initial mailing of the Class Notice. The request must state “I do not want to be part of the Settlement Class in *Hernandez v. Dyck-O’Neal*,” or words to that effect, and must be signed, dated, and include the individual’s name, address, and phone number. A Settlement Class Member who timely submits an opt-out using the procedure identified above shall be excluded from the Settlement Class for any and all purposes. Following the deadline, the Settlement Administrator shall prepare a declaration listing all of the valid opt-outs received and shall provide the declaration and list to Class Counsel, who will then report the names appearing on this list to the Court before the Final Approval Hearing.

11. A Settlement Class Member who does not timely submit a request for exclusion shall be bound by all subsequent proceedings, orders, and judgments in this action.

12. Any Settlement Class Member who wishes for any objection to be considered, must file a written notice of objection to be postmarked within sixty (60) days after the date of initial mailing of the Class Notice and Claim Form. The objection must include the following: (1) the Settlement Class Member’s full name, address and current telephone number; (2) if the individual

is represented by counsel, the name and telephone number of counsel; (3) all objections and the basis for any such objections stated with specificity, including a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (4) the identity of any witnesses the objector may call to testify; (5) a listing of all exhibits the objector intends to introduce into evidence at the Final Approval Hearing, as well as true and correct copies of such exhibits; (6) a statement of whether the objector intends to appear at the Final Approval Hearing, either with or without counsel; and (7) the objector's signature and a notation that it is for "*Hernandez v. Dyck-O'Neal, Inc.*, Civil Action No. 1:23-cv-1029 (E.D. Va.)."

13. Any Settlement Class Member who fails to timely file and serve a written objection pursuant to the terms of this Order and the Settlement Agreement shall not be permitted to object to the approval of the settlement or the Settlement Agreement and shall be foreclosed from seeking any review of the settlement or the terms of the Settlement Agreement by appeal or other means.

14. All briefs, memoranda, petitions and affidavits to be filed in support for an individual award to the Class Representative and for an award of attorney's fees and costs shall be filed not later than fourteen (14) days before the Opt-Out & Objections Deadline.

15. All briefs, memoranda, petitions and affidavits to be filed in support of final approval of the settlement shall be filed not later than fourteen (14) days before the Final Approval Hearing.

16. Neither this Order nor the Settlement Agreement shall be construed or used as an admission or concession by or against the Defendant or any of the Released Parties of any fault, omission, liability, or wrongdoing, or the validity of any of the Released Claims. This Order is not a finding of the validity or invalidity of any claims in this lawsuit or a determination of any wrongdoing by the Defendant or any of the Released Parties. The preliminary approval of the

Settlement Agreement does not constitute any opinion, position, or determination of this Court, one way or the other, as to the merits of the claims and defenses of Plaintiff, the Settlement Class Members, or the Defendant.

17. The Court retains exclusive jurisdiction over this action to consider all further matters arising out of or connected with the Settlement Agreement.

It is so ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
Hon. Anthony J. Trenga  
Senior United States District Judge



# Exhibit C

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

FREDIS ANTONIO HERNANDEZ, *on behalf of  
himself and all similarly situated individuals,*

Plaintiff,

v.

DYCK-O'NEAL, INC.,

Defendant.

Civil Action No. 1:23-cv-1029-AJT-IDD

**FINAL APPROVAL ORDER**

This matter comes before the Court on Plaintiff's Motion for Final Approval of the proposed class action settlement with Defendant Dyck-O'Neal, Inc. ("Defendant"). Having considered all papers filed and arguments made with respect to the Settlement, and having provisionally certified a Settlement Class, the Court hereby FINDS that:

1. On \_\_\_\_\_, the Court held a Final Approval Hearing, at which time the parties were afforded the opportunity to be heard in support of or in opposition to the Settlement.
2. Certification for settlement purposes of the Settlement Class, as defined by the Settlement Agreement and the Preliminary Approval Order, is appropriate pursuant to Rule 23(a), and (b) of the Federal Rules of Civil Procedure.
3. Notice to the Settlement Class required by Fed. R. Civ. P. 23(e) has been provided in accordance with the Settlement Agreement and the Preliminary Approval Order. Such Notice has been given in an adequate and sufficient manner, constitutes the best notice practicable under the circumstances, and satisfies Fed. R. Civ. P. 23(e) and due process.

4. Defendant has timely filed notification of this settlement with the appropriate officials pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715. The Court has reviewed Defendant’s notice of compliance and finds that Defendant’s notice complies with the application requirements of CAFA.

5. The Settlement Agreement was arrived at as a result of arms’ length negotiations conducted in good faith by counsel for the Parties, and is supported by the Parties.

6. The Settlement, as set forth in the Settlement Agreement, is fair, reasonable, and adequate to the members of the Settlement Class, in light of the complexity, expense, and duration of litigation, and the risks involved in establishing liability, damages, and in maintaining the class action through trial and appeal.

7. The relief provided in the settlement constitutes fair value given in exchange for the release of claims. The Settlement provides for cash payments to the Settlement Class Members in addition to the cancellation of approximately \$10,893,696 in debt and the reallocation of approximately \$426,818 in interest already collected from Class Members to their principal balances.

8. The list of individuals attached to the Settlement Administrator’s Declaration filed at \_\_\_\_\_ are determined to have validly excluded themselves from the Settlement Class in accordance with the provisions of the settlement and the Preliminary Approval Order.

9. There were **no** timely objections to Settlement.

10. The Parties and each Class Member have irrevocably submitted to the exclusive jurisdiction of this Court for any suit, action, proceeding, or dispute arising out of the Settlement Agreement.

11. It is in the best interests of the Parties and the Settlement Class Members and consistent with principles of judicial economy that any dispute between any Settlement Class Member (including any dispute as to whether any person is a Settlement Class Member) and any Released Party, which in any way relates to the applicability or scope of the Settlement Agreement or the Final Approval Order, should be presented exclusively to this Court for resolution.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

12. This action is a class action against Defendant Dyck-O'Neal, Inc. on behalf of a class of consumers that has been defined as follows:

All consumers: (1) with a non-performing mortgage loan owned by Defendant as of January 1, 2024; (2) to whom Defendant caused written correspondence to be sent in the one year predating the filing of the lawsuit; (3) that contained a demand for payment that included a late fee or interest assessed by Defendant for time periods when the consumer did not receive monthly statements.

The Settlement Class does not include Defendant's officers, directors, and employees; Defendant's attorneys; Plaintiff's attorneys; any Judge overseeing or considering the approval of the Settlement, together with members of their immediate family and any judicial staff, and those who validly excluded themselves from the Settlement Class as noted above.

13. The Settlement Agreement submitted by the Parties for the Settlement Class is finally approved pursuant to Rule 23(e) of the Federal Rules of Civil Procedure as fair, reasonable, and adequate and in the best interests of the Settlement Class. The Settlement Agreement shall therefore be deemed incorporated herein and the proposed settlement is finally approved and shall be consummated in accordance with the terms and provisions thereof, except as amended or clarified by any subsequent order issued by this Court.

14. This action is hereby dismissed on the merits, with prejudice and without costs.

15. As agreed by the Parties in the Settlement Agreement, upon the Effective Date, the Released Parties shall be released and discharged in accordance with the Settlement Agreement.

16. Each Settlement Class Member is permanently barred and enjoined from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit that asserts Released Claims against the Released Parties.

17. Without affecting the finality of this judgment, the Court hereby reserves and retains jurisdiction over this Settlement, including the administration and consummation of the Settlement. In addition, without affecting the finality of this judgment, the Court retains exclusive jurisdiction over Defendant and each Settlement Class Member for any suit, action, proceeding or dispute arising out of or relating to this Order, the Settlement Agreement or the applicability of the Settlement Agreement. Without limiting the generality of the foregoing, any dispute concerning the Settlement Agreement, including, but not limited to, any suit, action, arbitration or other proceeding by a Settlement Class Member in which the provisions of the Settlement Agreement are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection, shall constitute a suit, action or proceeding arising out of or relating to this Order. Solely for purposes of such suit, action or proceeding, to the fullest extent possible under applicable law, the parties hereto and all members of the Settlement Class are hereby deemed to have irrevocably waived and agreed not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of this Court, or that this Court is, in any way, an improper venue or an inconvenient forum.

18. Upon consideration of Class Counsel's application for fees and costs, the Court awards \$\_\_\_\_\_ as reasonable attorneys' fees and reimbursement for reasonable out-of-pocket expenses, to be paid by Defendant Dyck-O'Neal, Inc..

19. Upon consideration of the application for an individual service award, Named Plaintiff Fredis Antonio Hernandez is awarded the sum of \$5,000 to be paid by Defendant, in consideration for the service he has performed for and on behalf of the Settlement Class.

20. The Settlement Administrator is approved for reimbursement of up to \$ \_\_\_\_ in its out-of-pocket expenses in the administration of the settlement, to be paid by Defendant.

21. The Parties' distribution plan of payments to the Settlement Class Members, in *pro rata* allocations of the Statutory Damages Amount is approved for implementation. Should funds remain after all distributions are made, and the check negotiation period provided for in the Settlement Agreement has passed, the Parties' chosen *cy pres*, Virginia Poverty Law Center, is approved for receiving such balance.

22. The Court finds, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay, and directs the Clerk to enter final judgment.

It is so ORDERED.

Date: \_\_\_\_\_