

NO. 2017-20800

TODD WHITE  
Plaintiff,

V.

GREGORY FUNDING LLC

Defendant.

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IN THE DISTRICT COURT

270TH JUDICIAL DISTRICT

OF HARRIS COUNTY, TEXAS

**PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF  
CLASS SETTLEMENT**

**Exhibit A**  
**Settlement agreement**

CAUSE NO. 2017-20800

TODD WHITE

*Plaintiff,*

vs.

GREGORY FUNDING, LLC

*Defendant.*

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IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

270TH JUDICIAL DISTRICT

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made and entered into by and among Plaintiff Todd White, the Plaintiff Settlement Class and Gregory Funding.

**Definitions**

1. **“Plaintiff Settlement Class”** means all persons who fall within the class definitions as certified in the Litigation (defined below) and as specified in the Court’s March 10, 2020 Order Granting Motion for Class Certification.
2. **“Plaintiff”** means Plaintiff Todd White, who is serving as representative for the Plaintiff Settlement Class and has asserted the Individual Claims in the Litigation in his individual capacity.
3. **“Property”** refers to the property commonly known as 9805 Cynthia Ann Court, Houston, TX 77025-4344.
4. **“Class Counsel”** means the law firms appointed by the Court to serve as class counsel in its March 10, 2020 order granting class certification, specifically Gubernick Law P.L.L.C and Edwards Law Group P.L.L.C.
5. **"Gregory Funding"** means Defendant Gregory Funding, LLC.

6. **“Litigation”** means the lawsuit styled as *Todd White v. Gregory Funding, LLC*; Cause No. 2017-20800, in the 270th District Court in Harris County, Texas.
7. **“Court”** means the 270th Judicial District Court of Harris County, Texas.
8. **“Class Claims”** means the allegation asserted by the Plaintiff Settlement Class that Gregory Funding violated TILA and the FDCPA by sending mortgage statements to borrowers that did not accurately state the balance of those borrowers’ suspense account between May of 2016 and May of 2017.
9. **“Individual Claims”** means the claims and/or allegations asserted by Plaintiff regarding Gregory Funding’s servicing of Plaintiff’s mortgage loan that are not included within the Class Claims.
10. **“Counterclaim”** means the counterclaim for judicial foreclosure asserted by Gregory Funding.
11. **“TILA”** means the Federal Truth in Lending Act.
12. **“FDCPA”** means the Federal Fair Debt Collection Practices Act.
13. **“Administrator”** means the third party that the Court approves as the administrator of this Agreement with the responsibility for administering and implementing such tasks as sending out class notice.
14. **“Preliminary Approval Date”** means the date on which the Court grants preliminary approval of the settlement and form of class notice.
15. **“Final Approval Date”** means the later of (a) the date of the expiration of the deadline for appeal of a court order granting final approval of the settlement, from which no appeal has been perfected; or (b) the date upon which all timely appellate review of any operative order granting final approval of the settlement has been exhausted.

## Agreements

1. **Scope Of Settlement.** Subject to approval of the Court and the satisfaction of the other conditions in this Agreement, this Agreement resolves the Counterclaim as well as all claims pending against Gregory Funding in the Litigation.
2. **Adequate Investigation by Plaintiff.** Plaintiff and Class Counsel have investigated the facts underlying the Class Claims. Plaintiff and Class Counsel performed extensive discovery and are experienced in the litigation of complex consumer class actions such as this one. Accordingly, Plaintiff and Class Counsel are fully qualified to evaluate, and have in fact evaluated, the risks of continued litigation. Plaintiff and Class Counsel believe that the instant settlement is in the interests of the Plaintiff Settlement Class.
3. **Non-Collusive Settlement.** The instant settlement resulted from extensive, good-faith negotiations overseen by an experienced and impartial mediator, the Hon. Alice Oliver-Parrott (Ret.). The parties neither discussed nor reached an agreement regarding the amount of any attorneys' fees until an agreement was reached as to the settlement's other material terms. The only benefits Plaintiff will receive for his settlement of the Plaintiff Settlement Class's claims are: (1) the same relief as any other class member will receive; and (2) such incentive award as may be ordered by the Court.
4. **Membership In The Plaintiff Settlement Class.** Each member of the Plaintiff Settlement Class will have the opportunity to opt out of the Litigation by notifying the Administrator in accordance with the instructions contained in the notice to the class of this settlement.
5. **Class Settlement Payment.** Gregory Funding agrees to pay members of the Plaintiff Settlement Class a cumulative amount of \$200,000 (the "Class Settlement Payment"). The Class Settlement Payment is being made exclusively as consideration to settle and resolve the Class

Claims. The Class Settlement Payment is not being made as consideration for or to settle or resolve the Individual Claims.

**5.1. Distribution Of The Class Settlement Payment.** The total amount of the Class Settlement Payment will be distributed equally to all members of the Plaintiff Settlement Class who do not opt out of the settlement. For class members whose loans are still serviced by Gregory Funding, payment will be made in the form of a credit automatically posted to the class member's account, without the need to submit a claim. Class members whose loans are no longer serviced by Gregory Funding and who submit a valid claim will receive a check for their share of the settlement. The amount each class member receives will be calculated as follows: \$200,000 minus costs of claims administration, divided by the total number of class members receiving a payment. None of the \$200,000 allocated for payment to the Plaintiff Settlement Class will revert to Gregory Funding. In the event any checks sent to Class members remain uncashed after a period of 180 days after delivery, those funds will be considered unclaimed (the "Unclaimed Funds"). Any Unclaimed Funds will be donated to the Juvenile Diabetes Research Foundation by the Administrator.

**6. Loan Modification Agreement.** As consideration for resolving the Individual Claims, Gregory Funding and Plaintiff have agreed to enter into a Loan Modification Agreement (the "Loan Modification Agreement"), the anticipated terms of which are captured in the document attached hereto as **Exhibit A**. The Loan Modification Agreement will be effective as of the Final Approval Date and will only be effective if and when the Final Approval Date occurs. The document attached as **Exhibit A** presumes that the Final Approval Date will occur on or before September 1, 2021 (the "Presumed Approval Date"). In the event the Final Approval Date does not occur by the Presumed Approval Date for any reason, including an appeal, the initial

payment date under the Loan Modification Agreement will be extended, month by month, until the Final Approval Date occurs, and a new Loan Modification Agreement with an updated initial payment date will be generated for Plaintiff's signature. Further, if the Final Approval Date does not occur on or before the Presumed Approval Date, Gregory Funding shall have the right to modify the terms of the Loan Modification Agreement from those captured in **Exhibit A** to account for additional accrued interest, escrow advances, or other charges applied to Plaintiff's loan in accordance with the Loan Documents, as that term is defined by the Loan Modification Agreement. Additionally, notwithstanding that the Loan Modification Agreement authorizes Gregory Funding to establish an escrow account associated with Plaintiff's mortgage loan, in the event the Final Approval Date does not occur on or before January 1, 2022, Plaintiff agrees that he will pay any and all property taxes due for the Property directly to the Harris County Tax Assessor-Collector's Office on or before January 31, 2022. Plaintiff also agrees to keep the Property insured at all times. In the event Plaintiff fails to pay property taxes as specified herein or in the event Plaintiff fails to keep the Property insured at all times, Plaintiff shall be in breach of this Agreement, and Gregory Funding shall have no obligation to enter into the Loan Modification Agreement regardless of whether the terms of this Agreement are ultimately approved by the Court. Absent a breach of the foregoing obligation, once the Final Approval Date occurs, Plaintiff will remain in good standing so long as he complies with the Loan Modification Agreement and the Loan, as modified. Further, Plaintiff's obligation to comply with this Agreement is not contingent upon Plaintiff's performance under the Loan Modification Agreement, and Gregory Funding reserves all rights to enforce the terms of the loan as modified by the Loan Modification Agreement in the event of a default by Plaintiff. Gregory Funding and Plaintiff are entering the Loan Modification Agreement solely to settle and resolve the Individual

Claims. In the event this Agreement and the settlement of the Class Claims are not approved by the Court or an appellate court, should an appeal be filed, the provisions of this paragraph as well as the Loan Modification Agreement will be null and void, and Gregory Funding will have no obligation to modify the Loan.

7. **Costs Of Administration And Court.** This settlement will be administered by a third-party Administrator approved by the Court and selected by counsel for Gregory Funding. The court costs and the costs, expenses and fees in connection with administering this Settlement (including administrative costs, notice costs and Administrator's fees) shall be satisfied by way of a deduction from the Class Settlement Payment.

8. **Amount of Attorneys' Fees And Expenses.** After having reached agreement on all other matters of class relief as contained in this Agreement, the parties have separately negotiated and agreed that Gregory Funding shall make a payment for Class Counsel's fees and expenses in the amount of \$400,000. Gregory Funding expressly acknowledges that such amount is reasonable. Gregory Funding reserves the right to void this Agreement in the event that the Court orders Gregory Funding to pay attorneys' fees in an amount in excess of \$400,000.

8.1. **Right To Seek Sanctions Against Hughes Watters Askanase LLP.** In the event that Class Counsel's reasonable attorneys' fees exceed \$400,000, Plaintiff and Class Counsel may seek to recover such excess fees in the form of sanctions motion against Gregory Funding's former counsel, Hughes Watters Askanase LLP ("Hughes"). Any sanctions ordered by the Court as a result of such a motion shall be charged solely against Hughes, and will not be deducted from the \$400,000 in attorneys' fees for which Gregory Funding will remain responsible.

9. **Incentive Award For Named Plaintiff.** Plaintiff reserves the right to request an incentive award from the Court for his service to the Class, in an amount deemed reasonable by

the Court. Any incentive award will be deducted from Gregory Funding's \$400,000 payment for Class Counsel's fees and expenses.

**10. Timing Of Payments.** Gregory Funding will make its entire payment of said Class Settlement Payment, along with the payment for Class Counsel's attorneys' fees and expenses, and Plaintiff's incentive award, within 30 days after the Final Approval Date and shall make the payments pursuant to wire transfer instructions provided by Class Counsel.

**11. Sanctions Previously Paid By Gregory Funding.** Sanctions previously ordered by the Court and paid by Gregory Funding in the amount of \$18,848.73 will be applied as an offset to Gregory Funding's payment obligations under this agreement as follows: \$10,000 will be applied to reduce the Class Settlement Payment and \$8,848.73 will be applied to reduce Class Counsel's attorneys' fees in the Attorneys' Fees Payment & Incentive Award.

**12. Notice To Class Members.** Notice shall be provided to all members of the Plaintiff Settlement Class through good faith reasonable means in a manner approved by the Court. The contents and scope of the notice shall be approved by the Court. Class members will have 60 days from the mailing of notice to opt out of class adjudication. Class members whose mortgages are no longer serviced by Gregory Funding will have 60 days from the date class notice is mailed to submit a claim. Any unclaimed amounts will be treated as Unclaimed Funds in accordance with Section 5.1. The parties will ask the Court to conduct a preliminary settlement approval, to examine the fairness and appropriateness of the fundamental structure of the settlement agreement and process, and to approve the type, substance and manner of notice to be provided to class members. Gregory Funding agrees to bear the cost of providing notice to all members of the Plaintiff Settlement Class up to and including \$5,000. If the cost of providing notice to the



members of the Plaintiff Settlement Class exceeds \$5,000, all costs over and above \$5,000 will be deducted from the Class Settlement Payment.

**13. Approval Of Class Settlement & Materiality.** This Agreement is subject to approval by the Court and all of its provisions are material.

**14. Contingency For Non-Approval Of Settlement.** The parties jointly shall seek Court approval of this Agreement. However, in the event that any provision in this Agreement does not obtain final Court approval, then all future obligations of the parties under this Agreement shall become null and void, and each party shall bear the expenses it has incurred under this Agreement up to that time. In addition, the parties agree that they shall not use this Agreement, any discussions or filings related thereto, or any effort to obtain Court approval of this Agreement, other than for settlement purposes.

**15. Release Of Gregory Funding.**

**15.1. Release by Plaintiff Settlement Class.** Contingent upon the occurrence of the Final Approval Date, the members of the Plaintiff Settlement Class do hereby release, acquit, and forever discharge Gregory Funding, its predecessors, successors, heirs, assigns, parents, subsidiaries, affiliates, and past, present, or future officers, directors, shareholders, employees, owners, agents, and attorneys from any and all causes of action, claims, damages, equitable relief, legal relief, and demands or rights, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, or based on any statute, regulation or common law that have been, could have been, may be, or could be alleged or asserted now or in the future by any member of the Plaintiff Settlement Class related to the Litigation or relating to or arising from TILA, the FDCPA, the Class Claims, or state or local claims arising out of the acts that gave rise to the Class Claims. This paragraph shall be interpreted broadly.

**15.2. Release by Plaintiff Todd White.** Contingent upon the occurrence of the Final Approval Date, Plaintiff does hereby release, acquit, and forever discharge Gregory Funding, its predecessors, successors, heirs, assigns, parents, subsidiaries, affiliates, and past, present, or future officers, directors, shareholders, employees, owners, agents, and attorneys from any and all causes of action, claims, damages, equitable relief, legal relief, and demands or rights, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, or based on any statute, regulation or common law that have been, could have been, may be, or could be alleged or asserted now or in the future by Plaintiff related to the Litigation or relating to or arising from TILA, the FDCPA, the Individual Claims, or the manner or circumstances in which Gregory Funding services and/or originates mortgage loans. For the avoidance of any doubt, no release is accomplished herein as to matters between Gregory Funding and Plaintiff that occur or arise at a time after the Final Approval Date.

**15.3. Dismissal.** Upon Final Approval, (1) Plaintiff Todd White shall dismiss the Individual Claims with prejudice; (2) the members of the Plaintiff Settlement Class shall dismiss the Class Claims with prejudice; and (3) Gregory Funding shall dismiss the Counterclaim without prejudice.

**16. Retention Of Jurisdiction.** The Court shall retain jurisdiction over this Agreement and the implementation of this Agreement and shall resolve all disputes between or among the parties that the parties cannot resolve through good faith negotiation.

**17. Binding Effect.** This Agreement is binding upon, and inures to the benefit of, the successors and assigns of the parties to this Agreement. Subject to the terms of this Agreement, the parties may not withdraw from this Agreement for any reason including but not limited to a ruling from an appellate court on class certification issues.

**18. Defense to Future Claims.** Gregory Funding may plead this Agreement as a complete defense and bar to any action, claim or demand brought in contravention of this Agreement, and, in such event, the party bringing such barred action claim or demand shall indemnify and hold Gregory Funding harmless from and against any and all costs and expenses arising therefrom, including reasonable attorneys' fees and expenses incurred in connection therewith.

**19. Authority.** The person that signs this Agreement on behalf of Gregory Funding represents and warrants that such person is fully authorized to sign and enter into this Agreement. Class Counsel represents that they are authorized to negotiate on behalf of the Plaintiff Settlement Class and, subject to Court approval, have the authority to sign and enter into this Agreement on behalf of the Plaintiff Settlement Class.

**20. No Admission Of Liability.** Nothing in this Agreement shall be deemed to constitute an admission of liability.

**21. No Additional Advertising.** Class Counsel agree that publication of the Settlement and shall be limited to the notice provided in Paragraph 6. Class Counsel further agree not to issue any press releases or engage in any advertising activities that mention the Settlement or the case. Class Counsel also agrees not to solicit new clients to file other lawsuits against Gregory Funding. Class Counsel additionally agree to not mention or discuss Gregory Funding's or Aspen Capital's involvement in this matter in any marketing or advertising materials, including on Class Counsel's website. Nothing in this section shall bar Class Counsel from mentioning this case or the Settlement in any court-filed documents.

**22. Joint Drafting.** The parties actively negotiated and exchanged drafts of this Agreement. No party shall be deemed the drafter of this Agreement for any purpose including for the purpose of having this Agreement construed against the drafter. The Plaintiff Settlement Class and

Gregory Funding have engaged in arm's length settlement negotiations. In the Litigation and during the settlement negotiation process, the Plaintiff Settlement Class and Gregory Funding have been represented by counsel.


**23. Modification.** This Agreement may be modified only in a written agreement signed by all parties.

**24. Headings.** The headings and captions utilized in this Agreement are for convenience only and shall not be construed as a part of this Agreement.

**25. Counterpart Signatures.** This Agreement may be signed in any number of counterparts. The delivery of Gregory Funding's signed signature page by messenger, overnight mail, regular mail, email, fax, or otherwise to the Plaintiff Settlement Class's counsel is effective delivery and, upon such delivery, that Settling Defendant shall be bound by this Agreement subject to the terms of this Agreement.


**26. Entire Agreement.** This Agreement is the entire agreement and understanding between the parties and supersedes all prior discussions, negotiations and understandings between the parties relating to the subject matter of this Agreement.

**Agreed and Accepted by Plaintiff Settlement Class:**

  
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PLAINTIFF TODD WHITE, as Class  
Representative

Signed on this Date: 3/19/21

**Agreed and Accepted by Plaintiff:**

  
\_\_\_\_\_  
PLAINTIFF TODD WHITE, in his Individual  
Capacity

Signed on this Date: 3/19/21

Agreed and Accepted by Gregory Funding, LLC:

SIGNATURE: 

Signed on this date: 3/11/21

PRINTED NAME: Lauren Demasi

TITLE: Vice President

ON BEHALF OF: Gregory Funding, LLC