

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
Beckley Division**

**STEPHANIE ADKINS and
DOUGLAS SHORT**, on behalf
of themselves and all others
similarly situated,

Plaintiffs,

v.

CIVIL ACTION NO. 5:17-cv-04107
Judge Frank W. Volk

MIDLAND CREDIT MANAGEMENT, INC.,

Defendant.

**UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF SETTLEMENT
AND ENTRY OF SCHEDULING ORDER**

By this unopposed motion, Plaintiffs Stephanie Adkins and Douglas Short, on behalf of the certified class, respectfully request that the Court enter an Order (1) preliminarily approving the Parties' proposed Settlement Agreement (the "Settlement Agreement") attached as Exhibit A; (2) appointing Plaintiffs as class representatives and Plaintiffs' counsel as class counsel; (3) approving the form and manner of class notice; (4) establishing a schedule to complete the tasks necessary to effectuate the proposed settlement; and (5) preliminarily enjoining all members of the Settlement Class from commencing, prosecuting, or maintaining any claims against Defendant Midland Credit Management, Inc., which has been or may have been asserted in, or encompassed by the Action as defined in the Settlement Agreement.

For the reasons set forth more particularly in the memorandum in support of this Motion, Plaintiffs respectfully request that the Court grant this Motion. Defendant has agreed to the proposed order of preliminary approval attached to this Motion, for settlement purposes only.

Respectfully Submitted,

s/ Jonathan R. Marshall

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- and -

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Certificate of Service

I hereby certify that on this 8th day of September 2021, the foregoing **UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AND ENTRY OF SCHEDULING ORDER** was served upon counsel of record through the CM/ECF System, which will notify the following CM/ECF participants:

Jason E. Manning
Megan E. Burns
Troutman Sanders LLP
222 Central Park Avenue, Suite 2000
Virginia Beach, Virginia 23462

/s/ Jonathan R. Marshall
Jonathan R. Marshall (WVSB #10580)

Exhibit A

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT WEST VIRGINIA
BECKLEY DIVISION**

**STEPHANIE ADKINS and,
DOUGLAS SHORT**, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

Civil Action 5:17-cv-04107

MIDLAND CREDIT MANAGEMENT, INC.,

Defendant.

CLASS SETTLEMENT AND RELEASE AGREEMENT

1. PARTIES

This Class Settlement and Release Agreement (the “Agreement”) is made and entered into as of the Effective Date, as defined herein, by and between Plaintiffs Stephanie Adkins (“Adkins”) and Douglas Short (“Short”) (collectively “Plaintiffs”), acting individually and as representatives of the Settlement Class, as defined herein (the “Settlement Class” or “Class Members”) and Defendant Midland Credit Management, Inc. (“Defendant” or “Midland”) (individually, a “Party,” and collectively the “Parties”) for the purpose of resolving by compromise and settlement all claims, controversies and alleged liabilities arising out of the disputes as set forth below.

2. RECITALS

2.1. On October 3, 2017, Plaintiffs filed their Complaint (the “Complaint”) against Midland in the United States District Court for the Southern District of West Virginia, case number 5:17-cv-04107, entitled *Stephanie Adkins and Douglas Short, on behalf of themselves and all others similarly situated v. Midland Credit*

Management, Inc. (the “Action”). The Complaint asserted claims for violations of the West Virginia Consumer Credit Protection Act (“WVCCPA”) and the Fair Debt Collection Practices Act (“FDCPA”).

- 2.2. Plaintiffs subsequently dismissed their claims under the FDCPA and moved forward with their WVCCPA claim under W. Va. Code § 46A-2-128(f), seeking to certify a class of individuals with West Virginia addresses to whom Midland sent a letter on or after July 4, 2017, “seeking to collect debt that Midland’s records indicated had passed its statute of limitations, which letter failed to provide the following disclosure: ‘The law limits how long you can be sued on a debt. Because of the age of your debt, [Midland] cannot sue you on it.’”
- 2.3. On April 9, 2019, the Court granted Plaintiffs’ Motion for Class Certification, certifying a class of persons with West Virginia addresses to whom MCM sent a collection letter on or after July 4, 2017 “seeking to collect debt that Midland’s records indicated had passed its statute of limitations, which letter failed to provide the following disclosure: ‘The law limits how long you can be sued on a debt. Because of the age of your debt, [Midland] cannot sue you on it.’”
- 2.4. The Court also granted Plaintiffs’ Motion for Summary Judgment but ordered further briefing on Midland’s contentions that members of the certified class were bound by arbitration agreements and that the certified class included individuals whose debts were not barred by the statute of limitations.
- 2.5. After briefing on Midland’s Motion to Compel Arbitration and Amend Class Definition, the Court ordered a summary trial on the arbitration issue. Before any trial on the arbitration claims, the Parties reached a Stipulation to exclude from the

class 5,351 class accounts bound by arbitration agreements.

- 2.6. After briefing on the issue of whether the class included members whose debts are not time barred, the Court held that W. Va. Code § 46A-2-128(f) requires that a debt be actually time barred and therefore non-time-barred accounts must be excluded from the class. The Court directed the Parties to brief the issue of whether such class members were readily identifiable. In the course of that briefing, Plaintiffs proposed an amended class definition that includes only certain creditors and only individuals who received letters more than five years from the date of charge off of their accounts or five years from last payment, whichever is later.
- 2.7. On January 20, 2021, the Court adopted the modified class definition, certifying the following class of individuals:

All persons with West Virginia addresses, who did not file bankruptcy on or after July 4, 2017, to whom Midland sent a debt collection letter on or after July 4, 2017 seeking to collect a debt that originated from creditors Barclays Bank Delaware; Capital One; Chase; Citibank; GE Capital Retail Bank; HSBC; or WebBank, which letter was sent five years after charge off or five years plus sixty days after last payment, whichever is later, and which letter failed to provide the following disclosure: “The law limits how long you can be sued on a debt. Because of the age of your debt, [Midland] cannot sue you for it.”

- 2.8. The Parties then worked to identify and exclude additional individuals who are bound by arbitration agreements and/or who should be excluded due to death or bankruptcy filings. The resulting certified class of is composed of 1,022 individuals who were sent a total of 1,233 letters.
- 2.9. Midland denies any and all allegations and claims asserted against it in the Action and denies any and all wrongdoing. Neither the fact nor the terms of this Agreement shall be used, offered or received in evidence in any action or proceeding for any

purpose, except in an action or proceeding to enforce this Agreement.

- 2.10. Notwithstanding the above, solely in order to avoid the cost, burden, expense, and uncertainty of further litigation, the Parties desire to compromise and settle the Action and have reached this Agreement to resolve the disputes between them, pending approval of the Court, and to achieve complete peace.

3. DEFINITIONS

As used herein, the following terms have the meanings set forth below.

- 3.1. “Action” means the civil action styled *Stephanie Adkins and Douglas Short, on behalf of themselves and all others similarly situated v. Midland Credit Management, Inc.* filed in the United States District Court for the Southern District of West Virginia.
- 3.2. “Administrative Costs” means all reasonable and authorized costs and expenses of disseminating and publishing the Class Notice in accordance with the Preliminary Approval Order, and all reasonable and authorized costs and expenses incurred by the Settlement Administrator in administering the Settlement, including but not limited to costs and expenses associated with assisting Settlement Class Members, , escrowing funds, and issuing and mailing Settlement Relief.
- 3.3. “Affiliate” of an entity means any person or entity which controls, is controlled by, or is under common control with such entity.
- 3.4. “Agreement” or “Settlement Agreement” means this Class Settlement Agreement and Release, including all exhibits thereto.
- 3.5. “Attorney’s Fees and Expenses” means such funds as may be awarded to Class Counsel by the Court to compensate them (and all other attorneys for Plaintiffs or

the Settlement Class) for their fees and all expenses incurred by Plaintiffs or Class Counsel in connection with the Action.

- 3.6. “Class Accounts” means the 1,022 accounts identified by Midland as belonging to the Settlement Class Members.
- 3.7. “Class Counsel” means the law firms of Bailey Glasser, LLP and Hamilton, Burgess, Young & Pollard, PLLC.
- 3.8. “Class Notice” or “Notice” means the program of notice described in Section 10 of this Agreement to be provided to potential Settlement Class Members, which will notify potential Settlement Class Members about, among other things, their rights to opt out or object to the Settlement, the preliminary approval of the Settlement, and the scheduling of the Final Approval Hearing.
- 3.9. “Class Period” means the four-year period before Plaintiffs’ filing of the Action on October 3, 2017 through the Effective Date, as defined in Section 11 of this Agreement.
- 3.10. “Class List” means the confidential list of individuals who are within the Settlement Class, as defined below, as previously provided to Class Counsel together with the relevant information concerning the Class Accounts.
- 3.11. “Common Fund” means the \$995,000.00 in funds to be paid by Midland pursuant to Section 5 of this Agreement.
- 3.12. “Court” means the United States District Court for the Southern District of West Virginia.
- 3.13. “Effective Date” means the latest of (1) thirty-one (31) days after the date of Final Approval, if a Class Member objects to the Settlement but no appeal by a Class

Member is filed; or (2) thirty-one (31) days after the exhaustion of all appeal rights and the final termination of any appeal from the Final Approval Order.

- 3.14. “Final Approval Hearing” means the hearing at which the Court shall (1) determine whether to grant final approval to this Settlement; (2) consider any timely objections to this Settlement and all responses thereto; and (3) consider requests for incentive awards to the Plaintiffs and for an award of attorneys’ fees and expenses.
- 3.15. “Final Approval Order” means the order approving the Settlement and certifying the Settlement Class as final.
- 3.16. “Lawsuit” or “Litigation” means the Action.
- 3.17. “Letter” or “Letters” means the 1,233 letters sent to the Settlement Class Members.
- 3.18. “Preliminary Order” means the order entered by the Court preliminarily approving the Settlement, provisionally certifying the Settlement Class, and approving the Settlement, provisionally certifying the Settlement Class, and approving notice to Settlement Class Members.
- 3.19. “Released Claim” or “Released Claims” means any and all actual or potential claims, actions, causes of action, suits, counterclaims, crossclaims, third-party claims, contentions, allegations, and assertions of wrongdoing, and any demands for any and all debts, obligations, liabilities, damages (whether actual, compensatory, treble, punitive, exemplary, statutory, or otherwise), attorneys’ fees, costs, restitution, disgorgement, injunctive relief, and any other type of equitable, or legal statutory relief, any other benefits, or any penalties or any type whatsoever, whether known or unknown, suspected or unsuspected, contingent or non-contingent, or discovered or undiscovered, whether asserted in federal court, state

court, arbitration, or otherwise, and whether triable before a judge or jury or otherwise, arising from any violation of the WVCCPA or federal equivalent, or any other state, federal or local law, statute, regulation or common law based on the allegations in the Civil Action, which relate to written communications identified in the definition of the Settlement Class regarding the Class Accounts.

3.20. “Settlement” or “Stipulation of Settlement” means the settlement set forth in this Agreement.

3.21. “Settlement Administrator” means a third-party agent or administrator selected jointly by the Parties after a competitive bidding process to help implement and effectuate the terms of this Agreement. The Parties agree to propose a Settlement Administrator for Court approval.

3.22. “Settlement Class” or “Class” means the class of persons that will be certified by the Court for settlement purposes only.

3.23. “Settlement Class Member” means any person who falls within the definition of the Settlement Class and who has not opted out of the Settlement Class.

3.24. “Settlement Class Recovery” means the amount of the Common Fund available for distribution to Claimants after payment of Administrative Costs and any Court-approved Attorney’s Fees and Expenses and incentive awards.

3.25. “Settlement Payment” means the payment to be made from the Common Fund to Settlement Class Members.

4. SETTLEMENT CLASS MEMBERS

4.1. The Settlement Class consists of all persons with West Virginia addresses, who did not file bankruptcy on or after July 4, 2017, to whom Midland sent a debt collection

letter on or after July 4, 2017 seeking to collect a debt that originated from creditors Barclays Bank Delaware; Capital One; Chase; Citibank; GE Capital Retail Bank; HSBC; or WebBank, which letter was sent five years after charge off or five years plus sixty days after last payment, whichever is later, and which letter failed to provide the following disclosure: “The law limits how long you can be sued on a debt. Because of the age of your debt, [Midland] cannot sue you for it.”

- 4.2. The Settlement Class, prior to confirmation of any exclusions, is comprised of 1,022 consumers who meet the Settlement Class definition, set forth in Paragraph 4.1 above. The Settlement class members are identified on the Class List previously provided to Class Counsel.
- 4.3. The terms, effectiveness and validity of this Agreement are subject to the entry of the Preliminary Approval Order granting the Motion for Preliminary Approval of Class Settlement, and Entry of Scheduling Order (“Preliminary Approval Motion”), and the entry of an order granting a Motion for Final Approval of Class Settlement (“Final Approval Motion”). The Agreement becomes effective as of the Effective Date as defined in Paragraph 3.13 of this Agreement.

5. SETTLEMENT AMOUNT

- 5.1. Midland, its successors, and assigns will pay nine hundred ninety-five thousand (\$995,000.00) (the “Settlement Amount”) to a “Common Fund” in full settlement of all class claims that were asserted or could have been asserted in the Action. In no event shall the Settlement Amount exceed \$995,000.
- 5.2. The Settlement Amount is an “all-in” payment. In no event shall Midland be liable for any amount greater than the Settlement Amount.

6. COMMON FUND

- 6.1. The Common Fund shall be maintained as set forth in 6.2 and established by Midland within thirty (30) business days of the Effective Date. The Parties shall have joint control of the Common Fund.
- 6.2. The Court shall retain continuing jurisdiction over the Common Fund sufficient to satisfy the requirements of 26 C.F.R. § 1.468B-1. The Settlement Administrator shall at all times seek to have the Common Fund treated as a “qualified settlement fund” as that term is defined in 26 C.F.R. § 1.468B-1. The Settlement Administrator shall cause any taxes imposed on the earnings of the Common Fund, if any, to be paid out of such earnings and shall comply with all tax reporting and withholding requirements imposed on the Common Fund under applicable tax laws. The Settlement Administrator shall be the “administrator” of the Common Fund pursuant to 26 C.F.R. § 1.468B-2(k)(3).
- 6.3. Should the Settlement be denied for any reason, or otherwise not approved by the Court, then all monies placed into the Common Fund shall be returned to Midland.
- 6.4. Should the Settlement be approved, and any monies remain in the Common Fund after disbursement of funds in accordance with the terms of this Agreement, the remaining principal funds shall not revert to Midland. Any such remaining funds shall be donated as a cy pres award to the West Virginia University College of Law.

7. DISTRIBUTION OF SETTLEMENT AMOUNT

The Settlement Amount shall be distributed as follows:

- 7.1. Each Settlement Class Member shall receive a flat rate distribution per Class Letter after payment of Plaintiffs’ Attorney’s Fees and Expenses, Administrative Costs, and the incentive awards to Plaintiffs.

- 7.2. The amount of Settlement Payment shall be equal to the Settlement Class Recovery divided by the total number of Class Letters received by Settlement Class Members. No interest shall be included as an element of, or be payable or paid on, any Settlement Payment.
- 7.3. Co-borrowers who received a single Letter shall be entitled to a single Settlement Payment per Class Letter, and no Settlement Class Member is entitled to more than one Settlement Payment per Letter. Settlement Class Members who receive a Settlement Payment shall be solely responsible for distributing or allocating such payment between or among all co-borrowers.
- 7.4. As payment for Attorney's Fees and Expenses, Plaintiffs' counsel shall apply to the Court for a distribution of no more than one third (33.33%) of the Common Fund, plus expenses, which sum (one-third of the Common Fund plus expenses) shall include all Attorney's Fees and Expenses incurred by Plaintiffs.
- 7.5. Plaintiffs will receive an incentive award of ten thousand (\$10,000) each, subject to approval by the Court, in addition to their flat rate distribution of the Settlement Class Recovery. Plaintiffs' incentive awards shall be paid out of the Common Fund.

8. RETENTION OF SETTLEMENT ADMINISTRATOR AND COSTS

- 8.1 The Parties agree that a mutually selected Settlement Administrator will process claims, field calls and correspondence from Settlement Class Members, and disburse amounts from the Common Fund.
- 8.2 All the costs associated with providing notice to the Settlement Class Members and disbursement of the Common Fund ("Administrative Costs"), including all costs and expenses related to class notice, distribution of settlement proceeds, reasonable

measures to locate potential Settlement Class Members, and retaining any class or claims administrator will be paid from the Common Fund. Midland's only responsibility regarding such costs is to fund the Common Fund.

8.3 The Settlement Administrator shall administer the Settlement in a cost-effective and timely manner. Without limiting any of its other obligations as stated herein, the Settlement Administrator shall be responsible for mailing the class notice, as defined below, administration of Settlement Relief, and providing all other related support, reporting, and administration as further stated in this Agreement.

8.4 Midland will coordinate with the Settlement Administrator to provide the class notice to the potential Settlement Class Members, as provided in this Settlement Agreement, with Class Counsel's participation and oversight. Because the information about potential Settlement Class Members that will be provided to the Settlement Administrator will consist of confidential information, non-public personal information, and other information protected by privacy laws, any such information shall be deemed "Confidential-Attorneys' Eyes Only," and shall be used only for the purpose of administering this Settlement.

8.5 W9 Forms. The Settlement Administrator shall complete and provide to Midland any W9 forms as to the Common Fund necessary for Midland to implement this Settlement.

9. PRELIMINARY APPROVAL MOTION

Plaintiffs will submit to the Court a Motion for Preliminary Approval of Class Settlement and Entry of Scheduling Order ("Preliminary Approval Motion") no later than thirty (30) days

after full execution of this Agreement. The Preliminary Approval Motion will request that the Court:

- 9.1 Find that the Settlement Class representatives, and Settlement Class counsel, fairly and adequately represent the interests of the Settlement Class;
- 9.2 Find preliminarily that the Agreement is fair, reasonable and adequate to the Settlement Class;
- 9.3 Schedule a Final Approval Hearing one hundred and twenty (120) days after entry of the Preliminary Approval Order granting the Preliminary Approval Motion; and
- 9.4 Approve the form of notice to be provided to members of the Settlement Class.

10. NOTICE TO CLASS MEMBERS

- 10.1 If the Court grants the Preliminary Approval Motion, the Administrator will, within twenty-one (21) days of entry of the Preliminary Approval Order, mail to each Settlement Class Member at his or her last known address a Notice of Proposed Class Settlement (“Notice”), which form is attached as **Exhibit A**. Midland shall provide the Administrator with the last known address and social security number of each Class Member. Any Notices returned as undeliverable, but with a forwarding address, shall be promptly re-mailed to the forwarding address. The Administrator shall perform a National Change of Address Registry and LexisNexis/Death Records Search for all Notices returned as undeliverable, without a forwarding address. Such Notices shall be re-mailed upon discovery of a valid mailing address for the Settlement Class Member.

10.2 The Notice shall apprise the potential Settlement Class Members of his/her right to opt out of the Settlement Class, of his/her right to object to the Class Settlement, of the fact that any objections or opt outs must be sent to the Administrator and postmarked no later than twenty-one (21) days prior to the Final Approval Hearing, and that any failure to object or to opt out in accordance with applicable deadlines for opt outs and objections constitutes a knowing and voluntary waiver of any right to opt out of the Settlement Class or to appeal from the Final Approval Order.

10.3 This Agreement does not impose on any Party or the Administrator an obligation to make extraordinary efforts to locate a potential Settlement Class Member.

11. SERVICE OF NOTICE OF OPT OUT

At least fourteen (14) days prior to the Final Approval Hearing, the Administrator shall notify Class Counsel and Midland's counsel of any persons who have objected to the Class Settlement or opted out of the Settlement Class, and shall serve Midland's counsel, Plaintiffs' counsel, and the Court with copies of all objections, notices of opt out, and supporting documentation.

12. FINAL APPROVAL MOTION

12.1 Prior to the Final Approval Hearing, Plaintiffs will file a Motion for Final Approval of Class Settlement ("Final Approval Motion"). The Final Approval Motion will request that the Court approve the Settlement and enter a Final Order and Judgment that will, among other things:

12.2 Adjudge and approve in all respects the settlement of the Action on the terms described in this Agreement;

12.3 Dismiss on the merits and with prejudice all class and individual claims in the action;

12.4 Include all relief to be provided as part of this Settlement; and

12.5 Retain jurisdiction of all matters relating to the interpretation and enforcement of the Settlement and this Agreement.

13. EFFECT OF DISAPPROVAL/DENIAL OF SETTLEMENT

If the Court disapproves this Agreement or any part thereof for any reason or declines to enter a Final Approval Order as described in this Agreement, then this Agreement, including all releases contained within the Agreement, shall become null and void and the Action shall proceed as though no settlement had been negotiated or achieved, unless Plaintiffs and Midland agree otherwise or jointly appeal the order disapproving this Settlement.

14. RIGHT TO DECLARE AGREEMENT NULL AND VOID

In the event that more than three percent (3%) of the Settlement Class Members timely file notices of opt out, or in the event that the West Virginia Division of Financial Institutions seeks to intervene in this Action to object to the proposed settlement or otherwise notifies Midland of its intent to object to the proposed settlement, Midland may, within ten (10) business days after notice of the same, in Midland's sole discretion, declare that this Agreement, including all releases contained within the Agreement, is null and void. In that event, the action shall proceed as though no settlement had been negotiated or achieved.

15. REVERSAL, VACATION, OR MODIFICATION OF AGREEMENT BY APPELLATE COURT

In the event that a court of appeals or other reviewing court sets aside, reverses, vacates or modifies the Final Approval Order as described in this Agreement, then this Agreement, including

all releases contained within the Agreement, shall become null and void and the action shall proceed as though no settlement had been negotiated or achieved.

16. PAYMENT OF SETTLEMENT AMOUNT

- 16.1 As soon as practicable after entry of the Final Approval Order, the Administrator shall distribute the Settlement Amount to Settlement Class Members as provided in Section 7 of this Agreement, less that portion of the Settlement Amount the Court awards as Attorney's Fees and Expenses, Administrative Costs, and the incentive award to Plaintiffs. Distributions to Settlement Class Members will be made to their last known address by first class mail, postage prepaid.
- 16.2 Checks made payable to each Settlement Class Member shall become stale and all right to payment on any such check shall end upon expiration of three (3) months from the date of the check (which will be within one calendar week of the date such check is mailed) and shall include a statement to inform the bearer of this validity period.
- 16.3 Any check that becomes stale shall be re-issued one time. Right to payment on any re-issued check shall similarly become stale upon the expiration of two (2) months from the date of the re-issued check (which will be within one calendar week of the date such check is mailed) and shall include a statement again informing the bearer of this validity period. The funds represented by any re-issued checks that become stale shall be applied to Administrative Costs first and, if any sums remain after payment of Administrative Costs, donated as set forth in Paragraph 6.4 of this Agreement. Any such donation will have no effect on the validity of this Agreement

against those Class Members who do not receive a Settlement Payment following reasonable efforts to deliver a payment to them.

17. FINAL REPORT OF DISTRIBUTION OF SETTLEMENT AMOUNT

Twelve (12) months after the Final Approval Order is entered, or thirty (30) days after distribution of the Settlement Amount is completed, whichever is later, Class Counsel shall file a report with the Court, and serve a copy on Midland's counsel, detailing the distribution of the Settlement Amount.

18. FINAL AND BINDING AGREEMENT

The Parties acknowledge that this Agreement is a full and final accord and satisfaction and shall be binding upon and inure to the benefit of Midland, the named Plaintiffs, the Members of the Settlement Class, their counsel, and each of their respective trustees, heirs, executors, administrators, beneficiaries, representatives, agents, successors, and assigns.

19. RELEASE

19.1 In consideration for the Settlement Amount and for Midland's other promises contained herein, each Member of the Settlement Class, for and on behalf of the Class Member and the Class Member's present and future spouses (and common law spouses), children, parents, relations, successors, beneficiaries, heirs, next of kin, assigns, attorneys, executors, administrators, and/or estate, or any and all other persons who could claim through them, hereby unconditionally and irrevocably remises, releases, forever discharges and covenants not to sue Midland Credit Management, Inc. and all entities related to Midland Credit Management, Inc., its Affiliates, and each of their past, present and future directors, officers (whether acting in such capacity or individually), shareholders, owners, partners, joint

venturers, principals, trustees, creditors, law firms, attorneys, representatives, employees, managers, parents, subsidiaries, divisions, subdivisions, departments, affiliates, predecessors, successors, and assigns, or any agent acting or purporting to act for them or on their behalf, from any and all claims, counterclaims, actions, causes of action, suits, set-offs, costs, losses, expenses, sums of money, accounts, reckonings, debts, charges, complaints, controversies, disputes, damages, judgments, executions, promises, omissions, duties, agreements, rights, and any and all demands, obligations and liabilities, of whatever kind or character, direct or indirect, whether known or unknown or capable of being known up until the Effective Date, at law or in equity, by right of action or otherwise, arising out the Released Claims, which the Class Member may have against them up until the Effective Date.

- 19.2 It is the intention and effect of this Release to discharge all Released Claims that each Settlement Class Member has against Midland up until and including the Effective Date, including, but not limited to, the causes of action alleged against Midland in the Action.
- 19.3 In connection with the Released Claims, each Settlement Class Member is releasing past or currently existing claims that existed up until the Effective Date and is aware that he or she may hereafter discover claims that existed in the past or present during the Class Period that may be unknown or unsuspected but discoverable based on reasonable investigation, or facts in addition to or different from those which he or she now knows or believes to be true with respect to the allegations and subject matter in the Action. Nevertheless, it is the intention of each Settlement Class

Member to fully, finally and forever settle and release all Released Claims against Midland, which exist or might have existed (whether or not previously or currently asserted in this Action).

19.4 Each Party to this Agreement understands, acknowledges, and agrees that if any fact now believed to be true is found hereafter to be other than, or different from, that which is now believed, each expressly assumes the risk of such difference in fact and agrees that this Agreement shall be, and will remain, in effect notwithstanding any such difference in fact.

19.5 Each Settlement Class Member agrees not to start, continue, intervene in, participate in, or receive any benefits from any lawsuit, litigation, arbitration, administrative, regulatory, or other proceeding against Midland in any jurisdiction for the Released Claims.

20. NO ADMISSION OF LIABILITY OR CERTIFICATION OF CLASS

20.1 Neither this Agreement nor the fact of settlement nor the payment of the Settlement Amount is, may be construed as, or may be used as, an admission on the part of Midland of any fault, wrongdoing, or liability whatsoever, or that any class asserted by Plaintiffs merits certification. Midland expressly denies any wrongdoing under any federal, state, or local statute, public policy, tort law, contract law, or common law and expressly denies the truth or validity of any claim made against it or the propriety of certification of any class on the merits. In the event that, for any reason whatsoever, this Agreement should not become effective, the entry or negotiation of this Agreement will not be used as evidence of or argument for any position in the Action, including the propriety of certifying any class except a Settlement Class.

20.2 Further, neither this Agreement nor any drafts hereof nor any documents leading to or relating to the Settlement set forth herein, including, but not limited to, any proposed order, Preliminary Approval Motion, Final Approval Motion, or memoranda in support thereof, constitutes an admission of liability or of any fact by the Plaintiffs or Midland. The Parties agree that the foregoing documents:

20.2.1 Will not be offered or received against Midland as evidence of or be construed as or deemed to be evidence of, any admission or concession by Midland of (i) the truth or relevance of any fact alleged by any Party, (ii) the existence of any class alleged by Plaintiffs, , and (iii) the validity of any claim or defense that has been or could have been asserted by any Party in the Action or in any other litigation;

20.2.2 Will not be offered as or received against Midland as evidence of, or construed as or deemed to be evidence of any admission or concession of any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the Parties to this Agreement, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if this Agreement is approved by the Court, Midland may rely upon or use this Agreement as necessary to effectuate the liability protection granted Midland hereunder; and

20.2.3 Will not be offered or received as an admission or concession that the consideration to be given to Settlement Class Members hereunder

represents the amount which could be or would have been recovered by any such persons after trial.

21. NON-ADMISSIBILITY OF SETTLEMENT NEGOTIATIONS

The settlement negotiations resulting in this Agreement have been undertaken by Plaintiffs and Midland and their respective counsel in good faith and for settlement purposes only pursuant to Federal Rule of Evidence 408, and no evidence of negotiations or discussions underlying this Agreement shall be offered or received in evidence in any action or proceeding for any purpose. Nor shall the Agreement be offered or received in evidence in any action or proceeding for any purpose, except only for purposes of enforcing the terms and conditions of this Agreement.

22. NO ORAL MODIFICATION

This Agreement shall not be altered, amended, or modified by oral representation made before or after the execution of this Agreement. No amendment, modification, waiver, termination, or discharge of any provision of this Agreement shall be effective unless it is in a written agreement duly executed by all of the Parties hereto.

23. COMPLETE AGREEMENT

This Agreement constitutes a single, integrated, written contract expressing the entire understanding and agreement between the Parties, and the terms of the Agreement are contractual and not merely recitals. This Agreement supersedes all prior negotiations. No other agreement, written or oral, expressed or implied, exists between the Parties with respect to the subject matter of this Agreement, and the Parties declare and represent that no promise, inducement, or other agreement not expressly contained in this Agreement has been made conferring any benefit upon them.

24. COMPETENCY; INDEPENDENT COUNSEL

Each Party to this Agreement represents and warrants that it is competent to enter into the Agreement and in doing so is acting upon its independent judgment and upon the advice of its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Party, other than the terms set forth in or contemplated by this Agreement.

25. CONSTRUCTION OF AGREEMENT

The language and terms of this Agreement shall be construed as a whole, according to fair and ordinary meaning, as if both Parties jointly prepared it, and shall not be strictly construed for or against any party to this Agreement.

26. CONTINUING JURISDICTION

The United States District Court for the Southern District of West Virginia will have continuing jurisdiction over the Lawsuit for the purpose of implementing the Settlement until the Lawsuit and all related matters are fully resolved, and for enforcement of the Settlement, the Agreement, and the Final Order thereafter. Any dispute regarding the Parties' obligations pursuant to this Agreement or interpretation of the terms of this Agreement or the Final Order will be resolved by the Court.

27. CHOICE OF LAW

This Agreement will be governed by federal law and the internal laws of the State of West Virginia without regard to its choice of law principles.

28. CHOICE OF FORUM

The Parties consent to jurisdiction and venue in the United States District Court for the Southern District of West Virginia for any dispute arising in any way out of this Agreement.

29. ADDITIONAL ACTS TO EFFECTUATE THE AGREEMENT

The Parties shall execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement and to obtain the benefits of the Agreement.

30. WAIVER

The provisions of this Agreement may be waived only by an instrument in writing executed by the waiving Party. The waiver by any Party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

31. CONFIDENTIALITY

This Agreement shall remain confidential until the Preliminary Approval Motion is filed.

The Parties agree that confidential information regarding class members provided in connection with the administration of the settlement of this matter are deemed Confidential pursuant to the agreed Protective Order (ECF No. 18) and shall be subject to the terms thereof.

32. PRESERVATION OF PRIVILEGE

Nothing contained in this Agreement or any Order of this Court, and no act required to be performed pursuant to this Agreement or any Order of this Court, is intended to constitute, cause or effect any waiver, in whole or in part, of any attorney client privilege, work product protection, or common interest or joint defense privilege, and each Class Member agrees not to make or cause to be made in any form any assertion to the contrary.

33. AUTHORITY OF CLASS COUNSEL

Class Counsel unconditionally warrant and represent that they are authorized by Plaintiffs, for whom they are attorneys of record, and the attorneys of record for Midland warrant and represent that they are authorized by Midland, to take all appropriate action required or permitted

to be taken by such Parties pursuant to this Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel shall cooperate with each other and use their best efforts to affect the implementation of the Settlement.

34. TAX CONSEQUENCES

- 34.1 This Agreement is enforceable regardless of its tax consequences. The Parties understand and agree that the payments set forth in this Agreement reflect the settlement of disputed legal claims and that Midland makes no representations regarding the Agreement's tax consequences.
- 34.2 No opinion concerning the tax consequences of the Settlement to individual Class Members is being given or will be given by the Parties or their counsel, nor is any representation or warranty in this regard made by virtue of this Agreement. Plaintiffs must consult their own tax advisors regarding the tax consequences of the Settlement, including any payments provided hereunder and any tax reporting obligations he may have with respect thereto.
- 34.3 Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.
- 34.4 Each Class Member specifically agrees that he or she is solely responsible for any and all taxes, interest, and penalties due and owing, if any, should the payments or any portion thereof, be taxable.

35. RELEASE, LIMITATIONS

This Agreement does not release claims arising out of the failure of either Party to perform in conformity with the terms of this Agreement.

36. JURY WAIVER

The Parties voluntarily and intentionally waive any right that they may have to a trial by jury in any action, proceeding or litigation directly or indirectly arising out of, or relating to, this Agreement.

37. REPRESENTATIONS, INDEMNIFICATIONS

Plaintiffs and each Settlement Class Member represents and warrants that he/she is the sole and lawful owner of all right, title and interest in and to every claim and other matter which each releases in this Agreement and that he/she has not previously assigned or transferred, or purported to do so, to any person or other entity any right, title or interest in any such claim or other matter. In the event that such representation is false and any such claim or matter is asserted against Midland by anyone who is the assignee or transferee of such a claim or matter, then the Party who assigned or transferred such claim or matter shall fully indemnify, defend and hold harmless Midland against whom such claim or matter is asserted and its successors from and against such claim or matter and from all actual costs, attorneys' fees, expenses, liabilities and damages which Midland and its successors incur as a result of the assertion of such claim or matter.

38. KNOWING AND VOLUNTARY ASSENT

The Parties acknowledge that this Agreement is executed voluntarily by each of them, without any duress or undue influence on the part of, or on behalf of any of them. The Parties further acknowledge that they have had the opportunity for representation in the negotiations for, and in the performance of, this Agreement by counsel of their choice and that they have read this

Agreement and/or have had it fully explained to them by their counsel and that they are fully aware of the contents of this Agreement and its legal effect.

39. COUNTERPARTS AND FACSIMILE SIGNATURES

This Agreement may be executed in any number of counterparts and with facsimile signatures, and all such counterparts shall be construed together and constitute a single form of this Agreement.

40. HEADINGS AND CAPTIONS

The headings and captions inserted into this Agreement are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

(Remainder of Page Intentionally Left Blank)

IN WITNESS HEREOF, counsel for the parties and the named plaintiffs have executed this Class Settlement Agreement and Release as of September __, 2021.

PLAINTIFF STEPHANIE ADKINS

PLAINTIFF DOUGLAS SHORT

DEFENDANT MIDLAND CREDIT MANAGEMENT,
INC.

By: _____

Its: _____

Counsel for Plaintiffs and Settlement Class

Counsel for Defendant Midland Credit Management,
Inc.

Exhibit A



LEGAL NOTICE

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION

Adkins v. Midland Credit Management, Inc., Case No. 5:17-cv-04107 (U.S.D.C., Southern District of West Virginia)

THIS IS NOT A SUIT AGAINST YOU. The purpose of this Notice is to advise you that a Settlement has been reached in a class action lawsuit (the “Lawsuit”) against Midland Credit Management, Inc. (“Defendant” or “Midland”). The Notice is being sent to you because the parties’ records indicate that you are included in the Settlement, and that you are entitled to a cash payment.

This Notice describes the case in general and does not address all of the issues in detail. You may review a copy of the Settlement Agreement, Class Action Complaint, and the Court’s Order Preliminarily Approving Settlement at the following website: www.pacer.gov.

What is the Lawsuit About?

The lawsuit alleges that Defendant failed to include disclosures required by West Virginia law when debt collectors or creditors are seeking to collect debt for which the statute of limitations has expired.

Defendant denies that it acted improperly, did anything wrong, or that it is liable for multiple reasons, including because the letters at issue were not sent to Plaintiffs and/or were not an attempt to collect a debt. Midland also contends that it has defenses under a West Virginia statute that relieves creditors and debt collectors of any liability if a violation was unintentional or the result of a bona fide error of fact notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error. Defendant has agreed to the Settlement solely to avoid the burden, expense, risk, and uncertainty of continuing the Lawsuit.

Who is Included in the Settlement?

The parties’ records indicate that you are a Class Member. The Settlement Class is defined as follows:

All persons with West Virginia Addresses, who did not file bankruptcy on or after July 4, 2017, to whom Midland sent a debt collection letter on or after July 4, 2017 seeking to collect debt that originated from creditors Barclays Bank Delaware; Capital One; Chase; Citibank; GE Capital Retail Bank; HSBC; or WebBank, which letter was sent five years after charge off or five years plus sixty days after last payment, whichever is later, and which letter failed to provide the following disclosure: “The law limits how long you can be sued on a debt. Because of the age of your debt, [Midland] cannot sue you for it.”

What Does the Settlement Provide?

(1) **Cash Payments to Class Members.**

Midland will establish a Settlement Fund in the amount of \$995,000.00.

Each Settlement Class Member will receive a share of the Settlement Fund. Only one settlement payment will be made per

letter sent and, in most instances, the payment will be sent to the primary individual listed on the account.

After reduction for administrative costs as well as any attorneys’ fees, costs, and service awards granted by the Court, the net estimated disbursement to you is anticipated to be \$500 per letter.

Please understand that these sums may be taxable, that such tax consequences are further described in the settlement agreement, and that counsel is not giving you any tax advice. You are encouraged to seek tax advice without delay from a tax professional.

(2) **Service Award.** The Plaintiffs who brought this lawsuit, Stephanie Adkins and Douglas Short, will request a service award of \$10,000.00 each, for serving as class representatives.

(3) **Attorney’s Fees and Costs.** Class counsel are Jonathan R. Marshall, Bailey & Glasser LLP, 209 Capitol Street, Charleston, WV 25301; and Steven Broadwater, Hamilton, Burgess, Young & Pollard, PLLC, 5493 Maple Ln, Fayetteville, WV 25840. They will request attorneys’ fees of one-third the total amount of the Settlement Fund, plus their litigation costs.

(4) **Opinion of Class Counsel.** Class counsel considers it to be in the best interest of the class to enter into this Settlement on the terms described in light of the potential recovery, Defendant’s defenses, and the uncertainties of continued litigation.

(5) **Release.** Each person who remains in the Settlement Class and receives Settlement benefits will, if the Settlement is approved, release Defendant from all actual or potential claims, actions, causes of action, suits, counterclaims, crossclaims, third-party claims, contentions, allegations, and assertions of wrongdoing, and any demands for any and all debts, obligations, liabilities, damages (whether actual, compensatory, treble, punitive, exemplary, statutory, or otherwise), attorneys’ fees, costs, restitution, disgorgement, injunctive relief, and any other type of equitable, or legal statutory relief, any other benefits, or any penalties or any type whatsoever, whether known or unknown, suspected or unsuspected, contingent or non-contingent, or discovered or undiscovered, whether asserted in federal court, state court, arbitration, or otherwise, and whether triable before a judge or jury or otherwise, arising from any violation of the WVCCPA or federal equivalent, or any other state, federal or local law, statute, regulation or common law based on the allegations in the Lawsuit which relate to written communications identified in the definition of the Settlement Class regarding the Class Accounts.

(6) **Binding Effect of Class Judgment.** Upon conclusion of the settlement, the judgment of the Court will be binding upon all class members who do not opt out of the Settlement.

The Court’s Fairness Hearing

The U.S. District Court for the Southern District of West Virginia will hold a hearing in this case on _____, 202_ at ___ a.m./p.m., in the Courtroom of the Honorable Frank W. Volk, United States Courthouse, 110 North Heber Street, Beckley, West

Virginia, 25801. Class Members do not need to attend the hearing. The hearing date and time may be changed without further notice. If you wish to attend the hearing, you should call the Settlement Administrator in advance to confirm the day and time.

The objection must also state whether you or your own lawyer would like to appear and speak at the Court's fairness hearing, at your own cost. You do not need to appear at the fairness hearing to object to the settlement. If you intend to call witnesses at the fairness hearing, the objection should list any witnesses you intend to call.

What Are Your Options?

(1) **Do Nothing.** To accept the Settlement, **you do not need to do anything.** If the Settlement is approved, you will be bound by all of its terms, and a check will be mailed to you. If you change your address, please inform the Settlement Administrator at the address below;

(2) **Exclude Yourself.** You may "opt out" and exclude yourself from the Settlement. If you opt out, you will not receive any cash payment, and you will not release any claims you may have against Defendant. If you opt out, you will be free to pursue whatever legal rights you may have by pursuing your own lawsuit against Defendant at your own risk and expense. To exclude yourself from the Settlement, you must mail a letter to the Settlement Administrator (address below) stating that you wish to do so. Your letter must include your name, address, telephone number, and last four digits of your Social Security Number and a statement that you are seeking exclusion. You must postmark your letter no later than ____, 2021; OR

(3) **Object to the Settlement.** If you object to the Settlement, you must file with the Court a signed notice of your intention to appear, a statement saying that you object to the Settlement in *Adkins v. Midland Credit Management, Inc.*, Civil Action No. 5:17-cv-04107, submit documentary proof that you are a member of the Settlement Class, provide your name, address and telephone number, specifically state the basis for your objection(s), identify whether the objection applies to the entire Settlement Class, a specific subset of the Settlement Class, or only to the objector, **and** serve copies of the foregoing and all other papers in support of such objection(s) upon the following:

Court:
Clerk of Court
U.S. District Court for the Southern District of West Virginia
110 North Heber Street
Beckley, WV 25801

Administrator: Address Below

Class Counsel:
Jonathan R. Marshall
BAILEY & GLASSER LLP
209 Capitol Street
Charleston, WV 25301
(304) 345-6555

Steven Broadwater
HAMILTON BURGESS YOUNG & POLLARD
Fayetteville, WV 25840
(304) 574-2727

Midland's Counsel:
Jason E. Manning
TROUTMAN PEPPER HAMILTON SANDERS LLP
222 Central Park Avenue, Suite 2000
Virginia Beach, VA 23462

PLEASE DIRECT QUESTIONS TO:

SETTLEMENT ADMINISTRATOR

Address

Toll-Free Phone Number

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
Beckley Division**

**STEPHANIE ADKINS and
DOUGLAS SHORT**, on behalf
of themselves and all others
similarly situated,

Plaintiffs,

v.

CIVIL ACTION NO. 5:17-cv-04107
Judge Frank W. Volk

MIDLAND CREDIT MANAGEMENT, INC.,

Defendant.

**[PROPOSED] ORDER ON MOTION FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND SCHEDULING ORDER**

Pending before the Court is a Motion for Preliminary Approval of Class Action Settlement filed by Plaintiffs Stephanie Adkins and Douglas Short (“Plaintiffs”). Plaintiffs, on behalf of a certified class, and Defendant Midland Credit Management, Inc. (“Defendant” or “Midland”), have agreed to settle this Action pursuant to the terms and conditions set forth in a written Settlement Agreement (the “Settlement”). The parties reached the Settlement after years of hard-fought litigation and through arms’-length negotiations with the assistance of Stephen Dalesio, an experienced and well-respected mediator. After careful consideration, this Court GRANTS the motion and, in exercise of its discretion, APPROVES the Settlement on a preliminary basis, based on the following findings and conclusions.

The Class, the Class Representatives, and Class Counsel

This Court previously certified a class defined as:

All persons with West Virginia addresses, who did not file bankruptcy on or after July 4, 2017, to whom Midland sent a debt collection letter on or after

July 4, 2017 seeking to collect a debt that originated from creditors Barclays Bank Delaware; Capital One; Chase; Citibank; GE Capital Retail Bank; HSBC; or WebBank, which letter was sent five years after charge off or five years plus sixty days after last payment, whichever is later, and which letter failed to provide the following disclosure: “The law limits how long you can be sued on a debt. Because of the age of your debt, [Midland] cannot sue you for it.”

The Settlement concerns this already-certified Class and does not seek to amend or alter the class definition. For purposes of preliminarily approving the Settlement, the Court adopts and incorporates herein by reference its prior findings and conclusions regarding class certification. The Parties have identified 1,022 individuals who meet this class definition, who were sent a total of 1,233 letters.

The Court appoints Stephanie Adkins and Douglas Short as Class Representatives for the proposed Settlement Class. The Court appoints the following firms as Class Counsel:

BAILEY & GLASSER LLP
Jonathan R. Marshall
209 Capitol Street
Charleston, WV 25301
(304) 345-6555

HAMILTON BURGESS YOUNG & POLLARD, PLLC
Steven R. Broadwater, Jr.
P.O. Box 959
Fayetteville, WV 25840
(304) 574-2727

Preliminary Approval of Settlement

Under the Settlement, subject to the terms and conditions therein and subject to Court approval, Plaintiffs and the proposed Settlement Class would fully, finally, and forever resolve, discharge and release their claims in exchange for Midland’s payment of \$995,000.00 (the “Settlement Amount”) to create a common fund to benefit the Settlement Class. This fund will be used to pay class member damages, which will be allocated on a per letter basis. The Settlement Amount is inclusive of all attorneys’ fees and expenses and service awards to

Plaintiffs, all in amounts to be approved by the Court, and the costs of class notice and administration.

The Court preliminarily approves the Settlement, together with all exhibits thereto, as fair, reasonable, and adequate. The Court finds that the Settlement was reached in the absence of collusion, is the product of informed, good-faith, arms-length negotiations between the Parties and their capable and experienced counsel, and was reached with the assistance of a well-qualified and experienced mediator, Stephen Dalesio. The Court further finds that the Settlement, including the exhibits thereto, is within the range of reasonableness and possible judicial approval, such that: (a) a presumption of fairness is appropriate for the purposes of preliminary settlement approval; and (b) it is appropriate to effectuate notice to the Settlement Class, as set forth below and in the Settlement, and schedule a Final Approval hearing to assist the Court in determining whether to grant Final Approval to the Settlement and enter final judgment.

Approval of Notice and Notice Program and Direction to Effectuate Notice.

The Court directs the parties to propose a Settlement Administrator for Court approval.

The Court approves the form and content of the Notice, substantially in the form attached as Exhibit A to the Settlement. The Court further finds that the Notice program, described in Section 10 of the Settlement, is the best practicable under the circumstances. The Notice program is reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, the terms of the Settlement, Class Counsel's Fee Application and request for a service award for Plaintiffs, and their rights to opt-out of the Settlement Class and object to the Settlement, Class Counsel's Fee Application, and/or the request for a service award for Plaintiffs. The Notice and Notice program constitute sufficient notice to all persons entitled to notice. The

Notice and Notice program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23(c) and the Constitutional requirement of due process.

Pursuant to the terms of the Settlement Agreement, Midland is hereby directed to supply an electronic list to the Settlement Administrator containing the names, last known addresses and social security numbers of Class Members, to the extent available from Midland's records, as of the date of the entry of the Preliminary Approval Order, and the Settlement Administrator shall update the address list in accordance with the Settlement Agreement. Defendant shall provide a copy of the address list to Class Counsel at the same time it provides the list to the Settlement Administrator.

No later than twenty-one (21) days following entry of this Order, the Settlement Administrator shall mail the Notice by first class United States mail to the updated addresses for the Settlement Class. Any Notices returned as undeliverable, but with a forwarding address, shall be promptly re-mailed to the forwarding address. The Administrator shall perform a National Change of Address Registry and LexisNexis/Death Records Search for all Notices returned as undeliverable, without a forwarding address. Such Notices shall be re-mailed upon discovery of a valid mailing address for the Settlement Class Member.

The costs and expenses of printing, preparing and mailing the Notice shall be paid from the Settlement Fund.

Final Approval Hearing, Opt-Outs, and Objections

The Court directs that a Final Approval hearing shall be scheduled for _____, 202__, at ____ a.m./p.m., to assist the Court in determining whether to grant Final Approval of the Settlement and enter final judgment, and whether Class Counsel's Fee Application and request for service awards for Plaintiffs should be granted.

The Court directs that any person within the Settlement Class definition who wishes to be excluded from the Settlement Class may exercise the right to opt-out of the Settlement Class by following the opt-out procedures set forth in the Notice at any time before the Opt-Out Deadline. To be valid and timely, opt-out requests must be postmarked on or before the Opt-Out Deadline and mailed to the address indicated in the Notice, and must include:

- (a) the Settlement Class Member's full name, current address and telephone number;
- (b) the signature(s) of each Settlement Class Member obligated on the mortgage loan; and
- (c) a statement of intent of all signatories not to participate in the Settlement.

The Opt-Out Deadline shall be twenty-one days prior to the Final Approval Hearing, and shall be specified in the Notice. All persons within the Settlement Class definition who do not timely and validly opt-out of the Settlement Class shall be bound by the terms of the Settlement.

The Court further directs that any person in the Settlement Class who does not timely and validly opt-out of the Settlement Class may object to the Settlement, Class Counsel's Fee Application and/or the request for service awards for Plaintiffs. Objections to the Settlement and/or to the Fee Application and/or the request for service awards must be mailed to the Clerk of the Court, Settlement Administrator, Class Counsel, and Midland's Counsel. For an objection to be considered by the Court, the objection must be postmarked no later than the Objection Deadline, which shall be twenty-one days before the Final Approval Hearing, as specified in the Notice and shall include: (a) a notice of the objector's intention to appear; (b) documentary proof that the objector is a member of the Settlement Class; (c) a specific statement regarding the

basis for such objections; and (d) identification as to whether the objection applies to the entire Settlement Class, a specific subset of the Settlement Class, or only to the objector.

Further Papers In Support Of Settlement and Fee Application

Plaintiffs shall file their Motion for Final Approval of the Settlement, and Class Counsel shall file their Fee Application and request for service awards for Plaintiffs, no later than thirty (30) days after the Opt-Out Deadline and the Objection Deadline. If Midland chooses to file any papers in support of the Settlement, it also must do so no later than thirty (30) days after the Opt-Out Deadline and the Objection Deadline.

Stay/Bar Of Other Proceedings

All proceedings in this Action are stayed until further order of the Court, except as may be necessary to implement the terms of the Settlement. Pending final determination of whether the Settlement should be approved, Plaintiffs, all persons in the Settlement Class, and persons purporting to act on their behalf are enjoined from commencing or prosecuting (either directly, representatively or in any other capacity) against any of the Released Persons any action or proceeding in any court, arbitration forum or tribunal asserting any of the Settled Claims.

Based on the foregoing, the Court sets the following schedule for the Final Approval hearing and the actions which must precede it:

- The Settlement Administrator shall mail the Notice no later than twenty-one (21) days from the date of this Order (the “Notice Date”);
- Settlement Class Members must file any objections to the Settlement, the Motion for Final Approval of the Settlement, Class Counsel’s Fee Application and/or the request for a service award no later than twenty-one (21) days prior to the Final Approval Hearing;

- Settlement Class Members must file requests for exclusion from the Settlement no later than twenty-one (21) days prior to the Final Approval Hearing;
- Plaintiffs shall file their Motion for Final Approval of the Settlement, and Class Counsel shall file their Fee Application and Request for a service award for Plaintiff, no later than seven (7) days after the Opt-Out Deadline and the Objection Deadline; and
- The Final Approval Hearing will be held (approximately) 120 days after entry of this Order, on _____ at, _____ a.m./p.m. in the Courtroom of the Honorable Judge Frank W. Volk, United States Courthouse, 110 North Heber Street, Room 336, Beckley, WV 25801.

Jointly Agreed to and Submitted By:

/s/ Steven R. Broadwater, Jr.
Steven R. Broadwater, Jr. (WVSB #11355)
Hamilton Burgess Young & Pollard, PLLC
P.O. Box 959
Fayetteville, WV 25840
(304) 574-2727

Jonathan R. Marshall (WVSB #10580)
Bailey & Glasser, LLP
209 Capitol Street
Charleston, WV 25301
(304) 345-6555

*Counsel for Plaintiffs and the Settlement
Class*

/s/ Jason E. Manning
Jason E. Manning (WV Bar No. 11277)
Megan E. Burns (WV Bar No. 13290)
Troutman Pepper Hamilton Sanders LLP
222 Central Park Avenue, Suite 2000
Virginia Beach, VA 23462
(757) 687-7500

Counsel for Defendant

IT IS SO ORDERED.

Dated: _____, 20__

Honorable Frank W. Volk

cc: All Counsel of Record