

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SUSAN ROY, on behalf of herself and all others
similarly situated,

Plaintiff,

vs.

ESL FEDERAL CREDIT UNION,

Defendant.

CASE NO. 6:19-cv-06122-FPG-JWF

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

PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 23(e) and Western District of New York Local Rule 7, Plaintiff Susan Roy, (“Plaintiff”), on behalf of herself and all others similarly situated, hereby does move this Court for an order granting Final Approval of the class action Settlement reached between her and Defendant ESL Federal Credit Union (“Defendant” or “ESL”) (collectively, the “Parties”), and to enter the [Proposed] Order Granting Plaintiff’s Unopposed Motion for Final Approval and Application for Attorneys’ Fees Costs and Service Award submitted with this notice of motion.

The Final Approval Hearing is set for **May 24, 2022, at 11:00 a.m.**, at United States District Court for the Western District of New York, which is located at 100 State Street, Rochester, New York 14614. At the direction of the Court, the hearing may be virtual, in which case the instructions to participate shall be posted on the Settlement Website, *www.RoyClassActionSettlement.com*.

Final Approval is warranted because the terms of the proposed Settlement, memorialized in the Revised Settlement Agreement and Releases, are fair, adequate, and reasonable under the law of the Second Circuit and the Federal Rules of Civil Procedure, and provide substantial relief for the Sufficient Funds Fee Class and Retry Fee Class. Given the significant risks inherent in this Action, the \$1,830,758.36 Value of the Settlement, consisting of ESL’s: (a) cash payment of \$1,700,000.00

(allocated \$935,000.00 to the Sufficient Funds Fee Class and \$765,000.00 to the Retry Fee Class) and (b) agreement to forgive, waive, and not collect an additional \$130,758.36 in Uncollected Relevant Fees, is an excellent result for members of the Retry Fee Class and for members of the Sufficient Funds Fee Class.

Class Counsel respectfully request awards of attorneys' fees in the amount of \$610,246.68, reimbursable costs of \$29,515.86, and a \$5,000.00 Service Award for Plaintiff as Class Representative. Such awards are reasonable under the law of the Second Circuit and the Federal Rules of Civil Procedure.

Plaintiff hereby moves, and Defendant will not oppose a request for the Court to (1) finally approve the Settlement as being within the range of fair, adequate, and reasonable; (2) certify for settlement purposes only the proposed Sufficient Funds Fee Class and the proposed Retry Fee Class pursuant to Fed. R. Civ. P. 23; (3) affirm Plaintiff's appointment as Class Representative for both the Retry Fee Class and the Sufficient Funds Fee Class; (4) affirm the appointment of Jeff Ostrow and Jonathan Streisfeld of Kopelowitz Ostrow P.A., Sophia Gold of Kaliel PLLC, and Andrea Gold of Tycko & Zavareei LLP as Class Counsel; (5) award attorneys' fees and costs to Class Counsel and Local Counsel; (6) award a Service Award to the Class Representative; (6) enter the Final Approval Order; and (7) enter final judgment dismissing this action with prejudice and reserving jurisdiction over the Parties and the Settlement Class Members pending the completion of settlement administration.

This unopposed Motion is based upon this Notice of Motion; the supporting Memorandum of Law; the Revised Settlement Agreement and Releases and Exhibits 1 and 2 thereto; the Joint Declaration of Class Counsel; the Declaration of Local Counsel; the Declaration of Steven Weisbrot of Angeion Group LLC as Settlement Administrator; and all papers and pleadings on file herein.

Pursuant to Local Rule 7, Plaintiff and Class Counsel do not intend to file a reply in support of this unopposed motion unless a timely objection is filed by any member of the Retry Fee Class or Sufficient Funds Fee Class.

Dated: April 9, 2022

Respectfully submitted,

KOPELOWITZ OSTROW P.A.

/s/ Jonathan M. Streisfeld

Jeff Ostrow, Esq.

Jonathan M. Streisfeld, Esq.

1 West Las Olas Blvd, Suite 500

Fort Lauderdale, Florida 33301

Telephone: (954) 525-4100

ostrow@kolanyers.com

streisfeld@kolanyers.com

KALIEL GOLD PLLC

Sophia G. Gold, Esq.

1875 Connecticut Ave. NW, 10th Floor

Washington, DC 20009

Telephone: (202) 350-4783

sgold@kaliegold.com

TYCKO & ZAVAREEI LLP

Andrea Gold

1827 L St. NW, Suite 1000

Washington, DC 20036

agold@tzlegal.com

Telephone: (202) 973-0900

Class Counsel

REESE LLP

Michael R. Reese

100 West 93rd Street, 16th Floor

New York, New York 10025

Telephone: (212) 643-0500

mreese@reesellp.com

DAVID M. KAPLAN, Attorney at Law

David M. Kaplan

46 Helmsford Way

Penfield, New York 14526

Telephone: (585) 330-2222

dmkaplan@rochester.rr.com

Local Counsel

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SUSAN ROY, on behalf of herself and all others
similarly situated,

Plaintiff,

vs.

ESL FEDERAL CREDIT UNION,

Defendant.

CASE NO. 6:19-cv-06122-FPG-JWF

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPLICATION
FOR ATTORNEYS' FEES AND COSTS AND SERVICE AWARD**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	2
	A. Procedural History	2
	B. Class Counsel’s Investigation	3
	C. Summary of the Settlement Terms	5
	1. The Retry Fee Class and Sufficient Funds Fee Class	5
	2. Relief for The Benefit of The Retry Fee Class and Sufficient Funds Fee Class	5
	a. Settlement Fund and Uncollected Relevant Fees	5
	b. Allocation of the Settlement Class Member Payments	6
	c. Distribution of Settlement Class Member Payments	6
	d. Forgiveness of Uncollected Relevant Fees	7
	e. Disposition of Residual Funds	8
	3. Releases	8
	4. The Notice Program	8
	5. Class Representative Service Award	9
	6. Attorneys’ Fees and Costs	10
III.	ARGUMENT	10
	A. Legal Standard for Final Approval	10
	B. The Settlement Satisfies the Criteria for Final Approval	11
	1. This Settlement Is the Product of Good Faith, Informed, and Arm’s Length Negotiations	12
	2. The Facts Support a Final Determination That the Settlement Is Fair, Adequate, and Reasonable	13
	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	13
	b. The Reaction of Settlement Class Members to the Proposed Settlement	17
	c. The Expense, Complexity, and Likely Duration of Further Litigation	17
	d. The Risk of Maintaining Class Action Status Throughout Trial	18
	e. The Extent of Discovery Completed and The Stage of The Proceedings	18
	f. The Effectiveness of Distributing Relief, The Release and Equitable Treatment of Class Members	19

g. The Terms of Any Proposed Award of Attorneys’ Fees.....	20
C. Notice to the Settlement Class Members Was Adequate and Satisfied Rule 23 and Due Process	21
D. Certification of the Retry Fee Class and Sufficient Funds Fee Class Is Appropriate	22
E. Notice Is Satisfied Pursuant to the Class Action Fairness Act (“CAFA”)	23
F. Plaintiff’s Counsel Should Be Appointed Class Counsel	23
1. The Standard for Awarding Attorneys’ Fees to Class Counsel	24
2. Goldberger Factors	26
a. The Magnitude and Complexities of Litigation	26
b. Risks of Litigation.....	27
c. Quality of Representation.....	27
d. Requested Fee in Relation to the Settlement.....	28
e. Public Policy Considerations	31
f. The Time and Labor Expended by Counsel and Lodestar Cross-Check	31
G. Application for Service Award.....	34
H. Reimbursement of Costs.....	35
IV. CONCLUSION.....	35

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Pages(s)</u>
<i>Amchem Products, Inc. v. Windsor</i> , 521 U.S. 591 (1997)	23
<i>Anyoku v. World Airways (In re Nig. Charter Flights Litig.)</i> , No. MD 2004-1613, 2011 WL 7945548 (E.D.N.Y. Aug. 25, 2011)	27
<i>Beebe v. V&J National Enterprises, LLC</i> , No. 6:17-CV-06075 EAW, 2020 WL 2833009 (W.D.N.Y. June 1, 2020)	<i>passim</i>
<i>Bodnar v. Bank of Am., N.A.</i> , No. 14-3224, 2016 WL 4582084 (E.D. Pa. Aug. 4, 2016)	15
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980)	24
<i>Capsolas v. Pasta Res. Inc.</i> , 2012 WL 4760910 (S.D.N.Y. Oct. 5, 2012)	26
<i>Central States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, LLC</i> , 504 F.3d 229 (2d Cir. 2007)	24
<i>Charron v. Weiner</i> , 731 F.3d 241 (2d Cir. 2013)	17
<i>Christine Asia Co. v. Jack Yun Ma</i> , No. 1:15-md-02631 (CM)(SDA), 2019 WL 5257534 (S.D.N.Y. Oct. 16, 2019)	17
<i>City of Detroit v. Grinnell Corp.</i> , 495 F.2d 448 (2d Cir. 1974)	10, 13, 15
<i>City of Providence v. Aéropostale, Inc.</i> , 2014 WL 1883494 (S.D.N.Y. May 9, 2014), <i>aff'd sub nom. Arbutnot v. Pierson</i> , 607 F. App'x 73 (2d Cir. 2015)	32
<i>CLRB Hanson Indus., LLC v. Weiss & Assocs., PC</i> , 465 F. App'x 617 (9th Cir. 2012)	28
<i>Cornwell v. Credit Suisse Grp.</i> , No. 08-cv-03758 (VM), 2011 WL 13263367 (S.D.N.Y. July 20, 2011)	33
<i>Cosgrove v. Citizens Auto. Fin., Inc.</i> , No. 09-1095, 2011 WL 3740809 (E.D. Pa. Aug. 25, 2011)	29

<i>D'Amato v. Deutsche Bank</i> , 236 F.3d 78 (2d Cir. 2001)	12, 13
<i>Davis v. J.P. Morgan Chase & Co.</i> , 827 F. Supp. 2d 172 (W.D.N.Y. 2011)	33
<i>Deposit Guar. Nat'l Bank v. Roper</i> , 445 U.S. 326 (1980)	31
<i>Dorn v. Eddington Sec., Inc.</i> , No. 08 Civ. 10271, 2011 WL 9380874 (S.D.N.Y. Sept. 21, 2011)	25
<i>Dornberger v. Metro. Life Ins. Co.</i> , 203 F.R.D. 118 (S.D.N.Y. 2001)	21
<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)	29, 30
<i>Frank v. Eastman Kodak Co.</i> , 228 F.R.D. 174 (W.D.N.Y. 2005)	17, 18, 19
<i>Fresno Cty. Emps.'s Ret. Ass'n v. Isaacson/Weaver Family Tr.</i> , 925 F.3d 63 (2d Cir. 2019)	24
<i>Garland v. Cohen & Krassner</i> , No. 08-CV-4626 (KAM) (RLM), 2011 WL 6010211 (E.D.N.Y. Nov. 29, 2011)	16, 18
<i>Godson v. Eltman, Eltman, & Cooper, P.C.</i> , 328 F.R.D. 35 (W.D.N.Y. 2018)	13, 14, 18
<i>Goldberger v. Integrated Res., Inc.</i> , 209 F.3d 43 (2d Cir. 2000)	24, 26, 27, 31, 33
<i>Gradie v. Corp., N.A.</i> , No. 2:16-CV-00768-DN, 2020 WL 6827783 (D. Utah Nov. 20, 2020)	29
<i>Guevoura Fund Ltd. v. Sillerman</i> , No. 1:15-cv-07192-CM, 2019 WL 6889901 (S.D.N.Y. Dec. 18, 2019)	16, 30, 35
<i>Hanifin v. Accurate Inventory & Calculating Serv.</i> , No. 11 Civ. 1410 (MAD) (ATB), 2014 WL 4352060 (N.D.N.Y. Aug. 20, 2014)	33
<i>Hawthorne v. Umpqua Bank</i> , No. 11-cv-06700-JST, 2015 WL 1927342 (N.D. Cal. Apr. 28, 2015)	15

<i>Hayes v. Harmony Gold Min. Co.</i> , No. 08 CIV. 03653 BSJ, 2011 WL 6019219 (S.D.N.Y. Dec. 2, 2011)	25
<i>Holve v. McCormick & Co., Inc.</i> , No. 6:16-cv-6702-FPG-MWP, ECF No. 61 (W.D.N.Y. Jan. 11, 2022).....	32
<i>In re Austrian & German Bank Holocaust Litig.</i> , 80 F. Supp. 2d 164 (S.D.N.Y. 2000).....	13, 14, 17, 18
<i>In re Bear Stearns Co. Sec. Derivative and ERISA Litig.</i> , 909 F. Supp. 2d 259 (S.D.N.Y. 2012)	18
<i>In re Boesky Sec. Litig.</i> , 888 F. Supp. 551 (S.D.N.Y. 1995)	32
<i>In re Checking Account Overdraft Litig.</i> , No. 1:09-MD-02036-JLK, 2013 WL 11319242 (S.D. Fla. Aug. 2, 2013).....	15
<i>In re Checking Account Overdraft Litig.</i> , No. 1:09-MD-02036-JLK, 2015 WL 12641970 (S.D. Fla. May 22, 2015).....	15
<i>In re Checking Account Overdraft Litig.</i> , No. 1:09-MD-02036-JLK, 2020 WL 4586398 (S.D. Fla. Aug. 10, 2020).....	30
<i>In re Citigroup Inc. Sec. Litig.</i> , 965 F. Supp. 2d 369 (S.D.N.Y. 2013).....	14
<i>In re Colgate-Palmolive Co. ERISA Litig.</i> , 36 F. Supp. 3d 344 (S.D.N.Y. 2014).....	24, 25, 31, 33
<i>In re Flag Telecom Holdings, Ltd. Sec. Litig.</i> , No. 02-CV-3400 (CM)(PED) 2010 WL 4537550 (S.D.N.Y. Nov. 8, 2010)	33
<i>In re GSE Bonds Antitrust Litig.</i> , 414 F. Supp. 3d 686 (S.D.N.Y. 2019).....	10, 20
<i>In re Initial Pub. Offering Sec. Litig.</i> , 671 F. Supp. 2d 467 (S.D.N.Y. 2009)	26
<i>In re Lloyd's Am. Tr. Fund Litig.</i> , No. 96CIV1262RWS, 2002 WL 31663577 (S.D.N.Y. Nov. 26, 2002) <i>aff'd sub nom.</i> <i>Adams v. Rose</i> , No. 03-7011, 2003 WL 21982207 (2d Cir. Aug. 20, 2003)	28
<i>In re Med. X-Ray Film Antitrust Litig.</i> , No. 93-CV-5904, 1998 WL 661515 (E.D.N.Y. Aug. 7, 1998).....	16, 26

<i>In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.</i> , 330 F.R.D. 11 (E.D.N.Y. 2019).	12, 20
<i>In re Platinum & Palladium Commodities Litig.</i> , No. 10cv3617, 2015 WL 4560206 (S.D.N.Y. July 7, 2015).....	32
<i>In re Signet Jewelers Ltd. Sec. Litig.</i> , No. 1:16-cv-06728-CM-SDA, 2020 WL 4196468 (S.D.N.Y. July 21, 2020).	11
<i>In re Telik, Inc. Sec. Litig.</i> , 576 F. Supp. 2d 570 (S.D.N.Y. 2008).....	33
<i>In re Visa Check/Mastermoney Antitrust Litig.</i> , 297 F. Supp. 2d 503 (E.D.N.Y. 2003).....	20, 31
<i>Johnson v. Brennan</i> , No. 10-cv- 4712, 2011 WL 4357376, at *20 (S.D.N.Y. Sep. 16, 2011)	33
<i>Kirby v. FIC Restaurants, Inc.</i> , No. 5:19-CV-1306 (FJS/ML), 2020 WL 3501398 (N.D.N.Y. June 29, 2020)	12
<i>Kirby v. FIC Restaurants, Inc.</i> , No. 5:19-CV-1306 (FJS/ML), 2020 WL 5791582 (N.D.N.Y. Sep. 28, 2020)	11
<i>Kommer v. Ford Motor Co.</i> , No. 1:17-CV-0296 (LEK/DJS),2020 WL 7356715 (N.D.N.Y. Dec. 15, 2020).....	24
<i>Lambert v. Navy Fed. Credit Union</i> , No. 1:19-cv- 103-LO-MSN, 2019 WL 3843064 (E.D. Va. Aug. 14, 2019).....	30
<i>Landmen Partners, Inc. v. Blackstone Grp., L.P.</i> , No. 08-cv-03601-HB-FM, 2013 WL 11330936 (S.D.N.Y. Dec. 18, 2013)	26
<i>Macedonia Church v. Lancaster Hotel, LP</i> , No. 05- 0153 TLM, 2011 WL 2360138 (D. Conn. June 9, 2011)	25
<i>Marroquin v. Champlain Valley Specialty of N.Y., Inc.</i> , No. 5:15-cv-00441 (MAD/TWD), 2016 WL 3406111 (N.D.N.Y. June 17, 2016)	13
<i>Mobney v. Shelly's Prime Steak, Stone Crab & Oyster Bar</i> , 2009 WL 5851465 (S.D.N.Y. Mar. 31, 2009)	26, 30
<i>Moukengeshcaie v. Eltman, Eltman & Cooper, P.C.</i> , No. 1:08-cv-10783-LAP, 2016 WL 3369534 (S.D.N.Y. May 2, 2016).....	28
<i>NECA-IBEW Health & Welfare Fund v. Goldman, Sachs & Co.</i> , No. 11-cv-06700-JST, 2015 WL 1927342 (N.D. Cal. Apr. 28, 2015).....	33

<i>Newman v. Stein</i> , 464 F.2d 689 (2d Cir. 1972)	14
<i>Odom v. Hazen Transport, Inc.</i> , 275 F.R.D. 400 (W.D.N.Y. 2011)	13, 15, 18, 19
<i>Padovano v. FedEx Ground Packag Sys.e</i> , No. 16-CV-17-FPG, 2019 U.S. Dist. LEXIS 107092 (W.D.N.Y. June 10, 2019)	11, 12, 15, 20
<i>Plummer v. Chemical Bank</i> , 668 F.2d 654 (2d Cir. 1982)	18
<i>Raniere v. Citigroup Inc.</i> , 310 F.R.D. 211 (S.D.N.Y. 2015)	25
<i>Roberts v. Capital One, N.A.</i> , Case No. 1:16-cv-04841-LGS (S.D.N.Y. Dec. 1, 2020)	15
<i>Stefaniak v. HSBC Bank U.S.A., N.A.</i> , No. 1:05-CV-720 S, 2008 WL 7630102 (W.D.N.Y. June 28, 2008)	26, 30
<i>Story v. SEFCU</i> , No. 1:18-CV-764 (MAD/DJS), 2021 WL 736962 (N.D.N.Y. Feb. 25, 2021)	34
<i>Thompson v. Cmty. Bank, N.A.</i> , No. 8:19-CV-919, 2021 WL 4084148 (N.D.N.Y. Sept. 8, 2021)	25, 28, 31
<i>Torres v. Gristede's Operating Corp.</i> , 519 F. App'x 1 (2d Cir. 2013)	25, 30, 33
<i>United States ex rel. Fox Rx, Inc. v. Omnicare, Inc.</i> , No. 12cv275 (DLC), 2015 WL 1726474 (S.D.N.Y. Apr. 15, 2015)	32
<i>Velez v. Novartis Pharms. Corp.</i> , No. 04-CV-9194, 2010 WL 4877852 (S.D.N.Y. Nov. 30, 2010)	28
<i>Wal-Mart Stores v. Visa U.S.A.</i> , 396 F.3d 96 (2d Cir. 2005)	10, 12, 21, 24, 25, 27, 33
<i>Willix v. Healthfirst, Inc.</i> , No. 07 Civ. 1143(ENV)(RER) 2011 WL 754862 (E.D.N.Y. Feb. 18, 2011),	25
<i>Woburn Ret. Sys. v. Salix Pharm., Ltd.</i> , No. 14-CV-8925 (KMW), 2017 WL 3579892 (S.D.N.Y. Aug. 18, 2017)	33
<u>Statutes</u>	
28 U.S.C. § 1715	23

Rules

Fed. R. Civ. P. 12(b)(6).....3

Fed. R. Civ. P. 23*passim*

Other Authorities

Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical
Legal Stud. 811 (2010).....29

I. INTRODUCTION

Plaintiff Susan Roy submits this Memorandum of Law in Support of her Unopposed Motion for Final Approval of Class Settlement and Application for Attorneys' Fees and Costs and Service Award.¹ The Settlement Agreement ("Agreement"), attached as ***Exhibit A***, if approved, will resolve all claims against Defendant ESL Federal Credit Union, in the Action. The Settlement should be finally approved because it provides substantial relief for the Settlement Class and the Settlement terms are reasonable and consistent with Second Circuit precedent.

This Court should grant Final Approval because the terms of the proposed Settlement are fair, adequate, and reasonable under the law, and provide substantial relief for the Retry Fee Class and Sufficient Funds Fee Class. Indeed, given the significant risks inherent in this Action, the \$1,830,758.36 Value of the Settlement, consisting of Defendant's: (a) cash consideration totaling \$1,700,000.00 and (b) agreement to forgive, waive, and not to collect an additional \$130,758.36 in Uncollected Relevant Fees, is an excellent result for the Sufficient Funds Fee Class and Retry Fee Class. Moreover, where the Settlement provides for a guaranteed, direct, and immediate award for Settlement Class Members,² the Settlement far outweighs the substantial risks and uncertainties of continued litigation and expense. Indeed, the Settlement Administrator will automatically distribute *pro rata* the Net Settlement Fund—there are no claim forms and Settlement Class Members will not be required to submit proof that they were harmed by Defendant's Retry Fee and Sufficient Funds Fee practices. Instead, Defendant's available data was used to determine which Account Holders were harmed by Relevant Fees, and an appropriate formula to calculate each Settlement Class Member's distribution will be applied. Thus, the plan of allocation fairly and adequately accounts for the value of each member's individual claim. Additionally, Class Counsel is seeking attorneys' fees of 33.33% of the Value of the Settlement, reimbursement of reasonable costs, and a \$5,000.00 Service Award for Plaintiff.

¹ All capitalized terms in this memorandum shall have the same meanings as those defined in the Settlement Agreement.

² Settlement Class Members mean members of the Retry Fee Class *and/or* the Sufficient Funds Fee Class who do not opt-out of the Settlement. Agreement ¶ 47.

Since Preliminary Approval of the Settlement on January 26, 2022, the Settlement Administrator properly completed the Court-approved Notice Program. Of the 42,920 class members, 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 member has opted-out of the Settlement. The absence of objections to date and the lack of opt-outs shows that the Settlement Class fully supports approval of the Settlement and that it warrants Final Approval.³

In support of the Motion, Plaintiff submits a Joint Declaration from Class Counsel Andrea Gold, Sophia Gold, and Jeff Ostrow ("Decl."), attached as ***Exhibit B***, and a Declaration from the Settlement Administrator ("Admin. Decl."), attached as ***Exhibit C***. Plaintiffs and Class Counsel respectfully request that the Court: (1) grant Final Approval of the Settlement; (2) affirm its certification for settlement purposes the Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3); (3) affirm its appointment of Ms. Roy as Class Representative; (4) affirm its appointment of Jeff Ostrow and Jonathan Streisfeld of Kopelowitz Ostrow P.A., Andrea Gold of Tycko & Zavareei LLP, and Sophia Gold of KalieGold PLLC as 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 February 15, 2019, Plaintiff Susan Roy filed her putative class action complaint in the Action, seeking damages, restitution, and declaratory relief arising from Defendant's allegedly unfair and unconscionable assessment and collection of certain Returned Item Fees, which Defendant charges when it returns certain checking account debits unpaid. ECF No. 1.

On October 7, 2019, Plaintiff filed the operative Amended Complaint, asserting claims for breach of contract and the covenant of good faith and fair dealing, and violation of New York General

³ Should any timely objection be asserted following the filing of this Motion, a response will be filed. Class Counsel may seek permission to take discovery from any objector consistent with the Agreement.

Business Law (“GBL”), Section 349, arising from allegations that Defendant improperly assessed both Retry Fees and Sufficient Funds Fees on customers’ accounts. ECF No. 30. Defendant denies Plaintiff’s allegations or that it charged any fees that were contrary to the terms of its Account Documents.

On November 7, 2019, Defendant filed a Motion to Dismiss the Amended Complaint pursuant to Federal Rule of Civil Procedural 12(b)(6), ECF No. 31, which the Court granted as to the breach of the implied covenant of good faith and fair dealing claim, but denied as to the breach of contract and GBL claims on September 30, 2020. ECF No. 57. On October 14, 2020, Defendant filed its Answer and Affirmative Defenses. ECF No. 58.

While the motion to dismiss was pending, the Parties engaged in important written discovery and numerous meet and confer conferences made in good faith regarding outstanding discovery disputes, including those regarding Defendant’s production of electronically stored information (“ESI”) and cost-shifting considerations. Decl. ¶ 19.

The Parties also participated in two mediation sessions before Mediator Simeon H. Baum, Esq.—first on April 2, 2020, and then again on September 15, 2020. The Parties did not settle at either mediation. Decl. ¶ 12.

Shortly thereafter, the Parties engaged in further negotiations and ultimately agreed to settle the Action in its entirety. *Id.* ¶ 22. The Parties filed a Notice of Settlement with the Court reflecting the same and requesting that the Court vacate all upcoming hearings and deadlines in the Action pending the Parties execution of the Agreement and the filing of this Motion. ECF No. 59.

On February 8, 2021, the Parties finalized and executed the original agreement. Plaintiff filed an Unopposed Motion for Preliminary Approval of a class action settlement on February 16, 2021. ECF No. 64. In its Decision and Order, the Court denied the motion without prejudice on June 17, 2021. ECF No. 65. The Parties revised the settlement agreement to address the concerns identified by the Court and did so, entering into a revised Agreement dated July 15, 2021. *See Exhibit A.*

B. Class Counsel’s Investigation

Prior to filing, Class Counsel thoroughly investigated the viability of Plaintiff’s claims. Decl. ¶

14. Class Counsel interviewed a number of Defendant's members to gather information about Defendant's conduct and its impact upon consumers, which was essential to their ability to understand the nature of the Defendant's conduct, the language of the Account agreement and other documents at issue, and potential remedies. *Id.*

Class Counsel expended significant resources researching and developing the legal claims at issue. *Id.* ¶ 15. Indeed, Class Counsel is familiar with the instant claims through their extensive history of litigating and resolving other banking fee claims with similar factual and legal issues to the case at bar. *Id.* Class Counsel has experience in understanding the damages at issue, what information is critical in determining class membership, and what data is necessary to calculate each Retry Fee Class and Sufficient Funds Fee Class member's respective damages. *Id.* These key issues were to be heavily contested throughout the litigation, including during the Parties' written discovery process and ongoing meet and confer efforts. *Id.* Class Counsel, along with their data expert, spent a significant amount of time analyzing preliminary data regarding Defendant's fee revenue related to the assessment of Retry Fees and Sufficient Funds Fees at issue. *Id.* ¶ 20. Defendant similarly retained its own expert who conducted a review and analyzed data accordingly. *Id.* This data and analysis evaluating potential damages at issue was used in preparation for the Parties' scheduled meditations and to further drive the viability of resolution.

Class Counsel mediated twice with Mediator Simeon H. Baum, Esq., fully informed of the merits of Retry Fee Class and Sufficient Funds Fee Class members' claims, and negotiated the proposed Settlement while zealously advancing the position of Plaintiff, the Retry Fee Class members, and Sufficient Funds Fee Class members, and being fully prepared to continue litigation rather than to accept a settlement that was not in their best interests. *Id.* ¶¶ 12, 21. After the second mediation session, Mr. Baum continued to actively participate in the settlement discussions and helped the Parties reach an acceptable compromise. *Id.* ¶ 22.

In sum, prior to negotiating the Settlement, Class Counsel spent significant time conferring with Plaintiff, investigating facts, researching the law, preparing a well-pleaded complaint and amended complaint, engaging in discovery, working with an expert witness, and reviewing important

documents and data. *Id.* ¶ 23. This resulted in the Settlement for which Final Approval is respectfully requested.

C. Summary of the Settlement Terms

1. The Retry Fee Class and Sufficient Funds Fee Class

The Retry Fee Class is a Fed. R. Civ. P. 23(b)(3) opt-out class, defined as “those current or former members of Defendant who were assessed Retry Fees during the relevant Class Period.” Agreement ¶ 40. Retry Fees are Returned Item Fees that were charged and not refunded from January 1, 2016 to October 31, 2019, for Automated Clearing House (ACH) and check transactions that were re-submitted by a merchant after being returned by Defendant for insufficient funds. *Id.* ¶ 41.

The Sufficient Funds Fee Class is also a Rule 23(b)(3) opt-out class, defined as “those current or former members of Defendant who were assessed Sufficient Funds Fees.” *Id.* ¶ 52. Sufficient Funds Fees are Overdraft Fees that Defendant charged and did not refund from January 1, 2016 to October 31, 2019, when there was enough money in the Account Holder’s Account to cover the transaction in question if holds placed on deposits and pending debit card transactions were not deducted from the amount in the Account. *Id.* ¶ 51.

Excluded from the Retry Fee Class and Sufficient Funds Fee Class is Defendant, its parents, subsidiaries, affiliates, officers, and directors; all Retry Fee Class and Sufficient Funds Fee Class members who make a timely election to be excluded; and all judges assigned to this litigation and their immediate family members. *Id.* at ¶¶ 40, 52.

2. Relief for the Benefit of the Retry Fee Class and Sufficient Funds Fee Class

a. Settlement Fund and Uncollected Relevant Fees

The total Value of the Settlement is \$1,830,758.36 consisting of Defendant’s: (a) commitment to establish and pay a cash Settlement Fund of \$1,700,000.00, and its (b) agreement to forgive, waive, and not collect \$130,758.36 in Uncollected Relevant Fees. Agreement ¶¶ 54-56, 59-60. The Settlement Fund will be used to pay: (a) 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 Representative; (d) Settlement Administration Costs; and (e) if any funds

remain after the distribution to Settlement Class Members to distribute to the *cy pres* recipient. Agreement ¶¶ 78-79. Settlement Class Members who are entitled to forgiveness, waiver, and the agreement not to collect assessed, but unpaid Retry Fees and Sufficient Funds Fees, will receive their benefits from the Uncollected Relevant Fees. *Id.* at ¶ 78(e). Defendant is obligated to use best efforts to update any negative reporting to Chexsystems or credit reporting agencies with respect to Settlement Class Members who receive forgiveness of Uncollected Relevant Fees. *Id.* A Settlement Class Member may qualify for both a Settlement Class Member Payment and forgiveness of Uncollected Relevant 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 Relevant Fee. *Id.* at ¶ 55.

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 30 days following the Effective Date of the Settlement, Defendant and the Settlement Administrator will distribute the Net Settlement Fund to all Settlement Class Members. *Id.* at ¶ 78(d)(iii).

b. Allocation of the Settlement Class Member Payments

Of the \$1,700,000.00 cash paid into the Settlement Fund, \$935,000.00 is allocated to the Sufficient Funds Fee Class and \$765,000.00 is allocated to the Retry Fee Class. Agreement at ¶ 49. If applicable, Settlement Class Members may receive payments as members of the Sufficient Funds Fee Class and the Retry Fee Class. *Id.* Based on this allocation, payments from the Net Settlement Fund to the Settlement Class Members shall be on a *pro rata* basis using the detailed formulas stated in the Agreement. *Id.* ¶ 78.d.i.-ii. The total of the Sufficient Funds Fee Class Member Payment and/or the Retry Fee Class Member Payment due to each Settlement Class Member is the total Settlement Class Member Payment. *Id.* ¶ 78.d.iii.

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 the Settlement Class Member Payment to any account they are maintaining individually at the time of the credit. Agreement ¶ 78.d.iv.1. If by the

deadline for Defendant to apply credits of the Settlement Class Member Payments to accounts Defendant is unable to complete certain credit(s), Defendant shall deliver the total amount of such unsuccessful Settlement Class Member Payment credits to the Settlement Administrator to be paid by check in accordance with the procedure for Past Account Holders to receive payment. *Id.*

Settlement Class Members who are Past Account Holders when the Net Settlement Fund is distributed 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.* ¶ 78.d.iv.2. For jointly held accounts, checks will be payable to all members and will be mailed to the first member listed on the account. *Id.* 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 Account Holder other than the one listed first. *Id.* Settlement Class Members will have 180 days to negotiate the checks. The total value of uncashed checks after 180 days will be distributed to the Court-approved *cy pres* recipient. *Id.* ¶¶ 78.d.iv.2, 79.

d. Forgiveness of Uncollected Relevant Fees

Uncollected Relevant Fees totaling \$130,758.36 shall be fully forgiven within 10 days after the Effective Date. *Id.* ¶ 78.e. Defendant shall forgive, waive, and agree not to collect (a) from members of the Sufficient Funds Fee Class \$29,785.14, representing 100% of the Uncollected Sufficient Funds Fees during the Class Period, and (b) from members of the Retry Fee Class \$100,973.22, representing 100% of the Uncollected Retry Fees during the Class Period. *Id.* ¶ 60. In doing so, Defendant shall use best efforts to update any negative reporting to Chexsystems or credit reporting agencies with respect to Settlement Class Members who receive such debt forgiveness. *Id.* ¶ 78.e.

Settlement Class Members' Uncollected Relevant Fees are the result of Defendant charging off their negative balances that included Retry Fees and Sufficient Funds Fees that had not been paid. Decl. ¶ 36. That charged off balance often prevents the Account Holder from establishing new banking relationships because of the reported negative history. *Id.* The debit forgiveness is valuable because it will reduce or eliminate the negative balance that was reported, creating the concomitant

opportunity for the Account Holder to move closer to gaining access to the banking system created by updated credit reporting. *Id.*

e. Disposition of Residual Funds

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 distributed to an appropriate *cy pres* recipient agreed to by the Parties and approved by the Court. The Parties propose Jump\$tart Coalition for Personal Financial Literacy (<https://www.jumpstart.org/>). Agreement. ¶ 79. In no event shall any portion of the Settlement Fund revert to Defendant. *Id.* ¶ 78.d.v.

3. Releases

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

4. The Notice Program

The Settlement Administrator, Angeion Group, has overseen the Notice Program, which was designed to provide the best notice practicable and is tailored to take advantage of the information Defendant has available about the Retry Fee Class and Sufficient Funds Fee Class. Decl. ¶ 28; Admin Dec. ¶¶ 21-22. The Notice Program was reasonably calculated to apprise members of the Retry Fee Class and Sufficient Funds Fee Class of the material terms of the Settlement; a deadline to exclude themselves from the Retry Fee Class and Sufficient Funds Fee Class; a deadline to object to the Settlement; the Final Approval Hearing date; and the Settlement Website address to access the Settlement Agreement and other related documents and information. Agreement ¶¶ 65-68 and Exhibits 1-2. The Notice and Notice Program has provided sufficient notice to all persons entitled to notice, satisfying all applicable requirements of law, including Rule 23 and constitutional due process. Admin. Decl. ¶ 21; Decl. ¶ 28.

The Notice Program has been comprised of three parts: (1) direct Email Notice to Retry Fee Class and Sufficient Funds Fee Class members who have or had agreed to receive Account statements from Defendant electronically; (2) direct Postcard Notice to Retry Fee Class and Sufficient Funds Fee

Class members who have not agreed to receive notices from Defendant by email, and those Members who the Settlement Administrator is unable to send Email Notice using the email address provided by Defendant; and (3) 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 Settlement Administrator. Agreement ¶ 72 and Ex. 1-2 thereto.

The Long Form Notice describes the procedure that Retry Fee Class and Sufficient Funds Fee Class members must follow to opt-out of the Settlement or object to the Settlement, Class Counsel's application for attorneys' fees and costs, and/or the Class Representative Service Award. 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. *Id.* ¶¶ 66-67. For an objection to be valid, it must include: the name of the Action; the objector's full name, address, and telephone number; all grounds for the objection; the identity of all counsel (if any) representing the objector who prepared the objection and/or will appear at the Final Approval Hearing; a statement confirming whether the objector will appear and/or testify at the Final Approval Hearing; and the objector's signature (an attorney's signature is not sufficient). *Id.* ¶ 68.

The Settlement Website was established following Preliminary Approval and prior to commencement of the Notice Program. *Id.* ¶ 50; Admin. Decl. ¶ 13. The Settlement Administrator also established and maintains an automated toll-free telephone line for the Retry Fee Class and Sufficient Funds Fee Class to call with Settlement-related inquiries and to receive automated responses, and to accept requests for Long Form Notices. *Id.* ¶ 64.d.; Admin. Decl. ¶ 15. As of April 7, 2022, a total of 236 calls have been made to the toll-free hotline for a total of 1,004 minutes. Admin. Decl. ¶ 16. Additionally, 1,556 unique visitors accessed the Settlement Website, viewing 2,613 pages. Admin. Decl. ¶ 14.

5. Class Representative Service Award

Class Counsel seeks a Service Award of \$5,000.00 for Plaintiff as Class Representative (0.0027% of the Value of the Settlement) to be paid from the Settlement Fund, in addition to the Settlement Class Member Payment that Plaintiff will be entitled to receive, to compensate her for the

time and effort and for the risks she assumed in prosecuting the Action. *Id.* ¶¶ 44, 73, 78.b. Specifically, Plaintiff provided integral 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 settlement documentation. In doing so, Plaintiff was integral to the case and Defendant does not object to Class Counsel's request for the Service Award.

6. Attorneys' Fees and Costs

Class Counsel has not been paid for their extensive efforts or reimbursed for litigation costs. Decl. ¶ 29. They are entitled to request, and Defendant 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 ¶ 78.a. The Parties negotiated and reached an agreement regarding fees, costs, and expenses only after the Parties agreed to the material terms of the Settlement. Decl. ¶ 30. Such award is subject to this Court's approval and will serve to compensate for the time, risk, and expense Plaintiff's counsel incurred in pursuing claims for the Sufficient Funds Fee Class and Retry Fee Class.

III. ARGUMENT

A. Legal Standard for Final Approval

Courts, including the Second Circuit, emphasize 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); *Beebe v. V&J Nat'l Enters., LLC*, No. 6:17-CV096975 EAW, 2020 WL 2833009, at *3 (W.D.N.Y. June 1, 2020) (courts should give proper deference to the parties' private consensual decision bear in mind the unique ability of class and defense counsel to assess the potential litigation risks and rewards). "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 WL 3250593, at *1 (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); and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

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). *Padovano v. FedEx Ground Package Sys.*, No. 16-CV-17-FPG, 2019 U.S. Dist. LEXIS 107092, at *6-7 (W.D.N.Y. June 10, 2019) (Geraci, J.) (addressing 2018 amendment to Rule 23); *Beebe*, 2020 WL 2833009, at *3; *Kirby v. FIC Rest., Inc.*, No. 5:19-CV-1306 (FJS/ML), 2020 WL 5791582, at *2 (N.D.N.Y. Sep. 28, 2020); *In re Signet Jewelers Ltd. Sec. Litig.*, No. 1:16-cv-06728-CM-SDA, 2020 WL 4196468, at *1 (S.D.N.Y. July 21, 2020) (citations omitted). Both are satisfied here.

B. The 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. Furthermore, a review of the factors related to the fairness, adequacy, and reasonableness of the Settlement demonstrates that Settlement warrants Final Approval.

Any settlement requires the parties to balance the merits of the claims and defenses asserted against the attendant risks of continued litigation and delay. Plaintiff believes that the claims asserted are meritorious and would prevail if this matter proceeded to trial. Defendant argues that Plaintiff's claims are unfounded, denies any potential liability as well as Plaintiff's ability to certify the classes, and up to the point of settlement indicated a willingness to litigate those claims vigorously. Given the risks, uncertainties, and litigation burdens, Defendant agreed to the Settlement terms. The Parties

concluded that, on balance, the benefits of the 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 merits discovery, pretrial motion practice, trial, and finally appellate review. Decl. ¶ 31.

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

The Settlement is the result of intensive good faith, informed, and arm's-length negotiations between experienced attorneys familiar with class action litigation and with the legal and factual issues of this Action. *Id.* ¶ 12. 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. Further, a neutral mediator's involvement in settlement negotiations also lends to a finding that the Settlement is procedurally fair. *See Padovano*, 2019 U.S. Dist. LEXIS 107092 at *9; *Beebe*, 2020 WL 2833009, at *6; *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 35 (E.D.N.Y. 2019).

Class Counsel is particularly experienced in litigation, certification, trial, and settlement of nationwide consumer class action cases. Decl. ¶¶ 2-9, 13. Class Counsel thoroughly investigated and analyzed Plaintiff's claims and engaged in briefing on Defendant's motion to dismiss, and engaged in discovery and significant data and damage analysis, consulting an expert. *Id.* ¶¶ 14-15. Class Counsel was also well-positioned to evaluate Plaintiff's claims' strengths and weaknesses, and the appropriate basis upon which to settle them, by litigating similar claims in courts across the country. *Id.* ¶ 13. Thus, the settlement process was procedurally fair. *See Padovano*, 2019 U.S. Dist. LEXIS 107092 at *9-10; *Beebe*, 2020 WL 2833009, at *6-8; *see also Kirby v. FIC Rests., Inc.*, No. 5:19-CV-1306 (FJS/ML), 2020 WL 3501398, at * 3 (N.D.N.Y. June 29, 2020) (settlement result of arm's length negotiations where attorneys were well-versed in prosecuting the claims and engaged a private mediator for a full-day mediation session).

2. The Facts Support a Final 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 a proposed 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 the 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.

495 F.2d at 463 (internal citations omitted). Importantly, “not every factor must weigh in favor of settlement, rather, the court should consider the totality of these factors in light of the particular circumstances.” *Marroquin v. Champlain Valley Specialty of N.Y., Inc.*, No. 5:15-cv-00441 (MAD/TWD), 2016 WL 3406111, at *4 (N.D.N.Y. June 17, 2016) (citations omitted). As applied here, the *Grinnell* factors weigh heavily in favor of Final Approval.⁴ Even after Rule 23 was amended to enumerate additional factors to consider in evaluating a proposed settlement, “[t]he Advisory Committee Notes to the 2018 amendments indicate that the four new Rule 23 factors were intended to supplement, rather than displace the[] ‘*Grinnell*’ factors.” *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d at 692. *See also Padovano*, 2019 U.S. Dist. LEXIS 107092, *6-7 (addressing 2018 amendment to Rule 23).

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

Courts typically analyze the final two factors together: the range of reasonableness of settlement in light of the best possible recovery, and the range of reasonableness of the settlement fund in light of all the attendant risks of litigation. *See e.g., Beebe*, 2020 WL 2833009, at *7; *Godson v. Eltman, Eltman, & Cooper, P.C.*, 328 F.R.D. 35, 58 (W.D.N.Y. 2018); *Odom v. Hazen Transport, Inc.*, 275

⁴ The sole *Grinnell* factor which does not favor settlement is the ability of the defendant to withstand a larger settlement; however, “this factor, standing alone, does not suggest that the settlement is unfair.” *D’Amato*, 236 F.3d at 86 (citing *In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 178 n. 9 (S.D.N.Y. 2000)).

F.R.D. 400, 411-12 (W.D.N.Y. 2011). “Determining whether a settlement is reasonable is not susceptible of a mathematical equation yielding a particularized sum.” *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d at 178 (internal quotation and citation omitted). Rather, a settlement is within the “range of reasonableness” where it “recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking litigation to completion.” *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972). In making this determination, the court should compare the settlement amount with that of the best possible recovery in litigation. *Godson*, 328 F.R.D. at 58 (citing *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 384 (S.D.N.Y. 2013)).

The Action concerns Defendant’s alleged improper assessment of Retry Fees and Sufficient Funds Fees. This Settlement achieves Plaintiff’s desired goal of compensating class members charged such fees during the Class Period. While Plaintiff’s best-case scenario is a 100% refund of the Relevant Fees, there was a substantial risk that Plaintiff would not achieve such a result, or any recovery at all. Prior to Settlement, Defendant sought dismissal. Although that motion was denied (except as to the covenant of good faith and fair dealing claim), success on the merits is far from guaranteed. Defendant argues the relevant Account agreements are unambiguous as to both challenged practices, and even if they were ambiguous, extrinsic evidence resolves the ambiguity in its favor on whether the fees at issue are permitted. Defendant would have had the opportunity to make these arguments at summary judgment, at trial, and on appeal. Thus, although Plaintiff believes she has a strong chance on the merits as to both challenged practices and the related legal arguments, Plaintiff could certainly lose. Decl. ¶¶ 31, 33. Moreover, Defendant intended to challenge class certification, presenting another obstacle for Plaintiff and class members.

The Settlement Fund represents approximately 44% of the Retry Fees and Sufficient Funds Fees allegedly wrongly assessed. *Id.* ¶ 26. To prepare for mediation, Class Counsel worked with a data expert to analyze transactional data to determine the damages at issue in the case. *Id.* ¶ 20. Defendant similarly retained its own expert who conducted a review and analyzed data accordingly. *Id.* This data and analysis was used in preparation for the Parties’ scheduled meditations and to further drive the viability of resolution. *Id.* Thus, the Parties were well prepared for their arms-length negotiations.

This Settlement comes without the inherent litigation risks, a very fair and reasonable recovery. *Id.* ¶ 27. Indeed, it is an excellent result comparing the results in other similar cases. *Id.* Settlements at less than of the 44% recovery here have been found to “reasonably balance[] the damages potentially recoverable by the plaintiffs with the genuine risks of continued litigation.” *Odom*, 275 F.R.D. at 412 (finding settlement amount that was approximately one-third of the total damages recoverable by plaintiffs if they prevailed fully to represent a reasonable compromise); *Beebe*, 2020 WL 2833009, at *7 (holding a “\$2.35 million settlement is reasonable where the potential recovery is \$14.8 million,” especially when taking into consideration the risks of litigation). *See also Padovano*, 2019 U.S. Dist. LEXIS 107092 at *11-12 (granting preliminary approval of settlement for approximately 37% of damages that received final approval). Ultimately, however, “the fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” *Grinnell*, 495 F.2d at 455. Even in theory, a settlement amounting “to a hundredth or even a thousandth part of a single percent of the potential recovery” is passable. *Id.* at 455 n.2.

Indeed, the Settlement is a very good result by comparison to results in other account fee cases, and either meets or exceeds the vast majority of court-approved recoveries in financial institution fee class actions nationwide. *See Roberts v. Capital One, N.A.*, Case No. 1:16-cv-04841-LGS, 2020 (S.D.N.Y. Dec. 1, 2020) (approving a cash fund representing approximately 35% of relevant overdraft fees alleged by plaintiff); *Bodnar v. Bank of Am., N.A.*, No. 14-3224, 2016 WL 4582084, at *4 (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 WL 12641970, at *7 (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 WL 1927342, at *3 (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 WL 11319242, at *1 (S.D. Fla. Aug. 2, 2013) (approving \$4,000,000

settlement for 25% of the most probable recoverable damages).

The success of Plaintiff's claims in future litigation turns on these and other questions that are certain to arise in the context of her motion for class certification and at trial, as they have in 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 Plaintiff's and the classes' success at trial. Under the circumstances, Plaintiff and Class Counsel appropriately determined that Settlement outweighs the gamble of continued litigation. Decl. ¶¶ 31-40. Moreover, even if she prevailed at summary judgment and trial, any recovery could be delayed for years by appeals. "In assessing the adequacy of a settlement, a court must balance the benefits of a certain and immediate recovery against the inherent risks of litigation." *In re Med. X-Ray Film Antitrust Litig.*, No. 93-CV-5904, 1998 WL 661515, at *4 (E.D.N.Y. Aug. 7, 1998). This guaranteed, immediate recovery outweighs the consequential risks of continued litigation, and is particularly true given the small damage amount typically available in consumer class litigation. *See Garland v. Cohen & Krassner*, No. 08-CV-4626 (KAM)(RLM), 2011 WL 6010211, at *7 (E.D.N.Y. Nov. 29, 2011). *See also Guevoura Fund Ltd. v. Sillerman*, No. 1:15-cv-07192-CM, 2019 WL 6889901, at *10 (S.D.N.Y. Dec. 18, 2019) ("The prompt, guaranteed payment of the settlement money increases the settlement's value in comparison to some speculative payment of a hypothetically larger amount years down the road." (internal citation omitted)). The Settlement provides substantial relief to the Retry Fee Class and Sufficient Funds Fee Class without further delay. Decl. ¶ 40.

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 two mediation sessions and additional negotiation thereafter. As a result, the Parties have reached a Settlement that Class Counsel believes to be fair, reasonable, and in the Retry Fee Class's and Sufficient Funds Fee Class's best interests. Class Counsel's assessment in this regard is entitled to considerable deference. The \$1,830,758.36 Value of the Settlement is fair and reasonable in light of Defendant's defenses, and the challenging and unpredictable litigation path in the absence of

settlement. *Id.* ¶ 27.

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

The Retry Fee Class's and Sufficient Funds Fee Class's Class reaction has been overwhelmingly positive to date. Out of approximately 42,920 Settlement Class members, none have opted-out by the day this Motion was filed, and no objections have been filed. Admin Decl. ¶¶ 17-18. Following the Opt-Out Period and objection deadline, Class Counsel will file an updated Settlement Administrator declaration advising the Court as to any additional opt-outs or any objection, if applicable.

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

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 individual Settlement Class Members' claims, is impracticable. Indeed, the litigation's complexity, expense, and likely duration is critical to evaluate reasonableness of a class action settlement. *Charron v. Weiner*, 731 F.3d 241, 247 (2d Cir. 2013); *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 184-85 (W.D.N.Y. 2005). Settlements are favored in class actions, which have a well-deserved reputation as being most complex. *Christine Asia Co. v. Jack Yun Ma*, No. 1:15-md-02631 (CM)(SDA), 2019 WL 5257534at *8 (S.D.N.Y. Oct. 16, 2019). The proposed Settlement provides Settlement Class Members with a substantial, guaranteed, and immediate recovery, avoiding years of continued litigation and significant expense to achieve. Indeed, where settlements of such complex actions are favored by courts, this factor "weighs heavily" in evaluating the class settlement's reasonableness. *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d at 174.

Recovery by any means other than Settlement would require additional years of litigation here and in the Second Circuit, inevitably forcing the Retry Fee Class and Sufficient Funds Fee Class to wait longer for recovery, reducing its value. At a minimum, Class Counsel anticipate continued discovery disputes regarding Defendant's electronically stored information, ongoing document review, further involvement with Plaintiff's damages expert to analyze and calculating classwide damages, and several depositions relating to Defendant's fee policies and practices. The anticipated costs associated with litigation tasks of this nature weigh in favor of finding the Settlement is presumptively fair. *See*

Frank, 228 F.R.D. at 185; *see also Odom*, 275 F.R.D. at 410.

Although Plaintiff is confident that the Action is with merit and that the classes would ultimately prevail, the aforementioned risks of extended litigation and its given uncertainties, such as failing to achieve class certification before trial is very much palpable. *See Godson*, 328 F.R.D. at 55 (acknowledging pretrial motions, such as summary judgment, and the potential for subsequent appeals will produce delay of resolution and undermine value of potential recovery); *Garland*, 2011 WL 6010211, at *7 (“If the Settlement is not approved, protracted discovery and litigation will likely ensue.”). Thus, the proposed Settlement is the best vehicle for the Retry Fee Class and Sufficient Funds Fee Class to promptly and efficiently receive the relief to which they believe they are entitled.

d. The Risk of Maintaining Class Action Status Throughout Trial

It is uncertain that the classes would be certified in the absence of settlement: if the Settlement were disapproved, Defendant would likely oppose class certification as to both classes, creating an “appreciable risk to the class members’ potential for recovery and even if plaintiff[] could obtain class certification, there could be a risk of decertification at a later stage.” *Godson*, 328 F.R.D. at 57 (citations and internal quotation marks omitted). And given Defendant’s defense of this Action thus far, Defendant would also likely appeal any grant of class certification. Indeed, while Plaintiff might prevail, “the risk that the case might not be certified is not illusory and weighs in favor of Class Settlement.” *Frank*, 228 F.R.D. at 186.

e. The Extent of Discovery Completed and The Stage of The Proceedings

This factor does not require the Court to find the parties have engaged in extensive discovery. *Plummer v. Chemical Bank*, 668 F.2d 654, 660 (2d Cir. 1982). Rather, it inquires “whether the parties had adequate information about their claims such that their counsel can intelligently evaluate the merits of plaintiff’s claims, the strengths of the defenses asserted by defendants, and the value of plaintiff’s causes of action of purposes of settlement.” *In re Bear Stearns Co. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 267 (S.D.N.Y. 2012). Indeed, this factor can be satisfied even where only informal discovery occurred. *See In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d at 176.

Here, Class Counsel has devoted substantial time and resources to investigating, litigating, and

resolving this case. Decl. ¶¶ 14-23. Plaintiff settled the Action with the benefit of Class Counsel's years of experience litigating cases like this one, discovery, and data and damage analysis. *Id.* ¶¶ 2-9, 12-13, 23. 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. They confidently evaluated the likelihood of success at class certification and trial, the risks of continued litigation, and the benefits of settlement. Discovery to date enabled Class Counsel to understand Defendant's potential exposure, as well as to provide their expert sufficient data to analyze viable classwide damages calculations. This information allowed the Parties to estimate that the Settlement represents a recovery of approximately 44% of the total allegedly wrongful fees assessed as to each class without further risks. More specifically, the damages were determined by the Parties' respective expert's analysis of Defendant's account level transaction data for the individual accounts of each member of the Retry Fee Class and Sufficient Funds Fee Class to identify each challenged fee, and to identify each of the Uncollected Relevant Fees that were not paid at the time the Parties reached the Settlement. Decl. ¶ 26. In order to identify the Sufficient Funds Fees counted as damages, the Parties' experts analyzed the transactional data to assess the Overdraft Fees that would have been charged had Defendant used the actual account balance instead of the available balance to make its Overdraft Fee determinations. *Id.* In order to identify the Retry Fees counted as damages, the Parties' experts analyzed the transactional data to identify and sum the Automated Clearing House (ACH) and check transactions that were re-submitted by a merchant after being returned by Defendant for insufficient funds and counted the number of Returned Item Fees that had been charged on those re-submitted transactions. *Id.* Thus, "while this case is still in the relatively early stages of discovery, the information exchanged and analyzed has been sufficient to" inform the negotiations between counsel and to allow them to evaluate, with confidence, the strengths and deficiencies of Plaintiff's claims, and to craft a fair settlement structure for the Class. *Frank*, 228 F.R.D. at 185; *Odom*, 275 F.R.D. at 411.

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

Consideration under this Rule 23(e)(2) factor, which asks whether Class members are treated

equally relative to each other, also favors approval. Various provisions regarding the adequacy of the Settlement's relief under Fed. R. Civ. P. 23(e)(2)(C) also favor Final Approval. For example, Rule 23(e)(2)(C)(ii) examines "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." The Settlement's allocation of the Settlement benefits is straightforward: Settlement Class Members will receive a cash payment on a *pro rata* basis and upon a logical calculation for each member of the Sufficient Funds Fee Class and/or Retry Fee Class. Agreement, at ¶ 78.d.iii.

Further, the Settlement's plan for distribution is efficient in that it accounts for whether the Settlement Class Member is a Current Account Holder or Past Account Holder. *Id.* *Pro rata* allocation and distribution plans of this nature have been found to satisfy the Rule. *See, e.g., In re Payment Card*, 330 F.R.D. at 41 (settlement that provided each claimant with pro rata share of settlement fund based on interchange fees paid attributable to their transactions to be an effective form of relief distribution); *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 519 (E.D.N.Y. 2003) (fair and reasonable allocation plan where class members received a monetary award "directly proportional to their debit and credit purchase volume"). *See also Padovano*, 2019 U.S. Dist. LEXIS 107092 at *13-14.

Rule 23(e)(2)(D) asks whether class members are treated equally, and such consideration "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 on 2018 amendment. Here, as the Settlement distributes payments on a *pro rata* basis, Settlement Class Members will be treated equitably. *In re GSE Bonds*, 414 F. Supp. 3d at 698-99; *In re Payment Card*, 330 F.R.D. at 47. Further, because each Settlement Class Member will be required to give the same Releases, which uniformly releases Defendant from all claims relating to the subject matter of the Action during the Class Period, and does not affect the apportionment of relief to Settlement Class Members, this factor favors Final Approval. *In re GSE Bonds*, 414 F. Supp. 3d at 699.

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

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 Defendant 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 ¶ 78.a. The Parties negotiated and reached agreement regarding fees and costs only after agreeing on all material terms of the Settlement. Decl. ¶ 30. 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 Members Was Adequate and Satisfied Rule 23 and Due Process

In addition to having personal jurisdiction over Plaintiff, the Court has personal jurisdiction over all members of the Settlement Class Members 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, 148 (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 Defendant has available about the Settlement Class. Decl. ¶ 28 It was reasonably calculated under the circumstances to apprise Settlement Class Members of the material terms of the Settlement; a deadline to exclude themselves from the Retry Fee Class and Sufficient Funds Fee Class; a deadline to object to the Settlement; the Final Approval Hearing date; and the Settlement Website address to access the Settlement Agreement and other related documents and information. *Id.*; Admin. Decl. ¶¶ 21-22. 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. *Id.*

D. Certification of the Retry Fee Class and Sufficient Funds Fee Class Is Appropriate

In its Preliminary Approval Order, the Court conditionally certified the Retry Fee Class and Sufficient Funds Fee Class for Settlement purposes. ECF No. 69. Now, Plaintiff respectfully requests that the Court affirm that decision and finally certify those two classes. As explained at Preliminary Approval, certification for settlement purposes is appropriate under Fed. R. Civ. P. 23(a) and (b)(3) because:⁵

- (1) The Retry Fee Class and Sufficient Funds Fee Class collectively consist of approximately 42,920 members, each having thousands of members, and joinder of all such persons would be impracticable, Decl. ¶ 42. Accordingly, the Rule 23(a)(1) numerosity requirement is met.
- (2) There are questions of law or fact common to the Settlement Class including whether Defendant's alleged systematic practice of assessing Retry Fees and Sufficient Funds Fees, *Id.* ¶ 43. Accordingly, the Rule 23(a)(2) commonality requirement is met.
- (3) Plaintiff is typical of absent members of the Retry Fee Class and Sufficient Funds Fee Class as she was subjected to the same practices leading to the assessment of fees, suffered from the same injuries, and she will benefit equally from the Settlement relief, *Id.* ¶ 44. Accordingly, the Rule 23(a)(3) typicality requirement is met.
- (4) Plaintiff's interests are coextensive with, not antagonistic to, the interests of the Retry Fee Class and Sufficient Funds Fee Class because she and the absent Settlement Class Members have the same interest in the Settlement's relief, and the absent Settlement Class Members have no diverging interests. *Id.* ¶ 45. Plaintiff is a member of both the Retry Fee Class and the Sufficient Funds Fee Class. *Id.* Plaintiff is represented by qualified and competent counsel who devoted substantial time to the litigation and have extensive experience and expertise prosecuting complex class actions, including actions like the

⁵ A complete application of the Rule 23(a) and Rule 23(b)(3) factors to the Settlement of the Action, which lead the Court to preliminarily approve the Settlement, appear in the Renewed Motion for Preliminary Approval. ECF 68 at 22-28. The Court's conclusions that these factors were satisfied in the Preliminary Approval Order remain correct. *See generally* ECF 69.

instant case. *Id.* ¶¶ 2-9. Accordingly, the Rule 23(a)(4) adequacy requirement is met.

The questions of law or fact common to Retry Fee Class and Sufficient Funds Fee Class members predominate over any questions affecting only individual members. *See* Fed. R. Civ. P. 23(b)(3). These liability questions common to all Retry Fee Class and Sufficient Funds Fee Class members, whose relationships with Defendant arise from Account agreements that are the same or substantially similar in all material and relevant aspects and who were charged based on the same set of circumstances, substantially outweigh any possible issues that are individual to each Retry Fee Class and Sufficient Funds Fee Class member. Decl. ¶ 46. Further, resolution of several thousand claims in one action is far superior to individual lawsuits, because it promotes consistency and efficiency of adjudication. *See* Fed. R. Civ. P. 23(b)(3).⁶ For these reasons, the Court should affirm its certification of the Retry Fee Class and Sufficient Funds Fee Class.

E. Notice Is Satisfied Pursuant to the Class Action Fairness Act (“CAFA”)

CAFA requires that settling defendants give notice of a proposed class action settlement to appropriate state and federal officials, and such notice must supply all of the information and documents set forth under 28 U.S.C. § 1715(b)(1)-(8). The Settlement Administrator served the CAFA Notice twice, the second on account of the Parties revising the Agreement, along with a CD containing the documents described in Section 1715(b). *See* Admin. Decl. ¶¶ 5-6. The CAFA notice protects class members from a settlement that may be deemed unfair or inconsistent with regulatory policies and from class action abuse. No regulatory authorities have objected to date.

F. Application for Attorneys’ Fees

In this common fund Settlement, the Notice provides that Class Counsel will request an attorneys’ fee of 33.33% of the Value of the Settlement (\$1,830,758.36). Agreement ¶ 78.a. Class Counsel obtained these benefits for the Settlement Class with hard work and creativity, investing hundreds of hours of time in this matter. The requested award will compensate Class Counsel for

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 Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

their innovation, for their investment of time and resources in this case, and most importantly for the excellent results they achieved for the Retry Fee Class and Sufficient Funds Fee Class despite the uncertainty and risks.

As of filing this Motion, there are zero objections to that fee amount. The Parties negotiated and reached agreement regarding attorneys' fees only after reaching agreement on all other material terms of this Settlement. *Id.* 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 1.23 lodestar multiplier as a result of the hard work Class Counsel performed. Decl. ¶ 68. 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). *See also Kommer v. Ford Motor Co.*, No. 1:17-CV-0296 (LEK/DJS), 2020 WL 7356715, at *5 (N.D.N.Y. Dec. 15, 2020) ("Federal courts have long recognized that a lawyer whose efforts create a common fund may recover a reasonable fee from the fund as a whole."). The Second Circuit recognizes that a lawyer whose efforts create a common fund should recover a reasonable fee. *Central States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, LLC*, 504 F.3d 229, 248-50 (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 Res., 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 at 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 a similar bank fee class action, Judge Mae A. D’Agostino recently noted: “Courts in this Circuit routinely use the percentage method to compensate attorneys in common fund cases such as this Action. 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.” *Thompson v. Cmty. Bank, N.A.*, No. 8:19-CV-919, 2021 WL 4084148, at *10-12 (N.D.N.Y. Sept. 8, 2021) (citations and quotations omitted) (awarding at 33% of the value of the settlement).

Besides being far simpler, a percentage of the fund is preferred as it “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*, 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 most efficiently. *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, 4 (2d Cir. 2013) (noting that judges “need not, and indeed should not, become green-eyeshade accountants”).

Numerous courts in this Circuit have reviewed attorneys’ fees under the percentage method, without performing a lodestar multiplier crosscheck. *See Hayes v. Harmony Gold Min. Co.*, No. 08 CIV. 03653 BSJ, 2011 WL 6019219, at *1 (S.D.N.Y. Dec. 2, 2011), *aff’d*, 509 F. App’x 21 (2d Cir. 2013) (awarding one-third of the common fund); *Willix v. Healthfirst, Inc.*, No. 07 Civ. 1143(ENV)(RER), 2011 WL 754862, at *6 (E.D.N.Y. Feb. 18, 2011) (same); *Dorn v. Eddington Sec., Inc.*, No. 08 Civ. 10271, 2011 WL 9380874, at *6 (S.D.N.Y. Sept. 21, 2011) (33.33% “reasonable and consistent with the norms of class litigation in this circuit” (citation omitted)); *Macedonia Church v. Lancaster Hotel, LP*, No. 05-0153 TLM, 2011 WL 2360138, at *14 (D. Conn. June 9, 2011) (same).

Applying the percentage method here aligns Class Counsel’s interest in being paid a fair fee with the Settlement Class Members’ interests, achieving the maximum recovery in the shortest time required under the circumstances. Public policy supports this conclusion, as do Supreme Court and

Second Circuit precedent noting the current trend to do so.

The 33.33% requested fee is within the range of reason when considering the foregoing and when analyzing the following the Second Circuit's *Goldberger* guidelines: (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. 209 F.3d at 50.⁷ Decl. ¶ 49.

2. *Goldberger* Factors

a. The Magnitude and Complexities of Litigation

The magnitude and complexity of the litigation weighs in favor of approval. *Ranieri*, 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* Decl. ¶ 50. Legally, the case involved complex issues which have resulted in motions to dismiss being both denied and granted in similar cases. *Id.* Factually, the case was difficult as it involved detailed analysis of Defendant's internal, account level transaction data, review of account statements, and different versions of binding account contracts during the relevant limitations period. Decl. ¶ 51. While Plaintiff largely prevailed at the motion to dismiss stage, the fundamental contract construction issue remained unresolved when the Parties agreed to settle. *Id.* Defendant would aggressively litigate other merits issues and the yet to be filed motion for class certification. *Id.* Success defending class certification or a trial would have prevented any recovery.

⁷ *See, e.g., Stefaniak v. HSBC Bank U.S.A., N.A.*, No. 1:05-CV-720 S, 2008 WL 7630102, at *3 (W.D.N.Y. June 28, 2008) ("Class Counsel's request for 33% of the Settlement Fund is typical in class action settlements in the Second Circuit."); *Capsolas v. Pasta Res. Inc.*, 2012 WL 4760910, at *8 (S.D.N.Y. Oct. 5, 2012) (noting "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"); *In re Med. X-Ray Film Antitrust Litig.*, 1998 WL 661515, at *7 (same). The one-third award is also 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).

b. 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 (citation omitted) (internal quotation omitted). Regardless of the perceived strength of a plaintiff’s case, liability is no sure thing. *Wal-Mart Stores, Inc.*, 396 F.3d at 118. Plaintiff’s counsel took on considerable risk in filing and prosecuting this case on a contingent basis. Indeed, Defendant argued strenuously that its contract authorized the challenged fee practices. Nevertheless, Class Counsel proceeded with the litigation and received a favorable order largely denying the motion to dismiss. However, that ruling leaves open the risk that the trier of fact would determine Defendant was permitted to assess the challenged fees. Thus, Class Counsel certainly invested extensive time and costs with no guarantee of success.

c. 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. Decl. ¶¶ 2-9. 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 representing a 44% recovery of the Retry Fees and Sufficient Funds Fees allegedly wrongly assessed is an excellent result. Thus, the Court should easily find counsel achieved success. Decl. ¶ 55.

“The quality of opposing counsel is also important in evaluating the quality of class counsel’s work.” *See Anyoku v. World Airways (In re Nig. Charter Flights Litig.)*, No. MD 2004-1613, 2011 WL 7945548, *8 (E.D.N.Y. Aug. 25, 2011). Defendant is represented by Stuart Richter of Katten Muchin, who has defended numerous financial institutions in class actions. Counsel have professionally and zealously represented the Parties.

d. Requested Fee in Relation to the Settlement

The \$610,246.68 requested fee, which is 33.33% of the Value of the Settlement (\$1,830,758.36), is reasonable in light of the work performed, the results obtained, and falls within the range of common fund awards in the Second Circuit. Indeed, specifically in the context of debt relief like that obtained here, courts consistently award fees on such relief. As explained by Chief Judge Wolford: “a request for one-third of the settlement fund is reasonable and consistent with the norms of class litigation in this circuit.” *Beebe*, 2020 WL 2833009 at *8. *See also Thompson*, 2021 WL 4084148, at *10-12 (awarding 33.33% of value of bank fee settlement that included cash and debt forgiveness); *Coleman v. Alaska USA Fed. Credit Union*, No. 3:19-cv-00229-HRH, slip op. at 17–18 (D. Alaska Nov. 17, 2021), ECF No. 93 (“The Court considers both cash and cash equivalents, such as debt forgiveness of the Uncollected Retry Fees, when determining the denominator,” i.e., the value of the settlement); *Moukengesbaie v. Eltman, Eltman & Cooper, P.C.*, No. 14CV7539MKBCLP, 2020 WL 5995978, at *2-*4 (E.D.N.Y. Apr. 21, 2020), *report and recommendation adopted sub nom.*, 2020 WL 5995650 (E.D.N.Y. Oct. 8, 2020) (same); *In re Lloyd’s Am. Tr. Fund Litig.*, No. 96CIV1262RWS, 2002 WL 31663577, at *7, *28 (S.D.N.Y. Nov. 26, 2002), *aff’d sub nom. Adams v. Rose*, No. 03-7011, 2003 WL 21982207 (2d Cir. Aug. 20, 2003) (same); *Velez v. Novartis Pharmaceuticals Corp.*, No. 04 Civ. 09194(CM), 2010 WL 4877852, at *4, *18 (S.D.N.Y. Nov. 30, 2010) (awarding fees on value of settlement); *Hash v. First Financial Bancorp.*, No. 1:20-cv-01321-RLM-MJD (S.D. Ind. Nov. 22, 2021, ECF No. 91 at 7 (“In bank fee litigation, forgiveness of debts owed is routinely included in the value of the settlement.”) (collecting cases); Suppl. Decl. Brian T. Fitzpatrick at Table 1, *Perks v. TD Bank*, No. 18-CV- 11176 (S.D.N.Y. Feb. 8, 2022), ECF No. 111 (listing 24 bank fee class action settlements where courts included debt forgiveness to value a settlement, including state courts in California, Indiana, Iowa, Kentucky, Maine, Montana, and Ohio, and federal courts in Alaska, California, Connecticut, Hawaii, Indiana, Massachusetts, Michigan, Missouri, New York, Pennsylvania, and South Carolina). The excellent results achieved 44% of the allegedly wrongly assessed Retry Fees and Sufficient Funds Fees.

Indeed, debt forgiveness provides relieves class members of a repayment obligation that could be pursued in a debt collection actions. *Thompson*, 2021 WL 4084148, at *2, *8-*9; *CLRB Hanson Indus.*,

LLC v. Weiss & Assocs., PC, 465 F. App'x 617, 619 (9th Cir. 2012) (calling “forgiveness of indebtedness” a “cash-equivalent”); *Cosgrove v. Citizens Auto. Fin., Inc.*, No. 09-1095, 2011 WL 3740809, at *7 (E.D. Pa. Aug. 25, 2011) (“debt forgiveness provides a valuable award”).

[The financial institution] could initiate proceedings to collect. Alternatively, [the financial institution] could sell the debt at a discount to another entity that might be more willing to undertake collection efforts. The Debt Portion relief immunizes recipients from worrying about or suffering through any efforts to collect on this debt. The Debt Portion relief will also benefit recipients in the form of the improved credit scores some class members will realize once [the Bank] reports the debt relief to the credit bureaus.

Farrell v. Bank of Am., N.A., 327 F.R.D. 422, 431 (S.D. Cal. 2018), *aff'd sub nom. Farrell v. Bank of Am. Corp., N.A.*, 827 F. App'x 628 (9th Cir. 2020), *cert. denied*, 142 S. Ct. 71 (Oct. 4, 2021). *See also Gradie v. C.R. England, Inc.*, No. 2:16-CV-00768-DN, 2020 WL 6827783, at *11 (D. Utah Nov. 20, 2020) (“[D]ebt forgiveness [] eliminates [the defendant’s] legal right to pursue what it views to be an enforceable and collectable amount, whether in an independent action or . . . as a counterclaim or offset.”).

The Settlement obligates Defendant to use best efforts to update any negative reporting to Chexsystems or credit reporting agencies. That charged off balance often has very significant effects on consumer credit, such as preventing the Account Holder from establishing new banking relationships. The debt forgiveness is valuable because it will reduce or eliminate the negative balance that was reported, creating the concomitant opportunity for the Account Holder to move closer to gaining access to the banking system created by updated credit reporting.

Moreover, the attorneys’ fee percentage requested is lower than what would be requested in individual contingent fee litigation, which generally start at 33.33% of any recovery and frequently go 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* Decl. ¶ 56. 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 Stefaniak*, 2008 WL 7630102, at *3 (“Class Counsel’s request for 33% of the Settlement Fund is typical in class action settlements in the Second Circuit.”); *Mohney*, 2009 WL 5851465, at *5 (same); *Guevoura Fund Ltd.*, 2019 WL 6889901, at *15 (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). Indeed, the Second Circuit has upheld a fee award as high as 52% in a class action. *See Torres*, 519 F. App’x at 5-6 (noting one-third of common fund is the benchmark in the Second Circuit, while upholding a higher percentage of 52.2%).

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. The following depicts these settlements nationwide, all of which resulted in fee awards at or above the 33.33%, putting Class Counsel reasonable fee request in line with other overdraft litigation settling for a similar amount:

<u>Bank Fee Case Name</u>	<u>Percentage of the Fund Awarded</u>
<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.) (ECF No. 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 WL 4586398 (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. Community Bank, 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> , Case No. 1:19-cv-00556-JEJ (W.D. Pa.)	33.33% of \$910,000
<i>Figueroa v. Capital One</i> , Case 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 WL 3843064 (E.D. Va.)	33.33% of \$16 million
<i>Thompson v. Cmty. Bank, N.A.</i> , No. 8:19-CV-919, 2021 WL 4084148 (N.D.N.Y. Sept. 8, 2021)	33.33% of \$3.46 million

e. 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 In re Visa Check*, 297 F. Supp. 2d at 524 (raising that the 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.

f. 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*, 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.” *Id.* 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.” *In re 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. Decl. ¶ 57. As is detailed above, this Action was hotly contested and litigated efficiently and intelligently, including discovery, motions practice, two full-day mediation sessions, negotiating and documenting the Settlement, and the Settlement approval process. *Id.*

To date, Class Counsel and local counsel have expended 658.05 hours in the prosecution of this case. *Id.* ¶ 58. It is anticipated that from the date of the filing of this Motion forward, Class Counsel will spend an additional 40 hours, which includes the 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 *cypres* distribution, as needed. *Id.* ¶ 59. Local counsel will assist as well.

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.* ¶ 62. See, e.g., *Holve v. McCormick & Co., Inc.*, No. 6:16-cv-6702-FPG-MWP, ECF No. 61 (W.D.N.Y. Jan. 11, 2022) (Pedersen, J.) (order granting final approval of class settlement and awarding one-third of settlement for attorneys’ fees in case where senior partner billable rate was \$1050 per hour); *United States ex rel. Fox Rx, Inc. v. Omnicare, Inc.*, No. 12cv275 (DLC), 2015 WL 1726474, at *2 (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 WL 4560206, at *43 (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 WL 1883494, at *13 (S.D.N.Y. May 9,

2014), *aff'd sub nom. Arbutnot 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).

Finally, although not required as Plaintiff is applying pursuant to the percentage-of-benefit for attorneys' fees, a lodestar analysis also supports the requested fee. The Court need not exhaustively scrutinize the hours documented. *Torres*, 519 F. App'x at 4 (judges "need not, and indeed should not, become green-eyeshade accountants"); *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.*, No. 02-CV-3400 (CM)(PED) 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 \$496,070.70. Decl. ¶ 66. Class Counsel seek fees of \$610,246.68. Class Counsel seek a lodestar 1.23 multiplier, which is well within the range of what Court's in this circuit typically award. *See 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); *Hanifin v. Accurate Inventory & Calculating Serv.*, No. 11 Civ. 1410 (MAD) (ATB), 2014 WL 4352060, at *9 (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); *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); *In re Colgate-Palmolive*, 36 F. Supp. 3d at 353 (finding that a multiplier of five "was large, but not unreasonable"); *Woburn Ret. Sys. v. Salix Pharm., Ltd.*, No. 14-CV-8925 (KMW), 2017 WL 3579892, at *6 (S.D.N.Y. Aug. 18, 2017) (stating that the 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) (approving a 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. No. 10-cv- 4712, 2011 WL 4357376, at *20 (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 Plaintiff 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 1.23 multiplier is reasonable. 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 Plaintiff as Class Representative. “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.’” *Holve*, No. 6:16-cv-6702-FPG-MWP, ECF No. 61 at *5 (awarding \$5,000 service award to class representative); *Story v. SEFCU*, No. 1:18-CV-764 (MAD/DJS), 2021 WL 736962, at *10-11 (N.D.N.Y. Feb. 25, 2021) (awarding \$15,000 service award to each class representative). *See also Beebe*, 2020 WL 2833009, at *10-11 (awarding \$15,000 service award). Plaintiff invested significant time in this case and risked her reputation in doing so, by publicly disclosing her personal financial difficulties, creating notoriety regardless of her success on the claims. Had she failed, she created risk to her reputation. She should be commended for taking action to protect the interests of tens of thousands of Defendant’s Account Holders who were affected by Defendant’s practices, on top of her individual claims. It is undisputed that the Plaintiff’s efforts have created extraordinary financial benefits for the Retry Fee Class and Sufficient Funds Fee Class, compensating them for past harm. Plaintiff expended hours in advancing this litigation against a large and powerful adversary. She conferred with Class Counsel on a number of occasions. Decl. ¶ 74. Specifically, Plaintiff 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 settlement documentation. *Id.* ¶ 75.

The Service Award sought are for the Class Representative is well within the range awarded in this District and should be awarded here. *Id.* ¶ 76.

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 WL 6889901, at *22 (citation omitted). *See also Beebe*, 2020 WL 2833009, at*10. Second Circuit courts grant such requests as a matter of course. *Id.* Class Counsel requests reimbursement of \$29,515.86 for actual costs advanced and necessarily incurred in connection with the prosecution and settlement of the Action. Decl. ¶ 70. Specifically, those costs and expenses consist of filing fees and service of process costs, pro hac vice admission fees, deposition fees, expert witness fees, and, most substantially, the services of a well-qualified mediator. *Id.* ¶ 71. Class Counsel is not seeking legal research, copying, and other overhead costs, which were advanced and are commonly reimbursed. All of these out of these pockets were reasonably and necessarily incurred to pursue this Action. *Id.* ¶ 72.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court: (1) grant Final Approval to the Settlement; (2) affirm its certification for settlement purposes the Retry Fee Class and Sufficient Funds Fee Class, pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3); (3) affirm its appointment of Plaintiff as Class Representative; (4) affirm its appointment of Class Counsel the attorneys previously appointed in the Preliminary Approval Order; (5) award a Class Representative Service Award in the amount of **\$5,000.00** to Plaintiff; (6) award attorneys’ fees to Class Counsel in an amount of **\$610,246.68** which is 33.33% of the Value of the Settlement; (7) award Class Counsel reimbursement of litigation costs and expenses in the amount of **\$29,515.86**; 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 attached hereto as ***Exhibit D***.⁸

⁸ If any member of the Retry Fee Class or Sufficient Funds Fee Class timely requests exclusion from the Settlement, the proposed Final Approval Order will be revised to reflect that information and submitted to the Court at or before the Final Approval Hearing.

Dated: April 9, 2022

Respectfully submitted,

KOPELOWITZ OSTROW P.A.

/s/ Jonathan M. Streisfeld

Jeff Ostrow, Esq.

Jonathan M. Streisfeld, Esq.

1 West Las Olas Blvd, Suite 500

Fort Lauderdale, Florida 33301

Telephone: (954) 525-4100

ostrow@kolanyers.com

streisfeld@kolanyers.com

KALIELGOLD PLLC

Sophia G. Gold, Esq. (*pro hac vice*)

1100 15th Street, 4th Floor

Washington, DC 20005

Telephone: (202) 350-4783

sgold@kaliegold.com

TYCKO & ZAVAREEI LLP

Andrea Gold

1828 L St. NW, Suite 1000

Washington, DC 20036

agold@tzlegal.com

Telephone: (202) 973-0900

Class Counsel

REESE LLP

Michael R. Reese

100 West 93rd Street, 16th Floor

New York, New York 10025

Telephone: (212) 643-0500

mreese@reesellp.com

DAVID M. KAPLAN, Attorney at Law

David M. Kaplan

46 Helmsford Way

Penfield, New York 14526

Telephone: (585) 330-2222

davidkaplanlaw@gmail.com

Local Counsel

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SUSAN ROY, on behalf of herself and all
others similarly situated,

Plaintiff,

vs.

ESL FEDERAL CREDIT UNION,

Defendant.

CASE NO. 6:19-cv-06122-FPG-JWF

REVISED SETTLEMENT AGREEMENT AND RELEASES

This Revised Settlement Agreement and Releases (“Settlement” or “Agreement”),¹ dated as of July 15, 2021, is entered into by Plaintiff Susan Roy, individually and on behalf of the Sufficient Funds Fee Class and Retry Fee Class, and Defendant ESL Federal Credit Union. The Parties hereby agree to the following terms in full settlement of the action entitled *Susan Roy v. ESL Federal Credit Union*, No. 6:19-cv-06122, subject to Final Approval, as defined below, by the United States District Court for the Western District of New York.

I. Procedural History and Recitals

1. On February 15, 2019, Plaintiff filed a putative class action Complaint in the United States District Court for the Western District of New York, entitled *Susan Roy v. ESL Federal Credit Union*.

2. On October 7, 2019, Plaintiff filed the operative First Amended Class Action Complaint, asserting two claims for relief: (1) breach of contract and the covenant of good faith and fair dealing; and (2) violations of section 349 of the New York General Business Law

¹ All capitalized terms herein have the meanings ascribed to them in Section II below or various other places in the Agreement.

(“GBL”). Both claims were based on the theories that ESL allegedly improperly assesses Sufficient Funds Fees and Retry Fees.

3. On November 7, 2019, Defendant filed a Motion to Dismiss the Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(6).

4. The Parties participated in two mediation sessions before Mediator Simeon H. Baum, Esq.—first on April 2, 2020, and then again on September 15, 2020. The Parties did not settle at either mediation.

5. On September 30, 2020, the Court denied Defendant’s Motion to Dismiss Plaintiff’s breach of contract and GBL claims, but granted it as to the covenant of good faith and fair dealing claim.

6. Defendant filed its Answer and Affirmative Defenses on October 14, 2020.

7. Plaintiff filed an Unopposed Motion for Preliminary Approval of a class action Settlement on February 16, 2021. Doc. No. 64.

8. The Court denied without prejudice the motion on June 17, 2021. Doc. No. 65.

9. This Agreement represents a good faith effort by both Parties to address the concerns identified by the Court’s order denying without prejudice Preliminary Approval of the Settlement.

10. The Parties continue to agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims of the Releasing Parties. 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 Amended Complaint, 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 Amended Complaint, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Amended Complaint. 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. Plaintiff has entered into this Agreement to liquidate and recover on the claims asserted in the Amended Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiff does not in any way concede the claims alleged in the Amended Complaint lack merit or are subject to any defenses. The Parties intend this Agreement to bind Plaintiff, Defendant, and all Settlement Class Members.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

II. Definitions

In addition to the terms defined at various points within this Agreement, the following Defined Terms apply throughout this Agreement:

11. “Account” means any member checking account maintained by Defendant.
12. “Account Holder” means any person who has or had any interest, whether legal or equitable, in an Account during the Class Period.
13. “Action” means *Susan Roy v. ESL Federal Credit Union*, No. 6:19-cv-06122.
14. “Amended Complaint” means the First Amended Class Action Complaint filed in this Action on October 7, 2019.
15. “Class Counsel” means:

KOPELOWITZ OSTROW P.A.

Jeff Ostrow, Esq.

Jonathan M. Streisfeld, Esq.

1 West Las Olas Blvd.

Suite 500

Fort Lauderdale, FL 33301

KALIEL GOLD PLLC

Sophia Gold, Esq.

1875 Connecticut Ave. NW

10th Floor

Washington, DC 20009

TYCKO & ZAVAREEI LLP

Andrea Gold, Esq.

1828 L St. NW, Suite 1000

Washington, DC 20036

16. “Class Period” means the period from January 1, 2016 to October 31, 2019.

17. “Class Representative” means Susan Roy.

18. “Court” means the United States District Court for the Western District of New York.

19. “Current Account Holder” means a Settlement Class Member who continues to have his or her Account as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

20. “Defendant” means ESL Federal Credit Union.

21. “Effective Date” means 10 days after the entry of the Final Approval Order 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) 30 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 the earlier of 30 days after an appellate court ruling affirming the Final Approval Order or 30 days after entry of a dismissal of the appeal.

22. “Email Notice” means a short form of notice that shall be sent by email to Retry Fee Class and Sufficient Funds Fee Class members who agreed to receive account statements by email in the form attached as *Exhibit 1*.

23. “Final Approval” means the date that the Court enters the Final Approval Order.

24. “Final Approval Hearing” is the hearing held before the Court wherein the Court will consider granting Final Approval to the Settlement and further determine the amount of attorneys’ fees and costs awarded to Class Counsel and the amount of any Service Award to the Class Representative.

25. “Final Approval Order” means the final order that the Court enters granting Final Approval to the Settlement. The proposed Final Approval Order shall be in a form agreed upon by the Parties and shall be substantially in the form attached as an exhibit to the motion for Final Approval. Final Approval Order also includes the orders, which may be entered separately, determining the amount of fees and costs awarded to Class Counsel and the amount of any Service Award to the Class Representative.

26. “Long Form Notice” means the form of notice that shall be posted on the Settlement website created by the Settlement Administrator and shall be available to Sufficient Funds Fee Class and Retry Fee Classmembers by mail on request made to the Settlement Administrator in the form attached as *Exhibit 2*.

27. “Net Settlement Fund” means the Settlement Fund, minus Court approved attorneys’ fees and costs awarded to Class Counsel, any Settlement Administration Costs, and any Court approved Service Award to the Class Representative, allocated between the Sufficient Funds Fee Net Settlement Fund and Retry Fee Net Settlement Fund.

28. “Notice” means the Email Notice, Long Form Notice, and Postcard Notice that the

Parties will ask the Court to approve in connection with the Motion for Preliminary Approval of the Settlement.

29. “Notice Program” means the methods provided for in this Agreement for giving the Notice and consists of Email Notice, Postcard Notice, and Long Form Notice, which shall be substantially in the forms as the exhibits attached to this Agreement.

30. “Opt-Out Period” means the period that begins the day after the earliest date on which the Notice is first distributed, and that ends no later than 30 days before the Final Approval Hearing. The deadline for the Opt-Out Period shall be specified in the Notice.

31. “Overdraft Fee” means any fee or fees assessed to an Account Holder for items paid when the Account had insufficient funds.

32. “Party” means Plaintiff and Defendant and “Parties” means Plaintiff and Defendant collectively.

33. “Past Account Holder” means a Settlement Class Member who no longer holds his or her Account as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

34. “Plaintiff” means Susan Roy.

35. “Postcard Notice” shall mean the short form of notice that shall be sent by mail to Sufficient Funds Fee Class and Retry Fee Class members who did not agree to receive notices by email, or for whom the Settlement Administrator is unable to send Email Notice using the email address provided by Defendant, in the form attached as ***Exhibit 1***.

36. “Preliminary Approval” means the date that the Court enters, without material change, an order preliminarily approving the Settlement, substantially in the form of the exhibit attached to the Motion for Preliminary Approval.

37. “Preliminary Approval Order” means the order granting Preliminary Approval of this Settlement.

38. “Releasing Parties” means Plaintiff and all Settlement Class Members, and each of their respective executors, representatives, heirs, predecessors, assigns, beneficiaries, successors, bankruptcy trustees, guardians, joint tenants, tenants in common, tenants by entireties, agents, attorneys, and all those who claim through them or on their behalf.

39. “Relevant Fees” means Sufficient Funds Fees and Retry Fees.

40. “Retry Fee Class” shall mean those current or former members of Defendant who were assessed Retry Fees during the relevant Class Period. Excluded from the Retry Fee Class is Defendant, its parents, subsidiaries, affiliates, officers and directors; all Retry Fee Class members who make a timely election to be excluded; and all judges assigned to this litigation and their immediate family members.

41. “Retry Fees” shall mean Returned Item Fees that were charged and not refunded from January 1, 2016 to October 31, 2019, for Automated Clearing House (ACH) and check transactions that were re-submitted by a merchant after being returned by Defendant for insufficient funds.

42. “Retry Fee Net Settlement Fund” means \$765,000 minus proportional deductions for (a) the Court approved Court approved attorneys’ fees and costs awarded to Class Counsel, (b) any Settlement Administration Costs, and (c) any Court approved Service Award to the Class Representative.

43. “Returned Item Fee” means any non-sufficient funds fee or fees assessed to an Account Holder of an Account for items returned when the Account has insufficient funds.

44. “Service Award” means any Court ordered payment to Plaintiff for serving as the

Class Representative, which is in addition to any Settlement Consideration due to her pursuant to Section IV of this Agreement as a Settlement Class Member.

45. “Settlement Administrator” means Angeion Group. Class Counsel and Defendant may, by agreement, substitute a different organization as Settlement Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, either Class Counsel or Defendant may move the Court to substitute a different organization as Settlement Administrator, upon a showing that the responsibilities of Settlement Administrator have not been adequately executed by the incumbent.

46. “Settlement Administration Costs” means all costs and fees of the Settlement Administrator regarding Notice and Settlement administration.

47. “Settlement Class Member” means any member of the Retry Fee Class and/or Sufficient Funds Fee Class who has not opted-out of the Settlement and who is entitled to the benefits of the Settlement, including a Settlement Class Member Payment and/or forgiveness of Uncollected Retry Fees and/or Uncollected Sufficient Funds Fees.

48. “Settlement Class Member Payment” means the cash distribution that will be made from the Net Settlement Fund to each Settlement Class Member, pursuant to the allocation terms of the Settlement. It includes each “Sufficient Funds Fee Class Settlement Class Member Payment” and each “Retry Fee Class Settlement Class Member Payment.”

49. “Settlement Fund” means the \$1,700,000.00 common cash fund Defendant is obligated to pay under the terms of this Settlement, allocated \$935,000.00 for the Sufficient Funds Fee Class and \$765,000.00 for the Retry Fee Class. The Settlement Fund shall be paid into an account established by the Settlement Administrator within 10 days of the Court’s entry of the Final Approval Order, less the total amount that will be credited to Settlement Class Members by

Defendant, as provided in Paragraph 78.d.iv.below.

50. “Settlement Website” means the website that the Settlement Administrator will establish as a means for Retry Fee Class and Sufficient Funds Fee Class members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Long Form Notice, Preliminary Approval Order, and such other documents as the Parties agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website for at least six months after Final Approval.

51. “Sufficient Funds Fees” means Overdraft Fees that Defendant charged and did not refund from January 1, 2016 to October 31, 2019, when there was enough money in the Account Holder’s Account to cover the transaction in question if holds placed on deposits and pending debit card transactions were not deducted from the amount in the Account.

52. “Sufficient Funds Fee Class” means those current or former members of Defendant who were assessed Sufficient Funds Fees. Excluded from the Sufficient Funds Fee Class is Defendant, its parents, subsidiaries, affiliates, officers and directors; all Sufficient Funds Fee Class members who make a timely election to be excluded; and all judges assigned to this litigation and their immediate family members.

53. “Sufficient Funds Fee Net Settlement Fund” means \$935,000 minus proportional deductions for (a) the Court approved attorneys’ fees and costs awarded to Class Counsel, (b) any Settlement Administration Costs, and (c) any Court approved Service Award to the Class Representative.

54. “Uncollected Relevant Fees” means any Uncollected Sufficient Funds Fees and Uncollected Retry Fees.

55. “Uncollected Retry Fees” means any Retry Fees that were assessed but were not

paid when an Account was closed and the Retry Fees charged off during the Class Period.

56. “Uncollected Sufficient Funds Fees” means any Sufficient Funds Fees that were assessed but were not paid when an Account was closed and the Sufficient Funds Fees charged off during the Class Period.

57. “Value of the Settlement” means the Settlement Fund plus the Uncollected Relevant Fees.

III. Certification of the Retry Fee Class and Sufficient Funds Fee Class

58. For Settlement purposes only, Plaintiff and Defendant agree to ask the Court to certify the Retry Fee Class and Sufficient Funds Fee Class under Federal Rule of Civil Procedure 23.

IV. Settlement Consideration

59. Within 10 days of Final Approval by the Court, Defendant shall pay \$935,000.00 in cash for the benefit of the Sufficient Funds Fee Class and \$765,000.00 for the benefit of the Retry Fee Class to the Settlement Administrator to create the Settlement Fund. The Settlement Fund shall be used to pay Settlement Class Members their respective Settlement Class Member Payments; any and all attorneys’ fees and costs awarded to Class Counsel; any Service Award to the Class Representative; and all Settlement Administration Costs. Defendant shall not be responsible for any other payments under this Agreement.

60. Defendant shall forgive, waive, and agree not to collect from members of the Sufficient Funds Fee Class, an amount calculated to be \$29,785.14, representing 100% of the Uncollected Sufficient Funds Fees during the Class Period. Defendant shall forgive, waive, and agree not to collect from members of the Retry Fee Class, an amount calculated to be \$100,973.22, representing 100% of the Uncollected Retry Fees during the Class Period.

61. For avoidance of doubt, it is agreed by the Parties that a Settlement Class Member may be a member of both the Sufficient Funds Fee Class and Retry Fee Class. In addition, a Settlement Class Member may qualify for a Settlement Class Member Payment, forgiveness of Uncollected Relevant Fees, or both. . Eligibility for a Settlement Class Member Payment requires that the Settlement Class Member have paid one or more Retry Fees and/or Sufficient Funds Fees. Eligibility for forgiveness of an Uncollected Relevant Fee requires that the Settlement Class Member have been assessed one or more Uncollected Retry Fees and/or Uncollected Sufficient Funds Fees.

V. Settlement Approval

62. Upon execution of this Agreement by all Parties, Class Counsel shall promptly move the Court for a Preliminary Approval Order. The proposed Preliminary Approval Order shall be attached to the motion, or otherwise filed with the Court, and shall be in a form agreed to by Class Counsel and Defendant. The Motion for Preliminary Approval shall, among other things, request that the Court: (1) preliminarily approve the terms of the Settlement as being within the range of fair, adequate, and reasonable; (2) provisionally certify the Sufficient Funds Fee Class and Retry Fee Class pursuant to Federal Rule of Civil Procedure 23, for settlement purposes only; (3) approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement; (4) approve the procedures set forth herein for the Sufficient Funds Fee Class and Retry Fee Class members to exclude themselves from the Sufficient Funds Fee Class and/or Retry Fee Class or for Sufficient Funds Fee Class members and/or Retry Fee Class members to object to the Settlement; (5) stay the Action pending Final Approval of the Settlement; and (6) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel, and counsel for Defendant, at which the Court will conduct an inquiry into the fairness

of the Settlement, determine whether it was made in good faith, and determine whether to approve the Settlement and Class Counsel's application for attorneys' fees and costs and for a Service Award to the Class Representative.

VI. Settlement Administrator

63. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, effectuating the Notice Program and distributing the Settlement Fund as provided herein.

64. The duties of the Settlement Administrator are as follows:

a. Use the name and address information for Sufficient Funds Fee Class and Retry Fee Class members provided by Defendant in connection with the Notice Program approved by the Court, for the purpose of distributing the Postcard Notice and Email Notice, and later mailing Settlement Class Member Payments to Past Account Holder Settlement Class Members, and to Current Account Holder Settlement Class Members where it is not feasible or reasonable for Defendant to make the Settlement Class Member Payments by a credit to the Current Settlement Class Members' Accounts;

b. Establish and maintain a post office box for requests for exclusion from the Sufficient Funds Fee Class and/or Retry Fee Class;

c. Establish and maintain the Settlement Website;

d. Establish and maintain an automated toll-free telephone line for Sufficient Funds Fee Class and/or Retry Fee Class members to call with Settlement-related inquiries, and answer the frequently asked questions of Sufficient Funds Fee Class and/or Retry Fee Class members who call with or otherwise communicate such inquiries;

- e. Respond to any mailed Sufficient Funds Fee Class and/or Retry Fee Class member inquiries;
- f. Process all requests for exclusion from the Sufficient Funds Fee Class and Retry Fee Class;
- g. Provide weekly reports to Class Counsel and Defendant that summarizes the number of requests for exclusion received that week, the total number of exclusion requests received to date, and other pertinent information;
- h. In advance of the Final Approval Hearing, prepare a declaration or affidavit to submit to the Court confirming that the Notice Program was completed, describing how the Notice Program was completed, providing the names of each Sufficient Funds Fee Class and Retry Fee Class member who timely and properly requested exclusion from the Settlement, and other information as may be necessary to allow the Parties to seek and obtain Final Approval.
- i. Distribute Settlement Class Member Payments by check to Past Account Holder Settlement Class Members and Current Account Holder Settlement Class Members who are unable to receive credits;
- j. Provide to Defendant the amount of the Settlement Class Member Payments to Current Account Holder Settlement Class Members and instruct Defendant to initiate the direct deposit or credit of Settlement Class Member Payments to Current Account Holder Settlement Class Members.
- k. Pay invoices, expenses, and costs upon approval by Class Counsel and Defendant, as provided in this Agreement;
- l. Provide notice of this Settlement as required under the Class Action Fairness Act, 28 U.S.C. § 1715; and

m. Any other Settlement Administration function at the instruction of Class Counsel and Defendant, including, but not limited to, verifying that the Settlement Funds have been distributed.

VII. Notice to Sufficient Funds Fee Class and Retry Fee Class Members

65. As soon as practicable after Preliminary Approval through the time directed by the Court, the Settlement Administrator shall implement the Notice Program provided herein, using the forms of Notice approved by the Court. The Notice shall include, among other information: a description of the material terms of the Settlement; a date by which Sufficient Funds Fee Class and Retry Fee Classmembers may exclude themselves from or “opt-out” of the Sufficient Funds Fee Class and/or Retry Fee Class; a date by which Settlement Class Members may object to the Settlement, to Class Counsel’s application for attorneys’ fees and costs, and/or the Service Award for the Class Representative; the date upon which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website at which Sufficient Funds Fee Class and Retry Fee Class members may access this Agreement and other related documents and information. Class Counsel and Defendant shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Notices provided under or as part of the Notice Program shall not bear or include Defendant’s logo or trademarks or the return address of Defendant, or otherwise be styled to appear to originate from Defendant.

66. The Notice also shall include a procedure for Sufficient Funds Fee Class and Retry Fee Class members to opt-out of the Sufficient Funds Fee Class and/or Retry Fee Class. A Sufficient Funds Fee Class and Retry Fee Class member may opt-out of the Sufficient Funds Fee and/or Retry Fee Class at any time during the Opt-Out Period, provided the opt-out notice that

must be sent to the Settlement Administrator is postmarked no later than the last day of the Opt-Out Period. Any Settlement Class Member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement. If an Account has more than one Account Holder, and if one Account Holder excludes himself or herself from the Sufficient Funds Fee Class and/or Retry Fee Class, then all Account Holders on that Account shall be deemed to have opted-out of the Settlement with respect to that Account, and no Account Holder shall be entitled to a payment under the Settlement.

67. The Notice also shall include a procedure for Settlement Class Members to object to the Settlement, to Class Counsel's application for attorneys' fees and costs, and/or the Service Award for the Class Representative. Objections to the Settlement, to Class Counsel's application for attorneys' fees and costs, and/or to the Service Award must be mailed to the Clerk of the Court. For an objection to be considered by the Court, the objection must be submitted no later than the last day of the Opt-Out Period, as specified in the Notice. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (*e.g.*, Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

68. For an objection to be considered by the Court, the objection must also set forth:

- a. the name of the Action;
- b. the objector's full name, address and telephone number;
- c. all grounds for the objection;
- d. the identity of all counsel (if any) representing the objector who prepared the objection and/or will appear at the Final Approval Hearing;

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

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

Subject to Court approval, Class Counsel may conduct limited discovery on any objector or objector's counsel consistent with the Federal Rules of Civil Procedure.

69. For those Sufficient Funds Fee Class and Retry Fee Class members who are Current Account Holders, and have agreed, or Past Account Holders who had agreed, to receive Account statements from Defendant electronically, Defendant shall provide the Settlement Administrator with the most recent email addresses it has for these members. The Settlement Administrator shall send the Email Notice to each such 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 Settlement Administrator shall send a Postcard Notice in the manner described below. The Email Notice shall inform Sufficient Funds Fee Class and Retry Fee Class members how they may request a copy of the Long Form Notice.

70. For those Sufficient Funds Fee Class and Retry Fee Class members who are Current Account Holders of Defendant who have not agreed to, or Past Account Holders who had not agreed to, receive Account statements from Defendant electronically, the Postcard Notice shall be mailed to these members by first class United States mail to the best available mailing addresses. Defendant shall provide the Settlement Administrator with last known mailing addresses for these members. The Settlement Administrator shall run the names and addresses through the National Change of Address Registry and update as appropriate. If a mailed Postcard Notice is returned with forwarding address information, the Settlement Administrator shall re-mail the Postcard

Notice to the forwarding address. For all mailed Postcard Notices that are returned as undeliverable, the Settlement Administrator shall use standard skip tracing devices to obtain forwarding address information and, if the skip tracing yields a different forwarding address, the Settlement Administrator shall re-mail the Postcard Notice once to the address identified in the skip trace, as soon as reasonably practicable after the receipt of the returned mail. The Postcard Notice shall inform Sufficient Funds Fee Class and Retry Fee Class members how they may request a copy of the Long Form Notice.

71. The Settlement 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. In addition to weekly updates to the Parties regarding the progress of the Notice Program and the declaration or affidavit by the Settlement Administrator in advance of the Final Approval Hearing and in support of the motion for Final Approval, a summary report of the Notice Program shall be provided to the Parties three days prior to the Final Approval Hearing. The database maintained by the Settlement Administrator regarding the Notices 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. To the extent the database is provided to Class Counsel, it shall be kept confidential, not be shared with any third party and used only for purposes of implementing the terms of this Agreement, and shall not be used for any other purposes.

72. The Email Notice, Postcard Notice, and Long Form Notice shall be in forms approved by the Court, and substantially similar to the notice forms attached hereto as ***Exhibits 1 and 2***. The Parties may by mutual written consent make non-substantive changes to the Notices without Court approval. A Spanish language translation of the Long Form Notice shall be available on the Settlement Website and be provided to Sufficient Funds Fee Class and Retry Fee

Class members who request it from the Settlement Administrator.

VIII. Final Approval Order and Judgment

73. Plaintiff shall file her Motion for Final Approval of the Settlement, inclusive of Class Counsel's application for attorneys' fees and costs and for a Service Award for the Class Representative, no later than 30 days before the last day of the Opt-Out Period. At the Final Approval Hearing, the Court will hear argument on Plaintiff's Motion for Final Approval of the Settlement, and on Class Counsel's application for attorneys' fees and costs, and for the Service Award for the Class Representative. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Sufficient Funds Fee Class and Retry Fee Class members (or their counsel) who object to the Settlement or to Class Counsel's application for attorneys' fees and costs, or the Service Award application, provided the objectors submitted timely objections that meet all of the requirements listed in the Agreement or that are required by the Court.

74. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting Final Approval of the Settlement and final judgment thereon, and whether to approve Class Counsel's application for attorneys' fees and costs, and any Service Award. Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate and reasonable;
- b. Finally certify the Sufficient Funds Fee Class and Retry Fee Class for settlement purposes only;
- c. Determine that the Notice provided satisfies Due Process requirements;
- d. Bar and enjoin all Releasing Parties from asserting any of the Released Claims; bar and enjoin all Releasing Parties from pursuing any Released Claims (defined below) against Defendant or its affiliates at any time, including during any appeal from the Final Approval Order;

and retain jurisdiction over the enforcement of the Court's injunctions;

e. Release Defendant and the Released Parties from the Released Claims; and

f. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendant, all Sufficient Funds Fee Class and Retry Fee Class members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

IX. Calculation and Disbursement of Settlement Class Member Payments.

75. Within 10 days after entry of the Final Approval Order, Defendant shall transfer the Settlement Fund to the Settlement Administrator, less the total amount that will be credited to Settlement Class Members by Defendant, as provided in Paragraph 78.d.iv., below.

76. All funds held by the Settlement 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.

77. All funds held by the Settlement 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.

78. Payments shall be made from the Settlement Fund as follows:

a. Class Counsels' Fees and Costs. Class Counsels' reasonable attorneys' fees and costs, as determined and approved by the Court, shall be paid from the Settlement Fund within 10 days after entry of the Final Approval Order. Class Counsel shall apply for an award of attorneys' fees of up to 33.33% of the Value of the Settlement, plus reimbursement of reasonable litigation costs, to be approved by the Court. Defendant agrees not to oppose an application for attorneys' fees of up to 33.33% of the Value of the Settlement, but reserves the right to oppose an application for attorneys' fees in excess of that amount. Should the Final Approval Order be

reversed on appeal, Class Counsel shall immediately repay all attorneys' fees and costs to the Settlement Administrator; should the award of attorneys' 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.

b. Service Award. Subject to Court approval, the Class Representative shall be entitled to receive a Service Award of up to \$5,000.00 for her role as the Class Representative. The Service Award shall be paid no later than 10 days after the Effective Date.

c. Settlement Administrator's Fees and Costs. Consistent with Section VI above, the Settlement Administrator's fees and costs shall be paid from the Settlement Fund within 10 days after invoicing to and approval by the Parties. The Parties and the Settlement Administrator agree that any fees or costs incurred by the Settlement Administrator prior to funding of the Settlement Fund shall be deferred and not invoiced until the Settlement Fund has been funded. In the event the Final Approval Order is not entered or this Agreement is terminated pursuant to Section XII below, Defendant agrees to cover any costs incurred and fees charged by the Settlement Administrator pursuant to Section VII above prior to the denial of Final Approval or the termination of this Agreement.

d. Settlement Class Member Payments.

i. The Sufficient Funds Fee Net Settlement Fund shall be paid *pro rata* to the members of the Sufficient Funds Fee Class using the following calculation:

- The dollar amount of the Sufficient Funds Fee Net Settlement Fund divided by the total number of Sufficient Funds Fees paid by all members of the Sufficient Funds Fee

Class, which yields a per-fee amount;

- Multiply the per-fee amount by the total number of Sufficient Funds Fees charged to and paid by each member of the Sufficient Funds Fee Class.
- This results in a Sufficient Funds Fee Settlement Class Member Payment.

ii. The Retry Fee Net Settlement Fund shall be paid *pro rata* to the members of the Retry Fee Class using the following calculation:

- The dollar amount of the Retry Fee Net Settlement Fund divided by the total number of Retry Fees paid by all members of the Retry Fee Class, which yields a per-fee amount;
- Multiply the per-fee amount by the total number of Retry Fees charged to and paid by each member of the Retry Fee Class.
- This results in a Retry Fee Class Settlement Class Member Payment.

iii. The total of the Sufficient Funds Fee Class Member Payment and/or the Retry Fee Class Member Payment due to each Settlement Class Member is the total Settlement Class Member Payment.

iv. Settlement Class Member Payments shall be made no later than 30 days after the Effective Date, as follows:

1. For those Settlement Class Members who are Current

Account Holders at the time of the distribution of the Net Settlement Fund, a credit in the amount of the Settlement Class Member Payment they are entitled to receive shall be applied to any account they are maintaining individually at the time of the credit. If by the deadline for Defendant to apply credits of Settlement Class Member Payments to accounts Defendant is unable to complete certain credit(s), Defendant shall deliver the total amount of such unsuccessful Settlement Class Member Payment credits to the Settlement Administrator to be paid by check in accordance with subsection 2 below.

2. For those Settlement Class Members who are Past Account Holders at the time of the distribution of the Net Settlement Fund 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. For jointly held accounts, checks will be payable to all members, and will be mailed to the first member listed on the account. 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. Any checks uncashed after 180 days shall be distributed pursuant to Section X.

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

e. Forgiveness of Uncollected Relevant Fees. Uncollected Relevant Fees shall be forgiven in full within 10 days after the Effective Date. Defendant shall use best efforts to update any negative reporting to Chexsystems or credit reporting agencies with respect to Settlement Class Members who receive forgiveness of Uncollected Relevant Fees.

X. Disposition of Residual Funds

79. 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 distributed to an appropriate *cy pres* recipient agreed to by the Parties and approved by the Court. The parties propose Jump\$tart Coalition for Personal Financial Literacy (<https://www.jumpstart.org/>).

XI. Releases

80. As of the Effective Date, Releasing Parties shall automatically be deemed to have fully and irrevocably released and forever discharged Defendant and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former directors, officers, employees, agents, insurers, members, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers,

resellers, distributors, retailers, predecessors, successors and assigns of each of them (“Released Parties”), of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys’ fees, losses and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties or matters during the Class Period that were or could have been alleged in the Action relating to the assessment of Sufficient Funds Fees and Retry Fees (“Released Claims”).

81. Each Settlement Class Member is barred and permanently enjoined from bringing on behalf of themselves, or through any person purporting to act on their behalf or purporting to assert a claim under or through them, any of the Released Claims against Defendant in any forum, action, or proceeding of any kind.

82. Plaintiff or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the claims released herein, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he/she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by herein. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement, including by the release herein and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even

if he/she never receives actual notice of the Settlement and/or never receives a distribution of funds or credits from the Settlement.

83. In addition to the releases made by Plaintiff and Settlement Class Members above, Plaintiff, including each and every one of her agents, representatives, heirs, assigns, or any other person acting on her behalf or for her benefit, and any person claiming through her, makes the additional following general release of all claims, known or unknown, in exchange and consideration of the Settlement set forth in this Agreement. The Plaintiff agrees to a general release of the Released Parties from all claims, demands, rights, liabilities, grievances, demands for arbitration, and causes of action of every nature and description whatsoever, known or unknown, pending or threatened, asserted or that might have been asserted, whether brought in tort or in contract, whether under state or federal or local law.

84. Nothing in this Agreement shall operate or be construed to release any claims or rights that Defendant has to recover any past, present, or future amounts that may be owed by Plaintiff or by any Settlement Class Member on his/her accounts, loans or any other debts with Defendant, pursuant to the terms and conditions of such accounts, loans, or any other debts, with the exception of the Uncollected Sufficient Funds Fees and Uncollected Retry Fees under this Agreement. Likewise, nothing in this Agreement shall operate or be construed to release any defenses or rights of set-off that Plaintiff or any Settlement Class Member has, other than with respect to the claims expressly released by this Agreement, in the event Defendant and/or its assigns seeks to recover any past, present, or future amounts that may be owed by Plaintiff or by any Settlement Class Member on his/her accounts, loans, or any other debts with Defendant, pursuant to the terms and conditions of such accounts, loans, or any other debts.

XII. Termination of Settlement

85. This Agreement shall be subject to and is expressly conditioned on the occurrence of all of the following events:

a. The Court has entered the Preliminary Approval Order, as required by Section V above;

b. The Court has entered the Final Approval Order as required by Section VIII, 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

c. The Effective Date has occurred.

86. If all of the conditions specified in Paragraph 85 are not met, then this Agreement shall be cancelled and terminated.

87. Defendant shall have the option to terminate this Agreement if 5% or more of the total members of the Sufficient Funds Fee Class and Retry Fee Class opt-out. Defendant shall notify Class Counsel and the Court of its intent to terminate this Agreement pursuant to this Section XII within 10 business days after the end of the Opt-Out Period, or the option to terminate shall be considered waived.

88. In the event this Agreement is terminated or fails to become effective, 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*.

XIII. Effect of a Termination

89. The grounds upon which this Agreement may be terminated are set forth herein above. In the event of a termination, this Agreement shall be considered null and void; all of Plaintiff's, Class Counsel's, and Defendant's obligations under the Settlement shall cease to be of any force and effect; and the Parties shall return to the status *quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement rights, claims and defenses will be retained and preserved.

90. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made or filed with the Court.

XIV. No Admission of Liability

91. Defendant continues to dispute its liability for the claims alleged in the Action and maintains that its overdraft practices and representations concerning those practices complied, at all times, with applicable laws and regulations and the terms of the account agreements with its members. Defendant does not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. Defendant has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Action.

92. Class Counsel believe that the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and

time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims, conducted significant informal discovery, and conducted independent investigation of the challenged practices. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Sufficient Funds Fee Class and Retry Fee Class members.

93. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

94. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiff or members of the Sufficient Funds Fee Class and/or Retry Fee Class, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency, or other tribunal.

95. In addition to any other defenses the Parties may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement or the

Releases contained herein.

XIX. Confidentiality

96. Neither Party shall issue any press release or shall otherwise initiate press coverage of the Settlement, nor shall either Party post about the Settlement on social media or any website other than the fact that the Settlement was reached and that it was a fair and reasonable result. If contacted, the Party may respond generally, either online or in person, by stating that they are happy that the Settlement was reached and that it was a fair and reasonable result.

XX. Miscellaneous Provisions

97. Gender and Plurals. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

98. Binding Effect. This Agreement shall be binding upon, and inure to for the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

99. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

100. Obligation to Meet and Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted.

101. Integration. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

102. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

103. Governing Law. Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the State of New York, without regard to the principles thereof regarding choice of law.

104. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

105. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of their agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against Defendant or its affiliates at any time, including during any appeal from the Final Approval Order.

106. Notices. All notices to Class Counsel provided for herein, shall be sent by email with a hard copy sent by overnight mail to:

KOPELOWITZ OSTROW P.A.
Jeff Ostrow, Esq.
Jonathan M. Streisfeld, Esq.
1 West Las Olas Blvd., Suite 500
Fort Lauderdale, Florida 33301
Email: ostrow@kolawyers.com
Class Counsel

KALIEL GOLD PLLC
Sophia Goren Gold, Esq.
1875 Connecticut Avenue NW, 10th Floor
Washington, DC 20009
Email: sgold@kalielgold.com
Class Counsel

TYCKO & ZAVAREEI LLP
Andrea Gold, Esq.
1828 L St. NW, Suite 1000
Washington, DC 20036
Email: agold@tzlegal.com
Class Counsel

KATTEN MUCHIN ROSENMAN LLP
Stuart M. Richter, Esq.
Andrew J. Demko, Esq.
2029 Century Park East, Suite 2600
Los Angeles, CA 90067
Email: stuart.richter@katten.com
Counsel for ESL Federal Credit Union

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice program.

107. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and counsel for Defendant and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

108. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

109. Authority. Class Counsel (for the Plaintiff and the Sufficient Funds Fee Class and Retry Fee Class), and counsel for Defendant, represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation or entity included within the definitions of Plaintiff and Defendant to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.


110. Agreement Mutually Prepared. Neither Defendant nor Plaintiff, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

111. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. Both Parties recognize and acknowledge that they and their experts reviewed and analyzed data for a subset of the time at issue and that they and their experts used extrapolation to make certain determinations, arguments, and settlement positions. The Parties agree that this Settlement is reasonable and will not attempt to renegotiate or otherwise

void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

112. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

Dated: Jul 16, 2021


 Susan Roy (Jul 16, 2021 19:40 EDT)
 SUSAN ROY
 Plaintiff

Dated: Jul 19, 2021


 Sophia Gold (Jul 19, 2021 09:14 PDT)
 Sophia Gold, Esq.
 KALIEL GOLD PLLC
 Class Counsel

Dated: Jul 16, 2021

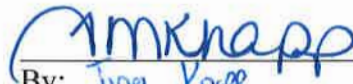

 Jeffrey Ostrow (Jul 16, 2021 23:53 EDT)
 Jeff Ostrow, Esq.
 KOPELOWITZ OSTROW P.A.
 Class Counsel

Dated: Jul 19, 2021


 Andrea Gold (Jul 19, 2021 10:57 EDT)
 Andrea Gold, Esq.
 TYCKO & ZAVEREEI LLP
 Class Counsel

Dated: 7-27-2021

ESL Federal Credit Union

By: 
ITS v. Director, Payments & Service Support

Dated: July 30, 2021



Stuart M. Richter, Esq.
KATTEN MUCHIN ROSENMAN LLP
Counsel for ESL Federal Credit Union

Exhibit 1 – Email and Postcard Notice

Susan Roy v. ESL 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 ESL FEDERAL CREDIT UNION AND YOU WERE CHARGED CERTAIN OVERDRAFT FEES OR RETURNED ITEMS FEES BETWEEN JANUARY 1, 2016 TO OCTOBER 31, 2019, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT

Para una notificación en Español, visitar www.XXXXXXXXXXXXXXXXXXXXXX.com.

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

You may be a member of the Sufficient Funds Fee Class and/or the Retry Fee Class in *Susan Roy v. ESL Federal Credit Union*, in which the plaintiff alleges that defendant ESL Federal Credit Union (“Defendant”) unlawfully assessed Sufficient Funds Fees and Retry Fees between January 1, 2016 and October 31, 2019. If you are a member of the Sufficient Funds Fee Class and if the Settlement is approved, you may be entitled to receive a cash payment from a \$935,000.00 Settlement Fund established for that class and/or the forgiveness of Uncollected Sufficient Funds Fees, benefits established by the Settlement. If you are a member of the Retry Fee Class and if the Settlement is approved, you may be entitled to receive a cash payment from a \$765,000.00 Settlement Fund established for that class and/or the forgiveness of Uncollected Retry Fees, benefits established by the Settlement. You may be a member of both classes, depending on the fees assessed on your account with Defendant.

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 the class representative, up to \$_____, equal 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 member, and/or to forgive certain Overdraft Fees and Returned Item Fees based on your eligibility for such Settlement benefits.

To obtain a long form class 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 credit or cash payment and/or the forgiveness of Uncollected Relevant 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

Susan Roy v. ESL 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 ESL FEDERAL
CREDIT UNION (“DEFENDANT”) AND YOU WERE CHARGED
CERTAIN OVERDRAFT FEES OR RETURNED ITEM FEES BETWEEN
JANUARY 1, 2016 TO OCTOBER 31, 2019, THEN YOU MAY BE
ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT**

The United States District Court for the Western 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 Relevant 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 Relevant 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 *Susan Roy v. ESL Federal Credit Union*. It is pending in the United States District Court for the Western District of New York, Case No. 6:19-cv-06122. The case is a “class action.” That means that the “Class Representative,” Susan Roy, is an individual who is acting on behalf of current and former members who were assessed certain Overdraft Fees and Returned Item Fees between January 1, 2016 to October 31, 2019. The Class Representative has asserted claims for breach of the account agreement and violations of New York’s Consumer Protection Laws.

Defendant does not deny it charged the fees the Class Representative is 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 Representative or any Sufficient Funds Fee Class and/or Retry Fee 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 Overdraft Fees or Returned Item Fees that are the subject of this action. You may be a member of the Sufficient Funds Fee Class or Retry Fee Class, or both classes. The Court directed that this Notice be sent to all Sufficient Funds Fee Class and Retry Fee 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’s and her 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’s lawyers, known as Class Counsel, make this recommendation to the Class Representative. The Class Representative has the duty to act in the best interests of the classes 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 Sufficient Funds Fee Class and Retry Fee 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’s claims are subject to other defenses that might result in no or less recovery to Sufficient Funds Fee Class and Retry Fee Class members. Even if the Class Representative were to win at trial, there is no assurance that the Sufficient Funds Fee Class and Retry Fee 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 Sufficient Funds Fee Class and Retry Fee 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 the Sufficient Funds Fee Class and/or the Retry Fee Class who may be entitled to receive a payment or credit to your Account, forgiveness of Uncollected Relevant Fees, or both. You may be a member of each class.

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. In addition, you may enter an appearance by hiring your own counsel.

6. What are the critical deadlines?

There is no deadline to receive a payment. If you do nothing, then you will get a payment.

The deadline for sending a letter to exclude yourself from or opt out of the settlement is _____.

The deadline to file an objection with the Court is also _____.

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. You may choose to exclude yourself from the Sufficient Funds Fee Class or Retry Fee Class, or both classes, if you are a member of both. If you are a member of one of the classes, then you may exclude yourself from that class.

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 Sufficient Funds Fee Class and/or the Retry Fee Class, nor will any forgiveness of Uncollected Relevant Fees occur. 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 Sufficient Funds Fees and/or Retry 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 and/or forgiveness of Uncollected Relevant Fees 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 _____.

THE SETTLEMENT PAYMENT**9. How much is the Settlement?**

Defendant has agreed to create a Settlement Fund of \$935,000 for the Sufficient Funds Fee Class and \$765,000 for the Retry Fee Class. It will also forgive Uncollected Sufficient Funds Fees for the Sufficient Funds Fee Class in an amount calculated to be \$29,785.14, and forgive Uncollected Retry Fees for the Retry Fee Class in an amount calculated to be \$100,973.22.

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), and a Service Award to the Class Representative will be allocated between and paid out of the Settlement Fund for both the Sufficient Funds Fee Class and Retry Fee Class. Thereafter, the Sufficient Funds Fee Net Settlement Fund and Retry Fee Net Settlement Fund will be divided among all members of each of those classes entitled to Settlement Class Member Payments based on formulas described in the Settlement Agreement and stated in response to Question 13 below.

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 \$_____, equal to 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 for her work in connection with this case. The Service Award must be approved by the Court.

12. How much of the Settlement Fund will be used to pay the Settlement Administrator’s expenses?

The Settlement Administrator estimates its expenses at \$_____.

13. How much will my payment be?

The balance of the Settlement Fund after attorneys’ fees and costs, the Service Award and the Settlement Administration Costs, 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 and summarized below:

The Sufficient Funds Fee Net Settlement Fund shall be paid *pro rata* to the members of the Sufficient Funds Fee Class using the following calculation:

- The dollar amount of the Sufficient Funds Fee Net Settlement Fund divided by the total number of Sufficient Funds Fees paid by all members of the Sufficient Funds Fee Class, which yields a per-fee amount;
- Multiply the per-fee amount by the total number of Sufficient Funds Fees charged to and paid by each member of the Sufficient Funds Fee Class.
- This results in a Sufficient Funds Fee Settlement Class Member Payment.

The Retry Fee Net Settlement Fund shall be paid *pro rata* to the members of the Retry Fee Class using the following calculation:

- The dollar amount of the Retry Fee Net Settlement Fund divided by the total number of Retry Fees paid by all members of the Retry Fee Class, which yields a per-fee amount;
- Multiply the per-fee amount by the total number of Retry Fees charged to and paid by each member of the Retry Fee Class.
- This results in a Retry Fee Class Settlement Class Member Payment.

The total of the Sufficient Funds Fee Class Member Payment and/or the Retry Fee Class Member Payment due to each Settlement Class Member is the total Settlement Class Member Payment.

Current members of Defendant entitled to a Settlement Class Member Payment will receive a credit to their Accounts for the amount they are entitled to receive. Former members of Defendant entitled to receive a Settlement Class Member Payment shall receive a check from the Settlement Administrator. Settlement Class Members entitled to forgiveness of Uncollected Sufficient Funds Fees and/or Uncollected Retry Fees shall receive this benefit automatically. You may receive *both* a cash payment and forgiveness of Uncollected Relevant Fees, if you are eligible for both Settlement benefits, or you may only be eligible for one of those Settlement benefits.

14. 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 Relevant Fees without having to make a claim, unless you choose to exclude yourself from the settlement, or “opt out.”

15. When will I receive my payment?
--

The Court will hold a Final Approval Hearing on _____, at _____ to consider whether the Settlement should be approved. If the Court approves the Settlement, then payments should be made or credits should be issued within 30 days of the Effective Date. 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

16. How do I exclude myself from the Settlement?

If you do not want to receive a payment or debt forgiveness, 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 *Susan Roy v. ESL Federal Credit Union* class action.” Be sure to include your name, the last four digits of your member number(s) or former member number(s), address, telephone number, and email address. Your exclusion or opt out request must be postmarked by _____, and sent to:

Susan Roy v. ESL Federal Credit Union

Attn:

ADDRESS OF THE SETTLEMENT ADMINISTRATOR

17. 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 or forgiveness of Uncollected Relevant Fees from the Settlement.

In the event an account has multiple Account Holders and one such individual opts out of the Settlement, all of the Account Holders will be deemed to have opted out of the Settlement.

OBJECTING TO THE SETTLEMENT

18. 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 at the address 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;
- d. the identity of all counsel (if any) representing the objector who prepared the objection and/or will appear at the Final Approval Hearing;
- e. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

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

All objections must be post-marked no later than _____, and must be mailed to the Clerk of the Court as follows:

Clerk of the U.S. Dist. Court for the Western District of New York
100 State Street
Rochester, NY 14614

19. 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 Sufficient Funds Fee Class and/or the Retry Fee 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 Relevant 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 Relevant Fees, or release claims you might have against Defendant for the claims alleged in this lawsuit.

20. What happens if I object to the Settlement?

If the Court sustains your objection, or the objection of any other member of the Sufficient Funds Fee Class and/or the Retry Fee Class, then there may be 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

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

The Court will hold a Final Approval or Fairness Hearing at ___ on ____, 2020 at the United States District Court for the Western District of New York, which is located at 100 State Street, Rochester, New York 14614. 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 Award to the Class Representative. The hearing may be virtual, in which case the instructions to participate shall be posted on the website at www.usdcwdny.com.

22. 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.

23. 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

24. 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 members of the Sufficient Funds Fee Class and/or Retry Fees Class.

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

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

26. 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 copy of the fee application at the website established by the Settlement Administrator, or by requesting the court record from the Clerk of the United States District Court for the Western District of New York at <https://www.nywd.uscourts.gov/document-requests>.

GETTING MORE INFORMATION

This Notice only summarizes the proposed Settlement. More details are contained in the Settlement Agreement, the Renewed Motion for Preliminary Approval, which can be viewed/obtained online at [[WEBSITE](#)] or at the Office of the Clerk of the United States District Court for the Western District of New York, which is located at 100 State Street, Rochester, NY 14614, by asking for the Court file containing the Renewed Motion for Preliminary Approval (the Revised Settlement Agreement is attached to the motion) or obtaining a copy by requesting a copy from the Clerk of the United States District Court for the Western District of New York at <https://www.nywd.uscourts.gov/document-requests>.

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

Susan Roy v. ESL Federal Credit Union
Settlement Administrator
Attn:

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

Sophia Goren Gold
KALIEL GOLD PLLC
1100 15th St. NW
4th Floor
Washington, DC 20005
202-350-4783
sgold@kalielgold.com

Jeffrey Ostrow
Jonathan M. Streisfeld
KOPELOWITZ OSTROW P.A.
One West Las Olas Boulevard
Suite 500
Fort Lauderdale, Florida 33301
954-525-4100
954-525-4300
ostrow@kolawyers.com
streisfeld@kolawyers.com

Andrea Gold, Esq.
TYCKO & ZAVAREEI LLP
1828 L St. NW, Suite 1000
Washington, DC 20036
202-973-0900
agold@tzlegal.com

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

EXHIBIT B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SUSAN ROY, on behalf of herself and all others
similarly situated,

Plaintiff,

vs.

ESL FEDERAL CREDIT UNION,
Defendant.

CASE NO. 6:19-cv-06122-FPG-JWF

**JOINT DECLARATION OF CLASS COUNSEL
JEFF OSTROW, ANDREA GOLD, AND SOPHIA GOLD IN SUPPORT OF
UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
AND APPLICATION FOR ATTORNEYS' FEES AND COSTS AND SERVICE AWARD**

We, Jeff Ostrow, Andrea Gold, and Sophia Gold declare as follows:

1. We are Class Counsel of record for Plaintiff Susan Roy and for the Retry Fee Class and Sufficient Funds Fee Class in the Action.¹ We submit this declaration in support of Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement and Application for Attorneys' Fees and Costs and Service Award. Unless otherwise noted, we have personal knowledge of the facts set forth in this declaration and could and would testify competently to them if called upon to do so.

Class Counsel and Local Counsel

2. Class Counsel have emerged as leaders in nationwide litigation against financial institutions over the assessment of improper fees, regularly working together to efficiently and successfully represent classes of accountholders. As detailed in Class Counsel's firm resumes, attached hereto as **Exhibits 1-3**, Class Counsel also have extensive experience in a wide range of consumer protection litigation in New York and around the country.

Kopelowitz Ostrow P.A.

3. Kopelowitz Ostrow P.A. ("KO") has extensive experience litigating nationwide and state consumer class actions. Although the firm handles a variety of consumer class actions, KO

¹ The capitalized terms used herein are defined in and have the same meaning as used in the Settlement Agreement unless otherwise stated.

focuses a significant amount of its resources pursuing financial institutions and other corporations that assess their customers unlawful fees.

4. KO has been appointed class counsel in dozens of cases throughout the country and have tried several to verdict. The firm is well positioned to understand the risks of this Action and why settlement at this stage of the litigation was the best option for the putative class. Based upon its experience as one of the leading financial services and unlawful fee class action firms for over a decade, KO is confident that the Settlement obtained here is a good result. KO has devoted the time and resources of its attorneys and staff to ensure the vigorous prosecution of the claims brought on behalf of the putative classes in this litigation. The KO firm resume, including biographical information for Jeff Ostrow, Jonathan Streisfeld, and Daniel Tropin, and former associate Rachel Glaser, and a listing of cases demonstrative of KO's success in litigation against financial institutions, is attached as **Exhibit 1**.

Tycko & Zavareei LLP

5. Tycko & Zavareei LLP ("TZ"), with offices in Washington DC and California, has been successfully litigating complex and innovative class actions for decades. TZ's practice focuses on high stakes litigation, with a particular emphasis on consumer and other types of class actions, and False Claims Act litigation. TZ's class action work is centered on representing consumers who have been the victims of corporate wrongdoing and, over the last ten-plus years, much of that work has been focused on recovering hundreds of millions of dollars for bank and credit union customers charged unlawful and exorbitant fees.

6. Courts around the country have appointed TZ lawyers as class counsel – either via settlement or as part of contested class certification – in scores of complex class actions. Given TZ's extensive class action experience – and, relevant to this case, broad experience litigating against banks and other financial services companies – TZ firmly grasps the risks of continued litigation and the benefits of the Settlement for the thousands of Settlement Class Members. The Settlement in this case – obtained after hard fought litigation and lengthy negotiations—is fair and reasonable, meriting final approval. TZ has and will continue to devote the time and resources of its attorneys and staff to

zealously advocate for the Plaintiff and the Retry Fee Class and Sufficient Funds Fee Class. The TZ firm resume, including biographical information for Class Counsel Andrea Gold (as well as the other attorneys and staff who have worked on this litigation), and a listing of the firm's representative successes in complex class litigation, is attached as **Exhibit 2**.

KalielGold PLLC

7. 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. KG has also successfully resolved numerous class actions by settlement, resulting in hundreds of millions of dollars in relief for millions of class members.

8. Ms. Sophia Gold has been appointed lead Class Counsel in numerous nationwide and state-specific class actions. In that capacity, she has won contested class certification motions, argued dispositive motions, engaged in data-intensive discovery, and worked extensively with economics and information technology experts to build damages models.

9. KG is 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. Le&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.). KG's experience is further detailed in the firm's resume attached hereto as **Exhibit 3**.

Reese LLP

10. Class Counsel was also aided by the legal services of Michael Reese, Esq. of Reese LLP who has served as local New York counsel for the Plaintiff throughout the Action.

11. Mr. Reese also has extensive experience in consumer class action litigation and is based

in New York, New York. He manages his firm's consumer and antitrust class action practice. Additional detail regarding Reese LLP and Mr. Reese's experience and qualifications can be found in **Exhibit 4** attached.

Litigation

12. After several rounds of arms-length negotiation and settlement discussions, including two full-day mediation sessions with mediator Simeon H. Baum, Plaintiff, Class Counsel, and Defendant entered into a Settlement Agreement in this matter. As explained below, a Revised Settlement Agreement and Releases was executed, a true and correct copy of which is attached as *Exhibit A* to the Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement and Application for Attorneys' Fees and Costs and Service Award.

13. As can be seen from their resumes, Class Counsel have substantial experience in the litigation, certification, and settlement of class action cases, specifically in the overdraft fee and insufficient funds fee context. Based on our experience, Defendant's counsel are also highly experienced in this type of litigation. It is thus our considered opinion that counsel for each side have fully evaluated the strengths, weaknesses, and equities of the Parties' respective positions and believe that the proposed Settlement fairly resolves their respective differences.

14. Prior to filing, Class Counsel thoroughly investigated the viability of Plaintiff's claims. Class Counsel interviewed a number of Defendant's members to gather information about Defendant's conduct and its impact upon consumers, which was essential to their ability to understand the nature of the Defendant's conduct, the language of the Account agreement and other documents at issue, and potential remedies.

15. Class Counsel expended significant resources researching and developing the legal claims at issue. Indeed, Class Counsel is familiar with the instant claims through their extensive history of litigating and resolving other banking fee claims with similar factual and legal issues to the case at bar. Class Counsel has experience in understanding the damages at issue, what information is critical in determining class membership, and what data is necessary to calculate each Settlement Class Member's respective damages. These key issues were to be heavily contested throughout the litigation,

including during the Parties' written discovery process and ongoing meet and confer efforts.

16. The Action was filed on February 15, 2019. From the beginning, Defendant vigorously defended the claims in the Action.

17. On October 7, 2019, Plaintiff filed the operative Amended Complaint, asserting claims for breach of contract and the covenant of good faith and fair dealing, and violation of New York General Business Law ("GBL"), Section 349, arising from allegations that Defendant improperly assessed both Retry Fees and Sufficient Funds Fees on customers' accounts.

18. On November 7, 2019, Defendant filed a Motion to Dismiss the Amended Complaint pursuant to Federal Rule of Civil Procedural 12(b)(6), which the Court granted as to the breach of the implied covenant of good faith and fair dealing claim but denied as to the breach of contract and GBL claims on September 30, 2020. On October 14, 2020, Defendant filed its Answer and Affirmative Defenses.

19. While the motion to dismiss was pending, the Parties engaged in important written discovery and numerous meet and confer conferences made in good faith regarding outstanding discovery disputes, including those regarding Defendant's production of electronically stored information ("ESI") and cost-shifting considerations.

20. To prepare for mediation, Class Counsel worked with a data expert to analyze transactional data to determine the damages at issue in the case. Defendant similarly retained its own expert who conducted a review and analyzed such data accordingly. This data and analysis evaluating potential damages at issue was used in preparation for the Parties' scheduled meditations and to further drive the viability of resolution.

21. The Parties also participated in two mediation sessions before Mediator Simeon H. Baum, Esq.—first on April 2, 2020, and then again on September 15, 2020. Class Counsel was fully informed of the merits of Retry Fee Class and Sufficient Funds Fee Class members' claims, and negotiated the proposed Settlement while zealously advancing the position of Plaintiff, the Retry Fee Class members, and Sufficient Funds Fee Class members, and being fully prepared to continue litigation rather than to accept a settlement that was not in their best interests. The Parties did not

settle at either mediation.

22. Shortly after the second mediation session, the Parties engaged in further negotiations and ultimately agreed to settle the Action in its entirety with Mr. Baum's assistance. The Parties filed a Notice of Settlement with the Court reflecting the same and requested that the Court vacate all upcoming hearings and deadlines in the Action pending the Parties execution of the Agreement and the filing of the motion for Preliminary Approval of the Settlement.

23. In summary, this Action was litigated and analyzed thoroughly prior to negotiating the Settlement. Class Counsel spent significant time conferring with Plaintiff, investigating facts, researching the law, preparing the well-pleaded complaint and amended complaint, engaging in discovery and motion practice, working with an expert witness, and reviewing important documents and data.

Settlement

24. On February 8, 2021, the Parties finalized and executed their formal Settlement Agreement and Releases. Following the Court's Decision and Order dated June 17, 2021, denying Preliminary Approval without prejudice, the Parties negotiated and executed their Revised Settlement Agreement and Releases dated July 15, 2021, which is the operative agreement for which Preliminary Approval was granted and Final Approval is currently sought.

25. The total value of the Settlement is \$1,830,758.36, consisting of Defendant's (a) commitment to established and pay a cash Settlement Fund of \$1,700,000.00; and (b) its agreement to forgive, waive, and not collect \$130,758.36 in Uncollected Relevant Fees.

26. The Settlement Fund represents approximately 44% of the Retry Fees and Sufficient Funds Fees allegedly wrongly assessed against the Retry Fee Class and Sufficient Funds Fee Class. More specifically, the damages were determined by the Parties' respective expert's analysis of Defendant's account level transaction data for the individual accounts of each member of the Retry Fee Class and Sufficient Funds Fee Class to identify each challenged fee, and to identify each of the Uncollected Relevant Fees that were not paid at the time the Parties reached the Settlement. In order to identify the Sufficient Funds Fees counted as damages, the Parties' experts analyzed the

transactional data to assess the Overdraft Fees that would have been charged had Defendant used the actual account balance instead of the available balance to make its Overdraft Fee determinations. In order to identify the Retry Fees counted as damages, the Parties' experts analyzed the transactional data to identify and sum the Automated Clearing House (ACH) and check transactions that were re-submitted by a merchant after being returned by Defendant for insufficient funds and counted the number of Returned Item Fees that had been charged on those re-submitted transactions.

27. In light of the inherent litigation risks, Plaintiff and Class Counsel submit that it is a very fair and reasonable recovery. Class Counsel weighed a number of factors before deciding to settle. First, Class Counsel considered that Defendant contends that the account agreements authorize the assessment of the challenged fees. It was a distinct possibility that a jury could find in Defendant's favor on this issue. Next, Class Counsel considered the possibility that this Court would deny class certification. Class Counsel also considered the amount of the settlement in comparison to a number of other similar bank fee settlements around the country and found it to be in line with those settlements. Finally, in reaching the conclusion that the Value of the Settlement in this Action is adequate, Class Counsel also considered that the Retry Fee Class and Sufficient Funds Fee Class are receiving real money and forgiveness of Uncollected Relevant Fees, without having to take the step of submitting a claim or having to wait years for a trial and potential appeal.

28. The Settlement Administrator, Angeion Group, has overseen the Notice Program, which was designed to provide the best notice practicable and is tailored to take advantage of the information Defendant has available about the Retry Fee Class and Sufficient Funds Fee Class members. It was reasonably calculated under the circumstances to apprise Settlement Class Members of the material terms of the Settlement; a deadline to exclude themselves from the Retry Fee Class and Sufficient Funds Fee Class; a deadline to object to the Settlement; the Final Approval Hearing date; and the Settlement Website address to access the Settlement Agreement and other related documents and information. The Notice Program constitutes sufficient notice to all persons entitled to notice. The Notice Program satisfies all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and constitutional due process.

29. Class Counsel has not been paid for their extensive efforts or reimbursed for litigation costs. They are entitled to request, and Defendant 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. Ten percent of the attorneys' fees award will be paid to local counsel, Reese LLP.

30. The parties did not discuss attorneys' fees and costs or any potential Service Award until they first agreed on the material terms of the Settlement, including the class definitions for the Retry Fee Class and Sufficient Funds Fee Class, class benefits, and scope of relief.

Fairness, Adequacy, and Reasonableness

31. The relevant factors weigh in favor of Final Approval. First, the Settlement was reached in the absence of collusion, and is the result of intensive good faith, informed, and arm's length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues in this Action, 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. Plaintiff believes she asserted meritorious claims and would prevail if this matter proceeded to trial. Defendant argues the claims are unfounded, denies any potential liability, and up to the point of settlement indicated a willingness to litigate those claims vigorously. The Parties concluded that, on balance, 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.

32. The Parties' negotiations were principled, with each side basing their offers and counteroffers on an analysis of discovery exchanged as well as damage data provided by Defendant. In addition, the negotiations were based on the Parties' respective assessments of the strengths and weaknesses of their positions, and interpretations of the law relative to those positions. The Parties concluded 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 if granted, completing the remaining class-wide merits discovery if the classes were certified, pretrial motion practice, trial, and finally appellate review.

33. Plaintiff maintains that her claims are meritorious; that she would establish liability and recover substantial damages if the case proceeded to trial; and that the final judgment recovered in favor of Plaintiff and the certified classes would be affirmed on appeal. But Plaintiff's ultimate success would require her to prevail, in whole or in part, at all of these junctures. Conversely, Defendant's success at any of these junctures could or would have spelled defeat for Plaintiff and the Retry Fee Class and Sufficient Funds Fee Class. Thus, continued litigation posed significant risks and numerous uncertainties, as well as the time, expense, and delay associated with trial and appellate proceedings.

34. On the basis of our investigation into this case and experience with and knowledge of the law and procedure governing the claims of Plaintiff and the Retry Fee Class and Sufficient Funds Fee Class, it is our belief that it is in the best interests of the Retry Fee Class and Sufficient Funds Fee Class to enter into this Settlement. Indeed, in light of the risks, uncertainties, and delays associated with continued litigation, the Settlement represents a significant achievement by providing guaranteed benefits to Settlement Class Members in the form of direct cash compensation.

35. With this Settlement, Plaintiff achieved her desired goal in this litigation—i.e., obtaining repayment of the complained about fees for Defendant's customers. Here, Class Counsel viewed the strength of the claims of each class as essentially equivalent and, in turn, negotiated the same percentage of damages for the cash Settlement Fund. The recovery provided by the Settlement includes a \$1,700,000.00 cash Settlement Fund paid by Defendant, allocated \$935,000.00 to the Sufficient Funds Fee Class and \$735,000.00 to the Retry Fee Class. The allocation is tied directly to the amount of such fees allegedly wrongfully assessed by Defendant, i.e., the damages to each class from the distinct applicable challenged fee assessment practice. Put another way, the portion of the Settlement Fund for each class is approximately 44% of the total allegedly wrongful fees assessed and paid. As the Court previously noted as to universe of Uncollected Relevant Fees, the distribution between Uncollected Retry Fees and Uncollected Sufficient Funds Fees is 77% (\$100,973.22) and 23%

(\$29,785.14), respectively. That distribution simply aligns with the amounts of Uncollected Retry Fees and Uncollected Sufficient Funds Fees assessed during the Class Period. Further, Defendant is forgiving 100% of all such Uncollected Relevant Fees for both classes.

36. The Settlement obligates Defendant to use best efforts to update any negative reporting to Chexsystems or credit reporting agencies with respect to Settlement Class Members who receive forgiveness of Uncollected Relevant Fees. Settlement Class Members' Uncollected Relevant Fees are the result of Defendant charging off their negative balances that included Retry Fees and Sufficient Funds Fees that had not been paid. That charged off balance often has very significant effects on consumer credit, such as preventing the Account Holder from establishing new banking relationships because of the reported negative history. The debit forgiveness is valuable because it will reduce or eliminate the negative balance that was reported, creating the concomitant opportunity for the Account Holder to move closer to gaining access to the banking system created by updated credit reporting. As discussed in the Memorandum to which this declaration is an exhibit, numerous courts have treated debt forgiveness as a "cash equivalent."

37. The Net Settlement Fund, calculated by subtracting from the \$1,700,000.00 Settlement Fund Court approved attorneys' fees and expenses; any notice and administration expenses incurred; and any Court approved Service Award to Plaintiff, will be distributed to Settlement Class Members using the formulas included in paragraph 78.d. of the Agreement. These benefits are an excellent result for the Sufficient Funds Fee Class and Retry Fee Class.

38. We are confident in the strength of Plaintiff's case as to both challenged practices and the related legal arguments, but we are also pragmatic regarding the risks in continuing this Litigation, including the possibility that the Court would deny class certification or grant summary judgment, or that Plaintiff and the classes could not prevail at trial. Defendant continues to dispute that the fees were improperly assessed given its proffered contract interpretation. In this context, the amount of the Net Settlement Fund to be distributed automatically to class members will be an outstanding recovery.

39. Each of these risks could have impeded Plaintiff's and the Retry Fee Class's and

Sufficient Funds Fee Class's successful prosecution of their claims at trial and in an eventual appeal. While Plaintiff disputes Defendant's arguments, it was unclear how the arguments would be resolved at the class certification stage or trial. Thus, there was a substantial risk that class members could receive nothing at all.

40. Moreover, even if Plaintiff prevailed at trial, any recovery could be delayed by an appeal. Thus, even in the best case, it could take years to get relief for class members. The Settlement provides substantial relief to the Retry Fee Class and Sufficient Funds Fee Class without further delay.

Class Certification Elements

41. Class Counsel has devoted substantial time and resources to this Action, and Plaintiff and Class Counsel will vigorously protect the interests of the Retry Fee Class and Sufficient Funds Fee Class.

42. The numerosity requirement of Rule 23(a) is satisfied because the Retry Fee Class and Sufficient Funds Fee Class collectively consist of approximately 42,920 members, with each class having thousands of members, and joinder of all such persons is impracticable.

43. Liability questions common to all members of the Retry Fee Class and Sufficient Funds Fee Class substantially outweigh any possible issues that are individual to each member of the Retry Fee Class and Sufficient Funds Fee Class. There are multiple questions of law and fact – centering on Defendant's alleged systematic practice of assessing the respective fees – that are common to the Retry Fee Class and Sufficient Funds Fee Class, alleged to have injured all Retry Fee Class and Sufficient Funds Fee Class members in the same way, and would generate common answers central to the viability of the claims were the Action to proceed to trial. Each Retry Fee Class and Sufficient Funds Fee Class member's relationship with Defendant arises from account agreements that are the same or substantially similar in all relevant respects to other Retry Fee Class and Sufficient Funds Fee Class members' account agreements.

44. Plaintiff's claims are typical of absent members of the Retry Fee Class and Sufficient Funds Fee Class because she was subjected to the same practices leading to the assessment of fees, suffered from the same injuries, and she will benefit equally from the relief provided by the Settlement.

45. Plaintiff's interests are coextensive with, not antagonistic to, the interests of the Retry Fee Class and Sufficient Funds Fee Class because she and the absent Settlement Class Members have the same interest in the relief the Settlement affords, and the absent Settlement Class Members have no diverging interests. Plaintiff is a member of both the Retry Fee Class and the Sufficient Funds Fee Class. Plaintiff and proposed Class Counsel were incentivized to maximize the recovery for both classes and obtained approximately 44% of the total wrongfully assessed Relevant Fees via the Agreement. Class Counsel evaluated the strength of the claims for each class as essentially equal, thus the interests of Plaintiff, the Retry Fee Class members, and the Sufficient Funds Fee Class members do not diverge as to the distribution of the allocated Settlement Fund or the forgiveness of Uncollected Retry Fees and Uncollected Sufficient Funds Fees.

46. The Rule 23(b)(3) predominance requirement is readily satisfied. Liability questions common to all members of the Retry Fee Class and Sufficient Funds Fee Class, whose relationships with Defendant arise from Account agreements that are the same or substantially similar in all material and relevant aspects and who were charged based on the same set of circumstances, substantially outweigh any possible issues that are individual to each member of the Retry Fee Class and Sufficient Funds Fee Class. Resolution of several thousand claims in one action is far superior to individual lawsuits, because it promotes consistency and efficiency of adjudication.

Attorneys' Fees

47. Plaintiff is represented by qualified and competent counsel who devoted a substantial time to the litigation and who have extensive experience and expertise prosecuting complex class actions, including consumer actions like the instant case.

48. While discretionary, to the extent that the Court wishes to perform a lodestar cross-check, it should be noted that there is a reasonable 1.23 - lodestar multiplier as a result of the hard work Class Counsel performed.

49. The 33.33% requested fee is within the range of reason when considering the foregoing and when analyzing the following guidelines set forth by the Second Circuit in *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000): (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.

50. This Action is complex presenting novel factual and legal issues, which have yet to be tried in this Court or others. Legally, the case involved complex issues which have resulted in motions to dismiss being both denied and granted in similar cases.

51. Factually, the case was difficult as it involved detailed analysis of Defendant's internal, account level transaction data, review of account statements, and different versions of binding account contracts during the relevant limitations period. While Plaintiff largely prevailed at the motion to dismiss stage, the fundamental contract construction issue remained unresolved when the Parties agreed to settle. Defendant would aggressively litigate other merits issues and the yet to be filed motion for class certification. Success defending class certification or a trial would have prevented any recovery.

52. As stated above, Class Counsel took on considerable risk in filing and prosecuting this case. Indeed, Defendant argued strenuously that the Relevant Fees were permissible under the contract language.

53. Nevertheless, Class Counsel proceeded with the litigation and received a favorable order from the Court at the motion to dismiss stage. However, that ruling leaves open the risk that the trier of fact would determine that Defendant was permitted to assess the challenged Relevant Fees.

54. 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.

55. Here the Settlement representing a 44% recovery of the Retry Fees and Sufficient Funds Fees allegedly wrongly assessed is an excellent result. Thus, the Court should easily find counsel achieved success.

56. The \$610,246.68 requested fee – which is 33.33% of the Value of the Settlement - is reasonable in light of the work performed, the results obtained, and falls within the range of common fund awards in the Second Circuit. The attorneys' fee requested is lower than what would be requested in individual contingent fee litigation, which generally start at 33.33% of any recovery and frequently

go up to 40% or more.

57. 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 discovery, motion practice, complaint amendment, a mediation, negotiating and documenting the Settlement, and the Settlement approval process.

58. To date, Class Counsel and local counsel have expended a total of 658.05 hours in the prosecution of this case.

59. It is anticipated that from the date of the filing of this Motion forward, Class Counsel will spend an additional 40 hours preparing for the Final Approval Hearing, which includes the filing of supplemental declarations, responding to any objections, if any, and preparing for and attending the Final Approval Hearing. Furthermore, 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 *c/pres* distribution, as needed.

60. Summaries of the time expended by all counsel and paralegals on the Action are listed below in support of the Motion, organized by work performed in the various stages of the Action. Should the Court require detailed billing, Class Counsel will promptly submit it. Hourly rates of attorneys and paralegals are commensurate with the rates charged by class action practitioners in this district with similar experience.

61. In connection with this litigation, the firms representing Plaintiff and the Retry Fee Class and Sufficient Funds Fee Class report a combined lodestar of **\$496,070.70**.

62. Class Counsel has organized the time spent by each Class Counsel firm into the following chart with categories describing the services rendered in the prosecution of this Action:

Task	Kaliel Gold PLLC	Kopelowitz Ostrow P.A.	Tycko & Zavareei LLP
Pre-suit investigation, Factual Development, Client Meetings, Correspondence, Legal Research	J. Kaliel (9.00) S. Gold (4.00)		

Strategy/Case Analysis, Class Counsel Conferences	J. Kalief (20.50) S. Gold (15.70)	J. Streisfeld (1.25) D. Tropin (1.75)	A. Gold (25.1) M. Lanahan (6.00) H. Zavareei (0.10)
Pleadings	J. Kalief (4.00)	J. Streisfeld (5.25) D. Tropin (2.25)	A. Gold (5.90) M. Dunn (0.30)
Motion Practice	J. Kalief (20.90) S. Gold (18.50) N. Garcia (6.00)	J. Streisfeld (7.25) D. Tropin (10.25) R. Glaser (1.00) T. Becker (1.00)	A. Gold (8.10) M. Lanahan (18.70) H. Zavareei (1.70) M. Dunn (2.60)
Discovery	J. Kalief (25.20) S. Gold (24.60) N. Garcia (1.40)	J. Streisfeld (33.50) D. Tropin (0.50) R. Glaser (3.00) T. Becker (3.50)	A. Gold (22.20) M. Lanahan (5.30) M. Dunn (1.30) M. Folkerts (1.70) N. Porzenheim (1.10)
Case Management and Other Court-Mandated Tasks	J. Kalief (6.40) S. Gold (10.30)	R. Glaser (0.50)	A. Gold (11.30) M. Lanahan (9.10) M. Dunn (3.70) M. Folkerts (7.90) N. Porzenheim (1.30) J. Morrison (1.00)
Settlement	J. Kalief (36.00) S. Gold (4.20)	J. Ostrow. (14.75) J. Streisfeld (22.25) T. Becker (3.25)	A. Gold (39.50) M. Lanahan (10.60) M. Dunn (0.60) N. Porzenheim (0.10)
Preliminary Approval	J. Kalief (3.00) S. Gold (1.50)	J. Streisfeld (11.75) R. Glaser (10.25) T. Becker (5.00)	A. Gold (18.70)
Class Notice	J. Kalief (2.00) S. Gold (0.50)	J. Streisfeld (2.50)	A. Gold (2.80)
Motion for Final Approval and Application for Attorneys' Fees, Costs, and Service Awards	J. Kalief (5.00) S. Gold (15.00)	J. Ostrow (1.50) J. Streisfeld (22.50) T. Becker (5.25)	A. Gold (2.70) C. Rowe (0.20)
Final Approval Hearing Preparation, Hearing Attendance, Post-Final Approval Work (<i>estimated</i>)	S. Gold (10.0)	J. Ostrow (10.00) J. Streisfeld (10.00)	A. Gold (10.0)
TOTALS BY FIRM	J. Kalief (132.00) S. Gold (104.30) N. Garcia (7.40) Total Hours 243.70	J. Ostrow. (26.25) J. Streisfeld (116.25) D. Tropin (14.75) R. Glaser (14.75) T. Becker (18.00) Total Hours 170.25	A. Gold (146.30) M. Lanahan (49.70) H. Zavareei (1.80) M. Dunn (5.60) M. Folkerts (12.50) N. Porzenheim (2.5) J. Morrison (1.00) C. Rowe (0.20) Total Hours 219.60

63. The hourly rates for each Class Counsel law firm are broken down as follows:

KalielGold PLLC

Jeffrey D. Kaliel - \$759.00

Sophia G. Gold - \$465.00

Kopelowitz Ostrow

Jeff Ostrow - \$775.00

Jonathan Streisfeld - \$775.00

Daniel Tropin - \$500.00

Rachel Glaser - \$200.00; \$350.00²

Todd Becker (paralegal)- \$200.00

Tycko & Zavareei LLP

Andrea Gold - \$764

Matthew Lanahan - \$676

Hassan Zavareei - \$919

Maura Dunn (paralegal) - \$208

Matthew Folkerts (paralegal) - \$208

Nicole Porzenheim (paralegal) - \$208

James Morrison (paralegal) - \$208

Connor Rowe (paralegal) - \$208

64. Additionally, the lodestar for calculation for local New York counsel, Reese LLP, is addressed in the Declaration of Michael Reese, Esq., which reports 64.5 hours for Reese LLP at Mr. Reese's hourly rate of \$1,050.00 for a total lodestar of \$67,725.00. *See Exhibit 4.*

65. The time and lodestar expended by the attorneys, paralegals, and law clerks at all three law firms is as follows:

- a. KalielGold PLLC – 243.70, **\$150,886.70**
- b. Kopelowitz Ostrow – 170.25, **\$125,900.00**
- c. Tycko & Zavareei LLP – 219.60, **\$151,559.00**
- d. Reese LLP – 64.5, **\$67,725.00**

66. The total time of all firms is **698.05** hours (including estimated time), with a total lodestar of **\$496,070.70**.

67. Cognizant of the need to work efficiently, Plaintiff's counsel coordinated their work to avoid duplication of effort and assigned work to associates and paralegal personnel whenever possible and prudent to keep costs low.

² Ms. Glaser became an attorney on November 23, 2020. Before that, she was a KO law clerk.

68. An attorneys' fee request of 33.33% results in a lodestar multiplier of **1.23**. This multiplier falls within the range of multipliers awarded in New York and the Second Circuit.

69. The retention agreement with Plaintiff is a contingent fee agreement. The requested 33.33% fee has routinely been awarded in similar bank fee litigation and in class action litigation in general, in courts across the country, as referenced in the Motion.

Cost Reimbursement

70. Class Counsel requests reimbursement of **\$29,515.86** for actual costs advanced and necessarily incurred in connection with the prosecution and Settlement of the Action.

71. Specifically, those costs and expenses consist of filing fees and service of process costs, pro hac vice admission fees, deposition fees, expert witness fees, and, most substantially, the services of a well-qualified mediator.

72. 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.

73. The total costs and expenses incurred by both all law firms in this Action are:

Category	Kaliel Gold PLLC	Kopelowitz Ostrow	Tycko & Zavareei	Reese LLP
Filing Fee		\$19.00		\$400.00
Pro Hac Vice Fees		\$508.92	\$91.00	
Process Service			\$407.76	
Mediation Fees	\$3,897.92	\$6,315.79	\$5,585.37	
Deposition Fees		\$390.10		
Expert Fees		\$11,300.00		
Total	\$3,897.92	\$19,133.81	\$6,084.13	\$400.00

Service Award

74. A \$5,000.00 Service Award is sought for Plaintiff. Plaintiff invested significant time in this case and risked her reputations in doing so, by publicly disclosing her personal financial difficulties, creating notoriety regardless of here success on the claims. Had she failed, she created risk to her reputations. She should be commended for taking action to protect the interests of

approximately 42,920 of Defendant's Account Holders who were affected by Defendant's practices, on top of her own individual claims. It cannot be disputed that the Plaintiff's efforts have created extraordinary financial benefits for the Retry Fee Class and Sufficient Funds Fee Class, compensating them for past harm. Plaintiff expended hours in advancing this litigation against a large and powerful adversary. She conferred with Class Counsel on a number of occasions.

75. Specifically, Plaintiff 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 settlement documentation.

76. In our experience, a **\$5,000.00** service award to Plaintiff is reasonable and in line with amounts regularly awarded by courts in similar litigation.

I declare under penalty of perjury that the foregoing is true of my own personal knowledge.
Executed in Fort Lauderdale, Florida this 9th day of April, 2022.

/s/ Jeff Ostrow
JEFF OSTROW

I declare under penalty of perjury that the foregoing is true of my own personal knowledge.
Executed in Kensington, Maryland this 9th day of April, 2022.

/s/ Andrea Gold
ANDREA GOLD

I declare under penalty of perjury that the foregoing is true of my own personal knowledge.
Executed in Albany, California this 9th day of April, 2022.

/s/ Sophia Gold
SOPHIA GOLD

EXHIBIT 1



FIRM RESUME

One West Las Olas Boulevard, Suite 500
Fort Lauderdale, Florida 33301

Telephone: 954.525.4100

Facsimile: 954.525.4300

Website: www.kolawyers.com

Miami – Fort Lauderdale – Boca Raton

OUR FIRM

For over two decades, Kopelowitz Ostrow Ferguson Weiselberg Gilbert (KO) has provided comprehensive, results-oriented legal representation to individual, business, and government clients throughout Florida and the rest of the country. KO has the experience and capacity to represent its clients effectively and has the legal resources to address almost any legal need. The firm's 26-plus attorneys have practiced at several of the nation's largest and most prestigious firms and are skilled in almost all phases of law, including consumer class actions, multidistrict litigation involving mass tort actions, complex commercial litigation, and corporate transactions. In the class action arena, the firm has experience not only representing individual aggrieved consumers, but also defending large institutional clients, including multiple Fortune 100 companies.

WHO WE ARE

The firm has a roster of accomplished attorneys. Clients have an opportunity to work with some of the finest lawyers in Florida and the United States, each one committed to upholding KO's principles of professionalism, integrity, and personal service. Among our roster, you'll find attorneys whose accomplishments include: being listed among the "Legal Elite Attorneys" and as "Florida Super Lawyers"; achieving an AV® Preeminent™ rating by the Martindale-Hubbell peer review process; being Board Certified in their specialty; serving as in-house counsel for major corporations, as a city attorney handling government affairs, as a public defender, and as a prosecutor; achieving multi-millions of dollars through verdicts and settlements in trials, arbitrations, and alternative dispute resolution procedures; successfully winning appeals at every level in Florida state and federal courts; and serving government in various elected and appointed positions.

KO has the experience and resources necessary to represent large putative classes. The firm's attorneys are not simply litigators, but rather, experienced trial attorneys with the support staff and resources needed to coordinate complex cases.

CLASS ACTION PLAINTIFF

Since its founding, KO has initiated and served as co-lead counsel and liaison counsel in many high-profile class actions. Currently, the firm serves as liaison counsel in a multidistrict class action antitrust case against four of the largest contact lens manufacturers pending before Judge Schlesinger in the Middle District of Florida. *See In Re: Disposable Contact Lens Antitrust Litigation*, MDL 2626 as well as co-lead counsel in *In re Zantac (Ranitidine) Prods. Liab. Litig.*, 9:20-md-02924-RLR (S.D. Fla.).

Further, the firm has served or is currently serving as lead or co-lead counsel in dozens of certified and/or proposed class actions against national and regional banks involving the unlawful re-sequencing of debit and ATM transactions resulting in manufactured overdraft fees, and other legal theories pertaining to overdraft fees and insufficient funds (NSF) fees. The cases are pending, or were pending, in various federal and state jurisdictions throughout the country, including some in multidistrict litigation pending in the Southern District of Florida and others in federal and state courts dispersed throughout the country. KO's substantial knowledge and experience litigating overdraft class actions and analyzing overdraft damage data has enabled the firm to obtain about a dozen multi-million dollar settlements (in excess of \$400 million) for the classes KO represents.

Additionally, other current cases are being litigated against automobile insurers for failing to pay benefits owed to insureds with total loss vehicle claims; data breaches; false advertising; defective consumer products and vehicles; antitrust violations; and suits on behalf of students against colleges and universities arising out of the COVID-19 pandemic.

The firm has in the past litigated certified and proposed class actions against Blue Cross Blue Shield and United Healthcare related to their improper reimbursements of health insurance benefits. Other insurance cases include auto insurers failing to pay benefits owed to insureds with total loss vehicle claims. Other class action cases include cases against Microsoft Corporation related to its Xbox 360 gaming platform, ten of the largest oil companies in the world in connection with the destructive propensities of ethanol and its impact on boats, Nationwide Insurance for improper mortgage fee assessments, and several of the nation's largest retailers for deceptive advertising and marketing at their retail outlets and factory stores.

CLASS ACTION DEFENSE

The firm also brings experience in successfully defended many class actions on behalf of banking institutions, mortgage providers and servicers, an aircraft maker and U.S. Dept. of Defense contractor, a manufacturer of breast implants, and a national fitness chain.

MASS TORT LITIGATION

The firm also has extensive experience in mass tort litigation, including the handling of cases against Bausch & Lomb in connection with its Renu with MoistureLoc product, Wyeth Pharmaceuticals related to Prempro, Bayer Corporation related to its birth control pill YAZ, and Howmedica Osteonics Corporation related to the Stryker Rejuvenate and AGB II hip implants. In connection with the foregoing, some of which has been litigated within the multidistrict arena, the firm has obtained millions in recoveries for its clients.

OTHER AREAS OF PRACTICE

In addition to class action and mass tort litigation, the firm has extensive experience in the following practice areas: commercial and general civil litigation, corporate transactions, health law, insurance law, labor and employment law, marital and family law, real estate litigation and transaction, government affairs, receivership, construction law, appellate practice, estate planning, wealth preservation, healthcare provider reimbursement and contractual disputes, white collar and criminal defense, employment contracts, environmental, and alternative dispute resolution.

FIND US ONLINE

To learn more about KO, or any of the firm's other attorneys, please visit www.kolawyers.com.

CLASS ACTION AND MASS TORT SETTLEMENTS**FINANCIAL
INSTITUTIONS**

Smith v. Fifth Third Bank, 1:18-cv-00464-DRC-SKB (W.D. Ohio 2021) - \$5.2 million

Lambert v. Navy Federal Credit Union, 1:19-cv-00103-LO-MSN (S.D. Va. 2021) - \$16 million

Roberts v. Capital One, N.A., 16 Civ. 4841 (LGS) (S.D.N.Y 2021) - \$17 million

Baptiste v. GTE Financial, 20-CA-002728 (Cir. Ct. Hillsborough 2021) - \$975,000,000

Morris v. Provident Credit Union, CGC-19-581616 (Sup. Ct. San Francisco 2020) - \$1.1 million

Lloyd v. Navy Federal Credit Union, 17-cv-01280-BAS-RBB (S.D. Ca. 2019) - \$24.5 million

Farrell v. Bank of America, N.A., 3:16-cv-00492-L-WVG (S.D. Ca. 2018) - \$66.6 million

Bodnar v. Bank of America, N.A., 5:14-cv-03224-EGS (E.D. Pa. 2015) - \$27.5 million

Morton v. Green Bank, 11-135-IV (20th Judicial District Tenn. 2018) - \$1.5 million

Hawkins v. First Tennessee Bank, CT-004085-11 (13th Judicial District Tenn. 2017) - \$16.75 million

Payne v. Old National Bank, 82C01-1012 (Cir. Ct. Vanderburgh 2016) - \$4.75 million

Swift v. Bancorpsouth, 1:10-CV-00090 (N.D. Fla. 2016) - \$24.0 million

Mello v. Susquehanna Bank, 1:09-MD-02046 (S.D. Fla. 2014) – \$3.68 million

Johnson v. Community Bank, 3:11-CV-01405 (M.D. Pa. 2013) - \$1.5 million

McKinley v. Great Western Bank, 1:09-MD-02036 (S.D. Fla. 2013) - \$2.2 million

Blabut v. Harris Bank, 1:09-MD-02036 (S.D. Fla. 2013) - \$9.4 million

Wolfgeher Commerce Bank, 1:09-MD-02036 (S.D. Fla. 2013) - \$18.3 million

Case v. Bank of Oklahoma, 09-MD-02036 (S.D. Fla. 2012) - \$19.0 million

Hawthorne v. Umpqua Bank, 3:11-CV-06700 (N.D.Ca. 2012) - \$2.9 million

Simpson v. Citizens Bank, 2:12-CV-10267 (E.D. Mi. 2012) - \$2.0 million

Nelson v. Rabobank, RIC 1101391 (Riverside County, Ca. 2012) - \$2.4 million

Harris v. Associated Bank, 1:09-MD-02036 (S.D. Fla. 2012) - \$13.0 million

LaCour v. Whitney Bank, 8:11-CV-1896 (M.D. Fla. 2012) - \$6.8 million

Orallo v. Bank of the West, 1:09-MD-202036 (S.D. Fla. 2012) - \$18.0 million

Taulava v. Bank of Hawaii, 11-1-0337-02 (1st Cir. Hawaii 2011) - \$9.0 million

Trevino v. Westamerica, CIV 1003690 (Marin County, CA 2010) - \$2.0 million

FALSE PRICING

Gattinella v. Michael Kors (USA), 14-Civ-5731 (WHP) (S.D. NY 2015) - \$4.875 million

Stathakos v. Columbia Sportswear, 4:15-cv-04543-YGR (N.D. Ca. 2018) - Injunctive relief prohibiting deceptive pricing practices

CONSUMER PROTECTION

Ostendorf v. Grange Indemnity Ins. Co., 2:19-cv-01147-ALM-KAJ (E.D. Ohio 2020) – \$12.6 million

Walters v. Target Corp., 3:16-cv-1678-L-MDD (S.D. Cal. 2020) – \$8.2 million

Papa v. Grieco Ford Fort Lauderdale, LLC, 18-cv-21897-JEM (S.D. Fla. 2019) - \$4.9 million

Bloom v. Jenny Craig, Inc., 18-cv-21820-KMM (S.D. Fla. 2019) - \$3 million

DiPuglia v. US Coachways, Inc., 1:17-cv-23006-MGC (S.D. Fla. 2018) - \$2.6 million

Masson v. Tallahassee Dodge Chrysler Jeep, LLC, 1:17-cv-22967-FAM (S.D. Fla. 2018) - \$850,000

MASS TORT

In re Zantac (Ranitidine) Prods. Liab. Litig., 9:20-md-02924-RLR (S.D. Fla.) - MDL No. 2924 – Co-Lead Counsel

In re: Stryker Rejuvenate and ABG II PRODUCTS LIABILITY LITIGATION, 13-MD-2411 (17th Jud. Cir. Fla. Complex Litigation Division)

In re: National Prescription Opiate Litigation, 1:17-md-02804-DAP (N.D. Ohio) - MDL 2804

In re: Smith and Nephew BHR Hip Implant Products Liability Litigation, MDL-17-md-2775

Yasmin and YAZ Marketing, Sales Practices and Products Liability Litigation, 3:09-md-02100-DRH-PMF (S.D. Ill.) – MDL 2100

In re: Prempro Products Liability Litigation, MDL Docket No. 1507, No. 03-cv-1507 (E.D. Ark.)



JEFF OSTROW

Managing Partner

Bar Admissions

The Florida Bar

Court Admissions

Supreme Court of the United States

U.S. Court of Appeals for the Eleventh Circuit

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

U.S. District Court, Northern District of Florida

U.S. District Court, Northern District of Illinois

U.S. District Court, Eastern District of Michigan

U.S. District Court, Western District of Tennessee

U.S. District Court, Western District of Wisconsin

Education

Nova Southeastern University, J.D. - 1997

University of Florida, B.S. - 1994

Email: Ostrow@kolawyers.com

Jeff Ostrow is the Managing Partner of Kopelowitz Ostrow P.A. He established his own law practice immediately upon graduation from law school in 1997, co-founded the current firm in 2001, and has since grown it to nearly 50 attorneys in 3 offices throughout South Florida. In addition to overseeing the firm's day-to-day operations and strategic direction, Mr. Ostrow practices full time in the areas of consumer class actions, sports and business law. He is a Martindale-Hubbell AV® Preeminent™ rated attorney in both legal ability and ethics.

Mr. Ostrow is an accomplished trial attorney who represents both Plaintiffs and Defendants, successfully trying many cases to verdict involving multi-million dollar damage claims in state and federal courts. Currently, he serves as lead counsel in nationwide and statewide class action lawsuits against many of the world's largest financial institutions in connection with the unlawful assessment of fees. To date, his efforts have successfully resulted in the recovery of over \$400,000,000 for tens of millions of bank customers, as well as monumental changes in the way banks assess fees. In addition, Mr. Ostrow has litigated consumer class actions against some of the world's largest clothing retailers, health insurance carriers, technology companies, and oil conglomerates, along with serving as class action defense counsel for some of the largest advertising and marketing agencies in the world, banking institutions, real estate developers, and mortgage companies.

Mr. Ostrow often serves as outside General Counsel to companies, advising them in connection with their legal and regulatory needs. He has represented many Fortune 500® Companies in connection with their Florida litigation. He has handled cases covered by media outlets throughout the country and has been quoted many times on various legal topics in almost every major news publication, including the Wall Street Journal, New York Times, Washington Post, Miami Herald, and Sun-Sentinel. He has also appeared on CNN, ABC, NBC, CBS, FoxNews, ESPN, and almost every other major national and international television network in connection with his cases, which often involve industry changing litigation or athletes in Olympic Swimming, the NFL, NBA and MLB.

In addition to the law practice, he is the President of ProPlayer Sports LLC, a full-service sports agency and marketing firm. He represents both Olympic swimmers and select NFL athletes and is licensed by both the NFL Players Association and the NBA Players Association as a certified Contract Advisor. Mr. Ostrow handles all player-team negotiations of contracts, represents his clients in legal proceedings, negotiates all marketing engagements, and oversees public relations and crisis management. He has extensive experience in negotiating, mediating and arbitrating a wide-range of issues on behalf of clients with the NFL Players Association, the International Olympic Committee, the United States Olympic Committee, USA Swimming and the United States Anti-Doping Agency.

He is the founder and President of Class Action Lawyers of American, a member of the Public Justice Foundation, and a lifetime member of the Million Dollar Advocates Forum. The Million Dollar Advocates Forum is the most prestigious group of trial lawyers in the United States. Membership is limited to attorneys who have won multi-million dollar verdicts. Additionally, he has been named as one of the top lawyers in Florida by Super Lawyers® for several years running, honored as one of Florida's Legal Elite Attorneys, recognized as a Leader in Law by the Lifestyle Media Group®, and nominated by the South Florida Business Journal® as a finalist for its Key Partners Award. Mr. Ostrow is a recipient of the Gator 100 award for the fastest growing University of Florida alumni-owned law firm in the world.'

When not practicing law, Mr. Ostrow serves on the Board of Governors of Nova Southeastern University's Wayne Huizenga School of Business and is a Member of the Broward County Courthouse Advisory Task Force. He is also the Managing Member of One West LOA LLC, a commercial real estate development company. Mr. Ostrow is a founding board member for the Jorge Nation Foundation, a 501(c)(3) non-profit organization that partners with the Joe DiMaggio Children's Hospital to send children diagnosed with cancer on all-inclusive Dream Trips to destinations of their choice. He has previously sat on the boards of a national banking institution and a national healthcare marketing company.



ROBERT C. GILBERT

Partner

Bar Admissions

The Florida Bar

District of Columbia Bar

Court Admissions

Supreme Court of the United States

U.S. Court of Appeals for the 11th Circuit

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

Education

University of Miami School of Law, J.D. - 1985

Florida International University, B.S. - 1982

Email: Gilbert@kolawyers.com

Robert C. “Bobby” Gilbert has over three decades of experience handling class actions, multidistrict litigation and complex business litigation throughout the United States. He has been appointed lead counsel, co-lead counsel, coordinating counsel or liaison counsel in many federal and state court class actions. Bobby has served as trial counsel in class actions and complex business litigation tried before judges, juries and arbitrators. He has also briefed and argued numerous appeals, including two precedent-setting cases before the Florida Supreme Court.

Bobby was appointed as Plaintiffs’ Coordinating Counsel in *In re Checking Account Overdraft Litig.*, MDL 2036, class action litigation brought against many of the nation’s largest banks that challenged the banks’ internal practice of reordering debit card transactions in a manner designed to maximize the frequency of customer overdrafts. In that role, Bobby managed the large team of lawyers who prosecuted the class actions and served as the plaintiffs’ liaison with the Court regarding management and administration of the multidistrict litigation. He also led or participated in settlement negotiations with the banks that resulted in settlements exceeding \$1.1 billion, including Bank of America (\$410 million), Citizens Financial (\$137.5 million), JPMorgan Chase Bank (\$110 million), PNC Bank (\$90 million), TD Bank (\$62 million), U.S. Bank (\$55 million), Union Bank (\$35 million) and Capital One (\$31.7 million).

Bobby has been appointed to leadership positions in numerous other class actions and multidistrict litigation proceedings. He is currently serving as co-lead counsel in *In re Zantac (Ranitidine) Prods. Liab. Litig.*, 9:20-md-02924-RLR (S.D. Fla.), as well as liaison counsel in *In re Disposable Contact Lens Antitrust Litig.*, MDL 2626 (M.D. Fla.); liaison counsel in *In re 21st Century Oncology Customer Data Security Beach Litig.*, MDL 2737 (M.D. Fla.); and *In re Farm-Raised Salmon and Salmon Products Antitrust Litig.*, No. 19-21551 (S.D. Fla.). He previously served as liaison counsel for indirect purchasers in *In re Terazosin Hydrochloride Antitrust Litig.*, MDL 1317 (S.D. Fla.), an antitrust class action that settled for over \$74 million.

For the past 18 years, Bobby has represented thousands of Florida homeowners in class actions to recover full compensation under the Florida Constitution based on the Florida Department of Agriculture's taking and destruction of the homeowners' private property. As lead counsel, Bobby argued before the Florida Supreme Court to establish the homeowners' right to pursue their claims; served as trial counsel in non-jury liability trials followed by jury trials that established the amount of full compensation owed to the homeowners for their private property; and handled all appellate proceedings. Bobby's tireless efforts on behalf of the homeowners resulted in judgments exceeding \$93 million.

Bobby previously served as an Adjunct Professor at Vanderbilt University Law School, where he co-taught a course on complex litigation in federal courts that focused on multidistrict litigation and class actions. He continues to frequently lecture and make presentations on a variety of topics.

Bobby has served for many years as a trustee of the Greater Miami Jewish Federation and previously served as chairman of the board of the Alexander Muss High School in Israel, and as a trustee of The Miami Foundation.



JONATHAN M. STREISFELD

Partner

Bar Admissions

The Florida Bar

Court Admissions

Supreme Court of the United States

U.S. Court of Appeals for the First, Second, Fourth, Fifth, Ninth, and Eleventh Circuits

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

U.S. District Court, Northern District of Florida

U.S. District Court, Northern District of Illinois

U.S. District Court, Western District of Michigan

U.S. District Court, Western District of New York

U.S. District Court, Western District of Tennessee

Education

Nova Southeastern University, J.D. - 1997

Syracuse University, B.S. - 1994

Email: streisfeld@kolawyers.com

Jonathan M. Streisfeld joined KO as a partner in 2008. Mr. Streisfeld concentrates his practice in the areas of consumer class actions, business litigation, and appeals nationwide. He is a Martindale-Hubbell AV® Preeminent™ rated attorney in both legal ability and ethics.

Mr. Streisfeld has vast and successful experience in class action litigation, serving as class counsel in nationwide and statewide consumer class action lawsuits against the nation's largest financial institutions in connection with the unlawful assessment of fees. To date, his efforts have successfully resulted in the recovery of over \$400,000,000 for millions of bank and credit union customers, as well as profound changes in the way banks assess fees. Additionally, he has and continues to serve as lead and class counsel for consumers in many class actions involving false advertising and pricing, defective products, and data breach. In addition, Mr. Streisfeld has litigated class actions against some of the largest health and automobile insurance carriers and oil conglomerates, and defended class and collective actions in other contexts.

Mr. Streisfeld has represented a variety of businesses and individuals in a broad range of business litigation matters, including contract, fraud, breach of fiduciary duty, intellectual property, real estate, shareholder disputes, wage and hour, and deceptive trade practices claims. He also assists business owners and individuals with documenting contractual relationships. Mr. Streisfeld also provides legal representation in bid protest proceedings.

Mr. Streisfeld oversees the firm's appellate and litigation support practice, representing clients in the appeal of final and non-final orders, as well as writs of certiorari, mandamus, and prohibition. His appellate practice includes civil and marital and family law matters.

Previously, Mr. Streisfeld served as outside assistant city attorney for the City of Plantation and Village of Wellington in a broad range of litigation matters.

As a member of The Florida Bar, Mr. Streisfeld served for many years on the Executive Council of the Appellate Practice Section and is a past Chair of the Section's Communications Committee. Mr. Streisfeld currently serves as a member of the Board of Temple Kol Ami Emanu-El.

JASON H. ALPERSTEIN

Partner

Bar Admissions

The Florida Bar
New York Bar

Court Admissions

U.S. Court of Appeals for the Sixth Circuit
U.S. Court of Appeals for the Ninth Circuit
U.S. District Court, Southern District of Florida
U.S. District Court, Middle District of Florida
U.S. District Court, Northern District of Florida
U.S. District Court, Southern District of New York
U.S. District Court, Eastern District of New York
U.S. District Court, Eastern District of Michigan
U.S. District Court, Western District of Michigan
U.S. District Court, Northern District of Illinois

Education

University of Miami School of Law, J.D. – 2008
University of Miami School of Business, M.B.A. – 2008
Brown University, B.A. – 2004

Email: alperstein@kolawyers.com

Jason Alperstein is a partner at Kopelowitz Ostrow P.A. (“KO”) and his practice focuses exclusively on the litigation of complex class actions, including cases involving automotive safety defects, mass torts, and data breaches. As a tireless advocate for consumers throughout his career, Jason has developed a track record of success in helping to implement significant business reforms and recover billions of dollars on behalf of those injured by fraudulent schemes and deceptive and unfair business practices.

Jason began his career as a class action litigator with KO in 2009 and rejoined the firm in 2021 after having the privilege of representing consumers around the country in some of the most important and unprecedented class actions. As a partner with Robbins Geller Rudman & Dowd LLP, Jason was an integral member of the team that litigated *In re Volkswagen “Clean Diesel” Marketing, Sales Practices, & Prods. Liab. Litig.*, No. 15-md-2672 (N.D. Cal.), prosecuting claims on behalf of almost 600,000 consumers who were duped into purchasing and leasing Volkswagen, Audi and Porsche vehicles that were marketed as environmentally friendly. In reality, those vehicles had been installed with “defeat devices” that concealed the vehicles’ true emission levels, which were up to 40 times the legal limit permitted by the EPA. Working closely with Lead Counsel and the Plaintiffs’ Steering Committee, Jason was involved in almost all aspects of the litigation, including at the appellate level. A series of settlements were ultimately reached on behalf of purchasers, lessees and dealers that totaled well over \$17 billion, the largest consumer automotive settlement in history.

On the heels of the landmark “Clean Diesel” settlement, Jason helped obtain an \$840 million global settlement in *In re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices and Prods. Liab. Litig.*, No. 3:17-md-02777-EMC (N.D. Cal.), for similar “defeat devices” installed in Jeep and Dodge diesel trucks and SUVs that were marketed as environmentally friendly “EcoDiesel” vehicles. Jason was also involved in some of the nation’s most significant privacy cases, including *In re Yahoo! Inc. Customer Data Security Breach Litig.*, No. 5:16-md-02752-LHK (N.D. Cal.), where he assisted Lead Counsel in obtaining a \$117.50 million recovery in the largest data breach in history.



Prior to these landmark recoveries, and as a partner with KO, Jason served on lead and co-lead litigation teams in nationwide and statewide class action lawsuits against dozens of the largest banking institutions in connection with the unlawful assessment of checking account overdraft fees. His efforts resulted in over \$250 million in settlements for his clients and significant changes in the way banks charge overdraft fees to their customers. In addition, Jason led consumer class actions against product manufacturers for false and deceptive labeling, and some of the world's largest clothing retailers for their use of false and deceptive comparative pricing in their outlet stores. Before shifting his focus to class action litigation, Jason successfully represented institutional investors in securities fraud and derivative actions seeking damages related to the origination and servicing of residential mortgage-backed securities. He also gained substantial experience representing both plaintiffs and defendants in business litigation disputes involving trademark infringement, theft of trade secrets, fraudulent and negligent misrepresentation, breach of fiduciary duty, breach of contract, tortious interference, and commercial real estate litigation.

Jason has been recognized by several leading industry organizations for the success he has achieved in the class action practice area. For the past three years, *Benchmark Litigation* has named him to its 40 & Under Hot List (previously known as the Under 40 Hot List) for being an "ambitious and accomplished lawyer[] [who] frequently handle[s] major cases – some of which are high-stakes or precedent-setting." The publication honors "the best and brightest law firm partners who stand out in their practices throughout the US and in Canada." In 2017, Jason was recognized by *Law360* as a Consumer Protection Rising Star, and from 2014-2019 was selected as a *Florida Super Lawyer* "Rising Star" in the Class Action & Mass Tort category. Jason is also a frequent speaker on issues pertaining to class action practice and procedure, having presented for The Florida Bar, the Florida Alliance of Paralegal Associations, and the Stanford Plaintiffs' Lawyers Association.

Jason earned a dual Bachelor of Arts degree in Political Science and Sociology, with honors, from Brown University. While at Brown, he was a sprinter on the Varsity Track & Field team, studied at the University of Melbourne in Australia, and served as an intern for Judge Gilbert V. Indeglia of the Superior Court of Rhode Island. Jason received a Juris Doctor degree, cum laude, from the University of Miami School of Law, where he was a member of the Business Law Review, and a Masters of Business Administration in Finance from the University of Miami School of Business, where he was a Graduate Assistant Scholar.

Jason is a native of South Florida and is the past Miami-Dade Area Chair of the Brown Alumni Schools Committee. He also is a founding member of the American Heart Association's PULSE, has been inducted into the Leadership Broward Foundation, and is a graduate of the National Outdoor Leadership School (NOLS). Prior to practicing law, Jason served as an intern for United States Senator Bob Graham in Washington, D.C., and as an intern for Wolf Blitzer Reports in the Washington, D.C. bureau of CNN.



DANIEL TROPIN

Partner

Bar Admissions

The Florida Bar

Court Admissions

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

Education

University of Virginia, J.D. - 2012

Emory University, B.A. - 2008

Email: tropin@kolawyers.com

Daniel Tropin is a litigator who specializes in complex commercial cases and class action litigation. Mr. Tropin joined the law firm as a partner in 2018, and has a wealth of experience across the spectrum of litigation, including class actions, derivative actions, trade secrets, arbitrations, and product liability cases.

Mr. Tropin graduated from the University of Virginia law school in 2012, and prior to joining this firm, was an associate at a major Miami law firm and helped launch a new law firm in Wynwood. He was given the Daily Business Review's Most Effective Lawyers, Corporate Securities award in 2014. His previous representative matters include:

- Represented a major homebuilder in an action against a former business partner, who had engaged in a fraud and defamation scheme to extort money from the client. Following a jury trial, the homebuilder was awarded \$1.02 billion in damages. The award was affirmed on appeal.
- Represented the former president and CEO of a cruise line in a lawsuit against a major international venture capital conglomerate, travel and entertainment company, based on allegations of misappropriation of trade secrets, breach of a non-disclosure agreement, and breach of a partnership agreement.
- Represented the CEO of a rapid finance company in an action seeking injunctive relief to protect his interest in the company.
- Represented a medical supply distribution company in an action that involved allegations of misappropriation and breach of a non-circumvention agreement.
- Represented a mobile phone manufacturer and distributor in a multi-million-dollar dispute regarding membership interests in a Limited Liability Company, with claims alleging misappropriation of trade secrets and breach of fiduciary duty.
- Represented a major liquor manufacturer in a products liability lawsuit arising out of an incident involving flaming alcohol.



JOSH LEVINE

Partner

Bar Admissions

The Florida Bar

Court Admissions

U.S. Court of Appeals for the Fifth Circuit

U.S. Court of Appeals for the Sixth Circuit

U.S. Court of Appeals for the Eleventh Circuit

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

U.S. District Court, Northern District of Illinois

Education

University of Miami School of Law, J.D. - 2011

University of Central Florida, B.A. - 2006

Email: levine@kolawyers.com

Josh Levine is a litigation attorney, and his practice takes him all over the State of Florida and the United States. Mr. Levine focuses on civil litigation and appellate practice, primarily in the areas of class actions and commercial litigation.

Mr. Levine has handled over 175 appeals in all five of Florida's District Courts of Appeal and the Florida Supreme Court, as well as multiple federal appellate courts. Mr. Levine has represented both businesses and individuals in litigation matters, including contractual claims, fraud, breach of fiduciary duty, negligence, professional liability, enforcement of non-compete agreements, trade secret infringement, real estate and title claims, other business torts, insurance coverage disputes, as well as consumer protection statutes.

Mr. Levine is a member of the Florida Bar Appellate Court Rules Committee, currently serving as the vice-chair of the Civil Practice Subcommittee and is an active member of the Appellate Practice Section of the Florida Bar and the Broward County Bar Association. Mr. Levine recently completed a four-year term as a member of the Board of Directors of the Broward County Bar Association Young Lawyers Section.

Mr. Levine received a Juris Doctor degree, Magna Cum Laude, from the University of Miami School of Law. While attending law school, he served as an Articles and Comments Editor on the University of Miami Inter-American Law Review and was on the Dean's List, and a Merit Scholarship recipient. Mr. Levine also was awarded the Dean's Certificate of Achievement in Legal Research and Writing, Trusts & Estates, & Professional Responsibility classes.

Before joining KO, Mr. Levine worked at an Am Law 100 firm where he also focused on civil litigation and appellate practice, primarily representing banks, lenders, and loan servicers in consumer finance related litigation matters.

KRISTEN LAKE CARDOSO

Partner

Bar Admissions

The Florida Bar

Court Admissions

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

Education

Nova Southeastern University, J.D., 2007

University of Florida, B.A., 2004

Email: cardoso@kolawyers.com



Kristen Lake Cardoso is a litigation attorney focusing on complex commercial cases and consumer class actions. She has gained valuable experience representing individuals and businesses in state and federal courts at both the trial and appellate levels in a variety of litigation matters, including contractual claims, fraud, breach of fiduciary duty, negligence, professional liability, real estate claims, enforcement of non-compete agreements, trade secret infringement, shareholder disputes, deceptive trade practices, other business torts, as well as consumer protection statutes.

Mrs. Cardoso's class action cases have involved, amongst other things, data breaches, violations of state consumer protection statutes, and breaches of contract. Mrs. Cardoso has represented students seeking reimbursements of tuition, room and board, and other fees paid to their colleges and universities for in-person education, housing, meals, and other services not provided when campuses closed during the COVID-19 pandemic. Ms. Cardoso has also represented consumers seeking recovery of gambling losses from tech companies that profit from illegal gambling games offered, sold, and distributed on their platforms.

Mrs. Cardoso is admitted to practice law throughout the State of Florida, as well as in the United States District Courts for the Southern District of Florida and the Northern District of Florida. Mrs. Cardoso attended the University of Florida, where she received her Bachelor's degree in Political Science, cum laude. She received her law degree from Nova Southeastern University, magna cum laude. While in law school, Mrs. Cardoso served as an Articles Editor for the Nova Law Review, was on the Dean's List, and was the recipient of a scholarship granted by the Broward County Hispanic Bar Association for her academic achievements. When not practicing law, Mrs. Cardoso serves as a volunteer at Saint David Catholic School. She has also served on various committees with the Junior League of Greater Fort Lauderdale geared towards improving the local community through leadership and volunteering.

RACHEL GLASER

Associate



Bar Admissions

The Florida Bar

The California Bar

Court Admissions

U.S. District Court, Southern District of Florida

U.S. District Court, Southern District of California

Education

Nova Southeastern University, J.D., 2020

Florida State University, B.S., 2017

Email: glaser@kolawyers.com

Rachel Feder Glaser is an attorney in KO's Fort Lauderdale office and is an active member of the Florida Bar. Her practice focuses primarily on class action litigation. Ms. Glaser litigates consumer class action lawsuits, including cases against some of the largest financial institutions in Florida and around the United States, challenging their unlawful assessment and collection of account fees. She has also assisted the firm in class actions targeting auto insurance companies across the country, in connection with the failure to provide proper coverage in the event of a total vehicular loss.

Ms. Glaser earned her Juris Doctor, summa cum laude, from Nova Southeastern University, Shepard Broad College of Law, where she served as an Executive Board Member of the Nova Trial Association, Senior Associate for the Nova Law Review, and as a teaching assistant for the Legal Research and Writing department. Ms. Glaser was consistently placed on the Dean's List and received the Book Awards in Legal research and Writing, Evidence, and Trial Advocacy.

While in law school, Ms. Glaser participated in national competitions for both the Nova Trial Association and the Moot Court Honor Society, winning a National Championship at the 2019 Buffalo-Niagara Mock Trial Competition. For her excellence in advocacy, Ms. Glaser was inducted into the Order of the Barristers.

Ms. Glaser received a Bachelor of Science in both Accounting and Finance from Florida State University. While attending Florida State, she interned for the University's Office of Inspector General Services where she assisted internal auditors in investigating allegations related to compliance, fraud, and abuse of university resources.

EXHIBIT 2



Firm Resume

Jonathan Tycko and Hassan Zavareei founded Tycko & Zavareei LLP in 2002 when they left a large national firm to form a private public interest law firm. Since then, a wide range of clients have trusted the firm with their most difficult problems. Those clients include individuals fighting for their rights, tenants' associations battling to preserve decent and affordable housing, consumers seeking redress for unfair business practices, whistleblowers exposing fraud and corruption, and non-profit entities and businesses facing difficult litigation.

The firm's practice focuses on complex litigation, with a particular emphasis on consumer and other types of class actions, and *qui tam* and False Claims Act litigation. In its class action practice, the firm represent consumers who have been victims of corporate wrongdoing. The firm's attorneys bring a unique perspective to such litigation because many of them trained at major national defense firms where they obtained experience representing corporate defendants in such cases. This unique perspective enables the firm to anticipate and successfully counter the strategies commonly employed by corporate counsel defending class action litigation. Tycko & Zavareei LLP's attorneys have successfully obtained class certification, been appointed class counsel, and obtained approval of class action settlements with common funds totaling over \$500 million.

Tycko & Zavareei LLP's nineteen attorneys graduated from some of the nation's finest law schools, including Harvard Law School, Columbia Law School, Duke University School of Law, UC Berkeley School of Law, Georgetown Law, and the University of Michigan Law School. They have served in prestigious clerkships for federal and state trial and appellate judges and have worked for low-income clients through competitive public interest fellowships. The firm's diversity makes it a leader amongst its peers, and the firm actively and successfully recruits attorneys who are women, people of color, and LGBTQ. To support its mission of litigating in the public interest, Tycko & Zavareei LLP offers a unique public interest fellowship for recent law graduates. Tycko & Zavareei LLP's attorneys practice in state and federal courts across the nation.

Tycko & Zavareei LLP
1828 L St. NW, Suite 1000
Washington, DC 20036
202.973.0900

Tycko & Zavareei LLP
1970 Broadway, Suite 1070
Oakland, CA 94612
510.254.6808

Tycko & Zavareei LLP
10880 Wilshire Blvd., Suite 1101
Los Angeles, CA 90024
510.254.6808



Jonathan Tycko

Partner

202.973.0900

jtycko@tzlegal.com

In his 25 years of practice, Jonathan Tycko has represented a wide range of clients, including individuals, Fortune 500 companies, privately-held business, and non-profit associations, in both trial and appellate courts around the country. Although he continues to handle a variety of cases, his current practice is focused primarily on helping whistleblowers expose fraud and corruption through qui tam litigation under the False Claims Act and other similar whistleblower statutes. Mr. Tycko's whistleblower clients have brought to light hundreds of millions of dollars in fraud in cases involving healthcare, government contracts, customs and import duties, banking and tax.

Prior to founding Tycko & Zavareei LLP in 2002, Mr. Tycko was with Gibson, Dunn & Crutcher LLP, one of the nation's top law firms. He received his law degree in 1992 from Columbia University Law School, and earned a B.A. degree, with honors, in 1989 from The Johns Hopkins University. After graduating from law school, Mr. Tycko served for two years as law clerk to Judge Alexander Harvey, II, of the United States District Court for the District of Maryland.

In addition to his private practice, Mr. Tycko is an active participant in other law-related and community activities. He currently serves on the Conference Committee of the Taxpayers Against Fraud Education Fund, charged with planning the premier annual conference of whistleblower attorneys and their counterparts at the United States Department of Justice and other government agencies. He has taught as an Adjunct Professor at the George Washington University Law School. He is a former member and Chairperson of the Rules of Professional Conduct Review Committee of the District of Columbia Bar, where he helped draft the ethics rules governing members of the bar. And Mr. Tycko is a member of the Board of Trustees of Studio Theatre, one of the D.C. area's top non-profit theaters.

Mr. Tycko is admitted to practice before the courts of the District of Columbia, Maryland and New York, as well as before numerous federal courts, including the Supreme Court, the Circuit Courts for the D.C. Circuit, Third Circuit, Fourth Circuit, Fifth Circuit, Seventh Circuit, Ninth Circuit, Eleventh Circuit and Federal Circuit, the District Courts for the District of Columbia and District of Maryland, the Southern District of New York, the Northern District of New York, the Western District of New York, and the Court of Federal Claims.



Education

Columbia University Law School,
1992

The Johns Hopkins University, 1989,
with Honors

Bar Admissions

District of Columbia
Maryland
New York
Supreme Court of the United States

Memberships

American Association for Justice
(AAJ)
Public Justice
Taxpayers Against Fraud Education
Fund (TAFEF)

Awards

Stone Scholar (all three years),
Columbia Law School
Thomas E. Dewey Prize for Best
Brief, Harlan Fiske Stone Moot Court
Competition, Columbia Law School
Award of Litigation Excellence,
CARECEN-The Central American
Resource Center
Super Lawyers, 2012-current
Member of the D.C. Bar Leadership
Academy



Hassan A. Zavareei

Partner

202.973.0900

hzavareei@tzlegal.com

Mr. Zavareei has devoted the last eighteen years to recovering hundreds of millions of dollars on behalf of consumers and workers. He has served in leadership roles in dozens of class action cases and has been appointed Class Counsel on behalf of numerous litigation and settlement classes. An accomplished and experienced attorney, Mr. Zavareei has litigated in state and federal courts across the nation in a wide range of practice areas; tried several cases to verdict; and successfully argued numerous appeals, including in the D.C. Circuit, the Fourth Circuit, and the Fifth Circuit.

After graduating from UC Berkeley School of Law, Mr. Zavareei joined the Washington, D.C. office of Gibson, Dunn & Crutcher LLP. There, he managed the defense of a nationwide class action brought against a major insurance carrier, along with other complex civil matters. In 2002, Mr. Zavareei founded Tycko & Zavareei LLP with his partner Jonathan Tycko.

Mr. Zavareei has served as lead counsel or co-counsel in dozens of class actions involving deceptive business practices, defective products, and/or privacy. He has been appointed to leadership roles in multiple cases. As Lead Counsel in an MDL against a financial services company that provided predatory debit cards to college students, Mr. Zavareei spearheaded a fifteen-million-dollar recovery for class members. He is currently serving as Co-Lead Counsel in consolidated proceedings against Fifth Third Bank, and on the Plaintiffs' Executive Committee in MDL litigation against TD Bank. As Co-Lead Counsel in *Farrell v. Bank of America*, a case challenging Bank of America's punitive overdraft fees, Mr. Zavareei secured a class settlement valued at \$66.6 million in cash and debt relief, together with injunctive relief forcing the bank to change a practice that will save millions of low-income consumers approximately \$1.2 billion in overdraft fees. In his Order granting final approval, Judge Lorenz of the U.S. District Court for the Southern District of California described the outcome as a "remarkable" accomplishment achieved through "tenacity and great skill."



Education

UC Berkeley School of Law, 1995,
Order of the Coif

Duke University, 1990, *cum laude*

Bar Admissions

California

District of Columbia

Maryland

Supreme Court of the United States

Memberships

Public Justice, Board Member

American Association for Justice

Awards

Washington Lawyers Committee,
Outstanding Achievement Award

Super Lawyer

Lawdragon 500

Presentations & Publications

Witness Before the Subcommittee on
the Constitution and Civil Justice,
115th Congress

Witness Before the Civil Rules
Advisory Committee, 2018, 2019

Editor, Duke Law School Center for
Judicial Studies, Guidance on New
Rule 23 Class Action Settlement
Provisions

Tycko & Zavareei LLP
1828 L St. NW, Suite 1000
Washington, DC 20036
202.973.0900

Tycko & Zavareei LLP
1970 Broadway, Suite 1070
Oakland, CA 94612
510.254.6808

Tycko & Zavareei LLP
10880 Wilshire Blvd., Suite 1101
Los Angeles, CA 90024
510.254.6808



Andrea R. Gold

Partner

202.973.0900
agold@tzlegal.com

Andrea Gold has spent her legal career advocating for consumers, employees, and whistleblowers. Ms. Gold has litigated numerous complex cases, including through trial. Her extensive litigation experience benefits the firm's clients in both national class action cases as well as in qui tam whistleblower litigation.

She has served as trial counsel in two lengthy jury trials.

In her class action practice, Ms. Gold has successfully defended dispositive motions, navigated complex discovery, worked closely with leading experts, and obtained contested class certification. Her class action cases have involved, amongst other things, unlawful bank fees, product defects, violations of the Telephone Consumer Protection Act, and deceptive advertising and sales practices.

Ms. Gold also has significant civil rights experience. She has represented individuals and groups of employees in employment litigation, obtaining substantial recoveries for employees who have faced discrimination, harassment, and other wrongful conduct. In addition, Ms. Gold has appellate experience in both state and federal court.

Prior to joining Tycko & Zavareei LLP, Ms. Gold was a Skadden fellow. The Skadden Fellowship Foundation was created by Skadden, Arps, Slate, Meagher & Flom LLP, one of the nation's top law firms, to support the work of new attorneys at public interest organizations around the country.

Ms. Gold earned her law degree from the University of Michigan Law School, where she was an associate editor of the Journal of Law Reform, co-President of the Law Students for Reproductive Choice, and a student attorney at the Family Law Project clinical program. Ms. Gold graduated with high distinction from the University of Michigan Ross School of Business in 2001, concentrating her studies in Finance and Marketing.



Education

University of Michigan Law School,
2004

University of Michigan, Ross School
of Business, 2001

Bar Admissions

District of Columbia
Illinois
Maryland

Memberships

American Association for Justice
National Associate of Consumer
Advocates
National Employment Lawyers
Association
Public Justice
Taxpayers Against Fraud Education
Fund

Awards

National Trial Lawyers, Top 100 Civil
Plaintiff Lawyers, 2020
Super Lawyers, Rising Star
Skadden Fellow, Skadden Arps Slate
Meagher & Flom LLP, 2004-2006



Anna Haac

Partner

202.973.0900
ahaac@tzlegal.com



Anna C. Haac is a Partner in Tycko & Zavareei LLP's Washington, D.C. office. She focuses her practice on consumer protection class actions and whistleblower litigation. Her prior experience at Covington & Burling LLP, one of the nation's most prestigious defense-side law firms, gives her a unique advantage when representing plaintiffs against large companies in complex cases. Since arriving at Tycko & Zavareei LLP, Ms. Haac has represented consumers in a wide range of practice areas, including product liability, false labeling, deceptive and unfair trade practices, and predatory financial practices. Her whistleblower practice involves claims for fraud on federal and state governments across an equally broad spectrum of industries, including health care fraud, customs fraud, and government contracting fraud.

Ms. Haac has helped secure multimillion-dollar relief on behalf of the classes and whistleblowers she represents. Ms. Haac also serves as the D.C. Co-Chair of the National Association of Consumer Advocates and as Co-Chair of the Antitrust and Consumer Law Section Steering Committee of the D.C. Bar.

Ms. Haac earned her law degree *cum laude* from the University of Michigan Law School in 2006 and went on to clerk for the Honorable Catherine C. Blake of the United States District Court for the District of Maryland. Prior to law school, Ms. Haac graduated with a B.A. in political science with Highest Distinction from the Honors Program at the University of North Carolina at Chapel Hill.

Ms. Haac is a member of the District of Columbia and Maryland state bars. She is also admitted to the United States Court of Appeals for the Second, Third, and Fourth Circuits and the United States District Courts for the District of Columbia, District of Maryland, and the Eastern District of Michigan, among others.

Education

University of Michigan Law School,
2006, *cum laude*

University of North Carolina at
Chapel Hill, 2002, Highest Honors

Bar Admissions

District of Columbia
Maryland

Memberships

Antitrust & Consumer Protection
Section of District of Columbia Bar,
Co-Chair

National Association of Consumer
Advocates, District of Columbia
Co-Chair

Awards

Super Lawyers, Rising Star, 2015

Presentations & Publications

Discussion Leader, "Practical Ideas
about Properly Framing the Issues
and Educating the Court and Public
in Filings Responding to Increasing
Attacks on Class Action Settlements
and Fees," Invitation-Only
Cambridge Forum on Plaintiffs'
Class Action Litigation (October
2020)

Tycko & Zavareei LLP
1828 L St. NW, Suite 1000
Washington, DC 20036
202.973.0900

Tycko & Zavareei LLP
1970 Broadway, Suite 1070
Oakland, CA 94612
510.254.6808

Tycko & Zavareei LLP
10880 Wilshire Blvd., Suite 1101
Los Angeles, CA 90024
510.254.6808



Annick M. Persinger

Partner

510.254.6808

apersinger@tzlegal.com

Annick M. Persinger leads Tycko & Zavareei LLP's California office as California's Managing Partner. While at Tycko & Zavareei LLP, Ms. Persinger has dedicated her practice to utilizing California's prohibitions against unfair competition and false advertising to advocate for consumers. Ms. Persinger has taken on financial institutions, companies that take advantage of consumers with deceptive advertising, tech companies that disregard user privacy, companies that sell defective products, and mortgage loan servicers. Ms. Persinger also represents whistleblowers who expose their employer's fraudulent practices.

Ms. Persinger graduated magna cum laude as a member of the Order of the Coif from the University of California, Hastings College of the Law in 2010. While in law school, Ms. Persinger served as a member of Hastings Women's Law Journal, and authored two published articles. In 2008, Ms. Persinger received an award for Best Oral Argument in the first year moot court competition. In 2007, Ms. Persinger graduated *cum laude* from the University of California, San Diego with a B.A. in Sociology, and minors in Law & Society and Psychology.

Following law school, Ms. Persinger worked as a legal research attorney for Judge John E. Munter in Complex Litigation at the San Francisco Superior Court.

Ms. Persinger served as an elected board member of the Bay Area Lawyers for Individual Freedom (BALIF) from 2017 to 2019, and as Co-Chair of BALIF from 2018 to 2019. During her term on the BALIF Board of Directors, Ms. Persinger advocated for LGBTQI community members with intersectional identities, and promoted anti-racism and anti-genderism. Ms. Persinger now serves as a Steering Committee member for the Cambridge Forum on Plaintiffs' Food Fraud Litigation.



Education

University of California Hastings College of Law, 2010, *magna cum laude*, Order of the Coif

University of California San Diego, 2007, *cum laude*

Bar Admissions

California

Memberships

American Association for Justice

Plaintiffs' Food Fraud Litigation, 2020 Steering Committee Member

Public Justice

Awards

Super Lawyer, Rising Star 2020

UC Hastings, Best Oral Argument 2008



Sabita J. Soneji

Partner

510.254.6808

ssoneji@tzlegal.com

In almost 20 years of practice, Sabita J. Soneji has developed extensive experience in litigation and legal policy at both the federal and state level and a passion for fighting consumer fraud. Now a Partner in Tycko & Zavareei LLP's Oakland office, she focuses on consumer protection class actions and whistleblower litigation. In addition to her success with novel Telephone Consumer Protection cases, False Claims Act cases involving insurance fraud, and deceptive and false advertising cases, Ms. Soneji serves in leadership on multi-district litigation against Juul, for its manufacture and marketing to youth of an addictive nicotine product. Ms. Soneji also successfully represents consumers harmed by massive data breaches and by corporate practices that collect and monetize user data without consent. She serves as head of the firm's Privacy and Data Breach Group.

Ms. Soneji began that work during her time with the United States Department of Justice, as Senior Counsel to the Assistant Attorney General. In that role, she oversaw civil and criminal prosecution of various forms of financial fraud that arose in the wake of the 2008 recession. For that work, Ms. Soneji partnered with other federal agencies, state attorneys' general, and consumer advocacy groups. Beyond that affirmative work, Ms. Soneji worked to defend various federal programs, including the Affordable Care Act in nationwide litigation.

Ms. Soneji has extensive civil litigation experience from her four years with international law firm, her work as an Assistant United States Attorney in the Northern District of California, and from serving as Deputy County Counsel for Santa Clara County, handling civil litigation on behalf of the County including regulatory, civil rights, and employment matters. She has successfully argued motions and conducted trials in both state and federal court and negotiated settlements in complex multi-party disputes.

Early in her career, Ms. Soneji clerked for the Honorable Gladys Kessler on the United States District Court for the District of Columbia, during which she assisted the judge in overseeing the largest civil case in American history, *United States v. Phillip Morris, et al.*, a civil RICO case brought against major tobacco manufacturers for fraud in the marketing, sale, and design of cigarettes. The opinion in that case paved the way for Congress to authorize FDA regulation of cigarettes.

Ms. Soneji is a graduate of the University of Houston, *summa cum laude*, with degrees in Math and Political Science, and Georgetown University Law Center, *magna cum laude*.



Education

Georgetown University Law Center,
magna cum laude

University of Houston, *summa cum laude*

Bar Admissions

District of Columbia
California

Memberships

American Association for Justice
(AAJ)

Public Justice

Taxpayers Against Fraud Education
Fund (TAFEF)

Awards

Attorney General's Award 2014

Presentations & Publications

NITA Trial Skills Faculty 2010-
present



Kristen G. Simplicio

Partner

202.973.0900

ksimplicio@tzlegal.com

Kristen G. Simplicio has devoted her career to representing victims of false advertising and corporate fraud. Prior to joining Tycko & Zavareei LLP's D.C. office in 2020, she spent ten years at a boutique class action firm in California. While there, she successfully litigated over a dozen false advertising cases against manufacturers of a variety of consumer products, including olive oil, flushable wipes, beverages, and chocolate. In connection with this work, she helped to obtain millions of dollars in refunds to consumers, as well as changed practices.

In addition to her product labeling work, Ms. Simplicio has represented plaintiffs in a wide variety of areas. For example, she was the lead associate on RICO case on behalf of small business owners against 18 defendants in the credit card processing industry. In connection with that case, she obtained a preliminary injunction halting an illegal \$10 million debt collection scheme, and later, helped to secure refunds and changed practices for the victims. She has also represented victims of other debt collectors, as well as those harmed by unlawful background and credit reporting, including a pro bono matter performed in conjunction with the Lawyers' Committee for Civil Rights of the San Francisco Bay Area. Ms. Simplicio also worked on a lawsuit against government agencies, which were charging unconstitutional fines and fees in connection with toll collection.

Ms. Simplicio graduated *cum laude* from American University, Washington College of Law in 2007. She holds a bachelor's degree from McGill University. She began her legal career at the United States Department of Labor, where she advised on regulations pertaining to group health insurance plans. Before and during law school, Ms. Simplicio worked for other plaintiffs' law firms.

Ms. Simplicio serves as the D.C. Co-Chair of the National Association of Consumer Advocates. She is admitted to practice in California and the District of Columbia.



Education

American University, Washington
College of Law, 2007, *cum laude*

McGill University, 1999

Bar Admissions

California
District of Columbia

Memberships

National Association of Consumer
Advocates

American Association for Justice



Renée Brooker

Partner

202.417.3664

reenebrooker@tzlegal.com

Bringing 30 years of practice, knowledge, and expertise as a former prosecutor in a senior leadership position at the United States Department of Justice, Renée Brooker is now representing whistleblowers. While at the Department of Justice for over two decades, Ms. Brooker was responsible for billions of dollars in recoveries under whistleblower laws. As an accomplished and experienced attorney, Ms. Brooker has advised and represented whistleblowers under the False Claims Act (FCA), the Anti-Kickback Statute and Stark Law, FIRREA (bank fraud, mail, and wire fraud), the Financial Institutions Anti-Fraud Enforcement Act (FIAFE), and the Whistleblower Programs of the SEC, the CFTC, and the IRS.

As Assistant Director within the Civil Division of the United States Department of Justice, Ms. Brooker was responsible for sizeable recoveries and successful judgments under the False Claims Act, FIRREA, and civil RICO in almost every industry: pharmaceutical, health care, defense, financial services, government procurement, small business, insurance, tobacco products, and higher education.

Ms. Brooker received her law degree in 1990 from Georgetown University Law Center, and a B.S. degree in 1987 from Temple University. After graduating from Georgetown, Ms. Brooker served as a Law Clerk to Judge Noël Kramer in the District of Columbia for one year before joining the United States Department of Education as an attorney. Ms. Brooker was hired as part of the enforcement response to Congressional investigations of fraud in federal student aid programs affecting consumers and taxpayers. Prior to joining Tycko & Zavareei LLP in 2020, Ms. Brooker worked at another prominent whistleblower firm where she advised and represented whistleblowers while expanding the firm's whistleblower practice. Ms. Brooker also served as a member of the United States Department of Justice-appointed Independent Corporate Compliance Monitor and Auditor for Volkswagen under its Plea Agreement and Consent Decree with the United States Department of Justice.



Education

Georgetown University Law Center, J.D.
Temple University, B.S.

Bar Admissions

District of Columbia
Pennsylvania

Memberships

Taxpayers Against Fraud Education Fund (TAFEF)
Board Member, Federal Bar Association Qui Tam Section
National Employment Lawyers Association (NELA)

Awards

Department of Justice Commendation Award for recovering billions of dollars under the Big Lender Initiative, 2016
Council of the Inspectors General on Integrity and Efficiency Award for Excellence for \$1.2 billion False Claims Act settlement with Wells Fargo, 2016
Department of Justice Award for "a record of outstanding actions and accomplishments," 2015
Attorney General's Award for Fraud Prevention, 2011
Department of Justice Award for prosecuting Big Tobacco under RICO, 2005

Tycko & Zavareei LLP
1828 L St. NW, Suite 1000
Washington, DC 20036
202.973.0900

Tycko & Zavareei LLP
1970 Broadway, Suite 1070
Oakland, CA 94612
510.254.6808

Tycko & Zavareei LLP
10880 Wilshire Blvd., Suite 1101
Los Angeles, CA 90024
510.254.6808



Eva Gunasekera

Partner

202.417.3655

eva@tzlegal.com

Bringing 16 years of complex litigation experience practice, Eva Gunasekera, the former Senior Counsel for Health Care Fraud at the United States Department of Justice, is now representing whistleblowers. Ms. Gunasekera has spent the better part of her career enforcing the False Claims Act and the Stark and Anti-Kickback laws.

Highly strategic, Ms. Gunasekera has many notable successes under her belt, sizeable recoveries under the False Claims Act, and has held companies accountable for fraudulent conduct that harmed important government programs such as Medicare and Medicaid. With deep health care fraud expertise, she has investigated, litigated, and settled cases involving all federal health care programs (Medicare, Medicaid, TRICARE, FEHB). Ms. Gunasekera is an expert on analyzing complex health care data sets, including Medicare and Medicaid payment data and trends, to identify potentially fraudulent practices. She has enforced anti-fraud laws and represented whistleblowers across industries: pharmaceutical manufacturers, health care providers, hospitals, physicians, physician groups, laboratories, managed care, pharmacies, hospice and nursing home providers, financial institutions, government suppliers, automotive, small businesses, and defense contractors. Many of her investigations involved parallel criminal proceedings and compliance and whistleblower programs of health care organizations, including those subjected to Corporate Integrity Agreements and oversight by Independent Review Organizations, as required by the U.S. Department of Health and Human Services, Office of Inspector General (HHS-OIG).

After graduating with her Master's in Public Administration from Ohio University, and from Georgetown University Law Center, Ms. Gunasekera practiced law at two international law firms. She acted as second chair during administrative trials and handled complex commercial litigation. Ms. Gunasekera also played a significant role on the team that represented the Enron Creditors Recovery Corp in the bankruptcy proceeding, successfully returning billions of dollars to creditors in the wake of the Enron scandal. Further, Ms. Gunasekera represented clients in pro bono matters, including the successful defense of an individual seeking asylum and as guardian ad litem for three children.



Education

Georgetown University Law Center,
J.D., 2004

Ohio University, M.A., 2001

Ohio University, B.A., 2000

Bar Admissions

District of Columbia

Ohio

Memberships

Taxpayers Against Fraud Education
Fund (TAFEF)

Federal Bar Association Qui Tam
Section

Public Justice

Presentations & Publications

"Whistleblower Rewards 101" –
Scottsdale (Arizona) Bar Association
(March 9, 2021)

"Should the False Claims Act be
Amended to Define Falsity?" - Federal
Bar Association, Qui Tam Section
(February 17, 2021)

Law review article: False Claims Act,
the opioid crisis, whistleblowing,
Emory University Law School,
February 26, 2019



Mark A. Clifford

Associate

202.973.0900

mclifford@tzlegal.com

Mr. Clifford zealously represents plaintiffs in class action litigation challenging corporate greed and practices that place profits over people. He is actively litigating cases against financial institutions, big tobacco, and the insurance industry over fraudulent, unfair, and unlawful conduct that has harmed millions of consumers. He also is litigating a number of data breach cases, in which the personal information of millions of innocent victims was stolen due to the lax security practices of major corporations. In addition to his consumer protection practice, Mr. Clifford represents whistleblowers who come forward with information about fraud on government programs.

Prior to joining Tycko & Zavareei LLP in 2019, Mr. Clifford was an Associate in the Washington, D.C. office of Covington & Burling LLP, one of the nation's top defense-side firms. He uses his knowledge of how the other side operates to advance the interests of clients harmed by corporate wrongdoing. During his time at Covington, Mr. Clifford represented corporations in complex litigation and government investigations, including matters involving whistleblower allegations in the healthcare and technology industries. He also maintained an active *pro bono* practice, representing indigent defendants in immigration and criminal matters.

Mr. Clifford graduated *magna cum laude* from Georgetown University Law Center in 2015. While in law school, he was an Executive Editor of the Georgetown Law Journal. Following law school, Mr. Clifford clerked for the Honorable Catherine C. Blake of the United States District Court for the District of Maryland. Prior to law school, he worked on several political campaigns following his graduation with Honors from the University of Georgia in 2009 with a Bachelor of Arts in International Affairs and a Master of Public Administration.

Mr. Clifford is admitted to practice law in the District of Columbia, Maryland, the United States District Court for the District of Maryland, and the United States Court of Appeals for the Fourth Circuit.



Education

Georgetown University Law Center,
2015, *magna cum laude*

University of Georgia, 2009

Bar Admissions

District of Columbia
Maryland

Memberships

American Constitution Society
LGBT Bar Association of the District
of Columbia
Public Justice

Awards

Medina S. and John M. Vasily
Endowed Scholarship (GULC)
Law Center Scholar (GULC)
CALI Award – Contracts (GULC)

Presentations & Publications

Georgetown Law Journal, Executive
Editor (2014 – 2015)

Co-Author, "The LGBT Community"
in *Divide, Develop, and Rule: Human
Rights Violations in Ethiopia*, UW
College of Law (2018)



Dia Rasinariu

Associate

202.973.0900

drasinariu@tzlegal.com

Dia Rasinariu graduated *cum laude* from Harvard Law School in 2016. While in law school, Ms. Rasinariu served as an Executive Editor of the *Harvard Law Review*. She was also a member of HLS Lambda. Following law school, Ms. Rasinariu clerked for the Honorable Diana Gribbon Motz on the United States Court of Appeals for the Fourth Circuit. Ms. Rasinariu earned her Bachelor of Arts, with distinction, from Cornell University in 2011, with majors in Government and in Economics.

Prior to joining Tycko & Zavareei LLP in 2021, Ms. Rasinariu was a litigation associate in the Washington, D.C. office of Jones Day. Ms. Rasinariu maintained an active pro bono practice, representing clients on civil rights, asylum, and domestic violence matters.

Ms. Rasinariu is a member of the District of Columbia and Illinois state bars. She is also admitted to practice before the United States District Court for the District of Maryland and the United States Courts of Appeals for the Fourth and Sixth Circuits.



Education

Harvard Law School, 2016, *cum laude*
Cornell University, 2011, with
Distinction

Bar Admissions

Illinois
District of Columbia

Memberships

Public Justice

Awards

Super Lawyers, Rising Star 2020



Allison W. Parr

Associate

202.973.0900

aparr@tzlegal.com

Prior to joining Tycko & Zavareei LLP in 2021, Allison W. Parr was an associate in the Washington, D.C. office of Mayer Brown LLP, where she represented corporations in complex commercial litigation, including cases involving unfair competition and false advertising claims. Previously, Ms. Parr was a litigation associate in the New York office of Kramer Levin Naftalis & Frankel LLP, where she maintained an active pro bono practice in LGBTQ civil rights.

Ms. Parr graduated from the Georgetown University Law Center in 2018, where she served as the Articles and Notes Editor for the Food and Drug Law Journal. During law school, Ms. Parr externed for the Commercial Litigation Branch, Fraud Section of the Department of Justice, where she assisted with cases involving allegations of fraud against the government. Ms. Parr received her Bachelor of Music from the Peabody Institute of the Johns Hopkins University in 2013.

Ms. Parr is admitted to practice in New York and the District of Columbia.



Education

Georgetown University Law Center,
2018

John Hopkins University, 2013, with
High Honors

Bar Admissions

New York
District of Columbia

Memberships

Public Justice

Presentations & Publications

Agribusiness and Antibiotics: A
Market-Based Solution, 73 Food &
Drug L.J. 338 (2018)



Glenn Chappell

Associate

202.973.0900

gchappell@tzlegal.com

Glenn Chappell is an associate in the Washington, D.C. office. Prior to joining Tycko & Zavareei LLP, he was an associate in the Washington, D.C. office of Gibson, Dunn & Crutcher LLP, one of the nation's most prestigious defense-side firms. During his time at Gibson Dunn, Mr. Chappell represented corporations in complex litigation at the trial and appellate levels, including the United States Supreme Court. He also maintained an active pro bono practice that focused on police and sentencing reform.

Mr. Chappell graduated *summa cum laude* from Duke University School of Law in 2017, where he served as Managing Editor of the *Duke Law Journal* and Senior Research Editor of the *Duke Law & Technology Review*. While in law school, he dedicated more than 450 hours to pro bono work.

After graduating law school, Mr. Chappell clerked for the Honorable Gerald Bard Tjoflat of the United States Court of Appeals for the Eleventh Circuit and the Honorable Anthony J. Trenga of the United States District Court for the Eastern District of Virginia. Before law school, he worked as a manager in the manufacturing industry. He graduated with honors from Saint Leo University, earning a Bachelor of Arts in Business Administration. His legal scholarship has appeared in multiple publications, including the *Duke Law Journal* and the *University of Richmond Law Review*.



Education

Duke University School of Law, 2017, *summa cum laude*, Order of the Coif
Saint Leo University, 2011, *cum laude*

Bar Admissions

District of Columbia
Virginia

Memberships

Order of the Coif
Virginia Equality Bar Association
American Constitution Society
Virginia Bar Association

Publications

The Historical Case for Constitutional "Concepts", 53 UNIVERSITY OF RICHMOND LAW REVIEW 373 (2019)

Health Care's Other "Big Deal": Direct Primary Care Regulation in Contemporary American Health Law, 66 DUKE LAW JOURNAL 1331 (2017)

Seeking Rights, Not Rent: How Litigation Finance Can Help Break Copyright's Precedent Gridlock, 15 DUKE LAW & TECHNOLOGY REVIEW 269 (2017)



Lauren Kuhlik

Associate

202.973.0900

lkuhlik@tzlegal.com

Prior to joining Tycko & Zavareei LLP in 2021, Lauren Kuhlik was a fellow at the National Prison Project of the American Civil Liberties Union, where she engaged in litigation and other advocacy to stop unconstitutional and illegal practices by prison and jail administrators and ICE. She focused on improving conditions of confinement for pregnant and postpartum people, as well as fighting to eliminate the inhumane practice of solitary confinement. During the COVID-19 crisis, Ms. Kuhlik maintained an extensive habeas practice seeking to secure the release of detained individuals with medical vulnerabilities.

Ms. Kuhlik graduated *cum laude* from Harvard Law School in 2017. She also received a Masters in Public Health from the Harvard T.H. Chan School of Public Health in 2017. Following law school, Ms. Kuhlik clerked for the Honorable Stephen Glickman of the District of Columbia Court of Appeals. She has published articles regarding the treatment of pregnant incarcerated people in the Harvard Law and Policy Review and the Harvard Civil Rights-Civil Liberties Law Review. Ms. Kuhlik has also published about gender and incarceration in USA Today and Ms. Magazine, among others.



Education

Harvard Law School, 2017, *cum laude*

Harvard T.H. Chan School of Public Health, M.P.H., 2017

Wesleyan University, BA in Philosophy with Honors, 2011

Bar Admissions

District of Columbia

Virginia (inactive)

Memberships

Public Justice

Publications & Presentations

National Abortion Federation Annual Meeting (2021)

Pregnancy, Systematic Disregard and Degradation, and Carceral Institutions, Harvard Law & Policy Review (2020)

Harvard Law & Policy Review Fall Symposium (2019)

Society of Family Planning Annual Meeting (2019)

George Mason University Law School Civil Rights Law Journal Symposium (2019)

Pregnancy Behind Bars: The Constitutional Argument for Reproductive Healthcare Access in Prison, Harvard Civil Rights & Civil Liberties Law Review (2017)



David Jochnowitz

Associate

202-417-3671
djoch@tzlegal.com

David Jochnowitz is an associate in the Washington, DC office, where he represents whistleblowers. Prior to joining Tycko & Zavareei LLP in 2021, David clerked for Magistrate Judge Peggy Kuo of the United States District Court for the Eastern District of New York. Before that, he worked at a law firm that exclusively represented whistleblowers under the federal and state False Claims Acts and the whistleblower programs of the SEC, CFTC, and IRS. His practice spanned diverse industries, with clients including physicians, nurses, billing specialists, sales reps, defense contractors, investment analysts, securities and commodities traders, and C-suite executives.

David graduated from Harvard Law School in 2013. While in law school, he was a member of the University's Greenhouse Gas Reduction Committee and the recruitment and training director for *Project No One Leaves*, which worked with tenants and homeowners affected by foreclosure. Prior to law school, he was a Peace Corps volunteer in Malawi, and he continues to serve on the boards of two non-profits dedicated to improving lives in and building cultural connections with Malawi. He graduated *magna cum laude* from Brooklyn College in 2007 with a Bachelor of Arts in economics.



Education

Harvard Law School, 2013
City University of New York Brooklyn College, 2007, *magna cum laude*

Bar Admissions

New York
District of Columbia

Memberships

Taxpayers Against Fraud



David W. Lawler

Of Counsel

202.973.0900
dlawler@tzlegal.com

Mr. Lawler joined Tycko & Zavareei LLP in January 2012. He has over twenty years of commercial litigation experience, including an expertise in eDiscovery and complex case management. At the firm Mr. Lawler has represented consumers in a numerous practice areas, including product liability, false labeling, deceptive and unfair trade practices, and antitrust class actions litigation.

Before joining Tycko & Zavareei LLP, Mr. Lawler was an associate in the litigation departments at McKenna & Cuneo LLP and Swidler Berlin Shereff Friedman LLP.

Among Mr. Lawler's career achievements include the co-drafting of appellate briefs which resulted in rare reversal and entry of judgment in favor of client, US Court of Appeals for the Fourth Circuit.

Mr. Lawler is a member of the District of Columbia Bar, as well as numerous federal courts.



Education

Creighton University School of Law,
1997

University of California, Berkeley
School of Law, 1989

Bar Admissions

District of Columbia

Memberships

American Association for Justice
Public Justice



Victoria Hoekstra

Staff Attorney

510.254.6808

vhoekstra@tzlegal.com

Victoria Hoekstra is highly skilled in e-Discovery. She was hired by Tycko & Zavareei LLP in 2018 to help with a custom's fraud case and later became a staff attorney. Currently she is working on a class action against Juul for marketing e-cigarettes to youth.

Victoria began her legal career at Paul, Hastings in Los Angeles. She moved to a small law firm and later became in-house counsel at an art store where she also ran an art education program. Victoria worked on many matters in these positions including business transactions, intellectual property rights and litigation involving accountant's malpractice, deceptive business practices, securities fraud and Elder Abuse.

In recent time, Victoria has worked on many e-Discovery projects related to large scale litigation and regulatory reviews by the DOJ, FTC, SEC, FDA and the DEA. Projects have involved breach of contract, personal injury, antitrust investigations (mergers and anti-competitive violations), anti-kickback violations, intellectual property, stock transactions, breaches of fiduciary duty and general fraud including fraudulent marketing related to the sale of opioids. Industries include pharmaceuticals, healthcare, ride-sharing platforms, telecommunications, retail, manufacturing, education, publishing, digital advertising, software development and implementation, data contracts, banking, insurance and government contracts. Victoria has also worked on compliance projects related to reviews by the DOJ and she had a long-term project answering search warrants, court orders and subpoenas related to Google products. In this capacity, Victoria helped law enforcement investigate critical crimes, but was also attentive to privacy laws.

Victoria is a Certified Public Accountant and prior to law school she worked as an auditor for a large CPA firm. Victoria was also a sole proprietor of an Internet bookstore for many years.

Victoria received a B.S. in Economics from University of California, Los Angeles. She received her Juris Doctorate from the University of California, Berkeley School of Law and she attended Oxford University (Christ Church) in England as a visiting scholar studying Philosophy.



Education

University of California, Berkeley
School of Law, J.D., 1988

University of California Los Angeles
College of Law, B.S. Economics, 1982

Bar Admissions

California

Memberships

Public Justice

CPA, California Public Accountancy



Leora N. Friedman

Fellow

202.417.3669

lfriedman@tzlegal.com

Leora Friedman received her J.D. from Georgetown University Law Center in 2020.

At Georgetown Law, Leora obtained diverse legal experience through experiential courses led by the O'Neill Institute for National and Global Health Law and by the Institute for Constitutional Advocacy and Protection. In addition, she authored papers proposing new legal frameworks for addressing the negative health impacts of electronic cigarettes and improving pandemic preparedness through writing-intensive coursework.

During law school, Leora also served as an intern for the Department of Justice's Office of Vaccine Litigation and its Consumer Protection Branch. She was an Executive Editor for the Georgetown Environmental Law Review, which published her note "Recommending Judicial Reconstruction of Title VI to Curb Environmental Racism: A Recklessness-Based Theory of Discriminatory Intent."

Previously, Leora was the Rockefeller Foundation's Princeton Project 55 Fellow from 2014-2015 and, thereafter, aided international health advocacy campaigns at Global Health Strategies.

She graduated from Princeton University with an A.B. in Politics in 2014.



Education

Georgetown University Law Center,
2020

Princeton University, 2014

Bar Admissions

District of Columbia

Memberships

Public Justice

Executive Editor, Georgetown
Environmental Law Review, 2019–
2020

Publications

*Recommending Judicial Reconstruction of
Title VI to Curb Environmental Racism: A
Recklessness-Based Theory of Discriminatory
Intent*, 32 GEO. ENV'T L. REV. 421
(2020)



Jaclyn S. Tayabji

Fellow

202.973.0900

jtayabji@tzlegal.com

Jaclyn Tayabji is the 2021-2023 Public Interest Fellow at Tycko & Zavareei LLP. Jaclyn received her J.D. *magna cum laude* from Boston University School of Law in 2021. While in law school, Jaclyn embraced experiential learning opportunities and consistently utilized her legal skills to promote the public interest. Jaclyn completed a legal internship in the Consumer Protection Division of the Massachusetts Attorney General's Office and a judicial externship with the Honorable Vickie L. Henry on the Massachusetts Appeals Court. As a Student Attorney in the Access to Justice Civil Litigation Clinic, Jaclyn represented low-income clients in various civil disputes, including defending tenants in summary process evictions and facilitating discovery production in a federal employment discrimination case.

In law school, Jaclyn served as an Editor for the *Boston University Law Review* and was elected to leadership positions in the Middle Eastern & South Asian Law Students Association, the International Law Society, and the Public Interest Project. Jaclyn was also selected to serve on the Public Interest Committee alongside fellow students, faculty, and staff to review the policies and programs related to public service offerings at Boston University School of Law and to advocate for institutional resources.

Jaclyn received her B.A. in International Studies and African Studies from Emory University in 2016. Prior to law school, Jaclyn served with the Peace Corps in Malawi and subsequently worked as a Recovery Coach through the inaugural AmeriCorps-Police Assisted Addiction & Recovery Initiative program.



Education

Boston University School of Law,
2021, *magna cum laude*

Emory University, 2016

Bar Admissions

District of Columbia

Memberships

Public Justice

Awards

Public Interest Scholar, Boston
University School of Law

Sylvia Beinecke Robinson Award,
Boston University School of Law

Paul J. Liacos Scholar, Boston
University School of Law

G. Joseph Tauro Distinguished
Scholar, Boston University School of
Law

Deans Award (Torts), Boston
University School of Law

Presentations & Publications

*Rehabilitation Under the Rehabilitation
Act: The Case for Medication-Assisted
Treatment in Federal Correctional Facilities*,
101 B.U. L. REV. ONLINE 79 (2021)

Boston University Law Review, Editor

EXHIBIT 3



KALIEL GOLD PLLC

Kaliel Gold 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&N 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, Kaliel Gold PLLC is well versed in class action litigation and zealously advocates for its clients. To learn more about Kaliel Gold 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 Kaliel Gold 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 Kaliel Gold 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 4

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK
(ROCHESTER DIVISION)**

SUSAN ROY, *individually and on behalf of all others
similarly situated,*

Plaintiff,

– against –

ESL FEDERAL CREDIT UNION
Defendant.

CASE No. 6:19-cv-06122-FPG-JWF

**DECLARATION OF MICHAEL R. REESE IN SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT AND APPLICATION FOR
ATTORNEYS' FEES AND COSTS AND SERVICE AWARD**

I, Michael R. Reese, hereby declare as follows:

Introduction and History of the Litigation and Settlement Negotiations

1. I am counsel of record for Plaintiff in this case and served as the New York counsel in this matter. I submit this declaration in support of Plaintiff's Motion for Final Approval of Class Action Settlement and Application for Attorneys' Fees and Costs and Service Award. Unless otherwise noted, I have personal knowledge of the facts set forth in this declaration and could and would testify competently to them if called upon to do so.

2. My firm is headquartered in New York, New York and has extensive class action experience, with a focus on class action practice throughout New York state, including the Western District of New York, where I am a member of the bar. My firm and I have litigated numerous class actions in New York to successful resolution, procuring significant injunctive relief and tens of millions of dollars for New York consumers. Furthermore, my firm and I have a successful appellate practice before the Second Circuit.

3. Prior to entering private practice, I worked in New York public practice when I served as an Assistant District Attorney at the New York County District Attorney's office, where I prosecuted violent felony and white collar crime before judge and jury.

4. I have also worked as an adjunctive professor at Brooklyn Law School teaching future

New York attorneys, where I have taught “The Law of Class Actions and Other Aggregate Litigation” for several years.

5. The firm resume of Reese LLP and my *curriculum vitae* are attached as *Exhibit A* to this declaration.

6. Based on my extensive experience with New York law, particularly class action law, I worked on this matter as the New York counsel.

7. As can be seen from my firm resume, I have substantial combined experience in the litigation, certification, and settlement of class action cases. Based on my experience, I believe Defendant’s counsel also are highly experienced in this type of litigation. It thus is my considered opinion that counsel for each side have fully evaluated the strengths, weaknesses, and equities of the Parties’ respective positions and believe that the proposed settlement fairly resolves their respective differences.

8. I expended resources in this matter, including researching and developing the legal claims at issue, filing the complaint, discovery, the motion to dismiss, and the motions for preliminary and final approval.

9. As far as I am aware, there are no pending related cases.

10. I believe the Settlement is an excellent result, as it provides the comprehensive class-wide relief Plaintiff sought in her Complaint.

11. Defendant has agreed not to oppose Class Counsel’s request for a combined attorneys’ fees and costs of up to 33.33% of the Settlement Fund. Pursuant to agreement with Class Counsel, Reese LLP is receiving 10% of that fee for the work as the New York counsel.

12. My hourly rate is \$1,050.00.

13. The lodestar total for Reese LLP for the 64.5 hours to date is **\$67,725.00**.

14. I have organized the time spent by Reese LLP the following chart with categories describing the services rendered in the prosecution of this Action to-date:

<u>Task</u>	<u>Michael Reese</u>
Presuit Investigation and Research	6.5
Strategy and Case Analysis	10.0
Pleadings	7.5
Motion Practice	3.5
Discovery	1.5
Case Management and Other Court Mandated Tasks	6.5
Settlement	0.0
Preliminary Approval	25.5
Class Notice	0.0
Final Approval, Settlement Execution, Distribution of Common Fund (Estimated)	3.5
Total	64.5

15. Additionally, my firm has incurred out-of-pocket expenses in the amount of **\$400.00** to date for a Court filing fee.

16. These out-of-pocket expenses are reasonable. The category of expense for which Reese LLP seeks reimbursement is the type routinely charged to paying clients in the marketplace. Consequently, the full requested amount should be reimbursed. This expense was integral to the prosecution of this case.

17. I have not been reimbursed for any costs incurred in the litigation and will not be reimbursed unless the Court grants the application for attorneys' fees and costs. I took the substantial risk of prosecuting this litigation on a full contingency basis, without charging Plaintiff or any Settlement Class Member for fees or expenses

18. Given the results achieved and the number of hours expended, the Fee and Expense Award is reasonable.

I declare under penalty of perjury that the foregoing is true of my own personal knowledge. Executed in New York, New York this 9th day of April, 2022.

/s/ Michael Reese
MICHAEL REESE

EXHIBIT A

REESE LLP

Reese LLP represents consumers in a wide array of class action litigation throughout the nation. The attorneys of Reese LLP are skilled litigators with years of experience in federal and state courts. Reese LLP is based in New York, New York with offices also in California and Minnesota.

Recent and current cases litigated by the attorneys of Reese LLP on behalf of consumers include the following:

In re Fairlife Milk Products Marketing and Sales Practices Litig., case no. 1:19-cv-03924 (N.D. Illinois)(case involving milk products allegedly mislabeled); *In re Hill's Pet Nutrition, Inc. Dog Food Products Liability Litig.*, case no. 19-md-2887-JAR-TT (D. Kansas)(case involving contaminated pet food); *Hasemann v. Gerber Products Co.*, case no. 15-cv-02995-MKB-RER (E.D.N.Y.)(case involving misrepresentation of health benefits of baby formula in violation of New York consumer protection laws); *Worth v. CVS Pharmacy, Inc.*, case no. 16-cv-00498 (E.D.N.Y.)(class action for alleged misrepresentations regarding health benefits of dietary supplement); *Roper v. Big Heart Pet Brands, Inc.*, case no. 19-cv-00406-DAD (E.D. Cal.)(class action regarding pet food); *Ackerman v. The Coca-Cola Co.*, 09-CV-0395 (JG) (RML) (E.D.N.Y.)(class action for violation of California and New York's consumer protection laws pertaining to health beverages); *Rapaport-Hecht v. Seventh Generation, Inc.*, 14-cv-9087-KMK (S.D.N.Y.)(class action for violation of California and New York's consumer protection laws pertaining to personal care products); *Berkson v. GoGo, LLC*, 14-cv-1199-JWB-LW (E.D.N.Y.)(class action regarding improper automatic renewal clauses); *Chin v. RCN Corporation*, 08-cv-7349 RJS (S.D.N.Y.)(class action for violation of Virginia's consumer protection law by I.S.P. throttling consumers' use of internet); *Bodoin v. Impeccable L.L.C.*, Index No. 601801/08 (N.Y. Sup. Ct.)(individual action for conspiracy and fraud); *Huyer v. Wells Fargo & Co.*, 08-CV-507 (S.D. Iowa)(class action for violation of the RICO Act pertaining to mortgage related fees); *Murphy v. DirecTV, Inc.*, 07-CV-06545 FMC (C.D. Cal.)(class action for violation of California's consumer protection laws); *Bain v. Silver Point Capital Partnership LLP*, Index No. 114284/06 (N.Y. Sup. Ct.)(individual action for breach of contract and fraud); *Siemers v. Wells Fargo & Co.*, C-05-4518 WHA (N.D. Cal.)(class action for violation of § 10(b) of the Securities Exchange Act of 1934 pertaining to improper mutual fund fees); *Dover Capital Ltd. v. Galvex Estonia OU*, Index No. 113485/06 (N.Y. Sup. Ct.)(individual action for breach of contract involving an Eastern European steel company); *All-Star Carts and Vehicles Inc. v. BFI Canada Income Fund*, 08-CV-1816 LDW (E.D.N.Y.)(class action for violation of the Sherman Antitrust Act pertaining to waste hauling services for small businesses on Long Island); *Petlack v. S.C. Johnson & Son, Inc.*, 08-CV-00820 CNC (E.D. Wisconsin)(class action for violation of Wisconsin consumer protection law pertaining to environmental benefits of household cleaning products); *Wong v. Alacer Corp.*, (San Francisco Superior Court)(class action for violation of California's consumer protection laws pertaining to deceptive representations regarding health benefits of dietary supplement's ability to improve immune system); *Howerton v. Cargill, Inc.* (D. Hawaii)(class action for violation of various consumer protection laws regarding sugar substitute); *Yoo v. Wendy's International, Inc.*, 07-CV-04515 FMC (C.D. Cal.)(class action for violation of California's consumer protection laws pertaining to adverse health effects of partially hydrogenated oils in popular food products).

The Attorneys of Reese LLP

Michael R. Reese

Mr. Reese is the founding partner of Reese LLP where he litigates consumer protection and antitrust cases as class actions and on behalf of individual clients. Prior to entering private practice, Mr. Reese served as an assistant district attorney at the Manhattan District Attorney's Office where he served as a trial attorney prosecuting violent and white-collar crime.

Achievements by Mr. Reese on behalf of consumers span a wide array of actions. For example, in *Yoo v. Wendy's International Inc.*, Mr. Reese was appointed class counsel by the court and commended on achieving a settlement that eliminated trans-fat from a popular food source. *See Yoo v. Wendy's Int'l Inc.*, No. 07-CV-04515-FMC (JCx) (C.D. Cal. 2007) (stating that counsel **"has conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy"**). In *Chin v. RCN Corporation*, Mr. Reese was appointed class counsel and commended by the court for stopping RCN's practice of throttling its Internet customers through adverse network management practices. *See Chin v. RCN Corp.*, No. 08-CV-7349(RJS)(KNF), 2010 WL 3958794, 2010 U.S. Dist. LEXIS 96302 (S.D.N.Y. Sept. 8, 2010) (stating that **"class counsel is qualified, experienced, and able to conduct the litigation"**).

Victories by Mr. Reese and his firm include a \$12.5 million dollar settlement in *In re Hill's Pet Nutrition, Inc. Dog Food Products Liability Litig.*, case no. 19-md-2887-JAR-TT (D. Kansas) for pet owners who bought contaminated pet food; a \$6.1 million class action settlement in *Howerton v. Cargill, Inc.* (D. Hawaii) for consumers of Truvia branded sweetener; a \$6.4 million class action settlement in the matter of *Wong v. Alacer Corp.* (S.F. Superior Court) for consumers of Emergen-C branded dietary supplement; and, a \$25 million dollar settlement for mortgagees in *Huyer v. Wells Fargo & Co.* (S.D. Iowa).

Mr. Reese and his firm are frequently appointed as co-lead counsel in multi-district litigations, including, but not limited to *In re Fairlife Milk Products Marketing and Sales Practices Litig.*, case no. 1:19-cv-03924-RMD (N.D. Illinois); *In re Hill's Pet Nutrition, Inc. Dog Food Products Liability Litig.*, case no. 19-md-2887-JAR-TT (D. Kansas); *In re Vitaminwater Sales and Marketing Practices Litig.*, case no. 11-md-2215-DLI-RML (E.D.N.Y.); and, *In re Frito-Lay N.A. "All-Natural" Sales & Marketing Litig.*, case no. 12-md-02413-RRM-RLM (E.D.N.Y.).

Mr. Reese is a frequent lecturer and author on issues of class actions. Mr. Reese co-hosts an annual two day conference with Professor Michael Roberts of UCLA that includes panels on class action litigation; presents on class action litigation at the annual conference of the Consumer Brands Association; and, presents regularly at the Union Internationale des Advocats Annual Congress.

Recent articles on class actions appear in publications by the American Bar Association; the Union Internationale des Advocats; and the Illinois State Bar Association.

Mr. Reese is also an executive committee member of the Plaintiffs' Class Action Roundtable, where he lectures on an annual basis on issues related to class actions.

Mr. Reese is also an adjunct professor at Brooklyn Law School where he teaches on class actions.

Mr. Reese is a member of the state bars of New York and California as well as numerous federal district and appellate courts. Mr. Reese received his juris doctorate from the University of Virginia in 1996 and his bachelor's degree from New College in 1993.

Sue J. Nam

Ms. Nam is based in New York where she focuses on consumer class actions. Ms. Nam also runs the appellate practice at the firm and has represented clients before the Second and Ninth Circuits, as well as The Court of Appeals in New York. Ms. Nam also specialized in copyright law and represents photographers and other visual artists who have had their copyright protected works infringed.

Prior to joining the firm, Ms. Nam was the General Counsel for NexCen Brands, Inc., a publicly traded company that owned a portfolio of consumer brands in food, fashion and homeware.

Previously, Ms. Nam was Intellectual Property Counsel and Assistant Corporate Secretary at Prudential Financial, Inc., and she was an associate specializing in intellectual property and litigation at the law firms of Brobeck Phleger & Harrison LLP in San Francisco, California and Gibson Dunn & Crutcher LLP in New York, New York.

Ms. Nam clerked for the Second Circuit prior to joining private practice.

Ms. Nam received her juris doctorate from Yale Law School in 1994. She received a bachelor's degree with distinction from Northwestern University in 1991.

Carlos F. Ramirez

Mr. Ramirez is an accomplished trial attorney based in New York, where he focuses his practice on the litigation of consumer class actions. Prior to entering private practice in 2001, Mr. Ramirez served as an Assistant District Attorney at the Manhattan District Attorney's Office where he served as a trial attorney prosecuting both violent and white-collar crimes.

Previous and current consumer fraud class actions litigated by Mr. Ramirez include *Hasemann v. Gerber Products Co.*, case no. 15-cv-02995-MKB-RER (E.D.N.Y.)(case involving misrepresentation of health benefits of baby formula in violation of New York consumer protection laws); *Coe v. General Mills, Inc.*, No. 15-cv-5112-TEH (N.D. Cal.) (involving false advertisement claims relating to the Cheerios Protein breakfast cereal); *In re Santa Fe Natural Tobacco Company Marketing & Sales Practices Litigation*, 16-md-2695-JB/LF (D.N.M.)(involving the deceptive marketing of cigarettes as "natural" and "additive free"); and, *Lamar v. The Coca-Cola Company, et al.*, No. 17-CA-4801 (D.C. Superior Ct.) (involving the deceptive marketing of sugar drinks as safe for health).

Mr. Ramirez is a member of the state bars of New York and New Jersey. He is also a member of the bars of the U.S. District Courts for the Eastern District of New York and Southern District of New York. Mr. Ramirez received his juris doctorate from the Fordham University School of Law in 1997 and his bachelor's degree from CUNY-Joh Jay College in 1994.

George V. Granade II

Mr. Granade is a partner at Reese LLP based in Los Angeles, California, where he focuses on consumer class actions. Cases Mr. Granade has worked on include: *Barron v. Snyder's-Lance, Inc.*, No. 0:13-cv-62496-JAL (S.D. Fla.); *In re: Frito-Lay North America, Inc. "All Natural" Litigation*, No. 1:12-md-02413-RRM-RLM (E.D.N.Y.) (involving "SunChips," "Tostitos," and "Bean Dip" products labeled as "natural" and allegedly containing genetically-modified organisms); and *Martin v. Cargill, Inc.*, No. 0:13-cv-02563-RHK-JJG (D. Minn.) (involving "Truvia" sweetener product labeled as "natural" and allegedly containing highly processed ingredients).

Mr. Granade received his juris doctorate from New York University School of Law in 2011. He received a master's degree from the University of Georgia at Athens in 2005 with distinction and a bachelor's degree from the University of Georgia at Athens in 2003, *magna cum laude* and with High Honors.

Mr. Granade is a member of the state bars of Georgia, New York, and California. He is also a member of the bar of the U.S. Courts of Appeals for the Second Circuit and Ninth Circuit, as well as the bars of the U.S. District Courts for the Eastern District of New York, Southern District of New York, Western District of New York, Northern District of New York, Southern District of Illinois, Northern District of Illinois, Northern District of California, Southern District of California, Central District of California, and Eastern District of California.

Charles D. Moore

Mr. Moore is based in Minneapolis, Minnesota where he focuses on both consumer as well as employment class actions.

Mr. Moore has worked on a number of high profile class actions at Reese LLP as well as his prior firm where he worked as co-counsel with Reese LLP on numerous matters. His notable cases include *Marino v. Coach, Inc.*, Case No. 1:16-cv-01122-VEC (OTW) (Lead) (S.D.N.Y.) (involving deceptive reference pricing in the sale of outlet merchandise); *Raporport-Hecht v. Seventh Generation, Inc.*, Case No. 7:14-cv-09087-KMK (S.D.N.Y.) (involving the deceptive advertising of household products as "natural"); *Gay v. Tom's of Maine, Inc.*, Case No. 0:14-cv-60604-KMM (S.D. Fla.) (involving deceptive advertising of personal care products as "natural"); *Frohberg v. Cumberland Packing Corp.*, Case No. 1:14-cv-00748-KAM-RLM (E.D.N.Y.) (involving deceptive advertising of food products as "natural"); *Baharenstan v. Venus Laboratories, Inc. d/b/a Earth Friendly Products, Inc.*, Case No. 3:15-cv-03578-EDL (N.D. Cal.) (involving deceptive advertising of household products as "natural"); *Sienkaniec v. Uber Technologies, Inc.*, Case No. 17-cv-04489-PJS-FLN (D. Minn.) (involving the misclassification of Uber drivers as independent contractors); *Dang v. Samsung Electronics Co.*, 673 F. App'x 779

(9th Cir. 2017) (*cert denied* 138 S. Ct. 203) (rejecting shrink-wrap terms in California for purposes of arbitration).

Mr. Moore is a member of the state bar of Minnesota. He is also a member of the bar of the U.S. District Court for the District of Minnesota. Mr. Moore received his juris doctorate from Hamline University School of Law in 2013, and his bachelor's degree from the University of North Dakota in 2007.

Curriculum Vitae
Michael R. Reese
REESE LLP
100 West 93rd Street, 16th Floor
New York, New York 10025
Telephone: (212) 643-0500
Website: www.reesellp.com
Email: mreese@reesellp.com

PROFESSIONAL ACTIVITIES:

REESE LLP (2008-present)

Founder and Managing Partner

Founder and managing partner of boutique litigation law firm specializing in class actions throughout the United States. Representative cases include:

- *Mantikas v. Kellogg Co.*, 910 F.3d 633 (2d Cir. 2018)(case involving alleged misrepresentation of amount of whole grain in food product; adoption by Second Circuit of reasonable consumer standard)
- *Sgouros v. Transunion Corp.*, 817 F.3d 1029 (7th Cir. 2016)(case alleging violation of the Fair Credit Reporting Act (“FCRA”); rejection by Seventh Circuit that case was subject to arbitration)
- *In re Santa Fe Natural Tobacco Company Marketing & Sales Practices and Products Liability Litig.*, 288 F.Supp.3d 1087 (D. New Mexico Dec. 21, 2017) (case alleging violation of consumer protection statutes for deceptive labeling of “natural” cigarettes)
- *Huyer v. Wells Fargo Co.*, 295 F.R.D. 332 (S.D. Iowa 2013)(certification of RICO class on behalf of mortgagors, resulting in \$25 million settlement)
- *Shalikaar v. Asahi Beer U.S.A., Inc.*, case no. 17-cv-02713 JAK, 2017 WL 9362139 (C.D. Cal. Oct. 16, 2017) (case alleging violation of consumer protective statute for deceptive and misleading labeling regarding origin of product)
- *Coe et al. v. General Mills, Inc.*, case no. 15-cv-05112-TEH, 2016 WL 4208287 (N.D. Cal. Aug. 10, 2016) (case alleging violation for deceptive and misleading packaging regarding levels of protein and sugar in popular breakfast cereal)
- *Rapoport-Hecht v. Seventh Generation, Inc.*, case no. 14-cv-09087-KMK, 2016 WL 11397676 (S.D.N.Y. July 10, 2016)(case alleging misleading labeling of personal care products as natural)

- *In re Frito-Lay North America, Inc. All Natural Litigation*, 2013 WL 4647512 (E.D.N.Y. Aug. 29, 2013) (case alleging violation for deceptive and misleading packaging of food products containing genetically modified organisms)

BROOKLYN LAW SCHOOL (2014-present)

Adjunct Professor of Law

- *The Law of Class Actions and other Aggregate Litigation*
- *Food Law*

COLUMBIA LAW SCHOOL (2016 to present)

Guest Lecturer - Food Law and Policy

WELLNESS IN THE SCHOOLS (WITS) – (2016 to present)

Advisory Board Member

RESNICK CENTER, UNIVERSITY OF CALIFORNIA SCHOOL OF LAW – (2018 to present)

Advisory Board Member

UNION INTERNATIONALE DES AVOCATS (UIA) (2016-present)

Vice President Agri-Food Law Commission (2022 to present)

North American Counsel to Food Law Commission (2018 to 2022)

Food Law Commission Member (2016 to present)

- Guest Speaker: Verona, Italy (2016); Toronto, Canada (2017); Porto, Portugal (2018); Guadalajara, Mexico (2020)(virtual)

CLE INTERNATIONAL – FOOD LAW (2016-present)

Conference Co-Host

Co-host of annual two day food law conference that brings together all stakeholders in food law and regulation; including, academia; in-house counsel; NGOs; and members of the plaintiffs and defense bars.

- *“6th Annual Food Law Conference - Current Trends & Perspectives Beyond the Beltway”* (virtual) March 11, 2022
- *“5th Annual Food Law Conference – Navigating the Intersection Between Regulation & Litigation”* San Francisco, California (March 2-3, 2020)
- *“Food Law – Industry, Academia, Consumer, NGO & Government Perspectives”*
UCLA School of Law, Los Angeles, California (June 6-7, 2019)
- *“Innovative Foods and Other Hot Topics”*
Denver, Colorado (April 19-20, 2018)
- *“Food Law – A Comprehensive Review of the Evolving Legal Landscape”*

Austin, Texas (May 11-12, 2017)

CAMBRIDGE FOOD FRAUD FORUM (2019-present)

Head Chairperson - Chairperson of annual three day food law conference for plaintiff class action attorneys who focus their practice on food fraud.

CLASS ACTION ROUNDTABLE and CLASS ACTION FORUM (2014-present)

Executive Committee Member -Executive Committee Member and annual presenter at exclusive forum limited to the top class action practitioners.

PERRIN FOOD AND BEVERAGE LAW ANNUAL CONFERENCE (2014 – present)

Annual Presenter - Moderator and Lecturer at annual food law conference.

SPEAKING ENGAGEMENTS:

2022

- March 11, 2022; CLE International; Co-host with Professor Michael Roberts (UCLA School of Law); Class Action Roundtable (moderator and panelist); Environmental Marketing Claims (moderator) (virtual)
- March 7, 2022; UCLA School of Law; Food Litigation: Consumer Protection, Regulation and Class Actions, Guest Lecturer (UCLA School of Law, Los Angeles, California)

2021

- September 28, 2021; Food and Drug Law Institute Food Advertising, Labeling and Litigation Conference; ***Consumer Surveys and Economic Analysis in Support of Litigation***; with Sarah Butler (NERA Economic Consulting); Christopher van Gundy (Sheppard, Mullin, Richter & Hampton LLP); and Anthony Anscombe (Steptoe & Johnson LLP); live webinar
- May 25, 2021; American Bar Association 10th Annual Food, Beverage and Supplements CLE Program; ***Class Action Round-Up***; with Angela Spivey (Alston & Bird LLP); Carey Bartell (Conagra); and Ben Wilner (Alvarez and Marsal); live webinar
- May 10, 2021; ***Hot Topics in Food Litigation (an Update)***; with David T. Biderman (Perkins & Coie LLP); Lawlines
- February 23, 2021, ***Food Litigation: Consumer Protection, Regulation and Class Class Actions***, Guest Lecturer of Professor David Biderman, University of California, Los Angeles School of Law (virtual)

- February 22, 2021, ***Food Law and Policy***, Guest Lecturer of Professors Melissa Weiner and Steve Toeniskeotter, Mitchell Hamline School of Law, Minneapolis, Minnesota (virtual)

2020

- October 30, 2020, ***Covid-19 and Food Product Distribution: Problems and Solutions***, Co-Moderator with Stefano Dindo; panelists – Sarah Brew (Faegre Drinker Biddle & Reath LLP); Diego Saluzzo (Grande Stevens Studio Legale); Alicia White (Whole Foods Market); Simona Musso (Lavazza); Carlos Ramirez (Reese LLP); Union Internationale des Advocats Congress, Guadalajara, Mexico (virtual)
- October 15, 2020, ***Food Labeling Issues***, Mass Torts Made Perfect, Las Vegas, Nevada (virtual)
- September 23, 2020, ***A Consumer Protection Attorney's Perspective on the Reasonable Consumer Standard and Preemption – Or: How I Learned to Stop Worrying about Preemption and Love 21 U.S.C. §343(a)(a tribute to Stanley Kubrick)***, FDLI, Washington, D.C. (virtual)
- June 2, 2020, ***Using Electronically Stored Information to Your Advantage to Win -Or: How I Learned to Stop Worrying about Technology and to Love ESI (a tribute to Stanley Kubrick)*** NACA Webinar
- March 3, 2020, ***Pulling It All Together An Interactive Discussion of Public and Private Regulation***, co-panelist with Chris van Gundy and Rita Mansuryan (both from Sheppard, Mullin, Richter & Hampton LLP), 5th Annual Food Law Conference – Navigating the Intersection Between Regulation & Litigation, San Francisco, California
- March 3, 2020 ***The Reasonable Consumer – An Interactive Debate***, moderator of panel – David Biderman; Ben Heikali; Angela Spivey; and, Gillian Wade, 5th Annual Food Law Conference – Navigating the Intersection Between Regulation & Litigation, San Francisco, California
- March 2, 2020, ***Litigation Case Studies - Environmental Marketing Claims***, co-presenter with Dale Giali, 5th Annual Food Law Conference – Navigating the Intersection Between Regulation & Litigation, San Francisco, California
- February 25, 2020, ***Food Law From the Plaintiffs' Perspective***, Co-Panelist with Jack Fitzgerald and Ani Gulati, Consumer Brands Association Legal Forum (Rancho Mirage, California)

2019

- November 19-20, 2019, Food Law Litigation Conference, Chairperson, Cambridge Food Law Litigation Forum, West Palm Beach, Florida

- November 19, 2019, *Food Law Litigation -The Amuse Bouche: Drafting Complaints; Surviving Motions to Dismiss and Defeating the Defenses Du Jour*, Cambridge Food Law Litigation Forum, West Palm Beach, Florida
- September 18, 2019, *Food Law and Policy*, Guest Lecturer of Professor Michael Roberts, University of California, Los Angeles School of Law
- June 6-7, 2019 4th *Annual Food Law Conference – Live From a Food Law Think Tank*, co-host, University of California, Los Angeles
- May 1, 2019, *Strategic Considerations for Bringing and Maintaining Class Actions*, Class Action Roundtable, Napa, California
- March 5, 2019, *A Plaintiff's Counsel Perspective on Class Action Food Litigation*, Grocery Manufacturers' Association, West Palm Beach, Florida
- March 4, 2019, *Mock Trial – Benson v. Stone Ground Kitchens, Inc.*, against Jerry Blackwell regarding allegedly deceptive glucosamine food supplements, Grocery Manufacturers' Association, West Palm Beach, Florida
- January 11, 2019, *Epic Systems, Its Aftermath and Impact on Class Action Waivers*, Bridgeport Class Action Conference, Costa Mesa, California
- January – May, 2019, *The Law of Class Actions and Other Aggregate Litigation*, Brooklyn Law School (with co-professor Mitchell Breit), Brooklyn, New York

2018

- November 2, 2018, *The Intersection of Biotech Foods and the Law*, UIA Joint Food Law and Biotech Commissions, 62nd UIA Congress, Porto, Portugal
- October 17, 2018, *What Does Natural Mean?*, Wisconsin Public Radio, The Morning Show with host John Munson, radio program
- October 16, 2018, *Recent Developments in Class Action Litigation*, Perrin Conference, Chicago, Illinois
- October 12, 2018, *Agricultural Verdicts of Interest: Monsanto and Smithfield*, Wagner Food Policy Alliance, New York University, Puck Building, New York, New York

- April 19-20, 2018, **CLE International Food Law Conference**, Co-Host of Conference; Panelist on **Food Law Class Actions**; Moderator of Panel (Charles Sipos and Melissa Weiner) **Taking Another Look at Innovative Foods, Class Actions and Regulatory Gaps**, Denver, Colorado
- April 17, 2018, **Misleading Food Labeling and Advertising under the Lanham Act and the FDCA**, American Bar Association, webinar
- April 13, 2018, **The Interplay Between Experts and Damages in Class Cases**, Class Action Roundtable, Rancho Palos Verde, California
- February 18, 2018, **Food Law and Policy**, Guest Lecturer of Professor Hannah Chamoine, Columbia Law School, New York, New York
- January-May, 2018 (Spring Semester) – **Food Law**, Brooklyn Law School (with co-professor Valerie Madamba), Brooklyn, New York

2017

- December 8, 2017, **Food Law Updates**, American Bar Association Brown Bag Presentation, teleconference presentation
- November 8, 2017, **Class Actions – Consumer Fraud and Product Labeling**, CLE International, Los Angeles, California
- October 28, 2017, **The Rules to be Followed When Importing Food Products - Country of Origin Litigation**, Union Internationale des Advocats (“UIA”) 61st Annual Congress, Toronto, Canada
- October 25, 2017, **Recent Developments in Food Law Class Action Litigation**, Moderator, Perrin Conference, Chicago, Illinois
- September-December, 2017 (Fall Semester) – **The Law of Class Actions and Other Aggregate Litigation**, Brooklyn Law School (with co-professor Mitchell Breit), Brooklyn, New York
- May 16, 2017, **Hot Topics in Food Litigation**, Lawlines (with Maia Kats of CSPI), live- filmed production, New York, New York

- May 11-12, 2017, ***International CLE Food Law Conference***, Co-Host of Conference; Panelist on ***Food Law Class Actions, Part I, Merits***; Moderator of Panel (Tim Blood; Karin Moore- GMA; Ani Gulati – General Mills; Michael Jacobson – CSPI) ***Where Should Food Law Be Made***, Austin, Texas
- May 9, 2017 – ***Dealing With Emerging Pleading Standards and Expert Qualifications at Class Certification***, Plaintiffs’ Class Action Forum, Carefree, Arizona
- April 20, 2017, ***The Future of Food Law*** (Panel with New York Assistant Attorney General Ellen Fried and Pace Law School Professor Margot Pollans), Cardozo Law School, New York, New York
- April 17, 2017 – ***Food Law and Policy***, Guest Lecturer of Professor Hannah Chamoine, Columbia Law School, New York, New York
- January 24 – April 24, 2017 (Spring Semester) ***Class Actions and Other Aggregate Litigation***, Brooklyn Law School, Brooklyn, New York

2016

- October 18, 2016, ***Recent Developments in Food Class Action Litigation***, Perrin Conference, New York Athletic Club, New York, New York
- September 15, 2016, ***Food Advertising and Litigation Conference***, FDLI, Washington, D.C.
- July 13, 2016 - ***Food and Beverage Class Actions: Litigating False Advertising, Labeling, Slack-Fill Packaging and Food Safety Claims – Navigating Issues of Ascertainability, Predominance; Preemption; Standing and More***, Strafford Webinar (with David Biderman of Perkins Coie LLP)
- June 9, 2016 – Union Internationale Advocats (“UIA”), ***Food Class Actions in the United States***, Verona, Italy
- May 24, 2016 – ***Integrating Food Law into Your Practice***, National Association of Consumer Advocates, Webinar
- April 28, 2016 – ***Class Action Settlements***, Plaintiffs’ Class Action Forum, West Palm Beach, Florida
- April 18, 2016 – ***Food Law and Policy***, Guest Professor of Professor Hannah Chamoine, Columbia Law School, New York, New York

- March 28, 2016 – ***What is Food Law?***, Brooklyn Law School, Brooklyn, New York
- March 17, 2016 – ***Food Law Class Actions***, International CLE, Washington, D.C.
- February 24, 2016 – , ***A Plaintiff Attorney’s Perspective on Food Litigation***, Grocery Manufacturers Association Annual Legal Conference, Rancho Mirage, California
- January 25 – April 26, 2016 (Spring Semester) – ***Class Actions and Other Aggregate Litigation***, Brooklyn Law School, Brooklyn, New York

2015

- December 8, 2015 - Panelist (with Maia Kats of CSPI and Professor Laura Murphy) on panel moderated by Nicole Foster, Health and Human Services, American Bar Association, Health Law Section, ***What is in Your Food? Food Labeling Regulation and Litigation***, Washington, D.C.
- December 2, 2015 - Co-Moderator with Laura Murphy, Vermont School of Law Professor, ***Discussion Regarding the FDA’s Recent Request for Comments on Use of the Term “Natural”***, American Bar Association, Health Law Section, Twitter Discussion
- November 10, 2015 - ***Recent Developments in Class Actions***, Perrin Annual Food Law Conference, Challenges Facing the Food & Beverage Industry in Complex Litigation, Washington, D.C.
- September 24, 2015 - ***Insights into the Food Courts, Key Cases and Trends***, Food and Drug Law Institute Food Advertising and Litigation, Chicago, Illinois
- June 16, 2015 - ***What Should Food Lawyers Do?***, Moderator, California Bar Litigation Section - Food Law Committee; (Charles Sipos; Professor Marsha Garrison; Melissa Wolchansky; Leslie Brueckner, Public Justice)(teleconference)
- April 23, 2015 - ***Ascertainability***, Plaintiff’s Class Action Forum, Rancho Palos Verde, California
- April 13, 2015 - ***“Food Law Litigation – A Practitioner’s Perspective”*** Guest Speaker of Professor Marsha Garrison, Food Law, Brooklyn Law School, Brooklyn, New York

- February 24, 2015 - *The Interplay of the FTC, Lanham Act and Class Actions*, Speaker with Richard Cleland of the Federal Trade Commission, Food and Drug Litigation Institute, Washington, D.C.

2014

- September-December 2014 (Fall Semester) – *The Law of Class Actions and Other Aggregate Litigation*, Brooklyn Law School, Brooklyn, New York
- June 16, 2014, *Hot Topics in Advertising Law*, Practising Law Institute, New York, New York
- April 11, 2014, *Food Fight: An Examination of Recent Trends in Food Litigation and Where We Go From Here*, University of California, Los Angeles, School of Law, Resnick Program for Food Law and Policy, Los Angeles, California
- April 8, 2014, *Challenges Facing the Food and Beverage Industries in Complex Commercial Litigation*, Perrin Conference, Chicago, Illinois
- April 3, 2014, *Non-Traditional Approaches to Class Certification – (b)(1), (b)(2) and (c)(4) Classes*, Plaintiffs’ Class Action Forum, San Diego, California

2013

- November 6, 2013, *Food Advertising, Strategies for Avoiding and Dealing with Litigation Issues*, Food and Drug Litigation Institute, New York, New York
- April 17, 2013, *The Level of Proof Required at the Class Certification Stage*, Plaintiff’s Class Action Forum, Miami, Florida

2012

- November 15, 2012, *Food Advertising: Claims, Litigation and Strategies – Plaintiff Counsel’s Perspective Regarding Recent Trend of Food Litigation*, Food and Drug Law Institute, New York, New York
- September 6, 2012, *False Advertising Consumer Class Actions: Latest Developments*, Stratford Publications Webinar New York, New York (webinar)
- January 24, 2012 - *Advertising, Labeling and Nutrition, Legal Developments - Managing Liability in an Increasing Litigious Environment*, Food and Drug Law Institute, Washington, D.C.

2011

- November 22, 2011 - ***False Advertising Consumer Class Actions: Best Practices for Bringing and Defending Misleading Advertisement Litigation***, Strafford Publications, New York, New York (webinar)

PUBLICATIONS:

- Reese, Michael R.
“Food Based Country and Region of Origin Litigation”, *Food Law*, Vol. 2, no. 1, Illinois State Bar, December 2021
- Reese, Michael R.
“How to Become a Food Lawyer - A Smörgåsbord of Tips from a Seasoned Practitioner”, *Environmental Law*, Vol. 49, No. 5, Illinois State Bar, May 2019
- Reese, Michael R.
“Food Based Country of Origin Litigation in the United States”, *Juriste International*, Union International des Advocats, July 19, 2018
- Reese, Michael R.
“Starting a Niche Food Law Practice”
General Practitioner, American Bar Association, December 2017
- Roberts, Michael T.; Turk, Whitney (Reese, Michael R. contributing section
“Improving Effective Use of Class Action Litigation”
“The Pursuit of Food Authenticity, Recommended Legal and Policy Strategies to Eradicate Economically Motivated Adulteration (Food Fraud)”
White Paper, University of California at Los Angeles (UCLA) Resnick Program for Food Law and Policy, April 2017
- Reese, Michael R.
“Typical Claims and Defenses in Class Action Food Litigation”
The Health Lawyer, American Bar Association, April 2016

ORGANIZATIONS AND AFFILIATIONS

Resnick Center, University of California School of Law - Advisory Board Member
Wellness in the Schools (“WITS”) – Advisory Board Member
Union International des Advocats – Vice-President of Agri-Food Law Commission
Brooklyn Law School – Adjunct Professor

EXHIBIT C

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

SUSAN ROY, on behalf of herself and all others
similarly situated,

Plaintiff,

v.

ESL FEDERAL CREDIT UNION,

Defendant.

Case No.: 6:19-CV-06122-FPG-JWF

**DECLARATION OF STEVEN WEISBROT, ESQ. OF ANGEION GROUP LLC
ON SETTLEMENT ADMINISTRATION**

I, Steven Weisbrot, Esq., declare under penalty of perjury as follows:

1. I am the President and Chief Executive Officer at the class action notice and claims administration firm Angeion Group, LLC (“Angeion”). I am fully familiar with the facts contained herein based upon my personal knowledge.

2. My credentials were previously reported to this Court in my prior declaration that was filed with the Notice of Motion and Unopposed Motion for Preliminary Approval of Class Action Settlement (Dkt. 68-4).

3. The purpose of this declaration is to provide the Parties and the Court with a summary of the dissemination of Notice pursuant to the Notice Program specified in the Revised Settlement Agreement and Releases (“Settlement Agreement”).

4. Angeion was retained by the Parties and appointed by this Court pursuant to this Court’s Decision and Order (the “Preliminary Approval Order”), dated January 26, 2022, to serve as the Settlement Administrator of the above-captioned litigation (Dkt. 69). In that role, among

other tasks, Angeion is responsible for (1) the implementation and effectuation of the Notice Program; (2) receiving and maintaining any requests for exclusion and/or objections to the Settlement; (3) administering Settlement Class Member Payments; and (5) performing other duties pursuant to the Preliminary Approval Order and the Settlement Agreement.

CAFA NOTICE

5. Pursuant to 28 US Code § 1715, Angeion caused notice regarding the Settlement to be sent to the Attorneys General of all states and territories, as well as the Attorney General of the United States on February 26, 2021 (“CAFA Notice”). As of the date of declaration, Angeion has not received an objection from any government agencies. The CAFA Notice was in the same form as **Exhibit A** attached hereto.

6. Pursuant to 28 US Code § 1715, Angeion caused a revised notice regarding the Settlement to be sent to the Attorneys General of all states and territories, as well as the Attorney General of the United States on August 6, 2021 (“Revised CAFA Notice”). As of the date of declaration, Angeion has not received an objection from any government agencies. The Revised CAFA Notice was in the same form as **Exhibit B** attached hereto.

CLASS MEMBER LIST

7. On or about February 4, 2022, Angeion received from the Defendant a spreadsheet containing 42,920 records of members of the Retry Fee Class and/or Sufficient Funds Fee Class. Each record contained the following class member data: class member’s name, last known mailing address, account number, member agreement number, fees paid by class member, and account status. Email addresses were also provided for 37,223 of the 42,920 records. Angeion reviewed the 42,920 records that were provided and compiled the class member database (“Class List”).

EMAIL NOTICE

8. On March 4, 2022, Angeion caused Email Notice to be sent to the 37,223 email addresses, of which 34,518 emails were delivered and 2,705 were not delivered due to either an invalid email address or a hard bounce. A true and accurate copy of the Email Notice is attached hereto as **Exhibit C**.

DIRECT MAIL NOTICE

9. Whereas the United States Postal Service generally takes 30 days or more to return undeliverable mail and the deadline to mail notice did not allow for delay, Angeion, in consultation with Class Counsel, decided to subject the entire list of 8,402 class members who did not have a deliverable email address (including the 2,705 members identified in paragraph 8) to a preemptive skip trace. These skip traces included the United States Postal Service (“USPS”) National Change of Address (“NCOA”) data to identify updated mailing address information for individuals and businesses who have moved in the last four years and filed a change of address card with the USPS. The skip traces provided 2,452 updated mailing addresses for the Class Members. Angeion updated the Class List with these updated addresses.

10. On March 18, 2022, Angeion caused the Postcard Notice (“Postcard Notice”) to be mailed via the United States Postal Service (“USPS”) first-class mail to the 8,402 class members for whom an Email Notice was unable to be delivered. A true and accurate copy of the Notice is attached hereto as **Exhibit D**.

11. As of April 7, 2022, a total of 494 of the Postcard Notices mailed have been returned by the USPS as undeliverable without a forwarding address.

12. As of April 7, 2022, for the 42,920 unique members of the Retry Fee Class and/or Sufficient Funds Fee Class, notice to 494 members remains undeliverable, which results in a 98.8% reach to the Class. The individual notice efforts were fully implemented in compliance with the Notice Program, as approved by the Court.

CASE SPECIFIC WEBSITE

13. On March 3, 2022, Angeion established the following website dedicated to this Settlement: www.RoyClassActionSettlement.com (“Settlement Website”). The Settlement Website has a “Frequently Asked Questions” page which provides members of the Retry Fee Class and Sufficient Funds Fee Class with answers to common inquiries about the Settlement, and a “Contact Us” page which provides members of the Retry Fee Class and Sufficient Funds Fee Class with the mailing address, phone number and email address to contact the Settlement Administrator.

Additionally, the Long Form Notice, Revised Settlement Agreement, Preliminary Approval Order and other settlement related documents are available for download. A true and accurate copy of the Long Form Notice is attached hereto as **Exhibit E**.

14. As of April 7, 2022, the Settlement Website has had 1,556 unique visitors, resulting in approximately 2,613 page views.

CASE SPECIFIC HOTLINE

15. On March 3, 2022, Angeion established a toll-free hotline dedicated to this Settlement to further apprise members of the Retry Fee Class and Sufficient Funds Fee Class of their rights and options in the Settlement: 1-855-955-5967. The toll-free hotline utilizes an interactive voice response (“IVR”) system to provide members of the Retry Fee Class and Sufficient Funds Fee Class with responses to frequently asked questions and provide essential information regarding the Settlement. Members of the Retry Fee Class and Sufficient Funds Fee Class may also leave a message to ask additional questions, provide updated address information or request a notice to be mailed to them. This hotline is accessible 24 hours a day, 7 days a week.

16. As of April 7, 2022, a total of 236 calls have been made to the toll-free hotline for a total of 1,004 minutes of calls.

REQUESTS FOR EXCLUSION AND OBJECTIONS

17. The deadline for members of the Retry Fee Class and Sufficient Funds Fee Class to request exclusion from the Settlement is April 24, 2022. As of April 7, 2022, Angeion has not received any requests for exclusion.

18. The deadline for Settlement Class Members to object to the Settlement is April 24, 2022. As of April 7, 2022, Angeion has not received any objections to the Settlement.

DISTRIBUTION AND REMAINING TAKS

19. Angeion will continue to keep the Parties apprised of any exclusion requests or objections received.

20. Upon issuance of a Final Approval Order from this Court and the achievement of the benchmarks set forth in the Settlement Agreement, Angeion will cause the distribution of

Settlement Fund to take place in accordance with the terms of the Settlement Agreement or as otherwise directed by this Court.

CONCLUSION

21. In my professional opinion, the Notice Program described herein provided full and proper notice to members of the Retry Fee Class and Sufficient Funds Fee Class before the opt-out and objection deadlines. Moreover, it is my opinion that the Notice Program was the best notice practicable under the circumstances, fully comported with due process and Fed. R. Civ. P.

22. Here, the Notice Program utilizes direct notice via mail and/or email to every member of the Retry Fee Class and Sufficient Funds Fee Class who can be identified through reasonable effort. This represented virtually the entire class population and is clearly the best notice that is practicable under the circumstances. As noted above, the reach to members of the Retry Fee Class and Sufficient Funds Fee Class who received the notice is currently 98.8%, which is well above the Federal Judicial Center standard.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: April 8, 2022


STEVEN WEISBROT

Exhibit A



1650 Arch Street, Suite 2210
Philadelphia, PA 19103
www.angeiongroup.com
215.563.4116 (P)
215.525.0209 (F)

February 26, 2021

VIA USPS PRIORITY MAIL

United States Attorney General &
Appropriate Officials

Re: Notice of Class Action Settlement

Roy v. ESL Federal Credit Union

Dear Counsel or Official:

Angeion Group, an independent claims administrator, on behalf of the defendant in the below-described action, hereby provides your office with this notice under the provisions of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715, to advise you of the following proposed class action settlement:

Case Name: *Roy v. ESL Federal Credit Union*

Index Number: 6:19-cv-06122

Jurisdiction: United States District Court, Western District of New York

Date Settlement Filed with Court: February 16, 2021

ESL Federal Credit Union denies any wrongdoing or liability whatsoever, but has decided to settle this action solely in order to eliminate the burden, expense, and uncertainties of further litigation. 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-ROM:

1. **28 U.S.C. § 1715(b)(1)-Complaint:** *Class Action Complaint and Demand for Jury Trial* filed with the Court on February 15, 2019, and the *First Amended Class Action Complaint and Demand for Jury Trial* filed with the Court on October 7, 2019.
2. **28 U.S.C. § 1715(b)(2)-Notice of Any Scheduled Judicial Hearings:** There are no judicial hearings currently scheduled.
3. **28 U.S.C. § 1715(b)(3)-Notification to Class Members:** The *Long and Short Form Notice* filed with the Court on February 16, 2021.
4. **28 U.S.C. § 1715(b)(4)-Class Action Settlement Agreement:** The *Settlement Agreement and Releases*, filed with the Court on February 16, 2021. The *Notice of Motion and Unopposed Motion for Preliminary Approval of Class Action Settlement*; *Unopposed Memorandum of Law in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement*; *Joint Declaration of Class*

Counsel Jeff Ostrow, Jeffrey Kaliei, and Andrea Gold in Support of Motion for Preliminary Approval of Settlement; Declaration of Steven Weisbrot Esq. of Angeion Group LLC re: The Proposed Notice Plan; and the Proposed Order Granting Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement filed with the Court on February 16, 2021, are also included on the enclosed CD-ROM.

5. **28 U.S.C. § 1715(b)(5)-Any Settlement or Other Agreements:** Other than the Settlement Agreement, no other settlements or other agreements have been contemporaneously made between the Parties.
6. **28 U.S.C. § 1715(b)(6)-Final Judgment:** The Court has not issued a Final Judgment or notice of dismissal as of the date of this CAFA Notice.
7. **28 U.S.C. § 1715(b)(7)(B)-Estimate of Class Members:** The Settlement Class contains approximately 42,920 Class Members located throughout the United States. The Class Member breakdown by state/territory is included on the enclosed CD-ROM. The estimated proportional share of the Settlement benefits is not available at this time.
8. **28 U.S.C. §1715(b)(8)-Judicial Opinions Related to the Settlement:** The Court has not issued a judicial opinion related to the Settlement at this time.

If you have questions or concerns about this notice, the proposed settlement, or the enclosed materials, or if you did not receive any of the above-listed materials, please contact this office.

Sincerely,

Angeion Group
1650 Arch Street, Suite 2210
Philadelphia, PA 19103
(p) 215-563-4116
(f) 215-563-8839

Enclosure: CD-ROM

Exhibit B



1650 Arch Street, Suite 2210
Philadelphia, PA 19103
www.angeiongroup.com
215.563.4116 (P)
215.525.0209 (F)

August 6, 2021

VIA USPS PRIORITY MAIL

United States Attorney General &
Appropriate Officials

Re: Updated Notice of Class Action Settlement
Roy v. ESL Federal Credit Union

Dear Counsel or Official:

Angeion Group, an independent claims administrator, on behalf of the defendant in the below-described action, hereby provides your office with this updated notice under the provisions of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715, to advise you of the following *revised* proposed class action settlement:

Case Name: *Roy v. ESL Federal Credit Union*
Index Number: 6:19-cv-06122
Jurisdiction: United States District Court, Western District of New York
Date Revised Settlement Filed with Court: August 2, 2021

ESL Federal Credit Union denies any wrongdoing or liability whatsoever, but has decided to settle this action solely in order to eliminate the burden, expense, and uncertainties of further litigation. 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-ROM:

1. **28 U.S.C. § 1715(b)(1)-Complaint:** *Class Action Complaint and Demand for Jury Trial* filed with the Court on February 15, 2019, and the *First Amended Class Action Complaint and Demand for Jury Trial* filed with the Court on October 7, 2019.
2. **28 U.S.C. § 1715(b)(2)-Notice of Any Scheduled Judicial Hearings:** There are no judicial hearings currently scheduled.
3. **28 U.S.C. § 1715(b)(3)-Notification to Class Members:** The *Long and Short Form Notice* filed with the Court on August 2, 2021, as Exhibits 1 and 2 to the *Revised Settlement Agreement and Releases*.
4. **28 U.S.C. § 1715(b)(4)-Class Action Settlement Agreement:** The *Revised Settlement Agreement and Releases*, filed with the Court on August 2, 2021. The *Notice of Motion and Unopposed Renewed Motion for Preliminary Approval of Class Action Settlement; Unopposed Memorandum of Law in Support of Plaintiff's Renewed Motion for Preliminary Approval of Class Action Settlement; Joint*

Declaration of Class Counsel Jeff Ostrow, Jeffrey Kaliel, and Andrea Gold, and Sophia Gold in Support of Renewed Motion for Preliminary Approval of Settlement; Declaration of Steven Weisbrot Esq. of Angeion Group LLC re: The Proposed Notice Plan; and the [Proposed] Order Preliminarily Approving Class Action Settlement and Certifying Retry Fee Class and Sufficient Funds Fee Class, all filed with the Court on August 2, 2021, are also included on the enclosed CD-ROM.

5. **28 U.S.C. § 1715(b)(5)-Any Settlement or Other Agreements:** Other than the Settlement Agreement, no other settlements or other agreements have been contemporaneously made between the Parties.
6. **28 U.S.C. § 1715(b)(6)-Final Judgment:** The Court has not issued a Final Judgment or notice of dismissal as of the date of this updated CAFA Notice.
7. **28 U.S.C. § 1715(b)(7)(B)-Estimate of Class Members:** The Settlement Class contains approximately 42,920 Class Members located throughout the United States. The Class Member breakdown by state/territory is included on the enclosed CD-ROM. The estimated proportional share of the Settlement benefits is not available at this time.
8. **28 U.S.C. § 1715(b)(8)-Judicial Opinions Related to the Settlement:** The Court has not issued a judicial opinion related to the Settlement at this time.

If you have questions or concerns about this notice, the proposed settlement, or the enclosed materials, or if you did not receive any of the above-listed materials, please contact this office.

Sincerely,

Angeion Group
1650 Arch Street, Suite 2210
Philadelphia, PA 19103
(p) 215-563-4116
(f) 215-563-8839

Enclosure: CD-ROM

Exhibit C

From: Roy v ESL Settlement Administrator <donotreply@royclassactionsettlement.com>

Sent: Friday, March 4, 2022 1:01 PM

To: [REDACTED]

Subject: Notice of Pending Class Action and Proposed Settlement

Notice ID: [REDACTED]
[REDACTED]

Susan Roy v. ESL 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 ESL FEDERAL CREDIT UNION
AND YOU WERE CHARGED CERTAIN OVERDRAFT FEES OR RETURNED ITEMS FEES
BETWEEN JANUARY 1, 2016 TO OCTOBER 31, 2019, THEN YOU MAY BE ENTITLED TO
A PAYMENT FROM A CLASS ACTION SETTLEMENT**

Para un aviso en Español, visitar www.RoyClassActionSettlement.com.

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

You may be a member of the Sufficient Funds Fee Class and/or the Retry Fee Class in *Susan Roy v. ESL Federal Credit Union*, in which the plaintiff alleges that defendant ESL Federal Credit Union ("Defendant") unlawfully assessed Sufficient Funds Fees and Retry Fees between January 1, 2016 to October 31, 2019 contrary to the terms of its Member Agreement and disclosures. If you are a member of the Sufficient Funds Fee Class and if the Settlement is approved, you may be entitled to receive a cash payment from a \$935,000.00 Settlement Fund established for that class and/or the forgiveness of Uncollected Sufficient Funds Fees, benefits established by the Settlement. If you are a member of the Retry Fee Class and if the Settlement is approved, you may be entitled to receive a cash payment from a \$765,000.00 Settlement Fund established for that class and/or the forgiveness of Uncollected Retry Fees, benefits established by the Settlement. You may be a member of both classes, depending on the fees assessed on your account with Defendant.

The Court has preliminarily approved this Settlement. It will hold a Final Approval Hearing in this case on **May 24, 2022**. 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 the class representative, of 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 member, and/or to forgive certain Overdraft Fees and Returned Item Fees based on your eligibility for such Settlement benefits.

To obtain a long form class notice and other important documents please visit

www.RoyClassActionSettlement.com. Alternatively, you may call 1-(855) 955-5967.

*If you do not want to participate in this settlement—you do not want to receive a credit or cash payment and/or the forgiveness of Uncollected Relevant 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 **April 24, 2022**. 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 **April 24, 2022**. You may learn more about the opt-out and objection procedures by visiting www.RoyClassActionSettlement.com or by calling 1-(855) 955-5967.*

[Unsubscribe](#)

Exhibit D

**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 ESL FEDERAL
CREDIT UNION AND YOU WERE
CHARGED CERTAIN OVERDRAFT
FEES OR RETURNED ITEMS
FEES BETWEEN JANUARY 1,
2016 TO OCTOBER 31, 2019, THEN
YOU MAY BE ENTITLED TO A
PAYMENT FROM A CLASS ACTION
SETTLEMENT**

1-855-955-5967

www.RoyClassActionSettlement.com

Roy v. ESL Federal Credit Union
Settlement Administrator
1650 Arch Street, Ste 2210
Philadelphia, PA 19103

FIRST-CLASS MAIL
U.S. POSTAGE PAID
MAG



Postal Service: Please Do Not Mark Barcode

Notice ID: [REDACTED]



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

You may be a member of the Sufficient Funds Fee Class and/or the Retry Fee Class in *Susan Roy v. ESL Federal Credit Union*, in which the plaintiff alleges that defendant ESL Federal Credit Union (“Defendant”) unlawfully assessed Sufficient Funds Fees and Retry Fees between January 1, 2016 and October 31, 2019 contrary to the terms of its Member Agreement and disclosures. If you are a member of the Sufficient Funds Fee Class and if the Settlement is approved, you may be entitled to receive a cash payment from a \$935,000.00 Settlement Fund established for that class and/or the forgiveness of Uncollected Sufficient Funds Fees, benefits established by the Settlement. If you are a member of the Retry Fee Class and if the Settlement is approved, you may be entitled to receive a cash payment from a \$765,000.00 Settlement Fund established for that class and/or the forgiveness of Uncollected Retry Fees, benefits established by the Settlement. You may be a member of both classes, depending on the fees assessed on your account with Defendant.

The Court has preliminarily approved this Settlement. It will hold a Final Approval Hearing in this case on **May 24, 2022**. 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 the class representative, of 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 member, and/or to forgive certain Overdraft Fees and Returned Item Fees based on your eligibility for such Settlement benefits.

To obtain a long form class notice and other important documents please visit www.RoyClassActionSettlement.com. Alternatively, you may call 1-855-955-5967.

*If you do not want to participate in this settlement—you do not want to receive a credit or cash payment and/or the forgiveness of Uncollected Relevant 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 **April 24, 2022**. 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 **April 24, 2022**. You may learn more about the opt-out and objection procedures by visiting www.RoyClassActionSettlement.com or by calling 1-855-955-5967.*

Para una notificación en Español, visitar www.RoyClassActionSettlement.com

Exhibit E

Susan Roy v. ESL 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 ESL FEDERAL
CREDIT UNION (“DEFENDANT”) AND YOU WERE CHARGED
CERTAIN OVERDRAFT FEES OR RETURNED ITEM FEES BETWEEN
JANUARY 1, 2016 TO OCTOBER 31, 2019, THEN YOU MAY BE
ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT**

The United States District Court for the Western 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 Relevant 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 Relevant 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 *Susan Roy v. ESL Federal Credit Union*. It is pending in the United States District Court for the Western District of New York, Case No. 6:19-cv-06122. The case is a “class action.” That means that the “Class Representative,” Susan Roy, is an individual who is acting on behalf of current and former members who were assessed certain Overdraft Fees and Returned Item Fees between January 1, 2016 to October 31, 2019. The Class Representative has asserted claims for breach of the account agreement and violations of New York’s Consumer Protection Laws.

Defendant does not deny it charged the fees the Class Representative is 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 Representative or any Sufficient Funds Fee Class and/or Retry Fee 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 Overdraft Fees or Returned Item Fees that are the subject of this action. You may be a member of the Sufficient Funds Fee Class or Retry Fee Class, or both classes. The Court directed that this Notice be sent to all Sufficient Funds Fee Class and Retry Fee 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’s and her 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’s lawyers, known as Class Counsel, make this recommendation to the Class Representative. The Class Representative has the duty to act in the best interests of the classes 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 Sufficient Funds Fee Class and Retry Fee 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’s claims are subject to other defenses that might result in no or less recovery to Sufficient Funds Fee Class and Retry Fee Class members. Even if the Class Representative were to win at trial, there is no assurance that the Sufficient Funds Fee Class and Retry Fee 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 Sufficient Funds Fee Class and Retry Fee 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 the Sufficient Funds Fee Class and/or the Retry Fee Class who may be entitled to receive a payment or credit to your Account, forgiveness of Uncollected Relevant Fees, or both. You may be a member of each class.

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. In addition, you may enter an appearance by hiring your own counsel.

6. What are the critical deadlines?

There is no deadline to receive a payment. If you do nothing, then you will get a payment.

The deadline for sending a letter to exclude yourself from or opt out of the settlement is **April 24, 2022**.

The deadline to file an objection with the Court is also **April 24, 2022**.

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. You may choose to exclude yourself from the Sufficient Funds Fee Class or Retry Fee Class, or both classes, if you are a member of both. If you are a member of one of the classes, then you may exclude yourself from that class.

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 Sufficient Funds Fee Class and/or the Retry Fee Class, nor will any forgiveness of Uncollected Relevant Fees occur. 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 Sufficient Funds Fees and/or Retry 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 and/or forgiveness of Uncollected Relevant Fees 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 **May 24, 2022**.

THE SETTLEMENT PAYMENT

9. How much is the Settlement?

Defendant has agreed to create a Settlement Fund of \$935,000 for the Sufficient Funds Fee Class and \$765,000 for the Retry Fee Class. It will also forgive Uncollected Sufficient Funds Fees for the Sufficient Funds Fee Class in an amount calculated to be \$29,785.14, and forgive Uncollected Retry Fees for the Retry Fee Class in an amount calculated to be \$100,973.22.

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), and a Service Award to the Class Representative will be allocated between and paid out of the Settlement Fund for both the Sufficient Funds Fee Class and Retry Fee Class. Thereafter, the Sufficient Funds Fee Net Settlement Fund and Retry Fee Net Settlement Fund will be divided among all members of each of those classes entitled to Settlement Class Member Payments based on formulas described in the Settlement Agreement and stated in response to Question 13 below.

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 up to 33.33% of the Value of the Settlement, plus reimbursement of reasonable litigation costs, to be approved by the Court. 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 for her work in connection with this case. The Service Award must be approved by the Court.

12. How much of the Settlement Fund will be used to pay the Settlement Administrator's expenses?

The Settlement Administrator estimates its expenses at \$45,719.00.

13. How much will my payment be?

The balance of the Settlement Fund after attorneys' fees and costs, the Service Award and the Settlement Administration Costs, 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 and summarized below:

The Sufficient Funds Fee Net Settlement Fund shall be paid *pro rata* to the members of the Sufficient Funds Fee Class using the following calculation:

- The dollar amount of the Sufficient Funds Fee Net Settlement Fund divided by the total number of Sufficient Funds Fees paid by all members of the Sufficient Funds Fee Class, which yields a per-fee amount.
- Multiply the per-fee amount by the total number of Sufficient Funds Fees charged to and paid by each member of the Sufficient Funds Fee Class.
- This results in a Sufficient Funds Fee Settlement Class Member Payment.

The Retry Fee Net Settlement Fund shall be paid *pro rata* to the members of the Retry Fee Class using the following calculation:

- The dollar amount of the Retry Fee Net Settlement Fund divided by the total number of Retry Fees paid by all members of the Retry Fee Class, which yields a per-fee amount.
- Multiply the per-fee amount by the total number of Retry Fees charged to and paid by each member of the Retry Fee Class.
- This results in a Retry Fee Class Settlement Class Member Payment.

The total of the Sufficient Funds Fee Class Member Payment and/or the Retry Fee Class Member Payment due to each Settlement Class Member is the total Settlement Class Member Payment.

Current members of Defendant entitled to a Settlement Class Member Payment will receive a credit to their Accounts for the amount they are entitled to receive. Former members of Defendant entitled to receive a Settlement Class Member Payment shall receive a check from the Settlement Administrator. Settlement Class Members entitled to forgiveness of Uncollected Sufficient Funds Fees and/or Uncollected Retry Fees shall receive this benefit automatically. You may receive *both* a cash payment and forgiveness of Uncollected Relevant Fees, if you are eligible for both Settlement benefits, or you may only be eligible for one of those Settlement benefits.

14. 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 Relevant Fees without having to make a claim, unless you choose to exclude yourself from the settlement, or "opt out."

15. When will I receive my payment?
--

The Court will hold a Final Approval Hearing on **May 24, 2022 at 11:00am** to consider whether the Settlement should be approved. If the Court approves the Settlement, then payments should be made or credits should be issued within 30 days of the Effective Date. 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

16. How do I exclude myself from the Settlement?

If you do not want to receive a payment or debt forgiveness, 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 *Susan Roy v. ESL Federal Credit Union* class action.” Be sure to include your name, the last four digits of your member number(s) or former member number(s), address, telephone number, and email address. Your exclusion or opt out request must be postmarked by **April 24, 2022**, and sent to:

Susan Roy v. ESL Federal Credit Union
c/o Settlement Administrator
Attn: Exclusion Request
P.O. Box 58220
Philadelphia, PA 19102

17. 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 or forgiveness of Uncollected Relevant Fees from the Settlement.

In the event an account has multiple Account Holders and one such individual opts out of the Settlement, all of the Account Holders will be deemed to have opted out of the Settlement.

OBJECTING TO THE SETTLEMENT

18. 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 at the address 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;

- d. the identity of all counsel (if any) representing the objector who prepared the objection and/or will appear at the Final Approval Hearing;
- e. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- f. the objector's signature (an attorney's signature is not sufficient).

All objections must be post-marked no later than **April 24, 2022**, and must be mailed to the Clerk of the Court as follows:

Clerk of the U.S. Dist. Court for the Western District of New York
100 State Street
Rochester, NY 14614

19. 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 Sufficient Funds Fee Class and/or the Retry Fee 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 Relevant 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 Relevant Fees, or release claims you might have against Defendant for the claims alleged in this lawsuit.

20. What happens if I object to the Settlement?

If the Court sustains your objection, or the objection of any other member of the Sufficient Funds Fee Class and/or the Retry Fee Class, then there may be 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

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

The Court will hold a Final Approval or Fairness Hearing at **11:00am** on **May 24, 2022** at the United States District Court for the Western District of New York, which is located at 100 State Street, Rochester, New York 14614. 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 Award to the Class Representative. The hearing may be virtual, in which case the instructions to participate shall be posted on the website at www.RoyClassActionSettlement.com.

22. 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.

23. 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

24. 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 members of the Sufficient Funds Fee Class and/or Retry Fees Class.

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

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

26. 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 copy of the fee application at the website established by the Settlement Administrator, or by requesting the court record from the Clerk of the United States District Court for the Western District of New York at <https://www.nywd.uscourts.gov/document-requests>.

GETTING MORE INFORMATION

This Notice only summarizes the proposed Settlement. More details are contained in the Settlement Agreement, the Renewed Motion for Preliminary Approval, which can be viewed/obtained online at www.RoyClassActionSettlement.com or at the Office of the Clerk of the United States District Court for the Western District of New York, which is located at 100 State Street, Rochester, NY 14614, by asking for the Court file containing the Renewed Motion for Preliminary Approval (the Revised Settlement Agreement is attached to the motion) or obtaining a copy by requesting a copy from the Clerk of the United States District Court for the Western District of New York at <https://www.nywd.uscourts.gov/document-requests>.

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

Susan Roy v. ESL Federal Credit Union
Attn: SETTLEMENT ADMINISTRATOR
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

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

Sophia Goren Gold
KALIEL GOLD PLLC
1100 15th St. NW
4th Floor
Washington, DC 20005
202-350-4783
sgold@kalielgold.com

Jeffrey Ostrow
Jonathan M. Streisfeld
KOPELOWITZ OSTROW P.A.
One West Las Olas Boulevard
Suite 500
Fort Lauderdale, Florida 33301
954-525-4100
954-525-4300
ostrow@kolawyers.com
streisfeld@kolawyers.com

Andrea Gold, Esq.
TYCKO & ZAVAREEI LLP
1828 L St. NW, Suite 1000
Washington, DC 20036
202-973-0900
agold@tzlegal.com

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

EXHIBIT D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SUSAN ROY, on behalf of herself and all others
similarly situated,

Plaintiff,

vs.

ESL FEDERAL CREDIT UNION,

Defendant.

CASE NO. 6:19-cv-06122-FPG-JWF

**[PROPOSED] FINAL APPROVAL ORDER APPROVING
CLASS ACTION SETTLEMENT AND GRANTING APPLICATION
FOR ATTORNEYS' FEES AND COSTS, AND SERVICE AWARD**

WHEREAS, the Parties in the above-captioned class Action entered into a Revised Settlement Agreement and Releases, dated July 15, 2021;

WHEREAS, the Unopposed Motion for Final Approval of Class Action Settlement and Application for Attorneys' Fees and Costs and Service Award was filed on April 9, 2022 (ECF No. —);

WHEREAS on January 26, 2022, the Court entered a Preliminary Approval Order that inter alia: (i) preliminarily approved the Settlement; (ii) determined that, for purposes of the settlement only, the Action should proceed as a class action pursuant to Federal Rules of Civil Rules 23(a) and 23(b)(3); (iii) appointed Plaintiff Susan Roy as Class Representative; (iv) appointed Jeff Ostrow and Jonathan Streisfeld of Kopelowitz Ostrow Ferguson Weiselberg Gilbert, Sophia Gold of KalieGold PLLC, and Andrea Gold of Tycko & Zavareei, LLP as Class Counsel; (v) approved the form and manner of the Notice Program; and (vi) set a hearing date to consider Final Approval of the Settlement (ECF No. 69);

WHEREAS, Notice was provided to all persons identified in the Retry Fee Class and Sufficient Funds Fee Class member list in accordance with the Court's Preliminary Approval Order by individual email and/or mailings to all persons in those classes who could be reasonably identified;

WHEREAS, a notice of Settlement was mailed first on February 26, 2021, and again on August 6, 2021, to governmental entities as provided for in 28 U.S.C. § 1715;

WHEREAS, on May 24, 2022, at 11:00 a.m., at the United States District Court for the Western District of New York, 100 State Street, Rochester, New York 14614, The Honorable Frank P. Geraci, Jr. held a Final Approval Hearing to determine whether the Settlement was fair, reasonable, and adequate, and to consider the application of Class Counsel for attorneys' fees and costs and for a Service Award for the Class Representative; and

WHEREAS, based on the foregoing, having considered the papers filed and proceedings held in connection with the Settlement, having considered all of the other files, records, and proceedings in the Action, and being otherwise fully advised,

IT IS HEREBY ORDERED as follows:

1. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class Members.

2. This Order incorporates the definitions in the Settlement Agreement, and all capitalized terms used in this Order have the same meanings as set forth in the Settlement Agreement, unless otherwise defined herein.

3. The Notice provided to the members of the Retry Fee Class and Sufficient Funds Fee Class in accordance with the Preliminary Approval Order was the best notice practicable under the circumstances and constituted due and sufficient notice of the proceedings and matters set forth therein, to all persons entitled to notice. The Notice fully satisfied the requirements of due process, Federal Rule of Civil Procedure 23, and all other applicable law and rules.

4. The notice to government entities, as given, complied with 28 U.S.C. § 1715.

5. The Court hereby finally certifies the Retry Fee Class and the Sufficient Funds Fee Class for purposes of the Settlement only, consisting of:

Retry Fee Class. All current and former members of Defendant who were assessed Retry Fees.

Sufficient Funds Fee Class. All current and former members of Defendant who

were assessed Sufficient Funds Fees.

Excluded from the Retry Fee Class and Sufficient Funds Fee Class is Defendant, its parents, subsidiaries, affiliates, officers and directors; all Retry Fee Class and Sufficient Funds Fee Class members who make a timely election to be excluded; and all judges assigned to this litigation and their immediate family members.

6. The Class Period is January 1, 2016 to October 31, 2019 for both the Retry Fee Class and the Sufficient Funds Fee Class.

7. No members of the Retry Fee Class or Sufficient Funds Fee Class have opted-out of or objected to the Settlement.

8. The Settlement (i) is in all respects fair, reasonable, and adequate to the Settlement Class, (ii) was the product of informed, arms-length negotiations among competent, able counsel, and (iii) was made based upon a record that is sufficiently developed and complete to have enabled the Class Representative and Defendant to adequately evaluate and consider their positions. In finding the Settlement fair, reasonable, and adequate, the Court has also considered that there were no opt-outs or objections to the Settlement, indicating an overwhelming positive reaction from the Settlement Class, and the opinion of competent counsel concerning such matters.

9. The distribution plan proposed by the Parties is fair, reasonable, and adequate.

10. The Class Representative and Class Counsel have fairly and adequately represented and will continue to adequately represent and protect the interests of Settlement Class Members in connection with the Settlement.

11. Because the Court approves the Settlement set forth in the Settlement Agreement as fair, reasonable, and adequate, the Court authorizes and directs implementation of all terms and provisions of the Settlement Agreement.

12. All Parties to this Action, and all Settlement Class Members, are bound by the Settlement as set forth in the Settlement Agreement and this Order.

13. The Court reaffirms the appointment of Plaintiff as Class Representative.

14. The Court reaffirms the appointment of Class Counsel listed in the Agreement and approved in the Preliminary Approval Order.

15. The Court reaffirms the appointment of the Settlement Administrator.

16. The Court affirms the finding that the Settlement Class meets the relevant requirements of Federal Rule of Civil Procedure 23(a) and (b)(3) for purposes of the Settlement in that: (1) the number of Settlement Class Members in each of the Retry Fee Class and Sufficient Funds Fee Class is so numerous that joinder is impracticable; (2) there are questions of law and fact common to the members of the Retry Fee Class and Sufficient Funds Fee Class; (3) the claims of the Class Representative are typical of the claims of the members of the Retry Fee Class and Sufficient Funds Fee Class; (4) the Class Representative is an adequate representative for the Retry Fee Class and Sufficient Funds Fee Class, and has retained experienced counsel to represent her; (5) the questions of law and fact common to the members of the Retry Fee Class and Sufficient Funds Fee Class predominate over any questions affecting any individual member of those classes; and (6) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

17. Judgment shall be, and hereby is, entered dismissing the Action with prejudice, on the merits, and without taxation of costs in favor of or against any Party.

18. The Releasing Parties hereby fully and irrevocably release and forever discharge Defendant and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former directors, officers, employees, agents, insurers, members, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors and assigns of each of them ("Released Parties"), of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys' fees, losses and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties or matters during the Class Period that were or could have been alleged in the Action relating to the assessment of Sufficient Funds Fees and Retry Fees.

19. The Class Representative and all Settlement Class Members are hereby barred and permanently enjoined from instituting, asserting, or prosecuting any or all of the Released Claims

against any of the Released Parties.

20. If, consistent with the plan of distribution set forth in the Settlement Agreement, any Residual Funds exist after the first distribution, the residue will go to the Jump\$tart Coalition for Personal Financial Literacy as *cy pres* beneficiary.

21. The Court hereby decrees that neither the Settlement Agreement, nor this Order, nor the fact of the Settlement, is an admission or concession by Defendant or the Released Parties of any fault, wrongdoing, or liability whatsoever, or as an admission of the appropriateness of class certification for trial or dispositive motion practice. This Order is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. Nothing relating to the Settlement shall be offered or received in evidence as an admission, concession, presumption or inference against Defendant or the Released Parties in any proceeding, other than such proceedings as may be necessary to consummate or enforce the Settlement Agreement or to support a defense based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense.

22. Class Counsel is awarded attorneys' fees in the amount of \$_____ and costs in the amount of \$_____, such amounts to be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement. The Court concludes that the attorneys' fees awarded to Class Counsel meets with the requirements of *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000), in all respects.

23. The Class Representative is awarded a Service Award of \$_____, such amount to be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement.

24. The Court hereby retains and reserves jurisdiction over: (a) implementation of this Settlement and any distributions from the Settlement Fund; (b) the Action, until the Effective Date, and until each and every act agreed to be performed by the Parties shall have been performed pursuant to the terms and conditions of the Settlement Agreement, including the exhibits appended thereto; and (c) all Parties, for the purpose of enforcing and administering the Settlement.

25. In the event that the Effective Date of the Settlement Agreement, does not occur, the

Settlement shall be rendered null and void to the extent provided by and in accordance with the Settlement Agreement, and this Order shall be vacated. In such event, all orders entered and releases delivered in connection with the Settlement shall be null and void and the Action shall return to its status immediately prior to execution of the Settlement Agreement.

26. The Court adjudges that the Class Representative and all Settlement Class Members shall be bound by this Final Approval Order.

27. There being no just reason for delay, the Clerk of Court is hereby directed to enter final judgment forthwith pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

DATED: _____, 2022

Honorable Frank P. Geraci, Jr.
UNITED STATES DISTRICT JUDGE