

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

	X	
PAMELA LLOYD, <i>on behalf of herself and others similarly situated,</i>	:	Civil Action No. 0:20-cv-60300-RS
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
JAMES E. ALBERTELLI, P.A. d/b/a ALBERTELLI LAW	:	
	:	
Defendant.	:	
	X	

CLASS ACTION SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) in the above-captioned case between Plaintiff, PAMELA LLOYD, an individual, on behalf of herself and all others similarly situated and Defendant, JAMES E. ALBERTELLI, P.A. d/b/a ALBERTELLI LAW (hereinafter “Defendant”) was reached after arms-length negotiations between counsel for all parties, and the terms and conditions are provided as follows:

RECITALS:

A. The Class Members (as defined below) are a class of individuals on whose behalf Plaintiff is pursuing the above-styled and numbered cause.

B. The Class Action Complaint in this action alleges that Defendant violated the Fair Debt Collection Practices Act (15 U.S.C. § 1692, *et seq.*, hereinafter the “FDCPA”) and that such alleged violation renders Defendant liable for statutory damages, costs, and reasonable attorneys’ fees.

C. Defendant denies the material allegations in Plaintiff's Complaint, disputes both factually and legally that it is liable in any way to Plaintiff or the Class she seeks to represent, denies that its actions violated state or federal law in any manner, and asserts that even if Plaintiff was to prevail, its maximum class liability is limited by 15 U.S.C. § 1692k(a)(2). Defendant concludes that the further conduct of this litigation by them would be protracted and expensive, and that it is desirable that this litigation be fully, finally, and forever settled in the manner set forth in this Agreement. Plaintiff and Defendant are willing to enter into this Agreement to avoid the further unnecessary costs and expense and inconvenience of litigation and to buy peace and resolve and settle all claims which have been made or could be made against Defendant by Plaintiff and the Class Members arising out of the Defendant's alleged statutory violation.

D. Class Counsel (defined below) has analyzed the facts and law relevant to this litigation and recognized the uncertainty of the outcome and the substantial expense and delay associated with the continued prosecution of this litigation against Defendant through trial and through appeals. Further, Class Counsel is mindful of the limitations on any possible recovery to the Class Members, even if they were to recover the maximum amount allowed by law, given the cap on statutory damages under the FDCPA.

E. Based on Class Counsel's analysis of the law and facts at issue in this litigation, Plaintiff has determined that a settlement on the terms set forth herein is fair, adequate, and reasonable, and thus in the best interest of the Class Members.

F. The Parties are desirous of entering into and obtaining approval of this Agreement, pursuant to FED. R. CIV. P. 23, in order to fully and finally resolve all claims

and disputes arising out of or related to Plaintiff's claims of violations of the FDCPA by Defendant or any of its officers, directors, shareholders, employees, agents, or representatives.

ARTICLE I
DEFINITIONS

When used in this Settlement Agreement, the following terms shall mean:

1.1 "AGREEMENT" means this Settlement Agreement in the above-styled and numbered cause.

1.2 "BUSINESS DAY" means any day on which national banks are open for the conduct of general business.

1.3 "CLASS" means the class as agreed to by the Parties, and in accordance with the terms of this Agreement, which is described as:

All persons (a) with an address within the States of Florida, Texas, Georgia, Arkansas, Alabama, South Carolina, or Tennessee, (b) to whom James E. Albertelli, P.A. mailed an initial debt collection communication not returned as undeliverable to James E. Albertelli, P.A. d/b/a Albertelli Law, (c) in connection with the collection of a consumer debt, (d) between February 12, 2019 and the date the Court grants preliminary approval of the settlement, (e) that (i) failed to include a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector, and (ii) failed to include a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor, but (iii) that included the following statement:

IF, WITHIN THIRTY (30) DAYS AFTER YOU RECEIVE THIS NOTICE, YOU NOTIFY US, AS STATED ABOVE, THAT THE DEBT, OR ANY PORTION THEREOF, IS DISPUTED AND/OR THAT YOU REQUEST, VALIDATION AND/OR THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, THE FAIR DEBT COLLECTION PRACTICES ACT REQUIRES US TO CEASE OUR COLLECTION EFFORTS, EVEN IF WE HAVE ALREADY FILED THE LAWSUIT, UNTIL WE PROVIDE YOU WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR.

1.4 “CLASS COUNSEL” means James L. Davidson, Esq. of Greenwald Davidson Radbil PLLC located at Greenwald Davidson Radbil PLLC at 7601 N. Federal Highway, Suite A-230, Boca Raton, Florida 33487.

1.5 “CLASS MEMBERS” mean those persons who are a part of the Class.

1.6 “CLASS NOTICE” means the proposed postcard notice substantially similar to that attached hereto as **Exhibit A** for mailing to each individual class member and the proposed longform notice substantially similar to that attached hereto as **Exhibit B** to be posted and published on Class Counsel’s designated case website, as approved by the Court.

1.7 “CLASS PERIOD” means February 12, 2019 to up to and including the date the settlement is preliminarily approved.

1.8 “CONSUMMATION DATE” means the date upon which all obligations and duties of the Parties have been effectuated and the Agreement has been closed.

1.9 “COURT” means the United States District Court for the Southern District of Florida, Fort Lauderdale Division.

1.10 “DEFENDANT” means JAMES E. ALBERTELLI, P.A. d/b/a ALBERTELLI LAW, (hereinafter referred to as either “Defendant”) and includes all officers, directors, shareholders, agents, employees, and insurers of Defendant.

1.11 “EFFECTIVE DATE” means the date that this Agreement is finally approved by the Court, and neither Defendant, Plaintiff, nor Class Counsel have given notice of withdrawal as provided in Section 5.2. This Agreement shall be finally approved only after the Court has entered the Final Order and Judgment, and the time for perfecting an appeal of such Final Order and Judgment has expired with no appeal taken; final dismissal of any appeal taken; or affirmance of the Final Order which is not subject to further review by any court with appellate jurisdiction over the Litigation (as defined below), and such Final Order and Judgment has not been vacated or reversed.

1.12 “FAIRNESS HEARING” means the final hearing to be conducted by the Court pursuant to FED. R. CIV. P. 23 to consider the fairness, adequacy, and reasonableness of the settlement reflected in this Agreement, a date to be set by the court.

1.13 “FINAL ORDER AND JUDGMENT” means the final order and judgment to be entered by the Court approving this Agreement as fair, adequate, and reasonable under FED. R. CIV. P. 23, and making such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Agreement. A proposed Final Order and Judgment is attached hereto as **Exhibit C**.

1.14 “LITIGATION” means the above-captioned and numbered case.

1.15 “PARTIES” means the Class Members (including Plaintiff) and Defendant.

1.16 “PARTICIPATING CLASS MEMBER” means each Class Member who timely submits a valid and verified Claim Form for himself or herself in order to share in the *pro rata* distribution of the Class Settlement Fund.

1.17 “PRELIMINARY APPROVAL ORDER” means the order to be entered by the Court preliminarily approving the Agreement. A proposed Preliminary Approval Order is attached hereto as **Exhibit D**.

1.18 “RELEASED CLAIMS” means:

Any and all claims, actions, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys’ fees, of any nature whatsoever, pursuant to sections 1692g(a)(3), 1692g(a)(4) and 1692g(a)(5) of the federal Fair Debt Collection Practices Act (“FDCPA”), including all “Unknown Claims” (as defined below), arising out of, or based upon, an initial written debt collection communication from Defendant and any and all claims, actions, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys’ fees, of any nature whatsoever, pursuant to section 1692e of the FDCPA, including all “Unknown Claims” (as defined below), arising out of, or based upon, Defendant’s conduct in advising consumers that the FDCPA would require Defendant to cease collection efforts if the consumer disputed the debt, requested validation of the debt, or requested creditor information, within the 30-day validation period, without advising the consumers that only a writing would trigger the cease collection requirement of the FDCPA. Nothing herein releases any claim arising out of the violation or breach of this Agreement

1.18 “SETTLEMENT ADMINISTRATOR” means: the independent settlement administrator, in this case, First Class, Inc. c/o Bailey Hughes, 5410 W. Roosevelt Road, Suite 222, Chicago, Illinois 60644-1490.

1.19 “SETTLEMENT FUND” means the fund of \$20,000.00 that Defendant will create to pay Participating Class Members in settlement of their claims. Defendant represents that \$20,000.00 is a compromised settlement amount that exceeds one percent of its book value net worth as demonstrated and stipulated by the Parties after reviewing confidential financial information.

1.20 “UNKNOWN CLAIMS” means:

Any and all claims that Plaintiff or any Class Member does not know or even suspect to exist that fall within the Released Claims, which, if known, might have affected his or her decision regarding the settlement of this Litigation. Plaintiff further acknowledges, and the Class Members shall be deemed to acknowledge, that they may hereafter discover facts in addition to or different from those that they now know or believe to be true concerning the subject matter of this release, but nevertheless fully, finally, and forever agree to the releases herein, without regard to subsequent discovery or existence of such different or additional facts concerning each of the Released Parties.

1.21 “RELEASED PARTIES” means: Defendant and each of its past, present, and future directors, officers, employees, partners, principals, agents, underwriters, insurers, co-insurers re-insurers, shareholders, attorneys, and any related or affiliated company, including any parent, subsidiary, predecessor, or successor company, and all

assigns, licensees, divisions, clients, joint ventures and any entities directly or indirectly involved in the Litigation, and all of their subsidiary entities, and any other related entity.

This Agreement and the settlement embodied herein shall not release any debt owed to Defendant's clients by Plaintiff or the Class, nor shall this settlement operate as an accord and satisfaction of such debt, nor impair or limit any right or cause of action by the Plaintiff or any Class Member to dispute the underlying debt or amount owed to the creditor(s) of the Class Member or the clients of Defendant, or raise any defense that they have to the alleged debt in any court of law.

1.22 "SETTLEMENT ADMINISTRATION COSTS AND EXPENSES" means the costs and expenses connected with obtaining the services of a Settlement Administrator to facilitate the Settlement, including, but not limited to, the costs of printing and mailing the postcard Class Notices with claim forms and mailing settlement checks to eligible Class Members.

Article II
TERMS AND CONDITIONS OF THE SETTLEMENT

Plaintiff and Defendant agree to the following settlement, subject to the terms and conditions of this Agreement and the terms and conditions of the incorporated documents. The relief provided for under this Agreement is in full satisfaction of all of Defendant's liability for all Released Claims (as defined above) of Plaintiff and all of the Class Members.

2.1 Class Action Settlement Procedures

A. The Parties will jointly file a mutually approved Motion for Preliminary Approval of Class Action Settlement with the Court (the "Preliminary Settlement

Motion”) seeking entry of the Preliminary Approval Order in substantially the same form as Exhibit D and dissemination of the Class Notice.

B. The Parties agree that Plaintiff should be appointed as the Class Representative for the Class Members and that James L. Davidson of Greenwald Davidson Radbil PLLC should be appointed as Class Counsel.

C. The Settlement Administrator will send via U.S. mail a multi-fold postcard Class Notice with claim form to each Class Member at his or her last known valid address, address correction requested, as provided by Defendant. Defendant will provide this information to the Settlement Administrator within three days of entry by the Court of the Preliminary Approval Order in an excel spreadsheet or some other form of editable document. Before sending the postcard Class Notice, the Settlement Administrator will confirm and, if necessary, update the addresses for the Class Members through the standard methodology it currently uses to update addresses, including attempting to identify the name and address of each Class Member. If any notice is returned with a new address, the Settlement Administrator will re-mail the notice to the new address and will update the Class Member address list with all forwarding addresses. If any notice is returned undeliverable without a new address, the Settlement Administrator will run a skip trace to attempt to locate an updated address and will re-mail the notice to the new address if a new address can be located. Furthermore, Plaintiff and Class Counsel will support the Settlement and will take no action inconsistent with such support.

The electronic data or other documents containing the Class Members list shall be held in trust by Defendant’s Counsel and not destroyed or disposed of until the terms and

conditions of dismissal and payment under this Settlement Agreement have been completed by the Parties. Should it be necessary to continue with the Lawsuit, the electronic data or other Class Member list will be returned to Class Counsel for their use in providing other required notices in this case.

D. Class Counsel will maintain a copy of the longform Class Notice on its website at www.gdrlawfirm.com. The postcard Class Notice will direct Class Members to the longform Class Notice on Class Counsel's website for further information about the settlement, which website will also include a copy of this Agreement, the Complaint, the Preliminary Approval Order, and other relevant documents.

E. Defendant will serve the notice required by the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §§ 1332(d), 1453, and 1711-1715, within 10 days of the filing of the Preliminary Settlement Motion.

F. Plaintiff will file an Unopposed Motion for Final Approval of Class Action Settlement (the "Final Settlement Motion")—which Defendant will have the opportunity to review before it is filed—seeking the entry of the Final Order and Judgment in substantially the same form attached as Exhibit C.

G. Defendant's agreement to support the Preliminary and Final Settlement Motions, for purposes of this Agreement only, shall be without prejudice to any *status quo ante* defenses, rights, or positions in the Class Action. In the event this Agreement is not approved by the Court, or if approval of this Agreement, including the entry of the Preliminary Approval Order or the Final Order and Judgment, is reversed or modified on appeal (except for the modification of any attorney's fee award), or any one of the

conditions precedent set forth in Article IV of this Agreement is not met or any termination right under Section 5.2 of this Agreement is exercised, then, after attempting and completing good-faith negotiations to salvage the Settlement, the Preliminary Approval Order, the Final Approval Order, this Agreement, and all findings of fact and conclusions of law therein, shall be automatically dissolved without further order of the Court, deemed null and void and of no force and effect, and in such event all *status quo ante* rights of Defendant to, among other things oppose any efforts by the Plaintiff to pursue this action as a class action. Moreover, all of Defendant's other defenses, rights, and positions shall in all respects be unaffected and preserved as shall those rights of Plaintiff and the Class.

2.2 Settlement Consideration. Subject to the terms of this Agreement, Defendant agrees to provide the following relief to Plaintiff and the Class:

- A. Relief to the Class: Defendant will create a non-reversionary settlement fund of **\$20,000.00** to be distributed pro rata to each Participating Class Member. The amount of the Settlement Fund is contingent on there being no more than 7,729¹ Class Members, including Plaintiff. If Defendant later determines that there are more than 7,729 Class Members, Defendant will add \$2.58 to the Settlement Fund for each additional Class Member above 7,729. Within 7 days after the Effective Date, Defendant will send the check for the Settlement Fund to the Settlement Administrator. Within 21 days after the Effective Date, the Settlement Administrator will send via U.S. mail a settlement check to each Participating Class Member. Defendant's obligations pursuant to this paragraph will be considered fulfilled upon the mailing of the settlement checks, regardless of whether any settlement check is received, returned, or cashed, except that the Class Administrator will be obligated to take reasonable steps to forward all settlement checks returned with a forwarding address, to such forwarding addresses. Each settlement check will be void 90 days after mailing.

¹ Defendant will review the database and provide an accurate count as to the number of letters mailed to potential Class Members during the Class Period.

- B. Cy Pres Contribution: To the extent that any funds remain in the Settlement Fund after the void date (from uncashed checks or otherwise), such funds will be paid to the Legal Aid Society of Broward County as a *cy pres* recipient.
- C. Stipulated Equitable Relief: Defendant represents and warrants that in response to the Litigation, it corrected the issues related to the subject collection communication as referenced in this Litigation. Defendant agrees to implement sufficient modifications to the wording of its collection notice to address the disputed issue contained in the Complaint in this Litigation (the “Stipulated Modifications”). Defendant agrees to cease the use of the letters containing the disputed language as of February 18, 2020.

The Stipulated Modifications shall serve as equitable relief benefiting the respective Class. By agreeing to this term, Defendant does *not* waive any defenses or rights under the federal or Florida law nor consent or agree that any modification was necessary to cure any alleged illegal language or conduct.

- D. Class Representative Settlement Amount: Defendant will also pay Plaintiff the total amount of \$1,000.00 as consideration for her service as Class Representative in this case, and for “additional damages” pursuant to 15 U.S.C. § 1692k(a)(2)(B)(i) (“Payment to Plaintiff”). The Payment to Plaintiff will be paid by Defendant separate and apart from the Settlement Fund, the Settlement Administration Costs and Expenses, and any attorney’s fees, costs and expenses awarded to Class Counsel by the Court.
- E. Class Notice and Settlement Administration: Defendant shall bear the Settlement Administration Costs and Expenses. The Settlement Administration Costs and Expenses will be paid by Defendant separate and apart from the Settlement Fund, the Payment to Plaintiff, and any attorney’s fees, costs and expenses awarded by to Class Counsel by the Court.
- F. Attorney’s Fees and Costs: Pursuant to Fed. R. Civ. P. 23(h), Defendant agrees to pay Class Counsel their reasonable attorney’s fees, expenses, and costs as mutually agreed by the Parties or approved by the Court, no later than 10 days after any order awarding fees and costs to Class Counsel becomes final. Class Counsel shall be solely responsible for the distribution of these funds to all vendors, creditors, or participating attorneys, experts, or other consultants and services, which may have

claim to these funds. For the limited purpose of a petition for attorney's fees, costs and expenses by Class Counsel in conjunction with this settlement, Plaintiff and the Settling Class are considered the prevailing party in this litigation. Any attorney's fees, costs and expenses awarded by the Court will be paid by Defendant separate and apart from the Settlement Fund, the Settlement Administration Costs and Expenses, and the Payment to Plaintiff.

2.3 Release by Plaintiff: As consideration for this Agreement, as of the Effective Date, Plaintiff remises, releases, acquits and forever discharges the Released Parties, and any of its subsidiaries, from any and all causes of action, suits, debts, dues, damages, including compensatory and punitive damages, medical payment benefits, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, claims and demands of whatsoever kind or nature, in law or in equity, whether asserted or unasserted, actual or contingent, anticipated or unanticipated, known or unknown, which Plaintiff ever had, now has or may hereinafter acquire against Defendant from the beginning of time through the Effective Date. This release includes, but is not limited to, all claims and causes of action which could be or have been alleged against Defendant in the Lawsuit, including Unknown Claims. This release does not limit or foreclose any defenses Plaintiff may have regarding the underlying debt Defendant sought to collect from her.

2.4 Class Members' Release and Exclusive Remedy.

- A. Upon entry of the Final Order and Judgment, each Class Member who did not timely exclude himself or herself—and excluding Plaintiff, whose release is provided in the subparagraph above—and any person claiming by or through each such Class Member as heir, administrator, devisee, predecessor, successor, representative of any kind, or assignee shall be deemed to release and forever discharge the Released Parties from any and all of the Released Claims.
- B. The relief described herein is the exclusive method of recovery and exclusive remedy for all Class Members who do not timely exclude themselves for any and all of the Released Claims and shall be in lieu of any other remedy or right of action against the Released Parties for the Released Claims. Accordingly, the Released Parties shall not be subject to liability of any kind to any Class Member who did not timely exclude himself or herself with respect to any of the Released Claims, other than as set forth in this Agreement.
- C. Each Class Member who did not timely exclude himself or herself, upon the Court's entry of a Final Order and Judgment, shall be enjoined by that Order from instituting or maintaining any action for the Released Claims against the Released Parties. The Court's Final Order and Judgment shall enjoin such actions for the Released Claims. The Court shall retain jurisdiction over the administration of this Agreement and may use its equitable powers to enforce this Agreement.

2.5 Attorney's Fees of Individual Class Members. Any Class Member or other person may be represented by counsel of his or her choice, but all fees and expenses of such counsel, if other than Class Counsel paid under Section 2.2.F hereof, shall be paid by the Class Member or other person.

2.6 No Admission of Liability by Defendant. The parties and their attorneys stipulate that this Agreement does not constitute an admission by Defendant, that any claim or fact alleged by any party in the Class Action is true or correct, and Defendant expressly denies any liability or wrongdoing whatsoever in connection with matters which are the subject of the Class Action.

2.7 Exclusions and Objections for Class Members. The Class Administrator will administer the receipt of any and all requests for exclusion.

- A. Any Class Member who desires to be excluded from the class must send a written request for exclusion to the Settlement Administrator with a postmark date no later than 60 days after the Court's entry of the Preliminary Approval Order. After that deadline passes, the Settlement Administrator will provide to Class Counsel and Defendant's counsel a list of the names of each Class Member who submitted a timely exclusion. A copy of this list will be provided to the Court in connection with the Final Approval Motion.
- B. In the written request for exclusion, the Class Member—subject to the Court's approval—must set forth his or her full name, address, telephone number, and email address (if available), along with a statement that he or she wishes to be excluded, and must sign said request for exclusion.
- C. Any Class Member who submits a valid and timely request for exclusion will not be bound by the terms of this Agreement. Any Class Member who fails to submit a valid and timely request for exclusion will be bound by the terms of this Agreement.
- D. Any Class Member who intends to object to the fairness of this settlement must file a written objection with the Court within 60 days from the Court's entry of the Order of Preliminary Approval of Class Action Settlement. Further, any such Class Member must, within the same time period, provide a copy of the written objection to Class Counsel and Counsel for Defendant via U.S. Mail.
- E. In the written objection, the Class Member—subject to the Court's approval—must: state his or her full name, address, telephone number, and email address (if available); state the reasons for his or her objection; state the name, address, bar number and telephone number of the objecting Class Member's counsel, if represented by an attorney; include a statement of the specific basis for each objection; identify all documents which the objector desires the Court to consider, including a list of any legal authority the objector will present at the settlement approval hearing; attach documents establishing, or provide information sufficient to allow the Parties to confirm, that the objector is a Class Member; and

state whether he or she intends to appear at the settlement approval hearing on his or her own behalf or through counsel.

- F. Any Class Member who does not file a valid and timely objection to the settlement will be barred from seeking review of the settlement by appeal or otherwise.
- G. Any Class Member who does not submit a valid and timely claim form shall not be entitled to share in the distribution of the Settlement Fund but shall be bound by the terms and conditions of the Settlement Agreement, including the Release provision, unless the Class Member has excluded himself or herself from the Class pursuant to Sections A-C above, or unless the Parties mutually agree to accept late claims with the Court's approval.
- H. Any Class Member who submits both an objection and an exclusion will be treated as having submitted an exclusion and will be excluded from this Litigation.
- I. When responding to any inquiry from a Class Member, Plaintiff and Class Counsel will confirm that they believe the settlement is fair and reasonable.
- J. Subject to approval by the Court, a fairness hearing will be conducted regarding the settlement within 90 to 120 days from the Court's entry of the Order of Preliminary Approval of Class Action Settlement. Under Rule 23(c)(2)(B)(iv) of the Federal Rules of Civil Procedure, the Class Members will be notified that they may enter an appearance through an attorney at their own expense if the member so desires.

Article III **Representations and Warranties**

3.1 Representations and Class Counsel's Warranties. Class Counsel represent and warrant that they believe the settlement set forth in this Agreement is in the best interests of the Plaintiff and Class Members. However, such representations shall not constitute the giving of legal advice to Defendant, who stipulates it is relying on the legal advice of its own attorneys in deciding whether to enter into this settlement.

3.2 Representations and Warranties of the Plaintiff. Plaintiff represents and warrants as follows:

- A. that on the date of execution of this Agreement she is the owner of the individual claims asserted in the Litigation, she has not assigned, pledged (except to her attorneys), sold or otherwise transferred such claims (or an interest in such claims), and that on the Effective Date, she will own such claims free and clear of any and all liens, claims, charges, security interests or other encumbrances of any nature whatsoever, except for any contingent legal fees and expenses; and
- B. that this Agreement does not constitute an admission by Defendant that any claim or fact alleged by any party in the Class Action Complaint is true or correct, and Defendant has always and consistently expressly denied any liability or wrongdoing whatsoever in connection with matters which are the subject of this litigation.

ARTICLE IV **CONDITIONS TO CLOSING**

4.1 Conditions. The foregoing agreements of Plaintiff and Defendant are subject to the accuracy of the representations and warranties contained in this Agreement and to the performance by the parties hereto of their obligations under this Agreement in all material respects. Additionally, Defendant's obligation to provide the Class Members the relief described herein and to proceed with closing shall be subject to the satisfaction of each of the following conditions to closing on or prior to the Consummation Date (unless such conditions are waived by Defendant):

- A. the Effective Date shall have occurred;
- B. the Court shall have approved and signed a Final Judgment that includes a release of all of the Released Claims;
- C. Defendant and Plaintiff shall have been furnished with such additional documents as may be reasonably required in order to implement the transactions contemplated by this Agreement; and;

- D. the representations and warranties contained in Article III of this Agreement shall be true and correct as of the date of execution of this Agreement.

ARTICLE V
MISCELLANEOUS PROVISIONS

5.1 Appeals. In the event that an appeal is taken by a Class Member or any other person from the Preliminary Approval Order or the Final Order and Judgment, the parties to this Agreement agree to jointly support the position on such appeal that the settlement is fair, reasonable and adequate, and should be approved, and to file briefs or other appropriate court papers in support of that position. Nothing contained herein, however, shall prejudice the rights of Plaintiff, Class Counsel, or Defendant to appeal from any order of the Court that is inconsistent with the orders contemplated by this Agreement.

5.2 Termination. Only after attempting and completing good-faith negotiations to salvage the settlement, this Agreement shall be terminable by either Plaintiff or the Defendant upon 5 business days written notice in the event (1) the Court refuses to enter an order of preliminary approval of class action settlement in substantially the form attached as Exhibit D; or (2) the Court refuses to approve the settlement following notice to the Class Members and the final fairness hearing. If this Agreement is terminated, Plaintiff, Defendant, and each of the Class Members shall be deemed to be in the same position as existed prior to its execution, with the same *status quo ante* rights and interests as they may have had absent the entry by Defendant and Plaintiff into these settlement discussions, and this Agreement and all other

understandings and agreements between the parties and their respective counsel relating to the settlement, shall be deemed to be null and void and of no force and effect.

In that event, the parties will jointly notify the Court of the need to proceed with the case and the need to re-set deadlines and dates under the existing Scheduling Order.

5.3 No Admission. The Parties and their attorneys stipulate that this Agreement is a compromise of disputed claims, and that this Agreement is entered into without admitting any liability, which liability is expressly denied, and without agreement by any Party to any of the allegations made by another Party. The Parties and their attorneys further stipulate that nothing contained in this Agreement, the supporting documents, or the negotiations leading up to this Agreement shall be construed as an admission of liability or wrongdoing of any kind, and in the event that this Agreement is terminated this Agreement shall not act or be construed as a waiver of any claim or defense that Defendant or Plaintiff may have in the Litigation.

5.4 Entire Agreement. This Agreement, including all referenced Exhibits, is the entire agreement of the Parties. All antecedent or contemporaneous extrinsic representations, warranties, or collateral provisions concerning the negotiation and preparation of this Agreement are intended to be discharged and nullified.

5.5 Modification. No modification of this Agreement may be made, except by written agreement executed by Plaintiff, Class Counsel, and Defendant, and approved by the Court.

5.6 Notices. All notices between and to Class Counsel and Defendant required under this Agreement shall be sent by first class U.S. Mail, by hand delivery, or by any

other verifiable means, to the recipients designated in this Agreement. The timeliness of all submissions and notices shall be measured by the date that is 3 days after the date of the postmark (if sent by mail), or by the date of receipt (if hand delivered or sent by other verifiable means). The persons designated to receive notice are as follows:

Class Counsel

James L. Davidson, Esquire
Greenwald Davidson Radbil PLLC
7601 N. Federal Highway, Suite A-230
Boca Raton, Florida 33487

Defense Counsel

Ernest H. Kohlmyer, III, Esquire
Shepard, Smith, Kohlmyer & Hand, P.A.
2300 Maitland Center Parkway, Suite 100
Maitland, FL 32751

5.7 Execution in Counterparts. This Agreement may be executed in any number of counterparts and each of which when so executed shall be deemed an original and all of which taken together shall constitute one and the same Agreement.

5.8 Applicable Law. This Agreement shall be governed by and shall be construed and enforced in accordance with the laws of the United States and the State of Florida without regard to any conflict of law provision in said laws of the State of Florida that might otherwise require the application of the laws of a jurisdiction other than that of the State of Florida to the performance, validity, construction, or enforcement of this Agreement.

5.9 Headings. Article and Section headings in this Agreement are for convenience of reference only and are not to be taken to be a part of the provisions of this Agreement, nor to control or affect meanings, constructions or the effect of the same.

5.10 Benefit of Agreement. The Agreement shall be binding upon and inure to the benefit of the parties hereto, the Class Members, the Released Persons, and their respective successors, heirs, and assigns. Nothing in this Agreement is intended or shall be construed to give any other person or corporation any legal or equitable right, remedy or claim under or in respect to this Agreement or any provision herein entered.

5.11 Place of Performance. This Agreement shall be performed in the Southern District of Florida.

5.12 Best Efforts. All signatories to this Agreement and their counsel shall exercise their best efforts to take all steps and expend all efforts that may become necessary to effectuate this Agreement.

5.13 Parties Are Equal Drafters. The parties shall be deemed to have drafted this agreement equally, and the settlement documents shall not be construed strictly against Plaintiff or Defendant.

5.14 Invalidity of Provision. In the event that any material provisions of this Agreement are held invalid or unenforceable for any reason, such invalidity or unenforceability will not affect other provisions of this Agreement, if Plaintiff and Defendant mutually elect to proceed as if the invalid or unenforceable provision had never been included in the Agreement.

5.15. Non-Disparagement Agreement. The Parties and their counsel agree that they will not make, post, or file any statement, comment, blog, complaint, or any other communication, disparaging the other. In furtherance of paragraph 2.1.D above however, Class Counsel may include on its website, under a heading with the case name and number, a brief factual summary of the settlement as well as copies of relevant pleadings, including the longform notice.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties and their authorized attorneys have caused this Settlement Agreement to be executed on the date set forth below.

PAMELA LLOYD, as an individual and on behalf of those similarly situated

Date: _____

James L. Davidson
Greenwald Davidson Radbil PLLC
7601 N. Federal Highway, Suite A-230
Boca Raton, FL 33487

Proposed Class Counsel

Date: _____



JAMES E. ALBERTELLI, P.A. d/b/a ALBERTELLI
LAW, by its authorized representative

Stacy Mestayer
Print Name

Title: General Counsel

Date: 6/8/2020

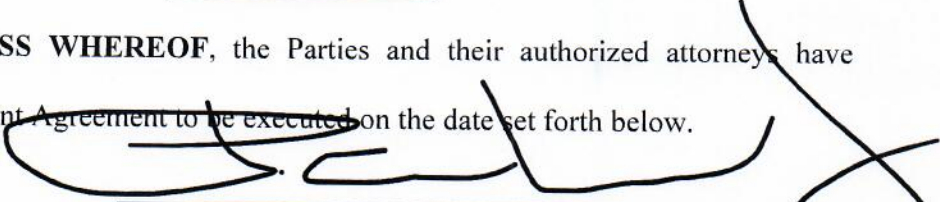
Ernest H. Kohlmyer, III
Shepard, Smith, Kohlmyer & Hand, P.A.
2300 Maitland Center Parkway, Suite 100
Maitland, FL 32751


Counsel for Defendant

Date: 6-8-2020

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties and their authorized attorneys have caused this Settlement Agreement to be executed on the date set forth below.


PAMELA LLOYD, as an individual and on behalf of those similarly situated
Date: 6/8/20


James L. Davidson
Greenwald Davidson Radbil PLLC
7601 N. Federal Highway, Suite A-230
Boca Raton, FL 33487

Proposed Class Counsel

Date: 06/08/2020

JAMES E. ALBERTELLI, P.A. d/b/a ALBERTELLI
LAW, by its authorized representative

Print Name

Title: _____

Date: _____

Ernest H. Kohlmyer, III
Shepard, Smith, Kohlmyer & Hand, P.A.
2300 Maitland Center Parkway, Suite 100
Maitland, FL 32751

Counsel for Defendant

Date: _____