

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is entered into between plaintiff Frank D'Agostino ("Plaintiff" or "Mr. D'Agostino") on behalf of himself and the Class members, and defendant WFS Financial Inc, now known as Wachovia Dealer Services, Inc. ("Defendant" or "WFS"). Mr. D'Agostino and WFS are collectively referred to as the "Parties."

### RECITALS

WHEREAS, on January 4, 2007, Plaintiff commenced a putative consumer class action entitled *Frank D'Agostino v. WFS Financial, Inc.*, Docket No. CV-07-4027731-S, in Connecticut Superior Court, Judicial District of Hartford;

WHEREAS, on February 1, 2007, the Action was removed to the United States District Court for the District of Connecticut, No. 3:07-cv-00161 (CFD);

WHEREAS, Plaintiff alleges that WFS violated the foreclosure provisions of the Connecticut Retail Installment Sales Financing Act, Conn. Gen. Stat. §§ 36a-770 *et seq.* ("RISFA"), and Article 9 of the Uniform Commercial Code, Conn. Gen. Stat. §§ 42a-9-101 *et seq.* ("UCC"), when it repossessed and sold Class members' vehicles and credited their accounts with the net sales proceeds rather than the fair market value of the repossessed vehicles;

WHEREAS, Plaintiff also alleges that, with respect to a subclass of Class members, WFS violated RISFA by failing to provide timely notice of the repossession of the vehicles and the right of redemption;

WHEREAS, Plaintiff also alleges that, with respect to another subclass of Class members, WFS violated RISFA and the UCC by failing to provide timely and reasonable notice of the sale of the vehicles;

WHEREAS, Defendant denies the allegations and all liability with respect to any and all facts and claims alleged in the Action and further denies that Plaintiff or any Class member, including any member of any subclass, has suffered any damage;

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

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

WHEREAS, on June 17, 2008, the Parties and their counsel participated in a full-day mediation with the Honorable Edward A. Infante of JAMS and reached a settlement;

WHEREAS, Class Counsel, while maintaining that Plaintiff and the Class members would prevail on all issues in the Action, has concluded that the terms and conditions of this Settlement Agreement are fair, reasonable and adequate to Plaintiff and to the Class members and in their best interests, and Plaintiff has agreed to settle the claims raised in the Action, subject to the

approval of the Court, pursuant to the terms and provisions of this Settlement Agreement, after considering: (a) the benefits that Plaintiff and the Class members will receive from settlement of the Action; (b) the attendant risks of litigation; and (c) the desirability of permitting a settlement to be consummated as provided by the terms of this Settlement Agreement; and

WHEREAS, Defendant, while continuing to deny all allegations of liability, also desires to settle, compromise and terminate Plaintiff's and the Class members' claims against it to avoid the further substantial expense, inconvenience and distraction of burdensome and protracted litigation and to put to rest forever all claims which have been or could have been asserted against WFS in this Action or elsewhere, and which arise from or are in any way related to the acts, transactions or occurrences alleged in the Action;

NOW THEREFORE, in consideration of the covenants and agreements set forth herein, Plaintiff, on behalf of himself and the Class members, and WFS agree to the Settlement of the Action, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, 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 **Action.** The lawsuit entitled *Frank D'Agostino v. WFS Financial, Inc.*, United States District Court for the District of Connecticut, No. 3:07-cv-00161 (CFD).

1.2 **Class.** Individuals who are listed in Exhibit A, which consist of individuals: (a) who were retail buyers of motor vehicles that were purchased pursuant to a retail installment contract or installment loan contract executed in the State of Connecticut and subsequently held by WFS; (b) whose motor vehicles were subsequently repossessed and sold by WFS within the Class Period; (c) as to whom the net proceeds of the sale were insufficient to cover the balance due under the retail installment contract or installment loan contract; (d) whose accounts WFS credited with the actual sales proceeds (as opposed to the fair market value of the motor vehicle); and (e) who were not parties to any legal action brought by or against WFS in which judgment was entered prior to June 17, 2008.

1.3 **Class Counsel or Plaintiff's Counsel.** Daniel S. Blinn of the Consumer Law Group, LLC.

1.4 **Class Period.** The period commencing on January 4, 2004, and terminating on July 1, 2008, this latter date representing the sale date through which WFS has reviewed putative Class members' files.

1.5 **Court.** The United States District Court for the District of Connecticut.

1.6 **Defendant's Counsel.** Michael J. Agoglia, James R. McGuire and Wendy M. Garbers of Morrison & Foerster LLP and Daniel L. FitzMaurice and Jason S. Weathers of Day Pitney LLP.

1.7 **Deficiency Judgment.** A judgment obtained by WFS against any Class member for any deficiency owed following the resale of the Class member's motor vehicle.

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

- (a) The Settlement Agreement is fully executed by Plaintiff, WFS, Class Counsel and the Defendant's Counsel.
- (b) The Court enters a Final Judgment and Order of Dismissal approving the Settlement of the Action in a manner substantially consistent with the terms and intent of the Settlement Agreement.
- (c) Either: (i) sixty-five (65) days have passed after completed service on the Parties to the Action and all objectors to the Settlement of the Action, if any, of notice of entry of the Court's Final Judgment and Order of Dismissal finally approving the Settlement of the Action, and within such time no appeal is taken or no extension for such appeal is granted, or (ii) if an appeal is taken with respect to the Court's Final Judgment and Order of Dismissal approving the Settlement of the Action, the appellate court has by final order affirmed the Court's judgment finally approving the Settlement of the Action, or has denied review, or the appellant otherwise has exhausted all appellate remedies, including, but not limited to, attempts to obtain discretionary review.

1.9 **Final Judgment and Order of Dismissal.** The proposed order in the form attached hereto as Exhibit D.

1.10 **Hearing.** The hearing at which the Court will determine whether to grant final approval of the Settlement.

1.11 **Notice.** The "Notice of Class Action Settlement," which is to be sent by mail to Class members in the form attached hereto as Exhibit C.

1.12 **Order Concerning Class Certification, Notice, Scheduling, and Preliminary Approval.** The proposed order in the form attached hereto as Exhibit B.

1.13 **Released Parties.** WFS and Wachovia Dealer Services, Inc., and any entities and persons who acted or who may have been alleged to have acted in concert with or at the request or direction of WFS and Wachovia Dealer Services, Inc., together with each of their respective present, former and future directors, officers, partners, associates, employees, agents, contractors, servants, accountants, auditors, insurers, reinsurers, appraisers, investment advisers, underwriters, attorneys, brokers, parent companies, subsidiaries, affiliates, predecessors, successors, assigns (whether express or by implication or operation of law), heirs, executors, personal representatives, estates, administrators and legal representatives.

1.14 **Settlement.** The settlement contemplated by this Settlement Agreement.

1.15 **Settlement Administrator.** Tilghman & Co., P.C., at 11250 Independence Drive, Suite 102, Birmingham, Alabama 35202-1250.

1.16 **Settlement Agreement.** This document, including the text and exhibits of this Settlement Agreement, which has been signed by Plaintiff, Class Counsel, Defendant and Defendant's Counsel.

1.17 **Settlement Class and Settlement Subclasses.** The class and subclasses defined in section 3.1 hereof.

1.18 **Subclass A.** Individuals who are in the Class and designated as Subclass A members in Exhibit A. Subclass A is made up of individuals who WFS's records indicate were not sent written notice of the repossession of their vehicles within three days of the date of repossession, as determined by WFS's file-by-file review. Subclass A does not include individuals who would otherwise qualify for membership but are also in Subclass B.

1.19 **Subclass B.** Individuals who are in the Class and designated as Subclass B members in Exhibit A. Subclass B is made up of individuals who WFS's records indicate were not sent written notice of the private sale or other intended disposition of their vehicles at least ten days prior to the time that such private sale or other disposition could be made, as determined by WFS's file-by-file review.

## **2. Settlement Procedures**

2.1 The Parties, as soon as is reasonably practicable, shall apply jointly to the Court for an Order Concerning Class Certification, Notice, Scheduling, and Preliminary Approval substantially in the form of Exhibit B hereto: (a) preliminarily approving this Settlement Agreement as within the range of possible final approval as fair, adequate and reasonable; (b) preliminarily certifying the Settlement Class, Settlement Subclass A and Settlement Subclass B, as defined in section 3.1 for settlement purposes only; (c) setting a final approval Hearing date; (d) setting a period of time during which Class members may submit requests to be excluded from the Settlement Class or object to the Settlement of this lawsuit; and (e) approving the manner and form of class notice described in section 3.

2.2 If the Court certifies any classes or enters any orders relating to Plaintiff and Class Counsel, such actions shall not be an adjudication of any fact or issue for any purpose other than the effectuation of this Settlement Agreement and shall neither be considered as law of the case or res judicata nor have collateral estoppel effect in this or any other proceeding. In the event that final approval is not achieved, the Court's orders contemplated by this section shall be null, void and vacated and shall not be used or cited thereafter by any person or entity.

## **3. The Settlement Class and Class Notice**

3.1 **Settlement Class and Settlement Subclasses.** For settlement purposes only, the Parties agree that the Court may certify: (a) a Settlement Class of individuals identified as Class members in Exhibit A, who were identified as described in section 1.2 above; (b) a Settlement Subclass A of individuals identified as Subclass A members in Exhibit A, who were identified as

described in section 1.18 above; and (c) a Settlement Subclass B of individuals identified as Subclass B members in Exhibit A, who were identified as described in section 1.19 above.

**3.2 Decertification of the Settlement Class if Settlement Not Approved.** If the Court does not grant final approval of the Settlement, certification of the Settlement Class and Subclasses will be vacated and the Parties will be returned to their status quo ante with respect to the Action as if this Settlement Agreement had not been entered into. In the event that final approval is not achieved: (a) any Court orders preliminarily or finally approving the certification of any class contemplated by this Settlement Agreement shall be null, void, and vacated and shall not be used or cited thereafter by any person or entity; and (b) the fact of this Settlement Agreement, that WFS sought the certification of any class under this Settlement Agreement, or that the Court preliminarily approved the certification of a Settlement Class, Settlement Subclass A, and/or Settlement Subclass B shall not be used or cited thereafter by any person or entity, including in any contested proceeding relating to the certification of any class.

**3.3 Form of Notice.** The Notice shall be substantially in the form attached as Exhibit C. The Notice to Class members shall provide for exclusion of individuals from the Class upon their written request for exclusion, hand-delivered or mailed to Class Counsel and postmarked on or before the date specified in the Notice and shall contain an opt-out form for this purpose. Proof of mailing of the Notice shall be submitted to the Court as part of the application for final approval of the Settlement. The Notice shall inform the Class members that they may contact Class Counsel to learn whether they are in either of the subclasses and whether they will be receiving a check under this Settlement Agreement.

**3.4 Administering the Settlement Agreement.** WFS shall pay the reasonable costs of administering this Settlement Agreement.

**3.5 Manner of Giving Notice.** Within 15 days of the Court's order preliminarily approving this Settlement Agreement, WFS shall provide the Settlement Class list to the Settlement Administrator. Within 30 days of the Court's order preliminarily approving this Settlement Agreement, the Settlement Administrator shall update the Settlement Class list through the National Change of Address database and shall mail the notices described in section 3.3 above to the Settlement Class members by first-class mail. Within 10 days of receiving any notices that are returned as undeliverable, the Settlement Administrator shall conduct a second address search through TransUnion and, in the event that the TransUnion search reveals an alternate address, re-mail those notices. In the event any notices are returned from the Post Office with a better address, the Settlement Administrator shall re-mail those notices. WFS will be obligated to provide only a single class notice to all Settlement Class members shown to reside at the same unique address. No further notice shall be required after the Court enters a Final Judgment and Order of Dismissal approving the Settlement of the Action.

**3.6 Opting Out.** Any Settlement Class member may elect to be excluded from this Settlement and from the Settlement Class and subclasses by opting out. Any such Settlement Class member must give written notice of the election to be excluded to Class Counsel. The opt-out request must be substantially in the form of the opt-out form contained in the Notice attached as Exhibit C and must be hand-delivered or postmarked on or before the date specified in the Notice. Within 15 days after the expiration of the opt-out period, Class Counsel shall provide

Defendant's Counsel with copies of the completed opt-out forms. If more than 5% of the people eligible for Class membership elect to opt out of the Class, WFS may elect to withdraw from this Settlement Agreement by providing written notice to Class Counsel of such election not later than 5 days before the Hearing, in which case this Settlement Agreement shall be of no force and effect and the Settlement Class and Subclasses shall be decertified pursuant to section 3.2.

**3.7 Settlement Administrator's Report.** In response to periodic requests, the Settlement Administrator shall inform Class Counsel of the status of the mailing of the Notices and the efforts to obtain current addresses for the Settlement Class members and will provide a written update to Class Counsel and Defendant's Counsel not less than 15 days prior to the Hearing.

#### **4. Classwide Settlement Relief**

4.1 As to each Settlement Class member who has not requested exclusion from the Settlement Class pursuant to the procedures set forth in section 3.6 above, in full settlement and compromise of all claims, the following events will occur within 30 days after the Effective Date:

- (a) WFS shall release each Settlement Class member from any obligation to pay any deficiency that was or is claimed by WFS after the repossession and sale of the motor vehicles. WFS shall file all papers necessary to withdraw or dismiss pending legal proceedings (if any) seeking Deficiency Judgments against Class members. If a Deficiency Judgment was entered by a court on or after June 17, 2008, then WFS will file a satisfaction of judgment with the court. WFS acknowledges that the obligations released under this section were subject to a bona fide dispute.
- (b) WFS shall contact the following credit reporting bureaus and request the deletion of the Class members' tradelines. WFS will notify:

Equifax	TransUnion	Experian
P.O. Box 740256	P.O. Box 2000	701 Experian Parkway
Atlanta, Georgia 30374	Chester, Pennsylvania 19016	Allen, Texas 75013

- (c) The Settlement Administrator shall mail to each Settlement Class member who is a member of Settlement Subclass A and upon whom a Notice has been served and not returned as undeliverable, as provided for in section 3.5 above, a check in the amount of \$215.00; provided, however, that there shall be a single check sent for each account, which check shall be made payable and mailed to the primary debtor on the account.
- (d) The Settlement Administrator shall mail to Plaintiff and to each Settlement Class member who is a member of Settlement Subclass B and upon whom a Notice has been served and not returned as undeliverable, as provided for in section 3.5 above, a check in the amount of \$575.00; provided, however, that there shall be a single check sent for each account, which

check shall be made payable and mailed to the primary debtor on the account.

4.2 The checks to the members of Settlement Subclass A and Settlement Subclass B will be issued and mailed by and in the name of WFS or the Settlement Administrator, with the cost of such mailing paid for by WFS. All such checks shall contain a notation stating that they must be cashed within 90 days of issuance. The Settlement Administrator shall certify to the Court that all checks were issued in the amounts required by section 4.1 above and mailed within the timeframe provided herein, all of which shall be subject to review by Class Counsel. If the Court's approval of the Settlement does not become final, no cash payment will be made.

## **5. Other Settlement Relief**

5.1 At least 10 days prior to the Hearing, Class Counsel shall apply to the Court for: (i) an award of reasonable attorney's fees and costs in an amount not greater than \$80,000; and (ii) a class representative fee in an amount not greater than \$2,000 to Plaintiff. Class Counsel and Plaintiff agree not to retain any fee awards in excess of the foregoing amounts.

5.2 The fees referred to in section 5.1 are to be paid by WFS in addition to, and not out of, payments WFS makes to the Class members, and shall be paid to Class Counsel within 20 business days of the Effective Date, subject to Class Counsel's and Plaintiff's obligation to make appropriate refunds or repayments to WFS if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or cost award is reduced or reversed.

5.3 It is specifically understood and agreed that any award of reasonable attorney's fees and costs and the class representative fee shall constitute the exclusive award of fees, expenses and costs pursuant to this Settlement. WFS confirms that these fees were negotiated at arm's length and that the negotiations did not begin until after all of the benefits to the Class members were agreed upon. WFS agrees not to oppose the application for these fees.

## **6. Release of Claims**

6.1 **Class Claims.** Upon final approval, Plaintiff, each Settlement Class member who has not opted out of this Settlement Agreement in accordance with the terms of this Settlement Agreement, and each of their respective spouses, executors, representatives, heirs, successors, bankruptcy trustees, guardians, wards, joint tenants, tenants in common, tenants by the entirety, co-borrowers, agents and assigns, and all those who claim through them or who assert claims on their behalf, will be deemed to have completely released and forever discharged the Released Parties, and each of them, from any claim, right, demand, charge, complaint, action, cause of action, obligation, or liability of any and every kind, including, without limitation, those based on the Released Parties' alleged violation of RISFA and the UCC, or any other federal, state, or local law, statute, regulation, common law or contractual undertaking, including all claims for monetary, equitable, declaratory, injunctive, or any other form of relief, whether known or unknown, suspected or unsuspected, under the law of any jurisdiction, which Plaintiff or any Settlement Class member ever had, now has or may have in the future resulting from, arising out of or in any way, directly or indirectly, connected with: (a) any acts or omissions that were

raised in the Action or that relate to any aspect of the lending relationship between each Settlement Class member and the Released Parties, including, but not limited to, the solicitation, application, processing, underwriting, pricing, origination, disclosures, closing, funding, modification, servicing, enforcement, sale or securitization of such loans, and efforts to foreclose upon, repossess or sell any collateral securing such loans; and (b) any event, matter, dispute or thing that in whole or in part, directly or indirectly, relates to or arises out of said events specified in subsection (a) of this section.

**6.2 Unknown Claims.** Plaintiff and Settlement Class members may hereafter discover facts other than or different from those that they know or believe to be true with respect to the subject matter of the claims released pursuant to the terms of section 6.1, but each of those individuals expressly agrees that, upon entry of the Court's Final Judgment and Order of Dismissal, 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 section 6.1, without regard to subsequent discovery or existence of such different or additional facts.

**6.3 Bar to Future Suits.** Plaintiff, and Settlement Class members who do not opt out in accordance with this Settlement Agreement, shall be permanently enjoined from bringing, joining, prosecuting or continuing to prosecute any legal proceeding against any Released Party with respect to the conduct, services, fees, charges, acts or omissions of any Released Party relating to all matters within the scope of the release in this section, in sections 6.1 and 6.2 above or actions taken by a Released Party that are authorized or required by this Settlement Agreement or by the Court's Final Judgment and Order of Dismissal. The Court shall retain jurisdiction to enforce its judgment, releases and bar to suits contemplated by this Settlement Agreement. It is further agreed that this Settlement Agreement may be pleaded as a complete defense to any proceeding subject to this section, and the release in this section and sections 6.1 and 6.2 shall have *res judicata* and other preclusive effect.

## **7. Dismissal of Litigation**

At the time of the Hearing, the Parties shall jointly move the Court for a Final Judgment and Order of Dismissal, substantially in the form attached as Exhibit D, dismissing the claims asserted in this lawsuit with prejudice and on the merits.

## **8. Continuing Jurisdiction**

The Court shall have continuing jurisdiction to enforce this Settlement Agreement's terms, and to enforce its Final Judgment and Order of Dismissal entered in this Action.

## **9. Non-Disparagement**

Class Counsel and Plaintiff agree to refrain from intentionally disparaging WFS and its parent company, subsidiaries, affiliates, successors or assigns with respect to any issue related to this case. Class Counsel and Plaintiff agree to refrain from taking any action designed to harm the public perception of WFS and its parent company, subsidiaries, affiliates, successors or assigns regarding any issue related to this case, except they may provide sworn testimony if required by an order from a court of competent jurisdiction. WFS and Defendant's Counsel

agree to refrain from intentionally disparaging Plaintiff 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.

## **10. Representations and Warranties**

**10.1 No Additional Persons with Financial Interest.** Plaintiff and Class Counsel warrant and represent that they are not aware of any persons (natural or legal) having any interest in any award of attorney's fees, costs and litigation expenses in connection with the Action. Plaintiff and Class Counsel agree to hold Defendant harmless from any claim by any person for an award of attorneys' fees, costs, and litigation expenses in connection with the Action.

**10.2 Parties Authorized to Enter into Settlement Agreement.** All persons executing this Settlement Agreement and any of the exhibits hereto, or any related documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to this Settlement Agreement to effectuate its terms. Each party hereto further represents and warrants that he, she, or it intends to be bound fully by the terms of this Settlement Agreement.

**10.3 No Attempt by Parties to Object.** Plaintiff and Defendant each represent and warrant that they have not nor will they: (a) attempt to void this Settlement Agreement in any way; or (b) solicit, encourage or assist in any fashion any effort by any person (natural or legal) to object to this Settlement Agreement.

**10.4 Cooperation.** The settling Parties, Class Counsel and Defendant's Counsel agree to cooperate fully with one another in seeking Court entry of the Order Concerning Class Certification, Notice and Scheduling and approval of the Settlement Agreement, and to promptly agree upon and execute all such other documentation containing such terms and conditions as to which they reasonably can agree, as may reasonably be required to effect final approval of the Settlement Agreement.

**10.5 Best Efforts.** The Parties agree that the terms of this Settlement Agreement reflect a good-faith settlement of disputed claims. Plaintiff, Class Counsel and WFS consider the Settlement effected by this Settlement Agreement to be fair and reasonable and will use their best efforts to seek approval of the Settlement by the Court, and in responding to any objectors, intervenors or other persons or entities seeking to preclude the final approval of this Settlement.

**10.6 Settlement Agreement Binding on Successors in Interest.** This Settlement Agreement shall be binding on and inure to the benefit of the respective heirs, successors, and assigns of the Parties. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

## **11. Miscellaneous**

**11.1 No Admission of Liability or Damages.** 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 the Action. This Settlement Agreement does not constitute a

waiver of any defenses or affirmative defenses that WFS or its successors may be entitled to assert in any future litigation, including, but not limited to, preemption.

**11.2 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. No representations, warranties or inducements have been made by the Parties hereto concerning this Settlement Agreement and its exhibits other than those contained and memorialized in such documents.

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

**11.4 Waiver.** The waiver by one party of any breach of this Settlement Agreement by the other party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.

**11.5 Governing Law.** This Settlement Agreement is intended to and shall be governed by the laws of the State of Connecticut. The construction, interpretation, operation, effect and validity of this Settlement Agreement, and all documents necessary to effectuate it, shall be governed by the substantive law of the State of Connecticut.

**11.6 No Construction Against Drafter.** This Settlement 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 Settlement Agreement.

**11.7 Time Periods.** The time periods and dates described in this Settlement Agreement related to the giving of notices and hearings are subject to Court approval and modification by the Court or by written stipulation of the Parties' counsel. The Parties may request that the Court allow reasonable extensions of time to carry out the provisions of the Settlement.

**11.8 Signatures.** The Parties may sign separate copies of this Settlement Agreement, which together will constitute one Settlement Agreement. Each copy shall be deemed to be an original, and execution of counterparts shall have the same force and effect as if the Parties had signed the same instrument. In addition, signature by facsimile will constitute sufficient execution of this Settlement Agreement.

*SEPT*  
Dated: ~~August~~ \_\_\_\_\_, 2008

PLAINTIFF AND CLASS REPRESENTATIVE  
OF THE SETTLEMENT CLASS

By:   
FRANK D'AGOSTINO

*SEPTEMBER*  
Dated: August \_\_\_\_\_, 2008

DEFENDANT WFS FINANCIAL, INC., NOW  
KNOWN AS WACHOVIA DEALER SERVICES, INC.

By: \_\_\_\_\_  
WACHOVIA DEALER SERVICES, INC.

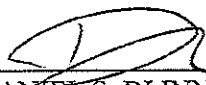
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POSITION: \_\_\_\_\_

*6/2/08*  
Dated: August \_\_\_\_\_, 2008

**APPROVED AS TO FORM:**

CONSUMER LAW GROUP, LLC

By:   
DANIEL S. BLINN, ESQ.  
Attorneys for Plaintiff and Class  
Representative Frank D'Agostino and the  
Settlement Class

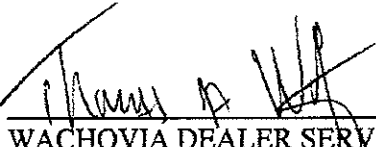
Dated: August \_\_\_\_\_, 2008

MORRISON & FOERSTER LLP

By: \_\_\_\_\_  
MICHAEL J. AGOGLIA, ESQ.  
JAMES R. MCGUIRE, ESQ.  
WENDY M. GARBERS, ESQ.  
Attorneys for WFS Financial Inc, now  
know as Wachovia Dealer Services, Inc.

Dated: September 15, 2008

DEFENDANT WFS FINANCIAL, INC., NOW  
KNOWN AS WACHOVIA DEALER SERVICES, INC.

By:   
WACHOVIA DEALER SERVICES, INC.

NAME: Thomas A Wolfe

POSITION: President

**APPROVED AS TO FORM:**


Dated: September \_\_\_\_\_, 2008

CONSUMER LAW GROUP, LLC

By: \_\_\_\_\_  
DANIEL S. BLINN, ESQ.  
Attorneys for Plaintiff and Class  
Representative Frank D'Agostino and the  
Settlement Class

Dated: September 25, 2008

MORRISON & FOERSTER LLP

By:   
MICHAEL J. AGOGLIA, ESQ.  
JAMES R. MCGUIRE, ESQ.  
WENDY M. GARBERS, ESQ  
Attorneys for WFS Financial Inc, now  
known as Wachovia Dealer Services, Inc.

# EXHIBIT B

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

FRANK D'AGOSTINO, on behalf of himself and all others similarly situated,	)	No. 3:07-cv-00161 (CFD)
	)	
Plaintiff,	)	
	)	
v.	)	<b>[PROPOSED] ORDER</b>
	)	<b>CONCERNING CLASS</b>
WFS FINANCIAL, INC.,	)	<b>CERTIFICATION, NOTICE,</b>
	)	<b>SCHEDULING AND</b>
Defendant.	)	<b>PRELIMINARY APPROVAL</b>
	)	

This matter is before the Court on the application of Frank D'Agostino ("Plaintiff" or "Mr. D'Agostino") and WFS Financial Inc (now known as Wachovia Dealer Services, Inc.) ("Defendant" or "WFS") for an order concerning class certification, notice, scheduling and preliminary approval of the settlement of this matter in accordance with a Settlement Agreement dated September \_\_\_\_, 2008 ("Settlement" or "Settlement Agreement"), a copy of which is attached hereto as Exhibit 1 and incorporated herein, which, together with the exhibits annexed to it, sets forth the terms and conditions for a proposed settlement and dismissal with prejudice of this lawsuit.

Having read and considered the Settlement Agreement, as well as the exhibits annexed thereto, and having heard the parties and given due consideration, the Court grants the application for this Order Concerning Class Certification, Notice, Scheduling and Preliminary Approval.

IT IS THEREFORE ORDERED THAT:

1. This Order incorporates by reference the definitions in the Settlement Agreement, unless terms are otherwise defined in this Order.
2. For settlement purposes only, the Court certifies the following Settlement Class:  
  
Individuals: (a) who were retail buyers of motor vehicles that were purchased pursuant to a retail installment contract or installment

loan contract executed in the State of Connecticut and subsequently held by WFS; (b) whose motor vehicles were subsequently repossessed and sold by WFS between January 4, 2004 and July 1, 2008; (c) as to whom the net proceeds of the sale were insufficient to cover the balance due under the retail installment contract or installment loan contract; (d) whose accounts WFS credited with the actual sales proceeds (as opposed to the fair market value of the motor vehicle); and (e) who were not parties to any legal action brought by or against WFS in which judgment was entered prior to June 17, 2008.

3. For settlement purposes only, the Court also certifies a Subclass A, which is specifically delineated in Exhibit 2 hereto, and consists of Settlement Class members who, WFS's records indicate, were not mailed notices of the repossession of their vehicles within three days of repossession. For settlement purposes only, the Court also certifies a Subclass B, which is specifically delineated in Exhibit 2 hereto, and consists of Settlement Class members who, WFS's records indicate, were not mailed notices of the date after which their vehicles could be sold at least ten days prior to that date.

4. The Court finds that a class of persons whose motor vehicles were repossessed and subsequently sold between January 4, 2004 and July 1, 2008, where the net proceeds of the sales were insufficient to satisfy the balances due under their loan agreements, is an ascertainable class of many members, rendering it too large to make any form of joinder a viable alternative.

5. The Court also finds that each member of the Settlement Class shares a community of interest in that: (a) the class action raises common questions of law and fact that predominate over individual interests; (b) Plaintiff's claims are typical of the claims of absent members of the Settlement Class and are based on the same legal theories; and (c) Plaintiff and his counsel will adequately protect the interests of the Settlement Class.

6. Class Counsel, Daniel S. Blinn of the Consumer Law Group, LLC, is authorized to negotiate and enter into this Settlement, subject to Court approval, on behalf of Plaintiff and members of the Settlement Class.

7. The Court finds that the Settlement agreed to by Plaintiff and Defendant falls within the range of reasonableness. The Court further finds that there is sufficient basis for notifying the Settlement Class of the proposed settlement.

8. The Court hereby preliminarily approves the Settlement Agreement, subject to a hearing on the final approval of the Settlement Agreement (“Fairness Hearing”).

9. The Fairness Hearing shall be held before this Court at \_\_\_\_\_ on \_\_\_\_\_, 2008, at the United States District Court for the District of Connecticut, 450 Main Street, Suite 228, Hartford, Connecticut 06103, to determine: (a) whether the proposed settlement of this action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable and adequate and should be approved by the Court and whether a judgment approving the Settlement should be entered; (b) whether and in what amount WFS will be ordered to pay Class Counsel for attorney’s fees and expenses; and (c) whether and in what amount WFS will be ordered to pay Mr. D’Agostino an incentive fee for his role as Class Representative.

10. The Court sets the following dates for compliance with this Order:

- |             |   |
|-------------|---|
| _____, 2008 | Notice mailed to Class members [30 days after Order];   |
| _____, 2008 | Deadline for Class members to “opt out” or object [75 days after Order];  |
| _____, 2008 | Filing date for Class Counsel and Defense Counsel’s joint submission in support of the Settlement Agreement, Class Counsel’s fee application and the Class Representative’s incentive fee application [___ days before Fairness Hearing]; and |
| _____, 2008 | Fairness Hearing [at least 105 days after Order].   |

11. The Court approves, as to form and content, the Notice of Class Action Settlement (“Notice”) in the format attached to the Settlement Agreement as Exhibit C, as well as the Opt-Out Form attached to the Notice. The Court further finds that mailing of the Notice to Class members by the Settlement Administrator in the manner and form set forth in section 3.5 of the

Settlement Agreement constitutes the best notice practicable under the circumstances, and constitutes valid, due and sufficient notice to all persons entitled thereto and complies fully with the requirements of state and federal law.

12. WFS is hereby authorized to retain Tilghman & Co., P.C., 11250 Independence Drive, Suite 102, Birmingham, Alabama 35202-1250, as Settlement Administrator to administer the notice procedures and other aspects of this proposed settlement, as more fully set forth in the Settlement Agreement and below.

13. Settlement Class members shall have no more than 45 days after the date on which the Notice is mailed to request exclusion from the Settlement Class. Opt-out requests postmarked or hand-delivered more than 45 days after such date shall be invalid.

14. At or prior to the Fairness Hearing, the Settlement Administrator shall serve on Plaintiff's counsel and file with the Court proof, by declaration, of mailing of the Notice.

15. Within fifteen days after the expiration of the opt-out period, Class Counsel shall provide Defendant's Counsel with copies of the completed opt-out forms. If more than 5% of the people eligible for Class membership elect to opt out of the Settlement Class, WFS may elect to withdraw from this Settlement Agreement by providing written notice to Class Counsel of such election not later than 5 days before the Fairness Hearing, in which case the Settlement Agreement and this Order shall be of no force and effect and the Settlement Class and Subclasses shall be decertified pursuant to section 3.2 of the Settlement Agreement.

16. Members of the Settlement Class who have not requested exclusion in the time and manner set forth in the Notice shall be bound by all orders and judgments entered in this litigation, whether favorable or unfavorable to the Settlement Class.

17. Settlement Class members may enter an appearance in this litigation through counsel of their own choice, at their own expense. If they do not enter such an appearance, they will be represented by Class Counsel.

18. Any member of the Settlement Class who has not requested exclusion may appear at the Fairness Hearing and show cause: (a) why the proposed settlement contained in the

Settlement Agreement should not be approved as fair, reasonable and adequate and why a judgment should not be entered dismissing this matter with prejudice in accordance with the terms of the Settlement Agreement; (b) why Class Counsel should not be awarded costs and attorney's fees in the amount requested; and (c) why the Class Representative should not be awarded the incentive payment requested.

19. However, no member of the Settlement Class or any other person shall be heard or entitled to contest the approval of the terms and conditions of the proposed settlement or, if approved, the judgment to be entered thereon approving the same, or the award of attorney's fees and costs to Class Counsel or the incentive fee to the Class Representative, unless, on or before \_\_\_\_\_, 2008, that person has: (a) hand-delivered or postmarked a letter setting forth (i) the name of this lawsuit, *D'Agostino v. WFS Financial, Inc.* (United States District Court for the District of Connecticut, Case No. 3:07-cv-00161 (CFD)); (ii) the person's full name, current address and telephone number; (iii) the reasons why the person objects to the Settlement; and (iv) the person's signature; (b) served such letter upon (i) the Clerk of the Court, United States District Court, 450 Main Street, Hartford, Connecticut 06103; (ii) Daniel S. Blinn, Consumer Law Group, LLC, 35 Cold Spring Road, Suite 512, Rocky Hill, Connecticut 06067; and (iii) Michael J. Agolia, James R. McGuire and Wendy M. Garbers, Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105; and (c) filed a Proof of Service with the Court stating that the person mailed or hand-delivered copies of the above-referenced letter to Class Counsel and Defense Counsel.

20. Any Settlement Class member who does not submit an objection in the manner provided above shall be deemed to have waived any objection to the Settlement Agreement and shall forever be foreclosed from making any objection to class certification, to the fairness, adequacy or reasonableness of the Settlement Agreement, to any attorney's fees and cost reimbursements approved and to any incentive payment awarded to the Class Representative.

21. Any member of the Settlement Class who does not file an objection in the time and manner provided shall be deemed to have waived such objection and shall forever be foreclosed

from making any objection to the fairness or adequacy of the proposed settlement as incorporated in the Settlement Agreement and any payment of fees and costs to Class Counsel or any incentive payment to Mr. D'Agostino, unless otherwise ordered by the Court.

22. If the Court finally approves the Settlement, all Settlement Class members who have not timely requested exclusion from the Settlement Class shall be barred from asserting any Released Claims against the Released Parties, and all of them, and shall be conclusively deemed to have released any and all such Released Claims as against all of the Released Parties.

23. All papers in support of this Settlement, any application for reimbursement of costs and attorney's fees to Class Counsel and any application for payment of an incentive fee to Mr. D'Agostino shall be filed at least ten days prior to the Fairness Hearing.

24. Unless this Settlement has been finally disapproved by this Court or any appellate court, and any appeals of such an order have been finally resolved, all Settlement Class members who have not properly and timely requested exclusion from the Settlement Class shall be bound by any and all orders and judgments entered by this Court, whether favorable or unfavorable to the Settlement Class.

25. 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 set forth in the Settlement Agreement, request for approval of attorney's fees and costs and request for an incentive payment to Mr. D'Agostino at or after the originally scheduled Fairness Hearing.

IT IS SO ORDERED.

Dated: \_\_\_\_\_, 2008

\_\_\_\_\_  
The Honorable Christopher F. Dronney  
United States District Court Judge

# EXHIBIT C

**NOTICE OF CLASS ACTION SETTLEMENT**

**THE RECORDS OF WACHOVIA DEALER SERVICES, INC. (FORMERLY KNOWN AS WFS FINANCIAL INC) INDICATE THAT YOUR MOTOR VEHICLE WAS REPOSSESSED AND SUBSEQUENTLY SOLD BETWEEN 1/4/2004 AND 7/1/2008 AND THAT THE NET PROCEEDS OF THE SALE WERE INSUFFICIENT TO SATISFY THE BALANCE DUE UNDER YOUR LOAN AGREEMENT. AS A RESULT, YOU MAY BE ENTITLED TO BENEFITS FROM A CLASS ACTION SETTLEMENT.**

*A federal district court authorized this notice.  
This is not a solicitation from a lawyer.  
This is not an attempt to collect money from you.*

A settlement has been proposed in a class action lawsuit against WFS Financial Inc (now known as Wachovia Dealer Services, Inc.) (“WFS”). The settlement will provide benefits to persons whose vehicles were repossessed and sold between January 4, 2004, and July 1, 2008, where the net proceeds of the sale were insufficient to satisfy the balance due under the loan agreement for which the vehicle served as collateral.

The complaint filed in this class action alleges that WFS violated Connecticut’s Retail Installment Sales Finance Act (“RISFA”) and Uniform Commercial Code (“UCC”) by, among other things, not crediting borrowers’ accounts with the fair market value of vehicles that WFS repossessed and resold. The complaint also alleges that WFS did not mail notices of the repossession of certain vehicles within three days of repossession. The complaint further alleges that WFS did not mail notices of the date after which certain vehicles could be sold at least ten days prior to that date. WFS denies all allegations of wrongdoing and contends that it fully complied with the law.

You are receiving this Class Notice because WFS’s records indicate that your vehicle was repossessed and sold between January 4, 2004, and July 1, 2008, and that the net proceeds of the sale were insufficient to satisfy the balance due under your loan agreement for which the vehicle served as collateral.

Your legal rights are affected whether or not you respond. ***Please read this notice carefully.***

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>DO NOTHING</b>	<p>If the Settlement Agreement receives final approval from the Court, WFS will release you from any remaining deficiency and will request that Equifax, Experian and TransUnion delete from your credit report the tradeline associated with the loan implicated by this litigation. If WFS has brought a lawsuit against you to collect a deficiency, and if the parties’ Settlement Agreement is approved, WFS will dismiss that lawsuit.</p> <p>Additionally, certain Settlement Class members will receive a monetary payment if they fall within the definition of two subclasses. The first subclass (“Subclass A”) consists of Settlement Class members to whom WFS did not mail notices of the repossession of their vehicles within three days of repossession. Settlement Class members who are also in Subclass A will receive a cash payment of \$215.00. The second subclass (“Subclass B”) consists of Settlement Class members to whom WFS did not mail notice of the date after which their vehicles could be sold at least ten days prior to that date. Settlement Class members who are also in Subclass B will receive a cash payment of \$575.00. Settlement Class members who fall within both Subclass A and</p>

	<p>Subclass B will receive only the Subclass B payment. Settlement Class members who do not fall within either Subclass A or Subclass B will not receive a cash payment. You may call 860.571.0408 to speak with Class Counsel at the Consumer Law Group to find out whether you are a member of one of the subclasses and thus eligible for a cash payment under this Settlement Agreement.</p> <p>You will give up your right to make a claim against WFS in connection with your loan.</p>
<b>EXCLUDE YOURSELF</b>	<p>WFS will make no change to its records regarding your account and will not stop trying to collect from you. WFS will not instruct Equifax, Experian and TransUnion to delete the tradeline associated with your loan implicated by this litigation. You will get no cash payment.</p>
<b>OBJECT</b>	<p>Write to the Court about why you don't think the settlement is fair, reasonable and adequate.</p>

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

The Court still must decide whether to approve the Settlement Agreement. Benefits may only be provided if the Court approves the Settlement Agreement and after appeals, if any, are resolved. Please be patient.

### **BASIC INFORMATION**

The complaint against WFS was filed on January 4, 2007. Here is some basic information about the case.

#### **1. WHAT IS THIS LAWSUIT ABOUT?**

The complaint against WFS was filed in 2007 by Frank D'Agostino, the Class Representative ("Mr. D'Agostino"). He alleges, on behalf of himself and others similarly situated, that WFS violated the foreclosure provisions of RISFA, Conn. Gen. Stat. §§ 36a-770 *et seq.*, and Article 9 of the UCC, Conn. Gen. Stat. §§ 42a-9-101 *et seq.*, when WFS repossessed and sold Class members' vehicles and credited their accounts with the net sales proceeds rather than the fair market value of the repossessed vehicles. Mr. D'Agostino also alleges that, with respect to members of Subclass A, WFS violated RISFA by failing to provide timely notice of the repossession of the vehicles and the right of redemption. Mr. D'Agostino also alleges that, with respect to members of Subclass B, WFS violated RISFA and the UCC by failing to provide timely and reasonable notice of the sale of the vehicles. As remedies for these alleged violations, Mr. D'Agostino seeks, for himself and others similarly situated, relief from any remaining deficiency and an award of statutory damages pursuant to RISFA (the greater of actual damages or 25% of all payments made under the installment contract) and the UCC (an amount not less than the credit service charge plus 10% of the principal amount of the obligation or the time-price differential plus 10% of the cash price). Mr. D'Agostino also seeks an award of attorney's fees and costs.

WFS denies all allegations of wrongdoing, denies that the state-law claims are actionable, contends that it fully complied with the law, and contends that Mr. D'Agostino has not suffered any compensable damages.

## **2. WHY IS THERE A SETTLEMENT?**

The Court did not decide in favor of Mr. D'Agostino or WFS. Instead, both sides agreed to a settlement. Settlements avoid the costs and uncertainty of a trial and possible appeals, while providing benefits to members of the Settlement Class. Mr. D'Agostino and the attorneys think the Settlement is best for all Settlement Class members.

## **WHO IS AFFECTED BY THE SETTLEMENT?**

### **3. HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?**

You are a member of the Settlement Class and are affected by the Settlement if: (a) you were a retail buyer of a motor vehicle that was purchased pursuant to a retail installment contract or installment loan contract executed in the State of Connecticut and subsequently held by WFS; (b) your motor vehicle was subsequently repossessed and sold by WFS between January 4, 2004, and July 1, 2008; (c) the net proceeds of the sale were insufficient to cover the balance due under the retail installment contract or installment loan contract; (d) your account was credited by WFS with the actual sales proceeds (as opposed to the fair market value of the motor vehicle); and (e) you were not a party to any legal action brought by or against WFS in which judgment was entered prior to June 17, 2008.

If you meet the description above, you are automatically a member of the Settlement Class and automatically included in the Settlement unless your valid request for exclusion, which is described further below, is received by \_\_\_\_\_, 2008.

## **WHAT BENEFITS ARE PROVIDED BY THE SETTLEMENT?**

### **4. WHAT DOES THE SETTLEMENT PROVIDE?**

WFS will stop trying to collect deficiency balances from Settlement Class members, will eliminate any outstanding deficiency balance and will update its records to reflect an account balance of zero. WFS will release Settlement Class members from any remaining deficiency and will request that Equifax, Experian and TransUnion delete from their credit reports the tradelines associated with the loans implicated by this litigation.

Additionally, Settlement Class members who fall within Subclass A will receive a cash payment of \$215.00, and Settlement Class members who fall within Subclass B will receive a cash payment of \$575.00. Settlement Class members who fall within both Subclass A and Subclass B will receive only the Subclass B payment. Settlement Class members who do not fall within either Subclass A or Subclass B will not receive a cash payment.

These benefits will only be made available if and when the Court determines that the Settlement Agreement is fair, adequate and reasonable.

### **5. WHAT DO I NEED TO DO FOR WFS TO MAKE MY ACCOUNT BALANCE ZERO AND TO INSTRUCT THE CONSUMER REPORTING AGENCIES TO DELETE MY ACCOUNT HISTORY?**

You do not need to do anything for WFS to stop its collection efforts, to eliminate any outstanding deficiency balance and to update its records to reflect an account balance of zero.

You also do not need to do anything for WFS to instruct Equifax, Experian and TransUnion to delete the tradeline associated with your loan implicated by this litigation.

## **6. WHEN WOULD I GET THE BENEFITS OF THE SETTLEMENT?**

The Court will hold a hearing on \_\_\_\_\_, 2008, to decide whether to approve the Settlement Agreement. If the Court approves the Settlement Agreement, you could get benefits provided by the Settlement Agreement within 95 days after the Court's approval. If anyone appeals, however, it could take longer.

## **7. WHAT AM I GIVING UP TO GET A BENEFIT OR STAY IN THE SETTLEMENT CLASS?**

If you don't exclude yourself, you will be barred from bringing any lawsuit against WFS that concerns your lending relationship. All of the Court's orders will apply to you and legally bind you. You will agree to a "Release of Claims," as explained below, which describes exactly the legal claims that you give up in exchange for receiving the benefits under the Settlement Agreement.

### **RELEASE OF CLAIMS**

If you don't exclude yourself from this Settlement Agreement, you can't be part of any other lawsuit against WFS about the legal issues in *this* case or that concerns the lending relationship between you and WFS in any way. You and your respective spouses, executors, representatives, heirs, successors, bankruptcy trustees, guardians, wards, joint tenants, tenants in common, tenants by the entirety, co-borrowers, agents and assigns, and all those who claim through you or who assert claims on your behalf (including the government in its capacity as *parens patriae*), will be deemed to have completely released and forever discharged WFS, and its parents, subsidiaries, affiliates, agents, successors, assignors, assignees, and/or assigns and their respective subsidiaries, affiliates, agents, successors, assignors, assignees, and/or assigns, and each of their respective present, former or future officers, directors, shareholders, agents, employees, representatives, consultants, accountants, and attorneys from any claim, right, demand, charge, complaint, action, cause of action, obligation, or liability of any and every kind, including, without limitation, those based on the Released Parties' alleged violation of RISFA and the UCC, or any other federal, state, or local law, statute, regulation, common law or contractual undertaking, including all claims for monetary, equitable, declaratory, injunctive, or any other form of relief, whether known or unknown, suspected or unsuspected, under the law of any jurisdiction, which you ever had, now have or may have in the future resulting from, arising out of or in any way, directly or indirectly, connected with: (a) any acts or omissions that were raised in this Action or that relate to any aspect of the lending relationship between each Settlement Class member and the Released Parties, including, but not limited to, the solicitation, application, processing, underwriting, pricing, origination, disclosures, closing, funding, modification, servicing, enforcement, sale or securitization of such loans, and efforts to foreclose upon, repossess or sell any collateral securing such loans; and (b) any event, matter, dispute or thing that in whole or in part, directly or indirectly, relates to or arises out of said events specified in subsection (a) of this section.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you don't want benefits from this Settlement and you want to keep the right to sue WFS on your own about the legal issues in this case or about other aspects of your lending relationship with WFS, you must take steps to exclude yourself from the Settlement Class. This is sometimes referred to as "opting out" of the Settlement Class. If you exclude yourself as a Class member, WFS will not be barred from trying to collect a deficiency balance from you, and you won't get any of the money you may be entitled to under the Settlement Agreement.

## **8. HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT?**

To exclude yourself from the Settlement, you must complete the opt-out form contained at the end of this Notice of Class Action Settlement and mail or hand-deliver it by no later than **[45 DAYS AFTER NOTICE IS MAILED]**, 2008 to:

Consumer Law Group, LLC, 35 Cold Spring Road, Suite 512, Rocky Hill, CT 06067.

**REQUESTS FOR EXCLUSION THAT ARE NOT RECEIVED OR POSTMARKED ON OR BEFORE \_\_\_\_\_, 2008 WILL NOT BE HONORED.**

You can't exclude yourself on the telephone or by email. You also can't exclude yourself by mailing a request to any other location or after the deadline.

## **9. IF I DON'T EXCLUDE MYSELF, CAN I SUE WFS FOR THE SAME THING LATER?**

No. Unless you exclude yourself, you give up the right to sue WFS for the claims encompassed by the Settlement Agreement. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from *this* Class to continue your own lawsuit. Remember, the exclusion deadline is **[45 DAYS AFTER NOTICE IS MAILED]**, 2008.

## **10. IF I EXCLUDE MYSELF, CAN I GET ANY BENEFIT FROM THIS SETTLEMENT?**

No.

### **THOSE REPRESENTING YOU**

## **11. DO I HAVE A LAWYER IN THE CASE?**

Mr. D'Agostino retained Daniel S. Blinn, Consumer Law Group, LLC, 35 Cold Spring Road, Suite 512, Rocky Hill, CT 06067, to represent him. Mr. Blinn and his firm have been appointed by the Court to represent you and other Settlement Class members. Mr. Blinn is called Class Counsel. You will not have to pay anything to Class Counsel, nor will any fee the Court awards to him diminish the payment you get.

If you want to be represented by your own lawyer, you may hire one at your own expense and enter an appearance through your counsel.

## **12. HOW WILL THE LAWYER BE PAID?**

Class Counsel will ask the Court to award attorney's fees and expenses. WFS has agreed to pay fees and expenses up to \$80,000. The Court may award less than this amount. WFS will separately pay those fees and expenses. WFS will also separately pay the costs of notice and of administering the Settlement. WFS's payment of these amounts will not affect the payment to which Settlement Class members are entitled.

## **13. IS MR. D'AGOSTINO, AS THE CLASS REPRESENTATIVE, ENTITLED TO A FEE?**

The Settlement Agreement provides that Class Counsel will ask the Court for a class representative fee in amount not greater than \$2,000 to be paid to Mr. D'Agostino for his efforts in this case. The Court may award less than this amount. WFS will separately pay this fee. WFS's payment of this amount will not affect the payment to which Settlement Class members are entitled.

## OBJECTING TO THE SETTLEMENT

### 14. HOW DO I TELL THE COURT THAT I DON'T LIKE THE SETTLEMENT?

If you are a Settlement Class member, you can object to the Settlement Agreement if you don't think any part of the Settlement is fair, reasonable or adequate. You can give reasons why you think the Court should not approve it. The Court will consider your views. Your objection must be in writing. To object, you must send a letter stating that you object to the Settlement in the *D'Agostino v. WFS Financial, Inc.* case. Be sure to include: (1) the name of this lawsuit, *D'Agostino v. WFS Financial, Inc.* (United States District Court for the District of Connecticut, Case No. 3:07-cv-00161 (CFD)); (2) your full name, current address and telephone number; (3) the reasons why you object to the Settlement; and (4) your signature. Mail the objection to these three different places so that they are received no later than **[45 DAYS AFTER NOTICE IS MAILED]**, 2008:

COURT	CLASS COUNSEL	DEFENSE COUNSEL
Clerk of the Court United States District Court 450 Main Street Hartford, CT 06103	Daniel S. Blinn Consumer Law Group, LLC 35 Cold Spring Road, Suite 512 Rocky Hill, CT 06067	Michael J. Agoglia James R. McGuire Wendy M. Garbers Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105

You also must file a Proof of Service with the Court stating that you mailed or delivered copies of these papers to Class Counsel and Defense Counsel.

If you fail to object to the Settlement Agreement, you will lose the right to object to it. If the Settlement Agreement is approved despite your objection, you will still receive the benefits of the Settlement and will be bound by the Court's judgment in this case. If the Court does not approve the Settlement Agreement, there will no longer be a Settlement Class and the lawsuit will return to its status immediately prior to the execution of the Settlement Agreement.

### 15. WHAT'S THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING?

Objecting is simply telling the Court that you don't like something about the Settlement Agreement. You can object only if you stay in the Settlement Class. If the proposed Settlement Agreement is approved despite your objection, you will still receive the benefits of the Settlement Agreement and will be bound by the Court's judgment in this case. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

## THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement Agreement. You may attend, and you may ask to speak, but you don't have to.

### 16. WHEN AND WHERE WILL THE COURT DECIDE TO APPROVE THE SETTLEMENT?

The Court will hold a Fairness Hearing at \_\_\_\_\_ on \_\_\_\_\_, 2008 at the United States District Court for the District of Connecticut, 450 Main Street, Suite 228, Hartford, CT

06103. At this hearing, the Court will consider whether the Settlement Agreement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court will listen to anyone who has submitted a timely request, as set forth below, to speak at the hearing. The Court may also decide how much WFS will be ordered to pay Class Counsel for attorney's fees and expenses. The Court may also decide how much WFS will be ordered to pay Mr. D'Agostino for his role as Class Representative. After the hearing, the Court will decide whether to approve the Settlement Agreement. We do not know how long these decisions will take.

If the Settlement Agreement is not approved, however, the lawsuit will continue. If that occurs, there is no guarantee that the Court will permit the case to proceed as a Class Action or that the Class Members will recover anything from WFS, or that any recovery will exceed the value of the benefits provided by the Settlement Agreement.

#### **17. DO I HAVE TO COME TO THE HEARING?**

No. Class Counsel will represent you and answer questions the Court may have. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

#### **18. MAY I SPEAK AT THE HEARING?**

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter providing that it is your "Notice of Intention to Appear in the *D'Agostino v. WFS Financial, Inc.* case." Be sure to include your name, address, telephone number and signature. Your Notice of Intention to Appear must be sent to the Clerk of the Court, Class Counsel and Defense Counsel at the three addresses provided above and must be received by the Clerk of the Court by \_\_\_\_\_, 2008. You cannot speak at the hearing if you have excluded yourself from this litigation.

### **IF YOU DO NOTHING**

#### **19. WHAT HAPPENS IF I DO NOTHING?**

If the Settlement Agreement is approved, you and the other Settlement Class members will receive the benefits described above in this notice and will be bound by the Court's judgment.

### **GETTING MORE INFORMATION**

#### **20. ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?**

This notice summarizes the parties' proposed Settlement. More details are in the Settlement Agreement, which is available online at [www.consumerlawgroup.com/classactions/wfs.html](http://www.consumerlawgroup.com/classactions/wfs.html).

## **21. HOW DO I GET MORE INFORMATION?**

If you wish to learn more about the matters involved in this litigation, you may review the pleadings, the orders entered and other papers filed in this litigation at the court address listed above during regular business hours each business day.

As noted above, you may contact Class Counsel at 860.571.0408 to find out whether you are eligible for a cash payment under this Settlement Agreement as a result of being a member in either Subclass A or Subclass B.

**ALL INQUIRIES REGARDING THIS LITIGATION SHOULD BE ADDRESSED TO CLASS COUNSEL. PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE OR THE DEFENDANT'S COUNSEL FOR INFORMATION.**

**OPT-OUT FORM**

*FRANK D'AGOSTINO,  
for himself and on behalf of all others similarly situated,*

v.

*WFS FINANCIAL, INC.*

*UNITED STATES DISTRICT COURT, DISTRICT OF CONNECTICUT*

Case No. 3:07-cv-00161 (CFD)

PLEASE **EXCLUDE** ME FROM THE CLASS. I DO **NOT** WANT TO PARTICIPATE IN THE CLASS ACTION LAWSUIT AGAINST WFS FINANCIAL, INC.

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

**Instructions:** Do *not* complete and submit this form if you wish to be a member of the Settlement Class and receive the benefits of the Settlement Agreement described in the Notice of Class Action Settlement. Submit this form only if you wish to **exclude** yourself from the Class. To exclude yourself from the lawsuit, you must complete this Opt-Out Form and mail or hand-deliver this form to: Consumer Law Group, LLC, 35 Cold Spring Rd., Suite 512, Rocky Hill, CT 06067. Your envelope must be postmarked or hand-delivered on or before \_\_\_\_\_, 2008. If you exclude yourself, you will not be a Settlement Class member, will not be bound by any judgment in this lawsuit and will not participate in the proposed Settlement or any recovery obtained on behalf of the Settlement Class members, but you will retain the right to bring your own lawsuit.

# EXHIBIT D



IT IS HEREBY ORDERED THAT:

1. For purposes of this Order, except as set forth herein, the Court adopts and incorporates the definitions in the Settlement Agreement.
2. The Court hereby finds that mailing of the Notice of Class Action Settlement, in the manner provided in the Preliminary Approval Order, fully and accurately informed all Settlement Class members of all material elements of the proposed settlement, constitutes the best notice practicable under the circumstances, constitutes valid, due and sufficient notice to all Settlement Class members and complies fully with the requirements of state and federal law.
3. The Court hereby fully approves the Settlement as set forth in the Settlement Agreement as fair, reasonable and adequate in all respects under all other applicable law and orders Plaintiff and Defendant to consummate the Settlement Agreement in accordance with its terms.
4. The Court hereby decrees that the Settlement Class consists of:  
  
Individuals: (a) who were retail buyers of motor vehicles that were purchased pursuant to a retail installment contract or installment loan contract executed in the State of Connecticut and subsequently held by WFS; (b) whose motor vehicles were subsequently repossessed and sold by WFS between January 4, 2004 and July 1, 2008; (c) as to whom the net proceeds of the sale were insufficient to cover the balance due under the retail installment contract or installment loan contract; (d) whose accounts WFS credited with the actual sales proceeds (as opposed to the fair market value of the motor vehicle); and (e) who were not parties to any legal action brought by or against WFS in which judgment was entered prior to June 17, 2008.
5. In accordance with the terms of the Settlement Agreement, WFS shall provide the following relief to Settlement Class members: WFS shall release each Settlement Class member from any obligation to pay any deficiency that was or is claimed by WFS after the repossession and sale of the motor vehicles at issue. WFS shall file all papers necessary to withdraw or dismiss pending legal proceedings (if any) seeking Deficiency Judgments against Class members. If a Deficiency Judgment was entered by a court on or after June 17, 2008, then WFS

will file a satisfaction of judgment with the court. WFS shall request that Equifax, Experian and TransUnion delete from Settlement Class members' credit reports the tradelines associated with the loans implicated by this litigation.

6. In accordance with the terms of the Settlement Agreement, WFS shall also make a monetary payment to certain Settlement Class members that fall within the definition of two subclasses. The first subclass ("Subclass A") consists of Settlement Class members who, according to WFS's records, were not mailed notices of the repossession of their vehicles within three days of repossession. Settlement Class members who are also in Subclass A will receive a cash payment of \$215.00. The second subclass ("Subclass B") consists of Settlement Class members who, according to WFS's records, were not mailed notices of the date after which their vehicles could be sold at least ten days prior to that date. Settlement Class members who are also in Subclass B will receive a cash payment of \$575.00. Settlement Class members who fall within both Subclass A and Subclass B will receive only the Subclass B payment. Settlement Class members who do not fall within either Subclass A or Subclass B will not receive a cash payment.

7. The Court approves an incentive fee award to Mr. D'Agostino, as Class Representative, in the amount of \$2,000, which WFS shall pay. All objections, if any, to Mr. D'Agostino's incentive fee award have been considered and overruled.

8. The Court approves an award of attorney's fees and costs to Class Counsel, Daniel S. Blinn of the Consumer Law Group, LLC, in the amount of \$80,000, which WFS shall pay. All objections, if any, to Class Counsel's request for approval of attorney's fees and costs have been considered and overruled.

9. [No Settlement Class member submitted a valid and timely request for exclusion pursuant to the Preliminary Approval Order, and no Settlement Class member is excluded from the Settlement Class.] or [Those persons who made timely and valid requests for exclusion from the Settlement Class pursuant to the Class Notice are set forth in Exhibit A, attached hereto.

Those persons are deemed not to be Settlement Class members and are not bound by this Final Judgment and Order of Dismissal.]

10. [No Settlement Class member objected to the Settlement.] or [[Number of] Settlement Class members objected to the Settlement, and each of their objections is overruled and denied.]

11. If the Effective Date, as defined in the Settlement Agreement, does not occur for any reason whatsoever, this Final Judgment and Order of Dismissal and the Preliminary Approval Order shall be deemed vacated and shall have no force and effect. The Court hereby decrees that neither this Final Judgment nor the Settlement Agreement shall constitute an admission by WFS of any liability or wrongdoing whatsoever.

12. The Court hereby dismisses, on the merits and with prejudice, all causes of action against WFS filed in the above-captioned action.

13. The Court hereby decrees that all members of the Settlement Class are conclusively deemed to have released and forever discharged Released Parties from all Released Claims, and forever enjoins and bars all Settlement Class members from asserting, instituting or prosecuting any Released Claim in any court, tribunal or governmental agency.

14. Without affecting the finality of this Final Judgment, the Court hereby reserves exclusive and continuing jurisdiction over this action, the Class Representative, Settlement Class members, Class Counsel, WFS and its counsel, for the purpose of, among other things, supervising the implementation, enforcement, construction and interpretation of the Settlement Agreement, the Preliminary Approval Order and this Final Judgment.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Christopher F. Droney  
United States District Court Judge