

STATE OF INDIANA	)	IN THE WARRICK CIRCUIT COURT
	) SS:	
COUNTY OF WARRICK	)	CAUSE NO. 87C01-2212-PL-002165
KEVIN LOWE, individually	)	
and on behalf and all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	JURY DEMAND
v.	)	
	)	
HERITAGE FEDERAL CREDIT UNION,	)	
	)	
Defendant.	)	

**PLAINTIFF'S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Pursuant to Trial Rule 23(E), Plaintiff Kevin Lowe, by counsel, respectfully move this Court to enter the tendered, agreed Preliminary Approval Order. The attached Preliminary Approval Order:

1. Grants preliminary approval to the class action Settlement Agreement and Release (the "Settlement"), which is attached as Exhibit 1 to this motion and which provides a total Settlement Value of \$635,000.00 (comprised of cash);
2. Certifies the Settlement Class under Indiana Trial Rules 23(A) and (B)(3);
3. Approves the form and manner of the Settlement Administrator to provide notice of the proposed Settlement to the members of the Settlement Class;
4. Sets deadlines for members of the Settlement Class to opt-out of, or object to, the Settlement;
5. Schedules a final approval hearing in approximately 90 days at which the Court will determine whether to grant final approval to the Settlement after hearing the feedback

from Class Members, if any.

Defendant does not oppose this motion. For the reasons set forth in the accompanying memorandum in support, the Court should grant this motion and set a final approval hearing approximately 90 days out.

Dated: August 19, 2025

Respectfully submitted,

/s/Lynn A. Toops

Lynn A. Toops
COHEN & MALAD, LLP
One Indiana Square, Suite 1400
Indianapolis, IN 46204
Telephone: 317-636-6481
Facsimile: 317-636-2593
ltoops@cohenandmalad.com

J. Gerard Stranch, IV*
BRANSTETTER, STRANCH
& JENNINGS, PLLC
223 Rosa L. Parks Avenue, Suite 200
Nashville, Tennessee 37203
Telephone: (615) 254-8801
Facsimile: (615) 255-5419
gerards@bsjfirm.com

Christopher D. Jennings*
JOHNSON FIRM
610 President Clinton Avenue, Suite 300
Little Rock, Arkansas 72201
Phone: 501-372-1300
Fax: 888-505-0909
chris@yourattorney.com

Attorneys for Plaintiff and the Putative Classes

* To Seek Admission *Pro Hac Vice*

CERTIFICATE OF SERVICE

I certify that on August 19, 2025, I electronically filed the foregoing document using the Indiana E-filing System (IEFS) and served all counsel of record.

Kay Dee Baird
Brett J. Ashton
Libby Yin Goodknight
KRIEG DEVAULT LLP
One Indiana Square, Suite 2800
Indianapolis, Indiana 46204

Rhett D. Gonterman
GONTERMAN & MEYER LAW, LLC
25 NW Riverside Drive, Suite 310
Evansville, Indiana 47708

/s/Lynn A. Toops

Lynn A. Toops

SETTLEMENT AGREEMENT AND RELEASE

Kevin Lowe v. Heritage Federal Credit Union

Circuit Court of Warrick County

Case No. 87C01-2212-PL-002165

PREAMBLE

This Settlement Agreement and Release (the “Agreement”) is entered into by and among plaintiff Kevin Lowe (“Named Plaintiff”) and all those on whose behalf he is prosecuting this action (each of them a “Plaintiff” and all of them “Plaintiffs”), on the one hand, and defendant Heritage Federal Credit Union (“Defendant”), on the other hand, as of the date executed below. All references in this Agreement to a “party” or the “parties” shall refer to a party or the parties to this Agreement.

RECITALS

A. On December 20, 2022, Named Plaintiff filed a *Class Action Complaint* (the “Complaint”) in the Circuit Court in Warrick County, Indiana, entitled *Kevin Lowe v. Heritage Federal Credit Union*, Cause No. 87C01-2212-PL-002165 (the “Litigation”), alleging claims for breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment and violation of the Indiana Deceptive Consumer Sales Act, Ind. Code §§ 24-5-0.5-1, *et seq.* (the “DCSA”) for (a) purportedly assessing overdraft fees (“OD Fees”) on transactions that did not actually overdraw an account; and (b) purportedly charging OD fees on transactions that were authorized on sufficient funds but settled on negative funds.

B. On April 10, 2023, Defendant filed a motion to dismiss the Complaint.

C. On April 19, 2023, Named Plaintiff filed an *Amended Class Action Complaint* (“Amended Complaint”) in the Litigation, again alleging claims for breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment and violation of the DCSA for (a) purportedly assessing OD Fees on transactions that did not actually overdraw an account; (b) purportedly charging OD fees on transactions that were authorized on sufficient funds but settled on negative funds; and (c) purportedly violating Regulation E by using an inadequate Regulation E Opt-In Form.

D. The Parties engaged in informal discovery.

E. On August 8, 2023, the Parties engaged in mediation under the auspices of mediator John C. Trimble, Esq. The mediation did not result in a settlement. The Parties continued to directly negotiate a possible resolution of the Litigation after the mediation and ultimately reached an agreement in principle on April 8, 2025, to settle the Litigation on a classwide basis.

F. Defendant has entered into this Agreement to resolve on a classwide basis any and all controversies and disputes arising out of or relating to the allegations made in the Litigation, 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 Litigation, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Litigation. Nothing contained in this Agreement shall be used or construed as an admission of liability and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement.

G. Named Plaintiff has entered into this Agreement to liquidate and recover on the claims asserted in the Amended Complaint on a classwide basis, and to avoid the risk, delay, and uncertainty of continued litigation. Named Plaintiff does not in any way concede the claims alleged in the Litigation lack merit or are subject to any defenses.

AGREEMENT

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

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

(a) “APSN Class” shall mean all current and former members of Defendant who were assessed an APSN Fee.

(b) “APSN Fee” shall mean an overdraft fee Defendant assessed during the Class Period on a debit card transaction that was authorized on sufficient funds and settled on negative funds in the same amount for which the debit card transaction was initially authorized.

(c) “Bar Date to Object” shall be the date set by the Court as the deadline for Class Members to file an Objection, and shall be thirty (30) days after the date the notice must be delivered to the Class Members pursuant to Section 4 herein.

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

(e) “Class Counsel” shall mean Cohen & Malad, LLP.

(f) “Class Member(s)” shall mean all members of the Regulation E Class and APSN Class, as determined by the Fee Expert from its review and analysis of Defendant’s transaction data.

(g) “Class Period” shall mean December 20, 2012, to April 8, 2025, for APSN Fees and December 20, 2021, to April 8, 2025, for Regulation E Fees.

(h) “Court” shall mean the Circuit Court of Warrick County, Indiana.

(i) “Defendant’s Counsel” shall mean Krieg DeVault LLP.

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

ruling affirming the Final Approval Order; or (3) thirty (30) days after entry of a dismissal of the appeal.

(k) “Email Notice” shall refer to a short form of the notice that shall be sent by email to Class Members who agreed to receive account notices by email in the form attached hereto as **Exhibit 2**.

(l) “Exclusion Letter” shall mean a letter by a Class Member who elects to opt out of the settlement.

(m) “Fee Expert” means Cassis Technology, LLC who shall be obligated to keep all Class Member data strictly confidential and secured by means of data security measures that meet the requirements of 12 CFR § 748, and appendices thereto, and shall not be disclosed other than as provided for under the terms of this Agreement or so ordered by the Court.

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

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

(p) “Final Report” shall mean the report prepared by the Settlement Administrator of all receipts and disbursements from the Settlement Fund, as described in Section 10, below.

(q) “Long Form Notice” shall mean the form of notice that will be posted to the settlement website and shall be sent by mail to Class Members who did not agree to receive notices by email in the form attached as **Exhibit 1**.

(r) “Motion for Final Approval” shall mean the motion or motions filed by Class Counsel, as referenced in Section 5, below, which shall be filed forty-five (45) days after the date the Notice (defined below) must be delivered to Class Members.

(s) “Motion for Award of Fees, Costs, and Service Award” shall mean the motion or motions filed by Class Counsel, as referenced in Section 6 below, which shall be filed fifteen (15) days before the Final Approval Hearing.

(t) “Net Settlement Fund” shall mean the net amount of the Settlement Fund after payment of court approved attorneys’ fees and costs, any Service Award allowed by the Court, and any fees and costs paid to the Settlement Administrator.

(u) “Preliminary Approval/Notice Order” shall mean the Order issued by the Court preliminarily approving this Agreement and authorizing the sending of notice to Class Members, as provided in Sections 4 and 5, below.

(v) “Regulation E Class” shall mean all current and former members of Defendant who were assessed an overdraft fee on a transaction that did not overdraw the member’s account.

(w) “Regulation E Fee” shall mean overdraft fees that Defendant assessed during the Class Period for debit card transactions and ATM withdrawals or transfers.

(x) “Service Award” shall mean the payment that Class Counsel requests that the Court award the Plaintiff for serving as the Class Representative.

(y) “Settlement Administrator” shall mean the entity that will provide the notice and other administrative handling of this Settlement Agreement and Release and whom will be subject to the obligation that all Class Member data shall be strictly confidential and secured by the Settlement Administrator by means of data security measures that meet the requirements of 12 CFR § 748, and appendices thereto, and shall not be disclosed other than as provided for under the terms of this Agreement or as ordered by the Court.

(z) “Settlement Fund” shall mean the amount of six hundred thirty-five thousand and 00/100 dollars (\$635,000.00) to be paid by the Defendant under the terms of the settlement.

2. CLASS ACTION SETTLEMENT. Plaintiff shall propose and recommend to the Court that the Regulation E Class and APSN Class shall be certified for purposes of implementing the terms of the settlement provided for in this Agreement. Defendant agrees solely for purposes of the settlement provided for in this Agreement, and the implementation of such settlement, that this case shall proceed as a class action; provided, however, that if a Final Approval Order is not issued, then Defendant shall retain all rights to object to maintaining this case as a class action. Plaintiff and Class Counsel shall not reference this Agreement in support of any subsequent motion relating to certification of a liability class.

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

4. NOTICE TO THE CLASS.

(a) The Settlement Administrator shall send the Email Notice and Long Form Notice, as applicable, to all Class Members as specified by the Court in the Preliminary Approval/Notice Order.

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

and resend the Email Notice. The Email Notice shall inform Class Members how they may request a copy of the Long Form Notice.

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

(d) The Long Form Notice shall be posted on the settlement website created by the Settlement Administrator.

(e) 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. A summary report of the notices shall be provided to the parties at least five (5) days prior to the deadline to file the Motion for Final Approval. The database maintained by the 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 used only for purposes of implementing the terms of this Agreement, and shall not be used for any other purposes.

(f) The Long Form Notice and Email 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.

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

5. MOTION FOR FINAL APPROVAL. Fifteen (15) days after the Bar Date to Opt Out and provided the conditions in Section 14 below are satisfied, Class Counsel shall file a Motion for Final Approval of this Agreement so that same can be heard on the Final Approval Hearing Date.

6. MOTION FOR FEES, COSTS, AND SERVICE AWARD. Fifteen (15) days before the Final Approval Hearing, Class Counsel shall file a Motion for Fees, Costs, and Service Award. The Motion for Fees, Costs and Service Award shall also be posted to the settlement

website. Defendant agrees not to oppose this motion so long as Class Counsel does not seek more than 1/3 of the Settlement Fund for its attorneys' fees.

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

8. **THE SETTLEMENT FUND AND DISTRIBUTION.**

(a) **Payments to Class Members.** Within ten (10) days after entry of the Preliminary Approval/Notice Order, Defendant shall transfer the Settlement Fund to the Settlement Administrator. The Settlement Fund shall be the total amount Defendant is obligated to pay under the terms of this Agreement and includes (a) Class Counsels' fees and costs; (b) any service award payment to the Named Plaintiff (which the parties agree shall not exceed \$10,000); (c) costs associated with administering the notice in accordance with Section 4, above; and (d) any fees paid to the Settlement Administrator or Fee Expert for services rendered in connection with the administration process. Defendant shall not make any additional or further contributions to the Settlement Fund, even if the total amount of all alleged improper fees charged to the Class Members exceeds the value of the Settlement Fund. In the event a Final Approval Order is not issued, or this Agreement is terminated by either party for any reason, including pursuant to Section 14, below, the portion of the Settlement Fund paid to the Settlement Administrator (including accrued interest, if any) less expenses actually incurred by the Settlement Administrator or due and owing to the Settlement Administrator in connection with the settlement provided for herein, shall be refunded to Defendant within two (2) business days.

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

(c) All funds held by the 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.

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

(i) **Plaintiff's Fees and Costs.** Plaintiff's reasonable attorneys' fees for Class Counsel, as determined and approved by the Court, and which shall not exceed 1/3 of the Settlement Fund, plus reasonable expenses approved by the Court, shall be paid from the Settlement Fund ten (10) days after entry of the Final Approval Order.

(ii) **Service Award.** Named Plaintiff's service award, as determined and approved by the Court and which shall not exceed \$10,000, shall be paid from the Settlement Fund ten (10) days after entry of the Final Approval Order.

(iii) **Settlement Administrator's and Fee Expert's Fees.** The Settlement Administrator's and the Fee Expert's fees and costs, including estimated fees and costs to

fully implement the terms of this Agreement, as approved by the Court, shall be paid within ten (10) days after the Effective Date.

(iv) Payments to Class Members. Defendant will provide the Fee Expert available information to calculate the amounts to be paid to each Class Member under this settlement. The payment amount to Class Members will be calculated as follows:

- (1) Total Number of Fees = For all Class Members, the total number of APSN Fees charged from December 20, 2012, to December 19, 2021, plus the total number of Regulation E Fees charged from December 20, 2021, to April 8, 2025.
- (2) Class Member's Number of Fees = For each Class Member, the number of APSN Fees charged from December 20, 2012, to December 19, 2021, plus the number of Regulation E Fees charged from December 20, 2021, to April 8, 2025.
- (3) Net Settlement Fund = The remaining amounts of the Settlement Fund after deduction of the costs and expenses identified in Section 8(d)(i)-(iii).
- (4) Per Fee Payment Amount = Net Settlement Fund divided by Total Number of Fees.
- (5) Class Member's Payment Amount = Class Member's Number of Fees multiplied by the Per Fee Payment Amount.

Each Class Member's Payment Amount will be distributed as follows: (a) Defendant will credit the Class Member's Payment Amount to the account of each Class Member currently a credit union member of Defendant; and (b) the Settlement Administrator will mail a check for the applicable Class Member's Payment Amount to the last known address of each Class Member who no longer is a credit union member of Defendant. Checks shall have an initial stale date of 120 days. Upon request, or if any check is returned as undeliverable, the Settlement Administrator may reissue the check so long as the stale date provided on the check does not exceed 200 days from the Effective Date.

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

9. THE SETTLEMENT ADMINISTRATOR.

(a) The Settlement Administrator shall execute a retainer agreement that shall provide, among other things, that the Settlement Administrator shall be bound by and shall perform the obligations imposed on it under the terms of this Agreement. The retainer agreement shall include provisions requiring that all Class Member data shall be strictly confidential and secured

by the Settlement Administrator by means of data security measures that meet the requirements of 12 CFR § 748, and appendices thereto, and shall not be disclosed other than as provided for under the terms of this Agreement or as ordered by the Court.

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

(c) The Settlement Administrator shall keep all information regarding Class Members confidential except as otherwise provided herein. All data created and/or obtained and maintained by the Settlement Administrator pursuant to this Agreement shall be destroyed twelve (12) months after the Final Report is submitted to the Court, provided that Class Counsel and Defendant's Counsel, or either of them, at their own cost, shall receive a complete copy of the Settlement Administrator's records, together with a declaration establishing completeness and authenticity, which they may maintain consistent with their own document retention policies. To the extent Class Counsel receives a copy of the class list, it shall be subject to any protective order issued in this case and shall not be used for any purposes other than the implementation of this Agreement. Any Class Member data received by Class Counsel shall be strictly confidential and secured by means of data security measures that meet the requirements of 12 CFR § 748, and appendices thereto, and shall not be disclosed other than as provided for under the terms of this Agreement or as ordered by the Court.

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

(e) The Settlement Administrator shall provide the data in its administration database to Defendant's Counsel and/or Class Counsel in response to any written request, including an email request. The written request shall be copied to the other party when made. Such information shall be used only for purposes of the implementation of this Agreement. Any Class Member data received shall be strictly confidential and secured by means of data security measures that meet the requirements of 12 CFR § 748, and appendices thereto, and shall not be disclosed other than as provided for under the terms of this Agreement or as ordered by the Court.

10. CY PRES PAYMENT. Within two hundred fifty (250) days after the Effective Date, Class Counsel will submit a Final Report to the Court of the total amount of uncashed, undeliverable, and/or otherwise unclaimed checks and residual amounts held by the Settlement Administrator. Subject to Court approval, within thirty (30) days after the Final Report, the total amount of uncashed, undeliverable, and/or otherwise unclaimed checks and residual amounts held by the Settlement Administrator at the time of the Final Report, shall be paid to as follows: (1) subject to the requirements of Indiana Rule of Trial Procedure 23(F)(2), fifty percent (50%) to the Indiana Bar Foundation to support the activities and programs of the Indiana Pro Bono Commission and its *pro bono* districts, and (2) fifty percent (50%) to the Indiana Community Action Association, or such other beneficiary as the parties and the Court shall agree at the time of the Final Approval Order

11. OPT-OUTS.

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

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

12. OBJECTIONS.

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

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

(i) The objector's name, address, telephone number, the last four digits of his or her member number or former member number, and the contact information for any attorney retained by the objector in connection with the objection or otherwise in connection with this case;

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

(iii) A statement as to whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying the counsel by name, address, and telephone number.

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

13. RELEASE.

Except for the rights and obligations provided for under the terms of this Agreement:

(a) The Named Plaintiff and the Class Members, in consideration for the promises and covenants described in this Agreement, and on behalf of themselves, their heirs, guardians, assigns, executors, administrators, predecessors, and/or successors, fully, finally and forever release and

discharge the Defendant, and all of its past, present and future predecessors, successors, parents, subsidiaries, divisions, employees, affiliates, assigns, officers, directors, shareholders, representatives, attorneys, insurers and agents (collectively, the “Defendant Releasees”) from – and shall not now or hereafter institute, maintain, or assert on their own behalf, on behalf of any class, or on behalf of any other person or entity – any and all manner of claims, actions, causes of action, suits, rights, debts, sums of money, payments, obligations, reckonings, contracts, agreements, executions, promises, damages, liens, judgments and demands of whatever kind, type or nature and whatsoever, both at law and in equity, whether past, present or future, mature or not yet mature, known or unknown, suspected or unsuspected, contingent or noncontingent, whether based on federal, state, or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim that Named Plaintiff or the Class Members ever had, now have, may have, or hereafter can, shall or may ever have against the Defendant Releasees in any other court, tribunal, arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other adjudicatory body, on the basis of, connected with, arising from, or in any way whatsoever relating to the claims alleged in the Litigation or arising from, directly or indirectly, or in any way whatsoever pertaining or relating to the following acts or omissions during the Class Period: (i) the assessment or amount of APSN Fees and Regulation E Fees collected by the Defendant Releasee; (ii) the Defendant Releasee’s practices with respect to processing, authorization and payment relating to APSN Fees and Regulation E Fees; (iii) the claims alleged in the Litigation or arising from, directly or indirectly, or in any way whatsoever pertaining or relating to the claims alleged in the Litigation, including, but not limited to, contracts, communications, disclosures, nondisclosures, representations, statements, claims, omissions by the Defendant Releasees relating to APSN Fees and Regulation E Fees; (iv) any claims for restitution or unjust enrichment for all damages of any kind relating to the assessment of APSN Fees and Regulation E Fees by the Defendant Releasees during the Class Period and the claims alleged in the Litigation; (v) any similar federal, state or local statutes, codes, damages, costs, expenses, extra-contractual damages, compensatory damages, exemplary damages, special damages, penalties, punitive damages and/or damage multipliers, disgorgement, expenses, interest, and/or attorneys’ fees and costs against the Defendant Releasees pertaining to or relating to the claims alleged in the Amended Complaint relating to the assessment of APSN Fees and Regulation E Fees by the Defendant Releasee during the Class Period and the claims alleged in the Litigation, notwithstanding that Named Plaintiff and the Class Members acknowledge that they may hereafter discover facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Litigation and/or the release herein.

(b) Defendant releases all claims of any kind or nature that have been or could have been asserted against the Named Plaintiff, any Class Member, or Class Counsel relating to the claims alleged in the Amended Complaint, or the filing or prosecution of any lawsuit relating to such claims.

14. CONDITIONS TO SETTLEMENT.

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

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

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

(iii) The Effective Date has occurred.

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

(c) Defendant shall have the option to terminate this Agreement if five percent (5%) or more of the Class Members opt out. Defendant shall notify Class Counsel and the Court of its intent to terminate this Agreement pursuant to this Section 15 within ten (10) business days after the Bar Date to Opt Out, or the option to terminate shall be considered waived.

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

15. REPRESENTATIONS.

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

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

(c) The Named Plaintiff, individually and on behalf of the Class Members, represents that he has made such inquiry into the terms and conditions of this Agreement as he deems appropriate, and that by executing this Agreement, he, based on Class Counsel's advice, and their understanding of the case, believe the Agreement and all the terms and conditions set forth herein, are fair and reasonable to all Class Members.

(d) The Named Plaintiff represents that he has no knowledge of conflicts or other personal interests that would in any way impact his representation of the classes in connection with the execution of this Agreement.

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

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

17. **PUBLICITY.** The parties and Class Counsel agree that they will not notify any member of the media regarding the terms and conditions of this Agreement and shall not issue a press release, or post or disseminate the terms of this Agreement on any social media or website, including Class Counsel's website. This section shall not prevent Defendant from disclosing such information to state and federal agencies, independent accountants, actuaries, advisors, financial analysts, insurers or attorneys.

18. **APPLICABLE LAW.** This Agreement shall be governed by and interpreted, construed, and enforced pursuant to the laws of the State of Indiana, without regard to the conflict laws thereof.

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

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

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

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

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

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

Lynn A. Toops
COHEN & MALAD, LLP
One Indiana Square
Suite 1400
Indianapolis
Indianapolis, IN 46204
Ph: 317-636-6481
Email: ltoops@cohenandmalad.com

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

Rhett D. Gonterman
Gonterman & Meyer Law, LLC
25 NW Riverside Drive, Suite 310
Evansville, IN 47708
Ph: (812) 213-4039
Email: rhett@evvlegal.com

Brett J. Ashton
Libby Y. Goodknight
Kay Dee Baird
KRIEG DEVAULT LLP
One Indiana Square, Suite 2800
Indianapolis, Indiana 46204
Telephone: (317) 238-6306
Facsimile: (317) 636-1507
Email: bashton@kdlegal.com
Email: lgoodknight@kdlegal.com
Email: kbaird@kdlegal.com

Any notice to the Settlement Administrator shall be sent by email to the address of the Settlement Administrator.

[signature pages to follow]

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

Dated: 8/13, 2025

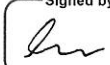
Heritage Federal Credit Union

By: Tony Ogilvie

Its: CEO

Dated: 7/16/2025, 2025

Kevin Lowe, individually and on behalf
of the Class Members

Signed by:
By: 
7AETBTEE91CF46D...
Kevin Lowe

APPROVED AS TO FORM:

Dated: August 13, 2025

KRIEG DEVAULT LLP
Brett J. Ashton
Libby Y. Goodnight
Kay Dee Baird

GONTERMAN & MEYER LAW, LLC
Rhett D. Gonterman

By: 

Kay Dee Baird
Attorneys for Defendant Heritage Federal Credit Union

APPROVED AS TO FORM:

Dated: 7/16/2025, 2025

COHENMALAD, LLP
Lynn A. Toops

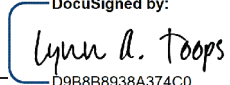
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By: 
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Lynn Toops
Attorneys for Named Plaintiff Kevin Lowe

Exhibit 1

Kevin Lowe
v.
Heritage Federal Credit Union

NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

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

**IF YOU HAVE OR HAD A CHECKING ACCOUNT WITH HERITAGE
FEDERAL CREDIT UNION (“DEFENDANT”) AND YOU WERE
CHARGED AN OVERDRAFT FEE BETWEEN DECEMBER 20, 2012, AND
APRIL 8, 2025, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM
A CLASS ACTION SETTLEMENT**

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

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

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

BASIC INFORMATION

1. What is this lawsuit about?

The lawsuit that is being settled is entitled *Kevin Lowe v. Heritage Federal Credit Union* in the Circuit Court of Warrick County, Indiana, Case No. 87C01-2212-PL-002165. The case is a “class action.” That means that the “Named Plaintiff,” Kevin Lowe, is an individual who is acting on behalf of current and former members who were assessed certain overdraft fees between December 20, 2012, and April 8, 2025. The Named Plaintiff has asserted claims for breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment and violation of the Indiana Deceptive Consumer Sales Act.

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

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

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

3. Why did the parties settle?

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

There is legal uncertainty about whether a judge or a jury will find that Defendant was contractually and otherwise legally obligated not to assess the fees that are being challenged in this case. And even if it was contractually wrong to assess these fees, there is uncertainty about whether the Named Plaintiff’s claims are subject to other defenses that might result in no or less recovery to Class Members. Even if the Named Plaintiff were to win at trial, there is no assurance that the 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 Class Members will avoid these and other risks and the delays associated with continued litigation.

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

WHO IS IN THE SETTLEMENT

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

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

YOUR OPTIONS

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

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

6. What are the critical deadlines?

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

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

The deadline to file an objection with the Court is also _____.

7. How do I decide which option to choose?

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

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

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

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

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

THE SETTLEMENT PAYMENT

9. How much is the Settlement?

Defendant has agreed to create a Settlement Fund of \$635,000.

As discussed separately below, attorneys' fees, litigation costs, expert fees, a service award, and the costs paid to a third-party Settlement Administrator to administer the settlement (including mailing and emailing this notice) will be paid out of the Settlement Fund. The balance of the Settlement Fund will be divided among the Class as described in the settlement agreement.

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

Class Counsel will request an attorney fee be awarded by the Court of up to 1/3 of the value of the settlement. Class Counsel has also requested that it be reimbursed litigation costs incurred in prosecuting the case. The Court will decide the amount of the attorneys' fees and costs based on a number of factors.

11. How much of the settlement fund will be used to pay the Named Plaintiff a Service Award?

Class Counsel will request that the Named Plaintiff be paid a service award in the amount of up to \$10,000.00 for his work in connection with this case. The service award must be approved by the Court.

12. How much of the settlement fund will be used to pay the Settlement Administrator's and Fee Expert's expenses?

The Settlement Administrator has agreed to cap its expenses at \$.

13. How much will my payment be?

The balance of the Settlement Fund after attorneys' fees and costs, the service award, fee expert and the Settlement Administrator's fees will be divided among all Class Members in accordance with the formulas outlined in the settlement agreement. Current members of Defendant will receive a credit to their accounts for the amount they are entitled to receive. Former members of Defendant shall receive a check from the Settlement Administrator.

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

No. If you are a member of the Class, then you will be entitled to receive a payment without having to make a claim, unless you choose to exclude yourself from the settlement, or "opt out."

15. When will I receive my payment?

The Court will hold a Final Approval Hearing on _____, at _____ to consider whether the settlement should be approved. If the Court approves the settlement, then payments should be made or credits should be issued within about 40 to 60 days after the settlement is approved. However, if someone objects to the settlement, and the objection is sustained, then there is no settlement. Even if all objections are overruled and the Court approves the settlement, an objector could appeal, and it might take months or even years to have the appeal resolved, which would delay any payment.

EXCLUDING YOURSELF FROM THE SETTLEMENT

16. How do I exclude myself from the settlement?

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

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

Kevin Lowe v. Heritage Federal Credit Union

Attn:

ADDRESS OF THE SETTLEMENT ADMINISTRATOR

17. What happens if I opt out of the settlement?

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

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

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

OBJECTING TO THE SETTLEMENT

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

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

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

Kevin Lowe v. Heritage Federal Credit Union

Attn:

ADDRESS OF THE SETTLEMENT ADMINISTRATOR

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

21. What happens if I object to the settlement?

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

THE COURT'S FINAL APPROVAL HEARING

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

The Court will hold a Final Approval or Fairness Hearing at _____ on _____, 2025 at the Warrick County Circuit Court, which is located at the Warrick County Courthouse, One County Square, #360, Booneville, Indiana 47601. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys' fees and expenses. The hearing may be held virtually, in which case the settlement website may provide information about how the hearing will be accessible.

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 object to the settlement you may attend, but the Court will consider your objection regardless.

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?

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

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 a physical copy of the fee application at the website established by the Settlement Administrator, or by reviewing it at the Circuit Court of Warrick County, Indiana, which is located at the Warrick County Courthouse, One County Square, #360, Booneville, Indiana 47601.

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 Circuit Court of Warrick County, Indiana, which is located at the Warrick County Courthouse, One County Square, #360, Booneville, Indiana 47601, by asking for the Court file containing the Motion For Preliminary Approval of Class Settlement (the settlement agreement is attached to the motion).

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

Kevin Lowe v. Heritage Federal Credit Union
Attn:

ADDRESS OF THE SETTLEMENT ADMINISTRATOR

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

Lynn A. Toops
COHEN & MALAD, LLP
One Indiana Square
Suite 1400
Indianapolis
Indianapolis, IN 46204
Ph: 317-636-6481
Email: ltoops@cohenandmalad.com

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

Exhibit 2

COURT ORDERED NOTICE OF CLASS ACTION SETTLEMENT

You may be a member of the settlement class in *Kevin Lowe v. Heritage Federal Credit Union*, in which the plaintiff alleges that defendant Heritage Federal Credit Union (“Defendant”) incorrectly assessed overdraft fees between December 20, 2012, and April 8, 2025. If you are a Settlement Class Member and if the Settlement is approved, you may be entitled to receive a cash payment from the \$635,000.00 fund, all benefits established by the Settlement.

The Court has preliminarily approved this settlement. It will hold a Final Approval Hearing in this case on [PARTIES TO INSERT DATE]. At that hearing, the Court will consider whether to grant final approval to the settlement, and whether to approve payment from the Settlement Fund of up to \$10,000 in a service award to the named plaintiff, up to \$211,666.67 as attorneys’ fees, and reimbursement of costs to the attorneys and the Settlement Administrator and fee expert. If the Court grants final approval of the settlement and you do not request to be excluded from the settlement, you will release your right to bring any claim covered by the Settlement. In exchange, Defendant has agreed to issue a credit to your account or a cash payment to you if you are no longer a member.

To obtain a long form class notice and other important documents please visit [PARTIES TO PROVIDE WEBSITE ADDRESS]. Alternatively, you may call [INSERT PHONE #].

If you do not want to participate in this settlement—you do not want to receive a credit or cash payment 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 #].

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [\\$635K Heritage Federal Credit Union Settlement Ends Class Action Lawsuit Over Alleged Overdraft Fees](#)
