

EXECUTION VERSION

Settlement Agreement and Release

Garcia et al. v. Midland States Bank, 2022-LA-0000104 (Winnebago Cnty., Ill. Cir. Ct.)

Enerson v. Midland States Bank, 2022LA56 (Grundy Cnty., Ill. Cir. Ct.)

EXECUTION VERSION

This Settlement Agreement and Release (“Settlement” or “Agreement”),¹ dated as of the last date on the signature page, is entered into by Plaintiffs Lindsey Garcia, Larry Benner, Michael Lungo, and Stephanie Enerson on behalf of themselves and on behalf of the Settlement Classes, and Defendant Midland States Bank. The Parties hereby agree to the following terms in full settlement of the actions entitled *Garcia et al. v. Midland States Bank*, 2022-LA-0000104 (Winnebago Cnty., Ill. Cir. Ct.), and *Enerson v. Midland States Bank*, 2022-LA-0000056 (Grundy Cnty., Ill. Cir. Ct.).²

I. Recitals

Garcia, et al. v. Midland States Bank

1. On April 8, 2022, Plaintiff Garcia commenced the first state court action against Defendant on behalf of herself and a putative class of Illinois Accountholders of Midland States Bank and Alpine Bank & Trust Co. (which Midland State Bank acquired). After Plaintiffs Benner and Lungo initiated a separate action, Plaintiffs’ counsel agreed to work together and ultimately filed a Third Consolidated Amended Complaint in *Garcia* on October 27, 2022, alleging Defendant improperly assessed certain OD Fees and NSF Fees, specifically APSN Fees and Retry Fees.

2. On December 8, 2022, Defendant moved to dismiss the Third Consolidated Amended Complaint, which the Parties fully briefed. Following a hearing on that motion, on April

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

² Subsequent to the execution of this Settlement Agreement, the parties intend to move to consolidate the *Enerson* matter into the *Garcia* matter, such that there will be only one case pending in Winnebago County containing all of the claims raised in the underlying *Enerson* and *Garcia* matters. This Settlement Agreement is intended to cover the claims, facts alleged, and causes of action brought in *Enerson* and *Garcia* cases, both as separate actions and when they are ultimately consolidated into one action.

EXECUTION VERSION

21, 2023, the Court denied in part and granted in part that motion.

3. Thereafter, the Parties to *Garcia* agreed to stay the litigation in an effort to focus on a potential settlement of the class claims. The Court stayed the case in an order on June 27, 2023, and extended the stay in an order dated March 14, 2024.

Enerson v. Midland States Bank

4. On September 23, 2022, Plaintiff Enerson commenced an action against Defendant on behalf of herself and a putative class of Illinois Accountholders challenging Midland States Bank and Centru Bank's (which Midland State Bank acquired) assessment of certain OD Fees and NSF Fees, specifically APSN Fees and Fees-On-Fees.

5. On December 9, 2022, Defendant moved to dismiss the Class Action Complaint, which the Parties fully briefed. Following a May 30, 2023 hearing on that motion, the Court denied that motion.

6. Thereafter, the Parties to *Enerson* agreed to stay the litigation in an effort to focus on a potential settlement of the class claims. The Court stayed the case in an order on July 19, 2023.

7. The Parties to *Enerson* subsequently stipulated to allow Plaintiff Enerson to amend her pleading, which the Court approved on December 12, 2023. On December 18, 2023, the Court also approved a stay to extend Defendant's deadline to respond to the Amended Class Action Complaint.

Discovery and Mediation

8. One the stays were entered in both *Garcia* and *Enerson*, the Parties engaged in cooperative and coordinated informal discovery and pre-mediation negotiations.

9. To facilitate settlement negotiations, Defendant retained an expert to analyze Account-level transaction data Defendant possessed for Midland States Bank, Alpine Bank &

EXECUTION VERSION

Trust Co., and Centru Bank Accountholders to identify which of those Accountholders had been assessed APSN Fees, Retry Fees, and/or Fees-On-Fees, and to determine the amount of such Fees that had been assessed to those Accountholders during the relevant time period.

10. Plaintiffs' counsel retained an experienced expert to review Defendant's expert's methodologies and the Account-level transaction data available.

11. On August 20, 2024, the Parties participated in a full day mediation with the Honorable Morton Denlow (Ret.). At this mediation, the Parties reached an agreement in principle to settle the Actions and signed a binding Term Sheet.

12. The Parties now agree to settle the Actions in their entirety, without any admission of liability, with respect to all Released Claims of the Releasing Parties. In doing so, the Parties have agreed (a) to dismiss *Enerson* without prejudice and to add Plaintiff Enerson as a named Plaintiff in *Garcia* so that the Parties may seek approval of a class action settlement in one court, the Winnebago County, Illinois Circuit Court; (b) for Plaintiffs to file a Fifth Consolidated Amended Class Action Complaint in *Garcia* to include all theories of liability, and Defendant will not oppose the motion for leave to amend the pleading; and (c) for Plaintiffs to then seek preliminary and final approval of the Settlement terms set forth herein in *Garcia*. Defendant agrees to the tolling of any applicable statute of limitations based on when the earliest action asserting that theory was filed. Defendant agrees not to remove the Fifth Consolidated Amended Class Action Complaint to federal court.

13. The claims in *Garcia* and *Enerson* will proceed together, including if the Settlement is terminated or does not receive Final Approval, as contemplated by this Agreement.

14. Defendant has entered into this Agreement to resolve any and all controversies and disputes arising out of or relating to the allegations made in the operative pleadings in the Actions,

EXECUTION VERSION

and to avoid the burden, risk, uncertainty, expense, and disruption to its business operations associated with further litigation. Defendant does not in any way acknowledge, admit to, or concede any of the allegations made in the operative pleadings, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted pertaining to APSN Fees, Fees-On-Fees, and Retry Fees. Nothing contained in this Agreement shall be used or construed as an admission of liability and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement. Plaintiffs have entered into this Agreement individually and on behalf of those similarly situated to liquidate and recover on the claims asserted in the operative pleadings, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiff does not in any way concede the claims alleged lack merit or are subject to any defenses. The Parties intend this Agreement to bind Plaintiffs, Defendant, and all Settlement Class Members.

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

II. Definitions

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

15. “Account” means any personal checking account maintained by Midland States Bank, Alpine Bank & Trust Co., or Centruue Bank.

16. “Accountholder” means any person who is or was listed as an owner of an Account during the Class Period.

17. “ACH debit” means an Automated Clearinghouse debit.

EXECUTION VERSION

18. “Actions” mean the following class action lawsuits: *Garcia et al. v. Midland States Bank*, 2022-LA-0000104 (Winnebago Cnty., Ill. Cir. Ct.), and *Enerson v. Midland States Bank*, 2022-LA-0000056 (Grundy Cnty., Ill. Cir. Ct.).

19. “Alpine APSN Fee Class” means all Accountholders who, from April 8, 2012, through February 28, 2018, were Alpine Bank & Trust Co. personal checking Accountholders in Illinois and were assessed an OD Fee on a Debit Card Transaction that was authorized on a sufficient available balance and settled on negative funds in the same amount for which the Debit Card Transaction was authorized.

20. “Alpine Retry Fee Class” means all who, from April 8, 2012, through February 28, 2018, were Alpine Bank & Trust Co. personal checking Accountholders in Illinois and were assessed multiple NSF Fees, or one or more NSF Fees followed by an OD Fee related to a single check, ACH, wire transfer, or other item.

21. “Application for Attorneys’ Fees, Costs, and Service Awards” means the application to be submitted to the Court by Class Counsel, as part of the Motion for Final Approval, requesting an award of attorneys’ fees for Class Counsel, reimbursement of litigation costs incurred by Class Counsel, and a Service Award for each of the Class Representatives.

22. “APSN Fee” means an OD Fee assessed on a signature point of sale Debit Card Transaction that was authorized on a sufficient available balance and settled on negative funds in the same amount for which the Debit Card Transaction was authorized during the Class Period.

23. “Centrue APSN Fee Class” means all Accountholders who, from April 8, 2012, through June 12, 2017, were Centrue Bank personal checking Accountholders in Illinois and were assessed an OD Fee on a Debit Card Transaction that was authorized on a sufficient available balance and settled on negative funds in the same amount for which the Debit Card Transaction

EXECUTION VERSION

was authorized.

24. “Check” means an original paper check or substitute check.

25. “Class Counsel” means: Lynn Toops of Cohen & Malad, LLP, Sophia Gold of KaliefGold PLLC; Jonathan Streisfeld of Kopelowitz Ostrow P.A.; and Marty Schubert of Stranch, Jennings & Garvey PLLC.

26. “Class Periods” means the periods of time identified in the definitions of each of the Settlement Classes.

27. “Class Representatives” means Lindsey Garcia, Larry Benner, Michael Lungo, and Stephanie Enerson.

28. “Court” means the Winnebago County, Illinois Circuit Court.

29. “Current Accountholder” means a Settlement Class member who is an Accountholder as of the Effective Date as specified herein.

30. “Debit Card” means a card or similar device issued or provided by Midland States Bank, Alpine Bank & Trust Co., or Centru Bank, including a debit card, check card, or automated teller machine card, that can or could be used to debit funds from an Account by point of sale transactions.

31. “Debit Card Transaction” means a point of sale transaction using a Debit Card.

32. “Defendant” means Midland States Bank, Alpine Bank & Trust Co. k/n/a Midland States Bank, and Centru Bank k/n/a Midland States Bank.

33. “Defendant’s Counsel” means Scott Porterfield and Carmel Dooling of Barack Ferrazzano Kirschbaum & Nagelberg LLP.

34. “Effective Date” means 10 days after the entry of the Final Approval Order provided no objections are made to this Agreement. If there are objections to the Agreement, then

EXECUTION VERSION

the Effective Date shall be the later of: (a) 10 days after time period to appeal the Final Approval Order has expired without an appeal being filed; or (b) if appeals are taken from the Final Approval Order, then the earlier of 10 days after the entry of an order dismissing the appeal or 10 days after the appeal has been finally resolved in the appellate court of last resort without any right to appeal or seek further review from another appellate court.

35. “Email Notice” means a short form of notice that shall be sent by email to Accountholders in one or more of the Settlement Classes who agreed to receive electronic communications by email from Defendant, in the form attached as *Exhibit 1*.

36. “Escrow Account” means the interest-bearing account to be established by the Settlement Administrator consistent with the terms and conditions described in Section IV below.

37. “Fees-On-Fees” means an OD Fee or an NSF Fee on a third-party merchant’s attempt to collect its own fee.

38. “Final Approval” means the date the Court enters the Final Approval Order granting final approval to the Settlement and determines the amount of attorneys’ fees and costs awarded to Class Counsel and the amount of any Service Awards to the Class Representatives.

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

40. “Final Approval Order” means the final order that the Court enters granting Final Approval to the Settlement. The proposed Final Approval Order shall be in a form agreed upon by the Parties and shall be substantially in the form attached as an exhibit to the Motion for Final Approval. Final Approval Order also includes the orders, which may be entered separately,

EXECUTION VERSION

determining the amount of attorneys' fees and costs awarded to Class Counsel and the amount of any Service Award to each of the Class Representatives.

41. "Long Form Notice" means the form of notice that shall be posted on the Settlement Website created by the Settlement Administrator and shall be available on request made to the Settlement Administrator in the form attached as *Exhibit 2*.

42. "Midland APSN Fee Class" means all Accountholders who, from April 8, 2012, through April 30, 2022, were Midland States Bank personal checking Accountholders in Illinois and were assessed an OD Fee on a Debit Card Transaction that was authorized on a sufficient available balance and settled on negative funds in the same amount for which the Debit Card Transaction was authorized.

43. "Midland Fees-On-Fees Class" means all Accountholders who, from April 8, 2012, through April 30, 2022, were Midland States Bank personal checking Accountholders in Illinois and were assessed an OD Fee or an NSF Fee on a third-party merchant's attempt to collect its own fee.

44. "Motion for Final Approval" means the motion requesting the Court grant Final Approval to the Settlement pursuant to 735 ILCS 5/2-801, *et. seq.* The Motion for Final Approval will include the Application for Attorneys' Fees and Costs and Service Awards.

45. "Motion for Preliminary Approval" means the motion requesting the Court grant Preliminary Approval to the Settlement pursuant to 735 ILCS 5/2-801, *et. seq.*

46. "Net Settlement Fund" means the Settlement Fund, minus Court-approved attorneys' fees and costs, any Settlement Administration Costs, and any Court-approved Service Awards to Plaintiffs, allocated between the Settlement Classes.

47. "Notice" means the Email Notice, Postcard Notice, and Long Form Notice that the

EXECUTION VERSION

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

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

49. “NSF Fee” means any fee assessed to an Accountholder for an item that is not paid when the Account had insufficient funds.

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

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

52. “Overdraft Fee” or “OD Fee” means any fee assessed to an Accountholder for an item paid when the Account had insufficient funds.

53. “Party” means each of the Plaintiffs and Defendant, and “Parties” means Plaintiffs and Defendant collectively.

54. “Past Accountholder” means a Settlement Class Member who is not an Accountholder as of the Effective Date as specified herein.

55. “Plaintiffs” means Lindsey Garcia, Larry Benner, Michael Lungo, and Stephanie Enerson.

56. “Postcard Notice” means the short form of notice that shall be sent by mail to

EXECUTION VERSION

Accountholders who have not agreed to receive electronic communications from Defendant by email, or for whom the Settlement Administrator is unable to send Email Notice using the email address provided by Defendant, in the form attached as *Exhibit 1*.

57. “Preliminary Approval” means the date the Court enters the Preliminary Approval Order.

58. “Preliminary Approval Order” means the order granting Preliminary Approval of this Settlement. The proposed Preliminary Approval Order shall be in a form agreed to by the Parties and shall be substantially in the form attached to the Motion for Preliminary Approval.

59. “Released Claims” means any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys’ fees, losses and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, arising out of or in any way related to the Action, or any of the facts, allegations, and claims asserted or which could have been asserted in the Actions related to APSN Fees assessed by Midland States Bank, Centru Bank, and Alpine Bank & Trust Co.; Retry Fees assessed by Alpine Bank & Trust Co.; Fees-on-Fees assessed by Midland States Bank; and NSF fees assessed by Alpine Bank & Trust Co.

60. “Released Parties” means Defendant and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former directors, officers, employees, agents, insurers, members, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, and successors.

61. “Releases” mean all the releases contained in Section XII hereof.

62. “Releasing Parties” mean Plaintiffs and all Settlement Class Members, and each of

EXECUTION VERSION

their respective executors, representatives, heirs, predecessors, assigns, beneficiaries, successors, bankruptcy trustees, guardians, joint tenants, tenants in common, tenants by entireties, agents, attorneys, and all those who claim through them or on their behalf.

63. “Relevant Fees” mean APSN Fees, Retry Fees, and Fees-On-Fees, as included in the Settlement Classes.

64. “Residual Funds” means the portion of the Net Settlement Fund that remains undistributed as further described in Section XI.

65. “Retry Fee” means an NSF Fee or OD Fee assessed related to a single, check, ACH, wire transfer, or other item after an NSF Fee was assessed.

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

67. “Settlement Administrator” means Verita Global. The Settlement Administrator was chosen by Class Counsel with input from Defendant’s Counsel. Class Counsel and Defendant may, by agreement, substitute a different organization as Settlement Administrator, subject to approval by the Court if the Court has previously granted Preliminary Approval or Final Approval. In the absence of agreement, either Class Counsel or Defendant may move the Court to substitute a different organization as Settlement Administrator, upon a showing that the responsibilities of Settlement Administrator have not been adequately executed by the incumbent.

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

69. “Settlement Classes” mean all members of the Alpine APSN Fee Class, Alpine Retry Fee Class, Centru APSN Fee Class, Midland APSN Fee Class, and Midland Fees-On-Fees Class. Excluded from the Settlement Classes is Defendant, its parents, subsidiaries, affiliates,

EXECUTION VERSION

officers and directors; all customers who make a timely election to opt-out; and all judges assigned to this litigation and their immediate family members.

70. “Settlement Class List” means the list of Potential Settlement Class Members who are to be sent Notice of the Settlement, and the list of Settlement Class Members following Final Approval to receive Settlement Class Member Payments.

71. “Potential Settlement Class Member” means any individual who qualifies for inclusion in one or more of the Settlement Classes.

72. “Settlement Class Member” means any member of one or more of the Settlement Classes who has not opted-out of the Settlement and who is entitled to the benefits of the Settlement, including a Settlement Class Member Payment.

73. “Settlement Class Member Payment” means the cash distribution that will be made from the Net Settlement Fund to each Settlement Class Member, pursuant to the allocation terms of the Settlement.

74. “Settlement Fund” means the \$3,125,000.00 common cash fund for the benefit of the Settlement Classes which is the amount that Defendant is obligated to pay under the Settlement. The “Settlement Fund” allocation to the Alpine APSN Fee Class, Alpine Retry Fee Class, Centru APSN Fee Class, Midland APSN Fee Class, and Midland Fees-On-Fees Class will be proportionate to the aggregate fees at issue in each of these classes.

75. “Settlement Website” means the website that the Settlement Administrator will establish as a means for Potential Settlement Class Members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Long Form Notice, Preliminary Approval Order, Final Approval Order, final judgment, and such other documents as the Parties agree to post or that the Court orders posted on the website. These

EXECUTION VERSION

documents shall remain on the Settlement Website at least until Final Approval. The URL of the Settlement Website shall be determined by the Settlement Administrator, and approved by Class Counsel and Defendant in writing. The Settlement Website shall not include any advertising and shall not bear or include the Defendant's logo or Defendant's trademarks.

III. Certification of the Settlement Class

76. For settlement purposes only, Plaintiffs will move for, and Defendant will not oppose, Preliminary Approval and Final Approval of the Settlement Class.

IV. Settlement Consideration and Escrow Account

77. Subject to approval by the Court, Defendant shall establish the cash Settlement Fund of \$3,125,000.00. Within 10 days of the Court's entry of the Preliminary Approval Order, Defendant will deposit into an Escrow Account established by the Settlement Administrator an amount equal to the Settlement Fund. The Settlement Fund shall be used to pay Settlement Class Members their respective Settlement Class Member Payments; any and all attorneys' fees and costs awarded to Class Counsel; any Service Award to each of the Class Representatives; and all Settlement Administration Costs. The deductions from the Settlement Fund for attorneys' fees and costs, Service Awards and Settlement Administration Costs will be pro rata based on the allocated amount for each of the Settlement Classes. Defendant shall not be responsible for any other payments under this Agreement.

78. For avoidance of doubt, it is agreed by the Parties that a Settlement Class Member may be a member of more than one of the Settlement Classes based on Defendant's records of the Relevant Fees charged to the Settlement Class Member. Eligibility for a Settlement Class Member Payment requires that the Settlement Class Member have paid one or more Relevant Fees.

V. Settlement Approval

79. Upon execution of this Agreement by all Parties, Class Counsel shall promptly file

EXECUTION VERSION

a Motion for Preliminary Approval of this Settlement. The Motion for Preliminary Approval shall, among other things, request the Court: (1) preliminarily approve the terms of the Settlement as within the range of fair, adequate, and reasonable; (2) provisionally certify the Settlement Class pursuant to 735 ILCS 5/2-801, *et. seq.* for settlement purposes only; (3) approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement; (4) approve the procedures set forth herein below for Potential Settlement Class Members to opt-out from the Settlement Class or for Settlement Class Members to object to the Settlement and/or the Application for Attorneys' Fees, Costs, and Service Awards; (5) stay the Actions pending Final Approval of the Settlement; and (6) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel, and Defendant's Counsel, at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith, and determine whether to approve the Settlement and the Application for Attorneys' Fees, Costs, and Service Awards.

VI. Discovery and Settlement Data

80. Class Counsel and Defendant have already engaged in significant discovery related to liability and damages. Defendant has identified the Accounts that were assessed Relevant Fees and shall create the Settlement Class List. Defendant will make available to Class Counsel and its expert data that identifies the Accounts with Relevant Fees. Defendant bears the cost of having extracted and paid to analyze the necessary data to create the Settlement Class List. Class Counsel shall be responsible for paying Class Counsel's expert, subject to Class Counsel's right to seek an award of their expert's costs from the Court from the Settlement Fund. Because Plaintiffs' expert will not have access to Potential Settlement Class Member names, Account numbers, email addresses, and mailing addresses, Defendant will provide identification information in the Settlement Class List to the Settlement Administrator, who will then use that list to provide Notice

EXECUTION VERSION

and to administer the Settlement. Defendant shall deliver the Settlement Class List to the Settlement Administrator no later than 21 days after entry of the Preliminary Approval Order.

VII. Settlement Administrator

81. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph hereafter and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including effectuating the Notice Program and distributing the Settlement Fund as provided herein.

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

a. Use the Settlement Class List in connection with the Notice Program approved by the Court, for the purpose of distributing the Postcard Notice, Email Notice, and Long Form Notice, and later mailing distribution checks to Past Accountholders Settlement Class Members, and to Current Accountholder Settlement Class Members where it is not feasible or reasonable for Defendant to make the payment by a credit to the Settlement Class Members' Accounts;

b. Establish and maintain a post office box for opt-out requests from Potential Settlement Class Members;

c. Establish and maintain the Settlement Website and maintain an email address to which Potential Settlement Class Members may send inquiries to the Settlement Administrator;

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

e. Respond to any mailed Potential Settlement Class Member inquiries;

f. Process all opt-out requests from the Settlement Class;

EXECUTION VERSION

g. Provide weekly reports to Class Counsel and Defendant that summarizes the number of opt-out requests received that week, the total number of opt-out requests received to date, and other pertinent information;

h. In advance of the Final Approval Hearing, prepare an affidavit or declaration to submit to the Court confirming the Notice Program was completed, describing how the Notice Program was completed, providing the names of each Potential Settlement Class Member who timely and properly opted-out from the Settlement Classes, and providing other information as may be necessary to allow the Parties to seek and obtain Final Approval.

i. Distribute Settlement Class Member Payments by check to Past Accountholder Settlement Class Members and to Current Accountholder Settlement Class Members where it is not feasible or reasonable for Defendant to make the payment by a credit to the Settlement Class Members' Accounts;

j. Provide to Defendant the amount of the Settlement Class Member Payments to Current Accountholder Settlement Class Members from the Settlement Fund and work with Defendant to initiate the Account credits of Settlement Class Member Payments to Current Accountholder Settlement Class Members.

k. Pay invoices, expenses, and costs upon approval by Class Counsel and Defendant, as provided in this Agreement; and

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

VIII. Notice to Settlement Class Members

83. Within 30 days of Preliminary Approval of the Settlement and consistent with the schedule set in the Preliminary Approval Order, the Settlement Administrator shall implement the

EXECUTION VERSION

Notice Program provided herein, using the forms of Notice approved by the Court. The Notice shall include, among other information: a description of the material terms of the Settlement; a date by which Potential Settlement Class Members may opt-out of the Settlement Classes; a date by which Settlement Class Members may object to the Settlement and/or to Class Counsel's Application for Attorneys' Fees and Costs and Service Awards; the Final Approval Hearing location, date, and time; and the Settlement Website address at which Potential Settlement Class Members may access this Agreement and other related documents and information. Class Counsel and Defendant shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Notices provided under or as part of the Notice Program shall not bear or include the Defendant's logo or trademarks or the return address of Defendant, or otherwise be styled to appear to originate from Defendant. The Long Form Notice will be translated to Spanish language and a Spanish language notation will be made on the Postcard Notice and Email Notice regarding the available translated Long Form Notice. Within a reasonable time before initiating the Email Notice and Postcard Notice, the Settlement Administrator shall establish the Settlement Website.

84. The Long Form Notice also shall include a procedure for members of the Settlement Class to opt-out of the Settlement Classes, and the Email Notice and Postcard Notice shall direct Potential Settlement Class Members to review the Long Form Notice to obtain the instructions. A Potential Settlement Class Member may opt-out of the Settlement Class at any time during the Opt-Out Period by mailing the opt-out request to the Settlement Administrator, provided the opt-out request is postmarked no later than the last day of the Opt-Out Period. Requests to opt-out of the Settlement must be sent by U.S. Mail or private courier (e.g., Federal Express) to the Settlement Administrator. The opt-out request must be personally signed by the Potential Settlement Class

EXECUTION VERSION

Member and contain the name, the last four digits of the account number(s), address, telephone number, and email address (if any), and include a statement indicating a request to be excluded from the Settlement Classes. A Potential Settlement Class Member may opt out on an individual and personal basis only; so-called “mass” or “class” opt-outs shall not be allowed. Any Potential Settlement Class Member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement. If an Account has more than one Accountholder, and if one Accountholder excludes himself or herself from the Settlement Classes, then all Accountholders on that account shall be deemed to have opted-out of the Settlement with respect to that Account, and no Accountholder shall be entitled to a payment under the Settlement.

85. The Long Form Notice also shall include a procedure for Settlement Class Members to object to the Settlement and/or to the Application for Attorneys’ Fees and Costs and Service Awards, and the Email Notice and Postcard Notice shall direct Settlement Class Members to review the Long Form Notice to obtain the instructions. Objections must be mailed to the Settlement Administrator. For an objection to be considered by the Court, the objection must be submitted no later than the last day of the Objection Period, as specified in the Notice. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

86. For an objection to be considered by the Court, the objection must also set forth:
- a. the name of the Action;
 - b. the objector’s full name, address, telephone number, and email address (if any);

EXECUTION VERSION

- c. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
- d. 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 the Application for Attorneys' Fees and Costs and Service Awards;
- e. 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;
- f. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;
- g. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);
- h. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- i. the objector's signature (an attorney's signature is not sufficient).

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

87. Notice shall be provided to Settlement Class members in three different ways: (a) Email Notice to Accountholders for whom Defendant has email addresses if the Accountholder agreed to receive electronic communications from Defendant; (b) Postcard Notice to those Accountholders for whom Defendant does not have email addresses, for Accountholders who have not agreed to receive electronic communications from Defendant, or for which the Email Notice is returned undeliverable; and (c) Long Form Notice with greater detail than the Email Notice and Postcard Notice, which shall be available on the Settlement Website and/or via mail upon request

EXECUTION VERSION

by an Accountholder in the Settlement Class. Not all Accountholders in the Settlement Class will receive all three forms of Notice, as detailed herein.

88. The Email Notice, Postcard Notice, and Long Form Notice shall be in forms approved by the Court, and substantially similar to the notice forms attached hereto as ***Exhibits 1*** and ***2***. The Parties may by mutual written consent make non-substantive changes to the Notices without Court approval.

89. Once the Settlement Administrator has the Settlement Class List, the Settlement Administrator shall send out Email Notice to all Settlement Class members receiving Notice by that method. The Settlement Administrator shall send the Email Notice to each such member's last known email address, in a manner that is calculated to avoid being caught and excluded by spam filters or other devices intended to block mass email. For those Accountholders in the Settlement Class for whom Defendant does not have email addresses, for those Accountholders who have not agreed to receive electronic communications from Defendant, or for whom the Email Notice is returned undeliverable, the Settlement Administrator shall run the physical addresses provided by Defendant through the National Change of Address Database and shall mail to all such Settlement Class members a Postcard Notice. The initial Mailed Postcard and Email Notice shall be referred to as "Initial Mailed Notice."

90. The Settlement Administrator shall perform reasonable address traces for initial Postcard Notices that are returned as undeliverable. By way of example, a reasonable tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such purpose. No later than 60 days before the original date set for the Final Approval Hearing, the Settlement Administrator shall complete the re-mailing of Postcard Notice to those Settlement Class members whose new addresses were identified as of that time through

EXECUTION VERSION

address traces (“Notice Re-Mailing Process”).

91. The Settlement Administrator shall maintain a database showing mail and email addresses to which each Notice was sent and any Notices that were not delivered by mail and/or email. In addition to weekly updates to the Parties regarding the progress of the Notice Program and the declaration or affidavit by the Settlement Administrator in advance of the Final Approval Hearing and in support of the Motion for Final Approval, a summary report of the Notice Program shall be provided to the Parties three days prior to the Final Approval Hearing. The database maintained by the Settlement Administrator regarding the Notices shall be available to the Parties and the Court upon request. It shall otherwise be confidential and shall not be disclosed to any third party. To the extent the database is provided to Class Counsel, it shall be kept confidential, not be shared with any third party, and used only for purposes of implementing the terms of this Agreement. Protecting bank account information is in the best interest of the Settlement Classes.

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

IX. Final Approval Order and Judgment

93. Plaintiffs’ Motion for Preliminary Approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Plaintiffs shall file their Motion for Final Approval of the Settlement no later than 45 days before the original date set for the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Plaintiffs’ Motion for Final Approval of the Settlement, and the Application for Attorneys’ Fees and Costs and Service Awards. In the Court’s discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or the Application for Attorneys’ Fees and Costs and Service Awards, provided the

EXECUTION VERSION

objectors submitted timely objections that meet all of the requirements listed in the Agreement. If the date or location of the Final Approval Hearing changes, that information will be included on the Settlement Website for the Settlement Class's benefit.

94. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting Final Approval of the Settlement and final judgment thereon, and whether to approve the Application for Attorneys' Fees and Costs and Service Awards. Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate, and reasonable;
- b. Finally certify the Settlement Classes for settlement purposes only;
- c. Determine that the Notice provided satisfies 735 ILCS 5/2-803 and Due Process requirements;
- d. Bar and enjoin all Releasing Parties from asserting any of the Released Claims; bar and enjoin all Releasing Parties from pursuing any Released Claims against Released Parties at any time, including during any appeal from the Final Approval Order; and retain jurisdiction over the enforcement of the Court's injunctions;
- e. Release Defendant and the other Released Parties from the Released Claims; and
- f. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendant, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

X. Calculation and Disbursement of Settlement Class Member Payments

95. The calculation and implementation of allocations of the Settlement Fund contemplated by this section shall be done by the Settlement Administrator using the information provided by Defendant for the purpose of compensating Settlement Class Members on a pro rata basis. The methodology provided for herein will be applied to the data as consistently, sensibly,

EXECUTION VERSION

and conscientiously as reasonably possible, recognizing and taking into consideration the nature and completeness of the data and the purpose of the computations. Consistent with its contractual, statutory, and regulatory obligations to maintain the security of and protect its customers' private financial information, Defendant shall make available such data and information as may reasonably be needed by Class Counsel and the Settlement Administrator to confirm and/or effectuate the calculations and allocations contemplated by this Agreement. Class Counsel shall confer with Defendant's Counsel concerning any such data and information.

96. The Net Settlement Fund shall be paid pro rata to the Settlement Class Members using the following calculation:

- a. The dollar amount of the Net Settlement Fund divided by the total number of Relevant Fees paid by all Settlement Class Members, which yields a per-fee amount;
- b. Multiply the per-fee amount by the total number of Relevant Fees for each Settlement Class Member; and
- c. This results in the individual Settlement Class Member Payment amount.

97. The Parties agree the foregoing allocation formula is exclusively for purposes of computing, in a reasonable and efficient fashion, the amount of any Settlement Class Member Payment each Settlement Class Member should receive from the Net Settlement Fund. The fact that this allocation formula will be used is not intended and shall not be used for any other purpose or objective whatsoever.

98. Within 15 days after the Effective Date, the Settlement Administrator shall identify to Defendant the full amount of Settlement Class Member Payments, along with the amount of each Settlement Class Member Payment to be credited to Current Accountholders' Accounts.

99. As soon as practicable but no later than 60 days from the Effective Date, Defendant

EXECUTION VERSION

and the Settlement Administrator shall distribute the Net Settlement Fund to Settlement Class Members, as follows:

a. Settlement Class Member Payments to Current Accountholders shall be made by a credit to those Accountholders' Accounts maintained individually at the time of the credit. The Settlement Administrator shall transfer the funds necessary for Defendant to make these credits at least 10 days before Defendant's deadline to make the credits. Defendant shall notify Current Accountholders of any such credit on the Account statement on which the credit is reflected by stating "Fee Refund" or something similar. Defendant will bear any costs associated with implementing the credits and notification required by this paragraph. If by the deadline for Defendant to apply credits of Settlement Class Member Payments to Accounts Defendant is unable to complete certain credits, or it is not feasible or reasonable to make the payment by a credit, Defendant shall deliver the total amount of such unsuccessful Settlement Class Member Payment credits to the Settlement Administrator to be paid by check in accordance with subparagraph b. below.

b. Settlement Fund Payments to Past Accountholders will be made by check with an appropriate legend, in a form approved by Class Counsel and Defendant's Counsel, to indicate that it is from the Settlement Fund. Checks will be cut and mailed by the Settlement Administrator and will be sent to the addresses that the Settlement Administrator identifies as valid. Checks shall be valid for 120 days. For jointly held Accounts, checks will be payable to all Accountholders, and will be mailed to the first Accountholder listed on the Account. The Settlement Administrator will make reasonable efforts to locate the proper address for any intended recipient of Settlement Funds whose check is returned by the Postal Service as undeliverable (such as by running addresses of

EXECUTION VERSION

returned checks through the Lexis/Nexis database that can be utilized for such purpose), and will re-mail it once to the updated address, or, in the case of a jointly held Account, and in the Settlement Administrator's discretion, to an Accountholder other than the one listed first. In the event of any complications arising in connection with the issuance or cashing of a check, the Settlement Administrator shall provide written notice to Class Counsel and Defendant's Counsel. Absent specific instructions from Class Counsel and Defendant's Counsel, the Settlement Administrator shall proceed to resolve the dispute using its best practices and procedures to ensure that the funds are fairly and properly distributed to the person or persons who are entitled to receive them. All costs associated with the process of printing and mailing the checks and any accompanying communication to Settlement Class Members shall be included in the Settlement Fund.

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

101. The amount of the Net Settlement Fund attributable to uncashed or returned checks sent by the Settlement Administrator shall be held by the Settlement Administrator for up to one year from the date that the Settlement Administrator mails the first distribution check.

102. All funds held by the Settlement Administrator shall be deemed and considered to be in custodia legis of the Court and remain subject to the jurisdiction of the Court until distributed pursuant to this Agreement.

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

XI. Disposition of Residual Funds

104. If any Residual Funds remain resulting from uncashed checks 120 days after distribution to Settlement Class Members, the Settlement Administrator and Defendant will distribute said Residual Funds in a second distribution, in the same manner as the first distribution,

EXECUTION VERSION

to Settlement Class Members who received an Account credit or cashed a check in the first distribution, if the average amount of a such a second distribution would be greater than \$5.00 after deducting the costs of the second distribution.

105. If the average amount of a second distribution would be equal to or less than \$5, or if a second distribution has already been performed and Residual Funds still remain, the Settlement Administrator must distribute the Residual Funds pursuant to 735 ICLS 5/2-807(a) to one or more eligible organizations. The Motion for Final Approval and Final Approval Order shall contain the identity of the recipient(s) of the Residual Funds. The Parties agree to propose Land of Lincoln Legal Aid as the sole *cy pres* recipient.

XII. Releases

106. As of the Effective Date, Releasing Parties shall automatically be deemed to have fully and irrevocably released and forever discharged the Released Parties of and from the Released Claims.

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

108. Plaintiffs or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the Released Claims, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he/she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-

EXECUTION VERSION

contingent claims with respect to all of the matters described in or subsumed by herein. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement, including by the release herein and that all of their claims in the Actions shall be released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he/she never receives actual notice of the Settlement and/or never receives a Settlement Class Member Payment.

109. Nothing in this Agreement shall operate or be construed to release any claims by Settlement Class Members for bodily injury or under the Servicemembers Civil Relief Act.

110. Defendant releases all claims of any kind or nature that have been or could have been asserted against the Class Representative or Class Counsel relating to the claims in this lawsuit, or the filing or prosecution of any lawsuit relating to such claims. Notwithstanding the forgoing, nothing in this Agreement shall be construed as a release or waiver of any obligation of any Class Representative, Settlement Class Member, or Class Counsel for any payment of monies due to the Defendant for any outstanding debts, loans, and credit obligations not expressly provided for in this Agreement. Any such debts, loans, and credit obligations shall be paid pursuant to the legal documents evidencing such debts, loans, or credit obligations and nothing contained herein modifies, extinguishes, or otherwise alters those obligations except as expressly stated in this Settlement Agreement.

XII. Payment of Attorneys' Fees and Costs, Service Awards, and Settlement Administration Costs.

111. Class Counsel may apply for an award of attorneys' fees of up to 33.33% of the Settlement Fund, plus reimbursement of reasonable litigation costs, to be approved by the Court, which Defendant agrees not to oppose. Any award of attorneys' fees and costs to Class Counsel shall be payable solely out of the Settlement Fund. The Parties agree that the Court's failure to

EXECUTION VERSION

approve, in whole or in part, any award for attorneys' fees and costs shall not prevent the Settlement Agreement from becoming effective, nor shall it be grounds for termination.

112. The Application for Attorneys' Fees, Costs, and Service Award shall be filed contemporaneously with the Motion for Final Approval.

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

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

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

EXECUTION VERSION

116. Defendant agrees that Class Counsel shall be entitled to move the Court to approve a Service Award to each of the Class Representatives in the amount of up to \$10,000.00, to be approved by the Court. The Service Award is to be paid by the Settlement Administrator to the Class Representatives within 10 days of the Effective Date. The Service Award shall be paid to the Class Representatives in addition to each Class Representative's Settlement Class Member Payment. Defendant agrees not to oppose Class Counsel's request for a Service Award for each Class Representative. The Parties agree the Court's failure to approve a Service Award, in whole or in part, shall not prevent the Settlement Agreement from becoming effective, nor shall it be grounds for termination.

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

118. Consistent with Section VII above, Settlement Administration Costs shall be paid from the Settlement Fund within 10 days after invoicing to and approval by the Parties. The Parties and the Settlement Administrator agree that any such costs incurred by the Settlement Administrator prior to funding of the Settlement Fund shall be deferred and not invoiced until the Settlement Fund has been funded.

XIII. Termination of Settlement

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

- a. the Parties agree to termination;
- b. the Court rejects, materially modifies, materially amends, or changes, or declines to grant Preliminary Approval or Final Approval;

EXECUTION VERSION

c. an appellate court vacates or reverses the Final Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand within 360 days after such reversal;

d. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement in a way that Plaintiff or Defendant seeking to terminate the Settlement reasonably considers material;

e. the Effective Date does not occur; or

f. any other ground for termination provided for elsewhere in this Agreement.

120. Defendant also shall have the right to terminate the Settlement by serving on Class Counsel and filing with the Court a notice of termination within 15 days after its receipt from the Settlement Administrator of any report indicating that the number of Settlement Class members who timely opt-out from the Settlement Class equals or exceeds 15% of the total Settlement Class members.

XIV. Effect of a Termination

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

122. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Actions or any other action or proceeding for

EXECUTION VERSION

any purpose. In such event, all Parties to the Actions shall stand in the same position as if this Agreement had not been negotiated, made or filed with the Court.

XV. No Admission of Liability

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

124. Plaintiffs and Class Counsel believe the claims asserted in the Actions have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims, conducted significant informal discovery, and conducted independent investigation of the challenged practices. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Potential Settlement Class Members.

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

EXECUTION VERSION

whatsoever.

126. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiffs or Potential Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Actions or in any proceeding in any court, administrative agency, or other tribunal.

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

XVI. Miscellaneous Provisions

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

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

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

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

EXECUTION VERSION

certify to the Court that they have consulted.

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

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

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

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

136. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of their agreement to render services in connection with this

EXECUTION VERSION

Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against Defendant or its affiliates at any time, including during any appeal from the Final Approval Order.

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

Lynn Toops
Cohen & Malad, LLP
One Indiana Square, Suite 1400
Indianapolis, IN 46204
ltoops@cohenandmalad.com
Class Counsel

Sophia Gold
KalielGold PLLC
490 43rd Street, No. 122
Oakland, CA 94609
sgold@kalielgold.com
Class Counsel

Jonathan M. Streisfeld
Kopelowitz Ostrow P.A.
1 West Las Olas Blvd, Suite 500
Fort Lauderdale, FL 33301
streisfeld@kolawyers.com
Class Counsel

Marty Schubert
Stranch, Jennings & Garvey PLLC
The Freedom Center
223 Rosa L. Parks Avenue, Suite 200
Nashville, Tennessee, 37203
mschubert@stranchlaw.com

Scott Porterfield
Carmel Dooling
Barack Ferrazzano Kirschbaum & Nagelberg LLP
200 West Madison Street

EXECUTION VERSION

Suite 3900
Chicago, IL 60606
scott.porterfield@bfkn.com
carmel.dooling@bfkn.com
Counsel for Defendant

The notice recipients and addresses designated above may be changed by written notice.

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

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

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

141. Representations by Class Counsel. By executing this Agreement, Class Counsel represent and warrant that: (1) they do not presently represent any clients who they know to have or claim to have any claims against Midland, Alpine, or Centruie that are the same as or similar to those alleged in any iteration of the underlying *Garcia* and *Enerson* cases; (2) they do not presently have any intention of seeking to represent any clients who have or claim to have any such claims against Midland, Alpine, or Centruie; and (3) they are not presently aware of any person or entity

EXECUTION VERSION

(other than Plaintiffs and the potential Class Members), including but not limited to any other attorney or law firm with whom Class Counsel has consulted, who has expressed or is expressing an interest in making such claims against Midland, Alpine, or Centru.

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

143. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Actions as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. Defendant has provided and is providing information that Plaintiffs reasonably request to identify Settlement Class members and the alleged damages they incurred. All Parties recognize and acknowledge that they and their experts reviewed and analyzed data for a subset of the time at issue and that they and their experts used extrapolation to make certain determinations, arguments, and settlement positions. The Parties agree that this Settlement is reasonable and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with this Actions pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or

EXECUTION VERSION

differences in facts or law, subsequently occurring or otherwise.

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

Signature Page to Follow

EXECUTION VERSION

Dated: 1/30/2025

DocuSigned by:

ABEB603E3EB94E3...
Lindsey Garcia, Plaintiff

Dated: _____

Larry Benner, Plaintiff

Dated: _____

Michael Lungo, Plaintiff

Dated: _____

Stephanie Enerson, Plaintiff

Dated: _____

_____, for **Midland States Bank**
Its _____

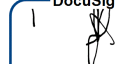
As To Form:

Dated: 1/31/2025


DocuSigned by:

D9B8B6938A374C0...
Lynn Toops
Cohen & Malad, LLP
Class Counsel

Dated: 1/31/2025

DocuSigned by:

898B65B0FF374A5...
Jonathan M. Streisfeld
Kopelowitz Ostrow P.A.
Class Counsel

Dated: 12/19/2024



Sophia Gold
KalielGold PLLC
Class Counsel

Dated: _____

Marty Schubert
Stranch, Jennings & Garvey PLLC
Class Counsel

Dated: _____

Scott Porterfield
Barack Ferrazzano Kirschbaum & Nagelberg LLP
Counsel for Defendant

EXECUTION VERSION

Dated: _____

Dated: 1/13/2025 | 7:58 AM PST

Dated: 1/8/2025 | 10:13 AM PST

Dated: 1/3/2025

Dated: _____

As To Form:

Dated: 1/6/2025 | 7:35 AM PST

Dated: 1/3/2025 | 1:54 PM PST

Dated: _____

Dated: 1/3/2025 | 3:46 PM CST

Dated: 1/8/2025 | 2:59 PM CST

Lindsey Garcia, Plaintiff

DocuSigned by:
Larry Benner
F720B076DC49453...

Larry Benner, Plaintiff

DocuSigned by:
Michael Lungo
4508031C28B441F...

Michael Lungo, Plaintiff

Signed by:
Stephanie Emerson
830F32A10F044F0...

Stephanie Emerson, Plaintiff

_____, for **Midland States Bank**
Its _____

DocuSigned by:
Lynn A. Toops
038808838A374C0...

Lynn Toops
Cohen & Malad, LLP
Class Counsel

DocuSigned by:
Jonathan M. Streisfeld
8980080FF374A3...

Jonathan M. Streisfeld
Kopelowitz Ostrow P.A.
Class Counsel

Sophia Gold
KalielGold PLLC
Class Counsel

DocuSigned by:
Marty Schubert
9D300B2613D94B6...

Marty Schubert
Stranch, Jennings & Garvey PLLC
Class Counsel

DocuSigned by:
Scott Porterfield
C98B9D9EE3A406...

Scott Porterfield
Barack Ferrazzano Kirschbaum & Nagelberg LLP
Counsel for Defendant

EXECUTION VERSION

Dated: _____

Lindsey Garcia, Plaintiff

Dated: _____

Larry Benner, Plaintiff

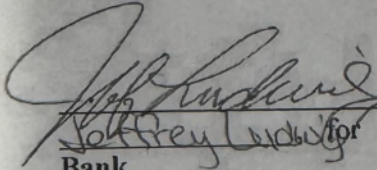
Dated: _____

Michael Lungo, Plaintiff

Dated: _____

Stephanie Enerson, Plaintiff

Dated: _____



Jeffrey Ludwig for Midland States
Bank
Its _____

As To Form:

Dated: _____

Lynn Toops
Cohen & Malad, LLP
Class Counsel

Dated: _____

Jonathan M. Streisfeld
Kopelowitz Ostrow P.A.
Class Counsel

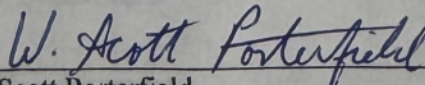
Dated: _____

Sophia Gold
KalielGold PLLC
Class Counsel

Dated: _____

Marty Schubert
Stranch, Jennings & Garvey PLLC
Class Counsel

Dated: 12-20-24



Scott Porterfield
Barack Ferrazzano Kirschbaum & Nagelberg
LLP
Counsel for Defendant

EXECUTION VERSION

Exhibit 1 – Email and Postcard Notice

Garcia et al. v. Midland States Bank, Case No. 2022-LA-0000104

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 MIDLAND
STATES BANK, ALPINE BANK & TRUST CO., AND/OR CENTRUE
BANK AND YOU WERE CHARGED CERTAIN OVERDRAFT FEES
AND/OR NSF FEES DURING THE CLASS PERIODS, THEN YOU MAY
BE ENTITLED TO A PAYMENT FROM A CLASS ACTION
SETTLEMENT**

Para una notificación en Español, visitar [\[class settlement website\]](#)

The Circuit Court of Winnebago County, Illinois has authorized this Notice;
it is not a solicitation from a lawyer.

You may be a member of the Settlement Classes in *Garcia et al. v. Midland States Bank*, in which the plaintiffs allege that defendant Midland States Bank (successor in interest to Alpine Bank & Trust Co. and Centru Bank) improperly assessed certain overdraft fees and NSF fees during the Class Periods. If you are a member of one or more of the Settlement Classes (the Alpine APSN Fee Class, Alpine Retry Fee Class, Centru APSN Fee Class, Midland APSN Fee Class, and Midland Fees-On-Fees Class) and if the Settlement is approved, you may be entitled to receive a cash payment from the \$3,125,000.00 Settlement Fund. You may be a member of more than one of Settlement Classes.

The Court has preliminarily approved this Settlement. It will hold a Final Approval Hearing in this case on **[INSERT DATE]**. At that hearing, the Court will consider whether to grant Final Approval to the Settlement, and whether to approve payments from the Settlement Fund of up to \$10,000.00 for a Service Award to each of the Class Representatives; up to 33.33% of the Settlement Fund as attorneys' fees; and reimbursement of costs to the attorneys and the Settlement Administrator. If the Court grants Final Approval and you do not request to opt-out from the Settlement, you will release your right to bring any claims covered by the Settlement. In exchange, Defendant has agreed to issue a cash payment directly to you by account credit or check.

To obtain a more detailed explanation of the Settlement terms and other important documents, including the Long Form Notice, please visit **[INSERT WEBSITE ADDRESS]. Alternatively, you may call **[INSERT PHONE #]**.**

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

If you do not take any action, you will be legally bound by the Settlement and any orders or judgment entered in the Action, and will fully, finally, and forever give up any rights to prosecute certain claims against Midland States Bank, Alpine Bank & Trust Co., and Centru Bank.

EXECUTION VERSION

Exhibit 2

Garcia et al. v. Midland States Bank, Case No. 2022-LA-0000104

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 MIDLAND STATES BANK, ALPINE BANK & TRUST CO., AND/OR CENTRUE BANK AND YOU WERE CHARGED CERTAIN OVERDRAFT FEES OR NSF FEES (DESCRIBED BELOW) DURING THE CLASS PERIODS, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

The Circuit Court of Winnebago County, Illinois 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 AND RECEIVE A PAYMENT OR ACCOUNT CREDIT	If you have received this notice, you will receive a payment from the Settlement Fund if you do not opt out.
OPT-OUT FROM THE SETTLEMENT; RECEIVE NO PAYMENT OR ACCOUNT CREDIT, 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 Midland States Bank (and as successor in interest to Alpine Bank & Trust Co. and Centruet Bank) but you will not receive a payment or account credit. If you opt-out from the Settlement, but want to recover against Midland States Bank (or Alpine Bank & Trust Co. and Centruet Bank), 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 the Settlement is approved and your objection is overruled by the Court, then you may receive a payment or account credit, and you will not be able to sue Midland States Bank (or Alpine Bank & Trust Co. and Centruet Bank) for the claims asserted in this litigation. If the Court agrees with your objection, then the Settlement may not be approved and the case may go forward into further litigation.

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

The Court in charge of this Action still has to decide whether to approve the Settlement. Payments and account credits will be provided if the Court approves the Settlement and after any appeals, if

EXECUTION VERSION

filed, are resolved. Please be patient.

BASIC INFORMATION**1. What is this lawsuit about?**

The lawsuit that is being settled is entitled *Garcia et al. v. Midland States Bank*, 2022-LA-0000104 (Winnebago Cnty., Ill. Cir. Ct.). The case is a “class action.” That means that the “Plaintiffs,” Lindsey Garcia, Larry Benner, Michael Lungo, and Stephanie Enerson, are acting on behalf of Accountholders of Midland States Bank, Alpine Bank & Trust Co., and Centru Bank who were assessed certain overdraft fees and NSF fees during the Class Periods described in the definitions of the Settlement Classes in Question 2 below. Midland States Bank acquired Alpine Bank & Trust Co. and Centru Bank and assumed the liabilities of those financial institutions.

The Plaintiffs claim Midland States Bank, Alpine Bank & Trust Co., and/or Centru Bank, as detailed in Question 2, improperly charged the following (“Relevant Fees”): (1) an overdraft fee on signature point of sale Debit Card Transactions that authorized on a sufficient available balance and settled on negative funds in the same amount for which the Debit Card Transaction was authorized (“APSN Fee”); (2) an overdraft fee or an NSF Fee on a third-party merchant’s attempt to collect its own fee (“Fee-On-Fee”); and (3) an NSF Fee or overdraft fee assessed related to a single, check, ACH, wire transfer, or other item after an NSF Fee was assessed (“Retry Fee”). The operative petition alleges Breach of Contract and Breach of the Implied Covenant of Good Faith and Fair Dealing, Unjust Enrichment, and violations of the Illinois Consumer Fraud and Deceptive Business Practices Act. Midland States Bank contends that it, Alpine Bank & Trust Co., and Centru Bank assessed these fees in accordance with the terms of the account agreements and applicable law.

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

You received this Notice because Midland States Bank’s, Alpine Bank & Trust Co.’s, and/or Centru Bank’s records indicate you were charged one or more Relevant Fees. You may be a member of one or more of the Settlement Classes (Alpine APSN Fee Class, Alpine Retry Fee Class, Centru APSN Fee Class, Midland APSN Fee Class, and Midland Fees-On-Fees Class). The Court directed that this Notice be available to be sent to all Settlement Class members because each Settlement Class member has a right to know about the proposed Settlement and the options available to him, her, or it before the Court decides whether to approve the Settlement.

The “Alpine APSN Fee Class” includes all Accountholders who, from April 8, 2012, through February 28, 2018, were Alpine Bank & Trust Co. personal checking Accountholders in Illinois and were assessed one or more APSN Fees.

The “Alpine Retry Fee Class” includes all Accountholders who, from April 8, 2012, through February 28, 2018, were Alpine Bank & Trust Co. personal checking Accountholders in Illinois and were assessed one or more Retry Fees.

The “Centru APSN Fee Class” includes all Accountholders who, from April 8, 2012, through

EXECUTION VERSION

June 12, 2017, were Centru Bank personal checking Accountholders in Illinois and were assessed one or more APSN Fees.

The “Midland APSN Fee Class” means all Accountholders who, from April 8, 2012, through April 30, 2022, were Midland States Bank personal checking Accountholders in Illinois and were assessed one or more APSN Fees.

The “Midland Fees-On-Fees Class” means all Accountholders who, from April 8, 2012, through April 30, 2022, were Midland States Bank personal checking Accountholders in Illinois and were assessed one or more Fees-On-Fees.

3. Why did the parties settle?

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

There is legal uncertainty about whether a judge or a jury will find that Midland States Bank, Alpine Bank & Trust Co., and/or Centru Bank was contractually and otherwise legally obligated not to assess overdraft and NSF fees in the manner alleged in the lawsuit, and, even if it was, there is uncertainty about whether the claims are subject to other defenses that might result in no or less recovery to Settlement Class members. Even if the Class Representatives were to win at trial, there is no assurance that the Settlement Class members would be awarded more than the current Settlement amount and it may take years of litigation before any payments would be made. By settling, the Settlement Class members will avoid these and other risks and the delays associated with continued litigation.

While Midland States Bank 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 litigation.

WHO IS IN THE SETTLEMENT

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

If you received this notice, then Midland States Bank’s, Alpine Bank & Trust Co.’s, and/or Centru Bank’s records indicate that you are a member of one or more of the following Settlement Classes: Alpine APSN Fee Class, Alpine Retry Fee Class, Centru APSN Fee Class, Midland APSN Fee Class, and Midland Fees-On-Fees Class. As a member of any of the Settlement Classes, you may be entitled to receive a payment or credit to your Account.

YOUR OPTIONS

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

You have three options: (1) do nothing and you will receive a payment or account credit according to the terms of this Settlement; (2) exclude yourself from the Settlement (“opt-out” of it); or (3) participate in the Settlement but object to it. Each of these options is described in a separate section below. In addition, you may enter an appearance by hiring your own counsel.

6. What are the critical deadlines?

There is no deadline to receive a payment or account credit. If you do nothing and the Settlement is approved, then you will get a payment or account credit.

The deadline for sending a letter to the Settlement Administrator to opt-out of the Settlement is [REDACTED].

The deadline to file a written objection with the Court to object to the Settlement is [REDACTED].

7. How do I decide which option to choose?

If you do not wish to participate in the Settlement and be sent a payment or account credit and be bound by the release, then you should opt-out. Likewise, if you believe 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, then you can object to the Settlement terms, including Class Counsel’s application for an award of attorneys’ fees and costs or a Service Award to each of the Class Representatives. The Court will decide if your objection is valid. If the Court agrees, then the Settlement may not be approved and no payments or account credits will be made to you or any other member of the Settlement Classes. If your objection (and any other objection) is overruled, and the Settlement is approved, then you may still get a payment or account credit and will be bound by the Settlement.

If you want to participate in the Settlement, you need not do anything and you may receive a payment or account credit if the Court approves the Settlement.

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 granted 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 [REDACTED].

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

Midland States Bank has agreed to create a Settlement Fund of \$3,125,000.00 that will be allocated for the Settlement Classes proportionately. As discussed separately below, attorneys' fees, litigation costs, a Service Award to each of the Class Representatives, and the costs paid to a third-party Settlement Administrator to administer the Settlement (including mailing or emailing this notice) will be paid out of the Settlement Fund. The balance of the Settlement Fund known as the Net Settlement Fund will be divided proportionally among all Settlement Class Members based on the amount of Relevant Fees they paid during the relevant Class Period(s).

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 33.33% of the Settlement Fund). Class Counsel will also request reasonable costs incurred in prosecuting the case. The Court will decide the amount of the attorneys' fees and costs based on a number of factors, including the risk associated with bringing the case on a contingency basis, the amount of time spent on the case, the amount of costs incurred to prosecute the case, the quality of the work, and the outcome of the case.

11. How much of the Settlement Fund will be used to pay the Class Representatives Service Awards?

Class Counsel on behalf of the Plaintiffs has requested that the Court award the Class Representatives of up to \$10,000.00 each for their work in connection with this case and securing this Settlement on behalf of the Settlement Classes. 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 Settlement Administrator's costs?

The Settlement Administrator estimates its costs at \$.

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, if you are a Current Accountholder you will receive a credit to your Midland States Bank account or if you are Past Accountholder a check will be mailed to you at the last known address Midland States Bank has for you if you are entitled to payment. If your address has changed, you should provide your current address to the Settlement Administrator at the address set forth in Question 16, below. Excluding yourself from the Settlement means you choose not to participate in the Settlement. You will keep your individual claims against Midland States Bank, Alpine Bank & Trust Co., and/or Centru Bank, but you will not receive a payment. In that case, if you choose to seek recovery against Midland States Bank, Alpine Bank & Trust Co., and/or Centru Bank then you will have to file a separate lawsuit or

EXECUTION VERSION

claim.

14. When will I receive my payment or account credit?
--

The Court will hold a Final Approval Hearing (explained below in Questions 22-24) on [REDACTED] to consider whether the Settlement should be approved. If the Court approves the Settlement, then payments should be made within 60 days of the Effective Date. However, if someone objects to the Settlement, and the objection is sustained, then there may be 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 of the Settlement's benefits.

15. How much will my payment or account credit be?

The balance of the Settlement Fund after deducting attorneys' fees and costs, the Service Awards and the Settlement Administration Costs, also known as the Net Settlement Fund, will be divided among all Settlement Class Members entitled to Settlement Class Member Payments *pro rata* in accordance with the following formulas included in the Settlement Agreement:

- The dollar amount of the Net Settlement Fund divided by the total number of Relevant Fees paid by all Settlement Class Members, which yields a per-fee amount;
- Multiply the per-fee amount by the total number of Relevant Fees for each Settlement Class Member; and
- This results in the individual Settlement Class Member Payment amount.

Current Accountholders at the time the Settlement is effective and who are entitled to a Settlement Class Member Payment will receive a credit to their Accounts for the amount they are entitled to receive. Past Accountholders at the time the Settlement is effective and who are entitled to receive a Settlement Class Member Payment shall receive a check from the Settlement Administrator.

If any Residual Funds remain resulting from uncashed checks 120 days after distribution to Settlement Class Members, the Settlement Administrator and Midland States Bank will distribute said Residual Funds in a second distribution, in the same manner as the first distribution, to Settlement Class Members who received an account credit or cashed a check in the first distribution, if the average amount of a such a second distribution would be greater than \$5.00 after deducting the costs of the second distribution.

If the average amount of a second distribution would be equal to or less than \$5, or if a second distribution has already been performed and Residual Funds still remain, the Settlement Administrator must distribute the Residual Funds pursuant to 735 ICLS 5/2-807(a) to one or more eligible organizations. The Parties agree to propose Land of Lincoln Legal Aid as the sole *cy pres* recipient.

16. What am I giving up to stay in the Settlement?

EXECUTION VERSION

If you stay in the Settlement Class, all of the decisions by the Court will bind you, and you give Midland States Bank a “release.” A release means you cannot sue, continue to sue, or be part of any other lawsuit against Midland States Bank about the legal issues in this case. As of the Effective Date, you shall automatically be deemed to have fully and irrevocably released and forever discharged Midland States Bank of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys’ fees, losses and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, arising out of or in any way related to the Action, or any of the facts, allegations, and claims asserted or which could have been asserted in the Complaint related to APSN Fees assessed by Midland States Bank, Centru Bank, and Alpine Bank & Trust Co.; Retry Fees assessed by Alpine Bank & Trust Co.; Fees-on-Fees assessed by Midland States Bank; and NSF fees assessed by Alpine Bank & Trust Co..

EXCLUDING YOURSELF FROM THE SETTLEMENT**17. How do I opt-out from the Settlement?**

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

To opt out, you must send a letter to the Settlement Administrator that you want to be excluded. Your letter can simply say “I hereby elect to be excluded from the settlement in the *Garcia, et al. v. Midland States Bank* class action.” Be sure to include your name, last four digits of your current or past account number, address, telephone number, and email address. Your opt-out request must be postmarked by [REDACTED], and sent to:

Garcia v. Midland States Bank Claims Administrator
c/o: Settlement Administrator
Attn: Opt-Out Request
P.O. Box _____
_____, _____

18. 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 Midland States Bank for the claims alleged in this case. However, you will not be entitled to receive a payment or account credit from the Settlement.

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

OBJECTING TO THE SETTLEMENT**19. How do I notify the Court that I do not like the settlement?**

EXECUTION VERSION

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

- the name of the Action;
- the objector's full name, address, telephone number, and email address (if any);
- all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
- 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 the Application for Attorneys' Fees and Costs and Service Awards;
- 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;
- the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;
- a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);
- a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- the objector's signature (an attorney's signature is not sufficient).

All objections must be post-marked no later than [REDACTED], and must be mailed to the Clerk of the Court, Class Counsel, and Midland States Bank as follows:

Garcia v. Midland States Bank Claims Administrator
c/o: Settlement Administrator
Attn: Objections
P.O. Box _____
_____, _____

20. 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 Classes, 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 may be entitled to a payment or account credit from the Net Settlement Fund if the Settlement is approved, but you will be bound by the release of claims you might have against Midland States

EXECUTION VERSION

Bank.

Opting-out is telling the Court that you do not want to be part of the Settlement, and you do not want to receive a payment or account credit or release claims you might have against Midland States Bank for the claims alleged in this lawsuit.

21. What happens if I object to the Settlement?

If the Court sustains your objection, or the objection of any other Settlement Class Member, then there may be no Settlement; provided, however, that an objection to Class Counsel's requested attorneys' fees and costs or to the requested Service Award amount, may result in approval of the Settlement but the award of a lower attorneys' fee and cost amount or lower Service Awards. If you object, but the Court overrules your objection and any other objection(s), then you will be part of the Settlement. If the Court approves the Settlement, then the objector will participate in the Settlement. If the Court does not approve the Settlement, then there is no Settlement.

THE COURT'S FINAL APPROVAL HEARING

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

The Court will hold a Final Approval Hearing at __:__ a.m./p.m. on [redacted] at the Circuit Court of Winnebago County, which is located at 400 West State Street, Rockford, IL 61101. 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 how much each of the Class Representatives should get as Service Awards. The hearing may be virtual, in which case the instructions to participate shall be posted on the Settlement Website at www.[class settlement website].com. Also, if the date and/or location of the Final Approval Hearing changes, that information will be posted on the same website. Notice of the final judgment entered by the Court will be given on the Settlement Website.

23. 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.

24. May I speak at the hearing?

If you have objected, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include with your objection, described in Question 19, above, the statement, "I hereby give notice that I intend to appear at the Final Approval Hearing."

THE LAWYERS REPRESENTING YOU

25. Do I have a lawyer in this case?

EXECUTION VERSION

The Court ordered that the lawyers and their law firms referred to in this notice as “Class Counsel,” Cohen & Malad, LLP; Kaliel Gold PLLC; Kopelowitz Ostrow P.A.; and Stranch, Jennings & Garvey PLLC, will represent you and the other Settlement Class Members.

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

No. Class Counsel will be paid directly from the Settlement Fund for the legal services provided to accomplish the Settlement for Settlement Class Members’ benefit. Class Counsels’ award of attorneys’ fees and costs is deducted from the Settlement Fund, reducing that amount in calculating the Net Settlement Fund that Settlement Class Members will be paid.

27. 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 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 Circuit Court for Winnebago County, Illinois.

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 for the Circuit Court for Winnebago County, Illinois, by asking for the Court file containing the Motion For Preliminary Approval (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 Settlement Administrator as follows:

Garcia, et al. v. Midland States Bank
Attn: Settlement Administrator

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

Lynn Toops
Cohen & Malad, LLP
One Indiana Square, Suite 1400
Indianapolis, IN 46204
ltoops@cohenandmalad.com

Sophia Gold
KalielGold PLLC
490 43rd Street, No. 122
Oakland, CA 94609
sgold@kalielgold.com

Jonathan M. Streisfeld
Kopelowitz Ostrow P.A.
1 West Las Olas Blvd, Suite 500
Fort Lauderdale, FL 33301
streisfeld@kolawyers.com

Marty Schubert
Stranch, Jennings & Garvey PLLC
The Freedom Center
223 Rosa L. Parks Avenue, Suite 200
Nashville, Tennessee, 37203
mschubert@stranchlaw.com

EXECUTION VERSION

PLEASE DO NOT CONTACT THE COURT OR ANY REPRESENTATIVE OF MIDLAND STATES BANK CONCERNING THIS NOTICE OR THE SETTLEMENT.