

SETTLEMENT AGREEMENT AND RELEASE

Eric Roberts v. Old Second Bancorp, Inc. d/b/a Old Second National Bank
(Case No. 2021-MR-2148)

Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois

PREAMBLE

This Settlement Agreement and Release (the “Agreement”) is entered into by Plaintiff Eric Roberts (“Named Plaintiff”) and all those on whose behalf he is prosecuting this action on the one hand, and Defendant Old Second Bancorp, Inc. and Old Second National Bank (collectively referred to as “Defendant” or “Old Second”), 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 December 13, 2021, Plaintiff Eric Roberts filed a class action complaint in the Circuit Court of the Sixteenth Judicial Circuit, Kane County, State of Illinois, captioned *Eric Roberts v. Old Second Bancorp, Inc. d/b/a Old Second National Bank*, Case No. 2021-MR-2148, alleging breach of contract, including breach of the implied covenant of good faith and fair dealing, and violation of Illinois’ Consumer Fraud and Deceptive Business Practice Act (“ICFA”).

B. On March 22, 2022, Defendant moved to dismiss the case.

C. On May 3, 2022, Plaintiff filed his First Amended Complaint after the Court granted Plaintiff’s motion for leave to amend the complaint.

D. On June 7, 2022, Defendant moved to dismiss the First Amended Complaint.

E. On July 14, 2022, Plaintiff filed his Second Amended Complaint after the Court granted Plaintiff’s second motion for leave to amend the complaint.

F. On August 10, 2022, Defendant moved to Dismiss the Second Amended Complaint. On December 12, 2022, following two hours of oral argument, the Court dismissed Plaintiff’s ICFA claim. On February 6, 2024, the Court denied Defendant’s motion to dismiss Plaintiff’s breach of contract claim including the covenant of good faith and fair dealing. Defendant filed its Answer to Plaintiff’s Second Amended Complaint on March 3, 2023.

G. Subsequently, the Parties pursued written discovery and simultaneously agreed to mediate to try to reach a comprehensive settlement.

H. On October 24, 2023, the Parties participated in mediation before the Honorable Hollis Webster (Ret.). The mediation did not result in settlement, but the parties continued settlement discussions and agreed to attempt a second mediation.

I. On October 4, 2024, the Parties participated in a second mediation before the Honorable Hollis Webster (Ret.). The mediation was successful, and the Parties have now formalized their agreed upon settlement by this Agreement.

J. 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 Second Amended Complaint or any other pleading or motion filed against it, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted against it. 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.

K. Named Plaintiff has entered into this Agreement to recover on the claims asserted in the Second Amended Complaint and to avoid the risk, delay, and uncertainty of continued litigation. Named Plaintiff does 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” means overdraft fees that were charged and not refunded from February 1, 2012, to December 31, 2021, on 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 an accountholder’s account.

(b) “Bar Date to Object” means the date set by the Court as the deadline for Class Members to file an Objection and shall be thirty (30) days after the date the Notice (defined below) must be sent to Class Members.

(c) “Bar Date to Opt Out” means 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” means Amanda J. Rosenberg, Jeffrey D. Kaliel, and Sophia G. Gold of Kaliel Gold PLLC, James Vlahakis of Vlahakis Law Group LLC, and David M. Berger, Shawn Judge, and Mark Troutman of Gibbs Law Group LLP.

(e) “Class Member(s)” means all Illinois citizens who, between February 1, 2012, to December 31, 2021, were Old Second checking accountholders that were charged APPSN Fees on transactions that were authorized into a positive available balance.

(f) “Court” means the Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois.

(g) “Defendant’s Counsel” means Thomas Scherschel of Amundsen Davis LLC and Jonathan Knicely of Nelson Mullins Riley & Scarborough LLP.

(h) “Effective Date” means 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” means the short form of notice that shall be sent by email to Class Members who are current customers of Defendant and who have agreed to receive account statements and notices electronically, in the form attached as **Exhibit A**.

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

(l) “Final Report” means the report prepared by the Settlement Administrator of all receipts and disbursements from the Settlement Fund, as described in Section 8, below.

(m) “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 Class Members by mail on request made to the Settlement Administrator in the form attached as **Exhibit B**.

(n) “Motion for Final Approval” means the motion or motions filed by Class Counsel, as referenced in Section 5, below, which shall be no later than fourteen (14) days after the Bar Date to Object.

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

(p) “Notice” means 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” means the short form notice that shall be sent by mail to Class Members who are not current customers of Defendant or who are current customers of Defendant 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 A**.

(r) “Preliminary Approval/Notice Order” means 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 Class, as provided in Sections 3 and 4, below.

(s) “Settlement Administrator” means the entity appointed by the Court to provide the notice and handle the other administrative tasks assigned under this Agreement.

(t) “Settlement Fund” means the One Million Two Hundred Thousand Dollars and no cents (\$1,200,000.00), to be paid by Defendant under the terms of this Agreement.

2. CLASS ACTION SETTLEMENT. Named Plaintiff 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 for the implementation of such settlement, that this case shall proceed as a class action; provided, however, that if a Final Approval Order is not issued, then Defendant shall retain all rights to object to maintaining this case as a class action and no class will have been deemed certified in this lawsuit. Named Plaintiff and Class Counsel shall not reference this Agreement in support of any subsequent motion relating to certification of a liability class.

3. PRELIMINARY SETTLEMENT APPROVAL. Class Counsel shall use reasonable efforts to promptly file a motion seeking a Preliminary Approval/Notice Order. The Preliminary Approval/Notice Order shall provide for: preliminary approval of this Agreement, provisional certification of the settlement classes for settlement purposes, appointment of Named Plaintiff 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 4, below (or as otherwise determined by the Court).

4. 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 accountholders 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 the 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 the 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 accountholders 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 the 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 A and B**. 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 identification of class members pursuant to Section 4(a) and the Settlement Administrator's fees and costs, shall be paid out of the Settlement Fund.

5. MOTION FOR FINAL APPROVAL AND MOTION FOR FEES, COSTS, AND SERVICE AWARD. No later than after the date that Notice is sent to the Class Members, Class Counsel shall file a Motion for Award of Fees, Costs, and Service Award, which shall be heard on the Final Approval Hearing Date. No later than fourteen (14) days after the Bar Date to Object,

and provided the conditions in Section 14, below, are satisfied, Class Counsel shall file a Motion for Final Approval of this Agreement so that same can also be heard on the Final Approval Hearing Date.

6. ENTRY OF JUDGMENT. The Final Approval Order shall constitute the Court's final judgment in this action. The Court shall retain jurisdiction to enforce the terms of the Final Approval Order.

7. THE SETTLEMENT FUND AND DISTRIBUTION.

(a) Payment to Class Members. Within forty-five (45) days after the entry of a Final Approval Order and determination of amount of Individual Payment (as hereinafter defined), Defendant shall transfer the Settlement Fund, less the amount that Defendant will issue to accountholders as credits in accordance with Section 7(d)(iv)(b)(i) and (iii) herein and less the amounts paid to or due and owing to Ankura Consulting for costs associated with identifying the class members, to the Settlement Administrator. The Settlement Fund shall be the total amount Defendant is obligated to pay under the terms of this Agreement and in no event shall exceed \$1,200,000.00. 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, and for any amounts to be paid by the Settlement Administrator for (a) Class Counsel's fees and costs; (b) any service award payment to Named Plaintiff; (c) costs associated with administering the Notice in accordance with Section 4, above; (d) any fees paid to the Settlement Administrator for services rendered in connection with the administration process; (e) costs associated with identifying the class members; and (f) 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 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 ten (10) days after the Effective Date. 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 object to 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 Plaintiff may apply to the Court for a service award of up to seven thousand five hundred dollars (\$7,500.00). 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 \$7,500.00 for the Named Plaintiff but reserves the right to oppose an application for a Service Award in excess of that amount.

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 Settlement Fund has been funded. In the event the Final Approval Order is not entered and this Agreement is terminated pursuant to Section 14 below based on a finding by the Court that Class Counsel and/or the Named Plaintiff are not qualified to service as Class Counsel and/or Named Plaintiff, the Named Plaintiff agrees to cover any costs incurred and fees charged by the Settlement Administrator pursuant to Section 4 above prior to the denial of final approval or the termination of this Agreement. In the event the Final Approval Order is not entered or this Agreement is terminated pursuant to Section 14 below for any other reason, Defendant agrees to cover any costs incurred and fees charged by the Settlement Administrator pursuant to Section 4 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 by the Settlement Administrator based upon information provided by Defendant's expert as follows:

- a. $(\text{Net Settlement Fund} / \text{Total number of APPSN Fees}) \times \text{number of fees charged to and paid by each Class Member} = \text{Individual Payment}$.
- b. Individual Payments shall be made sixty (60) days after the Effective Date, as follows:
 - i. For Class Members who are customers of Defendant at the time of the distribution of the Net Settlement Fund, and who then own the checking account maintained at Defendant that was assessed an APPSN Fee, 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 (ii), below.

- ii. For those Class Members who are not able to receive a credit as provided for in subsection (i), 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 jointly to all accountholders, 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 10.
- iii. Notwithstanding subsections (i) and (ii), 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.

c. In no event shall any portion of the Settlement Fund revert to Defendant.

8. FINAL REPORT. Within two hundred fifty (250) days after the Effective Date, Class Counsel shall file a report with the Court describing the payments made to Class Members, the amount of any unclaimed funds and the cy pres recipient. Defendant shall provide 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).

9. 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, other than credits, from the Settlement Fund as provided for in Section 7, above.

(d) The Settlement Administrator shall calculate the payments and/or credits owing to Class Members under Section 7 of this Agreement based on information provided by Ankura Consulting, as verified by Class Counsel and Defendant.

(e) The Settlement Administrator shall keep all information regarding members of the Class 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 purpose 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 Defendants 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 the data in its administration database to Defendant's Counsel and, if requested in writing, including an email request to Class Counsel. The written request shall be copied to Defendant, if made. Such information shall be used by Class Counsel only for purposes of the implementation of this Agreement.

(j) The Settlement Administrator shall provide Class Counsel and Defendant 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.

10. CY PRES PAYMENT. Subject to Court approval, within thirty (30) days after the Final Report, the total amount of uncashed checks and any other residual amounts held by the Settlement Administrator at the time of the Final Report shall be paid to an appropriate cy pres recipient agreed to by the Parties and approved by the Court.

11. OPT-OUTS.

(a) Any Class Member who wishes to exclude themselves 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 be excluded 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 the Class Member's 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 of that account.

(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.

12. 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, which is *Eric Roberts v. Old Second Bancorp, Inc. d/b/a Old Second National Bank*, Case No. 2021-MR-2148, Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois.
- The objector's name, address, telephone number, the last four digits of the objector's 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 indicating 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.

13. GENERAL RELEASE. Except as to the rights and obligations provided for under the terms of this Agreement, as of the Effective Date, Named Plaintiff, on behalf of himself and each of the Class Members who do not submit a valid request to exclude themselves as provided in Section 11, above, 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 Plaintiff and Class Members now have, own, or hold against any of the Defendant Releasees that arise out of or relate to the Second Amended Complaint, and any other claims relating to overdraft fees on debit card transactions related to the timing of the imposition of the overdraft fee from authorization to presentment, including but not limited to APPSN Fees.

14. 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 3 above;
- ii. The Court has entered the Final Approval Order as required by Section 5, 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) All of the conditions specified in Section 14(a) must be met for this Agreement to become effective. If any of the conditions specified in Section 14(a) are not met, then this Agreement does not become effective and shall be deemed cancelled and terminated.

(c) Defendant shall have the option to terminate this Agreement if fifteen percent (15%) 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 14(c) 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 14(c) or fails to become effective in accordance with Sections 14(a) and/or (b), then the Parties shall be restored to their

respective positions in the case as it 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 the case or in any other action or proceeding for any purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

15. 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 of their own selection and choosing 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) Named Plaintiff, on behalf of the Class Members, represents that he has made such inquiry into the terms and conditions of this Agreement as he deems appropriate and that, by executing this Agreement, he, 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) Named Plaintiff represents that he has 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.

16. FURTHER ASSURANCES. Each of the Parties 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 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.

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

18. NO ORAL WAIVER OR MODIFICIATON. 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, regardless of whether the waivers, modifications, or breaches are 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.

19. 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.

20. BINDING ON SUCCESSORS. This Agreement shall inure to the benefit of, and shall bind, each of the Parties hereto and their respective successors, assigns, heirs and estates.

21. 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.

22. 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.

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

James C. Vlahakis
VLAHAKIS LAW GROUP LLC
20 N. Clark Street, Suite 3300
Chicago Illinois 60602
Telephone: (312) 766-0511
jamesv@vlahakislaw.com

Jeffrey D. Kaliel
Sophia G. Gold
Amanda Rosenberg
KALIEL GOLD PLLC
1100 15th Street NW 4th Floor
Washington, D.C. 20005
Telephone: (202) 350-4783
jkaliel@kalielpllc.com
sgold@kalielgold.com
arosenberg@kalielgold.com

David M. Berger
GIBBS LAW GROUP LLP
1111 Broadway, Suite 2100
Oakland, California 94607
Telephone: (510) 350-9700
dmb@classlawgroup.com

Shawn K. Judge
Mark H. Troutman
GIBBS LAW GROUP LLP
1554 Polaris Pkwy., Suite 325
Columbus, Ohio 43240
Telephone: (510) 350-9247
skj@classlawgroup.com
mht@classlawgroup.com

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

Thomas P. Scherschel
AMUNDSEN DAVIS LLP
3815 E. Main St. Ste. A-1
St. Charles, IL 60174
Telephone: (630) 587-7912
tscherschel@amundsendavislaw.com

Jonathan M. Knicely
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street, 17th Floor
Columbia, SC 29201
Telephone: (803) 255-9593
jonathan.knicely@nelsonmullins.com

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

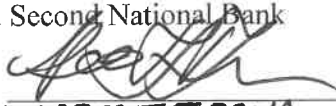
IN WITNESS WHEREOF, the Parties have entered this Agreement as of the dates set forth below.

Dated: January __, 2025

Old Second Bancorp, Inc.

By: 
BRAD ADAMS
Its: CFO

Dated: January __, 2025

Old Second National Bank
By: 
ROBERTO T. TIRONA
Its: SVP

Dated: January 2, 2025

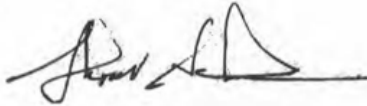
Eric Roberts, an individual on behalf of himself and those he represents

By: Eric Roberts

APPROVED AS TO FORM:

Dated: January 13, 2025

AMUNDSEN DAVIS LLP
Thomas P. Scherschel

By: 
Thomas P. Scherschel

Attorneys for Defendant Old Second Bancorp, Inc. and Old Second National Bank

Dated: January 13, 2025

NELSON MULLINS RILEY & SCARBOROUGH LLP
Jonathan Knicely

By: Jonathan Knicely
Jonathan Knicely

Attorneys for Defendant Old Second Bancorp, Inc. and Old Second National Bank

Dated: January 5, 2025

KALIEL GOLD PLLC
Sophia G. Gold
Jeffrey D. Kaliei
Amanda Rosenberg

By: *Sophia Gold*

Sophia G. Gold
Attorneys for Named Plaintiff and the Putative Class

Dated: January 3, 2025

GIBBS LAW GROUP LLP

Mark H. Troutman
Shawn K. Judge

By: *Mark Troutman*

Mark H. Troutman
Attorneys for Named Plaintiff and the Putative Class

Dated: January 3, 2025

VLAHAKIS LAW GROUP LLC

James Vlahakis

By: *James C. Vlahakis*

James Vlahakis
Attorneys for Named Plaintiff and the Putative Class

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Mark Troutman

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Location: Powell, United States

James Vlahakis

Email: jamesv@vlahakislaw.com

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James C. Vlahakis

Recipient Verification:

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IP address: 98.206.189.8
Location: Burr Ridge, United States

Sophia Gold

Email: sgold@kalielgold.com

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