

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

HAROLD KAHN and DEBORAH KAHN, on
behalf of plaintiffs and a class,

Plaintiffs,

v.

SELECT PORTFOLIO SERVICING, INC.,

Defendant.

Civil Action No. 7:17-cv-07540-NSR-PED

**PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Plaintiffs Harold Kahn and Deborah Kahn (the “Plaintiffs” or “Representative Plaintiffs”), respectfully request that the Court enter an order pursuant to Federal Rule of Civil Procedure 23(e): (1) provisionally certifying the proposed Class for settlement purposes only; (2) preliminarily approving the proposed Settlement Agreement; (3) directing notice to the Class; (4) setting dates for claim form submission, requests for exclusion, objections, and a final approval hearing and (5) setting dates for submission of Class Counsels’ fee petition, and the Class Representatives Award petition.

In support of their motion, Plaintiffs state:

1. This action was brought by the Plaintiffs on their own behalf and on behalf of all other persons similarly situated to the Plaintiffs.

2. Plaintiffs asserted a claim pursuant to the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §1692 *et seq.*, against Defendant Select Portfolio Servicing Inc., (“SPS”).

The parties have agreed to settle Plaintiffs’ FDCPA claim on a class action basis.

3. Plaintiffs' allege that SPS violated the FDCPA by sending plaintiffs and the class members monthly account statements on accelerated loans that stated that a late fee would be assessed if payment was not received by a date certain. Defendant denies all of these factual allegations and the Court has not made a finding of liability against Defendant.

4. Counsel for Plaintiffs and Counsel for Defendant have reviewed and analyzed the complex legal and factual issues presented in this action, and the risks and expense involved in pursuing the litigation to conclusion.

5. The parties conducted comprehensive settlement discussions with the assistance of Magistrate Judge Paul E. Davison and agreed on the terms of the Settlement Agreement during a Settlement Conference held on November 28, 2018 (the "Settlement Agreement"), attached as Exhibit 1.

6. Prior to entering into settlement discussions, Plaintiffs' counsel engaged in extensive discovery (including written discovery and depositions) concerning the merits of plaintiffs' claims and defendant's defenses, as well as, the class allegations. Prior to entering into settlement negotiations, the parties had fully briefed plaintiffs' motion for class certification and were awaiting a ruling by this Court.

The proposed Settlement Class is defined as (a) all individuals with property addresses in New York, (b) to whom SPS sent a monthly statement, (c) with respect to a loan that was over 30 days behind at the time SPS began servicing it, according to the records of SPS, (d) and had been accelerated at the time the monthly statement had been sent, (e) where the monthly statement referred to late charges for late payments, and (f) the monthly statement was sent at any time during a period beginning October 3, 2016 and ending October 3, 2017. It is estimated that the class includes approximately 5,082 such accounts.

Plaintiffs contend that the following requirements of Rule 23 are met:

- a. The Class, consisting of 5,082 accounts, is sufficiently numerous such that joinder of all members is impracticable.
- b. There are questions of law and fact common to the Class that predominate over any questions affecting only individual members.
- c. The Class Representatives' claims are typical of those of the Class Members.
- d. The Class Representatives and their counsel are adequate representatives for the Class.
- e. Settlement of this action on a class basis is the superior and appropriate method for the fair and efficient resolution of this controversy.

7. Plaintiffs respectfully request that this Court approve and appoint ClassSettlement.com as the Settlement Administrator for the Class.

8. Under the terms of the Class Action Settlement Agreement and subject to court approval,

- a. A Class Settlement Fund of at least \$115,000.00 shall be created for equal distribution to class members who submit a valid and timely claim form. All co-borrowers on an account shall be treated as one Class Member for purposes of the Settlement. Although it is unlikely, if a claim form is received on behalf of all 5,082 class members, each class member will receive a distribution of approximately \$22.62 from the Class Settlement Fund. Based on Class Counsel's experience, Class Counsel expects 10%-20% of the class members will submit claim forms resulting in a recovery of approximately \$226.28-\$113.14 per class member.
- b. The Representative Plaintiffs shall receive \$1,000.00 each for their statutory and actual damages. Additionally, the Representative Plaintiffs shall petition the Court for a Class Representative Award of \$4,000.00 each for their service as class representatives. The Representative Plaintiffs may petition the Court for Class Representative Award not to exceed Four-Thousand dollars (\$4,000.00) per Class Representative within 30 days after entry of the Preliminary Approval Order preliminarily approving the Class Settlement.

- c. Ten Thousand, Two-Hundred and Fifty Dollars (\$10,250.00) shall be paid to Class-Settlement.com for Settlement Administration Costs, that includes the costs of sending notice and checks to the class members.
- d. The Settlement Administrator shall cause Notice to the Class members to be mailed within 45 days after entry of the Preliminary Approval Order.
- e. Class Member shall have 45 days after the Class Notice mailing deadline to submit a claim form, object, opt-out or request exclusion from the Settlement.
- f. Class Counsel may petition the Court for Attorneys Fee/Litigation Cost Award not to exceed Ninety-Nine Thousand, Seven Hundred & Fifty dollars (\$99,750.00) within 30 days after entry of the Preliminary Approval Order preliminarily approving the Class Settlement.
- g. The Class Administrator must cause to be mailed to the Class members, by first class mail: (1) the Class Notice, and (2) the settlement checks.
- h. To the extent that there is a Settlement Amount Excess (as defined in ¶1.19 of the Settlement Agreement) an amount equal to the amount of such uncashed checks are to be distributed to a *cy pres* recipient agreed upon by the parties and approved by the Court.

9. Counsel for Class Representatives, and the proposed Class believe that the settlement of this action on the terms and conditions set forth in the Settlement Agreement is fair, reasonable, and adequate, and would be in the best interests of the members of the proposed Class.

10. The Parties desire to settle and compromise the litigation on the terms and conditions embodied in the Class Settlement Agreement.

11. The Parties have agreed on the form of notice to be sent to each Class Member, attached as Exhibit 2, via first class mail.

12. The Parties have agreed on the proposed Preliminary Approval Order, attached as Exhibit 3.

WHEREFORE, the Plaintiffs respectfully request that the Court enter an order: (1) provisionally certifying the proposed Class for settlement purposes only; (2) preliminarily approving the proposed Settlement Agreement; (3) Appointing Class-Settlement.com as the Settlement Administrator (4) directing notice to the Class; and (5) setting dates for submission of claim forms, requests for exclusion, objections, and scheduling a fairness hearing (5) setting dates for submission of Class Counsels' fee petition, and the Class Representatives Award petition.

Dated: Chicago, Illinois
March 7, 2019

EDELMAN COMBS LATTURNER
& GOODWIN, LLC

By: s/ Tiffany N. Hardy
Tiffany N. Hardy

Attorneys for the Plaintiffs
Tiffany N Hardy
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CERTIFICATE OF SERVICE

I, Tiffany N. Hardy, hereby certify that on Thursday, March 7, 2019 I caused a true and accurate copy of the foregoing document to be filed via the courts CM/ECF online system, which sent notice via email to all counsel of record.

s/ Tiffany N. Hardy
Tiffany N. Hardy

Tiffany N Hardy
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EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into as of March 6, 2019 between: (a) plaintiffs Harold Kahn and Deborah Kahn (“Plaintiffs” or “Representative Plaintiffs”) on behalf of themselves and a class defined herein, and (b) defendant Select Portfolio Servicing Inc. (“Defendant” or “SPS”). Plaintiffs and SPS are the “Parties.” All capitalized terms shall be as defined herein.

RECITALS

WHEREAS, this lawsuit was filed on or about October 3, 2017, in the United States District Court for the Southern District of New York, and captioned as *Kahn et al. v. Select Portfolio Servicing, Inc.*, No. 7:17-cv-07540-NSR-PED (the “Action”);

WHEREAS, Plaintiffs had a residential mortgage loan serviced by SPS which had been accelerated;

WHEREAS, Plaintiffs allege that SPS sent them monthly account statements on an accelerated mortgage loan that stated that a late fee would be assessed if a monthly payment was not received by a date certain;

WHEREAS, in their Complaint, Plaintiffs purport to assert, on behalf of themselves and a putative class, a cause of action against Defendant for alleged violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (“FDCPA”);

WHEREAS, Defendant denies the material allegations in the Action, denies any wrongdoing and any liability to Plaintiffs or any putative Class Member, in any amount, in connection with the claims asserted in the Action, denies that this case could be tried as a class action, and contends that it would prevail in the Action;

WHEREAS, Plaintiffs and Defendant have conducted an investigation into the facts and law;

WHEREAS, Plaintiffs, individually and on behalf of the Settlement Class, desire to settle the Action and all matters within the scope of the Release set forth herein, having taken into account the risks, delay, and difficulties involved in establishing liability, the likelihood of recovery in excess of that offered by this Agreement, the desirability of payment now, and the likelihood that continuing to pursue the Action could result in protracted and expensive proceedings;

WHEREAS, Defendant believes that it is desirable and in its best interest to settle the Action and all matters within the scope of the Release in the manner and upon the terms and conditions provided for in this Agreement in order to avoid the further expense, inconvenience, and distraction of litigation, and in order to put to rest the claims that have been asserted in the Action and/or are within the scope of the Release;

WHEREAS, the Parties have agreed on all of the terms and conditions of this Agreement through an arm's-length negotiation between their respective counsel during a settlement conference conducted by Magistrate Judge Paul E. Davison; and

WHEREAS, this Agreement resolves the Plaintiffs' claim under the FDCPA, which is brought on behalf of a putative class of similarly situated individuals.

NOW THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged herein, the Parties agree as follows:

I. DEFINITIONS

1.01 "Attorney Fee/Litigation Cost Award " means the award(s), if any, made to Class Counsel by the Court, upon application pursuant to paragraphs 3.21 and 3.22 below.

1.02 "Benefit Check" means the negotiable check from the Class Settlement Fund to be sent to those Class Members who submit a valid and timely Claim Form pursuant to paragraph 3.06, below.

1.03 "Class Counsel" means Tiffany N. Hardy, of Edelman Combs Lattuner & Goodwin, LLC, and Lawrence Katz of the Law Offices of Lawrence Katz.

1.04 "Class Member" means a member of the Settlement Class as defined below. For all purposes, the Class Member List, as defined in paragraph 3.03, shall be the definitive determinant of class membership. All co-borrowers on an account shall be treated as one Class Member for purposes of the Settlement.

1.05 "Class Period" means the period beginning October 3, 2016 through October 3, 2017.

1.06 "Class Representatives" or "Representative Plaintiffs" shall mean Harold Kahn and Deborah Kahn.

1.07 "Class Representative Award" means the sums awarded, if any, to Representative Plaintiffs by the Court pursuant to paragraph 2.03(b).

1.08 "Class Settlement Fund" means the remainder of the Total Settlement Amount, to be distributed equally to eligible Class Members in the form of Benefit Checks, after deductions for: (a) Settlement Administration Costs; (b) the Attorney Fee/Litigation Cost Award, if any; and (c) the Class Representatives Award, if any; and (d) the Class Representatives' statutory damages.

1.09 "Court" means the Honorable Nelson Stephen Roman, United States District Court for the Southern District of New York, and/or such other judge of the same court to whom the Action, or a proceeding in the Action, may hereafter be assigned.

1.10 “Final Approval” means the last date on which all of the following have occurred:

(a) The Court has issued all necessary orders under Fed. R. Civ. P. 23 approving of the Settlement in a manner substantially consistent with the terms and intent of this Agreement;

(b) The Court enters the Final Approval Order;

(c) Either: (i) Thirty-five (35) days have passed after entry of the Final Approval Order and within such time, no appeal is taken, or (ii) in the event the Final Approval Order is appealed, ten (10) days after all appellate remedies are exhausted and the Final Approval Order is upheld, or not altered in a manner that is substantially inconsistent with the Final Approval Order, provided that any change or modification that may increase the Defendant’s liability or reduce the scope of the Release or of the Settlement Class shall be considered as preventing the occurrence of Final Approval; and

(d) No Party with a right to do so has terminated the Agreement.

1.11 “Final Approval Date” means the date upon which Final Approval occurs.

1.12 “Final Approval Order” means the order and judgment of the Court approving the Settlement in a manner substantially consistent with the terms and intent of this Agreement, and dismissing all remaining claims in the Action with prejudice.

1.13 “SPS” or “Defendant” means Select Portfolio Servicing, Inc.

1.14 “Plaintiffs’ Counsel” means Class Counsel.

1.15 “Preliminary Approval Order” means the order or orders of the Court preliminarily approving the terms and conditions of this Agreement as contemplated by this Agreement and providing for the circulation of notice to the putative class.

1.16 “Settlement” means the resolution of the matters within the scope of the Release and this Agreement.

1.17 “Settlement Administrator” means Class-Settlement.com, any of its employees and any agent engaged by Class Counsel, in their sole discretion, to administer the settlement in this matter.

1.18 “Settlement Administration Costs” means any and all reasonable costs of administering the Settlement, including but not limited to: (i) the reasonable costs and expenses associated with disseminating the notice to the Settlement Class; (ii) the reasonable costs and expenses associated with the maintenance of the Qualified Settlement Fund as provided in this Agreement; (iii) the payment of Taxes, if any; (iv) the reasonable costs and expenses of the

distribution of the Qualified Settlement Fund to Class Members; and (v) any other costs and expenses reasonably necessary for implementing the Settlement.

1.19 “Settlement Amount Excess” means the amount, if any, of the Total Settlement Amount remaining after: (a) distribution of the Benefit Checks and the expiration of the period for Class Members to negotiate Benefit Checks; (b) payment of the Class Representative Award, if any, to Representative Plaintiffs; (c) payment of the Attorney Fee/Litigation Cost Award, if any, to Class Counsel; (d) payment of the Class Representatives’ statutory damages; and (e) payment of the Settlement Administration Costs.

1.20 “Settlement Class” means (a) all individuals with property addresses in New York, (b) to whom SPS sent a monthly statement, (c) with respect to a loan that was over 30 days behind at the time SPS began servicing it, according to the records of SPS, (d) and had been accelerated at the time the monthly statement had been sent, (e) where the monthly statement referred to late charges for late payments, and (f) the monthly statement was sent at any time during a period beginning October 3, 2016 and ending October 3, 2017. It is estimated that the class includes approximately 5,082 such accounts.

1.21 “Successful Opt-Out” means a person who timely and validly exercises his or her right to be excluded from the Settlement Class, pursuant to paragraph 3.07 and Fed. R. Civ. P. 23.

1.22 “Taxes” means: (a) all federal, state, or local taxes of any kind on any income earned on the Qualified Settlement Fund; and (b) the reasonable expenses and costs incurred by the Settlement Administrator in connection with determining the amount of, and paying, any taxes owed on interest accrued on the Qualified Settlement Fund (defined below) including, without limitation, reasonable expenses of tax attorneys and accountants.

1.23 “Total Settlement Amount” means two hundred thirty-five thousand dollars (\$235,000.00), which shall be the total settlement amount that Defendant will become obligated to pay under this Agreement if it gains Final Approval, comprised of all funds required for the (a) Class Settlement Fund, (b) payment of Settlement Administration Costs, (c) payment of the Class Representative Award, if any, to Representative Plaintiffs, (d) payment of the Attorney Fee/Litigation Cost Award, if any, to Class Counsel, and (e) payment of the Class Representatives’ statutory damages. The Total Settlement Amount will be the maximum monetary exposure to SPS under the Settlement.

II. SETTLEMENT FUND

2.01 The Total Settlement Amount shall be divided as set forth below:

2.02 Within ten (10) days after the Court enters a Preliminary Approval Order, SPS shall advance to the Settlement Administrator the Settlement Administration Costs (including the costs of class notice) in the amount of Ten Thousand Two Hundred and Fifty Dollars (\$10,250.00). This amount shall be deducted from the Total Settlement Amount. Any Settlement Administration costs that exceed \$10,250.00 shall be deducted from the Class Settlement Fund prior to distribution to the Class Members. Other than the advance for

Settlement Administration Costs (including the costs of class notice), SPS shall have no obligation to create the Total Settlement Fund, or pay any portion thereof, until Final Approval, and no person, entity or Class Member shall have any claim to, entitlement to, or rights in the Total Settlement Fund or any portion thereof other than as set forth in this Agreement.

2.03 Within ten (10) days after the Final Approval Date, SPS will pay to the Settlement Administrator Two Hundred Twenty-Four Thousand Seven Hundred and Fifty Dollars (\$224,750.00), representing the Total Settlement Amount less the advance for Settlement Administration Costs, as provided in paragraph 2.02, which shall be divided as follows:

(a) Plaintiffs intend to request an Attorney Fee/Litigation Cost Award in the amount of up to Ninety-Nine Thousand, Seven Hundred and Fifty Dollars (\$99,750.00). The Attorney Fee/Litigation Cost Award is subject to Court approval. The Settlement Administrator will deduct the approved amount of the Attorney Fee/Litigation Cost Award from the Total Settlement Amount.

(b) Each Plaintiff shall receive \$1,000.00 for his or her respective statutory damages as set forth in 15 U.S.C. §1692k of the FDCPA. The Settlement Administrator will deduct a total of \$2,000.00 from the Total Settlement Amount for Plaintiffs' statutory damages under the FDCPA. Additionally, each Plaintiff intends to request a Class Representative Award of up to \$4,000.00 (\$8,000.00 total). The Class Representative Award is subject to Court approval. The Settlement Administrator will deduct the approved amount of the Class Representative Award from the Total Settlement Amount.

(c) Subject to Court approval, the Settlement Administrator shall place the remainder of the \$224,750.00, after deductions for: the Class Representatives' statutory damages; the Class Representative Award, if any; payment of the Attorney Fee/Litigation Cost Award, if any; and payment of Settlement Administration Costs, in the Class Settlement Fund for distribution to Class Members who do not Opt Out and who submit a valid and timely claim form.

2.04 In the event that the Court approves an Attorney Fee/Litigation Cost Award that is less than Ninety-Nine Thousand, Seven Hundred and Fifty Dollars (\$99,750.00), or a Class Representative Award that is less than a total of Eight (\$8,000.00) Thousand Dollars (\$4,000.00 per plaintiff), then the difference will be added to the Class Settlement Fund for distribution to Class Members.

III. SETTLEMENT PROCEDURES

A. Preliminary Approval.

3.01 On or before March 7, 2019, Class Counsel shall move the Court for entry of the Preliminary Approval Order, which order shall be substantially in the form of Exhibit A hereto, and shall: (a) preliminarily approve the Settlement memorialized in this Agreement as fair, reasonable, and adequate, including the material terms of this Agreement; (b) provisionally certify the Settlement Class for settlement purposes only; (c) set a date for a final approval hearing ("Final Approval Hearing"); (d) approve the proposed Class Notice substantially in the

form attached hereto as Exhibit B, and authorize its dissemination to the Settlement Class; (e) set deadlines consistent with this Agreement; and (f) conditionally designate Representative Plaintiffs as representatives of the Settlement Class and Class Counsel as counsel for the Settlement Class. Defendant agrees not to oppose the entry of the Preliminary Approval Order, provided it is substantially in the form of Exhibit A hereto. Without implication of limitation, Defendant's agreement not to oppose the entry of the Preliminary Approval Order shall not be an admission or concession by Defendant that the certification of a class was appropriate in the Action in the absence of a settlement or would be appropriate in any other matter, and/or that any relief was appropriate in the Action in the absence of a settlement.

3.02 Defendant shall provide notice of the Settlement to the appropriate state or federal officials in accordance with the Class Action Fairness Act of 2005 ("CAFA"). *See* 28 U.S.C. § 1715. The Parties agree that Defendant is permitted to provide such notice as required by law and that any notice by Defendant shall be prepared to effectuate the Settlement and shall not be considered a breach of this Agreement or any other agreement of the Parties.

B. Claims Submission and Class Administration.

3.03 Defendant shall prepare the list of Class Members ("Class Member List") and provide it to the Settlement Administrator and Class Counsel within ten (10) days after the entry of the Preliminary Approval Order. In preparing the Class Member List, Defendant shall use reasonable good faith efforts to identify Class Members by their last known address, but shall have no obligation to look beyond information obtainable from readily searchable computer media maintained by Defendant. After receiving the Class Member List, the Settlement Administrator shall obtain updates, if any, to the addresses contained therein using the National Change of Address ("NCOA") database maintained by the United States Postal Service ("Postal Service").

3.04 Within forty-five (45) days after the entry of the Preliminary Approval Order, the Settlement Administrator shall mail to each Class Member a Class Notice. Other than as set forth in this Section III of the Agreement, there shall be no other provision for Class Notice.

3.05 If any Class Notice sent under paragraph 3.04 is returned by the Postal Service as undeliverable, the Settlement Administrator shall re-mail the Class Notice to the forwarding address, if any, provided by the Postal Service on the face of the returned mail.

3.06 Each Class Member is entitled to timely submit a claim form to receive his or her share of the Class Settlement Fund. A Class Member will receive a share of the Class Settlement Fund, if within such time as is ordered by the Court and contained in the Class Notice ("Claims Period"), the Class Member completes and mails a Claim Form ("Claim Form") to the Settlement Administrator at the address set forth in the Class Notice. The Parties will recommend that the Claims Period conclude forty-five (45) days after the Class Notice mailing deadline in paragraph 3.04. For a Class Member's Claim Form to be valid it must (a) state his, her, or their full name(s), address(es), and telephone number(s); and (b) contain the Class Member's signature(s) or the signature of a person authorized to act on behalf of the Class Member. In those cases where a Class Member includes co-borrowers, then all co-borrowers on an account must sign and timely submit a completed Claim Form for the Claim Form to be valid.

If the Claim Form does not contain all borrowers' signatures, there must be a valid explanation for the unavailability of co-borrowers to sign. At the expiration of the Claims Period, the Settlement Administrator shall create a list of valid Claim Forms received. In the event that information provided in the Claim Form is unclear or missing, the Settlement Administrator shall endeavor to contact the Class Member to clarify or obtain such information. In the event that a Class Member submits both a valid Claim Form and an Opt-Out, or the Class Member's intent with respect to the Claim Form is otherwise unclear, the Settlement Administrator shall endeavor to contact the Class Member to determine the Class Member's intent. If such Class Member does not withdraw either the Claim Form or the Opt-Out, the Settlement Class Member shall be deemed to have opted out.

3.07 Each Class Member is entitled to request exclusion from the Settlement Class and not to be bound by the Settlement, if, within such time as is ordered by the Court and contained in the Class Notice ("Opt-Out and Objection Period"), the Class Member completes and mails a request for exclusion ("Opt-Out") to the Settlement Administrator at the address set forth in the Class Notice. The Parties will recommend that the Opt-Out Period conclude forty-five (45) days after the Class Notice mailing deadline in paragraph 3.04. For a Class Member's Opt-Out to be valid and treated as a Successful Opt-Out, it must (a) state his, her, or their full name(s), address(es), and telephone number(s); (b) contain the Class Member's signature(s) or the signature of a person authorized to act on behalf of the Class Member; and (c) unequivocally state in some way the Class Member's intent to be excluded from the Settlement Class, to be excluded from the Settlement, not to participate in the Settlement, and/or to waive all rights to the benefits of the Settlement. In those cases where a Class Member includes co-borrowers, then all co-borrowers on an account must sign and timely submit a completed Opt-Out for the Opt-Out to be valid. If the Opt-Out does not contain all borrowers' signatures, there must be a valid explanation for the unavailability of co-borrowers to sign. At the expiration of the Opt-Out Period, the Settlement Administrator shall create a list of Successful Opt-Outs and provide to the Parties the list and copies of all communications from the Opt-Outs. Defendant or Class Counsel may dispute an Opt-Out or purported Opt-Out, and the Court shall resolve any such disputes.

3.08 Any Class Member who does not submit a timely Opt-Out, or otherwise comply with all requirements for opting-out as may be contained in this Agreement, in the Class Notice, or as otherwise ordered by the Court, or who is not a Successful Opt-Out shall be bound by this Agreement, this Settlement and the Release, as embodied in paragraph 5.01 of this Agreement. If a Class Member is a Successful Opt-Out, that Class Member shall be excluded from the Settlement, and shall not receive a Benefit Check, and will not be bound by the terms of the Settlement or this Agreement.

3.09 Any Class Member who is not a Successful Opt-Out and who wishes to object to the proposed Settlement must, before the end of the Opt-Out and Objection Period, serve a written objection to the Settlement ("Objection") upon Class Counsel and Counsel for the Defendant, at the addresses set forth in the Class Notice, and file the Objection simultaneously with the Court. Each Objection must set forth the Class Member's name and a statement of the legal and factual basis for the Objection, and provide copies of any documents that the Class Member wishes to submit in support of his/her/their position. Any Class Member who does not submit a timely Objection in complete accordance with this Agreement, the Class Notice, or as

otherwise ordered by the Court, shall not be treated as having filed a valid Objection to the Settlement.

3.10 Any Class Member who wishes to appear at the Final Approval Hearing, whether *pro se* or through counsel, must file with the Court a notice of appearance in the Action, at least fourteen (14) days before the Final Approval Hearing, take all other actions or make any additional filings as may be required in the Class Notice or as otherwise ordered by the Court, and serve the notice and other pleadings upon Class Counsel and Counsel for the Defendant as provided in the Class Notice and within the time set by the Court.

3.11 Unless the Court directs otherwise, the dates set forth in the Class Notice shall govern the rights of the Class Members.

C. Administration

3.12 The settlement administration shall be conducted by the Settlement Administrator, except as otherwise provided in this Agreement.

3.13 Plaintiffs will move for Class-Settlement.com to be appointed as the Settlement Administrator. Once appointed, Class-Settlement.com shall be responsible for administering this Agreement.

3.14 The Settlement Administrator shall hold all money received from SPS in a “Qualified Settlement Fund” in interest-bearing bank account deposits with commercial banks with excess capital exceeding One Hundred Million Dollars and No Cents (\$100,000,000.00), with a rating of “A” or higher by S&P and in an account that is fully insured by the United States Government or the FDIC.

3.15 All interest on the Qualified Settlement Fund shall accrue to the benefit of the Class Members. Any interest shall not be subject to withholding and shall, if required, be reported appropriately to the Internal Revenue Service by the Settlement Administrator. The Settlement Administrator is responsible for the payment of all Taxes.

3.16 The Qualified Settlement Fund shall be deemed as such within the meaning of Treasury Regulation § 1.468B-1 at all times since the creation of the Qualified Settlement Fund. All Taxes shall be paid out of the Qualified Settlement Fund. SPS, counsel for SPS, Plaintiffs, and counsel for Plaintiffs shall have no liability or responsibility for any of the Taxes. The Qualified Settlement Fund shall indemnify and hold SPS, counsel for SPS, Plaintiffs, and counsel for Plaintiffs harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

3.17 For the purpose of the Internal Revenue Code and the Treasury regulations thereunder, the Settlement Administrator shall be designated as the “administrator” of the Qualified Settlement Fund. The Settlement Administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Qualified Settlement Fund (including, without limitation, the returns described in Reg. § 1.468B-2(k)). Such returns (as well as the election described in the previous paragraph) shall be consistent with this paragraph and in all events shall reflect that all taxes (including the Taxes, any estimated

Taxes, interest, or penalties) on the income earned by the Qualified Settlement Fund shall be paid out of the Qualified Settlement Fund as provided herein.

3.18 For a period of one hundred twenty (120) days after the Final Approval Date, the Settlement Administrator shall maintain an address to receive inquiries with respect to the Settlement.

D. Final Approval.

3.19 At the time appointed by the Court, Representative Plaintiffs and Class Counsel shall move the Court for the Final Approval, which order shall: (a) finally approve the Settlement as fair, reasonable, and adequate; (b) give the terms of the Settlement final and complete effect; (c) finally certify the Settlement Class for settlement purposes only; (d) find that all requirements of statute, rule, and state and federal Constitutions necessary to effectuate this Settlement have been met and satisfied; (e) enter final judgment of dismissal on the merits and with prejudice in the Action. Defendant agrees not to oppose the entry of the Final Approval Order, provided it is substantially in compliance with the terms of this Agreement. Without implication of limitation, Defendant's agreement not to oppose the entry of the Final Approval Order shall not be an admission or concession by Defendant that a class was appropriate in the Action in the absence of the Settlement or would be appropriate in any other matter, and/or that any relief was appropriate in the Action in the absence of the Settlement or would be appropriate in any other matter.

3.20 The Final Approval Order, or a separate order, shall be entered providing that all Class Members (who are not Successful Opt-Outs), including Representative Plaintiffs, shall be enjoined from commencing, prosecuting, or assisting in any lawsuit against the Released Parties that asserts or purports to assert matters within the scope of the Release and judgment in the Action.

3.21 No later than thirty (30) days after the Class Notice mailing deadline in paragraph 3.04, Class Counsel may, subject to the limitations set forth in paragraphs 2.03(a) and (b) above, make written application to the Court for: (i) an Attorney Fees/Litigation Cost Award not to exceed, in the aggregate, Ninety-Nine Thousand Seven Hundred and Fifty dollars (\$99,750.00); and (ii) a Class Representative Award not to exceed, in the aggregate, Eight Thousand dollars (\$8,000.00) (\$4,000.00 per class representative). The Attorney Fees/Litigation Cost Award and the Class Representative Award shall be paid from the Total Settlement Amount. To the extent approved, such Awards shall be paid exclusively from, and not in addition to, the Total Settlement Amount.

3.22 Defendant's maximum potential liability under the Settlement for attorneys' fees and actual litigation costs incurred in the Action shall be Ninety-Nine Thousand Seven Hundred and Fifty dollars (\$99,750.00) to be paid from the Total Settlement Amount. In the event that a lawyer, law firm or other person or entity, other than Class Counsel, seeks an award of attorneys' fees, costs, expenses or other sums in connection with the Settlement, such appearance or attempt to obtain any award, or the Court's action thereon, shall in no way increase Defendant's maximum liability to pay attorneys' fees and litigation costs of Ninety-Nine Thousand Seven Hundred and Fifty dollars (\$99,750.00) to be paid from the Total Settlement Amount or any less

amount awarded by the Court for Attorney Fees/Litigation Costs to Class Counsel. In the event that an attorney, other than Class Counsel, seeks an award of attorneys' fees, costs, expenses or other sums in connection with the Settlement, any such award to such lawyer, law firm or other person or entity shall not, together with all sums awarded to Class Counsel, increase the Total Settlement Fund Amount or Defendant's maximum liability for attorneys' fees, costs, or expenses.

3.23 In the event that the Court denies, in whole or in part, any application made by Class Counsel pursuant to paragraph 3.21 above, the remainder of the terms of this Agreement shall remain in effect.

3.24 At the Final Approval Hearing, Representative Plaintiffs and Class Counsel shall make a good faith effort to support the entry of a Final Approval Order.

3.25 If and when the Court gives Final Approval to the Settlement, and as part of such approval, the Action shall be dismissed with prejudice, with all parties to bear his, her, or its own costs and attorneys' fees not otherwise awarded. The Court shall retain jurisdiction over the parties and the class members to effectuate the Agreement.

IV. CLASS SETTLEMENT BENEFITS

4.01 If a Class Member submits a valid and timely Claim Form and is not a Successful Opt-Out, he, she, or they shall receive a Benefit Check for his/her/their *pro rata* share of the Class Settlement Fund, subject to the other terms and conditions of this Agreement. There shall be no interest accrued, owing or paid on any Benefit Check or on any other benefit, notwithstanding any judgment, principle or statute.

4.02 The amount of each Class Member's Benefit Check shall be calculated by dividing the amount of the Class Settlement Fund by the total number of valid Claim Forms received from Class Members who are not Successful Opt-Outs.

4.03 Subject to the terms and conditions of the Agreement, within forty-five (45) days after the Final Approval Date, the Settlement Administrator shall mail the Benefit Checks. The Benefit Checks will be mailed to the addresses provided for the Class Members on the Class Member List or, if applicable, to any updated addresses identified during the class notice process or provided by the Postal Service. All Benefit Checks issued pursuant to this paragraph shall be void if not negotiated within ninety (90) calendar days of their date of issue, and shall contain a legend to that effect. The value of all Benefit Checks issued pursuant to this paragraph that are unclaimed by Class Members shall become part of the Settlement Amount Excess, subject to distribution pursuant to paragraph 4.07. The payment to be made by the Benefit Check shall remain the property of the Class Settlement Fund until such time as the Benefit Check is negotiated.

4.04 Subject to the terms and conditions of this Agreement, within twenty (20) days after the Final Approval Date, the Settlement Administrator shall pay the amount of any Attorney Fee/Litigation Cost Award ordered by the Court by check made payable to "Edelman Combs Latturmer & Goodwin, LLC Trust Account." Neither the Settlement Administrator nor

the Defendant shall have any liability arising from any claim regarding the division of any Attorney Fee/Litigation Cost Award between and among Plaintiffs' Counsel.

4.05 Subject to the terms and conditions of this Agreement, within twenty (20) days after the Final Approval Date, the Settlement Administrator shall pay the Plaintiffs their respective statutory damages in the amount of \$1,000.00 each (\$2,000 in total). In addition, subject to the terms and conditions of this Agreement, within twenty (20) days after the Final Approval Date, the Settlement Administrator shall pay the amount of any Class Representative Award ordered by the Court to Representative Plaintiffs. The Defendant shall not have any liability to Representative Plaintiffs or Plaintiffs' Counsel arising from any claim regarding the delivery or payment of the Class Representative Award by Plaintiffs' Counsel to Representative Plaintiffs or division of the Class Representative Award between and among Representative Plaintiffs.

4.06 The Settlement Administrator's obligations with respect to the distribution of Benefit Checks, the Class Representatives' statutory damages, the Attorney Fee/Litigation Cost Award, if any, and the Class Representative Award, if any, shall be performed reasonably and in good faith. Class Counsel and Plaintiffs shall provide all necessary tax information and otherwise cooperate in advance with all requirements necessary to enable Defendant to make any payments without incurring additional liability.

4.07 Subject to the terms and conditions of this Agreement, the Settlement Administrator shall, one hundred twenty (120) days after the initial mailing of all Benefit Checks issued pursuant to paragraph 4.03 of this Agreement, issue the Settlement Amount Excess as *cy pres* to The Legal Aid Society, Civil Division, subject to the Court's consent.

4.08 All monies that might in the future be paid to any Class Member are not vested, or otherwise monies in which the Class Member has an enforceable legal, tangible or intangible interest, and instead shall remain the sole and exclusive property of Defendant unless and until all conditions precedent to payment under this Agreement are met and the monies are paid. In order to give effect to the Parties' intention, no person, entity, or governmental body shall have any rights to the Total Settlement Amount, the Settlement Amount Excess, the Benefit Checks or any portion of the Benefit Checks, whether claimed or unclaimed, or in any amounts of uncashed Benefit Checks. The Parties further acknowledge and agree that to the extent a separate account or fund may be established as part of settlement administration, including but not limited to setting up an account for the payment of Benefit Checks, such accounts or funds are for administrative or legal convenience or requirements only and do not create any vested or ownership interest on the part of the Settlement Class or any Class Member or any other person, entity, or governmental body. Such accounts or funds set up by the Settlement Administrator shall be treated as property of Defendant held in escrow.

V. RELEASE

5.01 Upon Final Approval, and in consideration of the promises and covenants set forth in this Agreement, the Class Representatives, and each Class Member who did not successfully Opt Out, and each of their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, bankruptcy estates, bankruptcy trustees, successors,

predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf (in their capacities as such) (the “Releasing Parties”) hereby release and forever discharge Defendant and its past or present officers, directors, trustees, members, employers, employees, partners, principals, agents, shareholders, attorneys, accountants, auditors, advisors, personal and legal representatives, heirs, beneficiaries, assigns, predecessors, successors, parents, subsidiaries, divisions, associates, related or affiliated entities (in their capacities as such), any persons or entities for whom Defendant services or has serviced a Class Member’s mortgage loan, including but not limited to noteholders, or any person or entity acting or purporting to act for Defendant or on its behalf or on behalf of any other Released Party (collectively the “Released Parties”) from all causes of action, suits, claims, damages, agreements, liabilities, obligations, and demands of any kind whatsoever, known or unknown, direct or consequential, in law or in equity, which the Releasing Parties now have or ever had against the Released Parties, for any violations of the FDCPA, State fair debt collection laws, or any other claims or legal theories relating to or arising out of the claims alleged in the Complaint (the “Released Claims”). Notwithstanding the foregoing, this Agreement does not address the validity of the debts allegedly owed by the Class Representatives or the Class Members. Other than the FDCPA and state law claims released, the Class Representatives and the Class Members do not waive or release defenses available to them, if any, to any underlying foreclosure litigation brought by or on behalf of Defendant. The Class Representatives and the Class Members do not release their right to dispute any alleged debt or any part of an alleged debt related or unrelated to the language at issue in the monthly statements. Specifically excluded from the Class Members’ release are any claims or defenses relating to (1) whether or not any debt is owed, (2) the proper crediting of payments and (3) the accurate reporting of the alleged debt to the credit reporting bureaus. This release is conditioned on Defendant meeting its obligations under paragraphs 2.02 and 2.03, respectively, to: (i) advance to the Settlement Administrator the Settlement Administration Costs (including the costs of class notice) in the amount of Ten Thousand Two Hundred and Fifty Dollars (\$10,250.00); and (ii) pay to the Settlement Administrator Two Hundred Twenty-Four Thousand Seven Hundred and Fifty Dollars (\$224,750.00), representing the Total Settlement Amount less the advance for Settlement Administration Costs.

5.02 By Harold Kahn and Deborah Kahn: Upon Final Approval, and in consideration of the promises and covenants set forth in this Agreement, Plaintiffs Harold Kahn and Deborah Kahn, and each of their respective children, executors, representatives, guardians, wards, heirs, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf (in their capacities as such) (collectively “Kahn Releasers”), fully and forever resolve, release and discharge Defendant as well as its past, present and future predecessors, successors, assigns, parent corporations, subsidiaries, holding companies, divisions, unincorporated business units, joint venturers, partners, insurers, members, officers, directors, shareholders, managers, employees, agents, servants, representatives, officials, attorneys, associates, trustees, related or affiliated entities (in their capacities as such), any persons or entities for whom Defendant services or has serviced Plaintiffs’ mortgage, including but not limited to JPMorgan Chase Bank, N.A. and other noteholders, or any person or entity acting or purporting to act for Defendant or on its behalf or on behalf of any other Kahn Released Party, including but not limited to The Bank of New York Mellon Trust Company, N.A., f/k/a The Bank of New York Trust Company, N.A., as Trustee for Chase Flex Trust Series 2007-1

(collectively “Kahn Released Parties”), from any and all claims, counterclaims, causes of action, of whatever type or nature which were brought or could have been brought in the Action, including but not limited to all claims for violation of the FDCPA. Notwithstanding anything to the contrary, specifically excluded from this Release are any claims or defenses the Kahns may have concerning: (1) whether any specific mortgage debt is in fact owed (including any statute of limitations defense), and the amount thereof, (2) the proper crediting of specific payments, and (3) the reporting of the alleged specific mortgage debt to the credit reporting bureaus. This release is conditioned on Defendant meeting its obligations under paragraphs 2.02 and 2.03, respectively, to: (i) advance to the Settlement Administrator the Settlement Administration Costs (including the costs of class notice) in the amount of Ten Thousand Two Hundred and Fifty Dollars (\$10,250.00); and (ii) pay to the Settlement Administrator Two Hundred Twenty-Four Thousand Seven Hundred and Fifty Dollars (\$224,750.00), representing the Total Settlement Amount less the advance for Settlement Administration Costs.

VI. REPRESENTATIONS AND WARRANTIES

6.01 In addition to the provisions hereof, this Agreement and the Settlement shall be subject to the ordinary and customary judicial approval procedures under Fed. R. Civ. P. 23. Until and unless this Agreement is dissolved or becomes null and void by its own terms, or unless otherwise ordered by the Court, or if Final Approval is not achieved, Representative Plaintiffs, the Settlement Class and Class Counsel represent and warrant to Defendant that they shall take all appropriate steps in the Action necessary to preserve the jurisdiction of the Court, use their best efforts to cause the Court to grant Preliminary and Final Approval of this Agreement as promptly as possible, and take or join in such other steps as may be necessary to implement this Agreement and to effectuate the Settlement. This includes: (a) the obligation to oppose objections and to defend the Agreement and the Settlement before the Court and on appeal, if any; (b) to seek approval of this Agreement and of the Settlement by the Court; and (c) to move for the entry of the orders set forth in paragraphs 3.01 and 3.19.

6.02 Representative Plaintiffs and Class Counsel represent and warrant that other than “Class Counsel,” as that term is defined above, there are no persons that they know of (natural or legal) having any interest in any award of attorneys’ fees, expenses or litigation costs in connection with the Action. Representative Plaintiffs and Class Counsel represent and warrant that any Attorney Fee/Litigation Cost Award they may seek upon application to the Court pursuant to paragraph 3.21 above shall include all attorneys’ fees and litigation costs that Representative Plaintiffs, Class Counsel, and any of the current and former owners, predecessors, successors, partners, shareholders, agents (alleged or actual), representatives, employees, and affiliates of Class Counsel, seek or may have any right or claim to in connection with the Action.

6.03 Representative Plaintiffs, Class Counsel and Defendant represent and warrant that he, she, or it are fully authorized to enter into this Agreement and to carry out the obligations provided for herein. Each person executing this Agreement on behalf of a Party, entity, or other person(s) covenants, warrants, and represents that he, she, or it has been fully authorized to do so by that Party, entity, or other person(s). Representative Plaintiffs, Class Counsel and Defendant represent and warrant that he, she or it intends to be bound fully by the terms of this Agreement.

6.04 Representative Plaintiffs, Class Counsel, and Defendant represent and warrant that they have not, nor will they, unless expressly authorized to do so by the terms of this Agreement, (a) attempt to void this Agreement in any way; (b) Opt-Out of the Settlement under this Agreement; (c) solicit or encourage in any fashion Class Members to Opt-Out; or (d) solicit or encourage in any fashion any effort by any person (natural or legal) to object to the Settlement under this Agreement. Nothing herein shall prohibit Class Counsel from responding to any Class Member inquiry with advice that Class Counsel deems appropriate given the Class Member's individual circumstances.

6.05 Until and unless this Agreement is dissolved or becomes null and void by its own terms, or unless otherwise ordered by the Court, or if Final Approval is not achieved, Defendant represents and acknowledges to Representative Plaintiffs that it will not oppose the Settlement, Preliminary Approval and/or Final Approval, provided that the Preliminary Approval Order and Final Approval Order sought by Plaintiffs and Class Counsel are substantially in compliance with the terms of this Agreement.

VII. MISCELLANEOUS PROVISIONS

7.01 This Agreement reflects, among other things, the compromise and settlement of disputed claims and defenses among the Parties hereto, and nothing in this Agreement nor any action taken to effectuate this Agreement is intended to be an admission or concession of liability of any Party or third party or of the validity of any claim. Defendant denies the allegations in the Action, and contends that its conduct has been lawful and proper.

7.02 This Agreement is entered into only for purposes of settlement. In the event that this Agreement and this Settlement (i) do not receive Final Approval in accordance with the terms of this Agreement, (ii) are terminated, (iii) are canceled, or (iv) fail to become effective for any reason, this Agreement shall become null and void. In that event, the Parties shall be absolved from all obligations under this Agreement, and this Agreement, any draft thereof, and any discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions leading to the execution of this Agreement shall have no effect and shall not be admissible evidence for any purpose. In addition, in that event, the status of the Action shall revert to the state it was in prior to the Agreement, the pleadings shall revert to that date, and the agreements contained herein shall be null and void, shall not be cited or relied upon as an admission as to the Court's jurisdiction or the propriety of class certification in the absence of the Settlement, and the Parties shall have all rights, claims and defenses that they had or were asserting prior to entering into this Agreement or any predecessor agreement. In addition, in that event, the remainder of the Total Settlement Amount (including accrued interest), less (i) any Settlement Administration Costs incurred, and (ii) any amounts and Taxes incurred or due and owing and payable from the Qualified Settlement Fund in accordance with this Agreement, shall be refunded to SPS.

7.03 Nothing shall prevent Representative Plaintiffs or Defendant from appealing any denial by the Court of Final Approval of this Settlement, and the Parties agree that, in the event of such an appeal, the case should be stayed pending the resolution of any such appeal. The Parties agree they will continue to support and advocate for approval of the Settlement on appeal or in post-appeal proceedings, if there is such an appeal, to the same extent as they are bound

herein to do so while the case is before the Court. In the event such an appeal results, by order of the appellate court or by an order after remand or a combination thereof, in the entry of an order(s) whereby the Settlement is approved in a manner substantially consistent with the substantive terms and intent of this Agreement, and dismissing all claims in the Action with prejudice, and otherwise meeting the substantive criteria of this Agreement for approval of the Settlement, such order shall be treated as a Final Approval Order.

7.04 The Parties agree that all negotiations, statements, proceedings, and other items related to this Agreement are for settlement purposes only, and shall not be offered or be admissible in evidence by or against either Party or cited or referenced by Plaintiffs' Counsel or Defendant in any other action or proceeding against Defendant or Plaintiffs.

7.05 This Agreement is intended to and shall be governed as a contract executed under the laws of the State of New York.

7.06 The terms and conditions set forth in this Agreement constitute the complete and exclusive agreement between the Parties hereto, and may not be contradicted by evidence of any prior or contemporaneous agreement, and no extrinsic evidence may be introduced in any judicial proceeding to interpret this Agreement. Any modification of the Agreement must be confirmed and executed in writing by all Parties and served upon Counsel for the Defendant and Class Counsel. The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

7.07 This Agreement shall be deemed to have been drafted jointly by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

7.08 This Agreement shall inure to the benefit of the Released Parties and the Kahn Released Parties and heirs, successors and assigns of each Released Party and Kahn Released Party, and each and every one of the Released Parties and Kahn Released Parties shall be deemed to be intended third-party beneficiaries of this Agreement and, once approved by the Court, of the Settlement.

7.09 This Agreement shall become effective upon its execution by Plaintiffs, Class Counsel, Defendant, and Counsel for the Defendant. The signature of Counsel for the Defendant as an agent of Defendant shall be for this purpose only, and shall not create any separate duties or obligations on Counsel for the Defendant.

7.10 This Agreement may be executed in counterparts. Each counterpart shall be deemed to be an original, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument. Plaintiffs and Defendant authorize their respective counsel to execute this Agreement for this purpose.

7.11 Under no circumstances shall the Settlement or Agreement or the Release be deemed to alter, amend, or change the terms and conditions of any mortgage loan to which any Class Member is or was a party, or to provide a defense to any such Loan, including but not limited to a defense based on the so-called "one action" rule, nor shall the Settlement or the Agreement be deemed to have any effect in any bankruptcy case, in any foreclosure proceeding,

or in any other action involving a Class Member hereto, nor shall the Agreement create or be construed as evidence of any violation of law or contract, including claims under the FDCPA; in the event this Agreement is so construed as to a particular Class Member, it can be declared by Defendant to be null and void as to that Class Member only (and in such latter event, the Release as to that Class Member shall also be void). Representative Plaintiffs and the Settlement Class expressly covenant and agree that, as a material inducement to Defendant, and recognizing the practical difficulties faced by Defendant in ongoing or future matters, each of them waive and forever relinquish any rights or entitlement they may possess or come to possess (other than as set forth herein) to have Defendant or the Released Parties amend, alter or revise proofs of claims, rights, demands, suits, or other claims made (or to be made) in order to reflect the benefit of the Benefit Checks provided or to be provided or to reflect the other terms of this Agreement and the Settlement.

7.12 In the event that the Court enters an order preliminarily or finally approving the Settlement that may increase or decrease the Total Settlement Amount or reduce or increase the scope of the releases of the Settlement Class, or is otherwise not in substantial compliance with the terms and intent of this Agreement, each of the Parties shall have the right to terminate this Agreement if, after meeting and conferring in good faith, they are unable resolve all outstanding material issues.


7.13 Although the Court shall enter a judgment, the Court shall retain jurisdiction over the interpretation, effectuation, enforcement, administration, and implementation of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto, acting by and through their respective counsel of record, have entered into this Agreement on the date first above written, and have executed this Agreement on the date indicated below each respective signature.

REPRESENTATIVE PLAINTIFFS:

Harold Kahn


Harold Kahn

Date: 3/6/19
REPRESENTATIVE PLAINTIFF

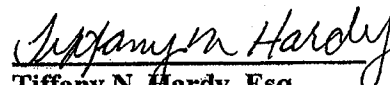
Deborah Kahn


Deborah Kahn

Date: 3/6/2019
REPRESENTATIVE PLAINTIFF

REPRESENTATIVE PLAINTIFFS'
COUNSEL:

**EDELMAN COMBS LATTURNER &
GOODWIN**



Tiffany N. Hardy, Esq.

Date: March 7, 2019

**EDELMAN COMBS LATTURNER &
GOODWIN**

20 S. Clark Street, Suite 1500
Chicago, IL 60603

Law Offices of Lawrence Katz


Lawrence Katz, Esq.

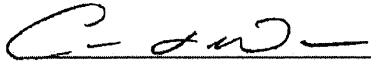
Date: March 7, 2019

Law Offices of Lawrence Katz

70 East Sunrise Highway, Suite 500
Valley Stream, NY 11581

DEFENDANT:

SELECT PORTFOLIO SERVICING, INC.

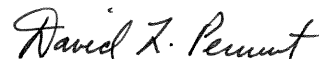
_____

By: **Cameron L. Ward**
Title: **Vice President, Senior Counsel**

Date: March 6, 2019

COUNSEL FOR DEFENDANT:

GOODWIN PROCTER LLP

_____
David L. Permut, Esq.

Date: March 7, 2019

GOODWIN PROCTER LLP

901 New York Ave., NW
Washington, D.C. 20001

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X
HAROLD KAHN and DEBORAH KAHN,
on behalf of plaintiffs and all
others similarly situated,

Plaintiffs,

v.

SELECT PORTFOLIO SERVICING, INC.,

Defendant.

-----X

Case No.: 17-cv-7540-NSR-PED

PRELIMINARY APPROVAL ORDER

This matter comes before the Court on the request (the “Plaintiffs’ Motion”) of Harold Kahn and Deborah Kahn, and a class of persons similarly situated (collectively “Plaintiffs” or “Settlement Class Members”), for preliminary approval of the class action Settlement Agreement entered into between Plaintiffs Harold Kahn and Deborah Kahn and Defendant Select Portfolio Servicing, Inc., (“SPS”), dated March 6, 2019 (the “Agreement”). The Settlement Agreement is intended to resolve the pending litigation *Harold Kahn and Deborah Kahn v. Select Portfolio Servicing Inc.*, 7:17-cv-07540-NSR-PED (“the Action”) in its entirety subject to the final approval of this Court. The Court has reviewed the Agreement and the exhibits attached to the Plaintiffs’ Motion, and, good cause appearing,

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Court finds that the proposed settlement is within the range of fairness and reasonableness and grants preliminary approval to it.
2. The Court hereby provisionally certifies the following Class solely for settlement purposes:

(a) all individuals with property addresses in New York, (b) to whom SPS sent a monthly statement, (c) with respect to a loan that was over 30 days behind at the time SPS began servicing it, according to the records of SPS, (d) and had been accelerated at the time the monthly statement had been sent, (e) where the monthly statement referred to late charges for late payments, and (f) the monthly statement was sent at any time during a period beginning October 3, 2016 and ending October 3, 2017. It is estimated that the class includes approximately 5,082 such accounts.

3. Based on the motion for preliminary approval, and for settlement purposes only, the Court finds that:

(A) the class as defined is sufficiently numerous such that joinder is impracticable;

(B) common questions of law and fact predominate over any questions affecting only individual Class Members, and include whether or not Defendant violated the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. (“FDCPA”) when it sent a monthly account statement on accelerated loans that stated that a late fee would be assessed if a monthly payment was not received by a date certain.

(C) the claims of Plaintiffs, Harold Kahn and Deborah Kahn, are typical of the Class Members’ Claims;

(D) Plaintiffs Harold Kahn and Deborah Kahn are appropriate and adequate representatives for the Class and their attorneys, Edelman, Combs, Lattuner and Goodwin, LLC, & Law Office of Lawrence Katz, are hereby appointed as Class Counsel; and

(E) a class action is the superior method for the fair and efficient adjudication of the claims of the Class Members.

4. The Court finds that the settlement was a product of arms-length negotiations during a settlement conference between the parties before the Honorable Paul E. Davison.

5. The Court finds that at the time of the settlement conference the parties had engaged in extensive discovery (written discovery and party depositions) and had fully briefed plaintiffs’ Motion for Class Certification.

6. The Court approves and appoints Class-Settlement.com as the Settlement Administrator for the Class.

7. If the above Settlement is not given final approval for any reason or in any way, as defined in Paragraph 1.10 of the Settlement Agreement, or the Settlement Agreement is rescinded and terminated, the Parties shall be restored to their respective positions in the Action as of the approximate date prior to which the agreement-in-principle to settle the Action was reached. In such event, the terms and provisions of the Agreement shall have no further force and effect with respect to the Parties, shall be deemed to be without prejudice in any way to the position of the Parties with respect to this Action or any other action, and shall not be used in the Action or in any other proceeding for any purpose, except as provided in the Agreement or herein.

8. A hearing on the fairness and reasonableness of the Agreement and whether final approval shall be given to it, the requests for attorney's fees and expenses by Class Counsel, and the Class Representatives' request for a Class Representative Award will be held before this Court on _____, 2019 at _____ a.m./p.m.

9. The Court approves the proposed form of notice to the Class Members, to be directed to the last known address of the Class Members as shown on Defendant's records.

10. Class Counsel shall cause the Settlement Administrator to mail notice to class members on or before _____, 2019 (within 45 days after entry of the Preliminary Approval Order). The Settlement Administrator will have the notice sent by any form of bulk mail that provides address-forwarding mail to each address. It will re-mail any notice that is returned with a forwarding address within five (5) business days.

11. Defendant shall (1) provide class counsel with the names and last known address of each class member and (2) advance to Class Counsel the costs of class notice and administration in the amount of \$10,250.00 within ten (10) days following entry of the preliminary approval order.

12. The Court finds that mailing of the class notice and the other measures specified above to locate and notify members of the class is the only notice required and that such notice satisfies the requirements of due process and FED. R. CIV. P. 23(c)(2)(B).

13. Class members shall have 45 days from the mailing of class notices to submit a Claim Form to participate in the proposed settlement. Class members shall have 45 days from the mailing of class notice to submit requests for exclusion, or object to the proposed settlement. Any class member who desires to exclude himself or herself from the action must mail a request for exclusion to Class Counsel and Defendant's Counsel by the deadline. Claim forms, requests for Exclusions and Objections to the Settlement are to be received by _____. To be valid, Claim Forms and Requests for Exclusion must be signed by all co-borrowers. If the Claim Form or Request for Exclusion does not contain all borrowers' signatures, there must be a valid explanation for the unavailability of co-borrowers to sign.

14. To be valid, a request for exclusion must be in writing, signed by the Class Member (or their authorized representative) who seeks exclusions, must be sent to the Settlement Administrator, and contain a written statement that must include: (1) the Class Member's name(s), address(es), and telephone number(s); and (2) the following statement: "I request to be excluded from the settlement class in "Kahn, et al v. Select Portfolio, Inc.," (a "Request for Exclusion"). Such Request for Exclusion must be received by the Settlement Administrator within forty-five (45) days after the Notice Date.

15. Class Counsel shall file its fee petition by _____ (within 30 days after the Notice Date).

16. The Class Representatives, by and through Class Counsel, shall file a request for

approval of the Class Representatives' Class Representative Award by
_____.

17. Defendant shall file proof of compliance with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. §1715(b) within ten (10) days after the entry of the Preliminary Approval Order.

18. The Court finds that dissemination of the Notice in the manner described herein constitutes the best notice practicable under the circumstances to potential Settlement Class Members and complies fully with Federal Rule of Civil Procedure 23, any and all substantive and procedural due process rights guaranteed by the United States Constitution, and any other applicable law.

19. All discovery and other proceedings in the Action are stayed unless pursuant to the Court's Order for the purpose of implementing the Settlement or complying with the terms of the Agreement.

20. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Class.

SO ORDERED this ____ day of _____, 2019.

Hon. Nelson S. Roman
United States District Judge

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

The case is *Harold Kahn and Deborah Kahn v. Select Portfolio Servicing, Inc.*
Case No. 7:17-cv-07540-NSR-PED

If you have or had an accelerated mortgage loan serviced by Select Portfolio Servicing, Inc. (“SPS”) and you received a monthly mortgage statement from SPS between October 3, 2016 and October 3, 2017, you could receive a payment from a class action settlement.

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

- A proposed Settlement has been reached in a class action lawsuit concerning monthly mortgage statements for accelerated loans that were sent between October 3, 2016 and October 3, 2017.
- You are receiving this Notice because SPS’ records indicate that SPS may have sent you a monthly account statement for an accelerated loan that stated that a late fee would be assessed if payment was not received by a date certain.
- Your legal rights will be affected whether you act or do not act. Therefore you should read this Notice carefully.

DO NOT CONTACT THE COURT REGARDING THIS NOTICE.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM BY _____, 2019 AND RECEIVE A SHARE OF THE CLASS SETTLEMENT FUND	If you wish to receive a share of the Class Settlement Fund, you and any co-borrowers on the account must complete and return the claim form on or before _____, 2019. If you submit a claim form, you will give up your rights to be part of any other lawsuit or legal proceeding against SPS or Released Parties about the claims made in this case and released by the Settlement.
DO NOTHING	By doing nothing, you will remain in the Settlement Class but you will not be entitled to receive a cash payment from the Class Settlement Fund. If you remain in the Settlement Class, you will give up your rights to be part of any other lawsuit or legal proceeding against SPS or Released Parties about the claims made in this case and released by the Settlement.
EXCLUDE YOURSELF BY _____, 2019	If you exclude yourself from the Settlement Class, you will not receive a cash payment from the Class Settlement Fund, but you will retain all of your legal claims against SPS and the Released Parties. If you exclude yourself from the Settlement Class, you will not be able to object to the Settlement.

OBJECT BY _____, 2019	Write to the Court about why you don't like the settlement. You can only object to the Settlement if you have not excluded yourself from the Settlement Class. You may also appear at the Fairness Hearing on _____, 2019.
------------------------------	--

These rights and options and the deadlines to exercise them are explained below.

1. Why did I get this notice?

You received this notice because you have been identified as a person who was sent a monthly account statement for an accelerated loan that stated that a late fee would be assessed if payment was not received by a date certain. You received this notice because you have been identified by defendant as a member of the class.

2. What is this lawsuit about?

Plaintiffs, Harold Kahn and Deborah Kahn ("Plaintiffs"), filed a class action lawsuit and alleged that defendant Select Portfolio Servicing, Inc. ("SPS" or "Defendant") sent you a monthly account statement for an accelerated loan that stated that a late fee would be assessed if payment was not received by a date certain. Plaintiffs allege that this statement violated the Fair Debt Collection Practices Act ("FDCPA" or "the Law"). Defendant denies these and all other allegations in the lawsuit, and the Court has not made a finding of liability against Defendant.

3. Why is this a class action?

In a class action, one or more people called Class Representatives (in this case, Harold Kahn and Deborah Kahn), sue on behalf of a group (or a "Class") of people who have similar claims.

4. Why is there a settlement?

The Class Representatives and the Defendant do not agree about the claims made in this lawsuit. The lawsuit has not gone to trial and the court has not decided in favor of either the Class Representatives or the Defendant. Instead, the Class Representatives and the Defendant have agreed to settle the lawsuit. The Class Representatives and their lawyers believe the Settlement is in the best interest of all Class Members because of the value of the Settlement, risks associated with continued litigation, the prolonged nature of litigation, and the defenses raised by the Defendant. The Defendant denies that it did anything wrong and believes that its defenses to the claims would succeed, but Defendant nevertheless has agreed to settle this lawsuit to avoid the burden, expense, risk, and uncertainty of continuing the litigation.

5. How do I know if I am a part of the settlement?

You received this Notice because Defendant's records indicate that you are a Class Member. The Class is defined as (a) all individuals with property addresses in New York, (b) to whom SPS sent a monthly statement, (c) with respect to a loan that was over 30 days behind at the time SPS began servicing it, according to the records of SPS, (d) and had been accelerated at the time the monthly statements had been sent, (e) where the monthly statements referred to late charges for late payments, and (f) the monthly statements were sent at any time during a period beginning October 3, 2016 and ending October 3, 2017. It is estimated that the class consists of 5,082 accounts.

YOUR BENEFITS UNDER THE SETTLEMENT

6. What can I get from the settlement?

The settlement calls for establishment of a Class Settlement Fund of at least \$115,000 to be divided equally among class members who submit a valid and timely claim form. Based on Class Counsel's experience, Class Counsel expects 10%-20% of the class members will submit claim forms resulting in an estimated recovery of between \$100 and \$200 per account.

7. When will I receive these benefits?

If you submit a valid claim form and do not opt-out, you will receive these benefits approximately sixty (60) days after the settlement has been given final approval by the Court, assuming that no party seeks an appeal of the settlement.

8. I want to be a part of the settlement and receive these benefits. What do I do?

To receive a share of the Class Settlement Fund, you and all co-borrowers on the account must submit a claim form by _____, 2019. If the claim form does not contain all borrowers' signatures, there must be a valid explanation for the unavailability of co-borrowers to sign.

9. What am I giving up if I stay in the Class?

By staying in the Class, all of the Court's orders will apply to you, and you give the Defendant a "release." Anyone who does not specifically exclude themselves from the Class will give Defendant a release. A release means you can't sue or be part of any other lawsuit against Defendant or Released Parties about the claims or issues in this lawsuit. A copy of the Settlement Agreement containing the Release can be found at www.eclgnotice.com.

10. How much will the Class Representative receive?

The settlement provides for the payment to each plaintiff of \$1,000.00 for their statutory damages and \$4,000.00 each for their service as class representatives.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want to receive the benefits of the settlement, but you want to keep your legal claims against the Defendant, then you must take steps to exclude yourself from the Settlement. This is also called opting-out.

11. How do I exclude myself from the settlement?

To exclude yourself from the settlement, you must submit a written Request for Exclusion or to Opt Out. If the Request for Exclusion or Opt-Out does not contain all borrowers' signatures, there must be a valid explanation for the unavailability of co-borrowers to sign. If you exclude yourself from the Settlement, you will not have a right to object to the Settlement. For your Request for Exclusion or to Opt Out to be effective, you must submit a letter stating words to the effect of: "I WANT TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN KAHN V. SELECT PORTFOLIO SERVICING, INC." Also, be sure to include your name, address, telephone number, and your authorized signature.

You must mail your exclusion request so that it is postmarked **no later than** _____ **2019, (45 days after the Notice date)** and sent to the following addresses:

EDELMAN, COMBS, LATTURNER AND
GOODWIN, LLC (#34234)
Attn: Tiffany N. Hardy
20 South Clark Street, Suite 1500
Chicago, IL 60603

GOODWIN PROCTER, LLP
Attn: David L. Permut

901 New York Avenue, NW
Washington, D.C., 20001

Be sure to include the name and number of the case:
Harold Kahn et al v. Select Portfolio Servicing, Inc., et al., 17-cv-07540-NSR-PED.

12. If I exclude myself, do I still receive benefits from this settlement?

No, you will not receive anything resulting from the settlement of this case. If you timely and validly request exclusion from this Class Settlement, you will not be bound by the judgment entered in this action and you will not be precluded from otherwise prosecuting your own individual claim, if timely, against Defendant based on the FDCPA violations alleged in this case.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

Yes. The Court has named the law firms of Edelman, Combs, Latturner & Goodwin, LLC and Law Offices of Lawrence Katz as Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense. If you choose to hire your own lawyer, he or she must file an appearance by _____, 2019.

14. How will the lawyers be paid?

Class Counsel, Edelman, Combs, Latturner & Goodwin, LLC and the Law Office of Lawrence Katz will ask the Court for attorney's fees and expenses of no more than \$99,750.00 to be paid from the Total Settlement Amount paid by Defendant. The amount of the attorney's fees to be paid to Class Counsel is subject to Court Approval. Class Counsel's attorney's fee will not reduce the estimated share of the settlement to be paid to Class Members who submit valid claim forms.

CLASS COUNSEL'S VIEWS ABOUT THE SETTLEMENT

15. Is this a fair settlement?

Class Counsel believes that this settlement is fair. The claim asserted on behalf of the Class against the Defendant is under the Fair Debt Collection Practices Act ("FDCPA"). The FDCPA is a federal statute which allows for both individual and class actions.

In an individual action, the person bringing the suit may recover (i) any actual damages suffered, if proven, and (ii) statutory damages of between \$0 and \$1,000. In a class action, the maximum possible recovery is (i) any actual damages suffered by the Class members and (ii) the lesser of 1% of the defendant's net worth or \$500,000. The Court, in its discretion, may award anything from \$0 up to the maximum amount to a prevailing party. In either an individual or a class action, the person bringing the suit can also recover attorney's fees and the expenses of prosecuting the suit, if it is successful.

Given the risks and costs associated with further litigation and in light of the violations alleged, Class Counsel believes this is a fair settlement.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do or do not agree with the settlement or some part of it.

17. How do I tell the Court that I do or do not like the Settlement?

If you are a Class Member and you have not excluded yourself from the settlement, you can comment on the settlement. In order to comment on the settlement or any part of the settlement, you may send a letter (or legal brief) stating that you object and the reasons why you think the Court should not approve the settlement. You must include the name and number of the case: *Harold Kahn, et al v. Select Portfolio Servicing, Inc., et al.*; 17-cv-07540-NSR-PED, and your name, address, telephone number and your signature. If you submit a written objection, you may appear at the fairness hearing (explained below in answer to Question no. 18).

You must mail your written objection so that it is postmarked no later than _____, 2019 to:

U.S. District Court for the
Southern District of New York
ATTN: Clerk of Court
300 Quarropas Street, White Plains,
NY 10601

THE FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You do not have to attend the Fairness Hearing, but you may attend if you want

to. If you want to attend the Fairness Hearing, by _____, 2019, you must file a notice of appearance in the lawsuit and mail the notice of appearance to counsel for both Plaintiffs and Defendant at the addresses in Paragraph 11 above.

18. Where and when is the fairness hearing?

The Court will hold a fairness hearing on _____ in the courtroom of Judge Nelson S. Roman, in the Federal Courthouse for the Southern District of New York, 300 Quarropas Street, White Plains, NY 10601. The purpose of the hearing will be for the Court to determine whether the proposed settlement is fair, reasonable and adequate and in the best interests of the Class and to determine the appropriate amount of compensation for the Class Representatives and Class Counsel. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the proposed settlement.

The hearing may be postponed to a later date without notice.

YOU ARE NOT REQUIRED TO ATTEND THIS HEARING.

GETTING MORE INFORMATION

19. How do I get more information?

You can call the firm representing the Class, Edelman, Combs, Lattuner & Goodwin, LLC at (312) 739-4200, if you have any questions. Before doing so, please read this full notice carefully. You can also send an email to info@edcombs.com or obtain information through its website at www.edcombs.com.

20. What if I have a new address?

If this notice was sent to you at your current address, you do not have to do anything more to receive further notices concerning this case. However, if this notice was forwarded to you, or if it was otherwise sent to you at an address that is not current, you should immediately send a letter to:

CLASS-SETTLEMENT.COM
20 MAX AVENUE
HICKSVILLE, NEW YORK 11802-9009

CLAIM FORM

<BARCODE>

<MEMBER ID>

**RE: HAROLD KAHN AND DEBORAH KAHN V. SELECT PORTFOLIO SERVICING, INC.
CASE No. 7:17-CV-07540 (NSR)(PED)**

I WISH TO PARTICIPATE IN THE SETTLEMENT BENEFITS

**IMPORTANT: THIS CLAIM FORM MUST BE POSTMARKED ON OR BEFORE
_____ AND MAILED TO THE FOLLOWING ADDRESS:**

**KAHN V. SPS
CLASS-SETTLEMENT.COM
PO BOX 9009
HICKSVILLE, NEW YORK 11802-9009**

PLEASE LEGIBLY PRINT THE FOLLOWING INFORMATION:

NAME: _____

MAILING ADDRESS: _____

TELEPHONE NUMBER: _____

<FILE NO.>

**IF YOUR NAME DIFFERS FROM THAT WHICH APPEARS ON THE MAILING LABEL, PLEASE NOTE THE
NAME OF THE PERSON TO WHOM THIS NOTICE WAS ADDRESSED HERE:**

**IF THIS NOTICE WAS MAILED TO AN ADDRESS OTHER THAN YOUR CURRENT ADDRESS, PLEASE NOTE
THE ADDRESS HERE:**

SIGNATURE:

X _____

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

The case is *Harold Kahn and Deborah Kahn v. Select Portfolio Servicing, Inc.*
Case No. 7:17-cv-07540-NSR-PED

If you have or had an accelerated mortgage loan serviced by Select Portfolio Servicing, Inc. (“SPS”) and you received a monthly mortgage statement from SPS between October 3, 2016 and October 3, 2017, you could receive a payment from a class action settlement.

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

- A proposed Settlement has been reached in a class action lawsuit concerning monthly mortgage statements for accelerated loans that were sent between October 3, 2016 and October 3, 2017.
- You are receiving this Notice because SPS’ records indicate that SPS may have sent you a monthly account statement for an accelerated loan that stated that a late fee would be assessed if payment was not received by a date certain.
- Your legal rights will be affected whether you act or do not act. Therefore you should read this Notice carefully.

DO NOT CONTACT THE COURT REGARDING THIS NOTICE.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM BY _____, 2019 AND RECEIVE A SHARE OF THE CLASS SETTLEMENT FUND	If you wish to receive a share of the Class Settlement Fund, you and any co-borrowers on the account must complete and return the claim form on or before _____, 2019. If you submit a claim form, you will give up your rights to be part of any other lawsuit or legal proceeding against SPS or Released Parties about the claims made in this case and released by the Settlement.
DO NOTHING	By doing nothing, you will remain in the Settlement Class but you will not be entitled to receive a cash payment from the Class Settlement Fund. If you remain in the Settlement Class, you will give up your rights to be part of any other lawsuit or legal proceeding against SPS or Released Parties about the claims made in this case and released by the Settlement.
EXCLUDE YOURSELF BY _____, 2019	If you exclude yourself from the Settlement Class, you will not receive a cash payment from the Class Settlement Fund, but you will retain all of your legal claims against SPS and the Released Parties. If you exclude yourself from the Settlement Class, you will not be able to object to the Settlement.

OBJECT BY _____, 2019	Write to the Court about why you don't like the settlement. You can only object to the Settlement if you have not excluded yourself from the Settlement Class. You may also appear at the Fairness Hearing on _____, 2019.
------------------------------	--

These rights and options and the deadlines to exercise them are explained below.

1. Why did I get this notice?

You received this notice because you have been identified as a person who was sent a monthly account statement for an accelerated loan that stated that a late fee would be assessed if payment was not received by a date certain. You received this notice because you have been identified by defendant as a member of the class.

2. What is this lawsuit about?

Plaintiffs, Harold Kahn and Deborah Kahn ("Plaintiffs"), filed a class action lawsuit and alleged that defendant Select Portfolio Servicing, Inc. ("SPS" or "Defendant") sent you a monthly account statement for an accelerated loan that stated that a late fee would be assessed if payment was not received by a date certain. Plaintiffs allege that this statement violated the Fair Debt Collection Practices Act ("FDCPA" or "the Law"). Defendant denies these and all other allegations in the lawsuit, and the Court has not made a finding of liability against Defendant.

3. Why is this a class action?

In a class action, one or more people called Class Representatives (in this case, Harold Kahn and Deborah Kahn), sue on behalf of a group (or a "Class") of people who have similar claims.

4. Why is there a settlement?

The Class Representatives and the Defendant do not agree about the claims made in this lawsuit. The lawsuit has not gone to trial and the court has not decided in favor of either the Class Representatives or the Defendant. Instead, the Class Representatives and the Defendant have agreed to settle the lawsuit. The Class Representatives and their lawyers believe the Settlement is in the best interest of all Class Members because of the value of the Settlement, risks associated with continued litigation, the prolonged nature of litigation, and the defenses raised by the Defendant. The Defendant denies that it did anything wrong and believes that its defenses to the claims would succeed, but Defendant nevertheless has agreed to settle this lawsuit to avoid the burden, expense, risk, and uncertainty of continuing the litigation.

5. How do I know if I am a part of the settlement?

You received this Notice because Defendant's records indicate that you are a Class Member. The Class is defined as (a) all individuals with property addresses in New York, (b) to whom SPS sent a monthly statement, (c) with respect to a loan that was over 30 days behind at the time SPS began servicing it, according to the records of SPS, (d) and had been accelerated at the time the monthly statements had been sent, (e) where the monthly statements referred to late charges for late payments, and (f) the monthly statements were sent at any time during a period beginning October 3, 2016 and ending October 3, 2017. It is estimated that the class consists of 5,082 accounts.

YOUR BENEFITS UNDER THE SETTLEMENT

6. What can I get from the settlement?

The settlement calls for establishment of a Class Settlement Fund of at least \$115,000 to be divided equally among class members who submit a valid and timely claim form. Based on Class Counsel's experience, Class Counsel expects 10%-20% of the class members will submit claim forms resulting in an estimated recovery of between \$100 and \$200 per account.

7. When will I receive these benefits?

If you submit a valid claim form and do not opt-out, you will receive these benefits approximately sixty (60) days after the settlement has been given final approval by the Court, assuming that no party seeks an appeal of the settlement.

8. I want to be a part of the settlement and receive these benefits. What do I do?

To receive a share of the Class Settlement Fund, you and all co-borrowers on the account must submit a claim form by _____, 2019. If the claim form does not contain all borrowers' signatures, there must be a valid explanation for the unavailability of co-borrowers to sign.

9. What am I giving up if I stay in the Class?

By staying in the Class, all of the Court's orders will apply to you, and you give the Defendant a "release." Anyone who does not specifically exclude themselves from the Class will give Defendant a release. A release means you can't sue or be part of any other lawsuit against Defendant or Released Parties about the claims or issues in this lawsuit. A copy of the Settlement Agreement containing the Release can be found at www.eclgnotice.com.

10. How much will the Class Representative receive?

The settlement provides for the payment to each plaintiff of \$1,000.00 for their statutory damages and \$4,000.00 each for their service as class representatives.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want to receive the benefits of the settlement, but you want to keep your legal claims against the Defendant, then you must take steps to exclude yourself from the Settlement. This is also called opting-out.

11. How do I exclude myself from the settlement?

To exclude yourself from the settlement, you must submit a written Request for Exclusion or to Opt Out. If the Request for Exclusion or Opt-Out does not contain all borrowers' signatures, there must be a valid explanation for the unavailability of co-borrowers to sign. If you exclude yourself from the Settlement, you will not have a right to object to the Settlement. For your Request for Exclusion or to Opt Out to be effective, you must submit a letter stating words to the effect of: "I WANT TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN KAHN V. SELECT PORTFOLIO SERVICING, INC." Also, be sure to include your name, address, telephone number, and your authorized signature.

You must mail your exclusion request so that it is postmarked **no later than** _____ **2019, (45 days after the Notice date)** and sent to the following addresses:

EDELMAN, COMBS, LATTURNER AND
GOODWIN, LLC (#34234)
Attn: Tiffany N. Hardy
20 South Clark Street, Suite 1500
Chicago, IL 60603

GOODWIN PROCTER, LLP
Attn: David L. Permut

901 New York Avenue, NW
Washington, D.C., 20001

Be sure to include the name and number of the case:
Harold Kahn et al v. Select Portfolio Servicing, Inc., et al., 17-cv-07540-NSR-PED.

12. If I exclude myself, do I still receive benefits from this settlement?

No, you will not receive anything resulting from the settlement of this case. If you timely and validly request exclusion from this Class Settlement, you will not be bound by the judgment entered in this action and you will not be precluded from otherwise prosecuting your own individual claim, if timely, against Defendant based on the FDCPA violations alleged in this case.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

Yes. The Court has named the law firms of Edelman, Combs, Latturner & Goodwin, LLC and Law Offices of Lawrence Katz as Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense. If you choose to hire your own lawyer, he or she must file an appearance by _____, 2019.

14. How will the lawyers be paid?

Class Counsel, Edelman, Combs, Latturner & Goodwin, LLC and the Law Office of Lawrence Katz will ask the Court for attorney's fees and expenses of no more than \$99,750.00 to be paid from the Total Settlement Amount paid by Defendant. The amount of the attorney's fees to be paid to Class Counsel is subject to Court Approval. Class Counsel's attorney's fee will not reduce the estimated share of the settlement to be paid to Class Members who submit valid claim forms.

CLASS COUNSEL'S VIEWS ABOUT THE SETTLEMENT

15. Is this a fair settlement?

Class Counsel believes that this settlement is fair. The claim asserted on behalf of the Class against the Defendant is under the Fair Debt Collection Practices Act ("FDCPA"). The FDCPA is a federal statute which allows for both individual and class actions.

In an individual action, the person bringing the suit may recover (i) any actual damages suffered, if proven, and (ii) statutory damages of between \$0 and \$1,000. In a class action, the maximum possible recovery is (i) any actual damages suffered by the Class members and (ii) the lesser of 1% of the defendant's net worth or \$500,000. The Court, in its discretion, may award anything from \$0 up to the maximum amount to a prevailing party. In either an individual or a class action, the person bringing the suit can also recover attorney's fees and the expenses of prosecuting the suit, if it is successful.

Given the risks and costs associated with further litigation and in light of the violations alleged, Class Counsel believes this is a fair settlement.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do or do not agree with the settlement or some part of it.

17. How do I tell the Court that I do or do not like the Settlement?

If you are a Class Member and you have not excluded yourself from the settlement, you can comment on the settlement. In order to comment on the settlement or any part of the settlement, you may send a letter (or legal brief) stating that you object and the reasons why you think the Court should not approve the settlement. You must include the name and number of the case: *Harold Kahn, et al v. Select Portfolio Servicing, Inc., et al.*; 17-cv-07540-NSR-PED, and your name, address, telephone number and your signature. If you submit a written objection, you may appear at the fairness hearing (explained below in answer to Question no. 18).

You must mail your written objection so that it is postmarked no later than _____, 2019 to:

U.S. District Court for the
Southern District of New York
ATTN: Clerk of Court
300 Quarropas Street, White Plains,
NY 10601

THE FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You do not have to attend the Fairness Hearing, but you may attend if you want

to. If you want to attend the Fairness Hearing, by _____, 2019, you must file a notice of appearance in the lawsuit and mail the notice of appearance to counsel for both Plaintiffs and Defendant at the addresses in Paragraph 11 above.

18. Where and when is the fairness hearing?

The Court will hold a fairness hearing on _____ in the courtroom of Judge Nelson S. Roman, in the Federal Courthouse for the Southern District of New York, 300 Quarropas Street, White Plains, NY 10601. The purpose of the hearing will be for the Court to determine whether the proposed settlement is fair, reasonable and adequate and in the best interests of the Class and to determine the appropriate amount of compensation for the Class Representatives and Class Counsel. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the proposed settlement.

The hearing may be postponed to a later date without notice.

YOU ARE NOT REQUIRED TO ATTEND THIS HEARING.

GETTING MORE INFORMATION

19. How do I get more information?

You can call the firm representing the Class, Edelman, Combs, Lattuner & Goodwin, LLC at (312) 739-4200, if you have any questions. Before doing so, please read this full notice carefully. You can also send an email to info@edcombs.com or obtain information through its website at www.edcombs.com.

20. What if I have a new address?

If this notice was sent to you at your current address, you do not have to do anything more to receive further notices concerning this case. However, if this notice was forwarded to you, or if it was otherwise sent to you at an address that is not current, you should immediately send a letter to:

CLASS-SETTLEMENT.COM
20 MAX AVENUE
HICKSVILLE, NEW YORK 11802-9009

CLAIM FORM

<BARCODE>

<MEMBER ID>

**RE: HAROLD KAHN AND DEBORAH KAHN V. SELECT PORTFOLIO SERVICING, INC.
CASE No. 7:17-CV-07540 (NSR)(PED)**

I WISH TO PARTICIPATE IN THE SETTLEMENT BENEFITS

**IMPORTANT: THIS CLAIM FORM MUST BE POSTMARKED ON OR BEFORE
_____ AND MAILED TO THE FOLLOWING ADDRESS:**

**KAHN V. SPS
CLASS-SETTLEMENT.COM
PO BOX 9009
HICKSVILLE, NEW YORK 11802-9009**

PLEASE LEGIBLY PRINT THE FOLLOWING INFORMATION:

NAME: _____

MAILING ADDRESS: _____

TELEPHONE NUMBER: _____

<FILE NO.>

**IF YOUR NAME DIFFERS FROM THAT WHICH APPEARS ON THE MAILING LABEL, PLEASE NOTE THE
NAME OF THE PERSON TO WHOM THIS NOTICE WAS ADDRESSED HERE:**

**IF THIS NOTICE WAS MAILED TO AN ADDRESS OTHER THAN YOUR CURRENT ADDRESS, PLEASE NOTE
THE ADDRESS HERE:**

SIGNATURE:

X _____

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X
HAROLD KAHN and DEBORAH KAHN,
on behalf of plaintiffs and all
others similarly situated,

Plaintiffs,

v.

SELECT PORTFOLIO SERVICING, INC.,

Defendant.
-----X

Case No.: 17-cv-7540-NSR-PED

PRELIMINARY APPROVAL ORDER

This matter comes before the Court on the request (the “Plaintiffs’ Motion”) of Harold Kahn and Deborah Kahn, and a class of persons similarly situated (collectively “Plaintiffs” or “Settlement Class Members”), for preliminary approval of the class action Settlement Agreement entered into between Plaintiffs Harold Kahn and Deborah Kahn and Defendant Select Portfolio Servicing, Inc., (“SPS”), dated March 6, 2019 (the “Agreement”). The Settlement Agreement is intended to resolve the pending litigation *Harold Kahn and Deborah Kahn v. Select Portfolio Servicing Inc.*, 7:17-cv-07540-NSR-PED (“the Action”) in its entirety subject to the final approval of this Court. The Court has reviewed the Agreement and the exhibits attached to the Plaintiffs’ Motion, and, good cause appearing,

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Court finds that the proposed settlement is within the range of fairness and reasonableness and grants preliminary approval to it.
2. The Court hereby provisionally certifies the following Class solely for settlement purposes:

(a) all individuals with property addresses in New York, (b) to whom SPS sent a monthly statement, (c) with respect to a loan that was over 30 days behind at the time SPS began servicing it, according to the records of SPS, (d) and had been accelerated at the time the monthly statement had been sent, (e) where the monthly statement referred to late charges for late payments, and (f) the monthly statement was sent at any time during a period beginning October 3, 2016 and ending October 3, 2017. It is estimated that the class includes approximately 5,082 such accounts.

3. Based on the motion for preliminary approval, and for settlement purposes only, the

Court finds that:

(A) the class as defined is sufficiently numerous such that joinder is impracticable;

(B) common questions of law and fact predominate over any questions affecting only individual Class Members, and include whether or not Defendant violated the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. ("FDCPA") when it sent a monthly account statement on accelerated loans that stated that a late fee would be assessed if a monthly payment was not received by a date certain.

(C) the claims of Plaintiffs, Harold Kahn and Deborah Kahn, are typical of the Class Members' Claims;

(D) Plaintiffs Harold Kahn and Deborah Kahn are appropriate and adequate representatives for the Class and their attorneys, Edelman, Combs, Lattuner and Goodwin, LLC, & Law Office of Lawrence Katz, are hereby appointed as Class Counsel; and

(E) a class action is the superior method for the fair and efficient adjudication of the claims of the Class Members.

4. The Court finds that the settlement was a product of arms-length negotiations during a settlement conference between the parties before the Honorable Paul E. Davison.

5. The Court finds that at the time of the settlement conference the parties had engaged in extensive discovery (written discovery and party depositions) and had fully briefed plaintiffs' Motion for Class Certification.

6. The Court approves and appoints Class-Settlement.com as the Settlement Administrator for the Class.

7. If the above Settlement is not given final approval for any reason or in any way, as defined in Paragraph 1.10 of the Settlement Agreement, or the Settlement Agreement is rescinded and terminated, the Parties shall be restored to their respective positions in the Action as of the approximate date prior to which the agreement-in-principle to settle the Action was reached. In such event, the terms and provisions of the Agreement shall have no further force and effect with respect to the Parties, shall be deemed to be without prejudice in any way to the position of the Parties with respect to this Action or any other action, and shall not be used in the Action or in any other proceeding for any purpose, except as provided in the Agreement or herein.

8. A hearing on the fairness and reasonableness of the Agreement and whether final approval shall be given to it, the requests for attorney's fees and expenses by Class Counsel, and the Class Representatives' request for a Class Representative Award will be held before this Court on _____, 2019 at _____ a.m./p.m.

9. The Court approves the proposed form of notice to the Class Members, to be directed to the last known address of the Class Members as shown on Defendant's records.

10. Class Counsel shall cause the Settlement Administrator to mail notice to class members on or before _____, 2019 (within 45 days after entry of the Preliminary Approval Order). The Settlement Administrator will have the notice sent by any form of bulk mail that provides address-forwarding mail to each address. It will re-mail any notice that is returned with a forwarding address within five (5) business days.

11. Defendant shall (1) provide class counsel with the names and last known address of each class member and (2) advance to Class Counsel the costs of class notice and administration in the amount of \$10,250.00 within ten (10) days following entry of the preliminary approval order.

12. The Court finds that mailing of the class notice and the other measures specified above to locate and notify members of the class is the only notice required and that such notice satisfies the requirements of due process and FED. R. CIV. P. 23(c)(2)(B).

13. Class members shall have 45 days from the mailing of class notices to submit a Claim Form to participate in the proposed settlement. Class members shall have 45 days from the mailing of class notice to submit requests for exclusion, or object to the proposed settlement. Any class member who desires to exclude himself or herself from the action must mail a request for exclusion to Class Counsel and Defendant's Counsel by the deadline. Claim forms, requests for Exclusions and Objections to the Settlement are to be received by _____. To be valid, Claim Forms and Requests for Exclusion must be signed by all co-borrowers. If the Claim Form or Request for Exclusion does not contain all borrowers' signatures, there must be a valid explanation for the unavailability of co-borrowers to sign.

14. To be valid, a request for exclusion must be in writing, signed by the Class Member (or their authorized representative) who seeks exclusions, must be sent to the Settlement Administrator, and contain a written statement that must include: (1) the Class Member's name(s), address(es), and telephone number(s); and (2) the following statement: "I request to be excluded from the settlement class in "Kahn, et al v. Select Portfolio, Inc.," (a "Request for Exclusion"). Such Request for Exclusion must be received by the Settlement Administrator within forty-five (45) days after the Notice Date.

15. Class Counsel shall file its fee petition by _____ (within 30 days after the Notice Date).

16. The Class Representatives, by and through Class Counsel, shall file a request for

approval of the Class Representatives' Class Representative Award by
_____.

17. Defendant shall file proof of compliance with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. §1715(b) within ten (10) days after the entry of the Preliminary Approval Order.

18. The Court finds that dissemination of the Notice in the manner described herein constitutes the best notice practicable under the circumstances to potential Settlement Class Members and complies fully with Federal Rule of Civil Procedure 23, any and all substantive and procedural due process rights guaranteed by the United States Constitution, and any other applicable law.

19. All discovery and other proceedings in the Action are stayed unless pursuant to the Court's Order for the purpose of implementing the Settlement or complying with the terms of the Agreement.

20. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Class.

SO ORDERED this ____ day of _____, 2019.

Hon. Nelson S. Roman
United States District Judge