

PREAMBLE

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

RECITALS

On October 27, 2021, plaintiff Fairchild-Cathey filed a putative class action complaint entitled *Fairchild-Cathey et al. v. Americu Credit Union*, in the United States District Court for the Northern District of New York, Case No. 6:21-CV-01173, alleging claims for breach of contract and violation of NY GBL Section 349 with regard to Defendant’s practice of charging overdraft fees (“OD Fees”) on debit card transactions that allegedly did not overdraw an account at the time they were authorized (“APPSN transactions”); Defendant’s allegedly routine practice assessing more than one insufficient funds fee (“NSF Fee”) on the same transaction; and

A. In January, 2022, Plaintiffs filed an Amended Complaint adding Defendant’s allegedly routine practice of assessing two out-of-network ATM Fees (“OON Fees”) on ATM withdrawals undertaken in conjunction with balance inquiries

B. On March 10, 2022, Defendant filed a motion to dismiss the Amended Complaint, which the Parties fully briefed. Docs. 22-52.

C. Via written order, the Court denied the motion to dismiss on January 17, 2023. Doc. 53.

D. The Parties stipulated to a discovery schedule and commenced discovery. Plaintiffs issued discovery requests on April 7, 2023. Defendant also issued discovery requests, which the Plaintiffs responded to. The Parties engaged in extensive discovery.

E. On October 18, 2023, the parties participated in a mediation before the Honorable Edward Carni (Ret.). The mediation resulted in a settlement in principle. The settlement described below is the result of the accepted Mediator’s Proposal.

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

purpose other than to enforce the terms of this Agreement.

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

AGREEMENT

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

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

(a) “Class Period” shall mean the dates from:

October 27, 2015 through July 5, 2019 for the APPSN Fee Settlement Class;

October 27, 2015 through July 5, 2019 for the Retry Fee Settlement Class; and

October 27, 2015 through January 31, 2023 for the OON Fee Settlement Class.

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

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

(d) “APPSN Fee” shall be an Overdraft Fee charged by Defendant on a debit card transaction when the account had a positive available balance at time it was authorized.

(e) “Retry Fee” shall be the second and any subsequent NSF or OD Fees charged by Defendant on a single ACH or check.

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

(g) “Class Counsel” shall mean the Gibbs Law Group and Jeffrey Kaliel of Kaliel Gold PLLC.

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

(i) “Retry Fee Class Member” shall mean any member of Defendant who had

a checking account with Defendant and was assessed a Retry Fee during the Class Period.

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

(k) “Defendant’s Counsel” shall mean Litchfield Cavo LLP.

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

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

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

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

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

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

(r) “Net Settlement Fund” shall mean the net amount of the Settlement Fund after payment of court approved attorneys’ fees and costs, any court approved service award and the costs of Notice, and any fees paid to the Claims Administrator.

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

(t) “OON Fee” shall mean a fee assessed against a member’s checking account for a balance inquiry undertaken at an out-of-network ATM, where a cash withdrawal was also performed at the same time.

(u) “Overdraft Fee” shall mean a fee assessed against a member’s checking account when that account does not have sufficient funds at the time a transaction is presented for payment that was not reversed.

(v) “NSF Fee” shall mean a fee assessed against a member’s checking account

when Defendant declines a payment or the cashing of a check that would result in a negative balance.

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

(x) “Settlement Fund” shall mean the one million, five hundred thousand dollars and zero cents (\$1,500,000.00) to be paid by Defendant under the terms of this Agreement.

(y) “APPSN Fee Settlement Class” shall mean those members of Defendant who, during the Class Period, were assessed an APPSN Fee.

(z) “OON Fee Settlement Class” shall mean those members of Defendant who, during the Class Period, were assessed an OON Fee.

(aa) “Retry Fee Settlement Class” shall mean those members of Defendant who, during the Class Period, were assessed a Retry NSF Fee.

2. CLASS ACTION SETTLEMENT. Plaintiffs shall propose and recommend to the Court that the three settlement classes defined above (the “APPSN Fee Settlement Class,” the “Retry Fee Settlement Class,” and the “OON Fee Settlement Class”)¹ be certified. Defendant agrees solely for purposes of the settlement provided for in this Agreement, and the implementation of such settlement, that this case shall proceed as a class action; provided, however, that if a Final Approval Order is not issued, then Defendant shall retain all rights to object to maintaining this case as a class action. Plaintiffs and Class Counsel shall not reference this Agreement in support of any subsequent motion relating to certification of a liability class.

3. PRELIMINARY SETTLEMENT APPROVAL. Class Counsel shall use reasonable efforts promptly to file a motion seeking a Preliminary Approval/Notice Order by **January 30, 2024**. The Preliminary Approval/Notice Order shall provide for: preliminary approval of this Agreement, provisional certification of the classes for settlement purposes, appointment of Class Counsel as counsel to the provisionally certified class, and the requirement that the Notice be given to the Class Members as provided in Section 4, below (or as otherwise determined by the Court).

4. NOTICE TO THE CLASS.

(a) Defendant shall prepare a list that identifies each Settlement Class Member and the number of each type of fee that the Class Member incurred during the Class Period.

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

(c) For those Class Members who are current members of Defendant and have agreed to receive notices regarding their accounts from Defendant by email, Defendant shall

¹ Together, the “Classes.”

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

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

(e) The Notice shall also be posted on a limited access settlement website created by the Claims Administrator, subject to designation by Defendant.

(f) The Claims Administrator shall maintain a database showing mail and email addresses to which each Notice was sent and any Notices that were not delivered by mail and/or email. A summary report of the Notice shall be provided to the Parties at least five (5) days prior to the deadline to file the Motion for Final Approval. The database maintained by the Claims Administrator regarding the Notice shall be available to the parties and the Court upon request. It shall otherwise be confidential and shall not be disclosed to any third party.

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

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

5. MOTION FOR FINAL APPROVAL. Within a reasonable time after the Bar Date to Opt Out, and provided the conditions in Section 14, below, are satisfied, Class Counsel shall file a Motion for Final Approval of this Agreement so that same can be heard on the Final Approval Hearing Date.

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

Approval Order.

7. THE SETTLEMENT FUND AND DISTRIBUTION.

(a) Payments to Class Members. Within ten (10) days after the entry of the Final Approval Order, Defendant shall transfer the Settlement Fund to the Claims Administrator, less the total amount that will be credited to Class Members by Defendant, as provided in subsection 7(d)(iv)b(1), below. The Settlement Fund shall be the total amount Defendant is obligated to pay under the terms of this Agreement and includes (a) Class Counsels' fees and costs; (b) any service award payment to the Named Plaintiffs; (c) costs associated with administering the Notice in accordance with Section 4, above; however, AmeriCU shall prepare the list that identifies each Class Member and the number and type of each fee that that Class member incurred during each Class Period for utilization by the Claims Administrator in calculating any disbursements; and (d) any fees paid to the Claims Administrator for services rendered in connection with the administration process. Defendant shall not make any additional or further contributions to the Settlement Fund, even if the total amount of all alleged improper fees charged to the Class Members exceeds the value of the Net Settlement Fund. No later than 10 days following Final Approval by the Court, by agreement of the Parties, all of Named Plaintiffs' accounts with Americu will be closed and all of their individual or joint memberships with Americu shall be terminated. Named Plaintiffs shall bring all accounts to a zero or positive balance before they close. The Parties further agree that Named Plaintiffs shall only thereafter be able to reestablish or reopen any accounts and/or membership with Americu, whether jointly or individually, at the sole discretion of Americu, which may be withheld for any reason. In the event a Final Approval Order is not issued, or this Agreement is terminated by either party for any reason, including pursuant to Section 14, below, the portion of the Settlement Fund paid to the Claims Administrator (including accrued interest, if any) less expenses actually incurred by the Claims Administrator or due and owing to the Claims Administrator in connection with the settlement provided for herein, shall be refunded to Defendant within two (2) business days.

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

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

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

(i) Plaintiffs' Fees and Costs. Plaintiffs' reasonable attorneys' fees and costs, as determined and approved by the Court, shall be paid from the Settlement Fund within ten (10) business days after entry of the Final Approval Order, notwithstanding any appeals of the final approval order. Class Counsel shall apply for an award of attorneys' fees of up to one-third (33-1/3%) of the Settlement Fund to the Class Members plus reimbursement of reasonable litigation costs, to be approved by the court. Defendant agrees not to oppose an application up to one-third (33-1/3%) of the Settlement Fund but reserves the right to oppose an

application for fees in excess of that amount. Should the judgment approving the settlement be reversed on appeal, Class Counsel shall immediately repay all fees and costs to Defendant; should the award of fees and costs be reduced on appeal, Class Counsel shall immediately repay into the Settlement Fund an amount equal to the reduction ordered by the appellate court.

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

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

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

a. The Net Settlement Fund shall be allocated to members of the Classes on a *pro rata* basis, as follows: (1) 83% of the Net Settlement Fund shall be allocated to the APPSN Fee Settlement Class; (2) 14% of the Net Settlement Fund shall be allocated to the Retry Fee Settlement Class; (3) 3% of the Net Settlement Fund shall be allocated to the OON Fee Settlement Class.

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

(1) For those Class Members who are members of Defendant at the time of the distribution of the Net Settlement Fund, their checking accounts shall be credited in the amount of the Individual Payment they are entitled to receive. If they do not have a checking account, but maintain another account at Defendant, then that account shall be credited.

(2) For those Class Members who are not members of Defendant at the time of the distribution of the Net Settlement Fund, they shall be sent a check by the Claims Administrator at the address used to provide the Notice, or at such other address as designated by the Class Member. The Class Member shall have one-hundred eighty (180) days to negotiate the check. Any checks uncashed after one-hundred eighty (180) days shall be distributed to Class Members on a pro-rata basis if practical. Otherwise, any residual shall be distributed pursuant to Section 12.

(3) Settlement Class Members of the APPSN Fee Class shall be paid per incurred APPSN Fee calculated as follows: $(0.83 \text{ of the Net Settlement Fund/Total APPSN Fees}) \times \text{Total number of APPSN Fees charged to and paid by each APPSN Fee Class member}$;

Settlement Class Members of the Retry NSF Fee Class shall be paid per Retry NSF Fee calculated as follows: $(0.14 \text{ of the Net Settlement Fund/Total Retry NSF Fees}) \times \text{Total number of Retry NSF Fees charged to and paid by each Retry NSF Fee Class member}$; and

(3) Settlement Class Members of the OON Fee Class shall be paid per OON Fee calculated as follows: $(0.03 \text{ of the Net Settlement Fund/Total OON Fees}) \times \text{Total number of OON Fees charged to and paid by each OON Fee Class member}$.

(4) Settlement Class Member Payments shall be made no later than 90 days after the Effective Date

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

8. PROSPECTIVE RELIEF

(a) **Cessation of Challenged Practices.** No later than January 1, 2024, Defendant shall cease changing APPSN Fees and shall cease charging more than one NSF Fee on the same ACH transaction or check.

(b) **Disclosure Improvements.** As of January 31, 2023, and as result of this litigation, Defendant has amended its account disclosures to expressly state that more than one OON Fee may be assessed when a member uses an out of network ATM to perform both a balance inquiry and a withdrawal.

9. THE CLAIMS ADMINISTRATOR.

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

(b) The Claims Administrator shall be subject to the jurisdiction of the Court with respect to the administration of this Agreement.

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

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

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

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

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

11. OPT-OUTS.

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

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

12. OBJECTIONS.

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

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

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

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

(iii) A statement as to whether the objector intends to appear at the Final

Approval Hearing, either in person or through counsel, and, if through counsel, identifying the counsel by name, address and telephone number.

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

13. RELEASE. Except as to the rights and obligations provided for under the terms of this Agreement, Named Plaintiffs, on behalf of themselves and each of the Class Members, hereby release and forever discharge Defendant, and all of its past, present and future predecessors, successors, subsidiaries, divisions, employees, affiliates, assigns, officers, directors, shareholders, representatives, attorneys and agents and insurers including CUMIS Insurance Society, Inc. (collectively, the “Defendant Releasees”) from any and all claims, charges, complaints, debts, liabilities, demands, obligations, costs, expenses, actions, and causes of action of every nature, character, and description, whether known or unknown, asserted or unasserted, suspected or unsuspected, which Named Plaintiffs and Class Members, who do not opt out, now have, own or hold against any of the Defendant Releasees that arise out of and/or relate to the facts and claims alleged in the Complaints, including claims or allegations regarding APPSN Fees, OON Fees and Retry Fees as defined in Section 1 and/or described in the operative Complaint.

14. CONDITIONS TO SETTLEMENT.

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

(i) The Court has entered the Preliminary Approval/Notice Order, as required by Section 3 above;

(ii) The Court has entered the Final Approval Order as required by Sections 5 and 6 above, and all objections, if any, to such Order are overruled, and all appeals taken from such Order are resolved in favor of approval; and

(iii) The Effective Date has occurred.

(b) If all of the conditions specified in Section 14(a) are not met, then this Agreement shall be cancelled and terminated.

(c) Defendant shall have the option to terminate this Agreement if five (5%) percent or more of the Class Members opt out. Defendant shall notify Class Counsel and the Court of its intent to terminate this Agreement pursuant to this Section 14 within fifteen (15) business days after the Bar Date To Opt Out, or the option to terminate shall be considered waived.

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

(e) In the event this Agreement is terminated, pursuant to Section 14(c)

immediately above, or fails to become effective in accordance with Sections 14(a) and/or (b) immediately above, then the parties shall be restored to their respective positions in this case as they existed as of the date of the execution of this Agreement. In such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the parties and shall not be used in this case or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

(f) Any dispute over the terms of this agreement, including but not limited to any claim of “material difference” discovered during confirmatory discovery as set forth in Section 14 (d) shall first be mediated by the Hon. Edward Carni (Ret.). If the parties cannot resolve their differences by mediation, the parties shall arbitrate any such dispute with Judge Carni.

15. REPRESENTATIONS.

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

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

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

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

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

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

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

18. NO ORAL WAIVER OR MODIFICATION. No waiver or modification of any provision of this Agreement or of any breach thereof shall constitute a waiver or modification of any other provision or breach, whether or not similar. Nor shall any actual waiver or modification

constitute a continuing waiver. No waiver or modification shall be binding unless executed in writing by the party making the waiver or modification.

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

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

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

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

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

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

-and-

David Berger
Gibbs Law Group
[]

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

[Jason E. Hunter; hunter@litchfieldcavo.com]

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

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

Dated: 11/21/2023

AMERICU CREDIT UNION, a state chartered credit union

DocuSigned by:
Daniel Belfield
4D80E5A8CEC7451...

By: _____

Its: VP, Legal & Compliance

Dated: 11 / 21 / 2023

MALINDA FAIRCHILD-CATHEY,

By: *Malinda Fairchild Cathey*

Malinda Fairchild-Cathey

Dated: 11 / 21 / 2023

RICHARD MUMFORD, an individual on behalf of herself and those she represents

By: *Richard Mumford*

Richard Mumford

Dated: 11 / 21 / 2023

AARON FORJONE, an individual on behalf of herself and those she represents

By: *Aaron Forjone*

Aaron Forjone

APPROVED AS TO FORM:

Dated: *Nov 21, 2023*

LITCHFIELD CAVO

Jason Hunter

By: *[Signature]*

Jason Hunter

Attorneys for Defendant Americu Credit Union

Dated: 11/22/2023

GIBBS LAW GROUP

David Berger

By: _____



David Berger

Attorney for Plaintiffs

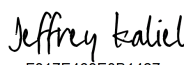
11/30/2023

Dated: _____

KALIELGOLD PLLC

Jeffrey Kalief

DocuSigned by:



F817E468E0B1427...

By: _____

Jeffrey Kalief

Attorneys for Plaintiffs

Exhibit 1 – Email and Postcard Notice

Fairchild-Cathey v. Americu 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 AMERICU
CREDIT UNION AND YOU WERE CHARGED CERTAIN OVERDRAFT,
NSF OR ATM FEES BETWEEN OCTOBER 27, 2015 AND JANUARY 31,
2023, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS
ACTION SETTLEMENT**

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

You may be a member of the settlement Class in *Fairchild-Cathey v. Americu Credit Union*, in which the plaintiffs allege that defendant Americu Credit Union. (“Defendant”) unlawfully assessed certain Overdraft, NSF and ATM fees (the “Relevant Fees”) between October 27, 2015 and January 31, 2023. If you are a member of the Settlement Class and if the Settlement is approved, you may be entitled to receive a cash payment from the \$1,500,000.00 Settlement Fund, benefits established by the Settlement. If you are a member of one of both of the Settlement Classes, you will receive a payment from the Settlement Fund so long as you do not opt out of or exclude yourself from the Settlement. **You do not have to do anything to be entitled to a payment from the Settlement Fund.**

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

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

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

Exhibit 2 – Long Form Notice

Fairchild-Cathey
v.
Americu 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 AMERICU
CREDIT UNION (“DEFENDANT”) AND YOU WERE CHARGED
CERTAIN OVERDRAFT, NSF OR ATM FEES BETWEEN OCTOBER 27,
2015 AND JANUARY 31, 2023, THEN YOU MAY BE ENTITLED TO A
PAYMENT FROM A CLASS ACTION SETTLEMENT**

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

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

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

BASIC INFORMATION

1. What is this lawsuit about?

The lawsuit that is being settled is entitled *Fairchild-Cathey v. Americu Credit Union*. It is pending in the United States District Court for the Northern District of New York, Case No. 6:21-CV-01173. The case is a “class action.” That means that the “Class Representatives” are individuals who are acting on behalf of current and former customers who were assessed certain assessed certain Overdraft, NSF and ATM fees (the “Relevant Fees”) between October 27, 2015 and January 31, 2023. The Class Representatives have asserted a claim for breach of the Account agreement and violation of consumer protection laws.

Defendant does not deny it charged the fees the Class Representatives are complaining about, but contends it did so properly and in accordance with the terms of its agreements and applicable law. Defendant therefore denies that its practices give rise to claims for damages by the Class Representatives or any Settlement Class members.

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

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

3. Why did the parties settle?

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

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

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

WHO IS IN THE SETTLEMENT

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

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

YOUR OPTIONS

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

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

6. What are the critical deadlines?

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

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

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

7. How do I decide which option to choose?

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

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

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

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

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

THE SETTLEMENT PAYMENT

9. How much is the Settlement?

Defendant has agreed to create a Settlement Fund of \$1,500,000.00, and change its practices regarding the Relevant Fees going forward.

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

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

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

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

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

12. How much will my payment be?

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

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

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

14. When will I receive my payment?

The Court will hold a Final Approval Hearing on [REDACTED], at [REDACTED] to consider whether the Settlement should be approved. If the Court approves the Settlement, then payments should be made or credits should be issued approximately 90 days later. However, if someone objects to the Settlement, and the objection is sustained, then there is no Settlement. Even if all objections are overruled and the Court approves the Settlement, an objector could appeal, and it might take months or even years to have the appeal resolved, which would delay any payment.

EXCLUDING YOURSELF FROM THE SETTLEMENT

15. How do I exclude myself from the settlement?

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

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

Fairchild-Cathey v. Americu Credit Union

Attn:

ADDRESS OF THE SETTLEMENT ADMINISTRATOR

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

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

OBJECTING TO THE SETTLEMENT

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

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

- a. the name of the Action;
- b. the objector’s full name, address and telephone number;
- c. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector’s counsel;
- d. the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector’s prior objections that were issued by the trial and appellate courts in each listed case;
- e. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the

Settlement or fee application;

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

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

ADDRESS OF THE SETTLEMENT ADMINISTRATOR

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

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

19. What happens if I object to the Settlement?

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

THE COURT'S FINAL APPROVAL HEARING

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

The Court will hold a Final Approval or Fairness Hearing at [REDACTED] on [REDACTED], 2024 at the United States District Court for the Northern District of New York, Federal Building and U.S. Courthouse, which is located at [REDACTED]. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys' fees and litigation costs and the amount of the Service Awards to the Class Representatives. The hearing may be virtual, in which case the instructions to participate shall be posted on the website at [www.\[REDACTED\]](http://www.[REDACTED]).

21. Do I have to come to the hearing?

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

22. May I speak at the hearing?

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

THE LAWYERS REPRESENTING YOU

23. Do I have a lawyer in this case?

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

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

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

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

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

GETTING MORE INFORMATION

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

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

Fairchild-Cathey v. Americu Credit Union
Settlement Administrator
Attn:

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

David Berger
Gibbs Law Group
[]

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

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

Signature Certificate

Reference number: HTKH2-PCEJJ-BERA4-ZUB7X

Signer

Timestamp

Signature

Malinda Fairchild Cathey

Email: eyes67@twcny.rr.com

Shared via link

Sent:

21 Nov 2023 19:58:24 UTC

Viewed:

21 Nov 2023 20:18:27 UTC

Signed:

21 Nov 2023 20:22:10 UTC

Malinda Fairchild Cathey

IP address: 74.70.245.23

Location: Rome, United States

Aaron Forjone

Email: aaron@forjone.com

Shared via link

Sent:

21 Nov 2023 19:58:24 UTC

Viewed:

21 Nov 2023 21:01:53 UTC

Signed:

21 Nov 2023 21:05:21 UTC

Aaron Forjone

IP address: 172.59.177.49

Location: Albany, United States

Richard Mumford

Email: newyorkskier18@yahoo.com

Shared via link

Sent:

21 Nov 2023 19:58:24 UTC

Viewed:

22 Nov 2023 01:48:54 UTC

Signed:

22 Nov 2023 17:58:17 UTC

Richard Mumford

IP address: 71.127.161.135

Location: East Syracuse, United States

Document completed by all parties on:

22 Nov 2023 17:58:17 UTC

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