# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

ASHLY ALEXANDER, CEDRIC BISHOP, AMY THOMAS-LAWSON, WILLIAM GREEN, BRENDA BOLEY, MIGUEL PADILLA, and VICTORIA DAWKINS

On behalf of themselves individually and similarly situated persons,

Plaintiffs,

Case No. 1:20-cv-02369-RDB

v.

CARRINGTON MORTGAGE SERVICES, LLC,

Defendants.

#### MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda Boley, Miguel Padilla, and Victoria Dawkins (hereinafter, "Plaintiffs"), through counsel and pursuant to Fed. R. Civ. P. 23, move this Court for preliminary approval of the proposed class action settlement in this matter, and for preliminary approval of a settlement class. The proposed, nationwide settlement class involving 442,050 consumer, mortgage loans and their borrowers is defined as follows:

All persons who paid a fee to Carrington for making a mortgage loan payment by telephone, IVR, or via the internet, between January 1, 2016 through December 31, 2021 who fall into one or more of the following groups:

(1) were borrowers on residential mortgage loans on properties located in California, Texas, New York, Maryland, or Florida;

- (2) were borrowers on residential mortgage loans on properties in the United States to which Carrington acquired servicing rights when such loans were 30 days or more delinquent on loan payment obligations; or
- (3) were borrowers on residential mortgage loans on properties located in the United States insured by the Federal Housing Administration.

In support of this motion, Plaintiffs refer the Court to the accompanying memorandum of law and attached declarations. Defendant Carrington Mortgage Services, LLC does not oppose this motion.

Dated: May 25, 2022 Respectfully submitted,

#### /s/ Hassan A. Zavareei

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing and attachments was sent to all parties and counsel of record when this motion was filed with the Court's ECF service.

/s/ Hassan A. Zavareei Hassan A. Zavareei

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Case No. 1:20-cv-02369-RDB

On behalf of themselves individually and similarly situated persons,

Plaintiffs,

v.

CARRINGTON MORTGAGE SERVICES, LLC,

Defendants.

# PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND FOR CERTIFICATION OF SETTLEMENT CLASS

Dated: May 25, 2022

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#### I. INTRODUCTION

Plaintiffs Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda Boley, Miguel Padilla, and Victoria Dawkins, individually and on behalf of the proposed Settlement Class, seek preliminary approval of a proposed Settlement of claims against Defendant Carrington Mortgage Services LLC ("Carrington"). The Settlement Agreement, if approved, will establish a common fund of over \$18 million to provide monetary relief to Settlement Class members, and will provide injunctive relief from charges going forward.

Specifically, a \$18,181,898.65 Common Fund will be created to resolve the claims of Plaintiffs and the Settlement Class Members deriving from Carrington's practice of charging fees for making mortgage payments online or over the phone ("Convenience Fees" or "Pay-to-Pay Fees"). The Common Fund represents approximately 35% of the Convenience Fees collected during the Class Period. The Fund will provide cash payments to Settlement Class Members, pay Administrative Costs to provide notice and administer the settlement, and pay any attorneys' Fee and Expense Award and Service Awards that the Court may approve. Settlement Class Members will not need to submit a claim form in order to receive monetary compensation, but instead will automatically receive a payment based on the amount they were charged for Convenience Fees.

Second, the Settlement includes valuable injunctive relief: Carrington has agreed to refrain from charging Convenience Fees for at least three years after Final Approval, while allowing borrowers to make payments foy phone, IVR, or internet without charge. Because Carrington collected, on average \$8.64 million a year in Convenience Fees from Settlement Class Members, the injunctive relief is estimated to be worth \$26 million.

<sup>&</sup>lt;sup>1</sup> Unless otherwise specifically defined herein, all capitalized terms have the same meanings as those set forth in the parties' Settlement Agreement, attached as Exhibit 1 to the Declaration of Kristen Simplicio ("Simplicio Decl.").

The proposed Settlement should be preliminarily approved. The settlement provides substantial monetary relief to the Settlement Class, as well as significant injunctive relief stopping a major mortgage loan servicer from charging of Convenience Fees for at least three years while continuing to offer free electronic payment services to borrowers. Indeed, the injunctive relief will save Settlement Class Members significant monetary expense as they pay their mortgages in the future. This relief was secured after seven months of settlement negotiations and a fourteen hour long mediation before an independent mediator, by experienced and informed counsel. As such, the proposed Settlement warrants preliminary approval, as the terms are fair, reasonable, and adequate. Accordingly, Plaintiffs request that the Court (1) preliminarily approve the proposed Settlement, (2) certify the Settlement Class for settlement purposes only, (3) appoint Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda Boley, Miguel Padilla, and Victoria Dawkins as Class Representatives, (4) appoint Hassan A. Zavareei and Kristen G. Simplicio of Tycko & Zavareei LLP, James L. Kauffman of Bailey Glasser LLP, and Phillip Robinson of Consumer Law Center, LLC as Class Counsel, (5) appoint Epiq as the Settlement Administrator and order that Class Notice be distributed to the Settlement Class, and (6) schedule a Final Approval Hearing. Carrington does not oppose the relief sought in this Motion.

#### II. BACKGROUND

To challenge Carrington's practice of charging and collecting illegal processing fees from borrowers paying their monthly mortgage by phone or online, Plaintiffs Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda Boley, Miguel Padilla, and Victoria Dawkins commenced separate actions in Maryland, California, and Florida. On July 10, 2020, Plaintiff Alexander initiated a class action lawsuit in the Circuit Court of Baltimore County, alleging that Carrington violated the Maryland Consumer Debt Collection Act ("MCDCA") and

the Maryland Consumer Protection Act ("MCPA"). See Alexander v. Carrington Mortg. Servs., LLC, 1-20-CV-02369-RDB (D. Md.), Dkt. 3. On August 17, 2020, Carrington removed the action to this Court, and on September 8, Plaintiffs filed an amended complaint, adding Plaintiff Bishop (also a Maryland homeowner) and an allegation that Carrington violated the federal Fair Debt Collection Practices Act ("FDCPA"). Dkts. 1, 20. On December 16, 2019, Plaintiffs Thomas-Lawson (Maryland), Boley (Texas), Padilla (California), and Green (New York) initiated a class action in this Court, see 1-19-CV-03567-CCB (D. Md.), which was transferred to the Central District of California on August 13, 2020. See Thomas-Lawson v. Carrington Mortg. Servs. LLC, 2-20-cv-07301-ODW(Ex) (C.D. Cal.), Dkt. 1. Plaintiffs Thomas-Lawson, Boley, Padilla, and Green alleged that Carrington violated the FDCPA, California's Rosenthal Fair Debt Collections Act ("Rosenthal Act") and Unfair Competition Law ("UCL"), the Texas Debt Collection Act ("TDCA"), and the MCDCA and MCPA. See id. And on May 20, 2020, Plaintiff Dawkins initiated a class action in the Southern District of Florida against Carrington, alleging breach of contract, unjust enrichment, and violations of the Florida Consumer Collection Practices Act ("FCCPA") and the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"). See Dawkins v. Carrington Mortg. Servs. LLC, 1:20-CV-60998-RAR (S.D. Fla.), Dkt. 1.<sup>2</sup>

Although the three putative class actions were brought separately, each is based on one central harm: Carrington charged and collected millions of dollars in \$5 to \$20 Convenience Fees from homeowners in addition to their regular mortgage payments, and Plaintiffs allege that this

<sup>&</sup>lt;sup>2</sup> On May 26, 2020, another plaintiff filed a lawsuit against Carrington in the Southern District of Florida with similar allegations and claims as the Plaintiffs here. *See Attix v. Carrington Mortgage Services, LLC*, Case No. 20-cv-22183-UU (S.D. Fla.) ("*Attix* Litigation"). After the court in that case denied Carrington's motion to compel arbitration, Carrington filed an appeal to the Eleventh Circuit, which is still pending. *See Carrington Mortgage Services, LLC v. Attix*, 2020-13575 ("*Attix* Appeal").

practice violated the FDCPA, and the laws of Maryland, California, Florida, and Texas, and breached their mortgage agreements. The Rosenthal Act, the MCDCA, the FCCPA, and the TDCA are all modeled on the FDCPA, which prohibits "[t]he collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law." 15 U.S.C. § 1692f(1). Plaintiffs alleged that these fees violated the FDCPA and California, Maryland, Florida, and Texas state law because the fees were not expressly authorized by their mortgage agreements or any statute.

In the *Alexander* case before this Court, Carrington moved to dismiss the Amended Complaint, Plaintiffs Alexander and Bishop opposed, and the Court issued an order granting the motion, dismissing Plaintiffs' claims in their entirety. *See* Dkts. 24, 28, 32-33. Plaintiffs appealed the dismissal, *see* Dkt. 34, and on January 19, 2022, the Fourth Circuit reversed. *See Alexander v. Carrington Mortg. Servs., LLC*, 23 F.4th 370 (4th Cir. 2022).

In the *Thomas-Lawson* matter, Plaintiffs Thomas-Lawson, Boley, Padilla, and Green moved to appoint Interim Class Counsel, and Carrington opposed. *See* Dkts. 71, 81. Carrington moved both to compel arbitration of the claims brought by Plaintiffs Boley and Green and to dismiss the complaint, and Plaintiffs Thomas-Lawson, Boley, Padilla, and Green opposed. *See* Dkts. 75-76, 85-86. On April 5, 2021, the court issued an order denying Carrington's motion to compel arbitration, granting Carrington's motion to dismiss in its entirety, and denying Plaintiffs' Rule 23(g) motion as moot. *See* Dkt. 97. Plaintiffs appealed the dismissal of their claims to the Ninth Circuit, *see* Dkt. 98, the parties submitted their briefs, and the Ninth Circuit set oral argument for June 9, 2022. *See Thomas-Lawson v. Carrington Mtg. Servs., LLC*, 21-55459 (9th Cir.), Dkts.

17, 35, 47-48. The appeal is currently pending, but stayed pending consideration of this settlement. *See id.* 

In the *Dawkins* matter, Carrington moved to compel arbitration and to stay discovery, and Plaintiff Dawkins opposed. *See* Dkts. 22-23, 33-34. Because the court in the *Attix* Litigation denied Carrington's motion to compel arbitration, which Carrington appealed, the court granted a joint motion to stay the *Dawkins* matter pending resolution of the *Attix* Appeal. *See* Dkts. 43-44, 51, 56.

To preserve the resources of the parties and the Court, the parties agreed that Plaintiffs' claims should be consolidated in this Court and a single Settlement Agreement considered and approved by one Court, rather than proceeding piecemeal. Thus, in advance of this Motion, the parties have notified the other courts of the Settlement and requested to stay proceedings pending approval of the Settlement. *See Thomas-Lawson*, Dkts. 53-54; *Dawkins*, Dkt. 62. And the Plaintiffs have filed a Second Amended Complaint by consent consolidating their claims before this Court. Dkt. 52.

After months of discussion, the parties agreed to engage in mediation with the assistance of Jeff Kichaven, a third-party mediator, to explore whether a negotiated resolution was possible in *Alexander*, *Thomas-Lawson*, and *Dawkins* ("the Convenience Fee Actions"). *See* Simplicio Decl. ¶ 6. In advance of the mediation, Carrington provided data regarding the Convenience Fees collected from borrowers to Class Counsel. Based on that data, Class Counsel prepared a mediation statement and provided it to both Mr. Kichaven and Carrington's counsel. *Id.* ¶ 7.

On April 20, 2022, the parties mediated before Mr. Kichaven. *Id.* ¶ 11. The mediation began at 12:00 pm (Eastern time) and continued for a full fourteen hours, until the parties reached an agreement on all material terms at approximately 2:00AM on April 21. *Id.* Class Counsel entered the mediation fully informed of the merits of Settlement Class members' claims and were

prepared to continue to litigate rather than accept a settlement that was not in the Plaintiffs' and Settlement Class's best interests. *Id.* ¶ 10. After these hard-fought negotiations, where both sides made presentations to the mediator and all attendees, the parties reached an agreement on all material terms, including the amount of the Common Fund and the injunctive relief. *Id.* ¶¶ 11-12. Class Counsel prepared the first draft of the Settlement Agreement, and the parties then negotiated the precise terms and language of the Agreement now before the Court. *Id.* 

#### III. THE SETTLEMENT AGREEMENT

#### A. The Proposed Class

The Settlement Agreement contemplates certification of the following Settlement Class for settlement purposes only:

All persons who paid a fee to Carrington for making a mortgage loan payment by telephone, IVR, or via the internet, between January 1, 2016 through December 31, 2021 ("Convenience Fees") who fall into one or more of the following groups:

- (1) Were borrowers on residential mortgage loans on properties located in California, Texas, New York, Maryland, or Florida;
- (2) Were borrowers on residential mortgage loans on properties in the United States to which Carrington acquired servicing rights when such loans were 30 days or more delinquent on loan payment obligations; or
- (3) Were borrowers on residential mortgage loans on properties located in the United States insured by the Federal Housing Administration.

Simplicio Decl. Ex. 1 ("SA") § II.D. The proposed Settlement Class is identical to the class definition included in the Second Amended Complaint filed on May 25, 2022. The Class Period ends on December 31, 2021, because Carrington ceased collecting Convenience Fees as of that date.

#### **B.** Benefits to the Settlement Class

#### 1. Monetary Benefits

The Settlement Agreement provides monetary benefits in the form of a Common Fund of \$18,181,898.65, from which shall be paid (1) all payments to Settlement Class members, (2) all Administrative Costs, (3) any taxes owed by the Gross Settlement Amount (but not any taxes owed by any individual Class Counsel, Plaintiffs, or Settlement Class Members), (4) any Fee and Expense Award approved by the Court, and (5) any Service Awards to the Class Representatives approved by the Court. See SA § IV.A. The settlement amount represents 35% of the total Convenience fees collected by Carrington from the class during the Class Period. After payment of costs of administration and notice and any fees, expenses, and service award authorized by the Court, the Net Settlement Fund will be distributed to Settlement Class Members as described below. Id. § IV.B.

Settlement Class Members do not have to submit claims or take any other affirmative step to receive benefits under the Settlement. Instead, Carrington will provide the Settlement Administrator with a Settlement Class Member List that includes the names, last known mailing addresses, the last known email addresses of the Settlement Class Members (if the Court's Preliminary Approval Order provides for email notice), and the dates and amounts of each Convenience Fee paid during the Class Period. *Id.* §§ II.FF, VI. Carrington estimates that the Settlement Class includes approximately 442,000 Settlement Class members, and that it has email addresses for roughly 89% of them. Simplicio Decl. ¶ 35.

Each Settlement Class Member who paid at least one Convenience Fee during the Class Period shall be entitled to receive a payment of \$5.00 from the Net Settlement Fund for the first Convenience Fee paid. The remainder of the Net Settlement Fund will be paid to Settlement Class

Members on a *pro rata* basis, based upon the amount of the remaining Convenience Fees paid by each Settlement Class Member during the Class Period. SA § IV.B. Co-borrowers on a single class account shall be entitled to a single total Settlement Payment per account, but all fees paid will be eligible for a *pro rata* share. *Id.* Settlement Class Members will automatically receive their payments by check and may also elect a digital payment option via the Settlement Website. *Id.* Prior to mailing checks, the Settlement Administrator shall attempt to update the last known address of the Settlement Class Member through the National Change of Address database. *Id.* If a check is returned and marked "Undeliverable," the Settlement Administrator shall make reasonable efforts to locate the Settlement Class Member, reissue the check, and send it to a forwarding address. *Id.* Any checks that are not cashed within 90 days shall be voided and the money returned to the Net Settlement Fund. For good cause shown by the Settlement Class Member involved, the Settlement Administrator may reissue a check for up to an additional 90-day period following the original 90-day period. *Id.* 

After 180 days from the date of issuance of the initial checks, any remaining funds in the Net Settlement Fund shall be distributed to Settlement Class Members via a secondary distribution. *Id.* If the amount of remaining funds is so minimal that a secondary distribution would be impracticable, then upon approval to the Court, the remaining funds shall be distributed to the *Cy Pres* Recipient. *Id.* Any funds remaining following a secondary distribution shall be distributed to the *Cy Pres* Recipient. *Id.* In no event shall any remaining funds be returned to Carrington. *Id.* 

#### 2. Injunctive Relief

In addition to the monetary relief, the Settlement Agreement also includes important and valuable injunctive relief. As of January 1, 2022, Carrington ceased charging or collecting Convenience Fees to any borrower in the United States, while allowing borrowers to make

payments by telephone, IVR or the internet for free. And as a result of the Settlement of this case, Carrington has agreed to refrain from charging or collecting such fees from borrowers in the United States for at least three years after the entry of a Final Approval Order, regardless of whether subsequent changes in law authorize such fees. SA § IV.C. Now, Settlement Class Members whose loans are still serviced by Carrington will be able to make payments by telephone, IVR, or the internet without incurring an additional fee. Carrington collected an average of approximately \$8.64 million a year from Settlement Class Members, and thus, injunctive relief is significant for Settlement Class Members because it may result in \$26 million or more in savings.

As set forth in Appendix A, while there have been many settlements of in similar cases in recent years, this settlement achieves a remarkable result. It is the largest in terms of the total value of relief being provided, and at the higher end in terms of the percentage of funds recovered. While a few defendants have agreed to pay a higher percentage of recovery, the class sizes were much smaller and the common funds were under \$2 million in each of those cases. Indeed, most of the cases listed in Appendix A were resolved by Class Counsel, involve similar results of around 30-35% of the amount of fees collected and 2-3 years of changed practices, and have been approved by courts around the country. The relief here stands in stark contrast to other cases, such as *McWhorter* and *Morris*, where the settlements included amendments to class members' notes, permitting the fees to be charged going forward. *See* App'x A.

#### C. Settlement Administrator and Administration Costs

Subject to Court approval, the Settlement Administrator is Epiq, a leading class action administration firm in the United States. Simplicio Decl. ¶ 33. The parties reviewed proposals from three prominent settlement administrators before deciding on Epiq based on overall cost and value to the Settlement Class. *Id.* The proposals included proposals for email and postcard notice, as well

as a long form notice to be available on a settlement website, along with a toll-free number for Settlement Class Members to call for information about the Settlement. *Id.* Epiq is able to offer the option for Settlement Class Members to elect to receive their distributions via digital payment as well as paper check. *Id.* This option will reduce the cost of administration and increase the speed at which Settlement Class members can be paid. *Id.* 

All Administrative Costs shall be paid from the Gross Settlement Fund. SA § IV.A. Currently, the Settlement Administrator estimates that the costs of notice will be approximately \$437,059. Simplicio Decl. ¶ 34. The Settlement Administrator will oversee the provision of Class Notice to the Settlement Class Members and administration of the Common Fund.

#### D. Class Member Release

In exchange for the benefits conferred by the Settlement, all Settlement Class Members will be deemed to have released the Released Entities from all claims that were or could have been asserted by the Class Representatives or Settlement Class Members arising out of, based upon, or related to the charging, collection, or attempted collection of Convenience Fees from the beginning of the world to the Effective Date, which the Settlement Class Member ever had or may have in the future. SA § V. The release is appropriately tailored, in that it covers claims arising from the identical factual predicate to the claims asserted in the operative Complaint.

#### E. Proposed Plan of Notice

The parties' proposed Notice Plan is designed to reach as many Settlement Class Members as possible and is the best notice practicable under the circumstances of the instant case. Simplicio Decl. ¶ 36. Within 14 days or such other time as provided in the Preliminary Approval Order, Carrington, at its own expense, will compile the Settlement Class Member List and provide it to the Settlement Administrator and Class Counsel. SA § VI. As soon as practicable, but starting no

later than thirty (30) days after receipt of the Settlement Class Member List, the Settlement Administrator shall cause the Email Notice to be sent to all Settlement Class Members for whom the Settlement Class Member List includes an email address. *Id*.

As soon as practicable, but starting no later than thirty (30) days after receipt of the Settlement Class Member List, the Settlement Administrator shall cause the Postcard Notice to be sent to all Settlement Class Members for whom no email address appears on the Settlement Class Member List. Id. Prior to mailing Class Notice, the Settlement Administrator will update the last known addresses of the members of the Settlement Class using the National Change of Address database. Id. The Settlement Administrator shall also cause the Postcard Notice to be sent to all Settlement Class Members whose Email Notices are returned undeliverable, after running those Settlement Class Members' last known addresses through the National Change of Address database. Id. If the Postcard Notice is returned with a forwarding address, the Settlement Administrator shall make one attempt to remail the Postcard Notice to that forwarding address, as soon as possible before the Response Deadline. *Id.* If the Postcard Notice is returned undeliverable without a forwarding address, the Settlement Administrator shall make a reasonable attempt to locate an updated address and make one attempt to remail the Postcard Notice to the updated address, as soon as possible before the Response Deadline. Id. The Settlement Administrator shall also mail or email the Long Form Notice to any Settlement Class member who requests a copy. Id.

Prior to the date on which the Settlement Administrator mails the Postcard Notice, the Settlement Administrator shall establish the Settlement Website. *Id.* The Settlement Website shall contain: (1) the Long Form Notice in downloadable PDF format in both English and Spanish; (2) the Long Form Notice in HTML format with a clickable table of contents, described as answers to

frequently asked questions; (3) contact information for the Settlement Administrator, and addresses and telephone numbers for Class Counsel and Carrington's Counsel; (4) the Settlement Agreement; (5) the signed Preliminary Approval Order and publicly filed motion papers and declarations in support thereof; (6) the operative complaints in each of the Actions; and (6) when they become available, the Fee and Service Award Application, the motion for entry of the Final Approval Order, and any motion papers and declarations filed publicly in support thereof. *Id.* The Settlement Website shall remain accessible until 30 days after the Settlement Administrator has completed its obligations under the Settlement Agreement. *Id.* 

The Settlement Administrator shall also establish a 24-hour toll-free telephone line with information about frequently asked questions about the Settlement. The number shall be included in the Class Notice and posted on the Settlement Website. *Id*.

The Settlement Administrator will also ensure that the necessary notice is provided to any state and federal officers as required by the Class Action Fairness Act, 28 U.S.C. § 1715. *Id.* 

#### F. Opt-Outs and Objections

The Class Notice will advise Settlement Class Members of their right to opt out of the Settlement or to object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs, and expenses and/or Service Award to the Class Representative, and of the associated deadlines. SA § VII.

Settlement Class Members who choose to opt out must submit a written request for exclusion. *Id.* Any request for exclusion must be postmarked on or before the "Response Deadline"—105 days after entry of the Preliminary Approval Order. *Id.* §§ II.BB, VII. Any request for exclusion must include the name of the case, and the name, address, phone number, and signature of the borrower or borrowers seeking exclusion and must contain language clearly

indicating a request for exclusion. *Id.* § VII. If there are co-borrowers on the loan all co-borrowers must sign the request for exclusion. *Id.* Any Settlement Class Member who does not submit a request to opt out in accordance with the deadlines and other requirements will be bound by the Settlement absent a court order to the contrary. *Id.* 

Settlement Class Members who wish to object to the Settlement must mail a written objection, postmarked on or before the Response Deadline, to the Court c/o the Class Action Clerk (reference to Case No. 1:20-cv-02369-RDB), United States District Court for the District of Maryland, 101 West Lombard Street, Baltimore, MD 21201 or file their objection in person on or before the Response Deadline at any location of the United States District Court for the District of Maryland. Id. All objections must be in writing and personally signed by the Settlement Class Member and include: (1) the objector's name, address, email address if any, and telephone number; (2) the case caption; (3) the specific factual basis and legal grounds for the objection; (4) a list of all cases in which the objector has objected to a class action settlement, including case name, court, and docket number; (5) if the objector is represented by counsel, a list of all cases in which the objector's counsel has represented an objector in objecting to a class action settlement, case name, court, and docket number; (6) a statement indicating whether the Settlement Class Member and/or their lawyer(s) intend to appear at the Final Fairness Hearing; (7) a list of witnesses, if any, that the objecting Settlement Class Member intends to call; and (8) whether the objection relates only to the objector, or to a subset of the Settlement Class, or to the entire Settlement Class. Id.

Any Settlement Class Member who has not submitted a timely request for exclusion may appear at the Final Fairness Hearing either in person or through an attorney. However, if the Settlement Class Member intends to appear through counsel, the Settlement Class Member must have submitted a written objection pursuant to this section. Any lawyer who intends to appear at

the Final Fairness Hearing also must enter a written Notice of Appearance of Counsel with the Clerk of the Court no later than the Response Deadline. Any Settlement Class Member who intends to request the Court to allow him or her to call witnesses at the Final Fairness Hearing must make such a request in a written brief, which contains a list of such witnesses and a summary of their requested testimony.

No person who has opted out of the Settlement may object to it. Any Settlement Class Member who does not provide a timely written objection or who does not make a record of his or her objection at the Final Approval Hearing shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement, Fee and Service Awards Application, or the Fee and Expense Award or Service Awards.

#### G. Attorneys' Fees and Costs and Service Award

The Settlement Agreement contemplates Class Counsel petitioning the Court for attorneys' fees, as well as documented, customary costs incurred by Class Counsel. SA § IV.E. The Settlement Agreement provides that Class Counsel may seek attorneys' fees in an amount not to exceed two-fifths of the Gross Settlement Fund (40%) as well as reasonable expenses incurred in the litigation subject to Court approval. *Id.* Any approved Fee and Expense Award will be paid from the Gross Settlement Fund prior to distribution to the Settlement Class Members. *Id.* § IV.B.

On or before 21 days prior to the Response Deadline, Class Counsel will file a petition for attorneys' fees and costs explaining why the requested Fee and Expense Award is reasonable. *Id.* § IV.E. Class Counsel will provide lodestar information sufficient for the Court to perform a lodestar cross-check should the Court choose to exercise its discretion to perform one. Carrington

has not agreed to any award of attorneys' fees or expenses and may respond to the Fee and Service Award Application as it sees fit. *Id*.

Class Counsel may also petition the Court for up to \$5,000 each for Plaintiffs Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda Boley, Miguel Padilla, and Victoria Dawkins as Service Awards as compensation for their time and effort in the Action. *Id.* § IV.D. Any approved awards will be deducted from the Gross Settlement Fund prior to distribution to the Settlement Class Members. *Id.* § IV.B. Plaintiffs will submit declarations detailing their participation in the Action along with the Fee and Service Award Application.

Neither final approval, nor the size of the Common Fund, are contingent upon approval of the full amount of requested Fee and Expense Award or Service Awards. *Id.* § IV.D-E.

#### IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL

Federal Rule of Civil Procedure 23 requires court approval of class action settlements. Fed. R. Civ. P. 23(e). "The primary concern addressed by Rule 23(e) is the protection of class members whose rights may not have been given adequate consideration during the settlement negotiations." *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991). Accordingly, the Court may approve a settlement only upon a finding that the settlement is "fair, reasonable, and adequate." *Alloways v. Cruise Web, Inc.*, No. CBD-17-2811, 2019 WL 1902813, at \*8 (D. Md. April 29, 2019). "The fairness prong is concerned with the procedural propriety of the proposed settlement agreement, while the adequacy prong focuses on the agreement's substantive propriety." *Id.* (citing *Edelen v. Am. Residential Servs., LLC*, No. DKC-11-2744, 2013 WL 3816986, at \*8 (D. Md. July 22, 2013)).

In the Fourth Circuit, courts look to a four-factor test to evaluate fairness: "(1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel." *Jiffy Lube*, 927 F.2d at 159. Adequacy is assessed through "(1) the relative strength of the plaintiffs' case on the merits,

(2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter of the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement." *Id*.

In addition to these factors, Rule 23 itself, as amended in 2018, provides specific guidance to federal courts considering whether to approve a class action settlement. *See* Fed. R. Civ. P. 23(e), Committee Notes. The factors that the Rules contemplate that a court should consider include whether: (A) the class representative and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate; and (D) the proposal treats class members equitably relative to each other. *See* Fed. R. Civ. P. 23(e). The Fourth Circuit has held that the *Jiffy Lube* standards "almost completely overlap with the new Rule 23(e)(2) factors, rendering the analysis the same." *See Herrera v. Charlotte Sch. of L., LLC*, 818 F. App'x 165, 176 n.4 (4th Cir. 2020) (citing *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Practices & Prods. Liab. Litig.*, 952 F.3d 471, 474 n.8 (4th Cir. 2020)).

#### V. ARGUMENT

#### A. The Settlement Agreement warrants preliminary approval.

As previously noted, a settlement must be "fair, reasonable, and adequate." *Alloways*, 2019 WL 1902813, at \*8. Courts in the Fourth Circuit typically bifurcate this analysis into consideration of the fairness and adequacy of the proposed settlement. *See*, *e.g.*, *Fire* & *Police Retiree Health Care Fund*, *San Antonio v. Smith*, No. CV CCB-18-3670, 2020 WL 6826549, at \*2 (D. Md. Nov. 20, 2020); *see also Gaston v. LexisNexis Risk Sols. Inc.*, No. 516CV00009KDBDCK, 2021 WL 244807, at \*5 (W.D.N.C. Jan. 25, 2021). "Preliminary approval should be granted when a proposed settlement is 'within the range of possible approval,' subject to further consideration after a final fairness hearing at which interested parties have had an opportunity to object." *Shaver v. Gills* 

Eldersburg, Inc., No. 14-3977-JMC, 2016 WL 1625835, at \*2 (D. Md. Apr. 25, 2016); see also Gaston, 2021 WL 244807, at \*5 (same). The Settlement here, reached after motion practice and appeals by sophisticated counsel and providing significant monetary and prospective relief to the class, is readily within the range of approval.

#### 1. The Settlement is fair.

"There is a strong presumption in favor of finding a settlement fair." *Decohen v. Abbasi*, *LLC*, 299 F.R.D. 469, 479 (D. Md. 2014) (internal quotation marks and citation omitted). And a preliminary review of each of the factors relating to fairness shows that the Settlement is fair and warrants preliminary approval. *See In re Jiffy Lube Sec. Litig.*, 927 F.2d at 159. Namely, each of the *Jiffy Lube* fairness factors is satisfied.

First, the posture of the case at the time of settlement demonstrates that the Settlement was agreed in the absence of collusion, and that the parties and counsel are well-informed. The Plaintiffs commenced these actions in December 2019 (Thomas-Lawson), May 2020 (Dawkins), and June 2020 (Alexander). The proposed settlement was reached after months of negotiation and significant work across the three actions, including motions practice with respect to motions to dismiss and motions to compel arbitration, as well as appeals before the Fourth and Ninth Circuits. Simplicio Decl. ¶¶ 6, 16. The fact that the settlement is on the higher end of approved Convenience Fee settlements, despite the fact that Plaintiffs' nationwide claims were dismissed and their appeal is pending before the Ninth Circuit should leave no doubt as to the arms'-length nature of the deal.

**Second**, the Settlement follows substantial, targeted informal discovery. Class Counsel engaged in substantial investigation of Carrington's Convenience Fees prior to filing and later reviewed and analyzed informal discovery from Carrington. Class Counsel have litigated many similar cases based on Convenience Fees and knew what information and data would be critical

for resolving the Settlement Class's claims. Thus, Class Counsel obtained through informal discovery information and data similar to what they would have received through the discovery process, while allowing the parties to focus on the most relevant discovery. Simplicio Decl. ¶¶ 7-9. Plaintiffs have conducted sufficient investigation and discovery to permit Class Counsel and the Court to intelligently and fairly evaluate the fairness and adequacy of the Settlement. See In re Jiffy Lube, 927 F.2d at 159 (recognizing that informal discovery can provide satisfactory information prior to preliminary approval); see also Decohen, 299 F.R.D. at 480 (finding proposed settlement met fairness factors where "parties ha[d] engaged in informal discovery, assuring sufficient development of the facts to permit an accurate assessment of the merits of the case").

Third, the circumstances surrounding the parties' negotiations demonstrate that the Settlement was reached through good faith, informed, arm's length negotiations. See In re Jiffy Lube, 927 F.2d at 159. In particular, the parties' negotiation of the claims in this action, with the assistance of a mediator, evidences the absence of collusion. See Nicholes v. Combined Ins. Co. of Am., No. 5:16-CV-10203, 2019 WL 2575066, at \*2 n.1 (S.D.W. Va. Feb. 22, 2019); see also Decohen, 299 F.R.D. at 480. Before agreeing upon the terms of the Settlement, the parties discussed negotiations for many months, and after Class Counsel had investigated the claims, litigated them and related cases, and become familiar with the claims' strengths and weaknesses, before ultimately spending fourteen hours mediating before Jeff Kichaven. Simplicio Decl. ¶¶ 6-8, 11. In advance of that mediation, Carrington provided Plaintiffs with its internal data. Id. ¶ 7. Because Class Counsel has litigated and settled other cases involving similar factual and legal issues, Class Counsel understands what information is critical to resolve the claims at issue, including information relating to membership in the Settlement Class and the amount of damages. Id. ¶ 8.

And the terms of the proposed award of attorneys' fees and Service Awards are also fair and demonstrate that the Settlement is the product of arm's length negotiation. See Fed. R. Civ. P. 23(e)(2)(c)(iii). Class counsel will file a separate motion seeking approval of Attorneys' Fees and Expenses and Service Awards, and the amounts they intend to seek are also reasonable and fair. The Settlement authorizes Class Counsel to seek an award of attorneys' fees of up to 40%, as well as expenses, which is consistent with the range in similar common fund settlements like this. Of course, here, if Class Counsel is awarded 40% of the common fund created by the Settlement, the requested award of \$7,272,759 actually would only be equal to 16.5% of the total value of the Settlement once the injunctive relief is considered. This percentage is well within the range of reasonableness. See, e.g., McAdams v. Robinson, 26 F.4th 149, 162 (4th Cir. 2022) (affirming award of "fees total[ing] \$1,300,000, 43% of the common fund" in class action alleging mortgage servicer violated federal and state consumer-protection laws); Jernigan v. Protas, Spivok & Collins, LLC, No. CV ELH-16-03058, 2017 WL 4176217, at \*5 (D. Md. Sept. 20, 2017) ("Fees awarded under 'the percentage-of-recovery' method in settlements under \$100 million have ranged from 15% to 40%." (citation omitted)); Pierce v. Statebridge Co., LLC, No. 1:20CV117, 2021 WL 1711784, at \*3 (M.D.N.C. Apr. 29, 2021) ("The other method for determining fees, the percentage of the fund method, reduces class members' recovery by a benchmark percentage, typically 33% to 40% of the common fund.").

The Settlement authorizes each Plaintiff to seek a Service Award of \$5,000. This amount is well within the range of approval for class action settlements that provide significant benefits to the class. *See*, *e.g.*, *Robinson v. Nationstar Mortg. LLC*, No. 8:14-CV-03667-TJS, 2020 WL 8256177, at \*4 (D. Md. Dec. 11, 2020), *aff'd sub nom. McAdams v. Robinson*, 26 F.4th 149 (4th Cir. 2022) (awarding \$5,000 service award in class action against mortgage servicer); *Manuel v.* 

Wells Fargo Bank, Nat'l Ass'n, No. 3:14CV238(DJN), 2016 WL 1070819, at \*6 (E.D. Va. Mar. 15, 2016) (noting that "[v]arious studies have found that the average incentive award per plaintiff ranged from \$9,355 to \$15,992") (citing Newberg on Class Actions § 17.8 (5th ed.)).

Fourth, Class Counsel and counsel for Carrington are experienced in the litigation, certification, trial, and settlement of nationwide litigation. Simplicio Decl. ¶ 27. Class Counsel have settled a number of class action cases involving mortgage servicers like Carrington involving Convenience Fees, as well as other debt collection issues, and continue to litigate cases against several others. Id. ¶ 28-29. See also App'x A. In negotiating the Settlement Agreement, Class Counsel had the benefit of years of experience and familiarity with the factual and legal bases for this case, as well as other cases involving servicers, financial institutions, and fees. Simplicio Decl. ¶¶ 28-30. This understanding of the intricacies of the consumer finance and mortgage servicing industry provided Class Counsel with the tools and perspective to achieve an outstanding recovery for the Settlement Class—and prepared them to fight this Action to a successful conclusion if necessary. Id. ¶¶ 8-10; see also In re Am. Cap. S'holder Derivative Litig., No. CIV. 11-2424 PJM, 2013 WL 3322294, at \*4 (D. Md. June 28, 2013) (noting satisfaction with class counsel due to "affiliat[ion] with well-regarded law firms with strong experience" in the relevant field). In Class Counsel's experience and informed judgment, the benefits of settling outweigh the risks and uncertainties of continued litigation, as well as the attendant time and expenses associated with litigation, discovery, and possible appellate review. Courts afford due consideration to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation. See Gaston, 2021 WL 244807, at \*6 ("The opinion of experienced and informed counsel in favor of settlement should be afforded due consideration in determining whether a class settlement is fair and adequate.").

#### 2. The Settlement is adequate.

Each of the *Jiffy Lube* adequacy factors is satisfied, showing that the Settlement is adequate and warrants preliminary approval. The first two factors (the relative strength of the plaintiffs' case on the merits and the existence of any difficulties of proof or strong defenses) evaluate "how much the class sacrifices in settling a potentially strong case in light of how much the class gains in avoiding the uncertainty of a potentially difficult one." *In re The Mills Corp. Securities Litig.*, 265 F.R.D. 246, 256 (E.D. Va. 2009).

While confident in the strength of their claims, Plaintiffs and Class Counsel are also pragmatic and recognize the risks inherent in litigation of this magnitude. *See* Simplicio Decl. ¶ 16. Carrington argues that Plaintiffs' claims are unfounded, denies any liability, and has indicated a willingness to litigate vigorously. Should the case proceed in litigation, Plaintiffs could see their claims dismissed or narrowed by a motion for summary judgment, at trial, or on a subsequent appeal. *Id.* They also face the risk that class certification could be denied. *Id.* ¶ 17. Each risk, by itself, could impede the successful prosecution of these claims at trial and in an eventual appeal—which would result in a *zero* recovery to the class. *Id.* ¶ 18. And even if Plaintiffs prevailed at trial, any recovery would likely be delayed for years by further appeals. *Id.* ¶ 19.

Plaintiffs face substantial risks to their claims should the Settlement not be approved. In that event, the Settlement Class Complaint will be treated as null and void, and each Plaintiff will proceed with their respective action before this court, the Ninth Circuit Court of Appeals (and perhaps back to the Central District of California), and the Southern District of Florida. The possibility would remain that the *Attix* Appeal could be resolved favorably for Carrington, which could cast doubt on whether certain Plaintiffs and some of the class members they seek to represent could be compelled to arbitration even though the Fourth Circuit has issued a favorable decision

on the question of arbitration. *See, e.g., Lyons v. PNC Bank, Nat'l Ass'n*, 26 F.4th 180 (4th Cir. 2022). And each case faces other serious risks. For Alexander and Mr. Bishop, the Fourth Circuit's reversal of this Court's dismissal of the Amended Complaint is not ultimately a guarantee of success on the merits, and they, like the other Plaintiffs, could face challenges on class certification, as discussed further below. *See Edelen v. Am. Residential Servs., LLC*, No. CIV.A. DKC 11-2744, 2013 WL 3816986, at \*9 (D. Md. July 22, 2013) (finding the "existence of [] disputed legal and factual issues creates uncertainty and risk for all parties moving forward"). And Carrington could appeal any order granting class certification or any judgment.

Though the *Alexander* matter survived Carrington's pleadings challenge, the *Thomas-Lawson* and *Dawkins* matters have not. Plaintiffs Thomas-Lawson, Green, Boley, and Padilla appealed the dismissal of their FDCPA and California statutory claims, but if the Settlement is not approved, the appeal will be ripe for resolution. And even if the Ninth Circuit reverses the dismissal of their claims, Carrington could seek *en banc* review or petition the Supreme Court. Moreover, while the Southern District of Florida has not yet ruled on Carrington's motion to compel arbitration, Ms. Dawkins faces many of the same challenges that the other Plaintiffs face. Florida courts have dismissed similar claims on the merits, and thus, there is potential for more uncertainty there once the stay is lifted. *See, e.g., Cooper v. PennyMac Loan Servs., LLC*, 509 F. Supp. 3d 1325, 1332 (S.D. Fla. 2020) ("Even if Plaintiff could allege that Defendant was collecting a debt by charging and receiving a processing fee, Plaintiff failed to allege that Defendant had no legal right to do so."); *Turner v. PHH Mortg. Corp.*, 467 F. Supp. 3d 1244, 1248 (M.D. Fla. 2020) (finding defendant was not a debt collector and convenience fees did not violate Florida or federal debt collection law); *Lang v. Ocwen Loan Servicing, LLC*, No. 3:20-cv-81-J-20MCR, 2020 WL

5104522, at \*2-3 (M.D. Fla. July 17, 2020) (same); *Bardak v. Ocwen Loan Servicing*, No. 19-1111, 2020 WL 5104523, at \*4 (M.D. Fla. Aug. 12, 2020) (same).

Importantly, all Plaintiffs would need to persuade the relevant court that Convenience Fees violate provisions of Maryland, California, Texas and Florida debt collection law incorporating the substantive provisions of the FDCPA, as well as the common laws of those states and the state of New York. For example, Carrington may persuade a court to dismiss the breach of contract claims, something that some servicers have had success doing (even though generally they are not a party to the contract). See Dees v. Nationstar Mortg., LLC, 496 F. Supp. 3d 1043, 1050–51 (S.D. Tex. 2020) ("Without a contractual prohibition against the assessment of these optional Convenience Fees, Plaintiffs do not assert a viable breach of contract claim."); Caldwell v. Freedom Mortg. Corp., No. 3:19-CV-2193-N, 2020 WL 4747497, at \*2 (N.D. Tex. Aug. 14, 2020) (finding no breach of contract based on collection of convenience fees). See also Alvarez v. LoanCare, LLC, No. 20-2187-CIV-ALTONAGA/Goodman, 2021 WL 184547, at \*11 (S.D. Fla. Jan. 19, 2021) ("The mere absence of express authority to charge fees does not mean fees are prohibited."). In short, there are any number of legal arguments that Carrington could successfully make that could result in Plaintiffs' claims being substantially narrowed at the motion to dismiss stage, summary judgment, or trial.

Moreover, no class has been certified in any of the underlying cases and there is no guarantee that this Court or any other would certify a class. In fact, the Southern District of Florida recently declined to certify a class in a case raising claims based on nearly-identical fees under Florida law. *See Alvarez*, 2021 WL 184547, at \*17-18. In *Alvarez*, the court found class certification inappropriate because, according to the court, there was no legal basis for the claims and because certification "would require, inter alia, individualized inquiries into each mortgage's

terms... and the circumstances of the making of each particular processing fee agreement, whether by phone or online." *Id.* at \*15. While Plaintiffs believe the *Alvarez* court's conclusion was incorrect because the uniform terms of the underlying mortgages and the common questions of law satisfy the commonality and predominance requirements; there is no guarantee that all three courts will agree—or that the Fourth, Ninth, and Eleventh Circuits would agree as well, should Carrington appeal.

Of course, Plaintiffs believe their claims are meritorious and that they would prevail if their cases proceeded to trial. But ultimately, the claims of any one state class are relatively small, and unless states can be bundled together in such a way to ensure economies of scale, each state's class members risk the possibility that in any individual state settlements, notice and administration costs could dwarf the cost of recovery. The same is true for the potential for a complete loss at trial, or the risks or costs of further potential appellate proceedings. All that is certain is that if the case continues in litigation, the class members will need to wait much longer before receiving any recovery at all. *See Robinson v. Carolina First Bank NA*, No. 7:18-CV-02927-JDA, 2019 WL 719031, at \*8 (D.S.C. Feb. 14, 2019) ("There is a strong judicial policy in favor of settlement to conserve scarce resources that would otherwise be devoted to protracted litigation.").

While litigation presents serious risks at many stages, not to mention substantial expense and delay without any guarantee of additional benefit to the Settlement Class, the Settlement provides immediate and substantial benefits to over 442,000 Settlement Class Members. And these benefits are substantial: 35% of damages is one of the best results in any of these cases, particularly given the size of the fund and the significant injunctive relief. See App'x A. Because Settlement Class Members thus stand to gain significant relief, without further risks attendant to protracted litigation, the first two Jiffy Lube adequacy factors weigh in favor of approval. See Decohen, 299

F.R.D. at 480 (finding settlement adequate where despite reversal of dismissal of claims, there was no guarantee the court would certify a class, and "the road to recovery—particularly for the class as a whole—likely would be protracted and costly if the settlement were not approved").

The third Jiffy Lube adequacy factor (the anticipated duration and expense of additional litigation) also favors approval. This case is settling in its early stages; if the Settlement is not approved, the parties will likely need to litigate through multiple dispositive motions and a motion for class certification. Simplicio Decl. ¶¶ 16-17. The litigation would likely take years to resolve and involve expensive expert discovery and substantial time engaging in in protracted and expensive discovery disputes. Id. ¶ 22. And of course, all parties would need to spend significant resources preparing for trial. The drawn out and expensive process that further litigation would entail would lead to significant legal costs to both sides, but would not necessarily lead to a better result for the class, particularly where there would likely be duplication of effort and consumption of the parties' and the court system's resources and time across the three separate actions. Thus, this factor favors approval. See Edelen, 2013 WL 3816986, at \*9 (approving settlement where absent approval, "litigation of this dispute could prove to be long and expensive" and "require substantial time by the parties' attorneys").

Lastly, as to the fourth *Jiffy Lube* adequacy factor (the solvency of the defendant and the likelihood of recovery on a litigated judgment), there is nothing to indicate that Carrington could not satisfy a judgment if one were entered. But, as previously noted, it is clear that continued litigation would be expensive and consume significant resources of the parties and the court

system.<sup>3</sup> Thus, "[o]n balance, the risks, delays, and costs associated with further litigation weigh in favor of granting" preliminary approval. *See id*.

#### 3. The allocation of the Settlement is fair and reasonable.

The allocation of the Settlement Fund is also fair and reasonable, and the manner of administering relief will be effective. Under the settlement, Carrington will provide a \$18,181,898.65 common fund. The common fund, which represents approximately 35% of damages, will provide cash payments to Settlement Class Members, as well as Administrative Costs to provide notice and administer the settlement, and any Fee and Expense Award and Service Awards that the Court may approve. Settlement Class Members who paid at least one Convenience Fee are entitled to receive a payment of \$5.00 from the Net Settlement Fund, with the remainder paid to Settlement Class Members on a *pro rata* basis, based upon the amount of Convenience Fees paid by each Settlement Class Member during the Class Period.

This method is consistent with the distribution of common funds in other fee cases. *See*, *e.g.*, *Lembeck*, 2021 WL 5494940 (approving settlement from which class members would receive *pro rata* distribution of common fund based on number of fees paid); *Fernandez v. Rushmore*, Case No. 8:21-cv-00621-DOC-(KEXc) (C.D. Cal. Feb. 14, 2022) (same); *Phillips v. Caliber Home Loans, Inc.*, Case No. 0:19-cv-2711, 2022 WL 832085 (D. Minn. Mar. 21, 2022) (same). Importantly, this method for calculating each class member's recovery equitably compensates each class member based on the amount of Convenience Fees they were charged during the class period. Regardless of which class they belong in, the Settlement treats each class member equitably based on the extent to which they were impacted by Carrington's conduct.

<sup>&</sup>lt;sup>3</sup> While the Class Members cannot react to the settlement (the fifth factor) until after notice goes out, the Court may properly consider the remaining factors at the preliminary approval stage.

Carrington has also agreed to refrain from the charging or collection of Convenience Fees from borrowers, while allowing borrowers to make payments by telephone, IVR or the internet for free, for a period of at least three years after entry of the Final Approval Order. The prospective relief of this settlement term is expected, based upon the discovery exchanged, to have an approximate value of \$26 million going forward for the putative class members who still have loans serviced by Carrington. All current and future Carrington borrowers benefit from the practice changes required by the Settlement.

The proposed method of distributing relief is also effective. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii). The parties have agreed upon an experienced Settlement Administrator to administer the settlement. *See generally* Simplicio Decl. ¶ 33. Class members are not required to fill out an unwieldy claim form or even submit claims at all. Settlement Class Members will have the option to choose to receive their payments digitally, and for those who do not so choose, the Settlement Administrator will mail checks to the Settlement Class Members, after running their addresses through the National Change of Address database.

#### B. The Court Should Certify the Settlement Class.

On a motion for preliminary approval, the parties must also show that the Court "will likely be able to . . . certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1). The Settlement Class meets all of the requirements of Fed. R. Civ. P. 23(a) and (b)(3).

#### 1. The proposed class is ascertainable.

Under Rule 23, a class definition must be sufficiently definite so that "a court can readily identify the class members in reference to objective criteria." *EQT Prod. Co. v. Adair*, 764 F.3d 347, 358 (4th Cir. 2014). This ascertainability requirement is satisfied in this case, as the

members of each class are identifiable based on objective criteria applied to Carrington's well-maintained records during the class period.

#### 2. The proposed class satisfies the requirements of Rule 23(a).

Under Federal Rule of Civil Procedure 23(a), a class may be certified when "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). The Settlement Class satisfies each of these requirements.

#### a. Numerosity

Class certification is appropriate when class members are "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "No particular number of class members is needed to satisfy this requirement." *Jones v. Fid. Res., Inc.*, No. CV RDB-17-1447, 2019 WL 4141015, at \*8 (D. Md. Aug. 30, 2019) (citing *Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984)). Here, the proposed Settlement Class consists of over 442,000 Settlement Class Members. Numerosity is thus satisfied.

#### b. Commonality

The Settlement Class also satisfies the commonality requirement that there are "questions of law or fact common to the class." *See* Fed. R. Civ. P. 23(a)(2). A common question must be "capable of classwide resolution" such that "determination of its truth or falsity will resolve an issue that is central" to each class member's claims "in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Rule 23(a) does not require commonality of all issues; rather, "even a single common question will do." *Id.* at 359 (alterations and internal quotation marks omitted).

Here, there are several common legal and factual questions that are common to all members. Common questions include: whether Carrington breached its contracts with borrowers by charging Convenience Fees not authorized by their mortgage agreements; whether Carrington violated state law by charging Convenience Fees; and whether Plaintiffs and the Classes were damaged by Carrington's conduct. As to these common questions, a plaintiff must show that the "determination of its truth or falsity will resolve an issue that is central to the validity of each and every one of the claims in one stroke." *Jones*, 2019 WL 4141015, at \*9 (citing *Dukes*, 564 U.S. at 350). Plaintiffs' claims here depend on the common contentions that Convenience Fees are neither authorized by class members' mortgages nor permitted by law. These common questions are sufficient to satisfy the requirements of Rule 23(a)(2).

### c. Typicality

"The commonality and typicality requirements of Rule 23(a) tend to merge." *Id.* Class representatives are typical if they are "part of the class and possess the same interest and suffer the same injury as the class members." *Id.* (citing *Broussard v. Meineke Discount Muffler Shops, Inc.*, 155 F.3d 331, 338 (4th Cir. 1998)). "The essence of the typicality requirement is captured by the notion that as goes the claim of the named plaintiff, so goes the claims of the class." *Id.* (citing *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2006) (internal quotation marks omitted)).

Here, Plaintiffs' claims arise from the same course of alleged conduct: charging borrowers a fee to make payments that is not authorized by borrowers' mortgages or permitted by law. And there is one Plaintiff from each state included in the Settlement Class. Accordingly, Plaintiffs' claims are typical of the claims of Settlement Class Members.

### d. Adequacy of representation

The adequacy requirement is satisfied when the class representatives will "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Adequacy requires that class counsel "be qualified, experienced, and able to conduct the litigation" and the named plaintiffs' interests "not be opposed to those of other class members." *Jones*, 2019 WL 4141015, at \*10 (citation omitted). This requirement "serves to uncover conflicts of interest between named parties and the class they seek to represent." *Id.* (citing *Amchem Prods.*, *Inc. v. Windsor*, 521 U.S. 591, 625 (1997). "Such conflicts 'must be more than merely speculative or hypothetical;' rather, they 'must be fundamental' and 'go to the heart of the litigation." *Id.* (citation omitted).

Here, the Plaintiffs have no conflicts of interest with other class members, and they and their counsel will and have vigorously prosecuted this case on behalf of the class. *See* Simplicio Decl. ¶ 25; *see supra* Part V.A.1 (describing Class Counsel's extensive experience litigating over proposed class actions against mortgage servicers). As previously noted, Class Counsel is particularly experienced in the litigation, certification, trial, and settlement of nationwide class action cases, and mortgage fee cases in particular. Simplicio Decl. ¶¶ 27-29. Given their understanding of the intricacies of consumer finance and mortgage servicing, Class Counsel are qualified, experienced, and able to conduct this litigation. Adequacy is satisfied here.

### 3. The Settlement Class meets the requirements of Rule 23(b)(3).

The Settlement Class satisfies the requirements of Rule 23(b)(3). Class certification is appropriate under Rule 23(b)(3) when "questions of law or fact common to the members of the class predominate over any question affecting only individual members, and . . . a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3).

#### a. Predominance

Common questions predominate over any questions affecting only individual members here. The questions common to all Settlement Class members include whether Carrington can charge Convenience Fees if the fees are not expressly authorized by the mortgage, not permitted by law, and exceed the bank's actual costs. These questions can be resolved using the same evidence for all class members and is exactly the kind of predominant common issue that makes class certification appropriate. *See Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) ("When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) . . . ." (citation and internal quotation marks omitted)). Accordingly, predominance is satisfied.

### b. Superiority

Class certification here is also "superior to other available methods for fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). Courts consider four factors: (1) individual class members' interest in controlling individual cases; (2) the existence of related litigation; (3) the desirability of concentrating the litigation in one forum; and (4) manageability.<sup>4</sup> *Jones*, 2019 WL 4141015, at \*11.

First, classwide resolution is the only practical method of addressing the alleged violations at issue in this case. There are thousands of class members with modest individual claims, most of whom likely lack the resources necessary to seek individual legal redress. *See Decohen*, 299 F.R.D.

<sup>&</sup>lt;sup>4</sup> Because Plaintiffs seek settlement-only class certification, the court need not consider the fourth factor here. *See Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 593 (1997) ("Whether trial would present intractable management problems, *see* Rule 23(b)(3)(D), is not a consideration when settlement-only certification is requested, for the proposal is that there be no trial.").

at 478 (finding superiority satisfied where "denial of the settlement will effectively foreclose relief for most class members as the harm each individual suffered will likely not justify the high costs of individual suits"). Second, Class counsel is not aware of other pending individual litigation against Carrington regarding the practices at issue in this Action. Simplicio Decl. ¶ 31. And third, "resolution of this case through class action settlement will achieve significant economies for the parties, the proposed class, and the court." *See Decohen*, 299 F.R.D. at 478. Accordingly, a class action is the superior method of adjudication.

# C. The Court Should Approve the Proposed Notice Plan and Appoint the Settlement Administrator.

The parties' proposed notice plan is formulated to conform with the procedural and substantive requirements of Rule 23. Due process under Rule 23 requires that class members receive notice of the settlement and an opportunity to be heard and participate in the litigation. *See* Fed. R. Civ. P. 23(c)(2)(B); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985); *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 175-76 (1974) ("[I]ndividual notice must be provided to those class members who are identifiable through reasonable effort.").

The Class Notice is comprised of direct notice in the form of Email Notice and Postcard Notice. In addition, the Settlement Administrator will establish the Settlement Website, where the Long Form Notice will be available, along with important case documents. And a toll-free telephone number will be available to Settlement Class Members with questions. The operative notice plan is the best notice practicable and is reasonably designed to reach the Settlement Class Members. *See* Simplicio Decl. ¶ 36. And the Notice Plan will be overseen by Epiq, a reputable settlement administrator.

Class Counsel have overseen several other settlements against mortgage loan servicers for similar practices for which email notice was used and final approval granted. See, e.g., Phillips v.

Caliber Home Loans, Inc., Case No. 0:19-cv-2711, 2022 WL 832085, at \*5 (D. Minn. Mar. 21, 2022). The Fourth Circuit has approved class notice in the form of email and postcard notice. See, e.g., McAdams, 26 F.4th at 158 (finding notice adequate where administrator emailed notice to "members for whom it had an email address," "mailed notice to class members for whom it had a physical address," and searched database to update addresses for those who postcard notice "was returned as undeliverable").

Here, contact information will initially be provided by Carrington, which, as a mortgage servicer regularly issuing statements to class members, is highly likely to have the most accurate contact information. When combined with a process to confirm addresses through NCOA before sending notice and subsequent skip tracing in the unlikely instance that any notice is returned as undeliverable, the notice program should cause nearly every class member to receive actual notice.

Moreover, the substance of the notice will fully apprise class members of their rights. "Rule 23(e) requires notice that describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *McAdams*, 26 F.4th at 158. The Notice contains all the critical information required to apprise Class Members of their rights under the settlement, directs them to the settlement website, where they can obtain more detailed information, and provides a toll-free number for Class Members to call with questions. This approach to notice is adequate. *See*, *e.g.*, *id.* at 158–59 (approving notice where email and postcard notice would include settlement "website and telephone number where class members could get the Longform Notice"). This information undoubtedly provides "sufficient detail" to allow class members with adverse viewpoints to conduct further investigation and "come forward to be heard." *See id.* at 158. Accordingly, this notice program will fully apprise Class

Members of their rights under Rule 23(e) and should be approved. Additionally, the court should appoint Epiq as the settlement administrator.

### VI. CONCLUSION

For the foregoing reasons, Plaintiffs Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda Boley, Miguel Padilla, and Victoria Dawkins request that the Court preliminarily approve the Settlement, enter the Preliminary Approval Order, appoint them as Class Representatives, appoint Tycko & Zavareei LLP, Bailey & Glasser LLP, and Consumer Law Center, LLC as Class Counsel, direct that Notice be distributed to the Settlement Class, and schedule a Fairness Hearing.

Dated: May 25, 2022

Respectfully submitted,

/s/ Hassan A. Zavareei
Hassan A. Zavareei
Kristen G. Simplicio
Dia Rasinariu

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Attorneys for Plaintiffs

# $\mathbf{Appendix}\ \mathbf{A}$

Case	Class Size	Funds Made Available	Percentage of Actual Damages	Distribution	Future Practices	Attorneys' Fees	Service Awards	Status
Elbert v. Roundpoint, 20-cv-00250- MMC (N.D. Cal)*	123,000	\$1,600,000	35%	Amount of funds distributed pro rate to class members automatically via check.	As a result of the settlement, RoundPoint has agreed to cease charging Pay-to-Pay Fees for all borrowers in the United States effective June 1, 2021 and continuing until at least two years after the date the Court grants final approval of the Settlement.	One third of the settlement fund.	\$5,000	Final Approval Granted April 18, 2022
Phillips v. Caliber Home Loans, Inc., 19-cv-2711 (D. Minn)*	322,404 loans	\$5 mil  Common fund with no reversion	29.38%	Amount of funds distributed pro rata to class members automatically via pre-paid card or check.	As term of Settlement, Defendant agreed to stop charging fees nationwide for two years	To be determined but no more than 1/3 of the Settlement Fund	\$5,000 for each named plaintiff	Final Approval Granted March 22, 2022

<sup>\*</sup> Plaintiff is represented by James Kauffman of Bailey Glasser LLP and Hassan A. Zavareei and Kristen G. Simplicio of Tycko & Zavareei LLP.

Case	Class Size	Funds Made Available	Percentage of Actual Damages	Distribution	Future Practices	Attorneys' Fees	Service Awards	Status
Fernandez v. Rushmore, 8:21-cv-00621- DOC-(KEXc) (C.D. Cal)*	122,000 loans	\$1,645,840	30%	Amount of funds distributed pro rate to class members automatically via check.	Rushmore agrees to stop charging Convenience Fees and continue to stop charging for a period of two years after entry of the Final Approval Order.	One third of the settlement fund.	\$5,000 for named plaintiff	Final Approval Granted February 14, 2022
Reddick v. Freedom Mortgage Corporation 3:19-cv-02193 (N.D. Tex.)	187,757 accounts	\$2.25 mil  Common fund with no reversion.	35%	Amount of funds distributed to class members in form of check without the need to make a claim.	As term of Settlement, Defendant agreed to stop charging fees from borrowers for a period of at least one year after entry of the Final Approval Order.	33.33% of the Gross Settlement Fund, \$19,982 in expenses	\$5,000 for each named plaintiff	Final Approval Granted December 17, 2021
Silveira v. M&T Bank, 2:19-cv-06958- ODW-KS (C.D. Cal)*	110,871 loans	\$3.325 mil  Common fund with no reversion.	34.7%	Amount of funds distributed pro rata to class members automatically via check.		25% of the settlement fund	\$5,000 for named plaintiff	Final Approval Granted October 12, 2021

<sup>\*</sup> Plaintiff is represented by James Kauffman of Bailey Glasser LLP and Hassan A. Zavareei and Kristen G. Simplicio of Tycko & Zavareei LLP.

Case	Class Size	Funds Made Available	Percentage of Actual Damages	Distribution	Future Practices	Attorneys' Fees	Service Awards	Status
White v. Shellpoint and Fannie Mae, Case No. C- 02-CV-001060 (Anne Arundel Cty. Cir. Ct. Md.)	20,307 loans	\$425,000 Common fund with no reversion.		Amount of funds distributed pro rata to class members automatically via check.		\$40% of the settlement fund	\$10,000 for named plainitff	Final Approval Granted August 31, 2021
Lembeck et al v. Arvest Central Mortgage Co., 3:20-cv-03277 (N.D. Cal.)*	48,059	\$1,474,314  Common Fund with no reversion.	49.7%	Amount of fund distributed pro rata to all class members via a check without need to make a claim	As term of Settlement, Defendant will stop charging fees in class member states for three years.	25% of Settlement Fund	\$3,000 for each named plaintiff	Final Approval Granted August 26, 2021

<sup>\*</sup> Plaintiff is represented by James Kauffman of Bailey Glasser LLP and Hassan A. Zavareei and Kristen G. Simplicio of Tycko & Zavareei LLP.

Case	Class Size	Funds Made Available	Percentage of Actual Damages	Distribution	Future Practices	Attorneys' Fees	Service Awards	Status
Morris v. PHH Mortgage Co., 0:20-cv-60633 (S.D. Fla)	659,304 loans	\$12.587 mil Payment Cap	20%	Class members must make claims to be reimbursed either 28% or 18% of fees paid; balance of fund reverts to Defendant	As term of Settlement, class member mortgages amended to permit Defendant to charge fees going forward indefinitely. For three years, fees will be reduced by 13.3%.	30% of the settlement fund	\$5,000 for each named plaintiff	Pending preliminary approval
Sanders v LoanCare, LLC, 2:18-CV-09376- PA(RAO) (C.D. Cal)	61,867 class members	\$3.4 mil  Common fund with no reversion.	38.64%	Amount of funds distributed pro rata to class members. Current customers will receive a credit. Former customers must make a claim to receive payment via check.		25% of the common fund in fees and \$30,6881.71 in expenses	\$7,500 combined for named plaintiffs	Final Approval Granted December 7, 2020

<sup>\*</sup> Plaintiff is represented by James Kauffman of Bailey Glasser LLP and Hassan A. Zavareei and Kristen G. Simplicio of Tycko & Zavareei LLP.

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Case	Class Size	Funds Made Available	Percentage of Actual Damages	Distribution	Future Practices	Attorneys' Fees	Service Awards	Status
Montesi et al v. Seterus, Inc 50-2015-CA- 010910 (Fla Cir. Ct) <sup>‡</sup>	57,615 loans	\$1.75 mil  Common fund with no reversion.	35%	Amount of funds distributed to class members in form of check without the need to make a claim.		One third of fund, up to \$150,000 in expenses	\$10,000 for each named plaintiff	Final Approval Granted April 1, 2020
McWhorter, et al v. Ocwen Loan Servicing LLC, et al 2:15-cv-01831 (N.D. Ala.)	182,831 loans	\$9.7 mil.  Common fund with no reversion.	30%	Amount of fund distributed pro rata via check to class members defendant is no longer servicing and via credit to class members defendant is still servicing.	As term of Settlement, class member mortgages amended to permit defendants to charge fees effective June 1, 2018. Fees will not increase until at least August 1, 2020. Defendant will provide disclosures on fee amount and avoidance.	One third of the fund, \$7,977.95 in expenses	\$15,000 for each named plaintiff	Final Approval Granted August 1, 2019

<sup>\*</sup> Plaintiff was represented by James Kauffman of Bailey Glasser LLP.
\* Plaintiff is represented by James Kauffman of Bailey Glasser LLP and Hassan A. Zavareei and Kristen G. Simplicio of Tycko & Zavareei LLP.

Case	Class Size	Funds Made Available	Percentage of Actual Damages	Distribution	Future Practices	Attorneys' Fees	Service Awards	Status
Garcia v. Nationstar Mortgage, LLC, 2:15-cv-01808 (W.D. Wash.)	119,511 loans	\$3.875 mil  Common fund with no reversion.	32%	Amount of fund distributed pro rata to class members via check. Class members must make a claim to receive payment.	As term of Settlement, Defendant will provide express notice to consumers prior to charging any Convenience Fees	25% of the fund, \$16,383.53 in expenses	\$5,000 for each named plaintiff	Final Approval Granted October 26, 2018

<sup>\*</sup> Plaintiff is represented by James Kauffman of Bailey Glasser LLP and Hassan A. Zavareei and Kristen G. Simplicio of Tycko & Zavareei LLP.

## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

ASHLY ALEXANDER, CEDRIC BISHOP, AMY THOMAS-LAWSON, BRENDA BOLEY, MIGUEL PADILLA, WILLIAM GREEN, and VICTORIA DAWKINS, On Behalf of Themselves and All Others Similarly Situated,

Plaintiffs.

Case No. 1:20-cv-02369-RDB

v.

CARRINGTON MORTGAGE SERVICES, LLC,

Defendant.

# DECLARATION OF KRISTEN G. SIMPLICIO IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND FOR CERTIFICATION OF SETTLEMENT CLASS

- I, Kristen G. Simplicio, declare as follows:
- 1. I am an attorney admitted to practice in the State of California, a partner at Tycko & Zavareei ("TZ"), and counsel of record for Plaintiffs and the Class in this case. I have personal knowledge of all of the facts set forth in this Declaration unless otherwise stated, and I am competent to testify to these facts if called on to do so.
  - 2. The proposed Settlement Agreement in this case is attached as **EXHIBIT 1.**
- 3. I make this Declaration in support of Plaintiffs' Motion for Preliminary Approval. In that regard, I discuss, in the following order: (a) the history of this litigation; (b) the proposed settlement agreement; (c) information relating to the certification of the Settlement Class, including TZ's experience; and (d) the proposed notice program.

### **Background and Settlement Negotiations**

4. Prior to filing the complaints in *Thomas-Lawson v. Carrington Mortg. Servs. LLC*, 2-20-cv-07301-ODW (C.D. Cal.) and *Dawkins v. Carrington Mortg. Servs. LLC*, 1:20-

CV-60998-RAR (S.D. Fla.), attorneys at my firm spent substantial time investigating the factual and legal bases for the matters set forth in the complaints. Attorneys here, working with our cocounsel at Bailey Glasser LLP ("BG") interviewed potential class members, reviewed information about the fees charged by Carrington Mortgage Services LLC ("Carrington") on its website, reviewed documents provided by the Plaintiffs and other potential class members, and researched the applicable law.

- 5. Shortly after the motion to dismiss was decided in December 2020 in *Alexander v. Carrington Mortg. Servs., LLC*, 1-20-CV-02369-RDB (D. Md.), TZ and BG were retained to represent the plaintiffs in that matter with Phillip Robinson of the Consumer Law Center LLC ("CLC").
- 6. The Parties began to discuss the possibility of a classwide settlement beginning in September 2021. Several preliminary discussions were held. Eventually the parties agreed to attend a mediation before Jeff Kichaven on April 20, 2022.
- 7. In advance of the mediation, Carrington provided informal discovery regarding the size of the Settlement Class and the amount of Pay-to-Pay Fees (fees charged in connection with mortgage payments made online and over the telephone) collected by Carrington since January 2016 for the various classes and claims pled in the three complaints.
- 8. The information provided by Carrington was similar to the information that we would have sought through the formal discovery process. Because we, BG, and CLC have litigated and settled numerous class actions involving mortgage servicers and fees, we understand what information is critical to determine damages and evaluate the strength of the underlying case.

- 9. Based on our review of the informal discovery, as well as our expertise in the relevant law, we prepared a thorough and persuasive mediation statement. We shared the mediation statement with Carrington in advance of the mediation, and reviewed Carrington's mediation statement.
- 10. Plaintiffs were fully prepared to litigate the three cases rather than accept a settlement that would not be in the best interests of the Settlement Class. Indeed, my co-counsel and I made clear from the onset of discussion that we would not agree to a settlement that would modify loan agreements to expressly permit the charging of Pay to Pay fees.
- 11. We mediated before Mr. Kichaven for a full day on April 20, 2022. It was a full day of hard-fought negotiations, where both sides made presentations to both Mr. Kichaven as well as all attendees. The mediation began at 12:00 p.m. (Eastern time) and the negotiations ran for a full fourteen hours, until reaching an agreement on all material terms at approximately 2:00 a.m. on April 21, 2022.
- 12. By the end of the day, we had agreed upon the material terms of the Settlement, including the amount of the common fund and the injunctive relief. We continued to negotiate the written terms of the Settlement Agreement before the Court, including the proposed Class Notice and proposed Preliminary Approval Order and Final Approval Order, over the next several weeks. Class Counsel prepared the first draft of the Settlement and exhibits, and the Parties negotiated over email and telephone until the written Settlement Agreement was complete.
- 13. Based on our review of the data provided by Carrington, it appears that Carrington collected an average of approximately \$8.64 million per year from Settlement Class members, and thus, because Carrington has agreed to stop charging these fees for three years

from the date of final approval, I estimate that the agreed injunctive relief can be valued at approximately \$26 million or more.

- 14. The Parties did not discuss any award of attorneys' fees and expenses, or any Service Awards, until after the material terms of the Settlement were agreed upon.
- 15. The negotiation was done at arms' length between experienced and sophisticated counsel. As discussed below, my firm has significant experience in complex litigation and class actions. And, based on my experience, it appears that Carrington's counsel is similarly experienced and sophisticated.

### **The Settlement Agreement**

- 16. While confident in the strengths of Plaintiffs' claims, we are also pragmatic, and recognize the risks inherent in litigation of this magnitude. Indeed, an appeal is pending before the Ninth Circuit in the *Thomas-Lawson* matter on questions that go to the heart of the merits of the dispute here. While the *Alexander* plaintiffs prevailed in their appeal before the Fourth Circuit, there is no guarantee the Ninth Circuit will agree. And the *Dawkins* matter is stayed pending resolution of an arbitration question before the Eleventh Circuit; a favorable ruling for Carrington at the Eleventh Circuit also presents risks to the class. Moreover, while *Alexander* matter's initial focus was on Maryland residents, the *Thomas-Lawson* and *Dawkins* matters included nationwide classes. Even if all these matters were to be resolved favorably for the Plaintiffs, it remains possible that they could see their claims narrowed by a motion for summary judgment, at trial, or on a subsequent appeal.
- 17. They also face the risk that class certification could be denied. A class has not been certified in any of the underlying cases. There is a significant risk that the Plaintiffs would not maintain class status through trial.

- 18. Each risk, by itself, could impede the successful prosecution of these claims at trial and in an eventual appeal—which would result in a *zero* recovery to the class.
- 19. Even if Plaintiffs were to prevail at trial, any recovery would likely be delayed for years by an appeal. Thus, any recovery would likely be years away.
- 20. Of course, Class Counsel acknowledges that Plaintiffs believe their claims are meritorious and that they would prevail if their cases proceeded to trial. But ultimately, the claims of any one state class are relatively small, and unless states can be bundled together in such a way to ensure economies of scale, each state's class members risk the possibility that in any individual state settlements, notice and administration costs could dwarf the cost of recovery in any one state.
- 21. All of this litigation would result in considerable expense and would consume the Parties' resources, particularly since the underlying cases would proceed in three separate courts in Maryland, California, and Florida. This could and likely would result in inefficiency and duplication of effort, and consumption of the court system's resources and time.
- 22. Litigation would likely involve expensive and cumbersome discovery disputes, complex and costly expert discovery, and of course the time and expense of preparing for trial and completing any appeals. Yet there is no guarantee that this additional time and expense would result in additional benefit for the class members.
- 23. In contrast, the Settlement provides immediate benefits, now, to the Settlement Class Members. It is my understanding, based on my review of data received from Carrington, that the Settlement represents approximately 35% of the total \$51,891,139.18 Pay-to-Pay fees collected by Carrington from the settlement class.

24. Thus, it is my opinion, based on my experience in complex litigation and class actions, that the Settlement Agreement is in the best interests of the Settlement Class in light of the strengths and risks of Plaintiffs' claims, and the likely expense and duration of further litigation.

### **Adequacy of Class Representatives and Class Counsel**

- 25. I am aware of no conflicts between the proposed Class Representatives and the proposed Settlement Class.
- 26. Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda Boley, Miguel Padilla, and Victoria Dawkins have participated in the litigation by reviewing the draft complaints their respective actions, communicating with counsel, and reviewing and signing the Settlement Agreement. They also took on significant risk in bringing lawsuits against their mortgage loan servicer. Due to the standard industry practice of placing debt collection litigation notations on the accounts of borrowers involved in litigation and represented by counsel, the mere act of filing the lawsuit came with the risk of experiencing complications in obtaining routine information about their mortgages, property taxes, or similar. It also exposes them to reputational risk and required them to turn over sensitive financial information.
- 27. Tycko & Zavareei LLP is experienced in the litigation, certification, trial, and settlement of nationwide class actions. A copy of our firm resume is attached as **EXHIBIT 2.**
- 28. TZ has worked with our co-counsel BG on the following Pay to Pay settlements: *Phillips v. Caliber Home Loans*, No. 19-cv-2711 (D. Minn.); *Elbert v. RoundPoint Loan Servicing*, No. 3:20-cv-00250-MMC (N.D. Cal.); *Fernandez v. Rushmore Loan Servicing*, 8:21-cv-00621 (C.D. Cal.); *Lembeck v. Arvest Central Mortgage Co.*, 20-cv-3277 (N.D. Cal.);

Silveira v. M&T Bank, 19-cv-06958 (C.D. Cal.). My partner Hassan A. Zavareei was class counsel in the Silveira matter; he and I were appointed class counsel in the other four matters. As noted in Appendix A, final approval in all five of these settlements was granted.

- 29. In addition, along with BG, I represent plaintiffs in two other Pay to Pay class actions: *McFadden v. Nationstar Mortgage Co. d/b/a Mr. Cooper*, No. 1:20-cv-00166-EGS (D.D.C.) and *DeSimone v. Select Portfolio Servicing*, No. 1:20-cv-03837 (E.D.N.Y.).
- 30. Mr. Zavareei and other lawyers at TZ were also named Class Counsel, Lead Counsel, or Settlement Class Counsel in the following consumer class actions: Shannon Schulte, et al. v. Fifth Third Bank, No. 1:09-cv-06655 (N.D. III.); Kelly Mathena v. Webster Bank, No. 3:10-cv-01448 (D. Conn.); Nick Allen, et al. v. UMB Bank, N.A., et al., No. 1016 Civ. 34791 (Cir. Ct. Jackson County, Mo.); Thomas Casto, et al. v. City National Bank, N.A., 10 Civ. 01089 (Cir. Ct. Kanawha County, W. Va.); Eaton v. Bank of Oklahoma, N.A., and BOK Financial Corporation, d/b/a Bank of Oklahoma, N.A., No. CJ-2010-5209 (Dist. Ct. for Tulsa County, Okla.); Lodley and Tehani Taulva, et al., v. Bank of Hawaii and Doe Defendants 1-50, No. 11-1-0337-02 (Cir. Ct. of 1st Cir., Haw.); Jessica Duval, et al. v. Citizens Financial Group, Inc., et al, No. 1:10-cv-21080 (S.D. Fla.); Mascaro, et al. v. TD Bank, Inc., No. 10-cv-21117 (S.D. Fla.); Theresa Molina, et al., v. Intrust Bank, N.A., No. 10-cv-3686 (18th Judicial Dist., Dist. Ct. Sedgwick County, Kan.); Trombley v. National City Bank, 1:10-cv-00232-JDB (D.D.C.); Jonathan Jones, et al. v. United Bank and United Bankshares, Inc., No. 11-C-50 (Cir. Ct. of Jackson County, W. Va.); Amber Hawthorne, et al. v. Umpqua Bank, No. 4:11-cv-06700 (N.D. Cal.); Sylvia Hawkins, et al. v. First Tennessee Bank, N.A., No. CT-004085-11 (Cir. Ct. of Shelby County, Tenn.); Jane Simpson, et al. v. Citizens Bank, et al., No. 2:12-cv-10267 (E.D. Mich.); Alfonse Forgione, et al. v. Webster Bank, N.A., No. UWY-CV12-6015956-S (Super. Ct.

Judicial Dist. of Waterbury, Conn.); Sherry Bodnar v. Bank of America, N.A., No. 5:14-cv-03224-EGS (E.D. Pa.); Wong v. TrueBeginnings LLC d/b/a True.com, No. 3-07 Civ. 1244-N (N.D. Tex.); Geis v. Airborne Health, et. al., Civil Action No. 2:07 Civ. 4238-KSH-PS (D. N.J.); Dennings, et al. v. Clearwire Corporation, No. 2:10-cv-01859 (W.D. Wash.); In Re: Higher One Oneaccount Marketing And Sales Practices Litigation, No. 3:12-md-02407 (VLB) (D. Conn.); Galdamez v. I.Q. Data International, Inc., No. 15-cv-1605 (E.D. Va.); Brown v. Transurban USA, No. 15-cv-494 (E.D. Va.), Gatinella et al. v. Michael Kors (USA), 14-cv-5731 (S.D.N.Y); Grayson, et al. v. General Electric Company, 3:13-cv-1799 (D. Conn.); Farrell, et al. v. Bank of America, N.A., No. 3:16-00492 (S.D. Cal.); In re: APA Assessment Fee Litigation, 1:10-cv-01780 (D.D.C.); Griffith v. ContextMedia Health, LLC d/b/a Outcome Health, No. 1:16-cv-02900 (N.D. Ill.); Scott, et al. v. JPMorgan Chase & Co., No. 17-cv-249 (D.D.C.); In re Think Finance, LLC, et al., No. 17-bk-33964 (Bankr. N.D. Tex.); Gibbs v. Plain Green, LLC, No. 3:17-cv-495 (E.D. Va.); and Meta v. Target Corp., et al., No. 14-cv-0832 (N.D. Ohio). Each of these actions has resulted in a settlement that has been finally approved.

### Superiority to Other Available Methods for Fair and Efficient Adjudication

31. I am not aware of other pending individual litigation against Carrington regarding the practices at issue in this Action.

### **Proposed Notice Program**

- 32. It is my opinion, based on my decades of experience in complex litigation and class actions, that the proposed Notice Plan is the best notice practicable under the circumstances.
- 33. Prior to selecting the Settlement Administrator, the Parties sought proposals from several experienced, nationally-recognized settlement administrators. The proposals included

proposals for email and postcard notice, as well as a long form notice to be available on a

settlement website, along with a toll-free number for Settlement Class Members to call for

information about the Settlement and that will include an option to speak with a live agent.

After reviewing the proposals, the Parties decided on Epiq Class Action & Claims Solutions

("Epiq") based on overall cost and value to the Settlement Class. Epiq has served as the

Settlement Administrator in two of the five other Pay to Pay settlements identified in Paragraph

28, and has delivered excellent service. Epiq also has developed a program by which Settlement

Class Members can elect to receive their Settlement Payments by digital means in lieu of check,

which will reduce the cost of administration and increase the speed at which Settlement Class

Members can be paid.

34. Currently, the Settlement Administrator estimates that the costs of notice and

administration will be approximately \$437,059.

35. I understand from Carrington's counsel that Carrington has email addresses for

roughly 89% of the Settlement Class Members, and because email notice has been successfully

used in other Pay to Pay settlements and results in increased cost savings for the Settlement

Class, it is being used here.

36. Based on my experience, it is my opinion that the proposed Notice Program is

the best notice practicable under the circumstances and is reasonably designed to reach the

Settlement Class Members.

I declare under penalty of perjury that the foregoing is true and correct to the best of my

knowledge.

Executed May 25, 2022 at Washington, DC.

/s/ Kristen G. Simplicio

Kristen G. Simplicio

# EXHIBIT 1

### **CLASS ACTION SETTLEMENT AGREEMENT**

This Settlement Agreement (the "Agreement"), subject to approval by the Court, as defined herein, is made this date of May 24, 2022, between Plaintiffs Victoria Dawkins, Amy Thomas-Lawson, Brenda Boley, Miguel Padilla, William Green, Ashly Alexander, and Cedric Bishop ("Plaintiffs"), as the proposed representatives of the Settlement Class, as defined herein, and Defendant Carrington Mortgage Services, LLC ("Carrington").

### I. RECITALS

- A. <u>Parties</u>. Plaintiffs, Victoria Dawkins, Amy Thomas-Lawson, Brenda Boley, Miguel Padilla, William Green, Ashly Alexander, and Cedric Bishop, individually, and as the representatives of the Settlement Class (defined below), and Defendant Carrington Mortgage Services, LLC ("Carrington") enter into this Agreement to resolve the claims of Plaintiffs and the Settlement Class described below. Plaintiffs and Carrington are collectively referred to hereinafter as the "Parties."
- B. The Three Lawsuits Encompassed by this Settlement (the "Lawsuits"). On December 16, 2019, Amy Thomas-Lawson, Brenda Boley, Miguel Padilla, and William Green, individually and on behalf of a putative class, filed a lawsuit in the United States District Court for the District of Maryland, which was transferred to the United States District Court for the Central District of California on August 13, 2021, *Thomas-Lawson, et al. v. Carrington Mortgage Services*, LLC., Case No. 2:20-cv-07301-ODW(Ex) (the "Thomas-Lawson Lawsuit"). The Plaintiffs alleged Carrington violated the federal Fair Debt Collection Practices Act ("FDCPA") and state debt collection laws, and breached the uniform terms of borrowers' mortgages by charging and collecting additional processing fees when borrowers paid their monthly mortgage by phone or online ("Convenience Fees").
- C. On May 20, 2020, Victoria Dawkins, individually and on behalf of a putative class, filed a lawsuit in the United States District Court for the Southern District of Florida, *Dawkins, et al. v. Carrington Mortgage Services*, LLC, Case No. 0:20-cv-60998-RAR (the "Dawkins Lawsuit"). Ms.

Dawkins alleged Carrington violated the Florida Consumer Collection Practices Act, Fla. Stat. § 559.72 (FCCPA), and the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.203 (FDUTPA), breached its contracts, and was unjustly enriched by charging and collecting Convenience Fees.

- D. On July 10, 2020, Ashly Alexander, individually and on behalf of a putative class, filed a lawsuit in the Circuit Court for Baltimore County, Maryland, *Alexander v. Carrington Mortgage Services, LLC*, Case No. C-03-CV-20-002729. Ms. Alexander alleged Carrington violated the Maryland Consumer Debt Collection Act (MCDCA), Com. Law § 14-201, *et seq.*, the Maryland Consumer Protection Act (MCPA), Com. Law § 13-101, and Maryland's Usury Law, Com. Law § 12-105(d), by charging and collecting Convenience Fees. On July 17, 2020, Carrington removed this case to the U.S. District Court for the District of Maryland, where it was assigned case number Civil No. 1:20-cv-2369. On September 8, 2020, Ms. Alexander filed an amended complaint that added Cedric Bishop as an additional Plaintiff.
- **E.** The Parties exchanged information necessary to mediation, and after a 14 hour mediation with an experienced class action mediator, Jeff Kichaven, on April 20, 2022, the Parties reached an agreement to resolve the Lawsuits.
- F. Denial of Liability. By entering into this Agreement, Carrington does not admit that it is liable to Plaintiffs or the Settlement Class, nor does Carrington concede that, absent a settlement, Plaintiffs' putative classes may properly be certified under the Federal Rules of Civil Procedure. Carrington desires to settle the claims brought solely to avoid the expense, burden, and uncertainty of further litigation, and to put to rest all claims which have or could have been asserted by Plaintiffs against Carrington relating to Carrington's alleged wrongful actions or omissions. Carrington denies all liability to Plaintiffs and the Settlement Class.
- **G.** Plaintiffs, individually and on behalf of the Settlement Class, desire to settle their claims alleged against Carrington in the Lawsuits, having taken into account through Plaintiffs' counsel

the risks, delay, and difficulties involved in establishing a right to recovery in excess of that offered by this Settlement and the likelihood that the Lawsuits will be further protracted and expensive.

- H. Plaintiffs' counsel has conducted an extensive investigation of the facts and applicable law, including, but not limited to, obtaining discovery on issues pertaining to class size and damages. Based on the foregoing, and upon an analysis of the benefits, including future relief concerning the subject practices, afforded by this Agreement, Plaintiffs' counsel considers it to be in the best interest of the Settlement Class to enter into this Agreement.
- I. This Agreement reflects a compromise between the Parties and shall in no event be construed as or be deemed an admission or concession by any Party of the truth of any allegation or the validity of any purported claim or defense asserted in any of the pleadings in the Action, or of any fault on the part of Carrington, and all such allegations are expressly denied. Nothing in this Agreement shall constitute an admission of liability or be used as evidence of liability, by or against any Party hereto.
- **J.** In consideration of the foregoing and other valuable consideration, Plaintiffs, Plaintiffs' Counsel, Carrington, and Carrington's Counsel agree collectively to settle the claims of the Plaintiffs and the Settlement Class arising from Carrington's collection of Convenience Fees as alleged in the Lawsuits, subject to the Court's approval, on the following terms and conditions.

### II. DEFINITIONS

- A. "Action" refers collectively to the Lawsuits identified above in the Recitals: *Thomas-Lawson, et al. v. Carrington Mortgage Services*, LLC., Case No. 2:20-cv-07301-ODW(Ex) (C.D. Cal.), Dawkins, et al. v. Carrington Mortgage Services, LLC, Case No. 0:20-cv-60998 (S.D. Fla.), Alexander, et al. v. Carrington Mortgage Services, LLC, Case No. 1:20-cv-02369 (D. Md.).
- **B.** "Administrative Costs" means all costs and expenses associated with and incurred in connection with providing notices to the Proposed Class, locating Class Members whose current

address is not reflected in existing records of Carrington, issuing settlement payments, and any other costs of or associated with administration of the Settlement. It does not include any fees, costs or expenses incurred by Class Counsel or any Class Members. All Administrative Costs shall be paid from the Gross Settlement Fund.

- C. "Agreement" or "Settlement Agreement" means this Proposed Class Action Settlement Agreement.
  - **D.** "Class" or "Class Member" is defined as:

All persons who paid a fee to Carrington for making a mortgage loan payment by telephone, IVR, or via the internet, between January 1, 2016 through December 31, 2021 who fall into one or more of the following groups:

- (1) were borrowers on residential mortgage loans on properties located in California, Texas, New York, Maryland, or Florida;
- (2) were borrowers on residential mortgage loans on properties in the United States to which Carrington acquired servicing rights when such loans were 30 days or more delinquent on loan payment obligations; or
- (3) were borrowers on residential mortgage loans on properties located in the United States insured by the Federal Housing Administration.

The Parties agree that the Class consists of 442,059 consumer, mortgage loans and their borrowers nationwide.

- **E.** "Class Counsel" means James L. Kauffman of Bailey & Glasser LLP, Hassan A. Zavareei and Kristen Simplicio of Tycko & Zavareei LLP and Phillip Robinson of Consumer Law Center, LLC.
- **F.** "Class Counsel's Fees and Expenses" means the amount awarded to Class Counsel by the Court to compensate Class Counsel for fees, costs, and expenses in prosecuting the Action and related matters, to be paid from the Gross Settlement Fund.

- G. "Class Member List" means a list of persons who, according to a reasonable search of Carrington's business records, fall within the definition of the Class. The Class Member List shall include the names of all persons who, according to a reasonable search of Carrington's business records, fall within the definition of the Class; their last known mailing address; their last known email address, provided that the Preliminary Approval Order prescribes Class Notice by email; and the dates and amounts of each Convenience Fee paid during the Class Period.
- **H.** "Class Notice" means the Long Form Notice of Proposed Class Action Settlement and Final Hearing attached as <u>Exhibit A1</u> hereto, the Short Form Postcard Notice of Proposed Class Action Settlement and Final Hearing attached as <u>Exhibit A2</u> hereto, and the Email Notice of Proposed Class Action Settlement and Final Hearing attached as <u>Exhibit A3</u>, or substantially similar notices approved by the Court.
  - I. "Class Period" means the time period January 1, 2016 through December 31, 2021.
- J. "Class Representatives" means Victoria Dawkins, Amy Thomas-Lawson, Brenda Boley, Miguel Padilla, William Green, Ashly Alexander, and Cedric Bishop.
- **K.** "Cy Pres Recipient" means NeighborWorks America and the Maryland Consumer Rights Coalition.
- L. "Defendant's Counsel" or "Carrington's Counsel" means Fredrick S. Levin and Scott T. Sakiyama of Buckley LLP.
- M. "Effective Date" means the date on which this Agreement and the Final Approval Orders are effective pursuant to this paragraph. This Effective Date shall be the later of: (i) 31 days after the docketing and entry of the Final Approval Order which is also the day after the last date for filing a Notice of Appeal, or (ii) the day after any order on appeal becomes final and non-appealable and there are no further proceedings on remand, including no further appeal of orders issued on remand.

- **N.** "Email Notice" means the notice to be emailed to Class members by the Settlement Administrator, substantially in the form of **Exhibit A3**, provided that the Preliminary Approval Order prescribes Class Notice by email.
- **O.** "Fee and Expense Award" means the amount awarded to Class Counsel by the Court to compensate Class Counsel for attorneys' fees and expenses in prosecuting the Actions, to be paid from the Gross Settlement Fund.
- **P.** "Fee and Service Award Application" means Class Counsel's application for a Fee and Expense Award and Service Awards.
- **Q.** "Final Approval Hearing" or "Final Fairness Hearing" mean the hearing at or after which the Court will determine whether to finally approve the Settlement.
- **R.** "Final Approval Order" means an order of the Court finally approving the Settlement. A copy of a proposed Final Approval Order is attached as **Exhibit C.**
- S. "Long Form Notice" means the notice to be posted on the Settlement Website and mailed to Class Members upon request that discloses the terms of the Settlement Agreement, substantially in the form of Exhibit A1.
- T. "Net Settlement Fund" means the Gross Settlement Fund minus any Fee and Expense Award, any Service Awards, and all Administrative Costs.
- U. "Notice Program" or "Notice Plan" means the procedure for providing Class Notice to the Settlement Class.
  - V. "Parties" shall mean the named Plaintiffs and Carrington.
- **W.** "Plan of Allocation" means the terms and procedures for allocating the Settlement Fund among, and for distributing amounts to Class Members as proposed in the Class Notice and approved by the Court.

- **X.** "Postcard Notice" means the notice to be mailed to Class Members by the Settlement Administrator, substantially in the form of **Exhibit A2.**
- Y. "Preliminary Approval Order" means an order from the Court preliminarily approving the Settlement; preliminarily certifying, for settlement purposes only, the Settlement Class; and approving the Class Notice. A copy of a proposed Preliminary Approval Order is attached hereto as Exhibit <u>B</u>.
- **Z.** "Released Claims" means any and all claims, counterclaims, actions, causes of action, suits, set-offs, costs, losses, expenses, sums of money, accounts, reckonings, debts, charges, complaints, controversies, disputes, damages, judgments, executions, promises, omissions, duties, agreements, rights, and any and all demands, obligations and liabilities, of whatever kind or character, direct or indirect, whether known or unknown, at law or in equity, by right of action or otherwise, arising out of, based upon, or related in any way to the facts, allegations, disputes that are the subject matter of the Lawsuits or the charging, collection, or attempted collection of Convenience Fees from the beginning of the world to the Effective Date, which the Settlement Class Member ever had or may have in the future.
- AA. "Released Entities" means Carrington and each of its past, present and future directors, officers (whether acting in such capacity or individually), shareholders, advisors, owners, partners, joint venturers, principals, trustees, creditors, law firms, attorneys, representatives, employees, managers, parents, direct or indirect subsidiaries, divisions, subdivisions, departments, entities in common control, affiliates, insurers, reinsurers, control persons, predecessors, and successors or any agent acting or purporting to act for them or on their behalf, as well as any investor on whose behalf Carrington services any loan to any Settlement Class Member, and each of their past, present and future directors, officers (whether acting in such capacity or individually), shareholders, advisors, owners, partners, joint venturers, principals, trustees, creditors, law firms, attorneys,

representatives, employees, managers, parents, direct or indirect subsidiaries, divisions, subdivisions, departments, entities in common control, affiliates, insurers, reinsurers, control persons, predecessors, and successors or any agent acting or purporting to act for them or on their behalf, and, any entity on whose behalf Carrington services any loan to any Class Member.

- **BB.** "Response Deadline" means 105 days after entry of the Preliminary Approval Order.
- **CC.** "Settlement Administrator" means Epiq. The Settlement Administrator was selected by Class Counsel, with input from Carrington, after several settlement administrators submitted proposals.
- **DD.** "Settlement Class" or "Settlement Class Member" means all Class Members who do not opt out of the Settlement.
- **EE.** "Gross Settlement Fund" means a payment by Carrington in the amount of \$18,181,898.65, from which all Administrative Costs, any Fee and Expense Award, and any Service Award shall be paid, pursuant to the terms of this Settlement Agreement as approved by the Court. The Gross Settlement Fund constitutes 35% of the total Convenience Fees collected by Carrington from the Class during the class period.
- **FF.** "Settlement Payment" means the payment made to each Settlement Class Member from the Net Settlement Fund pursuant to this Agreement.
- **GG.** "Service Award" means such funds as may be awarded by the Court to the Plaintiffs in recognition of their time and effort expended in pursuing the Action and in fulfilling their obligations and responsibilities as Class Representatives, to be paid from the Gross Settlement Fund.
- **HH.** "Settlement Website" means an internet website to be established and maintained by the Settlement Administrator.

II. "Prospective, Future Relief" means the benefits agreed to by this contract with Carrington which expressly provides that Carrington will not impose or collect Convenience Fees for a three year period following the entry of the Preliminary Approval Order.

## III. SCHEDULE AND CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS

Solely for the purpose of effectuating the Settlement set forth in this Agreement and subject to Court approval, the Parties state they have stipulated to stay the *Thomas-Lawson* Lawsuit and agreed to continue an existing stay in the *Dawkins* Lawsuit. They further agree that Victoria Dawkins, Amy Thomas-Lawson, Brenda Boley, Miguel Padilla, and William Green shall be permitted to join the *Alexander* Lawsuit as named Plaintiffs through the conditional filing of a second amended complaint, the terms of which shall be set forth in a stipulation to be filed concurrently with the Motion for Preliminary Approval. The parties further stipulate that: (1) a Settlement Class consisting of borrowers in accordance with the definition of the Class set forth in this Agreement shall be certified in accordance with the definition of the Settlement Class set forth in this Agreement; (2) the Class Representatives shall represent the Class for settlement purposes; (3) Class Counsel shall represent the Class for settlement purposes; and (4) the *Thomas-Lawson* and *Dawkins* Lawsuits (including the *Thomas-Lawson* appeal pending in the United States Court of Appeals for the Ninth Circuit) shall be voluntarily dismissed with prejudice upon the Effective Date of this settlement.

Plaintiffs shall file an unopposed Motion for Preliminary Approval of the Settlement, attaching this Agreement with Exhibits, on or before May 25, 2022 or such other date as is ordered by the Court. In their Motion for Preliminary Approval, Plaintiffs shall request that the Court: (1) enter the Preliminary Approval Order; (2) certify, for settlement purposes only, the Class; (3) appoint Plaintiffs as Class Representatives; (4) appoint Class Counsel as counsel for the Class; (5) approve the Notice Program; (6) approve the procedures for objecting to and requesting exclusion from the Settlement;

and (7) schedule a Final Fairness Hearing. Carrington shall not oppose the motion and may file a statement of non-opposition. Carrington agrees that the total amount of Convenience Fees the Class paid to Carrington during the Class Period may be filed publicly on the docket and not under seal.

Plaintiffs will also submit, by the deadline set by the Court, a motion (1) seeking entry of the Final Approval Order; (2) confirming certification of the Class for settlement purposes; approving the Settlement; (3) finding the Notice Program was the best notice practicable under the circumstances and comported with all applicable requirements of law and due process; (4) confirming the release of the Released Claims; (5) identifying those who have timely and validly requested exclusion; and (6) confirming the retention of jurisdiction relating to the administration, consummation, validity, enforcement, and interpretation of this Agreement, the Final Approval Order, and any order granting any Fee and Expense Award and Service Awards, and for any other necessary purpose. Carrington will not oppose the motion and may file a statement of non-opposition.

This Agreement, which is proposed, will become effective upon the Effective Date.

In the event that this Agreement (including the Settlement provided for herein) is not finally approved, or is terminated or cancelled or fails to become effective for any reason whatsoever, the conditional class certification and conditional leave to file a second amended complaint, to which the Parties have stipulated solely for the purpose of the settlement of the each of the three Lawsuits, shall be null and void, and the second amended complaint in the *Alexander* Lawsuit shall be deemed to be withdrawn, and each of the three Lawsuits shall revert to their status as they existed prior to the date of this Agreement.

### IV. THE SETTLEMENT TERMS

### A. Funding of Settlement

The Gross Settlement Fund shall be used to pay, in the following order: (1) all Administrative Costs, (2) any taxes owed by the Gross Settlement Fund (but not any taxes owed by any individual

Class Counsel, Plaintiffs, or Class Members), (3) any Fee and Expense Award approved by the Court, (4) any Service Awards to the Class Representatives approved by the Court, and (4) Settlement Payments.

The Gross Settlement Fund shall be paid by Carrington to the Settlement Administrator after the entry of the final Preliminary Approval Order by the later of (i) within thirty-five (35) days after the entry of the final Preliminary Approval Order; or (ii) July 20, 2022. The Gross Settlement Fund shall be deposited into an interest-bearing account established by the Settlement Administrator and designated as a Qualified Settlement Fund pursuant to the Internal Revenue Code (the "Escrow Account") to be held in escrow pending the Effective Date. Any interest earned shall accrue to the benefit of the Class. The Parties agree to take all necessary and reasonable actions to qualify the Settlement Fund as a QSF.

The principal and interest in the Escrow Account (the amount deposited plus interest) shall be returned to Carrington within five (5) business days of any of the following events: (i) the Court determines not to enter a Final Approval Order, unless otherwise agreed in writing by the Parties; (ii) a Final Approval Order entered by the Court is set aside by an appellate court, unless otherwise agreed in writing by the Parties; or (iii) the Settlement does not occur for some other reason.

### B. Settlement Payments and Distribution

Settlement Class Members who paid at least one Convenience Fee are entitled to receive a payment of \$5.00 from the Net Settlement Fund, with the remainder paid to Settlement Class Members on a pro rata basis, based upon the amount of Convenience Fees paid by each Settlement Class Member during the Class Period. Co-borrowers on a single class account shall be entitled to a single total Settlement Payment per account. Settlement Class Members who receive a Settlement Payment shall be solely responsible for distributing or allocating such payment between or among all co-account holders.

Within fourteen (14) days of entry of the Final Approval Order, the Settlement Administrator shall calculate the Net Settlement Fund by deducting (1) the Administrative Costs incurred in connection with the Notice Program and any other Administrative Costs approved by the Parties; (2) any costs, fees, or other expenses that the Settlement Administrator expects reasonably to incur through the conclusion of the Settlement ("Projected Administrative Costs"); (3) the amount of any Court-approved Fee and Expense Award; and (4) the amount of any Court-approved Service Awards. The Settlement Administrator will provide Class Counsel and Carrington's Counsel with a document demonstrating this calculation. The Parties shall review and approve any Projected Administrative Costs, and approval shall not be unreasonably withheld. If at the conclusion of the Settlement administration not all of the Projected Administrative Costs are incurred, remaining amounts shall be distributed to the *Cy Pres* Recipient. In no event, however, shall the Settlement Administrator be paid in excess of the actual Administrative Costs, including Projected Administrative Costs.

Within thirty (30) days of the occurrence of the Effective Date, the Settlement Administrator shall pay by wire any Fee and Expense Award approved by the Court, and any Service Awards approved by the Court. Wiring instructions and W-9s shall be provided by Class Counsel to the Settlement Administrator on or before this deadline.

Within fourteen (14) days of the Effective Date, the Settlement Administrator shall calculate on a percentage basis and dollar basis the allocation to each Settlement Class Member to be made from the Net Settlement Fund and disseminate to the Parties' counsel a final list identifying each Settlement Class Member, the percentage of the Net Settlement Fund to be paid to each Settlement Class Member, and the amount of payment to each Settlement Class Member.

Settlement Payments shall be made by check or by digital payment methods available to Settlement Class Members via the Settlement Website. Within fourteen (14) days of the Effective Date, the Settlement Administrator shall send an email to all Settlement Class Members for whom

Carrington provided an email address advising them of the option to select a digital payment method on the Settlement Website, and stating that any Settlement Class Member who does not select a digital payment method shall receive their Settlement Payment by check.

For Settlement Class Members who select a digital payment option, the payments will be effectuated within thirty (30) days of the Effective Date unless there is a pending appeal from a Fee and Expense Award. For Settlement Class Members who do not select a digital payment option, Settlement Payments will be mailed by check within thirty (30) days of the Effective Date unless there is a pending appeal from a Fee and Expense Award. Prior to mailing checks, the Settlement Administrator shall attempt to update the last known addresses of Settlement Class Members through the National Change of Address database. If a check is returned and marked "Undeliverable", the Settlement Administrator shall make reasonable efforts to locate the Settlement Class Member, reissue the check and send it to a forwarding address.

Checks issued under this Settlement shall be negotiable for ninety (90) days after date of issuance. Individual checks that have not been negotiated within ninety (90) days after issuance shall be void. For good cause shown, Settlement Class Members may request that the Settlement Administrator reissue a check for one additional 90-day period. After one hundred and eighty (180) days from the date of issuance of the initial checks, any remaining funds in the Net Settlement Fund shall be distributed to Settlement Class Members via a secondary distribution. If the amount of remaining funds is so minimal that a secondary distribution would be impracticable or infeasible, then the remaining funds shall be distributed to the *Cy Pres* Recipient. Any funds remaining following a secondary distribution shall be distributed to the *Cy Pres* Recipient. In no event shall such remaining funds be returned to Carrington.

The Parties agree that all Class Members who do not opt out shall be solely responsible for any and all tax obligations associated with this Settlement. Nothing in this Agreement is intended to

constitute legal advice or tax advice. To the extent that this Agreement or any of its Exhibits are interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code or any applicable state law.

### C. Injunctive Relief

As of January 1, 2022, Carrington has ceased charging or collecting Convenience Fees to any borrower, while allowing borrowers to make payments by telephone, IVR or internet for free, which constitutes extraordinary prospective, future relief. Carrington agrees to refrain from the charging or collection of Convenience Fees for allowing borrowers to make payments by telephone, IVR or internet, for a period of at least three (3) years after entry of the Final Approval Order and agrees that the Lawsuits were a substantial factor in its decision to stop charging Convenience Fees. Plaintiffs may file with the Court an estimate regarding how they value the injunctive relief based on the historical data that Carrington provided to Plaintiffs for the purpose of settlement. To the extent the Court requires additional non-privileged information to make such determination, Carrington agrees not to unreasonably withhold its consent to file additional information.

### D. Service Awards

On or before twenty-one (21) days prior to the Response Deadline, Class Counsel may apply to the Court for a Service Award from the Gross Settlement Fund for each Class Representative not to exceed \$5,000 per Class Representative. Service Awards will be requested in recognition of the Class Representatives' service to the Settlement Class, in addition to any other relief to which they are entitled. Carrington shall not object to the Class Representatives' request for Court approval of Service Awards.

This Settlement is not conditioned upon the Court awarding any Service Awards and should the Court decline to approve any Service Awards, or should the Court approve Service Awards in amounts less than that sought by Class Counsel, the remaining provisions of the Settlement shall be binding and effective.

### E. Class Counsel's Fees and Expenses

On or before twenty-one (21) days prior to the Response Deadline, Class Counsel may apply to the Court for a Fee and Expense Award from the Gross Settlement Fund, not to exceed forty (40%) of the Gross Settlement Fund as reasonable attorneys' fees, plus Class Counsel's reasonable expenses incurred in the litigation. Carrington may respond to the Fee and Service Award Application as it deems appropriate. The Parties agree that the amount of attorneys' fees ultimately paid from the Gross Settlement Fund will not in any way reduce, increase, or otherwise modify Carrington's obligation to pay the agreed-upon sum for the Gross Settlement Fund. Class Counsel Fees shall be subject to approval by the Court. Bailey Glasser LLP shall be solely responsible for paying any monies due to any and all other counsel for Plaintiffs, out of the Fee and Expense Award. Carrington shall not be liable for any claims ensuing from distribution of attorneys' fees and expenses. The Parties did not discuss any award of attorneys' fees or expenses until the material terms of the Settlement were agreed.

In consideration of this Agreement, Class Counsel and Plaintiffs release the Released Entities from any and all claims for attorneys' fees or costs, by lien or otherwise, other than the amount awarded by the Court. Class Counsel and Plaintiffs further agree that the Fee and Expense Award, if any, shall compensate them for all legal work in the Action up to and including the Effective Date, as well as for all legal work and costs that may be incurred in the Action after the Effective Date.

This Settlement is not conditioned upon the Court awarding any Fee and Expense Award and should the Court decline to make a Fee and Expense Award, or approve a Fee and Expense Award less than that sought by Class Counsel, the remaining provisions of the Settlement shall be binding and effective.

### F. Confirmatory Discovery

Carrington will provide Class Counsel reasonable confirmatory discovery as to the Class and the Convenience Fees they paid, if requested.

### V. RELEASE

Upon the Effective Date, and in consideration for the Settlement Payment and for Carrington's other promises contained herein, each Settlement Class Member, for and on behalf of their present and future spouses (and common law spouses), children, parents, relations, successors, beneficiaries, heirs, next of kin, assigns, attorneys, executors, administrators, and/or estate, or any and all other persons who could claim through them, hereby unconditionally and irrevocably remises, releases, and forever discharges the Released Entities from the Released Claims and further covenants not to sue any of the Released Entities with respect to any of the Released Claims.

### VI. NOTICE TO THE SETTLEMENT CLASS

No later than fourteen (14) days after entry of the Preliminary Approval Order, Carrington shall provide Plaintiffs' counsel and the Settlement Administrator the Class Member List in an electronic format.

As soon as practicable, but starting no later than thirty (30) days after the date that the Carrington provides the Class Member List to the Settlement Administrator, the Settlement Administrator shall cause the Email Notice to be sent to all Class Members for whom the Class Member List includes an email address, provided that the Preliminary Approval Order prescribes Class Notice by email. Carrington makes no representations as to the accuracy of any emails included in the Class Member List.

As soon as practicable, but starting no later than thirty (30) days after the date that Carrington provides the Class Member List to the Settlement Administrator, the Settlement Administrator shall cause the Postcard Notice to be sent to all Class Members for whom no email address appears on the

Class Member List. Prior to mailing Class Notice, the Settlement Administrator will update the last known addresses of the members of the Class using the National Change of Address database. Within a reasonable time prior to the Response Deadline, the Settlement Administrator shall also cause the Postcard Notice to be sent to all Class Members whose Email Notices are returned undeliverable, after running those Class Members' last known addresses through the National Change of Address database. If the Postcard Notice is returned with a forwarding address, the Settlement Administrator shall make one attempt to remail the Postcard Notice to that forwarding address, as soon as possible before the Response Deadline. If the Postcard Notice is returned undeliverable without a forwarding address, the Settlement Administrator shall make a reasonable attempt to locate an updated address and make one attempt to remail the Postcard Notice to the updated address, as soon as possible before the Response Deadline.

The Settlement Administrator shall mail or email the Long Form Notice to any Class member who requests a copy.

Prior to the date on which the Settlement Administrator mails the Postcard Notice, the Settlement Administrator shall establish the Settlement Website. The Settlement website shall contain:

(1) the Long Form Notice in downloadable PDF format in both English and Spanish; (2) the Long Form Notice in HTML format with a clickable table of contents, described as answers to frequently asked questions; (3) a contact information page with contact information for the Settlement Administrator, and addresses and telephone numbers for Class Counsel and Carrington's Counsel; (4) the Settlement Agreement; (5) the signed Preliminary Approval Order and publicly filed motion papers and declarations in support thereof; (6) the operative complaints in each of the Actions; and (6) when they become available, the Fee and Service Award Application, the motion for entry of the Final Approval Order, and any motion papers and declarations filed publicly in support thereof. The

Settlement Website shall remain accessible until thirty (30) days after the Settlement Administrator has completed its obligations under the Settlement Agreement.

The Settlement Administrator shall also establish a 24-hour toll-free telephone line with information about frequently asked questions about the Settlement. The number shall be included in the Class Notice and posted on the Settlement Website.

The Settlement Administrator shall ensure that timely notice is provided to any state and federal officials as required by the Class Action Fairness Act (28 U.S.C. § 1715).

### VII. OBJECTIONS AND OPTING OUT OF THE SETTLEMENT

**Request for Exclusion**. Class members have the right to request exclusion from the Settlement. The Class Notice shall advise Class Members of this right and the requirements for doing so.

Any Class Member may seek to be excluded from the Settlement Class by opting out by the Response Deadline. A request for exclusion must be in writing, postmarked on or before the Response Deadline, and include the name of the case. The request must also include the name, address, phone number and signature of the borrowers(s) seeking exclusion, as well as language clearly indicating a request for exclusion, such as "I wish to be excluded from the Settlement in *Alexander v. Carrington Mortgage Services, LLC.*". If there are co-borrowers on the loan, all co-borrowers must sign the request for exclusion. The request must be mailed to the address provided in the Class Notice. A request for exclusion that does not include all of the foregoing information, or that is sent to an address other than one designated in the Class Notice, or that is not received within the time specified shall be invalid and the person(s) serving such request shall remain a Class Member and shall be bound as a Settlement Class Member to the Agreement, if approved. The Settlement Administrator shall forward copies of all requests for exclusion to all counsel of record no later than seven (7) days after receipt. Any Class Member who opts out of the Settlement Class and the Agreement shall not be bound by

any prior court order or the terms of the Agreement. Any person who opts out of this Settlement is prohibited from objecting to the Settlement.

**Objecting to the Settlement**. Settlement Class Members have the right to object to the Settlement and/or the Fee and Service Awards Application. The Class Notice shall advise Class Members of this right and the requirements for doing so.

Any Settlement Class Member may object to this Agreement by mailing a written objection, postmarked on or before the Response Deadline, to the Court c/o the Class Action Clerk, United States District Court for the District of Maryland, 101 West Lombard Street, Baltimore, MD 21201 or by filing it in person on or before the Response Deadline at any location of the United States District Court for the District of Maryland. All objections must be in writing and personally signed by the Settlement Class Member and include: (1) the objector's name, address, email address if any, and telephone number; (2) the case caption; (3) the specific factual basis and legal grounds for the objection; (4) a list of all cases in which the objector has objected to a class action settlement, including case name, court, and docket number; (5) if the objector is represented by counsel, a list of all cases in which the objector's counsel has represented an objector in objecting to a class action settlement, case name, court, and docket number; (6) a statement indicating whether the Settlement Class Member and/or their lawyer(s) intend to appear at the Final Fairness Hearing; (7) a list of witnesses, if any, that the objecting Settlement Class Member intends to call; and (8) whether the objection relates only to the objector, or to a subset of the Settlement Class, or to the entire Settlement Class.

Any Settlement Class Member who has not submitted a timely request for exclusion may appear at the Final Fairness Hearing either in person or through an attorney. However, if the Settlement Class Member intends to appear through counsel, the Settlement Class Member must have submitted a written objection pursuant to this section. Any lawyer who intends to appear at the Final Fairness Hearing also must enter a written Notice of Appearance of Counsel with the Clerk of the

Court no later than the Response Deadline. Any Settlement Class Member who intends to request the Court to allow him or her to call witnesses at the Final Fairness Hearing must make such a request in a written brief, which contains a list of such witnesses and a summary of their requested testimony.

No person who has opted out of the Settlement may object to it. Any Settlement Class Member who does not provide a timely written objection or who does not make a record of his or her objection at the Final Approval Hearing shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement, Fee and Service Awards Application, or the Fee and Expense Award or Service Awards.

The Class Representatives, Class Counsel, and/or Carrington may file responses to any timely written objections no later than seven (7) days prior to the Final Fairness Hearing.

### VIII. OBLIGATIONS OF THE SETTLEMENT ADMINISTRATOR

As discussed in more detail elsewhere in the Agreement, the Settlement Administrator shall execute a retainer agreement that shall provide, among other things, that the Settlement Administrator shall perform the duties, tasks, and responsibilities associated with providing notice and administering the Settlement, including the following: (1) preparing and disseminating the Class Notice; (2) maintaining the Settlement Website to allow class members to elect electronic payments; (3) keeping track of any requests for exclusion from and objections to the Settlement, including maintaining the original envelope in which they were mailed; (4) delivering to Class Counsel and Carrington's Counsel copies of any request for exclusion, objection, or, upon request, any other written or electronic communications from the Settlement Class; (5) making Settlement Payments; (6) performing any tax reporting duties required by this Agreement or any applicable law; (7) maintaining adequate records of its activities, including dates of transmission of the Postcard Notice and Email Notice, returned mail, and other communications and attempted communications with the Class; (8) confirming in

writing its completion of the administration of the Settlement; and (9) such other tasks as Class Counsel and Carrington's Counsel mutually agree.

The retainer agreement shall provide that Settlement Administrator understands and agrees that it will be provided with certain personal identifying information relating to the Class and agrees to keep the information secure utilizing security measures that, at a minimum, comply with all applicable laws, rules, and regulations, not disclose or disseminate it, and use the information solely for purposes of effectuating the Settlement. The Settlement Administrator shall agree that it shall be subject to the jurisdiction of the Court with respect to the administration of this Settlement.

The Settlement Administrator shall also be required to sign a Confidentiality Agreement, which sets forth, among other things, a timeline for the Settlement Administrator to destroy all email addresses. The Settlement Administrator shall not utilize Class members' email addresses for any purpose other than effectuating this settlement.

Starting one week after the deadline to begin the Notice Program, the Settlement Administrator shall also provide weekly reports to Class Counsel and Carrington's Counsel concerning requests for exclusion and objections received during the prior week and to date.

Within five days of the Response Deadline, the Settlement Administrator shall provide Class Counsel and Carrington's Counsel with a report containing the information regarding requests for exclusion and objection, including timely and untimely requests for exclusion and objection. The Settlement Administrator shall provide a declaration to be submitted in support of the motion for entry of the Final Approval Order detailing the Notice Program and the number of valid requests for exclusion and objections received.

The Settlement Administrator shall also provide Class Counsel and Carrington's Counsel with a reconciliation and accounting of the Gross Settlement Fund at each of the following times: (1) no

later than ten (10) days after the Settlement Payments are made; and (2) no later than one hundred and eighty (180) days after the Settlement Payments are made.

All data created and/or obtained and maintained by the Settlement Administrator pursuant to this Agreement shall be destroyed twelve (12) months after the Final Report is submitted to the Court, provided that Class Counsel and Carrington's Counsel, or either of them, at their own cost, shall receive a complete copy of the Settlement Administrator's records (excluding specific account information), together with a declaration establishing completeness and authenticity, which they may maintain consistent with their own document retention policies. To the extent Class Counsel receives a copy of the Class List, it shall be kept confidential by Class Counsel and shall not be used for any purposes other than the implementation of this Agreement.

### IX. BINDING EFFECT OF AGREEMENT

This Agreement is binding upon and shall inure to the benefit of Settlement Class Members, as well as their heirs, successors, executors, personal or legal representatives, administrators, trustees, or anyone else claiming to have rights derived from or through the Settlement Class Member.

### X. NOTICES

Any communication, verification, or notice sent by any Party in connection with this Agreement shall be sent by email and overnight mail as follows:

### To Class Counsel:

James L. Kauffman 1055 Thomas Jefferson Street, NW, Suite 540 Washington, DC 20007 jkauffman@baileyglasser.com

Hassan A. Zavareei Kristen G. Simplicio 1828 L Street NW, Suite 1000 Washington, D.C. 20036 hzavareei@tzlegal.com ksimplico@tzlegal.com To Carrington's Counsel:

Fredrick S. Levin 100 Wilshire Boulevard, Suite 1000 Santa Monica, CA 90401 flevin@buckleyfirm.com

Scott T. Sakiyama 353 N. Clark Street, Suite 3600 Chicago, IL 60654 ssakiyama@buckleyfirm.com

### XI. ENTIRE AGREEMENT

The Parties agree that this Agreement sets forth the entire understanding between the Parties.

This statement is intended to satisfy all disclosure requirements of Rule 23 of the Federal Rules of Civil Procedure.

### XII. CHOICE OF LAW

Except to the extent federal law applies, this Agreement and ancillary agreements shall be governed by and construed in accordance with the laws of the state of Maryland without respect to its choice of law principles.

### XIII. REPRESENTATIONS

Plaintiffs represent and warrants that they have not sold, assigned, transferred or otherwise disposed of any of the claims, demands or rights that are the subject of this Agreement; and that they shall take all necessary action to effectuate the terms of this Agreement.

### XIV. VOIDING OF AGREEMENT AND RIGHT TO WITHDRAW

If the Court declines to approve the Agreement and procedures contemplated herein, then the Agreement is automatically null, void, and of no force and effect. If the Court imposes any additional or increased burden, condition, or obligation upon a Party and that entity finds it to be unacceptable, that entity will have fourteen (14) days after written notice of such order becoming final to withdraw from this Agreement, in which case the Agreement shall be null, void, and of no force and effect.

However, in the event the Court determines any proposed Class Representative payment or Class Counsel's Fees, Costs, and Expenses should be reduced, it is expressly agreed and understood that such a decision by the Court shall not operate as a means by which a Party can withdraw from this Agreement.

### XV. NO ADMISSION OF LIABILITY

This Agreement constitutes a compromise of disputed claims for purposes of achieving an amicable and efficient settlement. Nothing in this Agreement or any of the procedures carried out pursuant thereto shall constitute or be construed as an admission of liability or wrongdoing on the part of the Released Entities. Nothing in this Agreement shall constitute an admission by the Released Entities that the Action was properly brought as a class or representative action other than for settlement purposes or an admission by the Released Entities of the propriety of the Action.

It is agreed that neither the existence of this Agreement, its contents, nor communications or negotiations culminating in this Agreement, may be used as evidence of liability or fault on the part of the Released Entities or any person or entity associated in any way with the Released Entities.

### XVI. MISCELLANEOUS

This Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by Class Counsel and Carrington's Counsel, and with Court approval.

This Agreement may be executed in multiple counterparts; in which case the various counterparts shall constitute one instrument for all purposes. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies or electronic copies of executed copies of this Agreement may be treated as originals.

Each of the Parties hereto has jointly participated in the negotiation and drafting of this Agreement and each Party was represented by counsel of his or her own choosing throughout the negotiations. In the event an ambiguity or a question of intent or interpretation arises, this Agreement

shall be construed as if drafted jointly by each of the Parties hereto and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any provisions of this Agreement

AGREED TO ON THE LATEST OF THE DATES SET FORTH BELOW.

Plaintiffs:				
Victoria Dawkins:	DocuSigned by		5/24/2022 Date:	
Amy Thomas-Lawson:		: .omas-Lawson	DATE:	
Brenda Boley:	5C0226C37364 DocuSigned by  CF5001R9A9A DocuSigned by	5	DATE:	
Miguel Padilla:	Miguel Po  Docusioned by		DATE:	
William Green:	5AB54D8C65EC	<u></u>	DATE: 5/24/2022	
Ashly Alexander:		sander	DATE:	
Cedric Bishop:	DocuSigned by 883915C903704		DATE:	
Carrington Mortgage Son		$D^{A}$	.TE:	
APPROVED AS TO FORM AND CONTENT:				
BAILEY GLASSER L	LP			
By:		5/24 Date:	/2022	

shall be construed as if drafted jointly by each of the Parties hereto and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any provisions of this Agreement

AGREED TO ON THE LATEST OF THE DATES SET Plaintiffs:	FORTH BELOW.			
Victoria Dawkins:  Amy Thomas-Lawson:  Brenda Boley:  Miguel Padilla:  William Green:  Ashly Alexander:	DATE:  DATE:  DATE:  DATE:  DATE:			
Cedric Bishop:	DATE:			
Carrington Mortgage Services, LLC  Name: Darren Fulco  Docusigned by:  Signed: Davin Fulco  1E59A5E58D9140B	DATE: <u>5/25/2022</u>			
APPROVED AS TO FORM AND CONTENT:				
BAILEY GLASSER LLP				
By: Date:				

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TYCKO	& ZAVAREEI LLP		
	Hassan Lavarui  340cF36D727E4AF  Hassan A. Zavareei  Kristen G. Simplicio	Date:	5/25/2022
	MER LAW CENTER, LLC  Pullip Robinson  OBS74FDF56C34CE  Phillip R. Robinson	Date:	5/24/2022
BUCKL	EY LLP		
,	Fredrick S. Levin	Date:	

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I YCKO & ZAVAREEI LLP	
By: Hassan A. Zavareei Kristen G. Simplicio	Date:
CONSUMER LAW CENTER, LLC  By: Phillip R. Robinson	Date:
BUCKLEY LLP  By: Fredrick S. Levin	Date: MM, 24, 2022

# EXHIBIT A1

### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

A class action settlement may affect your rights if you paid Carrington Mortgage Services, LLC ("Carrington") a fee to make a residential loan payment by telephone, including through the use of the telephonic automated "IVR" (interactive voice response) system, or the internet between January 1, 2016 and December 31, 2021.

### THIS NOTICE COULD AFFECT YOUR RIGHTS - PLEASE READ IT CAREFULLY

A court authorized this Notice. This is <u>not</u> a solicitation from a lawyer.

- Carrington's records identify you as a Class Member.
- A proposed settlement requires Carrington to pay \$18,181,898.65 to make payments to Class Members and to pay other fees and expenses.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT			
Do Nothing And Receive A Payment	If you are entitled under the Settlement to payment, you do not have to do anything to receive it. If the Court approves the Settlement and it becomes final and effective, and you remain in the Settlement Class ( <i>i.e.</i> , you do nothing and do not otherwise exclude yourself from the Settlement), you will automatically receive a payment and will give up your right to bring your own lawsuit against Carrington about the claims in this case.		
Exclude Yourself From The Settlement Deadline: [Date]	Instead of doing nothing, you may ask to be excluded from the lawsuit. If you do so, you will receive no benefit from the Settlement, but you retain your right to sue on your own.		
Object Deadline: [Date]	You may object to the terms of the Settlement Agreement and have your objections heard at the [date] Final Approval Hearing.		

• These rights and options – and the deadlines to exercise them – are explained in this notice.

The United States District Court for the District of Maryland (the "Court") authorized this Notice. The following is a summary of the Settlement and of your rights. A full copy of the Settlement Agreement is available at <a href="https://www.com">www.com</a>.

### **Basic Information**

Three class action lawsuits have been filed against Carrington in Maryland, California, and Florida. They are entitled *Alexander v. Carrington*, Case No. 1:20-cv-2369-RDB (D. Md.), *Thomas-Lawson, et al. v. Carrington Mortgage Services*, LLC., Case No. 2:20-cv-07301-ODW (Ex) (C.D. Cal.) and *Dawkins, et al. v. Carrington Mortgage Services*, LLC, Case No. 0:20-cv-60998 (S.D. Fla.). The *Thomas-Lawson* and *Dawkins* cases have been consolidated with the *Alexander* case for settlement before the U.S. District Court for the District of Maryland. The actions are collectively referred to here as the Action.

The Plaintiffs in the Action sued Carrington claiming that Carrington charged borrowers fees to make mortgage payments online or over the phone, including through the use of the telephonic automated "IVR" (interactive voice response) system ("Convenience Fees"). The Action asserts that Carrington's practice of charging such fees, among other things, violated the federal Fair Debt Collection Practices Act and state debt collection laws including, the Maryland Consumer Debt Collection Act, the Maryland Consumer Protection Act, the Texas Finance Code, the California Rosenthal Fair Debt Practices Act, the California Unfair Competition Law, the Florida Consumer Collection Practices Act, and the Florida Deceptive and Unfair Trade Practices Act, and breached the terms of the borrowers' loan agreements. Carrington denies these allegations. The Court has not decided who is right.

This notice summarizes the proposed settlement and your rights. For the precise terms and conditions of the settlement, please see the settlement agreement available at [website url], contacting the Settlement Administrator at [phone number] or by contacting class counsel at the addresses listed in Part below, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <a href="https://ecf.mdd.uscourts.gov">https://ecf.mdd.uscourts.gov</a>, or by visiting the office of the Clerk of the Court for the United States District Court for the District of Maryland, 101 West Lombard Street, Baltimore, MD 21201 between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

### 1. Why is there a Notice?

A Court authorized this notice because you have a right to know about the proposed Settlement of this Action and about all of your options, before the Court decides whether to give Final Approval to the Settlement. This notice explains the Action, the Settlement and your legal rights.

Judge Richard D. Bennett, of the U.S. District Court for the District of Maryland, is overseeing this case. The case is known as *Alexander v. Carrington*, Case No. 1:20-cv-2369-RDB (D. Md.). The people who sued are called the "Plaintiffs." The Defendant is Carrington Mortgage Services, LLC.

### 2. What is this Action about?

The Action claims that Carrington charged borrowers fees to make mortgage payments online, or over the phone, including through the use of the telephonic automated "IVR" (interactive voice

Questions? Call [number] or visit [website url].

response) system ("Convenience Fees"). The Action asserts that Carrington's practice of charging such fees, among other things, violated the federal Fair Debt Collection Practices Act and state debt collection laws including the Maryland Consumer Debt Collection Act, the Maryland Consumer Protection Act, the Texas Finance Code, the California Rosenthal Fair Debt Practices Act, the California Unfair Competition Law, the Florida Consumer Collection Practices Act, and the Florida Deceptive and Unfair Trade Practices Act, and breached the terms of the borrowers' loan agreements. Carrington denies the allegations asserted in the Action.

The Amended Complaint in this Action is posted on <u>[website url]</u> and contains all of the allegations and claims asserted against Carrington.

### 3. Why is this a class action?

In a class action, one or more people, called Class Representatives (in this one, mortgage borrowers whose mortgages were serviced by Carrington and who paid Convenience Fees), sued on behalf of people who have similar claims.

All of the people who have claims similar to the Class Representatives are members of the Settlement Class, except for those who exclude themselves from the class.

### 4. Who is a Class Member?

The Court has determined that every person who fits the following description is a Class Member:

All persons who paid a fee to Carrington for making a mortgage loan payment by telephone, IVR, or via the internet, between January 1, 2016 through December 31, 2021 ("Convenience Fees") who fall into one or more of the following groups:

- (1) were borrowers on residential mortgage loans on properties located in California, Texas, New York, Maryland, or Florida;
- (2) were borrowers on residential mortgage loans on properties in the United States to which Carrington acquired servicing rights when such loans were 30 days or more delinquent on loan payment obligations; or
- (3) were borrowers on residential mortgage loans on properties located in the United States insured by the Federal Housing Administration.

### 5. Why is there a Settlement?

Both sides agreed to the Settlement. By agreeing to the Settlement, the Parties avoid the costs and uncertainty of a trial, and Settlement Class Members receive the benefits described in this notice. The Class Representatives and their attorneys think the Settlement is best for everyone who is affected.

### 6. What are the terms of the proposed Settlement?

The complete terms of the proposed Settlement are set forth in a formal Settlement Agreement (the "Agreement") which is on file with the Court, and which is also available on the settlement website at:[website url]. This Notice is only a summary of the Settlement, and in case of any conflict between this Notice and the Agreement, the terms of the Agreement will control.

In the proposed Settlement, Carrington has agreed to create a \$18,181,898.65 Common Fund. All Administrative Costs, any Court-awarded attorneys' fees and expenses to Class Counsel, and any Service Awards to the Class Representatives will be paid out of the Gross Settlement Fund first. The remaining balance of the settlement fund (the "Net Settlement Fund") will be distributed among the Class Representative and all Class Members who are not excluded from the class, as set forth below (the "Settlement Class Members"). If the Court awards all Administrative Costs, attorneys' fees and expenses, and Service Awards requested by the Parties, the Net Settlement Fund will be approximately \$

Also, as part of the Settlement, Carrington has agreed to stop charging fees for payments made online or by telephone, including through the use of the telephonic automated "IVR" (interactive voice response) system for three years.

Allocations of the Net Settlement Fund will be calculated on a borrower-by-borrower basis, such that each Settlement Class Member who paid at least one Convenience Fee will receive a minimum payment of \$5 and the remaining funds will be distributed on a pro rata basis based on the amount of Convenience Fees each Settlement Class Member paid during the Class Period. Settlement Class Members who receive a Settlement Payment are solely responsible for distributing or allocating their payment between or among all co-account holders. By way of illustration, if you are a borrower on a loan that paid one percent of the total Convenience Fees collected by Carrington during the Class Period, you will be allocated one percent of the Net Settlement Fund.

Attorneys' Fees and Expenses, and Service Award. Class Counsel will ask the Court to award attorneys' fees in an amount not to exceed forty percent of the Settlement Fund, or \$6,060,632.88, plus litigation costs and expenses. Class Counsel will also request Court approval of Service Awards to the Class Representatives in the amount of \$5,000 each. Class Counsel will file that request, along with all supporting documents, at least 21 days prior to the deadline to opt-out from or object to the Settlement. The Fee and Service Award Application and all supporting papers will be available for your review on the settlement website at [website url] The Court will determine the appropriate amount of the attorneys' fees and awards to be paid. The Settlement is not conditioned upon approval of any of the attorneys' fees, costs, or service award amounts.

You are not required to make any payments to Class Counsel in this action.

### 7. How Can I Get the Relief?

As long as you do not exclude yourself from the Settlement, you will automatically receive cash benefits from the Settlement, and you do not need to take further action.

Payments will be made by check mailed to Settlement Class Members, or, at the Settlement Class

Questions? Call [number] or visit [website url].

Member's election, by a digital method. Checks will be valid for 90 days. Settlement Class Members may request that the Settlement Administrator reissue a check for one additional 90-day period for good cause shown. If there is any amount in the Settlement Fund that remains following the distribution of checks to Settlement Class Members as a result of checks being returned undeliverable or which are not cashed within 90 days, those funds will be distributed on a *pro rata* basis to Settlement Class Members who cashed their checks. Within 180 days after the Settlement Administrator mails the first Settlement Class Member Payments, the administrator will decide whether Residual Funds should be distributed to the Settlement Class Members through a secondary distribution. If the amount of the remaining funds is so minimal that a secondary distribution would be impracticable or infeasible, then, subject to the Court's approval, the remaining funds shall be distributed to [CY PRES RECIPIENT], a 501(c)(3) charitable organization that works with nonprofits around the country on housing issues

### 8. When Will I Get the Relief?

As described below, the Court will hold a Fairness Hearing on [date] to decide whether to grant final approval of the Settlement. The Court must finally approve the Settlement before any relief will be distributed, and it will only do so after finding that the Settlement is fair, reasonable, and adequate. In addition, any final approval order the Court may enter may be subject to appeal. If there are any such appeals, resolving them takes time. Payments to Settlement Class Members will only be made after the time for any appeals expires. **Please be patient.** 

### 9. Who Represents Me?

The Court has appointed Hassan A. Zavareei and Kristen G. Simplicio of Tycko & Zavareei LLP, James L. Kauffman of Bailey & Glasser LLP and Phillip Robinson of Consumer Law Center, LLC to represent you and other Class Members in this Action and for purposes of this Settlement, and for no other purpose. These attorneys are called "Class Counsel." You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your own expense.

You may contact Class Counsel at:

James Kauffman Bailey & Glasser LLP 1055 Thomas Jefferson Street NW Suite 540 Washington, DC 20007

Hassan Zavareei Kristen G. Simplicio Tycko & Zavareei LLP 1828 L Street, NW – Suite 100 Washington, DC 20036

Phillip Robinson

Consumer Law Center, LLC 10125 Colesville, MD, Suite 378 Silver Spring, MD 20901

### 10. How will the lawyers be paid?

Class Counsel will ask the Court to award attorneys' fees in an amount not to exceed forty percent of the Settlement Fund, or \$6,060,632.88, plus litigation costs and expenses. Class Counsel will also request Court approval of Service Awards to the Class Representatives in the amount of \$5,000 each. Class Counsel will file that request, along with all supporting documents, at least 21 days prior to the deadline to opt-out from or object to the Settlement. The Fee and Service Award Application and all supporting papers will be available for your review on the settlement website at website url. The Court will determine the appropriate amount of the attorneys' fees and awards to be paid. The Settlement is not conditioned upon approval of any of the attorneys' fees, costs, or service award amounts.

### 11. How do I exclude myself from the Settlement?

If you do not want benefits from the Settlement and you want to keep the right to sue or continue to sue Carrington on your own about the legal issues in this case, then you must take steps to exclude yourself from the Settlement. This is called "opting out" of the Settlement Class.

If you choose to opt out of the Settlement, you must send a written statement to the Settlement Administrator that includes name, address, phone number and signature of the borrowers(s) seeking exclusion, as well as language clearly indicating a request for exclusion, such as "I wish to be excluded from the Settlement in *Alexander v. Carrington Mortgage Services, LLC.*" If there are co-borrowers on the loan, all co-borrowers must sign the request for exclusion.

You must mail your request for exclusion by no later than [Response deadline] to:

### [SA address]

If you are a co-borrower or joint borrower on a loan covered by the Settlement and you opt out of the Settlement, all co-borrowers and/or joint borrowers on the loan must sign the request for exclusion and will also be excluded from the Settlement. Similarly, if you are a co-borrower or joint borrower on a loan covered by the Settlement and another borrower on that loan is a Class Member who opts out of the Settlement, you must also sign the opt out and will also be excluded from the Settlement. If you do not opt out, and no co-borrower or joint borrower on your loan opts out, you (and your co-borrower(s) and/or joint borrower(s), if any) will be bound by this Settlement.

## 12. If I do not exclude myself, can I sue Carrington for the same thing later?

No. Unless you exclude yourself, you give up the right to sue Carrington for the claims that the Settlement resolves. You must exclude yourself from the Settlement Class in order to try to pursue your own lawsuit.

Questions? Call [number] or visit [website url].

### 13. If I exclude myself, will I receive a payment?

No. You will not receive a payment if you exclude yourself from the Settlement.

### 14. How do I tell the Court that I don't like the Settlement?

If you are a Class Member and have not requested to be excluded from the Settlement Class, you can object to any part of the Settlement, the Settlement as a whole, Class Counsel's requests for fees and expenses, and/or Class Counsel's request for Service Awards for the Class Representatives.

You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

The Court will accept objections that substantially comply with the objection requirements set forth below, and the submission of the following may be excused upon a showing of good cause. In particular, your objection must include the following:

- Your name, address, email address (if any), and phone number;
- The case caption, Alexander v. Carrington, Case No. 1:20-cv-2369-RDB (D. Md.);
- The specific legal and factual bases for your objection;
- A list of all cases in which you have objected to a class action settlement, including case name, court, and docket number;
- If you are represented by counsel, a list of all cases in which your counsel has represented an objector in objecting to a class action settlement, including the case name, court, and docket number;
- A statement indicating whether you and/or your counsel intend to appear at the Final Fairness Hearing;
- A list of witnesses, if any, that you intend to call;
- Whether the objection relates only to you, to a subset of the Settlement Class, or to the entire Settlement Class; and
- Your signature.

# You must also comply with [insert any local rules per D. Md – if none delete this].

Any Class Member who has not submitted a timely request for exclusion may appear at the Final Fairness Hearing either in person at the online hearing held using Zoom videoconferencing software or through an attorney. However, if the Settlement Class Member intends to appear through counsel, the Settlement Class Member must have submitted a written objection pursuant to this section. Any lawyer who intends to appear at the Final Fairness Hearing also must enter a written Notice of Appearance of Counsel with the Clerk of the Court no later than the Response Deadline. Any Settlement Class Member who intends to request the Court to allow him or her to call witnesses at the Final Fairness Hearing must make such a request in a written brief, which contains a list of such witnesses and a summary of their requested testimony. These written notice requirements may be excused upon a showing of good cause.

Your objection must be postmarked no later than [Response Deadline] and must be mailed to the Court c/o the Clerk of the Court for the United States District Court for the District of Maryland, 101 West Lombard Street, Baltimore, MD 21201 or filed in person on or before [Response Deadline] at any location of the United States District Court for the District of Maryland.

### 15. What am I agreeing to by remaining in the class in this case?

If the Settlement receives final approval from the Court, the Settlement will be legally binding on all Settlement Class Members, including Settlement Class Members who object. If you, or someone acting on your behalf, are currently litigating claims against Carrington or other released parties that are the same as or similar to those addressed here, you will be barred from pursuing the claims released by the Settlement unless you validly opt out, as described above. Under the terms of the release, you will not be able to sue for any claim relating to Convenience Fees for mortgage payments made over the internet, and or by phone, including those made using the telephonic automated "IVR" (interactive voice response) system, between January 1, 2016 and December 31, 2021.

The full terms of the release, which will bind all Settlement Class Members as to certain claims against Carrington and certain affiliates and related entities ("Released Parties"), are set forth in the Settlement Agreement, which is on file with the Court, and which is available on the settlement website at: [website url]. Unless you exclude yourself, you will be a Settlement Class Member, and that means that any claims you have regarding fees Convenience Fees you paid to Carrington will be fully and completely resolved, and that you cannot sue, continue to sue, or be part of any other lawsuit against Carrington about Carrington's collection of Convenience Fees. It also means that the Court's Orders approving the Settlement and the judgment in this case will apply to you and legally bind you.

If you want to keep the right to sue or continue to sue Carrington, on your own, about Carrington's collection of Convenience Fees, you must exclude yourself from the Settlement in this case. If you exclude yourself, as set forth above, you will not receive any of the benefits of the Settlement, as described above.

### 16. What Happens Next?

YOU DO NOT HAVE TO APPEAR AT THE HEARING TO RECEIVE THE BENEFITS OF THE SETTLEMENT.

Questions? Call [number] or visit [website url].

You may ask the Court for permission to speak at the Final Fairness Hearing. To do so, you must send a letter saying that you intend to appear and wish to be heard. Your Notice of Intention to Appear must include the following:

- Your name, address and telephone number;
- A statement that this is your "Notice of Intention to Appear" at the Final Approval Hearing for the Settlement in *Alexander v. Carrington*, Case No. 1:20-cv-2369-RDB (D. Md.);
- The reasons you want to be heard;
- Copies of any papers, exhibits, or other evidence or information that is to be presented to the Court at the Final Fairness Hearing; and
- Your signature.

You must submit your Notice of Intention to Appear no later than [Response deadline], to:

James Kauffman Bailey & Glasser LLP 1055 Thomas Jefferson Street NW Suite 540 Washington, DC 20007

Hassan Zavareei Kristen G. Simplicio Tycko & Zavareei LLP 1828 L Street NW, Suite 1000 Washington, DC 20036

Fredrick Levin Buckley LLP 100 Wilshire Boulevard, Suite 1000 Santa Monica, California 90401

John Williams Buckley LLP 2001 M Street NW, Suite 500 Washington, D.C. 20036

Scott Sakiyama Buckley LLP 353 N Clark Street, Suite 3600 Chicago, IL 60654

[Settlement Administrator]

### **More Information Is Available**

This Notice is only a summary of the Settlement and the Agreement. More details can be found in the Settlement Agreement. You can obtain a copy of the Settlement Agreement, and additional court documents related to the Settlement, at <a href="https://www.settlementwebsite">www.settlementwebsite</a>].com.

If you have other questions regarding the Settlement, you may the Settlement Administrator at:

Settlement Administrator, c/o [phone number and email]

You may also contact Class Counsel at:

James Kauffman, Bailey & Glasser LLP, 1055 Thomas Jefferson Street NW, Suite 540, Washington, DC 20007, jkauffman@baileyglasser.com.

Hassan Zavareei and Kristen Simplicio, Tycko & Zavareei LLP, 1828 L Street NW, Suite 1000, Washington, DC 20036, <a href="mailto:hzavareei@tzlegal.com">hzavareei@tzlegal.com</a>; <a href="mailto:ksimplicio@tzlegal.com">ksimplicio@tzlegal.com</a>.

You may also review the Court's file during regular court hours at:

United States District Court for the District of Maryland 101 West Lombard Street Baltimore, MD 94102

PLEASE <u>DO NOT</u> TELEPHONE THE COURT, THE JUDGE, OR THE CLERK OF THE COURT.

# EXHIBIT A2

### (Email Notice)

From: Carrington Mortgage Services Convenience Fee Settlement Administrator

Subject Line: Carrington Mortgage Services Convenience Fee Class Action Settlement

Content:

A federal court authorized this notice. This is not a solicitation from a lawyer, and you are not being sued.

You are receiving this notice because you could be affected by the settlement of class action lawsuits against Carrington Mortgage Services, LLC ("Carrington") involving Carrington's charging fees to borrowers to make mortgage payments by telephone, IVR (interactive voice response), or the internet ("Convenience Fees").

A Settlement has been reached in three class action lawsuits alleging that Carrington's practice of charging such fees, among other things, violated the federal Fair Debt Collection Practices Act and state debt collection laws, including Maryland, Texas, Florida, and California, and breached the terms of the borrowers' loan agreements. Carrington denies the allegations asserted in the lawsuits. The court has not decided who is right. Plaintiffs and the Carrington have agreed to settle the lawsuits to avoid the cost and uncertainty of litigation. You can read the Complaints, Settlement Agreement, and other case documents on the Settlement Website:

http://www.	.com

**Who's Included?** Carrington's records show you are a member of the Settlement Class. The **Settlement Class includes**:

All persons who paid a fee to Carrington for making a mortgage loan payment by telephone, IVR, or via the internet, between January 1, 2016 through December 31, 2021 ("Convenience Fees") who fall into one or more of the following groups:

- (1) were borrowers on residential mortgage loans on properties located in California, Texas, New York, Maryland, or Florida;
- (2) were borrowers on residential mortgage loans on properties in the United States to which Carrington acquired servicing rights when such loans were 30 days or more delinquent on loan payment obligations; or
- (3) were borrowers on residential mortgage loans on properties located in the United States insured by the Federal Housing Administration.

What are the Settlement terms? Carrington has agreed to establish a Settlement Fund of \$18,181,898.65 from which Settlement Class Members will receive payments by check, or by digital payment method. Subject to the Court's approval, the Settlement Fund will also be used to pay Settlement Notice and Administration Costs, Attorneys' Fees and Expenses to Class Counsel, and Service Awards for the Class Representatives. The Settlement Fund, net of any Settlement Notice and Administration Costs, Service Awards, and Attorneys' Fees and Expenses award by the Court ("Net Settlement Fund") will be distributed to Settlement Class Members *pro rata* according to the amount of Convenience Fees Settlement Class Members paid. If the Court

awards all Administrative Costs, Attorneys' Fees and Expenses, and Service Awards requested, the Net Settlement Fund will be approximately \$\_\_\_\_\_\_.

Also as part of the Settlement, Carrington has agreed to refrain from charging fees for telephone, IVR, or internet payments for a period of at least three years. Carrington stopped charging such Convenience Fees as of January 1, 2022.

Settlement Class Members will automatically receive payments from the Net Settlement Fund based on the amount of fees that the Settlement Class Member paid. Settlement Class Members who paid at least one Convenience Fee are entitled to receive a payment of \$5.00 from the Net Settlement Fund, with the remainder paid to Settlement Class Members on a pro rata basis, based upon the amount of Convenience Fees paid by each Settlement Class Member during the Class Period. Settlement Class Members are solely responsible for distributing or allocating Settlement Payments between or among all co-account holders.

Payments will be made by check mailed to Settlement Class Members, or, at the Settlement Class Member's election, by a digital payment method. Checks will be valid for 90 days. Settlement Class Members may request that the Settlement Administrator reissue a check for one additional 90-day period for good cause shown. If there is any amount in the Settlement Fund that remains following the distribution of checks to Settlement Class Members as a result of checks being returned undeliverable or which are not cashed within 90 days of issuance, those funds will be distributed on a *pro rata* basis to Settlement Class Members who cashed their checks. Within 180 days after the Settlement Administrator mails the first Settlement Class Member Payments, the administrator will decide whether these remaining funds should be distributed to the Settlement Class Members through a second distribution. If the amount of the remaining funds is so minimal that a second distribution would be impracticable or infeasible, then, subject to Court approval, the remaining funds shall be distributed to a *cy pres* recipient, a 501(c)(3) charitable organization that works on housing issues.

**Your Other Options:** If you do not want to be bound by the Settlement, you must exclude yourself by [Response deadline]. If you exclude yourself, you cannot get money from the Settlement. If you do not exclude yourself, you will release your claims against Carrington for the claims at issue in the lawsuits. Specifically, you will not be able to sue for any claim relating to Convenience Fees paid between January 1, 2016 and December 31, 2021. A more detailed Long Form Notice, available at <a href="http://www.com">http://www.com</a> contains instructions for how to exclude yourself.

If you do not exclude yourself, you may object to the Settlement by [Response Deadline]. The more detailed Long Form Notice available at <a href="http://www..com">http://www..com</a> contains instructions for how to object.

**Final Fairness Hearing:** The Court will hold a Final Fairness Hearing using Zoom videoconferencing. Further information about the Zoom videoconference, including the public URL for the videoconference, will be available on the Court's website at <a href="https://www.\_\_\_\_\_/">https://www.\_\_\_\_/</a>. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check the Settlement website at <a href="http://www.\_\_\_\_.com">http://www.\_\_\_.com</a> for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate.

At the Final Fairness Hearing, Class Counsel will ask the Court to award attorneys' fees in an amount not to exceed forty percent of the Settlement Fund, or \$6,060,632.88, plus litigation costs and expenses. Class Counsel will also request Court approval of Service Awards to the Class Representatives in the amount of \$5,000 each. Class Counsel will file that request, along with all supporting documents, at least 21 days prior to the deadline to opt-out from or object to the Settlement. The Fee and Service Award Application and all supporting papers will be available for your review on the Settlement website at <a href="http://www.com">http://www.com</a>. The Court will determine the appropriate amount of the attorneys' fees and awards to be paid. The Settlement is not conditioned upon approval of any of the attorneys' fees, costs, or service award amounts.

If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. You may appear at the hearing, but you don't have to. You may hire your own attorney, at your own expense, to appear or speak for you at the hearing.

If you do not take any action, you will be legally bound by the Settlement and any orders or Judgments entered in the Action, and will fully, finally, and forever give up any rights to prosecute certain claims against Carrington.

This notice provides limited information about the Settlement. For more information call

1----[---] [----] or visit <a href="http://www.">http://www.</a> .com

# EXHIBIT A3

Hocusign Envelope ID: 2CDB81DD-40F4-49B5-961A-2097E9EE3D49
In you write Charge rees by Callington Processing Services, LLC, for Making a Mortgage Payment by Telephone, IVR, or Internet, You May Be Eligible for a Payment from a Class Action Settlement.

A \$18,181,898.65 Settlement has been reached in class action lawsuits alleging that Carrington Mortgage Services, LLC ("Carrington"). improperly charged fees to borrowers who made mortgage payments by telephone, IVR (interactive voice response), or internet ("Convenience Fees"). Carrington denies any wrongdoing. The Court has not decided who is right.

Who's Included? Carrington's records show you are a member of the Settlement Class. The Settlement Class includes: All persons who paid a fee to Carrington for making a mortgage loan payment by telephone, IVR, or via the internet, between January 1, 2016 through December 31, 2021 ("Convenience Fees") who fall into one or more of the following groups: (1) were borrowers on residential mortgage loans on properties located in California, Texas, New York, Maryland, or Florida; (2) were borrowers on residential mortgage loans on properties in the United States to which Carrington acquired servicing rights when such loans were 30 days or more delinquent on loan payment obligations; or (3) were borrowers on

DocuSign Envelope ID: 2CDB81DD-40F4-49B5-961A-2097E9EE3D49
1551UCHIA INOUGAGE DAIDS ON PUDEL US INCACCU IN UIC ONITED States insured by the Federal Housing Administration.

What Are the Settlement Terms? Carrington has agreed to establish a Settlement Fund of \$18,181,898.65 from which Settlement Class Members will receive payments. Carrington has also agreed to refrain from charging Convenience Fees for three years. Once the Court approves the Settlement, each Settlement Class Member will automatically receive a payment for his or her portion of the Settlement Fund, after Court approved deductions for attorneys' fees and costs, administrative costs, service awards ("Net Settlement Fund"). There is no need to file a claim. The Net Settlement will be paid \$5 to each Settlement Class Members who paid at least one Convenience Fee with the remainder distributed pro rata according to the amount of fees each paid. The Net Settlement Fund is estimated to be \$\$\frac{1}{2}\$. Class Counsel may seek up to 40% of the Settlement Fund for attorneys' fees plus reimbursement of litigation expenses, and the Class Representatives may each seek \$\$5,000 as Service Awards.

Your Rights May Be Affected. If you do not want to be legally bound by the Settlement, you must exclude yourself from the Settlement Class by Month Day, 2022 If you do not timely exclude yourself, you will not be able to sue for any claim relating to Convenience Fees paid between January 1,

Class, you won't get a payment. If you stay in the Settlement Class, you may object to the Settlement in writing by Month Day, 2022. A more detailed Long Form Notice, available at <a href="http://www.PaytoPayFeeSettlement.com">http://www.PaytoPayFeeSettlement.com</a>, contains instructions for how to exclude yourself or object to the Settlement.

The Fairness Hearing. The Court will hold a hearing at \_\_\_\_\_\_.m. Month Day, 2022, by Zoom videoconferencing. The link to the Zoom videoconference will be available at on the Court's website at https://www. /. At the hearing the Court will consider whether to approve the Settlement and Class Counsel's request for attorneys' fees and expenses, and the plaintiffs' service awards. Unless you opt-out of the Settlement, you may appear at the hearing, but you are not required to attend. You may also hire your own attorney, at your own expense, to appear or speak for you at the hearing.

How Can I Get More Information? If you have questions or want more information about the lawsuits and your rights, visit <a href="http://www.com">http://www.com</a>. Com. You may obtain a detailed notice that explains how to exclude yourself from or object to the Settlement by visiting <a href="http://www.com">http://www.com</a>, by calling <a href="mailto:rumber]</a>, or by writing to the Settlement Administrator, <a href="mailto:Address">[Address]</a>.

Docusign Envelope ID: 2CDB81DD-40F4-49B5-961A-2097E9EE3D49
Settlement Administrator
PO Box XXXXX
City, State XXXXX

# Legal Notice about a Class Action Settlement

If you were charged a fee by Carrington Mortgage Services for a telephone, internet, or IVR mortgage payment, you may be eligible for a payment from a class action settlement.

Read this notice carefully.

You can also visit: http://www. .com or call [number]

Para una notificación en Español,

visite nuestro sitio de Web, [Settlement Website]

# **EXHIBIT B**

# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

ASHLY ALEXANDER, CEDRIC BISHOP, AMY THOMAS-LAWSON, WILLIAM GREEN, BRENDA BOLEY, MIGUEL PADILLA, and VICTORIA DAWKINS

Case No. 1:20-cv-02369-RDB

On behalf of themselves individually and similarly situated persons.

Plaintiffs,

v.

CARRINGTON MORTGAGE SERVICES, LLC,

Defendants.

## [PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND FOR CERTIFICATION OF SETTLEMENT CLASS

Plaintiffs Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda Boley, Miguel Padilla, and Victoria Dawkins, individually and on behalf of the proposed Settlement Class, seek preliminary approval of a proposed Settlement of claims against defendant Carrington Mortgage Services LLC ("Carrington"). For the reasons set forth herein, the Court GRANTS preliminary approval and GRANTS preliminary certification of the Settlement Class for settlement purposes only.

<sup>&</sup>lt;sup>1</sup> Unless otherwise specifically defined herein, all capitalized terms have the same meanings as those set forth in the parties' Settlement Agreement, attached as Exhibit 1 to the Declaration of Hassan A. Zavareei ("Zavareei Decl.").

#### I. BACKGROUND

Plaintiffs commenced separate actions in Maryland, California, and Florida. On July 10, 2020, Plaintiffs Ashly Alexander, a Maryland homeowner, initiated a class action lawsuit in the Circuit Court for Baltimore County, alleging that Carrington violated the Maryland Consumer Debt Collection Act ("MCDCA"), the Maryland Consumer Protection Act ("MCPA"), and Maryland's usury law. Dkt. 3. Carrington removed the case to this Court on August 17, 2020, Dkt. 1, and, on September 8, 2020, Plaintiffs filed an amended complaint, adding Plaintiff Cedric Bishop (also a Maryland homeowner) and an allegation that Carrington had violated the federal Fair Debt Collection Practices Act ("FDCPA"). See Dkt. 20. Plaintiffs Amy Thomas-Lawson (Maryland), William Green (New York), Brenda Boley (Texas), and Miguel Padilla (California) initiated a class action lawsuit in this Court, Case No. 1:19-cv-03567-CCB (D. Md.), which was transferred to the Central District of California on August 13, 2020, Case No. 2:20-cv-07301-ODW(Ex) (C.D. Cal.). Plaintiffs Thomas-Lawson, Green, Boley, and Padilla alleged that Carrington had violated the FDCPA, California's Rosenthal Fair Debt Collections Act ("Rosenthal Act") and Unfair Competition Law ("UCL"), the Texas Debt Collection Act ("TDCA"), and the MCDCA and MCPA, as well as breached its contracts with the class members. See Thomas-Lawson v. Carrington, Case No. 2:20-cv-07301-ODW(Ex) (C.D. Cal.), ECF No. 1. And, on May 20, 2020, Plaintiff Victoria Dawkins initiated a class action in the Southern District of Florida against Carrington, alleging violations of the Florida Consumer Collection Practices Act ("FCCPA") and the Florida Deceptive Unfair Trade Practices Act ("FDUTPA"), as well as breach of contract and unjust enrichment. See Dawkins v. Carrington, Case No. 0:20-cv-60998-RAR (S.D. Fla.), ECF No. 1.

Although the three putative class actions were brought separately, each is based on one allegation: Carrington charged and collected millions of dollars in \$5, \$10, and \$20 Convenience Fees from homeowners, in addition to their regular mortgage payments, and that this practice violated the FDCPA, the laws of Maryland, California, Florida, and Texas, and breached Plaintiffs' mortgage agreements. Carrington denies the allegations in the complaints and denies its actions were in any way unlawful.

Before this Court, Carrington moved to dismiss the complaint filed by Plaintiffs Alexander and Bishop. Dkt. 24. The Court granted the motion. Dkts. 32, 33. Plaintiffs appealed the dismissal, and, on January 19, 2022, the Fourth Circuit reversed. *Alexander v. Carrington Mortg. Servs.*, *LLC*, 23 F.4th 370, 376 (4th Cir. 2022).

In the *Thomas-Lawson* matter, Carrington moved to compel arbitration of the claims brought by Plaintiffs Boley and Green. *Thomas-Lawson*, Case No. 2:20-cv-07301-ODW(Ex) (C.D. Cal.), ECF No. 75. Carrington also moved to dismiss the complaint filed by Plaintiffs Thomas-Lawson, Green, Boley, and Padilla. *Thomas-Lawson*, ECF No. 76. On April 5, 2021, the Central District of California denied Carrington's motion to compel arbitration, but granted Carrington's motion to dismiss. *Thomas-Lawson*, ECF No. 97. Plaintiffs appealed to the Ninth Circuit, and that appeal is currently pending, but stayed pending consideration of this settlement. *See Thomas-Lawson v. Carrington Mortg. Servs.*, No. 21-55459 (9th Cir.).

In the *Dawkins* matter, Carrington moved to compel arbitration of Plaintiff Dawkins's claims. *Dawkins*, Case No. 0:20-cv-60998-RAR (S.D. Fla.), ECF No. 22. After the parties briefed the motion, the Southern District of Florida stayed the *Dawkins* matter pending resolution of *Carrington Mortgage Services*, *LLC v. Attix*, No. 20-13575-HH (11th Cir.), which involved a

similar arbitration issue and is currently on appeal, with a pending motion to stay pending consideration of this settlement.

After the Parties reached the proposed Settlement, the Parties agreed that, to preserve the resources of the Parties and the various courts, Plaintiffs' claims should be consolidated and a single Settlement Agreement considered and approved by this Court, rather than proceeding piecemeal. Thus, in advance of this Motion, the Plaintiffs filed, the current operative Second Amended Complaint consolidating their claims before this Court and also notified the *Thomas-Lawson* and *Dawkins* courts of the pending Settlement. The Parties have agreed to dismiss those cases following final approval of this Settlement. Carrington consented to the filing of the Second Amended Complaint solely for purposes of settlement without admitting any of the allegations contained therein.

Plaintiffs' counsel and Carrington's counsel had at least three pre-mediation conferences where the discovery and the Parties' respective positions on the merits and damages were discussed. The proposed Settlement was negotiated during a fourteen-hour mediation before an experienced mediator, Jeff Kichaven. In advance of that mediation, Carrington provided Plaintiffs with substantial data demonstrating the size of the Settlement Class and the amount of the total Convenience Fees collected by Carrington from the Class during the class period at issue. Following the mediation, the Parties continued to negotiate the details of the Settlement before arriving at the Settlement Agreement currently before the Court.

#### II. SETTLEMENT TERMS

#### A. The Proposed Settlement Class

The Settlement Agreement contemplates certification of the following Settlement Class for settlement purposes only:

All persons who paid a fee to Carrington for making a mortgage loan payment by telephone, IVR, or via the internet, between January 1, 2016 through December 31, 2021 ("Convenience Fees") who fall into one or more of the following groups:

- (1) were borrowers on residential mortgage loans on properties located in California, Texas, New York, Maryland, or Florida;
- (2) were borrowers on residential mortgage loans on properties in the United States to which Carrington acquired servicing rights when such loans were 30 days or more delinquent on loan payment obligations; or
- (3) were borrowers on residential mortgage loans on properties located in the United States insured by the Federal Housing Administration.

The proposed Settlement Class is identical to the class definition included in the Second Amended Complaint.

#### **B.** Benefits to the Settlement Class

The Settlement Agreement, if approved, will create a \$18,181,898.65 common fund and will resolve the claims of Plaintiffs and the Settlement Class Members deriving from Carrington's practice of charging fees for making mortgage payments by telephone, IVR, or via the internet ("Convenience Fees"). The common fund, which represents approximately 35% of the total Convenience Fees collected by Carrington from the Class during the class period, will provide cash payments to Settlement Class Members, as well as Administrative Costs to provide notice and administer the settlement, and any Fee and Expense Award and Service Awards that the Court may approve. Settlement Class Members need not submit a claim form in order to receive monetary compensation. Settlement Class Members who paid at least one Convenience Fee are entitled to receive a payment of \$5.00 from the Net Settlement Fund, with the remainder paid to Settlement Class Members on a *pro rata* basis, based upon the amount of Convenience Fees paid by each Settlement Class Member during the Class Period.

In addition to the common fund, the Settlement includes important and valuable injunctive relief. As of January 1, 2022, Carrington has ceased charging or collecting Convenience Fees to

any borrower, while allowing borrowers to make payments by telephone, IVR or the internet for free. As a result of this Settlement, Carrington also agrees to refrain from the charging or collection of Convenience Fees for allowing borrowers to make payments by telephone, IVR or the internet, for a period of at least three years after entry of the Final Approval Order. The prospective relief of this settlement term is expected, based upon the discovery exchanged, to have an approximate value of \$8M per year (based on the average of the last 4 years Carrington collected the fees) going forward for the putative class members who still have loans serviced by Carrington.

#### C. Settlement Administrator and Administration Costs

The proposed Settlement Administrator is Epiq, a leading class action administration firm in the United States. Plaintiffs' counsel obtained and reviewed proposals from several prominent settlement administrators before deciding on Epiq based on overall cost and value to the Settlement Class. The Administrative Costs will be paid from the Gross Settlement Fund.

#### D. Class Member Release

Upon the Effective Date, and in consideration for the Settlement Payment and for Carrington's other promises contained herein, each Settlement Class Member, for and on behalf of their present and future spouses (and common law spouses), children, parents, relations, successors, beneficiaries, heirs, next of kin, assigns, attorneys, executors, administrators, and/or estate, or any and all other persons who could claim through them, hereby unconditionally and irrevocably remises, releases, and forever discharges the Released Entities from the Released Claims and further covenants not to sue any of the Released Entities with respect to any of the Released Claims.

"Released Claims" means any and all claims, counterclaims, actions, causes of action, suits, set-offs, costs, losses, expenses, sums of money, accounts, reckonings, debts, charges, complaints, controversies, disputes, damages, judgments, executions, promises, omissions, duties,

agreements, rights, and any and all demands, obligations and liabilities, of whatever kind or character, direct or indirect, whether known or unknown, at law or in equity, by right of action or otherwise, arising out of, based upon, or related in any way to the facts, allegations, disputes that are the subject matter of the Lawsuits or the charging, collection, or attempted collection of Convenience Fees from the beginning of the world to the Effective Date, which the Settlement Class Member ever had or may have in the future.

"Released Entities" means Carrington and each of its past, present and future directors, officers (whether acting in such capacity or individually), shareholders, advisors, owners, partners, joint venturers, principals, trustees, creditors, law firms, attorneys, representatives, employees, managers, parents, direct or indirect subsidiaries, divisions, subdivisions, departments, entities in common control, affiliates, insurers, reinsurers, control persons, predecessors, and successors or any agent acting or purporting to act for them or on their behalf, as well as any investor on whose behalf Carrington services any loan to any Settlement Class Member, and each of their past, present and future directors, officers (whether acting in such capacity or individually), shareholders, advisors, owners, partners, joint venturers, principals, trustees, creditors, law firms, attorneys, representatives, employees, managers, parents, direct or indirect subsidiaries, divisions, subdivisions, departments, entities in common control, affiliates, insurers, reinsurers, control persons, predecessors, and successors or any agent acting or purporting to act for them or on their behalf, and, any entity on whose behalf Carrington services any loan to any Class Member.

#### E. Proposed Plan of Notice

The Parties' proposed Notice Plan consists of direct notice in the form of Postcard Notice and Email Notice, as well as a Settlement Website where Class Members may view and download a Long Form Notice. Class Members may also request that the Settlement Administrator mail or email them a copy of the Long Form Notice.

Within 14 days or such other time as provided in the Preliminary Approval Order, Carrington, at its own expense, will compile the Class Member List and provide it to the Settlement Administrator and Class Counsel.

As soon as practicable but starting no later than thirty (30) days after the date that the Defendant provides the Class Member List to the Settlement Administrator, the Settlement Administrator shall cause the Email Notice to be sent to all Settlement Class Members for whom the Class Member List includes an email address.

As soon as practicable but starting no later than thirty (30) days after the date that the Defendant provides the Class Member List to the Settlement Administrator, the Settlement Administrator shall cause the Postcard Notice to be sent to all Settlement Class Members for whom no email address appears on the Class Member List. Prior to mailing Class Notice, the Settlement Administrator will update the last known addresses of the members of the Settlement Class using the National Change of Address database. Within a reasonable time before the Response Deadline, the Settlement Administrator shall also cause the Postcard Notice to be sent to all Settlement Class Members whose Email Notices are returned undeliverable, after running those Settlement Class Members' last known addresses through the National Change of Address database. If the Postcard Notice is returned with a forwarding address, the Settlement Administrator shall make one attempt to remail the Postcard Notice to that forwarding address, as soon as possible before the Response Deadline. If the Postcard Notice is returned undeliverable without a forwarding address, the Settlement Administrator shall make a reasonable attempt to locate an updated address and make one attempt to remail the Postcard Notice to the updated address, as soon as possible before the Response Deadline.

The Settlement Administrator shall mail or email the Long Form Notice to any Settlement Class member who requests a copy.

Prior to the date on which the Settlement Administrator mails the Postcard Notice, the Settlement Administrator shall establish the Settlement Website. The Settlement Website shall contain: (1) the Long Form Notice in downloadable PDF format in both English and Spanish; (2) the Long Form Notice in HTML format with a clickable table of contents, described as answers to frequently asked questions; (3) a contact information page with contact information for the Settlement Administrator, and addresses and telephone numbers for Class Counsel and Defendant's Counsel; (4) the Settlement Agreement; (5) the signed Preliminary Approval Order and publicly filed motion papers and declarations in support thereof; (6) the operative complaints in each of the Actions; and (7) when they become available, the Fee and Service Award Application, the motion for entry of the Final Approval Order, and any motion papers and declarations filed publicly in support thereof. The Settlement Website shall remain accessible until 30 days after the Settlement Administrator has completed its obligations under the Settlement Agreement.

The Settlement Administrator shall also establish a 24-hour toll-free telephone line with information about frequently asked questions about the Settlement. The number shall be included in the Class Notice and posted on the Settlement Website.

The Settlement Administrator will also ensure that the necessary and timely notice is provided to any state and federal officers as required by the Class Action Fairness Act, 28 U.S.C. § 1715.

#### F. Opt-Outs and Objections

The Class Notice will advise Class Members of their right to opt out of the Settlement or to object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs, and expenses and/or Service Award to the Class Representatives, and of the associated deadlines to opt out or object.

Class Members who choose to opt out must submit a written request for exclusion. Any request for exclusion must be postmarked on or before the "Response Deadline"—105 days after entry of the Preliminary Approval Order. Any request for exclusion must include the name of the case, and the name, address, phone number, and signature of the borrower or borrowers seeking exclusion and must contain language clearly indicating a request for exclusion. If there are coborrowers on the loan, all co-borrowers must sign the request for exclusion. Any Class Member who does not submit a request to opt out in accordance with the deadlines and other requirements will be bound by the Settlement absent a court order to the contrary.

Class Members who wish to object to the Settlement must mail a written objection, postmarked on or before the Response Deadline, to the Court c/o the Class Action Clerk (reference to Case No. 1:20-cv-02369-RDB), United States District Court for the District of Maryland, 101 West Lombard Street, Baltimore, MD 21201 or by filing it in person on or before the Response Deadline at any location of the United States District Court for the District of Maryland. All objections must be in writing and personally signed by the Class Member and include: (1) the objector's name, address, email address if any, and telephone number; (2) the case caption; (3) the specific factual basis and legal grounds for the objection; (4) a list of all cases in which the objector has objected to a class action settlement, including case name, court, and docket number; (5) if the objector is represented by counsel, a list of all cases in which the objector's counsel has represented an objector in objecting to a class action settlement, case name, court, and docket number; (6) a statement indicating whether the Class Member and/or their lawyer(s) intend to appear at the Final Fairness Hearing; (7) a list of witnesses, if any, that the objecting Class Member intends to call;

and (8) whether the objection relates only to the objector, or to a subset of the Settlement Class, or to the entire Settlement Class.

Any Class Member who has not submitted a timely request for exclusion may appear at the Final Fairness Hearing either in person or through an attorney. However, if the Class Member intends to appear through counsel, the Class Member must have submitted a written objection pursuant to this section. Any lawyer who intends to appear at the Final Fairness Hearing also must enter a written Notice of Appearance of Counsel with the Clerk of the Court no later than the Response Deadline. Any Class Member who intends to request the Court to allow him or her to call witnesses at the Final Fairness Hearing must make such a request in a written brief, which contains a list of such witnesses and a summary of their requested testimony.

No person who has opted out of the Settlement may object to it. Any Class Member who does not provide a timely written objection or who does not make a record of his or her objection at the Final Approval Hearing shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement, Fee and Service Awards Application, or the Fee and Expense Award or Service Awards.

#### G. Attorneys' Fees and Costs and Service Award

The Settlement Agreement contemplates Class Counsel petitioning the Court for attorneys' fees, as well as documented, customary costs incurred by Class Counsel. The Settlement Agreement provides that Class Counsel may seek attorneys' fees in an amount not to exceed forty percent of the Gross Settlement Fund (40%) as well as reasonable expenses incurred in the litigation. Any approved Fee and Expense Award will be paid from the Gross Settlement Fund prior to distribution to the Settlement Class Members.

On or before 21 days prior to the Response Deadline, Class Counsel will file a petition for attorneys' fees and costs explaining why the requested Fee and Expense Award is reasonable. Carrington has not agreed to any award of attorneys' fees or expenses and reserves the right to respond as it deems appropriate.

Class Counsel may also petition the Court for up to \$5,000 each for Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda Boley, Miguel Padilla, and Victoria Dawkins as Service Awards as compensation for their time and effort in the Action. Any approved awards will be deduced from the Gross Settlement Fund prior to distribution to the Settlement Class Members.

Neither final approval, nor the size of the Common Fund, are contingent upon approval of the full amount of requested Fee and Expense Award or Service Awards.

#### III. FINDINGS AND ORDERS

### A. The Settlement Agreement warrants preliminary approval.

- 1. The Court finds, on a preliminary basis, that the Settlement Agreement appears to be within the range of reasonableness of a settlement that could ultimately be given final approval by this Court. The Court has reviewed the terms of the Settlement and preliminarily finds the Settlement to be fair, reasonable, and adequate. The Court finds that the Settlement contains no obvious deficiencies and that the Parties entered into the settlement in good faith, following arm's length negotiations between their respective counsel. The Settlement meets the considerations set forth in Federal Rule of Civil Procedure 23(e) and *In re Jiffy Lube Sec.* Litig., 927 F.2d 155 (4th Cir. 1991).
- 2. In the Fourth Circuit, courts look to a four-factor test to evaluate the fairness of a class settlement: "(1) the posture of the case at the time settlement was proposed; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations; and (4) the

experience of counsel in the area of [the] class action litigation." *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 159.<sup>2</sup> As to the posture of the case, it appears that the Settlement was reached after significant work was performed, including motions practice with respect to motions to dismiss and motions to compel arbitration, as well as appeals before the Fourth and Ninth Circuits. Although the parties did not engage in formal discovery, it appears Carrington provided substantial informal discovery to allow Class Counsel to intelligently evaluate the Settlement offered against the risks and benefits of continued litigation. The provision of informal damages discovery is sufficient to satisfy the fairness factor. *In re Jiffy Lube*, 927 F.2d at 159 (recognizing that informal discovery can provide satisfactory information prior to preliminary approval). Thus, the first two fairness factors warrant preliminary approval.

- 3. The third factor—the circumstances surrounding the negotiations—also supports preliminary approval. The Settlement was negotiated with the assistance of Jeff Kichaven, an experienced mediator, and appears to be the result of extensive, arm's length negotiations between the Parties after Class Counsel and Carrington's Counsel had investigated the claims, extensively litigated them, and become familiar with the claims' strengths and weaknesses. Further, the Parties did not discuss attorneys' fees or a Service Award until after agreeing upon the material terms of the Settlement. The Settlement appears not to be collusive, has no obvious defects, and falls within the range of reasonableness.
- 4. With respect to the fourth factor, Class Counsel and Carrington's Counsel are experienced in class action litigation. Moreover, it appears to the Court that the Class

<sup>&</sup>lt;sup>2</sup> The Fourth Circuit has recognized that these "factors for assessing class-action settlements almost completely overlap with the new Rule 23(e)(2) factors." *In re: Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Pracs. & Prod. Liab. Litig.*, 952 F.3d 471, 484 n.8 (4th Cir. 2020).

Representatives and Class Counsel have adequately represented the proposed Settlement Class. *See* Fed. R. Civ. P. 23(e)(2)(A). Class Counsel are experienced and sophisticated, with years of experience in complex class action litigation and litigation involving mortgage servicers, financial institutions, and fees. The Class Representatives have also supervised the litigation by reviewing pleadings, reviewing the Settlement, and communicating with Class Counsel regarding the litigation.

- 6. It appears to the Court that the terms of the proposed award of attorneys' fees and expenses are fair and reasonable. However, prior to final approval, Class Counsel shall file a separate motion seeking approval of Attorneys' Fees and Expenses in an amount not to exceed forty percent (40%) of the Gross Settlement Fund, plus their reasonable expenses of litigation. In this submission, Class Counsel will set forth the specific legal and factual bases for their request for attorneys' fees and expenses. It likewise appears to the Court that the proposed Service Awards are fair and reasonable.
  - 5. Accordingly, the Court preliminarily finds that the Settlement is fair.
- 6. In assessing the adequacy of the settlement, the Court looks to "(1) the relative strength of the plaintiffs' case on the merits; (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial; (3) the anticipated duration and expense of additional litigation; (4) the solvency of the defendant[] and the likelihood of recovery on a litigated judgment; and (5) the degree of opposition to the settlement." *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 159.
- 7. The first and second factors, which are generally considered together, evaluate "how much the class sacrifices in settling a potentially strong case in light of how much the class gains in avoiding the uncertainty of a potentially difficult one." *In re The Mills Corp. Securities*

Litig., 265 F.R.D. 246, 256 (E.D. Va. 2009). Although the Fourth Circuit reversed this Court's dismissal of Plaintiff Alexander and Bishop's complaint, there are still numerous factual and legal issues in dispute. In addition, Plaintiff Thomas-Lawson, Green, Boley, and Padilla's appeal of the dismissal of their FDCPA and California, Texas, and Maryland statutory claims is still pending before the Ninth Circuit, and there are open questions regarding whether Carrington could compel arbitration of some of the Plaintiffs' and class members' claims. Plaintiffs' motion describes the legal issues that would be decided before this Court and before the *Thomas-Lawson* and *Dawkins* courts should the settlement not be approved, both on the merits and at class certification.

- 8. With respect to the third factor, the likely duration and expense of continued litigation is substantial. While litigation presents serious risks at many stages, not to mention substantial expense and delay without any guarantee of additional benefit to the Settlement Class, the Settlement provides immediate and substantial benefits to over 442,059 Class Members.
  - 9. Finally, Carrington appears to be solvent.
  - 10. Accordingly, the Court preliminarily finds that the Settlement is adequate.<sup>3</sup>
- 11. It appears to the Court that the Settlement is fair, reasonable, and adequate when balanced against the probable outcome of further litigation, liability, and damages issues, and potential appeals of rulings. The amount offered in Settlement represents approximately 35% of potential damages, as well as significant injunctive relief. Finally, it appears to the Court that the Parties' proposed allocation of the Settlement is fair and reasonable. Settlement Class Members who paid at least one Convenience Fee are entitled to receive a payment of \$5.00 from the Net Settlement Fund, with the remainder paid to Settlement Class Members on a *pro rata* basis, based

<sup>&</sup>lt;sup>3</sup> The fifth *Jiffy Lube* factor, the degree of opposition to the settlement, cannot be evaluated until after class notice has gone out and Class Members have had an opportunity to opt out or object to the settlement.

upon the amount of Convenience Fees paid by each Settlement Class Member during the Class Period. According to this allocation, Class Members are treated fairly as to one another because they are compensated according to the amount of Convenience Fees they were charged. *See* Fed. R. Civ. P. 23(e)(2)(D). This method is consistent with the distribution of common funds in other fee cases. *See, e.g., Lembeck v. Arvest Central Mortgage Co.*, Case No. 3:20-cv-03277, 2021 WL 5494940(N.D. Cal. Aug. 26, 2021) (approving settlement from which class members would receive *pro rata* distribution of common fund based on number of fees paid); *Fernandez v. Rushmore*, Case No. 8:21-cv-00621-DOC-(KEXc) (C.D. Cal. Feb. 14, 2022) (same); *Phillips v. Caliber Home Loans, Inc.*, Case No. 0:19-cv-2711, 2022 WL 832085 (D. Minn. Mar. 21, 2022) (same). A *pro rata* distribution means that Settlement Class Members who paid more Convenience Fees will receive a relatively larger share of the Settlement Fund, and those who paid fewer will receive less. This allocation treats Settlement Class Members equitably.

### B. Certification of the Settlement Class for settlement purposes is appropriate.

On a motion for preliminary approval, the parties must also show that the Court "will likely be able to ... certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1). The Court finds for purposes of settlement only that the Settlement Class meets all of the requirements of Fed. R. Civ. P. 23(a) and (b)(3).

- 1. It appears to the Court for purposes of settlement only that the proposed Settlement Class is sufficiently numerous that joinder would be logistically impossible. The proposed Settlement Class consists of over 442,059 Class Members. The numerosity requirement is satisfied.
- 2. It appears to the Court for purposes of settlement only that there is a commonality of interests between the Settlement Class Members, including both questions of law and questions of fact. Plaintiffs' claims here depend on the common contentions that Convenience Fees are

neither authorized by class members' mortgages nor permitted by law. For the same reason, the predominance requirement of Fed. R. Civ. P. 23(b)(3) is satisfied for settlement purposes.

- 3. It appears to the Court for purposes of settlement only that the Class Representatives' claims are typical of those of the Settlement Class Members. The Class Representatives' claims arise from the same alleged course of conduct as those of the Settlement Class Members. The typicality requirement is satisfied.
- 4. It appears to the Court for purposes of settlement only that the Class Representatives and Class Counsel are adequate representatives and have no conflicts with the proposed Settlement Class.
- 5. It appears to the Court for purposes of settlement only that a class action is a superior method of resolving the claims of the Settlement Class Members, which are of modest amounts.

### C. The proposed Notice Plan is approved.

Due process under Rule 23 requires that class members receive notice of the settlement and an opportunity to be heard and participate in the litigation. *See* Fed. R. Civ. P. 23(c)(2)(B); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985); *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 175-76 (1974) ("[I]ndividual notice must be provided to those class members who are identifiable through reasonable effort.").

It appears to the Court that the proposed Notice Plan, which consists of Email Notice and Postcard Notice to be sent directly to Class Members, as well as a Long Form Notice, Settlement Website, and toll-free phone line, comports with due process, Rule 23, and all other applicable law. The five attorneys being appointed as Class Counsel herein have overseen several other settlements against mortgage loan servicers for similar practices for which email notice was used and final approval granted. *See, e.g., Phillips v. Caliber Home Loans, Inc.*, Case No. 0:19-cv-2711,

2022 WL 832085, at \*5 (D. Minn. Mar. 21, 2022). Given the relatively small value at stake for each class member, the Court finds that email notice is the best practicable notice under the circumstances and orders that Carrington provide email addresses to the Settlement Administrator for each Class Member for whom it is in possession of such information. *See, e.g., Galloway v. Williams*, No. 3:19-cv-470, 2020 WL 7482191, at \*6 (E.D. Va. Dec. 18, 2020) (where defendant "maintained loan records that included the borrowers' names, addresses, and frequently, email addresses," sending initial notice by email "and only mailing the notice if an email bounced back as undeliverable or no email existed for a particular Settlement Class Member" was both reasonable and provided the "best notice practicable under the circumstances"); *Abubaker v. Dominion Dental USA, Inc.*, No. 1:19-cv-1050, 2021 WL 6750844, at \*4 (E.D. Va. Nov. 19, 2021) (finding that notice made either by first class mail or by email for Class Members for whom the defendant had an existing email address constituted "the best notice practicable").

Moreover, the substance of the proposed Class Notice will fully apprise class members of their rights. Under Rule 23(e), notice to class members must "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *McAdams v. Robinson*, 26 F.4th 149, 158 (4th Cir. 2022) (quoting *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 114 (2d Cir. 2005)). The Notice contains all the critical information required to apprise Class Members of their rights under the settlement, directs them to the Settlement Website, where they can obtain more detailed information, and provides a toll-free number for Class Members to call with questions. This approach to notice is adequate. The Court also finds that the proposed costs associated with the Notice Plan appear to be fair and reasonable.

#### IV. SCHEDULE AND PROCEDURES

The Court orders the following schedule and procedures for disseminating the Notice, requesting exclusion from the Settlement Class, objecting to the Settlement, filing the Fee and Service Award Application, and filing the motion for final approval:

Date	Event
14 days from Preliminary Approval Order	Carrington to provide Class Member List to the Settlement Administrator
30 days from the date that the Defendant provides the Class Member List to the Settlement Administrator	Settlement Administrator to cause Email Notice to be sent to Settlement Class Members with email addresses
30 days from the date that the Defendant provides the Class Member List to the Settlement Administrator	Settlement Administrator to cause Postcard Notice to be sent to Settlement Class Members without email addresses
30 days from Preliminary Approval Order	Settlement Administrator to establish Settlement Website and toll-free telephone line
84 days from Preliminary Approval Order	Deadline for Class Counsel to file Fee and Service Award Application
105 days from Preliminary Approval Order	Response Deadline (deadline to request exclusion or file objections)
days prior to Final Approval Hearing	Deadline to file Motion for Final Approval
7 days prior to Final Approval Hearing	Deadline for the Parties to respond to objections
	Final Approval Hearing

### V. FINAL APPROVAL HEARING

The Court shall hold a Final Approval Hearing on \_\_\_\_\_ at \_\_\_\_ at the United States District Court for the District of Maryland, United States Courthouse, 101 West Lombard Street, Chambers 5D, Baltimore, MD 21201, before the Honorable Richard E. Bennett, for a final determination whether the proposed Settlement is fair, reasonable, and adequate.

Objections by Settlement Class Members will be considered if filed in writing with the clerk by the Response Deadline above. Settlement Class Members who have not requested exclusion may be heard orally in support of or opposition to the Settlement. Settlement Class Members who wish to appear at the Final Approval Hearing through counsel are required to file a notice with the Clerk of his or her desire to appear personally, and counsel must file a notice of appearance on the docket. Settlement Class Members proceeding *pro se* are requested, but not required, to file a notice with the Clerk of his or her desire to appear personally.

#### VI. OTHER PROVISIONS

Class Counsel and Defendant are authorized to take, without further Court approval, all necessary and appropriate steps to implement the Settlement, including the proposed Notice Plan and confirmatory discovery. The deadlines set forth in this Order may be extended by Order of the Court without further notice to Settlement Class Members, except that notice shall be posted on the Settlement Website. Settlement Class Members should check the Settlement Website regularly for updates and further details regarding the deadlines. Exclusions and objections must meet the deadlines and follow the requirements set forth in the approved Class Notice to be valid, although the Court will accept exclusions and objections deemed to be in substantial compliance.

If for any reason the Court does not execute and file an Order of Final Approval, or if the Effective Date does not occur for any reason, the Parties will be restored to the *status quo ante* as set forth more specifically in the Settlement.

#### VII. CONCLUSION

Accordingly, the Court having considered the Unopposed Motion for Preliminary Approval of Class Action Settlement and Certification of the Settlement Class, it is hereby ORDERED that:

1. The Motion is GRANTED;

2. The proposed Settlement Class is certified for settlement purposes only pursuant to

Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure;

3. The proposed Settlement is preliminarily approved as being fair, reasonable, and

adequate pursuant to Rule 23(e);

4. Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda

Boley, Miguel Padilla, and Victoria Dawkins are appointed as Class Representatives;

5. Hassan A. Zavareei, Kristen G. Simplicio, James L. Kauffman, and Phillip

Robinson are appointed as Class Counsel;

6. Carrington is ordered to provide the Class Member List to the Settlement

Administrator, including email addresses where available, who is ordered to follow the

confidentiality provisions set forth in the Settlement Agreement with respect to such information;

and

7. The proposed Notice Plan complies with the requirements of Rule 23 and Due

Process, and Class Notice is to be sent to the Settlement Class Members as set forth in the

Settlement Agreement and pursuant to the deadlines above.

IT	IS	SO	ORDERED.

Dated:	
	Hon. Richard E. Bennett
	United States District Judge

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IT IS SO ORDERED.	
Dated:	
	Hon. Richard E. Bennett
	United States District Judge

# **EXHIBIT C**

# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

ASHLY ALEXANDER, CEDRIC BISHOP, AMY THOMAS-LAWSON, WILLIAM GREEN, BRENDA BOLEY, MIGUEL PADILLA, and VICTORIA DAWKINS

Case No. 1:20-cv-02369-RDB

On behalf of themselves individually and similarly situated persons.

Plaintiffs.

v.

CARRINGTON MORTGAGE SERVICES, LLC,

Defendants.

# [PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda Boley, Miguel Padilla, and Victoria Dawkins, individually and on behalf of the proposed Settlement Class, seek final approval of a proposed Settlement of claims against defendant Carrington Mortgage Services LLC ("Carrington"). For the reasons set forth herein, the Court GRANTS the motion.

### I. BACKGROUND

Plaintiffs commenced separate actions in Maryland, California, and Florida, each challenging Carrington's practice of charging borrowers fees to make mortgage payments over the phone or online, alleging violations of applicable state or federal laws. On July 10, 2020, Plaintiffs

<sup>&</sup>lt;sup>1</sup> Unless otherwise specifically defined herein, all capitalized terms have the same meanings as those set forth in the parties' Settlement Agreement, attached as Exhibit 1 to the Declaration of Hassan A. Zavareei ("Zavareei Decl.").

Ashly Alexander initiated a class action in the Circuit Court for Baltimore County, alleging that Carrington violated the Maryland Consumer Debt Collection Act ("MCDCA"), the Maryland Consumer Protection Act ("MCPA"), and Maryland's usury law. Dkt. 3. Carrington removed the case to this Court on August 17, 2020, Dkt. 1, and, on September 8, 2020, Plaintiffs filed an amended complaint, adding Plaintiff Cedric Bishop and an allegation that Carrington violated the federal Fair Debt Collection Practices Act ("FDCPA"). See Dkt. 20. Plaintiffs Amy Thomas-Lawson, William Green, Brenda Boley, and Miguel Padilla initiated a class action lawsuit in this District, Case No. 1:19-cv-03567-CCB (D. Md.), which was transferred to the Central District of California on August 13, 2020, Case No. 2:20-cv-07301-ODW(Ex) (C.D. Cal.). Plaintiffs Thomas-Lawson, Green, Boley, and Padilla alleged that Carrington violated the FDCPA, California's Rosenthal Fair Debt Collections Act ("Rosenthal Act") and Unfair Competition Law ("UCL"), the Texas Debt Collection Act ("TDCA"), and the MCDCA and MCPA, as well as breached its contracts with the class members. See Thomas-Lawson v. Carrington, Case No. 2:20-cv-07301-ODW(Ex) (C.D. Cal.), ECF No. 1. And, on May 20, 2020, Plaintiff Victoria Dawkins initiated a class action in the Southern District of Florida against Carrington, alleging violations of the Florida Consumer Collection Practices Act ("FCCPA") and the Florida Deceptive Unfair Trade Practices Act ("FDUTPA"), as well as breach of contract and unjust enrichment. See Dawkins v. Carrington, Case No. 0:20-cv-60998-RAR (S.D. Fla.), ECF No. 1.

Before this Court, Carrington moved to dismiss the amended complaint filed by Plaintiffs Alexander and Bishop. Dkt. 24. The Court granted the motion. Dkts. 32, 33. Plaintiffs appealed the dismissal of the MCDCA and MCPA claims, and, on January 19, 2022, the Fourth Circuit reversed the dismissal of the claims brought under the MCDCA and reversed in part and affirmed

in part the claims brought under the MCPA. *Alexander v. Carrington Mortg. Servs., LLC*, 23 F.4th 370, 376 (4th Cir. 2022).

After the Parties reached the proposed Settlement, they agreed that, to preserve the resources of the Parties and the various courts, Plaintiffs' claims should be consolidated and a single Settlement Agreement considered and approved by this Court, rather than proceeding piecemeal. Thus, in advance of this Motion, the Plaintiffs filed, with the consent of Carrington for settlement purposes only, the current operative Second Amended Complaint consolidating their claims before this Court and also notified the *Thomas-Lawson* and *Dawkins* courts of the pending Settlement. The Parties have agreed to dismiss those cases following final approval of this Settlement.

Plaintiffs' counsel and Carrington's counsel had at least three pre-mediation conferences where the discovery and the Parties' respective positions on the merits and damages were discussed. The proposed Settlement was negotiated during a fourteen-hour mediation before an experienced mediator, Jeff Kichaven. Following the mediation, the Parties continued to negotiate the details of the Settlement before arriving at the Settlement Agreement currently before the Court for final approval.

On \_\_\_\_\_\_, 2022, this Court granted preliminary approval of the proposed settlement and approved the issuance of notice to the Class. Dkt. \_\_\_\_. A hearing on final approval was held on \_\_\_\_\_\_, 2022.

#### II. SETTLEMENT TERMS

#### A. The Proposed Settlement Class

The Settlement Agreement contemplates certification of the following Settlement Class for settlement purposes only:

All persons who paid a fee to Carrington for making a mortgage loan payment by telephone, IVR, or via the internet, between January 1, 2016 through December 31, 2021 ("Convenience Fees") who fall into one or more of the following groups:

- (1) were borrowers on residential mortgage loans on properties located in California, Texas, New York, Maryland, or Florida;
- (2) were borrowers on residential mortgage loans on properties in the United States to which Carrington acquired servicing rights when such loans were 30 days or more delinquent on loan payment obligations; or
- (3) were borrowers on residential mortgage loans on properties located in the United States insured by the Federal Housing Administration.

The proposed Settlement Class is identical to the class definition included in the Second Amended Complaint.

#### **B.** Benefits to the Settlement Class

The Settlement Agreement, if approved, will create a \$18,181,898.65 common fund and will resolve the claims of Plaintiffs and the Settlement Class Members deriving from Carrington's practice of charging fees for making mortgage payments by telephone, IVR, or via the internet ("Convenience Fees"). The common fund, which represents approximately 35% of the total Convenience Fees collected by Carrington from the Class during the class period, will provide cash payments to Settlement Class Members, as well as Administrative Costs to provide notice and administer the settlement, and any Fee and Expense Award and Service Awards that the Court may approve. Settlement Class Members need not submit a claim form in order to receive monetary compensation. Settlement Class Members who paid at least one Convenience Fee are entitled to receive a payment of \$5.00 from the Net Settlement Fund, with the remainder paid to Settlement Class Members on a *pro rata* basis, based upon the amount of Convenience Fees paid by each Settlement Class Member during the Class Period.

In addition to the common fund, the Settlement includes valuable injunctive relief. As of January 1, 2022, Carrington ceased charging Convenience Fees to any borrower, while allowing

borrowers to make payments by telephone, IVR or the internet for free. Carrington agrees to refrain from the charging or collecting Convenience Fees for allowing borrowers to make payments by telephone, IVR or the internet, for a period of at least three years after entry of the Final Approval Order. Carrington agrees that Plaintiffs' Lawsuits were a substantial factor in its decision to stop charging Convenience Fees. Based on the overall amounts collected from Class Members, the Court notes that Carrington was collecting at least an average of \$8,000,000 per year from the class in Convenience Fees.

#### C. Settlement Administrator and Administration Costs

The proposed Settlement Administrator is Epiq, a leading class action administration firm in the United States. Plaintiffs' counsel obtained and reviewed proposals from several prominent settlement administrators before deciding on Epiq based on overall cost and value to the Settlement Class. The Administrative Costs will be paid from the Gross Settlement Fund.

#### D. Class Member Release

Upon the Effective Date, and in consideration for the Settlement Payment and for Carrington's other promises contained herein, each Settlement Class Member, for and on behalf of their present and future spouses (and common law spouses), children, parents, relations, successors, beneficiaries, heirs, next of kin, assigns, attorneys, executors, administrators, and/or estate, or any and all other persons who could claim through them, hereby unconditionally and irrevocably remises, releases, and forever discharges the Released Entities from the Released Claims and further covenants not to sue any of the Released Entities with respect to any of the Released Claims.

"Released Claims" means any and all claims, counterclaims, actions, causes of action, suits, set-offs, costs, losses, expenses, sums of money, accounts, reckonings, debts, charges, complaints, controversies, disputes, damages, judgments, executions, promises, omissions, duties,

agreements, rights, and any and all demands, obligations and liabilities, of whatever kind or character, direct or indirect, whether known or unknown, at law or in equity, by right of action or otherwise, arising out of, based upon, or related in any way to the facts, allegations, disputes that are the subject matter of the Lawsuits or the charging, collection, or attempted collection of Convenience Fees from the beginning of the world to the Effective Date, which the Settlement Class Member ever had or may have in the future.

"Released Entities" means Carrington and each of its past, present and future directors, officers (whether acting in such capacity or individually), shareholders, advisors, owners, partners, joint venturers, principals, trustees, creditors, law firms, attorneys, representatives, employees, managers, parents, direct or indirect subsidiaries, divisions, subdivisions, departments, entities in common control, affiliates, insurers, reinsurers, control persons, predecessors, and successors or any agent acting or purporting to act for them or on their behalf, as well as any investor on whose behalf Carrington services any loan to any Settlement Class Member, and each of their past, present and future directors, officers (whether acting in such capacity or individually), shareholders, advisors, owners, partners, joint venturers, principals, trustees, creditors, law firms, attorneys, representatives, employees, managers, parents, direct or indirect subsidiaries, divisions, subdivisions, departments, entities in common control, affiliates, insurers, reinsurers, control persons, predecessors, and successors or any agent acting or purporting to act for them or on their behalf, and, any entity on whose behalf Carrington services any loan to any Class Member.

#### E. Notice to the Settlement Class

Notice was sent to Class members pursuant to the Settlement Agreement and the Court's Order granting preliminary approval. The Class Notice consisted of direct notice in the form of Postcard Notice and Email Notice, as well as a Settlement Website where Class Members could view and request to be sent the Long Form Notice. The Class Notice adequately described the

litigation and the Settlement Agreement and the procedures to opt out and object. The Notices further explained the amount of the Settlement, the plan of allocation, Class Counsel's intent to apply for an award of attorneys' fees and expenses and for Class Representative' Service Awards. Notice was also provided to state and federal officers as required by the Class Action Fairness Act, 28 U.S.C. § 1715.

#### F. Attorneys' Fees and Costs and Service Award

The Settlement Agreement contemplates Class Counsel petitioning the Court for an award of attorneys' fees, plus documented, customary costs incurred by Class Counsel. The Settlement Agreement provides that Class Counsel may seek attorneys' fees in an amount not to exceed forty percent of the Gross Settlement Fund (40%) as well as reasonable expenses incurred in the litigation. Any approved Fee and Expense Award will be paid from the Gross Settlement Fund prior to distribution to Settlement Class Members. The Settlement Agreement also authorizes Class Counsel to petition the Court for Service Awards of up to \$5,000 each for Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda Boley, Miguel Padilla, and Victoria Dawkins as compensation for their time and effort in the Action. Any approved awards will be deducted from the Gross Settlement Fund before distribution to Settlement Class Members.

Neither final approval, nor the size of the Common Fund, are contingent upon approval of the full amount of requested Fee and Expense Award or Service Awards.

#### III. LEGAL STANDARD FOR FINAL APPROVAL

Settlement of class actions must be approved by the Court. Fed. R. Civ. P. 23(e); *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991); *Whitaker v. Navy Fed. Credit Union*, No. 09CV2288, 2010 WL 3928616, at \*2 (D. Md. Oct. 4, 2010); *McDaniels v. Westlake Servs.*, *LLC*, No. CIV.A. ELH-11-1837, 2014 WL 556288, at \*8 (D. Md. Feb. 7, 2014).

As of December 1, 2018, Rule 23(e) provides specific guidance to federal courts in considering whether to grant final approval of a class action settlement. The Rule 23(e)(2) final approval factors include whether: (A) the class representative and class counsel have adequately represented the class; (B) the proposal was negotiated at an arm's length; (C) the relief provided is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3);<sup>2</sup> and (D) the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2).

Before 2018, to determine whether a settlement meets the requirements of Rule 23 and warrants final approval, the Fourth Circuit adopted a bifurcated analysis involving inquiries into the fairness and adequacy of the settlement, still utilized today. *Scardelletti*, 43 Fed. Appx. at 528; *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 158; *Donaldson v. Primary Residential Mortg., Inc.*, No. CV ELH-19-1175, 2021 WL 2187013, at \*3 - 4 (D. Md. May 28, 2021) (citing Rule 23(e)(2) factors and *Jiffy Lube* factors in assessing final approval).

In assessing the fairness of a proposed settlement, the Court looks to the following Fourth Circuit factors: (1) posture of the case at the time the settlement is proposed; (2) extent of discovery that has been conducted; (3) circumstances surrounding the negotiations; and (4) experience of counsel in the relevant area of class action litigation. *Scardelletti*, 43 Fed. Appx. at 528; *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 159; *Robinson v. Nationstar Mortg. LLC*, No. 8:14-CV-03667-TJS,

<sup>&</sup>lt;sup>2</sup> Here there is no agreement required to be identified under Rule 23(e)(3).

2020 WL 8256177, at \*2 (D. Md. Dec. 11, 2020), aff'd sub nom. McAdams v. Robinson, 26 F.4th 149 (4th Cir. 2022).

In determining the adequacy of the proposed settlement, the Fourth Circuit factors instruct the Court to consider: (1) the relative strength of plaintiff's case on the merits; (2) existence of any difficulties of proof or strong defenses plaintiff is likely to encounter if the case proceeds to trial; (3) anticipated duration and expense of additional litigation; (4) solvency of defendant and likelihood of recovery of a litigated judgment; and (5) degree of opposition to the settlement. *Scardelletti*, 43 Fed. Appx. at 528; *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 159; *Robinson v. Nationstar Mortg. LLC*, at \*2. Many of these factors overlap with the Rule 23(e) factors cited above.<sup>3</sup>

#### IV. FINDINGS AND ORDER

The Court finds that the Settlement Agreement is fair, reasonable, and adequate and warrants final approval under the applicable Rule 23 and Fourth Circuit factors.

1. With respect to the adequacy and experience of counsel, Class Counsel and Carrington's Counsel are experienced in class action litigation. Moreover, it appears to the Court that the Class Representatives and Class Counsel have adequately represented the proposed Settlement Class. Class Counsel are experienced and sophisticated, with years of experience in complex class action litigation and litigation involving mortgage servicers, financial institutions, and fees. The Class Representatives have also supervised the litigation by reviewing pleadings,

<sup>&</sup>lt;sup>3</sup> The Fourth Circuit has recognized that these "factors for assessing class-action settlements almost completely overlap with the new Rule 23(e)(2) factors." *In re: Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Pracs. & Prod. Liab. Litig.*, 952 F.3d 471, 484 n.8 (4th Cir. 2020).

reviewing the Settlement, and communicating with Class Counsel regarding the litigation. Rule 23(e)(2)(A) and the fourth fairness factor are satisfied.

- 2. The Court finds that the Settlement was negotiated at arm's length before an experienced mediator and between experienced and sophisticated counsel. The settling Parties vigorously contested motions to dismiss, contested appeals from rulings on the motions, and engaged in formal settlement mediation with the assistance of a professional mediator. "These adversarial encounters dispel any apprehension of collusion between the parties." *In re NeuStar, Inc. Sec. Litig.*, No. 1:14–CV–885(JCC/TRJ), 2015 WL 5674798, at \*10 (E.D. Va. Sept. 23, 2015). The Settlement was negotiated with the assistance of Jeff Kichaven, an experienced mediator, after extensive litigation, that enabled each side to assess the strengths and weaknesses of their claims. Further, the Parties did not discuss attorneys' fees or a Service Award until after agreeing upon the material terms of the Settlement. The Settlement satisfies Rule 23(e)(2)(B), and the third *Jiffy Lube* fairness factor.
- 3. As to the posture of the case, it appears that the Settlement was reached after significant work was performed, including motions practice with respect to motions to dismiss and motions to compel arbitration, as well as appeals before the Fourth and Ninth Circuits. Although the Parties did not engage in formal discovery, it appears Carrington provided substantial informal discovery to allow Class Counsel to intelligently evaluate the Settlement offered against the risks and benefits of continued litigation. The provision of informal damages discovery is sufficient to satisfy the fairness factor. *In re Jiffy Lube*, 927 F.2d at 159 (recognizing that informal discovery can provide satisfactory information prior to preliminary approval). Thus, the first two fairness factors are met: the case was sufficiently advanced, and sufficient discovery was completed.

6. With regard to the adequacy of the Settlement, Rule 23(e)(2)(C)(i), and the first two *Jiffy Lube* adequacy factors focus on the relief provided, in light of (1) the strength of the plaintiffs' case on the merits, and (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial. *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 159; Rule 23(e)(2)(C)(i)(requiring evaluation of the relief provided taking into account the costs and risks of trial and appeal). These factors weigh "how much the class sacrifices in settling a potentially strong case in light of how much the class gains in avoiding the uncertainty of a potentially difficult one." *In re The Mills Corp. Securities Litig.*, 265 F.R.D. 246, 256 (E.D. Va. 2009). The Settlement relief is fair, reasonable, and adequate when balanced against the probable outcome of further litigation, liability, and damages issues, and potential appeals of rulings. The amount offered in Settlement represents approximately 35% of the total Convenience Fees collected by Carrington from the Class during the class period, as well as significant injunctive relief.

Although the Fourth Circuit reversed this Court's dismissal of Plaintiff Alexander and Bishop's amended complaint, there are still numerous factual and legal issues in dispute. In addition, Plaintiff Thomas-Lawson, Green, Boley, and Padilla's appeal of the dismissal of their FDCPA and state law claims is still pending before the Ninth Circuit, and there are open questions regarding whether Carrington could compel arbitration of some of the Plaintiffs' and class members' claims. Plaintiffs' motion for preliminary approval describes the legal issues that would remain to be decided by this Court and the *Thomas-Lawson* and *Dawkins* courts should the settlement not be approved, both on the merits and at class certification.

4. Rule 23(e)(2)(C)(i) and *Jiffy Lube* adequacy factor three require the Court to consider the likely duration and expense of continued litigation. While litigation presents serious

risks at many stages, not to mention substantial expense and delay without any guarantee of additional benefit to the Settlement Class, the Settlement provides immediate and substantial benefits to over 442,059 Class Members.

- 5. Carrington appears to be solvent, so the fourth *Jiffy Lube* adequacy factor is neutral.
- 6. Finally, it appears to the Court that the Parties' proposed allocation of the Settlement, and plan for distribution is equitable and effective, as required by Rule 23(e)(2)(C)(ii). Settlement Class Members who paid at least one Convenience Fee are entitled to receive a payment of \$5.00 from the Net Settlement Fund, with the remainder paid to Settlement Class Members on a pro rata basis, based upon the amount of Convenience Fees paid by each Settlement Class Member during the Class Period. According to this allocation, Class Members are treated fairly as to one another because they are compensated according to the amount of Convenience Fees they were charged. See Fed. R. Civ. P. 23(e)(2)(D). This method is consistent with the distribution of common funds in other fee cases. See, e.g., Lembeck v. Arvest Central Mortgage Co., Case No. 3:20-cv-03277-VC, 2021 WL 5494940 (N.D. Cal. Aug. 26, 2021) (approving settlement from which class members would receive pro rata distribution of common fund based on number of fees paid); Fernandez v. Rushmore, Case No. 8:21-cv-00621-DOC-(KEXc) (C.D. Cal. Feb. 14, 2022) (same); Phillips v. Caliber Home Loans, Inc., Case No. 0:19-cv-2711 (WMW/LIB), 2022 WL 832085 (D. Minn. Mar. 21, 2022) (same). A pro rata distribution means that Settlement Class Members who paid more Convenience Fees will receive a relatively larger share of the Settlement Fund, and those who paid fewer will receive less. This allocation treats Settlement Class Members equitably.
- 7. The Court finds that early resolution of this Action will conserve the resources of the Parties and the Court, while at the same time, the Parties have vigorously litigated the legal

issues and Carrington provided sufficient informal discovery to permit Class Counsel and the Court to intelligently evaluate the Settlement offered against the risks and benefits of continued litigation.

- 8. The Court finds that the amount of attorneys' fees requested by Class Counsel, 40% of the Gross Settlement Fund, to be reasonable and aligns with other class actions where Maryland courts have awarded attorneys' fees. *See e.g.*, *Dickman v. Banner Life Ins. Co.*, No. 1:16-CV-00192-RDB, 2020 WL 13094954, at \*5 (D. Md. May 20, 2020), *aff'd sub nom. 1988 Tr. for Allen Child. Dated 8/8/88 v. Banner Life Ins. Co.*, 28 F.4th 513 (4th Cir. 2022) (awarding fees of 39.5 % of common fund); *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 685 (D. Md. 2013) (citing cases, noting that courts award fees ranging from 15 to 40% in settlements under \$100 million).
- 9. The Court also notes that in addition to the Gross Settlement Fund, the Settlement includes valuable injunctive relief that, when taken into account as additional benefit to the Settlement Class, means that the attorneys' fees requested by Class Counsel are significantly less than 40% of the total monetary benefit to the Settlement Class.
- 10. Class Counsel are entitled to reimbursement of reasonable out-of-pocket litigation expenses. Fed. R. Civ. P. 23(h). "It is well-established that plaintiffs who are entitled to recover attorneys' fees are also entitled to recover reasonable litigation-related expenses as part of their overall award." *Kabore v. Anchor Staffing, Inc.*, No. L–10–3204, 2012 WL 5077636, at \*10 (D. Md. Oct. 17, 2012). The Fourth Circuit has stated that such costs may include "those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services." *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir. 1988) (internal quotations omitted). Here, Class Counsel seeks reimbursement of § in litigation

expenses, which includes the cost of a private mediator. They have provided records that document their claim. *See* Zavareei Decl. ¶ ##; Kauffman Decl. ¶ ##. The court therefore finds that these submissions support an award of \$\\$ in costs.

- Service Awards are routinely made to class representatives in Rule 23 class actions. 11. See, e.g., In re Tyson Foods, Inc., No. RDB-08-1982, 2010 WL 1924012, at \*4 (D. Md. May 11, 2010). "Because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit." Cook v. Niedert, 142 F.3d 1004, 1016 (7th Cir. 1998). To determine whether an incentive payment is warranted, a court should consider "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefited from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." Id. Here, the Plaintiffs came forward to represent the interests of thousands of others, with very little personally to gain, as their individual alleged damages were very small. Before and during litigation, Plaintiffs had their highly sensitive financial information regarding their mortgage agreements inspected. Plaintiffs participated in the litigation by reviewing the complaint and other filings and making themselves available to assist with discovery. And Plaintiffs all worked with counsel to initiate separate cases, taking the substantial risk they might, at a minimum, lose their case and pay the other side's costs. Thus, the Court approves a \$5,000 award each for Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda Boley, Miguel Padilla, and Victoria Dawkins.
- 12. The Court confirms the certification for settlement purposes of the Settlement Class for the reasons stated in the preliminary approval Order, none of which have changed.

- 13. The Court confirms the appointment of Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda Boley, Miguel Padilla, and Victoria Dawkins as Class Representatives.
- 14. The Court confirms the appointment of Hassan A. Zavareei, Kristen G. Simplicio, James L. Kauffman, and Phillip Robinson as Class Counsel.
- 15. The Court finds that the approved Class Notice constituted the best notice practicable under the circumstances and was in full compliance with the applicable laws and the requirements of due process. The Court further finds that the Class Notice fully and accurately informed the Class Members of all material elements of the proposed Settlement, of their right to be excluded from the Settlement, and of their right and opportunity to object to the Settlement. The Court also finds that the Class Notice complied with the Class Action Fairness Act, 28 U.S.C. § 1715.
  - 15. All timely objections have been considered and are overruled.
- 16. All members of the Settlement Class who timely requested exclusion are excluded from the Settlement.
- 17. The Court confirms the *cy pres* recipient as NeighborWorks America and the Maryland Consumer Rights Coalition.
- 18. All Class Members who did not timely request exclusion are hereby bound by the terms of the Settlement Agreement, including the release.

Accordingly, the Court having considered the Motion for Final Approval of Class Action Settlement, it is hereby ORDERED that:

- 1. The Motion is GRANTED;
- 2. The proposed Settlement is approved as being fair, reasonable, and adequate pursuant to Rule 23(e);

- 3. Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda Boley, Miguel Padilla, and Victoria Dawkins are confirmed as Class Representatives;
- 4. Hassan A. Zavareei, Kristen G. Simplicio, James L. Kauffman, and Phillip Robinson Kauffman are confirmed as Class Counsel;
- 5. The Court awards \$\_\_\_\_\_ in attorneys' fees and \$\_\_\_\_ in reimbursed costs to Class Counsel;
- 6. The Court approves \$ Service Awards each to Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda Boley, Miguel Padilla, and Victoria Dawkins;
- 7. Without affecting the finality of the Court's judgment in any way, the Court retains jurisdiction over this matter for purposes of resolving issues related to interpretation, administration, implementation, effectuation, and enforcement of the Settlement;
  - 8. Based on the foregoing, the Court sets the following schedule:

Settlement Effective Date	
Settlement Administrator shall calculate the	
Net Settlement Fund	
Settlement Administrator shall pay by wire	
any Fee and Expense Award Service Awards	
approved by Court	
Settlement Administrator shall send Class	
Counsel final list of each Settlement Class	
Member, their percentage of the Net	
Settlement Fund, and their payment amount	
Settlement Administrator shall email Class	
Members allowing them to select digital	
payment method and informing them if they	
do not, their payment will be received via	
check	
Settlement Administrator shall effectuate	
payments for Class Members who selected	
digital payment option and mail checks to	
Class Members who did not select the digital	
payment option	
Settlement Administrator shall void	
individual, uncashed checks	
Settlement Administrator shall effectuate a	
secondary distribution or administer	

remaining funds to [cy pres recipient]	
9. This Action is <b>DISMISSED WITH PREJUDICE</b> ,	
IT IS SO ORDERED.	
Dated:	Hon. Richard D. Bennett United States District Judge

# EXHIBIT 2



#### Firm Resume

Jonathan Tycko and Hassan Zavareei founded Tycko & Zavareei LLP in 2002 when they left a large national firm to form a private public interest law firm. Since then, a wide range of clients have trusted the firm with their most difficult problems. Those clients include individuals fighting for their rights, tenants' associations battling to preserve decent and affordable housing, consumers seeking redress for unfair business practices, whistleblowers exposing fraud and corruption, and non-profit entities and businesses facing difficult litigation.

The firm's practice focuses on complex litigation, with a particular emphasis on consumer and other types of class actions, and *qui tam* and False Claims Act litigation. In its class action practice, the firm represent consumers who have been victims of corporate wrongdoing. The firm's attorneys bring a unique perspective to such litigation because many of them trained at major national defense firms where they obtained experience representing corporate defendants in such cases. This unique perspective enables the firm to anticipate and successfully counter the strategies commonly employed by corporate counsel defending class action litigation. Tycko & Zavareei LLP's attorneys have successfully obtained class certification, been appointed class counsel, and obtained approval of class action settlements with common funds totaling over \$500 million.

Tycko & Zavareei LLP's twenty-one attorneys graduated from some of the nation's finest law schools, including Harvard Law School, Columbia Law School, Duke University School of Law, UC Berkeley School of Law, UC Hastings College of the Law, Georgetown Law, the University of Michigan Law School, and the University of Miami School of Law. They have served in prestigious clerkships for federal and state trial and appellate judges and have worked for low-income clients through competitive public interest fellowships. The firm's diversity makes it a leader amongst its peers, and the firm actively and successfully recruits attorneys who are women, people of color, and LGBTQ. To support its mission of litigating in the public interest, Tycko & Zavareei LLP offers a unique public interest fellowship for recent law graduates. Tycko & Zavareei LLP's attorneys practice in state and federal courts across the nation.

# Representative Cases

Vergara v. Uber Technologies, Inc., No. 1:15-cv-06972 (N.D. Ill.). Tycko & Zavareei LLP served as Co-Lead Counsel in this case under the Telephone Consumer Protection Act, in which he obtained a class settlement of \$20 million.

In re Fifth Third Early Access Cash Advance Litigation, No. 1:12-cv-00851 (S.D. Ohio). Tycko & Zavareei LLP was appointed Co-Lead Counsel in these consolidated payday lending cases, which are in discovery after a successful appeal before the Sixth Circuit.

Farrell v. Bank of America, N.A., No. 16-cv-000492 (S.D. Cal.). As Co-Lead Counsel, Tycko & Zavareei LLP obtained a settlement valued at \$66.6 million plus injunctive relief valued at \$1.2 billion.

*In re TD Bank, N.A. Debit Card Overdraft Fee Litigation*, No. 15-mn-02613 (D.S.C.). Tycko & Zavareei LLP serves on the Plaintiffs Executive Committee in this case challenging TD Bank's overdraft fee practices. Tycko & Zavareei LLP assisted in obtaining a \$70 million class settlement.

In re Higher One Account Marketing & Sales Practices Litigation, No. 12-md-02407 (D. Conn.). As Lead Counsel, Tycko & Zavareei LLP helped secure a \$15 million common fund settlement with significant changes to business practices for illegal debit card fees.



*Duval v. Citizens Financial Group, Inc.*, No. 10-cv-21080 (S.D. Fla.). Tycko & Zavareei LLP was appointed Class Counsel and obtained a common fund settlement of \$137.5 million.

*In re American Psychological Association Assessment Fee Litigation*, No. 10-cv-01780 (D.D.C.). Tycko & Zavareei LLP served as Co-Lead Counsel in this case challenging the APA's deceptive fee practices, and achieved a \$9.02 million common fund settlement for the class.

Lloyd v. Navy Federal Credit Union, No. 17-cv-1280 (S.D. Cal.). As Co-Lead Counsel, Tycko & Zavareei LLP helped secure a \$24.5 million common fund settlement on behalf of a class of NFCU customers harmed by the credit union's overdraft fee practices.

Morgan v. Apple, Inc., No. 17-cv-5277 (N.D. Cal.), Simmons v. Apple Inc., No. 17CV312251 (Sup. Ct. Ca., Santa Clara Cty.). Tycko & Zavareei LLP is currently serving as Lead Counsel in this class action challenging Apple's deceptive marketing of Powerbeats headphones and secured a \$9.75 million settlement for the class, which is pending preliminary approval.

Wallace v. Wells Fargo Bank, N.A., No. 17CV31775 (Sup. Ct. Ca., Santa Clara Cty.). Tycko & Zavareei LLP serve as Co-Lead Counsel in this case against Wells Fargo's overdraft fee practices. Tycko & Zavareei LLP recently moved for preliminary approval of a \$10.5 million common fund class settlement.

Roberts v. Capital One Financial Corporation, No. 16-cv-04841 (S.D.N.Y.). As Co-Lead Counsel, Tycko & Zavareei LLP helped secure a \$17 million settlement on behalf of Capital One customers forced to pay excessive overdraft fees.

Hawkins v. First Tennessee Bank, N.A., No. CT-0040851-11 (Cir. Ct. Shelby Cty. Tenn.). As Co-Lead Counsel, Tycko & Zavareei LLP helped obtain a class settlement of \$16.75 million on behalf of bank customers harmed by First Tennessee's predatory overdraft fees.

Mascaro v. TD Bank, N.A., No. 10-cv-21117 (S.D. Fla.). Tycko & Zavareei LLP was appointed Class Counsel and was instrumental in obtaining a \$62 million common fund on behalf of the class.

*Trombley v. National City Bank*, No. 10-cv-00232 (D.D.C.). Tycko & Zavareei LLP served as Lead Counsel and obtained a \$12 million common fund settlement on behalf of a class of consumers.

*Taulava v. Bank of Hawaii*, No. 11-1-0337-02 (Cir. Ct. of 1<sup>st</sup> Cir., Haw.). As Co-Lead Counsel, Tycko & Zavareei LLP obtained a \$9 million common fund for a class of customers who were harmed by Bank of Hawaii's overdraft fee practices.

*Bodnar v. Bank of America, N.A.*, No. 14-cv-3224 (E.D. Pa.). Tycko & Zavareei LLP served as lead Counsel and obtained a \$27.5 million class settlement and significant injunctive relief.

Lambert v. Navy Federal Credit Union, No. 19-cv-00103 (E.D. Va.). Tycko & Zavareei LLP was appointed Class Counsel and helped secure a \$16 million settlement on behalf of members of Navy Federal Credit Union who were harmed by the credit union's practice of assessing a second or third NSF Fee upon re-presentment of debit items or checks.

Hamm v. Sharp Electronics Corp., No. 19-cv-488 (M.D. Fla.). Tycko & Zavareei LLP was appointed Co-Lead Counsel and was instrumental in providing relief valued at \$109 million for class members exposed to a product defect in certain Sharp Microwave Drawer Ovens.

Gibbs v. TCV V, LP & Gibbs v. Rees, Nos. 19-cv-789 & 20-cv-717 (E.D. Va.). Tycko & Zavareei LLP was named class counsel in one of, if not, the largest unlawful tribal payday lending schemes. Thus far, class counsel has been able to obtain a settlement fund over \$60 million as well as the cancellation of \$380 million in loans.



### Hassan A. Zavareei

#### Partner

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Mr. Zavareei has devoted the last eighteen years to recovering hundreds of millions of dollars on behalf of consumers and workers. He has served in leadership roles in dozens of class action cases and has been appointed Class Counsel on behalf of numerous litigation and settlement classes. An accomplished and experienced attorney, Mr. Zavareei has litigated in state and federal courts across the nation in a wide range of practice areas; tried several cases to verdict; and successfully argued numerous appeals, including in the D.C. Circuit, the Fourth Circuit, and the Fifth Circuit.

After graduating from UC Berkeley School of Law, Mr. Zavareei joined the Washington, D.C. office of Gibson, Dunn & Crutcher LLP. There, he managed the defense of a nationwide class action brought against a major insurance carrier, along with other complex civil matters. In 2002, Mr. Zavareei founded Tycko & Zavareei LLP with his partner Jonathan Tycko.

Mr. Zavareei has served as lead counsel or co-counsel in dozens of class actions involving deceptive business practices, defective products, and/or privacy. He has been appointed to leadership roles in multiple cases. As Lead Counsel in an MDL against a financial services company that provided predatory debit cards to college students, Mr. Zavareei spearheaded a fifteen-million-dollar recovery for class members. He is currently serving as Co-Lead Counsel in consolidated proceedings against Fifth Third Bank, and on the Plaintiffs' Executive Committee in MDL litigation against TD Bank. As Co-Lead Counsel in Farrell v. Bank of America, a case challenging Bank of America's punitive overdraft fees, Mr. Zavareei secured a class settlement valued at \$66.6 million in cash and debt relief, together with injunctive relief forcing the bank to change a practice that will save millions of low-income consumers approximately \$1.2 billion in overdraft fees. In his Order granting final approval, Judge Lorenz of the U.S. District Court for the Southern District of California described the outcome as a "remarkable" accomplishment achieved through "tenacity and great skill."



#### Education

UC Berkeley School of Law, 1995, Order of the Coif Duke University, 1990, *cum laude* 

#### Bar Admissions

California District of Columbia Maryland Supreme Court of the United States

#### Memberships

Public Justice, Board Member American Association for Justice

#### Awards

Washington Lawyers Committee, Outstanding Achievement Award Super Lawyer Lawdragon 500

#### Presentations & Publications

Witness Before the Subcommittee on the Constitution and Civil Justice, 115th Congress

Witness Before the Civil Rules Advisory Committee, 2018, 2019

Editor, Duke Law School Center for Judicial Studies, Guidance on New Rule 23 Class Action Settlement Provisions



# Kristen G. Simplicio

#### Partner

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Kristen G. Simplicio has devoted her career to representing victims of false advertising and corporate fraud. Prior to joining Tycko & Zavareei LLP's D.C. office in 2020, she spent ten years at a boutique class action firm in California. While there, she successfully litigated over a dozen false advertising cases against manufacturers of a variety of consumer products, including olive oil, flushable wipes, beverages, and chocolate. In connection with this work, she helped to obtain millions of dollars in refunds to consumers, as well as changed practices.

In addition to her product labeling work, Ms. Simplicio has represented plaintiffs in a wide variety of areas. For example, she was the lead associate on RICO case on behalf of small business owners against 18 defendants in the credit card processing industry. In connection with that case, she obtained a preliminary injunction halting an illegal \$10 million debt collection scheme, and later, helped to secure refunds and changed practices for the victims. She has also represented victims of other debt collectors, as well as those harmed by unlawful background and credit reporting, including a pro bono matter performed in conjunction with the Lawyers' Committee for Civil Rights of the San Francisco Bay Area. Ms. Simplicio also worked on a lawsuit against government agencies, which were charging unconstitutional fines and fees in connection with toll collection.

Ms. Simplicio graduated *cum laude* from American University, Washington College of Law in 2007. She holds a bachelor's degree from McGill University. She began her legal career at the United States Department of Labor, where she advised on regulations pertaining to group health insurance plans. Before and during law school, Ms. Simplicio worked for other plaintiffs' law firms.

Ms. Simplicio serves as the D.C. Co-Chair of the National Association of Consumer Advocates. She is admitted to practice in California and the District of Columbia.



#### Education

American University, Washington College of Law, 2007, *cum laude* McGill University, 1999

#### Bar Admissions

California District of Columbia

#### Memberships

National Association of Consumer Advocates American Association for Justice

Public Justice



## Dia Rasinariu

#### Associate

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Dia Rasinariu graduated *cum laude* from Harvard Law School in 2016. While in law school, Ms. Rasinariu served as an Executive Editor of the *Harvard Law Review*. She was also a member of HLS Lambda. Following law school, Ms. Rasinariu clerked for the Honorable Diana Gribbon Motz on the United States Court of Appeals for the Fourth Circuit. Ms. Rasinariu earned her Bachelor of Arts, with distinction, from Cornell University in 2011, with majors in Government and in Economics.

Prior to joining Tycko & Zavareei LLP in 2021, Ms. Rasinariu was a litigation associate in the Washington, D.C. office of Jones Day. Ms. Rasinariu maintained an active pro bono practice, representing clients on civil rights, asylum, and domestic violence matters.

Ms. Rasinariu is a member of the District of Columbia and Illinois state bars. She is also admitted to practice before the United States District Court for the District of Maryland and the United States Courts of Appeals for the Fourth and Sixth Circuits.



#### Education

Harvard Law School, 2016, *cum laude* Cornell University, 2011, with Distinction

#### **Bar Admissions**

Illinois District of Columbia

#### Memberships

Public Justice

#### Awards

Super Lawyers, Rising Star 2020



# Elvia M. Lopez

#### Associate

510.254.6808 elopez@tzlegal.com

Elvia M. Lopez focuses her practice on representing consumers and victims of fraud. Before joining Tycko & Zavareei LLP, Elvia clerked for the Honorable Daniel E. Winfree of the Alaska Supreme Court and the Honorable Haywood S. Gilliam, Jr. of the United States District Court for the Northern District of California.

Elvia earned her Juris Doctorate from the University of California, Berkeley School of Law, as well as a concurrent master's degree in Social Innovation and Entrepreneurship from the London School of Economics and Political Science. She graduated *summa cum laude* from the University of California, Los Angeles.

While in law school, Elvia interned at the Department of Justice, the Berkeley Law International Human Rights Clinic, the Berkeley Law New Business Practicum Clinic, and the Corporate Sustainability Program at the Pontificia Universidad Católica de Chile. She also participated in the Berkeley La Raza Law Journal, the California Asylum Representation Project, and the South Texas Pro Bono Asylum Representation Project. Among her achievements, Elvia received the Berkeley Law Fellowship, the Cruz Reynoso Fellowship, and academic distinctions as the first and second-highest ranking student in writing-intensive courses.

Throughout her studies, Elvia gained varied experience improving business practices, from organizing and representing employees to working with C-suite executives of the largest Latin American multinational companies to implement sustainable practices. She continues to focus on driving corporate accountability through her litigation practice.



#### Education

University of California, Berkeley School of Law, 2019

The London School of Economics and Political Science, 2018

University of California, Los Angeles, 2014, summa cum laude

#### **Bar Admissions**

California

#### Memberships

Public Justice

#### Awards

Berkeley Law Certificate of Specialization in International Law Berkeley Law Jurisprudence Award in Environmental Justice

Berkeley Law Prosser Prize in Comparative Law

#### Presentations & Publications

"Creando Valor Compartido," Programa de Sostenibilidad Corporativia, Pontificia Universidad Católica de Chile (March 2019)

"Implementing Sustainability: The Role of Inside Counsel," International Seminar for General Counsel, Lima, Peru (March 2019)

# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

ASHLY ALEXANDER, CEDRIC BISHOP, AMY THOMAS-LAWSON, BRENDA BOLEY, MIGUEL PADILLA, WILLIAM GREEN, and VICTORIA DAWKINS, On Behalf of Themselves and All Others Similarly Situated

Plaintiffs,

Case No. 1:20-cv-02369-RDB

v.

CARRINGTON MORTGAGE SERVICES, LLC,

Defendant.

#### **DECLARATION OF JAMES L. KAUFFMAN**

I, James L. Kauffman, do hereby declare as follows:

This declaration is based upon my personal knowledge and I am submitting this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and for Certification of Settlement Class, to show, as required by Rule 23, that the representative parties have adequately protected the interests of the class, in part, by hiring experienced and skilled counsel.

- 1. I am a partner at Bailey & Glasser LLP, which is a national firm with nearly 70 lawyers and a particular focus on complex business litigation and multi-party actions, including mass tort and class actions. I and the other attorneys at my firm have experience serving as trial, class and appellate counsel in a variety of cases, representing both plaintiffs and defendants in areas including class actions, debt collection, consumer protection and deceptive trade practices. My firm's resume is enclosed as **Exhibit A** to this Declaration.
- 2. Hassan Zavareei, Kristen G. Simplicio and I are seeking to be appointed as Class Counsel. Hassan Zavareei is the founding partner and Kristen G. Simplicio is a partner of Tycko & Zavareei LLP.

- 3. I am licensed and in good standing to practice law in the State of Florida, State of Arkansas, and District of Columbia. I have been a member of the Arkansas Bar since 2003 after I obtained my J.D. from the University of Florida Levin College of Law in December 2002. For more than 15 years, I have served as class and appellate counsel in a wide variety of cases including deceptive trade practices, securities fraud, ERISA, and consumer protection. I am a member of Public Justice, the Florida Bar Association, the Arkansas Bar Association, and the American Association of Justice (AAJ).
- 4. I was appointed as class counsel in one of the first filed class action lawsuits in the country to challenge Pay-to-Pay fees, *Montesi v. Seterus, Inc.*, Case No. 50-2015-CA-010910-XXXX-MB (Fla. Cir. Ct. Palm Beach Cty.). *Montesi* was heavily litigated and resulted in class certification over the defendant's opposition. It resulted in a \$1.75 million class settlement of Florida borrowers, which represented 35% of the amount collected by Seterus during the class period.
- 5. I was appointed as class counsel by the district courts in other class actions involving Pay-to-Pay Fees, which obtained settlement that is either pending or approved: Langston v. Gateway First Bank, No. 5:20-cv-01902 (C.D. Cal.)(pending); Torliatt v. Ocwen Loan Servicing, LLC et. al, No. 3:19-cv-04303-WHO (N.D.Cal.)(pending), Wilson v. Santander Consumer USA, Inc., No. 4:20-cv-00152-KGB (E.D. Ark.)(pending), Caldwell v. Freedom Mortgage Corp., No. 3:19-cv-02193-N (N.D. Tex.)(approved); Elbert v. Roundpoint Mortgage Servicing, Corp., No. 3:20-cv-00250-MMC (N.D.Cal.)(approved); Fernandez v. Rushmore Loan Servicing, Case No. 8:21-cv-00621-DOC (C.D.Cal.)(approved); Lembeck v. Arvest Central Mortgage Co., No. 3:20-cv-03277-VC (N.D. Cal.)(approved); Phillips v. Caliber Home Loans, No. 0:19-cv-02711 (D. Minn.) (approved); Pierce v. Statebridge Co., No.1:20-cv-117 (M.D.N.C.)(approved); and Silveira v. M&T Bank, No. 2:19-cv-06958-ODW (C.D. Cal.)(approved).
- 6. I am currently representing proposed class representatives in several other class action cases in courts across the country challenging the legality of the collection of Pay-to-Pay from residential borrowers. See McFadden v. Nationstar Mortgage Co. d/b/a Mr. Cooper, No. 1:20-cv-00166-

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- EGS (D.D.C.); Desimone v. Select Portfolio Servicing, Inc., No. 1:20-cv-03837-PKC (E.D. N.Y.); Williams v. PHH Mortgage Corp., No. 20-cv-04018 (S.D.Tex.); and Williams v. Lakeview Loan Servicing, LLC et al., Case No 4:20cv-01900 (S.D. Tex.).
- 7. My firm, Bailey & Glasser LLP has substantial experience in consumer law and litigation, as set forth in **Exhibit A**. Our attorneys have obtained millions of dollars in restitution and debt forgiveness for consumers by successfully asserting state and federal consumer credit law claims on their behalf. A partial listing of those cases includes the following:
  - Krakauer v. Dish Network, L.L.C., Case No. 1:14-cv-00333 (M.D. N.C.) (\$20.5 million jury verdict in a class action trial against Dish Network, alleging Dish was liable for more than 51,000 telemarketing calls placed by a defunct DISH dealer to persons whose telephone numbers were on the National Do Not Call Registry).
  - Tadepalli v. Uber Technologies, Inc., Case 3:15-cv-04348 (N.D. Cal.) (100% refunds made in class action settlement for California Uber riders charged approximately \$2.2 million in "airport fee tolls" which Uber did not pay to California airports).
  - Wieland v. Bring Care Home, Inc., C.A. No. ESCV2013-01380 (Essex County, Mass.) (class action settlement for failure to pay all hours worked).
  - Thomas v. Home Credit Corp., Inc., 11-CVS-1116 (Vance County, N.C.) (class action settlement in favor of state-wide class of borrowers denied consumer rights disclosures).
  - Desai v. Charvat, Civil Action No. 1:11-cv-1925 (N.D. Ill.) (\$15 million TCPA class settlement).
  - Roberts v. Walgreen Co., et al., Civil Action No. 12-C-337 (Circuit Court of Mercer County, West Virginia) (wage payment class settlement).
  - Glover v. Bank of America, N.A., C.A. No. 13-40042-TSH (D. Mass.) (class action settlement for Massachusetts borrowers regarding late fees).
  - Powers v. Santander Consumer USA, Inc., Civil Action No. 12-cv-11932-TSH (D. Mass.) (consumer class action resulting in the establishment of a \$750,000 settlement fund and \$20 million in debt relief).
  - Pirillo v. PNC Mortgage Corp., Civil Action No. 11-C-751 (Circuit Court of Monongalia County, West Virginia) (consumer class action settlement).
  - Ross v. CitiFinancial Auto Ltd., Case No. 12-1173-TJC (M.D. Fla.) (class action settlement in favor of state-wide class of borrowers denied consumer rights disclosures).
  - Morris v. Merck Sharp & Dahme Corp., Civil Action No. 3:11-cv-00882 (S.D. W. Va.) (wage payment class action settlement totaling \$750,000).
  - Hall v. Capital One Auto Fin., Inc., Case No. 08-1181 (N.D. Ohio) (\$37 million settlement

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- on behalf of state-wide class of car owners sent allegedly flawed repossession notices).
- Brailsford v. Jackson Hewitt, Inc., Case No. 06-00700 (N.D. Cal.) (\$672,000 settlement on behalf of class of California consumers).
- Hardwick v. Rent-A-Center, Inc., Civil Action No. 3:06-0901 (S.D. W. Va.) (class action settlement worth more than \$5 million, alleging violations of state Consumer Goods Rental Protection Act).
- Triplett v. NationStar Mortgage, LLC, Civil Action No. 3:11-cv-238 (S.D. W. Va.) (loan servicing case settled for \$1.5 million).
- Shonk v. SG Sales Co., Case No. 07-C-1800 (Circuit Court of Kanawha County, West Virginia) (\$2.4 million nationwide settlement of class action brought under the Telephone Consumer Protection Act).
- Lowe v. Ford Motor Credit, Case No. 99 CVF 15806 (Cuyahoga County, Ohio) (\$22 million settlement on behalf of state-wide class of car owners subject to flawed repossession practices).
- Muhammad v. National City Mortgage, Inc., Case No. 2:07-cv-00423 (S.D. W. Va.) (\$700,000 settlement of West Virginia loan servicing class action alleging National City Bank charged late loan-payment fees in violation of state law).
- Brailsford v. Jackson Hewitt, Case No. C 06-00700 CW (N.D. Cal.) (class action against Jackson Hewitt, Inc. for class of California consumers who purchased the tax preparer's refund anticipation loan product, settled for \$672,000).
- Dunlap v. Wells Fargo Financial West Virginia, Inc., Case No. 04-C-101 (Lincoln County, W. Va.) (predatory lending class action for over 100 West Virginia mortgage borrowers, settled for just over \$9 million, including more than \$4.9 million write down in mortgage balances, \$4.15 million in cash, and credit repair).
- Cummins v. H & R Block, Inc., Case No. 03-C-134 (Kanawha County, W. Va.) (in a case litigated for five years in venues ranging from the West Virginia trial and appellate courts, to federal district courts in West Virginia and Illinois, to the United States Supreme Court, firm lawyers served as lead counsel in winning a \$62.5 million multistate class action settlement against H&R Block. The case involved first-impression claims relating to the application of West Virginia's credit-services organization statute to Block's refund anticipation loan product. Other firms across the country litigated cases against Block alleging similar claims, without success, for more than ten years. West Virginia's share of the settlement was \$32.5 million).
- Malacky v. Huntington Nat'l Bank, Case No. CV 03 491420 (Cuyahoga County, Ohio) (\$15 million settlement in favor of state-wide class of car owners sent flawed repossession notices).
- Anderson v. Provident Bank, Civil Action No. 04-C-199 (Circuit Court of Mercer County, West Virginia) (predatory mortgage lending class action settled for \$8.1 million on behalf of 140 class members).
- Mey v. Herbalife Int'l, Inc., Civil Action No. 01-C-263 (Circuit Court of Ohio County, West

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Virginia) (\$7 million nationwide class action settlement alleging violations of the federal Telephone Consumer Protection Act).

- Cooley v. F.N.B. Corp., Case No. 10010 of 2003, C.A. (Lawrence County, Penn.) (\$14 million settlement on behalf of state-wide class of car owners allegedly deprived of post-repossession disclosures).
- *Dillon v. Chase*, Civil Action No. 03-C-164-W (Circuit Court of Hancock County, West Virginia) (\$3.3 million consumer class action settlement).
- In re Household Lending Litig., Case No. C 02-1240 CW (N.D. Cal.) (\$172 million settlement on behalf of nationwide class of home mortgage borrowers injured by predatory mortgage lending practices).
- Curry v. Fairbanks Capital Corporation, Case No. 03-10875-DPW (D. Mass.) (\$55 million settlement on behalf of nationwide class of borrowers subject to predatory loan servicing practices).
- Deem v. Ames True Temper, Inc., Civil Action No. 6:10-cv-01339 (S.D. W. Va.) (\$405,000 class action settlement in an ERISA action).
- 8. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25th day of May, 2022 in Washington, D.C.

/s/ James L. Kauffman

James L. Kauffman

#### **FIRM RESUME**

Bailey & Glasser brings a trial-focused litigation approach to its wideranging and successful class action and mass torts practice. The firm has the resources, experience and expertise to go toe-to-toe with some of the wealthiest corporations in the world. We litigate class action cases involving predatory mortgage lending, illegal loan servicing, antitrust violations, breaches of warranty, employee rights, mismanaged pension funds, ERISA, and a host of other consumer and employee matters.

The firm concentrates its litigation practice in the areas of complex commercial mass torts and class action litigation. The firm currently represents among others the States of Florida, Montana, Ohio, Oklahoma, and West Virginia, individual consumers, and retirement plan investors throughout the United States. The firm has substantial experience in successfully prosecuting multi-million dollar cases, including complex class actions and mass torts.

Our lawyers are equally comfortable and adept in the role of plaintiff or defendant. We bring a trial-focused approach to litigation to vigorously protect the interests of clients. We represent government and businesses, as well as individual plaintiffs and defendants, and lawyers throughout the country call upon the firm to access our unique blend of resources and trial experience.

The firm concentrates its practice in the areas of complex commercial and class action litigation, with a particular emphasis in energy and finance. We currently represent individual and classes of consumers, and a variety of corporate entities throughout the United States. The firm has substantial experience in successfully prosecuting and defending multimillion-dollar cases, including complex class actions.

#### BAILEY GLASSER'S REPRESENTATIVE CASES

#### Loan Servicing and Lending Class Action Representation:

- Montesi v. Seterus, Inc., Case No. 50-2015-CA-010910-XXXX-MB (Fla. Cir. Ct. Palm Beach Cty.) (final approval of class settlement of Florida borrowers who paid Pay-to-Pay fees for \$1.75 million).
- In re Household Lending Litig., Case No. C 02-1240 CW (N.D. Cal.) (\$172 million settlement on behalf of nationwide class of home mortgage borrowers injured by predatory mortgage lending practices).
- Bacardi v. Select Portfolio Servicing, Inc., Case No. 1:16-cv-23381-RNS (class counsel for settlement of case involving loan servicer's improper reinstatement quotes, resulting in \$380,000 recovery for borrowers). Blake v. Seterus, Inc., Case No. 16-cv-21225-JLK (S.D. Fla. (2018 class action settlement of case involving loan servicer's improper reinstatement quotes, resulting in \$527,000 recovery for borrowers).
- Paneque v. Bank of America, N.A., Case No. 1:16-cv-21212-DPG (S.D. Fla.) (2018 class action settlement of case involving challenge to reinstatement quotes, resulting in \$625,000 recovery for borrowers).
- Shore v. JP Morgan Chase Bank, N.A., et al., Case No. 16-cv-60125-JIC (S.D. Fla.) (\$400,000 recovery for borrowers as a result of reinstatement quotes).
- Pirillo v. PNC Mortgage Corp., Civil Action No. 11-C-751 (Circuit Court of Monongalia County, West Virginia) (consumer class action settlement).
- Triplett v. NationStar Mortgage, LLC, Civil Action No. 3:11-cv-238 (S.D. W. Va.) (loan servicing case settled for \$1.5 million).
- Muhammad v. National City Mortgage, Inc., Case No. 2:07-cv-00423 (S.D. W. Va.) (\$700,000 settlement of West Virginia loan servicing class action alleging National City Bank charged late loan-payment fees in violation of state law).
- Dunlap v. Wells Fargo Financial West Virginia, Inc., Case No. 04-C-101 (Lincoln County, W. Va.) (predatory lending class action for over 100 West Virginia mortgage borrowers, settled for just over \$9 million, including more than \$4.9 million write down in mortgage balances, \$4.15 million in cash, and credit repair).
- Anderson v. Provident Bank, Civil Action No. 04-C-199 (Circuit Court of Mercer County, West Virginia) (predatory mortgage lending class action settled for \$8.1 million on behalf of 140 class members).
- Curry v. Fairbanks Capital Corporation, Case No. 03-10875-DPW (D. Mass.) (\$55 million settlement on behalf of nationwide class of borrowers subject to predatory loan servicing practices).

Other Class Action Representation:

- Jessop v. Bankers Trust Company, et al., Case No. 2:14-cv-00916 (D. Utah) (\$19.8 million settlement recovery in 2017 on behalf of employee stock ownership plan participants for ERISA claims).
- Krakauer v. Dish Network, L.L.C., Case No. 1:14-cv-00333 (M.D. N.C.) (\$20.5 million jury verdict in a class action trial against Dish Network, alleging Dish was liable for more than 51,000 telemarketing calls placed by a defunct DISH dealer to persons whose telephone numbers were on the National Do Not Call Registry).
- Cummins v. H & R Block, Inc., Case No. 03-C-134 (Kanawha County, W. Va.) (in a case litigated for five years in venues ranging from the West Virginia trial and appellate courts, to federal district courts in West Virginia and Illinois, to the United States Supreme Court, firm lawyers served as lead counsel in winning a \$62.5 million multistate class action settlement against H&R Block. The case involved first-impression claims relating to the application of West Virginia's credit-services organization statute to Block's refund anticipation loan product. Other firms across the country litigated cases against Block alleging similar claims, without success, for more than ten years. West Virginia's share of the settlement was \$32.5 million).
- Tadepalli v. Uber Technologies, Inc., Case 3:15-cv-04348 (N.D. Cal.) (100% refunds made in class action settlement for California Uber riders charged approximately \$2.2 million in "airport fee tolls" which Uber did not pay to California airports).
- Navelski v. International Paper Company, Case No. Case No. 3:14-cv-445 MCR/CJK (N.D. Fla.) (certified class on behalf of homeowners of 317 homes in a neighborhood alleged to be flooded by Defendant's dam breaking).
- Wieland v. Bring Care Home, Inc., C.A. No. ESCV2013-01380 (Essex County, Mass.) (class action settlement for failure to pay all hours worked).
- Thomas v. Home Credit Corp., Inc., 11-CVS-1116 (Vance County, N.C.) (class action settlement in favor of state-wide class of borrowers denied consumer rights disclosures).
- Desai v. Charvat, Civil Action No. 1:11-cv-1925 (N.D. Ill.) (\$15 million TCPA class settlement).
- Roberts v. Walgreen Co., et al., Civil Action No. 12-C-337 (Circuit Court of Mercer County, West Virginia) (wage payment class settlement).
- Glover v. Bank of America, N.A., C.A. No. 13-40042-TSH (D. Mass.) (class action settlement for Massachusetts borrowers regarding late fees).
- Powers v. Santander Consumer USA, Inc., Civil Action No. 12-cv-11932-TSH (D. Mass.) (consumer class action resulting in the establishment of a \$750,000 settlement fund and \$20 million in debt relief).

Other Class Action Representation (cont.):

- Ross v. CitiFinancial Auto Ltd., Case No. 12-1173-TJC (M.D. Fla.) (class action settlement in favor of state-wide class of borrowers denied consumer rights disclosures).
- Morris v. Merck Sharp & Dahme Corp., Civil Action No. 3:11-cv-00882 (S.D. W. Va.) (wage payment class action settlement totaling \$750,000).
- Hall v. Capital One Auto Fin., Inc., Case No. 08-1181 (N.D. Ohio) (\$37 million settlement on behalf of state-wide class of car owners sent allegedly flawed repossession notices).
- Brailsford v. Jackson Hewitt, Inc., Case No. 06-00700 (N.D. Cal.) (\$672,000 settlement on behalf of class of California consumers).
- Hardwick v. Rent-A-Center, Inc., Civil Action No. 3:06-0901 (S.D. W. Va.) (class action settlement worth more than \$5 million, alleging violations of state Consumer Goods Rental Protection Act).
- Shonk v. SG Sales Co., Case No. 07-C-1800 (Circuit Court of Kanawha County, West Virginia) (\$2.4 million nationwide settlement of class action brought under the Telephone Consumer Protection Act).
- Lowe v. Ford Motor Credit, Case No. 99 CVF 15806 (Cuyahoga County, Ohio) (\$22 million settlement on behalf of state-wide class of car owners subject to flawed repossession practices).
- Brailsford v. Jackson Hewitt, Case No. C 06-00700 CW (N.D. Cal.) (class action against Jackson Hewitt, Inc. for class of California consumers who purchased the tax preparer's refund anticipation loan product, settled for \$672,000).
- Malacky v. Huntington Nat'l Bank, Case No. CV 03 491420 (Cuyahoga County, Ohio) (\$15 million settlement in favor of state-wide class of car owners sent flawed repossession notices).
- Mey v. Herbalife Int'l, Inc., Civil Action No. 01-C-263 (Circuit Court of Ohio County, West Virginia) (\$7 million nationwide class action settlement alleging violations of the federal Telephone Consumer Protection Act).
- Cooley v. F.N.B. Corp., Case No. 10010 of 2003, C.A. (Lawrence County, Penn.) (\$14 million settlement on behalf of state-wide class of car owners allegedly deprived of post-repossession disclosures).
- Dillon v. Chase, Civil Action No. 03-C-164-W (Circuit Court of Hancock County, West Virginia) (\$3.3 million consumer class action settlement).
- Deem v. Ames True Temper, Inc., Civil Action No. 6:10-cv-01339 (S.D. W. Va.) (\$405,000 class action settlement in an ERISA action).



# Partner James L. Kauffman

Washington, DC 1055 Thomas Jefferson Street NW Suite 540 Washington, DC 20007 T: 202.463.2105 F: 202.463.2103 jkauffman@baileyglasser.com

James L. Kauffman concentrates his practice on complex business litigation and class actions specifically in the areas of consumer protection, business litigation, and securities. James has represented consumers, investors, state attorneys general, municipalities, and whistleblowers in a wide variety of disputes in both court and arbitration forums across the country.

Notably, James represented shareholders in one of the largest securities litigation matters in history, *In re Initial Public Offerings Security Litigation* (21 MC 92) (SDNY), a case that involved 309 tech-bubble IPOs and 55 investment brokerage defendants and recovered \$586 million.

James regularly speaks at business tort seminars across the country and also on nationally syndicated radio and television shows. He covers topics such as financial industry regulation, consumer fraud, ERISA, and whistleblower protection.

He is also actively involved in the community and provides pro bono legal services to Laugh for Sight, a non-profit organization that raises money for eye disease research through comedy benefits in Los Angeles and New York City.

#### **Government Service / Previous Employment**

Financial Advisor, Morgan Stanley (1999)

#### **Practice Areas**

Arbitration & Dispute Resolution
Business & Finance
Class Actions
Commercial Litigation
Consumer Litigation
ERISA, Employee Benefits & Trust Litigation

#### **Education**

J.D., University of Florida Fredric G. Levin College of Law, 2002, *cum laude* B.S.B.A., University of Florida, 1998

#### **Admissions**

District of Columbia

Florida

**Arkansas** 

US Court of Appeals for the Ninth Circuit

US Court of Appeals for the Eleventh Circuit

US District Court, Northern District of Florida

US District Court, Southern District of Florida

US District Court, Middle District of Florida

US District Court, Eastern District of Arkansas

US District Court, Western District of Arkansas

US District Court, Eastern District of Michigan

#### **Representative Matters**

- Obtained \$19.8 million recovery of employees' retirement benefits from trustee and individual officers of a closely held private company.
- Represented a borrower challenging estimated attorney's fees tacked onto his mortgage loan in *Prescott v. Seterus*, a case that involved two separate appeals to the US Court of Appeals for the Eleventh Circuit; work resulted in two significant appellate opinions that strengthened nationwide consumer debt collection law and led to industry-wide reform, and this precedent paved the way for several recoveries for borrowers from their banks or loan servicers where James served as class counsel.
- Obtained \$586 million recovery for shareholders against 309 IPO companies and 55 investment banks in one of the largest securities fraud litigations in history.
- Obtained \$20 million recovery for shareholders against semiconductor supplier company in connection with the backdating of employee stock option grants.
- Represented shareholders against certain officers and directors who participated in a massive Medicare fraud. Resulted in significant corporate reforms and removal of CEO, CFO and General Counsel.



# Partner Jonathan R. Marshall

Charleston, WV 209 Capitol Street Charleston, WV 25301 T: 304.340.2295 F: 304.342.1110 jmarshall@baileyglasser.com

Jonathan R. Marshall focuses his practice on solving complex problems for individuals, other lawyers, and business owners. His approach to sophisticated legal work involves a team centered orientation where creative and experienced lawyers, subject matter experts, and technology leaders are leveraged to create practical and valuable solutions for clients.

In keeping with this philosophy, Jonathan has led federal and state mass tort and class action litigations in a dozen states. He has tried multiple mass and class actions to verdict.

Through a mixture of jury verdicts, settlements, and creative solutions, he has helped his clients avoid liability and provided hundreds of millions of dollars to his clients.

Jonathan leads the firm's Consumer Litigation Group, which focuses on numerous areas of consumer law including debt collection, predatory lending, TCPA, and wage-and-hour class actions.

Jonathan is a Director of the Center for Consumer Law and Education at West Virginia University College of Law, where he also teaches.

He is also a founder and co-chairman of the Consumer Law Division of the West Virginia Association for Justice and a frequent speaker at seminars on consumer law issues.

#### **Awards & Accolades**

2017 Member of the Year Award Recipient, West Virginia Association of Justice 2016 Consumer Advocate of the Year Award Recipient, West Virginia Association of Justice

#### **Practice Areas**

Appellate Advocacy
Arbitration & Dispute Resolution
Banking & Financial Services

Class Actions
Commercial Litigation
Consumer Litigation
Electronically Stored Information (ESI)
Energy - Oil & Gas
Labor & Employment
MDL Panels

Telephone Consumer Protection Act (TCPA)

Sexual Abuse & Harassment

#### **Education**

J.D., West Virginia University College of Law, 2007, Order of the Coif B.A., West Virginia University, 2003, *summa cum laude*, Phi Beta Kappa, Outstanding Senior

#### **Admissions**

West Virginia

Illinois

**US Supreme Court** 

US Court of Appeals for the Fourth Circuit

US District Court, Northern District of West Virginia

US District Court, Southern District of West Virginia

US District Court, Northern District of Illinois

US District Court, District of Colorado

US District Court, Northern District of Florida

US Bankruptcy Court, Northern District of West Virginia

US Bankruptcy Court, Southern District of West Virginia

#### **Representative Matters**

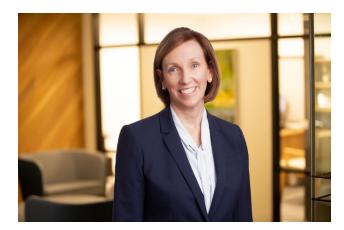
- Served as class counsel in approved class settlements totaling more than \$100 million, in dozens of state and federal cases; successfully litigated cases involving a range of consumer issues including predatory lending, debt collection, loan origination, and TCPA claims.
- Exemplar recent contested cases include: Dijkstra v. Carenbauer (N.D. W. Va.) (court awarded class more than \$2.6 million after granting affirmative summary judgment in mortgage loan case alleging violations of the West Virginia Consumer Credit and Protection Act; settled on appeal).

- Alig v. Quicken (N.D. W. Va.) (court certified class and awarded each class member \$3,500 for defendant's practice of sending appraisers estimated home values; presently on appeal).
- Exemplar loan servicing cases settled in last two years include: Henry v. Ocwen (class action settlement for \$1.975 million in case alleging debt collection violations under West Virginia Consumer Credit and Protection Act); Perez v. Figi's (S.D. W. Va.) (same; \$1.7 million settlement); Snuffer v. Liberty University, (Circuit Court of Raleigh County, W. Va.) (same; more than \$1.947 million settlement); Cox v. BB&T Co. (S.D. W. Va.) (same; \$861,355 settlement).
- Additional high-stakes class settlements include: Dunlap v. Wells Fargo (Circuit Court of Lincoln County, West Virginia) (consumer class action resulting in \$9 million cash settlement, plus millions of dollars in debt relief, interest rate reductions and credit repair provided as part of the settlement); In re Monitronics (N.D. W. Va.) (\$28 million TCPA class action settlement).
- Led more than 45 certified wage and hour class actions.
- Negotiated confidential resolutions to more than 50 high-stakes contractual disputes among business owners over a three-month period.
- Tried a West Virginia flood case to a verdict of over \$1 million, and on appeal changed the
  measure of damages for real property law that had been West Virginia law for over three
  decades, a victory for successful West Virginia landowners.

#### **Community and Professional Activities**

Director, Center for Consumer Law and Education, West Virginia University College of Law Co-Chair and Founding Member, West Virginia Association for Justice Consumer Law Division Co-Chair Education Committee, National Association of Consumer Advocates

President of the Board of Directors, West Virginia Land Trust



# Partner **Elizabeth Ryan**

Massachusetts 176 Federal Street, 5th Floor Boston, MA 02110 T: 617.439.6730 F: 617.951.3954 eryan@baileyglasser.com

Elizabeth Ryan concentrates her practice on class actions, representing consumers challenging unfair lending practices and violations of state and federal consumer protection statutes, as well as employees challenging violations of wage and hour laws. Elizabeth also represents whistleblowers in False Claims Act cases involving fraud against the government.

Throughout her career, she has focused on protecting the rights of those victimized by unfair business and employment practices.

Elizabeth also serves as the Diversity Partner for the firm.

#### Clerkships

Law Clerk, Hon. Nan R. Huhn, DC Superior Court, 1986

#### **Practice Areas**

Consumer Litigation
Labor & Employment
Telephone Consumer Protection Act (TCPA)

#### **Education**

J.D., The Catholic University of America Columbus School of Law, 1985 B.A., College of the Holy Cross, 1981

#### **Admissions**

Massachusetts
US Court of Appeals for the First Circuit
US Court of Appeals for the Fourth Circuit

US District Court, District of Massachusetts

#### **Representative Matters**

- Represented a class of borrowers challenging repossession notices in *Williams v. American Honda*, a case that involved appeals to the US Court of Appeals for the First Circuit and the Massachusetts Supreme Judicial Court; resulted in a reported decision confirming that lenders must give borrowers accurate information about their potential deficiency liability.
- Represented multiple classes of home health care workers who were not paid for their required travel time to go to patients' homes, resulting in settlements that returned hundreds of thousands of dollars in unpaid wages.
- Represented a class of purchasers of a generic vitamin supplement who alleged the supplement's label falsely claimed it was effective in slowing the progression of age-related macular degeneration, resulting in nationwide settlement.

#### **Community and Professional Activities**

National Association of Consumer Advocates Women's Bar Association Volunteer Lawyers Project Public Justice



# Partner Patricia Mulvoy Kipnis

New Jersey 923 Haddonfield Road Suite 300 Cherry Hill, NJ 08002 T: 856.324.8219 F: 304.342.1110 pkipnis@baileyglasser.com

Trish Kipnis concentrates her practice on consumer class actions, complex litigation, and appellate advocacy. As an experienced litigator, she pursues consumer claims on behalf of state and national classes. Trish regularly handles cases stemming from a full range of deceptive, unfair, and fraudulent business practices.

Trish particularly enjoys the research, innovation, and writing components of her legal practice: from developing and alleging claims, persuading the courts and adversaries of the merits of those claims, and achieving results for her clients in the courtroom or at the negotiating table. She has served on class counsel teams for dozens of certified class actions and helped successfully resolve many of these matters.

#### **Awards & Accolades**

2017 Distinguished Advocate Award, Support Center for Child Advocates

#### Clerkships

Law Clerk, Hon. Anita B. Brody, US District Court for the Eastern District of Pennsylvania (2003 - 2004)

#### **Government Service / Previous Employment**

Adjunct Professor of Legal Analysis, Writing and Research, Rutgers School of Law – Camden (2011 - 2012)

Judicial Intern, Hon. Edmund V. Ludwig, US District Court for the Eastern District of Pennsylvania (2001)

#### **Practice Areas**

Appellate Advocacy
Arbitration & Dispute Resolution

#### **BAILEY GLASSER**

Commercial Litigation
Consumer Litigation
Medical Device & Drugs
Telephone Consumer Protection Act (TCPA)

#### **Education**

J.D., University of Pennsylvania Law School, 2003, Moot Court Board Chairperson; Editor, *Journal of International Economic Law*; Legal Writing Instructor

M.S.I., University of Michigan School of Information, 1999

B.A., Swarthmore College, 1997, Honors

#### **Admissions**

**New Jersey** 

West Virginia

Pennsylvania

**US Supreme Court** 

US Court of Appeals for the Fourth Circuit

US District Court, District of New Jersey

US District Court, Western District of Pennsylvania

US District Court, Eastern District of Pennsylvania

US District Court, Southern District of West Virginia

US District Court, Northern District of West Virginia

#### **Representative Matters**

- Court awarded class more than \$2.6 million after granting affirmative summary judgment in mortgage loan case alleging violations of the West Virginia Consumer Credit and Protection Act (*Dijkstra v. Carenbauer* (N.D. W. Va.))
- Court certified class and awarded each class member \$3,500 for defendant's practice of sending appraisers estimated home values; presently on appeal (*Alig v. Quicken* (N.D. W. Va))
- Obtained class action settlement for \$1.975 million in case alleging debt collection violations under West Virginia Consumer Credit and Protection Act (*Henry v. Ocwen* (S.D. W. Va.))
- Obtained reversal of summary judgment before Florida's District Court of Appeal, arguing novel issue of qualified civil immunity in wrongful death case (*Martinez v. Taurus Int'l Mfg.*, 251 So.3d 328 (Fla. DCA 3d 2018))

• Obtained reversal in the US Court of Appeals for the Eleventh Circuit when the court found that that under § 1681i(a) of the Fair Credit Reporting Act, a consumer may recover actual damages even if the defendant credit reporting agency did not publish the consumer's false credit information to a third party (*Collins v. Experian*)

#### **Community and Professional Activities**

Lecturer in Law, University of Pennsylvania Law School Volunteer on behalf of abused and neglected children referred to the Support Center for Child Advocates in Philadelphia



# Of Counsel Victor S. Woods

Charleston, WV 209 Capitol Street Charleston, WV 25301 T: 304.340.7876 F: 304.342.1110 vwoods@baileyglasser.com

Victor Woods maintains a diverse practice concentrating in the areas of catastrophic personal injury, products liability, insurance bad faith, consumer protection, and class action litigation.

A native of Charleston, Vic worked as an Assistant Attorney General for the State of West Virginia, where among other things he served as co-lead counsel in West Virginia's landmark tobacco litigation.

After serving as a law clerk to the Honorable Warren R. McGraw, Justice of the Supreme Court of Appeals of West Virginia, Vic has fought hard over the past two decades representing the rights of individuals who have been injured through the fault of others and those who have suffered economic harm as a result of irresponsible corporate conduct.

#### Clerkships

Law Clerk, Hon. Warren R. McGraw, Justice, Supreme Court of Appeals of West Virginia (1999 - 2002)

#### **Government Service / Previous Employment**

Assistant Attorney General for the State of West Virginia (1995 - 1999)

#### **Practice Areas**

Appellate Advocacy
Catastrophic Personal Injury
Consumer Litigation
MDL Panels
Product Liability

#### **Education**

J.D., West Virginia University College of Law, 1995, Order of the Coif

B.A., University of Chicago, 1985

#### **Admissions**

West Virginia
US Court of Appeals for the Fourth Circuit
US District Court, Northern District of West Virginia
US District Court, Southern District of West Virginia

#### **Representative Matters**

- Successfully represented individuals who were severely injured as a result of a carbon monoxide leak at a hotel.
- Served as class co-counsel in *Nationwide Mutual Insurance Company v. O'Dell*, a class action lawsuit against Nationwide Mutual Insurance Company, which resulted in a \$75 million settlement for Nationwide's West Virginia policyholders.
- Successfully represented families of miners lost in the tragic Sago Mine Disaster.
- Obtained a successful jury verdict after a six-week mass-litigation trial for hundreds of Mingo County, West Virginia residents whose groundwater supplies were destroyed as a result of underground coal mining.
- Served as co-lead counsel in West Virginia's tobacco litigation, which resulted in an estimated \$1.8 billion settlement that contributes tens of millions of dollars to the state's budget every year.

#### **Community and Professional Activities**

American Association for Justice
West Virginia Association for Justice
Assistant Scout Master and Troop Executive Committee Secretary, Boy Scouts of America

# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

ASHLY ALEXANDER, CEDRIC BISHOP, AMY THOMAS-LAWSON, BRENDA BOLEY, MIGUEL PADILLA, WILLIAM GREEN, and VICTORIA DAWKINS, On Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

Case No. 1:20-cv-02369-RDB

v.

CARRINGTON MORTGAGE SERVICES, LLC,

Defendant.

#### **DECLARATION OF PHILLIP ROBINSON**

Phillip Robinson, being of lawful age, declares:

- 1. I have personal knowledge of the facts set forth herein.
- 2. I submit this declaration in support of the Plaintiffs' Motion to Preliminary Approve Settlement Class, Appoint Class Counsel and Class Representatives, and for Certification of Class for Settlement, Pursuant to FED. R. CIV. P. 23.
- 3. I am an attorney first licensed to practice law in 2000. I am currently admitted to practice before the Maryland Court of Appeals, and various federal courts including the United States District Court for the District of Maryland, United States District Court for the District of Columbia, and the United States Court of Appeals for the Fourth Circuit.
- 4. I am also currently a member of Consumer Law Center, LLC.
- 5. My practice includes representing consumers in financial transactions, concentrating in debt collection and mortgage servicing practices. I have represented consumers in cases involving federal and state consumer protection laws for approximately 18 years. I have been counsel in

- over a hundred cases involving consumer protection claims before this and other courts throughout the country.
- 6. In addition to my current practice, I previously was Of Counsel to the Legg Law Firm LLC and a past Executive Director and Attorney for Civil Justice Inc., a private not-for-profit legal services program that concentrates is legal representation in the area of predatory consumer practices.
- 7. I have devoted the resources necessary to pursue the claims in this action and advanced time and costs to the benefit of the class members and Plaintiffs (as well as administration of the case on behalf of the Class) and engaged qualified, co-counsel qualified to undertake this action with me on behalf of the class including all the appellate work. I am ready, able and willing, if necessary, to pursue this case through trial.
- 8. I have testified by invitation and otherwise before the Maryland General Assembly and Congressional committees relating to consumer protection laws. I have also participated in drafting these laws. In addition, I have also served as a presenter before numerous various state and national conferences concerning consumer protection and foreclosure issues including the Judicial Institute of Maryland.
- 9. In the community, I have also served in a variety of appointed positions including:
  - Appointed Member of the <u>Maryland State Bar Association's Laws Committee</u> (2019 to present)
  - Appointed Recipient of the Consumer Advocate of the Year Award, <u>National Association of Consumer Advocates</u> (2016)
  - Appointed Member, <u>Montgomery County</u>, <u>Maryland Advisory Committee on Consumer Affairs</u> (2007 to 2011, 2021 to the Present)
  - Appointed Member, <u>Maryland Consumer Rights Coalition</u> Board of Directors (2010-2011)
  - Recipient of the Denis J. Murphy Consumer Advocate of the Year, <u>Maryland Consumer</u> Rights Coalition (2008)
  - Appointed Member, Governor O'Malley's Homeownership Preservation Task Force (2007)

10. I have been appointed as class counsel in various actions before Federal and State Courts including:

Keneipp v. Fountainhead et al. (USDC of MD, Civ. No. 03-cv-02813-WMN);

Johnson v. Fountainhead (USDC of MD, Civ. No. 03-cv-03106-WMN);

Greer v. Crown Title Corp., Cir. Ct. Balt. City, MD; Case No. 24-C-02001227 (September 2005);

Robinson v. Fountainhead Title Group Corp., 447 F.Supp.2d 478 (D.Md. 2006); 252 F.R.D. 275 (D.Md. 2008);

Benway v. Resource Real Estate Services, 239 F.R.D. 419, (D.Md. 2006);

Taylor v. Savings First et al..Cir. Ct. Balt. City, MD; Case No. 24-C-02001635 (January 2008);

Proctor v. Metropolitan Money Store Corp., 645 F.Supp.2d 464, 483 (D.Md.2009);

Winston v. Regional Title & Escrow LLC, (USDC of MD, Civ. No. 08-2633-RWT) (2009);

Hauk v. LVNV Funding, LLC, 749 F. Supp. 2d 358 (D. Md. 2010);

Johnson v. Midland Funding, LLC, USDC of MD, Case No.: 1:09-cv-02391-RDB (2010);

*Bradshaw v. Hilco Receivables, LLC*, 725 F. Supp. 2d 532 (D. Md. 2010), 765 F. Supp. 2d 719 (D. Md. 2011);

Winemiller v. Worldwide Asset Purchasing, LLC, USDC of MD, Civ. No. 1:09-CV-02487, 2011 WL 1457749 (2011);

Gardner v. Montgomery County Teachers Fed. Credit Union, USDC of MD, Civ. No. 1:10-CV-02781-JKB, 2012 WL 1994602 (June 4, 2012);

Castillo v. Nagle & Zaller, PC, USDC of MD, Civ. No. 12-cv-2338 (2013);

Rand v. Main Street Acquisition Corporation, Cir. Ct.for Balt, MD; Case No.24-O-13-004864 (2015).

Turner v. Asset Acquisition Group, LLC, Cir. Ct.for Balt., MD; Case No. 24-C-13-004861 (2015).

Baumgardner v. Blatt, Cir. Ct. for Anne Arundel County, MD; Case No. C-02-CV-14-000785(2015);

Finch v. LVNV, Cir. Ct. for Baltimore City, MD; Case No. 24-C-11-007101 (2015);

Martinez v. Grand Bel Manor Condominium, et al. Cir. Ct. for Montgomery County, MD, Case No. 410129-V (2016);

Barbely v. Dyck O'Neal Inc., Cir. Ct. for Anne Arundel County, MD, Case No. 02-C-14-190995 (2016);

Devan v. Wilcox; Wilcox v. Wilmington Savings Fund Society FSB, as Trustee for the Primestar-H Fund I Trust, Cir. Ct. for Anne Arundel County, MD, Case No. C-02-cv-14-000099 (2016);

*Hansford v. Erin Capital Management*, Cir. Ct. for Baltimore City, MD, Case No. 24-C—13-004860 (2016);

Jason v. National Loan Recoveries, LLC, Cir. Ct. for Baltimore City, MD, Case No. 24-C-13-004862 (2017);

Hyatt v. Swann; Swann v. Pontus Capital Management, LLC, Cir. Ct. for Anne Arundel County, MD, Case No. C-02-cv-15-2117 (2017);

Jernigan et al. v. Protas, Spivok & Collins, LLC, (USDC of MD, Civ. No. 1:16-cv-03058-ELH) (2017);

Payne et al. v. Marriot Employees Federal Credit Union, (USDC for the E.D. of Pa., Civ. Act. No. 2:18-cv-04009-WB) (2019);

Grayson v. Freedom Mortgage Corporation, Cir. Ct. for Montgomery County, MD, Case No. 444996-V (2019);

Graham v. Servis One, Inc., (USDC for the E.D. of Pa., Civ. Act. No. 2:18-cv-04377-WB) (2020);

White v. NewRez LLC d/b/a Shellpoint Mortgage Servicing & Federal National Mortgage Association, (Cir. Ct. for Anne Arundel County, MD, Case No. C-02-cv-001060 (2021); and.

Cilano v. Shea, USDC of MD, Case No.: 8:19-cv-0827-PWG (2021).

11. Neither I nor the Plaintiffs, Ashly Alexander or Cedric Bishop, have any interests that are

antagonistic to the class or that would adversely affect any of us from acting as class

counsel and named representatives in this action. Ms. Alexander and Mr. Bishop are also

available and willing to appear at trial if necessary and have actively participated in this

litigation including substantial activities throughout the pandemic while remaining in

regular contact and also being deposed twice by Order of the Court.

I swear under penalty of perjury and upon personal knowledge that the foregoing is true and correct

to the best of my knowledge.

Executed on May 20, 2022

Phillip Robinson

# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

ASHLY ALEXANDER, CEDRIC BISHOP, AMY THOMAS-LAWSON, WILLIAM GREEN, BRENDA BOLEY, MIGUEL PADILLA, and VICTORIA DAWKINS

Case No. 1:20-cv-02369-RDB

On behalf of themselves individually and similarly situated persons.

Plaintiffs,

v.

CARRINGTON MORTGAGE SERVICES, LLC,

Defendants.

# [PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND FOR CERTIFICATION OF SETTLEMENT CLASS

Plaintiffs Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda Boley, Miguel Padilla, and Victoria Dawkins, individually and on behalf of the proposed Settlement Class, seek preliminary approval of a proposed Settlement of claims against defendant Carrington Mortgage Services LLC ("Carrington"). For the reasons set forth herein, the Court GRANTS preliminary approval and GRANTS preliminary certification of the Settlement Class for settlement purposes only.

<sup>&</sup>lt;sup>1</sup> Unless otherwise specifically defined herein, all capitalized terms have the same meanings as those set forth in the parties' Settlement Agreement, attached as Exhibit 1 to the Declaration of Hassan A. Zavareei ("Zavareei Decl.").

# I. BACKGROUND

Plaintiffs commenced separate actions in Maryland, California, and Florida. On July 10, 2020, Plaintiffs Ashly Alexander, a Maryland homeowner, initiated a class action lawsuit in the Circuit Court for Baltimore County, alleging that Carrington violated the Maryland Consumer Debt Collection Act ("MCDCA"), the Maryland Consumer Protection Act ("MCPA"), and Maryland's usury law. Dkt. 3. Carrington removed the case to this Court on August 17, 2020, Dkt. 1, and, on September 8, 2020, Plaintiffs filed an amended complaint, adding Plaintiff Cedric Bishop (also a Maryland homeowner) and an allegation that Carrington had violated the federal Fair Debt Collection Practices Act ("FDCPA"). See Dkt. 20. Plaintiffs Amy Thomas-Lawson (Maryland), William Green (New York), Brenda Boley (Texas), and Miguel Padilla (California) initiated a class action lawsuit in this Court, Case No. 1:19-cv-03567-CCB (D. Md.), which was transferred to the Central District of California on August 13, 2020, Case No. 2:20-cv-07301-ODW(Ex) (C.D. Cal.). Plaintiffs Thomas-Lawson, Green, Boley, and Padilla alleged that Carrington had violated the FDCPA, California's Rosenthal Fair Debt Collections Act ("Rosenthal Act") and Unfair Competition Law ("UCL"), the Texas Debt Collection Act ("TDCA"), and the MCDCA and MCPA, as well as breached its contracts with the class members. See Thomas-Lawson v. Carrington, Case No. 2:20-cv-07301-ODW(Ex) (C.D. Cal.), ECF No. 1. And, on May 20, 2020, Plaintiff Victoria Dawkins initiated a class action in the Southern District of Florida against Carrington, alleging violations of the Florida Consumer Collection Practices Act ("FCCPA") and the Florida Deceptive Unfair Trade Practices Act ("FDUTPA"), as well as breach of contract and unjust enrichment. See Dawkins v. Carrington, Case No. 0:20-cv-60998-RAR (S.D. Fla.), ECF No. 1.

Although the three putative class actions were brought separately, each is based on one allegation: Carrington charged and collected millions of dollars in \$5, \$10, and \$20 Convenience Fees from homeowners, in addition to their regular mortgage payments, and that this practice violated the FDCPA, the laws of Maryland, California, Florida, and Texas, and breached Plaintiffs' mortgage agreements. Carrington denies the allegations in the complaints and denies its actions were in any way unlawful.

Before this Court, Carrington moved to dismiss the complaint filed by Plaintiffs Alexander and Bishop. Dkt. 24. The Court granted the motion. Dkts. 32, 33. Plaintiffs appealed the dismissal, and, on January 19, 2022, the Fourth Circuit reversed. *Alexander v. Carrington Mortg. Servs.*, *LLC*, 23 F.4th 370, 376 (4th Cir. 2022).

In the *Thomas-Lawson* matter, Carrington moved to compel arbitration of the claims brought by Plaintiffs Boley and Green. *Thomas-Lawson*, Case No. 2:20-cv-07301-ODW(Ex) (C.D. Cal.), ECF No. 75. Carrington also moved to dismiss the complaint filed by Plaintiffs Thomas-Lawson, Green, Boley, and Padilla. *Thomas-Lawson*, ECF No. 76. On April 5, 2021, the Central District of California denied Carrington's motion to compel arbitration, but granted Carrington's motion to dismiss. *Thomas-Lawson*, ECF No. 97. Plaintiffs appealed to the Ninth Circuit, and that appeal is currently pending, but stayed pending consideration of this settlement. *See Thomas-Lawson v. Carrington Mortg. Servs.*, No. 21-55459 (9th Cir.).

In the *Dawkins* matter, Carrington moved to compel arbitration of Plaintiff Dawkins's claims. *Dawkins*, Case No. 0:20-cv-60998-RAR (S.D. Fla.), ECF No. 22. After the parties briefed the motion, the Southern District of Florida stayed the *Dawkins* matter pending resolution of *Carrington Mortgage Services*, *LLC v. Attix*, No. 20-13575-HH (11th Cir.), which involved a

similar arbitration issue and is currently on appeal, with a pending motion to stay pending consideration of this settlement.

After the Parties reached the proposed Settlement, the Parties agreed that, to preserve the resources of the Parties and the various courts, Plaintiffs' claims should be consolidated and a single Settlement Agreement considered and approved by this Court, rather than proceeding piecemeal. Thus, in advance of this Motion, the Plaintiffs filed, the current operative Second Amended Complaint consolidating their claims before this Court and also notified the *Thomas-Lawson* and *Dawkins* courts of the pending Settlement. The Parties have agreed to dismiss those cases following final approval of this Settlement. Carrington consented to the filing of the Second Amended Complaint solely for purposes of settlement without admitting any of the allegations contained therein.

Plaintiffs' counsel and Carrington's counsel had at least three pre-mediation conferences where the discovery and the Parties' respective positions on the merits and damages were discussed. The proposed Settlement was negotiated during a fourteen-hour mediation before an experienced mediator, Jeff Kichaven. In advance of that mediation, Carrington provided Plaintiffs with substantial data demonstrating the size of the Settlement Class and the amount of the total Convenience Fees collected by Carrington from the Class during the class period at issue. Following the mediation, the Parties continued to negotiate the details of the Settlement before arriving at the Settlement Agreement currently before the Court.

## II. SETTLEMENT TERMS

## A. The Proposed Settlement Class

The Settlement Agreement contemplates certification of the following Settlement Class for settlement purposes only:

All persons who paid a fee to Carrington for making a mortgage loan payment by telephone, IVR, or via the internet, between January 1, 2016 through December 31, 2021 ("Convenience Fees") who fall into one or more of the following groups:

- (1) were borrowers on residential mortgage loans on properties located in California, Texas, New York, Maryland, or Florida;
- (2) were borrowers on residential mortgage loans on properties in the United States to which Carrington acquired servicing rights when such loans were 30 days or more delinquent on loan payment obligations; or
- (3) were borrowers on residential mortgage loans on properties located in the United States insured by the Federal Housing Administration.

The proposed Settlement Class is identical to the class definition included in the Second Amended Complaint.

## **B.** Benefits to the Settlement Class

The Settlement Agreement, if approved, will create a \$18,181,898.65 common fund and will resolve the claims of Plaintiffs and the Settlement Class Members deriving from Carrington's practice of charging fees for making mortgage payments by telephone, IVR, or via the internet ("Convenience Fees"). The common fund, which represents approximately 35% of the total Convenience Fees collected by Carrington from the Class during the class period, will provide cash payments to Settlement Class Members, as well as Administrative Costs to provide notice and administer the settlement, and any Fee and Expense Award and Service Awards that the Court may approve. Settlement Class Members need not submit a claim form in order to receive monetary compensation. Settlement Class Members who paid at least one Convenience Fee are entitled to receive a payment of \$5.00 from the Net Settlement Fund, with the remainder paid to Settlement Class Members on a *pro rata* basis, based upon the amount of Convenience Fees paid by each Settlement Class Member during the Class Period.

In addition to the common fund, the Settlement includes important and valuable injunctive relief. As of January 1, 2022, Carrington has ceased charging or collecting Convenience Fees to

any borrower, while allowing borrowers to make payments by telephone, IVR or the internet for free. As a result of this Settlement, Carrington also agrees to refrain from the charging or collection of Convenience Fees for allowing borrowers to make payments by telephone, IVR or the internet, for a period of at least three years after entry of the Final Approval Order. The prospective relief of this settlement term is expected, based upon the discovery exchanged, to have an approximate value of \$8M per year (based on the average of the last 4 years Carrington collected the fees) going forward for the putative class members who still have loans serviced by Carrington.

## C. Settlement Administrator and Administration Costs

The proposed Settlement Administrator is Epiq, a leading class action administration firm in the United States. Plaintiffs' counsel obtained and reviewed proposals from several prominent settlement administrators before deciding on Epiq based on overall cost and value to the Settlement Class. The Administrative Costs will be paid from the Gross Settlement Fund.

## D. Class Member Release

Upon the Effective Date, and in consideration for the Settlement Payment and for Carrington's other promises contained herein, each Settlement Class Member, for and on behalf of their present and future spouses (and common law spouses), children, parents, relations, successors, beneficiaries, heirs, next of kin, assigns, attorneys, executors, administrators, and/or estate, or any and all other persons who could claim through them, hereby unconditionally and irrevocably remises, releases, and forever discharges the Released Entities from the Released Claims and further covenants not to sue any of the Released Entities with respect to any of the Released Claims.

"Released Claims" means any and all claims, counterclaims, actions, causes of action, suits, set-offs, costs, losses, expenses, sums of money, accounts, reckonings, debts, charges, complaints, controversies, disputes, damages, judgments, executions, promises, omissions, duties,

agreements, rights, and any and all demands, obligations and liabilities, of whatever kind or character, direct or indirect, whether known or unknown, at law or in equity, by right of action or otherwise, arising out of, based upon, or related in any way to the facts, allegations, disputes that are the subject matter of the Lawsuits or the charging, collection, or attempted collection of Convenience Fees from the beginning of the world to the Effective Date, which the Settlement Class Member ever had or may have in the future.

"Released Entities" means Carrington and each of its past, present and future directors, officers (whether acting in such capacity or individually), shareholders, advisors, owners, partners, joint venturers, principals, trustees, creditors, law firms, attorneys, representatives, employees, managers, parents, direct or indirect subsidiaries, divisions, subdivisions, departments, entities in common control, affiliates, insurers, reinsurers, control persons, predecessors, and successors or any agent acting or purporting to act for them or on their behalf, as well as any investor on whose behalf Carrington services any loan to any Settlement Class Member, and each of their past, present and future directors, officers (whether acting in such capacity or individually), shareholders, advisors, owners, partners, joint venturers, principals, trustees, creditors, law firms, attorneys, representatives, employees, managers, parents, direct or indirect subsidiaries, divisions, subdivisions, departments, entities in common control, affiliates, insurers, reinsurers, control persons, predecessors, and successors or any agent acting or purporting to act for them or on their behalf, and, any entity on whose behalf Carrington services any loan to any Class Member.

## E. Proposed Plan of Notice

The Parties' proposed Notice Plan consists of direct notice in the form of Postcard Notice and Email Notice, as well as a Settlement Website where Class Members may view and download a Long Form Notice. Class Members may also request that the Settlement Administrator mail or email them a copy of the Long Form Notice.

Within 14 days or such other time as provided in the Preliminary Approval Order, Carrington, at its own expense, will compile the Class Member List and provide it to the Settlement Administrator and Class Counsel.

As soon as practicable but starting no later than thirty (30) days after the date that the Defendant provides the Class Member List to the Settlement Administrator, the Settlement Administrator shall cause the Email Notice to be sent to all Settlement Class Members for whom the Class Member List includes an email address.

As soon as practicable but starting no later than thirty (30) days after the date that the Defendant provides the Class Member List to the Settlement Administrator, the Settlement Administrator shall cause the Postcard Notice to be sent to all Settlement Class Members for whom no email address appears on the Class Member List. Prior to mailing Class Notice, the Settlement Administrator will update the last known addresses of the members of the Settlement Class using the National Change of Address database. Within a reasonable time before the Response Deadline, the Settlement Administrator shall also cause the Postcard Notice to be sent to all Settlement Class Members whose Email Notices are returned undeliverable, after running those Settlement Class Members' last known addresses through the National Change of Address database. If the Postcard Notice is returned with a forwarding address, the Settlement Administrator shall make one attempt to remail the Postcard Notice to that forwarding address, as soon as possible before the Response Deadline. If the Postcard Notice is returned undeliverable without a forwarding address, the Settlement Administrator shall make a reasonable attempt to locate an updated address and make one attempt to remail the Postcard Notice to the updated address, as soon as possible before the Response Deadline.

The Settlement Administrator shall mail or email the Long Form Notice to any Settlement Class member who requests a copy.

Prior to the date on which the Settlement Administrator mails the Postcard Notice, the Settlement Administrator shall establish the Settlement Website. The Settlement Website shall contain: (1) the Long Form Notice in downloadable PDF format in both English and Spanish; (2) the Long Form Notice in HTML format with a clickable table of contents, described as answers to frequently asked questions; (3) a contact information page with contact information for the Settlement Administrator, and addresses and telephone numbers for Class Counsel and Defendant's Counsel; (4) the Settlement Agreement; (5) the signed Preliminary Approval Order and publicly filed motion papers and declarations in support thereof; (6) the operative complaints in each of the Actions; and (7) when they become available, the Fee and Service Award Application, the motion for entry of the Final Approval Order, and any motion papers and declarations filed publicly in support thereof. The Settlement Website shall remain accessible until 30 days after the Settlement Administrator has completed its obligations under the Settlement Agreement.

The Settlement Administrator shall also establish a 24-hour toll-free telephone line with information about frequently asked questions about the Settlement. The number shall be included in the Class Notice and posted on the Settlement Website.

The Settlement Administrator will also ensure that the necessary and timely notice is provided to any state and federal officers as required by the Class Action Fairness Act, 28 U.S.C. § 1715.

# F. Opt-Outs and Objections

The Class Notice will advise Class Members of their right to opt out of the Settlement or to object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs, and

expenses and/or Service Award to the Class Representatives, and of the associated deadlines to opt out or object.

Class Members who choose to opt out must submit a written request for exclusion. Any request for exclusion must be postmarked on or before the "Response Deadline"—105 days after entry of the Preliminary Approval Order. Any request for exclusion must include the name of the case, and the name, address, phone number, and signature of the borrower or borrowers seeking exclusion and must contain language clearly indicating a request for exclusion. If there are coborrowers on the loan, all co-borrowers must sign the request for exclusion. Any Class Member who does not submit a request to opt out in accordance with the deadlines and other requirements will be bound by the Settlement absent a court order to the contrary.

Class Members who wish to object to the Settlement must mail a written objection, postmarked on or before the Response Deadline, to the Court c/o the Class Action Clerk (reference to Case No. 1:20-cv-02369-RDB), United States District Court for the District of Maryland, 101 West Lombard Street, Baltimore, MD 21201 or by filing it in person on or before the Response Deadline at any location of the United States District Court for the District of Maryland. All objections must be in writing and personally signed by the Class Member and include: (1) the objector's name, address, email address if any, and telephone number; (2) the case caption; (3) the specific factual basis and legal grounds for the objection; (4) a list of all cases in which the objector has objected to a class action settlement, including case name, court, and docket number; (5) if the objector is represented by counsel, a list of all cases in which the objector's counsel has represented an objector in objecting to a class action settlement, case name, court, and docket number; (6) a statement indicating whether the Class Member and/or their lawyer(s) intend to appear at the Final Fairness Hearing; (7) a list of witnesses, if any, that the objecting Class Member intends to call;

and (8) whether the objection relates only to the objector, or to a subset of the Settlement Class, or to the entire Settlement Class.

Any Class Member who has not submitted a timely request for exclusion may appear at the Final Fairness Hearing either in person or through an attorney. However, if the Class Member intends to appear through counsel, the Class Member must have submitted a written objection pursuant to this section. Any lawyer who intends to appear at the Final Fairness Hearing also must enter a written Notice of Appearance of Counsel with the Clerk of the Court no later than the Response Deadline. Any Class Member who intends to request the Court to allow him or her to call witnesses at the Final Fairness Hearing must make such a request in a written brief, which contains a list of such witnesses and a summary of their requested testimony.

No person who has opted out of the Settlement may object to it. Any Class Member who does not provide a timely written objection or who does not make a record of his or her objection at the Final Approval Hearing shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement, Fee and Service Awards Application, or the Fee and Expense Award or Service Awards.

#### G. Attorneys' Fees and Costs and Service Award

The Settlement Agreement contemplates Class Counsel petitioning the Court for attorneys' fees, as well as documented, customary costs incurred by Class Counsel. The Settlement Agreement provides that Class Counsel may seek attorneys' fees in an amount not to exceed forty percent of the Gross Settlement Fund (40%) as well as reasonable expenses incurred in the litigation. Any approved Fee and Expense Award will be paid from the Gross Settlement Fund prior to distribution to the Settlement Class Members.

On or before 21 days prior to the Response Deadline, Class Counsel will file a petition for attorneys' fees and costs explaining why the requested Fee and Expense Award is reasonable. Carrington has not agreed to any award of attorneys' fees or expenses and reserves the right to respond as it deems appropriate.

Class Counsel may also petition the Court for up to \$5,000 each for Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda Boley, Miguel Padilla, and Victoria Dawkins as Service Awards as compensation for their time and effort in the Action. Any approved awards will be deduced from the Gross Settlement Fund prior to distribution to the Settlement Class Members.

Neither final approval, nor the size of the Common Fund, are contingent upon approval of the full amount of requested Fee and Expense Award or Service Awards.

## III. FINDINGS AND ORDERS

# A. The Settlement Agreement warrants preliminary approval.

- 1. The Court finds, on a preliminary basis, that the Settlement Agreement appears to be within the range of reasonableness of a settlement that could ultimately be given final approval by this Court. The Court has reviewed the terms of the Settlement and preliminarily finds the Settlement to be fair, reasonable, and adequate. The Court finds that the Settlement contains no obvious deficiencies and that the Parties entered into the settlement in good faith, following arm's length negotiations between their respective counsel. The Settlement meets the considerations set forth in Federal Rule of Civil Procedure 23(e) and *In re Jiffy Lube Sec.* Litig., 927 F.2d 155 (4th Cir. 1991).
- 2. In the Fourth Circuit, courts look to a four-factor test to evaluate the fairness of a class settlement: "(1) the posture of the case at the time settlement was proposed; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations; and (4) the

experience of counsel in the area of [the] class action litigation." *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 159.<sup>2</sup> As to the posture of the case, it appears that the Settlement was reached after significant work was performed, including motions practice with respect to motions to dismiss and motions to compel arbitration, as well as appeals before the Fourth and Ninth Circuits. Although the parties did not engage in formal discovery, it appears Carrington provided substantial informal discovery to allow Class Counsel to intelligently evaluate the Settlement offered against the risks and benefits of continued litigation. The provision of informal damages discovery is sufficient to satisfy the fairness factor. *In re Jiffy Lube*, 927 F.2d at 159 (recognizing that informal discovery can provide satisfactory information prior to preliminary approval). Thus, the first two fairness factors warrant preliminary approval.

- 3. The third factor—the circumstances surrounding the negotiations—also supports preliminary approval. The Settlement was negotiated with the assistance of Jeff Kichaven, an experienced mediator, and appears to be the result of extensive, arm's length negotiations between the Parties after Class Counsel and Carrington's Counsel had investigated the claims, extensively litigated them, and become familiar with the claims' strengths and weaknesses. Further, the Parties did not discuss attorneys' fees or a Service Award until after agreeing upon the material terms of the Settlement. The Settlement appears not to be collusive, has no obvious defects, and falls within the range of reasonableness.
- 4. With respect to the fourth factor, Class Counsel and Carrington's Counsel are experienced in class action litigation. Moreover, it appears to the Court that the Class

<sup>&</sup>lt;sup>2</sup> The Fourth Circuit has recognized that these "factors for assessing class-action settlements almost completely overlap with the new Rule 23(e)(2) factors." *In re: Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Pracs. & Prod. Liab. Litig.*, 952 F.3d 471, 484 n.8 (4th Cir. 2020).

Representatives and Class Counsel have adequately represented the proposed Settlement Class. *See* Fed. R. Civ. P. 23(e)(2)(A). Class Counsel are experienced and sophisticated, with years of experience in complex class action litigation and litigation involving mortgage servicers, financial institutions, and fees. The Class Representatives have also supervised the litigation by reviewing pleadings, reviewing the Settlement, and communicating with Class Counsel regarding the litigation.

- 6. It appears to the Court that the terms of the proposed award of attorneys' fees and expenses are fair and reasonable. However, prior to final approval, Class Counsel shall file a separate motion seeking approval of Attorneys' Fees and Expenses in an amount not to exceed forty percent (40%) of the Gross Settlement Fund, plus their reasonable expenses of litigation. In this submission, Class Counsel will set forth the specific legal and factual bases for their request for attorneys' fees and expenses. It likewise appears to the Court that the proposed Service Awards are fair and reasonable.
  - 5. Accordingly, the Court preliminarily finds that the Settlement is fair.
- 6. In assessing the adequacy of the settlement, the Court looks to "(1) the relative strength of the plaintiffs' case on the merits; (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial; (3) the anticipated duration and expense of additional litigation; (4) the solvency of the defendant[] and the likelihood of recovery on a litigated judgment; and (5) the degree of opposition to the settlement." *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 159.
- 7. The first and second factors, which are generally considered together, evaluate "how much the class sacrifices in settling a potentially strong case in light of how much the class gains in avoiding the uncertainty of a potentially difficult one." *In re The Mills Corp. Securities*

Litig., 265 F.R.D. 246, 256 (E.D. Va. 2009). Although the Fourth Circuit reversed this Court's dismissal of Plaintiff Alexander and Bishop's complaint, there are still numerous factual and legal issues in dispute. In addition, Plaintiff Thomas-Lawson, Green, Boley, and Padilla's appeal of the dismissal of their FDCPA and California, Texas, and Maryland statutory claims is still pending before the Ninth Circuit, and there are open questions regarding whether Carrington could compel arbitration of some of the Plaintiffs' and class members' claims. Plaintiffs' motion describes the legal issues that would be decided before this Court and before the *Thomas-Lawson* and *Dawkins* courts should the settlement not be approved, both on the merits and at class certification.

- 8. With respect to the third factor, the likely duration and expense of continued litigation is substantial. While litigation presents serious risks at many stages, not to mention substantial expense and delay without any guarantee of additional benefit to the Settlement Class, the Settlement provides immediate and substantial benefits to over 442,059 Class Members.
  - 9. Finally, Carrington appears to be solvent.
  - 10. Accordingly, the Court preliminarily finds that the Settlement is adequate.<sup>3</sup>
- 11. It appears to the Court that the Settlement is fair, reasonable, and adequate when balanced against the probable outcome of further litigation, liability, and damages issues, and potential appeals of rulings. The amount offered in Settlement represents approximately 35% of potential damages, as well as significant injunctive relief. Finally, it appears to the Court that the Parties' proposed allocation of the Settlement is fair and reasonable. Settlement Class Members who paid at least one Convenience Fee are entitled to receive a payment of \$5.00 from the Net Settlement Fund, with the remainder paid to Settlement Class Members on a *pro rata* basis, based

<sup>&</sup>lt;sup>3</sup> The fifth *Jiffy Lube* factor, the degree of opposition to the settlement, cannot be evaluated until after class notice has gone out and Class Members have had an opportunity to opt out or object to the settlement.

upon the amount of Convenience Fees paid by each Settlement Class Member during the Class Period. According to this allocation, Class Members are treated fairly as to one another because they are compensated according to the amount of Convenience Fees they were charged. *See* Fed. R. Civ. P. 23(e)(2)(D). This method is consistent with the distribution of common funds in other fee cases. *See, e.g., Lembeck v. Arvest Central Mortgage Co.*, Case No. 3:20-cv-03277, 2021 WL 5494940(N.D. Cal. Aug. 26, 2021) (approving settlement from which class members would receive *pro rata* distribution of common fund based on number of fees paid); *Fernandez v. Rushmore*, Case No. 8:21-cv-00621-DOC-(KEXc) (C.D. Cal. Feb. 14, 2022) (same); *Phillips v. Caliber Home Loans, Inc.*, Case No. 0:19-cv-2711, 2022 WL 832085 (D. Minn. Mar. 21, 2022) (same). A *pro rata* distribution means that Settlement Class Members who paid more Convenience Fees will receive a relatively larger share of the Settlement Fund, and those who paid fewer will receive less. This allocation treats Settlement Class Members equitably.

# B. Certification of the Settlement Class for settlement purposes is appropriate.

On a motion for preliminary approval, the parties must also show that the Court "will likely be able to ... certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1). The Court finds for purposes of settlement only that the Settlement Class meets all of the requirements of Fed. R. Civ. P. 23(a) and (b)(3).

- 1. It appears to the Court for purposes of settlement only that the proposed Settlement Class is sufficiently numerous that joinder would be logistically impossible. The proposed Settlement Class consists of over 442,059 Class Members. The numerosity requirement is satisfied.
- 2. It appears to the Court for purposes of settlement only that there is a commonality of interests between the Settlement Class Members, including both questions of law and questions of fact. Plaintiffs' claims here depend on the common contentions that Convenience Fees are

neither authorized by class members' mortgages nor permitted by law. For the same reason, the predominance requirement of Fed. R. Civ. P. 23(b)(3) is satisfied for settlement purposes.

- 3. It appears to the Court for purposes of settlement only that the Class Representatives' claims are typical of those of the Settlement Class Members. The Class Representatives' claims arise from the same alleged course of conduct as those of the Settlement Class Members. The typicality requirement is satisfied.
- 4. It appears to the Court for purposes of settlement only that the Class Representatives and Class Counsel are adequate representatives and have no conflicts with the proposed Settlement Class.
- 5. It appears to the Court for purposes of settlement only that a class action is a superior method of resolving the claims of the Settlement Class Members, which are of modest amounts.

# C. The proposed Notice Plan is approved.

Due process under Rule 23 requires that class members receive notice of the settlement and an opportunity to be heard and participate in the litigation. *See* Fed. R. Civ. P. 23(c)(2)(B); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985); *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 175-76 (1974) ("[I]ndividual notice must be provided to those class members who are identifiable through reasonable effort.").

It appears to the Court that the proposed Notice Plan, which consists of Email Notice and Postcard Notice to be sent directly to Class Members, as well as a Long Form Notice, Settlement Website, and toll-free phone line, comports with due process, Rule 23, and all other applicable law. The five attorneys being appointed as Class Counsel herein have overseen several other settlements against mortgage loan servicers for similar practices for which email notice was used and final approval granted. *See, e.g., Phillips v. Caliber Home Loans, Inc.*, Case No. 0:19-cv-2711,

2022 WL 832085, at \*5 (D. Minn. Mar. 21, 2022). Given the relatively small value at stake for each class member, the Court finds that email notice is the best practicable notice under the circumstances and orders that Carrington provide email addresses to the Settlement Administrator for each Class Member for whom it is in possession of such information. *See, e.g., Galloway v. Williams*, No. 3:19-cv-470, 2020 WL 7482191, at \*6 (E.D. Va. Dec. 18, 2020) (where defendant "maintained loan records that included the borrowers' names, addresses, and frequently, email addresses," sending initial notice by email "and only mailing the notice if an email bounced back as undeliverable or no email existed for a particular Settlement Class Member" was both reasonable and provided the "best notice practicable under the circumstances"); *Abubaker v. Dominion Dental USA, Inc.*, No. 1:19-cv-1050, 2021 WL 6750844, at \*4 (E.D. Va. Nov. 19, 2021) (finding that notice made either by first class mail or by email for Class Members for whom the defendant had an existing email address constituted "the best notice practicable").

Moreover, the substance of the proposed Class Notice will fully apprise class members of their rights. Under Rule 23(e), notice to class members must "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *McAdams v. Robinson*, 26 F.4th 149, 158 (4th Cir. 2022) (quoting *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 114 (2d Cir. 2005)). The Notice contains all the critical information required to apprise Class Members of their rights under the settlement, directs them to the Settlement Website, where they can obtain more detailed information, and provides a toll-free number for Class Members to call with questions. This approach to notice is adequate. The Court also finds that the proposed costs associated with the Notice Plan appear to be fair and reasonable.

# IV. SCHEDULE AND PROCEDURES

The Court orders the following schedule and procedures for disseminating the Notice, requesting exclusion from the Settlement Class, objecting to the Settlement, filing the Fee and Service Award Application, and filing the motion for final approval:

Date	Event
14 days from Preliminary Approval Order	Carrington to provide Class Member List to the Settlement Administrator
30 days from the date that the Defendant provides the Class Member List to the Settlement Administrator	Settlement Administrator to cause Email Notice to be sent to Settlement Class Members with email addresses
30 days from the date that the Defendant provides the Class Member List to the Settlement Administrator	Settlement Administrator to cause Postcard Notice to be sent to Settlement Class Members without email addresses
30 days from Preliminary Approval Order	Settlement Administrator to establish Settlement Website and toll-free telephone line
84 days from Preliminary Approval Order	Deadline for Class Counsel to file Fee and Service Award Application
105 days from Preliminary Approval Order	Response Deadline (deadline to request exclusion or file objections)
days prior to Final Approval Hearing	Deadline to file Motion for Final Approval
7 days prior to Final Approval Hearing	Deadline for the Parties to respond to objections
[]	Final Approval Hearing

# V. FINAL APPROVAL HEARING

The Court shall hold a Final Approval Hearing on \_\_\_\_\_\_ at \_\_\_\_ at the United States District Court for the District of Maryland, United States Courthouse, 101 West Lombard Street, Chambers 5D, Baltimore, MD 21201, before the Honorable Richard E. Bennett, for a final determination whether the proposed Settlement is fair, reasonable, and adequate.

Objections by Settlement Class Members will be considered if filed in writing with the clerk by the Response Deadline above. Settlement Class Members who have not requested exclusion may be heard orally in support of or opposition to the Settlement. Settlement Class Members who wish to appear at the Final Approval Hearing through counsel are required to file a notice with the Clerk of his or her desire to appear personally, and counsel must file a notice of appearance on the docket. Settlement Class Members proceeding *pro se* are requested, but not required, to file a notice with the Clerk of his or her desire to appear personally.

## VI. OTHER PROVISIONS

Class Counsel and Defendant are authorized to take, without further Court approval, all necessary and appropriate steps to implement the Settlement, including the proposed Notice Plan and confirmatory discovery. The deadlines set forth in this Order may be extended by Order of the Court without further notice to Settlement Class Members, except that notice shall be posted on the Settlement Website. Settlement Class Members should check the Settlement Website regularly for updates and further details regarding the deadlines. Exclusions and objections must meet the deadlines and follow the requirements set forth in the approved Class Notice to be valid, although the Court will accept exclusions and objections deemed to be in substantial compliance.

If for any reason the Court does not execute and file an Order of Final Approval, or if the Effective Date does not occur for any reason, the Parties will be restored to the *status quo ante* as set forth more specifically in the Settlement.

## VII. CONCLUSION

Accordingly, the Court having considered the Unopposed Motion for Preliminary Approval of Class Action Settlement and Certification of the Settlement Class, it is hereby ORDERED that:

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1. The Motion is GRANTED;

2. The proposed Settlement Class is certified for settlement purposes only pursuant to

Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure;

3. The proposed Settlement is preliminarily approved as being fair, reasonable, and

adequate pursuant to Rule 23(e);

4. Ashly Alexander, Cedric Bishop, Amy Thomas-Lawson, William Green, Brenda

Boley, Miguel Padilla, and Victoria Dawkins are appointed as Class Representatives;

5. Hassan A. Zavareei, Kristen G. Simplicio, James L. Kauffman, and Phillip

Robinson are appointed as Class Counsel;

6. Carrington is ordered to provide the Class Member List to the Settlement

Administrator, including email addresses where available, who is ordered to follow the

confidentiality provisions set forth in the Settlement Agreement with respect to such information;

and

7. The proposed Notice Plan complies with the requirements of Rule 23 and Due

Process, and Class Notice is to be sent to the Settlement Class Members as set forth in the

Settlement Agreement and pursuant to the deadlines above.

IT	IS	SO	ORDERED.

Dated:	
	Hon. Richard E. Bennett
	United States District Judge