

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: HIGHER ONE ONEACCOUNT MARKETING)
AND SALES PRACTICES LITIGATION) No. 3:12-md-02407 (VLB)
DATE: FEBRUARY 14, 2014

PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT

I. INTRODUCTION

Plaintiffs, Brandi Crawford, Tarsha Crockett, Aisha DeClue, Larry Forman, Rhonda Hannibal, Prince Kaywood, Gaynell Kaywood, John Brandon Kent, Brianne Elizabeth Kent, Kristen Krieg, Jonathan Lanham, Ashley Parker, and Jeanette Price, (the "Plaintiffs"), on behalf of themselves and the proposed Class, which is defined in the accompanying Settlement Agreement, hereby move for preliminary approval of the proposed settlement ("Settlement") reached with Defendants, Higher One Holdings, Inc., Higher One Inc., Wright Express Financial Services Corporation, Taylor Capital Group, Inc., and the Bancorp Bank (collectively, "Defendants"). For the reasons stated in the accompanying Memorandum of Law and as reflected in the accompanying Settlement Agreement, the proposed Settlement is fair, reasonable and adequate and is the product of arm's length negotiations between counsel for Plaintiffs and the Class and Defendants. Accordingly, Plaintiffs respectfully request that the Court (1) preliminarily approve the Settlement as set forth in the Settlement Agreement; (2)

approve the Notice plan; (3) appoint Rust Consulting as Settlement Administrator; (4) preliminarily certify the Class, pursuant to Federal Rule of Civil Procedure 23(b)(1) and (3) for purposes of settlement only; (5) appoint Class Representatives; (6) appoint Class Counsel; and (7) set a date for the Fairness Hearing.

Dated: February 14, 2014

Respectfully submitted:

/s/ Hassan A. Zavareei
Hassan A. Zavareei
TYCKO & ZAVAREEI LLP
Hassan A. Zavareei (*pro hac vice*)
Jeffrey D. Kaliel (*pro hac vice*)
2000 L Street NW, Suite 808
Washington, DC 20036
Telephone: (202) 973-0900
Facsimile: (202) 973-0950
hzavareei@tzlegal.com
jkaliel@tzlegal.com

Interim Lead Counsel

/s/KAREN M. LESER-GRENON
SHEPHERD FINKELMAN MILLER & SHAH LLP
James E. Miller (ct21560)
Karen M. Leser-Grenon (ct23587)
65 Main Street
Chester, CT 06412
Telephone: (860) 526-1100
Facsimile: (860) 300-7367
jmiller@sfmslaw.com
kleser@sfmslaw.com

GENTLE TURNER SEXTON DEBROSSE &
HARBISON
Diandra Debrosse
501 Riverchase Parkway East
Suite 100
Hoover, AL 35244
Telephone: (205) 716-3000
Facsimile: (205) 716-3010
ddebrosse@gtandslaw.com

JONES WARD PLC
Jasper Ward
Alex Davis
312 S Fourth Street, 6th Floor
Louisville, KY 40202
Telephone (502) 882-6000
Facsimile: (502) 587-2007
jasper@jonesward.com
alex@jonesward.com

Plaintiffs' Steering Committee

CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2014, a copy of the foregoing Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/Karen M. Leser-Grenon
Karen M. Leser-Grenon (ct23587)
Shepherd Finkelman Miller & Shah, LLP
65 Main Street
Chester, CT 06412
Telephone: (860) 526-1100
Facsimile: (866) 300-7367
Email: **kleser@sfmslaw.com**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

**IN RE: HIGHER ONE ONEACCOUNT MARKETING
AND SALES PRACTICES LITIGATION**

)
) **No. 3:12-md-02407 (VLB)**
)

) **DATE: FEBRUARY 14, 2014**

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT**

Table of Contents

Table of Authorities..... iii

I. INTRODUCTION 1

II. BACKGROUND RELEVANT TO PRELIMINARY APPROVAL 5

A. History of the Litigation 5

B. History of Settlement Negotiations..... 8

C. Higher One Practice Changes 10

III. THE SETTLEMENT PROVISIONS 12

A. The Class 13

B. Monetary Relief for the Class 13

C. Class Release 14

D. The Notice Program 14

1. Email Notice..... 16

2. Mailed Notice 17

3. The Settlement Website and the Toll-Free Settlement Line 18

E. Settlement Administration..... 18

F. Distribution of the Settlement Fund..... 19

G. Class Representative Service Awards..... 20

H. Attorneys’ Fees and Costs 21

IV. ARGUMENT 21

A. The Settlement Agreement Merits Preliminary Approval..... 21

1. The Settlement Agreement Is A Result Of Informed, Non-Collusive Negotiations	24
2. The Settlement Easily Falls Within the Range of Possible Approval	26
a. The Stage of the Proceedings and the Amount of Discovery Completed.....	26
b. The Risks of Establishing Liability and Damages.....	28
c. The Complexity, Expense and Likely Duration of the Litigation.....	30
d. The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and in Light of All the Attendant Risks of Litigation.....	31
V. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE PLAN OF DISTRIBUTION AND ALLOCATION	34
VI. THE PROPOSED CLASS MEETS THE PREREQUISITES FOR CLASS CERTIFICATION UNDER RULE 23	37
A. Numerosity, Commonality and Typicality	38
B. Adequacy of Representation.....	40
C. Predominance of Common Issues and Superiority.....	41
VII. NOTICE.....	43
A. Contents of Notice.....	46
1. Opting Out	46
2. Objecting.....	47
3. Scope of Notice.....	47
VIII. CONCLUSION	48

Table of Authorities

Cases

<i>Amchem Prods. v. Windsor</i> , 521 U.S. 591 (1997)	38, 42
<i>Browning v. Yahoo! Inc.</i> , 2006 WL 3826714 (N.D. Cal. Dec. 27, 2006).....	45
<i>Cagan v. Anchor Sav. Bank FSB</i> , 1990 WL 73423 (E.D.N.Y. May 22, 1990)	32
<i>Charron v. Wiener</i> , 731 F.3d 241 (2d Cir. N.Y. 2013).....	35
<i>Chatelain v. Prudential-Bache Sec.</i> , 805 F. Supp. 209 (S.D.N.Y. 1992)	29
<i>Chin v. RCN Corp.</i> , 2010 WL 1257586 (S.D.N.Y. Mar. 12, 2010).....	23
<i>Cotton v. Hinton</i> , 559 F.2d 1326 (5th Cir. 1977).....	31
<i>Cross v. 21st Century Holding Co.</i> , 2004 WL 307306 (S.D.N.Y. Feb. 18, 2004).....	38
<i>Danieli v. IBM</i> , 2009 WL 6583144 (S.D.N.Y. Nov.16, 2009)	36
<i>Detroit v. Grinnell Corp.</i> , 495 F.2d 448 (2d Cir. 1974).....	26, 28, 33
<i>Dura-Bilt Corp. v. Chase Manhattan Corp.</i> , 89 F.R.D. 87 (S.D.N.Y. 1981).....	42
<i>Frank v. Eastman Kodak Co.</i> , 228 F.R.D. 174, 186 (W.D.N.Y. 2005)	29, 37
<i>Friedman v. Union Bank of Switzerland (In Re Holocaust Victim Asset Litigation)</i> , 413 F.3d 183, 186 (2d Cir. 2001).....	37
<i>Hicks v. Morgan Stanley & Co.</i> , 2005 WL 2757792 (S.D.N.Y. Oct. 24, 2005).....	30
<i>In re “Agent Orange” Prod. Liab. Litig.</i> , 597 F. Supp. 740 (E.D.N.Y. 1984), <i>aff’d</i> , 818 F.2d 145 (2d Cir. Apr. 1987).....	31, 37
<i>In Re AmBase Corp.</i> , 1995 U.S. Dist. LEXIS 15516 (S.D.N.Y. Oct. 20, 1995).....	32
<i>In re China Sunergy Sec. Litig.</i> , 2011 WL 1899715 (S.D.N.Y. May 13, 2011)	34

In re Currency Conversion Fee Antitrust Litig.,
263 F.R.D. 110 (S.D.N.Y. 2009) 35

In re Currency Conversion Fee Antitrust Litig.,
2006 WL 3247396 (S.D.N.Y. Nov. 8, 2006) 22

In re Gilat Satellite Networks, Ltd.,
2007 WL 1191048 (E.D.N.Y. Apr. 19, 2007) 23

In re Host Am. Corp. Sec. Litig.,
2007 WL 3048865 (D. Conn. Oct. 18, 2007) 40

In re Lupron Mktg. and Sales Practices Litig.,
228 F.R.D. 75, 92 (D. Mass. 2005) 42

In re Marine Midland Motor Vehicle Leasing Litig.,
155 F.R.D. 416 (W.D.N.Y. 1994) 35

In re Merrill Lynch Tyco Research Sec. Litig.,
249 F.R.D. 124 (S.D.N.Y. 2008) 44

In re Michael Milken & Assoc. Sec. Litig.,
150 F.R.D. 57 (S.D.N.Y. 1993) 24

In re NASDAQ Market-Makers Antitrust Litig.,
176 F.R.D. 99 (S.D.N.Y. 1997) 22

In re PaineWebber Ltd., P’ships Litig.,
171 F.R.D. 104 (S.D.N.Y. 1997), *aff’d*, 117 F.3d 721 (2d Cir. 1997) 24, 26, 31

In re Prudential Sec. Inc. Ltd. P’ships Litig.,
163 F.R.D. 200 (S.D.N.Y. 1995) 22, 23

In re Sony SXRDRear Projection Television Class Action Litig.,
2008 WL 1956267 (S.D.N.Y. May 1, 2008) 45

In re Sturm, Ruger, & Company, Inc. Securities Litigation,
2012 WL 3589610 (Aug. 20, 2012) 33

In re AOL Time Warner ERISA Litigation,
2006 WL 2789862 (S.D.N.Y. Sept. 27, 2006) 40

In re Traffic Executive Ass’n,
627 F.2d 631 (2d Cir.1980) 23

In re Union Carbide,
718 F.Supp. 1099 (S.D.N.Y. 1989) 34

In re Warner Chilcott Ltd. Sec. Litig.,
2008 WL 5110904 (S.D.N.Y. Nov. 20, 2008) 22

Maley v. Del Global Technologies Corp.,
186 F. Supp. 2d 358 (S.D.N.Y. 2002) 27

Maywalt v. Parker and Parsley Petroleum Co.,
67 F.3d 1072 (2nd Cir. 1995) 46, 47

McKenzie Construction Inc. v. Maynard,
758 F.2d 97 (3d Cir.1985)..... 27

Milstein v. Huck,
600 F. Supp. 254 (E.D.N.Y. 1984) 30

Mullane v. Central Hanover Bank & Trust Co.,
339 U.S. 306 (1950) 47

Norflet v. John Hancock Life Ins. Co.,
658 F. Supp. 2d 350 (D. Conn. 2009) 35

Parker v. Time Warner Entm't Co., L.P.,
631 F. Supp. 2d 242 (E.D.N.Y. 2009) 35

Phillips Co. v. Shutts,
472 U.S. 797 (1985) 43, 47

Reed v. General Motors Corp.,
703 F.2d 170 (5th Cir. 1983)..... 24

Reilly v. Tucson Elec. Power Co.,
512 U.S. 1220, 114 S.Ct. 2707, 129 L.Ed.2d 834 (1994) 47

Strougo v. Bassini,
258 F. Supp. 2d 254 (S.D.N.Y. 2003) 22, 30

Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.,
2004 WL 1087261 (S.D.N.Y. May 14, 2004)..... 27

Torres v. Gristede's Operating Corp.,
2010 WL 2572937 (S.D.N.Y. Jun. 1, 2010)..... 36

Torrisi v. Tucson Elec. Power Co.,
8 F.3d 1370 (9th Cir.1993)..... 47

Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.,
396 F.3d 96 (2d Cir. 2005), *cert. denied*, 544 U.S. 1044 (2005)..... 43

Weigner v. City of New York,
852 F.2d 646 (2d Cir.1988), *cert. denied*, 488 U.S. 1005(1989) 44

Weinberge v. Kendrick,
689 F.2d 61 (2d Cir. 1982)..... 33

Other Authorities

Alba Conte & Herbert Newberg, *Newberg on Class Actions*
§ 11.28, at 11-59 (3d ed. 1992) 25

Alba Conte & Herbert Newberg, *NEWBERG ON CLASS ACTIONS*
§ 11.45 (4th ed. 2002) 26, 43

Herbert B. Newberg & Alba Conte, *Newberg on Class Actions*,
§§ 4.21, 4.25 (1992)..... 42

http://www.fdic.gov/news/news/press/2012/pr12092.html	33
Manual for Complex Litigation (Fourth), at § 21.162 (2004).....	22
Manual for Complex Litigation (Third), at § 30.41 (1995)	23
<u>Rules</u>	
Fed. R. Civ. P. 23	37, 43
Fed. R. Civ. P. 23 (c)(2)(B).....	43
Fed. R. Civ. P. 23(b)(3)	41, 42
Fed.R.Civ.P. 23(f).....	34
Federal Rule of Civil Procedure 23(e).....	21
Rule 23(a)(1)-(3)	38
Rule 23(a)(4).....	40
Rule 23(b).....	38

I. INTRODUCTION

Plaintiffs, Brandi Crawford, Tarsha Crockett, Aisha DeClue, Larry Forman, Rhonda Hannibal, Prince Kaywood, Gaynell Kaywood, John Brandon Kent, Brianne Elizabeth Kent, Kristen Krieg, Jonathan Lanham, Ashley Parker, and Jeanette Price, (the “Plaintiffs”), on behalf of themselves, and the proposed Class defined below, respectfully submit this Memorandum of Law in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Settlement. For the reasons set forth below, the proposed settlement (the “Settlement”) is fair, reasonable and adequate. The Settlement is the product of arm’s-length negotiations between Plaintiffs’ Interim Lead Counsel (“Class Counsel”) and Defendants, Higher One Holdings, Inc., Higher One Inc. (collectively referred to as “Higher One”), Wright Express Financial Services Corporation (“WEX”), Taylor Capital Group, Inc. (“Taylor”), and the Bancorp Bank (“Bancorp”) (collectively, “Defendants”). The Court should grant preliminary approval because the \$15 million Settlement provides substantial monetary relief to the Class, and because the Settlement provides for meaningful and immediate changes to the Higher One business practices challenged in this Litigation. As explained below, the terms of the Settlement are well within the range of reasonableness and are consistent with applicable case law. Indeed, the Settlement is an excellent result for the class of Higher One account holders defined in the Settlement Agreement (the “Class”) and easily satisfies all Second Circuit criteria for preliminary settlement approval. Accordingly, Plaintiffs request entry of a Preliminary Approval Order that will begin providing the Class with notice on the following schedule:

<u>Event</u>	<u>Days From Preliminary Approval Order</u>
Higher One Transfers \$15,000,000 to Settlement Fund	9 Days
Email Notice Complete	30 Days
Mailed Notice Complete	60 Days
Opt-Out Deadline	105 Days
Deadline to Submit Objections	105 Days
Motion for Final Approval	124 Days
Final Fairness Hearing	170 Days

These consolidated cases are proposed class actions in which Plaintiffs challenge Defendants' marketing of, and fee assessment upon, certain checking accounts used to deliver financial aid funds to students at participating colleges and universities. The proposed Settlement provides the following substantial and meaningful relief to the Class:

- Higher One will deposit \$15,000,000 in a common fund for the benefit of the Class;
- As a substantial result of this Litigation, Higher One has made significant changes to its business practices, and Higher One agrees to continue those changes for a minimum of two years after the Settlement Effective Date. Since the inception of the changes and through period required by the Settlement, those changes are anticipated to cost Higher One over \$66 million in lost fee revenue and include the following:
 - a. Not opening any Higher One account without requiring students' separate affirmative consent to the Fee Schedule in addition to affirmative consent to the Account Terms and Conditions for Higher One accounts;
 - b. Improving the clarity and readability of the Fee Schedule, consistent with best practices as recommended by the Pew Charitable Trust for consumer checking accounts;
 - c. Where a fee is charged for use of a non-Higher One ATM, explaining clearly in both in the OneAccount's Fee Schedule

that both Higher One and an ATM owner may each assess a OneAccount holder a fee in connection with a non-Higher One ATM transaction;

- d. Simplifying the process by which students may transfer their funds to other, non-Higher One checking accounts;
 - e. Offering a refund of up to \$5 per day for Non-Higher One ATM fees incurred when Higher One ATMs are not functioning properly due to any maintenance or repair related issues or when Higher One ATMs are out of cash;
 - f. Eliminating entirely the Lack of Documentation Fee on OneAccounts;
 - g. Eliminating entirely the Abandoned Account Fee on OneAccounts;
 - h. Eliminating entirely the Delinquent Account Fee on OneAccounts;
 - i. Eliminating Insufficient Funds Fee, Non-Sufficient Funds Fee, or Overdraft Fee on recurring debit card transactions made with a OneAccount; and
 - j. Not marketing the OneAccount as “free” when marketing the basic OneAccount, even where no monthly maintenance fee is imposed.
- Higher One will pay, separate from the Settlement Fund and as provided for in the Settlement Agreement, for the costs of a robust notice plan and for settlement administration, as well as related costs incurred in connection with the effectuation of the Settlement.

In sum, this is a robust Settlement that provides real benefits to hundreds of thousands of Higher One accountholders. As explained fully below, Plaintiffs have established all necessary prerequisites for preliminary approval of the Settlement. First, the Settlement provides excellent relief to Class Members, who may make simple, easy-to-submit claims to receive their *pro rata* share of the Net Settlement Fund. In addition, Higher One has agreed to pay, separate from the

Settlement Fund, the costs of Settlement notice and administration as provided for in the Settlement Agreement—costs which are estimated to be over \$1.3 million and potentially as high as \$2 million—another significant feature of the Settlement which accrues to the benefit of the Class. Lastly, Plaintiffs and Higher One estimate that the economic value to the Class of Higher One’s practice changes (in the form of fees no longer charged by Higher One) is at least \$66 million from their inception through 2016—and that figure does not include the difficult-to-quantify value of improved OneAccount disclosures and the enhanced ability of students to conveniently select checking account options other than Higher One’s. In the face of certain risks discussed below, Plaintiffs’ \$15 million recovery, plus costs of notice and administration, as well as meaningful practice changes, is outstanding—and merits preliminary approval.

For these reasons, and those detailed herein, Plaintiffs respectfully request that the Court: (1) preliminarily approve the Settlement; (2) certify for Settlement purposes the proposed Class, pursuant to Rule 23(b)(3) and (e) of the Federal Rules of Civil Procedure; (3) appoint Brandi Crawford, Tarsha Crockett, Aisha DeClue, Larry Forman, Rhonda Hannibal, Prince Kaywood, Gaynell Kaywood, John Brandon Kent, Brianne Elizabeth Kent, Kristen Krieg, Jonathan Lanham, Ashley Parker, and Jeanette Price as Class representatives; (4) approve the Notice program set forth in the Settlement Agreement (attached hereto as Exhibit A), and approve the form and content of the Notices (Attachments 2-5 to the Declaration of Kim Schmidt, Rust Consulting (“Schmidt Decl.”), attached hereto as Ex. C); (5) approve and order the opt-out and objection procedures set forth in

the Settlement Agreement; (6) stay the Litigation against Defendants pending Final Approval of the Settlement; (7) appoint as Class Counsel the attorneys and law firms listed in Paragraph C of the Settlement Agreement; and (8) schedule a fairness hearing to consider granting Final Approval of the Settlement to occur no sooner than September, 2014.

II. BACKGROUND RELEVANT TO PRELIMINARY APPROVAL

A. History of the Litigation

Class Counsel began investigating potential plaintiffs' claims against Higher One and reviewed several sets of checking account statements and various Higher One marketing materials beginning in 2011. Declaration of Hassan A. Zavareei ("Zavareei Decl.," attached hereto as Ex. B), ¶ 4. At an early stage, this investigation allowed Class Counsel to develop an understanding of the nature of Higher One's conduct, the language of the account agreements and marketing representations at issue, and potential causes of action and remedies.

Id.

Class Counsel expended significant resources researching and developing the legal claims at issue in this case, including the claims asserted under the Connecticut Unfair Trade Practices Act ("CUTPA"), Conn. Gen. Stat. § 42-110b *et seq.* and their applicability to out-of-state consumers. *Id.* ¶ 5.

The complaints in the Litigation, which were filed by the Plaintiffs and their respective counsel between July 2012 and November 2012 in six different federal district courts and state courts, (*Price v. Higher One Holdings, Inc.*, No. 3:12-cv-1093-VLB ("*Price*"); *Parker v. Higher One Holdings, Inc.*, No. 3:12-cv-1788-VLB

(“*Parker*”); *Massey v. Higher One Holdings, Inc.*, No. 3:12-cv-1808-VLB (“*Massey*”); *Lanham v. Higher One Holdings, Inc.*, No. 3:12-cv-1811-VLB (“*Lanham*”); *Kent v. Higher One Holdings, Inc.*, No. 3:13-cv-48-VLB (“*Kent*”); *DeClue v. Higher One Inc.*, No. 3:13-cv-556 VLB (“*DeClue*”), each alleged that Higher One and Bancorp had engaged in unfair and deceptive practices regarding the marketing of the OneAccount to Class Members and had charged unlawful and improper fees. Certain of the complaints contained similar allegations against WEX and Taylor Capital Group. *Id.* ¶ 6.

On September 11, 2012, Defendants requested that the Judicial Panel on Multidistrict Litigation (“Panel”) transfer the *Price, Parker, and Kent* matters to a single district for coordinated or consolidated pre-trial proceedings. While that motion was pending, Defendants notified the Panel of the *Lanham* and *Massey* matters and asked that they receive similar treatment. On December 11, 2012, the Panel granted Defendants’ motion and transferred the *Price, Parker and Kent* matters to this Court for all pre-trial proceedings. On December 21, 2012, the Panel also transferred the *Lanham* and *Massey* cases to this Court.

On October 28, 2012, Defendants filed their first motion to dismiss arguing that certain of Plaintiffs’ claims failed as a matter of law. The Parties fully briefed this motion, which became moot upon transfer of other cases to this Panel.

On January 11, 2013, with the consent and agreement of all Plaintiffs’ counsel, Tycko & Zavareei LLP moved the Court to be named Interim Lead Counsel of the consolidated litigation. This Court granted the motion on March 28, 2013.

On November 5, 2012, Aisha DeClue filed *DeClue v. Higher One Inc.*, No. 12SLCC4229., in the Circuit Court for Saint Louis County, Missouri. On December 20, 2012, Higher One removed the case to the United States District Court for the Eastern District of Missouri (No. 4:12-cv-2361), and also requested that the Panel transfer *DeClue* to the District of Connecticut as part of the MDL Proceedings, which the DeClue Counsel opposed. Nonetheless, the Panel transferred the DeClue Case on to this Court on April 1, 2013.

Plaintiffs consulted with experts both on potential theories of liability and damages, with a particular emphasis on intricate student financial aid regulations. Zavareei Decl., ¶ 7. On March 1, 2013, Class Counsel filed a motion seeking permission to file a Consolidated Amended Complaint in the newly-formed MDL. The Court granted the motion on March 28, 2013, and the Consolidated Amended Complaint was filed on April 2, 2013.

On April 22, 2013, Defendants filed a motion to strike Plaintiffs' nationwide CUTPA claims. Defendants also filed a second motion to dismiss the case, arguing, among other things, that many of Plaintiffs' claims were preempted by the Higher Education Act ("HEA"), 20 U.S.C. § 1098(g). The Parties fully briefed these motions, which remain pending.

Plaintiffs actively pursued discovery. Zavareei Decl., ¶ 8. Plaintiffs served Defendants with hundreds of requests to admit, interrogatories, and requests for production. Defendants responded or objected to each of these discovery requests. *Id.* ¶ 9. Defendants also served requests for production and interrogatories on Plaintiffs, to which Plaintiffs responded and/or objected. *Id.*

¶10. The Parties met and conferred on their respective discovery requests extensively. *Id.* ¶ 8. Defendants also began actively producing documents to Plaintiffs, and have produced approximately 15,000 pages of documents to date, including sample webflows, marketing materials, account agreements, and the agreements between the Defendants, all of which have been reviewed by Plaintiffs. Defendants have also produced a database containing the fee information for 3.7 million OneAccounts. *Id.* ¶ 9. Each Plaintiff also provided interrogatory responses to Defendants. *Id.* ¶ 10.

B. History of Settlement Negotiations

In December, 2012, Class Counsel met with counsel for Defendants in Hartford, Connecticut and requested a substantial amount of confidential information regarding Defendants' policies and practices and information regarding Higher One's revenue attributable to OneAccount fees. *Id.* ¶ 11. Higher One provided that information in early 2013. *Id.* ¶ 12. The information provided Class Counsel both with important knowledge as to the universe of damages at issue and with additional information regarding the probabilities of Class certification and, ultimately, prevailing on the merits. *Id.*

Subsequently, the Parties agreed to request that United States Magistrate Judge William Garfinkel of the United States District Court for the District of Connecticut preside over a mediation to determine whether resolution of the Litigation would be possible. On March 13, 2013, the Parties held an in-person mediation session before Judge Garfinkel in Bridgeport, Connecticut. While the mediation was productive, it did not result in a settlement. *Id.* ¶ 13. The Parties

agreed to hold a second mediation session before Judge Garfinkel on May 2, 2013, in Bridgeport, but that mediation ended without an agreement. *Id.* ¶ 14.

On October 10, 2013, the Parties held a third mediation session before Linda Singer, an experienced and well-respected independent mediator located in Washington, D.C. *Id.* ¶ 15. The mediation was contentious and hard-fought, and ultimately resulted in the Parties reaching an agreement in principle on certain material terms of a settlement. *Id.*

The Parties engaged in arm's-length negotiations over the terms of a Settlement Agreement for approximately three months following the Washington, D.C. mediation. *Id.* ¶ 16. During that time, Plaintiffs conducted discovery on the accessibility and content of Higher One's fee data associated with Class Members. *Id.* ¶ 17. Armed with this information, Class Counsel engaged in additional settlement-related analysis to determine—among other things—an appropriate plan for allocation of the Settlement Fund. *Id.* ¶ 27. In addition, Plaintiffs performed detailed confirmatory discovery on Higher One's proposed and implemented business practice changes. *Id.* ¶ 19. That discovery included an in-person visit to Higher One headquarters by Class Counsel to review the implementation and operation of changes to Higher One website and marketing practices. *Id.*

However, the Parties were unable to reach final agreement on all terms of a Settlement Agreement. *Id.* ¶ 28. Specifically, the Parties were unable to agree on a notice and administration plan for the Settlement. *Id.* Accordingly, the Parties re-engaged with Magistrate Judge Garfinkel for help in resolving remaining

disagreements, and reconvened with Judge Garfinkel on January 17, 2014. *Id.* The session was productive, and on January 31, 2014, the Parties were able to reach final agreement on the Settlement Agreement—including the Notice plan, claims process, and plan of allocation—now before the Court. *Id.*

As is evident from the foregoing, the Settlement Agreement involved extensive and protracted negotiations that involved Magistrate Judge Garfinkel and the respected neutral, Linda Singer. The Settlement Agreement was reached only after the provision of key data that allowed Class Counsel to adequately evaluate the possibility of settlement, and only after the production of thousands of pages of written discovery. In addition, the Parties fully briefed two motions to dismiss and a motion to strike. Thus, the Settlement was reached after considerable investigation and careful consideration and discussions. The Parties were thus fully aware of the issues and risks associated with their respective claims and defenses.

C. Higher One Practice Changes

Subsequent to the initiation of the *Price* action, and substantially as a result of that litigation, Higher One modified certain of its One Account policies and practices. Zavareei Decl., ¶ 18. Those changes, set forth in Paragraph 26 of the Settlement Agreement, include: (a) Not opening any Higher One account without requiring students' separate affirmative consent to the Fee Schedule in addition to affirmative consent to the Account Terms and Conditions for Higher One accounts; (b) Improving the clarity and readability of the Fee Schedule, consistent with best practices recommended by the Pew Charitable Trust for

consumer checking accounts; (c) Explaining clearly in the OneAccount's Fee Schedule that both Higher One and an ATM owner may each assess a OneAccount holder a fee in connection with a non-Higher One ATM transaction; (d) Simplifying the process by which students may transfer their funds to other, non-Higher One checking accounts; (e) Offering a refund of up to \$5 per day for Non-Higher One ATM fees incurred when Higher One ATMs are not functioning properly due to any maintenance or repair related issues or are out of cash; (f) Eliminating entirely the Lack of Documentation Fee on OneAccounts; (g) Eliminating entirely the Abandoned Account Fee on OneAccounts; (h) Eliminating entirely the Delinquent Account Fee on OneAccounts; (i) Eliminating Insufficient Funds Fee, Non-Sufficient Funds Fee, or Overdraft Fee on recurring debit card transactions made with a OneAccount; and (j) Not marketing the OneAccount as "free" when marketing the basic OneAccount, even where no monthly maintenance fee is imposed. These modifications were substantially a result of this Litigation. Settlement Agreement, ¶ 26. Higher One agrees to keep the practice changes in place for a minimum of two years from the Effective Date of the Settlement. *Id.* ¶ 27.

The Parties' October 10, 2013 agreement in principle included terms related to the specific Higher One practice changes. Subsequently, Class Counsel reviewed the proposed and implemented practice changes in detail. Zavareei Decl., ¶ 18. Plaintiffs requested and received additional discovery into current marketing communications, Terms and Conditions and Fee Disclosures, and reviewed each. *Id.* ¶ 19. As noted above, the discovery included an in-person

visit to Higher One headquarters by Class Counsel to review the implementation and operation of changes to Higher One website and marketing practices. *Id.* Dissatisfied with certain practice changes, Class Counsel negotiated with Higher One over further improvements to the practice changes after the completion of its discovery effort, including improvements to Higher One processes and disclosures regarding students' ability to transfer funds to non-Higher One accounts. *Id.* ¶ 20. As a result of these negotiations, Higher One ultimately agreed to make the process for transferring funds into another account even easier for students. *Id.* ¶ 21.

Overall, Plaintiffs and Higher One estimate that the economic value to the Class of Higher One's practice changes (in the form of fees no longer charged by Higher One) is at least \$66 million from their inception through the required period, that is, two years following the Effective Date—and that figure does not include the difficult-to-quantify value of improved OneAccount disclosures and the enhanced ability of students to conveniently select checking account options other than Higher One's. *Id.* ¶ 22.

III. THE SETTLEMENT PROVISIONS

The full terms of the Settlement are embodied in the Settlement Agreement, attached hereto as Exhibit A. The Agreement is fair and reasonable to the Class, as it provides significant and meaningful benefits to the Class. Moreover, the terms of the Settlement have been carefully crafted and relate directly to the conduct that Plaintiffs challenged in this case. In sum, the Settlement calls for a significant monetary payment to the Class and also provides substantial and

meaningful benefits in the form of significant changes in the manner in which Higher One conducts its business.

The terms of the Settlement are detailed in the Agreement. The following is a summary of the material terms.

A. The Class

The Class is an opt-out class under Rule 23(b)(3) of the Federal Rule of Civil Procedure. The Class is defined as:

All persons who opened a OneAccount between July 1, 2006 through August 2, 2012 and who incurred a OneAccount Fee during that period.

Settlement Agreement, ¶ B.

Excluded from this Class are Defendants, their subsidiaries, affiliates, parents, officers and directors, current and former employees, any entity in which Defendants have a controlling interest, governmental entities, and all judges assigned to hear any aspect of this case, as well as their immediate families. Also excluded is any person who, during the Class Period, released Defendants from liability concerning the claims in the Litigation. *Id.*

B. Monetary Relief for the Class

The Settlement required Higher One to deposit \$15 million into a client trust account held by its counsel, Wiggin & Dana, within 7 days of the execution of the Agreement. Settlement Agreement, ¶ 21. That transfer will occur on or before February 20, 2014. Zavareei Decl., ¶ 23. Within 9 days of this Court's preliminary

approval of the Settlement, that deposit will be transferred to a separate Escrow Account that will constitute the Settlement Fund. Settlement Agreement, ¶ 21.

Higher One will pay the costs of Settlement notice and administration as provided for in the Settlement Agreement separate from the Settlement Fund. Settlement Agreement, ¶ 25. The Notice administrator currently estimates those costs will be approximately \$1.3 million and could be as high as \$2 million—another significant benefit to the Class.

C. Class Release

In consideration of the benefits conferred by the Settlement, all Class Members who do not submit a valid and timely opt-out request will be deemed to have released Defendants from claims related to the subject matter of the Action. The detailed release language can be found in Paragraph 40 of the Agreement.

D. The Notice Program

The Parties have chosen one of the leading class action notice and administration firms in the country to serve as the Settlement Administrator for this Settlement. Rust Consulting (“Rust”) is highly experienced in national class action settlement notice and administration. Schmidt Decl., ¶¶ 2-3. The Notice program in this Settlement (Settlement Agreement, ¶¶ 39-52) is tailored to take advantage of the information Higher One has available about the Class Members. Schmidt Decl., ¶ 6. The Notice program will apprise the Class of (a) the pendency of the Action; (b) the Court’s preliminary certification of the Class; (c) the terms of the Settlement and the Class Members’ rights to opt-out of the Settlement Class or to object to the Settlement; (d) Class Counsel’s expected fee application; and

(e) the expected request for Service Awards for Plaintiffs. *Id.* ¶ 28; Settlement Agreement, ¶¶ 39-52. All costs associated with the Notice program provided for in the Settlement Agreement will be paid solely by Higher One. Settlement Agreement, ¶ 25.

The Notice program is comprised of six parts: (1) direct electronic notice via email to addresses held in Higher One's business records and which were provided by the Class Members ("E-mail Notice"), which will include a simple, easy-to-use electronic claim submission option; (2) for each Class Member where the E-mail Notice is returned or bounces back as undeliverable, the Settlement Administrator will mail, via first-class mail postcard, a mailed Notice to each Class Member at the address identified in Higher One's records ("mailed Notice"), which will include a "tear-off," pre-populated claim form for easy submission to the Settlement Administrator; (3) publication Notice ("Published Notice") designed to support the direct notice efforts noted above, via search engine sponsored search results and advertising on Facebook; (4) a "Long-form Notice" with more detail than the direct mail or publication notices, and which will describe the procedure Class Members must use to opt out of the Settlement or to object to the Settlement, and/or to Class Counsel's application for attorneys' fees, that will be available on the Settlement Website; (5) a Settlement Website, which will explain the Settlement, give answers to frequently asked questions, allow for the electronic submission of Claims, describe the Settlement Payment distribution process, and provide links to the Long-Form Notice, the Settlement Agreement, and such other documents as Class Counsel and counsel for Higher

One agree to post or that the Court orders posted on the website; and (6) a toll-free telephone line for Class Members to call with Settlement-related inquiries. Settlement Agreement, ¶¶ 38-39, 42-51.

All Notices will include, among other information: (a) a description of the material terms of the Settlement; (b) a date by which Class Members may exclude themselves from or “opt out” of the Class and a description of how to effectively opt out; (c) a date by which Class Members may object to the Settlement; (d) a date by which Class Members must file a Claim; (e) the date upon which the Final Approval Hearing will occur; (f) and the web address of the Settlement Website at which Class Members may access the Long-Form Notice, this Agreement, the Claim Form, and other related documents and information. Settlement Agreement, ¶ 39.

In addition, all notices will make clear that all opt-outs must be received by counsel before the Opt-Out Period expires, and any objections must be received by counsel for the Parties by the objection deadline. *Id.* ¶ 40. For an objection to be valid, it must include information specified in the Settlement Agreement. *Id.* ¶ 41.

1. Email Notice

The Settlement Administrator will e-mail the E-mail Notice to each Settlement Class Member at the e-mail address identified in Higher One’s records. The Settlement Administrator will take steps to prevent the E-mailed Notices from being treated as spam by Internet Service Providers. Schmidt Decl., ¶ 11. Should the Settlement Administrator learn (through an e-mail bounceback or otherwise) that the e-mail address in Higher One’s records is invalid, then the

Settlement Administrator will mail a Mailed Notice to that Class Member, as discussed below. Settlement Agreement, ¶ 45; Schmidt Decl., ¶ 13. Each electronic Notice will contain a link to a pre-populated claim form on the Settlement Website, allowing for quick and easy claim submission. Settlement Agreement, ¶ 50; Schmidt Decl., ¶ 12. Class Members will have the opportunity to update address and email information if necessary. *Id.*

2. Mailed Notice

For each Class Member where an attempted E-mailed Notice is returned or bounces back as undeliverable, the Settlement Administrator will mail, via first-class mail postcard, a Mailed Notice to each Class Member at the address identified in Defendants' records. Settlement Agreement, ¶ 47. However, before mailing postcards, the Settlement Administrator will verify and update the mailing addresses received through the United States Postal Service's National Change of Address database to maximize address accuracy. *Id.*; Schmidt Decl., ¶ 17.

Next, the Settlement Administrator will perform reasonable address traces for all postcards that are returned as undeliverable. No later than 35 days from the Initial Mailed Notice date, the Settlement Administrator will complete the re-mailing of Mailed Notice postcards to those Class Members whose original mailed postcards were returned as undeliverable and whose new addresses were identified as of that time through address traces. Settlement Agreement, ¶ 48. The Mailed Notice Program (which is comprised of both the Initial Mailed Notice, and the Notice Re-mailing Process) shall be completed no later than 60 days after the Court's Order of Preliminary Approval. *Id.* ¶ 46.

Each mailed Notice will be accompanied by a tear-off Claim Form that will allow for easy Claim submission by Class Members. Schmidt Decl., ¶ 15.

3. The Settlement Website and the Toll-Free Settlement Line

The Settlement Administrator will establish and maintain a Settlement Website, which will explain the Settlement, give answers to frequently asked questions, allow for the electronic submission of Claims, describe the Settlement payment distribution process, and provide links to the Long-Form Notice, this Agreement, and other Court documents, including the complaints filed in the Litigation. Settlement Agreement, Definition PP.

The Settlement Administrator will also establish and maintain an automated toll-free telephone line for Class Members to call with Settlement-related inquiries, and certain live telephone support to answer the questions of Class Members who call with or otherwise communicate such inquiries. Settlement Agreement, ¶ 38(d).

E. Settlement Administration

All fees and costs related to Notice and Settlement administration provided for in the Settlement Agreement will be paid by Higher One, except that the Settlement Fund will bear the cost if any secondary distribution of funds is necessary. Settlement Agreement, ¶ 37. In the event funds remain in the Settlement Fund one year after distribution of Settlement Payment checks to Class Members, and only in such event, Higher One will be entitled to recoup up to \$750,000 of the expenses it incurred from the leftover funds. *Id.* ¶ 59.

Higher One has engaged Rust as Settlement Administrator. Rust will administer various aspects of the Settlement, including, but not limited to,

providing E-mailed Notice and/or Mailed Notice to Class Members; making available a Long-Form Notice to Class Members on a Settlement Website; effectuating the Published Notice Program; allowing for the electronic submission of Claims through the Settlement Website and for the Submission of tear-off and printable Claim Forms in hard copy; distributing the Settlement Fund as provided herein; and repaying the Settlement Fund, less any previously authorized expenses, to Higher One in the event of a termination of the Settlement. Class Counsel and counsel for Higher One will jointly oversee the Settlement Administrator. Settlement Agreement, ¶ 36.

F. Distribution of the Settlement Fund

All Class Members who submit a claim will be entitled to a portion of the Settlement Fund. Within 60 days of the Effective Date, the Settlement Administrator will distribute the Settlement Payments from the Net Cash Settlement Fund to the Claimants who filed timely Claim Forms. Settlement Agreement, ¶ 55. The Settlement Administrator will make Settlement Payments by mailed check. Checks will be valid for 180 days. *Id.* ¶¶ 56-57. The Settlement Administrator will make reasonable efforts to locate the proper address for any Claimant whose check is returned by the Postal Service as undeliverable, and will re-mail it once to the updated address. *Id.*

The amount of each Class Member's distribution will be determined pursuant to a formula described in detail in the Settlement Agreement. *Id.* ¶ 54. To summarize, the allocation formula "weights" certain OneAccount Fees more heavily than others, based on a) the Fee's relative importance to Plaintiffs'

claims; and b) the relative strength of legal claims based on a particular Fee. Zavareei Decl., ¶ 29. This allocation formula allows Class Members who submit a claim to receive credit for the full value of all Non-Higher One ATM Fees and PIN-Based Transaction Fees—the Fees at the center of this Litigation. *Id.* ¶ 30. Other types of OneAccount Fees will be credited to Class Members who submit a claim subject to an overall cap, and at a reduced “weight.” Settlement Agreement, ¶ 54. Higher One has made available to Class Counsel sufficient information to determine and implement the allocation of Net Cash Settlement Fund. Zavareei Decl., ¶ 31. The data provided by Higher One to Class Counsel included information with respect to each Class Member’s total net fees incurred, the “net” amount of certain types of fees, including net Non-Higher One ATM and PIN-Based Transaction Fees, and the net amount of all other fees. *Id.* ¶ 32. “Net” fees were calculated by subtracting fee credits or refunds that Class Members have already received from Higher One, for any reason, from fees incurred by fee type. *Id.* ¶ 33.

Using this data, the Settlement Administrator will determine each Claimant’s *pro rata* share of the Net Settlement Fund by applying a formula detailed in the Settlement Agreement and at Section F, *infra*. The Settlement Administrator shall then apportion the Net Cash Settlement Fund *pro rata* to Claimants.

G. Class Representative Service Awards

Class Counsel will ask the Court to approve service awards of \$5,000 per Plaintiff and \$2,500 per Former Plaintiff (“Service Awards”). Each of the Plaintiffs and Former Plaintiffs devoted substantial time and effort, including responding to

detailed discovery requests and participating in regular communications with counsel to remain fully apprised of all developments in this case and the progress of all Settlement discussions. Zavareei Decl. at ¶ 34. Higher One shall take no position on Class Counsel's request for payment of the Service Awards. Settlement Agreement, ¶ 54. If the Court approves them, the Service Awards will be paid from the Settlement Fund. *Id.* These awards will compensate the representatives for their time and effort in the Actions, and for the risk they undertook in prosecuting the case against Higher One.

H. Attorneys' Fees and Costs

Higher One will not oppose Class Counsel's request for attorneys' fees of up to 30% of the Settlement Fund. *Id.* ¶ 62. The Parties negotiated and agreed upon this only after reaching agreement on all other material terms of this Settlement. *Id.* ¶ 65; Zavareei Decl., ¶ 35. Plaintiffs will submit their request for attorneys' fees at the time they seek final approval of the Settlement Agreement.

IV. ARGUMENT

A. The Settlement Agreement Merits Preliminary Approval

The issue now before the Court is whether the Settlement is within the range of what might later be found to be fair, reasonable and adequate, so that notice of the proposed Settlement should be given to Class Members and a hearing scheduled to consider final approval of the Parties' Settlement Agreement. Federal Rule of Civil Procedure 23(e) requires judicial approval for any compromise of claims brought on a class basis. Approval of a proposed settlement is a matter within the discretion of the district court. *See, e.g., In re*

Prudential Sec. Inc. Ltd. P'ships Litig., 163 F.R.D. 200, 209 (S.D.N.Y. 1995). This discretion should be exercised in the context of a public policy which strongly favors the pretrial settlement of class action lawsuits. See *Strougo v. Bassini*, 258 F. Supp. 2d 254, 257 (S.D.N.Y. 2003); see also *In re Warner Chilcott Ltd. Sec. Litig.*, No. 06 Civ. 11515 (WHP), 2008 WL 5110904, at *1 (S.D.N.Y. Nov. 20, 2008) (“The settlement of complex class action litigation is favored by the Courts.”) (citations omitted).

Once a proposed settlement is reached, “a court must determine whether the terms of the proposed settlement warrant preliminary approval. In other words, the court must make a ‘preliminary evaluation’ as to whether the settlement is fair, reasonable and adequate.” *In re Currency Conversion Fee Antitrust Litig.*, MDL No. 1409, 2006 WL 3247396, at *5 (S.D.N.Y. Nov. 8, 2006) (citations omitted); see also *In re NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997) (“Preliminary approval of a proposed settlement is the first in a two-step process required before a class action may be settled.”) A court is afforded wide discretion in determining the information that it wishes to consider at this preliminary stage, and this initial assessment can be made on the basis of information already known to the court. *Manual for Complex Litigation (Fourth)*, at § 21.162 (2004). “Once preliminary approval is bestowed, the second step of the process ensues: notice is given to the class members of a hearing, at which time class members and the settling parties may be heard with respect to final court approval.” See *NASDAQ*, 176 F.R.D. at 102. At the preliminary approval stage, the court is not required to make a final determination of the

merits of the proposed settlement. *See Prudential*, 163 F.R.D. at 210 (“At this stage of the proceeding, the Court need only find that the proposed settlement fits ‘within the range of possible approval.’”) (citation omitted). To grant preliminary approval, the court need only find that there is “‘probable cause’ to submit the [settlement] to class members and hold a full-scale hearing as to its fairness.” *In re Traffic Executive Ass’n*, 627 F.2d 631, 634 (2d Cir.1980).

Preliminary approval of a proposed settlement is warranted “[w]here the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the reasonable range of possible approval.” *See NASDAQ*, 176 F.R.D. at 102 (citing *Manual for Complex Litigation (Third)*, at § 30.41 (1995)); *see also In re Gilat Satellite Networks, Ltd.*, No. 02 Civ. 1510, 2007 WL 1191048, at *9 (E.D.N.Y. Apr. 19, 2007).

Because preliminary approval is simply the first step in the process of approving a settlement, courts have typically screened proposed settlements to determine if they have “obvious deficiencies, such as unduly preferential treatment of class representatives ... or excessive compensation for attorneys.” *Chin v. RCN Corp.*, No. 08-7349, 2010 WL 1257586, at *2 (S.D.N.Y. Mar. 12, 2010) (quoting *Manual for Complex Litigation* § 30.41 (3d ed.) (1995)).

The Settlement here has none of the “obvious defects” mentioned by courts. The Settlement itself is not contingent upon approval of attorneys’ fees or any service awards to the Class representatives. Settlement Agreement, ¶ 62.

The Court will separately and independently determine the appropriate amount of fees, costs, and expenses to award to Class Counsel and the appropriate amount of any award to the Class representatives. Moreover, allocation and distribution of the Settlement Fund will treat Class Members fairly, and indeed those Settlement provisions were agreed upon after considering the input of Magistrate Judge Garfinkel. Zavareei Decl., ¶ 28. Accordingly, the Proposed Settlement treats all members of the Proposed Class equally and fairly, and there are no “obvious deficiencies” which would prevent preliminary approval.

Considering the issues, evidence and nature of the Settlement negotiations in this case, preliminary approval clearly is proper in this instance.

1. The Settlement Agreement Is A Result Of Informed, Non-Collusive Negotiations

Where a settlement is reached only after extensive arm’s-length negotiations by competent counsel who had more than adequate information regarding the circumstances of the Litigation and the strengths and weaknesses of their respective positions, it is entitled to a “strong initial presumption of fairness.” *In re PaineWebber Ltd., P’ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997), *aff’d*, 117 F.3d 721 (2d Cir. 1997). The opinion of experienced counsel supporting the settlement is entitled to considerable weight in a court’s evaluation of a proposed settlement. *In re Michael Milken & Assoc. Sec. Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y. 1993); *see also Reed v. General Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983) (“[T]he value of the assessment of able counsel negotiating at arm’s length cannot be gainsaid. Lawyers know their strengths and they know where the bones are buried.”). Courts generally presume that

settlement negotiations were conducted in good faith and that the resulting agreement was reached without collusion, absent evidence to the contrary. Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 11.28, at 11-59 (3d ed. 1992) (counsel are “not expected to prove the negative proposition of a noncollusive agreement”).

Settlement discussions took place over the course of 10 months before an agreement was reached by the Parties. Zavareei Decl. ¶¶ 17-20. This case has been hard fought, and the Settlement negotiations were extensive and adversarial in nature. Moreover, the Parties were able to reach the Settlement only after working repeatedly with Magistrate Judge Garfinkel and with Linda Singer, a respected mediator. *Id.* ¶¶ 13-15. Moreover, Judge Garfinkel mediated the Parties’ disagreements on Settlement Fund allocation and distribution issues and reviewed the key terms of the Settlement as part of this process. *Id.* ¶ 28. There plainly was no collusion with respect to this proposed Settlement Agreement.

Moreover, the Parties have vigorously litigated this case and have thoroughly explored the issues in this Litigation. *Id.* ¶¶ 4-6. As discussed above, Class Counsel conducted a thorough investigation and analysis of Plaintiffs’ claims and engaged in extensive formal discovery with Higher One. *Id.* ¶¶ 7-10. Class Counsel’s review of that extensive discovery enabled them to gain an understanding of the evidence related to central questions in the case, and prepared them for well-informed settlement negotiations. Finally, Class Counsel and Defendants’ counsel are experienced in class action litigation. *Id.* ¶¶ 40-43.

Accordingly, the proposed Settlement is entitled to a “strong initial presumption of fairness.” *In re PaineWebeer Pshps. Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y 1997).

2. The Settlement Easily Falls Within the Range of Possible Approval

Even considering the more exacting standard for determining the fairness of the settlement at final approval, the Settlement is fair and reasonable. The Second Circuit has identified nine factors that courts should consider in deciding whether to grant final approval of a class action settlement:

(1) the complexity, expense and likely duration of the litigation, (2) the reaction of the class to the settlement, (3) the stage of the proceedings and the amount of discovery completed, (4) the risks of establishing liability, (5) the risks of establishing damages, (6) the risks of maintaining the class action through the trial, (7) the ability of the defendants to withstand a greater judgment, (8) the range of reasonableness of the settlement fund in light of the best possible recovery, [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974) (internal citations omitted). While not the subject of the preliminary approval analysis, as discussed below, a review of the key factors for final approval support the Court’s preliminary approval of the Settlement.

a. The Stage of the Proceedings and the Amount of Discovery Completed

In evaluating a settlement, “[t]here is no precise formula for what constitutes sufficient evidence to enable the court to analyze intelligently the contested questions of fact. It is clear that the court need not possess evidence to decide the merits of the issue, because the compromise is proposed in order to avoid further litigation.” Alba Conte & Herbert Newberg, *NEWBERG ON CLASS ACTIONS* § 11.45 (4th ed. 2002). By the time the Settlement was reached, Class

Counsel had sufficient knowledge of the merits of the claims alleged in the Litigation and the defenses that would be asserted. Class Counsel are intimately familiar with the factual and legal issues and the ever-changing legal landscape surrounding the claims at issue in this litigation.

Plaintiffs settled this Litigation with the benefit of thousands of pages of documents produced by Higher One, an analysis of a significant sample of fee data and aggregate Higher One revenue data, as well as detailed information regarding business practices, marketing representations, and written disclosures. As noted, review of this information positioned Class Counsel to evaluate with confidence the strengths and weaknesses of Plaintiffs' claims and prospects for success at Class certification, summary judgment and trial.

Class Counsel were well informed of the strengths and weaknesses of Plaintiffs' claims and Defendants' defenses, which permitted them to fully consider and evaluate the fairness of the Settlement to the Class. *See Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.*, No. 01 Civ. 11814 (MP), 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004) (citation omitted) (finding action had advanced to stage where parties "have a clear view of the strengths and weaknesses of their cases."). "[A] prompt and efficient attorney who achieves a fair settlement without litigation serves both his client and the interests of justice." *McKenzie Construction Inc. v. Maynard*, 758 F.2d 97, 101-2 (3d Cir.1985). In the context of a complex class action, early settlement has far reaching benefits in the judicial system. *Maley v. Del Global Technologies Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002).

b. The Risks of Establishing Liability and Damages

In assessing a proposed settlement, the Court should balance the benefits afforded the Class, including the *immediacy* and *certainty* of a recovery, against the continuing risks of litigation. See *Grinnell*, 495 F.2d at 463. While Class Counsel believe that Plaintiffs' claims are meritorious, there are substantial risks to achieving a better result for the Class through continued litigation. Those risks are laid bare in the two motions to dismiss and one motion to strike that Higher One filed. Docket No. 25; *Price v. Higher One Holdings, Inc.*, No. 3:12-cv-1093-VLB, Docket Nos. 39-40. Specifically, Plaintiffs would face legal risk that, *inter alia*, their claims could be found preempted in whole or in part; that a factfinder could determine Higher One's disclosures were adequate and not misleading; that the Defendants other than Higher One were not responsible for the complained about conduct; and that Plaintiffs' CUTPA claims would be limited to Connecticut consumers only.

Moreover, while Class Counsel believes that a class would be certified even over Defendants' objections, there is always a risk that Defendants would successfully block class certification. In attempting to block class certification, Higher One would point to variations both in Higher One practices over time and across colleges and universities, to the fact that colleges and universities also provided independent (and differing) information to students about the financial aid refund process, as well as variations in students' response to, and interpretation of, Higher One disclosures and marketing materials. But for the Settlement, Defendants would have contested certification of the Class, and even if the Class was eventually certified by the Court, Defendants would have likely

taken any opportunity to argue for decertification as the Litigation progressed. Further, there is no assurance of maintaining certification of a class, as courts may exercise their discretion to re-evaluate the appropriateness of class certification at any time. *See Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) (noting that “[w]hile plaintiffs might indeed prevail [on a motion for class certification], the risk that the case might not be certified is not illusory”); *Chatelain v. Prudential-Bache Sec.*, 805 F. Supp. 209, 214 (S.D.N.Y. 1992) (“Even if certified, the class would face the risk of decertification.”). Thus, the Settlement avoids any uncertainty with respect to class certification or decertification.

Protracted litigation carries inherent risks that would necessarily have delayed and endangered Class Members’ monetary recovery. Zavareei Decl., ¶ 36. This Settlement provides substantial relief to Class Members without further delay.

In short, it is Class Counsel’s considered opinion that the recovery from Defendants under this Settlement is fair and reasonable. Although Plaintiffs and Class Counsel would have obviously sought more in any trial, the value of the Settlement constitutes a substantial recovery under all of the circumstances. *Id.* Moreover, notwithstanding the confidence of Class Counsel in the merits of the Plaintiff’s claims against Defendants, Class Counsel are cognizant that significant obstacles existed to both Class certification and a victory at trial. Defendants had arguments and potential defenses available to it at both stages. If Class certification was denied and that denial was affirmed on appeal, the value of

Plaintiffs' claims would have virtually extinguished. *Id.* ¶ 37. Some of Defendants' arguments and defenses on liability include those reflected in Higher One's pending motions to strike and to dismiss, as well as arguments that Defendants could have presented to limit or restrict the potential damages available to the Class even in the event of a judgment in its favor. Under all of these circumstances, the proposed Settlement Agreement is fair, reasonable, and adequate.

c. The Complexity, Expense and Likely Duration of the Litigation

"The expense and possible duration of the litigation are major factors to be considered in evaluating the reasonableness of [a] settlement." *Milstein v. Huck*, 600 F. Supp. 254, 267 (E.D.N.Y. 1984). This Litigation involves many complex legal issues relating to state consumer protection laws, and federal financial aid law and regulation. The costs and risks associated with litigating this Litigation to a verdict, not to mention through the inevitable appeals, would have been high, and the process would require many hours of the Court's time and resources. Further, even in the event that the Class could recover a larger judgment after a trial, the additional delay through trial, post-trial motions, and the appellate process could deny the Class any recovery for years, further reducing its value. *Hicks v. Morgan Stanley & Co.*, No. 01 Civ. 10071 (RJH), 2005 WL 2757792, at *6 (S.D.N.Y. Oct. 24, 2005) ("Further litigation would necessarily involve further costs [and] justice may be best served with a fair settlement today as opposed to an uncertain future settlement or trial of the action."); *Strougo*, 258 F. Supp. 2d at 261 ("even if a shareholder or class member was willing to assume all the risks of pursuing the actions through further litigation...the passage of time would

introduce yet more risks...and would, in light of the time value of money, make future recoveries less valuable than this current recovery”).

Because this sprawling and complex Litigation would have placed significant burdens on both Parties and the Court, this factor militates in favor of the Settlement.

d. The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and in Light of All the Attendant Risks of Litigation

The adequacy of the amount offered in settlement must be judged “not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs’ case.” *In re “Agent Orange” Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff’d*, 818 F.2d 145 (2d Cir. Apr. 1987). Moreover, the Court need only determine whether the Settlement falls within a “range of reasonableness.” *PaineWebber*, 171 F.R.D. at 130 (citation omitted). When evaluating “the terms of the compromise in relation to the likely benefits of a successful trial . . . the trial court is entitled to rely upon the judgment of experienced counsel for the parties.” *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977). “Indeed, the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.” *Id.*

Here, the relief the Settlement Agreement provides for Class Members is outstanding. Higher One has agreed to create a Settlement Fund of \$15 million to reimburse Class Members for OneAccount fees incurred during the Class Period, plus pay Notice and administration costs that will range from \$1.3 to \$2 million, and make meaningful practice changes valued at \$66 million or more.

Plaintiffs' central claims concerned Higher One's inadequate disclosures of two of its fees: Non-Higher One ATM Fees and PIN-Based Transaction Fees. If Plaintiffs were to prevail on their claims relating to those fees, the Settlement value to the class of \$16.3 to \$17 million—excluding the \$66 million in value from the prospective relief—would amount to approximately 12% of the best possible damages award in this case. Zavareei Decl. ¶¶ 24-25. Plaintiffs would almost certainly face an argument by Defendants that even if the disclosures were *initially* inadequate, Class Members should have eventually been on notice of the fees after a reasonable amount of time, and after bank statements and other notices made the reality of the fees clear. *Id.* ¶ 26. If a factfinder agreed, best possible damages would be reduced accordingly. In that case, Class Counsel believe the Settlement value would amount to approximately 20% of potential damages. *Id.* Of course, neither of these estimates account for the extremely valuable prospective relief discussed above, and both assume that Plaintiffs could prevail at all in this case. As described in Section IV.A.2.b, the latter proposition is far from certain.

This recovery is well within the range of recovery routinely approved by courts in this circuit. See *Cagan v. Anchor Sav. Bank FSB*, 1990 U.S. Dist. LEXIS 11450, 1990 WL 73423, at *12-13 (E.D.N.Y. May 22, 1990) (approving \$2.3 million settlement over objections that “bets possible recovery would be approximately \$121 million.”); *In Re AmBase Corp.*, 1995 U.S. Dist. LEXIS 15516 (S.D.N.Y. Oct. 20, 1995) (approving a settlement where class members received from 3% to 20% of their losses, calculated as if all damage issues were resolved in the class

members' favor). *See also Weinberge v. Kendrick*, 689 F.2d 61, 65 (2d Cir. 1982) (class action settlement approved as fair, reasonable, and adequate even where “it is not disputed that the recovery will be only a negligible percentage of the losses suffered by the class.”); *Grinnell*, 495 F.2d at 455 (“The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.”).

Putting aside the extremely significant and carefully tailored non-economic relief provided for in the Settlement (which has an approximate value of \$66 million over relevant period), the \$16.3-17.0 million estimated overall monetary benefit conferred upon the Class represents a significant recovery, under all of the circumstances and in light of the substantial risks of litigation on both the merits and in connection with what surely would have been a contested Class certification proceeding. *Zavareei Decl.* at ¶ 38. It also bears noting that the Settlement represents a recovery in addition to and greater than the amount of restitution \$11 million separately obtained by the Federal Deposit Insurance Corporation (“FDIC”) in an enforcement action against Higher One. *Id.* ¶ 39; *see also* <http://www.fdic.gov/news/news/press/2012/pr12092.html>.

As this Court recently explained in *In re Sturm, Ruger, & Company, Inc. Securities Litigation*, No. 3:09-cv-1293 (VLB), 2012 WL 3589610 (Aug. 20, 2012) (approving a 3.5% recovery of damages and noting that it was higher than the typical recovery in similar class action settlement recoveries), “[i]n light of the legal and factually complexity, the unpredictability of a lengthy trial and the

appellate process as discussed above, the settlement amount is well within the range of reasonableness for similar ... cases.” *Id.* at 21, citing *In re China Sunergy Sec. Litig.*, No. 07Civ.7895 (DAB), 2011 U.S. Dist. LEXIS 53007, 2011 WL 1899715, at *5 (S.D.N.Y. May 13, 2011) (noting that "average settlement amounts in securities fraud class actions where investors sustained losses over the past decade ...have ranged from 3% to 7% of the class members' estimated losses"); *In re Union Carbide*, 718 F.Supp. 1099, 1103 (S.D.N.Y. 1989) (acknowledging that "a settlement can be approved even though the benefits amount to a small percentage of the recovery sought" and that the "essence of settlement is compromise."). Here, in light of the novel issues present in this case, as well as the factual and legal complexity entailed in the prosecution and defense of this case and the unpredictability associated with class certification proceedings, a lengthy trial and any appellate proceedings (both under Fed.R.Civ.P. 23(f) and on the merits), Plaintiffs respectfully submit that the result achieved is excellent under all of the circumstances.

As the Proposed Settlement meets the requirements for final approval, it clearly is “within the range” of *possible* approval, and thus the Class should be notified and given the opportunity to evaluate the terms of the proposed Settlement.

V. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE PLAN OF DISTRIBUTION AND ALLOCATION

The claims process to be used in connection with this Settlement has been made as simple and burden-free as possible for Class Members who wish to receive a Settlement distribution. The entirety of the Net Settlement Fund will be

allocated among Claimants, ensuring complete exhaustion of the Fund. With the limited exception discussed above, no Settlement funds will revert to Higher One, and the Net Settlement Fund will be fully allocated among Claimants. Settlement Agreement, ¶ 59.

Claims processes are routinely approved by courts reviewing class action settlements. *See, e.g., Charron v. Wiener*, 731 F.3d 241, 253-254 (2d Cir. N.Y. 2013) (approving a class action settlement that used a claims process where claimants received differing amounts, or in some cases, nothing from the settlement because “[a]ll class settlements value some claims more highly than others, based on their perceived merits, and strike compromises based on probabilistic assessments”); *Norflet v. John Hancock Life Ins. Co.*, 658 F. Supp. 2d 350, 354 (D. Conn. 2009) (approving a settlement that used a claims process); *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 120 (S.D.N.Y. 2009) (approving a settlement that used a claim process); *Parker v. Time Warner Entm’t Co., L.P.*, 631 F. Supp. 2d 242, 265, 279 (E.D.N.Y. 2009) (same); *In re Marine Midland Motor Vehicle Leasing Litig.*, 155 F.R.D. 416, 419 (W.D.N.Y. 1994) (same).

Here, each Electronic Notice will allow claim filing in a matter of seconds for what is largely a technology-savvy group of students and former students. For those Class Members who do not receive an Electronic Notice via email, the claims process has been made quick and easy as well. Each Mailed Notice will contain an integrated, tear-off claim form that will be pre-populated with all relevant demographic information. Schmidt Decl., ¶ 15. A Class Member need only tear off the form, sign, and place in the mail.

Neither electronic nor hard-copy claim forms will require a Class Member to enter anything other than basic name, address, and other demographic information. See e.g., Attachment 3 to Schmidt Decl., Proposed Mailed Notice. A Class Member need not provide the number of OneAccount Fees, the date Fees were incurred, or any other information. Instead, all claims payments will be automatically calculated based on the data in Higher One's business records, according to the plan of allocation discussed immediately above. In sum, the claims process has been made as simple and user-friendly as possible, and is worthy of preliminary approval.

The plan of allocation is similarly fair and reasonable. Courts grant preliminary approval of plans of allocation when they are "rationally related to the relative strengths and weaknesses of the respective claims asserted." *Torres v. Gristede's Operating Corp.*, No. 04-3316, 2010 WL 2572937, at *2 (S.D.N.Y. Jun. 1, 2010) (quoting *Danieli v. IBM*, No. 08 Civ. 3688, 2009 WL 6583144 at *12-13 (S.D.N.Y. Nov.16, 2009)). The proposed plan of allocation easily meets this standard.

The plan of allocation outlined above, and discussed more detail in the Settlement Agreement, treats Class Members fairly. First, the plan of allocation relies upon accurate data maintained in Higher One's records regarding the number of, and type of, OneAccount fees charged to each Class Member. Zavareei Decl., ¶¶ 31-33. Next, to the extent available in Higher One's business records, it accounts for refunds or credits already issued by Higher One to Class Members, to ensure that Class Members are not reimbursed twice for any

OneAccount Fees. Next, the allocation formula, as described above, “weights” certain OneAccount Fees more heavily than others, based on (a) the Fee’s relative importance to Plaintiffs’ claims; and (b) the relative strength of legal claims based on a particular Fee. Specifically, the allocation formula allows Class Members who submit a claim to receive credit for the full value of all Non-Higher One ATM Fees and PIN-Based Transaction Fees—the Fees at the center of this Litigation. Other types of OneAccount Fees will be credited to Class Members who submit a claim at a reduced “weight.”

Such weighing is permissible within the allocation context to ensure fairness. *See In re “Agent Orange” Product Liability Litigation*, 818 F.2d 179, 183 (2d Cir. 1987); *Friedman v. Union Bank of Switzerland (In Re Holocaust Victim Asset Litigation)*, 413 F.3d 183, 186 (2d Cir. 2001). This ensures fair compensation is given for all OneAccount Fees to each Claimant.

Lastly, the allocation formula “caps” the amount of all other fees other than ATM and PIN Fees, which is appropriate because it will ensure that accountholders who knowingly and repeatedly engaged in behavior, such as overdraft of non-sufficient funds transactions do not disproportionately consume the benefits of the Settlement Fund. Plaintiffs believe that this plan of allocation is fair and reasonable, and merits preliminary approval. Zavareei Decl., ¶ 36.

VI. THE PROPOSED CLASS MEETS THE PREREQUISITES FOR CLASS CERTIFICATION UNDER RULE 23

One of this Court’s functions in reviewing a proposed settlement of a class action is to determine whether the action may be maintained as a class action under Fed. R. Civ. P. 23. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 614

(1997). Rule 23(a) sets forth four prerequisites to class certification referred to in the short-hand as: (i) numerosity; (ii) commonality; (iii) typicality; and (iv) adequacy of representation. In addition, the Class must meet one of the three requirements of Rule 23(b). See Fed. R. Civ. P. 23.

A. Numerosity, Commonality and Typicality

The Class meets the numerosity, commonality, and typicality standards of Rule 23(a)(1)-(3). First, the number and location of putative Class Members is such that it is impractical to join all of the Class Members in one lawsuit. See *Cross v. 21st Century Holding Co.*, No. 00 Civ. 4333 (MBM), 2004 WL 307306, at *1 (S.D.N.Y. Feb. 18, 2004) (certifying where the number of persons in the class logically exceeded 100). Here, approximately 3.7 million accountholders are included in the Class.

Second, there are substantial questions of law and fact common to all Class Members, including, *inter alia* whether at least one Defendant:

- a. Automatically opens Higher One accounts on behalf of students and deposits financial aid refunds into such accounts without consent;
- b. Without students' consent, mails a pre-loaded, co-branded debit card and associated materials to students, falsely representing that Higher One is endorsed by, or is the preferred banking partner of, a student's college or university;
- c. Deceptively encourages students not to opt-out of their Higher One accounts without adequately disclosing the true nature of those accounts, including unconscionable and unusual usage fees;

- d. Intentionally makes it difficult for students to opt-out of the Higher One account by failing to provide an online “direct deposit” option and otherwise delaying access to financial aid monies for students who choose to use other banking providers;**
- e. Imposes contractual forms upon consumers only electronically, and only after a disbursement choice has been made, without providing consumers with the meaningful ability to review or approve the terms of those contracts prior to forcing a student to make a disbursement choice;**
- f. Deceives students about, and do not adequately disclose, PIN Transaction Fees by, among other things, labeling the Higher One access device a “debit card” even though a student must use it as a “credit” card to avoid the fee;**
- g. Does not provide means by which students can reasonably avoid PIN Transaction Fees;**
- h. Violates the contract by charging, in effect, two service fees for every non-Higher One withdrawal;**
- i. Does not provide means by which students can reasonably avoid non-Higher One ATM Transaction Fees;**
- j. Requires their customers to enter into standardized account agreements which include unconscionable provisions;**
- k. Violates DOE regulations and guidance;**

- I. Converts money belonging to Plaintiffs and other Members of the Class through their policies and practices;**
- m. Is unjustly enriched through their policies and practices;**
- n. Violates the consumer protection acts of Connecticut and/or various states through their policies and practices; and**
- o. Violates the Electronic Funds Transfer Act and Regulation E.**

Finally, Plaintiffs' claims are "typical" of other Class Members' claims because they were subjected to a uniform set of policies and practices that Higher One used for all accountholders. Representative Plaintiffs' claims arise from the same course of conduct as the other Class Members' claims. Additionally, Plaintiffs and all other Class Members' claims are premised on the same legal theories. Accordingly, the typicality requirement is satisfied. *See In re Host Am. Corp. Sec. Litig.*, Master File No. 05-CV-1250 (VLB), 2007 WL 3048865, at *5 (D. Conn. Oct. 18, 2007) (Bryant, J.) (finding typicality where plaintiffs alleged defendants committed the same acts, in the same manner against all class members).

B. Adequacy of Representation

The adequacy requirement of Rule 23(a)(4) requires Plaintiffs to demonstrate that: (1) there is no conflict of interest between Plaintiffs and the other Class Members; and (2) Class Counsel are qualified, experienced and capable of conducting the Litigation. *See In re AOL Time Warner ERISA Litigation*, No. 02-8853, 2006 WL 2789862, at *3 (S.D.N.Y. Sept. 27, 2006). Here, Plaintiffs do not have any claims antagonistic to or in conflict with those of the

other Class Members, as Plaintiffs are pursuing the same legal theories as the rest of the Class relating to the same course of Defendants' conduct.

Additionally, Class Counsel have an extensive background in litigating complex litigation and consumer class actions, have been appointed class counsel in prior cases, and have the resources necessary to prosecute this action to its conclusion. See Zavareei Decl., ¶¶ 40-43; Docket No. 8-2. Indeed, this Court has already named Tycko & Zavareei LLP as Interim Lead Counsel in this case, based on just these factors. *Id.* ¶ 3; see also Docket No. 16.

C. Predominance of Common Issues and Superiority

Rule 23(b)(3) authorizes class actions to proceed where “questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fair and efficient adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3). “The matters pertinent to these findings include: (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.” *Id.* “In adding ‘predominance’ and ‘superiority’ to the qualification-for-certification list, the Advisory Committee sought to cover cases ‘in which a class action would achieve the economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness

or bringing about other undesirable results.” *In re Lupron Mktg. and Sales Practices Litig.*, 228 F.R.D. 75, 92 (D. Mass. 2005) (citing *AmchemProds.*, 521 U.S., at 615). Where, as here, a court is deciding on the certification question in the context of a proposed class, questions regarding the manageability of the case for trial purposes do not have to be considered. *Amchem*, 521 U.S. at 619. The remaining elements of Rule 23, however, continue to apply in settlement-only certification situations. *Id.* at 619.

“The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *In re Lupron*, 228 F.R.D. at 91 (citing *Amchem*, 521 U.S. at 623). “Rule 23(b)(3) does not require that *all* questions of law or fact be common; it only requires that the common questions *predominate* over individual questions.” *Dura-Bilt Corp. v. Chase Manhattan Corp.*, 89 F.R.D. 87, 93 (S.D.N.Y. 1981) (emphasis added); see generally Herbert B. Newberg & Alba Conte, *Newberg on Class Actions*, §§ 4.21, 4.25 (1992). As demonstrated *supra* when addressing commonality, several issues of law and fact common to all Class Members are present in this matter. These common issues of law and fact predominate over any potential individual issues which may arise, as they could be resolved through the presentment of proof common to all Class Members. Thus, the predominance requirement of Rule 23(b)(3) is satisfied.

Additionally, the superiority requirement of Fed. R. Civ. P. 23(b)(3) is satisfied. A class action is not only the most desirable, efficient, and convenient mechanism to resolve the claims of the Class, but it is almost certainly the only

fair and efficient means available to adjudicate such claims. *See, e.g., Phillips Co. v. Shutts*, 472 U.S. 797, 809 (1985) (“[c]lass actions . . . permit the plaintiffs to pool claims which would be uneconomical to litigate individually . . . [in such a case,] most of the plaintiffs would have no realistic day in court if a class action were not available”). Class Members likely would be unable or unwilling to shoulder the great expense of litigating the claims at issue against Defendants given the comparatively small size of each individual Class Members’ claims. Thus, it is desirable to adjudicate this matter as a class action.

In light of the foregoing, all of the requirements of Rules 23(a) and 23(b)(3) are satisfied, and thus, the Court should certify this Class for settlement purposes in connection with the proposed Settlement.

VII. NOTICE

Rule 23 of the Federal Rules of Civil Procedure requires that notice of a settlement be “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23 (c)(2)(B). *See also* Alba Conte & Herbert Newberg, *NEWBERG ON CLASS ACTIONS*, § 8.2 at 162-65 (4th ed. 2002). However, there are no “rigid rules” to apply when determining the adequacy of notice for a class action settlement; and “the standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules is measured by reasonableness.” *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 113-14 (2d Cir. 2005), *cert. denied*, 544 U.S. 1044 (2005). Further, it is clearly established that “notice need not be perfect, but need be only the best

notice practicable under the circumstances, and each and every class member need not receive actual notice, so long as class counsel acted reasonably in choosing the means likely to inform potential class members.” *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 133 (S.D.N.Y. 2008) (citing *Weigner v. City of New York*, 852 F.2d 646, 649 (2d Cir.1988), *cert. denied*, 488 U.S. 1005 (1989)).

The proposed Notice program satisfies all of these criteria and is in fact the best notice practicable. As recited in the proposed Settlement and above, the Notice will (a) inform Class Members of the substantive terms of the Settlement, (b) advise Class Members on how to submit a claim (including the claim deadline for doing so), (c) advise Class Members of their options for opting-out or objecting to the Settlement, and (d) explain how to obtain additional information about the Settlement. Moreover, the Notice program was designed and is being implemented by a leading notice firm, Rust Consulting.

Here, the Parties have agreed that virtually all Class Members, whether current or former customers of Higher One, will receive individual notice within 60 days of this Court’s preliminary approval of the Settlement Agreement. As discussed above, the Parties will employ Email Notice for those Class Members for whom Higher One maintains valid email addresses. Settlement Agreement, ¶¶ 45-46. For any Email Notice not successfully delivered to a Class Member (or where no valid email address exists), the Settlement Administrator will subsequently send, via First-Class Mail, a postcard notice to Class Members, using updated mailing address information. *Id.* ¶ 47.

Courts regularly approve just such a process. *See, e.g., In re Sony SXRDRear Projection Television Class Action Litig.*, 2008 WL 1956267 (S.D.N.Y. May 1, 2008) (email notice to all known addresses, and a hard copy mailing to persons who did not have an email address on file or where the email was returned as undeliverable); *Browning v. Yahoo! Inc.*, 2006 WL 3826714 (N.D. Cal. Dec. 27, 2006) (email notice sent to all available addresses, with a hard copy mailing sent to anyone who did not have an email address on file or where the email was returned as undeliverable).

These actions will ensure the vast majority all Class Members will receive individualized notice. Schmidt Decl., ¶ 7. In addition, the Settlement Administrator will place targeted internet advertising, *id.* ¶ 21; make available a Long-Form Notice on a Settlement Website, *id.* ¶ 22; create a Settlement Website with important information; and place into operation a toll-free telephone line. *Id.* ¶ 23.

In her declaration, Kim Schmidt of Rust Consulting provides detailed information about the design and scope of the Notice program. Schmidt Decl., ¶¶ 10-25. Among other things, it will reach at least 90% of Class Members by direct email and mail. *Id.* ¶ 7. Therefore, the Court should approve the Notice program and the form and content of the Notices attached to the Schmidt Decl. as Attachments 2-5.

A. Contents of Notice

The proposed Email Notice (including electronic claim form), Mailed Notice (including tear-off claim form), Long-Form Notice, and Published Notice are attached hereto. The notices include a summary of settling Parties' respective litigation positions; the general terms of the Settlement as set forth in the Settlement Agreement; instructions for how to opt-out of or object to the Settlement; the process and instructions for making a claim; requested attorneys' fee and representative Plaintiff Service Awards; and the date, time, and place of the Final Fairness Hearing. Schmidt Decl., ¶¶ 26-28.

The content of the proposed notice is more than sufficient because it "fairly apprise[s] the ... members of the class of the terms of the proposed settlement and of the options that are open to them in connection with [the] proceedings." See *Maywalt v. Parker and Parsley Petroleum Co.*, 67 F.3d 1072, 1079 (2nd Cir. 1995) (internal quotations omitted). The Notice will provide Class Members with information on the Class, the purpose and timing of the fairness hearing, opt-out procedures and deadlines, and the deadline and process for filing claims. In addition, as discussed above, it will provide a telephone number and website that proposed Class Members may use to the extent they have any questions. Schmidt Decl., ¶¶ 23-24.

1. Opting Out

The Notice clearly explains that any Member of the Class who wishes to opt out of the Class must timely submit written notice clearly manifesting his or her intent to be excluded from the Class to the designated Post Office box established for such purpose. See e.g., Attachment 5 to Schmidt Decl., Long-

form Notice. Class Members will be provided with at least forty-five (45) days to submit requests to opt-out—and a large number of Class Members will be provided significantly more time. Schmidt Decl., ¶ 28.

2. Objecting

The Notices also clearly explain that any Member of the Class who wishes to object to the Settlement must timely file a written statement of objection with the Clerk of the Court and the Parties' counsel. *Id.* ¶ 41. Such objections must be postmarked no later than forty-five (45) days following the date the Notice program is completed. *Id.*, Definition Z. Class Members will be provided with at least forty-five (45) days to submit any objections—and a large number of Class Members will be provided significantly more time. Schmidt Decl., ¶ 28. That is more than sufficient under applicable case law. *See Maywalt v. Parker and Parsley Petroleum Co.*, 67 F.3d at 1079; *Torrise v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1374-75 (9th Cir. 1993), *cert. denied sub nom.*; *Reilly v. Tucson Elec. Power Co.*, 512 U.S. 1220, 114 S. Ct. 2707, 129 L. Ed. 2d 834 (1994).

3. Scope of Notice

In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), the United States Supreme Court described the due process standard for notice as “[n]otice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Id.* at 314; *see also Shutts*, 472 U.S. at 812. The proposed Notice is comprehensive and more than satisfies this standard, as it provides for Email or Mailed Notice to be provided directly to the vast majority of Class Members.

VIII. CONCLUSION

WHEREFORE, based on foregoing, Plaintiffs respectfully request that the Court enter an Order:

- (1) Preliminarily approving the Settlement as set forth in the Settlement Agreement;**
- (2) Approving the Notice plan;**
- (3) Appointing Rust Consulting as Settlement Administrator;**
- (4) Certifying the Class for Settlement purposes;**
- (5) Appointing Brandi Crawford, Tarsha Crockett, Aisha DeClue, Larry Forman, Rhonda Hannibal, Prince Kaywood, Gaynell Kaywood, John Brandon Kent, Brianne Elizabeth Kent, Kristen Krieg, Jonathan Lanham, Ashley Parker, and Jeanette Price as Representative Plaintiffs;**
- (6) Appointing as Class Counsel Tycko & Zavareei, LLP, Shepherd, Finkelman, Miller, & Shah, LLP, Gentle Turner Sexton Debrosse & Harbison, and JonesWard PLC; and**
- (7) Scheduling a Final Fairness Hearing in this matter.**

Plaintiffs respectfully submit the accompanying, proposed Preliminary Approval Order for the Court's review and consideration. Plaintiffs stand ready to provide any additional materials that the Court may require to consider and preliminarily approve this Settlement.

Dated: February 14, 2014

Respectfully submitted:

**/s/ Hassan A. Zavareei
Hassan A. Zavareei
TYCKO & ZAVAREEI LLP
Hassan A. Zavareei (*pro hac vice*)
Jeffrey D. Kaliel (*pro hac vice*)
2000 L Street NW, Suite 808
Washington, DC 20036**

**/s/Karen Leser-Grenon
SHEPHERD FINKELMAN MILLER & SHAH LLP
James E. Miller (ct21560)
Karen M. Leser-Grenon (ct23587)
65 Main Street
Chester, CT 06412
Telephone: (860) 526-1100**

Telephone: (202) 973-0900
Facsimile: (202) 973-0950
hzavareei@tzlegal.com
jkaliel@tzlegal.com

Interim Lead Counsel

Facsimile: (866) 300-7367
jmiller@sfmslaw.com
kleser@sfmslaw.com

**GENTLE TURNER SEXTON DEBROSSE &
HARBISON**

**Diandra Debrosse
501 Riverchase Parkway East
Suite 100
Hoover, AL 35244
Telephone: (205) 716-3000
Facsimile: (205) 716-3010
ddebrosse@gtandslaw.com**

**JONES WARD PLC
Jasper Ward
Alex Davis
312 S Fourth Street, 6th Floor
Louisville, KY 40202
Telephone (502) 882-6000
Facsimile: (502) 587-2007
jasper@jonesward.com
alex@jonesward.com**

Plaintiffs' Steering Committee

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: HIGHER ONE ONEACCOUNT MARKETING (VLB) AND SALES PRACTICES LITIGATION)))))	No. 3:12-md-2407
---	-----------------------	-----------------------

SETTLEMENT AGREEMENT AND RELEASE

This Agreement is made this 31st day of January, 2014 by and between Plaintiffs and Defendants, as defined below.

I. DEFINITIONS

These definitions apply to this Agreement.

A. "Agreement" means this Settlement Agreement and Release.

B. "Class" means a class consisting solely and entirely of persons who opened a OneAccount between July 1, 2006 through August 2, 2012, and who incurred a OneAccount Fee during that period. Excluded from this class are Defendants, their subsidiaries, affiliates, parents, officers and directors, current and former employees, any entity in which Defendants have a controlling interest, governmental entities, and all judges assigned to hear any aspect of this case, as well as their immediate families. Also excluded is any person who, during the Class Period, released Defendants from liability concerning the claims in the Litigation.

C. "Class Counsel" shall mean:

TYCKO & ZAVAREEI LLP
Hassan A. Zavareei
Jeffrey D. Kaliei

**2000 L Street, N.W., Suite 808
Washington, D.C. 20036
Telephone: (202) 973-0900**

**SHEPHERD, FINKELMAN, MILLER & SHAH, LLP
James E. Miller
Karen M. Leser-Grenon
65 Main Street
Chester, CT 06412
Telephone: (860) 526-1100**

**GENTLE, TURNER, SEXTON, DEBROSSE & HARBISON
Diandra Debrosse
501 Riverchase Parkway East, Suite 100
Hoover, AL 35244
Telephone: (205) 716-3000**

**JONES WARD PLC
Jasper Ward
Alex Davis
312 S Fourth Street, 6th Floor
Louisville, KY 40202
Telephone: (502) 882-6000**

D. “Claim” means a Class Member’s request, through submission of an electronic or paper Claim Form, for a Settlement Payment.

E. “Claim Form” means the tear-off form included with the Mailed Notice; the printable claim form available on the Settlement Website, and the electronic process of submitting a Claim on the Settlement Website submitted to seek a Settlement Payment.

F. “Claim Deadline” means no later than 60 days after the Final Settlement Hearing, or such other date as the Court sets in the Preliminary Approval Order. The Claim Form shall state the Claim Deadline as a month, day, and year.

G. “Claimant” means any Class Member who submits a timely and valid Claim Form.

H. “Class Member(s)” means any person who is a member of the Class.

I. “Class Period” means and refers to the time period July 1, 2006 through August 2, 2012.

J. “Class Representative Service Awards” means the amounts, as will be determined by the Court, to be awarded to the Plaintiffs and Former Plaintiffs in connection with their activities as class representatives.

K. “Court” means the United States District Court for the District of Connecticut.

L. “Days,” whether or not capitalized, means calendar days unless otherwise expressly indicated. If a deadline falls on a weekend or Court holiday, the deadline will be extended to the next Court business day.

M. “Defendants” means Higher One Holdings, Inc., Higher One Inc. (collectively, together with Higher One Holdings, Inc., “Higher One”), Wright Express Financial Services Corporation, which since the beginning of the Litigation has changed its name to WEX Bank (“WEX”), Taylor Capital Group, Inc. (“Taylor”), and the Bancorp Bank (“Bancorp”).

N. “Effective Date” means the fifth business day after which all of the following events have occurred:

- (i) All Parties, Defendants’ counsel, and Class Counsel have executed this Agreement;**

(ii) The Court has entered, without material change, the Judgment; and

(iii) The time for appeal or petition has expired, and no appeal or petition for rehearing or review has been timely filed; or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired, relief from a failure to file same is not available, and the mandate is filed with the Court.

O. “Escrow Account” means the interest bearing account to be established by the Settlement Administrator.

P. “Escrow Charges” means any direct costs, including attorneys’ fees incurred by any of the Defendants, in connection with placing the Settlement Funds in escrow as provided for in Paragraph 21.

Q. “Final Settlement Hearing” means the hearing at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith, determine whether to approve the Settlement and Class Counsel’s application for attorneys’ fees, costs and expenses and for Class Representative Service Awards, and determine whether to enter the Judgment.

R. “Former Plaintiffs” means Bailey Bates, Rachel Hancock, Anna Brooke Warren, Sherry McFall, Jill Massey, and Lee McWhorter.

S. “Judgment” means the Court’s order approving the Settlement and dismissing the Litigation with prejudice substantially in the form of a proposed judgment agreed upon by the parties that is submitted to the Court with the Motion for Final Approval.

T. “Lead Class Counsel” means Tycko & Zavareei LLP.

U. “Litigation” means In re Higher One OneAccount Marketing and Sales Practices Litigation, MDL Case No. 3:12-md-2407-VLB; Price v. Higher One Holdings, Inc., No. 3:12-cv-1093-VLB (“Price”); Parker v. Higher One Holdings, Inc., No. 3:12-cv-1788-VLB (“Parker”); Massey v. Higher One Holdings, Inc., No. 3:12-cv-1808-VLB (“Massey”); Lanham v. Higher One Holdings, Inc., No. 3:12-cv-1811-VLB (“Lanham”); Kent v. Higher One Holdings, Inc., No. 3:13-cv-48-VLB (“Kent”); DeClue v. Higher One Inc., No. 3:13-cv-556 VLB (“DeClue”), and any other cases pending in MDL No. 2407 as of the date of Preliminary Approval.

V. “Net Cash Settlement Fund” means the Settlement Fund less the Class Representative Service Awards, awards of attorneys’ fees, costs, and expenses, and the Escrow Charges.

W. “Notice” means the Long Form Notice, E-Mail Notice, Publication Notice, and Mailed Notice that are approved by the Court.

X. “Notice and Administration Expenses” means all fees and expenses in connection with the Notice and administration process set forth in this Agreement at Paragraphs 38-59.

Y. “Notice Date” means the date the Mailed Notice Program, including remailings, is complete.

Z. “Objection Deadline” means 45 days after the Notice Date, or such other date as the Court establishes in the Preliminary Approval Order. The Notice will state the Objection Deadline as a month, day, and year.

AA. “OneAccount” means a bank account provided by one of Higher One’s banking partners and serviced by Higher One that a Class Member selected as the method for receiving financial aid or tuition refund(s) from his/her college or university. “OneAccount” includes the basic OneAccount, which was offered throughout the entire Class Period, and the OneAccount Premier, OneAccount Flex, and OneAccount Edge, which were offered during certain portions of the Class Period.

BB. “OneAccount Fee” means any fee incurred by a OneAccount holder and imposed by Defendants in connection with a OneAccount.

CC. “Opt Out Deadline” means 45 days after the Notice Date, or such other date as the Court establishes in the Preliminary Approval Order. The Notice shall state the Opt Out Deadline as a month, day, and year.

DD. “Participating Firms” means Lead Class Counsel, Class Counsel, and the following additional law firms:

- 1. Carey, Danis & Lowe**
- 2. Law Office of Richard S. Cornfeld**
- 3. The Simon Law Firm, P.C.**
- 4. Rutledge, Davis and Harris, PLLC**

EE. “Parties” means Plaintiffs and Defendants.

FF. “Plaintiffs” means Brandi Crawford, Tarsha Crockett, Aisha DeClue, Larry Forman, Rhonda Hannibal, Prince Kaywood, Gaynell Kaywood, John Brandon Kent, Brianne Elizabeth Kent, Kristen Krieg, Jonathan Lanham, Ashley Parker, and Jeanette Price.

GG. “Preliminary Approval Date” means the date of entry of the Preliminary Approval Order.

HH. “Preliminary Approval Order” means the order the parties expect to be entered by the Court granting preliminary approval of the Settlement.

II. “Related Parties” means Defendants’ respective predecessors, successors, assigns, partners, privies, shareholders, owners, officers, directors, bank partners, managers, administrators, employees, agents, attorneys, affiliates, parents, subsidiaries (including but not limited to banking subsidiaries), related companies, and any other representatives or persons acting on their behalf.

JJ. “Released Claims” means the claims released by the Class Members in Paragraph 70 of this Agreement, except for the claims of those Class Members who submitted a timely and valid request for exclusion.

KK. “Released Parties” means Defendants and all Related Parties.

LL. “Settlement” means the settlement that the Parties are entering into by executing this Agreement.

MM. “Settlement Administrator” means the individual, firm, or business entity retained to assist in processing, administering and distributing, among other things, the Notice and the Net Cash Settlement Fund.

NN. “Settlement Fund” means a fund created with a payment of Fifteen Million Dollars (\$15,000,000.00) from Higher One.

OO. “Settlement Payment” means the cash payment to a Claimant calculated as described in Paragraph 54.

PP. “Settlement Website” means the website created by the Settlement Administrator that explains the Settlement, gives answers to frequently asked questions, allows for the electronic submission of Claims, describes the Settlement Payment distribution process, and provides links to the Long Form Notice, this Agreement, the Claim Form, and other court documents, including the complaints filed in the Litigation. The website will require prior approval from Class Counsel and counsel for Defendants as to form and content before the Settlement Administrator makes it publically available.

QQ. “Tax Administrator” means a professionally recognized tax administrator chosen by the parties. The Tax Administrator will perform all tax-related services for the Escrow Account as provided in this Agreement.

II. RECITALS

This Settlement Agreement is based on the following facts:

1. The complaints in the Litigation, which were filed between July 2012 and November 2012 in six different federal district courts and state courts, each alleged that Higher One and Bancorp had engaged in unfair and deceptive practices regarding the marketing of the OneAccount to Class Members and, related to the OneAccount, had charged unlawful and improper fees. Certain of the complaints contained similar allegations against WEX and Taylor. Each case was pleaded as a class action and sought monetary damages, restitution, attorneys' fees, punitive damages, and injunctive relief. Defendants deny Plaintiffs' allegations, including Plaintiffs' assertions that Defendants engaged in unfair or deceptive practices or any wrongful, unlawful, or improper conduct.

2. On September 11, 2012, Defendants sought to have the Judicial Panel on Multidistrict Litigation ("Panel") transfer the Price, Parker, and Kent matters to a single district for coordinated or consolidated pre-trial proceedings. While that motion was pending, Defendants notified the Panel of the Lanham and Massey matters and asked that they receive similar treatment. On December 11, 2012, the Panel granted Defendants' motion and transferred the Price, Parker and Kent matters to United States District Court Judge Vanessa L. Bryant of the United States District Court for the District of Connecticut. On December 21, 2012, the Panel transferred the Lanham and Massey cases to Judge Bryant.

3. On January 11, 2013, Tycko & Zavareei LLP moved the Court to be named Interim Lead Counsel of the consolidated litigation. The Court granted the motion on March 28, 2013.

4. On November 5, 2012, Aisha DeClue filed DeClue v. Higher One Inc., No. 12SL-CC004229, in the Circuit Court for Saint Louis County, Missouri. On December 20, 2012, Higher One removed the case to the United States District Court for the Eastern District of Missouri (No. 4:12-cv-2361), and also requested that the Panel transfer DeClue to the District of Connecticut as part of the consolidated litigation, and on April 1, 2013, the Panel transferred DeClue to the District of Connecticut, where it was assigned Docket Number 3:13-cv-556.

5. In 2012 and 2013, subsequent to the initiation of the Price Action, Higher One modified certain of its One Account policies and practices. These modifications were substantially a result of this Litigation. The policy and practice changes include those listed in Paragraph 26. On October 28, 2012, Defendants filed their first motion to dismiss arguing that certain of Plaintiffs' claims failed as a matter of law. The parties fully briefed this motion. The motion became moot upon transfer of other cases to the consolidated litigation.

6. On March 1, 2013, Class Counsel filed a motion seeking permission to file a consolidated amended complaint in the consolidated litigation. The Court granted the motion on March 28, 2013, and the Consolidated Amended Complaint was filed on April 2, 2013.

7. On April 22, 2013, Defendants filed a motion to strike Plaintiffs' claims on behalf of a nationwide class under the Connecticut Unfair Trade Practices Act. Defendants also filed a second motion to dismiss the case, arguing, among other things, that many of Plaintiffs' claims were preempted by the Higher Education Act. The Parties fully briefed these motions, which remain pending.

8. In December 2012, Class Counsel met with counsel for Defendants in Hartford, Connecticut and requested a substantial amount of confidential information regarding Defendants' policies and practices and information regarding Higher One's revenue attributable to OneAccount fees.

9. On March 13, 2013 and May 2, 2013, respectively, the Parties held two in-person mediation sessions before United States Magistrate Judge William Garfinkel of the United States District Court for the District of Connecticut, in Bridgeport, Connecticut. These mediation sessions were unsuccessful.

10. The Parties actively engaged in discovery. Plaintiffs served Defendants with hundreds of requests to admit, interrogatories, and requests for production. Defendants responded or objected to each of discovery requests. Defendants served requests for production and interrogatories on Plaintiffs, to which Plaintiffs responded and/or objected. The Parties met and conferred on their respective discovery requests extensively. Defendants also began actively producing documents to

Plaintiffs, having produced over 15,000 pages of documents, to date, all of which have been reviewed by Plaintiffs. Plaintiffs also provided interrogatory responses to Defendants.

11. On October 10, 2013, the Parties held a third mediation session before Linda Singer, an experienced and well-respected independent mediator located in Washington, D.C. The mediation was contentious and hard-fought, and ultimately resulted in the Parties reaching an agreement in principle on certain material terms of a settlement.

12. Contentious and hard-fought negotiations continued for approximately three months. During that time, Plaintiffs performed discovery on the accessibility and content of Higher One fee data associated with Class Members. Class Counsel also engaged in additional settlement-related analysis to determine—among other things—an appropriate plan for allocation of the Settlement Fund. In addition, performed detailed confirmatory discovery on Higher One's proposed and implemented business practice changes. That discovery included an in-person visit to Higher One headquarters by Class Counsel to review the implementation and operation of changes to Higher One's website and marketing practices. However, the Parties were unable to reach final agreement on all terms of a Settlement Agreement. Specifically, the Parties were unable to agree on a notice and administration plan for the including a plan for the distribution of the Settlement Fund to Class Members. Accordingly, the parties re-engaged with Magistrate Judge

Garfinkel for assistance in resolving remaining disagreements, and held a teleconference with Judge Garfinkel on January 17, 2014 for that purpose. With Judge Garfinkel's guidance and feedback, the Parties were able to reach final agreement on the notice and administration plan.

13. The Parties now agree to settle the Litigation in its entirety, without any admission of liability, with respect to the Released Claims of the Class. The Parties intend for this Agreement to bind Plaintiffs, Defendants, and all Class Members who do not file a timely request to be excluded from the Settlement.

14. Defendants deny the claims in the Litigation, deny any fault, wrongdoing, unfair or deceptive practices, or liability whatsoever arising out of or relating to their business practices, and affirmatively state that their practices have at all times been lawful and proper. Defendants are mindful, however, that defending the Litigation further would require them to expend significant time and money; distract key management personnel; and otherwise interfere with their ability to operate their businesses effectively and efficiently. Defendants have therefore decided that it is in their best interests to resolve the Litigation on the terms set forth in this Agreement, and thereby avoid the further expense, inconvenience, and interference with business operations that continuing the Litigation would entail.

15. Based on Class Counsel's comprehensive analysis of the law and facts at issue in the Litigation, and taking into account the risks,

uncertainties, delay, and expense involved in the Litigation, Plaintiffs and Class Counsel have concluded that it is in the best interests of the Class to compromise and settle the Litigation fully and finally in the manner and upon the terms and conditions set forth in this Agreement, and that this Agreement is fair, adequate, and reasonable and thus in the best interests the Class.

16. The Parties stipulate and intend that the Court will conditionally certify the Class strictly and solely for settlement purposes only, and that this Agreement will encompass and end all pending, threatened, or possible litigation by the Class, arising out of or related to claims that were brought, or could have been brought, in the Litigation.

17. The Parties specifically agree that Defendants' execution of this Agreement is not, and will not be construed as, an admission by Defendants (or any of them) or deemed to be evidence in the Litigation or elsewhere: (i) of the validity of any Plaintiff's claims or assertions or of any liability to any Plaintiff; (ii) that Defendants violated any state or federal law, rule, or regulation, or the common law in any respect or otherwise engaged in any wrongful or improper conduct; (iii) that Defendants or any of them engaged in unfair or deceptive practices regarding the OneAccount; or (iv) that, but for the Defendants' stipulation herein of the Class strictly and solely for settlement purposes, certification of the Class or other class treatment is or could be appropriate in the Litigation.

18. The Parties now enter into this Agreement to document the Settlement.

III. SETTLEMENT TERMS

19. The Parties agree to do all things necessary and appropriate to obtain Final Approval of this Agreement and of the Judgment, which will approve the terms contained in this Agreement as being fair, reasonable and adequate to all Class Members, and dismissing the Litigation with prejudice.

Class Certification

20. Defendants do not object to the certification of the Class strictly and solely for settlement purposes only. Certification of the Class will be effective only with respect to the Settlement of the Litigation. In the event that this Agreement is terminated pursuant to its terms, the Judgment is not entered, or the Effective Date does not occur for any reason, then certification of the Class, which is strictly and solely for settlement purposes only, will be vacated and of no further force or effect, and the Litigation will proceed as it existed before execution of this Agreement.

Settlement Benefits

Higher One, which is indemnifying all other Defendants, agrees to provide the following settlement benefits to the Class:

21. Within 7 days of the execution of this Agreement, Higher One will pay \$15,000,000 into Wiggin and Dana LLP's client trust account. 9 days after the Court enters the Preliminary Approval Order requiring the

creation of the Settlement Fund, Wiggin and Dana LLP will pay the \$15,000,000 from its client trust account to the Escrow Account to create Settlement Fund.

22. Upon the establishment of the Escrow Account, the Settlement Fund may be invested in interest-bearing short-term instruments—to be agreed upon by Class Counsel and Defendants—that are backed by the full faith and credit of the United States Government or that are fully insured by the United States Government or an agency thereof (the “Instruments”). The interest proceeds and the principal may thereafter be reinvested as they mature in similar Instruments, bearing in mind the liquidity requirements of the Escrow Account to ensure that it contains sufficient cash available to pay all invoices, taxes, fees, costs, and expenses, and other required disbursements, in a timely manner. Any interest proceeds will be added to the Settlement Fund. Except as otherwise specified herein, the Instruments at all times will remain in the Escrow Account.

23. The Settlement Fund at all times will be deemed a “qualified settlement fund” within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund or otherwise, including any taxes or tax detriments that may be imposed upon Defendants or their counsel with respect to income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for the purpose of

federal or state income taxes or otherwise (collectively “Taxes”), will be out of the Settlement Fund. Defendants and their counsel, and Plaintiffs Class Counsel, will have no liability or responsibility for any of the Taxes. The Settlement Fund will indemnify and hold Defendants and their counsel, and Plaintiffs and Class Counsel, harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

24. The Settlement Fund will be used to make:

- a. Distribution of the Settlement Payments pursuant to Paragraphs 55-59.**
- b. Payment of the Court-ordered award of Class Counsel’s attorneys’ fees, costs, and expenses pursuant to Paragraphs 62-63.**
- c. Payment of the Court-ordered Class Representative Service Awards pursuant to Paragraph 64.**
- d. Payment of the Escrow Charges and Taxes incurred by the Settlement Fund.**
- e. Reimbursement of certain of Higher One’s Notice and Administration Expenses, if the requirements of Paragraph 59 are all met.**

25. In addition to the payment to establish the Settlement Fund, Higher One, on behalf of Defendants, will pay the following:

- a. The Notice and Administration Expenses, in a timely following Class Counsel’s and counsel for Defendants’**

receipt and approval of invoices received from the Settlement Administrator; and

- b. All invoices of the Tax Administrator for performing tax-related services for the Escrow Account, in a timely manner after Class Counsel's and counsel for Defendants' receipt and approval of invoices received from the Tax Administrator.
- c. Higher One will be entitled to recover up to \$750,000 in costs that it expends under this Agreement for Notice and Administration Expenses and payment of the Tax Administrator, but only from any undistributed portion of the Settlement Fund, as explained below in Paragraph 59.
- d. If any fees, costs, and expenses arise that are not specifically enumerated in subparagraphs (a) through (c) above, the Parties will negotiate who is responsible to pay those additional fees, costs, and expenses, however, in no event shall Class Counsel be responsible for said fees, costs, and/or expenses.

26. In addition to the settlement benefits described in Paragraphs 24 and 25, Higher One agrees that it and its current and future banking partner(s), which provide the OneAccounts, will maintain the following practice changes regarding the OneAccount that it implemented substantially as a result of this Litigation:

- a. Use the current fee disclosure format, adapted from the Pew Charitable Trust recommended format (“Fee Schedule”), or, in the reasonable discretion of Higher One and its banking partners, to adapt the Fee Schedule to comply with future industry best practices;
- b. Where a fee is charged by Higher One and/or its banking partners for use of a Non-Higher One ATM, explain in the OneAccount’s Terms and Conditions and Related Disclosures and in the Fee Schedule that both Higher One and an ATM owner may each assess a OneAccount holder a fee in connection with a non-Higher One ATM transaction;
- c. Require a separate, affirmative consent to the Fee Schedule, in addition to consent to the full Account Terms and Conditions, by an individual before he/she can open a OneAccount;
- d. In connection with the refund preference option of “transfer to another bank,” provide individuals with the ability to submit the necessary automated clearing house (“ACH”) form by an electronic means. For example, these methods currently include using a scanner to create a .pdf of the ACH form or using a smartphone to take a picture of the ACH form and then submitting that .pdf or image electronically;

- e. Offer a refund of up to \$5 per day for Non-Higher One ATM fees incurred when Higher One ATMs¹ are not functioning properly due to any maintenance or repair related issues or are out of cash. OneAccount holders may make this refund request electronically;
- f. To not charge a Lack of Documentation Fee on OneAccounts;
- g. To not charge an Abandoned Account Fee on OneAccounts;
- h. To not charge a Delinquent Account Fee on OneAccounts;
- i. To not charge an Insufficient Funds Fee, Non-Sufficient Funds Fee, or Overdraft Fee on recurring debit card transactions made with a OneAccount; and
- j. To not refer to the basic OneAccount as “free” when marketing the basic OneAccount, even where no monthly maintenance fee is imposed.

27. Higher One agrees to keep the changes listed above in place for at least 2 years after the Effective Date.

28. The prospective relief listed in Paragraphs 26 and 27 will cover all accounts, whether termed “OneAccount” or not, that Higher One offers for the receipt of financial aid funds or other educational benefits. Bancorp, WEX, Taylor, and any other current or future banking partner of Higher One

¹ The term “Higher One ATM” does not include the Allpoint ATM Network available to OneAccount Premier accountholders.

is not limited in the types of fees it may charge on accounts not associated with Higher One.

29. Except as provided in Paragraphs 21-28, Defendants will have no other liability or financial responsibility of any kind in connection with the Settlement. For the avoidance of doubt, the Parties acknowledge that Plaintiffs' sole recourse to enforce this Settlement Agreement will be against Higher One only and not against any other Defendant.

Preliminary Approval of Settlement

30. Promptly after the execution of this Agreement, the Parties will jointly file this Agreement, including all attached exhibits, a joint motion for preliminary approval, and all supporting papers with the Court. The Parties will jointly request that the Court enter the proposed Preliminary Approval Order.

31. The proposed Preliminary Approval Order that will be attached to the motion will be in a form agreed upon by Class Counsel and counsel for Defendants. The motion for preliminary approval will request that the Court: (i) approve the terms of the Settlement as within the range of fair, adequate and reasonable; (ii) provisionally certify the Class pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e) for settlement purposes only; (iii) require that the Settlement Fund be created; (iv) approve the Notice program and Claims process described in this Agreement and approve the form and content of the Notices and the Claim Forms that will be submitted with the motion for preliminary approval; (v) approve the procedures set forth in paragraphs 40 and 41 below for Class Members to

exclude themselves from the Class or to object to the Settlement; (vi) stay the Litigation pending Final Approval of the Settlement; and (vii) schedule a Final Settlement Hearing for a time and date mutually convenient for the Court, Class Counsel and counsel for Defendants, but that is at least 100 days from the date that Defendants send the notices described in 32 to the necessary state and federal officials.

32. Within ten days after the filing of the joint motion for preliminary approval, Higher One will provide notice of the Settlement, consistent with the requirements of 28 U.S.C. § 1715(b), to the Attorney General of the United States, and the State Officials identified in Exhibit A. Bancorp will provide notice of the Settlement, consistent with the requirements of 28 U.S.C. § 1715(b)-(c), to the Federal Deposit Insurance Corporation and the Delaware State Banking Commissioner. WEX will provide notice of the Settlement, consistent with the requirements of 28 U.S.C. § 1715(b)-(c), to the Federal Deposit Insurance Corporation and the Utah Department of Financial Institutions. Taylor will provide notice of the Settlement, consistent with the requirements of 28 U.S.C. § 1715(b)-(c), to the Board of Governors of the Federal Reserve System and the Illinois Department of Financial and Professional Regulation. If, before the Date, any of the federal and state officials identified above or in Exhibit A seek to impose additional terms or liability on any Defendant or Related Parties for the matters resolved by this Settlement, the affected Defendant

or Higher One may, at its option, elect to void the Settlement by written notice to Class Counsel.

33. The parties recognize that Higher One is indemnifying WEX, Bancorp, and Taylor in this Litigation. WEX, Bancorp, and Taylor have entered into this Agreement relying on the representation and subject to the condition that Higher One will be providing, and is able to provide, the \$15,000,000 required to create the Settlement Fund. If Higher One fails to pay this \$15,000,000 in full, WEX, Bancorp, and Taylor will have the option, within ten business days of Higher One's failure to make the required payment to the Settlement Fund, either (a) to provide the remaining funds necessary to create the Settlement Fund or (b) to withdraw from the Agreement through written notice to Class Counsel and the Court. If WEX, Bancorp, and/or Taylor do not provide the remaining funds necessary to create the Settlement Fund but rather withdraw from the Agreement, Plaintiffs may continue with the Litigation against the Defendants and may also seek to enforce this Agreement against Higher One, provided that any funds actually paid by Higher One will be credited against any legal remedy actually and finally obtained against the Defendants in the Litigation. If successful in seeking to enforce this Agreement against Higher One, Plaintiffs will be entitled to recover from Higher One the reasonable attorney's fees, costs, and expenses incurred to enforce this Agreement.

Discovery

34. Class Counsel and Defendants already have engaged in significant formal and informal discovery. In addition, following the Parties' negotiation of a settlement in principle, Class Counsel has engaged in substantial confirmatory discovery, including an in -person demonstration of certain practice changes. The Parties agree that Plaintiffs are entitled to conduct, if necessary, additional confirmatory discovery on a) representations made by Defendants during settlement communications and b) practice changes implemented by Higher One since the initiation of this Litigation.

35. In addition, Higher One has provided Class Counsel with its reasonably available data to permit Class Counsel and their experts to perform the allocation analysis detailed in Paragraphs 53-54 below, and will continue to cooperate in providing reasonably available data.

Settlement Administrator

36. Defendants have retained Rust Consulting to serve as the Settlement Administrator. The Settlement Administrator will administer various aspects of the Settlement as described in paragraphs 38-59 below and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, providing E-mailed Notice and/or Mailed Notice to Class Members; making available a Long-Form Notice to Class Members on a Settlement Website; effectuating the Published Notice Program pursuant to Paragraph 51 allowing for the electronic submission of Claims through the Settlement

Website and for the submission of tear-off and printable Claim Forms in hard copy; distributing the Settlement Fund as provided herein; and repaying the Settlement Fund, less any previously authorized expenses, to Higher One in the event of a termination of the Settlement pursuant to Paragraph 68 hereof. Class Counsel and counsel for Higher One will jointly oversee the Settlement Administrator.

37. All Notice and Administration Expenses charged by the Settlement Administrator will be paid by Higher One in a timely manner after Class Counsel's and counsel for Defendants' receipt and approval of an invoice.

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

- a. Obtain from Higher One for each Class Member the name, e-mail address information, and mailing address information (to the extent it is available), and, for Class Members where an E-mailed Notice is undeliverable, verify and update the mailing addresses received through the National Change of Address database, for the purpose of mailing the Mailed Notice;
- b. Establish and maintain a post office box for requests for exclusion from the Class and the submission of hard -copy Claim Forms;
- c. Establish and maintain the Settlement Website;

- d. Establish and maintain an automated toll-free telephone line for Class Members to call with Settlement-related inquiries, and certain live telephone support to answer the questions of Class Members who call with or otherwise communicate such inquiries;**
- e. Respond to any Class Member inquiries;**
- f. Process all requests for exclusion from the Class;**
- g. Process all Claims;**
- h. Provide weekly reports and, no later than five days after the end of the Opt-Out Period, a final report to Class Counsel and counsel for Defendants that summarizes the number of requests for exclusion and the number of Claims received that week, the total number of exclusion requests and Claims received to date, and other pertinent information;**
- i. Interface with the Tax Administrator;**
- j. At Class Counsel's request in advance of the Final Settlement Hearing, prepare an affidavit to submit to the Court that identifies each Class Member who timely and properly requested exclusion from the Class;**
- k. Process and transmit Settlement Payments to Claimants from the Net Cash Settlement Fund; and**
- l. Administer the Escrow Account as described in this Agreement, and any other Settlement administration-**

function at the instruction of Class Counsel and counsel for Defendants.

Providing Notice to Class Members

39. Upon Preliminary Approval of the Settlement, at the joint direction of Class Counsel and counsel for Higher One, the Settlement Administrator will implement the Notice Program provided herein, using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice will include, among other information: a description of the material terms of the Settlement; a date by which Class Members may exclude themselves from or “opt out” of the Class; a date by which Class Members may object to the Settlement; a date by which Class Members must file a Claim; the date upon which the Final Approval Hearing will occur; and the web address of the Settlement Website at which Class Members may access this Agreement, file Claims, and other related documents and information. Class Counsel and counsel for Defendants will insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Notices and publications provided under or as part of the Notice Program will not bear or include Higher One logos or trademarks, the return address of Higher One, or otherwise be styled to appear to originate from Higher One.

40. The Notice will provide that Class Members may opt out of this Agreement, relinquishing their right to any Settlement Payment. Class Members who opt out of the Settlement will not release their claims under

Paragraph 70. Class Members who wish to opt-out of the Settlement must, by the Opt-Out Deadline, mail a notice of intention to opt out (in no format, but which contains the words “opt out,” “exclusion,” or words to that effect clearly indicating an intent not to participate in the Settlement sets forth the Settlement Class Member’s name, address, and telephone number) to the Settlement Administrator. Any request to opt-out must be postmarked on or before the Opt -Out Deadline. The date of the postmark the mailing envelope will be the exclusive means used to determine an opt-out request has been timely submitted. Any envelope with an post-mark will be treated as being mailed three business days before the Settlement Administrator received the submission. Class Members who fail to submit a valid and timely opt-out request will be bound by all the terms the Settlement Agreement, any Court order approving the Settlement, and the Judgment. Any Class Member who submits a timely opt-out request not file an objection to the Settlement and will be deemed to have waived any rights or benefits under the Agreement.

41. The Notice also will include a procedure for Class Members to object to the Settlement, to Class Counsel’s application for attorneys’ fees, costs and expenses, and/or to the application for Class Representative Service Awards. Objections to the Settlement or to the application for fees, costs, expenses, and Class Representative Service Awards must be mailed to the Clerk of the Court, Class Counsel, and Defendants’ counsel. For an objection to be considered by the Court, the objection must be received by

the Court, Class Counsel and Defendants' counsel no later than the Objection Deadline, as specified in the Notice. For an objection to be considered by the Court, the objection must also set forth:

- a. the name of the Litigation;**
- b. the objector's full name, address and telephone number;**
- c. an explanation of the basis upon which the objector claims to be a Class Member or otherwise asserts standing to object;**
- d. all grounds for the objection, accompanied by any legal support for the objection known to the objector or his counsel;**
- e. the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, and the caption of each case in which the objector has made such objection;**
- f. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;**
- g. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that the**

objector files the objection, and the caption of each case in which the counsel or the firm has made such objection;

- h. any and all agreements that relate to the objection or the process of objecting—whether written or verbal—between objector or objector’s counsel and any other person or entity;**
- i. the identity of all counsel representing the objector who will appear at the Final Approval Hearing;**
- j. a list of all persons, including if applicable the objector himself, who will be called to testify at the Final Approval Hearing in support of the objection; and**
- k. the objector his attorney’s signature.**

42. Each electronic Notice will allow for the submission of claims electronically, including the use of a pre-populated claim form. Each Notice will be accompanied by the tear-off Claim Form. All Class Members, whether they receive Notice electronically or by mail, may submit Claims electronically through the Settlement Website. The Notice and Claim Form will direct that each Class Member must submit the electronic or paper Claim Form by the Claim Deadline. As a condition of receiving any Settlement Payment, each Class Member must submit a timely Claim Form. No Settlement Payment will be provided to any Claimant who fails to the Claim Form by the Claim Deadline. All Class Members are subject to Claim Deadline. The filing of objections to this Agreement will not toll or

otherwise extend the Claim Deadline. If a timely but incomplete Claim is submitted to the Settlement Administrator before the Claim Deadline, the Settlement Administrator will, as promptly as reasonably possible, notify the Claimant by e-mail or in writing of any defects in the Claim Form, which must be cured within 21 days or by the Claim Deadline, whichever is

43. Notice will be provided to Class Members in four different ways: E-mailed Notice; Mailed Notice; Published Notice; and Long-form Notice available on the Settlement Website. Not all Class Members will receive all four forms of Notice, as detailed below.

44. Defendants will identify Class Members to receive the Notice based on a review of the data currently available in Higher One's computer systems. From the data on its computer systems, Higher One will generate solely for the Settlement Administrator's use, a report showing the name, street address, e-mail address, social security number, date of birth, fee information, and OneAccount number for every Class Member. This information will remain confidential, to be shared only with the Class Member himself or herself, the Defendants, the Parties' counsel and their employees, the Settlement Administrator and its employees, the Court and its employees, and other persons only on consent of the affected Class Member or Class Counsel, or by order of the Court. Class Counsel may, however, disclose as part of the final approval process the names and addresses of those Class Members opting out of the Settlement, subject to the confidentiality requirements of the Court's Electronic Filing Procedures

or as the Court may direct. Defendants may also disclose the names and state of residence of Class Members as part of the notice that it is required to provide to various state and federal regulators pursuant to 28 U.S.C. § 1715(b)(7).

45. The Settlement Administrator will e-mail the E-mailed Notice to each Settlement Class Member at the e-mail address identified in Higher One's records. The Settlement Administrator will take steps to prevent the E-mailed Notices from being treated as spam by internet service providers. Should the Settlement Administrator learn (through an e-mail bounceback or otherwise) that the e-mail address in Higher One's records is invalid, then the Settlement Administrator will mail a Mailed Notice to that Class Member, as discussed below.

46. The Mailed Notice Program (which is comprised of both the Initial Mailed Notice, and, when feasible, the Notice Re-mailing Process) will be completed no later than 60 days after the Court's order of Preliminary Approval.

47. For each Member where the E-mailed Notice is returned or bounces back as undeliverable, the Settlement Administrator will mail, via first-class mail postcard, a Mailed Notice to each Class Member at the address identified in Defendants' records. Before mailing postcards, the Settlement Administrator will verify and update the mailing addresses received through the National Change of Address database.

48. The Settlement Administrator will perform reasonable address traces for all postcards that are returned as undeliverable. No later than 35 days from the Initial Mailed Notice date, the Settlement Administrator will complete the re-mailing of Mailed Notice postcards to those Class Members whose original mailed postcards were returned as undeliverable and whose new addresses were identified as of that time through address traces (the “Notice Re-mailing Process”).

49. Within seven days after the date the Settlement Administrator completes the Notice Re-mailing Process, the Settlement Administrator will provide Class Counsel and Defendants’ counsel an affidavit confirming that the Notice Program was completed in a timely manner. Class Counsel will file that affidavit with the Court as an exhibit to or in conjunction with Plaintiffs’ Motion for Final Approval of the Settlement.

50. Each E-mailed Notice to Class Members will allow for the submission of claims electronically, including the use of a pre-populated claim form. Each Mailed Notice will contain a tear-off Claim Form and will list the web address for the Settlement Website to permit a Class Member to submit an electronic Claim Form.

51. The Settlement Administrator will administer the Published Notice Program, which will be comprised exclusively of search engine sponsored search results and advertising on Facebook. The Published Notice Program will be completed no later than 30 days after the Court’s order of Preliminary Approval.

52. Within seven days after the date the Settlement Administrator completes the Published Notice Program, the Settlement Administrator will provide Class Counsel and counsel for Defendants with an affidavit confirming that Published Notice was given in accordance with the Published Notice Program. Class Counsel will file the affidavit with the Court in conjunction with Plaintiffs' Motion for Final Approval of the Settlement.

Allocation of Settlement Fund Among Class Members

53. Consistent with its statutory and regulatory obligations to protect its customers' private financial information, Higher One has made available to Class Counsel and to Plaintiffs' experts data sufficient to determine and implement the allocation of Net Cash Settlement Fund as provided in this paragraph 54 of this Agreement. The methodology provided for in paragraph 54 will be applied to the data as consistently, sensibly, and conscientiously as reasonably possible recognizing and taking into consideration the nature and completeness of the data and the purpose of the computation. The data provided by Higher One to Class Counsel included information with respect to each class member's total net fees incurred, the net amount of certain types of fees, including net Non-Higher One ATM and PIN-Based Transaction Fees, and the net amount of all other fees. Net fees were calculated by subtracting fee credits or refunds from fees incurred by fee type.

54. Consistent with the limitations described in paragraph 53, the amount of the Settlement Payment from the Net Cash Settlement Fund to which each Claimant is entitled will be determined using the following methodology:

- a. For each Claimant, the Settlement Administrator, will determine the Claimant's "Claim Value." The Settlement Administrator will first total all net fees other than Non-Higher One ATM and PIN-Based Transaction Fees incurred by the Claimant up to \$350 ("Net Capped Other Fees"). The Settlement Administrator will then calculate the Claim Value by adding (Net Non-Higher One ATM Fees multiplied by 1) + (Net PIN-Based Transaction Fees multiplied by 1) + (Net Capped Other Fees multiplied by .2).**
- b. The Settlement Administrator will then add together the Claim Values calculated for all Claimants (the "Aggregate Claim Value").**
- c. The Settlement Administrator shall then divide the Net Cash Settlement Fund by the Aggregate Claim Value (the "Claim Ratio").**
- d. The Settlement Administrator shall thereafter calculate the Settlement Payment to each Claimant by multiplying the Claimant's Claim Value by Claim Ratio.**

Distribution of Settlement Fund to Class Members

55. Within 60 days of the Effective Date, the Settlement Administrator will distribute the Settlement Payments from the Net Cash Settlement Fund to the Claimants who filed timely Claim Forms.

56. The Settlement Administrator will make Settlement Payments by mailed check.

57. Settlement Payments made by check will be cut and mailed by the Settlement Administrator with an appropriate legend, in a form approved by Class Counsel and Defendants' counsel, to indicate that it is from the Settlement, and will be sent to the addresses that the Claimant provided on the Claim Form. Checks will be valid for 180 days. The Settlement Administrator will make reasonable efforts to locate the proper address for any Claimant whose check is returned by the postal service as undeliverable, and will re-mail it once to the updated address.

58. The amount of the Net Cash Settlement Fund attributable to uncashed checks and checks returned to the Settlement Administrator will remain in the Settlement Fund for one year from the date that the first distribution check is mailed by the Settlement Administrator, during which time the Settlement Administrator will make a reasonable effort to locate Claimants whose checks were returned as undeliverable to make a second attempt to effectuate delivery of such checks to the Claimants entitled to them. The Settlement Administrator will make only one attempt to determine a valid address and re-mail or re-issue a distribution check.

Disposition of Residual Funds After Distribution to the Settlement Class Of Settlement Class Member Payment Amounts.

59. Within 395 days after the date the Settlement Administrator mails the first Settlement Payment, any funds remaining in the Net Cash Settlement Fund from uncashed and undelivered checks will be distributed as follows:

- a. The Settlement Administrator shall reimburse Higher One for its Notice and Administration Expenses, including its expenses related to the Tax Administrator, in an amount not to exceed \$750,000. The amount of this reimbursement cannot exceed the amount remaining in the Net Cash Settlement Fund and in no event will it exceed the lesser of \$750,000 or the actual costs to Higher One of the Notice and Administration Expenses and Tax Administrator expenses.
- b. If the Net Cash Settlement Fund is not exhausted after taking the steps discussed in subparagraph (a), and at the election and complete discretion of Class Counsel and counsel for Defendants, the funds may be distributed to Claimants who received Settlement Payments on a pro rata basis, to the extent feasible and practical in light of the costs of administering such subsequent payments (all such costs to prepare and transmit these additional payments will be paid by the Net Cash Settlement Fund); or

- c. If the Net Cash Settlement Fund is not exhausted after taking the steps discussed in subparagraphs (a) and (b), the funds will be distributed through a residual cy pres program. The residual cy pres recipient(s) will be agreed upon by Defendants and Class Counsel, and approved by the Court. Any residual cy pres distribution will be paid as soon as reasonably possible following the completion of distribution of funds to the Claimants.
- d. If the Class Counsel and counsel for Defendants are unable to agree on a distribution plan under subsection (b) of this paragraph or one of the cy pres recipients(s) under subparagraph (c) of this paragraph, they will bring the matter, together with supporting materials and argument, to the Court for determination.
- e. In the event no money remains in the Net Cash Settlement Fund, the Parties will have no obligation whatsoever to make any distribution as contemplated by subparagraphs (a)-(c) above of this paragraph.

Final Approval Order and Judgment

60. The Plaintiffs' Motion for Preliminary Approval of the Settlement will include a request to the Court for a scheduled date on the Final Settlement Hearing will occur. Plaintiffs shall file their Motion for Final Approval of the Settlement, and their application for attorneys' fees, costs and expenses and for Class Representative Service Awards no later

than 45 days before the Final Settlement Hearing. At the Final Settlement Hearing the Court will hear argument on Plaintiffs' motion for final approval of the Settlement, and on Class Counsel's application for attorneys' fees, costs, and expenses and for Class Representative Service Awards. In the Court's discretion, the Court also will hear argument at the Final Settlement Hearing from any Class Members (or their counsel), provided the objectors filed timely objections that meet all of the requirements listed in paragraph 41 above.

61. The Court at the Final Settlement Hearing will determine whether to grant final approval of the Settlement and enter a final approval order, along with accompanying Judgment, and whether to approve Class Counsel's request for attorneys' fees, costs, expenses and Class Representative Service Awards. A proposed Judgment will be attached to the motion and will be in a form agreed upon by Class Counsel and counsel for Defendants. The Judgment will, among other things:

- a. Determine that the Settlement is fair, adequate and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice provided satisfies Due Process requirements;
- d. Dismiss the Litigation with prejudice and without costs;

- e. Bar and enjoin Plaintiffs and all Class Members that did not opt-out of the Settlement from asserting any of the Released Claims, as set forth in Paragraph 70, including during any appeal from the final approval order and Judgment;
- f. Release Defendants and the Related Parties from the Released Claims, as set forth in Paragraph 70; and
- g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendants, all Class Members, and all objectors, to administer, supervise, construe and enforce this Agreement in accordance with its terms.

Payment of Attorneys' Fees, Costs, and Incentive Awards

62. Class Counsel will apply to the Court for an award of fees of up to 30% of the Settlement Fund. Defendants will not take a position on the request so long as it is for no more than 30% of the Settlement Fund and will also take no position on Class Counsel's request for an award of reasonable costs and expenses. An award of attorney's fees, costs, and expenses to Class Counsel will be payable solely out of the Settlement Fund. This application to the Court settles any and all claims for attorney's fees, costs, and expenses regarding the Litigation. The parties agree that any attorney's fee, cost, and expenses award remains within the sole discretion of the Court, and whatever determination is made in that regard does not give rise to any grounds for rescinding or renegotiating this

Settlement. Thus, if the Court grants final approval and enters the but disallows all or any part of Class Counsel's application for attorney's fees, costs, and expenses, any such disallowance or reduction will not operate to terminate or cancel this Agreement or the Settlement, which will remain in full force and effect.

63. Within ten days of entry of the Judgment, all Court-approved attorneys' fees, costs, and expenses of Class Counsel, without interest, will be paid from the Escrow Account into the account described in this paragraph. The payment of attorneys' fees, costs, and expenses of Class Counsel pursuant to paragraph 62 will be made into an Attorney Client Trust Account controlled by Lead Class Counsel. After the fees, costs and expenses have been deposited into this account, Lead Class Counsel will be solely responsible for distributing each Participating Firm's allocated share of such fees, costs and expenses to that firm. However, should any further order of any court reverse the final approval order or Judgment or reduce the amount of attorney's fees, costs, and expenses awarded, Lead Class Counsel and any law firms to whom Lead Class Counsel has disbursed a portion of the Class Counsel Fees, will be jointly and severally liable for repayment of all funds paid to them within 10 days of such an order.

64. Class Counsel will ask the Court to approve Class Representative Service Awards of \$5,000 per Plaintiff and \$2,500 per Plaintiff. All Class Representative Service Awards are to be paid from the

Settlement Fund within 14 days after the Effective Date. Defendants agree to take no position on Class Counsel's request for payment of the Class Representative Service Awards. The Parties agree that any Class Representative Service Award remains within the sole discretion of the Court, and whatever determination is made in that regard does not give rise to any grounds for rescinding or renegotiating this Settlement or this Agreement. Thus, if the Court grants final approval and enters the but disallows all or any part of Class Counsel's application for Class Representative Service Awards, such disallowance or reduction will not operate to terminate or cancel this Agreement or the Settlement, which will remain in full force and effect.

65. The Parties negotiated and reached this agreement regarding Paragraphs 62-64 only after reaching agreement on all other material terms of this Settlement.

Termination of Settlement

66. This Settlement may be terminated by either Defendants or Class Counsel by serving on counsel for the opposing Party and filing with the Court a written notice of termination within fourteen days after any of the following occurrences:

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

- b. an appellate court reverses the final approval order and Judgment, and the Settlement is not reinstated without material change by the Court on remand;**
- c. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, final approval order, Judgment, or the Settlement in a way that Defendant or Class Counsel seeking to terminate the Settlement reasonably considers material;**
- d. the Effective Date does not occur; or**
- e. any other ground for termination provided for elsewhere in this Agreement, including, without limitation, an election by Defendants to withdraw from the Settlement pursuant to Paragraph 32.**

67. Defendants also will have the right to terminate the Settlement by serving on Class Counsel and filing with the Court a notice of termination within fourteen days of its receipt from the Settlement Administrator of the final report specified in paragraph 38(h) above, if the number of Class Members who timely request exclusion from the Settlement Class equals or exceeds the number or percentage specified in the separate letter agreement executed concurrently with this Settlement by Defendants' counsel and Class Counsel. The percentage will be confidential except to the Court, who shall upon request be provided with a copy of the letter agreement for in camera review.

68. In the event of a termination of the Settlement, and after payment of any invoices or other fees or expenses mentioned in this Agreement that have been incurred and are due to be paid from the Escrow Account, the balance of the Settlement Fund will be refunded and remitted to Higher One as provided in paragraph 36. Higher One will have no right to seek reimbursement from Plaintiffs, any of Plaintiff's counsel, or Class Counsel for any funds disbursed from the Escrow Account pursuant to paragraphs 25(a), 5(d) above. Higher One, however, will have the right to seek reimbursement of funds paid pursuant to Paragraphs 62-64 if those funds are not returned within 10 days of the Settlement being terminated.

69. In the event of a termination of the Settlement pursuant to Paragraph 67, the parties retain all of their pre-Settlement litigation rights and defenses, including Plaintiffs' right to seek class certification and Defendants' right to oppose class certification.

Scope of Release

70. The Class, except for Class Members who submit a valid request for exclusion from the Settlement, hereby fully and unconditionally releases and discharges the Released Parties from any and all claims, demands, rights, causes of action, judgments, executions, damages, liabilities, and costs or expenses of any kind, including attorney's fees and court costs, in law or equity, known or unknown, suspected or fixed or contingent, arising out of or relating to the opening of or the marketing, disclosure, charging, imposition, collection, reimbursement, non-reimbursement, or waiver of fees on OneAccounts

maintained by Class Members that were brought or that could have been brought in the Litigation and that are based on conduct that occurred policies and practices that were in place on or before the Effective Date. This release is intended to be a full and general release of all known and unknown claims that relate to any fees associated with or relating to a OneAccount that any member of the Class may have against the Released Parties and includes claims arising out of or relating to all of Defendants' policies and practices, and that were brought or that could have been brought in the Litigation, regarding charging, imposing, collecting, reimbursing, not reimbursing or waiving fees on OneAccounts; marketing the OneAccount; and disclosures relating to the terms and conditions of OneAccount and the fees associated with it. No releases will be provided accountholders of any accounts other than the OneAccounts. This release discharges the claims of all those who claim through any Class Member or who assert claims on behalf of Class Members (including the federal government or any state government in its capacity as *parens patriae*).

71. The Class, except for Class Members who submit a valid request for exclusion from the Settlement, specifically waives any and all rights or benefits which any of them may have with respect to the arising now or in the future under Section 1542 of the California Civil Code, which section provides: "A general release does not extend to claims the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially

affected his or her settlement with the debtor.” The Class acknowledges that some or all of them may hereafter discover facts different from or in addition to those which the Class now knows, believes, or suspects to be true with respect to the Litigation. Nevertheless, it is the intention of the Class fully, finally, and forever to settle and release all of the claims in this Agreement. The Class assumes the risk of the possible discovery of such additional or different facts and agrees that the release given herein shall be and remain effective in all respects as to the released matters, regardless of the discovery of such additional or different facts.

Additional Terms

72. The Parties voluntarily agree to enter into a stay of all litigation activities concerning any matters asserted in the Litigation or any of the Released Claims. The stay of all litigation activities will remain in effect until one of the following events occurs: (i) the Effective Date as defined in Definition N above; or (ii) one of the Parties voids this Agreement pursuant to Paragraphs 32, 33, 66 or 67.

73. Neither this Agreement nor any document prepared in connection with the Settlement may be cited or used in any way in any proceeding as an admission by Defendants, Released Parties, or Plaintiffs, including any admission as to the propriety of class treatment, except that any and all provisions of the Agreement may be admitted into evidence and otherwise used in a proceeding to enforce any or all terms of the Agreement, or in defense of any claims released or barred by this Agreement.

74. The Plaintiffs and Defendants represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation or entity included within the definitions of Plaintiffs and Defendants to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

75. Neither Defendants nor Plaintiffs, nor any of them, will be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

76. The Parties agree that all Class Members are entitled under Federal Rule of Civil Procedure Rule 23(c)(2)(B) to the best practicable notice under the circumstances, and that Class Counsel have a duty under Federal Rule of Civil Procedure Rule 23(g)(4) to represent fairly and adequately the interests of the Settlement Class. To meet these requirements, the Parties may take steps reasonably necessary to obtain approval of the Settlement and provide notice to class members. They may speak to relevant regulators, including Attorneys General, regarding the Settlement. The Parties and their counsel may respond to media inquiries but may not disparage the Parties, their counsel, or the terms of

the Settlement. Class Counsel may have direct communications about the Settlement with Class Members, who (if they do not opt out) will become bound by this and the other terms of the Settlement upon entry of the Judgment. Defendants may discuss the Settlement with stockholders, creditors and bondholders, current and future bank partners, current and future college and university customers, and any current or future investor, and make other disclosures as required by banking laws, securities law, or other applicable law. Any other public communications regarding the of the Settlement, including but not limited to advertising, press releases, television, radio, print, internet, social media, or any other medium will be submitted to and approved by the Court before dissemination.

77. Unless otherwise specifically provided in this Agreement, all notices, demands or other communications given hereunder will be in writing and will be deemed to have been duly given as of the third business day after mailing, addressed as follows:

To the Plaintiffs and the Class Members:

**Hassan Zavareei, Esq.
TYCKO & ZAVAREEI LLP
2000 L Street, N.W., Suite 808
Washington, D.C. 20036**

To Defendants Higher One, WEX, and Bancorp:

**Kim Rinehart, Esq.
WIGGIN AND DANA LLP
One Century Tower
P.O. Box 1832
New Haven, CT 06508**

To Defendant Taylor:

**Julie Bauer, Esq.
WINSTON & STRAWN
35 W. Wacker Drive
Chicago, IL 60601-9703**

78. After this Agreement is fully executed by all Parties and their attorneys of record, this Agreement and its attached Exhibits will constitute the entire agreement relating to Settlement of the Litigation, and it will then be deemed and agreed that no oral representations, warranties, or inducements have been made to any party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants expressly stated in this Agreement and its Exhibits.

79. Class Counsel unconditionally warrant and represent that they are authorized by Plaintiffs, for whom they are attorneys of record, and the attorneys of record for Defendants unconditionally warrant and represent that they are authorized by Defendants, to take all appropriate action required or permitted to be taken by their respective clients under this Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement.

80. No opinion concerning the tax consequences of the to individual Class Members or Class Counsel is being given or will be by the Defendants or their counsel, nor do Defendants make any representation or warranty in this regard by virtue of this Agreement. Each

Class Member's and Class Counsel's tax obligations, and the thereof, are the sole responsibility of the Class Member or Class Counsel respectively, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class or Class Counsel.

81. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. Facsimile or electronically scanned signatures will be accepted. Each Party will keep its original signature and, upon request, send it to its counsel. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

82. This Agreement is to be governed by and interpreted under the laws of the State of Connecticut.

83. The exhibits attached hereto and thereby incorporated into this Agreement are as follows:

A. List of State and Federal Officials

[remainder of page left blank]

IV. EXECUTION

The undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by all of the undersigned.

NAMED PLAINTIFFS



Brandi Crawford, Class Representative

2/12/14

Date

Tarsha Crockett, Class Representative

Date

Aisha DeClue, Class Representative

Date

Larry Forman, Class Representative

Date

Rhonda Hannibal, Class Representative

Date

Prince Kaywood, Class Representative

Date

IV. EXECUTION

The undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by all of the undersigned.

NAMED PLAINTIFFS

Brandi Crawford, Class Representative Date

Tarsha Crockett

Tarsha Crockett, Class Representative 2/5/2014
Date

Aisha DeClue, Class Representative Date

Larry Forman, Class Representative Date

Rhonda Hannibal, Class Representative Date

Prince Kaywood, Class Representative Date

IV. EXECUTION

The undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by all of the undersigned.

NAMED PLAINTIFFS

Brandi Crawford, Class Representative

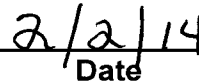
Date

Tarsha Crockett, Class Representative

Date



Aisha DeClue, Class Representative



Date

Larry Forman, Class Representative

Date

Rhonda Hannibal, Class Representative

Date

Prince Kaywood, Class Representative

Date

IV. EXECUTION

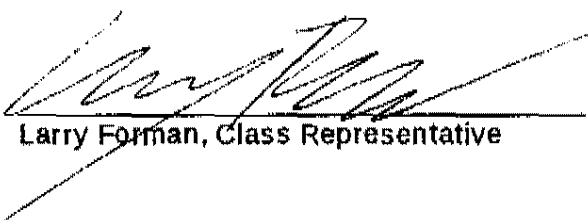
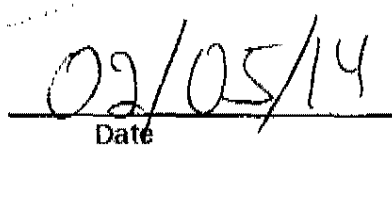
The undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by all of the undersigned.

NAMED PLAINTIFFS

Brandi Crawford, Class Representative	Date
---------------------------------------	------

Tarsha Crockett, Class Representative	Date
---------------------------------------	------

Aisha DeClue, Class Representative	Date
------------------------------------	------

	
Larry Forman, Class Representative	Date

Rhonda Hannibal, Class Representative	Date
---------------------------------------	------

Prince Kaywood, Class Representative	Date
--------------------------------------	------

IV. EXECUTION

The undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by all of the undersigned.

NAMED PLAINTIFFS

Brandi Crawford, Class Representative

Date

Tarsha Crockett, Class Representative

Date

Aisha DeClue, Class Representative

Date

Larry Forman, Class Representative

Date



Rhonda Hannibal, Class Representative



Date

Prince Kaywood, Class Representative

Date

IV. EXECUTION

The undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by all of the undersigned.

NAMED PLAINTIFFS

<u>Brandi Crawford, Class Representative</u>	<u>Date</u>
<u>Tarsha Crockett, Class Representative</u>	<u>Date</u>
<u>Aisha DeClue, Class Representative</u>	<u>Date</u>
<u>Larry Forman, Class Representative</u>	<u>Date</u>
<u>Rhonda Hannibal, Class Representative</u>	<u>Date</u>
<u>Prince Kaywood, Class Representative</u>	<u>2-3-2014</u> Date

<i>Gaynell Kaywood</i>	<i>2/3/14</i>
Gaynell Kaywood, Class Representative	Date

John Brandon Kent, Class Representative	Date
---	------

Brienne Elizabeth Kent, Class Representative	Date
--	------

Kristine Krieg, Class Representative	Date
--------------------------------------	------

Jonathan Lanham, Class Representative	Date
---------------------------------------	------

Ashley Parker, Class Representative	Date
-------------------------------------	------

Jeanette Price, Class Representative	Date
--------------------------------------	------

PLAINTIFFS' COUNSEL

Hassan Zavareei, Lead Class Counsel	Date
-------------------------------------	------

Gaynell Kaywood, Class Representative

Date

John Brandon Kent

2-7-14

John Brandon Kent, Class Representative

Date

Brianne Elizabeth Kent

2-7-14

Brianne Elizabeth Kent, Class Representative

Date

Kristine Krieg, Class Representative

Date

Jonathan Lanham, Class Representative

Date

Ashley Parker, Class Representative

Date

Jeanette Price, Class Representative

Date

Gaynell Kaywood, Class Representative

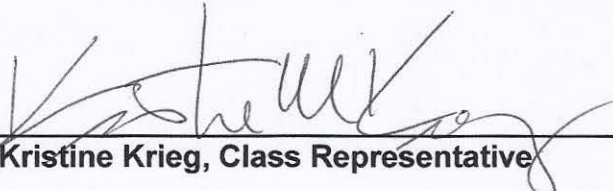
Date

John Brandon Kent, Class Representative

Date

Brienne Elizabeth Kent, Class Representative

Date



Kristine Krieg, Class Representative

2-3-14

Date

Jonathan Lanham, Class Representative

Date

Ashley Parker, Class Representative

Date

Jeanette Price, Class Representative

Date

PLAINTIFFS' COUNSEL

Hassan Zavareei, Lead Class Counsel

Date

Gaynell Kaywood, Class Representative

Date

John Brandon Kent, Class Representative

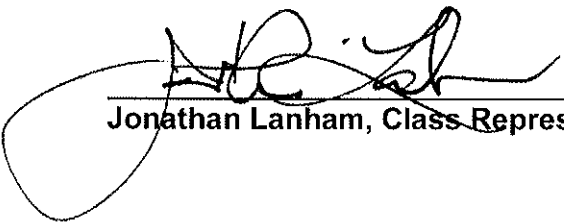
Date

Brianna Elizabeth Kent, Class Representative

Date

Kristine Krieg, Class Representative

Date



Jonathan Lanham, Class Representative

02/06/2014

Date

Ashley Parker, Class Representative

Date

Jeanette Price, Class Representative

Date

PLAINTIFFS' COUNSEL

Hassan Zavareei, Lead Class Counsel

Date

Gaynell Kaywood, Class Representative

Date

John Brandon Kent, Class Representative

Date

Brienne Elizabeth Kent, Class Representative

Date

Kristine Krieg, Class Representative

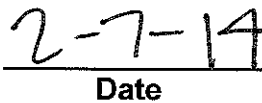
Date

Jonathan Lanham, Class Representative

Date



Ashley Parker, Class Representative



Date

Jeanette Price, Class Representative

Date

PLAINTIFFS' COUNSEL

Hassan Zavareei, Lead Class Counsel

Date

Gaynell Kaywood, Class Representative

Date

John Brandon Kent, Class Representative

Date

Brianne Elizabeth Kent, Class Representative

Date

Kristine Krieg, Class Representative

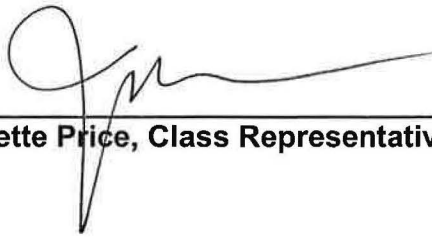
Date

Jonathan Lanham, Class Representative

Date

Ashley Parker, Class Representative

Date



Jeanette Price, Class Representative

2-4-14

Date

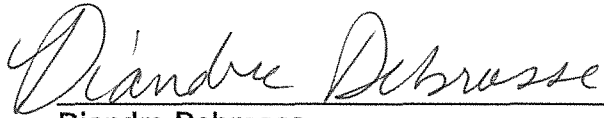
PLAINTIFFS' COUNSEL



Hassan Zavareei, Lead Class Counsel

2-4-14

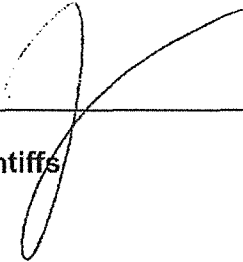
Date



Diandra Debrosse,
Counsel for Plaintiffs

2-10-2014

Date



Jasper Ward,
Counsel for Plaintiffs

2-7-14

Date

James E. Miller
Counsel for Plaintiffs

Date

Carey, Danis & Lowe
Counsel for Plaintiffs

Date

Shepherd Finkelman Miller & Shah, LLP
Counsel for Plaintiffs

Date

Law Office of Richard S. Cornfeld
Counsel for Plaintiffs

Date

The Simon Law Firm, P.C.
Counsel for Plaintiffs

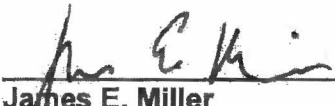
Date

**Diandra Debrosse,
Counsel for Plaintiffs**

Date

**Jasper Ward,
Counsel for Plaintiffs**

Date


**James E. Miller
Counsel for Plaintiffs**

2-4-14
Date

**Carey, Danis & Lowe
Counsel for Plaintiffs**

Date


**Shepherd Finkelman Miller & Shah, LLP
Counsel for Plaintiffs**

2-4-14
Date

**Law Office of Richard S. Cornfeld
Counsel for Plaintiffs**

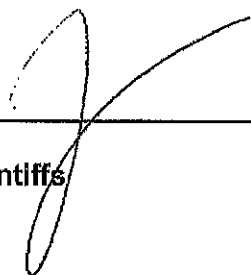
Date

**The Simon Law Firm, P.C.
Counsel for Plaintiffs**

Date

Diandra Debrosse,
Counsel for Plaintiffs

Date



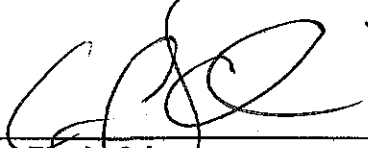
2-7-14

Date

Jasper Ward,
Counsel for Plaintiffs

James E. Miller
Counsel for Plaintiffs

Date



2/10/14

Date

Carey, Davis & Lowe
Counsel for Plaintiffs

Shepherd Finkelman Miller & Shah, LLP
Counsel for Plaintiffs

Date

Law Office of Richard S. Cornfeld
Counsel for Plaintiffs

Date

The Simon Law Firm, P.C.
Counsel for Plaintiffs

Date

**Diandra Debrosse,
Counsel for Plaintiffs**

Date

**Jasper Ward,
Counsel for Plaintiffs**

Date

**James E. Miller
Counsel for Plaintiffs**

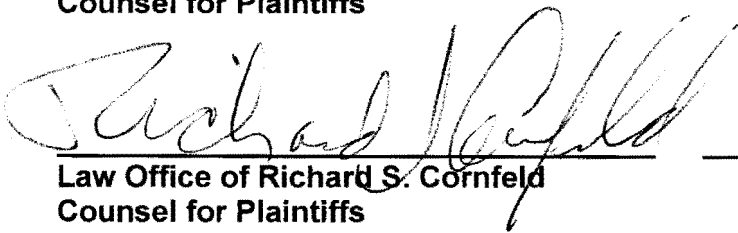
Date

**Carey, Danis & Lowe
Counsel for Plaintiffs**

Date

**Shepherd Finkelman Miller & Shah, LLP
Counsel for Plaintiffs**

Date



**Law Office of Richard S. Cornfeld
Counsel for Plaintiffs**

2/13/14

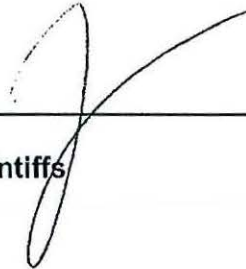
Date

**The Simon Law Firm, P.C.
Counsel for Plaintiffs**

Date

Diandra Debrosse,
Counsel for Plaintiffs

Date



2-7-14

Jasper Ward,
Counsel for Plaintiffs

Date

James E. Miller
Counsel for Plaintiffs

Date

Carey, Danis & Lowe
Counsel for Plaintiffs

Date

Shepherd Finkelman Miller & Shah, LLP
Counsel for Plaintiffs

Date

Law Office of Richard S. Cornfeld
Counsel for Plaintiffs

Date



The Simon Law Firm, P.C.
Counsel for Plaintiffs

2/10/14

Date



Rutledge, Davis and Harris, PLLC
Counsel for Plaintiffs

2/7/14

Date

DEFENDANTS:

Higher One Holdings, Inc.

2/11/14

Date

By: _____



Title: _____

CEO

Higher One, Inc.

2/11/14

Date

By: _____



Title: _____

CEO

The Bancorp Bank

Date

By: _____

Title: _____

DEFENDANTS:

Higher One Holdings, Inc.

Date

By: _____

Title: _____

Higher One, Inc.

Date

By: _____

Title: _____

The Bancorp Bank

2/11/14

Date

By: _____

Title: President

**WEX Bank (formerly known as Wright
Express Financial Services Corporation)**

February 3, 2014
Date

By: Kirk S. Wink

APPROVED AS
TO FORM Title: President / CEO

aar

Taylor Capital Group, Inc.

Date

By: _____

Title: _____

**Kim Rinehart, Counsel for Higher One
Holdings, Inc, Higher One, Inc.,
The Bancorp Bank, and
WEX Bank.**

Date

**Julie Bauer, Counsel for Taylor Capital
Group, Inc.**

Date

WEX, Inc. (formerly known as Wright
Express Financial Services Corporation)

Date

By: _____

Title: _____

Taylor Capital Group, Inc.

2/12/14

Date

By: Randall T. [Signature]

Title: CEO

Kim Rinehart, Counsel for Higher One
Holdings, Inc, Higher One, Inc.,
The Bancorp Bank, and
WEX, Inc.

Date

Julie Bauer [Signature]

Julie Bauer, Counsel for Taylor Capital
Group, Inc.

2-13-2014

Date

**WEX Bank (formerly known as Wright
Express Financial Services Corporation)**

Date

By: _____

Title: _____

Taylor Capital Group, Inc.

Date

By: _____

Title: _____



Kim Rinehart, Counsel for Higher One
Holdings, Inc, Higher One, Inc.,
The Bancorp Bank, and
WEX Bank.



Date

Julie Bauer, Counsel for Taylor Capital
Group, Inc.

Date

Exhibit A To Settlement Agreement

Officials to be Notified by Higher One Holdings, Inc. and Higher One, Inc.

Federal Official:

**The Honorable Eric Holder
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001**

State Officials (alphabetized by state and territory):

**The Honorable Luther Strange
Attorney General
Office of the Attorney General
500 Dexter Avenue
Montgomery, AL 36130**

**The Honorable Michael C. Geraghty
Attorney General
Office of the Attorney General
P.O. Box 110300
Juneau, AK 99811-0300**

**The Honorable Afoa Moega Lutu
Attorney General
Department of Legal Affairs
A.P. Lutali Executive Office Building
Utulei, American Soma 96799**

**The Honorable Tom Horne
Attorney General
Office of the Attorney General
1275 West Washington St.
Phoenix, AZ 85007**

**The Honorable Dustin McDaniel
Attorney General
Office of the Attorney General
200 Tower Building
323 Center St.
Little Rock, AR 72201-2610**

**The Honorable Kamala Harris
Attorney General
c/o CAFA Coordinator
Office of the Attorney General
Consumer Law Section
110 West "A" St., Suite 1100
San Diego, CA 92186-5266**

**The Honorable John W. Suthers
Attorney General
Office of the Attorney General
Colorado Department of Law
1525 Sherman St., 7th floor
Denver, CO 80203**

**William M. Rubenstein
Commissioner of Consumer Protection
Department of Consumer Protection
165 Capitol Avenue
Hartford, Connecticut 06106-1630**

**The Honorable George Jepsen
Attorney General
Office of the Attorney General
55 Elm Street
Hartford, CT 06106**

**The Honorable Joseph R. Biden III (Beau Biden)
Attorney General
Office of the Attorney General
Carvel State Office Building
820 North French Street
Wilmington, DE 19801**

**The Honorable Irvin B. Nathan
Attorney General
Office of the Attorney General
441 4th Street, NW, Suite 1145S
Washington, DC 20001**

**The Honorable Pam Bondi
Attorney General
Office of the Attorney General
State of Florida
The Capitol PL-01
Tallahassee, FL 32399-1050**

**John Sours
Chief Administrator
The Governor's Office of Consumer Affairs
2 Martin Luther King Jr. Drive SE, Suite 356
Atlanta, GA 30334-4600**

**The Honorable Sam Olens
Attorney General
Office of the Attorney General
40 Capitol Square, SW
Atlanta, GA 30334-1300**

**The Honorable Leonardo M. Rapadas
Attorney General
Office of the Attorney General
287 West O'Brien Drive
Hagatna, GU 96910**

**The Honorable David M. Louie
Attorney General
Department of the Attorney General
425 Queen Street
Honolulu, HI 96813**

**The Honorable Lawrence Wasden
Attorney General
Office of the Attorney General
Consumer Protection Division
954 W. Jefferson, 2nd Floor
Boise, ID 83720**

**The Honorable Lisa Madigan
Attorney General
Office of the Attorney General
James R. Thompson Ctr.,
100 West Randolph St.
Chicago, IL 60601**

**The Honorable Greg Zoeller
Attorney General
Office of the Indiana Attorney General
Indiana Government Center South - 5th Floor
302 W. Washington St.
Indianapolis, IN 46204**

**The Honorable Tom Miller
Attorney General
Office of the Iowa Attorney General
1305 E. Walnut Street
Des Moines, IA 50319**

**The Honorable Jack Conway
Attorney General
Office of the Attorney General
Capitol Suite 118
700 Capitol Avenue
Frankfort, KY 40601-3449**

**The Honorable Derek Schmidt
Attorney General
Office of the Kansas Attorney General
120 S.W. 10th Ave., Second Floor
Topeka, KS 66612-1597**

**The Honorable James D. Caldwell
Attorney General
Office of the Attorney General
Civil Division
P.O. Box 94095
Baton Rouge, LA 70804-4095**

**The Honorable Janet C. Mills
Attorney General
Office of the Attorney General
6 State House Station
Augusta, ME 04333**

**The Honorable Douglas F. Gansler
Attorney General
Office of the Attorney General
200 St. Paul Place
Baltimore, MD 21202-2202**

**The Honorable Martha Coakley
Attorney General
Office of Attorney General
One Ashburton Place
Boston, MA 02108-1698**

**The Honorable Bill Schuette
Attorney General
Department of the Attorney General
Cadillac Place, 10th Floor
3030 W. Grand Blvd., Suite 10-200
Detroit, MI 48202**

**The Honorable Lori Swanson
Attorney General
Office of the Attorney General
1400 Bremer Tower
445 Minnesota St.
St. Paul, MN 55101-2131**

**The Honorable Jim Hood
Attorney General
Office of the Attorney General
Consumer Protection Division
P.O. Box 22947
Jackson, MS 39205**

**The Honorable Chris Koster
Attorney General
Missouri Attorney General's Office
Supreme Court Building
207 W. High St.
P.O. Box 899
Jefferson City, MO 65102**

**The Honorable Tim Fox
Attorney General
Montana Department of Justice
P.O. Box 201401
Helena, MT 59620-1401**

**The Honorable John Bruning
Attorney General
Office of the Attorney General
2115 State Capitol,
Lincoln, NE 68509-8920**

**The Honorable Joseph Foster
Attorney General
Department of Justice
33 Capitol Street
Concord, NH 03301**

**The Honorable Catherine Cortez Masto
Attorney General
Office of the Attorney General
Old Supreme Court Building
100 N. Carson St.
Carson City, NV 89701**

**The Honorable John Jay Hoffman
Acting Attorney General
Office of the Attorney General
P.O. Box 080
Trenton, NJ 08625-0080**

**The Honorable Gary King
Attorney General
Office of Attorney General
P.O. Drawer 1508
Santa Fe, NM 87504-1508**

**The Honorable Eric Schneiderman
Attorney General
Office of the Attorney General
The Capitol
Albany, NY 12224**

**The Honorable Roy Cooper
Attorney General
Office of the Attorney General
9001 Mail Service Center
Raleigh, NC 27699-9001**

**The Honorable Wayne Stenehjem
Attorney General
Office of the Attorney General
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505**

**The Honorable Joey Patrick San Nicolas
Attorney General
Office of the Attorney General
Administration Building
P.O. Box 10007
Saipan MP 96950-8907**

**The Honorable Mike DeWine
Attorney General
Office of the Attorney General
30 E. Broad St., 17th Floor
Columbus, OH 43266-0410**

**The Honorable Scott Pruitt
Attorney General
Office of the Attorney General
313 NE 21st Street
Oklahoma City, OK 73105**

**The Honorable Ellen Rosenblum
Attorney General
Oregon Department of Justice
1162 Court Street, NE
Salem, OR 97301-4096**

**The Honorable Kathleen Kane
Attorney General
Pennsylvania Office of the Attorney General
1600 Strawberry Square, 16th Fl.
Harrisburg, PA 17120**

**The Honorable Cesar Miranda
Secretary of Justice
Department of Justice Puerto Rico
GPO Box 902192
San Juan, PR 00902-0192**

**The Honorable Peter Kilmartin
Attorney General
Office of the Attorney General
150 South Main St.
Providence, RI 02903**

**The Honorable Alan Wilson
Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549**

**The Honorable Marty J. Jackley
Attorney General
Office of the Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501**

**Julie Mix McPeak
Commissioner
Department of Commerce and Insurance
Consumer Affairs Division
500 James Robertson Pkwy
Davy Crockett Tower
Nashville, TN 37243-0600**

**The Honorable Robert E. Cooper, Jr.
Attorney General
Office of the Attorney General and Reporter
P.O. Box 20207
Nashville, TN 37202-0207**

**The Honorable Greg Abbott
Attorney General
Office of the Attorney General
P.O. Box 12548,
Austin, TX 78711-2548**

**The Honorable Sean D. Reyes
Attorney General
Office of the Attorney General
P.O. Box 142320
Salt Lake City, UT 84114-2320**

**The Honorable Mark Herring
Attorney General
Office of the Attorney General
900 East Main St.
Richmond, VA 23219**

**The Honorable Vincent F. Frazer
Attorney General
Department of Justice
Office of the Attorney General
34-38 Kronprindsens Gade
GERS Building, 2nd Floor
St. Thomas, VI 00802**

**The Honorable William H. Sorrell
Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001**

**The Honorable Bob Ferguson
Attorney General
Office of the Attorney General
1125 Washington St. SE
P.O. Box 40100
Olympia, WA 98504-0100**

**The Honorable Patrick Morrissey
Attorney General
Office of the Attorney General
State Capitol Complex,
Building. 1, Room E-26
Charleston, WV 25305**

**The Honorable J.B. Van Hollen
Attorney General
Office of the Attorney General
114 East State Capitol
Madison, WI 53707-7857**

**The Honorable Ben Brancel
Secretary of Agriculture, Trade, and Consumer Protection
Department of Agriculture, Trade, and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911**

**The Honorable Gregory A. Phillips
Attorney General
Attorney General's Office
123 Capitol Building
200 West 24th Street
Cheyenne, WY 82002**

Officials to be Notified by The Bancorp Bank

Federal Official:

**John Vogel
Regional Director
Federal Deposit Insurance Corporation
350 Fifth Avenue, Suite 1200
New York, NY 10118-0110**

State Official:

**The Honorable Robert A. Glen
State Banking Commissioner
Office of the State Bank Commissioner
555 East Loockerman Street
Dover, DE 19901**

Officials to be Notified by Wright Express Financial Services Corporation (WEX Bank)

Federal Official:

**Stan Ivie
Regional Director
Federal Deposit Insurance Corporation
25 Jessie Street at Ecker Square, Suite 2300
San Francisco, CA 94105-2780**

State Official:

**G. Edward Leary
Commissioner
Department of Financial Institutions
P.O. Box 146800
Salt Lake City, UT 84114-6800**

Officials to Be Notified By Taylor Capital Group

Federal Official:

**Elizabeth Knospe
Senior Vice President and General Counsel
Federal Reserve Bank of Chicago
230 South LaSalle Street
Chicago, IL 60604-1413**

State Official:

**The Honorable Manuel Flores
Acting Secretary
Department of Financial and Professional Regulation
320 West Washington Street
Springfield, IL 62786**

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: HIGHER ONE ONEACCOUNT MARKETING)
AND SALES PRACTICES LITIGATION)
_____)

No. 3:12-md-02407 (VLB)

DECLARATION OF HASSAN A. ZAVAREEI

I, Hassan A. Zavareei, hereby declare as follows:

1. I am competent to testify to the matters stated herein. I submit this declaration in support of Plaintiffs' Memorandum of Law in Support of Plaintiffs' Unopposed Motion Preliminary Approval of Settlement.
2. I am a partner at the firm Tycko & Zavareei, LLP and a member in good standing of the District of Columbia, Maryland and California bars. Over the past nineteen years, I have gained substantial experience handling complex civil litigation and class action litigation. I have taken several cases to trial, including jury trials that have lasted several months. I have argued appeals in both the D.C. Circuit and the Fifth Circuit. I am a graduate of Boalt Hall Law School at the University of California, Berkeley.
3. On March 28, 2013, the Court appointed Tycko & Zavareei, LLP as Interim Lead Counsel in this litigation.
4. Class Counsel began investigating potential plaintiffs' claims against Higher One and reviewed several sets of checking account statements and various Higher One marketing materials beginning in 2011. At an early stage, this

investigation allowed Class Counsel to develop an understanding of the nature of Higher One's conduct, the language of the account agreements and marketing representations at issue, and potential causes of action and remedies.

5. Class Counsel expended significant resources researching and developing the legal claims at issue in this case, including the claims asserted under the Connecticut Unfair Trade Practices Act ("CUTPA"), Conn. Gen. Stat. § 42-110b *et seq.* and their applicability to out-of-state consumers.

6. Between July 2012 and November 2012, Plaintiffs and their respective counsel filed complaints in six different federal district courts and state courts. Each complaint alleged that Higher One and Bancorp had engaged in unfair and deceptive practices regarding the marketing of the OneAccount to Class Members and, related to the OneAccount, had charged unlawful and improper fees. Certain of the complaints contained similar allegations against WEX and Taylor Capital Group.

7. Plaintiffs consulted with experts both on potential theories of liability and damages, with a particular emphasis on intricate student financial aid regulations. Subsequently, Parties have vigorously litigated this case and have thoroughly explored the issues in this Litigation.

8. In addition, Plaintiffs actively pursued discovery. The Parties met and conferred on their respective discovery requests extensively.

9. Plaintiffs served Defendants with hundreds of requests to admit, interrogatories, and requests for production. Defendants responded or objected to each of these discovery requests. Defendants also began actively producing

documents to Plaintiffs, and have produced approximately 15,000 pages of documents to date, including sample webflows, marketing materials, account agreements, and the agreements between the defendants, all of which have been reviewed by Plaintiffs. Defendants have also produced a database containing the fee information for 3.7 million OneAccounts.

10. Defendants also served requests for production and interrogatories on Plaintiffs, to which Plaintiffs responded and/or objected. Each Plaintiff also provided interrogatory responses to Defendants.

11. In December, 2012, Class Counsel met with counsel for defendants in Hartford, Connecticut and requested a substantial amount of confidential information regarding Defendants' policies and practices and information regarding Higher One's revenue attributable to OneAccount fees.

12. In early 2013, Higher One responded to Class Counsel's December 2012 requests. The responses provided Class Counsel both with important knowledge as to the universe of damages at issue, and with additional information regarding the probabilities of class certification and, ultimately, prevailing on the merits.

13. Then, the Parties agreed to request that United States Magistrate Judge William Garfinkel of the United States District Court for the District of Connecticut preside over a mediation to determine whether resolution of the Litigation would be possible. On March 13, 2013, the parties held an in-person mediation session before Judge Garfinkel in Bridgeport, Connecticut. The mediation did not lead to a settlement agreement.

14. The Parties agreed to hold a second mediation session before Judge Garfinkel on May 2, 2013, in Bridgeport, but that mediation also did not result in a settlement.

15. On October 10, 2013, the Parties held a third mediation session before Linda Singer, an experienced and well-respected independent mediator located in Washington, D.C. The mediation was contentious and hard-fought, and ultimately resulted in the parties reaching an agreement in principle on certain material terms of a settlement.

16. Negotiations continued over the terms of a Settlement Agreement for approximately three months following the Washington, D.C. mediation.

17. During this time, Plaintiffs conducted discovery on the accessibility and content of Higher One fee data associated with Class Members.

18. The Parties' October 10, 2013 agreement in principle included terms related to the specific Higher One practice changes. Subsequent to the initiation of the *Price Action*, and substantially as a result of that litigation, Higher One modified certain of its One Account policies and practices. After the October 10, 2013 agreement was reached, Class Counsel reviewed the proposed and implemented practice changes in detail.

19. A part of this review process, Class Counsel performed detailed confirmatory discovery on Higher One's proposed and implemented business practice changes. Specifically, Class Counsel requested and received additional discovery into current marketing communications, Terms and Conditions and Fee Disclosures, and reviewed each. That discovery included an in-person visit to

Higher One headquarters by Class Counsel to review the implementation and operation of changes to Higher One website and marketing practices.

20. Feeling that certain practice changes were unsatisfactory, Class Counsel negotiated with Higher One over further improvements to the practice changes after the completion of its discovery effort. These negotiations included improvements to Higher One processes and disclosures regarding students' ability to transfer funds to non-Higher One accounts.

21. As a result of these negotiations, Higher One ultimately agreed to make the process for transferring funds into another account much easier for students.

22. The economic value to the Class of Higher One's practice changes (in the form of fees no longer charged by Higher One) is at least \$66 million from their inception through the required period, that is, two years following the Effective Date—and that figure does not include the difficult-to-quantify value of improved OneAccount disclosures and the enhanced ability of students to conveniently select checking account options other than Higher One's.

23. In addition, Higher One has agreed to create a Settlement Fund of \$15 million to reimburse Class Members for OneAccount Fees incurred during the Class Period. This money will be deposited into a client trust account held by Higher One's counsel, Wiggin & Dana, within 7 days of the execution of the Settlement Agreement. That transfer will occur on February 20, 2014.

24. Plaintiffs and Class Counsel estimate this amount represents between approximately 12% and 20% of the best damages award that Plaintiffs may have been able to secure at trial.

25. Plaintiffs' central claims concerned Higher One's inadequate disclosures of two of its fees: Non-Higher One ATM Fees and PIN-Based Transaction Fees. If Plaintiffs were to prevail on their claims relating to those fees, the Settlement value to the class of \$16.3 to \$17 million—excluding the \$66 million in value from the prospective relief—would amount to approximately 12% of the best possible damages award in this case.

26. Plaintiffs would almost certainly face an argument by Defendants that even if the disclosures were initially inadequate, Class Members should have eventually been on notice of the fees after a reasonable amount of time, and after bank statements and other notices made the reality of the fees clear. If a factfinder agreed, best possible damages would be reduced accordingly. In that case, the Settlement value would amount to approximately 20% of potential damages.

27. In the months after the October 10, 2013 mediation, Class Counsel engaged in settlement-related analysis to determine an appropriate plan for allocation of the Settlement Fund.

28. The Parties were unable to reach final agreement on all terms of a Settlement Agreement. In particular, the Parties were unable to agree on a notice and administration plan for the Settlement. Consequently, the Parties reconvened with Judge Garfinkel on January 17, 2014. The session was

productive, and on January 31, 2014, the Parties were able to reach final agreement on the Settlement Agreement—including the Notice plan, claims process, and plan of allocation—now before the Court.

29. The amount of each Class Member’s distribution will be determined pursuant to a formula described in detail in the Settlement Agreement. The allocation formula “weights” certain OneAccount Fees more heavily than others, based on a) the Fee’s relative importance to Plaintiffs’ claims; and b) the relative strength of legal claims based on a particular Fee. The allocation formula “caps” the amount of other fees, which are largely comprised of overdraft of non-sufficient funds fees; the cap ensures that accountholders who knowingly and repeatedly engaged in overdraft of non-sufficient funds transactions do not disproportionately consume the benefits of the Settlement Fund.

30. The allocation formula contained in the Settlement Agreement allows Class Members who submit a claim to receive credit for the full value of all Non-Higher One ATM Fees and PIN-Based Transaction Fees—the Fees at the center of this Litigation.

31. Higher One has made available to Class Counsel and to Plaintiffs’ experts data sufficient to determine and implement the allocation of Net Cash Settlement Fund.

32. The data provided by Higher One to Class Counsel included information with respect to each class member’s total net fees incurred, the “net” amount of certain types of fees, including net Non-Higher One ATM and PIN-Based Transaction Fees, and the net amount of all other fees.

33. “Net” fees were calculated by subtracting fee credits or refunds that Class Members have already received from Higher One, for any reason, from fees incurred by fee type.

34. Each of the Plaintiffs and Former Plaintiffs devoted substantial time and effort, including responding to detailed discovery requests and participating in regular communications with counsel to remain fully apprised of developments in this case and the progress of all Settlement discussions.

35. The Parties negotiated and agreed upon attorneys’ fees and service award provisions of the Settlement Agreement only after reaching agreement on all other material terms of this Settlement.

36. It is Class Counsel’s considered opinion that the recovery from Defendants under the Settlement Agreement is fair and reasonable. Although Plaintiffs and Class Counsel would have obviously sought more in any trial, the value of the Settlement constitutes a substantial recovery under all of the circumstances. Moreover, Class Counsel believes that protracted litigation carries inherent risks that would necessarily have delayed and endangered Class Members’ monetary recovery.

37. Furthermore, Class Counsel are cognizant that significant obstacles existed to both class certification and a victory at trial. Defendants’ counsel are experienced in class action litigation. If class certification was denied and that denial was affirmed on appeal, the value of Plaintiffs’ claims would have virtually extinguished.

38. Overall, the \$16.3 to \$17 million overall monetary benefit conferred upon the Class represents a significant recovery and in light of the substantial risks of litigation on both the merits and in connection with what surely would have been a contested class certification proceeding.

39. Moreover, the Settlement represents a recovery in addition to and greater than the amount of restitution \$ 11 million separately obtained by the Federal Deposit Insurance Corporation ("FDIC") in an enforcement action against Higher One.

40. My firm has been named Class Counsel or Settlement Class Counsel in numerous class actions against financial institutions, including *Shannon Schulte, et al. v. Fifth Third Bank.*, No. 1:09-cv-06655 (N.D. Ill.); *Kelly Mathena v. Webster Bank*, No. 3:10-cv-01448 (D. Conn.); *Nick Allen, et al. v. UMB Bank, N.A., et al.*, No. 1016 Civ. 34791 (Cir. Ct. Jackson County, Mo.); *Thomas Casto, et al. v. City National Bank, N.A.*, 10 Civ. 01089 (Cir. Ct. Kanawha County, W. Va.); *Eaton v. Bank of Oklahoma, N.A., and BOK Financial Corporation, d/b/a Bank of Oklahoma, N.A.*, No. CJ-2010-5209 (Dist. Ct. for Tulsa County, Okla.); *Lodley and Tehani Taulva, et al., v. Bank of Hawaii and Doe Defendants 1-50*, No. 11-1-0337-02 (Cir. Ct. of 1st Cir., Haw.); *Jessica Duval, et al. v. Citizens Financial Group, Inc., et al.*, No. 1:10-cv-21080 (S.D. Fla.); *Mascaro, et al. v. TD Bank, Inc.*, No. 10-cv-21117 (S.D. Fla.); *Theresa Molina, et al., v. Intrust Bank, N.A.*, No. 10-cv-3686 (18th Judicial Dist., Dist. Ct. Sedgwick County, Kan.); and *Trombley v. National City Bank*, 1:10-cv-00232-JDB (D.D.C.).

41. I am currently lead counsel in *Timothy Hennigan, et al., v. General Electric Company*, No. 2:09-cv-11912 (E.D. Mi.) and *Ellen Levine, et al., v. American Psychological Association, Inc., et al.*, No. 1:10-cv-01780 (D.D.C.). Both of these cases are putative class actions, and I am coordinating and directing the work of several other law firms in these cases. I am also co-counsel in numerous other putative class actions that have not yet attained class action status.

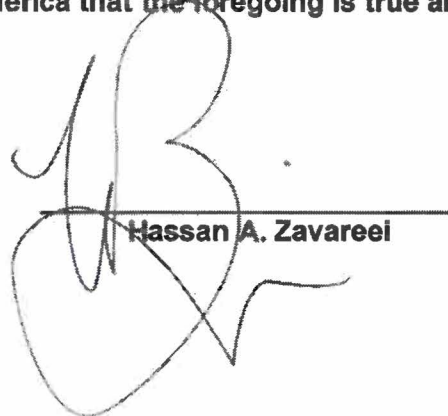
42. My firm has served and is serving as counsel in several putative class actions against financial institutions, including *Jonathan Jones, et al. v. United Bank and United Bankshares, Inc.*, No. 11-C-50 (Cir. Ct. of Jackson County, W. Va.); *Marta Farb, et al. v. People's United Bank*, No. CV-11-6009779-S (Super. Ct. Judicial Dist. of Waterbury, Conn.); *Amber Hawthorne, et al. v. Umpqua Bank*, No. 4:11-cv-06700 (N.D. Cal.); *Sylvia Hawkins, et al. v. First Tennessee Bank, N.A.*, No. CT-004085-11 (Cir. Ct. of Shelby County, Tenn.); *Gail Romascan, et al. v. First Midwest Bank*, No. 11 CH 30342 (Cir. Ct. of Cook County, Ill.); *Jane Simpson, et al. v. Citizens Bank, et al.*, No. 2:12-cv-10267 (E.D. Mich.); *William Klopfenstein, et al. v. Fifth Third Bank*, No. 1:12-cv-00851 (S.D. Ohio); *Alfonse Forgione, et al. v. Webster Bank, N.A.*, No. UWY-CV12-6015956-S (Super. Ct. Judicial Dist. of Waterbury, Conn.); *Emily Jacobs, et al., v. FirstMerit Corporation, et al.*, No. 11CV000090 (Ct. of Common Pleas, Lake County, Ohio); *Small v. BOKF, N.A.*, No. 1:13-cv-01125 (D. Colo.); *Christopher Graham, et al., v. BMO Bank, N.A., et al.*, No. 12-cv-01460 (D. Conn.); *Jessica Parm, et al., v. BMO Bank, N.A., et al.*, No. 12-cv-03326 (N.D. Ga.); *Patricia Booth, v. BMO Bank, N.A., et al.*, No. 13-cv-05968 (E.D. Pa.); *Jacinta Elder, v. BMO Bank, N.A., et al.*, No. 12-cv-03043 (D. Md.); *James*

Dillon, v. BMO Bank, N.A., et al, No. 13-c.v-00897 (M.D.N.C.); *Christina Labajo et al v. First International Bank & Trust, et al.*, No. 13-cv-01861 (C.D Cal.); *Deborah Moss, et al., v. BMO Bank, N.A., et al.*, No. 12-cv-05438 (E.D.N.Y); *Christina Achey, v. BMO Bank, N.A.*, No. 13-cv-07675 (N.D. Ill.); *Johnetta Riley, v. BMO Bank, N.A., et al.*, No. 13-cv-01677 (D.D.C); *Gordn, v. U.S. Bancorp., et al.*, No. 13-cv-03005 (D. Minn.).

43. The qualifications of other firms that comprise Class Counsel was discussed fully in Plaintiffs' Motion for Appointment of Tycko & Zavareei, LLP as Interim Lead Counsel and Setting of Deadline for Filing of Consolidated Amended Complaint and Incorporated Memorandum of Law. Docket No. 8. Firm resumes were attached thereto. Docket No. 8-2.

On this 14 day of February, 2014, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: February 14, 2014



Hassan A. Zavareei

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: HIGHER ONE ONEACCOUNT MARKETING AND SALES PRACTICES LITIGATION))))	No. 3:12-md-02407 (VLB)
--	------------------	--------------------------------

DECLARATION OF KIM SCHMIDT, RUST CONSULTING

I, Kim Schmidt, hereby declare as follows:

1. I am a Senior Vice President of Rust Consulting, Inc., (“Rust”). I submit this declaration for the purpose of providing the Court with information regarding the claims administration process in this class action. I make this declaration based upon my own personal knowledge and, if called as a witness in this action, I would be able to competently testify as to the facts set forth herein.

2. With 35 years of class action settlement administration experience, Rust is among the industry’s leaders. Rust has administered more than 4,500 class action settlements, 2,000 of which were in the past five years alone. Rust employs a permanent staff of approximately 550 people working in offices nationwide. Rust also has a subsidiary, Kinsella Media, LLC, that specializes in the design and implementation of class notice programs. Rust and Kinsella Media frequently work together to provide complete class action administration services.

3. Rust handles the claims administration process for class actions of all sizes and types, including consumer, antitrust, securities, insurance, healthcare, labor and employment, property, finance, telecom, and products liability class actions. In the past two years, Rust has handled claims

administration in, among many other matters, the \$65 million settlement in *In re Lawn Mower Engine Horsepower Marketing and Sales Practices Litig.*, No. 2:08-md-1999, MDL No. 1999 (E.D. Wisc.); the \$624 million settlement in *In re Countrywide Financial Corp. Securities Litig.*, No. CV 07-05295 (C.D. Cal.); the \$150 million settlement in *SEC v. Bank of America Corp.*, No. 09-cv-6829 & No. 10-cv-0215 (S.D.N.Y.); the \$90 million settlement in *In re Wal-Mart Wage and Hour Employment Practices Litig.*, No. 2:06-cv-00225, MDL No. 1735 (D. Nev.); the \$125 million settlement in *In re Pharmaceutical Industry Average Wholesale Price Litigation (All Class Actions Relating to Track Two Defendants)*, No. 01-CV-12257-PBS, MDL No. 1456; and the \$1.1 billion settlement in *In re TFT-LCD (Flat Panel) Antitrust Litigation (All Indirect-Purchaser Plaintiff Class Actions)*, No. 3:07-MD-1827 SI, MDL No. 1827. Rust has considerable experience in administering class action settlements of all types and sizes and will use this experience to develop a claims administration process for this action. Rust's resume is attached hereto as Attachment 1.

4. Rust Consulting was engaged to consult and coordinate on the administration process for the Settlement. We will provide notice and claims administration services in order to facilitate the provision of notice and to distribute and/or administer the distribution of settlement funds in connection with Settlement. This work will include noticing, designing and programming systems, toll-free IVR telephone support, website administration, exclusion and objection tracking, claimant correspondence, claims processing, validation, and quality control, payment calculation and distribution, reporting, and computer operations.

5. I estimate the Notice and administration efforts associated with the Settlement will cost between \$1,300,000 and \$2,000,000.

OVERVIEW

6. Based on Higher One's representation, I understand that individual e-mail addresses and mailing addresses are available for virtually all Class Members. Individual notice will be given to all known Class Members who can be identified with reasonable effort.

7. Based on the information provided to me concerning the email addresses and mailing addresses, I expect the notice to be delivered to over 90% of the class members if we use the process outlined in the notice summary below. As described below, Rust will mail postcard notice to all email bouncebacks. We typically see an average mail undeliverable rate of around 10%-15%, although the range varies based on class demographic. For any undeliverable postcard notice without a forward address, we would trace and remail. Typically, we locate new addresses for 60%- 80% of the records input.

8. Coverage and exposure will be further enhanced by making the Notices, as well as other Settlement documents, such as the Settlement Agreement, available at a website (www.OneAccountSettlement.com). In addition, a toll-free phone number will be established allowing Class Members to call and request that a Long-form Notice be mailed to them.

9. In consultation with the Parties, various forms of notice for Court approval have been developed as described below.

NOTICE PROGRAM SUMMARY

10. The Notice program utilizes (1) direct electronic notice via email to addresses held in Higher One's business records ("E-mail Notice"), which will include a simple, easy-to-use electronic claim submission option; (2) for each Class Member where the E-mail Notice is returned or bounces back as undeliverable, the Settlement Administrator will mail, via first-class mail postcard, a Mailed Notice to each Class Member at the address identified in Higher One's records ("Mailed Notice"), which will include a "tear-off," pre-populated claim form for easy submission to the Settlement Administrator; (3) publication notice ("Published Notice") designed to support the direct notice efforts noted above, Google via search engine sponsored search results and advertising on Facebook; (4) a "Long-form Notice" with more detail than the direct mail or publication notices that will be available on the Settlement Website and by request made through the toll-free number; (5) a Settlement Website, which will explain the Settlement, give answers to frequently asked questions, allow for the electronic submission of Claims, provide a Claim Form that may be printed and mailed, describe the Settlement Payment distribution process, and provide links to the Long Form Notice, the Settlement Agreement, and such other documents as Class Counsel and counsel for Higher One agree to post or that the Court orders posted on the website; and (6) a toll-free telephone line for Class Members to call with Settlement-related inquiries.

E-mail Notice

11. The E-mail Notice to each Settlement Class Member will be sent at the e-mail address identified in Higher One's records. Rust Consulting will take steps to prevent the E-mailed Notices from being treated as spam by Internet Service Providers. The proposed Email Notice is included as Attachment 2 hereto.

12. Each E-mail Notice will contain a link to a pre-populated claim form on the Settlement Website, allowing for quick and easy claim submission. For confidentiality reasons, the class member must authenticate by entering distinguishing information. On the Settlement Website, Class Members will have the opportunity to update address and email information if necessary.

13. Should we learn (through an e-mail bounceback or otherwise) that the e-mail address in Higher One's records is invalid, we will mail a Mailed Notice to that Class Member, as discussed below.

Mailed Notice

14. For each Class Member where an attempted E-mail Notice is returned or bounces back as undeliverable, we will send, via first-class mail, a two image 4.25" x 5.5" Summary Postcard Notice by USPS First Class mail. This size is a typical format for postcard mailings and compiles with the USPS standards for postcard rate. The proposed Mailed Notice is included as Attachment 3 hereto.

15. Each mailed Notice will be accompanied by a tear-off Claim Form that will be pre-populated with all relevant demographic information and allow for easy Claim submission by Class Members.

16. The postcard notice format is a common form of notice and has been routinely accepted by courts.

17. Prior to mailing, addresses will be verified and updated through the USPS National Change of Address service (NCOA) to maximize address accuracy. Additionally this service provides address standardization through the Coding Accuracy Support System (“CASS”) to ensure the quality of the zip code and Location Address Conversion System (LACS), which was part of the process for rural addresses to convert to street addresses as part of the “911” emergency system. This address updating process is standard for the industry and for the majority of promotional mailings that occur today.

18. If a postcard is returned as undeliverable and contain a forwarding address, we will update the database and mail a postcard to the forwarded address. If the postcard is returned without a forwarding address, we will perform address traces and update the database with the new address and mail a postcard to the new address.

19. No later than 35 days from the Initial Mailed Notice date, we will complete the re-mailing of Mailed Notice postcards to those Class Members whose original mailed postcards were returned as undeliverable at that time, and whose new addresses were identified through address trace.

20. The Mailed Notice program (which is comprised of both the Initial Mailed Notice, and the Notice Re-mailing Process) shall be completed no later than 60 days after the Court’s order of Preliminary Approval.

Published Notice

21. The Published Notice program consists of internet advertising via Google search engine sponsored results and advertising on Facebook. The proposed Published Notices are included as Attachment 4 hereto.

Long-form Notice

22. The Long-Form Notice will provide Class Members with more detail than the direct mail or publication notices. It will describe the procedure Class Members must use to opt out of the Settlement or to object to the Settlement, and/or to Class Counsel's application for attorneys' fees and it will be available on the Settlement Website. The proposed Long-form Notice is included as Attachment 5 hereto.

Settlement Website

23. A neutral website ([www. OneAccountSettlement.com](http://www.OneAccountSettlement.com)) will be established to allow Class Members to obtain additional information and documents about the settlement, including the Long-Form Notice, the Settlement Agreement. The website will also give answers to frequently asked questions, allow for the electronic submission of Claims, and describe the Settlement payment distribution process. The website address will be cited in all notice materials and will be registered with hundreds of search engines so that anyone can find the site when searching for various related keyword combinations.

Other

24. A toll-free phone number will be established allowing Class Members to call and request that a Detailed Notice or copy of the Settlement Agreement be mailed to them. The toll-free number will also provide Class Members with access to recorded information that includes answers to frequently-asked questions and directs them to the website. Callers may also speak to live operators during regular business hours who can address questions.

25. A post office box will be established allowing Class Members to contact the claims administrator by mail with requests or questions.

Notice Information

26. All Notices will include, among other information: (a) a description of the material terms of the Settlement; (b) a date by which Class Members may exclude themselves from or “opt out” of the Class and a description of how to effectively opt out; (c) a date by which Class Members may object to the Settlement; (d) a date by which Class Members must file a Claim; (e) the date upon which the Final Approval Hearing will occur; (f) and the web address of the Settlement Website at which Class Members may access the Long Form Notice, the Settlement Agreement, the Claim Form, and other related documents and information.

27. In addition, all Notices will make clear that all opt-outs must be received by the Settlement Administrator before the opt-out period expires, and any objections must be received by the Court and counsel for the Parties by the objection deadline.

28. The notice will provide a set deadline for individuals to opt-out or object, which is no less than 45 days from the completion of the Mailed Notice Program (which is comprised of both the Initial Mailed Notice, and the Notice Re-mailing Process). Class Members will have at least 45 days to opt-out or object, and most will have a significantly longer period in which to do so.

CONCLUSION

29. At the conclusion of the Notice program, we will provide a final report verifying the effective implementation of the administration as required by the Settlement Agreement.

I declare under penalty of perjury of the laws of MN and the United States that the foregoing is true and correct, and that this declaration was executed in Faribault, MN, on February 14, 2014.

Ken Schmidt

Attachment 1



Rust Consulting, Inc. Overview

Rust Consulting, Inc., a SourceHOV company, is the industry leader in class action settlement administration. has designed, implemented, or managed more than 4,500 class actions involving antitrust, consumer, finance, insurance and healthcare, labor and employment, product liability, and securities matters, as well as other complex and time-sensitive programs such as regulatory settlements, data breach responses, and recalls.

Our experience includes the administration of large and complex cases such as *Authors' Guild v. Google, Inc.*, No. 1:05-CV-08136 (S.D.N.Y.); *In re Dynamic Random Access Memory (DRAM) Antitrust Litigation*, No. M-02-1486 & MDL 1486 (N.D. Cal.); *Microsoft I-V Cases*, No. J.C.C.P. 4106 (Cal. Super. Ct. S.F. County); *Naef v. Masonite Corp.*, No. CV 94-4033 (Ala. Cir. Ct. Mobile County); *SEC v. Federal National Mortgage Association*, No. 1:06-CV-00959 (D.D.C.); *Sullivan v. DB Investments, Inc.*, No. 04-2819 (D.N.J.); and *In re Motorola Securities Litigation*, No. 03-C-00287 (N.D. Ill.).

SERVICES

Pre-Settlement Consultation

Our experts can help determine potential claim rates, settlement structures, and the most cost-effective methods of notice and distribution.

Class Data Management

We ensure efficient notification and high-quality administration.

- Class member identification and location
- Database design and management
- Manipulation of diverse types of files, formats, and layouts (normalization)
- Consolidation of multiple records into one master list
- Removal of duplicate records
- Custom data processing
- Mailing list formatting and address location services

Notification

Rust offers many types of notice and claim forms.

- Media-based notice (online, newspaper, radio, television)
- Direct mail notice
- Email notice
- Forms design and printing

- Media campaign design and implementation
- Customized notice and claim forms (account, policy, or purchase information)

Our in-house specialists ensure that notices are clear, understandable, and catch potential claimants' attention.

Contact Center

Rust's contact center can seat approximately 800 representatives, is managed by permanent, on-site staff, offers live customer service, Interactive Voice Response ("IVR"), and systems combining the two.

Callers receive high quality service from our experienced customer service representatives ("CSRs"), who work from plain language phone scripts.

- Five projects with 1 million or more calls
- More than 100 languages supported
- All calls recorded

Claims Processing

Our service-based information architecture is geared toward high-volume, high-speed data and transaction services through in-house execution. Our secure, technology systems and processes result in accurate and efficient claims processing and adjudication.

Distribution and Tax Reporting

We ensure cost-efficient distribution and manage distribution processes involving any benefit type, including checks, coupons, vouchers, and products. Rust is especially adept at handling ongoing, multiyear distribution projects or *cy pres* programs.

- More than \$3.5 billion in settlement benefits distributed in 2013 alone.
- 1099 and W-2 tax reporting
- Qualified Settlement Fund tax reporting

DATA AND SYSTEM SECURITY

Rust maintains a unified compliance posture to ensure the integrity and security of project data. We have accreditation under the Federal Information Security Management Act (FISMA), comply with and adhere to Safe Harbor Principles, and undergo an annual SSAE 16 (formerly SAS70) Type II audit of our data security and information technology controls.



LOCATIONS

Minneapolis

Rust Consulting, Inc.
625 Marquette Avenue, Suite 880
Minneapolis, MN 55402

Faribault

Rust Consulting, Inc.
201 South Lyndale Avenue
Faribault, MN 55021

Los Angeles

Rust Consulting, Inc.
777 South Figueroa Street, Suite 4600
Los Angeles, CA 90017

Palm Beach Gardens

Rust Consulting, Inc.
5210 Hood Road
Palm Beach Gardens, FL 33418

San Francisco

Rust Consulting, Inc.
Steuart Tower
One Market Plaza, Suite 1275
San Francisco, CA 94105



Attachment 2

Sender address name: Higher One OneAccount Settlement
Sender email address: notice@oneaccountsettlement.com
Reply to email address: noreply@rustconsulting.com (standard)
Subject line text: Legal Notice of OneAccount Class Action Settlement

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

A federal court authorized this notice. It is not a solicitation from a lawyer.

If you opened a Higher One OneAccount bank account between July 1, 2006 and August 2, 2012 and incurred a fee, you may be eligible for a payment from a class action settlement.

A \$15 million proposed Settlement has been reached in class action litigation against Higher One Holdings, Inc., Higher One, Inc., The Bancorp Bank, Wright Express Financial Services Corporation, and Taylor Capital Group, Inc. (“Defendants”) regarding the fees charged for and the marketing of Higher One OneAccount bank accounts. The Litigation is pending in the United States District Court for the District of Connecticut, No. 3:12-md-2407, before the Honorable Vanessa L. Bryant.

What is this case about? Plaintiffs claim that Defendants’s marketing did not adequately disclose the refund disbursement methods available to students for their tuition and financial aid refunds and that Defendants charged inadequately disclosed and otherwise improper fees, such as PIN Based Transaction Fees and Non-Higher One ATM Fees, for use of OneAccounts. Plaintiffs assert that Defendants’ practices breached the Account Terms and Conditions, unjustly enriched Defendants, and violated various state consumer protection laws. Defendants maintain that there was nothing wrong with their marketing and fee practices and that they did not violate any laws. The Court has not decided which side is right.

How and When Do I Get Paid? You must **submit a Claim** to participate in the Settlement. Once the Settlement is approved and becomes final (including after any appeals are dismissed), and once all timely Claims are processed, Settlement funds will be distributed promptly.

[Click this link to Submit a Claim](#)

Who’s included in the Class? The Class includes anyone who opened a OneAccount¹ between July 1, 2006 and August 2, 2012 and who incurred a fee related to its use. Higher One’s records show that you are in the Class. If you previously released Defendants from liability concerning the claims in this case, or if you are a current or former employee, officer, or director of any of the Defendants, or if you are an immediate family member of the judge handling this case, you are not eligible to submit a claim.

What are the Settlement Terms? Higher One, on behalf of itself and the other Defendants, has agreed to establish a Settlement Fund of \$15 million that will provide Payments to Class Members who file a Claim, net of any attorneys’ fees and expenses and service awards to the Class Representatives. Defendants have also made, or are in the process of making, certain practice changes that will remain in effect for two years after the Settlement becomes final. The cash payment made to each Class Member who submits a Claim will be determined by first applying an allocation formula to the net Fees incurred by the Class Member. The allocation formula weights

¹ This includes the basic OneAccount, OneAccount Premier, OneAccount Flex and OneAccount Edge.

Non-Higher One ATM Fees and PIN-Based Transaction Fees more heavily than other OneAccount Fees, but all non-refunded Fees, subject to a certain overall cap for Fees other than Non-Higher One ATM Fees and PIN Based Transaction Fees, will be included in the allocation calculation. Once this allocation formula is applied, the amount of the Payment will be a proportional share of the Settlement Fund, the size of which depends on the number of Claims received. For a more detailed explanation of the calculation of your Payment, please review paragraph 54 of the Settlement Agreement, which is available at www.OneAccountSettlement.com.

What will be decided at the Fairness Hearing? The Court will have a hearing on [REDACTED] to consider whether to approve the Settlement, a request for attorneys' fees, costs and expenses, as well as service awards for the Class Representatives. You can appear at the hearing (see instructions below), but you don't have to. You can hire your own attorney at your own expense to appear or speak for you at the hearing. You can call the toll-free number or visit the settlement website to learn more about how to exclude yourself from or object to the Settlement.

What are my Legal Rights?

You have three options:

- **Remain in the class.** If you are a Class Member and you do not exclude yourself from the Class, you will be bound by the terms of the Settlement and give up your right to sue regarding issues in this case. To obtain a Payment under the Settlement Agreement, you must submit a Claim, which can be done online by [clicking this link to Submit a Claim](#).
- **Request to be excluded.** The Court will exclude you from the Class only if you mail a request for exclusion to the Settlement Administrator. The specific details for excluding yourself from the Settlement are in the detailed notice available at www.OneAccountSettlement.com. Requests must be received by [REDACTED]. If you do not exclude yourself, you will release claims that were or could have been made against Defendants.
- **Object to the Settlement, the Attorneys' Fees and Expenses, or the Class Representatives' Service Awards.** If you do not exclude yourself from the Class, you may object to it by yourself or through an attorney that you hire at your own expense. The specific details for filing an objection are in the detailed notice available at www.OneAccountSettlement.com. Any objection must be postmarked by [REDACTED]. You will be bound by the terms of the settlement if your objection is rejected.

How Do I Get More Information?

If you have questions or want to review a detailed notice or other documents about this lawsuit and your rights, visit www.OneAccountSettlement.com. You may also contact the Settlement Administrator by writing to OneAccount Settlement P.O. Box 1631, Faribault MN 55021-1631, or by calling 1-877-310-4642. Please do not contact the Court or Defendants with questions regarding this lawsuit.

By Order of the Honorable Vanessa Bryant, United States District Court Judge.

Attachment 3

Who's Included in the Class? The Class includes anyone who opened a Higher One OneAccount bank account between July 1, 2006 and August 2, 2012 and who incurred a Fee.

What are the Settlement Terms? Higher One, on behalf of itself and the other defendants, has agreed to establish a Settlement Fund of \$15 million. Defendants have also made, or are in the process of making, certain practice changes that will remain in effect, for two years after the Settlement becomes final. Class Members who submit a Claim will receive a Payment from the Settlement Fund. The amount of the Payment will be based on the number and type of Fees incurred and the number of Claims received. Details about the calculation of the payment are available at: www.OneAccountSettlement.com.

How Do I Receive a Payment? To receive a Payment, you must submit a Claim. A Claim Form is included with this postcard or you may submit a Claim electronically at www.OneAccountSettlement.com. You must file a claim by _____, 2014. Once the Settlement is approved and becomes final (including after any appeals are dismissed), and once all timely Claims are processed, Settlement funds will be distributed promptly.

Your Rights May Be Affected. If the Settlement is approved, and you do not exclude yourself, you will be legally bound by the Settlement. To exclude yourself from the Settlement, you must provide written notice by _____, 201____. To object to this Settlement, you must file a written objection by _____. The exact procedure for either excluding yourself or objecting is provided at www.OneAccountSettlement.com, or you can call the settlement administrator at 1-877-310-4642. The Court will hold a hearing on _____, 201____ to consider whether to approve the Settlement, Class Counsel's request for attorneys' fees and expense reimbursements from the Settlement Fund, and service awards for the class representatives. You can appear at the hearing, but you don't have to. You can also hire your own attorney, at your own expense, to appear or speak for you at the hearing. For more information, call or visit the Settlement website.

www.OneAccountSettlement.com
1-877-310-4642

PLACE CORRECT
POSTAGE
HERE

HIGHER ONE ONEACCOUNT SETTLEMENT
PO BOX 1631
FARIBAULT, MN 55021-1631

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

HIGHER ONE ONEACCOUNT SETTLEMENT
PO BOX 1631
FARIBAULT, MN 55021-1631

PRESORTED
FIRST-CLASS MAIL
U.S. POSTAGE
PAID
Rust Consulting, Inc.

A federal court authorized this notice. It is not a solicitation from a lawyer.

If you opened a Higher One OneAccount bank account between July 1, 2006 and August 2, 2012 and incurred a Fee, you may be eligible for a payment from a class action settlement.

A \$15 million proposed settlement has been reached in a class action lawsuit against Higher One Holdings, Inc., Higher One, Inc., The Bancorp Bank, Wright Express Financial Services Corporation, and Taylor Capital Group, Inc. regarding the Fees charged and the marketing of the Higher One OneAccount. Defendants maintain that there was nothing wrong with their marketing and Fee practices and that they did not violate any laws. The Court has not decided which side is right.



<<NAME1>>
<<NAME2>>
<<ADDRESS1>>
<<ADDRESS2>>
<<CITY>> <<STATE>> <<ZIP>>
<<COUNTRY>>

CLAIM FORM

<<NAME1>>
<<NAME2>>
<<ADDRESS1>>
<<ADDRESS2>>
<<CITY>> <<STATE>> <<ZIP>>
<<COUNTRY>>

<input type="checkbox"/>	If the pre-printed information to the left is not correct or if there is no pre-printed information, please check the box and complete the information below:
Name: _____	
Address: _____	
City: _____	
State: _____ Zip Code: _____	

01

Notice Number: <<CLMNT_IDXE>>

In order to receive a cash payment, you may complete and submit this form online at www.OneAccountSettlement.com or by returning this card to the address on the reverse side. Your claim must be postmarked no later than _____, 2014.

If you previously released Defendants from liability concerning the claims in this case, or if you are a current or former employee, officer, or director of any of the Defendants, or if you are an immediate family member of the judge handling this case, you are not eligible to submit a claim.

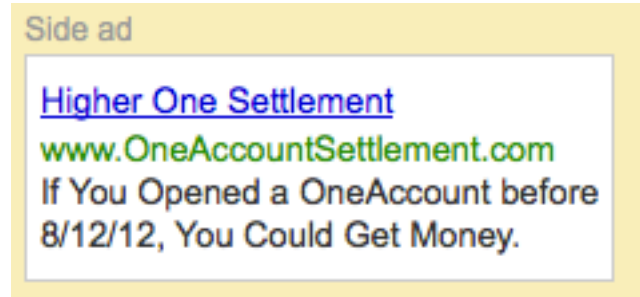
Signature: _____ Date: ____ / ____ / _____

16873/38/3010808.2



Attachment 4

Google Text Ad:




Google keywords/phases:

- higher one
- bank fees lawsuit
- bank fees settlement
- bank fees class action
- higher one banking
- higher one bank account
- higher one lawsuit
- Bank fees Class Action
- Bank fees Lawsuit
- Bank fees Settlement
- Higher One Class Action
- Higher One Lawsuit
- Higher One Settlement
- Higher One bank accounts
- OneAccount Class Action
- OneAccount Lawsuit
- OneAccount Settlement
- OneAccount bank accounts
- higher one class action
- higher one settlement
- oneaccount bank accounts
- oneaccount class action
- oneaccount lawsuit
- oneaccount settlement
- higher one bank accounts

Facebook Text Ad:

Higher One Settlement
oneaccountsettlement.com



If You Opened a
OneAccount before
8/12/12, You Could Get
Money.

Facebook Targeting:

- National
- Adults 18 years of age or older

Attachment 5

If you opened a Higher One OneAccount bank account between July 1, 2006 and August 2, 2012 and incurred a Fee, you may be eligible for a payment from a class action settlement.

A federal court authorized this notice. It is not a solicitation from a lawyer.

- A \$15 million proposed settlement has been reached in a class action lawsuit against Higher One Holdings, Inc., Higher One, Inc., The Bancorp Bank, Wright Express Financial Services Corporation, and Taylor Capital Group, Inc. (“Defendants”) regarding the Fees charged and the marketing of the Higher One OneAccount. Defendants maintain that there was nothing wrong with their marketing and Fee practices and that they did not violate any laws. The Court has not decided which side is right.

AVAILABLE BENEFITS:

Any Class Member who files a Claim will be entitled to a cash payment from the \$15,000,000 settlement fund. The size of the Payment depends on the number and type of Fees you incurred and the number of Claims that are made.

- The Court still has to decide whether to approve the Settlement. Payments will be provided if the Court approves the Settlement and after appeals, if any, are resolved. Please be patient. This process can take time.
- Your legal rights are affected whether you act or don’t act. Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT:

DO NOTHING	Receive no cash payment, give up certain legal rights.
SUBMIT A CLAIM	This is the only way to receive a cash payment. It is easy to do electronically or by mail.
OBJECT	Write to the Court about why you don’t like the Settlement.
GO TO A HEARING	Ask to speak in Court about the fairness of the Settlement.
EXCLUDE YOURSELF	Get no cash payment. This is the only option that allows you to ever be part of another lawsuit against the Defendants about the legal claims being resolved in this case.

- These rights and options - **and the deadlines to exercise them** - are explained in this notice

What This Notice Contains

BASIC INFORMATION.....PAGE 3

- 1. Why did I get this notice package?
- 2. What is this lawsuit about?
- 3. What is a class action?
- 4. Why is there a settlement?

WHO IS IN THE SETTLEMENT?..... PAGES 3-4

THE SETTLEMENT BENEFITS.....PAGE 4

HOW YOU GET SETTLEMENT BENEFITS.....PAGE 5

- 5. When will I get my settlement benefits?

RELEASE OF CLAIMS.....PAGE 5

EXCLUDING YOURSELF FROM THE SETTLEMENT.....PAGES 5

- 6. What happens if I exclude myself from the settlement?
- 7. If I don't exclude myself, can I sue the Defendants for the same thing later?
- 8. How do I exclude myself?

THE LAWYERS REPRESENTING YOU.....PAGE 6

- 9. Do I have lawyers in this case?
- 10. How will the lawyers be paid?

PLAINTIFFS..... PAGE 6

- 11. Will the Plaintiffs be paid something?

OBJECTING TO THE SETTLEMENT..... PAGE 6-7

- 12. What's the difference between objecting and excluding myself?
- 13. How do I object?

THE COURT'S SETTLEMENT HEARING.....PAGE 7

- 14. When and where will the Court decide whether to approve the settlement?
- 15. May I speak at the hearing?

IF YOU DO NOTHING.....PAGE 7

GETTING MORE INFORMATION..... PAGE 7

BASIC INFORMATION

This Litigation relates to the marketing of and Fees associating with Higher One OneAccount bank accounts. The people who brought this Litigation are called Plaintiffs or Class Representatives, and the companies they sued are called Defendants.

The Plaintiffs (or Class Representatives) are Brandi Crawford, Tarsha Crockett, Aisha DeClue, Larry Forman, Rhonda Hannibal, Prince Kaywood, Gaynell Kaywood, Brianne Kent, John Kent, Kristine Krieg, Jonathan Lanham, Ashley Parker, and Jeanette Price.

The Defendants are Higher One Holdings, Inc., Higher One, Inc., The Bancorp Bank, Wright Express Financial Services Corporation, and Taylor Capital Group, Inc.

1. Why did I get this notice package?

Records reflect that between July 1, 2006 and August 2, 2012 you opened a OneAccount bank account¹ and incurred a fee for using your OneAccount. You therefore have the right to know about a proposed Settlement of class action litigation involving OneAccounts opened during this period. This notice explains the Litigation, the Settlement, your legal rights, the benefits that are available, who is eligible for them, and how to get them.

The Court in charge of this Litigation directed that this Notice be provided to you because you have a right to know about the proposed Settlement of this class action Litigation before the Court decides whether to approve the Settlement. This Notice provides details on what options you have in response to this Settlement, and how to claim benefits provided by the Settlement.

2. What is this lawsuit about?

Plaintiffs claim that Defendants's marketing did not adequately disclose the refund disbursement methods available to students for their tuition and financial aid refunds and that Defendants charged inadequately disclosed and otherwise improper fees, such as PIN Based Transaction Fees and Non-Higher One ATM Fees, for use of OneAccounts. Plaintiffs assert that Defendants' practices breached the Account Terms and Conditions, unjustly enriched Defendants, and violated various state consumer protection laws.

Defendants deny that they did anything wrong or that they are liable for damages to anyone. Defendants contend that there is nothing misleading or improper about Higher One's marketing, that students are informed of refund distribution options, and that the Fees associated with the OneAccount are adequately disclosed and are appropriate standard banking fees.

This class action litigation is known as *In re Higher One OneAccount Marketing and Sales Practices Litigation*, Civ. No. 3:12-md-2407 (VLB) (D. Conn.). Judge Vanessa Bryant of the United States District Court for the District of Connecticut is overseeing this Litigation.

3. What is a class action?

In a class action, one or more persons called Class Representatives sue on behalf of a group of people with similar claims. All of these people together are called the "Class" or "Class Members." One court resolves the issues for everyone in the Class - except for those who exclude themselves from the Class, as described in the answers to questions 6-8 below.

4. Why is there a settlement?

A settlement is not an admission of any wrong doing by the Defendants, and the Court did not decide in favor of Plaintiffs or Defendants. Instead, both sides mutually agreed to settle the claims. By settling, they both avoid the risks, delay, and costs of a trial, and the affected consumers get a benefit. The Class Representatives and their attorneys believe this Settlement is the best option for everyone in the Class.

WHO IS IN THE SETTLEMENT?

You will be among the members of the Class, unless you exclude yourself, if you:

- Opened a OneAccount between July 1, 2006 and August 2, 2012 and incurred a Fee.

All of the Court's orders will apply to you and legally bind you.

¹ This includes the basic OneAccount, OneAccount Flex, OneAccount Premier and OneAccount Edge.

You are not a Settlement Class Member if you are:

- a person that has previously released Defendants from liability concerning the claims in this case between March 1, 2006 and August 2, 2012.
- You are a current or former officer, director, or employee of any Defendant or the member of the immediate family of a judge assigned to hear any aspect of this case.
- **You opened a OneAccount before July 1, 2006 or after August 2, 2012.**
- **You have incurred no Fees in connection with your OneAccount.**

If you are still not sure whether you are a member of the Settlement Class, you can call the Claims Administrator toll-free at 1-877-310-4642 or visit www.OneAccountSettlement.com for more information.

THE SETTLEMENT BENEFITS—WHAT YOU GET

If you submit a valid Claim, once the Court approves this Settlement, you will receive a cash payment in the mail. The amount of the cash payment depends on the number and type of fees you incurred and the number of claims made against the \$15 million Settlement Fund. The amount of this Payment will be calculated as follows.

Calculation of the Cash Payment

Defendants will create a fund of \$15,000,000 as part of the Settlement. Class Counsel will apply for an award of attorneys' fees of no more than 30% of the Settlement Fund and expenses. Plaintiffs will apply for a Class Representative Service Award of no more than \$5,000 each from this fund. In addition, six individuals who were, but no longer are, plaintiffs in the case (former plaintiffs) will apply for an award of no more than \$2,500 each from the Settlement Fund. After the Court determines the amounts of the attorneys' fees and expenses and the amount of service awards to the current and former plaintiffs, those amounts will be subtracted from the Settlement Fund.

The cash payment made to each Class Member who submits a Claim will be determined by first applying an allocation formula to the net Fees incurred by the Class Member. The allocation formula weights Non-Higher One ATM Fees and PIN-Based Transaction Fees more heavily than other OneAccount Fees, but all non-refunded Fees, subject to a certain overall cap for Fees other than Non-Higher One ATM Fees and PIN Based Transaction Fees, will be included in the allocation calculation. Once this allocation formula is applied, the amount of the Payment will be a proportional share of the Settlement Fund, the size of which depends on the number of Claims received. For a more detailed explanation of the calculation of your Payment, please review paragraph 54 of the Settlement Agreement, which is available at www.OneAccountSettlement.com.

Practice Changes

In addition, and substantially as a result of this Litigation, Higher One has changed, or is in the process of changing, the following practices and has agreed that it and its banking partners will keep them in place for two years after the Settlement becomes final:

- Not opening any Higher One account without requiring students' separate affirmative consent to the Fee Schedule in addition to affirmative consent to the Account Terms and Conditions for Higher One accounts;
- Improving the clarity and readability of the Fee Schedule, consistent with best practices as recommended by the Pew Charitable Trust for consumer checking accounts;
- Where a fee is charged for the use of a Non-Higher One ATM, explaining clearly in the Fee Schedule that both Higher One and an ATM owner may each assess a OneAccount holder a fee in connection with a non-Higher One ATM transaction;
- Simplifying the process by which students may transfer their funds to other, non-Higher One checking accounts;
- Offering a refund of up to \$5 per day for Non-Higher One ATM fees incurred when Higher One ATMs are not functioning properly due to any maintenance or repair related issues or when Higher One ATMs are out of cash;
- Eliminating entirely the Lack of Documentation Fee on OneAccounts;
- Eliminating entirely the Abandoned Account Fee on OneAccounts;
- Eliminating entirely the Delinquent Account Fee on OneAccounts;
- Eliminating Insufficient Funds Fee, Non-Sufficient Funds Fee, or Overdraft Fee on recurring debit card transactions made with a OneAccount²; and
- Not marketing the OneAccount as "free" when marketing the basic OneAccount, even where no monthly maintenance fee is imposed.

² The eliminated fees were not charged on all types of OneAccounts.

HOW YOU GET SETTLEMENT BENEFITS

In order to receive a cash payment, you must file a Claim and provide the following information:

- Your current address and contact information;
- Your notice number, which was provided either with the e-mail or postcard notice you received, and some other form of distinguishing information, such as the last four digits of your social security number, your birthday, or OneAccount number.

You may submit a Claim electronically at www.OneAccountSettlement.com. The process is simple. Once you enter your notice number and other identifier, the form will prepopulate your data if available. A printable Claim Form is also available at www.OneAccountSettlement.com. If you received a postcard notice, you may also use the tear-off Claim Form provided. Read the instructions carefully, fill out the form, and return the completed Claim Form by _____, 201_.

5. When will I get my settlement benefits?

Once the Settlement is approved and becomes final (including after any appeals are dismissed), and once all timely Claims are processed, settlement funds will be distributed promptly.

RELEASE OF CLAIMS

If the Settlement is approved, you will give up the right to sue Defendants and other Released Parties on your own (or to be a part of any other lawsuit against Defendants and other Released Parties) concerning the claims that this Settlement resolves. The only way to keep this right is to exclude yourself from the Settlement (see below).

If the Settlement is approved, it will extinguish the claims in these currently pending actions: *In re Higher One OneAccount Marketing and Sales Practices Litigation*, MDL No. 2407, *Price v. Higher One Holdings, Inc.*, No. 3:12-cv-1093 VLB (D. Conn.); *Parker v. Higher One Holdings, Inc.*, No. 3:12-cv-1788 VLB (D. Conn.); *Kent v. Higher One Holdings, Inc.*, No. 3:13-cv-48 VLB (D. Conn.); *Massey v. Higher One Holdings, Inc.*, No. 3:12-cv-1808 VLB (D. Conn.); *Lanham v. Higher One Holdings, Inc.*, No. 3:12-cv-1811 VLB (D. Conn.); *DeClue v. Higher One, Inc.*, No. 3:13-cv-556 (VLB) (D. Conn.).

For a full explanation of this provision and for the complete details regarding the Released Claims and Released Parties, please refer to the Settlement Agreement online at www.OneAccountSettlement.com. You may also contact the Settlement Administrator or Class Counsel directly (see below).

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a cash payment, but you want to keep the right to sue (or continue to sue) the Defendants on your own over legal issues in this Litigation, then you must ask to be excluded from the Settlement. This is sometimes referred to as "opting out."

6. What happens if I exclude myself from the Settlement?

If you exclude yourself from the Class, you will keep the right to sue the Defendants, but you will not be able to receive any cash payment from this Settlement. You will not be legally bound by anything that happens in this Litigation.

7. If I don't exclude myself, can I sue the Defendants for the same thing later?

No. Unless you exclude yourself, you give up any rights to sue the Defendants and the Released Parties for the claims that this Settlement resolves. If you have a pending lawsuit bringing claims that this Settlement resolves, speak to your lawyer in that case immediately. You must exclude yourself from this Class to continue your own lawsuit. Remember the exclusion deadline is _____.

8. How do I exclude myself?

To exclude yourself from the Class, you must send a letter by first class U.S. mail simply saying that you want to be excluded from the *In re Higher One OneAccount Marketing and Sales Practices Litigation* Settlement. Be sure to include your name, address, and signature. Please include your notice number and telephone number. Your exclusion request must be postmarked on or before _____ to:

Higher One OneAccount Settlement
PO Box 1631
Faribault, MN 55021-1631

You cannot exclude yourself by telephone or by e-mail.

THE LAWYERS REPRESENTING YOU

9. Do I have lawyers in this case?

The Court ordered that the law firms of Tycko & Zavareei LLP; Shepherd, Finkelman, Miller, Shah LLP; Gentle Turner Sexton DeBrosse & Harbison; and Jones Ward PLC will represent you and all Class Members. These firms are called Class Counsel.

If you want to be represented by your own lawyer, you may hire one at your own expense.

10. How will the lawyers be paid?

Class Counsel will ask the Court for an award of attorneys' fees in an amount not to exceed 30% of the \$15,000,000 Settlement Fund and the reimbursement of Litigation expenses from the Settlement Fund. Defendants have agreed not to oppose any request up to this amount, but it is up to court to determine the amount of attorneys' fees. A copy of the request, after it is filed, will be available at www.OneAccountSettlement.com. The Court may consider the request at the fairness hearing on _____, 201__.

PLAINTIFFS

11. Will the Plaintiffs be paid something?

Yes. Class Counsel will submit an application to the Court to award payments in an amount not to exceed \$5,000 for each of the Plaintiffs. Class Counsel will also submit a request that individuals who used to be plaintiffs also each receive a payment in an amount not to exceed \$2,500. Defendants will not oppose this request, but it is up to the Court to determine the amount of the service award payments. A copy of the request, after it is filed, will be available at _____ .com. The Court may consider the request at the fairness hearing on _____, 201__.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

12. What's the difference between objecting and excluding myself?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you cannot object because the case no longer affects you.

13. How do I object?

If you're a Class Member, you can object to the Settlement, the class representative payments, or the motion for an award of attorneys' fees and expenses, if you wish. You can give reasons why you think the Court should not approve the Settlement, the class representative payments, or the motion for an award of attorneys' fees and expenses. The Court will consider your views.

To object, you must send a letter saying that you object to the proposed Settlement in the In re Higher One OneAccount Marketing and Sales Practices Litigation. You must include your name, address, and telephone number. You must also explain why you believe that you are a Class Member or otherwise have standing to object, and you must provide all the reasons why you object, including any legal support for your objections. In addition, you must state the number of times you have objected to a class action settlement in the last five years and provide the case caption for each case in which you have objected. If you are represented by an attorney or have been represented by an attorney regarding this Litigation or your objection, you must identify the attorney, the number of times that your attorney or your attorney's law firm has objected to a class action settlement in the last five years and provide the case caption for each case in which your attorney or your attorney's law firm has objected. You must also identify any agreements that you have with anyone, including your attorney, regarding objecting to this Settlement. Finally, you must identify any attorneys who will represent you at the Settlement Fairness Hearing and all persons, including yourself, that you will call to testify at the Settlement Fairness Hearing. Either you or your attorney must sign the objection. A full explanation of what information you should include in your objection is contained in the Court's Order Preliminarily Approving the Settlement, which is available at www.OneAccountSettlement.com. Mail copies of the objection to each of the following addresses, postmarked no later than _____:

COURT	CLASS COUNSEL	DEFENSE COUNSEL
Clerk of the Court United States District Court Abraham A. Ribicoff Federal Building 450 Main Street Hartford, CT 06103	Hassan Zavareei TYCKO & ZAVAREEI LLP 2000 L Street, NW Suite 808 Washington, DC 20036	Kim Rinehart WIGGIN AND DANA LLP One Century Tower P.O. Box 1832 New Haven, CT 06508-1832

THE COURT'S SETTLEMENT HEARING

United States District Court Judge Vanessa L. Bryant is in charge of this case. This case is currently pending in the United States District Court for the District of Connecticut located at 450 Main Street, Hartford, Connecticut. The case number is 3:12-md-2407 (VLB).

PLEASE DO NOT WRITE OR CALL THE COURT OR THE CLERK'S OFFICE FOR INFORMATION.

The Court will hold a hearing to decide whether to approve the Settlement. You may attend the hearing (at your own expense) and you may ask to speak, but you don't have to, and if you request an opportunity to speak, Judge Bryant will decide whether to allow that. Class Counsel and Defense Counsel will answer any questions the Court may have. You may also pay your own lawyer to attend, but it's not necessary.

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

The Court will hold a Settlement Fairness Hearing at _____ on _____, 201__ at the United States District Court for the District of Connecticut in Hartford, Connecticut. 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 will decide whether to allow people who have asked to speak at the hearing to do so. The Court may also decide how much to award Class Counsel in attorneys' fees and expenses and how much to award the Class Representatives as service awards. After the hearing, the Court will decide whether to approve the Settlement.

15. May I speak at the Hearing?

You may ask the Court for permission to speak at the Settlement Fairness Hearing. To do so, you must include with your objection (described above) the statement, "I give notice that I intend to appear at the Settlement Fairness Hearing in *In re Higher One OneAccount Marketing and Sales Practices Litigation*." Be sure to include your name, address, telephone number, and your signature. If you intend to have any witnesses testify or to introduce any evidence at the Settlement Fairness Hearing, you must list the witnesses and evidence in your objection.

Your Notice of Intention to Appear must be postmarked no later than _____, 201_ and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel, at the addresses above.

Judge Bryant will decide whether to allow you to speak at the Settlement Fairness Hearing. You cannot speak at the hearing if you exclude yourself from the settlement.

IF YOU DO NOTHING

If you are a Class Member and you do not submit a Claim, you will receive no cash payment from this Settlement, and you will lose your right to start or continue a lawsuit against the Defendants and other Released Parties about the claims that this Settlement resolves.

GETTING MORE INFORMATION

This notice summarizes the proposed Settlement. More details are available in the Settlement Agreement, which you can read in its entirety by visiting www.OneAccountSettlement.com.

You can also call the Claims Administrator at 1-877-310-4642 toll free, with questions about the Settlement, or visit the website www.OneAccountSettlement.com where you can find answers to common questions about the Settlement and other information to help you determine whether you are a Class Member and whether you are eligible for certain benefits.

Any other questions should be directed to Class Counsel, whose address is listed above.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: HIGHER ONE ONEACCOUNT MARKETING)
AND SALES PRACTICES LITIGATION)

No. 3:12-md-02407 (VLB)

[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION
SETTLEMENT AGREEMENT, CERTIFYING THE SETTLEMENT CLASS
AND PROVIDING FOR NOTICE TO THE SETTLEMENT CLASS

The parties to the above-captioned action have agreed to settle the Litigation (the “Settlement”) pursuant to the terms and conditions set forth in an executed Settlement Agreement and Release (the “Settlement Agreement”). The parties reached the Settlement through arm’s-length negotiations with the assistance of United States Magistrate Judge Garfinkel and Linda Singer, an experienced and well-respected mediator. Under the Settlement Agreement, subject to the terms and conditions therein and subject to Court approval, Plaintiffs and the proposed Settlement Class would fully, finally, and forever resolve, discharge and release their claims in exchange for Defendants’ payment of \$15,000,000, inclusive of all attorneys’ fees and costs, to create a common fund to benefit the Class. In addition, Defendants will separately pay all costs and fees associated with providing Notice to the Class and the costs and fees of Settlement administration that are provided for in the Settlement Agreement.

Plaintiffs have filed an Unopposed Motion for Preliminary Approval of Settlement. Upon considering Plaintiffs’ motion, supporting memorandum and all exhibits thereto, the Settlement Agreement, the record in these proceedings, the

representations, argument and recommendations of counsel, and the requirements of law, the Court finds that: (1) this Court has jurisdiction over the subject matter and parties to these proceedings; (2) for purposes of settlement only, the proposed Class meets the requirements of Federal Rule of Civil Procedure 23 and should be certified for settlement purposes only; (3) the persons and entities identified below should be appointed Class Representatives and Class Counsel; (4) the Settlement is the result of informed, good-faith, arm's-length negotiations between the parties and their capable and experienced counsel, was reached with the assistance of experienced, highly-qualified mediators, and is not the result of collusion; (5) the Settlement is within the range of reasonableness and should be preliminarily approved; (6) the proposed Notice program and proposed forms of Notice satisfy Federal Rule of Civil Procedure 23 and constitutional due process requirements, and are reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Litigation, Class certification, the terms of the Settlement, Class Counsel's application for an award of attorneys' fees and expenses and request for Class Representative Service Awards for Plaintiffs, and their rights to opt-out of the Settlement Class and object to the Settlement; (7) good cause exists to schedule and conduct a Final Approval Hearing, pursuant to Federal Rule of Civil Procedure 23(e), to assist the Court in determining whether to grant Final Approval to the Settlement and enter Judgment, and whether to grant Class Counsel's application for an award of attorneys' fees and expenses and request for Class Representative Service Awards for Plaintiffs; and (8) the other related matters pertinent to the Preliminary Approval of the Settlement should also be

approved.

Based on the foregoing, IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. As used in this Order, capitalized terms shall have the definitions and meanings accorded to them in the Settlement Agreement.
2. The Court has jurisdiction over the subject matter and parties to this proceeding pursuant to 28 U.S.C. § 1332.
3. Venue is proper in this District.

Provisional Class Certification and Appointment of Class Representatives and Class Counsel

1. In deciding whether to provisionally certify a settlement class, a court must consider the same factors that it would consider in connection with a proposed litigation class –*i.e.*, all Rule 23(a) factors and at least one subsection of Rule 23(b) must be satisfied – except that the Court need not consider the manageability of a potential trial, since the settlement, if approved, would obviate the need for a trial. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

2. The Court finds, for Settlement purposes, that the Federal Rule of Civil Procedure 23 factors are present and that certification of the proposed Settlement Class is appropriate under Rule 23. The Court, therefore, certifies the following Class for Settlement purposes:

All persons who opened a OneAccount between July 1, 2006 through August 2, 2012, and who incurred a OneAccount Fee during that period.

Excluded from the Class are Defendants, their subsidiaries, affiliates, parents, officers and directors, current and former employees, any entity in which

Defendants have a controlling interest, governmental entities, and all judges assigned to hear any aspect of this case, as well as their immediate families. Also excluded is any person who, during the Class Period, released Defendants from liability concerning the claims in the Litigation.

3. Specifically, the Court finds, for settlement purposes, that the Settlement Class satisfies the following subdivisions of Federal Rule of Civil Procedure 23:

(a) **Numerosity**: In this Action, millions of individuals, spread out across the country, are members of the proposed Class. Their joinder is impracticable. Thus, the Rule 23(a)(1) numerosity requirement is met.

(b) **Commonality**: The threshold for commonality under Rule 23(a)(2) is not high. “Commonality requires the plaintiff to demonstrate that the class members ‘have suffered the same injury,’” and the plaintiff’s common contention “must be of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551, 180 L. Ed. 2d 374 (2011) (citation omitted). Here, the commonality requirement is readily satisfied. There are multiple questions of law and fact, centering on Defendants’ Class-wide policies and practices, that are common to the Class, that are alleged to have injured all Class Members in the same way, and that would generate common answers central to the viability of the claims were this case to proceed to trial.

(c) **Typicality**: The Plaintiffs’ claims also are typical of the Class because they concern the same Higher One policies and practices, arise from the

same legal theories, and allege the same types of harm and entitlement to relief. Rule 23(a)(3) is therefore satisfied.

(d) **Adequacy**: Rule 23(a)(4) is satisfied here because there are no conflicts of interest between the Plaintiffs and the Settlement Class, and Plaintiffs have retained competent counsel to represent them and the Class. Class Counsel here regularly engage in consumer class litigation and other complex litigation similar to the present Litigation, and have dedicated substantial resources to the prosecution of these Actions. Moreover, Plaintiffs and Class Counsel have vigorously and competently represented the Settlement Class Members' interests in these Actions.

(e) **Predominance and Superiority**: Rule 23(b)(3) is satisfied as well because the common legal and factual issues here predominate over individualized issues, and resolution of the common issues for the Settlement Class Members in a single, coordinated proceeding is superior to thousands of individual lawsuits addressing the same legal and factual issues. The predominance requirement is satisfied here because common questions present a significant aspect of the case and can be resolved for all Settlement Class Members in a single adjudication. In a liability determination, those common issues would predominate over any issues that are unique to individual Settlement Class Members. For example, the relationship between each Settlement Class Member and Higher One is governed by a substantially uniform account agreement. Moreover, each Settlement Class Member's claims arise from the same Higher One policies and practices, as well as the same legal theories.

4. In addition, the Court preliminarily finds that by not objecting to the certification of the settlement Class for settlement purposes and by taking other steps to negotiate, execute, and implement the Settlement Agreement, Defendants have not waived any arguments that they have or may have to opposing class certification absent this Settlement Agreement. If the proposed Settlement is not finally approved by the Court, or does not become final, pursuant to the terms of the Settlement Agreement, the Court will fully disregard and not consider any act relating to the negotiation, execution, or implementation of the Settlement Agreement, certification of the Settlement Class for settlement purposes only, or Defendants' lack of objection to Plaintiffs' class certification motion when deciding any class certification issues.

5. The Court appoints the following persons as class representatives: Brandi Crawford, Tarsha Crockett, Aisha DeClue, Larry Forman, Rhonda Hannibal, Prince Kaywood, Gaynell Kaywood, John Brandon Kent, Brianne Elizabeth Kent, Kristen Krieg, Jonathan Lanham, Ashley Parker, and Jeanette Price.

6. The Court appoints the following firms as Class Counsel: Tycko & Zavareei, LLP, Shepherd, Finkelman, Miller, & Shah, LLP, Gentle Turner Sexton Debrosse & Harbison, and JonesWard PLC.

Preliminary Approval of the Settlement

7. At the preliminary approval stage, the Court's task is to evaluate whether the Settlement is within the "range of reasonableness." 4 Newberg § 11.26. Settlement negotiations that involve arm's length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. See

Manual for Complex Litigation, Third, § 30.42 (West 1995) (“A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery.”) (internal quotation marks omitted).

8. The Court preliminarily approves the Settlement as fair, reasonable and adequate. The Court finds that the Settlement was reached in the absence of collusion, is the product of informed, good-faith, arm’s-length negotiations between the Parties and their capable and experienced counsel, and was reached with the assistance of two well-qualified and experienced mediators. The Court further finds that the Settlement is within the range of reasonableness and possible judicial approval, such that: (a) a presumption of fairness is appropriate for the purposes of Preliminary Approval; and (b) it is appropriate to effectuate notice to the Settlement Class, as set forth below and in the Settlement Agreement, and schedule a Final Approval Hearing to assist the Court in determining whether to grant Final Approval to the Settlement and enter Judgment.

9. Defendants shall comply with the obligation to give notice under CAFA, 28 U.S.C. § 1715, in connection with the proposed Settlement.

Approval of Notice and Notice Program and Direction to Effectuate Notice

10. The Court approves the form and content of Notice, substantially in the forms attached as Exhibits 1, 2, 3, and 4 to the Unopposed Motion for Preliminary Approval. The Court further finds that the notice program, described in Paragraphs 39-52 of the Settlement Agreement, is the best practicable under the circumstances. The notice program is reasonably calculated under the

circumstances to apprise the Class of the pendency of the Litigation, class certification, the terms of the Settlement, Class Counsel's application for attorneys' fees and expenses and request for Service Awards for Class Representatives, and their rights to opt-out of the Class and object to the Settlement. The Notice and notice program constitute sufficient notice to all persons entitled to notice. The Notice and notice program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the Constitutional requirement of due process.

11. The Court directs that Rust Consulting act as the Settlement Administrator.

12. The Settlement Administrator shall implement the Notice Program, as set forth below and in the Settlement Agreement, using substantially the forms of Notice attached as Exhibits 1, 2, 3 and 4 to the Unopposed Motion for Preliminary Approval and approved by this Order. Notice shall be provided to the Class Members pursuant to the notice program, as specified in Paragraphs 39-52 of the Settlement Agreement and approved by this Order. The notice program shall include E-mailed Notice, Mailed Notice, Published Notice, and Long-form Notice on the Settlement Website, as set forth in the Settlement Agreement and below.

13. All costs associated with the Notice Program shall be paid solely by Higher One, as set forth in the Settlement Agreement.

E-Mailed Notice

14. The Settlement Administrator will e-mail the E-mail Notice to each Settlement Class Member at the e-mail address identified in Higher One's

records. The Settlement Administrator will take steps to prevent the E-mailed Notices from being treated as spam by Internet Service Providers. Should the Settlement Administrator learn (through an e-mail bounceback or otherwise) that the e-mail address in Higher One's records is invalid, then the Settlement Administrator will mail a Mailed Notice to that Class Member, as discussed below.

15. Each E-mail Notice will contain link to a pre-populated claim form on the Settlement Website, where Class Members will have the opportunity to update address and email information if necessary.

16. E-mail Notices shall be delivered by no later than 30 days from the date of Preliminary Approval.

Mailed Notice

17. For each Class Member where an attempted E-mailed Notice is returned or bounces back as undeliverable, the Settlement Administrator will mail, via first-class mail postcard, a Mailed Notice to each Class Member at the address identified in Defendants' records. Before mailing postcards, the Settlement Administrator will verify and update the mailing addresses received through the United Postal Service's National Change of Address database.

18. The Settlement Administrator will perform reasonable address traces for all postcards that are returned as undeliverable. No later than 35 days from the Initial Mailed Notice date, the Settlement Administrator will complete the re-mailing of Mailed Notice postcards to those Class Members whose original mailed postcards were returned as undeliverable and whose new addresses were identified as of that time through address traces. The Mailed Notice Program (which is comprised of both the Initial Mailed Notice, and the Notice Re-mailing

Process) shall be completed no later than 60 days after the date of Preliminary Approval.

19. Each mailed Notice will be accompanied by a pre-populated, tear-off Claim Form.

Other Notice Efforts

20. The Settlement Administrator shall publish notice via search engine sponsored search results and advertising on Facebook.

21. The Settlement Administrator shall establish and maintain a Settlement Website, which will explain the Settlement, give answers to frequently asked questions, allow for the electronic submission of Claims, describe the Settlement payment distribution process, and provide links to the Long Form Notice, this Agreement, and other court documents, including the complaints filed in the Litigation.

22. The Settlement Administrator shall establish and maintain an automated toll-free telephone line for Class Members to call with Settlement-related inquiries, and certain live telephone support to answer the questions of Class Members who call with or otherwise communicate such inquiries.

23. These other notice efforts shall be completed no later than 30 days after the date of Preliminary Approval.

Final Approval Hearing, Opt-Outs, and Objections

24. The Court directs that a Final Approval Hearing shall be scheduled for [_____, 2014], at [__:__ am/pm], to assist the Court in determining whether to grant Final Approval to the Settlement and enter Judgment, and whether Class Counsel's application for attorneys' fees and expenses and

request for Service Awards for Class Representatives should be granted.

25. The Court directs that any person within the Settlement Class definition who wishes to be excluded from the Settlement Class may exercise their right to opt-out of the Settlement Class by following the opt-out procedures set forth in the Long-form Notice at any time before the Opt-Out Deadline. To be valid and timely, opt-out requests must be postmarked on or before the last day of the Opt-Out Deadline and mailed to the address indicated in the Long-Form Notice, and must include the words “opt out,” “exclusion,” or words to that effect clearly indicating an intent not to participate in the Settlement and setting forth the Settlement Class Member’s name, address, and telephone number.

26. All persons within the Settlement Class definition who do not timely and validly opt-out of the Settlement Class shall be bound by the terms of the Settlement.

27. The Court further directs that any person in the Settlement Class who does not timely and validly opt-out of the Settlement Class may object to the Settlement, Class Counsel’s application for attorneys’ fees and expenses and/or the request for Service Awards for Plaintiffs. Any such objections to the Settlement or to the application for fees, costs, expenses, and Class Representative Service Awards must be mailed to the Clerk of the Court, Class Counsel, and Defendants’ counsel no later than the Objection Deadline, as specified in the Notice. For an objection to be considered by the Court, the objection, as stated in the Long-Form Notice, must also set forth:

- a) the name of the Litigation;
- b) the objector’s full name, address and telephone number;

- c) an explanation of the basis upon which the objector claims to be a Class Member or otherwise asserts standing to object;**
- d) all grounds for the objection, accompanied by any legal support for the objection known to the objector or his counsel;**
- e) the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, and the caption of each case in which the objector has made such objection;**
- f) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;**
- g) the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that the objector files the objection, and the caption of each case in which the counsel or the firm has made such objection;**
- h) any and all agreements that relate to the objection or the process of objecting—whether written or verbal—between objector or objector's counsel and any other person or entity;**
- i) the identity of all counsel representing the objector who will appear at the Final Approval Hearing;**
- j) a list of all persons, including, if applicable, the objector himself, who will be called to testify at the Final Approval Hearing in**

support of the objection; and

k) the signature of the objector or his/her attorney.

Further Papers In Support Of Settlement and Fee Application

28. Plaintiffs shall file their Motion for Final Approval of the Settlement, and Class Counsel shall file their application for attorneys' fees and expenses and request for Service Awards for Plaintiffs, no later than 45 days prior to the Final Approval Hearing.

Effect of Failure to Approve the Settlement

29. In the event the Settlement is not approved by the Court, or for any reason the parties fail to obtain a Final Judgment as contemplated in the Settlement, or the Settlement is terminated pursuant to its terms for any reason, then the following shall apply:

(a) All Orders and findings entered in connection with the Settlement, including the certification of a class, shall become null and void and have no further force and effect, shall not be used or referred to by the parties or the Court or by any member of the putative class for any purposes whatsoever, and shall not be admissible or discoverable in any other proceeding; and

(b) Nothing contained in this Order is, or may be construed as, any admission or concession by or against Defendants or Plaintiffs on any point of fact or law.

Stay/Bar Of Other Proceedings

30. All proceedings in the Litigation are stayed until further Order of the Court, except as may be necessary to implement the terms of the Settlement.

31. Based on the foregoing, the Court sets the following schedule for the

Final Approval Hearing and the actions which must precede it:

<u>Event</u>	<u>Days From Preliminary Approval Order</u>	<u>Date</u>
Higher One Transfers \$15,000,000 to Settlement Fund	9 Days	_____, 2014
Email Notice Complete	30 Days	_____, 2014
Mailed Notice Complete	60 Days	_____, 2014
Opt-Out Deadline	105 Days	_____, 2014
Deadline to Submit Objections	105 Days	_____, 2014
Motion for Final Approval	124 Days	_____, 2014
Final Fairness Hearing	170 Days	_____, 2014

DONE AND ORDERED at the United States Courthouse in Hartford, Connecticut this ____ day of _____ 2014.

**VANESSA BRYANT
UNITED STATES DISTRICT JUDGE
DISTRICT OF CONNECTICUT**

cc: All Counsel of Record