

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

TRACY FRY, individually and on behalf  
of all similarly situated,

Plaintiff,

v.

MIDFLORIDA CREDIT UNION,  
Defendant.

Case No. 8:15-cv-2743-RAL-TGW

**SUPPLEMENTAL  
DECLARATION OF ANDREW  
PERRY ON BEHALF OF  
SETTLEMENT  
ADMINISTRATOR REGARDING  
NOTICE**

I, Andrew Perry declare:

1. I am employed as Project Manager by Kurtzman Carson Consultants (“KCC”), a nationally-recognized notice and claims administration firm located at 462 S. 4th Street, Louisville, KY 40202. KCC was retained as the Settlement Administrator in this case, and as the project manager, I oversaw the administrative services provided. I submit this supplemental declaration regarding the *Tracy Fry v. MidFlorida Credit Union* Notice Program.

2. On October 30, 2017, the Defendant provided an Excel file containing the names and mailing addresses for 32,086 Class Members. KCC reviewed and scrubbed the data and processed the names and addresses through the United States Postal Service (“USPS”) National Change of Address database. KCC identified and removed 23 duplicate records. Therefore, the total unique number of Class Members is 32,063.

3. On November 10, 2017, KCC established a website for this settlement at [www.midfloridacreditunionoverdraftclassaction.com](http://www.midfloridacreditunionoverdraftclassaction.com). On the website, visitors

can download the Notice, Settlement Agreement, Preliminary Approval, and also get answers to frequently asked questions.

4. On November 10, 2017, KCC sent the Email Notice to 11,369 Class Members. A true and correct copy of the Email Notice is attached hereto as Exhibit A.

5. On November 10, 2017, KCC mailed the Long-Form Notice to 20,693 Class Members. A true and correct copy of the Long Form Notice is attached hereto as Exhibit B.

6. To date, 843 unique Class Members had undeliverable email addresses. KCC ran a search and updated the email address for Class Members whose Email Notice was returned as undeliverable, and updated and successfully resent the Email Notice to 296 Class Members. It is estimated that of the 11,369 unique Email Notices that were sent, 10,822 were not returned as undeliverable, for an approximate Email delivery percentage of 95.19%.

7. To date, KCC mailed the Long Form Notice to 547 unique Class Members who had their Email Notice returned as undeliverable and failed to have their email address successfully updated in the search ran by KCC.

8. To date, 1,760 unique Class Members had their Long Form Notices returned as undeliverable. KCC ran a search for an updated address for Class Members whose Long Form Notice was returned as undeliverable, and updated and remailed the Long Form Notice to 1,222 Class Members. It is estimated that of the 21,240 unique Long Form Notices that were sent, 20,469 were not returned as undeliverable, for an approximate Long Form Notice delivery percentage of 96.37%.

9. To date, of the 32,062 Class Members that were sent Notice, approximately 31,291 Class Members ultimately received a Notice that was not returned as undeliverable, for an overall delivery rate of approximately 97.60%.

10. The deadline to submit a request for exclusion (“opt-out”) was December 11, 2017. To date, KCC has received 7 timely opt-outs. A list of all individuals opting out of the settlement is attached hereto as Exhibit C.

11. The deadline to submit an objection to the settlement is January 29, 2018. To date, KCC has received no objections.

12. Through December 2017, KCC’s estimated costs for administration are \$37,541.79. KCC’s cost will not to exceed \$68,500 for administration of the Settlement.

I declare under penalty of perjury under the laws of the State of Kentucky that the foregoing is true and correct and that this declaration was executed this 12<sup>th</sup> day of January, 2018, at Louisville, Kentucky.

A handwritten signature in cursive script, appearing to read "Andrew Perry", is written over a horizontal line.

Andrew Perry

# **EXHIBIT A**

## Andrew Perry

---

**From:** Class Action Claims Administrator  
<donotreply@midfloridacreditunionoverdraftclassaction.com>  
**Sent:** Friday, November 10, 2017 8:49 PM  
**To:** Andrew Perry  
**Subject:** Important - Notice of Class Action Settlement - Fry v. MidFlorida Credit Union

Claim#: KCC00001  
Andrew Perry  
1234 Main St.  
Anywhere, USA 55555

Tracy Fry  
v.  
MidFlorida Credit Union

### NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

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

**IF YOU HAD A CHECKING ACCOUNT WITH MIDFLORIDA CREDIT UNION (“MIDFLORIDA”) AND YOU WERE CHARGED AN OVERDRAFT FEE BETWEEN NOVEMBER 24, 2010 AND JANUARY 15, 2016, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT**

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

<b>SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION</b>	
<b>APPROVE THE SETTLEMENT AND RECEIVE A PAYMENT; YOU NEED NOT DO ANYTHING</b>	Unless you exclude yourself from the settlement (see the next paragraph), then you will receive a check or a credit to your account (depending on whether you are still a member of MidFlorida).
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT; RECEIVE NO PAYMENT BUT RELEASE NO CLAIMS</b>	You can choose to exclude yourself from the settlement or “opt out.” This means you choose not to participate in the settlement. You will keep your individual claims against MidFlorida but you will not receive a payment. If you want to recover against MidFlorida, then you will have to file a separate lawsuit or claim.
<b>OBJECT TO THE SETTLEMENT</b>	You can file an objection with the Court explaining why you believe the Court should reject the settlement. If your objection is overruled by the Court, you <u>will</u> receive a payment and you <u>will not</u> be able to sue MidFlorida for the claims asserted in this litigation. If the Court agrees with your objection, then the settlement may not be approved.

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

### BASIC INFORMATION

---

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

---

The lawsuit that is being settled is entitled *Tracy Fry v. MidFlorida Credit Union*, United States District Court for the Middle District of Florida, Case No. 8:15-cv-2743-RAL-TGW. The case is a “class action.” That means that the “Named Plaintiff,” Tracy Fry is an individual who is acting on behalf of all persons who were charged an overdraft fee by MidFlorida at any time from November 24, 2010 to January 15, 2016, and, at the time such fee was imposed, that person had sufficient funds in the

ledger balance but not the available balance in his or her account to complete the transaction. This group is called the “Class Members.” She is asserting claims for breach of contract, and violations of the Florida Deceptive and Unfair Trade Practices Act, and other causes of action. She seeks a refund of alleged improper overdraft fees charged to Class Member accounts. MidFlorida does not deny it charged overdraft fees but contends it did so properly and in accordance with the terms of its agreements and applicable law because MidFlorida assesses overdrafts based on the available balance in a member’s account. MidFlorida maintains that this practice is proper and was disclosed to its members, and therefore denies that its practices give rise to claims for damages by Ms. Fry or any Class Member. Nevertheless, because MidFlorida states it has always strived to conduct its business in a manner that is most beneficial to all of its members, and using ledger balance may result in fewer member overdrafts as a result of this lawsuit, MidFlorida changed its payment processing systems as of January 15, 2016 so that it now assesses overdrafts based only on the ledger balance in member accounts.

---

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

---

You received this Notice because you may be a Class Member. That means MidFlorida’s records indicate that you were charged overdraft fee(s) between November 24, 2010 and January 15, 2016, while your available balance was insufficient but your ledger balance contained enough money to complete the transaction at issue. The Court directed that this Notice be sent to all Class Members because each Class Member has a right to know about the proposed settlement and the options available to him or her before the Court decides whether to approve the settlement.

---

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

---

In any lawsuit, there are risks and potential benefits that come with a trial versus settling at an earlier stage. It is the Named Plaintiff’s lawyers’ job to identify when a proposed settlement offer is good enough that it justifies recommending settling the case instead of continuing to trial. In a class action, these lawyers, known as Class Counsel, make this recommendation to the Named Plaintiff. The Named Plaintiff has the duty to act in the best interests of the class as a whole and, in this case, it is her belief, as well as Class Counsel’s opinion, that this settlement is in the best interest of all Class Members for at least the following reasons:

There is legal uncertainty about whether a judge or a jury will find that MidFlorida was contractually and otherwise legally obligated not to assess overdraft fees when the ledger balance was sufficient to pay for a transaction, and even if it were legally obligated to do so, there is uncertainty about whether the claims are subject to other defenses that might result in no or less recovery to Class Members. Even if the Named Plaintiff were to win at trial, there is no assurance that the Class Members would be awarded more than the current settlement amount and it may take years of litigation before any payments would be made. By settling, the Class Members will avoid these and other risks and the delays associated with continued litigation.

**WHO IS IN THE SETTLEMENT**

---

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

---

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

**YOUR OPTIONS**

---

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

---

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

---

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

---

To participate in the settlement, you need not do anything; so long as you do not opt out or exclude yourself (described in Questions 16 through 18, below), a payment will be made to you, either by crediting your account if you are still a member of MidFlorida or by mailing a check to you at the last address on file with MidFlorida (or any other address you provide).

The deadline for sending a letter to exclude yourself from or opt out of the settlement is **December 11, 2017**.

The deadline to file an objection with the Court is **January 29, 2018**.

---

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

---

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

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

---

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

---

The Court has to decide that the settlement is fair, reasonable, and adequate before it will approve it. The Court already has decided to provide preliminary approval of the settlement, which is why you received this Notice. The Court will make a final decision regarding the settlement at a “Fairness Hearing” or “Final Approval Hearing”, which is currently scheduled for February 23, 2018 at 9:30 am.

**THE SETTLEMENT PAYMENT**

---

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

---

MidFlorida has agreed to create a Settlement Fund of \$2,375,000, and change the way it processes overdraft fees in a manner which will likely result in comparably fewer overdraft fees in the future. As discussed separately below, Attorneys’ fees, litigation costs, a Service Award to the Named Plaintiff, and the costs paid to a third party Claims Administrator to administer the settlement (including mailing and emailing this notice) will be paid out of this amount. The balance of the Settlement Fund will be divided among all Class Members based on the amount of eligible overdraft fees they paid.

---

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

---

Class Counsel has requested that the Court award 33 1/3% as attorneys’ fees of the estimated one year savings in overdraft fees plus Settlement Fund, but not more than \$1,125,000. Class Counsel has also requested that it be reimbursed not more than \$65,000 in litigation costs incurred in prosecuting the case. The Court makes the decision based on the request for attorneys’ fees and costs, and will decide the amount of the attorneys’ fees based on a number of factors, including the risk associated with bringing the case on a contingency basis, the amount of time spent on the case, the amount of costs incurred to prosecute the case, the quality of the work, and the outcome of the case.

---

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

---

Class Counsel on behalf of the Named Plaintiff has requested that the Court award her \$10,000 for her role in securing this settlement on behalf of the class. The Court will decide if a Service Award is appropriate and if so, the amount of the award.

---

**12. How much of the settlement fund will be used to pay the Claims Administrator’s expenses?**

---

The Claims Administrator has agreed to cap its expenses at \$68,500.

---

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

---

After payment of attorneys’ fees and costs of litigation and the costs of the Claims Administrator, there will be approximately \$1,106,500 available for distribution to Class Members.

---

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

---

No. As long as you do not opt out, a credit will be applied to your checking account if you are an existing member, or a check will be mailed to you at the last known address MidFlorida has for you if you are not an existing credit union member. If your address has changed, you should provide your current address to the Claims Administrator at the address set forth in Question 16, below.

---

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

---

The Court will hold a Fairness Hearing (explained below in Questions 22-24) on February 23, 2018 at 9:30 am to consider whether the settlement should be approved. If the Court approves the settlement, then payments should be made or credits should be issued within about 10 days. However, if someone objects to the settlement, and the objection is sustained, then there is no settlement. Even if all objections are overruled and the Court approves the settlement, an objector could appeal and it might take months or even years to have the appeal resolved, which would delay any payment.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

---

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

---

If you do not want to receive a payment, or if you want to keep any right you may have to sue MidFlorida for the claims alleged in this lawsuit, then you must exclude yourself or “opt out.”

To opt out, you must send a letter to the Claims Administrator that you want to be excluded. Your letter can simply say “I hereby elect to be excluded from the settlement in the *Tracey Fry v. MidFlorida Credit Union* class action.” Be sure to include your name, last four digits of your member number, address, telephone number, and email address. Your exclusion or opt out request must be postmarked by **December 11, 2017**, and sent to:

Fry v. MidFlorida Credit Union Claims Administrator  
P.O. Box 404000  
Louisville KY, 40233-4000

---

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

---

If you opt out of the settlement, you will preserve and not give up any of your rights to sue MidFlorida for the claims alleged in this case. However, you will not be entitled to receive a payment from this settlement.

---

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

---

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

**OBJECTING TO THE SETTLEMENT**

---

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

---

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

All objections must be post-marked no later than **January 29, 2018**, and must be mailed to the Court as follows: Office of the Clerk of the United States District Court for the Middle District of Florida, Tampa Division, which is located at 801 North Florida Avenue, Tampa, Florida 33602.

And to the Claims Administrator as follows:

Fry v. MidFlorida Credit Union Claims Administrator

---

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

---

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

---

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

---

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

**THE COURT'S FAIRNESS HEARING**

---

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

---

The Court will hold a Final Approval or Fairness Hearing at 9:30 am on February 23, 2018 at the United States District Court for the Middle District of Florida, Tampa Division, located at 801 North Florida Avenue, Department 15B, Tampa, Florida 33602. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys' fees and expenses.

---

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

---

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

---

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

---

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

**IF YOU DO NOTHING**

---

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

---

If you do nothing at all, and if the settlement is approved, then you will receive a payment that represents your share of the Settlement Fund net of attorneys' fees, costs of litigation, Service Award to the Named Plaintiff, and the Claims Administrator expenses. You will be considered a part of the class, and you will give up claims against MidFlorida for the conduct alleged in this lawsuit. You will not give up any other claims you might have against MidFlorida that are not part of this lawsuit.

**THE LAWYERS REPRESENTING YOU**

---

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

---

The Court ordered that the lawyers and their law firms referred to in this notice as "Class Counsel" will represent you and the other Class Members.

---

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

---

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

---

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

---

The Court will be asked to approve the amount of attorneys' fees at the Fairness Hearing. Class Counsel will file an application for fees and costs and will specify the amount being sought as discussed above. You may review the fee application at [www.midfloridacreditunionoverdraftclassaction.com](http://www.midfloridacreditunionoverdraftclassaction.com) or view a physical copy at the Office of the Clerk of the United States District Court for the Middle District of Florida, Tampa Division, which is located at 801 North Florida Avenue Tampa, Florida 33602.

**GETTING MORE INFORMATION**

This Notice only summarizes the proposed settlement. More details are contained in the settlement agreement, which can be viewed/obtained online at [www.midfloridacreditunionoverdraftclassaction.com](http://www.midfloridacreditunionoverdraftclassaction.com) or at the Office of the Clerk of the United States District Court for the Middle District of Florida, Tampa Division, which is located at 801 North Florida Avenue, Tampa, Florida 33602, by asking for the court file containing the Motion For Preliminary approval of Class Settlement (the settlement agreement is attached to the motion).

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

Fry v. MidFlorida Credit Union  
Claims Administrator  
P.O. Box 404000  
Louisville, KY 40233-4000  
Telephone: (866) 232-2512  
[info@midfloridacreditunionoverdraftclassaction.com](mailto:info@midfloridacreditunionoverdraftclassaction.com)

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

Richard D. McCune  
Jae (Eddie) K. Kim  
McCune Wright Alevaro LLP  
3281 E. Guasti Road, Ste. 100  
Ontario, CA 91761  
Telephone: (909) 557-1250  
[rdm@mccunewright.com](mailto:rdm@mccunewright.com)

Taras Kick  
The Kick Law Firm, APC  
815 Moraga Drive  
Los Angeles, CA 90049  
Telephone: (310) 395-2988  
[Taras@kicklawfirm.com](mailto:Taras@kicklawfirm.com)

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

This message was intended for: [andrew.perry@kccllc.com](mailto:andrew.perry@kccllc.com)  
You were added to the system November 10, 2017.  
For more information [click here](#). [Update your preferences](#)  
[Unsubscribe](#) | [Unsubscribe via email](#)



# **EXHIBIT B**

Fry v. MidFlorida Credit Union  
Claims Administrator  
P.O. Box 404000  
Louisville KY, 40233-4000

**MFF**

« a r c o d e »

Postal Service: Please do not mark barcode

Claim#: MFF-«<CLAIM8>>«<CkDig>>  
«<FirstName>» «<LastName>»  
«<Addr1>» «<Addr2>»  
«<City>», «<State>» «<Zip>» «<FPROV>> «<FZIP>>  
«<FCOUNTRY>>

Tracy Fry  
v.  
MidFlorida Credit Union

**NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT**

**READ THIS NOTICE FULLY AND CAREFULLY; THE PROPOSED SETTLEMENT MAY AFFECT YOUR RIGHTS!  
IF YOU HAD A CHECKING ACCOUNT WITH MIDFLORIDA CREDIT UNION (“MIDFLORIDA”) AND YOU WERE  
CHARGED AN OVERDRAFT FEE BETWEEN NOVEMBER 24, 2010 AND JANUARY 15, 2016, THEN YOU MAY BE  
ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT**

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

<b>SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION</b>	
<b>APPROVE THE SETTLEMENT AND RECEIVE A PAYMENT; YOU NEED NOT DO ANYTHING</b>	Unless you exclude yourself from the settlement (see the next paragraph), then you will receive a check or a credit to your account (depending on whether you are still a member of MidFlorida).
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT; RECEIVE NO PAYMENT BUT RELEASE NO CLAIMS</b>	You can choose to exclude yourself from the settlement or “opt out.” This means you choose not to participate in the settlement. You will keep your individual claims against MidFlorida but you will not receive a payment. If you want to recover against MidFlorida, then you will have to file a separate lawsuit or claim.
<b>OBJECT TO THE SETTLEMENT</b>	You can file an objection with the Court explaining why you believe the Court should reject the settlement. If your objection is overruled by the Court, you <u>will</u> receive a payment and you <u>will not</u> be able to sue MidFlorida for the claims asserted in this litigation. If the Court agrees with your objection, then the settlement may not be approved.

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

**BASIC INFORMATION**

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

The lawsuit that is being settled is entitled *Tracy Fry v. MidFlorida Credit Union*, United States District Court for the Middle District of Florida, Case No. 8:15-cv-2743-RAL-TGW. The case is a “class action.” That means that the “Named Plaintiff,” Tracy Fry is an individual who is acting on behalf of all persons who were charged an overdraft fee by MidFlorida at any time from November 24, 2010 to January 15, 2016, and, at the time such fee was imposed, that person had sufficient funds in the ledger balance but not the available balance in his or her account to complete the transaction. This group is called the “Class Members.” She is asserting claims for breach of contract, and violations of the Florida Deceptive and Unfair Trade Practices Act, and other causes of action. She seeks a refund of alleged improper overdraft fees charged to Class Member accounts. MidFlorida does not deny it charged overdraft fees but contends it did so properly and in accordance with the terms of its agreements and applicable law because MidFlorida assesses overdrafts based on the available balance in a member’s account. MidFlorida maintains that this practice is proper and was disclosed to its members, and therefore denies that its practices give rise to claims for damages by Ms. Fry or any Class Member. Nevertheless, because MidFlorida states it has always strived to conduct its business in a manner that is most beneficial to all of its members, and using ledger balance may result in fewer member overdrafts as a result of this lawsuit, MidFlorida changed its payment processing systems as of January 15, 2016 so that it now assesses overdrafts based only on the ledger balance in member accounts.

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

You received this Notice because you may be a Class Member. That means MidFlorida’s records indicate that you were charged overdraft fee(s) between November 24, 2010 and January 15, 2016, while your available balance was insufficient but your ledger balance contained

enough money to complete the transaction at issue. The Court directed that this Notice be sent to all Class Members because each Class Member has a right to know about the proposed settlement and the options available to him or her before the Court decides whether to approve the settlement.

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

In any lawsuit, there are risks and potential benefits that come with a trial versus settling at an earlier stage. It is the Named Plaintiff's lawyers' job to identify when a proposed settlement offer is good enough that it justifies recommending settling the case instead of continuing to trial. In a class action, these lawyers, known as Class Counsel, make this recommendation to the Named Plaintiff. The Named Plaintiff has the duty to act in the best interests of the class as a whole and, in this case, it is her belief, as well as Class Counsel's opinion, that this settlement is in the best interest of all Class Members for at least the following reasons:

There is legal uncertainty about whether a judge or a jury will find that MidFlorida was contractually and otherwise legally obligated not to assess overdraft fees when the ledger balance was sufficient to pay for a transaction, and even if it were legally obligated to do so, there is uncertainty about whether the claims are subject to other defenses that might result in no or less recovery to Class Members. Even if the Named Plaintiff were to win at trial, there is no assurance that the Class Members would be awarded more than the current settlement amount and it may take years of litigation before any payments would be made. By settling, the Class Members will avoid these and other risks and the delays associated with continued litigation.

## **WHO IS IN THE SETTLEMENT**

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

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

## **YOUR OPTIONS**

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

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

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

To participate in the settlement, you need not do anything; so long as you do not opt out or exclude yourself (described in Questions 16 through 18, below), a payment will be made to you, either by crediting your account if you are still a member of MidFlorida or by mailing a check to you at the last address on file with MidFlorida (or any other address you provide).

The deadline for sending a letter to exclude yourself from or opt out of the settlement is **December 11, 2017**.

The deadline to file an objection with the Court is **January 29, 2018**.

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

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

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

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

The Court has to decide that the settlement is fair, reasonable, and adequate before it will approve it. The Court already has decided to provide preliminary approval of the settlement, which is why you received this Notice. The Court will make a final decision regarding the settlement at a "Fairness Hearing" or "Final Approval Hearing", which is currently scheduled for February 23, 2018 at 9:30 am.

## **THE SETTLEMENT PAYMENT**

### **9. How much is the Settlement?**

MidFlorida has agreed to create a Settlement Fund of \$2,375,000, and change the way it processes overdraft fees in a manner which will likely result in comparably fewer overdraft fees in the future. As discussed separately below, Attorneys' fees, litigation costs, a Service Award to the Named Plaintiff, and the costs paid to a third party Claims Administrator to administer the settlement (including mailing and emailing this notice) will be paid out of this amount. The balance of the Settlement Fund will be divided among all Class Members based on the amount of eligible overdraft fees they paid.

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

Class Counsel has requested that the Court award 33 1/3% as attorneys' fees of the estimated one year savings in overdraft fees plus Settlement Fund, but not more than \$1,125,000. Class Counsel has also requested that it be reimbursed not more than \$65,000 in litigation costs incurred in prosecuting the case. The Court makes the decision based on the request for attorneys' fees and costs, and will decide the amount of the attorneys' fees based on a number of factors, including the risk associated with bringing the case on a contingency basis, the amount of time spent on the case, the amount of costs incurred to prosecute the case, the quality of the work, and the outcome of the case.

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

Class Counsel on behalf of the Named Plaintiff has requested that the Court award her \$10,000 for her role in securing this settlement on behalf of the class. The Court will decide if a Service Award is appropriate and if so, the amount of the award.

**12. How much of the settlement fund will be used to pay the Claims Administrator's expenses?**

The Claims Administrator has agreed to cap its expenses at \$68,500.

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

After payment of attorneys' fees and costs of litigation and the costs of the Claims Administrator, there will be approximately \$1,106,500 available for distribution to Class Members.

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

No. As long as you do not opt out, a credit will be applied to your checking account if you are an existing member, or a check will be mailed to you at the last known address MidFlorida has for you if you are not an existing credit union member. If your address has changed, you should provide your current address to the Claims Administrator at the address set forth in Question 16, below.

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

The Court will hold a Fairness Hearing (explained below in Questions 22-24) on February 23, 2018 at 9:30 am to consider whether the settlement should be approved. If the Court approves the settlement, then payments should be made or credits should be issued within about 10 days. However, if someone objects to the settlement, and the objection is sustained, then there is no settlement. Even if all objections are overruled and the Court approves the settlement, an objector could appeal and it might take months or even years to have the appeal resolved, which would delay any payment.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

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

If you do not want to receive a payment, or if you want to keep any right you may have to sue MidFlorida for the claims alleged in this lawsuit, then you must exclude yourself or "opt out."

To opt out, you must send a letter to the Claims Administrator that you want to be excluded. Your letter can simply say "I hereby elect to be excluded from the settlement in the *Tracey Fry v. MidFlorida Credit Union* class action." Be sure to include your name, last four digits of your member number, address, telephone number, and email address. Your exclusion or opt out request must be postmarked by **December 11, 2017**, and sent to:

Fry v. MidFlorida Credit Union Claims Administrator  
P.O. Box 404000  
Louisville KY, 40233-4000

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

If you opt out of the settlement, you will preserve and not give up any of your rights to sue MidFlorida for the claims alleged in this case. However, you will not be entitled to receive a payment from this settlement.

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

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

**OBJECTING TO THE SETTLEMENT**

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

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

All objections must be post-marked **no later than January 29, 2018**, and must be mailed to the Court as follows: Office of the Clerk of the United States District Court for the Middle District of Florida, Tampa Division, which is located at 801 North Florida Avenue, Tampa, Florida 33602.

And to the Claims Administrator as follows:

Fry v. MidFlorida Credit Union Claims Administrator  
P.O. Box 404000  
Louisville KY, 40233-4000

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

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

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

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

**THE COURT'S FAIRNESS HEARING**

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

The Court will hold a Final Approval or Fairness Hearing at 9:30 am on February 23, 2018 at the United States District Court for the Middle District of Florida, Tampa Division, located at 801 North Florida Avenue, Department 15B, Tampa, Florida 33602. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys' fees and expenses.

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

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

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

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

**IF YOU DO NOTHING**

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

If you do nothing at all, and if the settlement is approved, then you will receive a payment that represents your share of the Settlement Fund net of attorneys' fees, costs of litigation, Service Award to the Named Plaintiff, and the Claims Administrator expenses. You will be considered a part of the class, and you will give up claims against MidFlorida for the conduct alleged in this lawsuit. You will not give up any other claims you might have against MidFlorida that are not part of this lawsuit.

**THE LAWYERS REPRESENTING YOU**

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

The Court ordered that the lawyers and their law firms referred to in this notice as "Class Counsel" will represent you and the other Class Members.

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

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

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

The Court will be asked to approve the amount of attorneys' fees at the Fairness Hearing. Class Counsel will file an application for fees and costs and will specify the amount being sought as discussed above. You may review the fee application at [www.midfloridacreditunionoverdraftclassaction.com](http://www.midfloridacreditunionoverdraftclassaction.com) or view a physical copy at the Office of the Clerk of the United States District Court for the Middle District of Florida, Tampa Division, which is located at 801 North Florida Avenue Tampa, Florida 33602.

**GETTING MORE INFORMATION**

This Notice only summarizes the proposed settlement. More details are contained in the settlement agreement, which can be viewed/obtained online at [www.midfloridacreditunionoverdraftclassaction.com](http://www.midfloridacreditunionoverdraftclassaction.com) or at the Office of the Clerk of the United States District Court for the Middle District of Florida, Tampa Division, which is located at 801 North Florida Avenue, Tampa, Florida 33602, by asking for the court file containing the Motion For Preliminary approval of Class Settlement (the settlement agreement is attached to the motion).

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

Fry v. MidFlorida Credit Union  
Claims Administrator  
P.O. Box 404000  
Louisville, KY 40233-4000  
Telephone: (866) 232-2512  
[info@midfloridacreditunionoverdraftclassaction.com](mailto:info@midfloridacreditunionoverdraftclassaction.com)

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

Richard D. McCune  
Jae (Eddie) K. Kim  
McCune Wright Alevaro LLP  
3281 E. Guasti Road, Ste. 100  
Ontario, CA 91761  
Telephone: (909) 557-1250  
[rdm@mccunewright.com](mailto:rdm@mccunewright.com)

Taras Kick  
The Kick Law Firm, APC  
815 Moraga Drive  
Los Angeles, CA 90049  
Telephone: (310) 395-2988  
[Taras@kicklawfirm.com](mailto:Taras@kicklawfirm.com)

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

# **EXHIBIT C**

***Fry v MidFlorida Credit Union***

Timely Requests for Exclusion as of December 13, 2017

**Name**

1. Becky Crespo
2. Lisa Landry
3. Nancy Torres
4. Luis Suarez Jr.
5. Darlene Gardner
6. Brutus Lederl
7. Mona Hasty

**CERTIFICATE OF SERVICE**

I hereby certify that on January 12, 2018 I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Middle District of Florida by using the CM/ECF system, which sent notification of such filing to all CM/ECF participants.

/s/ Taras Kick

Taras Kick