

SETTLEMENT AGREEMENT AND RELEASE

Morris v. First Interstate Bank, No., Case No. DV 20-528 (Yellowstone Cnty. Mont.)

Miller v. First Interstate Bank, No. CV-21-45-BLG-SPW-TJC (D. Mont.)

PREAMBLE

This Settlement Agreement and Release (the “Agreement”) is entered into by and among plaintiffs Brandy Morris, Brenda Gray, Stacy Miller and A Few Good Cleaners (“Named Plaintiffs”) and all those on whose behalf they are prosecuting their respective actions (each of them a “Plaintiff” and all of them “Plaintiffs”), on the one hand, and defendant First Interstate Bank (“Defendant”), on the other hand, as of the last date executed below. All references in this Agreement to a “Party” or the “Parties” shall refer to a party or the parties to this Agreement as identified above.

RECITALS

A. On April 10, 2020 plaintiff Brandy Morris filed a putative class action complaint in the Yellowstone County Circuit Court, entitled *Brandy Morris v. First Interstate Bank*, Case No. DV 20-0528 (the “Morris Action”), alleging two claims for breach of contract and unjust enrichment on behalf of a Montana only class.

B. On November 3, 2020, plaintiff Brandy Morris amended her complaint to add plaintiff Brenda Gray.

C. On April 28, 2021, plaintiffs Stacy Miller and her company, A Few Good Cleaners, filed a class action complaint in the U.S. District Court for the District of Montana, entitled *Stacy Miller v. First Interstate Bank*, Case No. CV-21-45-BLG-SPW-TJC (the “Miller Action”) alleging claims for breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, money had and received, violation of the Montana Consumer Protection Act, and deceit (the “Miller Complaint”).¹

D. On June 22, 2021, Plaintiffs Morris and Gray filed a Second Amended Complaint alleging a new theory of liability for their breach of contract and unjust enrichment claims and seeking to certify two national classes (the “Morris Second Amended Complaint”). .

E. On July 8, 2021, Defendant removed the Morris Action to the U.S. District Court for the District of Montana, Case No. 1:21-cv-000076-DWM-TJC. Plaintiffs Morris and Gray moved to remand the Morris Action on August 6, 2021. The Motion to Remand was pending at the time of this Settlement.

F. On October 6, 2021, the Parties participated in a mediation before the Honorable Edward A. Infante. The mediation resulted in a Mediator’s Proposal, which all Parties accepted.

E. Defendant has entered into this Agreement to resolve any and all controversies and disputes arising out of or relating to the allegations made in the Complaints, and to avoid the burden, risk, uncertainty, expense, and disruption to its business operations associated with further litigation. Defendant does not in any way acknowledge, admit to or concede any of the allegations made in the Complaints, and expressly disclaims and denies any fault or liability, or any charges

¹ The Morris Second Amended Complaint and the Miller Complaint, together, are the “Complaints.”

of wrongdoing that have been or could have been asserted in the Complaints. Nothing contained in this Agreement shall be used or construed as an admission of liability and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement.

G. Named Plaintiffs have entered into this Agreement to liquidate and recover on the claims asserted in the Complaints, and to avoid the risk, delay, and uncertainty of continued litigation. Named Plaintiffs do not in any way concede the claims alleged in the Complaints lack merit or are subject to any defenses.

AGREEMENT

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

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

(a) “APPSN Fees” shall mean overdraft fees that were charged and not refunded on signature Point of Sale debit card transactions where there was a sufficient available balance at the time the transaction was authorized, but an insufficient available balance at the time the transaction was presented to Defendant for payment and posted to a customer’s account, during the following time periods for Class Members residing in the following states:

Idaho – April 10, 2015 to September 17, 2018
Montana – April 10, 2012 to September 17, 2018
Oregon – April 10, 2014 to September 17, 2018
South Dakota – April 10, 2014 to September 17, 2018
Washington – April 10, 2014 to September 17, 2018
Wyoming – December 30, 2011 to September 17, 2018

(b) “Bar Date to Object” shall be the date set by the Court as the deadline for Class Members to file an Objection, and shall be fifteen (15) days after Class Counsel files the Motion for Final Approval and Motion for Award of Fees, Costs, and Service Award.

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

(d) “Class Counsel” shall mean A. Clifford Edwards, Triel D. Culver, A. Christopher Edwards, and John W. Edwards of Edwards & Culver; Jeff Kaliei and Sophia Gold of Kaliei Gold PLLC; Taras Kick of The Kick Law Firm, APC; and David K. W. Wilson, Jr. and Robert Farris-Olsen of Morrison Sherwood Wilson & Deola PLLP.

(e) “Class Member(s)” shall mean those current or former customers of Defendant who were assessed APPSN Fees and/or Retry Fees.

(f) “Court” shall mean the Circuit Court of Yellowstone County.

(g) “Defendant’s Counsel” shall mean Stuart M. Richter and Andrew J. Demko, of Katten Muchin Rosenman LLP and Mark D. Parker of Parker, Heitz & Cosgrove, PLLC

(h) “Effective Date” shall be thirty (30) days after the entry of the Final Approval Order (defined below) provided no objections are made to this Agreement. If there are objections to the Agreement, then the Effective Date shall be the later of: (1) thirty (30) days after entry of the Final Approval Order if no appeals are taken from the Final Approval Order; or (2) if appeals are taken from the Final Approval Order, then thirty (30) days after an Appellate Court ruling affirming the Final Approval Order; or (3) thirty (30) days after entry of a dismissal of the appeal.

(i) “Email Notice” shall mean a short form of notice that shall be sent by email to Class Members who are current customers of Defendant and agreed to receive account statements and notices electronically, in the form attached as **Exhibit 1**.

(j) “Final Approval Hearing Date” shall be the date set by the Court for the hearing on the Motion for Final Approval of this Agreement and the Motion for Award of Fees, Costs, and Service Award.

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

(l) “Final Report” shall mean the report prepared by the Settlement Administrator of all receipts and disbursements from the Settlement Fund, as described in Section 9, below.

(m) “Long Form Notice” shall mean the form of notice that shall be posted on the settlement website created by the Settlement Administrator and shall be available to Class Members by mail on request made to the Settlement Administrator in the form attached as **Exhibit 2**.

(n) “Motion for Final Approval and Motion for Award of Fees, Costs, and Service Award” shall mean the motion or motions filed by Class Counsel, as referenced in Section 6, below, which shall be filed forty-five (45) days before the Final Approval Hearing date.

(o) “Net Settlement Fund” shall mean the net amount of the Settlement Fund after payment of court approved attorneys’ fees and costs, any service award allowed by the Court, and any fees and costs paid to the Settlement Administrator.

(p) “Notice” shall mean the Email Notice, Long Form Notice, and Postcard Notice that the Parties will ask the Court to approve in connection with the Motion for Preliminary Approval of the Settlement.

(q) “Postcard Notice” shall mean the short form notice that shall be sent by mail to Class Members who are not current customers of Defendant or are current customers but did not agree to receive notices by email, or Class Members to whom the Settlement Administrator is unable to send Email Notice using the email addresses provided by Defendant, in the form attached as **Exhibit 1**.

(r) “Preliminary Approval/Notice Order” shall mean the Order issued by the Court preliminarily approving this Agreement and authorizing the sending of the Postcard Notice and Email Notice to members of the Classes, as provided in Sections 4 and 5, below.

(s) “Retry Fees” shall mean overdraft and/or returned item fees that were charged and not refunded for Automated Clearing House (ACH) and check transactions that were re-submitted by a merchant after being returned by Defendant for insufficient funds during the following time periods for Class Members residing in the following states:

Idaho – April 28, 2016 to April 7, 2021
Montana – April 28, 2013 to April 7, 2021
Oregon – April 28, 2015 to April 7, 2021
South Dakota – April 28, 2015 to April 7, 2021
Washington – April 28, 2015 to April 7, 2021
Wyoming – December 30, 2011 to April 7, 2021

(t) “Settlement Administrator” shall mean the entity appointed by the Court to provide the notice and other administrative handling of this Agreement.

(u) “Settlement Fund” shall mean the Two Million Three Hundred Thirty-One Thousand Dollars (\$2,331,000.00) to be paid by Defendant under the terms of this Agreement.

(v) “Uncollected Fees” shall mean any APPSN Fees or Retry Fees that were assessed on Class Members but not collected. For purposes of this Agreement, the Parties agree that the Uncollected Fees are Seventeen Thousand Ninety Dollars (\$17,090.00).

(w) “Value of the Settlement” shall mean the Settlement Fund plus the Uncollected Fees, which is a total of Two Million Three Hundred Forty-Eight Thousand Ninety Dollars (\$2,348,090.00).

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

3. FORGIVENESS OF UNCOLLECTED FEES. Defendant shall forgive all Uncollected Fees as defined in Section 1(v) and as identified by the Settlement Administrator. The

forgiveness provided for in this Section 3 shall not apply to any unpaid balances owing by Class Members other than Uncollected Fees.

4. PRELIMINARY SETTLEMENT APPROVAL. Class Counsel shall use reasonable efforts to promptly file a motion seeking a Preliminary Approval/Notice Order in the Morris Action. Defendant agrees to withdraw its opposition to the Motion to Remand filed in the District of Montana by Plaintiffs Morris and Gray. If the Motion to Remand is not granted despite withdrawal of the opposition, then Class counsel shall file a motion seeking a Preliminary Approval/Notice Order in the United States District Court for the District of Montana and that court shall be the Court for purposes of this Agreement. The Preliminary Approval/Notice Order shall provide for: preliminary approval of this Agreement, provisional certification of the settlement class for settlement purposes, appointment of Named Plaintiffs as the class representatives for the provisionally certified classes, appointment of Class Counsel as counsel to the provisionally certified classes, and the requirement that the Postcard Notice and Email Notice be given to the Class Members as provided in Section 5, below (or as otherwise determined by the Court).

5. NOTICE TO THE CLASSES.

(a) The Settlement Administrator shall send the Postcard Notice and Email Notice (as applicable) to all Class Members as specified below and by the Court in the Preliminary Approval/Notice Order. The Class Members shall be identified by Defendant, pursuant to an analysis of Defendant's business records, and Class Member information shall be transmitted from Defendant to the Settlement Administrator.

(b) For those Class Members who are current customers of Defendant and have agreed to receive notices regarding their accounts from Defendant electronically, Defendant shall provide the Settlement Administrator with the most recent email addresses it has for these Class Members. The Settlement Administrator shall email an Email Notice to each such Class Member's last known email address, in a manner that is calculated to avoid being caught and excluded by spam filters or other devices intended to block mass email. For any emails that are returned undeliverable, the Settlement Administrator shall send a Postcard Notice in the manner described in subsection (c) below. The Email Notice shall inform Class Members how they may request a copy of the Long Form Notice.

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

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

(d) The Long Form Notice shall be posted on the settlement website created by the Settlement Administrator and shall be available on request made to the Settlement Administrator by any Class Member.

(e) The Settlement Administrator shall maintain a database showing mail and email addresses to which each Notice was sent and any Notices that were not delivered by mail and/or email. A summary report of the Notices shall be provided to the Parties at least five (5) days prior to the deadline to file the Motion for Final Approval. The database maintained by the Settlement Administrator regarding the notices shall be available to the Parties and the Court upon request. It shall otherwise be confidential and shall not be disclosed to any third party. To the extent the database is required by the Court to be provided to Class Counsel, it shall be used only for purposes of implementing the terms of this Agreement, and shall not be used for any other purposes.

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

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

6. MOTION FOR FINAL APPROVAL AND MOTION FOR FEES, COSTS, AND SERVICE AWARD. Forty-five (45) days before the Final Approval Hearing date, and provided the conditions in Section 15, below, are satisfied, Class Counsel shall file a Motion for Final Approval of this Agreement and a Motion for Fees, Costs, and Service Award so that same can be heard on the Final Approval Hearing Date.

7. ENTRY OF JUDGMENT AND DISMISSAL. The Final Approval Order shall constitute the Court's final judgment in the Morris Action. The Court shall retain jurisdiction to enforce the terms of the Final Approval Order. Within ten (10) days after the Effective Date, Plaintiff Miller shall file a notice of dismissal of the Miller Action. Class Counsel shall seek a stay in the Miller Action pending the Court's ruling on the Final Approval Order.

8. THE SETTLEMENT FUND AND DISTRIBUTION.

(a) Payments to Class Members. Within fifteen (15) days after the entry of a Final Approval Order, Defendant shall transfer the Settlement Fund to the Settlement Administrator, less the total amount that will be credited to certain Class Members by Defendant, as provided in Section 8(d)(iv)(A), below. The Settlement Fund shall be the total amount Defendant is obligated to pay under the terms of this Agreement. Defendant shall not be required, for any reason, to make any additional or further contributions to the Settlement Fund or to make any other payments/credits. The Settlement Fund shall be utilized for all amounts to be paid to

Class Members (whether by check or by credit, as applicable), and for any amounts to be paid by the Claims Administrator for (a) Class Counsel's fees and costs; (b) any service award payment to the Named Plaintiffs; (c) costs associated with administering the Notice in accordance with Section 5, above; (d) any fees paid to the Settlement Administrator for services rendered in connection with the administration process; and (e) any other amounts required to be paid to implement this Agreement. Defendant shall not make any additional or further contributions to the Settlement Fund, even if the total amount of all alleged APPSN Fees or Retry Fees charged to the Class Members exceeds the value of the Net Settlement Fund.

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

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

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

(i) Class Counsel's Fees and Costs. Class Counsel's reasonable attorneys' fees and costs, as determined and approved by the Court, shall be paid from the Settlement within twenty (20) days after the entry of the Final Approval Order. Class Counsel shall apply for an award of attorneys' fees of up to one-third (33 1/3%) of the Value of the Settlement, plus reimbursement of reasonable litigation costs, to be approved by the Court. Defendant agrees not to oppose an application for attorneys' fees of up to one-third (33 1/3%) of the Value of the Settlement, but reserves the right to oppose an application for fees in excess of that amount.

(ii) Service Award. Subject to Court approval, Named Plaintiffs may apply to the Court for a service award of up to ten thousand dollars (\$10,000.00) each. Subject to the Court's approval, the service award shall be paid from the Settlement Fund ten (10) days after the Effective Date. Defendant shall not object to a Service Award of up to \$10,000.00 for each Named Plaintiff.

(iii) Settlement Administrator's Fees and Costs. The Settlement Administrator's fees and costs shall be paid from the Settlement Fund within ten (10) days after invoicing to and approval by the Parties. The Parties and the Settlement Administrator agree that any fees or costs incurred by the Settlement Administrator prior to funding of the Settlement Fund shall be deferred and not invoiced until the Final Approval Order has been entered. In the event the Final Approval Order is not entered or this Agreement is terminated pursuant to Section 15 below, Defendant agrees to cover any costs incurred and fees charged by the Settlement Administrator pursuant to Section 5 above prior to the denial of final approval or the termination of this Agreement.

(iv) Payments to Class Members. Payments from the "Net Settlement Fund" to the individual Class Members ("Individual Payments") shall be calculated as follows:

- (1) Members of the APPSN Fees class shall be paid per incurred APPSN Fee calculated as follows:

$$(0.503 \text{ of the Net Settlement Fund/Total APPSN Fees}) \times \text{Total number of APPSN Fees charged to and paid by each Class Member} = \text{Individual Payment.}$$

- (2) Members of the Retry Fees class shall be paid per incurred Retry Fee calculated as follows:

$$(0.497 \text{ of the Net Settlement Fund/Total Retry Fees}) \times \text{Total number of Retry Fees charged to and paid by each Class Member} = \text{Individual Payment.}$$

- (3) Individual Payments shall be made ten (10) days after the Effective Date, as follows:

- A. For Class Members who are customers of Defendant at the time of the distribution of the Net Settlement Fund, and who then own a checking account maintained at Defendant which is individually titled in that Class Member's name (or Class Members' names if the subject Individual Payment is owing jointly to more than one Class Member), such account shall be credited in the amount of the Individual Payment. If by the deadline for Defendant to apply credits to accounts of Class Members Defendant is unable to complete certain credit(s), then Defendant shall deliver the total amount of such unsuccessful Individual Payments to the Settlement Administrator to be paid by check in accordance with subsection (B), below.
- B. For those Class Members who are not able to receive a credit as provided for in subsection (A), above, they shall be sent a check by the Settlement Administrator in the amount of their Individual Payments at the address used to provide the Notice, or at such other address as designated by the Class Member. For jointly held accounts, checks will be payable to all customers, and will be mailed to the first accountholder listed on the account. The Settlement Administrator shall 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. The Class Member shall have one-hundred eighty (180) days to negotiate the check. Any checks uncashed after one-hundred eighty (180) days shall be distributed pursuant to Section 11.

- C. Notwithstanding subsections (A) and (B), above, for those Class Members with negative balances or who otherwise owe money to Defendant, irrespective of whether the Class Member is a current customer of Defendant or owns an active checking account, Defendant may credit that Class Member's principal balance due, in lieu of tender of their Individual Payment to the extent of such balance due.

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

9. FINAL REPORT AND DECLARATION REGARDING ACCOUNT CREDITS. Within two hundred ten (210) days after the Effective Date, the Administrator shall prepare a report for Class Counsel indicating the total payments made to class members by check and the total amount of uncashed checks ("Unclaimed Funds"). Defendant shall provide Plaintiff's counsel with a declaration under penalty of perjury setting forth the amount of the credits issued to Class Members. Class Counsel shall be entitled to verify credits by confidential review of a reasonable sample of Class Member account statements (redacted as necessary to protect consumer privacy).

10. THE SETTLEMENT ADMINISTRATOR. In addition to the other obligations provided for under the terms of this Agreement, the Settlement Administrator shall have the following obligations:

(a) The Settlement Administrator shall execute a retainer agreement providing, among other things, that the Settlement Administrator shall be bound by and shall perform the obligations imposed on it under the terms of this Agreement. The retainer agreement shall include provisions requiring that all Class Member data shall be strictly confidential and secured by the Settlement Administrator by means of recognized data security measures, and shall not be disclosed other than as provided for under the terms of this Agreement or as ordered by the Court.

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

(c) The Settlement Administrator shall make the payments from the Settlement Fund as provided for in Section 8, above.

(d) The Settlement Administrator shall calculate the payments and/or credits owing to Class Members based on calculations provided by Ankura Consulting, as verified by Class Counsel.

(e) The Settlement Administrator shall keep all information regarding members of the Classes confidential except as otherwise provided herein. All data created and/or obtained and maintained by the Settlement Administrator pursuant to this Agreement shall be destroyed twelve (12) months after the Final Report is submitted to the Court, provided that Class Counsel and Defendant's Counsel, or either of them, at their own cost, shall receive a complete copy of the Settlement Administrator's records, together with a declaration establishing completeness and authenticity, which they may maintain consistent with their own document retention policies. Class Member names and/or contact information shall not be provided to Class Counsel unless ordered by the Court. To the extent Class Counsel inadvertently receives a copy of the class list, or any part of it, it shall be subject to the protective order issued in this case and shall not be used for any purposes other than the implementation of this Agreement.

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

(g) The Settlement Administrator shall establish and maintain a settlement website.

(h) The Settlement Administrator shall provide Class Counsel and Defendant with weekly reports showing: the status of the Notice, opt-outs, objections, access to the website, communications with Class Members and the status of payments out of the Settlement Fund, including uncashed checks.

(i) The Settlement Administrator shall provide notice of this Settlement as required under the Class Action Fairness Act, 28 U.S.C. § 1715.

(j) The Settlement Administrator shall provide the data in its administration database to Defendant's Counsel and/or Class Counsel in response to any written request, including an email request. The written request shall be copied to the other Party when made. Such information shall be used only for purposes of the implementation of this Agreement.

(k) The Settlement Administrator shall provide Class Counsel with a declaration, under penalty of perjury, confirming the payments made to Class Members and the amount of uncashed checks available for distribution to a cy pres recipient.

11. SECONDARY DISTRIBUTION AND CY PRES PAYMENT. Subject to agreement by the parties and approval by the Court, the Unclaimed Funds following the time provided for in Section 8(d)(iv)(B), above, shall be paid either: (1) as a secondary distribution to Class Members who received credits or cashed settlement payment checks in accordance with the formulas provided for in Section 8(d)(iv) above, or (2) to *cy pres* recipients pursuant to Montana R. Civ. Proc. 23(i). There shall not be a secondary distribution unless Unclaimed Funds are 25% or more of the Net Settlement Fund. The cost of the secondary distribution shall be paid out of the Unclaimed Funds. If there are Unclaimed Funds after the secondary distribution, then those funds shall be paid to the *cy pres* recipients. Subject to approval by the Court, the *cy pres* recipients shall be the Montana Legal Services Association and United Way of Montana.

12. OPT-OUTS.

(a) Any Class Member who wishes to exclude himself or herself from this Agreement, and from the release of claims and defenses provided for under the terms of this Agreement, shall send a letter by mail to the Settlement Administrator postmarked on or before the Bar Date to Opt Out. The letter shall identify the Class Member, state that person's election to exclude himself or herself from the Agreement, and shall be signed and dated by the Class Member. Identification of the Class Member shall include the name, address, telephone number, and the last four digits of his or her account number or former account number. A letter electing to opt out by any joint owner of an account shall be deemed to apply to all owners.

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

13. OBJECTIONS.

(a) Any Class Member may object to this Agreement.

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

- The name of the case: *Morris v. First Interstate Bank*, No.. DV 20-528.
- The objector's name, address, telephone number, the last four digits of his or her account number or former account number, and the contact information for any attorney retained by the objector in connection with the objection or otherwise in connection with this case who may be entitled to compensation for any reason related to the objection;
- A statement of the factual and legal basis for each objection and any exhibits the objector wishes the Court to consider in connection with the objection;

- A statement as to whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying the counsel by name, address, and telephone number;
- A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; and
- The objector's signature or the signature of the objector's legally authorized representative.

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

14. GENERAL RELEASE. Except as to the rights and obligations provided for under the terms of this Agreement, Named Plaintiffs, on behalf of themselves and each of the Class Members, hereby release and forever discharge Defendant, and all of its past, present and future predecessors, successors, parents, subsidiaries, divisions, employees, affiliates, assigns, officers, directors, shareholders, representatives, attorneys, insurers and agents (collectively, the "Defendant Releasees") from any and all losses, fees, charges, complaints, claims, debts, liabilities, demands, obligations, costs, expenses, actions, and causes of action of every nature, character, and description, whether known or unknown, asserted or unasserted, suspected or unsuspected, fixed or contingent, which Named Plaintiffs and Class Members now have, own or hold against any of the Defendant Releasees that arise out of and/or relate to the facts and claims alleged in the Complaints, and any other claims relating to APPSN Fees or Retry Fees assessed against said Class Members.

15. CONDITIONS TO SETTLEMENT.

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

(i) The Court has entered the Preliminary Approval/Notice Order, as required by Section 4 above;

(ii) The Court has entered the Final Approval Order as required by Section 7, above, and all objections, if any, to such Order are overruled, and all appeals taken from such Order are resolved in favor of approval; and

(iii) The Effective Date has occurred.

(b) If all of the conditions specified in Section 15(a) are not met, then this Agreement shall be cancelled and terminated.

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

(d) In the event this Agreement is terminated, pursuant to Section 15(c) immediately above, or fails to become effective in accordance with Sections 15(a) and/or (b) immediately above, then the Parties shall be restored to their respective positions in this case as they existed as of the date of the execution of this Agreement. In such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the parties and shall not be used in this case or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

16. REPRESENTATIONS.

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

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

(c) The Named Plaintiffs, on behalf of the Class Members, each represent that they have made such inquiry into the terms and conditions of this Agreement as they deem appropriate, and that by executing this Agreement, they, based on Class Counsel's advice, and their understanding of the case, believe the Agreement and all the terms and conditions set forth herein, are fair and reasonable to all Class Members.

(d) The Named Plaintiffs each represent that they have no knowledge of conflicts or other personal interests that would in any way impact their representation of the classes in connection with the execution of this Agreement.

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

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

18. PUBLICITY. The Parties and Class Counsel agree that they will not notify any member of the media regarding the terms and conditions of this Agreement and shall not issue a press release regarding the terms of this Agreement. In response to media inquiries, Class Counsel and the parties shall refer to the Settlement Administrator's website or publicly filed documents.

19. APPLICABLE LAW. This Agreement shall be governed by and interpreted, construed, and enforced pursuant to the laws of the State of Montana.

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

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

22. BINDING ON SUCCESSORS. This Agreement shall inure to the benefit of, and shall bind, each of the Parties hereto and their successors.

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

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

25. NOTIFICATION. Any notice to Class Counsel and/or Named Plaintiffs shall be sent by email as follows:

A. Clifford Edwards
Triel D. Culver
A. Christopher Edwards
John W. Edwards
EDWARDS & CULVER
1648 Poly Drive, Suite 206
Billings, Montana 59102
Telephone: (406) 256-8155
Facsimile: (406) 256-8159
triel@edwardslawfirm.org
chris@edwardslawfirm.org
john.edwards@edwardslawfirm.org

Jeffrey Kaliei
Sophia Gold
KALIEL GOLD PLLC
1100 15th Street NW, 4th Floor

Washington, DC 20005
Telephone: (202) 320-4783
jkaliel@kalielpllc.com
sgold@kalielgold.com

Taras Kick
THE KICK LAW FIRM, APC
815 Moraga Drive
Los Angeles, CA 90049
Telephone: (310) 395-2988
Facsimile: (310) 395-2088
taras@kicklawfirm.com

David K. W. Wilson, Jr.
Robert Farris-Olsen
MORRISON SHERWOOD WILSON & DEOLA, PLLP
401 North Last Chance Gultch
P.O. Box 557
Helena, MT 59624
Telephone: (406) 442-3261
Facsimile: (406) 443-7294
kwilson@mswdlaw.com
rfolsen@mswdlaw.com

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

Stuart M. Richter
Andrew J. Demko
KATTEN MUCHIN ROSENMAN LLP
2029 Century Park East, Suite 2600
Los Angeles, California 90067
Telephone: (310) 788-4400
stuart.richter@katten.com
andrew.demko@katten.com

Mark D. Parker
PARKER, HEITZ & COSGROVE, PLLC
401 N. 31st Street, Suite 805
P.O. Box 7212
Billings, Montana 59103
Telephone: (406) 245-9991
Facsimile: (406) 245-0971
markdparker@parker-law.com

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

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

Dated: December 2, 2021

First Interstate Bank

By: Brian Murphy

Its: Assistant General Counsel

Dated: December __, 2021

Brandy Morris , an individual on behalf
of herself and those she represents

By: _____
Brandy Morris

Dated: December __, 2021

Brenda Gray , an individual on behalf
of herself and those she represents

By: _____
Brenda Gray

Dated: December __, 2021

Stacy Miller , an individual on behalf
of herself and those she represents

By: _____
Stacy Miller

Dated: December __, 2021

A Few Good Cleaners, on behalf of itself and those it
represents

By: _____

Its: _____

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

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

Dated: December __, 2021

First Interstate Bank

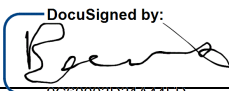
By: _____

Its: _____

12/1/2021

Dated: December __, 2021

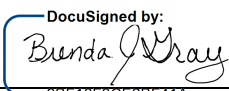
Brandy Morris , an individual on behalf
of herself and those she represents

By:  _____
Brandy Morris

12/2/2021

Dated: December __, 2021

Brenda Gray , an individual on behalf
of herself and those she represents

By:  _____
Brenda Gray

Dated: December __, 2021

Stacy Miller , an individual on behalf
of herself and those she represents

By: _____
Stacy Miller

Dated: December __, 2021

A Few Good Cleaners, on behalf of itself and those it
represents

By: _____

Its: _____

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

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

Dated: December __, 2021

First Interstate Bank

By: _____

Its: _____

Dated: December __, 2021

Brandy Morris , an individual on behalf
of herself and those she represents

By: _____
Brandy Morris

Dated: December __, 2021

Brenda Gray , an individual on behalf
of herself and those she represents

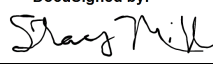
By: _____
Brenda Gray

12/6/2021

Dated: December __, 2021

Stacy Miller , an individual on behalf
of herself and those she represents

By: _____
Stacy Miller

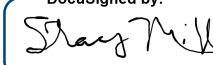
DocuSigned by:

D296C47ACA9D431...

12/7/2021

Dated: December __, 2021

A Few Good Cleaners, on behalf of itself and those it
represents

By: _____
Owner/operator

DocuSigned by:

D296C47ACA9D431...

Its: _____

APPROVED AS TO FORM:

Dated: December 8, 2021

KATTEN MUCHIN ROSENMAN LLP

Stuart M. Richter
Andrew J. Demko

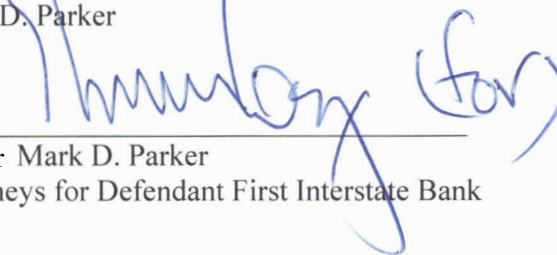
By: 

Stuart M. Richter
Attorneys for Defendant First Interstate Bank

Dated: December 8TH, 2021

PARKER, HEITZ & COSGROVE, PLLC

Mark D. Parker

By: 

Shawn Cosgrove for Mark D. Parker
Attorneys for Defendant First Interstate Bank

Dated: December __, 2021

EDWARDS & CULVER

A. Clifford Edwards
Triel D. Culver
A. Christopher Edwards
John W. Edwards

By: _____

Triel D. Culver
Attorneys for Morris Plaintiffs and the Putative Classes

Dated: December __, 2021

KALIEL GOLD PLLC

Jeffrey Kaliei
Sophia Gold

By: _____

Jeffrey Kaliei
Attorneys for Morris Plaintiffs and the Putative Classes

APPROVED AS TO FORM:

Dated: December __, 2021

KATTEN MUCHIN ROSENMAN LLP

Stuart M. Richter
Andrew J. Demko

By: _____

Stuart M. Richter
Attorneys for Defendant First Interstate Bank

Dated: December __, 2021

PARKER, HEITZ & COSGROVE, PLLC

Mark D. Parker

By: _____

Mark D. Parker
Attorneys for Defendant First Interstate Bank

Dated: December 7, 2021

EDWARDS & CULVER

A. Clifford Edwards
Triel D. Culver
A. Christopher Edwards
John W. Edwards

By:  _____

Triel D. Culver
Attorneys for Morris Plaintiffs and the Putative Classes

Dated: December 1, 2021

KALIEL GOLD PLLC

Jeffrey Kalien
Sophia Gold

By:  _____

Jeffrey Kalien
Attorneys for Morris Plaintiffs and the Putative Classes

12/7/2021
Dated: December ____, 2021

THE KICK LAW FIRM, APC
Taras Kick

By: _____
Taras Kick
Attorneys for Miller Plaintiffs and the Putative Classes

Dated: December ____, 2021

**MORRISON SHERWOOD WILSON & DEOLA,
PLLP**

David K. W. Wilson, Jr
Robert Farris-Olsen

By: _____
David K. W. Wilson, Jr.
Attorneys for Miller Plaintiffs and the Putative Classes

Dated: December ____, 2021

THE KICK LAW FIRM, APC
Taras Kick

By: _____
Taras Kick
Attorneys for Miller Plaintiffs and the Putative Classes

Dated: December 7th, 2021

**MORRISON SHERWOOD WILSON & DEOLA,
PLLP**
David K. W. Wilson, Jr
Robert Farris-Olsen


By:  _____
David K. W. Wilson, Jr.
Attorneys for Miller Plaintiffs and the Putative Classes

Exhibit 1 – Email and Postcard Notice

Morris v. First Interstate Bank, Case *Morris v. First Interstate Bank*, Yellowstone County Case No. DV 20-528 *Miller v. First Interstate Bank*, United States District Court Case No. CV-21-45-BLG-SPW-TJC

YELLOWSTONE COUNTY CIRCUIT COURT

NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

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

Para una notificación en Español, llamar 1-xxx-xxx-xxxx o visit [WEBSITE].

**IF YOU HAVE OR HAD AN ACCOUNT WITH FIRST INTERSTATE
BANK (“DEFENDANT”) AND YOU WERE CHARGED OVERDRAFT OR
RETURNED ITEM FEES BETWEEN DECEMBER 30, 2011 AND APRIL 7,
2021 (DEPENDING ON YOUR STATE OF RESIDENCE), THEN YOU
MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION
SETTLEMENT**

The Yellowstone County Circuit Court has authorized this Notice; it is not a solicitation from a lawyer.

You may be a member of the settlement class in *Morris v. First Interstate Bank* and/or *Miller v. First Interstate Bank*, in which the Named Plaintiffs allege that defendant First Interstate Bank (“Defendant”) improperly assessed certain types of overdraft and returned item fees. APPSN Fees means overdraft fees that were charged and not refunded on signature Point of Sale debit card transactions where there was a sufficient available balance at the time the transaction was authorized, but an insufficient available balance at the time the transaction was presented to Defendant for payment and posted to a customer’s account. Retry Fees means overdraft and/or returned item fees that were charged and not refunded for Automated Clearing House (ACH) and check transactions that were re-submitted by a merchant after being returned by Defendant for insufficient funds. If you are a Class Member and if the settlement is approved, then you may be entitled to receive a cash payment from the \$2,331,000.00 Settlement Fund and/or the forgiveness of Uncollected Fees.

The Court has preliminarily approved this settlement. It will hold a Final Approval Hearing in this case on [INSERT DATE]. At that hearing, the Court will consider whether to grant final approval to the settlement, and whether to approve payment from the Settlement Fund of up to \$10,000.00 to each of the Named Plaintiffs for their services on behalf of the Class, up to one-third (33 1/3 %) of the Value of the Settlement as attorneys’ fees, and reimbursement of costs incurred by the attorneys; and the Settlement Administrator’s estimated 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.

**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/or the forgiveness of Uncollected Fees 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, 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 #].

Exhibit 2 – Long Form Notice

*Morris v. First Interstate Bank, Case Morris v. First Interstate Bank, Yellowstone
County Case No. DV 20-528*

Miller v. First Interstate Bank, Case No. CV-21-45-BLG-SPW-TJC

YELLOWSTONE COUNTY CIRCUIT COURT

NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

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

**IF YOU HAVE OR HAD AN ACCOUNT WITH FIRST INTERSTATE
BANK (“DEFENDANT”) AND YOU WERE CHARGED OVERDRAFT OR
RETURNED ITEM FEES BETWEEN DECEMBER 30, 2011 AND APRIL 7,
2021 (DEPENDING ON YOUR STATE OF RESIDENCE), THEN YOU
MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION
SETTLEMENT**

The Circuit Court for Yellowstone County has authorized this Notice; it is not a solicitation from a lawyer.

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

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

BASIC INFORMATION

1. What is this lawsuit about?

The lawsuits that are being settled are entitled *Case Morris v. First Interstate Bank*, Yellowstone County Case No. DV 20-528 and *Miller v. First Interstate Bank*, United States District Court Case No. CV-21-45-BLG-SPW-TJC. The cases are “class actions.” That means that the Named Plaintiffs, Brandy Morris, Brenda Gray, Stacy Miller and A Few Good Cleaners are acting on behalf of current and former customers who were assessed allegedly improper overdraft and returned item fees between December 30, 2011 and April 7, 2021 (depending on your state of residence). APPSN Fees means overdraft fees that were charged and not refunded on signature Point of Sale debit card transactions where there was a sufficient available balance at the time the transaction was authorized, but an insufficient available balance at the time the transaction was presented to Defendant for payment and posted to a customer’s account. Retry Fees means overdraft and/or returned item fees that were charged and not refunded for Automated Clearing House (ACH) and check transactions that were re-submitted by a merchant after being returned by Defendant for insufficient funds. The Named Plaintiffs have asserted claims for breach of the First Interstate Bank account agreement and related claims.

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

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

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

3. Why did the Parties settle?

In any lawsuit, there are risks and potential benefits that come with a trial versus settling at an earlier stage. It is the Named Plaintiffs’ 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 Named Plaintiffs’ lawyers, known as Class Counsel, make this recommendation to the Named Plaintiffs. The Named Plaintiffs have the duty to act in the best interests of the class as a whole and, in this case, it is their belief, as well as Class Counsel’s opinion, that this settlement is in the best interests of all Class Members.

In Class Counsel's opinion, there is legal uncertainty about whether a judge or a jury will find that Defendant was contractually and otherwise legally obligated not to assess APPSN Fees or Retry Fees. And even if it was contractually wrong to assess these fees, there is uncertainty about whether the Named Plaintiffs' claims are subject to other defenses that might result in no or less recovery to Class Members. Even if the Named Plaintiffs were to win at trial, there is no assurance that the Class Members would be awarded more than the current settlement amount and it may take years of litigation before any payments would be made. By settling, and based on Class Counsel's experience, the Class Members will avoid these and other risks and the delays associated with continued litigation.

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

WHO IS IN THE SETTLEMENT?

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

If you received Email Notice or Postcard Notice, then Defendant's records indicate that you are a Class Member who may be entitled to receive a payment or credit to your account and/or forgiveness of Uncollected Fees.

YOUR OPTIONS

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

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

6. What are the critical deadlines?

There is no deadline to receive settlement benefits. If you do nothing and the settlement is approved, then you may receive a payment or credit to your account and/or receive forgiveness of Uncollected Fees after approval.

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

The deadline for sending a letter to the Settlement Administrator to object to the settlement is also _____.

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

7. How do I decide which option to choose?

If you do not wish to participate in the settlement and do not wish to be sent payment from the settlement and/or forgiveness of Uncollected Fees, and you do not wish to be bound by the release, then you should opt out. Likewise, if you believe that you could receive more money by pursuing your claims on your own (with or without an attorney that you could hire) and you are comfortable

with the risk that you might lose your case or get less than you would in this settlement, then you may want to consider opting out.

If you believe the settlement is unreasonable, unfair, or inadequate, then you can object to the settlement terms. The Court will consider timely objections. The Court will decide whether to approve the settlement and the award of attorneys' fees, litigation costs, a service award, and administrative costs. If the Court decides not to approve the settlement, then the settlement will be void and no payments will be issued pursuant to its terms. If the Court approves the settlement, whether or not it grants the requests for attorneys' fees, litigation costs, a service award, or administrative costs in full, then you may still be sent a payment and/or have your Uncollected Fees forgiven and you will be bound by the Settlement, including the release of claims.

If you want to participate in the settlement, then you don't have to do anything; you may be sent a payment and/or receive forgiveness of Uncollected Fees if the settlement is approved by the Court.

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

The Court has to decide that the settlement is fair, reasonable, and adequate before it will approve it. The Court already has decided to provide preliminary approval of the settlement, which is why you received a Notice. The Court will make a final decision regarding the settlement at a "Fairness Hearing" or "Final Approval Hearing," which is currently scheduled for _____. The hearing may be virtual, in which case the instructions to participate shall be posted on the website at www._____.

THE SETTLEMENT PAYMENT

9. How much is the Settlement?

Defendant has agreed to create a Settlement Fund of \$2,331,000.00 for the class. Defendant will also forgive Uncollected Fees totaling \$17,090.00.

As discussed separately below, attorneys' fees of up to one-third (33 1/3 %) of the Value of the Settlement, litigation costs, the service award of \$10,000.00 for each Named Plaintiff, and the costs paid to a third party Settlement Administrator to administer the settlement (including sending the Postcard Notices and Email Notices) will be paid out of the Settlement Fund. Once the requested disbursements are approved from the Settlement Fund, the Net Settlement Fund will be divided among all Class Members as follows and based on formulas described in the Settlement Agreement.

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

Class Counsel will request an attorney fee be awarded by the Court of not more than one-third (33 1/3%) of the Value of the Settlement, and will request that it be reimbursed for litigation costs incurred in prosecuting the case. Class Counsel will file the motion to make this request with the Court no later than _____, 2021. 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.

You can access this motion by visiting [www._____](http://www._____.).

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

Class Counsel will request that the Named Plaintiffs be paid a service award in the amount of \$10,000.00 each for their work in connection with this case. The service award must be approved by the Court. Class Counsel will file the application for this request with the Court no later than _____, 2021.

You can access this motion by visiting [www._____](http://www._____.).

12. How much will my payment be?

The balance of the Settlement Fund after attorneys' fees and costs, the service award and the Settlement Administrator's fees, also known as the Net Settlement Fund, will be divided among all Class Members.

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

No. If you received this Notice, then you may be entitled to receive a payment and/or forgiveness of Uncollected Fees without having to make a claim, unless you choose to exclude yourself from the settlement, or "opt out."

14. When will I receive my payment?

The Court will hold a Fairness Hearing on _____, 2021 at _____ to consider whether the settlement should be approved. If the settlement is approved by the Court and you are eligible for a payment, you may receive either a check or a credit to your account approximately forty-five (45) days after this hearing. However, if there is an appeal, payments may be delayed.

15. How will I be sent my payment?

Current customers of Defendant will receive a credit to their accounts for the amount they are entitled to receive.

Former customers of Defendant will be sent a check from the Settlement Administrator. The check will be sent to the address used to provide Postcard Notice of the settlement, or at such other address as designated by the Class Member. Checks must be cashed within 180 days.

Class Members entitled to forgiveness of Uncollected Fees shall receive this benefit automatically.

EXCLUDING YOURSELF FROM THE SETTLEMENT

16. How do I exclude myself from the settlement?

If you do not wish to participate in the settlement and be bound by the release, and you do not want to receive a payment and/or forgiveness of Uncollected Fees, or if you want to keep any right

you may have to sue Defendant for the claims alleged in this lawsuit, then you must exclude yourself, or “opt out.”

To opt out, you **must** send a letter to the Settlement Administrator that you want to be excluded. Your letter can simply say “I hereby elect to be excluded from the settlement in the *Morris v. First Interstate Bank* and *Miller v. First Interstate Bank* class actions. 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:

Morris and Miller v. First Interstate Bank

Attn:

ADDRESS OF THE SETTLEMENT ADMINISTRATOR

17. What does it mean to be bound by the release?

By choosing not to opt-out of the Settlement Agreement, you will remain a Class Member, and as such will be bound to a release. That means you will release any claims you may have against Defendant that arise out of and/or relate to the facts and claims alleged in the Complaint filed in the two class action cases. Put differently, participating in the settlement means that you will not be able to sue the Defendant in the future for such claims.

Additional details regarding the scope of the release can be found in Section 14 of the Settlement Agreement.

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

If you opt out of the settlement, you will preserve and not give up any of your rights to sue Defendant for the claims released in this case if the settlement is approved. However, you will not be entitled to receive a payment from this settlement for paid APPSN Fees, paid Retry Fees, and/or forgiveness of Uncollected Fees.

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

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

OBJECTING TO THE SETTLEMENT

20. How do I notify the Court if I do not like the settlement?

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

- The name of the case: *Morris v. First Interstate Bank*, *Morris v. First Interstate Bank*, Yellowstone County Court Case No. DV 20-528 .

- The objector's name, address, telephone number, the last four digits of his or her member number or former member number, and the contact information for any attorney retained by the objector in connection with the objection or otherwise in connection with this case who may be entitled to compensation for any reason related to the objection;
- A statement of the factual and legal basis for each objection and any exhibits the objector wishes the Court to consider in connection with the objection;
- A statement as to whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying the counsel by name, address, and telephone number;
- A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; and
- The objector's signature or the signature of the objector's legally authorized representative.

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

SETTLEMENT ADMINSTRATOR	CLASS COUNSEL
<p><i>Morris v. First Interstate Bank, Miller v. First Interstate Bank</i> Administrator Attn: ADDRESS OF THE SETTLEMENT ADMINISTRATOR</p>	<p>A. Clifford Edwards Triel D. Culver A. Christopher Edwards John W. Edwards EDWARDS & CULVER 1648 Poly Drive, Suite 206 Billings, Montana 59102 Telephone: (406) 256-8155 Facsimile: (406) 256-8159 triel@edwardslawfirm.org chris@edwardslawfirm.org john.edwards@edwardslawfirm.org</p> <p>Jeffrey Kaliel Sophia Gold KALIEL GOLD PLLC 1100 15th Street NW, 4th Floor Washington, DC 20005 Telephone: (202) 320-4783 jkaliel@kalielpllc.com sgold@kalielgold.com</p>

	<p>Taras Kick THE KICK LAW FIRM, APC 815 Moraga Drive Los Angeles, CA 90049 Telephone: (310) 395-2988 Facsimile: (310) 395-2088 taras@kicklawfirm.com</p> <p>David K. W. Wilson, Jr. Robert Farris-Olsen MORRISON SHERWOOD WILSON & DEOLA, PLLP 401 North Last Chance Gultch P.O. Box 557 Helena, MT 59624 Telephone: (406) 442-3261 Facsimile: (406) 443-7294 kwilson@mswdlaw.com rfolsen@mswdlaw.com</p>
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21. What is the difference between objecting and requesting exclusion from the settlement?

Objecting is telling the Court that you do not believe the settlement is fair, reasonable, and adequate for the class, and asking the Court to reject it. You can object only if you do not opt out of the settlement. If you object to the settlement and do not opt out, then you are entitled to a payment for paid APPSN Fees, paid Retry Fees, and/or forgiveness of Uncollected Fees if the settlement is approved, but you will be bound by the release of claims you might have against Defendant if the settlement is approved.

Excluding yourself or opting out is telling the Court that you do not want to be part of the settlement, and do not want to receive a payment for paid APPSN Fees, paid Retry Fees, and/or forgiveness of Uncollected Fees, or release claims you might have against Defendant for the claims alleged in this lawsuit.

22. What happens if I object to the settlement?

The Court will consider the objection. If the Court sustains your objection, or the objection of any other Class Member, then there may be no settlement; provided, however, that an objection to Class Counsel's requested attorneys' fees and costs or to the requested service award amount, may result in approval of the settlement but the award of a lower attorneys' fee and cost amount or lower service award. If you object, but the Court overrules your objection and any other objection(s), then you will be part of the settlement. If the Court approves the settlement, then the

objector will participate in the settlement. If the Court does not approve the settlement, then there is no settlement.

THE COURT'S FAIRNESS HEARING

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

The Court will hold a Final Approval or Fairness Hearing on _____, 2021 at _____. 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 award to each of the Named Plaintiffs.

24. 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. The hearing may be virtual, in which case the instructions to participate shall be posted on the website at www._____.

25. 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 20, above, a statement, showing that you intend to appear at the Final Approval Hearing. A statement substantively similar to "I intend to appear at the Final Approval Hearing" will be sufficient. The Court will consider your objection even if you do not appear. The hearing may be virtual, in which case the instructions to participate shall be posted on the settlement website at www._____.

THE LAWYERS REPRESENTING YOU

26. Do I have a lawyer in this case?

The Court ordered that the lawyers and their law firms referred to in this notice as "Class Counsel" will represent you and the other Class Members. However, you may retain a lawyer to represent you at your own expense.

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

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

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

The Court will be asked to approve the amount of attorneys' fees at the Fairness Hearing. Class Counsel will file an application for fees and costs and will specify the amount being sought as discussed above no later than _____, 2021. You can access this application by visiting www._____.

GETTING MORE INFORMATION

This Notice only summarizes the proposed settlement. More details are contained in the settlement agreement, which can be viewed/obtained online at [WEBSITE]. For additional information about the settlement and/or to obtain copies of the settlement agreement, or to change your address for purposes of receiving a payment, you should contact the Settlement Administrator as follows:

Morris v. First Interstate Bank, Miller v. First Interstate Bank
Settlement Administrator
Attn:

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

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