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

LULA WILLIAMS, *et al*., Plaintiffs, v. BIG PICTURE LOANS, LLC, *et al*., Defendants.	Case No. 3:17-cv-00461 (REP)

PLAINTIFFS' MEMORANDUM IN SUPPORT OF RENEWED MOTION FOR CLASS CERTIFICATION OF CLAIMS AGAINST DEFENDANT MATT MARTORELLO

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs, on behalf of themselves and all other similarly situated individuals, submit this memorandum of law in support of their Motion for Class Certification as to Defendant Matt Martorello ("Martorello")

I. INTRODUCTION

This case involves an illegal tribal lending enterprise created and operated by Martorello—a Chicago entrepreneur with no lineage to the Lac Vieux Desert Band of Lake Superior Chippewa Indians ("LVD"). Over the past nine years, the Martorello made and collected on high-interest loans to consumers originated in the name of Red Rock Tribal Lending, LLC and Big Picture Loans, LLC—two entities organized under the LVD's laws. Although the tribal lenders claimed to be owned and operated by the LVD, Martorello performed and controlled significant aspects of the lending businesses and, most importantly, received the vast majority of the profits (98% of the net income) from the lending enterprise.

The enterprise made loans with annual percentage rates greater than 700%, *i.e.*, more than 55 times higher than Virginia's 12% interest rate cap on these loans. *See* Va. Code § 6.2-1541(A);

Va. Code § 6.2-303. If a lender makes a loan exceeding 12% APR without a license in Virginia, Virginia law mandates that the "loan contract shall be void," and it prohibits the collection of "any principal, interest, or charges whatsoever with respect to the loan." Va. Code 6.2-1541(A)-(B). Virginia law further allows recovery of "[t]wice the total amount of interest paid" to a person "taking or *receiving* such payments." Va. Code § 6.2-305 (emphasis added). This class action seeks to recover all amounts paid on these illegal loans from Martorello, who has personally pocketed tens of millions of dollars as a result of his role in this scheme. (Ex. 1 at Int. No. 1).

In addition to the violations of Virginia's usury laws, Martorello's conduct violated the Racketeer Influenced and Corrupt Organizations Act ("RICO"), a statute enacted with the "principal aim" of eliminating "loansharking." *United States v. Biasucci*, 786 F.2d 504, 512 (2d Cir. 1986) (citing S.Rep. No. 617, 90th Cong., 2d Sess. 78–80; H.R.Rep. No. 1574, 90th Cong., 2d Sess. 5). To achieve this goal, RICO prohibits both the participation in an enterprise involved in the collection of and the conspiracy to collect "unlawful debt," 18 U.S.C. § 1962(c)-(d), which RICO defines as a debt incurred where the usurious rate "is at least twice the enforceable rate" under state or federal law. 18 U.S.C. § 1961(6). As a participant (and the primary beneficiary) of this contemporary loansharking enterprise, Martorello is jointly and severally liable to Plaintiffs and the class members for the collection of the unlawful debt.[1]

This case is particularly appropriate for class certification due to Martorello and the enterprise's uniform practice of evading Virginia's usury laws. Similar cases have been certified, including where the motion was contested. *See, e.g.*, *MacDonald v. Cashcall, Inc.*, 333 F.R.D. 331

[1] *See, e.g., States v. Philip Morris USA*, 316 F. Supp. 2d 19, 27 (D.D.C. 2004) ("Every circuit in the country that has addressed the issue has concluded that the nature of both civil and criminal RICO offenses requires imposition of joint and several liability because all defendants participate in the enterprise responsible for the RICO violations.").

(D.N.J. 2019) (granting a contested motion for class certification and certifying both usury and RICO claims in a comparable tribal lending case); *Inetianbor v. CashCall, Inc.*, No. 13-cv-60066-JIC, (S.D. Fla. Sept. 19, 2016) (granting a contested class certification motion in a case alleging violations of Florida's usury laws); *Henry v. Cash Today, Inc.*, 199 F.R.D. 566 (S.D. Tex. 2000) (granting a contested motion for class certification in a case alleging, *inter alia*, the defendant's usurious loans violated RICO and Texas's usury laws); *Upshaw v. Georgia (GA) Catalog Sales, Inc.,* 206 F.R.D. 694 (M.D. Ga. 2002) (granting a contested motion for class certification in a case alleging a company and its principal violated RICO and Georgia's usury laws).

II. FACTUAL BACKGROUND

A. The tribal lending enterprise is created under the erroneous belief that Martorello could control operations so long as the final act of loan origination occurred on the reservation.

Martorello became interested "in working with Native American tribes" at a 2011 online lending conference. Ex. 2, Merritt Dep. 31:3-4; 93:16-20. Introductions from several acquaintances led Martorello to Robert Rosette, who was "a very well-known attorney in that space." *Id*. at 28:16-21; 32:7-11. In August 2011, Martorello received a draft of the initial agreement providing the structure for the tribal lending enterprise. *See* Ex. 3 at Rosette_Revised_052504, Aug. 25, 2011 E-mail from Martorello. After reviewing the draft of the "servicing" agreement, Martorello asked several questions to Rosette and his business partner, Flint Richardson, about this new business model. *Id.* at 052501. One of those questions was whether "the Tribal Lending entity" would have "a Tribal Management Company, which is going to be the Bellicose customer[?]" *Id*. In response, Richardson said "NO," and clarified that Martorello's "ENTITY WOULD BE THE SERVICER FOR THE LENDING OPERATION. THE LLC MANAGERS ARE MANAGERS OF THE LLC ENTITY ON BEHALF OF THE TRIBE

BUT ARENT INVOLVED IN THE BUSINESS." *Id*. at 052500 (caps in original). And, when asked by Martorello to further elaborate on this point, Richardson explained that "REPRESENTATIVES FROM THE TRIBE ARE THE LLC'S 'MANAGERS'. THE SERVICER, BELLICOSE OPERATES THE BUSINESS COMPLETELY." *Id*. at 052498. In their view, this structure was legitimate because the "cornerstone of the sovereign model," Richardson explained, was the delegation of "Loan Originations" to the tribal lending entity. *Id*. at 052497. Delegating originations to the tribal lender, according to Richardson and Rosette, purportedly exempted the loans from state interest rates. *Id*. at 052497.

Richardson's e-mail describing the structure is consistent with the sworn declaration of Joette Pete, who served as the Vice Chairwoman of the Lac Vieux Desert Band of Lake Superior Chippewa Indians between 2010 and 2016, *i.e.*, from the inception of Red Rock through the restructure of Big Picture. Ex. 4 at ¶ 1. As the former Vice Chairwoman explained: "When Tribal Council initially agreed to the deal with Martorello," they "understood that all aspects of the lending business would be handled by Martorello and that the Tribe would have no risk. It was understood that Martorello's company would handle everything, including underwriting, marketing, servicing, funding, and collection of the loans." *Id*. at ¶ 3.

B. Although entitled "servicing agreement," the initial contract between Bellicose and Red Rock provided Martorello with complete control over the business, as well as virtually all profits.

Martorello was involved from the outset in the Tribe's creation of the nominal lending entity. As the Court recently found, Martorello chose the name "Red Rock," and he and his counsel prepared and reviewed the formational documents before they were sent to Tribal Council for approval. Dkt. 944 at 9-10. On October 25, 2011, Martorello's company, Bellicose VI, LLC, executed the "servicing agreement" with Red Rock Tribal Lending, LLC, which provided

Martorello with the authority to exercise almost exclusive control over Red Rock's operations. *See generally* Ex. 5, Oct. 25, 2011 Servicing Agreement.[2] Martorello not only had the contractual authority to control the lending business, but as detailed by the former Tribal Vice Chairwoman: "[a]fter the inception of the business, it was operated completely by Martorello until government regulators and litigation against competitors began. As these cases proceeded, efforts were made to create the appearance of the Tribe's involvement, but the Tribe had no substantive involvement." Ex. 4 at ¶ 4. Although the Tribe's co-managers held titles supposedly giving them a voice in Red Rock's lending operation, the co-managers actually played a "rather meaningless role" with limited involvement in or knowledge about the lending enterprise. Dkt. 944 at 14. As the Court recently found, "[n]either the establishment of the actual underwriting criteria for making the loans nor the decision actually to make them (or not) was done by the Tribal entity or by its employees."

[2] For example, the contract provided that Bellicose VI "shall have the authority and responsibility over all communication and interaction whatsoever between [Red Rock] and each service provider, lender and other agents of [Red Rock]." Ex. 5 at § 3.1; *see also id*. at § 4.1.1 (granting Bellicose VI "the necessary power and authority to act in order to fulfill its responsibilities" under the contract). Consistent with Bellicose VI's "authority and responsibility over all communication and interaction whatsoever" between Red Rock and others, the contract further specified that Bellicose VI was responsible for: (1) selecting and negotiating with service providers and lenders; (2) "[d]evelopment and promotion of sound and positive business relationships," including "the enforcement or termination of agreements with such service providers and lenders;" (3) preparation of regulatory, compliance, training, education, and accounting standards, as well as standards for "screening and review of" "website contents, marketing and consumer relations practices;" (4) providing "pre-qualified leads" and the "credit-modeling data and risk assessment strategies;" (5) oversight of Red Rock's call center in the Philippines; and (6) sales to third-party debt collectors. *Id.* § 4.2.1.

Bellicose VI also had the authority to "collect all gross revenues and other proceeds connected with or arising from the operation" of Red Rock. *Id.* § 4.9. Bellicose VI also had the contractual right to "sweep [Red Rock's] bank account amounts into [SourcePoint's] bank accounts" to receive its share of the proceeds. *Id.* § 3.5. Bellicose VI had "sole signatory and transfer authority over such bank accounts." *Id.* §§ 3.5; 4.4. The Court recently summarized findings on this issue: "money paid by consumers went into the Bellicose bank account over which only Martorello and his employees had control and access. (Dkt. 944 at 16.)

Id. at 15. In fact, the relevant "intellectual property was kept by Martorello's company, Sourcepoint, and was not known by, or available to, the Tribal entities that nominally were making the loans at issue." *Id*. at 18. In exchange for running virtually all aspects of the business, Bellicose VI received 98% of the net income collected on the loans. Ex. 5 at §§ 2.25; 3.5.1. By contrast, Red Rock received 2% of the net revenue from the loans, less charge offs.[3] *Id.* § 2.25.

C. Regulators began attacking the business model in 2012 and 2013, prompting the LVD and Red Rock to file a lawsuit against the New York Department of Financial Services.

As early as December 2012—a little over a year into the business—Martorello had concerns about the viability of the tribal lending model. Ex. 6 at Martorello_038990. In an e-mail from December 2012 to a business valuation expert, Martorello wrote that he had "some urgent questions" for them "on valuation" of his business. *Id*. Among other things, Martorello asked how to value illegal businesses, such as online poker sites, medical marijuana stores, and a drug cartel. *Id*. Martorello further added that "[t]his industry is going to be living in the grey area of its legality for another year or two," and that they had already "received dozens of letters from State AGs saying we need to be licensed and sending Cease and Desist orders." *Id*., 038991. In Martorello's view, there was "no business with such risk to it" as the tribal lending model, and the "[b]ottom line" was that "this business will simply not exist in 2 to 3 years," at least how it did then. *Id*. In addition to this risk, Martorello further explained that Greenberg Traurig provided him with a 20-page legal opinion, concluding that Martorello could be liable "for aiding and abetting felony crime[s]" in states like Georgia. *Id*. The term of the arrangement between Martorello and Red Rock

[3] However, Red Rock's compensation was reduced by 50% to pay a brokerage fee to another company owned by Rosette, Tribal Loan Management, LLC. *Id.* § 7.15. Rosette's 50% brokerage fee was paid directly by Bellicose VI. *Id.* ("[Red Rock] has authorized that fifty percent (50%) of the Tribal Net Profits due to the Tribe pursuant to Section 3.5.1 with the minimum set forth therein be paid directly to Tribal Loan Management, LLC by [Bellicose VI] on behalf of [Red Rock][.]").

was supposed to last until December 31, 2018, per an express term of the Servicing Agreement, Ex. 5 at § 3.2, but Martorello knew it would not make it more than "2 to 3 years." Ex. 6 at 038991. As early as April 2013, Martorello began e-mailing Rosette about restricting the arrangement to reduce Martorello's liability, writing: "Let's zero in asap on minimizing my risk for being individually liable like [Colorado] just successfully did to Butch [W]ebb." Ex. 7 at Rosette_Revised_048497.

Over the next six months, regulators continued to threaten to take action to stop Red Rock's illegal business practices. *See, e.g.*, Ex. 8, May 2013 Ltr. from Conn. Dep't of Banking. While the cease and desists were a risk, the biggest threat to Martorello's illegal lending enterprise came on August 6, 2013, when the New York Department of Financial Services ("NY DFS") issued a cease and desist to 35 online lending companies, including Red Rock. *See*, *e.g.*, The Official Website of New York State, Press Room, *Cuomo Administration Demands 35 Companies Cease and Desist Offering Illegal Online Payday Loans That Harm New York Consumers* (Aug. 6, 2013), *available at* https://www.governor.ny.gov/news/cuomo-administration-demands-35-companies-cease-and-desist-offering-illegal-online-payday-loans. Unlike other letters from state regulatory authorities, the NY DFS posed the biggest threat as it also sent letters to 117 banks and the National Automated Clearinghouse Association, requesting that "they work with DFS to cut off access to New York customer accounts for illegal payday lenders." *Id*.

Six days after the issuance of the cease and desist, Rosette had already drafted a complaint against the NY DFS "for LVD's consideration." Ex. 9 at Rosette 041064. In his e-mail to Martorello, Rosette—who was receiving 50% of Tribal profits for brokering the partnership—wrote that he "believe[d] strongly if we do nothing we may forever lose the tribal online lending opportunity." *Id*. In a separate e-mail to Martorello, Karrie Wichtman, the Tribe's lawyer, echoed

these concerns, writing "what do we achieve by laying low waiting for the next bomb to drop - hoping that it doesn't blow us up?" Ex. 10 at Rosette_Revised_049126.

Martorello expressed concern with joining the litigation. *Id*. at 049125. According to Martorello, the filing would "open the doors" and result in "counter attacks from all sides," and it would be "game over really quick." *Id*. Additionally, Martorello added that the "LVD's house" was not "completely in order yet," which was a concern he raised on multiple occasions. *Id*. Because of Martorello's dominance over operations, he further cautioned that "LVD" did not "represent the best facts" at the moment because they were not originating the loans on the reservation. Ex. 11 at Rosette_Revised_046605. Ultimately, Martorello became comfortable enough with the lawsuit, and it was filed on August 21, 2013, including a request for a preliminary injunction to prevent the NY DFS from interfering with the lending operation.

As Martorello had feared, the lawsuit backfired—the district court not only denied Red Rock's motion for a preliminary injunction, but its findings jeopardized the entire business model and opened Martorello to potential prosecution. *See* Ex. 12 at Rosette 006304-5. Most notably, the court found that Red Rock was "subject to the State's non-discriminatory anti-usury laws" because the "undisputed facts demonstrate[d]" that the illegal activity was "taking place in New York, off of the Tribes' lands." *Otoe-Missouria Tribe v. N.Y. Dep't of Fin. Servs.*, 974 F. Supp. 2d 353, 361 (S.D.N.Y. Sept. 2013). The court further noted that Red Rock "built a wobbly foundation for their contention" that the activity was occurring "on the Tribes' lands," and contrary to their argument, consumers did not "in any legally meaningful sense, travel[] to Tribal land." *Id*. at 360.

Two days after the ruling, Martorello wrote that the decision "presents a significant potential liability for [Bellicose] and we do not believe that we should service any new New York loans." Ex. 12, Rosette 06304-5. Martorello further added that they were willing to see existing

loans through completion, "but [they] simply cannot flaunt the clear ruling from Judge Sullivan's order, however legally incorrect it might be." *Id*. Martorello expressed concern that the "finding that tribal enterprises are subject to New York's anti-usury laws will be regarded as sufficiently final… such that it will precipitate their potential investigation and potential prosecution of us personally and our companies if we continue" to conduct business in New York. *Id*.

D. Two weeks after the district court's decision, Martorello contacts Rosette regarding a potential restructure to provide immunity to all entities involved in the illegal enterprise.

Two weeks after the district court's decision, Martorello had come up with a solution and approached Rosette regarding a restructure to protect Martorello/Bellicose. *See generally* Ex. 13. In an e-mail dated October 14, 2013, with a subject matter entitled "LVD to take ownership of Bellicose VI," Martorello presented options for a restructure so that Bellicose could attempt to share in the LVD's immunity. *Id*. Martorello proposed that Bellicose would "[a]ssign today LVD 51% of Bellicose via Equity only membership interest tied to the SPVI subsidiary only." *Id*. (underline in original). Additionally, Martorello also proposed assigning 51% of the interests in his other businesses involved in the scheme. *Id*. Anticipating the business would be shut down, Martorello further proposed that BlueTech, his trust, would "own 49% equity, but 100% profits interests until month 49," *i.e.*, ensuring Martorello would retain the profits until the business was gone. *Id*. Martorello's e-mail candidly explained that the transaction must be "structured to provide all entities sovereign immunity." *Id*.

Martorello also sent a similar e-mail to the members of LVD's Tribal Council, entitled "SPVI Equity Transfer to LVD." Ex. 4 at JPB 00988. Martorello wrote: "Below is the beginning of a concept I have to facilitate a transition to LVD of MY businesses." *Id*. This concept, as described by Martorello, was to "[a]ssign today to LVD – 51% of Bellicose VI, LLC," but "0%

profits interest" until four years after the restructure. *Id*. Martorello further added: the "Current Manager (myself) will be locked in as the decision maker for 48 months, at which point they will hire a new Manager to replace me." *Id*. According to the former Vice Chairwoman of LVD, this e-mail was "the first time [they] were ever presented with the opportunity 'to own' the business, but it would still be controlled by Martorello as proposed." Ex. 4 at ¶ 9.

In an email two weeks later, Martorello continued to voice his concerns to Wichtman, noting that vendors and debt providers of Red Rock were "asking what would happen to everything if the ruling in NY were upheld[?]" Ex. 14. The repercussions, according to Martorello, would be "certain death" and "all vendors including [SourcePoint], banks, ACH processors, bureaus etc would all obviously shut down if it were considered off reservation activity[.]" *Id*. Martorello added that "class actions" and "personal threats of enforcement actions against individuals by regulators" have "everyone spooked," causing "several of the biggest servicers" to "shut down." *Id*. In closing, Martorello proclaimed "[d]esperately hoping that Rule 19 works and a favorable outcome on the appeal!" *Id*.

On November 8, 2013, Martorello sent a similar e-mail to Wichtman, noting that SourcePoint was "about to be discovered and will need extreme resources to defend itself against all kinds of aiding and abetting and 'true lender' claims" coming in the first quarter of 2014. Ex. 15 at Rosette_Revised_052787. And similar to his earlier emails, Martorello reiterated that there was a "very significant possibility that should we even survive long enough to get there," he would need "to defend [him]self even personally (in more than civil matters), with no ongoing business or revenue at all should the decision be made in the appeal that the activity is in fact OFF reservation (a certain end to the industry)." *Id*. (capitals in original).

F. In December 2013, Rosette circulates a memorandum regarding a potential restructure to provide Martorello's entities with sovereign immunity.

On December 30, 2013, Rosette circulated a legal memorandum regarding Martorello's proposed transaction, analyzing "whether formation of a new entity that is co-owned by the Tribe and Source Point and subject to the proposed profit, management and voting controls" suggested by Martorello would be "sufficient to pass muster with the 'arm of the tribe' test to extend the Tribe's sovereign immunity from suit to the new LLC." Ex. 16 at Rosette_Revised_052248. On proposed changes to the structure, Martorello commented that the tribe's percentage of ownership of the company "could easily be increased to whatever the benchmark of confidence is, since equity and profits interest differ." *Id*. at 052247. He further added that he did not think "100%" ownership was "out of reach," and "some caveats could simply be made." *Id*. Martorello, however, took issue with Rosette's proposed revenue changes, writing "10% [to the tribal entity] certainly isn't going to work from a business standpoint," and he "might as well be a state licensed lender, as a comp[arison]." *Id*. Martorello also rejected Rosette's proposed management structure, writing "[a]ll the investors (institutional, personal, and myself) won't allow the deal to occur without being 100% certain adequate [m]anagement resources are in control," *id*. at 052248, *i.e.*, unless non-tribal members like Martorello continued to have final say over operations. And if challenged, Martorello explained that "[w]hat I think you'd tell a court" is "that if the deal were not done," then the tribe would not know: (1) "if SPVI would be around in 10 days given the industry," (2) execute "its termination provision in accordance with the" servicing agreement, or (3) "hike rates as risk has gone through the roof with detractors now seeking out SPVI's of the world for major attacks." *Id*. at 052247. Martorello stressed the deal's urgency, writing: "Clock is ticking before I end up in a Cash Call type attack though, at which point, I think the deal is about dead." *Id*.

A few days after receiving Rosette's memorandum analyzing the potential transaction,

Martorello sent an e-mail regarding the Consumer Financial Protection Bureau's civil complaint against CashCall, which was filed on December 16, 2013. *Consumer Fin. Protection Bureau v. CashCall, Inc.*, No. 1:13-cv-13167 (Mass) (complaint filed on Dec. 16, 2013). Ex 17. In this e-mail, Martorello characterized the CFPB's position as "without question a major attack on legit tribal lending operations." *Id*. at LVD-DEF00018128. Martorello's e-mail also expressed concern with cooperating with the CFPB's investigative demands, explaining that it would "come with an almost identical suit against the [tribal lending entities] as they just did against Cash Call." *Id*. at 00018129. If an "attack" on the Red Rock operation happened, Martorello warned, "the stakes are very literally everything." *Id*. at 00018128.

Less than a week later, things got worse for the industry and Martorello when the Department of Justice announced a consent decree with a major ACH provider. *See generally* Ex. 18 at Rosette_Revised_052155. Rosette described this consent decree as "the most disastrous result we have seen yet," and he predicted that he "would not be [] surprise[d] if we lost the last remaining banks and ach processors servicing tribal accounts after reading the consent decree." *Id*. Sure enough, the enterprise lost its only ACH processer the following day, which "obviously ha[d] major implications for [M]att since he ha[d] no other processors." Ex. 19. And, when Martorello attempted to hire another processor, one bank explained that they were told "if the bank so much as processes a single transaction [t]he DOJ will be relentless in shutting them down under the full weight of the US government." Ex. 20 at Rosette 036580-2. By this time, Red Rock had also received more than a dozen warnings from state attorney generals' offices. Ex. 6 at 038991.

G. Martorello pushed for re-branding of Red Rock to Big Picture Loans, a lending platform he had already developed.

Without any significant progress on the restructure, Martorello e-mailed Hazen and Wichtman in July 2014, urging that Red Rock "needs a rebrand." Ex. 21 at

Rosette_Revised_058409. Martorello further explained that "RRTL ha[d] been blacklisted and rolled through the mud in the press" following the *Otoe-Missouria* decision. *Id*. He added that "it's time to get away from the word '[p]ayday' and the black mark of RRTL before rules come out and things get hotter." *Id*. To accomplish the rebrand, Martorello suggested "forming ASAP a new LLC with a new domain/brand, for purposes of transferring all contracts, assets, bank accounts, liabilities etc. over to the new entities when ready." *Id*. Martorello's e-mail concluded that Bellicose would "gladly facilitate the work," but it needed "the entity formed and approv[ed] to begin doing" the rest of the work. *Id*. Shortly thereafter, Martorello had "the work and imaging done for ChorusLoans." *Id*. at 058407. Martorello further claimed that "[d]omain names in this space" were "very very rare and hard to come by" and "trying to get a [trademark] to protect it from competition" was "another issue," and "SPVI did a lot of work" to create "Chorus[.]" *Id*. On August 25, 2014, Martorello e-mailed Wichtman that "Chorus has been sold." Ex. 22 at Rosette 043437. But Martorello had "another really great brand" known as Big Picture Loans. *Id*. In this e-mail, Martorello attached a document, "Big Picture Site Designs," showing a fully developed website and brand for Big Picture. *Id*. at 043437-57. Wichtman, who was drafting the resolution for approval by tribal council, responded, "Which one do you want me to use?" *Id.* at 043435. It was left up to Martorello to decide on "BigPictureLoans.com." *Id*. The following day, Wichtman presented a resolution for the creation of Big Picture, as well as approving its Articles of Organization and Operating Agreement. Ex. 23, Resolution # T2014-066 ("the Council has been presented with Articles of Organization and an Operating Agreement for the tribally chartered business entity to be known as Big Picture Loans, LLC…."). As the Court recently found, "the record shows convincingly that Martorello was the driving force in the creation of Big Picture and Ascension, just as he was in the creation of Red Rock" (Dkt. 944 at 34), and "except for a few

cosmetic changes (or 'optics' as Martorello described them), the LVD lending operation by way of Big Picture continued as it had under the Red Rock structure." *Id.* at 22-23.

H. Restructuring became urgent after the Second Circuit's decision.

Over the next month, the parties did not make significant progress on the key terms or mechanics of the sale, but on October 1, 2014, it became urgent when the Second Circuit affirmed the district court's decision in *Otoe-Missouria*. In doing so, the Second Circuit made several damaging findings, including that "New York's usury laws apply to all lenders, not just tribal lenders[.]" *Otoe-Missouria Tribe of Indians v. New York State Dep't of Fin. Servs.*, 769 F.3d 105, 117 (2d Cir. 2014). The Second Circuit also observed that "Native Americans 'going beyond the reservation boundaries' must comply with state laws as long as those laws are 'non-discriminatory [and] … otherwise applicable to all citizens of that [State]." *Id.* (citations omitted). Against this backdrop, the Second Circuit observed that "[m]uch of the commercial activity at issue takes place in New York." *Id*. It reached these conclusions even though LVD/Red Rock never disclosed to the district court or Second Circuit the role of Martorello's companies in the operations.

After the Second Circuit issued its decision, Martorello wrote an e-mail to Wichtman on October 10, 2014, urging her to drop the case. Ex. 24 at Rosette 043659 ("I can't urge any stronger that LVD not proceed even if [O]toe does."). Martorello also indicated that "SPVI won't be willing to testify, or do anything as the result of another filing will certainly end in a slew of attacks on me, SPVI and my team." *Id*. Ultimately, Wichtman agreed, and as she explained in a subsequent e-mail to Martorello, their best option was to "go quietly into the night and restructure based on what we know from the opinion in order to build an even stronger case for future litigation." Ex. 25 at Rosette 001130. Following the Second Circuit's decision, the parties started moving quickly to restructure the business—even though the parties had not reached an agreement in principle to

the major terms of the restructure, including the price to be paid. For example, Wichtman obtained an employer tax identification number for Big Picture on December 1, 2014. Ex. 26.

On February 5, 2015, the LVD's Tribal Council adopted a resolution creating Ascension Technologies and designating Brian McFadden as its president. Ex. 27. Similarly, even though they were employed by a different company, Ascension designated McFadden and Liang as the signatories on Ascension's bank account on February 19, 2015. Ex 28 at LVD-DEF00000229. And immediately following its creation, SourcePoint began assigning its contracts to Ascension—another sign that the restructure was not an arm's length transaction, but a façade designed to protect Martorello and his team. *See, e.g.*, Ex. 29 at Rosette 035776. All of these steps—creation of Ascension, designation of McFadden as its president, assignment of contracts, adding signatories to bank accounts—were taken months before the parties entered into the Agreement and Plan of Merger dated September 14, 2015.

I. Martorello forms Eventide Credit Acquisitions on February 9, 2015, to facilitate the sham sale of his company, which was worthless as reflected by Martorello's communications with advisors.

On February 9, 2015, Martorello created a new company, Eventide Credit Acquisitions, to facilitate the continuation of the illegal lending enterprise. *See generally* Ex. 30. On September 14, 2015, Eventide, Bellicose, and a company formed by LVD to effectuate the merger, Tribal Acquisition Company, LLC, executed the "Agreement and Plan of Merger." *See generally* Ex. 31. Pursuant to § 2.7 of the Agreement and Plan of Merger, the "consideration to be paid to" Eventide was "an amount equal to three hundred million dollars, $300,000,000 (the 'Acquisition Amount')." *Id.* § 2.7.

The $300 million acquisition price was just an elaborate opportunity for Eventide and Martorello to be the targeted recipient of all of the net profits from the lending operation for the

anticipated life cycle of the enterprise. Martorello engineered the superficial changes to the structure of the operation—characterizing his interest as a $300 million debt rather than equity—in a vain attempt to avoid accountability for his oversight of the lending operation and blatant violations of state and federal lending laws. Through the inflated "sales" price with an accompanying sunset provision to "forgive" any remaining "debt," Martorello intended to receive all the net profits from the lending operation while maintaining the "status quo" of his oversight and management of the illegal scheme.

Approximately three weeks after the Agreement and Plan of Merger, Martorello wrote an e-mail providing his thoughts on the "FMV vs FV" of Bellicose, *i.e.*, its fair market value v. future value. Ex. 32 at Liont_09845. As for its low fair market value, Martorello stated "[e]veryone knows the CFPB rule shuts down the business and there is a court decision that shows the CFPB does control Tribes." *Id*. Martorello wrote that they could "provide all the support in the world for this." *Id*. And if "someone asks," Martorello provided 11 points for the low fair market value assigned to the business, including "1) the Tribe is buying it b/c our contract gets terminated and they want this to continue[,] 2) Operation Choke Point is a risk for SPVI owners but not for the Tribe[,] 3) All the lawsuits against Servicers is removed from the equation for the Tribe to lose us… 7) They risk that they lose their debt investors if we go away, this deal keeps debt investors comfortable to remain, whereas they'd leave if a new vendor replaced us… 10) IN THE UNLIKELY EVENT that the CFPB rule doesn't take them down, then they pay as they go via a Seller financed deal rather than taking risk. . . ." *Id*. at 09845-6. In closing, Martorello further added "there is the risk that we get shut off from banking immediately (or the Tribe does) and we suffer catastrophic damages even worse than CFPB rule." *Id*. at 09846.

Martorello sent a similar e-mail to a business valuation firm on December 5, 2015, *i.e.*,

about six weeks before the closing. Ex. 33 at Martorello_05530-2. In this e-mail, Martorello explained that "efforts would be attempted by [s]tate governments to shut down tribal lenders (and are being attempted in fact)." *Id*. One of those was an action filed by the Pennsylvania Attorney General, which Martorello characterized as "the most significant issue/risk to SPVI" as "PA could bring the same claims against SPVI for sure." *Id*. Martorello further added that Red Rock had already "received threats from several state AGs demanding they stop lending or they will come after them." *Id*. In addition to attorney general threats, Martorello further explained that the NY DFS has "issues too" with tribal lending "and they could go after SPVI as well." *Id*. Martorello encouraged the firm to include all "of the support [] that says the CFPB rule will shut this business down, and how operation choke point is hurting everyone." *Id*.

In another email dated December 6, 2016, Martorello similarly wrote that "It was estimated that the industry would be wiped out in Feb 2014 by the new CFPB, and/operation chokepoint tactics." Ex. 34 at Martorello_011446. Martorello further explained that "[a]ccurately enough, the clients lost the ability to debit borrower bank accounts in January 2014" and they "made no loans for many months after out of fear banking would be fully cut off for good." *Id*.

There are multiple e-mails reiterating this position that the tribal lending would be shut down and the restructure was simply a disguise to allow Martorello to continue to make millions until his prediction came true. *See also* Ex. 35, at Liont_05387 ("Lawsuits by AGs and regulators against SPVI, myself, or the client (as the reports and cases filed to date against competitors supports) may end the business or seriously shrink the business"); Ex. 36 at Martorello_011671 (e-mail from Martorello explaining that "we thought (and data supported) 'end of days in 2015'" because of Operation Chokepoint). In a review of this record, the Court recently found, "The record is thus clear beyond serious question that Martorello was motivated to sell Bellicose to LVD

because of the threats of litigation and enforcement actions against him and his entities under the then-current lending arrangement between him, his entities, and LVD." Dkt. 944 at 30.

J. During the negotiations, Martorello insists on retaining control over the business after the restructure.

Although Martorello "sold" his companies to LVD, he insisted on control over the business until the expiration or repayment of the $300,000,000.00 promissory note. For example, in an e-mail dated August 26, 2014, Martorello insisted "the seller," "will have to keep a final say so in business decisions to protect the business from being destroyed by the new owner before paid." Ex. 37 at 045272. And, Martorello made clear he did not want any changes, explaining there was "[n]o need to reinvent the wheel or shake things up, just need to keep it alive and then use the earnings from it to take risks with and do other things." *Id*.

Similarly, in an e-mail to Wichtman, Hazen, and Chairman Williams dated September 15, 2014, Martorello insisted that "the Bellicose Companies will be sold only 'as is', with existing Management in place and the company remaining substantially the same." Ex. 38 at Rosette_Revised 040179. Despite servicing through a new entity, Martorello insisted that it needed to "remain an independent cutting edge" company, which "needs to be run in the same format it is today." *Id*. Although technically tribally owned, remaining separately managed by the servicer would aid the "PR effect" on hiring and retaining professionals "who will understand they risk being labeled by peers as working for some 'illegal' lender" if the companies were combined. *Id*.

They maintained the status quo even though one of Rosette's lawyers, Tanya M. Gibbs, identified the structure—requiring Big Picture "to establish certain relationships with a servicer"—as opening them up to rent-a-tribe arguments similar to "the current class action litigation pending in Vermont, *Gingras & Givens v. Rosette*." Ex. 39 at Rosette_Revised 043997. To avoid this, Ms. Gibbs wondered whether they needed to "to put these things in writing." *Id*. Martorello insisted on

formal control in writing, saying it was "take it or leave it[.]" *Id*. at 043996. Martorello further added that "Servicer comfort" was the "only way" that an important investor would "be involved." *Id*. From "their perspective," if LVD "was to cut SPVI out of the picture, then [it] simply cannot perform as a business." *Id*.

The parties' intent to restructure the form of the arrangement, but not its substance, is further demonstrated by an e-mail exchange dated January 14, 2016, *i.e.*, two weeks before closing. As a part of the email exchange, Martorello explained that the enterprise's lenders "care about the person who runs the business at AT." *Id*. So long as the restructure documents were "clear that the position in question and under scrutiny to the lenders is President and CEO (Brian)," it was sufficient according to Martorello. *Id*. Martorello further wrote "[a]s far as I know, the Manager[s]," *i.e.*, Hazen and Chairman Williams, "don't really do anything." *Id*. In closing, Martorello explained that he would leave it up to his attorney, John Williams, on what the transaction documents "say if that jives, and what the authority is of BMF [Brian McFadden] vs the Managers, but if Managers are really only involved per the [operating agreement] to get feedback from the CEO/President" then that seemed "OK." *Id*. If the managers did "more than that" or the governing documents "say the position of concern are the Managers," then there was "some cleaning up to do" according to Martorello. *Id*. A day after this exchange, John Williams e-mailed Wichtman a draft of the Delegation of Authority Policy to ensure it was clear who had operational control. Ex. 40. The Delegation of Authority policy ensured that "The Tribal Council does not get to make the decision regarding [McFadden's] employment nor determine his salary other than through the budgeting process [which involves Eventide]" as explained by Wichtman's email dated January 14, 2016. Ex. 41 at Rosette_Revised_020473. Put differently, Wichtman explained that this structure ensured that "Tribal Council can't get a wild hair up their hiny and

pass a resolution or motion to fire [Brian] because they do not have the authority to act in that capacity as Member." *Id*.

K. As demanded by Martorello, the restructuring documents are crafted to ensure Martorello's control over operations and retention of profits.

In an effort to exploit sovereign immunity and conceal Martorello's role, the lending enterprise completed the merger on January 26, 2016. Ex. 42. On paper, the LVD now appeared to own the business, ostensibly shielding Bellicose/Martorello from any pre-merger claims—as desired by Martorello almost immediately after he read the district court's decision in *Otoe-Missouria*. Ex. 13 (proposing "LVD to take ownership of Bellicose VI," and "[a]ll structured to provide all entities sovereign immunity."). And as designed by Martorello, LVD contractually relinquished any right to control the business through the restructuring documents, namely: (1) the Delegation of Authority Policy, (2) the Intratribal Servicing Agreement, (3) the Loan and Security Agreement, and (4) Eventide's Operating Agreement. Each of these documents worked together to ensure Martorello's control.

First, LVD contractually relinquished any right to control Ascension through the Delegation of Authority Policy. *See generally* Ex. 43. Under this policy, Ascension delegated McFadden with the authority to: (1) handle Ascension's "strategic direction, goals and targets," (2) execute documents on behalf of Ascension, (3) open and maintain bank accounts, (4) adopt employee benefit plans and programs, and (5) "authority regarding all matters necessary for the day to day management of Ascension." *Id*. at § 1.4(a)-(e)). By contrast, the only matters designated to the tribal co-managers are: (1) approval of contracts in excess of $100,000 in a calendar year, (2) appointment of the president, and (3) approval of any "new major employee benefit plans." *Id*. at § 1.2(a)-(c). And, while the authority to appoint the president seems to provide some control, the Loan Agreement takes this control away—to appoint a new president, Hazen and Williams

must receive the approval of Eventide, *i.e.*, Martorello. *See* Ex. 44 at Martorello_000080 ("Management. Neither [TED] nor [Big Picture or Ascension] shall terminate or replace any manager, director or officer of [TED] or [Big Picture or Ascension] or modify delegations of authority without the prior written consent of [Eventide], which shall not be unreasonably withheld, conditioned or delayed.").

Second, because of McFadden's *de facto* control of Ascension, the restructuring documents were designed to provide Ascension with control over Big Picture's operations—no different than the relationship between SourcePoint and Red Rock. *See generally*, Ex. 45. Indeed, Ascension and Big Picture entered into a "Intratribal Servicing Agreement," which is virtually identical to the prior servicing agreement between SourcePoint and Red Rock. *Compare id.*, *with* Ex. 5 at § 4.2.1. Like the prior arrangement, this agreement grants Ascension "all the necessary power and authority to act in order to fulfill its responsibilities," which includes the enumerated responsibilities previously designated to SourcePoint. Ex. 5 at §§ 4.1, 4.2; *compare with* Ex. 45, at §§ 4.1, 4.2. And, just like the Delegation of Authority Policy, LVD cannot amend, modify, or terminate the Intratribal Servicing Agreement until satisfaction of the $300 million-dollar promissory note.[4] Ex. 44 at § 5.12. The Delegation of Authority Policy and Intratribal Servicing Agreement work in tandem to ensure that Martorello's designee, McFadden, has control over Ascension, and Ascension has control over the lending business.

Further, Eventide's operating agreement ensures that Martorello has control over McFadden. *See generally* Ex. 30 at § II(I). In particular, to ensure control over McFadden, Eventide's operating agreement allows Martorello to unilaterally revoke his shares in Eventide

[4] If TED breaches the Intratribal Servicing Agreement, it would forfeit the reinvestment amounts, as well as its ownership interest in Ascension. (Ex. 46, Secured Promissory Note at § 1.2(b)(2)).

with 14-days notice. *Id.* ("The Manager, in his sole and absolute discretion, may require a Member to sell all or a portion of the Interest" within 14 days). In other words, if Martorello disagrees with any action by McFadden, including in his capacity as president of Ascension, Martorello possesses the sole discretion to revoke his primary economic interest in the lending enterprise, *i.e.*, McFadden's profit interest as a shareholder of Eventide. Ex. 30. And those profits have been substantial, such as monthly distributions to McFadden ranging from $18,000-$50,000. *See* Ex. 47. The evidence shows that Martorello has already considered wielding this power, including in August 2016, when Martorello texted his brother and business partner, expressing concern that "Brian [McFadden] and James [Dowd] are getting too big for their britches." Ex. 48 at Justin_Martorello_00157. Martorello further explained that "they see monthly wires and are starting to think they deserve a lot more of it now than the $1mm a year Brian makes for being a hired CEO." *Id*. Martorello further wrote that McFadden "may have to be disappointed somewhere down the near term road," as "he's not the founder and $1mm a year buys a lot of very capable replacements." *Id*. In short, even after the sale, Martorello believed that he controlled the business, including the ability to remove the president of Ascension, who possesses the authority to run the lending business free from interference by the co-managers or Tribal Council—exactly as Martorello had insisted.

III. NATURE OF PLAINTIFFS' CLAIMS AND THE PROPOSED CLASSES

Plaintiffs, each from Virginia, obtained loans from Big Picture and Red Rock. Each of the loans imposed an interest rate higher than 12%. Williams' loan was subject to an APR of 649.8%; Turnage's loan had an APR of 693.2%; Hengle's loan had an APR of 607.5%; Coffy's loan had an APR of 607.5%; and Gillison, Jr.'s loan had an APR of 627.2%. Each of the Plaintiffs made payments on these loans. For example, Mr. Hengle paid at least $12,698.75 on his loans with Red

Rock and Big Picture. Ex. 49, Decl. of George Hengle ¶ 8. Plaintiffs' claims are simple and straightforward—they accuse Martorello of engaging in a scheme to lend to and collect from Virginia consumers at interest rates far exceeding those permitted by Virginia law.

In response to Plaintiffs' initial motion for class certification, Martorello argued that consumers who borrowed from Red Rock differ from consumers who borrowed from Big Picture loans. *See, e.g.,* Dkt. 216 at 26 ("Class members who took loans or made payments after January 26, 2016, are thus very differently situated vis-à-vis SourcePoint and Martorello from class members who took out loans or made payments beyond that date."). Because the title of his role changed—from owner of the "servicer" to owner of the "creditor"—Martorello contended that common issues at trial would not predominate. Plaintiffs disagree. The sale restructured the enterprise on paper but not how it operated in practice (and certainly not with respect to the elements and evidence pertinent to each claim). In fact, the sale agreements allowed Martorello to continue to have complete management control over the enterprise, retain the majority of the profits, and retake the business (including the LVD's investment) if his instructions were not followed or any material changes to the business occurred. *See* Sections J & K, *supra*, Exs. 37-48. That said, to address any risk that the consumers are differently situated, Plaintiffs request that the Court certify two separate classes for Virginia consumers with Red Rock and Big Picture loans,[5]

[5] The Court retains its discretion to adapt or modify the class definition to resolve typicality, predominance or other defense concerns it concludes have merit. Fed. R. Civ. P. 23(c)(1)(C) gives District Courts broad discretion to modify the class definition until there is a decision on the merits. *See* 2 H. NEWBERG AND A. CONTE, NEWBERG ON CLASS ACTIONS § 6.14 (4th ed. 2006) ("broad discretion [under Rule 23] to modify the definition of the class even after certification."). *See e.g. Branch v. Gov't Employees Ins. Co*. *Branch v. Gov't Employees Ins. Co.*, 323 F.R.D. 539 (E.D. Va. 2018); *Williams v. LexisNexis Risk Mgmt. Inc.*, No. CIV A 306CV241, 2007 WL 2439463, at *8 (E.D. Va. Aug. 23, 2007).

with sub-classes of each to address the different statute of limitations periods for each of the three claims:

> **Big Picture RICO Class:** All Virginia consumers who entered into a loan agreement with Big Picture where a payment was made from June 22, 2013 to December 20, 2019.
>
> > **Big Picture Usury Sub-class:** All Virginia consumers who paid any principal, interest, or fees on their loan with Big Picture from June 22, 2015 to December 20, 2019.
> >
> > **Big Picture Unjust Enrichment Sub-class**: All Virginia consumers who paid any amount on their loan with Big Picture from June 22, 2014 to December 20, 2019.
>
> **Red Rock RICO Class:** All Virginia consumers who entered into a loan agreement with Red Rock where a payment was made from June 22, 2013 to December 20, 2019.
>
> > **Red Rock Usury Sub-class:** All Virginia consumers who paid any principal, interest, or fees on their loan with Red Rock from June 22, 2015 to December 20, 2019.
> >
> > **Red Rock Unjust Enrichment Sub-class**: All Virginia consumers who paid any amount on their loan with Red Rock from June 22, 2014 to December 20, 2019.

Plaintiffs and the Classes seek damages consisting of any illegal amounts paid on these loans as part of the illegal lending scheme, plus any doubling or trebling of damages as permitted under the applicable statutes and attorneys' fees and costs. Plaintiffs seek certification of all Classes under Fed. R. Civ. P. 23(b)(3).

IV. ARGUMENT

"To obtain class certification, a plaintiff must satisfy the four requirements" of Rule 23(a) of the Federal Rules of Civil Procedure, and the case "must also fall within at least one of the types of class actions defined in Rule 23(b)." *Branch v. Gov't Employees Ins. Co.*, 323 F.R.D. 539, 544, (E.D. Va. 2018). The Court must undertake a "rigorous analysis" as to each requirement. *Wal-Mart Stores, Inc., v. Dukes*, 564 U.S. 338, 351 (2011) (internal quotations omitted). Because of the rigorous analysis required by *Dukes*, "the district court must take a 'close look' at the facts relevant to the certification question and, if necessary, make specific findings on the propriety of

certification." *Branch*, 323 F.R.D. at 545 (quoting *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 319 (4th Cir. 2006)). Although this analysis may "overlap into the merits of the underlying case," the "likelihood of the plaintiff's success on the merits . . . is not relevant to the issue of whether certification is proper." *Id*. (quoting *Thorn*, 445 F.3d at 319). Stated differently, Rule 23 does not provide courts with a "license to engage in free-ranging merits inquiries at the certification stage," and merits questions should only be considered "only to the extent" that "they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Amgen, Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 466 (2013).

Federal courts have long regarded "consumer claims" as "particularly appropriate for class resolution." *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625 (1997); *In re Mexican Money Transfer Litig.*, 267 F.3d 743, 747 (7th Cir. 2001); *Cavin v. Home Loan Ctr., Inc.*, 236 F.R.D. 387, 395-96 (N.D. Ill. 2006) ("Consumer claims are among the most commonly certified for class treatment"). As explained below, this case is no different as Plaintiffs' claims satisfy the four prerequisites of Rule 23(a) and fall within two of the types of class actions allowed by Rule 23(b).

A. The Classes meet the requirements of Rule 23(a).

1. Numerosity is easily met.

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. Proc. 23(a). There is no set minimum number of potential class members that fulfills the numerosity requirement. *See Holsey v. Armour & Co.*, 743 F.2d 199, 217 (4th Cir. 1984) (citing *Kelley v. Norfolk & Western Ry. Co.*, 584 F.2d 34 (4th Cir. 1978)). Where the class numbers 25 or more, joinder is usually impracticable. *Cypress v. Newport News Gen'l & Nonsectarian Hosp. Ass'n*, 375 F.2d 648, 653 (4th Cir. 1967) (finding that 18 class members was sufficient to fulfill the numerosity requirement); *In re Zetia (Ezetimibe) Antitrust Litig.*, MDL No.

2:18md2836, 2020 WL 4917625, at * (E.D. Va. Aug. 21, 2020) (finding 35 class members satisfied numerosity); *Soutter v. Equifax Info. Servs., LLC*, 307 F.R.D. 183, 199 (E.D. Va. 2015) (granting class certification where class included roughly 1,000 persons).

Here, the numerosity requirement is easily met. Everyone now knows who these Class members are, as they were noticed and participated in the separate settlement with the Tribal defendants in *Galloway v. Williams*, No. 3:19-cv-00470-REP, Dkt. 108-1 (E.D. Va. Dec. 1, 2020) ("*Galloway III*"). The *Galloway III* "class list" provided by Big Picture Loans showed that the national class consisted of 491,018 class members. *See* Ex. 51, *Galloway v. Williams*, No. 3:19-cv-00470-REP, Dkt. 108-1 (E.D. Va. Dec. 1, 2020). At least 12,530 of these class members are from Virginia. Ex. 60 at ¶ 5, Declaration from American Legal Claims. Accordingly, Rule 23(a)(1)'s numerosity prerequisite is satisfied.[6]

Here, class membership is also readily ascertainable as the definition is based entirely on objective criteria and class members are identifiable, mostly through electronic data analysis. Identification of the class members involves a handful of discrete steps: (1) determining whether a consumer had a loan with Big Picture and/or Red Rock, (2) for all such consumers, determining whether they had a Virginia address when they executed the loan, and (3) identifying any payments made by those consumers from June 22, 2013 to December 20, 2019. The answers to these questions was and is readily ascertainable through loan records that the Tribe has agreed to provide voluntarily. *See* Ex. 52, Rosette letter (representing that "the data related to the alleged Virginia class in Williams exists, is held by TranDotCom, and [] my clients consent to TranDotCom

[6] Although it is not required by the plain language of Rule 23(a)(1), the Fourth Circuit has created an implicit requirement that a plaintiff "readily identify class members in reference to objective criteria." *EQT Prod. Co. v. Adair*, 764 F.3d 347, 358 (4th Cir. 2014); *see also* 7A Charles Alan Wright et al., *Federal Practice & Procedure* § 1760 (3d ed. 2005). This is not an issue in this case, as each class member has already been identified in *Galloway III*.

supplying that information according to the Court's order (ECF No. 415)"). And as noted, the majority of information has already been produced in connection with the *Galloway III* settlement. Ex. 51, *Galloway v. Williams*, No. 3:19-cv-00470-REP at Dkt. 108-1.

2. Common questions of law and fact bind the Class Members together.

Rule 23(a)(2) requires the court to find that there are questions of law or fact common to the class, but complete congruence of those questions is not necessary. *Lienhart v. Dryvit Sys. Inc.,* 255 F.3d 138, 146 (4th Cir. 2001); *Centr. Wesleyan Coll. v. W.R. Grace & Co*., 143 F.R.D. 628, 636 (D.S.C. 1992), *aff'd*, 6 F.3d 177 (4th Cir. 1993). "Commonality is satisfied where there is one question of law or fact common to the class, and a class action will not be defeated solely because of some factual variances in individual grievances." *Jeffreys v. Commc'ns Workers of Am.*, 212 F.R.D. 320, 322 (E.D. Va. 2003); *Manuel v. Wells Fargo Bank, Nat. Ass'n*, No. 3:14CV238, 2015 WL 4994549, at *9 (E.D. Va. Aug. 19, 2015) ("To satisfy [the commonality] requirement, there need be only a single issue common to the class.").

In this instance, all liability questions of fact and law are entirely common. The claims asserted by Plaintiffs and the class members originate from the same conduct, practice, and procedure on the part of Martorello, namely the use of the tribal lending scheme in an attempt to evade interest rate laws in Virginia. Pursuant to this scheme, the lending operation used a uniform pricing structure when issuing loans that universally resulted in each class member receiving a loan with an illegal interest rate under Virginia law.[7] Based on these facts, Plaintiffs and the class members share a number of common questions of law that can all be decided with common proof, including: (1) whether their interest rates violate Virginia's usury laws; (2) whether the choice-of-law provision in their loan agreements bar enforcement of Virginia's

[7] *See, e.g.*, *Rates*, Big Picture Loans, https://www.bigpictureloans.com/loan-rates-2 (last visited Aug. 28, 2018).

usury laws; (3) whether the relationship between the various participants constitutes an enterprise as defined under RICO; (4) whether Martorello participated or operated in the management of the enterprise; (5) whether Martorello had knowledge of and agreed to the overall objective of the enterprise; and (6) whether the amounts paid by each consumer are recoverable against Martorello.

Courts have found common questions in cases based on similar factual allegations and legal claims. This includes certification of classes in cases alleging that the defendants used a subterfuge, such as a purported tribal lender, to conceal the fact that they were making unlawful loans. For example, in *Inetianbor v. CashCall, Inc.*, a case involving a similar rent-a-tribe scheme, the court found that:

> The proposed class' claims share multiple questions of law and fact. For example, it is a common question of fact whether CashCall improperly used Western Sky as a "front" for its lending business, invoking Tribal law in an attempt to shield the enterprise from State regulation and consumer laws. Additionally, all class members entered into loan agreements with materially similar terms; therefore, whether the loan contracts are void for charging usurious interest rates is a legal question common to all or nearly all members of the class. Further, whether the loans violated Florida lending and consumer protection law and whether Reddam can be held personally liable are legal questions common to the class.

No. 13-cv-60066-JIC, Doc. 284 at 17–18 (S.D. Fla. Sept. 19, 2016) (attached as Ex. 53). The facts in this case are comparable to those in *Inetianbor* and similarly warrant a finding of commonality. Another court has also recently held:

> As to each class, the questions of whether Defendants charged interest at rates in excess of those permitted by New Jersey law will be common, as will questions of whether Defendants and Western Sky together formed an enterprise sufficient for liability under RICO.

MacDonald, 333 F.R.D. at 343.

Other decisions involving non-tribal usurious loans are in accord. *See, e.g.*, *Purdie v. Ace Cash Express*, 2003 WL 22976611, at *3 (N.D. Tex. Dec. 11, 2003) ("Here, the members of the

putative class share a common factual circumstances of having obtained payday loans that were originated, serviced and collected in a uniform manner according to policies and procedures implemented by Defendants on a nationwide basis."); *Upshaw*, 206 F.R.D. at 699 (M.D. Ga. 2002). As to the commonality element, *Upshaw* identified "numerous common issues," including, among others, "[w]hether the interest charged on the loans violates the Georgia usury laws" and "[w]hether the loans and interest are unlawful debts, the collection of which violates RICO." *Id.* at 699; *Madden*, 237 F. Supp. at 155 (finding commonality in a case alleging violations of New York's usury laws based on the "common injury" of "the attempted collection of interest at a usurious rate"). Because there are multiple common questions of law and fact, commonality is easily satisfied.

3. Plaintiffs' claims are typical of the Classes' claims.

A class representative's claims or defenses must be "typical" of the claims or defenses of the class. Fed. R. Civ. P. 23(a)(3). The Fourth Circuit has described the typicality requirement as "the heart of a representative [party's] ability to represent a class." *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2006). Typicality demands "a class representative must be part of the class and possess the same interest and suffer the same injury as the class members." *Id.*; *accord Soutter v. Equifax Info. Servs., LLC*, 498 F. App'x 260, 264 (4th Cir. 2012); *Lienhart*, 255 F.3d at 146. A plaintiff's interest in prosecuting her case must advance the interests of the Class. *Soutter*, 498 F. App'x at 264.

Nonetheless, typicality does not require that a class representative's claims be perfectly identical to the class members' claims. *See, e.g.*, *Broussard v. Meineke Disc. Muffler Shops, Inc.*, 155 F.3d 331, 337 (4th Cir. 1998); *Deiter*, 436 F.3d at 467; *Soutter*, 498 F. App'x at 265; *In re Mills Corp. Sec. Litig.*, 257 F.R.D. 101, 105 (E.D. Va. 2009). Rather, "the interests of the party representing a class must be substantially similar to those of the unrepresented parties." *Id.*; *see*

also In re BearingPoint, Inc. Sec. Litig., 232 F.R.D. 534, 538 (E.D. Va. 2006). However, "the mere existence of individualized factual questions with respect to the class representative's claim will not bar class certification." *In re BearingPoint,* 232 F.R.D. at 538 (quoting *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 903 F.2d 176, 178 (2d Cir. 1990)). As the Fourth Circuit explained:

> To determine if [the plaintiff] has shown typicality, we compare her claims and [the opposing party's] defenses to her claims with those of purported class members by reviewing the elements of [the plaintiff's] prima facie case and the fact supporting those elements and examining "the extent" to which those facts "would also prove the claims of the absent class members."

Soutter, 498 F. App'x at 265.

Plaintiffs' claims satisfy the typicality requirement of Rule 23. Here, Plaintiffs assert a uniform practice of charging usurious loans to consumers using the now-rejected rent-a-tribe model. RICO defines "unlawful debt" as a debt incurred in connection where the usurious rate "is at least twice the enforceable rate" under state or federal law. 18 U.S.C. § 1961(6). In other words, § 1962(c) "encompasses efforts to collect on a usurious loan" such as the predatory loans made to Plaintiffs in this case. *See Goldenstein v. Repossessors Inc.*, 815 F.3d 142, 148 (3d Cir. 2016). Plaintiffs and the class members are all in the same boat; they were all subject of the making and collection of the usurious loans, and the only genuine difference from one member to another is the level of financial harm incurred.

Again, *Inetianbor* is instructive. There, the court found that the plaintiffs' claims, based on usurious loans were "typical of those of the proposed class" because the plaintiffs all "entered into Western Sky loan agreements with materially similar terms, including interest rates that allegedly exceeded the allowable rate under Florida law," and "all members of the proposed class may allege similar damages as a result of Defendants' actions." *Inetianbor*, Ex. 53, at 19. Similarly, another court has explained "[t]ypicality is inherent in the class definition because each member entered

into the same type of transaction, a payday loan, with Defendants and his/her claims arose from the same practices of Defendants." *Henry*, 199 F.R.D. at 571–72; *see also MacDonald*, 333 F.R.D. at 343 ("Plaintiffs have shown that their claims are legally identical to those of the class, as they obtained loans from Western Sky at allegedly usurious interest rates, under loan agreements purporting to be governed exclusively by [tribal] law. These are precisely the theories and claims under which each class seeks to recover.").

Like *Inetianbor* and *MacDonald*, Plaintiffs' claims for usury violations are typical of those of the proposed classes. In relevant part, this statute provides that "[i]f interest in excess of that permitted by an applicable statute is paid upon any loan," the borrower may bring an action "to recover from the person taking or ***receiving***" such payments. Va. Code. § 6.2-305 (emphasis added). Broken down, a claim under § 6.2-305 requires proof of two elements: (1) payment of interest at a rate greater than 12% per year and (2) taking or receipt of such payments. Va. Code § 6.2-305. If Plaintiffs prove that Martorello violated Virginia's usury laws by receiving amounts in excess of 12%, they will advance the claims of all of the proposed class members to the same degree. *Milbourne v. JRK Residential Am., LLC*, 2014 WL 5529731, at *7 (E.D. Va. Oct. 31, 2014) ("Because there are no factual differences between claims and the members all raise the same legal issue as [the Plaintiff], there are no factual or legal differences between the class members' claims and [Plaintiff's'] claim. … For the foregoing reasons, the typicality factor is satisfied." (citations omitted)); *Dreher v. Experian Info. Sols., Inc.*, 2014 WL 2800766, at *2 (E.D. Va. June 19, 2014) ("The evidence [Plaintiffs] will rely on to establish each element of the case will similarly establish the claims of each absent class member."). The same is true for the RICO claims, which revolve around the making and collection of unlawful debt under state law.

Martorello has maintained that his conduct toward Class members who took out loans

with Red Rock differed from his conduct toward Class members who took out loans with Big Picture. *See* Dkt. 216 at 25-26. Discovery conducted in this case over the past several years has demonstrated that this contention is false and, regardless, any purported differences are immaterial to the claims in this case. *See* Factual Background, *supra*, §§ J & K, Exs. 37-48. However, even if the Court found Martorello's liability materially different between the Red Rock and Big Picture Loan periods, the certification of separate classes resolves this concern. *See, e.g., EQT Prod. Co.*, 764 F.3d at 369 (explaining a "district court may also be able to craft more definite class definitions, thus eliminating or mitigating some of the problems" with certification"); *Hawkins v. Cohen*, No. 5:17-CV-581-FL, 2018 WL 3785398, at *13 (E.D.N.C. Aug. 9, 2018) (reconstructing the plaintiff's definition into "two independent classes").

4. Plaintiffs and their Counsel will adequately represent the Classes.

Rule 23(a)'s final component requires that the "representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). This prerequisite is met if: "(1) the named plaintiff[s] [have] interests common with, and not antagonistic to, the Class' interests; and (2) the plaintiff[s'] attorney is qualified, experienced and generally able to conduct the litigation." *In re Se. Hotel Props. Ltd. P'ship Investor Litig.*, 151 F.R.D. 597, 607 (W.D.N.C. 1993).

Plaintiffs' counsel are experienced in class-action work as well as consumer protection issues and have been approved as class counsel in numerous cases before this Court. *Clark v. Trans Union, LLC*, 3:15-cv-391, 2017 WL 814252, at *13 (E.D. Va. Mar. 1, 2017) (collecting cases and stating "This Court has repeatedly found that [proposed Class Counsel] is qualified to conduct such litigation. . . . This Court echoes the sentiments previously stated about [proposed Class

Counsel] because they pertain here with equal vigor." (citations omitted)).[8] They have already been found adequate in *Galloway III*, as well as other tribal lending matters. *Galloway v. Williams, Jr.*, 2020 WL 7482191, at *8 (E.D. Va. Dec. 18, 2020) (finding "Class Counsel and their firms have extensive backgrounds in complex and class action litigation and consumer protection litigation" and further noting that counsel "have significant experience in litigating class action lawsuits against tribal lenders.") (*citing, e.g.*, *Hayes, et al. v. Delbert Servs. Corp.*, 3:14-cv-00258-JAG, Dkt. No. 193 ¶ 4, 14 (Jan. 20, 2017)).

Plaintiffs' interests and those of members of the proposed classes are fully aligned. And both Classes and all sub-classes are represented. Ex. 54, Kelly Decl. ¶¶ 15-20. Moreover, each Paintiff shares the Class interest in obtaining a determination that Martorello violated § 1962(c) of RICO through management and participation in the affairs of an enterprise involved in the "collection of unlawful debt," that Martorello further violated § 1962(d) of RICO by entering into a series of agreements to violate § 1962(c), that the loans made to Virginia consumers used an interest rate in excess of what is legal under Virginia law, and that the loan agreements are void under Va. Code § 6.2-1541(A). Further, Plaintiffs and the proposed class members share identical interests in establishing Martorello's liability for his role in the scheme. Additionally, Plaintiffs have vigorously prosecuted this case, answered discovery, sat for depositions, and filed claims against the other participants involved. They have assisted and cooperated from the beginning to benefit all Virginia consumers similarly situated. Ex. 54, Kelly Decl. ¶ 14.

[8] Declarations from each firm seeking to serve as class counsel setting forth their experience and ability to serve as class counsel are attached. Ex. 54, Kelly Declaration; Ex. 55, Bennett Declaration; Ex. 56, Drake Declaration; Ex. 57, Terrell Declaration; Ex. 58, Wessler Declaration; Ex. 59, Caddell Declaration.

B. The classes likewise meet the demands of Rule 23(b)(3).

1. Common questions predominate over individual ones.

Under Rule 23(b)(3), the common questions found under Rule 23(a)(2) "must predominate over any questions affecting only individual members." *Amchem,* 521 U.S. at 615. Whether common questions predominate over individual questions "is a separate inquiry, distinct from the requirements found in Rule 23(a)." *Ealy v. Pinkerton Gov't Servs., Inc.*, 514 F. App'x 299, 304 (4th Cir. 2013) (citing *Wal–Mart,* 131 S. Ct. at 2556). This requirement is "even more demanding than Rule 23(a)," *Comcast Corp. v. Behrend*, 569 U.S. 27, 34 (2013), and "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation," *Amchem,* 521 U.S. at 623. This analysis is not simply a matter of counting common versus noncommon questions and checking the final tally. *Soutter*, 307 F.R.D. at 214. Instead, "Rule 23(b)(3)'s commonality-predominance test is qualitative rather than quantitative." *Stillmock v. Weis Markets, Inc.*, 385 Fed. App'x. 267, 272 (4th Cir. 2010) (citing *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 429 (4th Cir. 2003)). In other words, Rule 23(b)(3) "compares the quality of the common questions to those of the noncommon questions." *Soutter*, 307 F.R.D. at 214 (quoting *Newberg* § 3:27); *see also Karkauer*, 925 F.3d at 658 (observing "the predominance inquiry 'calls upon courts to give careful scrutiny to the relation between common and individual questions in the case.'") (quoting *Tyson Foods, Inc. v. Bouaphakeo*, --- U.S. ---, 136 S. Ct. 1036, 1045 (2016)).

If the "qualitatively overarching issue" in the litigation is common, a class may be certified notwithstanding the need to resolve individualized issues. *See Ealy*, 514 Fed. App'x. at 305 ("Indeed, common issues of liability may still predominate even when some individualized inquiry is required."). For example, if "common questions predominate regarding liability, then courts generally find the predominance requirement to be satisfied even if individual damages issues remain." *Stillmock,* 385 Fed. App'x. at 273 (citing *Smilow v. Southwestern Bell Mobile Systems,*

Inc., 323 F.3d 32, 40 (1st Cir. 2003)). This is because class certification in those cases will still "achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Gunnells,* 348 F.3d at 424 (citing *Amchem,* 521 U.S. at 615); *see also id.* at 426 ("Proving these issues in individual trials would require enormous redundancy of effort, including duplicative discovery, testimony by the same witnesses in potentially hundreds of actions, and relitigation of many similar, and even identical, legal issues. Consolidation of these recurring common issues will also conserve important judicial resources.").

Here, common issues necessarily predominate because Plaintiffs' claims are all based on standardized conduct by Martorello toward them and fellow class members: namely, using a Native American Tribe to evade state laws in order to issue and collect on usurious loans in Virginia. As the court found in *Intetianbor*, common issues predominate in rent-a-tribe schemes for usurious loans because of "the standardized nature of the loan transactions and the uniform manner in which defendants made, processed and collected on the loans," such that "few variations exist in the claims and the legal claims and theories asserted." *Inetianbor*, Ex. 53, at 21; *see also Purdie*, 2003 WL 22976611, at *4 (finding predominance in a payday lending case based on standardized loan transactions); *Upshaw*, 203 F.R.D. at 700–01 (finding predominance in a payday lending case because "Defendants' conduct was substantially the same with respect to all members of the class," and "[t]his conduct gives rise to Plaintiffs' class-wide liability claims for violation of the Georgia usury laws and RICO"). Martorello's conduct was not only substantially the same as to all members of the classes, but there are also no material individual defenses to Plaintiffs' usury and RICO claims. *Henry*, 199 F.R.D. at 572 ("[T]he common questions are whether Defendants were engaged in racketeering activity or collecting an unlawful debt, whether an

enterprise exists, and whether defendants conducted or participated in an enterprise. ***No reliance or causation need be shown***…." (emphasis added)).

RICO claims like Plaintiffs' are particularly well-suited for class treatment because "common issues of fact in a RICO action, concerning the existence of an enterprise and a pattern of racketeering activity are quite substantial" and "would tend to predominate over all but the most complex individual issues." *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1357-58 (11th Cir. 2009). In a RICO action, "[t]he existence of a conspiracy, and whether the defendants aided and abetted each other" are "issues common to all of the plaintiffs" that "tend[] to predominate." *Klay v. Humana, Inc.*, 382 F.3d 1241, 1255 (11th Cir. 2004). And as a sister court recently explained:

> Here, Plaintiffs have shown that common questions predominate for each of the elements of their RICO claim. Whether Defendants engaged in conduct as part of RICO enterprise is common to the class (and raises no individual issues whatsoever), as is whether they did so through the collection of unlawful debt. Plaintiffs can show that Defendants conducted their alleged RICO enterprise through common documentary evidence concerning the relationships between Western Sky Financial and Defendants and the testimony of their officers and employees.

MacDonald, 333 F.R.D. at 353.

Finally, this case is also similar to other cases where a defendant's lending practices or other financial misconduct predominates because the defendant's uniform treatment of the plaintiffs caused them harm. As another court explained:

> Given the standardized nature of the payday loan transactions and the uniform manner in which Defendants made, processed and collected on the loans, and that few variations exist in the claims or the factual bases underlying the claims and the legal claims and theories asserted, the court finds that the factual and legal issues in this case would be subject to generalized proof applicable to the entire class, and that such issues predominate over any issue that may be subject only to individualized proof.

Purdie, 2003 WL 22976611, at *4. Like the plaintiffs in *Purdie* and similar cases, Plaintiffs and the classes have been subjected to the same usurious lending practices by Martorello and the other

enterprise participants, and therefore, common issues predominate. *See also Veal v. Crown Auto Dealerships, Inc.*, 236 F.R.D. 572, 579 (M.D. Fla. 2006) (finding that common issues predominated with respect to claims under the Truth in Lending Act, Finance Act, FDUPTA, and unjust enrichment based on defendant's "deceptive acts common to the purported class"); *Spinelli v. Capital One Bank*, 265 F.R.D. 598, 610 (M.D. Fla. 2009) (adopting report and recommendation to certify class claims alleging sale of deceptive credit protection product); *see also Madden*, 237 F. Supp. 3d at 160–61 (finding predominance in a case based on violations of New York's usury laws).

As for damages, Plaintiffs are seeking unlawful amounts paid in connection with their loans. With electronic records from the lenders, this amount can be calculated easily for all class members. *See Krakauer*, 925 F.3d at 658 (finding predominance satisfied where "all of the major issues in the case could be shown through aggregate records"). Even if damages did require some evidence from individual consumers, this is not a case where the determination of damages awarded will largely depend on individualized testimony, such as in a case where the consumer is seeking compensation for emotional distress or physical injuries. Because the loans were credited and debited using ACH transactions to and from the consumers' bank accounts, bank records will show the relevant transactions that could be used to calculate damages. More simply, the *Galloway III* "class list" provided by Big Picture Loans can be used to determine which class members made payments on a Big Picture or Red Rock loan and when a class member made those payments. Ex. 60, Pirrung Decl. ¶¶ 9-13.

To the extent that there might be some individualized damage determinations, in no event would those issues predominate over the common liability issues. *See Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013) ("If the issues of liability are genuinely common issues, and the

damages of individual class members can be readily determined in individual hearings, in settlement negotiations, or by creation of subclasses, the fact that damages are not identical across all class members should not preclude class certification.").

2. Class treatment is the superior method for litigating the classes' claims.

Finally, the Court must determine whether a class action is superior to other methods for the fair and efficient adjudication of the controversy under Fed. R. Civ. P. 23(b)(3). *Lienhart*, 255 F.3d at 142; *In re A.H. Robins Co., Inc.*, 880 F.2d 709, 713 (4th Cir. 1989). The factors to be considered in determining the superiority for the class mechanism are: (1) the interest in controlling individual prosecutions; (2) the existence of other related litigation; (3) the desirability of concentrating the litigation in the forum; and (4) manageability. *Hewlett v. Premier Salons Int'l, Inc.*, 185 F.R.D. 211, 220 (D. Md. 1997); *Newsome v. Up_To_Date Laundry, Inc.*, 219 F.R.D. 356, 365 (D. Md. 2004).

In examining these factors, it is proper for a court to consider the "inability of the poor or uninformed to enforce their rights, and the improbability that large numbers of class members would possess the initiative to litigate individually." *CitiFinancial v. Logan Furniture Mart, Inc.*, 503 F.2d 1161, 1164 (7th Cir. 1974). "Class actions are particularly appropriate" where, as here, "multiple lawsuits would not be justified because of the small amount of money sought by the individual plaintiffs." *See Advisory Committee Note* to 1996 Amendment to Rule 23.

Class litigation is not only the most efficient means of adjudicating these disputes; it is the only means. Separately litigating the common issues that bind the class, whether in hundreds or tens of thousands of individual lawsuits would be a practical impossibility—even assuming it were economically feasible for consumers to pursue these claims on their own. Here, even on Plaintiffs' counsel have taken dozens of depositions, reviewed hundreds of thousands of pages of documents, had to brief multiple dispositive motions, spending thousands of hours doing so. Given the amount

of work involved in unraveling this scheme, an individual case worth a few thousand dollars simply is not a viable alternative to a class proceeding. There simply is no other practical means for these classes—mostly low-income consumers—to challenge a practice that stands in uniform violation of Virginia's usury laws. "The desirability of providing recourse for the injured consumer who would otherwise be financially incapable of bringing suit and the deterrent value of class litigation clearly render the class action a viable and important mechanism in challenging fraud on the public." 6 H. Newberg and A. Conte, Newberg on Class Actions § 21:30 (4th ed. 2003).

Furthermore, even if just a small fraction of the class were to bring individual suits, the adjudication of common issues in a single proceeding would be infinitely more efficient than would be the separate adjudication of thousands of individual claims.[9] Additionally, there "is a strong presumption in favor of a finding of superiority" where, as here, "the alternative to a class action is likely to be no action at all for the majority of class members." *Cavin*, 236 F.R.D. at 396. This presumption is rooted in the policy that lies "at the very core of the class action mechanism"—namely, "overcom[ing] the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights." *Amchem*, 521 U.S. at 625; *see also Henry*, 199 F.R.D. at 573 (finding a class action was superior because "the potential class is composed of individuals so financially strapped that they would borrow money at extremely usurious rates."); *Crawford v. Equifax Payment Services, Inc.*, 201 F.3d 877, 880 (7th Cir. 2000) (stating in "small-stakes cases, a class suit is the best, and perhaps the only, way to proceed").

[9] *See, e.g.*, *White v. E-Loan, Inc.,* 2006 WL 2411420, at *9 (N.D. Cal. 2006)("given that thousands of consumers may have suffered identical injury, a class action is certainly the most efficient way to adjudicate disputes over those consumers' rights"); *Cavin*, 236 F.R.D. at 396; *White v. Imperial Adjustment Corp.*, 2002 WL 1809084, at *15 (E.D. La. Aug. 6, 2002), ("the piecemeal approach is rife with shortcomings, not the least of which is the possibility of inconsistent adjudications with regard to an identical course of conduct"), *aff'd in part*, 75 Fed. Appx. 972 (5th Cir. 2003).

Given the commonality that characterizes all of the issues in these cases, such treatment will not raise any significant manageability hurdles. Even if it did, however, "[a] class action has to be unwieldy indeed before it can be pronounced an inferior alternative—no matter how massive the . . . wrongdoing that will go unpunished if class treatment is denied—to no litigation at all." *Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 661 (7th Cir. 2004).

CONCLUSION

Plaintiffs respectfully request the Court to grant this motion for class certification.

RESPECTFULLY SUBMITTED AND DATED this 23rd day of December, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

DATED this 23rd day of December, 2020.

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