

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Willie Mae Kirby, on behalf of herself
and all others similarly situated,

Plaintiff

vs.

Excelsior I, Inc., Excelsior of
Charleston, LLC, and We Finance,
LLC,

Defendants

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Case No. 2019-CP-40-01109

**JOINT MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

COME NOW Plaintiff(s) Willie Mae Kirby, *et al.*, and Defendants Excelsior I, Inc., Excelsior of Charleston, LLC, and We Finance, LLC, (hereinafter “CNAC”) (collectively the “parties”) and, under Rule 23(c) of the South Carolina Rules of Civil Procedure, hereby move this Honorable Court to grant preliminary approval of the parties’ proposed class action settlement. The parties’ proposed class action settlement is reflected in the attached agreement titled “Mediated Settlement Agreement” attached hereto at Exhibit A.

The parties respectfully request that this Joint Motion be granted and that the Court issue an Order: (1) preliminarily approving the attached proposed Settlement Agreement; (2) certifying the Class for settlement purposes; (3) appointing Dave Maxfield and Ray Gallo as Class Counsel and determining fees and costs; (4) approving the form and manner of Class Notice; and (5) setting a schedule for a Fairness Hearing to grant final approval of the parties’ settlement agreement and other remaining procedures.

RESPECTFULLY SUBMITTED,

DAVE MAXFIELD, ATTORNEY, LLC

s/ David A. Maxfield, ID 7163

DATED: February 26, 2019

By: _____
Dave Maxfield
Attorney for Plaintiff

BELSER & BELSER, PA

s/ H. Freeman Belser, ID 72403

DATED: February 26, 2019

By: _____
H. Freeman Belser
Attorneys for Defendants

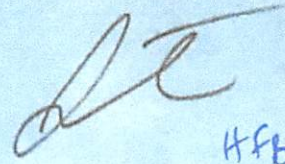
Mediated Settlement Agreement

This Mediated Settlement Agreement is reached following a day of mediation before Karl A. Folkens, subject to and conditioned upon court approval.

1. Parties:
 - A. Plaintiff: Willie Mae Kirby
 - B. Defendants: Excelsior I, Inc, Excelsior of Charleston, LLC; We Finance, LLC (f/k/a Excelsior of Greenville, LLC); and their owners, officers, employees, agents, and affiliated companies.
2. This case will be settled as a class action to be filed and approved in the Court of Common Pleas of South Carolina, Richland County.
3. There are no admissions of liability in connection with the settlement.
4. Plaintiff will concurrently file:
 - A. A class action complaint (the "Complaint") substantially in the form of the draft complaint Plaintiff's counsel provided to Defendants' counsel on or about January 25, 2018, but amended as to the named Defendants and containing class allegations.
 - B. A motion for preliminary approval of class action settlement.
5. The parties stipulate to certification of a settlement class defined as:

All persons who financed the purchase of a vehicle with Excelsior I, Inc., Excelsior of Charleston, LLC, or We Finance, LLC (f/k/a Excelsior of Greenville, LLC), all doing business as Car Now Acceptance Corporation or CNAC, and whose vehicle was repossessed by one of these companies between February 12, 2014 and March 1, 2018.

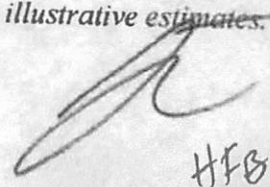
Excluded from the class are all those who timely request exclusion from (opt-out of) the class by mail in the manner prescribed by the class notice, or on the claims website.
6. Notice: The content and appearance of the class notice shall be in a form acceptable to the Defendants and approved by the Court and shall be delivered by mail to the last known address (as updated using USPS address updating), by email where an email address is available, and by a text message where a mobile phone number is available. The Court shall have final authority to determine the content and appearance of the form in the event the parties cannot agree.



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Exhibit A

7. Releases: Plaintiff and each class member release Defendants with respect to all claims arising out of the facts alleged in the Complaint. Release will include owners, officers, employees, and all affiliated individuals and entities, including, but not limited to JDB of Columbia, Inc., JDB of Charleston, LLC, JDB of Columbia, LLC, JTMG II, LLC, JTMG III, LLC, JTMG Laurens, LLC, Riviera Reinsurance Limited, Jonathan & Andrew Company, Inc., John T. Gandolfo, and Jonathan J. Gandolfo ("Released Parties").
8. Court Approval Contingency: The court's approval of this settlement is a contingency. Absent court approval, there is no settlement. In light of the limited parties to be named in the complaint, the existing tolling agreement shall remain in force and effect as to all parties to it, and parties or signatories to this Agreement, pending approval or denial of the settlement, and no party shall have the right to terminate that tolling agreement until 30 days after the court's approval or denial of approval of the settlement. Counsel's signature below shall effect a consonant amendment to the tolling agreement.
9. Injunctive Relief:
 - A. Each Class members' liability for any deficiency arising in connection with a repossessed vehicle is hereby considered paid based on the value of the repossessed vehicle, as established by the re-sale or transfer price of that vehicle, which for settlement purposes Defendants agree equaled or exceeded the balance owed for most class members. No class member shall receive a 1099-C or other indicia indicating that the debt has been "forgiven," because the debts are not forgiven, but were in effect repaid by the "surrender" of the vehicle. Defendants shall not transfer, place, sell or assign any account included in the class to any other party for collection. This section applies irrespective of whether the class member cashes a settlement check. Defendants represent and warrant that they have not and will not report to credit agencies for any Class member. To the extent Defendants have reported class member accounts to credit reporting agency(ies), Defendants will request that the agencies delete the tradelines Defendants furnished for each class member in connection with a repossessed vehicle, will use commercially reasonable efforts to ensure that any such tradelines are deleted, and will report the debt as paid. This request shall be made irrespective of whether the class member cashes a settlement check.
 1. Value: Defendants represent and warrant the value of crediting each Class member's above-described debts as paid resolves, on average, [\$7500] of debt per class member, plus interest and penalties from the date of default. With a presently estimated total of 1,300 class members, the total value of this credit is [\$9,750,000] plus penalties and interest (interest is generally 24% on the sales at issue), for a total estimated value of [\$15,000,000]. *[The numbers in brackets in this paragraph are illustrative estimates.]*



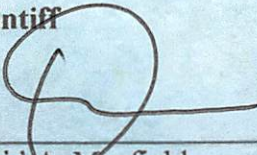
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Defendants shall assist in the calculation of correct numbers.]

- B. Defendants shall implement the following procedures for a period of at least four years from entry of judgment:
1. Where a customer's default consists only of the customer's failure to make a required payment, Defendants shall give the customer notice of his or her right to cure in compliance with S.C. Code § 37-5-110 at least 20 days before repossessing the vehicle.
 2. At least fifteen days before disposing of a customer's repossessed vehicle, Defendants shall send the customer a notification of disposition in compliance with S.C. Code § 36-9-614.
10. Cash Consideration. Prior to the hearing to confirm the settlement, Released Parties shall pay \$2,000,000 (two million US Dollars) (the "Cash Portion") into the Belser & Belser attorney client trust account or directly to the claims administrator, for disbursement in accordance with the Court's approval order. This payment includes payment to the class (the "Net Settlement"), attorneys' fees and costs, an incentive award to Plaintiff, and claims administration fees. No portion of the Total Settlement will revert to Defendants. Belser & Belser, PA shall certify to the Court that the Cash Portion is "good" prior to the hearing.
- A. The Net Settlement Distribution means the cash paid by Defendants, less: (1) attorneys' fees and costs to plaintiff's counsel, (2) incentive award, and (3) the cost of claims administration.
 - B. The Net Settlement Distribution shall be divided among Class members *pro rata* based on each Class member's total "Claim Amount" for all vehicles that Class member had repossessed by any Defendant within the class period. The Claim Amount for a repossessed vehicle shall be calculated pursuant to the following formula: Claim Amount = ten percent of the sum of: (a) Down Payment(s) Made (including deferred down payment(s) made) + (b) Finance Charge (as shown on RISC) + (c) 10% of Cash Price + (d) \$500.
 1. For example: Willie Mae Kirby had one vehicle repossessed by a Defendant within the class period. For that vehicle, Ms. Kirby made down payments of \$2,400 (including two deferred down payments); her Finance Charge is \$5,118.44; and 10% of her \$11,299.00 cash price is \$1,129.90. Accordingly, her total Claim Amount is \$914.83 [$0.10 \times (\$2,400 + \$5,118.44 + \$1,129.90 + \$500) = \914.83].
 - C. The Claims Administrator shall determine the claim values and final payouts (pro-ration of claims) based on the claims submitted. The parties shall have the right to review and approve the calculations before payments are made.

- D. Defendants shall provide reasonable access to all data in their possession, custody, or control to Plaintiff's counsel to facilitate the accurate determination of the class list and appropriate payouts.
- E. The settlement distribution procedures shall not require the submission of claims forms. Rather, settlement checks shall be automatically mailed to qualified class members.
- F. Funds available to pay on checks uncashed after 8 months shall be paid 50% to City of Hope Hospital, Gerh Family Center for Leukemia Research, and 50% to the Salvation Army of the Midlands.
11. Claims administrator: Plaintiff's counsel shall select a claims administrator (or elect to perform the work themselves if they wish). The claims administrator shall be paid from the Total Settlement.
12. Incentive Award: Plaintiff Willie Mae Kirby may apply for an incentive award, in addition to her share as a class member.
13. Attorneys' Fees and Costs: Plaintiff's counsel may apply to the court for attorneys' fees and costs.
14. Plaintiffs and Defendants shall each pay one-half of the cost of mediation, respectively.

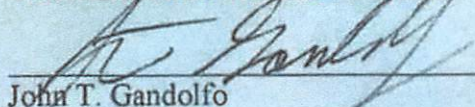
Plaintiff



David A. Maxfield
Authorized Agent for Willie Mae Kirby

Dated: 2/4/19

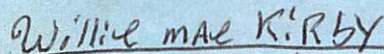
Defendants and Released Parties



John T. Gandolfo
Authorized Representative for Defendants
And Released Parties

Dated: 2/2/19


H. Freeman Belser
Counsel for Defendants and Released Parties

Dated: 2/4/19


Willie Mae Kirby
Willie Mae Kirby

Dated: 2/4/19

APPROVED AS TO FORM AND CONTENT:

Counsel for Plaintiff

Ray E. Gallo

Dated: _____

Counsel for Defendants and Released Parties



H. Freeman Belser

Dated: 2/4/19