

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (“Agreement”), made subject to approval by the Court, is by and between Dustin Mosley (“Mosley”) (also sometimes referred to herein as (“Class Representative”), individually and as the representative of the Settlement Class, as defined herein, and Show-Me Credit Union (“SMCU”). The Class Representative, SMCU and the Settlement Class are also sometimes individually referred to as “Party” and collectively referred to as the “Parties.”

WHEREAS, Mosley is the named counterclaimant in the civil action pending before the Twelfth Judicial Circuit Court, Audrain County, Missouri, styled *Show-Me Credit Union v. Dustin Mosely, et al.*, Case No. 16AU-AC00046-01 (the “Counterclaim” or “Litigation”); and

WHEREAS, Mosley is asserting claims against SMCU for alleged violations of Missouri Chapter 408, the Uniform Commercial Code and common law, and seeks statutory damages and other relief for himself and a class of persons similarly situated who obtained a secured collateralized loan or financing from SMCU and the collateral was repossessed with a notice indicating the sale of collateral would be by public sale; and

WHEREAS, the Parties stipulate to a Settlement Class, pending preliminary and final approval by the Circuit Court of Audrain County, Missouri, comprising and defined as Missouri consumers who have or had a loan or finance agreement held by SMCU under which personal property was pledged as collateral who were mailed a pre-sale notice of intent to sell collateral in the form of or substantially similar to the form mailed to Mosley on or about September 2, 2015, which states “public or private,” where the presale notice is dated between September 15, 2010 through September 15, 2016. Excluded from the class are persons whom SMCU has obtained a

deficiency judgment and who filed for bankruptcy after the date on their presale notice and whose bankruptcy ended in discharge rather than dismissal.

WHEREAS, Class Representative's counsel ("Class Counsel") and SMCU's counsel have thoroughly investigated the facts relating to the claims alleged and the events and transactions underlying the Litigation, through formal and informal discovery, and have made a thorough study of the legal principles applicable to the claims being asserted against SMCU; and

WHEREAS, the Parties have agreed, subject to Court approval, to resolve the Litigation as between Class Representative, the Settlement Class and SMCU under the terms of this Agreement; and

WHEREAS, the Parties and their respective counsel have engaged in arm's length negotiations concerning the settlement of the claims and causes of action being asserted against SMCU in the Counterclaim; and

WHEREAS, the Class Representative and Class Counsel have concluded that a settlement with SMCU under the terms of this Agreement will be fair, just, equitable, reasonable, adequate and in the best interests of Class Representative and the Settlement Class based upon their investigation, study, negotiations and discovery taken, and considering the contested issues, the expense and time to prosecute the Litigation against SMCU through trial, the delays and the risks and costs of further prosecution against SMCU, the uncertainties of complex litigation, and the benefits to be received under this Agreement; and

WHEREAS, SMCU disputes the claims but desires to settle the claims being asserted against it on the terms and conditions in this Agreement to avoid the burden, expense, and uncertainty of continuing litigation, and to put to rest all controversies that have been or could be raised against SMCU in the Litigation; and

WHEREAS, the Parties acknowledge and agree the Agreement constitutes a compromise in settlement of the claims and causes of action that have been or could be raised by the Class Representative and the Settlement Class (or members thereof) against SMCU and/or the other Released Persons as to any collateralized loan or financing from SMCU.

NOW THEREFORE, the undersigned Parties, each intending to be legally bound and acknowledging the sufficiency of the consideration and undertakings in this Agreement, agree, subject to approval of the Agreement by the Court, that the Litigation and the Released Claims against the Released Persons are finally and fully compromised and settled:

1. Definitions

As used in the Agreement, the following terms shall be defined:

1.1 **Cash Fund.** “Cash Fund” means the amount to be paid under Paragraph 3.a.

1.2 **Class Counsel.** “Class Counsel” shall mean Class Representative’s counsel, Martin L. Daesch, Jesse B. Rochman and the law firm OnderLaw, LLC, 110 E. Lockwood Avenue, St. Louis, Missouri 63119.

1.3 **Class Mail Notice.** “Class Mail Notice” means a notice in a form substantially the same as that attached as **Exhibit A**.

1.4 **Counterclaim Defendant’s Counsel.** “Counterclaim Defendant’s Counsel” means Kevin P. Clark of the law firm Litchfield Cavo, L.L.P., 222 South Central Avenue Suite 110, St. Louis, Missouri 63105.

1.5 **Court.** “Court” means the Twelfth Judicial Circuit Court, Audrain County, Missouri.

1.6 **Deficiency Write-Off.** “Deficiency Write-Off” means all deficiency account balances and deficiency claims as of the Effective Date that SMCU will write off for the benefit

of the Settlement Class under Paragraph 3.1.

1.7 **Effective Date.** The “Effective Date” of the Agreement means the date when all of the conditions in Paragraph 11 have occurred.

1.8 **Final Approval Order.** “Final Approval Order” means an Order consistent with Paragraph 9, finally approving the Agreement and the “Settlement” under Missouri Supreme Court Rule 52.08.

1.9 **Final Hearing Date.** “Final Hearing Date” means the date set by the Court for the hearing on final approval of the “Settlement.”

1.10 **Final Judgment.** “Final Judgment” means a Judgment of the Court consistent with Paragraph 9.

1.11 **Gross Write-Offs.** “Gross Write-Offs” is the Deficiency Write-Off and the Judgment Write-Off to be provided by SMCU or performed by SMCU under Paragraphs 3.1. and 3.m. as consideration for the Settlement.

1.12 **Gross Settlement Fund.** “Gross Settlement Fund” is the Cash Fund and Gross Write-Offs.

1.13 **Long-Form Notice.** “Long-Form Notice” means a notice in a form substantially the same as that attached hereto as **Exhibit B**.

1.14 **Net Distributable Settlement Fund.** “Net Distributable Settlement Fund” means the “Cash Fund” plus any interest earned on the Cash Fund, while in escrow, less the sum of (a) any incentive award approved by the Court and paid to the Class Representative; (b) any litigation expenses and/or costs approved by the Court and awarded to Class Counsel for this litigation or for ancillary matters.; and (c) any award of attorneys’ fees to Class Counsel.

1.15 **Person(s).** Person(s) shall have the broadest meaning possible and shall include all

legal entities such as corporations, companies and the like.

1.16 **Preliminary Approval Order.** “Preliminary Approval Order” means an Order consistent with Paragraph 7, preliminarily approving the Settlement, conditionally or preliminarily certifying a class for settlement, directing the issuance of class notice and scheduling a settlement hearing under Missouri Supreme Court Rule 52.08.

1.17 **Released Persons.** “Released Persons” shall mean SMCU and its insurers, including their members, current and former officers, directors, employees, attorneys and agents.

1.18 **Released Claims.** “Released Claims” means all past and present known and unknown claims, demands, damages, causes of action or suits seeking damages or other legal or equitable relief arising out of or in any way related to the repossession and disposition of personal property collateral in connection with any of SMCU’s loans encompassed by the Settlement Class or any claim relating to the adequacy or sufficiency of notices and disclosures related to any SMCU direct or indirect collateralized loan encompassed by the Settlement Class, whether arising from federal, state or local law or regulation which any of the Settlement Class Members have or may have had, or now have, from the beginning of time up through and including the Effective Date, against SMCU.

1.19 **Releasors.** “Releasors” means the Class Representative and all Settlement Class Members, and each of their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other person claiming by or through any or all of them. The Releasors shall not include: (a) any members of the Settlement Class who opt out of the Settlement under Paragraph 8; or (b) any person(s) not identified by SMCU as a member of the Settlement Class on **Exhibit C.**

1.20 **Settlement.** Settlement means the compromise in settlement memorialized in

this Agreement.

1.21 **Settlement Administrator.** “Settlement Administrator” means First Class, Inc. or any other independent class action settlement administrator company retained by Class Counsel and approved by the Court to administer the Settlement.

1.22 **Settlement Class.** “Settlement Class” shall have the meaning defined in Paragraph 2.a.

1.23 **Settlement Class Member.** “Settlement Class Member” means any member of the Settlement Class who does not timely opt out of the Settlement under Paragraph 8. If a Settlement Class Member has died, then the person’s estate, heirs, representatives, successors or assigns shall be deemed a Settlement Class Member.

1.24 **Settlement Class Member Payment.** “Settlement Class Member Payment” means the portion of the “Net Distributable Settlement Fund” shown on **Schedule A** to be paid to the respective Settlement Class Members under the Settlement. **Schedule A** shall be prepared by Class Counsel and furnished to the Court and Counterclaim Defendant’s Counsel within 10 business days after the information being furnished to Class Counsel under Paragraph 2.b.

1.25 **Settlement Hearing.** “Settlement Hearing” means the hearing on final approval of the class action settlement embodied in this Agreement.

2. **Certification of the SMCU Settlement Class**

a. Class Counsel and Counterclaim Defendant’s Counsel will request the Court to approve a settlement for a Class of persons for settlement (referred to and defined as the “Settlement Class”). The Settlement Class comprises: all persons who have or had a loan or finance agreement held by SMCU under which personal property was pledged as collateral who were mailed a pre-sale notice of intent to sell collateral in the form of or substantially similar to the form

mailed to Mosley on or about September 2, 2015, which states “public or private,” where the presale notice is dated between September 15, 2010 through September 15, 2016. Excluded from the class are persons whom SMCU has obtained a deficiency judgment and who filed for bankruptcy after the date on their presale notice and whose bankruptcy ended in discharge rather than dismissal.

b. Acting in good faith and using its best efforts, within five (5) business days after the Court issues its Preliminary Approval Order, SMCU shall provide a list to Class Counsel of all persons it has identified as in the Settlement Class. The list provided to Class Counsel, if ordered by the Court in the Preliminary Approval Order or otherwise, shall contain for each member of the Settlement Class: (a) their name, Social Security Number, and last known address; and (b) date of purchase, loan number or other loan identifier, the co-borrower or co-buyer, if applicable, the “Amount Financed” and “Finance Charge” from the truth-in-lending information in the agreement, the approximate deficiency balance remaining on the loan as of the Effective Date, and any other reasonable information that Class Counsel and Counterclaim Defendant’s Counsel mutually agree is necessary for administration of the Settlement. To protect the privacy and the names, addresses and other personal information of the members of the Settlement Class, the list of Settlement Class Members attached hereto as **Exhibit C** shall not be filed with the Court. **If the Court requires the list containing all the information provided to Class Counsel be filed, the Parties agree the list shall be filed under seal with the Court to protect the privacy and the names and addresses of the members of the Settlement Class.**

c. If the Agreement is not approved by the Court under the proposed Final Approval Order and Final Judgment, the Agreement, the conditional settlement class certification provided, the Settlement (including any modifications made with the consent of the Parties), and any

action(s) taken or to be taken in connection therewith, shall be terminated and shall become null and void and have no further force or effect, the Preliminary Approval Order shall be vacated, the Parties shall be restored to their respective positions existing prior to the execution of the Agreement. In addition, neither the Agreement, the stipulated Settlement Class, the Preliminary Approval Order, nor any other document relating to any of the foregoing, shall be relied on, referred to or used for any purpose with any further proceedings in the Litigation or any related action. In such case, or if the Agreement shall terminate or the settlement embodied does not become effective for any reason, the Agreement and all negotiations, court orders and proceedings relating thereto shall be without prejudice to the rights of the Parties, who shall be restored to their respective positions existing prior to the execution of the Agreement, and evidence relating to the Agreement, and all negotiations, shall not be discoverable or admissible.

d. No Admission of Liability. The Parties are entering into this Agreement to resolve vigorously disputed claims that have arisen between them and avoid the burden, expense and risk of further litigation. By entering into settlement negotiations and ultimately this Agreement, SMCU is not making any agreement, admission or concession regarding any claims or defenses alleged or asserted. Neither the Agreement nor any of its terms or provisions nor any of the negotiations between the Parties or their counsel shall be construed as an admission or concession of any of the Parties of anything, including but not limited to the claims and defenses asserted in the Litigation. The Parties agree that if the Settlement is not approved or anything prevents it from becoming final, nothing contained in the Agreement or the negotiations shall in any be admissible in any way and no Party will seek to admit any such matter.

3. **Settlement Consideration and Distribution of the Settlement Fund to the Settlement Class Members**

Cash Fund

a. Within twenty-one (21) business days after the Effective Date and the receipt of an IRS Form W-9 from Mosley and Class Counsel, SMCU and/or its insurer shall deliver \$160,000 into a qualified settlement fund established by Class Counsel through the Settlement Administrator, subject to Paragraph 14 below, by check or some other mutually agreeable form of payment. The account shall be labeled “Mosley Class Action Qualified Settlement Fund.”

b. The Cash Fund shall be returned to SMCU if the Settlement is rescinded, terminated, vacated, voided, or the Effective Date does not arrive for any other reason.

c. The Settlement Administrator, subject to such supervision and direction of the Court as may be necessary, shall be responsible for and shall administer and oversee the distribution of the Gross Settlement Fund, Cash Fund, and Net Distributable Settlement Fund under the terms of the Agreement and **Schedule A**.

d. Subject to the provisions in Paragraph 8, if any members of the Settlement Class timely opt out and exclude themselves from the Settlement, the names of the “opt out” class members shall be removed from **Schedule A**, and the Net Distributable Settlement Fund shall be reduced by the portion attributable to said “opt outs” The portion of the Net Distributable Settlement Fund attributable to said “opt outs” shall be returned to Counterclaim Defendant. . The Parties shall submit any required revisions to **Schedule A** to the Court prior to the Final Hearing Date.

e. Class Counsel shall calculate the Gross Settlement Fund, Cash Fund and Net Distributable Settlement Fund, subject to approval of Counterclaim Defendant’s Counsel, and the Settlement Administrator shall distribute the Net Distributable Settlement Fund to the Settlement

Class Members in the pro rata amounts included on **Schedule A**, or as the Court may otherwise determine and approve. Such distributions to the Settlement Class Members are referred to and defined as the “Settlement Class Member Payments.” The Settlement Administrator shall distribute the Settlement Class Member Payments within thirty (30) days after the Effective Date by checks mailed to the Settlement Class Members. The Settlement Administrator will re-mail any returned check to any new address disclosed. If any check is returned a second time, Class Counsel and/or the Settlement Administrator shall undertake reasonable efforts to locate a current address for the Settlement Class Member. If any Settlement Class Member refuses to accept receipt of a Settlement Class Payment check, or does not cash a Settlement Cash Payment check within thirty (30) days of receipt, Class Counsel and/or the Settlement Administrator shall undertake reasonable efforts to locate and/or contact the Settlement Class Member and inquire about receiving and/or cashing the check.

f. Following the expiration of 120 days after the Effective Date, all checks first issued to the Settlement Class Members as a Settlement Class Member Payment not cashed or negotiated will be deemed void, and the Settlement Administrator shall stop payment on such checks. Following the expiration of 210 days after the Effective Date, all checks reissued to the Settlement Class Members as a Settlement Class Member Payment not cashed or negotiated will be deemed void, and the Settlement Administrator shall stop payment on such checks. All portions of the Net Distributable Settlement Fund remaining 210 days after the Effective Date, less any costs or expenses associated with stopping payment on such checks, shall be payable to Legal Services of Eastern Missouri or some other organization approved by the Court.

g. Any Settlement Class Member who receives a payment under the Settlement shall be solely responsible for distributing or allocating such payment between or among all co-

borrowers on his, her, or their Loan, regardless of whether a payment check has been made payable to all or only some of the Settlement Class Members' co-borrowers. All Settlement Class Members represent and warrant he or she is entitled to receipt of the Settlement Class Member Payment and has not assigned by operation of law or otherwise the right to receipt of the Settlement Class Member Payment. The Settlement Class Members shall, upon receipt of any Settlement Class Member Payment, remit the Settlement Class Member Payment to any persons having received by assignment or operation of law any right, title or interest to or in the Settlement Class Member Payment.

h. The Released Persons shall have no responsibility for, interest in, or liability regarding the investment, allocation or distribution of the Settlement Fund, the determination, administration, calculation, or payment of claims, tax liability, the payment or withholding of taxes, or any losses in connection with the Settlement Funds or the implementation of this Settlement.

i. If a Settlement Class Member has filed for bankruptcy, the Settlement Class Member shall be solely responsible for providing any required notice to the bankruptcy trustee or Bankruptcy Court of the Settlement and Settlement Class Member Payment.

j. **State Laws Relating to Deficiency.** Notwithstanding anything to the contrary, the Parties acknowledge and agree that the Settlement Class Members' claims are premised on state law which bars the recovery of the Settlement Class Members' deficiency balances because SMCU failed to send them presale notices complying with the Missouri UCC. *See Show-Me Credit Union v. Mosely*, 541 S.W.3d 28 (Mo. App. 2018). The settlement consideration provided in the Agreement is determined by operation of state law. The Parties will ask the Court to make an independent judicial investigation into sufficiency of SMCU's presale notice to the Settlement

Class Members and what effect the insufficiency of the presale notice has on Settlement Class Members' alleged deficiency balances.

k. **Write-Off of Class Members' Account Balances or Counterclaim Defendant's Deficiency Claims.** Promptly upon the Effective Date of the Agreement, SMCU will, regarding all Settlement Class Members, close all accounts and write off any remaining deficiency balances then owed or claimed remaining as of the Effective Date on the Settlement Class Members' collateralized loans, as of the Effective Date, that are the subject of the Litigation, and will cease all collections and attempts to collect monies regarding said closed accounts and written off balances. Upon Preliminary Approval being granted, SMCU shall not accept payments on Settlement Class Members' deficiency balances and will return any payment received by returning the payment instrument to the sender. If final approval is not granted, all collections on the closed accounts and written off balances after the date of Preliminary Approval shall be retained by SMCU. The Deficiency Write-Off and all account balances and deficiency claims written off under the terms of this Agreement is approximately \$59,609.96 as of September 4, 2019 and shall be included as part of the Gross Settlement Fund.

l. **Credit Reporting by SMCU.** After the Effective Date, SMCU will cease reporting to the national credit reporting agencies (Experian, Equifax and TransUnion) (the "Credit Bureaus") there is any amount due or owing from the Settlement Class Members on the loans that are the subject of this Settlement. As soon as practicable after the Effective Date, SMCU will submit to the Credit Bureaus, through an electronic file, a deficiency balance of zero for each loan that is the subject of this Settlement. However, nothing contained in this Settlement shall require SMCU to attempt to delete any credit reporting items that Settlement Class Members' payments were past due, the loans were in default or that any repossession(s) occurred.

The Parties acknowledge the Credit Bureaus are separate entities from SMCU. The Parties acknowledge that SMCU cannot guarantee, warrant, or take responsibility for the Credit Bureaus regarding changing, deleting, suppressing, or making entries regarding any credit information or other information regarding the Settlement Class Members' accounts concerning their motor vehicle loans or financing from SMCU for any loan by SMCU. Provided SMCU has undertaken its obligations in this Paragraph 3, Class Representative and the Settlement Class Members waive all claims, whether arising in contract or tort, common law or statute, and/or federal or state law (including, but not limited to, claims for any damages, attorneys' fees and/or costs) against Released Persons that may arise subsequent to the Agreement or which arise out of or relate to actions required to be taken by SMCU under this provision. If an item fails to get deleted or the reporting reoccurs on any account involved in this Litigation after SMCU's initial request, SMCU's only responsibility will be to submit a "Universal Data Form" or its equivalent to the Credit Bureaus directing them to delete the information required. Class Representatives' expert estimates the approximate benefit of the rate provided by this paragraph is \$10,000 per class member for a total of \$230,000 that shall be included as part of the gross settlement fund.

Settlement Administrator

Any costs, fees and expenses shall be paid from the Settlement Fund or by Class Counsel as the Court may direct and approve.

4. Incentive Award, Attorneys' Fees and Costs and No Publicity

a. Class Representative may petition the Court for the payment of an incentive award in a total amount not to exceed \$5,000 in recognition of services rendered for the benefit of the Settlement Class throughout the Litigation. Any such incentive award shall be in addition to the amount to be paid on his individual claims. Any incentive award approved by the Court shall be

paid from the Cash Fund and not in addition to it. Any incentive award approved by the Court shall be deducted from the Cash Fund and distributed to the Class Representative with their Settlement Class Member Payment. SMCU will not object to Class Representative applying to the Court for and/or receiving an incentive award in the above-stated amount.

b. Class Counsel and/or Class Representative may petition the Court for an award of attorney's fees, litigation expenses, settlement administration expenses and/or court costs not to exceed \$125,000. Any such expense and/or award approved by the Court shall be paid from the Cash Fund and not in addition. Any such expense and/or award shall be deducted from the Cash Fund and distributed to Class Counsel the first business day after Cash Fund is received by the Settlement Administrator. SMCU will not object to Class Counsel and/or Class Representative applying to the Court for and receiving an award of fees, expenses and/or costs in the above amount.

c. Class Counsel agrees, as part of the consideration for this Settlement, it will not in any way publicize this Settlement other than providing the Class Notices as specifically set forth herein or by Court Order. As such, Class Counsel shall not publicize the Settlement in Missouri Lawyers Weekly or other similar publications, nor will they issue any press releases or speak to the press about the litigation and/or Settlement other than to direct them to the Class Notice provided for herein.

5. Releases

a. Upon SMCU's compliance with its obligations under this Agreement, Releasors, by operation of the Agreement and the judgment in the Final Order and Judgment, shall be deemed without further action by any person or the Court, (i) to have fully, finally and forever released, settled, compromised, relinquished, and discharged all of the Released Persons of all Released

Claims; (ii) and to be forever barred and enjoined from instituting or further prosecuting in any forum including, but not limited to, any state, federal, or foreign court, or regulatory agency, the Released Claims. The Parties agree that the Released Persons will suffer irreparable harm if any Settlement Class Member takes action inconsistent with this release, and that the Released Persons may seek an injunction on such action without further showing of irreparable harm.

b. The Releasors acknowledge and agree that they know they may discover material or immaterial facts besides or different from those which they now know or believe to be true regarding the subject matter of the Release, but they intend to and do, upon the Effective Date of the Agreement, fully, finally and forever settle and release each and every of the Released Persons from every Released Claim, known or unknown, suspected or unsuspected, accrued or not accrued, contingent or matured, which now exists, may exist, or may heretofore have existed, without regard to the subsequent discovery or existence of such different or additional facts.

c. Subject to Court approval, each Settlement Class Member shall be bound by the Agreement and all of their claims shall be dismissed with prejudice and released even if they never received actual, prior notice of the Litigation or the Settlement in the Class Mail Notice or otherwise. The Release and agreements in this paragraph shall apply to and bind all Settlement Class Members, including those Settlement Class Members whose Class Mail Notices are returned as undeliverable, and those for whom no current address can be found.

6. Representations and Stipulations

a. SMCU represents, warrants and declares that:

(i) it has acted in good faith and has used its best efforts in identifying the members of the Settlement Class and in producing the Class Members' Retail Installment Contracts and Security Agreements or other Loan Agreements on which the distribution of the

individual Settlement Class Member Payments on **Schedule A** is based;

(ii) to the best of SMCU's actual knowledge, there are no members of the Settlement Class other than those identified on **Exhibit C**;

(iii) But for the "automatic bar" operation of law as enforced by the Settlement, the total amount due and owing from the Settlement Class Members for "deficiencies" on the Effective Date, if such totals could be determined or located, is approximately \$59,609.96.

b. Except for their clients in Case No. 16AU-AC00046 Counsel represents and warrants to SMCU they have not been retained by any existing client to commence a new lawsuit or pursue any claims or right of relief against SMCU regarding any of the Released Claims. In addition, Class Counsel agrees that they will not solicit the right to legally represent any member or members of the Settlement Class who opt(s) out of the Settlement Class and Settlement regarding the Released Claims unless the Agreement terminates or does not become effective.

7. Preliminary Approval Order

The Parties shall promptly move the Court for a Preliminary Approval Order that:

a. Preliminarily approves the proposed Settlement Class under Missouri Supreme Court Rule 52.08 for settlement;

b. Preliminarily approves the Agreement as fair, reasonable and adequate under Missouri Supreme Court Rule 52.08 subject to a final determination by the Court;

c. Approves the appointment of Mosley as representative of the Settlement Class;

d. Approves the appointment of Class Counsel as counsel for the Settlement Class;

e. Approves a form of mailed notice substantially like the Class Mail Notices attached hereto as **Exhibit A** to be sent to the members of the Settlement Class on **Exhibit C**;

f. Approves a Long-Form Notice (substantially like the form attached hereto as **Exhibit B**) that contains more extensive information than the Class Mail Notice and that will be

provided to members of the Settlement Class by request and on a website.

g. Directs the Administrator to mail the Class Mail Notice promptly after entry by the Court of the Preliminary Approval Order to the Settlement Class by first-class mail to the last known address of such persons and to provide the Long-Form Notice to members of the Settlement Class on a website or otherwise if Settlement Class Members request it;

h. Schedules a hearing for final approval of the Agreement;

i. Establishes a procedure for members of the Settlement Class to opt out and setting a date, approximately 45 days after the mailing of class notice or earlier as the Court directs, after which no member of the Settlement Class shall be allowed to opt out of the Settlement Class;

j. Establishing a procedure for the members of the Settlement Class to appear and/or object to the Settlement and setting a date, approximately 45 days after the mailing of the Class Mail Notices or earlier as the Court directs, after which no member of the Settlement Class shall be allowed to object;

k. Containing such other provisions consistent with the terms and provisions of the Agreement as the Court may deem advisable.

8. Opt Outs and Objections By Members of the Settlement Class

a. Procedure for Opt Outs. The deadline for opt-out requests shall be set forth in the Preliminary Approval Order. Any request to opt out must be in writing and must include the name, address, telephone number, last four digits of the Social Security Number of the Settlement Class Member seeking to opt out, and a statement that the Settlement Class Member and all other borrowers named on the Settlement Class Member's Retail Installment Contract and Security Agreement or governing loan agreement are seeking exclusion. Any opt-out request must be signed by each person who was a party to the Retail Installment Contract and Security Agreement

or governing loan agreement that is the subject of this Litigation, unless such person is deceased. If a party to the Retail Installment Contract and Security Agreement or governing loan agreement is deceased, a copy of the death certificate for such person shall be submitted with the opt-out request. Any opt-out request must include a reference to “*Show-Me Credit Union v. Dustin Mosely, et al.*, Case No. 16AU-AC00046” and be mailed to the Settlement Administrator. Class Counsel will cause the Settlement Administrator to send all opt-out requests to Class Counsel and Counterclaim Defendant’s Counsel via email within two days after receiving said requests.

To be timely and effective, any opt-out request must be postmarked by the date established by the Court in the Preliminary Approval Order. No member of the Settlement Class may opt out by having a request to opt out submitted and signed by an actual or purported agent or attorney acting on behalf of the Class Member. No opt-out request may be made on behalf of a group of Settlement Class Members. Each member of the Settlement Class not submitting an opt-out request that substantially complies with Paragraph 8 shall be included in the Settlement Class and deemed a Settlement Class Member. The Parties shall provide to the Court, by the date of the Final Approval Hearing, a list of all persons, by reference to a unique identifier and last four digits of their Social Security Number, who have timely and adequately filed a request to be excluded from the Settlement.

b. Opt Out Limit. If ten (10 or) more of the class opts out of the Settlement, then SMCU, at its sole option, may choose to rescind and void the settlement by providing written notice to Class Counsel within 10 days prior to the final fairness hearing. If SMCU exercises its option to rescind and void the Settlement Agreement, the Parties shall return to the status quo as if the Parties had not entered into the Settlement Agreement, and nothing contained in the Agreement or the settlement negotiations shall be discoverable or admissible in Court.

c. Procedure for Objections to Settlement. Any member of the Settlement Class who wishes to object to the Settlement or to the incentive awards or the awards of expenses, costs and/or attorneys' fees must file a written notice of objection, including supporting papers as described further below (collectively referred to as the "Notice of Objection"), with the Court on or prior to the date established by the Court in the Preliminary Approval Order. To determine timeliness, a Notice of Objection shall be deemed to have been submitted when received and filed with the Clerk of Court. Copies of the Notice of Objection must also be postmarked by the date established by the Court in the Preliminary Approval Order, which shall be no later than 15 days before the Final Hearing Date:

Martin L Daesch, Esq.
Jesse B. Rochman, Esq.
Onder Law, LLC
110 E. Lockwood Avenue
St. Louis, Missouri 63119

(on behalf of the Settlement Class)

and

Kevin P. Clark, Esq.
Litchfield Cavo, L.L.P.
222 South Central Avenue, Suite 110
St. Louis, Missouri 63105

(on behalf of Counterclaim Defendant SMCU).

The Notice of Objection must be in writing and shall specifically include:

- (i) The name, address, telephone number, facsimile number (if available), email address (if available) and last four digits of the Social Security Number of the Settlement Class Member filing the objection;
- (ii) A statement of each objection asserted;
- (iii) A detailed description of the facts underlying each objection;
- (iv) Any loan documents in the possession or control of the objector and relied

upon by the objector as a basis for the objection;

- (v) If the objector is represented by counsel, the name, address, telephone number, facsimile number (if available) and email address (if available) of the counsel, and a detailed description of the legal authorities supporting each objection;
- (vi) If the objector plans to utilize expert opinion and/or testimony as part of the objection(s), a written expert report from all proposed experts that outlines each of the expert's opinions and the factual and substantive bases thereof;
- (vii) If the objector plans to call a witness or present other evidence at the hearing, the objector must state the identity of the witness and identify any documentary evidence by attaching the documents to the objection, and the objector must provide any other evidence that the objector intends to present;
- (viii) A statement of whether the objector intends to appear at the hearing;
- (ix) A copy of any exhibits which the objector may offer during the hearing;
- (x) A reference to "*Show-Me Credit Union v. Dustin Mosely, et al.*;" Case No. 16AU-AC00046-01;" and
- (xi) **A certification under 28 U.S.C. § 1746 or similar state law in substantially the following form: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".**

Attendance at the final hearing by an objector is optional. Any Settlement Class Member who does not make his or her objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy, or reasonableness of the proposed settlement or any other provision of the Agreement. The agreed-upon procedures and requirements for filing objections should ensure the efficient administration of justice and the orderly presentation of any Settlement Class Members' objections to the Agreement, in accordance with such Settlement Class Members' due process rights. The Preliminary Approval Order and Long-Form Notice shall require all Settlement Class Members who have any objections to serve by mail or hand delivery such objection upon Class Counsel and

Counterclaim Defendant's Counsel at the addresses in the Long-Form Notice no later than the objection date set by the Court. If the objecting Settlement Class Member opts to serve the objection upon Class Counsel and Counterclaim Defendant's Counsel by mail, the objection must be postmarked no later than the objection date set by the Court. The Preliminary Approval Order shall further provide that objectors who fail to properly or timely file their objections with the Clerk of the Court with the required information and documentation, or fail to serve them, shall not be heard during any hearings, nor shall their objections be considered by the Court.

9. Final Approval Order and Final Judgment

a. The Class Representative and Class Counsel agree that they will request the Court to enter, after the hearing on final approval of the Agreement, a Final Approval Order certifying the Settlement Class and finding that the Agreement is fair, reasonable, and adequate and in the best interest of the Settlement Class and ordering the Parties to carry out the Agreement.

b. The Class Representative and Class Counsel agree that they will request the Court to enter a Final Judgment dismissing all claims and motions of SMCU and the Settlement Class on the merits and with prejudice, declare the Settlement Class Members are bound by the Releases in Paragraph 5, and note the Court's decision to reserve continuing jurisdiction over the enforcement of the Agreement and the administrator and distribution of the Settlement Funds.

c. The Settlement Administrator, with the assistance of Class Counsel, shall file a final accounting with the Court within 300 days after the Effective Date. This final accounting shall contain a summary of all the distributions of the Cash Fund. Upon receipt of the final accounting, the Court, if satisfied with such report, shall file a Notice of Acceptance of Final Accounting indicating the Court's approval. If the Court requires clarification or additional information, the Parties shall furnish such information within 10 business days after such request.

10. Certifications to the Court

a. By the Final Hearing Date, Class Counsel shall file with the Court an affidavit verifying the Court-approved Class Mail Notices have been sent by first-class mail and the Long-Form Notice has been provided to members of the Settlement Class on a website or otherwise upon the request of Settlement Class Members.

b. By the Final Hearing Date, Class Counsel shall file with the Court an affidavit verifying they have complied with the procedures described in Paragraph 13 regarding all Class Mail Notices returned as undeliverable.

11. Effectiveness of Settlement Agreement

The “Effective Date” of the Agreement shall be the date when each and all of the following conditions have occurred:

a. A Final Approval Order has been entered by the Court.

b. A Final Judgment has been entered by the Court.

c. The Final Approval Order and the Final Judgment entered have become final for purposes of appeal because of (i) the expiration of the time for appeals therefrom with no appeal having been taken or, (ii) if review of the order, or any portion thereof, is sought by any person, the matter has been fully and finally resolved by the appellate court(s) and the time for seeking any higher level of appellate review has expired.

d. If any material portion of the Agreement, the Final Approval Order, or the Final Judgment is vacated, modified, or otherwise altered on appeal, any Party may, within seven (7) business days after such appellate ruling, declare that the Agreement has failed to become effective and in such circumstances the Agreement shall cease to be of any force and effect as provided in Paragraph 12.

e. Once all obligations of SMCU and/or its insurer have been completed as required by the Agreement, Class Counsel shall file a Satisfaction of Judgment in this case within 10 business days after SMCU has filed an affidavit of compliance with the Court affirming all obligations of SMCU and/or its insurer have been completed as required by the Agreement.

12. Failure of Condition

If the Agreement fails to become effective, the orders, judgment, and dismissal to be entered under the Agreement shall be null and void or otherwise vacated, and the Parties will be returned to the status quo as if the Agreement had never been entered. In addition, the Agreement and all negotiations, court orders and proceedings relating to the Agreement shall be without prejudice to the rights of all Parties, and evidence relating to the Agreement and all negotiations shall not be admissible or discoverable.

13. Class Notice Forms

a. **Exhibit C** constitutes a list of the members of the Settlement Class to whom notice under the Agreement shall be provided. Prior to mailing the Class Mail Notices, the Settlement Administrator will update the addresses by the United States Postal Service's National Change of Address database or another address database service (e.g., Accurint, Intelius). The Settlement Administrator will re-mail any returned notices to any new address disclosed. If any notice is returned a second time, the Settlement Administrator shall undertake reasonable efforts to locate a current address for the Settlement Class Members. The portion of the Net Distributable Settlement Fund attributable to where the Settlement Administrator is unable to obtain a current address shall remain a part of the Net Distributable Settlement Fund and will be reallocated to the Settlement Class Members with valid current addresses *pro rata*. The notices shall be mailed within ten (10) business days after the Preliminary Approval Order. Also within ten (10) business

days after the Preliminary Approval Order, the Settlement Administrator will provide the Court-approved Long-Form Notice and claim form on a website that the Settlement Class can access. If so requested by any member of the Settlement Class, the Settlement Administrator shall also mail a copy of the Long-Form Notice to the requesting member by first-class mail.

b. Subject to Court approval, all Settlement Class Members shall be bound by the Agreement and the Released Claims shall be released even if a Settlement Class Member never received actual notice of the Litigation or the Settlement. Further, the Parties expressly acknowledge and agree that a Final Judgment shall be entered by the Court barring the re-litigation of the Released Claims, regardless of whether the claims were asserted, to the fullest extent of the law, and that any judgment shall be entitled to Full Faith and Credit in any other court, tribunal, forum, including arbitration forum, or agency.

14. Qualified Settlement Fund

a. The Gross Fund shall constitute a “qualified settlement fund” (“QSF”) within the meaning of Treasury Regulation Section 1.468B-1 promulgated under Section 468B of the Internal Revenue Code of 1986 as amended. The Settlement Administrator shall be the “administrator” within the meaning of Treasury Regulation §1.468B-2(k)(3).

b. Upon establishment of the QSF, the Settlement Administrator shall apply for an employer identification number for the QSF utilizing Internal Revenue Service Form SS-4 and in accordance with Treasury Regulation §1.468B-2(k)(4).

c. If requested by either SMCU or the Settlement Administrator, the Settlement Administrator and SMCU shall fully cooperate in filing a relation-back election under Treasury Regulation §1.468B-1(j)(2) to treat the QSF as coming into existence as a settlement fund as of the earliest possible date.

d. Class Counsel shall cause the Settlement Administrator to file, on behalf of the QSF, all required federal, state, and local tax returns, information returns and tax withholdings statements under Treasury Regulation §1.468B-2(k)(1) and Treasury Regulation §1.468B-2(1)(2)(ii).

15. General Provisions

a. Best Efforts to Effectuate Settlement. The Parties' counsel shall use their best efforts to cause the Court to give Preliminary Approval to this Agreement as promptly as practicable, to take all steps contemplated by this Agreement to effectuate the settlement on the stated terms and conditions and to obtain Final Approval of this Agreement.

b. Entire Agreement. This Agreement constitutes the full, complete and entire understanding, agreement and arrangement of and between the Class Representative and the Settlement Class Members and SMCU regarding the Settlement and the Released Claims against the Released Persons. The Agreement supersedes all prior oral or written understandings, agreements, and arrangements between the Parties regarding the Settlement and the Released Claims against the Released Persons. Except for those set forth expressly in the Agreement, there are no agreements, covenants, promises, representations or arrangements between the Parties regarding the Settlement and/or the Released Claims against the Released Persons.

c. Modification in Writing. This Agreement may be altered, amended, modified or waived, in whole or in part, only in a writing signed by all Parties. The Agreement may not be amended, altered, modified or waived, in whole or in part, orally.

d. Ongoing Cooperation. The Parties hereto shall execute all documents and perform all acts necessary and proper to effectuate the Agreement. The execution of documents must take place prior to the Final Hearing Date.

e. Duplicate Originals/Execution in Counterparts. All Parties, Class Counsel and Counterclaim Defendant's Counsel shall sign two copies of the Agreement, and each such copy shall be an original. The Agreement may be signed in one or more counterparts. All executed copies of the Settlement Agreement and photocopies thereof (including facsimile copies of the signature pages) shall have the same force and effect and shall be as legally binding and enforceable as the original.

f. No Reliance. Each Party to the Agreement warrants he, she or it is acting upon his, her, or its independent judgment and upon the advice of his, her, or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other party, other than the warranties and representations made in the Agreement.

g. Governing Law. The Agreement shall be interpreted, construed, enforced, and administered under the laws of Missouri, without regard to conflict of laws rules. The Agreement shall be enforced in the Twelfth Judicial Circuit Court – Audrain County, Missouri. SMCU, Class Representative and the Settlement Class Members waive any objection that each such party has to the venue of such suit, action, or proceeding and irrevocably consent to the jurisdiction of the Twelfth Judicial Circuit Court – Audrain County, Missouri in any such suit, action or proceeding, and agree to accept and acknowledge service of all process which may be served in any such suit, action or proceeding.

h. Reservation of Jurisdiction. The Parties agree that the Court should retain jurisdiction to enforce the terms of the Agreement.

i. Binding on Successors. Upon execution, the Agreement shall bind and shall inure to the benefit of the Parties and their respective successors, assigns, executors, administrators, heirs and legal representatives.

j. Mutual Preparation. The Agreement shall not be construed more strictly against one party than another merely because it may have been prepared by counsel for one of the Parties, it being recognized that because of the arm's length negotiations between the Parties, all Parties have contributed to the preparation of the Agreement.

k. Gender Neutrality. All personal pronouns used in the Agreement, whether used in the masculine, feminine or neutral gender, shall include all other genders, and the singular shall include the plural and vice versa.

l. Taxes. All Settlement Class Members are responsible for paying and reporting any federal, state and local income taxes that may be due on any payments made to them and any other benefit they receive under the Agreement, including benefits related to the Deficiency Write-Off.

m. Authority. Each of the Parties to the Agreement represents, covenants and warrants that (a) they have the full power and authority to enter into and consummate all transactions contemplated by the Agreement and have duly authorized the execution, delivery and performance of the Agreement and (b) the person executing the Agreement has the full right, power and authority to enter into the Agreement on behalf of the party for whom he/she has executed the Agreement, and the full right, power and authority to execute all necessary instruments, and to fully bind such party to the terms and obligations of the Agreement.

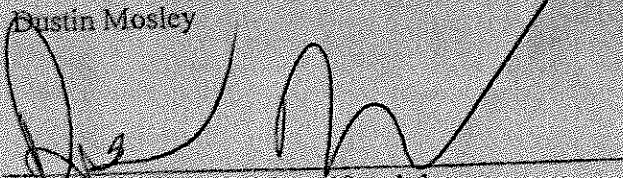
n. Exhibits. The exhibits attached to the Agreement are incorporated as though fully set forth in the Agreement.

o. Own Fees and Costs. Except as otherwise provided in this Agreement, each Party shall bear his or its own attorneys' fees, costs, and expenses in the prosecution, defense, or settlement of the Litigation.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have caused the Agreement to be executed as of the 17 day of December, 2019.

Dated: December 17, 2019

Dustin Mosley


Dustin Mosley, for himself and the Settlement Class Members

Dated: December 17, 2019

Show-Me Credit Union

By: 

Name: CHUCK A. RENTSCHLER

Title: PRESIDENT

Dated: December 17, 2019

Class Counsel

By: 

Dated: December 17, 2019

Counterclaim Defendant's Counsel

By: 

EXHIBITS AND SCHEDULES

Schedule A – Proposed Distribution Schedule of Net Distributable Settlement Fund/
Settlement Class Member Payments (To be furnished as provided for in this Agreement)

Exhibit A – Class Mail Notices

Exhibit B – Long Form Mail Notices

Exhibit C – Settlement Class List (To be furnished as provided for in this Agreement)