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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN.

CHIQUITA LEE, on behalf of herself)
and all others similarly situated,)
Plaintiff,)
v.)
WFS FINANCIAL, INC., a California)
corporation,)
Defendant.)

Class Action
No. 3-02-0570
Judge Campbell
Magistrate Judge Griffin

SETTLEMENT AGREEMENT AND EXHIBITS

(204)

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between Chiquita Lee, Melissa Ortiz Cuccio, Lula B. Wade, Michelle Thompson, Joaquin Andrade, and Jose Duran (“Litigation Class Representatives”) on behalf of themselves and the Class Members, and WFS Financial Inc (“WFS”).

RECITALS

WHEREAS, Chiquita Lee, Melissa Ortiz Cuccio, and Lula B. Wade each purchased an automobile by entering into retail installment contracts, each of which was assigned to WFS Financial Inc, and are the plaintiffs in *Lee, et al. v. WFS Financial Inc*, U.S.D.C. M.D. Tenn. Civil Action No. 3-02-0570 (“*Lee Action*”);

WHEREAS, Michelle Thompson, Joaquin Andrade, and Jose Duran each purchased an automobile by entering into retail installment contracts, each of which was assigned to WFS Financial Inc, and are the plaintiffs in *Thompson, et al. v. WFS Financial Inc*, California Superior Court, County of Alameda Civil Action No. RG03088926, appeal pending in the Court of Appeal of the State of California, First Appellate District, Division One, No. A104967 (“*Thompson Action*”);

WHEREAS, the *Lee Action* asserts that WFS violated the Equal Credit Opportunity Act, 15 U.S.C. § 1601 *et seq.*, and its implementing regulations (collectively “ECOA”) in connection with the financing of automobiles involving African-American and Hispanic automobile purchasers;

WHEREAS, the *Thompson Action* asserts that WFS violated the Unruh Civil Rights Act, California Civil Code section 51 *et seq.*, and the Unfair Competition Law, California Business & Professions Code section 17200 *et seq.*, in connection with the financing of automobiles involving African-American and Hispanic automobile purchasers;

WHEREAS, the *Lee action* and the *Thompson action* are distinct and separate actions asserting different claims, but for administrative convenience have been settled on the basis of simultaneous negotiations;

WHEREAS, for administrative convenience and given the different procedural postures of the *Lee Action* and the *Thompson Action*, the parties agree that the settlements of these Actions are conditioned upon obtaining approval of the settlement of the *Lee Action* by the court in the *Lee Action*;

WHEREAS, defendant denies the allegations and all liability with respect to any and all facts and claims alleged in the *Lee* and *Thompson Actions* (the “Actions”), and further deny that Litigation Class Representatives or any member of the classes they purport to represent has suffered any damage;

WHEREAS, contested issues of both law and fact exist concerning the allegations and claims made by and against defendant;

WHEREAS, Litigation Class Representatives and Litigation Class Counsel have conducted an extensive investigation into the facts and law and have engaged in extensive discovery and settlement negotiations relating to the Actions;

WHEREAS, defendants vigorously and expressly deny liability, but nevertheless desire to settle the Actions finally on the terms and conditions set forth herein for the purposes of avoiding the burden, expense, and uncertainty of litigation, and putting to rest the controversies engendered by the Actions;

NOW THEREFORE, in consideration of the covenants and agreements set forth herein, the Litigation Class Representatives, on behalf of themselves and the purported class, themselves and through their undersigned counsel, and defendants, agree to the settlement of the Actions, subject to Court approval, under the following terms and conditions:

1. **Definitions**

As used in this Settlement Agreement, the terms set forth in this section in boldface type will have the following meanings:

1.1 Annual Percentage Rate or "APR." The measure of the cost of credit, expressed as a yearly rate, as defined in Regulation Z, 12 C.F.R. Part 226, implementing the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*

1.2 Buy Rate. The rate used by WFS to acquire a Contract from a dealership, which is expressed in the form of a percentage, and which is determined by a WFS credit analyst in each transaction and which does not include Dealer Spread.

1.3 Class Members. All African-American or Hispanic car buyers who have entered or will enter into a retail installment contract that was or will be acquired by Western Financial Bank, Westcorp Financial Services, Inc., or WFS Financial Inc, and its predecessors or successors, during the period January 1, 1990 through the Effective Date of this Settlement Agreement.

1.4 Confidential Information. All documents and things produced as discovery materials by WFS or any dealership, during the course of this Litigation, including, without limitation, all deal jackets, contract information, customer information, electronic data, data dictionaries, rate sheets, credit information, account information, marketing materials, internal memoranda and other communications, deposition transcripts, and all reproductions of these discovery materials, whether photocopies, scanned copies, electronic copies, printouts, or copies created by any other method of reproduction. Notwithstanding the above, all documents and information described in this paragraph that were filed in the public record during the course of this Litigation, shall not be deemed Confidential Information.

1.5 Contract. A promissory note and security agreement, retail installment sale contract, or conditional sales contract signed in connection with the retail purchase of a vehicle between a motor vehicle dealership and a vehicle purchaser.

1.6 Dealer Spread. The difference between customer's APR as reflected on the contract acquired by WFS and the customer's Buy Rate.

1.7 ECOA. Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, and its implementing Regulation B, 12 C.F.R. Part 202 *et seq.*

1.8 Effective Date. The last date on which all of the following have occurred:

- (a) The *Lee* Court enters a judgment finally approving the settlement of *Lee* Action in a manner substantially consistent with the terms and intent of the Agreement.
- (b) Either: (i) Thirty-five (35) days have passed after completed service on the parties to the Actions and all objectors to the settlement of the *Lee* Action, if any, of notice of entry of the Court's judgment finally approving the settlement of the *Lee* Action, and within such time no appeal is taken or extension for such appeal is granted, or (ii) if an appeal is taken with respect to the Court's judgment finally approving the settlement of the *Lee* Action, the appellate court has by final order affirmed the Court's judgment finally approving the settlement of the *Lee* Action, or has denied review, or the appellant otherwise has exhausted all appellate remedies.

1.9 Extended Term Contract. A Contract that is for an original scheduled term in excess of sixty (60) monthly payments, in excess of one hundred twenty (120) bi-monthly payments, or in excess of two hundred sixty (260) weekly payments.

1.10 Final Judgment. The Final Judgment and Order of Dismissal with Prejudice to be rendered by the Court consistent with this Settlement Agreement in the form attached as Exhibit 1.

1.11 Lee Action. *Lee, et al. v. WFS Financial Inc*, U.S.D.C. M.D. Tenn. Civil Action No. 3-02-0570.

1.12 Lee Court. The United States District Court for the Middle District of Tennessee.

1.13 Litigation. The *Lee* Action and the *Thompson* Action, collectively.

1.14 Litigation Class Counsel. Clint Watkins of the Law Office of Clint Watkins in Brentwood, Tennessee; Michael E. Terry of Terry & Gore law firm in Nashville, Tennessee; Wyman O. Gilmore of Gilmore Law Office in Grove Hill, Alabama; Richard Dorman, John Crowder, and Edwin Lamberth of the Cunningham, Bounds, Yance, Crowder & Brown law firm in Mobile, Alabama; Stuart T. Rossman of the National Consumer Law Center, Boston, Massachusetts; Bill Lann Lee, Michael W. Sobol, and Lori Andrus of Lieff, Cabraser, Heimann & Bernstein, LLP, San Francisco, California; Morris J. Baller and Linda M. Dardarian of Goldstein, Demchak, Baller, Borgen & Dardarian, Oakland, California; and Barrett S. Litt of Litt & Associates, Los Angeles, California.

1.15 Litigation Class Representatives. Chiquita Lee, Melissa Ortiz Cuccio, Lula Wade, Michelle Thompson, Joaquin Andrade, and Jose Duran.

1.16 Notice. The Notice of Refinance Offer in the form attached as Exhibit 2.

1.17 Open Contract. A Contract acquired by WFS that has not been paid off, charged off, discharged in bankruptcy, or that WFS otherwise does not own.

1.18 Parties. The Litigation Class Representatives, on behalf of themselves and the Class Members, and WFS.

1.19 Preliminary Approval Order. The Order of Preliminary Approval of Settlement in the form attached as Exhibit 3.

1.20 Qualified Loans. Current WFS accounts which: (1) according to WFS's records have an APR that is higher than the Buy Rate; (2) according to a pre-screen conducted by WFS, belong to borrowers who would be placed at the time of the offer in the same credit tier (or higher) as that in which the borrowers were originally placed at the time WFS purchased the contract; and (3) are identified by WFS based upon census tract data as likely African-American or Hispanic borrowers. Current WFS accounts shall include all Open Contracts existing as of the date of final approval of the Settlement.

1.21 Refinance Program. The program to be implemented by WFS as part of this Settlement as defined in section 7.5.

1.22 Refinance Offers. Offers to refinance Open Contracts made by WFS under the Refinance Program as defined in section 7.5.

1.23 Settlement Agreement. This document, including the text and exhibits of this Settlement Agreement, which has been signed by the Litigation Class Representatives, Litigation Class Counsel, and WFS or its counsel.

1.24 Term. Unless otherwise specified, this Settlement Agreement is effective for a three-year period beginning on the Effective Date.

1.25 Thompson Action. *Thompson, et al. v. WFS Financial Inc*, California Superior Court, County of Alameda Civil Action No. RG03088926, appeal pending in the Court of Appeal of the State of California, First Appellate District, Division One, No. A104967.

1.26 Thompson Court. The California Superior Court for the County of Alameda and the Court of Appeal of the State of California, First Appellate District, Division One.

2. WFS's Preliminary Statement

It is WFS's position that the following are not contradicted: (a) WFS competes with many finance companies, banks, and other financial institutions to purchase Contracts from dealerships; (b) WFS does not control any dealerships, and the dealerships have the right to select the finance company, bank, or other financial institution to which they sell their Contracts;

(c) most dealerships sell their interest in Contracts to many different finance companies, banks, or other financial institutions; (d) WFS does not know the race or ethnicity of the buyers on Contracts it purchases; and (e) WFS has no actual knowledge of any discrimination that might occur at a particular dealership and no knowledge of such conduct within the meaning of the ECOA.

WFS restates its long-standing commitment to the principles embodied in the ECOA. WFS expressly denies any wrongdoing or liability in the Litigation. The plaintiffs concede that they have no information to contradict WFS's position that the manner in which WFS evaluates credit worthiness is neutral as to race and ethnicity. WFS believes that no court has ever determined ECOA liability under circumstances comparable to those presented by this Litigation, and that no court has ever entered a judgment establishing as proven fact the existence of any disparate impact discrimination involving WFS, or any discrimination based on any of the other liability theories alleged in the Litigation.

WFS further contends that the discrimination claim asserted against WFS is inherently individualized. WFS asserts that its pricing decisions are made on a deal-by-deal basis, subject to WFS's general policy guidelines, but ultimately are dependent on the individualized pricing decisions of WFS credit analysts. WFS credit analysts have the authority to price based on numerous individualized factors, including characteristics of the dealership, the purchaser, the collateral, competition (including competition by other financial institutions for the dealer's business generally as well as competition by one or more financial institutions for the purchase of any individual contract), and market conditions. Further, WFS believes that a long line of authority rejecting the existence of any agency relationship between dealerships and sales finance companies will affect the imposition of class-wide liability for the purchase of contracts from more than 7,000 dealerships.

3. Plaintiffs' Preliminary Statement

This Litigation arises under the ECOA, which prohibits a creditor from discriminating against an applicant, with respect to any aspect of a credit transaction, on the basis of race, color, and national origin. Class Members each entered into retail installment contracts. WFS evaluated the credit of each Class Member according to WFS's credit pricing policy.

The Litigation Class Representatives contend that the difference in finance charges resulting from the differences between the APR and the Buy Rate (markup) is greater for Class Members than for similarly situated White customers. Litigation Class Representatives allege that markup is purely subjective, that it is more likely to adversely impact African-American and Hispanic WFS credit customers than similarly-situated White customers, and that the markup on the contracts of African-American and Hispanic customers is higher than the average markup for similarly-situated White customers. Litigation Class Representatives further allege that the disparity cannot be explained by legitimate risk-based differences or differences in the cost of services provided. Litigation Class Representatives contend that this disparity is caused by WFS's credit pricing policy, which Litigation Class Representatives contend authorizes and encourages dealers to markup Buy Rates according to subjective factors.

Litigation Class Counsel have conducted extensive discovery and, based on their investigation of the facts and an analysis of the legal issues, recognize (a) the uncertainty and the risk of any litigation, particularly in complex nationwide class actions such as this Litigation; (b) the uncertainty of the scope of the relief the Court would enter if the claims are proven in this case; and (c) that if settlement is not reached, any final relief through litigation will entail substantial further delay, expense, and continuing harm to Class Members.

4. Return of Confidential Information and Other Discovery

Litigation Class Counsel, on behalf of themselves and their expert witnesses and consultants as well as others retained by them, acknowledge that during the course of the Litigation, they have received Confidential Information. No later than thirty (30) days after the Effective Date, Litigation Class Counsel will return all Confidential Information to WFS and will certify under oath that they and their expert witnesses and consultants do not retain any copies or summaries or compilations or indices of such information. Within the same time period, Litigation Class Counsel will identify for WFS the expert witnesses, outside consultants, and any other individuals or entities to whom Confidential Information was given, and will advise those persons of this requirement and will ensure their compliance with it. Litigation Class Counsel also will not use any of the Confidential Information learned or obtained in this Litigation for any purpose after the Effective Date.

No later than thirty (30) days after the Effective Date, Litigation Class Counsel will return to WFS all originals and duplicate copies of materials produced by or obtained from WFS in the discovery process of the Litigation, whether by formal or informal discovery. This will include, but not be limited to, business records, proprietary information, and all originals, copies, video tapes, or audio tapes of any and all depositions of WFS employees or witnesses taken in this Litigation. This provision is not intended to cover work product of Litigation Class Counsel but is intended to cover any documents or other materials that might simply be attached to any work product. Notwithstanding the above, all documents and information described in this paragraph that were filed in the public record during the course of this Litigation, unless currently under seal, will not be subject to the provisions of this paragraph.

5. Non-Disparagement

Litigation Class Counsel and Litigation Class Representatives agree to refrain from disparaging WFS, and its parent company, subsidiaries, affiliates, successors or assigns, with respect to any issue related to this case. Litigation Class Counsel and Litigation Class Representatives agree to refrain from taking any action designed to harm the public perception of WFS regarding any issue related to this case, except they may provide sworn testimony if required by compulsory process from a court of competent jurisdiction. WFS agrees to refrain from disparaging Litigation Class Representatives publicly or in the media regarding any issue related to this case. Failure to abide by this provision will constitute a breach of this settlement agreement.

6. Release of Claims

6.1 Litigation Class Representatives. The Litigation Class Representatives consent to the dismissal of the Litigation with prejudice. The Litigation Class Representatives also forever release, waive, discharge, and agree to the dismissal of, with prejudice, all claims that have been made, or could have been made, in the Litigation against WFS (defined here to include all of its parents, subsidiaries, affiliates, agents, successors, assignors, assignees, and/or assigns), under the ECOA, the Unruh Civil Rights Act (Cal. Civ. Code § 51 *et seq.*), or the Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*) or any other federal or state statute or any common law theory, including all claims for monetary, equitable, declaratory, injunctive, or any other form of relief.

6.2 Class Members. The Litigation Class Representatives, on behalf of themselves and the Class Members, consent to the dismissal of the Litigation with prejudice. The Class Members also, subject to section 6.4, forever release, waive, discharge, and agree to the dismissal of, with prejudice:

A) all claims, whether known or unknown, suspected or unsuspected, under the law of any jurisdiction, for equitable, declaratory, and/or injunctive relief that have been made, or could have been made, in this Litigation against WFS (defined here to include all of its parents, subsidiaries, affiliates, agents, successors, assignors, assignees, and/or assigns) under the ECOA, that arise in whole or in part out of the business practices challenged in the Complaint, and that arose or will arise on or before the Effective Date; and

B) all race and ethnic status discrimination claims, whether known or unknown, suspected or unsuspected, under the law of any jurisdiction, for equitable, declaratory, and/or injunctive relief that have been made, or could have been made, in this Litigation against WFS (defined here to include all of its parents, subsidiaries, affiliates, agents, successors, assignors, assignees, and/or assigns) under any federal or state statute or any common law theory, that arise in whole or in part out of the business practices challenged in the Complaint and that arose or will arise on or before the Effective Date.

6.3 Unknown Claims. Litigation Class Representatives and Class Members, subject to Section 6.4, each waive and release any and all provisions, rights, and benefits conferred either (a) by section 1542 of the California Civil Code, or (b) by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to section 1542 of the California Civil Code, with respect to the claims released pursuant to paragraph 6.1 or 6.2. Section 1542 of the California Civil Code reads:

Section 1542. General Release, extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Each Class Representative and Class Member may hereafter discover facts other than or different from those that he knows or believes to be true with respect to the subject matter of the claims released pursuant to the terms of paragraph 6.1 or 6.2, but each of those individuals expressly

agrees that, upon entry of the final judgment contemplated by this Settlement Agreement, he shall have waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim with respect to the claims released pursuant to paragraph 6.1 or 6.2, whether or not concealed or hidden, without regard to subsequent discovery or existence of such different or additional facts.

6.4 Claims for Monetary Relief. Notwithstanding the above, Class Members (excluding the Litigation Class Representatives) are not releasing any claims for monetary relief.

7. Classwide Settlement Relief

7.1 Contract Disclosures. WFS will use or encourage the use of certain disclosures in retail installment contracts as set forth below.

7.1.1 Unless otherwise prohibited by law, within one hundred eighty (180) days after the Effective Date and throughout the Term, WFS will include a disclosure in all Contract forms it creates and distributes to dealerships substantially similar to the following:

*The Annual Percentage Rate may be negotiable with the Seller.
The Seller may assign this contract and retain its right to receive a part of the Finance Charge.*

7.1.2 Unless otherwise prohibited by law, within one hundred eighty (180) days after the Effective Date and throughout the Term, WFS will send a communication to the dealers with whom it does business encouraging them to use contract forms that contain the following disclosure:

*The Annual Percentage Rate may be negotiable with the Seller.
The Seller may assign this contract and retain its right to receive a part of the Finance Charge.*

The disclosure will be set forth in bold-faced, italicized, 10-point type, on the front side of the Contract, near the customer's signature line. In states where prior regulatory review and/or approval is required to implement changes to contract forms, WFS will implement this disclosure in the form and manner approved by such regulator within the later of three hundred sixty-five (365) days after the Effective Date or ninety (90) days after receipt of approval from such regulator. To the extent that WFS prepares a Spanish-language translation of any WFS-created contract provided to dealers, the disclosure shall also be included in the translation.

7.2 Limit on Difference Between APR and Buy Rate. For a period of three (3) years commencing no later than sixty (60) days after the Effective Date: (a) WFS will not acquire any Contract if the APR is more than 2.50 percentage points above the Buy Rate; and (b) WFS will not acquire any Extended Term Contract if the APR is more than 2.00 percentage points above the Buy Rate. Minimal bona fide errors on an irregular basis will not be deemed a violation of this Settlement Agreement. WFS will implement reasonable procedures designed to promptly correct any such errors that are discovered.

7.3 Consumer Education and Assistance Programs. Within thirty (30) days after the Effective Date, WFS will contribute \$250,000 to a fund that will be disbursed by Litigation Class Counsel to one or more of the following non-profit organizations: Rainbow Push, LaRaza, Consumer Federation of America, or National Legal Aid and Defender Association. Litigation Class Counsel shall have discretion as to the disbursement of the funds among these organizations. Contribution recipients must be bona fide tax-exempt, non-profit organizations at the time of contribution.

7.4 Refinance Program. WFS will initiate a program involving offers of refinancing for all Qualified Loans, up to a limit of \$1 billion of WFS's current outstanding loan portfolio ("Refinance Program"). The offers will be subject to the following terms and conditions in this section ("Refinance Offers"). The Refinance Program is designed to provide an opportunity to Class Members to refinance their Contracts at a lower interest rate in order to remedy the disparity alleged by plaintiffs between the Dealer Spread on Contracts for Class Members and the Dealer Spread on Contracts for non-minority automobile purchasers.

7.4.1 WFS will submit offers to refinance Qualified Loans at one percentage point lower than the existing APR interest rate on the loan.

7.4.2 For the purpose of identifying Qualified Loans, WFS's current outstanding loan portfolio shall consist of all Open Contracts as of the date of final approval. WFS will identify likely African-American and Hispanic borrowers by using data identifying high minority-concentration census tracts.

7.4.3 WFS will not charge any cost to borrowers in connection with Refinance Offers. Refinancing shall be without prepayment penalty regardless of original contract terms.

7.4.4 Refinance Offers shall not extend the contract term, unless the borrower specifically requests that the refinanced loan extend the current term of the borrower's contract and WFS concedes to the extension. WFS will have full discretion whether to agree to any request for extension.

7.4.5 Refinance Offers shall advise borrowers that they must independently determine whether the refinancing is in their best interests.

7.4.6 WFS shall make Refinance Offers by mail. Offers may be accepted three ways: (1) by mail, (2) by calling a toll-free number to be operated from 10:00 a.m. to 4:00 p.m. Pacific time on business days, or (3) by visiting the WFS website (www.wfsfinancial.com).

7.4.7 Borrowers who accept a Refinance Offer will be required to complete and return refinancing loan documents to WFS.

7.4.8 Loans will be refinanced at simple interest rates. Loans subject to the Rule of 78s will not be eligible to receive Refinance Offers.

7.4.9 WFS shall complete the Refinance Offers within two (2) years after the Effective Date. Within the two (2) year period, WFS shall have discretion as to when the Refinance Offers will be made, but shall make good-faith efforts, consistent with its available

resources, to make offers in a prompt and expeditious manner, and shall not schedule the offers with the intent of minimizing the value of the offers made to the class.

7.4.10 WFS will not have any obligation to issue Refinance Offers until after the Effective Date, but will have the discretion to voluntarily issue Refinance Offers before that time. Refinance Offers issued before the Effective Date shall count against the total \$1 billion limit.

7.4.11 In computing the value of offers to be credited toward the total \$1 billion in refinancing, current outstanding loan balances — *i.e.*, the loan balances at the time the offers are submitted by WFS — shall be used.

7.4.12 Refinance Offers shall be valid for sixty (60) days from the date of mailing by WFS.

7.4.13 Offers returned by the postal service as undeliverable shall not be credited toward the \$1 billion of refinancing.

7.4.14 WFS shall make a good-faith attempt to make offers of refinancing in proportions similar to the proportions of African-American and Hispanic borrowers in its loan portfolio.

7.4.15 WFS shall provide Litigation Class Counsel with fifteen (15) days' advance notice before first making any offers of refinance; subsequent phases of refinancing offers may be made without prior notice; however, WFS shall provide Litigation Class Counsel with notice of all offers made, within a reasonable time of such offers being made.

7.4.16 Within sixty (60) days after the final approval by the District Court of the settlement of the *Lee* Action, plaintiffs' counsel may provide WFS with a list of identified borrowers and, provided that such identified borrowers have Qualified Loans, WFS shall extend offers of refinancing to all such identified borrowers within the time provided in Section 7.5.9, and such offers shall be credited against the \$1 billion of refinancing. Up to two hundred (200) such loans shall be included in the first wave of offers made by WFS (not inclusive of any initial sampling/test of Refinance Offers that may be done by WFS).

7.4.17 The Refinance Offers will be made in both English and Spanish in the form attached as Exhibit 2.

7.4.18 As a condition of accepting refinancing under a Refinance Offer, WFS will require each borrower to sign a release of claims arising out of WFS's origination of refinanced loans. Borrowers will not be required to release claims that WFS failed to perform the refinance as required under this settlement or claims related to WFS's servicing or collection efforts in connection with the refinanced loans. The release must be signed along with the loan documents necessary to complete the refinancing, and shall be in the form attached as Exhibit 4.

7.5 No Violation of Law. Litigation Class Counsel and the Litigation Class Representatives, on behalf of themselves and the Class Members, agree that (1) the Refinance Program as described in this Settlement Agreement does not violate ECOA, California Business

& Professions Code section 17200 *et seq.*, the Unruh Civil Rights Act, or any other state or federal statute or regulation prohibiting discrimination on the basis of race or ethnicity or any other statute, regulation, or common law, including but not limited to the Truth-in-Lending Act, 15 U.S.C. § 1601 *et seq.* and its implementing regulations (“TILA”) and the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* and its implementing regulations (“FCRA”); and (2) they are estopped from contending in any future litigation that the Refinance Program violates the ECOA, California Business & Professions Code section 17200 *et seq.*, the Unruh Civil Rights Act, or any other state or federal statute or regulation prohibiting discrimination on the basis of race or ethnicity or any other statute, regulation, or common law, including but not limited to the TILA and the FCRA.

7.6 Compensation. WFS will pay \$90,000 to be distributed by Litigation Class Counsel to the Litigation Class Representatives as approved by the Court. Litigation Class Counsel shall not indicate or suggest in any manner that WFS controlled the amount of this payment to be received by individual Litigation Class Representatives.

8. Attorney Fees and Litigation Expenses and Reimbursements

8.1 Fees. Litigation Class Counsel intend to request approval of attorney fees in an amount not to exceed \$3.86 million. WFS will not oppose any such request and will pay any fees approved by the Court in an amount that does not exceed \$3.86 million, within ten (10) days after the Effective Date. Provided that no material modifications (which include modifications with more than a *de minimis* effect on the cost to WFS of performing its obligations under this Settlement Agreement) are made to the Settlement Agreement or its exhibits, WFS will also not appeal any approval of fees that does not exceed \$3.86 million.

8.2 Litigation Expenses and Reimbursements. Litigation Class Counsel will request approval from the Court of litigation expenses and litigation-related reimbursements in an amount not to exceed \$350,000. WFS will not oppose any such request and hereby agrees to pay any litigation expenses and litigation-related reimbursements approved by the Court in an amount that does not exceed \$350,000, within ten (10) days after the Effective Date. Provided that no material modifications (which include modifications with more than a *de minimis* effect on the cost to WFS of performing its obligations under this Settlement Agreement) are made to the Settlement Agreement or its exhibits, WFS will also not appeal any approval of litigation expenses and litigation-related reimbursements that does not exceed \$350,000.

9. Dismissal of Litigation

9.1 Lee Action. Promptly after execution of this Settlement Agreement, the Parties will request preliminary approval of the Settlement from the *Lee* Court. In connection with that request, WFS, the Litigation Class Representatives, and the Class Members stipulate to entry of the following orders:

9.1.1 Entry of Order Certifying Settlement Class. An Order certifying a Class for settlement purposes only and conforming to the definition of Class Members in the Third Amended Complaint.

9.1.2 Entry of Order Preliminarily Approving Settlement. Entry of the Preliminary Approval Order granting preliminary approval of the Settlement and setting a fairness hearing for final approval.

9.1.3 Entry of Order of Final Approval of the Settlement. Entry of the Final Judgment granting final approval of the Settlement Agreement without modification, and dismissal of the Litigation with prejudice, in the form set forth in Exhibit 1.

9.2 Thompson Action. All Litigation Class Counsel who are counsel of record in the *Thompson* Action will execute and file a request for dismissal of the appeal of the *Thompson* Action within five (5) court days after the Effective Date of the settlement of the *Lee* Action in the form attached hereto as Exhibit 5.

10. Exception for Compliance with Legislative/Regulatory Requirements

To the extent that any local, state, or federal legislative or regulatory body or agency has adopted or adopts legislation, regulations, or rules governing the disclosure components of motor vehicle retail installment sale contracts, and such regulations or rules conflict with or impose requirements substantially similar to the terms of the Settlement Agreement, then compliance by WFS with any such legislation, regulations, or rules shall be deemed to constitute satisfaction of the terms of the Settlement Agreement, except for the provisions set forth in sections 7.3, 7.4, and 7.5.

11. Notices

Any communication, verification, or notice sent by Litigation Class Counsel or a party in connection with this Settlement Agreement shall be effected by facsimile and overnight courier as follows:

To Plaintiffs:

Lee Action

National Consumer Law Center
Attn: Stuart T. Rossman
77 Summer Street, 10th Floor
Boston, MA 02110-1006
Fax: (617) 542-8028

Thompson Action

Lieff, Cabraser, Heimann & Bernstein, LLP
Attn: Bill Lann Lee or Michael W. Sobol
275 Battery Street, 30th Floor
San Francisco, CA 94111-3339
Fax: (415) 956-1008

To WFS:

WFS Financial Inc
Legal Department
23 Pasteur
Irvine, CA 92623-9733
Fax: (949) 753-3085

12. Miscellaneous

12.1 Entire Agreement. This Settlement Agreement contains the entire agreement between the parties and supersedes all prior understandings, agreements, or writings regarding the subject matter of this Settlement Agreement.

12.2 No Liability by WFS. This Settlement Agreement does not constitute, is not intended to constitute, and will not under any circumstances be deemed to constitute, an admission by either party as to the merits, validity, or accuracy, or lack thereof, of any of the allegations or claims in this Litigation. This Settlement Agreement does not constitute a waiver of any defenses or affirmative defenses that WFS may be entitled to assert in any future litigation, including the applicable statute of limitations.

12.3 Invalidity. If this Settlement Agreement does not become effective, or is limited or modified by any court, or is deemed null and void for any other reason, nothing in this Settlement Agreement will be deemed to waive any of Class Representative or Class Member claims or any of the objections and defenses of WFS, and neither this Settlement Agreement nor any related proceedings relating to its approval will be admissible in any court regarding the propriety of class certification or any other issue that is the subject of this Litigation.

In the event any court disapproves or sets aside this Settlement Agreement or any material part hereof for any reason, or holds that it will not enter or give effect to the Final Judgment without modification, or holds that the entry of the Final Judgment or any material part thereof should be overturned or modified in any material way, then:

(A) If all Parties do not agree jointly to appeal such ruling, this Settlement Agreement will become null and void, and the Litigation will continue, and the Parties stipulate to a joint motion (i) that any and all orders entered pursuant to this Settlement Agreement be vacated, including, without

limitation, any order modifying the class certification order or permitting the amending of the Complaint referenced in Section 9 of this Settlement Agreement, and (ii) that any and all dismissals pursuant to this Settlement Agreement will be vacated; or

(B) if the Parties do agree to jointly appeal such ruling and if the Final Judgment or its equivalent in all material respects is not in effect after the termination of all proceedings arising out of such appeal, this Settlement Agreement will become null and void, and the Litigation will continue, and the Parties stipulate to a joint motion (i) that any and all orders entered pursuant to this Settlement Agreement be vacated, including, without limitation, any order modifying the class certification order or permitting the amending of the Class Complaint, and (ii) that any and all dismissals pursuant to this Settlement Agreement will be vacated.

12.4 Amendment. This Settlement Agreement may be amended or modified only by a written instrument signed by all Parties or their successors in interest or their duly authorized representatives.

13. Representations and Warranties

13.1 No Additional Persons with Financial Interest. Litigation Class Representatives and Litigation Class Counsel represent and warrant that the term "Litigation Class Counsel" as defined in paragraph 1.13 of this Agreement includes all persons (natural or legal) having any interest in any award of attorneys' fees or costs in connection with either of the Actions.

13.2 Parties Authorized to Enter into Settlement Agreement. Representative Plaintiffs and WFS represent and warrant that he, she, or it is fully authorized to enter into this Agreement and to carry out the obligations provided for herein. Each person executing this Agreement on behalf of a Party covenants, warrants and represents that he is and has been fully authorized to do so by such Party. Each party hereto further represents and warrants that he, she, or it intends to be bound fully by the terms of this Agreement.

13.3 No Attempt by Parties to Object. Litigation Class Representatives and Litigation Class Counsel and each defendant represent and warrant that they have not made, nor will they, (a) attempt to void this Agreement in any way, or (b) solicit, encourage, or assist in any fashion any effort by any person (natural or legal) to object to the settlement under this Agreement.

13.4 Signatures. The parties and their counsel may sign separate copies of this Settlement Agreement, which together will constitute one agreement. Each person executing this Settlement Agreement warrants that such person has the full authority to do so. In addition, signature by facsimile will constitute sufficient execution of this Settlement Agreement.

13.5 Best Efforts. The Parties agree that the terms of the Settlement Agreement reflect a good-faith settlement of disputed claims. Litigation Class Counsel and WFS consider

the Settlement to be fair and reasonable and will use their best efforts to seek approval of the Settlement Agreement by the Court.

13.6 Time Periods. The time periods and dates described in this Agreement with respect to the giving of notices and hearings are subject to Court approval and modification by the Court or by written stipulation of the Counsel.

13.7 Governing Law. This Agreement is intended to and shall be governed by the laws of the State of Tennessee. All disputes arising hereunder or relating hereto shall be subject to the exclusive jurisdiction of the *Lee* Court.

13.8 No Construction Against Drafter. This Agreement shall be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

13.9 Agreement Binding on Successors in Interest. This Agreement shall be binding on and inure to the benefit of the respective heirs, successors, and assigns of the Parties.

13.10 Execution by Counterpart. This Agreement shall become effective upon its execution by counsel for all Parties. The Parties may execute this Agreement in counterparts. Each counterpart shall be deemed to be an original, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument. Each Litigation Class Representative, Litigation Class Counsel, and a duly authorized officer from Defendant, shall execute this Agreement on or about August 20, 2004.

14. Annual Certification

On or before each anniversary of the Effective Date during the Term of this Settlement Agreement, WFS will provide a certification to Litigation Class Counsel stating: (i) that WFS has made all payments due under this Settlement Agreement, (ii) the number of Refinance Offers made, (iii) that all contract forms created by WFS and distributed to dealerships include a disclosure complying with Section 7.1, along with a sample copy, and (iv) that all contracts acquired during the previous year comply with the limit on the difference between the APR and the Buy Rate expressed in Section 7.2.

Approved as of August 20, 2004.

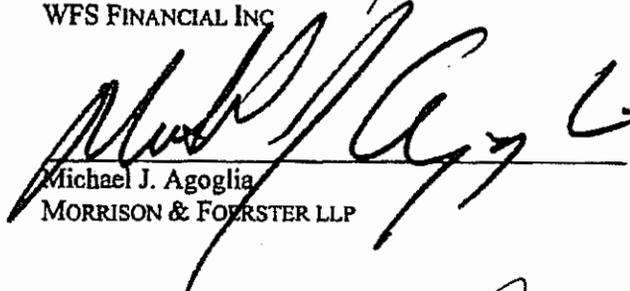
ON BEHALF OF WFS FINANCIAL INC

Dated: August 20, 2004



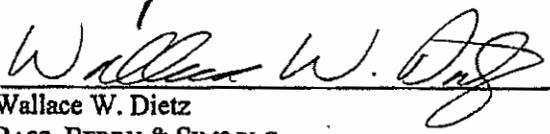
Lee Whatcott
Senior Executive Vice President & CFO
WFS FINANCIAL INC

Dated: August 20, 2004



Michael J. Agoglia
MORRISON & FOERSTER LLP

Dated: August 20, 2004



Wallace W. Dietz
BASS, BERRY & SIMS PLC

ON BEHALF OF PLAINTIFFS

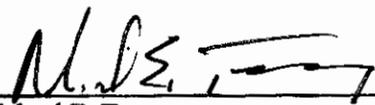
Dated: August __, 2004

Richard Dorman / John T. Crowder, Jr.
CUNNINGHAM, BOUNDS, YANCE, CROWDER, AND
BROWN

Dated: August __, 2004

Clint W. Watkins
LAW OFFICE OF CLINT W. WATKINS

Dated: August 20, 2004



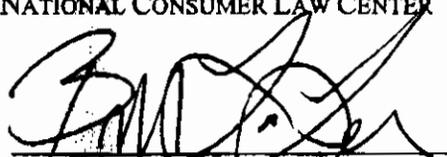
Michael E. Terry
TERRY & GORE

Wyman O. Gilmore
GILMORE LAW OFFICE

Dated: August ____, 2004

Stuart T. Rossman
NATIONAL CONSUMER LAW CENTER

Dated: August 20, 2004



Bill Linn Lee / Michael W. Sobol
LIEFF, CABRASER, HEIMAN, AND BERNSTEIN

Dated: August ____, 2004

Linda Dardarian
GOLDSTEIN, DEMCHAK, BALLER, BORGAN & DARDARIAN

Dated: August ____, 2004

Paula A. Daniels
LITT & ASSOCIATES

LITIGATION CLASS
REPRESENTATIVES

Dated: August ____, 2004

Chiquita Lee

Dated: August ____, 2004

Melissa Ortiz Cuccio

Dated: August ____, 2004

Lula B. Wade

Wyman O. Gilmore
GILMORE LAW OFFICE

Dated: August ____, 2004

Stuart T. Rossman
NATIONAL CONSUMER LAW CENTER

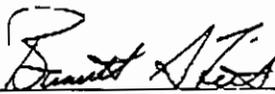
Dated: August ____, 2004

Bill Lann Lee / Michael W. Sobol
LIEFF, CABRASER, HEIMAN, AND BERNSTEIN

Dated: August ____, 2004

Linda Dardarian
GOLDSTEIN, DEMCHAK, BALLER, BORGAN & DARDARIAN

Dated: August 20, 2004



Paula A. Daniels *Barrett S. Litt*
LITT & ASSOCIATES

**LITIGATION CLASS
REPRESENTATIVES**

Dated: August ____, 2004

Chiquita Lee

Dated: August ____, 2004

Melissa Ortiz Cuccio

Dated: August ____, 2004

Lula B. Wade

Exhibits to Settlement Agreement

Lee, et al. v. WFS Financial Inc

Thompson, et al. v. WFS Financial Inc

- Exhibit 1: Proposed Final Judgment and Dismissal with Prejudice
- Exhibit 2: Notice of Refinance Offer (English and Spanish versions)
- Exhibit 3: Proposed Order of Preliminary Approval of Settlement
- Exhibit 4: Release of Claims Relating to Refinancing
- Exhibit 5: Request for Dismissal of Appeal (Civil Case) form

FILED

EXHIBIT 1

2004 AUG 20 PM 3

**U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN.**

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

CHIQUITA LEE, MELISSA ORTIZ CUCCIO,
and LULA WADE, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

WFS FINANCIAL INC, a California corporation,

Defendant.

No. 3-02-0570

(JUDGE CAMPBELL)
(JUDGE GRIFFIN)

Class Action Case

PROPOSED FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

The Settlement Agreement dated August 20, 2004 (the "Settlement Agreement") between the Class Representatives and Defendant WFS Financial Inc ("WFS") provides for the Settlement of this lawsuit on behalf of the Class Representatives and the Class Members, subject to approval by this Court of its terms and to the entry of this Final Judgment.

Pursuant to an Order dated August 27, 2004, ("Preliminary Approval Order"), the Court scheduled a hearing (the "Fairness Hearing") to consider the approval of the Settlement Agreement and the Settlement reflected in it.

WFS denies any wrongdoing, fault, violation of law, or liability for damages of any sort. WFS objected, and continues to object, to the certification of any class and has agreed to the certification of this class for settlement purposes only.

A Fairness Hearing was held before this Court on November 22, 2004, to consider, among other things, whether the Settlement should be approved by this Court as fair, reasonable and adequate, and whether Litigation Class Counsel's request for approval of attorneys' fees and expenses is reasonable and should be approved by this Court.

**NOW THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED,
ADJUDGED AND DECREED THAT:**

1. This Order incorporates by reference the definitions in the Settlement Agreement, and all capitalized terms used in this Order will have the same meanings as set forth in the Settlement Agreement, unless otherwise defined in this Order.

2. The Settlement Agreement is the product of good faith arms' length negotiations by the Parties, each of whom was represented by experienced counsel.

3. The Court finds that the class proposed for purposes of the settlement meets the requirements of Fed. R. Civ. P. 23(b)(2), and hereby certifies a settlement class in the Litigation as follows:

All African-American or Hispanic car buyers who have entered into or will enter into a retail installment contract that was or will be acquired by Western Financial Bank, Westcorp Financial Services, Inc., or WFS Financial Inc, and its predecessors or successors, during the period January 1, 1990 through the Effective Date of this Settlement Agreement.

4. This Court approves the Settlement and all terms set forth in the Settlement Agreement and finds that the Settlement is, in all respects, fair, reasonable, adequate and in the best interest of the Class Members, and the Parties to the Agreement are directed to consummate and perform its terms.

5. The Parties dispute the validity of the claims in this Litigation, and their dispute underscores not only the uncertainty of the outcome but also why the Court finds the Settlement Agreement to be fair, reasonable, adequate and in the best interests of the Class Members. Beyond facing uncertainty regarding the resolution of those issues, by continuing to litigate, Class Members would also face the challenge of surviving an appeal of any class certification order entered in this action, and any other rulings rendered during trial. The relief negotiated by the Parties includes a contract disclosure by WFS in the forms it produces and distributes to dealerships, even though this Court has not made any ruling as to whether there is a legal

requirement to disclose that information in the Contracts. Further, the relief negotiated by the Parties includes an agreement by WFS to lower its present maximum differential between the APR and Buy Rate, even though there has been no ruling made by this Court that any differential is improper. Finally, the relief negotiated by the Parties includes an agreement by WFS to offer refinancing at a lower interest rate to a substantial number of Class Members even though there has been no ruling made by this Court that any interest rate on any Class Member's retail installment contract is improper. For these reasons, the Court finds that the uncertainties of continued litigation in both the trial and appellate courts, as well as the tremendous expense associated with it, weigh in favor of approval of the Settlement Agreement.

8. The Court acknowledges the Parties' agreement, as set forth at paragraph 8.5 of the Settlement Agreement, that the Refinance Program does not violate the ECOA or any other state or federal statute, regulation, or common law. WFS is specifically authorized to use any race identification data for the sole purpose of implementing the Refinance Program notwithstanding the Court's prior orders regarding confidentiality. WFS will use such information exclusively for conducting the Refinance Program and will not distribute, use or seek to use such information for any other purpose, except that WFS may share it with its parent, subsidiaries, affiliates and successors for other marketing purposes.

9. Any and all objections to the Settlement Agreement and Class Counsel's request for approval of attorneys' fees and expenses have been considered and are hereby found to be without merit and are overruled.

10. This entire *Lee* Action is dismissed with prejudice, and without costs to any party.

11. Upon the Effective Date, the Class Representatives forever release, waive, discharge, and agree to the dismissal of, with prejudice, all claims that have been made, or could have been made, in the Litigation against WFS (defined here to include all of its parents, subsidiaries, affiliates, agents, successors, assignors, assignees, and/or assigns), under the ECOA, the Unruh Civil Rights Act (Cal. Civ. Code § 51 *et seq.*), or the Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*) or any other federal or state statute or any common law

theory, including all claims for monetary, equitable, declaratory, injunctive, or any other form of relief.

12. The Class Members also forever release, waive, discharge and agree to the dismissal of, with prejudice:

A) all claims, whether known or unknown, suspected or unsuspected, under the law of any jurisdiction, for equitable, declaratory, and/or injunctive relief that have been made, or could have been made, in this Litigation against WFS (defined here to include all of its parents, subsidiaries, affiliates, agents, successors, assignors, assignees, and/or assigns) under the ECOA, that arise in whole or in part out of the business practices challenged in the Complaint, and that arose or will arise on or before the Effective Date; and

B) all race and ethnic status discrimination claims, whether known or unknown, suspected or unsuspected, under the law of any jurisdiction, for equitable, declaratory, and/or injunctive relief that have been made, or could have been made, in this Litigation against WFS (defined here to include all of its parents, subsidiaries, affiliates, agents, successors, assignors, assignees, and/or assigns) under any federal or state statute or any common law theory, that arise in whole or in part out of the business practices challenged in the Complaint and that arose or will arise on or before the Effective Date.

Notwithstanding the above, Class Members (excluding the Class Representatives) are not releasing any claims for monetary relief.

13. The Class Representatives and Class Counsel's request for approval of attorneys' fees in the amount of \$3.86 million, and reimbursement of litigation-related expenses in the amount of \$350,000 are approved.

14. Any person or entity wishing to appeal this Final Judgment shall post a bond with this Court in the amount of \$_____ as a condition to prosecuting the appeal.

15. If the Effective Date, as defined in the Settlement Agreement, does not occur for any reason whatsoever, this Final Judgment and the Preliminary Approval Order shall be deemed vacated and shall have no force and effect whatsoever.

16. Without affecting the finality of this Final Judgment in any way, this Court retains continuing jurisdiction for the purpose of enforcing the Settlement Agreement and this Final Judgment, and other matters related or ancillary to the foregoing.

17. The Parties having so agreed, good cause appearing, and there being no just reason for delay, it is expressly directed that this Final Judgment and Order of Dismissal with Prejudice be, and hereby is, entered as a final and appealable order.

IT IS SO ORDERED.

Dated: _____

HONORABLE TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE

EXHIBIT 2

FILED

2004 AUG 2 9 AM

U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN.

NOTICE OF REFINANCE OFFER

You have been pre-screened and pre-approved to have WFS refinance your existing auto finance contract at a lower rate. If you accept this offer, WFS will lower your current interest rate by one percent. WFS will not charge you any costs in connection with this refinance offer, and WFS will waive any prepayment penalty or fee that may be required by your existing contract.

WFS's offer to refinance your existing auto financing contract is being made as part of a settlement of disputed legal claims. If you accept this offer, you will not be able to sue WFS for any claims arising out of this refinancing of your existing auto financing contract. More specifically, by accepting the refinancing offered by WFS, you agree to waive and release any claims arising from WFS providing you with a new auto loan, including any claims regarding the terms of your new loan, and any claims regarding or related to any disclosures provided in connection with your new loan. Other than as described above, you will not be required to release claims related to WFS's future conduct in servicing your new loan. In addition, you will not be required to waive or release claims relating to whether WFS provided the refinancing in the manner required under the settlement agreement approved by the Court [cite]. WFS is not making any recommendation regarding whether or not you should accept this refinance offer, and you must independently determine whether to accept this refinance offer.

To accept this offer, simply check the box below and mail this document to WFS at the following address:

WFS Financial Inc
P.O. Box 168071
Irving, TX 75016

? I wish to accept the refinance offer.

If you prefer, you may also accept this offer by calling WFS at (800) 289-8004 between 10 a.m. and 4 p.m. (Pacific) or by going to www.wfsfinancial.com. If you accept this offer, WFS will mail you a new contract and other documents you will be required to sign.

AVISO DE OFERTA PARA REFINANCIAR

Usted ha sido preseleccionado y preautorizado para refinanciar su contrato de auto actual a una tasa de interés más baja. Si acepta esta oferta, WFS rebajará su tasa de interés actual por un por ciento. WFS no le cobrará ningún precio o costo relacionado con esta oferta para refinanciar. Tampoco WFS le exigirá ningún recargo si se paga el préstamo antes de que venza ni le cobrará ningún costo que requiere su contrato actual.

La oferta de WFS para refinanciar su contrato de auto actual se hace como resultado de un acuerdo de demandas legales en litigio. Si acepta esta oferta no podrá hacer ninguna demanda contra WFS relacionada con este refinanciamiento de su contrato de auto actual. Más específicamente si se acepta la oferta para refinanciar con WFS, usted está de acuerdo con renunciar a demandas que pueden surgir porque WFS le proporciona el nuevo préstamo de auto. Ésto incluye cualquier demanda que tenga que ver con los términos de su nuevo préstamo y cualquier demanda que tenga que ver o esté relacionada con alguna revelación proporcionada con respecto a su nuevo préstamo. Aparte de lo que se encuentra en este documento usted no tiene que renunciar a demandas relacionadas con la conducta de WFS al proveer servicio de su nuevo préstamo en el futuro. Adicionalmente no será requerido que renuncie a demandas ni que ceda a WFS las demandas con respecto a la manera en que WFS cumple con los requisitos del refinanciamiento bajo el acuerdo de demandas legales aprobado por la Corte [cite]. WFS no hace ninguna recomendación sobre si usted debiera de aceptar esta oferta para financiar y usted debe de determinar independientemente aceptar esta oferta para refinanciar.

Para aceptar esta oferta simplemente marque la casilla abajo y envíe este documento a WFS a esta dirección:

WFS Financial Inc
P.O. Box 168071
Irving, TX 75016

Yo quiero aceptar la oferta para refinanciar.

Si prefiere también puede aceptar la oferta llamando a WFS al (800) 289-8004 entre las diez de la mañana y las cuatro de la tarde (huso horario Pacífico) o por ir a www.wfsfinacial.com. Si acepta esta oferta, WFS le enviará un nuevo contrato y otros documentos los que tendrá que firmar.

EXHIBIT 3

FILED.

2004 AUG 24 DB

U.S. DISTRICT COURT
MIDDLE DISTRICT OF TN.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

CHIQUITA LEE, MELISSA ORTIZ CUCCIO,
and LULA WADE, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

WFS FINANCIAL INC, a California corporation,

Defendant.

No. 3-02-0570

(JUDGE CAMPBELL)
(JUDGE GRIFFIN)

Class Action Case

[PROPOSED] ORDER OF PRELIMINARY APPROVAL OF SETTLEMENT

The Class Representatives, on behalf of themselves and the Class Members, and the Defendant in this case (collectively, the Parties), have entered into a Settlement Agreement dated August 20, 2004 (the Settlement Agreement), providing for a proposed settlement (the Settlement) of this lawsuit and a related action, *Thompson v. WFS Financial*, California Superior Court, County of Alameda, Civil Action No. RG03088926, appeal pending in the Court of Appeal of the State of California, First Appellate District, Division One, No. A104967.

Plaintiffs have moved for, and Defendant has stipulated to, entry of this Order which, *inter alia*, (i) establishes a procedure for filing of objections to the Settlement; and (ii) schedules a hearing for final approval of the Settlement. After due consideration,

IT IS ORDERED THAT:

1. This Order incorporates by reference the definitions in the Settlement Agreement, and all capitalized terms used in this Order will have the same meanings as set forth in the Settlement Agreement, unless otherwise defined in this Order.

2. The Parties have agreed to the following class for the purposes of settlement (the Settlement Class):

All African-American or Hispanic car buyers who have entered or will enter into a retail installment contract that was or will be acquired by Western Financial Bank, Westcorp Financial Services, Inc., or WFS Financial Inc, and its predecessors or successors, during the period January 1, 1990 through the Effective Date of this Settlement Agreement.

6. Plaintiffs will be filing declarations on behalf of proposed Litigation Class Representatives Chiquita Lee, Melissa Ortiz Cuccio, Lula Wade, Michelle Thompson, Joaquin Andrade, and Jose Duran. Based on the Court's review of the Third Amended Complaint, argument of counsel and the entire record, these individuals are certified as adequate representatives of the Settlement Class and their claims are deemed to be typical of the members of the Settlement Class, and the following counsel are deemed to adequately represent the Settlement Class: Clint Watkins of the Law Office of Clint Watkins in Brentwood, Tennessee; Michael E. Terry of Terry & Gore law firm in Nashville, Tennessee; Wyman O. Gilmore of Gilmore Law Office in Grove Hill, Alabama; Richard Dorman, John Crowder, and Edwin Lamberth of the Cunningham, Bounds, Yance, Crowder & Brown law firm in Mobile, Alabama; Stuart T. Rossman of the National Consumer Law Center, Boston, Massachusetts; Bill Lann Lee, Michael W. Sobol, and Lori Andrus of Lieff, Cabraser, Heimann & Bernstein, LLP, San Francisco, California; Morris J. Baller and Linda M. Dardarian of Goldstein, Demchak, Baller, Borgen & Dardarian, Oakland, California; and Barrett S. Litt of Litt & Associates, Los Angeles, California.

7. Based on the Court's preliminary review of the Settlement Agreement, argument of counsel and the entire record, including Defendant's stipulation, the Plaintiffs' Motion for Preliminary Approval of Settlement is granted.

8. A hearing (the Fairness Hearing) shall be held before this Court on November 22, 2004, at 9 a.m. to hear objections and determine (i) whether the proposed Settlement and compromise of this Litigation as set forth in the Settlement Agreement is fair, reasonable and adequate to the Class Members and should be approved by the Court; (ii) to determine whether the Final Judgment should be entered approving the Settlement; and (iii) whether to approve the request of Class Counsel for payment of attorneys' fees and reimbursement of expenses.

9. Any interested person may appear at the Fairness Hearing to show cause why the proposed Settlement should or should not be approved as fair, reasonable, adequate, and in good faith and/or why the request of Class Counsel for approval of attorneys' fees and expenses and litigation-related reimbursements should or should not be approved as fair and reasonable; provided, however, that no person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement or the fees, costs, and reimbursements requested by Class Counsel, unless that person has (i) sent or delivered written objections and copies of any supporting papers and briefs so that they are received no later than October ___, 2004, upon counsel below:

National Consumer Law Center
Attn: Stuart T. Rossman
77 Summer Street, 10th Floor
Boston, MA 02110-1006
Fax: (617) 542-8028

Co-Counsel for Plaintiffs

-and-

Michael J. Agoglia
Morrison & Foerster
425 Market Street
San Francisco, CA 94105-2482
Fax: (415) 268-7522

Co- Counsel for Defendant WFS Financial Inc;

and (ii) has filed said objections, papers and briefs, showing due proof of service upon said counsel with the Clerk of the United States District Court for the Middle District of Tennessee, Nashville, Tennessee, on or before the same date. Any Class Member who does not submit an objection in the manner provided above shall be deemed to have waived any objection to the Settlement and shall forever be foreclosed from making any objection to class certification, to the fairness, adequacy or reasonableness of the Settlement, and to any attorneys' fees and reimbursements approved.

10. All memoranda, affidavits, declarations and other evidence in support of the request for approval of the Settlement and Class Counsel's request for approval of attorneys' fees, costs and reimbursement of expenses shall be filed on or before September ___, 2004.

11. The Court expressly reserves its right to adjourn the Fairness Hearing from time to time without further notice other than to counsel of record and to approve the proposed Settlement and request for approval of attorneys' fees and expenses at or after the originally scheduled Fairness Hearing.

IT IS SO ORDERED.

HONORABLE TODD CAMPBELL
UNITED STATES DISTRICT JUDGE

FILED,

2004 AUG 24 DB

EXHIBIT 4

U.S. DISTRICT COURT
MIDDLE DISTRICT OF TN.

RELEASE OF CLAIMS RELATING TO REFINANCING

1. As a condition of obtaining a new loan refinancing my current contract ("New Loan") with WFS Financial Inc ("WFS"), I agree that I will not now or hereafter institute, participate in, maintain, maintain a right to or assert against WFS, and its parent company, subsidiaries, affiliates, successors or assigns, on my own behalf, or on behalf of any other person, entity or class, any cause of action, claim, damages, award, equitable, legal and administrative relief, interest, demand, or right, including without limitation claims for rescission, restitution for all damages of any kind, including those in excess of actual damages, and claims for mental anguish, whether based on federal, state, or local law, statute, ordinance, regulation, contract, common law, or any other source, that have been, could have been, may be or could be alleged or asserted now or in the future in connection with the refinancing of my current WFS contract and origination of a New Loan.

2. I waive and release any and all provisions, rights, and benefits conferred either (a) by section 1542 of the California Civil Code, or (b) by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to section 1542 of the California Civil Code, with respect to the claims released pursuant to paragraph 1. Section 1542 of the California Civil Code reads:

"Section 1542. General Release, extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

3. I acknowledge that I may hereafter discover facts other than or different from those that I know or believe to be true with respect to the subject matter of the claims released pursuant to the terms of paragraph 1, but expressly agree that I waive and fully, finally, and forever settle and release any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claims release in paragraph 1, whether or not concealed or hidden, without regard to subsequent discovery or existence of such different or additional facts.

4. This release does not apply to claims that the refinancing was not performed in accordance with the terms of the Settlement Agreement as approved by the Court in *Lee, et al. v. WFS Financial Inc*, U.S.D.C. M.D. Tenn. Civil Action No. 3-02-0570. This release also does not apply to claims arising in the future from WFS's servicing of the New Loan.

Borrower: _____

Co-borrower: _____

Date: _____

EXHIBIT 5

FILED

2006 AUG 29 DB

U.S. DISTRICT COURT
MIDDLE DISTRICT OF TN.

CASE NAME:	CASE NUMBER:
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NOTICE TO PARTIES: A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. A person who is at least 18 years old and is not a party to this appeal must complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the front and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

PROOF OF SERVICE

Mail Personal Service

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My residence or business address is *(specify)*:
3. I mailed or personally delivered a copy of the *Request for Dismissal of Appeal (Civil Case)* as follows *(complete either a or b)*:
 - a. **Mail.** I am a resident of or employed in the county where the mailing occurred.
 - (1) I enclosed a copy in an envelope **and**
 - (a) **deposited** the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (b) **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served:
 - (b) Address on envelope:
 - (c) Date of mailing:
 - (d) Place of mailing *(city and state)*:
 - b. **Personal delivery.** I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:
 - (3) Date delivered:
 - (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____ ▶ _____
 (TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)