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Case Filed: 7/26/2019
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Judge: THOMAS O BERIDON

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Document Type	Title	Format	Pages
MOTION	PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT	PDF	99

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IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

VALERIE CARR, <i>et al.</i>	:	CASE NO. A 1903532
	:	
Plaintiffs,	:	Judge Thomas O. Beridon
	:	
v.	:	<u>PLAINTIFFS' UNOPPOSED</u>
	:	<u>MOTION FOR PRELIMINARY</u>
GENERAL ELECTRIC CREDIT	:	<u>APPROVAL OF CLASS ACTION</u>
UNION,	:	<u>SETTLEMENT</u>
	:	
Defendant.	:	

Under Rule 23 of the Ohio Rules of Civil Procedure, Plaintiffs Valerie Carr & Kai Krueger seek preliminary approval of the settlement of this class action lawsuit and an Order Granting Preliminary Approval (Attached as Exhibit A). Plaintiffs' efforts have resulted in a proposed \$85,000.00 common fund settlement that was negotiated at arm's-length and is fair, reasonable, and adequate and in the Class's best interest. A memorandum in support is filed along with this Motion. Furthermore, the Settlement Agreement and Release ("Settlement Agreement") is attached as Exhibit B, which includes the Class Notice that will be distributed to potential Class Members via regular U.S. mail and/or email (attached as Exhibit 1 to Exhibit B) and the proposed Facebook Notice (attached as Exhibit 2 to Exhibit B). Last, the affidavit of Terence R. Coates in Support of Preliminary Approval is attached as Exhibit C ("Coates Affidavit").

Defendant General Electric Credit Union does not oppose this Motion.

Respectfully submitted,

/s/ Terence R. Coates

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MEMORANDUM IN SUPPORT PRELIMINARY APPROVAL

I. INTRODUCTION

Plaintiffs Valerie Carr and Kai Krueger (“Plaintiffs”) brought this class action on their own behalf and on behalf of all other persons similarly situated who they allege have been affected by General Electric Credit Union’s (“Defendant” or “GECU”) failure to timely release mortgage satisfactions under Ohio Revised Code 5301.36 *et seq.* After Plaintiffs’ rejection of GECU’s attempt to moot their individual claim, extensive briefing and oral argument on GECU’s motion to dismiss, the Court’s denial of GECU’s motion to dismiss, Plaintiffs’ counsel’s extensive review of Ohio county recorder websites for GECU’s untimely mortgage releases, and GECU’s production of several lists of GECU mortgages from July 26, 2013 through the end of 2019 to Plaintiffs’ counsel (“Class Counsel”), the Parties participated in extensive settlement negotiations ultimately resulting in this proposed Settlement.

The proposed Settlement provides for:

- (1) Conditional certification of a class for settlement;
- (2) Establishment of an \$85,000.00 common fund settlement (“Settlement Fund”) that will be distributed pro rata to Class Members with Valid Claims after the deduction of:

- (a) the payment of fees and expenses to Settlement Administrator, CAC Services Group, LLC;
 - (b) the payment of Class Representative Incentive Awards of \$1,500.00 for a total of \$3,000.00;
 - (c) the payment of attorneys' fees to Class Counsel in an amount not to exceed one-third of the common fund (\$28,333.33) and reimbursement of litigation expenses not to exceed \$1,000.00; and,
 - (d) the payment of any outstanding Court costs.
- (3) No reversion to GECU of any of the Settlement Fund;
- (4) Establishment of the Settlement Website, www.GECUsettlement.com, for the purpose of posting certain case documents, permitting the online filing of claims, and providing potential Class Members with information about the proposed Settlement; and,
- (5) The distribution of notice to potential Class Members through sending the Class Notice by email and/or a trifold postcard notice, the Social Media Notice, and posting the Class Notice on the Settlement Website.

The Parties also agree to, and request Court approval of, Plaintiffs as the Class Representatives for the Class, Terence R. Coates, Justin C. Walker, W.B. Markovits, and

Zachary C. Schaengold of Markovits, Stock & DeMarco, LLC, and Matthew C. Metzger of the Wolterman Law Office, LPA as Class Counsel, and CAC Services Group, LLC as the Settlement Administrator. The Settlement Agreement is subject to preliminary approval by the Court, and then to final approval by the Court after the execution of the notice plan, completion of claims administration, and conclusion of the Fairness Hearing. As reflected below, the Settlement Agreement is fair, reasonable, and adequate, and provides for substantial cash benefits to the Class. Accordingly, Plaintiffs, without opposition from GECU, respectfully request preliminary approval of this Settlement.

II. FACTUAL BACKGROUND

Plaintiffs initiated this class action lawsuit on July 26, 2019 captioned *Valerie Carr, et al. v. General Electric Credit Union*, Case No. A-1903532, in the Court of Common Pleas for Hamilton County, Ohio. On September 25, 2019, the Plaintiffs filed their Amended Class Action Complaint, which is the operative complaint in this matter. The Amended Complaint alleges violations of Ohio Revised Code Section 5301.36 *et seq.* and seeks damages, on behalf of the Plaintiffs and on behalf of the Class, against GECU as mortgagee for GECU's alleged failure to record satisfactions of mortgages within 90 days after receipt of payment in full on residential and commercial mortgage loans. The

statutory damages under R.C. 5301.36(B) for each untimely filing of a mortgage release is \$250.00. *See* R.C. 5301.36(C).

In 2015, Plaintiffs entered into a mortgage agreement with GECU for residential real property located in Cincinnati, Ohio. Amended Complaint, at ¶ 7. Plaintiffs then paid off the mortgage in full in the year 2016. *Id.* at ¶ 8. Despite satisfying the mortgage, GECU (the mortgagee) failed to file an entry of mortgage satisfaction with the Hamilton County Recorder's Office to reflect that Plaintiffs had satisfied the balance on the mortgage until 2019. *Id.* at ¶ 9.

On October 9, 2019, GECU attempted to moot Plaintiffs' claims and ability to pursue this matter as a class action by sending a \$250.00 check to Class Counsel made payable to Plaintiffs. Plaintiffs rejected this offer. GECU then filed a motion to dismiss the Action on October 8, 2019, Plaintiffs opposed such motion, and the Court held oral argument on the motion to dismiss on December 12, 2019. On December 30, 2019, the Court denied GECU's motion to dismiss.

Class Counsel then conducted an extensive review of Ohio county recorders' websites for GECU's untimely mortgage releases and further reviewed GECU's production of several lists of GECU mortgages from July 26, 2013 through the end of 2019 to Plaintiffs' Counsel. Coates Affidavit, at ¶ 13. A review of Ohio county recorders'

websites indicate that GECU's failure to file an entry of mortgage satisfaction for Plaintiffs was not an isolated occurrence. For example, Class Counsel's cursory review of the Hamilton County Recorder's website shows at least twelve mortgages for which GECU failed to file an entry of mortgage satisfaction within 90-days of the mortgage's satisfaction. *See* Motion for Class Certification, Exhibit 1 (examples of entries of mortgage satisfaction filed in Hamilton County more than 90 days after mortgage satisfaction). Class Counsel then received two lists of data from GECU, one including a random sample of 100 GECU mortgages satisfied since July 26, 2013 and another list including the number of GECU mortgages per county. Coates Affidavit, at ¶ 13. The list of GECU mortgages per county indicated that approximately 95.5% them were within Hamilton, Butler, Clermont and Warren counties. *Id.* at ¶ 14. Class Counsel's testing showed that GECU's untimely filed mortgage error rate was 5% or less for each year within the Class Period with several of those years being around 2%. *Id.* at ¶ 15. The proposed Settlement assumes a 5% error rate per year for the purposes of efficiency and equates to a cash settlement that is approximately 80% of all amounts GECU might be liable for at a 5% error rate throughout the Class Period and includes the potential two-sided liability for violations of R.C. 5301.36 (borrower and current owner as revised in 2015). *Id.* at ¶ 16. The proposed Class covered under this Settlement Agreement is defined as,

all persons or entities who were the mortgagor to a mortgage or current owner of the real property to which the mortgage pertains where GECU (or any predecessor or other entity acquired or merged with – or otherwise now part of GECU – including any affiliates, subsidiaries, and/or related lending institutions) was the mortgagee for real property in the State of Ohio, whereby the mortgage was satisfied in full and GECU failed to record an entry of mortgage satisfaction with the applicable county recorder’s office within 90 days of the date of mortgage satisfaction, from July 26, 2013 through the date of the filing of this request for Preliminary Approval.

Settlement Agreement, at 4.

III. THE SETTLEMENT

Class Counsel and the Plaintiffs believe the proposed Settlement is fair, reasonable and adequate, and that it provides substantial cash benefits to all Class Members participating in this Settlement by filing a Valid Claim. Coates Affidavit, at ¶¶ 17, 27. The Settlement Fund and the timing of the implementation of the Settlement is succinctly described by the Settlement Timeline included in the Settlement Agreement, which states the following:

<u>Date of Settlement Agreement</u>	
GECU Production of Class List	+14 days
Class Counsel Deadline to Review and/or Dispute the Content of the Class List	+28 days
<u>Grant of Preliminary Approval</u>	
Notice Date	+30 days
- Settlement Website activated	- On or before the Notice Date
Objection Deadline	+90 days
Opt-Out Deadline	+90 days

Claims Deadline	+90 days
Master List	+100 days
Valid Claim List	+110 days
<u>Fairness Hearing</u>	
Motion for Final Approval, and Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Incentive Awards	-7 days
CAC Provide Notice of Opt-Outs	-14 days
CAC's submission of signed W-9 form to GECU	+/-0 days
<u>Final Approval</u>	
Effective Date	+35 days
Payment of Attorneys' Fees and Expenses, Settlement Administration Costs, and Class Representative Incentive Awards	+40 days
Payment Deadline	+56 days
Notice of Accounting	+ 176 days

Settlement Agreement, at 32.

A. GECU's production of and Class Counsel's review of the Class List

By May 5, 2020, GECU will provide Class Counsel with the Class List, which is the list of all individuals or entities who satisfied an Ohio GECU Mortgage from July 26, 2013 to the present or purchased a property for which an Ohio GECU Mortgage was satisfied from March 23, 2015 to the present, including the Parcel ID Number and the address to which the mortgage was attached. The individuals or entities on the Class List shall be

referred to as potential Class Members. Settlement Agreement, at 5. Class Counsel will then have 14 days to review the Class List and determine whether to make any modifications to the Class List. *Id.* at 11-12.

B. The Notice Program and Claims Administration

Within 30 days of this Court's potential grant of preliminary approval, the Settlement Administrator will issue notice to the potential Class Members by, (1) sending the Class Notice substantially in the form of Exhibit 1 to the attached **Exhibit B** via email and/or regular U.S. Mail; (2) posting a geotargeted Facebook advertisement substantially in the form of Exhibit 2 as the Social Media Notice to **Exhibit B**; and (3) making the Class Notice available on the Settlement Website. *Id.* at 12-13, 32.

The Class Notice includes all relevant details about the Settlement and attaches a copy of the Claim Form. Settlement Agreement, Exhibit 1. For the trifold postcards, the form of the Class Notice sent via regular U.S. mail, the Claim Form is a tear-off from the Class Notice that may be returned to CAC with postage prepaid or that may be submitted online through the Settlement Website using the unique claim identification number included on each tear-off Claim Form. The email notice will include a live link to the Settlement Website whereby the potential Class Member may directly link to the Settlement Website for the purpose of submitting the Claim Form online. GECU has

relevant email address for approximately 1,600 potential Class Members. Coates Affidavit, at ¶ 19. The Social Media Notice will also directly link to the Settlement Website and provide potential Class Members the ability to complete and submit the Claim Form online. *Id.* at ¶ 20. The Settlement Website will include certain important case documents such as the Settlement Agreement and Class Notice and act as an additional platform for providing potential Class Members with information about this Settlement. *Id.* at ¶ 18. Class Counsel also intends to post information about this Settlement on Markovits, Stock & DeMarco, LLC's website (www.mslegal.com). CAC will issue the Class Notice to the roughly 5,000 potential Class Members understanding that the percentage of actual Class Members is likely 5% of that total or less. *Id.* at ¶ 22. The Parties agreed to notify all GECU mortgagors and related property owners so that the parties could focus their efforts on the Valid Claims received as the result of such notice instead of undertaking the substantial time, cost, and expense of combing through the county recorders' websites or physical records in the event the county recorder does not make the public records available online for all GECU untimely filed mortgage releases. *Id.* at ¶ 23. The Parties agree that this method of notice is substantially more efficient given the facts and circumstances of this case and permits the Parties to reduce the cost of third-party settlement administration.

After issuing the Class Notice, CAC will field all claims received by the Claims Deadline, and those claims will be recorded on what will be known as the Master List. Settlement Agreement, at 6, 14. CAC will then submit the Master List to CAC within 10 days of the Claims Deadline. *Id.* at 14. GECU will review the Master List and determine which claims are Valid Claims. *Id.* Within 10 days of receiving the Master List, GECU will provide Class Counsel with the Valid Claim List. *Id.* Class Counsel will then review the Valid Claims List for accuracy. *Id.* The Claims Deadline shall be 60 days from the Notice Date. *Id.* at 4, 14, 32. Class Members will also have the option to opt out of the Settlement by completing an opt out request by the Claims Deadline. *Id.* at 16. Furthermore, Class Members, if they choose to do so, may object to the terms of the Settlement by the Claims Deadline by meeting all the necessary requirements for a valid objection as specified in the Settlement Agreement and the Class Notice. *Id.* at 17.

C. The Fairness Hearing

Under the proposed Settlement, the Court will conduct the Fairness Hearing after the Claims Deadline. *Id.* at 25, 32. At the Fairness Hearing, the Court will consider whether the Settlement, including execution of notice to the Class and the claims administration, is fair, reasonable and adequate. At least 7 days before the Fairness Hearing, Class Counsel will file a Motion for Final Approval and a sperate Motion for

Attorneys' Fees and Reimbursement of Litigation Expenses, and Award of Class Representative Incentive Awards. *Id.* at 22-23, 32. Class Members will also have the opportunity to appear and voice objection to the Settlement if they submitted a valid objection or as otherwise permitted by the Court. *Id.* at 17.

D. Final Approval and Distribution of Settlement Funds

In the event this Court grants final approval of this Settlement, the Effective Date of the Settlement will be 35 days after the grant of Final Approval. *Id.* at 26, 32. Immediately upon the Effective Date, GECU will pay \$85,000.00 to CAC. *Id.* at 32. CAC will then pay the \$1,500.00 incentive awards to each of the two Class Representatives, the Attorneys' Fees and Expenses, and the Settlement Administration Fees and Expenses within 5 days of the Effective Date. *Id.* at 23, 32. Within 21 days of the Effective Date will be the Payment Deadline, which is the date by which all Settlement Payments will be distributed for each Valid Claim. *Id.* at 22, 32.

The amount of each Settlement Payment will be calculated by taking the remainder in the Settlement Fund and dividing that amount by the number of valid claims. Coates Affidavit, at ¶ 24. For example, if there were \$40,000.00 in deductions from the Settlement Fund for the above-noted deductions leaving \$45,000.00 in funds available for distribution to the Class and there were 75 Valid Claims, the Settlement Payment to

each Class Member submitting a Valid Claim would be \$600.00. The Settlement Benefits will be issued via electronic payment if the Class Member submitted the Valid Claim online and selected the option of being paid electronically and the claim was determined to be a Valid Claim. Coates Affidavit, at ¶ 25. The Settlement Benefits not eligible for electronic payment will be issued via paper check to the address identified in the Valid Claim and will be valid for 90 days from the issuance date on the check. Settlement Agreement, at 32. There will not be any check reissuances after the 90 days has expired. *Id.* at 32.

Class Counsel is hopeful that all cash in the Settlement Fund is distributed before expiration of the paper checks (90 days after the Payment Deadline), but in the event any funds remain after the issuance of payment to all Valid Claims (i.e., if a Valid Claim did not timely deposit the paper check), any remaining funds will be distributed via *cy pres* distribution to the Cincinnati Bar Foundation. *Id.* at 24. No portion of the Settlement Fund shall revert to GECU. *Id.* Within 30 days of the expiration of the Settlement Payments issued via paper check, Class Counsel will submit for the Court's review a Notice of Accounting detailing how all portions of the Settlement Fund were allocated and paid. *Id.* at 24, 32.

IV. THE SETTLEMENT AGREEMENT SATIFIES RULE 23

Class Counsel respectfully requests for this Court to grant preliminary approval of this matter including conditionally certifying the Class for settlement purposes.

A. Requirements for Class Certification

Plaintiff previously submitted a Motion for Class Certification in this matter identifying the specific reasons that this matter is proper for class action treatment. Consistent with the Motion for Class Certification there are roughly seven requirements for class certification under Ohio R. Civ. P 23:

(1) An identifiable class must exist and the definition of the class must be unambiguous; (2) the named representatives must be members of the class; (3) the class must be so numerous that joinder of all members is impracticable; (4) there must be questions of law or fact common to the class; (5) the claims or defenses of the representatives parties must be typical of the claims or defenses of the class; (6) the representative parties must fairly and adequately protect the interests of the class; and (7) one of the three Civ. R. 23(B) requirements must be met.

Hamilton v. Ohio Sav. Bank, 82 Ohio St.3d 67, 71, 1998-Ohio-365, 694 N.E.2d 442 (1998).

1. The Class is Readily Identifiable and the Definition of the Class is Unambiguous

A class definition must allow the court to identify members of the class with reasonable effort. *Id.* at 72. Here, the Class definition is unambiguous and Plaintiffs have specified a means to determine an individual's Class membership: each member of the

proposed Class was the mortgagor, or purchased real property secured by the mortgage, to which GECU was the mortgagee and failed to file an entry of satisfaction within 90 days of the date the mortgage was satisfied from July 26, 2013 through April 21, 2020, the Class Period. Settlement Agreement, at 4. This Class is sufficiently definite, and its members are readily identifiable using information already in GECU's possession or publicly available via the certain Ohio county recorders' websites and publicly available records. Using this information, there would be no ambiguity regarding which individuals are Class Members and which are not. *See State ex rel. Ogan v. Teater*, 54 Ohio St.2d 235, 247, 375 N.E.2d 1233 (1978). Furthermore, the time period for the class is clear, consisting of those loans that were paid in full during the Class Period. Settlement Agreement, at 4.

2. The Named Representatives are Members of the Class

To meet the second prong, the named representatives must have standing to sue as a class representative. *Hamilton*, 82 Ohio St.3d at 74. This means that they must possess the same interest and suffer the same injury shared by all members of the class that they seek to represent. *Id.*

Plaintiffs are members of the Class they seek to represent. They were residential mortgage customers of GECU who paid off their loan in full during the Class Period and

whose mortgage satisfaction was not recorded within 90 days of payoff. GECU admits as much. *See* GECU's January 14, 2019 Answer, at ¶ 7 (admitting "that Plaintiffs' mortgage with respect to the property located at 3798 Lincoln Road, Cincinnati, OH 45247 was satisfied on or about August 24, 2016."); *id.* at ¶ 8 (admitting that GECU "did not file an entry of mortgage satisfaction with respect to Plaintiffs' mortgage secured by the property at 3798 Lincoln Road, Cincinnati, OH 45247 until May 1, 2019."); and *id.* at ¶ 9 ("GECU admits that May 1, 2019 is more than 90 days after August 24, 2016.").

3. The Class is so Numerous that Joinder of All Members is Impracticable

The prerequisite of numerosity is satisfied if "the class is so numerous that joinder of all members is impracticable." Civ.R. 23(A)(1). Ohio courts have not specified numerical limits for a class action, instead holding that the "determination must be made on a case-by-case basis." *Warner v. Waste Mgt., Inc.*, 36 Ohio St.3d 91, 97, 521 N.E.2d 1091 (1988). However, Ohio courts have held that the numerosity requirement is generally satisfied if a class contains more than forty people. *Id.* (citation omitted).

Here, it is projected that there are more than 250 class members. Coates Affidavit, at ¶ 22. For example, a cursory review of the Hamilton County Recorder's website showed twelve properties for which GECU was the mortgagee within the past six years and failed to file an entry of mortgage satisfaction within 90 days after the mortgage was

completely paid off. Furthermore, Class Counsel reviewed each GECU mortgage release for several years within the Class Period and determined that GECU's rate of untimely mortgage release filings occurred in 5% or less of those mortgages satisfied within the Class Period. Understanding that the 5% error was a high projection, the Parties anticipate that the number of Class Members is over 250.

4. There Are Common Questions of Law and Fact Common to the Class

Commonality is satisfied if the claims of the class members share a "common nucleus of operative facts." *Marks v. C.P. Chemical Co.*, 31 Ohio St.3d 200, 202, 509 N.E.2d 1249 (1987). "The commonality requirement is generally given a permissive application." *Miller v. Volkswagen of Am., Inc.*, 2008-Ohio-4736, ¶ 35 (citing *Marks*, 31 Ohio St.3d at 202).

The proposed Class here shares several common questions, as set forth in the Amended Complaint. *See* Amended Complaint, at ¶ 24. Common questions of law or fact include at least whether GECU failed to comply with the provisions of R.C. 5301.36 and whether GECU is required to pay Plaintiffs and the class members damages in accordance with R.C. 5301.36(C). Thus, the proposed class shares sufficient factual and legal commonality to satisfy the requirements of Civ.R. 23(A)(2).

5. The Claims and Defenses of Plaintiffs and Defendant are Typical of the Claims and Defenses of the Class

The typicality requirement examines "whether a sufficient relationship exists

between the injury to the named plaintiff and the conduct affecting the class, so that the court may properly attribute a collective nature to the challenged conduct." *Baughman v. State Farm Mut. Auto Ins. Co.*, 88 Ohio St.3d 480, 485, 2000-Ohio-397, 727 N.E.2d 1265 (2000) (quoting 1 Newberg on Class Actions § 3.13 (3d ed. 1992)). This standard is not demanding. *See id.* at 484. There is no requirement that claims be identical. *Id.* at 485. Instead, a claim is typical "if it arises out of the same event or course of conduct that gives rise to the claims of other class members and is based on the same legal theory." *Id.* (quoting 1 Newberg on Class Actions § 3.13 (3d ed. 1992)).

When a complaint alleges "that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of varying fact patterns that underlie individual claims." *Id.* Additionally, the typicality requirement "has been found to be satisfied where there is no express conflict between the representatives and the class." *Warner*, 36 Ohio St.3d at 97.

Here, Plaintiffs' claim is typical of all proposed class members. Indeed, although not required, the Plaintiffs' claim and the claims of each class member are essentially identical. GECU owed the same statutory duty to file timely entries of mortgage satisfactions to each class member, including Plaintiffs. Plaintiffs allege that GECU

breached its duty to Plaintiffs and each class member through the same exact course of unlawful conduct, i.e., failing to file timely mortgage releases under R.C. 5301.36. Therefore, Plaintiffs' claim is typical under Rule 23(A)(3) of the Class they seek to represent.

6. Plaintiffs fairly and Adequately Protect the Interests of the Class

The adequacy standard requires that the representative parties "fairly and adequately protect the interests of the class." Civ.R. 23(A)(4). Trial courts should analyze both the adequacy of the class representatives and their counsel. *Warner*, 36 Ohio St.3d at 98. Class representatives will be considered adequate if their interests are not antagonistic to those of the class. *Marks*, 31 Ohio St.3d at 203.

a. Class Counsel is Well Qualified and Experienced in Class Action Litigation

For attorneys to be considered adequate under Rule 23(A)(4), they should also "be experienced at handling litigation of the type involved in the case before class certification is allowed. *Warner*, 36 Ohio St.3d at 98. This requirement is also embodied in Rule 23(F), which sets out the following factors that trial courts must consider when deciding to appoint class counsel:

- (i) the work counsel has done in identifying or investigating potential claims in the action;
- (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims

asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class.

Civ.R. 23(F)(a).

Class Counsel are experienced in complex class action litigation and will fairly and adequately represent the interests of all Class Members. Class Counsel have litigated successful class actions in state and federal courts in Ohio and around the country. *See* Coates Affidavit, at ¶ 8. Class Counsel negotiated the terms of the Settlement Agreement and believe the Settlement to be fair, reasonable, and adequate and in Plaintiffs' and the Class's best interests. *Id.* at ¶ 17. Furthermore, Class Counsel's law firms will continue to fully commit the resources necessary to represent the Class. *Id.* at ¶ 11. Class Counsel have diligently identified, researched, and prosecuted all potential claims in an efficient and timely manner resulting in Settlement Payments to Class Members submitting valid claims. *Id.* at ¶¶ 13-15, 23.

b. Plaintiffs' Interests are Not Antagonistic to the Class

As discussed above, Plaintiffs were subject to the same exact alleged unlawful conduct as the rest of the Class. Furthermore, they have been, and remain, actively engaged in prosecuting this Action for the benefit of the absent class members. *Id.* at ¶ 26. Accordingly, Plaintiffs are adequate representatives because their claims fall within the class definition and their interests are not antagonistic to the rest of the Class.

7. Rule 23(B)(3) is Satisfied as Questions of Law and Fact predominate Over Any Questions Affecting Only Individual Members and a Class Action is Superior to Individual Actions

The final requirement to achieve class certification is that the party seeking certification also show that the action is maintainable under Rule 23(B)(1), (2), or (3). *Hamilton*, 82 Ohio St.3d at 71. Here, Plaintiffs primarily seek conditional certification under Rule 23(B)(3). However, class certification is also appropriate under Rule 23(B)(1) and (2).

Rule 23(B)(3) provides that certification is appropriate if “the questions of law and fact common to members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Matters relevant to this finding include:

- (a) the interest of members of the class in individually controlling the prosecution or defense of separate actions;
- (b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
- (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;
- (d) the difficulties likely to be encountered in the management of a class action.

Civ.R. 23(B)(3).

The purpose of class actions is “to overcome the problem that small recoveries do

not provide any incentive for any individual to bring a solo action prosecuting his or her rights." *Hamilton*, 82 Ohio St.3d at 80 (quoting *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 617 (1997)). Class actions solve this problem by aggregating claims with relatively low economic value into a case worth litigating. *Id.* Thus, the analysis weighs the efficiency and economy of class wide adjudication against the difficulties and complexity of trying the class members' claims individually. *See Warner*, 36 Ohio St.3d at 96.

To support a holding that common issues predominate, common issues must do more than merely exist. *Schmidt v. Avco Corp.*, 15 Ohio St.3d 310, 313, 473 N.E.2d 822 (1994). They must instead represent a significant aspect of the case and be capable of class wide resolution in a single adjudication. *Id.*

The Ohio Supreme Court previously found that claims brought under R.C. 5301.36 meet Ohio's Rule 23(B)(3) predominance requirement. *See In re Consol. Mortg. Satisfaction Cases*, 97 Ohio St.3d 465, 2002-Ohio-6720, 780 N.E.2d 556 (2002). There, the Supreme Court held:

Clearly, the claims brought by each plaintiff invoke a common question of law: whether a particular lender violated its duty to record a satisfaction of mortgage. In resolving this common question, the trial court of course will be presented with different evidence relating to each lender's failure to record a satisfaction of a residential mortgage. While appellees assert that sifting through these facts in a class action suit will be arduous, we are not compelled

to agree. The mere existence of different facts associated with the various members of a proposed class is not by itself a bar to certification of that class. If it were, then a great majority of motions for class certification would be denied. Civ.R. 23(B)(3) gives leeway in this regard and permits class certification where there are facts common to the class members.

Id. at ¶ 10.

The Supreme Court's analysis in *In re Consol. Mortg.* applies here, too. As stated above, members of the proposed Class all share the same exact claim: GECU failed to record an entry of mortgage satisfaction within 90 days of payoff in violation of R.C. 5301.36. Common questions of fact predominate because the damages suffered by each class member result from GECU's same unlawful course of conduct. There are also common questions of law, i.e., whether GECU failed to comply with R.C. 5301.36 and whether it owes Plaintiffs and the Class Members' damages under R.C. 5301.36(C). Thus, the predominance requirement of Rule 23(B)(3) is met.

The superiority requirement found in Rule 23(B)(3) is also satisfied. As noted by the Ohio Supreme Court in *Schmidt*, 15 Ohio St3d at 314:

To aid courts in determining whether there has been compliance with the Civ.R. 23(B)(3) requirements of predominance and superiority, i.e., requirements that demonstrate the utility and propriety of employing the class action device, the drafters listed four factors which they deemed to be particularly relevant: (a) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (b) the extent and nature of any litigation concerning the controversy already commenced by

or against members of the class; (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (d) the difficulties likely to be encountered in the management of a class a action.

Here, there are over 250 Class Members. One single class action is a fair and efficient method to adjudicate such a large number of claims that are individually worth so little money. The possibility of over 250 individual lawsuits would create a substantial burden on the local courts. Class Members do not have an interest in prosecuting their own individual actions, as the small value of each individual claim makes the prosecution of such actions economically unfeasible unless the claims are prosecuted as a class action. Class Counsel is unaware of any similar litigation commenced by members of the Class against GECU.

The forum for this action is Hamilton County, Ohio – a place where GECU does substantial business. Furthermore, Hamilton County has an interest in ensuring that the property records maintained by the Recorder’s Office are accurate and timely reflect mortgage satisfactions. Thus, this jurisdiction and venue have a substantial interest in this action. Lastly, there are no likely difficulties to be encountered in the management of this class action.

Indeed, as the Supreme Court of Ohio previously found, “our review of the relevant factors leads us to conclude that the class action is the superior method for the

fair and efficient adjudication of the [R.C. 5301.36] controversies.” *In re Consol. Mortg.*, 97 Ohio St.3d at 469-470. Because common issues of law and fact predominate over individual issues, and the class action is the superior method of resolving the dispute, Rule 23(B)(3) and all other requirements for class certification have been satisfied, and this Court should grant conditional class certification.

V. THE NOTICE PLAN SHOULD BE APPROVED

Civ.R. 23 requires notification be sent to class members regarding the granting of class certification and/or of any proposed settlement. With conditional certification and a proposed settlement before this Court on this Motion for Preliminary Approval of Class Action Settlement, Plaintiffs hereby request for this Court to approve the notice plan specified in Section III(B) above. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175 (1974) (“individual notice is clearly the ‘best notice practicable’ within the meaning of Rule 23(c)(2) and our prior decisions.”). The proposed notice plan permits direct notice to potential Class Members of this Settlement and the conditional grant of class certification through email and/or regular U.S. mail, and secondarily through geotargeted Facebook advertisements. Claim Forms will be attached to the notices issued to potential Class Members and the Settlement Website will be implemented to provide potential Class Members with an online means for obtaining more information about the Settlement,

including permitting the submission of online Claim Forms and posting certain important case documents and information. The notice plan will be executed by the Settlement Administrator with Class Counsel and the Court's oversight. Class Counsel believes the notice plan is thorough in that it provides notice to potential Class Members through several means (email, mail, and online advertisements). Coates Affidavit, at ¶ 18. The purpose of sending the notice to potential Class Members is to reach as many potential Class Members as possible. Furthermore, the notice plan provides that potential Class Members will receive electronic or physical copies of the Claim Form and for the establishment of the Settlement Website. These measures are being requested for Court approval so that Class Counsel and the Plaintiffs may reach as many potential Class Members as possible and for ease of completing and submitting Claim Form for potential treatment as a Valid Claim. Accordingly, Class Counsel and Plaintiffs respectfully request this Court to approve the proposed notice plan.

VI. THE SETTLEMENT AGREEMENT SHOULD BE PRELIMINARLY APPROVED AS FAIR, REASONABLE, AND ADEQUATE

Last, the Court must decide whether the proposed Settlement is fair, reasonable, and adequate. Civ.R. 23(E); *In re Kroger Shareholders Litig.*, 70 Ohio App. 3d 52, 67-68, 590 N.E.2d 391 (1st Dist.1990). In reaching such determination, the Court must weigh "(1) the fairness and reasonableness of the proposed settlement to those affected by it; (2) the

adequacy of the settlement to the class; and (3) whether the settlement proposed is in the public interest." *In re Kroger*, 70 Ohio App. 3d at 67-68. The Court should also consider the complexity, expense and duration of the litigation; the risks of the litigation; the defendant's resources; the judgment of Class Counsel; the plaintiffs' likelihood of success on the merits balances against the amount and form of relief obtained in the settlement; objections to the settlement, if any; and the stage of litigation when the settlement was reached. *Id.* at 69, n.9. Whether to grant preliminary approval of a class action settlement is within the trial court's sound discretion. *Id.* at 67. Furthermore, Ohio courts recognize that "agreements of compromise and settlement are highly favored at law" and that "[t]his principle is equally true in complex class action litigation." *Sutherland v. ITT Residential Capital Corp.*, 122 Ohio App. 3d 526, 536, 702 N.E.2d 436 (6th Dist.1977) (citations omitted).

With these considerations in mind, this Court should grant preliminary approval of the proposed Settlement because it: (1) was the result of extensive arm's-length negotiations between the parties; (2) was after the Court denied GECU's motion to dismiss in its entirety; (3) was entered after Class Counsel received two lists of information from GECU regarding GECU Ohio Mortgages and after Class Counsel conducted testing on certain years of GECU's mortgage releases within the Class Period;

(4) creates a substantial recovery for Plaintiffs and the Class Members in the form of a no reversion, \$85,000.00 Settlement Fund from which all fees, expenses, incentive payments and pro rata settlement payments will be paid; (5) provides for conditional class certification; and, (6) permits the efficient and timely payment of settlement benefits to Class Members submitting Valid Claims.

If during the claims process, a claimant demonstrates to CAC and/or Class Counsel, or CAC and/or Class Counsel determine, that no release has been filed on the mortgage in question, then CAC and/or Class Counsel will notify GECU within 10 days of learning of the non-filing and, if appropriate, GECU will file a release within 10 days, at GECU's expense. Settlement Agreement, at 21.

Before the Fairness Hearing, Class Counsel will submit a motion for attorneys' fees in the amount of 1/3 of the Settlement Fund, reimbursement of litigation expenses not to exceed \$1,000.00, and \$1,500.00 Incentive Awards to each of the Class Representatives for a total of \$3,000.00. GECU has agreed to these requests within the Settlement Agreement. Such motion will be submitted separate and apart from any motion for final approval.

VII. CONCLUSION

For the reasons contained in this memorandum, Plaintiffs respectfully request for the Court grant their motion for preliminary approval of class action settlement including

granting conditional class certification, approving the notice plan, appointing Plaintiffs as the Class Representatives, appointing Class Counsel as counsel for Plaintiffs and the Class, and approving CAC Services Group, LLC as the Settlement Administrator.

Respectfully submitted,

/s/ Terence R. Coates

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Counsel for Plaintiffs and the Class

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing Plaintiffs' Motion and Memorandum in Support of Preliminary Approval of Class Action Settlement was filed electronically with the Hamilton County Clerk of Court and emailed to counsel for Defendant at dgibson@bricker.com, this 21st day of April 2020.

/s/ Terence R. Coates
Terence R. Coates (0085579)

EXHIBIT A

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

VALERIE CARR, *et al.* : CASE NO. A 1903532
:
Plaintiffs, : Judge Thomas O. Beridon
:
v. : [PROPOSED] ORDER GRANTING
: PRELIMINARY APPROVAL OF
GENERAL ELECTRIC CREDIT : CLASS ACTION SETTLEMENT
UNION, :
:
Defendant. :

Before this Court is Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement (“Motion”). The Court has reviewed the Motion and Settlement Agreement between Plaintiffs Valerie Carr and Kai Krueger and Defendant General Electric Credit Union. After conducting a hearing on the request for preliminary approval on April 28, 2020, this Court grants the Motion and preliminarily concludes that the proposed Settlement is fair, reasonable, and adequate.

IT IS HEREBY ORDERED THAT:

1. The Settlement Agreement,¹ including the proposed notice plan and forms of notice to the Class, the appointment of Plaintiffs as the Class Representatives, the appointment as Counsel for Plaintiffs as Class Counsel, the approval of CAC Services Group, LLC as the Settlement Administrator, the establishment of a \$85,000.00 Settlement Fund, and the proposed method of distribution from the Settlement Fund, are fair,

¹ All capitalized terms used in this Order shall have the same meanings as set for in the Settlement Agreement.

reasonable, and adequate, subject to further consideration at the Fairness Hearing described below.

2. The Court does hereby preliminarily and conditionally approve, for settlement purposes, the following Class:

all persons or entities who were the mortgagor to a mortgage or current owner of the real property to which the mortgage pertains where GECU (or any predecessor or other entity acquired or merged with – or otherwise now part of GECU – including any affiliates, subsidiaries, and/or related lending institutions) was the mortgagee for real property in the State of Ohio, whereby the mortgage was satisfied in full and GECU failed to record an entry of mortgage satisfaction with the applicable county recorder's office within 90 days of the date of mortgage satisfaction, from July 26, 2013 through April 21, 2020.

3. Based on the information provided: the Class is ascertainable; it consists of 500 or more Class Members satisfying numerosity; there are common questions of law and fact including whether GECU filed untimely mortgage releases under R.C. 5301.36 *et seq.* satisfying commonality; the proposed Class Representatives' claims are typical in that they are members of the Class and allege they have been damaged by the same conduct as the other members of the Class; the proposed Class Representatives and Class Counsel fully, fairly, and adequately protect the interests of the Class; questions of law and fact common to members of the Class predominate over questions affecting only individual members for settlement purposes; and a class action for settlement purposes is superior to other available methods for the fair and efficient adjudication of this Action.

4. The Court appoints Plaintiffs Valerie Carr & Kai Krueger as the Class

Representatives for the Class.

5. The Court appoints Terence R. Coates, Justin C. Walker, W.B. Markovits, and Zachary C. Schaengold of Markovits, Stock & DeMarco, LLC and Matthew C. Metzger of Wolterman Law Office, LPA as Class Counsel for the Class.

6. The Court appoints CAC Services Group, LLC as the Settlement Administrator.

7. A Fairness Hearing shall be held before the Court on _____, 2020 at _____ a.m. for the following purposes:

- a. To determine whether the proposed Settlement on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate to the Class and should be approved by the Court;
- b. To determine whether to grant Final Approval, as defined in the Settlement Agreement;
- c. To determine whether the notice plan conducted was appropriate;
- d. To determine whether the claims process under the Settlement is fair, reasonable and adequate and should be approved by the Court;
- e. To determine whether the requested Class Representative Incentive Awards, Class Counsel's attorneys' fees and litigation expenses, and the Settlement Administrator's fees and expenses should be approved by the Court;

f. To determine whether the planned allocation of Settlement Payments and other distributions from the Settlement Fund are fair, reasonable, and adequate.

g. To rule upon such other matters as the Court may deem appropriate.

8. The Court approves, as to the form and content, the Class Notice (including the Claim Form) and the Social Media Notice. Furthermore, the Court approves the implementation of the Settlement Website and the proposed methods of emailing, mailing, distributing, and/or otherwise publishing of the various notices substantially in the form as noted on pages 12-13 of the Settlement Agreement, and finds that such notice plan meets the requirements of Civ.R. 23 and due process, and is the best notice practicable under the circumstances, and shall constitute due and efficient notice to all persons or entities entitled to notice.

9. The Court preliminarily approves the following Timeline for the purposes of conducting the notice plan, settlement administration, claims processing, and other execution of the proposed Settlement:

SETTLEMENT TIMELINE

<u>Date of Settlement Agreement</u>	
GECU Production of Class List	+14 days
Class Counsel Deadline to Review and/or Dispute the Content of the Class List	+28 days
<u>Grant of Preliminary Approval</u>	
Notice Date	+30 days

- Settlement Website activated	- On or before the Notice Date
Objection Deadline	+90 days
Opt-Out Deadline	+90 days
Claims Deadline	+90 days
Master List	+100 days
Valid Claim List	+110 days
<u>Fairness Hearing</u>	
<u>Motion for Final Approval, and Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Incentive Awards</u>	<u>-7 days</u>
<u>CAC Provide Notice of Opt-Outs</u>	-14 days
CAC's submission of signed W-9 form to GECU	+/-0 days
<u>Final Approval</u>	
Effective Date	+35 days
Payment of Attorneys' Fees and Expenses	+40 days
Payment Deadline	+56 days
Notice of Accounting	+ 176 days

10. In order to be fielded as a timely claim under the Settlement, all Claim Forms must be either submitted or received by the Settlement Administrator no later than 60 days after the Notice Date. Class Counsel and the Settlement Administrator will ensure that all specific dates and deadlines are added to the Class Notice and posted on the Settlement Website after this Court enters this Order in accordance with the timeline being keyed on the grant of this Order.

11. Additionally, any and all requests to opt out or object to the proposed Settlement must be received no later than 60 days after the Notice Date. Any request to

opt out of the Settlement should, to the extent possible, contain words or phrases such as “opt-out,” “opt out,” “exclusion,” or words or phrases to that effect indicating an intent not to participate in the settlement or be bound by this Agreement) to CAC and/or Class Counsel. Opt-Out notices shall not be rejected simply because they were inadvertently sent to the Court or Class Counsel so long as they are timely postmarked or received by the Court or GECU’s Counsel. Members of the Class who seek to Opt-Out shall receive no benefit or compensation under this Agreement.

12. Class Members may submit an objection to the proposed Settlement under Ohio Rule of Civil Procedure 23(E)(5). For the Objection to be valid, it must be filed with the Court within 60 days of the Notice Date and include each and all of the following:

- (a) The objector’s name, mailing address, telephone number, and email address;
- (b) A statement including all legal and factual support for the Objection;
- (c) “Notice of Class Action Objection” at the top of the document and include the Action’s case number and case name;
- (d) Be signed by the Objector and the Objector’s legal counsel in the event the Objector is represented by legal counsel;
- (e) A statement regarding whether the Objector intends to appear at the Fairness Hearing; and,
- (f) A complete and accurate list of all objections the Objector has filed in any court of law within the past 5 years.

Any Objection failing to include the requirements expressed above will be deemed to be invalid. Furthermore, any Class Member objecting to the Settlement agrees to submit to any discovery related to the Objection.

13. All Class Members shall be bound by all determinations and judgments in this Action concerning the Settlement, including, but not limited to, the release provided for in the Settlement Agreement, whether favorable or unfavorable, except those who timely and validly requested exclusion from the Class. The persons and entities who timely and validly requested exclusion from the Class will be excluded from the Class and shall not have rights under the Settlement Agreement, shall not be entitled to submit any Claim Forms, and shall not be bound by the Settlement Agreement or any Final Approval order as to GECU in this Action.

14. Pending final determination of whether the Settlement Agreement should be approved, Plaintiffs are barred and enjoined from commencing or prosecuting any claims asserting any of the Settled Claims against GECU.

15. The Court reserves the right to adjourn the date of the Fairness Hearing without further notice to the potential Class Members, and retains jurisdiction to consider all further requests or matters arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modification as may be agreed to by the Parties or as ordered by the Court, without further notice to the Class.

Hon. Thomas O. Beridon

EXHIBIT B

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by and among Valerie Carr and Kai Krueger, as representatives of the later defined Class, (jointly the “Plaintiffs”) and Defendant General Electric Credit Union (“GECU”). The Plaintiffs, GECU, and the Class are collectively referred to as “Parties.” “Class Counsel” means Terence R. Coates, Justin C. Walker, W.B. Markovits, Zachary C. Schaengold, and Matthew C. Metzger, collectively.

WHEREAS, On September 25, 2019, the Plaintiffs filed their Amended Class Action Complaint captioned *Valerie Carr, et al. v. General Electric Credit Union*, Case No. A-1903532, in the Court of Common Pleas for Hamilton County, Ohio (the “Action”).

WHEREAS, the Action alleges violations of Ohio Revised Code Section 5301.36 *et seq.* and seeks damages, on behalf of the Plaintiffs and on behalf of the Class against GECU as mortgagee for GECU’s alleged failure to record satisfactions of mortgages within 90 days after receipt of payment in full on residential and commercial mortgage loans. The statutory damages under R.C. 5301.36(B) for each untimely filing of a mortgage release is \$250.00. *See* R.C. 5301.36(C).

WHEREAS, GECU filed a motion to dismiss the Action on October 8, 2019, Plaintiffs opposed such motion, and the Court held oral argument on the motion to dismiss on December 12, 2019. On December 30, 2019, the Court denied GECU’s motion to dismiss.

WHEREAS, GECU represents that it has diligently conducted an investigation to reasonably identify the approximate number of potential members of the Class.

WHEREAS, Class Counsel and GECU have engaged in extensive arms' length negotiations concerning the resolution of the claims asserted in the Action, including Class Counsel reviewing several years of GECU's mortgage satisfactions between 2013 and the present to determine roughly how many GECU mortgages were untimely released, reviewing relevant information supplied by GECU, and reviewing several local county recorders' records relating to GECU's mortgage satisfactions.

WHEREAS, Plaintiffs and Class Counsel have concluded, based upon their investigations, and taking into account the contested issues involved in this Action, including that GECU still maintains that it mooted Plaintiffs' claims, the expense and time necessary to prosecute the Action through trial and possible further appeals, the risks and costs of further prosecution of the Action, the uncertainties of continued litigation including risks associated with class certification, and the substantial benefit to be received under this Agreement through the distribution of the Settlement Payments to Class Members submitting Valid Claims, that a settlement with GECU on the terms set forth herein (the "Settlement") is fair, just, equitable, reasonable, adequate, and in the best interests of the Plaintiffs and the Class. The Plaintiffs and Class Counsel, on behalf of the Class, have agreed to settle the Action with GECU on the terms set forth herein.

WHEREAS, GECU denies each of the claims asserted against it and denies all liability in the Action. GECU nevertheless desires to settle the Action and the claims asserted in the Action, on the terms and conditions set forth herein, for the purpose of avoiding burden, expense, and uncertainty of continuing litigation, both to it and its members, and for the purposes of putting to rest the controversies engendered by the Action.

NOW, THEREFORE, in consideration of the mutual agreements contained herein and the monies to be paid under to the terms hereof and without any admission of wrongdoing or liability on the part of any party, the Parties agree to this Settlement as follows:

I. DEFINITIONS AND SCOPE

For purposes of the Agreement, the following definitions apply:

“Action” means the class action lawsuit titled *Valerie Carr, et al. v. General Electric Credit Union*, Case No. A-1903532, pending in the Court of Common Pleas for Hamilton County, Ohio.

“Agreement” means this Settlement Agreement and Release resolving this Action.

“Attorneys’ Fees and Expenses” means the attorneys’ fees appropriate in this matter in the sum of 1/3 of the Common Fund (\$28,333.33), and reimbursement of up to \$1,000 of Class Counsel’s litigation expenses and case costs incurred in pursuit of this Action. Class Counsel will submit a motion seeking attorneys’ fees, reimbursement of

litigation expenses, and class representative incentive awards separately, but on the same day as, any motion for final approval.

“**CAC**” shall mean CAC Services Group, LLC, the Settlement Administrator.

“**Claim Form**” means the form included in the Class Notice, emailed to potential Class Members or available on the Settlement Website for potential Class Members to complete and timely return in order to submit a Valid Claim.

“**Claims Deadline**” means the date by which all Claim Forms must be submitted to be considered for treatment as a Valid Claim, which is 60 days after the Notice Date.

“**Class**” or “**Class Members**” are defined as all persons or entities who were the mortgagor to a mortgage or current owner of the real property to which the mortgage pertains where GECU (or any predecessor or other entity acquired or merged with – or otherwise now part of GECU – including any affiliates, subsidiaries, and/or related lending institutions) was the mortgagee for real property in the State of Ohio, whereby the mortgage was satisfied in full and GECU failed to record an entry of mortgage satisfaction with the applicable county recorder’s office within 90 days of the date of mortgage satisfaction, from July 26, 2013 through the date of the filing of this request for Preliminary Approval.

“**Class Period**” means July 26, 2013 through the date of the filing of the motion for Preliminary Approval in this Action.

“Class List” means a list of all individuals or entities who satisfied an Ohio GECU Mortgage from July 26, 2013 to the present or purchased a property for which an Ohio GECU Mortgage was satisfied from March 23, 2015 to the present, including the Parcel ID Number and the address to which the mortgage was attached. The individuals or entities on the Class List shall be referred to as potential Class Members.

“Class Notice” means the notice that will be issued to all potential Class Members notifying them of the Settlement of this Action, including all of its terms.

“Class Representative Incentive Award” means the incentive award to be paid to Valerie Carr and Kai Kreuger each in the amount of \$1,500.00 for a total of \$3,000.00 for their time, effort, and diligence in representing the Class. Ms. Carr and Mr. Kreuger remained apprised of events of this Action and put the Class’s interests before their individual interests.

“Common Fund” means the \$85,000.00 GECU will pay to resolve this matter, which will be controlled and distributed by CAC.

“Court” means the Hamilton County Court of Common Pleas, Judge Thomas O. Beridon.

“Court Costs” means any and all costs assessed by the Court and/or Hamilton County Clerk of Courts for the pendency of this Action, which will be paid from the Common Fund.

“Effective Date” means 35 days after the date the Court grants the Final Approval of this Settlement so long there have been no appeals of Final Approval filed.

“Fairness Hearing” means the final approval hearing scheduled by the Court after the Class Notices have been issued and Claims Forms have been collected. At the Fairness Hearing the Court will determine whether to grant Final Approval of the proposed Settlement and potentially conclude that the Settlement is fair, reasonable, and adequate.

“Final Approval” means the Court’s decision that the Settlement is fair, reasonable, and adequate after conducting the Fairness Hearing.

“GECU” means General Electric Credit Union, the defendant in the Action.

“Master List” means the list of Class Members submitting Valid Claims.

“Notice Date” means the date by which the Class Notice will be mailed or emailed to potential Class Members and by which the Settlement Website will be activated, which is 30 days after the Court grants Preliminary Approval. The Social Media Notice will be strategically displayed between the Notice Date and the Claims Deadline in order to attempt to optimize viewership.

“Notice of Accounting” means a notice that Class Counsel will file with the Court detailing all distributions CAC made from the Common Fund and identifying at least (1) the total number of Settlement Payments issued; (2) the number of Settlement Payments, if any, remaining unredeemed or not yet cashed; (3) if there are any uncashed or

unredeemed Settlement Payments, the reason the funds remain; (4) and the total sum remaining in the Common Fund.

“Objection” means any Class Member’s objection to the Settlement, which must meet all the requirement identified herein for submitting a valid Objection and must be filed within 60 days of the Notice Date.

“Ohio GECU Mortgage” refers to any mortgage to which GECU (or any predecessor or other entity acquired or merged with – or otherwise now part of GECU – including any affiliates, subsidiaries, and/or related lending institutions) was the mortgagee for real property in the State of Ohio.

“Opt-Out” means any Class Member properly requesting to be excluded as a Class Member from this Action and that must be submitted to CAC and/or Class Counsel within 60 days of the Notice Date.

“Paid Loans” are the total number of Ohio GECU Mortgages (or any predecessor or other entity acquired or merged with – or otherwise now part of GECU – including any affiliates, subsidiaries, and/or related lending institutions) and that were fully paid by members of the Class during the Class Period, the number of which is at most 5,000. The settlement of this Action is limited to the Paid Loans. Paid Loans do not include securitized loans where GECU served or serves as trustee.

“Payment Deadline” means the date by which the Settlement Payments for Valid Claims will be issued. The Payment Deadline will be no later than 21 days after the Effective Date.

“Plaintiffs” means Valerie Carr and Kai Kreuger, acting as representatives of the Class in this Action.

“Preliminary Approval” means the request for the Court to grant preliminary approval of the proposed Settlement, including conditionally granting class certification.

“Settled Claims” means and includes any and all claims, demands, actions, causes of action, rights, offsets, liens or liabilities, whether known or unknown, alleged or not alleged in the Action, suspected or unsuspected, contingent or vested, individually or collectively, that the Class Representatives or any member of the Class has had, now has, or may have in the future, against GECU related to any Ohio GECU Mortgage that was satisfied during the Class Period arising out of or connected in any way with (i) the recording of or failure to record the satisfaction of the mortgage, or (ii) any representations, misrepresentations, disclosures, incorrect disclosures, failure to disclose, acts (legal or illegal), omissions, failures to act with due care, deceptions, acts of unconscionability, acts of illegality, unfair business practices, breaches of contract, unfulfilled promises, breaches of warranty, or violations of any Ohio statute, or any other body of case or statutory law, federal or state, including all such claims for general, special, and punitive damages, as well as any and all claims for penalties, attorneys’ fees,

and costs of such, in connection with the timing of the recording of the satisfaction of the mortgage.

“Settlement” means the agreed-upon resolution of this Action by the Parties.

“Settlement Administration Payment” means the payment to CAC as the Settlement Administrator in this Action for approving and issuing the Class Notice.

“Settlement Payment” means the pro rata payment submitted to each Class Member submitting a Valid Claim Form from the Common Fund after the deduction of the Class Representative Incentive Awards, the Settlement Administration Payment, and the Attorneys’ Fees and Expenses.

“Settlement Website” means www.GECUsettlement.com and any of its subpages, which will make accessible to the potential Class Members important case documents, important case deadlines, and the ability to submit claims online.

“Social Media Notice” means the notice to Class Members that will be issued to the Class via geotargeted Facebook ads and/or other social media posts.

“Valid Claim” is any and all timely Claim Forms that contain all required information for the Class Member’s claim to qualify for a Settlement Payment.

“Valid Claims List” means the list GECU composes within 7 days of receiving the Master List and that includes all claims GECU recommends for treatment as Valid Claims and if the Claim Form is being rejected, GECU will state the specific reasoning for rejecting the Claim Form.

II. THE SETTLEMENT FUND

A. Establishment of Common Fund

GECU agrees to establish a fund by paying to CAC for distribution an amount totaling \$85,000.00, which will be used for the payment of (1) Settlement Payment to each Class Member submitting a Valid Claim; (2) \$1,500.00 to each of the Plaintiffs as the Class Representative Incentive Awards for their efforts and attention to detail in representing the Class' interests as the two class representatives; (3) the Settlement Administration Payment; and (4) the Attorneys' Fees and Expenses as approved by the Court. Under no circumstances shall GECU be required to pay more, or less, than \$85,000.00 to the Common Fund. CAC will control and make distributions from the Common Fund until it is exhausted.

After the payment of the Class Representative Incentive Awards, the Settlement Administration Payment, and the Attorneys' Fees and Expenses, any remaining funds shall be distributed pro rata to Class Members submitting valid claims. There shall be no reversion of funds to GECU under any circumstance.

B. Administration of Common Fund

CAC shall be responsible for administering the Common Fund under the terms of this Agreement. Class Counsel may elect to use CAC to perform any of the administrative tasks described in this Agreement for and on its behalf. CAC shall establish a primary

contact who shall be available to address or discuss any Settlement-related issue with Class Counsel or GECU's counsel.

1. Delineation of Potential Members of the Class

Within two weeks of entering into the Agreement to resolve this Action, GECU will submit the Class List to Class Counsel identifying individuals or entities who satisfied an Ohio GECU Mortgage from July 26 2013 to the present or purchased a property for which an Ohio GECU Mortgage was satisfied from March 23, 2015 to the present, including the Parcel ID Number and the address to which the mortgage was attached. The individuals or entities on the Class List shall be referred to as potential Class Members ("Potential Class Members"). GECU will cover all costs and expenses relating to producing the identity of all Potential Class Members. At the same time as the submission of the Class List, GECU will also submit an affidavit from a GECU executive stating the GECU has conducted reasonable due diligence to identify the persons and/or entities included in the Class List and that identifies the number of mortgages, including those for purchases, refinances, and home equity loans, within the State of Ohio that have been satisfied from July 26, 2013 through approximately the date the motion for Preliminary Approval is filed, and the specific number of mortgages satisfied by county within the State of Ohio within the Class Period.

Class Counsel shall be permitted 14 days from receipt of the Class List to confirm the size and composition of the potential Class. Class Counsel may provide information

to add a Potential Class Member to the Class List and GECU will agree or dispute the addition. The Parties will attempt to resolve any disputes but if a dispute still remains, CAC shall decide if the requested addition is entitled to inclusion on the Class List.

Throughout the administration of the Agreement, the Parties and CAC agree that they will not use any social security numbers (partial or full) of the Potential Class Members or any other information provided by the Potential Class Members for any purpose other than for the administration of the Common Fund as set forth in this Agreement.

2. Notice to Members of the Class

CAC will have 30 days from the date of the Court's grant of Preliminary Approval to mail the Class Notice substantially similar to the form attached as **Exhibit 1** to everyone on the Class List. GECU and/or Class Counsel will provide CAC with all necessary information to mail the notice based on the Class List. **Exhibit 1** shall be mailed to all Potential Class Members. The Class Notice will also be made available on the Settlement Website and will be sent via email to all persons or entities on the Class List for whom GECU has email addresses.

The Class Notice shall be sent via email to all known email address and also by first class regular U.S. mail to the most recent address in GECU's records, unless before mailing a more recent address is obtained using the National Change of Address registry. The email subject line shall state "*Carr v. General Electric Credit Union* – Class Action

Settlement Notice” or substantially similar to it and shall include the content the same or substantially similar to **Exhibit 1**, and will include a link to the Settlement Website where a Claim Form may be submitted electronically. The envelope containing the Class Notices shall have printed on it “Settlement Notice” (or similar notation), have a return address, and have a general “address service requested” instruction to the United States Postal Service (“Postal Service”). In the event that a Class Notice is returned as undeliverable by the Postal Service, then CAC shall re-mail the Class Notice to the forwarding address, if any, disclosed to it by the Postal Service by virtue of the returned mail or to an appropriate address located using an update service recommended by CAC (in consultation with Class Counsel and Counsel for GECU) for the Court’s approval.

In addition, the Class will be notified through geotargeted Facebook ads and/or other social media posts for some or all of the time between the Notice Date and Claims Deadline. Such Social Media Notice shall be in a form substantially similar to **Exhibit 2** attached.

CAC will establish the Settlement Website, which will be live on or before the Notice Date.

3. Class Members’ Submission of Claim Forms

In order to receive a Settlement Payment, members of the Class are required to submit a Claim Form to CAC that complies with all of the requirements of this Agreement. The Claim Form shall be substantially similar to the Claim Form attached to

Exhibit 1. To be considered timely, completed Claim Forms must be postmarked, submitted electronically through the Settlement Website or received by CAC no later than 60 days from the Notice Date, which will be the Claims Deadline. CAC shall compile a list of all persons or entities submitting a Claim Form (“Master List”). Within 10 days after the Claims Deadline, CAC shall provide Class Counsel and Counsel for GECU with the Master List of all Claim Forms submitted. From the Master List, GECU will within 7 days determine whether or not the Claim Form qualifies as a Valid Claim and immediately send such Valid Claims List to Class Counsel for review. The Valid Claims List shall include a notation including each Valid Claim and the specific reason for rejecting any Claim Form.

As to the submission of Claim Forms, the following conditions apply:

- (i) Where more than one person or entity has signed a single mortgage and/or is otherwise designated as a borrower on a single mortgage loan, only one Claim Form may be submitted and only one Settlement Payment shall be paid for the signatories of that mortgage.
- (ii) Where more than one person or entity has purchased a property following a sale by the original mortgagor(s) to a mortgage for which GECU failed to file a timely release, only one Claim Form may be submitted and only one Settlement Payment shall be paid for the subsequent purchaser(s) of that property.

- (iii) No Claim Form shall be submitted on behalf of any other person or entity, except as specifically permitted hereunder. No person or entity may submit a Claim Form as a group or operating as a claim service (all claims submitted hereunder may be submitted only by the individual members of the Class, his or her guardian, legal representative, or appointed court representative in the event of death or disability). No claims may be submitted by attorneys or agents on behalf of any other person.
- (iv) If some, but not all, of the original mortgagors are dead or dissolved, then the Claim Form must be signed by the surviving mortgagor(s) and proof of death or dissolution of the deceased or dissolved mortgagor(s) must accompany the Claim Form. If all persons who executed a mortgage are no longer living or have been dissolved, the Claim Form must be signed by a court-appointed administrator or executor of the last surviving authorized signer.
- (v) If the persons who executed the mortgage are divorced, the Claim Form may be signed by one of the former spouses so long as he or she provides documentation from a court establishing that he or she received, as part of the decree of divorce or dissolution or other final settlement, the property described in the mortgage.

- (vi) A person who signed the mortgage may sign the Claim Form on behalf of any other person who signed the mortgage if the signatory provides a Power of Attorney establishing that he or she is authorized to sign on behalf of the other person.

4. Class Members' Opt-Out Right

Each member of the Class shall have the right to Opt-Out of this Settlement and not participate in the Settlement or be bound by the Agreement. Opt-Out rights may be exercised only individually by a member of the Class and not by any other person in a representative capacity. The Class Notice shall permit each member of the Class who wishes to Opt-Out of this settlement to do so by mailing with a postmark on or before the 60th day following the Notice Date a written notice of intention to Opt-Out (in no particular format, but which contains the words or phrases "opt-out," "opt out," "exclusion," or words or phrases to that effect indicating an intent not to participate in the settlement or be bound by this Agreement) to CAC and/or Class Counsel. Opt-Out notices shall not be rejected simply because they were inadvertently sent to the Court or GECU's Counsel so long as they are timely postmarked or received by the Court or GECU's Counsel. Members of the Class who seek to Opt-Out shall receive no benefit or compensation under this Agreement. If only one borrower on a mortgage with multiple borrowers opts out, or one title holder on property for which there are multiple title holders opts out, no borrower on that mortgage shall receive a benefit or compensation

under the Agreement. CAC shall give notice to GECU and Class Counsel of any Opt-Outs timely received and shall do so not less than fourteen (14) days before the Fairness Hearing.

5. Objection to the Settlement

Class Members may submit an objection to the proposed Settlement under Ohio Rule of Civil Procedure 23(E)(5). For the Objection to be valid, it must be filed with the Court within 60 days of the Notice Date and include each and all of the following:

- (a) The objector's name, mailing address, telephone number, and email address;
- (b) A statement including all legal and factual support for the Objection;
- (c) "Notice of Class Action Objection" at the top of the document and include the Action's case number and case name;
- (d) Be signed by the Objector and the Objector's legal counsel in the event the Objector is represented by legal counsel;
- (e) A statement regarding whether the Objector intends to appear at the Fairness Hearing; and,
- (f) A complete and accurate list of all objections the Objector has filed in any court of law within the past 5 years.

Any Objection failing to include the requirements expressed above will be deemed to be invalid. Furthermore, any Class Member objecting to the Settlement agrees to

submit to any discovery related to the Class Member's membership in the Class and the subject of the Objection.

C. Disbursement of Common Fund

1. Payment to Class Members

a. Valid Claims

Class Members submitting a Valid Claim will receive a pro rata distribution from the Common Fund after the deduction of the Settlement Administration Payment, Class Representative Incentive Awards, and Attorneys' Fees and Expenses, except that any and all costs of ascertaining the identity of Potential Class Members will be borne solely by GECU.

A Valid Claim is a Claim Form that is Postmarked, submitted on the Settlement Website, and/or sent to CAC at the address on the Claim Form or otherwise received by CAC by the Claims Deadline and which Claim Form is substantially completed, has the required documents submitted with it as necessary, and GECU and/or Class Counsel, after good-faith investigation, is able to determine that a release of the mortgage at issue was not recorded in the land records of the applicable county within 90 days after the date of full payoff.

Settlement Payments for Valid Claims will be made no later 21 days following the Effective Date, which is the Payment Deadline. All Settlement Payments shall be sent via first class mail-postage prepaid or possibly through electronic form of payment if the

Claim Form was submitted through the Settlement Website. All Settlement Payments on Valid Claims shall be mailed to the address provided on the Claim Form for claims that were submitted using a paper Claim Form and not electronically through the Settlement Website. Each check for a Settlement Payment shall conspicuously state: "VOID AFTER 90 DAYS FROM DATE ISSUED." The funds for checks not deposited within 90 days from the date the check was issued shall be paid via *cy pres* distribution to the Cincinnati Bar Foundation, 225 East Fifth Street, Second Floor, Cincinnati, OH 45202.

b. Rejected Claims

The Parties agree that CAC may reject any Claim Form filed for the following reasons:

- (i) The Claim Form was not signed by all mortgagors on the loan or account, or by all subsequent title holders to a property for which a release was not timely recorded, or appropriate documentation justifying the missing signature was not provided;
- (ii) The person or entity submitting the Claim Form does not satisfy the criteria for inclusion in the Class;
- (iii) The obligation secured by the mortgage was not paid in full or, if the secured obligation was a personal credit line account, the account was not closed;
- (iv) A satisfaction of mortgage was stamped recorded by the applicable county recorder within 90 days of the loan's payment in full, or if the loan was a

- personal line of credit, within 90 days of the latter of the loan's payment in full or closing of the account;
- (v) The claimant is the subject of a bankruptcy proceeding and the claim is property of, or has not been abandoned by the bankruptcy trustee; and
 - (vi) The claimant has previously been paid for a late filing of the release.

Claim Forms shall not be rejected simply because they were inadvertently sent to Class Counsel or the Court, if they are otherwise postmarked timely or received by Class Counsel or the Court before the Claims Deadline. Class Counsel shall promptly forward any claim forms received to CAC.

If any Claim Forms are received and are not signed by all mortgagors, Class Counsel shall make one attempt to contact the Class Member submitting the invalid Claim Form for the purpose of correcting any deficiency. To the extent Class Counsel is unable to reach the Class Member submitting the invalid Claim Form or the Class Member is unable to reasonably cure the invalid Claim Form, the Class Member submitting that invalid and/or deficient Claim Form will be excluded from receiving a Settlement Payment.

Any member of the Class who does not submit a Valid Claim, or whose claim is rejected and not cured, shall not be entitled to a Settlement payment but, shall nonetheless remain a member of the Class unless a timely Opt-Out is filed under this Agreement.

If there are two or more mortgagors on a mortgage and a Valid Claim is made, or if there are two or more title holders to property purchased subsequent to the failure to record a timely satisfaction, CAC will provide only one Settlement Payment to or on behalf of all mortgagors on that mortgage or subsequent title holders.

c. Contested Claims

In the event that Class Counsel contests the validity of a rejection of a Claim Form by CAC and the dispute cannot be resolved between Class Counsel, CAC and Counsel for GECU, they shall promptly submit the dispute to the assigned Judge in the Action and the Judge shall make a quick, summary, non-appealable decision as to whether the claim is valid. If the Court determines the claim is valid, then within 15 business days of receiving notice of the Judge's determination, CAC shall include the valid claim in the pro rata distribution of the Settlement Payment. If the Court determines the claim is invalid, CAC shall send notice of the invalidity determination to the claimant to Class Counsel within 5 business days of receiving notice of the Judge's determination.

If during the claims process, a claimant demonstrates to CAC and/or Class Counsel or CAC and/or Class Counsel determine that no release has been filed on the mortgage in question, then CAC and/or Class Counsel will notify GECU within 10 days of learning of the non-filing and GECU will file a release within 10 days, at GECU's expense.

2. Payment to the Plaintiffs

The Plaintiffs, each by and through counsel, shall apply to the Court for an award of \$1,500 as Class Representative Incentive Awards for representing the Class's interests for a combined total of \$3,000, in addition to any Valid Claim they may individually or jointly submit and be compensated for. The Plaintiffs shall submit an executed Form W-9 to CAC within 10 days of the Effective Date. Assuming timely submission of the Form W-9 to CAC, the Plaintiffs will receive the Class Representative Incentive Awards by the Payment Deadline. GECU shall not oppose this payment. The Class Representative Incentive Awards shall be paid by CAC to each Plaintiff from the Common Fund in the form of a check made payable to the respective Plaintiff and delivered to Class Counsel, or paid from CAC to the Class Representative if feasible.

3. Payment of Attorneys' Fees and Expenses

GECU agrees that Class Counsel should be paid, from the Common Fund, Attorneys' Fees and Expenses in an amount as approved by the Court in the action. GECU agrees not to object to Class Counsel's application for Attorneys' Fees and Expenses as long as the request for attorneys' fees does not exceed 33.33% or \$28,333.33 of the Common Fund. In applying for payment of attorneys' fees, Class Counsel agrees that it will base its request upon the contingent nature of this litigation, the benefits obtained for the Class through the creation of the Common Fund, and other relevant factors supporting their request for 33.33% percent of the Common Fund. Class Counsel

will submit a motion seeking attorneys' fees, reimbursement of litigation expenses, and class representative incentive awards separately, but on the same day as, any motion for final approval, no later than 7 days before the Fairness Hearing.

CAC shall pay the approved attorneys' fees and expenses to Class Counsel within 5 business days after the Effective Date. The information for the wire transfer, a tax identification number and/or Form W-9 from all payees will be provided to CAC with notice to Counsel for GECU, at least 10 days before to the Effective Date. The amount of attorneys' fees under this Paragraph shall not be contingent upon the number of Valid Claims. No attorneys' fees or expenses shall be paid if, for any reason, this Agreement fails or the later defined Effective Date does not occur. The validity of this Agreement shall not be conditioned upon or delayed by the Court's failure to approve the attorneys' fees and each party shall bear their own attorneys' fees and expenses until the Effective Date.

The Plaintiffs, Class Members, and Class Counsel shall not seek or accept an award of attorneys' fees or expenses in the Action except as set forth in this Paragraph.

4. Payment of Cost of Action

The payment of the Court Costs assessed in the Action shall be paid from the Common Fund or by Class Counsel and then reimbursed from the Common Fund with the first of such payments of Court Costs to the clerk of courts within 5 days of the Court's issuance of Final Approval and will be separate from the Common Fund.

5. Remainder Funds

Within 120 days after the Payment Deadline, Class Counsel will submit a Notice of Accounting identifying the status of the Common Fund and whether there are any funds remaining in the Common Fund.

If, after the deduction of Settlement Administration Payment, Class Counsel's attorneys' fees and expenses, and, the pro rata distribution of the Settlement Payment to Class Members submitting Valid Claims, there are any funds remaining in the Common Fund likely due to any Settlement Payment check(s) not being cashed/deposited within a timely manner, the remaining funds will be first applied to any outstanding Court Costs. If any funds remain after payment of any outstanding Court Costs, the remainder will be paid to the Cincinnati Bar Foundation so that the Common fund is exhausted. No portion of the Common Fund will revert to Defendant.

III. COURT APPROVAL OF SETTLEMENT FUND

A. Preliminary Approval Order

Class Counsel shall move the Court within 30 days of the execution in full of this Agreement for an order substantially in the form of **Exhibit 3**, attached hereto, which preliminarily approves this Agreement and incorporates its terms including all notice provisions. In seeking Preliminary Approval, Class Counsel will request that the Court establish a procedure for members of the Class to object to the settlement reached under the Agreement by filing with the Court, and serving a copy on Class Counsel and Counsel

for GECU, a written objection. All objections must be filed no later than 60 days after the Notice Date. The Parties will request that Preliminary Approval require that no objection be considered, and no person be heard on any objection or challenge to any aspect of this Agreement or the Action unless a timely written objection is filed. Persons who wish to appear or make argument or provide evidence at the Fairness Hearing must include in their timely filed objection a written notice of the person's intention to appear as well as a copy of all such evidence he or she (or their attorney) intends to introduce at the Fairness Hearing.

B. Final Approval

The Parties will request that the Court schedule the Fairness Hearing to seek final Court approval of this Agreement no earlier than 90 days after the Notice Date.

Class Counsel will file (and, subject to this Agreement, GECU will not oppose) a Motion requesting the Court to enter an order of final approval no later than 7 days before the Fairness Hearing. On or before the Fairness Hearing, Class Counsel will file with the Court a declaration verifying that (i) all notices required by the Agreement were sent and published, (ii) compliance with all notice procedures required by this Agreement, and (iii) compliance with the requirements to verify the validity of each Valid Claim.

CAC will submit a signed W-9 form to GECU on or before the date of the Fairness Hearing.

IV. EFFECTIVE DATE

The Effective Date of this Agreement shall be the date when each and all of the following conditions have occurred:

1. This Agreement has been signed by the Plaintiffs, Class Counsel, and Counsel for GECU;
2. The Court in the Action has granted Preliminary Approval in substantially the same form as **Exhibit 3**, attached;
3. The notices required by this Agreement have been mailed or otherwise distributed as required by this Agreement;
4. The Court has held the Fairness Hearing and has granted Final Approval; and,
5. The time for any member of the Class to appeal from the entry of the Final Approval has expired without filing of such an appeal; or, in the event an appeal has been filed, upon the conclusion of all appellate proceedings, including all deadlines for subsequent appeals or proceedings upon remand and all appeals have been resolved in favor of the agreement and against any member of the Class who brought the appeal.

If for any reason, the Effective Date does not occur, then all orders, judgments and dismissals to be entered pursuant to this Agreement shall be vacated, including the

Preliminary Approval Order and the granting of Final Approval and the Parties will be returned to the *status quo* prior to entering into this Agreement with respect to the Action as if this Agreement had never been entered.

V. RELEASE

As of the Effective Date, the Plaintiffs on their behalf, and on the behalf of each member of the Class who does not Opt-Out as provided for in this Agreement, acknowledge full satisfaction of, and fully, finally and forever settle with, release and discharge GECU, its past, present, or future parents, predecessors, successors, assignees, subsidiaries, affiliates, and each of its and their divisions, members, owners, shareholders, officers, directors, attorneys, insurers, agents, representatives, and employees of and from all Settled Claims. Subject to Court approval, all Class Members who do not Opt-Out as provided for in this Agreement shall be bound by the Agreement, and their Settled Claims released, and all of their claims shall be dismissed with prejudice and released even if they never received notice of the Action, this settlement, or submitted a Claim Form, including but not limited to, those members of the Class whose class notices and Claim Forms are returned as undeliverable and those for whom no current address can be found.

The Plaintiffs acknowledge, on their own behalf and on behalf of each member of the Class who does not Opt-Out as provided in the Agreement, that they are aware that they or members of the Class may hereafter discover facts in addition to or different from

those which they now know or believe to be true with respect to the subject matter of this Agreement, but it is their intention to, and they and the Class hereby do upon the Effective Date, fully, finally and forever settle and release any and all Settled Claims, known or unknown, suspected or unsuspected, contingent or matured, which now exist, may hereafter exist, or may heretofore have existed without regard to the subsequent discovery or existence of such different or additional facts.

Nothing in the Agreement shall in any way affect any member of the Class's obligation to repay any loan currently owned or serviced by GECU, or owned by GECU in the future, and nothing in this Agreement shall affect the ability of any person or entity, including GECU, to enforce the terms of any promissory note, deed of trust, mortgage, or any other document relating to or evidencing a current or future loan or banking agreement with any members of the Class.

VI. GENERAL PROVISIONS

The Plaintiffs and Class Counsel represent and warrant that they are not aware of any other lawsuits by anyone against GECU relating to or alleging any of the Settled Claims.

This Agreement constitutes the entire agreement between and among the Parties with respect to the settlement of the Action. This Agreement supersedes all prior negotiations and agreements and may not be modified or extended except by a document

in writing signed by the Plaintiffs, GECU, and their respective attorneys. Such written documents may be executed in counterparts.

The Parties shall execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement. The executing of documents must take place prior to the date scheduled for hearing on preliminary approval of this Agreement.

Each Party to this Agreement warrants that he, she, or it is acting upon his, her, or its independent judgment and upon the advice of his, her, or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other party, other than the warranties and representations expressly made in this Agreement.

This Agreement shall be construed, enforced, and administered in accordance with the laws of the State of Ohio. Neither this Agreement nor any document referred to herein, nor any documents prepared in connection herewith, or any action taken to implement this Agreement is, or may be construed as, or may be used as, an admission or concession by or against GECU on any point of fact or law, or of any alleged fault, wrongdoing or liability whatsoever. This Agreement may be executed in counterparts with signatures individually on the signature page below deemed as binding.

The Agreement shall not be offered or received in evidence or considered in any way in any action or proceeding against GECU in any court, administrative agency, or

other tribunal for any purpose whatsoever, other than to enforce the provisions of this Agreement and the provisions of any related document, agreement, or release.

The Plaintiffs represent and warrant that they maintain complete control over the disposition of their claims and have never assigned to anyone any part of the claims being released herein. In the event the Plaintiffs have assigned all or any portion of their claims to any assignee, lien holder, or statutory or other subrogee, and any assignee, lien holder, or statutory or other subrogee asserts claims against GECU relating in any way to the Action or the Settled Claims, the Plaintiffs agree to indemnify, defend and hold GECU harmless from such claims.

WHEREFORE, INTENDING TO BE BOUND, THE PARTIES, INDIVIDUALLY OR BY THEIR DULY AUTHORIZED AGENTS HAVE SIGNED THIS AGREEMENT AND RELEASE, EFFECTIVE THE LAST DAY SIGNED BY ALL THE PARTIES.

<p>General Electric Credit Union</p> <p><u>s/ Daniel C. Gibson (per email authority on 4.21.2020)</u></p>	<p>Valerie Carr</p> <p><u>Valerie Carr</u> Valerie Carr (Apr 21, 2020)</p>
<p>General Electric Credit Union's Counsel</p> <p><u>s/ Daniel C. Gibson (per email authority on 4.21.2020)</u></p>	<p>Kai Kreuger</p> <p><u>Kai Kreuger</u> kai.kreuger (Apr 21, 2020)</p> <p>Class Counsel</p> <p><u>s/ Terence R. Coates on 4/21/2020</u></p>

SETTLEMENT TIMELINE

<u>Date of Settlement Agreement</u>	
GECU Production of Class List	+14 days
Class Counsel Deadline to Review and/or Dispute the Content of the Class List	+28 days
<u>Grant of Preliminary Approval</u>	
Notice Date - Settlement Website activated	+30 days - On or before the Notice Date
Objection Deadline	+90 days
Opt-Out Deadline	+90 days
Claims Deadline	+90 days
Master List	+100 days
Valid Claim List	+110 days
<u>Fairness Hearing</u>	
Motion for Final Approval, and Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Incentive Awards	-7 days
CAC Provide Notice of Opt-Outs	-14 days
CAC's submission of signed W-9 form to GECU	+/-0 days
<u>Final Approval</u>	
Effective Date	+35 days
Payment of Attorneys' Fees and Expenses	+40 days
Payment Deadline	+56 days
Notice of Accounting	+ 176 days

EXHIBIT 1

NOTICE OF CLASS ACTION
SETTLEMENT

If you or the previous owner of your property satisfied a General Electric Credit Union mortgage from July 26, 2013 through April 21, 2020, you may be entitled to approximately \$250.00 or more.

A settlement has been reached in a class action lawsuit, *Carr v. General Electric Credit Union*, relating to GECU's failure to timely release some of its mortgages within 90 days of the mortgage being satisfied (*i.e.* paid in full) as required under Ohio Revised Code Section 5301.36 *et seq.*

Your receipt of this notice does not mean that you indeed are a class member of the proposed class. Instead, your receipt of this notice means that you ***might be*** a valid class member. To determine if you have a valid claim under the settlement, please complete the enclosed claim form and return it no later than [month day], 2020 to potentially receive approximately \$250.00 or more.

www.GECUsettlement.com

GECU Mortgage Release Settlement
c/o CAC Services Group, LLC
6420 Flying Cloud Drive, Suite 101
Eden Prairie, MN 55344

First-Class
Mail
US Postage
Paid
Permit #

«Barcode»

Postal Service: Please do not mark barcode

«First1» «Last1»

«co»

«Addr1»

«Addr2»4

«City», «St» «Zip»

«Country»

WHO IS A CLASS MEMBER?

In the lawsuit of *Carr v. General Electric Credit Union*, No. A1903532 (Hamilton Cty. Ohio Court of Common Pleas), you are a class member if you were the mortgagor (borrower) to a mortgage, or current owner of the real property to which the mortgage pertains, where GECU (or any predecessor or other entity acquired or merged with – or otherwise now part of GECU – including any affiliates, subsidiaries, and/or related lending institutions) was the mortgagee (lender) for real property in the State of Ohio, whereby the mortgage was satisfied (paid) in full and GECU failed to record an entry of mortgage satisfaction with the applicable county recorder’s office within 90 days of the date of mortgage satisfaction, from July 26, 2013 through April 21, 2020. This Class will be conditionally certified under the proposed settlement.

WHAT ARE THE SETTLEMENT BENEFITS AND TERMS?

Class Members who timely submit a Valid Claim (“Valid Claimants”) may receive a cash payment of approximately \$250.00 (or more or less depending on the number of Valid Claims). GECU has agreed to pay \$85,000.00 into a common fund settlement whereby Valid Claimants will receive their pro rata distribution of the common fund after the deduction of the payment to CAC Services Group, LLC who is the Settlement Administrator, class counsel’s attorneys’ fees and litigation expenses, and the class representative incentive payments. Considering the typical class action participation rate, it is expected that Valid Claimants will receive payments of approximately \$250.00 or more (“Settlement Payment”) per Valid Claim. The statutory damage amount available under Ohio Revised Code Section 5301.36(c) is \$250.00, so, depending on the rate of Valid Claims, it is expected that each Valid Claim will receive the full statutory damage amount or more.

WHAT ARE YOUR RIGHTS AND OPTIONS?

Submit a Claim Form. To qualify for a Settlement Payment, you must submit a timely Claim Form either in hard copy that is attached to this notice or by completing a Claim Form online at www.GECUsettlement.com (“Settlement Website”). Your Claim Form must be postmarked or submitted online no later than **[60 days from Notice Date]**.

Opt Out. You may exclude yourself from the settlement and retain your ability to sue GECU on your own by sending a written request for exclusion to the Settlement Administrator by **[60 days from Notice Date]**. If you do not exclude yourself, you will be bound by the settlement and give up your right to sue regarding the settled claims.

Object. If you do not exclude yourself, you have the right to object to the settlement. Written objections must be signed, postmarked by **[60 days from Notice Date]**, and provide the reasons for the objection. Please visit Settlement Website for more details.

Do Nothing. If you do nothing, you will not receive a Settlement Payment and will lose the right to sue regarding any issues relating to this action. You will be bound by the Court’s decisions.

Attend the Fairness Hearing. The Court will hold a Fairness Hearing on **[roughly 5 months after preliminary approval]**. All persons who timely object to the settlement by **[60 days from Notice Date]** may ask to appear at the Fairness Hearing.

Additional Case Information

What is a class action? A class action is a lawsuit whereby certain representatives of the potential class file a lawsuit on behalf of themselves and others similarly situated. Class actions permit individuals with potentially smaller individual damages to pursue their individual claims together in one proceeding against a common defendant or defendants.

Who are the class representatives? Valerie Carr and Kai Krueger are the named plaintiffs and class representatives in this lawsuit. They have stayed engaged in representing the class's interests throughout this litigation and have reviewed and approved of the terms and conditions of the proposed settlement.

Who are the attorneys for the plaintiffs and the proposed class? Class Counsel are Terence R. Coates, Justin C. Walker, W.B. Markovits, and Zachary C. Schaengold of Markovits, Stock & De Marco, LLC, 3825 Edwards Road, Suite 650, Cincinnati, OH 45209; (513) 651-3700, and Matthew C. Metzger of Wolterman Law Office, LPA. This group of attorneys has decades of experience handling class action lawsuits and are renowned in Southwest Ohio for handling class actions.

Do I have any obligation to pay attorneys' fees or expenses? No. The attorneys' fees and expenses will be awarded and approved by the Court and paid from the \$85,000.00 common fund. The attorneys' fees will be in an amount not to exceed 1/3 of the \$85,000.00 common fund (\$28,333.33). The litigation expenses are expected not to exceed \$1,000.00 of the common fund.

Who is the Settlement Administrator? CAC Services Group, LLC will act as the Settlement Administrator: [Phone]

If I submit an objection to the settlement, what must it include? Any class member may object to the proposed settlement. All objections must include all of the following: (a) the objector's name, mailing address, telephone number, and email address; (b) a statement including all legal and factual support for the objection; (c) "Notice of Class Action Objection" at the top of the document and include the class action case number and name; (d) be signed by the objector and the objector's legal counsel in the event the objector is represented by individual legal counsel; (e) a statement regarding whether the objector intends to appear at the Fairness Hearing; and (f) a complete and accurate list of all objections the objector has filed in any court of law within the past 5 years. Any objection shall be filed with the Court and a copy must be served upon Class Counsel and GECU's counsel no later than [60 days from Notice Date].

How are potential class members being notified of this Settlement? The class action settlement notice is being issued to class members in three different methods: (1) via email to all potential class members for whom GECU had email addresses; (2) via regular U.S. Mail such as this notice to potentially all persons or entities who might be class members; and (3) via geotargeted Facebook advertisements to certain zip codes throughout Southwest Ohio, which is where GECU's mortgages exist(ed).

Why am I receiving this notice? You are receiving this notice because you previously had a GECU mortgage that was satisfied or you are the current property owner of real property that previously had a GECU mortgage that was satisfied, between July 26, 2013 and April 21, 2020.

How will the \$85,000.00 settlement be distributed? The \$85,000.00 common fund will be used to pay the Settlement Administrator's fees and expenses, Class Counsel's attorneys' fees and expenses, the class representatives incentive awards, with the remainder being divided pro rata among the number of Valid Claimants. To the extent any Valid Claimant does not timely deposit the Settlement Payment within 90 days of the issuance of the Settlement Payment, any remaining funds in the common fund will be forwarded to the Cincinnati Bar Foundation. It is expected that no funds or a small percentage of the common fund will be paid to the Cincinnati Bar Foundation.

Does my completion of a Claim Form mean that I am guaranteed a Settlement Payment? No. This notice, either via email or regular U.S. mail, is being sent to all potential class members meaning all individuals or entities who satisfied a GECU mortgage from July 26, 2013 to April 21, 2020 or who are the current owners of real property where a GECU mortgage was satisfied from March 23, 2013 to April 21, 2020. GECU and Class Counsel will review each claim submitted to determine if the claim form indeed relates to a GECU mortgage that was filed more than 90 days after it was satisfied, which is a violation of Ohio Revised Code section 5301.36.

What if some or all mortgagors or property owners are dead or the parties with standing to submit a claim have divorced? If a property owner is deceased, the remaining property owner if one exists, or the deceased property owner/borrower's executor, court-appointed administrator, or last surviving authorized signer may submit a claim. If the borrowers or current property owners are divorced, only one spouse may submit a claim for consideration for a valid claim.

When is the Fairness Hearing? The fairness hearing, where the Court will determine if the settlement is fair, reasonable, and adequate, will be conducted on **roughly 5 months after preliminary approval**.

Who is the Judge overseeing this settlement? Judge Thomas O. Berdion, Hamilton County Court of Common Pleas.

Where may locate a copy of the settlement agreement and other important case documents? www.GECUsettlement.com

This Notice is a summary of the proposed settlement. If you wish, you may find more details about the settlement on the website: www.GECUsettlement.com. DO NOT CONTACT THE COURT.

CLAIM FORM

YOUR NAME(S): _____

IF YOU ARE NOT THE BORROWER OR CURRENT PROPERTY OWNER, WHAT IS YOUR RELATIONSHIP TO THE BORROWER OR PROPERTY OWNER: _____

EMAIL: _____ PHONE: _____

ADDRESS (INCLUDING COUNTY) OF THE PROPERTY THAT WAS SUBJECT TO THE MORTGAGE FOR WHICH YOU ARE MAKING THIS CLAIM: _____

(If some or all original signers of the mortgage are dead, or if the original signers of the mortgage are divorced, then you must provide proof of your capacity to make a claim, as described in the Notice under the question “What if some or all mortgagors or property owners are dead or the parties with standing to submit a claim have divorced?”. Additionally, if you are asserting a claim on behalf of another person who signed a mortgage, you must provide a Power of Attorney establishing that you are authorized to sign on behalf of the person for whom you are asserting a claim).

I request payment as provided under the proposed settlement, and hereby agree to the terms of the release stated below:

Signature: _____

Signature: _____

Release: I/we, under the proposed settlement, release any claims related to the timing of the recording of the mortgage satisfaction relating to the GECU mortgages that were untimely released from July 26, 2013 through April 21, 2020. I/we release GECU, its past, present or future parents, predecessors, successors, assignees, subsidiaries, and agents of any kind from any and all Settled Claims as defined in the Settlement Agreement.

CLAIM DEADLINE: Claims must be postmarked or received by [60 days from Notice Date].

Please contact the Settlement Website, www.GECUsettlement.com if you have any questions.

Claim ID: 1234567

BUSINESS REPLY MAIL
FIRST-CLASS MAIL PERMIT

POSTAGE WILL BE PAID BY ADDRESSEE

GECU Mortgage Release Settlement
c/o CAC Services Group, LLC
6420 Flying Cloud Drive, Suite 101
Eden Prairie, MN 55344

NO POSTAGE
NECESSARY IF
MAILED
IN THE
UNITED STATES

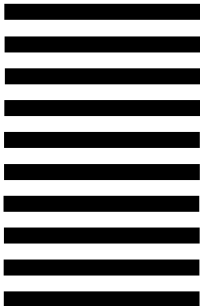


EXHIBIT 2



General Electric Credit Union Class Action Settlement

Sponsored - 

Did you or the previous owner of your real property have a General Electric Credit Union mortgage?




GECUSETTLEMENT.COM

Does General Electric Credit Union owe you a cash payment?

[Learn More](#)

 Like

 Comment


 Share

EXHIBIT 3

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

VALERIE CARR, *et al.* : CASE NO. A 1903532
:
Plaintiffs, : Judge Thomas O. Beridon
:
v. : [PROPOSED] ORDER GRANTING
: PRELIMINARY APPROVAL OF
GENERAL ELECTRIC CREDIT : CLASS ACTION SETTLEMENT
UNION, :
:
Defendant. :

Before this Court is Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement (“Motion”). The Court has reviewed the Motion and Settlement Agreement between Plaintiffs Valerie Carr and Kai Krueger and Defendant General Electric Credit Union. After conducting a hearing on the request for preliminary approval on April 28, 2020, this Court grants the Motion and preliminarily concludes that the proposed Settlement is fair, reasonable, and adequate.

IT IS HEREBY ORDERED THAT:

1. The Settlement Agreement,¹ including the proposed notice plan and forms of notice to the Class, the appointment of Plaintiffs as the Class Representatives, the appointment as Counsel for Plaintiffs as Class Counsel, the approval of CAC Services Group, LLC as the Settlement Administrator, the establishment of a \$85,000.00 Settlement Fund, and the proposed method of distribution from the Settlement Fund, are fair,

¹ All capitalized terms used in this Order shall have the same meanings as set for in the Settlement Agreement.

reasonable, and adequate, subject to further consideration at the Fairness Hearing described below.

2. The Court does hereby preliminarily and conditionally approve, for settlement purposes, the following Class:

all persons or entities who were the mortgagor to a mortgage or current owner of the real property to which the mortgage pertains where GECU (or any predecessor or other entity acquired or merged with – or otherwise now part of GECU – including any affiliates, subsidiaries, and/or related lending institutions) was the mortgagee for real property in the State of Ohio, whereby the mortgage was satisfied in full and GECU failed to record an entry of mortgage satisfaction with the applicable county recorder's office within 90 days of the date of mortgage satisfaction, from July 26, 2013 through April 21, 2020.

3. Based on the information provided: the Class is ascertainable; it consists of 500 or more Class Members satisfying numerosity; there are common questions of law and fact including whether GECU filed untimely mortgage releases under R.C. 5301.36 *et seq.* satisfying commonality; the proposed Class Representatives' claims are typical in that they are members of the Class and allege they have been damaged by the same conduct as the other members of the Class; the proposed Class Representatives and Class Counsel fully, fairly, and adequately protect the interests of the Class; questions of law and fact common to members of the Class predominate over questions affecting only individual members for settlement purposes; and a class action for settlement purposes is superior to other available methods for the fair and efficient adjudication of this Action.

4. The Court appoints Plaintiffs Valerie Carr & Kai Krueger as the Class

Representatives for the Class.

5. The Court appoints Terence R. Coates, Justin C. Walker, W.B. Markovits, and Zachary C. Schaengold of Markovits, Stock & DeMarco, LLC and Matthew C. Metzger of Wolterman Law Office, LPA as Class Counsel for the Class.

6. The Court appoints CAC Services Group, LLC as the Settlement Administrator.

7. A Fairness Hearing shall be held before the Court on _____, 2020 at _____ a.m. for the following purposes:

- a. To determine whether the proposed Settlement on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate to the Class and should be approved by the Court;
- b. To determine whether to grant Final Approval, as defined in the Settlement Agreement;
- c. To determine whether the notice plan conducted was appropriate;
- d. To determine whether the claims process under the Settlement is fair, reasonable and adequate and should be approved by the Court;
- e. To determine whether the requested Class Representative Incentive Awards, Class Counsel's attorneys' fees and litigation expenses, and the Settlement Administrator's fees and expenses should be approved by the Court;

f. To determine whether the planned allocation of Settlement Payments and other distributions from the Settlement Fund are fair, reasonable, and adequate.

g. To rule upon such other matters as the Court may deem appropriate.

8. The Court approves, as to the form and content, the Class Notice (including the Claim Form) and the Social Media Notice. Furthermore, the Court approves the implementation of the Settlement Website and the proposed methods of emailing, mailing, distributing, and/or otherwise publishing of the various notices substantially in the form as noted on pages 12-13 of the Settlement Agreement, and finds that such notice plan meets the requirements of Civ.R. 23 and due process, and is the best notice practicable under the circumstances, and shall constitute due and efficient notice to all persons or entities entitled to notice.

9. The Court preliminarily approves the following Timeline for the purposes of conducting the notice plan, settlement administration, claims processing, and other execution of the proposed Settlement:

SETTLEMENT TIMELINE

<u>Date of Settlement Agreement</u>	
GECU Production of Class List	+14 days
Class Counsel Deadline to Review and/or Dispute the Content of the Class List	+28 days
<u>Grant of Preliminary Approval</u>	
Notice Date	+30 days

- Settlement Website activated	- On or before the Notice Date
Objection Deadline	+90 days
Opt-Out Deadline	+90 days
Claims Deadline	+90 days
Master List	+100 days
Valid Claim List	+110 days
<u>Fairness Hearing</u>	
<u>Motion for Final Approval, and Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Incentive Awards</u>	<u>-7 days</u>
<u>CAC Provide Notice of Opt-Outs</u>	-14 days
CAC's submission of signed W-9 form to GECU	+/-0 days
<u>Final Approval</u>	
Effective Date	+35 days
Payment of Attorneys' Fees and Expenses	+40 days
Payment Deadline	+56 days
Notice of Accounting	+ 176 days

10. In order to be fielded as a timely claim under the Settlement, all Claim Forms must be either submitted or received by the Settlement Administrator no later than 60 days after the Notice Date. Class Counsel and the Settlement Administrator will ensure that all specific dates and deadlines are added to the Class Notice and posted on the Settlement Website after this Court enters this Order in accordance with the timeline being keyed on the grant of this Order.

11. Additionally, any and all requests to opt out or object to the proposed Settlement must be received no later than 60 days after the Notice Date. Any request to

opt out of the Settlement should, to the extent possible, contain words or phrases such as “opt-out,” “opt out,” “exclusion,” or words or phrases to that effect indicating an intent not to participate in the settlement or be bound by this Agreement) to CAC and/or Class Counsel. Opt-Out notices shall not be rejected simply because they were inadvertently sent to the Court or Class Counsel so long as they are timely postmarked or received by the Court or GECU’s Counsel. Members of the Class who seek to Opt-Out shall receive no benefit or compensation under this Agreement.

12. Class Members may submit an objection to the proposed Settlement under Ohio Rule of Civil Procedure 23(E)(5). For the Objection to be valid, it must be filed with the Court within 60 days of the Notice Date and include each and all of the following:

- (a) The objector’s name, mailing address, telephone number, and email address;
- (b) A statement including all legal and factual support for the Objection;
- (c) “Notice of Class Action Objection” at the top of the document and include the Action’s case number and case name;
- (d) Be signed by the Objector and the Objector’s legal counsel in the event the Objector is represented by legal counsel;
- (e) A statement regarding whether the Objector intends to appear at the Fairness Hearing; and,
- (f) A complete and accurate list of all objections the Objector has filed in any court of law within the past 5 years.

Any Objection failing to include the requirements expressed above will be deemed to be invalid. Furthermore, any Class Member objecting to the Settlement agrees to submit to any discovery related to the Objection.

13. All Class Members shall be bound by all determinations and judgments in this Action concerning the Settlement, including, but not limited to, the release provided for in the Settlement Agreement, whether favorable or unfavorable, except those who timely and validly requested exclusion from the Class. The persons and entities who timely and validly requested exclusion from the Class will be excluded from the Class and shall not have rights under the Settlement Agreement, shall not be entitled to submit any Claim Forms, and shall not be bound by the Settlement Agreement or any Final Approval order as to GECU in this Action.

14. Pending final determination of whether the Settlement Agreement should be approved, Plaintiffs are barred and enjoined from commencing or prosecuting any claims asserting any of the Settled Claims against GECU.

15. The Court reserves the right to adjourn the date of the Fairness Hearing without further notice to the potential Class Members, and retains jurisdiction to consider all further requests or matters arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modification as may be agreed to by the Parties or as ordered by the Court, without further notice to the Class.

Hon. Thomas O. Beridon

EXHIBIT C

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

VALERIE CARR, *et al.* : CASE NO. A 1903532
 :
 :
 Plaintiffs, : Judge Thomas O. Beridon
 :
 :
 v. :
 :
 : AFFIDAVIT OF TERENCE R.
 GENERAL ELECTRIC CREDIT : COATES IN SUPPORT OF
 UNION, : PRELIMINARY APPROVAL
 :
 :
 Defendant. :
 :

STATE OF OHIO)
) SS:
 COUNTY OF HAMILTON)

I, Terence R. Coates, being first duly sworn and cautioned, depose and state as follows:

1. I am the managing partner of the law firm Markovits, Stock & DeMarco, LLC (“MSD”) and have held this position from January 1, 2016 to the present. I am one of the proposed Class Counsel in this Action representing the Plaintiffs and the proposed Class and have monitored my firm’s participation in this matter from July 2019 to the present. The contents of this Affidavit are based upon my own personal knowledge, the events of this litigation, and my review of my firm’s business records and information which are maintained on a routine basis.

2. I attended Wittenberg University in Springfield, Ohio and graduated in 2005 with a B.A. in History and a B.A. in Sociology. I then received my law degree in 2009 from Thomas M. Cooley Law School in Lansing, Michigan, with a focus on litigation. I have been licensed to practice law in the State of Ohio since 2009.

3. I am a member in good standing of the Ohio Bar and have never been the subject of any disciplinary proceeding.

4. I am admitted to the United States District Court for the Southern and Northern Districts of Ohio, and have been admitted pro hac vice to several federal district courts throughout the United States.

5. My first employer in my capacity as an attorney was Waite, Schneider, Bayless & Chesley, Co., L.P.A., which was one of the nation's preeminent plaintiffs' litigation law firms. Within a few months of receiving my law license, I took the deposition of the primary 30(B)(5) witness in an Ohio statewide class action against a nationwide auto insurance carrier. I have remained heavily involved in complex commercial lawsuits and class actions from the start of my career to the present. From 2014 to the present, I have been recognized as a Super Lawyers® Rising Star with my current primary area of recognition being Class Action/Mass Tort cases.

6. In addition to participating in the actual litigating of class action lawsuits, I have taken on the role of being the primary person at MSD focused on working with settlement administrators to implement notice programs that are designed to gain as much class participation as possible. Beyond the critical task of selecting a successful settlement administrator, I have paid particular attention to determining how to get direct notice to class members to the extent possible and secondarily, to help implement a notice program that provides notice through as many mainstream mediums as possible for the purpose of informing potential class members about class certification and/or a class action settlement.

7. One great example of an effective notice program is the *Williams v. Duke Energy* case that received final approval from Chief United States District Judge Edmund Sargus in 2016. I was the primary person at MSD working with the settlement administrator to implement the notice program in the *Duke* case. By the time of the fairness hearing in the *Duke* case, over 20% of the potential class members had filed claims. This is an astounding number for class

participation given that a 10% class participation rate in class actions is generally deemed to be a high participation rate.

8. I have served as counsel on numerous notable class actions and have substantial experience litigating class actions and complex civil litigation. Below is a summary of a few of the complex litigations and class actions I have participated in during my career:

(a) ***Collins Inkjet v. Eastman Kodak*** – I served as counsel for Plaintiff Collins Inkjet, a local commercial ink provider, against Eastman Kodak for an antitrust tying claim resulting in United States District Judge Michael R. Barrett granting a preliminary injunction against Kodak – a decision that was affirmed by the Sixth Circuit Court of Appeals: *Collins Inkjet Corp. v. Eastman Kodak Co.*, 781 F.3d 264 (6th Cir. 2015);

(b) ***Bowling v. Pfizer***, No. C-1-91-256, United States District Court for the Southern District of Ohio. I have assisted as a member of Class Counsel over the past three years to disburse substantially all of the remaining settlement funds (approximately \$18 million) to an international class of heart valve recipients and their spouses. In this case, I worked closely with the settlement administrator to execute the supplemental notice to class members identifying that the remaining funds that would be distributed to the class and to issue payments consistent with the supplemental notice;

(c) ***Day v. NLO, Inc.***, No. C-1-90-67, Southern District of Ohio – I am assisting as a member of the Class Counsel team for certain former workers from the Fernald nuclear weapons facility. My primary role at this point is to remain as the youngest member of the Class Counsel team in order to be available to represent the Class through the expiration of the medical monitoring program, which under the settlement in that case must continue until the last Class Member dies;

(d) *In re Fannie Mae Securities Litigation*, No. 1:04-cv-1639, United States District Court, District of Columbia – I helped represent the Ohio public pension funds as Lead Plaintiffs in a Section 10b-5 class action resulting in a \$153 million settlement;

(e) *In re NCAA Student-Athlete Name & Likeness Licensing Litigation*, No. 4:09-cv-1967, United States District Court, Northern District of California – I served as counsel for NCAA, Olympic, and NBA legend Oscar Robertson in antitrust claims against the National Collegiate Athletic Association, Collegiate Licensing Company, and Electronic Arts resulting in a \$40 million settlement with Electronic Arts and Collegiate Licensing Company and the Court issuing a permanent injunction against the NCAA for unreasonably restraining trade in violation of antitrust law;

(f) *In re Toyota Motor Corp., Unintended Acceleration Marketing, Sales Practices & Products Liability Litigation*, MDL No. 2151, United States District Court, Central District of California – I served as counsel for the economic loss class action plaintiffs against Toyota that resulted in a settlement valued at \$1.6 billion. Notably, I prepared potential class representatives and participated in the defense of their depositions;

(g) *Linneman v. Vita-Mix Corp.*, No. 15-cv-748, Southern District of Ohio – I participated as a member of Class Counsel for a nationwide class of blender purchasers resulting in a settlement whereby eligible class members received blade assembly replacements or gift cards;

(h) *Mullins v. Southern Ohio Pizza, Inc.*, No. 1:17-cv-426, Southern District of Ohio – I assisted as a member of Class Counsel in a \$1.42 million settlement for 172 pizza delivery drivers in Southwest Ohio;

(i) *Shin v. Plantronics, Inc.*, No. 5:18-cv-05626, Northern District of California – I participated as a member of Class Counsel for headphone purchasers in a nationwide class action settlement involving cash settlement benefits to eligible class members; and,

(j) *Williams v. Duke Energy*, No. 1:08-cv-0046, United States District Court, Southern District of Ohio – I served as counsel for Plaintiffs against Duke Energy in a complex antitrust and RICO class action resulting in the court granting final approval of an \$80.875 million settlement.

9. As demonstrated by the above, I have participated as counsel in cases across the United States that generally involve complex class action litigation.

INVOLVEMENT IN THIS ACTION

10. As Counsel in this litigation, I have been intimately involved in all aspects of the case, including:

- a. Communicating with the Plaintiffs before the filing of this Action and throughout its pendency;
- b. Overseeing my firm's handling of this Action;
- c. Drafting and reviewing all relevant filings on behalf of Plaintiffs and the Class, including not limited to, the Complaint, the Amended Complaint, the Memorandum in Opposition to GECU's Motion to Dismiss, the Motion for Class Certification, the Settlement Agreement, the Class Notice, the Social Media Notice, and the Motion for Preliminary Approval;
- d. Selecting and managing the proposed Settlement Administrator, CAC Services Group, LLC;

- e. Working with CAC, the Settlement Administrator, to prepare and finalize the content of the notice program materials;
- f. Developing and implementing case strategy;
- g. Working with co-counsel to efficiently divide tasks to be performed for the benefit of the Class; and,
- h. Drafting and finalizing filings for preliminary approval.

11. Because this litigation and settlement process remains on-going, I anticipate that my future involvement implementing the settlement will include the following tasks:

- a. Reviewing and responding to any objections;
- b. Drafting additional filings related to the proposed request for final approval;
- c. Overseeing and managing the ongoing notice program;
- d. Overseeing and managing the claims process;
- e. Preparing for and attending the Fairness Hearing;
- f. Interacting and corresponding with GECU's counsel; and,
- g. Responding to class member inquiries.

12. Class Counsel, consisting myself, Justin C. Walker, W.B. Markovits, and Zachary C. Schaengold of MSD and Matthew C. Metzger of Wolterman Law Office, LPA, have represented Plaintiffs on a contingency fee basis in this Action and have received no payment for legal services rendered to date.

CLASS COUNSEL'S DUE DILIGENCE

13. My staff extensively reviewed local Ohio county recorder mortgage release documents for any untimely GECU mortgage releases and reviewed GECU's production of several lists of GECU mortgages from July 26, 2013 through the end of 2019. The two lists of data GECU

produced consisted of a random sample of 100 GECU mortgage satisfied since July 26, 2013 and a list including the number of GECU mortgages per county.

14. Based on the information produced, 95.5% of GECU's mortgages satisfied were within Hamilton, Butler, Clermont and Warren counties.

15. My firm conducted testing of GECU's mortgages, including the filing of mortgage releases within the Class Period. This testing identified that GECU's untimely filed mortgage release error rate was 5% or less for each year within the Class Period with a few of those years being around 2%.

16. The Settlement total of \$85,000.00 is approximately 80% of the total project maximum liability GECU would have under this class action in that it assumes a 5% error rate per year for the purposes of efficiency and includes the potential two-sided liability for violations of R.C. 5301.36 (borrower and current owner as revised in 2015).

17. Class Counsel negotiated the terms of the Settlement Agreement and believe the Settlement to be fair, reasonable, and adequate and in Plaintiffs' and the Class's best interests.

THE NOTICE PLAN

18. The proposed notice plan is robust under the circumstances. The Class Notice will be mailed and/or emailed to potential Class Members, the Social Media Notice will be strategically posted on Facebook between the Notice Date and the Claims Deadline, and the Settlement Website will provide an online platform for potential Class Members to access important case information and to potentially submit Claims Forms. The email notice will include a live link to the Settlement Website to permit potential Class Members to submit a Claim Form online.

19. GECU informed Class Counsel that GECU possesses relevant email addresses for approximately 1,600 potential Class Members.

20. The Social Media Notice contains a direct link to the Settlement Website and gives potential Class Members the ability to submit the Claim Form online.

21. My firm will post information about this Settlement on MSD's website (www.msdllegal.com).

22. The Class Notice will be issued to the roughly 5,000 potential Class Members understanding that the percentage of actual Class Members is likely 5% of that total or less, or about 250 or more Class Members.

23. The Parties agreed to notify all GECU mortgagors and related property owners for efficiency purposes to limit the cost and delay associated with reviewing each county recorder's website or public records to determine the specific number of GECU's violations of R.C. 5301.36.

ALLOCATION OF THE SETTLEMENT FUND

24. The amount of each Settlement Payment will be calculated by taking the remainder in the Settlement Fund after the deduction of the Settlement Administrator's fees and expenses, the Class Representatives' Incentive Awards, Class Counsel's attorneys' fees and expenses, and any outstanding case costs, and dividing that remaining amount by the number of Valid Claims.

25. CAC will permit the Settlement Benefits to be disbursed via electronic payment if the Class Member submitted the Valid Claim online and selected the option of being paid electronically and the claim was determined to be a Valid Claim.

PLAINTIFFS' EFFORTS IN THIS ACTION

26. Plaintiffs Valerie Carr and Kai Krueger have been zealous advocates for the Class throughout this Action. Plaintiffs reviewed the complaint before the filing of this Action and have remained informed about this matter throughout the case. Importantly, GECU attempted to buy off Plaintiffs by offering \$250.00 in an attempt to moot Plaintiffs' individual claim. Putting the

Class's interests before their own, Plaintiffs rejected GECU's \$250.00 offer and took the risk of having the entire case dismissed if the Court were to have granted GECU's motion to dismiss. As indicated in the Settlement Agreement, Plaintiffs believe the terms of the proposed Settlement are fair, reasonable, and adequate and in the best interests of the Class.

27. Class Counsel and the Plaintiffs opine that the proposed Settlement is fair, reasonable and adequate, and that it provides substantial cash benefits to all Class Members submitting Valid Claims.

CAC'S QUALIFICATIONS

28. I previously worked with CAC in the *Bowling v. Pfizer* matter referenced in Paragraph 8(b) above wherein CAC assisted in distributing roughly \$16 million in settlement funds to class members within the United States and internationally. In my experience, CAC is a very competent settlement administrator and has the credentials and experience to act as the Settlement Administrator in this Action.

LITIGATION EXPENSES

29. I reviewed all the contemporaneous expense records and individual receipts for MSD related to this Action. MSD's expense total is \$755.94. My firm has not been reimbursed for these litigation expenses to date.

FURTHER AFFIANT SAYETH NAUGHT.

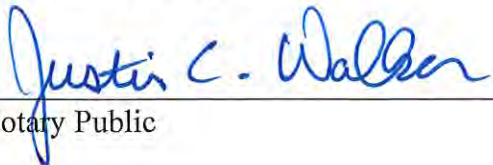
Executed on April 21, 2020.


TERENCE R. COATES, ESQ.

Sworn to before me, a Notary Public, this 21st day of April, 2020.



Justin Charles Walker
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration Date. Section 147.03 O.R.C.


Justin C. Walker
Notary Public