

# **Exhibit 1**

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13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
15 **EASTERN DIVISION**

16 DANIELLE GAMINO, )  
17 individually and on behalf of all )  
18 others similarly situated, )  
19 )  
20 *Plaintiff,* )

21 v. )

22 KPC HEALTHCARE HOLDINGS, )  
23 INC., *et al.*, )  
24 )  
25 *Defendants,* )

26 and )

27 KPC HEALTHCARE, INC. )  
28 EMPLOYEE STOCK )  
OWNERSHIP PLAN, )  
*Nominal Defendant* )

Case No.: 5:20-cv-01126-SB-SHK

**CLASS ACTION SETTLEMENT  
AGREEMENT WITH ALERUS  
FINANCIAL, N.A.**

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1 **INTRODUCTION**

2 Subject to approval by the United States District Court for the Central  
3 District of California, Eastern Division pursuant to Rule 23, this Class Action  
4 Settlement Agreement is made and entered into by and among Plaintiff and Class  
5 Representative Danielle Gamino (“Plaintiff”), individually and on behalf of the  
6 certified Class (the “Class”), and Defendant Alerus Financial, N.A. (“Alerus”).  
7 Plaintiff agrees to settle claims against Alerus, subject to the terms and conditions  
8 below. All capitalized terms will have the meaning ascribed thereto in Section I of  
9 this Agreement.

10 **RECITALS**

11 WHEREAS, on June 1, 2020, Plaintiff Danielle Gamino filed a lawsuit,  
12 docketed as Case No. 5:20-cv-01126-SB-SHK in the United States District Court  
13 for the Central District of California, Eastern Division, asserting claims on behalf  
14 of herself and a class of participants and beneficiaries of the ESOP for alleged  
15 violations of ERISA;

16 WHEREAS, on January 15, 2021, the Court denied Alerus’s motion to  
17 dismiss all claims in the Complaint;

18 WHEREAS, on August 11, 2021, Plaintiff filed her First Amended  
19 Complaint, which is the operative complaint against Alerus;

20 WHEREAS, on August 6, 2021, and April 5, 2022, the Court granted  
21 Plaintiff’s motions for class certification and certified this action as a class action  
22 against all Defendants;

23 WHEREAS, on November 1, 2021, the Court denied Alerus’s motion to  
24 dismiss Count IX in the First Amended Complaint, the KPC Defendants’ motion to  
25 dismiss all claims in the First Amended Complaint against Dr. Chaudhuri and  
26 William E. Thomas, and granted the KPC Defendants’ motion to dismiss Count IX  
27 as to certain KPC Defendants;

1 WHEREAS, on January 21, 2022, the Court consolidated this Action with  
2 *Gamino v. SPCP Group, LLC*, Case No. 5:21-cv-01466-SB-SHK;

3 WHEREAS, on August 16, 2022, the Court granted SPCP's Motion for  
4 Summary Judgement (ECF No. 338);

5 WHEREAS, as part of discovery the Parties conducted extensive discovery  
6 regarding the merits and potential recoveries for Plaintiff's claims;

7 WHEREAS, Plaintiff and Alerus conducted arms-length negotiations  
8 mediation sessions with Robert A. Meyer of JAMS on June 22, 2022, August 4,  
9 2022, and September 10, 2022, and reached an agreement in principle as to the  
10 settlement amount as a result of a mediator's proposal during the September 10,  
11 2022 mediation;

12 WHEREAS, as a result of the factual investigation and legal research  
13 conducted by Co-Lead Class Counsel concerning the claims asserted in the Action  
14 and discovery, Co-Lead Class Counsel have concluded that the terms of this  
15 Settlement are fair, reasonable, adequate and in the best interests of both the Class  
16 and the ESOP, and have agreed to settle the Action with Alerus on the terms set  
17 forth herein;

18 WHEREAS, Alerus denies the material allegations asserted in the Action;  
19 denies any wrongdoing or liability whatsoever; and states that it is entering into the  
20 Settlement solely to avoid the cost, disruption, and uncertainty of litigation;

21 WHEREAS, the Parties desire to promptly and fully resolve and settle with  
22 finality all of the claims on the terms set forth herein and subject to the approval of  
23 the Court; and

24 WHEREAS, each of the undersigned counsel represent that their respective  
25 clients have been informed of and consent to the provisions set forth below;

26 NOW, THEREFORE, Plaintiff and Alerus, in consideration of the promises,  
27 covenants and agreements herein described, and for other good and valuable  
28 consideration, acknowledged by each of them to be satisfactory and adequate, and

1 without any admission or concession as to any matter of fact or law, and intending  
2 to be legally bound, do hereby agree as follows:

3 **I. DEFINITIONS**

4 As used in this Agreement, the following terms have the following  
5 meanings, unless a section or subsection of this Agreement specifically provides  
6 otherwise. Capitalized terms used in this Agreement, but not defined in this  
7 Section I, will have the meaning ascribed to them elsewhere in this Agreement.

8 **A.** “2015 ESOP and Warrant Transactions” means the warrant purchase,  
9 warrant redemption, warrant cancellation, and stock purchase transactions that  
10 took place on August 28, 2015, through which Defendant Kali Pradip Chaudhuri  
11 sold 100% of the stock of KPC Healthcare Holdings, Inc. to the ESOP for  
12 \$217,574,000.00, and Defendant William E. Thomas sold pre-existing stock  
13 warrants to KPC for cash and other consideration.

14 **B.** “Action” means the class action pending in this Court styled Danielle  
15 Gamino, on behalf of herself individually and on behalf of all other similarly  
16 situated, v. KPC Healthcare Holdings, Inc., The Administrative Committee of the  
17 KPC Healthcare, Inc. Employee Stock Ownership Plan, Kali Pradip Chaudhuri,  
18 William E. Thomas, Kali Priyo Chaudhuri, Amelia Hippert, and Lori Van Arsdale  
19 (collectively, the “KPC Defendants”), Alerus Financial, N.A. (“Alerus”), and  
20 SPCP Group LLC (“SPCP”), Case No. 5:20-cv-01126-SB-SHK. The “Action”  
21 includes *Gamino v. SPCP Group, LLC*, Case No. 5:21-cv-01466-SB-SHK, which  
22 was consolidated with Case No. 5:20-cv-01126-SB-SHK on January 21, 2022.

23 **C.** “Alerus” means Defendant Alerus Financial, N.A.

24 **D.** “Alerus Releasees” means Alerus, its parents, subsidiaries, affiliates,  
25 shareholders and members, and each and all of the respective past, present, and  
26 future officers, directors, employees, attorneys, agents, or insurers of any of them,  
27 and their respective predecessors, successors and assigns, both individually and in  
28

1 their capacities as directors, officers, fiduciaries, administrators, shareholders,  
2 members, employees, agents, insurers and attorneys other than the Non-Releasees.

3 **E.** “Cash Settlement Amount” means four million dollars  
4 (\$4,000,000.00) to be paid by or on behalf of Alerus, as described in Section III  
5 below.

6 **F.** “Class” means “All participants in the KPC Healthcare, Inc.  
7 Employee Stock Ownership Plan from August 28, 2015 or any time thereafter  
8 through August 31, 2021 (unless they terminated employment without vesting in  
9 the ESOP) and those participants’ beneficiaries. Excluded from the class are (a)  
10 Defendants in the Action; (b) any fiduciary of the Plan; (c) the officers and  
11 directors of KPC Healthcare Holdings, Inc. or of any entity in which one of the  
12 individual Defendants has a controlling interest; (d) the immediate family  
13 members of any of the foregoing excluded persons; and the legal representatives,  
14 successors, and assigns of any such excluded persons.”

15 **G.** “Class Counsel” means Co-Lead Class Counsel.

16 **H.** “Class Data” has the meaning set forth in Section II.7 of this  
17 Agreement.

18 **I.** “Class Member” means an individual who is a member of the Class.  
19 Where applicable, such as with regard to notice and payment provisions of this  
20 Settlement Agreement, this term shall apply to either the former employee  
21 participants, the beneficiaries of such participants, or an “Alternate Payee” (within  
22 the meaning of IRC § 414(p)) of any of the same, whomever of which is to receive  
23 an allocation of the Net Settlement Amount.

24 **J.** “Class Notice” means the form of notice provided to the Class  
25 Members that complies with the requirements of Section II in this Agreement,  
26 Rule 23, and as approved by the Court.

27 **K.** “Class Period” means August 28, 2015 through August 31, 2021 or  
28 another end date approved by the Court.

1       **L.**     “Class Representative” means Plaintiff Danielle Gamino.

2       **M.**     “Co-Lead Class Counsel” means R. Joseph Barton of Block &  
3 Leviton LLP, Daniel Feinberg of Feinberg, Jackson, Worthman & Wasow LLP,  
4 and Richard Donahoo of Donahoo & Associates, PC.

5       **N.**     “Company” means KPC.

6       **O.**     “Complaint” means the First Amended Complaint (ECF No. 179).

7       **P.**     “Court” or “District Court” means the United States District Court for  
8 the Central District of California, Eastern Division.

9       **Q.**     “Defense Counsel” means Alerus’s counsel, Groom Law Group,  
10 Chartered.

11       **R.**     “Effective Date” means the date on which the Final Order is Non-  
12 Appealable.

13       **S.**     “ERISA” means the Employee Retirement Income Security Act of  
14 1974, as amended.

15       **T.**     “Escrow Account(s)” means an account(s) established by Co-Lead  
16 Class Counsel in the name of KPC ESOP Litigation Settlement Fund into which  
17 the Cash Settlement Amount is to be paid.

18       **U.**     “ESOP Plan Administrator” means the Administrator of the KPC  
19 ESOP within the meaning of ERISA § 3(16), 29 U.S.C. 1002(16).

20       **V.**     “Excluded Persons” means the following persons who are excluded  
21 from the Class: (1) Defendants in the Action; (2) any fiduciary of the Plan; (3) the  
22 officers and directors of KPC, or of any entity in which one of the individual  
23 Defendants has a controlling interest; (4) the immediate family members of any of  
24 the foregoing excluded persons (including any person defined as a relative under  
25 29 U.S.C. § 1002(15)); and (5) the legal representatives, successors, and assigns of  
26 any such excluded persons.

27       **W.**     “Expense Award” will have the meaning set forth in Section VIII of  
28 this Agreement.



1           **X.**   “Fee Award” will have the meaning set forth in Section VIII of this  
2 Agreement.

3           **Y.**   “Final Approval Hearing” has the meaning set forth in Section X of  
4 this Agreement.

5           **Z.**   “Final Approval Motion” means the motion to be filed by Co-Lead  
6 Class Counsel requesting that the Court grant final approval of the Settlement  
7 pursuant to Fed. R. Civ. P. 23(e).

8           **AA.** “Final Order” means the Order and Final Judgment, substantially in  
9 the form of an Order described in Section X below.

10          **BB.** “KPC” means Defendant KPC Healthcare Holdings, Inc.

11          **CC.** “KPC 401k Plan” or “401k Plan” means the KPC 401(k) Plan (as the  
12 same may be amended from time to time).

13          **DD.** “KPC 401k Plan Administrator” means the Administrator of the KPC  
14 401k Plan within the meaning of ERISA § 3(16), 29 U.S.C. 1002(16).

15          **EE.** “KPC Defendants” means KPC Healthcare Holdings, Inc.; The  
16 Administrative Committee of the KPC Healthcare, Inc. Employee Stock  
17 Ownership Plan; Kali Pradip Chaudhuri; William E. Thomas; Kali Priyo  
18 Chaudhuri; Amelia Hippert; and Lori Van Arsdale.

19          **FF.** “KPC ESOP”, “ESOP” or the “Plan” means the KPC Employee Stock  
20 Ownership Plan (as the same may be amended from time to time).

21          **GG.** “Net Settlement Fund” or “Net Settlement Amount” means the  
22 Settlement Fund or Cash Settlement Amount minus all Court-approved reductions  
23 such as the Fee Award, Expense Award, Service Award or approved settlement  
24 administration expenses.

25          **HH.** “Non-Appealable” means an order entered by the Court that is no  
26 longer subject to appeal, which will occur when: (i) if no appeal is taken  
27 therefrom, on the date on which the time to appeal therefrom (including any  
28 extension of time) has expired; or (ii) if any appeal is taken therefrom, on the date

1 on which all appeals therefrom, including any petitions for rehearing or re-  
2 argument, petitions for rehearing *en banc*, and petitions for writ of *certiorari* or  
3 any other writ, or any other form or review, have been finally disposed of, such  
4 that the time to appeal therefrom (including any extension of time) has expired, in  
5 a manner resulting in an affirmance of the Final Order.

6 **II.** “Non-Releasees” means SPCP and KPC Defendants, and their  
7 parents, subsidiaries, affiliates, shareholders, partners, investors and members, and  
8 each and all of the respective past, present, and future officers, directors,  
9 employees, attorneys, agents, or insurers of any of them, and their respective  
10 predecessors, successors and assigns, individually or in their capacities as  
11 directors, officers, fiduciaries, administrators, shareholders, partners, investors,  
12 members, employees, agents, insurers and attorneys.

13 **JJ.** “Plaintiff” means Danielle Gamino.

14 **KK.** “Plaintiff’s Counsel” means Co-Lead Class Counsel and Major Khan  
15 of MK LLC Law.

16 **LL.** “Plan of Allocation” means the plan for distribution of the proceeds of  
17 the Cash Settlement Amount as proposed by Co-Lead Class Counsel that is  
18 subject to approval by the Court.

19 **MM.** “Preliminary Approval Motion” means the Motion to be filed by Co-  
20 Lead Class Counsel requesting that the Court enter the Preliminary Approval  
21 Order.

22 **NN.** “Preliminary Approval Order” means the “Order Preliminarily  
23 Approving Settlement, Approving Form of Notice, and Setting Final Approval  
24 Hearing” in this Action, substantially in the form described in Section X.

25 **OO.** “Released Claims” means any and all present, or past claims,  
26 demands, debts, damages, losses, offsets, obligations, liabilities, warranties, costs,  
27 fees, penalties, expenses, rights of action, suits, and causes of action of every kind  
28 and nature whatsoever, whether under federal, state, local, or foreign law, whether

1 based on contract, tort, statute, regulation, ordinance, the common law, or another  
2 legal or equitable theory of recovery, whether known or unknown, suspected or  
3 unsuspected, existing or claimed to exist, asserted or unasserted, foreseen or  
4 unforeseen, actual or contingent, liquidated or unliquidated, in law or in equity,  
5 that Plaintiff or the Class has that:

6           **1.**     are asserted against Alerus in the First Amended Complaint  
7 (ECF No. 179);

8           **2.**     are based on or arise out of the facts alleged or the claims  
9 asserted in the First Amended Complaint, including, but not limited to, the  
10 following:

11                   a.     breach of duties or obligations (including fiduciary duties  
12 and obligations) under ERISA to the Plan, to Named Plaintiff, to the  
13 Class in connection with the acquisition of KPC stock in 2015 or the  
14 sale or cancellation of warrants by any of the KPC Defendants in  
15 2015;

16                   b.     causing the Plan to enter into a transaction prohibited by  
17 ERISA in connection with the acquisition of KPC stock in 2015 or the  
18 sale or cancellation of warrants by any of the KPC Defendants in  
19 2015;

20                   c.     knowing of an ERISA breach of fiduciary duty or  
21 prohibited transaction relating to KPC or the Plan in 2015 ESOP and  
22 Warrant Transactions, and participating in or enabling such ERISA  
23 breach of fiduciary duty or prohibited transaction 2015 ESOP and  
24 Warrant Transactions, or knowing of such ERISA breach of fiduciary  
25 duty or prohibited transaction 2015 ESOP and Warrant Transactions  
26 and failing to remedy it;

1           **3.**     would be barred by principles of *res judicata* had the claims  
2 asserted in the Action been fully litigated and resulted in a final judgment or order;  
3 or

4           **4.**     are claims for attorneys’ fees, costs or expenses (except as  
5 provided herein) or sanctions against Alerus relating to or arising out of the claims  
6 in this litigation whether such claim arises under ERISA or any federal law, state  
7 law, foreign law, common law doctrine, rule, regulation or otherwise.

8           **PP.**    “Released Parties” means any person who receives a release from  
9 another party under this Settlement Agreement.

10          **QQ.**    “Service Award” will have the meaning set forth in Section VIII of  
11 this Agreement.

12          **RR.**    “Settled Claims” means all claims released pursuant to this  
13 Settlement.

14          **SS.**    “Settled Class Claims” means the claims that the Class will release  
15 pursuant to this Settlement as provided in Section XIII.

16          **TT.**    “Settlement” means the settlement and compromise of this Action as  
17 provided for in this Settlement Agreement.

18          **UU.**    “Settlement Administrator” means the person whom Co-Lead Class  
19 Counsel may hire, subject to Court approval, who will be responsible for, among  
20 other things, providing Class Notice to Class Members and/or otherwise assisting  
21 with the administration of the Settlement including as set forth in Section VII.

22          **VV.**    “Settlement Agreement” means this Class Action Settlement  
23 Agreement and any accompanying Exhibits, including any subsequent  
24 amendments thereto and any Exhibits to such amendments.

25          **WW.**    “Settlement Fund” means the Cash Settlement Amount plus any  
26 earnings and interest thereon, minus any Court-approved deductions and expenses.

27          **XX.**    “Settling Parties” or “Parties” means Plaintiff, on behalf of herself and  
28 the Class, and Alerus. It does not mean KPC Defendants or SPCP.

1           **YY.** “SPCP” means Defendant SPCP Group, LLC.

2           **ZZ.** “Tax” or “Taxes” means any and all taxes, fees, levies, duties, tariffs,  
3 imposts, and other charges of any kind (together with any and all interest,  
4 penalties, additions to tax and additional amounts imposed with respect thereto)  
5 imposed by any governmental authority, including income tax and other taxes and  
6 charges on or regarding franchises, windfall or other profits, gross receipts,  
7 property, sales, use, capital stock, payroll, employment, social security, workers’  
8 compensation, unemployment compensation, or net worth; taxes or other charges  
9 in the nature of excise, withholding, *ad valorem*, stamp, transfer, value added or  
10 gains taxes; license, registration and documentation fees; and customs’ duties,  
11 tariffs, and similar charges.

12           **AAA.** “Trust Agreement” means the KPC Healthcare Employee Stock  
13 Ownership Trust Effective April 1, 2015.

14 **II. CLASS DEFINITION & CLASS NOTICE**

15           **1. Modification of the Class Definition.** As part of the motion for  
16 preliminary approval, Class Counsel will seek to modify the Class Definition to  
17 establish an end date of August 31, 2021. Alerus will not oppose that requested  
18 modification. To the extent that the Court does not agree to that modification, it  
19 will not be a condition of the settlement and will not serve as a basis for either  
20 party to withdraw from the settlement.

21           **2. Provision of Class Notice.** Upon the Court’s preliminary approval of  
22 this Settlement Agreement or by the date specified by the Court, the Settlement  
23 Administrator will be responsible for providing Class Notice to the Class  
24 Members.

25           **3. Contents.** The Class Notice will contain a brief description of the  
26 claims advanced by the Class, a summary of the terms of the Settlement  
27 Agreement, information on the attorneys’ fees and costs sought by Class Counsel,  
28 describe the proposed Plan of Allocation of the Settlement Fund to the Class, and

1 provide information about the Final Approval Hearing, in the form approved by the  
2 Court. It is anticipated that the Class Notice of this Settlement will be combined  
3 with the Class Notice for the settlement with the KPC Defendants.

4 **4. Method of Providing Class Notice.** Class Notice will be provided to  
5 each individual Class Member (a) by either electronic notification (if available and  
6 approved by the Court) to all Class Members, or, if unavailable or not approved by  
7 the Court, by mailing via first class US Mail to all Class Members, and (b) by  
8 posting the Class Notice on websites maintained by Co-Lead Class Counsel and  
9 the Settlement Administrator.

10 **5. Additional Information Provided with the Class Notice.** To the  
11 extent that the Court orders the KPC ESOP to provide or the Plan Administrators  
12 of the KPC ESOP or the KPC 401k Plan agrees to provide the following, or Alerus  
13 has the ability, as Trustee of the ESOP, to have the following provided, along with  
14 the Class Notice or at the same time as Class Notice is sent, every Class Member  
15 will be provided with:

16 (a) instructions and other information necessary to electronically  
17 request a distribution or rollover of the Class Member's allocation of the  
18 proceeds from the Net Settlement Amount credited to the Class Member's  
19 account under the KPC ESOP or the KPC 401k Plan to the extent eligible  
20 for a distribution under either of those Plans; and

21 (b) any other information necessary for the Class Member to  
22 electronically provide instructions to the KPC 401k Plan Administrator  
23 regarding the manner by which the Class Member's allocation of the  
24 proceeds from the Net Settlement Amount credited to the Class Member's  
25 account under the KPC 401k Plan should be invested in accord with the  
26 KPC 401k Plan's participant directed investment program as in effect from  
27 time to time. Any Class Member will be entitled to request and receive from  
28

1 the KPC 401k Plan Administrator the information necessary to elect a  
2 distribution or investment of his or her share of the Net Settlement Amount.

3 **6. Cooperation with Settlement Administrator.** Alerus and Defense  
4 Counsel will reasonably cooperate with the Settlement Administrator to facilitate  
5 providing the Class Notice and other settlement-related communications and  
6 administering the Settlement and Alerus will exercise its authority under the Trust  
7 Agreement and the written instrument of the Plan to cause the information in  
8 Section II.5 to be provided to Class Members. Alerus will provide or facilitate  
9 provision of other information reasonably requested by Co-Lead Class Counsel or  
10 the Settlement Administrator necessary for administration of the Settlement.

11 **7. Undeliverable Notices.** In the event that a Class Notice sent by email  
12 or by U.S. Mail is returned as undeliverable, the Settlement Administrator will  
13 make reasonable efforts to obtain a valid mailing address and promptly resend the  
14 Class Notice to the Class Member by U.S. Mail.

15 **8. Class Data.** The Class Data used to send Notice to the Class will be  
16 the Class Data provided by KPC Defendants pursuant to Section II.7 of Plaintiff's  
17 settlement agreement with the KPC Defendants. The persons identified in that  
18 Class Data, unless they meet the definition of Excluded Persons, will  
19 presumptively be the Class Members and the persons identified by the KPC  
20 Defendants as the Excluded Persons presumptively will be the Excluded Persons.

21 **9. Internet/Website Publication:** Class Counsel and/or the Settlement  
22 Administrator will establish a website dedicated and designed to provide  
23 information about the Action and the Settlement to Class Members. Among other  
24 information, this website will contain the Class Notice, the First Amended  
25 Complaint, the Order on the Motions to Dismiss, the Orders on the Motions for  
26 Class Certification, the Order on SPCP's Motion for Summary Judgment, the  
27 Settlement Agreements, Preliminary Approval Motions, Preliminary Approval  
28 Orders, proposed Plan of Allocation, Final Approval Motion, Motion for

1 Attorneys' Fees, Expenses and Service Award, the summary plan description for  
2 the KPC 401k Plan, any forms or other information necessary for a Class Member  
3 to either electronically request a distribution of the Class Member's allocation of  
4 the Net Settlement Amount from the 401k Plan or electronically provide  
5 instructions to the KPC 401k Plan Administrator as to how to invest the Class  
6 Member's allocation of the Net Settlement Amount under the 401k Plan's directed  
7 investment program, as in effect from time to time, and other agreed-upon  
8 documents relevant to the Action and Settlement.

9 **10. Class Notice Costs and Expenses.** All costs and expenses for the  
10 Class Notice and the Settlement Administrator will be paid from the Settlement  
11 Fund.

12 **11. Declaration Regarding Class Notice.** Within 30 days after the date  
13 on which the Class Notice is required to be sent, the Settlement Administrator will  
14 file a declaration with the Court confirming that the Class Notice and related  
15 information was sent in accordance with the Preliminary Approval Order.

### 16 **III. SETTLEMENT FUND**

17 **1. Payment of Cash Settlement Amount into Escrow Account.** In the  
18 event the Preliminary Approval Order is entered on or after December 1, 2022,  
19 Alerus will pay or cause its Insurers to pay \$4,000,000.00 into the Escrow Account  
20 within 30 days after entry of the Preliminary Approval Order. In the event the  
21 Preliminary Approval Order is entered before December 1, 2022, Alerus will pay  
22 or cause its Insurers to pay \$4,000,000.00 into the Escrow Account by December  
23 31, 2022.

24 **2. Payment of Cash Settlement Amount Sole Payment Obligation of**  
25 **Alerus.** Except as specified in this Agreement, the payment of the Cash  
26 Settlement Amount shall be the sole, total, and only payment obligations of the  
27 Alerus or any Alerus Releasee in the Settlement of the Action.  
28



1           **3. Custody of Settlement Fund.** The Settlement Fund held in the  
2 Escrow Account will be deemed to be in the custody of the Court and will remain  
3 subject to the jurisdiction of the Court and will be administered in accordance with  
4 the terms of this Settlement Agreement and the Orders of the Court. Except as  
5 provided herein, the Settlement Fund will not be released from the Escrow  
6 Account until the Final Order becomes Non-Appealable or the Settlement is  
7 terminated in accordance with this Agreement.

8           **4. Management of the Settlement Fund.** Until the Final Order becomes  
9 Non-Appealable or until the Settlement is terminated in accordance with this  
10 Agreement, the Settlement Fund will be held in the Escrow Account established by  
11 Co-Lead Class Counsel, for which an escrow agent (the “Escrow Agent”) will act  
12 pursuant to the terms of the escrow agreements (the “Escrow Agreements”) or as  
13 ordered by the Court. After the Final Order becomes Non-Appealable, Co-Lead  
14 Class Counsel will have the sole right and duty to manage the Settlement Fund in  
15 compliance with the terms of the Final Order. At no time will Alerus have any duty  
16 or authority to hold, manage, or invest any portion of the Settlement Fund prior to  
17 the receipt by the KPC ESOP of the Net Settlement Amount. After receipt of the  
18 Net Settlement Amount by the KPC ESOP, the Net Settlement Amount will be  
19 transferred to the KPC 401k Plan where it will be held, managed, and invested  
20 consistent with this Agreement. Any earnings or interest earned by the Settlement  
21 Fund will become part of the Settlement Fund.

22           **5. Qualified Settlement Fund.** The Settlement Fund is intended by the  
23 Settling Parties to be a “qualified settlement fund” for federal income tax purposes  
24 under Treas. Reg. § 1.468B-1 at the earliest date possible.

#### 25 **IV. DISTRIBUTIONS FROM THE SETTLEMENT FUND**

26           **1. Expenses Before the Effective Date.** Until the Final Order becomes  
27 Non-Appealable or the Settlement is terminated in accordance with this  
28 Agreement, Class Counsel will be authorized to pay from the Settlement Fund

1 upon notice to Counsel for Alerus (a) any actual or estimated taxes on any income  
2 earned on the Settlement Fund, (b) all costs and expenses related to the preparation  
3 of such tax filings or payments and (c) all costs and expenses incurred in  
4 connection with the Class Notice and administration of the Settlement. Any dispute  
5 regarding the reasonableness of any expense incurred, paid, or owing will be  
6 adjudicated by the Court, but in no event will such a dispute require Class Counsel  
7 to cause or allow the Settlement Fund to fail to make a tax payment in a timely  
8 manner.

9 **2. Attorneys' Fees, Expenses/Costs, and Service Awards.** Pursuant to  
10 any deadline set by the Court, Class Counsel may file any motion with the Court  
11 requesting the payment of attorneys' fees, reimbursement of litigation expenses  
12 and costs, and/or Service Award out of the Settlement Fund. Any amounts so  
13 awarded by the Court will be paid from the Settlement Fund as directed by Class  
14 Counsel before Distribution to the Class

15 **3. Tax Reserve After the Effective Date:** Upon the Final Order  
16 becoming Non-Appealable, Class Counsel will be authorized to establish a reserve  
17 from the Settlement Fund to pay any taxes that are or will be owed (but not yet  
18 due) and for expenses related to payment of taxes or filing of tax returns or to the  
19 extent that there are other costs of administration of the Settlement.

20 **4. Distribution to KPC ESOP Accounts of the Class:** After the Final  
21 Order becomes Non-Appealable, the Settlement Fund (along with any settlement  
22 funds paid by any other defendants prior to this Settlement becoming Non-  
23 Appealable) will be distributed to Class Members pursuant to the Court-approved  
24 Plan of Allocation after payment of the following: (a) any Taxes on the income or  
25 earnings by the Settlement Fund, any tax-related expenses, and the creation of any  
26 reserve for future expenses (as described above); (b) any expenses incurred in  
27 connection with the administration of the Settlement Fund; and (c) any award of  
28 attorneys' fees, reimbursement of any litigation expenses and costs to Class

1 Counsel, and/or payment of any Service Award. After deduction of the foregoing,  
2 the Net Settlement Amount will be distributed to Class Members in accordance  
3 with the Plan of Allocation by remitting the Net Settlement Amount to the KPC  
4 ESOP (along with any settlement funds paid by any other defendants prior to this  
5 Settlement becoming Non-Appealable) to be allocated by the ESOP Plan  
6 Administrator to the ESOP accounts of Class Members based on the instructions of  
7 the Settlement Administrator. Subject to an Order by the Court and/or agreement  
8 by the KPC ESOP, it is contemplated that the distribution process for this  
9 Settlement will be at the same time and utilize the same distribution process as the  
10 settlement with the KPC Defendants.

11 **5. Distributions of the Net Settlement Fund Proceeds to the Class.**

12 Distributions to Class Members who are entitled to receive an allocation from the  
13 Settlement Fund will be made as follows (unless the Court orders otherwise):

14 (a) To the extent that the Court orders the KPC ESOP to do the  
15 following or the KPC ESOP and the KPC 401k Plan agree to do the  
16 following or Alerus has the ability to require the following:

17 (1) For Class Members who are eligible for an immediate  
18 distribution from the KPC ESOP or the KPC 401(k) Plan prior to the  
19 Final Approval Order becoming Non-Appealable and who have  
20 submitted a request for an immediate distribution prior to the Final  
21 Approval Hearing (and at least 30 days before the date on which the  
22 Final Order becomes Non-Appealable), the KPC ESOP will make a  
23 distribution or rollover as directed by the election form within the  
24 later of (i) 30 days of the Final Order becoming Non-Appealable or  
25 (ii) 30 days after the KPC ESOP Plan Administrator has received  
26 amounts from the Settlement Fund and a direction or approval from  
27 Class Counsel or the Settlement Administrator regarding the  
28

1 allocation of any portion of the net proceeds of the Settlement Fund  
2 for these Class Members.

3 (2) For Class Members who are not eligible for a distribution  
4 from the KPC ESOP prior to the Final Approval Order becoming  
5 Non-Appealable or for those Class Members who do not make a  
6 distribution election prior to Final Approval, their proceeds from the  
7 Net Settlement Amount shall be transferred to each Class Member's  
8 existing account in the KPC 401k Plan or, if the Class Member does  
9 not have an existing KPC 401k Plan account, such an account will be  
10 established and the settlement proceeds will be allocated to such  
11 account within the later of (i) 30 days of the Final Order becoming  
12 Non-Appealable or (ii) thirty (30) days after the Plan Administrator  
13 has received amounts from the Settlement Fund and a direction from  
14 the Settlement Administrator (or Class Counsel) regarding the  
15 allocation of any portion of the net proceeds of the Settlement Fund.

16 (b) To make such an election for distribution or rollover from  
17 either the KPC ESOP or the KPC 401k Plan, a Class Member will need to  
18 complete an election form, which will be valid, unless modified by the Class  
19 Member, for 180 days after the election is executed by the Class Member.  
20 To the extent that a Class Member executes an election form more than 180  
21 days prior to the date the distribution date for that Class Member, the Class  
22 Member will need to make a new election to receive their distribution or  
23 rollover. To the extent that the election form expires prior to the time that the  
24 KPC ESOP Plan Administrator is required to make a distribution of the  
25 Settlement Fund under this Agreement, the KPC ESOP Plan Administrator  
26 will send a new election form to the Class Member within 10 days of the  
27 expiration date.  
28

1 (c) For all Class Members whose Settlement Proceeds are paid into  
2 the KPC ESOP or the KPC 401k Plan, all reasonable efforts will be taken to  
3 ensure that the distribution complies with ERISA and the relevant provisions  
4 of the Internal Revenue Code (and any corresponding state tax provisions) in  
5 order to preserve the tax-favored treatment of the amounts distributed to  
6 those Class Members.

7 **6. Investment of the Settlement Proceeds in the KPC 401k Plan:** For  
8 Class Members whose proceeds from this Settlement are transferred to the KPC  
9 401k Plan, allocations from this Settlement will be invested as follows:

10 (a) For Class Members with an existing KPC 401k Plan Account,  
11 the Class Member's settlement proceeds will be invested according to that  
12 Class Member's pre-existing investment instructions for contributions in that  
13 Class Member's KPC 401k Plan account.

14 (b) For Class Members without an existing KPC 401k Plan  
15 Account, the Class Member's settlement proceeds will be invested in the  
16 KPC 401k Plan's default investment option.

17 (c) After the initial allocations are made, Class Members will be  
18 permitted to direct investment of their proceeds from this Settlement into  
19 any of the available investment options in the KPC 401k Plan according to  
20 the terms of the KPC 401k Plan and will be able to request and receive  
21 distributions from the KPC 401k Plan according to the terms of the KPC  
22 401k Plan, and as provided in this Settlement Agreement.

23 **7. Costs and Expenses Related to Settlement Administration.** Alerus  
24 and its insurers will not be entitled to reimbursement from the Class Members of  
25 any expenses incurred by any of Alerus and its insurers from the Settlement  
26 Amount in connection with the administration of the settlement or distribution of  
27 the settlement proceeds. No amounts will be charged by Alerus to any participants  
28 in (or beneficiaries of) the ESOP in connection with the administration or

1 distribution of the proceeds of the Settlement to members of the Class. No fees,  
2 expenses, costs, or other charges will be imposed on Class Members in connection  
3 with any expenses incurred by Alerus or the Plan in implementing the terms of this  
4 Settlement or in connection with distributing the Settlement proceeds or in  
5 connection with the costs of the Independent Fiduciary.

6 **8. Restrictions on Administration and Distribution Expenses**

7 **Charged to Class Members.** For any Class Members who, within 120 days after  
8 the date on which the Plan Administrator has sent notice to the Class Member that  
9 the Net Settlement Amount has actually been credited to Class Members' Plan  
10 accounts, electronically request a distribution of their allocation of the proceeds  
11 from the Net Settlement Amount (and are entitled to a distribution of their  
12 proceeds from the Net Settlement Amount), no fees, expenses, costs or other  
13 charges will be imposed on Class Members to receive their allocation of the  
14 proceeds from the Net Settlement Amount nor will such Class Members (or their  
15 ESOP or 401k accounts) be charged any administration fees or costs on their  
16 allocation of the proceeds from the Net Settlement Amount for the 120-day period  
17 of time that the distributions are to be made; rather, to the extent that the  
18 distribution of allocations from the Net Settlement Amount to these Class  
19 Members involves any charges, such distribution processing costs will be borne by  
20 KPC Defendants.

21 **9. Restriction on Investment of the Settlement Proceeds.** In no event

22 will the proceeds from the Net Settlement Amount be invested in KPC stock under  
23 either the ESOP or the 401k Plan.

24 **10. Amendment of the KPC ESOP or KPC 401k Plan to Effectuate**  
25 **Provisions Related to the Distribution of the Settlement Funds.** To the extent  
26 that KPC adopts any amendments to the KPC ESOP necessary to effectuate the  
27 Settlement, including amendments consistent with this Settlement Agreement (a)  
28 permitting distribution or roll-over of a participant's allocation from the Net

1 Settlement Amount from the 401k Plan to the extent permitted by applicable law,  
2 and (b) allowing participants who leave their allocation from the Net Settlement  
3 Amount in the 401k Plan to direct the investment of such amounts in accord with  
4 the 401k Plan's participant directed investment program, as in effect from time to  
5 time, Alerus will provide Class Counsel with a copy of any Amendment to the  
6 KPC ESOP (and if Alerus is provide a copy of any such amendment of the KPC  
7 401k Plan, also with that amendment) within three business days after the adoption  
8 of the Amendment. To the extent any such Amendment is contemplated or is  
9 rescinded, modified, or eliminated Alerus will provide promptly, and not later than  
10 three business days after Alerus learns of such a proposed or actual amendment,  
11 notify Class Counsel of the contemplated or adoption of any such modification or  
12 elimination of the Amendment.

13 **11. Tax Liability.** The Settling Parties will not have any liability or  
14 responsibility for the payment of any Taxes incurred by or with respect to the  
15 Settlement Fund, and any such Taxes will be paid out of the Settlement Fund.

16 **V. PLAN OF ALLOCATION**

17 **1. Proposed Plan of Allocation.** Co-Lead Class Counsel will propose  
18 and submit a Plan of Allocation to the Court as to the recommended method of  
19 determining and distributing the proceeds of the Settlement Fund (net of any Fee  
20 Award, Expense Award, any Service Award approved by the Court and other costs  
21 or expenses authorized herein) to Class Members.

22 **2. Alerus's Non-Involvement.** Alerus will have no responsibility for  
23 preparing or any right to provide input into and will take no position on the Plan of  
24 Allocation except to the extent that the Plan of Allocation would result in adverse  
25 tax consequences to the KPC ESOP.

26 **3. Modification of Plan of Allocation.** In the event that the proposed  
27 Plan of Allocation is rejected or modified by the Court or on appeal, such rejection  
28 or modification will not constitute a material modification of this Settlement

1 Agreement, will not void this Settlement Agreement, and will not provide a basis  
2 for any party to withdraw from this Settlement Agreement; however, the Plan of  
3 Allocation must prohibit the Excluded Persons from receiving any distribution or  
4 allocation from the Settlement Fund.

5 **4. Class Members' Right to Demonstrate Membership and/or**  
6 **Submit ESOP Account Data.** Before the Final Approval Hearing and by a  
7 deadline to be established by the Court, any person who claims to meet the  
8 definition of a Class Member but who has not been identified as a Class Member in  
9 the Class Data will be entitled to demonstrate membership in the Class and any  
10 person claiming that the Class Data regarding a participant's ESOP account is  
11 erroneous will be entitled to demonstrate that such an error will impact the amount  
12 allocated to that person under the Plan of Allocation. Such submissions will only  
13 be used to determine whether a person qualifies as a Class Member for purpose of  
14 this Settlement, subject to Court approval, and to adjust amounts allocated to Class  
15 Members, subject to Court approval, under the Plan of Allocation.

16 **5. Excluded Persons Prohibited From Receiving Settlement Funds.**  
17 None of the Excluded Persons will either directly or indirectly through allocations  
18 to their KPC ESOP or KPC 401k Plan accounts receive any of the proceeds from  
19 this Settlement.

20 **6. No Claim Based on Distribution in Accordance with the Plan of**  
21 **Allocation.** The Class and its members will not have any claim against Plaintiff,  
22 Alerus, the Plan, Class Counsel, Defense Counsel, the Settlement Administrator, or  
23 the Independent Fiduciary, including any of the individuals involved in the  
24 distribution under the Plan of Allocation, based on any distributions of the  
25 Settlement Fund or allocations of the Net Settlement Amount made substantially in  
26 accordance with this Settlement Agreement, the Plan of Allocation, or as  
27 authorized by the Court. Additionally, Class Members will be barred from  
28 asserting any claims against Alerus or Alerus Releasees either arising out of



1 calculations, distributions, or allocations performed by the Settlement  
2 Administrator or based on actions by Alerus or Alerus Releasees that were  
3 consistent with the Plan of Allocation, the Settlement Agreement, the applicable  
4 plan (ESOP or 401k Plan), an order of the Court, or the direction of the Settlement  
5 Administrator or Class Counsel.

## 6 **VI. SETTLEMENT ADMINISTRATION**

7 **1. Appointment of Settlement Administrator.** A Settlement  
8 Administrator who will be approved by the Court will be appointed to administer  
9 the Settlement and will report to Co-Lead Class Counsel and the Court. The  
10 proposed Settlement Administrator for this Settlement will be the same as the one  
11 appointed to administer the settlement with the KPC Defendants. Any Settlement  
12 Administrator will have experience providing notice to Class Members in  
13 employment or employee benefit class action settlements, and in supervising and  
14 administering large and complex settlement funds.

15 **2. Settlement Administrator's Responsibilities.** The Settlement  
16 Administrator will undertake the following tasks to administer this Settlement  
17 consistent with the terms of this Settlement, the Plan of Allocation, and the Orders  
18 of the Court and such other procedures required by the Court or as directed by Co-  
19 Lead Class Counsel:

20 (a) Print and email and/or mail the Class Notice to the Class  
21 Members in accordance with this Settlement Agreement and any order of the  
22 Court and undertake to trace and re-mail all undeliverable Class Notices or  
23 other reasonable steps to locate missing Class Members;

24 (b) Provide Class Counsel and Defense Counsel with copies of all  
25 written objections to the Settlement (to the extent such objections are not  
26 filed with the Court), and all challenges to the Class Data, including all  
27 information submitted in support of each challenge, and/or any request for  
28 exclusions from the Class;

1 (c) Respond to questions from Class Members or refer Class  
2 Members to Class Counsel for response;

3 (d) Maintain and staff a toll-free phone number and a web site until  
4 at least six (6) months after distributions of the Net Settlement Fund have  
5 been made to Class Members' KPC ESOP accounts;

6 (e) File with the Court a declaration confirming compliance with  
7 the procedures approved by the Court for providing notice to the Class;

8 (f) Determine for purposes of allocation of the Net Settlement  
9 Amount, subject to the approval by the Court, whether Class Members  
10 claiming to have sufficiently established either their status as members of the  
11 Class or that their account data differs from the Class Data and send notice  
12 of determinations or adjudications to those persons;

13 (g) Calculate the amount of the Net Settlement Amount to be  
14 allocated to each Class Member entitled to payment from the Net Settlement  
15 Amount by name and amount;

16 (h) Instruct the ESOP Plan Administrator, consistent with  
17 instructions from Class Counsel and the court-approved Plan of Allocation,  
18 as to how the Net Settlement Amount is allocated among the Class and into  
19 the KPC ESOP accounts of individual Class Members;

20 (i) Monitor the Settlement Fund and file all informational and  
21 other tax returns or other tax filings necessary or advisable with respect to  
22 the Settlement or Settlement Fund (including without limitations the returns  
23 described in Treas. Reg. Section 1.468B-2(k));

24 (j) Pay the Net Settlement Amount to the KPC ESOP, consistent  
25 with instructions from Class Counsel and the court-approved Plan of  
26 Allocation; and

27 (k) Any other responsibilities set forth in this Agreement; and any  
28 other responsibilities agreed to by the Settling Parties related to

1 administration of the Settlement and consistent with the orders of the Court  
2 or any other responsibilities ordered by the Court.

3 **3. KPC ESOP's Responsibilities.** The KPC ESOP will (a) allocate the  
4 Net Settlement Amount to the Class Members' KPC ESOP accounts pursuant to  
5 and consistent with the instructions from the Settlement Administrator to the extent  
6 such instructions are not inconsistent with this Settlement Agreement, law and  
7 regulations; and (b) once such amounts are allocated into the Class Members'  
8 ESOP accounts, to the extent ordered by the Court or agreed to by the KPC  
9 Defendants, transfer the proceeds from the Net Settlement Amount to the KPC  
10 401k Plan consistent with the terms of this Settlement Agreement.

11 **4. KPC 401k Plan Administrator's Responsibilities.** To the extent that  
12 the KPC Defendants consent to the transfer of the Settlement proceeds from this  
13 Settlement, the KPC 401k Plan Administrator will (a) process electronic  
14 distribution requests and distribute the Net Settlement Amount to Class Members  
15 who make requests for distributions or rollovers as set forth in this Settlement  
16 Agreement and to the extent permitted by applicable law; (b) invest the Net  
17 Settlement Amount in accord with the 401k Plan's participant directed investment  
18 program and the investment instructions by participants provided consistent with  
19 that program and consistent with the terms of this Settlement Agreement; and (c)  
20 search for and locate any Class Members who are missing participants consistent  
21 with Department of Labor regulations.

22 **5. Tax Treatment of the KPC Plans.** Plaintiff, Class Counsel and  
23 Alerus will use their best efforts to ensure that the Settlement will not adversely  
24 affect the tax-qualified status of the KPC ESOP or the KPC 401k Plan.

25 **6. Tax Reporting.** The KPC ESOP Administrator will be responsible for  
26 tax reporting for the KPC ESOP. To the extent that any proceeds from this  
27 Settlement are transferred to the KPC 401k Plan, the KPC 401k Plan Administrator  
28 will be responsible for tax reporting for the KPC 401k Plan. The Settlement

1 Administrator will be responsible for tax reporting for the Settlement Fund,  
2 including tax reporting for the payment of any Fee Award to Class Counsel and  
3 any Service Award.

4 **VII. PAYMENT OF FEES, SERVICE AWARDS, AND**  
5 **REIMBURSEMENT OF COSTS AND EXPENSES**

6 **1. Attorneys’ Fees & Expenses From the Settlement Fund.** Class  
7 Counsel will be entitled to file a motion seeking an award of attorneys’ fees and  
8 reimbursement of expenses and costs from the Settlement Fund. Prior to the  
9 deadline for Class Members to object to the Settlement Agreement, Class Counsel  
10 will file a motion with the Court for an award from the Settlement Fund of: (a)  
11 attorneys’ fees (the “Fee Award”), (b) a service award for Danielle Gamino  
12 (“Service Award”), and (c) reimbursement of litigation costs and expenses (the  
13 “Expense Award”). Any Fee Award, Service Award or Expense Award will be  
14 paid solely from the Settlement Fund and is subject to the Court’s approval at the  
15 Final Approval Hearing. The Motions for a Fee Award, Expense Award and  
16 Service Award may be combined with the motions seeking fees, expenses or a  
17 service award from the settlement with the KPC Defendants.

18 **2. Alerus’s Non-Opposition.** Alerus and Defense Counsel will take no  
19 position regarding the application for or an award of the Fee Award from this  
20 Settlement or the Settlement with the KPC Defendants provided that the  
21 application for the Fee Award does not exceed one-third of the Cash Settlement  
22 Amount or one-third of the Cash Settlement Amount of both settlements. Alerus  
23 and Defense Counsel will not take any position on a requested Service Award for  
24 Plaintiff so long as the Service Award does not exceed \$10,000.00.

25 **3. Payment of Fees/Expenses to Co-Lead Class Counsel.** All amounts  
26 to be paid pursuant to this Section will be paid into an account designated by Co-  
27 Lead Class Counsel to be distributed among Plaintiffs’ Counsel as directed by Co-  
28

1 Lead Class Counsel. Neither Alerus nor its Insurers will have any input as to the  
2 division of such fees and expenses among Plaintiffs' Counsel.

3 **4. Timing of Payment of Attorneys' Fees and Reimbursement of**  
4 **Expenses.** Disbursement of any Fee Award, Expense Award or Service Award  
5 will be made only upon the Final Order becoming Non-Appealable except that in  
6 the event that there is no appeal of the Final Order, but an appeal solely of a Fee  
7 Award, Expense Award, or any Service Awards (or an appeal only related to the  
8 settlement with the KPC Defendants), in which event Class Counsel will be  
9 entitled to a disbursement from the Settlement Fund of such amount of the Fee  
10 Award or Expense Award as to which there is no appeal.

11 **5. Non-Materiality of Award of Attorneys' Fees, Reimbursement of**  
12 **Expenses or Service Award to Settlement.** In the event that the Court refuses to  
13 award attorneys' fees, allow reimbursement of expenses/costs or permit a service  
14 award, in whole or in part, or any such award is rejected or modified on appeal,  
15 such rejection or modification will not constitute a material modification of this  
16 Settlement Agreement, will not void this Settlement Agreement, and will not  
17 provide a basis for any Settling Party to withdraw from this Settlement Agreement.

18 **6. Alerus's Attorneys' Fees & Expenses.** Alerus and/or its Insurers will  
19 bear their own attorneys' fees, expenses and costs. No amount of the attorneys'  
20 fees, expenses, or costs of this Action incurred by Alerus or the administration of  
21 this Settlement incurred by Alerus will be paid by, or charged to, directly or  
22 indirectly, the KPC ESOP account of any Class Member.

23 **VIII. NO ADMISSION OF WRONGDOING**

24 **1.** This Settlement Agreement embodies a compromise of disputed  
25 claims and nothing in the Settlement Agreement, including the furnishing of  
26 consideration in connection with this Settlement Agreement, will be interpreted or  
27 deemed to constitute any finding of wrongdoing or admission of wrongdoing by  
28 Alerus under ERISA or any other statute, regulation, case law, common law

1 doctrine, or other legal authority, or give rise to any inference of liability in this or  
2 any other proceeding. This Settlement Agreement and the payments made  
3 consistent with its terms will not be offered or received against Alerus as any  
4 admission by any such party with respect to the truth of any fact alleged by  
5 Plaintiff or Class Members or the validity of any claim that had been or could have  
6 been asserted in the Action or in any litigation, or of admission by any Alerus of  
7 any damages, losses, liability, negligence, fault, or wrongdoing of any such party.  
8 Alerus expressly denies any liability, wrongdoing, damages, or losses with respect  
9 to the matters alleged in the Complaint or First Amended Complaint.

10 **2.** This Settlement Agreement may be used in such proceedings as may  
11 be necessary to consummate or enforce this Settlement Agreement or the Final  
12 Order, and any Party may file this Settlement Agreement and/or the Final Order in  
13 any action that may be brought against it or any of the Released Parties to support  
14 a claim, a defense or counterclaim based on principles of res judicata, collateral  
15 estoppel, release, good faith settlement, judgment bar, or reduction or any other  
16 theory of claim preclusion or issue preclusion or similar defense or counterclaim,  
17 or in any action that may be brought to enforce any claim assigned pursuant to this  
18 Settlement Agreement. Alerus may use and disclose this Settlement Agreement in  
19 connection with any proceeding or claim involving any of their insurers or any  
20 governmental agency with respect to the KPC ESOP.

21 **IX. APPROVAL OF THE SETTLEMENT**

22 **1. Preliminary Approval Order.** Plaintiff will file the Preliminary  
23 Approval Motion. The Parties will use their best efforts to file the Preliminary  
24 Approval Motion on or before October 7, 2022. Class Counsel shall give Alerus at  
25 least two (2) days to review the Preliminary Approval Motion before filing. The  
26 Preliminary Approval Motion will seek an Order in a form agreed upon by the  
27 Settling Parties which will provide for, among other things:  
28

1 (a) Request modification of the class definition to provide an end  
2 date of August 31, 2021;

3 (b) Preliminary Approval of the Settlement as set forth in this  
4 Settlement Agreement, subject to further hearing and determination under  
5 Fed. R. Civ. P. 23(e);

6 (c) Approval of the form of Class Notice, substantially in the form  
7 agreed-upon by the parties, and the manner of distribution and publication  
8 which is consistent with this Agreement, Rule 23 and the requirements of  
9 due process;

10 (d) Preliminary Approval of the Plan of Allocation;

11 (e) Appoint the Settlement Administrator;

12 (f) Set deadlines by which all objections to the Settlement must be  
13 made, or any submissions to the Settlement Administrator regarding Class  
14 Members' membership in the Class or challenges regarding information  
15 about their ESOP account contained in the Class Data must be made;

16 (g) Schedule a hearing date to determine whether the Settlement  
17 Agreement should be finally approved as fair, reasonable and adequate, and  
18 whether an Order finally approving the Settlement Agreement should be  
19 entered ("Final Approval Hearing");

20 (h) Provide that no objection to the Settlement Agreement will be  
21 heard and no papers submitted in support of said objection will be received  
22 and considered by the Court at the Final Approval Hearing unless the  
23 objection and reasons therefore, along with copies of any supporting papers,  
24 are filed with the Clerk of the Court and served on the Parties within forty-  
25 five (45) days of the publication and/or distribution of the Class Notice;

26 (i) Provide that the Final Approval Hearing may be continued from  
27 time to time by Order of the Court if necessary, and without further notice to  
28 the Class; and

1 (j) Provide a deadline for filing of a Final Approval Motion and for  
2 Class Counsel's application for Fee Award, Service Awards, and Expense  
3 Award; and

4 (k) Require the KPC ESOP to provide the distribution election  
5 forms set forth in Section II.5 to the Class Counsel and the Settlement  
6 Administrator so that those forms can be distributed to Class Members along  
7 with the Class Notice.

8 **2. Final Approval of the Settlement.** If the Court preliminarily  
9 approves this Settlement, Class Counsel will file the Final Approval Motion.  
10 Alerus will either join in or not oppose the Final Approval Motion. Class Counsel  
11 shall provide Alerus at least five (5) days to review the Final Approval Motion  
12 before filing. The Final Approval Motion will seek entry of a proposed Final  
13 Order in a form to be agreed-upon by the Settling Parties and will, among other  
14 things:

15 (a) Order Final Approval of the Settlement set forth in this  
16 Settlement Agreement;

17 (b) Adjudge that the Settlement is fair, reasonable and adequate to  
18 the Class pursuant to Rule 23(e);

19 (c) Order the KPC ESOP to make distributions to Class Members  
20 consistent with Section IV.5(a)-(c) of this Agreement;

21 (d) Prohibit the KPC ESOP from imposing any costs or expenses  
22 on Class Members from receiving the proceeds of this Settlement;

23 (e) Approving the Plan of Allocation;

24 (f) Determining any challenges raised by Class Members about  
25 Class Data;

26 (g) Dismiss the Action against Alerus with prejudice;  
27  
28



1 (h) Adjudge that Plaintiff and the Class will be deemed  
2 conclusively to have released and waived any and all Settled Class Claims  
3 against the Released Parties as provided in this Settlement Agreement;

4 (i) Bar and permanently enjoin the Parties and the Class from  
5 prosecuting any and all Settled Claims, as provided in this Settlement  
6 Agreement, against any Party for whom they have released claims;

7 (j) Bar and permanently enjoin Alerus and the ESOP, from  
8 asserting any claims on behalf of the ESOP challenging the correctness of  
9 any of the Class Data provided by the KPC Defendants for purpose of this  
10 Settlement or challenge the prior distributions to Class Members resulting  
11 from the 2015 ESOP Transaction or an allocation to any of the Class  
12 Members' ESOP accounts, except to the extent that a Class Member  
13 challenged the Class Data as part of this Settlement and a contrary  
14 determination was made;

15 (k) Determine Class Counsel's request(s) for a Fee Award,  
16 Expense Award, and Service Award;

17 (l) Provide that Class Members will be barred from asserting any  
18 claims against the Alerus or Alerus Releasees arising out of the allocation of  
19 the Net Settlement Amount calculated by the Settlement Administrator or  
20 based on actions by Alerus or Alerus Releasees that were consistent with the  
21 Plan of Allocation, the Settlement Agreement, the applicable plan (ESOP or  
22 401k Plan), an order of the Court, or the direction of the Settlement  
23 Administrator or Class Counsel; and

24 (m) Retain exclusive jurisdiction, without affecting the finality of  
25 the Order entered, with regard to: (i) implementation of this Settlement  
26 Agreement; (ii) disposition of the Settlement Fund; and (iii) enforcement  
27 and administration of this Settlement Agreement, including the release  
28 provisions thereof.

1 **X. CONDITIONS OF SETTLEMENT**

2 **1. Court Approval.** Each of the following is an express condition of  
3 Settlement: (a) the September 13, 2022 Order (ECF No. 376) entered by the Court  
4 remains in effect, (b) the Court enters a Preliminary Approval Order substantially  
5 in the form as required by this Agreement, (c) the Court enters the Final Order,  
6 substantially in the form as required by this Agreement, (d) determination by an  
7 Independent Fiduciary that the Prohibited Transaction Class Exemption 2003-39 is  
8 met (as set forth in Section XII); and (e) the Excluded Persons do not receive any  
9 allocation from the Settlement.

10 **2. Non-Conditional Matters.** Each of the following is not a condition of  
11 the Settlement, and none will serve as a basis for any of the Settling Parties to  
12 withdraw from this Settlement:

13 (a) Court approval of the Fee Award, Service Award, Expense  
14 Award, or the Plan of Allocation are not conditions of the Settlement. No  
15 action by the District Court or any courts of appeal related to the Fee Award,  
16 the Service Award, the Expense Award, or the Plan of Allocation will  
17 prevent the Final Order allowing the approval of the Settlement from  
18 becoming Non-Appealable.

19 (b) Court approval or modification of the Plan of Allocation  
20 proposed by Class Counsel.

21 **XI. INDEPENDENT FIDUCIARY**

22 **1. Appointment.** Alerus will hire an Independent Fiduciary to evaluate  
23 and, if appropriate, to determine whether the Settlement is consistent with  
24 Prohibited Transaction Exemption (PTE) 2003-39. The person or entity hired as  
25 the Independent Fiduciary by Alerus will (a) have experience evaluating settlement  
26 under PTE 2003-39 and (b) will be acceptable to Co-Lead Class Counsel, who will  
27 act in good faith and not unreasonably withhold approval. In the event of a dispute  
28

1 about the person or entity who should be hired as an Independent Fiduciary, the  
2 Court will resolve the dispute and appoint an Independent Fiduciary.

3 **2. Costs.** The cost of the Independent Fiduciary will not be paid out of  
4 the Settlement Amount or the Settlement Amount in the settlement with the KPC  
5 Defendants.

6 **3. Deadline.** Within forty-two (42) days after the Court enters its  
7 Preliminary Approval Order and at least 21 days before the deadline for Plaintiff to  
8 file the Motion for Final Approval, whichever is sooner, the Independent Fiduciary  
9 will issue its final opinion. If the Independent Fiduciary issues an opinion that does  
10 not approve all aspects of this Settlement Agreement satisfying Prohibited  
11 Transaction Exemption 2003-39, Alerus or Co-Lead Class Counsel will have the  
12 right, but not the obligation, to withdraw from the Settlement Agreement so long as  
13 such right is exercised within seven (7) days of the receipt of the Independent  
14 Fiduciary's opinion. If any Party exercises such right under this provision (and the  
15 30 days in Section XIII.2 expires without an agreed modification), then the entire  
16 Settlement Agreement will be void and the parties will revert to their respective  
17 positions in the Action as of September 10, 2022.

## 18 **XII. RELEASES**

19 Upon the Final Order becoming Non-Appealable, and provided that each  
20 Party has performed all of the respective obligations under this Settlement  
21 Agreement to be performed on or prior to such date by such Party:

### 22 **1. Release and Covenant Not to Sue by Plaintiff and the Class.**

23 (a) Plaintiff on behalf of herself and the Class (including each and  
24 all of the foregoing's legal representatives, heirs, executors, administrators,  
25 successors, and assigns) will dismiss with prejudice the claims asserted in  
26 the First Amended Complaint against Alerus and will forever release and  
27 covenant not to sue Alerus, its parents, subsidiaries, affiliates, shareholders  
28 and members, and each and all of the respective past, present, and future

1 officers, directors, employees, attorneys, agents, or insurers of any of them,  
2 and their respective predecessors, successors and assigns, both individually  
3 and in their capacities as directors, officers, fiduciaries, administrators,  
4 shareholders, members, employees, agents, insurers and attorneys other than  
5 the Non-Releasees (collectively the “Alerus Releasees”) from the Released  
6 Claims.

7 (b) The Released Claims do not include any claims against the  
8 Non-Releasees (or any other person not included in the definition of KPC  
9 Releasees), including any claims for attorneys’ fees, costs or expenses  
10 against the Non- Releasees (or any other person not included in the Alerus  
11 Releasees), and Plaintiff and the Class and the ESOP (by the independent  
12 fiduciary) are not agreeing to dismiss, release or agreeing not to sue the  
13 Non-Releasees (or any other person not included in the Alerus Releasees)  
14 for any claims.

15 **2. Release of Plaintiff and the Class and Covenant Not to Sue by**  
16 **Alerus.** Alerus and the Alerus Releasees will forever release and covenant not to  
17 sue Plaintiff, each Class Member, Class Counsel and Plaintiff’s Counsel from (a)  
18 each and every claim that could have been asserted in the Action related to the  
19 filing of the Action including any claims for attorneys’ fees, costs, expenses or  
20 sanctions, that relate to the filing, commencement, prosecution or settlement of the  
21 Action whether such Claim arises under ERISA or any federal law, state law,  
22 foreign law, common law doctrine, rule, regulation or otherwise; and (b) any  
23 claims challenging the correctness of any Class Member’s accounts/benefits as set  
24 forth in the Class Data provided by the KPC Defendants for purposes of this  
25 Settlement and the settlement with the KPC Defendants.

26 **3. Correctness of Class Data.** Alerus, as the Trustee with the authority  
27 to compromise, settle or abandon any claims on behalf the ESOP pursuant to  
28 Section 2.4(j) of the Trust Agreement, agrees that the ESOP will not assert any

1 claims that challenge the correctness of any of the Class Data provided by the KPC  
2 Defendants for purpose of this Settlement and the settlement with the KPC  
3 Defendants, including any prior distributions to Class Members or any allocation  
4 to any of the Class Members' ESOP accounts unless that Class Member challenges  
5 that data and only as to that challenging Class Member's data.

6 **4. Non-Released Claims.** Notwithstanding the foregoing or any other  
7 language in this Settlement Agreement, the Settling Parties are not releasing claims  
8 to enforce this Settlement Agreement or claims concerning the validity of this  
9 Settlement Agreement (including any representations upon which the Settlement  
10 was based).

11 **5. Release by the ESOP.** The ESOP, by and through the Independent  
12 Fiduciary, will forever release and covenant not to sue Alerus Releasees from the  
13 Released Claims.

14 **6. Waiver of California Civil Code Section 1542.** The Settling Parties,  
15 on behalf of themselves and all persons and entities on whose behalf they are  
16 providing the releases herein, acknowledge and understand that there is a risk that,  
17 subsequent to the execution of this Agreement, they may accrue, obtain, incur,  
18 suffer, or sustain claims which in some conceivable way arise out of, are caused  
19 by, are connected with, or relate to the facts alleged or claims asserted in the First  
20 Amended Complaint, and that such claims are unanticipated at the time this  
21 Agreement is signed, or are not presently capable of being ascertained. The  
22 Settling Parties further acknowledge that there is a risk that any claims as are  
23 known or should be known may become more serious than they now expect or  
24 anticipate. Nevertheless, the Settling Parties hereby expressly waive all rights they  
25 may have in such unknown consequences or results. The Settling Parties  
26 acknowledge that they have had the benefit of and the opportunity to consult with  
27 their counsel, understand the import of Civil Code section 1542, and expressly  
28 waive the protection of Civil Code section 1542, which provides as follows:

1           **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**  
2           **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**  
3           **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**  
4           **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**  
5           **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR**  
6           **OR RELEASED PARTY.**

7           **XIII. EFFECT OF TERMINATION**

8           **1. Termination Notice.** In the event that one of the conditions in Section  
9           XI.1 does not occur and the Final Approval Order has not become Non-  
10           Appealable, either Co-Lead Class Counsel or Defendants may void this Settlement  
11           by providing written notice to counsel for all other Parties to the Settlement within  
12           seven days (7) days after the event prompting the right to terminate (“Termination  
13           Notice”).

14           **2. Effectiveness of Termination Notice.** The Termination Notice will  
15           become effective to void the Settlement Agreement only if and after the Settling  
16           Parties have failed to reach a written agreement within thirty (30) days of the event  
17           triggering the Termination Notice to modify this Settlement Agreement to resolve  
18           the issue and Counsel for the Parties have not agreed in writing to extend the  
19           deadline.

20           **3. Effect of Termination.** In the event that any party to the agreement  
21           terminates this settlement pursuant to paragraphs XIII.1 and XIII.2 or any other  
22           circumstance occurs which causes the Final Order to not become non-appealable  
23           and the parties have not entered into a written modification of the Settlement  
24           Agreement within 30 days of such occurrence:

25                   (a)    the monies in the escrow account (including any interest or  
26                   earning accrued while in escrow, but less any amount paid or owing for  
27                   taxes or other expenses reasonably incurred by Class Counselor the  
28                   Settlement Administrator while in the escrow account in connection with  
                  administering the settlement agreement, including any amounts necessary to  
                  prepare tax returns or monies paid or owing to the Settlement Administrator

1 or the escrow agent), will be returned to each payor, pro rata according to  
2 the amount of its respective payment(s) into the settlement fund upon written  
3 request within 10 business days of such written request;

4 (b) the Settling Parties will not be released from the claims asserted  
5 in this action notwithstanding anything contained herein to the contrary;

6 (c) the Settlement Agreement will be void *ab initio* except that the  
7 following provisions will survive: (i) the amount of the settlement and the  
8 terms of this Settlement Agreement will remain confidential if this  
9 Settlement Agreement has not been filed with the Court; and (ii) the  
10 requirements of this Section XIII.3 (a)-(e) of this Agreement;

11 (d) the respective positions, rights and responsibilities of the  
12 Settling Parties will be deemed to have reverted to their respective status in  
13 this litigation as of September 10, 2022, and, except as may otherwise be  
14 expressly provided herein, the settling parties will proceed in all respects as  
15 if the Settlement Agreement never existed (except as provided in this  
16 Section XIII.3 (c)); and

17 (e) any motions and trial that were held in abeyance or for which a  
18 stay applied (in whole or in part) pursuant to the Court's September 13,  
19 2022, Order (ECF No. 376) will be completed in accordance with that Order.

#### 20 **XIV. MISCELLANEOUS PROVISIONS**

21 **1. Tax Advice Not Provided.** No opinion or advice concerning the Tax  
22 consequences of the Settlement Agreement has been given or will be given by  
23 counsel involved in the Action to the Class, nor is any representation or warranty  
24 in this regard made by virtue of this Settlement Agreement. The Tax obligations  
25 of the Class and the determination thereof are the sole responsibility of each Class  
26 Member, and it is understood that the Tax consequences may vary depending on  
27 the particular circumstances of each Class Member.

1           **2. Binding Effect.** This Settlement Agreement will be binding upon, and  
2 inure to the benefit of, the successors, assigns, executors, administrators, affiliates,  
3 heirs and legal representatives of the Settling Parties and Released Parties,  
4 provided, however, that no assignment by any Settling Party will operate to  
5 relieve such party of its obligations hereunder.

6           **3. Good Faith.** The Settling Parties: (a) acknowledge that it is their  
7 intent to consummate this Settlement; (b) agree to exercise their best efforts and to  
8 act in good faith to cooperate to the extent necessary to effectuate and implement  
9 all terms and conditions of this Settlement Agreement; and (c) agree to exercise  
10 their best efforts and to act in good faith to cooperate to the extent necessary to  
11 obtain the fullest possible participation of all Class Members in any Settlement.  
12 The Settling Parties and their counsel agree to cooperate fully with one another in  
13 seeking entry of the Preliminary Approval Order and final approval of the  
14 Settlement. The Settling Parties also agree to promptly execute and/or provide  
15 such documentation as may be reasonably required to obtain preliminary and final  
16 approval of this Settlement.

17           **4. Exhibits.** Any exhibits attached hereto and identified herein are  
18 hereby incorporated by reference as though fully set forth herein.

19           **5. Modification.** This Settlement Agreement may be amended or  
20 modified only by written instrument signed by Co-Lead Counsel on behalf of  
21 Plaintiffs and the Class and by Defense Counsel on behalf of Alerus or its  
22 respective successors in interest and if the Court has already entered a preliminary  
23 approval order, only if the Court approves the modification or amendment.

24           **6. Representations.** This Settlement Agreement constitutes the entire  
25 agreement among the Settling Parties, and no representations, warranties or  
26 inducements have been made to any party concerning this Settlement Agreement,  
27 other than the representations, warranties, and covenants contained and  
28 memorialized in this document. In the event of any conflicts between this



1 Settlement Agreement and any other document (other than a Stipulation and Order  
2 by the Court), the Settling Parties agree that this Settlement Agreement will  
3 control.

4 **7. Authorization.** Each signatory to this Settlement Agreement  
5 represents that he or she is authorized to enter into this Settlement Agreement on  
6 behalf of the respective parties he or she represents.

7 **8. Counterparts.** This Settlement Agreement may be executed in one or  
8 more original, photocopied, or facsimile counterparts. All executed counterparts  
9 and each of them will be deemed to be one and the same instrument.

10 **9. Governing Law.** All terms of this Settlement Agreement will be  
11 governed by and interpreted according to the laws of the State of California  
12 without regard to its rules of conflicts of law and in accordance with the laws of  
13 the United States.

14 **10. Headings.** The headings in this Settlement Agreement are used for  
15 purposes of convenience and ease of reference only and are not meant to have any  
16 legal effect, nor are they intended to influence the construction of this Settlement  
17 Agreement in any way.

18 **11. Waiver.** The waiver by one party of any breach of this Settlement  
19 Agreement by any other party will not be deemed a waiver of any other breach of  
20 this Settlement Agreement. The provisions of this Settlement Agreement may not  
21 be waived except by a writing signed by the affected party, or counsel for that  
22 party, or orally on the record in court proceedings.

23 **12. Continuing Jurisdiction.** The Settling Parties agree to submit to the  
24 jurisdiction of the Court and will be bound by the terms of this Settlement  
25 Agreement, including, without limitation, disputes related to implementing and  
26 enforcing the Settlement embodied in this Settlement Agreement. Any and all  
27 disputes related to claims that are not satisfactorily resolved by the Settling Parties  
28

1 will be submitted to the Court for final resolution. The Final Order will provide  
2 that the Court will have continuing jurisdiction over this Settlement.

3 **13. Enforcement of this Agreement.** In the event that any Party to this  
4 Settlement Agreement believes that another Party to this Settlement Agreement  
5 has breached the terms of this Settlement Agreement, that Party will notify the  
6 alleged breaching Party and Counsel in writing setting forth the nature of the  
7 breach and the requested method to cure the breach at least 14 days prior to filing  
8 any litigation to enforce the terms of the Settlement Agreement. In the event that  
9 the allegedly breaching Party fails to cure the alleged breach as set forth in the  
10 written notification after 14 days, the other Party may then file an action to  
11 enforce the Settlement Agreement. A Party who achieves some success on the  
12 merits in demonstrating a breach occurred, could have been reasonably cured  
13 within 14 days (or a longer time set forth in the written notification) and was not  
14 cured within that time, will be entitled to attorneys' fees and expenses consistent  
15 with the standards of ERISA § 502(g)(1).

16 **14. No Party Is the Drafter.** The Settlement Agreement is deemed to  
17 have been drafted by all Settling Parties hereto, as a result of arm's-length  
18 negotiations among the Settling Parties. Whereas all Settling Parties have  
19 contributed substantially and materially to this Settlement Agreement, it will not  
20 be construed more strictly against one party than another.

21 **15. Extensions.** The Settling Parties reserve the right, subject to the  
22 Court's approval, to request any reasonable extensions of time that might be  
23 necessary to carry out any of the provisions of this Settlement Agreement.

24 **16. Evidentiary Effect.** Neither this Settlement Agreement nor the  
25 Settlement, nor any negotiation, nor act performed, nor document executed, nor  
26 proceedings held pursuant to or in forbearance of this Settlement Agreement or  
27 the Settlement, even if this Settlement Agreement is cancelled or terminated: (a)  
28 is, or may be deemed to be, or may be used as an admission of, or evidence of the

1 validity of any Settled Claim, or of any wrongdoing, negligence,  
2 misrepresentation, violation or liability of any Settling Party; (b) is, or may be  
3 deemed to be, or may be used as an admission of, or evidence of any infirmity in  
4 the Complaint or claims asserted by the Class; or (c) is, may be deemed to be, or  
5 may be used as an admission of, or evidence of, any fault or omission of any  
6 Settling Party in any civil, criminal or administrative proceeding in any court,  
7 administrative agency, or tribunal, including in this Action. However, this  
8 Settlement Agreement may be used in such proceedings as may be necessary to  
9 consummate or enforce this Settlement Agreement, the Settlement, or the Final  
10 Order; and any Settling Party may file this Settlement Agreement and/or the Final  
11 Order in any action to support a defense or counterclaim based on principles of res  
12 judicata, collateral estoppel, release, good faith settlement, judgment bar, or  
13 reduction or any other theory of claim preclusion or issue preclusion or similar  
14 defense or counterclaim or in any subsequent action brought by any Alerus or any  
15 Alerus Releasee, including insurers, seeking subrogation, contribution, indemnity  
16 or any other theory of recovery as against the KPC Defendants and/or Non-  
17 Releasees.

18 **17. Final and Complete Resolution.** The Settling Parties intend this  
19 Settlement Agreement to be a final and complete resolution of all disputes  
20 between them with respect to this Action. The Settlement compromises claims  
21 which are contested and will not be deemed an admission by any Settling Party as  
22 to the merits of any claim or defense. The Settling Parties agree that the amount  
23 paid to the Settlement Fund and the other terms of the Settlement Agreement were  
24 negotiated in good faith at arm's-length by the Settling Parties and reflect a  
25 settlement that was reached voluntarily after consultation with competent legal  
26 counsel.

27 **18. Interpretation and Construction.** In interpreting this Settlement  
28 Agreement, duplicative and/or overlapping release provisions will not be

1 presumed or construed to be intended to release separate claims or have different  
2 meanings. Neither prior versions of this Settlement Agreement or the Agreements  
3 in Principle, nor the negotiating history of these terms will be used to aid in any  
4 interpretation or construction of those terms.

5 **19. Confidential Information.** The Settling Parties will continue to  
6 abide by the terms of the Protective Order (ECF No. 74). Additionally, the  
7 Settlement Administrator will be entitled to maintain the Class Data for one year  
8 after the date of distribution of the Settlement to Class Members or Final  
9 Disposition (as defined in the Protective Order), whichever is later.

10 IN WITNESS WHEREOF, the parties hereto, intending to be legally bound  
11 hereby have caused this Settlement Agreement to be executed by them or their  
12 duly authorized counsel, on the dates set forth below.

13 **[Signature page follows]**  
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Agreed to by Class Counsel



DATED: October 6, 2022

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*On Behalf of Plaintiff and the Class*

1 Agreed to by Alerus Financial, N.A.,

2 Dated October 7, 2022

3 Signature: Nels Carlson

4 Printed Name: Nels Carlson

5 Title: Managing Director

7 Dated: October 7, 2022

Approved as to form and content by

Lars C. Golumbic

Lars C. Golumbic (admitted *pro hac vice*)  
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*Attorneys for Alerus Financial, N.A.*

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