

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CHARLENE BAKER
On Behalf of Herself and All Others Similarly Situated,

Plaintiff,

v.

Civil Action No: 15-C-164
Tera Salango, Judge

FILED
Cathy S. Gatson, Clerk
Kanawha Co. Circuit Court

APR 23 2019

E.J. HAGAN ASSOCIATES, P.C.,
and
EDWARD J. HAGAN,

Defendants.

CLASS ACTION SETTLEMENT AGREEMENT

Introduction

Plaintiff, Charlene Baker, as representative of the proposed Settlement Class, as defined herein, and E. J. Hagan Associates, P.C., and Edward J. Hagan (the "Settling Defendants") hereby agree to this class action settlement agreement that resolves, in accordance with the terms set forth herein and pursuant to West Virginia Rule of Civil Procedure 23, the claims released hereunder.

The parties to this settlement agreement have entered into it in good faith and after extensive arm's-length negotiations. They are not aware of any conflicts of interest that would have any effect on this settlement. They believe in good faith that the terms of this settlement agreement are fair, reasonable, adequate, and in the best interests of Plaintiff and the members of the Settlement Class, taking into account the burdens, risks, uncertainties, and expense of litigation.

The parties agree, subject to Final Judicial Approval (as defined herein) and compliance with the conditions set forth below, that the Settled Claims (as defined herein) at issue are settled, compromised, and released and should be dismissed with prejudice.

The Lawsuit

Plaintiff filed her Complaint on or about January 27, 2015, which included individual and claims and class allegations stemming from alleged violation of the West Virginia Consumer Credit and Protection Act. Plaintiff filed an Amended Complaint on or about April 15, 2015. Defendants filed a motion to dismiss the amended complaint on or about May 15, 2015. The Court granted Defendants' motion to dismiss by Order entered August 17, 2015. Plaintiff filed a Rule 59(e) motion to alter or amend the judgment on or about August 31, 2015. On May 16, 2017 the parties participated in mediation which culminated in a settlement agreement.

Settlement Agreement

I. DEFINITIONS

- A. Class Counsel.** Class Counsel is Gary M. Smith, Mountain State Justice, Inc., 1217 Quarrier Street, Charleston, West Virginia 25301.
- B. Class Notice.** Class Notice means the notice to members of the Settlement Class required by West Virginia Rule of Civil Procedure 23(e), as applicable. At a minimum, Class Notice shall summarize the material terms of this Settlement Agreement; state the time, date, and place of the Final Fairness Hearing; and explain the procedures and deadlines for filing a claim, opting out, and for objecting. The parties agree that the text of the notice attached here as Exhibit 1 comports with the requirements of the Rule and this agreement.
- C. Class Representative.** The Class Representative is Charlene Baker.
- D. The Court.** The Court is the Circuit Court of Kanawha County, West Virginia.
- E. Final Fairness Hearing.** The term Final Fairness Hearing means the hearing before the Court on the parties' joint motion for Final Judicial Approval.
- F. Final Judicial Approval.** The term Final Judicial Approval means a final order of the

Court approving the settlement agreement and release of claims set forth herein, including each of the stipulations set forth in Section V.C., and dismissing the Settled Claims (as defined herein) with prejudice, which order either has been affirmed on appeal by the West Virginia Supreme Court of Appeals or, by the lapse of time is no longer subject to direct appeal.

G. The Parties means E. J. Hagan Associates, P.C., Edward J. Hagan and Charlene Baker, as representative of the proposed Settlement Class, and the Class Members as defined below.

H. Person means any individual, corporation, partnership, joint venture, association, business trust, unincorporated organization, Governmental Authority, limited liability company or other entity.

I. Released Party. Released Party, as used herein, shall mean E. J. Hagan Associates, P.C. and Edward J. Hagan, all entities or persons succeeding, affiliated with or related to E.J. Hagan Associates and/or Edward J. Hagan, their respective officers and directors, other agents, servants, and employees. Released Party also includes the clients and client affiliates of E. J. Hagan Associates, P.C. and/or Edward J. Hagan specifically, including but not limited to, Atlantic Credit & Finance, Inc., Atlantic Credit & Finance Special Finance Unit, LLC, Atlantic Credit & Finance Special Finance Unit III, LLC, Midland Funding, LLC, Midland Credit Management, Inc., NCEP, LLC, Credigy Receivables, Inc., Velocity Investments, LLC, Riverwalk Holdings, Ltd., Jefferson Capital Systems, LLC, 1st Financial Bank USA, and Crescent Bank & Trust (a/k/a Crescent Bank New Orleans, Crescent Bank, Inc.) For purposes of this Agreement, “affiliate” means, with respect any Released Party, any other person, natural or artificial, directly or indirectly controlling or controlled by or under common control with the Released Party.

J. Settlement Agreement. The term Settlement Agreement shall mean this class action settlement agreement between the Plaintiff and the Settlement Class and the Settling Defendants.

K. The Settlement Fund. The Settlement Fund shall comprise the consideration specified in Section III.A, herein below, as created by this Settlement Agreement. As part of its Preliminary Judicial Approval, the Court shall order the funds be paid into an interest-bearing account established by the Claim Administrator with a federally chartered and insured financial institution reasonably acceptable to the Parties. The Settlement Fund will be used to make settlement payments to eligible Settlement Class members who make claims in accordance with the Court's orders whom the Claim Administrator determines to be entitled to payment. All interest accruing in the Settlement Fund will become part of the settlement proceeds to be used for Settlement Class member payments. Any monies remaining in the Settlement Fund after all payments described herein shall be paid as *cypres* in accord with West Virginia law.

L. Settled Claims. Settled claims consist of any and all claims which were asserted or which could have been asserted against the Settling Defendants or any Released Party in the pending lawsuit.

M. Claim Administrator. The entity appointed by the Court to handle and administer the class action settlement claims process, including, but not limited to, the distribution of the Notice of Proposed Settlement of Class Action; reviewing, approving and/or rejecting each Class Member Claim or Opt Out Election Form; paying out awards for valid claim; and, any other activity as directed by the Court.

II. THE SETTLEMENT CLASS

Subject to Final Judicial Approval and for purposes of settlement only, the Parties agree that the following Settlement Class shall be certified:

all residents of West Virginia who at any time on or after January 1, 2011 received an initial demand letter from E.J. Hagan Associates, P.C. and/or Edward J. Hagan, or were served with a complaint filed in any West Virginia Court, seeking

to collect a consumer debt that included any claim for prejudgment interest and/or a demand for court costs.

The Parties currently believe the Settlement Class is comprised of 866 Members, broken down as follows:

1. An estimated 394 Class Members who received correspondence but were not served with a summons and complaint. This sub-class is also comprised of Class Members against whom a Complaint was filed but was never served.
2. An estimated 472 Class Members who were served with a summons and complaint.
3. The Settlement Class shall be a West Virginia Rule of Civil Procedure 23(b)(3) class to which all members of the Settlement Class shall belong save that members shall have the ability to "opt out" upon proper and timely exercise of the procedure established by the Court prior to Final Judicial Approval. The Parties agree that if more than 10% of the known Class Members opt out of the Settlement Class that Defendants will have the option to decide that the Class Settlement will not go forward and the litigation will resume.

III. TERMS OF SETTLEMENT

A. Consideration

Within twenty (20) days of obtaining an order from the Court preliminarily approving this Settlement Agreement, the Settling Defendants shall pay to Class Counsel the total sum of \$100,000 (one hundred thousand dollars and no cents) as the Settlement Fund to compromise all Settled Claims. The Settlement Fund shall remain in a federally chartered and insured financial institution reasonably acceptable to the Parties and the Court until either Final Judicial Approval or an order from either the Court or an appellate court denying Final Judicial Approval. At the time of Final

Judicial Approval, the Parties shall submit a joint order to the Court directing the Claim Administrator pay Class Member claims in accord with the approved Final Class Roster from the Settlement Fund. In the event that Final Judicial Approval is not obtained, or the Court's order approving this Settlement Agreement is reversed on appeal, the Parties shall submit a joint order directing the Claim Administrator to return the Settlement Fund, with all interest earned, to the Settling Defendants within fifteen (15) days of such order.

B. No Admission

The Class Representative and the members of the Settlement Class understand and agree that neither the Settling Defendants nor any Released Party admits any fault or liability; that they expressly deny any fault or liability in connection with the Settled Claims; and that the Settling Defendants have agreed to settle this matter only to avoid the expense, inconvenience, and uncertainty of further litigation. In addition, the Class Representative and the members of the Settlement Class understand and agree that neither the Settling Defendants nor any Released Party, concedes, admits, suggests, or agrees that class certification is proper outside the limited purposes set forth within this Settlement Agreement. Plaintiff agrees that she shall not use the Settling Defendants' willingness to enter into a settlement class as evidence of or argument for the propriety of class certification in the event that Final Judicial Approval is not obtained and a contested motion for class certification is litigated against the Settling Defendants or any Released Party.

C. Taxes

This Agreement is enforceable regardless of its tax consequences. The Parties understand and agree that the reimbursements and payments set forth in this Agreement arise from the settlement of disputed legal claims and that no Party makes representations regarding the Agreement's tax consequences. Each Class Member's tax obligations, if any, and the determination thereof, are

the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

IV. RIGHTS OF DEFENDANTS

A. Dismissal of Claims with Prejudice

Effective upon Final Judicial Approval, every Settled Claim against every Released Party from any time between January 1, 2011 through January 31, 2018, which is held by any Class Member who did not opt-out of this Settlement Agreement within the time allowed by the Court, is at that entry released and waived and their claims dismissed with prejudice. As a consequence, thereof, each and every Class Member shall be thereby bound by this Settlement Agreement and forever barred from initiating, asserting, or prosecuting any Settled Claim against the Released Party, except for those Settlement Class members who opt out of this class action by procedure and order of the Court. This Agreement does not release claims arising out of the failure of any Party to perform in conformity with the terms of this Agreement.

B. Release

At the time of the entry of Final Judicial Approval, any Class Member who did not opt-out of this Settlement Agreement within the time allowed by the Court shall be deemed to have discharged and released the Released Party from any and all Settled Claims on behalf of themselves and any present and former agents, assigns, successors, assignors, heirs, executors, administrators, trustees, attorneys, and/or any other person or entity claiming by or through any of them ("Releasers"). The Class Representative and the members of the Settlement Class acknowledge that they may hereafter discover facts in addition to or different from those that are now known or believed to be true with respect to the subject matter of this Settlement Agreement. The Class Representative and the members of the Settlement Class further acknowledge that upon Final

Judicial Approval, they will have fully, finally, and forever settled and released all Settled Claims without regard to the subsequent discovery or existence of such different or additional facts.

V. PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

A. Application for Preliminary Court Approval of Settlement Agreement

1. Within ten (10) days of executing this Settlement Agreement, the Parties shall jointly move the Court for entry of an order granting preliminary approval of this Settlement Agreement, as well as providing for the type and method of disseminating notice to the members of the Settlement Class, as required by West Virginia Rule of Civil Procedure 23(e). By its terms, such order shall (subject to Court approval):

(a) Conditionally certify the settlement class as defined above;

(b) Preliminarily approve the Settlement Agreement;

(c) Appoint Plaintiff's counsel as Class Counsel for settlement purposes;

(d) Preliminarily approve Class Counsel's fee award and costs agreed upon by the Parties as set forth in this Settlement Agreement;

(e) Appoint Mountain State Justice as the Claim Administrator;

(f) Approve the form of Class Notice, and direct that Class Notice be disseminated to the members of the Settlement Class in accordance with the methods for dissemination recommended by the Parties and any retained Class Notice experts;

(g) Establish opt-out and objection deadlines; and

(h) Schedule the Fairness Hearing.

2. The Parties shall also ask the following be approved by the Court at the preliminary approval hearing:

(a) The Parties agree that the extent of any injury each class member may have suffered

from the challenged practices is uncertain and difficult to quantify, and that the time, expenses, and difficulty of individually ascertaining and calculating amounts paid by Class Members as a result of Settling Defendants' practices would significantly outweigh the likely benefit of that process to most class members. For these reasons, the Parties stipulate that instead of individually-determining any improper amounts a Class Member might have paid as the result of these initial demand letters, unserved complaints or served complaints, class members who file approved claim forms will instead be reimbursed through recovery of a pro-rata share of the Class Settlement Fund established by this Agreement.

(b) The only action class members must take to obtain reimbursement as calculated above are:-

- (i) complete and sign a class claim settlement and release form like that attached;
- (ii) deliver the form to class counsel before the claim deadline stated therein; and
- (iii) not opt out of the settlement.

(c) The Parties agree that class counsel Mountain State Justice, Inc., shall administer the class notice and claims process. Defendants will cooperate in good faith and make available all relevant, non-privileged and non-proprietary information available to assist and support Mountain State Justice, Inc.'s efforts. Within twenty (20) days of the preliminary approval of this Agreement by the Court, Defendants shall pay Mountain State Justice, Inc., \$15,000.00 for administration of the class notice and claims processes. The Parties agree that Mountain State Justice, Inc., shall have fully earned the administration fee prior to the fairness hearing and shall be entitled to retain that fee whether or not this Agreement is finally approved by the Court.

- (d) Procedures for the Claim Administrator's use in resolving disputed claims; and
- (e) Cut-off dates for Class Notice, the receipt and resolution of claims, payments to

members of the Settlement Class, and any other dates and deadlines necessary to administer the claims process and conclude the case.

3. The Parties shall cooperate, assist, and undertake all reasonable actions to accomplish the above terms and to meet the schedule set by the Court, and they shall jointly support the Settlement Agreement in its entirety in the Court and in any appellate court.

4. Prior to the execution of this Agreement, the Settling Defendants provided class counsel with access to its relevant, non-privileged and non-proprietary records to permit class counsel to prepare the preliminary Class Roster by identifying all known members of the Settlement Class by name, last known contact information, and debt collection case information, including production of that information for the members Defendants believe they have already identified, to support and permit the distribution of class notice and administration of the class settlement process outlined in this Agreement. The Claim Administrator and class counsel agree that the Settling Defendants' records are confidential, will be used only for purposes of administering this Settlement Agreement, and shall not be disclosed for any purpose not strictly related to the effectuation of the purpose of this Settlement Agreement.

B. Notice to the Settlement Class

The Parties agree the Class Notice Form attached should be approved by the Court. The Claim Administrator will mail the approved Class Notice to all persons the Claim Administrator identifies as members of the Settlement Class as listed on a preliminary Class Roster.

1. If the Court grants the Preliminary Approval Motion, the Claims Administrator will, within thirty (30) days of class counsel's delivery of a preliminary Class Roster, mail to each person named thereon at his or her last known address, a Notice of Proposed Class Settlement and Certification of Settlement Class ("Notice") as approved by the Court. Additionally, the

Settlement Administrator shall advertise the Class Settlement in one or more publications with substantial circulation in West Virginia.

2. Any notices returned as undeliverable, but with a forwarding address, shall be promptly re-mailed to the forwarding address. The Administrator shall perform a National Change of Address Registry and electronic database search (Westlaw or Lexis/Nexis) for the location and vital status of every class member whose notice is finally returned as undeliverable, without a forwarding address. Such Notices shall be re-mailed thereafter upon discovery of a valid mailing address for the Class Member.

3. The Administrator shall also maintain a settlement website and toll-free number for Class Member inquiries, and will make consistent good faith efforts to publicize generally, specifically including in newspapers of general circulation in West Virginia, the terms and nature of the proposed settlement, the manner in which claims, objections, or opt-outs can be made, and the deadlines established by the Court to maximize the likelihood that class members who do not receive the Class Notice may nonetheless learn of their rights under this Agreement.

4. The Claim Administrator shall file a report with the Court fourteen (14) days before the fairness hearing summarizing its actions to provide notice and the results of the notice process. That report shall notify all counsel and the Court of persons objecting to the Class Settlement; persons opting out of the Settlement Class; and persons submitting an approved Claim Form. Copies of all objections received shall be filed with the Court at the time of that report. All responses received through the Class Notice process shall be brought to the fairness hearing to allow any review the Court requests.

5. The Administrator's report shall include a proposed Final Class Roster naming every identified member of the plaintiff class; the status of notice to that member and any

response; whether that class member has filed a claim, objected, or opted out, and the amount of reimbursement the Administrator has determined that member shall be paid from the Class Settlement Fund. The report shall include a summary as to all opt-outs and shall be filed with the Court at least fourteen (14) days in advance of the Final Fairness Hearing.

6. The Settling Defendants' counsel may review, or request examination of the opt out or claim responses at any time, and shall serve any objections to the Final Class Roster at least 48 hours in advance of the Final Fairness Hearing.

C. Final Approval Motion

1. No later than twenty-one (21) days after the date opt outs, objections, and claim forms are due, the Parties will move for final approval of this Agreement, which motion shall be heard at the time of the fairness hearing scheduled in the class notice. The motion will request that the Court finally certify the class and approve the settlement in a final order and judgment that will, among other things:

(a) adjudge and approve in all respects the final settlement of this action on the terms described in this Settlement Agreement, entering its requirements and provisions as the final order of the Court;

(b) dismiss on the merits and with prejudice all claims of the named plaintiff and non-opting out Class Members which were asserted or which could have been asserted against the Settling Defendants or any Released Party, in the pending Lawsuit as having been settled and compromised, reserving only jurisdiction of all matters relating to the interpretation and enforcement of the Settlement, this Agreement, and the terms the final approval order entered by the Court.

(c) approve, and/or modify and approve, the Final Class Roster thereby determining

the identifiable members of the plaintiff class and the amounts (if any) each shall be paid under the terms of this Agreement;

(d) finally certify the Settlement Class defined herein for settlement purposes only;

(e) make findings of fact and draw conclusions of law regarding this settlement as are necessary to document its fairness, reasonableness, and adequacy, including but not limited to the adequacy of notice and the lack of collusion;

(f) dismiss with prejudice the Settled Claims of those class members who filed claims or did not otherwise opt out pursuant to the procedure established by the Court, all of whom shall be deemed conclusively to have settled and released the Settled Claims as against the Settling Defendants and the Released Parties;

(g) bar and permanently enjoin each Class member who did not opt out from asserting any and all Settled Claims in any court.

(h) Approve the Settling Defendants' payment of attorney fees to Class pursuant to the Settlement Agreement.

2. Within fourteen (14) days after entry of the Final Approval Order, the Claim Administrator shall issue payment to class members from the Class Settlement fund in accord with the Court's order and the approved final roster.

(a) Distributions will be made to the class member by first class mail, postage prepaid to that person's last known address. In the event payment mailing is returned to the Administrator with a forwarding address, it shall be promptly re-mailed to the forwarding address. The Administrator shall perform a National Change of Address Registry and electronic location search for all class members whose payment is returned as undeliverable, without a forwarding address. Such payments shall be re-mailed upon discovery of a valid mailing address for the Class Member.

(b) Any reimbursements which cannot be delivered to the class member entitled to them, or which have not been negotiated after 90 days, shall be distributed as a *cy pres* payment in accord with West Virginia law.

(c) The Claim Administrator shall file a Final Report of Distribution with the court no later than 120 days after entry of the Final Approval Order.

VI. FAIRNESS HEARING AND OBJECTIONS

The Court's order preliminarily approving this Settlement Agreement shall schedule a fairness hearing sufficiently in advance to allow completion of the Class Notice process and for Class Members to object, opt out, or file a claim in response to Notice. Objections to the terms of this Settlement Agreement may be submitted in writing to the Court prior to the Final Fairness Hearing. Class members who do not file timely written objections to the Class Settlement consistent with the procedure established by the Court will not be entitled to participate and raise objections at the Final Fairness Hearing. Any objections not submitted in writing prior to the Final Fairness Hearing shall be forever waived. Opt-outs shall be filed and processed in accordance with the time limits and procedure set forth in the Court's order preliminarily approving this Settlement Agreement and as summarized in the Class Notice.

VII. OTHER PROVISIONS

A. Costs of Administration. Costs of class administration will be paid for as provided above. The Settling Defendants have no obligation to pay any sum for class administration over and above the \$15,000.00 flat payment provided for above.

B. Service Award. Plaintiff, Charlene Baker, as Class Representative, will receive \$3,000.00 (three thousand dollars and no cents) as a service award, the said sum being paid by the Settling Defendants at the time of the Fairness Hearing.

C. Legal Counsel. The Class Representative and the Settling Defendants represent and warrant that they have consulted with attorneys of their choice concerning this Settlement Agreement and all matters covered by it; that their attorneys have reviewed and negotiated this Settlement Agreement; and that the rule of construction of contracts resolving ambiguities against the drafting party shall be inapplicable. All attorney fees and costs shall be paid out of the consideration described in Section III. A herein above. The Settling Parties have agreed that the Plaintiff's counsel will be entitled to attorneys' fees and litigation expenses in the total amount of \$45,000.00 (forty-five thousand dollars and no cents), the said sum being paid by the Settling Defendants within twenty (20) days after the Court's entry of a Final Approval Order.

D. Retention of Rights. The Parties shall retain all rights with respect to the litigation referenced herein, including, but not limited to, the right to contest any aspect of the certification (for settlement purposes or otherwise) of a class, should this Settlement Agreement not be approved; or should Final Judicial Approval be denied or vacated on appeal. The Parties agree that the existence or execution of this Settlement Agreement shall have no effect on the same.

E. Jurisdiction of Court. The Circuit Court of Kanawha County, West Virginia, will have original jurisdiction over all provisions of this Settlement Agreement, including the administration, supervision, interpretation, and enforcement thereof, in accordance with its terms.

F. Notices. Any notice, request, instruction, or other document or communication to be given to any party to this Settlement Agreement (other than Class Notice) shall be in writing and delivered personally, or sent by overnight delivery service, or by United States Postal Service Priority Mail with signature confirmation requested, as follows: said parties last known address.

G. Entire Agreement. This Settlement Agreement constitutes the sole, entire, and complete agreement of the Parties relating to the subject matter hereof. No statements, promises, or

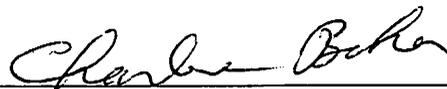
representations have been made or are relied upon by any party, and no consideration has been or is offered, promised, expected, or held out, other than as stated in this Settlement Agreement. There are no oral or written collateral agreements. All prior discussions and negotiations have been, and are, merged with, integrated into, and superseded by this Settlement Agreement. The terms of this Settlement Agreement may not be modified except in a writing signed by the Parties to be charged and approved by the Court. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which collectively shall be deemed one and the same instrument. Provided, however, that the Parties recognize that this Settlement Agreement is subject to the approval and modification of the Court as necessary to comply with Rule 23 and other substantive law.

H. Documentation. For Class Counsel's use during the verification process, The Settling Defendants have provided Class Counsel with a complete copy of the names and last known addresses of all known Class Members. The documentation provided pursuant to this section is subject to West Virginia Rule of Evidence 408. By his signature below, Class Counsel acknowledges that such information may include confidential information of a personal nature and that its use shall be limited to effectuation of the purposes of this Settlement Agreement and in compliance with the West Virginia Rules of Professional Conduct.

Payment Obligations. Defendants acknowledge prior receipt of a W-9 provided by Mountain State Justice. Defendants will use best efforts and/or good faith in complying with the deadlines by which payments are to be received by Mountain State Justice in any capacity, but the parties agree an inadvertent late payment shall not be considered a breach of this agreement or provide a basis for voiding this agreement, so long as defendants pay per diem interest at the statutory rate for the period during which that payment was delayed.

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Approved and Agreed:



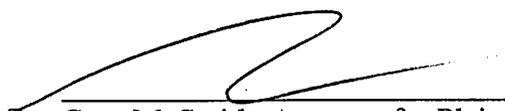
Charlene Baker

3/15/2019
Date

Edward J. Hagan, individually and for E.J. Hagan Associates, P.C.
as its authorized officer

Date

Approved as to Form:



Gary M. Smith, Attorney for Plaintiff

3/15/19
Date

Michael D. Crim, Attorney for Defendants

Date

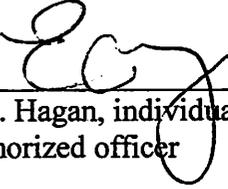
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by which payments are to be received by Mountain State Justice in any capacity, but the parties agree an inadvertent late payment shall not be considered a breach of this agreement or provide a basis for voiding this agreement, so long as defendants pay per diem interest at the statutory rate for the period during which that payment was delayed.

Approved and Agreed:

Charlene Baker

Date



Edward J. Hagan, individually and for E.J. Hagan Associates, P.C.
as its authorized officer

3-1-19

Date

Approved as to Form:

Gary M. Smith, Attorney for Plaintiff

Date



Michael D. Crim, Attorney for Defendants

3-1-19

Date