

# **SETTLEMENT AGREEMENT AND RELEASE**

***Latoya Lashay Fludd and Wanda Sue Butcher, et al. v. South State Bank, and Does 1-100***

**United States District Court, District of South Carolina, Charleston Division**

**Case No. 2:20-cv-1959-BHH**

## PREAMBLE

This Settlement Agreement and Release (the “Agreement”) is entered into by and among plaintiffs Latoya Lashay Fludd and Wanda Sue Butcher (“Named Plaintiffs”) and all those on whose behalf they are prosecuting this action (each of them a “Plaintiff” and all of them “Plaintiffs”), on the one hand, and defendant SouthState Bank, N.A. (“SouthState” or “Defendant”), on the other hand, as of the 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.

## RECITALS

A. On May 20, 2020, Named Plaintiff Latoya Lashay Fludd filed a putative class action Complaint in a lawsuit styled as *Latoya Lashay Fludd, individually, and on behalf of all other similarly situated v. South State Bank, and Does 1-100* in the United States District Court for the District of South Carolina, Charleston Division, Case No. 2:20-cv-01959-BHH (the “Lawsuit”). Named Plaintiff Fludd alleged claims arising from Defendant’s practice of charging multiple non-sufficient funds (“NSF”) fees for the same electronic transaction item, or charging an NSF fee following by an overdraft fee on the same transaction item. The specific causes of action alleged in the Complaint included breach of the account agreement, breach of the implied covenant of good faith and fair dealing, unjust enrichment/restitution, and money had and received.

B. On August 21, 2020, SouthState filed a Motion to Dismiss Named Plaintiff Fludd’s Complaint, which the parties fully briefed.

C. While the Motion to Dismiss was pending, Named Plaintiff Fludd sought leave to amend the Complaint to add a second Named Plaintiff, Wanda Sue Butcher, and her claim against SouthState for allegedly violating Regulation E of the Electronic Fund Transfer Act, 12 C.F.R. § 1005.1, *et seq.*, by failing to follow proper procedures to opt-in customers prior to charging them overdraft fees on one-time debit card and ATM transactions as required.

D. On January 6, 2021, the Court granted Named Plaintiff Fludd leave to file the First Amended Complaint (“FAC”), adding Named Plaintiff Butcher and her Regulation E claim to the allegations in the case. The FAC was filed on January 12, 2021.

E. On February 16, 2021, SouthState filed a Motion to Dismiss the FAC, which the parties fully briefed. On September 30, 2021, SouthState’s Motion was denied.

F. On October 29, 2021, SouthState filed its Answer to the FAC.

G. Following Defendant’s Answer, the parties engaged in discovery. Defendant produced Named Plaintiffs’ bank records, contracts, sample data, and other materials relating to its overdraft and NSF fee practices. Named Plaintiffs also deposed SouthState’s corporate designee. Likewise, Named Plaintiffs responded to SouthState’s discovery requests and sat for their depositions.

H. On June 6, 2023, the parties participated in a mediation before Bradish J. Waring of Butler Snow LLP. The parties did not reach a settlement at the mediation, but with Mr. Waring’s assistance, they were able to reach a settlement of all claims at issue a few weeks later. The parties

notified the Court of this agreement on July 26, 2023. The settlement described below is the result of the parties' agreement reached as a result of the mediation.

I. SouthState has entered into this Agreement to resolve any and all controversies and disputes arising out of or relating to the allegations made in the FAC, and to avoid the burden, risk, uncertainty, expense, and disruption to its business operations associated with further litigation. SouthState does not in any way acknowledge, admit to, or concede any of the allegations made in the FAC, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the FAC. SouthState nevertheless believes that this settlement is in its best interest and in the best interests of all of its customers. Nothing contained in this Agreement shall be used or construed as an admission of fault, wrongdoing, or 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 fault, liability, or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement.

J. Named Plaintiffs have entered into this Agreement to liquidate and recover on the claims asserted in the FAC, and to avoid the risk, delay, and uncertainty of continued litigation. Named Plaintiffs do not in any way concede the claims alleged in the FAC 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) "Bar Date to Object" will be the date set by the Court as the deadline for Class Members to file an objection to the class settlement, and shall be approximately fifteen (15) days after the filing of the Motion for Final Approval.

(b) "Bar Date to Opt Out" shall be the date set by the Court as the deadline for Class Members to opt out of the class settlement. The Bar Date to Opt Out shall be thirty (30) days after the date the Notice must be sent to the Class Members.

(c) "Claims Administrator" shall mean the entity agreed upon by the parties and approved by the Court that will provide the Notice of the class settlement and other administrative handling of this Agreement. Class Counsel shall request bids from at least two separate claims administrators (which such administrators must be approved by SouthState in writing) and the one providing the lowest bid shall be selected. If the parties cannot agree on the selection of the Claims Administrator, they will each present their positions to the Court for its determination.

(d) "Class Counsel" shall mean Richard D. McCune and Emily J. Kirk of McCune Law Group, McCune Wright Arevalo Vercoski Kusel Weck Brandt, APC, Mark C.

Tannenbaum of Mark C. Tanenbaum, PA, and Richard A. Harpootlian of Richard A. Harpootlian Law Firm.

(e) “Class Member” shall mean any customer of SouthState who is in the Repeat Fee Settlement Class or Regulation E Settlement Class, and who does not submit a timely request to be excluded from the classes. Excluded from the classes are SouthState’s current and former officers, directors, affiliates, legal representatives, employees, successors, subsidiaries, and assigns. Also excluded are Class Counsel, all employees of Class Counsel, and any judge who has presided over this matter.

(f) “Court” shall mean the United States District Court for the District of South Carolina.

(g) “Defendant’s Counsel” shall mean Christian P. George, Christopher S. Carver, and Howard Jay Harrington of Akerman LLP, and Charles S. Altman of the Law Offices of Charles S. Altman, LLC.

(h) “Effective Date” shall be thirty (30) 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: (1) ninety (90) 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 the appellate mandate following a ruling affirming the Final Approval Order or thirty (30) days after entry of a dismissal of the appeal.

(i) “Email Notice” shall mean a short form of the Notice that shall be sent by email to Class Members who have elected to receive notices from Defendant by email.

(j) “Exclusion Letter” shall mean a letter by a Class Member who elects to opt out of this Agreement.

(k) “Final Approval Hearing Date” shall be the date set by the Court for the hearing on any and all motions for final approval of this Agreement.

(l) “Final Approval Order” shall mean the order and/or judgment approving this Agreement issued by the Court at or after the Final Approval Hearing Date. The proposed Final Approval Order shall be in a form agreed upon by the parties and shall be substantially in the form attached as an exhibit to the motion for Final Approval.

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

(n) “Motion for Final Approval” shall mean the motion or motions filed by Class Counsel, as referenced in Section 5, below.

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

administration shall include, but not be limited to, the costs of compiling the class list, sending the Notice, updating the class list, and the transmissions of settlement checks.

(p) “Notice” shall mean the notice to Class Members of the settlement provided for under the terms of this Agreement, as ordered by the Court in its Preliminary Approval/Notice Order and shall refer to the form of Notice attached hereto as Exhibit 1 and Exhibit 2 (E-mail version).

(q) “Preliminary Approval/Notice Order” shall mean the Order issued by the Court preliminarily approving this Agreement and authorizing the sending of the Notice to Class Members. The proposed Preliminary Approval/Notice Order shall be attached to a motion seeking the Preliminary Approval/Notice Order, or otherwise filed with the Court, and shall be in a form agreed to by Class Counsel and Defendant.

(r) “Regulation E Fee Charge” shall mean an overdraft fee that was paid by certified Regulation E Settlement Class Members on any ATM or non-recurring debit card transaction(s) from January 12, 2020, through July 18, 2023.

(s) “Regulation E Settlement Class” shall mean those customers who have or have had accounts with Defendant who incurred an overdraft fee(s) for ATM or non-recurring debit card transaction(s) during the period beginning January 12, 2020, and ending on July 18, 2023.

(t) “Repeat Fee Charge” shall mean an NSF or overdraft fee that was paid by certified Repeat Fee Settlement Class Members on any item that was previously assessed an NSF fee from May 20, 2017, through July 18, 2023.

(u) “Repeat Fee Settlement Class” shall mean those customers who have or have had accounts with Defendant who incurred more than one NSF fee, or an NSF fee followed by an overdraft fee, for the same item during the period beginning May 20, 2017, and ending on July 18, 2023.

(v) “FAC” shall mean the operative First Amended Complaint filed on January 12, 2021.

(w) “Settlement Fund” shall mean the sum of two million nine hundred thousand dollars and zero cents (\$2,900,000.00), to be paid by SouthState under the terms of this Agreement. The amount of \$2,900,000.00 is intended to and shall be a hard and inviolable cap; in no event shall SouthState, its insurers, or any of the Defendant Releasees ever be liable for any amount whatsoever in excess of the Settlement Fund of \$2,900,000.00, regardless of any circumstances whatsoever.

(x) “Uncollected Fees” shall mean all overdraft and NSF fees for Class Members whose accounts were closed and uncollected with a negative balance from May 20, 2017 through July 18, 2023.

(y) “Value of the Settlement” shall mean the Settlement Fund plus the value of Uncollected Fees.

**2. CLASS ACTION SETTLEMENT.** Named Plaintiffs shall propose and recommend to the Court that the settlement classes be certified, which classes shall be comprised of the Class Members. However, Class Members will have the opportunity to opt out, or otherwise object, intervene, or appear at the Final Approval Hearing. SouthState agrees, solely for purposes of the settlement provided for in this Agreement and the implementation of such settlement, that this case shall proceed as a class action; provided, however, that if a Final Approval Order is not issued, then SouthState shall retain all rights to object to maintaining this case as a class action. In the event a Final Approval Order is not issued, named Plaintiffs and Class Counsel shall not reference this Agreement in support of any subsequent filing relating to certification of a class in this or any other action.

**3. PRELIMINARY SETTLEMENT APPROVAL.** Class Counsel shall use reasonable efforts to file a motion seeking a Preliminary Approval/Notice Order on or before November 15, 2023. The Preliminary Approval/Notice Order shall provide for: preliminary approval of this Agreement, provisional certification of the classes for settlement purposes, appointment of Class Counsel as counsel to the provisionally certified classes, and the requirement that the 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 Claims Administrator shall send the Notice to all Class Members as specified by the Court in the Preliminary Approval/Notice Order.

(b) For those Class Members who are current customers of SouthState and have agreed to receive notices regarding their accounts from SouthState electronically, SouthState shall provide the Claims Administrator with the most recent email addresses it has for these Class Members. The Claims Administrator shall email an Email Notice (see Exhibit 2) 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 Claims Administrator shall use the best available databases to obtain current email address information, update its database with these emails, and resend the Notice by email. The Email Notice shall inform Class Members how they may request a copy of the Long Form Notice.

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



(d) The Notice shall also be posted on a settlement website created by the Claims Administrator.

(e) The Claims Administrator shall maintain a database showing mail and email addresses to which each Notice and/or Email Notice was sent and any Notices and/or Email Notices that were not delivered by mail and/or email. A summary report of this information shall be provided to the parties at least five (5) business days prior to the deadline to file the Motion for Final Approval. The database maintained by the Claims Administrator regarding the Notice 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.

(f) The Notice and Email Notice shall be in a form approved by the Court and substantially similar to the notice forms attached hereto as Exhibits 1 and 2. The parties may by mutual written consent make non-substantive changes to the Notice and Email Notice, and fill in any blanks, 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 Claims Administrator's fees and costs shall be paid out of the Settlement Fund.

**5. MOTION FOR FINAL APPROVAL.** Within a reasonable time after the Bar Date to Opt Out, and provided the conditions in Section 15, below, are satisfied, Class Counsel shall file a Motion for Final Approval of this Agreement so that same can 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) **Payments to Class Members.** Within five (5) business days after entry of the Preliminary Approval/Notice Order, SouthState shall transfer the Settlement Fund to the Claims Administrator. If the total amount to be credited by SouthState to Class Members with open accounts is known at this time per Plaintiff's Expert's analysis and calculations, SouthState need only transfer to the Claims Administrator the Settlement Fund, less these amounts. If Plaintiff's Expert has not finalized these amounts by the date on which the Settlement Fund is to be transferred to the Claims Administrator, the entire Settlement Fund shall be transferred for later distribution by the Claims Administrator per the terms of this Section at which time the Claims Administrator shall remit to SouthState the total amount to be credited by SouthState to Class Members with open accounts. The Settlement Fund shall be the total amount Defendant is obligated to pay under the terms of this Agreement and includes (a) Class Counsel's fees and costs; (b) any service award payment to the Named Plaintiffs; (c) costs associated with administering the Notice in accordance with Section 4, above; and (d) any fees paid to the Claims Administrator for services rendered in connection with the administration process. SouthState has and shall have no obligation to make any additional or further contributions to the Settlement Fund, even if the total amount of all alleged improper fees charged to the Class Members exceeds the value of the Net Settlement Fund. In the event a Final

Approval Order is not issued, or this Agreement is terminated by either party for any reason, including pursuant to Section 15, below, the portion of the Settlement Fund paid to the Claims Administrator (including accrued interest, if any) less expenses actually incurred by the Claims Administrator or due and owing to the Claims Administrator in connection with the settlement provided for herein, shall be refunded to SouthState within two (2) business days after the Final Approval Order is denied or this Agreement is terminated. Further, the parties agree that if such Final Approval Order is denied or this Agreement is terminated, any order preliminarily or finally certifying the classes shall be vacated.

(b) All funds held by the Claims 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 Claims 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 Fund ten (10) business days after entry of the Final Approval Order. Class Counsel shall apply for an award of attorneys' fees of up to one-third (33-1/3%) of the Value of the Settlement to the Class Members, plus reimbursement of reasonable litigation costs, to be approved by the Court. SouthState agrees not to oppose an application 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. Should the judgment approving the settlement be reversed on appeal, Class Counsel shall immediately repay all fees and costs to SouthState; should the award of fees and costs be reduced on appeal, Class Counsel shall immediately repay into the Settlement Fund an amount equal to the reduction ordered by the appellate court.

(ii) Service Award. Named Plaintiffs may apply to the Court for a service award of up to ten thousand dollars (\$10,000) each. Subject to the Court's approval, the service award shall be paid from the Settlement Fund ten (10) business days after the Effective Date. Named Plaintiffs and Class Counsel shall each provide a Form W-9 to SouthState before receiving any service award.

(iii) Claims Administrator's Fees. The Claims Administrator's fees and costs, including estimated fees and costs to fully implement the terms of this Agreement, as approved by the Court, shall be paid within ten (10) business days after the Effective Date.

(iv) Payments to Class Members. All payments made to Class Members shall be based on SouthState's transaction data and determined on a pro-rata automatic allocation by Plaintiffs' expert, Arthur Olsen ("Plaintiffs' Expert"), under direction of Class Counsel. No allocation shall be made on a claims-made basis. Of the \$2,900,000.00



Settlement Fund, \$500,000.00 (17.24%) is allocated to the “Regulation E Settlement Class,” and \$2,400,000.00 (82.76%) is allocated to the “Repeat Fee Settlement Class.” Based on these allocations, payments from the “Net Settlement Fund” shall be calculated as follows:

- (1) Members of the Regulation E Settlement Class shall be paid per “Regulation E Fee Charge” calculated as follows:

$(0.1724 \text{ of the Net Settlement Fund} / \text{Total “Regulation E Fee Charges”}) \times \text{Total “Regulation E Fee Charges” paid by the Class Member} = \text{Individual Payment.}$

- (2) Members of the Repeat Fee Settlement Class shall be paid per incurred Repeat Fee Charge calculated as follows:

$(0.8276 \text{ of the Net Settlement Fund} / \text{Total “Repeat Fee Charges”}) \times \text{Total “Repeat Fee Charges” paid by the member of the Repeat Fee Settlement Class} = \text{Individual Payment.}$

- (3) Payments to individual Class Members (“Individual Payments”) shall be made no later than twenty (20) business days after the Effective Date, as follows:

- i) For those Class Members who are customers of SouthState at the time of the distribution of the Net Settlement Fund, any checking or savings account they are then maintaining at SouthState, held by them individually, shall be credited in the amount of the Individual Payment they are entitled to receive.

- ii) For those Class Members who are not customers of SouthState at the time of the distribution of the Net Settlement Fund, they shall be sent a check by the Claims Administrator at the address used to provide the Notice, or at such other address as designated by the Class Member. The Class Member shall have one-hundred eighty (180) calendar days to negotiate the check. Any checks uncashed after one-hundred eighty (180) calendar days shall be distributed pursuant to Section 11.

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

**8. UNCOLLECTED FEES.** Upon the occurrence of the Effective Date, SouthState shall make its best reasonable efforts to identify and forgive the Uncollected Fees as defined in paragraph 1(x) which are the Uncollected Fees portion of any amounts owing to SouthState by Class Members to the extent, if any, SouthState is attempting to collect thereon. If any identified Uncollected Fees are inadvertently collected, then they shall be refunded by SouthState to the Class Member insofar as SouthState is aware of the collection of the Uncollected Fees.

**9. FINAL REPORT TO THE COURT.** Within two hundred (200) calendar days after the Effective Date (or such other date set by the Court), Class Counsel shall submit to the Court a Final Report, setting forth: (a) the amounts paid to Class Members by the Claims Administrator, (b) any checks not cashed or returned; (c) the efforts undertaken to follow up on uncashed and/or returned checks; (d) the total amount of money unpaid to Class Members; and (e) the total amount of credits issued to Class Members by Defendant. Class Counsel shall be entitled to verify credits by confidential review of a reasonable sample of Class Member account statements.

**10. THE CLAIMS ADMINISTRATOR.**

(a) The Claims Administrator shall execute a retainer agreement that shall provide, among other things, that the Claims 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 Claims 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 Claims Administrator shall be subject to the jurisdiction of the Court with respect to the administration of this Agreement.

(c) The Claims Administrator shall keep all information regarding Class Members confidential except as otherwise provided herein. All data created and/or obtained and maintained by the Claims Administrator pursuant to this Agreement shall be destroyed six (6) months after the Final Report is submitted to the Court.

(d) The Claims 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, Named Plaintiffs and Class Members shall be responsible for their own tax reporting of payments or credits received under the terms of this Agreement.

(e) Claims Administrator shall provide the data in its claims administration database to Defendant's Counsel and/or Class Counsel in response to any written request, including an e-mail request. Any written request shall be copied on to all parties. Such information shall be used only for purposes of the implementation of this Agreement.

(f) Within one hundred ninety (190) calendar days after the Effective Date or such other date as required by the Court, the Claims Administrator shall prepare a declaration setting forth the total payments issued to Class Members by the Claims Administrator, the total amount of any checks uncashed and/or returned, and the total amount of money being held by the Claims Administrator.

**11. CY PRES PAYMENT.** Subject to Court approval, within thirty (30) calendar days after the Final Report, the total amount of uncashed checks, and the amounts held by the Claims Administrator at the time of the Final Report, shall be paid by the Claims Administrator to a *cy pres* recipient as nominated by Plaintiffs but agreed to by Defendant and consistent with the South Carolina rules on *cy pres* funds. If the parties are unable to agree on a *cy pres* recipient, they will each submit their proposed nominee to the Court in the Motion for Final Approval and the Court will decide the *cy pres* recipient.

**12. OPT-OUTS.**

(a) A Class Member who wishes to exclude himself or herself from this Agreement and from the release of claims and defenses provided for under the terms of this Agreement shall submit an Exclusion Letter by mail to the Claims Administrator at the address listed in the Notice. For an Exclusion Letter to be valid, it must be postmarked on or before the Bar Date to Opt Out. Any Exclusion Letter shall identify the Class Member, state that the Class Member wishes to exclude himself or herself from the Agreement and shall be signed by the person requesting exclusion and dated. Persons who do not timely and validly opt out in accordance with the Notice shall be bound by all determinations and judgments in the action concerning the Agreement.

(b) The Claims 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 business (5) days prior to the date Class Counsel is required to file the Motion for Final Approval. The Claims Administrator shall retain the originals of all Exclusion Letters (including the envelopes with the postmarks). The Claims Administrator shall make the original Exclusion Letters available to Defendant's Counsel, Class Counsel, and/or the Court upon two (2) court days' written notice. Such information shall be used only for purposes of the implementation of this Agreement.

**13. OBJECTIONS.**

(a) Any Class Member, other than a Class Member who timely submits an Exclusion Letter, may object to this Agreement.

(b) To be valid and considered by the Court, the objection must be in writing and mailed to the Claims Administrator at the address listed in the Notice. The objection must be postmarked on or before the Bar Date to Object, and must include the following information:

(i) The objector's name, address, telephone number, the last four digits of his or her account number or former account number, and the contact information for any attorney retained by the objector in connection with the objection or otherwise in connection with this case;

(ii) 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; and

(iii) A statement as to whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying the counsel by name, address, and telephone number.

(c) The Claims Administrator shall provide all objections to Class Counsel as received and Class Counsel shall file any objections and any responsive pleadings at least seven (7) business days prior to the Final Approval Hearing Date.

**14. GENERAL RELEASE.** Except as to the rights and obligations provided for under the terms of this Agreement, Named Plaintiffs, on behalf of themselves and each of the Class Members, hereby releases and forever discharge SouthState, 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, from May 20, 2017 through July 18, 2023 which the Named Plaintiffs and each of the Class Members who do not opt out now own or hold or have owned or held, against the Defendant Releasees arising out of, resulting from, or in any way related to any transaction, agreement, occurrence, act, or omission that arises out of and/or relates to the facts and claims alleged in the FAC. The Named Plaintiffs and Class Members acknowledge that they may 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 this Agreement, but that it is their intention to finally and forever settle and release claims with respect to all of the matters described or subsumed herein, and that, notwithstanding the discovery or existence of any additional or different facts, as to which the Named Plaintiffs and Class Members expressly assume the risk, they freely and voluntarily give the release as set forth above.

**15. CONDITIONS TO SETTLEMENT.**

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

(i) The Court has entered the Preliminary Approval/Notice Order, as required by Section 3 above;

(ii) The Court has entered the Final Approval Order as required by Sections 5 and 6 above, and all objections, if any, to such Order are overruled, and all appeals taken from such Order are resolved in favor of approval; and

(iii) The Effective Date has occurred.

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

(c) SouthState shall have the option to terminate this Agreement if five percent (5%) or more of the Class Members opt out. SouthState shall notify Class Counsel and the Court of its intent to terminate this Agreement pursuant to this Section 15 within five (5) 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, in accordance with Section 15(c) immediately above, or fails to become effective in accordance with Sections 15(a) and/or (b)

immediately above, then the parties shall be restored to their respective positions in this case as they existed as of the date of the execution of this Agreement. In such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the parties, and neither this Agreement nor any discussions, offers, or negotiations associated with this Agreement shall be used in this case or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

**16. REPRESENTATIONS.**

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

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

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

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

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

(f) Named Plaintiffs represent that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof, or interest therein, and agrees to indemnify, defend, and hold the Defendant Releasees harmless against any and all claims, based on or arising out of any such assignment or transfer, or purported assignment or transfer of any claims or any portion thereof or interest therein.

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

**18. APPLICABLE LAW.** This Agreement shall be governed by and interpreted, construed, and enforced pursuant to the laws of the State of South Carolina.

**19. NO ORAL WAIVER OR MODIFICATION.** No waiver or modification of any provision of this Agreement or of any breach thereof shall constitute a waiver or modification of

any other provision or breach, whether or not similar. Nor shall any actual waiver or modification constitute a continuing waiver. No waiver or modification shall be binding unless executed in writing by the parties.

**20. ENTIRE AGREEMENT.** This Agreement, including the exhibits attached hereto, constitutes the entire agreement made by and between the parties pertaining to the subject matter hereof, and fully supersedes any and all prior or contemporaneous understandings, representations, warranties, and agreements made by the parties hereto or their representatives pertaining to the subject matter hereof. No extrinsic evidence whatsoever may be introduced in any judicial proceeding involving the construction or interpretation of this Agreement. No Party shall be considered the drafter of this Agreement for purposes of any presumption relating to the interpretation of this Agreement.

**21. BINDING ON SUCCESSORS.** This Agreement shall inure to the benefit of, and shall bind, each of the parties hereto and their successors.

**22. 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, (i) the remaining provisions contained in this Agreement will only remain in effect upon the mutual written agreement of the parties, and (ii) any discussions, offers, or negotiations associated with this Agreement shall not be discoverable or offered into evidence or used in the Lawsuit or any other action or proceeding for any purpose.

**23. 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.

**24. OBLIGATION TO MEET AND CONFER.** Before filing any motion with the Court raising any dispute arising out of or related to this Agreement, the parties shall consult with each other in a good faith effort to resolve such dispute, and include a certification in such motion that they have done so.

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

Richard D. McCune  
Emily J. Kirk  
McCune Wright Arevalo, LLP  
3281 E. Guasti Road, Ste. 100  
Ontario, CA 91761  
Telephone: (909) 557-1250  
[rdm@mccunewright.com](mailto:rdm@mccunewright.com)  
[ejk@mccunewright.com](mailto:ejk@mccunewright.com)

Mark C. Tanenbaum  
Mark C. Tanenbaum, PA



P.O. Box 2455  
Mt. Pleasant, SC 29464  
Telephone: (843) 577-5100  
mark@tanenbaumlaw.com

Richard A. Harpootlian  
Richard A. Harpootlian Law Firm  
1410 Laurel Street  
Columbia, SC 29201  
Telephone: (803) 252-4848  
rah@harpootlianlaw.com

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

Christian P. George  
Christopher S. Carver  
Howard J. Harrington  
Akerman LLP  
50 North Laura Street, Suite 3100  
Jacksonville, Florida 32202  
[christian.george@akerman.com](mailto:christian.george@akerman.com)  
[christopher.carver@akerman.com](mailto:christopher.carver@akerman.com)  
[jay.harrington@akerman.com](mailto:jay.harrington@akerman.com)

Any notice to the Claims Administrator shall be sent by email to the address of the Claims Administrator, which will be determined by the lowest bid for services.

*[Remainder of page intentionally left blank]*

Dated: November 15, 2023

MCCUNE LAW GROUP, APC

By: \_\_\_\_\_



Richard D. McCune

Attorney for Named Plaintiff Wanda Sue Butcher and the  
Putative Class

Dated: November 14, 2023

MARK C. TANENBAUM, PA

By: \_\_\_\_\_



Mark C. Tanenbaum

Attorney for Named Plaintiff Latoya Lashay Fludd and the  
Putative Class

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

Dated: November 9, 2023

SOUTHSTATE BANK, NATIONAL ASSOCIATION



By: Beth S. DeSimone

Its: Executive Vice President, Chief Risk Officer and  
General Counsel

Dated: November \_\_, 2023

Latoya Lashay Fludd, an individual on behalf of  
herself and those she represents

By: \_\_\_\_\_  
Latoya Lashay Fludd

Dated: November \_\_, 2023

Wanda Sue Butcher, an individual on behalf of  
herself and those she represents

By: \_\_\_\_\_  
Wanda Sue Butcher

**APPROVED AS TO FORM:**

Dated: November \_\_, 2023

AKERMAN LLP

By: \_\_\_\_\_  
Howard J. Harrington  
Attorney for Defendant SouthState Bank, N.A.

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

Dated: November \_\_, 2023

SouthState Bank, N.A.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: November \_\_, 2023

Latoya Lashay Fludd, an individual on behalf of herself and those she represents

By: \_\_\_\_\_  
Latoya Lashay Fludd

Dated: November \_\_, 2023

Wanda Sue Butcher, an individual on behalf of herself and those she represents

By: \_\_\_\_\_  
Wanda Sue Butcher

**APPROVED AS TO FORM:**

Dated: November 15, 2023

AKERMAN LLP

By: \_\_\_\_\_  
Howard J. Harrington, Esq.  
Attorney for Defendant SouthState Bank, N.A.

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

Dated: November \_\_, 2023


SouthState Bank, N.A.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: November <sup>13</sup>\_\_, 2023

Latoya Lashay Fludd, an individual on behalf of herself and those she represents

By:  \_\_\_\_\_  
Latoya Lashay Fludd

Dated: November \_\_, 2023

Wanda Sue Butcher, an individual on behalf of herself and those she represents

By: \_\_\_\_\_  
Wanda Sue Butcher

**APPROVED AS TO FORM:**

Dated: November \_\_, 2023

AKERMAN LLP

By: \_\_\_\_\_  
Howard J. Harrington  
Attorney for Defendant SouthState Bank, N.A.

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

Dated: November \_\_, 2023

SouthState Bank, N.A.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: November \_\_, 2023

Latoya Lashay Fludd, an individual on behalf of herself and those she represents

By: \_\_\_\_\_

Latoya Lashay Fludd

Dated: November 13, 2023

Wanda Sue Butcher, an individual on behalf of herself and those she represents

By: Wanda Butcher

Wanda Sue Butcher

**APPROVED AS TO FORM:**

Dated: November \_\_, 2023

AKERMAN LLP

By: \_\_\_\_\_

Howard J. Harrington  
Attorney for Defendant SouthState Bank, N.A.



## Exhibit 1

Latoya Lashay Fludd and Wanda Sue Butcher, et al.  
v.  
SouthState Bank, N.A., and Does 1-100

### NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

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

**IF YOU HAVE OR HAD A CHECKING ACCOUNT WITH SOUTHSTATE BANK, N.A. (“SOUTHSTATE” OR “DEFENDANT”) AND YOU WERE CHARGED AN OVERDRAFT FEE ON A ONE-TIME DEBIT CARD OR ATM TRANSACTION BETWEEN JANUARY 12, 2020, AND JULY 18, 2023, OR INCURRED MORE THAN ONE NON-SUFFICIENT FUNDS (“NSF”) FEE, OR AN NSF FEE FOLLOWED BY AN OVERDRAFT FEE, FOR THE SAME ITEM BETWEEN MAY 20, 2017, AND JULY 18, 2023, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT**

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

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION	
<b>DO NOTHING</b>	If you fall within the class definitions (described below) and do nothing in response to this Notice, you will remain a member of the Class and eligible to automatically receive a settlement check or account credit once the settlement is finally approved. However, you will also give up the right to file a separate lawsuit against Defendant regarding the issues covered and resolved by the settlement.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT; RECEIVE NO PAYMENT BUT RELEASE NO CLAIMS</b>	You can choose to exclude yourself from the settlement or “opt out.” This means you choose not to participate in the settlement. Excluding yourself is the only option that allows you to bring your own lawsuit against Defendant concerning the claims and legal issues covered and resolved by the settlement. All exclusion requests must be submitted by U.S. Mail to the address listed below under question 16, postmarked no later than [insert date].

<b>OBJECT TO THE SETTLEMENT</b>	If you do not like the settlement and you do not exclude yourself, you can file an objection with the Court explaining why you believe the Court should reject the settlement. All objections must be submitted by U.S. Mail to the addresses listed below under question 19, postmarked no later than [insert date]. If you submit a written objection, the Court will take it into account in considering whether to approve the settlement.
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These rights and options – *and the deadlines to exercise them* – along with the material terms of the settlement are explained in this Notice.

The Court still has to decide whether to approve the settlement. **Settlement benefits will be available only if and after the Court approves the settlement.**

### **BASIC INFORMATION**

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

The lawsuit that is being settled is entitled *Laytoya Lashay Fludd and Wanda Sue Butcher, et al. v. SouthState Bank, and Does 1-100*, and is currently pending in the United States District Court for the District of South Carolina, Case No. 2:20-cv-1959-BHH. The case is a “class action.” That means that the “Named Plaintiffs,” Latoya Lashay Fludd and Wanda Sue Butcher, are individuals who are acting on behalf of two groups of individuals. The first group includes SouthState personal checking customers who, from January 12, 2020, through July 18, 2023, were assessed an overdraft fee on a one-time debit card or ATM transaction. The second group includes SouthState personal checking account customers who, from May 20, 2017, through July 18, 2023, were assessed more than one NSF fee, or an NSF fee followed by an overdraft fee, for the same item. The persons in these groups are collectively called the “Class Members.”

For purposes of this settlement, Named Plaintiff Butcher claims Defendant improperly charged overdraft fees on one-time debit card and ATM transactions without following the necessary opt-in procedures required by Regulation E of the Electronic Fund Transfer Act, 12 C.F.R. § 1005.1, *et seq.* She is seeking a refund of these alleged improper overdraft fees charged to Class Member accounts. Named Plaintiff Fludd claims Defendant improperly charged more than one fee on the same item in violation of SouthState’s account agreement. She is seeking a refund of these alleged improper fees charged to Class Member accounts. Based on these allegations, the operative First Amended Complaint alleges causes of action for violations of Regulation E, breach of the account agreement, breach of the implied covenant of good faith and fair dealing, unjust enrichment/restitution, and money had and received.

Defendant disputes these claims and denies that it did anything wrong. Defendant contends that it has not violated Regulation E or the account agreement, that its fee practices, policies and procedures comply with all applicable laws, that it abided by the terms of its contracts, and that no customers were harmed by its conduct. Defendant maintains that its practices were proper and

properly disclosed to its customers, and therefore denies that its practices give rise to claims for damages by the Named Plaintiffs or any Class Member.

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

You received this Notice because Defendant's records indicate that you are a Class Member because you were charged with one or more fees that are the subject of the claims alleged in this case within the applicable date ranges (the "Class Period"). The Court directed that this Notice be sent to all Class Members because Class Members have a right to know about the proposed settlement and the options available to them before the Court decides whether to approve the settlement.

**3. Why did the parties settle?**

The Court did not decide in favor of the Named Plaintiffs or Defendant. Instead, both sides agreed to a settlement before the case proceeded to a trial. In any lawsuit, there are potential risks and benefits that come with a trial versus settling at an earlier stage. For instance, there is legal uncertainty as to whether a judge or jury will find in favor of either party. Further, proceeding to trial is costly for both sides, and would likely add years to the process with no guarantee of any recovery. Under these circumstances, the parties believe that settlement is in the best interests of all parties and Class Members. And although the court will not decide in favor of either party, it will evaluate the settlement to determine whether it is fair, reasonable, and adequate before it approves the settlement.

It is the Named Plaintiffs' lawyers' job to identify when a proposed settlement offer is good enough that it justifies recommending settling the case instead of continuing to trial. In a class action, these lawyers, known as Class Counsel, make this recommendation to the Named Plaintiffs. The Named Plaintiffs have the duty to act in the best interests of the class as a whole and, in this case, it is their belief, as well as Class Counsel's opinion, that this settlement is in the best interest of all Class Members. By settling, the Named Plaintiffs do not in any way concede that the claims lack merit. Likewise, Defendant does not in any way acknowledge, admit to, or concede any of the Named Plaintiffs' allegations and expressly disclaims and denies any and all fault or liability for the charges that have been alleged in this lawsuit and/or settlement.

**WHO IS IN THE SETTLEMENT**

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

If you received this notice, then Defendant's records indicate that you are a Class Member who is entitled to receive a payment or credit to your account.

**YOUR OPTIONS**

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

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

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

To participate in the settlement, you need not do anything, so long as you do not opt out or exclude yourself (described in Questions 16 through 18, below), a payment will be made to you, either by crediting your account if you are still a customer of Defendant or by mailing a check to you at the last address on file with Defendant (or any other address you provide) if you no longer maintain an account with Defendant.

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

The deadline to file an objection with the Court (described in Questions 19 through 21, below) is also [REDACTED].

**7. How do I decide which option to choose?**

If you do not like the settlement and you believe that you could receive more money by pursuing your claims on your own (with or without an attorney that you could hire) and you are comfortable with the risk that you might lose your case or get less than you would in this settlement, then you may want to consider opting out.

If you believe the settlement is unreasonable, unfair, or inadequate and the Court should reject the settlement, you can object to the settlement terms. The Court will decide if your objection is valid. If the Court agrees, then the settlement will not be approved and no payments will be made to you or any other Class Member. If your objection (and any other objection) is overruled, and the settlement is approved, then you will still get a payment.

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

The Court has to decide that the settlement is fair, reasonable, and adequate before it will approve it. The Court already has decided to provide preliminary approval of the settlement, which is why you received this Notice. The Court will make a final decision regarding the settlement at a “Fairness Hearing” or “Final Approval Hearing,” which is currently scheduled for [REDACTED].

**THE SETTLEMENT PAYMENT**

**9. How much is the settlement?**

Defendant has agreed to create a Settlement Fund of \$2,900,000.00. In addition, Defendant has agreed to forgive eligible overdraft and/or NSF fees assessed on Class Members whose accounts were closed and uncollected with a negative balance between May 20, 2017, through July 18, 2023. Together these constitute the Value of the Settlement.

As discussed separately below, attorneys’ fees, litigation costs, a Service Award to the Named Plaintiffs, and the costs paid to a third-party Claims Administrator to administer the settlement (including mailing and emailing this notice) will be paid out of the Settlement Fund. The balance of the Settlement Fund will be divided among all Class Members based on the amount of eligible

overdraft and/or NSF fees they paid. The formula for distributing the settlement is described in the Settlement Agreement.

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

Class Counsel will request an attorney fee be awarded by the Court of not more than one-third of the Value of the Settlement. Class Counsel has also requested that it be reimbursed approximately \$ [REDACTED] in litigation costs incurred in prosecuting the case. The Court will decide the amount of the attorneys' fees and costs based on a number of factors, including the risk associated with bringing the case on a contingency basis, the amount of time spent on the case, the amount of costs incurred to prosecute the case, the quality of the work, and the outcome of the case.

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

Class Counsel on behalf of the Named Plaintiffs will request that the Court award them up to \$10,000 each for their roles in securing this settlement on behalf of the classes. The Court will decide if a Service Award is appropriate and if so, the amount of the award.

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

The Claims Administrator has agreed to cap its expenses at \$ [REDACTED].

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

The balance of the Settlement Fund will be divided among all Class Members on a pro rata basis according to an allocation in the Settlement Agreement. Current accountholders of Defendant will receive a credit to their accounts for the amount they are entitled to receive. Former accountholders of Defendant shall receive a check from the Claims Administrator.

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

No. As long as you do not opt out, a credit will be applied to your account if you are an existing accountholder, or a check will be mailed to you at the last known address Defendant has for you if you are not an existing accountholder. If your address has changed, you should provide your current address to the Claims Administrator at the address set forth in the section "Getting More Information," below.

**15. When will I receive my payment?**

The Court will hold a Fairness Hearing (explained below in Questions 22-24) on [REDACTED] to consider whether the settlement should be approved. If the Court approves the settlement, then payments should be made or credits should be issued within about 50 to 60 days after the settlement is approved. However, if someone objects to the settlement, and the objection is sustained, then there is no settlement. Even if all objections are overruled and the Court approves the settlement, an objector could appeal, and it might take months or even years to have the appeal resolved, which would delay any payment.

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

### **16. How do I exclude myself from the settlement?**

If you do not want to receive a payment, or if you want to keep any right you may have to sue Defendant for the claims alleged in this lawsuit or pursuant to this settlement, then you must exclude yourself, or “opt out.” To opt out, you **must** send a letter to the Claims Administrator that you want to be excluded. Your letter can simply say “I hereby elect to be excluded from the settlement in the *Latoya Lashay Fludd and Wanda Sue Butcher v. SouthState Bank* class action. Be sure to include your name, the last four digits of your account or former account number, address, telephone number, and email address. Your exclusion or opt out request must be postmarked by [REDACTED], and sent to:

Latoya Lashay Fludd and Wanda Sue Butcher v. SouthState Bank Claims Administrator  
Attn:

**ADDRESS OF THE CLAIMS ADMINISTRATOR**

### **17. What happens if I opt out of the settlement?**

Class Members who exclude themselves (or “opt out”) are free to file individual lawsuits against Defendant about the issues subject to this settlement. If you file your own lawsuit against Defendant after you exclude yourself, you will have to prove your claims.

If you opt out, then you cannot object to the settlement and you will not be entitled to receive a payment from this settlement.

### **18. If I exclude myself, can I obtain a payment?**

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

## **OBJECTING TO THE SETTLEMENT**

### **19. How do I notify the Court that I do not like the settlement?**

You can object to the settlement or any part of it that you do not like **IF** you do not exclude yourself, or opt out, from the settlement. (Class Members who exclude themselves from the settlement have no right to object to how other Class Members are treated.) To object, you **must** mail a written document to the Claims Administrator at the address below. Your objection should say that you are a Class Member, that you object to the settlement, and the factual and legal reasons why you object, whether you intend to appear at the Final Approval/Fairness Hearing, and if you are represented, the name of your attorney and contact information. In your objection, you must include your name, address, telephone number, email address (if applicable) and your signature.

All objections must be post-marked no later than [REDACTED], and must be mailed to the Claims Administrator as follows:



**CLAIMS ADMINSTRATOR**

Latoya Lashay Fludd and Wanda Sue Butcher v.  
SouthState Bank Claims Administrator

Attn:

ADDRESS OF THE  
CLAIMS  
ADMINISTRATOR

**20. What is the difference between objecting and requesting exclusion from the settlement?**

Objecting is telling the Court that you do not believe the settlement is fair, reasonable, and adequate for the class, and asking the Court to reject it. You can object only if you do not opt out of the settlement. If you object to the settlement and do not opt out, then you are entitled to a payment if the settlement is approved and you qualify for such a payment, but you will release claims you might have against Defendant. Excluding yourself or opting out is telling the Court that you do not want to be part of the settlement, and do not want to receive a payment or release claims you might have against Defendant for the claims alleged in this lawsuit and covered by this settlement. You cannot object if you opt out.

**21. What happens if I object to the settlement?**

If the Court sustains your objection, or the objection of any other Class Member, then there is no settlement. If you object, but the Court overrules your objection and any other objection(s), then you will be part of the settlement and you will receive the payment you are entitled to under the terms of the settlement.

**THE COURT'S FAIRNESS HEARING**

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

The Court will hold a Final Approval or Fairness Hearing on [REDACTED] at [REDACTED]. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys' fees and expenses and how much the Named Plaintiffs should get as a "Service Award" for acting as the class representatives.

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

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

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

If you have objected, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include with your objection, described in Question 19, above, the statement, “I hereby give notice that I intend to appear at the Final Approval Hearing.”

**IF YOU DO NOTHING**

**25. What happens if I do nothing at all?**

If you do nothing at all, and if the settlement is approved, then you may receive a payment if you are entitled to one that represents your share of the Settlement Fund net of attorneys’ fees and costs, Claims Administrator expenses, and the Named Plaintiffs’ Service Award. You will be considered a part of the Settlement Class, and you will give up all claims against Defendant concerning the claims and legal issues covered and resolved by the settlement.

**THE LAWYERS REPRESENTING YOU**

**26. Do I have a lawyer in this case?**

The Court decided that Richard D. McCune and Emily J. Kirk of McCune Law Group, APC, Mark C. Tanenbaum of Mark C. Tanenbaum, PA and Richard A. Harpootlian of Richard A. Harpootlian Law Firm (“Class Counsel”) are qualified to represent you and all other Class Members. Contact information for Class Counsel is:

Richard D. McCune  
Emily J. Kirk  
McCune Law Group, APC  
3281 E. Guasti Road, Ste. 100  
Ontario, CA 91761  
Telephone: (909) 557-1250  
rdm@mccunewright.com  
ejk@mccunewright.com

Mark C. Tanenbaum  
Mark C. Tanenbaum, PA  
P.O. Box 2455  
Mt. Pleasant, SC 29464  
Telephone: (843) 577-5100  
mark@tanenbaumlaw.com

Richard A. Harpootlian  
Richard A. Harpootlian Law Firm  
1410 Laurel Street  
Columbia, SC 29201  
Telephone: (803) 252-4848  
rah@harpootlianlaw.com

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

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

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

The Court will be asked to approve the amount of attorneys' fees at the Fairness Hearing. Class Counsel will file an application for fees and costs and will specify the amount being sought as discussed above. You may review the fee application at [WEBSITE] or view a physical copy of the fee application at the Court Clerk's Office, located at [REDACTED].

**GETTING MORE INFORMATION**

This Notice only summarizes the proposed settlement. More details are contained in the Settlement Agreement, which can be viewed/obtained online at [WEBSITE] or at the Court Clerk's Office, located at [REDACTED], by asking for the Court file containing the Motion For Preliminary Approval of Class Settlement (the Settlement Agreement is attached to the motion).

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

Latoya Lashay Fludd and Wanda Sue Butcher v. SouthState Bank  
Claims Administrator

**Attn:**

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

## Exhibit 2

**Subject of Email: Legal Notice of Class Action Settlement**

(Body of email below, dynamic text is in purple and will appear black in final email)

**ATTENTION:**

<<FName1>><<MName1>><<LName1>>

<<FName2>><<MName2>><<LName2>>

<<Business>>

<<Rep>>

**Latoya Lashay Fludd and Wanda Sue Butcher**

**v.**

**SouthState Bank, N.A. and Does 1-100**

**Case No. 2:20-cv-1959-BHH**

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

**IF YOU HAVE OR HAD A CHECKING ACCOUNT WITH SOUTHSTATE BANK, N.A. (“SOUTHSTATE” OR “DEFENDANT”) AND YOU WERE CHARGED AN OVERDRAFT FEE ON A ONE-TIME DEBIT CARD OR ATM TRANSACTION BETWEEN JANUARY 12, 2020, AND JULY 18, 2023, OR INCURRED MORE THAN ONE NON-SUFFICIENT FUNDS (“NSF”) FEE, OR AN NSF FEE FOLLOWED BY AN OVERDRAFT FEE, FOR THE SAME ITEM BETWEEN MAY 20, 2017, AND JULY 18, 2023, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT**

**This email only summarizes the proposed settlement. The full Notice and Settlement Agreement can be viewed and downloaded from the settlement website at [www.southstate.com](http://www.southstate.com).**

### **What is this lawsuit about, and who is included in the settlement?**

The lawsuit that is being settled is entitled *Laytoya Lashay Fludd and Wanda Sue Butcher, et al. v. SouthState Bank, N.A. and Does 1-100*, and is currently pending in the United States District Court for the District of South Carolina, Case No. 2:20-cv-1959-BHH. The case is a “class action.” That means that the “Named Plaintiffs,” Latoya Lashay Fludd and Wanda Sue Butcher, are individuals who are acting on behalf of two groups of individuals. The first group includes all SouthState personal checking account customers who, from January 12, 2020, through July 18, 2023, were assessed an overdraft fee on a one-time debit card or ATM transaction. The second group includes all SouthState personal checking account customers who, from May 20, 2017, through July 18, 2023, were assessed more than one NSF fee, or an NSF fee followed by an overdraft fee, for the same item. The persons in these groups are collectively called the “Class Members.”

For purposes of this settlement, Named Plaintiff Butcher claims Defendant improperly charged overdraft fees on one-time debit card and ATM transactions without following the necessary opt-in procedures required by Regulation E of the Electronic Fund Transfer Act, 12 C.F.R. § 1005.1, *et seq.* She is seeking a refund of these alleged improper overdraft fees charged to Class Member accounts. Named Plaintiff Fludd claims Defendant improperly charged more than one fee on the same item in violation of SouthState's account agreement. She is seeking a refund of these alleged improper fees charged to Class Member accounts. Based on these allegations, the operative First Amended Complaint alleges causes of action for violations of Regulation E, breach of the account agreement, breach of the implied covenant of good faith and fair dealing, unjust enrichment/restitution, and money had and received.

Defendant disputes these claims and denies that it did anything wrong. Defendant contends that it has not violated Regulation E or its account agreement, that its fee practices, policies and procedures comply with all applicable laws, that it abided by the terms of its contracts, and that no customers were harmed by its conduct. Defendant maintains that its practices were proper and properly disclosed to its customers, and therefore denies that its practices give rise to claims for damages by the Named Plaintiffs or any Class Member.

The Court has not decided who is right.

#### **Why did I receive this Notice of this lawsuit?**

You received this Notice because Defendant's records indicate that you are a Class Member because you were charged one or more fees that are the subject of the claims alleged in this case and settlement. The Court directed that this Notice be sent to all Class Members because Class Members have a right to know about the proposed settlement and the options available to them before the Court decides whether to approve the settlement.

#### **What does the settlement provide?**

Defendant has agreed to create a Settlement Fund of \$2,900,000.00.

Attorneys' fees, litigation costs, a Service Award to each of the Named Plaintiffs, and the costs paid to a third-party Claims Administrator to administer the settlement (including mailing and emailing this notice) will be paid out of the Settlement Fund first. The balance of the Settlement Fund will then be divided among all Class Members based on the allocation in the Settlement Agreement and the amount of eligible fees they paid.

#### **Do I have to do anything if I want to participate in the settlement?**

No. As long as you do not opt out you are entitled to a payment or forgiveness of uncollected fees on closed accounts. If you are entitled to a payment, then a credit will be applied to your account if you are an existing accountholder, or a check will be mailed to you at the last known address Defendant has for you if you are not an existing accountholder with SouthState. If your address has changed, you should provide your current address to the Claims Administrator at the address set forth under "Other Options," below. Excluding yourself from the settlement means you choose not to participate in the settlement. If you exclude yourself, you are free to file an individual lawsuit against Defendant about the issues addressed in this lawsuit and settlement. If you file your own lawsuit against Defendant after you exclude yourself, you will have to prove your claims.

**Do I have a lawyer in this case?**

The Court decided that Richard D. McCune and Emily J. Kirk of the McCune Law Group, APC, Mark C. Tanenbaum, PA, and Richard A. Harpootlian of Richard A. Harpootlian Law Firm (“Class Counsel”) are qualified to represent you and all other Class Members. You do not have to pay for Class Counsel. They will request attorney fees be awarded by the Court of not more than one-third of the Value of the Settlement. Complete contact information for Class Counsel can be found on the settlement website at

[www. .com](http://www. .com).

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

The Court will hold a Final Approval or Fairness Hearing on [REDACTED] at [REDACTED]. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys’ fees and expenses and how much the Named Plaintiffs should get as a Service Award for acting as the class representatives.

**Other Options**

If you do not want to receive a payment, or if you want to keep any right you may have to sue Defendant for the claims alleged in this lawsuit or resolved pursuant to the Settlement Agreement, then you must exclude yourself, or “opt out.” To opt out, you **must** send a letter to the Claims Administrator requesting to be excluded. Your letter can simply say “I hereby elect to be excluded from the settlement in the *Latoya Lashay Fludd and Wanda Sue Butcher v. SouthState Bank* class action.” Be sure to include your name, the last four digits of your account number(s) or former account number(s), address, telephone number, and email address. The deadline for sending a letter to exclude yourself from, or opt out of, the settlement is [REDACTED].

You can object to the settlement or any part of it that you do not like **IF** you do not exclude yourself, or opt out, from the settlement. (Class Members who exclude themselves from the settlement have no right to object to how other Class Members are treated.) To object, you must mail a written document to the Claims Administrator at the address below. Your objection should say that you are a Class Member, that you object to the settlement, the factual and legal reasons why you object, whether you intend to appear at the hearing, and whether you are represented by counsel, and if so, the name of your attorney and contact information. In your objection, you must include your name, address, telephone number, email address (if applicable) and your signature. The deadline to file an objection with the Court is [REDACTED].

All requests for exclusion and objections must be postmarked no later than their Court-ordered deadlines and mailed to the Claims Administrator as follows:

Latoya Lashay Fludd and Wanda Sue Butcher v. SouthState Bank Claims Administrator  
**ADDRESS**

You may hire your own attorney, at your own expense, to appear or speak for you at the hearing.

**Questions?**

Detailed information about the settlement, including complete details on how to exclude yourself or object, is available at the settlement website at [www. .com](http://www. .com) or by calling toll-free on 1-855-XXX-XXXX.



Please do not contact the Court or any representative of Defendant about this Notice or settlement. They will not be able to provide legal advice or answer your questions.