

SETTLEMENT AGREEMENT AND RELEASE

Bernadette Dominique v. Desert Financial Credit Union,

Superior Court Of The State Of Arizona For The County Of Maricopa

Case No. CV2020-053959

PREAMBLE

This Settlement Agreement and Release (the “Agreement”) is entered into by and among Plaintiff Bernadette Dominique (“Named Plaintiff”) and all those on whose behalf she is prosecuting this action (each of them a “Plaintiff” and all of them, together with Named Plaintiff, collectively referred to herein as “Plaintiffs”), on the one hand, and Defendant Desert Financial 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

A. On June 18, 2020, Plaintiff Bernadette Dominique filed a putative class action complaint entitled *Bernadette Dominique v. Desert Financial Credit Union*, in the Superior Court Of The State Of Arizona For The County Of Maricopa, Case No. CV2020-053959 (the “Litigation”). On November 19, 2021, Plaintiff filed her First Amended Complaint in the Litigation (“Amended Complaint”). In the Amended Complaint, Named Plaintiff alleged claims for breach of contract and breach of the implied covenant of good faith and fair dealing.

B. Defendant has entered into this Agreement to resolve the Litigation, including any and all controversies and disputes arising out of or relating to the allegations made in the Amended Complaint, and to avoid the burden, risk, uncertainty, expense, and disruption to its business operations associated with further litigation. Defendant does not in any way acknowledge, admit to, or concede any of the allegations asserted in the Litigation, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Litigation. Nothing contained in this Agreement shall be used or construed as an admission of fault, wrongdoing or 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 fault, liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement.

C. Named Plaintiff has entered into this Agreement to liquidate and recover on the claims asserted in the Amended Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. Named Plaintiff does not in any way concede the claims alleged in the Amended Complaint 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) “APPSN Fee” means overdraft fee(s) that the Amended Complaint alleges Defendant charged on certain Point of Sale debit card transactions where there was a sufficient available balance at the time the transaction was authorized, but an insufficient available balance

at the time the transaction was presented for payment and posted to an accountholder's account, and which fee was not refunded.

(b) "Bar Date to Object" will be the date set by the Court as the deadline for members of the Settlement Class to file an Objection, and shall be approximately fifteen (15) days after the filing of the Motion for Final Approval.

(c) "Bar Date to Opt Out" shall be the date set by the Court as the deadline for members of the Settlement Class to opt out. The Bar Date shall be thirty (30) days after the date the Notice (defined below) is sent to members of the Settlement Class.

(d) "Claims Administrator" shall mean the entity that will provide the notice and handle other administrative matters related to this Settlement Agreement.

(e) "Class Counsel" shall mean The Kick Law Firm, APC and Kaliel Gold LLC.

(f) "Class Member" means any person who is a member of the Settlement Class and who does not submit a timely request to be excluded from the Settlement Class, as provided by the Preliminary Approval/Notice Order, and who is not otherwise excluded by the Court from the Settlement Class.

(g) "Court" shall mean the Superior Court Of The State Of Arizona For The County Of Maricopa.

(h) "Defendant's Counsel" shall mean Squire Patton Boggs (US) LLP.

(i) "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: (1) thirty (30) days after entry of the Final Approval Order if no appeals are taken from the Final Approval Order; or (2) if appeals are taken from the Final Approval Order, then thirty (30) days after issuance of a final appellate ruling affirming the Final Approval Order after all appeals are exhausted or thirty (30) days after entry of a dismissal of the appeal.

(j) "Email Notice" shall mean a short form of the Notice that shall be sent by email to members of the Settlement Class who receive notice by email, and it shall be approved in writing by Defendant as to form and content before dissemination.

(k) "Exclusion Letter" shall mean a letter by a member of the Settlement Class who elects to opt out of the Settlement Class.

(l) "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.

(m) "Final Approval Order" shall mean the Order and Judgment approving this Agreement issued by the Court on or after the Final Approval Hearing Date.

(n) “Final Report” shall mean the report prepared by the Claims Administrator of all receipts and disbursements from the Settlement Fund, as described in Section 8, below.

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

(p) “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 to the Named Plaintiff, the costs of Notice, any fees paid to the Claims Administrator, and up to \$40,000 in any expert fees and/or costs incurred by Defendant in identifying members of the Settlement Class and performing the calculations necessary for determining the allocations of the Settlement Fund to those members.

(q) “Notice” shall mean the notice to members of the Settlement Class 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 be substantially similar to the form of Notice attached hereto as Exhibit 1, with final written approval by Defendant as to form and content before dissemination.

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

(s) “Settlement Class” means all current and former Desert Financial Credit Union checking account holders who are citizens of Arizona who from June 1, 2014 to November 1, 2017, were charged an APPSN Fee and did not previously settle and release individual claims with Desert Financial Credit Union. Excluded from the class are Defendant’s current and former officers, directors, affiliates, legal representatives, and assigns. Also excluded are any judges who have presided over this matter and their immediate families and judicial staff.

(t) “Settlement Fund” shall mean the six million dollars (\$6,000,000) Defendant has agreed to pay under the terms of this Agreement, plus any accrued interest.

2. CLASS ACTION SETTLEMENT. Plaintiff shall propose and recommend to the Court that the Settlement Class 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 oppose class certification and object to this case proceeding as a class action. Plaintiff and Class Counsel shall not reference this Agreement in support of any subsequent motion relating to certification of a class.

3. PRELIMINARY SETTLEMENT APPROVAL. Class Counsel shall use reasonable efforts to file a motion seeking a Preliminary Approval/Notice Order within fifteen (15) days of this Settlement Agreement being fully executed. The Preliminary Approval/Notice Order shall provide for: preliminary approval of this Agreement, provisional certification of the Settlement Class for settlement purposes, appointment of Class Counsel as counsel to the provisionally certified class, and the requirement that the Notice be given to members of the Settlement Class as provided in Section 4, below (or as otherwise determined by the Court).

4. NOTICE TO THE SETTLEMENT CLASS.

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

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

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

(d) The Notice shall also be posted on a settlement website that shall be created by the Claims Administrator and approved by Defendant as to form and content.

(e) The Claims Administrator shall maintain a database showing mail and email addresses to which each Notice was sent and any Notices that were not delivered by mail and/or email. A summary report of the Notice shall be provided to the parties at least five (5) days prior to the deadline to file the Motion for Final Approval. The database maintained by the Claims Administrator regarding the Notice shall be available to the parties and the Court upon request. It shall otherwise be confidential and shall not be disclosed to any third party. To the extent the database is provided to Class Counsel, it shall be used only for purposes of implementing the terms of this Agreement, and shall not be used for any other purposes.

(f) The Notice shall be in a form approved by the Court and substantially similar to the notice form attached hereto as Exhibit 1. The parties may by mutual written consent make non-substantive changes to the Notice without Court approval. Claims Administrator shall not send, transmit, publicize, or post any form of the Notice until Defendant has provided final written approval of such Notice.

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

5. MOTION FOR FINAL APPROVAL. Within twenty (20) business days after the Bar Date to Opt Out, and provided the condition in Section 14(a)(i) of this Agreement is satisfied and that this Agreement has not been terminated pursuant to Section 14(b), 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 ninety (90) days after entry of the Preliminary Approval/Notice 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)(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 Plaintiff; (c) costs associated with administering the Notice in accordance with Section 4, above; (d) up to \$40,000 in any expert fees and/or costs charged by Defendant's expert for identifying members of the Settlement Class and performing the calculations necessary for determining the allocations of the Settlement Fund to those members; and, (e) 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 under any circumstance, even if the total amount of APPSN Fees charged to the Class Members exceeds the amount of the Net Settlement Fund. In the event a Final Approval Order is not issued, or this Agreement is terminated by either party for any reason, the Claims Administrator shall return the entire Settlement Fund (including accrued interest, if any) to Defendant within two (2) business days, and any fees owed to, and expenses actually incurred by, the Claims Administrator in connection with this Agreement through the date of denial of a Final Approval Order or termination of this Agreement shall be paid by Class Counsel.

(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) Plaintiff's Fees and Costs. Plaintiff's reasonable attorneys' fees and costs, as determined and approved by the Court, shall be paid from the Settlement Fund ten (10) days after entry of the Final Approval Order. Class Counsel shall apply for an

award of attorneys' fees of one-third (33-1/3%) of the Settlement Fund, plus reimbursement of reasonable litigation costs, to be approved by the Court. Defendant agrees not to oppose an application for attorneys' fees of one-third (33-1/3%) of the Settlement Fund plus reimbursement of litigation costs, but reserves the right to oppose an application 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 Plaintiff may apply to the Court for a service award of up to twenty thousand dollars (\$20,000) for serving as class representative. Defendant reserves its right to object to any application for a service award of more than \$10,000. 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 future 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. Payments from the "Net Settlement Fund" shall be calculated as follows:

Each Class Member shall receive an Individual Payment calculated as follows:

$$\text{Individual Payment} = (\text{Net Settlement Fund} / \text{Total Dollar Amount of APPSN Fees Paid By All Class Members Collectively}) \times \text{Total Number of APPSN Fees Paid by the Class Member}$$

Individual Payments shall be made within fifteen (15) business days after the Effective Date, as follows:

- (1) For those Class Members who are customers of Defendant at the time of the distribution of the Net Settlement Fund, Defendant shall credit any checking or savings account held individually by the Class Member in the amount of the Individual Payment they are entitled to receive.
- (2) For those Class Members who are not customers of Defendant at the time of the distribution of the Net Settlement Fund, the Claims Administrator shall mail a check, in the amount of the Individual Payment they are entitled to receive, 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 pursuant to Section 10 of this Agreement.

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

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

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. The retainer agreement shall include provisions requiring that all data concerning members of the Settlement Class shall be strictly confidential and secured by the Claims Administrator by means of recognized data security measures, and shall not be disclosed other than as provided for under the terms of this Agreement or as ordered by the Court. The retainer agreement shall further require the Claims Administrator to comply with all applicable laws and regulations in performing its obligations, including but not limited to the CAN-SPAM Act and other laws and regulations applicable to electronic communications, and it shall require the Claims Administrator to indemnify Defendant for any penalties, liabilities, or third-party claims arising from or related to any violations of such laws and regulations by the Claims Administrator.

(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 members of the Settlement Class 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 Defendant's Counsel, or either of them, at their own cost, shall receive a complete 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 or credits received under the terms of this Agreement.

(e) 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. Such information shall be used only for purposes of the implementation of this Agreement.

(f) Within one hundred ninety (190) days after the Effective Date or such other date as required by the Court, 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, within thirty (30) days after the Final Report is submitted to the Court, the total amount of uncashed checks and residual amounts held by the Claims Administrator at the time of the Final Report shall be paid by the Claims Administrator to Phoenix Children's Hospital, a 501(c) non-profit corporation, subject to being approved by the Court and subject to both sides representing they have no interest in that organization. If the Court does not approve Phoenix Children's Hospital, Defendant will nominate a different 501(c) non-profit corporation subject to approval by the Court.

11. OPT-OUTS.

(a) A member of the Settlement Class 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 at the address listed in the Notice. 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 member of the Settlement Class, state that the 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 within five (5) days after the Bar Date to Opt Out. 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 member of the Settlement Class, other than a 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 mailed to the Court and the Claims Administrator at the email and physical addresses listed in the Notice. 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, the last four digits of his or her account number or former account 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 responsive pleadings at least seven (7) days prior to the Final Approval Hearing Date.

13. GENERAL RELEASE. Except as to the rights and obligations provided for under the terms of this Agreement, Named Plaintiff, on behalf of herself and each of the Class Members, hereby releases and forever discharges Defendant and all of its past, present and future predecessors, successors, parents, subsidiaries, divisions, employees, affiliates, assigns, officers, directors, shareholders, representatives, attorneys, insurers and agents (collectively, the "Defendant Releasees") from any and all losses, fees, charges, complaints, claims, 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, fixed or contingent, which Named Plaintiff and the Class Members now have, own, or hold against any of the Defendant Releasees, that were asserted in or arise from or relate in any way to, the Litigation. The Named Plaintiff and Class Members acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention to finally and forever settle and release claims with respect to all of the matters described or subsumed herein, and that, notwithstanding the discovery or existence of any such additional or different facts, as to which the Named Plaintiff and Class Members expressly assume the risk, they freely and voluntarily give the release as set forth above.

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 exhausted and fully and finally resolved in favor of upholding the Final Approval Order.

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

(b) Defendant shall have the option to terminate this Agreement if ten percent (10%) or more of the members of the Settlement Class opt out. Defendant shall notify Class Counsel and the Court of its intent to terminate this Agreement pursuant to this Section 14(b) within ten (10) business days after the Bar Date to Opt Out, or the option to terminate shall be considered waived.

(c) In the event this Agreement is terminated pursuant to Section 14(b) immediately above, or fails to become effective in accordance with Section 14(a) 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 purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

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 Plaintiff, on behalf of the members of the Settlement Class, represents that she has made such inquiry into the terms and conditions of this Agreement as she deems appropriate, and that by executing this Agreement, she, based on Class Counsel's advice, and her understanding of the case, believes the Agreement and all the terms and conditions set forth herein, are fair and reasonable to all members of the Settlement Class.

(d) The Named Plaintiff represents that she has no knowledge of conflicts or other personal interests that would in any way impact her representation of the members of the Settlement 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 out the provisions of this Agreement, subject to Class Counsel's obligation to protect the interests of the Class Members.

17. PUBLICITY. Plaintiff and Class Counsel agree that they will not notify any member of the media regarding the terms and conditions of this Agreement and shall not issue a

press release or post or disseminate the terms of this Agreement on any social media. Plaintiff and Class Counsel further agree that if they are asked, approached, or contacted about the Litigation, then to the extent doing so does not violate any ethical rules or laws, they shall refer such inquiries to Desert Financial Credit Union and affirmatively state that they cannot comment on the Litigation. Plaintiffs shall offer no further comment, including any confirmation of the outcome of the Litigation.

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

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

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

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

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

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

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

Sophia Goren Gold
Kaliel Gold LLP
950 Gilman St., Ste. 200
Berkeley, CA 94710
Telephone: 202-350-4783 (o)
sgold@kalielgold.com

- And —

Taras Kick
The Kick Law Firm, APC
815 Moraga Drive
Los Angeles, California 90049
Telephone: (310) 395-2988
Taras@kicklawfirm.com

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

Brian A. Cabianca
Kerryn L. Holman
Squire Patton Boggs (US) LLP
2325 E. Camelback Rd., Suite 700
Phoenix, Arizona 85016
Telephone: (602) 528-4000
brian.cabianca@squirepb.com
kerryn.holman@squirepb.com

Any notice to the Claims Administrator shall be sent by email to the address of the claims administrator, as follows:

[Insert]

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

Dated: December __, 2022

Desert Financial Credit Union

By: _____

Its: _____

Bernadette Dominique, individually and on behalf of those she represents

Dated: December __, 2022

By: _____

Bernadette Dominique

APPROVED AS TO FORM:

Dated: December __, 2022

SQUIRE PATTON BOGGS (US) LLP

Kerryn L. Holman

By: _____

Kerryn L. Holman
Attorneys for Defendant Desert Financial Credit Union

Dated: December ____, 2022

THE KICK LAW FIRM, APC
Taras Kick

By: _____

Taras Kick
Attorneys for Plaintiff Bernadette Dominique and the Class

Dated: December ____, 2022

KALIEL GOLD LLP
Sophia Gold

By: _____

Sophia Gold
Attorneys for Plaintiff Bernadette Dominique and the Class

Exhibit 1

Bernadette Dominique
v.
Desert Financial Credit Union

NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

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

IF YOU HAVE OR HAD A CHECKING ACCOUNT WITH DESERT FINANCIAL CREDIT UNION (“DEFENDANT”) AND YOU WERE CHARGED AN OVERDRAFT FEE BETWEEN JUNE 1, 2014 AND NOVEMBER 1, 2017 ON A NON-PIN DEBIT CARD TRANSACTION THAT AUTHORIZED AGAINST A SUFFICIENT AVAILABLE BALANCE, AND SETTLED AGAINST AN INSUFFICIENT AVAILABLE BALANCE, AND THE OVERDRAFT FEE WAS NOT REFUNDED TO YOU, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT

The Superior Court for The State of Arizona For the County of Maricopa 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 have received this notice, you will receive a payment from the Settlement Fund if you do not opt out.
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 Desert Financial Credit Union but you will not receive a payment. If you exclude yourself from the settlement but want to recover against Desert Financial Credit Union, 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 or opt-out as discussed above. If you object and the objection is overruled by the Court, then you will receive a payment and you will not be able to sue Desert Financial Credit Union for the claims asserted in this litigation. If the Court agrees with your objection, then the settlement may not be approved and the case will go forward. If you opt-out, you will not recover anything through this settlement and you will have

	to file a separate lawsuit if you want to recover damages from Desert Financial Credit Union.
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These rights and options – *and the deadlines to exercise them* – along with the material terms of the settlement are explained in this Notice.

BASIC INFORMATION

1. What is this lawsuit about?

The lawsuit that is being settled is entitled *Bernadette Dominique v. Desert Financial Credit Union* in the Superior Court Of The State Of Arizona For The County Of Maricopa, Case No. CV2020-053959. The case is a putative “class action.” That means that the “Named Plaintiff,” Bernadette Dominique, is an individual seeking to act on behalf of members of Desert Financial Credit Union.

The Named Plaintiff claims Desert Financial Credit Union incorrectly charged overdraft fees between June 1, 2014 and November 1, 2017 on non-PIN debit card transactions that authorized against a sufficient available balance and settled against an insufficient available balance. Desert Financial Credit Union disputes these allegations and responds that its overdraft fees were charged as permitted by its terms and conditions and applicable law.

2. Why did I receive this Notice of this lawsuit?
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You received this Notice because Desert Financial Credit Union’s records indicate that you were charged one or more eligible overdraft fees and Desert Financial Credit Union has not already refunded those fees. The Court directed that this Notice be sent to all members of the proposed Settlement Class because they have a right to know about the proposed settlement and the options available to them before the Court decides whether to approve the settlement.

3. Why did the parties settle?

In any lawsuit, there are risks that come with proceeding to trial versus settling at an earlier stage. It is the Named Plaintiff’s 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, these lawyers, known as Class Counsel, make this recommendation to the Named Plaintiff. The Named Plaintiff has the duty to act in the best interests of the putative class as a whole and, in this case, it is her belief, as well as Class Counsel’s opinion, that this settlement is in the best interest of all members of the proposed Settlement Class for at least the following reasons:

There is legal uncertainty about whether a judge or a jury will find that Desert Financial Credit Union incorrectly charged overdraft fees between June 1, 2014 and November 1, 2017 on non-PIN debit card transactions that authorized against a sufficient available balance and settled against an insufficient available balance, and, even if it does, there is uncertainty about whether the claims

are subject to other defenses that might result in no or less recovery to members of the proposed Settlement Class. Even if the Named Plaintiff were to win at trial, there is no assurance that members of the proposed Settlement Class would be awarded more than the current settlement amount, and it may take years of litigation before any payments would be made. By settling, members of the proposed Settlement Class will avoid these and other risks and the delays associated with continued litigation.

While Desert Financial Credit Union 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 Desert Financial Credit Union's records indicate that you are a member of the Settlement Class who is entitled to receive a payment or credit to your account under the terms of the settlement.

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?

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

The deadline to file an objection with the Court is .

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, then you can object to the settlement terms. The Court will decide if your objection is valid. If the Court agrees, then the settlement will not be approved and no payments will be made to you or any other member of the Settlement Class. If your objection (and any other objection) is overruled, and the settlement is approved, then you will still get a payment.

If you want to participate in the settlement, you need not do anything and you will receive a payment if you do not opt out.

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

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

THE SETTLEMENT PAYMENT

9. How much is the settlement?

Desert Financial Credit Union has agreed to create a Settlement Fund of \$6,000,000. As discussed separately below, Plaintiff’s attorneys’ fees, Plaintiff’s litigation costs, a Service Award to the Named Plaintiff, the costs paid to a third-party Claims Administrator to administer the settlement (including mailing and emailing this notice), and up to \$40,000 in any expert fees and/or costs incurred by Desert Financial Credit Union in identifying members of the Settlement Class and performing the calculations necessary for determining the allocations of the Settlement Fund to those members, will be subtracted from the Settlement Fund. The balance of the Settlement Fund will be divided among all members of the Settlement Class based on the amount of eligible overdraft fees that each member paid.

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

Class Counsel will request an attorney fee be awarded by the Court of not more than one-third (\$2,000,000) of the Settlement Fund, which will be subtracted from the Settlement Fund before the Fund is allocated to members of the Settlement Class. Class Counsel has also requested that it be reimbursed approximately \$[REDACTED] in 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 Plaintiff a Service Award?

Class Counsel on behalf of the Named Plaintiff has requested that the Court award the Named Plaintiff up to \$20,000 for her role in acting as the Named Plaintiff and securing this settlement on behalf of the class. The Court will decide if a Service Award is appropriate and, if so, the amount of the award.

12. How much of the settlement fund will be used to pay the Class Administrator’s expenses?

The Claims Administrator has agreed to cap its expenses at \$[REDACTED].

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

No. If you received this Notice, as long as you do not opt out, a credit will be applied to your account if you are an existing customer, or a check will be mailed to you at the last known address Desert Financial Credit Union has for you if you are not an existing customer. If your address has

changed, you should provide your current address to the Claims Administrator at the address set forth in Question 15, below. Excluding yourself from the settlement means you choose not to participate in the settlement. You will keep your individual claims against Desert Financial Credit Union, but you will not receive a payment. In that case, if you choose to seek recovery against Desert Financial Credit Union, then you will have to file a separate lawsuit or claim.

14. When will I receive my payment?

The Court will hold a Fairness Hearing (explained below in Questions 21-23) on [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 within about 40 to 60 days after the settlement is approved. However, if someone objects to the settlement, and the objection is sustained, then there is no settlement. Even if all objections are overruled and the Court approves the settlement, an objector could appeal and it might take months or even years to have the appeal resolved, which would delay any payment.

EXCLUDING YOURSELF FROM THE SETTLEMENT

15. How do I exclude myself from the settlement?

If you do not want to receive a payment, or if you want to keep any right you may have to sue Desert Financial Credit Union 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 *Bernadette Dominique v. Desert Financial Credit Union* class action.” Be sure to include your name, last four digits of your account number, address, telephone number, and email address. Your exclusion or opt-out request must be postmarked by [redacted], and sent to:

Dominique v. Desert Financial Credit Union Claims Administrator
Attn: [redacted]

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 Desert Financial Credit Union for the claims alleged in this case. However, you will not be entitled to receive a payment from this settlement.

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

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

OBJECTING TO THE SETTLEMENT

18. How do I notify the Court that I do not like the settlement?

You can object to the settlement or any part of it that you do not like **IF** you do not exclude yourself or opt out from the settlement. (Members of the Settlement Class who exclude themselves from the settlement have no right to object to how other members are treated.) To object, you must send a written document to the Claims Administrator at the address below. Your objection should say that you are a member of the Settlement Class, that you object to the settlement, and the factual and legal reasons why you object, and whether you intend to appear at the hearing. In your objection, you must include your name, address, telephone number, email address (if applicable) and your signature.

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

CLAIMS ADMINISTRATOR
Dominique v. Desert Financial Credit Union Claims Administrator Attn:

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

Objecting is telling the Court that you do not believe the settlement is fair, reasonable, and adequate for the 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 if the settlement is approved, but you will release claims you might have against Desert Financial Credit Union. Excluding yourself or opting out is telling the Court that you do not want to be part of the settlement, and do not want to receive a payment or release claims you might have against Desert Financial Credit Union for the claims alleged in this lawsuit.

20. What happens if I object to the settlement?

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

THE COURT'S FAIRNESS HEARING

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

The Court will hold a Final Approval or Fairness Hearing on [redacted] at the Superior Court Of The State Of Arizona For The County Of Maricopa, _____ . At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys' fees and expenses and how much the Named Plaintiff should get as a Service Award for acting as the class representative.

22. Do I have to come to the hearing?

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

23. May I speak at the hearing?

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

IF YOU DO NOTHING

24. What happens if I do nothing at all?

If you do nothing at all, and if the settlement is approved, then you will receive a payment that represents your share of the Settlement Fund net of attorneys' fees, Claims Administrator expenses, the Named Plaintiff's Service Award, and up to \$40,000 in expert fees and/or costs incurred by Desert Financial Credit Union in identifying members of the Settlement Class and performing the calculations necessary for determining the allocations of the Settlement Fund to those members. You will be considered a part of the Settlement Class, and you will give up claims against Desert Financial Credit Union for the conduct alleged in this lawsuit. You will not give up any other claims you might have against Desert Financial Credit Union that are not part of this lawsuit.

THE LAWYERS REPRESENTING YOU

25. 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", The Kick Law Firm, APC and Kaliel Gold LLP, will represent you and the other members of the Settlement Class.

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

No. Class Counsel will be paid directly from the Settlement Fund before the Settlement Fund is allocated to the members of the Settlement Class.

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

The Court will be asked to approve the amount of attorneys' fees at the Fairness Hearing. Class Counsel will file an application for fees and costs and will specify the amount being sought as discussed above. You may review the fee application at [\[WEBSITE\]](#) or view a physical copy at the Office of the Clerk for the Superior Court Of The State Of Arizona For The County Of Maricopa.

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

Superior Court Of The State Of Arizona For The County Of Maricopa, by asking for the Court file containing the Motion For Preliminary Approval of Class Settlement (the settlement agreement is attached to the motion).

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:

Dominique v. Desert Financial Credit Union
Claims Administrator

Attn:

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

Sophia Goren Gold
Kaliel Gold LLP
950 Gilman St., Ste. 200
Berkeley, CA 94710
Telephone: 202-350-4783
sgold@kalielgold.com

- And —

Taras Kick
The Kick Law Firm, APC
815 Moraga Drive
Los Angeles, California 90049
Telephone: (310) 395-2988
Taras@kicklawfirm.com

PLEASE DO NOT CONTACT THE COURT OR ANY REPRESENTATIVE OF DESERT FINANCIAL CREDIT UNION CONCERNING THIS NOTICE OR THE SETTLEMENT