

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

WEST LOOP CHIROPRACTIC)	
& SPORTS INJURY CENTER, LTD.,)	
and WEST LOOP HEALTH & SPORTS)	
PERFORMANCE CENTER, LLC,)	
on behalf of plaintiffs and)	
the class members defined herein,)	
)	16 C 5856
Plaintiffs,)	
)	Judge Guzman
v.)	Magistrate Judge Gilbert
)	
NORTH AMERICAN BANCARD, LLC,)	
and JOHN DOES 1-10,)	
)	
Defendants.)	
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MARTIN M. MATUS, O.D.,)	
on behalf of plaintiff and)	
the class members defined herein,)	
)	19 C 1797
Plaintiff,)	
)	Judge Dow
v.)	Magistrate Judge Valdez
)	
NORTH AMERICAN BANCARD, LLC,)	
and JOHN DOES 1-10,)	
)	
Defendants.)	

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

RECITALS AND DEFINITIONS

A. Parties. Plaintiffs West Loop Chiropractic & Sports Injury Center, Ltd., West Loop Health & Sports Performance Center, LLC (collectively, “West Loop”) and Martin M. Matus, O.D. (“Matus”) (West Loop and Matus are collectively referred to as “Plaintiffs”), individually and as representatives of the settlement class of persons defined below in paragraph E (the

“Settlement Class”), and Defendant North American Bancard, LLC (“NAB” or “Defendant”) enter into this Class Action Settlement Agreement and Release (“Settlement Agreement”). Plaintiffs and Defendant are collectively referred to as the “Parties.”

B. Nature of Cases. In the lawsuit captioned *West Loop Chiropractic & Sports Injury Center, Ltd., et al., v. North American Bancard, LLC, et al.*, pending in the United States District Court, Northern District of Illinois, Eastern Division, docket number 16 C 5856, (the “West Loop Litigation”), West Loop alleges that Defendant violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (“TCPA”) by sending, directly or indirectly through its agents, unsolicited advertisements via facsimile to West Loop and a nationwide class of individuals and entities.

In the lawsuit captioned *Martin M. Matus, O.D. v. North American Bancard, LLC, et al.*, pending in the United States District Court, Northern District of Illinois, Eastern Division, docket number 19 C 1797, (the “Matus Litigation”), Matus alleges that Defendant violated the TCPA and the Illinois Consumer Fraud Act, 815 ILCS 505/2 by sending, directly or indirectly through its agents, unsolicited advertisements via facsimile to Matus and a nationwide class of individuals and entities.

C. Denial of Liability. NAB denied and continues to deny the allegations and claims asserted by West Loop in the West Loop Litigation and Matus in the Matus Litigation and maintains that it complied with the TCPA and all applicable laws to the extent it sent, directly or indirectly through its agents, any advertisements via facsimile at issue in the West Loop Litigation and the Matus Litigation. NAB further denied and continues to deny violating the TCPA as alleged in the West Loop Litigation and the Matus Litigation, and further denies any liability whatsoever to Plaintiffs and the Settlement Class based upon, arising out of, or otherwise related to the allegations and claims asserted in the West Loop Litigation and the Matus Litigation or the TCPA.

Defendant further maintains that if the West Loop Litigation or the Matus Litigation were to be litigated, such litigation would be not appropriate for class treatment. Defendant is entering into this Settlement Agreement solely to avoid the expense, time, and risk associated with the continued defense of the West Loop Litigation and the Matus Litigation through, respectively, dispositive motion practice, class certification briefing in the Matus Litigation, trial, and any subsequent appeals, and to fully and finally compromise and settle all claims, known or unknown, asserted or unasserted, actual or contingent, that have been or may have been asserted by the Plaintiffs or the Settlement Class based upon, arising out of, or otherwise related to the allegations and claims asserted in the West Loop Litigation and the Matus Litigation. Defendant also has considered the uncertainty, difficulty, and delays inherent in litigation, especially in these complex class actions. Neither the fact of this Settlement Agreement, including any consideration therefore, nor any actions taken to implement the terms of this Settlement Agreement are intended to be or may be deemed or construed to be an admission or concession of liability or of the validity of any allegation, claim, point of law, or fact based upon, arising out of, relating to, or otherwise in connection with the allegations and claims asserted or that could have been asserted in the West Loop Litigation or the Matus Litigation, and shall not be deemed or construed to be an admission or evidence for any purpose whatsoever.

D. “Settlement Class Counsel” means Edelman, Combs, Lattuner & Goodwin, LLC.

E. “Settlement Class” means all persons with fax numbers, who during the Class Period, were sent faxes by or on behalf of North American Bancard, LLC, promoting its goods or services for sale.

F. “Class Period” means April 6, 8, 12, 18, 20, 25, 26, and 27; May 4, 9, 12, 20, 25 and 26; June 8, 22, and 23; July 28; and August 4, 8, 9, 10, 12, 18 and 23, 2016.

G. “Plaintiffs” means West Loop and Matus.

H. “Released Parties” means Defendant and any and all of its present or former predecessors, parents, subsidiaries, affiliates, principals, successors, assigns, officers, members, directors, partners, insurers, divisions, entities in which Defendant has a controlling interest, employees, representatives, agents, including without limitation Merchant Payment Processing (“MPP”) and its purported principals Sandor Krizsan and/or Kent Harper (in such capacities as they relate to the actions that are the subject of the West Loop Litigation and Matus Litigation). The Parties expressly agree that all of the foregoing persons and entities that are not signatories to this Settlement Agreement are intended third-party beneficiaries of this Settlement Agreement.

I. “Settlement Class Administrator” means the firm retained by Plaintiffs with the consent of Defendant and approved by the Court to issue notice to the Settlement Class Members and to administer the settlement.

J. “Settlement Class Member(s)” means Plaintiffs and any member of the Settlement Class who does not opt out and is not otherwise excluded from the Settlement Class by the Court.

K. “Released Claims” means any and all causes of action, suits, claims, controversies, liabilities, demands, and obligations of any kind or nature whatsoever, whether in law or in equity, whether known or unknown, whether asserted or unasserted, whether suspected or unsuspected, whether foreseen or unforeseen, whether individual or representative, which Plaintiffs or any other Settlement Class Members now have, did have, or may have against each or any of the Released Parties, based upon, arising out of, or relating to the claims and allegations in, or that could have been asserted in, the West Loop Litigation or Matus Litigation, or any legal theory based upon, arising out of, or relating to the sending or receipt of advertisements by facsimile. This includes

any and all claims that were asserted or could have been asserted against each or any of the Released Parties in the West Loop Litigation or Matus Litigation.

L. Plaintiffs' Desire to Settle. Plaintiffs, individually and on behalf of the Settlement Class, desire to settle their respective claims against Defendant, having taken into account through Settlement Class Counsel the risks, delay, and difficulties involved in establishing a right to recovery in excess of that offered by this settlement and the likelihood that further litigation will be protracted and expensive. Plaintiffs represent and warrant that they owned or leased the facsimile machines which received the faxes at issue in the West Loop Litigation and Matus Litigation at the time the faxes were received. The warranties and representations made in this Settlement Agreement survive the execution of this Settlement Agreement.

M. Investigation. Settlement Class Counsel state that they have engaged in wide-ranging discovery, investigated the facts and the applicable law, retained and consulted with expert witnesses concerning those facts and applicable law, and participated in two mediation sessions before the Hon. James Holderman (ret.) on August 22, 2017, and September 26, 2018, as well as two settlement conferences before the Hon. Maria Valdez on October 1, 2020, and November 12, 2020. Based on the foregoing, and upon an analysis of the benefits afforded by this Settlement Agreement, Settlement Class Counsel have sufficient information to evaluate this Settlement Agreement and consider it to be in the best interests of the Settlement Class to enter into this Settlement Agreement.

N. Agreement. In consideration of the foregoing and other valuable consideration, Plaintiffs, Settlement Class Counsel and Defendant agree to settle the claims of the Plaintiffs and the Settlement Class and the Released Claims, subject to the Court's approval, on the following terms and conditions.

TERMS

1. Incorporation of Recitals and Definitions. The recitals and definitions set forth above are incorporated into this Settlement Agreement.

2. Effective Date. The Settlement Agreement shall become effective (hereinafter the “Effective Date”) upon the occurrence of all of the following: (a) the Court’s entry of a Final Approval Order substantially in the form of Exhibit 3, and (b) the expiration of five business (5) days after the date the Final Approval Order becomes final and non-appealable.

3. Certification of Settlement Class. Solely for the purposes of settlement, the Parties stipulate to the certification of the Settlement Class. The Parties agree to propose that Plaintiffs shall be appointed class representatives and that Daniel A. Edelman, Cathleen M. Combs and Heather Kolbus of Edelman, Combs, Latturner & Goodwin, LLC shall be appointed Settlement Class Counsel. The Settlement Class shall be certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure. Defendant does not consent to certification of the Settlement Class for any purpose other than to effectuate the settlement of the West Loop Litigation and the Matus Litigation as contemplated by this Settlement Agreement. Any class certification order entered in the West Loop Litigation or the Matus Litigation pursuant to this Settlement Agreement shall not constitute a waiver or admission by NAB in the West Loop Litigation, the Matus Litigation, or in any other proceeding of a finding or evidence that the Released Claims are valid or appropriate for class treatment or that any requirement for class certification is otherwise satisfied in the West Loop Litigation or the Matus Litigation. If this Settlement Agreement is not approved by the Court or is terminated pursuant to its terms or for any other reason, or is disapproved in a final order by any court of competent jurisdiction, (a) any order certifying the Settlement Class and all preliminary and/or final findings or stipulations regarding certification of the Settlement Class

shall be automatically vacated upon notice to the Court of this Settlement Agreement's termination or disapproval; (b) the West Loop Litigation and Matus Litigation will proceed as though the Settlement Class had never been certified and any related findings or stipulations had never been made, and neither this Settlement Agreement, nor any of its Exhibits, nor any other associated settlement document may be used in seeking class certification in the Matus Litigation or in any other way against NAB in the West Loop Litigation or Matus Litigation; and (c) Plaintiffs and Defendant reserve all procedural and substantive rights in existence as of the date of execution of this Settlement Agreement.

4. Identification of Settlement Class Members. Defendant stipulates for purposes of this Settlement Agreement only that, based on a review of the records available to it, and after conducting a reasonable investigation of available information and records, including the discovery conducted in the West Loop Litigation, 62,496 facsimiles were successfully transmitted by MPP to 44,986 unique facsimile numbers during the Class Period, which Plaintiffs allege are unsolicited facsimile advertisements as defined in the TCPA and were sent on behalf of Defendant. Counsel for Defendant and Settlement Class Counsel have obtained and provided to the Settlement Class Administrator the list of recipients of the 62,496 facsimiles by including the 44,986 unique fax numbers that received the 62,496 facsimiles as reflected in the calling records of MPP produced by non-party RingCentral, Inc. in the course of discovery in the West Loop Litigation (the "Fax List").

5. Relief to Plaintiffs and the Settlement Class. The total amount distributed to the Settlement Class shall be the Settlement Class Recovery. Any distribution of the Settlement Class Recovery to the Settlement Class Members shall commence only after the Effective Date. The

following monetary relief shall be provided to Plaintiffs and the Settlement Class, subject to the

Court's approval:

- a. Defendant agrees to deposit Two Million Two Hundred Thousand 00/100 Dollars (\$2,200,000.00) into an account established and maintained by the Settlement Class Administrator for the benefit of the Settlement Class, Plaintiffs, and Settlement Class Counsel (the "Settlement Fund"). The Settlement Fund is to be established and maintained by the Settlement Class Administrator for the explicit purpose of issuing and/or paying the Settlement Class Recovery with respect to the Settlement Class and Settlement Class Members, any incentive award to the Plaintiffs as set forth in section 5(c)(i)-(ii) of this Settlement Agreement, any award of attorneys' fees and costs to Settlement Class Counsel as set forth in section 5(c)(iii) of this Settlement Agreement, and any other expenditure authorized by the Court. The Settlement Fund shall be established and maintained by the Settlement Class Administrator. Subject to section 5(b) of this Settlement Agreement, the Settlement Fund is the total aggregate amount of money that Defendant shall be obligated to pay pursuant to the terms of this Settlement Agreement. The entire Settlement Fund will be paid out and there will be no reverter to Defendant. The Settlement Fund shall be distributed as set forth in subsections (b), (c), and (d), below;
- b. Notice, administration, and distribution expenses will be paid exclusively from the Settlement Fund up to a maximum of One Hundred Thousand 00/100 Dollars (\$100,000.00). Any notice or administrative expenses that exceed One Hundred Thousand 00/100 Dollars (\$100,000.00) but are less than or equal to One Hundred Ten Thousand 00/100 Dollars (\$110,000.00) will be paid by Defendant, in addition to the Settlement Fund. Any notice or administration expenses that exceed One Hundred Ten Thousand 00/100 Dollars (\$110,000.00) will be paid equally by Defendant and Settlement Class Counsel, in addition to the Settlement Fund. The Settlement Fund less notice and administration expenses is the Net Settlement Fund; and
- c. After the notice and administration expenses are deducted from the Settlement Fund, the Net Settlement Fund shall be apportioned as follows:
 - i. Subject to the Court's approval, Twenty-Five Thousand 00/100 Dollars (\$25,000.00) shall be paid to West Loop as an incentive award in recognition of their services as class representatives, in addition to their recovery as a class member;
 - ii. Subject to the Court's approval, Ten Thousand 00/100 Dollars (\$10,000.00) shall be paid to Matus as an incentive award in recognition of his services as class representative, in addition to his recovery as a class member; and

Class Action Settlement Agreement and Release

West Loop Chiropractic et al. v. North American Bancard, LLC; Case No. 16 C 5856 (N.D. Ill.)

Martin M. Matus, O.D. et al. v. North American Bancard, LLC; Case No. 19 C 1797 (N.D. Ill.)

- iii. The amount awarded by the Court to Settlement Class Counsel for its attorneys' fees and costs, which fees and costs shall not be sought by Plaintiffs, the Settlement Class, or Settlement Class Counsel in an amount greater than 1/3 of the Net Settlement Fund; and
- d. The Net Settlement Fund less the incentive awards set forth in section 5(c)(i) and 5(c)(ii) of this Settlement Agreement and the attorney's fees and costs award set forth in section 5(c)(iii) of this Settlement Agreement is the Settlement Class Recovery; and
 - i. Each Settlement Class Member who submits a valid claim form will receive a check for a pro rata distribution of the Settlement Class Recovery (the "Initial Distribution") per successful fax transmission. Multiple subscribers and/or users of any unique facsimile number shall be limited to a single recovery per successful fax transmission to such unique fax number. In calculating the pro rata distribution, the total number of successful fax transmissions shall be divided into the Settlement Class Recovery to yield a "share." Each share shall permit a Settlement Class Member to be paid by check a cash benefit equal to the net of the Settlement Class Recovery divided by the total number of shares allocated to all Settlement Class Members.
 - ii. If after the Initial Distribution there is sufficient money remaining in the Settlement Class Recovery to pay each Settlement Class Member who cashed his/her/its Initial Distribution a minimum of Fifteen 00/100 (\$15.00) each, then there shall be a second pro rata distribution of the Settlement Class Recovery to the Settlement Class Members (the "Second Distribution") to be calculated in the same manner as set forth in section 5(d)(i) of this Settlement Agreement.
 - iii. If after the Initial Distribution there is not sufficient money remaining in the Settlement Class Recovery to make a Second Distribution as provided in section 5(d)(ii) of this Settlement Agreement, such money remaining in the Settlement Class Recovery shall be distributed to one or more *cy pres* charities, subject to court approval, consistent with section 10 below.
 - iv. All pro rata distribution check payments of the Settlement Class Recovery, whether Initial Distributions or Second Distributions or otherwise, shall be mailed via first-class mail, consistent with section 6 below. .

6. Any award of attorneys' fees and costs and incentive awards to Plaintiffs which are approved by the Court may be distributed to them within fourteen (14) days following the Effective Date. Within thirty (30) days following the Effective Date, the Settlement Class Administrator shall distribute the Settlement Class Recovery to the Settlement Class Members who have submitted timely and valid claim forms in accordance with this Settlement Agreement. In the event that (i) the Settlement Agreement is terminated pursuant to its terms; (ii) Defendant withdraws from the Settlement Agreement; (iii) the Settlement Agreement does not become effective as set forth in section 2 of this Settlement Agreement; or (iv) the Final Approval Order is reversed, vacated, or modified in any material respect which is not mutually acceptable to the Parties, then Settlement Class Counsel or the Settlement Class Administrator shall return within three (3) business days following the event all funds paid or otherwise received from the Settlement Fund, less any reasonable costs (which shall not exceed \$100,000.00) that were incurred before any of the aforementioned events occurred and in good faith to issue notice to the Settlement Class Members, to counsel for Defendant, Greenspoon Marder LLP.

7. Settlement Class Members shall have sixty (60) days to submit a claim form, to opt out, or object to the proposed settlement, after notice is initially sent by fax.

8. Settlement Class Administrator costs associated with notice, claims administration, and distribution of the Settlement Class Recovery shall be paid as set forth in section 5(b) of this Settlement Agreement. Defendant shall fund One Hundred Thousand 00/100 Dollars (\$100,000.00) of the Settlement Fund within 14 days after entry of the Preliminary Approval Order.

9. The Settlement Class Recovery checks issued to the Settlement Class Members (both Initial Distributions and Second Distributions, if any) will be void after 60 days from the

date of issuance. As such, each Settlement Class Recovery checks shall state on its face that the check will expire and become null and void unless cashed within 60 days after the date of issuance. Any Settlement Class Member who does not deposit or negotiate the claim payment check issued to such Settlement Class Member within 60 days of the date of issuance of the settlement claim payment check, agrees that such Settlement Class Member rescinds, withdraws, waives, and forever releases his/her/its claim for monetary compensation under this Settlement Agreement but remains a Settlement Class Member bound by the terms of this Settlement Agreement.

10. Undistributed Settlement Funds. Within thirty (30) days after the last void date of all Settlement Class Recovery checks (both Initial Distributions and the Second Distributions, if any) issued to Settlement Class Members, the Settlement Class Administrator will report to the Parties if there are any uncashed checks or unclaimed or undistributed amounts remaining in the Settlement Class Recovery. Any such unclaimed or undistributed amounts remaining in the Settlement Class Recovery after all payments required under this Settlement Agreement have been made shall be distributed to one or more *cy pres* charities selected by the Parties, subject to court approval. The Parties shall identify and submit a memorandum in support of their respective *cy pres* recipient at the time of the final approval of the settlement. In no event shall undistributed Settlement Class Recovery funds revert to Defendant. Any distribution to the court approved *cy pres* recipient(s) shall occur no earlier than forty-five (45) days after expiration of the void dates on all Settlement Class Recovery checks (both Initial Distributions and Second Distributions, if any) issued to Settlement Class Members.

11. Release. On the Effective Date, Plaintiffs and the Settlement Class Members who have not opted out or been otherwise excluded from the Settlement Class shall be deemed to have

fully and finally released and discharged each and every of the Released Parties from any and all liability for the Released Claims.

This Settlement Agreement may be pleaded as a full and complete defense by each and any of the Released Parties to any action, suit, or other proceeding that may be instituted or prosecuted with respect to the Released Claims. Without admitting that California law or the laws of any other state apply to this Settlement Agreement or that the release provided herein by Plaintiffs and the Settlement Class is a general release, the Parties agree that upon the Effective Date, the Settlement Class shall be deemed to have waived and shall have expressly waived the provisions and benefits of California Civil Code §1542 relating to the Released Claims, which section provides that a general release does not extend to claims which the creditor does not know or suspect to exist in his, her, or its favor at the time of executing the release, which if known by him, her, or it, must have materially affected his, her, or its settlement with the debtor. Further, Plaintiff and the Settlement Class expressly waive any and all provisions and rights or benefits relating to the Released Claims which may be conferred upon them by any law, statute, ordinance, rule, or regulation which is similar, comparable, or equivalent to California Civil Code §1542. Further, Plaintiffs and the Settlement Class understand and acknowledge the significance of these waivers and relinquishment of California Civil Code §1542 and similar federal and state statutes, ordinances, rules, regulations, orders, or law relating to limitations on releases. In connection with such waivers and relinquishment, Plaintiffs and the Settlement Class understand and acknowledge that they are aware they may hereafter discover facts in addition to, or different from, those facts that they know or believe to be true with respect to the subject matter of the West Loop Litigation, the Matus Litigation, and this Settlement Agreement. Nonetheless, it is the intention of Plaintiffs and the Settlement Class to fully, finally, and forever release and discharge each and every of the

Released Parties from all Released Claims, and in furtherance of such intention, the release and discharge of the each and every of the Released Parties from all Released Claims will be and remain in effect notwithstanding the discovery by any person of, or existence of, any such additional or different facts. It is the intent of the Parties that this Settlement Agreement will fully, finally, and forever dispose of the West Loop Litigation and Matus Litigation, each of which shall be dismissed with prejudice, and any and all Released Claims against each and any of the Released Parties.

12. If this Settlement Agreement is not approved by the Court or for any reason does not become effective as set forth in section 2 of this Settlement Agreement, it shall be deemed null and void and shall be without prejudice to the rights of the Parties hereto and shall not be used in any subsequent proceedings in this or any other litigation, or in any manner whatsoever.

13. Attorneys' Fees, Notice Costs and Related Matters. The Settlement Class Administrator will administer the Net Settlement Fund and the Settlement Class Recovery for the benefit of the Settlement Class. Settlement Class Counsel will request approval from the Court for attorneys' fees to be paid exclusively from the Settlement Fund in an amount not to exceed 1/3 of the Net Settlement Fund as set forth in section 5(c) of this Settlement Agreement. Settlement Class Counsel will not request additional fees or costs from Defendant, except as provided in section 5(b), or the Settlement Class other than the above-referenced sums. Settlement Class Counsel shall file a fee petition at least thirty (30) days prior to the deadline set by the Court in the Preliminary Approval Order for the Settlement Class to submit claims, opt out, or object to the Settlement Agreement. Settlement Class Counsel shall file an accounting detailing the disbursement of the Net Settlement Fund and the Settlement Class Recovery thirty (30) days following any *cy pres* payments or on the date set by the Court in the Final Approval Order. Nothing in this Settlement

Agreement requires Defendant or counsel for Defendant to take any position with respect to this section 13 of the Settlement Agreement. Defendant shall have no responsibility for, or any liability with respect to, the payment of any award of attorneys' fees and costs or the allocation of any award of attorneys' fees and costs among Settlement Class Counsel or any other person who may assert a claim thereto. The sole source of any payment of any such award of attorneys' fees and costs shall be the Settlement Fund. Any application for an award of attorneys' fees and costs, including any out-of-pocket costs incurred by Settlement Class Counsel, and/or any application for an incentive award to any class representatives, and any and all matters related thereto, shall be considered independent of this Settlement Agreement, and the application(s) for such awards, and any and all matters related thereto, shall be considered by the Court separate and apart from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement Agreement. Nonetheless, the payments of any such awards for attorneys' fees and costs and for incentive awards to any class representatives are subject to and dependent upon the Court's approval as fair, reasonable, adequate, and in the best interests of the Settlement Class Members. In the event the Court declines such awards or awards less than the respective amounts sought in the applications for such awards, this Settlement Agreement will continue to be in effect and enforceable by the Parties.

14. Notice. Within five (5) days of entry of the Preliminary Approval Order, Plaintiffs, through Settlement Class Counsel, shall provide the Settlement Class Administrator with the Fax List in MS Word or Excel format. The Fax List shall also contain the number of fax transmissions sent to each unique fax number. Within 35 days following entry of the Preliminary Approval Order, the Settlement Class Administrator shall cause the Notice and Claim Form in the form of Exhibit 1 (the "Notice and Claim Form") to be disseminated to all persons in the Settlement Class

as set forth herein. Such Notice and Claim Form shall comport with Rule 23 of the Federal Rules of Civil Procedure. The costs and expenses of such Notice and Claim Form shall be paid as set forth in section 5(b) of this Settlement Agreement.

15. Class notice was developed in consultation with the Settlement Class Administrator and it includes:

a. Facsimile Notice. Subject to the approval of the Court, within thirty-five (35) days following entry of the Preliminary Approval Order, the Settlement Class Administrator shall cause the Notice and the Claim Form to be sent to the facsimile numbers identified on the Fax List. The Settlement Class Administrator shall perform all steps deemed appropriate by the Settlement Class Administrator and reasonable by the Parties in an attempt to identify complete and current facsimile information for the Settlement Class Members. The Settlement Class Administrator shall make at least two additional attempts to transmit the Notice and Claim Form by facsimile to those numbers where the initial transmission failed.

b. Mail Notice. After a total of three unsuccessful attempts to transmit the Notice and Claim Form to a Settlement Class Member by fax as set forth in Paragraph 14(a) of this Settlement Agreement, the Settlement Class Administrator shall determine if a valid mailing address is ascertainable for those fax numbers of each person in the Settlement Class on the Fax List. If a mailing address is ascertainable, the Settlement Class Administrator shall mail the Notice and Claim Form to such person in the Settlement Class via First Class U.S. mail, and forwarding addresses requested, to the names and addresses ascertained by the Settlement Class Administrator to be associated with the fax numbers of the Settlement Class Members identified on the Fax List. The Settlement Class Administrator shall check each address against the United States Post Office National Change of Address Database (“NCOA”) prior to mailing. In the event a Notice and Claim

Form is returned as undeliverable and a forwarding address is provided, the Settlement Class Administrator shall forward any such returned Notice and Claim Form to the address provided as soon as practicable. In the event that a Notice and Claim Form is returned as undeliverable and without a forwarding address, the Settlement Class Administrator shall perform investigations deemed appropriate by the Settlement Class Administrator and reasonable by the Parties in an attempt to identify complete and current address information for each person in the Settlement Class whose Notice and Claim Form was returned as undeliverable and without a forwarding address, and shall mail the notice to any such identified addresses as soon as practicable.

c. Settlement Website. Following entry of the Preliminary Approval Order, but prior to the date of the sending of the Notice and Claim Form via facsimile as set forth in section 15(a) of this Settlement Agreement, the Settlement Class Administrator shall create, maintain, operate, and host a dedicated settlement website to assist in the administration of this Settlement Agreement (the “Settlement Website”). The Settlement Website shall provide the Settlement Class Members access to copies of the complaint, answer, if any, this Settlement Agreement, without exhibits, the Notice and Claim Form, the Motion for Preliminary Approval, the Preliminary Approval Order, and the Settlement Class Counsel’s fee petition set forth in section 13 of this Settlement Agreement. The Settlement Class Administrator shall set up a toll-free telephone number for receiving toll-free calls related to the Settlement. The name of the Settlement Website shall include “North American Bancard” or “NAB” and shall be agreed to by the Parties in consultation with the Settlement Class Administrator.

Settlement Class Counsel will also post the Notice, but not the Claim Form, and this Settlement Agreement (excluding exhibits) on their firm’s website at the sole expense of Settlement Class Counsel. Settlement Class Counsel shall direct any person in the Settlement Class

who contacts Settlement Class Counsel and requests a copy of the Claim Form to the Settlement Class Administrator for the provision of the Claim Form to such person in the Settlement Class.

Settlement Class Counsel and the Settlement Class Administrator shall retain all documents and records generated during the administration of the settlement, including records of Notice given to persons in the Settlement Class via facsimile, mail, or otherwise, records of returned mail, records of undelivered mail, Claim Forms, and payments to Settlement Class Members (*i.e.*, Initial Distributions or Second Distributions) for a period of one year following the issuance of the Final Approval Order and the expiration of all deadlines for appeal therefrom. Defendant may inspect such documents and records upon the reasonable request of its counsel. The Fax List and all other documents and records generated during the administration of the settlement shall be used solely for purposes consistent with notice and administration of this settlement and for no other purpose.

Defendant is responsible at its own expense, separate and distinct from the Settlement Fund, for serving the required CAFA Notice(s) within ten (10) days after the filing of the Preliminary Approval Motion. Defendant's counsel shall file a Notice of CAFA Compliance declaration within thirty-five (35) days after entry of the Preliminary Approval Order.

The Settlement Class Administrator shall prepare and execute a declaration attesting to compliance with the notice requirements of this Settlement Agreement and the Preliminary Approval Order. Such declaration shall be provided to Settlement Class Counsel and counsel for Defendant, and filed with the Court on the date set forth in the Preliminary Approval Order.

The Parties agree that compliance with the procedures described in section 15 of this Settlement Agreement is the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency of the West Loop Litigation and

Matus Litigation, certification of the Settlement Class, terms of this Settlement Agreement, and the final approval hearing. The Parties agree that the class notice described in section 15 of this Settlement Agreement shall satisfy the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law, rule, regulation, and/or order.

16. Claim Validation. The Settlement Class Administrator shall match the fax number provided by the Settlement Class Member on a returned Claim Form to the fax numbers on the Fax List. The Settlement Claims Administrator shall also determine whether the claim is a duplicate, whether the Claim Form is signed and examine the claim form for completeness and validity. If the fax number does not match, then the Settlement Class Administrator shall follow-up with the Settlement Class Member and inquire if such Settlement Class Member employed other fax numbers during the Class Period (to ascertain if any different fax number is a number on the Fax List), in an effort to determine whether the claim is a valid claim.

If the fax number or fax numbers provided on a Claim Form do not match a fax number on the Fax List, and the follow-up with the Settlement Class Member has not resolved the issue, the Settlement Class Administrator shall disallow the claim. If a claim is deemed disallowed by the Settlement Class Administrator, the Settlement Class Administrator must communicate that disallowance of the claim to the Settlement Class Member, Settlement Class Counsel, and counsel for Defendant, and allow Settlement Class Counsel an opportunity to investigate the basis for disallowing the claim. In the event the Parties disagree as to the validity of any Claim Form or whether to disallow a claim, then Settlement Class Counsel will present the disputed claim to the Court for resolution.

17. a. Initial Distribution. Settlement Class Members submitting timely and valid claim forms shall be paid a pro rata share per fax transmission of the Settlement Class Recovery

in accordance with this Settlement Agreement for each unique facsimile number as set forth in section 5(d)(i).

b. Second Distribution. If there is sufficient money remaining in the Settlement Class Recovery to pay at least \$15.00 to each Settlement Class Member who timely cashed his/her/its Initial Distribution, then such remaining Settlement Class Recovery will be distributed on a pro rata basis to those Settlement Class Members who cashed his/her/its Initial Distribution as the Second Distribution as set forth in section 5(d)(ii).

c. W-9 Collection. There is a possibility Settlement Class Members will recover more than \$599.99, and such Settlement Class Members may be required to submit a W-9 form. The W-9 forms will be issued to Settlement Class Members who are individuals by the Settlement Class Administrator as required within twenty-one (21) days after entry of the Final Approval Order and before any settlement checks are issued. Settlement Class Members will have thirty (30) days to respond to a request to complete a W-9 form. If a Settlement Class Member does not submit a W-9 form, the Settlement Class Administrator will reduce the settlement payment to \$599.99. If W-9 forms need to be collected, certain dates set forth in sections 6, 9, and 10 are reset and calculated as follows: within thirty (30) days following the expiration of time for Settlement Class Members to complete a W-9 form, the Settlement Class Administrator shall distribute the Settlement Class Recovery to the Settlement Class Members who have submitted valid Claim Forms in accordance with section 16 of this Settlement Agreement; settlement checks to the Settlement Class Members will be void sixty (60) days from date of issuance; and within thirty (30) days following the void date on the Settlement Class Members' checks, any uncashed checks or unclaimed or undistributed funds, the disposition of which will be determined by the Court, will be disbursed.

18. Right to Object. The Notice shall contain information about how a Settlement Class Member may object to the Settlement Agreement. The deadline to object shall be set by the Court in the Preliminary Approval Order and the Parties shall propose that it be at least sixty (60) days after notice is sent. Any Settlement Class Member may object to the Settlement Agreement by filing a written objection with the Court by the deadline set by the Court in the Preliminary Approval Order, with a copy served on the Settlement Class Administrator, Settlement Class Counsel and counsel for Defendant via first-class mail. Any Settlement Class Member may object to the Settlement Agreement and appear at the final approval hearing, in person or through counsel at the objecting Settlement Class Member's own expense, to address the objection(s). Any objection must include: (a) the full name (or business name, if the objector is an entity), address, fax number to which the fax(es) were sent, and signature of the objecting Settlement Class Member; (b) a statement of the objection to the Settlement Agreement; (c) an explanation of the legal and factual basis for the objection; (d) documentation, if any, to support the objection; (e) the identity of all witnesses, if any, and a summary of such witnesses' proposed testimony who the objecting Settlement Class Member may call to testify at the final approval hearing, and describe and produce copies of all evidence such objecting Settlement Class Member may offer to the final approval hearing; and (f) a statement whether the objecting Settlement Class Member and/or his/her/its counsel intends to appear at the final approval hearing. The Parties shall have the right to depose or seek discovery from any objecting Settlement Class Member to assess whether the objector has standing. Any person in the Settlement Class who does not file a timely written objection to the Settlement Agreement as described in this section 18 of the Settlement Agreement and as detailed in the class notice shall waive the right to object or to be heard at the final approval hearing and shall be forever barred from making any objection to the Settlement Agreement or

seeking review of the Settlement Agreement by appeal or other means. Any person in the Settlement Class who does not file a timely written objection to the Settlement Agreement as described in this section 18 of the Settlement Agreement and as detailed in the class notice will be bound by the Settlement Agreement and the Final Approval Order, including the release described in section 11 of this Settlement Agreement.

19. Right of Exclusion. The Notice shall contain information about how a Settlement Class Member may request to be excluded from the Settlement Agreement. The deadline to request to be excluded from the Settlement Agreement shall be set by the Court in the Preliminary Approval Order and the Parties shall propose that it be at least sixty (60) days after notice is sent. All persons in the Settlement Class who properly submit a timely written request for exclusion from the Settlement Class shall be excluded from the Settlement Class and shall have no rights as Settlement Class Members pursuant to this Settlement Agreement. A request for exclusion must be in writing and state the name, address, and telephone and fax number (to which the fax(es) were sent) of the person(s) or entity seeking exclusion. Each request must also contain a signed statement providing that: "I/we hereby request that I/we be excluded from the proposed Settlement Class in the West Loop Litigation and/or Matus Litigation." The request must be mailed to the Settlement Class Administrator at the address provided in the notice and postmarked by the Settlement Class Administrator on such date as set by the Court. Copies of the requests for exclusion and a report of the names and addresses of persons whose request for exclusion have been timely mailed shall be provided by the Settlement Class Administrator to Settlement Class Counsel and counsel for Defendant no later than fourteen (14) days prior to the Final Approval Hearing. Each request for exclusion shall be filed with the Court by Settlement Class Counsel by the date set by the Court in the Preliminary Approval Order. A request for exclusion that does not

include all of the foregoing information, or that is sent to an address other than the one designated in the notice, or that is not postmarked within the time specified herein, shall be invalid and the person(s) serving such a request shall remain a Settlement Class Member and shall be bound by the terms of the Settlement Agreement, if approved.

20. Preliminary Approval. As soon as practicable after execution of this Settlement Agreement, Settlement Class Counsel shall file a Motion for Preliminary Approval of this Settlement Agreement and shall present such motion to the Court requesting the entry of a Preliminary Approval Order substantially in the form of Exhibit 2 or in such other form which is mutually acceptable to the Parties. The Preliminary Approval Order shall, among other things: preliminarily approve this Settlement Agreement (subject to a final approval hearing) as fair and reasonable; preliminarily certify the Settlement Class for settlement purposes only; appoint Settlement Class Counsel as counsel for the Settlement Class; appoint Plaintiffs as class representatives; appoint Class-Settlement.com as the Settlement Class Administrator; set a schedule of proceedings concerning final approval of the Settlement Agreement, including a final approval hearing date, which shall be scheduled no earlier than ninety (90) days after entry of the Preliminary Approval Order; approve the manner and form of notice and authorize same for dissemination in accordance with section 15 of this Settlement Agreement; approve the manner in which and deadline by which persons in the Settlement Class may submit a request for exclusion as described in section 19 of this Settlement Agreement; approve the manner in which and the deadlines by which Settlement Class Members may submit objections to this Settlement Agreement as described in section 18 of this Settlement Agreement; provide, pending entry of a final approval order, the Parties shall cooperate in seeking orders that no person in the Settlement Class shall commence or continue any action, in any capacity, against Defendant or any of the

other Released Parties asserting any of the Released Claims; issue a stay in the West Loop Litigation and the Matus Litigation, other than such proceedings as are related to this Settlement Agreement; and provide that Defendant has made no admissions in relation to the negotiation or execution of this Settlement Agreement or any document based upon, arising out of, relating to, or otherwise in connection therewith. The Preliminary Approval Order shall further authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of this Settlement Agreement and its implementing documents, including all exhibits hereto, so long as such amendments, modifications, and expansions are consistent in all material respects with the proposed terms and exhibits herein. If the Court refuses to issue the Preliminary Approval Order in substantially the same form as Exhibit 1 hereto or the Preliminary Approval Order is modified on appeal and/or remand, then the Settlement Agreement in its entirety shall become null and void unless the Parties promptly agree in writing to proceed with the Settlement Agreement consistent with the change or modification under which the Settlement Agreement is otherwise rendered null and void. In the event the Settlement Agreement becomes null and void, the Parties shall be restored without prejudice to their respective litigation positions in the West Loop Litigation and the Matus Litigation prior to execution of this Settlement Agreement. The Parties shall undertake all reasonable efforts that are in good faith necessary and appropriate to obtain a Preliminary Approval Order in substantially the same form as Exhibit 1 hereto.

21. Final Approval. Settlement Class Counsel shall file a memorandum in support of final approval of the settlement on the dates set forth by the Court in the Preliminary Approval Order. The memorandum in support of final approval of the settlement shall request the Court to enter a Final Approval Order substantially in the form of Exhibit 3, or in another form which is

mutually acceptable to the Parties. At the Hearing on Final Approval of the Settlement, the Court will consider the proposed Final Approval Order, which shall, among other things: find that the Court has personal jurisdiction over all Settlement Class Members; find that the Court has subject matter jurisdiction over the West Loop Litigation and Matus Litigation and the Released Claims such that the Court may approve this Settlement Agreement; find that final approval of this Settlement Agreement to be fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members, and that each Settlement Class Member shall be bound by this Settlement Agreement, including the release described in section 11 of this Settlement Agreement, and that this Settlement Agreement should be and is approved; direct the Parties and their counsel to fulfill their obligations under the Settlement Agreement and to implement this Settlement Agreement according to its terms and provisions; declare that the Settlement Agreement is binding on, and has preclusive effect on, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and/or the Settlement Class Members asserting any of the Released Claims against any of the Released Parties; find that the notice described in section 15 of this Settlement Agreement satisfies the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all applicable rules of the Court, constitutes the best practicable notice under the circumstances, constitutes notice that is reasonably calculated to apprise the Settlement Class Members of the pendency of the West Loop Litigation and Matus Litigation, their right to object or to exclude themselves from the Settlement Agreement, and to appear at the final approval hearing; find that the Plaintiffs, as class representatives, and Settlement Class Counsel adequately represented the Settlement Class for purposes of entering and implementing the Settlement Agreement; approve and incorporate the release described in section 11 of this Settlement Agreement, make such release effective as of the Effective Date, and forever discharge

each and every of the Released Parties from the Released Claims as described in section 11 of this Settlement Agreement; without affecting the finality of the Final Approval Order, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of this Settlement Agreement. Pursuant to the Class Action Fairness Act, the Final Approval Order shall not be entered until the expiration of at least ninety (90) days from the date the Preliminary Approval Order was entered. Entry of a Final Approval Order substantially in the form of Exhibit 3 or in another form which is mutually acceptable to the Parties is a condition precedent to this Settlement Agreement becoming fully effective. In the event a Final Approval Order substantially in the form of Exhibit 3 or in another form which is mutually acceptable to the Parties is not entered then this Settlement Agreement in its entirety shall become null and void and is rescinded and the Preliminary Approval Order and any other orders entered by the Court in connection with this settlement shall be vacated, and the Parties shall be returned without prejudice to the position they were in prior to the execution of this Settlement Agreement, and the West Loop Litigation and Matus Litigation shall proceed as though this Settlement Agreement was never executed. The Parties shall undertake all reasonable efforts that are in good faith necessary and appropriate to obtain a Final Approval Order in substantially the same form as Exhibit 3 hereto.

22. Termination of Settlement. NAB's willingness to enter into this Agreement and to agree to the certification of the Settlement Class, for settlement purposes only, is dependent upon achieving finality in the West Loop Litigation and Matus Litigation and avoiding the uncertainties, risks, costs, and delays associated with the West Loop Litigation and Matus Litigation. Accordingly, NAB shall have the unilateral right to terminate this Agreement, declare it null and void, and have no further obligation under this Agreement by providing written notice

to the Court and all other Parties hereto within ten (10) business days of NAB's actual notice of any of the following events:

- a. the Court rejects, materially modifies, materially amends or changes, or declines to issue the Preliminary Approval Order of the Final Approval Order;
- b. an appellate court reverses the Final Approval Order and the settlement set forth in this Agreement is not reinstated without material change by the Court on remand;
- c. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, the Final Approval Order, of this Agreement in a way that NAB reasonably considers material, unless such incorporation, deletion, modification, amendment, or change is accepted in writing by all Parties;
- d. the Effective Date does not occur for any reason;
- e. the Final Approval Order does not become final;
- f. more than 500 persons within the Settlement Class timely and validly exclude themselves from the settlement set forth in this Agreement pursuant to section 19 of this Agreement; or
- g. any other ground for termination provided elsewhere in this Agreement occurs.

If the settlement set forth in this Agreement is terminated as set forth in this section 22 of the Agreement for any reason whatsoever or the Effective Date does not occur for any reason whatsoever:

- a. this Agreement, and all negotiations, proceedings, documents, and statements made or prepared in connection therewith shall be without prejudice to any Party and shall not be deemed or construed to be an admission or confession of any Party whatsoever;
- b. the Parties shall stand in the same posture, procedurally and substantively, as if this Agreement had not been negotiated, made, or filed with the Court;
- c. the certification of the Settlement Class pursuant to this Agreement shall have no further force and effect and shall not be offered in evidence or used in the West Loop Litigation, the Matus Litigation, or in any other proceeding for any reason whatsoever; and
- d. Settlement Class Counsel and counsel for Defendant may seek to have any orders, filings, or other entries reflected on the Court's docket in any way based upon, arising out of, relating to, or otherwise in connection with this Agreement set aside, withdrawn, vacate, and/or stricken from the record.

It is the express intent of the Parties that should NAB terminate this Agreement pursuant to this section 22 of the Agreement, the Agreement will be of no force and effect and the Parties' respective rights and defenses will be restored, without prejudice, to their respective positions as if this Agreement had never been executed, and any orders entered by the Court in connection with this Agreement will be set aside, withdrawn, vacated, and/or stricken from the record, subject to Court approval. It is the express intention of the Parties that should this Agreement not be approved in full by the Court, NAB may terminate the Agreement thereby reverting the Parties to the *status quo ante* prior to this Agreement.

23. Release of Attorneys' Lien. In consideration of this Settlement Agreement, Settlement Class Counsel hereby waives, discharges, and releases Defendant and each and every

of the Released Parties of and from any and all claims for attorneys' fees, by lien or otherwise, for legal services rendered by Settlement Class Counsel in connection with the West Loop Litigation and Matus Litigation, other than the amount awarded by the Court as specified above which amount shall be exclusively paid from the Net Settlement Fund.

24. Delivery of Settlement Fund. Defendant shall wire the amount of the Settlement Fund less the amount advanced pursuant to section 8 of this Settlement Agreement for notice and administration costs to the Settlement Class Administrator within ten (10) days after the Effective Date. Once the payment is made in accordance with this paragraph, Defendant shall have no further payment obligation to Plaintiffs, the Settlement Class, or Settlement Class Members and Defendant shall have no obligation or duty to monitor, supervise, or control disbursements from the Settlement Fund.

25. Dismissal Order. Within five (5) calendar days of Defendant delivering the Settlement Fund as set forth in section 24 of this Settlement Agreement, the Parties will file a stipulation of dismissal in both the West Loop Litigation and the Matus Litigation dismissing the claims of the Settlement Class Members against Defendant with prejudice and without fees or costs except those costs provided herein. In the event that Defendant fails or refuses to deliver the Settlement Fund as set forth in section 24 of this Settlement Agreement, Defendant agrees that at the option of Settlement Class Counsel, the Final Approval Order may be vacated pursuant to Fed. R. Civ. P. 60(b), this Agreement shall be rescinded, and the West Loop Litigation and Matus Litigation shall be reinstated as if this agreement never existed.

26. Applicable Law. This Settlement Agreement shall be governed by and interpreted in accordance with the state law of the State of Illinois.

27. Miscellaneous Provisions. The Parties and their attorneys agree to cooperate fully

with one another in seeking approval of this Settlement Agreement, and to use their best efforts to effect the consummation of this Settlement Agreement and the settlement provided for herein. Whether or not this Settlement Agreement and the settlement contemplated hereunder are consummated, this Settlement Agreement and the proceedings had in connection herewith shall in no event be construed as, or be deemed to be, evidence of an admission or concession of any kind on the part of Defendant of any liability or wrongdoing whatsoever. The Parties intend this Settlement Agreement to be a final and complete resolution of the Released Claims by Plaintiffs, the Settlement Class, Settlement Class Members, and each or any of them, on the one hand, and against Defendant and the Released Parties, and each of any of them, on the other hand. The Parties have been represented by counsel of their own choosing in negotiating and drafting this Settlement Agreement and intend to be legally bound by this Settlement Agreement.

28. Benefit of this Settlement Agreement. This Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiffs, Defendant, the Released Parties, and Settlement Class Members, and each of their respective successors and personal representatives, predecessors, affiliates, heirs, executors and assigns.

29. Authority. The Parties hereby represent to one another that they have full power and authority to enter into this Settlement Agreement and carry out their obligations hereunder.

30. Entire Agreement. Any and all prior understandings and agreements between the Parties with respect to the subject matter of this Settlement Agreement are merged into and with this Settlement Agreement, which fully and completely expresses the entire agreement and understanding of the Parties with respect to the subject matter hereof. This Settlement Agreement may be amended, modified, or changed only by a written instrument or instruments executed by

duly authorized officers or other representatives of the Parties expressly amending, modifying, or changing this Settlement Agreement and may not be amended, modified, or changed orally.

31. Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. Signatures provided by facsimile or e-mail shall be deemed legal and binding for all purposes.

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

33. The Settlement Agreement represents a negotiated compromise, and regardless whether the Effective Date occurs or the Settlement Agreement is terminated, neither this Settlement Agreement nor any act performed or document executed pursuant to or in furtherance of this Settlement Agreement:

a. is, may be deemed, or shall be used, offered, or received against the Released Parties, or each or any of them, in any proceeding whatsoever as an admission, concession, or evidence of the validity of any of the Released Claims, the truth of any fact alleged by the Plaintiffs in the West Loop Litigation and the Matus Litigation, the deficiency of any defense that has been or could have been asserted in the West Loop Litigation and the Matus Litigation, the violation of any law or statute, the reasonableness of the Settlement Fund, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or each or any of them;

b. is, may be deemed, or shall be construed against Plaintiffs, or against the Released Parties, or each or any of them, as an admission, concession, or evidence that the consideration to be given hereunder represents an amount equal to, less than, or greater than that

amount that could have or would have been recovered after trial in the West Loop Litigation or Matus Litigation; and

c. is, may be deemed, or shall be construed against Plaintiffs, or against the Released Parties, or each or any of them, as an admission, concession, or evidence that any of the claims the Plaintiffs alleged in the West Loop Litigation or Matus Litigation or the Released Claims, are with or without merit or that damages recoverable in the West Loop Litigation or the Matus Litigation would have exceeded or would have been less than any particular amount.

34. Except as otherwise provided herein, each Party shall bear his/its own costs and attorneys' fees.

35. The waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Settlement Agreement.

36. Unless otherwise stated herein, any notice to the Parties required or provided under this Settlement Agreement shall be in writing and may be sent by electronic mail, overnight delivery by a nationally recognized courier service (*i.e.*, UPS, FEDEX, USPS, or the equivalent), or hand delivery as follows:

a. If to Settlement Class Counsel:

Heather Kolbus
EDELMAN, COMBS, LATTURNER & GOODWIN, LLC
20 S. Clark Street, Suite 1500
Chicago, IL 60603
hkolbus@edcombs.com

b. If to counsel for Defendant:

Beth-Ann E. Krinsky
Lawren A. Zann
GREENSPOON MARDER LLP
200 E. Broward Boulevard, Suite 1800

Fort Lauderdale, FL 33301
beth-ann.krimsky@gmlaw.com
lawren.zann@gmlaw.com

37. This Settlement Agreement is deemed to have been prepared by counsel for all Parties as a result of arms' length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Settlement Agreement, it shall not be construed more strictly against one Party than another.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be duly executed and delivered by their duly authorized representatives on the date last written below.

PLAINTIFFS
West Loop Chiropractic & Sports Injury Center, Ltd.

DEFENDANT
North American Bancard, LLC

By: _____

By:  _____

Its: _____

Its: General Counsel and Chief Privacy Officer

Dated: _____

Dated: April 2, 2020

West Loop Health & Sports Performance Center, LLC

By: _____

Its: _____

Dated: _____

Martin M. Matus, O.D.

Dated: _____

Class Action Settlement Agreement and Release
West Loop Chiropractic et al. v. North American Bancard, LLC; Case No. 16 C 5856 (N.D. Ill.)
Martin M. Matus, O.D. et al. v. North American Bancard, LLC; Case No. 19 C 1797 (N.D. Ill.)

Fort Lauderdale, FL 33301
beth-ann.krimsky@gmlaw.com
lawren.zann@gmlaw.com

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IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be duly executed and delivered by their duly authorized representatives on the date last written below.

PLAINTIFFS

West Loop Chiropractic & Sports Injury Center, Ltd.

By: Dr. Alden Clendenen

Its: Owner

Dated: 4.02.21

DEFENDANT

North American Bancard, LLC

By: _____

Its: _____

Dated: _____

West Loop Health & Sports Performance Center, LLC

By: Dr. Alden Clendenen

Its: Owner

Dated: 4.02.21

Martin M. Matus, O.D.

Dated: _____

312-419-0379

Class Action Settlement Agreement and Release

*West Loop Chiropractic et al. v. North American Bancard, LLC; Case No. 16 C 5856 (N.D. Ill.)
Martin M. Matus, O.D. et al. v. North American Bancard, LLC; Case No. 19 C 1797 (N.D. Ill.)*

Fort Lauderdale, FL 33301
beth-ann.krinsky@gmlaw.com
lawren.zann@gmlaw.com

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IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be duly executed and delivered by their duly authorized representatives on the date last written below.

PLAINTIFFS
West Loop Chiropractic & Sports Injury Center, Ltd.

DEFENDANT
North American Bancard, LLC


By: _____
Its: _____
Dated: _____

By: _____
Its: _____
Dated: _____

West Loop Health & Sports Performance Center, LLC

By: _____
Its: _____
Dated: _____

Martin M. Matus, O.D.

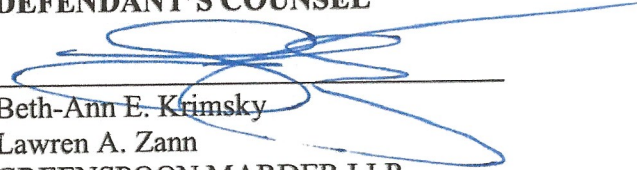

Dated: 4-05-2021

SETTLEMENT CLASS COUNSEL

Heather Kolbus
Daniel A. Edelman
Cathleen M. Combs
Heather Kolbus
EDELMAN, COMBS, LATTURNER
& GOODWIN, LLC
20 S. Clark Street, Suite 1500
Chicago, IL 60603
(312) 739-4200
(312) 419-0379 (FAX)
Counsel for Plaintiffs and the Settlement Class

Dated: 4/5/2021

DEFENDANT'S COUNSEL


Beth-Ann E. Krinsky
Lawren A. Zann
GREENSPOON MARDER LLP
200 East Broward Blvd., Suite 1800
Fort Lauderdale, FL 33309
(954) 527-2427
(954) 333-4027 (FAX)

Timothy A. Hudson
TABET DIVITO & ROTHSTEIN, LLC
209 S. LaSalle Street, Suite 700
Chicago, IL 60604
(312) 762-9450
(312) 762-9451 (FAX)

Dated: 4/5/2021