

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

RECEIVED
SEP 26 2024
SUPERIOR COURT - CIVIL
JOHN E. POWERS, III
ACTING CLERK MAGISTRATE

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CIVIL ACTION NO. 2484-cv-02546

In re **Franklin Credit Management Corporation**

ASSURANCE OF DISCONTINUANCE PURSUANT TO G.L. c. 93A, §5

The Commonwealth of Massachusetts, by and through the Office of Attorney General Andrea Joy Campbell (“AGO”), and Franklin Credit Management Corporation (“FCMC”) (collectively, the “Parties”) hereby agree to this Assurance of Discontinuance (“Assurance”) pursuant to Massachusetts General Laws chapter 93A, § 5.

I. Introduction

1. FCMC is a Delaware corporation with a principal place of business in New Jersey. FCMC is a mortgage servicer primarily engaged in the servicing and resolution of nonperforming residential mortgage loans.

2. Pursuant to G.L. c. 93A, § 6, the AGO conducted an investigation into FCMC’s compliance with G.L. c. 93A, § 2, G.L. c. 244, §§ 35A and 35B, 940 C.M.R. 7.04, 940 C.M.R. 7.07, 940 C.M.R. 7.08, and 12 C.F.R. 1026.41 in its mortgage servicing activities in Massachusetts.

3. Based on the investigation, the AGO alleges that FCMC failed to comply with Massachusetts foreclosure-prevention law by failing to timely provide borrowers with required notices and failing to take required steps when borrowers replied to the notices.

4. The AGO further alleges that FCMC violated Massachusetts Debt Collection Regulations by improperly collecting or attempting to collect on time-barred debt, calling

borrowers in excess of twice in a seven-day period, and by failing to send required debt validation notices.

5. The AGO further alleges that FCMC violated 12 C.F.R. 1026.41, enforceable by the AGO under 12 U.S.C. § 5552, by failing to send required periodic statements.

6. In lieu of litigation and in recognition of FCMC's cooperation throughout the investigation, the AGO agrees to accept this Assurance on the terms and conditions contained herein, pursuant to the Massachusetts Consumer Protection Act, G.L. c. 93A, § 5.

7. FCMC enters into this Assurance for settlement purposes only in order to avoid the expense and risks of litigation, and denies the AGO's allegations.

II. Definitions

The following definitions shall apply wherever the defined terms are used within this Assurance:

8. All terms defined in G.L. c. 244, § 35B, including without limitation, "borrower," "creditor," and "mortgage loan" shall have the same meaning when used herein.

9. Where applicable, "creditor" shall also have the same meaning as defined by 940 CMR 7.00, *et seq.*

10. Where applicable, "borrower" shall also refer to the same individual who is defined as a "debtor" pursuant to 940 CMR 7.00, *et seq.*

11. "Collection Activity" means any attempt or other action undertaken to obtain payment from a borrower in relation to a debt including, without limitation, soliciting or accepting payment, sending letters or placing telephone calls, initiating or litigating collection suits, attempting to collect on a judgment, or initiating or advancing a foreclosure.

12. "Covered Conduct" means those acts or practices alleged in Paragraphs 18-35, below.

13. “Effective Date” means the date that this Assurance is filed in the Superior Court.
14. “Future Accounts” include any and all Massachusetts accounts FCMC owns or services other than a Settlement Portfolio Account after the Effective Date.
15. “Reporting Term” means a period of three (3) years from the Effective Date.
16. “Settlement Portfolio Accounts”: All Massachusetts accounts currently serviced by FCMC as of the Effective Date, which were approximately 518 accounts with a stated total unpaid principal, interest, and other charges of not less than \$10,000,000.
17. “Specific Evidence” of a fact means that, either (a) FCMC has in its possession documentary evidence that demonstrates the fact and no documentary evidence that contradicts the fact; or (b) one of FCMC’s employees or agents has personally observed the fact; or (c) FCMC has business records of a prior servicer that demonstrates the fact or contains a statement by a third party who personally observed the fact. For the avoidance of doubt, a conclusory statement by an employee or third party who did not personally observe the fact is not Specific Evidence. Where the fact in question is that a debt has never been accelerated, FCMC has Specific Evidence of the fact if it has in its possession a reasonably complete set of records and prior correspondence such that, if the debt had been accelerated, the records and correspondence would reasonably be expected to contain the acceleration and FCMC has reviewed all such records and confirmed that no evidence of acceleration is contained therein. A mere statement by a prior servicer, unaccompanied by relevant business records, that the prior servicer did not accelerate the debt is not Specific Evidence.

III. Allegations

18. Based on its investigation, the AGO alleges that FCMC services a portfolio of primarily second-lien mortgages originated prior to the financial crisis of 2008. These loans were largely originated as part of so-called “80/20” mortgage transactions, in which first and second

liens were originated together in a single transaction which commonly financed 80% of the principal balance through a first mortgage and 20% through a second mortgage. FCMC did not originate any of these loans. Where the 80% loan was modified or otherwise remained in effect, the 20% loan remained secured on the property even if it was wholly underwater. Where the 80% loan was foreclosed upon, the 20% loan became unsecured debt.

19. The AGO further alleges that, because 80/20 loans were originated as a single transaction, it was frequently unclear to borrowers that these were two independent loans. Thus, many borrowers who modified or underwent foreclosure of their first-lien mortgage believed that their total mortgage debt, including these second-lien mortgages, had been satisfied or extinguished at the same time.

A. Compliance with G.L. c. 244, §§ 35A, 35B and G.L. c. 93A, § 2 Relating to Secured Loans

20. The AGO alleges that FCMC failed to send monthly statements to the borrowers of numerous secured second loans, as required by 12 C.F.R. 1026.41.

21. The AGO further alleges that FCMC delayed communication with numerous secured borrowers until large unpaid balances had accrued before initiating attempts to collect on the mortgage, and failed for years to send the notices required by G.L. c. 244, §§ 35A and 35B. The AGO alleges this may have had the effect of frustrating borrowers' ability to cure or to pursue modified mortgage loans that they were entitled to under §§ 35A and 35B.

22. The AGO further alleges that, in some instances, where FCMC did eventually send the notice required by G.L. c. 244, § 35B, FCMC unlawfully charged up-front payments as a prerequisite to entering into a mortgage modification.

23. The AGO further alleges that FCMC generally failed to comply with the requirements of G.L. c. 244, § 35B when processing borrowers' requests for modified mortgage

loans including by failing to determine the borrower's ability to make an affordable monthly payment, failing to identify a modified mortgage loan that achieves the borrower's affordable monthly payment, and failing to conduct a compliant analysis comparing the net present value of the modified mortgage loan and the creditor's anticipated net recovery that would result from foreclosure.

24. The AGO alleges that the conduct described in paragraphs 20-23 constitutes violations of G.L. c. 93A, § 2.

25. FCMC denies the allegations in paragraphs 20-23, and denies that the alleged conduct, even if it occurred, would constitute a violation of any laws or regulations.

B. Compliance with 940 C.M.R. 7.07(24) and G.L. c. 93A

26. The AGO alleges that FCMC engaged in Collection Activity on debts that it knew or should have known were time-barred, in violation of 940 C.M.R. 7.07(24), without making required disclosures.

27. The AGO further alleges that in some instances FCMC misinformed some borrowers that their debts had never been accelerated, when in fact the debts had been previously accelerated by a prior servicer or owner and were time-barred.

28. The AGO further alleges that in some instances FCMC sent collection letters to borrowers purporting to require the payment of the entire outstanding balance of the debt but disclaiming any intent to accelerate the debt, while failing to disclose that only some of the debt was currently due and owing.

29. The AGO further alleges that FCMC filed lawsuits against borrowers and obtained judgments on debts that were time-barred by filing sworn affidavits that attested to personal knowledge that the debts had never been accelerated, when FCMC lacked any such

knowledge and, in a few instances, knew or should have known that the debts had in fact been accelerated.

30. The AGO alleges that FCMC's use of unlawful methods to collect on time-barred debts as described in paragraphs 26-29 violated 940 C.M.R. 7.07(24) and G.L. c. 93A.

31. FCMC denies the allegations in paragraphs 26-29, and denies that the alleged conduct, even if it occurred, would constitute a violation of any laws or regulations.

C. Compliance with 940 C.M.R. 7.00 *et seq.* and G.L. c. 93A

32. The AGO alleges that, when FCMC contacted borrowers about debts, both secured and unsecured, it did so in a manner that often violated the Attorney General's debt collection regulations, 940 CMR 7.00 *et seq.*

33. The AGO alleges that FCMC contacted some borrowers by telephone in excess of two calls in any seven-day period, in violation of 940 C.M.R. 7.04(1)(f).

34. The AGO further alleges that FCMC failed to send many borrowers the notice required by 940 C.M.R. 7.08 within five business days after the initial communication with a debtor in connection with the collection of a debt.

35. The AGO alleges that FCMC's debt collection practices as described in paragraphs 32-34 violated 940 C.M.R. 7.00, *et seq.* and G.L. c. 93A.

36. FCMC denies the allegations in paragraphs 32-34, and denies that the alleged conduct, even if it occurred, would constitute a violation of any laws or regulations.

* * *

37. The AGO alleges that the acts or practices identified in Paragraphs 20-35 above are independently or in combination unfair or deceptive, and as such constitute violations of G.L. c. 93A, §2.

38. The AGO alleges that FCMC knew or should have known that all of these acts were unfair or deceptive and violated G.L. c. 93A, §2.

39. FCMC denies the allegations in paragraphs 20-35, and denies that the alleged conduct, even if it occurred, would constitute a violation of any laws or regulations.

IV. Assurances and Undertakings

A. Monetary Payment

40. On or before thirty (30) days from the Effective Date of this Assurance, FCMC shall pay \$300,000 to the AGO by check or wire transfer payable to the “Commonwealth of Massachusetts.”

41. At her sole discretion, the Attorney General may use or distribute the payment described in the foregoing paragraph in any amount, allocation or apportionment and for any purpose permitted by law, including but not limited to: (a) payments to or for consumers and for the facilitation this Assurance; (b) payments to the General Fund of the Commonwealth of Massachusetts; (c) payments to the Local Consumer Aid Fund established pursuant to G.L. c. 12, § 11G; or (iv) for programs or initiatives in furtherance of the protection of the people of the Commonwealth.

42. For avoidance of doubt, FCMC shall have no right to direct, nor any responsibility as to the use or application of funds by the Attorney General.

B. Consumer Relief for Settlement Portfolio Accounts

43. FCMC shall not undertake any Collection Activity on Settlement Portfolio Accounts as of the Effective Date.

44. FCMC shall not sell or transfer any Settlement Portfolio Account or the servicing rights thereto to any other entity for further Collection Activity or for any other reason.

45. Notwithstanding the obligation in paragraph 44 above, in the event that any Settlement Portfolio Account or the servicing rights thereto is transferred, the loan or servicing right shall be transferred subject to the obligations in paragraphs 43-44 above.

46. FCMC shall, within ninety (90) days of the Effective Date, record the release of all liens that are secured as of the Effective Date that are associated with any Settlement Portfolio Account in the Registry of Deeds in which any such lien is recorded. To the extent that a title insurer or court after the Effective Date requires any other lien to be released that was not released pursuant to this paragraph, FCMC shall promptly release such lien at no expense to the affected consumer.

47. FCMC shall, within ninety (90) days of the Effective Date, file an Acknowledgment of Satisfaction in each lawsuit associated with any Settlement Portfolio Account, except where any such judgment has already been acknowledged as fully satisfied.

48. FCMC shall, within ninety (90) days of the Effective Date, request that the tradelines for any Settlement Portfolio Accounts be deleted from the borrower's credit reporting file with any credit reporting agency where FCMC previously reported the debt.

49. FCMC shall, within thirty (30) days of the Effective Date, contact each of the borrowers holding any Settlement Portfolio Account, except for those borrowers whose accounts have already been discharged in bankruptcy or are the subject of an open bankruptcy case, a written notice, in a form approved by the Commonwealth of Massachusetts. The notice will inform the borrower of the following:

- a. FCMC owned or serviced a loan made to the borrower;
- b. The date, original lender, and original principal balance of the loan;
- c. FCMC has entered into an agreement with the Massachusetts Attorney General's Office concerning this loan;
- d. FCMC has agreed not to collect or attempt to collect any additional payments on this loan;

- e. FCMC has agreed not to assign or transfer its right to collect payment on this loan;
- f. FCMC requested deletion of the tradeline for the loan if it had previously reported it to any credit reporting agency; the credit reporting agencies are not obligated to honor the request and FCMC does not control the timing of any deletion;
- g. Where applicable, FCMC filed an acknowledgment of satisfaction of any judgments, dismissed any pending lawsuits, and/or released any liens associated with the loan; and
- h. Instructions to contact the Massachusetts Attorney General's Office with questions relating to the Order.

C. Compliance Terms Applicable to All Secured and Unsecured Future Accounts

50. The terms in paragraphs 51-57 shall be applicable to all Future Accounts on which FCMC takes or intends to take any Collection Activity.

51. FCMC shall comply with all applicable Federal and State laws and regulations.

52. FCMC shall not undertake any Collection Activity in connection with any debt for which the statute of limitations has lapsed.

53. In determining whether the statute of limitations for any debt has lapsed, FCMC shall presume that the debt was accelerated at the time that the debtor most recently became delinquent, unless FCMC has Specific Evidence that the debt has never been accelerated or was first accelerated at a later time.

54. In determining whether or when a debt was accelerated, any notice or demand for payment of the entire unpaid balance of the loan (including the balance associated with installment payments not yet due) shall be deemed an acceleration notwithstanding any statement within the notice or demand that the note has not been or is not being accelerated, unless the notice: (a) includes the past-due amount as a separate line from the entire unpaid balance, and (b) clearly states that only the past-due amount is actually due and owing.

55. FCMC shall not file any pleading, affidavit, or verified complaint containing any factual assertion unless it has Specific Evidence that the assertion is true.

56. FCMC shall comply with all requirements of 940 C.M.R. 7.00 *et seq.*, including:

- a. FCMC shall not initiate more than two communications to any debtor within any seven-day period, as required by 940 C.M.R. 7.04(f); and
- b. FCMC shall provide the notice required by 940 C.M.R. 7.08 within five business days after the initial communication made in connection with the collection of a debt.

57. If the debtor, or any attorney or other authorized representative of the debtor, notifies FCMC in writing within the 30-day period described in 940 CMR 7.08(1), that the debt, or any portion thereof, is disputed, FCMC shall cease collection of the debt and all Collection Activity until it verifies the debt and provides the debtor, or any attorney of the debtor, by first class mail, the following materials as provided in 940 CMR 7.08(2):

- a. All documents, including electronic records or images, which bear the signature of the debtor and which concern the debt being collected;
- b. A ledger, account card, account statement copy, or similar record, whether paper or electronic, which reflects the date and amount of payments, credits, balances, and charges concerning the debt, including but not limited to interest, fees, charges or expenses incidental to the principal obligation which the creditor is expressly authorized to collect by the agreement creating the debt or permitted to collect by law;
- c. The name and address of the original creditor, if different from the collecting creditor; and
- d. A copy of any judgment against the debtor.

D. Compliance Terms Applicable to Future Accounts That Are Secured Residential Mortgage Loans

58. The terms in paragraphs 59-69 shall be applicable to Future Accounts that are secured by a residential property on which FCMC takes or intends to take any Collection Activity.

59. FCMC shall provide periodic statements in the form and with the frequency required by 12 C.F.R. § 1026, unless it strictly complies with the charge-off provisions of 12 C.F.R. § 1026.41(e)(6).

60. For any loan which is at least 30 days past due, a periodic statement shall qualify as a “communication made in connection with the collection of a debt” from FCMC within the meaning of 940 CMR 7.08, and an “initial” communication if such periodic statement is not preceded by other communications from FCMC.

61. FCMC shall implement procedures to assign a Single Point of Contact (“SPOC”) to all delinquent borrowers. FCMC shall provide sufficient training to prepare the borrower’s SPOC to answer questions regarding G.L. c. 244, §§ 35A and 35B, and communicate processes and deadlines associated with § 35B. Such SPOC shall be familiar with the borrower’s mortgage history and shall assist the borrower with available loss mitigation options. If a borrower contacts the SPOC and does not immediately receive a live response, FCMC shall ensure that the SPOC or a designee with sufficient knowledge of the borrower’s individual account can provide a live response in a timely manner, within two days of the borrower’s contact.

62. FCMC shall issue the 90-day right to cure notice required by G.L. c. 244, § 35A (“35A Notice”), to the borrower in a timely manner that provides the borrower with an opportunity to cure the default as allowed by, and consistent with, § 35A.

63. FCMC shall not charge any attorney’s fees, charges, other fees, or penalties during the 90-day right to cure period as required by G.L. c. 244, § 35A(d).

64. Concurrently with the 35A Notice, FCMC shall issue a notice of the borrower’s right to pursue a modified mortgage loan pursuant to G.L. c. 244, § 35B (“35B Notice”) unless it has Specific Evidence that the borrower is not entitled to receive the notice pursuant to G.L. c. 244, § 35B. FCMC’s 35B Notice shall identify all documents that FCMC reasonably anticipates will be needed to complete the loan modification review. For the avoidance of doubt, nothing in this paragraph prohibits FCMC from issuing a 35B Notice to any other borrower.

65. FCMC shall promptly “file[] with the attorney general” copies of all 35B Notices issued to borrowers as required by G.L. c. 244, § 35B(c).

66. Following a borrower’s submission of notice of intent to pursue a modified mortgage loan as defined in § 35B, FCMC shall complete a timely review of the borrower’s 35B loan modification application, consistent with the requirements of § 35B, and its associated regulations, 209 CMR 56.00 *et seq.* Such review shall include, *inter alia*:

- a. FCMC shall promptly review a request from a borrower to pursue a § 35B modification to identify any and all missing documents that FCMC requires to complete the loan modification review. FCMC shall list all required documents in each request for additional documents following the borrower’s initial submission, and, where the previously requested documents are received, shall use best efforts to make only one request for documents unless it explains in writing the reason why such additional documentation could not have been requested earlier. Such request shall be consistent with the timelines set forth in 209 CMR 56.07.
- b. The SPOC assigned to the borrower shall call the borrower to explain any such request for additional documents and shall make best efforts to explain to the borrower any action they are required to take to proceed with the loss mitigation process.
- c. FCMC shall request only documents or information necessary to complete the loan modification review pursuant to § 35B and associated regulations, and shall not request any extraneous or duplicative documents.
- d. To determine the applicant’s gross monthly income, FCMC shall review, for all borrowers and/or contributors to the household:
 - i. Request for Modification Assistance (RMA) or the Uniform Borrower Assistance Form (UBAF);
 - ii. For Wage Earners - 2 Most Recent Paystubs with YTD Earning/Deductions;
 - iii. For Self Employed - Most Recent Quarter Profit and Loss Statement;
 - iv. For Rental Income - Current Lease Agreement along with (1) Proof of Funds Receipt;
 - v. For Fixed Income (e.g., SSI, Pension, Annuity, Retirement) - Current Award Letter OR (1) Proof of Receipt;
 - vi. For Food Stamps/Welfare - Current Award Letter;
 - vii. For Child Support/Alimony - Official Court Recorded Document along with (2) Proof of Receipt;¹
 - viii. For HOA - Proof of HOA Statement;

¹ Child support or separate maintenance income does not need to be disclosed if applicant chooses not to have it considered for repaying the mortgage debt. If the additional income would disqualify applicant, it will be removed from consideration.

- ix. For Divorce - Court Recorded Divorce Decree;
 - x. For Separation - Legal Separation Agreement OR Quit Claim Deed (if applicable);
 - xi. For Non-Married Borrowers - Quit Claim Deed;
 - xii. For Death of Borrower - Death Certificate;
 - xiii. 2 most recent bank statements
- e. In reviewing a borrower's application, FCMC shall comply with all requirements of G.L. c. 244, § 35B(b) to take reasonable steps and make a good faith effort to avoid foreclosure including, as set forth in § 35B(b)(2):
- i. Determine a borrower's current ability to make an affordable monthly payment;
 - ii. Identify a modified mortgage loan that achieves the borrower's affordable monthly payment, which may include 1 or more of the following: reduction in principal, reduction in interest rate or an increase in amortization period; provided, however, that the amortization period shall not be more than a 15-year increase; provided, further, that no modified mortgage loan shall have an amortization period that exceeds 45 years;
 - iii. Conduct a compliant analysis comparing the net present value of the modified mortgage loan and the creditor's anticipated net recovery that would result from foreclosure; and
 - iv. In all circumstances where the net present value of the modified mortgage loan exceeds the anticipated net recovery at foreclosure, FCMC shall agree to modify the loan in a manner that provides for the affordable monthly payment; or, in circumstances where the net present value of the modified mortgage loan is less than the anticipated net recovery of the foreclosure, or does not meet the borrower's affordable monthly payment, notifies the borrower that no modified mortgage loan will be offered and provides a written summary of FCMC's net present value analysis and the borrower's current ability to make monthly payments, after which FCMC may proceed with the foreclosure process in conformity with c. 244.
- f. In accordance with § 35B(b), FCMC is permitted to consider the interest of the secured creditor or the investors.
- g. Within thirty (30) days of FCMC's receipt of a borrower's completed § 35B loan modification application package, FCMC shall provide such borrower with its written assessment of the application and an offer or denial of a loan modification that contains all elements required by § 35B(c).
- h. When offering a loan modification in response to a § 35B submission, FCMC shall not require an up-front payment, also known as a down payment or good faith payment, as a condition of entering the loan modification or modification trial plan.
- i. Where FCMC transfers the servicing rights to a mortgage loan during the pendency of a § 35B loan modification review, FCMC shall notify the new servicer of the status of the § 35B review at the time of transfer and the outcome of the loan modification review, if applicable. Any trial plan or permanent modification FCMC offered to the borrower shall be promptly communicated to the new servicer to prevent unreasonable delay in implementation.

67. FCMC shall implement policies and procedures in connection with its execution of affidavits pursuant to G.L. c. 244, § 35B(f), such that FCMC employees who sign affidavits pursuant to § 35B(f) attesting to FCMC's compliance with § 35B shall base their testimony on the review of FCMC's business records (including those of any prior servicer) evidencing the actions taken by the borrower and FCMC in connection with the 35B process. If FCMC is relying on a § 35B(f) affidavit signed by a prior servicer, FCMC shall either verify that the prior servicer complied with the requirements of § 35B, or shall verify that FCMC made a good faith effort to avoid foreclosure in compliance with the requirements of § 35B.

68. FCMC shall conduct regular audits of a sample set of borrower accounts and related § 35B(f) affidavits for compliance with the requirements of § 35B, its implementing regulations and this settlement during the Reporting Term.

69. FCMC shall ensure that it submits materially accurate reports to the Division of Banks ("DOB") pursuant to the requirements of § 35B(g), the implementing regulations, and in accordance with the DOB's instructions.

E. Reporting

70. FCMC shall comply with reasonable requests made by the AGO during the Reporting Term for individual consumer account data associated with Settlement Portfolio Account(s) made for the purposes of facilitating any consumer restitution.

71. Within ninety (90) days, FCMC shall issue a report to the AGO listing each Settlement Portfolio Account, the amount of outstanding principal balance, the unpaid interest, and a statement that FCMC shall not engage in any Collection Activity on those accounts and has not done so since the Effective Date, and containing documents sufficient to demonstrate FCMC's compliance with paragraphs 43-49.

72. In the event that FCMC subsequently obtains ownership or servicing rights to any Future Account during the Reporting Term, prior to undertaking any Collection Activity on any such account, FCMC shall report to the AGO listing each Future Account, the amount of outstanding principal balance, the unpaid interest, whether the account is secured by a residential property, and (if so), the property address. Such report shall also include a copy of all policies and procedures that FCMC has implemented to ensure compliance with the terms of this Assurance. For the avoidance of doubt, if FCMC does not obtain any Future Accounts during the Reporting Term, or obtains Future Accounts during the Reporting Term but engages in no Collection Activity, no such reporting is required.

73. After FCMC makes an initial report pursuant to paragraph 68, upon request by the AGO not more than once every three (3) months during the Reporting Term, FCMC shall report the following information:

- a. every instance in which it has made a determination that a debt has not been accelerated, with the basis for that determination;
- b. every instance in which it has initiated or advanced a foreclosure, the date(s) on which it issued 35A and 35B Notices, the borrower's response to those notice(s), if any, and any loss mitigation offers made to the borrower; and
- c. every instance in which it has initiated litigation against a borrower in relation to a debt.

V. Release

74. Contingent on compliance with the terms of this Assurance, the AGO fully and finally releases FCMC, its parent corporation, affiliates, subsidiaries and subdivisions, and their officers, agents, servants, employees and shareholders, from all civil liability to the AGO arising from the Covered Conduct occurring prior to the Effective Date.

75. Notwithstanding the preceding paragraph, for the removal of any doubt, any and all of the following forms of liability are specifically reserved and excluded from the above releases:

- a. any claims or defenses of any private or other governmental party;
- b. tax liability;
- c. criminal liability;
- d. claims alleging violations of state or federal securities laws;
- e. claims alleging violations of state or federal antitrust laws; and/or
- f. claims by any other agency or subdivision of the Commonwealth of Massachusetts.

76. Further, nothing in this Assurance shall be deemed to preclude the AGO's review of conduct that occurs after the Effective Date, or any claims that may be brought by the AGO to enforce FCMC's compliance with the Assurance.

VI. Notice

77. Any notice that is made or required under the terms of this Assurance shall be provided via electronic mail and first-class mail to the following addresses.

For the Commonwealth:

Massachusetts Attorney General's Office
Consumer Protection Division
ATTN: Matthew Lashof-Sullivan & Daniel Bahls
One Ashburton Place, 18th Floor
Boston, MA 02108
matthew.lashof-sullivan@mass.gov
daniel.bahls@mass.gov

For FCMC:

Aaron A. Fredericks, Esq.
Hinshaw & Culbertson LLP
53 State Street, 27th Floor
Boston, MA 02109
afredericks@hinshawlaw.com

David Schultz, Esq.
Hinshaw & Culbertson LLP
151 North Franklin Street, Suite 2500
Chicago, IL 60606
dschultz@hinshawlaw.com

VII. General Provisions

78. This Assurance shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, and Superior Court for Suffolk County shall retain jurisdiction over this Assurance.

79. This Assurance shall be effective as of the Effective Date.

80. This Assurance contains the complete agreement between the Parties. No promises, representations, or warranties other than those set forth in this Assurance have been made by either party. This Assurance supersedes all prior communications, discussions, or understandings, if any, of the Parties, whether written or oral.

81. The provisions of this Assurance are severable. If any provision herein is found to be legally insufficient, invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect and shall in no way be affected, impaired, or invalidated.

82. This Assurance shall be binding on FCMC's successors, subsidiaries, and all other persons who have authority to control or who in fact control and direct FCMC's business in the Commonwealth of Massachusetts.

83. Nothing contained in this Assurance shall be used, offered, or received in evidence in any proceeding to prove any liability, any wrongdoing, or any admission on the part of FCMC or by any individual or entity not a party hereto; provided, however, that the foregoing provision shall not limit the Attorney General's rights under G.L. c. 93A, § 5, and shall not prevent this Assurance from being used, offered, or received in evidence in any proceeding between the Parties to enforce its terms.

84. FCMC shall not assert that because of this Assurance it is entitled to any offset or reduction of any compensatory monetary remedies imposed in any related consumer or state or federal government action.

85. FCMC and the AGO participated in the drafting of this assurance.

86. FCMC waives all rights to appeal or to otherwise challenge or contest the validity of this Assurance.

87. Except as to the Notice provision, this Assurance can be amended or supplemented only by a written document signed by all parties or by court order.

88. This Assurance, as well as any amendments thereto, may be signed in multiple counterparts, each of which will be considered an original and all of which, when considered together, will constitute a whole.

89. Nothing in this Assurance shall relieve FCMC of any obligations to comply with all applicable federal and state laws, rules, and regulations. Nor does this Assurance supersede FCMC's obligation to otherwise comply with all applicable law or require FCMC to take any action prohibited by law.

90. This Assurance does not constitute an approval by the AGO of FCMC's acts or practices, and FCMC shall make no representation to the contrary.

91. FCMC shall not cause, encourage, or knowingly permit third parties acting as FCMC's agent, on FCMC's behalf or for its benefit, or otherwise under FCMC's control or direction, to engage in practices from which FCMC is prohibited by this assurance.

92. FCMC and its signatories have consulted with counsel in connection with their decision to enter into this Assurance.

93. Signatories for FCMC represent and warrant that they have the full legal power, capacity, and authority to bind FCMC.

94. By signing below, FCMC agrees to comply with all of the terms of this Assurance.

COMMONWEALTH OF MASSACHUSETTS
ANDREA JOY CAMPBELL, ATTORNEY GENERAL

By: 
Matthew Lashof-Sullivan, BBO #695922
Daniel Bahls, BBO #601060
Assistant Attorneys General
Consumer Protection Division
One Ashburton Place
Boston, MA 02108
p. 617.963.2192

Dated: Sept. 26, 2024

FRANKLIN CREDIT MANAGEMENT CORPORATION

By: 
Name: Donald A. Knight
Title: Corporate Counsel

Dated: September 26, 2024