

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT  
Case Type: Other Civil; Complex Case


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PETER DUGGAN and BEATRICE,  
ROBISON, on behalf of themselves and  
all others similarly situated,

Plaintiff,

v.

WINGS FINANCIAL CREDIT UNION,

Defendant.

Court File No.: 19AV-cv-20-2163

**MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT,  
CERTIFICATION OF SETTLEMENT  
CLASS, APPOINTMENT OF CLASS  
COUNSEL, DIRECTION OF NOTICE,  
AND SETTING DECEMBER 2022 FOR  
FINAL APPROVAL HEARING**

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**INTRODUCTION**

After engaging in motion practice over the legal claims, conducting informal and formal discovery, including exchanging information relating to damages, and subsequently engaging in settlement negotiations in front of a well-respected mediator, the parties reached the proposed class action Settlement Agreement and Release (the "Settlement") that is now before the Court for preliminary approval under Minnesota Rule of Civil Procedure 23.05(a).<sup>1</sup> The Settlement represents \$1,157,000 in relief for the Settlement Class, including a cash Settlement Fund of \$1,100,000 for the proposed Settlement Class, which represents approximately half (50%) of the total estimated damages, and the forgiveness of \$57,000 in fees that were assessed by not yet collected. Declaration of Jeff Kaliel in Support of the Plaintiff's Notice of Motion and Unopposed Motion for Preliminary Approval of Class Action Settlement, Certification of the Settlement Class, Appointment of Class Counsel, Direction of Notice, and Setting December, 2022 for Final

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<sup>1</sup> The Settlement is attached as Exhibit 1 to this memorandum.

Approval Hearing (“Kaliel Decl.”) ¶ 7. The Settlement monies will be distributed to the members of the Settlement Class by check or direct deposit, without need for Settlement Class Members to complete a claim form or take any additional steps. The Settlement represents an excellent result for the Settlement Class in this litigation, and the Court should grant preliminary approval to the Settlement. Granting preliminary approval will allow notice of the Settlement to be distributed to the Settlement Class and for a hearing to be scheduled to consider whether to grant final approval.<sup>2</sup>

## STATEMENT OF FACTS

### I. The Lawsuit

On November 23, 2020, Plaintiff Peter Duggan commenced the Action and alleged that Wings charged Overdraft Fees on Debit Card Transactions that authorized against a positive balance but settled against a negative balance due to intervening charges. Plaintiff alleged that this practice is inconsistent with the terms of Wings’ Account Agreement and Disclosure (“Account Agreement”) and Overdraft Disclosure (collectively, the “Account Documents”). On January 20, 2021, Plaintiff Peter Duggan and Wings filed a Stipulation for Plaintiff to file an Amended Complaint. On January 21, 2021, the Court issued an Order approving the Stipulation for Plaintiff to file an Amended Complaint.

On January 25, 2021, Plaintiffs Peter Duggan and Beatrice Robison filed an Amended Complaint asserting additional allegations that Wings charged insufficient fund fees (“NSF”) upon “reprocessing” a previously declined transaction. Plaintiffs alleged that this practice was inconsistent with the Account Documents.

On March 29, 2021, Wings filed a Motion to Dismiss the Action on the basis that the Class Action Amended Complaint failed to state a claim for relief. On April 12, 2021, Plaintiffs filed a

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<sup>2</sup> The final approval hearing can be scheduled for a date approximately 90 days after entry of the order granting preliminary approval.

Response in Opposition to the Motion to Dismiss. On April 26, 2021, the Parties argued the Motion to Dismiss which was taken under advisement by the Court.

On July 2, 2021, the Parties filed a Joint Motion to Stay the Proceedings to allow additional time for further settlement discussions. On July 6, 2021, the Court issued a Stay of Proceedings and held the pending Motion to Dismiss in abeyance until October 1, 2021.

The Parties thereafter engaged in data analysis and discovery to determine the range of damages at issue in the case. On September 20, 2021, the Parties participated in a remote mediation conducted via Zoom with mediator retired Judge Edward Infante. The mediation concluded that day without the Parties reaching an agreement. Thereafter, the Parties continued to negotiate and ultimately agreed to the material terms of a settlement on October 14, 2021.

On October 15, 2021, the Parties informed the Court that they had reached an agreement in principle and requested that the Court stay all deadlines in the Action to allow time for the Parties for completing settlement discovery and negotiations to finalize the class-wide settlement.

Over the next several months, the Parties engaged in further data analysis, confirmatory discovery, and settlement negotiation that ultimately resulted in the Settlement Agreement and proposed notices that are now before the Court.

## **II. The Settlement Terms**

### **A. The Settlement Class**

The Settlement provides for certification of a class of current and former Wings customers. Settlement ¶¶ 45.

The Settlement Class is defined as all current and former Wings consumer checking account customers, who were charged an Overdraft Fee on a Debit Card Transaction that was authorized into a positive available balance, but settled against a negative balance, and/ or were charged more than one Retry Fee on the same ACH item processed more than once during the

Class Period. *Id.* “Class Period” means for Settlement Class Members seeking recovery of Overdraft Fees charged on APPSN Transactions, the period from April 2, 2018 to May 17, 2019; for Settlement Class Members seeking recovery for NSF Retry Fees, the period from January 1, 2015, through May 1, 2019. *Id.*, ¶ 18. There are approximately 15,000 Settlement Class Members. Kalief Decl. ¶ 8.

**B. Value of the Settlement to the Settlement Class Members**

In exchange for the dismissal of this action and the release in the Settlement, Wings has agreed to: (1) pay \$1,110,000.00 to be used for direct payments to the members of the Settlement Class (the “Settlement Fund”), after deductions of court-approved fees and expenses. Settlement ¶ 48. Wings will also forgive Uncollected Fees, which are Overdraft Fees and Retry Fees that were assessed on Settlement Class Members but not collected, in the amount of \$57,000. *Id.*, ¶ 50.

The Settlement does not require Settlement Class Members to submit a claim or take any action to claim the monies they are entitled to under the Settlement. Settlement ¶ 76-79. Rather, payments will be made to Settlement Class Members by mailing a check to their last known address or depositing funds directly into their accounts (for current Wings accountholders). *Id.* Each Settlement Class Member will receive their pro rata share of the Settlement Fund, based on the total number of fees that the Settlement Class Member paid. *Id.*, 71.

**C. Cy Pres Distribution of any Unclaimed Funds**

If any checks mailed to former Wings members remain uncashed, those funds do not revert to Wings. Settlement ¶ 81. Instead, those funds will be sent to Settlement Class Members in a secondary distribution, if economically feasible, or be paid to an agreed upon charitable organization as a *cy pres* award, as approved by the Court. *Id.*

**D. Notice to Settlement Class Members**

The Settlement includes proposed short form and long form notices to the Settlement Class Members that inform them of the terms of the settlement and their rights to object to, or opt-out of, the Settlement, or to do nothing and receive the benefits of the Settlement and be bound by it. *See* Notices attached to this Memorandum as Exhibit 2. Short-form notice will be mailed or email directly to Settlement Class Members and long-form notice will be available on the settlement website. Settlement ¶ 63. The website will provide Settlement Class Members with additional information relating to the Settlement. *Id.* The Settlement Administrator will provide the notice and the costs will be paid from the Settlement Fund.

**E. Attorneys' Fees and Expenses, Settlement Administrator's Costs, and Class Representative Service Award**

Before the deadline for Settlement Class Members to object, Class Counsel will file a motion with the Court requesting to be paid up to one-third of the Value of the Settlement as attorneys' fees, and will seek reimbursement of reasonable expenses. Settlement ¶ 87. Class Counsel will also file a motion requesting that the Court approve a service award of \$7,500 each to the Class Representatives, in recognition of their efforts in this case that have resulted in a benefit to thousands of others. Settlement ¶ 91. The requests for attorneys' fees and expenses, the Settlement Administrator's costs, and for a service award will be posted to the settlement website.

**DISCUSSION**

Minnesota Rule of Civil Procedure 23.05(a)(1) requires court approval of a class action settlement. The process for court approval involves three stages: (1) after "preliminary approval" by the court and certification of the class for settlement purposes, notice is sent to all Settlement Class Members informing them of the proposed settlement; (2) Settlement Class Members have a period of time to opt out of, or object to, the proposed settlement; and (3) the court holds a final

hearing to consider any objections and to consider whether to court grant “final approval” upon finding that the settlement is “fair, reasonable, and adequate,” after which judgment is entered, Settlement Class Members receive the benefits of the settlement, and the defendant receives the benefit of the settlement’s release. Minn. R. Civ. P. 23.05. The current motion addresses the first stage: “preliminary approval.”

**III. The Court should grant preliminary approval and certify the Settlement Class for settlement purposes.**

In deciding whether to grant “preliminary approval” to a proposed settlement, the Court evaluates whether the requested Settlement Class meet the requirements for class certification for settlement purposes and whether, on a preliminary review, the settlement appears to be fair, reasonable, and adequate. In making these determinations regarding class actions, Minnesota courts consider federal decisions on Rule 23 “instructive.” *Lewy 1990 Tr. ex rel. Lewy v. Inv. Advisors, Inc.*, 650 N.W.2d 445, 452 (Minn. Ct. App. 2002). Here, the Court can easily find that the Settlement Class can be certified and that the settlement is fair on a preliminary basis.

**A. The settlement is a fair, reasonable, and adequate compromise of the claims and was negotiated at arm’s-length by competent counsel after adequate investigation.**

Courts evaluating a proposed settlement often use several factors, none of which is dispositive, to weigh whether the settlement is “fair, reasonable, and adequate.” For example, in the Eighth Circuit, courts use four factors, commonly known as the *Van Horn* factors, along with additional factors recently codified in the 2018 amendment to Federal Rule of Civil Procedure 23(e)(2), to evaluate whether the court “will likely be able to” grant final approval to a settlement as being “fair, reasonable, and adequate.” *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988); *Swinton v. SquareTrade, Inc.*, No. 4:18-CV-00144-SMR-SBJ, 2020 WL 1862470, at \*5 (S.D. Iowa

Apr. 14, 2020) (holding that it is “appropriate for the Court to consider the Rule 23(e)(2) factors along with the *Van Horn* Factors.”).

In making the fairness determination, a court must be mindful that “[s]ettlement agreements are generally encouraged, and are presumptively valid.” *Huyer v. Wells Fargo & Co.*, 314 F.R.D. 621, 626 (S.D. Iowa 2016) (citing *In re Uponor, Inc.*, 716 F.3d 1057, 1063 (8th Cir. 2013)). “A strong public policy favors [settlement] agreements, and courts should approach them with a presumption in their favor.” *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1148 (8th Cir. 1999) (quoting *Little Rock Sch. Dist. v. Pulaski Cnty. Special Sch. Dist. No. 1*, 921 F.2d 1371, 1383 (8th Cir. 1990)). The policy “favoring the voluntary resolution of litigation through settlement is particularly strong in the class action context.” *Khoday v. Symantec Corp.*, No. 11-CV-180 (JRT/TNL), 2016 WL 1637039, at \*5 (D. Minn. Apr. 5, 2016), *report and recommendation adopted*, No. 11-CV-0180 (JRT/TNL), 2016 WL 1626836 (D. Minn. Apr. 22, 2016), *aff’d sub nom. Caligiuri v. Symantec Corp.*, 855 F.3d 860 (8th Cir. 2017). The “guiding principle” is that “a class action settlement is a private contract negotiated between the parties” and thus the Court’s review is limited to ensuring “that the agreement is not the product of fraud or collusion and that, taken as a whole, it is fair, adequate, and reasonable to all concerned.” *Marshall v. Nat’l Football League*, 787 F.3d 502, 509 (8th Cir. 2015) (quoting *In re Wireless Tel Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 934 (8th Cir. 2005)). A court’s decision on the fairness of a class action settlement will be affirmed absent a clear abuse of discretion. *Van Horn*, 840 F.2d at 607.

The four *Van Horn* factors that courts consider are: (1) the merits of the plaintiffs’ case weighed against the terms of the settlement; (2) the defendants’ financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement. *Id.* The first factor is the most important, but so long as “[t]he settlement fund ensures that

Settlement Class Members will receive an adequate percentage of their damages and mitigates the risk inherent in taking these legal claims to trial,” the first *Van Horn* factor “weighs strongly in favor of approving the settlement and finding it to be fair and reasonable.” *Huyer*, 314 F.R.D. at 627. Courts have found that settlements that provide as little as 10% or less of potential damages provide an “adequate percentage” recovery. *See, e.g., Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542–43 (S.D. Fla. 1988), *aff’d*, 899 F.2d 21 (11th Cir. 1990) (approving settlement equal to 3 to 5% of the per share recovery sought by plaintiffs and observing that “the fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate” and that “[a] settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery.”).

The other *Van Horn* factors are less important. For example, even where, under the second *Van Horn* factor, a defendant is financially sound and able to pay more or continue with litigation, that circumstance is merely “neutral” to the fairness analysis. *Marshall*, 787 F.3d 502, 512 (8th Cir. 2015) (fact that the NFL could afford to pay more was only “neutral”). And under the third *Van Horn* factor, courts note that “[c]lass actions, in general, place an enormous burden of costs and expense upon [ ] parties,” which favors approval. *Id.* (internal quotations and citation omitted). The fourth *Van Horn* factor applies for final approval—after the class has received notice and an opportunity to object—but does not apply at the preliminary approval stage because there has been no notice of the settlement to the class and therefore no opposition. Again, no one factor is determinative, but the “most important factor in determining whether a settlement is fair, reasonable, and adequate is a balancing of the strength of the plaintiff’s case against the terms of the settlement.” *Van Horn*, 840 F.2d at 607.



In addition to the *Van Horn* factors, courts look to factors listed in Federal Rule of Civil Procedure 23(e)(2). These include whether the class was adequately represented, the effectiveness of the method for distributing the settlement relief, the proposed attorneys' fees, and whether the agreement was negotiated at arm's length.

Here, both the *Van Horn* and the additional Rule 23(e)(2) factors favor finding the settlement to be fair, reasonable, and adequate on a preliminary basis. First, the Class Representatives and Class Counsel have adequately represented the Settlement Class by investigating and vigorously pursuing the claims in this case and by convincing the Defendant to agree to pay \$1,157,000, which is over 50% of the potential total damages. Kaliel Decl. ¶ 9. The Settlement was negotiated at arm's length by counsel experienced in class action litigation and bank fee litigation in particular. Kaliel Decl. ¶ 10. The Settlement eliminates the costs, and delays of litigation and eliminates the risk that the Settlement Class could have suffered at summary judgment, class certification, trial, or appeal. Kaliel Decl. ¶ 11. The method of distributing the relief to the Settlement Class is also highly efficient because it requires Settlement Class Members to do nothing—they will automatically receive a direct deposit or check in the mail, without the need to submit a claim form or take any other steps. Kaliel Decl. ¶ 12. The requested fees will be evaluated by the Court at final approval, but are the standard one-third normally awarded in class actions. *See, e.g., Yarrington v. Solvay Pharm., Inc.*, 697 F. Supp. 2d 1057, 1065 (D. Minn. 2010) (awarding one-third fee and noting it is the amount commonly awarded). The Settlement treats Settlement Class Members equitably relative to each other by awarding them a pro rata share of the Settlement Fund that is based on the number of disputed fees they were charged, ensuring that Settlement Class Members who were charged more in disputed fees will receive larger payments. Thus, the Court should find, for purposes of preliminary approval, that the proposed settlement is

fair, reasonable, and adequate, and that notice of the proposal should be sent to the Settlement Class.

**B. The proposed Settlement Class meet the requirements for class certification under Minn. R. Civ. P. 23.01 and 23.02(c).**

The Court should also certify the Settlement Class for purposes of notice and settlement. Class certification under Minnesota Rule of Civil Procedure 23 requires satisfying the four mandatory requirements of Rule 23.01 and one of the subsections of Rule 23.02. *Lewy 1990 Tr. ex rel. Lewy v. Inv. Advisors, Inc.*, 650 N.W.2d 445, 451–52 (Minn. Ct. App. 2002). In this case, the Settlement Class satisfy all the requirements of Rule 23.01 (numerosity, commonality, typicality, and adequacy of representation) and the two requirements of subsection (c) of Rule 23.02 (predominance and superiority). *Id.*

Numerosity is satisfied if there are merely forty or more Settlement Class Members. *Lewy 1990 Tr.*, 650 N.W.2d at 452. Commonality is satisfied if there is “behavior causing a common effect must be subject to some dispute.” *Id.* at 453. Typicality is satisfied “when the claims of the named plaintiffs arise from the same event or are based on the same legal theory as the claims of the Settlement Class Members.” *Id.* “[A]dequacy means the representative parties’ interests must coincide with the interests of other Settlement Class Members and that the parties and their counsel will competently and vigorously prosecute the lawsuit.” *Id.* Predominance is satisfied “where generalized evidence may prove or disprove elements of a claim.” *Id.* at 455. Finally, superiority is satisfied when “collective adjudication promises substantial efficiency benefits or makes it possible for Settlement Class Members with small claims to bring suit and enforce the substantive law.” *Id.* at 457.

Here, each element is met. Numerosity is met because, based on the number of fees charged, there are thousands of Settlement Class Members—many more than the 40 needed.

Commonality is met because the bank's behavior of charging fees in a systematic way to the Settlement Class Members had a common effect. Typicality is met because the Plaintiffs were subject to the same treatment as the other Settlement Class Members and her claims are based on the same theories as the Settlement Class Members. Adequacy is met because the Plaintiffs share the same interests as the class in recovering the disputed fees and they and their counsel have vigorously pursued the litigation. Predominance is met because the Plaintiffs' and class's claims can all be proven from generalized evidence of what the bank's agreements permitted with respect to the fees at issue and the bank's standard practices and procedures for assessing those fees. Finally, a class action is superior because it allows all of the relatively small claims to be resolved in one proceeding. Thus, all of the requirements for class certification are met and the Court should certify the following Settlement Class discussed *supra* for settlement purposes:

Defendant does not oppose certifying these Settlement Class for purposes of settlement.

In addition, the Court should appoint Kaliel PLLC and The Kick Firm, as Class Counsel, and Plaintiffs as Class Representative. Minn. R. Civ. P. 23.07. These firms have the requisite experience and skill to represent the Settlement Class and that they have done so in litigating this action and achieving the Settlement. Kaliel Decl. ¶ 13.

**IV. The Court should approve the notice to the class, set deadlines for opt-outs and objections, and schedule a final approval hearing.**

Upon the granting of preliminary approval, the court "must direct notice in a reasonable manner to all Settlement Class Members who would be bound by a proposed settlement" to inform them of its terms and their rights. Minn. R. Civ. P. 23.05(a)(2). 13. Under Minn. R. Civ. P. 23.03(b), the notice must concisely and clearly state in plain, easily understood language:

(A) the nature of the action,

(B) the definition of the class certified,

(C) the class claims, issues, or defenses,

(D) that a Settlement Class Member may enter an appearance through counsel if the member so desires,

(E) that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded, and

(F) the binding effect of a class judgment on Settlement Class Members under Rule 23.03(c).

As part of the preliminary approval order, the Court should approve the proposed forms and manner of notice. The notice constitutes the “best practicable notice” under the circumstances and is direct notice to each Settlement Class Member individually. The long form of notice is based off of plain-English forms adopted by the Federal Judicial Center and informs the Settlement Class Members of all the required information, including (i) the nature of the action; (ii) the Settlement Class; (iii) the class claims; (iv) that a Settlement Class Member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23.03(c). Settlement Ex. 1 & 2. The notice also provides for the Court to schedule a final approval hearing, which Plaintiffs request be held in December 2022, after Settlement Class Members have had a chance to opt-out of, object to, or remain part of the Settlement.

### **CONCLUSION**

The Court should enter the proposed Order Preliminary Approving Class Action Settlement, Certifying the Settlement Class, Appointing Class Counsel, Directing Notice, and Setting Date for Final Approval Hearing.

Dated: August 17, 2022

Respectfully submitted,

/s/ Jeffrey D. Kaliel

Jeffrey D. Kaliel (admitted *pro hac vice*)

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# **EXHIBIT 1**

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

Case Type: Other Civil; Complex Case

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Peter Duggan and Beatrice Robison, on behalf of  
themselves and all others similarly situated,

Case No.: 19AV-CV-20-2163

Plaintiff,

v.

Wings Financial Credit Union,

Defendant.

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**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Settlement” or “Agreement”)<sup>1</sup>, dated as of July 26, 2022, is entered into by Plaintiffs Peter Duggan and Beatrice Robison, on behalf of themselves and on behalf of the Settlement Class, and Defendant Wings Financial Credit Union (“Wings”) each individually a “Party” and collectively the “Parties.” The Parties hereby agree to the following terms in full settlement of the action entitled *Peter Duggan and Beatrice Robison v. Wings Financial Credit Union*, Case No. 19AV-CV-2163, subject to Final Approval, as defined below, by the Dakota County District Court for the First Judicial District of the State of Minnesota.

**I. Recitals**

1. On November 23, 2020, Plaintiff Peter Duggan commenced the Action and alleged that Wings charged Overdraft Fees on Debit Card Transactions that authorized against a positive balance but settled against a negative balance due to intervening charges. Plaintiff alleged that this

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<sup>1</sup> All capitalized terms herein have the meanings ascribed to them in Section II or various places in the Agreement.

practice is inconsistent with the terms of Wings' Account Agreement and Disclosure ("Account Agreement") and Overdraft Disclosure (collectively, the "Account Documents").

2. On January 20, 2021, Plaintiff Peter Duggan and Wings filed a Stipulation for Plaintiff to file an Amended Complaint.

3. On January 21, 2021, the Court issued an Order approving the Stipulation for Plaintiff to file an Amended Complaint.

4. On January 25, 2021, Plaintiffs Peter Duggan and Beatrice Robison filed an Amended Complaint asserting additional allegations that Wings charged insufficient fund fees ("NSF") upon "reprocessing" a previously declined transaction. Plaintiffs alleged that this practice was inconsistent with the Account Documents.

5. On March 29, 2021, Wings filed a Motion to Dismiss the Action on the basis that the Class Action Amended Complaint failed to state a claim for relief.

6. On April 12, 2021, Plaintiffs filed a Response in Opposition to the Motion to Dismiss.

7. On April 26, 2021, the Parties argued the Motion to Dismiss which was taken under advisement by the Court.

8. On July 2, 2021, the Parties filed a Joint Motion to Stay the Proceedings to allow additional time for further settlement discussions.

9. On July 6, 2021, the Court issued a Stay of Proceedings and held the pending Motion to Dismiss in abeyance until October 1, 2021.

10. On September 20, 2021, the Parties participated in a remote mediation conducted via Zoom with mediator retired Judge Edward Infante. The mediation concluded that day without



the Parties reaching an agreement. Thereafter, the Parties continued to negotiate and ultimately agreed to the material terms of a settlement on October 14, 2021.

11. On October 15, 2021, the Parties informed the Court that they had reached an agreement in principle and requested that the Court stay all deadlines in the Action to allow time for the Parties for completing settlement discovery and negotiations to finalize the class-wide settlement.

12. The Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims of the Releasing Parties (definitions below). The Parties intend this Agreement to bind Plaintiffs, Wings, 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:

13. “Account” means any consumer checking account maintained by Wings.

14. “Account Holder” means any person who has or had any interest, whether legal or equitable, in an Account during the Class Period.

15. “Action” means *Peter Duggan and Beatrice Robison v. Wings Financial Credit Union*, Case No. 19AV-CV-2163.

16. “Wings” means Wings Financial Credit Union.

17. “Class Counsel” means: Jeff Kaliel of KalielGold PLLC, Taras Kick of The Kick Law Firm.

18. “Class Period” means:

- a. for Settlement Class Members seeking recovery of Overdraft Fees charged on APPSN Transactions, the period from April 2, 2018 to May 17, 2019;
- b. for Settlement Class Members seeking recovery for NSF Retry Fees, the period from January 1, 2015, through May 1, 2019.

19. “Class Representatives” means Peter Duggan and Beatrice Robison.

20. “Court” means the Dakota County District Court for the First Judicial District of the State of Minnesota.

21. “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.

22. “Debit Card” means a card or similar device issued or provided by Wings, including a debit card, check card, or automated teller machine (“ATM”) card that can or could be used to debit funds from an Account by Point of Sale and/or ATM transactions.

23. “Debit Card Transaction” means a Point of Sale or ATM transaction using a Debit Card.

24. “Effective Date” means the fifth business day after which all of the following events have occurred:

- a. The Court has entered without material change the Final Approval Order and judgment; and
- b. The time for seeking rehearing or appellate or other review has expired, and no appeal or petition for rehearing or review has been timely filed; or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for

hearing, review, appeal, or certiorari could be taken has finally expired and relief from a failure to file same is not available.

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

26. “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 fees, costs, and expenses awarded to Class Counsel and the amount of any Service Award to the Class Representatives.

27. “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, costs, and expenses awarded to Class Counsel and the amount of any Service Award to the Class Representatives.

28. “Net Settlement Fund” means the Settlement Fund, minus Court approved attorneys’ fees, costs and expenses, any notice and administration expenses, and any Court approved Service Award to Plaintiffs.

29. “Notice” means the notices that the Parties will ask the Court to approve in connection with the Motion for Preliminary Approval of the Settlement.

30. “Notice Program” means the methods provided for in this Agreement for giving the Notice and consists of Postcard Notice, Email Notice, and Long Form Notice (all defined herein below), which shall be substantially in the forms as the exhibits attached to the Motion for Preliminary Approval.

31. “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 will be specified in the Notice.

32. “Overdraft Fee” means any fee or fees assessed to a holder of an Account for APPSN transactions.

33. “APPSN transactions” means transactions that Authorize Positive, and Purportedly Settle Negative.

34. “Retry Fee” means any fee or fees assessed to a holder of an Account for a second or third time a merchant attempted to be paid with the same check or performed a “Retry Payment” ACH transaction.

35. “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.

36. “Plaintiffs” means Peter Duggan and Beatrice Robison.

37. “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.

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

39. “Releases” means all the releases contained in Section XIII hereof.

40. “Released Claims” means all claims to be released as specified in Section XIII hereof.

41. “Releasing Parties” means Plaintiffs 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.

42. “Service Award” means any Court ordered payment to Plaintiffs for serving as Class Representatives, which is in addition to any payment due Plaintiffs as a Settlement Class Member.

43. “Settlement Administrator” means Epiq Systems, Inc. Settlement Class Counsel and Wings 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 Settlement Class Counsel or Wings 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.

44. “Settlement Administration Costs” means all costs and fees of the Settlement Administrator regarding notice and settlement administration.

45. “Settlement Class” means all current and former Wings consumer checking account customers, who were charged an Overdraft Fee on a Debit Card Transaction that was authorized into a positive available balance, but settled against a negative balance, and/ or were charged more than one Retry Fee on the same ACH item processed more than once during the Class Period. Excluded from the Settlement Class is Wings, its parents, subsidiaries, affiliates, officers and directors; all Settlement Class members who make a timely election to be excluded; and all judges assigned to this litigation and their immediate family members.

46. “Settlement Class Member” means any member of the Settlement 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.

47. “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.

48. “Settlement Fund” means the \$1,100,000.00 total commitment Wings is obligated to pay under the Settlement. Portions of the Settlement Fund (\$1,100,000 less the amounts that will be credited to current Wings’ members) will be funded into an escrow account established by the Settlement Administrator within 10 days of the Court’s entry of the Final Approval Order. The Settlement Fund will be used to pay the Settlement Class Member Payments, any attorneys’ fees, expenses, costs, and Service Award ordered by the Court, any Settlement Administration Costs, and any *cy pres* payment required under this Agreement.

49. “Settlement Website” means the website that the Settlement Administrator will establish as a means for Settlement 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 at least until Final Approval. The URL of the Settlement Website shall be a URL that Class Counsel and Wings agree upon in writing. The Settlement Website shall not include any advertising, and shall not bear or include the Wings logo or Wings trademarks. Ownership of the Settlement Website URL shall be transferred to Wings within 10 days of the date on which operation of the Settlement Website ceases.

50. “Uncollected Fees” shall mean any Overdraft Fees and Retry Fees that were assessed on Settlement Class Members but not collected, in the amount of \$57,000.

51. “Value of the Settlement” shall mean the Settlement Fund plus the Uncollected Fees.

### **III. Certification of the Settlement Class**

52. For Settlement purposes only, Plaintiffs and Wings agree to ask the Court to certify the Settlement Class under the Minnesota Rules of Civil Procedure.

### **IV. Settlement Consideration**

53. Subject to approval by the Court, Wings shall establish a Settlement Fund of \$1,100,000.00 inclusive of Settlement Administration Costs. The Settlement Fund shall be used to pay Settlement Class Members their respective Settlement Class Member Payments; any and all attorneys’ fees; costs and expenses awarded to Class Counsel; any Service Award to the Class Representatives; and all costs and expenses incurred by the Settlement Administrator. Wings shall not be responsible for any other payments under this Agreement.

54. Wings shall not collect any of the Uncollected Fees as defined above and as identified by the Settlement Administrator. This paragraph shall not apply to any unpaid balances owing by Class Members other than Uncollected Fees.

### **V. Settlement Approval**

55. Upon execution of this Agreement by all Parties, Class Counsel shall promptly move the Court for an order granting Preliminary Approval of this Settlement. The proposed Preliminary Approval Order that will be attached to the motion shall be in a form agreed upon by Class Counsel and Wings. The Motion for Preliminary Approval shall, among other things, request that the Court: (1) approve the terms of the Settlement as within the range of fair, adequate, and reasonable; (2) provisionally certify the Settlement Class pursuant to Minnesota 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 below for Settlement Class members to exclude themselves from the Settlement Class or 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 Wings, 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, costs and expenses and for a Service Award to the Class Representatives.

#### **VI. Discovery and Settlement Data**

56. Class Counsel and Wings already have engaged in significant discovery related to liability and damages and have identified the accounts that would be entitled to Settlement Class Member damages. Wings will make available to Class Counsel and its expert, data for the entirety of the Class Period that identifies the accounts entitled to Settlement Class Member damages. Once verified and because Plaintiff's expert will not have access to Settlement Class member names or Account numbers, Wings will provide identification information to the Settlement Administrator, who will then create a list of Settlement Class members and their electronic mail or postal addresses, which will be used to provide Notice.

#### **VII. Settlement Administrator**

57. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph hereafter 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.



58. The duties of the Settlement Administrator, in addition to other responsibilities that are described in the preceding paragraph and elsewhere in this Agreement, are as follows:

- a. Use the name and address information for Settlement Class members provided by Wings in connection with the Notice Program approved by the Court, for the purpose of distributing the Mailed Notice, Email Notice, and Long Form Notice, and later mailing distribution checks to Past Account Holder Settlement Class Members, and to Current Account Holder Settlement Class Members where it is not feasible or reasonable for Wings to make the payment by a credit to the Settlement Class Members' Accounts;
- b. Establish and maintain a post office box for requests for exclusion from the Settlement Class;
- c. Establish and maintain the Settlement Website;
- d. Establish and maintain an automated toll-free telephone line for Settlement Class members to call with Settlement-related inquiries, and answer the questions of Settlement Class members who call with or otherwise communicate such inquiries;
- e. Respond to any mailed Settlement Class member inquiries;
- f. Process all requests for exclusion from the Settlement Class;
- g. Provide weekly reports to Class Counsel and Wings 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 an 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 Settlement Class member who timely and properly requested exclusion from the Settlement Class, 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;
- j. Provide to Wings the amount of the Settlement Class Member Payments to Current Account Holder Settlement Class Members from the Settlement Fund and instruct Wings to initiate the direct deposit of Settlement Class Member Payments to Current Account Holder Settlement Class Members.
- k. Pay invoices, expenses, and costs upon approval by Class Counsel and Wings, as provided in this Agreement; and

1. Any other Settlement-administration-related function at the instruction of Class Counsel and Wings, including, but not limited to, verifying that the Settlement Funds has been distributed.

### **VIII. Notice to Settlement Class Members**

59. As soon as practicable after Preliminary Approval of the Settlement, at the direction of Class Counsel and Wings' Counsel, 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 Settlement Class members may exclude themselves from or "opt-out" of the Settlement Class; a date by which Settlement Class Members may object to the Settlement; the date upon which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website at which Settlement Class members may access this Agreement and other related documents and information. Class Counsel and Wings 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 the Wings logo or trademarks or the return address of Wings, or otherwise be styled to appear to originate from Wings.

60. The Notice also shall include a procedure for members of the Settlement Class to opt-out of the Settlement Class. A Settlement Class member may opt-out of the Settlement Class at any time during the Opt-Out Period, provided the opt-out notice 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 Settlement 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.

61. The Notice also shall include a procedure for Settlement Class Members to object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs and expenses and/or Service Award for the Class Representatives. Objections to the Settlement, to the application for fees, costs, expenses, and/or to the Service Award must be mailed to the Clerk of the Court, Class Counsel, Wings' counsel, and the Settlement Administrator. 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.

62. 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, accompanied by any legal support for the objection known to the objector or objector's counsel;
  - d. the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;
  - e. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
  - f. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each

- listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years;
- g. any and all agreements that relate to the objection or the process of objecting— whether written or oral—between objector or objector's counsel and any other person or entity;
  - h. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;
  - i. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
  - j. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
  - k. the objector's signature (an attorney's signature is not sufficient).

Class Counsel and/or Wings may conduct limited discovery on any objector consistent with the Federal Rules of Civil Procedure.

63. Notice shall be provided to Settlement Class members in three different ways: (a) Email notice to Account Holders for whom Wings has email addresses (“Email Notice”); (b) postcard notice to those Account Holders for whom Wings does not have email addresses (“Postcard Notice”); and (c) long-form notice with greater detail than the Email Notice and Postcard Notice (“Long Form Notice”). Email Notice and Postcard Notice shall collectively be referred to as “Mailed Notice.” Not all Settlement Class members will receive all forms of Notice, as detailed herein.

64. Wings will cooperate with Class Counsel and its expert to make available the necessary data to Class Counsel's expert to determine Settlement Class membership. The data necessary for Class Counsel's expert to compile the Settlement Class membership list shall be provided as soon as practicable. Wings will bear the expense of extracting the necessary data to make available to Class Counsel's expert for analysis, while Class Counsel shall be responsible for paying Class Counsel's expert, who will analyze the data provided to determine Settlement

Class membership as well as the amount of the Settlement Class' damages. The Settlement Administrator shall send out Email Notice to all Settlement Class members receiving Notice by that method. For those Settlement Class members for whom Wings does not have email addresses, the Settlement Administrator shall run the physical addresses provided by Wings through the National Change of Address Database and shall mail to all such Settlement Class members Postcard Notice. The initial Mailed Postcard and Email Notice shall be referred to as "Initial Mailed Notice."

65. The Settlement Administrator shall perform reasonable address traces for Mailed Notice postcards that are returned as undeliverable. By way of example, a "reasonable" tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such purpose. No later than 60 days before the Final Approval Hearing, the Settlement Administrator shall complete the re-mailing of Postcard Notice to those Settlement Class members whose new addresses were identified as of that time through address traces ("Notice Re-mailing Process"). The Settlement Administrator shall send Postcard Notice to all Settlement Class members whose emails were returned as undeliverable and complete such Notice pursuant to the deadlines described herein as they relate to the Notice Re-mailing Process.

66. The Notice Program (which is composed of both the Initial Mailed Notice and the Notice Re-mailing Process) shall be completed no later than 60 days before the Final Approval Hearing.

67. Within the provisions set forth in this Section VIII, further specific details of the Notice Program shall be subject to the agreement of Class Counsel and Wings.

#### **IX. Final Approval Order and Judgment**

68. Plaintiff's Motion for Preliminary Approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Plaintiff shall

file her Motion for Final Approval of the Settlement, inclusive of Class Counsel's application for attorneys' fees, costs and expenses and for a Service Award for the Class Representatives, no later than 45 days before the Final Approval Hearing. 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, costs, and expenses and for the Service Award for the Class Representatives. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to Class Counsel's application for attorneys' fees, costs, expenses or the Service Award application, provided the objectors submitted timely objections that meet all of the requirements listed in the Agreement.

69. 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 request for attorneys' fees, costs, expenses and 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 Settlement 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 against Wings 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 Wings 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 Wings, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

**X. Calculation and Disbursement of Settlement Class Member Payments**

70. The calculation and implementation of allocations of the Settlement Fund contemplated by this section shall be done by Class Counsel and its expert for the purpose of compensating Settlement Class Members. The methodology provided for herein will be applied to the data as consistently, sensibly, and conscientiously as reasonably possible, recognizing and taking into consideration the nature and completeness of the data and the purpose of the computations. Consistent with its contractual, statutory, and regulatory obligations to maintain the security of and protect its customers' private financial information, Wings shall make available such data and information as may reasonably be needed by Class Counsel and its expert to confirm and/or effectuate the calculations and allocations contemplated by this Agreement. Class Counsel shall confer with Wings' counsel concerning any such data and information.

71. The amount of the Settlement Class Member Payment from the Net Settlement Fund to which each Settlement Class Member is entitled for the Class Period (subject to the availability of data) is to be determined using the following methodology or such other methodology as would have an equivalent result:

- a. All accounts held by Settlement Class Members will be identified at which, on one or more calendar days during the Class Period, Wings assessed Overdraft Fees on Debit Card Transactions that were authorized into a positive available balance ("Relevant Overdraft Fees") and/or Wings assessed NSF fees on a single ACH item processed more than once ("Relevant NSF Fees").
- b. Relevant Overdraft Fees will be totaled for each Account.
- c. Relevant NSF Fees will be totaled for each Account.
- d. The Net Settlement Fund will be allocated pro rata to the Settlement Class Members based on their number of Relevant Overdraft Fees and/or Relevant NSF Fees.

72. The Parties agree the foregoing allocation formula is exclusively for purposes of computing, in a reasonable and efficient fashion, the amount of any Settlement Class Member Payment each Settlement Class Member should receive from the Net Settlement Fund. The fact

that this allocation formula will be used is not intended and shall not be used for any other purpose or objective whatsoever.

73. The Settlement Administrator shall divide the total amount of the Net Settlement Fund by the total amount of all Settlement Class Members' Relevant Overdraft Fees. This calculation shall yield the "Pro Rata Percentage."

74. Each Settlement Class Member's Pro Rata Percentage will be multiplied by the amount of the Net Settlement Fund, which yields a "Pre-Adjustment Payment Amount" for each Settlement Class Member.

75. As soon as practicable but no later than 90 days from the Effective Date, Wings and the Settlement Administrator shall distribute the Net Settlement Fund to Settlement Class Members.

76. Settlement Class Member Payments to Current Account Holders shall be made either by a credit to those Account Holders' Accounts, or by mailed check in those circumstances where it is not feasible or reasonable to make the payment by a credit. Wings shall notify Current Account Holders of any such credit with a statement entry indicating: "Credit per Overdraft Settlement." Wings shall provide the notice of account credit described in this paragraph in or with the account statement on which the credit is reflected. Wings will bear any costs associated with implementing the account credits and notification discussed in this paragraph. Settlement Class Member Payments made to Current Account Holders by check will be cut and mailed by the Settlement Administrator with an appropriate legend, in a form approved by Class Counsel and Wings, to indicate that it is from the Settlement, and will be sent to the addresses that the Settlement Administrator identifies as valid. Checks shall be valid for 180 days.



77. For jointly held Accounts, checks will be payable to all Account Holders, and will be mailed to the first Account Holder listed on the Account. The Settlement Administrator will make reasonable efforts to locate the proper address for any intended recipient of Settlement Funds whose check is returned by the Postal Service as undeliverable (such as by running addresses of returned checks through the Lexis/Nexis database that can be utilized for such purpose) 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. In the event of any complications arising in connection with the issuance or cashing of a check, the Settlement Administrator shall provide written notice to Class Counsel and Wings' Counsel. Absent specific instructions from Class Counsel and Wings' Counsel, the Settlement Administrator shall proceed to resolve the dispute using its best practices and procedures to ensure that the funds are fairly and properly distributed to the person or persons who are entitled to receive them. All costs associated with the process of printing and mailing the checks and any accompanying communication to Current Account Holders shall be included in the Settlement Fund.

78. Within three business days of the effective date, the Settlement Administrator shall send Wings a total amount for the credits to the Settlement Class Members who are Current Account Holders. Within five business days of receiving that amount, Wings will wire the remainder of the Net Settlement Fund to the Settlement Administrator.

79. Settlement Fund Payments to Past Account Holders will be made by check with an appropriate legend, in a form approved by Class Counsel and Wings Counsel, to indicate that it is from the Settlement Fund. Checks will be cut and mailed by the Settlement Administrator and will be sent to the addresses that the Settlement Administrator identifies as valid. Checks shall be valid for 180 days. For jointly held Accounts, checks will be payable to all Account Holders, and will

be mailed to the first Account Holder listed on the Account. The Settlement Administrator will make reasonable efforts to locate the proper address for any intended recipient of Settlement Funds whose check is returned by the Postal Service as undeliverable (such as by running addresses of returned checks through the Lexis/Nexis database that can be utilized for such purpose), 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. All costs associated with the process of printing and mailing the checks and any accompanying communication to Past Account Holders shall be included in the Settlement Fund.

80. The amount of the Net Settlement Fund attributable to uncashed or returned checks sent by the Settlement Administrator shall be held by the Settlement Administrator for up to one year from the date that the first distribution check is mailed by the Settlement Administrator. During this time, the Settlement Administrator shall make a reasonable effort to locate intended recipients of settlement funds whose checks were returned (such as by running addresses of returned checks through the Lexis/Nexis database that can be utilized for such purpose) to effectuate delivery of such checks. For any such recipients for whom updated addresses are found, the Settlement Administrator shall make only one additional attempt to re-mail or re-issue a distribution check to the updated address.

#### **XI. Disposition of Residual Funds**

81. Within one year after the date the Settlement Administrator mails the first Settlement Class Member Payment, any remaining amounts resulting from uncashed checks ("Residual Funds") shall be distributed as follows:

- a. First, any Residual Funds remaining after distribution shall be distributed on a pro rata basis to participating Settlement Class Members who received Settlement Class Member Payments, to the extent feasible and practical in light of the costs of administering such subsequent payments, unless the amounts involved are too small to

make individual distributions economically feasible or other specific reasons exist that would make such further distributions impossible or unfair.

- b. Second, in the event the costs of preparing, transmitting and administering such subsequent payments pursuant to this Section are not feasible and practical to make individual distributions economically feasible or other specific reasons exist that would make such further distributions impossible or unfair, or if such a distribution is made and Residual Funds still remain, Class Counsel and Wings shall seek the Court's approval to distribute the Residual Funds to a *cy pres* recipient or recipients. The Parties shall propose as a *cy pres* recipient or recipients an entity or entities that work to promote financial literacy.
- c. All costs of any second distribution, including Wings' internal costs of crediting Settlement Class Member Accounts, will come from the Residual Funds, and Wings is not required to pay these costs as Settlement Administration Costs.

## **XII. Releases**

82. As of the Effective Date, Releasing Parties shall automatically be deemed to have fully and irrevocably released and forever discharged Wings 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 ("Released Claims"), relating to the assessment of Overdraft Fees on Debit Card Transactions that authorized against a positive balance but settled against a negative balance due to intervening charges and/or Retry Fees.

83. 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 Wings in any forum, action, or proceeding of any kind.

84. With respect to all Released Claims, Plaintiff and each of the other Settlement Class Members agree that they are expressly waiving and relinquishing to the fullest extent permitted by Minnesota law and any law of any state or territory of the United States, federal law or principle of common law, or international or foreign law, that is similar, comparable or equivalent.

85. 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. In addition to the releases made by Plaintiff and Settlement Class Members above, Plaintiff, including each and every one of her agents, representatives, attorneys, 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. This named 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.

86. Nothing in this Agreement shall operate or be construed to release any claims or rights that Wings 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 Wings, pursuant to the terms and conditions of such accounts, loans, or any other debts. 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 Wings 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 Wings, pursuant to the terms and conditions of such accounts, loans, or any other debts.

### **XIII. Payment of Attorneys' Fees, Costs, Expenses and Service Award**

87. Wings agrees not to oppose Class Counsel's request for attorneys' fees of up to 33% of the Value of the Settlement, and not to oppose Class Counsel's request for reimbursement of reasonable costs and expenses. Any award of attorneys' fees and costs and expenses to Class Counsel shall be payable solely out of the Settlement Fund. The Parties agree that the Court's failure to approve, in whole or in part, any award for attorneys' fees shall not prevent the Settlement Agreement from becoming Effective, nor shall it be grounds for termination.

88. Within seven days of the Court's entry of the Final Approval Order or within seven days of Class Counsel providing all information required to make the payment, whichever is later, the Settlement Administrator shall pay Class Counsel all Court-approved attorneys' fees, costs and expenses from the Settlement Fund. In the event the award of attorneys' fees is reduced on appeal, or if the Effective Date does not occur (either because approval of the Settlement is overturned or the Agreement is terminated for any reason), Class Counsel shall reimburse the Settlement Fund, within 10 business days of the entry of the order reducing the fees, overturning the approval of the Settlement on appeal, or the termination of the Agreement, the difference between the amount distributed and the reduced amount (in the event of a reduction) or the entirety of the amount (in the event approval is overturned or the Agreement is terminated).

89. After the fees, costs and expenses have been paid to Class Counsel by the Settlement Administrator, Class Counsel shall be solely responsible for distributing each Class Counsel firm's allocated share of such fees, costs and expenses to that firm. Wings shall have no responsibility for any allocation, and no liability whatsoever to any person or entity claiming any share of the funds to be distributed for payment of attorneys' fees, costs, or expenses or any other payments from the Settlement Fund not specifically described herein.

90. In the event the Effective Date does not occur, or the attorneys' fees or expenses and cost award is reduced following an appeal, each counsel and their law firms who have received any payment of such fees or costs shall be jointly and severally liable for the entirety. Further, each counsel and their law firms consent to the jurisdiction of the Court for the enforcement of this provision.

91. Class Counsel will ask the Court to approve a Service Award to each of the Plaintiffs in the amount of \$7,500. The Service Award is to be paid by the Settlement Administrator

to the Class Representatives within 10 days of the Effective Date. The Service Award shall be paid to the Class Representatives in addition to Class Representative's Settlement Class Member Payment. Wings agrees not to oppose Class Counsel's request for a Service Award. The Parties agree that the Court's failure to approve a Service Award, in whole or in part, shall not prevent the Settlement Agreement from becoming Effective, nor shall it be grounds for termination.

92. The Parties negotiated and reached agreement regarding attorneys' fees, expenses, and costs, and the Service Award, only after reaching agreement on all other material terms of this Settlement.

#### **XIV. Termination of Settlement**

93. This Settlement may be terminated by either Class Counsel or Wings by serving on counsel for the opposing Party and filing with the Court a written notice of termination within 15 days (or such longer time as may be agreed in writing between Class Counsel and Wings) after any of the following occurrences:

- a. Class Counsel and Wings agree to termination;
- b. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;
- c. an appellate court vacates or reverses the Final Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand within 360 days after such reversal;
- d. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement in a way that Class Counsel or Wings seeking to terminate the Settlement reasonably considers material;
- e. the Effective Date does not occur; or
- f. any other ground for termination provided for elsewhere in this Agreement.

94. Wings also shall have the right to terminate the Settlement by serving on Class Counsel and filing with the Court a notice of termination within 14 days after its receipt from the

Settlement Administrator of any report indicating that the number of Settlement Class members who timely request exclusion from the Settlement Class equals or exceeds the number or percentage specified in the separate letter executed concurrently with this Settlement by Class Counsel and Wings. The number or percentage shall be confidential except to the Court, which shall upon request be provided with a copy of the letter for in camera review.

#### **XV. Effect of a Termination**

95. 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 Wings' 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.

96. In the event Wings terminates the Agreement, Wings agrees to pay all Settlement Administration Costs..

97. The Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions hereof.

98. 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.

#### **XVI. No Admission of Liability**

99. Wings 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. Wings does not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. Wings 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. The Parties agree that the terms of this Paragraph shall be included in any Notice to Settlement Class Members.

100. 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 Settlement Class members.

101. 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.

102. 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 Settlement Class members, 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.

103. In addition to any other defenses Class Counsel 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.

#### **XVII. No Press Release**

104. No Party shall issue any press release, initiate press coverage, or post on any social media platform concerning the Settlement. If contacted, the Party may respond generally by stating that they are happy that the Settlement was reached and that it was a fair and reasonable result.

#### **XVIII. Miscellaneous Provisions**

105. 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.

106. 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.

107. 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.

108. 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.

109. 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.

110. 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.

111. 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 Minnesota , without regard to the principles thereof regarding choice of law.

112. 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.

113. 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 Wings or its affiliates at any time, including during any appeal from the Final Approval Order.

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

Jeff Kaliel  
KalielGold PLLC  
1100 15<sup>th</sup> St. NW, 4<sup>th</sup> Fl.  
Washington, DC 20005

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.

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

116. 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.

117. Authority. Class Counsel (for the Plaintiff and the Settlement Class Members), and counsel for Wings (for Wings), 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 Wings 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.

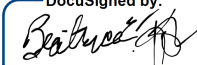
118. Agreement Mutually Prepared. Neither Wings nor Plaintiff, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed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

119. 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. Wings has provided and is providing information that Plaintiff reasonably requests to identify Settlement Class members and the alleged damages they incurred. 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,

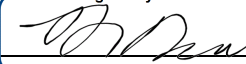
and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

120. 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: 8/12/2022

DocuSigned by:  
  
F466F5BBB41048C  
Beatrice Robinson, Plaintiff


Dated: 8/12/2022

DocuSigned by:  
  
64051A838FD4D  
Peter Duggan, Plaintiff

Dated: 8/12/2022

  
Jeff Kaliel, Class Counsel

Dated: 8/15/2022

DocuSigned by:  
  
774E5BE8DB464CD  
Taras Kick, Class Counsel

Dated: \_\_\_\_\_

\_\_\_\_\_, for Wings Credit Union

Dated: \_\_\_\_\_

\_\_\_\_\_, Outside Counsel for Wings  
Credit Union

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.

120. 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: \_\_\_\_\_

\_\_\_\_\_  
Beatrice Robinson, Plaintiff

Dated: \_\_\_\_\_

\_\_\_\_\_  
Peter Duggan, Plaintiff

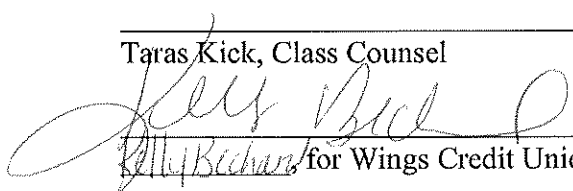
Dated: \_\_\_\_\_

\_\_\_\_\_  
Jeff Kalief, Class Counsel

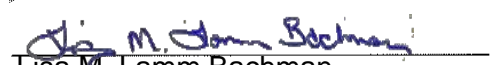
Dated: \_\_\_\_\_

\_\_\_\_\_  
Taras Kick, Class Counsel

Dated: 08/15/22

  
\_\_\_\_\_  
Kelly Beck for Wings Credit Union

Dated: 08/15/22

  
\_\_\_\_\_  
Lisa M. Lamm Bachman  
\_\_\_\_\_, Outside Counsel for Wings  
Credit Union

# **EXHIBIT 2**



**Long Form Notice**

Peter Duggan, et al,  
v.  
Wings Financial 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 WINGS FINANCIAL  
CREDIT UNION (“DEFENDANT”) AND YOU WERE CHARGED APPSN FEES OR  
RETRY FEES BETWEEN JANUARY 1, 2015, THROUGH MAY 17, 2019, THEN YOU  
MAY BE ENTITLED TO A PAYMENT AND/OR DEBT FORGIVENESS FROM A  
CLASS ACTION SETTLEMENT<sup>1</sup>**

The District Court for Dakota County, Minnesota has authorized this Notice; it is not a solicitation from a lawyer.

<b>SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION</b>	
<b>DO NOTHING</b>	If you don’t do anything, you will receive a payment from the Settlement Fund and/or debt forgiveness, so long as you do not opt out of or exclude yourself from the settlement (described in the next box).
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT; RECEIVE NO PAYMENT BUT RELEASE NO CLAIMS</b>	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 any individual claims you may have against Defendant but you will not receive a payment and/or debt forgiveness. If you exclude yourself from the settlement but want to seek recovery from Defendant, you will have to file a separate lawsuit or claim.

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<sup>1</sup> “APPSN transactions” means debit card transactions that Authorize Positive, and Purportedly Settle Negative. “Retry Fees” means any fee or fees assessed to a holder of an Account for a second or third time a merchant attempted to be paid with the same check or performed a “Retry Payment” ACH transaction.

<b>OBJECT TO THE SETTLEMENT</b>	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 will receive a payment and/or debt forgiveness, 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.
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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 *Peter Duggan et al v. Wings Financial Credit Union* in the District Court for Dakota County, Case No. 19AV-CV-20-2163. The case is a “class action.” That means that the “Class Representatives” are acting on behalf of a group, which consists of those current and former customers of Defendant who were charged APPSN Fees or Retry Fees (defined in footnote 1, above) between April 2, 2018 and May 17, 2019 (for APPSN Fees) and between January 1, 2015 and May 1, 2019 (for Retry Fees). The people in this group are collectively called the “Settlement Class Members.”

The Class Representatives claim Defendant improperly charged APPSN Fees and Retry Fees. The Complaint alleges claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and violation of Minnesota statute. The Class Representatives sought a refund of alleged improper fees charged to Settlement Class Member accounts and other relief. Defendant does not deny it charged these fees but contends it did so properly and in accordance with the terms of its agreements and applicable law. Defendant maintains that its practices were and now are proper and properly disclosed to its customers, and therefore denies that its practices give rise to claims for damages by the Class Representatives or any Settlement Class Member.

#### **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 of the fees that are the subject of this action. The Court directed that this Notice be sent to all Settlement Class Members because each Settlement Class 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 Representatives’ and their lawyers’ job to identify when a proposed settlement offer is good enough that it justifies recommending settling the case instead of

continuing to trial. In a class action, the Class Representatives' lawyers, known as Class Counsel, make this recommendation to the Class Representatives. The Class Representatives have the duty to act in the best interests of the class as a whole and, in this case, it is their belief, as well as Class Counsels' opinion, that this settlement is in the best interest of all Settlement Class Members.

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

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

### **WHO IS IN THE SETTLEMENT**

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

If you received this notice, then Defendant's records indicate that you are a Settlement Class Member who is entitled to receive a payment or credit to your account.

### **YOUR OPTIONS**

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

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

#### **6. What are the critical deadlines?**

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

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.

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 will not be approved and no payments will be made to you or any other Settlement Class Member. If your objection (and any other objection) is overruled, and the settlement is approved, then you will still get a payment.

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

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

The Court has to decide that the settlement is fair, reasonable, and adequate before it will approve it. The Court already has decided to provide preliminary approval of the settlement, which is why you received this Notice. The Court will make a final decision regarding the settlement at a "Fairness Hearing" or "Final Approval Hearing," which is currently scheduled for \_\_\_\_\_ at \_\_\_\_\_.

**THE SETTLEMENT PAYMENT**

**9. How much is the Settlement?**

Defendant has agreed to create a Settlement Fund of \$1,100,000.00. In addition, Defendant has agreed to forgive certain uncollected APPSN Fees or Retry Fees, as identified by the Parties based on review and analysis of Defendant's reasonably accessible data and information, in a total amount of \$57,000.

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 this notice) will be paid out of the Settlement Fund. The balance of the Settlement Fund will be divided among all Settlement Class Members as outlined in the settlement agreement.

**10. How much of the settlement fund will be used to pay for attorney fees and costs?**

Class Counsel will request an attorney fee be awarded by the Court of up to one-third of the Value of the Settlement. Class Counsel will also request that it be reimbursed for reasonable litigation costs incurred in prosecuting the case. The Court will decide the amount of the attorneys' fees and costs that are reasonable.

**11. How much of the settlement fund will be used to pay the Class Representatives a Service Award?**

Class Counsel will request that the Class Representatives be paid service awards in the amount of \$7,500 each for their work in connection with this case. The service awards must be approved by the Court.

**12. How much will my payment be?**

The balance of the Settlement Fund after attorneys' fees and costs, the service award, and the Settlement Administrator's fees will be divided among all Settlement Class Members as outlined in the settlement agreement. Current customers of Defendant will receive a credit to their accounts

for the amount they are entitled to receive. Former customers of Defendant shall receive a check from the Settlement Administrator.

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

No. If you received this Notice, then you will be entitled to receive a payment and/or debt forgiveness without having to make a claim (but if you choose to exclude yourself from the settlement, or “opt out,” then you will not receive a payment or debt forgiveness).

**14. When will I receive my payment?**

The Court will hold a Fairness 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 about 40 to 60 days after the settlement is approved. However, if someone objects to the settlement, and the objection is sustained, then there is no settlement. Even if all objections are overruled and the Court approves the settlement, an objector could appeal, and it might take months or even years to have the appeal resolved, which would delay any payment.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

**15. How do I exclude myself from the settlement?**

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

To opt out, you must send a letter to the Settlement Administrator that you want to be excluded. Your letter can simply say “I hereby elect to be excluded from the settlement in the *Duggan et al v. Wings Financial Credit Union* class action.” Be sure to include your name, the last four digits of your account number(s) or former account number(s), address, telephone number, and email address. Your exclusion or opt out request must be postmarked by \_\_\_\_\_, and sent to:

Duggan et al v. Wings Financial Credit Union

Attn:

**ADDRESS OF THE SETTLEMENT ADMINISTRATOR**

**16. What happens if I opt out of the settlement?**

If you opt out of the settlement, you will preserve and not give up any right you may have to sue Defendant for the claims alleged in this case. However, you will not be entitled to receive a payment or debt forgiveness from this settlement.

**17. If I exclude myself, can I obtain a payment?**

No. If you exclude yourself, you will not be entitled to a payment.

**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 to the Settlement Administrator at the address below. Your objection should say that you are a Settlement Class Member, that you object to the settlement, and the factual and legal reasons why you object, and whether you intend to appear at the hearing. In your objection, you must include your name, address, telephone number, email address (if applicable), and your signature.

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

<b>SETTLEMENT ADMINISTRATOR</b>
Duggan et al v. Wings Financial Credit Union Settlement Administrator Attn: <b>ADDRESS OF THE SETTLEMENT ADMINISTRATOR</b>

**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 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 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 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 Settlement Class Member, then there is no settlement. If you object, but the Court overrules your objection and any other objection(s), then you will be part of the settlement.

**THE COURT'S FAIRNESS 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 \_\_\_\_, 2022 at \_\_\_\_\_. 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 expenses.

**22. Do I have to come to the hearing?**

No. You do not have to attend this hearing. Class Counsel will answer any questions the Court may have. You may attend if you desire to do so, at your own cost. The Court will consider any objection you have properly submitted regardless of whether you attend or not.

**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 19, 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 Settlement Class Members.

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

No. Class Counsel will be paid directly from the Settlement Fund in an amount approved by the Court.

**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 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.

**GETTING MORE INFORMATION**

This Notice only summarizes the proposed settlement. More details are contained in the settlement agreement, which can be viewed/obtained online at [[WEBSITE](#)].

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

Duggan et al v. Wings Financial Credit Union  
Settlement Administrator  
Attn:

[ADDRESS OF THE SETTLEMENT ADMINISTRATOR](#)

If the Settlement Administrator does not answer any questions you have to your satisfaction, then you also may contact Class Counsel as follows:

Taras Kick  
[\[ADDRESS\]](#)

Jeffrey Kalief  
KaliefGold PLLC  
1100 15<sup>th</sup> St. NW  
4th Floor  
Washington, DC 20005  
202-350-4783

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



## Email/Postcard Notice

### COURT ORDERED NOTICE OF CLASS ACTION SETTLEMENT

You may be a member of the settlement class in *Duggan et al v. Wings Financial Credit Union*, in which the plaintiffs allege that defendant Wings Financial Credit Union (“Defendant”) incorrectly assessed certain overdraft and non-sufficient funds fees (known as APPSN Fees and Retry Fees) between April 2, 2018 and May 17, 2019 (for APPSN Fees) and between January 1, 2015 and May 1, 2019 (for Retry Fees). If you are a Settlement Class Member and if the Settlement is approved, you may be entitled to receive a cash payment from the \$1,100,000.00 fund or have certain uncollected overdraft fees or other debt forgiven, in a total amount of \$57,000, benefits established by the Settlement.

The Court has preliminarily approved this settlement. It will hold a Final Approval Hearing in this case on [PARTIES TO 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 \$7,500 in service awards to the two Class Representatives, up to one-third 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, or a cash payment to you if you are no longer a customer, and/or to forgive certain fees or other amounts that remain unpaid on checking accounts that were closed with a negative balance.

**To obtain a long form class notice and other important documents please visit [PARTIES TO PROVIDE 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 or the forgiveness of certain overdraft fees or other amounts 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 #].*