

## AGREEMENT TO SETTLE CLAIMS

This is an agreement to settle all claims raised by Plaintiffs Jeffrey Reichart and Gary Moyer (jointly, “Plaintiffs”) on behalf of themselves and a Washington State Subclass (“the Subclass”) solely against Defendant Keefe Commissary Network, LLC (“Keefe”) in the matter of *Reichert v. Keefe Commissary Network LLC*, No. C17-5848 BHS, (the “Action”) in the United States District Court for the Western District of Washington. The Plaintiffs, the Subclass, and Keefe, are jointly referred to as the “Parties”).

## RECITALS

1. The Action was filed in 2017 against Keefe. Also sued were Defendants Rapid Financial Solutions and Cache Valley Bank, who are not parties to this agreement. No claims made by Plaintiffs and the Subclass against Defendants Rapid Financial Solutions and Cache Valley Bank are resolved by this agreement.

2. The claims raised by Plaintiffs and the Subclass arise from prepaid debit cards received by them to return money held by detention facilities on their behalf. These cards are generally referred to as “release cards.” Plaintiffs and the Subclass contend that they were required to accept release cards for return of the money owed to them, which they contend is illegal. Plaintiffs and the Subclass contend that Keefe should pay damages under the Washington Consumer Protection Act and for conversion, unlawful taking, and unjust enrichment claims, arising from Keefe’s role in contracting with six Washington facilities to provide release cards. Keefe denies that it was involved in any wrongdoing and contends that it is not liable to Plaintiffs or the Subclass under any claim or theory.

3. Keefe and the other Defendants in the Action filed motions to require Plaintiff Moyer to arbitrate his claims. That motion was denied, and Keefe and the other Defendants appealed. During the appeal, a mediation was held between Keefe and the Plaintiffs and the Subclass with the assistance of a Ninth Circuit mediator. Agreement was reached on terms to resolve only the claims brought against Keefe in the Action and is made under the following terms and conditions:

## AGREEMENT

### 1. *Definitions.*

- 1.1 “*Action*” means: *Reichert v. Keefe Commissary Network LLC*, No. C17-5848 BHS, a class action pending in the United States District Court for the Western District of Washington.
- 1.2 “*Agreement*” means: the terms and conditions contained in this agreement among the Parties upon the date it is executed by all Parties.
- 1.3 “*Case Contribution Award*” means: any monetary amount awarded by the Court in recognition of the Plaintiffs’ assistance in the prosecution of this Action.
- 1.4 “*Class Counsel*” means: SIRIANNI YOUTZ SPOONEMORE HAMBURGER.

- 1.5 “*Court*” means: the United States District Court for the Western District of Washington.
- 1.6 “*Effective Date*” means: the date on which all of the conditions to settlement set forth in Section 2 have been fully satisfied or waived.
- 1.7 “*Parties*” means: Plaintiffs, the Subclass, and Keefe.
- 1.8 “*Plaintiffs*” means: Jeffrey Reichart and Gary Moyer.
- 1.9 “*Opt-Out*” means: to timely request exclusion from the Settlement pursuant to Fed. R. Civ. P. 23(c)(2)(B).
- 1.10 “*Qualified Settlement Fund*” means: the trust into which the Settlement Amount shall be deposited and which shall be administered in accordance with Section 8 of this Agreement.
- 1.11 “*Releasees*” means: Keefe and each of its affiliates, subsidiaries, parents, fiduciaries, trustees, recordkeepers, partners, attorneys, administrators, representatives, agents, directors, officers, employees, insurers, reinsurers, predecessors, and their Successors-in-Interest.
- 1.12 “*Settlement*” means the terms and conditions of settlement as described in this Agreement.
- 1.13 “*Settlement Administrator*” means: Class Counsel or an entity selected by Class Counsel, and approved by Keefe and the Court, to administer the Settlement pursuant to this Agreement and orders of the Court.
- 1.14 “*Settlement Amount*” means: \$287,500 to be paid by Keefe under the terms of this Agreement.
- 1.15 “*Six Keefe Facilities*” means: Kitsap County Jail, Grays Harbor County Jail, Clark County Jail, Grant County Jail, Sunnyside Jail and Wapato City Jail.
- 1.16 “*Subclass*” means: the class certified in the Action as the Washington Subclass: All persons who, at any time since October 20, 2013, were: (1) taken into custody at a jail, correctional facility, detainment center, or any other law enforcement facility located in the state of Washington, (2) entitled to the return of money either confiscated from them or remaining in their inmate accounts when they were released from the facility, (3) issued a prepaid debit card from Keefe Commissary Network, LLC, Rapid Investments, Inc., and/or Cache Valley Bank that was subject to fees, charges, and restrictions and (4) not offered an alternative method for the return of their money.
- 1.17 “*Subclass Member(s)*” means: any member(s) of the Subclass.
- 1.18 “*Subclass Notice*” means: the form of notice to be provided to the Subclass after preliminary approval of this Agreement by the Court.
- 1.19 “*Subclass Released Claims*” means: any and all claims of any nature whatsoever that were brought, or that could have been brought against the Releasees, by the Plaintiffs on behalf of the Subclass Members, including

but not limited to claims for any and all benefits, losses, opportunity losses, damages, attorney fees, costs, expenses, contribution, indemnification or any other type of legal or equitable relief.

**2. *Conditions to Effectiveness of the Settlement.***

- 2.1 *Effective Date of Agreement.* This Agreement is effective when all conditions in Sections 2.2 through 2.5 are satisfied or waived.
- 2.2 *Preliminary Court Approval.* An order issued by the Court granting the Parties' joint motion for preliminary approval of the Settlement that (1) preliminarily approves the Settlement as being fair and reasonable to the Plaintiffs and the Subclass, (2) establishes the procedures and a date for a hearing by video, or such other means as the Court deems appropriate, for final approval of the Settlement, and (3) approves the form and methods of providing notice to members of the Subclass that describes: (a) the terms and conditions of the Settlement, (b) how members of the Subclass may comment or object to the Settlement, (c) how members of the Subclass may opt out of the Settlement and not be bound by this Agreement, and (d) the effect of the Settlement on the Subclass Members' claims against other defendants and as members of the national class certified in this Action.
- 2.3 *Issuance of Class Notice.* The process for providing notice to the Subclass and receiving comments, objections, or requests to opt out of the Subclass,, in accordance with the Court's order preliminarily approving the Settlement, is completed.
- 2.4 *Final Court Approval.* An order issued by the Court, after consideration of additional information and materials provided by Class Counsel and counsel for Keefe and any objections and comments received from members of the Subclass or their representatives, that (1) approves the proposed Settlement among the Parties and finds that it is fair, reasonable, and adequate; (2) rules on Class Counsel's requests for attorney fees, reimbursement of costs, and payment of Case Contribution Awards; (3) determines that fair and adequate notice regarding the Settlement and the right to Opt-Out of the Settlement was provided to members of the Subclass; and (4) enters judgment that includes a dismissal of Plaintiffs' and the Subclass' claims against Keefe with prejudice and without an award of costs or fees other than as provided under the Agreement and that identifies and excludes from the judgment Class Members who chose to Opt-Out of the Settlement.
- 2.5 *Payment Made.* Keefe has paid the amount required by this Agreement in accordance with Section 6.1 of this Agreement.

### 3. *Releases.*

- 3.1 *Releases of the Releasees.* Upon the Effective Date of Settlement, Plaintiffs, on their own behalf and, to the full extent permitted by law, on behalf of Subclass Members who did not Opt-Out of this Settlement, absolutely and unconditionally release and forever discharge Releasees from any and all Subclass Released Claims that Plaintiffs or the Subclass have directly, indirectly, derivatively, or in any other capacity ever had or now have whether known or unknown, supported or unsupported.
- 3.2 Subclass Members who did not Opt-Out of this Settlement covenant not to sue Releasees for any and all Subclass Released Claims and are enjoined and barred from asserting any Subclass Released Claims, except as specifically provided in Section 6.7. The foregoing, however, does not prohibit Plaintiffs or Subclass Members from enforcing the terms of the Agreement.
- 3.3 Subclass members who Opt-Out of this Settlement may continue to pursue their claims against defendants other than Keefe in this Action. Subclass members who Opt-Out of this Settlement who wish to bring their own claims against Keefe may not do so in this Action but must initiate a request for relief in a separate lawsuit or arbitration in which they must obtain their own counsel to represent them.
- 3.3 *Keefe's Releases of Plaintiffs, the Settlement Class, and Class Counsel.* Upon the Effective Date of Settlement, Keefe, to the full extent permitted by law, absolutely and unconditionally release and forever discharge the Plaintiffs, the Subclass, except for Subclass Members who Opt-Out of this settlement, and Class Counsel from any and all claims based on the institution or prosecution of the Action.
- 3.4 Keefe covenants not to sue Plaintiffs, the Subclass, and Class Counsel for claims relating to institution or prosecution of the Action. The foregoing, however, does not prohibit Keefe from enforcing the terms of the Agreement.

### 4. *Representations and Warranties.*

- 4.1 *Plaintiffs.* Plaintiffs represent and warrant that they have not assigned or otherwise transferred any interest in any Subclass Released Claims against any Releasees, and further covenant that they will not assign or otherwise transfer any interest in such claims.
- 4.2 *The Parties.* The Parties, and each of them, represent and warrant they are voluntarily entering into this Agreement as a result of arm's-length negotiations; in executing this Agreement they are relying upon their own judgment, belief and knowledge, and the advice and recommendations of their own counsel, concerning the nature, extent and duration of their rights

and claims hereunder and regarding all matters which relate in any way to the subject matter hereof. The Parties, and each of them, represent and warrant that they have carefully read the contents of this Agreement; they have made such investigation of the facts pertaining to the Settlement, this Agreement, and all of the matters pertaining thereto as they deem necessary or appropriate; and this Agreement is signed freely by each person executing this Agreement on behalf of each party. Each individual executing this Agreement on behalf of any other person does hereby represent and warrant to the other parties that he or she has the authority to do so.

**5. *No Admission of Liability.***

- 5.1 The Parties understand and agree that this Agreement is a compromise that settles disputed claims, and nothing herein shall be deemed to constitute an admission of any liability or wrongdoing by any of the Releasees. Neither the fact nor the terms of this Agreement shall be offered or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce this Agreement or arising out of or relating to the Final Order and motions for preliminary and final approval.

**6. *Qualified Settlement Fund.***

- 6.1 *Payment of Settlement Amount.* Keefe shall pay the Settlement Amount into an account established for that purpose by the Settlement Administrator. Keefe shall make this payment within 31 days after the Court enters a judgment for final approval of the settlement. Plaintiffs and Keefe agree that the amounts held in the account will be treated as a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1, *et seq.*
- 6.3 *Payments from Settlement Amount.* The Settlement Amount shall be used to make payments to Subclass Members who file valid claims, attorney fees and costs payable to Class Counsel, Case Contribution awards to Plaintiffs, and costs of providing the settlement notice and claims administration for the Settlement.
- 6.4 *Payments for taxes.* The Settlement Administrator is responsible for filing tax returns and related forms, if necessary, for income earned on the Settlement Amount. Any required federal or state taxes will be paid from the Settlement Amount without further order or approval of the Court. Releasees shall not have any liability or responsibility for tax expenses or filing of tax returns.

**7. *Distribution of Settlement Fund to Subclass.***

- 7.1 Payments to Subclass Members who did not Opt-Out and filed valid claims shall be made from the Settlement Amount remaining after deducting the (a) attorney fees and costs payable to Class Counsel approved by the Court,

(b) Case Contribution awards payable to Plaintiffs approved by the Court, (c) costs of providing the settlement notice and claims administration for the Settlement, and (d) amounts paid or held in reserve for taxes, preparation of tax returns, and expenses of mailing checks to Subclass Members.

7.2 Each Subclass Members' claim shall be calculated by multiplying by three the fees incurred on the Release Card received by the Subclass Member upon release from one or more of the Six Keefe Facilities. If sufficient funds exist after the deduction set forth in Section 7.1, then those claims shall be paid at 100%. However, if insufficient funds exists, then each Subclass Member's claim shall be paid on a pro rata basis with all other clamants.

7.3 Any funds remaining after all deductions have been taken under Section 9.1, and 30 days after all payments determined by Section 7.2 have been mailed to Subclass Members who submitted valid claims, shall be paid to one or more *cy pres* recipients approved by the Court.

**8. *Grounds for Termination of Agreement.***

8.1 *Court Rejection.* If the Court declines to preliminarily or finally approve the Settlement in accordance with this Agreement, then this Agreement will terminate and become null and void, unless otherwise stipulated by the Parties.

8.2 *Court of Appeals Reversal.* If the Court of Appeals reverses the Court's order approving the Settlement, this Agreement will terminate and will become null and void, unless otherwise stipulated by the Parties.

8.3 *Supreme Court Reversal.* If the Supreme Court of the United States reverses the Court's order approving the Settlement, then this Agreement shall automatically terminate and thereupon become null and void, on the 31st day after issuance of the Supreme Court's mandate.

8.4 *Pending Appeal.* If an appeal is pending of an order declining to approve the Settlement, this Agreement shall not be terminated until final resolution of dismissal of any such appeal, except by written agreement of the Parties.

**9. *Consequences of Termination.*** If the Agreement is terminated or rendered null and void for any reason, then the following shall occur unless otherwise stipulated by the Parties:

9.1 *Reversion of Action.* The Action shall revert to its status as of November 9, 2021, and the fact and terms of this Agreement shall not be used in the Action for any purpose.

- 9.2 *Releases and Terms Void.* All Releases given or executed pursuant to this Agreement shall be null and void and none of the terms of the Agreement shall be effective or enforceable.

**10. *Attorney Fees, Litigation Expenses and Case Contribution Awards.***

- 10.1 *Attorney Fees.* Class Counsel shall apply for attorney fees under the common fund/common benefit doctrine. Keefe will take no position with respect to this application for attorney fees, which is subject to review and approval by the Court.
- 10.2 *Litigation Costs.* Class Counsel's out-of-pocket litigation costs shall be reimbursed out of the Settlement Amount, subject to the Court's review and approval.
- 10.3 *Case Contribution Award.* Case Contribution Awards for the Plaintiffs may be requested. Keefe will take no position with respect to any application for Case Contribution Awards, which is subject to the Court's review and approval.

**11. *Press Release.*** Outside of required disclosures to the Court and the Subclass, Plaintiffs and Class Counsel will not advertise or otherwise pursue media coverage of the settlement terms except that (1) Human Rights Defense Center and Prison Legal News may publish news regarding the settlement and (2) Class Counsel may disclose the settlement as part of updates regarding the Action on their website.

**12. *Miscellaneous***

- 12.1 *Dispute Resolution.* The Parties agree that any dispute regarding the terms, conditions, releases, enforcement or termination of this Agreement shall be resolved by a mutually-agreed upon mediator in Seattle, Washington, through mediation and, if mediation is unsuccessful, through binding arbitration before retired King County Superior Court Judge George Finkle. If Judge Finkle is unavailable, the Parties shall arbitrate before another mutually-agreed upon arbitrator at Judicial Dispute Resolution in Seattle, Washington.
- 12.2 *Governing Law.* This Agreement shall be governed by the laws of State of Washington without regard to conflict of law principles.
- 12.3 *Severability.* The provisions of this Agreement are not severable.
- 12.4 *Amendment.* Before entry of the Preliminary Approval Order, this Agreement may be modified or amended only by written agreement signed by or on behalf of all Parties. Following entry of the Preliminary Approval Order, this Agreement may be modified or amended only by written agreement signed on behalf of all Parties and approved by the Court.



- 12.5 *Waiver.* The provisions of this Agreement may be waived only by an instrument in writing executed by the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.
- 12.6 *Construction.* None of the Parties hereto shall be considered to be the drafter of this Agreement or any provision thereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause the provision to be construed against the drafter thereof.
- 12.7 *Principles of Interpretation.* The following principles of interpretation apply to this Agreement:
- 12.7.1 *Headings.* The headings herein are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.
- 12.7.2 *Singular and Plural.* Definitions apply to the singular and plural forms of each term defined.
- 12.7.3 *References to a Person.* References to a person include references to an entity, and include successors and assigns.
- 12.8 *Survival.* All representations, warranties and covenants set forth in herein shall be deemed continuing and shall survive the Effective Date of Settlement.
- 12.9 *Entire Agreement.* This Agreement contains the entire agreement among the Parties relating to this Settlement and supersedes any and all prior verbal and written communications regarding the Settlement.
- 12.10 *Counterparts.* This Agreement may be executed by exchange of executed faxed or PDF signature pages, and any signature transmitted in such a manner shall be deemed an original signature. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same instrument.
- 12.11 *Binding Effect.* This Agreement binds and inures to the benefit of the Parties hereto, their assigns, heirs, administrators, executors, and successors-in-interest, affiliates, benefit plans, predecessors, and transferees, and their past and present shareholders, officers, directors, agents, and employees.
- 12.12 *Further Assurances.* Each of the Parties agree, without further consideration, and as part of finalizing the Settlement hereunder, that they will in good faith promptly execute and deliver such other documents and



take such other actions as may be necessary to consummate the subject matter and purpose of this Agreement.

- 12.13 *Tax Advice Not Provided.* No opinion or advice concerning the Tax consequences of the Settlement Agreement has been given or will be given by Class Counsel, nor is any representation or warranty in this regard made by virtue of this Agreement. The Tax obligations, if any, of the Subclass and the determination thereof are the sole responsibility of each Subclass Member, and it is understood that the Tax consequences may vary depending on the particular circumstances of each Subclass Member.

**SIGNATURES:**

\_\_\_\_\_  
Keefe Commisary Network, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
Jeffrey Reichert

\_\_\_\_\_  
Gary Moyer