

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CAROL TIMS, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

LGE COMMUNITY CREDIT UNION,

Defendant.

Case No. 1:15-cv-04279-TWT

**MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT
AND CERTIFICATION OF SETTLEMENT CLASS**

On August 10, 2022, the Court issued preliminary approval to the settlement and notice program and provisionally certified the settlement class. *See* Preliminary Approval Order (Dkt. No. 145). Notice has now been provided to the class and Plaintiff hereby moves for final approval of the settlement and certification of the settlement class. The settlement – which consists of (1) a common fund of \$1.31 million to be distributed to current and former customers of Defendant LGE Community Credit Union (“LGE”) that were allegedly charged improper overdraft fees and (2) disclosure changes to more clearly state that the available balance is used by LGE to determine whether an overdraft has occurred, and to define available balance. LGE has changed the language in its Opt-In Form to likewise more clearly explain its overdraft program.

The settlement is an outstanding achievement that will provide immediate benefits to the settlement class without further risks or delay. Moreover, the notice program, as implemented, satisfies due process and Rule 23 and the settlement class satisfies the requirements for certification. This motion should thus be granted.

BACKGROUND

A. Facts and Procedural History. On December 9, 2015, Plaintiff Tims filed this action against LGE, asserting claims for breach of contract (including via the covenant of good faith and fair dealing), unjust enrichment, money had and received, negligence, and violation of the Electronic Funds Transfer Act (“EFTA”). *See* Joint Declaration of E. Adam Webb and Richard D. McCune, ¶ 12 (“Joint Decl.”) (Doc. No. 144-2). LGE was served on February 5, 2016. *Id.* at ¶ 13. On March 25, 2016, LGE moved to dismiss for failure to state a claim. Among other things, the motion alleged Mrs. Tims’ breach of contract and money had and received allegations were insufficient, and the unjust enrichment claim failed as a matter of law in light of the existence of the contract. *Id.* at ¶ 14.

On April 25, 2016, Mrs. Tims filed an amended complaint. *Id.* at ¶ 15. In response, LGE filed a renewed motion to dismiss as to the amended complaint. *Id.* at ¶ 16. Mrs. Tims responded to the motion on May 31, 2016. *Id.* at ¶ 17.

Defendant filed a reply in further support of its motion on June 17, 2016. *Id.* at ¶ 18.

On July 13, 2016, the parties filed a joint motion to stay consideration of Defendant's motion to dismiss for 60 days to allow for the parties to engage in settlement discussions. *Id.* at ¶ 19. This Court granted the joint motion on July 14, 2016. *Id.* at ¶ 20. In connection with their settlement efforts, the parties negotiated and filed a stipulated protective order on October 12, 2016. *See* Dkt. No. 38.

Over the next several months, the parties continued their settlement discussions and received additional time from the Court to continue these efforts. *See* Dkt. Nos. 44, 46. Eventually, the settlement talks reached an impasse and Mrs. Tims requested that the Court lift the stay and proceed to a ruling on LGE's motion to dismiss. *See* Joint Decl., ¶ 23. The Court granted this request on June 7, 2017. *Id.*

Around the same time that Plaintiff requested that the stay be lifted, LGE changed counsel. *See* Dkt. Nos. 47, 49, 50. On June 19, 2017, the Court held a status conference with the parties regarding the case. *See* Dkt. No. 58. During the status conference, the Court ordered the parties to supplement their briefing as to Defendant's motion to dismiss by July 7, 2017. *Id.*

On July 7, 2017, Mrs. Tims and LGE filed their supplemental briefs as instructed by the Court. *See* Joint Decl., ¶ 26. On November 6, 2017, the Court entered an order granting LGE's motion to dismiss and entering judgment in favor of Defendant. *See* Dkt. Nos. 67, 68. Mrs. Tims appealed. *See* Dkt. No. 69.

On August 24, 2019, the Eleventh Circuit Court of Appeals reversed the dismissal of Mrs. Tims' amended complaint and remanded the case for further proceedings. *See* Joint Decl., ¶ 29. On September 9, 2019, Defendant filed its answer to the amended complaint. *Id.* at ¶ 30. On October 8, 2019, the parties filed their joint preliminary report and discovery plan. *Id.* at ¶ 31.

On October 14, 2019, LGE filed a motion to strike the class allegations contained in the amended complaint. *Id.* at ¶ 32. Plaintiff filed a response in opposition (Dkt. No. 83), and Defendant filed a reply. *Id.* at ¶ 33. Defendant's motion to strike was denied on March 23, 2020. *See* Dkt. No. 96.

On November 21, 2019, the district court held a scheduling conference. *See* Dkt. No. 87. Thereafter, on November 22, 2019, the Court entered a scheduling order. *See* Dkt. No. 89. Thereafter, the parties participated in discovery, including a telephonic discovery conference before the Court on February 7, 2020. *See* Dkt. No. 94. On September 14, 2020, the parties filed a joint motion to stay the case

pending mediation, which motion the Court granted and extended twice. *See* Dkt. Nos. 109, 110, 112, 113, 114, 115.

B. Mediation and Settlement. On January 26, 2021, the parties participated in mediation before experienced class action mediator Hunter Hughes, III. *See* Joint Decl., ¶ 38. With the assistance of Mr. Hughes, the parties ultimately came to an agreement to settle the claims alleged in the FAC on the terms set forth in the Settlement Agreement. *Id.* On February 3, 2021, the parties informed the Court that they had reached a settlement in principal. *Id.* at ¶ 39.

Over the next few weeks, the parties exchanged multiple redlined drafts of the agreement, which included fine tuning how notice and eventually payments could most efficiently be disseminated to the class members. *Id.* at ¶ 40. During this time period, the parties also exchanged multiple drafts of (1) the notice to ensure that the settlement was accurately and appropriately described to the class, and (2) the allocation formula, which was designed to fairly divide payments among class members in accordance with Plaintiff's theories and to do so in a logistically feasible manner. *Id.* at ¶ 41. The allocation formula was developed in coordination with Plaintiff's expert to disperse funds in rough proportion to the categories of challenged fees.

In conjunction with these discussions, Class Counsel obtained advice from potential settlement administrators, who also submitted competitive bids to provide notice and administer the settlement. *Id.* at ¶ 42. The parties ultimately chose KCC to be the settlement administrator. *Id.* at ¶ 43. Consensus was reached on final drafts of the agreement, notices, and allocation formula in April 2021. *Id.* at ¶ 44.

As part of the original Settlement Agreement, Plaintiff's expert was slated to review PDF versions of individual account statements for LGE customers during the time periods of December 2009 through May 2010 and January 2011 through May 2011, in order to make up for gaps in LGE records and identify potential class members during these periods. *Id.* at ¶ 45. However, due to various unforeseen challenges, a review of these PDF statements was unable to be completed in a timely fashion. *Id.* at ¶ 46. Therefore, the parties reconvened with Mr. Hughes to renegotiate the settlement terms and exclude the time periods of December 2009 through May 2010 and January 2011 through May 2011 from the settlement classes. *Id.* at ¶ 47. On March 21, 2022, the parties came to an amended agreement to settle this matter on the terms set forth in an Amended Settlement Agreement. *Id.* at ¶ 48; Dkt. No. 140.

C. **Terms of the Settlement.** The settlement's terms are detailed in the agreement. *See* Dkt. No. 144-1. The following is a summary of the material terms:

1. **Settlement Class:** The settlement classes – opt-out classes under Rule 23(b)(3) – are defined as:

those members of Defendant who opted in to the overdraft program, and who were charged an overdraft fee on an ATM or debit card transaction on a non-business account between August 15, 2010 and September 18, 2015 (the “Regulation E Class”).

and

those members of Defendant who received an overdraft fee on a non-business account when, at the time the transaction posted to the member's account, the ledger balance was equal to or greater than the transaction causing the overdraft between December 9, 2009 and September 18, 2015 (the “Sufficient Funds Class”).

Settlement, ¶¶ 1(cc) and (gg). Several types of entities enumerated in the settlement are excluded from the class, most notably those owned by or affiliated with Defendant. *Id.*

2. **The Relief:** The relief to settlement class members includes: ***Settlement Fund*** – Defendant will pay \$1.31 million that will be used to pay cash benefits to settlement class members, notice and administration costs, legal fees and expenses, and any necessary taxes. Settlement, ¶ 1(ee). The majority of settlement class members – roughly 16,000 in number – are automatically eligible

to receive a cash payment. Settlement, ¶ 9; Joint Decl., ¶¶ 50-51. Others need only file a simple claim form. Settlement, ¶ 9.

The amount of the cash payments is calculated as described in the allocation formula, which is found in paragraph 10(d)(iv) of the settlement. Ninety percent of the net settlement fund (the amount remaining after payment of all other obligations) is allocated to the Sufficient Funds Class and ten percent is allocated to the Regulations E Class.

Disclosure Changes – In addition to funding the settlement, Defendant has already revised the language in its Membership and Account Agreement to more clearly state that the available balance is used by Defendant to determine whether an overdraft has occurred, and to define available balance. Defendant also changed the language in its Opt-In Form to likewise more clearly explain its overdraft program. Settlement, ¶ 2.

D. The Notice Program. The notice program was designed to provide the best notice practicable, and was tailored to take advantage of the contact information LGE had available about the settlement class members. Settlement ¶ 7. Each facet of the notice program was timely and properly accomplished. *See* Declaration of Jeff Moore, ¶¶ 5-9 (Exh. 1 hereto) (“Moore Decl.”). Defendant forwarded the settlement administrator the names and contact information for all members of the settlement

class. *Id.* at ¶ 4. Notice of the settlement was sent to class members by email and postcard notice with attached claim forms were sent to those members whose email addresses were unavailable or unusable. Reasonable efforts were made to update all addresses. *Id.* at ¶¶ 5-8. Since September 9, 2022, the Email Notice, Class Notice, Claim Form, relevant pleadings, and other information about the settlement has been available on the settlement website. *Id.* at ¶ 9.

The success rate for the individual notice program has been high. To date, individual notice has reached 97 percent of settlement class members, *id.* at ¶¶ 6-7, and efforts to resend notices to those whose previous notice was returned as undeliverable are ongoing. *Id.* This reach exceeds the threshold recommended by the Federal Judicial Center and approved by many courts in connection with other class action settlements. *E.g.*, <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>.

As of November 9, 2022, the settlement administrator had received **zero** requests for exclusion (opt-outs). Moore Decl. ¶ 11. Moreover, to date **zero** objections to the settlement have been received. *Id.* at ¶ 12; *also* Supplemental Joint Declaration of E. Adam Webb and Richard D. McCune (“Supp. Joint Decl.”) ¶ 18 (Exh. 2 hereto).

ARGUMENT AND CITATION OF AUTHORITY

Court approval is required for settlement of a class action. Fed. R. Civ. P. 23(e).

Courts have long recognized “the strong judicial policy favoring [class] settlement as well as by the realization that compromise is the essence of settlement.” *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984); *see also Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977); *Meyer v. Citizens and Southern Bank*, 677 F. Supp. 1196, 1200 (M.D. Ga. 1988). Indeed, “[s]ettlements conserve judicial resources by avoiding the expense of a complicated and protracted litigation process and are highly favored by the law.” *In re Motorsports Merchandise Antitrust Litig.*, 112 F. Supp. 2d 1329, 1333 (N.D. Ga. 2000). The Court has broad discretion in approving a settlement. *Id.* As explained herein, the Settlement here provides excellent, automatic benefits to the Settlement Class and is more than sufficient under Rule 23(e). Final approval is warranted.

A. The Court Has Personal Jurisdiction Over the Settlement Class.

In addition to having personal jurisdiction over Plaintiff, the Court also has personal jurisdiction over all members of the settlement class because they received the requisite notice and due process. *See Phillips Petro. Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950)). The Court-approved individual notice program, supplemented by the settlement website, more than satisfies due process requirements. *Shutts*, 472 U.S. at 812; Preliminary Approval Order, ¶ 11. Indeed,

not only did the notice inform the settlement class members about the scope of the settlement, their rights under the settlement, and where they could find more information, but it also informed them of class counsel's intention to seek fees of up to one-third of the settlement fund as well as \$10,000 service award for the Plaintiff. Hence, the notice was "reasonably calculated, under [the] circumstances, to apprise interested Parties of the pendency of the action and afford them an opportunity to present their objections." *Shutts*, 472 U.S. at 812.

Moreover, in terms of timing, the settlement class members had 60 days between the initial emailing and mailing of the notice and the deadline to request exclusion from the class, which is November 14, 2022. *Silber v. Mabon*, 18 F.3d 1449, 1452, 1454 (9th Cir. 1994) (due process requirement and Rule 23 satisfied when settlement notices were sent out 40 days before the opt-out deadline). The notice program, as implemented, clearly met constitutional and Rule 23(e) due process requirements. As a result, the Court should affirm in its final approval order that the settlement class was provided the best notice practicable under the circumstances.

B. The Settlement Is Fair, Adequate, and Reasonable. Federal Rule 23(e) indicates settlements should be approved if they are "fair, adequate, and reasonable." Over the years, the various circuits developed their own criteria for

assessing whether a class settlement met this standard. The Eleventh Circuit, for instance, identified six key points of analysis, known as the “*Bennett* factors.” *Leverso v. Southtrust Bank*, 18 F.3d 1527, 1530 (11th Cir. 1994); *also Bennett*, 737 F.2d at 986. These six factors are:

(1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of plaintiffs’ success on the merits; (5) the range of possible recovery; and (6) the opinions of the class counsel, class representatives, and absent class members.

Leverso, 18 F.3d at 1530.

In an effort to unify the criteria considered by the various circuits, Congress recently amended Rule 23(e) to specifically articulate the applicable criteria. The amended Rule 23(e)(2) took effect on December 1, 2018, and states that courts may approve a proposed settlement as “fair, reasonable, and adequate” only after a hearing and after considering whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing

class-member claims;

- (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
- (iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

An analysis of these criteria, which are substantively similar to the Eleventh Circuit's *Bennett* factors, show this settlement to be eminently fair, reasonable, and adequate.

1. The Settlement Class Has Received Outstanding Representation: The record shows that class counsel and the class representatives have provided excellent representation to the settlement class. Class counsel conducted an extensive factual investigation before filing the case; obtained a huge amount of class and merits discovery from Defendant; obtained voluminous information to enable a qualified data expert to accurately estimate class damages; retained such an expert to calculate damages; and briefed various legal issues in Court and during the mediation process on both merits and class certification issues. Joint Decl. ¶¶ 7-48; Firm Résumés (Exh. 1 & 2 to Joint Decl.); Supp. Joint Decl. ¶ 2.

Class counsel's extensive knowledge, investigation, discovery, and briefing allowed them to better understand the merits of these action and damages of the settlement class, prepared them for the mediation, and successfully positioned

them to engage in vigorous, arms-length negotiations under the direction of Mr. Hughes, who fully explored the issues in the case and helped the parties reach the proposed settlement. Supp. Joint Decl. ¶ 3.

In light of the foregoing, the settlement constitutes an informed, educated, and fair resolution of this dispute. Extensive information allowed class counsel and the class representatives to assess their position in great detail and make a reasonable decision on settlement, which is all that is required. *E.g., Champs Sports Bar & Grill Co. v. Mercury Payment Sys., LLC*, 275 F. Supp. 3d 1350, 1354 (N.D. Ga. 2017) (approving class settlement that was settled under similar circumstances); *Mashburn v. Nat’l Healthcare, Inc.*, 684 F. Supp. 660, 669 (M.D. Ala. 1988) (settlement appropriate given counsel acquired sufficient information “to determine the probability of . . . success on the merits, the possible range of recovery, and the likely expense and duration of the litigation”).

2. The Settlement Was Negotiated at Arm’s Length: The settlement resulted from hard-fought, informed, protracted negotiations by experienced attorneys with the active assistance of a well-respected and highly experienced mediator. Joint Decl. ¶¶ 54-68. Counsel zealously represented their clients throughout the case. The settlement did not result from fraud or collusion. *E.g., In re Checking Account Overdraft Litig.*, 275 F.R.D. 654, 661 (S.D. Fla. 2011)

(“Settlement negotiations that involve arm’s length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness”); *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 693 (N.D. Ga. 2001) (“The fact that the entire mediation was conducted under the auspices of ... a highly experienced mediator lends further support to the absence of collusion”).

3. The Substantial Relief Provided Is Admirable Given the Risks: “The law favors compromises in large part because they are often a speedy and efficient resolution of long, complex, and expensive litigations.” *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 543 (S.D. Fla. 1988). A settlement thus merits approval if it “will alleviate the need for judicial exploration of . . . complex subjects, reduce litigation costs, and eliminate the significant risk that individual claimants might recover nothing.” *Lipuma v. American Express Co.*, 406 F. Supp. 2d 1298, 1323 (S.D. Fla. 2005). Such is the case here. Indeed, if not settled, this case inevitably will result in substantial additional expenditure of time and money by the parties and the Court, as would be true of any case involving complex facts and a class of 15,898 members. The Court would be required to rule on class certification, summary judgment motions, and *Daubert* challenges, followed by a lengthy trial and (potentially) appeals. Joint Decl. ¶ 68. The enormous costs to the parties and the court system of such proceedings are obvious and cannot be overlooked.

Because many of the most controversial and hard-fought of all the issues in this case remain to be litigated, the settlement “eliminates the transaction costs that further proceedings would impose,” “provides relief for the class sooner than continued litigation would,” and “avoids the risks and burdens of potentially protracted litigation.” *Ayers v. Thompson*, 358 F.3d 356, 369 (5th Cir. 2004).

Settlement is an appropriate outcome where the likelihood of success is difficult to assess and the plaintiffs face substantial challenges. *Parker v. Anderson*, 667 F.2d 1204, 1209 (5th Cir. 1982). Such is the case here. Indeed, the settlement represents a compromise that balances the merits of Plaintiff’s claims with the considerable difficulties of proving their claims. The class representative and class counsel believe that they could succeed on their claims at trial. Joint Decl. ¶ 68. However, the risks involved cannot be disregarded. *Id.*

The proposed settlement avoids these uncertainties and provides the settlement class with immediate, meaningful, and certain monetary and equitable relief. *Id.* Under the circumstances, Plaintiff and class counsel appropriately determined that the settlement outweighs the risks of continued litigation. *Id.* at ¶ 65.

Here, the settlement falls within the range of reason. Based on class counsel’s work with Plaintiff’s expert, the settlement recovers approximately forty percent (40%) of the most likely recoverable trial damages. These benefits compare

favorably with class settlements approved in other cases. *See, e.g., Mercury Payment*, 275 F. Supp. 3d at 1354 (settlement recovering 25-50% of damages approved by Judge Cohen); *Lipuma*, 406 F. Supp. 2d at 1323 (approving settlement that provided less than ten percent of potential recovery); *Behrens*, 118 F.R.D. at 542 (settlement for six percent of damages approved and noting “fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean [it] is unfair or inadequate”).

Additionally, the settlement made it as easy as possible on class members to receive their payments, with the Settlement Fund Class automatically receiving their payments and the Regulation E Class receiving payment after submitting a very simple claim form that is extremely easy to complete. Settlement ¶ 10; Supp. Joint Decl. ¶ 17. The experienced settlement administrator will have no trouble processing the simple claim form. Claims will only be rejected if they are submitted by non-settlement class members or are untimely. *Id.*

Subject to approval by the Court, the settlement calls for class counsel to receive one-third of the settlement fund and an expense reimbursement, and the class representative to receive a service award of \$10,000. Settlement ¶ 10(d)(i) and (ii). The parties did not negotiate these amounts until after the key provisions of the settlement, including the direct relief to the class, was agreed upon. Joint Decl. ¶ 85.

These amounts are reasonable. *See* Motion for Attorneys’ Fees, Expenses, and Service Awards (filed concurrently herewith).

The parties have no agreements in connection with the settlement other than those specifically articulated in the agreement. Joint Decl. ¶ 95.

By any reasonable measure, the settlement is a significant achievement given the extraordinary obstacles that Plaintiff and the settlement class faced.

4. The Settlement Treats Class Members Equitably: All class members have the same opportunity to receive a payment from the settlement fund pursuant to an allocation formula that was designed to ensure that settlement class members will be fairly compensated relative to each other. Joint Decl. ¶¶ 90-93. All class members have been treated equitably.

5. The Opinions of Class Counsel, the Class Representatives, and Absent Class Members Support the Settlement: The Advisory Committee Note to the amended Rule 23(e) provides that courts may continue to consider factors previously used to assess the fairness of a settlement in addition to those specifically enumerated. As a result, the Court should give “great weight to the recommendations of counsel for the Parties, given their considerable experience in this type of litigation.” *Warren v. City of Tampa*, 693 F. Supp. 1051, 1060 (M.D. Fla. 1988); *see also In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297,

312-13 (N.D. Ga. 1993) (“In determining whether to approve a proposed settlement, the Court is entitled to rely upon the judgment of the Parties’ experienced counsel. ‘[T]he trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel’”) (citations omitted).

Class counsel whole-heartedly recommend the settlement as an excellent result. Supp. Joint Decl. ¶ 25. Indeed, class counsel endorse the settlement as fair, reasonable, and adequate based upon (i) their experience litigating other class actions, including those involving similar allegations as to other banks; (ii) their hands-on involvement in this litigation; (iii) their knowledge of the extensive formal and mediation discovery that they reviewed and analyzed; (iv) the opinions and guidance they received from their expert; and (v) their participation in arms-length and adversarial negotiations under the supervision of Mr. Hughes. Joint Decl. ¶ 93.

The named Plaintiff also agrees that the settlement is a fair, adequate, and reasonable compromise. Joint Decl. ¶ 94.

Moreover, every indication is that collectively the absent settlement class members also support the settlement. While the objection deadline is weeks away and the opt out deadline is next week, to date no class member has objected or requested to opt out. Moore Decl. ¶¶ 11, 12. Considering that the settlement class comprises 15,898 members, this response is overwhelmingly favorable,

strengthening the argument that the settlement should be approved. Indeed, it is settled that “[a] small number of objectors from a plaintiff class of many thousands is strong evidence of a settlement’s fairness and reasonableness.” *Association for Disabled Americans v. Amoco Oil Co.*, 211 F.R.D. 457, 467 (S.D. Fla. 2002).

All of the new Rule 23(e)(2) factors, as well as the Eleventh Circuit’s *Bennett* factors, support a finding that the settlement is fair, reasonable, and adequate.

C. The Court Should Certify the Settlement Class. This Court has previously found that the settlement class is adequately defined and clearly ascertainable and satisfies all requirements of Rule 23(a) and 23(b)(3) for settlement purposes. *See* Preliminary Approval Order ¶¶ 3-5; *also* Motion for Preliminary Approval, pp. 18-23. Nothing has changed regarding the application of the factors to this case since the preliminary approval order was entered. For the reasons already considered by the Court, Plaintiff request that the Court confirm its preliminary decision and finally certify the settlement class. *E.g., Mercury Payment*, 275 F. Supp. 3d at 1355.

CONCLUSION

Based on the foregoing, Plaintiff and class counsel respectfully request that the Court find that the notice program, as implemented, meets the requirements of due process and Rule 23, finally approve the settlement, and certify the settlement

class. Plaintiff will submit a proposed order for the Court's consideration.

DATED this 10th day of November, 2022.

Respectfully submitted,

BY: WEBB, KLASSE & LEMOND, LLC

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TYPE AND FONT CERTIFICATION

The undersigned certifies that this brief complies with Local Rule 5.1(B) regarding typefaces and fonts.

/s/ G. Franklin Lemond, Jr.
G. Franklin Lemond, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 2022, I caused the foregoing document to be electronically filed with the Clerk of Court using the CM/ECF system which automatically sends email notification of such filing to all attorneys of record.

/s/ G. Franklin Lemond, Jr.
G. Franklin Lemond, Jr.

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CAROL TIMS, individually and on)
behalf of all others similarly situated,)
Plaintiff,)

v.)

COMMUNITY CREDIT UNION,)
Defendant.)

) CIVIL ACTION FILE

) NO. 1:15-CV-04279-LGE-TWT

) DECLARATION OF JEFF MOORE

) **NOTICE PROCEDURES**

1 I, Jeff Moore, declare and state as follows:

2 1. I am a Senior Project Manager with KCC Class Action Services, LLC (“KCC”),
3 located at San Rafael, California. Pursuant to the ORDER GRANTING PRELIMINARY
4 APPROVAL AND DIRECTING NOTICE, (the “Preliminary Approval Order”) dated August 10,
5 2022, the Court appointed KCC as the Claims Administrator in connection with the proposed
6 Settlement of the above-captioned Action.¹ I have personal knowledge of the matters stated herein
7 and, if called upon, could and would testify thereto.

8 **CAFA NOTIFICATION**

9 2. In compliance with the Class Action Fairness Act (“CAFA”), 28 U.S.C. Section
10 1715, KCC compiled a CD-ROM containing the following documents: *Class Action Complaint*,
11 *Amended Class Action Complaint*, *Response to Amended Class Action Complaint*, *Order re*
12 *Preliminary Approval Hearing*, *Proposed Order re Preliminary Approval Hearing*, *Motion for*
13 *Preliminary Approval*, *Motion to Dismiss Plaintiff’s Complaint*, *Motion to Dismiss Plaintiff’s First*
14 *Amended Complaint*, *Joint Declaration of E Adam Webb and Richard D McCune*, *Reply in Support*
15 *of Motion to Dismiss*, *Supplemental Brief in Further Support of Motion to Dismiss First Amended*
16 *Complaint*, *Motion to Strike Class Allegations Contained in Plaintiff’s First Amended Complaint*,
17 *Reply in Further Support of Defendant’s Motion to Strike Class Allegations*, *Plaintiff’s First*
18 *Amended Complaint*, *Long Form Notice and Claim Form*, *Settlement Agreement*, *Executed*
19 *Amended Settlement Agreement*, *Executed Side Agreement Regarding Defendant’s Right to*
20 *Terminate Agreement*, *a copy of the Class Member Data*, *Order Dismissing Plaintiff Action*,
21 *Issuance of Mandate*, *Opinion and Order Granting Defendant’s Motion to Dismiss*, *Motion*
22 *Denying Defendant’s Motion to Strike Plaintiff’s Class Allegations*, *and the Order Reversing and*
23 *Remanding District Court’s Motion to Dismiss*, and a cover letter (collectively, the “CAFA Notice
24 Packet”). A copy of the cover letter is attached hereto as Exhibit A.

25
26
27
28 ¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Amended Settlement Agreement and Release, dated August 8, 2022, and/or the Preliminary Approval Order.

4. On August 31, 2002 and September 2, 2022, KCC received from Defendant a list of 15,898 persons identified as the Class List. The Class List included lists of applicable data points, such as: names, addresses, bank account fees paid or charged, and e-mail addresses. KCC formatted the list for mailing and emailing purposes, and processed the names and addresses through the National Change of Address Database (“NCOA”) to update any addresses on file with the United States Postal Service (“USPS”).

5. On September 15, 2022, KCC caused the (collectively, the “Notice Packet”) to be printed and mailed to Class Members who do not have a known valid email address available. The Notice was mailed to the 1,438 names and mailing addresses in the Sufficient Funds Class List, and the Claim Form with Notice was mailed to the 5,256 Regulation E Class Members and the Hybrid Class who were on both the Sufficient Funds List and the Regulation E Class list. Altogether KCC mailed 6,684 Notice packets to the class. A true and correct copy of the Notice Packets are attached hereto as Exhibits C and D, respectively.

3

EMAILING OF THE NOTICE PACKETS

7. On September 15, 2022, KCC caused the Notice to be emailed to Class Members who have an email address available. The Notice was emailed to the 2,156 names and email addresses in the Sufficient Funds Class List with 2,094 being successfully delivered and 62 were not. The success rate was 97%. On September 15, 2022, KCC sent the Claim Form with Notice by email to the 7,048 Regulation E Class Members and the Hybrid Class who were on both the Sufficient Funds List and the Regulation E Class. Of these emails, 361 bounced and 6,687 were successfully delivered for a success rate of 95%. KCC then mailed the Notice Packets to the Class members where their email had bounced.

8. On October 25, 2022, KCC sent a reminder email blast containing the Claims Forms to the 7,048 Regulation E Class Members and the Hybrid Class who were on both the Sufficient Funds Class list and the Regulation E Class list.

SETTLEMENT WEBSITE

9. On or about September 9, 2022, KCC established a website www.TimsFeesSettlement.com dedicated to this matter to provide information to the Class Members and to answer frequently asked questions. The website URL was set forth in the email Notice, Class Notice, and Claim Form. Visitors of the website can download copies of the Notice, Claim Form, and other case-related documents.

CLAIM FORMS

10. The postmark deadline for Class Members to file claims in this matter is November 14, 2022. To date, KCC has received 400 timely-filed claim forms. KCC expects additional timely-filed claim forms to arrive over the next few weeks. It is probable the total number of timey claims will change depending upon the number of claims received during that timeframe.

REPORT ON EXCLUSION REQUESTS RECEIVED TO DATE

11. The Notice informs Class Members that requests for exclusion from the Class must be postmarked no later than November 14, 2022. As of the date of this declaration, KCC has received zero requests for exclusion.

OBJECTIONS TO THE SETTLEMENT

12. The postmarked deadline for Class Members to object to the settlement is November 14, 2022. As of the date of this declaration, KCC has received zero objections to the settlement.

ADMINISTRATION COSTS

13. As of November 7, 2022, KCC estimates its total cost of administration to be \$69,070.00. This amount includes costs to date as well as through the completion of this matter.

14. KCC's estimated fees and charges are based on certain information provided to KCC by the parties as well as significant assumptions. Accordingly, the estimate is not intended to limit KCC's actual fees and charges, which may be less or more than estimated due to the scope of actual services or changes to the underlying facts or assumptions.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 10, 2022 at San Rafael, California.


Jeff Moore

EXHIBIT A



1 McInnis Parkway
Suite 250
San Rafael, CA 94903

August 18, 2022

VIA PRIORITY MAIL

«First» «Last»
«Company_1»
«Company_2»
«Address_1»
«Address_2»
«City», «State» «Zip»

Re: Notice of Proposed Class Action Settlement Pursuant to 28 U.S.C. § 1715

Dear «First» «Last»:

KCC Class Action Services, LLC is the independent third-party Administrator in a putative class action lawsuit entitled *Tims v. LGE Community Credit Union*, Case No. 1:15-cv-04279. Honigman, LLP represents LGE Community Credit Union (“Defendant”) in that Action. The lawsuit is pending before the Honorable Thomas W. Thrash, Jr. in the United States District Court for the Northern District of Georgia, Atlanta Division. This letter is to advise you that Carol Tims (“Plaintiff”) filed a Motion for Preliminary Approval of Class Action Settlement in connection with this class action lawsuit on August 8, 2022.

Case Name: *Tims v. LGE Community Credit Union*

Case Number: 1:15-cv-04279

Jurisdiction: United States District Court,
Northern District of Georgia
Atlanta Division

**Date Settlement
Filed with Court:** August 8, 2022



«First» «Last»

August 18, 2022

Page 2

Defendant denies any wrongdoing or liability whatsoever, but has decided to settle this action solely in order to eliminate the burden, expense, and uncertainties of further litigation. In compliance with 28 U.S.C. § 1715(b), the following documents referenced below are included on the CD that is enclosed with this letter:

1. **28 U.S.C. § 1715(b)(1) – Complaint and Related Materials:** Copies of the *Class Action Complaint*, *Amended Class Action Complaint*, and the *Response to Amended Class Action Complaint* are included on the enclosed CD.
2. **28 U.S.C. § 1715(b)(2) – Notice of Any Scheduled Judicial Hearing:** The Court has scheduled a final fairness hearing in this matter for December 12, 2022. Copies of the *Order re Preliminary Approval Hearing*, *Proposed Order re Preliminary Approval Hearing*, *Motion for Preliminary Approval*, *Motion to Dismiss Plaintiff's Complaint*, *Motion to Dismiss Plaintiff's First Amended Complaint*, *Joint Declaration of E Adam Webb and Richard D McCune*, *Reply in Support of Motion to Dismiss*, *Supplemental Brief in Further Support of Motion to Dismiss First Amended Complaint*, *Motion to Strike Class Allegations Contained in Plaintiff's First Amended Complaint*, and the *Reply in Further Support of Defendant's Motion to Strike Class Allegations Contained in Plaintiff's First Amended Complaint* are included on the enclosed CD.
3. **28 U.S.C. § 1715(b)(3) – Notification to Class Members:** Copies of the *Long Form Notice* and *Claim Form* to be provided to the class are included on the enclosed CD.
4. **28 U.S.C. § 1715(b)(4) – Class Action Settlement Agreement:** Copies of the *Settlement Agreement* and *Executed Amended Settlement Agreement* are included on the enclosed CD.
5. **28 U.S.C. § 1715(b)(5) – Any Settlement or Other Agreement:** A copy of the *Executed Side Agreement Regarding Defendant's Right to Terminate Agreement* is included on the enclosed CD.
6. **28 U.S.C. § 1715(b)(6) – Final Judgment:** No Final Judgment has been reached as of August 18, 2022, nor have any Notices of Dismissal been granted at this time.



«First» «Last»
August 18, 2022
Page 3

7. **28 U.S.C. § 1715(b)(7)(A)-(B) – Names of Class Members/Estimate of Class Members:** A copy of the *Class Member Data* is included on the enclosed CD.
8. **28 U.S.C. § 1715(b)(8) – Judicial Opinions Related to the Settlement:** Copies of the *Order Dismissing Plaintiff Action*, *Issuance of Mandate*, *Opinion and Order Granting Defendant's Motion to Dismiss*, *Motion Denying Defendant's Motion to Strike Plaintiff's Class Allegations*, and the *Order Reversing and Remanding District Court's Motion to Dismiss* are included on the enclosed CD.

If for any reason you believe the enclosed information does not fully comply with 28 U.S.C. § 1715, please contact the undersigned immediately so that Defendant can address any concerns or questions you may have.

Thank you.

Sincerely,

/s/
Fred Webb,
Case Coordinator

Enclosure – CD ROM

EXHIBIT B

Last	First	Company 1	Address 1	Address 2	City	State	Zip
Garland	Merrick	Attorney General of the United States	United States Department of Justice	950 Pennsylvania Avenue, NW	Washington	DC	20530-0001
Taylor	Treg	Office of the Alaska Attorney General	1031 W. 4th Avenue, Suite 200		Anchorage	AK	99501-1994
Marshall	Steve	Office of the Alabama Attorney General	501 Washington Avenue	PO Box 300152	Montgomery	AL	36130-0152
Rutledge	Leslie	Arkansas Attorney General Office	323 Center Street, Suite 200		Little Rock	AR	72201-2610
Brnovich	Mark	Office of the Arizona Attorney General	2005 N. Central Avenue		Phoenix	AZ	85004
CAFA Coordinator		Office of the Attorney General	Consumer Law Section	455 Golden Gate Ave., Suite 11000	San Francisco	CA	94102
Weiser	Phil	Office of the Colorado Attorney General	Ralph L. Carr Colorado Judicial Center	1300 Broadway, 10th Floor	Denver	CO	80203
Tong	William	State of Connecticut Attorney General	165 Capitol Avenue		Hartford	CT	06106
Racine	Karl A.	District of Columbia Attorney General	400 6th St., NW		Washington	DC	20001
Jennings	Kathy	Delaware Attorney General	Carvel State Office Building	820 N. French Street	Wilmington	DE	19801
Moody	Ashley	Office of the Attorney General of Florida	The Capitol, PL-01		Tallahassee	FL	32399-1050
Carr	Chris	Office of the Georgia Attorney General	40 Capitol Square, SW		Atlanta	GA	30334-1300
Shikada	Holly T.	Office of the Hawaii Attorney General	425 Queen Street		Honolulu	HI	96813
Miller	Tom	Iowa Attorney General	Hoover State Office Building	1305 E. Walnut Street	Des Moines	IA	50319
Wasden	Lawrence	State of Idaho Attorney General's Office	700 W. Jefferson Street, Suite 210	P.O. Box 83720	Boise	ID	83720-1000
Raoul	Kwame	Illinois Attorney General	James R. Thompson Center	100 W. Randolph Street	Chicago	IL	60601
Rokita	Todd	Indiana Attorney General's Office	Indiana Government Center South	302 West Washington Street, 5th Floor	Indianapolis	IN	46204
Schmidt	Derek	Kansas Attorney General	120 S.W. 10th Ave., 2nd Floor		Topeka	KS	66612-1597
Cameron	Daniel	Office of the Kentucky Attorney General	700 Capitol Ave	Capitol Building, Suite 118	Frankfort	KY	40601
Landry	Jeff	Office of the Louisiana Attorney General	P.O. Box 94095		Baton Rouge	LA	70804-4095
Healey	Maura	Attorney General of Massachusetts	1 Ashburton Place	20th Floor	Boston	MA	02108-1698
Frosh	Brian	Office of the Maryland Attorney General	200 St. Paul Place		Baltimore	MD	21202-2202
Frey	Aaron	Office of the Maine Attorney General	State House Station 6		Augusta	ME	04333
Nessel	Dana	Office of the Michigan Attorney General	P.O. Box 30212	525 W. Ottawa Street	Lansing	MI	48909-0212
Keith Ellison	Attorney General	Attention: CAFA Coordinator	445 Minnesota Street	Suite 1400	St. Paul	MN	55101-2131
Schmitt	Eric	Missouri Attorney General's Office	Supreme Court Building	207 W. High Street	Jefferson City	MO	65101
Fitch	Lynn	Mississippi Attorney General's Office	Department of Justice	P.O. Box 220	Jackson	MS	39205
Knudsen	Austin	Office of the Montana Attorney General	Justice Bldg.	215 N. Sanders Street	Helena	MT	59620-1401
Stein	Josh	North Carolina Attorney General	Department of Justice	P.O.Box 629	Raleigh	NC	27602-0629
Peterson	Doug	Office of the Nebraska Attorney General	2115 State Capitol	P.O. Box 98920	Lincoln	NE	68509-8920
Ford	Aaron	Nevada Attorney General	Old Supreme Ct. Bldg.	100 North Carson St.	Carson City	NV	89701
Formella	John	New Hampshire Attorney General	Hew Hampshire Department of Justice	33 Capitol St.	Concord	NH	03301-6397
Platkin	Matthew J.	Office of the New Jersey Attorney General	Richard J. Hughes Justice Complex	25 Market St., P.O. Box 080	Trenton	NJ	08625-0080
Balderas	Hector	Office of the New Mexico Attorney General	P.O. Drawer 1508		Santa Fe	NM	87504-1508
James	Letitia	Office of the New York Attorney General	Dept. of Law - The Capitol	2nd Floor	Albany	NY	12224-0341
Wrigley	Drew H.	North Dakota Office of the Attorney General	State Capitol	600 E. Boulevard Ave., Dept. 125	Bismarck	ND	58505-0040
Yost	Dave	Ohio Attorney General	Rhodes State Office Tower	30 E. Broad St., 14th Flr.	Columbus	OH	43215
O'Connor	John	Oklahoma Office of the Attorney General	313 NE 21st St.		Oklahoma City	OK	73105
Rosenblum	Ellen F.	Office of the Oregon Attorney General	Justice Building	1162 Court St., NE	Salem	OR	97301-4096
Shapiro	Josh	Pennsylvania Office of the Attorney General	16th Flr., Strawberry Square		Harrisburg	PA	17120
Neronha	Peter	Rhode Island Office of the Attorney General	150 South Main St.		Providence	RI	02903
Wilson	Alan	South Carolina Attorney General	Rembert C. Dennis Office Bldg.	P.O. Box 11549	Columbia	SC	29211
Vargo	Mark	South Dakota Office of the Attorney General	1302 East Highway 14, Suite 1		Pierre	SD	57501-8501
Slatery, III	Herbert H.	Tennessee Attorney General and Reporter	P.O. Box 20207		Nashville	TN	37202-0207

Last	First	Company 1	Address 1	Address 2	City	State	Zip
Paxton	Ken	Attorney General of Texas	Capitol Station	P.O. Box 12548	Austin	TX	78711-2548
Reyes	Sean	Utah Office of the Attorney General	P.O. Box 142320		Salt Lake City	UT	84114-2320
Young	Susanne	Office of the Attorney General of Vermont	109 State St.		Montpelier	VT	05609-1001
Miyares	Jason	Office of the Virginia Attorney General	202 North Ninth St.		Richmond	VA	23219
Ferguson	Bob	Washington State Attorney General	1125 Washington St. SE	P.O. Box 40100	Olympia	WA	98504-0100
Morrissey	Patrick	West Virginia Attorney General	State Capitol Complex, Bldg. 1, Rm. E-26	1900 Kanawha Blvd. E.	Charleston	WV	25305
Kaul	Josh	Office of the Wisconsin Attorney General	Dept. of Justice, State Capitol	Rm. 114 East, P.O. Box 7857	Madison	WI	53707-7857
Hill	Bridget	Office of the Wyoming Attorney General	109 State Capitol		Cheyenne	WY	82002
Ala'ilima-Utu	Fainu'ulelei Falefatu	American Samoa Gov't	Dept. of Legal Affairs, c/o Attorney General	P.O. Box 7	Utulei	AS	96799
Camacho	Leevin T.	Office of the Attorney General, ITC Building	590 S. Marine Corps Dr.	Suite 901	Tamuning	Guam	96913
Manibusan	Edward	Northern Mariana Islands Attorney General	Administration Building	P.O. Box 10007	Saipan	MP	96950-8907
Hernández	Domingo Emanuelli	Puerto Rico Attorney General	Torre Chardón, Suite 1201	350 Carlos Chardón Ave.	San Juan	PR	00918
George	Denise N.	Virgin Islands Atty. General, DOJ	3438 Kronprindsens Gade	GERS Complex, 2nd Floor	St. Thomas	VI	00802
Wilson	Brandon	Honigman LLP	39400 Woodward Avenue	Suite 101	Bloomfield Hills	MI	48304-5151

EXHIBIT C

Claims Administrator

P.O. Box 6188

Novato, CA 94948-6188

LGM

«3of9 barcode »

«BARCODE»

Postal Service: Please do not mark barcode

LGM «Claim Number»

«FIRST1» «LAST1»

«ADDRESS LINE 1» «ADDRESS LINE 2»

«CITY», «STATE»«PROVINCE» «POSTALCODE»

«COUNTRY»

*Carol Tims v. LGE Community 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 HAD A CHECKING ACCOUNT WITH LGE COMMUNITY CREDIT UNION (“LGE”) AND YOU WERE CHARGED AN OVERDRAFT FEE BETWEEN DECEMBER 9, 2009 AND SEPTEMBER 18, 2015, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

The United States District Court for the Northern District of Georgia has authorized this Notice; it is not a solicitation from a lawyer.

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION	
MAKE A CLAIM	You may make a claim for up to five (5) Overdraft Fees which were paid by you on a debit card or ATM transaction if there was no refund of the Overdraft Fee regardless of the funds in your account. The number of such Overdraft Fees you may have incurred are shown on the Claim Form enclosed with this Notice. If you did not receive a Claim Form, then you have no eligible ATM or debit card fees of this type and therefore need not make a claim. You may still be entitled to payment for other Overdraft Fees. If you are eligible to make a claim for ATM and debit card fees, you should fill out and submit the Claim Form by November 14, 2022, or you will not receive any such funds.
DO NOTHING	Even if you do not make a claim, if you have incurred an Overdraft Fee on a debit card or ATM transaction, or any check, ACH, or other payment transaction while your ledger balance was sufficient to pay for the transaction, you will receive a payment from the Settlement Fund if you do not opt out. However, you may receive more if you receive a Claim Form and make a claim.
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 LGE but you will not receive a payment. If you opt out and want to recover against LGE, then 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, you <u>will</u> receive a payment and you <u>will not</u> be able to sue LGE 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 *Carol Tims v. LGE Community Credit Union*, Case No. 1:15-cv-04279-TWT (N.D. Ga.). The case is a “class action.” That means that the “Named Plaintiff,” Ms. Carol Tims, is an individual who is acting on behalf of two groups. The first group is all members of LGE who were charged an Overdraft Fee for any payment transaction between December 9, 2009 and September 18, 2015, and, at the time such fee was imposed, that person had sufficient funds in the ledger balance but not the available balance in his or her account to complete the transaction. The second group is all members of LGE who were charged Overdraft Fees for ATM and debit card transactions between August 15, 2010 to September 18, 2015. The persons in these groups are collectively called the “Class Members.”

The Named Plaintiff claims LGE did not properly opt members into its overdraft program for ATM and debit card payment transactions. Plaintiff also alleges LGE improperly charged Overdraft Fees when members had enough money in the ledger balances of their checking accounts, but not in their available balances, to pay for the transaction in question. The Named Plaintiff is seeking a refund of alleged improper Overdraft Fees charged to Class Member accounts. LGE does not deny it charged Overdraft Fees but contends it did so properly and in accordance with the terms of its agreements and applicable law. LGE assessed Overdraft Fees based on the available balance in a member's account. LGE maintains that this practice is proper and was disclosed to its members, and therefore denies that its practices give rise to claims for damages by the Named Plaintiff or any Class Member. LGE also alleges that it properly gave notice and opted members into its overdraft program for ATM and debit card transactions.

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

You received this Notice because LGE's records indicate that you are in one or both of the groups that was alleged to have been charged improper Overdraft Fee(s). 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 lawyers' job to identify when a proposed settlement offer is good enough that it justifies recommending settling the case instead of continuing to trial. In a class action, these lawyers, known as Class Counsel, make this recommendation to the Named Plaintiff. The Named Plaintiff has the duty to act in the best interests of the 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 for at least the following reasons:

There is legal uncertainty about whether a judge or a jury will find that LGE was contractually and otherwise legally obligated not to assess Overdraft Fees when the ledger balance was sufficient to pay for a transaction even though the available balance was not, and whether LGE properly opted members into its overdraft program for ATM and debit card transactions. There is also uncertainty about whether the Named Plaintiff's claims are subject to other defenses that might result in Class Members receiving no recovery, or a substantially smaller recovery than that being offered here. 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 LGE disputes Plaintiff's claims, it has agreed to settle to avoid the costs, distractions, and risks of litigation. Thus, even though LGE denies that it did anything improper, it believes settlement is in its best interest and in the best interests of all of its members.

WHO IS IN THE SETTLEMENT

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

If you received this Notice, then LGE'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 four options: (1) file a claim with the Claims Administrator on the Claim Form enclosed with this Notice to recover for the Overdraft Fees you were charged for ATM and debit card transactions pertaining to the Claim Form (if you did not receive a Claim Form then you were not assessed any eligible ATM and debit card fees); (2) do nothing and receive a payment according to the terms of this settlement for other Overdraft Fees you have been charged; (3) exclude yourself from the settlement ("opt out" of it); or (4) participate in the settlement but object to it. Each of these options is described in a separate section below.

6. What are the critical deadlines?

The deadline for sending a Claim Form to the Claims Administrator is November 14, 2022. If you do nothing, you may nonetheless receive settlement funds by credit to your account if you are still a member of LGE when the settlement is paid or via check mailed to your residence of record if you are not a member of LGE, but only if you were assessed Overdraft Fees while you had sufficient funds in your ledger balance to cover the transaction.

The deadline for sending a letter to exclude yourself from, or opt out of, the settlement is November 14, 2022.

The deadline to file an objection with the Court is November 14, 2022.

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, and the Claim Form enclosed with this Notice indicates you were assessed Overdraft Fees for ATM withdrawals or one-time (non-recurring) debit card signature payments, then you should fill out the Claim Form and return it. See Question 25, below. If you did not receive a Claim Form with this Notice, then LGE's records indicate you were not assessed the type of Overdraft Fees for ATM withdrawals or debit card payments that are reimbursable under the claims portion of the settlement. In that case, you need not do anything and you will still receive a payment for other Overdraft Fees assessed when you had sufficient ledger balance in your account if you do not opt out.

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

The Court has to decide that the settlement is fair, reasonable, and adequate before it will approve it. The Court already has decided to provide preliminary approval of the settlement, which is why you received this Notice. The Court will make a final decision regarding the settlement at a "Fairness Hearing" or "Final Approval Hearing," which is currently scheduled for December 12, 2022 at 10:00 a.m.

THE SETTLEMENT PAYMENT**9. How much is the settlement?**

LGE has agreed to create a Settlement Fund of \$1,310,000. As discussed separately below, attorneys' fees, litigation costs, a Service Award to the Named Plaintiff, and the costs paid to a third-party Claims Administrator to administer the settlement (including mailing and emailing this Notice) will be paid out of this amount. The balance of the Settlement Fund will be divided among all Class Members based on the amount of Eligible Overdraft Fees they paid, and if eligible to make a claim, whether they make a claim.

10. How much of the Settlement Fund will be used to pay for attorneys' fees and costs?

Class Counsel will request that the Court award a portion of the Settlement Fund as attorneys' fees. Class Counsel will also request reimbursement of the litigation costs incurred in prosecuting the case. The Court will decide the amount of the fees and expenses to be paid based on a number of factors pursuant to applicable law.

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

Class Counsel on behalf of the Named Plaintiff will request that the Court award her \$10,000 for her role in securing this settlement on behalf of the class. The Court will decide if a Service Award is appropriate and, if so, the amount of the award.

12. How much of the Settlement Fund will be used to pay the Claims Administrator's expenses?

The Claims Administrator has estimated its total costs at \$60,447.

13. How much will my payment be?

If you have received a Claim Form and are qualified to make a claim, you may do so for up to five ATM and/or debit card Overdraft Fees, which will be paid from a portion of the Net Settlement Fund on a *pro rata* basis, less deduction for fees and costs. The remaining funds from the Net Settlement Fund will be disbursed to Class Members who were assessed Overdraft Fees for payments made when they had a positive ledger balance in their checking accounts on a *pro rata* basis.

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

If you received a Claim Form with this Notice and it indicates you had qualifying Overdraft Fees from ATM and debit card transactions within the requisite period, then you should fill out the Claim Form and send it to the Claims Administrator as provided in Question 25, below. If you received this Notice but there is no Claim Form enclosed, then you will still be entitled to receive a payment without having to make a claim for Overdraft Fees assessed when you had a high enough ledger balance in your account to pay the transaction that resulted in the fee, if you do not opt out. If you are qualified to make a claim, you may receive a greater payment if you do so.

15. When will I receive my payment?

The Court is scheduled to hold a Fairness Hearing (explained below in Questions 22-24) on December 12, 2022 to consider whether the settlement should be approved. If the Court approves the settlement, and no appeals are filed, then the Claims Administrator should begin processing and paying claims within about 10 days. 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 LGE for the claims alleged in this lawsuit, then you must exclude yourself or “opt out.”

To opt out, you must send a letter to the Claims Administrator stating that you want to be excluded. Your letter can simply state “I hereby elect to be excluded from the settlement in the *Carol Tims v. LGE Community Credit Union* class action.” Be sure to include your name, last four digits of your member number, address, telephone number, email address, and signature. Your exclusion or opt-out request must be postmarked by November 14, 2022, and sent to:

Tims v. LGE Community Credit Union Claims Administrator
P.O. Box 6188
Novato, CA 94948-6188

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 LGE 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 Court and the Claims Administrator at the addresses below. Your objection should state that you are a Class Member, that you object to the settlement, give the factual and legal reasons why you object, and indicate 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 postmarked no later than November 14, 2022, and must be mailed to the Court as follows:

Clerk of the Court, United States District Court for the Northern District of Georgia
2211 United States Courthouse
75 Ted Turner Drive, SW
Atlanta, GA 30303-3309.

And to the Claims Administrator as follows:

Tims v. LGE Community Credit Union Claims Administrator
P.O. Box 6188
Novato, CA 94948-6188

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 LGE. 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 LGE 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 FAIRNESS HEARING

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

The Court is scheduled to hold a Final Approval or Fairness Hearing at 10:00 a.m. on December 12, 2022 at the United States District Court for the Northern District of Georgia, located at 2108 United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303-3309, or through remote means such as video or telephone conferencing as provided by the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys' fees and expenses and how much the Named Plaintiff should get as a "Service Award" for acting as the class representative.

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 and would like to be heard by the Court" or similar.

SUBMIT A CLAIM

25. How do I make a claim if I received a Claim Form?

If you received a Claim Form, then you should use it to make a claim. It should be filled out, signed, and sent to the Claims Administrator. If you receive a claim form and do not make a claim, you may still receive payment if you were assessed Overdraft Fees for payments made when you had a positive ledger balance in your checking account on a pro rata basis.

All claims must be postmarked no later than November 14, 2022, and must be mailed as follows:

Tims v. LGE Community Credit Union Claims Administrator
P.O. Box 6188
Novato, CA 94948-6188

IF YOU DO NOTHING

26. What happens if I do nothing at all?

If you do nothing at all, and if the settlement is approved, then you may receive a payment that represents your share of the Settlement Fund net of attorneys' fees, Claims Administrator expenses, and the Named Plaintiff's Service Award. You will be considered a part of the class, and you will give up claims against LGE for the conduct alleged in this lawsuit. You will not give up any other claims you might have against LGE that are not part of this lawsuit.

THE LAWYERS REPRESENTING YOU

27. 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.

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

No. Class Counsel will be paid directly from the Settlement Fund.

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

The Court will be asked to approve the amount of attorneys' fees at the Fairness Hearing. Class Counsel will file an application for fees and costs and will specify the amount being sought as discussed above. You may review the fee application at www.Timsfeesettlement.com or view an electronic copy at the Office of the Clerk of the United States District Court for the Northern District of Georgia, which is located at 2211 United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303-3309.

GETTING MORE INFORMATION

This Notice only summarizes the proposed settlement. More details are contained in the Settlement Agreement, which can be viewed/obtained online at www.Timsfeesettlement.com or at the Office of the Clerk of the United States District Court for the Northern District of Georgia, which is located at 2211 United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303-3309, by asking to see the Motion For Preliminary Approval of Class Settlement and all supporting declarations (the Settlement Agreement is attached to a Declaration filed in support of the motion) at a public access terminal.

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

Tims v. LGE Community Credit Union Claims Administrator
P.O. Box 6188
Novato, CA 94948-6188

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

Tims v. LGE Community Credit Union Claims Administrator
P.O. Box 6188
Novato, CA 94948-6188

Richard D. McCune
McCune Wright Arevalo LLP
3281 E. Guasti Road, Suite 100
Ontario, CA 91761

E. Adam Webb
Webb, Klase & Lemond, LLC
1900 The Exchange SE, Suite 480
Atlanta, GA 30339

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

EXHIBIT D

Tims v. LGE Community Credit Union
 Claims Administrator
 P.O. Box 6188
 Novato, CA 94948-6188

LGM

«3of9 barcode »

«BARCODE»

Postal Service: Please do not mark barcode

LGM «Claim Number»

«FIRST1» «LAST1»

«ADDRESS LINE 1» «ADDRESS LINE 2»

«CITY», «STATE»«PROVINCE» «POSTALCODE»

«COUNTRY»

*Carol Tims v. LGE Community
 Credit Union*

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF GEORGIA

Case No. 1:15-cv-04279-TWT (N.D. Ga.)

**Must Be Postmarked
 No Later Than
 November 14, 2022**

Claim ID: <<Claim Number>>

PIN: <<PIN>>

Claim Form

According to LGE's records, your account was assessed <<NumberofFees>> Eligible Regulation E Overdraft Fees totaling <<Amount>> between August 15, 2010 and September 18, 2015. You can submit a claim for a refund of up to five (5) such fees by completing this form, signing it, and mailing it by the deadline listed below.

Your claim must be postmarked by November 14, 2022. Late claims will be rejected.

PROVIDE NAME, MAILING ADDRESS, AND EMAIL ADDRESS HERE:

Name of Customer (Business or Organization)																																																																																																			
Street Address																																																																																																			
Street Address (continued)																																																																																																			
City																																																												State										ZIP Code																													
Email Address																																																																																																			

Authorized Representative Signature: _____

Date (mm/dd/yyyy): _____

Print Name: _____

By signing this Claim Form, you are affirming that you are the authorized representative of a member of the settlement class and thus are eligible to receive the benefits of the settlement.



FOR CLAIMS PROCESSING ONLY	OB <input type="checkbox"/>	CB <input type="checkbox"/>	<input type="radio"/> DOC <input type="radio"/> LC <input type="radio"/> REV	<input type="radio"/> RED <input type="radio"/> A <input type="radio"/> B
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*Carol Tims v. LGE Community 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 HAD A CHECKING ACCOUNT WITH LGE COMMUNITY CREDIT UNION (“LGE”) AND YOU WERE CHARGED AN OVERDRAFT FEE BETWEEN DECEMBER 9, 2009 AND SEPTEMBER 18, 2015, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

The United States District Court for the Northern District of Georgia has authorized this Notice; it is not a solicitation from a lawyer.

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION	
MAKE A CLAIM	You may make a claim for up to five (5) Overdraft Fees which were paid by you on a debit card or ATM transaction if there was no refund of the Overdraft Fee regardless of the funds in your account. The number of such Overdraft Fees you may have incurred are shown on the Claim Form enclosed with this Notice. If you did not receive a Claim Form, then you have no eligible ATM or debit card fees of this type and therefore need not make a claim. You may still be entitled to payment for other Overdraft Fees. If you are eligible to make a claim for ATM and debit card fees, you should fill out and submit the Claim Form by November 14, 2022, or you will not receive any such funds.
DO NOTHING	Even if you do not make a claim, if you have incurred an Overdraft Fee on a debit card or ATM transaction, or any check, ACH, or other payment transaction while your ledger balance was sufficient to pay for the transaction, you will receive a payment from the Settlement Fund if you do not opt out. However, you may receive more if you receive a Claim Form and make a claim.
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 LGE but you will not receive a payment. If you opt out and want to recover against LGE, then 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, you <u>will</u> receive a payment and you <u>will not</u> be able to sue LGE 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 *Carol Tims v. LGE Community Credit Union*, Case No. 1:15-cv-04279-TWT (N.D. Ga.). The case is a “class action.” That means that the “Named Plaintiff,” Ms. Carol Tims, is an individual who is acting on behalf of two groups. The first group is all members of LGE who were charged an Overdraft Fee for any payment transaction between December 9, 2009 and September 18, 2015, and, at the time such fee was imposed, that person had sufficient funds in the ledger balance but not the available balance in his or her account to complete the transaction. The second group is all members of LGE who were charged Overdraft Fees for ATM and debit card transactions between August 15, 2010 to September 18, 2015. The persons in these groups are collectively called the “Class Members.”

The Named Plaintiff claims LGE did not properly opt members into its overdraft program for ATM and debit card payment transactions. Plaintiff also alleges LGE improperly charged Overdraft Fees when members had enough money in the ledger balances of their checking accounts, but not in their available balances, to pay for the transaction in question. The Named Plaintiff is seeking a refund of alleged improper Overdraft Fees charged to Class Member accounts. LGE does not deny it charged Overdraft Fees but contends it did so properly and in accordance with the terms of its agreements and applicable law. LGE assessed Overdraft Fees based on the available balance in a member's account. LGE maintains that this practice is proper and was disclosed to its members, and therefore denies that its practices give rise to claims for damages by the Named Plaintiff or any Class Member. LGE also alleges that it properly gave notice and opted members into its overdraft program for ATM and debit card transactions.

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

You received this Notice because LGE's records indicate that you are in one or both of the groups that was alleged to have been charged improper Overdraft Fee(s). 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 lawyers' job to identify when a proposed settlement offer is good enough that it justifies recommending settling the case instead of continuing to trial. In a class action, these lawyers, known as Class Counsel, make this recommendation to the Named Plaintiff. The Named Plaintiff has the duty to act in the best interests of the 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 for at least the following reasons:

There is legal uncertainty about whether a judge or a jury will find that LGE was contractually and otherwise legally obligated not to assess Overdraft Fees when the ledger balance was sufficient to pay for a transaction even though the available balance was not, and whether LGE properly opted members into its overdraft program for ATM and debit card transactions. There is also uncertainty about whether the Named Plaintiff's claims are subject to other defenses that might result in Class Members receiving no recovery, or a substantially smaller recovery than that being offered here. 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 LGE disputes Plaintiff's claims, it has agreed to settle to avoid the costs, distractions, and risks of litigation. Thus, even though LGE denies that it did anything improper, it believes settlement is in its best interest and in the best interests of all of its members.

WHO IS IN THE SETTLEMENT

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

If you received this Notice, then LGE'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 four options: (1) file a claim with the Claims Administrator on the Claim Form enclosed with this Notice to recover for the Overdraft Fees you were charged for ATM and debit card transactions pertaining to the Claim Form (if you did not receive a Claim Form then you were not assessed any eligible ATM and debit card fees); (2) do nothing and receive a payment according to the terms of this settlement for other Overdraft Fees you have been charged; (3) exclude yourself from the settlement ("opt out" of it); or (4) participate in the settlement but object to it. Each of these options is described in a separate section below.

6. What are the critical deadlines?

The deadline for sending a Claim Form to the Claims Administrator is November 14, 2022. If you do nothing, you may nonetheless receive settlement funds by credit to your account if you are still a member of LGE when the settlement is paid or via check mailed to your residence of record if you are not a member of LGE, but only if you were assessed Overdraft Fees while you had sufficient funds in your ledger balance to cover the transaction.

The deadline for sending a letter to exclude yourself from, or opt out of, the settlement is November 14, 2022.

The deadline to file an objection with the Court is November 14, 2022.

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, and the Claim Form enclosed with this Notice indicates you were assessed Overdraft Fees for ATM withdrawals or one-time (non-recurring) debit card signature payments, then you should fill out the Claim Form and return it. See Question 25, below. If you did not receive a Claim Form with this Notice, then LGE's records indicate you were not assessed the type of Overdraft Fees for ATM withdrawals or debit card payments that are reimbursable under the claims portion of the settlement. In that case, you need not do anything and you will still receive a payment for other Overdraft Fees assessed when you had sufficient ledger balance in your account if you do not opt out.

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

The Court has to decide that the settlement is fair, reasonable, and adequate before it will approve it. The Court already has decided to provide preliminary approval of the settlement, which is why you received this Notice. The Court will make a final decision regarding the settlement at a "Fairness Hearing" or "Final Approval Hearing," which is currently scheduled for December 12, 2022 at 10:00 a.m.

THE SETTLEMENT PAYMENT**9. How much is the settlement?**

LGE has agreed to create a Settlement Fund of \$1,310,000. As discussed separately below, attorneys' fees, litigation costs, a Service Award to the Named Plaintiff, and the costs paid to a third-party Claims Administrator to administer the settlement (including mailing and emailing this Notice) will be paid out of this amount. The balance of the Settlement Fund will be divided among all Class Members based on the amount of Eligible Overdraft Fees they paid, and if eligible to make a claim, whether they make a claim.

10. How much of the Settlement Fund will be used to pay for attorneys' fees and costs?

Class Counsel will request that the Court award a portion of the Settlement Fund as attorneys' fees. Class Counsel will also request reimbursement of the litigation costs incurred in prosecuting the case. The Court will decide the amount of the fees and expenses to be paid based on a number of factors pursuant to applicable law.

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

Class Counsel on behalf of the Named Plaintiff will request that the Court award her \$10,000 for her role in securing this settlement on behalf of the class. The Court will decide if a Service Award is appropriate and, if so, the amount of the award.

12. How much of the Settlement Fund will be used to pay the Claims Administrator's expenses?

The Claims Administrator has estimated its total costs at \$60,447.

13. How much will my payment be?

If you have received a Claim Form and are qualified to make a claim, you may do so for up to five ATM and/or debit card Overdraft Fees, which will be paid from a portion of the Net Settlement Fund on a *pro rata* basis, less deduction for fees and costs. The remaining funds from the Net Settlement Fund will be disbursed to Class Members who were assessed Overdraft Fees for payments made when they had a positive ledger balance in their checking accounts on a *pro rata* basis.

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

If you received a Claim Form with this Notice and it indicates you had qualifying Overdraft Fees from ATM and debit card transactions within the requisite period, then you should fill out the Claim Form and send it to the Claims Administrator as provided in Question 25, below. If you received this Notice but there is no Claim Form enclosed, then you will still be entitled to receive a payment without having to make a claim for Overdraft Fees assessed when you had a high enough ledger balance in your account to pay the transaction that resulted in the fee, if you do not opt out. If you are qualified to make a claim, you may receive a greater payment if you do so.

15. When will I receive my payment?

The Court is scheduled to hold a Fairness Hearing (explained below in Questions 22-24) on December 12, 2022 to consider whether the settlement should be approved. If the Court approves the settlement, and no appeals are filed, then the Claims Administrator should begin processing and paying claims within about 10 days. 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 LGE for the claims alleged in this lawsuit, then you must exclude yourself or “opt out.”

To opt out, you must send a letter to the Claims Administrator stating that you want to be excluded. Your letter can simply state “I hereby elect to be excluded from the settlement in the *Carol Tims v. LGE Community Credit Union* class action.” Be sure to include your name, last four digits of your member number, address, telephone number, email address, and signature. Your exclusion or opt-out request must be postmarked by November 14, 2022, and sent to:

Tims v. LGE Community Credit Union Claims Administrator
P.O. Box 6188
Novato, CA 94948-6188

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 LGE 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 Court and the Claims Administrator at the addresses below. Your objection should state that you are a Class Member, that you object to the settlement, give the factual and legal reasons why you object, and indicate 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 postmarked no later than November 14, 2022, and must be mailed to the Court as follows:

Clerk of the Court, United States District Court for the Northern District of Georgia
2211 United States Courthouse
75 Ted Turner Drive, SW
Atlanta, GA 30303-3309.

And to the Claims Administrator as follows:

Tims v. LGE Community Credit Union Claims Administrator
P.O. Box 6188
Novato, CA 94948-6188

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 LGE. 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 LGE 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 FAIRNESS HEARING

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

The Court is scheduled to hold a Final Approval or Fairness Hearing at 10:00 a.m. on December 12, 2022 at the United States District Court for the Northern District of Georgia, located at 2108 United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303-3309, or through remote means such as video or telephone conferencing as provided by the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys' fees and expenses and how much the Named Plaintiff should get as a "Service Award" for acting as the class representative.

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 and would like to be heard by the Court" or similar.

SUBMIT A CLAIM

25. How do I make a claim if I received a Claim Form?

If you received a Claim Form, then you should use it to make a claim. It should be filled out, signed, and sent to the Claims Administrator. If you receive a claim form and do not make a claim, you may still receive payment if you were assessed Overdraft Fees for payments made when you had a positive ledger balance in your checking account on a pro rata basis.

All claims must be postmarked no later than November 14, 2022, and must be mailed as follows:

Tims v. LGE Community Credit Union Claims Administrator
P.O. Box 6188
Novato, CA 94948-6188

IF YOU DO NOTHING

26. What happens if I do nothing at all?

If you do nothing at all, and if the settlement is approved, then you may receive a payment that represents your share of the Settlement Fund net of attorneys' fees, Claims Administrator expenses, and the Named Plaintiff's Service Award. You will be considered a part of the class, and you will give up claims against LGE for the conduct alleged in this lawsuit. You will not give up any other claims you might have against LGE that are not part of this lawsuit.

THE LAWYERS REPRESENTING YOU

27. 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.

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

No. Class Counsel will be paid directly from the Settlement Fund.

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

The Court will be asked to approve the amount of attorneys' fees at the Fairness Hearing. Class Counsel will file an application for fees and costs and will specify the amount being sought as discussed above. You may review the fee application at www.Timsfeesettlement.com or view an electronic copy at the Office of the Clerk of the United States District Court for the Northern District of Georgia, which is located at 2211 United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303-3309.

GETTING MORE INFORMATION

This Notice only summarizes the proposed settlement. More details are contained in the Settlement Agreement, which can be viewed/obtained online at www.Timsfeesettlement.com or at the Office of the Clerk of the United States District Court for the Northern District of Georgia, which is located at 2211 United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303-3309, by asking to see the Motion For Preliminary Approval of Class Settlement and all supporting declarations (the Settlement Agreement is attached to a Declaration filed in support of the motion) at a public access terminal.

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

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P.O. Box 6188
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For more information, you also can contact the Claims Administrator or Class Counsel as follows:

Tims v. LGE Community Credit Union Claims Administrator
P.O. Box 6188
Novato, CA 94948-6188

Richard D. McCune
McCune Wright Arevalo LLP
3281 E. Guasti Road, Suite 100
Ontario, CA 91761

E. Adam Webb
Webb, Klase & Lemond, LLC
1900 The Exchange SE, Suite 480
Atlanta, GA 30339

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

Exhibit 2

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CAROL TIMS, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

LGE COMMUNITY CREDIT UNION,

Defendant.

Case No. 1:15-cv-04279-TWT

**SUPPLEMENTAL JOINT DECLARATION OF
E. ADAM WEBB AND RICHARD D. MCCUNE**

1. We are lead counsel for Plaintiff and the settlement classes in the above-referenced matter and submit this joint declaration in support of the motion for final approval of class settlement and motion for attorneys' fees, expenses, and service awards, and as a supplement to the joint declaration we previously filed with the Court. (Dkt. 144-2). Unless otherwise noted, we have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

2. Our firm spent an enormous amount of time on this case. This work included extensive pre-suit investigation; communications with Plaintiff; preparing complaints, motions, and responses to multiple dispositive motions; taking copious amounts of written and document discovery; negotiating several case management orders and similar documents; researching and drafting voluminous mediation briefs;

exchanging extensive informal damages discovery and working with an expert to analyze extensive billing data; mediating, negotiating, and drafting the settlement; appearing at several hearings; preparing the preliminary approval papers; and working to perfect the class notice program, including communicating with class members.

3. Each of the above-described efforts was essential to reaching the final approval stage of the settlement before the Court. Indeed, our extensive knowledge, investigation, discovery, and briefing allowed us to better understand the merits of these actions and the damages of the settlement class, prepared us for the mediation, and successfully positioned us to engage in vigorous, arms-length negotiations under the direction of Hunter Hughes. Our work with the settlement administrator and class members has shown us that the notice program has been thorough and robust and that class members appreciate the litigation and settlement.

4. Since the Court issued preliminary approval, we have worked with KCC – the appointed settlement administrator – to ensure that all settlement class members were provided notice in accordance with the notice program and the Court’s preliminary approval order.

5. In doing so, we have (a) worked with KCC and Defendant to ensure the class list included all necessary data points and information to provide notice and calculate awards pursuant to the allocation formula and was timely provided by

Defendant; (b) edited the email, postcard, and long form notices, the claim form, and the content of the settlement website and telephone line scripts; (c) ensured notice was timely sent; (d) answered direct, individual inquiries from settlement class members via telephone, email, or U.S. mail; (f) monitored the undeliverables and claims response; and (g) sent out emails to settlement class members reminding them to file claims.

6. We also have prepared (and will file) a motion for final approval and will appear at the final approval hearing.

7. Even if the settlement is approved, our work will continue past the final approval hearing and not conclude until all claims are paid and the settlement fully consummated. Based on the planned timeline and our experience, this process will likely take more than a year of additional work, including answering questions from settlement class members and overseeing cash distributions.

8. This case involved difficult factual issues. For example, it is very difficult to identify – let alone establish liability based upon – the overdraft practices that lie at the heart of this litigation. We were forced to analyze voluminous documents and data that covered nearly a decade.

9. Moreover, the case presented novel legal issues, such as the enforceability and applicability of the contractual provisions that Defendant includes in

its form contracts, whether Defendant had sufficient records and information to allow the class members to be ascertained and individual damages calculated, and whether a class comprised of nearly 16,000 account holders could be managed and certified.

10. Litigation of this case required counsel highly trained in class action law and procedure as well as counsel familiar with the specialized issues at bar. Indeed, the uncovering of Defendant's purported improper overdraft fees and positioning of this case for class certification and a potential for victory on the merits presented challenges most law firms, in our experience, are simply not able to meet. Over the past decade years, we have handled several class actions against banks regarding overdraft fees. This experience was vital to a full understanding of this matter and the ability to navigate many of the challenges.

11. If we had not taken on this case, we would have been able to spend significant time on other matters. We have small firms and, due in part to the time and resources required by this case, we have turned down other cases.

12. In our experience, individual contingency cases in Georgia typically call for a fee of one-third to 40 percent of the recovery. Consistent with this practice, we entered into a contingent fee agreement with the class representative – with whom we had no prior relationship – providing for payment of one-third to 40 percent of any recovery. As is common in Georgia, a fee of 40% was applicable after suit was filed.

13. Because we took this case on a contingency fee basis, had we not achieved a recovery, we would have received nothing and, in fact, would have suffered substantial out-of-pocket losses because we advanced all the litigation expenses (which easily could have amounted to hundreds of thousands of dollars through trial). Uncompensated expenditures of such magnitude can severely damage (or even destroy) small firms like ours.

14. Defendant has been represented by skilled attorneys throughout these actions. Indeed, Brandon Wilson and Kevin Maxim have considerable experience defending class actions. They were highly skilled adversaries and their tireless, inventive representation of Defendant makes the settlement all the more impressive.

15. It is believed that this is the only case brought against Defendant for the practices at issue. Thus, bringing these claims was by no means an easy or attractive undertaking.

16. Distribution of the net settlement fund to the settlement class members will be made directly in cash. Under the circumstances, we believe this to be the best method of distribution possible.

17. Additionally, to make it as easy as possible on class members to obtain their payments, the parties designed a very simple claim form that is

extremely easy to complete (including the ability to update their address information). Completing the claim form literally takes less than a minute.

18. As of November 10, 2022, no objections have been filed in the case, nor have we received notice that any settlement class members intend to object to the settlement. The settlement class members who have contacted us concerning the settlement have given overwhelmingly positive feedback.

19. We sent a reminder email to settlement class members who have not yet filed claims.

20. We request a fee of one-third of the \$1.31 million common fund, or \$436,666.66. No effort has been made to include the value of Defendant's disclosure changes.

23. We request reimbursement for a total of \$54,219.95 in litigation expenses. The requested sum corresponds to specific out-of-pocket expenses incurred while prosecuting and settling the actions and includes expert fees, mediator fees, and necessary administrative expenses (i.e., filing and service fees, PACER charges, copies, postage, delivery fees, etc.). All such expenses are reasonable and necessary for the furtherance of these actions. Notably, we do not seek any expenses for the period after final approval. Sometimes there can be substantial expenses during this phase.

24. We enthusiastically support a \$10,000 service award for the named Plaintiff/class representative to be paid from the settlement fund. Indeed the representative devoted substantial time to this litigation (such as by contacting class counsel, submitting to interviews, forwarding relevant documents, responding to multiple sets of discovery, participating in conferences, and keeping herself abreast of the proceedings). But for the class representative's service and willingness to bear these risks, other settlement class members would have received nothing.

25. We wholeheartedly recommend the settlement as an excellent result for the settlement class.

We declare under penalty of perjury that the foregoing is true and correct to the best of our knowledge, information, and belief.

Executed this 10th day of November, 2022, at Atlanta, Georgia.

/s/ E. Adam Webb
E. Adam Webb

Executed this 10th day of November, 2022, at Ontario, California.

/s/ Richard D. McCune
Richard D. McCune