

IN DISTRICT COURT, COUNTY OF CASS, STATE OF NORTH DAKOTA

MARY LOU FALLIS and KYLA DELORME,  
on behalf of themselves and all others similarly  
situated,

Civil No. 09-2019-CV-04007

Plaintiffs,

vs.

GATE CITY BANK,

Defendant.

**SETTLEMENT AGREEMENT AND RELEASES**

This Settlement Agreement and Releases (“Settlement Agreement,” “Settlement,” or “Agreement”)<sup>1</sup> is made and entered into this 22 day of November, 2021, by and among (1) Plaintiffs, Mary Lou Fallis and Kyla Delorme, individually, and on behalf of the Settlement Classes, and (2) Defendant, Gate City, subject to Preliminary Approval and Final Approval as required by the North Dakota Rules of Civil Procedure. As provided herein, Plaintiffs, Class Counsel and Gate City hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a Final Order and Judgment, all claims of the Settlement Classes against Gate City in the action titled *Mary Lou Fallis, et al. v. Gate City Bank*, East Central District, Cass County, North Dakota; Case No. 09-2019-CV-04007, shall be settled and compromised upon the terms and conditions contained herein without any admission of liability by Plaintiffs or Gate City.

**I. Procedural History and Recitals**

1. On November 20, 2019, Plaintiff Fallis filed a putative Class Action Complaint, asserting claims for (1) breach of contract; (2) breach of the covenant of good faith and fair dealing; and (3) violations of the North Dakota Consumer Protection Law. All three claims were based on the theory that Gate City allegedly assesses improper NSF Fees and OD Fees. [D.E. 2]. Specifically, Fallis alleged that Gate City improperly assessed multiple NSF Fees and/or OD Fees on ACH debits and checks resubmitted by

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<sup>1</sup> Unless defined elsewhere, all capitalized terms herein have the same meanings given to them in Section II below.

merchants for payment after being returned by Gate City for insufficient funds. On December 10, 2019, Gate City filed its Motion to Dismiss the Complaint. [D.E. 10].

2. Plaintiff Fallis did not respond to the Motion to Dismiss, but on January 7, 2020, as a result of the Parties' stipulation, Plaintiffs filed their Amended Class Action Complaint, which added Plaintiff Delorme. [D.E. 28]. The Amended Complaint alleged that Gate City, in addition to assessing Multiple Fees on allegedly the same item, also assessed OD Fees on transactions that do not actually overdraw the account. Specifically, the additional theory alleged that OD Fees should not have been charged on Debit Card transactions that authorized against a positive available balance but purportedly settled days later against a negative balance ("APPSN Transactions"). At this point, Plaintiffs were pursuing two classes, the APPSN Fee Class and the Multiple Fees Class, both for Gate City's North Dakota accountholders, and which are included in this Settlement.

3. Gate City contends that its assessment of the NSF Fees and OD Fees alleged in Plaintiffs' Amended Complaint was lawful and consistent with industry banking practice. It also maintains that the Parties' contract clearly and adequately discloses the manner in which these fees are assessed.

4. On January 28, 2020, Gate City filed its Modified Motion to Dismiss the Amended Complaint, to which Plaintiffs filed their opposition on February 18, 2020, and Gate City filed its reply on February 28, 2020. [D.E. 37, 45, 61].

5. On February 21, 2020, Gate City filed a Motion for Protective Order to Stay Discovery. [D.E. 54]. On March 5, 2020, Plaintiffs filed their opposition to that motion, to which Gate City filed its reply on March 12, 2020. [D.E. 63, 70]. On April 7, 2020, the Court granted the motion. [D.E. 96].

6. Based on the Parties' written submissions and an oral argument which took place on April 6, 2020, the Court entered an Order denying the Modified Motion to Dismiss the Amended Complaint in its entirety on May 12, 2020. [D.E. 103]. Prior to the Court denying the Motion, Plaintiffs filed four separate notices of supplemental authority supporting their opposition. After the Motion was denied, the Parties jointly drafted a Stipulated Scheduling Order, which the Court entered on June 25, 2020. [D.E. 107]. The discovery stay was lifted.

7. Gate City filed its Answer on May 26, 2020. [D.E. No. 105]. Thereafter, the Parties engaged in formal and informal discovery. Prior to the discovery stay, Plaintiffs had served an extensive first set of document requests and interrogatories on January 23, 2020. Gate City served its responses with objections on June 11, 2020. The Parties met and conferred extensively to address discovery objections and the sufficiency of the responses, along with document production. Gate City also served its amended responses to two of Plaintiffs' interrogatories on September 11, 2020.

8. On July 7, 2020, the Court issued a Notice of Trial to commence on October 19, 2021. [D.E. No. 117].

9. On August 28, 2020, the Parties filed a joint motion for a protective order to cover confidential documents to be exchanged throughout discovery. [D.E. No. 127]. The Court entered the protective order on September 1, 2020. [D.E. No. 130].

10. Gate City served its first set of document requests and interrogatories to Plaintiffs on April 26, 2021. Plaintiffs served their objections and responses on June 1, 2021. Plaintiffs produced documents.

11. The Parties negotiated and jointly submitted to the Court on April 15, 2021, a Stipulated Order Regarding Discovery of Electronically Stored Information, which included ESI search terms. [D.E. No. 146]. The Court entered the Order on April 19, 2021. [D.E. No. 148].

12. Beginning in August 2020, the Parties began discussing the prospect of settlement and the sample data necessary for analysis to estimate damages. Thereafter, Gate City made a substantial production of documents. It also produced, in December 2020, sample transaction data pertaining to Gate City's assessment of NSF Fees and OD Fees. Plaintiffs, through their retained expert, used Gate City's transaction data to estimate damages and determine ascertainability of the classes.

13. On September 24, 2021, Plaintiffs filed a Notice of Settlement and Request to Suspend Deadlines to notify the Court that the Parties had reached an agreement in principle on the material terms of a class settlement to resolve and release on a class-wide basis all pending claims. [D.E. 152]. On September 27, 2021, the Parties appeared before the Court to discuss the steps necessary to obtain approval of the Settlement. The Court's order dated September 27, 2021 suspended all deadlines to allow the parties

to negotiate and execute this Agreement and to move for Preliminary Approval of the Settlement pursuant to N.D. R. Civ. P. 23.

14. The Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims of the Releasing Parties. Gate City has entered into this Agreement to resolve any and all controversies and disputes arising out of or relating to the allegations made in the Amended Complaint, and to avoid the burden, risk, uncertainty, expense, and disruption to its business operations associated with further litigation. Gate City does not in any way acknowledge, admit to, or concede any of the allegations made in the Amended Complaint, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Amended Complaint. Nothing contained in this Agreement shall be used or construed as an admission of liability and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement. Plaintiffs have entered into this Agreement to liquidate and recover on the claims asserted in the Amended Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiffs do not in any way concede the claims alleged in the Amended Complaint lack merit or are subject to any defenses. The Parties intend this Agreement to bind Plaintiffs, Gate City, and all Settlement Class Members.

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

## **II. Definitions**

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

15. “Account” means any consumer checking account maintained by Gate City.

16. “Account Holder” means any person who has or had any interest, whether legal or equitable, in an Account during the Class Period.

17. “Action” means *Mary Lou Fallis, et al. v. Gate City Bank*, East Central Judicial District, Cass County, North Dakota; Case No. 09-2019-CV-04007.

18. “Amended Complaint” means the Amended Complaint filed on January 7, 2020.

19. “APPSN Fees” means fees that Gate City charged and did not refund on Debit Card transactions, during the Class Period, where there was a sufficient balance at the time the transaction was authorized, but an insufficient balance at the time the transaction was presented to Gate City for payment and posted to a customer’s account.

20. “APPSN Fee Class” means those current or former Gate City Account Holders who are North Dakota residents and were assessed APPSN Fees during the Class Period.

21. “APPSN Fee Net Settlement Fund” means \$4,840,000.00 minus proportional deductions for (a) the Court-approved attorneys’ fees and costs awarded to Class Counsel, (b) any Settlement Administration Costs, and (c) any Court-approved Service Awards to the Class Representatives.

22. “Class Counsel” means:

KOPELOWITZ OSTROW P.A.  
Jeff Ostrow, Esq.  
Jonathan M. Streisfeld, Esq.  
1 West Las Olas Blvd.  
Suite 500  
Fort Lauderdale, FL 33301

KALIEL PLLC  
Jeffrey Kaliel, Esq.  
1875 Connecticut Avenue, NW 10th Floor  
Washington, DC 20009

23. “Class Period” means the period from November 20, 2013, through November 30, 2021.

24. “Class Representatives” mean Mary Lou Fallis and Kyla Delorme.

25. “Court” means the East Central Judicial Circuit in and for Cass County, North Dakota.

26. “Current Account Holder” means a Settlement Class Member who continues to have his or her Account as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

27. “Debit Card” means a card or similar device issued or provided by Gate City, including a

debit card, check card, or automated teller machine (“ATM”) card that can or could be used to debit funds from an Account by Point of Sale and/or ATM transactions.

28. “Effective Date” means 10 days after all of the following events have occurred:

a. The Court has entered without material change the Final Approval Order and judgment;  
and

b. The time for seeking rehearing or appellate or other review has expired, and no appeal or petition for rehearing or review has been timely filed; or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired.

29. “Email Notice” means the short form notice, attached hereto as **Exhibit 1**, sent to Settlement Class members for whom Gate City has email addresses.

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

31. “Final Approval” means the date that the Court enters an order granting final approval to the Settlement and determines the amount of attorneys’ fees and costs awarded to Class Counsel and the amount of any Service Awards to the Class Representatives. The proposed Final Approval Order shall be in a form agreed upon by Class Counsel and Gate City. In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.

32. “Final Approval Hearing” means the hearing set by the Court to determine the fairness of the Settlement and whether to approve its terms.

33. “Final Approval Order” means the final order that the Court enters upon Final Approval, which shall be substantially in the form attached as an exhibit to the Motion for Final Approval. In the event that the Court issues separate Orders addressing the matters constituting Final Approval, then the Final Approval Order includes all such Orders.

34. “Gate City” means Defendant Gate City Bank.

35. “Long Form Notice” means the form of notice attached hereto as **Exhibit 2**, that shall be

posted on the Settlement Website created by the Settlement Administrator and shall be available to Settlement Class members by mail on request made to the Settlement Administrator.

36. “Multiple Fees” means NSF Fees and/or OD Fees that were charged for Automated Clearing House (ACH) and check transactions that were re-submitted by a merchant after being returned by Gate City for insufficient funds.

37. “Multiple Fees Class” means those current or former Gate City Account Holders who are North Dakota residents and were assessed Multiple Fees during the Class Period.

38. “Multiple Fees Net Settlement Fund” means \$660,000.00 minus proportional deductions for (a) the Court-approved attorneys’ fees and costs awarded to Class Counsel, (b) any Settlement Administration Costs, and (c) any Court-approved Service Awards to the Class Representatives.

39. “Net Settlement Fund” means the Settlement Fund, minus Court-approved attorneys’ fees and costs; any Court-approved Service Awards to the Class Representatives; and any Settlement Administration Costs, allocated between the APPSN Fee Net Settlement Fund and Multiple Fees Net Settlement Fund.

40. “Notice” means the notices, attached as Exhibits 1 and 2, that the Parties will ask the Court to approve in connection with Preliminary Approval of the Settlement.

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

42. “NSF Fee” or “Non-Sufficient Funds Fee” means any non-sufficient funds fee charged to an Account Holder for items returned when the Account had insufficient funds.

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

44. “OD Fee” or “Overdraft Fee” means any non-sufficient funds fee charged to an Account Holder for items paid when the Account had insufficient funds.

45. “Party” means the Plaintiffs and Gate City, individually, and “Parties” mean the Plaintiffs and Gate City collectively.

46. “Past Account Holder” means a Settlement Class Member who no longer has an open Account as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

47. “Plaintiffs” means Mary Lou Fallis and Kyla Delorme.

48. “Postcard Notice” means the short form notice, attached as **Exhibit 1**, sent by U.S. mail to Settlement Class members for whom Gate City does not have valid email addresses, or for whom Email Notice is returned undeliverable.

49. “Preliminary Approval” means the date that the Court enters, without material change, the Preliminary Approval Order.

50. “Preliminary Approval Order” means the Court’s order granting Preliminary Approval of the Settlement and approving the Notice Program.

51. “Releases” means all of the releases contained in Section XII hereof.

52. “Released Claims” means all claims to be released as specified in Section XII.

53. “Released Parties” means those persons released as specified in Section XII.

54. “Releasing Parties” means Plaintiffs and all Settlement Class Members, and each of their respective heirs, assigns, beneficiaries and successors.

55. “Service Award” means any Court-ordered payment to the Plaintiffs for serving as Class Representatives, which is in addition to any payment due to Plaintiffs as Settlement Class Members.

56. “Settlement Administration Costs” means all costs of the Settlement Administrator regarding Notice and settlement administration.

57. “Settlement Administrator” means Epiq Class Action & Claims Solutions. Class Counsel and Gate City may, by agreement, substitute a different organization as Settlement Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, either Class Counsel or Gate City may move the Court to substitute a different



organization as Settlement Administrator, upon a showing that the responsibilities of Settlement Administrator have not been adequately executed by the incumbent.

58. “Settlement Classes” means all members of the APPSN Fee Class and the Multiple Fees Class.

59. “Settlement Class Member” means any member of the APPSN Fee Class and/or Multiple Fees Class who does not opt-out of the Settlement and who is entitled to the benefits of the Settlement.

60. “Settlement Class member” means all members of the Settlement Classes.

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

62. “Settlement Fund” means the \$5,500,000.00 common cash fund for the benefit of the Settlement Classes that Gate City is obligated to pay under the Settlement, allocated \$4,840,000.00 for the APPSN Fee Class and \$660,000.00 for the Multiple Fees Class. The Settlement Fund will be used to pay Settlement Class Member Payments, any award of attorneys’ fees, litigation costs, any Service Awards to the Class Representatives ordered by the Court, all Settlement Administration Costs, and any residual payment to Gate City pursuant to North Dakota Rule of Civil Procedure 23(o)(E).

63. “Settlement Website” means the website that the Settlement Administrator will use as a means for Settlement Class members to obtain notice of and information about the Settlement, including hyperlinked access to this Agreement, the Long Form Notice, the Preliminary Approval Order approving this Settlement, and such other documents as the Parties agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website at least until Final Approval. The URL of the Settlement Website shall be [www.gatecityfeelitigation.com](http://www.gatecityfeelitigation.com), or such other URL as Class Counsel and Gate City agree upon in writing.

### **III. Certification of the Settlement Classes**

64. For Settlement purposes only, Plaintiffs and Gate City agree to ask the Court to certify the Settlement Classes, consisting of the APPSN Fee Class and the Multiple Fees Class, under the North Dakota

Rules of Civil Procedure.

**IV. Settlement Consideration and Escrow Account**

65. Subject to approval by the Court, Gate City shall pay \$4,840,000.00 in cash for the benefit of the APPSN Fee Class and \$660,000.00 in cash for the benefit of the Multiple Fees Class to create the Settlement Fund. The Settlement Fund shall be used to pay Settlement Class Members their respective Settlement Class Member Payments; any and all attorneys' fee and costs awarded to Class Counsel; any Service Awards to the Class Representatives; and all Settlement Administration Costs. Gate City shall not be responsible for any other payments or consideration under this Agreement.

66. The \$5,500,000.00 Settlement Fund shall be paid by Gate City into the Escrow Account within 7 days of Preliminary Approval.

67. For avoidance of doubt, it is agreed by the Parties that a Settlement Class Member may be a member of both the APPSN Fee Class and Multiple Fees Class.

68. As a result of the Action, Gate City revised its account agreement to clarify when APPSN Fees and Multiple Fees may be assessed.

69. The funds in the Escrow Account shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1 at all times since creation of the Escrow Account. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Escrow Account or otherwise, including any taxes or tax detriments that may be imposed upon Gate City, Gate City's counsel, Plaintiffs, and/or Class Counsel with respect to income earned by the Escrow Account, for any period during which the Escrow Account does not qualify as a "qualified settlement fund" for the purpose of federal or state income taxes or otherwise (collectively "Taxes"), shall be paid out of the Escrow Account. Gate City and Gate City's counsel and Plaintiffs and Class Counsel shall have no liability or responsibility for any of the Taxes. The Escrow Account shall indemnify and hold Gate City and Gate City's counsel and Plaintiffs and Class Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

70. Within 30 days of the Effective Date, Gate City shall cause any and all accounts held at

Gate City by Plaintiffs to be closed. To the extent any funds remain in any such accounts at the time of closure, Gate City will transmit said funds by check made payable to the account owners and delivered to the addresses Gate City has on file for said account owners. The closure of these or any other accounts shall in no way be construed to extinguish or release any debt owed by Plaintiffs on such accounts. Plaintiffs agree that they will not open any new accounts, whether as a joint or individual owner or as an authorized signer, at Gate City.

**V. Settlement Approval**

71. Upon execution of this Agreement by all Parties, Class Counsel shall promptly move the Court for an order granting Preliminary Approval of this Settlement. The proposed Preliminary Approval Order that will be attached to the motion shall be in a form agreed upon by Class Counsel and Gate City. The motion for Preliminary Approval shall, among other things, request that the Court: (1) approve the terms of the Settlement as within the range of fair, adequate and reasonable; (2) provisionally certify the Settlement Class pursuant to the North Dakota Rules of Civil Procedure for settlement purposes only; (3) approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement; (4) approve the procedures set forth herein below for Settlement Class members to exclude themselves from the Settlement Classes or to object to the Settlement; (5) stay the Action pending Final Approval of the Settlement; and (6) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel, and Gate City's counsel, at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith, and determine whether to approve the Settlement and Class Counsel's application for attorneys' fees and costs and for Service Awards to the Class Representatives.

**VI. Discovery and Settlement Data**

72. Class Counsel and Gate City already have engaged in significant discovery related to liability and damages. Additionally, for purposes of effectuating the Settlement, Gate City will make available to Class Counsel and its expert data for the entire Class Period, similar to that previously provided for settlement negotiation purposes, such that Plaintiffs' expert may determine membership in the

Settlement Classes and ultimately the amount of Settlement Class Member damages. Because Plaintiffs' expert will not have access to Settlement Class member names or Account numbers, Plaintiffs' expert will provide his results to Gate City, which will then create a list of Settlement Class members and their email or postal addresses, which will be provided to the Settlement Administrator to provide Notice and to administer distributions to Settlement Class Members.

**VII. Settlement Administrator**

73. Class Counsel, in consultation with Gate City, has selected the Settlement Administrator. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph hereafter and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, effectuating the Notice Program and distributing the Settlement Fund as provided herein.

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

a. Use the name and address information for Settlement Class members provided by Gate City in connection with the Notice Program approved by the Court, for the purpose of mailing the Postcard Notice and sending the Email Notice, and later mailing distribution checks to Past Account Holders and to Current Account Holders where it is not feasible or reasonable for Gate City to make the payment by a credit to the Settlement Class Members' Accounts;

b. Establish the Escrow Account and receive the Settlement Fund from Gate City;

c. Establish and maintain a Post Office box for the receipt of opt-out requests and objections;

d. Establish and maintain the Settlement Website;

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

f. Respond to any mailed Settlement Class member inquiries;

g. Process all requests for exclusion from the Settlement Classes;

h. Provide weekly reports to Class Counsel and Gate City that summarize the number of requests for exclusion and/or objections received that week, the total number of exclusion requests and/or objections received to date, the progress of the Notice Program, and other pertinent information;

i. In advance of the Final Approval Hearing, prepare an affidavit to submit to the Court confirming that the Notice Program was completed, describing how the Notice Program was completed, providing the names of each Settlement Class member who timely and properly opted-out from the Settlement Classes, as well as those Settlement Class Members that timely filed objections, and other information as may be necessary to allow the Parties to seek and obtain Final Approval;

j. Provide to Gate City the amount of the Net Settlement Fund required to make Settlement Class Member Payments to Current Account Holders by a credit to those Settlement Class Members' Accounts and then sending Gate City the funds at least ten days before Gate City's deadline to make the Account credits;

k. Distribute Settlement Class Member Payments by check to Past Account Holders;

l. Perform all tax-related services for the Escrow Account as provided in the Agreement;

m. Pay invoices, expenses, and costs upon approval by Class Counsel and Gate City, as provided in this Agreement; and

n. Any other Settlement-administration-related function at the instruction of Class Counsel and Gate City, including, but not limited to, verifying that the Settlement Fund has been distributed.

75. Settlement Administration Costs shall be paid from the Settlement Fund within 10 days after invoicing to and approval by the Parties. In the event the Final Approval Order is not entered, or this Agreement is terminated pursuant to Section XIV below, Gate City agrees to cover any reasonable costs incurred and fees charged by the Settlement Administrator pursuant to this Section VII prior to the denial of Final Approval or the termination of this Agreement.

#### **VIII. Notice to Settlement Class members**

76. As soon as practicable after Preliminary Approval of the Settlement, at the direction of Class Counsel and Gate City's counsel, the Settlement Administrator shall implement the Notice Program

provided herein, using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice shall include, among other information: a description of the material terms of the Settlement; a date by which Settlement Class members may exclude themselves from, or “opt-out” of, the APPSN Fee Class and/or Multiple Fees Class; a date by which Settlement Class Members may object to the Settlement, to Class Counsel’s application for attorneys’ fees and costs, and/or the Service Award for the Class Representative; the date on which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website at which Settlement Class members may access this Agreement and other related documents and information. Class Counsel and Gate City shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Notices provided under or as part of the Notice Program shall not bear or include the Gate City logo or trademarks or the return address of Gate City, or otherwise be styled to appear to originate from Gate City.

77. The Notice also shall include a procedure for Settlement Class members to opt-out of the Settlement Class. A Settlement Class member may opt-out of the APPSN Fee Class and/or Multiple Fees Class at any time during the Opt-Out Period, provided the opt-out notice is postmarked no later than the last day of the Opt-Out Period. Any Settlement Class Member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement. If an Account has more than one Account Holder, and if one Account Holder excludes himself or herself from the APPSN Fee Class and/or Multiple Fees Class, then all Account Holders on that Account shall be deemed to have opted-out of the Settlement with respect to that Account, and no Account Holder shall be entitled to a payment under the Settlement.

78. The Notice also shall include a procedure for Settlement Class Members to object to the Settlement and/or to Class Counsel’s application for attorneys’ fees and costs and/or a Service Awards to the Class Representatives. Objections to the Settlement, to the application for fees and costs, and/or to the Service Awards must be mailed to the Clerk of the Court, Class Counsel, Gate City’s counsel, and the Settlement Administrator. For an objection to be considered by the Court, the objection must be submitted no later than the last day of the Opt-Out Period, as specified in the Notice. If submitted by mail, an objection

shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

79. For an objection to be considered by the Court, the objection must also set forth:
- a. the name of the Action;
  - b. the objector's full name, address, and telephone number;
  - c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
  - d. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
  - e. the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;
  - f. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
  - g. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the 5 years preceding the date that of the filed objection, the caption of each case in which counsel or the firm has made such objection, and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years;
  - h. any and all agreements that relate to the objection or the process of objecting— whether written or oral—between objector or objector's counsel and any other person or entity;

i. the identity of all counsel, if any, representing the objector who will appear at the Final Approval Hearing;

j. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;

k. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

l. the objector's signature (an attorney's signature is not sufficient).

Class Counsel and/or Gate City may conduct limited discovery on any objector consistent with the North Dakota Rules of Civil Procedure.

80. Notice shall be provided to Settlement Class members in three different ways: Email Notice to Account Holders for whom Gate City has email addresses; Postcard Notice sent by U.S. mail to Account Holders for whom Gate City does not have valid email addresses, and for whom Email Notice is returned undeliverable; and Long Form Notice, which shall be available on the Settlement Website and/or via mail upon a Settlement Class member's request. Not all Settlement Class members will receive all forms of Notice, as detailed herein.

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

82. Gate City will cooperate with Class Counsel and Plaintiffs' expert to make available the necessary data to Plaintiffs' expert to determine membership in the Settlement Classes. The data necessary for Plaintiffs' expert to compile the membership in the Settlement Classes shall be provided as soon as practicable. Gate City will bear the expense of extracting the necessary data to make available to Plaintiffs' expert for analysis, while Class Counsel shall be responsible for paying Plaintiffs' expert, who will analyze the data provided to determine membership in one or both of the Settlement Classes as well as the amount of the Settlement Classes' damages. Thereafter, Plaintiffs' expert will deliver a membership list identifying the Account Holders that are Settlement Class members and identifying each as a member of the APPSN



Fee Class, Multiple Fees Class, or both, to Gate City. Gate City will then add the name, mailing address, and email address, to the extent available, of each identified Account Holder to the list and transmit it to the Settlement Administrator. Gate City will bear the expense of adding the name and address information and transmitting the membership list.

83. Once the Settlement Administrator has the Settlement Class membership list, the Settlement Administrator shall send out Email Notice to all Settlement Class members receiving Notice by that method. For Settlement Class members for whom Gate City does not have email addresses, the Settlement Administrator shall run the physical addresses through the National Change of Address Database and shall mail to all such Settlement Class members Postcard Notice. The initial Postcard Notice and Email Notice shall be referred to as "Initial Mailed Notice."

84. The Settlement Administrator shall perform reasonable address traces for all Initial Mailed Notice postcards that are returned as undeliverable. A reasonable tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such purpose. No later than 60 days before the Final Approval Hearing, the Settlement Administrator shall complete the re-mailing of Postcard Notice to those Settlement Class members whose new addresses were identified as of that time through address traces ("Notice Re-mailing Process"). The Settlement Administrator shall also send Postcard Notice to all Settlement Class members whose Email Notice were returned as undeliverable and complete such notice pursuant to the deadlines described herein as they relate to the Notice Re-mailing Process.

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

86. The Settlement Administrator shall maintain a database showing mail and email addresses to which each Notice was sent and any Notices that were not delivered by mail and/or email. In addition to weekly updates to the Parties regarding the progress of the Notice Program and the declaration or affidavit by the Settlement Administrator in advance of the Final Approval Hearing and in support of the Motion for Final Approval, a summary report of the Notice Program shall be provided to the Parties three days prior

to the Final Approval Hearing. The database maintained by the Settlement Administrator regarding the Notices shall be available to the Parties and the Court upon request. It shall otherwise be confidential and shall not be disclosed to any third party. To the extent the database is provided to Class Counsel, it shall be kept confidential, not be shared with any third party and used only for purposes of implementing the terms of this Agreement and shall not be used for any other purposes.

87. All costs and expenses related to the Notice Program shall be paid from the Settlement Fund after approval by Class Counsel.

88. Within the provisions set forth in this Section VIII, further specific details of the Notice Program shall be subject to the agreement of Class Counsel and Gate City.

**IX. Final Approval Order and Judgment**

89. Plaintiffs' Motion for Preliminary Approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Plaintiffs shall file their Motion for Final Approval of the Settlement, and application for attorneys' fees and costs and for Service Awards for the Class Representatives, no later than 45 days before the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' Motion for Final Approval of the Settlement, including Class Counsel's application for attorneys' fees and costs, and for the Service Awards for the Class Representatives. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to Class Counsel's application for attorneys' fees and costs, or the Service Awards application, provided the objector(s) submitted timely objections that meet all of the requirements listed in the Agreement.

90. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting Final Approval of the Settlement and entering final judgment thereon, and whether to approve Class Counsel's request for attorneys' fees and costs and Service Awards. The proposed Final Approval Order shall be in a form agreed upon by Class Counsel and Gate City. Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate, and reasonable;

- b. Finally certify the APPSN Fee Class and Multiple Fees Class for settlement purposes only;
- c. Determine that the Notice provided satisfies due process requirements;
- d. Enter judgment dismissing the Action with prejudice;
- e. Bar and enjoin all Releasing Parties from asserting any of the Released Claims hereof, bar and enjoin all Releasing Parties from pursuing any Released Claims against Gate City or its affiliates at any time, including during any appeal from the Final Approval Order, and retain jurisdiction over the enforcement of the Court's injunctions;
- f. Release Gate City and the Released Parties from the Released Claims; and
- g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Gate City, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

**X. Calculation and Disbursement of Settlement Class Member Payments**

91. The calculation and implementation of allocations of the Settlement Fund contemplated by this Section X shall be done by Class Counsel and Plaintiffs' expert for the purpose of compensating Settlement Class Members. The methodology provided for herein will be applied to the data as consistently, sensibly, and conscientiously as reasonably possible, recognizing and taking into consideration the nature and completeness of the data and the purpose of the computations. Consistent with its contractual, statutory, and regulatory obligations to maintain the security of and protect its customers' private financial information, Gate City shall make available such data and information as may reasonably be needed by Class Counsel and Plaintiffs' expert to confirm and/or effectuate the calculations and allocations contemplated by this Agreement. Class Counsel shall confer with Gate City's counsel concerning any such data and information.

92. The APPSN Fee Net Settlement Fund shall be paid *pro rata* to the members of the APPSN Fee Class using the following calculation:

- a. The dollar amount of the APPSN Fee Net Settlement Fund divided by the total number of APPSN Fees paid by all members of the APPSN Fee Class, which yields a per-fee amount;

b. Multiply the per-fee amount by the total number of APPSN Fees charged to and paid by each member of the APPSN Fee Class; and

c. This results in an APPSN Fee Class Settlement Class Member Payment.

93. The Multiple Fees Net Settlement Fund shall be paid *pro rata* to the members of the Multiple Fees Class using the following calculation:

a. The dollar amount of the Multiple Fees Net Settlement Fund divided by the total number of Multiple Fees paid by all members of the Multiple Fees Class, which yields a per-fee amount;

b. Multiply the per-fee amount by the total number of Multiple Fees charged to and paid by each member of the Multiple Fees Class; and

c. This results in a Multiple Fees Class Settlement Class Member Payment.

94. The total of the APPSN Fee Class Settlement Class Member Payment and/or the Multiple Fees Class Settlement Class Member Payment due to each Settlement Class Member is the total Settlement Class Member Payment.

95. Within 15 days after Final Approval, the Settlement Administrator shall identify to Gate City the full amount of Settlement Class Member Payments, along with the amount of each Settlement Class Member's Payment to be credited to Current Account Holders' Accounts.

96. Settlement Class Member Payments shall be made no later than 60 days after the Effective Date, as follows:

a. For those Settlement Class Members who are Current Account Holders at the time of the distribution of the Net Settlement Fund, a credit in the amount of the Settlement Class Member Payment they are entitled to receive shall be applied to any account they are maintaining individually at the time of the credit. The Settlement Administrator shall transfer the funds necessary for Gate City to make these credits at least 10 days before Gate City's deadline to make the credits. Gate City shall notify Current Account Holders of any such credit on the Account statement on which the credit is reflected by stating "APPSN Fee Refund" or "Multiple Fees Refund" or something similar. Gate City will bear any costs associated with implementing the Account credits and notification discussed in this paragraph. If by the

deadline for Gate City to apply credits of Settlement Class Member Payments to accounts Gate City is unable to complete certain credit(s), or it not feasible or reasonable to make the payment by a credit, Gate City shall deliver the total amount of such unsuccessful Settlement Class Member Payment credits to the Settlement Administrator to be paid by check in accordance with subsection b. below.

b. For those Settlement Class Members who are Past Account Holders at the time of the distribution of the Net Settlement Fund or at that time do not have an individual account, they shall be sent a check with an appropriate legend, in a form approved by Class Counsel and Gate City, by the Settlement Administrator at the address used to provide the Notice, or at such other address as designated by the Settlement Class Member. For jointly held accounts, checks will be payable to all Account Holders and will be mailed to the first Account Holder listed on the Account. The Settlement Administrator will make reasonable efforts to locate the proper address for any check returned by the Postal Service as undeliverable and will re-mail it once to the updated address or, in the case of a jointly held account, and in the Settlement Administrator's discretion, to an accountholder other than the one listed first. In the event of any complications arising in connection with the issuance or cashing of a check, the Settlement Administrator shall provide written notice to Class Counsel and Gate City's counsel. Absent specific instructions from Class Counsel and Gate City's Counsel, the Settlement Administrator shall proceed to resolve the dispute using its best practices and procedures to ensure that the funds are fairly and properly distributed to the person or persons who are entitled to receive them. The Settlement Class Member shall have 180 days to negotiate the check.

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

98. The amount of the Net Settlement Fund attributable to uncashed or returned checks sent by the Settlement Administrator shall be held by the Settlement Administrator for up to one year from the date that the first distribution check is mailed by the Settlement Administrator. During this time the Settlement

Administrator shall make a reasonable effort to locate intended recipients of settlement funds whose checks were returned (such as by running addresses of returned checks through the Lexis/Nexis database that can be utilized for such purpose) to effectuate delivery of such checks. The Settlement Administrator shall make only one such additional attempt to identify updated addresses and re-mail or re-issue a distribution check to those for whom an updated address was obtained.

**XI. Disposition of Remaining Funds**

99. Within 1 year after the date the Settlement Administrator mails the first Settlement Class Member Payment, any remaining amounts resulting from uncashed checks (“Residual Funds”) shall be distributed as follows:

a. First, any Residual Funds remaining after distribution shall be distributed on a *pro rata* basis to participating Settlement Class Members who received Settlement Class Member Payments, to the extent feasible and practical in light of the costs of administering such subsequent payments, unless the amounts involved are too small to make individual distributions economically feasible or other specific reasons exist that would make such further distributions impossible or unfair. All costs of any second distribution, including Gate City’s internal costs of crediting Settlement Class Member Accounts, will come from the Residual Funds.

b. Second, in the event the costs of preparing, transmitting and administering such subsequent payments of the Residual Funds pursuant to this Section XII are not feasible and practical to make individual distributions economically feasible or other specific reasons exist that would make such further distributions impossible or unfair, or if such a subsequent distribution is made and Residual Funds still remain, Gate City shall seek the Court’s approval to distribute the Residual Funds to Gate City pursuant to North Dakota Rule of Civil Procedure Rule 23(o)(E). Plaintiffs and Class Counsel agree not to oppose Gate City’s request.

**XII. Releases**

100. As of the Effective Date, the Releasing Parties shall automatically be deemed to have fully and irrevocably released and forever discharged Gate City and each of its present and former parents,

subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former directors, officers, employees, agents, insurers, members, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors and assigns of each of them (“Released Parties”), of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys’ fees, losses and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties or matters during the Class Period that were or could have been alleged in the Action relating to the assessment of APPSN Fees and Multiple Fees (“Released Claims”).

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

102. With respect to all Released Claims, Plaintiffs and each of the other Settlement Class Members agree that they are expressly waiving and relinquishing to the fullest extent permitted by law any law of any state or territory of the United States, federal law or principle of common law, or of international or foreign law, that is similar, comparable or equivalent to Section 1542 of the California Civil Code, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

103. Plaintiffs or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the claims released herein, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he/she shall have automatically and irrevocably waived and

fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or noncontingent claims with respect to all of the matters described in or subsumed by herein. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement, including by the release herein and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he/she never receives actual notice of the Settlement and/or never receives a distribution of funds, credits, or other relief from the Settlement.

104. In addition to the Released Claims, Plaintiffs, including each and every one of their agents, representatives, attorneys, heirs, assigns, or any other person acting on their behalf or for their benefit, and any person claiming through them, makes the additional following general release of all claims, known or unknown, in exchange and consideration of the Settlement set forth in this Agreement. These named Plaintiffs agree to a general release of the Released Parties from all claims, demands, rights, liabilities, grievances, demands for arbitration, and causes of action of every nature and description whatsoever, known or unknown, pending or threatened, asserted or that might have been asserted, whether brought in tort or in contract, whether under state or federal or local law.

105. Nothing in this Agreement shall operate or be construed to release any claims or rights that Gate City has to recover any past, present or future amounts that may be owed by Plaintiffs or by any Settlement Class Member on his/her accounts, loans or any other debts with Gate City, pursuant to the terms and conditions of such accounts, loans, or any other debts. Likewise, nothing in this Agreement shall operate or be construed to release any defenses or rights of set-off that Plaintiffs or any Settlement Class Member has, other than with respect to the Released Claims, in the event Gate City and/or its assigns seeks to recover any past, present or future amounts that may be owed by Plaintiffs or by any Settlement Class Member on his/her accounts, loans or any other debts with Gate City, pursuant to the terms and conditions of such accounts, loans, or any other debts.



**XIII. Payment of Attorneys' Fees, Costs, and Service Awards**

106. Gate City agrees not to oppose Class Counsel's request for attorneys' fees of up to 33.33% of the Settlement Fund, and not to oppose Class Counsel's request for reimbursement of reasonable costs. Gate City reserves the right to oppose an application for attorneys' fees in excess of 33.33% of the Settlement Fund. Any award of attorneys' fees and costs to Class Counsel shall be payable solely out of the Settlement Fund. The Parties agree that the Court's failure to approve, in whole or in part, any request for an award for attorneys' fees or costs shall not prevent the Settlement Agreement from becoming Effective, nor shall it be grounds for termination.

107. Class Counsel's reasonable attorneys' fees and costs, as determined and approved by the Court, shall be paid from the Settlement Fund within 10 days after entry of the Final Approval Order.

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

109. In the event the Effective Date does not occur (either because approval of the Settlement is overturned or the Agreement is terminated for any reason), or the attorneys' fees and costs award is reduced following an appeal, Class Counsel shall reimburse the Settlement Fund, within 20 days of the entry of the order reducing the fees, overturning the approval of the Settlement on appeal, or the termination of the Agreement, the difference between the amount distributed and the reduced amount (in the event of a reduction) or the entirety of the amount (in the event approval is overturned or the Agreement is terminated). Each counsel and their law firms who have received any payment of fees and/or costs shall be jointly and severally liable for the entirety. Further, each counsel and their law firm consent to the jurisdiction of the Court for the enforcement of this provision.

110. Class Counsel will ask the Court to approve Service Awards to the Plaintiffs in the amount

of \$5,000.00 each. The Service Awards are to be paid by the Settlement Administrator from the Escrow Account within 15 days of the Effective Date. The Service Awards shall be paid to the Class Representatives in addition to the Settlement Class Member Payments. Gate City agrees not to oppose Class Counsel's request for Service Awards up to \$5,000.00 each. The Parties agree that the Court's failure to approve the Service Awards, in whole or in part, shall not prevent the Settlement Agreement from becoming Effective, nor shall it be grounds for termination.

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

#### **XIV. Termination of Settlement**

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

- a. Class Counsel and Gate City agree to termination;
- b. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;
- c. an appellate court vacates or reverses the Final Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand within 360 days after such reversal;
- d. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement in a way that Class Counsel or Gate City reasonably considers material;
- e. the Effective Date does not occur; or
- f. any other ground for termination provided for elsewhere in this Agreement.

113. Gate City also shall have the right to terminate the Settlement by serving on Class Counsel and filing with the Court a notice of termination within 15 days after its receipt from the Settlement

Administrator of any report indicating that the number of Settlement Class members who timely request exclusion from the Settlement Class equals or exceeds 5% of the total Settlement Class members.

**XV. Effect of a Termination**

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

115. In the event of termination, Gate City shall have no right to seek reimbursement from Plaintiffs, Class Counsel, or the Settlement Administrator for Settlement Administration Costs paid out of the Settlement Fund. The Settlement Administrator shall submit to the Parties any outstanding invoices for reasonable fees or expenses, which shall be paid from the Settlement Fund upon approval by the Parties. After payment of invoices or other fees or expenses mentioned in this Agreement that have been incurred and are due to be paid from the Settlement Fund, the Settlement Administrator shall return the balance of the Settlement Fund to Gate City within seven days of termination.

116. The Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions hereof.

117. Certification of the Settlement Classes shall have no bearing in deciding whether the claims asserted in the Action are or were appropriate for class treatment in the absence of settlement. If this Agreement terminates or is nullified, the provisional class certification shall be vacated by its terms, and the Action shall revert to the status that existed before execution of this Settlement Agreement. Thereafter, Plaintiffs shall be free to pursue any claims available to them, and Gate City shall be free to assert any defenses available to it, including but not limited to, denying the suitability of this case for class treatment. Nothing in this Agreement shall be argued or deemed to estop any Party from the assertion of such claims and defenses.

118. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

**XVI. No Admission of Liability**

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

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

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

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

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

**XVII. No Press Release**

124. Neither Party shall issue any press release or shall otherwise initiate press coverage of the Settlement. If contacted, the Party may respond generally by stating that that the Party is satisfied with the Settlement was reached and that it was a fair and reasonable result.

**XVIII. Miscellaneous Provisions**

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

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

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

128. Obligation To Meet and Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted.

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

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

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

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

133. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of the agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against Gate City or its affiliates at any time, including during any appeal from the Final Approval Order.

134. Notices. All notices to Class Counsel provided for herein, shall be sent by email with a

hard copy sent by overnight mail to:

KOPELOWITZ OSTROW P.A.  
Jeff Ostrow  
Jonathan M. Streisfeld  
1 West Las Olas Blvd.  
Suite 500  
Fort Lauderdale, Florida 33301  
ostrow@kolawyers.com

KALIEL GOLD PLLC  
Jeffrey Kaliel  
1875 Connecticut Avenue Northwest  
10th Floor  
Washington, DC 20009  
jkaliel@kalielpllc.com

*Class Counsel*

BUCKLEY LLP  
James McGuire  
201 Mission Street  
12th Floor  
San Francisco, CA 94105  
jmcguire@buckleyfirm.com

*Counsel for Gate City*

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice program.

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

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

137. Authority. Class Counsel (for the Plaintiffs and the Settlement Class Members), and counsel for Gate City (for Gate City), represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation or entity included

within the definitions of Plaintiffs and Gate City to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

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

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

140. Assignment; Third Party Beneficiaries. None of the rights, commitments, or obligations recognized under this Settlement Agreement may be assigned by any member of the Settlement Classes without the express written consent of the other Parties.




141. Calculation of Time. All time listed in this Agreement is in calendar days.

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

*Signature Page to Follow*

Dated: Nov 19, 2021

  
Mary Lou Fallis (Nov 19, 2021 06:29 EST)


MARY LOU FALLIS  
*Plaintiff*

Dated: Nov 19, 2021

  
Kyla Delorme (Nov 19, 2021 11:29 MST)


KYLA DELORME  
*Plaintiff*

Dated: Nov 19, 2021

  
Jeffrey Ostrow (Nov 19, 2021 13:30 EST)

JEFF OSTROW  
KOPELOWITZ OSTROW P. A.  
*Class Counsel*

Dated: Nov 19, 2021

  
Jeff Kaliel (Nov 19, 2021 13:32 EST)

JEFFREY KALIEL  
KALIEL GOLD PLLC  
*Class Counsel*

Dated: Nov 19, 2021

*Eric Malchodi*

GATE CITY BANK  
By: Eric Malchodi  
ITS Exec. V.P. and Chief Risk Officer

Dated: Nov 22, 2021

  
James McGuire (Nov 22, 2021 11:13 PST)

JAMES MCGUIRE  
BUCKLEY LLP  
*Counsel for Gate City Bank*

# **EXHIBIT 1**

## Exhibit 1 – Email and Postcard Notice

*Mary Lou Fallis, et al. v. Gate City Bank*

Case No. 09-2019-CV-04007

### NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

#### **IF YOU WERE CHARGED CERTAIN OVERDRAFT FEES OR NON-SUFFICIENT FUNDS FEES ON A GATE CITY BANK CHECKING ACCOUNT BETWEEN NOVEMBER 20, 2013, AND NOVEMBER 30, 2021, THEN YOU MAY BE ENTITLED TO A PAYMENT OR CREDIT FROM A CLASS ACTION SETTLEMENT**

This is not a solicitation from a lawyer.

The East Central District Court, Cass County, State of North Dakota has authorized this Notice.

You may be a member of the APPSN Fee Class and/or the Multiple Fees Class in *Mary Lou Fallis, et al. v. Gate City Bank*, in which the Plaintiffs, Mary Lou Fallis and Kyla Delorme, allege that Defendant Gate City Bank (“Gate City”) improperly assessed Overdraft Fees and Non-Sufficient Funds Fees. Gate City maintains it did nothing wrong, but has agreed to settle the lawsuit to avoid the cost, delay, and uncertainty of litigation. The Court has not decided which side is right.

If you are a member of the APPSN Fee Class and the Settlement is approved, you may be entitled to receive a cash payment from a \$4,840,000.00 settlement fund established for that class. If you are a member of the Multiple Fees Class and the Settlement is approved, you may be entitled to receive a cash payment from a \$660,000.00 settlement fund established for that class. You may be a member of both classes, depending on the fees assessed on your account with Gate City, and if so, will receive a payment from each fund.

The Court has preliminarily approved this Settlement. It will hold a Final Approval Hearing on [INSERT DATE]. At that hearing, the Court will consider whether to grant Final Approval to the Settlement, and whether to approve payment from the Settlement Fund of up to \$5,000.00 in Service Awards to each Class Representative, up to 33.33% or \$1,833,333.33 of the Settlement Fund as attorneys’ fees, reimbursement of attorney litigation costs, and payment to the Settlement Administrator for its fees and costs. If the Court grants Final Approval of the Settlement and you do not request to be excluded from the Settlement, you will release your right to bring any claim covered by the Settlement. In exchange, Gate City has agreed to issue a credit to your Account or a cash payment to you if you are no longer a customer.

**To obtain a Long Form class notice and other important documents, please visit [INSERT WEBSITE ADDRESS]. Alternatively, you may call [INSERT PHONE #].**

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

**If you do not take any action, you will be legally bound by the Settlement and any orders or judgment entered in the Action, and will fully, finally, and forever give up any rights to prosecute certain claims against Gate City.**

# **EXHIBIT 2**

## Exhibit 2 – Long Form Notice

*Mary Lou Fallis, et al. v. Gate City Bank*  
Case No. 09-2019-CV-04007

### NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

#### **IF YOU WERE CHARGED CERTAIN OVERDRAFT FEES OR NON-SUFFICIENT FUNDS FEES ON A GATE CITY BANK CHECKING ACCOUNT BETWEEN NOVEMBER 20, 2013, AND NOVEMBER 30, 2021, THEN YOU MAY BE ENTITLED TO A PAYMENT OR CREDIT FROM A CLASS ACTION SETTLEMENT**

This is not a solicitation from a lawyer. The East Central District Court, Cass County, State of North Dakota has authorized this Notice.

A Settlement has been reached in a class action lawsuit claiming that Gate City Bank (“Gate City”) breached its contract with Account Holders and improperly assessed and collected Overdraft Fees and Non-Sufficient Fees on certain transactions. Gate City maintains it did nothing wrong; however, it has agreed to settle the lawsuit to avoid the cost, delay, and uncertainty of litigation. The Court has not decided which side is right.

A cash Settlement Fund of \$5.5 million has been established to pay Settlement Class Member Payments and any attorneys’ fees and costs and Service Awards ordered by the Court, as well as any Settlement Administration Costs. Current Account Holders who have and Former Account Holders who had a Gate City checking account(s) may be eligible for a Settlement Class Member Payment from the Settlement Fund.

Your legal rights are affected whether you act or don’t act. Read this notice carefully.

<b>SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION</b>	
<b>DO NOTHING AND RECEIVE A PAYMENT OR ACCOUNT CREDIT</b>	If you don’t do anything, you will receive a payment or account credit from the Settlement Fund so long as you do not opt-out of or exclude yourself from the Settlement (described in the next box).
<b>OPT-OUT FROM THE SETTLEMENT; RECEIVE NO PAYMENT BUT RELEASE NO CLAIMS</b>	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 Gate City, but you will not receive a payment or credit for APPSN Fees and/or Multiple Fees. If you opt-out of the Settlement, but want to recover against Gate City, you will have to file a separate lawsuit or claim.

<b>OBJECT TO THE SETTLEMENT</b>	You can file an objection with the Court explaining why you believe the Court should reject the Settlement. If your objection is overruled by the Court, then you may receive a payment and you will not be able to sue Gate City for the claims asserted in this Action. If the Court agrees with your objection, then the Settlement may not be approved.
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These rights and options – *and the deadlines to exercise them* – along with the material terms of the Settlement are explained in this Notice.

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

**BASIC INFORMATION**

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

The lawsuit that is being settled is entitled *Mary Lou Fallis, et al. v. Gate City Bank*. It is pending in the East Central District Court, Cass County, State of North Dakota, Case No. 09-2019-CV-04007. The case is a “class action.” That means that the “Class Representatives,” Mary Lou Fallis and Kyla Delorme, are individuals who are acting on behalf of current and former Gate City Account Holders who were assessed certain Overdraft Fees and Non-Sufficient Funds Fees November 20, 2013, and November 30, 2021. The Class Representatives have asserted claims for breach of the account agreement and violations of the North Dakota Consumer Protection Law.

The Complaint in this lawsuit is posted on the Settlement Website and contains all of the allegations and claims asserted against Gate City. Gate City maintains that it did nothing wrong, but has agreed to settle the lawsuit to avoid the cost, delay, and uncertainty of litigation. The Court has not decided which side is right.

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

You received this Notice because Gate City’s records indicate that you were charged one or more Overdraft Fees or Non-Sufficient Funds Fees that are the subject of this Action. You may be a member of the APPSN Fee Class or Multiple Fees Class, or both. The Court directed that notice be sent to all APPSN Fee Class and Multiple Fees Class members because each such 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 Class Representatives’ and their lawyers’ job to identify when a proposed

settlement offer is good enough that it justifies recommending settling the case instead of continuing to trial. In a class action, the Class Representatives' lawyers, known as Class Counsel, make this recommendation to the Class Representatives. The Class Representatives have the duty to act in the best interests of the classes as a whole and, in this case, it is their belief, as well as Class Counsel's opinion, that this Settlement is in the best interest of all APPSN Fee Class and Multiple Fees Class members.

There is legal uncertainty about whether a judge or a jury will find that Gate City was contractually and otherwise legally obligated not to assess the fees at issue. Even if it was contractually wrong to assess these fees, there is uncertainty about whether the Class Representatives' claims are subject to other defenses that might result in no or less recovery to APPSN Fee Class and Multiple Fees Class members. Even if the Class Representatives were to win at trial, there is no assurance that the APPSN Fee Class and Multiple Fees 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 APPSN Fee Class and Multiple Fees Class members will avoid these and other risks and the delays associated with continued litigation.

Gate City disputes the allegations in the lawsuit and denies any liability or wrongdoing, and it enters into the Settlement solely to avoid the cost, delay, and uncertainty of further proceedings in the litigation.

### **WHO IS IN THE SETTLEMENT**

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

If you received this notice, then Gate City's records indicate that you may be a member of the APPSN Fee Class and/or the Multiple Fees Class and entitled to receive a payment or credit to your Account. You may be a member of each class.

You are a member of the APPSN Fee Class if you are a current or former Gate City Account Holder from North Dakota who was assessed an Overdraft Fee(s) on a Debit Card transaction that was authorized into a positive available balance, but settled against a negative available balance during the Class Period.

You are a member of the Multiple Fee Class if you are a current or former Gate City Account Holder from North Dakota who was assessed a Non-Sufficient Funds Fee(s) and/or Overdraft Fee(s) on an Automated Clearing House (ACH) and/or check transaction that was resubmitted for payment by a merchant after being returned by Gate City for insufficient funds during the Class Period.

### **YOUR OPTIONS**

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

You have three options: (1) do nothing and you will receive a payment or account credit according to the terms of this Settlement; (2) opt-out of the Settlement; or (3) participate in the Settlement, but object to it. Each of these options is described in a separate section below. In addition, you



may enter an appearance by hiring your own counsel.

**6. What are the critical deadlines?**

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

The deadline for sending a letter to opt-out of the settlement is \_\_\_\_\_.

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

**7. What has to happen for the Settlement to be approved?**

The Court has to decide that the Settlement is fair, reasonable, and adequate before it will approve it. The Court already has granted Preliminary Approval of the Settlement, which is why you received a Notice. The Court will make a final decision regarding the Settlement at the Final Approval Hearing, which is currently scheduled for \_\_\_\_\_.

**THE SETTLEMENT PAYMENT**

**8. How much is the Settlement?**

Gate City has agreed to create a Settlement Fund of \$5,500,000.00, which consists of \$4,840,000.00 for the APPSN Fee Class and \$660,000.00 for the Multiple Fee Class.

As discussed separately below, attorneys' fees, litigation costs, the costs paid to a third-party Settlement Administrator to administer the Settlement (including mailing and emailing Notice), and Service Awards to the Class Representatives will be allocated between and paid out of the Settlement Fund for both the APPSN Fee Class and Multiple Fees Class. Thereafter, the APPSN Fee Net Settlement Fund and Multiple Fees Net Settlement Fund will be divided among all members of each of those classes entitled to Settlement Class Member Payments based on formulas described in the Settlement and stated in response to Question 12 below.

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

Class Counsel will request the Court to approve attorneys' fees of not more than \$1,833,333.33 or 33.33% of the Settlement Fund, and will request that it be reimbursed for litigation costs incurred in filing and litigating the Action. The Court will decide the amount of the attorneys' fees and costs based on a number of factors, including the risk associated with bringing the case on a contingency basis, the amount of time spent on the case, the amount of costs incurred to prosecute the case, the quality of the work, and the outcome of the case.

**10. How much of the Settlement Fund will be used to pay the Class Representatives a Service Award?**

Class Counsel will request that the Class Representatives be paid a Service Award in the amount

of \$5,000.00 each for their filing and pursuit of the Action. The Service Awards must be approved by the Court.

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

The Settlement Administrator estimates its expenses will be \$\_\_\_\_\_.

**12. How much will my payment be?**

The balance of the Settlement Fund after attorneys' fees and costs, the Service Awards, and the Settlement Administration Costs, will be divided among all Settlement Class Members entitled to Settlement Class Member Payments following the division for the two classes and thereafter in accordance with the formulas outlined in the Settlement and summarized below:

I. The APPSN Fee Net Settlement Fund shall be paid *pro rata* to the members of the APPSN Fee Class using the following calculation:

- The dollar amount of the APPSN Fee Net Settlement Fund divided by the total number of APPSN Fees paid by all members of the APPSN Fee Class, which yields a per-fee amount;
- Multiply the per-fee amount by the total number of APPSN Fees charged to and paid by each member of the APPSN Fee Class.
- This results in a APPSN Fee Class Settlement Class Member Payment.

II.

III. The Multiple Fees Net Settlement Fund shall be paid *pro rata* to the members of the Multiple Fees Class using the following calculation:

- The dollar amount of the Multiple Fees Net Settlement Fund divided by the total number of Multiple Fees paid by all members of the Multiple Fees Class, which yields a per-fee amount;
- Multiply the per-fee amount by the total number of Multiple Fees charged to and paid by each member of the Multiple Fees Class.
- This results in a Multiple Fees Class Settlement Class Member Payment.

IV. The total of the APPSN Fee Settlement Class Member Payment and/or the Multiple Fees Class Settlement Class Member Payment due to each Settlement Class Member is the total Settlement Class Member Payment.

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

**13. What am I giving up to stay in the Settlement Class?**

If you stay in the Settlement Class, all of the decisions by the Court will bind you, and you give

Gate City a “release.” A “release” means you cannot sue, continue to sue, or be part of any other lawsuit against Gate City about the legal issues in this case. Section XII of the Settlement Agreement contains the release and describes the precise legal claims that you give up if you remain in the Settlement. The Settlement Agreement is available at [www.\[insertaddress\].com](http://www.[insertaddress].com).

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

No. If you are a Settlement Class member, then you may be entitled to receive a payment or credit for APPSN Fees and/or Multiple Fees without having to make a claim, unless you choose to opt-out of the Settlement.

**15. When will I receive my payment or account credit?**

The Court will hold a Final Approval Hearing on \_\_\_\_\_, 2022, at \_\_\_\_\_ a.m/p.m. to consider whether the Settlement should be approved. If the Court approves the Settlement, then payments should be made or credits should be issued within 60 days of the Effective Date. 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 opt-out of the Settlement?**

If you do not want to receive a payment or credit, or if you want to keep any right you may have to sue Gate City for the claims alleged in this lawsuit, then you must opt-out of the Settlement.

To opt-out, you must send a letter to the Settlement Administrator that you want to be excluded. Your letter can simply say “I hereby elect to be excluded from the settlement in the *Mary Lou Fallis, et al. v. Gate City Bank* class action.” Be sure to include your name, the last four digits of your account number(s) or former account number(s), address, telephone number, and email address. Your exclusion or opt-out request must be postmarked by \_\_\_\_\_, and sent to:

Mary Lou Fallis, et al. v. Gate City Bank Attn:  
ADDRESS OF THE SETTLEMENT ADMINISTRATOR

**17. What happens if I opt-out of the Settlement?**

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

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

## **OBJECTING TO THE SETTLEMENT**

<b>18. How do I notify the Court that I do not like the Settlement?</b>
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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. (Settlement Class members who exclude themselves from the Settlement have no right to object to how other Settlement Class members are treated.) To object, you must send a written document by mail or private courier (e.g., Federal Express) to the Clerk of Court at the address below. Your objection must include the following information:

- a. the name of the Action;
- b. the objector's full name, address and telephone number;
- c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
- d. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
- e. the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;
- f. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
- g. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the 5 years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection, and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years;
- h. any and all agreements that relate to the objection or the process of objecting— whether written or oral—between objector or objector's counsel and any other person or entity;
- i. the identity of all counsel, if any, representing the objector who will appear at the Final Approval Hearing;
- j. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;

- k. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- l. the objector's signature (an attorney's signature is not sufficient).

All objections must be post-marked no later than \_\_\_\_\_, \_\_\_\_\_, 2022, and must be mailed to the Clerk of the Court, Class Counsel, Gate City's counsel, and the Settlement Administrator as follows:

Clerk of Court	Settlement Administrator	Class Counsel	Gate City's Counsel
Clerk of District Court - East Central Judicial District 211 9th Street South Fargo, ND 58103	INSERT ADDRESS	Jeffrey Ostrow Jonathan M. Streisfeld KOPELOWITZ OSTROW P.A. One West Las Olas Boulevard Suite 500 Fort Lauderdale, FL 33301 <i>Class Counsel</i>  Jeffrey Kaliel KALIEL GOLD PLLC 1100 15 <sup>th</sup> St. NW 4th Floor Washington, DC 20005 <i>Class Counsel</i>	James McGuire BUCKLEY LLP 150 Spear Street Suite 800 San Francisco, CA 94105

**19. What is the difference between objecting and requesting to opt-out of the Settlement?**

Objecting is telling the Court that you do not believe the Settlement is fair, reasonable, and adequate for the APPSN Fee Class and/or the Multiple Fees 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 or credit from the APPSN Fee Net Settlement Fund and/or Multiple Fees Net Settlement Fund, or both, if the Settlement is approved, but you will release claims you might have against Gate City. 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 credit for APPSN Fees and/or Multiple Fees, or both, or release claims you might have against Gate City for the claims alleged in this lawsuit.

**20. What happens if I object to the Settlement?**

If the Court sustains your objection, or the objection of any other member of the APPSN Fee Class and/or the Multiple Fees Class, then there may be no Settlement. If you object, but the Court

overrules your objection and any other objection(s), then you will be part of the Settlement.

### **THE COURT'S FINAL APPROVAL HEARING**

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

The Court will hold a Final Approval or Fairness Hearing at \_\_\_ on \_\_\_, 2022 at the East Central Judicial Circuit Court House, Cass County, which is located at 211 9th Street South, Fargo, North Dakota 58103, unless otherwise noticed by the Court. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys' fees and litigation costs and the amount of the Service Awards to the Class Representatives. The hearing may be virtual, in which case the instructions to participate shall be posted on the website at [www.\\_\\_\\_\\_\\_](http://www._____).

**22. Do I have to come to the hearing?**

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

**23. May I speak at the hearing?**

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

### **THE LAWYERS REPRESENTING YOU**

**24. 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 members of the APPSN Fee Class and/or Multiple Fees Class.

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

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

**26. 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 attorneys' fees and costs, at the time they file the motion for Final Approval, and will specify the amount being sought as discussed above. You may review a copy of the fee application at the website established by the Settlement Administrator, [WEBSITE], or by requesting the court record from the Clerk of the District Court for the East Central Judicial District at <https://www.ndcourts.gov/public-access>.

**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 the Settlement Website, [WEBSITE]; in person at the Office of the Clerk of the District Court for the East Central Judicial District, which is located at 211 9th Street South, Fargo, North Dakota 58103; by contacting the Settlement Administrator (details below) and requesting a copy; or by requesting the court record from the Clerk of the District Court for the East Central Judicial District at <https://www.ndcourts.gov/public-access>.

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

Mary Lou Fallis, et al. v. Gate City Bank Settlement Administrator  
Attn:

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

Jeffrey Ostrow Jonathan M. Streisfeld KOPELOWITZ OSTROW P.A. One West Las Olas Boulevard Suite 500 Fort Lauderdale, Florida 33301 954-525-4100 954-525-4300 <i>ostrow@kolawyers.com</i> <i>streisfeld@kolawyers.com</i>	Jeffrey Kaliel KALIEL GOLD PLLC 1100 15 <sup>th</sup> St. NW 4th Floor Washington, DC 20005 202-350-4783 <i>jdkaliel@kalielpllc.com</i>
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***PLEASE DO NOT CONTACT THE COURT OR ANY REPRESENTATIVE OF GATE CITY CONCERNING THIS NOTICE OR THE SETTLEMENT.***