

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**JOHN C. RAYBURN,**

**Plaintiff,**

**Civil Action 2:18-cv-1534**

**v.**

**Judge Edmund A. Sargus Jr.  
Magistrate Judge Jolson**

**SANTANDER CONSUMER USA  
INC., et al.,**

**Defendants.**

**SETTLEMENT AGREEMENT AND RELEASE**

## TABLE OF CONTENTS

	<b>Page</b>
Recitals.....	1
1. Definitions.....	6
2. Conditions and Effectiveness of Agreement.....	14
3. Settlement Consideration.....	19
4. Qualified Settlement Fund.....	22
5. Payments from the Settlement Fund.....	24
6. Retention and Duties of Settlement Administrator.....	25
7. Notice to the Class and Settlement Website.....	27
8. Covenants Not to Sue.....	28
9. Representations and Warranties.....	29
10. Releases.....	30
11. Opt Out Rights.....	31
12. Objections.....	33
13. Termination.....	34
14. Certification of Settlement Class For Settlement Purposes.....	37
15. Attorneys' Fees and Litigation Costs.....	37
16. Stay of Discovery and Other Proceedings.....	39
17. Return/Destruction of Discovery Materials.....	40
18. Media and Confidentiality.....	41
19. Notices.....	41
20. Miscellaneous Provisions.....	42

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release is entered into by and between (i) Plaintiff John C. Rayburn, individually and as class representative on behalf of the Settlement Class, and (ii) Defendant Santander Consumer USA Inc. ("SC"). The Parties intend and agree to resolve, discharge, and settle fully, finally, and forever certain claims of the Settlement Class asserted in the class action captioned *Rayburn v. Santander Consumer USA Inc.*, Civil Action 2:18-cv-1534, pending in the United States District Court for the Southern District of Ohio, subject to approval of the Court.

### **RECITALS**

A. On or about September 5, 2018, Class Representative John C. Rayburn ("Mr. Rayburn") filed a complaint in Belmont County, Ohio Common Pleas Court (the "State Court Action") alleging SC engaged in unlawful acts in connection with the repossession of his vehicle purchased as part of a consumer transaction in violation of the Ohio Consumer Sales Practices Act ("CSPA"), the Ohio Retail Installment Sales Act ("RISA"), and the Ohio Uniform Commercial Code ("OUCC"), as well as in breach of the RISC assigned to SC from Staffilino Chevrolet, Inc ("Staffilino").

B. Staffilino as well as its principal Anthony Staffilino were formerly defendants in this action, but are no longer, as they were dismissed by Mr. Rayburn with prejudice on May 13, 2019 and are not parties to this Agreement.

C. On or about October 5, 2018, SC filed an answer and counterclaim against Mr. Rayburn in the State Court Action.

D. On or about October 29, 2018, Mr. Rayburn filed a reply to SC's counterclaim as well as a First Amended Class Action Complaint in the State Court Action, asserting claims against

SC under CSPA, RISA, and the OUCC on behalf of similarly situated Ohio residents related to notices sent to consumers in connection with the repossession of their vehicles, as well as a breach of contract claim.

E. On or about November 28, 2018, SC timely filed a notice of removal of the State Court Action to the United States District Court for the Southern District of Ohio pursuant to the Class Action Fairness Act (“CAFA”).

F. On or about December 27, 2018, SC filed a partial motion to dismiss the First Amended Class Action Complaint for failure to state a claim as to Mr. Rayburn’s CSPA claim under R.C. 1317.12 for “Inclusion of Full Repossession Charges,” as well as a partial answer.

G. On or about February 14, 2019, the Parties stipulated to the dismissal of Mr. Rayburn’s first claim against SC for an alleged violation of R.C. 1317.12, rendering SC’s partial motion to dismiss moot.

H. On or about May 22, 2019, the Parties filed a joint motion to stay the litigation pending mediation, which the Court granted on May 22, 2019.

I. On or about September 9, 2019, the Parties participated in an arm’s length mediation before the Honorable Judge Morton Denlow (ret.) to attempt resolve the remaining claims in this matter.

J. On or about September 23, 2019, the Parties filed a joint status report informing the Court that the mediation was initially unsuccessful and asking the Court to lift the stay.

K. On or about November 14, 2019, the Court terminated the stay and set a case schedule.

L. On or about March 5, 2020, the Parties filed a joint motion to extend the case schedule, which was granted on March 6, 2020 and explained to the Court that the parties had

continued their settlement discussions post-mediation and re-engaged Judge Denlow for further negotiations.

M. The Parties have engaged in written discovery in this matter, exchanged documents, and were set to begin depositions. The Parties have also briefed many of the issues in this matter through motions practice and mediation statements and other materials submitted to Judge Denlow.

N. Based upon their discovery, investigation, and evaluation of the facts and law relating to the matters in the pleadings, mediation before Judge Denlow, and fruitful, months-long settlement discussions through Judge Denlow, the Parties have agreed to settle this Action pursuant to the provisions of this Agreement.

O. SC has denied and continues to deny each and every allegation of liability, wrongdoing, and damages, as it has substantial factual and legal defenses to all claims and class allegations asserted in the Action. SC has always maintained, and continues to maintain, that it has acted in accordance with governing law. Mr. Rayburn maintains the strength of his positions. This Agreement shall in no event be construed as, or deemed to be evidence of, an admission or concession on the part of the Parties with respect to any claim by any Class Member, any fault, liability, wrongdoing or damage, or any defenses SC asserted. The Parties nonetheless have concluded that continuing to defend against the Action would be protracted, expensive, and disruptive to their business and/or lives. They therefore have decided that it is desirable to fully and finally settle the Action on the terms and conditions set forth herein to avoid the further expense, inconvenience, and distraction of the Action and to dispel any related uncertainty.

P. By this Agreement, and recognizing the consideration provided for under this Agreement, the Class Representative and Class Counsel intend to fully and finally resolve the remaining claims against SC in connection with the Action, as more fully set forth herein.

Q. The Class Representative and Class Counsel recognize the expense and length of proceedings necessary to continue the litigation through further discovery, motion practice, trial, and any possible appeals. They have taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. They are also aware of the burdens of proof necessary to establish liability and damages for the claims alleged in the Action and the defenses thereto. Based upon their evaluation, the Class Representative and Class Counsel have determined that the settlement set forth in the Agreement is in the best interests of the Class Representative and the Settlement Class and is fair, adequate and reasonable, based upon the following substantial benefits that the settlement bestows upon the Settlement Class:

- i. For all Settlement Class Members, SC will waive all Deficiency Balances, which total approximately \$333,000,000, on their SC accounts;
- ii. SC will pay \$1,900,000 into a Settlement Fund for the benefit of the Settlement Class and for the purposes of implementing this settlement, which will be used to provide monetary relief to certain Settlement Class Members, as described below, and to pay an incentive payment to the Class Representative, as approved by the Court;
- iii. Settlement Class Members whose repossessed vehicles were sold by SC and who made payments in excess of \$100 to SC after repossession will be entitled to a cash benefit equal to a pro rata share of the Settlement Fund after the Incentive Payment;
- iv. SC will request the Credit Reporting Agencies Equifax, Experian, and TransUnion to delete the reporting of the Settlement Class Members' Accounts that are the subject of this Action;
- v. SC shall pay the Settlement Administrator's costs associated with disseminating the Class Notice, setting up a Settlement Website, distributing funds, and any escrow, administrative and/or bank related fees and costs associated with the Settlement Administrator's duties, up to \$65,000; and

- vi. SC will pay up to \$2,500,000 in Attorney's Fees and Expenses, as approved by the Court, to cover the attorney's fees and costs incurred by the Settlement Class through Class Counsel.

R. This Agreement and all associated exhibits or attachments are made for the sole purpose of attempting to consummate settlement of this Action on a class-wide basis. This Agreement and the settlement it evidences are made in compromise of disputed claims. Because the Action is pled as a class action, this settlement must receive preliminary and final approval by the Court. Accordingly, the Class Representative and SC enter into this Agreement and associated settlement on a conditional basis. In the event that SC or the Class Representative exercise a right herein to terminate or rescind this Agreement, the Court does not execute and file the Order Granting Final Approval of Settlement, or the associated Judgment does not become Final for any reason, this Agreement shall be deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever by anyone, and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of Federal Rule of Evidence 408, any and all state statutes of a similar nature, and the mediation privilege. Notwithstanding the foregoing, SC may use, offer, admit, or refer to the Agreement and to the settlement reached therein where necessary to defend itself in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding.

S. The Parties expressly reserve all rights, claims and defenses and do not waive any such rights, claims or defenses in the event that the Agreement is not approved for any reason. The Parties agree that they each retain and reserve all rights, and agree not to take a position to the contrary. The Class Representative and Class Counsel agree not to argue or present any argument, and hereby waive any argument, that SC could not contest class certification and/or proceeding

collectively on any grounds if the Action were to proceed or that this Agreement is evidence of or constitutes an admission that class certification may be appropriate.

**1. Definitions.**

As used in all parts of this Agreement, including the recitals above, and the exhibits hereto, the following terms have the meanings specified below:

1.1. “Action” means the matter removed from the Belmont County, Ohio Common Pleas Court to the United States District Court for the Southern District of Ohio on or about November 28, 2018, Case No. 2:18-cv-01534-EAS-KAJ, entitled *Rayburn v. Santander Consumer USA Inc.*

1.2. “Account” or “Accounts” means each Settlement Class Member’s account with SC related to the financing of their vehicles, which were subsequently repossessed and which are the subject of this Action.

1.3. “Agreement” or “Settlement Agreement” means this Settlement Agreement and Release and all of its attachments and exhibits, which the Class Representative and SC understand and agree sets forth all material terms and conditions of the settlement of the Action between them and which is subject to Court approval. It is understood and agreed that SC’s obligations under this Agreement are conditioned on, *inter alia*, the occurrence of the Effective Date and other conditions set forth in this Agreement.

1.4. “Attorney’s Fees and Expenses” means such funds as may be awarded to Class Counsel pursuant to paragraph 15 of the Agreement to compensate them for their fees and expenses incurred in connection with the Action.



1.5. "Cash Refund Eligible Settlement Class Members" means Settlement Class Members whose Accounts reflect Deficiency Payments. SC represents that there are approximately 3,052 Settlement Class Members whose Accounts reflect Deficiency Payments.

1.6. "Class" means every Ohio resident who: (1) purchased a motor vehicle during the period from January 1, 2013 to the date the Court certifies and finally approves the class for settlement purposes only; (2) as part of the purchase transaction, entered into a RISC where the RISC was assigned to SC; (3) where SC repossessed the vehicle and sent, subsequent to the repossession, a "Notice of Our Plan to Sell Property" Letter; and (4) where the "Notice of Our Plan to Sell Property" Letter had a vehicle sale date that included the phrase "on or after." The Class expressly excludes any person who is eligible for a Deficiency Balance Waiver in connection with the State AG Actions, unless that individual is also a Cash Refund Eligible Settlement Class Member.

1.7. "Class Counsel" means, collectively, all counsel of record representing the Class Representative in this Action.

1.8. "Class Member" or "Member of the Class" means a natural person who is a member of the Class according to the Class definition herein. Based on currently available information, SC estimates that there are approximately 49,003 potential Class Members.

1.9. "Class Representative" means John C. Rayburn, the named plaintiff and proposed class representative in the Action identified in the first Paragraph of this Agreement.

1.10. "Complaint" means the First Amended Class Action Complaint filed by the Class Representative in the Action.

1.11. "Consumer Credit Report" refers to an individual's credit report as issued by any of the three major Credit Reporting Agencies.

- 1.12. "Court" means the United States District Court for the Southern District of Ohio.
- 1.13. "Credit Reporting Agency" or "Credit Reporting Agencies" refers to TransUnion, Experian, Equifax, and any other credit reporting agency to which SC reports.
- 1.14. "Defendant" refers to SC.
- 1.15. "Deficiency Balance" for purposes of this settlement, means the Account balance remaining after the repossession and disposition of a Settlement Class Member's vehicle, after crediting the Class Member's account with the sale price of the vehicle and including all interest and other charges. The Parties agree that the Deficiency Balances for all Settlement Class Members are disputed.
- 1.16. "Deficiency Balance Waiver" refers to the waiver of a Settlement Class Member's Deficiency Balance, whether through relief afforded in this Action or the State AG Actions.
- 1.17. "Deficiency Payment" means any payment to SC towards the Deficiency Balance made by a Settlement Class Member.
- 1.18. "Defense Counsel" shall mean Defendants' counsel of record in the Action.
- 1.19. Disparaging statements are statements that are false, misleading, or might tend to cast the Parties in a negative light, regardless of their truth or falsity.
- 1.20. "Distribution Date" means 60 days after the Effective Date.
- 1.21. "Effective Date" means the date when all of the conditions set forth in section 2 have occurred, provided, however, that Defendant has not exercised its right of termination under section 13 of this Agreement.
- 1.22. "Final" means five (5) business days after the latest of: (i) the date of final affirmance on an appeal of the Judgment; (ii) the date of final dismissal with prejudice of the last pending appeal from the Judgment; (iii) if no appeal is filed, the expiration of the date of the time

for the filing or noticing any form of valid appeal or writ review from the Judgment. If the Judgment is set aside, modified, or overturned by any court including on appeal and is not fully reinstated on appeal, the Judgment shall not become final.

1.23. "Final Approval Hearing" means a hearing set by the Court to take place on or about the date which is at least fifteen (15) days after the Opt-Out Deadline for the purpose of:

- (i) Determining the fairness, adequacy and reasonableness of the Agreement and associated settlement pursuant to class action procedures and requirements;
- (ii) Determining the good faith of the Agreement and associated settlement; and
- (iii) Entering Judgment.

1.24. "Final Approval Order," "Order of Final Approval," and "Order Granting Final Approval of Settlement" shall mean an order to be entered and filed by the Court entitled "Final Judgment and Order of Dismissal with Prejudice"; substantially in the form attached hereto as **Exhibit 3**.

1.25. "Judgment" means the Final Approval Order and judgment to be rendered by the Court pursuant to this Agreement, in the form attached hereto as **Exhibit 3**, or in a similar form without material changes thereto.

1.26. "Mail Notice" means the Notice that is mailed by the Settlement Administrator to potential Settlement Class Members, in substantially the form attached as **Exhibit 1-A** to this Agreement and/or as ultimately approved by the Court. Mail Notice shall be mailed not less than ninety (90) days before the date set by the Court for the Final Approval Hearing.

1.27. "Mr. Rayburn" means Class Representative John C. Rayburn.

1.28. "Notice" or "Class Notice" means a notice entitled "Notice of Proposed Settlement of Class Action" to be approved by the Court, substantially in the form attached hereto as **Exhibit 1-B**.

1.29. "Notice Approval Date" means the date of the Preliminary Approval Order when the Court approves the Notice.

1.30. "Notice List" means a list, to be treated as Confidential pursuant to the terms of the Protective Order, listing the names and addresses of all Class Members, as prepared by SC.

1.31. The "Notice Mailing Date" shall be a date no later than sixty (60) days after the Notice Approval Date, when the Notice is mailed to the individuals on the Notice List.

1.32. "Objection Deadline" means the date identified in the Preliminary Approval Order and Class Notice by which a Settlement Class Member must serve written objections to the Settlement, if any, in accordance with section 12 of this Agreement to be able to object to the Settlement. The Objection Deadline shall be no earlier than thirty (30) days after the Notice Mailing Date and not later than fifteen (15) days prior to the Final Approval Hearing.

1.33. "Opt-Out Deadline" means the date identified in the Preliminary Approval Order and Class Notice by which a Request to Opt Out must be filed or submitted in writing to the Settlement Administrator in accordance with section 11 of this Agreement in order for a person who would otherwise fall within the definition of Settlement Class to be excluded from the Settlement Class. The Opt-Out Deadline shall be no earlier than thirty (30) days after the Notice Mailing Date and not later than fifteen (15) days prior to the Final Approval Hearing.

1.34. "Parties" means the Class Representative, on behalf of himself and all Members of the Settlement Class, and SC.

1.35. "Preliminary Approval Order" shall mean an order to be executed and filed by the Court entitled "Order Preliminarily Approving Settlement and Providing for Notice" substantially in the form attached hereto as **Exhibit 2**.

1.36. "Protective Order" shall mean the Stipulated Protective Order entered in the Action by Magistrate Judge Kimberly A. Jolson on March 21, 2019.

1.37. "Released Claims" mean any and all claims, defenses, demands, actions, causes of action, offsets, setoffs, suits, damages, lawsuits, costs, relief for contempt, losses, attorneys' fees, expenses, or liabilities of any kind whatsoever in law or in equity, for any relief whatsoever, including monetary, sanctions or damage for contempt, injunctive, or declaratory relief, rescission, general, compensatory, special, liquidated, indirect, incidental, consequential, or punitive damages, as well as any and all claims for treble damages, penalties, interest, attorneys' fees, costs, or expenses, whether a known or Unknown Claim, suspected or unsuspected, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, that in any way concern, arise out of, or relate to (1) allegations that were or could have been asserted in the Complaint; or (2) any claim regarding or relating to the "Notice of Our Plan to Sell the Property" letter or any claim relating to the repossession or disposition of the putative Class Member's vehicles.

1.38. "Releasees," "the Releasees," or "the Released Parties" means (1) SC; (2) each of SC's past, present, or future subsidiaries, parent companies, divisions, affiliates, partners or any other organization units of any kind doing business under their names, or doing business under any other names, or any entity now or in the past controlled by, controlling, or under the common control with any of the foregoing and doing business under any other names, and each and all of their respective affiliates and subsidiaries, and each of their respective predecessors, successors, and assigns; and (3) each of the present and former officers, directors, partners, shareholders,

agents, employees, attorneys (including any consultants hired by counsel), advisors, independent contractors, representatives, beneficial owners, insurers, accountants, heirs, executors, and administrators, and each of their respective predecessors, successors, and assigns of any person or entities in subparts (1) or (2) hereof.

1.39. "Releasers" means the Class Representative, all Settlement Class Members, and each of their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other person claiming by or through any or all of them.

1.40. "Notice of Our Plan to Sell Property" Letter means a notice of intent to dispose of a repossessed or surrendered motor vehicle.

1.41. "Request to Opt Out" means the written request from a Class Member that seeks to exclude that person from the Settlement Class and that complies with the requirements set forth in section 11 of this Agreement.

1.42. "RISC" means a motor vehicle retail installment sales contract for the purchase of a motor vehicle in Ohio which is subject to Ohio law.

1.43. "State AG Actions" means any of the actions initiated by State Attorneys General against SC and as settled in or about May 2020, which provided Deficiency Balance Waivers and other relief to consumers in 34 states.

1.44. "Settlement" means the settlement terms set forth in this Agreement.

1.45. "Settlement Administrator" means third-party JND Legal Administration, which will act as the Settlement Administrator and assist with implementing and effectuating the terms of this Agreement.

1.46. "Settlement Class" means the collective group of all of the Class Members who do not properly and timely exclude themselves from a Settlement, and thus means the collective group

of all of the Class Members who will become bound by the Judgment when the Effective Date occurs.

1.47. "Settlement Class Member" or "Member of the Settlement Class" means any person who is a member of the Settlement Class.

1.48. "Settlement Fund" means the 1.9 million dollars (\$1,900,000) that SC shall pay pursuant to section 3 of the Agreement. The Settlement Fund is for the benefit of the Settlement Class and will be used to pay Cash Refund Eligible Settlement Class Members, the Incentive Award, and any costs of settlement administration in excess of \$65,000.

1.49. "Settlement Website" means the website to be established by the Settlement Administrator as set forth in section 7.

1.50. "Unknown Claims" mean any Released Claims which any Releasor does not know or suspect to exist in his or her favor at the time of the entry of the Judgment, and which, if known by him or her might have affected his or her settlement with and release of the Releasees, or might have affected his or her decision to opt out of the Settlement Class or to object to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date, the Class Representative shall expressly and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have to the fullest extent allowed by law, waived the provisions, rights, and benefits of any statute or principle of common law which provides that general releases do not extend to claims which the debtor does not know or suspect exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the creditor. Each Releasor may hereafter discover facts in addition to or different from those which he or she now knows or believes to be true with respect to the subject matter of the Released Claims, but the Releasors, upon the Effective

Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released to the fullest extent allowed by law any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which then exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, contract, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Class Representative acknowledges, and the Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a material term of the settlement of which this release is a part.

1.51. The plural of any defined term includes the singular, and the singular of any defined term includes the plural.

1.52. Other terms are defined in the text of this Agreement and shall have the meaning given to those terms in the text. In all documents related to the settlement, capitalized terms shall have the meanings given to them in this Agreement.

## **2. Conditions and Effectiveness of Agreement.**

2.1 This Agreement is expressly contingent upon the satisfaction, in full, of the material conditions set forth below. The Effective date of this Agreement shall be the date when all of the following actions and events listed below have occurred.

2.2 The Parties have signed the Agreement.

2.3 Class Action Fairness Act. This Settlement shall be administered as if governed by 28 U.S.C. § 1715. Defendant shall engage the Settlement Administrator to provide the notices required by 28 U.S.C. § 1715 to all appropriate federal and state officials within ten (10) days after



the Motion for Preliminary Approval is filed, but in no event shall the Final Approval Hearing take place prior to the provision of effective notices and the expiration of the statutory time. The Final Approval Order shall make a finding that 28 U.S.C. § 1715 was fully complied with.

2.4 Court Approval. The Court approves this Agreement in accordance with the following steps:

2.4.1 Motion for Preliminary Approval. After good faith consultation with Defense Counsel, Class Counsel will present a Motion for Preliminary Approval to the Court within twenty (20) days of execution of this Agreement including the Class Notice, in substantially the form of **Exhibit 1-A and Exhibit 1-B** hereto, and the Preliminary Approval Order, in substantially the form of **Exhibit 2** hereto.

2.4.2 Certification of Class for Settlement Purposes. In connection with the proceedings for Preliminary and Final Approval, the Class Representative shall seek orders (Preliminary and Final, respectively) certifying the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure for purposes of this Settlement only.

2.4.3 Entry of Preliminary Approval Order. The Court shall enter a Preliminary Approval Order in substantially the form of that attached **Exhibit 2** hereto, which shall among other things:

- a. Preliminarily certify the proposed Class under Rule 23 of the Federal Rules of Civil Procedure for settlement purposes only;
- b. Preliminarily approve this Agreement as fair, reasonable and adequate under Rule 23 of the Federal Rules of Civil Procedure subject to final determination by the Court;

- c. Approve the appointment of the Class Representative as representative of the Class for the Settlement and the appointment of Class Counsel as counsel for the Class for the Settlement;
- d. Approve a form of Mail Notice substantially in the form of **Exhibit 1-A** to be sent to the individuals on the Notice List;
- e. Direct the Settlement Administrator, promptly after entry by the Court of the Preliminary Approval Order, to mail the Notice to each individual on the Notice List by first-class mail;
- f. Schedule a Final Approval Hearing on final approval of this settlement;
- g. Establish a procedure for Members of the Class to exclude themselves and set a date, approximately thirty (30) days before the Final Approval Hearing, after which no Member of the Class shall be allowed to opt out of the Settlement and shall be bound to the terms of the Settlement;
- h. Establish a procedure for Settlement Class Members to appear and/or object to the Settlement and set a date, approximately thirty (30) days before the Final Approval Hearing, after which no Settlement Class Member shall be allowed to object;
- i. Require any attorneys representing Settlement Class Members, at the Settlement Class Member's expense, to file a notice of appearance;
- j. Stay all proceedings in the Action against the Defendant, other than proceedings as may be necessary to carry out the terms and conditions of the Agreement;
- k. Pending Final Approval, and upon expiration of the Opt-Out Deadline, preliminarily enjoin each Settlement Class Member from maintaining, commencing, prosecuting

or pursuing directly, representatively, or in any other capacity any Released Claim subsumed and covered by the Release in this Agreement in any court or arbitration forum;

l. Contain such other and further provisions consistent with the terms and provisions of this Agreement as the Court may deem advisable; and

m. Authorize the Parties to take all necessary and appropriate steps to establish the means necessary to implement the terms of this Agreement.

2.5 Class Notice. The Settlement Administrator shall cause the Class Notice to be mailed pursuant to the Preliminary Approval Order and the terms of this Agreement. After entry of the Preliminary Approval Order, SC agrees to re-run the class data to finalize the number of class members, the total number of Deficiency Balances waived, and the total Deficiency Payments in order to finalize the Class Members to which the Settlement Administrator will send Notice. As part of this process, SC will remove from the list of potential Class Members any individuals who received Deficiency Balance Waivers in connection the State AG Actions, unless that individual made any Deficiency Payments. If a potential Class Member received a Deficiency Balance Waiver in the State AG Actions and did make a Deficiency Payment, they will remain in the class as a Cash Refund Eligible Settlement Class Member. The Parties agree and acknowledge that any changes to the Class size that may result from this process is not a substantial change under this Agreement.

2.6 Order of Final Approval and Judgment. The Court shall enter the Order of Final Approval substantially in the form attached as **Exhibit 3**, which shall among other things:

a. Find that (i) the Court has personal jurisdiction over the Settlement Class Members, (ii) the Court has personal jurisdiction over the claims asserted in the Action, and (iii) venue is proper;

- b. Finally approve the Settlement;
- c. Finally certify the Settlement Class for settlement purposes only;
- d. Find that the form and means of disseminating the Class Notice complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution, and find that the Parties and procedures used complied with federal law so as to give full effect to the Settlement;
- e. Enter Final Judgment with respect to the Released Claims of all Settlement Class Members and dismiss the Released Claims with prejudice;
- f. Make the Releases in section 10 of this Agreement effective as of the date of the Final Judgment;
- g. Permanently bar and enjoin the Class Representative and all Settlement Class Members from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action in any jurisdiction for the Released Claims;
- h. Permanently bar and enjoin the Class Representative and all Settlement Class Members from organizing Settlement Class Members, or soliciting the participation of Settlement Class Members, or persons who would otherwise fall within the definition of Settlement Class Members but who have requested to be excluded from the Settlement Class, in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint or counterclaim to include class allegations, or seeking class certification in a pending action in any jurisdiction based on or relating to any of the Released Claims);
- i. Find that, by operation of the entry of the Judgment, the Class Representative and all of the Settlement Class Members shall be deemed to have forever released, relinquished, and discharged the Released Parties from any and all Released Claims;

j. Authorize the Parties to implement the terms of this Agreement;

k. Retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Agreement, the Final Judgment, and for any other necessary purposes; and

l. Issue related orders to effectuate the Final Approval of the Settlement and its implementation.

2.7 No Injunctive Relief. The Final Approval Order and Judgment shall not provide for any injunctive relief against Defendant.

2.8 Finality of Judgment. The Final Approval Order has become Final, including expiration of the time for filing any appeal or other form of objection to the Final Approval Order, full and final resolution of any appeal or objection that may be filed, and expiration of the time for seeking review of that disposition through an appeal, *en banc* hearing, or higher level of review.

3. Settlement Consideration.

3.1 In consideration for the Releases set forth in section 10, SC will provide the following benefits.

3.2 Waiver of Deficiency Balances. Upon the Effective Date, SC agrees to waive the any Deficiency Balance alleged to be owed by each Settlement Class Member. Settlement Class Members that SC has identified as entitled to receive a waiver of their Deficiency Balance in connection with the State AG Actions will not receive an additional waiver and will be excluded from the Class unless they are a Cash Refund Eligible Settlement Class Member.

3.3 Settlement Monetary Consideration.

3.3.1 Within thirty (30) days after the Court's entry of the Preliminary Approval Order, SC will fund the Settlement Fund by depositing the sum of One Million Nine Hundred

Thousand Dollars (\$1,900,000) into an escrow account with the Settlement Administrator, the terms of which shall be subject to SC's approval.

3.3.2 SC shall directly pay the Settlement Administrator's costs associated with disseminating the Class Notice, the Settlement Website, distributing checks to Cash Refund Eligible Settlement Class Members, and any escrow, administrative and/or bank related fees and costs associated with the Settlement Administrator's distribution of payments up to \$65,000 after the Settlement Administrator provides the information set forth in section 6.4. Any costs of the Settlement Administrator in excess of \$65,000 shall be paid out of the Settlement Fund.

3.3.3 After deducting the Court-approved Incentive Payment to the Class Representative, as set forth in section 5.2, and any administrative costs from the Settlement Fund in excess of \$65,000, Cash Refund Eligible Settlement Class Members shall be paid from the Settlement Fund in an amount equal to the Cash Refund Eligible Settlement Class Member's proportionate share of the Settlement Fund, which is the ratio of the dollar amount of the Cash Refund Eligible Settlement Class Member's Deficiency Payments to the dollar amount of all Deficiency Payments made by Settlement Class Members. In the case of accounts that list more than one person as a customer, debtor, or guarantor, the check will be made payable to the person listed in SC's records as the primary account holder.

3.3.4 SC represents that, to the best of its knowledge based on researching customer accounts, the Deficiency Balances owed by Settlement Class Members total

approximately \$333,000,000, and the amount of Deficiency Payments made by Settlement Class Members is approximately \$5,720,000.

3.3.5 Under no circumstances shall SC's total payment obligation under the Settlement Agreement exceed \$1,965,000, plus any attorneys' fees awarded in accordance with section 15 of this Agreement.

#### 3.4 Deletion of Tradelines.

3.4.1 SC represents and warrants that within sixty (60) days after the Effective Date, it will ask the Credit Reporting Agencies to delete or suppress the tradelines associated with each Settlement Class Member's Account. The Class Representative on behalf of himself and the Settlement Class agree that the Credit Reporting Agencies are separate entities from SC and that SC does not and cannot guarantee, warrant, or take responsibility for the performance of the Credit Reporting Agencies with respect to changing, deleting, suppressing, or making entries regarding any information previously reported to them by SC concerning the Settlement Class Member's Account and that no cause of action can or will be stated against SC, including any for breach of this Agreement against SC, in the event any credit reporting agency fails to amend a Settlement Class Member's credit history pursuant to the deletion request. SC is not required to request deletion from any credit reporting agency that SC has not reported the Account to.

3.4.2 Nothing in section 3.2 is an admission either about SC's current or past practices, or an admission that the terms are mandated by law or other requirement.

3.4.3 The relief set forth in this section shall not operate as an injunction or otherwise provide any Class Member or governmental official or agency, or any other person or entity with any right or power to seek direct enforcement of its terms, except a Member of the

Settlement Class may seek relief from the Court as to the breach of the terms of the Settlement Agreement if, and only if, SC fails to make the deletion request set forth in section 3.2.1.

3.5 Tax Treatment. This Agreement is enforceable regardless of its tax consequences. The parties understand and agree that this Agreement reflects the settlement of disputed legal claims and the Settlement Administrator makes no representations regarding the Agreement's tax consequences. For each Deficiency Balance Waiver or payment made pursuant to this Settlement, SC, itself or through the Settlement Administrator, may report each waiver or payment to government authorities including the IRS as required by law, and it may make all required deductions and/or withholdings. A Form 1099 may be issued to each Class Member who does not opt out. Settlement Class Members will be solely responsible for the reporting and payment of any federal, state, and/or local income or other tax or any other withholdings, if any, on any of the payments made pursuant to the Settlement. SC makes no representations as to the taxability of any portions of the benefits provided to Settlement Class Members herein. The Notice will advise Settlement Class Members to seek their own tax advice prior to acting in response to the Notices.

#### 4. Qualified Settlement Fund.

4.1 The Settlement Fund shall constitute a "qualified settlement fund" ("QSF") within the meaning of Treasury Regulation Section 1.46B-1 promulgated under Section 468B of the Internal Revenue Code of 1986 as amended. The Settlement Administrator shall be the "administrator" within the meaning of Treasury Regulation § 1.468B-2(k)(3).

4.2 Upon or before establishment of the QSF, the Settlement Administrator shall apply for an employer identification number for the QSF utilizing Internal Revenue Service Form SS-4 and in accordance with Treasury Regulation § 1.468B-2(k)(4), and shall provide SC with that employer identification number on a properly completed and signed IRS Form W-9.



4.3 If requested by either SC or the Settlement Administrator, the Settlement Administrator and SC shall fully cooperate in filing a relation-back election under Treasury Regulation § 1.468B-1 (j)(2) to treat the QSF as coming into existence as a settlement fund as of the earliest possible date.

4.4 Following its remittances of the Settlement Fund monies as described in paragraph 3.4.1 of this Agreement, SC shall have no responsibility, financial obligation or liability whatsoever with respect to the notifications to the Class required hereunder, the processing of opt out letters, payments to Cash Refund Eligible Settlement Class Members, payments to the Class Representative, investment of QSF funds, payment of federal, state, and local income, employment, unemployment, excise, and any other taxes, penalties, interest or other charges related to taxes imposed on the QSF or its disbursements, payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the QSF, since it is agreed that such deposits shall fully discharge SC's obligation to the Class Representative, Settlement Class Members, Class Counsel and expenses of administration with respect to the disposition of the Settlement Fund.

4.5 The Settlement Administrator shall file or cause to be filed, on behalf of the QSF, all required federal, state, and local tax returns, information returns, including, but not limited to, any Form 1099-series return, and tax withholdings statements, in accordance with the provisions of Treasury Regulation § 1.468B-2(k)(i) and Treasury Regulation § 1.468B-2(1)(2). Any contract, agreement or understanding with the Settlement Administrator relating to the QSF shall require the Settlement Administrator or its agent to file or cause to be filed, on behalf of the QSF, all required federal, state, and local tax returns, information returns, including, but not limited to, any Form 1099-series return, and tax withholdings statements, in accordance with the provisions of

Treasury Regulation § 1.468B-2(k)(1) and Treasury Regulation § 1.468B-2(1)(2). The Settlement Administrator may, if necessary, secure the advice of a certified public accounting firm in connection with its duties and tax issues arising hereunder.

**5. Payments from the Settlement Fund.**

5.1.1 Within sixty days (60) days of the Effective Date, and using the updated Notice List as set forth in section 7.2, the Settlement Administrator shall remit payment to the Cash Refund Eligible Class Members in the amount set forth in section 3.4.3 (the "Distribution Date").

5.1.2 For Cash Refund Eligible Settlement Class Members whose checks are returned by the U.S. Postal Service for lack of current correct address, the Settlement Administrator shall seek an address correction via an advanced address search or skip tracing, and then re-send their checks to any subsequently obtained address that the Settlement Administrator reasonably believes to be valid. After one re-mailing, neither the Settlement Administrator nor SC shall have any further obligation to locate any particular Cash Refund Settlement Class Member.

5.1.3 Cash Refund Eligible Settlement Class Members who are not located or whose checks are not cashed within 90 days after the Distribution Date shall be automatically rendered ineligible for cash refunds and shall be ineligible to share in the cash distribution portion of the settlement. The Settlement Administrator may void any checks issued to such Settlement Class Members.

5.1.4 The Settlement Administrator shall notify counsel in writing within 120 days after the Distribution Date of the number of Cash Refund Eligible Settlement Class Members who were sent checks, the number of Cash Refund Eligible Settlement Class members who did

not cash their checks, and the total dollar amount of the checks distributed by the Settlement Administrator, and the total dollar amount of uncashed checks.

5.2 Incentive Payment. Within sixty (60) days of the Effective Date and upon the Class Representative's submission of a Form W-9 to the Settlement Administrator, the Settlement Administrator shall remit an incentive award to the Class Representative from the Settlement Fund in the amount awarded by the Court but not to exceed \$10,000 ("Incentive Payment").

5.3 Administrative Costs in Excess of \$65,000. The Settlement Administrator's costs associated with disseminating the Class Notice, the Settlement Website, and any escrow, administrative and/or bank related fees and costs associated with the Settlement Administrator's distribution of payments in excess of \$65,000 shall be paid out of the Settlement Fund.

5.4 Reverter and Cy Pres. 150 days after the Distribution Date, the residue of the Settlement Fund, if any, up to \$65,000 shall revert to SC for reimbursement of Administrative Costs. Any residue remaining in the Settlement Fund in excess of \$65,000 shall be used to pay any Administrative Costs in excess of \$65,000 and any remainder shall be distributed to *cy pres* recipients to be agreed upon by the Parties.

## **6. Retention and Duties of Settlement Administrator.**

6.1 The Settlement Administrator shall administer the Settlement pursuant to the terms of this Agreement. The Settlement Administrator shall be responsible for Mail Notice (including data standardization and de-duplication of the Notice List including updating addresses through NCOA, reasonable efforts to update addresses for undeliverable notices, and printing and mailing the Class Notice), drafting and submitting the CAFA notice required by 28 U.S.C. § 1715, creating and hosting an informational website with downloadable forms (as necessary) and case information, deploying and operating an automated toll-free contact center, including Interactive

Voice Response (which does not provide a live operator) to obtain documents and answer questions, distributing the Incentive Payment to the Class Representative, and distributing payments to Cash Refund Eligible Settlement Class Members. The Settlement Administrator shall also be responsible for additional tasks the Parties jointly agree are necessary to accomplish administration of the Settlement.

6.2 The Settlement Administrator shall not have any duties with respect to settlement administration apart from those expressly provided for in this Agreement. SC shall not be responsible for any costs of the Settlement Administrator for additional services provided outside the scope of this Settlement Agreement.

6.3 SC will coordinate with the Settlement Administrator to provide Mail Notice to the Settlement Class, as provided in this Settlement Agreement. Because the information about Settlement Class members that will be provided to the Settlement Administrator will consist of confidential information, non-public personal information, and other information protected by privacy laws, the Settlement Administrator will execute a non-disclosure agreement and will take all reasonable steps to ensure that any information provided to it by SC will be used solely for the purpose of effecting this Settlement and otherwise shall comply with SC vendor and information security requirements. Any such information provided to the Settlement Administrator will not be provided to the Class Representative or Class Counsel. The Settlement Administrator shall administer the Settlement in accordance with the terms of this Settlement Agreement and, without limiting the foregoing, shall treat any and all documents, communications and other information and materials received in connection with the administration of the Settlement as confidential and shall not disclose any or all such documents, communications, or other information to any person or entity except as provided for in this Settlement Agreement or by court order.

6.4 The Settlement Administrator shall complete and provide to SC any W-9 forms necessary for SC to pay for the settlement administration costs and to otherwise implement this Settlement.

7. **Notice to the Class and Settlement Website.**

7.1 Subject to the Court's approval, the form of Notice shall be substantially in the form of **Exhibit 1** attached hereto.

7.2 Within thirty (30) days of the Court's entry of the Preliminary Approval Order, SC shall update the Class data to provide the Settlement Administrator the Notice List. This will include determining the total number of Deficiency Balances to be waived, the total Deficiency Payments, the Cash Refund Eligible Settlement Class Members, and which Class Members are excluded due to Deficiency Balance Waivers in connection with the State AG Actions. The Settlement Administrator shall treat the Notice List as confidential pursuant to the terms of the Protective Order and section 6.3 of this Agreement. Class Counsel shall not be entitled to a copy of the Notice List. SC represents and warrants that the Notice List includes all Class Members to the best of its knowledge.

7.3 If, by entering an order approving the final form of the Notice, the Court provides authorization to send the Notice to the individuals on the Notice List, the Settlement Administrator will mail the Notice to the individuals on the Notice List via first class mail through the United States Postal Service, postage pre-paid, no later than the Notice Mailing Date. The Agreement and Notice shall also be posted on the Settlement Website, as outlined in this section.

7.4 Following the mailing of the Notice, the Settlement Administrator shall provide counsel with written confirmation of the mailing.

7.5 Unless the Settlement Administrator receives a Notice returned from the United States Postal Service for reasons discussed below in this Paragraph, that Notice shall be deemed mailed and received by the individual to whom it was sent five (5) days after mailing. In the event that subsequent to the first mailing of a Notice, and prior to seven (7) days before the Opt-Out Deadline, the Notice is returned to the Settlement Administrator by the United States Postal Service with a forwarding address for the recipient, the Settlement Administrator shall re-mail the notice to that address, and the Notice will be deemed mailed at that point. The Notice shall be deemed received by the individual once it is mailed for the second time. Nothing in this Paragraph shall be construed to extend the Opt-Out Deadline for any Class Member.

7.6 No later than thirty (30) days after the Effective Date, the Settlement Administrator, upon the approval of the Court to file under seal pursuant to the Protective Order (to protect the names, addresses, and other personal information of Class members), will cause to be filed with the Court a list of the names and addresses of all Class Members to whom the Notice was sent.

7.7 No later than the mailing of the Class Notice, the Settlement Administrator shall establish the Settlement Website, which shall contain copies of this Agreement and Exhibits including the Class Notice as well as the Complaint, the Preliminary Approval Order, applications for attorney's fees and class representative incentive awards, and the Final Approval Order. The Settlement Website shall remain open and accessible until at least sixty (60) days following entry of the Final Approval Order.

## **8. Covenants Not to Sue.**

8.1 The Class Representative, on behalf of himself and the Settlement Class Members, covenant and agree: (i) not to file, commence, prosecute, intervene in, or participate in (as class members or otherwise) any action in any jurisdiction based on or relating to any of the Released

Claims, or the facts and circumstances relating thereto, against any of the Released Parties; (ii) not to organize or solicit the participating of Settlement Class Members, or persons who would otherwise fall within the definition of the Settlement Class but who requested to be excluded from the Settlement Class, in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action in any jurisdiction) based on or relating to any of the Released Claims or the facts and circumstances relating thereto, against any of the Released Parties; and (iii) that the foregoing covenants and this Agreement shall be a complete defense to any of the Released Claims against any of the Releasees.

**9. Representations and Warranties.**

9.1 The Class Representative represents and warrants that he has not assigned or otherwise transferred any interest in any of the Released Claims against any of the Released Parties, and further covenant that they will not assign or otherwise transfer any interest in any of the Class Representative's Released Claims.

9.2 The Class Representative represents and warrants that he has no surviving claim or cause of action against any of the Released Parties with respect to any of the Released Claims.

9.3 The Parties, and each of them on his, her, or its own behalf only, represent and warrant that they are voluntarily entering into the Settlement Agreement as a result of arm's-length negotiations and mediation among their counsel and before the Hon. Morton Denlow (ret.), that in executing the Settlement Agreement, they are relying solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently selected counsel and Judge Denlow, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof; and that, except as

provided herein, they have not been influenced to any extent whatsoever in executing the Settlement Agreement by representations, statements or omissions pertaining to any of the foregoing matters by any Party or by any person representing any party to the Settlement Agreement. Each of the parties assumes the risk of mistake as to facts or law.

**10. Releases.**

10.1 On the Effective Date, Releasors, including but not limited to the Class Representative, on his own behalf and on behalf of each Settlement Class Member, by operation of this Release and the Judgment set forth in the Order of Final Approval, do hereby and shall be deemed to have fully, finally, conclusively, irrevocably, and forever released, settled, compromised, relinquished, and discharged any and all of the Releasees of and from any and all Released Claims and, without further action by any person or the Court, will be deemed: (a) to have consented to dismissal of the Action and the dismissal with prejudice of any and all Released Claims; (b) to have released and forever discharged any and all Released Claims; and (c) to be forever barred and enjoined from instituting or further prosecuting, in any forum whatsoever, including but not limited to any state, federal, or foreign court, or regulatory agency, or any arbitration forum, each and every Released Claim. The Parties agree that the Releasees will suffer irreparable harm if any Settlement Class Member takes action inconsistent with this paragraph, and that in that event, the Releasees may seek an injunction as to such action without further showing of irreparable harm in this or any other forum.

10.2 The Releasors acknowledge and agree that they are aware that they may hereafter discover material or immaterial facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Release, that it is possible that unknown facts, losses or claims exist, and that known losses may have been underestimated in



amount or severity. This was explicitly taken into account in connection with this Agreement. It is the Releasers' intention to, and they do hereby, upon the Effective Date of this Agreement, fully, finally, and forever settle and release each and every one of the Releasees from each and every Released Claim.

10.3 Subject to Court approval, each Settlement Class Member shall be bound by this Agreement and all of their Released Claims shall be dismissed with prejudice and released even if they never received actual, prior notice of the Action or its settlement in the form of the Notice or otherwise. The Release and agreements contained in this section 10 shall apply to and bind all Settlement Class Members, including those Settlement Class Members whose Notices are returned as undeliverable, and those for whom no current address can be found, if any.

10.4 On the Effective Date, Releasers hereby release the Releasees from each and every Released Claim.

10.5 Promptly after the Effective Date, Settlement Class Members shall dismiss with prejudice all claims, actions or proceedings that are released pursuant to this Agreement. In the event any such actions or proceedings are not dismissed and SC learns of the action, SC may provide notice to the Settlement Class Member of this Settlement and request dismissal of the action.

## **11. Opt Out Rights.**

11.1 A Settlement Class Member who wishes to be excluded from the Settlement Class must do so in writing. To opt out, the Settlement Class Member must comply with the procedures and deadlines in this Agreement and any Court order entered in this case.

11.2 In order to opt out, the Class Member must complete and send to the Settlement Administrator, at the address listed in the Class Notice and on the Settlement Website for this

Settlement, a Request to Opt Out that is postmarked no later than the Opt-Out Deadline, as specified in the Class Notice. The Request to Opt Out must: (a) identify the case name; (b) identify the name and address of the person requesting exclusion; (c) be personally signed by the person requesting exclusion; and (d) contain a statement that indicates a desire to be excluded from the Settlement Class, such as "I hereby request that I be excluded from the proposed Settlement Class in the Action." Mass or class opt outs shall be void.

11.3 Any Settlement Class Member who does not opt out of the Settlement in the manner described herein shall be deemed to be part of the Settlement Class upon the expiration of the Opt-Out Deadline, and shall be bound by all subsequent proceedings, orders, and judgments.

11.4 Any Settlement Class Member who desires to opt out must take timely affirmative written action pursuant to this section, even if the person desiring to opt out of the Class (a) files or has filed a separate action against any of the Released Parties, or (b) is, or becomes, a putative or actual class member in any other class action filed against any of the Released Parties.

11.5 Any Settlement Class Member who properly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments relating to the Settlement; (b) be entitled to relief under, or be affected by, the Agreement; (c) gain any rights by virtue of the Agreement; or (d) be entitled to object to any aspect of the Settlement.

11.6 The Settlement Administrator shall provide Class Counsel and Defense Counsel with a list of all timely Requests to Opt Out within seven (7) business days after the Opt-Out Deadline.

11.7 Notwithstanding the foregoing, a Class Member shall have the right to revoke a properly and timely submitted request for exclusion if a notice of the Class Member's election to

revoke his or her exclusion is sent to the Settlement Administrator, postmarked on or before the Opt-Out Deadline.

## **12. Objections**

12.1 Overview. Any Settlement Class Member may object to the Settlement. To object, the Settlement Class Member must comply with the procedures and deadlines in this Agreement and any Court order entered in this case.

12.2 Process. Any Settlement Class Member who wishes to object to the Settlement must do so in writing on or before the Objection Deadline, as specified in the Class Notice and Preliminary Approval Order. The written objection must be filed with the Clerk of Court, and mailed (with the requisite postmark) to Class Counsel and Defense Counsel (at the addresses identified in section 19), no later than the Objection Deadline.

12.3 The requirements to assert a valid written objection shall be set forth in the Class Notice and on the Settlement Website, and, to be valid, the written objection must include: (a) the case name and number; (b) the name, address, telephone number of the Settlement Class Member objecting and, if represented by counsel, of his/her counsel; (c) the basis for objection; and (d) a statement of whether he/she intends to appear at the Final Approval Hearing, either with or without counsel.

12.4 Within seven (7) business days of the Objection Deadline, the Settlement Administrator shall provide a report to the Court setting forth a list of Objections that meet the above guidelines. The Court shall have the ultimate determination of whether an Objection has been appropriately made.

12.5 Any Settlement Class Member who does not make his or her objection in the manner provided in this section shall be deemed to have waived such objection, shall not be

permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement as incorporated in the Agreement, and to the award of Attorney's Fees and Expenses to Class Counsel and the payment of an Incentive Award to the Class Representative, unless otherwise ordered by the Court.

12.6 Appearance. Subject to approval of the Court, any Class Member who files and serves a written objection in accordance with this section and the Class Notice may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Settlement Class Member: (a) files with the Clerk of the Court a notice of intention to appear at the Final Approval Hearing by the Objection Deadline ("Notice of Intention to Appear"); and (b) serves the Notice of Intention to Appear on all counsel designated in the Class Notice by the Objection Deadline.

12.7 The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing.

12.8 Any Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in the Agreement and Class Notice shall not be entitled to appear at the Final Approval Hearing and raise any objections.

### **13. Termination.**

13.1 In the event that the Settlement set forth in this Agreement is not approved without changes by the Court or, if one of the conditions upon which the Agreement is based is not satisfied, or if the Court determines that it lacks jurisdiction to approve the Settlement, or if there

is a court order from another court that takes jurisdiction over some or all of the Claims, or if there is a regulator determination that frustrates the purpose of and protection of the Settlement, or in the event that the Effective Date does not occur, no further payments shall be made by SC to anyone in accordance with the terms of this Agreement, the Parties will bear their own costs and fees with regard to the efforts to obtain Court approval, and this Agreement shall be deemed null and void with no effect on the Action whatsoever. Reductions in the amount of the requested Attorneys' Fees and Expenses shall not be deemed a substantial change necessitating termination of the Settlement.

13.2 Failure of the Court to enter the Preliminary Approval or Final Approval Order in its entirety or in a similar form without material changes thereto as determined by SC or the Class Representative will be grounds for SC or the Class Representative to terminate the Settlement and the terms of this Agreement. If any material portion of the Agreement or the Order of Final Approval is vacated, modified, or otherwise altered on appeal, SC or the Class Representative may, in their sole discretion, within fourteen (14) calendar days of such appellate ruling, declare that the Agreement has failed to become effective, and in such circumstances the Agreement shall cease to be of any force and effect.

13.3 In the event that 1% or more Class Members exclude themselves from the Settlement Class, SC shall have the absolute discretionary right to terminate this settlement and Agreement and in such case, each and every one of SC's obligations under this Agreement shall cease to be of any force and effect, and this Agreement and any orders entered into in connection therewith shall be vacated, rescinded, cancelled, and annulled (except for any provision included in the Preliminary Approval Order substantially similar to paragraph 20 of the Preliminary Approval Order attached as **Exhibit 2**). If SC exercises this option, the Parties shall return to the

status quo in the Action as if the Parties had not entered into this Agreement. In addition, in such event, the Agreement and all negotiations, Court orders, and proceedings relating thereto shall be without prejudice to the rights of the Parties, and each of them, and evidence relating to the Agreement and all negotiations shall not be admissible or discoverable in the Action or in any other proceeding. SC must exercise this option pursuant to this paragraph within ten (10) days after receiving the Opt Out List and at least three (3) days prior to the Final Approval Hearing, by giving written notice of such exercise to Class Counsel.

13.4 If one of the Parties exercises a right herein to terminate or rescind this Agreement or this Agreement is not approved by the Court pursuant to the proposed Order of Final Approval, this Agreement, the conditional Class certification provided herein, the Settlement proposed herein (including any modifications made with the consent of the Parties), and any action taken or to be taken in connection therewith shall be terminated and shall become null and void and have no further force or effect, the Preliminary Approval Order shall be vacated (except for any provision included in the Preliminary Approval Order substantially similar to Paragraph 20 of the Preliminary Approval Order attached as **Exhibit 2**), the Parties shall be restored to their respective positions existing prior to the execution of this Agreement, and the Parties' rights and obligations with respect to the use of this Agreement and the settlement contemplated hereby will be subject to section 18 hereof. In addition, neither this Agreement, the preliminary certification of the Class, the Preliminary Approval Order, nor any other document in any way relating to any of the foregoing, shall be relied on, referred to, or used by anyone in any way for any purpose in connection with any further proceedings in this Action and/or any action, lawsuit, arbitration, or proceeding involving a Released Claim.

**14. Certification of Settlement Class For Settlement Purposes.**

14.1 After the Preliminary Approval Order and no later than twenty-eight (28) days before the Final Approval Hearing, the Class Representative shall move for Final Approval of the Settlement and entry of Final Judgment and shall request that the preliminary certification of the Settlement Class for settlement purposes be made final. Any responsive papers shall be filed and served no later than seven (7) calendar days prior to the Final Approval Hearing.

14.2 If the Settlement is not granted final approval and the Final Approval Order is not entered in substantially the form attached hereto as **Exhibit 3**, the certification of the above-described Settlement Class shall be automatically vacated and shall not constitute evidence or a binding determination that the requirements for certification of a class for any other purposes in this or any other action can be or have been satisfied. In such circumstances, SC reserves and shall have all rights to challenge certification of a Settlement Class or any other class for any other purpose in the Action or any other action on all available grounds as if no Settlement Class had been certified.

**15. Attorneys' Fees and Litigation Costs**

15.1 SC will not object to Class Counsel moving the Court for an award of Attorneys' Fees and Expenses in the Action in an amount not to exceed \$2,500,000.

15.2 Class Counsel's application for Attorney's Fees and Expenses shall be filed and served no later than twenty (20) calendar days prior to the Final Approval Hearing. Class Counsel agree that the amounts of such costs and fees awarded shall compensate them for all legal work in the Action up to and including the date of Final Judgment, including any appeal of the Judgment, as well as for all legal work and costs that may be incurred in the Action after the date of Final Judgment. Provided any award of Attorneys' Fees and Expenses does not exceed \$2,500,000, SC

shall pay the Attorneys' Fees and Expenses allowed by the Court in the Final Judgment. In the event the Court awards Class Counsel less than \$2,500,000 in Attorneys' Fees and Expenses, this Settlement Agreement shall nonetheless remain in full force and effect and the other benefits or payments due or to become due shall not be increased or changed. In no event shall SC be obligated to pay Attorneys' Fees and Expenses in an amount greater than \$2,500,000 in connection with the Action.

15.3 Neither SC nor the Releasees shall have any responsibility for any application of Attorney's Fees and Expenses submitted by Class Counsel. The procedure for and the grant or denial or disallowance by the Court of the application for Attorneys' Fees and Expenses is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceedings relating to the applications for Attorneys' Fees and Expenses or any appeal from any order relating thereto or reversal or modification thereof, will not operate to terminate or cancel this Agreement, or affect or delay the Finality of Judgment approving the Agreement and the Settlement, except as provided for in section 13.

15.4 Within thirty (30) days after the Effective Date or entry of the an order approving the application for attorneys' fees (whichever is later), SC shall make payment of the Attorneys' Fees and Expenses awarded by the Court (not to exceed \$2,500,000) to Class Counsel, pursuant to payment instructions in writing from Class Counsel, which may include depositing the Attorneys' Fees and Expenses into a separate QSF to be paid to Class Counsel in a manner they choose. Except as provided in section 15.6, in accepting this payment, the Class Representative and Class Counsel, on behalf of themselves and all Settlement Class Members, acknowledge that the payment and method of payment under this Agreement are in full satisfaction of any and all



claims, rights, and demands that Class Counsel, the Class Representative, or the Settlement Class had, have, or may claim to have in the future for attorneys' fees, costs, expenses, or any other payment in connection with this Action or this Agreement, up to the date of final judgment. SC shall have no responsibility for allocation or distribution of the award among Class Counsel.

15.5 A Form 1099 for this payment may be filed. Class Counsel shall cooperate with SC to provide all information necessary to process the payment including completing any requested tax forms (*e.g.*, IRS Form W-9 and applicable tax identification numbers). SC shall have no responsibility for, and no liability whatsoever with respect to, any tax obligations or any allocation among the Class Representative and Class Counsel, and/or any other person who may assert some claim thereto, of any award or payment made in this Action or pursuant to this Agreement, including but not limited to any award or payment pursuant to this section 15. Class Counsel and the Class Representative shall alone be responsible for the reporting and payment of any federal, state, and/or local income or other form of tax on any payment made pursuant to this section 15. No party shall be deemed the prevailing party for any other purposes of the Action.

**16. Stay of Discovery and Other Proceedings.**

16.1 To the extent the Action has not already been stayed by the Court, upon execution of this Agreement, the Parties shall discontinue all discovery activity or related proceedings in the Action.

16.2 Upon the Effective Date, and notwithstanding any of the other provisions in this Agreement, the Defendants shall have no obligation to preserve documents and evidence with respect to Released Claims, and the Class Representative and Class Counsel shall not pursue any spoliation claims or other actions or sanctions against Defendants with respect to documents or evidence related to the Released Claims.

**17. Return/Destruction of Discovery Materials**

17.1 The Parties agree that the terms of the Protective Order govern the dealings of the Parties with respect to materials produced in discovery in this Action and shall continue in force after the Effective Date of the Settlement. Accordingly, within thirty (30) business days of the Effective Date, the Parties and their counsel of record, and any consultants or experts retained by the Parties or their counsel of record, shall use their best efforts to locate all Confidential Information (as the term is defined in the Protective Order) produced in the Action and return such Confidential Information to counsel of record for the producing party or destroy all originals or reproductions (whether in electronic, hard copy, or other form) of the Confidential Information.

17.2 Within sixty (60) days of the Effective Date, counsel of record shall make written certification that they have used their best efforts to search for all Confidential Information, that they have instructed the Class Representative, Defendants, and all consultants or experts to return or destroy Confidential Information, and that, to the best of their knowledge, they have retained no originals or copies of any Confidential Information. The Parties acknowledge that their duty to return or destroy all Confidential Information is a continuing duty and the Parties agree to return or destroy any such information found in the future.

17.3 Notwithstanding this section, the Parties shall be excused from any duty to return or destroy Confidential Information to the extent necessary to comply with outstanding court orders or with judicial and non-judicial subpoenas, civil investigative demands or other compulsory process.

17.4 The Court shall retain jurisdiction to ensure compliance with the Protective Order.

**18. Media and Confidentiality**

18.1 The Parties, including their Counsel, agree that the terms of this Settlement shall remain confidential and not be disclosed by any party until the Settlement Agreement is filed in connection with the Motion for Preliminary Approval.

18.2 The Parties, including their counsel, agree that they shall not at any time publish or issue a press release including but not limited to the media or on the Internet concerning the Settlement. The Parties further agree that they shall not make any statement, with or without attribution, in response to any media inquiries concerning the Action, Defendants or the Settlement. In response to any such inquiries, the Parties shall refer the inquiring media to the papers filed in the court docket. The Parties agree that they may issue a statement that describes the case and settlement using factual information in the public record and using non-disparaging language.

**19. Notices**

19.1 All notices (other than the Class Notice) required by the Agreement shall be made in writing and communicated by mail and email to the following addresses:

All notices to Class Counsel shall be sent to Class Counsel c/o:

Ronald I. Frederick  
FREDERICK & BERLER LLC  
767 East 185<sup>th</sup> Street  
Cleveland, Ohio 44119  
[ronf@clevelandconsumerlaw.com](mailto:ronf@clevelandconsumerlaw.com)

Daniel P. Goetz  
WEISMAN, KENNEDY & BERRIS CO., L.P.A.  
1600 Midland Building  
101 W. Prospect Avenue  
Cleveland, Ohio 44115  
[dgoetz@weismanlaw.com](mailto:dgoetz@weismanlaw.com)

All notices to Defense Counsel shall be sent to Defense Counsel c/o:

K. Issac deVyver  
Benjamin J. Sitter  
MCGUIREWOODS LLP  
260 Forbes Avenue, Suite 1800  
Pittsburgh, Pennsylvania 15222  
[kdevyver@mcguirewoods.com](mailto:kdevyver@mcguirewoods.com)  
[bsitter@mcguirewoods.com](mailto:bsitter@mcguirewoods.com)

**20. Miscellaneous Provisions**

20.1 Cooperation. The Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effect and implement all terms and conditions of the Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of the Agreement.

20.2 No Admission. The Agreement compromises claims which are contested in good faith, and it shall not be deemed an admission by any of the Parties as to the merits of any claim or defense. The Parties agree that the amounts paid in settlement and the other terms of the Agreement were negotiated in good faith by the Parties and at arm's length and reflect a settlement that was reached voluntarily after consultation with competent legal counsel. Neither the Agreement nor the Settlement, nor any act performed or document executed pursuant to, or in furtherance of, the Agreement or the settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Releasees, or any of them; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Releasees, or any of them, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. The Class Representative and Class Counsel agree not to argue or present any argument, and hereby waive any argument, that SC could not contest (or is estopped from contesting) class certification

and/or proceeding collectively on any grounds if this Action were to proceed; this Agreement shall not be deemed an admission by, or ground for estoppel against, SC that class certification and/or proceeding collectively in the Action is proper or cannot be contested on any grounds.

20.3 Exhibits. All of the exhibits to the Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

20.4 Amendment/Modification. The Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest. The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement. Class Counsel, on behalf of the Class, are expressly authorized by the Class Representative to take all appropriate action required or permitted to be taken by the Class pursuant to the Agreement to effect its terms, and also are expressly authorized to enter into any modifications or amendments to the Agreement on behalf of the Class which they deem appropriate.

20.5 Entire Agreement. The Agreement and the related documents entered at this time of this Agreement or referenced herein constitute the entire agreement among the Parties hereto concerning the settlement of the Action. No representations, warranties, or inducements have been made to any party concerning the Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. Except as otherwise provided herein, each party shall bear its own costs and attorney fees.

20.6 Authority. Each person executing the Agreement or any of its exhibits on behalf of any Party hereto hereby warrants that such person has the full authority to do so.

20.7 Counterparts. The Agreement may be executed in one or more counterparts, including by signature transmitted by facsimile or by email in PDF format. All executed counterparts and each of them shall be deemed to be one and the same instrument.

20.8 Successors and Assigns. The Agreement shall be binding upon, and inures to the benefit of, the heirs, executors, successors, and assigns of the Parties hereto; but this Agreement is not designed to and does not create any third-party beneficiaries.

20.9 No Third-Party Rights or Beneficiaries. Except as expressly provided for herein, no government agency or official can claim any rights under this Agreement or Settlement, whether with respect to the conduct that is the subject of the Releases, the restrictions in section 3, or the funds (or remainder of funds) paid or used in the Settlement. There are no third party beneficiaries created or implied.

20.10 Jurisdiction. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Agreement until such time that the Court enters an order dismissing the action with prejudice.

20.11 Governing Law. The Agreement and the exhibits hereto shall be considered to have been negotiated, executed, and delivered, and to have been wholly performed, in the State of Ohio, and the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Ohio without giving effect to that State's choice of law principles.

20.12 Drafting. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either party. No party shall be deemed the drafter of this Agreement. The Parties acknowledge that the terms of the Agreement


are contractual and are the product of negotiations between the Parties and their counsel. Each party and their counsel cooperated in the drafting and preparation of the Agreement. In any construction to be made of the Agreement, the Agreement shall not be construed against any party and the canon of contract interpretation to the contrary shall not be applied.

20.13 Recitals. The recitals set forth above shall be and hereby are terms of this Agreement as if set forth herein. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.


20.14 No Collateral Attack. The Settlement Agreement shall not be subject to collateral attack by any Settlement Class Member or any recipient of notices of the Settlement after the Final Judgment is entered.

Dated: \_\_\_\_\_, 2020

CLASS REPRESENTATIVE  
JOHN C. RAYBURN

By:   
JOHN C. RAYBURN  
SANTANDER CONSUMER USA INC.

Dated: 9/25/, 2020

  
By: Jason Miller  
Name: Sr. Director Litigation  
Title: \_\_\_\_\_