

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION**

CASE NO: 20-60633-CIV-SMITH

VINCENT J. MORRIS, and MICHAEL  
LUZZI, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

PHH MORTGAGE CORPORATION d/b/a  
PHH MORTGAGE SERVICES, on its own  
behalf and as successor by merger to OCWEN  
LOAN SERVICING, LLC, a New Jersey  
Corporation, and OCWEN LOAN SERVICING,  
LLC, a Florida Limited Liability  
Company,

Defendants.

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**PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT, CLASS COUNSEL'S APPLICATION FOR ATTORNEYS'  
FEES AND EXPENSES, AND INCORPORATED MEMORANDUM OF LAW**

## INTRODUCTION

Class Counsel and Plaintiffs are very proud to formally move for final approval of this class action settlement (the “Settlement”), which was previously granted preliminary approval by this Court. [D.E. 185] Plaintiffs and Class Counsel respectfully move, under Rule 23 of the Federal Rules of Civil Procedure, for final approval of the Settlement previously agreed to by all Defendants<sup>1</sup>, for an order making final this Court’s prior certification of the Settlement Class defined in the Preliminary Approval Order, (the “Class” or the “Settlement Class”), and for an award of attorneys’ fees and litigation expenses to Class Counsel.

A final approval hearing, as required by Rule 23(e)(2), is scheduled for May 31, 2023. The Settlement provides the establishment of a non-reversionary common fund of approximately \$2,771,068 to make cash payments to nearly 142,000 Settlement Class Members from across the country, while also securing important and valuable injunctive relief. As of this date, the Parties have received only 16 opt-outs and, no objections to final approval.<sup>2</sup> This response to the Settlement is overwhelmingly supportive.

The Settlement’s benefits were the result of significant, rigorous arm’s length negotiations by the Parties and their counsel, under the direction of a distinguished mediator, The Honorable John W. Thornton (Ret.). Per the Court-approved notice plan, notice of this Settlement was disseminated to all Class Members via the establishment of a settlement website, internet notice, and direct mail to Settlement Class Members at their last known mailing address according to Defendants’ records.

Undersigned Counsel were well positioned to evaluate and negotiate this Settlement because they have substantial experience in financial services class actions and had been actively litigating this matter against the Defendants for years. Specifically, Plaintiffs’ counsel investigated their claims and allegations extensively, and reviewed thousands of pages of documents regarding

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<sup>1</sup> As defined in the Settlement Agreement, “Defendants” or “PHH Defendants” shall mean PHH Mortgage Corporation, (“PHH”), individually and as successor by merger to named defendant Ocwen Loan Servicing, LLC (“Ocwen”), as well as Ocwen Loan Servicing, LLC (“Ocwen”). Unless otherwise noted, capitalized terms in this motion shall have the same meanings given to them in the Second Amended Stipulation of Settlement and Release [D.E. 178-1].

<sup>2</sup> The deadline for Class Members to Object or Opt-Out of the Settlement occurs on April 26, 2023. Plaintiffs will file supplemental papers prior to the Final Approval Hearing to advise whether any objections or further Opt-Out Requests were received after this motion was filed. *See* Preliminary Approval Order, [D.E. 185 at ¶9].

Defendants' convenience fee practices. Despite that work, Plaintiffs and Class Members faced significant hurdles in litigating their claims to successful adversarial resolution. As such, and, given the immediate and substantial cash and other benefits the Settlement will provide to the Class, there can be no question that the Settlement is "fair, reasonable, and adequate" and should be granted final approval.

For this accomplishment, Class Counsel are asking for the Court to award them \$859,031.08 in attorneys' fees (31% of the Common Fund), plus \$55,421.36 in unreimbursed expenses. This percentage would be lower if one considers the value of the significant injunctive relief. The requested fee award is consistent with precedent from our District and the Eleventh Circuit and is warranted because of the substantial efforts Class Counsel have undertaken, the significant risks borne throughout the litigation, and the superb results achieved for the Class.

Plaintiffs and Class Counsel respectfully submit that, once the deadline for objections has passed and the Fairness Hearing takes place as previously scheduled, this Court grant final approval of the Settlement and approve the application for attorneys' fees and costs. A Proposed Order to this effect will be submitted no later than May 22, 2023.

### **FACTUAL BACKGROUND**

#### **I. BACKGROUND OF THE LITIGATION AND MEDIATION**

This action alleges that charging Convenience Fees for phone and web payments violates the Federal Fair Debt Collection Practices Act 15 U.S.C. §§ 1692, *et seq.* ("FDCPA"), Florida state law, and class members' mortgage contracts. Plaintiffs allege that because the "Convenience Fees" are neither expressly authorized by the applicable mortgage agreements nor expressly permitted by applicable law, the FDCPA and Florida law do not allow them to be charged. And because they are not allowable fees under the FDCPA or Florida law, Plaintiffs allege that charging them also violates the standard form mortgage contracts of Settlement Class Members. Plaintiffs' counsel filed this action after having spearheaded other financial services class action litigation in over 32 nationwide class actions brought against the largest banks, mortgage servicers and force-placed insurers across the country, reaching 30 settlements to date totaling over \$4.2 billion dollars for the proposed

nationwide classes of over 5.3 million homeowners.<sup>3</sup> Ocwen and PHH were among the defendants in some of those successful nationwide force-placed insurance class action settlements.

Defendants moved to dismiss this action on August 7, 2020. [D.E. 26]. Recognizing that many different courts had reached diametrically opposed conclusions on similar claims, and, given the existence of contradictory regulatory guidance on the issue, the Parties decided to mediate this dispute. The Parties entered into a settlement agreement and moved for preliminary approval in August 2020. [D.E. 46]. The Court held a hearing on preliminary approval of the settlement on March 23, 2021. [D.E. 128]. At that hearing, the Court raised questions regarding some aspects of the settlement. In response to the Court's questions, and to address corresponding concerns raised by the Attorneys General and the DOJ, the Parties ultimately agreed to the Amended Settlement, which provided a better resolution for the class members. *See* [D.E. 136-1 at 5]. The Court then denied as moot the motion for preliminary approval of the Original Settlement and set a briefing schedule on the new motion for preliminary approval of the Amended Settlement. *See* [D.E. 138].

While the new motion for preliminary approval was pending, on November 8, 2021, a California class of borrowers was certified in *Torliatt v. Ocwen Loan Servicing, LLC*, Case No. 19-cv-04303-WHO at [D.E. 152]. On November 11, 2021, the Parties filed a joint motion to stay this case in light of the *Torliatt* certification order. [D.E. 160]. On November 17, 2021, the Court held

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<sup>3</sup> *See e.g., Williams v. Wells Fargo Bank, N.A.*, No. 11-cv-21233 (S.D. Fla.) (final approval granted); *Saccoccio v. JPMorgan Chase Bank N.A.*, No. 13-cv-21107 (S.D. Fla.) (final approval granted); *Diaz v. HSBC Bank (USA), N.A.*, No. 13-cv-21104 (S.D. Fla.) (final approval granted); *Fladell v. Wells Fargo Bank, N.A.*, No. 13-cv-60721 (S.D. Fla.) (final approval granted); *Hamilton v. SunTrust Mortg., Inc.*, No. 13-cv-60749 (S.D. Fla.) (final approval granted); *Hall v. Bank of Am., N.A.*, No. 12-cv-22700 (S.D. Fla.) (final approval granted); *Lee v. Ocwen Loan Servicing, LLC*, No. 14-cv-60649 (S.D. Fla.) (final approval granted); *Braynen v. Nationstar Mortg., LLC*, No. 14-cv-20726 (S.D. Fla.) (final approval granted); *Wilson v. Everbank, N.A.*, No. 14-cv-22264 (S.D. Fla.) (final approval granted); *Montoya v. PNC Bank, N.A.*, No. 14-cv-20474 (S.D. Fla.) (final approval granted); *Almanzar v. Select Portfolio Servicing*, No. 14-cv-22586 (S.D. Fla.) (final approval granted); *Jackson v. U.S. Bank, N.A.*, No. 14-cv-21252 (S.D. Fla.) (final approval granted); *Circeo-Loudon v. Green Tree Servicing, LLC*, No. 14-cv-21384 (S.D. Fla.); *Beber v. Branch Banking & Trust Co.*, No. 15-cv-23294 (S.D. Fla.) (final approval granted); *Ziwczyn v. Regions Bank*, No. 15-cv-24558 (S.D. Fla.) (final approval granted); *McNeil v. Selene Finance, LP*, No. 16-cv-22930 (S.D. Fla.); *McNeil v. Loancare, LLC*, No. 16-cv-20830 (S.D. Fla.) (final approval granted); *Edwards v. Seterus, Inc.*, No. 15-cv-23107 (S.D. Fla.) (final approval granted); *Cooper v. PennyMac Loan Servicing, LLC*, No. 16-cv-20413 (S.D. Fla.) (final approval granted). *Strickland, et al. v. Carrington Mortgage Services, LLC, et al.*, 16-cv- 25237 (S.D. Fla.) (final approval granted for three separate settlements); *Quarashi et al v. Caliber Home Loans Inc. et al.*; 16-9245 (D.N.J.) (final approval granted).

a status conference as to the impact of the *Torliatt* certification order and requested further briefing. [D.E. 164]. On November 23, 2021, this Court granted the motion to stay, closed this case for administrative purposes, and terminated all pending motions. [D.E. 167].

After the Ninth Circuit Court of Appeals denied PHH permission to appeal the *Torliatt* class certification decision on February 28, 2022, without opinion (*see Torliatt v. Ocwen Loan Servicing, LLC, et al.*, No. 21-80117 (9th Cir. Feb. 28, 2022)), the Parties retained the services of the Honorable John Thornton (Ret.) of JAMS in order to begin mediating a revised settlement agreement that takes into account the effect of that decision and the previous class certification order entered in *Torliatt* on the Parties' previously proposed settlement.

After weeks of additional negotiations, the Parties came to a resolution to fully resolve this matter. The Parties subsequently executed the Second Amended Stipulation of Settlement and Release [D.E. 178-1] (hereinafter "Settlement Agreement" or "Agreement"). On September 15, 2022, the Parties announced their settlement and filed a joint motion to reopen this action and lift the stay. [D.E. 173]. The Court granted that motion on September 22, 2022. [D.E. 174]. Per the Court's order granting the motion to reopen the motion, on September 23, 2022, Plaintiffs filed a Second Amended Complaint. [D.E. 175].

## II. THE SETTLEMENT TERMS AND AGREEMENT

### A. *The Proposed Settlement Class*

The Agreement provides relief to the following Settlement Class:

#### The FDCPA Class:

(A) All borrowers on residential mortgage loans secured by mortgaged property in the United States whose mortgage loans were serviced but not owned by Ocwen and to which Ocwen acquired servicing rights when such loans were 30 days or more delinquent on their loan payment obligations, and who, at any time during the period from March 25, 2019 through and including August 17, 2022, paid a Convenience Fee to Ocwen that was not refunded or returned; PLUS (B) all borrowers on residential mortgage loans secured by mortgaged property in the United States whose mortgage loans were serviced but not owned by PHH and to which PHH acquired servicing rights when such loans were 30 days or more delinquent on their loan payment obligations, and who, at any time during the period from March 25, 2019 through and including August 17, 2022, paid a Convenience Fee to PHH that was not refunded or returned.

Excluded from the FDCPA Class are (a) borrowers whose loans were included as class loans in the previously approved class action settlement in *McWhorter, et al. v. Ocwen Loan Servicing, LLC, et al.*, No. 2:15-cv-01831-MHH (N.D. Ala.); (b) borrowers whose loans make them potential members of the proposed settlement classes in *Torliatt v.*

*Ocwen Loan Servicing, LLC*, Case Nos. 3:19-cv-04303-WHO, 3:19-cv-04356-WHO (N.D. Cal.), or *Thacker v. PHH Mortgage Corp.*, Case no. 5:21-cv-00174-JPB (Bailey) (N.D. W. Va.), whether or not those borrowers timely and validly exclude themselves from those settlement classes; (c) borrowers who are or were named plaintiffs in any civil action other than this Action which challenges Convenience Fees charged by a PHH Defendant that was initiated against either PHH Defendant on or before the date the Agreement was fully executed; (d) the PHH Defendants' board members and executive level officers; and (e) the federal district and magistrate judges assigned to this Action, along with persons within the third degree of relationship to them.

– and –

**The Florida Class:**

All borrowers on residential mortgage loans secured by mortgaged property in the State of Florida who, from March 25, 2016 to August 17, 2022, paid a Convenience Fee to either Ocwen or PHH that was not refunded or returned.

Excluded from the Florida Class are (a) borrowers whose loans were included as class loans in the previously approved class action settlement in *McWhorter, et al. v. Ocwen Loan Servicing, LLC, et al.*, No. 2:15-cv-01831-MHH (N.D. Ala.); (b) borrowers who are or were named plaintiffs in any civil action other than this action which challenges Convenience Fees charged by a PHH Defendant that was initiated against either PHH Defendant on or before the date the Agreement was fully executed; (c) borrowers in the “FDCPA Class” defined above who did not also make an additional Convenience Fee payment to the PHH Defendants between March 25, 2016 and March 24, 2019; (d) the PHH Defendants' board members and executive level officers; and (e) the federal district and magistrate judges assigned to this Action, along with persons within the third degree of relationship to them. For the avoidance of doubt, a borrower in the FDCPA Class who also paid a fee to either PHH Defendant between March 25, 2016 and March 24, 2019, inclusive, and who otherwise meets the definition of the Florida Class would be in both the FDCPA Class and the Florida Class.

**B. Monetary Relief**

The Settlement Agreement affords members of the Settlement Class significant monetary relief. (*Id.* ¶ 1.1.47.) The PHH Defendants shall make available to the Settlement Class two Settlement Funds for a total amount of \$2,771,068. The first (the “FDCPA Settlement Fund”) shall be equal to the sum of 32% of the Convenience Fees paid to and retained by Ocwen from March 25, 2019 through August 17, 2022, for borrowers meeting subpart (A) of the definition of the FDCPA Class and 32% of the Convenience Fees paid to and retained by PHH from March 25, 2019 through August 17, 2022, for borrowers meeting subpart (B) of the definition of the FDCPA Class. (*Id.* ¶ 1.1.16.)

The second (the “Florida Settlement Fund”) shall be equal to 18% of the amounts paid as Convenience Fees to the PHH Defendants by Florida Settlement Class Members and retained by the PHH Defendants from March 25, 2016 through August 17, 2022, but excluding Convenience Fees already captured in the FDCPA Settlement Fund. Both Settlement Funds shall exclude all amounts paid to or otherwise retained by any third-party vendor to facilitate the Settlement Class Members’ payments by telephone, IVR, or the internet and any Convenience Fees previously refunded or waived by the PHH Defendants on any given Settlement Class Loan. (*Id.* ¶ 1.1.22.)

The Settlement Funds will be allocated as follows: first, they will be used to pay on a pro rata basis based on the size of each fund as a percentage of the combined total of both funds any attorneys’ fee and expense award to Class Counsel. (*Id.* ¶ 4.6.) The remaining balance of each fund will be divided and distributed as individual allocations as follows:

- i. Each FDCPA Class Loan shall receive an Individual Allocation from the FDCPA Settlement Fund, calculated as follows: the proportion of Convenience Fees paid to and retained by either Ocwen or PHH on that FDCPA Class Loan between March 25, 2019 and August 17, 2022, as compared to the total aggregate amount of all Retained Convenience Fees paid to either Ocwen or PHH on all FDCPA Class Loans during that period. Only Retained Convenience Fees paid to a servicer that serviced but did not own the FDCPA Class Loan and that acquired servicing rights to the FDCPA Class Loan when it was 30 days or more delinquent will be included in these calculations. For the avoidance of doubt, a borrower who qualifies as an FDCPA Class Member because Ocwen acquired servicing rights when the loan was 30 days or more delinquent and did not own the loan would be entitled to an Individual Allocation for the Retained Convenience Fees paid to Ocwen on that FDCPA Class Loan. But if that same FDCPA Class Loan later service transferred to PHH when it was not 30 days or more delinquent, then that borrower would not receive any Individual Allocation from the FDCPA Settlement Fund for the Retained Convenience Fees paid to PHH after the service transfer. To the extent an FDCPA Class Loan meets both subpart (A) and subpart (B) of the definition of the FDCPA Class, then the Individual Allocation for that loan will be calculated as the proportion of Convenience Fees paid to and retained by both Ocwen and PHH on that loan between March 25, 2019 and August 17, 2022, as compared to the total aggregate amount of all Convenience Fees captured in the FDCPA Settlement Fund as described above.
- ii. Each Florida Class Loan shall receive an Individual Allocation from the Florida Settlement Fund, calculated based on the proportion of Convenience Fees paid to and retained by Ocwen and/or PHH on that Florida Class loan between March 25, 2016 and August 17, 2022 (but excluding Convenience Fee payments captured in the FDCPA Settlement Fund) as compared to the

total aggregate amount of all Convenience Fees paid to and retained by Ocwen and/or PHH with respect to all Florida class loans during that period (but excluding Convenience Fees captured in the FDCPA settlement fund).

(*Id.* ¶¶ 4.7-4.8.)

All Settlement Class Members shall receive their individual allocations by check mailed to the last known borrower address as set forth in the PHH Defendants' records or as updated by the Settlement Administrator. No portion of the Settlement Fund will revert to the PHH Defendants. Individual Allocation relief that remains undeliverable three hundred (300) days after the Final Settlement Date despite the Settlement Administrator's efforts to locate the Settlement Class Members shall be paid to Homes for Our Troops, "a privately funded 501(c)(3) nonprofit organization that builds and donates specially adapted custom homes nationwide for severely injured post – 9/11 Veterans, to enable them to rebuild their lives." <https://www.hfotusa.org/mission/>.

### ***C. Injunctive Relief***

In addition to the monetary relief and release described above, the Parties have agreed in the Settlement to a number of very important injunctive relief components (***that have not been included in the above-stated value of the proposed Settlement***). The PHH Defendants, to the extent they continue to charge Settlement Class Members for payments by telephone or internet in the future, have agreed to include language disclosing the following additional information at the time that borrowers pay online, to appear next to the first page of the website for the applicable form of payment:

Paying by telephone, IVR, or internet is entirely optional and, unless otherwise specified, involves a fee retained in whole or in part by PHH. There are alternative methods of payment involving no fee, such as mailing a check or money order, or scheduled monthly bank account debits, while some methods of payment involve a lower fee than others. Click here to visit the FAQ section for more details.

(*Id.* ¶ 5.1.1.)

Further, in each payment transaction involving a Convenience Fee following the Final Settlement Date, the PHH Defendants have agreed to use their best efforts to cause its customer service representatives, telephone systems, scripts or websites involved to disclose, in substance, the following information to each Settlement Class Member, except as otherwise hereafter prescribed or proscribed by law:



- a. the exact fee to be charged for the payment method chosen by the borrower;
- b. the fact that the fee may include an amount retained by the PHH Defendants in excess of its third party costs;
- c. the fact that the borrower is not required to use the payment method for which a fee is being charged;
- d. the payment methods for which the PHH Defendants do not charge a fee;
- e. any other optional payment methods accepted by the PHH Defendants that may involve a lower fee; and
- f. when a material consideration in the payment transaction at issue, the applicable deadline by which payment must be received in order to avoid a late fee.

(*Id.*) The PHH Defendants further agreed to the following non-monetary relief as additional consideration for the Settlement:

The PHH Defendants currently charge a Convenience Fee of \$7.50 per online payment transaction. The PHH Defendants agree to reduce the per transaction Convenience Fee for online payments for borrowers with mortgaged property in Florida or who meet the definition of the FDCPA Class to \$6.50 for a period of two years.

(*Id.* ¶ 5.1.2.) The PHH Defendants currently charge Convenience Fees of \$7.50 per IVR payment transaction and \$17.50 for payments made by telephone with the assistance of a live agent. (*Id.* ¶ 5.1.3.) The PHH Defendants agree not to increase either of those fees for borrowers with mortgaged property in Florida or who meet the definition of the FDCPA class for a period of two years.

**D. Release of Claims against Defendants**

In exchange for the relief provided by the Settlement, Settlement Class Members will release the PHH Defendants, as well as all other entities included in the definition of “Released Persons” set forth in the Settlement Agreement from:

each and all of the claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages (whether punitive, statutory, or compensatory and whether liquidated or unliquidated), 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 regulatory bulletin, guidelines, handbook, opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, that relate to or arise out of Convenience Fees charged (a) by Ocwen on FDCPA Class Loans to FDCPA Class Members meeting Subpart (A) of the definition of the FDCPA Class, during the period from March 25, 2019 through and including August 17, 2022; (b) by PHH on FDCPA Class Loans to FDCPA Class Members meeting Subpart (B) of the definition of the FDCPA Class, during the period from March 25, 2019 through and including August 17, 2022; or (c) by Ocwen or

PHH to Florida Class Members on Florida Class Loans, during the period from March 25, 2016 through and including August 17, 2022.

(*Id.* ¶¶ 1.1.38, 1.1.39 & 3.3.)

**E. *Class Notice***

As required by this Court’s Preliminary Approval Order, Settlement Class members were previously mailed comprehensive written notice of the settlement by first-class mail at their last-known mailing address in the form attached to the Settlement Agreement as Exhibit A. The Class Notice also included a provision directing Spanish-speaking class members to the Settlement Website, which includes the relevant settlement information in Spanish and a Spanish version of the Notice created by a federally certified Spanish interpreter. (*Id.* ¶ 7.2.8). The notice mailing was completed on January 19, 2023. *See* Declaration of Tina Chiango dated April 11, 2023, at ¶5 (“RG/2 Declaration”) (attached as Exhibit A). The Settlement Administrator performed a search of the National Change of Address database for each mailing address prior to the mailing of the Notice. *Id.* at 6. The Settlement Administrator also established a website on which Settlement Class members could review the settlement information. *See* <https://morrisvphhspeedpaysettlement.com/> The Settlement Administrator additionally advertised the Settlement on the internet. The notice provided a toll-free number to call for settlement information. Settlement Class Members were told how to opt out or object if they wished, in accordance with this Court’s instructions.

**F. *Class Counsel Fees and Expenses***

This Court previously appointed the undersigned as Class Counsel. The Settlement provides that Class Counsel’s application for attorneys’ fees and expenses for all the law firms involved shall not exceed 33% of the Settlement Fund, inclusive of expenses. The Settlement is not made contingent upon any particular amount of Attorneys’ Fees and Expenses being awarded by the Court. The PHH Defendants have maintained their right and full discretion to object to Class Counsel’s petition for Attorneys’ Fees and Costs for any reason, but do not oppose Class Counsel’s petition. [D.E. 178-1¶ 10.1].

**G. *Class Member Response to Notice***

To date, not a single Class Member has objected to any aspect of the Settlement, and only 16 Class Members have submitted requests to opt-out of the Settlement (representing only .0113%

of the Settlement Class). See Declaration of Adam Moskowitz dated April 11, 2023 (“Moskowitz Decl.”) at ¶ 49 (attached as Exhibit B).<sup>4</sup>

### **LEGAL ARGUMENT**

#### **I. THIS COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT.**

Settlement “has special importance in class actions with their notable uncertainty, difficulties of proof, and length. Settlements of complex cases contribute greatly to the efficient utilization of scarce judicial resources, and achieve the speedy resolution of justice[.]” *Turner v. Gen. Elec. Co.*, No. 2:05-cv-186, 2006 WL 2620275, at \*2 (M.D. Fla. Sept. 13, 2006) (citation omitted). For these reasons, “there exists an overriding public interest in favor of settlement, particularly in class actions that have the well-deserved reputation as being most complex.” *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1314 (S.D. Fla. 2005) (citation omitted).

Rule 23(e) provides five requirements that must be satisfied for a proposed class settlement to secure final approval:

- (1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.
- (2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.
- (3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.
- (4) If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.
- (5) Any class member may object to the proposal if it requires court approval under the subdivision (e); the objection may be withdrawn only with the court’s approval.

*Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 690 (S.D. Fla. 2014) (citing Fed. R. Civ. P. 23(e)).

Each of these five requirements is readily satisfied here. The Court-approved notice program directed the best notice practicable under the circumstances to all Settlement Class Members; a final

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<sup>4</sup> As previously noted, the deadline for Class Members to Object or Opt-Out of the Settlement occurs on April 26, 2023. [D.E. 185 at ¶9].

fairness hearing has been scheduled for May 31, 2023; there is no agreement other than the Settlement Agreement itself; Class Members have had an appropriate time to opt-out; and currently there have been *no* objections filed against the Settlement or Plaintiffs' Request for Attorneys' Fees.

**A. The Notice Program Gave the Best Practicable Notice to Settlement Class Members and Satisfied Rule 23 and Due Process.**

To exercise jurisdiction over absent Class members, a court must assure itself that such class members receive notice of any settlement that is “the best practicable, ‘reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985) (quoting *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, 314-15 (1950)); see Fed. R. Civ. P. 23(c)(2)(B). Such notice “should describe the action and the plaintiffs’ rights in it,” as well as provide each class member “with an opportunity to remove [itself] from the class by executing and returning an ‘opt out’ or ‘request for exclusion’ form.” *Shutts*, 472 U.S. at 812. As this Court noted in its Preliminary Approval Order, the Notice Program ordered and used here constitutes “the best practicable notice under the circumstances....” [D.E. 185 at ¶13]

The Notice Program has been implemented in accordance with the Court’s Order. See RG/2 Claims Decl. ¶¶ 5-11. 105,317 Notices were mailed to potential Settlement Class Members as identified from Defendants’ records. *Id.*, ¶ 5. RG/2, the notice administrator, used advanced address research and re-mailing protocols for those notices that did not reach their intended recipient, ensuring that the maximum number of Settlement Class Members received direct-mail notice. *Id.*, ¶ 6. In addition, the Settlement Website has had more than 3,327 users clicking the links on the Settlement website, and RG/2 has received more than 2,659 calls to the settlement phone number. *Id.*, ¶¶ 7-9.

This far-reaching Notice Program has ensured that the Court has personal jurisdiction over all Settlement Class Members, because they have received the notice required to satisfy constitutional due process. See *Shutts*, 472 U.S. at 811-12; *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 306 (3d Cir. 1998) (“[T]he district court obtains personal jurisdiction over the absentee class members by providing proper notice of the impending class action and providing the absentees with the opportunity to be heard or the opportunity to exclude themselves from the class.”). As required, the Court-approved notice described the claims brought and “contained information reasonably necessary to make a decision to remain a class member and be

bound by the final judgment.” *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1104-05 (5th Cir. 1977). The Class Notice directly mailed to Settlement Class Members, among other things, described the Settlement Class, the release, the amount and proposed distribution of the Settlement Funds and informed Settlement Class Members of their right to opt out or object, as well as the procedural steps required to opt out or object. The notice further informed Settlement Class Members of the time and place of the Fairness Hearing. And the Notice explained to Settlement Class Members that they would be bound by a judgment unless they opted out. The Notice additionally informed Settlement Class Members that Class Counsel would seek attorneys’ fees of up to 33% of the aggregate value of the Settlement Funds, inclusive of litigation expenses. Lastly, the Notice informed Settlement Class Members that additional information would be available on the Settlement Website, where copies of the Agreement and Notice, were made available.

In short, Settlement Class Members were provided with the best practicable notice “reasonably calculated, under [the] circumstances, to apprise them of the pendency of the action and afford them an opportunity to present their objections.” *Mullane*, 339 U.S. at 314.

#### **B. The Settlement Is Fair, Reasonable, and Adequate**

In evaluating a proposed settlement, Courts in this circuit consider the following factors: (1) the existence of fraud or collusion behind the settlement; (2) complexity, expense and duration of litigation; (3) the stage of proceedings at which the settlement was achieved; (4) the likelihood of the plaintiffs’ success on the merits; (5) the range of possible recovery; and (6) the opinions of class counsel, class representatives, and the substance and amount of opposition received. *See Leverso v. SouthTrust Bank of Ala., N.A.*, 18 F.3d 1527, 1530 n.6 (11th Cir. 1994); *Saccoccio*, 297 F.R.D. at 691–94. “In assessing these factors, the Court ‘should be hesitant to substitute . . . her own judgment for that of counsel.’” *Lipuma*, 406 F. Supp. 2d at 1315 (quoting *In re Smith*, 926 F.2d 1027, 1028 (11th Cir. 1991)). Analysis of these factors compels the conclusion that this Court should approve the Settlement.

##### **1. The Settlement is the Product of Good Faith, Informed, and Arm’s-Length Negotiations among Experienced Counsel.**

The first factor for final approval requires this Court to consider whether the Settlement was obtained by fraud or collusion among the parties and their counsel. Courts begin with a presumption of good faith in the negotiating process. *See Saccoccio*, 297 F.R.D. at 692 (“Where the parties have negotiated at arm’s length, the Court should find that the settlement is not the product of collusion”); *Hemphill v. San Diego Ass’n of Realtors, Inc.*, 225 F.R.D. 616, 621 (S.D. Cal. 2004) (“the courts

respect the integrity of counsel and presume the absence of fraud or collusion in negotiating the settlement”). The Settlement terms in this case are the product of significant give and take by the settling parties and were negotiated at arm’s length. The Parties participated in an intensive mediation with Judge Thornton, a well-respected mediator with significant experience resolving complex cases. Judge Thornton conducted multiple mediation sessions throughout the Summer and Fall of 2022. (Moskowitz Decl., ¶¶ 11, 35).

The Parties, through regular telephonic and zoom sessions, as well as email communications, and with the assistance of Judge Thornton, negotiated the amended Agreement. *Id.* Judge Thornton has significant experience mediating complex commercial suits to resolution and was involved in every step of the process. *Id.* The very fact of his involvement weighs in favor of approval. *See, e.g., Lobatz v. U.S. In re Educ. Testing Serv. Praxis Principles of Learning & Teaching, Grades 7-12 Litig.*, 447 F. Supp. 2d 612, 619-20 (E.D. La. 2006) (use of special master to oversee mediation evidenced procedural fairness of negotiating process); *In re WorldCom, Inc. ERISA Litig.*, 2004 WL 2338151, at \*6 (S.D.N.Y. Oct. 18, 2004) (fact that “[a] respected and dedicated judicial officer presided over the lengthy discussions from which this settlement emerged” belied any suggestion of collusion). The Parties’ negotiations were also informed by considerable discovery obtained by Class Counsel in litigating these claims.

**A. The Issues Presented Were Highly Complex and Settlement Approval Will Save the Class Years of Extremely Costly Litigation in this Court and on Appeal.**

This case involves complex legal claims and defenses brought on behalf of over 141,000 Settlement Class Members, and includes claims for violations of the Fair Debt Collection Practices Act 15 U.S.C. § 1692, et seq. and the Florida Consumer Collection Practices Act, § 559.55, Florida Statutes, et seq., Florida Deceptive and Unfair Trade Practices Act, § 501.201, Florida Statutes, et seq. and breach of contract. [ECF No. 175.] Litigating these claims would have undoubtedly proven difficult and consumed significant time, money, and judicial resources. Even if Plaintiffs were ultimately to have prevailed in this litigation (which Defendants contest), that success would likely have borne fruit for the Class only after years of trial and appellate proceedings and the expenditure of millions of dollars by both sides. (Moskowitz Decl. ¶ 36); *see, In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mex., on Apr. 20, 2010*, 910 F. Supp. 2d 891, 932 (E.D. La. 2012), *aff’d*, 2014 WL 103836 (5th Cir. 2014) (“Even assuming litigation could obtain the results that this Settlement provides, years of litigation would stand between the class and any such recovery. Hence, this second factor weighs strongly in favor of granting final approval to the Settlement Agreement.”).

By contrast, the Settlement provides immediate and substantial relief to the Settlement Class, with cash payments approximating 32% of the total Retained Convenience Fees paid by Class Members within the nationwide FDCPA Class, and 18% of total Retained Convenience Fees paid by Class Members within the Florida Class. (Moskowitz Decl. ¶¶ 43–44.) This recovery is extremely favorable and constitutes an excellent result. *See, e.g., Beber et al. v. Branch Banking & Trust Co. et al.*, No. 15-cv-23294 (S.D. Fla.) (ECF No. 109) (approving similar settlement with payment percentages of 10%, 8%, and 5%); *Saccoccio*, 297 F.R.D. at 693 (return of 12.5% of premiums charged for FPI with prospective relief “very likely exceeds what Plaintiffs could have won at trial”). These benefits come without the expense, uncertainty, and delay of litigation. In light of the costs, uncertainties, and delays of litigating through trial—possibly an appeal—“the benefits to the class of the present settlement become all the more apparent.” *See Ressler v. Jacobson*, 822 F. Supp. 1551, 1555 (M.D. Fla. 1992).

**B. The Factual Record Was Sufficiently Developed to Enable Class Counsel to Make a Reasoned Judgment Regarding the Settlement.**

Courts consider “the degree of case development that class counsel have accomplished prior to settlement” to ensure that “counsel had an adequate appreciation of the merits of the case before negotiating.” *In re Gen. Motors Pick-up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 813 (3d Cir. 1995). At the same time, “[t]he law is clear that early settlements are to be encouraged, and accordingly, only some reasonable amount of discovery should be required to make these determinations.” *Ressler*, 822 F. Supp. at 1555.

Prior to settlement, Class Counsel had been investigating and litigating these types of claims for years and familiarized themselves thoroughly with the facts of this matter. (Moskowitz Decl. ¶¶ 37, 52-53.) This knowledge and the results of similar litigation around the country led the parties to enter settlement discussions. Further, before, during, and after mediation, Class Counsel confirmed details regarding the Class Members affected, and the amount at stake to ensure the Settlement was fair and complete, and to confirm the value of the relief provided to the Settlement Class. *Id.* ¶ 37.

**D. Plaintiffs Faced Significant Obstacles to Obtaining Relief.**

“[T]he likelihood and extent of any recovery from the defendants absent ... settlement” must be considered in assessing the reasonableness of a settlement. *See In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 314 (N.D. Ga. 1993); *see also Ressler*, 822 F. Supp. at 1555 (“a court is to consider the likelihood of the plaintiffs’ success on the merits of his claims against the amount and form of relief offered in the settlement before judging the fairness of the compromise”).

Class Counsel and Plaintiffs believe they have a compelling case, but also recognize that Defendants would have raised significant defenses to all claims. Although Plaintiffs and Class Counsel maintain that these defenses would have lacked merit, had litigation continued, Plaintiffs and Settlement Class Members would have risked not prevailing on their claims. (Moskowitz Decl. ¶¶ 38–41). Had the Parties continued to litigate, Plaintiffs could well have recovered nothing on behalf of the Settlement Class.

**E. The Benefits Provided by the Settlement Are Fair, Reasonable, and Adequate When Considered Against the Possible Range of Recovery.**

As explained above, the Settlement creates two non-reversionary Settlement Funds with an aggregate value of \$2.77 million. The Settlement Funds will provide significant cash payments and injunctive relief. All Settlement Class Members will receive cash payments equal to 18% or 32% of each Convenience Fee paid to and retained by the Defendants (minus their respective shares of any fees or expenses awarded to Class Counsel). This represents a significant recovery for Settlement Class Members, especially in light of the risks of continuing to litigate. (Moskowitz Decl. ¶¶ 42–47). Moreover, the agreed-to injunctive relief freezes the amount of Convenience Fees that can be charged for two years and ensures that the Settlement Class Members are better informed of their choices when making mortgage payments. Federal courts hold that settlements providing the class with a percentage of the recovery sought in litigation are reasonable in light of the attendant risks of litigation. *See, e.g., Johnson v. Brennan*, No. 10-cv-4712, 2011 WL 4357376 (S.D.N.Y. Sept. 16, 2011) (“[T]here is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery.”); *see also Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542–43 (S.D. Fla. 1988) (approving recovery of \$.20 per share where desired recovery was \$3.50 a share because “the fact that a proposed settlement amounts to only a fraction of the possible recovery does not mean the settlement is inadequate or unfair”); *Moreno v. Beacon Roofing Supply, Inc.*, No. 19CV185-GPC(LL), 2020 WL 3960481, at \*5 (S.D. Cal. July 13, 2020) (holding that non-reversionary aspect of settlement supported final approval under Rule 23(e)(2)(C)(ii)). “Moreover, when settlement assures immediate payment of substantial amounts to class members, even if it means sacrificing speculative payment of a hypothetically larger amount years down the road, settlement is reasonable[.]” *Johnson*, 2011 WL 4357376, at \*12). The results here are clearly reasonable.



**F. The Opinions of Class Counsel, the Class Representatives, and Absent Class Members Strongly Favor Settlement Approval.**

A court should give “great weight to the recommendations of counsel for the parties, given their considerable experience in this type of litigation.” *Warren v. Tampa*, 693 F. Supp. 1051, 1060 (M.D. Fla. 1988). This Court has already found that Class Counsel and Plaintiffs will adequately represent the Class in this action, and its conclusion was warranted. *See* Preliminary Approval Order [D.E. 185 ¶ 4(e)].

Class Counsel litigated this matter aggressively and competently, reviewed thousands of pages of documents, and fully support the Settlement. Based on this specific experience, and decades of experience in litigating consumer class action lawsuits, it is Class Counsel’s informed opinion that the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class. (Moskowitz Decl. ¶ 48.)

As of April 11, 2023, of the nearly 142,000 Settlement Class Members, the Settlement Administrator has received only 16 valid opt out requests and *no* objections have been filed or otherwise submitted. *See* RG/2 Decl. ¶¶ 10-11. This overwhelming support is evidence of the Settlement’s fairness. *See, e.g., Saccoccio*, 297 F.R.D. at 694 (opposition amounting to .018% of the class was termed as “low resistance to the settlement” and weighed “in favor of approving the settlement.”). Viewed either independently or taken together, the above factors confirm that the Settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class.

**II. THE COURT SHOULD AWARD REASONABLE FEES AND COSTS.**

For their extensive work prior to the filing of the complaint and throughout the pre-trial and settlement phases of this litigation, Class Counsel seek a fee award of \$859,031.08, which is 31% of the aggregate value of the Settlement Funds created for the benefit of the Settlement Class, plus \$55,421.36 in unreimbursed expenses. This is a total of \$914,452.44 in attorneys’ fees and expenses, which equals 33% of the aggregate value of the Settlement Funds.

**A. The Court Should Award the Requested Attorneys’ Fees and Expenses.**

When a class settlement establishes a calculable monetary benefit for class members, attorneys’ fees should be awarded to class counsel pursuant to the well-established common benefit doctrine, based on a percentage of the monetary benefit obtained. *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). In the Eleventh Circuit, “attorneys’ fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class.” *Camden I*, 946 F.2d at 774; *see also*

*Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1339 (S.D. Fla. 2007); *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1333 (S.D. Fla. 2001).

The Eleventh Circuit, therefore, requires class counsel fee awards to be based on a percentage of the common fund generated through a class action settlement. In *Camden I*—the controlling authority in the Eleventh Circuit on the issue of attorneys’ fees in common-fund class action cases—the court held that “the percentage of the fund approach [as opposed to the lodestar approach] is the better reasoned in a common fund case. Henceforth in this circuit, attorneys’ fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class.” *Camden I*, 946 F.2d at 774. The Eleventh Circuit recently reaffirmed this rule, holding that “*Camden I* and the percentage method remain the law in this Circuit.” *In re Equifax Inc. Customer Data Security Breach Litig.*, 999 F.3d 1247, 1280 (11th Cir. 2021).

The “majority of common fund fee awards,” the Eleventh Circuit has observed, “fall between 20% to 30% of the fund.” *Camden I*, 946 F.2d at 774-75; see *Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1243 (11th Cir. 2011) (affirming fee award above the “25% benchmark”); *Waters v. Int’l Precious Metals Corp.*, 190 F.3d 1291, 1294 (11th Cir. 1999) (affirming fee award of 33.33% on settlement of \$40 million). Thus, “[c]ourts nationwide,” the Eleventh Circuit recently noted with approval, “have repeatedly awarded fees of 30 percent or higher.” *In re Equifax*, 999 F.3d at 1281 (quoting *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1367 (S.D. Fla. 2011)). Class Counsel’s fee request adheres to the Eleventh Circuit’s guidance, particularly given the circumstances of this litigation, as detailed below. See *Waters*, 190 F.3d at 1294.

The Eleventh Circuit’s factors for evaluating the reasonable percentage to award class action counsel are (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and the length of the professional relationship with the client; and (12) awards in similar cases. See *Camden I*, 946 F.2d at 772 n.3. This Court may also consider the time required to reach settlement, the existence of substantial objections and non-monetary benefits, and the economics of prosecuting a class action. *Id.* at 775. As explained below, the factors set forth in *Camden I* support the full award requested.

**1. The Contingent Nature of the Fee, the Financial Burden Carried by Counsel, and the Economics of Prosecuting a Class Action Support the 31% Award.**

A determination of a fair fee for Class Counsel must include consideration of the contingent nature of the fee, the outlay of out-of-pocket expenses by Class Counsel, and the fact that the risks of failure and nonpayment in a class action are extremely high. *See Pinto*, 513 F. Supp. 2d at 1339. These factors weigh in favor of awarding Class Counsel a fee award equaling approximately 31% of the aggregate value of the Settlement Funds, not counting the value of the injunctive relief that PHH Defendants have also agreed to provide as part of this Settlement. Class Counsel received no compensation during the course of this litigation and incurred expenses on behalf of the Settlement Class, which they risked losing had Defendants prevailed. (Moskowitz Decl. ¶¶ 66–71.) From the time Class Counsel filed suit, there was a real possibility Class Counsel would receive no compensation whatsoever.

**2. The Fee Request Reflects the Market Rate in Complex, Contingent, Litigation.**

A fee of approximately 31% of a settlement’s monetary value is within the market for class actions. *See Waters*, 190 F.3d 1291 (11th Cir. 1999) (affirming fee award of 33.33% on settlement of \$40 million). “The percentage method of awarding fees in class actions is consistent with, and is intended to mirror, practice in the private marketplace where attorneys typically negotiate percentage fee arrangements with their clients.” *Pinto*, 513 F. Supp. 2d at 1340. In private litigation, attorneys regularly contract directly with their clients for contingent fees between 25% and 33%. These percentages are the prevailing market rates throughout the United States for contingent representation. *See id.* at 1341 (citing, *inter alia*, *Kirchoff v. Flynn*, 786 F.2d 320, 323 (7th Cir. 1986)). In making a determination of what constitutes a fair fee, this Court should be guided by such awards. A fee of approximately 31% of the aggregate value of the Settlement Funds is well within the range of the customary fee awarded in common fund cases. *See, e.g., In re Disposable Contact Lens Antitrust Litig.*, 3:15-md-02626-HESLLL, ECF No. 1258 at 5 (M.D. Fla. June 1, 2021) (awarding 33 1/3% of the anticipated net settlement fund in partial settlement of antitrust class action); *Morgan v. Pub. Storage*, 301 F. Supp. 3d 1237, 1257-58 (S.D. Fla. 2016) (“[A] fee award of 33% . . . is consistent with attorneys’ fees awards in federal class actions in this Circuit . . . .”); *Sawyer v. Intermex Wire Transfer, LLC*, 2020 WL 5259094 (S.D. Fla. 2020) (awarding one-third of the common fund); *Wolff v. Cash 4 Titles*, 2012 WL 5290155, at \*6 (S.D. Fla. 2012) (collecting cases and concluding that 33% is consistent with the market rate in class actions).

### **3. The Novelty and Difficulty of the Questions at Issue**

As previously mentioned, this case presents novel questions of law and issues of fact. Class action matters are generally complex. Defendants' defenses regarding the legality of the Convenience Fees, would have led to contested briefing regarding class certification and on the merits, at trial, post-trial, and on appeal. (Moskowitz Decl. at ¶¶ 39, 57-59, 64). Thus, even though Class Counsel successfully reached a settlement with Defendants, the difficulty and associated risk of mastering and litigating these issues amply supports the full award requested. *Id.*

### **4. The Skill, Experience, and Reputation of Class Counsel**

This litigation required a high degree of skill and experience. Class Counsel have established their skill, experience, and reputation in the record, and in repeated cases before this court. (Moskowitz Decl. at ¶ 57); Firm Resumes at [ECF No. 178-3]. Class Counsel have many years of experience successfully litigating nationally recognized class actions, including in the financial services industry. Beyond that, Class Counsel's reputation, diligence, expertise, and skill are reflected in the results they have achieved. They resolved this dispute efficiently despite the potential hurdles presented them and the arguments raised by Defendants detailed above. The quality of Class Counsel and their achievement here is equally shown by the strength of their opponents, Bradley Arant Boult Cummings LLP, an excellent defense firm. *Id.* at ¶ 59. This factor thus also favors awarding the requested fee.

### **5. The Result Achieved for the Class**

The result achieved is a major factor to consider in making a fee award and here, it is significant and perhaps best establishes the propriety of the requested fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 436, (1983) ("critical factor is the degree of success obtained"); *Pinto*, 513 F. Supp. 2d at 1342; *Behrens*, 118 F.R.D. at 547-48 ("The quality of work performed in a case that settles before trial is best measured by the benefit obtained."). In considering the results, courts examine the value of *both* monetary and prospective relief. *See Poertner*, 618 Fed. App'x at 629; *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360 (S.D. Fla. 2007); *LiPuma*, 406 F. Supp. 2d at 1323. The results here, of more than \$2.77 million in a non-reversionary Settlement Fund and the prospective relief, are excellent. Moskowitz Decl. at ¶ 72. Defendants are required to provide meaningful disclosures regarding the fees they charge, freezing the amount of those fees, and other injunctive changes. These results are powerful evidence supporting the fee award.

## **6. The Time and Labor of Class Counsel**

Investigating, prosecuting, and settling the claims here demanded time and labor. (Moskowitz Decl. ¶¶ 52–56). The complexity of this case required organization by Class Counsel, including assignment of work and regular meetings and calls to ensure coordinated, productive work efforts to maximize efficiency and minimize duplication of effort. Class Counsel spent over 2,000 hours investigating the claims of many potential plaintiffs and in litigating Plaintiffs’ and the Class’s claims against Defendant in this action. *Id.* Plaintiffs’ counsel investigated their claims and allegations through extensive discovery, including the review of thousands of pages of documents. *Id.* This work required a significant amount of resources.

## **7. The Reaction of the Class to the Settlement.**

To date, the Parties have received no objections and only 16 valid opt-out requests, which supports the fee request. *See Pinto*, 513 F. Supp. 2d at 1343; (RG/2 Claims Decl. ¶¶ 10-11.)

### **B. Class Counsel’s Request For Expenses Should Be Approved.**

Class Counsel also incurred \$55,421.36 in unreimbursed expenses that have been borne to date. These expenses were reasonably and necessarily incurred during the litigation. These expenses are comprised of expert fees, case investigation costs, travel costs, copying costs, court reporting, stenography, mediation fees, legal research costs, court fees, and miscellaneous costs. *See Moskowitz Decl.* at ¶¶ 75-76. It is well understood that Class Counsel are “entitled to be reimbursed from the class fund for the reasonable expenses incurred” in pursuing actions on behalf of a Class. *Behrens*, 118 F.R.D. at 549. Accordingly, courts in this Circuit have routinely approved payment of reasonable and necessary litigation expenses from common funds created by the litigation. *See Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 2008 WL 11234103, at \*6 (N.D. Ga. Mar. 4, 2008) (approving \$2.4 million for reimbursement of litigation expenses).

## **CONCLUSION**

Plaintiffs and Class Counsel respectfully request that the Court grant final approval of the Settlement, as well as the application for Class Counsel’s fees and expenses.

Dated: April 12, 2023

Respectfully submitted,

By: /s/ Adam Moskowitz

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*Counsel for Plaintiff and the Class*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 12, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Southern District of Florida, by using the CM/ECF system, which will serve a copy of same on all counsel of record.

By: /s/ Adam M. Moskowitz

Adam M. Moskowitz

# **Motion**

# **Exhibit A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
FT. LAUDERDALE DIVISION**

**Case No. 0:20-CV-60633-RS**

VINCENT J. MORRIS and MICHAEL LUZZI,  
on behalf of themselves and all other similarly  
situated,

Plaintiffs,

v.

PHH MORTGAGE CORPORATION d/b/a  
PHH MORTGAGE SERVICES, on its own  
Behalf and as successor by merger to OCWEN  
LOAN SERVICING, LLC, a New Jersey  
Corporation, and OCWEN LOAN SERVICING,  
LLC, a Florida Limited Liability Company,

Defendants.

\_\_\_\_\_ /

**DECLARATION OF TINA CHIANGO REGARDING  
DISSEMINATION OF NOTICE TO THE CLASS AND IN SUPPORT OF  
PLAINTIFFS MOTION FOR FINAL APPROVAL**

I, Tina Chiango, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am the Director of Claims Administration, Securities, and Antitrust for RG/2 Claims Administration LLC (“RG/2”), the Settlement Administrator retained in this matter, located at 30 S. 17<sup>th</sup> Street, Philadelphia, PA 19103. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.



2. RG/2 is a full-service class action settlement administrator offering notice, claims processing, allocation, distribution, tax reporting, and class action settlement consulting services. RG/2's experience includes the provision of notice and administration services for settlements arising from antitrust, consumer fraud, civil rights, employment, negligent disclosure, and securities fraud allegations. Since 2000, RG/2 has administered and distributed in excess of \$1.8 billion in class action settlements.

3. RG/2 was retained by the parties and approved by the Court to serve as Settlement Administrator, which includes amongst other tasks, disseminating notice to the class via first class mail; contracting and overseeing published notice and media plan; creating a case website; setting up an IVR phone system for Class Members to get information regarding the Settlement; receiving and tracking requests for exclusion and objections; responding to Class Member inquiries; calculating and issuing a distribution to all Class Members; and any additional tasks as the parties mutually agree upon or the Court orders RG/2 to perform.

4. On November 1, 2022, RG/2 accessed a secure link supplied by Defendant's Counsel which contained two files for the Florida Class and two files for the FDCP Class. Each of the files included the mortgage loan numbers, names on the loan, mailing addresses and each convenience payment made by each Class Member. RG/2 reviewed the files and compiled a mailing database that included each unique loan with the contact information for that loan, all borrowers associated with that loan, as well as whether the loan was part of the Florida Class, the FDCPA Class or both.

5. On January 19, 2023, RG/2 arranged for the mailing of the Class Notice to be mailed to the contact addresses of the 105,317 unique loans. As referenced in the Class Notice, a personalized attachment was included which identified the loan number, all borrowers and co-

borrowers associated with the mortgage loan, and which Class(es) they were part of. A non-personalized copy of the Class Notice with attachment is attached hereto as **Exhibit A**.

6. Of the 105,317 Class Notices mailed, a total of 4,648 were returned by the USPS as undeliverable. Of those returned, 534 contained a forwarding address, which RG/2 used to immediately re-mail those Class Notices. RG/2 performed address verification searches (also referred to as “skip tracing”) for those returned as undeliverable without a forwarding address. Re-mails were promptly sent to 2,663 Class Members via U.S. First Class mail at the updated addresses located via skip tracing. After these efforts, 1,451 remained undeliverable.

7. In addition to the mailed Notice, RG/2 also arranged for an online media campaign which involved Facebook and Instagram ads targeted at certain Florida adults, as well as keywords in Google and Bing search engines that would identify the Settlement. The media campaign started on January 19, 2023 and continued for one month, ending on February 17, 2023. The ads would direct people to the Settlement website to get more information. The whole campaign resulted in over 1.7 million impressions, which resulted in 3,327 users clicking on the links to visit the Settlement website.

8. As reference above, RG/2 created a settlement website, which went live on January 15, 2023, [www.morrisvphhspeedpaysettlement.com](http://www.morrisvphhspeedpaysettlement.com). The website’s homepage include Important Dates, as well as a summary of the Settlement. The website also included a “Contact Us” page and a “Court Documents” page, which included: the Second Amended Class Action Complaint; the Settlement Agreements with Exhibits; the Preliminary Approval Order; a copy of the Class Notice; and a Class Notice in Spanish.

9. RG/2 also had an IVR (interactive voice response) system set up using the toll free number of 877-203-9760. The IVR included various questions and answers relating to the Settlement that gave callers the ability to listen to the answers to certain questions. Callers also

had an option to leave their names and addresses if they wanted to request a Notice be sent to them. To date, a total of 2,659 calls have been made to the IVR.

10. As referenced in the Class Notice, the deadline to submit a request for Exclusion from the Settlement is April 26, 2023. To date, RG/2 has received 16 Requests for Exclusion from Class Members. RG/2 also received a Request for Exclusion from one person, Brian Rusin, who is not listed as a Class Member in the data supplied to RG/2. Copies of these requests for Exclusion are attached hereto as **Exhibit B**. As the filing deadline has not yet passed, RG/2 will provide a supplemental declaration after the Exclusion deadline if any additional requests are submitted.

11. Also referenced in the Class Notice, the deadline to object to the Settlement is April 26, 2023. To date, RG/2 has not received or been made aware of any Objections to the Settlement.

I declare under penalty of perjury under the laws of the United States that to the best of my knowledge the foregoing is true and correct.

Executed on April 11, 2023 at Philadelphia, Pennsylvania.

A handwritten signature in cursive script, appearing to read "Tina Chiango", is written over a horizontal line.

Tina Chiango

# **EXHIBIT A**

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA**

**A class action settlement may affect your rights if you paid Ocwen or PHH a fee to make a mortgage loan payment by telephone, through an interactive voice response telephone system, or through the internet on or after March 25, 2016**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

**PARA VER ESTE AVISO EN ESPAÑOL, VISITE [www.morrisvphhspeedpaysettlement.com](http://www.morrisvphhspeedpaysettlement.com)**

A settlement of \$2,771,068 has been reached in a class action lawsuit alleging that Ocwen Loan Servicing, LLC (“Ocwen”) and PHH Mortgage Corporation (“PHH,” and with Ocwen, “Defendants” or the “PHH Defendants”) violated the Fair Debt Collection Practices Act (“FDCPA”) to borrowers nationwide and violated the Florida Consumer Collection Practices Act (“FCCPA”), Florida’s Deceptive and Unfair Trade Practices Act (“FDUTPA”), or borrower loan agreements or mortgages as to borrowers with mortgaged property in the State of Florida, when they charged borrowers fees for making loan payments by telephone through a live operator, by telephone through an interactive voice response telephone system (“IVR”), or by the internet. These types of fees are known as “Convenience Fees.” For much of the period at issue in this lawsuit, Ocwen and PHH used the “Speedpay™” service to facilitate these kinds of payments, so the Convenience Fees charged by Ocwen and PHH were often referred to as “Speedpay” fees. Ocwen and PHH deny that they did anything wrong, and the Court has not decided who is right. Ocwen, PHH, and the Plaintiffs, Vincent Morris and Michael Luzzi (together with PHH and Ocwen, the “Parties”), agreed to enter into this Settlement to avoid the uncertainties, delays, and expenses of ongoing litigation, while providing class members with definite benefits now. **The purpose of this notice is to inform you of the class action and the proposed Settlement so that you may decide whether to participate, opt out, or object.**

**QUICK SUMMARY OF SETTLEMENT**

**WHO’S INCLUDED?** Ocwen’s and PHH’s records indicate that you may be a member of the “Settlement Class” at issue in this case, or in other words, you may be a “Settlement Class Member.” The “Settlement Class” includes each of the following:

**The FDCPA Class:**

(A) All borrowers on residential mortgage loans secured by mortgaged property in the United States whose mortgage loans were serviced but not owned by Ocwen and to which Ocwen acquired servicing rights when such loans were 30 days or more delinquent on their loan payment obligations, and who, at any time during the period from March 25, 2019 through and including August 17, 2022, paid a Convenience Fee to Ocwen that was not refunded or returned; PLUS (B) all borrowers on residential mortgage loans secured by mortgaged property in the United States whose mortgage loans were serviced but not owned by PHH and to which PHH acquired servicing rights when such loans were 30 days or more delinquent on their loan payment obligations, and who, at any time during the period from March 25, 2019 through and including August 17, 2022, paid a Convenience Fee to PHH that was not refunded or returned.

Excluded from the FDCPA Class are (a) borrowers whose loans were included as class loans in the previously approved class action settlement in *McWhorter, et al. v. Ocwen Loan Servicing, LLC, et al.*, No. 2:15-cv-01831-MHH (N.D. Ala.); (b) borrowers whose loans make them potential members of the proposed settlement classes in *Torliatt v. Ocwen Loan Servicing, LLC*, Case Nos. 3:19-cv-04303-WHO, 3:19-cv-04356-WHO (N.D. Cal.), or *Thacker v. PHH Mortgage Corp.*, Case no. 5:21-cv-00174-JPB (Bailey) (N.D. W. Va.), whether or not those borrowers timely and validly exclude themselves from those settlement classes; (c) borrowers who are or were named plaintiffs in any civil action other than this Action which challenges Convenience Fees charged by a PHH Defendant that was initiated against either PHH Defendant on or before the date the Agreement was fully executed; (d) the PHH Defendants’ board members and executive level officers; and (e) the federal district and magistrate judges assigned to this Action, along with persons within the third degree of relationship to them.

***Questions? Call 1-877-203-9760 or visit [www.morrisvphhspeedpaysettlement.com](http://www.morrisvphhspeedpaysettlement.com)***

– and –

**The Florida Class:**

All borrowers on residential mortgage loans secured by mortgaged property in the State of Florida who, from March 25, 2016 to August 17, 2022, paid a Convenience Fee to either Ocwen or PHH that was not refunded or returned.

Excluded from the Florida Class are (a) borrowers whose loans were included as class loans in the previously approved class action settlement in *McWhorter, et al. v. Ocwen Loan Servicing, LLC, et al.*, No. 2:15-cv-01831-MHH (N.D. Ala.); (b) borrowers who are or were named plaintiffs in any civil action other than this action which challenges Convenience Fees charged by a PHH Defendant that was initiated against either PHH Defendant on or before the date the Agreement was fully executed; (c) borrowers in the “FDCPA Class” defined above who did not also make an additional Convenience Fee payment to the PHH Defendants between March 25, 2016 and March 24, 2019; (d) the PHH Defendants’ board members and executive level officers; and (e) the federal district and magistrate judges assigned to this Action, along with persons within the third degree of relationship to them. For the avoidance of doubt, a borrower in the FDCPA Class who also paid a fee to either PHH Defendant between March 25, 2016 and March 24, 2019, inclusive, and who otherwise meets the definition of the Florida Class would be in both the FDCPA Class and the Florida Class.

**The separate page in this mailing that contains your address also contains your Class Loan number or numbers and also identifies whether your Class Loan is an FDCPA Class Loan, a Florida Class Loan, or both, according to Defendants’ records.**

**WHAT ARE THE SETTLEMENT TERMS?**

**What the Settlement Class Members are getting:**

Monetary Relief. Defendants have agreed to create two separate settlement funds with an aggregate combined value of \$2,771,068 (the “Settlement Funds”), which will be distributed to Settlement Class Members (after first deducting any fees and expenses that the Court awards Plaintiffs and the attorneys representing the Settlement Class (“Class Counsel”). The Settlement Funds will be distributed on a loan-by-loan basis.

FDCPA Class Members will be entitled to an allocation from the FDCPA Settlement Fund. The FDCPA Settlement Fund has an aggregate value of \$1,233,381, which is equal to the sum of 32% of the Convenience Fees paid to and retained by Ocwen from March 25, 2019 through and including August 17, 2022 for borrowers meeting subpart (A) of the definition of the FDCPA Class and 32% of the Convenience Fees paid to and retained by PHH from March 25, 2019 through and including August 17, 2022 for borrowers meeting subpart (B) of the definition of the FDCPA Class. Individual allocations will be calculated as explained in Section 6, below.

Florida Class Members will be entitled to an allocation from the Florida Settlement Fund. The Florida Settlement Fund has an aggregate value of \$1,537,687, which is equal to 18% of the Convenience Fees that were paid to and retained by the PHH Defendants from Florida Class Members during the period from March 25, 2016 through and including August 17, 2022, but excluding Convenience Fees already subject to allocations from the FDCPA Settlement Fund. Individual allocations will be calculated as explained in Section 6, below.

Other Relief. Within 120 days after the Final Settlement Date, PHH has also agreed to reduce any Convenience Fee it charges for internet payments by Settlement Class Members from \$7.50 to \$6.50 for a period of two years and to keep all of its future Convenience Fee charges to Settlement Class Members at or below their current levels for a period of two years. PHH will also add additional disclosures to its website to increase borrower awareness of alternative payment methods that could have lower fees or no fees. Finally, PHH will provide training and scripting to customer service employees to provide additional information and disclosures about Convenience Fees and about alternative payment options that do not involve a fee. See the full Settlement documents at [www.morrisvphhspeedpaysettlement.com](http://www.morrisvphhspeedpaysettlement.com) for more details.

***Questions? Call 1-877-203-9760 or visit [www.morrisvphhspeedpaysettlement.com](http://www.morrisvphhspeedpaysettlement.com)***

**What the Settlement Class Members are giving up:** In return for the relief that Defendants are providing, Settlement Class Members are deemed to have agreed to the following:

- **The Florida Class will release any claims that they may have against Ocwen or PHH or their associated persons and entities relating in any way to the payment of Convenience Fees to Ocwen or PHH on Florida Class Loans during the period from March 25, 2016 through and including August 17, 2022. “Florida Class Loans” means residential mortgage loans secured by mortgaged property in the State of Florida that qualify a Florida Class Member for membership in the Florida Class as defined above; and**
- **The FDCPA Class will release any claims that they may have (a) against Ocwen for Convenience Fees charged on FDCPA Class Loans to FDCPA Class Members meeting Subpart (A) of the definition of the FDCPA Class during the period from March 25, 2019 through and including August 17, 2022 or (b) against PHH for Convenience Fees charged on FDCPA Class Loans to FDCPA Class Members meeting Subpart (B) of the definition of the FDCPA Class during the period from March 25, 2019 through and including August 17, 2022. “FDCPA Class Loans” means residential mortgage loans of FDCPA Class Members which qualify them for membership in the FDCPA Class as defined above.**

**This is only a simplified summary of the claims being released as part of the Settlement. See Section 10 for a more complete explanation of the claims being released.**

**HOW CAN I GET PAYMENT?** You do not need to take any action to share in the relief offered by the Settlement. If you have moved since March 25, 2016, you may notify the Settlement Administrator of your new mailing address by writing to: Morris v PHH, c/o RG/2 Claims Administration LLC, P.O. Box 59479, Philadelphia, PA 19102-9479.

#### **WHAT ARE MY OTHER OPTIONS?**

**You can exclude yourself:** If you do not want to be bound by the Settlement, you must exclude yourself by **April 26, 2023**. Part 11 below explains what you need to do to exclude yourself. If you do not exclude yourself, and the Settlement is given final approval by the Court, you will remain a member of the Settlement Class, you will receive your individual allocation of the applicable Settlement Fund(s), and you will be bound by the Settlement, including the release of claims against Ocwen and PHH.

**You can object:** You alternatively may object to the Settlement by **April 26, 2023**. Part 16 below explains what you need to do to object to the settlement. The Court will hold a hearing on **May 31, 2023** beginning at **9:00 a.m.** to consider whether to finally approve the Settlement, as well as any request for attorneys’ fees by class counsel (the “Fairness Hearing”). If you object, Part 20 explains how you may ask the Court to speak at the Fairness Hearing. Persons who exclude themselves from the Settlement Class will not be bound cannot file an objection and cannot speak at the Fairness Hearing.

The rest of this Notice provides you with a more detailed summary of the Settlement, and also more fully describes your legal rights and options. For even more information, please visit [www.morrisvphhspeedpaysettlement.com](http://www.morrisvphhspeedpaysettlement.com) (the “Settlement Website”), at which you may download a complete copy of the “Second Amended Stipulation of Settlement and Release” (together with all attached exhibits, the “Agreement”). *Please read all of this Notice carefully and in its entirety because your legal rights may be affected whether you act or don’t act.*

### **BASIC INFORMATION**

#### **1. Why did I get this Notice?**

If this Notice was addressed to you, then according to Defendants’ records you may be a member of the above-referenced Settlement Class, meaning you may be a member of the FDCPA Class, the Florida Class, or both, because you paid a fee to make one or more mortgage loan payments to Ocwen or PHH by telephone, through an IVR, or through the internet during the Class Periods. Ocwen and PHH were not required by your loan documents to offer these optional payment methods, but nevertheless offered these extra payment methods in exchange for a Convenience Fee.

*Questions? Call 1-877-203-9760 or visit [www.morrisvphhspeedpaysettlement.com](http://www.morrisvphhspeedpaysettlement.com)*

You have received this Notice because you have a right to know about a proposed Settlement of *Morris v. PHH Mortgage Corporation*, case number 0:20-cv-60633-RS, pending in the United States District Court for the Southern District of Florida (the “Action”). This Notice describes the lawsuit, the Settlement, your legal rights, what relief is being offered to you, how that relief will be distributed and other important information. This Notice only summarizes the Settlement, the full terms of which are available for review at [www.morrisvphhspeedpaysettlement.com](http://www.morrisvphhspeedpaysettlement.com). If there is any conflict between this Notice and the Settlement (as set forth in the Agreement), the Settlement governs. You should review the Agreement before deciding what to do. Please share this Notice with any co-borrower(s) on your loan(s).

## 2. What is this lawsuit about?

Plaintiffs allege that Ocwen and PHH violated Section 1692f(1) of the FDCPA, the FCCPA, the FDUTPA, and/or breached borrower mortgage agreements and deeds of trust by charging Convenience Fees to borrowers for making loan payments by telephone, through IVR, or through the internet. Although Ocwen and PHH were not required to offer these payment methods, and although use of these extra payment methods was always purely optional, Plaintiffs contend that such fees were still unlawful because they were not expressly authorized by the Settlement Class Members’ underlying loan documents. Defendants deny that they did anything wrong because all customers who were charged a Convenience Fee (a) were informed in advance that the payment methods for which such fees were charged were entirely optional and the borrower’s decision to use of them would result in a disclosed charge amount, and (b) were required to expressly consent to the Convenience Fee before it was charged. Defendants contend among other things that under both the plain language of the FDCPA and regulatory guidance issued by the Federal Trade Commission, separate fees for a separate, optional, entirely avoidable, and agreed-upon service do not violate the FDCPA. Likewise, Defendants also contend that for those same reasons, their Convenience Fees do not violate the FCCPA or the FDUTPA. Defendants also contend that Convenience Fees are permitted by state and federal law, including the law of contract.

Section 1692k of the FDCPA provides that prevailing plaintiffs may recover any actual damages sustained as a result of a defendant’s violation of the FDCPA, if any, along with the costs of the action and a reasonable attorney’s fee as determined by the court. In the case of class actions, members of a prevailing class may also *share in* a classwide statutory damage award of *up to* the lesser of \$500,000 or 1 per centum of the net worth of the debt collector. The same actual and classwide statutory damages are also available under the FCCPA, while damages also may be potentially available under the FDUTPA or for breach of contract.

This Settlement is a compromise of these and other potential claims described in the Settlement, as explained in Part 10 below. Meanwhile, this Notice is only a partial summary of the details of this Action and the Settlement. Part 22 of this Notice explains how you may obtain more information about the claims in this Action and Defendants’ response to those claims. You can also visit [www.morrisvphhspeedpaysettlement.com](http://www.morrisvphhspeedpaysettlement.com) to review Plaintiffs’ operative complaint, the Parties’ proposed Settlement, and other documents related to this Action.

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

In a class action, one or more people, called class representatives (here Plaintiffs Vincent Morris and Michael Luzzi), sue on behalf of all other people who have similar claims. Together, all of these people are called a class, and the persons in it are called class members. In a class action, one court resolves the claims of all class members, except for those who ask in writing to be excluded from the class. The Honorable Rodney Smith of the United States District Court for the Southern District of Florida is in charge of all aspects of this case, and has already given preliminary approval to the Settlement. Nevertheless, because the Settlement will determine the rights of the Settlement Class, the Parties must send Settlement Class Members notice of the settlement and give them an opportunity to opt out or object before the Court decides whether to grant final approval of the Settlement.

The Court has conditionally certified the Settlement Class for settlement purposes only. If the Settlement is not given final approval, or otherwise fails to become final, or is terminated by the Parties for any of the reasons set forth in Section 12 of the Agreement, the Settlement will become void, the Settlement Class will no longer remain certified, and the Action will proceed as if there had been no Settlement and no certification of the Settlement Class.

**Questions? Call 1-877-203-9760 or visit [www.morrisvphhspeedpaysettlement.com](http://www.morrisvphhspeedpaysettlement.com)**



#### 4. Why is there a Settlement?

The Court has not decided whether Plaintiffs or Defendants would win this case. Instead, both sides agreed to the Settlement before any judgment was entered in the case. That way, the Parties avoid the uncertainties and expenses of ongoing litigation, and the delays of a trial and possible appeals, while providing Settlement Class Members with definite benefits now rather than the uncertain benefits potentially available from fully contested litigation years from now (if at all). Plaintiffs and Class Counsel believe the Settlement is in the best interests of the Settlement Class because it offers significant relief now, while at the same time allowing anyone who wishes to pursue their own individual claims against Defendants to exclude themselves from the Settlement Class.

#### WHO IS IN THE SETTLEMENT

#### 5. How do I know if I am part of the Settlement?

The Court decided that everyone who fits either one or both of the following descriptions is a member of the Settlement Class:

##### **The FDCPA Class:**

(A) All borrowers on residential mortgage loans secured by mortgaged property in the United States whose mortgage loans were serviced but not owned by Ocwen and to which Ocwen acquired servicing rights when such loans were 30 days or more delinquent on their loan payment obligations, and who, at any time during the period from March 25, 2019 through and including August 17, 2022, paid a Convenience Fee to Ocwen that was not refunded or returned; PLUS (B) all borrowers on residential mortgage loans secured by mortgaged property in the United States whose mortgage loans were serviced but not owned by PHH and to which PHH acquired servicing rights when such loans were 30 days or more delinquent on their loan payment obligations, and who, at any time during the period from March 25, 2019 through and including August 17, 2022, paid a Convenience Fee to PHH that was not refunded or returned.

Excluded from the FDCPA Class are (a) borrowers whose loans were included as class loans in the previously approved class action settlement in *McWhorter, et al. v. Ocwen Loan Servicing, LLC, et al.*, No. 2:15-cv-01831-MHH (N.D. Ala.); (b) borrowers whose loans make them potential members of the proposed settlement classes in *Torliatt v. Ocwen Loan Servicing, LLC*, Case Nos. 3:19-cv-04303-WHO, 3:19-cv-04356-WHO (N.D. Cal.), or *Thacker v. PHH Mortgage Corp.*, Case no. 5:21-cv-00174-JPB (Bailey) (N.D. W. Va.), whether or not those borrowers timely and validly exclude themselves from those settlement classes; (c) borrowers who are or were named plaintiffs in any civil action other than this Action which challenges Convenience Fees charged by a PHH Defendant that was initiated against either PHH Defendant on or before the date the Agreement was fully executed; (d) the PHH Defendants' board members and executive level officers; and (e) the federal district and magistrate judges assigned to this Action, along with persons within the third degree of relationship to them.

– and –

##### **The Florida Class:**

All borrowers on residential mortgage loans secured by mortgaged property in the State of Florida who, from March 25, 2016 to August 17, 2022, paid a Convenience Fee to either Ocwen or PHH that was not refunded or returned.

Excluded from the Florida Class are (a) borrowers whose loans were included as class loans in the previously approved class action settlement in *McWhorter, et al. v. Ocwen Loan Servicing, LLC, et al.*, No. 2:15-cv-01831-MHH (N.D. Ala.); (b) borrowers who are or were named plaintiffs in any civil action other than this action which challenges Convenience Fees charged by a PHH Defendant that was initiated against either PHH Defendant on or before the date the Agreement was fully executed; (c) borrowers in the “FDCPA Class” defined above who did not also make an additional Convenience Fee payment to the PHH Defendants between March 25, 2016 and March 24, 2019; (d) the PHH Defendants' board members and executive level officers; and (e) the federal district and magistrate judges assigned to this Action, along with persons within the third degree of relationship to them. For the avoidance of doubt, a borrower in the FDCPA Class who also paid a fee to either PHH Defendant between March 25, 2016 and March 24, 2019, inclusive, and who otherwise meets the definition of the Florida Class would be in both the FDCPA Class and the Florida Class.

***Questions? Call 1-877-203-9760 or visit [www.morrisvphhspeedpaysettlement.com](http://www.morrisvphhspeedpaysettlement.com)***

As noted in Part 1, if this Notice was addressed to you, then according to Defendants' records, you are a member of either the FDCPA Class, the Florida Class, or both, and therefore are a member of the Settlement Class unless you timely and properly exclude yourself from the Settlement Class as described in Part 11 of this Notice. **The separate page in this mailing that contains your address also contains your Class Loan number or numbers and also identifies whether your Class Loan is an FDCPA Class Loan, a Florida Class Loan, or both, according to Defendants' records.**

## WHAT YOU CAN GET UNDER THE SETTLEMENT

### 6. What relief does the Settlement provide?

Defendants have agreed to create two Settlement Funds, the FDCPA Settlement and the Florida Settlement Fund. If the Settlement obtains final approval, each Settlement Fund will be used first to pay on a pro rata basis based on the size of each Settlement Fund as a percentage of the combined total of both Settlement Funds any Court-awarded fees and expenses to Class Counsel. Following the payment of any such fees and expenses, the remaining balance of each Settlement Fund will be divided and distributed among Plaintiffs and the rest of the Settlement Class Members.

The FDCPA Settlement Fund shall be \$1,233,381, which amount is equal to the sum of 32% of the Convenience Fees paid to and retained by Ocwen on FDCPA Class Loans from March 25, 2019 through and including August 17, 2022 for borrowers meeting subpart (A) of the definition of the FDCPA Class and 32% of the Convenience Fees paid to and retained by PHH on FDCPA Class Loans from March 25, 2019 through and including August 17, 2022 for borrowers meeting subpart (B) of the definition of the FDCPA Class. The Florida Settlement Fund shall be \$1,537,687, which amount is equal to 18% of the Convenience Fees paid to and retained by either Ocwen or PHH on Florida Class Loans from March 25, 2016 through August 17, 2022, but excluding Convenience Fees already subject to an allocation from the FDCPA Settlement Fund. "Retained Convenience Fees" means Convenience Fees paid to and retained by either Ocwen or PHH that were neither refunded to the borrower nor paid by Ocwen or PHH to a third-party vendor to facilitate the Convenience Fee payment.

The distributions of the Settlement Funds to Settlement Class Members are called "Individual Allocations." Individual Allocations to Settlement Class Members will be calculated as follows:

Each FDCPA Class Loan will receive an Individual Allocation from the FDCPA Settlement Fund, calculated as follows: the proportion of Retained Convenience Fees paid to either Ocwen or PHH on that FDCPA Class Loan between March 25, 2019 and August 17, 2022, as compared to the total aggregate amount of all Retained Convenience Fees paid to either Ocwen or PHH on all FDCPA Class Loans during that period. Only Retained Convenience Fees paid to a servicer that serviced but did not own the FDCPA Class Loan and that acquired servicing rights to the FDCPA Class Loan when it was 30 days or more delinquent will be included in these calculations. For the avoidance of doubt, a borrower who qualifies as an FDCPA Class Member because Ocwen acquired servicing rights when the loan was 30 days or more delinquent and did not own the loan would be entitled to an Individual Allocation for the Retained Convenience Fees paid to Ocwen. But if that same FDCPA Class Loan later service transferred to PHH when it was not 30 days or more delinquent, then that borrower would not receive any Individual Allocation from the FDCPA Settlement Fund for the Retained Convenience Fees paid to PHH after the service transfer.

Each Florida Class Loan will receive an Individual Allocation from the Florida Settlement Fund, calculated based on the proportion of Retained Convenience Fees paid to Ocwen or PHH on that Florida Class Loan from March 25, 2016 to August 17, 2022 (but excluding Convenience Fee payments captured in the FDCPA Settlement Fund) as compared to the total aggregate amount of all Retained Convenience Fees paid to and retained by either Ocwen or PHH with respect to all Florida Class Loans during that period (but again excluding all Convenience Fees already subject to an allocation from the FDCPA Settlement Fund).

Class Loans that are both Florida Class Loans and FDCPA Class Loans will receive an Individual Allocation drawn from both Settlement Funds. From the Florida Settlement Fund, the Class Loan will receive an allocation for Retained Convenience Fees paid to Ocwen or PHH on that Class Loan from March 25, 2016 to March 24, 2019. From the FDCPA Settlement Fund, the Class Loan will receive an allocation for Retained Convenience Fees paid to Ocwen or PHH (as explained above) from March 25, 2019 to August 17, 2022.

The actual amount that each Settlement Class Member will receive as an Individual Allocation will ultimately depend on a variety of factors, including the delinquency of the Class Loan at the time that Defendants began servicing the loan, the number and total amount of Convenience Fees paid on each Class Loan, and whether and in what amounts the Court will approve any attorneys' fees and expenses to Class Counsel.

**Questions? Call 1-877-203-9760 or visit [www.morrisvphhspeedpaysettlement.com](http://www.morrisvphhspeedpaysettlement.com)**

Starting within 120 days after the Final Settlement Date, PHH has agreed to reduce any Convenience Fee it charges for internet payments by Settlement Class Members from \$7.50 to \$6.50 for a period of two years, and to keep all of its future Convenience Fee charges to Settlement Class Members at or below their current levels for a period of two years. PHH will also add additional disclosures to its website to increase borrower awareness of alternative payment methods that could have lower fees or no fees. Finally, PHH will provide training and scripting to customer service employees to provide additional information and disclosures about Convenience Fees and about alternative payment options that do not involve a fee

## 7. How can I get such relief?

If you are a member of the Settlement Class, then as long as you do not exclude yourself from the Settlement Class, you will automatically receive an Individual Allocation, and you do not need to take any further action in order to receive that Individual Allocation. If your mailing address has changed since March 25, 2016, however, you may wish to notify the Settlement Administrator of your current mailing address by contacting the Settlement Administrator at 1-877-203-9760 or [info@rg2claims.com](mailto:info@rg2claims.com). This will help ensure that your Individual Allocation is mailed to the correct address.

## 8. When would I get such relief and how will it be distributed to me?

As described in Part 18, the Court will hold a Fairness Hearing on May 31, 2023 to decide whether to grant final approval to the Settlement. The Court must finally approve the Settlement before any relief will be distributed, and it will only do so after finding that the Settlement is fair, reasonable and adequate. In addition, any final approval order the Court may enter may be subject to appeal. If there are any such appeals, resolving them takes time—sometimes more than a year. Finally, it is possible that this Settlement may be terminated for other reasons, such as those set forth in Section 12 of the Settlement (available for review at [www.morrisvphhspeedpaysettlement.com](http://www.morrisvphhspeedpaysettlement.com)). Please be patient.

The “Final Settlement Date,” as defined in the Settlement, is ten days after the order finally approving the Settlement becomes non-appealable and any appeals have been resolved in favor of the Settlement. Individual Allocations are expected to be distributed within 75 days of the Final Settlement Date. The Settlement Website will be updated from time to time to reflect the progress of the Settlement.

Individual Allocations will be paid by a check mailed to you, made payable jointly to all borrowers of record on your Class Loan, and addressed to the mailing address of record on your Class Loan.

NOTE: All checks will expire and become void 180 days after they are issued and will be considered unclaimed funds. Unclaimed funds will be considered a waiver by you and any co-borrowers on your Class Loan of the right to receive Individual Allocation relief. Individual Allocation relief that remains unclaimed or undeliverable 300 days after the Final Settlement Date despite reasonable efforts to locate you will be donated and paid to Homes for Our Troops, “a privately funded 501(c)(3) nonprofit organization that builds and donates specially adapted custom homes nationwide for severely injured post – 9/11 Veterans, to enable them to rebuild their lives.”

## 9. Will the Settlement have any tax consequences on me?

Neither the Court nor the Parties (including their counsel) can advise you about what, if any, tax consequences might arise for you from the Settlement. You are encouraged to consult with your own tax advisor to determine whether any potential tax consequences could arise from your receipt of an Individual Allocation.

## 10. Am I giving anything up by remaining in the Settlement Class?

Unless you exclude yourself, you will remain in the Settlement Class, and that means that if the Settlement is given final approval and reaches the Final Settlement Date then you:

release and shall be deemed to have released, and by operation of the Final Order and Judgment upon the Final Settlement Date shall have released, all Released Claims against all of the Released Persons, separately and severally. In connection therewith, upon the Final Settlement Date, each of the Releasing Persons: (i) shall be deemed to have, and by operation of the Final Order and Judgment, shall have, fully, finally, and forever waived, released, relinquished, remised, acquitted, and discharged to the fullest extent permitted by law all Released Claims against each and all of the Released Persons; (ii) shall forever be barred and enjoined from commencing, instituting, prosecuting, or participating in any fashion in any and all claims, causes of action, suits,

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or any other proceeding in any court of law or equity, arbitration tribunal, or other forum of any kind, directly, representatively, derivatively, or in any other capacity and wherever filed, with respect to any Released Claims against any of the Released Persons; and (iii) shall be deemed to have agreed and covenanted not to sue any of the Released Persons with respect to any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Person related in any way to any Released Claims.

This Release will include claims that Settlement Class Members do not know or suspect to exist in their favor at the time final approval may be granted to the Settlement, if those claims arise from, are based on, or relate to the Released Claims. If the Settlement is given final approval and reaches the Final Settlement Date, all Settlement Class Members will be deemed to have knowingly and voluntarily waived, relinquished and released the protections of any laws that would limit this release, including, without limitation, Section 1542 of the California Civil Code, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

The phrase “Released Claims” means and refers to:

each and all of the claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages (whether punitive, statutory, or compensatory and whether liquidated or unliquidated), 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 regulatory bulletin, guidelines, handbook, opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, that relate to or arise out of Convenience Fees charged (a) by Ocwen on FDCPA Class Loans to FDCPA Class Members meeting Subpart (A) of the definition of the FDCPA Class, during the period from March 25, 2019 through and including August 17, 2022; (b) by PHH on FDCPA Class Loans to FDCPA Class Members meeting Subpart (B) of the definition of the FDCPA Class, during the period from March 25, 2019 through and including August 17, 2022; or (c) by Ocwen or PHH to Florida Class Members on Florida Class Loans, during the period from March 25, 2016 through and including August 17, 2022.

The phrase “Released Persons” means and refers to:

(a) PHH, Ocwen, and any and all of their current or former predecessors, successors, assigns, parent corporations, subsidiaries, divisions, related and affiliated companies and entities, associates, vendors, service providers, software licensors and licensees, clients and customers, principals, stockholders, directors, officers, partners, principals, members, employees, attorneys, consultants, independent contractors, representatives, and agents, transferee servicers, and all individuals or entities acting by, through, under, or in concert with any of them; and (b) any trustee of a mortgage securitization trust which includes loans on which Settlement Class Members are borrowers, including, but not limited to, any direct or indirect subsidiary of any of them, and all of the officers, directors, employees, agents, brokers, distributors, representatives, and attorneys of all such entities.

The full terms of the Settlement’s release are set forth in Section 3 of the Agreement, which is available for review at [www.morrisvphhspeedpaysettlement.com](http://www.morrisvphhspeedpaysettlement.com).

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

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

If you don’t want to be part of the Settlement, or if you want to keep the right to sue or continue suing Ocwen or PHH on your own about the Released Claims, then you must take steps to exclude yourself from the Settlement Class. This is called excluding yourself, or “opting out.” If you exclude yourself from the Settlement Class, you will not be bound by the Settlement and will not receive any relief offered by the Settlement, but you will be free to file and then pursue your own individual lawsuit regarding the Released Claims if you wish to do so. However, the Court has ruled that neither the Settlement, nor this Notice, nor the Court’s preliminary approval order may be used as evidence in such individual lawsuits. You should be aware that if you do exclude yourself and you plan to file your own action against Defendants, the statute of limitations applicable to your claim may prevent you from separately suing Defendants unless you act promptly.

*Questions? Call 1-877-203-9760 or visit [www.morrisvphhspeedpaysettlement.com](http://www.morrisvphhspeedpaysettlement.com)*

To exclude yourself, you must mail a letter sufficiently in advance to be received by the “Settlement Administrator,” RG/2 Claims Administration LLC, no later than **April 26, 2023**, saying that you want to be excluded from the Settlement Class. Your letter must be addressed to Morris v. PHH, c/o RG/2 Claims Administration LLC, P.O. Box 59479, Philadelphia, PA 19102-9479, and must: (a) contain a caption or title that identifies it as “Request for Exclusion in *Morris v. PHH* (case number 0:20-cv-60633-RS);” (b) include your name, mailing and e-mail addresses, and contact telephone number; (c) specify that you want to be excluded from the Settlement Class and identify the Class Loan number(s) for which you seek exclusion from the Settlement; and (d) be *personally* signed by you. For your convenience, your Class Loan number or numbers are included on the separate page in this mailing that contains your address.

NOTE: If your request for exclusion is late or incomplete, it will not be valid and you will remain part of the Settlement Class, you will still be bound by the Settlement and all other orders and judgments in the Action, and you will not be able to participate in any other lawsuits against Defendants and the Released Persons based on the Released Claims. If you submit a request for exclusion, it will be deemed as a request for exclusion by you and any other co-borrowers, joint-borrowers and multiple borrowers on the Class Loan(s) identified in the exclusion request.

### 12. If I don’t exclude myself, can I sue Ocwen or PHH later for the same thing?

No. If you do not exclude yourself from the Settlement Class and the Settlement is given final approval and reaches the Final Settlement Date, you will give up the right to sue Defendants and the Released Persons for the Released Claims.

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

No. If you exclude yourself, you will not be eligible to receive any of the individual benefits that the Settlement offers.

## THE LAWYERS REPRESENTING YOU

### 14. Do I have a lawyer in this case?

Yes. The Court has appointed Adam M. Moskowitz, Howard M. Bushman, Joseph M. Kaye, and Barbara C. Lewis of the law firm The Moskowitz Law Firm, PLLC to represent you and the other Settlement Class Members in this Action and for purposes of this Settlement, and for no other purpose. These attorneys are called “Class Counsel,” and they can be reached by writing them at The Moskowitz Law Firm, 2 Alhambra Plaza, Suite 601, Coral Gables, FL 33134. You will not be separately charged for the services of Class Counsel for issues related to this Action.

You have the right to retain your own separate lawyer to represent you in this case, but you are not obligated to do so. If you do hire your own lawyer, you will be solely responsible for all of his or her fees and expenses. You also have the right to represent yourself before the Court without a lawyer, but if you want to appear at the Fairness Hearing you must comply with the procedures set forth in Part 20 of this Notice below.

### 15. How will Class Counsel Be Paid?

Class Counsel have prosecuted this case on a contingent-fee basis and, so far, have not yet been paid anything for their services. If the Settlement is approved, Class Counsel will ask the Court for an award of attorneys’ fees and expenses, to be paid from the Settlement Funds in an amount not to exceed 33% of both Settlement Funds. Class Counsel will file with the Court their request for attorneys’ fees and expenses on or before April 12, 2023, which will then be posted on [www.morrisvphhspeedpaysettlement.com](http://www.morrisvphhspeedpaysettlement.com).

Defendants reserve the right to oppose any request for attorneys’ fees and expenses that Defendants deem to be unreasonable in nature or amount or otherwise objectionable. The Settlement is not conditioned on the Court approving any specific amount of attorneys’ fees and expenses. The Court will ultimately decide whether any attorneys’ fees and expenses should be awarded to Class Counsel, and in what amounts.

## OBJECTING TO THE SETTLEMENT

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

If you do not exclude yourself from the Settlement Class, you can object to the Settlement if you don't agree with any part of it. You can provide reasons why you think the Court should deny approval of the Settlement by filing an objection. However, you can't ask the Court to order a larger or different type of settlement as the Court can only approve or deny the Settlement presented by the Parties. If the Court denies approval, no settlement relief will be available to the Settlement Class Members and the lawsuit will continue. If you file a written objection, the Court will consider your views.

To object, you must file a written statement of objection with the Court. Your written objection must: (a) include a caption or title that identifies it as "Objection to Class Settlement in *Morris v. PHH* (case number 0:20-cv-60633-RS);" (b) include your name, mailing and email addresses, contact telephone number, and your Class Loan number(s); (c) state whether the objection applies only to you, to a specific subset of the class, or to the entire class; (d) state with specificity the specific reason(s), if any, for each of your objections, including all legal support you wish to bring to the Court's attention and all factual evidence you wish to introduce in support of your objection; (e) disclose the name and contact information of any and all attorneys representing, advising, or in any way assisting you in connection with the preparation or submission of your objection, and (f) be *personally* signed by you. For your convenience, your Class Loan number or numbers are included on the separate page in this mailing that contains your address.

You may file your written statement of objection in person at, or you may mail it to, the Clerk of the Court, United States District Court for the Southern District of Florida, U.S. Federal Building and Courthouse, 299 East Broward Boulevard #108, Fort Lauderdale, Florida 33301. However, if you are represented by your own attorney, your attorney must file your objection through the Court's Case Management/Electronic Case Filing (CM/ECF) system. To be considered timely and valid, all statements of objection must be filed with the Court by, or mailed sufficiently in advance to be received by the Court by, **April 26, 2023**. Any Settlement Class Member who does not comply with the above deadline and requirements shall be deemed to have waived all objections to and shall be forever barred from challenging the Settlement.

### 17. What's the difference between objecting and excluding myself?

Objecting simply means telling the Court that you don't agree with something about the Settlement, but that you are still willing to be bound by it if the Settlement is finally approved despite your objection. 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 at all. If you exclude yourself, you will not be subject to the Settlement and therefore cannot object to the Settlement or appear at the Fairness Hearing because the case will no longer affect you.

## THE COURT'S FAIRNESS HEARING

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

A Fairness Hearing has been set for May 31, 2023, beginning at 9:00 a.m., before the Honorable Rodney Smith at the United States District Court for the Southern District of Florida, U.S. Federal Building and Courthouse, 299 East Broward Boulevard, Fort Lauderdale, Florida 33301 in Courtroom 310B. At the hearing, the Court will consider whether to: (1) grant final certification to the Settlement Class for settlement purposes; (2) approve the Settlement as fair, reasonable, and adequate; and (3) award any attorneys' fees and expenses to Class Counsel. The Court will also consider any and all objections to the Settlement and any other issues relating to the Settlement. After the hearing, the Court will decide whether to approve the Settlement. It is not possible to predict how long the Court's decision will take.

NOTE: The Court has reserved the right to change the date and/or time of the Fairness Hearing, or to continue it, without further notice. If you plan to attend the Fairness Hearing, you should confirm the date and time shortly before travelling to attend the hearing by checking [www.morrisvphhspeedpaysettlement.com](http://www.morrisvphhspeedpaysettlement.com) or the Court's Public Access to Court Electronic Records (PACER) system at <https://www.alnd.uscourts.gov/CMECF/default.htm>.

*Questions? Call 1-877-203-9760 or visit [www.morrisvphhspeedpaysettlement.com](http://www.morrisvphhspeedpaysettlement.com)*

## 19. Do I have to come to the Fairness Hearing?

No. Class Counsel will represent the Settlement Class at the Fairness Hearing. But you are welcome to come at your own expense. Even if you send an objection, you are not required to come to the Fairness Hearing to talk about it. As long as your objection was timely filed and meets the other requirements described in Part 16, the Court will consider it. You may also hire and pay your own lawyer to attend the Fairness Hearing at your expense, but you are not required to do so.

## 20. May I speak at the Fairness Hearing?

You may ask the Court for permission to speak at the Fairness Hearing, but only if you timely file an objection in full compliance with the instructions set forth in Part 16, and if you also state in that objection that you would like to speak at the Fairness Hearing. However, any separate attorney you hire may appear only if he or she files through the Court's Case Management/Electronic Case Filing (CM/ECF) system a separate "Notice of Intention to Appear in *Morris v. PHH* (case number 0:20-cv-60633-RS)." That notice must be filed with the Court no later than **April 26, 2023**. You cannot speak at the Fairness Hearing if you have excluded yourself from the Settlement Class.

### IF YOU DO NOTHING

## 21. What if I do nothing?

If you meet the definition of the Settlement Class and you do nothing, and the Settlement is approved and reaches the Final Settlement Date, you will remain a Settlement Class Member and you will automatically receive an Individual Allocation. You will also be bound by the Settlement's release and other terms, and therefore you will not be able to file your own lawsuit, continue with your own lawsuit, or be part of any other lawsuit against Ocwen, PHH, and the Released Persons concerning any of the Released Claims.

### GETTING MORE INFORMATION

## 22. Where can I get additional information?

This notice summarizes the Settlement. For the precise terms and conditions of the Settlement, please see the full Stipulation of Settlement and Release available at [www.morrisvphhspeedpaysettlement.com](http://www.morrisvphhspeedpaysettlement.com), by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://www.flsd.uscourts.gov/CMECF>, or by visiting the office of the Clerk of the Court for the United States District Court for the Southern District of Florida, U.S. Federal Building and Courthouse, 299 East Broward Boulevard, Fort Lauderdale, Florida 33301, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

**PLEASE DO NOT TELEPHONE THE COURT, THE COURT CLERK'S OFFICE,  
OR OCWEN TO INQUIRE ABOUT THIS SETTLEMENT.**

**THIS PAGE INTENTIONALLY LEFT BLANK**



Morris v. PHH  
c/o RG/2 Claims Administration LLC  
P.O. Box 59479  
Philadelphia, PA 19102-9479

<<Name1>>  
<<Name2>>  
<<Address1>>  
<<Address2>>  
<<City>>, <<St>> <<Zip>>  
<<Country>>



YOU ARE A MEMBER OF THE <<class>> CLASS FOR LOAN # <<loan #>>  
THE BORROWERS LISTED UNDER THIS LOAN ARE <<all borrowers>>

*Questions? Call 1-877-203-9760 or visit [www.morrisvphhspeedpaysettlement.com](http://www.morrisvphhspeedpaysettlement.com)*

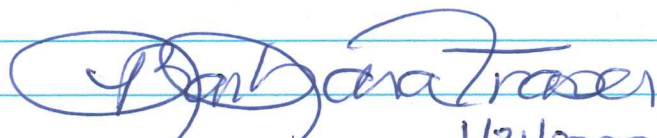
# **EXHIBIT B**

To: Morris v. PHH, c/o RC/2 Claims Administration LLC

"Request for Exclusion in  
Morris v. PHH  
(Case # 0:20-cv-60633-RS)"

Barbara E. Fraser  
1404 FERNVALE AV.  
Sebring, Fl. 33870  
flashvw@yahoo.com  
(863) 381-5867

I want to be Excluded From  
The Settlement Class  
Lead # 0071293484

  
1/31/2023

Barbara Fraser  
1404 Fernvale Av.  
Sebring, FL 33870

TAMPA FL 335  
SAINT PETERSBURG FL  
31 JAN 2023 PM 5 L



Morris V. P.H.H, c/o RG/2 Claims Administration LLC  
P.O. Box 59479  
Philadelphia, PA  
19102-9479

19102-947979



DATE 1-31-2023 FROM Paulette ferti TO Settlement Ad

FEB 09 2023

Request for Exclusion in Morris v. PHH  
case number 0:20-cv-60633-RS

1531 NW 62nd Ter  
Miami FL 33147  
Paulettefert11871@gmail.com  
786 991-3747

Loan # 2029535875

I would like to be excluded from the  
Settlement Class # 2029535875

Paulette ferti  
Paulette ferti

F

Paulette Fertl  
1531 NW 62nd Ter.  
Miami, FL 33147

MIAMI FL 330  
3 FEB 2023 PM 5 L



Morris v. PTH  
c/o RG12 Claims Administration  
LLC  
P.O. Box 59479  
Philadelphia, PA 19123-9479

15102-947979

Request for Exclusion

FEB 15 2023

Morris V. PHH

Case # 0:20-cv-60633-RS)<sup>44</sup>;

Robert and Sheila Summers  
1795 N 1100E Road,  
Gilman, IL 60938

bobstaterbug@yahoo.com  
815-644-0799

Robert Summers  
Sheila Summers

want to be included from the settlement  
Class and the loan # 8012675305

Robert R. Summers  
Sheila Summers

Summers  
1795N 1100E RD  
Gillman, IL  
60938

Morris v. PHH  
c/o RG/a Claims Administration LLC  
PO Box 59479  
Philadelphia, PA 19102-9479

CHAMPAIGN IL 618  
7 FEB 2023 PM 4 L



19102-9479





FEB 15 2023

Request for Exclusion in Morris v. PHH (case number 0:20-cv-60633-RS)

Michael Sanchez  
NewRez Serviced Loan# 7091406426  
220 Copper Ave NW STE 250  
Albuquerque, N.M. 87102  
Cell 505-514-1140  
mgsanchj@comcast.net

Morris vs. PHH  
c/o RG/2 Claims Administration LLC  
PO Box 59479  
Philadelphia, PA 19102-9479

Dear Settlement Administrator,

Please consider this my formal legal certified letter for;

# Request for Exclusion in Morris v. PHH (case number 0:20-cv-60633-RS)

Comes now, one Michael Sanchez owner of previously interest only residential PHH loan #7091406426, requesting immediate exclusion from case number listed in above caption. Note a title and caption format requested have been included and cannot be used as excuse for deeming letter incomplete.

All exact format, information, and fonts have been followed and documented for further proceedings if necessary.

I look forward to your timely response as I have till April 26<sup>th</sup>, 2023 to decide my next course of action.

Thank you for your time and consideration in this very important matter to Pro Se Sanchez.

Mailing address:

Michael Sanchez  
15 Sunflower Lane  
Peralta, N.M. 87042-8446

sign: Michael Sanchez  
Date: 1-29-2023

PS. I do not have an  
Attorney...  
MS

deadline 4/26/2023  
call to confirm exclusion  
MS

Morris v. PHH  
c/o RG/2 Claims Administration LLC  
P.O. Box 59479  
Philadelphia, PA 19102-9479

1/29/2023

MICHAEL SANCHEZ  
15 SUNFLOWER LN  
PERALTA, NM 87042-8446



11016388320



YOU ARE A MEMBER OF THE FDCPA CLASS FOR LOAN # 7091406426  
THE BORROWERS LISTED UNDER THIS LOAN ARE MICHAEL SANCHEZ

Michael Sanchez  
1-29-2023

**CERTIFIED MAIL®**  
7022 2410 0000 1737 0750

**Michael Sanchez**  
15 Sunflower Ln.  
Peralta, NM 87042-8446



RDC 99

U.S. POSTAGE PAID  
FOR LETTER MAIL  
FIRST CLASS PERMIT NO. 100  
ALBUQUERQUE, NM  
AMOUNT \$2.89  
R2307M152768-4



ALBUQUERQUE  
31 JAN 2023

JAN 31 2023

USPS

Morris v. PHH  
c/o RG/2 Claims Administration,  
PO BOX 594775  
Philadelphia, P.A. 19102-9479

19102-947575



**John B. Ennis**  
*Attorney at Law*  
**1200 Reservoir Avenue**  
**Cranston, Rhode Island 02920**

FEB 21 2023

**Tel. (401) 943-9230**

**Fax. (401) 679-0035**

February 11, 2023

Settlement Administrator  
RG/2 Claims Administration LLC  
PO Box 59479  
Philadelphia PA 19102-9479

Re: Morris v PHH

REQUEST FOR EXCLUSION

Dear Sir:

I wish to be excluded from the Settlement Class in Morris v PHH case number 0:20-cv-60633-RS. I do not want to be in that settlement class. My email address is [KittieForrest@gmail.com](mailto:KittieForrest@gmail.com). My mailing address is 106 High Street, Bristol, Rhode Island 02809. Please send all communications to me in this matter. Please confirm receipt of this letter.

Sincerely,



Kathryn Forrest

John B. Ennis Esq.  
1200 Reservoir Avenue  
Cranston RI 02920

**\$4.75 US POSTAGE**  
FIRST-CLASS  
Feb 11 2023  
Mailed from ZIP 02920  
1 OZ FIRST-CLASS MAIL LETTER  
RATE  
11923275



062S0012913542

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**USPS CERTIFIED MAIL**



**9407 1118 9876 5838 7988 96**

---

Settlement Administrator  
RG/2 Claims Adminstations LLC  
PO Box Box 59479  
Philadelphia PA 19102-9479



FEB 23 2023

*Class. For Loan  
# 0071629570*

Morris v. PHH

C/O RG/2 Claims Administration LLC

P.O. Box 59479


Philadelphia, PA 19102-9479

1-877-203-9760

To Whom it May Concern:

I Marcia A Henry do not wish to be part of the settlement for loan # 0071629570. I am writing this letter to be excluded from this settlement class, so this is my formal request for exclusion in Morris v PHH (case number ).

Thank You For Your Assistance,

 \_\_\_\_\_

Marcia A. Henry

I can be contacted at the following:

Marcia A Henry

1323 Abalom St

Port Charlotte, FL 33980

1-941-626-5452

Marcia A Henry  
1323 Abalom Street  
Port Charlotte, FL 33980



PHILADELPHIA PA 19102  
25 FEB 2023 10:58 AM

To: Morris V. PHH  
c/o RG/2 Claims Admin  
P.O. Box 59479  
Philadelphia, PA 19102

19102-947979



MAR 07 2023

Miriam Vielmas  
4990 SW 8th Court  
Margate, FL 33068  
[vielmas\\_miriam@hotmail.com](mailto:vielmas_miriam@hotmail.com)  
(954) 600-8016

02/18/23

Morris v. PHH % RG/2 Claims Administration LLC  
P.O Box 59479  
Philadelphia, PA 19102-9479

**Request for Exclusion in Morris v. PHH (Case Number 0:20-cv-60633-RS)**

To Whom it May Concern,

I am writing this letter to seek exclusion from the Settlement Class related to Morris v. PHH. The Class Loan # is 0706419041.

Please let me know if anything further is needed from me.

Best,



Miriam Vielmas





51 18 52 63 20 15 1



Miriam Williams  
4990 SW 8th ct  
Margate FL 33068

Morris v. PTH % Rq/z Claims Admin. LLC  
P.O Box 59479  
Philadelp<sup>h</sup>ia, PA 19102-9479

MAR 07 2023

MAR 07 2023

2-27-23

Morris v PHH

% RG/2 Claims Administration LLC

PO Box 59479

Philadelphia PA 19102-9479

Subject: Request for Exclusion in Morris v PHH  
(Case number 0:20-cv-60633-RS)

Regina A Graham

7111 Jennifer Rd

Pensacola FL 32506

rainbow2424@yahoo.com

850-341-0694

I want to be excluded from the Settlement  
Class for Loan # 9019987560

Regina A Graham

7111 Jennifer Rd  
Pensacola FL 32526

PENSACOLA FL 325  
28 FEB 2023 PM 1 L



Morris v PHH  
c/o RG/a Claims Administration LLC  
PO Box 59479  
Philadelphia PA 19102-9479

19102-9479



MAR 16 2023

Warnnie S. Ballard  
4530 E. Whitehall Dr.  
San Tan Valley, Az 85140  
318-914-9921  
[warnnieb@yahoo.com](mailto:warnnieb@yahoo.com)  
Loan #8012580208

Request for Exclusion in Morris v. PHH (case number 0:20-cv-60633-RS)

Please exclude me, Warnnie S. Ballard, from any and all litigation, and/or lawsuit in case number 0:20-cv-60633-RS against Ocwen Loan Servicing, LLC and PHH Mortgage Corporation. I am not interested nor want to be a part of this class action suit.

I would also like some type of notification that verifies that I am indeed no longer a "Settlement Class Member" in this suit. Acceptable notifications will be a certified letter and/or an email.

Best Regards,

A handwritten signature in black ink that reads "Warnnie S. Ballard". The signature is written in a cursive style with a large, stylized initial 'W'.

Warnnie S. Ballard



MAR 16 2023

**Martin Wiescholek**  
**Dr. Sarah Youssef**

5 Engle Drive  
Ocean Ridge, Florida 33435  
(561) 633-8882

[martin@wiescholek.com](mailto:martin@wiescholek.com)

Morris v. PHH  
c/o RG/2 Claims Administration LLC  
P.O.BOX: 59479  
Philadelphia, PA 19102-9479

RE: Request for exclusion in Morris v. PHH (Case: 0:20-cv-60633-RS)

To Whom It May Concern:

I, we, hereby request to be excluded from the settlement in the above mentioned case.  
We will be filing our own case if necessary against PHH in the next few months.

Florida Class Loan # 7240232228

Regards,



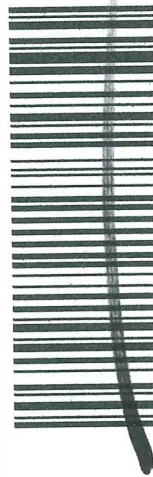
Sarah Youssef



5 Engle Drive  
Ocean Ridge, FL 3343

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT  
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

**CERTIFIED MAIL**



7022 2410 0002 4166 1907

**Retail**



**RDC 99**

U.S. POSTAGE PAID  
FCM LETTER  
BOYNTON BEACH, FL 33435  
MAR 09, 2023



**\$4.78**

R2305K134495-12

19102

Morris v. PHH  
c/o RG/2 Claims Administration LLC  
P.O.BOX: 59479  
Philadelphia, PA 19102-9479

19102-947979



MAR 16 2023

Morris v. PHH,  
c/o RG/2 Claims Administration LLC  
P.O. Box 59479  
Philadelphia, PA 19102-9479

NOTICE OF OPT OUT OF SETTLEMENT CLASS IN  
Morris v. PHH  
Request for Exclusion in Morris v. PHH (case number 0:20-cv-60633-RS)

Please consider this written notification that I want to opt out of the settlement class and be excluded from the settlement in the above matter.

PRINTED FULL NAME Steve Pastva

SIGNATURE Steve M Pastva

LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER 0803

ADDRESS 13090 River Rd Plano TX 75045

EMAIL ADDRESS pastva.steve@gmail.com

LOAN NUMBER 1026979242

CELL PHONE NUMBER 630-552-5127

DATE 2-19-23



Morris v. PHH,  
c/o RG/2 Claims Administration LLC  
P.O. Box 59479  
Philadelphia, PA 19102-9479

NOTICE OF OPT OUT OF SETTLEMENT CLASS IN  
Morris v. PHH  
Request for Exclusion in Morris v. PHH (case number 0:20-cv-60633-RS)

Please consider this written notification that I want to opt out of the settlement class and be excluded from the settlement in the above matter.

PRINTED FULL NAME Kenneth W. Boatwright

SIGNATURE 

LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER 9454


ADDRESS 2444 S. Bay Ave. Sanford, FL 32771

EMAIL ADDRESS kwb33@bellsouth.net

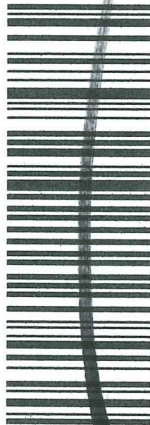
LOAN NUMBER 0070050091

CELL PHONE NUMBER 407 415 1096

DATE 2-19-23

 **CONSUMER  
LAW  
ATTORNEYS**  
2727 Ulmerton Rd Ste 270  
Clearwater, FL 33762

**CERTIFIED MAIL**



7022 3330 0001 9047 7583

PITNEY BOWES  
**\$4.75**  
US POSTAGE<sup>®</sup>  
FIRST-CLASS<sup>™</sup>  
028W0004897219  
2000301543  
ZIP 33762  
MAR 09 2023



*Morris v. PHH c/o R4/2 claims Administrator  
PO Box 59479  
Philadelphia PA 19102-9479*

191029479 8115



Settlement Administrator  
RG/2 claims Administrator LLC

MAR 23 2023

Request for exclusion in

Morris v PTH (Case Number 0:20-cv-60633-RS)

MAUREEN V GLOVER  
941 EAST 218 STREET  
BRONX N.Y 10469  
email: maureen9724@gmail.com  
tel: 718-653-7851

I MAUREEN GLOVER want to be excluded  
from the Settlement class for loan  
# 0103374922.

For which I seek exclusion from  
the settlement.

Respectfully  
Maureen V Glover  
Loan # 0103374922

03-20-2023

MARK BERNARD GIBBY  
941 E 218 Street  
Bronx N.Y 10469

5118 645820151

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT  
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.  
**CERTIFIED MAIL**



020950 0001 1509 0130

MORRIS V. PHT  
c/o RG/2 CHAIRS Administration LLC  
P.O. Box 59479  
PHILADELPHIA, P.A. 19102 - 9479

191029479 0115

POSTAGE WILL BE PAID BY ADDRESSEE  
NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES



RDC 99

19102

U.S. POSTAGE PAID  
FCM LETTER  
BRONX, NY  
10469  
MAR 20, 23  
AMOUNT  
**\$8.13**  
R2305K141735-15

March 17, 2023

**Request for Exclusion in Morris v. PHH (case number 0:20-cv-60633-RS)**

MAR 23 2023

**Shontell Brown**

**2851 West Prospect Road #902**

**Tamarac, FL. 33309**

**[Shontellbrown@aol.com](mailto:Shontellbrown@aol.com)**

**(954) 696-0097**

To: Settlement Administrator,

I, Shontell Brown, want to be excluded from the Settlement Class, *Loan #7095130519*.

Respectfully,

A handwritten signature in black ink, appearing to read "Shontell Brown", with a large, stylized flourish at the end.

Shontell Brown

Shontell Brown

2851 W. Prospect Rd. #903

Ft. Lauderdale, FL 33309



Morris V. PHH

c/o RG/2 Claims Administration LLC

P.O. Box 59479

Philadelphia, PA 19102-9479

19102-947979



MAR 23 2023

MORGAN T. NEALY, III  
C/o Richard Shuster  
1413 South Patrick Drive, Ste. 7  
Satellite Beach, FL 32937

March 14, 2023

Morris V. PHH  
Attn: Settlement Administrator  
C/o RG/2 Claims Administration, LLC  
P.O Box 59479  
Philadelphia, PA 19102

**Re: Request for Exclusion in Morris v. PHH  
Case Number: 0:20-cv-60633-RS**

Dear Settlement Administrator:

I wish to be excluded from the above-referenced class action. My information is as follows:

Name: Morgan T. Nealy, III  
Personal E-mail: talnealy@gmail.com  
Attorney E-mail: [rshuster@piplaw.com](mailto:rshuster@piplaw.com)  
My Phone: 321-652-2723  
Attorney Phone: 321-622-5040  
My address: 179 Ellwood Ave., Satellite Beach, FL 32937  
Class Loan No: PHH Loan: 0027601764 and any prior loan numbers.

I am represented by counsel so please use my attorney's phone and Email listed above.  
Do not contact me directly.

Personally Signed

Morgan T. Nealy, III



MAR 28 2023


Request for Exclusion in Morris v. PHH  
(Case # 0:20-cv-60633-RS)

Maria Cristina Sanchez  
10511 SW 45 ST  
Miami, FL 33165

loric2021@yahoo.com

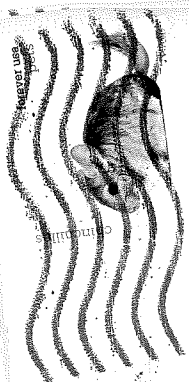
786-399-7950

I want to be excluded from the Settlement  
Class, the class loan # is 7190230099

  
Maria C Sanchez

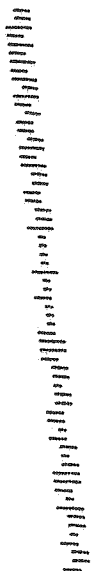


Mania C Sanchez  
10511 SW 45 ST  
Miami, FL 33145



MIAMI FL 330  
20 MAR 2023 PM 2 L

Morris V. PHH  
C/O RG/2 Claims Administration LLC.  
P.O. Box 59479  
Philadelphia, PA 19102-9479



19102-947979

# **Motion**

# **Exhibit B**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION**

CASE NO: 20-60633-CIV-SMITH

VINCENT J. MORRIS, and MICHAEL  
LUZZI, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

PHH MORTGAGE CORPORATION d/b/a  
PHH MORTGAGE SERVICES, on its own  
behalf and as successor by merger to OCWEN  
LOAN SERVICING, LLC, a New Jersey  
Corporation, and OCWEN LOAN SERVICING,  
LLC, a Florida Limited Liability  
Company,

Defendants.

**DECLARATION OF ADAM MOSKOWITZ IN SUPPORT OF PLAINTIFFS' MOTION  
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CLASS COUNSEL'S  
APPLICATION FOR ATTORNEYS' FEES AND EXPENSES, AND  
INCORPORATED MEMORANDUM OF LAW**

I, ADAM MOSKOWITZ declare as follows:

1. I am Settlement Class Counsel, and counsel of record for Plaintiffs and the proposed Settlement Class in this action ("Class Counsel"), and respectfully submit this Declaration in support of Plaintiffs' Motion for Final Approval of Settlement, Class Counsel's Application for Attorneys' Fees and Costs, and incorporated Memorandum of Law. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

2. In October 2022, after months of hard-fought, arm's-length negotiations, Plaintiffs and Defendants executed the Second Amended Stipulation of Settlement and Release ("Agreement") [D.E. under which Defendants have agreed to establish of a non-reversionary common fund of approximately \$2,771,068 to make cash payments to approximately 142,000

Class Members from across the country and make important and valuable injunctive changes to their business practices.<sup>1</sup> We are proud to seek final approval and the reaction from the Class to date has been outstanding.

3. Plaintiffs maintain that the claims asserted in this matter are meritorious, Defendants' attempt to dismiss this action would be unsuccessful, a motion for class certification would be successful (and would be upheld on appeal), and Defendants' attempt to win summary judgement would be unsuccessful, and Plaintiffs would prevail if this matter proceeded to trial. This case involved sharply opposed positions on several fundamental and dispositive legal and factual issues. The ultimate success of the litigation required Plaintiffs to prevail, in whole or in part, on *all* of these issues. Conversely, Defendants' success on any one of these issues could have spelled defeat for Plaintiffs and the Settlement Class. Therefore, continued litigation would have presented significant risks to attaining a successful judgment, as well as the time and expense associated with proceeding to trial, the time and expense associated with appellate review, and the countless uncertainties of litigation, particularly in the context of a large and complex litigation.

4. In light of the risks presented by continued litigation and taking into account the substantial cash payments and other benefits extended to Settlement Class Members under the terms of the Agreement, the Settlement not only provides fair and adequate compensation to Settlement Class Members, but it also represents a significant achievement benefitting the Settlement Class.

**I. Background of the Litigation and Mediation**

5. This action alleges that charging Convenience Fees for phone and web payments violates the Federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, *et seq.* ("FDCPA") and class members' mortgage contracts.

6. Plaintiffs allege that because the "Convenience Fees" are neither expressly authorized by the applicable mortgage agreements nor expressly permitted by applicable law, the FDCPA and Florida law do not allow them to be charged. And because they are not allowable fees

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<sup>1</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement, [ECF No. 178-1], and in the December 22, 2022 Order Granting Motion for Preliminary Approval of Class Action Settlement, Conditionally Certifying a Class for Settlement Purposes, Directing the Issuance of Class Notice, and Scheduling a Final Approval Hearing, [ECF No. 185] ("Preliminary Approval Order").

under the FDCPA or Florida law, Plaintiffs allege that charging them also violates the standard form mortgage contracts of Settlement Class Members.

7. Plaintiffs' counsel filed this action after having spearheaded class action litigation in over 32 nationwide class actions brought against the largest banks, mortgage servicers and force-placed insurers across the country, reaching 30 settlements to date totaling over \$4.2 billion dollars for the proposed nationwide classes of over 5.3 million homeowners.<sup>2</sup> Ocwen and PHH were defendants in those successful nationwide force-placed insurance class action settlements.

8. Defendants moved to dismiss this action on August 7, 2020. [D.E. 26]. Recognizing that many different courts had reached diametrically opposed conclusions on claims just like this, and, given the existence of contradictory regulatory guidance on the issue, the Parties decided to mediate this dispute.

9. The Parties entered into a settlement agreement and moved for preliminary approval in August 2020. [D.E. 46]. The Court held a hearing on preliminary approval of the settlement on March 23, 2021. [D.E. 128]. At that hearing, the Court raised questions regarding some aspects of the settlement. In response to the Court's questions, and to address corresponding concerns raised by the Attorneys General and the DOJ, the Parties ultimately agreed to the Amended Settlement, which provided an even more beneficial resolution for the class members.

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<sup>2</sup> See e.g., *Williams v. Wells Fargo Bank, N.A.*, No. 11-cv-21233 (S.D. Fla.) (final approval granted); *Saccoccio v. JPMorgan Chase Bank N.A.*, No. 13-cv-21107 (S.D. Fla.) (final approval granted); *Diaz v. HSBC Bank (USA), N.A.*, No. 13-cv-21104 (S.D. Fla.) (final approval granted); *Fladell v. Wells Fargo Bank, N.A.*, No. 13-cv-60721 (S.D. Fla.) (final approval granted); *Hamilton v. SunTrust Mortg., Inc.*, No. 13-cv-60749 (S.D. Fla.) (final approval granted); *Hall v. Bank of Am., N.A.*, No. 12-cv-22700 (S.D. Fla.) (final approval granted); *Lee v. Ocwen Loan Servicing, LLC*, No. 14-cv-60649 (S.D. Fla.) (final approval granted); *Braynen v. Nationstar Mortg., LLC*, No. 14-cv-20726 (S.D. Fla.) (final approval granted); *Wilson v. Everbank, N.A.*, No. 14-cv-22264 (S.D. Fla.) (final approval granted); *Montoya v. PNC Bank, N.A.*, No. 14-cv-20474 (S.D. Fla.) (final approval granted); *Almanzar v. Select Portfolio Servicing*, No. 14-cv-22586 (S.D. Fla.) (final approval granted); *Jackson v. U.S. Bank, N.A.*, No. 14-cv-21252 (S.D. Fla.) (final approval granted); *Circeo-Loudon v. Green Tree Servicing, LLC*, No. 14-cv-21384 (S.D. Fla.); *Beber v. Branch Banking & Trust Co.*, No. 15-cv-23294 (S.D. Fla.) (final approval granted); *Ziwczyn v. Regions Bank*, No. 15-cv-24558 (S.D. Fla.) (final approval granted); *McNeil v. Selene Finance, LP*, No. 16-cv-22930 (S.D. Fla.); *McNeil v. Loancare, LLC*, No. 16-cv-20830 (S.D. Fla.) (final approval granted); *Edwards v. Seterus, Inc.*, No. 15-cv-23107 (S.D. Fla.) (final approval granted); *Cooper v. PennyMac Loan Servicing, LLC*, No. 16-cv-20413 (S.D. Fla.) (final approval granted); *Strickland, et al. v. Carrington Mortgage Services, LLC, et al.*, 16-cv- 25237 (S.D. Fla.) (final approval granted for three separate settlements); *Quarashi et al v. Caliber Home Loans Inc. et al.*; 16-9245 (D.N.J.) (final approval granted).

*See* [D.E. 136-1 at 5]. The Court then denied as moot the motion for preliminary approval of the Original Settlement and set a briefing schedule on the new motion for preliminary approval of the Amended Settlement. *See* [D.E. 138].

10. While the new motion for preliminary approval was pending, on November 8, 2021, a California class of borrowers was certified in *Torliatt v. Ocwen Loan Servicing, LLC*, Case No. 19-cv-04303-WHO at [D.E. 152]. On November 11, 2021, the Parties filed a joint motion to stay this case in light of the *Torliatt* certification order. [D.E. 160]. On November 17, 2021, the Court held a status conference as to the impact of the *Torliatt* certification order and requested further briefing. [D.E. 164]. On November 23, 2021, this Court granted the motion to stay, closed this case for administrative purposes, and terminated all pending motions. [D.E. 167].

11. After the Ninth Circuit Court of Appeals denied PHH permission to appeal the *Torliatt* class certification decision on February 28, 2022, without opinion. *Torliatt v. Ocwen Loan Servicing, LLC, et al.*, No. 21-80117 (9th Cir. Feb. 28, 2022), the Parties retained the services of the Honorable John Thornton (Ret.) of JAMS in order to begin mediating a revised settlement agreement that takes into account the effect of that decision and the previous class certification order entered in *Torliatt* on the parties' previously proposed settlement.

12. After weeks of additional negotiations, the parties have come to a resolution to fully resolve this matter. The parties subsequently executed the Agreement.

13. On September 15, 2022, the Settling Parties announced their settlement and filed a joint motion to reopen this action and lift the stay. [D.E. 173]. The Court granted that motion on September 22, 2022. [D.E. 174]. Per the Court's order granting the motion to reopen the motion, on September 23, 2022, Plaintiffs filed a Second Amended Complaint. [D.E. 175].

14. On October 18, 2022, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement and Certification of the Settlement Class [D.E. 178]. The Court preliminarily approved the Settlement on December 22, 2022. [D.E. 185].

15. On October 18, 2022, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement and Certification of the Settlement Class [D.E. 178]. Defendants served notice pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715 on the appropriate regulatory agencies and filed a Motion for Finding of Compliance with the Notice Requirements of the Class Action Fairness Act. [D.E. 180]. The Court granted Defendants motion for finding

compliance on November 8, 2022. [D.E. 181]. Finally, the Court preliminarily approved the Settlement on December 22, 2022. [D.E. 185].

## **II. The Settlement Terms and Agreement**

### **A. *The Proposed Settlement Class***

16. The Agreement provides relief to the following Settlement Class:

#### **The FDCPA Class:**

(A) All borrowers on residential mortgage loans secured by mortgaged property in the United States whose mortgage loans were serviced but not owned by Ocwen and to which Ocwen acquired servicing rights when such loans were 30 days or more delinquent on their loan payment obligations, and who, at any time during the period from March 25, 2019 through and including August 17, 2022, paid a Convenience Fee to Ocwen that was not refunded or returned; PLUS (B) all borrowers on residential mortgage loans secured by mortgaged property in the United States whose mortgage loans were serviced but not owned by PHH and to which PHH acquired servicing rights when such loans were 30 days or more delinquent on their loan payment obligations, and who, at any time during the period from March 25, 2019 through and including August 17, 2022, paid a Convenience Fee to PHH that was not refunded or returned.

Excluded from the FDCPA Class are (a) borrowers whose loans were included as class loans in the previously approved class action settlement in *McWhorter, et al. v. Ocwen Loan Servicing, LLC, et al.*, No. 2:15-cv-01831-MHH (N.D. Ala.); (b) borrowers whose loans make them potential members of the proposed settlement classes in *Torliatt v. Ocwen Loan Servicing, LLC*, Case Nos. 3:19-cv-04303-WHO, 3:19-cv-04356-WHO (N.D. Cal.), or *Thacker v. PHH Mortgage Corp.*, Case no. 5:21-cv-00174-JPB (Bailey) (N.D. W. Va.), whether or not those borrowers timely and validly exclude themselves from those settlement classes; (c) borrowers who are or were named plaintiffs in any civil action other than this Action which challenges Convenience Fees charged by a PHH Defendant that was initiated against either PHH Defendant on or before the date the Agreement was fully executed; (d) the PHH Defendants' board members and executive level officers; and (e) the federal district and magistrate judges assigned to this Action, along with persons within the third degree of relationship to them.

– and –

#### **The Florida Class:**

All borrowers on residential mortgage loans secured by mortgaged property in the State of Florida who, from March 25, 2016 to August 17, 2022, paid a Convenience Fee to either Ocwen or PHH that was not refunded or returned.

Excluded from the Florida Class are (a) borrowers whose loans were included as class loans in the previously approved class action settlement in *McWhorter, et al. v. Ocwen Loan Servicing, LLC, et al.*, No. 2:15-cv-01831-MHH (N.D. Ala.); (b) borrowers who are or were named plaintiffs in any civil action other than this action which challenges Convenience Fees charged by a PHH Defendant that was initiated against either PHH Defendant on or before the date the Agreement was fully executed; (c) borrowers in the “FDCPA Class” defined above who did not also make an additional Convenience Fee payment to the PHH Defendants between March 25, 2016 and March 24, 2019; (d) the PHH Defendants’ board members and executive level officers; and (e) the federal district and magistrate judges assigned to this Action, along with persons within the third degree of relationship to them. For the avoidance of doubt, a borrower in the FDCPA Class who also paid a fee to either PHH Defendant between March 25, 2016 and March 24, 2019, inclusive, and who otherwise meets the definition of the Florida Class would be in both the FDCPA Class and the Florida Class.

#### **A. Monetary Relief**

17. The Settlement Agreement affords members of the Settlement Class significant monetary relief. (*Id.* ¶ 1.1.47.) The PHH Defendants shall make available to the Settlement Class two Settlement Funds for a total amount of \$2,771,068. The first (the “FDCPA Settlement Fund”) shall be equal to the sum of 32% of the Convenience Fees paid to and retained by Ocwen from March 25, 2019 through August 17, 2022, for borrowers meeting subpart (A) of the definition of the FDCPA Class and 32% of the Convenience Fees paid to and retained by PHH from March 25, 2019 through August 17, 2022, for borrowers meeting subpart (B) of the definition of the FDCPA Class. (*Id.* ¶ 1.1.16.)

18. The second (the “Florida Settlement Fund”) shall be equal to 18% of the amounts paid as Convenience Fees to the PHH Defendants by Florida Settlement Class Members and retained by the PHH Defendants from March 25, 2016 through August 17, 2022, but excluding Convenience Fees already captured in the FDCPA Settlement Fund. Both Settlement Funds shall exclude all amounts paid to or otherwise retained by any third-party vendor to facilitate the Settlement Class Members’ payments by telephone, IVR, or the internet and any Convenience Fees previously refunded or waived by the PHH Defendants on any given Settlement Class Loan. (*Id.* ¶ 1.1.22.)

19. The Settlement Funds will be allocated as follows: first, they will be used to pay on a pro rata basis based on the size of each fund as a percentage of the combined total of both funds any attorneys’ fee and expense award to Class Counsel and any service award to Lead Plaintiffs.



(*Id.* ¶ 4.6.) The remaining balance of each fund will be divided and distributed as individual allocations as follows:

- i. Each FDCPA Class Loan shall receive an Individual Allocation from the FDCPA Settlement Fund, calculated as follows: the proportion of Convenience Fees paid to and retained by either Ocwen or PHH on that FDCPA Class Loan between March 25, 2019 and August 17, 2022, as compared to the total aggregate amount of all Retained Convenience Fees paid to either Ocwen or PHH on all FDCPA Class Loans during that period. Only Retained Convenience Fees paid to a servicer that serviced but did not own the FDCPA Class Loan and that acquired servicing rights to the FDCPA Class Loan when it was 30 days or more delinquent will be included in these calculations. For the avoidance of doubt, a borrower who qualifies as an FDCPA Class Member because Ocwen acquired servicing rights when the loan was 30 days or more delinquent and did not own the loan would be entitled to an Individual Allocation for the Retained Convenience Fees paid to Ocwen on that FDCPA Class Loan. But if that same FDCPA Class Loan later service transferred to PHH when it was not 30 days or more delinquent, then that borrower would not receive any Individual Allocation from the FDCPA Settlement Fund for the Retained Convenience Fees paid to PHH after the service transfer. To the extent an FDCPA Class Loan meets both subpart (A) and subpart (B) of the definition of the FDCPA Class, then the Individual Allocation for that loan will be calculated as the proportion of Convenience Fees paid to and retained by both Ocwen and PHH on that loan between March 25, 2019 and August 17, 2022, as compared to the total aggregate amount of all Convenience Fees captured in the FDCPA Settlement Fund as described above.
- ii. Each Florida Class Loan shall receive an Individual Allocation from the Florida Settlement Fund, calculated based on the proportion of Convenience Fees paid to and retained by Ocwen and/or PHH on that Florida Class Loan between March 25, 2016 and August 17, 2022 (but excluding Convenience Fee payments captured in the FDCPA Settlement Fund) as compared to the total aggregate amount of all Convenience Fees paid to and retained by Ocwen and/or PHH with respect to all Florida class loans during that period (but excluding Convenience Fees captured in the FDCPA settlement fund).

(*Id.* ¶¶ 4.7-4.8.)

20. All Settlement Class Members shall receive their individual allocations by check mailed to the last known borrower address as set forth in the PHH Defendants' records or as updated by the Settlement Administrator. No portion of the Settlement Fund will revert to the PHH Defendants. Individual Allocation relief that remains undeliverable three hundred (300) days after the Final Settlement Date despite the Settlement Administrator's efforts to locate the

Settlement Class Members shall be paid to Homes for Our Troops, “a privately funded 501(c)(3) nonprofit organization that builds and donates specially adapted custom homes nationwide for severely injured post – 9/11 Veterans, to enable them to rebuild their lives.” <https://www.hfotusa.org/mission/>.

**B. Injunctive Relief**

21. In addition to the monetary relief and release described above, the parties have agreed in the Settlement to a number of very important injunctive relief components (*that have not been included in the above-stated value of the proposed Settlement*). The PHH Defendants, to the extent they continue to charge Settlement Class Members for payments by telephone or internet in the future, have agreed to include language disclosing the following additional information at the time that borrowers pay online, to appear next to the first page of the website for the applicable form of payment:

Paying by telephone, IVR, or internet is entirely optional and, unless otherwise specified, involves a fee retained in whole or in part by PHH. There are alternative methods of payment involving no fee, such as mailing a check or money order, or scheduled monthly bank account debts, while some methods of payment involve a lower fee than others. Click here to visit the FAQ section for more details.

(*Id.* ¶ 5.1.1.)

22. Further, in each payment transaction involving a Convenience Fee following the Final Settlement Date, the PHH Defendants have agreed to use their best efforts to cause its customer service representatives, telephone systems, scripts or websites involved to disclose, in substance, the following information to each Settlement Class Member, except as otherwise hereafter prescribed or proscribed by law:

- a. the exact fee to be charged for the payment method chosen by the borrower;
- b. the fact that the fee may include an amount retained by the PHH Defendants in excess of its third party costs;
- c. the fact that the borrower is not required to use the payment method for which a fee is being charged;
- d. the payment methods for which the PHH Defendants do not charge a fee;
- e. any other optional payment methods accepted by the PHH Defendants that may involve a lower fee; and
- f. when a material consideration in the payment transaction at issue, the applicable deadline by which payment must be received in order to avoid a late fee.

(*Id.*)

23. The PHH Defendants further agreed to the following non-monetary relief as additional consideration for the Settlement:

The PHH Defendants currently charge a Convenience Fee of \$7.50 per online payment transaction. The PHH Defendants agree to reduce the per transaction Convenience Fee for online payments for borrowers with mortgaged property in Florida or who meet the definition of the FDCPA Class to \$6.50 for a period of two years.

(*Id.* ¶ 5.1.2.)

24. The PHH Defendants currently charge Convenience Fees of \$7.50 per IVR payment transaction and \$17.50 for payments made by telephone with the assistance of a live agent. (*Id.* ¶ 5.1.3.) The PHH Defendants agree not to increase either of those fees for borrowers with mortgaged property in Florida or who meet the definition of the FDCPA class for a period of two years.

**C. Release of Claims against Defendants**

25. In exchange for the relief provided by the Settlement, Settlement Class Members will release the PHH Defendants, as well as all other entities included in the definition of “Released Persons” set forth in the Settlement Agreement from:

each and all of the claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages (whether punitive, statutory, or compensatory and whether liquidated or unliquidated), 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 regulatory bulletin, guidelines, handbook, opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, that relate to or arise out of Convenience Fees charged (a) by Ocwen on FDCPA Class Loans to FDCPA Class Members meeting Subpart (A) of the definition of the FDCPA Class, during the period from March 25, 2019 through and including August 17, 2022; (b) by PHH on FDCPA Class Loans to FDCPA Class Members meeting Subpart (B) of the definition of the FDCPA Class, during the period from March 25, 2019 through and including August 17, 2022; or (c) by Ocwen or PHH to Florida Class Members on Florida Class Loans, during the period from March 25, 2016 through and including August 17, 2022.

(*Id.* ¶¶ 1.1.38, 1.1.39 & 3.3.)

**D. Class Notice**

26. Settlement Class members will receive notice of the settlement by first-class mail at their last-known mailing address in the form attached to the Settlement Agreement as Exhibit A. The Class Notice also will contain a provision directing Spanish-speaking class members to the

Settlement Website, which will include the relevant settlement information in Spanish and a Spanish version of the Notice. (*Id.* ¶ 7.2.8). The notice will be mailed within 28 days of the entry of the Preliminary Approval Order. (*Id.*) The Settlement Administrator shall perform a search of the National Change of Address database for each mailing address prior to the mailing of the Notice. (*Id.*) The Settlement Administrator will also establish a website on which Settlement Class members may review the Settlement Agreement and its exhibits. The Settlement Administrator will also advertise the Settlement on the internet. The notice will provide a toll-free number to call for settlement information. Settlement Class Members may opt out or object by following the prescribed process.

**E. Class Counsel Fees and Expenses**

27. The Parties stipulate in the Agreement that The Moskowitz Law Firm PLLC, will serve as Class Counsel. Class Counsel's application for attorneys' fees and expenses for all of the law firms involved shall not exceed 33% of the Settlement Fund, inclusive of expenses. The Settlement is not made contingent upon any particular amount of Attorneys' Fees and Expenses being awarded by the Court. PHH Defendants maintain their right and full discretion to object to any petition for Attorneys' Fees and Costs for any reason. (*Id.* ¶ 10.1.)

**III. Preliminary Approval and Settlement Administration**

28. After the Court preliminarily approved the Settlement and certified the proposed Settlement Class, it ordered the parties to implement the Notice plan. [D.E. 185 at 18]. Pursuant to the Court's Preliminary Approval Order, the Court approved claims administrator, RG/2 Claims Administration LLC ("RG/2 Claims") mailed over 105,317 copies of the Court-approved Class Notice of the proposed Settlement to Class Members on January 19, 2023. *See* Declaration of Tina Chiango dated April 11, 2023 ("RG/2 Claims Decl."), attached as Exhibit A to the Motion for Final Approval. Prior to mailing the class notices, RG/2 Claims caused the addresses of the Class List to be standardized and updated using NCOA, a national database of address changes compiled by the United States Postal Service ("USPS"). RG/2 Claims Decl. ¶¶ 5–6.

29. RG/2 Claims also established a website, on which Settlement Class Members are able to review the Settlement Agreement and its exhibits. *See* <https://morrisvphs-speedpaysettlement.com/>; *see also* RG/2 Claims Decl. ¶ 8. Finally, RG/2 Claims undertook an advertising campaign on the internet to ensure wide-spread distribution. RG/2 Claims Decl. ¶ 7.

30. To date, not a single Class Member has objected to any aspect of the Settlement, and only 16 Class Members have submitted requests to opt-out of the Settlement (representing only .0113% of the Settlement Class).<sup>3</sup> Further, as of the date of this filing, the parties have not received *a single inquiry* regarding the Settlement from the CAFA Notice.

#### **IV. Considerations Supporting Settlement**

##### **A. *There Was No Fraud or Collusion.***

31. Class Counsel negotiated the Settlement vigorously and at arm's-length. Plaintiffs were represented by experienced counsel at these arm's-length negotiations. Settlement negotiations were informed by the experience of counsel for both sides in the litigation, certification, trial, and settlement of nationwide class action cases.

32. Specifically, Class Counsel investigated their claims and allegations through extensive discovery, including the review of thousands of pages of documents.

33. Class Counsel's investigation and review of the information provided by Defendants enabled Class Counsel to gain an understanding of the evidence related to central questions in the case and prepared them for well-informed settlement negotiations.

34. Thus, Class Counsel were well-positioned to evaluate the strengths and weaknesses of Plaintiffs' claims, as well as the appropriate basis upon which to settle them.

35. Moreover, the mediation was overseen by the Honorable John W. Thornton (Ret.), a highly experienced and prominent mediator. Judge Thornton has significant experience mediating complex commercial suits to resolution and was involved in every step of the process. The settlement negotiations and mediation sessions were, at all times, adversarial and conducted at arm's length. The mediation process and subsequent negotiations spanned many weeks.

##### **B. *The Settlement Will Avert Years of Highly Complex and Expensive Litigation.***

36. This case involves approximately 142,000 Settlement Class Members who paid Convenience Fees to the Defendants in order to make their respective mortgage payments. The claims and potential defenses are complex, and litigating them to resolution would have been difficult and time consuming. Although Plaintiffs' claims have been pending for almost three

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<sup>3</sup> The deadline for Class Members to Object or Opt-Out of the Settlement occurs on April 26, 2023. Plaintiffs will file supplemental papers prior to the Final Approval Hearing to advise whether any objections or further Opt-Out Requests were received after the instant motion was filed. *See* Preliminary Approval Order, [D.E. 185 at ¶9].

years, recovery by any means other than settlement would require additional years of litigation in this Court and appellate courts. By contrast, the Settlement provides immediate and substantial cash payments to the Settlement Class.

**C. *The Factual Record Is Sufficiently Developed to Enable Plaintiffs and Class Counsel to Make a Reasoned Judgment Concerning the Settlement.***

37. As discussed above, Class Counsel were well-versed in Defendants' operations through considerable discovery in this action prior to Settlement. This afforded Class Counsel important insight into the strengths and weaknesses of their claims against Defendants. Before settling, Class Counsel had already developed ample information and performed extensive analyses from which to assess the probability of success on the merits, the possible range of recovery, and the likely expense and duration of the litigation. Further, before, during, and after mediation, Class Counsel confirmed details regarding the Class Members affected, and the amount at stake to ensure the Settlement was fair and complete, and to confirm the value of the relief provided to the Settlement Class

**D. *Plaintiffs Would Have Faced Significant Obstacles to Obtaining Relief.***

38. Plaintiffs and Class Counsel are confident in the strengths of their case, but are also pragmatic in their awareness of the various defenses available to Defendants and the risks inherent to litigation.

39. While Plaintiffs and Class Counsel believe they have a compelling case against Defendants, Class Counsel is mindful of the fact that Defendants would have advanced significant defenses that they would be required to overcome at the dismissal stage, class certification, summary judgment, trial, and eventually on appeal on any merits and class certification. Class Counsel and Plaintiffs thus appreciate that, absent a settlement, it would have taken years of additional litigation – and overcoming vigorous legal and factual defenses – to bring the action to finality. Even then, the outcome would be uncertain. Given the myriad risks attending these claims, the Settlement cannot be seen as anything other than a fair compromise.

40. Protracted litigation carries inherent risks and inevitable delay.

41. Plaintiffs and Class Counsel determined that the benefits of the Settlement reached with Defendants clearly outweigh the risks of continued litigation.

**E. *The Settlement Amount Is Reasonable Given the Range of Possible Recovery.***

42. The Settlement provides substantial value to the Settlement Class. Such value is well within the range of reasonableness.

43. The Settlement Agreement creates a non-reversionary \$2.77 million Settlement Fund which will provide significant cash payments and injunctive relief.

44. All Settlement Class Members will receive cash payments equal to 18% or 32% of the Convenience Fees paid to and retained by the Defendants (minus any fees or expenses awarded to Class Counsel).

45. This represents a significant recovery for Class Members, especially in light of the risks of continuing to litigate and return here is eminently fair.

46. Moreover, the agreed-to injunctive relief freezes the amount of Convenience Fees that can be charged for two years and ensures that the Class Members are better informed of their choices when making mortgage payments.

47. While it is certainly possible that the maximum recoverable damages at trial for all claims could exceed the amount of the Settlement, this assumes complete acceptance of Plaintiffs' liability and damage evidence on a class-wide basis. Given the obstacles and uncertainties of continued litigation, Class Counsel believe the proposed settlement represents an outstanding recovery for the Class who otherwise may have not recovered anything.

**F. *The Opinions of Class Counsel, Class Representatives, and Absent Class Members Strongly Favor Approval of the Settlement.***

48. Class Counsel believe that this Settlement is extraordinary and clearly deserving of final approval.

49. Moreover, opposition to the Settlement has been *de minimis*. As of April 11, 2023, the parties received no objections and 16 exclusion requests. *See* RG/2 Claims Decl. ¶¶ 10-11.

**IV. Class Counsel's Attorneys' Fees**

50. Pursuant to the Settlement, Class Counsel are entitled to request that the Court award attorneys' fees equal to 33% of the Settlement Fund created for the benefit of the Class, inclusive of expenses (excluding the valuable and important prospective relief). Class Counsel seek \$859,031.08 which is 31% of the Settlement Fund created for the benefit of the Class, plus \$55,421.36 in unreimbursed expenses. This is a total of \$914,452.44 in attorneys' fees and

expenses. If the value of the injunctive relief is included, the percentage is even lower.<sup>4</sup> Defendants have reserved the right to oppose Class Counsel's request for attorneys' fees and expenses. *See* Settlement Agreement at ¶10.1. The Parties negotiated and reached this agreement regarding attorneys' fees and expenses only after reaching agreement on all other material terms of this Settlement.

51. As indicated in the Court-approved Notice disseminated to the Settlement Class, and consistent with standard class action practice and procedure, Class Counsel request a fee amounting to \$914,452.44 inclusive of all litigation costs and expenses.

**A. *The Claims against Defendants Required Substantial Time and Labor.***

52. Investigating, prosecuting, and settling the claims here demanded considerable time and labor. The complexity of this case required organization by Class Counsel, including assignment of work and regular meetings and conference calls to ensure coordinated, productive work efforts to maximize efficiency and minimize duplication of effort. Class Counsel spent over 2,000 hours investigating the claims of many potential plaintiffs and in litigating Plaintiffs' and the Class's claims against Defendants in this action.

53. Class Counsel expended significant resources researching and developing the legal claims at issue.

54. Class Counsel prepared for and participated in many meetings and conference calls to settle the action. After the Parties executed a term sheet, Class Counsel engaged in protracted discussions and drafting over the terms of the amended Settlement Agreement, Notice, and settlement forms. In addition, Class Counsel had continued communications with Defendants, pending final approval of the Settlement.

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<sup>4</sup> *See Poertner v. Gillette Co.*, 618 Fed. App'x 624 (11th Cir. 2015) (class counsel fees properly awarded based on percentage of total "settlement pie," including injunctive relief and *cy pres* award); *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003) ("[C]ourts should consider the value of the injunctive relief obtained as a relevant circumstance in determining what percentage of the common fund class counsel should receive as attorneys' fees.") (internal quotation and citation omitted); *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360 (S.D. Fla. 2007); *Sheppard v. Consol. Edison Co. of N.Y., Inc.*, 2002 WL 2003206, at \*7 (E.D.N.Y. Aug. 1, 2002) (in valuing total settlement for percentage-based attorneys' fee award, court included \$6.745 million in monetary relief and "an estimated \$5 million in non-monetary, injunctive relief"); *Steiner v. Williams*, 2001 WL 604035, at \*4 (S.D.N.Y. May 31, 2001) ("Although the settlement in this action did not involve the payment of money by the defendants, counsel may nonetheless recover a fee if the settlement conferred a substantial non-monetary benefit.").



55. Further, the Settlement requires a continuing role for Class Counsel after final approval, in reviewing the payments made to Class Members. Class Counsel have responded to many Class Member calls and written inquiries concerning the Settlement and will continue to do so. Finally, Class Counsel will be responsible for responding to any appeals that may be filed and for handling all other post-approval proceedings. These substantial efforts justify awarding Class Counsel the requested fee.

56. All told, Class Counsel's steadfast and coordinated work paid great dividends for the Settlement Class. Each of the above-described efforts was essential to achieving the Settlement currently before the Court. Taken together, the time and resources Class Counsel devoted to prosecuting and settling this action of nationwide importance justify the fee we are now seeking.

**B. *The Issues Involved Were Novel and Difficult and Required the Exceptional Skill of a Highly Talented Group of Attorneys.***

57. The Court has witnessed the high quality of Class Counsel's legal work, which has conferred a significant benefit on the Settlement Class in the face of daunting litigation obstacles. As the Court is aware, it is extremely challenging to establish liability based upon the facts at issue in this litigation. This complex action requires the acquisition and analysis of specific science and economic data – and the efforts of highly skilled lawyers.

58. Indeed, litigation of a case like this requires counsel highly trained in class action law and procedure as well as the specialized issues these cases present. All the lawyers representing Plaintiffs possess these attributes, and their participation as Class Counsel added significant value to the representation of this Settlement Class consisting of thousands of individuals. The record before the Court establishes that the Action involved a wide array of complex challenges, which Class Counsel met at every juncture based on their extensive experience in complex litigation and class action litigation.

59. In assessing the quality of representation by Class Counsel, the Court also should consider the quality of their opposing counsel. Throughout this litigation, Defendant has been represented by extremely able and diligent attorneys. These were worthy, highly competent adversaries.

**C. *The Claims against Defendants Entailed Considerable Risk.***

60. There have been vigorous defenses to similar claims in other actions denying any and all liability and similar defenses have been raised in this Action. The time and expense

demands required to prepare to work on this for Class Counsel were daunting, to say the least, and obviated their ability to work on numerous other matters. Class Counsel's success under these circumstances thus represents a genuine milestone.

61. Prosecuting the Action was risky from the outset. While several risks existed, Class Counsel limit the discussion to the most serious risks.

62. First, the possibility that this Court would dismiss this action in its entirety based upon arguments that would be raised by Defendants in their motions to dismiss.

63. Second, the Court could have denied class certification.

64. Each of these risks, standing alone, could have impeded Plaintiffs' successful prosecution of these claims at trial (and in any appeal).

65. Together, they overwhelmingly demonstrate that Plaintiffs' claims against Defendant were far from a "slam dunk" and that, in light of all the circumstances, the Settlement achieves an excellent class-wide result.

**D. *Class Counsel Assumed Substantial Risk to Pursue the Action on a Pure Contingency Basis, and Were Precluded From Other Employment as a Result.***

66. Class Counsel prosecuted the Action entirely on a contingent fee basis. In undertaking to prosecute this complex action on that basis, Class Counsel assumed a significant risk of nonpayment or underpayment. That risk warrants the requested fee.

67. Public policy concerns – especially ensuring the continued availability of experienced and capable counsel to represent classes of injured plaintiffs whose individual claims would defy vindication – further justify the requested fee award.

68. Because of the nature of a contingent practice where cases are predominantly "big cases" lasting for years, not only do contingent firms have to pay regular overhead, but they also have to advance the substantial expenses of litigation of this kind. The financial burden on counsel bringing contingent fee cases is far greater than on a firm that is paid on an ongoing basis.

69. The above does not take into consideration the possibility of no recovery. It is not unusual to spend tens of thousands of hours on losing efforts. Prosecutions without recovery are exceedingly expensive. While the Court must focus on the reasonableness of the fees to be paid in this case, the fees and expenses that go unpaid when the cases are dismissed should not be ignored.

70. The progress of the Action to date readily demonstrates the inherent risk that Class Counsel faced in taking these cases on a contingency fee basis. Despite Class Counsel's ongoing

effort in litigating before this Court, Class Counsel remain completely uncompensated for the time and expenses they have invested. Uncompensated expenditures of this magnitude can severely damage or even destroy law firms. There can be no reasonable dispute that the Action entailed substantial risk of nonpayment and resulting financial harm for our practices.

71. Furthermore, the time Class Counsel spent on the Action was time that they could not spend on other matters. This factor thus strongly militates in favor of Class Counsel's requested fee.

**E. *Class Counsel Have Achieved an Excellent Result.***

72. The result Class Counsel achieved is outstanding. Instead of facing additional years of costly and uncertain litigation, Settlement Class Members. The results here, of more than \$2.77 million in a non-reversionary Settlement Fund and the prospective relief, are excellent. The Settlement represents an exceptional achievement by any measure.

**F. *The Requested Fee Comports with Customary Fees Awarded in Similar Cases.***

73. The fee requested here matches the fee typically awarded in similar cases. As legions of decisions have recognized, a fee award of 31% or more of a common benefit is well within the range of a customary fee. The fee requested are 31%, plus expenses (without any consideration of the injunctive relief). Moreover, the requested fee falls squarely within the range of awards made in numerous cases brought in this Circuit and District.

**G. *Other Factors Also Favor Approving Class Counsel's Fee Request.***

74. Other factors likewise support granting Class Counsel's fee request. As noted, the burdens of this litigation have precluded Class Counsel's pursuit of other cases. The relatively small size of the firms representing Plaintiffs, and the major commitment involved in accepting this representation, precluded Class Counsel's firms from working on other matters and accepting other representations. In addition, Class Counsel's fee request is firmly rooted in the economics of prosecuting a class action. *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 775 (11th Cir. 1991). Without adequate compensation and financial reward, cases such as this simply could not be pursued.

**VI. *Class Counsels Expenses***

75. Class Counsel's expenses in connection with the prosecution of this litigation total \$55,421.36. These expenses were reasonably and necessarily incurred during the litigation. These

expenses are comprised of expert fees, case investigation costs, travel costs, copying costs, court reporting, stenography, mediation fees, legal research costs, court fees, and miscellaneous costs.

Those expenses and charges are itemized as follows:

Description of Expense	Amount of Expense
Experts	\$5,000.00
Mediation	\$11,355.00
Transcripts	\$951.25
Online Research	\$36,370.00
Filing Fee	\$520.00
Outside Office Services	\$45.40
Travel, Meals, and Parking	\$1,179.23
<b>Total</b>	<b>\$55,421.36</b>

76. The foregoing expenses pertaining to this litigation are reflected in the books and records of Class Counsel. These books and records are prepared from receipts, expense vouchers, check records and other documents and are an accurate record of the expenses.

### **Conclusion**

77. Class Counsel are well aware of the strengths and weaknesses of their case, the principles of law applicable to the disputed issues, and the relative risks of continuing to prosecute the litigation and believe the Settlement obtained is an excellent result. For the reasons set forth above and in the accompanying memoranda, Class Counsel respectfully submit that the Settlement is fair, reasonable, and adequate and should be approved. In addition, the amount of attorney's fees and expenses agreed upon by the Parties is fair and reasonable and should be approved by the Court.

I declare under penalty of perjury of the laws of Florida and the United States that the foregoing is true and correct, and that this declaration was executed in Miami-Dade County, Florida on April 12, 2023.

By: /s/ Adam M. Moskowitz  
Adam M. Moskowitz