

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION**

**JOSEPH SELF AND MALINDA SELF,  
on behalf of themselves and all others  
similarly situated,**

**PLAINTIFFS**

**v.**

**CASE NO. 4:24-cv-00142-LPR**

**CADENCE BANK**

**DEFENDANT**

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Settlement” or “Agreement”), dated as of \_\_\_\_\_, 2024, is entered into by Joseph and Malinda Self, individually and as putative representatives of the Settlement Class (“Plaintiffs”), and Cadence Bank (“Defendant”) (collectively, the “Parties”).

**I. RECITALS.**

The following recitals are material terms of this Settlement, and all terms are used as defined in Section II below, except as otherwise defined herein. This Settlement is made in contemplation of the following facts and circumstances:

**WHEREAS**, on January 11, 2024, Plaintiffs Joseph and Malinda Self filed a putative class action Complaint in the Circuit Court of Pulaski County, Arkansas, captioned *Self v. Cadence Bank*, No. 60CV-24-354 (the “Complaint”). On behalf of a putative nationwide class, the Complaint asserted claims for breach of contract, including breach of the duty of good faith and fair dealing, unjust enrichment, and violation of the Arkansas Deceptive Trade Practices Act.

**WHEREAS**, on February 16, 2024, Cadence Bank filed a Notice of Removal under 28 U.S.C. § 1446, removing this action to the United States District Court for the Eastern District of Arkansas, where it was assigned case number 4:24-cv-142-LPR.

**WHEREAS**, on March 6, 2024, Plaintiffs filed a Motion to Remand to State Court pursuant to 28 U.S.C. § 1447(c), which Plaintiffs subsequently withdrew.

**WHEREAS**, on March 7, 2024, the Parties filed a Joint Motion to Stay All Proceedings for a period of 120 days. The Court granted the Joint Motion on March 11, 2024.

**WHEREAS**, on May 30, 2024, the Parties attended a mediation session before a neutral JAMS Mediator. The Parties reached an agreement in principle and executed a settlement term sheet at the mediation.

**WHEREAS**, following the mediation session, the Parties negotiated the details of this final Settlement Agreement and Release.

**WHEREAS**, the Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims, Releasees, and Released Parties. Cadence Bank has entered into this Agreement to resolve any and all controversies and disputes arising out of or relating to the Complaint, and to avoid the burden, risk, uncertainty, expense, and disruption to its business operations associated with further litigation. Cadence Bank does not in any way acknowledge, admit to, or concede any of the allegations made in the 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 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 Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. The Parties intend this Agreement to bind Plaintiffs, Cadence Bank, and all Settlement Class Members.

**NOW THEREFORE**, in consideration of the promises and agreements set forth herein, it is hereby agreed, subject to the Court’s approval, that each and every claim that has been alleged, or could have been alleged, shall be fully and finally settled and compromised and dismissed with prejudice, and shall be fully discharged and released, upon and subject to the following terms and conditions:

**II. DEFINITIONS.**

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

1. “Account” means a checking account maintained by Defendant on behalf of a customer.
2. “Action” means *Self v. Cadence Bank*, No. 4:24-cv-142-LPR (E.D. Ark.).
3. “APSN Fees” means an overdraft fee that Defendant charged on a Point-of-Sale debit card transaction that the customer initiated with a positive balance but settled into a negative balance during the Class Period, and which overdraft fee was not subsequently refunded.
4. “Charged-Off Amounts” means any APSN Fees that Settlement Class Members owe to Cadence Bank on an Account that was closed during the Class Period, as identified by the Parties based on review and analysis of Cadence Bank’s reasonably accessible data and information, up to and not to exceed the amount of six hundred eighty-two thousand dollars (\$682,000).

5. “Class Counsel” means Lynn A. Toops of Cohen & Malad, LLP and Randall K. Pulliam of Carney Bates & Pulliam, PLLC.

6. “Class Period” means the period from January 11, 2019 through November 15, 2023.

7. “Court” means the United States District Court for the Eastern District Court of Arkansas.

8. “Current Account Holder” means a Settlement Class Member who continues to hold an Account as of the date that the Net Settlement Fund is distributed to the Settlement Class Members pursuant to this Agreement.

9. “Effective Date” means ten (10) calendar days after the entry of the Final Approval Order provided no objections are made to this Agreement. If there are objections to the Agreement, then the Effective Date shall be the later of: (i) ten (10) calendar days after entry of the Final Approval Order if no appeals are taken from the Final Approval Order; or (ii) if appeals are taken from the Final Approval Order, then ten (10) calendar days after an Appellate Court ruling the Final Approval Order; or (iii) ten (10) calendar days after entry of a dismissal of the appeal.

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

11. “Final Approval” means the date that the Court enters the Final Approval Order granting final approval to the Settlement and determines the amount of fees, costs and expenses awarded to Class Counsel and the amount of any Service Award to Plaintiffs. A proposed Final Approval Order, in a form agreed upon by the Parties, will be attached to the motion for final approval of the Settlement.

12. “Long Form Notice” means the form of notice that shall be posted on the Settlement Website created by the Settlement Administrator and shall be available to Settlement Class Members by mail upon request made to the Settlement Administrator in the form attached as Exhibit A.

13. “Net Settlement Fund” means the Settlement Amount minus: (i) payment of any Court ordered award of Class Counsel’s attorneys’ fees, costs, and expenses pursuant to Section XV hereof; (ii) payment of any Court ordered Service Award to Plaintiffs pursuant to Section XV hereof; (iii) payment of any cost incurred by the Settlement Administrator in connection with the Settlement Administrator’s duties described in Section VII; (iv) payment of any taxes as set forth in Paragraph 34; (v) payment of costs and expenses of Defendant’s consulting experts in compiling and updating the Class List; and (vi) payment of any other fees, costs and expenses not specifically enumerated, subject to approval of Class Counsel, Cadence Bank and the Court.

14. “Notice” means the notices of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement.

15. “Notice Program” means the methods provided for in this Agreement for giving the Notice and consists of Emailed Notice, Mailed Notice and Long-Form Notice substantially in the forms attached hereto as Exhibits A to B.

16. “Objection Deadline” means sixty (60) calendar days after the date of Preliminary Approval (or other date as ordered by the Court).

17. “Opt-Out Deadline” means sixty (60) calendar days after the date of Preliminary Approval (or other date as ordered by the Court).

18. “Past Account Holder” means a Settlement Class Member who no longer holds his or her Account as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

19. “Preliminary Approval” means the date that the Court enters, without material change, an order preliminarily approving the Settlement in the form jointly agreed upon by the Parties.

20. “Released Claims” means all claims released by this Agreement as specified in Section XIV.

21. “Releases” means all of the releases contained in Section XIV of this Agreement.

22. “Released Parties” means those persons and entities released in Section XIV of this Agreement.

23. “Releasers” means Plaintiffs and all Settlement Class Members, and each of their respective heirs, assigns, beneficiaries and successors.

24. “Service Award” means any Court ordered payment to Plaintiffs as Class representatives in addition to any payment due Plaintiffs as Settlement Class Members.

25. “Settlement Administrator” is Verita LLC.

26. “Settlement Class” and “Settlement Class Members” means all current and former holders of Cadence Bank checking Accounts who, during the Class Period, were assessed at least one APSN Fee. Excluded from the Settlement Class are: (i) Defendant, its parent, subsidiaries, affiliated entities, and directors; (ii) all Settlement Class members who make a timely election to be excluded; (iii) current and former holders of Cadence Bank checking accounts who are or were represented separately by other counsel and have entered into separate individual settlement

agreements prior to the Opt-Out Deadline related at least in part to APSN fees assessed during the Class Period; and (iv) all judges assigned to this litigation and their immediate family members.

27. “Settlement Fund” means the amount of four million five hundred thousand dollars (\$4,500,000.00) to be paid by Cadence Bank under the terms of this agreement.

28. “Settlement Value” means the Settlement Fund plus the Charged-Off Amounts and shall not exceed five million one hundred eighty-two thousand dollars (\$5,182,000).

29. “Settlement Website” means the website that the Settlement Administrator will establish as a means for Settlement Class Members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Long Form Notice, Preliminary Approval Order, and such other documents as the Parties agree to post or that the Court orders posted on the websites. These documents shall remain on the Settlement Website for at least six months after Final Approval.

**III. THE SETTLEMENT AMOUNT; ESTABLISHING AND MAINTAINING THE ESCROW ACCOUNT; COSTS OF NOTICE AND SETTLEMENT ADMINISTRATION; PROSPECTIVE RELIEF.**

30. In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases set forth in Section XIV and the dismissal of the Action with prejudice upon Final Approval, Cadence Bank agrees to pay into the Settlement Fund.

31. The Settlement Fund shall be used for the following purposes:

- a. All payments to Settlement Class Members;
- b. Payment of any Court ordered award of Class Counsel’s attorneys’ fees, costs, and expenses pursuant to Section XV hereof;
- c. Payment of any Court ordered Service Award to Plaintiffs pursuant to Section XV hereof;

d. Payment of any cost incurred by the Settlement Administrator in connection with the Settlement Administrator's duties described in Section VII;

e. Payment of any taxes as set forth in Paragraph 34;

f. Payment of costs and expenses of Defendant's consulting experts in compiling and updating the Class List; and

g. Payment of any other fees, costs and expenses not specifically enumerated in Subparagraphs (a) through (f) of this Paragraph, subject to approval of Class Counsel, Cadence Bank and the Court.

32. In no event shall Cadence Bank be required to pay more than the Settlement Fund in connection with this Settlement. No portion of the Settlement Fund shall revert to Cadence Bank, except where the Settlement is terminated pursuant to Section XII.

33. Within sixty (60) calendar days of Preliminary Approval, Cadence Bank shall deposit the Settlement Fund into the Escrow Account.

34. 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 starting with 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 Cadence Bank, Cadence Bank'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. Cadence Bank and Cadence Bank'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 Cadence Bank and Cadence Bank's Counsel and Plaintiffs and Class Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification). Notwithstanding the foregoing, Cadence Bank and Cadence Bank's Counsel shall have no responsibility or liability for any taxes or tax consequences to Plaintiffs or Class Counsel in connection with the payment of the Service Award, payment of attorney's fees and costs, or payment of any funds received by Plaintiffs from the Settlement Fund.

35. Cadence Bank shall forgive, waive, and agree not to collect from Settlement Class Members the Charged-Off Amounts. Should the Charged-Off Amounts otherwise exceed \$682,000, forgiveness shall be applied to relevant accounts on a pro rata basis.

**IV. CERTIFICATION OF THE SETTLEMENT CLASS.**

36. For the purposes of settlement, the Parties agree to certification of the following Settlement Class under Fed. R. Civ. P. 23(b)(2) and (b)(3):

**All current and former holders of Cadence Bank checking Accounts who, during the Class Period, were assessed at least one APSN Fee. Excluded from the Settlement Class are: (i) Defendant, its parent, subsidiaries, affiliated entities, and directors; (ii) all Settlement Class members who make a timely election to be excluded; (iii) current and former holders of Cadence Bank checking accounts who are or were represented separately by other counsel and have entered into separate individual settlement agreements prior to the Opt-Out Deadline related at least in part to APSN fees assessed during the Class Period; and (iv) all judges assigned to this litigation and their immediate family members.**

37. In the event this Settlement is not finally approved by the Court, or this Settlement is terminated, any certification of the Settlement Class will be void, and the Parties will not be bound by this definition of the Settlement Class, nor will the parties be permitted to use it as evidence or otherwise in support of any argument or position in any motion, brief, hearing, appeal, or otherwise, and Cadence Bank will retain its right to object to the maintenance of this Action, as a class action and the suitability of the Plaintiffs to serve as class representatives.

V. **PRELIMINARY APPROVAL.**

38. Upon execution of this Agreement by the Parties and identification of the Settlement Class Members by Defendant's consulting expert, Class Counsel shall promptly move the Court for a Preliminary Approval Order. The proposed Preliminary Approval Order shall be attached to the motion, or otherwise filed with the Court, and shall be in a form attached hereto as Exhibit C.

39. The Motion for Preliminary Approval shall, among other things, request that the Court: (i) preliminarily approve the terms of the Settlement as being within the range of what is fair, adequate, and reasonable; (ii) find that it will be likely to certify the Settlement Class pursuant to Federal Rule of Civil Procedure 23, for settlement purposes only; (iii) appoint the Class Representatives as representatives of the Settlement Class; (iv) approve the Notice Program described herein and approve the form and content of the Notices; (v) approve the procedures set forth herein for Settlement Class members to exclude themselves from the Settlement or to object to the Settlement; (vi) stay the Action pending Final Approval of the Settlement; and (vii) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel and Cadence Bank's Counsel, at which the Court will conduct an inquiry into the fairness, reasonableness and adequacy of the Settlement, and determine whether to approve the Settlement and Class Counsel's application for attorneys' fees, costs and expenses and for a Service Award to each of the Plaintiffs ("Final Approval Hearing").

40. The Parties further agree that in Plaintiffs' motion seeking a Preliminary Approval Order, Plaintiffs will request that the Court enter the following schedule governing the Settlement: (i) deadline for sending the Class Notices: thirty (30) calendar days from Preliminary Approval; (ii) deadline for opting out or serving objections: no later than the Opt-Out Deadline and the

Objection Deadline, respectively; (iii) deadline for filing motions for Class Representative service award and attorneys' fees, costs & expense award: forty-five (45) calendar days from Preliminary Approval; and (iv) Final Approval Hearing: ninety (90) calendar days from Preliminary Approval.

**VI. DISCOVERY.**

41. Consistent with its statutory and regulatory obligations to protect its customers' private financial information, Cadence Bank will provide reasonable assistance in the implementation of this Settlement by providing to the Settlement Administrator the list of names and addresses of identifiable Settlement Class Members that will be used in providing the Email and Mailed Notice to the Settlement Class (the "Class List"). Cadence Bank, Class Counsel, and the Settlement Administrator will agree that the Settlement Administrator will maintain the Class List and other information derived therefrom, in a confidential manner, and that the Settlement Administrator will not provide such Class List or other information to any other person, including Class Counsel and the Class Representative, without the prior written consent of Cadence Bank. In generating the Class List, Cadence Bank will use commercially reasonable procedures to identify each account holder who, based on available account data, falls within the definition of the Settlement Class. Should Cadence Bank subsequently decide to remove a member from the Class List, Cadence Bank shall immediately provide Class Counsel with the reasons for each proposed removal. Class Counsel shall then have ten (10) calendar days to object to such removal. The Parties agree to attempt to resolve any such objections in good faith.

**VII. SETTLEMENT ADMINISTRATOR.**

42. The Settlement Administrator shall administer various aspects of the Settlement as described below and perform such other functions assigned to the Settlement Administrator elsewhere in this Agreement, including, but not limited to: providing Emailed and Mailed Notice

to Settlement Class Members; effectuating the Notice Program pursuant to Section VIII below; and distributing the Settlement Fund as provided herein. Class Counsel, in consultation with Cadence Bank's Counsel, shall supervise and oversee the Settlement Administrator.

43. Settlement Administrator fees, charges and expenses shall be paid from the Escrow Account within thirty (30) calendar days of Class Counsel's and Cadence Bank's receipt and approval of an invoice from the Settlement Administrator. Because the notice and settlement administration costs are being paid from the Settlement Fund, payments to the Settlement Administrator shall not be conditioned on Final Approval.

44. The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Agreement, are as follows:

- a. Obtain from Cadence Bank and Class Counsel, the name, email, and mailing address information (to the extent reasonably available) for Settlement Class Members, and, to the extent necessary, verify and update the addresses received through the National Change of Address database for the purpose of mailing the Mailed Notice, and later mailing distribution checks to Past Account Holder Settlement Class Members, and to Current Account Holder Settlement Class Members where it is not feasible or reasonable for Cadence Bank to make the payment by a credit to the Settlement Class Members' Accounts;
- b. Establish and maintain a Post Office Box for requests for exclusion from the Settlement Class;
- c. Establish and maintain the Settlement Website;

d. Establish and maintain an automated toll-free telephone line for Settlement Class Members to call for information on the Settlement (except that the Settlement Administrator shall not give, and shall not be expected to give, legal advice);

e. Respond to any mailed inquiries from Settlement Class Members;

f. Process all requests for exclusion from Settlement Class Members;

g. Provide weekly reports and a final report to Class Counsel and Cadence Bank's Counsel that summarize the number of requests for exclusion received that week, the total number of exclusion requests received to date and other pertinent information.

h. At Class Counsel's request in advance of the Final Approval Hearing, prepare an affidavit to submit to the Court that identifies each Settlement Class Member who timely and properly requested exclusion from the Settlement Class.

i. Transfer to Cadence Bank the amount of the Net Settlement Fund required to make Settlement Payments to Current Account Holders by a credit to those Settlement Class Members' Accounts;

j. Process and transmit distributions to Settlement Class Members from the Net Settlement Fund;

k. Perform all tax-related services for the Escrow Account as provided in this agreement;

l. Perform any other Settlement-administration-related function at the instruction of Class Counsel and Cadence Bank's Counsel, including, but not limited to, verifying that Cadence Bank has correctly made the distributions to Settlement Class Members with current Accounts; and

m. Pay invoices, expenses and costs upon approval by Class Counsel and Cadence Bank's Counsel, as provided in this Agreement.

**VIII. PROVIDING NOTICE TO THE SETTLEMENT CLASS.**

45. Upon Preliminary Approval of the Settlement, the Settlement Administrator shall implement the Notice Program outlined 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 opt-out of the Settlement Class no later than the Opt-Out Deadline; a date by which Settlement Class Members may object to the Settlement no later than the Objection Deadline; the date upon which the Final Approval Hearing will 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 Cadence Bank's Counsel 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 Cadence Bank's logo or trademarks, the return address of Cadence Bank, the Cadence Bank colors, or otherwise be styled so as to appear to originate from Cadence Bank.

46. The Notice shall also include a procedure for Settlement Class Members to opt-out at any time prior to the Opt-Out Deadline. A Settlement Class Member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement.

47. All Settlement Class Members shall be given the opportunity to opt out of the Settlement Class by submitting a "Request for Exclusion." All requests must be in writing, sent to the Settlement Administrator and Postmarked no later than the Opt-Out Deadline. To be valid,

a Request for Exclusion must be personally signed by the Settlement Class Member (electronic signatures are not acceptable) and must include: (1) the individual's name, address, telephone number, and account number; and (2) a statement substantially to the effect that: "I request to be excluded from the Settlement Class in *Self v. Cadence Bank*, No. 4:24-cv-142-LPR, United States District Court, Eastern District of Arkansas." Notwithstanding the foregoing, no Settlement Class Member, or any person acting on behalf of or in concert or participation with that Settlement Class Member, may submit a Request for Exclusion of any other Settlement Class Member.

48. The Notice shall also include a procedure for Settlement Class Members to object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs and expenses and for Service Awards to Plaintiffs. Objections to the Settlement or to the application for attorneys' fees, costs, expenses and Service Awards must be mailed to the Clerk of the Court, Class Counsel and Cadence Bank's Counsel. For an objection to be considered by the Court, the objection must be postmarked no later than the Objection Deadline, as specified in the Notice. 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 his or her 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 has made such

objection, and a copy of any orders or opinions related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case;

f. The identity of all counsel representing the objector who will appear at the Final Approval Hearing;

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

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

i. The objector's signature (an attorney's signature is not sufficient).

49. The Notice Plan has three components:

a. Email Notice for Settlement Class Members who are Current Account Holders for whom Cadence Bank has an email address;

b. Mailed Notice for:

i. Settlement Class Members for whom Email Notice is not sent because email addresses are not available to Cadence Bank;

ii. Settlement Class Members for whom Email Notice was returned or bounced back as undeliverable; and

iii. All Former Account holders; and

c. A Long-Form Notice with more detail than the Email Notice or Mailed Notice, and which will be available on the Settlement Website.

50. Within thirty (30) calendar days of Preliminary Approval, the Settlement Administrator will dispatch Email Notice to each Current Account for which Cadence Bank has an email address. Should the Settlement Administrator learn that the email address in Cadence



Bank's records is invalid, the Settlement Administrator will send Mailed Notice to that Settlement Class Member.

51. For each Settlement Class Member for whom an attempted Emailed Notice is returned or bounced back as undeliverable, and for all Former Account Holders, the Settlement Administrator will mail, via first-class mail postcard, Mailed Notice to each Settlement Class Member at the address identified in Cadence Bank's records. The Settlement Administrator will request that Cadence Bank provide all contact information necessary to facilitate the Mailed Notice program, including the most recent mailing address on file. Before mailing postcards, the Settlement Administrator will verify and update the mailing addresses received through the United States Postal Service's National Change of Address database to maximize address accuracy.

52. Next, the Settlement Administrator will perform reasonable address traces for all postcards that are returned as undeliverable and will promptly re-mail Mailed Notice postcards to those Settlement Class Members whose original mailed postcards were returned as undeliverable and whose new addresses were identified (the "Notice Re-mailing Process").

53. A detailed, Long-form Notice will be available on the Settlement Website.

54. The Notice Plan shall be completed no later than thirty (30) calendar days after Preliminary Approval. Within seven (7) calendar days after the date the Settlement Administrator completes the Notice Re-mailing Process, the Settlement Administrator shall provide Class Counsel and Cadence Bank's Counsel an affidavit that confirms that the Notice Plan was completed in a timely manner. Class Counsel shall file that affidavit with the Court as an exhibit to or in conjunction with Plaintiff's motion for Final Approval of the Settlement.

**IX. FINAL APPROVAL ORDER AND JUDGMENT.**

55. Plaintiff's motion for a Preliminary Approval Order 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 no later than fifteen (15) calendar days prior to the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' motion for Final Approval of the Settlement, and on Class Counsel's application for attorneys' fees, costs and expenses and for a Service Award for Plaintiffs. 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 the fee, cost, expense or Service Award application, provided the objectors filed timely objections that meet all of the requirements listed in Paragraph 48 above.

56. The Court at the Final Approval Hearing will determine whether to enter the Final Approval Order granting Final Approval of the Settlement, and whether to approve Class Counsel's request for attorneys' fees, costs, expenses and Service Awards. The proposed Final Approval Order that will be attached to the motion shall be in a form agreed upon by Class Counsel and Cadence Bank's Counsel. Such Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, reasonable and adequate;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice provided satisfies due process requirements;
- d. Dismiss the Action with prejudice and without costs;
- e. Bar and enjoin Plaintiffs and all Settlement Class Members from asserting any of the Released Claims, as set forth in Section XIV, including during any appeal from the Final Approval Order;

- f. Release Cadence Bank and the Released Parties from the Released Claims, as set forth in Section XIV; and
- g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Plaintiffs, Cadence Bank and all Settlement Class Members, to administer, supervise, construe and enforce this Agreement in accordance with its terms.

**X. ALLOCATION OF NET SETTLEMENT FUND AMONG SETTLEMENT CLASS MEMBERS.**

57. Ankura Consulting Group, LLC, Cadence Bank's consulting expert, shall calculate the amount each Settlement Class Member paid in APSN fees during the Class Period. The Settlement Administrator shall then determine the amount of distribution from the Net Settlement Fund to each Settlement Class Member on a pro rata basis, based on the amount of APSN Fees paid by that Settlement Class Member. The following formula will determine each Settlement Class Member's distribution:

$$\text{Settlement Class Member's Pro Rata \%} = \frac{\text{APSN Fees Paid by Class Member}}{\text{Total of APSN Fees Paid by All Class Members}}$$

*Settlement Class Member's Distribution = Settlement Class Member's Pro Rata \% x Net Settlement Fund*

58. No Settlement Class Member shall receive more in this settlement than the APSN Fees received by Cadence Bank from that Settlement Class Member.

59. For purposes of issuance of settlement payments, the primary Account holder along with any joint or co-holders shall be treated as one. Any settlement checks for Settlement Class Members who are joint or co-holders shall be issued payable to only the primary Account holder but shall be deemed to satisfy any rights or interest of any joint or co-owners of the Account and shall be mailed to the last known address of the primary Account holder. For the avoidance of

doubt, the releases described in Section XIV apply to all Settlement Class Members regardless of whether payment is directed to only one of multiple joint accountholders.

**XI. DISTRIBUTION OF NET SETTLEMENT FUND TO SETTLEMENT CLASS MEMBERS.**

60. Within a reasonable period of time after the Effective Date, Cadence Bank and the Settlement Administrator will distribute the Net Settlement Fund to the Settlement Class Members. Each Settlement Class Member who had been assessed APSN Fees shall receive a distribution in the amount of a pro rata share of the Net Settlement Fund, consistent with Paragraph 57.

61. Settlement Payments to Current Account Holders will be made by a credit to those Settlement Class Members' Accounts by Cadence Bank. Such credit shall be accompanied by a description on the Account statement of "Credit—Fees Charged" or another description determined by Cadence Bank. Cadence Bank shall provide the notice of account credit described in this Paragraph in or with the account statement on which the credit is reflected.

62. Any account credits paid pursuant to Paragraph 61 shall be paid from the Net Settlement Fund. For each Current Account Holder entitled to a Settlement Payment, the Settlement Administrator shall provide Cadence Bank with the account holder's name, account number, and the amount of account credit to which he or she is entitled. The Settlement Administrator shall also transfer to Cadence Bank from the Escrow Account the sum of the total Settlement Payments to be credited to the accounts of all Current Account Holders ("Current Account Holder Credit Amount"). Within seven (7) calendar days of receipt of the transferred funds, Cadence Bank will distribute those funds by crediting the Accounts of the Current Account Holders, following which it will provide written verification to Class Counsel and the Settlement Administrator of the amount of account credits that were given. To the extent any funds transferred from the Escrow Account to Cadence Bank are not successfully credited to a Current Account

Holder's account, those funds shall be returned by Cadence Bank to the Escrow Account. Cadence Bank shall notify the Settlement Administrator of any such occurrences. The Settlement Administrator shall then cut and mail a check to the Current Account Holder in accordance with the instructions in Paragraph 63 below. Under no circumstances shall Cadence Bank be required to credit the Accounts of the Current Account Holders pursuant to this paragraph in an aggregate amount that exceeds the Current Account Holder Credit Amount.

63. Settlement Class Member Payments to Past Account Holders will be made by check with an appropriate legend, in a form approved by Class Counsel and Cadence Bank's Counsel, to indicate that it is from the Settlement. Checks will be cut and mailed by the Settlement Administrator, and will be sent to the addresses that the Settlement Administrator identifies as valid Settlement Class Member addresses. Checks shall be valid for one hundred eighty (180) calendar days. The Settlement Administrator will make reasonable efforts to locate the proper address for any Settlement Class Member whose check is returned by the Postal Service as undeliverable, and will re-mail it once to the updated address.

**XII. DISPOSITION OF RESIDUAL FUNDS AFTER DISTRIBUTION TO SETTLEMENT CLASS MEMBERS.**

64. Within thirty (30) calendar days after the latest issued check is no longer valid pursuant to Paragraph 63 of this Settlement Agreement, any funds remaining in the Escrow Account (after the payment of all other fees and costs described in Paragraph 31) resulting from uncashed settlement checks shall be disposed of in the following manner:

a. The Settlement Administrator shall distribute the remaining funds in a second distribution to Settlement Class Members who cashed checks in the first distribution if the average check amount would equal or exceed \$10.00 after deducting the costs of a second distribution which will be paid from the Settlement Fund. Any second

distribution will be made in the same manner as the first distribution. Following the second distribution, or if no second distribution is required to be made, any remaining unclaimed settlement funds shall be distributed to a *cy pres* recipient.

b. The residual *cy pres* recipient shall be agreed upon by Cadence Bank and Plaintiffs, and approved by the Court. Any residual *cy pres* distribution shall be paid as soon as reasonably possible following the completion of distribution of funds to the Settlement Class Members.

c. If Cadence Bank and Plaintiffs are unable to agree on a distribution plan ((a) or (b)) or on the recipient, they shall bring the matter, together with supporting materials and argument, to the Court for determination.

d. In the event no money remains in the Settlement Fund, the Parties shall have no obligation whatsoever to make any distribution as contemplated by subparagraphs (a) or (b) above of this paragraph.

### **XIII. TERMINATION OF SETTLEMENT.**

65. This Settlement may be terminated by either Cadence Bank or Class Counsel by serving on counsel for the opposing Party and filing with the Court a written notice of termination within fourteen (14) calendar days after any of the following occurrences:

a. The Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;

b. An appellate court reverses the Final Approval Order, and the Settlement is not reinstated without material change by the Court on remand;

c. 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 Cadence Bank or Class Counsel seeking to terminate the Settlement reasonably considers material;

d. At any time prior to preliminary approval, one of Cadence Bank's regulators rejects the terms of this Settlement Agreement.

e. The Effective Date does not occur as contemplated by this Settlement Agreement; or

f. Any other ground for termination provided for elsewhere in this Agreement.

66. In addition, Cadence Bank shall also have the right to terminate the Settlement by serving on Class Counsel and filing with the Court a notice of termination within fourteen (14) calendar days of its receipt from the Settlement Administrator of the final opt-out report, if the number of Settlement Class Members who timely request exclusion from the Settlement Class equals or exceeds 2.5% of the Settlement Class.

67. In the event of a termination pursuant to this Section, this Agreement shall be considered null and void; all of Cadence Bank'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 claims and defenses will be preserved.

68. In the event of a termination pursuant this Section, any funds remaining in the Escrow Account shall be returned to Cadence Bank within seven (7) calendar days of termination, less any money that the Escrow Account has incurred as an obligation to pay for administration related costs and expenses.

69. In the event of a termination pursuant to this Section, 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, without prejudice to Plaintiffs' right to seek discovery and class certification, and Cadence Bank's right to oppose class certification. 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.

**XIV. RELEASES.**

70. As of the Effective Date, Plaintiffs and all Settlement Class Members (who do not timely opt-out of the Settlement) (collectively, "Releasers"), and each of their respective, executors, representatives, heirs, successors, bankruptcy trustees, guardians, wards, agents and assigns, and all those who claim through them or who assert claims on their behalf, shall automatically be deemed to have fully and irrevocably released and forever discharged Cadence Bank 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, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors, and assigns of each of them (collectively, "Releasees"), of and from any claim, right, demand, charge, complaint, action, cause of action, obligation, arbitration or liability for any type of relief and statutory or punitive damages predicated on any claim and for actual or statutory damages, punitive damages, restitution or other monetary relief of any and every kind, including, without limitation, those based on any federal, state, or local law, statute, regulation, or common law, including all claims for declaratory or injunctive relief, whether known or unknown, suspected or unsuspected, under the law of any jurisdiction, which the Plaintiffs or any Settlement Class Member ever had, now has or may have in the future resulting from, arising out of or in any way, directly or indirectly, relating to: (a) any claims that were or could have been alleged in the



Complaint relating to APSN Fees; or (b) any conduct prior to the date of final settlement approval that was or could have been alleged in the Complaint relating to APSN Fees. For the avoidance of doubt, the Released Claims include, and each Releasor expressly waives and fully, finally and forever settles, any claims they may have against Releasees or any of them under the Arkansas Deceptive Trade Practices Act and similar state laws, which claims are included in and expressly incorporated into this Paragraph.

71. Plaintiffs and each Settlement Class Member waive and release any and all provisions, rights, and benefits conferred either: (i) by section 1542 of the California Civil Code; or (ii) by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to section 1542 of the California Civil Code, with respect to the claims released pursuant to Section XIV hereto. Section 1542 of the California Civil Code reads:

**Section 1542. Certain claims not affected by general release.** 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.

72. 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, or the law applicable to such claims may change. Nonetheless, each Settlement Class Member 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 non-contingent claims with respect to all of the matters and conduct described in or subsumed by this Paragraph and Paragraphs 70-71. Further, each Settlement Class Member agrees and acknowledges that they shall be bound by this Agreement, including by the releases

contained in this Paragraph and in Paragraphs 70-71, 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 or never receives a distribution of funds or credits from the Settlement.

**XV. PAYMENT OF ATTORNEYS' FEES AND COSTS, AND INCENTIVE AWARDS.**

**A. Class Counsel Fees and Costs**

73. Class Counsel shall file a motion with the Court for consideration at the Final Approval Hearing seeking to be paid attorneys' fees of up to one-third of the Settlement Value, plus reasonable expenses, to be paid from the Settlement Fund. Cadence Bank agrees to take no position as to the amount of attorneys' fees of up to one-third of the Settlement Value which Class Counsel may seek.

74. Any award of attorneys' fees, costs and expenses to Class Counsel shall be payable solely from the Escrow Account and taken from the Settlement Fund, and is subject to Court approval. Notwithstanding anything herein, the Court's failure to approve, in whole or in part, any award of attorneys' fees, costs and expenses to Class Counsel shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination. In the event the Court declines to approve, in whole or in part, the payment of attorneys' fees, costs and expenses to Class Counsel in the amounts sought by Class Counsel, or at all, the remaining provisions of this Agreement shall remain in full force and effect.

75. Within ten (10) calendar days of the Court's entering of the Final Approval Order, the Settlement Administrator shall pay from the Escrow Account to Class Counsel all Court

approved attorneys' fees, costs and expenses. Class Counsel shall furnish to the Settlement Administrator any required tax information or forms before the payment is made.

**B. Class Representative Service Awards**

76. Class Counsel on behalf of the Plaintiffs may apply to the Court for a service award of up to \$5,000 for each Plaintiff serving as a Class Representative.

77. Any Service Award is to be paid solely from the Escrow Account and taken from the Settlement Amount. Any Service Award shall be paid to Plaintiffs in addition to any payments Plaintiffs are entitled to receive as a Settlement Class Member. Notwithstanding anything herein, the Court's failure to approve, in whole or in part, the Service Award sought by Class Counsel shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination. In the event the Court declines to approve, in whole or in part, a Service Award in the amount set forth above, or at all, the remaining provisions of this Agreement shall remain in full force and effect. The Parties negotiated and reached this agreement regarding a Service Award only after reaching agreement on all other material terms of this Settlement.

**XVI. PARTIES' POSITION ON THE ACTION AND SETTLEMENT.**

78. 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.

79. Class Counsel and Plaintiffs 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 have fully investigated the facts and law relevant to the merits of the claims, have conducted extensive discovery, and have conducted independent investigation of the challenged practices. Class Counsel and Plaintiffs have concluded that the proposed Settlement set forth in this Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

80. Cadence Bank disputes the claims alleged in the Action and does not by this Agreement or otherwise admit any liability or wrongdoing of any kind. Cadence Bank 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 have been asserted in the Action.

81. 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.

82. In addition to any other defenses Cadence Bank 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. MISCELLANEOUS PROVISIONS.**

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

84. 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.

85. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval and to do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement. This obligation of the Parties to support and complete the Settlement shall remain in full force and effect regardless of events that may occur, or court decisions that may be issued, in any other case in any court or tribunal.

86. 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, and attempted in good faith to resolve such dispute.

87. Integration. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter herein. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein. This Agreement does not supersede, waive, or amend the terms of, or rights under, any other agreements between Cadence Bank and each Settlement Class Member including, but not limited to, the Deposit Account Terms and Conditions.

88. 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.

89. 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 submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

90. Exclusive Jurisdiction. The Court 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 and shall retain jurisdiction for the purpose of enforcing all terms 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 their respective agreements to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

91. Notices. All notices to counsel provided for herein shall be sent by email and facsimile with a hard copy sent by overnight mail to:

**As to Plaintiffs and the Settlement Class:**

Lynn A. Toops  
[ltoops@cohenandmalad.com](mailto:ltoops@cohenandmalad.com)  
**COHEN & MALAD LLP**  
One Indiana Square  
1400 N. Pennsylvania St.  
Indianapolis, IN 46204  
(317)-636-6481

Randall K. Pulliam  
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**CARNEY BATES & PULLIAM, PLLC**  
519 W. 7th St.

Little Rock, AK 72201  
(501)-312-8500

**As to Cadence Bank:**

Austin Brown  
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Washington, DC  
(202)-799-4513

Amy J. Eldridge  
[Amy.eldridge@cadencebank.com](mailto:Amy.eldridge@cadencebank.com)  
**Cadence Bank**  
1333 West Loop South, 18th Floor

Houston, Texas 77027  
(713)-871-5367

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.

92. Modification and Amendment. This Agreement may be amended or modified only by a written instrument signed by the Parties and their respective counsel and approved by the Court.

93. 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.

94. Authority. 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.

95. Agreement Mutually Prepared. Neither Cadence Bank nor Plaintiff, 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.

96. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that: (a) they have performed an independent investigation of the allegations of fact and law made in connection with the Action; and (b) 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. Cadence Bank has provided and is providing information that Plaintiffs reasonably request to identify Settlement Class Members and the alleged APSN Fees they incurred. It is the Parties' intention to resolve their disputes in connection with the 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.

97. Receipt of Advice of Counsel. Each Party acknowledges, agrees and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained in Section XIV above, received independent legal advice with respect to the advisability of entering this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

[Remainder of this page intentionally left blank]

**SIGNATURES**


**PLAINTIFFS**

\_\_\_\_\_  
Joseph Self


\_\_\_\_\_  
Malinda Self

**CLASS COUNSEL**

  
\_\_\_\_\_  
Lynn Toops (Oct 10, 2024 13:44 PDT)  
Lynn A. Toops

  
\_\_\_\_\_  
Randall K Pulliam (Oct 11, 2024 15:59 CDT)  
Randall K. Pulliam

**CADENCE BANK**

  
\_\_\_\_\_  
Print Name: Ty Lambert  
Capacity: Chief Risk Officer

**SIGNATURES**

**PLAINTIFFS**

  
\_\_\_\_\_  
Joseph Self

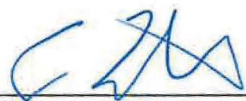
\_\_\_\_\_  
Malinda Self

**CLASS COUNSEL**

\_\_\_\_\_  
Lynn A. Toops

\_\_\_\_\_  
Randall K. Pulliam

**CADENCE BANK**

  
\_\_\_\_\_  
Print Name: Ty Lambert  
Capacity: Chief Risk Officer

**SIGNATURES**

**PLAINTIFFS**

\_\_\_\_\_  
Joseph Self


  
\_\_\_\_\_  
Malinda Self

**CLASS COUNSEL**

\_\_\_\_\_  
Lynn A. Toops

\_\_\_\_\_  
Randall K. Pulliam

**CADENCE BANK**

  
\_\_\_\_\_  
Print Name: Ty Lambert  
Capacity: Chief Risk Officer