IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

IRIS CALOGERO, individually and on behalf of all others similarly situated, and MARGIE NELL RANDOLPH, individually and on behalf of all others similarly situated **v.** **SHOWS, CALI & WALSH, LLP, a Louisiana limited liability partnership; MARY CATHERINE CALI, an individual; and JOHN C. WALSH, an individual**	**CIVIL ACTION** **NO. 2:18-cv-06709** **SECTION "M" DIVISION "3"** **JUDGE: BARRY W. ASHE** **MAGISTRATE JUDGE:** **EVA J. DOSSIER**

JOINT MOTION FOR FINAL APPROVAL
OF CLASS SETTLEMENT AGREEMENT

NOW COME Plaintiffs Iris Calogero and Margie Nell Randolph, individually and on behalf of members of the certified class, and Defendants Shows, Cali & Walsh LLP, Mary Catherine Cali, and John C. Walsh, and move jointly pursuant to Rule 23(e) of the Federal Rules of Civil Procedure for: 1) a finding that the notice provided to class members complied with the requirements of law; 2) final approval of their Settlement Agreement, as amended **(Exhibit A)**, including the attorneys' fees, costs, and incentive awards set forth therein; 3) an order that *cy pres* funds be used first to satisfy the claims of all known class members and then as an award to Southeast Louisiana Legal Services' fund for consumer representation and education; 4) an order that Defendants adhere to the schedule of payments set forth in the settlement agreement, except that the initial payment to Settlement Services, Inc. shall be $1,870,000, with any unused portion of the added $20,000 returned to Class Counsel; 5) an order that the parties implement the

Settlement Agreement, as amended, in accordance with its terms and as modified by order; and 6) retaining jurisdiction for purposes of insuring compliance with the order.

In addition, attached hereto as **Exhibit B** is the declaration of compliance regarding notice requirements provided by the court-appointed Settlement Administrator, Settlement Services, Inc., in accordance with this Court's order granting preliminary approval of the parties' settlement (Rec. Doc. 296).

DATED: March 3, 2025

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this **3rd** day of **March, 2025**, a copy of the above and foregoing was filed electronically with the Clerk of Court and all counsel of record using the CM/ECF system, and will be posted to the class website, https://www.splcenter.org/settlement-louisiana-road-home-program/.

s/ Margaret E. Woodward

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MEMORANDUM IN SUPPORT OF JOINT MOTION
FOR FINAL APPROVAL OF CLASS SETTLEMENT AGREEMENT

This memorandum is respectfully submitted on behalf of Plaintiffs Iris Calogero and Margie Nell Randolph, individually and on behalf of members of the certified class (collectively "Plaintiffs"), and Defendants Shows, Cali & Walsh LLP, Mary Catherine Cali, and John C. Walsh (collectively "Defendants"), in support of their joint motion for final approval of their class action Settlement Agreement, as amended, attached hereto as Exhibit A, which this Court preliminarily approved on December 3, 2024. (Rec. Doc. 296).

A. Actions taken since preliminary approval.

1. Revisions to the Settlement Agreement

In its December 3, 2024 order of preliminary approval, following consultation with the parties, the Court modified some of the dates for class members' responses to the class notice. Thereafter, the parties revised Paragraphs 23, 25, and 26 of the Settlement Agreement to align the

periods for objecting and opting out to 45 days in accordance with the Order.

The parties further consensually corrected a few insubstantial grammatical and spelling errors, clarified the sources of further information concerning the pleadings and proceedings, and added the same 45-day deadline for return of next of kin forms to Paragraph 19, which had not previously included a return date.

The revised Settlement Agreement is attached hereto as **Exhibit A** ("Settlement").

2. Notices to the class members, and their responses.

As detailed in the Declaration of Aisha Lange, Assistant Director of Operations at Settlement Services, Inc. ("SSI"), the court-approved class administrator, notice packets were timely mailed to 3468 class members on January 17, 2025. *See*, **Exhibit B**. Those packets included the class notice and forms for class members and next of kin, all as approved by this Court. Prior to the mailing, the Southern Poverty Law Center created a website, https://www.splcenter.org/settlement-louisiana-road-home-program/, where people can access additional pleadings, such as the Amended Complaint and the Amended Settlement, and pose questions about the case and the settlement. The class notices directed class members to that site and also provided the email and mailing addresses and the telephone number for the Class Administrator, SSI, as a source for additional information. Several class members or their counsel also directly contacted class counsel unbidden. Every personal inquiry has received a personal response.

Only two of the 3468 notice packets were returned as undeliverable. On further investigation, the parties determined that Defendants' initial demand letters, on which class membership depended, had also been returned, so that the two people involved were not in fact members of the class. The parties attribute the overall success of the mailing to the fact that the

class members were all homeowners at one time, and most of the notices were directed to their homes.

To date, SSI has received 124 claim forms, three opt-outs, and no objections. These numbers may increase before the hearing date, because the notices required that responses be post-marked by March 3, 2025 (with delivery necessarily thereafter). Undersigned counsel will provide updated figures at the fairness hearing scheduled for April 3, 2025, and will offer supplemental briefing should any objections be lodged.

The relatively low number of claim forms received is untroubling because, unless the claim was filed on behalf of a deceased class member, submission of a claim form was voluntary. The need for claims was obviated by the fact that the parties had determined class membership and the amount of each class member's potential recovery before the notice packets issued. Of the 120 claim forms received, nine were submitted by persons whom the parties had not identified as class members; these persons are being given an opportunity to establish their membership in the class. Two other claimants, whom the parties showed as members of subclasses 2 & 3, asserted that they were also members of subclass 4. Because these claimants were able to document their payments to Defendants, they have been transferred to subclass 4 and will receive the higher recoveries such status merits.

None of the opt-outs have given any indication that they mean to pursue litigation with Defendants separately. Indeed, the only one to offer any reasoning for her decision said that she found her interactions with Defendants so distressing that she wanted nothing further to do with them, even by way of this settled action.

Most significant of all is the fact that not one of the more than three thousand class members notified of the settlement found any basis for objection. This silence is the highest compliment

the settlement agreement might have received.

B. Legal standards for approval of class-wide settlement

A class action may not be dismissed, compromised, or settled without approval of the Court. FED. R. CIV. P. 23(e). The Rule describes three distinct steps for approval where, as here, a class has already been certified:

1. Preliminary approval of the proposed settlement;

2. Dissemination of notice to all affected class members; and

3. A formal fairness hearing at which class members may be heard regarding the settlement, and at which counsel for the settling parties may introduce evidence and present argument concerning the fairness, adequacy, and reasonableness of the settlement.

This procedure safeguards class members' procedural due process rights and enables the Court to fulfill its role as guardian of class members. *See*, 4 WILLIAM RUBENSTEIN, *ET AL*., NEWBERG AND RUBENSTEIN ON CLASS ACTIONS (hereinafter, "NEWBERG"), §§ 11.22, *et seq.* (6th ed. 2022). The Settlement Agreement having been preliminarily approved and notices disseminated, only the final determination of fairness remains.

Before the 2018 amendments to Rule 23, the Fifth Circuit had articulated six factors bearing on the fairness and reasonableness of a settlement agreement:

> (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of plaintiffs' success on the merits; (5) the range of possible recovery; and (6) the opinions of the class counsel, class representatives, and absent class members.

Reed v. General Motors Corp., 703 F.2d 170, 172 (5th Cir. 1983) (internal citations omitted).

The Advisory Committee Notes accompanying the 2018 amendments to Rule 23(e)(1) suggest some of the types of information that might appropriately be provided to the Court,

including:

- the extent and types of benefits that the settlement will confer on the members of the class;
- the proposed distribution of any unclaimed funds;
- information about the likely range of litigated outcomes, and about the risks that might attend full litigation;
- information about the extent of discovery completed in the litigation;
- information about the existence of other pending or anticipated litigation on behalf of class members involving claims that would be released under the proposal;
- the proposed handling of an award of attorneys' fees under Rule 23(h); and in some cases, relating the amount of an award of attorneys' fees to the expected benefits to the class;
- any other topic that the parties regard as pertinent to the determination whether the proposal is fair, reasonable, and adequate.

FED. R. CIV. P. 23(e)(1) – Note, Advisory Committee (amend. 2018).

There is considerable overlap between the two sets of focus criteria, and the Advisory Committee specifically declared that "[t]he goal of this amendment [to Rule 23(e)(2)]is not to displace any [circuit case-law] factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." *Id.* For these reasons, courts in this circuit often combine the *Reed* factors and the guidance provided by the 2018 Advisory Committee Notes in analyzing class settlements. *See, O'Donnell v. Harris Cnty., Texas*, No. CV-H-16-1414, 2019 WL 6219933 at *9 (S.D.Tex. Nov. 21, 2019), *Hays v. Eaton Grp. Att'ys, LLC*, No. 17-88-JWD-RLB, 2019 WL 427331, at *9 (M.D. La. Feb. 4, 2019); *Al's Pals Pet Care v. Woodforest Nat'l Bank, NA*, No. H-17-3852, 2019 WL 387409, at *3 (S.D. Tex. Jan. 30, 2019).

At the preliminary approval stage, the parties satisfied the Court with their "showing that the court will likely be able to i) approve the proposal under Rule 23(e)(2); and ii) certify the class for purposes of judgment of the proposal," FED. R. CIV. P. 23(e)(1)(B). *See,* NEWBERG, § 13.12. This memorandum addresses the Rule's requirements, the *Reed* criteria, and the Advisory Committee's recommended showings to demonstrate that the parties' proposed settlement, is "fair, reasonable, and adequate" in satisfaction of Rule 23(e). The parties are prepared to submit any additional information the Court may request about these or other topics.

C. Procedural History

On July 16, 2018, Plaintiff Calogero filed a Class Action Complaint (Rec. Doc. 1) against Defendants in the United States District Court for the Eastern District of Louisiana, alleging that Defendants violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692 *et seq.*, in connection with correspondence sent by Defendants to Plaintiffs, recipients of Homeowners Grants extended by the Road Home Program; Plaintiffs alleged that Defendants' correspondence seeking repayment of certain grant funds violated the FDCPA. This Court dismissed the action on July 9, 2019 for failure to state a claim on which relief could be granted, upon concluding that "grant recapture" did not constitute debt collection within the meaning of the FDCPA. (Rec. Docs. 25, 26). On appeal, the U.S. Fifth Circuit held that Plaintiffs' claims *did* arise from collection activity arising from debt, or alleged debt, within the protection of the FDCPA. (Rec. Docs. 34, 34-1, *Calogero v. Shows, Cali & Walsh, LLP*, 970 F.3d 576 (5th Cir. 2020)).

On remand, Plaintiffs commenced extensive discovery of Defendants and of third parties who funded, regulated, and administered the Road Home Program, and who provided the allegedly duplicative payments which led to Defendants' recapture efforts. Plaintiffs twice amended their Complaint. (Rec. Docs. 47, 80). In their Second Amended Complaint filed on June 30, 2021,

Plaintiffs Calogero and Randolph alleged four separate FDCPA violations: 1) misleading descriptions of the alleged debt; 2) threats of litigation on a time-barred alleged debt; 3) improper threats to seek attorneys' fees; and 4) additional attempts to collect the alleged debts after prescription had run. (Rec. Doc. 80). They defined an umbrella class of all recipients of the form letter directed to the Named Plaintiffs within a year before suit was filed, and four subclasses corresponding to each separate FDCPA violation. *Id.* On December 10, 2021, Plaintiffs filed their initial motion for class certification. (Rec. Doc. 127).

After discovery had been concluded, Plaintiffs filed four separate motions for summary judgment, one for each of their claims, (Rec. Docs. 174, 214, 162, 229); Defendants filed a motion for summary judgment seeking dismissal of all of Plaintiffs' claims, (Rec. Doc. 203). Because of the complexity of the legal and factual issues in the case, the summary judgment pleadings ran to the many hundreds of pages.

On July 12, 2022, this Court granted Defendants' motion for summary judgment, denied Plaintiff's initial motion for class certification as moot, and dismissed the action for a second time. (Rec. Doc. 244). Plaintiffs again appealed on a record that ran to 25 volumes in length. The Fifth Circuit again reversed, in full, finding that the Named Plaintiffs had established each of their four FDCPA claims; it remanded for further proceedings consistent with its decision. *See, Calogero v. Shows, Cali & Walsh,* L.L.P., 95 F.4th 951 (5th Cir. 2024) (hereinafter, *Calogero II*).

On remand, Plaintiffs renewed their motion for class certification, (Rec. Doc. 256). Because the Fifth Circuit's analysis of Plaintiffs' first claim required a potentially class-defeating analysis of each demand letter directed to each of the thousands of prospective class members, Plaintiffs sought to restrict class membership to those three subclasses corresponding to the more uniform second, third, and fourth subclasses. On June 10, 2024, this Court granted Plaintiffs'

motion and certified the following umbrella class in the form of three subclasses:

> The umbrella class consists of all Louisiana residents who received a Road Home homeowner's grant for personal, family, or household purposes to whom defendants Shows, Cali & Walsh, LLP, Mary Catherine Cali, and/or John C. Walsh (collectively, "SCW") sent a collection letter in the form of exhibit 4 and/or exhibit 5 of the second amended complaint within the one-year period prior to the filing of this lawsuit, and who also fall into one or more of the following three subclasses:
>
> • Subclass 2 (which relates to Plaintiffs' second claim) consists of those to whom SCW sent a collection letter in the form of exhibit 4 and/or exhibit 5 (which letter did not state that the alleged debt was not legally enforceable or otherwise acknowledge a potential statute-of-limitations problem and that a payment would renew the debt) more than ten years after the grant agreement was signed or the State was notified of his or her alleged duplicate payments.
>
> • Subclass 3 (which relates to Plaintiffs' third claim) consists of those to whom SCW sent a collection letter in the form of exhibit 4 and/or exhibit 5 which stated that "you may also be responsible for ... attorney fees," who did not receive duplicate payments after the grant agreement was signed.
>
> • Subclass 4 (which relates to Plaintiffs' fourth claim) consists of those to whom SCW sent a promissory note in the form of exhibit 6 of the second amended complaint obligating them to repay alleged grant overpayments, without advising that signing the instrument would revive any statute of limitations that had run against legal action on the alleged debt.

(Rec. Doc. 280).

In a subsequent status conference, the parties advised the Court that they wished to pursue settlement discussions. The Court encouraged this avenue of resolution, facilitated the parties' recourse to the Fifth Circuit Mediation Program which had overseen talks during the pendency of the appeal, and placed Rule 23 class action notice requirements on hold pending the outcome of settlement negotiations. (Rec. Doc. 282).

On September 18, 2024, following several mediation conferences and a concluding day-long session, the parties arrived at a settlement in principle. The Court preliminarily approved it on December 3, 2024. (Rec. Doc. 296).

D. The Settlement Agreement

1. Overview

Several factors militated strongly in favor of settlement here. For Defendants, the decision in *Calogero II* resolved against them many of the most hotly-contested issues in the case. The size of the umbrella class, which Defendants' records placed at 3385 persons,[1] posed a substantial risk of a class recovery exceeding the $3,000,000 in coverage provided by their policy of malpractice insurance. The FDCPA permits a successful plaintiff to recover actual damages and additional statutory damages, as well as attorneys' fees and costs. 15 U.S.C. § 1692k. And, because the FDCPA is a fee-shifting statute, Defendants, having already lost on liability, faced the very real possibility of paying Plaintiffs' costs and attorneys' fees, which already totaled more than $1,000,000, as well as their own fees and costs for any additional litigation. For Plaintiffs, uncertainties about membership in the subclasses and the class members' damages for emotional distress posed risks that were best resolved through compromise. For both sides, the size and terms of Defendants' insurance policy provided a substantial impetus for recovery. Not only was the policy potentially inadequate to the Plaintiffs' claims, but it was also an "eroding" policy, reduced by the expenses of defense counsel's representation and therefore ever-diminishing by continued

[1] When Plaintiffs sought class certification, they believed the class consisted of some 2577 people. After the class was certified, analysis of Defendants' records revised the number upwards, to 3385 people. In massaging the class lists for the purposes of mailing notices, SSI discovered that the lists were comprised of 3468. Defendants have since advised that two of those people never received their demand letter and therefore were improperly listed.

litigation. At the time of the mediation, Defendants agreed to fix the remaining balance of the policy at $2.8 million. Disputes over Defendants' net worth and the nature of their assets called into question their ability to pay any substantial amount beyond the policy limits.

The parties agreed to settle for the full (remaining) policy limits of $2.8 million, with approximately $1,850,000 to be distributed among members of the class, and an estimated $40,000 to pay for the costs of class administration, and the remainder of approximately $910,000 allocated in satisfaction of the more than $1.1 million of Plaintiffs' attorneys' fees and costs incurred to date:

Settlement Allocation	**Amount**
Class Award	$1,850,000.00 (approximately)
Costs of Class Settlement Administration	$40,000.00 (estimated)
Residual funds for fee award to Plaintiffs as prevailing party (discounted by Class Counsel's consent)	$910,000.00 (approximately)
Total Amount to be Paid by Defendants	**$2,800,000.00**

The parties resolved the two greatest litigation uncertainties, regarding class composition and damages for emotional distress, as follows. As noted above, the umbrella class, those who received Defendants' demand letter within the operative time-frame, consists of 3466 members. Membership in the umbrella class, however, established only the *possibility* of damage. To prove an FDCPA violation warranting the recovery of damages, an umbrella class member would also have to demonstrate membership in one of the three subclasses. The parties agreed in settlement that *every* member of the umbrella class would also belong to one of the three designated subclasses and would share equally in the damage award; but to account for the fact that litigation might exclude as many as 10% of the umbrella class members from one subclass, they further

agreed to reduce by 10% most of the damage awards. Additionally, the parties compromised the awards for emotional distress as described more fully below, and then reduced those amounts by a further 10% to allow for the uncertainty of class membership.

Having handled those uncertainties, the parties addressed the remaining decisions more easily. They arrived at the following breakdown of class damages, as detailed in Exhibit C to the Settlement Agreement, which is attached hereto as Exhibit A, and listed here:

- $75,000.00 in statutory damages to the class (approximately $22.17 each);
- $2,000.00 in statutory damages to the Named Plaintiffs ($1000.00 each);
- $1,061,835.17 in damages for emotional distress for members of subclasses 2 & 3, who are not members of subclass 4 ($373.94 to Plaintiff Calogero and $1,061,461.23 to the rest of subclass 2/3, which is approximately $336.54 per person);
- $426,469.02 in reimbursement to the members of the fourth subclass from whom Defendants collected money ($1,500.00 to Plaintiff Randolph and $424,969.02 to the rest of subclass 4, according to their respective payments made);
- $264,358.35 in damages for emotional distress for members of subclass 4 ($1,276.47 to Plaintiff Randolph and $263,081.88 to the rest of subclass 4, which is approximately $1,148.82 per person);
- approximately $1,148.82 for each of the 230 members of subclass 4, plus Plaintiff Randolph's additional portion of $127.64);
- $20,000.00 as incentive awards to the Named Plaintiffs ($10,000 each), who also, as the only undisputed members of subclasses, will not face a 10% reduction of their shares of the class awards, as reflected in their portions described above.

The sum of these items, as originally calculated during the settlement negotiations, provided a total class award to named plaintiffs and the class members they represent of $1,849,662.52.

Unfortunately, Defendants' miscalculations have resulted in a larger class than the 3385 originally identified. To avoid any reductions in the recoveries that were announced in the notices given to class members, the parties' counsel have agreed to pay the full sums promised to each claimant. If those amounts are not made available by unclaimed funds from the class settlement,

Defendants propose to cover a portion of the shortfall and class counsel propose to cover a portion from their fees, as discussed below.

In addition to the class award, the Settlement Agreement provides for payment of the class administration costs and a fee award to Plaintiffs as the prevailing party. The estimated cost of class administration is $35,000-40,000, which according to the terms of Defendants' eroding policy, will have to be paid from the settlement funds. The remaining $910,000 or so is to be applied to any shortfall in the class recovery fund, and then to the more than $1,000,000 in fees and costs already accrued by Plaintiffs' counsel, as well as any additional fees and costs owed to them for work in administering the settlement.

Members of the class will also receive the substantial, valuable benefit of assurance that there will be no further actions against them to collect the alleged Road Home debt, and that any liens against their property arising from the subject collection efforts will be removed.

2. Rule 23 and *Reed* factors indicate the settlement is "fair, reasonable, and adequate."

a. Class Representatives and Counsel have adequately represented the Class.

As the Court is aware, this action was filled with legal and factual complexities, many of them unique and presenting issues of first impression. During intensive litigation that has consumed more than six years, class counsel, assisted by the class representatives, overcame two dismissals of the Plaintiffs' claims, prosecuted two appeals, perservered in obtaining essential evidence over objection and by successive motions to compel, successfully fought to have the class certified, over opposition, and negotiated the Settlement Agreement under consideration. The Settlement Agreement acknowledges that Plaintiffs prevailed.

This factor argues forcefully for approval of the settlement agreement. *Cf., O'Donnell, supra.*

b. The Agreement is the product of legitimate, arms-length negotiations.

The record of hard-fought litigation demonstrates that the parties thoroughly explored the facts and researched the applicable law, and pushed the case through a substantial process of judicially-determined resolution before finally embarking upon compromise of a relatively few remaining issues. The final agreement resulted from multiple sessions with highly-trained and impartial mediators.

Simply put, this record establishes that the parties did not engage in *any* collusion. Rather, the record confirms that the interests of the class were adequately – indeed, zealously – represented since suit was initiated several years ago.

A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery. *O'Donnell,* 2019 WL 6219933, at *9 (citing, *inter alia*, *In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico*, 910 F. Supp. 2d 891, 930-31 (E.D. La. 2012, *aff'd sub nom., In re Deepwater Horizon*, 739 F. 3d 790 (5th Cir. 2014)); *Welsh v. Navy Fed. Credit Union*, No. 16-CV-1062-DAE, 2018 WL 7283639, at *12 (W.D. Tex. Aug. 20, 2018); *Erica P. John Fund, Inc. v. Halliburton Co.*, No. 02-CV-1152-M, 2018 WL 1942227, at *4 (N.D. Tex. Apr. 25, 2018) (quoting *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1063 (S.D. Tex. 2012)); *Collins v. Sanderson Farms, Inc.*, 568 F. Supp. 2d 714, 725 (E.D. La. 2008). That presumption properly attaches here.

c. The parties' compromises are fair and reasonable on their face.

i. Settlement was the best possible outcome of this litigation.

"When the prospect of ongoing litigation threatens to impose high costs of time and money on the parties, the reasonableness of approving a mutually-agreeable settlement is strengthened."

O'Donnell, 2019 WL 6219933 at *11, quoting *Heartland*, 851 F. Supp. 2d at 1064 (quoting *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 651 (N.D. Tex. 2010)); *see also, Ayers v. Thompson*, 358 F.3d 356, 373 (5th Cir. 2004) ("[S]ettling . . . avoids the risks and burdens of potentially protracted litigation."). These considerations carried added weight here, because under the terms of Defendants' eroding insurance policy, the costs of ongoing litigation would diminish the funds available to pay Plaintiffs' claims.

The parties have extensively litigated this case—now in its seventh year—in this Court and in the Fifth Circuit, resulting in substantial fees and costs. The motions to dismiss and for summary judgment, as well as the appeals, raised difficult legal and factual questions that required extensive efforts by the parties and the courts. If the case proceeded, additional discovery and motions would be required. Even assuming that liability could be determined by summary judgment, a trial of damages would be lengthy, burdensome, and would consume tremendous time and resources of the parties and the Court. *See*, *O'Donnell, supra*; *Hays*, 2019 WL 427331, at *10.

The length and intensity of the pre-settlement litigation also positioned this Court well to evaluate the third *Reed* factor, "whether 'the parties and the district court possess ample information with which to evaluate the merits of the competing positions.'" *See*, *Klein*, 705 F. Supp. 2d at 653 (quoting *Ayers*, 358 F.3d at 369).

Settlement could not be achieved without compromise. Therefore, compromise was essential, and each of the compromised elements, discussed below, was reasonable.

ii. The agreement on class membership and damage reduction

The parties well understood the factors that would determine subclass membership, which they had already determined for Named Plaintiffs Calogero and Randolph, and whose parameters were refined by the decision in *Calogero II*. Membership in subclass two (the time-bar claim)

would depend on two dates: the date on which Defendants' client, the State, learned of the allegedly duplicative payment and the date on which Defendants mailed their dunning letter. Membership in subclass three (the claim for wrongful threat of attorneys' fees) would depend on two *different* dates: the date on which a class member signed their Road Home agreement and the date on which they received the alleged overpayment from FEMA and/or private insurance. Membership in subclass four required membership in subclass 2 (or time-barred correspondence about a promissory note) or subclass 3 *and* some payment to Defendants of the alleged debt.

Discovery yielded a great deal of information about the general time-frame during which all of the operative events occurred. From this overview, the parties could easily conclude that 90% of the letter recipients would also belong to one of the subclasses. The parties also knew the mechanisms by which subclass membership could be determined with absolute certainty. But while the analysis would largely be driven by simple computer searches, the process of cross-checking four dates for each of the 3385 members of the umbrella class – 13,540 entries that both sides would want to examine – and then presenting the resulting figures to the Court in the form of a motion for summary judgment on three separate claims, and likely engaging in argument over some of the specific dates, seemed like an extremely wasteful undertaking when the anticipated end result would probably be 90% class membership. Counsel agreed that the cost of arriving at precise figures for class membership would greatly exceed the reduction in overall damages achieved by such a small reduction of the subclass size. For this reason, the parties decided to streamline this segment of litigation by the simple expedient of accepting that every member of the umbrella class also belonged to a subclass and reducing everyone's recovery by 10%.[2]

[2] The 10% reduction has not been applied to the recoveries of the Named Plaintiffs, whose class membership is certain. Their exclusion from the reduction has resulted in their recovery of less than $200 more than the other class members, and is not an undue advantage. *See,* Exhibit A, ¶¶

Importantly, this agreement benefits the class as whole because it allows them to share in moneys that would otherwise have been paid for defense fees and costs, thereby further eroding the limited insurance fund available.

Because experienced counsel calculated that the litigation costs would probably outstrip the 10% reduction in the recovery, the benefit to the class as a whole is obvious. The agreement also accelerated the time of the class members' recovery by at least several months that would otherwise be devoted to litigation.

iii. Statutory damages

In a class action such as this, the FDCPA authorizes statutory damages of $1,000 to each of the class representatives and, for the remainder of the class, up to "the lesser of $500,000 or 1 per centum of the net worth" of Defendants. 15 U.S.C. § 1692k(a)(2). The parties agreed that Plaintiffs Calogero and Randolph were each entitled to the $1,000 awards and that the number and severity of Defendants' FDCPA violations warranted application of the full 1% for the rest of the class. *See, Peter v. GC Servs., L.P.*, 310 F.3d 344, 352, n. 5 (5th Cir. 2002) ("the nature of the non-compliance is a factor to be considered by the district court in assessing damages within the statutory range," citing 15 U.S.C. § 1692k(b)(1)).

The parties disagreed, however, about Defendants' net worth, which had already been the subject of two separate motions to compel. In their self-disclosures, Defendants placed their net worth at just over $5 million. But they never produced the CPA-reviewed statements ordered by the Court, and Plaintiffs placed the figures considerably higher. Rather than engaging in further costly litigation, which would probably have required resort to the services of at least one forensic

10, 11.

accountant, the parties settled on a net worth of $7.5 million, which translates to statutory damages of $75,000 for the class, or approximately $22.17 apiece. This amount is not subject to the 10% reduction because the statutory penalty is tied to Defendants' conduct and worth, not to the class members' damages.

Given this backdrop, the compromise reached reasonably weighs the known facts against the costs of exactitude.

iv. Reimbursement of sums collected by Defendants

The most straightforward element of actual damages suffered by Plaintiffs was the amount collected by Defendants from the members of subclass 4. According to Defendants' records, two-hundred-and-thirty (230) subclass 4 members paid in a total of $473,687.81.[3] The parties agreed that these sums should be reimbursed in full, given that they were collected by FDCPA-violative means. As with other elements of actual damages, a 10% reduction was applied to everyone save Ms. Randolph, to arrive at a total reimbursement of $426,469.02. Reimbursements will be paid *pro rata* to the other 229 members of subclass 4, in accordance with their respective payments made.

This portion of the agreement redresses the known monetary damages sustained by Plaintiffs, and is plainly equitable.

[3] These were the figures on which the settlement was based. Defendants undercounted the subclass 4 members, however, and they probably also misreported the amount of payments. Through the claims process, Class Counsel have identified two more members of this subclass from whom Defendants collected an additional $8701. As noted above, the parties have agreed to honor the promised recoveries; if these sums cannot be paid out of unclaimed class funds, counsel and Defendants will make up the shortfall.

v. Damages for emotional distress

The hottest debate in the settlement talks centered on class-wide damages for emotional distress. On the one hand, the parties accepted that they had no direct knowledge of the emotional toll Defendants' conduct had taken on anyone other than the Named Plaintiffs. On the other hand, they could safely assume that Defendants' harsh letter, directed at a vulnerable population and carrying an implicit threat against their homes, would cause some distress to every recipient. The question was how much?

Before engaging in mediation, counsel had conducted wide-ranging surveys of such damages awarded in FDCPA cases, which ranged from a few dollars to $100,000, with the mean falling in the $5,000-$15,000 range. But the survey necessarily covered only reported decisions in which damages had been established by evidence, not presumption. Neither party had any definitive calculus for arriving at a median award in a class-wide settlement. In the end, as settlements often go, it came down to what Defendants were willing to pay and Plaintiffs were willing to accept, based on their appreciation of the facts they had gleaned from six years of study.

For subclasses 2 & 3,[4] they agreed upon an award of $1,208,061.11, subject to a 10% reduction for all save Ms. Calogero, for a total award of $1,087,293.20 (about $345 per person). The parties agreed, however, that one known factor distinguished subclass 4 from the rest: the 230 (or more) members of subclass 4, who had made payments to Defendants in response to the latter's collection activities, could fairly be presumed to have been more seriously affected than those who

[4] There is no practical distinction between subclasses 2 and 3. One group suffered the violation of an improper threat of time-barred litigation; the other suffered an improper threat of Defendants' pursuing attorneys' fees. There is likely considerable overlap between the two subclasses, and neither FDCPA violation can be said to have triggered a more significant emotional response. In all events, the emotional distress was inflicted by the dunning letter itself, and the FDCPA authorizes damages per communication from a debt collector rather than the number of violations committed within a communication.

did not pay; the presumption derived both from the distress that moved them to pay money they did not owe and the deprivation occasioned by the payments. *Cf., Berger v. Iron Workers Reinforced Rodmen, Local 201*, 170 F.3d 1111, 1138 (D.C. Cir. 1999) ("in appropriate circumstances the infliction of emotional distress may be inferred from the circumstances of the violation"); *accord*, *Augustin v. Jablonsky*, 819 F. Supp. 2d 153, 160-161 (E.D.N.Y. 2011) (awarding $500 to each inmate improperly subjected to strip searches). Here, the parties agreed that the 230 members of subclass four would receive the sum of $264,358.33 (approximately $1150 apiece) for their presumably greater suffering.

The two-tiered approach to damages for emotional distress took into account all of the information known to the parties about a class from whom no individual discovery had been obtained. It provides a neutral and fair way to distinguish among classes who sustained differing types of injury. As with the other elements of damages, the parties were driven to compromise by an understanding that the costs of determining individualized damages would consume much of the available insurance fund, leaving less for the class to actually collect.

In ascertaining whether such relief is adequate, courts often look to the relief the class could expect to recover at trial. *See*, NEWBERG, § 13:15. The probability of the plaintiffs' success on the merits is the most important *Reed* factor, "absent fraud and collusion." *Santinac v. Worldwide Labor Support of Ill., Inc*., No. 15-CV-25, 2017 WL 1098828, at *3 (S.D. Miss. Mar. 23, 2017) (citing *Parker v. Anderson*, 667 F.2d 1204, 1209 (5th Cir. 1982)). This factor relates to the "risks . . . of trial and appeal," a consideration under Rule 23(e)(2)(C)(i). "In evaluating the likelihood of success, the Court must compare the terms of the settlement with the rewards the class would have been likely to receive following a successful trial." *DeHoyos v. Allstate Corp*., 240 F.R.D. 269, 287 (W.D. Tex. 2007) (citing *Reed*, 703 F.2d at 172). This factor favors approving a settlement

even when the likelihood of success on the merits is not certain. *See, In re Corrugated Container Antitrust Litig.*, 659 F.2d 1322, 1326-27 (5th Cir. 1981) ("A district court need not establish the plaintiffs' likelihood of prevailing to a certainty."). Indeed, the court "must not try the case in the settlement hearings because the very purpose of the compromise is to avoid the delay and expense of such a trial." *Reed*, 703 F.2d at 172.

In this case, the Fifth Circuit's ruling in *Calogero II* that Defendants had committed multiple FDCPA violations created a strong likelihood that most Plaintiffs would prevail on the merits. However, Class Counsel had no knowledge *which* class members would succeed. Even more uncertainty attached to their potential recoveries for mental anguish. Defendants repeatedly threatened that they would move to decertify the class for purposes of nonpecuniary damage assessments.

As noted above, both sides surveyed emotional distress awards in FDCPA actions, and found a wide range. *See, e.g.*, *Campbell v. Bradley Fin. Grp.*, No. 13-604, 2014 WL 3350054 (S.D. Ala. July 9, 2014) (awarding $15,000 in emotional distress damages to a woman who received multiple threatening calls about a debt she did not owe, and because of her fear of being sued, paid the alleged debt anyway); *Almodovar v. P&V Collection Servs., Inc.* (*In re Rivera Almodovar*), No. 09-07002, 2011 WL 1238821 (Bankr. D.P.R. Mar. 24, 2011) (awarding $1,000 in emotional distress damages to a man who testified that he and his family incurred emotional distress as a result of the collection letter, but incurred no permanent damages, out-of-pocket expenses, or lost time from work).

Against the possibility of higher recoveries at trial, Plaintiffs had to consider how the costs of litigation would erode the funds available to pay them. Settlement provides the class with a timely, certain, and meaningful cash award, whereas a trial would significantly delay recovery,

offer an uncertain outcome, and divert substantial funds from class recovery. On balance, the agreed damages serve the best interests of the class.

vi. Incentive awards to the class representatives

In agreeing that Named Plaintiffs Calogero and Randolph would each receive an incentive award of $10,000, the parties took several considerations into account: the length and difficulty of the litigation, the tremendous volume of written pleadings, which both Named Plaintiffs reviewed, and the pressure on them to serve the interests on the class (both Plaintiffs twice refused to settle the case on terms that would have paid their damages in full *and* a $10,000 incentive award, but only *after* having the district court dismiss their claims)..

The purpose of payments to class representatives is to compensate them for the services they provided and the risks they incurred during the course of class action litigation, and to reward their public service in cases such as this FDCPA action that enforces laws protecting the public interest. *See*, *Scott v. Dart*, 99 F.4th 1076, 1082-83 (7th Cir. 2024) (recognizing that incentive awards are designed to compensate named plaintiffs for bearing costs above and beyond that of ordinary class members, such as, *inter alia*, reviewing and approving any proposed settlement agreements), *cert. denied*, No. 24-464, 2025 WL 581591 (U.S. Feb. 25, 2025); *Sullivan v. DB Invs. Inc.*, 667 F.3d 273, 333, n. 65 (3d Cir. 2011) (*en banc*) (affirming antitrust class settlement of $295 million and $85,000 service awards to each of two class representatives), *cert. denied*, 566 U.S. 923, 132 S. Ct. 1876 (2012); *Lee v. Metrocare Servs*., No. 3:13-CV-2349-O, 2015 WL 13729679, at *4 (N.D. Tex. July 1, 2015) (citing *Heartland, supra*, and collecting cases with range of incentive awards approved in discretion of the district court); *Purdie v. Ace Cash Express, Inc*., No. CIV.A. 301CV1754L, 2003 WL 22976611, at *7 (N.D. Tex. Dec. 11, 2003) (approving $16,665 incentive award to named plaintiffs for actively participating in the lawsuit); *Camp v.*

Progressive Corp., No. CIV.A. 01-2680, 2004 WL 2149079, at *7 (E.D. La. Sept. 23, 2004) (awarding up to $10,000 incentive payments to class representatives).

In light of the Named Plaintiffs' enduring commitment and substantial contributions to this case, and to the recovery their perseverance helped achieve, the agreed awards, which are within the range approved within this circuit, are appropriate and reasonable.

vii. Attorneys' fees and costs

The FDCPA provides that "in the case of any successful action to enforce the foregoing liability, [the defendant is liable for] the costs of the action, together with a reasonable attorney's fee as determined by the court." 15 U.S.C. § 1692k(a)(3). In this case, the parties have agreed that Plaintiffs prevailed and that Defendants are obligated to pay Plaintiffs' previously-incurred costs of $37,880.30, plus the yet-uncertain costs of class administration (estimated to be in the range of $35,000-40,000), and fees in the amount of whatever is left of the $950,000 allocated in settlement to fees and costs. The attorneys' fees, costs, and administration expenses will amount to approximately one-third of the overall recovery. Like all other provisions in the settlement, this agreement requires Court approval. "'[T]o fully discharge its duty to review and approve class action settlement agreements, a district court must assess the reasonableness of the attorneys' fees.'" *Dyson v. Stuart Petroleum Testers, Inc*., No. 1:15cv282-RP, 2016 WL 815355, at *4 (W.D. Tex. Feb. 29, 2016) (quoting *Strong v. BellSouth Telecomm., Inc*., 137 F.3d 844, 849 (5th Cir. 1998)).

The parties agree that this settlement agreement includes the resolution and payment in full (albeit incompletely) of all of Plaintiffs' claims for reasonable attorneys' fees and costs out of the

settlement fund. In common fund cases,[5] courts in this circuit are authorized to utilize two methods in assessing the fairness of such an award: 1) the fees' percentage of recovery, and 2) the lodestar approach. And, with respect to calculation of attorneys' fees, courts in this circuit are permitted to use either the percentage method or the lodestar method. *See, Union Asset Mgmt. v. Dell, Inc*., 669 F.3d 632, 644 (5th Cir. 2012).

Here, the proposed attorneys' fees and costs, including settlement administration costs, are almost 34% of the total recovery; the fee component comprises approximately 31% of the total recovery. This falls well within the range found acceptable in the Eastern District and the Fifth Circuit. *See, Banks v. First Student Inc.*, No. CV 16-4316, 2019 WL 13167171, at *2 (E.D. La. Mar. 21, 2019) (compiling cases). Also, the attorneys' fee percentage is likely to decrease, given that Class Counsel have pledged a portion of their fees to insure that SSI is fully paid and that each claimant receives the award determined in the Settlement Agreement.

Courts in this Circuit alternatively apply a two-step process known as the "lodestar" method. *Fessler v. Porcelana Corona De Mexico., S.A. DE C.V.*, 23 F.4th 408, 415 (5th Cir. 2022). The starting point in the lodestar method calls for multiplying hours reasonably expended by a reasonable hourly rate. *Id.*, *see also*, *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S. Ct. 1933, 1939, 76 L.Ed.2d 40 (1983). First, the Court multiplies the number of hours reasonably spent on the case by an appropriate hourly rate in the community for similar work. *Id*. Second, the reviewing court may decrease or enhance the amount based on the relative weights of twelve so-called "Johnson factors." *Id*. at 415-16 (citing *Johnson v. Georgia Highway Exp., Inc*., 488 F.2d 714 (5th Cir. 1974)). The party seeking to recover its attorneys' fees bears the burden of establishing that

[5] Practically speaking, this is a common fund case under the terms of Defendants' eroding insurance policy, which provides only one fund to satisfy claims, fees, and costs.

the requested fees are reasonable. *McClain v. Lufkin Indus., Inc.*, 649 F.3d 374, 381 (5th Cir. 2011). "But once calculated, the party seeking modification of the lodestar under the Johnson factors bears the burden." *Fessler*, 23 F.4th at 416. In this case, the parties have carried their initial burdens by consent.

Attached as Exhibit 2 *en globo* to the Joint Motion for Preliminary Approval were Declarations by Class Counsel Margaret Woodward, Jennifer Deasy, and Keren Gesund that include a breakdown of their respective number of hours expended, hourly rates, and final totals for fees and costs. In sum, Plaintiff Counsel's Fees and Costs, at the time of preliminary approval, were:

Attorney	Hourly Rate	Hours Billed	Fee	Expenses
SPLC	Waived	Waived	Waived	$34,529.00
M. Woodward	$400	1,182	$472,800.00	$3,351.30
J. Deasy	$350	1,322	$462,700.00	--
K. Gesund	$300	490	$147,000.00	--
R. Bragg	Flat fee	n/a	$10,000.00	--
Sub-totals, to date		2,994	$1,092,500.00	$37,880.30
Grand Total:			**$1,130,380.30**	

These figures are no longer up-to-date. For example, during the period of class administration, Woodward logged an additional 70 hours, including the preparation of the instant motion. But there was no reason for counsel to submit their updated hours because there are no additional funds to pay them.

Woodward and Deasy expended the most time, as they had primary responsibility for the prosecution of this class action in the district court and on both appeals. Woodward and Deasy exercised billing judgment in recording their time, *see, Hensley*, 461 U.S. at 437 (requiring the exercise of "billing judgment," to excise extraneous hours); and they will be subject to further

reductions because of the limited portion of settlement funds available for fees. None of Plaintiffs' counsel will receive full compensation for their total amount of time expended. SPLC, which dedicated a rotating team of counsel to the case, will be reimbursed for the costs it expended ($34,529), but will waive its fees for work expended. SPLC's hours expended are not included in the calculation of the fees, to account for duplication of multiple lawyers on this complex case and to demonstrate that the Plaintiffs have exercised billing judgment. Gesund, the only attorney who represented Plaintiffs from start to finish, has submitted her time in full but will be subject to *pro rata* reductions. Bragg, who acted as an FDCPA consultant throughout the proceedings, charged a flat rate of $10,000 and will be compensated in full.

The total of 2,994 hours devoted to the case is consistent with its size, novelty, and complexity, and is reflected in the excellent results achieved. Some overlap of hours was essential in this representation because the size and difficulty of the case required a team, but the reductions by Woodward and Deasy, and the waiver of fees from SPLC accounts for any duplication or redundancies for multiple lawyers reviewing court filings and attending conferences, hearings, and meetings. *See, Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1302 (11th Cir. 1988), citing *Johnson v. Univ. Coll. of Univ. of Alabama in Birmingham*, 706 F.2d 1205, 1208 (11th Cir.1983), *cert. denied*, 464 U.S. 994, 104 S. Ct. 489, 78 L.Ed.2d 684 (1983) ("There is nothing inherently unreasonable about a client having multiple attorneys, and they may all be compensated if they are not unreasonably doing the same work and are being compensated for the distinct contribution of each lawyer."). Because Plaintiffs prevailed on all of their claims, no downward adjustments are warranted for unsuccessful results. *See, Hensley*, 461 U.S. at 436-37. To the contrary, because the results obtained in this ground-breaking action were exceptional, some enhancement of the lodestar would be called for, if the funds were available to pay such

enhanced fees. *See, Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 564, 106 S. Ct. 3088, 3098 97 L. Ed. 2d 585 (1986).

A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation. *Blum v. Stenson*, 465 U.S. 886, 895-96 n. 11, 104 S. Ct. 1541, 1547, 79 L. Ed.2d 891 (1984); *McClain*, 649 F.3d. at 381. Counsel's backgrounds and qualifications were presented to the Court in connection with their request to serve as class counsel in the Motion for Class Certification. (Rec. Doc. 127). Parties typically establish the reasonable rate by providing affidavits of other attorneys practicing in the community in which the district court sits. *See, Tollett v. City of Kemah*, 285 F.3d 357, 368 (5th Cir. 2002); but in view of Defendants' consent to the rates of Plaintiffs' counsel, the parties considered such a showing unnecessary. *Cf., Smith & Fuller, P.A. v. Cooper Tire & Rubber Co.*, 685 F.3d 486, 491 (5th Cir. 2012) (holding that the submissions of counsel "may alone be sufficient proof" to establish the reasonable hourly rate); *see also, Menard v. Targa Res., LLC*, No. CV 19-50, 2023 WL 5628593, at *3 (M.D. La. Aug. 31, 2023), citing *Mesa Petroleum Co. v. Coniglio*, 629 F.2d 1022, 1030 (5th Cir. 1980).

This Court is itself an expert on the question of applicable rates in the community; it may consider its own knowledge and experience concerning reasonable and proper fees and may form an independent judgment as to value of counsel's time. *See, e.g., Mesa Petroleum Co., supra*; *Primrose Operating Co. v. Nat'l Am. Ins. Co.*, 382 F.3d 546, 562 (5th Cir. 2004); *Campbell v. Green*, 112 F.2d 143, 144 (5th Cir.1940); *Menard, supra.* Woodward's hourly rate was previously fixed by Judge Fallon, who appointed her as Objectors' counsel in the *Vioxx* MDL litigation, at $400/hr. (Rec. Doc. 195-1); then-Magistrate Douglas seconded that rate in an award of sanctions in this action (Rec. Doc. 240). Deasy's standard rate for this type of litigation is between $350/hr

and $400/hr; she seeks the lower amount of $350/hr here. Gesund's hourly rate was previously fixed by Judge Vitter, in another FDCPA action, at $300/hr. *See*, *Bardales v. Fontana & Fontana, LLC*, No. 19-340, 2021 WL 3741510 (E.D. La. Aug. 24, 2021).

The lodestar amount may be adjusted up or down according to the twelve factors delineated by the Fifth Circuit in *Johnson*, 488 F. 2d at 717-19. Here, none of the *Johnson* factors warrant a downward adjustment in fees, while almost every listed factor suggests that a multiplier could properly be applied:

(1) the time and labor required for the litigation – the number of hours entered in this case reflects the challenge of tackling an enormous program, the bureaucracy that administered it, the daunting panoply of laws and regulations applicable on the state and federal level, and the near-impenetrable records of a host of third-party agencies, from HUD and FEMA to insurers and defunct IT personnel from whom Plaintiffs had to extract material evidence;

(2) the novelty and difficulty of the questions presented – the Road Home was itself a novel program, subject to novel regulations crafted in many instances solely for its administration; counsel had to familiarize themselves with the regulatory backdrop of the program in order to demonstrate how Defendants' conduct ran afoul of the FDCPA; during the course of the litigation, they created new law, not least of which was the holding by the Fifth Circuit that Defendants' conduct fell within the compass of the FDCPA;

(3) the skill required to perform the legal services properly – skill was needed to litigate a class action of this complexity, including two successful federal court appeals;

(4) the preclusion of other employment by the attorney due to acceptance of the case – with the exception of SPLC who waived their fees, all class counsel are sole practitioners who could not meet the demands of the instant case without refusing other fee-generating work;

(5) the uncertainty of fee recovery– counsel had no assurance of being paid at all in a novel action that lasted many years and was twice dismissed by the District Court;

(6) time limitations imposed by the client or the circumstances – Woodward and Deasy frequently logged long hours to meet the scheduling demands; because of the advanced age and frailty of the Named Plaintiffs, they could not afford the luxury of delay and requested extensions of time only when defense delays demanded it;

(7) the amount involved and the result obtained – the settlement secured all of the available funds: the $2.8 million dollar limits of Defendants' insurance policy;

(8) the experience, reputation and ability of the attorneys – counsel's showings in support of their request to represent the class demonstrate their long and distinguished careers;

(9) the "undesirability" of the case – Defendants directed their dunning letters to the 3385 people within the one-year FDCPA statute of limitations applicable to this case, and to many thousands more who fell outside of that range; the fact that Plaintiffs' counsel filed the only suit speaks volumes to the undesirability of a case that promised to be long and hard, and held only slim prospects of fee-generating success;

(10) the nature and length of the professional relationship with the client – six years and counting; and

(11) awards in similar cases – As detailed above, the attorneys' fees requested are well within the range of awards in similar cases.

The *Johnson* factors support the fairness and reasonableness of the agreed-upon fees, as does the relatively low percentage of fees and costs against the overall recovery.

Presented for the Court's approval is the following proposed distribution of the fee-shifting terms negotiated pursuant to the FDCPA, as consented to by Defendants:

Proposed Fees and Costs Award to Plaintiffs as Prevailing Party	**Defendants' Payment Installments**	**Allocation by Class Counsel**
Defendants' initial installment to be paid to Class Counsel on Effective Date of Agreement	$850,000.00	
To be paid to Class Settlement Administrator (estimated)		($40,000.00)
To be paid to Plaintiffs' Counsel for reimbursement of costs		(37,880.30)
To be paid to Plaintiff Counsel R. Bragg for consultancy fee		($10,000.00)
Remainder of Defendants' initial installment to be paid toward Plaintiffs' attorneys' fees pursuant to a *pro rata* agreement among M. Woodward, J. Deasy, and K. Gesund		($762,119.70)
Defendants' final installment to be paid to Class Counsel after the Settlement Administrator has been paid in full (approximately)	$100,000.00	
Remainder of Defendants' final installment to be paid toward Plaintiffs' attorneys' fees according to *pro rata* agreement		($100,000.00)
Remainder of Plaintiffs' Counsel's pre-settlement fees (approximately, depending on the actual cost to be paid to the Class Settlement Administrator)		~~$230,380.30~~ Waived
Total fee-shifting award by consent	**$950,000.00**	($950.000.00)

See, Exhibit A, Settlement Agreement, ¶¶18. As discussed in Section 3(c) below, the parties are proposing a modification of the payment schedule, and a possible further reduction of Class Counsel's fees.

3. Other settlement provisions

a. Dismissals of claims

The dismissals of potential claims against Defendants are commonplace, and generally unobjectionable provided they are not overly broad. NEWBERG, *supra.* In this case, the parties specifically tied the release of Plaintiffs' claims to "any claims arising out of or relating to the same nucleus of operative facts as alleged in the Second Amended Class Action Complaint." *See*, Exhibit A, ¶ 20(B).

Correspondingly, Defendants have promised to release all claims against the class members. This commitment was made before the parties entered into settlement negotiations, but Defendants have finalized it here, and have further committed to "dismiss with prejudice all pending lawsuits Defendants filed against any and all class members to recover Road Home homeowners' grants and cancel all notes signed by class members and/or judgments taken or liens recorded against their properties." Exhibit A, ¶ 20(A). Plaintiffs count the avoidance and cancellation of liens against their homes as the greatest achievement of this litigation.

b. Confidentiality agreement

Defendants argued for a confidentiality agreement, but the need to provide full and adequate notice to the members of the class made a traditional confidentiality clause unworkable. On further discussion, it became apparent that Defendants were concerned about the reputational harm they might suffer from subjective derogatory remarks publicized alongside the settlement terms. Accordingly, the parties agreed to confine their remarks on conduct and performance to those appearing in the courts' decisions, as follows:

> It is further understood that the terms and conditions of this settlement and release will be publicized in order to provide full and adequate notice to the members of the class. However, the parties agree that they will not further comment upon the conduct and performance of any party except by reference to the decisions of the District Court and the Fifth Circuit Court of Appeal.
>
> The parties agree that, other than the above noted allowed disclosures, they will not, directly or indirectly, in any capacity or manner, make, express, transmit, speak, write, verbalize, post on any social media platform (or cause to be posted) or otherwise communicate in any way (or cause, further, assist, solicit, encourage, support or participate in any of the following), any remark, comment, message, information, declaration, or statement of any kind, whether verbal, in writing, electronically transferred or otherwise, that might reasonably be construed to be derogatory or critical of, or disparaging toward any other party in connection with the relationship and services between the plaintiffs and RELEASED PARTIES.

> Additionally, Plaintiffs' counsel agrees not to hold any press conferences, post on social media platforms, or make media statements other than those necessary to fulfill notice requirements to the class; however, the foregoing shall not limit Plaintiffs' counsel's ability to report to counsel's Board of Directors, donors, potential donors, management, tax/legal advisors, auditors or other business-related stakeholders. Plaintiffs' counsels disclosures to the aforementioned stakeholders shall include reference to this confidentiality and non-disparagement agreement.
>
> Total cumulative damages payable by a single plaintiff for any violations of this non-disparagement agreement shall be capped per individual at the individual plaintiff's share of statutory and emotional distress damages. No plaintiff shall be liable for any other party' s breach of this section, including counsel. Neither shall any plaintiff be expected to return their refund of alleged debt payments under this agreement.

The above language, which applies to all parties, is mutually beneficial to Defendants and the members of the class.

c. Proposed distribution of unclaimed funds

The Settlement Agreement, ¶11, provides that: "Any funds which remain unclaimed ninety (90) days after the settlement payments are disbursed to the Class Members will be paid as a *cy pres* award to Southeast Louisiana Legal Services' (SLLS's) fund for consumer representation and education. At the time this language was agreed upon, the parties believed that they knew the identities and recovery amounts of each class member. During class administration, however, subclass membership and the amounts owed have been called into question, including an enlarged overall class, see n. 1, and two members of the class claiming also to be members of subclass 4, entitled to increased awards for emotional distress and more than $8,000 in reimbursement. Defendants have not yet completed their investigation of these members' claims, nor certified whether they missed other payments that might shift additional class members into subclass 4. The parties are discussing whether Defendants will bear some portion of the cost of their mistakes. The parties now wish to amend the settlement agreement to provide that unclaimed funds will go first to satisfy the claims of newly-discovered class members, with the remainder to

be awarded to Southeast Louisiana Legal Services.

In class actions, federal courts apply the equitable doctrine of *cy pres* to put undistributed or unclaimed settlement funds to their next best compensatory use, "*e.g.*, for the aggregate, indirect, prospective benefit of the class." *Klier v. Elf Atochem N. Am., Inc*., 658 F.3d 468, 474 (5th Cir. 2011) (quoting *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 436 (2d Cir. 2007), in turn quoting *NEWBERG*, §10.17 (4th ed. 2002)). A court may, after thorough investigation and analysis to identify recipients whose interests reasonably approximate those of the class, approve a *cy pres* award to a recipient with more tangential connections. *See id*.; *see also*, *Diamond Chem. Co., Inc. v. Akzo Nobel Chems. B.V.*, Nos. 01-2118 (CKK), 02-1018 (CKK), 2007 WL 2007447, at *2 (D.D.C. July 10, 2007) ("[T]he doctrine of cy pres and the courts' broad equitable powers now permit the use of funds for other public interest purposes by educational, charitable, and other public service organizations." (internal quotation marks omitted)).

The Fifth Circuit requires that two conditions be met before finding that a *cy pres* distribution is appropriate. First, it must be infeasible to make further settlement distributions to class members. *Klier*, 658 F.3d at 475 (citing AM. LAW INST., PRINCIPLES OF THE LAW OF AGGREGATION LITIGATION § 3.07 (2010); WILLIAM B. RUBENSTEIN, *ET AL*., NEWBERG ON CLASS ACTIONS § 10.17 (4th ed. 2002)). It is infeasible to make further distributions when (1) remaining class members cannot be identified or chose not to participate, (2) the claim amounts are too small to make individual distributions economically viable, and/or (3) the class members' damages claims are fully satisfied by the initial distribution. *Id*.; AM. LAW INST., *supra* § 3.07. Given the number of class members and the fact that reimbursement claims will be satisfied from the initial distribution, the parties believe it will be economically infeasible to make further distributions.

Second, the unclaimed funds must "be distributed for a purpose as near as possible to the

legitimate objectives underlying the lawsuit, the interests of class members, and the interests of those similarly situated." *Klier*, 658 F.3d at 474 (quoting *In re Airline Ticket Comm'n*, 307 F.3d 679, 682 (8th Cir. 2002)); *see also, In re Pool Prods. Distrib. Mkt. Antitrust Litig.*, No. MDL 2328, 2015 WL 4528880, at *8 (E.D. La. July 27, 2015); *In re Lease Oil Antitrust Litig. (No. II)*, MDL No. 1206, 2007 WL 4377835, at *21 (S.D. Tex. Dec. 12, 2007) ("In applying cy pres principles, it is appropriate for a court to consider (1) the objectives of the underlying statute(s), (2) the nature of the underlying suit, (3) the interests of the class members, and (4) the geographic scope of the case." (internal citations omitted)). Stated differently, there must be a nexus between the harm that the plaintiffs suffered and the benefit the cy pres distribution is expected to provide. *See*, NEWBERG, *supra* § 12.33.

Clearly, distribution of unclaimed funds to previously-unknown class members satisfies every requirement. However, the payment schedule provided by the Settlement Agreement will have to be modified to insure that all claims are paid simultaneously. That is so because the initial payment to SSI was intended to cover the known costs and claims, and the amount of unclaimed funds will not be determined until ninety days after the payments are distributed. To prevent the newly-discovered claimants from waiting until after funds are designated as unclaimed, Defendants will have to make a larger payment to SSI on the Effective Date[6] than originally anticipated. The only available source of additional funds is the reserve withheld for a final payment of Class Counsel's fees.

[6] Paragraph 8 of the Settlement Agreement provides:

> This Settlement Agreement shall become effective ("Effective Date") upon the occurrence of the following: Thirty-One (31) days after the Court's order granting final approval of the class settlement, or if an appeal has been sought, the expiration of five (5) days after the final disposition of any such appeal which disposition approves the Court's order granting final approval of the class settlement.

The Settlement Agreement contemplated that Defendants would make a $1,850,000 payment toward the class members' claims on or before the Effective Date. Paragraph 18 of the Settlement Agreement withheld the final $100,000 of Class Counsel's fee payment because the parties anticipated that some portion of it might have to be applied to the payment of SSI's charges:

> The amount of $850,000.00 of said payment will be made via Class Counsel upon the Effective Date, and the balance [of $100,000] paid after the settlement administrator has been paid in full.

Exhibit A, ¶18.

To permit simultaneous payment of all claims, the parties propose that $20,000 be diverted from the attorneys' fee fund to the payment of class members' awards. If $20,000 in unclaimed funds remains after a period of ninety days, that amount should be returned by SSI to class counsel for payment of their fees, as originally intended. To be clear, the parties are not suggesting that any *cy pres* funds be applied to the payment of attorneys' fees, only that the unused portion of the fund diverted from Class Counsel's fees be returned to them.

For funds remaining after all class members have received their awards and Class Counsel have been compensated, the parties reiterate their nomination of Southeast Louisiana Legal Services to receive the *cy pres* reserve. The provision for SLLS ensures that unclaimed funds will continue to serve the goals established by the FDCPA within the area where the claimants' losses occurred. The receiving organization has had no involvement in this litigation, and the Court can take judicial notice of its excellent reputation for public service in this community. Therefore, the parties seek to apply *cy pres* funds first to the needs of the newly-discovered class members and then to an appropriate SLLS fund.

The Settlement Agreement, as modified, satisfies all Rule 23 requirements for fairness, reasonableness, and adequacy.

CONCLUSION

Because there is a strong public interest in settling class actions, there exists a strong presumption in favor of finding the parties' settlement to be fair, reasonable, and adequate. *Hays*, *supra*, 2019 WL 427331, at *8, citing *In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico*, 910 F. Supp. 2d 891, 930-31 (E.D. La. 2012), in turn citing *Kincade v. Gen. Tire & Rubber Co.*, 635 F.2d 501, 507 (5th Cir. Jan. 1981), in turn citing *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977); and further citing *Collins*, *supra*, 568 F. Supp. at 720. Based on their joint briefing herein and their forthcoming appearance at the fairness hearing to be held on April 3, 2025, the parties pray that this Settlement Agreement be granted final approval pursuant to Federal Rule of Civil Procedure 23(e).

WHEREFORE, pursuant to FED. R. CIV. P. 23(e), Plaintiffs and Defendants respectfully request that the Court enter an order: 1) finding that the notice provided to class members complied with the requirements of law; 2) finding the Settlement Agreement, as amended, to be fair, reasonable, and adequate, and granting it final approval; 3) authorizing the use of *cy pres* funds first to satisfy the claims of known class members and then as an award to Southeast Louisiana Legal Services' fund for consumer representation and education; 4) awarding attorneys' fees, costs, and incentive awards as approved by the Settlement Agreement; and 5) ordering Defendants to adhere to the schedule of payments set forth in the settlement agreement, except that the initial payment to SSI shall be $1,870,000, with any unused portion of the added $20,000 returned to Class Counsel; 6) ordering implementation of the Settlement Agreement in accordance with its terms as modified by order; and 7) retaining jurisdiction for purposes of insuring compliance with the order.

DATED: March 3, 2025

Respectfully Submitted,

Plaintiffs Iris Calogero and Margie Nell Randolph, and Members of the Certified Class, through Class Counsel:

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and [additional counsel on following page]

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CERTIFICATE OF SERVICE

I hereby certify that on this **3rd** day of **March, 2025**, a copy of the above and foregoing was filed electronically with the Clerk of Court and all counsel of record using the CM/ECF system, and will be posted to the class website, https://www.splcenter.org/settlement-louisiana-road-home-program/.

s/ Margaret E. Woodward

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IRIS CALOGERO, *et al.*	CIVIL ACTION
VERSUS	NO. 18-6709
SHOWS, CALI & WALSH, LLP, *et al.*	SECTION M (3)

DECLARATION OF AISHA LANGE

I, AISHA LANGE, declare as follows:

1. I am Assistant Director of Operations at Settlement Services, Inc. ("SSI"). The following statements are based on my personal knowledge and information provided by other SSI employees working under my supervision, and, if called on to do so, I could and would testify competently thereto.

2. SSI is serving in this matter as the Settlement Administrator in the Action for the purposes of administering the Class Action Settlement Agreement preliminarily approved in the Court's Order dated December 3, 2024. I submit this Declaration in order to provide the Court and the Parties to this Action with information regarding the dissemination of the Class Action Settlement Notice ("Notice"), processed in accordance with the Court's Order.

3. **Class Data**. On January 8, 2025, Defense Counsel provided SSI with two (2) spreadsheets, the ("Class List") and ("Class List (Sub Class 4)". The spreadsheet, "Class List" included Attorney name/ Date of Letter, File number, Client claim Number, Applicant First Name, Applicant Last Name, Debtor Address one, Debtor City, Debtor State, Debtor Zip, Co-debtor First Name, Co-debtor Last Name, Co-debtor Address one, Co-debtor City, Co-debtor State, Co-debtor Zip, Demand amount, Recovery Reason 1, Recovery Reason 2, Recovery Reason 3 for three thousand four hundred fifty-six (3,456) records. The spreadsheet "Class List (Sub Class 4)" included Applicant Name, Applicant ID, Demand Letter Mailed, Sgnd/Notrzd Promsry Not Rcvd, Principal Amount, Amount Collected, Balance Due for one hundred fifty-five (155) records. SSI reviewed both spreadsheets and identified three thousand four hundred sixty-eight (3,468) unique

Class Members.

4. **NCOA**. In order to obtain the most current mailing address for Class Members, SSI processed the Class Lists addresses through the National Change of Address ("NCOA") database maintained by the United States Postal Service ("USPS"). This process updates addresses for individuals who have moved within the last four years and who filed a change of address card with the USPS.

5. **Phone Support.** On or about January 17, 2025 (the "Notice Date"), SSI established a toll-free number, (888) 293-2380, that Class Members could call to provide updated addresses, ask questions about the settlement, and request remailing of the Notice.

6. **Notice Packet Mailing**. On January 17, 2025 (the "Notice Date"), SSI mailed the Notice Packet by first-class mail, postage prepaid, from Tallahassee, Florida, to three thousand four hundred sixty-eight (3,468) Class Members.

7. **Undeliverable Mail**. As of this date, a total of two (2) Notice Packets have been returned to SSI by the USPS as undeliverable without forwarding address information. SSI conducted a locator trace for the individuals with a returned Notice prior to the postmark deadline, and possible new addresses were obtained for two (2) of them. SSI re-mailed a Notice to these 2 possible new addresses.

8. **Remail by Request.** There have been no (0) Notice Packets remailed at the request of either Class Counsel or the Class Member.

9. **Remail to PO Forward.** There have been no (0) Notice Packets remailed to PO forward addresses provided by the US Postal Service.

10. **Claim Forms.** The deadline for Class Members to file a Claim Form is a postmark deadline March 3, 2025. As of this date of the declaration, SSI has received one hundred twenty-four (124) timely Claim Forms. SSI has also received nine (9) non-Class Member Claim Forms.

11. **Requests for Exclusion.** The postmark deadline for Class Members to exclude themselves from the settlement is March 3, 2025. As of the date of this declaration, SSI has received three (3) timely requests for exclusion.

12. **Objections**. The postmark deadline for Class Members to object to the Settlement is March 3, 2025. As of the date of this declaration, SSI has received no (0) objections, timely or otherwise.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 3rd day of March 2025, in Tallahassee, Florida.

Aisha Lange

AISHA LANGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

IRIS CALOGERO, individually and on behalf of all others similarly situated, and MARGIE NELL RANDOLPH, individually and on behalf of all others similarly situated **v.** **SHOWS, CALI & WALSH, LLP, a Louisiana limited liability partnership; MARY CATHERINE CALI, an individual; and JOHN C. WALSH, an individual**	**CIVIL ACTION** **NO. 2:18-cv-06709** **SECTION "M" DIVISION "3"** **JUDGE: BARRY W. ASHE** **MAGISTRATE JUDGE:** **EVA J. DOSSIER**

CLASS SETTLEMENT AGREEMENT
(REVISED BY CONSENT FOLLOWING ENTRY OF COURT ORDER GRANTING PRELIMINARY APPROVAL)

1. **PARTIES:** The parties to this Settlement Agreement ("Agreement") are: Plaintiffs Iris Calogero and Margie Nell Randolph, individually and on behalf of themselves and all others similarly situated, including the class members defined below, and Defendants Shows, Cali & Walsh, LLP, Mary Catherine Cali, and John C. Walsh ("Defendants"). This Agreement is intended by Plaintiffs and Defendants to bind the Plaintiffs, the class members, and the Defendants, their assigns and successors, officers and employees of Defendants, and all others acting with knowledge of this Agreement. This Agreement is also intended by Plaintiffs and Defendants to fully, finally, and forever resolve, discharge, and settle the claims of the Plaintiffs and the class members upon the terms and conditions described herein.

2. **NATURE OF LITIGATION:** On July 16, 2018, Plaintiff Calogero filed a Class Action Complaint (Doc. 1) against Defendants in the United States District Court for the Eastern District of Louisiana, alleging that Defendants violated the Fair Debt Collection Practices Act,

EXHIBIT A

15 U.S.C. §§ 1692 *et seq.* ("FDCPA"), in connection with correspondence sent by Defendants to Plaintiffs, recipients of Homeowners Grants extended by the Road Home Program; Defendants claimed repayment of certain grant funds. On June 30, 2021, Plaintiffs Calogero and Randolph filed a Second Amended Class Action Complaint (Doc. 80), alleging that Defendants committed multiple violations of the FDCPA in connection with their efforts to collect the alleged Homeowners Grant debt.

3. **SETTLEMENT:** Plaintiffs and Defendants consider it desirable that the action and the claims alleged therein be settled upon the terms and conditions set forth in this Agreement, in order to avoid the further expense and uncertainty of protracted litigation.

4. **INVESTIGATION:** Counsel for the proposed settlement class have investigated the facts available to counsel and the applicable law. Defendants have cooperated with counsel for the class and have made Defendants' records of collection efforts and payments available to counsel for the class, as well as Defendants' statements of net worth. Defendants acknowledge that Plaintiffs and class counsel have relied on this information in reaching this Agreement.

5. **SETTLEMENT NEGOTIATIONS:** Prior to entering into this Agreement, counsel for the parties engaged in discovery, extensive litigation, settlement discussions, and extensive arms-length negotiations, which resulted in an agreement on the principal terms of this settlement, and it is the desire and intent of the parties by entering into this Agreement to effectuate the settlement.

6. **COMPROMISE:** Plaintiffs and the class members desire to settle their claims against Defendants, having taken into account, through their counsel, the risks, delay and difficulties involved in further litigation. Based on the foregoing, and upon an analysis of the benefits which this Settlement Agreement affords the class, counsel for the class considers it to

be in the best interests of the class to enter into this Agreement, and that the Agreement is fair, reasonable, adequate, and in the best interests of the class.

7. In consideration of the foregoing and other good and valuable consideration, Defendants, Plaintiffs, and counsel for the members of the class agree that the claims of the Plaintiffs and the members of the class against Defendants should be and are compromised and settled, subject to the approval of the Court, upon the following terms and conditions.

TERMS

8. **EFFECTIVE DATE:** This Settlement Agreement shall become effective ("Effective Date") upon the occurrence of the following: Thirty-One (31) days after the Court's order granting final approval of the class settlement, or if an appeal has been sought, the expiration of five (5) days after the final disposition of any such appeal which disposition approves the Court's order granting final approval of the class settlement.

9. **CLASS MEMBERS:** The Class was certified by the district court on June 10, 2024. (Rec. Doc. 280). Class Members are defined as follows:

> The umbrella class consists of all Louisiana residents who received a Road Home homeowner's grant for personal, family, or household purposes to whom defendants Shows, Cali & Walsh, LLP, Mary Catherine Cali, and/or John C. Walsh (collectively, "SCW") sent a collection letter in the form of exhibit 4 and/or exhibit 5 of the second amended complaint within the one-year period prior to the filing of this lawsuit, and who also fall into one or more of the following three subclasses:
>
> • Subclass 2 (which relates to Plaintiffs' second claim) consists of those to whom SCW sent a collection letter in the form of exhibit 4 and/or exhibit 5 (which letter did not state that the alleged debt was not legally enforceable or otherwise acknowledge a potential statute-of-limitations problem and that a payment would renew the debt) more than ten years after the grant agreement was signed or the State was notified of his or her alleged duplicate payments.
>
> • Subclass 3 (which relates to Plaintiffs' third claim) consists of those to whom SCW sent a collection letter in the form of exhibit 4 and/or exhibit 5 which

stated that "you may also be responsible for ... attorney fees," who did not receive duplicate payments after the grant agreement was signed.

• Subclass 4 (which relates to Plaintiffs' fourth claim) consists of those to whom SCW sent a promissory note in the form of exhibit 6 of the second amended complaint obligating them to repay alleged grant overpayments, without advising that signing the instrument would revive any statute of limitations that had run against legal action on the alleged debt.

The parties have interpreted "in the form of Exhibit 4 or 5, . . .[and] exhibit 6," as used above in the class definition to mean collection letters in the form of Exhibit 4 or 5, and a promissory note in the form of Exhibit 6 as attached to the Second Amended Complaint, sent by Defendants to recipients of Road Home Homeowners Grants, in an attempt to collect their alleged obligation, which was not returned to Defendants as undeliverable by the U.S. Post Office.

Defendants represent that the Umbrella class size does not exceed approximately 3385 persons, that subclasses 2 and 3 are the same size, and that subclass 4 includes 230 persons who are also members of subclass 2 or 3. There is no distinction, in terms of entitlement to damages, between the members of subclasses 2 and 3, and no added benefit for membership in both subclass 2 and 3. **Exhibit A** hereto lists the 3385 class members, who are members of subclasses 2 and 3; and **Exhibit B** lists the 230 members of subclass 4.

10. **MONETARY RELIEF TO THE NAMED PLAINTIFFS:**

The Membership of Plaintiffs Calogero and Randolph in the Umbrella Class and in subclasses 2 and 3 (Calogero and Randolph) and subclass 4 (Randolph) has been determined by litigation. Plaintiff Randolph's entitlement to reimbursement has been disclosed by Defendants' records. Named Plaintiffs' statutory damages, incentive awards, and damages for emotional distress have been determined by negotiated compromise.

Defendants shall pay to Iris Calogero (member of second and third subclasses):

Statutory damages	$1,000.00
Damages for emotional distress	$373.94
Incentive and service as class representative award	$10,000.00
Total:	**$11,373.94**

Defendants shall pay to Margie Randolph (member of second, third, and fourth subclasses):

Statutory damages	$1,000.00
Reimbursement	$1,500.00
Damages for emotional distress	$1,276.47
Incentive and service as class representative award	$10,000.00
Total:	**$13,776.47**

11. **MONETARY RELIEF TO THE CLASS:**

Plaintiffs Calogero and Randolph are the only persons whose membership in the Umbrella Class and any subclass has been determined by litigation. Plaintiffs and Defendants agreed that the costs of litigating definitive membership in the subclasses would exceed the economic benefits of such determination. The parties agreed that 90% of the remaining putative class of 3383 persons would probably qualify as a member of subclass 2, 3, or 4. They therefore agreed to accept each of those persons as a class member but to reduce their recoveries of actual damages by 10%. The following subsections describe the award calculations, as summarized on **Exhibit C** hereto.

A. Statutory Damages (subclasses 2, 3, and 4)

Defendants represent that their combined net worth does not exceed $7,500,000. Defendants shall pay $75,000 to the class, which is approximately 1% or more of the net worth of each Defendant, as statutory damages pursuant to 15 U.S.C. § 1692k(a)(2). This element of damage is not subject to a 10% reduction because the FDCPA calls for statutory damages to be

shared equally among class members. Exclusive of Named Plaintiffs, each class member will receive approximately $22.17 in statutory damages (1/3383rd of $75,000).

B. Damages for emotional distress (subclasses 2 & 3, but not 4)

The parties negotiated the damages for emotional distress for the 3155 members of subclasses 2 & 3 who are not members of subclass 4 at $1,179,775.31, from which Plaintiff Calogero will receive her full pro rata allotment, $373.94 (1/3155th of $1,179,775.31), as shown in Paragraph 10 above, and from which the other 3154 members will receive their pro rata portions of 90% of the remaining $1,179,401.37 (which is $1,061,461.23) – about $336.54 each.

C. Reimbursement (subclass 4)

Defendants represent that 230 members of subclass 4 paid Defendants a combined total of $473,687.81, as reflected on Exhibit B. Plaintiff Randolph, whose class membership is unquestioned, paid $1500.00, which Defendants will reimburse to her in full as shown in Paragraph 10 above. Defendants will reimburse 90% of the remaining $472,187.81, or $424,969.02, to the other 229 members of subclass 4, prorated as 90% of the payments by them reflected on Exhibit B. Because each member of subclass 4 paid different amounts, each member will receive a different amount as reimbursement.

D. Damages for emotional distress for subclass 4

The parties negotiated the amount of $293,589.67 as damages for emotional distress of the 230 members of subclass 4. Ms. Randolph will receive her full allotment of $1,276.47 (1/230th of $293,589.67). The other 229 members of subclass 4 will share equally in $263,081.88 (90% of the remaining $292,313.20) – about $1148.82 apiece.

E. *Cy pres* award for any unclaimed funds in the class award

Defendants will make these settlement funds available no later than thirty (30) days after

the Effective Date. No later than thirty (30) days after the entry of Final Judgment, Defendants, through the Settlement Administrator, will issue pro rata payments to those Class Members who have submitted a claim and have not opted out. Any class award funds which remain unclaimed ninety (90) days after the settlement payments are disbursed to the Class Members will be paid as a *cy pres* award to Southeast Louisiana Legal Services' fund for consumer representation and education.

12. **CLASS SETTLEMENT NOTICE:** Defendants will pay the costs of administration, distribution, and mailing the notice to the class members, including the expense of the distribution of checks to the class members, and a National Change of Address (NCOA) search upon preliminary approval of class settlement. These administration expenses shall be subtracted from the amounts payable to Plaintiffs' attorneys, as described in Paragraph 18 below.

13. **SETTLEMENT ADMINISTRATOR:** The Settlement Administrator shall be Settlement Services, Inc. Defendants will provide a list of class members and their addresses to the Settlement Administrator within thirty (30) days of the Court's order preliminarily approving the class settlement. Notice shall be sent within forty-five (45) days of the Court's order preliminarily approving the class settlement.

14. **CAFA NOTICE DEADLINE:** Defendants' attorneys shall be responsible for sending the Class Action Fairness Act (CAFA) Notice pursuant to 28 U.S.C. § 1715(d) within ten (10) days of the filing of the Preliminary Approval Motion.

15. **CLASS NOTICE MAILING:** Notice will be mailed via First Class U.S. Mail to the Class Member's last known address as listed in Defendants' records, as updated from an NCOA search by the Settlement Administrator, unless the Class Member has informed Defendants in writing as of the date of the Court's preliminary approval order that (1) he or she is represented

by an attorney, and provided a mailing address for that attorney or (2) that Defendants should communicate with a non-attorney third party rather than the Class Member. If the Class Member has informed Defendants that he or she is represented by an attorney, and provided a mailing address for that attorney, the class notice will be mailed to the attorney's last known address contained in Defendants' records, as updated from an NCOA search by the Settlement Administrator. If the Class Member has informed Defendants in writing that they should communicate with a non-attorney third party, the class notice will be mailed to the Class Member's last known address contained in Defendants' records as updated from an NCOA search by the Settlement Administrator. The Settlement Administrator's responsibilities include, but are not limited to, giving notice, obtaining new addresses for returned mail, acting as a liaison between Class Members and the parties, distributing payments to Class Members, and any other tasks reasonably required to effectuate the foregoing.

16. **CLASS NOTICE FORMAT:** The class notice will be in the general format attached hereto as **Exhibit D**.

17. **STATUTORY RELIEF AND INCENTIVE AWARD TO THE NAMED PLAINTIFFS:** As noted in Paragraph 10 above, Defendants will pay $1,000.00 to each Named Plaintiff, Iris Calogero and Margie Randolph, as statutory damages pursuant to 15 U.S.C. § 1692k(a)(2) and an additional $10,000.00 to each of them as an incentive award for their services as class representatives. Said payment will be made via Class Counsel upon the Effective Date.

18. **ATTORNEYS' FEES AND COSTS:** Defendants agree that for purposes of this settlement, the Plaintiffs are the successful parties and therefore Defendants agree to pay reasonable attorneys' fees and costs to Class Counsel pursuant to 15 U.S.C. § 1692k(a)(3). Class

Counsel's reasonable attorneys' fees and costs have been agreed upon as $950,000.00, less class administration costs described in Paragraph 12 above, to be distributed among them as reflected in **Exhibit E**; Proposed Preliminary Order; *see also*, **Exhibit F**, Summary of Plaintiffs' Counsel's fees and costs, as incurred and as discounted by consent. The amount of $850,000.00 of said payment will be made via Class Counsel upon the Effective Date, and the balance paid after the settlement administrator has been paid in full. Defendants will issue Form 1099s directly to Plaintiffs' counsel for their court-approved, statutory fees and costs, and no portion of these amounts will be included in Form 1099s issued by the Settlement Administrator to the class members. The Court's order regarding Class Counsel's proposed attorneys' fees, costs, and expenses, and Plaintiffs' statutory damages and incentive award, will not affect the finality of the class action settlement.

19. **TOTAL PAYMENT BY DEFENDANTS:** The total amount to be paid by Defendants under this settlement is TWO MILLION EIGHT HUNDRED THOUSAND ($2,800,000.00) AND NO/100 DOLLARS.

20. **RELEASES:**

A. Defendants agree that they have or will dismiss with prejudice all pending lawsuits Defendants filed against any and all class members to recover Road Home homeowners' grants and cancel all notes signed by class members and/or judgments taken or liens recorded against their properties.

B. Plaintiffs and each class member shall, as of the Effective Date, be deemed to release and discharge forever Defendants, and their current and former officers, directors, successors, predecessors, executors, administrators, assigns, shareholders, partners, investors, affiliated companies, insurers, attorneys, clients, and employees, from all claims, controversies, liabilities,

actions and causes of action, which were asserted or could have been asserted in this litigation, as well as any claims arising out of or relating to the same nucleus of operative facts as alleged in the Second Amended Class Action Complaint. This release is conditioned upon the performance by Defendants of their obligations toward Plaintiffs and the class members as set forth in this Agreement.

21. **CONFIDENTIALITY:**

It is further understood that the terms and conditions of this settlement and release will be publicized in order to provide full and adequate notice to the members of the class. However, the parties agree that they will not further comment upon the conduct and performance of any party except by reference to the decisions of the District Court and the Fifth Circuit Court of Appeal.

The parties agree that, other than the above noted allowed disclosures, they will not, directly or indirectly, in any capacity or manner, make, express, transmit, speak, write, verbalize, post on any social media platform (or cause to be posted) or otherwise communicate in any way (or cause, further, assist, solicit, encourage, support or participate in any of the following), any remark, comment, message, information, declaration, or statement of any kind, whether verbal, in writing, electronically transferred or otherwise, that might reasonably be construed to be derogatory or critical of, or disparaging toward any other party in connection with the relationship and services between the plaintiffs and RELEASED PARTIES.

Additionally, Plaintiffs' counsel agrees not to hold any press conferences, post on social media platforms, or make media statements other than those necessary to fulfill notice requirements to the class; however, the foregoing shall not limit Plaintiffs' counsel's ability to report to counsel's Board of Directors, donors, potential donors, management, tax/legal advisors,

auditors or other business-related stakeholders. Plaintiffs' counsels' disclosures to the aforementioned stakeholders shall include reference to this confidentiality and non-disparagement agreement.

Total cumulative damages payable by a single plaintiff for any violations of this non-disparagement agreement shall be capped per individual at the individual plaintiff's share of statutory and emotional distress damages. No plaintiff shall be liable for any other party' s breach of this section, including counsel. Neither shall any plaintiff be expected to return their refund of alleged debt payments under this agreement.

22. **NON-APPROVAL.** If this Settlement Agreement is not approved by the Court or for any reason does not become effective, it shall be deemed null and void and shall be without prejudice to the rights of the parties hereto and shall not be used as a limitation on Plaintiffs' alleged damages nor an admission of liability by Defendants in any subsequent proceedings in this or any other litigation, or in any manner whatsoever. The parties agree that if this Settlement Agreement is not approved by the Court or for any reason does not become effective, the parties shall seek a new scheduling order to place the parties in the same position that they were in as of September 18, 2024.

23. **CLASS MEMBERS' CLAIMS AND RIGHT OF EXCLUSION:** Class Members' claim forms must be returned or postmarked within forty-five (45) days of the Court's order preliminarily approving the class settlement. Any Class Member can seek to be excluded from this Agreement and from the class. Any Class Member who wishes to be excluded from the settlement must mail a written request for exclusion to the Settlement Administrator postmarked no more than forty-five (45) days of the Court's order preliminarily approving the class settlement. Within fourteen (14) days of receipt of a request for exclusion the Settlement

Administrator shall forward a copy to Class Counsel and to counsel for Defendant. Through a request for exclusion, and subject to the court's approval, a Class Member must include his or her:

a. Full name;

b. Address;

c. Telephone number; and

d. A statement that he or she wishes to be excluded from the class action settlement.

Any Class Member so excluded shall not be bound by the terms of this Agreement nor entitled to any of its benefits.

The Settlement Administrator will provide to the Court a list of the names of each Class Member who submitted a valid and timely request for exclusion.

24. **DECEASED CLASS MEMBER:** Where a Plaintiff or Class Member is deceased, upon receipt of proper identification and documentation of the payee's interest, payment will be made to the Class Member's estate or, in the event there is no estate, to the Class Member's next of kin in the following priority: (1) spouse; (2) children; (3) parents; (4) siblings; and (5) other relatives. A proposed Next of Kin Form is attached as **Exhibit G**. These forms must be filed with a Claim Form within the time prescribed for filing a claim form (45 days from preliminary approval of the settlement).

25. **RIGHT OF APPEARANCE:** Pursuant to Rule 23(c)(2)(B)(iv) of the Federal Rules of Civil Procedure, a Class Member may enter an appearance through his or her attorney, provided that such person files with the Court a written entry of appearance no more than forty-five (45) days after the Court's order preliminarily approving the class settlement. A Class Member is not required to enter an appearance to participate in the settlement.

26. **OBJECTIONS:** Any Class Member who objects to the settlement contemplated by this Agreement shall have a right to appear and be heard at the fairness hearing, provided that such person files with the Court a written notice of objection no more than forty-five (45) days after the Court's order preliminarily approving the class settlement. Through his or her notice of objection, and subject to the court's approval, a Class Member must include his or her:

a. Full name;

b. Address;

c. Telephone number;

d. A statement of the objection;

e. A detailed description of the facts underlying the objection;

f. A detailed description of the legal authorities that support each objection;

g. A statement noting whether the Class Member intends to appear at the fairness hearing;

h. A list of all witnesses that the Class Member intends to call by live testimony, deposition testimony, or affidavit or declaration testimony; and

i. A list of exhibits that the Class Member intends to present at the fairness hearing.

Counsel for the parties may, but need not, respond to the objections, if any, by means of a memorandum of law of no more than fifteen (15) pages filed and served prior to the fairness hearing. The manner in which a notice of objection should be filed shall be stated in detail in the notice to the class. Only Class Members who have filed valid and timely written notices of objection will be entitled to be heard at the fairness hearing, unless the Court orders otherwise. A Class Member who has filed an objection may, but need not, appear at the fairness hearing.

Any Class Member who does not make his or his objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the settlement or the award of attorneys' fees to class counsel, unless otherwise ordered by the Court.

27. **PRELIMINARY APPROVAL:** As soon as practicable after execution of this Agreement, the parties shall apply to the Court for an order which:

a. Preliminarily approves this Agreement.

b. Schedules a hearing for final approval of this Agreement by the Court.

c. Approves the form of notice to the class, to be published as described above.

d. Finds that mailing of such class notice is the only notice required and that such notice satisfies the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure.

28. **FINAL APPROVAL:** After the conclusion of the fairness hearing, the Court will determine whether to enter a final order approving the terms of this Agreement as fair, reasonable, and adequate, providing for the implementation of those terms and provisions, finding that the notice given to the Class Members satisfies the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure, directing the entry of the proposed final order, and retaining jurisdiction to enforce the provisions of this Agreement.

29. **SETTLEMENT DOCUMENTS:** The parties propose to use a form of notice to the class similar to Exhibit D, attached hereto, and a form of proposed Preliminary Order similar to Exhibit E, attached hereto. The fact that the Court may require non-substantive changes in the notice or either order does not invalidate this Agreement.

MISCELLANEOUS PROVISIONS

30. **OTHER MATTERS:** The parties and their attorneys agree to cooperate fully with one another in seeking court approval of this Agreement, and to use their best efforts to effect the consummation of this Agreement and the settlement provided for herein as soon as is reasonably possible.

31. **ENFORCEMENT OF SETTLEMENT:** If this Agreement is breached, reasonable and necessary attorneys' fees may be awarded to the non-breaching party as determined by the Court.

32. The foregoing constitutes the entire agreement between the parties with regard to the subject matter hereof and may not be modified or amended except in writing, signed by all parties hereto, and approved by the Court.

33. This Agreement may be executed in multiple counterparts, in which case the various counterparts shall be said to 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 of executed copies of this Agreement may be treated as originals.

34. Each and every term of this Agreement shall be binding upon and inure to the benefit of Plaintiffs, the Class Members, and any of their successors and personal representatives, and shall bind and shall inure to the benefits of the Released Parties, all of which persons and entities are intended to be beneficiaries of this Agreement.

35. **ENTIRE AGREEMENT:** With the exception of the Exhibits attached hereto and referenced above, this Agreement constitutes the entire agreement and understanding between the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

36. **SEVERABILITY:** If any provision of this Agreement shall be found by any court of competent jurisdiction to be void, voidable, invalid or unenforceable, the remaining portions shall remain in full force and effect.

37. **AUTHORITY TO EXECUTE:** Each counsel or other person executing the Agreement or any of its Exhibits on behalf of any party hereto hereby warrants that he or she has the full authority to do so.

38. **EXCLUSIVE JURISDICTION AND VENUE FOR ENFORCEMENT:** Any dispute relating to this Agreement or Final Judgment shall be resolved exclusively in the United States District Court for the Eastern District of Louisiana, and if necessary, the United States Court of Appeals for the Fifth Circuit, and the United States District Court for the Eastern District of Louisiana shall retain exclusive jurisdiction and venue with respect to the consummation, implementation, enforcement, construction, interpretation, performance, and administration of this Agreement and/or Judgment, subject to appeal, if necessary. The parties agree to submit to the exclusive jurisdiction and venue for the purposes described above.

39. **CHOICE OF LAW:** This Agreement and any document executed in furtherance of the Settlement shall be governed by, subject to, and construed in accordance with the laws of the State of Louisiana and the Federal laws and procedures applicable to class actions settlements, without regard to conflicts-of-laws principles.

40. **APPEALS:** If a Class Member appeals the Final Order and Judgment, Plaintiffs and Defendants agree to support this Agreement on appeal. Nothing contained in this Agreement is intended to preclude Plaintiffs, Defendants, or Class Counsel, from appealing any order inconsistent with this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

The parties, through their authorized Counsel, have executed this Settlement Agreement as of the date(s) indicated below.

s/ David S. Daly 11/25/2024
BY: _____ DATE:_____

David S. Daly
FRILOT, LLC

FOR DEFENDANTS, SHOWS, CALI & WALSH, LLP, MARY CATHERINE CALI, and JOHN C. WALSH

AND

s/Margaret E. Woodward 11/25/2024
BY: _____ DATE:_____

Margaret E. Woodward
ATTORNEY AT LAW

ON BEHALF OF PLAINTIFFS,
IRIS CALOGERO, MARGIE RANDOLPH AND THE CLASS