

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:22-cv-0271-CNS-NRN

SHAWNTE WARDEN, individually and on behalf of all others similarly situated,

Plaintiff,

v.

TSCHETTER SULZER, P.C., a Colorado professional corporation,

Defendant.

**PLAINTIFF WARDEN’S UNOPPOSED MOTION AND MEMORANDUM
OF LAW IN SUPPORT OF PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Plaintiff Shawnte Warden (“Plaintiff” or “Warden”), individually and on behalf of a class of similarly-situated individuals, respectfully moves the Court, in accordance with Federal Rule of Civil Procedure 23, for an Order granting preliminary approval of the proposed class action Settlement Agreement agreed to by the Parties and, in support, states as follows:

CERTIFICATE OF CONFERRAL

Plaintiff’s counsel conferred with Defendant’s counsel regarding this motion. Defendant does not oppose the relief sought. Defendant, however, denies it engaged in any unlawful conduct. Defendant’s consent to the relief sought in this motion should not be construed as consent to Plaintiff’s position set forth herein that Defendant did engage in wrongful conduct.

1. Plaintiff has brought this alleged class action lawsuit against Defendant Tschetter Sulzer, P.C. (“Defendant” or “Tschetter”) challenging certain debt collection practices that Plaintiff alleges Defendant engaged in in violation of the Fair Debt Collections Practices Act

(“FDCPA” or “Act”), 15 U.S.C. § 1692, *et seq.*

2. Warden alleges that Tschetter violated the FDCPA by providing tenants who owe a debt to their landlords with form authorizations (the “Authorization”) and stipulations (the “Stipulation”) that Plaintiff alleges were deceptive.

4. Tschetter denies all claims asserted against it in this action, denies all allegations of wrongdoing and liability, and has raised other defenses to class certification and the merits.

5. Notwithstanding their disagreements, the Parties, following a full day mediation session overseen by the Honorable Ann B. Frick (ret.) of the Judicial Arbitrator Group, Inc. (“JAG”) in Denver, Colorado, have entered into a Settlement Agreement, subject to Court approval, that provides the following relief:

(i) certification of a Settlement Class for settlement purposes only defined as "all Tenants who signed the Stipulation between January 31, 2021, and February 28, 2022 and for whom any Judgment of Possession has not yet been vacated." (Settlement Agrmt. at § II.27.) The Parties understand the Settlement Class to consist of approximately 249 individuals.

(ii) the establishment of a settlement fund of no less than sixty thousand dollars (\$60,000.00 USD) for the payment of all Settlement Class Members who do not opt out. In the event that the Settlement Class exceeds 249 individuals, Defendant will increase the amount of the settlement fund so as to ensure that there are sufficient funds for each Class Member to receive a settlement payment in the amount of \$240;

(iii) an agreement from Tschetter that it will seek to have judgments for possession that were entered against class members vacated upon obtaining approval to do so from each class member tenant’s respective landlord or where the landlord does not timely raise an objection to vacating the judgment based on the tenants failure to vacate;

(iv) revisions to Defendant’s form Advisement and Stipulation, subject to approval by Class Counsel. The Mediator has reviewed the suggested revisions and believes they are appropriate;

(v) payment by Tschetter of any notice and settlement administration expenses;

(vi) payment of a Class Member incentive award, subject to Court approval, of \$10,000; and

(vii) payment of any award of reasonable attorneys’ fees and reimbursement of expenses, subject to the approval of the Court, not to exceed \$150,000.

See “Settlement Agreement”, a true and accurate copy of which is attached as Ex. A.

6. As set forth more fully in the Memorandum of Law below, the Settlement terms are demonstrably fair, reasonable, and adequate and fall well-within the range of final approval. The terms provide significant relief to the Class Members—including cash payments and the vacation of judgments from the court records—without the continued risks and costs attendant to protracted litigation.

7. Such relief compares favorably to other alleged FDCPA class actions that have been approved by courts across the Country.

8. The strength of the Settlement is little surprise given the process used to achieve it. Proposed Settlement Class Counsel engaged in negotiations after having obtained information necessary to fairly evaluate the merits and strengths of Plaintiff and the other Settlement Class Members’ claims. The Parties then engaged in a full-day mediation session with a well-respected and experienced neutral who helped facilitate arm’s-length discussions. The end result is a Settlement that is fair, reasonable, and adequate for the Settlement Class Members.

WHEREFORE, and as set forth in the accompanying Memorandum of Law, Plaintiff

Warden, on behalf of herself and the proposed Settlement Class, seeks an Order granting Preliminary Approval of the Settlement, directing that Notice be disseminated to the Settlement Class as set forth the Settlement, and setting dates for Settlement Class Members to object or request to be excluded, for the submission of papers in support of Final Approval, and for a Final Approval Hearing, and for such additional relief as the Court deems necessary and just.

Dated: November __, 2023

Respectfully submitted,

SHAWNTE WARDEN, individually
and on behalf of all others similarly situated,

By: /s/

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT**

I. Introduction

This case concerns Defendant’s use of a form Authorization and Stipulation that Plaintiff alleged was misleading in violation of the FDCPA. The matter has been heavily litigated for nearly two years, including multiple motions to dismiss, a motion for reconsideration, extensive written and oral discovery, and a formal mediation session.

Not only was the mediation session successful in bringing the Parties together to discuss their respective claims and defenses—the Parties reached a settlement to resolve the claims at issue and provide relief to Warden and the Settlement Class. The result is a strong Settlement (“Settlement Agreement” or “Settlement,” attached hereto as Exhibit A) that fairly, reasonably, and adequately compensates the Settlement Class Members.

The underlying settlement agreement is undeniably admirable. In addition to requiring Tschetter to take measures to revise its Advisement and Stipulation forms and to vacate judgments against Class Members, the Agreement creates a Settlement Fund totaling no less than \$60,000 from which Class Members will receive cash compensation. The process is straightforward. All Class Members who are on the Class List and who do not opt out of the settlement will be sent a check for \$240. The Settlement Agreement further provides that Defendant will pay for all settlement administration costs, as well as any incentive award to the Class Representative and Fee Award to Settlement Class Counsel as approved by the Court. The Agreement provides for notice to Class Members of the Settlement and their rights to be excluded from or object to the Agreement as well as procedures for requesting to opt out so as not to be bound.

The results achieved by the Settlement—which compare favorably to FDCPA settlements that have received final approval by courts around the country—demonstrate the propriety of

granting preliminary approval. As such, Warden respectfully moves the Court for an Order: (1) granting preliminary approval to the Settlement Agreement, and (2) ordering that Notice be disseminated to the Settlement Class in accordance with the Settlement Agreement.

II. The FDCPA

The FDCPA makes it unlawful for debt collectors to employ false, deceptive, or misleading means or engage in unfair practices when collecting debts. 15 U.S.C. § 1692e, 1692f. An entity that “uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another” is considered a “debt collector” subject to the requirements of the FDCPA. *Id.* § 1692a(6). The FDCPA is a strict liability statute, and litigants are only required to show that a single violation of a provision of the FDCPA occurred to be entitled to summary judgment. *See O’Connor v. Check Rite, Ltd.*, 973 F. Supp. 1010, 1020 (D. Colo. 1997).

III. Summary of the Plaintiff’s Claims, Litigation, and Settlement Process.

Following significant discovery regarding the scope of the case, the Parties engaged in a full-day mediation with respected mediator, Hon. Ann B. Frick (Ret.) of Judicial Arbiter Group, Inc. The result of the efforts of the Parties’ counsel and the mediator is a favorable deal that reflects fair, reasonable, and adequate relief for the Settlement Class.

A. The Plaintiff’s Claims and The Litigation History.

This case was filed on January 31, 2022. (Dkt. 1.) Tschetter is a Colorado law firm that advertises itself as a “landlord advocacy firm,” with extensive experience in the handling of residential evictions. Plaintiff was a tenant in the Mint Urban Infinity Apartment complex in

Glendale, Colorado, from 2019 until early 2021, at which point she fell behind on her rent payments and eventually intended to move out of her home.

Defendant filed an eviction lawsuit and collection proceeding against Warden on behalf of her landlord on January 22, 2021, and on January 31, 2021, Tschetter provided Plaintiff with a link to its form Stipulation and Advisement hosted on its website. Allegedly confused by its terms, Warden claims she believed the Stipulation would provide her with additional time to stay in the unit and that any judgment against her would be vacated. She signed the form, vacated the unit, and received confirmation from her landlord that the court case was dismissed. However, Tschetter did not move to vacate judgment, instead filing a proposed Writ of Restitution, and Plaintiff alleges she was subsequently denied housing when a tenant screening revealed that the outstanding eviction judgment had not been dismissed.

On March 17, 2022, Defendant filed a motion to dismiss for lack of jurisdiction, and on June 2, 2022, the Court granted Plaintiff leave to amend her complaint, denying the motion to dismiss without prejudice. (Dkts. 17, 39.) Warden filed an amended complaint on June 7, 2022, and Defendant again moved to dismiss on June 21, 2022. (Dkts. 40, 41.) The Parties fully briefed the second motion to dismiss, and the Court ultimately denied the motion on December 5, 2022. (Dkt. 51.) Tschetter thereafter filed a motion for reconsideration, which the Court, following complete briefing, denied on March 15, 2023. (Dkts. 52, 61.)

The Parties thereafter engaged in significant discovery related to the size and scope of the alleged Class as well as Tschetter's forms, policies, and practices. Equipped with sufficient information to negotiate, on September 18, 2023, the Parties attended a full-day mediation session with the Honorable Ann B. Frick (Ret.) (the "Mediator") of Judicial Arbitrator Group, Inc., in Denver,

Colorado. Their efforts were successful, and the Parties reached an agreement to settle the claims at issue and provide relief to Plaintiff the Settlement Class.

As such, and as set forth below, the Parties' efforts and negotiations have produced settlement terms that fall within the range of terms that should ultimately be considered as fair, reasonable, and adequate on final approval.

IV. Key Terms of the Settlement

The complete terms of the Settlement are set forth in the Settlement Agreement. (Ex. A.) A brief summary follows.

A. Class Definition

The "Settlement Class" or "Class" is defined as "all Tenants who signed the Stipulation between January 31, 2021, and February 28, 2022, and for whom any Judgment of Possession has not yet been vacated." (Settlement Agrmt. at § II.27.) The Parties understand the Settlement Class to consist of approximately 249 individuals.

B. Monetary Relief

Tschetter must establish a Settlement Fund of no less than \$60,000, (*Id.* at § II.31), which will be used to pay all class members who do not opt out approximately \$240 each, and any additional class members identified will increase the settlement fund by \$240. The Agreement further provides that, separate from the Settlement Fund (and so as not to diminish the Settlement Fund) Tschetter must pay any Incentive Award and reasonable Fee Award as approved by the Court, up to \$10,000 and \$150,000, respectively. Tschetter must also bear all costs of Settlement Administration and Notice. Any amounts remaining in the Settlement Fund after payment of all Settlement Class Members, and after at least one attempt at re-mailing, will be paid to a *cy pres* recipient approved by the Court.

C. Prospective Relief

In addition to the \$60,000 in cash relief, the Settlement Agreement also requires that Tschetter adopt the following prospective measures: (1) Tschetter is required to vacate judgments against class members where no objection is raised or where landlord or management companies fail to respond within 14 days of a letter notifying them of the intent to seek to have the judgment vacated; and (2) Tschetter must revise its Advisement and Stipulation forms, subject to approval by Class Counsel. The Mediator has reviewed the suggested revisions and believes they are appropriate. (Settlement Agrmt. § III.5.) Hence, the Settlement not only compensates Settlement Class Members for Tschetter's alleged violations of the Act, it seeks to ensure that Settlement Class Members avoid future harms related to pending collections actions and that tenants in the future will be presented with Advisement and Stipulation forms that comply with the FDCPA.

D. Release of Liability

In exchange for the benefits to the Class, Tschetter will receive a full release of any claims relating to Tschetter's use of the subject Advisement and Stipulation forms made under the FDCPA or any similar state statute or law. (Settlement Agrmt. § V.) The Release includes unknown claims, which are limited to claims that could have been brought in the litigation.

E. Notice

The Settlement also calls for the dissemination of notice to Class Members. This includes a comprehensive plan that features direct mail and email notice and an attempt to re-mail notices to forwarding addresses when any such notice is returned as undeliverable. The Notices will explain the key terms of the Settlement, the rights of Settlement Class Members to request exclusion, and instructions as to the method to submit a valid opt-out request. The proposed notice documents are attached as Exhibit B to this motion. Defendant is responsible for ensuring the

Notice is timely mailed to the Settlement Class Members and for processing any objections or exclusion requests by promptly forwarding them to Settlement Class Counsel and the Court.

Such terms are decidedly favorable to the Settlement Class, and the Court should grant preliminary approval.

V. The Proposed Settlement Class Should Be Approved.

Approval of a class action settlement is performed in two steps: (1) preliminary approval, where the court, before notice is disseminated, evaluates whether the terms fall within the range of final approval such that notice to the Class is appropriate, and (2) final approval, following notice and the opportunity for settlement class members to opt out, object, or speak in favor of the settlement, where the court determines whether the terms are fair, reasonable, and adequate.

Here on preliminary approval, the first step for is to certify the proposed settlement class for settlement purposes. The Parties have agreed, solely for the purposes of this Settlement, to define the Settlement Class as follows:

[A]ll Tenants who signed the Stipulation between January 31, 2021 and February 28, 2022 and for whom any Judgment of Possession has not yet been vacated.

(Settlement Agrmt. at § II.27.) As of the time of this filing, the Parties understand the class to include 249 individuals, and to the extent any additional class members are discovered, the Agreement provides that the Settlement Fund will increase by \$240 for any additional class members. (*Id.* § II.31.) Under the settlement, only persons who appear on the Class List will receive notice of the settlement and have an opportunity to opt out, but they also are the only persons who will be releasing claims against Tschetter. Thus, there is no prejudice to anyone not appearing on the Class List to limit the Settlement Class to those on the List.

The Court should therefore, for the purposes of settlement, certify the Settlement Class of 249 individuals as defined in the Agreement.

VI. The Proposed Settlement Falls Well Within the Range of Terms That are Fundamentally Fair, Reasonable, and Adequate, and Thus Warrants Preliminary Approval.

The Court may approve a class settlement only “on finding that it is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e); *see also* A. Conte & H.B. Newberg, *NEWBERG ON CLASS ACTIONS*, §11.25, 3839 (4th ed. 2002). The approval process includes three steps: “(1) the court should determine whether the compromise embodied in the decree is illegal or tainted with collusion; (2) members of the class must be given notice of the proposed settlement; and (3) a hearing must be held to determine whether the decree is fair to those affected, adequate and reasonable.” *Tenn. Ass’n of Health Maint. Orgs., Inc. v. Grier*, 262 F.3d 559, 565–66 (6th Cir. 2001). Judicial policy favors the voluntary conciliation and settlement of complex class actions. *In re Telectronics*, 137 F. Supp. 2d 985, 1008–09 (S.D. Ohio 2001).

Regarding the first step, a preliminary hearing enables the court to determine whether a proposed settlement is “within the range of possible approval.” Newberg, §11.25, at 3839 (quoting *Manual for Complex Litigation* §30.41 (3d ed. 1995)); *see also In re Packaged Ice Antitrust Litig.*, 08-MD-01952, 2010 WL 3070161, at *4 (E.D. Mich. Aug. 2, 2010) (citation omitted). The Court must “ensur[e] that the proposed settlement is not illegal or collusive” based upon the “issues and evidence, as well as the arms-length nature of the negotiations prior to the proposed settlement.” *Thacker v. Chesapeake Appalachia, L.L.C.*, 259 F.R.D. 262, 270 (E.D. Ky. 2009) (citation omitted).¹ Preliminary approval only requires “initial evaluation” of the fairness of the settlement,

¹ When “determining whether preliminary approval is appropriate, the Court should evaluate . . . whether the proposed settlement ‘appears to be the product of serious, informed, non-collusive negotiation, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.’” *In re Polyurethane Foam Antitrust Litig.*, 2012 WL 12868246, at *4 (N.D. Ohio Jan. 23, 2012).

which is based on written submissions and informal presentations from the settling parties. Manual for Complex Litigation § 21.632 (4th ed. 2004).

In analyzing whether a settlement is fair, reasonable, and adequate, courts typically consider the same list of factors applicable to the final approval analysis: “(1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable.” *In re: Motor Fuel Temperature Sales Pracs. Litig.*, 872 F.3d 1094, 1116 (10th Cir. 2017) (quoting *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002)).

As explained below, each factor weighs in favor of approval of the Settlement.

A. There is no risk of fraud or collusion—the instant Settlement was reached through fair and honest negotiation.

The first factor—fair and honest negotiation—weighs in favor of granting preliminary approval. To protect absent class members, courts reviewing proposed class action settlements must ward against possible collusion. In general, “[c]ourts presume the absence of fraud or collusion in class action settlements unless there is evidence to the contrary.” *Thacker v. Chesapeake Appalachia, L.L.C.*, 695 F.Supp.2d 521, 531 (E.D. Ky. 2010) (citation omitted). Further, negotiations that are overseen by third-party mediators are generally considered to be non-collusive. *See Bert v. AK Steel Corp.*, 2008 WL 4693747, at *2 (S.D. Ohio Oct. 23, 2008) (“The participation of an independent mediator in settlement negotiations virtually insures that the negotiations were conducted at arm’s length and without collusion between the parties.”); *see also Satchell v. Fed. Express Corp.*, 2007 WL 1114010, at *4 (N.D. Cal. Apr.13, 2007) (“The assistance of an experienced mediator . . . confirms that the settlement is non-collusive.”).

This case was mediated with the Honorable Ann B. Frick (ret.) of Judicial Arbitrator Group, Inc., a respected mediator in Denver. It was with Judge Frick's guidance and assistance that the Parties were able to reach the agreement that they did, which provides considerable relief to the Class Members in exchange for a class-wide release of the claims brought against Tschetter. The Settlement achieved by the Parties is a result free of collusion—the negotiations always stayed at arm's length, and the lack of collusion or fraud here supports granting preliminary approval.

B. Questions of law and fact exist in the case support approving a favorable settlement now.

The second and third factors, which inquire into the complexity and likely duration of the litigation and the value of immediate recovery weighed against the mere possibility of future relief, also supports approval. This analysis balances the “risk of continued litigation . . . against the certainty and immediacy of recovery from the Settlement.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1041 (N.D. Cal. 2008) (citing *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000)). When considering the immediate recovery provided by a fair settlement, as opposed to the uncertainty of continued litigation, “it has been held proper to take the bird in hand instead of a prospective flock in the bush.” *Kim v. Space Pencil, Inc.*, No. 11-CV-03796, 2012 WL 5948951, at *5 (N.D. Cal. Nov. 28, 2012) (quoting *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1323 (S.D. Fla. 2005)). In this case, given that several hurdles remain (including the need to move for and obtain class certification and survive any subsequent motions for summary judgment, trial, and appeal, this factor weighs in favor of approval of the settlement. *See Garner*, 2010 WL 1687832, at *10 (citing *Rodriguez*, 563 F.3d at 966).

The expense, duration, and complexity of continued litigation certain to occur in the absence of this Settlement would be considerable, and time and expenses would be expended on both sides to brief motions related to class certification and summary judgment. Exacerbating the

inherent risk of pursuing and litigating the merits of any case is the unavoidable risk attendant to seeking adversarial class certification, as well as maintaining class status through the remainder of the action. Not only would Plaintiff need to move for and obtain class certification, but she may also be faced with efforts and motions practice by Defendant to decertify—this is especially true given that “[a] district court may decertify a class at any time.” *Rodriguez*, 563 F.3d at 966 (citing *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160 (1982)).

In addition to motions practice, significant labor and expenses would be required of both parties in preparation for trial, including the expenses involved in the preparation and calling of witnesses and experts. *See Young v. Polo Retail, LLC*, 02-CV-4546, 2007 WL 951821, at *3 (N.D. Cal. Mar. 28, 2007). Likewise, the uncertainty of outcome presents risk for both parties, and given the potential for a statutory award, the losing party would likely appeal the decision as a matter of course, resulting in the expenditure of even more time and money.

Given the expense and risk involved in continued litigation, this factor weighs in favor of approval. The Parties have agreed to a Settlement that provides substantial monetary relief to the class members, as well as prospective relief—neither of which would be guaranteed in the absence of Settlement or even if Plaintiff was successful at trial. As such, for all of the reasons discussed above, the Court should find the decision to settle at this stage a reasonable one and supportive of the fairness of the Settlement.

C. The judgment of the Parties supports approval

As to the fourth factor, the judgment of both Parties—who achieved the settlement with assistance from a mediator—also supports approval. When considering this factor, proposed Class Counsel’s “weighing of the relative risks and benefits of protracted litigation” is to be given “great deference.” *Hyland v. HomeServices of Am., Inc.*, 2012 WL 1575310, at *7 (W.D. Ky. May 3,

2012). This case challenges Tschetter's Advisement and Stipulation forms it provides to tenants facing eviction. Notwithstanding any individuals that may elect to opt out of the settlement, all class members will receive financial compensation in addition to vacation of judgments against them, and all future tenants from whom Defendant may seek to evict will benefit from Tschetter's improved forms.

Under the FDCPA, damages in a class action that may be awarded by a court are not to exceed the lesser of \$500,000 or one (1) percent of the debt collector's net worth. 15 U.S.C. § 1692k(a)(2)(B). Given that the limit of \$500,000 would only apply to debt collectors with a net worth of more than \$50,000,000.00, the one percent calculation would apply to Tschetter if the Parties were to proceed to trial. Here, a settlement fund of \$60,000 represents a considerable amount from Tschetter, a Colorado-based law firm with twelve attorneys. Net worth under the FDCPA is typically performed as a balance sheet calculation. Although some courts have expanded the analysis to include equity, capital stock, and goodwill, *see Wisneski v. Nationwide Collections, Inc.*, 227 F.R.D. 259, 261 (E.D. Pa. 2004), that is admittedly a minority view, and even if such sums were included the result remains favorable.

Further, the recovery of approximately \$240 per class member well-exceeds amounts that have been approved by courts in this Circuit and others. The Court in *Rhodes v. Olson Associates*, for example, approved an FDCPA settlement estimated to provide class members with an amount ranging "from \$7.10 (assuming a highly unlikely, 100% claims rate), to \$71.00 (assuming a 10% claims rate)." 308 F.R.D. 664, 667 (D. Colo. 2015). Similarly, the District of Kansas approved a settlement that provided "approximately \$71.42" to each class member, citing in part to a case in the Northern District of California that approved a settlement providing \$15.10 each to 901 class members. *Tripp v. Berman & Rabin P.A.*, No. 14-CV-2646-DDC-GEB, 2017 WL 86186, at *2 (D.

Kan. Jan. 9, 2017) (citing *Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673 (N.D. Cal. 2016)). By contrast, the District of Colorado denied approval of an FDCPA class settlement that would have provided “less than \$0.14 each” at a 100% claims rate and only \$2.70 each at the parties’ estimated 5% claims rate. *Ross v. Convergent Outsourcing, Inc.*, 323 F.R.D. 656, 660 (D. Colo. 2018). Here, the settlement fund is such that all class members who do not opt out of the settlement will receive approximately \$240 each. There is no claims process. Accordingly, the monetary relief provided to the Class is undoubtedly favorable.

The Settlement Fund is of course in addition to the incentive award and any award of reasonable attorneys’ fees—in no way do the payment of such amounts lower the relief available to the Settlement Class. It is also worth noting that the Monetary Relief is coupled with strong prospective relief that cures the alleged defects in Tschetter’s forms and will result in hundreds of persons having judgments against them vacated. When viewed against the risks of continued litigation—including the possibility of no recovery at all—the Settlement presents an undeniably favorable outcome for members of the class.

VII. The Proposed Notice Plan is the Best Practicable in this Case.

Rule 23(c)(2)(B) provides that “[f]or any class certified under Rule 23(b)(3), the court must direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B); *Dukes*, 131 S. Ct. at 2558. Rule 23(e)(1) further states that “[t]he court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.” Fed. R. Civ. P. 23(e)(1).

Notice is considered adequate “if it may be understood by the average class member.” Newberg, § 11:53 at 167. In substance, the notice must describe the nature of the case, the class definition, the claims and defenses at issue, and it must inform settlement class members that they

may enter an appearance through counsel if they so desire, request to be excluded from the settlement class, and that the effect of a class judgment will be binding on all class members. *See* Fed. R. Civ. 23(c)(2)(B).

As evidenced by the proposed notice attached as Exhibit B², the notice plan developed and agreed to by both Parties represents the best notice practicable under the circumstances. Using the class list, Tschetter will send Notice to each Class Member, via first class mail, in addition to sending notice via email to all class members for whom an email address has been located. (Settlement Agrmt. at § IV.3.c.) Tschetter is also required to re-mail notice to any forwarding address as noted on any notices returned as undeliverable. (*Id.* § IV.3.d.) The Notice will provide information to Class Members of their inclusion in the Class because they appeared on Tschetter's Class List. The Notices will provide the terms and provisions of the proposed settlement, including the settlement amounts. The Notice will further advise Class Members of their rights, including the right to be excluded from, comment upon, and object to the Agreement and the procedures for taking such actions. (*Id.* § IV.4.b.)

Tschetter will also oversee the administration of the Settlement. As such, it will receive and forward any objections and requests for exclusions and ensure, following Final Approval, that checks are appropriately drawn and disseminated.

All told, the Notice Plan comports with due process and should be approved the Court.

VIII. Conclusion

For the foregoing reasons, Plaintiff respectfully asks that the Court grant preliminary approval of the Settlement Agreement, approve the form and manner of notice described above, set dates for Settlement Class Members to object or request to be excluded, and schedule a Final

² The Parties continue to work on finalizing the draft Notice and to the extent there are any substantive edits they can be provided to the Court at the preliminary approval hearing.

Approval hearing.

Dated: December 1, 2023

Respectfully submitted,

SHAWNTE WARDEN, individually
and on behalf of all others similarly situated,

By: /s/ Jason Legg
One of Plaintiff's Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served upon its filing via this Court's CM/ECF system on December 1, 2023 to all counsel of record.

/s/ Jason Legg

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:22-cv-00271-CNS-NRN

SHAWNTE WARDEN, individually and on behalf of all others similarly situated,

Plaintiff,

v.

TSCHETTER SULZER, P.C., a Colorado professional corporation,

Defendant.

CLASS ACTION SETTLEMENT AGREEMENT

This Settlement Agreement and Release (“Settlement Agreement”) is entered into by Plaintiff Shawnte Warden (“Warden” or the “Settlement Class Representative”), individually and on behalf of the Settlement Class, and by Defendant Tschetter Sulzer, P.C., a Colorado professional corporation (“Tschetter”). Warden and Tschetter are referred to collectively in this Settlement Agreement as the “Parties.”

I. RECITALS

A. WHEREAS, Plaintiff had a lease for a rental unit located at the Mint Urban Infinity Apartment Complex in Glendale, Colorado, that commenced in 2019;

B. WHEREAS, on January 21, 2021, Defendant, acting on behalf of Plaintiff’s landlord, filed an action for forcible entry and detainer plus back rent and other amounts (the “Eviction Lawsuit”);

C. WHEREAS, in connection with the Eviction Lawsuit, Defendant presented Plaintiff with an Advisement and Stipulation;

D. WHEREAS, on or about January 31, 2021, Plaintiff signed the Stipulation;

E. WHEREAS, on January 31, 2022, Plaintiff filed a lawsuit seeking damages under the federal Fair Debt Collections Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et. seq.*, alleging the Advisement and Stipulation violated the FDCPA (the “Action”);

F. WHEREAS, the Parties have vigorously litigated the Action;

G. WHEREAS, on September 18, 2023, the Parties engaged in a full-day mediation session with the Hon. Ann B. Frick (Ret.) (the “Mediator”) of Judicial Arbitrator Group, Inc., in Denver, Colorado (the “Mediation”);

H. WHEREAS, the Mediation was successful and the Parties were able to reach a Settlement Agreement, the terms of which are memorialized herein;

I. WHEREAS, Tschetter vigorously denies all claims asserted against it in the Action, denies all allegations of wrongdoing and liability, denies all material allegations of the Complaint, and denies that Plaintiff and the Settlement Class Members are entitled to any relief from Defendant;

J. WHEREAS, counsel for the Parties have investigated the facts relating to the claims and defenses alleged and the underlying events in the Action, have made a thorough study of the legal principles applicable to the claims and defenses asserted in the Action, and have conducted a thorough assessment of the strengths and weaknesses of their respective claims and defenses;

K. WHEREAS, counsel for the Parties have engaged in extensive arm’s-length negotiations concerning the settlement of the claims asserted in the Action, including the Mediation and follow up telephone conversations and other communications with and without the Mediator;

L. WHEREAS, Tschetter, without admitting any liability, fault or wrongdoing, and taking into account the uncertainty and risks inherent in any litigation, has concluded that further prosecution and defense of the Action would be protracted, burdensome and expensive, and that it is desirable and beneficial to fully and finally settle and terminate the Action in the manner and upon the terms and conditions set forth in this Settlement Agreement, subject to Court approval.

This Settlement Agreement is inadmissible as evidence against either of the Parties except to enforce the terms of the Settlement Agreement;

M. WHEREAS, Warden, and her counsel, on behalf of the Settlement Class, after receiving information from Tschetter regarding her claims, including discovery concerning the number of tenants who signed the Stipulation, Tschetter's processes for presenting the Stipulation, and related information, have concluded based upon their investigation, and taking into account the contested issues involved, the legal principles at issue, the expense and time necessary to prosecute the Action through trial, the risks and costs associated with further prosecution of the Action, the uncertainties of complex litigation, and the substantial benefits to be received pursuant to this Settlement Agreement, that a settlement with Tschetter on the terms set forth herein is fair, reasonable, and adequate, and in the best interest of Warden and the Settlement Class;

N. WHEREAS, Warden and her counsel, on behalf of the Settlement Class, has agreed to settle the Action with Tschetter on the terms set forth herein and to have judgment entered pursuant to this Settlement Agreement without trial or adjudication of any issue of fact or law and without this Settlement Agreement, including any exhibits thereto, constituting any evidence against, or any admission by, any Party with respect to liability, fault, certifiability of the class or any other issue raised in the Action;

O. WHEREAS, Warden's Motion for Preliminary Approval will include a request for the Court to confirm certification of the Settlement Class for settlement purposes;

P. WHEREAS, the Settlement contemplated by this Settlement Agreement is expressly conditioned upon and subject to preliminary and final approval by the Court, as set forth herein. Absent such approvals, this Agreement and underlying settlement shall be null, void, and of no further force or effect and the parties shall be returned to their *status quo ante* as set forth at Article IV, Section IX. Effective upon such approvals, this Agreement is intended by the parties to fully, finally and forever resolve, discharge and settle the claims of the Settlement Class, upon and subject to the terms and conditions hereof; and

Q. WHEREAS, Tschetter and counsel for Tschetter have agreed to settle the Action with Plaintiff on the terms set forth herein and to have judgment entered pursuant to this Settlement Agreement without trial or adjudication of any issue of fact or law and without this Settlement Agreement, including any exhibits thereto, constituting any evidence against, or any admission by, any Party with respect to liability, fault, certifiability of the class, or any other issue raised in the Action.

NOW, THEREFORE, it is hereby agreed that, in consideration of the agreements, promises, and covenants set forth in this Settlement Agreement, and subject to the terms and conditions set forth herein and the approval of the Court, the Action shall be fully and finally settled and dismissed with prejudice.

II. DEFINITIONS

Unless defined elsewhere in this Settlement Agreement, as used herein and in the documents attached hereto as exhibits, the terms set forth below shall have the meanings set forth below. The singular includes the plural and vice versa.

1. “Action” means the Litigation captioned *Shawnte Warden v. Tschetter Sulzer, P.C.*, 1:22-cv-00271-WJM-NRN (Dist. Colo.) including any and all appeals;

2. “Class List” means the list of certain names, addresses, and/or telephone numbers of Persons who fall into the definition of the Settlement Class to be provided by Tschetter no later than five (5) business days following entry of the Preliminary Approval Order to Settlement Class Counsel for the purposes of identifying and sending notice to potential Settlement Class Members.

3. “Class Member Payment” means the distribution as described in Section III.1, to be paid from the Settlement Fund to each Settlement Class Member who does not request exclusion.

4. “Counsel for Tschetter” or “Tschetter’s Counsel” means John M. Palmeri and Tamara A. Seelman of Gordon Rees Scully Mansukhani, LLP.

5. “Court” means the United States District Court for District of Colorado, and the Honorable Charlotte N. Sweeney, or any judge who may succeed her as Judge in the Action.

6. “*Cy Pres* Recipient” means the Colorado Coalition for the Homeless. Should the Court not approve the Colorado Coalition for the Homeless as a *cy pres* recipient, the *Cy Pres* Recipient shall mean any other such organization(s) proposed by the Parties that the Court approves.

7. “Effective Date” means one (1) business day after the Court has entered a Final Approval Order and Judgment and that Final Approval Order and Judgment has become Final.

8. “Fee Award” means any award of reasonable attorney’s fees and for reimbursement of costs and expenses to be awarded by the Court to Settlement Class Counsel as set forth in Section VI below.

9. “Final” means that the Final Approval Order and Judgment has been entered on the docket in the Action and that the following has occurred: (a) the time to appeal from such order and judgment has expired and no appeal has been timely filed, or (b) if an appeal from such order and judgment has been filed, it has resulted in an affirmance of the Final Approval Order and Judgment without any material change, no other appeal or petition for rehearing or review is pending, the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired, relief from a failure to file same is not available, and the mandate is filed with the Court, or (c) the Court, following the resolution of any appeal from the Final Approval Order and Judgment, enters a further order or orders approving settlement on the terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal results in affirmation of such order(s).

10. “Final Approval Hearing” means the hearing at which the Court will be asked to grant final approval to this Settlement Agreement in all material respects as fair, reasonable and adequate, consider any timely objections to this Settlement Agreement, authorize the entry of a final judgment, and determine and approve the amounts of the Fee Award and Incentive Award.

11. “Final Approval Order and Judgment” means the order in which the Court certifies the Settlement Class, grants final approval of this Settlement Agreement, authorizes the entry of a final judgment, and dismisses the Action with prejudice.

12. “Incentive Award” means the payment to be made to the Named Plaintiff as set forth in Section VI.2 of this Settlement Agreement, subject to the approval of the Court in recognition for the Named Plaintiff’s time and effort in prosecuting the case.

13. “Notice” means traditional “long form” notice to be sent via U.S. Mail to Settlement Class Members describing the terms of this Settlement Agreement and containing information about the Action and instructions on how to opt-out of or object to the Settlement Class that will be made available in accordance with Section IV.3 of this Settlement Agreement, substantially in the form of Exhibit 1 hereto.

14. “Notice Plan” means and refers to the plan to disseminate notice of the Settlement Agreement to the Settlement Class that comports with due process and that includes direct mail notice as set forth in Section IV.3.

15. “Objection Deadline” means and refers to the date set by the Court for Settlement Class Members to submit any objections to the Settlement Agreement, which shall be at least 14 (fourteen) days after the filing of Class Counsel’s Motion for any Fee Award.

16. “Opt-Out Deadline” means and refers to the date set by the Court for Persons who fall within the definition of the Settlement Class to submit any requests to exclude themselves from the Settlement Class or to opt-out of the Settlement, which shall be the same date as the Objection Deadline.

17. “Parties” means Warden and Tschetter.

18. “Person” means, without limitation, any individual, and any entity including, without limitation, a corporation, partnership, limited partnership, limited liability partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, and any other business or legal entity and their respective predecessors, successors, representatives, and assigns.

19. “Preliminary Approval Order” means the Court’s Order described in Section IV.2.b below and entered in connection with the hearing (the “Preliminary Approval Hearing”) at which the Court, *inter alia*, confirms certification of the Settlement Class for settlement purposes,

grants its preliminary approval to this Settlement Agreement, authorizes dissemination of notice to the Settlement Class in accordance with the Notice Plan or as amended or modified by the Court, and schedules the Final Approval Hearing.

20. “Release” means the releases set forth in Section V of this Settlement Agreement.

21. “Released Parties” means Tschetter, all of its acquired entities, predecessors, successors, affiliates, parent companies and subsidiaries, and any and all of Tschetter’s and its affiliates’ past or present predecessors, successors, heirs, executors, estates, administrators, direct or indirect parents, subsidiaries, associates, affiliates, assigns, employers, employees, principals, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, attorneys, accountants, financial and other advisors, investment bankers, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns, franchisees and persons, firms, trusts, corporations, debt collectors, and any other individuals or entities in which Tschetter has or had a controlling interest, to which it is related, or with which it is affiliated and any other representatives of any of these individuals or entities. Released Parties shall not include Tschetter’s landlord or management clients.

22. “Releasing Parties” means the Settlement Class Representative, all Settlement Class Members and any present, former, and future spouses, dependents, children, parents, co-tenants and any other members of the household who resided at an Tschetter property with a Settlement Class Member as well as the present, former, and future estates, heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, assigns and any other representatives of each of them.

23. “Relevant Period of Time” means from January 31, 2021, to February 28, 2022.

24. “Settlement Administration Costs” means any and all costs incurred in administering the Settlement, to be paid exclusively by Defendant, including but not limited to all costs associated with identification of Persons who fall within the definition of the Settlement Class, costs of executing the Notice Plan and disseminating all notices, processing opt outs and forwarding objections to counsel, and sending Settlement Checks to Settlement Class Members,

but specifically excluding all class benefit payments, payment of any Incentive Award, and any award by the Court of Attorney's Fees and Costs.

25. "Settlement Agreement" or "Settlement" or "Settlement Agreement and Release" or "Agreement" means this settlement agreement and release, including the attached exhibits.

26. "Settlement Check" means the negotiable checks to be sent to Settlement Class Members following Final Approval.

27. "Settlement Class" means all Tenants who signed the Stipulation between January 31, 2021 and February 28, 2022 and for whom any Judgment of Possession has not yet been vacated. It is understood by and between the Parties that the Settlement Class consists of approximately 249 Persons.

28. "Settlement Class Counsel" means Steven L. Woodrow of Woodrow & Peluso, LLC and Jason Legg of Cadiz Law, LLC.

29. "Settlement Class Member" means a Person who falls within the definition of the Settlement Class and who has not submitted a valid request to be excluded/opt out of the Settlement.

30. "Settlement Class Representative" or "Warden" means and refers to the Settlement Class Representative in the Action, Shawnte Warden.

31. "Settlement Fund" means the common fund that Tschetter will be obligated to pay by operation of this Settlement Agreement if it receives final approval from the Court and the Judgment becomes Final. The Settlement Fund equals sixty-thousand dollars and zero cents (\$60,000.00 USD). The Settlement Fund monies need not be sequestered into a separate account. The Settlement Fund will be used to pay the Settlement Checks. Any Fee Award or Incentive Award approved by the Court and all Settlement Administration Costs shall be paid separately. The Parties agree that the Settlement Fund amount is based upon an understanding that there are 249 Settlement Class Members. Any additional Settlement Class Members that are identified shall increase the Settlement Fund amount by \$240.

32. “Successful Opt-Out” means a Person who, in accordance with Section IV.4 of this Settlement exercises the right to be excluded from the Settlement by the Opt-Out Deadline, but shall not include (a) any Person whose communication is not treated as a request for exclusion, and (b) Persons whose requests for exclusion are not valid or are otherwise void pursuant to Section IV.4.

33. “Tschetter” means Tschetter Sulzer, P.C., Defendant in the Action, together with all owners, members, shareholders, employees, agents, parents, subsidiaries, joint venturers, heirs and assigns.

34. All references to days shall be interpreted to mean calendar days, unless otherwise noted. When a deadline or date falls on a weekend or a legal Court holiday, the deadline or date shall be extended to the next business day that is not a weekend or legal Court holiday.

35. All references to “his,” “her,” “they,” similar terms are intended to be gender-neutral, and apply equally to Persons who are businesses, organizations, or other non-natural Persons.

36. Other terms are defined in the text of this Settlement Agreement and shall have the meaning given to those terms in the text. It shall be the intent of the Parties in connection with all documents related to the Settlement that defined terms as used in other documents shall have the meaning given to them in this Settlement Agreement, unless otherwise specified.

III. SETTLEMENT CONSIDERATION AND CLAIMS PROCEDURE

In consideration of a full, complete and final settlement of the Action, dismissal of the Action with prejudice, and the releases set forth in Section V below, and subject to the Court’s preliminary and final approval, the Parties agree to the following relief:

1. Monetary Relief to Settlement Class Members

a. Cash Payments. Subject to the terms and conditions of this Agreement, Settlement Class Members shall qualify for payment from the Settlement Fund if they are on the Class List and have not validly opted out of the Settlement.

b. Each Settlement Class Member who qualifies for payment by appearing on the Class List shall be eligible to receive one Class Member Payment equal to \$240.

c. No later than thirty (30) days after the Final Approval Order and Judgment becomes Final, Tschetter shall cause Settlement Checks to be issued to Settlement Class Members who have not validly opted out of the Settlement.

d. Settlement Checks for the Class Member Payments shall be valid for ninety (90) days after issuance.

e. Any funds associated with Settlement Checks not cashed by Settlement Class Members within that time will remain in the Settlement Fund unless such Settlement Check is returned as undeliverable to Defendant within the 90-day period after issuance (“Returned Settlement Checks”). With respect to Returned Settlement Checks, Tschetter will make one (1) attempt at re-mailing to the address on file or to any updated address determined by using the national change of address registry or any information received by the Settlement Class Member. Re-mailed checks shall be valid for ninety (90) days after issuance of the re-mailing.

f. Any amounts remaining in the Settlement Fund after payment of all Class Member Payments will be paid to the *Cy Pres* Recipient or recipients approved by the Court.

g. Notwithstanding any judgment, principle, or statute, there shall be no interest accrued, owing, or paid by Tschetter on the Class Member Payments, or on the Settlement Fund, or on any other benefit available (or potentially available) under this Agreement.

2. Payment of Claims Administration Costs

a. All Settlement Administration Costs, including postage, overhead, and other expenses, shall be borne by Tschetter and shall be paid separately from and in addition to the Settlement Fund.

3. Payment of Benefits

a. Subject to the terms and conditions of this Settlement Agreement, Defendant shall make the following disbursements from the Settlement Fund in this order:

i. Pay all taxes and tax-related expenses, if any, or, at Tschetter's discretion, it shall reserve an amount of the Settlement Fund sufficient to pay taxes and tax-related expenses;

ii. Costs to mail or otherwise provide a Settlement Check in the amount of the Class Member Payment to each Settlement Class Member who qualifies for payment by appearing on the Class List, who has not opted out of the Settlement,

iii. Upon the earlier of (1) the cashing of the last Settlement Check (including any Settlement Check that is resent in accordance with Section III.1.e), or (2) the passage of 150 days since the mailing of the last Settlement Check, Defendant shall pay any amounts remaining in the Settlement Fund to the *Cy Pres* Recipient.

b. The Settlement Checks shall be paid solely from the Settlement Fund and shall be mailed to the address on the Class List or any updated address provided by the Settlement Class Member or found using the national change of address registry.

c. All Settlement Checks issued under this section shall be void if not negotiated within ninety (90) days of their date of issue and shall contain a disclosure to that effect. Settlement Checks issued pursuant to this section that are not negotiated within ninety (90) calendar days of their date of issue shall not be reissued unless agreed upon by the Parties. Counsel for the Parties shall meet and confer regarding any claims of lost checks no later than one hundred twenty (120) days of their date of issue.

d. The Parties' respective obligations with respect to the distribution of Settlement Checks, the Settlement Administration Costs, any Fee Award, any Incentive Awards, and the amount of unclaimed and uncashed Settlement Checks, if any, together with the forgiveness of any debt, shall be performed reasonably and in good faith. So long as such obligations are performed in good faith, the Parties shall not be liable for erroneous, improper, or inaccurate distribution, and the Release and any judgment shall be effective, once this Agreement becomes Final.

5. Prospective Relief

Tschetter agrees to:

a. *Vacation of Judgments of Possession.* No later than thirty (30) days following the date that the Final Approval Order and Judgment becomes final, Defendant shall send a letter to each landlord or management company of those Settlement Class Members whose judgments of possession have not been vacated, stating: “As part of the settlement of a Class Action lawsuit, please respond to the following within 14 days:

- (1) Do you object to the vacation of judgment of possession with respect to [Tenant’s name]; and
- (2) If you do object, provide proof that the Tenant did not vacate the premises within the time agreed to in the Stipulation.

The letter shall notify Tschetter’s landlord or management company clients that failure to respond within 14 days will result in Tschetter being required under the Settlement to proceed to have the judgment vacated. Tschetter shall vacate all judgments of possession where either no objection has been raised or the landlord or management company has failed to respond to Tschetter’s letter within 14 days.

b. *Revisions to Defendant’s Advisement and Stipulation Forms.* No later than thirty (30) days following the date that the Final Approval Order and Judgment becomes final, Defendant shall submit revised Advisement and Stipulation Forms to Class Counsel for their approval of the revised language. The revision is being made to more clearly inform the tenant of their rights and obligations, specifically their obligation to notify Defendant when they move out, which shall then trigger the vacation of the judgment of possession. The Mediator has reviewed the suggested revisions and believes they are appropriate.

IV. SETTLEMENT PROCEDURES

1. Class Certification

a. For purposes of this Settlement Agreement and the proceedings and certification contemplated herein, Warden, through Class Counsel, will request: (i) that the Court appoint Warden as the Settlement Class Representative for the Settlement Class and (ii) that the Court appointment Warden's counsel from the law firm of Woodrow & Peluso, LLC, Steven Woodrow, together with Jason Legg from Cadiz Law, LLC, as Settlement Class Counsel. Tschetter agrees not to oppose any motion of Woodrow & Peluso, LLC or Cadiz Law, LLC to have their appointment as Class Counsel for the Settlement Class or to have Warden's appointment as Settlement Class Representative confirmed by the Court for settlement purposes only.

b. Tschetter does not object to confirming the certification of the Settlement Class strictly and solely for settlement purposes only. Confirmation of the certification of the Settlement Class will be effective only with respect to the Settlement of this Action and is without prejudice to the rights of Tschetter to oppose class certification, seek decertification, and/or to contest issues of liability in this Action should this Settlement Agreement be terminated or the Effective Date not occur for any reason. This Settlement Agreement shall not be construed as an admission by Tschetter as to any matter. In the event that this Agreement is terminated pursuant to its terms or the Effective Date does not occur for any reason, then the confirmation of the certification of the Settlement Class, which is strictly and solely for settlement purposes only, will be vacated and of no further force or effect, and the Action will proceed with respect to the Settlement Class as it existed before execution of this Settlement Agreement.

2. Preliminary Approval

a. As soon as practical after the execution of this Settlement Agreement, Plaintiff shall move the Court for entry of the Preliminary Approval Order. Tschetter's failure to oppose the Plaintiff's request for entry of a Preliminary Approval Order shall not constitute an admission by Tschetter as to any matter.

- b. Such Preliminary Approval Order shall, *inter alia*:
- i. preliminarily approve the Settlement as fair, reasonable, and adequate;
 - ii. confirm the certification of the Settlement Class for settlement purposes only;
 - iii. approve the form and contents of the proposed Notice in a form substantially similar to that attached hereto as Exhibit 1 and authorize its dissemination to the Settlement Class;
 - iv. find that the Notice set forth herein constitutes the best notice practicable under the circumstances and satisfies Due Process and Rule 23 of the Colorado Rules of Civil Procedure;
 - v. approve the requirement that Settlement Class Members appear on the Class List to obtain a Settlement Check;
 - vi. set deadlines consistent with this Agreement for notifying the Settlement Class of their rights in accordance with the Notice Plan, including the Opt-Out Deadline, the Objection Deadline, and the filing of papers in connection with the Final Approval Hearing;
 - vii. confirm Shawnte Warden as the representative of the Settlement Class and confirm her lawyers as counsel for the Settlement Class;
 - viii. set a date for the Final Approval Hearing, which may be continued by the Court from time to time without the necessity of further notice.

3. Notice Plan

- a. The Parties agree to provide the best notice that is practicable under the circumstances, including individual notice to Persons in the Settlement Class who may be identified through reasonable efforts.
- b. Tschetter shall, within five (5) business days of entry of the Preliminary Approval Order, provide Class Counsel with the Class List. Tschetter shall use the Class List to

take all steps reasonably necessary, including reverse phone look-ups of the phone numbers, to identify current addresses for persons appearing on the Class List. After identifying mailing addresses, Tschetter shall, by using the National Change of Address (“NCOA”) database maintained by the United States Postal Service (“Postal Service”), obtain updated mailing addresses, if available.

c. Within thirty (30) days following entry of the Preliminary Approval Order, Tschetter shall mail the Notice to each Settlement Class Member via first class mail. Wherever an email address has been located, Tschetter will also email the Notice, in a form appropriate for email, to the email address. Tschetter shall have no obligation to mail or email Notice to any Settlement Class Member for whom no mailing address or email address could be located. The last known address of Persons in the Settlement Class will be subject to confirmation or updating as follows: (a) Tschetter shall conduct a reasonable search to locate an updated address for any Person in the Settlement Class whose Notice is returned as undeliverable; (b) Tschetter shall update addresses based on any forwarding information received from the United States Post Office; and (c) Tschetter shall update addresses based on information it receives and through any requests received from Persons in the Settlement Class.

d. If any Notice sent under this Section is returned by the Postal Service as undeliverable, Tschetter shall re-mail the Notice once to the forwarding address, if any, provided by the Postal Service on the face of the returned mail. Otherwise, Tschetter shall attempt to send notice via email. Other than as set forth in this paragraph, neither Party shall have any other obligation to re-mail the Notice.

e. Before the Notices are mailed and emailed, Class Counsel shall first be provided with a proof copy of any and all notices (including what the items will look like in their final form), and shall have the right to inspect the same for compliance with the Settlement Agreement and with any orders by the Court.

4. Right and Effect of Members of the Class to Opt-Out

a. Each Person who falls within the definition of the Settlement Class shall have the right to opt-out and not participate in the Settlement Agreement as provided for in the Preliminary Approval Order.

b. The Notice shall explain the right to request exclusion from the Settlement Class and not to be bound by this Settlement Agreement, if, before the Opt-Out Deadline, the Person who falls within the definition of the Settlement Class (a “requester”) completes and mails a valid request for exclusion (“Opt-Out”) to Class Counsel, Tschetter’s Counsel, or the Clerk of the Court at the addresses set forth in the Notice. The Opt-Out must be postmarked on or before the Opt-Out Deadline.

c. For an Opt-Out request to be valid and treated as a Successful Opt-Out, it must include: (a) the requester’s full name, address, and name of the Action (*i.e. Warden v. Tschetter*) and telephone number; (b) the requester’s personal and original signature, or the original signature of a person previously authorized by law, such as a trustee, guardian or person acting under a power of attorney, to act on behalf of the requester with respect to a claim or right such as those in the Action; and (c) state unequivocally that the requester desires to be excluded from the Settlement Class, to be excluded from the Settlement, not to participate in the Settlement, and/or to waive all rights to the benefits of the Settlement. Each Party’s counsel shall promptly inform the other of any Opt-Out requests it receives.

d. Persons who submit complete Opt-Outs that are postmarked before the Opt-Out Deadline shall receive no benefit or compensation under this Settlement Agreement, shall have no right to object to the proposed Settlement Agreement or participate at the Final Approval Hearing, and shall not be bound by any order or judgment entered in this Action.

e. A request to Opt-Out that does not comply with all of the foregoing, or that is not timely submitted or postmarked by the Opt-Out deadline, or that is sent to an address other than that set forth in the notice, shall be invalid and the person serving such request shall be treated as a Settlement Class Member and be bound by this Settlement Agreement and the Release contained herein if finally approved.

f. No Person shall purport to exercise any exclusion rights of any other Person, or purport: (a) to opt-out Persons who fall within the definition of the Settlement Class as a group, aggregate, or class involving more than one Person; or (b) to opt-out more than one Person who falls within the definition of the Settlement Class on a single paper, or as an agent or representative. Any such purported opt-outs shall be void, and any Person(s) who are the subject of such purported opt-outs shall be treated as a Settlement Class Members.

g. Before the Final Approval Hearing, Class Counsel and Counsel for the Defendant shall create a comprehensive list of successful Opt-Outs. The Parties shall, if possible, agree as to whether a communication from or on behalf of a Person who falls within the definition of the Settlement Class is a request to opt-out. Tschetter or Class Counsel may dispute an Opt-Out or purported Opt-Out, and if the Parties are unable to resolve such dispute, they shall present the issue to the Court for resolution.

5. Inquiries from Settlement Class Members

a. It shall be the responsibility of Tschetter to respond to all inquiries from or on behalf of potential Settlement Class Members with respect to this Settlement by directing the Settlement Class Members to Class Counsel.

6. Objections to the Settlement and Appearance at Final Approval Hearing

a. Any Settlement Class Member may comment in support of, or in opposition to, the Settlement at his, her, or their own expense; provided however, that all comments and/or objections must be in writing and mailed or hand-delivered to the Clerk of the Court, Class Counsel, and Tschetter's attorneys and postmarked or delivered by no later than the Objection Deadline. Objections may be filed by counsel for a Settlement Class Member though any such counsel must file an appearance in the Action.

b. Each objection must: (i) set forth the Settlement Class Member's full name, current address, and telephone number; (ii) contain the Settlement Class Member's original signature or the signature of counsel for the Settlement Class Member; (iii) state that the Settlement Class Member objects to the Settlement, in whole or in part; (iv) set forth the complete legal and

factual bases for the objection, including citations to relevant authorizes; (v) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position; and (vi) state whether the objecting Settlement Class Member intends on appearing at the Final Approval Hearing either *pro se* or through counsel and whether the objecting Settlement Class Member plans on offering testimony at the Final Approval Hearing.

c. All objections must be mailed or hand-delivered to the Court before the Objection Deadline. An objector is not required to attend the Final Approval Hearing. However, any Settlement Class Member who objects may appear at the Final Approval Hearing, either in person or through an attorney hired at his or her own expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the underlying settlement. A Settlement Class Member or his or her attorney who wishes to speak at the Fairness Hearing must so state in his or her written objection or submit a separate notice of intention to appear to the Clerk of the Court no later than the Objection Deadline. No Settlement Class Member shall be permitted to raise matters at the Final Approval Hearing that the Settlement Class Member could have raised in a written objection but failed to do so.

d. Any Settlement Class Member who fails to timely submit a written objection with the Court shall not be permitted to object to this Settlement Agreement at the Final Approval Hearing, shall be foreclosed from seeking any review of this Agreement by appeal or other means, and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other related action or proceeding.

7. Final Approval Hearing

a. The Parties will recommend that the Final Approval Hearing be scheduled for a date no more than seventy-five (75) days after the last date required for the mailing of the Notice and Claim Form.

b. Class Counsel shall file their petition for any Fee Award no later than thirty-five (35) days prior to the Final Approval Hearing.

c. No more than fourteen (14) days prior to the Final Approval hearing, Tschetter shall, through its counsel, file with the Court and serve on Class Counsel a declaration stating that the Notice required by the Agreement has been completed in accordance with the terms of the Preliminary Approval Order.

d. If the Settlement Agreement is preliminarily approved by the Court, and all other conditions precedent to the Settlement have been satisfied, then, no later than fourteen (14) calendar days prior to the Final Approval Hearing, Plaintiff shall file a Motion for Final Approval asking, *inter alia*, that the Court enter a Final Approval Order and Judgment, with Plaintiff filing a memorandum of points and authorities in support of the motion. Either Party may file a memorandum addressing any objection to the Settlement that has been submitted. Any request by Tschetter for entry of the Final Approval Order and Judgment, or failure to object to Plaintiff's request for entry of the Final Approval Order and Judgment, shall not be an admission or concession by Tschetter as to any matter pertaining to Plaintiff's claims.

e. At the Final Approval Hearing, the Court will consider and determine whether the provisions of this Agreement should be finally approved as fair, reasonable, and adequate, whether any objections to the Agreement should be sustained or overruled, whether the requested Fee Award to Settlement Class Counsel and the requested Incentive Payment to the Class Representative should be approved, and whether a judgment finally approving the Settlement Agreement should be entered.

f. This Settlement Agreement is subject to and conditioned upon the issuance by the Court of a Final Approval Order that grants final approval of this Agreement and:

i. finds that the notice provided satisfies the requirements of due process and the Colorado Rules of Civil Procedure;

ii. finds that Settlement Class Members have been adequately represented by the Settlement Class Representative and Settlement Class Counsel;

iii. finds that the Settlement Agreement is fair, reasonable and adequate to the Settlement Class, that each Settlement Class Member shall be bound by this Agreement, including the releases in Section V, and that this Settlement Agreement should be and is approved;

iv. dismisses on the merits and with prejudice all claims of the Settlement Class Members asserted against Tschetter in the Action, without fees or costs to any party except as provided in this Agreement; and

v. retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Settlement.

8. Litigation Stay

a. Except as necessary to secure approval of this Settlement Agreement or as otherwise provided herein, the Parties shall take no further steps to prosecute the Action in the Court or in any other court. In the event the Settlement Agreement is not approved or is terminated according to its terms, the Parties may resume litigation no sooner than fourteen (14) days after such event or as otherwise directed by the Court.

9. Conditions of Settlement; Effect of Disapproval, Cancellation, Termination or Nullification of Settlement

a. The Effective Date of this Settlement Agreement shall not occur unless and until each and every one of the following events occurs, and shall be the date upon which the last (in time) of the following events occurs:

(i) This Agreement has been signed by the Parties, Settlement Class Counsel, and Tschetter's Counsel;

(ii) The Court has entered an order granting Preliminary Approval of the Settlement Agreement;

(iii) The Court has entered an order finally approving the Settlement Agreement, following notice to the Settlement Class and a Final Approval Hearing, as provided in the Colorado Rules of Civil Procedure, and has entered the Final Approval Order and Judgment, or a judgment substantially consistent with this Agreement; and

(iv) The Final Approval Order and Judgment has become Final.

b. If some or all of the conditions specified in Section 9(a) are not met, or in the event that this Settlement Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Settlement Agreement shall be cancelled and terminated subject to Section 9(c) below, unless Class Counsel and Tschetter's Counsel mutually agree in writing to proceed with this Agreement. Notwithstanding anything herein, the Parties agree that the Court's decision as to the amount of the Fee Award to Class Counsel set forth above or the Incentive Award to the Class Representative, regardless of the amounts awarded, shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination of the Agreement.

c. Plaintiff and Tschetter shall each have the right to unilaterally terminate this Settlement Agreement by providing written notice of his, her, their or its election to do so ("Termination Notice") to all other Parties hereto within ten (10) calendar days of any of the following occurrences:

i. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement Agreement;

ii. an appellate court reverses the Final Approval Order, and the Settlement Agreement is not reinstated without material change by the Court on remand;

iii. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement Agreement in a material way, unless such modification or amendment is accepted in writing by all Parties;

iv. the Effective Date does not occur; or

v. any other ground for termination provided for elsewhere in this Agreement occurs.

d. If, at the conclusion of the Opt-Out Deadline, more than one hundred (100) valid Opt-Outs have been received, Tschetter shall have, in its sole and absolute discretion, the option to terminate this Settlement Agreement within ten (10) calendar days after the Opt-Out Deadline.

e. If either Plaintiff or Tschetter terminates this Settlement Agreement as provided herein, the Settlement Agreement shall be of no force and effect and the Parties' rights and defenses shall be restored, without prejudice, to their respective positions as if this Settlement Agreement had never been executed, any orders entered by the Court in connection with this Agreement shall be vacated, and this Settlement Agreement shall not be used for any purpose whatsoever against any of the Parties.

V. RELEASE

1. Releases; Binding and Exclusive Nature of Settlement Agreement

a. In connection with the Settlement, the Final Approval Order and Judgment shall provide that the Action is dismissed with prejudice as to Warden and all Settlement Class Members. As of the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, fully, finally, and forever released, resolved, relinquished and discharged each and all of the Released Parties from each of the Released Claims and Unknown Claims (as defined below). The Releasing Parties further agree that they will not institute any action or cause of action (in law, in equity or administratively), suits, debts, liens, or claims, known or unknown, fixed or contingent, which they may have or claim to have, in state or federal court, in arbitration, or with any state, federal or local government agency or with any administrative or advisory body, arising from or reasonably related to the Released Claims and Unknown Claims. The release does not apply to Persons who fall within the definition of the Settlement Class who timely opt-out of the Settlement in accordance with the terms of this Agreement. The release also does not preclude Settlement Class Members from addressing, dealing with, or otherwise complying with requests or inquiries from any governmental authorities relating to the issues raised in this Settlement Agreement.

b. “Released Claims” means any and all claims (including Unknown Claims), causes of action, suits, obligations, debts, demands, agreements, promises, rights, extra-contractual claims, liabilities, damages, losses, controversies, costs, expenses, and attorneys’ fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, potential or filed, accrued or unaccrued, claimed or unclaimed, individual or representative, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, direct or punitive, multiplied or compensatory of every nature and description whatsoever arising out of Tschetter’s use of the Advisement or Stipulation.

c. “Unknown Claims” means claims that could have been raised in the Action and that the Releasing Parties do not know or suspect to exist, which, if known by them might affect their agreement to release the Released Parties or the Released Claims or might affect their decision to agree, object or not to object to the Settlement. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Paragraph.

VI. ATTORNEY’S FEES AND INCENTIVE AWARD

1. Fee Award and Costs

a. No later than fourteen (14) days before the Objection Deadline, Class Counsel may make written application to the Court for a Fee Award not to exceed \$150,000 USD. The Parties agree that the Court (and only the Court) shall determine the final amount of the Fee Award in this Action.

b. Any Fee Award shall be paid separate from and in addition to the Settlement Fund.

c. Subject to the terms and conditions of this Agreement, within fourteen (14) days after the Settlement Agreement becomes Final, and only in the event that the Court has made a Fee Award payable to Class Counsel, Tschetter shall send the amount of any approved Fee Award to Settlement Class Counsel. The payment shall be made via wire or check as directed by Class Counsel. Prior to payment, Settlement Class Counsel shall submit to Tschetter such documentation (such as a W-9 form) as may be reasonably requested to accomplish the payment of the Fee Award contemplated herein.

d. Except as provided for in this Section, the Parties shall bear their own attorney's fees, costs, and expenses incurred in the prosecution, defense, or settlement of the Action.

2. Class Representative Incentive Award

a. No later than fourteen (14) days before the Objection Deadline, the Settlement Class Representative and Class Counsel may make written application to the Court for an Incentive Award not to exceed the amount of \$10,000 USD to be paid to the Settlement Class Representative for her service as the class representative in the Action and the settlement. The Parties agree that the Court (and only the Court) shall determine the final amount, if any, of the Incentive Award.

b. Tschetter agrees not to oppose any such application provided that it is in accord with the limitations set forth in this Section.

c. The Incentive Award shall be paid separate from and in addition to the Settlement Fund.

d. Subject to the terms and conditions of this Agreement, within fourteen (14) days after the Settlement Agreement becomes Final, and only in the event that the Court has approved an Incentive Award to the Class Representative, Tschetter shall pay the Incentive Award to the Settlement Class Representative as directed by Settlement Class Counsel. The Settlement Class Representative, through Settlement Class Counsel, shall provide a W-9 form to Tschetter prior to payment.

3. Effect on Settlement

The Parties agree that the rulings of the Court regarding the amount of the Fee Award and Incentive Award, and any claim or dispute relating thereto, will be considered by the Court separately from the remaining matters to be considered at the Final Approval Hearing as provided for in this Settlement Agreement and that any determination in that regard may be embodied in a separate order from the Court. Any order or proceedings relating to the amount of the Fee Award or the Incentive Award, including any appeals from or modifications or reversals of any orders related thereto, shall not operate to modify, reverse, terminate, or cancel the Settlement Agreement, affect the releases provided for in the Settlement Agreement, or affect whether the Final Approval Order and Judgment becomes Final as defined herein.

VII. LIMITATIONS ON USE OF SETTLEMENT AGREEMENT

1. No Admission

a. Tschetter denies any liability or wrongdoing of any kind associated with the alleged claims in the Action. Tschetter has denied and continues to deny each and every material factual allegation and all claims asserted against it in the Action. Nothing herein shall constitute an admission by Tschetter of wrongdoing or liability, or of the truth of any allegations in the Action. The settlement of the Action, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of the Settlement are not and shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Tschetter, or as a concession by Tschetter as to the truth of any of the allegations in the Action, or the veracity of any claim for relief or defense, or as an admission regarding any other matter in the case.

b. Plaintiff Warden, by settling, does not admit the infirmity of any claim held by herself or the Settlement Class Members. The settlement of the Action, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of the Settlement are not and shall not be deemed to be, and may not be used as, an admission or evidence of admission on the part of Plaintiff, or as a concession by Plaintiff as to

the truth of any of the defenses in the Action, or the veracity of any defense, or as an admission regarding any other matter in the case.

2. Limitations on Use

Neither this Settlement Agreement nor any related documents filed or created in connection with this Settlement Agreement shall be admissible in evidence in any proceeding, except as necessary to approve, interpret or enforce this Settlement Agreement.

VIII. MISCELLANEOUS PROVISIONS

1. Claims Against Settlement Benefits

In the event a third party, such as a bankruptcy trustee, former spouse, or other third party has or claims to have a claim against any Class Member Payment made to a Settlement Class Member, it is the responsibility of the Settlement Class Member to transmit the funds to such third party.

2. Counterparts

This Settlement Agreement and any amendments hereto may be executed in one or more counterparts, and either Party may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and both of which counterparts taken together shall constitute but one and the same instrument. Signature by digital, facsimile or in PDF format shall be deemed an original for all purposes.

3. Integration Clause

This Settlement Agreement, including the Exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties with respect to the subject matter contained herein. There are no promises, representations, warranties, covenants or undertakings governing the subject matter of this Settlement Agreement other than those expressly set forth in this Settlement Agreement. This Settlement Agreement supersedes all prior agreements and understandings among the Parties with respect to the settlement of the Action. This Settlement Agreement may not be changed, altered or modified, except in a writing signed by a duly authorized agent of Tschetter, the Settlement Class Representative, and their respective counsel

and approved by the Court, and may not be discharged except by performance in accordance with its terms.

4. Execution of Documents

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

5. Independent Judgment and Advice of Counsel

Each party to this Settlement Agreement warrants that he, she, or it is acting upon his, her, or their independent judgment and upon the advice of his, her, or their 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 warranties and representations expressly made in this Settlement Agreement. The Parties acknowledge, agree, and specifically warrant to each other that they have read this Settlement Agreement, have received legal advice with respect to the advisability of entering into this Settlement, and fully understand its legal effect.

6. Governing Law

The Settlement Agreement shall be construed, enforced, and administered in accordance with the laws of the State of Colorado.

7. Jurisdiction

The Court shall retain jurisdiction, after entry of the Final Approval Order and Judgment, with respect to enforcement of the terms of this Settlement Agreement and the underlying settlement, and all Parties and Settlement Class Members submit to the exclusive jurisdiction of the Court with respect to the enforcement of this Settlement Agreement and any dispute relating thereto.

8. Exhibits

Any exhibits to this Settlement Agreement are an integral and material part of this Settlement Agreement and are hereby incorporated and made a part of this Settlement Agreement.

9. No Assignments: Binding on Assigns

Each Party represents, covenants, and warrants that he, she, or they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber any portion of any liability, claim, demand, cause of action, or rights that he, she or they herein release. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, successors, and assigns.

10. Waiver of Compliance

Any failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be expressly waived or excused in writing, to the extent permitted under applicable law, by the Party entitled to the benefit of such obligation, covenant, agreement, or condition and such party's counsel. A waiver or failure to insist upon compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to any subsequent or other failure.

11. No Collateral Attack

This Settlement Agreement shall not be subject to collateral attack by any Settlement Class Members or their representatives any time on or after the Effective Date. Such prohibited collateral attacks shall include, but shall not be limited to, claims that a Settlement Class Member's claim should have been heard or decided by another court or in another suit, that the payment to a Settlement Class Member was insufficient, and/or that a Settlement Class Member failed to receive timely notice of the Settlement.

12. Authorization

The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties to the terms and conditions hereof.

13. Settlement Class Member Signatures

It is agreed that, because the Settlement Class is so numerous, it is impractical to have each Settlement Class Member execute this Settlement Agreement. The Notice will advise all Settlement Class Members and/or their representatives of the binding nature of the releases and of this Settlement Agreement, and in the absence of a valid and timely request for exclusion, such

Notice shall have the same force and effect as if each Settlement Class Member executed this Settlement Agreement.

14. Taxes

a. To the extent required, for the purpose of §1.468B of the Code and the Treasury regulations thereunder, Tschetter shall be designated as the “administrator” of the Settlement Fund. Tschetter shall cause to be timely and properly filed all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)). Such returns on the income earned by the Settlement Fund shall be paid out of the Settlement Fund.

b. Any Person that receives a distribution from the Settlement Fund pursuant to Section III shall be solely responsible for any taxes or tax-related expenses owed or incurred by that Person by reason of that distribution. Such taxes and tax-related expenses shall not be paid from the Settlement Fund.

c. Warden, the Settlement Class Members, and Class Counsel shall fully bear all the tax consequences of any and all benefits received by them and the Settlement Class Members from Tschetter in connection with this Agreement. Warden acknowledges that Tschetter and its attorneys provided no tax advice related to this Agreement and that Tschetter may be required to file certain Form 1099 or other information reports with the United States Internal Revenue Service. Warden has been advised to consult with tax counsel of Warden’s own choice to seek legal and tax advice regarding the taxability or non-taxability of consideration provided herein. In no event shall Tschetter or any of the other Released Parties have any responsibility or liability for taxes or tax-related expenses arising in connection with the payment or distribution of the Settlement Fund to Warden, Class Counsel, the Settlement Class Members, the *Cy Pres* or any other person or entity.

15. Drafter of Agreement

Neither Tschetter nor Warden, nor any of them, will be considered to be the drafter of this Settlement Agreement or any of its provisions for the purpose of any statute, case law, or rule of

interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement.

SIGNATURES

**THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLORADO**

**If You Signed a Stipulation with the Law Firm
Tschetter Sulzer, P.C. and Have Not Had Your
Judgment of Possession Vacated,
You May be Entitled to Relief**

A Federal Court in Colorado authorized this notice. This is not a solicitation from a lawyer.

Para ver este aviso en español, call 720-213-0676

- A Settlement has been reached in a class action lawsuit about whether Tschetter Sulzer, P.C. (“Tschetter”) violated the Fair Debt Collection Practices Act 15 U.S.C. § 1692 *et. seq.*, (“FDCPA”) by using an Advisement and Stipulation in its eviction cases.
- Tschetter denies that it did anything unlawful and asserts certain defenses. The Court has not determined who is right. Tschetter is referred to as the “Defendant.”
- Those included in the Settlement will be eligible to receive a payment from the Settlement Fund. Every Settlement Class Member who does not request to be excluded will receive a check for \$240.
- The Settlement also provides that Tschetter will seek to vacate judgments, and pay administrative costs and any incentive award or attorney fees and expenses approved by the Court.
- **Please read this notice carefully.** Your legal rights are affected whether you act or don’t act.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
EXCLUDE YOURSELF	You will receive no benefits, but you will retain any rights you currently have to sue the Defendant about the claims in this case.
OBJECT	Write to the Court explaining why you don’t like the Settlement.
PARTICIPATE IN THE HEARING	You can speak in Court about your opinion of the Settlement, but you are not required to do so.
DO NOTHING	You will receive a \$240 payment from the Settlement Fund and will give up your right to sue the Defendant for the claims released under the Settlement Agreement.

These rights and options – **and the deadlines to exercise them** – are explained in this Notice.

CALL 720-213-0676 for Class Counsel

BASIC INFORMATION

1. Why was this Notice issued?

A federal court seated in Denver Colorado authorized this notice because you have a right to know about this Settlement and all of your options. This Notice explains the lawsuit, the Settlement, and your legal rights.

Judge Sweeney of the United States District Court for the District of Colorado is overseeing this case (the “Lawsuit”). The Lawsuit is known as *Shawnte Warden v. Tschetter Sulzer, P.C.*, Case No. 2022-cv-00271-CNS-NRN. Shawnte Warden, the tenant who sued Tschetter, is called the Class Representative. The Defendant is Tschetter Sulzer, P.C.

2. What is a Class Action?

In a class action, one or more people called Class Representatives (in this case, Shawnte Warden) sues on behalf of a group or a “class” of people who have similar claims. In a class action, the court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

3. What is this Lawsuit about?

This Lawsuit alleges that Tschetter used a form Advisement and Stipulation in its eviction filings that violated the FDCPA. Tschetter denies it violated any law and asserts several defenses. If the Class Representative had moved forward with the suit and prevailed, Class Members could be entitled to certain monetary damages, including a share of 1% of Tschetter’s Net Worth.

The Court has not determined who is right. Rather, the Parties have agreed to settle the Lawsuit to avoid the uncertainties and expenses associated with ongoing litigation.

4. Why is there a Settlement?

The Court has not decided whether the Plaintiff or the Defendant should win this case. Instead, both sides agreed to a Settlement. That way, they avoid the uncertainties and expenses associated with ongoing litigation, and Class Members will get compensation now rather than, if at all, months or years from now.

WHO’S INCLUDED IN THE SETTLEMENT?

5. How do I know if I am in the Settlement Class?

You are in the Settlement Class if you fall into the Settlement Class Definition. The Court defined the Settlement Class as:

All Tenants who signed the Stipulation between January 31, 2021 and February 28, 2022 and for whom any Judgment of Possession has not yet been vacated.

It is understood by and between the Parties that the Settlement Class consists of approximately 249 Persons. As such, you are a Member of the Settlement Class if you signed the Stipulation, vacated your unit, and did not have the judgment of possession entered against you vacated.

THE SETTLEMENT BENEFITS

6. What does the Settlement provide?

Call 720-213-0676 or email swoodrow@woodrowpeluso.com for Class Counsel

The Settlement provides for a settlement of \$60,000 (the “Settlement Fund”) to settle the case. Every Class Member that does not opt out will receive a check for \$240. The cost to send notice to the Class and administer the Settlement, as well as the court approved attorney fees and expenses, and a court-approved payment to the Class Representative will be paid by the Defendant in addition to and separate from the Settlement Fund.

Class members are also eligible to have the judgments of possession entered against them vacated. Tschetter will contact its landlord clients and inquire as to whether the client objects to vacating the judgment. If the landlord does not raise a valid objection within 14 days, Tschetter will proceed to request the court vacate the judgments.

7. How much will my payment be?

If you are a member of the Settlement Class who does not request exclusion you will receive a check for \$240. Any amounts remaining in the Settlement Fund after disbursement of these amounts, due, for example, to uncashed checks, will be paid to a *cy pres* recipient approved by the Court.

8. When will I get my payment?

You should receive a check from Tschetter within 60-90 days after the Settlement has been finally approved and/or after any appeals have been resolved in favor of the Settlement. The hearing to consider the final fairness of the Settlement will be held before the Honorable Judge Charlotte Sweeney of the United States District Court for the District of Colorado, Alfred A. Arraj Courthouse, 901 19th St, Denver, CO 80294, Courtroom A702, scheduled for [Fairness Hearing Date.] All checks will expire and become void 90 days after they are issued.

HOW TO GET BENEFITS

9. How do I get benefits?

If you are a Settlement Class Member and you want to participate in the Settlement, you don’t need to do anything. If you move, please contact Class Counsel or Tschetter’s Counsel to provide an updated address.

REMAINING IN THE SETTLEMENT

10. What am I giving up if I stay in the Class?

If the Settlement becomes final, you will give up your right to sue Tschetter for the claims being resolved by this Settlement. The specific claims you are giving up against Tschetter are described in Section V of the Settlement Agreement. You will be “releasing” the Defendant and all related people and entities as described in Section II.22 of the Settlement Agreement. Unless you exclude yourself (*see* Question 15), you are “releasing” the claims. The Settlement Agreement is available by contacting Settlement Class Counsel at swoodrow@woodrowpeluso.com or by contacting counsel for Tschetter.

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions you can talk to Class Counsel listed in Questions 12 for free or you can, of course, talk to your own lawyer if you have questions about what this means.

11. What happens if I do nothing at all?

If you do nothing, you will get the benefits from this Settlement and give up your right to sue Tschetter over the Advisement and Stipulation. Unless you exclude yourself, you won't be able to start a lawsuit or be part of any other lawsuit against the Defendant for the claims being resolved by this Settlement.

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in the case?

The Court has appointed Steven Woodrow of Woodrow & Peluso, LLC and Jason Legg of Cadiz Law, LLC to be the attorneys representing the Settlement Class. They are called "Class Counsel." They believe, after litigating the case and conducting an extensive investigation, that the Settlement is fair, reasonable, and in the best interests of the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense. You may also enter an appearance through an attorney if you so desire.

13. How will the lawyers and Class Representative be paid?

The Settlement Agreement allows Class Counsel to submit a request for reasonable attorneys' fees and costs of up to \$150,000 as fees and expenses for investigating the facts, litigating the case, and negotiating the Settlement in this matter. Class Counsel may seek, and the Court may award, less than this amount. Class Counsel also will apply to the Court for an Incentive Award in the amount of up to \$10,000.00 for the Class Representative for her efforts in bringing the action and assisting throughout the litigation. If approved by the Court, these amounts will be paid separately from the Settlement Fund. The Settlement also requires that all costs and expenses associated with giving notice of and administering the Settlement will be paid separately from the Settlement Fund.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to participate in this Settlement, or you want to keep the right to sue or continue to sue Defendant on your own, then you must take steps to get out of the Settlement. This is called "excluding yourself" from or "opting out" of the Settlement. If you exclude yourself from the Settlement, you will not be entitled to any relief the Settlement provides.

14. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter (or request for exclusion) by mail stating that you want to be excluded from the Settlement of *Shawnte Warden v. Tschetter Sulzer, P.C.* Case No. 2022-cv-00271-CNS-NRN. Your letter or request for exclusion must also include your name, address, phone number and email. You must mail your exclusion request so that it is postmarked no later than [Opt Out Deadline] to:

Tamara Seelman
Shawnte Warden v. Tschetter Sulzer, P.C.
Case No. 2022-cv-00271-CNS-NRN
[Address Line 1]
[Address Line 2]
tseelman@grsm.com

You cannot exclude yourself on the phone.

The Court will exclude from the Settlement Class any Class Member who timely requests exclusion.

Call 720-213-0676 or email swoodrow@woodrowpeluso.com for Class Counsel

15. If I don't exclude myself, can I sue the Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Tschetter for the claims being resolved by this Settlement.

16. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, you will no longer be eligible to receive a benefit from the Settlement.

OBJECTING TO THE SETTLEMENT

17. How do I tell the Court I do not like the Settlement?

If you're a Class Member and you do not exclude yourself, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views before deciding whether to approve the Settlement. To object, you must send a letter stating that you object to the Settlement in *Shawnte Warden v. Tschetter Sulzer, P.C.* Case No. 2022-cv-00271-CNS-NRN and identify all your reasons for your objections (including citations and supporting evidence) and attach any materials you rely on for your objections. Your letter or brief must also include your name, address, phone number, and your signature. You must mail or deliver the objection to the Clerk of the Court at the address below, postmarked no later than [exclusion deadline]. If you are represented by a lawyer, your lawyer must file your objection or comment with the Court together with the lawyer's appearance. Include your lawyer's contact information in the objection or comment.

Clerk of the Court

[Address Line 1]

[Address Line 2]

Class Counsel will file with the Court its request for attorney fees two weeks prior to the objection deadline.

18. May I speak to the Court about my objection?

Yes, you may ask the Court for permission to speak. If you want to appear and speak at the Final Approval Hearing to object to the Settlement, with or without a lawyer, you must either say so in your objection, designating it as an "Objection and Notice of Intention to Appear at Final Fairness Hearing," or you must send a letter stating your intent to speak and the final fairness hearing to the Clerk of the Court at the address listed above. If submitted separately from your objection, your Notice of Intention to Appear at Final Fairness Hearing must include your name, address, telephone number, and your signature. Mail the objection so that it is postmarked no later than **Month 00, 2024**.

19. What's the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you are excluding yourself from the entire Settlement, so you have no basis to object because the case no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

20. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Fairness Hearing at [time] on **Month 00, 2024** at the Alfred A. Arraj Courthouse, Courtroom A702, located at 901 19th St, Denver, CO 80294. The purpose of the hearing will be for the Court to consider whether to approve the Settlement as fair, reasonable, adequate, and in the best interests of the Class; to consider the Class Counsel's request for an award of attorneys' fees and expenses; and to consider the request for an incentive award to the Class Representative. If anyone has asked to speak at the hearing (see Question 18), the Court will listen to them at that time. The Court will issue its decision after the hearing. We do not know how long it will take for the Court to decide.

The hearing may be postponed to a different date or time without notice, so if you plan to attend it is a good idea to check with Class Counsel by calling 720.213.0676. If, however, you timely object to the Settlement and advise the Court that you intend to appear and speak at the Fairness Hearing, you will receive notice of any change in the date of such Fairness Hearing.

21. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have that are directed to the Class. But you are welcome to come at your own expense. If you send an objection or comment, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend, but it's not required.

GETTING MORE INFORMATION

22. Where do I get more information about the Settlement?

This Notice summarizes the proposed Settlement. More details are in the full Settlement Agreement, which can be viewed by contacting Settlement Class Counsel. Please read this full Notice carefully.

Many of the Court papers, including this Notice, the Settlement Agreement, and the Order for Preliminary Approval are available by contacting Settlement Class Counsel at swoodrow@woodrowpeluso.com or 720.213.0676. You also can obtain a copy of the Settlement Agreement or review any other public papers relating to the lawsuit by examining the records of this case, *Shawnte Warden v. Tschetter Sulzer, P.C.* Case No. 2022-cv-00271-CNS-NRN at the Clerk's office at the Alfred A. Arraj Courthouse, Courtroom A702, located at 901 19th St, Denver, CO 80294. The clerk's office has the ability to make copies of any such public documents for a fee. Also, all filed documents in the case, including the Settlement document, are available for viewing online for a fee through the Court's online filing system. Any questions that you may have about this Notice should not be directed to the Court but should be directed to Settlement Class Counsel.

23. What am I giving up in exchange for the Settlement benefits?

Unless you exclude yourself, you will give up the ability to sue Tschetter all of its acquired entities, predecessors, successors, affiliates, parent companies and subsidiaries, and any and all of Tschetter's and its affiliates' past or present predecessors, successors, heirs, executors, estates, administrators, direct or indirect parents, subsidiaries, associates, affiliates, assigns, employers, employees, principals, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, attorneys, accountants, financial and other advisors, investment bankers, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns, franchisees and persons, firms, trusts, corporations, debt collectors, and any other individuals or entities in which Tschetter has or had a controlling interest, to which it is related, or with which it is affiliated and any other representatives of any of these individuals or entities from any and all claims (including Unknown

Claims), causes of action, suits, obligations, debts, demands, agreements, promises, rights, extra-contractual claims, liabilities, damages, losses, controversies, costs, expenses, and attorneys' fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, potential or filed, accrued or unaccrued, claimed or unclaimed, individual or representative, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, direct or punitive, multiplied or compensatory of every nature and description whatsoever arising out of Tschetter's use of the Advisement or Stipulation.

24. What are the released claims?

The "Released Claims" consist of any and any and all claims (including Unknown Claims), causes of action, suits, obligations, debts, demands, agreements, promises, rights, extra-contractual claims, liabilities, damages, losses, controversies, costs, expenses, and attorneys' fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, potential or filed, accrued or unaccrued, claimed or unclaimed, individual or representative, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, direct or punitive, multiplied or compensatory of every nature and description whatsoever arising out of Tschetter's use of the Advisement or Stipulation.

The full terms of the Release are set forth in Section V of the Settlement Agreement available by contacting Settlement Class Counsel.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:22-cv-0271-CNS-NRN

SHAWNTE WARDEN, individually and on behalf of all others similarly situated,

Plaintiff,

v.

TSCHETTER SULZER, P.C., a Colorado professional corporation,

Defendant.

**[PROPOSED] ORDER GRANTING PRELIMINARY
APPROVAL TO CLASS ACTION SETTLEMENT**

WHEREAS, a class action is pending before the Court styled *Shawnte Warden v. Tschetter Sulzer, P.C.*, Case No. 2022-cv-00271-CNS-NRN; and

WHEREAS, Plaintiff Shawnte Warden (“Plaintiff” or “Warden”) and Defendant Tschetter Sulzer, P.C. (“Defendant” or “Tschetter”) have entered into a Settlement Agreement, which, together with the exhibits attached thereto, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice as to Tschetter for the claims of the Settlement Class upon the terms and conditions as set forth in the Settlement Agreement, and

WHEREAS, the Court has read and considered the Settlement Agreement and exhibits attached thereto, and this matter having come before the Court upon the agreement of the Parties, good cause being shown, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS FOLLOWS:

1. Terms and phrases in this Order shall have the same meaning as ascribed to them in the Parties’ Settlement Agreement.

2. The Parties have moved the Court for an order approving the settlement of the Action in accordance with the Settlement Agreement, which, together with the documents incorporated therein, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice against Tschetter, and the Court having read and considered the Settlement Agreement and being fully advised in the premises, hereby preliminarily approves the Settlement Agreement in its entirety subject to the Final Approval Hearing referred to in Paragraph 17 of this Order.

3. This Court finds that it has jurisdiction over the subject matter of this action and over all Parties to the Action, including all members of the Class (“Settlement Class Members”) as defined as:

All Tenants who signed the Stipulation between January 31, 2021, and February 28, 2022, and for whom any Judgment of Possession has not yet been vacated.

(Settlement Agrmt. at § II.27.)

4. The Court certifies the Class for settlement purposes finding that the Class meets the requirements for certification under Federal Rule of Civil Procedure 23. The Court further appoints Warden as Settlement Class Representative and Steven Woodrow and Jason Legg as Settlement Class Counsel.

5. The Court finds that, subject to the Final Approval Hearing, the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Class Members as to their claims against Tschetter. The Court further finds that the Settlement Agreement substantially fulfills the purposes and objectives of the class action against Tschetter and provides beneficial relief to the Class.

6. The Court also finds that the Settlement Agreement (a) is the result of arms’ length negotiations involving experienced class action attorneys and overseen by an experience third-party mediator; (b) is sufficient to warrant notice of the settlement to the class and the scheduling of a Final Approval hearing; (c) meets all applicable requirements of law; and (d) is not a finding or admission of liability by Tschetter.

Notice and Administration

7. Pursuant to the Settlement Agreement, Tschetter shall be in charge of disseminating the Class Notice as set forth in the settlement and for issuing settlement checks to all Settlement Class Members who do properly seek to exclude themselves.

8. The Court finds that the Notice Plan and the form of Notice to the Class as set forth in the Settlement Agreement and the Exhibit thereto is also approved as its form, method, and content, complies with the requirements of Federal Rule of Civil Procedure 23 and due process, and constitutes the best notice practicable under the circumstances. The Court further finds that the Notice is reasonably calculated to, under all circumstances, apprise the members of the Class of the pendency of this action, the certification of the Settlement Class, the terms of the Settlement Agreement, and the right of members to object to the settlement and to exclude themselves from the Class. The Parties, by agreement, may revise the Notice in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting.

9. Tschetter shall implement the Notice Plan as set forth in the Settlement Agreement.

Exclusion

10. Settlement Class Members who wish to exclude themselves from the Class for purposes of this Settlement may do so by complying with the exclusion procedures set forth below. Any member of the Class who timely requests exclusion consistent with those procedures shall not be bound by the terms of the Settlement Agreement.

11. To request exclusion (“Opt-Out”), the Settlement Class Member must complete, sign, and mail to counsel for either Party an Opt-Out request. To be valid and treated as a Successful Opt-Out, it must include: (a) the requester’s full name, address, and name of the Action (*i.e. Warden v. Tschetter*) and telephone number; (b) the requester’s personal and original signature, or the original signature of a person previously authorized by law, such as a trustee, guardian or person acting under a power of attorney, to act on behalf of the requester with respect to a claim or right such as those in the Action; and (c) state unequivocally that the requester desires to be excluded from the Settlement Class, to be excluded from the Settlement, not to participate in the Settlement, and/or to waive all rights to the benefits of the Settlement. Each Party’s counsel shall promptly inform the other of any Opt-Out requests it receives.

12. The deadline to Opt-Out is 75 days from the date of this Order.

13. Class Members who Opt-Out of the Settlement Agreement shall not (i) be bound by any orders of the Final Approval Order; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. However, Class Members who fail to submit a valid and timely request for exclusion shall be bound by all terms of the Settlement Agreement and the Final Approval Order, regardless of whether they have requested exclusion from the Settlement Agreement.

Objections

14. Any Settlement Class Member may comment in support of, or in opposition to, the Settlement at his, her, or their own expense; provided however, that all comments and/or objections must be in writing and mailed or hand-delivered to the Clerk of the Court, Class Counsel, and Tschetter’s attorneys and postmarked or delivered by no later than the Objection Deadline. Objections may be filed by counsel for a Settlement Class Member though any such counsel must file an appearance in the Action.

15. Each objection must: (i) set forth the Settlement Class Member’s full name, current address, and telephone number; (ii) contain the Settlement Class Member’s original signature or the signature of counsel for the Settlement Class Member; (iii) state that the Settlement Class Member objects to the Settlement, in whole or in part; (iv) set forth the complete legal and factual bases for the objection, including citations to relevant authorizes; (v) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position; and (vi) state whether the objecting Settlement Class Member intends on appearing at the Final Approval Hearing either *pro se* or through counsel and whether the objecting Settlement Class Member plans on offering testimony at the Final Approval Hearing.

16. The Objection Deadline shall be 75 days from the date of this Order . All objections must be mailed or hand-delivered to the Court before the Objection Deadline. An objector is not required to attend the Final Approval Hearing. However, any Settlement Class Member who objects may appear at the Final Approval Hearing, either in person or through an attorney hired at his or her own expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the underlying settlement. A Settlement Class Member or his or her attorney who wishes to speak at the Fairness Hearing must so state in his or her written objection or submit a separate notice of intention to appear to the Clerk of the Court no later than the Objection Deadline. No Settlement Class Member shall be permitted to raise matters at the Final Approval Hearing that the Settlement Class Member could have raised in a written objection but failed to do so.

Final Approval Hearing

17. The Final Approval Hearing shall be held approximately 90 days after the date of this Order before this Court on _____, 2024 at ___ the United States District Court for the District of Colorado, Alfred A. Arraj Courthouse, 901 19th St, Denver, CO 80294, Courtroom A702 to determine whether the proposed Settlement Agreement with Tschetter is fair, reasonable and adequate and should be given final approval by the Court. The Court may adjourn the Final Approval Hearing or conduct it by telephone or Zoom (or similar technology) without further notice to Class Members.

Further Matters

18. To protect its jurisdiction to consider the fairness of this Settlement Agreement and to enter a Final Approval Order and Judgment having binding effect on all Settlement Class Members, the Court hereby enjoins all Settlement Class Members, and anyone who acts or purports to act on their behalf, from pursuing all other proceedings in any state or federal court that seeks to address any parties' or Settlement Class Members' rights or claims relating to, or arising out of, any of the Released Claims as set forth in the Settlement Agreement.

19. Settlement Class Members shall be bound by all determinations and judgments in the Action concerning the Action and/or Settlement Agreement, whether favorable or unfavorable.

20. In the event that the Settlement Agreement is terminated pursuant to the provisions of the Settlement Agreement, then (i) the Settlement Agreement shall be null and void, and shall have no further force and effect with respect to any Party in this Action, and shall not be used in this Action or in any other proceeding for any purpose; (ii) all negotiations, proceedings, and statements made in connection therewith shall be without prejudice to any person or Party hereto, for such hearing shall not be deemed or construed to be an admission by any Party of any act, matter, or proposition, and shall not be used in any manner or for any purpose in any subsequent proceeding in this Action or in any other action in any court or other proceeding, provided, however, that the termination of the Settlement Agreement shall not shield from subsequent discovery any factual information provided in connection with the negotiation of this Settlement Agreement that would ordinarily be discoverable but for the attempted settlement; (iii) other than as expressly preserved by the Settlement Agreement in the event of its termination, the Settlement Agreement shall have no further force and effect with respect to any Party and shall not be used in

the Action or any other proceeding for any purpose; and (iv) any Party may elect to move the Court pursuant to the provisions of this paragraph, and none of the non-moving Parties (or their counsel) shall oppose any such motion.

21. Class Counsel shall move for an award of reasonable attorneys' fees to be paid as set forth in the Settlement Agreement at least 14 days prior to the Objection Deadline.

22. No later than fourteen (14) days prior to the Objection Deadline, Class Counsel shall move for Final Approval of the Settlement Agreement and respond to any objections no later than seven (7) days prior to the Final Approval Hearing.

IT IS SO ORDERED.

Dated this ____ day of December 2023

DISTRICT COURT JUDGE