

STIPULATION AND AGREEMENT OF SETTLEMENT

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STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (“Agreement”) is entered into by and between Defendants ZestFinance, Inc. and Douglas Merrill (“Zest Defendants”) and BlueChip Financial (“BlueChip,” collectively with Zest Defendants, “Defendants”), on the one hand, and Plaintiffs Diane Turner, Lula Williams, Renee Galloway, Darlene Gibbs, Marketa Bass, John Glatt, Gwendolyn Beck, Anastasia Sherman, Sheila Burns, Stanie Haggins, Keisha Hamm, David Hawkins, Sheila Simmons, Faith Thomas, Dashawn Hunter, Tonekia Showell, Sonji Grandi, Susie Allen, Krista Biehl, Beverly Gross, Rachel Bulette, Ricky Panas, Lorna Johnson, Esther Taitai, and Cynthia Burns, on behalf of themselves and all other similarly situated individuals, and as representatives of the Settlement Class, as these terms are defined in Section II, on the other.

I. RECITALS

The following recitals are material terms of this Agreement, and all capitalized terms are used as defined in Section II, below, except as otherwise defined herein. This Agreement is made in contemplation of the following facts and circumstances.

WHEREAS, on May 10, 2018, Plaintiff Teresa Titus filed a class action complaint against ZestFinance, Inc., BlueChip Financial, and Douglas Merrill in the United States District Court for the Western District of Washington, Civil Action No. 3:18-cv-05373 (the “Titus Action”). The Titus Action was dismissed with prejudice on October 25, 2019;

WHEREAS, on November 21, 2018, Plaintiff Rachel Bulette filed a class action complaint against ZestFinance, Inc. and Douglas Merrill in the Superior Court of California, County of Alameda, Case No. HG18929579;

WHEREAS, on April 17, 2019, Plaintiffs David Hawkins, Anastasia Sherman, Lula Williams, Reginald Jones, Dianne Turner, Susie Allen, Faith Thomas, Sonji Grandy, Gwendolyn

Beck, Renee Galloway, Stanie Haggins, Sheila Simmons, Dashawn Hunter, Tonekia Showell, Sheila Burns, Marketa Bass, Keisha Hamm, and John Glatt filed a class action complaint against ZestFinance, Inc., BlueChip Financial, and Douglas Merrill in the United States District Court for the Eastern District of Virginia, Civil Action No. 3:19-cv-00293;

WHEREAS, on September 26, 2019, Plaintiffs Beverly Gross and Krista Biehl filed a class action complaint against BlueChip Financial and members of the Tribal Council of the Turtle Mountain Band of Chippewa Indians in the United States District Court for the District of Connecticut, Civil Action No. 3:19-cv-1520;

WHEREAS, the Actions alleged various class and non-class claims for violations of various state and federal laws;

WHEREAS, Defendants deny any and all claims alleged by Plaintiffs in the Actions, and further deny that any Plaintiffs or any members of the Settlement Class they purport to represent have suffered any injury or damage;

WHEREAS, Plaintiffs and Class Counsel have conducted an investigation of the legal claims at issue, by review and analysis of documents that Defendants provided in discovery and during settlement negotiations;

WHEREAS, the Parties participated in mediation sessions on September 23, 2019, and October 10, 2019, and continued to negotiate with the assistance of a mediator through December 2019;

WHEREAS, based on the investigation and mediation sessions described above, Plaintiffs and Class Counsel have concluded that it would be in the best interests of the Settlement Class to enter into this Agreement in order to avoid the uncertainties of litigation and to assure benefits to the Settlement Class and that the settlement contemplated hereby is fair, reasonable, and adequate

and in the best interests of all members of the Settlement Class;

WHEREAS, Defendants expressly deny all allegations of wrongdoing and liability, and have asserted or would assert numerous defenses, but nevertheless desire to settle the Actions finally on the terms and conditions set forth herein solely for the purposes of avoiding the burden, expense, and uncertainty of continuing litigation, and to obtain the conclusive and complete dismissal of the Actions and release of all Released Claims; and

WHEREAS, the Parties understand, acknowledge, and agree that the execution of this Agreement constitutes the settlement and compromise of disputed claims that have been or could be brought by or on behalf of Plaintiffs or the Settlement Class relating to the conduct at issue in the Actions. This Agreement is inadmissible as evidence against any party except to enforce the terms of the Settlement and is not an admission of wrongdoing or liability on the part of any party to this Agreement.

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, it is hereby STIPULATED AND AGREED, subject to the District Court’s approval, that the Actions below have been resolved upon and subject to the following terms and conditions:

II. DEFINITIONS

2.1 “Actions” means the following cases:

Style	Court	Case No.
<i>Titus v. ZestFinance, Inc., et al.</i>	USDC W.D. Wa.	3:18-cv-05373
<i>Bulette v. ZestFinance, Inc., et al.</i>	Cal. Sup. Ct. Alameda Cnty.	HG18929579
<i>Turner, et al., v. ZestFinance, Inc., et al.</i>	USDC E.D. Va.	3:19-cv-00293
<i>Gross, et al., v. BlueChip Financial, et al.</i>	USDC D. Conn.	3:19-cv-01520

2.2 “Administrator” means the settlement administrator selected jointly by the Parties through a competitive bidding process. If the Parties cannot reach an agreement on the settlement

administrator, they agree to submit this issue to District Judge David J. Novak, who will have the final authority to pick the Administrator.

2.3 “BlueChip” means BlueChip Financial dba Spotloan.

2.4 “CAFA Notice” refers to the notice made pursuant to the requirements imposed by 28 U.S.C. § 1715(b).

2.5 “Cash Award” means a cash payment to an eligible Settlement Class Member pursuant to Section 3.4(b).

2.6 “Class Counsel” means Terrell Marshall Law Group PLLC, Berger Montague PC, Gupta Wessler PLLC, Kelly Guzzo PLC, and Consumer Litigation Associates, P.C.

2.7 “Direct Notice” means the notice that will be provided pursuant to Sections 5.3(a) and 5.3(b), subject to approval by the District Court, substantially in the form attached hereto as “Exhibit 1.”

2.8 “District Court” means the United States District Court for the Eastern District of Virginia.

2.9 “Effective Date” means the date that the Judgment becomes final for all purposes because either (i) no appeal has been filed in accordance with Fed. R. App. P. 4(a) and the time within which an appeal may be noticed and filed has lapsed; or (ii) if a timely appeal has been filed, the appeal is finally resolved, with no possibility of further appellate or other review, resulting in final judicial approval of this Settlement.

2.10 “Escrow Account” means the bank account into which Defendants and the Administrator will cause the Fund to be deposited.

2.11 “Final Approval Order” means the Final Approval Order and Judgment to be entered by the District Court in the Action finally approving this Settlement and resolving all issues

between the Parties, as provided for in Section VIII below, substantially in the form attached hereto as “Exhibit 3.”

2.12 “Final Fairness Hearing” means the hearing at which the District Court will consider and finally decide whether to approve this Settlement, enter Judgment, and make such rulings as are contemplated by this Settlement.

2.13 “Fund” means the total sum of \$18,500,000 to be paid by Defendants in connection with this Settlement, which is inclusive of payments to Settlement Class Members, attorneys’ fees and costs, service awards to Named Plaintiffs, and costs of notice and administration. ZestFinance, Inc. agrees to pay \$18,000,000 on behalf of the Zest Defendants and BlueChip agrees to pay \$500,000 of the total sum of \$18,500,000.

2.14 “Internet Notice” means notice through the Internet website created pursuant to Section 5.3(c) of this Agreement.

2.15 “Named Plaintiffs” means Diane Turner, Lula Williams, Renee Galloway, Darlene Gibbs, Marketa Bass, John Glatt, Gwendolyn Beck, Anastasia Sherman, Sheila Burns, Stanie Haggins, Keisha Hamm, David Hawkins, Sheila Simmons, Faith Thomas, Dashawn Hunter, Tonekia Showell, Sonji Grandi, Susie Allen, Krista Biehl, Beverly Gross, Rachel Bulette, Ricky Panas, Lorna Johnson, Esther Taitai, and Cynthia Burns.

2.16 “NCOA” means the United States Postal Service’s National Change of Address database.

2.17 “Outstanding Loans” means loans originated by BlueChip executed from January 1, 2012, through October 31, 2018 that are owned by BlueChip and have not been paid off by a Settlement Class Member as of January 31, 2020.

2.18 “Parties” means Defendants, Named Plaintiffs, and the Settlement Class.

2.19 “Plaintiffs” means the Named Plaintiffs, individually and as representatives of the Settlement Class.

2.20 “Preliminary Approval Order” means an order to be entered by the District Court, as provided for in Section 7.1 below, substantially in the form attached hereto as “Exhibit 2.”

2.21 “Released Claims” means the claims released by this Agreement as set forth in Section IV.

2.22 “Released Parties” means (1) Douglas Merrill; (2) ZestFinance, Inc., and each of their respective (both current and former) parents, subsidiaries, administrators, successors, reorganized successors, members, current and former directors, officers, trustees, shareholders, employees, partners, contractors, agents, lenders, investors, insurers, and attorneys; and (3) BlueChip Financial and each and all of its present, former and future direct and indirect parents (including the Turtle Mountain Band of Chippewa Indians), affiliates, subsidiaries, administrators, agents, successors, reorganized successors, predecessors-in-interest, or any financial institutions, corporations, trusts, or other entities that may hold or have held any interest (including, without limitation, any participation or security interest) in any account or any receivables relating to any account, or any receivables or group of receivables, or any direct or indirect interest in the operation or ownership of BlueChip, and all of the aforementioned’s respective members, officers, directors, trustees, employees, partners, contractors, lenders, investors, attorneys, insurers, joint venturers, shareholders, agents, vendors, representatives, elected officials (including, without limitation, any members of the Tribal Council), and assigns; provided, however, that any person or entity who purchased charged-off debt from BlueChip or any successor-in-interest to BlueChip prior to December 31, 2019 shall not be released.

2.23 “Settlement” means the settlement set forth in this Stipulation and Agreement of

Settlement.

2.24 “Settlement Class” means all consumers residing within the United States who executed loan agreements with BlueChip Financial from January 1, 2012, through October 31, 2018.

2.25 “Settlement Class Member” means a person in the Settlement Class who does not timely submit a valid request for exclusion from the Settlement Class.

2.26 “Zest Defendants” means ZestFinance, Inc. and Douglas Merrill.

III. TERMS OF THE SETTLEMENT

3.1 Class Certification. Defendants dispute that a class would be manageable and further deny that a litigation class could be certified on the claims asserted in the Actions. However, solely for purposes of avoiding the expense and inconvenience of further litigation, Defendants do not oppose the District Court’s certification of the Settlement Class for settlement purposes only. No agreements made by Defendants in connection with this Agreement may be used by Plaintiffs, any Settlement Class Member, or any other person, to establish any of the elements of class certification in this or any other proceeding. Preliminary certification of a Settlement Class for settlement purposes shall not be deemed a concession that certification of a class is appropriate, nor are Defendants estopped or otherwise precluded from challenging class certification in further or other proceedings if this Settlement is not finally approved.

3.2 Definition of the Settlement Class. Solely for the purposes of this Settlement, the Parties agree to preliminary certification of the following Settlement Class:

All consumers residing within the United States who executed loan agreements with BlueChip Financial from January 1, 2012, through October 31, 2018.

Based on a review of its records, BlueChip estimates that, under this definition, the Settlement Class consists of approximately 366,000 Settlement Class Members.

Certification of the Settlement Class will be sought pursuant to Federal Rule of Civil Procedure 23(b)(3), and all Settlement Class Members shall have the right to exclude themselves by way of the opt-out procedure set forth in Section 7.2 of this Agreement and the Preliminary Approval Order.

3.3 Identification of the Settlement Class and Eligibility for Cash Award. Settlement Class Members will be identified by BlueChip based on its best efforts and in consultation with its business records. Within 7 days of entry of the Preliminary Approval Order, BlueChip agrees to provide the Administrator with a list of names, email addresses, social security numbers (to the extent available), and mailing addresses of the class members as defined in the Preliminary Approval Order. Class Counsel is also entitled to receive and review this information subject to the restrictions set forth in Section 10.6 below. BlueChip shall also provide loan-level information regarding each class member's loan(s) sufficient to demonstrate the original principal balance of the loan, the interest rate, and the amount of any payments the class member made on the loan, as well as any other loan-level information reasonably requested by Class Counsel for purposes of effectuating the Settlement and for no other purpose. Class Counsel shall have seven (7) business days to review and approve the list of Settlement Class Members, the criteria used by BlueChip to identify Settlement Class Members, and the loan-level data, or to notify Defendants of any objections to its completeness. Class Counsel agree that they shall not be permitted to retain any of the above information after settlement administration has been completed or if the settlement does not receive final approval, and all such information (including summaries, copies, extracts, etc.) shall be subject to return or destruction pursuant to Section 10.6 of this Agreement.

3.4 Settlement Consideration. Pursuant to this Agreement, as full and complete consideration for the releases set forth below, Defendants will implement the relief set forth in

Section 3.4(a) and pay the Fund described in Section 3.4(b), as follows:

- a. Prospective Relief
 - i. Cancellation of Debt and Injunctive Relief. Within 30 days of the Effective Date, with respect to each loan originated during the class period that has a balance due and that is owned by BlueChip as of December 31, 2019, BlueChip agrees to reduce the balance due on each such loan to zero on the basis that the debt is disputed. Within 60 days of the Effective Date, the Administrator shall forward to each Settlement Class Member with such a loan a letter from BlueChip, in a form approved by Plaintiffs and BlueChip, confirming that no further payments are due on such loan.
 - ii. No Sale or Attempt to Enforce Outstanding Loans. As of January 31, 2020, BlueChip further agrees that it will not sell any Outstanding Loans and that it will cease all direct or indirect collection activity on Outstanding Loans, subject to resumption if the settlement does not receive preliminary or final approval from the Court. To the extent any amounts are inadvertently collected after January 31, 2020, BlueChip will remit the funds back to the borrower. BlueChip shall certify its compliance with this provision in declarations to be filed with the Court within 14 days after Preliminary Approval and at least 14 days before the Final Approval Hearing. Such declarations shall not disclose any information concerning specific borrowers, but shall detail the method, number, aggregate amount, and timing of refunds made.

- iii. Agreement the BlueChip Loans are Disputed Debts. The Parties agree that the Outstanding Loans are disputed debts. If judgments regarding Outstanding Loans originated during the class period by BlueChip to Settlement Class Members were obtained by or on behalf of BlueChip, within sixty (60) days of the Effective Date, BlueChip agrees to notify the relevant courts that the judgments are satisfied.
- iv. Negative Tradeline Deletion Request. Within thirty (30) days of the Effective Date, BlueChip shall contact all consumer reporting agencies to which it previously had reported information regarding Outstanding Loans (the “CRAs”) and request permanent removal of any negative tradelines previously reported to consumer reporting agencies in the name of BlueChip or Spotloan regarding loans originated during the class period by BlueChip to Settlement Class Members. A tradeline shall be considered “negative” if it indicates that any payment due was missed. The Named Plaintiffs acknowledge that they understand, on behalf of themselves and the Settlement Class Members, that it may take up to 30 days for this update to be reflected on their credit reports. If at any time following 60 days after the Effective Date, any Settlement Class Member determines that any of the CRAs have not complied with BlueChip’s request as set forth in this paragraph, then the Settlement Class Member may provide written notice to BlueChip by e-mail at help@spotloan.com or U.S. mail at Spotloan Customer Service, P.O. Box 720, Belcourt, ND 58136, together with copies of any credit reports for which he or she

contends the credit reporting was not properly updated. In that event, BlueChip will have 30 days following receipt of such written notice to make a second request that the CRAs update the reporting as set forth in this paragraph. The Named Plaintiffs acknowledge that they understand, on behalf of themselves and the Settlement Class Members, that BlueChip's responsibilities, as set forth in this Section 3.4(a)(iv), shall constitute the sole requirements imposed on BlueChip under this Agreement with respect to credit reporting. The Named Plaintiffs acknowledge that they understand, on behalf of themselves and the Settlement Class Members, that BlueChip does not control the actions of the CRAs and, thus, BlueChip may only request that the CRAs make updates as set forth in Section 3.4(a)(iv).

- v. Personal Identifying Information. Defendants have agreed as of December 31, 2019 not to sell personal identifying information obtained from Settlement Class Members during the class period to third parties for third-party marketing purposes; provided, however, that this provision shall not prohibit BlueChip from using such information in its own lending business. This provision shall not prohibit the transferring of such information to a third party in connection with a sale, merger, or acquisition of BlueChip's business or the assets of its business, or to a BlueChip affiliate owned by the Turtle Mountain Band of Chippewa Indians.
- b. Monetary Consideration. In addition to the changes and consideration set

forth in Section 3.4(a), ZestFinance, Inc. agrees to pay \$18,000,000.00 on behalf of the Zest Defendants and BlueChip agrees to pay \$500,000.00 as monetary consideration for the settlement, for a total of \$18,500,000.00.

- i. Payments into the Fund. Subject to approval by the District Court, the Fund shall be held in the Escrow Account. Monies will be placed into the Fund, subject to the District Court's oversight, by wire payment, as follows:
 1. The first installment of \$1,000,000.00 shall be paid by ZestFinance, Inc. within ten (10) days after Preliminary Approval of the Settlement by the District Court.
 2. The second installment of \$17,000,000.00 shall be paid by ZestFinance, Inc. within ten (10) days after the Effective Date.
 3. The third installment of \$500,000.00 shall be paid by BlueChip within ten (10) days after the Effective Date.
 4. There shall be no reverter of any monies paid into the Fund, with the exception of the reimbursement set forth in Section 3.4(b)(iii)(6).
- ii. Payments from the Fund. The Fund shall be distributed as follows: First, to pay costs of notice and administration; second, to pay service awards to Named Plaintiffs approved by the District Court and attorneys' fees and costs awarded by the District Court; and third, to pay Cash Awards. Cash Awards to eligible Settlement Class Members shall be determined based on the following Claim Amounts:¹

¹ BlueChip's records reflect that it did not make loans to residents of every state listed in these tiers.

Tier 1: All amounts paid by the Settlement Class Member if at least the original principal amount was repaid and the Settlement Class Member resided in Arizona, Arkansas, Colorado, Connecticut, Idaho, Illinois, Indiana, Kansas, Kentucky, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, Ohio, South Dakota, Vermont, Virginia, or Wisconsin at the time the Settlement Class Member took out the loan; and

Tier 2: All amounts of interest paid by the Settlement Class Member above the state's legal limits for the loan if the Settlement Class Member resided in Alabama, Alaska, California, Delaware, Florida, Georgia, Hawaii, Iowa, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Washington, Washington D.C., West Virginia, or Wyoming at the time the Settlement Class Member took out the loan, as such legal limits are shown in Table 1; and

Tier 3: Zero if the Settlement Class Member lived in Utah or Nevada when the loan was taken out.

For Settlement Class Members who took out more than one loan during the class period, their Claim Amount shall be calculated by determining the Claim Amount for each loan and adding them together.

iii. Distributions to the Settlement Class. Cash Awards shall be calculated and distributed to the Settlement Class Members as follows:

1. Administrative Costs Reserve. Before making the *pro rata* calculation below, and subject to approval by the Parties, the Administrator shall provide an estimate of all costs expected to be reasonably incurred by the Administrator through the completion of the first distribution of Cash Awards (the "Administrative Costs Reserve").
2. Net Settlement Amount. The Net Settlement Amount shall be equal to \$18,500,00.00 minus all amounts previously paid for notice and

administration costs, minus the Administrative Costs Reserve, minus any amounts awarded by the District Court to Class Counsel for attorneys' fees and costs, and minus the amount of any service awards to Named Plaintiffs approved by the District Court. The Tier 1 Total Amount shall be equal to the sum of the Claim Amounts for all Settlement Class Members in Tier 1. The Tier 2 Total Amount shall be equal to the sum of the Claim Amounts for all Settlement Class Members in Tier 2. The Tier 1 Net Settlement Amount shall be equal to the Net Settlement Amount multiplied by a fraction, the numerator of which shall be the Tier 1 Total Amount and the denominator of which shall be the sum of the Tier 1 Total Amount and the Tier 2 Total Amount. The Tier 2 Net Settlement Amount shall be equal to the Net Settlement Amount multiplied by a fraction, the numerator of which shall be the Tier 2 Total Amount and the denominator of which shall be the sum of the Tier 1 Total Amount and the Tier 2 Total Amount.

3. Pro Rata Calculations. Each Settlement Class Member who repaid the principal amount borrowed and is in Tier 1 shall be entitled a Cash Award equal to the Claim Amount for the Settlement Class Member multiplied by a fraction, the numerator of which shall be the Claim Amount for the Settlement Class Member and the denominator of which shall be the Tier 1 Net Settlement Amount. Each Settlement Class Member who repaid the principal amount borrowed and is in Tier 2 shall be entitled to a Cash Award equal to the Claim Amount

for the Settlement Class Member multiplied by a fraction, the numerator of which shall be the Claim Amount for the Settlement Class Member and the denominator of which shall be the Tier 2 Net Settlement Amount. After calculation, all fractional Cash Awards shall be rounded down to the nearest cent. Cash Awards will be paid to Settlement Class Members only if their calculated Cash Award is equal to or greater than one dollar (\$1.00), or ten dollars (\$10.00) for Settlement Class Members who will receive debt cancellation under this Agreement.

4. Review Process. Before distributing payments to Settlement Class Members, the Administrator shall provide Class Counsel and counsel for Defendants with its calculations of the Net Settlement Amount, the Tier 1 Total Amount, the Tier 2 Total Amount, the Tier 1 Net Settlement Amount, the Tier 2 Net Settlement Amount, and all Cash Award amounts, in native electronic form, so that counsel may confirm that the calculations are correct. After receiving the foregoing information, Class Counsel and counsel for Defendants each shall either notify the Administrator and each other in writing that it approves the distribution of payments, or informally attempt to resolve any concerns (such as the need for any further adjustments to address rounding issues or the minimum Cash Award amounts set forth above) with opposing counsel and the Administrator. The Parties may (but are not required to) seek the District Court's

assistance in resolving any disputes by filing a Joint Statement regarding the dispute and requesting the scheduling of a telephonic hearing.

5. Payment of Cash Awards. Eligible Settlement Class Members shall not be required to complete claim forms in order to obtain payment. After receiving approval from counsel to the parties, and within 60 days after the Effective Date, the Administrator shall mail to each Settlement Class Member who has not opted out of the Settlement a check in the amount of such Settlement Class Member's Cash Award (or any adjusted amount reached through the above review process) at the most recent address shown in BlueChip's electronic records or identified by the Administrator using the NCOA or any equivalent database, or to any updated address provided by the Settlement Class Member to the Administrator. Settlement Class Members shall be advised that the checks must be deposited or cashed within 90 days of the postmarked date. On the 45th day following the mailing of all Cash Awards, the Administrator shall email all Settlement Class Members receiving a Cash Award a reminder to cash the check. After ninety (90) days from the date of mailing, each Cash Award check shall become void.
6. Reimbursement for Costs for Notice and Administration. After the void date has passed, ZestFinance, Inc. will be entitled to reimbursement from the Fund for the costs of notice and

administration up to \$750,000.00.

7. Remaining Funds. After the void date has passed and ZestFinance, Inc. has received its reimbursement for notice and administration costs, the Parties and the Administrator shall confer regarding the disposition of uncashed settlement payments, any funds created by rounding down the Cash Awards, and any unused portion of the Administrative Costs Reserve that remains. Specifically, the Parties and the Administrator shall determine whether it is reasonable and feasible to make a second distribution to Settlement Class Members who cashed their initial checks. If it is determined by the Parties and the Administrator that it is reasonable and feasible, the Settlement Administrator shall distribute the remaining Fund using the same procedure detailed in Sections 3.4(b)(iii)(1)-(5), except that second distribution payments shall not be made in amounts less than three dollars (\$3.00). If any residual funds remain in the Fund after the second distribution, then such residual funds shall be paid, with the approval of the District Court pursuant to the *cy pres* doctrine, to the National Consumer Law Center upon the condition that the money must be used solely for consumer education and not for litigation or advocacy purposes.

- iv. Monthly Reports Regarding Distribution of Settlement Fund. The Administrator will provide monthly reports to Class Counsel and counsel for Defendants on the distribution of the Fund until such

time as the Fund is fully paid to eligible recipients and depleted or distributed as set forth in this Section 3.4(b) and Section 5.2. The Administrator also shall notify counsel to the Parties in writing when settlement administration has been completed.

3.5 Named Plaintiffs' Service Awards. No later than twenty-one (21) days before the Final Fairness Hearing, Plaintiffs will apply to the District Court for Named Plaintiffs' service awards of \$5,000.00 each, totaling \$125,000.00. The Named Plaintiffs' service awards will be paid from the Fund in the amounts approved by the District Court. The Settlement is not conditioned upon the District Court's approval of the service awards sought by Named Plaintiffs. The service awards, if any, shall be paid to Named Plaintiffs no earlier than the Effective Date and no later than fourteen (14) days after the Effective Date.

3.6 Attorneys' Fees and Costs. No later than twenty-one (21) days before the Final Fairness Hearing, Plaintiffs will apply to the District Court for an award of attorneys' fees and costs. Such attorneys' fees and costs will be paid from the Fund in an amount not to exceed \$6,146,660.00 and as approved by the District Court. The Settlement is not conditioned upon the District Court's approval of the attorneys' fees and costs sought by Plaintiffs. The award of attorneys' fees and costs, if any, shall be paid to Class Counsel no earlier than the Effective Date and no later than fourteen (14) days after the Effective Date.

3.7 Costs of Notice and Administration. All costs of notice and administration are to be paid from the Fund. Under no circumstances will Defendants be responsible to pay additional costs of notice and administration beyond or separate from the amount of the Fund.

3.8 Total Payments by Defendants. In no event shall Zest Defendants be required to pay any more than \$18,000,000.00, and in no event shall BlueChip be required to pay any more

than \$500,000.00, pursuant to this Agreement, inclusive of (i) the amount of the Fund as monetary consideration to the Settlement Class; (ii) notice and administration costs and expenses; (iii) Class Counsel's attorneys' fees and/or litigation costs, (iv) Named Plaintiffs' service awards; and (v) any other fees or costs associated with this Settlement.

IV. RELEASE AND DISMISSAL

4.1 Release. As of the Effective Date of this Settlement, the following releases shall be effective:

a. Upon the Effective Date, each Named Plaintiff and each Settlement Class Member who is sent a payment from the Fund and/or who receives debt cancellation, on behalf of themselves and their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, shall be deemed to have, and by operation of the Judgment shall have, fully released and forever discharged Defendants and each and all of their present, former and future direct and indirect parents (including, without limitation, the Turtle Mountain Band of Chippewa Indians), affiliates, subsidiaries, administrators, agents, successors, reorganized successors, predecessors-in-interest, or any financial institutions, corporations, trusts, or other entities that may hold or have held any interest (including, without limitation, any participation or security interest) in any account or any receivables relating to any account, or any receivables or group of receivables, or any direct or indirect interest in the operation or ownership of BlueChip or ZestFinance, and all of the aforementioned's respective members, officers, directors, trustees, employees, partners, contractors, lenders, investors, attorneys, insurers, joint venturers, shareholders, agents, vendors, representatives, elected officials, and assigns, from

any and all rights, duties, obligations, claims, actions, causes of action or liabilities, whether arising under local, state, tribal, or federal law (including, without limitation, under any consumer-protection or unfair and deceptive practices acts), whether by constitution, statute, contract, common law, or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, as of the Effective Date, including, without limitation: (1) that arise out of or relate in any way to any or all of the claims, causes of action, acts, omissions, facts, matters, transactions, or occurrences that were or could have been directly or indirectly alleged, asserted, described, set forth or referred to in the Actions; or (2) that arise out of or relate in any way to the administration of the Settlement; provided, however, that any person or entity who purchased charged-off debt from BlueChip or any successor-in-interest to BlueChip prior to December 31, 2019 shall not be released.

b. Upon the Effective Date, each Settlement Class Member who is not sent a payment from the Fund and who does not receive debt cancellation, on behalf of themselves and their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, shall be deemed to have, and by operation of the Judgment shall have, fully released and forever waived their rights to bring a class action, collective action, or mass action against Defendants and each and all of their present, former and future direct and indirect parents (including, without limitation, the Turtle Mountain Band of Chippewa Indians), affiliates, subsidiaries, administrators, agents, successors, reorganized successors, predecessors-in-interest, or any financial institutions,

corporations, trusts, or other entities that may hold or have held any interest (including, without limitation, any participation or security interest) in any account or any receivables relating to any account, or any receivables or group of receivables, or any direct or indirect interest in the operation or ownership of BlueChip or ZestFinance, and all of the aforementioned's respective members, officers, directors, trustees, employees, partners, contractors, lenders, investors, attorneys, insurers, joint venturers, shareholders, agents, vendors, representatives, elected officials, and assigns, from any and all rights, duties, obligations, claims, actions, causes of action or liabilities, whether arising under local, state, tribal, or federal law (including, without limitation, under any consumer-protection or unfair and deceptive practices acts), whether by constitution, statute, contract, common law, or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, as of the Effective Date, including, without limitation: (1) that arise out of or relate in any way to any or all of the claims, causes of action, acts, omissions, facts, matters, transactions, or occurrences that were or could have been directly or indirectly alleged, asserted, described, set forth or referred to in the Actions; or (2) that arise out of or relate in any way to the administration of the Settlement. It is the intention of the Parties that the release provided in this subsection does not release a class member's right to bring an individual claim against any of the Released Parties. By entering into this agreement, Defendants do not waive and expressly reserve the right to move to compel arbitration of any of these claims if they are brought in court.

c. Without limiting the foregoing, the claims released above specifically include claims that the Named Plaintiffs and Settlement Class Members (or any of them) do not know or suspect to exist in their favor at the time that the Settlement, and the releases contained in this Agreement, becomes effective. The Named Plaintiffs acknowledge that they each have read, understand, and waive, on behalf of themselves and the Settlement Class Members, all rights and benefits of Section 1542 of the California Civil Code (or any other statute or legal doctrine limiting the effectiveness of releases), which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Named Plaintiffs understand and acknowledge, and the Settlement Class Members shall be deemed to understand and acknowledge, the significance of this waiver of California Civil Code Section 1542 and any other applicable law relating to limitations on releases. In connection with such waiver and relinquishment, Named Plaintiffs acknowledge on behalf of themselves and the Settlement Class Members that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of the Settlement, but that it is their intention to release fully, finally and forever all Released Claims, and in furtherance of such intention, the release of the Released Claims shall remain in effect notwithstanding the discovery or existence of any such additional or different facts.

4.2 Scope of Release. The releases in Section 4.1 shall apply to Named Plaintiffs and all Settlement Class Members as of the Effective Date of this Settlement. Any Settlement Class Members who do not wish to be subject to these releases shall have the right to exclude themselves by way of the general opt-out procedures set forth in Section 7.2 of this Agreement and the Preliminary Approval Order.

4.3 Dismissal. Provided that the Final Approval Order has been entered, in each Action (other than the Titus Action, which has been dismissed), including any related appeals arising from the Actions, that had previously been stayed pending approval of the Settlement by the Court, the Parties shall file stipulations or other appropriate documents requesting dismissal of the actions with prejudice within 7 days of the Effective Date.

V. NOTICE AND SETTLEMENT ADMINISTRATION

5.1 Settlement Administrator. Subject to approval by the District Court, the Administrator shall be responsible for administering the Settlement in accordance with this Agreement and applicable orders from the Court. The Administrator may disburse money from the Fund only in accordance with this Agreement and applicable orders of the Court, upon receiving written consent (which may be provided via e-mail) from counsel for all Parties. The actions of the Administrator shall be governed by the terms of this Agreement. The Parties shall provide information reasonably requested by the Administrator pursuant to this Agreement.

5.2 Costs of Notice and Administration. The costs of notice and administration shall be paid entirely from the Fund.

5.3 Class Notice. Notice consistent with the due process requirements of Fed. R. Civ. P. 23 shall be provided within thirty (30) days following entry of the Preliminary Approval Order, as follows:

a. Direct Notice, substantially in the form attached hereto as Exhibit 1 or as modified by the District Court with the consent of all Parties, will be sent via electronic mail (email) to Settlement Class Members within thirty (30) days after the date of entry of the Preliminary Approval Order at the most recent email address shown in BlueChip's electronic records, as maintained in the ordinary course of business, for the loan at issue.

b. Direct Notice, substantially in the form attached hereto as Exhibit 1 or as modified by the District Court with the consent of all Parties, will be mailed, via first class mail, to Settlement Class Members whose email notice results in a bounce-back email. Mailing addresses will be run once through the NCOA, or any other postal address verification database that the Administrator deems proper, prior to mailing. Returned Direct Notices will be re-mailed if they are returned within twenty (20) days of the postmark date of the Direct Notice and contain a forwarding address. No further e-mailed or mailed notice shall be required except as otherwise expressly provided herein.

c. The Administrator will establish and maintain an Internet site, using a domain name approved by all Parties, on which will be posted the Direct Notice as well as the Class Action Complaint; this Agreement; any motions and memoranda seeking approval of this Settlement, approval of attorneys' fees and costs, or approval of Named Plaintiffs' service awards; any orders of the District Court relating to this Settlement; and any other information the Parties believe necessary and appropriate. The Direct Notice shall direct recipients to the location of the Internet site. The website shall make available a form that allows Settlement Class

Members to update their mailing addresses; Settlement Class Members may also contact the Administrator by telephone or mail to update their mailing addresses. Within sixty (60) days after entry of the Preliminary Approval Order, the website shall allow Class Members to determine whether or not they are eligible for a Cash Award by entering their unique identifier (provided on the Direct Notice or available by calling the Administrator) and last name. The website shall become active within ten (10) days after the District Court's entry of the Preliminary Approval Order and shall remain active until at least 30 days after administration of the Settlement has concluded. The Parties shall have the right to audit the work of the Claims Administrator at any time.

d. Defendants shall ensure compliance with the notice provisions of the Class Action Fairness Act ("CAFA"), and approval dates will be set in accord with CAFA. All CAFA notices shall be subject to approval by all Parties before service.

5.4 Certification to the District Court. No later than twenty-one (21) days before the Final Fairness Hearing, the Administrator and/or its designees shall file a declaration with the District Court verifying that notice has been provided to the Settlement Class in accordance with this Agreement and the District Court's Preliminary Approval Order.

VI. DISPUTE RESOLUTION

6.1 Dispute Resolution. The Parties agree to meet and confer in good faith in regard to any dispute relating to this Settlement or to administration of this Settlement. Any dispute that cannot be resolved by the Parties shall be submitted, not earlier than thirty (30) days after written notice of the dispute was first given, to the assigned Magistrate Judge for his or her written recommendation as to a resolution. In the event any Party disagrees with the written recommendation, the Party must file a motion in the Action to address the issue within ten (10)

days of receiving the recommendation.

VII. PRELIMINARY APPROVAL ORDER AND FINAL FAIRNESS HEARING

7.1 Preliminary Approval Order. Class Counsel will seek the District Court's approval of this Settlement by filing an appropriate Motion for Preliminary Approval and seeking entry of the Preliminary Approval Order, substantially in the form attached hereto as Exhibit 2. The Parties shall cooperate in presenting such papers to the District Court by February 10, 2020, i.e., two weeks in advance of the currently scheduled February 24, 2020 preliminary approval hearing. Concurrently with the filing of Plaintiffs' Motion for Preliminary Approval, Named Plaintiffs shall file a proposed amended complaint in the District Court, together with a stipulation to permit filing of such amended complaint, solely for the purpose of adding additional plaintiffs so that all Named Plaintiffs are plaintiffs in the *Turner* case.

7.2 Opt-Out/Requests for Exclusion from Settlement.

a. Requests for Exclusion. Prospective Settlement Class Members shall be given the opportunity to opt out of the Settlement Class. All requests by Settlement Class Members to be excluded must be in writing and mailed to the Administrator, postmarked no later than ninety (90) days after entry of the Preliminary Approval Order. An appropriate written request for exclusion must be personally signed by the Settlement Class Member and must include: (i) the name of this Action; (ii) the Settlement Class Member's name, address and telephone number; and (iii) the following statement: "I request to be excluded from the class settlement in this case." No Settlement Class Member, or any person acting on behalf of or in concert or participation with that Settlement Class Member, may exclude any other Settlement Class Member from the Settlement Class.

b. Delivery to Parties/Filing with District Court. The Administrator shall provide copies of the original requests for exclusion to the Parties by no later than five (5) days after the opt-out deadline. Not later than twenty-one (21) days before the Final Fairness Hearing, the Administrator shall file with the District Court a declaration that lists all of the opt-outs received.

c. Effect. All prospective Settlement Class Members who timely exclude themselves from the Settlement Class will not be eligible to receive any consideration pursuant to this Settlement and will not be bound by any further orders or judgment in this Action, and will preserve their ability to independently pursue any individual claims they may have against the Released Parties. In the event of ambiguity as to whether a Settlement Class Member has requested to be excluded, the Settlement Class Member shall be deemed not to have requested exclusion.

d. Right to Withdraw for Excessive Opt-Outs. If the number of Settlement Class Members who request exclusion exceeds 5% of the Settlement Class, any defendant may terminate this Settlement in its sole discretion and the Parties shall be returned to the *status quo ante* as of the time that Plaintiffs initiated the Action for all litigation purposes, as if no settlement has been negotiated or entered into. If a defendant exercises this right to declare this Settlement void, it shall provide Class Counsel with written notice of this election no later than twenty (20) days after the opt-out deadline.

7.3 Objections to Settlement.

a. Right to Object. Any Settlement Class Member who has not previously

opted out as provided in Section 7.2 may appear at the Final Fairness Hearing to argue that the proposed settlement should not be approved, to oppose the application of Class Counsel for an award of attorneys' fees and costs, and/or to oppose the service awards to Named Plaintiffs. Any Settlement Class Member who wishes to object to the Settlement must file a written objection with the District Court no later than the date specified by subsection (b) of this section. Settlement Class Members who fail to timely file and serve written objections shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to this Settlement.

b. Deadline. Any such objection must be filed or submitted by mail to the District Court in a writing postmarked no later than ninety (90) days after entry of the Preliminary Approval Order. Copies of all objections must also be mailed or e-mailed to the Administrator, who shall forward by email immediately upon receipt copies of the objections and all related papers to counsel for the Parties. Notwithstanding this deadline, objections solely as to attorneys' fees or service awards may be made no later than fourteen (14) days after the filing of a motion for the award of attorneys' fees and/or service awards.

c. Content of Objections. All objections must include: (i) the name of this Action; (ii) the objector's name, address and telephone number; (iii) the account number(s) of the extension of credit; (iv) a sentence confirming that he or she is a Settlement Class Member; (v) any factual basis and legal grounds for the objection to the Settlement; and (vi) a list of any prior cases in which the objector or the objector's counsel have objected to a class settlement. Counsel representing an

objecting Settlement Class Member must enter an appearance in this Action.

d. The right to object to the Settlement must be exercised individually by a Settlement Class Member or through his or her attorney, and not as a member of a group, class or subclass.

VIII. FINAL APPROVAL OF SETTLEMENT AND OTHER CONDITIONS

8.1 Final Approval Order. On a date to be set by the District Court, Plaintiffs will petition the District Court to enter the Final Approval Order in this Action in the form attached as Exhibit 3. The Final Approval Order that the Parties propose to the District Court will provide:

- a. That the Action, for purposes of this Settlement, may be maintained as a class action on behalf of the Settlement Class;
- b. That Named Plaintiffs fairly and adequately represent the interests of the Settlement Class;
- c. That Class Counsel fairly and adequately represent Plaintiffs and the Settlement Class;
- d. That the Direct Notice and Internet Notice satisfy the requirements of due process, the Federal Rules of Civil Procedure and any other applicable laws;
- e. That the Settlement is fair, reasonable and adequate to the Settlement Class and that each Settlement Class Member shall be bound by the Settlement, including the releases contained in Section IV above;
- f. That the Settlement represents a fair resolution of all claims asserted on behalf of the Settlement Class and fully and finally resolves all such claims;
- g. That this Settlement should be, and is, approved;
- h. The amounts of the attorneys' fees, costs, and Named Plaintiff service awards;

- i. Confirmation of the opt outs from the Settlement;
- j. Overruling of objections, if any;
- k. Dismissal, on the merits and with prejudice, of all claims and an injunction prohibiting all Settlement Class Members or their representatives or privies from bringing, joining, or continuing to prosecute against the Released Parties any Released Claims and entering judgment thereon; and
- l. Retention of jurisdiction of all matters relating to the modification, interpretation, administration, implementation, effectuation and enforcement of this Settlement.

IX. TERMINATION OF SETTLEMENT

9.1 Non-Approval of Settlement. If the District Court declines to preliminarily or finally approve, or requires material modification of the Agreement, the Parties shall request that the Actions continue to be stayed for a period of thirty (30) days to allow the Parties meet and confer in good faith with regard to how to address any questions raised and/or changes required by the District Court, including whether to accept the Agreement as modified by the District Court or modify the Agreement for resubmission to the District Court for approval. If within thirty (30) days after entry of the District Court's order denying preliminary or final approval or requiring material modification of the Agreement, the Parties do not agree to accept the Agreement as modified by the District Court or fail to agree to modify the Agreement for resubmission to the District Court for approval, any Party may unilaterally terminate the Agreement by providing written notice of this election to all Parties. In such an event, nothing in this Agreement or filed in connection with seeking settlement approval shall be construed as an admission or concession of any fault, wrongdoing, or liability of any kind, nor are Defendants estopped or otherwise precluded from challenging any of the allegations in further proceedings in the Action or any other

action. Moreover, the Parties shall be deemed to have preserved all of their rights or defenses as of the date that Plaintiffs initiated the Action and shall not be deemed to have waived any substantive or procedural rights of any kind that they may have as to each other or any member of the Settlement Class. Likewise, in the event that this Settlement is approved without material modification by the District Court, but is later reversed or vacated on appeal, each of the Parties shall have the right to withdraw from this Settlement and return to the *status quo ante* as of the date that Plaintiffs initiated the Action for all litigation purposes, as if no agreement had been negotiated or entered into, and shall not be deemed to have waived any substantive or procedural rights of any kind that they may have as to each other or any member of the Settlement Class.

X. MISCELLANEOUS PROVISIONS

10.1 Further Assurance. Each of the Parties shall execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement.

10.2 No Admission of Liability. It is expressly recognized and accepted by Plaintiffs that the Released Parties deny any liability and that Defendants are settling solely to avoid the cost and inconvenience of litigation.

10.3 Evidentiary Preclusion. Neither this Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Released Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. In addition, except for purposes of demonstrating the validity of this Agreement or its terms, neither the fact of, nor any documents relating to, any Defendant's withdrawal from the Settlement, any failure of the District Court to approve the Settlement, and/or objections or interventions may be used as

evidence for any purpose whatsoever. The Released Parties may file this Agreement and/or Judgment in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

10.4 No Invocation of Sovereign Immunity as a Defense to the Final Settlement Agreement. BlueChip agrees that it will not invoke sovereign immunity as a defense to the enforcement of the Agreement. BlueChip further agrees to submit to the jurisdiction of the United States District Court for the Eastern District of Virginia with respect to and solely with respect to the enforcement of the Agreement. Nothing contained herein shall be construed as a waiver of BlueChip's sovereign immunity defense (or the sovereign immunity of any person or entity related to BlueChip) in any other context, proceeding, or litigation.

10.5 Entire Agreement. This Agreement constitutes the entire agreement between and among the parties with respect to the settlement of the Action. This Agreement supersedes all prior negotiations and agreements. The Parties, and each of them, represent and warrant that no other party or any agent or attorney of any of the Parties has made any promise, representation, or warranty whatsoever not contained in this Agreement and the other documents referred to in this Agreement to induce them to execute the same. The Parties, and each of them, represent and warrant that they have not executed this Agreement, or the other documents referred to in this Agreement, in reliance on any promise, representation or warranty not contained in this Agreement and the other documents referred to in this Agreement.

10.6 Confidentiality. Subject to order of the District Court, any and all drafts of this Agreement and other settlement documents relating to the negotiations between the Parties will

remain confidential and will not be disclosed or duplicated except as necessary to obtain preliminary and/or final court approval. This provision will not prohibit the Parties from submitting this Agreement to the District Court in order to obtain preliminary and/or final approval of the settlement. Furthermore, subject to order of the District Court, any and all discovery materials in this case shall remain confidential and shall not be disclosed or duplicated. It is agreed that within thirty (30) days after either the completion of settlement administration or the termination of the Settlement based on denial of any motion seeking preliminary or final approval or any other reason permitted by this Agreement, Class Counsel shall deliver a declaration certifying that all information exchanged in connection with the Settlement, including but not limited to, settlement negotiation documents, mediation and confirmatory discovery, the list of Settlement Class Members, loan-level data, and any summaries, copies, and/or extracts thereof have been returned to the producing party or destroyed in a manner not allowing the information to be recovered, and purged from all machine-readable media on which it resides.

10.7 Publicity. The Parties agree that no press releases or affirmative statements will be made to the media, except as otherwise agreed in writing by the Parties.

10.8 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the heirs, successors, and assigns of the Parties.

10.9 Immediate Suspension of Proceedings. The Parties agree to stay the Actions identified above (other than the Titus Action, which has been dismissed) and any related appeals. The Parties shall request that each case be stayed to allow the Settlement to be completed, maintaining the procedural posture of each case pending final approval. Plaintiffs and their counsel agree not to file any additional cases arising from loans covered by this Settlement pending Final Approval of the Settlement. Any party that served third-party discovery requests in any of

the Actions shall immediately withdraw all such requests by letter to the recipients with copies to counsel for all Parties, subject to renewing such discovery if the settlement fails to receive preliminary or final approval.

10.10 Competency of the Parties. The Parties, and each of them, acknowledge, warrant, represent, and agree that in executing and delivering this Agreement, they do so freely, knowingly, and voluntarily, that they had an opportunity to and did discuss its terms and their implications with legal counsel of their choice, that they are fully aware of the contents and effect of this Agreement, and that such execution and delivery is not the result of any fraud, duress, mistake, or undue influence whatsoever.

10.11 Authority. The persons signing this Agreement on behalf of an entity warrant and represent that they are authorized to sign on the respective entity's behalf. Each of the Plaintiffs has personally signed this Agreement.

10.12 Modification. No modification of or amendment to this Agreement shall be valid unless it is in writing and signed by all Parties hereto or agreed to on the record in the District Court.

10.13 Construction. Each of the Parties has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the Agreement shall not be construed against any of the Parties. Before declaring any provision of this Agreement invalid, the District Court shall first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedent so as to find all provisions of this Agreement valid and enforceable. After applying this rule of construction and still finding a provision invalid, the District Court shall thereupon interpret the invalid provision to the fullest extent possible to otherwise enforce the invalid provision. The invalidity of any one provision shall not render this

Agreement otherwise invalid and unenforceable unless the provision found to be invalid materially affects the terms of this Agreement after application of the rules of construction set forth in this paragraph.

10.14 No Waiver. The failure of any of the Parties to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, or any other provision, nor in any way to affect the validity of this Agreement or any part hereof, or the right of any of the Parties thereafter to enforce that provision or each and every other provision. No waiver of any breach of this Agreement shall constitute or be deemed a waiver of any other breach.

10.15 Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Virginia, including all matters of construction, validity, performance, and enforcement and without giving effect to the principles of conflict of laws.

10.16 Notices/Communications. All requests, demands, claims, and other communications hereunder shall: (a) be in writing; (b) delivered by U.S. mail and electronic mail; (c) be deemed to have been duly given on the date received; and (d) be addressed to the intended recipient as set forth below:

If to Plaintiffs or the Settlement Class:

Kristi C. Kelly
3925 Chain Bridge Road, Suite 202
Fairfax, Virginia 22030
email: kkelly@kellyguzzo.com

If to Zest Defendants:

Shon Morgan
Quinn Emanuel Urquhart & Sullivan, LLP
865 S. Figueroa Street, 10th Floor
Los Angeles, California 90017
shonmorgan@quinnemanuel.com

If to BlueChip:

Before March 1, 2020:
Scott M. Pearson
Manatt, Phelps & Phillips, LLP
11355 West Olympic Boulevard
Los Angeles, CA 90064
SPearson@manatt.com

March 1, 2020 and after:
Scott M. Pearson
Manatt, Phelps & Phillips, LLP
2049 Century Park East, Suite 1700
Los Angeles, CA 90067
SPearson@manatt.com

Each of the Parties may change the address to which requests, demands, claims, or other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth herein.

10.17 Counterparts. This Agreement may be executed in one or more counterparts and, if so executed, the various counterparts shall be and constitute one instrument for all purposes and shall be binding on each of the Parties that executed it, provided, however, that none of the Parties shall be bound unless and until all Parties have executed this Agreement. For convenience, the several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

10.18 Cooperation. The Parties, and their respective counsel, agree to cooperate with each other and do all things reasonably necessary to obtain preliminary approval of the Settlement; to obtain final approval of the Settlement; and to otherwise ensure that a fully effective final approval of the Settlement occurs. In the event the District Court disapproves or sets aside this Agreement or any material part hereof for any reason, then the Parties will either jointly agree to accept the Agreement as modified by the Court or engage in negotiations in an effort to jointly agree to modify the Agreement for resubmission to the District Court for approval.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates set forth below.

Dated: _____, 2020

By: _____
David Hawkins
Plaintiff

Dated: _____, 2020

By: _____
Anastasia Sherman
Plaintiff

Dated: _____, 2020

By: _____
Lula Williams
Plaintiff

Dated: _____, 2020

By: _____
Dianne Turner
Plaintiff

Dated: _____, 2020

By: _____
Susie Allen
Plaintiff

Dated: _____, 2020

By: _____
Faith Thomas
Plaintiff

Dated: _____, 2020

By: _____
Sonji Grandy
Plaintiff

Dated: _____, 2020

By: _____
Gwendolyn Beck
Plaintiff

Dated: _____, 2020

By: _____
Renee Galloway
Plaintiff

Dated: _____, 2020

By: _____
Stanie Haggins,
Plaintiff

Dated: _____, 2020

By: _____
Sheila Simmons
Plaintiff

Dated: _____, 2020

By: _____
Dashawn Hunter
Plaintiff

Dated: _____, 2020

By: _____
Tonekia Showell
Plaintiff

Dated: _____, 2020

By: _____
Sheila Burns
Plaintiff

Dated: _____, 2020

By: _____
Marketa Bass
Plaintiff

Dated: _____, 2020

By: _____
Keisha Hamm
Plaintiff

Dated: _____, 2020

By: _____
John Glatt
Plaintiff

Dated: _____, 2020

By: _____
Beverly Gross
Plaintiff

Dated: _____, 2020

By: _____
Krista Biehl
Plaintiff

Dated: _____, 2020

By: _____
Darlene Gibbs
Plaintiff

Dated: _____, 2020

By: _____
Rachel Bulette
Plaintiff

Dated: _____, 2020

By: _____
Ricky Panas
Plaintiff

Dated: _____, 2020

By: _____
Lorna Johnson
Plaintiff

Dated: _____, 2020

By: _____
Esther Taitai
Plaintiff

Dated: _____, 2020

By: _____
Cynthia Burns
Plaintiff

Dated: _____, 2020

By: _____
Douglas Merrill
Defendant

Dated: _____, 2020

ZESTFINANCE, INC.

By: _____
Its: _____

Dated: _____, 2020

BLUECHIP FINANCIAL

By: _____
Its: Jamie Azure
Chairman

Dated: _____, 2020

TERRELL MARSHALL LAW GROUP
PLLC

By: _____
Beth E. Terrell

Attorneys for Plaintiffs

Dated: _____, 2020

BERGER MONTAGUE PC

By: _____
E. Michelle Drake

Attorneys for Plaintiffs

Dated: _____, 2020

GUPTA WESSLER PLLC

By: _____
Matthew W. Wessler

Attorneys for Plaintiffs

Dated: _____, 2020

KELLY GUZZO PLC

By: _____
Andrew J. Guzzo

Attorneys for Plaintiffs

Dated: _____, 2020

CONSUMER LITIGATION ASSOCIATES,
P.C.

By: _____
Leonard A. Bennett

Attorneys for Plaintiffs

AGREED AS TO CONFIDENTIALITY AND APPROVED AS TO FORM:

Dated: _____, 2020

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By: _____
Shon Morgan

Attorneys for ZestFinance, Inc. and
Douglas Merrill

AGREED AS TO CONFIDENTIALITY AND APPROVED AS TO FORM:

Dated: _____, 2020

MANATT, PHELPS & PHILLIPS, LLP

By: _____
Scott M. Pearson

Attorneys for BlueChip Financial

325683257.7

Exhibit 1 to
Stipulation and Agreement of Settlement

Return Address Box 123
Return City, ST 12345-6789

E1234 0000001 P01 T00001 *****5-DIGIT 12345



John Q. Sample
123 Any Street
Any Town, PA 12345-6789



If You Obtained a Loan from Spotloan You Could Get Loan Forgiveness and/or a Cash Payment from a Settlement.

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

- Read this Notice. It states your rights and provides you with information regarding a proposed nationwide class action (“Settlement”) with BlueChip Financial, ZestFinance, Inc. and Douglas Merrill (“Defendants”) involving loans made by BlueChip Financial, dba Spotloan.
- This Notice is a summary of information about the Settlement and explains your legal rights and options because you are a member of the class of borrowers who will be affected if the Settlement is approved by the Court. The complete terms of the proposed Settlement are available at the Settlement website, www.xxxxxxxxxxxx.com. You may also contact Class Counsel for further details and advice.
- Lawsuits were brought on behalf of all individuals who obtained a loan from January 1, 2012, to October 31, 2018 from Spotloan.
- The lawsuits claimed that the loans were made at annual interest rates greater than what is permitted by state law or the lender did not have a license to lend when one was required, making the loans illegal, deceptive, or unfair under various state and federal laws. Defendants deny any and all wrongdoing and liability in these lawsuits.
- As part of the proposed Settlement, loans made prior to November 1, 2018 and owned by BlueChip as of December 31, 2019 will be cancelled if they have not been paid in full. In addition, you may be entitled to a cash payment.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	You will remain a member of the Settlement Class and may be eligible for benefits, including cash payments. If you receive debt cancellation or payment, you will give up rights to ever sue the Defendants and others about the legal claims that are in the lawsuits. If you are not eligible for debt cancellation or payment or don’t receive these benefits, you will give up the right to bring a class action, collective action or mass action against the Defendants.
EXCLUDE YOURSELF	You can opt out of the Settlement and you will not be eligible for any benefits, including any cash payments. You will retain rights that you would otherwise give up if you do nothing. There is no guarantee that another lawsuit would be successful or would lead to a larger or better recovery than this Settlement.
OBJECT TO THE SETTLEMENT	If you do not exclude yourself, you may write to the Court about why you don’t like the Settlement or why the Court should not approve it.

1. WHY IS THERE A NOTICE?

This Notice is about a proposed nationwide Settlement that will be considered by the United States District Court in Richmond, Virginia (the “Court”). The Settlement must be approved by this Court. The lawsuit is assigned to Hon. David J. Novak with the

2. WHAT ARE THESE LAWSUITS ABOUT?

The claims involved in the Settlement arise out of loans made in the name of BlueChip Financial dba Spotloan. Services were provided to Spotloan by ZestFinance, Inc. (“ZestFinance”) and by an individual, Douglas Merrill.

The Plaintiffs in these cases claim that the Defendants violated federal and various state laws by: (a) making and collecting loans with annual interest rates in excess of the amount allowed by state law, (b) lending to consumers when these entities were required to have a license from a state to lend to consumers and they did not have that license, (c) servicing or collection activities, or (d) their involvement in and support of other parties’ conduct.

The Defendants vigorously deny any wrongdoing. They assert that the loans are legal because the rates and terms were authorized under the respective laws of the Native American Indian Tribe that owns and operates BlueChip Financial and because the borrowers each explicitly agreed that tribal laws governed the loan(s). Defendants also contest the consumers’ claims on a number of additional grounds, including that the loans’ rates and terms were fully disclosed, that the loans benefitted the consumers, that tribal companies are immune from suit, and that consumers agreed to arbitrate any disputes.

Important case documents may be accessed at the Settlement website, www.xxxxxxxxxxxx.com.

3. WHY IS THIS A CLASS ACTION?

In a class action or proceeding, one or more people, called class representatives, bring an action on behalf of people who have similar claims. All of the people who have claims similar to the class representatives are a class or class members, except for those who exclude themselves from the class. Here, the Plaintiffs have filed a lawsuit on behalf of the class against the Defendants.

4. HOW DO I KNOW IF I AM INCLUDED IN THE SETTLEMENT?

You are a member of the Settlement Class and would be affected by the Settlement if you obtained a loan from Spotloan between January 1, 2012 and October 31, 2018.

If you received this Notice, we believe you are a member of the Settlement Class and you will be a Settlement Class member unless you exclude yourself.

5. WHAT DOES THE SETTLEMENT PROVIDE AND HOW MUCH WILL MY PAYMENT BE?

The Defendants have agreed to provide the following benefits and others more fully described at the Settlement website, www.xxxxxxxxxxxx.com:

- a. **Loan Forgiveness and Credit Reporting Removal:** Any loan made during the class period that is owned by BlueChip as of December 31, 2019 will be adjusted to a zero balance. For those loans, BlueChip has agreed to request that the consumer reporting agencies to which BlueChip previously reported information delete the loans from credit reports if any payment was reported as not having been timely made.
- b. **Consumer Refunds:** A fund will be created to provide refunds to some Class Members. The \$18,500,000 fund will come from the Defendants. If the Settlement receives the Court’s approval, and if you are entitled to any payment, a check for your portion will be mailed to you automatically. The amount of your check will depend on the state in which you resided when you took out the loan and that state’s legal rate of interest, whether or not you repaid the original principal amount of the loan (i.e., the amount you borrowed); and the amount you paid on the loan, as further explained below. You will only get a proportionate share of the recovery (because the total available settlement funds will be insufficient to provide everyone a full refund).

The fund will be allocated to Class Members based on their address at the time of the origination of their loan. You will not receive a cash payment, but will receive other benefits if you:

1. Resided in Arizona, Arkansas, Colorado, Connecticut, Idaho, Illinois, Indiana, Kansas, Kentucky, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, Ohio, South Dakota, Vermont, Virginia, or Wisconsin ("Tier 1") and did not make payments above the principal amount you borrowed on your loan.
2. Resided in Alabama, Alaska, California, Delaware, Florida, Georgia, Hawaii, Iowa, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Washington, West Virginia, Washington D.C., or Wyoming ("Tier 2") and did not pay interest above your state's legal limits for the loan (a list of each state's legal limits for these purposes is available at www.xxxxxxxxxxxx.com); or
3. Resided in Utah or Nevada ("Tier 3") (which had no interest restrictions).

Cash payments will be paid only if the calculated payment amount is equal to or greater than one dollar (\$1.00), or ten dollars (\$10.00) for Class Members who will receive debt cancellation under this Agreement.

- c. **Other Benefits:** With limited exceptions, Defendants have also agreed that any remaining unpaid accounts covered by the Settlement will not be sold or transferred to third parties, and not to share certain borrower information with third parties.

6. WHAT DO I HAVE TO DO TO RECEIVE MY PAYMENT?

Nothing. *If you are entitled to a cash payment*, the Settlement Administrator will mail you a check automatically approximately 60 days after the Court grants final approval to the Settlement and any appeals are resolved. The Settlement Administrator will mail the check to the address listed at the top of this Notice, so please update your address if you move. You can contact the Settlement Administrator at the telephone number or address below, or through the Settlement website, if your address has changed.

For information about whether you will qualify for a cash payment, go to www.xxxxxxxxxxxx.com or call 1-8##-###-####. Please allow up to 30 days from your receipt of this notice for the website and toll-free number to make available information regarding your entitlement to a cash payment. Once available, you will be able to determine your eligibility using your last name and the unique identifying number provided at the top of this notice.

7. WHAT AM I GIVING UP TO GET A BENEFIT AND STAY IN THE SETTLEMENT CLASS?

Unless you exclude yourself, you are a member of the Settlement Class. If you receive any debt cancellation or are sent a payment, you cannot sue, continue to sue, or be part of any other lawsuit against the Defendants concerning the claims in the lawsuits or the administration of this Settlement, including, without limitation claims: (1) that arise out of or relate in any way to any or all of the claims, causes of action, acts, omissions, facts, matters, transactions, or occurrences that were or could have been directly or indirectly alleged, asserted, described, set forth or referred to in the Actions; or (2) that arise out of or relate in any way to the administration of the Settlement.

This means that you will not be able to pursue or recover any additional money from the Released Parties beyond what you receive as part of this Settlement.

If you are not entitled to debt cancellation or a payment, you will waive your right to bring a class action, collective action or mass action against the Released Parties related to the claims asserted in these cases as well as other claims that could have been brought. You keep the right to bring an individual claim against the Released Parties. Staying in the Class also means that any Court orders pertaining to this Settlement will apply to you and legally bind you.

The Released Parties include: (1) Douglas Merrill; (2) ZestFinance, Inc., and each of their respective (both current and former) parents, subsidiaries, administrators, successors, reorganized successors, members, current and former directors, officers, trustees, shareholders, employees, partners, contractors, agents, lenders, investors, insurers, and attorneys; and (3) BlueChip Financial and each of its present, former and future direct and indirect parents (including the Turtle Mountain Band of Chippewa Indians), affiliates, subsidiaries, administrators, agents, successors, reorganized successors, predecessors-in-interest, or any financial institutions, corporations, trusts, or other entities that may hold or have held any interest (including,

without limitation, any participation or security interest) in any account or any receivables relating to any account, or any receivables or group of receivables, or any direct or indirect interest in the operation or ownership of BlueChip, and all of the aforementioned's respective members, officers, directors, trustees, employees, partners, contractors, lenders, investors, attorneys, insurers, joint venturers, shareholders, agents, vendors, representatives, elected officials (including, without limitation, any members of the Tribal Council), and assigns; provided, however, that any person or entity who purchased charged-off debt from BlueChip or any successor-in-interest to BlueChip prior to December 31, 2019 shall not be released

It is the intention of the Parties that the release provided in this subsection does not release a class member's right to bring an individual claim against any of the Released Parties. By entering into this agreement, Defendants do not waive and expressly reserve the right to move to compel arbitration of any of these claims if they are brought in court.

The complete Release and list of Released Parties can be found in the Settlement Agreement, which is available on the Settlement website at www.xxxxxxxxxxxx.com.

8. HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT?

To be excluded from this Settlement, you must send an "Exclusion Request" by mail. You may download a form to use from the Settlement website or you may send your own letter which must include:

- The name of this action: *Turner v. ZestFinance, Inc.*,
- Your name, address, and telephone number,
- A statement that you want to be excluded: "I request to be excluded from the class settlement in this case," and
- Your Signature.

Your Exclusion Request must be mailed, **postmarked** no later than [90 days after preliminary approval order], to:

Spotloan Settlement
c/o Settlement Administrator
P.O. Box #####
City, State #####-####

9. HOW DO I TELL THE COURT THAT I OBJECT TO AND DO NOT LIKE THE SETTLEMENT?

Objecting to the Settlement is different than excluding yourself from the Settlement.

If you are a Settlement Class Member and you do not exclude yourself from the Settlement, you can object to the Settlement if you think the Settlement is not fair, reasonable, or adequate, and that the Court should not approve the Settlement. You also have the right to appear personally and be heard by the Judges. The Court and the Parties will consider your views carefully.

To object, you must send a letter stating your views to each of the parties listed below:

COURT
Clerk of the Court
United States District Court
Eastern District of Virginia
701 E. Broad St.
Richmond, VA 23219

SETTLEMENT ADMINISTRATOR
Spotloan Settlement
c/o Settlement Administrator
P.O. Box #####
City, State #####-####

Or by email to:
[ADD EMAIL ADDRESS]

You should include the docket number on the front of the envelope and letter you file to the Court: "EDVA USDC Case No. 3:19-cv-293".

All objections must include:

- The name of this action: *Turner v. ZestFinance, Inc.*;
- Your name, address, and telephone number,
- Your account number (if you know it) with Spotloan,
- A sentence confirming that you are a Settlement Class Member,
- Factual basis and legal grounds for the objection to the Settlement, and
- A list of any prior cases in which you or your counsel have objected to a class settlement. Counsel representing an objecting Settlement Class Member must enter an appearance in these cases. If you want to appear personally at the hearings, you must state that in your Objection.

Objections must be sent to the Court and the Settlement Administrator and must be postmarked no later than [90 days after preliminary approval]. No later than twenty-one (21) days before the Final Fairness Hearing, Class Counsel will apply to the Court for an award of attorneys' fees and costs, as well as the award of service payments to the named plaintiffs in the lawsuits. This motion and any supporting papers will be posted to the settlement website on that date (www.xxxxxxxxxxxx.com) or can be obtained from the Settlement Administrator by calling the toll-free number (1-8##-###-####). Objections to any Motion for attorneys' fees and service awards must be sent to the above Court and the Settlement Administrator and must be postmarked no later than fourteen (14) days after the filing of the motion for the award of attorneys' fees and/or service awards .

10. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court will hold a hearing to decide whether to approve the Settlement on Month ##, 2020 at ##:00 a.m. in the courtroom of Judge David J. Novak of the United States District Court for the Eastern District of Virginia, 701 E. Broad St., Richmond, VA 23219. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate.

If there are objections or comments, the Court will consider them at that time. The hearing may be moved to a different date or time without additional notice. Please check www.xxxxxxxxxxxx.com or call 1-8##-###-#### to be kept up-to-date on the date, time, and location of the hearings.

11. DO I HAVE TO COME TO THE HEARING?

No. But you are welcome to come at your own expense. As long as you mailed your written objection on time, the Court will consider it. You may also retain a lawyer to appear on your behalf at your own expense.

12. DO I HAVE A LAWYER IN THE CASE?

Yes. The Court has appointed the following law firms as Class Counsel to represent you and all other members of the Settlement Class:

Kristi C. Kelly and Andrew J. Guzzo Kelly Guzzo, PLC 3925 Chain Bridge Road, Suite 202 Fairfax, VA 22030	Leonard A. Bennett and Craig Marchiando Consumer Litigation Associates, P.C. 763 J. Clyde Morris Blvd., Suite 1A Newport News, VA 23601	Beth Terrell Terrell Marshall Law Group, PLLC 936 N 34th Street, Suite 300 Seattle, WA 98103
Michelle Drake Berger Montague P.C. 43 SE Main St, Suite 505 Minneapolis, MN 55414	Matthew Wessler Gupta Wessler PLLC 1900 L St NW Washington, D.C. 20036	

These lawyers will not separately charge you for their work on the case. If you want to be represented by your own lawyer, you may hire one at your own expense.

13. HOW WILL THE LAWYERS BE PAID?

As part of the proposed Settlement Agreement that the Court will consider for approval, Class Counsel is seeking an award of up to 33% of the Settlement Fund. The amounts awarded by the Court will reduce the distributions to Class Members.

Class Counsel will also ask the Court to approve a \$5,000 payment to each of the twenty-five individual Plaintiffs who have brought lawsuits against the Defendants. The Plaintiffs made substantial contributions in the prosecution of these lawsuits for the benefit of the Class. The Court will ultimately decide how much Class Counsel and individual Plaintiffs will be paid.

The Settlement contains a number of detailed provisions for the allocation of the fund, including amounts to be paid for attorneys' fees and the distribution of leftover amounts. If you cash your check and there are remaining funds, you may receive a second payment at a later time with the funds that are not cashed. The details for fund distribution are set forth in the settlement documents available on the website at www.xxxxxxxxxxxx.com.

14. HOW DO I GET MORE INFORMATION?

This Notice summarizes the proposed Settlement. You can get a copy of the Settlement Agreement and other relevant case-related documents by visiting www.xxxxxxxxxxxx.com, by calling the Settlement Administrator at 1-8##-###-####, Class Counsel at ###-###-####, or by contacting Class Counsel at the addresses above or by email to classcounsel@xxxxxxxx.com.

PLEASE DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT, THE JUDGES, THE DEFENDANTS OR THE DEFENDANTS' COUNSEL. THEY ARE NOT PERMITTED TO ANSWER YOUR QUESTIONS.

Exhibit 2 to
Stipulation and Agreement of Settlement

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

DIANNE TURNER, <i>et al.</i> , individually and on <i>behalf of all others similarly situated,</i>	:	
	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 3:19-cv-00293
	:	
ZESTFINANCE, INC., <i>et al</i>	:	
	:	
	:	
Defendants.	:	

[PROPOSED] ORDER
GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs Diane Turner, Lula Williams, Renee Galloway, Darlene Gibbs, Marketa Bass, John Glatt, Gwendolyn Beck, Anastasia Sherman, Sheila Burns, Stanie Haggins, Keisha Hamm, David Hawkins, Sheila Simmons, Faith Thomas, Dashawn Hunter, Tonekia Showell, Sonji Grandi, Susie Allen, Krista Biehl, Beverly Gross, Rachel Bulette, Ricky Panas, Lorna Johnson, Esther Taitai, and Cynthia Burns (“Plaintiffs”) have moved the Court for preliminary approval of a proposed class action settlement with Defendants ZestFinance, Inc. and Douglas Merrill (“Zest Defendants”) and BlueChip Financial (“BlueChip”) (collectively with Zest Defendants, “Defendants,” and together with Plaintiffs, the “Parties”), the terms and conditions of which are set forth in the Stipulation and Agreement of Settlement filed with the Court on February 10, 2020 (“Settlement Agreement”) as an exhibit to Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Preliminary Approval Motion”).¹

¹ All capitalized terms used herein have the meanings set forth in the Stipulation and Agreement of Settlement.

Upon review and consideration of Plaintiffs' Preliminary Approval Motion, the Settlement Agreement, and the exhibits attached to the foregoing, it is **IT IS HEREBY ORDERED** as follows:

1. This Preliminary Approval Order incorporates the Settlement Agreement, and the capitalized terms used herein, unless stated otherwise, shall have the meanings and/or definitions given to them in the Settlement Agreement, as if fully set forth in this Order.

2. The Settlement, on the terms and conditions stated in the Settlement Agreement, is preliminarily approved by this Court as being fair, reasonable and adequate, free of collusion or indicia of unfairness, and within the range of possible final judicial approval. In making this determination, the Court has considered the current posture of this litigation and the risks and benefits to the Parties involved in both settlement of these claims and the continuation of the litigation, and finds that the settlement between the Settlement Class and Defendants was arrived at through arm's length negotiations and exchange of information by experienced counsel.

**CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS AND
APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS COUNSEL**

3. For purposes of the Settlement, and conditioned upon the Settlement receiving final approval following the Final Fairness Hearing, this Court hereby conditionally certifies a class for settlement purposes only (the "Settlement Class"), defined as follows:

All consumers residing within the United States who executed loan agreements with BlueChip Financial from January 1, 2012, through October 31, 2018.

4. The Court preliminarily finds that, for settlement purposes and conditioned upon the entry of this Order, the Final Approval Order, and the occurrence of the Effective Date, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied. The Court finds, in the specific context of this Settlement, that the

following requirements are met: (a) the number of Settlement Class Members is so numerous that joinder is impracticable; (b) there are questions of law and fact common to the Settlement Class Members; (c) Plaintiffs' claims are typical of the claims of the Settlement Class Members; (d) Plaintiffs have fairly and adequately represented the interests of the Settlement Class and will continue to do so, and Plaintiffs have retained experienced counsel to represent them; (e) the questions of law and fact common to the Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; and (f) a class action provides a fair and efficient method for settling the controversy under the criteria set forth in Rule 23 and is superior to alternative means of resolving the claims and disputes at issue in this Action. The Court also concludes that, because this Action is being settled rather than litigated, the Court need not consider manageability issues that might be presented by the trial of a class action involving the issues in this case.

5. The Court finds that the Settlement falls within the range of reasonableness because it provides for meaningful remediation relative to the merits of Plaintiffs' claims and the Defendants' defenses in that Settlement Class Members will obtain substantial monetary relief, as well as injunctive relief. The Settlement also has key indicia of fairness in that sufficient discovery and litigation had been undertaken by the Parties in the Action and settlement negotiations occurred at arm's length.

6. For purposes of Settlement only, the Court finds and determines that Plaintiffs will fairly and adequately represent the interests of the Settlement Class in enforcing the rights of the Settlement Class in this Action, and thus hereby appoints Diane Turner, Lula Williams, Renee Galloway, Darlene Gibbs, Marketa Bass, John Glatt, Gwendolyn Beck, Anastasia Sherman, Sheila Burns, Stanie Haggins, Keisha Hamm, David Hawkins, Sheila Simmons, Faith Thomas, Dashawn

Hunter, Tonekia Showell, Sonji Grandi, Susie Allen, Krista Biehl, Beverly Gross, Rachel Bulette, Ricky Panas, Lorna Johnson, Esther Taitai, and Cynthia Burns as representatives of the conditionally certified Settlement Class (“Class Representatives”).

7. For purposes of the Settlement only, the Court appoints as Class Counsel the law firms of Terrell Marshall Law Group PLLC, Berger Montague PC, Gupta Wessler PLLC, Kelly Guzzo PLC, and Consumer Litigation Associates, P.C. For purposes of these settlement approval proceedings, the Court finds that these law firms are competent and capable of exercising their responsibilities as Class Counsel and have fairly and adequately represented the interests of the Settlement Class for settlement purposes.

CLASS NOTICE AND SETTLEMENT ADMINISTRATION

8. Since the Settlement Agreement is within the range of reasonableness and possible final approval, notice shall be provided to the Settlement Class pursuant to the Settlement Agreement. The Court approves, as to form and content, the Direct Notice submitted with Plaintiffs’ Preliminary Approval Motion, attached as Exhibit 1 to the Settlement Agreement.

9. The Court further hereby appoints _____ as the Settlement Administrator. The Settlement Administrator shall abide by the terms and conditions of the Settlement Agreement that pertain to the Settlement Administrator. As further set forth in the Settlement Agreement, the Settlement Administrator shall be responsible for, without limitation: (a) disseminating Notice to the Settlement Class; (b) handling returned mail not delivered to members of the Settlement Class; (c) fielding inquiries about the Settlement Agreement; (d) receiving and maintaining Settlement Class member correspondence regarding requests for exclusion; (e) establishing a Settlement website with relevant case documents to which members of the Settlement Class may refer for information about the Action and the Settlement; (f) establishing a toll-free telephone line to

receive calls from Settlement Class Members; and (g) carrying out such other responsibilities as are provided for in the Settlement Agreement, or agreed to by the Parties.

10. The Court directs the Settlement Administrator, in accordance with the Settlement Agreement, to cause a copy of the Direct Notice to be sent in substantially the same form attached to Plaintiffs' Preliminary Approval Motion to the Settlement Class by a combination of e-mail notice to verified e-mail addresses and/or by U.S. mail, postage prepaid to each Settlement Class Member identified on the Class List.

11. The Court further directs the Settlement Administrator to establish the Settlement Website and secure a toll-free telephone number as set forth in the Settlement Agreement, which shall be operational within 10 days after the Court enters this Preliminary Approval Order.

12. No later than twenty-one (21) days before the Final Fairness Hearing, the Settlement Administrator will provide Class Counsel and counsel for the Defendants with an affidavit that the mailing of the Settlement Class Notice was completed in a timely manner, which shall be filed with the district court no later than fourteen (14) days before the Final Fairness Hearing.

13. The Court finds that the Direct Notice accompanying Plaintiffs' Motion for Preliminary Approval, specifically, and, more generally, the notice program described above and set forth in the Settlement Agreement constitutes the best notice practicable under the circumstances and satisfies due process and Rule 23 of the Federal Rules of Civil Procedure. The Court finds that the language of the proposed Direct Notice is plain and easy to understand and provides neutral and objective information about the nature of the Settlement. Furthermore, the Court finds that the notice program complies with Rule 23(e) of the Federal Rules of Civil Procedure as it is a reasonable manner of providing notice to those Settlement Class Members who

would be bound by the Settlement and their right to participate in, object to, or exclude themselves from the Settlement. The Court also finds that the Notice Program complies with Rule 23(c) as it provides for individual notice to all Settlement Class Members and is thus the best notice practicable under the circumstances. In addition, Settlement Class Members will have access to the Settlement Website and a toll-free telephone line for purposes of obtaining additional information about the Settlement.

14. Class Notice and Settlement administration costs as set forth in the Settlement Agreement shall be paid from the Fund as set forth in the Settlement Agreement.

REQUESTS FOR EXCLUSION

15. Settlement Class Members may elect to exclude themselves or “opt-out” from the Settlement Agreement by following the procedures set forth in the Settlement Agreement for doing so. In the event a Settlement Class Member wishes to be excluded from the Settlement and not to be bound by the Settlement Agreement, that person must, prior to the Opt-Out Deadline, advise the Class Administrator in writing of that intent. In the written request for exclusion, the Settlement Class Member must state the name of the Action, and his or her full name, address, and telephone number. Further, the Settlement Class Member must include a statement in the written request that he or she wishes to be excluded from the Settlement Agreement in the Action. The request must also be signed by the Settlement Class Member.

16. Any request for exclusion or opt out must be postmarked on or before the Opt-Out Deadline of 90 days after entry of the Preliminary Approval Order. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. The Court retains jurisdiction to resolve any disputed exclusion requests.

17. A Settlement Class Member who opts out of the Settlement may opt back in so long as the opt-in request is received prior to the Opt-Out Deadline.

18. No one shall be permitted to exercise any exclusion rights on behalf of any other person, whether as an agent or representative of another or otherwise, except upon proof of a legal power of attorney, conservatorship, trusteeship, or other legal authorization, and no one may exclude other persons within the Settlement Class as a group, class, or in the aggregate.

19. Any member of the Settlement Class who submits a valid and timely request for exclusion will not be a Settlement Class Member, shall not be bound by the terms of the Settlement Agreement, and shall relinquish their rights to benefits with respect to the Settlement Agreement, should it be finally approved, and may not file an objection to the Settlement Agreement or to any application for reimbursement of attorneys' fees and costs or Service Awards or otherwise intervene in this Action.

20. Any Settlement Class Member who does not submit a valid and timely request for exclusion shall be bound by all the terms and provisions of the Settlement Agreement, including the releases set forth therein, the Final Approval Order, and the Final Judgment, whether or not such Settlement Class Member objected to the settlement.

21. The Settlement Administrator shall provide copies of any requests for exclusion to the Parties as provided in the Settlement Agreement.

OBJECTIONS

22. Settlement Class Members who wish to object to the Settlement must do so in writing as specified below. Objections must be mailed to the Court and mailed or emailed to the Settlement Administrator and be postmarked (or time-stamped, in the case of an email to the Settlement Administrator) no later than 90 days after entry of the Preliminary Approval Order.

Class Counsel shall file, no later than 21 days before the Final Fairness Hearing, a motion for reimbursement of attorneys' fees and costs and Service Awards to the Class Representatives. Objections solely as to the motion for reimbursement of attorneys' fees and costs, and/or Service Awards, must be postmarked no later than 14 days after filing of the motion for reimbursement of attorneys' fees and costs and Service Awards to the Class Representatives. For an objection to be considered by the Court, the objection must also set forth and include the following:

- a. the name of the Action;
- b. the Settlement Class Member's full name, address, and telephone number;
- c. the account number(s) of the extension of credit;
- d. a sentence confirming that he or she is a Settlement Class Member;
- e. any factual basis and legal grounds for the objection to the Settlement; and
- f. a list of any prior cases in which the objector or the objector's counsel have objected to a class settlement.

23. A Settlement Class Member may not both opt out of the Settlement and object. If a Settlement Class Member submits both a request for exclusion and objection, the request for exclusion will control.

24. No member of the Settlement Class or counsel retained by such a member of the Settlement Class shall be entitled to be heard at the Final Fairness Hearing unless the Objector or his or her attorneys who intend to make an appearance at the Final Fairness Hearing state their intention to appear in the objection filed with the Court in accordance with the preceding paragraphs. Counsel for any such member of the Settlement Class must enter his or her appearance with the Court by the Objection Deadline.

25. Any Settlement Class Member who fails to file and serve a valid and timely written objection in the manner specified above shall be deemed to have waived all objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement,

including but not limited to the compensation to Settlement Class Members, the award of Class Counsel's attorneys' fees and reimbursement of costs, the Service Awards, or the Final Judgment.

FINAL FAIRNESS HEARING

26. A Final Fairness Hearing shall be held on _____, 2020 at _____ a.m./p.m. before this Court in Courtroom 6300 of the Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse, 701 East Broad Street, Richmond, VA 23219. At the Final Fairness Hearing, the Court will consider and determine: (1) whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate; (2) whether any objections to the Settlement Agreement should be overruled; (3) whether Class Counsel's requested attorneys' fees and costs and the Service Awards to the Class Representatives should be approved; and (4) whether a Final Approval Order and Judgment finally approving the Settlement Agreement should be entered. The date of the Final Fairness Hearing may be continued by the Court from time to time without the necessity of further notice to the Settlement Class.

27. Any Settlement Class Member may enter an appearance, at his or her own expense, individually or through counsel. However, if a Settlement Class Member wishes to object to the Settlement at the Final Fairness Hearing (either personally or through counsel), the Settlement Class Member must submit a written objection as set forth in the Settlement Agreement and this Order. All Settlement Class Members who do not enter an appearance will be represented by Class Counsel.

28. The motion for final approval of the Settlement Agreement, and any papers the Parties wish to submit in support of final approval of the Settlement such as responses to any objections to the Settlement, shall be filed with the Court no later than fourteen (14) calendar days prior to the Final Fairness Hearing.

STAY OF LITIGATION

29. Pending the Final Fairness Hearing, all proceedings in this Action are stayed and suspended until further order of this Court, except such actions as may be necessary to carry out or enforce the terms and conditions of the Settlement Agreement, and this Preliminary Approval Order.

OTHER PROVISIONS

30. For the benefit of the Settlement Class and to protect this Court's jurisdiction, this Court retains continuing jurisdiction over the Settlement proceedings relating to the interpretation, administration, implementation, effectuation, and enforcement of this Settlement.

31. Any deadlines set in this Preliminary Approval Order may be extended by order of the Court, for good cause shown, without further notice to the Settlement Class, except that notice of any such extensions shall be posted to the Settlement Website. Members of the Settlement Class should check the Settlement Website regularly for updates, changes, and/or further details regarding extensions of these deadlines.

32. The Parties are directed to carry out their obligations under the Settlement Agreement and are hereby authorized to use all reasonable procedures in connection with approval and administration of the settlement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the Settlement Agreement or to the form or content of the Direct Notice that the Parties jointly agree are reasonable or necessary, and which do not limit the rights of Settlement Class Members under the Settlement Agreement.

33. In the event that the proposed Settlement is not finally approved by the Court, or in the event that the Settlement Agreement becomes null and void or terminates pursuant to its terms,

this Preliminary Approval Order and all orders entered in connection with the Settlement Agreement shall become null and void, shall be of no further force and effect, and the Parties' rights and defenses shall be restored, without prejudice, to their respective positions as if the Settlement Agreement had never been executed.

IT IS SO ORDERED.

Dated: _____

Hon. David J. Novak
United States District Court Judge

Exhibit 3 to
Stipulation and Agreement of Settlement

held a Final Fairness Hearing on _____, at which time the Parties and other interested persons were given an opportunity to be heard in support of and in opposition to the proposed settlement. Based on the papers filed with the Court and the presentations made at the Final Fairness Hearing, the Court finds that the Settlement Agreement is fair, adequate, and reasonable. Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. This Final Approval Order incorporates herein and makes a part hereof the Settlement Agreement and the Preliminary Approval Order. Unless otherwise provided herein, the capitalized terms used herein shall have the same meanings and/or definitions given to them in the Preliminary Approval Order and Settlement Agreement.

2. This Court has jurisdiction over matters relating to the Settlement, including, without limitation, the administration, interpretation, effectuation and/or enforcement of the Settlement, the Settlement Agreement, and this Final Order and Judgment.

**CERTIFICATION OF THE SETTLEMENT CLASS AND
APPOINTMENT OF CLASS COUNSEL AND CLASS REPRESENTATIVES**

3. In the Preliminary Approval Order, this Court previously certified, for settlement purposes only, a Settlement Class defined as follows:

- a. All consumers residing within the United States who executed loan agreements with BlueChip Financial from January 1, 2012, through October 31, 2018.
- b. Excluded from the Class are the Judge presiding over this Action and the Court staff, as well as those Class Members who opt out from the Settlement pursuant to the procedures set forth in the Settlement Agreement.

4. Certification of the Settlement Class is hereby reaffirmed as a final Settlement Class pursuant to Fed. R. Civ. P. 23. For the reasons set forth in the Preliminary Approval

Order, this Court finds, on the record before it, that the Action, for purposes of this Settlement, may be maintained as a class action on behalf of the Settlement Class.

5. In the Preliminary Approval Order, this Court previously appointed the above-identified Plaintiffs Diane Turner, Lula Williams, Renee Galloway, Darlene Gibbs, Marketa Bass, John Glatt, Gwendolyn Beck, Anastasia Sherman, Sheila Burns, Stanie Haggins, Keisha Hamm, David Hawkins, Sheila Simmons, Faith Thomas, Dashawn Hunter, Tonekia Showell, Sonji Grandi, Susie Allen, Krista Biehl, Beverly Gross, Rachel Bulette, Ricky Panas, Lorna Johnson, Esther Taitai, and Cynthia Burns as Class Representatives and hereby reaffirms that appointment, finding, on the record before it, that the Class Representatives have and continue to adequately represent Settlement Class Members.

6. In the Preliminary Approval Order, this Court previously appointed the law firms of Terrell Marshall Law Group PLLC, Berger Montague PC, Gupta Wessler PLLC, Kelly Guzzo PLC, and Consumer Litigation Associates, P.C. as Class Counsel for settlement purposes only and hereby reaffirms that appointment, finding, on the record before it, that Class Counsel have and continue to adequately and fairly represent Settlement Class Members.

CLASS NOTICE

7. The record shows, and the Court finds, that Class Notice has been given to the Settlement Class in the manner approved by the Court in its Preliminary Approval Order. The Court finds that such Class Notice constitutes: (i) the best notice practicable to the Settlement Class under the circumstances; (ii) notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and the terms of the Settlement Agreement, their rights to exclude themselves from the Settlement or to object to any part of the Settlement, their rights to appear at the Final Fairness Hearing (either on their own or

through counsel hired at their own expense), and the binding effect of the Final Order and Judgment, whether favorable or unfavorable, on all persons who do not exclude themselves from the Settlement Class; (iii) due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) notice that fully satisfies the requirements of the United States Constitution (including the Due Process Clause), Federal Rules of Civil Procedure 23(c)(2)(B) and 23(e)(1), and any other applicable law.

8. Due and adequate notice of the proceedings having been given to the Settlement Class and a full opportunity having been offered to Settlement Class Members to participate in the Final Fairness Hearing, it is hereby determined that all Settlement Class Members except those who timely opted out, as identified in Exhibit A to this Final Approval Order, are bound by this Final Approval Order and Judgment. No Settlement Class Members, other than those listed in Exhibit A, are excluded from the Settlement Class, from the terms of the Settlement Agreement, or from the effect of this Final Approval Order and Judgment.

FINAL APPROVAL OF THE SETTLEMENT AGREEMENT

9. Pursuant to Fed. R. Civ. P. 23(e), the Court hereby finally approves in all respects the Settlement as set forth in the Settlement Agreement and finds that the Settlement, the Settlement Agreement, the benefits to the Settlement Class Members, and all other parts of the Settlement are, in all respects, fair, reasonable, and adequate, and in the best interest of the Settlement Class, within a range that responsible and experienced attorneys could accept considering all relevant risks and factors and the relative merits of Plaintiffs' claims and any defenses of the Defendants, and are in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause, and the Class Action Fairness Act. Accordingly, the Settlement shall be consummated in accordance with the terms and provisions

of the Settlement Agreement, with each Settlement Class Member bound by the Settlement Agreement, including any releases therein.

10. Specifically, the Court finds that the Settlement is fair, reasonable, and adequate given the following factors, among other things:

a. The Action was complex and time consuming and would have continued to be so if the Parties had not settled;

b. Class Counsel had a well-informed appreciation of the strengths and weaknesses of the Action while negotiating the Settlement;

c. The monetary and injunctive relief provided for by the Settlement is well within the range of reasonableness in light of the best possible recovery and the risks the Parties would have faced if the case had continued to verdicts as to jurisdiction, liability, and damages;

d. The Settlement was the result of arm's-length good faith negotiations and exchange of information by experienced counsel;

e. The reaction of the class to the Settlement has been positive, with _____ consumers timely requesting to opt out and _____ objections to the Settlement. This Court has considered and hereby overrules all objections to the Settlement on their merits.

11. Accordingly, the Settlement shall be consummated in accordance with the terms and provisions of the Settlement Agreement.

**PAYMENT OF MONETARY CONSIDERATION AND INJUNCTIVE RELIEF TO THE
CLASS**

12. The Court approves the Parties' plan to distribute the Cash Awards provided for by the Settlement Agreement to Settlement Class Members as set forth in the Settlement Agreement.

13. The Court also approves the agreements reached with respect to injunctive relief, as more particularly set forth in the Settlement Agreement (which shall control in the event of any alleged inconsistency with this Final Approval Order):

a. BlueChip will cancel (as a disputed debt) all loans originated during the class period that have a balance due and that was owned by BlueChip as of December 31, 2019;

b. BlueChip will cease all direct or indirect collection activity on any Outstanding Loan, and agrees not to sell any Outstanding Loan;

c. BlueChip will return any funds inadvertently collected after January 31, 2020;

d. Defendants will not sell personal identifying information obtained from Settlement Class Members during the class period to third parties for third-party marketing purposes; provided, however, that this provision shall not prohibit BlueChip from using such information in its own lending business or prohibit the transferring of such information to a third party in connection with a sale, merger, or acquisition of BlueChip's business or the assets of its business, or to a BlueChip affiliate owned by the Turtle Mountain Band of Chippewa Indians; and

e. BlueChip shall contact all consumer reporting agencies to which it previously had reported information regarding Outstanding Loans and request permanent removal of any negative tradelines previously reported to consumer reporting agencies in the name of BlueChip or Spotloan regarding loans originated during the class period by BlueChip to Settlement Class Members. A tradeline shall be considered "negative" if it indicates that any payment due was missed.

14. The relief provided by the Settlement is significant. All consumers will receive a

financial benefit in the form of a cash payment, tradeline deletion, loan cancellation, or restrictions on the sale of personal identifying information. In addition, the injunctive relief provided by the Settlement to all Settlement Class Members, regardless of their loan status, is significant. Defendants have also agreed not to sell or transfer any remaining unpaid accounts associated with Class Members from the Class Period, to cease all direct or indirect collection activity on Outstanding Loans, not to sell Class Members' personal identifying information obtained during the Class Period to certain third parties, that the loans from the Class Period are disputed debts, and to request removal of negative credit reporting regarding certain loans from the Class Period. These benefits to Class Members have significant value and are not included in the monetary amount payable to the Settlement Fund, but constitute real benefits for Settlement Class Members. Furthermore, Class members will receive these benefits without having to prove any harm or take any affirmative actions. In other words, Class Members will not be required to submit any forms or claims for payment.

DISMISSAL OF CLAIMS AND RELEASES

15. This Court hereby dismisses with prejudice on the merits and without costs or attorneys' fees (except as otherwise provided in the Agreement) the above-captioned action (subject to retention of jurisdiction to enforce the Agreement and the Settlement).

16. Pursuant to the Settlement Agreement, as of the Effective Date of this Settlement, the following releases shall be effective:

a. Upon the Effective Date, each Named Plaintiff and each Settlement Class Member who is sent a payment from the Fund and/or who receives debt cancellation, on behalf of themselves and their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, shall be deemed to have,

and by operation of the Judgment shall have, fully released and forever discharged Defendants and each and all of their present, former and future direct and indirect parents (including, without limitation, the Turtle Mountain Band of Chippewa Indians), affiliates, subsidiaries, administrators, agents, successors, reorganized successors, predecessors-in-interest, or any financial institutions, corporations, trusts, or other entities that may hold or have held any interest (including, without limitation, any participation or security interest) in any account or any receivables relating to any account, or any receivables or group of receivables, or any direct or indirect interest in the operation or ownership of BlueChip or ZestFinance, and all of the aforementioned's respective members, officers, directors, trustees, employees, partners, contractors, lenders, investors, attorneys, insurers, joint venturers, shareholders, agents, vendors, representatives, elected officials, and assigns, from any and all rights, duties, obligations, claims, actions, causes of action or liabilities, whether arising under local, state, tribal, or federal law (including, without limitation, under any consumer-protection or unfair and deceptive practices acts), whether by constitution, statute, contract, common law, or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, as of the Effective Date, including, without limitation: (1) that arise out of or relate in any way to any or all of the claims, causes of action, acts, omissions, facts, matters, transactions, or occurrences that were or could have been directly or indirectly alleged, asserted, described, set forth or referred to in the Actions; or (2) that arise out of or relate in any way to the administration of the Settlement; provided, however, that any person or entity who purchased charged-off debt from BlueChip or any successor-in-interest to BlueChip prior to December 31, 2019 shall not be released.

b. Upon the Effective Date, each Settlement Class Member who is not sent a

payment from the Fund and who does not receive debt cancellation, on behalf of themselves and their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, shall be deemed to have, and by operation of the Judgment shall have, fully released and forever waived their rights to bring a class action, collective action, or mass action against Defendants and each and all of their present, former and future direct and indirect parents (including, without limitation, the Turtle Mountain Band of Chippewa Indians), affiliates, subsidiaries, administrators, agents, successors, reorganized successors, predecessors-in-interest, or any financial institutions, corporations, trusts, or other entities that may hold or have held any interest (including, without limitation, any participation or security interest) in any account or any receivables relating to any account, or any receivables or group of receivables, or any direct or indirect interest in the operation or ownership of BlueChip or ZestFinance, and all of the aforementioned's respective members, officers, directors, trustees, employees, partners, contractors, lenders, investors, attorneys, insurers, joint venturers, shareholders, agents, vendors, representatives, elected officials, and assigns, from any and all rights, duties, obligations, claims, actions, causes of action or liabilities, whether arising under local, state, tribal, or federal law (including, without limitation, under any consumer-protection or unfair and deceptive practices acts), whether by constitution, statute, contract, common law, or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, as of the Effective Date, including, without limitation: (1) that arise out of or relate in any way to any or all of the claims, causes of action, acts, omissions, facts, matters, transactions, or occurrences that were or could have been directly or indirectly alleged, asserted, described, set forth or referred to in the Actions; or (2) that arise out of or relate in any way to the administration of the

Settlement. It is the intention of the Parties that the release provided in this subsection does not release a class member's right to bring an individual claim against any of the Released Parties. By entering into this agreement, Defendants do not waive and expressly reserve the right to move to compel arbitration of any of these claims if they are brought in court.

c. Without limiting the foregoing, the claims released above specifically include claims that the Named Plaintiffs and Settlement Class Members (or any of them) do not know or suspect to exist in their favor at the time that the Settlement, and the releases contained in this Agreement, becomes effective. The Named Plaintiffs acknowledge that they each have read, understand, and waive, on behalf of themselves and the Settlement Class Members, all rights and benefits of Section 1542 of the California Civil Code (or any other statute or legal doctrine limiting the effectiveness of releases), which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Named Plaintiffs have acknowledged, and the Settlement Class Members shall be deemed to understand and acknowledge, the significance of this waiver of California Civil Code Section 1542 and any other applicable law relating to limitations on releases. In connection with such waiver and relinquishment, Named Plaintiffs have acknowledged on behalf of themselves and the Settlement Class Members that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect

to the subject matter of the Settlement, but that it is their intention to release fully, finally and forever all Released Claims, and in furtherance of such intention, the release of the Released Claims shall remain in effect notwithstanding the discovery or existence of any such additional or different facts.

AWARD OF ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS

17. At the conclusion of a successful class action, class counsel may apply to a court for an award of attorneys' fees. *See* Fed. R. Civ. P. 23(h). Pursuant to the Settlement Agreement Class Counsel may request reasonable attorneys' fees and reimbursement of costs to be paid from the Monetary Consideration, provided that the total amount of such request does not exceed one-third of the Monetary Consideration provided under the Settlement Agreement.

18. Because this is a common-fund case, it is appropriate to employ a percentage of the fund method for calculating a proper fee award. When a representative party confers a substantial benefit upon a class, counsel is entitled to attorneys' fees based on the benefit obtained. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). *See, e.g., Milbourne v. JRK Residential America, LLC*, No. 3:12-cv-861-REP (E.D. Va. Jan. 4, 2017) (Doc. 324); *Mayfield v. Memberstrust Credit Union*, 3:07-cv-506-REP (E.D. Va. Nov. 7, 2008) (Doc. 22); *Conley v. First Tennessee*, 1:10-cv-1247-JFA (E.D. Va. Aug. 18, 2011) (Doc. 37); *Lengrand v. Wellpoint*, No. 3:11-cv-333-HEH (E.D. Va. Nov. 13, 2012) (Doc. 42).

19. [No Class Member or Government entity has objected to Class Counsel's request.]

20. The Court, having reviewed the declarations, exhibits, and points and authorities submitted in support of and opposition to Class Counsel's request for attorneys' fees and reimbursement of costs, approves the award of attorneys' fees and reimbursement of costs to

Class Counsel in the amount of \$_____ (“Fee and Expense Award”). The Court finds that the Fee and Expense Award is reasonable and appropriate under all of the circumstances presented.

21. The Settlement Agreement also provides that Plaintiffs may request a Service Award to be paid from the Monetary Consideration, provided such awards do not exceed \$5,000 to each Class Representative.

22. Courts routinely grant service awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of class action litigation. *See, e.g., Manuel v. Wells Fargo Bank*, No. 3:14-cv-238 (DJN), 2016 WL 1070819, at *6 (E.D. Va. Mar. 15, 2016) (explaining that service awards are “intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general”). Here, the Court finds that the requested Service Awards are reasonable and within the range of awards granted by courts in this and other circuits. *See, e.g., id.* (approving \$10,000 service award); *Ryals, Jr. v. HireRight Solutions, Inc.*, No. 3:09-cv-625 (JAG) (E.D. Va. Dec. 22, 2011) (awarding \$10,000 service awards to each class representative). Moreover, these Service Awards are justified by the time and effort expended by the Class Representatives on behalf of the Settlement Class Members and the risk each assumed in bringing this action. Accordingly, the Court finds that each of the Class Representatives Diane Turner, Lula Williams, Renee Galloway, Darlene Gibbs, Marketa Bass, John Glatt, Gwendolyn Beck, Anastasia Sherman, Sheila Burns, Stanie Haggins, Keisha Hamm, David Hawkins, Sheila Simmons, Faith Thomas, Dashawn Hunter, Tonekia Showell, Sonji Grandi, Susie Allen, Krista Biehl, Beverly Gross, Rachel Bulette, Ricky Panas, Lorna Johnson, Esther Taitai, and Cynthia

Burns shall be awarded \$ _____ each for their efforts, totaling \$ _____.

23. The Court further notes that the amount of requested attorneys' fees and reimbursement of costs and the dollar amount of the requested Service Awards was included in the notice materials disseminated to the Settlement Class.

24. The award of attorneys' fees and costs and Service Awards shall be paid by the Defendants from the Fund within fourteen (14) days of the Effective Date.

OTHER PROVISIONS

25. The Court has jurisdiction to enter this Final Order and Final Judgment. Without in any way affecting the finality of this Final Order or the Final Judgment, this Court expressly retains exclusive and continuing jurisdiction over the Settlement and the Settlement Agreement, including all matters relating to the administration, consummation, validity, enforcement, and interpretation of the Settlement Agreement or the Final Order and Judgment, including, without limitation, for the purpose of:

a. enforcing the terms and conditions of the Settlement Agreement and resolving any disputes, claims or causes of action that, in whole or in part, are related to or arise out of the Settlement Agreement, the Final Order, or the Final Judgment (including, whether a person or entity is or is not a Settlement Class Member);

b. entering such additional orders, if any, as may be necessary or appropriate to protect or effectuate the Final Order, the Final Judgment, or the Settlement Agreement, or to ensure the fair and orderly administration of the Settlement; and

c. entering any other necessary or appropriate orders to protect and effectuate this Court's retention of continuing jurisdiction over the Settlement Agreement, the Final Order, or the Final Judgment.

26. Without affecting the finality of this Final Order or the Final Judgment, the Defendants, each Settlement Class Member, and the Class Administrator hereby irrevocably submit to the exclusive jurisdiction of the Court for the limited purpose of any suit, action, proceeding, or dispute arising out of the Settlement Agreement or the applicability of the Settlement Agreement, including any suit, action, proceeding, or dispute relating to the Release provisions herein. Defendant BlueChip further makes a limited waiver of their claims to sovereign immunity from suit for the limited purpose of enforcing this Settlement Agreement.

27. The Parties are hereby directed to carry out their obligations under the Settlement Agreement.

28. Without further order of the Court, the Parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement Agreement. Likewise, the Parties may, without further order of the Court or notice to the Settlement Class, agree to and adopt such amendments to the Settlement Agreement (including exhibits) as are consistent with this Final Approval Order and that do not limit the rights of Settlement Class Members under the Settlement Agreement.

29. In the event that the Settlement becomes null and void, certification of the Settlement Class shall be automatically vacated and this Final Approval Order and Judgment, as well as all other orders entered and releases delivered in connection with the Settlement Agreement, shall be vacated and shall become null and void, shall be of no further force and effect, and the Parties' rights and defenses shall be restored, without prejudice, to their respective positions as if the Settlement Agreement had never been executed.

30. This Final Approval Order and Judgment is final for purposes of appeal and may be appealed immediately, and the Clerk is hereby directed to enter judgment thereon and THIS

CAUSE IS ENDED.

IT IS SO ORDERED.

Dated: _____

Hon. David J. Novak
United States District Court Judge