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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

RICHARD LEE SMITH, JR., individually and  
on behalf of persons similarly situated,

Plaintiff,

vs.

MATT MARTORELLO, *et al.*,

Defendants.

Case No. 3:18-cv-01651-AC

**DEFENDANTS' MOTION TO DISMISS  
UNDER FEDERAL RULE OF CIVIL  
PROCEDURE 19**

REQUEST FOR ORAL ARGUMENT

**L.R. 7-1 CERTIFICATION**

Pursuant to LR 7-1, counsel for defendants certify that they conferred in good faith with counsel for plaintiffs via telephonic conference on February 1, 2021 regarding the substance of this motion and were unable to resolve the issues presented herein.

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## **MOTION**

Defendants move to dismiss this action in its entirety pursuant to Federal Rule of Civil Procedure 19 because Big Picture Loans, LLC (“Big Picture”), Ascension Technologies, LLC (“Ascension”), and the Lac Vieux Desert Band of Lake Superior Chippewa Indians (“Tribe”) are indispensable parties and this action should not proceed in their absence.

## **MEMORANDUM IN SUPPORT OF MOTION**

### **INTRODUCTION**

Plaintiff, on behalf of a putative class of consumer borrowers, seeks to invalidate his and the class’s loan agreements in the absence of the lender, Big Picture, its marketing and technology support affiliate, Ascension, and the Tribe, the sole owner and operator of Big Picture and Ascension. Because of their interests in these loan agreements, Big Picture, Ascension, and the Tribe are required parties to this action under Rule 19(a). *See Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1024 (9th Cir. 2002) (holding tribes were required parties due to their contractual interests in gaming compacts, where district court’s order “amount[ed] to a declaratory judgment that the present gaming conducted by the tribes [was] unlawful” under state law). The Tribe is also a required party because Plaintiff’s claims challenge its sovereign interests in governing itself according to its own laws, developing its economy, regulating Big Picture’s lending operations, negotiating contracts that are subject to its laws, and engaging in commercial dealings with non-Indians. *See Dawavendewa v. Salt River Project Agr. Imp. & Power Dist.*, 276 F.3d 1150, 1157 (9th Cir. 2002) (“[A] judgment rendered in the [Navajo] Nation’s absence will impair its sovereign capacity to negotiate contracts and, in general, to govern the Navajo reservation.”).

As sovereigns, Indian tribes have inherent governmental immunity from suit. *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014). Thus, the Tribe cannot be joined to this action due to its sovereign immunity. Further, a tribe’s sovereign immunity extends to its commercial activities, including those conducted by “arms of the tribe acting on behalf of the tribe.” *White v. Univ. of Cal.*, 765 F.3d 1010, 1025 (9th Cir. 2014). Big Picture and Ascension are governmental instrumentalities of the Tribe possessing sovereign immunity and thus cannot be joined to this

action. *Williams v. Big Picture, LLC*, 929 F.3d 170, 185 (4th Cir. 2019).

The factors set forth in Rule 19(b) lead inescapably to the conclusions that the Tribe, Big Picture, and Ascension are indispensable parties and that, given their sovereign immunity, this action should not proceed in their absence. *See, e.g., Rep. of Phil. v. Pimentel*, 553 U.S. 851, 867-69 (2008); *Dine Citizens Against Ruining Our Env't v. Bureau of Indian Affairs*, 932 F.3d 843, 857 (9th Cir. 2019); *Fluent v. Salamanca Indian Lease Auth.*, 928 F.2d 542, 548 (2d Cir. 1991); *Enter. Mgmt. Consultants, Inc. v. U.S. ex rel. Hodel*, 883 F.2d 890, 894 (10th Cir. 1989). Accordingly, this action should be dismissed under Rule 19.

### **BACKGROUND**

#### **I. Plaintiff's allegations arise from loans made by Big Picture, an arm of the Tribe, pursuant to tribal law.**

This case arises out of loan agreements between the putative class and Big Picture, a tribal entity that engages in the federally and tribally regulated business of online consumer lending on behalf of the Tribe. (Dkt. 100 ¶ 3.) The loan agreements contain choice of law and forum selection provisions, which provide that they are governed by the laws of the Tribe and applicable federal law, and that all disputes shall be solely and exclusively resolved pursuant to the Tribal Dispute Resolution Procedure set forth in the Tribal Consumer Financial Services Regulatory Code. This procedure requires complaints related to loan agreements to be filed with Big Picture and adjudicated by the Tribe's regulatory authority, and provides the right to appeal to Tribal Court. (*Id.* ¶¶ 105, 106.)

Despite agreeing to those provisions, plaintiff Richard Smith seeks to invalidate his loan agreement—and any similar agreements for a nationwide class of borrowers and an Oregon subclass—claiming they are governed by state law and that the choice of law and forum selection provisions are void and unenforceable. (*Id.* ¶¶ 103-104, 107-110.) Plaintiff further claims that Big Picture, Ascension, Matt Martorello (“Martorello”), Tribal council members, and others constitute a criminal enterprise that collects unlawful debts in violation of RICO. (*Id.* ¶ 149.)

**II. Plaintiff and certain class members have settled some, but not all, of their claims with Big Picture and Ascension.**

Following the Fourth Circuit's decision in *Williams*, Plaintiff Smith and the plaintiffs in parallel cases entered a class action settlement agreement with Big Picture, Ascension, and certain other defendants, which is attached hereto as Exhibit A. *Galloway, et al. v. Williams, et al.*, 3:19-cv-00470 (E.D. Va.) ("*Galloway*"), Dkt. 55-1 ("Settlement Agreement"). The Settlement Class includes all consumers in the United States who executed loan agreements with Big Picture from June 22, 2013 to December 20, 2019. "Approximately 361,731 Settlement Class Members have outstanding loans." *Galloway*, Dkt. 114, at 6. Those class members whose loans are at least 210 days in default will be charged off. (Settlement Agreement § 11.3.) For those class members whose loans are not fully paid off (but have not been charged off), Big Picture agreed to cap collections at no more than 2.5 times the original principal amount. (Settlement Agreement § 11.2.) "For class members who paid off their loans and who paid more than 2.5 times the original loan principal, the settling defendants will establish an \$8.7 million Settlement Fund from which class members can make a claim." *Galloway*, Dkt. 114, at 6 (emphasis added).

As relevant here, the Settlement Agreement contains no admission of liability and no waiver of tribal sovereign immunity. (Settlement Agreement §§ 1.6, 3.1-3.3.) It does not modify the choice of law and forum selection provisions in Big Picture's loan agreements. Even with the collections cap, it permits the continued collection of Big Picture's loans at rates that far exceed the state usury laws the Plaintiff claims apply here. And the Settlement Agreement has no impact on loans originated after December 20, 2019. Indeed, it establishes a two-year payment schedule for the defendants to make deposits to the settlement fund (Settlement Agreement § 10.1), which clearly contemplates that Big Picture will continue to originate and collect on loans (from non-Settlement Class borrowers) to fund the settlement. The Settlement Agreement also requires certain individual defendants to transfer their ownership interests in Eventide (the alleged lynchpin of a RICO enterprise) to the settlement fund with the express contemplation that their share of ongoing Big Picture note payments to Eventide shall flow to the settlement fund. (Settlement

Agreement § 10.2); *see also Galloway*, Dkt. 92, at 8 (“Under the Settlement Agreement, the consumer loans made by Big Picture will continue to be serviced by Ascension and the proceeds therefore will be collected and will be available to make payments on the Note to Eventide.”).<sup>1</sup>

Significantly, the Settlement Agreement did not resolve all potential claims against Big Picture or Ascension. It does not cover loans that Big Picture has originated since December 20, 2019. Furthermore, the overwhelming majority of the Settlement Class members did not resolve their individual claims against Big Picture; they simply waived their right to form a class if they pursue a claim against Big Picture or Ascension. Under the Settlement Agreement, class members who receive a payment from the settlement fund release all claims against Big Picture and Ascension, but members who do not receive a payment waive only their rights to bring a class action, collective action, or mass action. (Settlement Agreement §§ 12.1–12.4.) As of October 23, 2020, only 4,245 Settlement Class members had submitted claims. *Galloway*, Dkt. 114, at 6.

### **III. The claims in this case directly implicate the interests of Big Picture, Ascension, and the Tribe.**

The claims in this case directly implicate the interests of the Tribe, Big Picture, and Ascension, and are largely unaffected by the Settlement Agreement. The First Amended Class Action Allegation Complaint alleges that the loans made by Big Picture to Plaintiff and the Oregon Subclass violate Oregon law and are null and void. (Dkt. 100 ¶¶ 94-96.) The Oregon Subclass is defined as all persons who executed a loan with Big Picture while residing in Oregon and where the loan was originated or any payment was made after October 30, 2014. (*Id.* ¶ 127.) The Complaint alleges that the choice-of-law, dispute resolution, and class action waiver provisions in Big Picture’s loan agreements are void and/or unenforceable. (*Id.* ¶¶ 103-26.)

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<sup>1</sup> In effect, the Settlement Agreement allows Big Picture’s allegedly unlawful loan operation to continue in return for the Settlement Class indirectly receiving a share of the profits. Indeed, by receiving equity in Eventide, Plaintiff Smith and the Settlement Class are part owners of an entity allegedly engaging in criminal activity.

The Complaint further alleges that defendants Martorello and Eventide, together with the “Settled Defendants,” constitute a RICO enterprise, who “have all participated in the formation and operation of [a] scheme to defraud borrowers while attempting to take advantage of tribal immunity through the association with the Tribe.” (*Id.* ¶ 149.) The “Settled Defendants” (also referred to as the “Settled Parties”) include Big Picture, Ascension, the chairman of the Tribal Council and a number of Council members. (*Id.* ¶ 19 n.7.) The Complaint alleges that the Settled Parties (Big Picture, Ascension, and Tribal leaders) have acted in concert with Martorello and Eventide to define the types of loans that Big Picture would offer to customers and the illegal terms on which the loans would be created, and to market the loans via the Internet. (*Id.* ¶¶ 156-57.) It alleges that the Settled Parties, in concert with Martorello and Eventide, participated in establishing the illegal enterprise and have intentionally and willfully committed mail fraud and wire fraud, and have defrauded thousands of people in a financially challenged position by extending loans at illegally high and extortionate interest rates. (*Id.* ¶¶ 165-66.) It alleges that the Settled Parties, in concert with Martorello and Eventide, have and continue to operate, direct, and control the RICO enterprise by lending money at usurious rates according to Oregon law. (*Id.* ¶¶ 179, 181.)

The Complaint further alleges that Martorello and Eventide entered into a series of agreements with the Settled Parties to violate RICO, including (1) the service agreements, promissory notes, other agreements, and addenda with the Settled Parties; (2) agreements to provide the necessary funds to conduct and expand the affairs of the lending enterprise; (3) agreements with the Settled Parties to investigate, solicit, and/or consent to investors in furtherance of the affairs of the lending enterprise; (4) agreements with the Settled Parties to generate high-interest loans to desperate borrowers, including borrowers in Oregon; and (5) agreements with the Settled Parties to refinance the lending enterprise, including the agreement for the acquisition of Bellicose Capital and the continued payments to Martorello. (*Id.* ¶ 189.) Among the relief that the Complaint seeks is a declaratory judgment that the choice of law, forum selection, class action waiver, and dispute resolution provisions in all of the Big Picture loan

documents are void and unenforceable as to Oregon residents because they violate Oregon law and are unconscionable and contrary to matters of public policy. (*Id.* ¶ 139.)

These claims directly affect the interests of Big Picture, Ascension, and the Tribe. All of them have an obvious interest in Big Picture’s continuing ability to originate and collect loans, and in not having the loan agreements declared unlawful, which would adversely affect their business prospects and their existing and future relationships with banks, credit bureaus, lenders, employees, borrowers, and prospective borrowers. They have an equally obvious interest in not having Big Picture, Ascension, and tribal officials labeled as racketeers who are operating a RICO enterprise through the collection of unlawful debt.<sup>2</sup> And the Tribe has a sovereign interest in not having its lending laws and regulatory regime invalidated.

But Big Picture and Ascension cannot be joined because they are arms of the Tribe entitled to all of the privileges of tribal sovereignty, which includes its sovereign immunity. *See Williams*, 929 F.3d at 185 (holding Big Picture and Ascension “have promoted ‘the Tribe’s self-determination through revenue generation and the funding of diversified economic development’” and that a finding of no immunity “would weaken the Tribe’s ability to govern itself according to its own laws, become self-sufficient, and develop economic opportunities for its members”) (quoting *Breakthrough Mgmt. Grp., Inc. v. Chukchansi Gold Casino & Resort*, 629 F.3d 1173, 1187-88 (10th Cir. 2010)). And the Tribe enjoys sovereign immunity as a federally recognized Indian Tribe. *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998) (“[A]n Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity.”); *Indian Tribes Recognized by the United States Bureau of Indian Affairs*, 85 Fed. Reg. 5,462-01 (Jan. 30, 2020).

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<sup>2</sup> “[A] RICO defendant faces the unsavory label ‘racketeer’ . . . [which places] his reputation for honesty [] at great risk.” *Schnitzer v. Oppenheimer & Co.*, 633 F. Supp. 92, 97 (D. Or. 1985).



## LEGAL STANDARD

Under Federal Rule of Civil Procedure 19, an “entity is a ‘required party’ and ‘must be joined’ if feasible if either ‘in that [party]’s absence, the court cannot accord complete relief among existing parties’; or if ‘that [party] claims an interest relating to the subject of the action and is so situated that disposing of the action in the [party]’s absence may . . . as a practical matter impair or impede the [party]’s ability to protect the interest’ or ‘leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.’” *Dine Citizens*, 932 F.3d at 851 (quoting Fed. R. Civ. P. 19(a)(1)). “[I]f the party ‘who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed.’” *Id.* (quoting Fed. R. Civ. P. 19(b)). Because Big Picture, Ascension, and the Tribe are required parties who cannot be joined, and because this action should not proceed in their absence, this case should be dismissed.

## ARGUMENT

### **I. Big Picture, Ascension, and the Tribe Are Required Parties Under Rule 19.**

#### **A. Proceeding in the Absence of Big Picture, Ascension, and the Tribe Will Impair Their Sovereign Interests, Including Their Interest in the Loan Agreements.**

“[N]o procedural principle is more deeply imbedded in the common law than that, in an action to set aside a lease or a contract, all parties who may be affected by the determination of the action are indispensable.” *Dawavendewa*, 276 F.3d at 1156 (citation omitted); *see also U.S. ex rel. Hall v. Tribal Dev. Corp.*, 100 F.3d 476, 479 (7th Cir. 1996) (“A judicial declaration as to the validity of a contract necessarily affects, ‘as a practical matter,’ the interests of both parties to the contract. As a party to the lease contracts at issue here, the Tribe . . . is a necessary party under Rule 19(a).”) (citation omitted); *Naartex Consulting Corp. v. Watt*, 722 F.2d 779, 788 (D.C. Cir. 1983) (“Numerous cases hold that ‘an action seeking rescission of a contract must be dismissed unless all parties to the contract, and others having a substantial interest in it, can be joined.’”).



This principle is illustrated by the Ninth Circuit’s decision in *American Greyhound*. There, racetrack owners and operators sought to enjoin the Governor of Arizona from renewing gaming compacts with several tribes, claiming the gaming permitted by the compacts was prohibited by state law. 305 F.3d at 1018, 1020-21. The Governor moved to dismiss on the ground that the tribes were necessary and indispensable parties. *Id.* at 1018. The district court denied the motion, held the gaming permitted by the compacts was unlawful, and enjoined the Governor from renewing existing gaming compacts with the tribes. *Id.* at 1021.

On appeal, the Ninth Circuit reversed, holding the tribes were necessary parties for two reasons. *Id.* at 1024-25. First, the court observed that the tribes had a right to renewal under the compacts and found this contractual right established the tribes’ interest in the litigation. *Id.* at 1023. Second, the district court’s injunction “amount[ed] to a declaratory judgment that the present gaming conducted by the tribes is unlawful” and impaired the “sovereign power of the tribes to negotiate compacts.” *Id.* at 1024. The court noted that while the tribes were not bound by the district court’s ruling, “their interests may well be affected *as a practical matter* by the judgment that its operations are illegal,” and “enforcement authorities may consider themselves compelled to act against the tribes” in light of the ruling. *Id.* (emphasis in original). The court also found the tribes were indispensable and reversed and remanded with instructions to dismiss the action because the tribes were immune from suit. *Id.* at 1018; *see also Dewberry v. Kulongoski*, 406 F. Supp. 2d 1136, 1147 (D. Or. 2005) (finding that “the Tribes have legally protected interests in this action that ‘arise from terms in bargained contracts,’ and disposition in this matter in the Tribes’ absence would impede if not impair the Tribes’ ability to protect their claimed interests”).

Similarly, in this case, Plaintiff claims the loan agreements are void under state usury laws and seeks a declaratory judgment that the choice of law and forum selection provisions in the loan agreements are void and unenforceable. In addition, Plaintiff alleges that Big Picture, Ascension, and elected tribal officials participated in a RICO enterprise through the collection of unlawful debt. As in *American Greyhound*, Plaintiff seeks a declaratory judgment that Big Picture’s lending operation is unlawful. Further, Plaintiff seeks an adjudication that an unlawful RICO enterprise

exists which includes Big Picture, Ascension, and several elected members of tribal council(s). Therefore, Big Picture, Ascension, and the Tribe are required parties because they have a substantial interest in avoiding any judgment that impugns the legality of Big Picture's lending operation, undermines their tribal sovereignty, finds they are operating a RICO enterprise, or declares provisions of the Big Picture's loan agreements improper, unconscionable or unenforceable.

**B. The Tribe is a Required Party Because Proceeding in its Absence Will Impair its Ability to Protect its Sovereign and Economic Interests.**

Plaintiff's claims challenge the Tribe's sovereign authority to govern and regulate its own businesses, subject to its laws, and negotiate contracts that are governed by its laws and pursuant to terms it sees fit. The loan agreements provide that they are governed by tribal law, including the Tribal Consumer Financial Services Regulatory Code, which is enforced by the Tribal Financial Services Regulatory Authority. Accordingly, the Tribe is a required party because adjudicating the validity of the loan agreements, including the choice of law and forum selection provisions, in the absence of the Tribe will impair its sovereign interests in making and enforcing its laws. *See Dawavendewa*, 276 F.3d at 1157 (holding in a suit challenging hiring preference policy for members of tribe in lease between tribe and operator of tribe's power generating station that "a judgment rendered in the [tribe's] absence will impair its sovereign capacity to negotiate contracts and, in general, to govern the [tribe's] reservation."); *Enter. Mgmt. Consultants, Inc.*, 883 F.2d at 894 ("In addition to the effect this action would have on the Tribe's interest in the contract, the suit would also effectively abrogate the Tribe's sovereign immunity by adjudicating its interest in that contract without consent."); *cf. Kennedy v. U.S. Dep't of the Interior*, 282 F.R.D. 588, 594 (E.D. Cal. 2012) ("[T]he Tribe has a legally protected interest in the outcome of this case 'because the dispute between the [factions of the tribe] raises questions about compliance with the Tribe's Constitution, Election Ordinance and Membership Ordinance and because the governance of the Tribe is . . . at stake.'").

The Tribe’s status as a required party is also established by its economic interest in Big Picture’s lending business. In 2018, the district Court in *Williams* found that “[p]roceeds from Big Picture’s business now comprise more than 10% of the Tribe’s general fund, and those profits could possibly fund more than 30% of the Tribe’s budget over the next few years.” *Williams v. Big Picture Loans, LLC*, 329 F. Supp. 3d 248, 264 (E.D. Va. 2018).<sup>3</sup> The Fourth Circuit concluded that Big Picture and Ascension provide “substantial revenue that the Tribe has received (and will continue to receive) in the form of payouts and reinvestments,” *Williams*, 929 F.3d at 182, and has “promoted the Tribe’s self-determination through revenue generation and the funding of diversified economic development.” *Id.* at 185 (internal quotation and citation omitted). The Tribe’s economic interest in Big Picture and Ascension makes it a required party.

In a recent Rule 19 decision, the Ninth Circuit considered the economic impact of litigation on the absent tribe, itself, in addition to its impact on a tribal corporation. The court noted that “[t]he Navajo Nation and [the corporation] would be prejudiced if this lawsuit were to proceed and Plaintiffs were to prevail—at stake is an estimated 40 to 60 million dollars per year in revenue for the Navajo Nation, as well as its ability to use its natural resources how it chooses.” *Dine Citizens*, 932 F.3d at 857; *see also Ctr. for Biological Diversity v. Pizarchik*, 858 F. Supp. 2d 1221, 1225-26 (D. Colo. 2012) (holding tribe was necessary party in suit challenging lawfulness of mining permit issued to operator of the tribe’s mine, where royalties and taxes from the mine constituted 24% of the tribe’s budget). Likewise, the Tribe’s economic interest in the continued operations of Big Picture and Ascension makes it a required party in this case.

**C. The Court Cannot Afford Complete Relief in the Absence of Big Picture.**

Plaintiff seeks a declaratory judgment that the choice of law, forum selection, class action waiver, and dispute resolution provisions in all of the Big Picture loan documents are void and unenforceable as to Oregon residents because they violate Oregon law and are unconscionable and contrary to public policy. But, because Big Picture is not a party to this action, it will not be bound

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<sup>3</sup> As of December 2018, more than 44% of the Tribe’s general fund came from revenue generated by Big Picture. (Dkt. 40-2, ¶ 18).

by any such judgment. Without Big Picture, or the Tribe’s governing body (the only entities with authority to change Big Picture’s lending and collection activities), the Court cannot provide this relief. It is fundamental that “a district court cannot adjudicate an attack on the terms of a negotiated agreement without jurisdiction over the parties to that agreement” because it cannot afford complete relief. *Clinton v. Babbitt*, 180 F.3d 1081, 1088 (9th Cir. 1999).

**II. This Action Must Be Dismissed Because Big Picture, Ascension, and the Tribe Cannot Be Joined.**

Because Big Picture, Ascension, and the Tribe are required parties that cannot be joined due to their sovereign immunity, the Court must next consider whether they are indispensable such that this action must be dismissed. A party is indispensable if in “equity and good conscience,” the Court should not allow the action to proceed in its absence. Fed. R. Civ. P. 19(b).

**A. Big Picture, Ascension, and the Tribe Have Compelling Interests that Warrant Dismissal.**

To evaluate whether an action could fairly proceed without a required party, courts consider four nonexclusive factors: (1) the extent to which a judgment rendered in the person’s absence might prejudice that person or the existing parties; (2) the extent to which any prejudice could be lessened or avoided by (a) protective provisions in the judgment, (b) shaping the relief, or (c) other measures; (3) whether a judgment rendered in the person’s absence would be adequate; and (4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder. *Pimentel*, 553 U.S. at 862.

In this case, however, there are two overriding reasons why a detailed balancing of these four factors is not necessary. First, “[i]f the necessary party is immune from suit, there may be ‘very little need for balancing Rule 19(b) factors because immunity itself may be viewed as the compelling factor.’” *Kescoli v. Babbitt*, 101 F.3d 1304, 1311 (9th Cir. 1996) (quoting *Confederated Tribes v. Lujan*, 928 F.2d 1496, 1499 (9th Cir. 1991)). “A case may not proceed when a required-entity sovereign is not amenable to suit. . . . dismissal of the action must be

ordered where there is a potential for injury to the interests of the absent sovereign.” *Pimentel*, 553 U.S. at 867. “*Pimentel* stands for the proposition that where a sovereign party should be joined in an action, but cannot be owing to sovereign immunity, **the entire case must be dismissed if there is the potential for the interests of the sovereign to be injured.**” *Klamath Tribe Claims Comm. v. United States*, 106 Fed. Cl. 87, 96 (2012), *aff’d sub nom. Klamath Claims Comm. v. U.S.*, 541 F. App’x 974 (Fed. Cir. 2013) (emphasis added). As the Ninth Circuit recently observed:

there is a “wall of circuit authority” in favor of dismissing actions in which a necessary party cannot be joined due to tribal sovereign immunity—“virtually all the cases to consider the question appear to dismiss under Rule 19, regardless of whether [an alternate] remedy is available, if the absent parties are Indian tribes invested with sovereign immunity.”

*Dine Citizens*, 932 F.3d at 857 (quoting *White*, 765 F.3d at 1028). Thus, the fact that Big Picture, the Tribe, and Ascension are required parties that cannot be joined due to tribal sovereign immunity is, without more, a compelling factor requiring dismissal of this action.

A second reason why a detailed weighing of the Rule 19(b) factors is unnecessary is that Big Picture is a party to all of the loan agreements at issue in this action. “[A] party to a contract is necessary, and if not susceptible to joinder, indispensable to litigation seeking to decimate that contract.” *Dawavendewa*, 276 F.3d at 1157 (emphasis added; citation omitted); *see also Lomayaktewa v. Hathaway*, 520 F.2d 1324, 1325 (9th Cir. 1975) (“No procedural principle is more deeply imbedded in the common law than that, in an action to set aside a lease or a contract, all parties who may be affected by the determination of the action are indispensable”). Because Big Picture is a party to the loan agreements, it is indispensable and this action cannot proceed in Big Picture’s absence.

**B. The Rule 19(b) Factors Weigh in Favor of Dismissal.**

An analysis of all four factors set forth in Rule 19(b) confirms the conclusion that this action must be dismissed in the absence of Big Picture, Ascension, and the Tribe. “Prejudice, the first factor in the Rule 19(b) analysis, ‘largely duplicates the consideration that made a party

necessary under Rule 19(a)[.]” *Dine Citizens*, 932 F.3d at 857.

For all of the reasons already discussed, Big Picture, Ascension, and the Tribe face severe prejudice to their legitimate interests if the claims in this case are adjudicated in favor of the Plaintiff. In *United States. ex rel. Hall v. Tribal Development Corp.*, the Seventh Circuit concluded the first Rule 19(b) factor weighed in favor of dismissal where the plaintiffs sought “to void contracts between the defendants and the Tribe for the leasing of goods and services that the Tribe needs in order to operate its casinos.” 100 F.3d at 480. Noting the “Tribe’s stake in this matter extends beyond the specific contracts at issue,” the court agreed with the trial court’s reasoning that

In a larger sense, **the precedent set by rescission of transactions freely entered by the tribes would likely be extremely prejudicial to the tribes’ long term interest in Indian gaming and the revenue it provides. . . . The message such a judgment would send to outside vendors would be that transactions with Indian gaming enterprises are subject to cancellation at any time** and without regard to whether the contracts were freely and fairly negotiated, the extent to which the parties have performed their duties under the contracts or the settled expectations and reliance of the parties. . . . Regardless of whether such a judgment would otherwise constitute the correct application of the law, it would undeniably be prejudicial to the interests of the Indian tribes.

*Id.* (citation omitted) (alteration in original and emphasis added). Likewise, here, an adjudication in favor of Plaintiff and the class would not only discredit Big Picture’s loan agreements but would undermine the Tribe’s interest in tribal lending and the essential revenue that it provides.

“The second factor, the court’s ability to shape relief so as to avoid prejudice, likewise favors dismissal . . . [because Big Picture, Ascension, and the Tribe] inevitably would be prejudiced if Plaintiff[] ultimately succeeded.” *Dine Citizens*, 932 F.3d at 858. Entering judgment for Plaintiff will impugn the legality of Big Picture’s loan agreements and business methods, as well as the existing business arrangements between Big Picture, Ascension, and Eventide, and there is no way to shape relief to avoid this prejudice. *See Hall*, 100 F.3d at 480 (reasoning second

factor supported dismissal because “[t]here is no middle ground—either the transactions violate statutory requirements and are void, requiring payment of all value paid by the tribes, or they comply with the law and are valid”); *Hardy v. IGT, Inc.*, No. 2:10-CV-901-WKW, 2011 WL 3583745, at \*7 (M.D. Ala. Aug. 15, 2011) (“Narrowing the scope of [plaintiff’s] recovery to just the [defendant manufacturers of bingo machines] would not alter the determination that the Tribe’s gaming contracts with its patrons are void under Alabama law, and its electronic bingo operations are illegal under Alabama law or federal law, or both.”); *Am. Greyhound*, 305 F.3d at 1025 (noting second factor favored dismissal where modifying relief “would not protect the tribes from other potential effects of the declaration that the gaming conducted by the tribes pursuant to their compacts is illegal”). Because “[t]here is no middle ground,” an adverse judgment would inevitably harm the Tribe, Big Picture, and Ascension.

The third factor focuses on “the interests of the courts and the public in complete, consistent, and efficient settlement of controversies.” *Paiute-Shoshone Indians v. City of Los Angeles*, 637 F.3d 993, 1000 (9th Cir. 2011). In this case, the Court cannot render an adequate judgment—one that provides a complete, consistent, and efficient resolution of Plaintiff’s claims—in the absence of Big Picture. Plaintiff seeks a judgment that the Big Picture loan agreements are unlawful and unenforceable as to Oregon residents. But Big Picture will not be bound by any such judgment. Thus, any Oregon borrower—including Plaintiff—who seeks to invalidate a loan agreement with Big Picture would have to bring a separate action to do so. The controversy regarding the legality and enforceability of the loans would remain alive and incapable of resolution in the absence of Big Picture. “Because Plaintiff’s action only gets Plaintiff part of the way to the relief that [he] wants, the interest of the courts and the public in a complete and efficient settlement does not support [proceeding with the action].” *Id.* at 1001-02. Furthermore, an adequate judgment is not possible when, as here, the plaintiff’s claim cannot be addressed without prejudicing the absent parties. *See Wilbur v. Locke*, 423 F.3d 1101, 1114-15 (9th Cir. 2005), *abrogated on other grounds Levin v. Commerce Energy, Inc.*, 560 U.S. 413 (2010); *Dewberry v. Kulongoski*, 406 F. Supp. 2d at 1148 (noting third factor favors dismissal where



plaintiffs seek nothing less than nullification of a tribal contract).

The fourth factor also favors dismissal because Plaintiff and the putative class of borrowers have an adequate remedy if this action is dismissed. They can pursue relief under the Tribal Dispute Resolution Procedure set forth in their loan agreements. In addition, they can seek relief through the Consumer Financial Protection Bureau (CFPB) dispute resolution process (<https://www.consumerfinance.gov/complaint/>). Congress created the CFPB to regulate and enforce consumer lending activity (including tribal lending) and Big Picture has no immunity from its processes. *See Dawavendewa*, 276 F.3d at 1162-63 (noting EEOC might provide plaintiff with an adequate alternative forum).

But even if Plaintiff lacks an alternative forum, dismissal is warranted because of the compelling interests that weigh against proceeding in the absence of Big Picture, Ascension, and the Tribe. *See Dine Citizens*, 932 F.3d at 858 (“Even assuming that no alternate remedy exists, and that both the third and fourth factors therefore weigh against dismissal, we would hold that dismissal is proper. . . . we have regularly held that the tribal interest in immunity overcomes the lack of an alternative remedy.” (emphasis added)); *Am. Greyhound*, 305 F.3d at 1025 (even if no alternative forum exists, “this result is a common consequence of sovereign immunity, and the tribes’ interest in maintaining their sovereign immunity outweighs the plaintiffs’ interest in litigating their claims.”); *cf. Pimentel*, 553 U.S. at 872 (“Dismissal under Rule 19(b) will mean, in some instances, that plaintiffs will be left without a forum for definitive resolution of their claims. But that result is contemplated under the doctrine of foreign sovereign immunity.”). Because Big Picture, Ascension, and the Tribe are plainly indispensable parties, this action must be dismissed.

### **CONCLUSION**

For the foregoing reasons, Martorello and Eventide respectfully request that this action be dismissed pursuant to Federal Rule of Civil Procedure 19.

Dated: February 2, 2021

s/  
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# EXHIBIT A

**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

This Class Action Settlement Agreement and Release (“Settlement Agreement”) is made and entered into by and between: (1) Plaintiffs in the Actions listed below (“Plaintiffs”), and (2) (i) Big Picture Loans, LLC (“Big Picture”) and Ascension Technologies, LLC (“Ascension”) (collectively, the “Big Picture Defendants”), wholly-owned and operated entities of the Lac Vieux Desert Band of Lake Superior Chippewa Indians (the “Tribe”), a federally-recognized Indian tribe, (ii) James Williams, Jr., Michelle Hazen, Henry Smith, Alice Brunk, Andrea Russell, Tina Caron, Mitchell McGeshick, Gertrude McGeshick, Susan McGeshick, Giiwegiizhigookway Martin, Jeffery McGeshick, Roberta Ivey, and June Saad (collectively, the “Individual Tribal Defendants”), (iii) Columbia Pipe & Supply Co., Timothy Arenberg, Terrance Arenberg, DTA Trinity Wealth Transfer Trust, and Deborah M. Arenberg Living Trust (collectively, the “Columbia Defendants”), (iv) Amlaur Resources, LLC and Brian Jedwab (collectively the “Amlaur Defendants”), (v) James Dowd (“Dowd”), (vi) Simon Liang (“Liang”), and (vii) Brian McFadden (“McFadden”) (collectively, the Big Picture Defendants, the Tribe, the Individual Tribal Defendants, the Columbia Defendants, the Amlaur Defendants, Dowd, Liang and McFadden shall be referred to as the “Settling Defendants”; collectively, Plaintiffs and the Settling Defendants shall be referred to as the “Parties”).

This Settlement Agreement is intended to fully, finally, and forever resolve the Released Claims (*see* Section XII) of the Settlement Class (*see* Section 2.28), some of which are set forth in certain pending and dismissed civil actions, including but not limited to: *Lula Williams, et al. v. Big Picture Loans, LLC, et al.*, No. 3:17-cv-00461 (E.D. Va.) (“*Williams*”); *Renee Galloway, et al. v. Big Picture Loans, LLC, et al.*, No. 3:18-cv-00406 (E.D. Va.) (“*Galloway I*”); *Renee Galloway, et al. v. Matt Martorello, et al.*, No. 3:19-cv-00314 (E.D. Va.) (“*Galloway II*”); *Renee*

*Galloway, et al. v. James Williams, Jr., et al.*, No. 3:19-cv-00470 (E.D. Va.) (“*Galloway III*”); *Dana Duggan v. Big Picture Loans, LLC, et al.*, No. 1:18-cv-12277 (D. Mass.) (“*Duggan*”); *Richard Lee Smith, Jr. v. Big Picture Loans, LLC, et al.*, No. 3:18-cv-01651 (D. Or.) (“*Smith*”); *Christine Cumming, et al. v. Big Picture Loans, LLC, et al.*, No. 5:18-cv-03476 (N.D. Ca.); *Chris Kobin v. Big Picture Loans, LLC, et al.*, 2:19-cv-02842 (C.D. Ca.); and *Victoria Renee McKoy, et al., v. Big Picture Loans, LLC, et al.*, 1:18-cv-03217 (N.D. Ga.) (collectively, the “Actions”).

## I. RECITALS

1.1 Beginning in June 2017, Plaintiffs filed putative class action Complaints in the United States District Courts for the Eastern District of Virginia, Central District of California, Northern District of California, Northern District of Georgia, District of Massachusetts, and District of Oregon, alleging violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”) and the usury laws of various states, among other claims, arising from loans made to consumers by Big Picture or Red Rock Tribal Lending, LLC (“Red Rock”).

1.2 The Actions collectively involved substantial discovery and motion practice, including multiple motions to dismiss; the production and review of hundreds of thousands of pages of documents; depositions and expert reports; an appeal to the Fourth Circuit Court of Appeals; and pre-trial briefing and preparation, which – following significant arms-length negotiations and multiple all-day mediations conducted by Nancy F. Lesser of PAX ADR Dispute Resolution & Mediation Services and the Honorable David J. Novak – culminated in a Settlement (see Section 2.24). During those mediation sessions, the fact that Troutman Sanders, LLP represented multiple Defendants, including certain Settling Defendants and certain Non-Settling Defendants, was fully disclosed to the Parties, the mediator, and the Honorable David J. Novak. Troutman Sanders, LLP did not participate in discussions where any proposed settlement term potentially adversely impacting any of the Non-Settling Defendants was being considered.

13 Based on Class Counsel's investigation and the Parties' negotiations, which included Class Counsel's extensive review of voluminous documents and data obtained in discovery in related litigation and multiple depositions, and taking into account the sharply-contested issues involved, the risks, uncertainty, and cost of further prosecution of this litigation, and the substantial benefits to be received by Settlement Class Members pursuant to this Settlement Agreement, Class Counsel have concluded that a settlement with the Settling Defendants on the terms set forth herein is fair, reasonable, adequate and in the best interests of the Settlement Class Members.

14 The Tribe, the Big Picture Defendants, the Tribal Officials, the Individual Tribal Defendants, Dowd, McFadden, and Liang assert that they are all entitled to tribal sovereign immunity. Further, the Tribe, the Big Picture Defendants, the Tribal Officials, the Individual Tribal Defendants, Dowd, McFadden, and Liang deny that any court in the Actions has subject matter jurisdiction or personal jurisdiction over any of them. By entering into this Settlement Agreement, Plaintiffs and Class Counsel have not conceded nor agreed to these defenses.

15 The Columbia Defendants and the Amlaur Defendants deny that the Court in *Galloway II* has subject matter jurisdiction or personal jurisdiction over any of them. By entering into this Settlement Agreement, Plaintiffs and Class Counsel have not conceded nor agreed to these defenses.

16 The Settling Defendants deny all material allegations in the Complaints, deny any jurisdiction in this Court save for purposes of enforcing this Settlement Agreement, deny any fault, wrongdoing, or liability whatsoever arising out of or related to their business practices, and affirmatively state that their practices have been lawful and proper. The Settling Defendants deny that the resolution of the merits of the Actions is suitable for class treatment, and further deny

liability to Plaintiffs or to others similarly situated, including all members of the Settlement Class. It is specifically agreed that the execution of this Settlement Agreement is not, and shall not be construed as, an admission of wrongdoing or liability by any Defendant, an admission that any Defendant violated any provision of any federal or state law, or an admission that any Defendant concedes that class treatment of the Actions is appropriate for any purpose other than certification of a settlement class as set forth herein. By entering into this Settlement Agreement, Plaintiffs and Class Counsel have not conceded nor agreed to the preceding assertions, disputes, and defenses.

1.7 Based on the investigation and negotiations described above, Plaintiffs and Class Counsel have concluded that it would be in the best interests of the Settlement Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation and to assure benefits to the Settlement Class and that the settlement contemplated hereby is fair, reasonable, and adequate, and in the best interests of all members of the Settlement Class.

1.8 The Parties understand, acknowledge and agree that the execution of this Settlement Agreement constitutes the settlement and compromise of disputed claims. This Settlement Agreement is inadmissible as evidence against any Party except to enforce the terms of the Settlement Agreement and is not an admission of fact or law, or as a concession of any wrongdoing, obligation, or liability on the part of any Party or the Tribe. The Parties desire and intend to affect a full, complete, and final settlement and resolution of all existing disputes and claims as set forth herein. The Parties agree that nothing in this Settlement Agreement shall constitute a waiver by the Tribe, the Big Picture Defendants, the Tribal Officials, the Individual Tribal Defendants, Dowd, McFadden, and/or Liang of sovereign immunity, except as specifically and expressly provided herein, namely and only to the extent, of enforcement of this Settlement Agreement.



19 The Settlement contemplated by this Settlement Agreement is subject to preliminary approval and final approval by the Court, as set forth herein. This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, it is hereby STIPULATED AND AGREED, subject to this Court's approval, that each and every claim that has been alleged, or could have been alleged based on the facts alleged in the Actions, whether brought by or on behalf of Plaintiffs, the Settlement Class (as defined in Paragraph 2.32 below), or portions of the Settlement Class, shall be fully and finally settled and compromised and dismissed with prejudice, and shall be fully discharged and released, upon and subject to the following terms and conditions.

The recitals stated above are true and accurate and are hereby made a part of the Settlement Agreement.

## **II. DEFINITIONS**

2.1 As used in this Settlement Agreement, the terms defined below shall have the meanings assigned to them when capitalized in the same fashion as in this Section II. All other terms shall have the meaning accorded to those terms in the operative complaint in the Actions.

2.2 "Attorneys' Fees" means the attorneys' fees and expenses applied for by Class Counsel relating to this Settlement Agreement and approved by the Court.

2.3 "Claim" means any and all actions, causes of action, proceedings, adjustments, executions, offsets, contracts, judgments, obligations, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, variances, covenants, trespasses, damages, demands (whether written or oral), agreements, promises, liabilities, controversies, costs, expenses, attorneys' fees and losses whatsoever, whether in law, in admiralty or in equity, whether by affirmative claim,

counterclaim, or setoff, and whether based on any federal law, state law, foreign law or common law right of action or otherwise, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued, existing now or that may later exist in the future, relating to and/or arising out of loans made by and/or in the name of Big Picture, Castle Payday Loans, and/or Red Rock that are the subject of the Actions.

2.4 “Claim Amount” means a *pro rata* distribution to those members of the Settlement Class who make a claim and have paid more than 2.5 times the amount of principal on their respective loan. This Claim Amount will be the same regardless of the number of loans.

2.5 “Claims Process” means the process by which a member of the Settlement Class must complete a Claim Form certifying his or her membership in the Settlement Class and decision electing to obtain a distribution from the Settlement Fund, as set forth in Section VIII.

2.6 “Class Counsel” means Consumer Litigation Associates, P.C.; Kelly Guzzo PLC, Terrell Marshall Law Group PLLC; Berger & Montague PC; Virginia Poverty Law Center; Gupta Wessler PLLC; Tycko & Zavareei LLP; Caddell & Chapman; and their respective attorneys, as listed on the operative complaints in the Actions.

2.7 “Class Notice” means the notice (in form substantially similar to that attached hereto as **Exhibit A** and approved by the Court) that will be emailed to Settlement Class Members pursuant to the Notice Plan approved by the Court.

2.8 “Consumer” means a natural person residing in the United States of America or its territories who is a member of the Settlement Class.

2.9 “Court” means the United States District Court for the Eastern District of Virginia.

2.10 “Settling Defendants’ Counsel” means Rosette, LLP; Troutman Sanders LLP; Dorsey & Whitney LLP; Hinshaw and Culbertson LLP; Ruyak Cherian LLP; and Bellew LLC, as set forth in the respective signature blocks below.

2.11 “Effective Date” is the date on which this Court’s entry of the Final Approval Order and this Court’s order regarding attorneys’ fees have all become final because the following has occurred: (i) the expiration of three (3) business days after the time to file a motion to alter or amend the Final Approval Order under Federal Rule of Civil Procedure 59(e) has passed without any such motion having been filed; (ii) the expiration of three (3) business days after the time in which to appeal the Final Approval Order has passed without any appeal having been filed (which date shall be deemed to be thirty-three (33) days following the entry of the Final Approval Order, unless the date to take such an appeal shall have been extended by Court order or otherwise, or unless the thirty-third (33rd) day falls on a weekend or a Court holiday, in which case the date for purposes of this Settlement shall be deemed to be the next business day after such thirty-third (33rd) day); and (iii) if such motion to alter or amend is filed, or if an appeal is taken, three business days after a determination of any such motion or appeal that permits the consummation of the Settlement. For purposes of this definition, the term “appeal” includes all writ proceedings.

2.12 “Final Approval” means the approval of the Settlement Agreement by the Court at or after the Final Approval Hearing, and entry on the Court’s docket of the Final Approval Order.

2.13 “Final Approval Hearing” or “Final Fairness Hearing” means the hearing at which the Court will consider and finally decide whether to approve this Settlement, enter a judgment, and make such other rulings as are contemplated by this Settlement. The Final Approval Hearing shall be scheduled in accordance with the Notice Plan approved by the Court and following the granting of Plaintiffs’ motion for Preliminary Approval of the Settlement.

2.14 “Final Approval Order” means a final order and judgment entered by the Court giving Final Approval of the Settlement Agreement, dismissing with prejudice Plaintiffs’ claims (which shall not include Plaintiffs’ Claims against the Non-Settling Defendants), and entering a judgment in a form agreed to by the Parties according to the terms set forth in this Settlement Agreement and as approved by the Court.

2.15 “Named Plaintiffs” means Lula Williams; Gloria Turnage; George Hengle; Dowin Coffy; Marcella Singh; Renee Galloway; Dianne Turner; Earl Browne; Rose Marie Buchert; Regina Nolte; Kevin Minor; Teresa Titus; Lisa Martinez; Anthony Green; Sonji Grandy; Anastasia Sherman; Burry Pough; Linda Madison; Dominique de la Bay; Lucinda Gray; Andrea Scarborough; Jerry Avent; Lori Fitzgerald; Derek Geter; Keisha Hamm; Faith Thomas; Sharon Paavo; Latanya Tarleton; Christina Cumming; Lamesha Kondo; Andrea Mendez; Tammy Wangeline; Freeman Revels; Kimberly Pool; Tasha Pettiford; Richard L. Smith, Jr.; Victoria R. McKoy; Desiree W. Lovins; Sandra Monsalve; Carrie S. Smith; Chris Kobin; and Dana Duggan.

2.16 “Non-Settling Defendant” means any defendant in any of the Actions that is not one of the Released Parties and/or Settling Defendants in this Settlement Agreement. The Non-Settling Defendants include at this time, but are not limited to, Matt Martorello, Justin Martorello, Rebecca Martorello, Jeremy Davis, Eventide Credit Acquisitions, Bluetech Irrevocable Trust, Kairos Holdings, LLC, Liant, LLC, Breakwater Holdings, LLC, and Gallant Capital, LLC.

2.17 “Notice Plan” means the plan for disseminating notice to Settlement Class Members that is approved by the Court, as described in Sections 6.6 through 6.8.

2.18 “Objection Deadline” shall be the final date set by the Court for Settlement Class Members to return notice of their objection to this Settlement, which shall be thirty (30) days prior to the Final Approval Hearing.

2.19 “Payment Notices” means the notices sent at the time of payment to Settlement Class Members who submit Valid Claims pursuant to Section VIII.

2.20 “Preliminary Approval” means the preliminary approval of the Settlement Agreement by the Court, conditional certification of the Settlement Class, and approval of the Notice Plan by the Court, including the method and content of notice to the Settlement Class Members.

2.21 “Released Claims” means those Claims released as set forth in Section 12.3 below.

2.22 “Released Parties” shall include the Tribe and its current and former Tribal Officials; the Individual Tribal Defendants; Big Picture; Ascension; Red Rock; Duck Creek Tribal Financial, LLC (“Duck Creek”); Tribal Economic Development Holdings, LLC (“TED”); Columbia Pipe & Supply Co. (“Columbia Pipe”); DTA Wealth Transfer Trust (“DTA Wealth”); Deborah M. Arenberg Living Trust (“DMA Living”); Amlaur Resources, LLC (“Amlaur”) and each of their current and former directors, officers, principals, trustees, shareholders, partners, contractors, agents, attorneys (including, Rosette Holdings, LLC, Rosette, LLP, Robert A. Rosette, and Karrie S. Wichtman). The Released Parties also specifically include: (1) Simon Liang; (2) Brian McFadden; (3) James Dowd; (4) Terrance Arenberg; (5) Timothy Arenberg; (6) Brian Jedwab; (7) Alice Brunk; (8) Tina Caron; (9) Michelle Hazen; (10) Roberta Ivey; (11) Gertrude McGeshick; (12) Jeffery McGeshick; (13) Mitchell McGeshick; (14) Susan McGeshick; (15) Giiwegiizhigookway Martin; (16) Andrea Russell; (17) June Saad; (18) all members (past and present) of the LVD Tribal Council, each in their individual and official capacity; (19) Henry Smith; and (20) James Williams, Jr. The “Released Parties” shall not include Matt Martorello, Justin Martorello, Rebecca Martorello, Jeremy Davis, Eventide Credit Acquisitions, LLC,

Bluetech Irrevocable Trust, Kairos Holdings, LLC, Liont, LLC, or any other entities owned, directly or indirectly, by Matt Martorello, Justin Martorello or Rebecca Martorello.

223 “RICO” means the federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961, *et seq.*, and any subsequent amendments thereto.

224 “Service Awards” means the payments to Named Plaintiffs for their service as class representatives of the Settlement Class as set forth in Section 10.11, subject to approval by the Court.

225 “Settlement” means the agreement between the Named Plaintiffs as proposed representatives of the Settlement Class, and Settling Defendants, to settle and compromise, fully, finally, and forever, the Named Plaintiffs’ and the Settlement Class Members’ Claims in the Actions, as memorialized in this Settlement Agreement and the accompanying documents attached hereto.

226 “Settlement Administrator” means the class settlement administration company mutually agreeable to all Parties and approved by the Court, which has been hired by the Parties to provide the Class Notice and to carry out the other specified, administrative tasks set forth in this Settlement Agreement.

227 “Settlement Agreement” means this Class Action Settlement Agreement and Release.

228 “Settlement Class” or “Settlement Class Member” means all consumers residing within the United States who executed loan agreements with Red Rock, Castle Payday Loans, or Big Picture (including loans assigned to Big Picture) from June 22, 2013 to the date of the Preliminary Approval Order; provided, however, that “Settlement Class” and “Settlement Class Member” shall exclude: (i) all consumers who would otherwise qualify for membership in the

“Settlement Class” for which the consumer previously has released all claims as to the Settling Defendants; (ii) Settling Defendants’ officers, directors, and employees; (iii) Settling Defendants’ attorneys; (iv) Plaintiffs’ attorneys; and (v) any judge who has presided over either mediation or disposition of this case and the members of his or her immediate family.

2.29 “Settlement Fund” means the amount paid pursuant to Sections 10.1 and 10.2 herein. The Settlement Fund shall be inclusive of any and all Service Awards, Attorneys’ Fees, costs, expenses, notice to the Settlement Class Members, and settlement administration costs.

2.30 “Settlement Website” means the internet website established by the Settlement Administrator for purposes of facilitating notice to, and communicating with, the Settlement Class and for receipt of online claims.

2.31 “Tribal Officials” means the Individual Tribal Defendants and/or any past or present members of the Lac Vieux Desert Band of Lake Superior Chippewa Indians Tribal Council and/or any employees of the Tribe or any arms of the Tribe.

2.32 “Valid Claim” means a claim filed pursuant to Section VIII by a Settlement Class Member who (1) repaid his or her loan in full, and also (2) paid more than 2.5 times the original principle amount of the loan in payments over the life of the loan.

### **III. NO ADMISSION OF LIABILITY OR TO THE ELEMENTS OF CLASS CERTIFICATION FOR PURPOSES OF MERITS RESOLUTION.**

3.1 Settling Defendants’ Denial of Wrongdoing or Liability. Settling Defendants have asserted and continue to assert many defenses in these Actions and have expressly denied and continue to deny any fault, wrongdoing, or liability whatsoever arising out of the conduct alleged in the Actions. Settling Defendants expressly deny any fault, wrongdoing, or liability whatsoever, as well as the validity of each of the claims and prayers for relief asserted in the Actions. The Parties expressly acknowledge and agree that neither the fact of, nor any provision contained in,



this Settlement Agreement nor any of the implementing documents or actions taken under them, shall constitute or be construed as an admission of the validity of any claim, any status, or any fact alleged in the Actions or any fault, wrongdoing, violation of law, or liability of any kind on the part of Settling Defendants and/or the Released Parties, or any admission by Settling Defendants and/or the Released Parties of any claim or allegation made in any action or proceeding against Settling Defendants. Settling Defendants have denied and continue to deny each and all of the claims and allegations in the Actions. Neither this Settlement Agreement nor any document referred to herein, nor any action taken to carry out this Settlement Agreement and/or the Settlement, or Settling Defendants' willingness to enter into this Settlement Agreement, nor any or all negotiations, communications, and discussions associated with the Settlement are, or may be construed as, or may be used in any proceeding as, an admission by or against any or all Settling Defendants of any fault, wrongdoing or liability whatsoever, or any infirmity of any defenses asserted by any or all Settling Defendants.

32 No Waiver of Tribal Sovereign Immunity. The Big Picture Defendants, the Tribe, the Individual Tribal Defendants, the Tribal Officials, Dowd, McFadden, and Liang expressly assert that they are all entitled to tribal sovereign immunity. Neither this Settlement Agreement nor any document referred to herein, nor any action taken to carry out this Settlement Agreement and/or the Settlement, or Defendants' willingness to enter into this Settlement Agreement, nor any or all negotiations, communications, and discussions associated with the Settlement are, or may be construed as, or may be used in any proceeding as, an admission by or against the Big Picture Defendants, the Tribe, the Individual Tribal Defendants, the Tribal Officials, Dowd, McFadden, and/or Liang of any waiver of sovereign immunity.

33 No Admission of Applicability or Inapplicability of State Law or State Regulation. The Big Picture Defendants, the Tribe, the Individual Tribal Defendants, and the Tribal Officials expressly deny that they – or any of their loans or lending activity – are subject to the laws and/or regulations of any state. Plaintiffs expressly assert that they – and any of their loans or lending activity – are subject to the laws and/or regulations of their respective states. Neither this Settlement Agreement nor any document referred to herein, nor any action taken to carry out this Settlement Agreement and/or the Settlement, or the Parties' willingness to enter into this Settlement Agreement, nor any or all negotiations, communications, and discussions associated with the Settlement are, or may be construed as, or may be used in any proceeding as, an admission by or against any Party as to the application of state law and/or state regulation to the Settling Defendants, their loans, or their activities.

34 No Admission by Settling Defendants of Elements of Class Certification for Merits Resolution. Settling Defendants deny that a class should be certified other than for purposes of this Settlement and reserve their rights to contest any class certification motion should this Settlement Agreement not be approved by the Court. Settling Defendants contend for settlement purposes only that the Actions could be certified as a class action under Federal Rule of Civil Procedure 23, including Rule 23(b)(2) and/or 23(b)(3). Nothing in this Settlement Agreement shall be construed as an admission by any Defendant that the Actions or any similar case is amenable to class certification for trial purposes. Furthermore, nothing in this Settlement Agreement shall prevent Settling Defendants from opposing class certification or seeking de-certification of the conditionally certified Settlement Class if Final Approval of this Settlement is not obtained, or not upheld on appeal, including, without limitation, any review by the United States Supreme Court.

3.5 None of the foregoing disclaimers in this Section should be construed as an admission or stipulation by Plaintiffs and Class Counsel regarding the Released Parties' defenses, including the disputed issues of sovereign immunity, the application of state law, and/or the legality of the subject lending practices.

3.6 Admissibility of this Settlement Agreement and Release. The Parties agree that this Settlement Agreement, its terms and provisions, and any facts surrounding its entry by the Parties shall not be used in any court of law, including the Actions, for any purpose other than those permitted under Section 14.1 below.

#### **IV. CERTIFICATION OF THE SETTLEMENT CLASS**

4.1 Certification of Settlement Class. Plaintiffs shall seek, and Settling Defendants shall not oppose, the certification for settlement purposes only of the Settlement Class under Rule 23(b)(2) of the Federal Rules of Civil Procedure. If the Settlement Agreement is not finally approved by the Court for any reason whatsoever, the certification of the Settlement Class will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in this Action. No agreements made by or entered in connection with the Settlement Agreement may be admitted as evidence or used in any way by Plaintiffs, Settling Defendants, any person in the Settlement Class, or any other person to establish any of the elements of liability or class certification other than as expressly provided herein in any litigated certification proceedings, whether in the Actions or any other judicial proceeding.

4.2 Appointment of Class Counsel and Class Representatives. For Settlement purposes only, Plaintiffs shall also seek, and Settling Defendants shall not oppose, appointment of Class Counsel, and appointment of the Named Plaintiffs as class representatives, to represent the Settlement Class.

#### **V. PRELIMINARY APPROVAL**

5.1 Amended Complaint and Single Case for Settlement. Upon execution of this Settlement Agreement and prior to the filing of the Motion for Preliminary Approval of this Settlement Agreement, Plaintiffs in *Galloway III* shall seek leave to amend their complaint to add the Plaintiffs and the Settling Defendants from the other Actions, after which *Williams, Galloway I, Galloway II, Duggan, and Smith* shall be voluntarily dismissed as to the Settling Defendants only. The amended complaint in *Galloway III* shall represent a consolidation of the allegations against the Settling Defendants and will name all of the Settling Defendants. The Parties agree to consent to Plaintiffs' request to amend their complaint in *Galloway III* solely for the purposes of effectuating this Settlement. The Settling Defendants do not by such consent agree that the allegations that may be contained in such amended complaint are true, correct, or accurate. In the event this Settlement is not finally approved, Plaintiffs shall file whatever motions and pleadings are necessary to ensure that the Parties are postured in the respective Actions as they were prior to the aforementioned amendment as if such amendment intended for settlement purposes had never occurred.

5.2 Order of Preliminary Approval. Plaintiffs shall move the Court for entry of the Preliminary Approval Order subsequent to the amendment described in Section 5.1. Pursuant to the motion for preliminary approval, Plaintiffs will request that:

5.2.1 the Court certify the Settlement Class for settlement purposes only, appoint the Named Plaintiffs as the class representatives of the Settlement Class for settlement purposes only, and appoint Class Counsel as counsel for the Settlement Class for settlement purposes only;

5.2.2 the Court preliminarily approve the Settlement Agreement as fair, adequate, and reasonable, and within the reasonable range of possible Final Approval;

5.2.3 the Court approve the form(s) of Class Notice and find that the Notice Plan satisfies due process and Rule 23 of the Federal Rules of Civil Procedure;

5.2.4 the Court set the date and time for the Final Fairness Hearing, which may be continued by the Court from time to time without the necessity of further notice; and,

5.2.5 the Court set the Objection Deadline.

53 Stay. Other than actions taken for purposes of effectuating the Settlement and those items covered in Sections 6.2 of this Settlement Agreement and subject to Court approval, the Parties agree to jointly move the respective Courts for stays of the Actions – including all pending motions and discovery directed to the Parties – and any related appeals after preliminary approval and pending Final Approval of this Settlement Agreement with respect to Settling Defendants only. The stay will not apply to the prosecution of claims against the Non-Settling Defendants.

## **VI. ADMINISTRATION AND NOTIFICATION PROCESS**

6.1 Appointment of Settlement Administrator. Class Counsel will cause to be hired the Settlement Administrator, subject to reasonable objection by the Settling Defendants and approval by the Court. The Settlement Administrator shall be responsible for carrying out the specified tasks set forth in this Settlement Agreement, including, but not limited to, creating a post office box for receipt of objections and maintaining records of all its activities, including the dates of Class Notices, mailed checks, returned mail, and any other communications and attempted communications with the Settlement Class Members.

6.2 Provision of Data and Information for Settlement Purposes as to Settling Defendants. Within thirty (30) days after entry of the Preliminary Approval Order and only as part of this Settlement, the Big Picture Defendants agree to provide a list of names, postal addresses, and email addresses, all if known, for Settlement Class Members to the Settlement Administrator approved by the Court for the purposes of effectuating this Settlement. The Big Picture Defendants

will cooperate with the Settlement Administrator to the extent that additional personally-identifiable information is necessary to locate a Settlement Class Member. The Big Picture Defendants shall also provide Loan-Level information regarding each Settlement Class Member's loan sufficient to demonstrate the original principal balance of the loan, the interest rate, and the amount and timing of any payments the Settlement Class Member made on the Loan, as well as any other loan-level information reasonably requested by Class Counsel for purposes of effectuating the Settlement and for no other purpose. Class Counsel shall have five (5) business days to review and approve the class data and/or class list, or to notify the Big Picture Defendants of any objections to its completeness. In the event this Settlement is not finally approved, within five (5) business days of such an occurrence, Class Counsel shall destroy all copies of such data that remain in their possession, custody, or control, and shall certify to each Settling Defendant that they have done so.

6.3 Class Certification as to a Non-Settling Defendant. If a class action is certified against a non-Settling Defendant in one or more of the Actions, the Big Picture Defendants will provide (or provide authorization for third parties to provide) data sufficient to identify class members, to determine the terms of class members' loans, to determine payments made by class members on their loans, to determine which loans have been charged off, to determine all outstanding amounts owed under the terms of class members' loan agreements, and any other data or information about class members and their loans which is reasonably requested by Class Counsel and under this provision, such data may only be used for the purpose of creation of a class list or distribution of funds to class members, or to effectuate a subsequent settlement with such Non-Settling Defendant. Subject to the provisions in Section 6.4 below, upon Twenty-One (21) calendar days' notice, in response to a reasonable request from Plaintiffs, the Big Picture

Defendants shall also provide evidence necessary to establish the availability of this data to identify class membership in a contested class certification motion.

6.4 Other Uses Plaintiffs have represented that they may need additional data, documents, and information to establish liability or for other important purposes in the Actions other than class certification, including by example only and without limitation, information from: TransDotCom, LLC, Data X, LLC, and Microbilt (as it relates to the Actions); emails and communications by Non-Settling Defendants to which the Tribe or Tribal Officials were not a party; and loan-level information regarding each Settlement Class Member's loan sufficient to demonstrate the original principal balance of the loan, the interest rate, and the amount and timing of any payments the Settlement Class Member made on the loan. The Settling Defendants have neither agreed nor refused to provide this information and documents to the Plaintiffs as a term of the Settlement. If such request is made to the Big Picture Defendants by the Plaintiffs, Plaintiffs will discuss their request(s) with Robert Rosette and both sides agree to negotiate and attempt to resolve any disagreement in good faith. Any remaining disputes will be resolved in accordance with Section 6.5.

6.5 If the Parties are not able to reach an agreement on Plaintiffs' request(s), the Honorable. David J. Novak will conduct binding mediation of the disputed issues.

6.6 Notice Process Generally. Subject to approval by the Court, Class Notice shall be provided to all persons in the Settlement Class in accordance with the Notice Plan approved by the Court. The form of the Class Notice is attached hereto as **Exhibit A** for all Settlement Class Members. Class Notice will be sent in accordance with Fed. R. Civ. P. 23(c) in the manner approved by the Court through email notice to verified email addresses to each Settlement Class

Member identified on the Class List. Class Notice shall be emailed no later than thirty (30) days after the class list is reviewed by Class Counsel.

6.7 Settlement Website. The Settlement Administrator shall establish an Internet domain and website containing information about the Settlement. The Settlement Website will be accessible by no later than the date of the electronic mailing of the Class Notices. The Settlement Website will post the Settlement Agreement, the Class Notice, Claim Form, the Preliminary Approval Order, the proposed Final Judgment, and, if not included in the Preliminary Approval Order, any court order setting a date and time for the Final Fairness Hearing, and all other documents and information requested by Plaintiffs, subject to reasonable objection by another Party, and any other information required by the Court. Any information appearing on the Settlement Website in addition to the above-listed documents shall be subject to joint approval of the Parties. The Settlement Website also will offer a Spanish-language translation option. The Settlement Website also will detail a process through the website and direct e-mail notice by which a Settlement Class Member can review an estimated claim amount before submitting either a mailed or electronic claim as well as a process to determine, after the claim deadline has passed, an approximate amount of recovery and may elect to withdraw his or her claim. A Settlement Class Member may elect to withdraw his or her claim only by U.S. Mail. The Settlement Website shall be disestablished by the Settlement Administrator within ninety (90) days following the mailing of the last payment to a Settlement Class Member.

6.8 Telephone Assistance Program. The Settlement Administrator will establish a toll-free telephone number, which will be staffed by the Settlement Administrator, to answer questions from Settlement Class Members. The toll-free number will provide access to live support, a voice



response unit (“VRU”) or a combination of live support and VRU. It shall also offer a Spanish-language alternative number and VRU.

6.9 Expenses of Notice and Administration. All Class Notice, Payment Notices, and other class administration costs shall be invoiced by the Settlement Administrator and paid promptly from the Settlement Fund, as set forth in Sections 6.10 and 6.11 below. Any disputes relating to this Subsection shall be brought to the Honorable David J. Novak for binding resolution.

6.10 Expenses Paid Through the Settlement Fund. The total expenses associated with Class Notice, Payment Notices, and any other class administration costs (including any consulting costs), shall not increase the amount paid by any of the Settling Defendants as part of the Settlement under any circumstance. Any and all payments shall come from the Settlement Fund before the calculation of net settlement payments to Settlement Class Members. The Settlement Administrator shall invoice and charge as to each subsequent distribution against the payments to be made in that distribution.

6.11 In the event that the Big Picture Defendants advance payments for purposes of effectuating the Notice Plan and administration of the Settlement as provided in Sections 6.6 through 6.8 (as provided in Section 10.1), the Big Picture Defendants will provide an accounting of the payments to Class Counsel. Any disagreement or objection as to the advance payments will be raised with Honorable David J. Novak for binding resolution.

6.12 Notice under Class Action Fairness Act of 2005 (“CAFA Notice”). Settling Defendants will send the CAFA Notice in accordance with 28 U.S.C. § 1715(a)-(b), not later than ten (10) days after this Settlement Agreement is filed with the Court.

6.13 Notice to Court. No later than fourteen (14) days prior to the Final Fairness Hearing, the Settlement Administrator shall file with the Court and serve on counsel for all Parties a

declaration stating that the Class Notice required by the Settlement Agreement has been completed, as well as implementation of the Settlement Website, toll-free telephone support, and copies of all objections received.

6.14 Confidentiality. The Settlement Administrator (and any person retained by the Settlement Administrator) shall sign a confidentiality agreement in a form agreed to by all counsel for the Parties. The confidentiality agreement will provide that the Settlement Administrator (and any person retained by the Settlement Administrator) shall treat as confidential the names, addresses, and all other information concerning Settlement Class Members. The confidentiality agreement will further provide that the Settlement Administrator (and any person retained by the Settlement Administrator) shall use such information only for the purposes of fulfilling the Settlement Administrator's duties and responsibilities as provided for under this Settlement Agreement.

## **VII. PROCEDURES FOR OBJECTIONS**

7.1 Objections from Settlement Class Members. Any Settlement Class Member may appear at the Final Fairness Hearing to argue that the proposed Settlement should not be approved and/or to oppose the application of Class Counsel for an award of Attorneys' Fees and costs and the Service Awards to the Named Plaintiffs. However, no individual within the Settlement Class shall be heard, and no objection may be considered, unless the individual files the objection with the Court no later than thirty (30) days before the Final Fairness Hearing and serves the objection so that it is received by representative Class Counsel, representative Settling Defendants' Counsel (who shall forward a copy of each objection received to the other Settling Defendants' Counsel), and the Settlement Administrator no later than thirty (30) days before the Final Fairness Hearing; provided, however, objections to the Class Counsel's Attorneys' Fees or the requested Service Awards may be supplemented up to seven (7) days after the filing of a motion for such fees or

awards to address additional information or materials in the motion. Copies of all objection papers must be sent to the following addresses:

<p><b><u>Class Counsel Representative</u></b></p> <p>Leonard A. Bennett          Consumer Litigation Associates, PC          763 J Clyde Morris Blvd., Suite 1A          Newport News, VA 23601          Telephone: (757) 930-6330          Facsimile: (757) 960-3662          Email: lenbennett@clalegal.com</p>	<p><b><u>Big Picture Defendants' Counsel Representative</u></b></p> <p>Karrie S. Wichtman          Lac Vieux Desert Band of Lake Superior          Chippewa Indians          N4698 US 45, P.O. Box 249          Watersmeet, Michigan 49969          Telephone: (906) 358-4577, extension 4127          Email: karrie.wichtman@lvdtribal.com</p>
<p><b><u>Big Picture Defendants' Counsel Representative</u></b></p> <p>Robert A. Rosette          Rosette, LLP          565 W. Chandler Boulevard          Suite 212          Chandler, Arizona 85225          Telephone: (480) 889-8990          Facsimile: (480) 899-8997          Email: rosette@rosettelaw.com</p>	<p><b><u>Settlement Administrator</u></b></p> <p>Settlement Administrator to be approved by the Court.</p>

7.2 All objections must include: (1) the objector's name, address, telephone number, and the last four digits of the Settlement Class Member's Social Security number; (2) a sentence stating that to the best of his or her knowledge he or she is a member of the Settlement Class; and (3) the factual basis and legal grounds for the objection to the Settlement; and (4) the name, firm name, phone number, email address, and mailing address of counsel representing the objector, if any. The written objection must state whether the Settlement Class Member and/or his or her lawyer(s) intend to appear at the Final Fairness Hearing. Any lawyer who intends to appear at the Final Fairness Hearing must also enter a written Notice of Appearance of Counsel with the Clerk of the Court no later than thirty (30) days before the Final Fairness Hearing and shall include the

full style and case number of each previous class action case in which that counsel has represented an objector. To the extent necessary or desired, the Parties may respond to any properly-filed objections no later than fourteen (14) days before the Final Fairness Hearing.

7.3 A Settlement Class Member who objects to the Settlement may withdraw that objection. Any Settlement Class Member that does not make an objection in the time and manner set forth herein shall be deemed to have waived any objection and be forever foreclosed from making any objection to the fairness or adequacy of any aspect of the Settlement.

## **VIII. SETTLEMENT CLAIMS PROCESS**

8.1 In order to receive a payment from the Settlement Fund, a Settlement Class Member must submit a Claim Form, no later than sixty (60) days from the date of mailing the Class Notices, by either: (1) submitting a Claim Form on the Settlement Website; or (2) returning to the Settlement Administrator, via U.S. mail, the completed Claim Form attached to the Class Notice.

8.2 Submission of claims pursuant to this Section shall be permitted commencing on the first day on which Class Notice is disseminated.

8.3 To be eligible for any payment from the Settlement Fund, a Settlement Class Member must submit a Valid Claim by completing a Claim Form, which shall be provided within the Class Notice to all Settlement Class Members and also made available for download or submission on the Settlement Website or by request from the Settlement Administrator. The Claim Form shall be streamlined, requiring only the Settlement Class Member's name, current postal address, date of birth, and the last four digits of the Settlement Class Member's Social Security number. The Claim Form shall also solicit and recommend Settlement Class Members submit an updated email address and current telephone number of the Class Member. However, an email address and phone number shall not be required. The Claim Form and the Settlement Website shall provide complete instructions for completion of this claims process. Each Class Member

may submit only one Claim Form regardless of the number of loans the Class Member had with the Big Picture Defendants and that Claim Form will apply to all loans the Class Member had with the Big Picture Defendants.

8.4 Claim Forms submitted by U.S. mail shall contain the same information as contained in the electronic form (plus the individual's signature) and shall be mailed to a separate, dedicated post office box established by the Settlement Administrator, as provided herein.

8.5 Deceased Claimants. Claims may be filed by deceased Settlement Class Members through authorized representatives of their estates if appropriate documentation is provided. Any claim paid to a deceased consumer shall be made payable to the estate of the deceased.

8.6 Determining the Validity of Claims. Claim Forms, whether submitted electronically via the Settlement Website or by U.S. mail, that do not meet the requirements as set forth in this Settlement Agreement shall be rejected. The Settlement Administrator shall have the authority to determine whether a claim is a Valid Claim. The Settlement Administrator's determination in this regard shall be final and non-appealable unless Settling Defendants' Counsel or Class Counsel disagree, in which case the determination shall be made by the Honorable David J. Novak. The Settlement Administrator shall promptly notify such individual that his or her claim has been denied and why it has been denied. Settlement Class Members shall have an opportunity to cure deficient claims.

8.7 The Settlement Administrator shall notify, in a prompt fashion, any Settlement Class Member whose Claim Form has been rejected, setting forth the reasons therefore. The Settlement Administrator shall timely provide copies of all rejection notices to Class Counsel and to Settling Defendants' Counsel. Such claimant shall have an additional twenty-one (21) days

after the date this notice is mailed to correct and resubmit the defective claim, but any subsequent determination by the Class Administrator on any resubmitted notice shall be final.

8.8 No Liability for Determinations Relating to Validity of Claims. No person shall have any claim against Settling Defendants, Plaintiffs, the Settlement Class, Class Counsel, Settling Defendants' Counsel, or the Settlement Administrator based on any claim determinations made in accordance with this Settlement Agreement.

#### **IX. FINAL FAIRNESS HEARING AND FINAL APPROVAL**

9.1 Final Fairness Hearing. The Parties will jointly request that the Court hold the Final Fairness Hearing to consider approval of the Settlement of the Actions in accordance with the time period specified in the Notice Plan approved by the Court. On or before a date at least fourteen (14) days prior to the Final Fairness Hearing, Class Counsel shall file a motion for entry of the Final Approval Order. The Parties agree that, upon entry, the Final Approval Order constitutes a final judgment dismissing the Actions with prejudice as to Settling Defendants and all of the Released Parties.

9.2 Final Approval. Unless stated otherwise herein, all relief contemplated by this Settlement Agreement is expressly contingent upon the Settlement Agreement receiving the Court's Final Approval.

#### **X. SETTLEMENT FUND**

10.1 Creation of and Deposit into Settlement Fund. Class Counsel, in conjunction with the Settlement Administrator, shall establish an escrow account or equivalent account at Towne Bank (the "Financial Institution"), which shall be considered a common fund created as a result of the settlement of the Actions. The Settlement Administrator shall direct the Financial Institution to make distributions from the Settlement Fund only in accordance with this Settlement Agreement. No funds shall be distributed or paid by the Financial Institution without written

confirmation from both Class Counsel and Settling Defendants' Counsel. Class Counsel shall promptly notify the other Parties of the date of the establishment of the account. Subject to credits for amounts that were previously paid by the Big Picture Defendants for purposes of effectuating the Notice Plan and administration of the Settlement as provided in Sections 6.6 through 6.8, the Big Picture Defendants shall make deposits totaling \$8,700,000.00 to the Settlement Fund on the following schedule: (1) \$2,900,000 within Ninety (90) days after the Effective Date; (2) an additional \$2,900,000.00 within One (1) years after the Effective Date; and (3) an additional \$2,900,000.00 within Two (2) years after the Effective Date. The failure of the Big Picture Defendants to perform as to this term will constitute a material breach. The Settlement Fund may not be commingled with any other funds and may be held in cash, cash equivalents, certificates of deposit, or instruments insured by an arm of or backed by the full faith and credit of the United States Government. Interest earned, if any, on the Settlement Fund shall be for the benefit of the Settlement Class Members who submit Valid Claims in the event this Settlement Agreement is not terminated by the Settling Defendants and the Effective Date otherwise occurs.

102 Dowd, Liang, and McFadden each presently own discrete membership interests in Eventide Credit Acquisitions, LLC ("Eventide"), which is entitled to receive payments from the Loan Agreement and Promissory Note dated September 14, 2015 between Eventide and TED (the "Eventide Note"). As separate and distinct consideration for the respective releases granted to each of them under this Settlement, each of Dowd, Liang, and McFadden shall transfer to the Settlement Fund their respective Eventide membership interests, including their respective interests in future Eventide distributions, if any, received under the Eventide Note (separately and collectively, Dowd's, Liang's, and McFadden's "Eventide Interests") subject to the Parties' understanding that such transfer must be structured in such a way as to: (a) avoid any tax liability

to Dowd, Liang, and McFadden; (b) comply with the terms of the Eventide Note; (c) comply with the terms of the Eventide Operating Agreement; and (d) if necessary because it is not possible to satisfy requirements (a), (b) and (c), through the direct transfer of their Eventide Interests, effectuate the transfer or assignment to the Settlement Fund of their respective future Eventide distributions, if any. The transfer of the Eventide Interests shall be made in a manner to avoid Dowd, Liang, or McFadden incurring any tax liabilities; however, in the event that is not possible, such transfer shall be made, less whatever amounts are necessary to satisfy any tax liabilities incurred by Dowd, Liang, or McFadden as the result of receiving such distributions before payment to the Settlement Fund. The Parties and Settlement Administrator shall provide their reasonable cooperation to accomplish the transfer of the Eventide Interests contemplated under this Section 10.2. Any disputes relating to this Section 10.2 shall be brought to the Honorable David J. Novak for resolution.

103 Settlement Fund Distributions. The Settlement Fund will be used to make distributions to the Settlement Class Members who submit a Valid Claim from the Settlement Fund under the process set forth below. Class Counsel will: (1) request an award of Attorneys' Fees in an amount not to exceed Thirty-three percent (33%) of the Settlement Fund; and (2) seek the disbursement of the remaining balance of the costs of the Notice Plan and administration out of the Settlement Fund. The remainder of the Settlement Fund shall be used to pay Settlement Class Members who submit a Valid Claim on a *pro rata* basis, as set forth below. Distribution checks will be void after ninety (90) days. To the extent that Attorney's Fees are awarded by the Court in an amount that is less than what is sought by Class Counsel at the time of Final Approval, the difference shall be credited to the Settlement Fund.



104 Costs of Notice and Administration Expenses Deduction. Prior to Final Approval, costs of notice and any other expenses incurred in the administration of the Settlement shall be paid by the Big Picture Defendants within ten (10) business days of receiving advance, written notice from the Settlement Administrator for amounts to be invoiced by the Settlement Administrator to the Big Picture Defendants for costs and any other expenses incurred in the administration of the Settlement. This amount shall be credited against the initial payment of \$2,900,000.00 scheduled to be paid within Ninety (90) days of the Effective Date. The Big Picture Defendants, therefore, will fund the Settlement Fund in two stages: first to pay the costs of notice and any other expenses incurred in the administration of the Settlement in accordance with Section 6.6-6.10; and second to pay the remainder of the Settlement Fund in accordance with Section 10.1. Under no circumstance shall the total amount paid by the Big Picture Defendants into the Settlement Fund exceed \$8,700,000.00. Under no circumstances shall the total amount paid by Dowd, Liang, and McFadden into the Settlement Fund exceed the Eventide Interests (addressed in Section 10.2).

105 Settlement Fund Tax Status. The Parties agree to treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. The Settlement Administrator shall timely make such elections as necessary or advisable to carry out the provisions of this Subsection, including the “relation back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Settlement Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. For the purpose of Treasury Regulation § 1.468B of the Internal Revenue Code of 1986, as amended,

and the regulations promulgated thereunder, the “administrator” shall be the Settlement Administrator. The Settlement Administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)). Such returns shall be consistent with this Subsection and in all events shall reflect that all federal or state income taxes (“Taxes”) (including any estimated Taxes, interest or penalties) on the income earned by the Settlement Fund, if any, shall be paid out of the Settlement Fund.

106 Tax Liabilities. All (a) taxes (including any estimated Taxes, interest or penalties) arising with respect to any income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Released Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes, and (b) expenses and costs incurred in connection with the operation and implementation of this Subsection (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns herein (“Tax Expenses”), shall be paid out of the Settlement Fund. In no event shall the Released Parties have any responsibility for or liability with respect to the Taxes or the Tax Expenses. The Settlement Administrator shall indemnify and hold the Released Parties harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order from the Court, and the Settlement Administrator shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as

well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(l)); the Released Parties are not responsible therefore nor shall they have any liability with respect thereto. The Parties hereto agree to cooperate with the Settlement Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section. The Settlement Administrator has discretion to submit whatever tax form(s) it deems appropriate to any Settlement Class Member. The Settling Defendants do not make any representation or warranty as to the appropriate tax treatment of any provision of this Settlement Agreement.

107 Attorneys' Fees. No later than fourteen (14) days before the Final Approval Hearing, Class Counsel shall file an application or applications to the Court for reimbursement of Attorneys' Fees and costs from the overall Settlement Fund, not to exceed Thirty-three percent (33%) of the Settlement Fund. The application or applications shall be noticed to be heard at the Final Fairness Hearing. Settling Defendants will not oppose such a request so long as it does not exceed that amount.

108 Settlement Not Conditioned on Attorneys' Fees Approval. The application or applications for Attorneys' Fees, and any and all matters related thereto, shall not be considered part of the Settlement Agreement, and shall be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. Plaintiffs and Class Counsel agree that this Settlement Agreement is not conditional on the Court's approval of Attorneys' Fees in the requested amount or in any amount whatsoever. The Court's ruling on the application or applications for such fees shall not operate to terminate or cancel the Settlement.

109 All Attorneys' Fees Come Out of Settlement Fund. Settling Defendants shall have no responsibility for, nor any liability with respect to, the payment of Attorneys' Fees to Class Counsel. The sole source of any payment of Attorneys' Fees shall be the Settlement Fund.

10.10 Payment of Attorneys' Fees. Attorneys' Fees in the amount approved by the Court will be paid through distribution from the Settlement Fund by the Settlement Administrator from the third and final \$2,900,000 payment made by the Settling Defendants and may be paid ten (10) days after receipt of the final payment in the Settlement Fund under Section 10.1.

10.11 Service Awards to the Named Plaintiff. On or before fourteen (14) days before the Final Fairness Hearing, Class Counsel shall file an application to the Court for a Service Award, not to exceed five-thousand dollars (\$5,000.00), depending upon each Plaintiff's degree of contribution and service, to be paid to each of the Named Plaintiffs serving as class representatives in support of the Settlement out of the Settlement Fund. Settling Defendants will not oppose such a request. To the extent the Court approves a Service Award in an amount less than \$5,000.00 to a Named Plaintiff, the difference will remain in the Settlement Fund. Any Service Award payment shall be funded through the Settlement Fund.

10.12 Settlement Class Member Payments. All Settlement Class Members who submit Valid Claims are entitled to payment pursuant to the processes for submitting Claim Forms and determining Valid Claims as set forth in Section VIII. The amount of each check to be issued is subject to deduction for Attorneys' Fees and costs approved by the Court and costs of administration by the Settlement Administrator. To calculate the amount of each payment, the Settlement Administrator shall divide the amount left in the Settlement Fund after all other payments and costs required by this Settlement Agreement have been deducted.

10.13 Settlement Checks. All settlement checks shall be issued thirty (30) days after receipt of the second deposit into the Settlement Fund under Section 10.1. All settlement checks shall state: “This payment is tendered to you as a class member in *Renee Galloway, et al. v. James Williams, Jr., et al.*, Case No. 3:19-cv-00470-REP (E.D. Va.) in consideration for your release of the Released Parties as set forth in the Class Action Settlement Agreement and Release.”

10.14 Use and Disbursement of Settlement Fund. The Settlement Fund shall be used only in the manner and for the purposes provided for in this Settlement Agreement. No portion of the Settlement Fund shall be disbursed except as expressly provided for herein.

10.15 Disbursement of Funds for Notice and Administrative Expenses. Upon Preliminary Approval, the Settlement Administrator shall disburse funds for the costs of notice and related administrative expenses incurred with respect to effectuating the Notice Plan approved by the Court.

10.16 Deduction of Reasonable and Necessary Expenses. The Settlement Administrator shall distribute payments from the Settlement Fund pursuant to the processes set forth in this Section X. The Settlement Administrator may deduct from the Settlement Fund any and all reasonable and necessary expenses for the administration of such payments (*e.g.*, costs associated with generating and mailing checks), as well as all reasonable expenses for the determinations as to Valid Claims.

10.17 General Distribution Plan. The Settlement Administrator shall send payments via U.S. mail or by commercially reasonable electronic means out of the Settlement Fund to the Settlement Class Members who submit Valid Claims. Each such Settlement Class Member will receive only one payment, regardless of the number of counts in any of the operative complaints in the Actions that may have applied to that Settlement Class Member. The Payment Notices

accompanying the payment check shall notify the recipients that the checks must be cashed within sixty (60) days from the date on the Payment Notice and that the enclosed check shall not be valid after that date.

10.18 Distribution after Sixty (60) Days. Sixty (60) days after the date on the Payment Notice, if the check has not been deposited or cashed, the amount of the check shall remain in the Settlement Fund.

10.19 Residual Amounts in Settlement Fund. Any residual amounts in the Settlement Fund (including after payments to Settlement Class Members, Attorneys' Fees, Service Awards, and amounts necessary to effectuate the Notice Plan and for administration of the Settlement) shall be paid to The PEW Charitable Trusts.

10.20 Capped Fund. All of the following must be paid from the \$8,700,000 and Eventide Interests, if any, paid into the Settlement Fund by Settling Defendants: (i) notice and administration/consulting costs; (ii) payments to the Settlement Class Members who submit Valid Claims; (iii) payments of Service Awards to the Named Plaintiffs; (iv) and payments to Class Counsel for Attorneys' Fees. The Parties and their respective counsel agree that under no circumstances will Settling Defendants and/or Released Parties pay or cause to be paid more than their respective contributions aggregating to the sum of \$8,700,000, plus the assigned Eventide Interests, if any, pursuant to this Settlement.

10.21 No Vested Interest. The Parties Agree, and the Court shall order, that no Settlement Class Member has a vested interest in any amount to be paid to him or her under the Settlement Agreement unless and until he or she has cashed a settlement check under the parameters and timeframe set forth herein.

## **XI. SETTLEMENT CLASS INJUNCTIVE RELIEF**

11.1 Subject to the terms and conditions of this Settlement Agreement, the Parties have agreed that Plaintiffs will move for an uncontested motion for the Court to enter an injunction attached as **Exhibit B** to this Settlement Agreement that will consist of the following issues only.

11.2 Cap on Collections. With respect to Settlement Class Members residing within the United States or its territories who executed loan agreements with Big Picture and/or Red Rock (including loans assigned to Big Picture or Red Rock) from June 22, 2013, to the date of the Preliminary Approval Order and have not fully paid off his or her loan under the agreed terms, but not including Charged-Off Loans (defined below), the Big Picture Defendants agree to collect no more than 2.5 times the original principal amount of the loan in payments over the life of the loan (*e.g.*, if the original principal amount of the loan was \$500.00 then the Big Picture Defendants agree to cap collection at \$1,250.00, including payments credited to either interest or principal reduction).

11.3 Cease Collection and Cancellation of Charged-Off Loans. With respect to loan agreements executed (i) by Settlement Class Members residing within the United States or its territories, (ii) with Big Picture and/or Red Rock (including loans assigned to Big Picture) and (iii) from June 22, 2013 to the date of the Preliminary Approval Order, Big Picture will charge off such loans after being at least 210 days in default (“Charged-Off Loans”). The Big Picture Defendants agree to cease any collection activities and cancel all such loans as a contested liability to the extent not already done for Charged-Off Loans. The Big Picture Defendants will not assign, sell, or transfer any interest in Charged-Off Loans and/or future loan proceeds from Charged-Off Loans. Any consumers with Charged-Off Loans on the Effective Date will be notified of the elimination of their defaulted loan balances through a letter, approved by all Parties and sent by the Settlement Administrator. Such letter will be sent by email if such address is reasonably verifiable and shall

not imply or express any admission of wrongdoing by any of the Released Parties. Any payments made on Charged-Off Loans to the Big Picture Defendants after the date of the Preliminary Approval Order will either be (i) rejected by Big Picture Defendants or (ii) held in escrow by the Big Picture Defendants and within thirty (30) days of the Effective Date shall be returned to the respective consumer or paid to the Settlement Administrator to be returned to the respective Settlement Class Member.

## **XII. RELEASE OF CLAIMS**

12.1 Release for Valid Claims. Upon the Effective Date, the Named Plaintiffs, for themselves and as representatives of the Settlement Class, each Settlement Class Member who submits a Valid Claim, and/or their respective spouses, heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors and 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 the Released Parties of and from the Released Claims. Nothing in this Settlement Agreement, however, shall be deemed a release of the Parties' respective rights and obligations under this Settlement Agreement. Also, nothing in this Settlement Agreement shall be deemed a release of Plaintiffs' and Settlement Class Members' respective Claims against the Non-Settling Defendants.

12.2 Scope of Release for Settlement Class Members Who Submit Valid Claims. In exchange for the relief described in this Settlement Agreement and the injunctive relief set forth in Section XI, the Settlement Class Members who submit Valid Claims and/or anyone acting or purporting to act on their behalf agree to release the Released Parties from any and all Released Claims. It is the intent of the Parties that this release covers every possible Claim that could have been brought in the Actions against the Released Parties, regardless of any other requirement



imposed by federal or state law, including all damages claims and claims for any and other remedies.

123 Released Claims. “Released Claims” means any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses and attorneys’ fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, tribal law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory, as of the date of the Final Fairness Approval Order and Judgment, that relate to and/or arise out of loans made by and/or in the name of Big Picture, Castle Payday Loans, and/or Red Rock. Notwithstanding the Release defined and stated herein, this Settlement Agreement shall not release any claim alleged against any party in *Williams, et al, v. Microbilt Corporation, et al*, Civ. No. 3:19cv85 (E.D. Va.).

124 Scope of Release for Settlement Class Members Who Do Not Receive a Payment (“Non-Payment Released Claims”). All Settlement Class Members who do not receive a payment from the Settlement Fund will waive their rights to bring a class action, collective action, and/or mass action (but not an individual action) against any and all of the Released Parties related to not only claims asserted in the Actions, but also claims that could have been asserted in the Actions.

125 General Release to Fullest Extent Possible. The Parties agree that the release is limited to those Released Claims encompassed by the provisions of Section 12.3. Notwithstanding that understanding, Plaintiffs, for themselves and for each Settlement Class Member, acknowledge that they are aware that they may hereafter discover facts in addition to or different from those that

they or Class Counsel now knows or believes to be true with respect to the subject matter of these releases, but it is their intention to, and they do hereby, upon the Effective Date of this Settlement Agreement, fully, finally and forever settle and release any and all Released Claims and Non-Payment Released Claims, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiffs, for themselves and for each Settlement Class Member, further waives any and all rights and benefits afforded by California Civil Code Section 1542, which provides as follows: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.” Plaintiffs and Class Counsel understand and acknowledge the significance of this waiver and/or of any other applicable federal or state law relating to limitations on releases.

12.6 Binding Nature of Settlement. Subject to the requirements of due process, this Settlement Agreement shall bind all Settlement Class Members and all of the Released Claims shall be dismissed with prejudice and released as against the Released Parties, even if the Settlement Class Member claims or can later show that he or she did not receive actual notice of the Settlement prior to the hearing on final approval of the Settlement.

12.7 This Release as set forth in this Section may be raised as a complete defense and bar to any action or demand brought in contravention of this Settlement Agreement.

12.8 Upon entry of the Final Fairness Approval Order and Judgment, the Parties shall take all actions necessary to cause entry of Final Judgment, including the severance of Claims

against the Non-Settling Defendants, and the Parties agree to dismiss the Actions and any related appeals with prejudice as to Settling Defendants.

129 It is expressly understood and acknowledged by the Parties that the provisions of this release and covenant not to sue as set forth in this Section together constitute essential and material terms of the Settlement Agreement to be included in the Final Approval Order.

### **XIII. TERMINATION AND SUSPENSION**

13.1 Settling Defendants' Rights to Terminate Agreement. Settling Defendants' willingness to settle the Actions on a class-action basis and to agree to the certification of conditional Settlement Class is dependent upon achieving finality in the Actions, and the desire to avoid the expense of these and other Actions. Consequently, Settling Defendants shall have the unilateral right in their sole discretion to individually terminate this Settlement Agreement, declare it null and void, and have no further obligations under this Settlement Agreement to the Plaintiffs, Settlement Class Members, or Class Counsel if any of the following conditions subsequently occurs: (1) the Court fails or declines to grant Preliminary Approval pursuant to the terms of the Preliminary Approval Order; (2) the Court modifies the terms of the Settlement Agreement; or (3) the Effective Date does not occur for any reason, including the entry of an order by any court that would require either material modification or termination of the Settlement Agreement or the Final Approval Order.

13.2 Plaintiffs' Rights to Terminate Agreement. Plaintiffs shall have the unilateral right in their sole discretion to individually terminate this Settlement Agreement, declare it null and void, and have no further obligations under this Settlement Agreement to the Settling Defendants if any of the following conditions subsequently occurs: (1) the Court fails or declines to grant Preliminary Approval pursuant to the terms of the Preliminary Approval Order; (2) the Court modifies the terms of the Settlement Agreement; or (3) the Effective Date does not occur for any

reason, including the entry of an order by any court that would require either material modification or termination of the Settlement Agreement or the Final Approval Order.

133 Disapproval of Fee Request. Notwithstanding anything else contained herein, the failure of any Court to approve the Attorneys' Fees or Service Awards in the requested amounts, or any amounts whatsoever, shall not be grounds for the Named Plaintiffs or Class Counsel to terminate this Settlement Agreement.

134 Effect of Termination on This or Future Actions. If this Settlement Agreement is rejected by the Court or terminated for any reason: (1) the class-certification portions of the Settlement Agreement shall have no further force and effect and shall not be offered in evidence or used in the Actions or in any other proceeding; (2) counsel for the Parties shall seek to have any Court orders, filings, or other entries in the Court's file that result from this Settlement Agreement set aside, withdrawn, and stricken from the record; (3) the Settlement Agreement and all negotiations, proceedings, and documents prepared, and statements made in connection with either of them, 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, liability, or proposition of law; and (4) the Parties shall stand in the same procedural position as if the Settlement Agreement had not been negotiated, made, or filed with the Court, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in the Actions against any Party, including without limitation, the amended complaint filed in *Galloway III* and any consolidation of the Actions pursuant to Section 5.1 shall be null and void as it was filed only to effectuate this Settlement.

#### **XIV. PUBLIC STATEMENTS**

14.1 Public Statements. Settling Defendants and Plaintiffs shall not issue any press releases or make any affirmative statements to any media regarding this Settlement. Class Counsel

shall not use the name of or identity of any Settling Defendant, other than the Big Picture Defendants, on any of Class Counsel's websites or promotional materials.

## **XV. MISCELLANEOUS PROVISIONS**

15.1 No Invocation of Sovereign Immunity as a Defense to the Final Settlement Agreement: The Tribe, the Individual Tribal Defendants, the Big Picture Defendants, Dowd, Liang, and McFadden will not invoke sovereign immunity as a defense to the enforcement of the Settlement Agreement. None of the Individual Tribal Defendants, the Big Picture Defendants, Dowd, Liang, or McFadden consent to a waiver of their sovereign immunity from suit except for the limited purposes of the enforcement of this Settlement Agreement and as follows: (a) any dispute shall be brought by and limited to Plaintiffs, Settlement Class Members and no other party or entity; (b) the dispute shall be limited to those arising under this Settlement Agreement and the enforcement of any agreement, order, judgment or ruling resulting therefrom; and (c) the dispute shall be brought in the United States District Court for the Eastern District of Virginia. Nothing contained herein shall be construed as a waiver of the sovereign immunity of the Tribe, the Individual Tribal Defendants, the Big Picture Defendants, Dowd, Liang, and/or McFadden in any other context, proceeding or litigation. Except as expressly set forth herein, nothing contained in this Settlement Agreement shall be construed as a waiver of any rights or privileges belonging to the Tribe, the Individual Tribal Defendants, the Tribal Officials, the Big Picture Defendants, Dowd, Liang, and McFadden, and each of their current, past and future affiliates, subsidiaries, parents, insurers, and all of the respective directors, officers, Tribal Council members, general and limited partners, shareholders, managers, representatives, employees, members, agents, attorneys, accountants successors, assigns, and representatives, including sovereign immunity from judicial process, all of which are otherwise reserved.

152 Choice of Law. This Agreement and the rights of the parties under this Settlement Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia including all matters of construction, validity, performance, and enforcement and without giving effect to the principles of conflict of laws. By agreeing to this, none of the Defendants is agreeing to the application of Virginia law in any other context. Neither this Settlement Agreement nor any document referred to herein, nor any action taken to carry out this Settlement Agreement and/or the Settlement, or Defendants' willingness to enter into this Settlement Agreement, nor any or all negotiations, communications, and discussions associated with the Settlement are, or may be construed as, or may be used in any proceeding as, an admission by or against the Big Picture Defendants, the Tribe, the Individual Tribal Defendants, the Tribal Officials, Dowd, McFadden, and/or Liang of any waiver of sovereign immunity.

153 Discovery to Settling Defendants. In addition to the stay sought in Section 5.3 and the dismissals pursuant to Section 5.1, as to Settling Defendants named in the Actions, all discovery as to the Settling Defendants is stayed while the Settlement Agreement goes through the approval process. If the Settlement is not finally approved by the Court for any reason, the stay shall be terminated, and any discovery implicated by this Section 15.3 shall not be deemed due for response until at least forty-five (45) days from such termination.

154 Use of Discovery Materials in Related Actions. Settling Defendants agree that documents produced, and depositions provided in *Williams* or *Galloway I* shall be produced in *Galloway II* or any other related case subject to the protective order entered or to be entered in *Galloway II*.

155 Destruction and Non-Use of Discovery Materials. Class Counsel agrees to destroy all materials produced by the Settling Defendants, Released Parties, and all third parties upon entry

of the Final Approval Order or upon resolution of the Actions, or any related actions brought against a party that is not a Released Party, whichever is later; subject to good faith discussion between counsel of the Parties as necessary. Class Counsel agree to be bound by the requirements of the protective orders entered in the Actions, even following their disposal of the materials. Any disputes will be arbitrated by the Honorable David J. Novak.

15.6 Bellicose Capital, LLC (“Bellicose”) Privilege. The Big Picture Defendants agree to withdraw their assertion of attorney-client privilege for communications that occurred at Bellicose or Sourcepoint VI, LLC prior to the acquisition on January 26, 2016. The Big Picture Defendants will produce such communications if they are within the Big Picture Defendants’ possession unless another Party or entity, other than a Released Party, has timely served a separate privilege objection that has not been overruled by the respective court. The Big Picture Defendants agree to withdraw their objections to discovery for such communications, including but not limited to third-party subpoenas to Jennifer Galloway and Conner & Winters, LLP.

15.7 Admissibility of Settlement Agreement. This Settlement Agreement shall not be offered or be admissible in evidence in any action or proceeding except: (1) the hearings necessary to obtain and implement Court approval of this Settlement; or (2) any hearing to enforce the terms of this Settlement Agreement or any related order by the Court.

15.8 Successors and Assigns. The terms of this Settlement Agreement shall apply to and bind the Parties as well as their heirs, successors, and assigns.

15.9 Communications Relating to Settlement Agreement. Unless specified otherwise herein, all notices or other formal communications under this Settlement Agreement and/or the Settlement shall be in writing and sent by electronic mail, fax or hand delivery, or overnight mail postage prepaid to:

If to Class Counsel:

Leonard A. Bennett  
CONSUMER LITIGATION ASSOCIATES, P.C.  
763 J. Clyde Morris Blvd., Ste. 1-A  
Newport News, VA 23601  
Telephone: (757) 930-3660  
Facsimile: (757) 930-3662  
Email: lenbennett@clalegal.com

If to counsel for the Big Picture Defendants, the Tribe, the Individual Tribal Defendants,  
Liang and McFadden:

Robert A. Rosette  
Justin A. Gray  
Rosette, LLP  
44 Grandville Avenue SW  
Suite 300  
Grand Rapids, Michigan 49503  
Telephone: (616) 655-1601  
Facsimile: (517) 916-6443  
Email: rosette@rosettela.com  
Email: jgray@rosettela.com

If to counsel for the Columbia Defendants:

Thomas Lester  
Devin Noble  
HINSHAW & CULBERTSON LLP  
100 Park Avenue  
PO Box 1389  
Rockford, IL 61105  
Telephone: 815-490-4946  
Facsimile: 815-490-4901  
Email: tlester@hinshawlaw.com  
Email: dnoble@hinshawlaw.com

If to counsel for Defendant James Dowd:

Michael Stinson  
Vernle C. Durocher, Jr.  
DORSEY & WHITNEY LLP  
50 S Sixth St., Suite 1500  
Minneapolis, MN 55402  
Telephone: 612-492-6624  
Facsimile: 612-340-2868  
Email: stinson.mike@dorsey.com



Email: Durocher.skip@dorsey.com

If to counsel for Defendants Amlaur Resources and Brian Jebwab:

Rebecca Ruby Anzidei  
Amadou Kilkenny Diaw  
Martin Cunniff  
RUYAK CHERIAN LLP  
1700 K Street NW  
Suite 810  
Washington, DC 20006  
Telephone: (202) 897-1914  
Facsimile: (202) 478-1715  
Email: rebecca@ruyakcherian.com  
Email: amadouk@ruyakcherian.com  
Email: martinc@ruyakcherian.com

Sean J. Bellew  
Bellew LLC  
2961 Centerville Road  
Suite 302  
Wilmington, DE 19808  
Telephone: (302) 353-4951  
Email: sjbellew@bellewllc.com

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections received in relation to this Settlement Agreement.

Any Party may, by written notice to all the other Parties, change its designated recipient(s) or notice address provided above.

15.10 If any Party to this Agreement believes that another Party is in default of its obligations under this Agreement, the Party believe there is a default must advise all Parties in writing (“Notice of Default”), as listed in Section 15.9, prior to filing suit or seeking other relief to enforce the terms of this Agreement. Upon receipt of the Notice of Default, the defaulting Party shall have thirty (30) days to cure the default. If the default is not cured at the end of the 30-day

period, the non-defaulting Party may file suit or seek other relief to enforce the terms of this Agreement.

15.11 Non-Solicitation/Representation. Class Counsel represents and warrants that they will not solicit or suggest, directly or indirectly, personally or through other actions, other lawyers, law firms, nonprofit entities, or governmental or regulatory authorities the filing of new actions against Settling Defendants or any of the Released Parties relating to the offering, transacting, servicing, selling, or collection of the Big Picture Defendants' or Red Rock's loans consummated prior to the date of Preliminary Approval to any consumer located in the United States.

15.12 Destruction and Non-Use of Discovery Materials: Class Counsel agree to destroy all materials produced by Settling Defendants, any Released Party, and/or any third parties and designated upon that production as confidential upon entry of the Final Order or upon final resolution of the Actions, or any related actions brought against a party that is not a Released Party, whichever is later; subject to good faith discussion between counsel for the Parties as necessary. Class Counsel agree to be bound by the requirements of the protective orders entered in the Actions, even following their disposal of the materials. Any disputes will be arbitrated by the Honorable David J. Novak.

15.13 Big Picture Defendants' Communications with Consumers in the Ordinary Course of Business. Big Picture Defendants reserve the right to continue communicating with its customers and Consumers, including Settlement Class Members, in the ordinary course of business. Big Picture Defendants shall not advise consumers of anything contrary to the terms of this Settlement.

15.14 Efforts to Support Settlement. The Parties and their counsel agree to cooperate fully in seeking Court approval for this Settlement Agreement and to use their best efforts to effect

the consummation of the Settlement and to protect the Settlement Agreement by applying for appropriate orders enjoining others from initiating or prosecuting any action arising out of or related to facts or claims alleged in the Actions, if so required.

15.15 Competency of the Parties. The Parties, and each of them, acknowledge, warrant, represent, and agree that in executing and delivering this Settlement Agreement, they do so freely, knowingly, and voluntarily, that they had an opportunity to and did discuss its terms and their implications with legal counsel of their choice, that they are fully aware of the contents and effect of this Settlement, and that such execution and delivery is not the result of any fraud, duress, mistake, or undue influence whatsoever.

15.16 Procedures for Disputes Between Parties Relating to the Settlement Agreement. Unless specifically indicated as a dispute to be brought to the Honorable David J. Novak in the first instance, the Parties agree to submit any dispute arising under this Settlement Agreement first to mediation with Nancy F. Lesser of PAX ADR Dispute Resolution & Mediation Services, a private mediator previously used by the Parties on three occasions for the Actions, and, if deemed necessary and agreed by the Parties, the Honorable David J. Novak, before filing any motion or action with the Court, allowing a reasonable time for the mediation of the dispute.

15.17 Entire and Voluntary Agreement. The Parties intend the Settlement Agreement to be a final and complete resolution of the Actions. The Parties agree that the terms of the Settlement Agreement were negotiated at arm's length and in good faith and were reached voluntarily after consultation with competent legal counsel. There shall be no presumption for or against any Party that drafted all or any portion of this Settlement Agreement. This Settlement Agreement contains the entire agreement and understanding concerning the subject matter between the Parties and supersedes all prior negotiations and proposals, whether written or oral. No other party or any

agent or attorney of any other party has made any promise, representation or warranty whatsoever not contained in this Settlement Agreement and the other documents referred to in this Settlement Agreement to induce them to execute the same. The Parties represent that they have not executed this instrument or the other documents in reliance on any promise, representation, or warranty not contained in this Settlement Agreement and the other documents referred to in this Settlement Agreement. Any modification must be in writing signed by the Parties and their respective counsel and, to the extent necessary, approved by the Court.

15.18 Headings for Convenience Only. The headings in this Settlement Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

15.19 Settlement Agreement Controls. All of the Exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. To the extent that there is any conflict between the terms of this Settlement Agreement and the Exhibits attached hereto, this Settlement Agreement shall control.

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

15.21 Amendments. The Settlement Agreement may be amended or modified only by a written instrument signed by Class Counsel and Settling Defendants' Counsel, or their respective successors-in-interest.

15.22 Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Settlement Agreement, received independent legal advice with respect to the advisability of entering into this Settlement Agreement and fully

understands the effect of this Settlement Agreement, the Released Parties, and the Released Claims.

1523 Authorization of Counsel. Class Counsel, on behalf of the Settlement Class, are expressly authorized by Plaintiffs to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Settlement Class that they deem necessary or appropriate. Each attorney executing the Settlement Agreement on behalf of any Party hereto hereby warrants that such attorney has the full authority to do so.

1524 Confidentiality. All agreements made and Orders entered during the course of the Actions relating to the confidentiality of information shall survive this Settlement Agreement.

1525 Court's Jurisdiction. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement and all orders entered in connection therewith. The Parties and their attorneys submit to the jurisdiction of the Court regarding these matters.

1526 Construction. Each of the Parties has cooperated in the mutual drafting and preparation of this Settlement Agreement. Hence, in any construction to be made of this Settlement Agreement, the same shall not be construed against any of the Parties. Before declaring any provision of this Settlement Agreement invalid, a court should first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedent so as to find all provisions of this Settlement Agreement valid and enforceable.

1527 No Claims Arising from this Settlement Agreement. No person shall have any claim against any Settling Defendants, Released Party, Settling Defendants' Counsel, Named

Plaintiff or Class Counsel based on distribution of benefits made substantially in accordance with this Settlement Agreement or any Settlement Agreement-related order(s) of the Court.

1528 Waiver. The waiver by one party of any provision or breach of this Settlement Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

1529 Counterparts and Date of Agreement. This Settlement Agreement may be executed in one or more counterparts and by facsimile. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the Parties shall exchange among themselves signed counterparts, and a complete set of executed counterparts shall be filed with the Court. The Settlement Agreement shall become effective upon its execution by all of the undersigned.

IN WITNESS THEREOF, the Parties hereto have caused this Settlement Agreement to be executed by their duly authorized representatives.

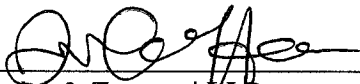
**LULA WILLIAMS; GLORIA TURNAGE;  
GEORGE HENGLE; DOWIN COFFY;  
MARCELLA SINGH; RENEE GALLOWAY;  
DIANNE TURNER; EARL BROWNE; ROSE  
MARIE BUCHERT; REGINA NOLTE; KEVIN  
MINOR; TERESA TITUS; LISA MARTINEZ;  
ANTHONY GREEN; SONJI GRANDY;  
ANASTASIA SHERMAN; BURRY POUGH;  
LINDA MADISON; DOMINQUE DE LA BAY;  
LUCINDA GRAY; ANDREA  
SCARBOROUGH; JERRY AVENT; LORI  
FITZGERALD; DEREK GETER; KEISHA  
HAMM; FAITH THOMAS; SHARON PAAVO;  
LATANYA TARLETON**

Date: 11/20/19

  
\_\_\_\_\_  
Consumer Litigation Associates, P.C.  
Kelly Guzzo PLC  
Terrell Marshall Law Group PLLC  
Berger & Montague PC  
Virginia Poverty Law Center  
Gupta Wessler PLLC

**CHRISTINA CUMMING; LAMESHA  
KONDO; ANDREA MENDEZ; TAMMY  
WANGELINE; FREEMAN REVELS;  
KIMBERLY POOL; TASHA PETTIFORD**

Date: 12/17/2019

  
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Tycko & Zavareei LLP



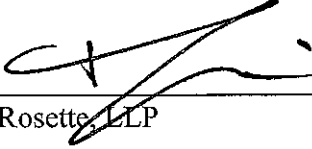
**RICHARD L. SMITH, JR.; VICTORIA R.  
MCKOY; DESIREE W. LOVINS; SANDRA  
MONSALVE; CARRIE S. SMITH; CHRIS  
KOBIN; DANA DUGGAN**

Date: 11/26/19

Michael A. Caddell  
Caddell & Chapman

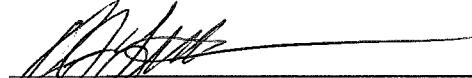
**BIG PICTURE LOANS, LLC; ASCENSION  
TECHNOLOGIES, LLC; JAMES WILLIAMS,  
JR.; MICHELLE HAZEN; GERTRUDE  
MCGESHICK; SUSAN MCGESHICK;  
GIWEGIIZHIGOOKWAY MARTIN; JAMES  
DOWD; SIMON LIANG; BRIAN MCFADDEN;  
KARRIE WICHTMAN; HENRY SMITH;  
ALICE BRUNK; ANDREA RUSSELL; TINA  
CARON; MITCHELL MCGESHICK;  
JEFFERY MCGESHICK; ROBERTA IVEY;  
JUNE SAAD**

Date: 11/27/19

  
\_\_\_\_\_  
Rosette, LLP

**COLUMBIA PIPE & SUPPLY CO.; TIMOTHY  
ARENBERG; TERRANCE ARENBERG; DTA  
TRINITY WEALTH TRANSFER TRUST;  
DEBORAH M. ARENBERG LIVING TRUST**

Date: 11/27/19

  
\_\_\_\_\_  
Hinshaw and Culbertson LLP

**JAMES DOWD**

Date: 12/2/2019

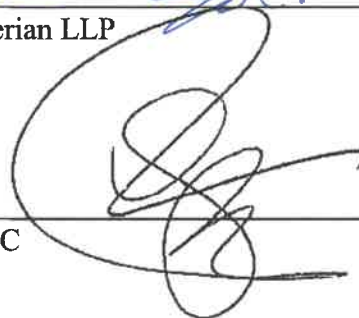
  
Dorsey & Whitney LLP

**AMLAUR RESOURCES, LLC; BRIAN  
JEBWAB**

Date: 12/2/19

  
\_\_\_\_\_  
Ruyak Cherian LLP

Date: 11/27/2019

  
\_\_\_\_\_  
Bellew LLC

# EXHIBIT A

## CLASS NOTICE

Return Address Box 123



E1234 0000001 P01 T00001 \*\*\*\*\*5-DIGIT 12345

John Q. Sample  
123 Any Street  
Any Town, ST 12345-6789



## If You Obtained a Big Picture or Castle Payday Loan You Could Get Loan Forgiveness and/or a Cash Payment from a Settlement.

*A federal court ordered this notice. This is not a solicitation from a lawyer.*

- Read this Notice. It states your rights and provides you with information regarding a proposed nationwide class action settlement (“Settlement”) in lawsuits brought against a number of companies and persons alleged to be involved with the making of online loans in the name of Big Picture Loans and Red Rock Tribal Lending d/b/a/ Castle Payday Loans. All of these settling parties, listed below, are known here as the Settling Defendants.
- The lawsuit claimed that the Big Picture and Castle Payday loans violated state usury laws and the Racketeer Influenced and Corrupt Organizations Act. There was no finding of liability in this case, and the Settling Defendants vigorously denied all allegations in the lawsuits.
- As part of the proposed Settlement, individuals who executed Big Picture and/or Castle Payday loan agreements from June 22, 2013, to the date of the Preliminary Approval Order may be eligible to receive certain benefits, as detailed below, including cash refunds.
- This Notice is a summary of information about the Settlement and explains your legal rights and options because you may be a member of the class of borrowers who would be affected if the Settlement is finally approved by the Court. The complete terms of the proposed Settlement are available at the Settlement website, WEBSITE (“Settlement Website”). You may also obtain further information about the Settlement at the following telephone number: NUMBER.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
<b>DO NOTHING</b>	<p>You will remain a member of the Settlement Class. You may receive certain benefits without doing anything, including a reduction in the amount of interest you can be charged on your loan.</p> <p>However, if you do nothing, you will not receive a cash payment. You can still bring any claim you may have against a Defendant, but only on an individual basis.</p>
<b>MAKE A CLAIM FOR A CASH PAYMENT</b>	<p>You can make a claim for a cash amount by submitting the attached claim form (“Claim Form”) by mail or at [WEBSITE]. You will receive a cash payment if you repaid your loan, and paid more than 2.5 times the original principal amount of the loan in payments over the life of the loan. You can go to <a href="http://www._____.com/claim">www._____.com/claim</a> to see whether you would receive a cash payment.</p>
<b>OBJECT TO THE SETTLEMENT</b>	<p>If you do not exclude yourself, you may write to the Courts about why you don’t like the Settlement or why the Courts should not approve it.</p>

### I. WHY IS THERE A NOTICE?

This Notice relates to a proposed nationwide Settlement that will be considered by a United States District Court in Richmond, Virginia (the “Court”). Before the Settlement becomes effective, it must be finally approved by the Court. The claims of the Settlement Class Members (as defined below) are being settled in the Court in the following class action matter: *Renee Galloway, et al. v. James Williams, Jr., et al.*, Case No. 3:19-cv-00470-REP (E.D. Va.) (the “Lawsuit”).



You have been identified as a Settlement Class Member. The Court authorized this Notice because you have a right to know about a proposed Settlement of the lawsuit and about all of your options before the Court decides whether to give "final approval" to the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

## 2. WHAT ARE THESE LAWSUITS ABOUT?

The claims involved in the Settlement arise out of loans made in the name of two companies that are owned by a Native American Indian Tribe: Big Picture Loans and Red Rock Tribal Lending d/b/a/ Castle Payday Loans ("Tribal Companies"). There were others that are alleged to have invested or assisted in the operations of these businesses. Several of these companies and individuals are also included in the Settlement (collectively known as the "Settling Defendants"). Each of the Settling Defendants is listed below in Section 7.

The plaintiffs in these cases claim that the Settling Defendants violated federal and various state laws by: (a) making and collecting loans with annual interest rates in excess of the amount allowed by state law, (b) lending to consumers when these entities were required to have a license from a state to lend to consumers, and they did not have that license, (c) servicing or collection activities, or (d) their involvement in and support of other parties' conduct.

The plaintiffs in the lawsuit claim that the Tribal Companies' loans violated state usury laws that govern the amount of interest lenders can charge and federal laws that prevent the collection of illegal debts.

The Settling Defendants do not agree that state law is applicable to the loans made by the Tribal Companies. They have vigorously denied all claims and allegations of wrongdoing. The Tribal Companies have maintained at all times that they are arms of the Tribe and share in the Tribe's sovereign immunity. Notwithstanding the denials of liability and alleged unlawful conduct, the Settling Defendants have decided it is in their best interest to settle the Lawsuit to avoid the burden, expense, risk, and uncertainty of continuing in litigation.

Important case documents, including the Settlement Agreement, may be accessed at the Settlement Website, [www.WEBSITE.com](http://www.WEBSITE.com).

## 3. WHY IS THIS A CLASS ACTION?

In a class action or proceeding, one or more people, called class representatives, bring an action on behalf of people who have similar claims. All of the people who have claims similar to the class representatives are a class or class members, except for those who exclude themselves from the class. Here, the Plaintiffs have filed a claim on behalf of the Settlement Class.

## 4. HOW DO I KNOW IF I AM INCLUDED IN THE SETTLEMENT?

You are affected by the Settlement (and thus a "Settlement Class Member") if you obtained a Big Picture or Castle Payday loan(s) from June 22, 2013 to the date of the Preliminary Approval Order (the "Settlement Class").

The Settling Defendants' business records have identified you as a member of the Settlement Class, and you will be a Settlement Class Member unless you exclude yourself.

## 5. WHAT DOES THE SETTLEMENT PROVIDE AND HOW MUCH WILL MY PAYMENT BE?

The Settling Defendants have agreed to create a fund in the amount of \$8.7 million ("Settlement Fund"), and they have also agreed to certain other forms of non-monetary relief for the Settlement Class. The Settling Defendants have agreed to provide the following benefits and others more fully described in the Settlement Agreement:

- a) **Consumer Refund.** A Settlement Fund will provide payments to some Settlement Class Members who submit claims to the administrator of the Settlement ("Settlement Administrator"). Only borrowers who repaid the loan and also paid more than 2.5 times the original principal amount of the loan in payments over the life of the loan

PAYMENT. The amount of your check will depend on the amount of interest that you paid on your loan(s) and how many total valid claims are made by other Settlement Class Members. The Settlement Administrator will mail the check to the address you provide on the Claim Form, and so it is your obligation to update your address with the Settlement Administrator if you move.

- b) **Reduced Interest on Pending Loans.** For those Settlement Class Members whose loan(s) have not been fully paid off or are not more than 210 days delinquent or past due, the Settling Defendants agree to collect no more than 2.5 times the original principal amount of the loan in payments over the life of the loan. For example, if the original principal amount of the loan was \$500.00, then the Settling Defendants have agreed to cap collection at \$1,250.00 over the life of the loan, including payments credited to either interest or principal reduction.
- c) **Loan Forgiveness.** For those Settlement Class Members whose loan(s) are currently, or become, more than 210 days in default ("Charged-Off Loans"), the Settling Defendants agree to cease any collection activities and cancel all such loans as a contested liability to the extent not already done. The Settling Defendants will not assign, sell, or transfer any interest in Charged-Off Loans and/or future loan proceeds from Charged-Off Loans.

## 6. WHAT DO I HAVE TO DO TO RECEIVE MY PAYMENT?

To receive a refund payment from the Settlement Fund, you must complete the Claim Form attached to this Notice or at [WEBSITE]. The Claim Form requires your name, current postal address, date of birth, and the last four digits of the Settlement Class Member's Social Security number. The Claim Form and the Settlement Website provide complete instructions for completion of this claims process. You may submit only one Claim Form regardless of the number of loans you had.

The Claim Form is also made available for download on the Settlement Website or by request from the Settlement Administrator.

If you are entitled to a payment, the Settlement Administrator will mail you a check upon receipt of a Valid Claim approximately 395 days after the Court grants final approval of the Settlement and any appeals are resolved.

The Settlement Administrator will mail the check to the address you provide on the Claim Form, and so it is your obligation to update your address with the Settlement Administrator if you move. You can contact the Settlement Administrator at the telephone number or address below if your address has changed.

TO SEE IF YOU QUALIFY FOR A CASH REFUND PAYMENT, click here or call NUMBER.

## 7. WHAT AM I GIVING UP IN THE SETTLEMENT?

As a member of the Settlement Class, you are providing a "Release" of certain claims against the "Released Parties" in the Settlement, who are the Settling Defendants. If you do nothing or otherwise do not receive a cash refund payment, you do not release any of your rights or claims, but you can only bring those on an individual basis. Under the Settlement, you lose your right to bring these claims in a different class action.

If you do submit a claim and do receive a cash refund payment, you will release all your claims against the Settling Parties and Released Parties. You will not be allowed to bring those claims either as an individual case or as a different class action.

The Released Parties and Settling Defendants include: the Lac Vieux Desert Band of Lake Superior Chippewa Indians (the "Tribe") and the current and former members of the Lac Vieux Desert Band of Lake Superior Chippewa Indians Tribal Council and/or any employees of the Tribe or any arms of the Tribe; Big Picture Loans, LLC; Ascension Technologies, LLC; James Williams, Jr., Michelle Hazen, Henry Smith, Alice Brunk, Andrea Russell, Tina Caron, Mitchell McGeshick, Gertrude McGeshick, Susan McGeshick, Giiwegiizhigookway Martin, Jeffery McGeshick, Roberta Ivey, and June Saad; Columbia Pipe & Supply Co., Timothy Arenberg, Terrance Arenberg, DTA Trinity Wealth Transfer Trust, and Deborah M. Arenberg Living Trust; Amlaur Resources, LLC and Brian Jedwab; James Dowd; Simon Liang; Brian McFadden; Duck Creek Tribal Financial, LLC; Tribal Economic Development Holdings, LLC; and each of their current and former directors, officers, principals, trustees, shareholders, partners, contractors, agents, attorneys (including, Rosette Holdings, LLC, Rosette, LLP, Robert A. Rosette, and Karrie S. Wichtman).



12.1 Release for Valid Claims. Upon the Effective Date, the Named Plaintiffs, for themselves and as representatives of the Settlement Class, each Settlement Class Member who submits a Valid Claim, and/or their respective spouses, heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors and 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 the Released Parties of and from the Released Claims. Nothing in this Settlement Agreement, however, shall be deemed a release of the Parties' respective rights and obligations under this Settlement Agreement. Also, nothing in this Settlement Agreement shall be deemed a release of Plaintiffs' and Settlement Class Members' respective Claims against the Non-Settling Defendants.

Settlement Class Members who do not submit a Valid Claim will be deemed to have provided a more limited release of only class, collective, and mass actions against the Released Parties. Specifically, Section 12.4 of the Settlement Agreement states:

12.4 Scope of Release for Settlement Class Members Who Do Not Receive a Payment ("Non-Payment Released Claims"). All Settlement Class Members who do not receive a payment from the Settlement Fund will waive their rights to bring a class action, collective action, and/or mass action (but not an individual action) against any and all of the Released Parties related to not only claims asserted in the Actions, but also claims that could have been asserted in the Actions.

The Plaintiffs have brought claims against other Non-Settling Defendants and their companies who they allege were behind the lending operation. Specifically, claims against Matt Martorello, Justin Martorello, Rebecca Martorello, Jeremy Davis, Eventide Credit Acquisitions, LLC, Bluetech Irrevocable Trust, Kairos Holdings, LLC, Liant, LLC, or any other entities owned, directly or indirectly, by Matt Martorello, Justin Martorello, or Rebecca Martorello will continue to be litigated by the Plaintiffs. If a class is certified, you may also be part of that class and will receive separate notice of this and any rights or benefits you may have due to those lawsuits.

**8. CAN I OPT OUT OF THE SETTLEMENT?**

No. Settlement Class Members are not permitted to exclude themselves or otherwise "opt out" of the Settlement because of the nature of the Settlement, which is brought under Fed. R. Civ. P. 23(b)(2). However, unless you request and receive a cash refund payment, you do not give up your rights (if any) to bring an individual claim in your own lawsuit. That individual lawsuit would not be part of this case, and you would need to obtain your own lawyer(s) to bring it.

**9. HOW DO I TELL THE COURT THAT I OBJECT TO AND DO NOT LIKE THE SETTLEMENT?**

If you are a Settlement Class Member, then you can object to the Settlement if you think the Settlement is not fair, reasonable, or adequate, and that the Court should not approve the Settlement. You have the right to appear personally and be heard by the judge. The Court will consider your views carefully.

To preserve your objection, you must send a letter stating your views to each of the parties listed below:

<u>Class Counsel Representative</u>	<u>Big Picture Defendants' Counsel Representative</u>
Leonard A. Bennett Consumer Litigation Associates, PC 763 J Clyde Morris Blvd., Suite 1A Newport News, VA 23601 Telephone: (757) 930-6330 Facsimile: (757) 960-3662 Email: lenbennett@clalegal.com	Karrie S. Wichtman Lac Vieux Desert Band of Lake Superior Chippewa Indians N4698 US 45, P.O. Box 249 Watersmeet, Michigan 49969 Telephone: (906) 358-4577, extension 4127 Email: karrie.wichtman@lvdtribal.com

Robert A. Rosette  
 Rosette, LLP  
 565 W. Chandler Boulevard  
 Suite 212  
 Chandler, Arizona 85225  
 Telephone: (480) 889-8990  
 Facsimile: (480) 899-8997  
 Email: rosette@rosettela.com

Settlement Administrator to be approved by the Court

You should include the following case name and docket number on the front of the envelope and letter you file with the Court: "*Renee Galloway, et al. v. James Williams, Jr., et al.*, Case No. 3:19-cv-00470-REP (E.D. Va.)".

All objections **must** include the following information:

- Your name, address, telephone number, and the last four digits of your Social Security number;
- A sentence confirming that you are a Settlement Class Member;
- Your factual basis and legal grounds for the objection to the Settlement; and
- The name, firm name, phone number, email address, and mailing address of counsel representing you, if any.

**Objections must be filed with the Court and served on the above parties so that they are postmarked no later than DATE. Any lawyer who intends to appear at the Final Fairness Hearing must also enter a written Notice of Appearance of Counsel with the Clerk of the Court no later than thirty (30) days before the Final Fairness Hearing and shall include the full style and case number of each previous class action case in which that counsel has represented an objector.**

**10. WHEN AND WHERE WILL THE COURTS DECIDE WHETHER TO APPROVE THE SETTLEMENT?**

The Court will hold a hearing to decide whether to approve the Settlement on DATE at TIME in the courtroom of Judge Robert E. Payne of the United States District Court for the Eastern District of Virginia, Spottswood W. Robinson III and Robert R. Merhige, Jr. Federal Courthouse, 701 E. Broad St., Richmond, VA 23219. At this hearing, the Court will determine whether the Settlement is fair, reasonable, and adequate.

If there are objections, the Court will consider them at that time. The hearing may be moved to a different date or time without additional notice. Please check WEBSITE or call PHONE NUMBER to be kept up-to-date on the date, time, and location of the hearing.

**11. DO I HAVE TO COME TO THE HEARING?**

No. But you are welcome to come at your own expense. As long as you mailed your written objection on time, the Court will consider it. You may also retain a separate lawyer to appear on your behalf at your own expense.

**12. DO I HAVE A LAWYER IN THE CASE?**

Yes. The Court has appointed these law firms in these cases as "Class Counsel" to represent you and all other members of the Settlement Class: Consumer Litigation Associates, P.C., Kelly Guzzo PLC, Terrell Marshall Law Group PLLC, Berger & Montague PC, Caddell & Chapman, Gupta Wessler PLLC and Tycko & Zavareci LLP.

These lawyers will not separately charge you for their work on the case. If you want to be represented by your own lawyer, you may hire one at your own expense.



**13. HOW WILL THE LAWYERS BE PAID?**

As part of the proposed Settlement, Class Counsel are seeking an award of up to 33% of the Settlement Fund for their attorneys' fees and costs. The amount awarded by the Court will reduce the distributions to Settlement Class Members.

Class Counsel also will ask the Court to approve a service award of up to \$5,000 to each of the 43 individual Plaintiffs in this matter, depending upon each Plaintiff's degree of contribution and service. The Plaintiffs were subject to extensive discovery and made substantial contributions in the prosecution of these lawsuits for the benefit of the Class. The Court will ultimately decide how much Class Counsel and the individual Plaintiffs will be paid.

The Settlement contains a number of detailed provisions for the allocation of the Settlement Fund, including the distribution of leftover amounts. The details for Settlement Fund distribution are set forth in the settlement documents available at the Settlement Website, [www.WEBSITE.com](http://www.WEBSITE.com).

**14. HOW DO I GET MORE INFORMATION?**

This Notice summarizes the proposed Settlement. You can get a copy of the Settlement Agreement and other relevant case-related documents at the Settlement Website, [www.WEBSITE.com](http://www.WEBSITE.com), by calling the Settlement Administrator at PHONE NUMBER, or by contacting Class Counsel at the addresses above or by email to email@email.com.

**PLEASE DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT, THE JUDGE, THE SETTLING DEFENDANTS OR THE SETTLING DEFENDANTS' COUNSEL.**

**THEY ARE NOT PERMITTED TO ANSWER YOUR QUESTIONS.**

# EXHIBIT B

## PROPOSED ORDER

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division

RENEE GALLOWAY, *et al.*,

Plaintiffs,

v.

Civil Action No. 3:19-cv-00470-REP

JAMES WILLIAMS, JR., *et al.*,

Defendants.

**ORDER**

WHEREAS all named Plaintiffs, by counsel, have alleged that Defendants, Big Picture Loans, LLC (“Big Picture”) and Ascension Technologies, LLC (“Ascension”) (collectively, the “Big Picture Defendants” and with Plaintiffs, “the Parties”), violated the Racketeer Influenced and Corrupt Organizations Act (“RICO”) and the usury laws of various states, among other claims, arising from loans made to consumers by Big Picture or Red Rock Tribal Lending, LLC (“Red Rock”); and

WHEREAS, the Big Picture Defendants, while denying that they have violated any legal requirement, have agreed to adopt certain changes to their businesses as a condition of the class Settlement of the above-captioned matter.

THEREFORE, pursuant to the agreement and consent of the Parties, and upon its own consideration and disposition, the Court hereby FINDS and ORDERS as follows:

1. With respect to Settlement Class Members residing within the United States or its territories who executed loan agreements with Big Picture and/or Red Rock (including loans assigned to Big Picture or Red Rock) from June 22, 2013, to the date of the Preliminary Approval Order and have not fully paid off his or her loan under the agreed terms, but not

including Charged-Off Loans (defined below), the Big Picture Defendants shall collect no more than 2.5 times the original principal amount of the loan in payments over the life of the loan.

2. With respect to loan agreements executed (i) by Settlement Class Members residing within the United States or its territories, (ii) with Big Picture and/or Red Rock (including loans assigned to Big Picture) and (iii) from June 22, 2013 to the date of the Preliminary Approval Order, Big Picture shall charge off such loans after being at least 210 days in default ("Charged-Off Loans"). The Big Picture Defendants shall cease any collection activities and cancel all such loans as a contested liability to the extent not already done for Charged-Off Loans. The Big Picture Defendants shall not assign, sell, or transfer any interest in Charged-Off Loans and/or future loan proceeds from Charged-Off Loans. Any consumers with Charged-Off Loans on the Effective Date shall be notified of the elimination of their defaulted loan balances through a letter, approved by all Parties and sent by the Settlement Administrator. Such letter will be sent by email if such address is reasonably verifiable and shall not imply or express any admission of wrongdoing by any of the Released Parties. Any payments made on Charged-Off Loans to the Big Picture Defendants after the date of the Preliminary Approval Order shall either be (i) rejected by Big Picture Defendants or (ii) held in escrow by the Big Picture Defendants and within thirty (30) days of the Effective Date shall be returned to the respective consumer or paid to the Settlement Administrator to be returned to the respective Settlement Class Member.

3. All capitalized terms in this Order shall have the same meaning ascribed to them in the Class Action Settlement Agreement and Release.



IT IS SO ORDERED.

Dated: \_\_\_\_\_

Senior United States District Judge

# EXHIBIT C

## PROPOSED PRELIMINARY APPROVAL ORDER

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

RENEE GALLOWAY, *et al.*,

Plaintiffs,

v.

Civil Action No. 3:19-cv-00470-REP

JAMES WILLIAMS, JR., *et al.*,

Defendants.

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**PRELIMINARY APPROVAL ORDER**

WHEREAS, all named Plaintiffs (listed and defined below) and certain Defendants, namely: (1) Big Picture Loans, LLC (“Big Picture”) and Ascension Technologies, LLC (“Ascension”) (collectively, the “Big Picture Defendants”), represented to be wholly-owned and operated entities of the Lac Vieux Desert Band of Lake Superior Chippewa Indians (the “Tribe”), a federally-recognized Indian tribe, (2) James Williams, Jr., Michelle Hazen, Henry Smith, Alice Brunk, Andrea Russell, Tina Caron, Mitchell McGeshick, Gertrude McGeshick, Susan McGeshick, Giiwegiizhigookway Martin, Jeffery McGeshick, Roberta Ivey, and June Saad (collectively, the “Individual Tribal Defendants”), (3) Columbia Pipe & Supply Co., Timothy Arenberg, Terrance Arenberg, DTA Trinity Wealth Transfer Trust, and Deborah M. Arenberg Living Trust (collectively, the “Columbia Defendants”), (4) Amlaur Resources, LLC and Brian Jedwab (collectively the “Amlaur Defendants”), (5) James Dowd (“Dowd”), (6) Simon Liang (“Liang”), and (7) Brian McFadden (“McFadden”) (collectively, the Big Picture Defendants, the Tribe, the Individual Tribal Defendants, the Columbia Defendants, the Amlaur Defendants, Dowd, Liang and McFadden shall be referred to as the “Settling Defendants”; collectively, the Named Plaintiffs and the Settling Defendants shall be referred to as the “Parties”), through their respective

counsel, have agreed, subject to Court approval following notice to the Settlement Class Members and a hearing, to settle the above-captioned lawsuit (the "Lawsuit") upon the terms and conditions set forth in the Class Action Settlement and Release (the "Settlement Agreement").

The Settlement Agreement that has been filed with the Court (ECF No. \_\_\_) and the definitions set forth in the Settlement Agreement are incorporated herein by reference.

Based upon the Settlement Agreement and all the files, records, and proceedings herein, it appears to the Court that, upon preliminary examination, the proposed Settlement is fair, reasonable, and adequate. Accordingly, the Court grants preliminary approval of the Settlement. A Final Approval Hearing will be held on \_\_\_\_\_, \_\_\_\_, 20\_\_ at \_\_:\_\_ A.M./P.M., after notice to the proposed Settlement Class Members, in order to determine whether a Final Approval Order should be entered in the Lawsuit.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. **Consolidated Amended Complaint:** Plaintiffs' Motion for Leave to File the Consolidated Amended Complaint is granted, subject to the conditions within the Settlement Agreement.

2. **Settlement Class:** Pursuant to Fed. R. Civ. P. 23(b)(2), the matter is hereby preliminarily certified, for Settlement purposes only, as a class action on behalf of the following class of individuals (the "Settlement Class Members" or "Settlement Class"):

All consumers residing within the United States or its territories who executed loan agreements with Red Rock Tribal Lending, LLC or Big Picture Loans, LLC (including loans assigned to Big Picture Loans, LLC) from June 22, 2013 to the date of the Preliminary Approval Order; provided, however, that "Settlement Class" and "Settlement Class Member" shall exclude: (i) all consumers who would otherwise qualify for membership in the "Settlement Class" for which the consumer previously has released all claims as to the Settling Defendants; (ii) the Settling Defendants' officers, directors, and employees; (iii) the Settling Defendants' attorneys; (iv) the Named Plaintiffs' attorneys; and (v) any judge who has presided over either mediation or disposition of this case and the members of his or her immediate family.

3. **Class Representative Appointment:** Pursuant to Fed. R. Civ. P. 23, the Court preliminarily certifies Lula Williams; Gloria Turnage; George Hengle; Dowin Coffy; Marcella Singh, as administrator of the Estate of Felix Gillison, Jr.; Renee Galloway; Dianne Turner; Earl Browne; Rose Marie Buchert; Regina Nolte; Kevin Minor; Teresa Titus; Lisa Martinez; Anthony Green; Sonji Grandy; Anastasia Sherman; Burry Pough; Linda Madison; Dominique de la Bay; Lucinda Gray; Andrea Scarborough; Jerry Avent; Lori Fitzgerald; Derek Geter; Keisha Hamm; Faith Thomas; Sharon Paavo; Latanya Tarleton; Christina Cumming; Lamesha Kondo; Andrea Mendez; Tammy Wangeline; Freeman Revels; Kimberly Pool; Tasha Pettiford; Richard L. Smith, Jr.; Victoria Renee McKoy; Desiree Wright Lovins; Sandra Monsalve; Carrie Samantha Smith; Chris Kobin; Dana Duggan; and John Actis (collectively, "Named Plaintiffs") as the Class Representative(s) for the Settlement Class. The Court finds and determines that the Named Plaintiffs will fairly and adequately represent the interests of the Settlement Class in enforcing the rights of the Settlement Class in the Litigation.

4. **Class Counsel Appointment:** The following attorneys are preliminarily appointed as Class Counsel under Fed. R. Civ. P 23(g)(1):

- a. Leonard A. Bennett, Elizabeth W. Hanes, and Craig C. Marchiando of Consumer Litigation Associates, P.C.;
- b. Kristi C. Kelly, Andrew J. Guzzo, and Casey S. Nash of Kelly Guzzo PLC;
- c. Beth E. Terrell, Elizabeth A. Adams, and Jennifer R. Murray of Terrell Marshall Law Group PLLC;
- d. E. Michelle Drake and John G. Albanese of Berger & Montague PC;
- e. Matthew W. Wessler of Gupta Wessler PLLC;
- f. Anna C. Haac and Hassan Zavareei of Tycko & Zavareei LLP; and



g. Michael A. Caddell, Cynthia B. Chapman, John B. Scofield, Jr., and Amy E. Tabor of Caddell & Chapman.

For purposes of these Settlement approval proceedings, the Court finds that these law firms are competent and capable of exercising their responsibilities as Class Counsel and have fairly and adequately represented the interests of the Settlement Class for Settlement purposes.

5. **Preliminary Certification of the Class:** For Settlement purposes only, the Court preliminarily finds that this matter and the Settlement Class satisfy the applicable prerequisites for class action treatment under Fed. R. Civ. P. 23(b)(2). The Court preliminarily finds that, for Settlement purposes and conditioned upon the entry of this Order and the Final Approval Order, and the occurrence of the Effective Date, that the prerequisites for a class action under Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure have been satisfied. The Court finds, in the specific context of this Settlement, that the following requirements are met: (a) the number of Settlement Class Members is so numerous that joinder is impracticable; (b) there are questions of law and fact common to the Settlement Class Members; (c) the Named Plaintiffs' claims are typical of the claims of the Settlement Class Members; (d) the Named Plaintiffs have fairly and adequately represented the interests of the Settlement Class and will continue to do so, and the Named Plaintiffs have retained experienced counsel to represent them; (e) the questions of law and fact common to the Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; and, (f) a class action provides a fair and efficient method for settling the controversy under the criteria set forth in Rule 23 and is superior to alternative means of resolving the claims and disputes at issue in this Lawsuit. The Court also concludes that, because this case is being settled rather than litigated, the Court need not consider manageability issues that might be presented by the trial of a class action involving the issues in this case.

6. The Court finds that the Settlement falls within the range of reasonableness because it provides for meaningful remediation relative to the merits of the Named Plaintiffs' claims and the Settling Defendants' defenses in that Settlement Class Members will obtain substantial injunctive relief. The Settlement also has key indicia of fairness in that significant discovery and litigation have been undertaken by the Parties in the Lawsuit and other related cases and settlement negotiations occurred at arm's length.

7. **Class Action Administration:** [ ] is approved as the Settlement Administrator. The Settlement Administrator shall oversee the administration of the Settlement and the notification to Settlement Class Members as directed in the Settlement Agreement. The Notice Plan and class administration expenses shall be paid in accordance with the Settlement Agreement.

8. **Class Notice:** The Court approves the form and content of the Class Notice submitted to the Court on November 26, 2019 (ECF No. \_\_\_\_). The proposed form and method for notifying the Settlement Class Members of the Settlement and its terms and conditions meet the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process. The proposed Class Notice constitutes the best notice that is practicable under the circumstances and constitutes due and sufficient notice to all persons and entities entitled to notice. The Court finds that the proposed notice concisely and clearly states, in plain, easily understood language, the nature of the Lawsuit; the definition of the class certified; the class claim, issues, and defenses; that a Settlement Class Member may enter an appearance through counsel if the member so desires; and the binding effect of a class judgment on Settlement Class Members. The Notice Plan is designed for notice to reach a significant number of Settlement Class Members and is otherwise proper under Fed. R. Civ. P. 23(e)(1).

Based on the foregoing, the Court hereby approves the Notice Plan developed by the Parties and directs that the Notice Plan be implemented according to the Settlement Agreement.

9. **Objections:** Any individual within the Settlement Class may appear at the Final Approval Hearing to argue that the proposed Settlement should not be approved and/or to oppose the application of Class Counsel for an award of Attorneys' Fees and costs and the Service Awards to the Named Plaintiffs; provided, however, that no individual within the Settlement Class shall be heard, and no objection may be considered, unless the individual files the objection with the Court no later than thirty (30) days before the Final Approval Hearing and mails the objection to Class Counsel, Settling Defendants' Counsel, and the Settlement Administrator postmarked no later than thirty (30) days before the Final Approval Hearing; provided, however, objections to the Class Counsel's Attorneys' Fees or the requested Service Awards may be supplemented up to seven (7) days after the filing of a motion for such fees or awards to address additional information or materials in the motion. All objections must include: (1) the objector's name, address, telephone number, and the last four digits of the Settlement Class Member's Social Security Number; (2) a sentence stating that to the best of his or her knowledge he or she is a member of the Settlement Class; (3) the factual basis and legal grounds for the objection to the Settlement; and (4) the name, firm name, phone number, email address, and mailing address of counsel representing the objector, if any.

The written objection must indicate whether the Settlement Class Member and/or his or her lawyer(s) intend to appear at the Final Approval Hearing. Any lawyer who intends to appear at the Final Approval Hearing must also enter a written Notice of Appearance of Counsel with the Clerk of the Court no later than thirty (30) days before the Final Approval Hearing and shall include the full style and case number of each previous class action case in which that counsel has represented an objector. Settlement Class Members who do not timely make their objections in this manner



will be deemed to have waived all objections and shall not be heard or have the right to appeal approval of the Settlement.

10. **Final Approval:** The Court shall conduct a Final Fairness Hearing on \_\_\_\_\_, 2020 at the Spottswood W. Robinson III and Robert R. Merhige, Jr. Federal Courthouse, 701 East Broad Street, Richmond, VA 23219, commencing at \_\_\_:\_\_\_ A.M./P.M., to review and rule upon the following issues:

- a. Whether the proposed Settlement is fundamentally fair, reasonable, adequate, and in the best interests of the Settlement Class Members and should be approved by the Court, including in light of any valid objections filed by Settlement Class Members;
- b. Whether the Final Approval Order should be entered, dismissing the Lawsuit with prejudice against the Settling Defendants, releasing the Released Claims against the Released Parties, and releasing the Non-Payment Released Claims against Settlement Class Members who do not receive a payment from the Settlement Fund, as defined in the Settlement Agreement and Class Notice;
- c. Whether Class Counsel's requested Attorneys' Fees and costs and the Service Awards to the Class Representatives should be approved; and
- d. To discuss and review other issues as the Court deems relevant to the Settlement.

11. Settlement Class Members need not appear at the Final Approval Hearing or take any other action to indicate their approval of the proposed class action Settlement. Settlement Class Members wishing to be heard regarding their objection are, however, required to indicate in their written objection whether or not they intend to appear at the Final Approval Hearing. The Final Approval Hearing may be postponed, adjourned, transferred, or continued without further notice to the Settlement Class Members.

12. An application for Attorneys' Fees and reimbursement of costs and expenses by Class Counsel shall be made in accordance with Section 10.7 of the Settlement Agreement and shall be filed with the Court no later than fourteen (14) days before the Final Fairness Hearing. Further submissions by the Parties, including memoranda in support of the proposed Settlement and responses to any objections, shall be filed with the Court no later than fourteen (14) days prior to the Final Approval Hearing. The Court will permit the supplementation of any filings by objectors as to Attorneys' Fees and costs at any date up to seven (7) days after the filing of a motion for such fees to address additional information or materials in the motion. The Parties may respond to this supplementation before the Final Fairness Hearing.

13. All proceedings against the Settling Defendants are stayed pending Final Approval of the Settlement, except as may be necessary to implement the Settlement or comply with the terms of the Settlement Agreement.

14. Any deadlines set in this Preliminary Approval Order may be extended by order of the Court, for good cause shown, without further notice to the Settlement Class, except that notice of any such extensions shall be posted to the Settlement Website. Members of the Settlement Class should check the Settlement Website regularly for updates, changes, and/or further details regarding extensions of these deadlines.

15. The Parties are directed to carry out their obligations under the Settlement Agreement and are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the Settlement Agreement or to the form or content of the Class Notice that the Parties jointly agree are reasonable or necessary, and which do not limit the rights of Settlement Class Members under the Settlement Agreement.

16. Pending final determination of whether the Settlement should be approved, the Named Plaintiffs, all Settlement Class Members, and any person or entity allegedly acting on behalf of Settlement Class Members, either directly, representatively or in any other capacity, are preliminarily enjoined from commencing or prosecuting against: (1) the Released Parties any action or proceeding in any court or tribunal asserting any of the Released Claims and/or Non-Payment Released Claims. This injunction is necessary to protect and effectuate the Settlement, this Order, and this Court's flexibility and authority to effectuate the Settlement and to enter Judgment when appropriate, and is ordered in aid of this Court's jurisdiction and to protect its judgments pursuant to 28 U.S.C. § 1651(a).

17. If the Settlement Agreement and/or this Order are voided per Section XIII of the Settlement Agreement:

- a. The Settlement Agreement shall have no further force and effect and shall not be offered in evidence or used in the Litigation or in any other proceeding;
- b. Counsel for the Parties shall seek to have any Court orders, filings, or other entries in the Court's file that result from the Settlement Agreement set aside, withdrawn, and stricken from the record;
- c. The Settlement Agreement and all negotiations, proceedings, and documents prepared, and statements made in connection with either of them, 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
- d. The Parties shall stand in the same procedural position as if the Settlement Agreement had not been negotiated, made, or filed with the Court, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in the Actions against any Party, including without limitation, the

amended complaint filed the Lawsuit and any consolidation of the Actions pursuant to Section 5.1 of the Settlement Agreement shall be null and void as it was filed only to effectuate this Settlement.

18. The Court retains continuing and exclusive jurisdiction over the Lawsuit only to consider all further matters arising out of or connected with the Settlement, including the administration and enforcement of the Settlement Agreement.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

Senior United States District Judge