

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

REGINALD EDWARDS and ASHLEY
FACCIOLA, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

MID-HUDSON VALLEY FEDERAL
CREDIT UNION,

Defendant.

Case No. 1:22-cv-00562-TJM-CFH

**NOTICE OF MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT APPLICATION FOR ATTORNEYS' FEES AND
COSTS AND SERVICE AWARDS**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that upon: (1) the accompanying Memorandum of Law, (2) the Declaration of Peter Sperry, and (3) the Joint Declaration of Joseph I. Marchese and Jeffrey D. Kaliel, and the exhibits attached thereto, Plaintiffs Reginald Edwards and Ashley Facciola ("Plaintiffs"), through their undersigned attorneys, will move this Court, before the Honorable Thomas J. McAvoy, Senior United States District Court Judge, Northern District of New York, at the U.S. Courthouse and Federal Building, 15 Henry Street Binghamton, NY 13901, for an Order, pursuant to Federal Rule of Civil Procedure 23(e) to: (1) grant Final Approval to the Settlement; (2) grant approval of class action representative service awards, (3) grant approval of attorneys' fees and costs, and (4) enter judgment in Plaintiffs' favor and close the case.

* * *

A Proposed Final Approval Order is submitted herewith.

Dated: July 24, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 24, 2023, the foregoing was served by CM/ECF to all counsel of record.

Respectfully submitted,

By: /s/ Jeffrey D. Kalief
Jeffrey D. Kalief

**UNITED STATES DISTRICT COURT
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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND
APPLICATION FOR ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS**

Plaintiffs Reginald Edwards and Ashley Facciola respectfully submit the following Memorandum of Law in Support of their Unopposed Motion for Final Approval of Class Action Settlement and Application for Attorneys' Fees, Costs and Service Award.

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I. INTRODUCTION

Plaintiffs Reginald Edwards and Ashley Facciola (“Plaintiffs”) respectfully move for Final Approval of the Settlement Agreement and Release, attached as *Exhibit A* (the “Settlement” or “Agreement”), which will resolve all claims against Defendant Mid-Hudson Valley Federal Credit Union (“Defendant” or “MHVCU”) in the above-captioned Action. The Court should grant Final Approval because the Settlement provides substantial relief for the Settlement Class and the terms of the Settlement are well within the range of reasonableness and consistent with applicable case law. Indeed, given the significant risks inherent in this Action, the over \$2.26 million Settlement—including a \$2.10 million cash Settlement Fund, forgiveness of \$164,780 in Uncollected Fees, and the cessation of the challenged fee practices at issue in this case, estimated to save MHVCU accountholders at least \$3 million over the next five years alone—is an excellent result for the Settlement Class.

The Settlement satisfies all Second Circuit criteria for settlement approval. One keystone of this Settlement is that all Settlement Class Members will automatically receive their pro rata share of the Net Settlement Fund without having to do anything. There are no claims forms, and Settlement Class Members will not be asked to prove they were damaged by the APPSN Fees and Retry Fee (together, the “Class Fee”) practices alleged in the Amended Complaint. Instead, MHVCU’s data will be used to determine which checking Account Holders experienced the alleged practices, and a formula will be applied to calculate each Settlement Class Member’s distribution. Thus, the plan of allocation fairly and adequately accounts for the value of each Settlement Class member’s individual claim. In the face of certain risks discussed below, this Settlement is fair and reasonable and merits Final Approval.

Class Counsel is seeking attorneys’ fees of 33.33% of the Settlement value, reimbursement

of reasonable costs, and a \$5,000.00 Service Award for each of the Plaintiffs.

Since Preliminary Approval of the Settlement on April 5, 2023, the Claims Administrator properly completed the Court-approved Notice Program. To date, no Settlement Class Member has objected to the Settlement, Class Counsel’s request for attorneys’ fees and costs, or the Service Award, and no Settlement Class Members have opted-out of the Settlement. The absence of objections and opt-outs to date shows that the Settlement Class fully supports approval of the Settlement and that it warrants Final Approval.¹

In support of the Motion, Plaintiffs submit a Joint Declaration from Class Counsel Joseph I. Marchese and Jeffrey D. Kaliel (“Joint Decl.”), filed concurrently herewith, and a Declaration from the Claims Administrator (“Admin. Decl.”), filed concurrently herewith. Plaintiffs and Class Counsel respectfully request that the Court: (1) grant Final Approval of the Settlement; (2) certify for settlement purposes the Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3); (3) appoint Plaintiffs as Class Representatives; (4) appoint Class Counsel; (5) grant Class Counsel’s Application for Attorneys’ Fees and Costs and Service Award; and (6) enter Final Judgment dismissing the Action with prejudice.

II. BACKGROUND

A. Procedural History

On March 29, 2021, Plaintiff Ashley Facciola filed a putative class action complaint entitled *Ashely Facciola v. Mid-Hudson Valley Federal Credit Union*, in the United States District Court for the Southern District of New York, Case No. 7:21-cv-02676, alleging claims for breach of contract with regard to Defendant’s practice of charging overdraft fees (“OD Fees”) on debit card transactions that allegedly did not overdraw an account at the time they were authorized

¹ Should any objection be asserted following the filing of this Motion, a response will be filed.

(“APPSN transactions”). After defense counsel moved to dismiss Plaintiff Facciola’s complaint for lack of subject matter jurisdiction under CAFA, Plaintiff Facciola voluntarily dismissed her complaint without prejudice, then filed an identically captioned complaint in the New York Supreme Court in Ulster County (the “Facciola Action”), Index. No. EF2021-1549.

On August 20, 2021, Defendant filed an answer to the Complaint in the Facciola Action. On April 27, 2022, Plaintiff Reginald Edwards filed a putative class action complaint entitled *Reginald Edwards v. Mid-Hudson Valley Federal Credit Union*, in the United States District Court for the Northern District of New York, Case No. 1:22-cv-00562, alleging claims for Breach of Contract and Violations of NY GBL § 349 with regard to Defendant’s allegedly routine practice assessing more than one insufficient funds fee (“NSF Fee”) on the same transaction (the “Edwards Action”).

Discovery proceeded apace. Plaintiffs’ counsel reviewed multiple document productions from Defendant and retained a data analysis expert to assist in analyzing the challenged fee practices and determining damages. *See* Joint Declaration in Support of Plaintiffs’ Motion for Final Approval of Class Action Settlement (“Joint Decl.”) ¶ 9. Additionally, counsel for Plaintiffs noticed six depositions – including five named MHVCU employees and one corporate representative for MHVCU during the summer of 2022. *Id.* at ¶ 10. Those depositions were only postponed when the Parties began the process of scheduling a mediation. *Id.* at ¶ 11.

On August 15, 2022, the Parties moved to stay the Edwards Action pending mediation. That motion was granted on August 19, 2022. Also on August 19, 2022, the Parties moved to stay the Facciola Action pending mediation. That motion was granted on September 12, 2022. On November 16, 2022, the parties participated in a mediation before the Honorable Diane Welsh (Ret.). The mediation resulted in a Mediator’s Proposal, which both parties accepted. Further

negotiations by the Parties resulted in the Settlement reflected in the Agreement. The settlement described below is the result of the accepted Mediator's Proposal.

On December 7, 2022, and pursuant to the Mediator's Proposal, Plaintiffs filed a putative class action complaint entitled *Reginald Edwards and Ashley Facciola v. Mid-Hudson Valley Federal Credit Union*, in the United States District Court for the Northern District of New York, Case No. 1:22-cv-00562, that consolidated the Facciola Action and Edwards Action for purposes of effectuating a global class settlement in the United States District Court for the Northern District of New York, which is hereafter referred to as "Action" or "Consolidated Action."

On December 9, 2022, the Parties moved to stay the Facciola Action pending final approval of a class settlement in the Consolidated Action. This motion was granted on January 25, 2023. The Parties then jointly moved for Preliminary Approval of the Settlement. That motion was granted by this Court on April 5, 2023. ECF No. 27.

B. Class Counsel's Investigation

Class Counsel spent many hours investigating the claims of several potential plaintiffs against MHVCU. Joint Decl. ¶ 12. Class Counsel interviewed numerous MHVCU customers to gather information about MHVCU's disclosures and practices and their potential impact upon consumers, which was essential to counsels' ability to understand the nature of the potential claims and issues, the language of the Account Agreement and other documents at issue, and potential remedies. *Id.* at ¶ 13. Class Counsel expended significant resources researching and developing the legal claims at issue. *Id.* at ¶ 14. Class Counsel are familiar with the claims as they have litigated and resolved other fee claims with similar factual and legal issues. Class Counsel has experience in understanding the damages at issue, the information critical to determine class membership, and the necessary data to calculate each Settlement Class Member's damages. The issues were heavily contested throughout the litigation. *Id.* at ¶ 15. Class Counsel, along with their data analysis expert,

spent a significant amount of time analyzing data regarding MHVCU's fee revenue related to the assessment of the APPSN Fees and the Retry Fees at issue. *Id.* at ¶ 16. The Parties conferred regarding the calculations' accuracy, with MHVCU retaining its own expert. Prior to the mediation, Class Counsel and Plaintiffs' expert used this data to analyze the damages at issue. *Id.*

Consequently, Class Counsel mediated with Judge Welsh fully informed of the merits of Settlement Class Members' claims and negotiated the proposed Settlement while zealously advancing the position of Plaintiffs and Settlement Class members and being fully prepared to continue to litigate rather than accept a settlement that was not in the best interest of Plaintiffs and the Settlement Class. *Id.* at ¶ 17.

In sum, prior to negotiating the Settlement, Class Counsel spent significant time conferring with Plaintiffs, investigating facts, researching the law, preparing a well-pleaded complaint, engaging in discovery, working with an expert witness, and reviewing important documents and data. *Id.* at ¶¶ 9-17.

C. Summary of the Settlement Terms

1. The Settlement Class.

The Settlement Class is a Federal Rule of Civil Procedure 23(b)(3) opt-out class, defined as: "any member of MHVCU who had a checking account with Defendant and was assessed an APPSN Fee or a Retry Fee from June 9, 2015 to September 14, 2022, both dates inclusive."

2. Relief for the Benefit of the Settlement Class

a. Settlement Fund

The Settlement Fund is \$2.10 million and will be used to: (a) pay Settlement Class Members their respective cash Settlement Class Member Payments; (b) Class Counsel for any Court awarded attorneys' fees and costs; (c) any Court awarded Service Award for the Class Representatives; (d) Settlement Administration Costs; and (e) if funds remain after the initial

distribution to Settlement Class Members to distribute to the *cy pres* recipient. Agreement at ¶¶ 7, 11.

Settlement Class Members do not have to submit claims or take any other affirmative step to receive relief under the Settlement. Instead, as soon as practicable, but no later than 10 days following the Effective Date of the Settlement, MHVCU and the Claims Administrator will distribute the Net Settlement Fund to all Settlement Class Members. *Id.* at ¶ 7(d)(iv)b.

b. Allocation of the Settlement Class Member Payments.

Of the \$2,100,000 paid into the Settlement Fund, \$1,680,000 (80%) is allocated to the APPSN Fee Class and \$420,000 (20%) is allocated to the Retry Fee Class. *Id.* at ¶ 7(d)(iv)a. Based on this allocation, payments from the Net Settlement Fund to the Settlement Class Members shall be calculated as follows:

Settlement Class Members of the APPSN Fee Class shall be paid per incurred APPSN Fee calculated as follows: $(0.8 \text{ of the Net Settlement Fund} / \text{Total APPSN Fees}) \times \text{Total number of APPSN Fees charged to and paid by each APPSN Fee Class member}$; Settlement Class Members of the Retry NSF Fee Class shall be paid per Retry NSF Fee calculated as follows: $(0.2 \text{ of the Net Settlement Fund} / \text{Total Retry NSF Fees}) \times \text{Total number of Retry NSF Fees charged to and paid by each Retry NSF Fee Class member}$.

Id. at ¶ 7(d)(iv)b.(3).

c. Distribution of Settlement Class Member Payments.

Settlement Class Members who are currently members of the credit union when the Net Settlement Fund is distributed will receive a credit in the amount of their Settlement Class Member Payments applied to any account they are maintaining individually at the time of the credit. *Id.* at ¶ 7(d)(iv)b.(1). If by the deadline to apply credits of Settlement Class Member Payments to accounts MHVCU is unable to complete certain credit(s), MHVCU shall deliver the total amount of such unsuccessful Settlement Class Member Payment credits to the Claims Administrator to be paid by check in accordance with the procedure for Settlement Class Members who are not

currently members of the credit union to receive payment. *Id.*

For Settlement Class Members who are not currently members of the credit union when the Net Settlement Fund is distributed, they shall be sent a check by the Claims Administrator at the address used to provide the Notice, or at such other address as designated by the Settlement Class Member. *Id.* The Claims Administrator will make reasonable efforts to locate the proper address for any check returned by the Postal Service as undeliverable and will re-mail it once to the updated address. *Id.* The Settlement Class Member shall have one-hundred eighty (180) days to negotiate the check. The total value of checks uncashed after 180 days shall be distributed to a Court-approved *cy pres* recipient. *Id.*

d. Disposition of Residual Funds.

Within one year after the date the Claims Administrator mails the first Settlement Class Member Payment, any remaining amounts resulting from uncashed checks shall be distributed to an appropriate *cy pres* recipient agreed to by the Parties and approved by the Court. *Id.* at ¶ 11. In no event shall any portion of the Settlement Fund revert to MHVCU.

e. Forgiveness of Uncollected Fees.

Upon the occurrence of the Effective Date, Defendant shall forgive the Uncollected Fees. If any Uncollected Fees are inadvertently collected, then they shall be refunded by Defendant insofar as Defendant is aware of the Uncollected Fees. If a member of MHVCU with Uncollected Fees attempts to open a new account or re-open a closed account, Defendant shall not require payment of the Uncollected Fees as a condition to account opening insofar as Defendant is aware of the outstanding Uncollected Fees. *Id.* at ¶ 8(a).

f. Cessation of Challenged Practices.

Within a commercially reasonable amount of time not to exceed 2 years following the occurrence of the Effective Date, Defendant shall cease charging APPSN Fees entirely. Within the

same commercially reasonable amount of time not to exceed 2 years following the occurrence of the Effective Date, Defendant shall make a good faith effort to attempt to cease charging Multiple Retry Fees. If Defendant is unable to cease charging Multiple Retry Fees, Defendant will provide updated disclosures that properly explain how Multiple Retry Fees are assessed to Defendant's account holders. *Id.* at ¶ 8(b).

3. Releases.

In exchange for the benefits conferred by the Settlement, all Settlement Class Members will be deemed to have released MHVCU from claims relating to the subject matter of the Action. The Releases are set forth in Section 14 of the Agreement.

4. The Notice Program.

The Parties hired Epiq as the Claims Administrator, one of the leading notice administration firms in the United States. The Claims Administrator has successfully overseen the Notice Program approved by this Court, which was designed to provide the best notice practicable and is tailored to take advantage of the information MHVCU has available about the Settlement Class. Joint Decl. ¶ 18. The Notice Program was reasonably calculated to apprise Settlement Class members of the following through the Notice: a description of the material terms of the Settlement; a deadline to exclude themselves from the Settlement Class; a deadline to object to the Settlement; the Final Approval Hearing date; and the Settlement Website address to access the Agreement and other related documents. Agreement, Exhibits 1-2. The Notice and Notice Program constitute sufficient notice to all persons entitled to notice, satisfying all applicable requirements of law, including Rule 23 and constitutional due process. Joint Decl. ¶ 19. Since Preliminary Approval of the Settlement on April 5, 2023, the Claims Administrator properly completed the Court-approved Notice Program. Admin Decl., at ¶ 4. To date, no Settlement Class Member has objected to the Settlement, Class Counsel's request for attorneys' fees and costs, or the Service Award, and no

Settlement Class Members have opted-out of the Settlement. Admin Decl., at ¶¶ 23-24. The absence of objections and opt-outs to date shows that the Settlement Class fully supports approval of the Settlement and that it warrants Final Approval.

The Notice Program was comprised of three parts: (1) direct Postcard Notice to all Settlement Class members who did not agree to receive notices from MHVCU by email, or for whom the Claims Administrator is unable to send Email Notice using the email address provided by MHVCU; (2) direct Email Notice to those Settlement Class members who agreed to receive account statements from MHVCU by email; and (3) a long form Notice containing more detail than the Postcard Notice and Email Notice posted on the Settlement Website and available by U.S. mail on request to the Claims Administrator. Agreement at Exs. 1-2 thereto.

The Long Form Notice describes the procedure that Settlement Class members must follow to (a) opt-out of the Settlement or (b) object to the Settlement; Class Counsel's application for attorneys' fees, costs and expenses; or the Service Award for the Plaintiffs. Specifically, opt-outs must be postmarked no later than the last day of the Opt-Out Period, and objections must be postmarked no later than the last day of the Opt-Out Period (no later than 30 days before the Final Approval Hearing). *Id.* For an objection to be valid, it must include: (a) the name of the Action; (b) the objector's full name, address, and telephone number; (c) all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel; (d) a description of the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case; (e) the identity of all counsel who represent the objector, including any former or current counsel who

may be entitled to compensation for any reason related to the objection to the Settlement or fee application; (f) the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection, and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five years; (g) any and all agreements that relate to the objection or the process of objecting—whether written or oral—between the objector or objector's counsel and any other person or entity; (h) the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing; (i) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; (j) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and (k) the objector's signature (an attorney's signature is not sufficient). *Id.*

The Notice Program (Postcard Notice and Email Notice, including the Notice Re-Mailing Process) were completed before the filing of this Motion. Admin Decl., at ¶ 4. Additional details on the tasks performed by the Claims Administrator can be found *infra* Sec. C.

In accordance with the Agreement, following Preliminary Approval, the Settlement Website, which included hyperlinks to the Agreement, the Long Form Notice, the Preliminary Approval Order and such other documents as the Parties agrees to post or that the Court orders posted, was launched on June 1, 2023. Admin Decl., at ¶¶ 4, 19.

The Claims Administrator also established and maintained (and will continue to maintain for the requisite time) an automated toll-free telephone line for the Settlement Class to call with

Settlement-related inquiries and to receive automated responses, and to accept requests for Long Form Notices. Agreement at Ex. 1; Admin Decl., at ¶ 21-22.

5. Settlement Termination.

Either Party may terminate the Settlement if the Settlement is rejected or materially modified by the Court or an appellate court. Agreement at ¶ 15(b). MHVCU also may terminate the Settlement if 5% or more of the total Settlement Class members opt-out. Agreement. at ¶ 15(c).

6. Class Representatives' Service Award.

Class Counsel seeks a Service Award of \$5,000.00 each for the Named Plaintiffs, as allowed by the Agreement. Agreement at ¶ 7(d)(ii). The Service Awards will be paid from the Settlement Fund and will be in addition to the Settlement Class Member Payments the Plaintiffs will be entitled to receive under the Settlement. *Id.* The awards will compensate the Class Representatives for their time and effort and for the risks they assumed in prosecuting the Action. Specifically, Plaintiffs provided assistance that enabled Class Counsel to successfully prosecute the Action and reach the Settlement, including: (1) submitting to interviews with Class Counsel; (2) locating and forwarding documents and information to Class Counsel; (3) participating in conferences with Class Counsel; and (4) reviewing the settlement documentation. Joint Decl. ¶ 20. In so doing, the Plaintiffs were integral to the case. *Id.* MHVCU does not object to Class Counsel's request for the Service Awards. Agreement at ¶ 7(d)(ii).

7. Attorneys' Fees and Costs.

Class Counsel has not been paid for their extensive efforts or reimbursed for litigation costs. Joint Decl. ¶ 21. They request, and MHVCU does not oppose, attorneys' fees of up to 33.33% of the value of the Settlement, as well as reimbursement of litigation costs incurred in connection with the Actions. Agreement at ¶ 7(d)(i). The Parties negotiated and reached agreement regarding fees, costs and expenses only after agreeing on all material terms of the Settlement. Joint

Decl. ¶ 22. Such award is subject to this Court’s approval and will serve to compensate for the time, risk and expense Plaintiffs’ counsel incurred pursuing claims for the Settlement Class.

III. ARGUMENT

A. The Legal Standard for Final Approval.

Courts, including the Second Circuit, have emphasized the “strong judicial policy in favor of settlements, particularly in the class action context.” *Wal-Mart Stores v. Visa U.S.A.*, 396 F.3d 96, 116 (2d Cir. 2005). Fed. R. Civ. P. 23(e) requires court approval before a class action can be dismissed via a settlement. “In order to grant final approval of a proposed settlement under Federal Rule of Civil Procedure 23(e)(2), the Court must find ‘that it is fair, reasonable, and adequate.’” The Court considers a number of factors laid out in Rule 23(e)(2), as well as in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000), to determine whether this standard has been met.” *In re GSE Bonds Antitrust Litig.*, No. 19-cv-1704 (JSR), 2020 U.S. Dist. LEXIS 104842, at *10 (S.D.N.Y. June 16, 2020).

At the final approval stage, Rule 23(e)(2) requires courts to consider whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims, if required;
 - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3);² and
- (D) the proposal treats class members equitably relative to each other.

² There is no such agreement to be identified. The only agreement is the Settlement Agreement.

To evaluate the Settlement's fairness, the Court must examine its procedural fairness under Rule 23(e)(2)(A)-(B) and substantive fairness under 23(e)(2)(C)-(D). *Kirby v. FIC Rest., Inc.*, No. 5:19-CV-1306 (FJS/ML), 2020 U.S. Dist. LEXIS 178109, at *4 (N.D.N.Y. Sep. 28, 2020). Both are satisfied.

B. This Settlement Satisfies the Criteria for Final Approval.

The relevant factors weigh in favor of Final Approval. First, the Settlement was reached in the absence of collusion, and is the product of good faith, informed and arm's length negotiations by competent counsel, making it procedurally fair. Furthermore, a review of the substantive factors related to the Settlement's fairness, adequacy and reasonableness demonstrates that Final Approval is warranted. Any settlement requires the parties to balance the claims' merits and the defenses asserted against the attendant risks of continued litigation and delay. Plaintiffs believe they asserted meritorious claims and would prevail if this matter proceeded to trial. MHVCU argues the claims are unfounded, denies any potential liability, and up to the point of settlement indicated a willingness to litigate those claims vigorously. Joint Decl. ¶ 33. The Parties concluded that the benefits of settlement outweigh the risks and uncertainties of continued litigation, as well as the attendant time and expenses associated with contested class certification proceedings and possible interlocutory appellate review, completing class discovery, pretrial motion practice, trial, and finally appellate review. *Id.* ¶ 23.

1. This Settlement Is the Product of Good Faith, Informed and Arm's Length Negotiations.

The Settlement in this case is the result of intensive, arm's-length negotiations between experienced attorneys familiar with class action litigation and with the legal and factual issues of this Action—all occurring before a well-respected neutral with an expertise in these kinds of financial services cases. *Id.* ¶ 24. In assessing procedural fairness, courts examine the negotiating

process leading to the settlement. *D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001). A strong initial presumption of fairness attaches to the proposed settlement if, as here, the settlement is reached after discovery by experienced counsel and after arm’s length negotiations. *Wal-Mart Stores, Inc.*, 396 F.3d at 116.

Class Counsel is particularly experienced in the litigation, certification, trial, and settlement of nationwide class action cases in the financial services industry. Joint Decl. ¶¶ 2-8. In negotiating this Settlement in particular, Class Counsel had the benefit of years of experience and familiarity with the facts of this case as well as with other cases involving overdraft fees across the country. *Id.* Class Counsel thoroughly investigated and analyzed Plaintiffs’ claims and engaged in briefing on the motion to amend the operative complaint. They engaged in significant discovery and extensive data and damage analysis. *Id.* ¶ 25. Class Counsel were also well-positioned to evaluate Plaintiffs’ claims strengths and weaknesses, and the appropriate basis upon which to settle them, by litigating similar claims in courts across the country. *Id.* ¶ 26. Finally, Class Counsel used an experienced mediator to achieve this Settlement. *Id.* ¶ 17. This factor, too, supports Final Approval. *George v. Shamrock Saloon II, LLC*, 2021 WL 3188314, at *6 (S.D.N.Y. July 28, 2021). (“The Settlement Agreement resulted from extensive negotiations between experienced counsel, with the assistance of a third-party mediator, and following significant discovery, which are all indications of a fair settlement process.”).

2. The Facts Support a Determination That the Settlement Is Fair, Adequate and Reasonable.

A review of the relevant factors supports a determination that the Settlement should be finally approved under Rule 23(e)(2). The Second Circuit has identified nine *Grinnell* factors that should be considered in determining the substantive fairness of the Settlement:

- (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of

discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

495 F.2d at 463. In applying these factors, “not every factor must weigh in favor of [the] settlement, rather the court should consider the totality of these factors in light of the particular circumstances.” *Marroquin Alas v. Champlain Valley Specialty of N.Y., Inc.*, No. 5:15-cv-00441 (MAD/TWD), 2016 U.S. Dist. LEXIS 79043, at *11 (N.D.N.Y. June 17, 2016). As applied here, the *Grinnell* factors weigh heavily in favor of Final Approval.³ These factors remain applicable even after the 2018 amendment of Rule 23(e), which clarified the factors quoted above. *Christine Asia Co. v. Jack Yun Ma*, No. 1:15-md-02631 (CM) (SDA), 2019 U.S. Dist. LEXIS 179836, at *37 (S.D.N.Y. Oct. 16, 2019) (“The Court understands the new Rule 23(e) factors to add to, rather than displace, the *Grinnell* factors.”).

a. The Risks of Establishing Liability and Damages Demonstrate That This Settlement is Within the Range of Reasonableness in Light of All Attendant Risks of Litigation and Relative to the Best Possible Recovery

Plaintiffs and Class Counsel are confident in the strength of their case, but they are also pragmatic in their awareness of the various defenses available to MHVCU and the risks inherent to litigation and establishing both liability and damages. This is a crucial factor favoring

³ The sole *Grinnell* factor which does not favor settlement is the ability of the defendant to withstand a larger judgment; however, this standing alone is not reason to reject the Settlement. *In re Sinus Buster Prods. Consumer Litig.*, 2014 U.S. Dist. LEXIS 158415, at *26 (E.D.N.Y. Nov. 10, 2014) (collecting cases); *Guevoura Fund Ltd. v. Sillerman*, No. 1:15-cv-07192-CM, 2019 U.S. Dist. LEXIS 218116, at *26-27 (S.D.N.Y. Dec. 18, 2019) (“[T]he ability of defendants to pay more, on its own, does not render the settlement unfair. Rather, the reasonableness of the Settlement is better analyzed in light of the amount of the Settlement compared to the substantial risks Lead Plaintiffs faced in proving liability and damages, and not on whether the Director Defendants could have paid more.”) (quotations omitted); *accord D’Amato*, 236 F.3d at 86.

settlement, as courts routinely approve settlements where a plaintiff would have faced significant legal and factual obstacles to establishing liability. *Cruz v. Sal-Mark Rest. Corp.*, No. 1:17-CV-0815 (DJS), 2019 U.S. Dist. LEXIS 13529, at *14 (N.D.N.Y. Jan. 28, 2019). Indeed, “[l]itigation inherently involves risks.” *Id.* The adequacy of the amount offered in settlement must be judged “not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of [Plaintiffs’] case.” *Baudin*, 2020 U.S. Dist. LEXIS 146280, at *23.⁴

The dispute centers on MHVCU’s allegedly unfair and misleading assessment of certain OD and NSF Fees – claims MHVCU forcefully denied throughout the litigation. With this Settlement, Plaintiffs have achieved their desired goal of compensating class members charged such fees during the Class Period. While Plaintiffs’ best-case scenario is a 100% refund of the APPSN Fees and Retry Fees, there was a substantial risk that Plaintiffs would not achieve such a result. MHVCU would have sought summary judgment in its favor after discovery closed. Success on the merits was not certain. MHVCU contends that the relevant Account agreements are unambiguous, and that even if they are ambiguous, that extrinsic evidence resolves the ambiguity in its favor as to whether the fees at issue are permitted. Thus, although Plaintiffs believe they have a strong chance on the merits, Plaintiffs might not certify the classes or could lose at summary judgment or trial, or on appeal. Joint Decl. ¶ 27.

The success of Plaintiffs’ claims in future litigation turns on these and other questions that are certain to arise in the context their motion for class certification and at trial, as they have in

⁴ See also *In re Global Crossing*, 225 F.R.D. at 461 (“the certainty of [a] settlement amount has to be judged in [the] context of the legal and practical obstacles to obtaining a large recovery”); *In re Indep. Energy Holdings PLC Sec. Litig.*, 00 Civ. 6689 (SAS), 2003 U.S. Dist. LEXIS 17090, at *12-13 (S.D.N.Y. Sept. 29, 2003) (few jury trials result in full amount of damages claimed).

other similar cases. The legal issues raised in this case have not been decided in the cases in which plaintiffs have sued financial institutions for assessing fees based on the specific contractual language.

Each of these risks, by itself, could easily have impeded Plaintiffs’ and the Settlement Class’s success at trial. Under the circumstances, Plaintiffs and Class Counsel appropriately determined that Settlement outweighs the gamble of continued litigation. Joint Decl. ¶ 28. Moreover, even if they prevailed at summary judgment and trial, any recovery could be delayed for years by appeals. “Settlement eliminates the risk, expense, and delay inherent in this process.” *Cruz*, 2019 U.S. Dist. LEXIS 13529, at *15. The Settlement provides substantial relief without further delay. Joint Decl. ¶ 29.

For these reasons, a Settlement Fund that represents approximately 50% of the Class Fees allegedly wrongly charged to Settlement Class Members, as this Settlement does—and without the inherent litigation risks—is a very fair and reasonable recovery. *Id.* ¶ 30. And that amount does not even include the substantial value of the prospective relief obtained, which will save accountholders at least \$3 million over the next five years. Joint Decl. ¶ 31.

The reasonableness of the Settlement is particularly apparent when compared to other settlements involving similar claims. The Settlement either meets or exceeds the percentage of liability recovered for the vast majority of court-approved settlements in overdraft fee class actions nationwide—most of which did not include substantial prospective relief like that obtained here. *See, e.g., Roberts v. Capital One*, No. 16 Civ. 4841 (LGS), Dkt. 198 (S.D.N.Y. Dec. 1, 2020) (approving cash fund of approximately 34% of the most likely recoverable damages for class members); *Bodnar v. Bank of Am., N.A.*, No. 14-3224, 2016 U.S. Dist. LEXIS 121506, at *12 (E.D. Pa. Aug. 4, 2016) (approving a cash fund of between 13%-48% of the maximum amount of

damages they may have been able to secure at trial, and describing such a result as a “significant achievement” and “outstanding”); *In re Checking Account Overdraft Litig.*, No. 1:09-MD-02036-JLK, 2015 U.S. Dist. LEXIS 193690, at *37 (S.D. Fla. May 22, 2015) (approving \$31,767,200 settlement representing approximately 35% of the most probable aggregate damages); *Hawthorne v. Umpqua Bank*, No. 11-cv-06700-JST, 2015 U.S. Dist. LEXIS 56370, at *9 (N.D. Cal. Apr. 28, 2015) (approving \$2,900,000 settlement for approximately 38% of what could have been obtained at trial); *In re Checking Account Overdraft Litig.*, No. 1:09-MD-02036-JLK, 2013 U.S. Dist. LEXIS 190562, at *3-4 (S.D. Fla. Aug. 2, 2013) (approving \$4,000,000 settlement for 25% of the most probable recoverable damages); *Mosser v. TD Bank, N.A.*, No. 1:09-MD-02036-JLK, 2013 U.S. Dist. LEXIS 187627, at *83-84 (S.D. Fla. Mar. 18, 2013) (approving \$62,000,000 settlement for 42% of the most probable damages and praising it as an “outstanding result”).

Further, as discussed above, the Settlement is the product of arm’s length negotiations conducted by the Parties’ experienced counsel with the assistance of a well-respected mediator through a mediation and additional negotiations thereafter. As a result, the Parties have reached a Settlement that Class Counsel believes to be fair, reasonable, and in the Settlement Class’s best interests. Class Counsel’s assessment in this regard is entitled to considerable deference. The \$2.26 million value of the Settlement is fair and reasonable in light of MHVCU’s defenses, and the challenging and unpredictable litigation path in the absence of settlement. Joint Decl. ¶ 31.

b. The Reaction of Settlement Class Members to the Proposed Settlement

The Reaction of the Settlement Class has been overwhelmingly positive to date. Out of approximately 17,981 Settlement Class Members, none have opted-out by the day this Motion was filed, and no objections have been filed. Admin Decl. ¶¶ 23-24. Following the Opt-Out Period and objection deadline, Class Counsel will file an updated declaration from the Claims

Administrator advising the Court as to any additional opt-outs or any objection.

c. The Expense, Complexity, and Likely Duration of Further Litigation Favor Settlement

The traditional means for handling claims like those at issue here would tax the court system, require a large expenditure of public and private resources, and given the relatively small value of the claims of the individual Settlement Class Members, is impracticable. Indeed, the complexity, expense, and likely duration of litigation is critical in evaluating the reasonableness of a class action settlement. *Charron v. Weiner*, 731 F.3d 241, 247 (2d Cir. 2013). Settlements are favored in class actions, which in general have a well-deserved reputation as being most complex. *Christine Asia Co.*, 2019 U.S. Dist. LEXIS 179836, at *34-35.

Recovery by any means other than settlement would require additional years of litigation in this Court and the Second Circuit. Delay, both at the trial stage, and through post-trial motions and appeals, could force the Settlement Class to wait even longer, further reducing its value.⁵ Joint Decl. ¶ 32.

Here, Final Approval will mean an immediate recovery for Settlement Class Members. While Plaintiffs believe that the Action has merit and that the class ultimately would prevail at trial, continued litigation would last for an extended period of time before any judgment might be entered. The risk of obtaining class certification and maintaining it through trial is also present. *Hanifin v. Accurate Inventory & Calculating Serv.*, 2014 U.S. Dist. LEXIS 115710, at *13 (N.D.N.Y. Aug. 20, 2014). The Parties would also have to first litigate a motion for class certification. *See e.g., Parkis v. Microsoft Corp.*, No. 5:09-CV-110 (FJS/GHL), 2009 U.S. Dist.

⁵ *See United States v. Glens Falls Newspapers, Inc.*, 160 F.3d 853, 856 (2d Cir. 1998) (noting that “a principal function of a trial judge is to foster an atmosphere of open discussion among the parties’ attorneys and representatives so that litigation may be settled promptly and fairly so as to avoid the uncertainty, expense and delay inherent in a trial”).

LEXIS 47880, at *2 (N.D.N.Y. June 4, 2009).

Settling now with the benefit of the analysis of Settlement Class membership provides immediate and substantial benefits to tens of thousands of customers, avoiding significant costs and risks of continuing litigation, including considerable fees incurred by experts. This consideration militates heavily in favor of the Settlement as “[t]he settlement of complex class action litigation is favored by the courts.” *Cavalieri v. GE*, No. 06cv315 (GLS/DRH), 2009 U.S. Dist. LEXIS 68693, at *4 (N.D.N.Y. Aug. 5, 2009). Settling now on such favorable terms is, therefore, in the Settlement Class’s best interests. *See Oneida Indian Nation v. Cty. Of Oneida*, 199 F.R.D. 61, 77 (N.D.N.Y. 2000).

Therefore, the proposed Settlement is the best vehicle for Settlement Class Members to receive the relief to which they believe they are entitled in a prompt and efficient manner.

d. The Risk of Maintaining Class Action Status Throughout Trial Favors Settlement

Whether the Action would have been tried as a class action is also relevant in assessing fairness. *See Hill*, 2020 U.S. Dist. LEXIS 168099, at *10 (“Whether the case would be manageable as a class action at trial is not of consequence here . . . as ‘[t]he court need not consider the [manageability] factor, however, when the class is being certified solely for the purpose of settlement.’”). As the Court had not yet certified a class when the Agreement was signed, it is unclear whether certification would have been granted. The difficulty of class certification favors approving the Settlement. *See id.* *See also Bellifemine v. Sanofi-Aventis U.S. LLC*, 07 Civ. 2207 (JGK), 2010 U.S. Dist. LEXIS 79679, at *11 (S.D.N.Y. Aug. 6, 2010) (“no assurance of obtaining class certification through trial, because a court can reevaluate the appropriateness of certification at any time”).

Given MHVCU’s defense of this Action to date, MHVCU would have vigorously opposed

Plaintiffs' certification motion, and may have appealed if unsuccessful. Defendant would have argued class certification is not appropriate on the grounds of typicality, adequacy, predominance, commonality, and numerosity. Success on any one of these grounds could have prevented the maintenance of a class through trial. Further, this litigation activity would have required the Parties to expend significant resources. Joint Decl. ¶ 33. Accordingly, this factor favors Preliminary Approval.

e. The Extent of Discovery Completed and the Stage of the Proceedings Favor Settlement

This *Grinnell* factor requires that the parties have “engag[ed] in thorough investigation and discovery,” enough to recommend settlement to the Court. *Cruz*, 2019 U.S. Dist. LEXIS 13529, at *11. This factor is relevant to the Parties' knowledge of the strengths and weaknesses of the various claims which affects the determination of the settlement's fairness.” *Id.* at *10 (“A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's length negotiations between experienced, capable counsel after meaningful discovery”). Here, Class Counsel devoted substantial time and resources investigating, litigating, and resolving this case. Plaintiffs settled the Action with the benefit of Class Counsel's years of experience litigating cases like this one, discovery, and data and damage analysis. Joint Decl. ¶ 34. Due to their extensive experience, the Parties' counsel are well aware of the relative strengths and weaknesses of their respective cases, informing the negotiations between counsel. Class Counsel's analysis allowed them to confidently evaluate Plaintiffs' claims' strengths and weaknesses, the prospects for success at class certification and trial, and the merits of claims and defenses, the risks attendant to continued litigation, and the benefits of settling.

The record provides sufficient information for this Court to determine that the Settlement is fair. Class Counsel have shown their willingness to litigate this action and their past experience

shows that they will zealously represent their clients. *Id.* at ¶¶ 2-8, 35. The litigation has been hard-fought as the Parties have engaged in motion practice and discovery, and extensive data and damage analysis. Accordingly, this factor also weighs in favor of final approval.

In sum, Plaintiffs' recovery noted above for the Settlement Class is a very good result given the litigation's complexity and the significant barriers that would loom absent settlement, including motions for class certification and summary judgment, trial, and appeals. "The settlement agreement assures immediate payment of substantial amounts to class members, even if it means sacrificing speculative payment of hypothetically larger amount[s] years down the road" *Cruz*, 2019 U.S. Dist. LEXIS 13529, at *16.

f. The Effectiveness of Distributing Relief, the Release and Equitable Treatment of Class Members Favor Approval

Consideration under the Rule 23(e)(2) factor, which asks whether Class members are treated equally relative to each other, also favors approval. Consideration here "could include whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." Fed. R. Civ. P. 23 advisory committee's note to 2018 amendment. Because the Settlement distributes proceeds on a pro rata basis, there is no doubt Settlement Class Members will be treated equitably. *Baudin*, 2020 U.S. Dist. LEXIS 146280, at *26 ("[F]inding that the requirement that class members be treated equitably relative to each other is satisfied where each class member was to receive a "pro rata share" of the settlement fund").

Further, the release's scope applies uniformly to Settlement Class Members and does not affect apportionment of the relief to Settlement Class Members. *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. at 47. The Parties explicitly agree that the Class Release from the Settlement Class Members (other than Plaintiffs) is not a general release of claims

against MHVCU. Rather, it is tailored to the Released Claims as defined in the Agreement. *Id.* Accordingly, this Court should find this factor weighs in favor of Final Approval.

g. The Terms of Any Proposed Award of Attorneys' Fees Favor Approval

Class Counsel has not been paid for their extensive efforts or reimbursed for litigation costs incurred. Under the Agreement, Class Counsel are entitled to request, and MHVCU does not oppose, attorneys' fees of up to 33.33% of the value of the Settlement, as well as reimbursement of litigation costs incurred in connection with the Action. Agreement at ¶ 72(a). The Parties negotiated and reached agreement regarding fees and costs only after agreeing on all material terms of the Settlement. Joint Decl. ¶ 37. Upon consideration of the detailed analysis of Class Counsel's application *infra*, this Court should find that this factor weighs in favor of Final Approval.

C. Notice to the Settlement Class Was Adequate and Satisfied Rule 23 and Due Process

In addition to having personal jurisdiction over Plaintiffs, the Court also has personal jurisdiction over all members of the Settlement Class because they received the requisite notice and due process. *Wal-Mart Stores, Inc.*, 396 F.3d at 114 (adequate notice must be fairly understood by the average class member, fairly apprise prospective class members of the proposed settlement terms and the options open to them and will satisfy due process when it informs class members of the allocation of attorney's fees and provide the final approval hearing date, time, and place); *Dornberger v. Metro. Life Ins. Co.*, 203 F.R.D. 118 (S.D.N.Y. 2001) ("Because adequate notice has been disseminated and all potential Class Members have been given the opportunity to opt out of this class action, the Court has personal jurisdiction over all Class Members.").

The Notice Program was designed to provide the best notice practicable and was tailored to take advantage of the information MHVCU has available about the Settlement Class. Admin. Decl. ¶ 4. It was reasonably calculated under the circumstances to apprise Settlement Class

Members of: the material terms of the Settlement; the deadline for them to exclude themselves from the Settlement Class; the deadline to object to the Settlement; the Final Approval Hearing date; and the Settlement Website address to access the Agreement and other related documents and information. Admin. Decl. ¶¶ 4-22. The Notice and Notice Program constituted sufficient notice to all persons entitled to notice. *Id.* The Notice Program satisfied all applicable requirements of law, including Fed. R. Civ. P. 23 and constitutional due process.

The Notice Program is comprised of three parts: (1) direct Postcard Notice to all Settlement Class members who did not agree to receive notices from MHVCU by email, or for whom the Claims Administrator is unable to send Email Notice using the email address provided by MHVCU; (2) direct Email Notice to those Settlement Class members who agreed to receive account statements from MHVCU by email; and (3) a long form Notice containing more detail than the Postcard Notice and Email Notice posted on the Settlement Website and available by U.S. mail on request to the Claims Administrator. Agreement at ¶ 4 and at Exs. 1-2 thereto.

Prior to distributing notice to the Class members, the Claims Administrator established a website, www.EdwardsOverdraftSettlement.com, as well as a toll-free line that Class Members could access or call for any questions or additional information about the proposed Settlement. Declaration of Claims Administrator Regarding Notice and Settlement Administration filed contemporaneously herewith (“Admin Decl.”) at ¶¶ 19-22.

Once Class Members were identified via MHVCU’s business records, the notices attached to the Settlement Agreement were delivered to each Settlement Class Member. For current MHVCU accountholders for whom an email address was included in the Class Data and for whom the Defendant’s data indicated were eligible to receive the Email Notice, notice was delivered via email. Admin Decl., ¶ 8. To former MHVCU accountholders, and to all current accountholders

who have not elected to receive communications by email or for whom MHVCU does not have a valid email address, notice was delivered by U.S. Mail postcard. *Id.* ¶ 13.

On June 2, 2023, the Claims Administrator mailed the Court-approved notice of the Settlement to the 7,121 Settlement Class Members who elected to receive notice from MHVCU by mail, at their last known mailing addresses after updating through the National Change of Address database. *Id.* ¶ 15. For returned notices, the Claims Administrator performed skip trace searches to attempt to locate an updated address and remail the notice. *Id.* ¶ 17. In total, mailed Notice was delivered, without return, to 6,180 unique Class members. *Id.* ¶¶ 15-17.

On June 2, 2023, the Claims Administrator emailed the Court-approved notice of the Settlement to 10,860 Class Members who have opted to receive communications from MHVCU electronically. *Id.* ¶ 10. In total, emailed Notice was delivered, without return, to 10,286 unique Settlement Class Members. *Id.* ¶¶ 10-12.

In response to the notice, to date no Settlement Class Member objected to the Settlement. Admin. Decl. ¶ 24. No Settlement Class Members have so far elected to opt-out of the Settlement. *Id.* ¶ 23.

The Claims Administrator also established and maintains an automated toll-free telephone line to call with Settlement-related inquiries and to receive automated responses, and to accept requests for Long Form Notices. Admin. Decl. ¶ 21. As of July 20, 2023, a total of 105 calls have been made to the toll-free hotline for a total of 288 minutes. Admin. Decl. ¶ 22. Additionally, 647 unique visitors accessed the Settlement Website, viewing 948 pages. Admin. Decl. ¶ 20.

D. Certification of the Settlement Class Is Appropriate.

In its Preliminary Approval Order, the Court conditionally certified the Settlement Class for Settlement purposes. (ECF No. 27). Now, for Settlement purposes, Plaintiffs respectfully request that the Court finally certify the Settlement Class. As was already explained in the Court's

Preliminary Approval Order, certification for settlement purposes is appropriate under Fed. R. Civ. P. 23(a) and (b)(3) because:

- (1) the number of Settlement Class members is so numerous that joinder is impracticable;
- (2) there are questions of law and fact common to the Settlement Class members;
- (3) the claims of the Class Representatives are typical of the claims of the Settlement Class members;
- (4) the Class Representatives are adequate representatives for the Settlement Class, and have retained experienced counsel to represent them;
- (5) the questions of law and fact common to the Settlement Class members predominate over any questions affecting any individual Settlement Class member; and
- (6) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.⁶

Nothing has changed with respect to these factors. Joint Decl. ¶¶ 38-45. For these reasons, the Court should certify the Settlement Class.

E. Notice Pursuant to the Class Action Fairness Act (CAFA)

CAFA requires a settling defendant to give notice of a proposed class settlement to appropriate state and federal officials. 28 U.S.C. § 1715(b). The CAFA Notice of Proposed Settlement must supply the information and documents set forth in 28 U.S.C. § 1715(b)(1)-(8). The Claims Administrator served the CAFA Notice, along with a CD containing the documents described in Section 1715(b). *See* Admin. Decl. ¶ 25. The CAFA notice protects class members from a settlement that may be deemed unfair or inconsistent with regulatory policies and from

⁶ “Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.” *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

class action abuse. No regulatory authorities have objected to date.

F. Application for Attorneys' Fees and Costs

In this common fund Settlement, the Notices to Settlement Class Members provided that Class Counsel would request an attorneys' fee of 33.33% of the value of the Settlement. As of filing this Motion, there are zero objections to that fee amount, which again was prominently stated in each of the class notices. However, via this Motion, Class Counsel are only seeking 33.33% of the cash Settlement Fund plus the amount of forgiven Class Fees, or \$754,851. That amount is far less than 33% of the overall Settlement value, which also includes meaningful injunctive relief estimated to save MHVCU accountholders at least \$3 million over the next five years alone. Joint Decl. ¶ 31. Class Counsel's application is subject to this Court's approval to compensate them for their time, risk, and expenses incurred pursuing claims for the Settlement Class. While discretionary, to the extent that the Court wishes to perform a lodestar cross-check, it should be noted that there is a reasonable 2.3 lodestar multiplier as a result of the hard work Class Counsel performed. Joint Decl. ¶ 62. Separately, Class Counsel also seeks reimbursement of litigation costs in the amount of \$11,868.56. Joint Decl. ¶ 63. For the reasons stated below, Class Counsel's application should be approved.

1. The Standard for Awarding Attorneys' Fees to Class Counsel

"[A]...lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The Second Circuit recognizes that a lawyer whose efforts create a common fund should recover a reasonable fee. *Central States Southeast & Southwest Areas v. Merck-Medco Managed Care, LLC*, 504 F.3d 229 (2d Cir. 2007).

In common fund settlements, courts in this Circuit typically look at the percentage-of-the-fund method, with an optional lodestar crosscheck. *Goldberger v. Integrated Resources, Inc.*, 209

F.3d 43, 50 (2d Cir. 2000). The “‘percentage of the fund’ method, [] is the trend in this Circuit.” *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 348 (S.D.N.Y. 2014) (citing *Wal-Mart Stores*, 396 F.3d at 121). Class Counsel is entitled to “a reasonable fee – set by the court – to be taken from the fund.” *Goldberger*, 209 F.3d 50; *see also* Fed. R. Civ. P. 23(h). *See also Fresno Cty. Emps.’s Ret. Ass’n v. Isaacson/Weaver Family Tr.*, 925 F.3d 63, 68 (2d Cir. 2019) (“The common-fund doctrine is . . . rooted in the courts’ ‘historic power of equity to permit’ a person who secures a fund for the benefit of others to collect a fee directly from the fund.” (citation omitted)).

In addition to being far simpler, awarding a percentage of the fund is preferred and “‘directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.’” *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d at 348 (quoting *Wal-Mart Stores, Inc.*, 396 F.3d at 121). This method further incentivizes class counsel to obtain the largest possible recovery in the most efficient manner possible. *Id.* “The lodestar method, on the other hand, disincentivizes early settlements, tempts lawyers to run up their hours, and ‘compels district courts to engage in a gimlet-eyed review of line-item fee audits.’” *Raniere v. Citigroup Inc.*, 310 F.R.D. 211, 220 (S.D.N.Y. 2015) (citing *Wal-Mart Stores, Inc.*, 396 F.3d at 121). *See also Torres v. Gristede’s Operating Corp.*, 519 F. App’x 1, 3 (2d Cir. 2013) (trial courts evaluating fee requests “need not, and indeed should not, become green-eyeshade accountants”).

The percentage method is an appropriate method of fee recovery here because, among other things, it aligns Class Counsel’s interest in being paid a fair fee with the Settlement Class’s interests. It achieves the maximum recovery in the shortest amount of time required under the circumstances, is supported by public policy, has been recognized as appropriate by the Supreme

Court for cases of this nature, and represents the current trend in the Second Circuit.

The requested fee is well within the range of reason when considering the foregoing and when analyzing the following guidelines set forth by the Second Circuit in *Goldberger*: (1) the time and labor expended by counsel, (2) the magnitude of the litigation, (3) the risk of the litigation, (4) the quality of the representation, (5) the requested fee in relation to the settlement, and (6) public policy considerations. *Goldberger*, 209 F.3d at 50.⁷ Joint Decl. ¶ 64.

a. *Goldberger* Factors

(1) The Magnitude and Complexities of Litigation

The magnitude and complexity of the litigation weighs in favor of approval. *Raniere*, 310 F.R.D. at 221. This Action is complex presenting novel factual and legal issues, which have yet to be tried in this Court or others. *Id.*; *see also* Joint Decl. ¶ 46. Legally, the case involved complex issues which required guidance from the Second Circuit in a similar case, *Roberts v. Capital One, N.A.*, 719 F. App'x 33 (2d Cir. 2017). Factually, the case was difficult as it involved the detailed review of back-end transactional data from MHVCU, as well as review of several different versions of binding account contracts during the relevant limitations period. The fundamental contract construction issue remained unresolved when the Parties agreed to settle. That issue,

⁷ *See, e.g., Capsolas v. Pasta Res. Inc.*, 2012 WL 4760910, at *8 (S.D.N.Y. Oct. 5, 2012) (“Class counsel’s request for one third of the Fund is reasonable and consistent with the norms of class litigation in this circuit”); *Mohney v. Shelly’s Prime Steak, Stone Crab & Oyster Bar*, 2009 WL 5851465, at *5 (S.D.N.Y. Mar. 31, 2009) (noting “request for 33% of the Settlement Fund is typical”); *Gilliam v. Addicts Rehab. Ctr. Fund*, 2008 WL 782596, at *5 (S.D.N.Y. Mar. 24, 2008) (same); *In re Med. X-Ray Film Antitrust Litig.*, No. CV-93-5904, 1998 WL 661515, *7 (E.D.N.Y. Aug. 7, 1998) (same); *Klein v. PDG Remediation, Inc.*, No. 95-cv-4954- DAB, 1999 WL 38179, at *4 (S.D.N.Y. Jan. 28, 1999) (same). The one-third award is common in the Second Circuit in much larger cases as well. *See, e.g., Landmen Partners, Inc. v. Blackstone Grp., L.P.*, No. 08-cv-03601-HB-FM, 2013 WL 11330936, at *3 (S.D.N.Y. Dec. 18, 2013) (awarding 33.33% of \$85 million recovery, plus expenses); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467 (S.D.N.Y. 2009) (awarding 33.33% of \$586 million).

along with other merits issues and the yet to be filed and decided motion for class certification, would have been litigated aggressively. *Id.* If MHVCU was successful in opposing class certification or at trial, or had prevailed on a motion for summary judgment, that would have prevented recovering anything at all. *Id.* ¶ 33.

(2) Risks of Litigation

The Second Circuit has historically labeled the risk of success as “perhaps the foremost factor to be considered in determining whether to award an enhancement.” *Goldberger*, 209 F.3d at 54. Courts recognize that regardless of the perceived strength of a plaintiff’s case, liability is no sure thing. *Wal-Mart Stores, Inc.*, 396 F.3d at 118.

Plaintiffs’ Counsel took on considerable risk in filing and prosecuting this case. Nevertheless, Class Counsel proceeded with the litigation. Still, the risk remains that without settlement the trier of fact would determine that MHVCU was permitted to assess the challenged bank fees. *Id.* Thus, Class Counsel certainly invested extensive time and costs with no guarantee of success.

(3) Quality of Representation

Class Counsel are experienced in class action litigation, serving as Lead or Co-Lead Counsel in dozens of consumer class actions in federal and state courts throughout the country. Joint Decl. ¶¶ 2-8. Counsel used their experience to obtain a great result for the Settlement Class. “[T]he quality of representation is best measured by results, and such results may be calculated by comparing ‘the extent of possible recovery with the amount of actual verdict or settlement.’” *Goldberger*, 209 F.3d at 55 (citation omitted). Here the Settlement Fund, representing an approximate 50% recovery of the most probable damages, is an excellent result—and that does not even include the additional \$164,780 in waived Uncollected Fees still owed by Settlement

Class Members, nor the cessation of the challenged practices by Defendant, which will save MHVCU accountholders at least \$3 million over the next five years alone. Thus, the Court should easily find counsel achieved success. Joint Decl. ¶¶ 30-31.

(4) Requested Fee in Relation to the Settlement

The \$754,851 requested fee—which is, again, 33.33% of the cash Settlement Fund plus the amount of forgiven Class Fees—is reasonable in light of the work performed, the results obtained, and falls within the range of common fund awards in the Second Circuit. In considering the results, courts examine the value of both monetary and injunctive relief. *See Story v. SEFCU*, No. 1:18-CV-764 (MAD/DJS), 2021 U.S. Dist. LEXIS 34909, at *25 (N.D.N.Y. Feb. 25, 2021) (holding that the overall value of the settlement, from which attorneys’ fees are calculated, comprises monetary as well as non-monetary relief.); *Baudin v. Res. Mktg. Corp., LLC*, No. 1:19-cv-386 (MAD/CFH), 2020 U.S. Dist. LEXIS 146280, at *7 (N.D.N.Y. Aug. 13, 2020) (awarding class counsels a 33% of the Settlement Fund). The results achieved here, including recovery of approximately 50% of the disputed amounts plus other valuable relief demonstrates the excellent results achieved through the Settlement.

The fee request here is consistent with this Court’s order granting a 33% fee in *Kelly v. Community Bank, supra*, a case in which Plaintiffs recovered approximately 39% of damages, compared with the 50% of damages achieved here.

Moreover, the attorneys’ fee requested is on par with what would be requested in individual contingent fee litigation, which generally starts at 33.33% of any recovery and frequently goes up to 40% or more. Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 830 (2010) (the attorneys’ fees generally awarded to class action lawyers are lower than what “contingency-fee lawyers receive in individual litigation,

which are usually at least 33 percent.”); *see also* Joint Decl. ¶ 64.

As discussed above, courts in this circuit have found an award of 33.33% of a class settlement as the benchmark to be fair, reasonable, and within the range of what is normally awarded for a class settlement. *See Guevoura Fund Ltd.*, 2019 U.S. Dist. LEXIS 218116, at *46 (compiling cases awarding 33% for settlements between \$6,750,000 and \$21,000,000, and noting reasonable paying clients typically pay one-third pursuant to contingent fee agreements). *See also Mohney v. Shelly’s Prime Steak, Stone Crab & Oyster Bar*, 2009 U.S. Dist. LEXIS 27899, at *16 (S.D.N.Y. Mar. 31, 2009) (“Class Counsel’s request for 33% of the Settlement Fund is typical in class action settlements in the Second Circuit.”). Here, the requested fee, 33.33% of the value of the Settlement, is clearly within the range of acceptable attorneys’ fees in Second Circuit cases and is common in overdraft fee litigation. Courts regularly award fees in excess of 30% when awarding attorneys’ fees in similar financial services class action settlements. The following depicts these settlements nationwide, all of which resulted in fee awards at or above the 33.33% that Class Counsel requests here:

| <u>Bank Fee Case Name</u> | <u>Percentage of the Fund Awarded</u> |
|--|---|
| <i>Lopez v. JPMorgan Chase Bank, N.A.</i> , No. 1:09-MD-02036-JLK (S.D. Fla.) | 44% of value of settlement, which includes 30% of \$110 million cash fund and 30% of value of practice changes |
| <i>Jacobs v. Huntington Bancshares Inc.</i> No. 11-cv-000090 (Lake County Ohio) | 40% of value of settlement, which includes 40% of \$8.975 million and 40% of \$7 Million in debt forgiveness |
| <i>Farrell v. Bank of Am., N.A.</i> , 327 F.R.D. 422 (S.D. Cal. 2018), <i>aff’d sub nom. Farrell v. Bank of Am. Corp., N.A.</i> , 827 F. App’x 628 (9th Cir. 2020) | 40% of 37.5 million common fund |
| <i>Wolfgeher v. Commerce Bank, N.A.</i> , No. 1:09-MD-02036-JLK (S.D. Fla.) (Dkt. 3574) | 38% of \$18.3 million common fund |
| <i>Nelson v. Rabobank, N.A.</i> , No. RIC 1101391 (Cal. Supr.) | 35.2% (\$750k fee includes % of practice changes) |

| | |
|--|--------------------------------|
| <i>In re Checking Account Overdraft Litig.</i> , No. 1:09-MD-02036-JLK, 2020 U.S. Dist. LEXIS 142012 (S.D. Fla. Aug. 10, 2020) | 35% of \$7.5 million |
| <i>Molina v. Intrust Bank, N.A.</i> , No. 10-CV-3686 (Dist. Ct. Ks.) | 33% of \$2.7 million |
| <i>Hawkins et al v. First Tenn. Bank, N.A.</i> (Cir. Ct. Tenn.) | 35% of \$16.75 million |
| <i>Swift v BancorpSouth</i> , No. 1:10-cv-00090-GRJ (N.D. Fla.) | 35% of \$24 million |
| <i>Casto v. City National Bank, N.A.</i> , No. 10-C-1089 (Cir. Ct. W.Va.) | 33.33% of \$3 million |
| <i>Schulte v. Fifth Third Bank</i> , No. 09-cv-6655 (N.D. Ill.) | 33.33% of \$9.5 million |
| <i>Johnson v. MHVFCU, N.A.</i> , No. 12-cv-01405-RDM (M.D. Pa.) | 33.33% of \$2.5 million |
| <i>Bodnar v. Bank of America</i> , No. 5:14-cv-03224-EGS (E.D. Pa.) | 33.33% of \$27 million |
| <i>Holt v. Community America Credit Union</i> , No. 4:19-CV-00629-FJG (W.D. Mo.) | 33.33% of 3.078 million |
| <i>White v. Members 1st Federal Credit Union</i> , No. 1:19-cv-00556-JEJ (W.D. Pa.) | 33.33% of \$910,000 |
| <i>Figueroa v. Capital One</i> , No. 3:18-cv-00692-JM-BGS (S.D. Cal.) | 33.33% of \$13 million |
| <i>Liggio v. Apple Federal Credit Union</i> , No. 1:18-cv-01059-LO-MSN (E.D. Va.) | 33.33% of \$2.7 million |
| <i>Lambert v. Navy Fed. Credit Union</i> , No. 1:19-cv-103-LO-MSN, 2019 U.S. Dist. LEXIS 138592, at *3 (E.D. Va.) | 33.33% of \$16 million |

As the requested fee is clearly in line with other similar overdraft litigation around the nation that settled for a similar amount, the fee requested is reasonable.

(5) Public Policy Considerations

Where relatively small claims can only be prosecuted through aggregate litigation, “private attorneys general” play an important role. *Deposit Guar. Nat’l Bank v. Roper*, 445 U.S. 326, 338-39 (1980). Attorneys who fill the private attorney general role must be adequately compensated for their efforts. *Id.* See also *Wal-Mart Stores*, 396 F.3d 96 (policy issue in evaluating a fee request is that fees “must . . . serve as an inducement for lawyers to make similar efforts in the future”).

Counsel's fees should reflect the important public policy goal of "providing lawyers with sufficient incentive to bring common fund cases that serve the public interest." *Goldberger*, 209 F.3d at 51. This and the other *Goldberger* factors support approval of the attorneys' fees requested by Class Counsel.

(6) The Time and Labor Expended by Counsel and Lodestar Cross-Check

"The last *Goldberger* factor to consider is the time and labor expended by counsel, which is essentially what the lodestar method does by assessing the value of attorney hours worked times a reasonable billing rate." *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d at 353. Under the lodestar method, the court "scrutinizes the fee petition to ascertain the number of hours reasonably billed to the class and then multiplies that figure by an appropriate hourly rate" to calculate the "lodestar." *Goldberger*, 209 F.3d at 47. "Of course, where used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court." *Goldberger*, 209 F.3d at 50. In considering the lodestar in common fund settlements, it is appropriate to enhance the lodestar by a multiplier accounting for "(1) the contingent nature of the expected compensation for services rendered; (2) the consequent risk of non-payment viewed as of the time of filing the suit; (3) the quality of representation; and (4) the results achieved." *Goodwin v. Boesky (In re Ivan F. Boesky Sec. Litig.)*, 888 F. Supp. 551, 562 (S.D.N.Y. 1995).

There was no unnecessary amount of time, labor, and resources expended by the Parties. As is detailed above, this Action was hotly contested and litigated efficiently and intelligently, including hotly contested discovery, complaint amendment, a mediation, negotiating and documenting the Settlement, and the Settlement approval process. Joint Decl. ¶¶ 9-17.

To date, Class Counsel have expended a total of 546.60 hours in the prosecution of this case, *id.* ¶ 52-57, including anticipated time preparing for the Final Approval Hearing, filing of

supplemental declarations, responding to objections, if any, and preparing for and attending the Final Approval Hearing. Further, there will be significant post-Final Approval work ensuring that the Settlement proceeds are properly distributed to Settlement Class Members, responding to Settlement Class Members' inquiries, and effectuating a secondary or *cy pres* distribution, as needed. *Id.* ¶ 65.

Summaries of the time expended by all counsel and paralegals on the Action appear in Class Counsel's Joint Declaration in support of this Motion, organized by work performed in the various stages of the Action. Hourly rates of attorneys and paralegals are commensurate with the rates charged by class action practitioners in this state with similar experience. *Id.* ¶ 52-57. *See, e.g., United States ex rel. Fox Rx, Inc. v. Omnicare, Inc.*, No. 12cv275 (DLC), 2015 U.S. Dist. LEXIS 49477, at *5 (S.D.N.Y. Apr. 15, 2015) (approving as reasonable in this district \$836/hour for a litigation partner; \$631.75/hour for an eighth-year associate; and \$541.50/hour for a fourth-year associate); *In re Platinum & Palladium Commodities Litig.*, No. 10cv3617, 2015 U.S. Dist. LEXIS 98691, at *13 (S.D.N.Y. July 7, 2015) (approving rates up to \$950/hour and citing National Law Journal survey indicating that the average partner billing rate at the largest New York-based law firms is \$982 per hour); *City of Providence v. Aéropostale, Inc.*, 2014 U.S. Dist. LEXIS 64517, at *38 (S.D.N.Y. May 9, 2014), *aff'd sub nom. Arbuthnot v. Pierson*, 607 F. App'x 73, 73 (2d Cir. 2015) (approving rates ranging from \$640 to \$875 for partners, \$550 to \$725 for of counsels, and \$335 to \$665 for other attorneys).⁸

Finally, although not required to be performed by this Court, as Plaintiff is applying pursuant to the percentage-of-benefit for attorneys' fees, a lodestar analysis also supports the

⁸ Timesheets which support the hours set forth in Class Counsel's Joint Declaration can also be brought to the hearing, if the court so requests.

requested fee. The Court need not exhaustively scrutinize the hours documented. *Goldberger*, 209 F.3d at 50. Fees representing multiples of lodestar are regularly awarded in a case like this to reflect the contingency-fee risk and other relevant factors. *See, e.g., In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) (“‘Under the lodestar method, a positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors.’”).

Here, the aggregate lodestar is \$328,460. Class Counsel seek fees of \$754,851. Class Counsel seek a lodestar multiplier of 2.3, which is well within the range of what courts in this circuit typically award. *Hanifin*, 2014 U.S. Dist. LEXIS 115710 at *19 (“Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers.”); *see also* Wal-Mart, 396 F.3d at 123 (upholding multiplier of 3.5); *NECA-IBEW Health & Welfare Fund v. Goldman, Sachs & Co.*, No. 1:08-cv-10783-LAP, 2016 WL 3369534, at *1 (S.D.N.Y. May 2, 2016) (3.9 multiplier on \$272 million settlement); *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 185 (W.D.N.Y. 2011) (multiplier of 5.3 was “not atypical” in similar cases); *Woburn Ret. Sys. v. Salix Pharm., Ltd.*, No. 14-CV-8925 (KMW), 2017 WL 3579892, at *6 (S.D.N.Y. Aug. 18, 2017) (3.14 multiplier was “within the range of reasonable . . . multipliers approved in this Circuit”); *Cornwell v. Credit Suisse Grp.*, No. 08-cv-03758 (VM), 2011 WL 13263367, at *2 (S.D.N.Y. July 20, 2011) (4.7 multiplier); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 590 (S.D.N.Y. 2008) (“In contingent litigation, lodestar multiples of over 4 are routinely awarded by courts, including this Court.”); *Johnson v. Brennan*, No. 10-cv- 4712, 2011 U.S. Dist. LEXIS 105775, at *58 (S.D.N.Y. Sep. 16, 2011) (“Courts regularly award lodestar multipliers from two to six times lodestar.”).

As detailed above, Class Counsel assumed significant risks in representing Plaintiffs on a contingent fee basis. Those risks should be rewarded. Given that this Court applies the percentage of the fund method with a lodestar crosscheck, the 2.3 multiplier is reasonable. *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d at 353 (finding that a multiplier of five “was large, but not unreasonable”); *James v. China Grill Mgmt.*, 2019 U.S. Dist. LEXIS 72759, at *8 (S.D.N.Y. Apr. 30, 2019) (approving “a fee award equivalent to 30% of the settlement fund [that] represents a lodestar multiplier of approximately 3.53.”). Class Counsel expended resources to achieve a prompt fair, adequate and reasonable settlement.

For the reasons set forth above, the requested fee is appropriate, fair, and reasonable, and should therefore be approved.

G. Application for Service Award

As noted above, a \$5,000.00 Service Award is sought for each of the Plaintiffs as Class Representatives. “Courts regularly grant requests for service awards in class actions ‘to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiffs.’” *Story v. SEFCU*, No. 1:18-CV-764 (MAD/DJS), 2021 U.S. Dist. LEXIS 34909, at *28-29 (N.D.N.Y. Feb. 25, 2021). Plaintiffs invested significant time in this case and risked their reputations in doing so, by publicly disclosing their personal financial difficulties, creating notoriety regardless of their success on the claims. Had they failed, they created risk to their reputations. They should be commended for taking action to protect the interests of tens of thousands of MHVCU accountholders who were affected by MHVCU’s practices, on top of their individual claims. It is undisputed that the Plaintiffs’ efforts have created extraordinary financial benefits for the Class, compensating them for past harm and protecting them from future harm.

Their efforts will also inure to the benefit of new accountholders, who will better be able to understand how MHVCU assesses fees. Plaintiffs expended hours in advancing this litigation against a large and powerful adversary. Each conferred with Class Counsel on a number of occasions. Joint Decl. ¶ 20. Specifically, Plaintiffs provided assistance that enabled Class Counsel to successfully prosecute the Action and reach the Settlement, including: (1) submitting to interviews with Class Counsel; (2) locating and forwarding responsive documents and information; (3) providing discovery documents; and (4) participating in conferences with Class Counsel. *Id.*

The award sought is well within the range awarded in this District and should be awarded here.

H. Reimbursement of Costs

“It is well established that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class.” *Guevoura Fund Ltd.*, 2019 U.S. Dist. LEXIS 218116, at *67 (citation omitted). Second Circuit courts grant such requests as a matter of course. *Id.* Class Counsel requests reimbursement of \$11,868.56 for actual costs advanced and necessarily incurred in connection with the prosecution and settlement of the Action. Joint Decl. ¶ 55, 60, 63. Specifically, those costs and expenses consist of filing fees and service of process costs, pro hac vice admission fees, expert witness fees, litigation support vendors and, most substantially, the services of a well-qualified mediator. *Id.* Class Counsel is not seeking costs related to legal research, copying, and other overhead expenses, which were advanced and are commonly reimbursed. All of these out of these pockets were reasonably and necessarily incurred to pursue this Action. *Id.*

IV. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court: (1) grant Final Approval to the Settlement; (2) certify for settlement purposes the proposed Settlement Class, pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3); (3) appoint Plaintiffs as Class Representatives; (4) appoint as Class Counsel the attorneys previously appointed in the Preliminary Approval Order; (5) award Class Representative Service Awards in the amount of **\$5,000.00** each; (6) award attorneys' fees to Class Counsel in an amount of **\$754,851** which is 33.33% of the Settlement value; (7) award Class Counsel reimbursement of litigation costs and expenses in the amount of **\$11,868.56**; and (8) enter final judgment dismissing this Action, and reserving jurisdiction over settlement implementation. For the Court's convenience, a proposed Final Approval Order is also filed currently herewith.

Dated: July 24, 2023

Respectfully submitted,

/s/ Jeffrey D. Kaliel

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Attorneys for Plaintiffs and the Putative Class

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 24, 2023, the foregoing was filed via CM/ECF, which caused a true and correct copy to be served to all counsel of record.

Respectfully submitted,

/s/ Jeffrey D. Kaliel
Jeffrey D. Kaliel

EXHIBIT A

PREAMBLE

This Settlement Agreement and Release (the “Agreement”) is entered into by and among plaintiffs Reginald Edwards and Ashley Facciola (“Named Plaintiffs”) and all those on whose behalf they are prosecuting this action (each of them a “Plaintiff” and all of them “Plaintiffs”), on the one hand, and defendant Mid-Hudson Valley Federal Credit Union (“Defendant”), on the other hand, as of the date executed below. All references in this Agreement to a “party” or the “parties” shall refer to a party or the parties to this Agreement.

RECITALS

On March 29, 2021, plaintiff Ashley Facciola filed a putative class action complaint entitled *Ashely Facciola v. Mid-Hudson Valley Federal Credit Union*, in the United States District Court for the Southern District of New York, Case No. 7:21-cv-02676, alleging claims for breach of contract with regard to Defendant’s practice of charging overdraft fees (“OD Fees”) on debit card transactions that allegedly did not overdraw an account at the time they were authorized (“APPSN transactions”). After defense counsel moved to dismiss Plaintiff Facciola’s complaint for lack of subject matter jurisdiction under CAFA, Plaintiff Facciola voluntarily dismissed her complaint without prejudice, then filed an identically-captioned complaint in the New York Supreme Court in Ulster County (the “Facciola Action”), Index. No. EF2021-1549.

A. On August 20, 2021, Defendant filed an answer to the Complaint in the Facciola Action.

B. On April 27, 2022, plaintiff Reginald Edwards filed a putative class action complaint entitled *Reginald Edwards v. Mid-Hudson Valley Federal Credit Union*, in the United States District Court for the Northern District of New York, Case No. 1:22-cv-00562, alleging claims for Breach of Contract and Violations of NY GBL § 349 with regard to Defendant’s allegedly routine practice assessing more than one insufficient funds fee (“NSF Fee”) on the same transaction (the “Edwards Action”).

C. On August 15, 2022, the Parties moved to stay the Edwards Action pending mediation. That motion was granted on August 19, 2022.

D. On August 19, 2022, the Parties moved to stay the Facciola Action pending mediation. That motion was granted on September 12, 2022.

E. On November 16, 2022, the parties participated in a mediation before the Honorable Diane Welsh (Ret.). The mediation resulted in a Mediator’s Proposal, which both parties accepted. The settlement described below is the result of the accepted Mediator’s Proposal.

F. On December 7, 2022 and pursuant to the Mediator’s Proposal, Named Plaintiffs filed a putative class action complaint entitled *Reginald Edwards and Ashley Facciola v. Mid-Hudson Valley Federal Credit Union*, in the United States District Court for the Northern District of New York, Case No. 1:22-cv-00562, that consolidated the Facciola Action and Edwards Action for purposes of effectuating a global class settlement in the United States District Court for the Northern District of New York, which is hereafter referred to as “the Facciola Action and Edwards Action” or “Consolidated Action.”

G. On December 9, 2022, the Parties moved to stay the Facciola Action pending final approval of a class settlement in the Consolidated Action. This motion was granted on January 25, 2023.

H. On December 23, 2022, the parties filed a Notice of Settlement in the Consolidated Action and requesting a stay of all deadlines in the Consolidated Action.

I. Defendant has entered into this Agreement to resolve any and all controversies and disputes arising out of or relating to the allegations made in the Facciola Action and Edwards Action, and to avoid the burden, risk, uncertainty, expense, and disruption to its business operations associated with further litigation. Defendant does not in any way acknowledge, admit to, or concede any of the allegations made in the Facciola Action and Edwards Action, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in Facciola Action and Edwards Action. Defendant nevertheless believes that this settlement is in its best interest and in the best interests of all of its members. Nothing contained in this Agreement shall be used or construed as an admission of liability and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement.

J. Plaintiffs have entered into this Agreement to liquidate and recover on the remaining claims asserted in the Facciola Action and Edwards Action, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiffs do not in any way concede the claims alleged in the Facciola Action and Edwards Action lack merit or are subject to any defenses.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into and are an integral part of this Agreement, and in consideration of the mutual promises below, the parties agree as follows:

1. DEFINITIONS. In addition to the definitions contained elsewhere in this Agreement, the following definitions shall apply:

(a) “Account Holder” means any person who has or had any interest, whether legal or equitable, in a checking account maintained by Defendant during the Class Period.

(b) “APPSN Fee” shall be an Overdraft Fee charged by Defendant during the Class Period on a debit card transaction when the checking account had a positive available balance at time it was authorized but an insufficient available balance at the time the transaction was presented to Defendant for payment and posted to a customer’s checking account and the charge was not refunded

(c) “APPSN Fee Class Member” shall mean any member of Defendant who had a checking account with Defendant and was assessed an APPSN Fee during the Class Period.

(d) “Bar Date To Object” will be the date set by the Court as the deadline for Class Members to file an Objection, and shall be approximately thirty (30) days after the date the Notice (defined below) must be delivered to the Class Members.

(e) “Bar Date To Opt Out” shall be the date set by the Court as the deadline for Class Members to opt out. The Bar Date shall be thirty (30) days after the date the Notice (defined below) must be delivered to the Class Members.

(f) “Class Period” shall mean the dates from June 9, 2015 to September 14, 2022, both dates inclusive.

(g) “Claims Administrator” shall mean the entity that will provide the notice and other administrative handling in this Settlement Agreement. Class Counsel shall request bids of at least two separate claims administrators and the one providing the lowest bid shall be selected.

(h) “Class Counsel” shall mean Joseph I. Marchese of Bursor & Fisher, P.A. and Jeffrey D. Kalief of Kalief Gold PLLC.

(i) “Court” shall mean the United States District Court for the Northern District of New York.

(j) “Defendant’s Counsel” shall mean Peter Siachos and Eric Evans of Gordon & Rees LLP.

(k) “Effective Date” shall be thirty (30) days after the entry of the Final Approval Order (defined below) provided no objections are made to this Agreement. If there are objections to the Agreement, then the Effective Date shall be the later of: (1) Ninety (90) days after entry of the Final Approval Order, if no appeals are taken from the Final Approval Order; or (2) if appeals are taken from the Final Approval Order, then thirty (30) days after an Appellate Court ruling affirming the Final Approval Order; or (3) Thirty (30) days after entry of a dismissal of the appeal.

(l) “Exclusion Letter” shall mean a letter by a Class Member who elects to opt out of this Agreement.

(m) “Final Approval Hearing Date” shall be the date set by the Court for the hearing on any and all motions for final approval of this Agreement.

(n) “Final Approval Order” shall mean the Order and Judgment approving this Agreement issued by the Court at or after the Final Approval Hearing Date.

(o) “Final Report” shall mean the report prepared by the Claims Administrator of all receipts and disbursements from the Settlement Fund, as described in Section 9, below.

(p) “Motion For Final Approval” shall mean the motion or motions filed by Class Counsel, as referenced in Section 5 below.

(q) “Net Settlement Fund” shall mean the net amount of the Settlement Fund,

as defined below, after payment of court approved attorneys' fees and costs, any court approved service award and the costs of Notice, and any fees paid to the Claims Administrator.

(r) "Notice" shall mean the notice to Class Members of the settlement provided for under the terms of this Agreement, as ordered by the Court in its Preliminary Approval/Notice Order (defined below), and shall refer to the form of Notice attached hereto as **Exhibit 1** and **Exhibit 2**.

(s) "NSF Fee" shall mean a fee assessed against a member's checking account when Defendant declines a payment or the cashing of a check that would bring the account to a negative balance.

(t) "Overdraft Fee" means any fee or fees assessed to an Account Holder for items paid when the checking account had insufficient funds.

(u) "Preliminary Approval/Notice Order" shall mean the Order issued by the Court preliminarily approving this Agreement and authorizing the sending of the Notice to Class Members, as provided in Sections 3 and 4 below.

(v) "Retry Fee" shall mean a non-sufficient fund or returned item fee that was assessed and paid during the Class Period for an ACH or check transaction that was re-submitted after being declined and was not refunded by Defendant.

(w) "Retry Fee Class Member" shall mean all current or former members of Defendant who had a checking account with Defendant and was assessed a Retry Fee during the Class Period.

(x) "Settlement Class Member" means any members of the APPSN Class Member and Retry Fee Class Member who has not opted-out of the Settlement and who is entitled to the benefits of the Settlement. "APPSN Class Settlement Member" and "Retry Fee Settlement Class Member" are the Settlement Class Members who may be entitled to cash distribution that will be made from the Net Settlement Fund, pursuant to the allocation terms of the Settlement.

(y) "Settlement Fund" shall mean the two million, one hundred thousand dollars and zero cents (\$2,100,000.00) to be paid by Defendant under the terms of this Agreement.

(z) "Uncollected Fees" shall mean any APPSN Fee or Retry Fee that were assessed but were not paid because they were charged-off, in the amount of \$164,780.00

(aa) "Value of the Settlement" shall mean the Settlement Fund plus the value of the Prospective relief described in Section 8 below, including the value of the Uncollected Fees as defined in Section 1(z).

2. CLASS ACTION SETTLEMENT. Plaintiffs shall propose and recommend to the Court that the two settlement classes defined above (be certified. Defendant agrees solely for purposes of the settlement provided for in this Agreement, and the implementation of such settlement, that this case shall proceed as a class action; provided, however, that if a Final Approval Order is not issued, then Defendant shall retain all rights to object to maintaining this case as a

class action. Plaintiffs and Class Counsel shall not reference this Agreement in support of any subsequent motion relating to certification of a liability class.

3. PRELIMINARY SETTLEMENT APPROVAL. Class Counsel shall use reasonable efforts promptly to file a motion seeking a Preliminary Approval/Notice Order by February 21, 2023. The Preliminary Approval/Notice Order shall provide for: preliminary approval of this Agreement, provisional certification of the classes for settlement purposes, appointment of Class Counsel as counsel to the provisionally certified class, and the requirement that the Notice be given to the Class Members as provided in Section 5, below (or as otherwise determined by the Court).

4. NOTICE TO THE CLASS.

(a) The Claims Administrator shall send the Notice to all Class Members as specified by the Court in the Preliminary Approval/Notice Order.

(b) For those Class Members who are current members of Defendant and have agreed to receive notices regarding their accounts from Defendant by email, Defendant shall provide the Claims Administrator with the most recent email addresses it has for the Class Members. The Claims Administrator shall email an Email Notice (see Exhibit 1) to each such Class Member's last known email address, in a manner that is calculated to avoid being caught and excluded by spam filters or other devices intended to block mass email. For any emails that are returned undeliverable, the Claims Administrator shall use the best available databases to obtain current email address information, update its database with these emails, and resend the Notice by email. The Email Notice shall inform Class Members how they may request a copy of the Long Form Notice (see Exhibits 1-2).

(c) For those Class Members who are not current members of Defendant or who have not agreed to receive notices regarding their accounts from Defendant by email, the Notice shall be mailed to these Class Members by first class United States mail to the best available mailing addresses. Defendant shall provide the Claims Administrator with last known mailing addresses for these Class Members. The Claims Administrator will run the names and addresses through the National Change of Address Registry and update as appropriate. If a mailed Notice is returned with forwarding address information, the Claims Administrator shall re-mail the Notice to the forwarding address. For all mailed Notices that are returned as undeliverable, the Claims Administrator shall use standard skip tracing devices to obtain forwarding address information and, if the skip tracing yields a different forwarding address, the Claims Administrator shall re-mail the Notice to the address identified in the skip trace, as soon as reasonably practicable after the receipt of the returned mail.

(d) The Notice shall also be posted on a settlement website created by the Claims Administrator.

(e) The Claims Administrator shall maintain a database showing mail and email addresses to which each Notice was sent and any Notices that were not delivered by mail and/or email. A summary report of the Notice shall be provided to the Parties at least five (5) days prior to the deadline to file the Motion for Final Approval. The database maintained by the Claims

Administrator regarding the Notice shall be available to the parties and the Court upon request. It shall otherwise be confidential and shall not be disclosed to any third party.

(f) The Notice and Email Notice shall be in a form approved by the Court and, substantially similar to the notice form attached hereto as Exhibit 1 and Exhibit 2. The parties may by mutual written consent make non-substantive changes to the Notice without Court approval.

(g) All costs associated with publishing, mailing and administering the Notice as provided for in this Section, and all costs of administration, including but not limited to the Claims Administrator's fees and costs shall be paid out of the Settlement Fund.

5. MOTION FOR FINAL APPROVAL. Within a reasonable time after the Bar Date to Opt Out, and provided the conditions in Section 15, below, are satisfied, Class Counsel shall file a Motion for Final Approval of this Agreement so that same can be heard on the Final Approval Hearing Date.

6. ENTRY OF JUDGMENT. The Final Approval Order shall constitute the Court's final judgment in this action. The Court shall retain jurisdiction to enforce the terms of the Final Approval Order.

7. THE SETTLEMENT FUND AND DISTRIBUTION.

(a) Payments to Class Members. Within ten (10) days after the entry of the Final Approval Order, Defendant shall transfer the Settlement Fund to the Claims Administrator, less the total amount that will be credited to Class Members by Defendant, as provided in subsection 7(d)(iv)b(1), below. The Settlement Fund shall be the total amount Defendant is obligated to pay under the terms of this Agreement and includes (a) Class Counsels' fees and costs; (b) any service award payment to the Named Plaintiffs; (c) costs associated with administering the Notice in accordance with Section 5, above; and (d) any fees paid to the Claims Administrator for services rendered in connection with the administration process. Defendant shall not make any additional or further contributions to the Settlement Fund, even if the total amount of all alleged improper fees charged to the Class Members exceeds the value of the Net Settlement Fund. In the event a Final Approval Order is not issued, or this Agreement is terminated by either party for any reason, including pursuant to Section 15, below, the portion of the Settlement Fund paid to the Claims Administrator (including accrued interest, if any) less expenses actually incurred by the Claims Administrator or due and owing to the Claims Administrator in connection with the settlement provided for herein, shall be refunded to Defendant within two (2) business days after the Final Approval Order is denied and this Agreement is terminated.

(b) All funds held by the Claims Administrator shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until distributed pursuant to this Agreement.

(c) All funds held by the Claims Administrator at any time shall be deemed to be a Qualified Settlement Fund as described in Treasury Regulation §1.468B-1, 26 C.F.R. §1.468B-1.

(d) Payments shall be made from the Settlement Fund as follows:

(i) Plaintiffs' Fees and Costs. Plaintiffs' reasonable attorneys' fees and costs, as determined and approved by the Court, shall be paid from the Settlement Fund within ten (10) business days after entry of the Final Approval Order, n. Class Counsel shall apply for an award of attorneys' fees of up to one-third (33-1/3%) of the Value of the Settlement to the Class Members plus reimbursement of reasonable litigation costs, to be approved by the court. Defendant agrees not to oppose an application up to one-third (33-1/3%) of the Value of the Settlement but reserves the right to oppose an application for fees in excess of that amount. Should the judgment approving the settlement be reversed on appeal, Class Counsel shall immediately repay all fees and costs to Defendant; should the award of fees and costs be reduced on appeal, Class Counsel shall immediately repay into the Settlement Fund an amount equal to the reduction ordered by the appellate court.

(ii) Service Award. Named Plaintiffs may apply to the Court for a service award of up to \$5,000.00 each. Subject to the Court's approval, the service award shall be paid from the Settlement Fund ten (10) days after the Effective Date.

(iii) Claims Administrator's Fees. The Claims Administrator's fees and costs, including estimated fees and costs to fully implement the terms of this Agreement, as approved by the Court, shall be paid within ten (10) days after the Effective Date.

(iv) Payments to Settlement Class Members. The amount paid to each Settlement Class Member shall be calculated as follows:

a. The Net Settlement Fund shall be allocated to members of the Settlement Classes on a *pro rata* basis, as follows: (1) 80% of the Net Settlement Fund shall be allocated to the APPSN Fee Settlement Class; and (2) 20% of the Net Settlement Fund shall be allocated to Retry Fee Settlement Class.

b. Payments to those members of the Classes ("Individual Payments") shall be made no later than ten (10) days after the Effective Date, as follows:

(1) For those Class Members who are members of Defendant at the time of the distribution of the Net Settlement Fund, their individual checking or savings accounts shall be credited in the amount of the Individual Payment they are entitled to receive.

(2) For those Class Members who are not members of Defendant at the time of the distribution of the Net Settlement Fund, they shall be sent a check by the Claims Administrator at the address used to provide the Notice, or at such other address as designated by the Class Member. The Class Member shall have one-hundred eighty (180) days to negotiate the check. Any checks uncashed after one-hundred eighty (180) days shall be distributed to Class Members on a pro-rata basis if practical. Otherwise, any residual shall be distributed pursuant to Section 11.

(3) Settlement Class Members of the APPSN Fee Class shall be paid per incurred APPSN Fee calculated as follows: $(0.8 \text{ of the Net Settlement Fund} / \text{Total APPSN Fees}) \times \text{Total number of APPSN Fees charged to and paid by each APPSN Fee Class member}$;

Settlement Class Members of the Retry NSF Fee Class shall be paid per Retry NSF Fee calculated as follows: $(0.2 \text{ of the Net Settlement Fund} / \text{Total Retry NSF Fees}) \times \text{Total number of Retry NSF Fees charged to and paid by each Retry NSF Fee Class member}$;

c. In no event shall any portion of the Settlement Fund revert to Defendant.

8. PROSPECTIVE RELIEF

(a) **Forgiveness of Uncollected Fees.** Upon the occurrence of the Effective Date, Defendant shall forgive the Uncollected Fees as defined in Section 1(z) which are the Uncollected Fees portion of any amounts owing to Defendant by Class Members to the extent, if any, Defendant is attempting to collect thereon. If any Uncollected Fees are inadvertently collected, then they shall be refunded by Defendant insofar as Defendant is aware of the Uncollected Fees. If a member of Defendant with Uncollected Fees attempts to open a new account or re-open a closed account, Defendant shall not require payment of the Uncollected Fees as a condition to account opening insofar as Defendant is aware of the outstanding Uncollected Fees.

(b) **Cessation of Challenged Practices.** Within a commercially reasonable amount of time not to exceed 2 years following the occurrence of the Effective Date, Defendant shall cease changing APPSN Fees entirely. Within the same commercially reasonable amount of time not to exceed 2 years following the occurrence of the Effective Date, Defendant shall make a good faith effort to attempt to cease charging Retry Fees. If Defendant is unable to cease charging Retry Fees, Defendant will provide updated disclosures that properly explain how Retry Fees are assessed to Defendant's account holders.

9. FINAL REPORT TO THE COURT. Within two hundred (200) days after the Effective Date, Class Counsel shall submit to the Court a Final Report, setting forth: (a) the amounts paid to Class Members by the Claims Administrator, (b) Any checks not cashed or returned; (c) the efforts undertaken to follow up on uncashed and/or returned checks; (d) the total amount of money unpaid to Class Members; and (e) the total amount of credits issued to Class Members by Defendant pursuant to Paragraph 7(iv)(b)(1). Defendant shall provide a declaration under penalty of perjury setting forth the amount of the credits issued to Class Members. Class Counsel shall be entitled to verify credits by confidential review of Class Member account statements.

10. THE CLAIMS ADMINISTRATOR.

(a) The Claims Administrator shall execute a retainer agreement that shall provide, among other things, that the Claims Administrator shall be bound by and shall perform the obligations imposed on it under the terms of this Agreement.

(b) The Claims Administrator shall be subject to the jurisdiction of the Court

with respect to the administration of this Agreement.

(c) The Claims Administrator shall keep all information regarding Class Members confidential except as otherwise provided herein. All data created and/or obtained and maintained by the Claims Administrator pursuant to this Agreement shall be destroyed twelve (12) months after the Final Report is submitted to the Court, provided that Class Counsel and Defendants Counsel, or either of them, at their own cost, shall receive a complete digital copy of the Claims Administrator's records, together with a declaration establishing completeness and authenticity, which they may maintain consistent with their own document retention policies.

(d) The Claims Administrator also shall be responsible for timely and properly filing all tax returns necessary or advisable, if any, with respect to the Settlement Fund. Except as provided herein, Class Members shall be responsible for their own tax reporting of payments received under the terms of this Agreement.

(e) The Claims Administrator shall provide the data in its claims administration database to Defendant's Counsel and/or Class Counsel in response to any written request, including an email request. The written request shall be copied to the other party when made.

(f) Any notice required under the Class Action Fairness Act, 28 U.S.C. § 1715 shall be paid out of the Settlement Fund.

(g) Within one hundred-ninety (190) days after the Effective Date, the Claims Administrator shall prepare a declaration setting forth the total payments issued to Class Members by the Claims Administrator, the total amount of any checks uncashed and/or returned, and the total amount of money being held by the Claims Administrator.

11. CY PRES PAYMENT. Subject to Court approval, thirty (30) days after the Final Report the total amount of uncashed checks, and amounts held by the Claims Administrator at the time of the Final Report, shall be paid by the Claims Administrator to one or more public interest organizations nominated by the parties and subject to Court approval.

12. OPT-OUTS.

(a) A Class Member who wishes to exclude himself or herself from this Agreement, and from the release of claims and defenses provided for under the terms of this Agreement, shall submit an Exclusion Letter by mail to the Claims Administrator. For an Exclusion Letter to be valid, it must be postmarked on or before the Bar Date to Opt Out. Any Exclusion Letter shall identify the Class Member, state that the Class Member wishes to exclude himself or herself from the Agreement, and shall be signed and dated.

(b) The Claims Administrator shall maintain a list of persons who have excluded themselves and shall provide such list to Defendant's Counsel and Class Counsel at least five (5) days prior to the date Class Counsel is required to file the Motion for Final Approval. The Claims Administrator shall retain the originals of all Exclusion Letters (including the envelopes with the postmarks). The Claims Administrator shall make the original Exclusion Letters available to Class Counsel, Defendant's Counsel and/or the Court upon two (2) court days' written notice.

13. OBJECTIONS.

(a) Any Class Member, other than a Class Member who timely submits an Exclusion Letter, may object to this Agreement.

(b) To be valid and considered by the Court, the objection must be in writing and sent by first class mail, postage pre-paid, to the Claims Administrator. The objection must be postmarked on or before the Bar Date to Object, and must include the following information:

(i) The objector's name, address, telephone number, and the contact information for any attorney retained by the objector in connection with the objection or otherwise in connection with this case;

(ii) A statement of the factual and legal basis for each objection and any exhibits the objector wishes the Court to consider in connection with the objection; and

(iii) A statement as to whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying the counsel by name, address and telephone number.

(c) Class Counsel shall file any objections and responsive pleadings at least seven (7) days prior to the Final Approval Hearing Date.

14. RELEASE. Except as to the rights and obligations provided for under the terms of this Agreement, Ashley Facciola and Reginald Edwards, on behalf of themselves and each of the Class Members, hereby release and forever discharge Defendant, and all of its past, present and future predecessors, successors, subsidiaries, divisions, employees, affiliates, assigns, officers, directors, shareholders, representatives, attorneys and agents (collectively, the "Defendant Releasees") from any and all claims, charges, complaints, debts, liabilities, demands, obligations, costs, expenses, actions, and causes of action of every nature, character, and description, whether known or unknown, asserted or unasserted, suspected or unsuspected, which Named Plaintiffs and Class Members, who do not opt out, now have, own or hold against any of the Defendant Releasees that arise out of and/or relate to the facts and claims alleged in the Facciola Action and Edwards Action, including Overdraft Fees governed under the Electronic Fund Transfer Act (Regulation E), 12 C.F.R. § 1005 *et. seq.*

15. CONDITIONS TO SETTLEMENT.

(a) This Agreement shall be subject to and is expressly conditioned on the occurrence of all of the following events:

(i) The Court has entered the Preliminary Approval/Notice Order, as required by Section 4 above;

(ii) The Court has entered the Final Approval Order as required by Sections 6 and 7 above, and all objections, if any, to such Order are overruled, and all appeals taken from such Order are resolved in favor of approval; and

(iii) The Effective Date has occurred.

(b) If all of the conditions specified in Section 16(a) are not met, then this Agreement shall be cancelled and terminated.

(c) Defendant shall have the option to terminate this Agreement if five (5%) percent or more of the Class Members opt out. Defendant shall notify Class Counsel and the Court of its intent to terminate this Agreement pursuant to this Section 16 within fifteen (15) business days after the Bar Date To Opt Out, or the option to terminate shall be considered waived.

(d) Defendant shall provide reasonable confirmatory discovery to confirm its overdraft and NSF fee practices and the amount of the APPSN and Retry Fees at issue. If the confirmatory discovery reveals either that the APPSN and Retry fees at issue are materially different than as provided in the Parties' pre-mediation and mediation information exchange, then Plaintiffs may withdraw from the settlement.

(e) In the event this Agreement is terminated, pursuant to Section 15(c) immediately above, or fails to become effective in accordance with Sections 15(a) and/or (b) immediately above, then the parties shall be restored to their respective positions in this case as they existed as of the date of the execution of this Agreement. In such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the parties and shall not be used in this case or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

16. REPRESENTATIONS.

(a) The parties to this Agreement represent that they have each read this Agreement and are fully aware of and understand all of its terms and the legal consequences thereof. The parties represent that they have consulted or have had the opportunity to consult with and have received or have had the opportunity to receive advice from legal counsel in connection with their review and execution of this Agreement.

(b) The parties have not relied on any representations, promises or agreements other than those expressly set forth in this Agreement.

(c) The Named Plaintiffs, on behalf of the Class Members, represent that they have made such inquiry into the terms and conditions of this Agreement as they deem appropriate, and that by executing this Agreement, they believe the Agreement and all the terms and conditions set forth herein, are fair and reasonable to all Class Members.

(d) The Named Plaintiffs represent that they have no conflicts or other personal interests that would in any way impact their representation of the class in connection with the execution of this Agreement.

(e) Defendant represents and warrants that it has obtained all corporate authority necessary to execute this Agreement.

17. **FURTHER ASSURANCES.** Each of the parties hereto agrees to execute and deliver all such further documents consistent with this Agreement, and to take all such further actions consistent with this Agreement, as may be required in order to carry the provisions of this Agreement into effect, subject to Class Counsel's obligation to protect the interests of the Class Members.

18. **APPLICABLE LAW.** This Agreement shall be governed by and interpreted, construed, and enforced pursuant to the laws of the State of New York.

19. **NO ORAL WAIVER OR MODIFICATION.** No waiver or modification of any provision of this Agreement or of any breach thereof shall constitute a waiver or modification of any other provision or breach, whether or not similar. Nor shall any actual waiver or modification constitute a continuing waiver. No waiver or modification shall be binding unless executed in writing by the party making the waiver or modification.

20. **ENTIRE AGREEMENT.** This Agreement, including the exhibits attached hereto, constitutes the entire agreement made by and between the parties pertaining to the subject matter hereof, and fully supersedes any and all prior or contemporaneous understandings, representations, warranties, and agreements made by the parties hereto or their representatives pertaining to the subject matter hereof. No extrinsic evidence whatsoever may be introduced in any judicial proceeding involving the construction or interpretation of this Agreement.

21. **BINDING ON SUCCESSORS.** This Agreement shall inure to the benefit of, and shall bind, each of the parties hereto and their successors.

22. **SEVERABILITY.** In the event any one or more of the provisions of this Agreement is determined to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement will not in any way be affected or impaired thereby.

23. **COUNTERPARTS AND FACSIMILE SIGNATURES.** This Agreement may be executed and delivered in separate counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts together shall constitute but one and the same instrument and agreement. Facsimile and pdf signature pages shall have the same force and effect as original signatures.

24. **NOTIFICATION.** Any notice to be given to Class Counsel and/or Named Plaintiffs shall be sent by email as follows:

Joseph I. Marchese
Bursor & Fisher, P.A.
888 Seventh Avenue
New York, NY 10019
Telephone: (646) 837-7150
jmarchese@bursor.com

-and-

Jeffrey D. Kaliel
 KalielGold PLLC
 1100 15th St NW, 4th Floor
 Washington, D.C. 20005
 (202) 350-4783
 jkaliel@kalielllc.com

Any notice to be given to Defendant under the terms of this Agreement shall be sent by email as follows:

Eric Evans, Esq.
 Gordon & Rees LLP
 18 Columbia Turnpike, Suite 220
 Florham Park, New Jersey 07932
 Telephone: (973) 549-2500
eevans@grsm.com

Any notice to the Claims Administrator shall be sent by email to the address of the claims administrator, which will be determined by the lowest bid for services.

IN WITNESS WHEREOF, the parties have entered this Agreement as of the dates set forth below.

Dated: _____

MID-HUDSON VALLEY FEDERAL CREDIT
 UNION, a federally chartered credit union

By: _____

Its: _____

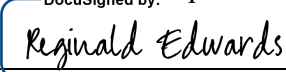
Dated: Feb 16, 2023

ASHLEY FACCIOLA, an individual on behalf of
 herself and those she represents

By: 
Ashley Facciola (Feb 16, 2023 14:22 EST)
 Ashley Facciola

Dated: 2/22/2023

REGINALD EDWARDS, an individual on behalf of
 herself and those she represents

By: 
DocuSigned by: Reginald Edwards
 Reginald Edwards

Jeffrey D. Kaliel
KalielGold PLLC
1100 15th St NW, 4th Floor
Washington, D.C. 20005
(202) 350-4783
jkaliel@kalielpllc.com

Any notice to be given to Defendant under the terms of this Agreement shall be sent by email as follows:

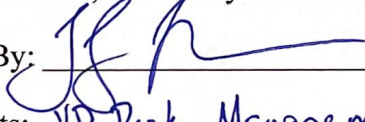
Eric Evans, Esq.
Gordon & Rees LLP
18 Columbia Turnpike, Suite 220
Florham Park, New Jersey 07932
Telephone: (973) 549-2500
eevans@grsm.com

Any notice to the Claims Administrator shall be sent by email to the address of the claims administrator, which will be determined by the lowest bid for services.

IN WITNESS WHEREOF, the parties have entered this Agreement as of the dates set forth below.

Dated: 2/17/2023

MID-HUDSON VALLEY FEDERAL CREDIT
UNION, a federally chartered credit union

By: 
Its: VP Risk Management

Dated: _____

ASHLEY FACCIOLA, an individual on behalf of
herself and those she represents

By: _____
Ashley Facciola

Dated: _____

REGINALD EDWARDS, an individual on behalf of
herself and those she represents

By: _____
Reginald Edwards

APPROVED AS TO FORM:

Dated: 2/17/23

GORDON & REES LLP

Peter Siachos

Eric Evans

By: 

Peter Siachos

Attorneys for Defendant Mid-Hudson Valley Federal
Credit Union

Dated: _____

BURSOR & FISHER, P.A.

Joseph I. Marchese

By: _____

Joseph I. Marchese

Attorney for Plaintiff Ashley Facciola

Dated: _____

KALIELGOLD PLLC

Jeffrey Kaliel

By: _____

Jeffrey Kaliel

Attorneys for Plaintiff Reginald Edwards

APPROVED AS TO FORM:

Dated: _____

GORDON & REES LLP
Peter Siachos
Eric Evans

By: _____

Peter Siachos
Attorneys for Defendant Mid-Hudson Valley Federal
Credit Union

Dated: Feb 16, 2023

BURSOR & FISHER, P.A.
Joseph I. Marchese

By:  _____
Joseph I. Marchese (Feb 16, 2023 16:37 EST)

Joseph I. Marchese
Attorney for Plaintiff Ashley Facciola

Dated: 2/22/2023

KALIELGOLD PLLC
Jeffrey Kaliel

By:  _____

Jeffrey Kaliel
Attorneys for Plaintiff Reginald Edwards

Exhibit 1 – Email and Postcard Notice

Edwards v. Mid-Hudson Valley Federal Credit Union

NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT
READ THIS NOTICE FULLY AND CAREFULLY; THE PROPOSED SETTLEMENT
MAY AFFECT YOUR RIGHTS!

IF YOU HAVE OR HAD A CHECKING ACCOUNT WITH MID-HUDSON VALLEY FEDERAL CREDIT UNION, AND YOU WERE CHARGED CERTAIN OVERDRAFT OR NSF FEES BETWEEN JUNE 9, 2015 AND SEPTEMBER 14, 2022, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT AND/OR FORGIVENESS OF CERTAIN UNCOLLECTED FEES

The United States District Court for the Northern District of New York has authorized this Notice; it is not a solicitation from a lawyer.

You may be a member of the settlement Class in *Edwards v. Mid-Hudson Valley Federal Credit Union*, in which the plaintiffs allege that defendant Mid-Hudson Valley Federal Credit Union. (“Defendant”) unlawfully assessed certain Overdraft and NSF fees (the “Relevant Fees”) between June 9, 2015 and September 14, 2022. If you are a member of the Settlement Class and if the Settlement is approved, you may be entitled to receive a cash payment from the \$2,100,000.00 Settlement Fund and/or the forgiveness of Uncollected Fees, benefits established by the Settlement. If you are a member of one of both of the Settlement Classes, you will receive a payment from the Settlement Fund so long as you do not opt out of or exclude yourself from the Settlement. **You do not have to do anything to be entitled to a payment from the Settlement Fund.**

The Court has preliminarily approved this Settlement. It will hold a Final Approval Hearing in this case on [INSERT DATE]. At that hearing, the Court will consider whether to grant Final Approval to the Settlement, and whether to approve payment from the Settlement Fund of up to \$5,000.00 in a Service Award to each Class Representative, up to 33.33% of the Value of the Settlement as attorneys’ fees, and reimbursement of costs to the attorneys and the Settlement Administrator. If the Court grants Final Approval of the Settlement and you do not request to be excluded from the Settlement, you will release your right to bring any claim covered by the Settlement. In exchange, Defendant has agreed to issue a credit to your Account, a cash payment to you if you are no longer a customer, and/or to forgive certain Relevant Fees.

To obtain a Long Form Notice and other important documents please visit [INSERT WEBSITE ADDRESS]. Alternatively, you may call [INSERT PHONE #].

If you do not want to participate in this Settlement—you do not want to receive a cash payment and/or the forgiveness of Uncollected Fees and you do not want to be bound by any judgment entered in this case—you may exclude yourself by submitting an opt-out request postmarked no later than [PARTIES TO INSERT DATE]. If you want to object to this Settlement because you think it is not fair, adequate, or reasonable, you may object by submitting an objection postmarked no later than [PARTIES TO INSERT DATE]. You may learn more about the opt-out and objection procedures by visiting [PARTIES TO PROVIDE WEBSITE ADDRESS] or by calling [Insert Phone #].

Exhibit 2 – Long Form Notice

Edwards
v.
Mid-Hudson Valley Federal Credit Union

NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

**READ THIS NOTICE FULLY AND CAREFULLY; THE PROPOSED SETTLEMENT
MAY AFFECT YOUR RIGHTS!**

**IF YOU HAVE OR HAD A CHECKING ACCOUNT WITH MID-HUDSON
VALLEY FEDERAL CREDIT UNION (“DEFENDANT”) AND YOU
WERE CHARGED CERTAIN OVERDRAFT OR NSF FEES BETWEEN
JUNE 9, 2015 AND SEPTEMBER 14, 2022, THEN YOU MAY BE
ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT**

The United States District Court for the Northern District of New York has authorized
this Notice; it is not a solicitation from a lawyer.

| SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION | |
|---|--|
| DO NOTHING | If you don’t do anything, you will receive a payment from the Settlement Fund so long as you do not opt out of or exclude yourself from the settlement (described in the next box). |
| EXCLUDE YOURSELF FROM THE SETTLEMENT; RECEIVE NO PAYMENT BUT RELEASE NO CLAIMS | You can choose to exclude yourself from the settlement or “opt out.” This means you choose not to participate in the settlement. You will keep your individual claims against Defendant but you will not receive a payment for Relevant Fees and/or forgiveness of Uncollected Fees. If you exclude yourself from the settlement but want to recover against Defendant, you will have to file a separate lawsuit or claim. |
| OBJECT TO THE SETTLEMENT | You can file an objection with the Court explaining why you believe the Court should reject the settlement. If your objection is overruled by the Court, then you may receive a payment and/or forgiveness of Uncollected Fees and you will not be able to sue Defendant for the claims asserted in this litigation. If the Court agrees with your objection, then the settlement may not be approved. |

These rights and options – *and the deadlines to exercise them* – along with the material terms of the settlement are explained in this Notice.

BASIC INFORMATION

1. What is this lawsuit about?

The lawsuit that is being settled is entitled *Edwards v. Mid-Hudson Valley Federal Credit Union*. It is pending in the United States District Court for the Northern District of New York, Case No. 1:22-cv-00562. The case is a “class action.” That means that the “Class Representatives,” Reginald Edwards and Ashely Facciola, are individuals who are acting on behalf of current and former customers who were assessed certain assessed certain Overdraft and NSF fees (“Relevant Fees”) between June 9, 2015 and September 14, 2022. The Class Representatives have asserted a claim for breach of the Account agreement and violation of consumer protection laws. Defendant does not deny it charged the fees the Class Representatives are complaining about, but contends it did so properly and in accordance with the terms of its agreements and applicable law. Defendant therefore denies that its practices give rise to claims for damages by the Class Representatives or any Settlement Class members.

2. Why did I receive this Notice of this lawsuit?

You received this Notice because Defendant’s records indicate that you were charged one or more Relevant Fees that are the subject of this action. The Court directed that this Notice be sent to all Settlement Class members because each such member has a right to know about the proposed settlement and the options available to him or her before the Court decides whether to approve the settlement.

3. Why did the parties settle?

In any lawsuit, there are risks and potential benefits that come with a trial versus settling at an earlier stage. It is the Class Representative’ and their lawyers’ job to identify when a proposed settlement offer is good enough that it justifies recommending settling the case instead of continuing to trial. In a class action, the Class Representative’ lawyers, known as Class Counsel, make this recommendation to the Class Representative. The Class Representative have the duty to act in the best interests of the class as a whole and, in this case, it is their belief, as well as Class Counsels’ opinion, that this settlement is in the best interest of all Settlement Class members.

There is legal uncertainty about whether a judge or a jury will find that Defendant was contractually and otherwise legally obligated not to assess the fees at issue. And even if it was contractually wrong to assess these fees, there is uncertainty about whether the Class Representative’ claims are subject to other defenses that might result in no or less recovery to Settlement Class members. Even if the Class Representative were to win at trial, there is no assurance that the Settlement Class Members would be awarded more than the current settlement amount and it may take years of litigation before any payments would be made. By settling, the Settlement Class members will avoid these and other risks and the delays associated with continued litigation.

While Defendant disputes the allegations in the lawsuit and denies any liability or wrongdoing, it enters into the Settlement solely to avoid the expense, inconvenience, and distraction of further proceedings in the litigation.

WHO IS IN THE SETTLEMENT

4. How do I know if I am part of the Settlement?

If you received this notice, then Defendant's records indicate that you are a member of one or both of the Settlement Classes who is entitled to receive a payment or credit to your Account.

YOUR OPTIONS

5. What options do I have with respect to the Settlement?

You have three options: (1) do nothing and you will receive a payment according to the terms of this Settlement; (2) exclude yourself from the settlement ("opt-out" of it); or (3) participate in the Settlement but object to it. Each of these options is described in a separate section below.

6. What are the critical deadlines?

There is no deadline to receive a payment. If you do nothing, then you will get a payment or forgiveness of Uncollected Fees.

The deadline for sending a letter to exclude yourself from or opt-out of the settlement is [REDACTED].

The deadline to file an objection with the Court is also [REDACTED].

7. How do I decide which option to choose?

If you do not like the Settlement and you believe that you could receive more money by pursuing your claims on your own (with or without an attorney that you could hire) and you are comfortable with the risk that you might lose your case or get less than you would in this Settlement, then you may want to consider opting out.

If you believe the Settlement is unreasonable, unfair, or inadequate and the Court should reject the Settlement, you can object to the Settlement terms. The Court will decide if your objection is valid. If the Court agrees, then the Settlement may not be approved and no payments will be made to you or any other member of the Classes. If your objection (and any other objection) is overruled, and the Settlement is approved, then you may still get a payment and/or forgiveness of Uncollected Fees, and will be bound by the Settlement.

If you want to participate in the Settlement, then you don't have to do anything; you will receive a payment if the Settlement is approved by the Court.

8. What has to happen for the Settlement to be approved?

The Court has to decide that the Settlement is fair, reasonable, and adequate before it will approve it. The Court already has decided to provide Preliminary Approval of the Settlement, which is why you received a Notice. The Court will make a final decision regarding the Settlement at a "Fairness Hearing" or "Final Approval Hearing," which is currently scheduled for [REDACTED].

THE SETTLEMENT PAYMENT

9. How much is the Settlement?

Defendant has agreed to create a Settlement Fund of \$2,100,000.00. It will also forgive Uncollected Fees totaling approximately \$164,780.00, as defined in the Settlement Agreement, and change its practices regarding the Relevant Fees going forward.

As discussed separately below, attorneys' fees, litigation costs, and the costs paid to a third-party Settlement Administrator to administer the Settlement (including mailing and emailing notice) will be paid out of the Settlement Fund. The Net Settlement Fund will be divided among all Settlement Class Members entitled to Settlement Class Member Payments based on formulas described in the Settlement Agreement.

10. How much of the Settlement Fund will be used to pay for attorney fees and costs?

Class Counsel will request the Court to approve attorneys' fees of not more than 33.33% of the Value of the Settlement, and will request that it be reimbursed for litigation costs incurred in prosecuting the case. The Court will decide the amount of the attorneys' fees and costs based on a number of factors, including the risk associated with bringing the case on a contingency basis, the amount of time spent on the case, the amount of costs incurred to prosecute the case, the quality of the work, and the outcome of the case.

11. How much of the Settlement Fund will be used to pay the Class Representative a Service Award?

Class Counsel will request that the Class Representative be paid a service award in the amount of \$5,000.00 each for their work in connection with this case. The Service Awards must be approved by the Court.

12. How much will my payment be?

The balance of the Settlement Fund after attorneys' fees and costs, the service award and the Settlement Administrator's fees, also known as the Net Settlement Fund, will be divided among all Settlement Class Members entitled to Settlement Class Member Payments in accordance with the formulas outlined in the Settlement Agreement. Current customers of Defendant will receive a credit to their Accounts for the amount they are entitled to receive. Former customers of Defendant shall receive a check from the Settlement Administrator. Settlement Class Members entitled to forgiveness of Uncollected Fees shall receive this benefit automatically.

13. Do I have to do anything if I want to participate in the Settlement?

No. If you received this Notice, then you may be entitled to receive a payment for a Relevant Fee and/or forgiveness of Uncollected Fees without having to make a claim, unless you choose to exclude yourself from the settlement, or "opt out."

14. When will I receive my payment?

The Court will hold a Final Approval Hearing on [REDACTED], at [REDACTED] to consider whether the Settlement should be approved. If the Court approves the Settlement, then payments should be made or credits should be issued approximately 90 days later. However, if someone objects to the

Settlement, and the objection is sustained, then there is no Settlement. Even if all objections are overruled and the Court approves the Settlement, an objector could appeal, and it might take months or even years to have the appeal resolved, which would delay any payment.

EXCLUDING YOURSELF FROM THE SETTLEMENT

15. How do I exclude myself from the settlement?

If you do not want to receive a payment or if you want to keep any right you may have to sue Defendant for the claims alleged in this lawsuit, then you must exclude yourself, or “opt-out.”

To opt-out, you **must** send a letter to the Settlement Administrator that you want to be excluded. Your letter can simply say “I hereby elect to be excluded from the settlement in the *Edwards v. Mid-Hudson Valley Federal Credit Union* class action. Be sure to include your name, the last four digits of your account number(s) or former account number(s), address, telephone number, and email address. Your exclusion or opt-out request must be postmarked by [REDACTED], and sent to:

Edwards v. Mid-Hudson Valley Federal Credit Union

Attn:

ADDRESS OF THE SETTLEMENT ADMINISTRATOR

16. What happens if I opt-out of the Settlement?

If you opt-out of the Settlement, you will preserve and not give up any of your rights to sue Defendant for the claims alleged in this case. However, you will not be entitled to receive a payment from the settlement.

OBJECTING TO THE SETTLEMENT

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

You can object to the settlement or any part of it that you do not like **IF** you do not exclude yourself, or opt-out, from the Settlement. (Settlement Class members who exclude themselves from the Settlement have no right to object to how other Settlement Class members are treated.) To object, you **must** send a written document by mail or private courier (e.g., Federal Express) to the Clerk of Court, Settlement Administrator, Class Counsel, and Defendant’s Counsel at the addresses below. Your objection must include the following information:

- a. the name of the Action;
- b. the objector’s full name, address and telephone number;
- c. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector’s counsel;
- d. the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector’s

prior objections that were issued by the trial and appellate courts in each listed case;

e. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;

f. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five years;

g. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;

h. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;

i. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;

j. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

k. the objector's signature (an attorney's signature is not sufficient).

All objections must be post-marked no later than [REDACTED], and must be mailed to the Settlement Administrator as follows:

ADDRESS OF THE SETTLEMENT ADMINISTRATOR

| |
|---|
| 18. What is the difference between objecting and requesting exclusion from the settlement? |
|---|

Objecting is telling the Court that you do not believe the Settlement is fair, reasonable, and adequate for the Settlement Class, and asking the Court to reject it. You can object only if you do not opt-out of the settlement. If you object to the Settlement and do not opt-out, then you are entitled to a payment for a Relevant Fee and/or forgiveness of Uncollected Fees if the Settlement is approved, but you will release claims you might have against Defendant. Excluding yourself or opting-out is telling the Court that you do not want to be part of the Settlement, and do not want to receive a payment for a Relevant Fee or forgiveness of Uncollected Fees, or release claims you might have against Defendant for the claims alleged in this lawsuit.

| |
|--|
| 19. What happens if I object to the Settlement? |
|--|

If the Court sustains your objection, or the objection of any other member of the Settlement Classes, then there is no Settlement. If you object, but the Court overrules your objection and any other objection(s), then you will be part of the Settlement.

THE COURT'S FINAL APPROVAL HEARING

20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval or Fairness Hearing at [REDACTED] on [REDACTED], 2023 at the United States District Court for the Northern District of New York, Federal Building and U.S. Courthouse, which is located at 15 Henry Street, Binghamton, New York 13901. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys' fees and litigation costs and the amount of the Service Awards to the Class Representative. The hearing may be virtual, in which case the instructions to participate shall be posted on the website at www.usdcndny.gov.

21. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. You may attend if you desire to do so. If you have submitted an objection, then you may want to attend.

22. May I speak at the hearing?

If you have objected, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include with your objection, described in Question 18, above, the statement, "I hereby give notice that I intend to appear at the Final Approval Hearing."

THE LAWYERS REPRESENTING YOU

23. Do I have a lawyer in this case?

The Court ordered that the lawyers and their law firms referred to in this notice as "Class Counsel" will represent you and the other Settlement Class members.

24. Do I have to pay the lawyer for accomplishing this result?

No. Class Counsel will be paid directly from the Settlement Fund.

25. Who determines what the attorneys' fees will be?

The Court will be asked to approve the amount of attorneys' fees at the Fairness Hearing. Class Counsel will file an application for attorneys' fees and costs and will specify the amount being sought as discussed above. You may review a physical copy of the fee application at the website established by the Settlement Administrator, or by requesting the court record online from the United States District Court for the Northern District of New York at <https://eservices.archives.gov/orderonline>.

GETTING MORE INFORMATION

This Notice only summarizes the proposed Settlement. More details are contained in the Settlement Agreement, which can be viewed/obtained online at [**WEBSITE**] or at the Office of the Clerk of the United States District Court for the Northern District of New York, which is located at 15 Henry St., Binghamton, NY 13901 , by asking for the Court file containing the Motion For Preliminary Approval of Class Settlement (the settlement agreement is attached to the motion) or obtaining a copy online at <https://eservices.archives.gov/orderonline>.

For additional information about the settlement and/or to obtain copies of the Settlement Agreement, or to change your address for purposes of receiving a payment, you should contact the Settlement Administrator as follows:

Reginald Edwards v. Mid-Hudson Valley Federal Credit Union
Settlement Administrator
Attn:

For more information, you also can contact the Class Counsel as follows:

Joseph I. Marchese
Bursor & Fisher, P.A.
888 Seventh Avenue
New York, NY 10019
Telephone: (646) 837-7150
jmarchese@bursor.com

Jeffrey Kaliel
KalielGold PLLC
1100 15th St. NW
4th Floor
Washington, DC 20005
202-350-4783
jkaliel@kalielpllc.com

***PLEASE DO NOT CONTACT THE COURT OR ANY REPRESENTATIVE OF
DEFENDANT CONCERNING THIS NOTICE OR THE SETTLEMENT.***

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

REGINALD EDWARDS and ASHLEY
FACCIOLA, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

MID-HUDSON VALLEY FEDERAL
CREDIT UNION,

Defendant.

Case No. 1:22-cv-00562-TJM-CFH

**JOINT DECLARATION IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPLICATION FOR
ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS**

We, Joseph I. Marchese and Jeffrey D. Kaliel, declare:

1. We are Class Counsel of record for Plaintiffs Reginald Edwards and Ashley Facciola and the proposed Settlement Class in the above-captioned matter. We submit this Joint Declaration in support of Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement and Application for Attorneys' Fees and Costs and Service Awards.

Experience

2. The Settlement in this action provides meaningful relief to Settlement Class Members and was made possible only by Class Counsel's extensive experience in class action litigation in general and in litigation against financial institutions in particular.

3. Class Counsel have emerged as leaders in nationwide litigation against financial institutions over the assessment of improper fees. As detailed in Class Counsel's firm resumes, attached hereto as **Exhibits A-B**, Class Counsel also have extensive experience in a wide range of consumer protection litigation in Ohio and around the country.

KalielGold PLLC

4. KalielGold PLLC (“KG”) has extensive experience in consumer protection class actions in both state and federal court and has represented accountholders in hundreds of class actions against financial institutions.

5. Mr. Kaliel has been appointed lead Class Counsel in numerous nationwide and state-specific class actions. In that capacity, Mr. Kaliel has won contested class certification motions, defended dispositive motions, engaged in data-intensive discovery, and worked extensively with economics and information technology experts to build damages models. Mr. Kaliel has also successfully resolved numerous class actions by settlement, resulting in hundreds of millions of dollars in relief for millions of class members.

6. Mr. Kaliel and his colleague Sophia Gold are currently class counsel in numerous ongoing putative class action lawsuits. Additionally, KG has been named class counsel or settlement class counsel in numerous class actions including, *inter alia*, *Figueroa v. Capital One, N.A. et al.*, No. 3:18-cv-00692 (S.D. Cal.); *Roberts v. Capital One*, No. 1:16-cv-04841 (S.D.N.Y.); *Liggio v. Apple Federal Credit Union*, No. 18-cv-01059 (E.D. Va.); *Walters v. Target Corporation*, No. 3:16-CV-01678-L-MDD (S.D. Cal.); *Robinson v. First Hawaiian Bank*, Civil No.17-1-0167-01-GWBC (1st Cir. Haw.); *Brooks v. Canvas Credit Union*, 2019CV30516 (Denver Cnty., Colo. Dist. Ct); *Martin v. L&N Federal Credit Union*, No. 19-CI-002873 (Jefferson Cir. Ct., Tenn.); *Lambert v Navy Federal Credit Union*, No. 1:19-cv-00103 (E.D. Va.); *Perks v. Activehouse d/b/a Earnin*, No. 5:19-cv-05543 (N.D. Cal.); and *White v. Members 1st Credit Union*, No. 1:19-cv-00556 (M.D. Pa.). Mr. Kaliel and Ms. Gold’s biographies and experience are further detailed in the firm’s resume, attached hereto as **Exhibit A**.

Bursor & Fisher, P.A.

7. Mr. Marchese's firm, Bursor & Fisher, P.A., has significant experience in litigating class actions of similar size, scope, and complexity to the instant action. (See Firm Resume of Bursor & Fisher, P.A., a true and accurate copy of which is attached hereto as **Exhibit B**; see also *Wellington v. Empower Federal Credit Union et al*, 5:20-cv-01367-DNH-ML (N.D.N.Y. June 27, 2023) (final approval granted for \$5.2 million class settlement to resolve claims that a New York credit union unlawfully charged their accountholders overdraft fees)). Bursor & Fisher, P.A. regularly engages in major complex litigation, including cases such as *Moeller v. American Media, Inc.*, No. 16-cv-11367 (E.D. Mich.); *Edwards v. Hearst Communications, Inc.*, No. 15-cv-09279 (S.D.N.Y.); *Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast*, No. 15-cv-05671 (S.D.N.Y.); *Ruppel v. Consumers Union of United States, Inc.*, No. 16-cv-02444, (S.D.N.Y.); and *Taylor v. Trusted Media Brands, Inc.*, No. 16-cv-01812 (S.D.N.Y.), and has the resources necessary to conduct litigation of this nature, and has frequently been appointed lead class counsel by courts throughout the country.

8. Bursor & Fisher, P.A. has also been recognized by courts across the country for its expertise. See Ex. 2; see also *Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561, 566 (S.D.N.Y. Feb. 25, 2014) ("Bursor & Fisher, P.A., are class action lawyers who have experience litigating consumer claims ... The firm has been appointed class counsel in dozens of cases in both federal and state courts, and has won multi-million dollar verdicts or recoveries in five [now six] class action jury trials since 2008."); *In re Michaels Stores Pin Pad Litigation*, Case No. 11-cv-03350, ECF No. 22 (N.D. Ill. June 8, 2011) (appointing Bursor & Fisher class counsel to represent a putative nationwide class of consumers who made in-store purchases at Michaels using a debit or credit card and had their private financial information stolen as a result).

9. During Discovery, Plaintiffs' counsel reviewed multiple document productions from Defendant and retained a data analysis expert to assist in analyzing the challenged fee practices and determining damages.

10. Plaintiffs' counsel noticed six depositions – including five named MHVCU employees and one corporate representative for MHVCU during the summer of 2022.

11. Those depositions were only postponed when the Parties began the process of scheduling a mediation.

12. Class Counsel spent many hours investigating the claims of several potential plaintiffs against MHVCU.

13. Class Counsel interviewed numerous MHVCU customers to gather information about MHVCU's disclosures and practices and their potential impact upon consumers, which was essential to counsels' ability to understand the nature of the potential claims and issues, the language of the Account Agreement and other documents at issue, and potential remedies.

14. Class Counsel expended significant resources researching and developing the legal claims at issue.

15. The factual and legal issues in this case were heavily contested throughout the litigation.

16. Class Counsel, along with its data analysis expert, spent a significant amount of time analyzing data regarding MHVCU's fee revenue related to the assessment of the APPSN Fees and the Retry Fees at issue. The Parties conferred regarding the calculations' accuracy, with MHVCU retaining its own expert. Prior to the mediation, Class Counsel and Plaintiffs' expert used this data to analyze the damages at issue.

17. Class Counsel mediated with Judge Welsh fully informed of the merits of Settlement Class Members' claims and negotiated the proposed Settlement while zealously advancing the position of Plaintiffs and Settlement Class members and being fully prepared to continue to litigate rather than accept a settlement that was not in the best interest of Plaintiffs and the Settlement Class.

18. The Parties selected Epiq as the Claims Administrator, one of the leading notice administration firms in the United States. The Claims Administrator have overseen the Notice Program, which is designed to provide the best notice practicable and is tailored to take advantage of the information MHVCU has available about the Settlement Class.

19. The Notice and Notice Program constitute sufficient notice to all persons entitled to notice, satisfying all applicable requirements of law, including Rule 23 and constitutional due process.

20. Plaintiffs Reginald Edwards and Ashley Facciola provided assistance that enabled Class Counsel to successfully prosecute the Action and reach the Settlement, including: (1) submitting to interviews with Class Counsel; (2) locating and forwarding documents and information to Class Counsel; (3) participating in conferences with Class Counsel; and (4) reviewing the settlement documentation. Both Plaintiffs were integral to the case. Plaintiffs expended hours in advancing this litigation against Defendant. Both Mr. Edwards and Ms. Facciola conferred with Class Counsel on a number of occasions.

21. Class Counsel has not been paid for their extensive efforts or reimbursed for litigation costs.

22. The Parties negotiated and reached agreement regarding fees, costs and expenses only after agreeing on all material terms of the Settlement.

23. The Parties concluded that the benefits of settlement in this case outweigh the risks and uncertainties of continued litigation, as well as the attendant time and expenses associated with contested class certification proceedings and possible interlocutory appellate review, completing merits discovery, pretrial motion practice, trial, and finally appellate review.

24. The Settlement in this case is the result of intensive, arm's-length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues of this Action.

25. Class Counsel thoroughly investigated and analyzed Plaintiffs' claims and engaged in briefing on the motion to amend the operative complaint. They engaged in significant discovery and extensive data and damage analysis.

26. Class Counsel were well-positioned to evaluate Plaintiffs' claims strengths and weaknesses, and the appropriate basis upon which to settle them, by litigating similar claims in courts across the country.

27. Although Plaintiffs believe they have a strong chance on the merits, Plaintiffs might not certify the classes or would lose at summary judgment or trial, or on appeal.

28. Each of these risks, by itself, could easily have impeded Plaintiffs' and the Settlement Class's success at trial. Under the circumstances, Plaintiffs and Class Counsel appropriately determined that Settlement outweighs the gamble of continued litigation.

29. The Settlement provides substantial relief without further delay.

30. For these reasons, a Settlement Fund that represents approximately 50% of the Class Fees allegedly wrongly charged to Settlement Class Members, as this Settlement does—and without the inherent litigation risks—is a very fair and reasonable recovery.

31. This amount does not even include the additional \$164,780 in waived Uncollected

Fees still owed by Settlement Class Members, nor the cessation of the challenged practices by Defendant, which will save MHVCU accountholders at least \$3 million over the next five years based on damages at issue in this case.

32. Further, as discussed above, the Settlement is the product of arm's length negotiations conducted by the Parties' experienced counsel with the assistance of a well-respected mediator through a mediation session and additional negotiations thereafter. As a result, the Parties have reached a Settlement that Class Counsel believes to be fair, reasonable, and in the Settlement Class's best interests. Class Counsel's assessment in this regard is entitled to considerable deference. The \$2.26 million Value of the Settlement is fair and reasonable in light of MHVCU's defenses, and the challenging and unpredictable litigation path in the absence of settlement. Recovery by any means other than settlement would require additional years of litigation in this Court and the Second Circuit. Delay, both at the trial stage, and through post-trial motions and appeals, could force the Settlement Class to wait even longer, further reducing its value.

33. Given MHVCU's defense of this Action to date, MHVCU would have vigorously opposed Plaintiffs' certification motion, and may have appealed if unsuccessful. Defendant would have argued class certification is not appropriate on the grounds of typicality, adequacy, predominance, commonality, and numerosity. Success on any one of these grounds could have prevented the maintenance of a class through trial. Further, this litigation activity would have required the Parties to expend significant resources. If MHVCU was successful in opposing class certification or at trial, or had prevailed on a motion for summary judgment, that would have prevented recovering anything at all.

34. Here, Class Counsel devoted substantial time and resources investigating, litigating, and resolving this case. Plaintiffs settled the Action with the benefit of Class Counsel's

years of experience litigating cases like this one, discovery, and data and damage analysis.

35. Class Counsel have been and continue to be willing to litigate this action.

36. Class Counsel has not been paid for their extensive efforts or reimbursed for litigation costs incurred.

37. The Parties negotiated and reached agreement regarding fees and costs only after agreeing on all material terms of the Settlement.

38. Numerosity is satisfied because the Settlement Class consists of thousands of MHVCU customers, and joinder of all such persons is impracticable.

39. There are multiple questions of law and fact – centering on the alleged systematic practice of assessing fees – that are common to the Settlement Class, alleged to have injured all Settlement Class members in the same way, and would generate common answers central to the claims’ viability were the Action to be tried.

40. Plaintiffs’ claims are typical of those of the absent Settlement Class members because they were subjected to the same MHVCU practices leading to the assessment of fees and suffered from the same injuries and will benefit equally from the relief provided by the Settlement.

41. Here, Plaintiffs’ interests are coextensive with, not antagonistic to, the Settlement Class’s interests because Plaintiffs and the absent Settlement Class members have the same interests in the relief afforded by the Settlement, and absent Settlement Class members have no diverging interests.

42. Further, Plaintiffs are represented by qualified and competent counsel with extensive experience and expertise prosecuting complex class actions, including similar consumer actions.

43. Class Counsel has devoted substantial time and resources to this Action and will

vigorously protect the interests of the Settlement Class.

44. Predominance is readily satisfied because liability questions common to all members of the Settlement Class substantially outweigh any possible issues that are individual to each member of the Settlement Class.

45. Each Settlement Class member's relationship with MHVCU arises from Account agreements that are the same or substantially similar in all relevant respects to the other Settlement Class members' agreements, and the fees at issue were charged based on the same set of circumstances alleged to be in breach of the Class Members' form agreements.

46. This Action is complex presenting novel factual and legal issues, which have yet to be tried in this Court or others.

47. Class Counsel diligently investigated and litigated Plaintiffs' claims and the feasibility of class certification, and have and will continue to devote substantial time and resources to this litigation. Class Counsel have extensive experience with similar class action litigation and have been appointed class counsel in many class actions, including many banking fee cases. As such, Class Counsel have an in-depth knowledge of the laws applicable to the Settlement Class members' claims and class certification.

48. Mr. Marchese has personally reviewed all of Bursor & Fisher, P.A.'s time entries associated with this case and has used billing judgment to ensure that duplicative and unnecessary time has been excluded and that only time reasonably devoted to the litigation has been included. Bursor & Fisher, P.A.'s time entries were regularly and contemporaneously recorded by Mr. Marchese and the other timekeepers at the firm pursuant to firm policy and have been maintained in the computerized records of Bursor & Fisher, P.A.

49. Through July 20, 2023, Bursor & Fisher, P.A. has expended 374.60 hours in representing Plaintiffs and the Settlement Class without compensation in this Action. B&F's total lodestar in this case, based on current billing rates, is \$190,480.00.

50. Bursor & Fisher, P.A.'s total lodestar represents the work that the firm has undertaken since the inception of this case and does not include additional work that will be required through final approval.

51. Due to the commitment of time and capital investment required to litigate this action, Bursor & Fisher, P.A. had to forego other work, including other class action matters.

52. The rates and hours that each attorney and paralegal at Bursor & Fisher, P.A. has worked on this matter, as recorded in Bursor & Fisher, P.A.'s computerized records,¹ are incorporated into the chart below:

| BURSOR & FISHER, P.A. | | | | |
|----------------------------------|------|---------------|-------------|---------------------|
| ATTORNEY | YEAR | HOURS | HOURLY RATE | LODESTAR |
| Joseph I. Marchese | 22 | 85.30 | \$975.00 | \$83,167.00 |
| Max S. Roberts | 4 | 0.2 | \$400 | \$80.00 |
| Julian C. Diamond | 3 | 143.50 | \$375.00 | \$53,812.50 |
| Matthew A. Girardi | 3 | 125.80 | \$375.00 | \$47,175.00 |
| STAFF MEMBER | | HOURS | HOURLY RATE | LODESTAR |
| Christopher J. Byrne | -- | 4.7 | \$325 | \$1527.00 |
| Kyle D. Gordon | -- | 1.7 | \$325 | \$552.50 |
| Alyssa R. Myers | -- | 8.7 | \$325 | \$2,827.00 |
| Rebecca R. Richter | -- | 0.5 | 300 | \$150.00 |
| J. Georgina McCulloch | -- | 0.6 | 300 | \$180.00 |
| Kasey G. Gibbons | -- | 0.7 | \$300.00 | \$210.00 |
| Erin M. Wald | -- | 0.4 | \$275.00 | \$110.00 |
| Teresa E. Clark | -- | 2.2 | \$275.00 | \$605.00 |
| Amanda E. Larson | -- | 0.3 | \$275.00 | \$82.50 |
| TOTALS | | 374.60 | | \$190,480.00 |

¹ Bursor & Fisher, P.A. will produce the detailed billing records contained in our computerized records for *in camera* review at the Court's request.

53. Bursor & Fisher, P.A.'s rates are set taking into account our unique experience and track record of success winning 6 of 6 class action trials. As a matter of firm policy, we do not discount our rates for non-contingent matters. Bursor & Fisher, P.A.'s rates have been deemed reasonable by Courts across the country, including in New York, Illinois, California, Michigan, Missouri, New Hampshire, and New Jersey for example:

- a. *Wellington v. Empower Federal Credit Union et al*, Case No. 5:20-cv-01367-DNH-ML (N.D.N.Y. June 27, 2023) Order Granting Final Approval of Class Action Settlement and Order of Dismissal With Prejudice).
- b. *Farias v. R.R. Donnelley & Sons Company*, Case No. 20-cv-07468 (N.D. Ill. July 20, 2022) Order Granting Final Approval of Class Action Settlement And Order of Dismissal With Prejudice)
- c. *In re Michaels Stores Pin Pad Litigation*, Case No. 11-cv-03350, N.D. Ill. (Apr. 17, 2013) Order Approving Settlement).
- d. *Russett v. Northwestern Mutual Life Insurance Co.*, Case No. 19-cv-07414, S.D.N.Y. (Oct. 6, 2020) Final Judgment And Order Of Dismissal With Prejudice).
- e. *Edwards v. Hearst Communications, Inc.*, Case No. 15-cv-09279, S.D.N.Y. (Apr. 24, 2019) Final Judgment And Order Of Dismissal With Prejudice).
- f. *Taylor v. Trusted Media Brands, Inc.*, Case No. 16-cv-01812, S.D.N.Y. (Feb. 1, 2018) Final Judgment And Order Of Dismissal With Prejudice).
- g. *Rodriguez v. CitiMortgage, Inc.*, Case No. 11-cv-4718, S.D.N.Y. (Oct. 6, 2015), the court concluded during the *fairness* hearing that Bursor & Fisher's rates for two of its partners, Joseph Marchese and Scott Bursor, were "reasonable."
- h. *Perez v. Rash Curtis & Associates*, 2020 WL 1904533, at *20 (N.D. Cal. Apr. 17, 2020) (concluding that "blended rate of \$634.48 is within the reasonable range of rates").
- i. *In re Haier Freezer Consumer Litig.*, Case No. C11-02911 EJD, N.D. Cal. (Oct. 25, 2013) Final Judgment and Order Granting Plaintiffs' Motion For Final Approval Of Class Action Settlement And For Award Of Attorneys' Fees, Costs And Incentive Awards).
- j. *Kokoszki v. Playboy Enterprises, Inc.*, Case No. 19-cv-10302, E.D. Mich. (Aug. 19, 2020) Final Judgment And Order Of Dismissal With Prejudice.

- k. *Moeller v. American Media, Inc.*, Case No. 16-cv-11367, E.D. Mich. (Sept. 28, 2017) Order And Judgment Of Dismissal With Prejudice).
 - l. *Wright v. Southern New Hampshire University*, 61 F. Supp. 3d 211, 214 (D.N.H. Sept. 22, 2021) (approving motion for attorneys' fees).
 - m. *In re Blue Buffalo Company, Ltd. Marketing and Sales Practices Litigation*, Case No. 14-md-02562, E.D. Mo. (June 16, 2016) Order Awarding Fees And Costs).
 - n. *Rossi v. The Procter & Gamble Co.*, Case No. 11-7238, D.N.J. (Oct. 3, 2013) Final Approval Order And Judgment).
54. No court has ever cut Bursor & Fisher, P.A.'s fee application by a single dollar on the ground that our hourly rates were not reasonable.
55. In addition, Bursor & Fisher, P.A. has incurred \$8,338.31 in reimbursable expenses, which include mediation fees, filing fees, and process server fees.
56. Furthermore, Bursor & Fisher, P.A. continues to expend time and other resources in an effort to ensure that the Class Members secure their relief under the Settlement. Class Counsel will continue to work diligently to ensure the best relief possible for the Class Members.
57. The rates and hours that each attorney and paralegal at KalielGold PLLC has worked on this matter, as recorded in KalielGold PLLC's computerize records,² are incorporated into the chart below:

| KALIELGOLD PLLC | | | | |
|-------------------|------|---------------|-------------|------------------|
| ATTORNEY | YEAR | HOURS | HOURLY RATE | LODESTAR |
| Jeffrey D. Kaliel | 18 | 124.00 | \$829.00 | \$102,796 |
| Sophia G. Gold | 8 | 48 | \$733.00 | \$35,184 |
| TOTALS | | 172.00 | | \$137,980 |

58. KalielGold PLLC's rates are set taking into account our unique experience and track record of success winning 6 of 6 class action trials. As a matter of firm policy, we do not

² KalielGold PLLC will produce the detailed billing records contained in our computerized records for *in camera* review at the Court's request.

discount our rates for non-contingent matters. KaliefGold PLLC's rates have been deemed reasonable by Courts across the country, including in New York, California, Washington, D.C.

59. No court has ever cut KaliefGold PLLC's fee application by a single dollar on the ground that our hourly rates were not reasonable.

60. In addition, KaliefGold PLLC has incurred \$3,530.25 in reimbursable expenses, which include mediation fees, filing fees, and process server fees.

61. Furthermore, KaliefGold PLLC continues to expend time and other resources in an effort to ensure that the Class Members secure their relief under the Settlement. Class Counsel will continue to work diligently to ensure the best relief possible for the Class Members.

62. Class Counsel's application is subject to this Court's approval to compensate them for their time, risk, and expenses incurred pursuing claims for the Settlement Class. While discretionary, to the extent that the Court wishes to perform a lodestar cross-check, it should be noted that there is a reasonable 2.3 lodestar multiplier as a result of the hard work Class Counsel performed.

63. Separately, Class Counsel also seeks reimbursement of litigation costs in the amount of \$11,868.56.

64. Moreover, the attorneys' fee requested is on par with what would be requested in individual contingent fee litigation, which generally starts at 33.33% of any recovery and frequently goes up to 40% or more.

65. Further, there will be significant post-Final Approval work ensuring that the Settlement proceeds are properly distributed to Settlement Class Members, responding to Settlement Class Members' inquiries, and effectuating a secondary or *cy pres* distribution, as needed.

I declare under the laws of the United States of America that the foregoing is true and correct and that this declaration was signed on this 24th day of July, 2023 at New York City, New York.

/s/ Joseph I. Marchese
Joseph I. Marchese

I declare under the laws of the United States of America that the foregoing is true and correct and that this declaration was signed on this 24th day of July, 2023 at Washington, D.C.

/s/ Jeffrey D. Kaliel
Jeffrey D. Kaliel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 24, 2023, the foregoing was served by CM/ECF to all counsel of record.

Respectfully submitted,

By: /s/ Jeffrey D. Kaliel
Jeffrey D. Kaliel

EXHIBIT A



KALIELGOLD PLLC

KalielGold PLLC was founded in 2017 and is a 100% contingency Plaintiff-side law firm. Our attorneys have decades of combined experience and have secured hundreds of millions of dollars for their clients. Our firm's practice focuses on representing consumers in class action litigation and specifically on cases in the consumer financial services sector. In the four years since our firm was founded, our firm has been appointed lead counsel or co-lead counsel in numerous class action and putative class action lawsuits in state and federal courts nationwide including most recently in *Roberts v. Capital One*, No. 1:16-cv-04841 (S.D.N.Y.); *Walters v. Target Corp.*, No. 3:16-cv-00492 (S.D. Cal.); *Robinson v. First Hawaiian Bank*, Civil No.17-1-0167-01 GWBC (1st Cir. Haw.); *Liggio v. Apple Federal Credit Union*, No. 18-cv-01059 (E.D. Va.); *Morris et al. v. Bank of America, N.A.*, No. 3:18-cv-00157-RJC-DSC (W.D.N.C.); *Brooks et al. v. Canvas Credit Union*, 2019CV30516 (Dist. Ct. for Denver Cnty., Colo.); *Figueroa v. Capital One, N.A.*, Case No. 3:18-cv-00692-JM-BGS (S.D. Cal.); *White v. Members 1st Credit Union*, Case No. 1:19-cv-00556-JEJ (M.D. Pa.); *Plummer v. Centra Credit Union*, Case No. 03D01-1804-PL-001903 (Cnty. Of Bartholomew, Ind.); *Holt v. Community America Credit Union*, Case No. 4:19-cv-00629-FJG (W.D. Mo.); *Trinity Management v. Charles Puckett*, Case No. GCG-17-558960 (Super. Ct., San Francisco Cnty, Cal.); *Martin v. Le^oN Federal Credit Union*, No. 19-CI-022873 (Jefferson Cir. Ct., Div. One); *Clark v. Hills Bank and Trust Company*, No. LACV080753 (Iowa Dist. Ct. Johnson Cnty.); *Morris v. Provident Credit Union*, Case No. CGC-19-581616 (Super. Ct., San Francisco Cnty., Cal.).

As shown in the biographies of our attorneys and the list of class counsel appointments, KalielGold PLLC is well versed in class action litigation and zealously advocates for its clients. To learn more about KalielGold PLLC, or any of the firm's attorneys, please visit www.kalielgold.com.



JEFFREY D. KALIEL

Jeffrey Kaliel earned his law degree from Yale Law School in 2005. He graduated from Amherst College summa cum laude in 2000 with a degree in Political Science, and spent one year studying Philosophy at Cambridge University, England.

Over the last 10 years, Jeff has built substantial class action experience. He has received "Washington D.C. Rising Stars Super Lawyers 2015" recognition.

Jeff has been appointed lead Class Counsel in numerous nationwide and state-specific class actions. In those cases, Jeff has won contested class certification motions, defended dispositive motions, engaged in data-intensive discovery and worked extensively with economics and information technology experts to build damages models. Jeff has also successfully resolved numerous class actions by settlement, resulting in hundreds of millions of dollars in relief for millions of class members.

Currently Jeff is actively litigating several national class action cases, including actions against financial services entities and other entities involved in predatory lending and financial services targeting America's most vulnerable populations.

Jeff's class action successes extend beyond financial services litigation. He seeks to lead cases that serve the public interest. Jeff has worked with nonprofits such as the Humane Society, Compassion Over Killing, and the National Consumers League to fight for truth in the marketplace on food and animal products.

Jeff has over a decade of experience in high-stakes litigation. He was in the Honors Program at the Department of Homeland Security, where he worked on the Department's appellate litigation. Jeff also helped investigate the DHS response to Hurricane Katrina in preparation for a Congressional inquiry. Jeff also served as a Special Assistant US Attorney in the Southern District of California, prosecuting border-related crimes.

Jeff is a former Staff Sergeant in the Army, with Airborne and Mountain Warfare qualifications. He is a veteran of the second Iraq war, having served in Iraq in 2003.

Jeff is admitted to practice in California and Washington, DC, and in appellate and district courts across the country.

Jeff lives in Washington, D.C. with his wife, Debbie, and their three children.



SOPHIA GOREN GOLD

Sophia Goren Gold is a third-generation Plaintiff's lawyer. A *summa cum laude* graduate of Wake Forest University and the University of California, Berkeley, School of Law, Sophia has spent her entire career fighting for justice.

A fierce advocate for those in need, Sophia's practice centers around taking on financial institutions, insurance companies, and other large corporate interests. Sophia has participated in hundreds of individual and class cases in both state and federal courts across the country. Collectively, she has helped secure tens of millions of dollars in relief on behalf of the classes she represents.

In addition to providing monetary relief, Sophia's extensive litigation experience has resulted in real-world positive change. For example, she brought litigation which resulted in the elimination of the Tampon Tax in the State of Florida, and she was influential in changing the state of Delaware's Medicaid policy, resulting in greater access to life-saving medication.

Sophia is currently representing consumers in numerous cases involving the assessment of improper fees by banks and credit unions, such as overdraft fees, insufficient funds fees, and out of network ATM fees. She is also currently representing consumers who have been the victims of unfair and deceptive business practices.

Sophia is admitted to practice in California and Washington, D.C. When not working, Sophia enjoys spending time with her husband, daughter, and their goldendoodle.



BRITTANY CASOLA

Brittany Casola attended the University of Central Florida in Orlando and graduated in 2012 with a bachelor's degree in Political Science and a minor in Spanish. Brittany earned her Juris Doctorate from California Western School of Law in 2015 and graduated magna cum laude in the top 10% of her class.

Throughout the course of her law school career, she served as a judicial extern to the Honorable Anthony J. Battaglia for the United States District Court, Southern District of California and worked multiple semesters as a certified legal intern for the San Diego County District Attorney's Office. Brittany was awarded Academic Excellence Awards in law school for receiving the highest grade in Trial Practice, Health Law & Policy, and Community Property.

Before joining KalielGold PLLC, Brittany worked as a judicial law clerk for the Honorable Anthony J. Battaglia and as an associate attorney for Carlson Lynch LLP, specializing in consumer complex litigation.



AMANDA ROSENBERG

Amanda Rosenberg graduated *cum laude* from the University of California, Hastings College of the Law in 2011 and the University of California, San Diego in 2008, where she earned departmental Honors with Highest Distinction in history.

Before joining KalielGold PLLC, Amanda represented and advised small businesses and financial institutions in litigation matters including employment disputes, merchant disputes, credit and charge card disputes, wrongful foreclosures, and securities. She has successfully litigated cases in California, Illinois, and Michigan.

Amanda is an active volunteer in her community and has helped numerous individuals understand and navigate their rights in the workplace.

In law school, Amanda worked as an extern for the Honorable Judge Vaughn Walker in the United States District Court, Northern District of California. Amanda was awarded academic excellence awards for receiving the highest grades in Trial Advocacy and Litigating Class Action Employment.

When not working, Amanda loves exploring Michigan's outdoors with her husband, kids, and rescue dog.



CLASS COUNSEL APPOINTMENTS

- *Roberts v. Capital One*, No. 1:16-cv-04841 (S.D.N.Y.);
- *Walters v. Target Corp.*, No. 3:16-cv-00492 (S.D. Cal.);
- *Figueroa v. Capital One, N.A.*, Case No. 3:18-cv-00692-JM-BGS (S.D. Cal.).
- *Robinson v. First Hawaiian Bank*, Civil No.17-1-0167-01 GWBC (1st Cir. Haw.);
- *Brooks et al. v. Canvas Credit Union*, 2019CV30516 (Dist. Ct. for Denver Cnty., Colo.).
- *Liggio v. Apple Federal Credit Union*, Civil No. 18-cv-01059 (E.D. Va.);
- *Morris et al. v. Bank of America, N.A.*, Civil No. 3:18-cv-00157-RJC-DSC (W.D.N.C.);
- *White v. Members 1st Credit Union*, Case No. 1:19-cv-00556-JEJ (M.D. Pa.);
- *Plummer v. Centra Credit Union*, Case No. 03D01-1804-PL-001903 (Bartholomew Cnty., Ind.);
- *Holt v. Community America Credit Union*, Case No. 4:19-cv-00629-FJG (W.D. Mo.);
- *Trinity Management v. Charles Puckett*, Case No. GCG-17-558960 (Super. Ct., San Francisco, Cnty., Cal.);
- *Martin v. Le&N Federal Credit Union*. No. 19-CI-022873 (Jefferson Cir. Ct., Division One);
- *Clark v. Hills Bank and Trust Company*, No. LACV080753 (Iowa Dist. Ct. Johnson Cnty.);
- *Morris v. Provident Credit Union*, Case No. CGC-19-581616 (Super. Ct. San Francisco Cnty., Cal.).
- *Bodnar v. Bank of America, N.A.*, 5:14-cv-03224 (E.D. Pa.);
- *In re Higher One OneAccount Marketing and Sales Practice Litigation.*, No. 12-md-02407-VLB (D. Conn.).
- *Shannon Schulte, et al. v. Fifth Third Bank.*, No. 1:09-cv-06655 (N.D. Ill.);
- *Kelly Mathena v. Webster Bank*, No. 3:10-cv-01448 (D. Conn.);
- *Nick Allen, et al. v. UMB Bank, N.A., et al.*, No. 1016 Civ. 34791 (Cir. Ct. Jackson Cnty., Mo.);
- *Thomas Casto, et al. v. City National Bank, N.A.*, 10 Civ. 01089 (Cir. Ct. Kanawha Cnty., W. Va.);
- *Eaton v. Bank of Oklahoma, N.A.*, and *BOK Financial Corporation, d/b/a Bank of Oklahoma, N.A.*, No. CJ-2010-5209 (Dist. Ct. for Tulsa Cnty., Okla.);
- *Lodley and Tehani Taulva, et al., v. Bank of Hawaii and Doe Defendants 1-50*, No. 11-1-0337-02 (Cir. Ct. of 1st Cir., Haw.);
- *Jessica Duval, et al. v. Citizens Financial Group, Inc., et al*, No. 1:10-cv-21080 (S.D. Fla.);
- *Mascaro, et al. v. TD Bank, Inc.*, No. 10-cv-21117 (S.D. Fla.);
- *Theresa Molina, et al., v. Intrust Bank, N.A.*, No. 10-cv-3686 (18th Judicial Dist., Dist. Ct. Sedgwick Cnty., Kan.);
- *Trombley v. National City Bank*, 1:10-cv-00232-JDB (D.D.C.); *Galdamez v. I.Q. Data International, Inc.*, No. 1:15-cv-1605 (E.D. Va.);
- *Brown et al. v. Transurban USA, Inc. et al.*, No. 1:15-CV-00494 (E.D. Va.);
- *Grayson v. General Electric Co.*, No. 3:13-cv-01799 (D. Conn.);
- *Galdamez v. I.Q. Data International, Inc.*, No. 1:15-cv-1605 (E.D. Va.).

EXHIBIT B



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FIRM RESUME

With offices in Florida, New York, and California, BURSOR & FISHER lawyers have represented both plaintiffs and defendants in state and federal courts throughout the country.

The lawyers at our firm have an active civil trial practice, having won multi-million-dollar verdicts or recoveries in six of six class action jury trials since 2008. Our most recent class action trial victory came in May 2019 in *Perez v. Rash Curtis & Associates*, in which Mr. Bursor served as lead trial counsel and won a \$267 million jury verdict against a debt collector found to have violated the Telephone Consumer Protection Act. During the pendency of the defendant's appeal, the case settled for \$75.6 million, the largest settlement in the history of the Telephone Consumer Protection Act.

In August 2013 in *Ayyad v. Sprint Spectrum L.P.*, in which Mr. Bursor served as lead trial counsel, we won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

In *Thomas v. Global Vision Products, Inc. (II)*, we obtained a \$50 million jury verdict in favor of a certified class of 150,000 purchasers of the Avacor Hair Regrowth System. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009, and the largest in any class action.

The lawyers at our firm have an active class action practice and have won numerous appointments as class counsel to represent millions of class members, including customers of Honda, Verizon Wireless, AT&T Wireless, Sprint, Haier America, and Michaels Stores as well as purchasers of Avacor™, Hydroxycut, and Sensa™ products. Bursor & Fisher lawyers have been court-appointed Class Counsel or Interim Class Counsel in:

1. *O'Brien v. LG Electronics USA, Inc.* (D.N.J. Dec. 16, 2010) to represent a certified nationwide class of purchasers of LG French-door refrigerators,
2. *Ramundo v. Michaels Stores, Inc.* (N.D. Ill. June 8, 2011) to represent a certified nationwide class of consumers who made in-store purchases at Michaels Stores using a debit or credit card and had their private financial information stolen as a result,
3. *In re Haier Freezer Consumer Litig.* (N.D. Cal. Aug. 17, 2011) to represent a certified class of purchasers of mislabeled freezers from Haier America Trading, LLC,
4. *Rodriguez v. CitiMortgage, Inc.* (S.D.N.Y. Nov. 14, 2011) to represent a certified nationwide class of military personnel against CitiMortgage for illegal foreclosures,

5. *Rossi v. The Procter & Gamble Co.* (D.N.J. Jan. 31, 2012) to represent a certified nationwide class of purchasers of Crest Sensitivity Treatment & Protection toothpaste,
6. *Dzielak v. Whirlpool Corp. et al.* (D.N.J. Feb. 21, 2012) to represent a proposed nationwide class of purchasers of mislabeled Maytag Centennial washing machines from Whirlpool Corp., Sears, and other retailers,
7. *In re Sensa Weight Loss Litig.* (N.D. Cal. Mar. 2, 2012) to represent a certified nationwide class of purchasers of Sensa weight loss products,
8. *In re Sinus Buster Products Consumer Litig.* (E.D.N.Y. Dec. 17, 2012) to represent a certified nationwide class of purchasers,
9. *Ebin v. Kangadis Food Inc.* (S.D.N.Y. Feb. 25, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
10. *Forcellati v. Hyland's, Inc.* (C.D. Cal. Apr. 9, 2014) to represent a certified nationwide class of purchasers of children's homeopathic cold and flu remedies,
11. *Ebin v. Kangadis Family Management LLC, et al.* (S.D.N.Y. Sept. 18, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
12. *In re Scotts EZ Seed Litig.* (S.D.N.Y. Jan. 26, 2015) to represent a certified class of purchasers of Scotts Turf Builder EZ Seed,
13. *Dei Rossi v. Whirlpool Corp., et al.* (E.D. Cal. Apr. 28, 2015) to represent a certified class of purchasers of mislabeled KitchenAid refrigerators from Whirlpool Corp., Best Buy, and other retailers,
14. *Hendricks v. StarKist Co.* (N.D. Cal. July 23, 2015) to represent a certified nationwide class of purchasers of StarKist tuna products,
15. *In re NVIDIA GTX 970 Graphics Card Litig.* (N.D. Cal. May 8, 2015) to represent a proposed nationwide class of purchasers of NVIDIA GTX 970 graphics cards,
16. *Melgar v. Zicam LLC, et al.* (E.D. Cal. March 30, 2016) to represent a certified ten-jurisdiction class of purchasers of Zicam Pre-Cold products,
17. *In re Trader Joe's Tuna Litigation* (C.D. Cal. December 21, 2016) to represent purchaser of allegedly underfilled Trader Joe's canned tuna.
18. *In re Welspun Litigation* (S.D.N.Y. January 26, 2017) to represent a proposed nationwide class of purchasers of Welspun Egyptian cotton bedding products,
19. *Retta v. Millennium Products, Inc.* (C.D. Cal. January 31, 2017) to represent a certified nationwide class of Millennium kombucha beverages,
20. *Moeller v. American Media, Inc.,* (E.D. Mich. June 8, 2017) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
21. *Hart v. BHH, LLC* (S.D.N.Y. July 7, 2017) to represent a nationwide class of purchasers of Bell & Howell ultrasonic pest repellers,
22. *McMillion v. Rash Curtis & Associates* (N.D. Cal. September 6, 2017) to represent a certified nationwide class of individuals who received calls from Rash Curtis & Associates,

23. *Lucero v. Solarcity Corp.* (N.D. Cal. September 15, 2017) to represent a certified nationwide class of individuals who received telemarketing calls from Solarcity Corp.,
24. *Taylor v. Trusted Media Brands, Inc.* (S.D.N.Y. Oct. 17, 2017) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
25. *Gasser v. Kiss My Face, LLC* (N.D. Cal. Oct. 23, 2017) to represent a proposed nationwide class of purchasers of cosmetic products,
26. *Gastelum v. Frontier California Inc.* (S.F. Superior Court February 21, 2018) to represent a certified California class of Frontier landline telephone customers who were charged late fees,
27. *Williams v. Facebook, Inc.* (N.D. Cal. June 26, 2018) to represent a proposed nationwide class of Facebook users for alleged privacy violations,
28. *Ruppel v. Consumers Union of United States, Inc.* (S.D.N.Y. July 27, 2018) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
29. *Bayol v. Health-Ade* (N.D. Cal. August 23, 2018) to represent a proposed nationwide class of Health-Ade kombucha beverage purchasers,
30. *West v. California Service Bureau* (N.D. Cal. September 12, 2018) to represent a certified nationwide class of individuals who received calls from California Service Bureau,
31. *Gregorio v. Premier Nutrition Corporation* (S.D.N.Y. Sept. 14, 2018) to represent a nationwide class of purchasers of protein shake products,
32. *Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast* (S.D.N.Y. Oct. 24, 2018) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
33. *Bakov v. Consolidated World Travel Inc. d/b/a Holiday Cruise Line* (N.D. Ill. Mar. 21, 2019) to represent a certified class of individuals who received calls from Holiday Cruise Line,
34. *Martinelli v. Johnson & Johnson* (E.D. Cal. March 29, 2019) to represent a certified class of purchasers of Benecol spreads labeled with the representation “No Trans Fat,”
35. *Edwards v. Hearst Communications, Inc.* (S.D.N.Y. April 24, 2019) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
36. *Galvan v. Smashburger* (C.D. Cal. June 25, 2019) to represent a proposed class of purchasers of Smashburger’s “Triple Double” burger,
37. *Kokoszki v. Playboy Enterprises, Inc.* (E.D. Mich. Feb. 7, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
38. *Russett v. The Northwestern Mutual Life Insurance Co.* (S.D.N.Y. May 28, 2020) to represent a class of insurance policyholders that were allegedly charged unlawful paper billing fees,
39. *In re: Metformin Marketing and Sales Practices Litigation* (D.N.J. June 3, 2020) to represent a proposed nationwide class of purchasers of generic diabetes medications that were contaminated with a cancer-causing carcinogen,

40. *Hill v. Spirit Airlines, Inc.* (S.D. Fla. July 21, 2020) to represent a proposed nationwide class of passengers whose flights were cancelled by Spirit Airlines due to the novel coronavirus, COVID-19, and whose tickets were not refunded,
41. *Kramer v. Alterra Mountain Co.* (D. Colo. July 31, 2020) to represent a proposed nationwide class of purchasers to recoup the unused value of their Ikon ski passes after Alterra suspended operations at its ski resorts due to the novel coronavirus, COVID-19,
42. *Qureshi v. American University* (D.D.C. July 31, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by American University due to the novel coronavirus, COVID-19,
43. *Hufford v. Maxim Inc.* (S.D.N.Y. Aug. 13, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
44. *Desai v. Carnegie Mellon University* (W.D. Pa. Aug. 26, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Carnegie Mellon University due to the novel coronavirus, COVID-19,
45. *Heigl v. Waste Management of New York, LLC* (E.D.N.Y. Aug. 27, 2020) to represent a class of waste collection customers that were allegedly charged unlawful paper billing fees,
46. *Stellato v. Hofstra University* (E.D.N.Y. Sept. 18, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Hofstra University due to the novel coronavirus, COVID-19,
47. *Kaupelis v. Harbor Freight Tools USA, Inc.* (C.D. Cal. Sept. 23, 2020), to represent consumers who purchased defective chainsaws,
48. *Soo v. Lorex Corporation* (N.D. Cal. Sept. 23, 2020), to represent consumers whose security cameras were intentionally rendered non-functional by manufacturer,
49. *Miranda v. Golden Entertainment (NV), Inc.* (D. Nev. Dec. 17, 2020), to represent consumers and employees whose personal information was exposed in a data breach,
50. *Benbow v. SmileDirectClub, Inc.* (Cir. Ct. Cook Cnty. Feb. 4, 2021), to represent a certified nationwide class of individuals who received text messages from SmileDirectClub, in alleged violation of the Telephone Consumer Protection Act,
51. *Suren v. DSV Solutions, LLC* (Cir. Ct. DuPage Cnty. Apr. 8, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
52. *De Lacour v. Colgate-Palmolive Co.* (S.D.N.Y. Apr. 23, 2021), to represent a certified class of consumers who purchased allegedly “natural” Tom’s of Maine products,
53. *Wright v. Southern New Hampshire University* (D.N.H. Apr. 26, 2021), to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Southern New Hampshire University due to the novel coronavirus, COVID-19,

54. *Sahlin v. Hospital Housekeeping Systems, LLC* (Cir. Ct. Williamson Cnty. May 21, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
55. *Landreth v. Verano Holdings LLC, et al.* (Cir. Ct. Cook Cnty. June 2, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act.
56. *Rocchio v. Rutgers, The State University of New Jersey*, (Sup. Ct., Middlesex Cnty. October 27, 201), to represent a certified nationwide class of students for fee refunds after their classes were moved online by Rutgers due to the novel coronavirus, COVID-19,
57. *Malone v. Western Digital Corp.*, (N.D. Cal. Dec. 22, 2021), to represent a class of consumers who purchased hard drives that were allegedly deceptively advertised,
58. *Jenkins v. Charles Industries, LLC*, (Cir. Ct. DuPage Cnty. Dec. 21, 2021) to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
59. *Frederick v. Examsoft Worldwide, Inc.*, (Cir. Ct. DuPage Cnty. Jan. 6, 2022) to represent a certified class of exam takers who used virtual exam proctoring software, in alleged violation of the Illinois Biometric Information Privacy Act,
60. *Isaacson v. Liqui-Box Flexibles, LLC, et al.*, (Cir. Ct. Will Cnty. Jan. 18, 2022) to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
61. *Goldstein et al. v. Henkel Corp.*, (D. Conn. Mar. 3, 2022) to represent a proposed class of purchasers of Right Guard-brand antiperspirants that were allegedly contaminated with benzene,
62. *McCall v. Hercules Corp.*, (N.Y. Sup. Ct., Westchester Cnty. Mar. 14, 2022) to represent a certified class of who laundry card purchasers who were allegedly subjected to deceptive practices by being denied cash refunds,
63. *Lewis v. Trident Manufacturing, Inc.*, (Cir. Ct. Kane Cnty. Mar. 16, 2022) to represent a certified class of workers who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
64. *Croft v. Spinx Games Limited, et al.*, (W.D. Wash. Mar. 31, 2022) to represent a certified class of Washington residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Washington law,
65. *Fischer v. Instant Checkmate LLC*, (N.D. Ill. Mar. 31, 2022) to represent a certified class of Illinois residents whose identities were allegedly used without their consent in alleged violation of the Illinois Right of Publicity Act,
66. *Rivera v. Google LLC*, (Cir. Ct. Cook Cnty. Apr. 25, 2022) to represent a certified class of Illinois residents who appeared in a photograph in Google Photos, in alleged violation of the Illinois Biometric Information Privacy Act,
67. *Loftus v. Outside Integrated Media, LLC*, (E.D. Mich. May 5, 2022) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,

68. *D'Amario v. The University of Tampa*, (S.D.N.Y. June 3, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by The University of Tampa due to the novel coronavirus, COVID-19,
69. *Fittipaldi v. Monmouth University*, (D.N.J. Sept. 22, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Monmouth University due to the novel coronavirus, COVID-19,
70. *Armstead v. VGW Malta Ltd. et al.* (Cir. Ct. Henderson Cnty. Oct. 3, 2022) to present a certified class of Kentucky residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Kentucky law,
71. *Cruz v. The Connor Group, A Real Estate Investment Firm, LLC*, (N.D. Ill. Oct. 26, 2022) to represent a certified class of workers who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act;
72. *Delcid et al. v. TCP HOT Acquisitions LLC et al.* (S.D.N.Y. Oct. 28, 2022) to represent a certified nationwide class of purchasers of Sure and Brut-brand antiperspirants that were allegedly contaminated with benzene,
73. *Kain v. The Economist Newspaper NA, Inc.* (E.D. Mich. Dec. 15, 2022) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
74. *Strano v. Kiplinger Washington Editors, Inc.* (E.D. Mich. Jan. 6, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
75. *Moeller v. The Week Publications, Inc.* (E.D. Mich. Jan. 6, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act.

SCOTT A. BURSOR

Mr. Bursor has an active civil trial practice, having won multi-million verdicts or recoveries in six of six civil jury trials since 2008. Mr. Bursor's most recent victory came in May 2019 in *Perez v. Rash Curtis & Associates*, in which Mr. Bursor served as lead trial counsel and won a \$267 million jury verdict against a debt collector for violations of the Telephone Consumer Protection Act (TCPA).

In *Ayyad v. Sprint Spectrum L.P.* (2013), where Mr. Bursor served as lead trial counsel, the jury returned a verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

In *Thomas v. Global Vision Products, Inc.* (2009), the jury returned a \$50 million verdict in favor of the plaintiff and class represented by Mr. Bursor. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009.

Class actions are rarely tried to verdict. Other than Mr. Bursor and his partner Mr. Fisher, we know of no lawyer that has tried more than one class action to a jury. Mr. Bursor's perfect record of six wins in six class action jury trials, with recoveries ranging from \$21 million

to \$299 million, is unmatched by any other lawyer. Each of these victories was hard-fought against top trial lawyers from the biggest law firms in the United States.

Mr. Bursor graduated from the University of Texas Law School in 1996. He served as Articles Editor of the Texas Law Review, and was a member of the Board of Advocates and Order of the Coif. Prior to starting his own practice, Mr. Bursor was a litigation associate at a large New York based law firm where he represented telecommunications, pharmaceutical, and technology companies in commercial litigation.

Mr. Bursor is a member of the state bars of New York, Florida, and California, as well as the bars of the United States Court of Appeals for the Second, Third, Fourth, Sixth, Ninth and Eleventh Circuits, and the bars of the United States District Courts for the Southern and Eastern Districts of New York, the Northern, Central, Southern and Eastern Districts of California, the Southern and Middle Districts of Florida, and the Eastern District of Michigan.

Representative Cases

Mr. Bursor was appointed lead or co-lead class counsel to the largest, 2nd largest, and 3rd largest classes ever certified. Mr. Bursor has represented classes including more than 160 million class members, roughly 1 of every 2 Americans. Listed below are recent cases that are representative of Mr. Bursor's practice:

Mr. Bursor negotiated and obtained court-approval for two landmark settlements in *Nguyen v. Verizon Wireless* and *Zill v. Sprint Spectrum* (the largest and 2nd largest classes ever certified). These settlements required Verizon and Sprint to open their wireless networks to third-party devices and applications. These settlements are believed to be the most significant legal development affecting the telecommunications industry since 1968, when the FCC's Carterfone decision similarly opened up AT&T's wireline telephone network.

Mr. Bursor was the lead trial lawyer in *Ayyad v. Sprint Spectrum, L.P.* representing a class of approximately 2 million California consumers who were charged an early termination fee under a Sprint cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory and common law claims. After a five-week combined bench-and-jury trial, the jury returned a verdict in June 2008 and the Court issued a Statement of Decision in December 2008 awarding the plaintiffs \$299 million in cash and debt cancellation. Mr. Bursor served as lead trial counsel for this class again in 2013 during a month-long jury trial in which Sprint asserted a \$1.06 billion counterclaim against the class. Mr. Bursor secured a verdict awarding Sprint only \$18.4 million, the exact amount calculated by the class's damages expert. This award was less than 2% of the damages Sprint sought, less than 6% of the amount of the illegal termination fees Sprint charged to class members. In December 2016, after more than 13 years of litigation, the case was settled for \$304 million, including \$79 million in cash payments plus \$225 million in debt cancellation.

Mr. Bursor was the lead trial lawyer in *White v. Cellco Partnership d/b/a Verizon Wireless* representing a class of approximately 1.4 million California consumers who were charged an early termination fee under a Verizon cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory

and common law claims. In July 2008, after Mr. Bursor presented plaintiffs' case-in-chief, rested, then cross-examined Verizon's principal trial witness, Verizon agreed to settle the case for a \$21 million cash payment and an injunction restricting Verizon's ability to impose early termination fees in future subscriber agreements.

Mr. Bursor was the lead trial lawyer in *Thomas v. Global Visions Products Inc.* Mr. Bursor represented a class of approximately 150,000 California consumers who had purchased the Avacor® hair regrowth system. In January 2008, after a four-week combined bench-and-jury trial, Mr. Bursor obtained a \$37 million verdict for the class, which the Court later increased to \$40 million.

Mr. Bursor was appointed class counsel and was elected chair of the Official Creditors' Committee in *In re Nutraquest Inc.*, a Chapter 11 bankruptcy case before Chief Judge Garrett E. Brown, Jr. (D.N.J.) involving 390 ephedra-related personal injury and/or wrongful death claims, two consumer class actions, four enforcement actions by governmental agencies, and multiple adversary proceedings related to the Chapter 11 case. Working closely with counsel for all parties and with two mediators, Judge Nicholas Politan (Ret.) and Judge Marina Corodemus (Ret.), the committee chaired by Mr. Bursor was able to settle or otherwise resolve every claim and reach a fully consensual Chapter 11 plan of reorganization, which Chief Judge Brown approved in late 2006. This settlement included a \$12.8 million recovery to a nationwide class of consumers who alleged they were defrauded in connection with the purchase of Xenadrine® dietary supplement products.

Mr. Bursor was the lead trial lawyer in *In re: Pacific Bell Late Fee Litigation*. After filing the first class action challenging Pac Bell's late fees in April 2010, winning a contested motion to certify a statewide California class in January 2012, and defeating Pac Bell's motion for summary judgment in February 2013, Mr. Bursor obtained final approval of the \$38 million class settlement. The settlement, which Mr. Bursor negotiated the night before opening statements were scheduled to commence, included a \$20 million cash payment to provide refunds to California customers who paid late fees on their Pac Bell wireline telephone accounts, and an injunction that reduced other late fee charges by \$18.6 million.

L. TIMOTHY FISHER

L. Timothy Fisher has an active practice in consumer class actions and complex business litigation and has also successfully handled a large number of civil appeals.

Mr. Fisher has been actively involved in numerous cases that resulted in multi-million dollar recoveries for consumers and investors. Mr. Fisher has handled cases involving a wide range of issues including nutritional labeling, health care, telecommunications, corporate governance, unfair business practices and consumer fraud. With his partner Scott A. Bursor, Mr. Fisher has tried five class action jury trials, all of which produced successful results. In *Thomas v. Global Vision Products*, Mr. Fisher obtained a jury award of \$50,024,611 — the largest class action award in California in 2009 and the second-largest jury award of any kind. In 2019, Mr. Fisher served as trial counsel with Mr. Bursor and his partner Yeremey Krivoshey in *Perez. v. Rash Curtis & Associates*, where the jury returned a verdict for \$267 million in statutory damages under the Telephone Consumer Protection Act.

Mr. Fisher was admitted to the State Bar of California in 1997. He is also a member of the bars of the United States Court of Appeals for the Ninth Circuit, the United States District Courts for the Northern, Central, Southern and Eastern Districts of California, the Northern District of Illinois, the Eastern District of Michigan, and the Eastern District of Missouri. Mr. Fisher taught appellate advocacy at John F. Kennedy University School of Law in 2003 and 2004. In 2010, he contributed jury instructions, a verdict form and comments to the consumer protection chapter of Justice Elizabeth A. Baron's *California Civil Jury Instruction Companion Handbook* (West 2010). In January 2014, Chief Judge Claudia Wilken of the United States District Court for the Northern District of California appointed Mr. Fisher to a four-year term as a member of the Court's Standing Committee on Professional Conduct.

Mr. Fisher received his Juris Doctor from Boalt Hall at the University of California at Berkeley in 1997. While in law school, he was an active member of the Moot Court Board and participated in moot court competitions throughout the United States. In 1994, Mr. Fisher received an award for Best Oral Argument in the first-year moot court competition.

In 1992, Mr. Fisher graduated with highest honors from the University of California at Berkeley and received a degree in political science. Prior to graduation, he authored an honors thesis for Professor Bruce Cain entitled "The Role of Minorities on the Los Angeles City Council." He is also a member of Phi Beta Kappa.

Representative Cases

Thomas v. Global Vision Products, Inc. (Alameda County Superior Court). Mr. Fisher litigated claims against Global Vision Products, Inc. and other individuals in connection with the sale and marketing of a purported hair loss remedy known as Avacor. The case lasted more than seven years and involved two trials. The first trial resulted in a verdict for plaintiff and the class in the amount of \$40,000,000. The second trial resulted in a jury verdict of \$50,024,611, which led to a \$30 million settlement for the class.

In re Cellphone Termination Fee Cases - Handset Locking Actions (Alameda County Superior Court). Mr. Fisher actively worked on five coordinated cases challenging the secret locking of cell phone handsets by major wireless carriers to prevent consumers from activating them on competitive carriers' systems. Settlements have been approved in all five cases on terms that require the cell phone carriers to disclose their handset locks to consumers and to provide unlocking codes nationwide on reasonable terms and conditions. The settlements fundamentally changed the landscape for cell phone consumers regarding the locking and unlocking of cell phone handsets.

In re Cellphone Termination Fee Cases - Early Termination Fee Cases (Alameda County Superior Court and Federal Communications Commission). In separate cases that are a part of the same coordinated litigation as the Handset Locking Actions, Mr. Fisher actively worked on claims challenging the validity under California law of early termination fees imposed by national cell phone carriers. In one of those cases, against Verizon Wireless, a nationwide settlement was reached after three weeks of trial in the amount of \$21 million. In a second case, which was tried to verdict, the Court held after trial that the \$73 million of flat early termination

fees that Sprint had collected from California consumers over an eight-year period were void and unenforceable.

Selected Published Decisions

Melgar v. Zicam LLC, 2016 WL 1267870 (E.D. Cal. Mar. 30, 2016) (certifying 10-jurisdiction class of purchasers of cold remedies, denying motion for summary judgment, and denying motions to exclude plaintiff's expert witnesses).

Salazar v. Honest Tea, Inc., 2015 WL 7017050 (E.D. Cal. Nov. 12, 2015) (denying motion for summary judgment).

Dei Rossi v. Whirlpool Corp., 2015 WL 1932484 (E.D. Cal. Apr. 27, 2015) (certifying California class of purchasers of refrigerators that were mislabeled as Energy Star qualified).

Bayol v. Zipcar, Inc., 78 F.Supp.3d 1252 (N.D. Cal. 2015) (denying motion to dismiss claims alleging unlawful late fees under California Civil Code § 1671).

Forcellati v. Hyland's, Inc., 2015 WL 9685557 (C.D. Cal. Jan. 12, 2015) (denying motion for summary judgment in case alleging false advertising of homeopathic cold and flu remedies for children).

Bayol v. Zipcar, Inc., 2014 WL 4793935 (N.D. Cal. Sept. 25, 2014) (denying motion to transfer venue pursuant to a forum selection clause).

Forcellati v. Hyland's Inc., 2014 WL 1410264 (C.D. Cal. Apr. 9, 2014) (certifying nationwide class of purchasers of homeopathic cold and flu remedies for children).

Hendricks v. StarKist Co., 30 F.Supp.3d 917 (N.D. Cal. 2014) (denying motion to dismiss in case alleging underfilling of 5-ounce cans of tuna).

Dei Rossi v. Whirlpool Corp., 2013 WL 5781673 (E.D. Cal. October 25, 2013) (denying motion to dismiss in case alleging that certain KitchenAid refrigerators were misrepresented as Energy Star qualified).

Forcellati v. Hyland's Inc., 876 F.Supp.2d 1155 (C.D. Cal. 2012) (denying motion to dismiss complaint alleging false advertising regarding homeopathic cold and flu remedies for children).

Clerkin v. MyLife.com, 2011 WL 3809912 (N.D. Cal. August 29, 2011) (denying defendants' motion to dismiss in case alleging false and misleading advertising by a social networking company).

In re Cellphone Termination Fee Cases, 186 Cal.App.4th 1380 (2010) (affirming order approving \$21 million class action settlement).

Gatton v. T-Mobile USA, Inc., 152 Cal.App.4th 571 (2007) (affirming order denying motion to compel arbitration).

Selected Class Settlements

Melgar v. Zicam (Eastern District of California) - \$16 million class settlement of claims alleging cold medicine was ineffective.

Gastelum v. Frontier California Inc. (San Francisco Superior Court) - \$10.9 million class action settlement of claims alleging that a residential landline service provider charged unlawful late

fees.

West v. California Service Bureau, Inc. (Northern District of California) - \$4.1 million class settlement of claims under the Telephone Consumer Protection Act.

Gregorio v. Premier Nutrition Corp. (Southern District of New York) - \$9 million class settlement of false advertising claims against protein shake manufacturer.

Morris v. SolarCity Corp. (Northern District of California) - \$15 million class settlement of claims under the Telephone Consumer Protection Act.

Retta v. Millennium Products, Inc. (Central District of California) - \$8.25 million settlement to resolve claims of bottled tea purchasers for alleged false advertising.

Forcellati v. Hyland's (Central District of California) – nationwide class action settlement providing full refunds to purchasers of homeopathic cold and flu remedies for children.

Dei Rossi v. Whirlpool (Eastern District of California) – class action settlement providing \$55 cash payments to purchasers of certain KitchenAid refrigerators that allegedly mislabeled as Energy Star qualified.

In Re NVIDIA GTX 970 Graphics Chip Litigation (Northern District of California) - \$4.5 million class action settlement of claims alleging that a computer graphics card was sold with false and misleading representations concerning its specifications and performance.

Hendricks v. StarKist Co. (Northern District of California) – \$12 million class action settlement of claims alleging that 5-ounce cans of tuna were underfilled.

In re Zakskorn v. American Honda Motor Co. Honda (Eastern District of California) – nationwide settlement providing for brake pad replacement and reimbursement of out-of-pocket expenses in case alleging defective brake pads on Honda Civic vehicles manufactured between 2006 and 2011.

Correa v. Sensa Products, LLC (Los Angeles Superior Court) - \$9 million settlement on behalf of purchasers of the Sensa weight loss product.

In re Pacific Bell Late Fee Litigation (Contra Costa County Superior Court) - \$38.6 million settlement on behalf of Pac Bell customers who paid an allegedly unlawful late payment charge.

In re Haier Freezer Consumer Litigation (Northern District of California) - \$4 million settlement, which provided for cash payments of between \$50 and \$325.80 to class members who purchased the Haier HNCM070E chest freezer.

Thomas v. Global Vision Products, Inc. (Alameda County Superior Court) - \$30 million settlement on behalf of a class of purchasers of a hair loss remedy.

Guyette v. Viacom, Inc. (Alameda County Superior Court) - \$13 million settlement for a class of cable television subscribers who alleged that the defendant had improperly failed to share certain tax refunds with its subscribers.

JOSEPH I. MARCHESE

Joseph I. Marchese is a Partner with Bursor & Fisher, P.A. Joe focuses his practice on consumer class actions, employment law disputes, and commercial litigation. He has represented corporate and individual clients in a wide array of civil litigation, and has substantial trial and appellate experience.

Joe has diverse experience in litigating and resolving consumer class actions involving claims of mislabeling, false or misleading advertising, privacy violations, data breach claims, and violations of the Servicemembers Civil Relief Act.

Joe also has significant experience in multidistrict litigation proceedings. Recently, he served on the Plaintiffs' Executive Committee in *In Re: Blue Buffalo Company, Ltd. Marketing And Sales Practices Litigation*, MDL No. 2562, which resulted in a \$32 million consumer class settlement. Currently, he serves on the Plaintiffs' Steering Committee for Economic Reimbursement in *In Re: Valsartan Products Liability Litigation*, MDL No. 2875.

Joe is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, and the Eastern District of Michigan, as well as the United States Court of Appeals for the Second Circuit.

Joe graduated from Boston University School of Law in 2002 where he was a member of The Public Interest Law Journal. In 1998, Joe graduated with honors from Bucknell University.

Selected Published Decisions:

Boelter v. Hearst Communications, Inc., 269 F. Supp. 3d 172 (S.D.N.Y. Sept. 7, 2017), granting plaintiff's motion for partial summary judgment on state privacy law violations in putative class action.

Boelter v. Hearst Communications, Inc., 192 F. Supp. 3d 427 (S.D.N.Y. June 17, 2016), denying publisher's motion to dismiss its subscriber's allegations of state privacy law violations in putative class action.

In re Scotts EZ Seed Litigation, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

Ebin v. Kangadis Food Inc., 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

In re Michaels Stores Pin Pad Litigation, 830 F. Supp. 2d 518 (N.D. Ill. 2011), denying retailer's motion to dismiss its customers' state law consumer protection and privacy claims in data breach putative class action.

Selected Class Settlements:

Wellington v. Empower Federal Credit Union et al, 5:20-cv-01367-DNH-ML (N.D.N.Y. 2023) – final approval granted for \$5.2 million class settlement to resolve claims that a New York credit union unlawfully charged their accountholders overdraft fees.

Edwards v. Hearst Communications, Inc., Case No. 15-cv-09279-AT (S.D.N.Y. 2019) – final approval granted for \$50 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast, Case No. 15-cv-05671-NRB (S.D.N.Y. 2019) – final approval granted for \$13.75 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

In re Scotts EZ Seed Litigation, Case No. 12-cv-4727-VB (S.D.N.Y. 2018) – final approval granted for \$47 million class settlement to resolve false advertising claims of purchasers of combination grass seed product.

In Re: Blue Buffalo Marketing And Sales Practices Litigation, Case No. 14-MD-2562-RWS (E.D. Mo. 2016) – final approval granted for \$32 million class settlement to resolve claims of pet owners for alleged false advertising of pet foods.

Rodriguez v. Citimortgage, Inc., Case No. 11-cv-4718-PGG (S.D.N.Y. 2015) – final approval granted for \$38 million class settlement to resolve claims of military servicemembers for alleged foreclosure violations of the Servicemembers Civil Relief Act, where each class member was entitled to \$116,785 plus lost equity in the foreclosed property and interest thereon.

O'Brien v. LG Electronics USA, Inc., et al., Case No. 10-cv-3733-DMC (D.N.J. 2011) – final approval granted for \$23 million class settlement to resolve claims of Energy Star refrigerator purchasers for alleged false advertising of the appliances' Energy Star qualification.

SARAH N. WESTCOT

Sarah N. Westcot is the Managing Partner of Bursor & Fisher's Miami office. She focuses her practice on consumer class actions, complex business litigation, and mass torts.

She has represented clients in a wide array of civil litigation, and has substantial trial and appellate experience. Sarah served as trial counsel in *Ayyad v. Sprint Spectrum L.P.*, where Bursor & Fisher won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

Sarah also has significant experience in high-profile, multi-district litigations. She currently serves on the Plaintiffs' Steering Committee in *In re Zantac (Ranitidine) Products Liability Litigation*, MDL No. 2924 (S.D. Florida). She also serves on the Plaintiffs' Executive Committee in *In re Apple Inc. App Store Simulated Casino-Style Games Litigation*, MDL No. 2985 (N.D. Cal.) and *In Re: Google Play Store Simulated Casino-Style Games Litigation*, MDL No. 3001 (N.D. Cal.).

Sarah is admitted to the State Bars of California and Florida, and is a member of the bars of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, the United States District Courts for the Southern and Middle Districts of Florida, and the bars of the United States Courts of Appeals for the Second, Eighth, and Ninth Circuits.

Sarah received her Juris Doctor from the University of Notre Dame Law School in 2009. During law school, she was a law clerk with the Cook County State's Attorney's Office in Chicago and the Santa Clara County District Attorney's Office in San Jose, CA, gaining early trial experience in both roles. She graduated with honors from the University of Florida in 2005.

Sarah is a member of The National Trial Lawyers Top 100 Civil Plaintiff Lawyers, and was selected to The National Trial Lawyers Top 40 Under 40 Civil Plaintiff Lawyers for 2022.

JOSHUA D. ARISOHN

Joshua D. Arisohn is a Partner with Bursor & Fisher, P.A. Josh has litigated precedent-setting cases in the areas of consumer class actions and terrorism. He participated in the first ever trial to take place under the Anti-Terrorism Act, a statute that affords U.S. citizens the right to assert federal claims for injuries arising out of acts of international terrorism. Josh's practice continues to focus on terrorism-related matters as well as class actions.

Josh is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, the District Court for the District of Columbia, and the United States Courts of Appeals for the Second and Ninth Circuits.

Josh previously practiced at Dewey & LeBoeuf LLP and DLA Piper LLP. He graduated from Columbia University School of Law in 2006, where he was a Harlan Fiske Stone Scholar, and received his B.A. from Cornell University in 2002. Josh has been honored as a 2015, 2016 and 2017 Super Lawyer Rising Star.

Selected Published Decisions:

Fields v. Syrian Arab Republic, Civil Case No. 18-1437 (RJL), entering a judgment of approximately \$850 million in favor of the family members of victims of terrorist attacks carried out by ISIS with the material support of Syria.

Farwell v. Google LLC, 2022 WL 1568361 (C.D. Ill. Mar. 31, 2022), denying social media defendant's motion to dismiss BIPA claims brought on behalf of Illinois school students using Google's Workspace for Education platform on laptop computers.

Weiman v. Miami University, Case No. 2020-00614JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Smith v. The Ohio State University, Case No. 2020-00321JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Waitt v. Kent State University, Case No. 2020-00392JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Duke v. Ohio University, Case No. 2021-00036JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Keba v. Bowling Green State University, Case No. 2020-00639JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Kirkbride v. The Kroger Co., Case No. 2:21-cv-00022-ALM-EPD, denying motion to dismiss claims based on the allegation that defendant overstated its usual and customary prices and thereby overcharged customers for generic drugs.

Selected Class Settlements:

Morris v. SolarCity Corp., Case No. 3:15-cv-05107-RS (N.D. Cal.) - final approval granted for \$15 million class settlement to resolve claims under the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*

Marquez v. Google LLC, Case No. 2021-CH-1460 (Cir. Ct. Cook Cnty. 2022) – final approval granted for \$100 million class settlement to resolve alleged BIPA violations of Illinois residents appearing in photos on the Google Photos platform.

JOEL D. SMITH

Joel D. Smith is a Partner with Bursor & Fisher, P.A. Joel is a trial attorney who has practiced in lower court and appeals courts across the country, as well as the U.S. Supreme Court.

Prior to joining Bursor & Fisher, Joel was a litigator at Crowell & Moring, where he represented Fortune 500 companies, privately held businesses, and public entities in a wide variety of commercial, environmental, and class action matters. Among other matters, Joel served as defense counsel for AT&T, Enterprise-Rent-A-Car, Flowers Foods, and other major U.S. businesses in consumer class actions, including a class action seeking to hold U.S. energy companies accountable for global warming. Joel represented four major U.S. retailers in a case arising from a devastating arson fire and ensuing state of emergency in Roseville, California, which settled on the eve of a trial that was expected to last several months and involve several dozen witnesses. Joel also was part of the trial team in a widely publicized trial over the death of a contestant who died after participating in a Sacramento radio station's water drinking contest.

More recently, Joel's practice focuses on consumer class actions involving automotive and other product defects, financial misconduct, false advertising, and privacy violations.

Joel received both his undergraduate and law degrees from the University of California at Berkeley. While at Berkeley School of Law, he was a member of the California Law Review, received several academic honors, externed for the California Attorney General's office and published an article on climate change policy and litigation.

Joel is admitted to the State Bar of California, as well as the United States Courts of Appeals for the Second, Third and Ninth Circuits; all California district courts; the Eastern District of Michigan; and the Northern District of Illinois.

Selected Published Decisions:

Javier v. Assurance IQ, LLC, --- Fed App'x --- 2022 WL 1744107 (9th Cir. May 31, 2022), reversing dismissal in a class action alleging surreptitious monitoring of internet communications.

Revitch v. DIRECTV, LLC, 977 F.3d 713 (9th Cir. 2020), affirming denial of motion to compel arbitration in putative class action alleging unlawful calls under the Telephone Consumer Protection Act.

Kaupelis v. Harbor Freight Tools USA, Inc., 2020 WL 5901116 (C.D. Cal. Sept. 23, 2020), granting class certification of consumer protection claims brought by purchasers of defective chainsaws.

Selected Class Settlements:

Recinos et al. v. The Regents of the University of California, Superior Court for the State of California, County of Alameda, Case No. RG19038659 – final approval granted for a settlement providing debt relief and refunds to University of California students who were charged late fees.

Crandell et al. v. Volkswagen Group of America, Case No. 2:18-cv-13377-JSA (D.N.J.) – final approval granted for a settlement providing relief for Volkswagen Touareg owners to resolve allegations that defects in Touareg vehicles caused the engines to ingest water when driving in the rain.

Isley et al. v. BMW of N. America, LLC, Case No. 2:19-cv-12680-ESK (D.N.J.) – final approval granted for settlement providing BMW owners with reimbursements and credit vouchers to resolve allegations that defects in the BMW N63TU engine caused excessive oil consumption.

Kaupelis v. Harbor Freight Tools USA, Inc., 8:19-cv-01203-JVS-DFM (C.D. Cal.) – final approval granted for a settlement valued up to \$40 million to resolve allegations that Harbor Freight sold chainsaws with a defective power switch that could prevent the chainsaws from turning off.

Morris v. SolarCity Corp., Case No. 3:15-cv-05107-RS (N.D. Cal.) - final approval granted for \$15 million class settlement to resolve claims under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*

NEAL J. DECKANT

Neal J. Deckant is a Partner with Bursor & Fisher, P.A., where he serves as the firm's Head of Information & e-Discovery. Neal focuses his practice on complex business litigation and consumer class actions. Prior to joining Bursor & Fisher, Neal counseled low-income homeowners facing foreclosure in East Boston.

Neal is admitted to the State Bars of California and New York, and is a member of the bars of the United States District Court for the Northern District of California, the United States District Court for the Eastern District of California, the United States District Court for the Central District of California, the United States District Court for the Southern District of California, the United States District Court for the Southern District of New York, the United States District Court for the Eastern District of New York, and the bars of the United States Courts of Appeals for the Second and Ninth Circuits.

Neal received his Juris Doctor from Boston University School of Law in 2011, graduating cum laude with two Dean’s Awards. During law school, Neal served as a Senior Articles Editor for the Review of Banking and Financial Law, where he authored two published articles about securitization reforms, both of which were cited by the New York Court of Appeals, the highest court in the state. Neal was also awarded Best Oral Argument in his moot court section, and he served as a Research Assistant for his Securities Regulation professor. Neal has also been honored as a 2014, 2015, 2016, and 2017 Super Lawyers Rising Star. In 2007, Neal graduated with Honors from Brown University with a dual major in East Asian Studies and Philosophy.

Selected Published Decisions:

Martinelli v. Johnson & Johnson, 2019 WL 1429653 (N.D. Cal. Mar. 29, 2019), granting class certification of false advertising and other claims brought by purchasers of Benecol spreads labeled with the representation “No Trans Fats.”

Dzielak v. Whirlpool Corp., 2017 WL 6513347 (D.N.J. Dec. 20, 2017), granting class certification of consumer protection claims brought by purchasers of Maytag Centennial washing machines marked with the “Energy Star” logo.

Duran v. Obesity Research Institute, LLC, 204 Cal. Rptr. 3d 896 (Cal. Ct. App. 2016), reversing and remanding final approval of a class action settlement on appeal, regarding allegedly mislabeled dietary supplements, in connection with a meritorious objection.

Marchuk v. Faruqi & Faruqi, LLP, et al., 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting individual and law firm defendants’ motion for judgment as a matter of law on plaintiff’s claims for retaliation and defamation, as well as for all claims against law firm partners, Nadeem and Lubna Faruqi.

Ebin v. Kangadis Food Inc., 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported “100% Pure Olive Oil” product.

Ebin v. Kangadis Food Inc., 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor’s motion for summary judgment against nationwide class of purchasers of purported “100% Pure Olive Oil” product.

Selected Class Settlements:

In Re NVIDIA GTX 970 Graphics Chip Litigation, Case No. 15-cv-00760-PJH (N.D. Cal. Dec. 7, 2016) – final approval granted for \$4.5 million class action settlement to resolve claims that a computer graphics card was allegedly sold with false and misleading representations concerning its specifications and performance.

Hendricks v. StarKist Co., 2016 WL 5462423 (N.D. Cal. Sept. 29, 2016) – final approval granted for \$12 million class action settlement to resolve claims that 5-ounce cans of tuna were allegedly underfilled.

In re: Kangadis Food Inc., Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014) – class action claims resolved for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy, following claims that its olive oil was allegedly sold with false and misleading representations.

Selected Publications:

Neal Deckant, *X. Reforms of Collateralized Debt Obligations: Enforcement, Accounting and Regulatory Proposals*, 29 Rev. Banking & Fin. L. 79 (2009) (cited in *Quadrant Structured Products Co., Ltd. v. Vertin*, 16 N.E.3d 1165, 1169 n.8 (N.Y. 2014)).

Neal Deckant, *Criticisms of Collateralized Debt Obligations in the Wake of the Goldman Sachs Scandal*, 30 Rev. Banking & Fin. L. 407 (2010) (cited in *Quadrant Structured Products Co., Ltd. v. Vertin*, 16 N.E.3d 1165, 1169 n.8 (N.Y. 2014)); *Lyon Village Venetia, LLC v. CSE Mortgage LLC*, 2016 WL 476694, at *1 n.1 (Md. Ct. Spec. App. Feb. 4, 2016); Ivan Ascher, *Portfolio Society: On the Capitalist Mode of Prediction*, at 141, 153, 175 (Zone Books / The MIT Press 2016); Devon J. Steinmeyer, *Does State National Bank of Big Spring v. Geithner Stand a Fighting Chance?*, 89 Chi.-Kent. L. Rev. 471, 473 n.13 (2014)).

YITZCHAK KOPEL

Yitzchak Kopel is a Partner with Bursor & Fisher, P.A. Yitz focuses his practice on consumer class actions and complex business litigation. He has represented corporate and individual clients before federal and state courts, as well as in arbitration proceedings.

Yitz has substantial experience in successfully litigating and resolving consumer class actions involving claims of consumer fraud, data breaches, and violations of the telephone consumer protection act. Since 2014, Yitz has obtained class certification on behalf of his clients

five times, three of which were certified as nationwide class actions. Bursor & Fisher was appointed as class counsel to represent the certified classes in each of the cases.

Yitz is admitted to the State Bars of New York and New Jersey, the bar of the United States Court of Appeals for the Second, Eleventh, and Ninth Circuits, and the bars of the United States District Courts for the Southern District of New York, Eastern District of New York, Eastern District of Missouri, Eastern District of Wisconsin, Northern District of Illinois, and District of New Jersey.

Yitz received his Juris Doctorate from Brooklyn Law School in 2012, graduating *cum laude* with two Dean's Awards. During law school, Yitz served as an Articles Editor for the Brooklyn Law Review and worked as a Law Clerk at Shearman & Sterling. In 2009, Yitz graduated *cum laude* from Queens College with a B.A. in Accounting.

Selected Published Decisions:

Bassaw v. United Industries Corp., --- F. Supp. 3d ---, 2020 WL 5117916 (S.D.N.Y. Aug. 31, 2020), denying motion to dismiss claims in putative class action concerning insect foggers.

Poppiti v. United Industries Corp., 2020 WL 1433642 (E.D. Mo. Mar. 24, 2020), denying motion to dismiss claims in putative class action concerning citronella candles.

Bakov v. Consolidated World Travel, Inc., 2019 WL 6699188 (N.D. Ill. Dec. 9, 2019), granting summary judgment on behalf of certified class in robocall class action.

Krumm v. Kittrich Corp., 2019 WL 6876059 (E.D. Mo. Dec. 17, 2019), denying motion to dismiss claims in putative class action concerning mosquito repellent.

Crespo v. S.C. Johnson & Son, Inc., 394 F. Supp. 3d 260 (S.D.N.Y. 2019), denying defendant's motion to dismiss fraud and consumer protection claims in putative class action regarding Raid insect fogger.

Bakov v. Consolidated World Travel, Inc., 2019 WL 1294659 (N.D. Ill. Mar. 21, 2019), certifying a class of persons who received robocalls in the state of Illinois.

Bourbia v. S.C. Johnson & Son, Inc., 375 F. Supp. 3d 454 (S.D.N.Y. 2019), denying defendant's motion to dismiss fraud and consumer protection claims in putative class action regarding mosquito repellent.

Hart v. BHH, LLC, 323 F. Supp. 3d 560 (S.D.N.Y. 2018), denying defendants' motion for summary judgment in certified class action involving the sale of ultrasonic pest repellents.

Hart v. BHH, LLC, 2018 WL 3471813 (S.D.N.Y. July 19, 2018), denying defendants' motion to exclude plaintiffs' expert in certified class action involving the sale of ultrasonic pest repellents.

Penrose v. Buffalo Trace Distillery, Inc., 2018 WL 2334983 (E.D. Mo. Feb. 5, 2018), denying bourbon producers' motion to dismiss fraud and consumer protection claims in putative class action.

West v. California Service Bureau, Inc., 323 F.R.D. 295 (N.D. Cal. 2017), certifying a nationwide class of "wrong-number" robocall recipients.

Hart v. BHH, LLC, 2017 WL 2912519 (S.D.N.Y. July 7, 2017), certifying nationwide class of purchasers of ultrasonic pest repellers.

Browning v. Unilever United States, Inc., 2017 WL 7660643 (C.D. Cal. Apr. 26, 2017), denying motion to dismiss fraud and warranty claims in putative class action concerning facial scrub product.

Brenner v. Procter & Gamble Co., 2016 WL 8192946 (C.D. Cal. Oct. 20, 2016), denying motion to dismiss warranty and consumer protection claims in putative class action concerning baby wipes.

Hewlett v. Consolidated World Travel, Inc., 2016 WL 4466536 (E.D. Cal. Aug. 23, 2016), denying telemarketer's motion to dismiss TCPA claims in putative class action.

Bailey v. KIND, LLC, 2016 WL 3456981 (C.D. Cal. June 16, 2016), denying motion to dismiss fraud and warranty claims in putative class action concerning snack bars.

Hart v. BHH, LLC, 2016 WL 2642228 (S.D.N.Y. May 5, 2016) denying motion to dismiss warranty and consumer protection claims in putative class action concerning ultrasonic pest repellers.

Marchuk v. Faruqi & Faruqi, LLP, et al., 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting clients' motion for judgment as a matter of law on claims for retaliation and defamation in employment action.

In re Scotts EZ Seed Litigation, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

Brady v. Basic Research, L.L.C., 101 F. Supp. 3d 217 (E.D.N.Y. 2015), denying diet pill manufacturers' motion to dismiss its purchasers' allegations for breach of express warranty in putative class action.

Ward v. TheLadders.com, Inc., 3 F. Supp. 3d 151 (S.D.N.Y. 2014), denying online job board's motion to dismiss its subscribers' allegations of consumer protection law violations in putative class action.

Ebin v. Kangadis Food Inc., 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

Ebin v. Kangadis Food Inc., 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor's motion for summary judgment against nationwide class of purchasers of purported "100% Pure Olive Oil" product.

Selected Class Settlements:

Hart v. BHH, LLC, Case No. 1:15-cv-04804 (S.D.N.Y. Sept. 22, 2020), resolving class action claims regarding ultrasonic pest repellers.

In re: Kangadis Food Inc., Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014), resolving class action claims for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy following the certification of nationwide claims alleging that its olive oil was sold with false and misleading representations.

West v. California Service Bureau, Case No. 4:16-cv-03124-YGR (N.D. Cal. Jan. 23, 2019), resolving class action claims against debt-collector for wrong-number robocalls for \$4.1 million.

FREDERICK J. KLORCZYK III

Frederick J. Klorczyk III is a Partner with Bursor & Fisher, P.A. Fred focuses his practice on complex business litigation and consumer class actions.

Fred has substantial experience in successfully litigating and resolving consumer class actions involving claims of mislabeling, false or misleading advertising, and privacy violations. In 2019, Fred certified both a California and a 10-state express warranty class on behalf of purchasers of a butter substitute. In 2014, Fred served on the litigation team in *Ebin v. Kangadis Food Inc.* At class certification, Judge Rakoff adopted Fred's choice of law fraud analysis and research directly into his published decision certifying a nationwide fraud class.

Fred is admitted to the State Bars of California, New York, and New Jersey, and is a member of the bars of the United States District Courts for the Northern, Central, Eastern, and Southern Districts of California, the Southern, Eastern, and Northern Districts of New York, the District of New Jersey, the Northern District of Illinois, the Eastern District of Missouri, the Eastern District of Wisconsin, and the Eastern District of Michigan, as well as the bars of the United States Court of Appeals for the Second and Ninth Circuits.

Fred received his Juris Doctor from Brooklyn Law School in 2013, graduating *magna cum laude* with two CALI Awards for the highest grade in his classes on conflict of laws and criminal law. During law school, Fred served as an Associate Managing Editor for the Brooklyn Journal of Corporate, Financial and Commercial Law and as an intern to the Honorable Alison J. Nathan of the United States District Court for the Southern District of New York and the Honorable Janet Bond Arterton of the United States District Court for the District of Connecticut. In 2010, Fred graduated from the University of Connecticut with a B.S. in Finance.

Selected Published Decisions:

Revitch v. New Moosejaw, LLC, 2019 WL 5485330 (N.D. Cal. Oct. 23, 2019), denying defendants' motions to dismiss consumer's allegations of state privacy law violations in putative class action.

In re Welspun Litigation, 2019 WL 2174089 (S.D.N.Y. May 20, 2019), denying retailers' and textile manufacturer's motion to dismiss consumers' allegations of false advertising relating to purported "100% Egyptian Cotton" linen products.

Martinelli v. Johnson & Johnson, 2019 WL 1429653 (E.D. Cal. Mar. 29, 2019), granting class certification of California false advertising claims and multi-state express warranty claims brought by purchasers of a butter substitute.

Porter v. NBTY, Inc., 2016 WL 6948379 (N.D. Ill. Nov. 28, 2016), denying supplement manufacturer's motion to dismiss consumers' allegations of false advertising relating to whey protein content.

Weisblum v. Prophase Labs, Inc., 88 F. Supp. 3d 282 (S.D.N.Y. 2015), denying supplement manufacturer's motion to dismiss consumers' allegations of false advertising relating to a homeopathic cold product.

In re Scotts EZ Seed Litigation, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

Marchuk v. Faruqi & Faruqi, LLP, et al., 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting individual and law firm defendants' motion for judgment as a matter of law on plaintiff's claims for retaliation and defamation, as well as for all claims against law firm partners, Nadeem and Lubna Faruqi.

Ebin v. Kangadis Food Inc., Case No. 13-4775 (2d Cir. Apr. 15, 2015), denying olive oil manufacturer's Rule 23(f) appeal following grant of nationwide class certification.

Ebin v. Kangadis Food Inc., 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

Ebin v. Kangadis Food Inc., 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor's motion for summary judgment against nationwide class of purchasers of purported "100% Pure Olive Oil" product.

Selected Class Settlements:

Gregorio v. Premier Nutrition Corp., Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for \$9 million class settlement to resolve claims of protein shake purchasers for alleged false advertising.

Ruppel v. Consumers Union of United States, Inc., Case No. 16-cv-02444-KMK (S.D.N.Y. 2018) – final approval granted for \$16.375 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

In Re: Blue Buffalo Marketing And Sales Practices Litigation, Case No. 14-MD-2562-RWS (E.D. Mo. 2016) –final approval granted for \$32 million class settlement to resolve claims of pet owners for alleged false advertising of pet foods.

In re: Kangadis Food Inc., Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014) – resolved class action claims for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy following the certification of nationwide claims alleging that its olive oil was sold with false and misleading representations.

YEREMEY O. KRIVOSHEY

Yeremey O. Krivoshey is a Partner with Bursor & Fisher, P.A. Mr. Krivoshey has particular expertise in COVID-19 related consumer litigation, unlawful fees and liquidated damages in consumer contracts, TCPA cases, product recall cases, and fraud and false advertising litigation. He has represented clients in a wide array of civil litigation, including appeals before the Ninth Circuit.

Mr. Krivoshey served as trial counsel with Mr. Bursor in *Perez. v. Rash Curtis & Associates*, where, in May 2019, the jury returned a verdict for \$267 million in statutory damages under the Telephone Consumer Protection Act. Since 2017, Mr. Krivoshey has secured over \$200 million for class members in consumer class settlements. Mr. Krivoshey has been honored multiple times as a Super Lawyers Rising Star.

Mr. Krivoshey is admitted to the State Bar of California. He is also a member of the bars of the United States Court of Appeals for the Ninth Circuit and the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, as well as the District of Colorado.

Mr. Krivoshey graduated from New York University School of Law in 2013, where he was a Samuel A. Herzog Scholar. Prior to Bursor & Fisher, P.A., Mr. Krivoshey worked as a Law Clerk at Vladeck, Waldman, Elias & Engelhard, P.C, focusing on employment discrimination and wage and hour disputes. In law school, he has also interned at the American Civil Liberties Union and the United States Department of Justice. In 2010, Mr. Krivoshey graduated *cum laude* from Vanderbilt University.

Representative Cases:

Perez v. Rash Curtis & Associates, Case No. 16-cv-03396-YGR (N.D. Cal. May 13, 2019). Mr. Krivoshey litigated claims against a national health-care debt collection agency on behalf of people that received autodialed calls on their cellular telephones without their prior express consent. Mr. Krivoshey successfully obtained nationwide class certification, defeated the defendant's motion for summary judgment, won summary judgment as to the issue of prior express consent and the use of automatic telephone dialing systems, and navigated the case

towards trial. With his partner, Scott Bursor, Mr. Krivoshey obtained a jury verdict finding that the defendant violated the Telephone Consumer Protection Act (“TCPA”) 534,712 times. Under the TCPA, class members are entitled to \$500 per each call made in violation of the TCPA – in this case, \$267 million for 534,712 unlawful calls.

Selected Published Decisions:

Goodrich, et al. v. Alterra Mountain Co., et al., 2021 WL 2633326 (D. Col. June 25, 2021), denying ski pass company’s motion to dismiss its customers’ allegations concerning refunds owed due to cancellation of ski season due to COVID-19.

Bayol v. Zipcar, Inc., 2014 WL 4793935 (N.D. Cal. Sept. 25, 2014), denying enforcement of forum selection clause based on public policy grounds.

Bayol v. Zipcar, Inc., 78 F. Supp. 3d 1252 (N.D. Cal. Jan. 29, 2015), denying car-rental company’s motion to dismiss its subscriber’s allegations of unlawful late fees.

Brown v. Comcast Corp., 2016 WL 9109112 (C.D. Cal. Aug. 12, 2016), denying internet service provider’s motion to compel arbitration of claims alleged under the Telephone Consumer Protection Act.

Chaisson, et al. v. University of Southern California (Cal. Sup. Ct. Mar. 25, 2021), denying university’s demurrer as to its students’ allegations of unfair and unlawful late fees.

Choi v. Kimberly-Clark Worldwide, Inc., 2019 WL 4894120 (C.D. Cal. Aug. 28, 2019), denying tampon manufacturer’s motion to dismiss its customer’s design defect claims.

Horanzy v. Vemma Nutrition Co., Case No. 15-cv-298-PHX-JJT (D. Ariz. Apr. 16, 2016), denying multi-level marketer’s and its chief scientific officer’s motion to dismiss their customer’s fraud claims.

McMillion, et al. v. Rash Curtis & Associates, 2017 WL 3895764 (N.D. Cal. Sept. 6, 2017), granting nationwide class certification of Telephone Consumer Protection Act claims by persons receiving autodialed and prerecorded calls without consent.

McMillion, et al. v. Rash Curtis & Associates, 2018 WL 692105 (N.D. Cal. Feb. 2, 2018), granting plaintiffs’ motion for partial summary judgment on Telephone Consumer Protection Act violations in certified class action.

Perez v. Indian Harbor Ins. Co., 2020 WL 2322996 (N.D. Cal. May 11, 2020), denying insurance company’s motion to dismiss or stay assigned claims of bad faith and fair dealing arising out of \$267 million trial judgment.

Perez v. Rash Curtis & Associates, 2020 WL 1904533 (N.D. Cal. Apr. 17, 2020), upholding constitutionality of \$267 million class trial judgment award.

Salazar v. Honest Tea, Inc., 2015 WL 7017050 (E.D. Cal. Nov. 12, 2015), denying manufacturer’s motion for summary judgment as to customer’s false advertising claims.

Sholopa v. Turk Hava Yollari A.O., Inc. (d/b/a Turkish Airlines), 2022 WL 976825 (S.D.N.Y. Mar. 31, 2022), denying airline's motion to dismiss its customers claims for failure to refund flights cancelled due to COVID-19.

Selected Class Settlements:

Perez v. Rash Curtis & Associates, Case No. 16-cv-03396-YGR (N.D. Cal. Oct. 1, 2021) granting final approval to a \$75.6 million non-reversionary cash common fund settlement, the largest ever consumer class action settlement stemming from a violation of the Telephone Consumer Protection Act.

Strassburger v. Six Flags Theme Parks Inc., et al. (Ill. Cir. Ct. 2022) granting final approval to \$83.6 million settlement to resolve claims of theme park members for alleged wrongful charging of fees during the COVID-19 pandemic.

Juarez-Segura, et al. v. Western Dental Services, Inc. (Cal. Sup. Ct. Aug. 9, 2021) granting final approval to \$35 million settlement to resolve claims of dental customers for alleged unlawful late fees.

Moore v. Kimberly-Clark Worldwide, Inc. (Ill. Cir. Ct. July 22, 2020) granting final approval to \$11.2 million settlement to resolve claims of tampon purchasers for alleged defective products.

Retta v. Millennium Prods., Inc., 2017 WL 5479637 (C.D. Cal. Aug. 22, 2017) granting final approval to \$8.25 million settlement to resolve claims of kombucha purchasers for alleged false advertising.

Cortes v. National Credit Adjusters, L.L.C. (E.D. Cal. Dec. 7, 2020) granting final approval to \$6.8 million settlement to resolve claims of persons who received alleged autodialed calls without prior consent in violation of the TCPA.

Bayol et al. v. Health-Ade LLC, et al. (N.D. Cal. Oct. 11, 2019) – granting final approval to \$3,997,500 settlement to resolve claims of kombucha purchasers for alleged false advertising.

PHILIP L. FRAIETTA

Philip L. Fraietta is a Partner with Bursor & Fisher, P.A. Phil focuses his practice on data privacy, complex business litigation, consumer class actions, and employment law disputes. Phil has been named a “Rising Star” in the New York Metro Area by Super Lawyers® every year since 2019.

Phil has significant experience in litigating consumer class actions, particularly those involving privacy claims under statutes such as the Michigan Preservation of Personal Privacy Act, the Illinois Biometric Information Privacy Act, and Right of Publicity statutes. Since 2016, Phil has recovered over \$100 million for class members in privacy class action settlements. In addition to privacy claims, Phil has significant experience in litigating and settling class action claims involving false or misleading advertising.

Phil is admitted to the State Bars of New York, New Jersey, Illinois, and Michigan, the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, the Western District of New York, the Northern District of New York, the District of New Jersey, the Eastern District of Michigan, the Western District of Michigan, the Northern District of Illinois, the Central District of Illinois, and the United States Court of Appeals for the Second, Third, and Ninth Circuits. Phil was a Summer Associate with Bursor & Fisher prior to joining the firm.

Phil received his Juris Doctor from Fordham University School of Law in 2014, graduating cum laude. During law school, Phil served as an Articles & Notes Editor for the Fordham Law Review, and published two articles. In 2011, Phil graduated cum laude from Fordham University with a B.A. in Economics.

Selected Published Decisions:

Fischer v. Instant Checkmate LLC, 2022 WL 971479 (N.D. Ill. Mar. 31, 2022), certifying class of Illinois residents for alleged violations of Illinois' Right of Publicity Act by background reporting website.

Kolebuck-Utz v. Whitepages Inc., 2021 WL 157219 (W.D. Wash. Apr. 22, 2021), denying defendant's motion to dismiss for alleged violations of Ohio's Right to Publicity Law.

Bergeron v. Rochester Institute of Technology, 2020 WL 7486682 (W.D.N.Y. Dec. 18, 2020), denying university's motion to dismiss for failure to refund tuition and fees for the Spring 2020 semester in light of the COVID-19 pandemic.

Porter v. NBTY, Inc., 2019 WL 5694312 (N.D. Ill. Nov. 4, 2019), denying supplement manufacturer's motion for summary judgment on consumers' allegations of false advertising relating to whey protein content.

Boelter v. Hearst Communications, Inc., 269 F. Supp. 3d 172 (S.D.N.Y. 2017), granting plaintiff's motion for partial summary judgment on state privacy law violations in putative class action.

Selected Class Settlements:

Edwards v. Hearst Communications, Inc., Case No. 15-cv-09279-AT (S.D.N.Y. 2019) – final approval granted for \$50 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Ruppel v. Consumers Union of United States, Inc., Case No. 16-cv-02444-KMK (S.D.N.Y. 2018) – final approval granted for \$16.375 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast, Case No. 15-cv-05671-NRB (S.D.N.Y. 2019) – final approval granted for \$13.75 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Benbow v. SmileDirectClub, LLC, Case No. 2020-CH-07269 (Cir. Ct. Cook Cnty. 2021) – final approval granted for \$11.5 million class settlement to resolve claims for alleged TCPA violations.

Gregorio v. Premier Nutrition Corp., Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for \$9 million class settlement to resolve claims of protein shake purchasers for alleged false advertising.

Taylor v. Trusted Media Brands, Inc., Case No. 16-cv-01812-KMK (S.D.N.Y. 2018) – final approval granted for \$8.225 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Moeller v. American Media, Inc., Case No. 16-cv-11367-JEL (E.D. Mich. 2017) – final approval granted for \$7.6 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Rocchio v. Rutgers, The State University of New Jersey, Case No. MID-L-003039-20 (Sup. Ct. Middlesex Cnty. 2022) – final approval granted for \$5 million class settlement to resolve claims for failure to refund mandatory fees for the Spring 2020 semester in light of the COVID-19 pandemic.

Heigl v. Waste Management of New York, LLC, Case No. 19-cv-05487-WFK-ST (E.D.N.Y. 2021) – final approval granted for \$2.7 million class settlement to resolve claims for charging allegedly unlawful fees pertaining to paper billing.

Frederick v. Examsoft Worldwide, Inc., Case No. 2021L001116 (Cir. Ct. DuPage Cnty. 2022) – final approval granted for \$2.25 million class settlement to resolve claims for alleged BIPA violations.

ALEC M. LESLIE

Alec Leslie is a Partner with Bursor & Fisher, P.A. He focuses his practice on consumer class actions, employment law disputes, and complex business litigation.

Alec is admitted to the State Bar of New York and is a member of the bar of the United States District Courts for the Southern and Eastern Districts of New York. Alec was a Summer Associate with Bursor & Fisher prior to joining the firm.

Alec received his Juris Doctor from Brooklyn Law School in 2016, graduating *cum laude*. During law school, Alec served as an Articles Editor for Brooklyn Law Review. In addition, Alec served as an intern to the Honorable James C. Francis for the Southern District of New York and the Honorable Vincent Del Giudice, Supreme Court, Kings County. Alec graduated from the University of Colorado with a B.A. in Philosophy in 2012.

Selected Class Settlements:

Gregorio v. Premier Nutrition Corp., Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for class settlement to resolve claims of protein shake purchasers for alleged false advertising.

Wright v. Southern New Hampshire Univ., Case No. 1:20-cv-00609-LM (D.N.H. 2021) – final approval granted for class settlement to resolve claims over COVID-19 tuition and fee refunds to students.

Mendoza et al. v. United Industries Corp., Case No. 21PH-CV00670 (Phelps Cnty. Mo. 2021) – final approval granted for class settlement to resolve false advertising claims on insect repellent products.

Kaupelis v. Harbor Freight Tools USA, Inc., Case No. 8:19-cv-01203-JVS-DFM (C.D. Cal. 2021) – final approval granted for class settlement involving allegedly defective and dangerous chainsaws.

Rocchio v. Rutgers Univ., Case No. MID-L-003039-20 (Middlesex Cnty. N.J. 2021) – final approval granted for class settlement to resolve claims over COVID-19 fee refunds to students.

Malone v. Western Digital Corporation, Case No. 5:20-cv-03584-NC (N.D. Cal.) – final approval granted for class settlement to resolve false advertising claims on hard drive products.

Frederick et al. v. ExamSoft Worldwide, Inc., Case No. 2021L001116 (DuPage Cnty. Ill. 2021) – final approval granted for class settlement to resolve claims over alleged BIPA violations with respect to exam proctoring software.

STEPHEN BECK

Stephen is an Associate with Bursor & Fisher, P.A. Stephen focuses his practice on complex civil litigation and class actions.

Stephen is admitted to the State Bar of Florida and is a member of the bars of the United States District Courts for the Southern and Middle Districts of Florida.

Stephen received his Juris Doctor from the University of Miami School of Law in 2018. During law school, Stephen received an Honors distinction in the Litigation Skills Program and was awarded the Honorable Theodore Klein Memorial Scholarship for excellence in written and oral advocacy. Stephen also received the CALI Award in Legislation for earning the highest grade on the final examination. Stephen graduated from the University of North Florida with a B.A. in Philosophy in 2015.

BRITTANY SCOTT

Brittany Scott is an Associate with Bursor & Fisher, P.A. Brittany focuses her practice on data privacy, complex civil litigation, and consumer class actions. Brittany was an intern with Bursor & Fisher prior to joining the firm.

Brittany has substantial experience litigating consumer class actions, including those involving data privacy claims under statutes such as the Illinois Biometric Information Privacy Act, the Fair Credit Reporting Act, and the Michigan Preservation of Personal Privacy Act. In addition to data privacy claims, Brittany has significant experience in litigating class action claims involving false and misleading advertising.

Brittany is admitted the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, the Eastern District of Wisconsin, and the Northern District of Illinois.

Brittany received her Juris Doctor from the University of California, Hastings College of the Law in 2019, graduating *cum laude*. During law school, Brittany was a member of the Constitutional Law Quarterly, for which she was the Executive Notes Editor. Brittany published a note in the Constitutional Law Quarterly entitled “Waiving Goodbye to First Amendment Protections: First Amendment Waiver by Contract.” Brittany also served as a judicial extern to the Honorable Andrew Y.S. Cheng for the San Francisco Superior Court. In 2016, Brittany graduated from the University of California Berkeley with a B.A. in Political Science.

Selected Class Settlements:

Morrissey v. Tula Life, Inc., Case No. 2021L0000646 (18th Judicial Circuit Court DuPage County 2021) – final approval granted for \$4 million class settlement to resolve claims of cosmetics purchasers for alleged false advertising.

MAX S. ROBERTS

Max Roberts is an Associate in Bursor & Fisher’s New York office. Max focuses his practice on class actions concerning data privacy and consumer protection. Max was a Summer Associate with Bursor & Fisher prior to joining the firm and is now Co-Chair of the firm’s Appellate Practice Group.

Max received his Juris Doctor from Fordham University School of Law in 2019, graduating *cum laude*. During law school, Max was a member of Fordham’s Moot Court Board, the Brennan Moore Trial Advocates, and the Fordham Urban Law Journal, for which he published a note entitled [*Weaning Drug Manufacturers Off Their Painkiller: Creating an Exception to the Learned Intermediary Doctrine in Light of the Opioid Crisis*](#). In addition, Max served as an intern to the Honorable Vincent L. Briccetti of the Southern District of New York and the Fordham Criminal Defense Clinic. Max graduated from Johns Hopkins University in 2015 with a B.A. in Political Science.

Outside of the law, Max is an avid triathlete.

Selected Published Decisions:

Jackson v. Amazon.com, Inc., --- F.4th ---, 2023 WL 2997031 (9th Cir. Apr. 19, 2023), affirming district court's denial of motion to compel arbitration. Max personally argued the appeal before the Ninth Circuit, which can be viewed [here](#).

Javier v. Assurance IQ, LLC, 2022 WL 1744107 (9th Cir. May 31, 2022), reversing district court and holding that Section 631 of the California Invasion of Privacy Act requires prior consent to wiretapping. Max personally argued the appeal before the Ninth Circuit, which can be viewed [here](#).

Mora v. J&M Plating, Inc., --- N.E.3d ---, 2022 WL 17335861 (Ill. App. Ct. 2d Dist. Nov. 30, 2022), reversing circuit court and holding that Section 15(a) of Illinois' Biometric Information Privacy Act requires an entity to establish a retention and deletion schedule for biometric data at the first moment of possession. Max personally argued the appeal before the Second District, which can be listened to [here](#).

Cristostomo v. New Balance Athletics, Inc., 2022 WL 17904394 (D. Mass. Dec. 23, 2022), denying motion to dismiss and motion to strike class allegations in case involving sneakers marketed as "Made in the USA."

Carroll v. Myriad Genetics, Inc., 2022 WL 16860013 (N.D. Cal. Nov. 9, 2022), denying in part motion to dismiss in case involving non-invasive prenatal testing product.

Louth v. NFL Enterprises LLC, 2022 WL 4130866 (D.R.I. Sept. 12, 2022), denying motion to dismiss alleged violations of the Video Privacy Protection Act.

Sholopa v. Turk Hava Yollari A.O., Inc. d/b/a Turkish Airlines, 2022 WL 976825 (S.D.N.Y. Mar. 31, 2022), denying motion to dismiss passenger's allegations that airline committed a breach of contract by failing to refund passengers for cancelled flights during the COVID-19 pandemic.

Saleh v. Nike, Inc., 562 F. Supp. 3d 503 (C.D. Cal. 2021), denying in part motion to dismiss alleged violations of California Invasion of Privacy Act.

Soo v. Lorex Corp., 2020 WL 5408117 (N.D. Cal. Sept. 9, 2020), denying defendants' motion to compel arbitration and denying in part motion dismiss consumer protection claims in putative class action concerning security cameras.

Selected Class Settlements:

Miranda v. Golden Entertainment (NV), Inc., Case No. 2:20-cv-534-AT (D. Nev. 2021) – final approval granted for class settlement valued at over \$4.5 million to resolve claims of customers and employees of casino company stemming from data breach.

Malone v. Western Digital Corp., Case No. 5:20-cv-3584-NC (N.D. Cal. 2021) – final approval granted for class settlement valued at \$5.7 million to resolve claims of hard drive purchasers for alleged false advertised.

Frederick v. ExamSoft Worldwide, Inc., Case No. 2021-L-001116 (18th Judicial Circuit Court DuPage County, Illinois 2021) – final approval granted for \$2.25 million class settlement to resolve claims of Illinois students for alleged violations of the Illinois Biometric Information Privacy Act.

Bar Admissions

- New York State
- Southern District of New York
- Eastern District of New York
- Northern District of New York
- Northern District of Illinois
- Central District of Illinois
- Eastern District of Michigan
- District of Colorado
- Ninth Circuit Court of Appeals
- Seventh Circuit Court of Appeals

CHRISTOPHER R. REILLY

Chris Reilly is an Associate with Bursor & Fisher, P.A. Chris focuses his practice on consumer class actions and complex business litigation.

Chris is admitted to the State Bar of Florida and is a member of the bar of the United States District Courts for the Southern and Middle Districts of Florida.

Chris received his Juris Doctor from Georgetown University Law Center in 2020. During law school, Chris clerked for the Senate Judiciary Committee, where he worked on antitrust and food and drug law matters under Senator Richard Blumenthal. He has also clerked for the Mecklenburg County District Attorney's Office, the ACLU Prison Project, and the Pennsylvania General Counsel's Office. Chris served as Senior Editor of Georgetown's Journal of Law and Public Policy. In 2017, Chris graduated from the University of Florida with a B.A. in Political Science.

JULIA K. VENDITTI

Julia Venditti is an Associate with Bursor & Fisher, P.A. Julia focuses her practice on complex civil litigation and class actions. Julia was a Summer Associate with Bursor & Fisher prior to joining the firm.

Julia is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Julia received her Juris Doctor in 2020 from the University of California, Hastings College of the Law, where she graduated *cum laude* with two CALI Awards for the highest

grade in her Evidence and California Community Property classes. During law school, Julia was a member of the UC Hastings Moot Court team and competed at the Evans Constitutional Law Moot Court Competition, where she finished as a national quarterfinalist and received a best brief award. Julia was also inducted into the UC Hastings Honors Society and was awarded Best Brief and an Honorable Mention for Best Oral Argument in her First-Year Moot Court section. In addition, Julia served as a Research Assistant for her Constitutional Law professor, as a Teaching Assistant for Legal Writing & Research, and as a Law Clerk at the San Francisco Public Defender's Office. In 2017, Julia graduated *magna cum laude* from Baruch College/CUNY, Weissman School of Arts and Sciences, with a B.A. in Political Science.

JULIAN DIAMOND

Julian Diamond is an Associate with Bursor & Fisher, P.A. Julian focuses his practice on privacy law and class actions. Julian was a Summer Associate with Bursor & Fisher prior to joining the firm.

Julian received his Juris Doctor from Columbia Law School, where he was a Harlan Fiske Stone Scholar. During law school, Julian was Articles Editor for the Columbia Journal of Environmental Law. Prior to law school, Julian worked in education. Julian graduated from California State University, Fullerton with a B.A. in History and a single subject social science teaching credential.

MATTHEW GIRARDI

Matt Girardi is an Associate with Bursor & Fisher, P.A. Matt focuses his practice on complex civil litigation and class actions, and has focused specifically on consumer class actions involving product defects, financial misconduct, false advertising, and privacy violations. Matt was a Summer Associate with Bursor & Fisher prior to joining the firm.

Matt is admitted to the State Bar of New York, and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, and the Eastern District of Michigan

Matt received his Juris Doctor from Columbia Law School in 2020, where he was a Harlan Fiske Stone Scholar. During law school, Matt was the Commentary Editor for the Columbia Journal of Tax Law, and represented fledgling businesses for Columbia's Entrepreneurship and Community Development Clinic. In addition, Matt worked as an Honors Intern in the Division of Enforcement at the U.S. Securities and Exchange Commission. Prior to law school, Matt graduated from Brown University in 2016 with a B.A. in Economics, and worked as a Paralegal Specialist at the U.S. Department of Justice in the Antitrust Division.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

REGINALD EDWARDS and ASHLEY
FACCIOLA, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

MID-HUDSON VALLEY FEDERAL
CREDIT UNION,

Defendant.

Case No. 1:22-cv-00562-TJM-CFH

Assigned to: Hon. Thomas J. McAvoy

CLASS ACTION

DECLARATION OF PETER SPERRY
REGARDING IMPLEMENTATION OF
NOTICE PROCEDURE

**DECLARATION OF PETER SPERRY REGARDING
IMPLEMENTATION OF NOTICE PROCEDURE**

I, PETER SPERRY, hereby declare and state as follows

1. I am a Senior Project Manager, employed by Epiq Class Action & Claims Solutions, Inc. (“Epiq”). I have more than eight years of experience handling all aspects of settlement administration. The statements of fact in this Declaration are based on my personal knowledge and information provided to me by my colleagues in the ordinary course of business, and if called on to do so, I could and would testify competently thereto.

2. Epiq was retained by the Parties to be the Claims Administrator pursuant to the Court’s April 5, 2023, Order Granting Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement, (the “Order”) and in accordance with the Settlement Agreement and Release (the “Agreement”) and which was preliminarily approved by the Order.¹ I submit this Declaration in order to advise the Parties and the Court regarding the implementation of the Court-approved notice program, in accordance with the Order and the Agreement.

¹All capitalized terms not otherwise defined in this document shall have the same meanings ascribed to them in the Settlement Agreement.

3. Epiq was established in 1968 as a client services and data processing company. Epiq has administered bankruptcies since 1985 and settlements since 1993. Epiq has routinely developed and executed notice programs and administrations in a wide variety of mass action contexts including settlements of consumer, antitrust, products liability, and labor and employment class actions, settlements of mass tort litigation, Securities and Exchange Commission enforcement actions, Federal Trade Commission disgorgement actions, insurance disputes, bankruptcies, and other major litigation. Epiq has administered more than 4,500 settlements, including some of the largest and most complex cases ever settled. Epiq's class action case administration services include administering notice requirements, designing direct-mail notices, implementing notice fulfillment services, coordinating with the United States Postal Service ("USPS"), developing and maintaining notice websites and dedicated telephone numbers with recorded information and/or live operators, processing exclusion requests, objections, claim forms and correspondence, maintaining class member databases, adjudicating claims, managing settlement funds, and calculating claim payments and distributions. As an experienced neutral third-party administrator working with settling parties, courts, and mass action participants, Epiq has handled hundreds of millions of notices, disseminated hundreds of millions of emails, handled millions of phone calls, processed tens of millions of claims, and distributed hundreds of billions in payments.

OVERVIEW OF CLASS NOTICE PLAN

4. Pursuant to the Agreement and Order, Epiq was retained to provide, and did provide, the following administrative services for the benefit of members of the Settlement Class, as they are defined in the Agreement:

- As appropriate, send Email Notice containing the summary of the Settlement to all members of the Settlement Class who had previously provided their email address to the Defendant and had agreed to receive communications via that method;
- For any member of the Settlement Class who had not previously authorized email communications or provided an email address, send the Postcard Notice via direct mail to the addresses provided on the Class List, after updating through the United States Postal Service's National Change of Address database;
- Establish and maintain an official settlement website containing information about the Settlement;
- Establish and maintain an official toll-free number that Settlement Class Members may contact for additional information about the Settlement;
- Review and process requests for exclusion sent to or received by Epiq;
- Review and track objections sent to or received by Epiq; and
- Receive, process, track, and handle any correspondence received from any member of the Settlement Class.

DATA TRANSFER

5. On April 15, 2023, Counsel for Defendant provided Epiq with one electronic file containing records of the members of the Settlement Class. The file contained 20,236 rows of data that included names, addresses, and other relevant custom data for potential members of the Settlement Class ("Class Data").

6. Epiq loaded the information provided by Counsel into a secure database created for the purpose of administration of the proposed Settlement. Epiq assigned unique identifiers to all the records it received in order to maintain the ability to track them throughout the settlement

administration process. During review of the Class Data, Epiq combined duplicate members of the Settlement Class where the entries had the exact matching names and addresses, resulting in a Settlement Class member population of 17,981 (the “Class List”)².

DISSEMINATION OF INDIVIDUAL CLASS NOTICE VIA E-MAIL

7. In preparation for sending both the emailed and mailed Notice, Epiq established a dedicated Post Office Box that allows Class members to contact the Claims Administrator or submit request for exclusion by mail. Epiq has and will continue to maintain the Post Office Box throughout the administration process.

8. Pursuant to Section 4.(b) of the Agreement and Section 10. of the Order, Epiq was to cause the Court-approved Email Notice to be formatted for electronic distribution by email to members of the Settlement Class for whom an email address was included in the Class Data and for whom the Defendant’s data indicated were eligible to receive the Email Notice. Attached hereto as **Exhibit 1** is a template of the Court-approved Email Notice that Epiq electronically disseminated to Settlement Class Members for whom an email address was provided in the Class Data. The Email Notice contained substantial, albeit easy to read, information that made potential members of the Settlement Class aware of their rights under the Agreement and provided instructions on how to obtain more information by visiting the settlement website or calling the toll-free number.

9. The Email Notice, which was formatted for distribution using imbedded html text, provided Settlement Class Members with a link to the settlement website. The Email Notice was formatted with easy-to-read text without graphics, tables, images and other elements that increase the likelihood that the message could be blocked by Internet Service Providers and/or SPAM

² 2,258 of the total 20,236 records were determined duplicative. Individual fee details have been individually maintained for the eventual distribution phase of this Settlement.

filters. Epiq also followed standard email protocols, including utilizing “unsubscribe” links and Epiq’s contact information in the Email Notice.

10. Epiq sent the Email Notice to 10,864 potentially valid email addresses associated with 10,860 unique class members on June 2, 2023. Each Email Notice was transmitted with a unique message identifier. If the receiving e-mail server could not deliver the message, a “bounce code” was returned along with the unique message identifier.

11. For all members of the Settlement Class with potentially valid email addresses in the Class Data, Epiq closely monitored all deliverability attempts of the Email Notice throughout the Email Notice campaign. Of the 10,860 members of the Settlement Class receiving the Email Notice, delivery was completed to 9,974 members of the Settlement Class. Epiq was unable to confirm successful delivery to 890 members of the Settlement Class who were sent the Email Notice.

12. Pursuant to Section 4.(b) of the Agreement, Epiq performed address research in an attempt to obtain current email address information for the 890 undeliverable email addresses, update its database with these emails, and resend the Notice by Email. Following address research, 448 updated email addresses were located and mailed on June 30, 2023. Of the 448 Email Notices that were reissued to new addresses, delivery was completed to 312 email addresses. Epiq was unable to confirm successful delivery to 136 of updated email addresses.

DISSEMINATION OF INDIVIDUAL CLASS NOTICE VIA POSTCARD

13. Pursuant to Section 4.(c) of the Agreement and Section 10. of the Order, Epiq was responsible for sending the Postcard Notice to all potential members of the Settlement Class via U.S. First Class Mail for whom no valid email address appears on the Class List or did not agree

to receive communications via email. Attached hereto as **Exhibit 2** is the Postcard Notice that Epiq disseminated by mail.

14. Prior to mailing the Postcard Notice to the Class List, all mailing addresses were checked against the National Change of Address (“NCOA”) database maintained by the United States Postal Service (“USPS”).³ In addition, the addresses were processed via the Coding Accuracy Support System (“CASS”) to ensure the quality of the zip code and verified through Delivery Point Validation (“DPV”) to verify the accuracy of the addresses. To the extent that any member of the Settlement Class had filed a USPS change of address request, and the address was certified and verified, the current address listed in the NCOA database was used in connection with the Postcard Notice mailing. This address updating process is standard for the industry and for the majority of promotional mailings that occur today. A total of 1,586 records in the Class List sent through the USPS NCOA, CASS, and DPV process and were updated with a new address.

15. On June 2, 2023, Epiq mailed 7,121 Postcard Notices via First Class USPS Mail to identified Settlement Class Members on the Class List with only a valid mailing address.

16. The return address on the Postcard Notices is the post office box maintained by Epiq. As of July 20, 2023, 71 Postcard Notices have been returned by the USPS with forwarding information and promptly re-mailed to the forwarding address.

17. As of July 14, 2023, a total of 976 Postcard Notices have been returned to Epiq without forwarding address information. Pursuant to Section 4.(c) of the Agreement, skip trace searches were performed by Epiq using a third-party lookup service. A total of 816 addresses have been updated and have been re-mailed to the updated addresses. Address updating and re-mailing

³ The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person’s name and last known address.

for undeliverable Postcard Notices is ongoing and will continue through the Final Approval Hearing.

18. As of July 20, 2023, Epiq has mailed and/or emailed Notice to the 17,981 members of the Settlement Class, with Notice to 499 unique members of the Settlement Class currently known to be undeliverable, which is a 97.2% deliverable rate.

SETTLEMENT WEBSITE

19. Pursuant to Section 4.(d) of the Agreement, on June 1, 2023, Epiq launched a website, www.EdwardsOverdraftSettlement.com (the “Website”), that potential members of the Settlement Class could visit to obtain additional information about the proposed Settlement, as well as important documents, including the Email Notice, Postcard Notice, Long Form Notice, and Agreement. The Website contains a summary of options available to Settlement Class Members, deadlines to act, and provides answers to frequently asked questions. References to the Website were prominently displayed in the Email Notice, Postcard Notice, and Long Form Notice, and contained the password necessary to access the Website.

20. As of July 20, 2023, the Website has been visited by 655 visitors and 961 website pages have been viewed. Epiq has maintained and will continue to maintain and update the Website throughout the administration of the proposed Settlement.

TOLL-FREE INFORMATION LINE

21. On June 1, 2023, Epiq established and is maintaining a toll-free interactive Voice Response Unit (“VRU”), 888-574-3952, to provide information and accommodate inquiries from Members of the Settlement Class. Callers hear an introductory message and then are provided with scripted information about the Settlement in the form of recorded answers to frequently asked questions. Callers also have the option of requesting a Long Form Notice by mail. The toll-free

number was included in the Email and Postcard Notice sent to Settlement Class Members and the automated telephone system is available 24 hours per day, 7 days per week.

22. As of July 20, 2023, the toll-free number has received 105 calls representing 288 total minutes.

REQUESTS FOR EXCLUSION

23. Pursuant to Section 12. of the Agreement and Section 12. of the Order, members of the Settlement Class who wished to be excluded from the Settlement were required to mail a written request for exclusion to Epiq postmarked and on or before August 7, 2023. As of July 20, 2023, Epiq has not received or been made aware of any requests for exclusion.

OBJECTIONS RECEIVED

24. Pursuant to Section 13. of the Agreement and Section 13. of the Order, any Class Member who wished to object to the Settlement was required to submit written objections to the Epiq as the Claims Administrator, such that they are postmarked on or before the objection deadline of August 7, 2023. As of July 20, 2023, Epiq is not aware of and has not received any written objections to the Settlement.

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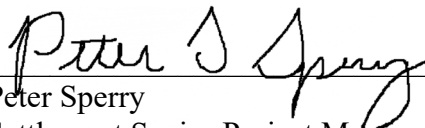
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CAFA NOTICE

25. On June 6, 2023, Epiq sent 57 CAFA Notice Packages (“Notice”). The Notice was mailed via USPS Certified Mail to 55 officials (the Attorneys General of 49 states, the District of Columbia, and the United States Territories). As per the direction of the Office of the Nevada Attorney General, the Notice was sent to the Nevada Attorney General electronically via email. The Notice was also sent via United Parcel Service (“UPS”) to the Attorney General of the United States. The Declaration of Kyle S. Bingham on Implementation of CAFA Notice is attached **Exhibit 3** detailing Epiq’s efforts to issue CAFA Notice.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. This Declaration was executed on July 24, 2023, at Kent, Washington.



Peter Sperry
Settlement Senior Project Manager
Epiq Class Action & Claims Solutions, Inc. (“Epiq”)

Exhibit 1

From: Edwards v. Mid-Hudson Valley Federal Credit Union Settlement Administrator
<noreply@edwardsoverdraftsettlement.com>
Sent:
To:
Subject: NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

Edwards et al. v. Mid-Hudson Valley Federal Credit Union

NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

READ THIS NOTICE FULLY AND CAREFULLY; THE PROPOSED SETTLEMENT MAY AFFECT YOUR RIGHTS!

IF YOU HAVE OR HAD A CHECKING ACCOUNT WITH MID-HUDSON VALLEY FEDERAL CREDIT UNION AND YOU WERE CHARGED CERTAIN OVERDRAFT OR NSF FEES BETWEEN JUNE 9, 2015, AND SEPTEMBER 14, 2022, YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT AND/OR FORGIVENESS OF CERTAIN UNCOLLECTED FEES.

The United States District Court for the Northern District of New York has authorized this Notice; it is not a solicitation from a lawyer.

You may be a member of one of the Settlement Classes in *Edwards v. Mid-Hudson Valley Federal Credit Union*, in which the Plaintiffs allege that Defendant Mid-Hudson Valley Federal Credit Union ("Defendant") unlawfully assessed certain Overdraft and NSF Fees (the "Relevant Fees") between June 9, 2015, and September 14, 2022. If you are a member of one of the Settlement Classes and if the Settlement is approved, you may be entitled to receive a cash payment from the \$2,100,000 Settlement Fund and/or the forgiveness of Uncollected Fees, benefits established by the Settlement. If you are a member of one or both of the Settlement Classes, you will receive a payment from the Settlement Fund so long as you do not opt out of, or exclude yourself from, the Settlement. **You do not have to do anything to receive a payment from the Settlement Fund.**

The Court has preliminarily approved this Settlement. It will hold a Final Approval Hearing in this case on **September 7, 2023**. At that hearing, the Court will consider whether to grant Final Approval to the Settlement and whether to approve payment from the Settlement Fund of up to \$5,000 in a Service Award to each Class Representative, up to 33.33% of the Value of the Settlement as attorneys' fees, and reimbursement of costs to the attorneys and the Claims Administrator. If the Court grants Final Approval of the Settlement and you do not request to be excluded from the Settlement, you will release your right to bring any claim covered by the Settlement. In exchange, Defendant has agreed to issue a credit to your Account, a cash payment to you if you are no longer a customer, and/or to forgive certain Relevant Fees.

To obtain a Long-Form Notice and other important documents, please visit EdwardsOverdraftSettlement.com. Alternatively, you may call 1-888-574-3952.

If you do not want to participate in this Settlement—you do not want to receive a cash payment and/or the forgiveness of Uncollected Fees and you do not want to be bound by any judgment entered in this case—you may exclude yourself by submitting an opt-out request postmarked no later than August 7, 2023. If you want to object to this Settlement because you think it is not fair, adequate, or reasonable, you may object by submitting an objection postmarked no later than August 7, 2023. You may learn more about the opt-out and objection procedures by visiting EdwardsOverdraftSettlement.com or by calling 1-888-574-3952.

AI815_v01

You are subscribed to this email as peter.sperry@epiqglobal.com.

Click here to modify your [preferences](#) or [unsubscribe](#).

Exhibit 2

Edwards v. Mid-Hudson Valley Federal Credit Union
Claims Administrator
P.O. Box 4748
Portland, OR 97208-4748

FIRST-CLASS MAIL
U.S. POSTAGE
PAID
Portland, OR
PERMIT NO. 2882

*Edwards et al. v. Mid-Hudson Valley
Federal Credit Union*

**NOTICE OF PENDING CLASS ACTION AND
PROPOSED SETTLEMENT
READ THIS NOTICE FULLY AND
CAREFULLY; THE PROPOSED SETTLEMENT
MAY AFFECT YOUR RIGHTS!**

**IF YOU HAVE OR HAD A CHECKING
ACCOUNT WITH MID-HUDSON
VALLEY FEDERAL CREDIT UNION AND YOU
WERE CHARGED
CERTAIN OVERDRAFT OR NSF FEES
BETWEEN JUNE 9, 2015, AND
SEPTEMBER 14, 2022, YOU MAY BE
ENTITLED TO A PAYMENT
FROM A CLASS ACTION SETTLEMENT
AND/OR FORGIVENESS OF
CERTAIN UNCOLLECTED FEES.**

The United States District Court for the Northern District of New York has authorized this Notice; it is not a solicitation from a lawyer.

You may be a member of one of the Settlement Classes in *Edwards et al. v. Mid-Hudson Valley Federal Credit Union*, in which the Plaintiffs allege that defendant Mid-Hudson Valley Federal Credit Union (“Defendant”) unlawfully assessed certain Overdraft and NSF Fees (the “Relevant Fees”) between June 9, 2015, and September 14, 2022. If you are a member of one of the Settlement Classes and if the Settlement is approved, you may be entitled to receive a cash payment from the \$2,100,000.00 Settlement Fund and/or the forgiveness of Uncollected Fees, benefits established by the Settlement. If you are a member of one or both of the Settlement Classes, you will receive a payment from the Settlement Fund so long as you do not opt out of or exclude yourself from the Settlement. **You do not have to do anything to be entitled to a payment from the Settlement Fund.**

The Court has preliminarily approved this Settlement. It will hold a Final Approval Hearing in this case on **September 7, 2023**. At that hearing, the Court will consider whether to grant Final Approval to the Settlement and whether to approve payment from the Settlement Fund of up to \$5,000.00 in a service award to each Named Plaintiff, up to 33.33% of the Value of the Settlement as attorneys’ fees, and reimbursement of costs to the attorneys and the Claims Administrator. If the Court grants Final Approval of the Settlement and you do not request to be excluded from the Settlement, you will release your right to bring any claim covered by the Settlement. In exchange, Defendant has agreed to issue a credit to your account, a cash payment to you if you are no longer a customer, and/or to forgive certain Uncollected Fees.

To obtain a Long-Form Notice and other important documents, please visit EdwardsOverdraftSettlement.com. Alternatively, you may call 1-888-574-3952.

If you do not want to participate in this Settlement—you do not want to receive a cash payment and/or the forgiveness of Uncollected Fees and you do not want to be bound by any judgment entered in this case—you may exclude yourself by submitting an opt-out request postmarked no later than August 7, 2023. If you want to object to this Settlement because you think it is not fair, adequate, or reasonable, you may object by submitting an objection postmarked no later than August 7, 2023. You may learn more about the opt-out and objection procedures by visiting EdwardsOverdraftSettlement.com or by calling 1-888-574-3952.

Exhibit 3

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

REGINALD EDWARDS and ASHLEY
FACCIOLA, on behalf of themselves and all
others similarly situated,

Plaintiff,

v.

MID-HUDSON VALLEY FEDERAL
CREDIT UNION,

Defendant.

Case No. 1:22-CV-0562-TJM-CFH

DECLARATION OF KYLE S. BINGHAM ON IMPLEMENTATION OF CAFA NOTICE

I, KYLE S. BINGHAM, hereby declare and state as follows:

1. My name is KYLE S. BINGHAM. I am over the age of 25 and I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am the Director of Legal Noticing for Epiq Class Action & Claims Solutions, Inc. (“Epiq”), a firm that specializes in designing, developing, analyzing and implementing large-scale, un-biased, legal notification plans. I have overseen and handled Class Action Fairness Act (“CAFA”) notice mailings for more than 350 class action settlements.

3. Epiq is a firm with more than 25 years of experience in claims processing and settlement administration. Epiq’s class action case administration services include coordination of all notice requirements, design of direct-mail notices, establishment of fulfillment services, receipt and processing of opt-outs, coordination with the United States Postal Service (“USPS”), claims database management, claim adjudication, funds management and distribution services.

DECLARATION OF KYLE S. BINGHAM ON IMPLEMENTATION OF CAFA NOTICE

4. The facts in this Declaration are based on what I personally know, as well as information provided to me in the ordinary course of my business by my colleagues at Epiq.

CAFA NOTICE IMPLEMENTATION

5. At the direction of counsel for Defendant Mid-Hudson Valley Federal Credit Union, 57 federal and state officials (Attorney General of the United States and the Attorneys General of each of the 50 states, the District of Columbia, and the United States Territories) were identified to receive CAFA notice.

6. Epiq maintains a list of these federal and state officials with contact information for the purpose of providing CAFA notice. Prior to mailing, the names and addresses selected from Epiq's list were verified, then run through the Coding Accuracy Support System ("CASS") maintained by the United States Postal Service ("USPS").¹

7. On June 6, 2023, Epiq sent 57 CAFA Notice Packages ("Notice"). The Notice was mailed via USPS Certified Mail to 55 officials (the Attorneys General of 49 states, the District of Columbia, and the United States Territories). As per the direction of the Office of the Nevada Attorney General, the Notice was sent to the Nevada Attorney General electronically via email. The Notice was also sent via United Parcel Service ("UPS") to the Attorney General of the United States. The CAFA Notice Service List (USPS Certified Mail, Email, and UPS) is included as **Attachment 1**.

8. The materials sent to the federal and state officials included a Cover Letter, which provided notice of the proposed Settlement of the above-captioned case. The Cover Letter is included as **Attachment 2**.

¹ CASS improves the accuracy of carrier route, 5-digit ZIP®, ZIP + 4® and delivery point codes that appear on mail pieces. The USPS makes this system available to mailing firms who want to improve the accuracy of postal codes, i.e., 5-digit ZIP®, ZIP + 4®, delivery point (DPCs), and carrier route codes that appear on mail pieces.

9. The cover letter was accompanied by a CD, which included the following:

a. Per 28 U.S.C. § 1715(b)(1) – Complaint and Any Amended Complaints:

- Facciola Class Action Complaint (filed June 9, 2021);
- Edwards Class Action Complaint (filed May 26, 2022); and
- First Amended Class Action Complaint (filed December 7, 2022).

b. Per 28 U.S.C. § 1715(b)(3) – Notification to Class Members:

- Email and Postcard Notice (*Exhibit 1 to the Settlement Agreement*); and
- Long Form Notice (*Exhibit 2 to the Settlement Agreement*).

c. Per 28 U.S.C. § 1715(b)(4) – Class Action Settlement Agreement: The following documents were included:

- Settlement Agreement; and
- Ordering Granting Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement.

d. Per 28 U.S.C. § 1715(b)(7) – Estimate of Class Members: A Geographic Location Analysis of potential Class Members was included on the CD.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 6, 2023.


KYLE S. BINGHAM

Attachment 1

CAFA Notice Service List

USPS Certified Mail

| Company | FullName | Address1 | Address2 | City | State | Zip |
|--|-----------------------------------|---|---------------------------------|----------------|-------|-------|
| Office of the Attorney General | Treg Taylor | 1031 W 4th Ave | Suite 200 | Anchorage | AK | 99501 |
| Office of the Attorney General | Steve Marshall | 501 Washington Ave | | Montgomery | AL | 36104 |
| Office of the Attorney General | Tim Griffin | 323 Center St | Suite 200 | Little Rock | AR | 72201 |
| Office of the Attorney General | Kris Mayes | 2005 N Central Ave | | Phoenix | AZ | 85004 |
| Office of the Attorney General | CAFA Coordinator | Consumer Protection Section | 455 Golden Gate Ave Suite 11000 | San Francisco | CA | 94102 |
| Office of the Attorney General | Phil Weiser | Ralph L Carr Colorado Judicial Center | 1300 Broadway Fl 10 | Denver | CO | 80203 |
| Office of the Attorney General | William Tong | 165 Capitol Ave | | Hartford | CT | 06106 |
| Office of the Attorney General | Brian Schwalb | 400 6th St NW | | Washington | DC | 20001 |
| Office of the Attorney General | Kathy Jennings | Carvel State Bldg | 820 N French St | Wilmington | DE | 19801 |
| Office of the Attorney General | Ashley Moody | State of Florida | The Capitol PL-01 | Tallahassee | FL | 32399 |
| Office of the Attorney General | Chris Carr | 40 Capitol Square SW | | Atlanta | GA | 30334 |
| Department of the Attorney General | Anne E Lopez | 425 Queen St | | Honolulu | HI | 96813 |
| Iowa Attorney General | Brenna Bird | Hoover State Office Building | 1305 E Walnut St | Des Moines | IA | 50319 |
| Office of the Attorney General | Raul Labrador | 700 W Jefferson St Ste 210 | PO Box 83720 | Boise | ID | 83720 |
| Office of the Attorney General | Kwame Raoul | 100 W Randolph St | | Chicago | IL | 60601 |
| Office of the Indiana Attorney General | Todd Rokita | Indiana Government Center South | 302 W Washington St Rm 5 | Indianapolis | IN | 46204 |
| Office of the Attorney General | Kris Kobach | 120 SW 10th Ave 2nd Fl | | Topeka | KS | 66612 |
| Office of the Attorney General | Daniel Cameron | 700 Capitol Ave Suite 118 | | Frankfort | KY | 40601 |
| Office of the Attorney General | Jeff Landry | PO Box 94005 | | Baton Rouge | LA | 70804 |
| Office of the Attorney General | Andrea Campbell | 1 Ashburton Pl 20th Fl | | Boston | MA | 02108 |
| Office of the Attorney General | Anthony G Brown | 200 St Paul Pl | | Baltimore | MD | 21202 |
| Office of the Attorney General | Aaron Frey | 6 State House Station | | Augusta | ME | 04333 |
| Department of Attorney General | Dana Nessel | PO BOX 30212 | | Lansing | MI | 48909 |
| Office of the Attorney General | Keith Ellison | 445 Minnesota St Ste 1400 | | St Paul | MN | 55101 |
| Missouri Attorney General's Office | Andrew Bailey | 207 West High Street | PO Box 899 | Jefferson City | MO | 65102 |
| Mississippi Attorney General | Lynn Fitch | PO Box 220 | | Jackson | MS | 39205 |
| Office of the Attorney General | Austin Knudsen | 215 N Sanders 3rd Fl | PO Box 201401 | Helena | MT | 59620 |
| Attorney General's Office | Josh Stein | 9001 Mail Service Ctr | | Raleigh | NC | 27699 |
| Office of the Attorney General | Drew H Wrigley | 600 E Boulevard Ave Dept 125 | | Bismarck | ND | 58505 |
| Nebraska Attorney General | Mike Hilgers | 2115 State Capitol | PO Box 98920 | Lincoln | NE | 68509 |
| Office of the Attorney General | John Formella | NH Department of Justice | 33 Capitol St | Concord | NH | 03301 |
| Office of the Attorney General | Matthew J Platkin | 25 Market Street | PO Box 080 | Trenton | NJ | 08625 |
| Office of the Attorney General | Raul Torrez | 408 Galisteo St | Villagra Bldg | Santa Fe | NM | 87501 |
| Office of the Attorney General | CAFA Coordinator | 28 Liberty Street 15th Floor | | New York | NY | 10005 |
| Office of the Attorney General | Dave Yost | 30 E Broad St Fl 14 | | Columbus | OH | 43215 |
| Office of the Attorney General | Gentner Drummond | 313 NE 21st St | | Oklahoma City | OK | 73105 |
| Office of the Attorney General | Ellen F Rosenblum | Oregon Department of Justice | 1162 Court St NE | Salem | OR | 97301 |
| Office of the Attorney General | Michelle A. Henry | 16th Fl Strawberry Square | | Harrisburg | PA | 17120 |
| Office of the Attorney General | Peter F Neronha | 150 S Main St | | Providence | RI | 02903 |
| Office of the Attorney General | Alan Wilson | PO Box 11549 | | Columbia | SC | 29211 |
| Office of the Attorney General | Marty Jackley | 1302 E Hwy 14 Ste 1 | | Pierre | SD | 57501 |
| Office of the Attorney General | Jonathan Skrmetti | PO Box 20207 | | Nashville | TN | 37202 |
| Office of the Attorney General | Ken Paxton | PO Box 12548 | | Austin | TX | 78711 |
| Office of the Attorney General | Sean D Reyes | PO Box 142320 | | Salt Lake City | UT | 84114 |
| Office of the Attorney General | Jason S Miyares | 202 N 9th St | | Richmond | VA | 23219 |
| Office of the Attorney General | Charity R Clark | 109 State St | | Montpelier | VT | 05609 |
| Office of the Attorney General | Bob Ferguson | 800 5th Ave Ste 2000 | | Seattle | WA | 98104 |
| Office of the Attorney General | Josh Kaul | PO Box 7857 | | Madison | WI | 53707 |
| Office of the Attorney General | Patrick Morrissey | State Capitol Complex Bldg 1 Room E 26 | 1900 Kanawha Blvd E | Charleston | WV | 25305 |
| Office of the Attorney General | Bridget Hill | 109 State Capital | | Cheyenne | WY | 82002 |
| Department of Legal Affairs | Fainu'ulei Falefatu Ala'ilima-Utu | American Samoa Gov't Exec Ofc Bldg Utulei | Territory of American Samoa | Pago Pago | AS | 96799 |
| Attorney General Office of Guam | Douglas Moylan | Administrative Division | 590 S Marine Corps Dr Ste 901 | Tamuning | GU | 96913 |
| Office of the Attorney General | Edward Manibusan | Administration Bldg | PO Box 10007 | Saipan | MP | 96950 |
| PR Department of Justice | Domingo Emanuelli Hernández | PO Box 9020192 | | San Juan | PR | 00902 |
| Department of Justice | Carol Thomas- Jacobs | 3438 Kronprindsens Gade Ste 2 | GERS BLDG | St Thomas | VI | 00802 |

CAFA Notice Service List

Email

| Company | Contact Format | State |
|---|--|--------------|
| Office of the Attorney General for Nevada | All documents sent to NV AG at their dedicated CAFA email inbox. | NV |

CAFA Notice Service List

UPS

| Company | FullName | Address1 | Address2 | City | State | Zip |
|--------------------------|--------------------|-------------------------|----------|------------|-------|-------|
| US Department of Justice | Merrick B. Garland | 950 Pennsylvania Ave NW | | Washington | DC | 20530 |

Attachment 2

CAFA NOTICE ADMINISTRATOR

HILSOFT NOTIFICATIONS
10300 SW Allen Blvd
Beaverton, OR 97005
P 503-350-5800
DL-CAFA@epiqglobal.com

June 6, 2023

VIA UPS OR USPS CERTIFIED MAIL

Class Action Fairness Act – Notice to Federal and State Officials

Dear Federal and State Officials:

Pursuant to the Class Action Fairness Act of 2005 (“CAFA”), codified at 28 U.S.C. § 1715, please find enclosed information from Defendant Mid-Hudson Valley Federal Credit Union relating to the proposed settlement of a class action lawsuit.

- **Case:** *Edwards v. Mid-Hudson Valley Federal Credit Union*, Case No. 1:22-cv-00562.
- **Court:** United States District Court for the Northern District of New York.
- **Defendant:** Mid-Hudson Valley Federal Credit Union.
- **Documents Enclosed:** In accordance with the requirements of 28 U.S.C. § 1715, please find copies of the following documents associated with this action on the enclosed CD:

1. Per 28 U.S.C. § 1715(b)(1) – Complaint and Any Amended Complaints:

- a. Facciola Class Action Complaint (filed June 9, 2021);
- b. Edwards Class Action Complaint (filed May 26, 2022); and
- c. First Amended Class Action Complaint (filed December 7, 2022).

2. Per 28 U.S.C. § 1715(b)(2) – Notice of Any Scheduled Judicial Hearing: The Court has scheduled a Final Approval Hearing for September 7, 2023.

3. Per 28 U.S.C. § 1715(b)(3) – Notification to Class Members: Forms of Notice.

- a. Email and Postcard Notice (*Exhibit 1 to the Settlement Agreement*); and
- b. Long Form Notice (*Exhibit 2 to the Settlement Agreement*).

4. Per 28 U.S.C. § 1715(b)(4) – Class Action Settlement Agreement: The following documents are included:

- a. Settlement Agreement; and
- b. Order Granting Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement.

CAFA NOTICE ADMINISTRATOR

HILSOFT NOTIFICATIONS
10300 SW Allen Blvd
Beaverton, OR 97005
P 503-350-5800
DL-CAFA@epiqglobal.com

5. **Per 28 U.S.C. § 1715(b)(5) – Any Settlement or Other Agreements:** There are no other Settlements or Agreements between the parties.
6. **Per 28 U.S.C. § 1715(b)(6) – Final Judgment or Notice of Dismissal:** To date, the Court has not issued a final order, judgment or dismissal in the above-referenced action.
7. **Per 28 U.S.C. § 1715(b)(7) – Estimate of Class Members:** A Geographic Location Analysis of potential Class Members is included on the enclosed CD.
8. **28 U.S.C. § 1715(b)(8) – Judicial Opinions Related to the Settlement:** To date, the Court has not issued a final order or judgment in the above-referenced action.

If you have questions or concerns about this notice or the enclosed materials, please contact this office.

Sincerely,

CAFA Notice Administrator

Enclosures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 24, 2023, the foregoing was served by CM/ECF to all counsel of record.

Respectfully submitted,

/s/ Jeffrey D. Kaliel
Jeffrey D. Kaliel

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

REGINALD EDWARDS and ASHLEY
FACCIOLA, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

MID-HUDSON VALLEY FEDERAL
CREDIT UNION,

Defendant.

Case No. 1:22-cv-00562-TJM-CFH

**[PROPOSED] FINAL APPROVAL ORDER APPROVING
CLASS ACTION SETTLEMENT AND GRANTING APPLICATION
FOR ATTORNEYS' FEES AND COSTS, AND SERVICE AWARDS**

I. INTRODUCTION

On March 29, 2021, Plaintiff Ashley Facciola filed a putative class action complaint entitled *Ashely Facciola v. Mid-Hudson Valley Federal Credit Union*, in the United States District Court for the Southern District of New York, Case No. 7:21-cv-02676, alleging claims for breach of contract with regard to Defendant Mid-Hudson Valley Federal Credit Union's ("MHVCU") practice of charging overdraft fees ("OD Fees") on debit card transactions that allegedly did not overdraw an account at the time they were authorized ("APPSN transactions"). After defense counsel moved to dismiss Plaintiff Facciola's complaint for lack of subject matter jurisdiction under CAFA, Plaintiff Facciola voluntarily dismissed her complaint without prejudice, then filed an identically captioned complaint in the New York Supreme Court in Ulster County (the "Facciola Action"), Index. No. EF2021-1549.

On August 20, 2021, Defendant filed an answer to the Complaint in the Facciola Action. On April 27, 2022, Plaintiff Reginald Edwards filed a putative class action complaint entitled *Reginald Edwards v. Mid-Hudson Valley Federal Credit Union*, in the United States District Court

for the Northern District of New York, Case No. 1:22-cv-00562, alleging claims for Breach of Contract and Violations of NY GBL § 349 with regard to Defendant's allegedly routine practice assessing more than one insufficient funds fee ("NSF Fee") on the same transaction (the "Edwards Action").

On December 7, 2022, Plaintiffs filed a putative class action complaint entitled *Reginald Edwards and Ashley Facciola v. Mid-Hudson Valley Federal Credit Union*, in the United States District Court for the Northern District of New York, Case No. 1:22-cv-00562, that consolidated the Facciola Action and Edwards Action (the "Consolidated Action").

On December 9, 2022, the Parties moved to stay the Facciola Action pending final approval of a class settlement in the Consolidated Action. That motion was granted on January 25, 2023. The Parties then jointly moved for Preliminary Approval of the Settlement. On April 5, 2023, the Court granted Preliminary Approval and directed that Notice be sent to Settlement Class members. ECF No. 27. On September 7, 2023, the Court held a Final Approval Hearing, during which it signaled its intent to approve the Settlement and requested attorneys' fees, costs, and Services Awards, and indicated that a written decision would follow.

As set forth below, the Court hereby grants Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement and Application for Attorneys' Fees and Costs and Service Awards.

II. NOTICE WAS EFFECTUATED

A. CAFA Notice

On June 6, 2023 the Settlement Administrator sent notice packets to federal authorities as required by the Class Action Fairness Act ("CAFA"). See 28 U.S.C. § 1715(d).

B. Notice to Class Members

Prior to distributing notice to the Class members, the Settlement Administrator established a website, www.EdwardsOverdraftSettlement.com, as well as a toll-free line that Class Members could access or call for any questions or additional information about the proposed Settlement.

Once Class Members were identified via MHVCU's business records, the notices attached to the Settlement Agreement were delivered to each Settlement Class Member. For current MHVCU accountholders who have elected to receive bank communications via email, notice was delivered via email. To all class members who have not elected to receive communications by email or for whom MHVCU does not have a valid email address, notice was delivered by U.S. Mail postcard.

On June 2, 2023, the Settlement Administrator mailed the Court-approved notice of the Settlement to the 7,121 Settlement Class Members who elected to receive notice from MHVCU by mail, at their last known mailing addresses after updating through the National Change of Address database. For returned notices, the Settlement Administrator performed skip trace searches to attempt to locate an updated address and re-mail the notice. In total, mailed Notice was delivered, without return, to 6,180 unique Class members.

On June 2, 2023, the Settlement Administrator emailed the Court-approved notice of the Settlement to 10,860 Class Members who have opted to receive communications from MHVCU electronically. In total, emailed Notice was delivered, without return, to 10,286 unique Settlement Class Members.

To date, no Settlement Class Member has objected to the Settlement. No Settlement Class Members have elected to opt-out of the Settlement.

The Settlement Administrator also established and maintains an automated toll-free telephone line to call with Settlement-related inquiries and to receive automated responses, and to

accept requests for Long Form Notices.

III. SUMMARY OF THE SETTLEMENT TERMS

1. The Settlement Class.

The Settlement Class is a Federal Rule of Civil Procedure 23(b)(3) opt-out class, defined as any member of MHVCU who had a checking account with Defendant and was assessed an APPSN Fee or a Retry Fee from. Agreement at § 1. The Class Period is from June 9, 2015 to September 14, 2022, both dates inclusive. *Id.*, at ¶ 1(f).

2. Relief for the Benefit of the Settlement Class.

a. Settlement Fund & Uncollected Fees

The total value of the Settlement is \$2,264,780 consisting of MHVCU's: (a) commitment to establish and pay a cash Settlement Fund of \$2,100,000.00; and its (b) agreement to forgive, waive, and not collect \$164,780 in Uncollected Fees. Joint Decl. at ¶ 31; Agreement at ¶ 1(y). The Settlement Fund will be used to: (a) pay Settlement Class Members their respective cash Settlement Class Member Payments; (b) Class Counsel for any Court awarded attorneys' fees and costs; (c) any Court awarded Service Award for the Class Representatives; (d) Settlement Administration Costs; and (e) if funds remain after the initial distribution to Settlement Class Members to distribute to the *cy pres* recipient. Agreement at ¶ 7(d). Settlement Class Members who are entitled to forgiveness, waiver, and the agreement not to collect assessed, but unpaid Relevant Fees will receive their benefits from the Uncollected Fees. A Settlement Class Member may qualify for both a Settlement Class Member Payment and forgiveness of Uncollected Fees by virtue having paid one or more Relevant Fees and having been assessed at least one other Relevant Fee that was not paid and thus became an Uncollected Overdraft Fee. *Id.*, at ¶ 8(a).

Settlement Class Members do not have to submit claims or take any other affirmative step

to receive relief under the Settlement. Instead, as soon as practicable, but no later than 10 days following the Effective Date of the Settlement, MHVCU and the Settlement Administrator will distribute the Net Settlement Fund to all Settlement Class Members. *Id.*, at ¶ 7(d)(iv).

b. Allocation of the Settlement Class Member Payments

Of the \$2,100,000.00 paid into the Settlement Fund, \$1,680,000 (80%) is allocated to the APPSN Fee Class and \$420,000 (20%) is allocated to the Retry NSF Fee Class. *Id.*, at ¶ 7(d)(iv)(a). If applicable, Settlement Class Members may receive payments as members of the APPSN Fee Class and the Retry NSF Fee Class. *Id.* Based on this allocation, payments from the Net Settlement Fund to the Settlement Class Members shall be calculated as follows:

i. Settlement Class Members of the APPSN Fee Class shall be paid per incurred APPSN Fee calculated as follows: $(0.80 \text{ of the Net Settlement Fund} / \text{Total APPSN Fees}) \times \text{Total number of APPSN Fees charged to and paid by each APPSN Fee Class member}$; and

ii. Settlement Class Members of the Retry NSF Fee Class shall be paid per Retry NSF Fee calculated as follows: $(0.20 \text{ of the Net Settlement Fund} / \text{Total Retry NSF Fees}) \times \text{Total number of Retry NSF Fees charged to and paid by each Retry NSF Fee Class member}$.

Id., at ¶ 7(d)(iv)(b)(3).

c. Distribution of Settlement Class Member Payments

Settlement Class Members who are Current Account Holders when the Net Settlement Fund is distributed will receive a credit in the amount of their Settlement Class Member Payments applied to any account they are maintaining individually at the time of the credit. *Id.*, at ¶ 7(d)(iv)(b)(1).

For Settlement Class Members who are Past Account Holders when the Net Settlement Fund is distributed or at that time do not have an individual account, they shall be sent a check by the Settlement Administrator at the address used to provide the Notice, or at such other address as designated by the Settlement Class Member. *Id.* at ¶ 7(d)(iv)(b)(2). The Settlement Administrator will make reasonable efforts to locate the proper address for any check returned by the Postal Service as undeliverable and will re-mail it once to the updated address or, in the case of a jointly held account, and in the Settlement Administrator's discretion, to an accountholder other than the one listed first. The Settlement Class Member shall have 180 days to negotiate the check. *Id.* The total value of checks uncashed after 180 days shall be distributed to a Court-approved *cy pres* recipient. *Id.*

d. Forgiveness of Uncollected Fees

Uncollected Fees shall be fully forgiven upon the occurrence of the Effective Date. *Id.*, at ¶ 8(a). If any Uncollected Fees are inadvertently collected, then they shall be refunded by Defendant insofar as Defendant is aware of the Uncollected Fees. *Id.* If a member of Defendant with Uncollected Fees attempts to open a new account or re-open a closed account, Defendant shall not require payment of the Uncollected Fees as a condition to account opening insofar as Defendant is aware of the outstanding Uncollected Fees. *Id.*

e. Disposition of Residual Funds

Within two hundred days after the Effective Date, Class Counsel shall submit to the Court a Final Report, setting forth: (a) the amounts paid to Class Members by the Claims Administrator, (b) Any checks not cashed or returned; (c) the efforts undertaken to follow up on uncashed and/or returned checks; (d) the total amount of money unpaid to Class Members; and (e) the total amount of credits issued to Class Members by Defendant. *Id.*, at ¶ 9. Thirty days after the Final Report

the total amount of uncashed checks, and amounts held by the Claims Administrator at the time of the Final Report, shall be paid by the Claims Administrator to one or more public interest organizations nominated by the parties and subject to Court approval. *Id.*, at ¶ 11. In no event shall any portion of the Settlement Fund revert to NBT Bank. *Id.*, at ¶ 7(d)(iv)(c).

3. Releases.

In exchange for the benefits conferred by the Settlement, all Settlement Class Members will be deemed to have released forever discharged Defendant, and all of its past, present and future predecessors, successors, subsidiaries, divisions, employees, affiliates, assigns, officers, directors, shareholders, representatives, attorneys and agents (collectively, the “Defendant Releasees”) from any and all claims, charges, complaints, debts, liabilities, demands, obligations, costs, expenses, actions, and causes of action of every nature, character, and description, whether known or unknown, asserted or unasserted, suspected or unsuspected, which Named Plaintiffs and Class Members, who do not opt out, now have, own or hold against any of the Defendant Releasees that arise out of and/or relate to the facts and claims alleged in the Facciola Action and Edwards Action, including Overdraft Fees governed under the Electronic Fund Transfer Act (Regulation E), 12 C.F.R. § 1005 *et. seq.* *Id.*, at ¶ 14.

4. Settlement Termination.

Either Party may terminate the Settlement if the Settlement is rejected or materially modified by the Court or an appellate court. Agreement at ¶ 15(a). MHVCU also may terminate the Settlement if 5% or more of the total Settlement Class members opt-out. *Id.* at ¶ 15(c).

IV. DISCUSSION

A. Class Certification

1. Rule 23

“Before approving a class settlement agreement, a district court must first determine whether the requirements for class certification in Rule 23(a) and (b) have been satisfied.” *In re Am. Int’l Grp., Inc. Sec. Litig. (In re AIG)*, 689 F.3d 229, 238 (2d Cir. 2012). “Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems” precluding findings of predominance under Rule 23(b)(3). *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *see also In re AIG*, 689 F.3d at 242 (“[M]anageability concerns do not stand in the way of certifying a settlement class”). “But other specifications of the Rule — those designed to protect absentees by blocking unwarranted or overbroad class definitions — demand undiluted, even heightened, attention in the settlement context.” *Amchem*, 521 U.S. at 620.

On April 22, 2022, the Court preliminarily certified the Settlement Class. *See* Dkt. No. 98. Plaintiffs now request that the Court certify the APPSN Fee Class and the Account Verification Fee Class for purposes of effectuating the settlement.

Rule 23(a) requires that “(1) the class is so numerous that joinder of all members is impractical; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). A class action may be maintained if the requirements of Rule 23(a) are satisfied and, as relevant here, “the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). In the Second Circuit, “‘Rule 23 is given liberal rather than restrictive construction, and courts are to adopt a standard of flexibility’ in deciding whether to grant

certification.” *Story v. SEFCU*, No. 1:18-CV-764 (MAD/DJS), 2021 U.S. Dist. LEXIS 34909, at *13 (N.D.N.Y. Feb. 25, 2021) (quoting *Marisol A. v. Giuliani*, 126 F.3d 372, 377 (2d Cir. 1997)).

2. Numerosity

With thousands of Settlement Class Members, is apparent that the proposed class satisfies the numerosity requirement. “[N]umerosity is presumed at a level of 40 members.” *Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995).

3. Commonality

The proposed Settlement Class also satisfies the commonality requirement, the purpose of which is to test “whether the named plaintiff’s claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.” *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982). Although the claims need not be identical, they must share common questions of fact or law. *See Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 181 (W.D.N.Y. 2005). Courts construe the commonality requirement liberally. *See id.*

Here, the case involves numerous common issues. Plaintiffs and Settlement Class members all bring identical claims, i.e., that Defendant improperly charged Relevant Fees in violation of the Account agreements. Courts have found such allegations sufficient to satisfy the commonality requirement. *See Story*, 2021 U.S. Dist. LEXIS 34909 at *14 (citing *Pantelyat v. Bank of America, N.A.*, No. 16-CV-8964, 2019 WL 402854, *2 (S.D.N.Y. Jan. 31, 2019)).

4. Typicality

Rule 23(a)(3) requires that the representative plaintiff’s claims or defenses “are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). Typicality requires that a class representative have “the incentive to prove all the elements of the cause of action which would be presented by the individual members of the class were they initiating individualized actions.”

Story, 2021 U.S. Dist. LEXIS 34909 at *14-15 (quoting *In re Oxford Health Plans, Inc.*, 191 F.R.D. 369, 375 (S.D.N.Y. 2000)). The requirement is met if the (1) “claims of representative plaintiffs arise from same course of conduct that gives rise to claims of the other class members,” (2) “where the claims are based on the same legal theory,” and (3) “where the class members have allegedly been injured by the same course of conduct as that which allegedly injured the proposed representative.” *Id.* (citing *In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285, 291 (2d Cir. 1992)).

Here, Plaintiffs’ claims arise from the same factual and legal circumstances that form the bases of the Settlement Class members’ claims. Plaintiffs and the Settlement Class members entered into the same types of Account agreements and were allegedly assessed the same Relevant Fees in violation of those contracts. Additionally, the claimed injuries arise from the same course of conduct for both the Settlement Class members and Plaintiffs. As such, Plaintiffs have satisfied the typicality requirement. *See Morris*, 859 F. Supp. 2d at 616; *Frank*, 228 F.R.D. at 182.

5. Adequacy of the Named Plaintiffs and Class Counsel

“Determination of adequacy typically ‘entails inquiry as to whether: (1) plaintiff’s interests are antagonistic to the interest of other members of the class and (2) plaintiff’s attorneys are qualified, experienced, and able to conduct the litigation.’” *Cordes & Co. Fin. Servs. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 99 (2d Cir. 2007) (quoting *Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 222 F.3d 52, 60 (2d Cir. 2000)). “The adequacy requirement exists to ensure that the named representatives will ‘have an interest in vigorously pursuing the claims of the class, and ... have no interests antagonistic to the interests of other class members.’” *Story*, 2021 U.S. Dist. LEXIS 34909 at *15-16 (quoting *Penney v. Deutsche Bank AG*, 443 F.3d 253, 268 (2d Cir. 2006)).

In the present matter, there is no evidence that the interests of Plaintiffs and the Settlement Class members are at odds. Rather, the record reflects that Plaintiffs, and the Settlement Class members have the same incentive to maximize their compensation for past harm.

Additionally, Class Counsel in this Action have established that they are qualified, experienced, and able to conduct the litigation of this Action. Class Counsel is experienced in handling class actions, complex litigation, and claims stemming from assessment of banks fees by financial institutions. As such, the Court finds that Class Counsel also meets the Rule 23(a)(4) requirements for adequate representation.

6. *Certification is Proper Under Rule 23(b)(3)*

Pursuant to Rule 23(b)(3), a class action may be maintained if Rule 23(a) is satisfied and “the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). The matters pertinent to these findings include:

- (A) the class members’ interests in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (D) the likely difficulties in managing a class action.

Id. Satisfaction of Rule 23(a) “goes a long way toward satisfying the Rule 23(b)(3) requirement of commonality.” *Rossini v. Ogilvy & Mather, Inc.*, 798 F.2d 590, 598 (2d Cir. 1986).

Here, again, Plaintiffs have satisfied the requirements of Rule 23(b)(3). As discussed, common questions of law and fact predominate over any questions that might affect the individual

Plaintiffs. Further, a class action is far superior to requiring the claims to be tried individually given the relatively small awards that each Settlement Class member is otherwise entitled. Additionally, litigating this matter as a class action will conserve judicial resources and is more efficient for the Settlement Class members, particularly those who lack the resources to bring their claims individually. Accordingly, the Court grants Plaintiffs' motion insofar as it seeks class certification for settlement purposes.

B. Fairness of the Proposed Settlement

1. Standard of Review

"The compromise of complex litigation is encouraged by the courts and favored by public policy." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116-17 (2d Cir. 2005); *see also Story*, 2021 U.S. Dist. LEXIS 34909 at *18. Federal Rule of Civil Procedure 23(e)(2) provides that a court may approve a class action settlement if "it is fair, reasonable, and adequate" after considering the following:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

Courts in the Second Circuit also analyze proposed class-action settlements under the framework set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), abrogated on other grounds by *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000), in tandem with Rule 23 to determine whether a class settlement is substantively fair and warrants final approval. *See Story*, 2021 U.S. Dist. LEXIS 34909 at *18 (citing *Grinnell*, 495 F.2d at 463). The Grinnell factors include (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *See Grinnell*, 495 F.2d at 463.

2. The Settlement is Procedurally Fair

Rules 23(e)(2)(A)-(B) “constitute the procedural analysis” of the fairness inquiry. *Story*, 2021 U.S. Dist. LEXIS 34909 at *18. “A strong initial presumption of fairness attaches to a proposed settlement if it is reached by experienced counsel after arm’s-length negotiations, and great weight is accorded to counsel’s recommendation.” *Story*, 2021 U.S. Dist. LEXIS 34909 at *19 (quoting *Guevoura Fund Ltd. v. Sillerman*, No. 1:15-CV-7192, 2019 U.S. Dist. LEXIS 218116, *6 (S.D.N.Y. Dec. 18, 2019)). This presumption of fairness and adequacy applies here.

Based on the submissions before the Court and as discussed at the Final Approval Hearing, the Settlement was reached through arm’s-length negotiations and after experienced counsel had evaluated the merits of Plaintiffs’ claims. Plaintiffs’ counsel conducted a thorough investigation, engaged in formal discovery which involved Defendant producing hundreds of pages of

documents as well as transactional data, and engaged a data expert to analyze MHVCU's data to determine whether a class could be ascertained and to support Plaintiffs' future motion for class certification. Class Counsel also participated in extensive settlement negotiations with Defendant. The final terms of the Settlement were memorialized in a comprehensive Agreement. See Dkt. No. 26-2. These arm's-length negotiations raise a presumption that the Settlement meets the requirements of due process. *See Story*, 2021 U.S. Dist. LEXIS 34909 at *20. Accordingly, the Court finds that the requirements of Rule 23(e)(2)(A)-(B) have been satisfied.

3. The Settlement is Substantively Fair

a. The Complexity, Expense, and Likely Duration of Litigation

The first *Grinnell* factor evaluates whether the continuation of the litigation would be complex, expensive, and lengthy. This case, had it not settled, would have been all three. "Most class actions are inherently complex, and settlement avoids the costs, delays and multitude of other problems associated with them." *Story*, 2021 U.S. Dist. LEXIS 34909 at *20 (quoting *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000)). This case is no exception. Additionally, settlement of this matter avoided the delay that necessarily would have followed motion practice and the time needed for the Court to act on those motions. After all that, a lengthy and complex trial would be required, that would consume tremendous time and resources for all Parties and the Court. Therefore, the first *Grinnell* factor weighs heavily in favor of Final Approval.

b. The Reaction of the Class

"It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy." *Story*, 2021 U.S. Dist. LEXIS 34909 at *21 (quoting *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002)).

The lack of class member objections “may itself be taken as evidencing the fairness of a settlement.” *Id.* There are no Settlement Class members that have opted-out of the Settlement and there have been no objections. As such, this factor favors Final Approval. *See id.* (citing *Wright v. Stern*, 553 F. Supp. 2d 337, 344-45 (S.D.N.Y. 2008) (“The fact that the vast majority of class members neither objected nor opted out is a strong indication” of fairness)).

c. The Stage of the Proceedings and the Amount of Discovery Completed

The third *Grinnell* factor considers the amount of discovery completed, with a “focus [] on whether the plaintiffs obtained sufficient information through discovery to properly evaluate their case and to assess the adequacy of any settlement proposal.” *Story*, 2021 U.S. Dist. LEXIS 34909 at *21-22 (quoting *Fleisher v. Phoenix Life Ins. Co.*, No. 11-CV-8405, 2015 U.S. Dist. LEXIS 121574 *7 (S.D.N.Y. Sept. 9, 2015)). The Parties’ discovery meets this standard. They exchanged discovery as well as a separate production of transactional data, which as discussed above, was analyzed by the Parties’ experts. Therefore, this factor favors Final Approval.

d. Risk of Establishing Liability and Damages and Maintaining Class Action

The fourth, fifth, and sixth *Grinnell* factors, which address “the risks of establishing liability,” “the risks of establishing damages,” and “the risks of maintaining the class action through the trial,” also strongly support the Settlement. In assessing the fourth, fifth, and sixth factors, which are often considered together, “the Court is not required to decide the merits of the case, resolve unsettled legal questions, or to ‘foresee with absolute certainty the outcome of the case.’” *Story*, 2021 U.S. Dist. LEXIS 34909 at *22 (quoting *Fleisher*, 2015 U.S. Dist. LEXIS 121574 at *8). “[R]ather, the Court need only assess the risks of litigation against the certainty of recovery under the proposed settlement.” *Id.* (quoting *In re Global Crossing Secs. and ERISA Litig.*, 225 F.R.D. 436, 459 (S.D.N.Y. 2004)). “In assessing the risks, courts recognize that ‘the

complexity of Plaintiff's claims ipso facto creates uncertainty.'" *Id.* (quoting *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 123 (S.D.N.Y. 2009)).

Here, while Plaintiffs and Class Counsel believe that they would prevail on their claims asserted against Defendant, they also recognize the risks and uncertainties inherent in pursuing the action through class certification, summary judgment, trial, and appeal. A trial on the merits would involve risks for Plaintiffs as to both liability and damages. Plaintiffs would have to prove that they and the Settlement Class were charged Relevant Fees and that the assessment of those fees was in violation of their Account agreements. Plaintiffs would risk a trier of fact reaching the conclusion that the language of the agreement, and other related disclosure documents, permits Defendant to assess Relevant Fees in the manner that it did.

Additionally, there is risk and additional expense associated with obtaining class certification and maintaining both conditional and class certification through trial. The Court has not certified a Rule 23 class, and such a determination would only be reached after further discovery and exhaustive briefing by the Parties. Even assuming that the Court granted certification, there is always the risk of decertification after the close of discovery. *See Story*, 2021 U.S. Dist. LEXIS 34909 at *23-24; *Zivali v. AT&T Mobility, LLC*, 784 F. Supp. 2d 456, 470 (S.D.N.Y. 2011) (granting the defendant's motion to decertify collective action). Risk, expense, and delay permeate such processes. As such, the Court finds that the fourth, fifth, and sixth Grinnell factors weigh in favor of granting Final Approval.

e. Defendant's Ability to Withstand a Greater Judgment

The seventh *Grinnell* factor addresses the defendant's ability to withstand a greater judgment. Even assuming that it could withstand a greater judgment, "this factor, standing alone, does not suggest that the settlement is unfair." *D'Amato v. Deutsche Bank*, 236 F.3d 78, 86 (2d

Cir. 2001) (citations omitted). Indeed, “a defendant is not required to ‘empty its coffers’ before a settlement can be found adequate.” *Story*, 2021 U.S. Dist. LEXIS 34909 at *24 (quoting *McBean v. City of N.Y.*, 233 F.R.D. 377, 388 (S.D.N.Y. 2006)). Here, this factor is, at best, neutral, and “does not suggest that the settlement is unfair.” *D’Amato*, 236 F.3d at 86 (citations omitted).

f. Range of Reasonableness

The final two *Grinnell* factors, “the range of reasonableness of the settlement fund in light of the best possible recovery” and “the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation,” also strongly support approval of the settlement. *Grinnell*, 495 F.2d at 463. Courts typically analyze the final two *Grinnell* factors together. *See Global Crossing*, 225 F.R.D. at 460. In analyzing these two factors, a reviewing court “consider[s] and weigh[s] the nature of the claim, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable.” *Grinnell*, 495 F.2d at 462. “The determination of whether a settlement amount is reasonable ‘does not involve the use of a mathematical equation yielding a particularized sum.’” *Story*, 2021 U.S. Dist. LEXIS 34909 at *25 (quoting *Frank*, 228 F.R.D. at 186). Rather, “there is a range of reasonableness with respect to a settlement — a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *Visa*, 396 F.3d at 119. Moreover, the settlement amount must be judged “not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs’ case.” *Story*, 2021 U.S. Dist. LEXIS 34909 at *25 (quoting *In re Agent Orange Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984)). The overall Value of the Settlement comprises monetary as well as non-monetary relief. *See id.*; *Velez v. Novartis Pharm. Corp.*, No. 04- CV-09194, 2010 WL 4877852, *18 (S.D.N.Y.

Nov. 30, 2010) (holding that both the monetary and non-monetary relief must be considered in calculating value of a settlement).

In the present matter, the total value of the Settlement is \$2,264,780 and represents substantial value given the attendant risks of litigation, even though recovery could be greater if Plaintiffs attained class certification, overcame a motion to decertify any class, succeeded on all claims at trial, and survived an appeal with their judgment intact.

By Class Counsel's estimation, the Settlement Fund of \$2,100,000 represents approximately 50% of Defendant's potential damages exposure, assuming Plaintiffs were to prevail on all of their claims. The forgiveness of an additional \$164,780 in Uncollected Fees provides further value to the Settlement Class Members. The Settlement represents a substantial recovery for Settlement Class Members, particularly in light of the risks of litigation.

Further, the Class Members will receive a pro rata payment based on a percentage of the Net Settlement Fund multiplied by the total amount of Relevant Fees assessed. Settlement Class Member Payment amounts and forgiveness of Uncollected Overdraft Fees will depend on the class or classes to which they belong. Weighing the benefits of settlement against the available evidence and the risks associated with proceeding in the litigation, the Court finds that the recovery is fair and reasonable.

g. Rule 23(e)(2)(C)-(D)

Rule 23 also requires the Court to consider whether the relief provided for the Settlement Class is adequate and whether the proposed Settlement treats Settlement Class Members equitably relative to each other. As discussed above, the record demonstrates that the Settlement provides adequate relief to Settlement Class Members by avoiding the cost and risk of further litigation and the Parties have proposed an effective method for processing and allocating Settlement Class

Members' claims. The Agreement calls for automatic payments to Settlement Class Members and automatic forgiveness of Uncollected Fees.

The Agreement's allocation plan calls for Settlement Class Members to receive a pro rata share of the Net Settlement Fund based upon the amount of Relevant Fees they incurred. It also provides for forgiveness of Uncollected Overdraft Fees to those eligible for such relief. The Court finds that this allocation is reasonable and treats all Settlement Class Members in an equitable manner. *See Story*, 2021 U.S. Dist. LEXIS 34909 at *27; *In re Vitamin C Antitrust Litig.*, No. 06-MD-1738, 2012 WL 5289514, *7 (E.D.N.Y. Oct. 23, 2012) ("An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel") (quotation omitted); *Christine Asia Co. v. Yun Ma*, No. 15-MD-2631, 2019 WL 5257534, *15 (S.D.N.Y. Oct. 16, 2019) (finding that the requirement that class members be treated equitably relative to each other is satisfied where each class member was to receive a "pro rata share" of the settlement fund).

Finally, as will be discussed in more detail below, Plaintiffs' proposed award of attorneys' fees is reasonable and the Parties filed the Agreement required by Rule 23(e)(3), including the attorneys' fees awarded pursuant to the Settlement, on the docket. *See* 5 William B. Rubenstein, *Newberg on Class Actions* § 15:12 (5th ed. 2018).

C. Service Award

The named Plaintiffs seek Service Awards of \$5,000.00 each for serving as Class Representatives. Class Counsel argue that these Service Awards are appropriate and reasonable in light of the substantial and meaningful work that Plaintiffs have contributed.

"Courts regularly grant requests for service awards in class actions 'to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks

incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiffs.” *Story*, 2021 U.S. Dist. LEXIS 34909 at *28-29 (quoting *Hall v. ProSource Technologies, LLC*, No. 14-CV-2502, 2016 U.S. Dist. LEXIS 53791, *9 (E.D.N.Y. Apr. 11, 2016)). A Service Award of \$5,000.00 for each Class Representative is reasonable and within the range of awards granted in this Circuit. *See id.* (awarding the named plaintiffs service awards of \$15,000)). Therefore, the Court approves a \$5,000.00 Service Award for each of the Class Representatives.

D. Costs

Class Counsel request reimbursement of \$[REDACTED] in costs to be paid from the Settlement Fund. “Attorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were ‘incidental and necessary to the representation’ of those clients.” *Story*, 2021 U.S. Dist. LEXIS 34909 at *29 (quoting *In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 183 n.3 (S.D.N.Y. 2003)). Here, the Notice informed Settlement Class members that Class Counsel would seek reimbursement of expenses. The vast majority of the costs are attributable to deposition and mediation expenses and were necessary. Accordingly, the Court awards costs in the amount of \$11,868.56.

E. Settlement Administrator Costs

Class Counsel also seeks payment to Epiq Class Action and Claims Solutions, Inc, which was selected to serve as the Settlement Administrator, to be paid out of the Settlement Fund. Notice of this selection and payment was provided to the Settlement Class and no objections were made. The Court finds that this expense is in line with cases of a similar nature. Accordingly, the Court grants Class Counsel’s request.

F. Attorney’s Fees

Class Counsel move for an award of attorneys’ fees in the amount of \$754,851, which

constitutes 33.33% of the total value of the settlement.

i. Method of Calculating Attorneys' Fees

“Attorneys who create a common fund from which members of a class are compensated are entitled to ‘a reasonable fee — set by the court — to be taken from the fund.’” *Story*, 2021 U.S. Dist. LEXIS 34909 at *32 (quoting *Goldberger*, 209 F.3d at 47). Such a fee award directly depletes the amount by which the class benefits. Accordingly, the Court has a duty to award fees with moderation and a regard for the rights of those with an interest in the fund who are not before the Court. *See, e.g., Burger v. CPC Intern., Inc.*, 76 F.R.D. 183, 188 (S.D.N.Y. 1977).

The Second Circuit has sanctioned two methods — the percentage method and lodestar method — for calculating reasonable attorneys’ fees in class actions. *See Goldberger*, 209 F.3d at 50. The Court has discretion to award fees based on either the percentage method or the lodestar method. *See McDaniel v. County of Schenectady*, 595 F.3d 411, 417 (2d Cir. 2010). Courts in this Circuit routinely use the percentage method to compensate attorneys in common fund cases such as this Action. *See Story*, 2021 U.S. Dist. LEXIS 34909 at *32 (citing *McDaniel*, 595 F.3d at 417); *WalMart*, 396 F.3d at 121. The “percentage method,” is the far simpler method by which the fee award is “some percentage of the fund created for the benefit of the class.” *Savoie*, 166 F.3d at 460 (citing *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984)). In determining what percentage of the fee to award, courts consider the same factors used to gauge the appropriate multiplier for the lodestar. *See Goldberger*, 209 F.3d at 47. When utilizing the percentage method, courts often “crosscheck” the adequacy of the resulting fee by applying the lodestar method. *See Goldberger*, 209 F.3d at 50. Under use of either method, the touchstone of the inquiry is whether the award is reasonable. *See id.* A court determines reasonableness by evaluating: (1) counsel’s time and labor; (2) the litigation’s complexities and magnitude; (3) the litigation risks; (4) quality of

representation; (5) the relationship of the requested fee to the settlement; and (6) considerations of public policy. *See id.*

a. Comparison to Court-Approved Fees in Other Common Fund Settlements

In using the percentage of the fund approach, the Court must first determine a baseline reasonable fee percentage in relation to the settlement, using common fund settlements of similar magnitude and complexity as guidance. *Story*, 2021 U.S. Dist. LEXIS 34909 at *32. Additionally, a sliding scale approach – awarding a smaller percentage of the settlement as the amount of the settlement fund increases – is appropriate in order to avoid overcompensating the plaintiffs’ counsel to the detriment of the class members they represent. *See id.* (citing *In re Bank of Am. Corp. Sec., Derivative & Emp. Ret. Income Sec. Act (ERISA) Litig.*, 772 F.3d 125, 134 (2d Cir. 2014)) (other citation omitted). Class Counsel contend that a fee of 33.33% of the Value of the Settlement to be payable from the Settlement Fund is reasonable and commonly awarded in cases of this nature. The Court finds that it is a reasonable baseline in the present matter. *Baudin v. Res. Mktg. Corp., LLC*, No. 1:19-cv-386 (MAD/CFH), 2020 U.S. Dist. LEXIS 146280, at *7 (N.D.N.Y. Aug. 13, 2020) (awarding class counsels a 33% of the Settlement Fund); *see also Elliot v. Leatherstocking Corp.*, No. 3:10-CV-0934 (MAD/DEP), 2012 U.S. Dist. LEXIS 171443, at *18-19 (N.D.N.Y. Dec. 4, 2012) (citing *Chavarria v. N.Y. Airport Serv., LLC*, 875 F. Supp. 2d 164, 179 (E.D.N.Y. 2012)(awarding attorneys’ fees of one-third of the settlement); *deMunecas v. Bold Food, LLC*, 2010 U.S. Dist. LEXIS 87644, at *3 (S.D.N.Y. Aug. 23, 2010) (awarding 33% of the settlement fund).

b. Counsel’s Time and Labor

Class Counsel spent significant effort to achieve the settlement. During the formal litigation of this Action, Class Counsel conducted a thorough investigation into the merits of the potential

claims and defenses. Class Counsel engaged in discovery. Finally, Class Counsel took part in mediation, and negotiated the terms of a favorable settlement for Plaintiffs.

Class Counsel is particularly experienced in the litigation, certification, trial, and settlement of nationwide class action cases in the financial services industry. In negotiating this Settlement in particular, Class Counsel had the benefit of years of experience and familiarity with the facts of this case as well as with other cases involving overdraft fees across the country.

Upon completion of the Agreement, Plaintiffs drafted and filed their motion for Preliminary Approval. *See* Dkt. No. 26. After Preliminary Approval was granted, Class Counsel worked and communicated with the Settlement Administrator to ensure that the Notice Program was carried out efficiently and correctly. Further, Class Counsel spent hours preparing the Motion for Final Approval, which included the filing of additional declarations, and preparing for and attending the Final Approval Hearing. Further, there will be significant post-Final Approval work ensuring that the Settlement benefits are properly distributed to Settlement Class Members, responding to Settlement Class Members' inquiries, and effectuating a secondary or *cy pres* distribution, as needed.

In performing these and other tasks, Class Counsel contends that their total hours of attorney, paralegal, and staff member time is 546.60, including an estimate of future hours they will spend assisting the Settlement Administrator following Final Approval, which they claim represents an aggregate lodestar of approximately \$328,460. Considering the complexity of class actions in general and the overall result obtained, the Court finds that the time spent by counsel is reasonable and supports the requested award.

c. Complexity of the Case

The magnitude and complexity of this case also supports the requested award. "Most class

actions are inherently complex, and settlement avoids the costs, delays and multitudes of other problems associated with them.” *Story*, 2021 U.S. Dist. LEXIS 34909 at *34 (quoting *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d at 174). This case is no exception. Plaintiffs’ claims involved complicated banking activities and the analysis of voluminous data to determine which Account Holders are members of the Settlement Class.

d. Risk of Litigation

Class Counsel undertook risk in accepting the case on a contingency basis. *Story*, 2021 U.S. Dist. LEXIS 34909 at *34. In the face of the risk of no recovery, Class Counsel proceeded with the litigation and obtained a favorable outcome for the class. Thus, Class Counsel certainly invested extensive time and costs with no guarantee of success.

e. Quality of the Representation

Class Counsel competently and efficiently represented Plaintiffs in prosecuting this Action. As such, this factor supports the requested award.

f. Policy Considerations

Lastly, the attorneys’ fees award may be altered due to policy considerations. *See In re World Trade Ctr. Disaster Site Litig.*, 754 F.3d 114, 127 (2d Cir. 2014). Counsel’s fees should reflect the important public policy goal of “providing lawyers with sufficient incentive to bring common fund cases that serve the public interest.” *Goldberger*, 209 F.3d at 51. “On the other hand, fees should compensate counsel only for the value they create, or the court risks incentivizing class counsel to settle cases in a manner detrimental to the class.” *Story*, 2021 U.S. Dist. LEXIS 34909 at *34.

Class Counsel obtained a favorable settlement in an efficient manner. Ultimately, Class Counsel’s fee award is tied directly to the Value of the Settlement they created, with no claims

process to obtain the benefits of the Settlement. No money will revert to the Defendant.

g. Lodestar Cross-Check

In assessing the reasonableness of a fee award, the Court may use the lodestar amount as a cross-check to the fees awarded under the percentage of the fund method. *See In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 388 (S.D.N.Y. 2013). The lodestar method entails “scrutiniz[ing] the fee petition to ascertain the number of hours reasonably billed to the class and then multipl[y] that figure by an appropriate hourly rate.” *Goldberger*, 209 F.3d at 47 (citing *Savoie v. Merchants Bank*, 166 F.3d 456, 460 (2d Cir. 1999)). The resulting lodestar may then be increased (or decreased) by applying a multiplier based on certain factors related to the litigation. *See id.*

When the lodestar method is used as a cross-check, “the Court need not exhaustively scrutinize the hours documented by class counsel; instead, the reasonableness of the lodestar ‘can be tested by the court’s familiarity with the case.’” *Story*, 2021 U.S. Dist. LEXIS 34909 at *35. (quoting *Sewell v. Bovis Lend Lease, Inc.*, No. 09-CV-6548, 2012 WL 1320124, *13 (S.D.N.Y. Apr. 16, 2012)). “Under the lodestar method, a positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors.” *Id.*

Here, Class Counsel asserts that its combined lodestar is \$328,460, resulting in a multiplier of about 2.3. This multiplier is within the range of accepted multipliers for this Circuit. *See Hanifin v. Accurate Inventory & Calculating Serv.*, 2014 U.S. Dist. LEXIS 115710, at *19 (N.D.N.Y. Aug. 20, 2014) (“Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers.”); *see also Wal-Mart*, 396 F.3d at 123 (upholding multiplier of 3.5); *NECAIBEW Health & Welfare Fund v. Goldman, Sachs & Co.*, No. 1:08-CV-10783, 2016 WL 3369534, *1 (S.D.N.Y. May 2, 2016) (approving a multiplier of 3.9 on a \$272 million

settlement); *Woburn Ret. Sys. v. Salix Pharm., Ltd.*, No. 14-CV-8925, 2017 WL 3579892, *6 (S.D.N.Y. Aug. 18, 2017) (finding that a 3.14 multiplier was “within the range of reasonable ... multipliers approved in this Circuit”). Accordingly, the Court finds that Class Counsel is entitled to \$754,851 in reasonable attorneys’ fees.

G. *Cy Pres* Distribution

Pursuant to the Agreement, no money shall revert to Defendant. Instead, within one year after the date the Settlement Administrator mails the first Settlement Class Member Payment, any remaining amounts resulting from uncashed checks shall be to the *cy pres* beneficiary that the Parties shall suggest, and the Court approves.

V. CONCLUSION

After carefully reviewing the entire record in this matter, the Parties’ submissions, and the applicable law, and for the reasons set forth herein, the Court hereby

ORDERS that Plaintiffs’ unopposed motion for certification of the Settlement Class, Final Approval of the class action settlement, approval of Service Awards, and approval of attorneys’ fees and costs is GRANTED; and the Court further

ORDERS that the Clerk of the Court shall enter judgment in Plaintiffs’ favor and close this case; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Memorandum-Decision and Order on the Parties in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: _____, 2023
Binghamton, New York

Honorable Thomas J. McAvoy
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 24, 2023, the foregoing was served by CM/ECF to all counsel of record.

Respectfully submitted,

By: /s/ Jeffrey D. Kalief
Jeffrey D. Kalief