UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MALINDA FAIRCHILD-CATHEY, RICHARD MUMFORD, and AARON FORJONE, on behalf of themselves and all others similarly situated, Plaintiffs, v. AMERICU CREDIT UNION, Defendant.	Civil Action No. 6:21-cv-1173 (LEK-ML) JUDGE LAWRENCE E. KAHN Class Action

PLAINTIFFS' NOTICE OF UNOPPOSED MOTION FOR FINAL APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT

PLEASE TAKE NOTICE that pursuant to Fed. R. Civ. P. 23, Plaintiffs Malinda Fairchild-Cathey, Richard Mumford, and Aaron Forjone, by and through counsel, move the Court for final approval of the previously approved class action settlement with Defendant Americu Credit Union.

Based upon (1) the accompanying motion and memorandum of law; (2) the declaration of Jeffrey D. Kaliel, which Plaintiffs previously filed in support of the motion for preliminary approval; and (3) the accompanying declaration of Scott Fenwick of Kroll Settlement Administration LLC, Plaintiffs respectfully request that the Court grant final approval of the Settlement and enter the accompanying Proposed Final Approval Order and Judgment filed herewith.

Dated: April 3, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 3, 2024, a copy of the above document has this day been served on all counsel of record via the court's ECF system:

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UNITED STATES DISTRICT COURT
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MALINDA FAIRCHILD-CATHEY, RICHARD MUMFORD, and AARON FORJONE, on behalf of themselves and all others similarly situated, Plaintiffs, v. AMERICU CREDIT UNION, Defendant.	Civil Action No. 6:21-cv-1173 (LEK-ML) JUDGE LAWRENCE E. KAHN Class Action

PLAINTIFFS' UNOPPOSED MOTION AND MEMORANDUM OF LAW FOR FINAL APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND ENTRY OF JUDGMENT

Now comes Plaintiffs, by and through counsel, who move under Fed. R. Civ. P. 23 for final approval of a proposed class action settlement with Defendant AmeriCU Credit Union. Plaintiffs respectfully request that the Court enter the accompanying Proposed Final Approval Order and Judgment filed herewith. A Memorandum in Support has been filed in conjunction with this motion and is incorporated by reference.

Dated: April 3, 2024

Respectfully submitted,

/s/ Jeffrey D. Kaliel

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Plaintiffs Malinda Fairchild-Cathey, Richard Mumford, and Aaron Forjone move for final approval of a proposed **$1,500,000.00** class action settlement with Defendant AmeriCU Credit Union. Defendant does not oppose the relief sought in this motion.

The Court previously granted preliminary approval of the Settlement, conditionally certified the settlement class, and approved the proposed Notice program. Since that Order, the Parties and the Settlement Administrator have worked to satisfy all conditions of the Court's Order and the Agreement, which includes the filing of the instant motion.

The Settlement has been well-received by the Settlement Class. The culmination of the Notice period has resulted in notice to over 22,000 Class Members. To date, **zero** Class Members have objected to the Settlement and **one** Class Member has opted out of the Settlement.

In light of the excellent result achieved for the Settlement Classes and the overwhelmingly positive response to the Settlement, Plaintiff now respectfully requests that the Court grant final approval of the Settlement, finding it to be fair, adequate, and reasonable; enter the Proposed Final Approval Order and Judgment approving the Settlement; and grant the separate requests for attorneys' fees and costs, the Settlement Administrator's fees and costs, and the service award for Named Plaintiffs.

II. BACKGROUND

A. Brief Overview of the Litigation and the Settlement Process

On October 27, 2021, Plaintiff Malinda Fairchild-Cathey filed the captioned putative class action case against Defendant AmeriCU Credit Union. The complaint asserted claims for breach of contract and violation of New York General Business Law ("GBL") § 349 related to

Defendant's alleged practice of charging overdraft fees ("OD Fees")[1] on debit card transactions that did not overdraw an account at the time they were authorized ("APPSN transactions") and Defendant's alleged practice of assessing more than one insufficient funds fee ("NSF Fee")[2] on the same transaction.

After Defendant filed a motion to dismiss, Plaintiff filed a January 2022 Amended Complaint that added two additional plaintiffs, Richard Mumford and Aaron Forjone, and claims targeting Defendant's alleged practice of assessing two out-of-network ATM Fees ("OON Fees") on ATM withdrawals undertaken in conjunction with balance inquiries. (Am. Compl. at 1.) Plaintiffs asserted the following claims for relief against Defendant: (1) breach of contract; (2) breach of the implied covenant of good faith and fair dealing; and (3) violation of New York General Business Law ("GBL") § 349. (Am. Compl. at 30-33.) Defendant then filed a second motion to dismiss, which the Court granted in part and denied in part. *See* Order, ECF No. 53. The Court dismissed the claim for breach of the implied covenant of good faith and fair dealing and left Plaintiffs' claims for breach of contract and § 349 claims pending. *Id.* at 32.

Thereafter, the Parties engaged in extensive discovery. On October 18, 2023, the Parties participated in a mediation before the Honorable Edward Carni (Ret.), which resulted in a settlement in principle after a Mediator's Proposal. The Parties then worked to draft and finalize a full Settlement Agreement and Class Notices before filing a motion for preliminary approval of the Settlement on December 14, 2023. (Doc. 81.) The terms and conditions of the Settlement are

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[1] "Overdraft Fees" means fees 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. (Agreement § 1(u).)

[2] "NSF Fee" means 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. (Agreement § 1(v).)

set forth in the Settlement Agreement and Release[3] (the "Agreement"), which is attached to the Declaration of Jeffrey Kaliel ("Kaliel Decl.") that was previously filed as Exhibit 1 to the motion for preliminary approval.

On January 3, 2024, the Court preliminarily approved the Settlement, certified the Settlement Classes, and approved the proposed Notice Program. (Doc. 82.) In compliance with that Order, Kroll, the Settlement Administrator, has since implemented and completed the Notice program. Class Counsel can now report that this Notice Program has been resoundingly successful. Specifically, as evidenced by the contemporaneously filed declaration of Kroll's Senior Director of Settlement Administration Scott M. Fenwick and as discussed more fully below, the settlement administrator provided Notice to 22, 100 of the 22,286 Class Members, which is a success rate of approximately 99.17%. Declaration of Scott M. Fenwick ("Fenwick Decl.") ¶ 14. Only a single potential Class Member opted out from the Settlement, and not a single Class Member has objected. *Id.* ¶¶ 15, 16. This very favorable reaction by Class Members supports the Court's preliminary finding that the Settlement is fair, reasonable, and adequate.

Also in conformity with the Court's January 3, 2024 Order, Plaintiffs filed their Unopposed Application for Attorneys' Fees and Costs and Service Awards (Doc. 85). Both the fee and final approval motions are ripe for adjudication at the May 8, 2024 Final Approval Hearing. Because the proposed Settlement is an excellent result for the Class, and because Class Members' reaction to the Settlement has been overwhelmingly positive, Plaintiffs respectfully request that the Court grant both motions and enter final approval of the Settlement.

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[3] Capitalized terms herein have the same meaning as defined in the Agreement.

B. The Key Terms of the Preliminarily Approved Settlement

The Settlement includes the following key terms:

- The Parties have agreed to certify the following three Settlement Classes:

> Those members of Defendant who, during the Class Period, were assessed an APPSN Fee ("APPSN Fee Settlement Class"). The Class Period for this Settlement Class is from October 27, 2015 through July 5, 2019.[4]
>
> Those members of Defendant who, during the Class Period, were assessed an OON Fee ("OON Fee Settlement Class"). The Class Period for the OON Fee Settlement Class is from October 27, 2015 through January 31, 2023.[5]
>
> Those members of Defendant who, during the Class Period, were assessed a Retry NSF Fee ("Retry Fee Settlement Class"). The Class Period for the Retry Fee Settlement Class is from October 27, 2015 through July 5, 2019.[6]

(Agreement, § 1(y), (z), (aa).) Excluded from the Settlement Classes are Defendant, all officers and directors of Defendant, and the judge(s) presiding over this Action.

- Defendant will pay $1,500,000.00 into a Settlement Fund (from which the following will be paid: reasonable attorneys' fees and costs; any approved Service Award to Named Plaintiffs; the Settlement Administrator's fees and costs; and payments to Class Members).

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[4] "APPSN Fee" means an Overdraft Fee charged by Defendant on a debit card transaction when the account had a positive available balance at time it was authorized. (Agreement § 1(d).) "APPSN Class Member" means any member of Defendant who had a checking account with Defendant and was assessed an APPSN Fee during the Class Period. (*Id.* § 1(hi).)

[5] "OON Fee" means 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. (Agreement § 1(t).) The Agreement does not expressly define "OON Fee Class Member." The Parties agree that "OON Fee Class Member" implicitly means any member of Defendant who had a checking account with Defendant and was assessed an OON Fee during the Class Period.

[6] "Retry Fee" means the second and any subsequent NSF of OD Fees charged by Defendant on a single ACH or check. (Agreement § 1(e).) "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. (*Id.* § 1(i).)

- The Settlement Fund will be distributed directly to Class Members by account credit or check, with no need to submit a claim or take any action;

- Any Settlement Funds constituting uncashed checks or residual amounts will not revert to Defendant but will instead be either distributed to Class Members in a second distribution or paid to an appropriate *cy pres* recipient.

- If ultimately approved, the Settlement will resolve this litigation.

Review of the Settlement indicates that it treats all Class Members fairly and equally.

The distribution to Class Members shall be on a *pro rata* basis based as follows: (1) 83% of the Net Settlement Fund shall be allocated to the APPSN Fee Settlement Class, with each APPSN Class Member paid based on the following formula of (0.83 of the Net Settlement Fund/Total APPSN Fees) x Total number of APPSN Fees; (2) 14% of the Net Settlement Fund shall be allocated to the Retry Fee Settlement Class, with each Retry NSF Class Member paid based on the following formula of (0.14 of the Net Settlement Fund/Total Retry NSF Fees) x Total number of Retry NSF Fees; (3) 3% of the Net Settlement Fund shall be allocated to the OON Fee Settlement Class, with each OON Class Members paid based on the following formula of (0.03 of the Nest Settlement/Total OON Fees) x Total number of OON Fees charged). (Agreement § 7(d)(iv)(a) and (b)(3).)[7]

C. Notice Dissemination and the Anticipated Distribution

Kroll has completed the three components of the Notice program approved by the Court.

First, Kroll has disseminated notice to 22,100 of the 22,286 total Class Members. Fenwick Decl. ¶ 14. This involved initially sending Postcard Notice to 7,750 Class Members (*id.* ¶ 9) and sending Email Notice to 14,536 Class Members (*id.* ¶ 10). One thousand and two-hundred seventy-one of the initial 14,536 Email Notices bounced back. *Id.* Kroll re-sent 991 Email Notices to

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[7] The Agreement has a typographical error: it has two § 7(d)(iv)(b)(3) sections.

updated email addresses, and 486 were unsuccessful. *Id.* Kroll subsequently sent 766 additional Postcard Notices to Class Members. *Id.*

Second, a website (www.FeeSettlementNY.com) dedicated to the settlement went live on February 2, 2024. Fenwick Decl. ¶ 6. Website visitors can download copies of the Agreement, the Long Form Notice, and other case-related documents. *Id.*

Third, a toll-free hotline ((833) 383-4685) dedicated to the settlement became operational on February 2, 2024. *Id.* ¶ 7. Potential Class Members can call the telephone number for information about the settlement and obtain assistance from an Interactive Voice Response system. *Id.* As of March 29, 2024, there have been 73 calls to the hotline. *Id.*

D. Class Reaction to the Notice: Opt-Outs and Objectors

The Agreement provides a procedure for Class Members to exclude themselves from the Settlement by sending a letter by mail to the Settlement Administrator postmarked on or before the Exclusion Deadline of March 4, 2024. Fenwick Decl. ¶ 15. As of March 29, 2024, Kroll received only **one** request for exclusion. *Id.* ¶ 16.

The Agreement also provides a procedure for Class Members to object to the Agreement by the Objection Deadline of March 4, 2024. *Id.* ¶ 15. As of January 9, 2024, Kroll received **zero** objections to the settlement. *Id.* ¶ 16.

III. ANALYSIS

Courts generally utilize a two-step approach in class actions to the settlement approval process. This approach is used widely by federal and state courts across the country. *See, e.g.*, *In re Tyco Int., Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249 (D.N.H. 2007); *Hawkes ex. Rel. Hawkes v. Comm. of NHDHHS*, No. 99-143-JD, 2004 WL 166722 (D.N.H. Jan. 23, 2004); *Fortin v. Ajinomoto U.S.A., Inc.*, No. 022345C, 2005 WL 3739852 (Mass. Super. Dec. 15, 2005); Herbert

Conte, *Newberg on Class Actions*, §§ 11.25 and 13:64; Manual for Complex Litigation, Fourth, § 21.632 (2004).

The first step was the preliminary approval phase, where the Court reviewed the proposed settlement for obvious deficiencies, scheduled a formal fairness hearing, and approved the Notice plan. The remaining step is the final approval phase, which entails the May 8, 2024 fairness hearing at which the Court considers the arguments presented herein and any necessary evidence. There are no objections to consider.

Here, final approval is appropriate because as discussed below, the Settlement satisfies federal due process considerations and is fair, adequate, and reasonable.

A. The Notice Program Satisfied Due Process

The Court is charged with ensuring that notice to the Class satisfies basic due process concerns, which entitles class members to notice of the proposed settlement and an opportunity to be heard if they so choose. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). The specific mechanics of the notice process "are left to the discretion of the court subject only to the broad 'reasonableness' standards imposed by due process." *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 121 (8th Cir. 1975).

Here, the Notices were written in plain English, were of reasonable length, and included the following: (i) a description of the case; (ii) a description of the class; (iii) a description of the proposed settlement; (iv) a statement of the amount of attorneys' fees that may be sought by class counsel; (v) the fairness hearing date and a description of the hearing; (vi) a statement regarding eligibility to appear at the hearing; (vii) a statement of the deadlines for filing objections to the settlement and for submitting a claim; (viii) a statement of options, including the option to be

excluded from the class and (ix) how to obtain further information. Further information was then made available via a settlement website and a dedicated toll-free hotline.

The approved Notice program implemented here was therefore meaningful and met or exceed notice protocols approved in other class action cases.[8] Consequently, the Notice provided here and the results obtained support final approval. *See Tyco*, 535 F. Supp. 2d at 258 (notice plan that involved efforts at mailing the claim packets to class members, publication notice in eight national and regional newspapers, and a website and toll-free telephone hotline supported final approval of settlement).

B. The Settlement is Fair, Adequate, and Reasonable

It is well settled that, "[t]o be likely to approve a proposed settlement under Rule 23(e)(2), the Court must find 'that it is fair, reasonable, and adequate.'" *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 692 (S.D.N.Y. 2019). In addressing these findings, courts consider four factors: "(1) adequacy of representation, (2) existence of arm's-length negotiations, (3) adequacy of relief, and (4) equitableness of treatment of class members." *Id*.

1. Adequacy of Representation

Before the Court can preliminarily approve a settlement, "Rule 23(e)(2)(A) requires a Court to find that 'the class representatives and class counsel have adequately represented the class." *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d at 692.

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[8] *See, e.g., Shepherd Park Citizens Ass'n v. Gen. Cinema Beverages of Washington D.C., Inc.*, 584 A.2d 20, 22 (D. Columbia 1990) (settlement notice published in The Washington Post deemed sufficient notice in indirect purchaser case involving soft drink consumers in Washington, D.C.); *Carlough v. Amchem Prods., Inc.*, 158 F.R.D. 314, 325 (E.D. Pa. 1993) (approving notice employing lists of potential class members and a publication and advertising campaign).

The adequacy inquiry in regard to the Named Plaintiffs is whether their interests are antagonistic to the interests of the other members of the classes. *Id.* (quoting *Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 222 F.3d 52, 60 (2d Cir. 2000)). Here, Plaintiffs are all Defendant members holding checking accounts. They have assisted Class Counsel throughout the litigation, including by: (1) allowing Class Counsel to review their bank statements before filing suit; (2) participating in interviews with Class Counsel; (3) conducting an extensive search for relevant documents and evidence; (4) assisting with written discovery responses; (5) keeping apprised of the case and conferring with Class Counsel throughout the litigation; and (6) agreeing to a class settlement that is in the best interests of the Class Members. In doing so, Plaintiffs were integral to the case and have demonstrated their adequacy as class representatives. Moreover, Plaintiffs have no known interests antagonistic to the interests of the Classes.

The adequacy inquiry in regard to counsel asks whether they "are qualified, experienced and able to conduct the litigation." *Id.* (quoting *Cordes & Co. Fin. Servs. V. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 99 (2d Cir. 2007) (internal quotation marks omitted). Here, Class Counsel have extensive experience litigating and settling nationwide class actions, including litigating literally *dozens* of cases involving similar facts and identical legal theories to those alleged in the complaints. They have served as class counsel in multiple cases, including federal and state overdraft cases. (Kaliel Decl., ¶¶ 2, 3.) Class Counsel thoroughly investigated and analyzed Plaintiffs' claims, Defendant's liability, class-wide damages theories, and Defendant's potential defenses. Class Counsel also reviewed extensive data files and only reached a settlement after satisfactorily confirmatory discovery. They were thus able to knowledgably evaluate the strengths and weaknesses of their claims, the suitability of the claims for class treatment, and the value of

the Settlement to the Class Members. Thus, as in *GSE Bonds*, "Rule 23(e)(2)(A)'s adequacy of representation prong thus weighs in favor of approval." *Id.*

2. Existence of Arm's Length Negotiations

The Agreement is the result of arm's length negotiations between experienced counsel after extensive litigation. This matters because "[i]f a class settlement is reached through arm's-length negotiations between experienced, capable counsel knowledgeable in complex class litigation, 'the Settlement will enjoy a presumption of fairness.'" *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d at 693 (quoting *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173-74 (S.D.N.Y. 2000)). *See also Newberg on Class Actions* § 11.41, at 11-88. In addition, "a mediator's involvement in settlement negotiations can help demonstrate their fairness." *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d at 693.

There remains no debate over whether arm's-length negotiations were involved. The Parties aggressively negotiated the Agreement and engaged in discovery to inform the Parties' discussions. (Kaliel Decl., ¶ 5.) They mediated before the Honorable Edward Carni (Ret.), and the actual settlement reached was the result of an accepted Mediator's Proposal. The proposed Settlement presently before this Court is the product of intensive, arm's-length negotiations. (*Id.* ¶ 10.) Importantly, the Parties did not discuss attorneys' fees and costs, or any potential service award, until they first agreed on the material terms of the settlement, including the Class definitions, form and manner of Notice, class benefits, and scope of the Release. (*Id.* ¶ 6.)

Moreover, experienced, capable counsel knowledgeable in complex class litigation were involved here. The negotiations on both sides were conducted by attorneys who are highly experienced in prosecuting, defending, and settling consumer class actions. (Kaliel Decl., ¶ 11.) As noted above, Class Counsel specifically have extensive experience litigating and settling

nationwide class actions, including litigating literally *dozens* of cases involving similar facts and identical legal theories to those alleged in the complaints. Accordingly, the proposed Settlement in this case is entitled to a preliminary presumption of fairness, adequacy, and reasonableness.

3. Adequacy of Relief

> The adequacy of relief factor takes into account
>
> (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims, if required; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3).

In re GSE Bonds Antitrust Litig., 414 F. Supp. 3d at 693 (quoting Rule 23(e)(2)(C)).

When compared with the risks of continued litigation, the amount recovered and the related modification of Defendant's practices (that will afford plaintiffs ongoing benefits) constitute an astounding recovery. Legitimate disputes exist as to many legal issues, including, for example, damages and certification of a class for trial. *See id.* at 694 ("Although the 'risk of maintaining a class through trial is present in [every] class action, . . . this factor [nevertheless] weighs in favor of settlement where it is likely that defendants would oppose class certification if the case were to be litigated." (internal quotation marks and citations omitted)). The Parties naturally dispute the strength of Plaintiffs' case, and the Agreement reflects the Parties' compromise of their assessments of the worst-case and best-case scenarios, weighing the likelihood of various potential outcomes. This case is complex, carries significant risks for all parties as to both legal and factual issues, and would consume a great deal of time and expense if the Parties litigated it to the end.

The settlement of this action assures that Class Members will receive compensation for a significant portion of their alleged losses relatively soon, rather than years from now or not at all. The Agreement provides prompt relief, and the proposed method of distribution is efficient and

cost-effective. It is fair and adequate, serving to weed out unjustified claims while not being unduly demanding. *See id.* ("A claims processing method should deter or defeat unjustified claims, but the court should be alert to whether the claims process is unduly demanding." (quoting Fed. R. Civ. P. 23, 2018 Advisory Note)).

Two other points remain in support of final approval. First, the requested attorney's fee is within the applicable range of reasonable percentage fund awards. *See id.* at 695-96 ("Courts in this District have approved fees as high as 33.5% from comparable class settlement funds"). *See also In re DDAPV Direct Purchaser Antitrust Litig.*, No. 05-2237, 2011 WL 12627961 (S.D.N.Y. Nov. 28, 2011) (approving 33.5% from a class settlement fund of $20.25 million); *see In re Oxycontin Antitrust Litig.*, No. 04-md-1603-SHS, ECF No. 360 (S.D.N.Y. Jan. 25, 2011) (awarding 33.5% from a class settlement fund of $16 million).

Second, it is notable that the proposed settlement fund comprises approximately 50% of the Classes alleged damages. (Kaliel Decl., ¶ 9.) This percentage either meets or exceeds many court-approved recoveries in federal overdraft fee class actions nationwide. *See, e.g., Bodnar v. Bank of Am., N.A.*, No. 14-3224, 2016 WL 4582084, at *4 (E.D. Pa. Aug. 4, 2016) (praising as "outstanding" and "a significant achievement," a cash fund providing between 13 and 48 percent of the maximum damages); *In re Checking Account Overdraft Litig.*, No. 1:09-MD-02036-JLK, 2015 WL 12641970, at *1 (S.D. Fla. May 22, 2015) (approving settlement providing 35% of the most probable aggregate damages); *Hawthorne v. Umpqua Bank*, No. 11-cv-06700-JST, 2015 WL 1927342, at *3 (N.D. Cal. Apr. 28, 2015) (approving settlement of approximately 38% of damages); *Torres v. Bank of Am.*, 830 F. Supp. 2d 1330, 1346 (S.D. Fla. 2011) (approving settlement of between 9 and 45 percent of the total potential damages); *Trombley v. Nat'l City Bank*, 826 F. Supp. 2d 179, 198 (D.D.C. 2011) (approving overdraft settlement with recovery range

of 12 to 30 percent as "within the realm of reasonableness"); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 583 (N.D. Ill. 2011) (approving settlement representing 10% of potential recovery).

4. Equitableness of Treatment of Class Members

Rule 23(e)(2)(d) requires consideration of whether the proposed settlement "treats class members equitably relative to one another." Here, similar to the plan approved in *GSE Bonds*, the proposed plan of distribution treats claimants equitably by providing them with a pro rata share of the recovery allocated within their respective class and all Class Members will provide the same release of claims. 414 F. Supp. 3d at 699. There is no preferred category of Class Members, but an equitable approach employed.

C. Certification is Appropriate

A proposed settlement must meet the four requirements under Rule 23(a) for class certification, as well as at least one of the three requirements under Rule 23(b). *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d at 699-700. The instant case satisfies these requirements.

1. Numerosity

Rule 23(a)(1) requires that the proposed Settlement Classes be "so numerous that joinder of all members is impracticable." Notably, "[t]he federal courts have repeatedly stated that there is no 'magic number' of class members that is required before certification is granted." *Prive v. New HaHerempshire-Vermont Health Servs.*, No. 98-E-20, 1998 WL 375294, at *3 (N.H. Super. July 1, 1998) (citing *CV Reit, Inc. v. Levy*, 144 F.R.D. 690, 696 (S.D.Fla.1992); *Johns v. Rozet,* 141 F.R.D. 211, 216 (D.D.C.1992)). Thus, "[c]lass sizes may be as small as ninety members, *see Smith v. MCI Telecommunications Corp.,* 124 F.R.D. 665, 675 (D.Kan.1989), or number in the tens of thousands. *See Coleman v. Cannon Oil Corp.,* 141 F.R.D. 516, 521 (M.D.Ala.1992)." *Id.* "In making its determination, the court is encouraged 'to accept common sense assumptions in

order to support a finding of numerosity.'" *Id.* (quoting *Wolgin v. Magic Marker Corp.*, 82 F.R.D. 168, 171 (E.D.Pa. 1979)). *See also* Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 3:3, at 225 (4th ed.2002) ("a common sense approach is contemplated by Rule 23"). In this Circuit, there is a presumption of numerosity for classes of 40 or more. *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d at 700. Here, there are over 22,000 Class Members, which satisfies numerosity.

2. Commonality

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." A judicial officer in Southern District has explained this requirement as follows:

> A question is common to the class if it is "capable of classwide resolution--which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350, 131 S.Ct. 2541, 180 L.Ed.2d 374 (2011). Commonality requires a plaintiff "to demonstrate that the class members have suffered the same injury." *Id.* at 349-50, 131 S.Ct. 2541 (internal quotations and citation omitted). "Where the same conduct or practice by the same defendant gives rise to the same kind of claims from all class members, there is a common question." *Johnson v. Nextel Commc'ns, Inc.*, 780 F.3d 128, 137 (2d Cir. 2015).

In re GSE Bonds Antitrust Litig., 414 F. Supp. 3d at 700.

Commonality exists where plaintiffs allege the same economic injury stemming from the same violation exists. *Id.* Each of the members of the three Settlement Classes shares the issue with the other members of those Classes of whether Defendant was permitted to charge APSN Fees, OON Fees, and Retry NSF Fees, respectively for each Class. The commonality factor supports certification.

3. Typicality

Rule 23(a)(3) requires that "[t]he claims or defenses of the representative parties are typical of the claims or defenses of the class." This requirement is satisfied "when "each class member's claim arises from the same course of events, and each class member makes similar legal arguments

to prove the defendant's liability." *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d at 700 (quoting *Brown v. Kelly*, 609 F.3d 467, 475 (2d Cir. 2010)).

The claims here arise from the same respective practices and course of conduct by Defendant, namely the charging of APSN Fees, OON Fees, and Retry NSF Fees, respectively for each Class. The same course of events and same arguments would prove Defendant's liability. The typicality requirement supports certification.

4. Adequacy of Representation

Rule 23(a)(4) requires that "[t]he representative parties will fairly and adequately protect the interests of the class." This requirement is two-pronged and looks at the adequacy of the Named Plaintiffs to be class representatives and the adequacy of counsel to serve as class counsel. *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d at 701. Both components of the adequacy inquiry already discussed above support certification. *See In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d at 701 (applying Rule 23(e)(2)(A) findings and reasoning to Rule 23(b) requirement).

5. Predominance and Superiority

Rule 23(b)(3) provides that "[a] class action may be maintained . . . if . . . the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Findings pertinent to this multi-pronged requirement include "the class members interests in individually controlling the prosecution or defense of separate actions"; "the extent and nature of any litigation concerning the controversy already begun by or against class members"; "the desirability or undesirability of concentrating the litigation of the claims in the particular forum"; and " the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3).

Here, the predominate issue in the litigation is shared among each of the members of the respective Settlement Classes, namely whether Defendant was permitted to charge APPSN Fees, OON Fees, and Retry NSF Fees, against each member of each Class. The predominance requirement supports certification.

The class mechanism is also superior to other means of adjudicating the Class Members' claims. As in *In re GSE Bonds Antitrust Litig.*, "the large size of the class and potentially small recovery of many individual plaintiffs suggests that class members' interests are likely served by a class action." 414 F. Supp. 3d at 702. Individual litigation could result in inconsistent or varying adjudications with respect to individual Class Members and could establish incompatible standards of conduct for Defendant. Further, a class action would allow both the Parties and the Court to benefit from economies of scale and the final and consistent resolution of relatively small claims in one forum. It is impracticable to bring Class Members' individual claims before the Court. Class treatment permits a large number of similarly situated persons or entities to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, or expense. *See id.* ("concentrating the case in one forum will help improve fairness and efficiency in adjudication of the claims of plaintiffs"). Litigating the claims of over 22,000 Class Members would be infeasible because it would require presentation of the same evidence and expert opinions many times over. Superiority supports certification.

IV. CONCLUSION

The same facts and arguments that prompted the Court to preliminarily approve the Settlement remain applicable, and the Parties have complied with the Notice plan previously approved by the Court as satisfying due process. There is a single exclusion and no objections to

the Settlement. Moreover, all factors applicable to certification and final approval support that the Settlement is fair, reasonable, and adequate.

Accordingly, Plaintiffs respectfully request that the Court grant final approval of the Settlement and enter the accompanying Proposed Final Approval Order and Judgment.

Dated: April 3, 2024

Respectfully submitted,

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Attorneys for Plaintiffs and the Putative Class

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 3, 2024, a copy of the above document has this day been served on all counsel of record via the court's ECF system:

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MALINDA FAIRCHILD-CATHEY, RICHARD MUMFORD, and AARON FORJONE, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

AMERICU CREDIT UNION,

Defendant.

Civil Action No. 6:21-cv-1173 (LEK-ML)

CLASS ACTION

DECLARATION OF SCOTT M. FENWICK OF KROLL SETTLEMENT ADMINISTRATION LLC IN CONNECTION WITH FINAL APPROVAL OF SETTLEMENT

Date: May 8, 2024
Time: 11:30 A.M.

The Hon. Lawrence E. Kahn

I, Scott M. Fenwick, declare as follows:

INTRODUCTION

1. I am a Senior Director of Kroll Settlement Administration LLC ("Kroll"),[1] the Claims Administrator[2] appointed in the above-captioned case, whose principal office is located at 2000 Market Street, Suite 2700, Philadelphia, Pennsylvania 19103. I am over 21 years of age and am authorized to make this declaration on behalf of Kroll and myself. The following statements are based on my personal knowledge and information provided by other experienced Kroll employees working under my general supervision. This declaration is being filed in connection with final approval of the settlement.

2. Kroll has extensive experience in class action matters, having provided services in class action settlements involving antitrust, securities fraud, labor and employment, consumer, and government enforcement matters. Kroll has provided notification and/or claims administration services in more than 3,000 cases.

BACKGROUND

3. Kroll was appointed as the Claims Administrator to provide services in connection with that certain Settlement Agreement and Release (the "Settlement Agreement"). Kroll's duties in connection with the settlement have and will include: (a) preparing and sending notices in connection with the Class Action Fairness Act; (b) receiving and analyzing the Class Member contact list (the "Class List") from Defendant; (c) creating a settlement website; (d) establishing a toll-free telephone number; (e) establishing a post office box for the receipt of mail; (f) preparing and sending the Notice via first-class mail; (g) preparing and sending the Notice via email; (h) receiving and processing mail from the United States Postal Service ("USPS") with forwarding

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement as defined below.

[2] The Preliminary Approval/Notice Order appoints "Kroll" as the Claims Administrator. Kroll Settlement Administration LLC is the full legal name of the Claims Administrator in this case.

addresses; (i) receiving and processing undeliverable mail, without a forwarding address, from the USPS; (j) receiving and processing Exclusion Letters and objections; and (k) such other tasks as counsel for the Parties or the Court request Kroll to perform.

NOTICE PROGRAM

The CAFA Mailing

4. As noted above, on behalf of the Defendant, Kroll provided notice of the proposed settlement pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715(b) ("the CAFA Notice"). At Defendant's Counsel's direction, on December 22, 2023, Kroll sent the CAFA Notice, a true and correct copy of which is attached hereto as **Exhibit A**, listing the documents required via first-class certified mail, to (a) the National Credit Union Administration, and (b) the New York State Department of Financial Services, as set forth in the service list for the CAFA Notice, attached hereto as **Exhibit B**. The CAFA Notice included a USB flash drive with electronic versions of all the documents relating to the settlement referenced in the CAFA Notice.

Data and Case Setup

5. On January 17, 2024, Kroll received a data file from the Defendant. The file contained 22,286 total Class Member names, accrued fee counts for each, and full account numbers by which to uniquely identify them. Of the total 22,286 Class Members, 22,249 had mailing addresses and 20,877 had email address information. The data also included account status and whether the Class Member had agreed to receive electronic communications from the Defendant. Of the total Class Members included, 21,103 were current accountholders of the Defendant. Of the 21,103 current accountholders, 14,536 had agreed to receive electronic communications and had an email address provided in the data from the Defendant. The remaining 6,567 current accountholders either had not agreed to receive electronic communications or did not have an email address by which to contact them. Of the total 22,286 Class Members, 1,183 were past accountholders. Kroll undertook several steps to standardize the address and email information provided by the Defendant and compile the eventual Class List. Additionally, in an effort to ensure

that Notices would be deliverable to Class Members, Kroll ran the Class List through the USPS's National Change of Address ("NCOA") database and updated the Class List with address changes received from the NCOA.

6. On December 15, 2024, Kroll created a dedicated settlement website entitled www.FeeSettlementNY.com (the "Settlement Website"). The Settlement Website "went live" on February 2, 2024, and contains information about the settlement, including important dates and deadlines, answers to frequently asked questions, contact information for the Claims Administrator, and copies of relevant documents, including the Settlement Agreement, the Amended Class Action Complaint, the Preliminary Approval Order, the Long Form Notice, and Plaintiffs' application for attorneys' fees and costs and service awards.

7. On February 2, 2024, Kroll established a toll-free telephone number, (833) 383-4685, for Class Members to call and obtain additional information regarding the settlement through an Interactive Voice Response ("IVR") system. As of March 29, 2024, the IVR system has received 73 calls.

8. On December 6, 2023, Kroll designated a post office box with the mailing address *Fairchild-Cathey v. AmeriCU Credit Union*, c/o Kroll Settlement Administration LLC, PO Box 5324, New York, NY 10150-5324, in order to receive Exclusion Letters, objections, and correspondence from Class Members.

The Notice Program

9. On February 2, 2024, Kroll caused 7,750 postcard Notices to be mailed via first-class mail to all Class Members who are current accountholders but had not agreed to receive electronic communications from the Defendant, are not current accountholders, and/or current accountholders whose email address was not provided in the original data transfer from Defendant. A true and correct copy of the mailed postcard Notice, as well as the Long Form Notice, are attached hereto as **Exhibits C and D,** respectively.

10. On February 2, 2024, Kroll caused the email Notice to be sent to the 14,536 email addresses on file for Class Members who were current accountholders, had agreed to receive electronic communications from the Defendant, and had a valid email address associated with their record, as noted above. Of the 14,536 emails attempted for delivery, 1,271 emails were rejected/bounced back as undeliverable. These 1,271 emails were run through an advanced search, which returned 991 updated emails to which the email Notice was re-sent. Of these 991 re-sent email Notices, 486 were rejected/bounced back as undeliverable. A true and correct copy of a complete exemplar email Notice (including the subject line) is attached hereto as **Exhibit E.**

11. On March 7, 2024, Kroll mailed the postcard Notice to the 766 Class Members whose email Notice was unsuccessfully delivered following the first and second attempt.

NOTICE PROGRAM REACH

12. As of March 4, 2024, forty-six (46) postcard Notices were returned by the USPS with a forwarding address. Of those, forty-five (45) postcard Notices were automatically re-mailed to the updated addresses provided by the USPS. The remaining one (1) postcard Notice was remailed by Kroll to the updated address provided by the USPS.

13. As of March 29, 2024, 375 postcard Notices were returned by the USPS as undeliverable as addressed, without a forwarding address. Kroll ran 374 undeliverable records through an advanced address search.[3] The advanced address search produced 238 updated addresses. Kroll has re-mailed postcard Notices to the 238 updated addresses obtained from the advanced address search. Of the 238 re-mailed postcard Notices, 49 have been returned as undeliverable a second time.

14. Following all postcard and email Notice re-mailings, Kroll has reason to believe that Notice likely reached 22,100 of the 22,286 Class Members to whom the Notice was emailed/mailed, a success rate of approximately 99.17%. This reach rate is consistent with other

[3] The one remaining undeliverable postcard Notice received to date was received after Kroll was instructed to no longer run address searches.

court-approved, best-practicable notice programs and Federal Judicial Center Guidelines, which state that a notice plan that reaches[4] over 70% of targeted class members is considered a high percentage and the "norm" of a notice campaign.[5]

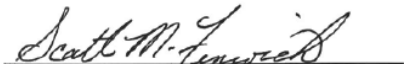
EXCLUSIONS AND OBJECTIONS

15. The Bar Date to Object and the Bar Date to Opt Out was March 4, 2024.

16. Kroll has received one timely Exclusion Letter and no objections to the settlement. A list of the exclusion received is attached hereto as **Exhibit F**.

CERTIFICATION

I declare under penalty of perjury under the laws of the United States that the above is true and correct to the best of my knowledge and that this declaration was executed on March 29, 2024, in Inver Grove Heights, Minnesota.



SCOTT M. FENWICK

[4] FED. JUD. CTR., *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* (2010), *available at* https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf. The guide suggests that the minimum threshold for adequate notice is 70%.

[5] Barbara Rothstein and Thomas Willging, Federal Judicial Center Managing Class Action Litigation: A Pocket Guide for Judges, at 27 (3d Ed. 2010).

Exhibit A

KROLL SETTLEMENT ADMINISTRATION

VIA U.S. MAIL

Date: December 22, 2023

To: All "Appropriate" Federal and State Officials Per 28 U.S.C. § 1715
(*see attached service list*)

Re: CAFA Notice for the proposed Settlement in *Fairchild-Cathey et al. v. Americu Credit Union*, 6:21-cv-01173 (LEK-ML), pending in the United States District Court Northern District of New York

Pursuant to Section 3 of the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715, Defendant AmeriCU Credit Union ("Defendant" or "AmeriCU Credit Union") hereby notifies you of the proposed settlement of the above-captioned action (the "Action"), currently pending in the United States District Court Northern District of New York (the "Court").

Eight items must be provided to you in connection with any proposed class action settlement pursuant to 28 U.S.C. § 1715(b). Each of these items is addressed below, and all exhibits are available on the enclosed flash drive:

1. 28 U.S.C. § 1715(b)(l) – a copy of the complaint and any materials filed with the complaint and any amended complaints.

   The Class Action Complaint and First Amended Complaint are available as **Exhibit A** and **A1**.

2. 28 U.S.C. § 1715(b)(2) – notice of any scheduled judicial hearing in the class action.

   On December 14, 2023, Plaintiff filed a motion for Preliminary Approval of the class action settlement, and the date of the Preliminary Approval hearing has not yet been set. The Court has not yet scheduled the Final Approval Hearing Date for this matter. The proposed Preliminary Approval Order is available as **Exhibit B**.

3. 28 U.S.C. § 1715(b)(3) – any proposed or final notification to class members.

   Copies of the proposed Email, Postcard, and Long Form Notices will be provided to Class Members and will be available on the settlement website created for the administration of this matter. These are available as **Exhibits C**, **D**, and **E**, respectively. The Notices describe, among other things, information about the settlement and the Class Members' rights to object or exclude themselves from the Class.

4. 28 U.S.C. § 1715(b)(4) – any proposed or final class action settlement.

   The Settlement Agreement is available as **Exhibit F**.

5. 28 U.S.C. § 1715(b)(5) – any settlement or other agreement contemporaneously made between class counsel and counsel for defendants.

   There are no other settlements or other agreements between Class Counsel and Defendant's Counsel beyond what is set forth in the Settlement Agreement.

6. 28 U.S.C. § 1715(b)(6) – any final judgment or notice of dismissal.

   The Court has not yet entered a final judgment or notice of dismissal. Accordingly, no such document is presently available.

7. 28 U.S.C. § 1715(b)(7) – (A) If feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement to that State's appropriate State official; or (B) if the provision of the information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement.

   The definition of the three Classes in the proposed Settlement Agreement are:

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

   (b) "OON Fee Settlement Class" shall mean those members of Defendant who, during the Class Period, were assessed an OON Fee

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

   The complete list and counts by state of Class Members is not known.

8. 28 U.S.C. § 1715(b)(8) – any written judicial opinion relating to the materials described in 28 U.S.C. § 1715(b) subparagraphs (3) through (6).

   There has been no written judicial opinion. Accordingly, no such document is presently available.

If you have any questions about this notice, the Action, or the materials available on the enclosed flash drive, please contact the undersigned below.

Respectfully submitted,

Maggie McGill
Senior Manager
Maggie.mcgill@kroll.com

Exhibit B

CAFA NOTICE SERVICE LIST

National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

New York State Department of Financial Services
1 State Street
New York, NY 10004-1511

Exhibit C

Fairchild Cuny - Andel CU Credit Union
c/o Kroll Settlement Administration
P.O. Box 5324
New York, NY 10150-5324

FIRST-CLASS MAIL
U.S. POSTAGE PAID
CITY, ST
PERMIT NO. XXXX

ELECTRONIC SERVICE REQUESTED

<<Refnum Barcode>>

CLASS MEMBER ID: <<Refnum>>

Postal Service: Please do not mark barcode

<<FirstName>> <<LastName>>
<<Company>>
<<Address1>>
<<Address2>>
<<City>>, <<State>> <<Zip>>-<<zip4>>
<<Country>>

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 et al. 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. Defendant denies that its practices give rise to claims for damages by the Named Plaintiffs or any Settlement Class Members.

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 or more 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 May 8th, 2024 at 11:30am. At that hearing, the Court will consider whether to grant final approval to the settlement, and whether to approve payment from the Settlement Fund of up to $5,000.00 in a service award to each Named Plaintiff, up to 33.33% of the Settlement Fund as attorneys' fees, and reimbursement of costs to the attorneys and the Claims Administrator. If the Court grants final approval of the settlement and you do not request to be excluded from the settlement, you will release your right to bring any claim covered by the settlement. In exchange, Defendant has agreed to issue a credit to your account, a cash payment to you if you are no longer a customer, and/or to forgive certain Relevant Fees.

To obtain a Long Form Notice and other important documents please visit www.FeeSettlementNY.com. Alternatively, you may call (833) 383-4685.

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 March 4th, 2024. 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 March 4th, 2024. You may learn more about the opt-out and objection procedures by visiting www.FeeSettlementNY.com or by calling (833) 383-4685.

Exhibit D

Fairchild-Cathey et al.
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 et al. 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 "Named Plaintiffs" 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 Named Plaintiffs 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 Named Plaintiffs 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 Named Plaintiffs 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 Named Plaintiffs' 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 Named Plaintiffs' lawyers, known as Class Counsel, make this recommendation to the Named Plaintiffs. The Named Plaintiffs 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 Named Plaintiffs' claims are subject to other defenses that might result in no or less recovery to Settlement Class Members. Even if the Named Plaintiffs 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 more 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.

The Bar Date (deadline) to Opt Out for sending a letter to exclude yourself from or opt-out of the settlement is March 4th, 2024.

The Bar Date (deadline) to Object to file an objection with the Court is also March 4th, 2024.

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 "Final Approval Hearing," which is currently scheduled for May 8th, 2024 at 11:30 A.M.

THE SETTLEMENT PAYMENT

9. How much is the Settlement?

Defendant has agreed to create a Settlement Fund of $1,500,000 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 Claims 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 Named Plaintiffs a service award?

Class Counsel will request that the Named Plaintiffs be paid a service award in the amount of $5,000 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 awards and the Claims 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 mailed check from the Claims 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 May 8th, 2024, at 11:30 A.M. 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 Claims 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 et al. 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 March 4th, 2024, and sent to:

Fairchild-Cathey v. AmeriCU Credit Union
c/o Kroll Settlement Administration
PO Box 5324
New York, NY 10150-5324

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 Claims 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 March 4th, 2024, and must be mailed to the Claims Administrator as follows:

Fairchild-Cathey v. AmeriCU Credit Union
c/o Kroll Settlement Administration
PO Box 5324
New York, NY 10150-5324

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 Hearing at 11:30 A.M. on May 8th, 2024 at the United States District Court for the Northern District of New York, Federal Building and U.S. Courthouse, which is located at 445 Broadway, Albany, NY 12207. 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 Named Plaintiffs. The hearing may be virtual, in which case the instructions to participate shall be posted on the website at www.FeeSettlementNY.com.

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 Final Approval 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 Claims 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 www.FeeSettlementNY.com or at the Office of the Clerk of the United States District Court for the Northern District of New York, which is located at 445 Broadway, Albany, NY 12207-2926, 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 Claims Administrator as follows:

Fairchild-Cathey v. AmeriCU Credit Union
c/o Kroll Settlement Administration
PO Box 5324
New York, NY 10150-5324

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

David Berger
Gibbs Law Group
1111 Broadway, Suite 2100
Oakland, CA 94607
510-350-9700
dmb@classlawgroup.com

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

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

Exhibit E

From:

To:

Subject: Legal Notice of Class Action Settlement

Class Member ID: <<Refnum>>

Fairchild-Cathey et al. v. AmeriCU Credit Union
Case No. 6:21-cv-01173

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 et al. 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. Defendant does not deny it charged the fees the Named Plaintiffs 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 Named Plaintiffs or any Settlement Class Members.

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 Settlement Fund, benefits established by the settlement. If you are a member of one or more 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 May 8th, 2024 at 11:30am. At that hearing, the Court will consider whether to grant final approval to the settlement, and whether to approve payment from the Settlement Fund of up to $5,000 in a service award to each Named Plaintiff, up to 33.33% of the Settlement Fund as attorneys' fees, and reimbursement of costs to the attorneys and the Claims Administrator. If the Court grants final approval of the settlement and you do not request to be excluded from the settlement, you will release your right to bring any claim covered by the settlement. In exchange, Defendant has agreed to issue a credit to your account, a cash payment to you if you are no longer a customer, and/or to forgive certain Relevant Fees.

To obtain a Long Form Notice and other important documents please visit www.FeeSettlementNY.com. Alternatively, you may call (833) 383-4685.
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 March 4th, 2024. 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 March 4th, 2024. You may learn more about the opt-out and objection procedures by visiting www.FeeSettlementNY.com or by calling (833) 383-4685.

Exhibit F

Exclusion List

Count	Record Identificatoin Number
1	817534WD5WJNF

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MALINDA FAIRCHILD-CATHEY, RICHARD MUMFORD, and AARON FORJONE, on behalf of themselves and all others similarly situated, Plaintiffs, v. AMERICU CREDIT UNION, Defendant.	Civil Action No. 6:21-cv-1173 (LEK-ML) JUDGE LAWRENCE E. KAHN Class Action

[PROPOSED] FINAL APPROVAL ORDER AND ENTRY OF JUDGMENT

THIS MATTER came before the Court for consideration of Plaintiffs' Unopposed Motion for Final Approval of Proposed Class Action Settlement and Entry of Judgment. The Court has reviewed the Settlement Agreement and Release and attachments thereto ("Settlement Agreement" or "Agreement"), has reviewed the briefing and declarations submitted in support thereof, and held a Final Approval Hearing on May 8, 2024, notice of which was given in accordance with this Court's January 3, 2024 Order that (1) conditionally certified the Settlement Classes, (2) preliminarily approved the Settlement, (3) approved the Notice Plan, and (4) set the Final Approval Hearing.

IT IS HEREBY ORDERED as follows:

1. The Settlement Agreement and Release and its exhibits (the "Agreement" or the "Settlement"), as well as the definitions contained therein, are incorporated by reference in this Order. The terms of this Court's Preliminary Approval Order are also incorporated by reference in

this Order.

2. This Court has jurisdiction over the subject matter and Parties to the above-referenced lawsuit captioned *Fairchild-Cathey v. AmeriCU Credit Union* (the "Action").

3. The Court finds that the Fed. R. Civ. P. 23(a) and (b)(3) prerequisites for a class action have been satisfied in that: (a) the Settlement Classes are comprised of so numerous members that joinder of all members is impracticable; (b) there are common questions of law and fact common to the Settlement Classes that predominate over questions affecting only individual members; (c) the claims of Named Plaintiffs are typical of the claims of the Settlement Classes; (d) Named Plaintiffs have fairly and adequately protected the interests of the Settlement Classes; (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy; and (f) Class Counsel have adequately represented the interests of the Settlement Class. In addition, questions of law or fact common to the members of the Class predominate over any questions affecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. The Settlement Classes are defined as follows:

> Those members of Defendant who, during the Class Period, were assessed an APPSN Fee ("APPSN Fee Settlement Class").
>
> Those members of Defendant who, during the Class Period, were assessed an OON Fee ("OON Fee Settlement Class").
>
> Those members of Defendant who, during the Class Period, were assessed a Retry NSF Fee ("Retry Fee Settlement Class").

Excluded from the Settlement Classes are Defendant, all officers and directors of Defendant, and the judge(s)presiding over this Action. The Class Period for the APPSN Fee Settlement Class means the dates from October 27, 2015, through July 5, 2019. The Class Period for the OON Fee

Settlement Class means the dates from October 27, 2015, through January 31, 2023. The Class Period for the Retry Fee Settlement Class means the dates from October 27, 2015, through July 5, 2019.

5. Given the foregoing findings, the Settlement Classes described in paragraph 4 above are hereby finally certified, solely for purposes of effectuating the Settlement and this Final Order and Entry of Judgment.

6. The Court appoints Plaintiffs Malinda Fairchild-Cathey, Richard Mumford, and Aaron Forjone as Class Representatives, appoints Jeffrey Kaliel of Kaliel Gold PLLC and David Berger of Gibbs Law Group LLP as Class Counsel, and appoints Kroll as Claims Administrator.

7. The Court hereby finds and concludes that the Class Notice program fully satisfies applicable law and the requirements of due process and constitutes the best notice practicable under the circumstances. The Court further finds that the Notice Program provided individual notice to all Class Members who could be identified through reasonable effort and supports the Court's exercise of jurisdiction over the Settlement Classes as contemplated in the Settlement and this Order.

8. There were no objections to the Settlement and one opt-out from the Classes. The apparent reaction of the Settlement Classes has been overwhelmingly positive.

9. The strength of Plaintiffs' case balanced against the risks of litigation supports granting final approval of the Settlement. The final approval papers adequately recognized the inherent uncertainty surrounding the claims and defenses at issues in the captioned cases. The Settlement thus provides a pragmatic and guaranteed significant recovery to the Classes.

10. The Settlement does not constitute an admission, concession, or indication by Defendant of the validity of any claims in this Action or of any wrongdoing, liability, or violation of law by Defendant, nor of the appropriateness of certification of a litigation class. To the contrary, Defendant has advised the Court that it believes it is without any liability whatsoever for any of the claims included in the Settlement and is participating in the Settlement to put an end to all such claims and the risks and expense of protracted litigation.

11. Plaintiffs are confident in their claims while Defendant is confident in its defenses. The Parties recognize, however, that the substantial risks involved in litigating two complex class actions through trial cannot be disregarded. The Settlement, which provides Class Members with substantial, guaranteed, and immediate recovery that would typically take several years of continued litigation and significant expense to possibly achieve, is the best vehicle to efficiently resolve the consolidated actions and afford the Parties certainty and more immediate closure.

12. Defendant possesses the ability to fund the proposed Settlement on the agreed-upon timetable, which will provide prompt relief to the Class Members, but does not possess unlimited funds to necessarily fund a notably larger recovery. In addition, the inherent uncertainty of the future does not guarantee that if the litigation were to continue and Plaintiffs were to prevail at trial, Defendant would at that point have sufficient resources to fund the relief recovered.

13. The Settlement is the result of arm's length, intense negotiations. There has been no suggestion or evidence of collusion.

14. The Court notes the experience of Class Counsel in complex litigation generally, and in bank fee cases in particular, and credits their informed opinion that the $1,500,000.00

monetary Value of the Settlement is an excellent result for the Settlement Classes in light of the circumstances that exist here, including the inherent risks involved in this litigation.

15. The Court recognizes that the Parties engaged in significant information exchange in connection with settlement negotiations so that the Parties could adequately evaluate the claims and their positions.

16. The Court finds that the Settlement's terms constitute, in all respects, a fair, adequate, and reasonable settlement as to all Class Members and directs its consummation pursuant to its terms and conditions. The plan of administering the Settlement as set forth in the Agreement is hereby approved.

17. The Parties and Class Members are bound by the terms and conditions of the Agreement. For the benefit of the Parties and the Class and to protect this Court's jurisdiction, the Court retains continuing jurisdiction over the Settlement to ensure the effectuation thereof in accordance with the Agreement approved herein and the related orders of this Court.

18. Upon the Effective Date of the Settlement, Plaintiffs and each and every one of the Settlement Class Members shall be deemed to have released the Released Parties from the Released Claims as provided in the Agreement. Upon entry of Judgment by the Court in accordance with the Settlement, all Settlement Class Members shall be barred from asserting any Released Claims against the Released Parties and any such Settlement Class Member shall be conclusively deemed to have released any and all such Released Claims against the Released Parties.

19. The Agreement (including, without limitation, its exhibits), and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation, or principle of

common law or equity, of any liability or wrongdoing, by Defendant, or of the truth of any of the claims asserted by Plaintiffs, and evidence relating to the Agreement shall not be discoverable or used, directly or indirectly, in any way, whether in the captioned cases or in any other action or proceeding, except for purposes of enforcing the terms and conditions of the Agreement, the Preliminary Approval Order, and/or this Order.

20. If an appeal, writ proceeding, or other challenge is filed as to this Final Approval Order, and if thereafter the Final Approval Order is not ultimately upheld, all orders entered, stipulations made and releases delivered in connection herewith, or in the Settlement or in connection therewith, shall be null and void to the extent provided by and in accordance with the Settlement.

21. Without further order of the Court, the Parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement.

22. In addition to granting Final Approval of the Settlement, the Court grants Plaintiffs' February 20, 2024, Unopposed Motion for Attorneys' Fees and Costs and Service Awards. (Doc. 85.) The Court approves an award of $500,000 in attorneys' fees for Class Counsel, $6,451.18 in Class Counsel's costs and expenses, and a service award of $5,000 for each Class Representative, all to be paid from the Settlement Fund established by Defendant.

IT IS SO ORDERED.

Dated: _____

_____
LAWRENCE E. KAHN
United States District Judge

Approved as to form:

*/s/ Jeffrey D. Kaliel*_____

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Attorneys for Defendant AmeriCU Credit Union

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 3, 2024, a copy of the above document has this day been served on all counsel of record via the court's ECF system:

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Attorneys for Defendant AmeriCU Credit Union

/s/ Jeffrey D. Kaliel
Jeffrey D. Kaliel