UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIFFANY K. COLEMAN-WEATHERSBEE, individually, and on behalf of others similarly situated, Plaintiff, v. MICHIGAN STATE UNIVERSITY FEDERAL CREDIT UNION and DOES 1 through 100, Defendants.	Case No.: 5:19-cv-11674-JEL-DRG Honorable Judith E. Levy Magistrate Judge David R. Grand

PLAINTIFF TIFFANY K. COLEMAN-WEATHERSBEE'S NOTICE OF MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT Plaintiff Tiffany K. Coleman-Weathersbee hereby moves this Honorable Court for entry of an Order:

1. Preliminarily approving the Settlement Agreement reached between Plaintiff and Defendants attached as Exhibit 1 to the Declaration of Taras Kick in Support of the Unopposed Motion for Preliminary Approval; and

2. Scheduling a hearing for final approval of the settlement.

This motion is made on the grounds that the settlement is the product of arm's-length negotiations by informed counsel and is fair, reasonable and adequate. Class Counsel met and conferred with Counsel for Defendant about the motion, and Defendant does not oppose the motion.

This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities in Support Thereof, the accompanying Declaration of Taras Kick, the accompanying Declaration of Richard McCune, the accompanying Declaration of Arthur Olsen, the accompanying Declaration of Tiffany K. Coleman-Weathersbee, other documents and papers on file in this action, and such other materials as may be presented before or at the hearing on this motion, or as this Honorable Court may allow.

LOCAL RULE 7.1(f) REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(f), Plaintiff requests oral argument before this Court on her Motion for Preliminary Approval of Class Action Settlement.

LOCAL RULE 7.1(a) CERTIFICATION OF CONCURRENCE

Pursuant to Local Rule 7.1(a), Plaintiff's counsel certifies that he has

conferred with Defendant's counsel prior to filing this Motion and Defendant does not oppose this motion.

Dated: January 31, 2020

Respectfully submitted,
/s/ *Richard D. McCune*
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Counsel for Tiffany K. Coleman-Weathersbee and the Putative Class

CERTIFICATE OF SERVICE

I, Richard D. McCune, hereby certify that on the 31st day of January, 2020, the foregoing document, filed through the CM/ECF System, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ *Richard D. McCune*
Richard D. McCune

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIFFANY K. COLEMAN-WEATHERSBEE, individually, and on behalf of others similarly situated, Plaintiff, v. MICHIGAN STATE UNIVERSITY FEDERAL CREDIT UNION and DOES 1 through 100, Defendants.	Case No.: 5:19-cv-11674-JEL-DRG Honorable Judith E. Levy Magistrate Judge David R. Grand

PLAINTIFF TIFFANY K. COLEMAN-WEATHERSBEE'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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A	Declaration of Taras Kick, with Settlement Agreement attached as Exhibit 1 and Proposed Schedule of Future Dates attached as Exhibit 2
B	Declaration of Arthur Olsen, with Consultant Profile attached as Exhibit 1
C	Declaration of Tiffany K. Coleman-Weathersbee
D	Declaration of Richard McCune

MEMORANDUM

I. SUMMARY

This putative class action contends that Michigan State University Federal Credit Union ("MSUFCU ") improperly charged overdraft fees and Non-Sufficient Funds ("NSF") fees in violation of the terms of its contracts governing the overdraft and NSF fee program for certain types of transactions. Plaintiff also alleges that Defendant violated Regulation E, 12 C.F.R. § 1005.17 ("Reg. E"), by enrolling credit union members in its overdraft program for subject transactions without first obtaining their affirmative consent based on a complete and valid disclosure of the terms. Although MSUFCU disputes Plaintiff's claims, the parties have now settled these claims on fair, just, and arm's-length terms, and thus Plaintiff submits this memorandum in support of her unopposed motion to approve the settlement.

The proposed settlement is the result of a mediation before the Hon. Gerald E. Rosen (Ret.). There are four separate benefits under the proposed settlement. First, MSUFCU will pay five million two hundred and one thousand ninety-six dollars ($5,201,096.00) of cash money, with no reversion of any residue to MSUFCU. (*See* Declaration of Taras Kick ("Kick Decl."), Ex. 1, Settlement Agreement, at ¶ 1(aa), (hereafter "Settlement Agreement" or "SA").) Second, effective December 12, 2019, MSUFCU agreed to cease assessing overdraft fees on transactions subject to Reg. E fees until it obtained new opt-ins in compliance with Reg. E and Regulation DD. Further, if MSUFCU collected such fees during this period, MSUFCU agreed to refund them. (SA ¶¶ 3,4.) This is estimated to be worth

$300,991 through January 31, 2020. (*See* Declaration of Arthur Olsen ("Olsen Decl."), at ¶ 17.) Furthermore, depending on the rate at which the members re-opt in, this is estimated to potentially provide an additional $4,846,837 in savings on these Reg. E fees to Class Members. (Olsen Decl. ¶ 18.) Third, Defendant will forgive certain uncollected fees which were assessed on Class Members but not paid. (SA ¶ 1(dd) and ¶ 5.) This is estimated to be worth $250,274. (Olsen Decl. ¶¶ 13, 15.) Finally, MSUFCU also has agreed to more clearly disclose its overdraft practices, including defining available balance, describing the impact of holds on the available balance, and the possibility that it will assess multiple NSF fees on certain transactions, and has implemented processes to provide the revised member agreement and disclosures to new and existing members. (SA ¶2.)

Therefore, although value also ought to be attributed to the improvement in clarity in the disclosures at issue in this case, even if one were not to attribute any monetary value to that improvement (SA ¶2), the value of the settlement is estimated at $10,599,198, and the value of the settlement without the future savings for the reduction in Reg. E fees due to the new re-opt-in requirement is estimated at $5,752,361.

The manner of distribution to Class Members is very consumer friendly. Specifically, there are five defined classes in this settlement: the Sufficient Funds Class; the Multiple NSF class; the Pre-Litigation Regulation E Class; the Post-

Litigation Regulation E Class; and, the Post-Resolution Regulation E Class. This is explained in further detail in Section III., *infra*. All Class Members will be paid by direct deposit into their accounts if they are current MSUFCU credit union members, or will be mailed a check if they no longer have an account with MSUFCU. (SA ¶ 13(d)(iv)(8) and (9).) Of these five defined classes, four will not need to do anything at all to receive the money from this settlement, and will receive a *direct pro rata* distribution, as stated, either deposited directly into their account if they are a current member of MSUFCU, or mailed to them if they are a former member. (SA, ¶¶ 13.(d) (iv.) (1), (2), (3), (4), (5).) Only the Pre-Litigation Regulation E Class will need to make a claim, so those who believe they have been most aggrieved by that conduct have maximum opportunity to address it.

As the proposed settlement meets all criteria for preliminary approval, Plaintiff's counsel respectfully requests that the Court preliminarily approve the settlement so that notice of a final approval hearing may be disseminated.

II. THE HISTORY OF THIS CASE

Plaintiff filed the Complaint and Demand for Jury Trial on June 6, 2019. (Dkt. No. 1.) The Complaint alleged that MSUFCU had breached its contracts with its customers by charging overdraft fees for transactions which, to be completed, required less money than was already in the customers' actual balances, and by charging multiple Non-Sufficient Funds ("NSF") fees on the same electronic

transaction. (Compl. at ¶¶ 2-4.) It also alleged claims for violations of Reg. E of the Electronic Fund Transfer Act, breach of the covenant of good faith and fair dealing, unjust enrichment/restitution, and money had and received. (*See* Dkt. No. 1.) On August 26, 2019, MSUFCU moved to dismiss the Complaint, arguing that the contracts at issue unambiguously disclosed that it uses a lesser balance, which it called the available-balance method, to determine overdraft fees, and that it was permitted to assess multiple NSF fees for the same transaction. (Dkt. No. 10.) Plaintiff opposed MSUFCU's motion on September 17, 2019, and MSUFCU replied on October 1, 2019. (Dkt. Nos. 15-18.)

Regarding discovery, on October 7, 2019, Plaintiff served her first set of requests for production on MSUFCU. MSUFCU served its objections and responses on November 12, 2019 and produced approximately 796 pages of documents which Plaintiff's counsel reviewed. MSUFCU served its first request for documents to Plaintiff on November 6, 2019. (Kick Decl. ¶ 7.) Plaintiff served her objections and responses, along with approximately 298 pages of documents, on November 13, 2019. (*Id*.) Plaintiff noticed MSUFCU's Fed. R. Civ. P., Rule 30(b)(6) deposition for November 15, 2019, and deposed two MSUFCU witnesses on that date. (*Id*.) The witnesses included Samantha Jo Amburgey, MSUFCU's Chief Information Officer, and Lera L. Ammerman, MSUFCU's Chief Operating Officer. (*Id*.) MSUFCU noticed Plaintiff's deposition for November 14, 2019. (*Id*.) Plaintiff sat for her

deposition that day. (*Id*.)

Following the depositions, the parties agreed to mediate their claims before the Hon. Gerald E. Rosen (Ret.). The mediation took place on December 9, 2019. The parties were able to reach a settlement during the mediation based on a mediator's proposal. At all times negotiations were non-collusive and at arm's-length, and presided over by Judge Rosen. (*Id*., at ¶ 8.) It is the settlement now being brought to this Court for Preliminary Approval.

III. THE CLASS DEFINITIONS

The proposed settlement class includes members of MSUFCU in any of the five following classes. The "Sufficient Funds Class" is defined as those members of MSUFCU who between June 6, 2013 and December 9, 2019, were assessed and paid an overdraft fee on a Sufficient Funds Damage Transaction that was not refunded. (SA ¶ 1 (bb).) A "Sufficient Funds Damage Transaction" is a transaction that was the subject of an overdraft fee when the account had a positive ledger balance following posting of the transaction and which was not refunded. (SA ¶ 1 (cc).) The "Pre-Litigation Regulation E Class" is defined as those members of MSUFCU who from and including June 6, 2013 through June 5, 2019, were assessed and paid an overdraft fee on a debit card or ATM transaction that was not refunded. (SA ¶ 1 (u).) The "Post-Litigation Regulation E Class" is defined as those members of MSUFCU who from and including June 6, 2019 through December 11, 2019, were assessed

and paid an overdraft fee on a debit card or ATM transaction that was not refunded. (SA ¶ 1 (w).)

The "Post-Resolution Regulation E Class" is defined as those who paid an overdraft fee charge on a Reg. E transaction after December 12, 2019, and before the member on whom such charge was assessed has opted in to the Reg. E overdraft program under the revised Opt-In Agreement sent in December 2019. (SA ¶ 1 (x) and (y).) The "Multiple NSF Fees on a Single Item Class" means those members of MSUFCU from and including June 6, 2013 through December 9, 2019, who were assessed more than one NSF fee on a single payment transaction that was not refunded. (SA ¶ 1 (q).)

IV. ANALYSIS OF THE DATA HAS BEEN PERFORMED

Plaintiff's database expert, Arthur Olsen, is one of the leading experts in the country on analysis of financial institutions' databases pertaining to fees they charge, and has performed an analysis of MSUFCU's data pertaining to each of the five above-listed classes regarding the overdraft and NSF fees assessed on Class Members. (Declaration of Arthur Olsen ["Olsen Decl."] ¶¶ 6-18.) The class data analyzed by Mr. Olsen contained detailed information regarding all overdraft and NSF fees assessed by MSUFCU on debit card, check, and ACH transactions between

June 6, 2013 and October 23, 2019. (Olsen Decl. ¶ 6.)[1]

For the Sufficient Funds Class, Mr. Olsen identified 18,895 MSUFCU members (across 18,904 accounts) who were assessed at least one overdraft fee when the member had a positive ledger balance in their account that was sufficient to cover the transaction at issue between June 6, 2013 and October 23, 2019, after the application of any refunds already credited by MSUFCU. (Olsen Decl. ¶ 8.) There were 94,945 such fees totaling $2,848,350. (*Id*.) Mr. Olsen estimates that once the data which is not currently available is provided the final damages number will be $2,915,086. (Olsen Decl. ¶ 15.) For the Multiple NSF Fees on a Single Item Class, Mr. Olsen has identified 13,367 MSUFCU members (across 13,501 accounts) who were assessed more than one NSF fee on a single payment at least once between June 6, 2013 and October 23, 2019, after the application of any refunds already credited by MSUFCU. (Olsen Decl. ¶ 9.) There were 46,328 such fees totaling $1,389,840. (*Id*.) He estimates that once the data which is not currently available is provided, the final damages number will be $1,430,827. (Olsen Decl. ¶ 15.)

For the Post-Litigation Regulation E Class, Mr. Olsen identified 4,103 MSUFCU members (across 4,103 accounts) who were assessed at least one overdraft fee for an ATM or debit card transaction between June 6, 2019 and October

[1] MSUFCU is expected to produce additional data covering the period October 24, 2019 through January 31, 2020, and Mr. Olsen's results will be updated then.

23, 2019, after the application of any refunds already credited by MSUFCU. (Olsen Decl. ¶ 10.) There were 25,476 such fees totaling $764,280. (*Id*.) Mr. Olsen estimates that once the data which is not currently available is provided the final damages number will be $1,032,536. (Olsen Decl. ¶ 15.) For the Pre-Litigation Regulation E Class, the one class under the proposed settlement which would make a claim, Mr. Olsen has identified 17,964 MSUFCU members (across 18,010 accounts) who were assessed at least one overdraft fee for an ATM or debit card transaction between June 15, 2013 and June 5, 2019, after the application of any refunds already credited by MSUFCU. (Olsen Decl. ¶ 11.) There were 356,170 such fees totaling $10,685,100. (*Id*.) For the Post-Resolution Regulation E Class, Mr. Olsen was asked to estimate the amount of Reg. E fees MSUFCU would have assessed between December 12, 2019 and January 31, 2020, based on historic data but for the agreement to stop collecting such fees during that time frame. Based on that extrapolation, he estimates that MSUFCU would have assessed $300,991 in Regulation E fees between December 12, 2019 and January 31, 2020. (Olsen Decl. ¶ 17.) Furthermore, Mr. Olsen was asked to assume a re-opt-in rate to MSUFCU's program of 25%, and based on that calculates that MSUFCU would assess $4,846,837 less in Reg. E fees over the next three years. (Olsen Decl. ¶ 18.)

Mr. Olsen also calculated that under the proposed Settlement Agreement, the forgiveness and release of any claims MSUFCU may have to collect any Sufficient

Funds Overdraft Charges, Multiple NSF Fees on a Single Item NSF Charges, Post-Litigation Regulation E Overdraft Charges; and Pre-Litigation Regulation E Overdraft Charges that have been assessed by MSUFCU, but never collected, as of October 23, 2019, is $244,416. (Olsen Decl. ¶ 13.) He estimates once the data which is not available is provided, the number will be $250,274. (Olsen Decl. ¶ 15.)

Finally, Mr. Olsen determined that after account for the overlap, there are a total of 356,170 fees at issue totaling $13,787,430. (*Id*.)

V. TERMS OF THE SETTLEMENT

A. Benefits to the Class Members

As stated, there are four different benefits under the proposed Settlement Agreement. First, MSUFCU will pay five million two hundred and one thousand ninety-six dollars ($5,201,096.00) of cash money, with no reversion of any residue to MSUFCU. (SA ¶ 1(aa).) Second, effective December 12, 2019, MSUFCU agreed to cease assessing overdraft fees on non-recurring debit card transactions for consumer accounts and continue to do so until such time as MSUFCU obtains new opt-ins from consumer members in compliance with Reg. E and Regulation DD. (SA ¶ 3.) To the extent MSUFCU collected such fees during this period, the fees will be refunded. (SA ¶ 4.) This is estimated to be worth $300,991 through January 31, 2020. (Olsen Decl. ¶ 17.) Furthermore, depending on the rate at which the members re-opt in, this is estimated at this time to potentially provide an additional

$4,846,837 in savings on these Reg. E fees to Class Members. (Olsen Decl. ¶ 18.) Third, MSUFCU shall forgive certain uncollected overdraft fees which were assessed on Class Members but not paid. (SA ¶ 1(dd) and ¶ 5.) This is estimated to be worth $250,274. (Olsen Decl. ¶¶ 13, 15.) Fourth, and finally, as a part of this Settlement Agreement, MSUFCU also has agreed to more clearly disclose its overdraft practices, including defining available balance, describing the impact of holds on available balance, and the possibility of multiple NSF Fees, and has implemented processes to provide the revised member agreement and disclosures to new and existing members. (SA ¶2.) Even if one were not to attribute any monetary value to the improvement in the clarity of the disclosures (SA ¶2), the full value of the settlement is estimated at $10,599,198, and without the future savings for the reduction in Reg. E fees due to the new re-opt-in requirement is estimated at $5,752,361.

B. Payments to Claimants

Of the $5,201,096 Settlement Fund, $2,500,000 is allocated to the Sufficient Funds Class; $500,000 is allocated to the Multiple NSF Fees on a Single Item Class; $1,451,096 is allocated to the Pre-Litigation Regulation E Class; and, $750,000 is allocated to the Post-Litigation Regulation E Class. (SA ¶ 13(d)(iv).) Additionally, Reg. E fees assessed from December 12, 2019 until such time as the Class Member re-opts back into the Reg. E program under the revised Reg. E Opt-In contract sent

in December 2019 either will not be charged, or if they were charged, will be refunded (less proportionate attorney fees and costs). (SA ¶ 13(d)(iv) (5).) Based on this allocation, payments from the "Net Settlement Fund" to the Class Members shall be calculated on a *pro rata* basis, with no claims requirement whatsoever, except for the Pre-Litigation Regulation E Class. (SA ¶ 13(d)(iv) (1), (2), (4), and (5).)

With regard to the members of the Pre-Litigation Regulation E Class, each member will receive a claim form indicating how many Reg. E fees they were assessed, and be permitted to claim up to 25 such assessed fees. (SA ¶ 13(d)(iv) (3).) If there is an oversubscription, the distribution will be *pro rata*. (*Id*.) If there is an under-subscription, the distribution formula will remove the 25 fees cap, and distribute the remaining under-subscribed amount from this portion to all the Pre-Litigation Regulation E Class Members who made a claim *pro rata* based on the number of these fees they had been assessed. (*Id*.)

C. *Cy Pres* Distribution

Under no circumstances will any of the money from this settlement revert to MSUFCU. (SA Paragraph 8(d)(vi).) Rather, if there is any residue which remains in the Net Settlement Fund, the Settlement provides for a proposed *cy pres* distribution to a charity to be approved by this Court which will be nominated to the Court for consideration with the Motion for Final Approval. (SA ¶ 16.)

D. Class Notice

For Class Members who are current members of MSUFCU and who have agreed to receive notices regarding their accounts from MSUFCU by email, MSUFCU will provide the claims administrator with the most recent email addresses it has for those Class Members, to which the claims administrator will email the notice in a manner that is calculated to avoid being caught and excluded by spam filters or other devices intended to block mass email. (SA ¶ 10(b).)

For Class Members who are not currently members of MSUFCU or who did not agree to receive notices regarding their accounts by email, the claims administrator will mail those members the notice by first class United States mail to their best available mailing addresses. (SA ¶ 10(c).) The notice shall also be posted on a settlement website created by the claims administrator. (SA ¶ 10(d).)

Plaintiff requested bids from two highly regarded claims administrators, and will select the low bidder as the claims administrator. (Kick Decl. ¶ 10.) In the past, using notice programs similar or identical to that proposed here, the selected administrator has consistently attained a successful direct notice reach in excess of 90%. (Kick Decl. ¶ 10.) The costs of the claims administrator for settlement administration are to come from the Settlement Fund. (SA ¶ 10 (g).)

E. Opt Out Procedure and Opportunity to Object

Any Class Member who wishes to opt out can do so by mailing an exclusion

letter by the Bar Date. (SA ¶ 17.) Any Class Member who wishes to object to the settlement terms can do so by mailing an objection to the Court and the settlement administrator. (SA ¶ 18.)

F. Attorneys' Fees and Costs

In the Sixth Circuit, the Court may employ either the percentage-of-the-fund or the lodestar method for awarding attorneys' fees in a class action. *Gascho v. Glob. Fitness Holdings, LLC*, 822 F.3d 269, 279 (6th Cir. 2016). Courts in this Circuit often prefer the percentage method because it eliminates disputes about the reasonableness of rates and hours, conserves judicial resources, and aligns the interests of class counsel and the Class Members. *See Rawlings*, 9 F.3d at 515; *In re Delphi Corp. Sec., Derivative & ERISA Litig.*, 248 F.R.D. 483, 502 (E.D. Mich. 2008). Class Counsel intends to apply under a percentage-of-the-fund for one-third of the Value of the Settlement. The Value of the Settlement is reasonably estimated at this time at $10,599,198. However, Class Counsel intends to cap its application at $2 million for attorneys' fees, despite one-third of the estimated value of the settlement equaling $3,533,066.

Numerous federal courts across the country, including in the Sixth Circuit, have approved attorneys' fees of one-third or higher in class actions. (*See, e.g.*, *Kritzer v. Safelite Solutions, LLC*, 2012 U.S. Dist. LEXIS 74994, *28-29 (S.D. Ohio 2012) (awarding 52% of settlement fund as fees); *In re AremisSoft Corp., Sec. Litig.,*

210 F.R.D. 109, 134 (D.N.J. 2002) ("Scores of cases exist where fees were awarded in the one-third to one-half of the settlement fund."); *Howes v. Atkins*, 668 F. Supp. 1021 (E.D. Ky. 1987) (fee equal to 40% of recovery); *Dallas v. Alcatel-Lucent USA, Inc.*, 2013 WL 2197624, *12 (E.D. Mich. 2013) (noting that "fee awards in class actions average around one-third of the recovery".)

Additionally, the Motion for Final Approval will apply for a service award to Ms. Coleman-Weathersbee which is valued at approximately $14,674, in the form of the forgiveness of a loan she has with MSUFCU in that amount, subject to this Court's approval. Ms. Coleman-Weathersbee was valuable to this case, always asking questions, preparing for deposition, sitting for deposition, providing documents, and even attending the mediation in this matter in person despite it being more than five hundred miles from her home. (Declaration of Tiffany K. Coleman-Weathersbee ("Coleman-Weathersbee Decl.") ¶¶ 2-4; Kick Decl. ¶ 9.) The proposed class representative's service award is well within the range of reasonableness. *In re CMS Energy ERISA Litig.*, No. 02-72834, 2006 WL 2109499, at *3 (E.D. Mich. June 27, 2006) (awarding three class representatives $15,000 each for contributions to the case, including providing information to class counsel, reviewing documents, and participating in settlement discussions).[2]

[2] The firms of McCune Wright Arevalo, LLP and The Kick Law Firm, APC, the two proposed Class Counsel, have agreed to share equally in the attorneys' fees, and this was disclosed to and approved by the proposed class representative Ms.

Regarding costs, Plaintiff's attorneys to date already have expended in excess of $48,000 in costs in necessary litigation expenses. (McCune Decl. ¶9; Kick Decl. ¶ 12.) They estimate spending an additional $50,000 through the conclusion of this matter. (*Id*.) As such, they request that in the proposed class notice notify that Class Counsel may apply for up to $100,000 in costs. (*Id*.)

G. Release

In consideration for the settlement, as detailed in the Settlement Agreement, Class Members are releasing all claims that arise out of the facts and claims alleged in the Complaint. (SA ¶ 19.)

VI. ARGUMENT

A. The Settlement Should Be Preliminarily Approved

1. Class Action Settlement Procedure

Class action settlements are subject to a two-step approval process. First, the Court makes a preliminary evaluation of the fairness of the settlement. If the Court determines that the settlement appears be fair, adequate and reasonable, then it should order that notice be given to the Class Members of a formal final settlement hearing. At that formal hearing, evidence may be presented in support of and in opposition to the settlement.

Weathersbee-Coleman. (Weathersbee-Coleman Decl. ¶ 3.) Further, lead co-counsel intend to pay ten percent of the fee to local counsel Philip Goodman, who is Of Counsel to the Law Offices of Serling & Abramson, P.C. (Kick Decl. ¶ 11.)

The Federal Manual for Complex Litigation, Second ("MCL 2d"), summarizes the preliminary approval criteria as follows:

> If the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement. (MCL 2d § 30.44.)

Rule 23(e) was amended effective December 1, 2018, to, specify that the focus of a court's preliminary approval evaluation is whether "giving notice [to the class] is justified by the parties' showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B). The Sixth Circuit's approval factors overlap with amended Rule 23(e)(2), and are: (i) plaintiffs' likelihood of ultimate success on the merits balanced against the amount and form of relief offered in the settlement; (ii) complexity, expense, and likely duration of the litigation; (iii) stage of the proceedings and the amount of discovery completed; (iv) judgment of experienced trial counsel; (v) nature of the negotiations and the risk of collusion; (vi) objections raised by the class members; and (vii) public interest. *Int'l Union, United Auto., Aerospace, & Agric. Implement Workers of Am. v. Gen. Motors Corp.*, 497 F.3d 615, 632 (6th Cir. 2007).

Courts will ordinarily grant preliminary approval of a settlement where, as here, the settlement "(1) does not disclose grounds to doubt its fairness or other

obvious deficiencies, such as unduly preferential treatment to class representatives or of segments of the class, or excessive compensation for attorneys, and (2) appears to fall within the range of possible approval." *Dallas, supra.,* at *8.

The Sixth Circuit recognizes that the law favors the settlement of class action lawsuits. *Int'l Union, supra.,* at 632 (6th Cir. 2007) (noting "the federal policy favoring settlement of class actions"). In light of this policy:

> [T]he role of the district court is limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

IUE-CWA v. Gen. Motors Corp., 238 F.R.D. 583, 594 (E.D. Mich. 2006).

2. The Risk of Fraud or Collusion

One of the six factors listed by *UAW* for approval of a proposed settlement is the absence of collusion. *UAW*, 497 F.3d at 631. All of the settlement negotiations between the parties in this matter were conducted at arm's-length. (Kick Decl. ¶ 8.) The proposed settlement is actually the result of a mediation the parties attended in-person on December 9, 2019, with the Hon. Gerald E. Rosen (Ret.). (Kick Decl. ¶ 8.) Courts have recognized that the "participation of an independent mediator in settlement negotiations virtually insures that the negotiations were conducted at arm's length and without collusion." *Hillson v. Kelly Services, Inc.*, 2017 WL 279814 at *6 (E.D.Mich. January 23, 2017) (the use of a neutral, experienced mediator is an indication that the parties' agreement is non-collusive).

3. The Stage of the Proceedings and the Amount of Discovery

Another factor set forth in *UAW* for approval of a proposed settlement is the stage at which the proceedings were settled and the amount of discovery performed. *UAW*, 497 F.3d at 632. As detailed in Section II, *supra*., there has been meaningful discovery performed in this case; a fully briefed Motion to Dismiss which allowed both sides to assess each other's legal positions, and strengths and weaknesses; and, as described in Section IV., *supra*., a detailed analysis by Plaintiff's database expert of the data in this case. (Kick Decl. ¶ 7.)

4. The Plaintiff's Likelihood of Ultimate Success on the Merits Balanced Against the Amount of Relief in the Settlement

The next factor to consider is the plaintiff's likelihood of ultimate success on the merits balanced against the amount and form of relief offered in the settlement. *UAW*, 497 F.3d at 631. Equally, Rules 23(e)(2)(C) and (D) direct the Court to evaluate whether "the relief provided for the class is adequate." As stated, the estimated value of this settlement is $10,599,198, as well as improvement in its disclosures. (SA ¶ 1(aa), 1 (dd), 2, 3, 4, 4; Olsen Decl. ¶ 18.) Although Plaintiff does believe the liability in this case is strong, Plaintiff is not unmindful of the risks. (Kick Decl. ¶ 13.) For example, though the Motion to Dismiss has not been ruled on. (*Id*.) Further, although Plaintiff's counsel believes the likelihood for certification is strong, there is always some risk in class actions getting certified. (*Id*.)

Plaintiff's database expert Mr. Olsen has quantified that the total possible damages in this matter, after accounting for overlap, equal $13,787,430. (Olsen Decl. ¶ 12.) Therefore, if one were to look at the total estimated value of the settlement of $10,599,198, this means the proposed settlement equals approximately 76.87% of the total possible damages. Further, even if one were to disregard the value derived from the future reduction in Regulation E fees arising from the re-opt-in requirement in this Settlement Agreement, the value of this settlement is $5,752,361, which is 41.72% of the total possible damages.

Courts have determined that settlements are, of course, reasonable where plaintiffs recover only a much smaller part of their actual losses. *See Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988), aff'd 899 F.2d 21 (11th Cir. 1990) ("[T]he fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate"). Indeed, "[a] settlement can be satisfying even if it amounts to a hundredth or even - a thousandth of a single percent of the potential recovery."

With regard to expected duration, if a settlement were not approved, a motion for class certification, a motion for summary judgment, a trial, and likely appellate work by whichever side did not prevail at trial, are all expected, and all likely lasting years beyond today. (Kick Decl. ¶ 13.) "Courts have consistently held that the expense and possible duration of litigation are major factors to be considered in

evaluating the reasonableness of a settlement." *In re Delphi Corp. Sec.,* 248 F.R.D. 483, 497-98 (E.D. Mich. 2008).

5. The Recommendation of Experienced Counsel

Courts recognize that the opinion of experienced and knowledgeable counsel supporting settlement after vigorous, arm's-length negotiation is entitled to considerable weight. *See Williams v. Vukovich*, 720 F.2d 909, 922-23 (6th Cir. 1983) ("The court should defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs."). Plaintiff's counsel are experienced in litigating and settling consumer class actions and other complex matters, and are in favor of the settlement. (McCune Decl. ¶ 8; Kick Decl. ¶ 8.)

6. The Proposed Forms of Notice and Notice Programs

The Settlement Agreement is attached as Exhibit 1 to the Declaration of Taras Kick. The proposed notice is attached as Exhibit 1 to the Settlement Agreement. The proposed form of notice and notice program here fully comply with due process and Federal Rules of Civil Procedure, Rule 23. Rule 23(c)(2) requires notice to be "the best notice that is practicable under the circumstances." *In re: Auto. Parts Antitrust Litig.*, 2016 WL 8201483, at *3 (E.D. Mich. Dec. 28, 2016) ("The combination of reasonable notice, the opportunity to be heard, and the opportunity to withdraw from the class satisfy due process requirements . . . .") Here, all Class Members are proposed to receive direct notice. (SA, ¶ 10, Ex. 1.)

Further, the notice should "fairly, accurately, and neutrally" "apprise [] prospective [class] members of the terms of the Proposed Settlement, the identity of persons entitled to participate in it and the options that are open to the [class] members in connection with the proceedings." *In re Drexel Burnham Lambert* 130 B.R. 910, 924 (S.D.N.Y. 1991), aff'd, 960 F.2d 285 (2d Cir. 1992). Here, the notice does that. (SA, Ex. 1.)

B. The Proposed Settlement Class Should Be Certified

In granting preliminary approval of a proposed settlement, the Court also must determine that the proposed settlement class is appropriate for certification. MANUAL FOR COMPLEX LITIGATION § 21.632 (4th ed. 2004); *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Class certification is proper if the numerosity, commonality, typicality, and adequacy of representation requirements of Fed. R. Civ. P. 23(a)(1-4) are satisfied. In addition to meeting the requirements of Rule 23(a), a plaintiff seeking class certification must also meet at least one of the three provisions of Fed. R. Civ. P. 23(b).

"[C]ourts have generally held that numerosity is presumed for a class with more than forty members." *Jenkins v. Macatawa Bank Corp.*, 2006 WL 3253305, at *3 (W.D. Mich. Nov. 9, 2006). Here, the class totals 34,320. (Olsen Decl. ¶ 12.)

Regarding commonality, it is demonstrated when the claims of all Class Members "depend upon a common contention . . . that is capable of classwide

resolution." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). "The commonality test is qualitative rather than quantitative, that is, there need be only a single issue common to all members of the class." *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1080 (6th Cir. 1996). Here, there is no dispute the theories underlying the class claims involve a uniform overdraft fee and uniform NSF fee practice with uniform contractual terms and uniform law. It is undisputed that Defendant uniformly and systematically used the "available balance" to determine whether to assess an overdraft fee on a transaction, as opposed to utilizing the actual money in the account, *i.e.*, the "actual balance", and would charge a repeat NSF fee when the same item on which an NSF fee already had been charged would be re-presented. Determination of whether this breached the contracts, regardless of the answers, will resolve the allegations for the classes in whole.

Regarding typicality, the test is not demanding: "factual distinctions between named and unnamed class members do not preclude typicality." *Cates v. Cooper Tire & Rubber Co.*, 253 F.R.D. 422, 429 (N.D. Ohio 2008). Plaintiff's claims are typical of those of the other putative Class Members: there is no dispute that Plaintiff entered into the uniform and standardized Account Agreement and Opt-In Contract and that she was assessed overdraft fees when there was enough money in the account (*i.e.*, the actual balance) to complete the requested transaction.

Regarding adequacy, the test is two-pronged: "representative plaintiffs must

have common interests with unnamed members of the class, and it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel." *Wilkof v. Caraco Pharm. Labs., Ltd.*, 280 F.R.D. 332, 342 (E.D. Mich. 2012). This calls for an examination of "the experience and ability of counsel for plaintiffs and whether there is any antagonism between the interests of the plaintiffs and other members of the class they seek to represent." *Swigart v. Fifth Third Bank*, 288 F.R.D. 177, 186 (S.D. Ohio 2012). Proposed Class Counsel, Richard McCune of McCune Wright Arevalo, LLP, and Taras Kick of The Kick Law Firm, APC, both have significant class action, litigation, and trial experience, are competent, and have been competent in representing the Classes. (McCune Decl. ¶¶ 2-7; Kick Decl. ¶¶ 2-3.) The interests of Plaintiff Tiffany K. Coleman-Weathersbee are not antagonistic to those of the other Class Members; her interests are aligned because she was charged improper fees when it is contended they should not have been charged and she understands that she is pursuing this case on behalf of all Class Members similarly situated and understands she has a duty to protect the absent Class Members. (Declaration of Tiffany K. Coleman-Weathersbee at ¶¶ 2-4; Kick Decl. ¶ 9.) She also has actively participated. (*Id.*)

C. The Proposed Settlement Class Also Satisfies Rule 23(b)(3)

A plaintiff must also demonstrate that she satisfies the requirements of Rule 23(b). To certify a class under Rule 23(b)(3), the plaintiff must show that (1) the

common questions of law and fact predominate over questions affecting only individuals and (2) the class action mechanism is superior to other available methods for adjudicating the controversy. Fed. R. Civ. P. 23(b)(3). "[T]o meet the predominance requirement, a plaintiff must establish that issues subject to generalized proof and applicable to the class as a whole predominate over those issues that are subject to only individualized proof." *Randleman v. Fidelity Nat'l Title Ins. Co.*, 646 F.3d 347, 352-53 (6th Cir. 2011). "[T]o meet the predominance requirement, a plaintiff must establish that issues subject to generalized proof and applicable to the class as a whole predominate over those issues that are subject to only individualized proof." *Randleman,* at 352-53. The Supreme Court states:

> When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.

Tyson Foods, Inc. v. Bouaphakeo, 136 S. Ct. 1036, 1045 (2016).

Both the contract claims, for overdraft fees and for NSF fees, and also the claims for violation of Regulation E, are subject to common proof, and thus it would be more efficient to decide those common issues via the class action mechanism. MSUFCU does not dispute its practice of charging fees based on the "available balance" while the "actual balance" contains enough money to pay for the transaction, and does not dispute that it would charge more than one NSF fee for the same item if presented more than once; thus, the predominating issue is whether the

contracts at issue governing those two fees permitted MSUFCU to do so. The only task the trier of fact needs to perform in adjudicating the breach of contract claims is to determine the meaning of the contractual language. Another predominating question is whether MSUFCU's manner of opting its members into the Reg E program complied with the law. These central core liability questions predominate over any possible individualized questions.

Finally, superiority is satisfied because each overdraft fee at issue involves only $30. As Judge Posner stated, "[t]he realistic alternative to a class action is not 17 million individual suits, but zero individual suits, as only a lunatic or a fanatic sues for $30." *Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 661. (7th Cir. 2004). The only real choice is between a class action and no action.

VII. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court: (1) preliminarily approve the settlement; (2) approve the proposed plan of notice to the Classes; (3) appoint the lower bidder of those administrators from which bids are being obtained as the claims administrator to provide the notice and administration program outlined in the Settlement Agreement; (4) set a schedule of dates as set forth in Exhibit 2 to the Kick Decl., including a hearing pursuant to Rule 23(e) of the Federal Rules of Civil Procedure to determine whether the proposed settlement is fair, reasonable, and adequate and should be finally approved.

Dated: January 31, 2020

Respectfully submitted,

/s/ Richard D. McCune
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Counsel for Plaintiff Tiffany K. Coleman-Weathersbee and the Putative Class

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIFFANY K. COLEMAN-WEATHERSBEE, individually, and on behalf of others similarly situated, Plaintiff, v. MICHIGAN STATE UNIVERSITY FEDERAL CREDIT UNION and DOES 1 through 100, Defendants.	Case No.: 5:19-cv-11674-JEL-DRG Honorable Judith E. Levy Magistrate Judge David R. Grand

DECLARATION OF TARAS KICK IN SUPPORT OF PLAINITFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, Taras Kick, declare as follows:

1. I am an attorney at law duly licensed to practice before all courts of the State of California and a shareholder with The Kick Law Firm, APC. The following is based on my personal knowledge, and, if called as a witness, I could and would testify competently thereto.

2. I have been a member of the California State Bar since 1989, the year I graduated from the University of Pennsylvania Law School. Prior to that, in 1986, I graduated from Swarthmore College, from which I earned a Bachelor of Arts degree in Economics and Psychology. I have served as class counsel in numerous national and state class actions, including being appointed lead counsel and a member of plaintiffs' executive committees. For over five years I was a member of the national Board of Directors of Public Justice, including its Class Action Preservation Committee. I am or have been a member of numerous other committees pertaining to consumer class actions, including the American Association for Justice Class Action Litigation Sub-Group; the Consumer Attorneys of California Class Action Group; the American Bar Association Committee on Class Actions & Derivative Suits; and, the State Bar of California Antitrust and Unfair Competition Litigation section. From 2012 through September 2017, I was a Commissioner of the California Law Revision Commission, an independent state agency created by statute in 1953 to assist the Legislature and Governor by examining California law and recommending needed reforms, having been appointed by Governor Edmund G. Brown Jr. in 2012, and was Chair of the Commission from September 2015 through September 2016 (although my role in this case is independent of any aspect of my duties with the

Commission and does not reflect one way or the other any positions of the Commission). The Kick Law Firm, APC primarily represents plaintiffs in consumer class actions.

3. The firm's class action experience includes, but is not limited to, the following cases: *Ketner v. SECU* Maryland, Civil No.:1:15-CV-03594-CCB (D. MD. 2017) (appointed co-lead counsel in federal consumer class action in the District of Maryland regarding alleged improper overdraft fees by a credit union, with issues similar to this case, final approval granted on January 11, 2018); *Towner v. 1st MidAmerica Credit Union*, No. 3:15-cv-1162 (S.D. Ill. 2017) (appointed co-lead counsel in federal consumer class action regarding alleged improper overdraft fees by a credit union, with issues similar to this case, final approval granted in November 2017); *Lane v. Campus Federal Credit Union*, Case No. 3:16-cv-00037 (M.D. La. 2017) (appointed co-lead counsel in consumer class action in the Middle District of Louisiana regarding alleged improper overdraft fees by a credit union, with issues similar to this case, final approval granted in August 2017); *Hernandez v. Point Loma Credit Union*, San Diego County Superior Court, Case No. 37-2013-00053519 (appointed co-lead counsel in California state consumer class action regarding alleged improper overdraft fees by a credit union, with issues similar to this case, final approval granted); *Gray v. Los Angeles Federal Credit Union*, Los Angeles County Superior, Case No. BC625500 (appointed co-lead counsel in California state consumer class action regarding alleged improper overdraft fees by a credit union, with issues similar to this case, final approval granted in June 2017); *Moralez v. Kern Schools Federal Credit Union*, Kern County Superior Court, Case No. BCV-15-100538 (appointed co-lead

counsel in California state consumer class action regarding alleged improper overdraft fees by a credit union, with issues similar to this case, final approval granted in June 2017); *Manwaring v. Golden 1 Credit Union*, Sacramento County Superior Court, Case No. 34-2013-00142667 (appointed co-lead counsel in California state consumer class action regarding alleged improper overdraft fees by a credit union, with issues similar to this case, final approval granted in December 2015); *Casey v. Orange County Credit Union*, Orange County Superior Court No. 30-2013-00658493-CJ-BT-CXC (appointed co-lead counsel in California state consumer class action regarding alleged improper overdraft fees by credit union, with issues similar to this case, final approval granted by the court in May 2015); *Southern California Gas Leak JCCP & Other Related Cases*, Case No. JCCP 4861, Los Angeles County Superior Court (appointed as interim co-lead counsel for the class action cases); *Howard v. Sage Software,* Los Angeles County Superior Court Case No. BC487140 (appointed lead counsel in multi-state consumer class action regarding alleged improper sales tax issues, final approval granted); *Kirtley v. Wadekar*, United States District Court for the District of New Jersey, Case No. 05-5383 (lead class counsel for nationwide class of purchasers of generic drugs); *Ford Explorer Cases*, Sacramento County Superior Court, JCCP Nos. 4266 & 4270 (co-class counsel and head of discovery committee for California class of car purchasers); *Pereyra v. Mike Campbell & Associates*, Los Angeles County Superior Court Case No. BC365631 (appointed lead class counsel for state-wide class of employees); *Alston v. Pacific Bell*, Los Angeles County Superior Court Case No. BC297863 (appointed lead class counsel for multi-state class regarding alleged improper telephone service related charges); *Oshaben v. Monster*

Worldwide, Inc., et al., San Francisco County Superior Court Case No. CGC-06-454538 (appointed lead class counsel for nationwide class regarding improper auto-renewal of subscription fees); *Cole v. T-Mobile USA, et al.*, Central District of California Case No. 06-6649 (appointed lead class counsel for an adversely certified state-wide class of 1.4 million cell-phone customers). Additionally, since 2014, I have taken two consumer class action cases to trial, with both trials resulting in judgments in favor of the consumer class. I was co-lead counsel in both of those cases.

4. The Kick Law Firm, APC undertook this case on a contingent basis, with the understanding that we would not be compensated for our efforts unless the case was successful. To date, the Kick Law Firm has not been paid for any of its time spent on this matter. The time spent on this matter by the firm's attorneys has required considerable work that could have, and would have, been spent on other billable matters. As a result of having accepted and been devoted to this case, it is my informed belief this law firm wound up not representing parties in cases it otherwise would have, and which in my opinion likely would have compensated this firm at its hourly rates requested in this matter.

5. The Kick Law Firm worked cooperatively, efficiently and very effectively with co-lead counsel McCune Wright Arevalo, LLP on this matter. The firms made every reasonable effort to prevent the duplication of work or inefficiencies, and I believe were successful in this. Assignments were made for specific tasks and activities so that it was clear which firm had primary responsibility for each task.

6. Prior to the filing of this lawsuit, I analyzed the class representative

Tiffany K. Coleman-Weathersbee's account statements from Michigan State University Federal Credit Union ("MSUFCU") and conferred with her. She reviewed the Complaint before it was filed.

7. Plaintiff filed the initiating Complaint and Demand for Jury Trial on June 6, 2019. (Dkt. No. 1.) The Complaint alleged that MSUFCU had breached its contracts with its customers by charging overdraft fees for transactions which, to be completed, required less money than was already in the customers' actual balances, and by charging multiple Non-Sufficient Funds ("NSF") fees on the same electronic transaction. (Compl. at ¶¶ 2-4.) The Complaint also alleged claims for violations of Regulation E of the Electronic Fund Transfer Act, breach of the covenant of good faith and fair dealing, unjust enrichment/restitution, and money had and received. (*See* Dkt. No. 1.) On August 26, 2019, MSUFCU moved to dismiss the Complaint, arguing that the contracts at issue for its overdraft program unambiguously disclosed that it uses a lesser balance, which it called the available-balance method, to determine overdrafts, and that it was permitted to assess multiple NSF fees for the same transaction. (Dkt. No. 10.) Plaintiff opposed MSUFCU's motion on September 17, 2019, and MSUFCU replied on October 1, 2019. (Dkt. Nos. 15-18.) The motion was set for a hearing on January 16, 2020. (Dkt. No. 21.) While the Motion to Dismiss was pending, the parties agreed to begin discovery. On October 7, 2019, Plaintiff served her first set of requests for production on MSUFCU. MSUFCU served its objections and

responses on November 12, 2019 and produced approximately 796 pages of documents which Plaintiff's counsel reviewed. MSUFCU served its requests to produce documents from Plaintiff on November 6, 2019. Plaintiff served her objections and responses, along with approximately 298 pages of documents, on November 13, 2019. Plaintiff noticed MSUFCU's Fed. R. Civ. P., Rule 30(b)(6) deposition for November 15, 2019. Plaintiff deposed two MSUFCU 30(b)(6) witnesses on that day. These witnesses included Samantha Jo Amburgey, MSUFCU's Chief Information Officer, and Lera L. Ammerman, MSUFCU's Chief Operating Officer. MSUFCU noticed Plaintiff's deposition for November 14, 2019. Plaintiff sat for her deposition on that date, after spending portions of two days preparing in person with her counsel.

8. Following the depositions, the parties agreed to mediate their claims before the Hon. Gerald E. Rosen (Ret.). The mediation took place on December 9, 2019, in New York, New York. Settlement negotiations at all times were at arm's length, adversarial and devoid of any collusion. The parties were able to reach a settlement during the mediation based on the active involvement and recommendations of the mediator Judge Rosen. A true and correct copy of the proposed Settlement Agreement which was reached as a result of this mediation is attached as Exhibit 1 and a true and correct copy of the Proposed Schedule of Future Dates for this settlement as agreed to by the parties is attached as Exhibit 2. I believe the proposed settlement is fair, adequate, and reasonable, and in the best

interest of class members, and I recommend it.

9. Plaintiff Tiffany K. Coleman-Weathersbee is typical of the settlement classes. She had a consumer checking account, and she was charged overdraft fees on transactions when the balance of her account was positive. Ms. Coleman-Weathersbee was involved and interactive in the case. She was deposed in the case, and she prepared with her attorneys on at least two different days in advance of the deposition, and also telephonically. I personally had numerous conversations with Ms. Coleman-Weathersbee about the case. She also gathered documents whenever requested, answered written discovery, and provided other information I requested. She also appeared personally at the mediation in this matter with Judge Rosen. Ms. Coleman-Weathersbee was, in my opinion, very helpful and important to the success of this case.

10. Administration services for this case have been put out to bid to two well-regarded claims administrators, KCC Class Action Services, LLC and Epiq Class Action & Claims Solutions, Inc. We are awaiting their bids, and intend to use the claims administrator which offers the lower bid. The notice and administration services to be performed by the claims administrator are set forth in the Settlement Agreement, attached as Exhibit 1. Using similar notice procedures in other overdraft fee class actions against credit unions, Plaintiff's counsel have accomplished successful direct notice well in excess of 90%.

11. The Kick Law Firm, APC and McCune Wright Arevalo, LLP have

agreed to share equally in any attorney fees awarded in this matter, and class representative Ms. Coleman-Weathersbee has been aware of this at all times and agreed to this fee sharing in writing. Further, the two firms are in agreement to pay local counsel, Philip J. Goodman, P.C. 10% of any attorneys' fees awarded.

12. Litigation costs incurred to date on behalf of Plaintiff are in excess of $48,000 and are estimated at an additional $50,000. (See also McCune Decl. ¶9.) Therefore, Class Counsel request a litigation costs cap on this matter of not to exceed $100,000 for purposes of the Notice which will be sent to class members. Of course, if the costs do not reach $100,000, that difference will go to class members instead. The costs will be detailed with the filing of the Motion for Final Approval.

13. Although I believe the liability in this case is strong, there was risk. For example, this case had not yet gone through a ruling on the fully briefed Motion to Dismiss. With regard to expected duration, after the Motion to Dismiss contest was concluded, if this settlement were not approved, I believe it is likely that at least all of the following would still have occurred if the matter were not settled: a contested motion for class certification; a contested motion for summary judgment; a contested trial; and, appellate work arising from a likely appeal by whichever side did not prevail at trial. This likely would have added several years of duration to the case. This is another reason why I am in support of the proposed settlement. This additional work also would have added many hundreds of

thousands of dollars in further attorney time and further litigation costs. Furthermore, Plaintiff acknowledges that there has been success by Defendant's counsel in other cases regarding the Regulation E class, including an issue related to it extending back in time less than alleged here.

I declare under penalty of perjury under the laws of the United States of America and the State of Michigan that the foregoing is true and correct.

Executed this 31st day of January 2020, at Los Angeles, California.

/s/ *Taras Kick*
Taras Kick

EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE

Tiffany Coleman-Weathersbee v. Michigan State University Federal Credit Union,

United States District Court for the Eastern District of Michigan, Southern Division

Case No. 19-cv-11674

PREAMBLE

This Settlement Agreement and Release (the "Agreement") is entered into by and among plaintiff Tiffany Coleman-Weathersbee ("Named Plaintiff") and all those on whose behalf she is prosecuting this action (each of them a "Plaintiff" and all of them "Plaintiffs"), on the one hand, and defendant Michigan State University Federal Credit Union ("Defendant"), on the other hand, as of the date executed below. All references in this Agreement to a "party" or the "parties" shall refer to a party or the parties to this Agreement.

RECITALS

A. On June 6, 2019, Named Plaintiff filed a putative class action complaint in the United States District Court for the Eastern District of Michigan entitled *Coleman-Weathersbee v. Michigan State University Federal Credit Union,* USDC Case No. 5:19-cv-11674-JEL-DRG, alleging claims for breach of the opt-in contract, breach of the Account Agreement, breach of the implied covenant of good faith and fair dealing, unjust enrichment/restitution, money had and received, and violations of the Electronic Fund Transfers Act and implementing regulations.

B. On August 26, 2019, Defendant filed a Motion to Dismiss.

C. On September 17, 2019, Plaintiff filed her Response to Defendant's Motion to Dismiss.

D. On December 9, 2019, the parties participated in a mediation before the Honorable Gerald E. Rosen (Ret.). The mediation resulted in a Mediator's Proposal, which both parties accepted.

E. Defendant has entered into this Agreement to resolve any and all controversies and disputes arising out of or relating to the allegations made in the Complaint, and to avoid the burden, risk, uncertainty, expense, and disruption to its business operations associated with further litigation. Defendant does not in any way acknowledge, admit to or concede any of the allegations made in the Complaint, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Complaint. Nothing contained in this Agreement shall be used or construed as an admission of liability and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement.

F. Named Plaintiff has entered into this Agreement to liquidate and recover on the claims asserted in the Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. Named Plaintiff does not in any way concede the claims alleged in the Complaint lack merit or are subject to any defenses.

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AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into and are an integral part of this Agreement, and in consideration of the mutual promises below, the parties agree as follows:

1. DEFINITIONS. In addition to the definitions contained elsewhere in this Agreement, the following definitions shall apply:

(a) "Bar Date to Object" shall be the date set by the Court as the deadline for Class Members to file an Objection, and shall be approximately fifteen (15) days after the filing of the Motion for Final Approval.

(b) "Bar Date to Opt Out" shall be the date set by the Court as the deadline for Class Members to opt out. The Bar Date shall be thirty (30) days after the date the Notice (defined below) must be delivered to the Class Members.

(c) "Claim Form" shall mean the form sent to Class Members along with the Notice (defined below) for purposes of submitting claims in the form attached as Exhibit 1.

(d) "Claims Administrator" shall mean the entity that will provide the notice and other administrative handling this Settlement Agreement. Class Counsel shall request bids from at least two separate claims administrators and the one providing the lowest bid shall be selected.

(e) "Class Counsel" shall mean Richard D. McCune of McCune Wright Arevalo, LLP, and Taras Kick of The Kick Law Firm, APC.

(f) "Class Member" shall mean any member of Defendant who is in either the Sufficient Funds Class, the Pre-Litigation Regulation E Class, the Post-Litigation Regulation E Class, or the Multiple NSF Fees on a Single Item Class.

(g) "Complaint" shall mean the Complaint filed in this case on June 6, 2019.

(h) "Court" shall mean the United States District Court for the Eastern District of Michigan.

(i) "Defendant's Counsel" shall mean Scott A. Chernich of Foster, Swift, Collins & Smith, P.C. and Stuart M. Richter and Andrew J. Demko of Katten Muchin Rosenman LLP.

(j) "Effective Date" shall be thirty (30) days after the entry of the Final Approval Order (defined below) provided no objections are made to this Agreement. If there are objections to the Agreement, then the Effective Date shall be the later of: (1) thirty (30) days after entry of the Final Approval Order if no appeals are taken from the Final Approval Order; or (2) if appeals are taken from the Final Approval Order, then thirty (30) days after an Appellate Court ruling affirming the Final Approval Order; or (3) thirty (30) days after entry of a dismissal of the appeal.

(k) "Email Notice" shall mean a short form of the Notice that shall be sent by email to Class Members who receive notice by email.

(l) "Exclusion Letter" shall mean a letter by a Class Member who elects to opt out of this Agreement.

(m) "Final Approval Hearing Date" shall be the date set by the Court for the hearing on any and all motions for final approval of this Agreement.

(n) "Final Approval Order" shall mean the Order and Judgment approving this Agreement issued by the Court at or after the Final Approval Hearing Date.

(o) "Final Report" shall mean the report prepared by the Claims Administrator of all receipts and disbursements from the Settlement Fund, as described in Section 14, below.

(p) "Motion for Final Approval" shall mean the motion or motions filed by Class Counsel, as referenced in Section 11, below.

(q) "Multiple NSF Fees on a Single Item Class" shall mean those members of Defendant who, from and including June 6, 2013 through December 9, 2019, were assessed more than one NSF fee on a single payment transaction that was not refunded.

(r) "Multiple NSF Fees" shall mean overdraft or non-sufficient funds fees that were assessed and paid for ACH and check transactions that were re-submitted by merchants after being declined.

(s) "Net Settlement Fund" shall mean the net amount of the Settlement Fund after payment of court approved attorneys' fees and costs, the costs of Notice, and any fees paid to the Claims Administrator.

(t) "Notice" shall mean the notice to Class Members of the settlement provided for under the terms of this Agreement, as ordered by the Court in its Preliminary Approval/Notice Order (defined below) and shall refer to the form of Notices attached hereto as Exhibit 1.

(u) "Pre-Litigation Regulation E Class" shall mean those members of Defendant who, from and including June 6, 2013 through June 5, 2019, were assessed and paid an overdraft fee on a debit card or ATM transaction that was not refunded.

(v) "Preliminary Approval/Notice Order" shall mean the Order issued by the Court preliminarily approving this Agreement and authorizing the sending of the Notice to Class Members, as provided in Sections 9 and 10, below.

(w) "Post-Litigation Regulation E Class" shall mean those members of Defendant who, from and including June 6, 2019 through December 11, 2019, were assessed and paid an overdraft fee on a debit card or ATM transaction that was not refunded.

(x) "Post-Resolution Regulation E Class Charges" shall mean overdraft charges paid on a Regulation E transaction or after December 12, 2019, and before the member on whom such charge is assessed has opted in to the Regulation E overdraft program under the revised Opt-In Agreement sent in December 2019 per Section 3 of this Settlement Agreement.

(y) "Post-Resolution Regulation E Class Member" shall mean all those on whom a "Post-Resolution Regulation E Class Charge" was assessed.

(z) "Regulation E Overdraft Charges" shall mean overdraft fees that were paid by the Pre-Litigation and Post-Litigation Regulation E Class members.

(aa) "Settlement Fund" shall mean the five million two hundred and one thousand ninety six dollars ($5,201,096.00), plus any accrued interest, to be paid by Defendant under the terms of this Agreement.

(bb) "Sufficient Funds Class" shall mean those members of Defendant who, between June 6, 2013 and December 9, 2019, were assessed and paid an overdraft fee on a Sufficient Funds Damage Transaction that was not refunded.

(cc) "Sufficient Funds Damage Transaction" shall mean a transaction that expert Arthur Olsen has determined was the subject of an overdraft fee when the account had a positive ledger balance (including $0.00) following posting of the transaction which was not refunded.

(dd) "Uncollected Overdraft Fees" shall mean any Regulation E Overdraft Charges, Sufficient Funds Damage Transactions and Multiple NSF Fees that were assessed on members of the Sufficient Funds Class, the Multiple NSF Fees on a Single Item Class, the Pre-Litigation Regulation E Class and the Post-Litigation Regulation E Class but were not paid.

(ee) "Value of the Settlement" shall mean the Settlement Fund plus the value of the Changes to Defendant's Practices, Refund of Overdraft Fees, and Forgiveness of Uncollected Overdraft Fees.

2. **CHANGES IN ACCOUNT DISCLOSURES**. Effective December 10, 2019, Defendant changed its member agreement and other disclosures to more clearly disclose its overdraft practices, including defining available balance, describing the impact of holds on available balance and the possibility of Multiple NSF Fees. Defendant has implemented processes to provide the revised member agreement and disclosures to new and existing members.

3. **CHANGES TO DEFENDANT'S PRACTICES**. Effective December 12, 2019, Defendant ceased assessing overdraft fees on non-recurring debit card transactions and ATM withdrawals for consumer accounts and shall continue to do so until such time as Defendant obtains new opt-ins from consumer members in compliance with Regulation E and Regulation DD. On or before December 31, 2019, Defendant shall provide a revised Opt-In form to all members who are opted in to overdraft protection under Regulation E as of that date. Defendant shall provide all such members with the opportunity to opt in to Defendant's Courtesy Pay for Debit overdraft service in accordance with Regulation E. Those members who do not opt in on or before January 31, 2020 shall be excluded from the Courtesy Pay for Debit service.

4. **REFUND OF OVERDRAFT FEES**. To the extent Defendant assessed and was paid any overdraft fees for non-recurring debit card transactions or ATM withdrawals from December 12, 2019, until Defendant can discontinue charging overdraft fees on non-recurring debit card transactions for consumer accounts, Defendant shall refund all such fees charged to any member's account until such time as they opt in under the revised Opt-In form set forth in Section 3

of this Settlement Agreement. To the extent such fees were assessed but not paid, Defendant shall forgive and shall not attempt to collect such fees.

5. **FORGIVENESS OF UNCOLLECTED OVERDRAFT FEES**. Defendant shall forgive all Uncollected Overdraft Fees as defined in paragraph 1(dd).

6. **CLOSURE OF NAMED PLAINTIFF'S ACCOUNTS**. Within thirty (30) days after the Effective Date, Plaintiff shall terminate her membership with Defendant and shall close any personal bank accounts, owned individually or jointly, that Named Plaintiff has at that time. Named Plaintiff shall not apply for any new accounts with Defendant, either individually, jointly or as a co-party. Named Plaintiff may keep her childrens' certificate of deposit accounts with Defendant through maturity, but may not open any new banking products for the children. This term as with all terms, is subject to approval by the Court.

7. **FORGIVENESS OF NAMED PLAINTIFF'S LOANS.** As of the Effective Date, Defendant shall forgive and discharge the balance on any outstanding loans Named Plaintiff has with Defendant. For purposes of credit reporting, Defendant shall indicate the loans have been paid off. This is subject to review and approval by the Court, and is being presented in lieu of an additional or different service award to be approved by the Court.

8. **CLASS ACTION SETTLEMENT**. Plaintiff shall propose and recommend to the Court that settlement classes be certified, which classes shall be comprised of the Class Members. Defendant agrees solely for purposes of the settlement provided for in this Agreement, and the implementation of such settlement, that this case shall proceed as a class action; provided, however, that if a Final Approval Order is not issued, then Defendant shall retain all rights to object to maintaining this case as a class action. Plaintiffs and Class Counsel shall not reference this Agreement in support of any subsequent motion relating to certification of a liability class.

9. **PRELIMINARY SETTLEMENT APPROVAL**. Class Counsel shall use reasonable efforts to file a motion seeking a Preliminary Approval/Notice Order by January 31, 2020. The Preliminary Approval/Notice Order shall provide for: preliminary approval of this Agreement, provisional certification of each class for settlement purposes, appointment of Class Counsel as counsel to the provisionally certified classes, and the requirement that the Notice be given to the Class Members as provided in Section 10, below (or as otherwise determined by the Court).

10. **NOTICE TO THE CLASSES.**

(a) The Claims Administrator shall send the Notice to all Class Members as specified by the Court in the Preliminary Approval/Notice Order.

(b) For those Class Members who are current members of Defendant and have agreed to receive notices regarding their accounts from Defendant electronically, Defendant shall provide the Claims Administrator with the most recent email addresses it has for these Class Members. The Claims Administrator shall email an Email Notice to each such Class Member's last known email address, in a manner that is calculated to avoid being caught and excluded by spam filters or other devices intended to block mass email. For any emails that are returned undeliverable, the Claims Administrator shall use the best available databases to obtain current email address information for

class members, update its database with these emails, and resend the Notice. The Email Notice shall inform Class Members how they may request a copy of the Notice.

(c) For those Class Members who are not current members of Defendant or who have not agreed to receive electronic notices regarding their accounts from Defendant, the Notice shall be mailed to these Class Members by first class United States mail to the best available mailing addresses. Defendant shall provide the Claims Administrator with last known mailing addresses for these Class Members. The Claims Administrator will run the names and addresses through the National Change of Address Registry and update as appropriate. If a mailed Notice is returned with forwarding address information, the Claims Administrator shall re-mail the Notice to the forwarding address. For all mailed Notices that are returned as undeliverable, the Claims Administrator shall use standard skip tracing devices to obtain forwarding address information and, if the skip tracing yields a different forwarding address, the Claims Administrator shall re-mail the Notice to the address identified in the skip trace, as soon as reasonably practicable after the receipt of the returned mail.

(d) The Notice shall also be posted on a settlement website created by the Claims Administrator.

(e) The Claims Administrator shall maintain a database showing mail and email addresses to which each Notice was sent and any Notices that were not delivered by mail and/or email. A summary report of the Notice shall be provided to the Parties at least five (5) days prior to the deadline to file the Motion for Final Approval. The database maintained by the Claims Administrator regarding the Notice shall be available to the parties and the Court upon request. It shall otherwise be confidential and shall not be disclosed to any third party. To the extent the database is provided to Class Counsel, it shall be used only for purposes of implementing the terms of this Agreement, and shall not be used for any other purposes.

(f) The Notice shall be in a form approved by the Court and, substantially similar to the notice form attached hereto as Exhibit 1. The parties may by mutual written consent make non-substantive changes to the Notice without Court approval.

(g) All costs associated with publishing, mailing and administering the Notice as provided for in this Section, and all costs of administration including, but not limited to, the Claims Administrator's fees and costs shall be paid out of the Settlement Fund.

11. **MOTION FOR FINAL APPROVAL**. Within a reasonable time after the Bar Date to Opt Out, and provided the conditions in Section 20, below, are satisfied, Class Counsel shall file a Motion for Final Approval of this Agreement so that same can be heard on the Final Approval Hearing Date.

12. **ENTRY OF JUDGMENT**. The Final Approval Order shall constitute the Court's final judgment in this action. The Court shall retain jurisdiction to enforce the terms of the Final Approval Order.

13. THE SETTLEMENT FUND AND DISTRIBUTION.

(a) Payments to Class Members. Within ten (10) days after entry of the Preliminary Approval/Notice Order, Defendant shall transfer the Settlement Fund to the Claims Administrator, less the total amount that will be credited to Class Members by Defendant, as provided in subsection 13(d)(iv), below. The Settlement Fund shall be the total amount Defendant is obligated to pay under the terms of this Agreement and includes (a) Class Counsels' fees and costs; (b) any service award payment to the Named Plaintiff; (c) costs associated with administering the Notice in accordance with Section 10, above; and (d) any fees paid to the Claims Administrator for services rendered in connection with the administration process. Defendant shall not make any additional or further contributions to the Settlement Fund, even if the total amount of all alleged improper fees charged to the Class Members exceeds the value of the Net Settlement Fund. In the event a Final Approval Order is not issued, or this Agreement is terminated by either party for any reason, including pursuant to Section 20, below, the portion of the Settlement Fund paid to the Claims Administrator (including accrued interest, if any) less expenses actually incurred by the Claims Administrator or due and owing to the Claims Administrator in connection with the settlement provided for herein, shall be refunded to Defendant within two (2) business days.

(b) All funds held by the Claims Administrator shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until distributed pursuant to this Agreement.

(c) All funds held by the Claims Administrator at any time shall be deemed to be a Qualified Settlement Fund as described in Treasury Regulation §1.468B-1, 26 C.F.R. §1.468B-1.

(d) Payments shall be made from the Settlement Fund as follows:

(i) Plaintiffs' Fees and Costs. Plaintiffs' reasonable attorneys' fees and costs, as determined and approved by the Court, shall be paid from the Settlement Fund ten (10) days after entry of the Final Approval Order. Class Counsel shall apply for an award of attorneys' fees of up to one-third (33-1/3%) of the Value of the Settlement, plus reimbursement of reasonable litigation costs, to be approved by the court. Defendant agrees not to oppose an application for attorneys' fees of up to one-third (33-1/3%) of the Value of the Settlement, but reserves the right to oppose an application for fees in excess of that amount. Should the judgment approving the settlement be reversed on appeal, Class Counsel shall immediately repay all fees and costs to Defendant; should the award of fees and costs be reduced on appeal, Class Counsel shall immediately repay into the Settlement Fund an amount equal to the reduction ordered by the appellate court.

(ii) Service Award. Named Plaintiff agrees not to seek a service award beyond that set forth in Section 7 of this Settlement Agreement regarding the forgiveness of the loans, and this is subject to Court approval.

(iii) Claims Administrator's Fees. The Claims Administrator's fees and costs, including estimated fees and costs to fully implement the terms of this Agreement, as approved by the Court, shall be paid within ten (10) days after the Effective Date.

(iv) Payments to Class Members. Of the $5,201,096 Settlement Fund, $2,500,000 (48.07%) is allocated to the Sufficient Funds Class, $500,000 (9.61%) is allocated to the Multiple NSF Fees on a Single Item Class, $1,451,096 (27.9%) is allocated to the Pre-Litigation Regulation E Class, and $750,000 (14.42%) is allocated to the Post-Litigation Regulation E Class. Based on this allocation, payments from the "Net Settlement Fund" to the Class Members shall be calculated as follows:

(1) Members of the Sufficient Funds Class shall be paid per incurred Sufficient Funds Overdraft Charge calculated as follows:

(0.4807 of the Net Settlement Fund/Total Sufficient Funds Overdraft Charges) x Total number of Sufficient Funds Overdrafts charged to and paid by each Sufficient Funds Class Member = Individual Payment.

(2) Members of the Multiple NSF Fees on a Single Item Class shall be paid per Multiple NSF Fee calculated as follows:

(0.0961 of the Net Settlement Fund/Total NSF Fees assessed on a single item within 10 days of receiving the initial NSF fee on the item) x Total number of Multiple NSF Fees on a Single Item charged to and paid by each Multiple NSF Fees on a Single Item Class Member = Individual Payment.

(3) Members of the Pre-Litigation Regulation E Class who incurred Regulation E Overdraft Charges shall be entitled to make a claim for a refund of up to 25 such fees from that portion of the Net Settlement Fund allocated to the Pre-Litigation Regulation E Class (27.9%) and shall be provided a Claim Form with the Notice. The Claim Form shall indicate the number and amount of Regulation E Overdraft Charges assessed against each such member's accounts. To the extent the 27.9% of the Net Settlement Fund allocated to pay Pre-Litigation Regulation E Overdraft Charges is not sufficient to make full payment for all such claims made, the money shall be distributed on a *pro rata* basis. If the total amount of Pre-Litigation Regulation E Overdraft Charges claimed through the claims process is less than the net amount allocated, the excess shall be paid to all members of the Pre-Litigation Regulation E Class according to the same formula but without a cap of 25 such fees. The formula for this class is:

(0.2790 of the Net Settlement Fund/Total Pre-Litigation Regulation E Overdraft Charges) x Total number of Pre-Litigation Regulation E Overdraft Charges assessed on and paid by each Pre-Litigation Regulation E Class Member = Individual Payment. This is subject to an initial cap of 25 valid claimed fees per class member who submits a claim, and then if the funds in this class are not exhausted, the balance is distributed pro-rata to all who made a claim.

(4) Members of the Post-Litigation Regulation E Class who incurred Regulation E Overdraft Charges shall be Class shall be paid per incurred Regulation E Overdraft charge as follows:

(0.1442 of the Net Settlement Fund/Total Post-Litigation Regulation E Overdraft Charges) x Total number of Regulation E Overdrafts charged to and paid by each member of the Post-Litigation Regulation E Class = Individual Payment.

(5) Members of the Post-Resolution Regulation E Class shall be refunded all Regulation E overdraft fees assessed on them from December 12, 2019 until such time as they have opted-in to the revised Opt-In form as set forth in Section 3 of this Settlement Agreement, less proportionate deduction for litigation costs, attorneys' fees, administration costs from the fees. Defendant will provide at least ten days before the due date to file the Motion for Final Approval reasonable data to Arthur Olsen to verify the dollar amount of these fees.

(6) Class Members who were not assessed a Pre-Litigation Regulation E Overdraft Charge shall not receive a Claim Form.

(7) Because members of the Sufficient Funds Class may also be members of the Pre-Litigation Regulation E Class, Post-Litigation Regulation E Class, or Multiple NSF Fees on a Single Item Class, there may be circumstances where eligible Overdraft Fees which are Sufficient Funds Overdraft Charges will also be Regulation E Overdraft Charges or Multiple NSF Fees on a Single Transaction Charges. To prevent Class Members from recovering more than the fees they paid, Class Members shall not be entitled to recover more than $30 per fee. Thus, if a Class Member was charged $30 for an Eligible Overdraft Fee which is a Regulation E Overdraft Charge and is also a Sufficient Funds Overdraft Charge, then that member shall only be entitled to recover at most $30 for that fee. The amount payable to a class member in excess of $30 shall be distributed to the other Class Members in the applicable classes, pro rata.

(8) Payments to individual class members ("Individual Payments") shall be made no later than ten (10) days after the Effective Date, as follows:

For those Class Members who are members of Defendant at the time of the distribution of the Net Settlement Fund, a credit in the amount of the Individual Payment they are entitled to receive shall be applied to the account that was assessed Regulation E Overdraft Charges, Sufficient Funds Damage Transactions and/or Multiple NSF Fees. If that account is no longer active, then a credit may be made to any checking or savings account they are then maintaining at Defendant that is held by them individually.

(9) For those Class Members who are not members of Defendant at the time of the distribution of the Net Settlement Fund or at that time do not have an individual account, they shall be sent a check by the Claims Administrator at the address used to provide the Notice, or at such other address as designated by the Class Member. The Class Member shall have one-hundred eighty (180) days to negotiate the check. Any checks uncashed after one-hundred eighty (180) days shall be distributed pursuant to Section 16.

(v) In no event shall any portion of the Settlement Fund revert to Defendant.

14. **FINAL REPORT TO THE COURT**. Within two hundred (200) days after the Effective Date (or such other date set by the Court), Class Counsel shall submit to the Court a Final Report, setting forth: (a) the amounts paid to Class Members by the Claims Administrator, (b) Any checks not cashed or returned; (c) the efforts undertaken to follow up on uncashed and/or returned checks; (d) the total amount of money unpaid to Class Members; and (e) the total amount of credits issued to Class Members by Defendant. Defendant shall provide a declaration under penalty of perjury

setting forth the amount of the credits issued to Class Members. Class Counsel shall be entitled to verify credits by confidential review of a reasonable sample of Class Member account statements.

15. THE CLAIMS ADMINISTRATOR.

(a) The Claims Administrator shall execute a retainer agreement that shall provide, among other things, that the Claims Administrator shall be bound by and shall perform the obligations imposed on it under the terms of this Agreement. The retainer agreement shall include provisions requiring that all Class Member data shall be strictly confidential and secured by the Claims Administrator by means of data security measures that meet the requirements of 12 CFR § 748, and appendices thereto, and shall not be disclosed other than as provided for under the terms of this Agreement or as ordered by the Court.

(b) The Claims Administrator shall be subject to the jurisdiction of the Court with respect to the administration of this Agreement.

(c) The Claims Administrator shall keep all information regarding Class Members confidential except as otherwise provided herein. All data created and/or obtained and maintained by the Claims Administrator pursuant to this Agreement shall be destroyed twelve (12) months after the Final Report is submitted to the Court, provided that Class Counsel and Defendants Counsel, or either of them, at their own cost, shall receive a complete copy of the Claims Administrator's records, together with a declaration establishing completeness and authenticity, which they may maintain consistent with their own document retention policies. To the extent Class Counsel receives a copy of the class list, it shall be subject to the protective order issued in this case and shall not be used for any purposes other than the implementation of this Agreement.

(d) The Claims Administrator also shall be responsible for timely and properly filing all tax returns necessary or advisable, if any, with respect to the Settlement Fund. Except as provided herein, Class Members shall be responsible for their own tax reporting of payments or credits received under the terms of this Agreement.

(e) Claims Administrator shall provide the data in its claims administration database to Defendant's Counsel and/or Class Counsel in response to any written request, including an email request. The written request shall be copied to the other party when made. Such information shall be used only for purposes of the implementation of this Agreement.

(f) Within one hundred ninety (190) days after the Effective Date or such other date as required by the Court, the Claims Administrator shall prepare a declaration setting forth the total payments issued to Class Members by the Claims Administrator, the total amount of any checks uncashed and/or returned, and the total amount of money being held by the Claims Administrator.

16. CY PRES PAYMENT. Subject to Court approval, within thirty (30) days after the Final Report, the total amount of uncashed checks, and residual amounts held by the Claims Administrator at the time of the Final Report, shall be paid by the Claims Administrator to a Cy Pres fund or funds that is/are appropriate for the case and agreed to by the parties.

17. OPT-OUTS.

(a) A Class Member who wishes to exclude himself or herself from this Agreement, and from the release of claims and defenses provided for under the terms of this Agreement, shall submit an Exclusion Letter by mail to the Claims Administrator. For an Exclusion Letter to be valid, it must be postmarked on or before the Bar Date to Opt Out. Any Exclusion Letter shall identify the Class Member, state that the Class Member wishes to exclude himself or herself from the Agreement, and shall be signed and dated.

(b) The Claims Administrator shall maintain a list of persons who have excluded themselves and shall provide such list to Defendant's Counsel and Class Counsel at least five (5) days prior to the date Class Counsel is required to file the Motion for Final Approval. The Claims Administrator shall retain the originals of all Exclusion Letters (including the envelopes with the postmarks). The Claims Administrator shall make the original Exclusion Letters available to Class Counsel, Defendant's Counsel and/or the Court upon two (2) court days' written notice.

18. OBJECTIONS.

(a) Any Class Member, other than a Class Member who timely submits an Exclusion Letter, may object to this Agreement.

(b) To be valid and considered by the Court, the objection must be in writing and sent by first class mail, postage pre-paid, to the Claims Administrator. The objection must be postmarked on or before the Bar Date to Object, and must include the following information:

(i) The objector's name, address, telephone number, the last four digits of his or her member number or former member number, and the contact information for any attorney retained by the objector in connection with the objection or otherwise in connection with this case;

(ii) A statement of the factual and legal basis for each objection and any exhibits the objector wishes the Court to consider in connection with the objection; and

(iii) A statement as to whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying the counsel by name, address, and telephone number.

(c) Class Counsel shall file any objections and responsive pleadings at least seven (7) days prior to the Final Approval Hearing Date.

19. GENERAL RELEASE. Except as to the rights and obligations provided for under the terms of this Agreement, Named Plaintiff, on behalf of herself and each of the Class Members, hereby releases and forever discharges Defendant, and all of its past, present and future predecessors, successors, parents, subsidiaries, divisions, employees, affiliates, assigns, officers, directors, shareholders, representatives, attorneys, insurers and agents (collectively, the "Defendant Releasees") from any and all losses, fees, charges, complaints, claims, debts, liabilities, demands, obligations, costs, expenses, actions, and causes of action of every nature, character, and description, whether known or unknown, asserted or unasserted, suspected or unsuspected, fixed or

contingent, which Named Plaintiff and the Class Members who do not opt out now have, own or hold against any of the Defendant Releasees that arise out of and/or relate to the facts and claims alleged in the Complaint.

20. CONDITIONS TO SETTLEMENT.

(a) This Agreement shall be subject to and is expressly conditioned on the occurrence of all of the following events:

(i) The Court has entered the Preliminary Approval/Notice Order, as required by Section 9 above;

(ii) The Court has entered the Final Approval Order as required by Sections 11 and 12 above, and all objections, if any, to such Order are overruled, and all appeals taken from such Order are resolved in favor of approval; and

(iii) The Effective Date has occurred.

(b) If all of the conditions specified in Section 20(a) are not met, then this Agreement shall be cancelled and terminated.

(c) Defendant shall have the option to terminate this Agreement if five percent (5%) or more of the Class Members opt out. Defendant shall notify Class Counsel and the Court of its intent to terminate this Agreement pursuant to this Section 20 within ten (10) business days after the Bar Date to Opt Out, or the option to terminate shall be considered waived.

(d) In the event this Agreement is terminated, pursuant to Section 20(c) immediately above, or fails to become effective in accordance with Sections 20(a) and/or (b) immediately above, then the parties shall be restored to their respective positions in this case as they existed as of the date of the execution of this Agreement. In such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the parties and shall not be used in this case or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc.*

21. REPRESENTATIONS.

(a) The parties to this Agreement represent that they have each read this Agreement and are fully aware of and understand all of its terms and the legal consequences thereof. The parties represent that they have consulted or have had the opportunity to consult with and have received or have had the opportunity to receive advice from legal counsel in connection with their review and execution of this Agreement.

(b) The parties have not relied on any representations, promises, or agreements other than those expressly set forth in this Agreement.

(c) The Named Plaintiff, on behalf of the Class Members, represents that she has made such inquiry into the terms and conditions of this Agreement as she deems appropriate, and that by executing this Agreement, she, based on Class Counsel's advice, and her understanding of the case,

believes the Agreement and all the terms and conditions set forth herein, are fair and reasonable to all Class Members.

(d) The Named Plaintiff represents that she has no knowledge of conflicts or other personal interests that would in any way impact her representation of the class in connection with the execution of this Agreement.

(e) Defendant represents and warrants that it has obtained all corporate authority necessary to execute this Agreement.

22. **FURTHER ASSURANCES**. Each of the parties hereto agrees to execute and deliver all such further documents consistent with this Agreement, and to take all such further actions consistent with this Agreement, as may be required in order to carry the provisions of this Agreement into effect, subject to Class Counsel's obligation to protect the interests of the Class Members.

23. **APPLICABLE LAW**. This Agreement shall be governed by and interpreted, construed, and enforced pursuant to the laws of the State of Michigan.

24. **NO ORAL WAIVER OR MODIFICATION**. No waiver or modification of any provision of this Agreement or of any breach thereof shall constitute a waiver or modification of any other provision or breach, whether or not similar. Nor shall any actual waiver or modification constitute a continuing waiver. No waiver or modification shall be binding unless executed in writing by the party making the waiver or modification.

25. **ENTIRE AGREEMENT**. This Agreement, including the exhibit attached hereto, constitutes the entire agreement made by and between the parties pertaining to the subject matter hereof, and fully supersedes any and all prior or contemporaneous understandings, representations, warranties, and agreements made by the parties hereto or their representatives pertaining to the subject matter hereof. No extrinsic evidence whatsoever may be introduced in any judicial proceeding involving the construction or interpretation of this Agreement.

26. **BINDING ON SUCCESSORS**. This Agreement shall inure to the benefit of, and shall bind, each of the parties hereto and their successors.

27. **SEVERABILITY**. In the event any one or more of the provisions of this Agreement is determined to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement will not in any way be affected or impaired thereby.

28. **COUNTERPARTS AND FACSIMILE SIGNATURES.** This Agreement may be executed and delivered in separate counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts together shall constitute but one and the same instrument and agreement. Facsimile and pdf signature pages shall have the same force and effect as original signatures.

29. NOTIFICATION. Any notice to be given to Class Counsel and/or Named Plaintiff shall be sent by email as follows:

Richard D. McCune
McCune Wright Arevalo, LLP
3281 E. Guasti Road, Suite 100
Ontario, California 91761
Telephone: (909) 557-1250
rdm@mccunewright.com

- And —

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

Any notice to be given to Defendant under the terms of this Agreement shall be sent by email as follows:

Stuart M. Richter
Andrew J. Demko
Katten Muchin Rosenman LLP
2029 Century Park East, Suite 2600
Los Angeles, California 90067
Telephone: (310) 788-4400
stuart.richter@katten.com
andrew.demko@katten.com

- And -

Scott A. Chernich
Foster, Swift, Collins & Smith, P.C.
313 S. Washington Square
Lansing, MI 48933
Telephone: (517) 371-8133
schernich@fosterswift.com

Any notice to the Claims Administrator shall be sent by email to the address of the claims administrator, which will be determined by the lowest bid for services.

IN WITNESS WHEREOF, the parties have entered this Agreement as of the dates set forth below.

Dated: January 31, 2020

Michigan State University Federal Credit Union, a federally chartered credit union

By: April M Cobes

President and CEO

Its: _____

Dated: January ___, 2020

Tiffany Coleman-Weathersbee, an individual on behalf of herself and those she represents

By: _____

Tiffany Coleman-Weathersbee

APPROVED AS TO FORM:

Dated: January ___, 2020

KATTEN MUCHIN ROSENMAN LLP
Stuart M. Richter
Andrew J. Demko

FOSTER, SWIFT, COLLINS & SMITH, P.C.
Scott A. Chernich

By: _____

Stuart M. Richter

Attorneys for Defendant Michigan State University Federal Credit Union

Dated: January ___, 2020

MCCUNE WRIGHT AREVALO, LLP
Richard D. McCune

THE KICK LAW FIRM
Taras Kick

By: _____

Richard McCune

Attorneys for Named Plaintiff Tiffany Coleman-Weathersbee

IN WITNESS WHEREOF, the parties have entered this Agreement as of the dates set forth below.

Dated: January ___, 2020

Michigan State University Federal Credit Union, a federally chartered credit union

By:_____

Its:_____

Dated: January 31st, 2020

Tiffany Coleman-Weathersbee, an individual on behalf of herself and those she represents

By:_____
Tiffany Coleman-Weathersbee

APPROVED AS TO FORM:

Dated: January 31, 2020

KATTEN MUCHIN ROSENMAN LLP
Stuart M. Richter
Andrew J. Demko

FOSTER, SWIFT, COLLINS & SMITH, P.C.
Scott A. Chernich

By _____
Stuart M. Richter
Attorneys for Defendant Michigan State University Federal Credit Union

Dated: January 31, 2020

MCCUNE WRIGHT AREVALO, LLP
Richard D. McCune

THE KICK LAW FIRM
Taras Kick

By:_____
Richard McCune
Attorneys for Named Plaintiff Tiffany Coleman-Weathersbee

Exhibit 1

Tiffany Coleman-Weathersbee
v.
Michigan State University Federal Credit Union

NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

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

IF YOU HAVE OR HAD A CHECKING ACCOUNT WITH MICHIGAN STATE UNIVERSITY FEDERAL CREDIT UNION ("DEFENDANT") AND YOU WERE CHARGED AN OVERDRAFT OR NON-SUFFCIENT FUNDS FEE BETWEEN JUNE 6, 2013 AND DECEMBER 9, 2019, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT

The District Court for the Eastern District of Michigan has authorized this Notice; it is not a solicitation from a lawyer.

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION	
MAKE A CLAIM	You may make a claim for up to 25 overdraft fees which were paid by you on a debit card or ATM transaction between June 6, 2013 and June 5, 2019, if there was no refund of the overdraft fee, regardless of the funds in your account. The number of such overdraft fees you may have incurred is shown on the Claim Form attached to this Notice. If you did not receive a Claim Form, then you have no eligible ATM or debit card fees of this type and therefore need not make a claim. As stated in the box below, you may still be entitled to a payment for other Overdraft Fees that do not require a claim to be made. If you are eligible to make a claim for ATM and debit card fees, then you should fill out and submit the Claim Form within thirty (30) days after receipt of this notice.

DO NOTHING	Even if you do not make a claim, if you have incurred an Overdraft Fee on a debit card or ATM transaction after June 5, 2019; or, on a debit card or ATM transaction any check, ACH or other payment transaction while your ledger balance was sufficient to pay for the transaction or, more than one NSF fee for the same item between June 6, 2013 and December 9, 2019, you will receive a payment from the Settlement Fund so long as you do not opt out of or exclude yourself from the settlement (described in the next box). However, you may receive more if you receive a Claim Form and make a claim.
EXCLUDE YOURSELF FROM THE SETTLEMENT; RECEIVE NO PAYMENT BUT RELEASE NO CLAIMS	You can choose to exclude yourself from the settlement or "opt out." This means you choose not to participate in the settlement. You will keep your individual claims against Defendant but you will not receive a payment. If you exclude yourself from the settlement but want to recover against Defendant, you will have to file a separate lawsuit or claim.
OBJECT TO THE SETTLEMENT	You can file an objection with the Court explaining why you believe the Court should reject the settlement. If your objection is overruled by the Court, then you will receive a payment and you will not be able to sue Defendant for the claims asserted in this litigation. If the Court agrees with your objection, then the settlement may not be approved.

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

BASIC INFORMATION

1. What is this lawsuit about?

The lawsuit that is being settled is entitled *Tiffany Coleman-Weathersbee v. Michigan State University Federal Credit Union* in the United States District Court for the Eastern District of Michigan, Case No. 19-cv-11674. The case is a "class action." That means that the "Named Plaintiff," Tiffany Coleman-Weathersbee, is an individual who is acting on behalf of four groups. The first is all members of Defendant who were charged an overdraft fee for any payment transaction from June 6, 2013 through December 9, 2019, and at the time such fee was imposed, that person had sufficient funds in the ledger balance but not the available balance in his or her account to complete the transaction. The second group is all members of Defendant who were charged an overdraft fee on a debit card or ATM transaction from and including June 6, 2013 through June 5, 2019. The third group is all members of Defendant who were charged an overdraft fee on a debit card or ATM transaction from and including June 6, 2019 through January 31, 2020, or to the present if the person did not opt back in to the Regulation E overdraft program under the revised Opt-In form sent in December 2019. The fourth group is all members of Defendant who

were assessed more than one NSF fee on a single item, from and including June 6, 2013 through December 9, 2019. The persons in these groups are collectively called the "Class Members."

The Named Plaintiff claims Defendant improperly charged overdraft fees when members had enough money in the ledger balances but not the available balances of their checking accounts to cover a transaction, and also alleges Defendant did not properly opt members into its overdraft program for debit card payment transactions. The Complaint alleges claims for breach of the opt-in contract, breach of the Account Agreement, breach of the implied covenant of good faith and fair dealing, unjust enrichment/restitution, money had and received, and violation of the Electronic Fund Transfers Act and implementing regulations. The Named Plaintiff is seeking a refund of alleged improper overdraft fees charged to Class Member accounts. Defendant does not deny it charged overdraft fees but contends it did so properly and in accordance with the terms of its agreements and applicable law. Defendant maintains that its practices were and now are proper and properly disclosed to its members, and therefore denies that its practices give rise to claims for damages by the Named Plaintiff or any Class Member.

2. Why did I receive this Notice of this lawsuit?

You received this Notice because Defendant's records indicate that you were charged with one or more Eligible Overdraft Fees. The Court directed that this Notice be sent to all Class Members because each Class Member has a right to know about the proposed settlement and the options available to him or her before the Court decides whether to approve the settlement.

3. Why did the parties settle?

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

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

While Defendant disputes the allegations in the lawsuit and denies any liability or wrongdoing, it enters into the settlement solely to avoid the expense, inconvenience, and distraction of further proceedings in the litigation.

WHO IS IN THE SETTLEMENT

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

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

YOUR OPTIONS

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

You have four options: (1) file a claim with the claims administrator on the Claim Form attached to this Notice to recover for the Overdraft Fees you were charged for ATM and debit card transactions as listed on the Claims Form; (2) do nothing and you will receive a payment according to the terms of this settlement; (3) exclude yourself from the settlement ("opt out" of it); or (4) participate in the settlement but object to it. Each of these options is described in a separate section below.

6. What are the critical deadlines?

The deadline for sending a Claim Form to the Claims Administrator is _____. If you do nothing, you may nonetheless receive settlement funds; so long as you do not opt out or exclude yourself (described in Questions 16 through 18, below), a payment will be made to you, either by crediting your account if you are still a member of Defendant or by mailing a check to you at the last address on file with Defendant (or any other address you provide).

The deadline for sending a letter to exclude yourself from or opt out of the settlement is _____.

The deadline to file an objection with the Court is also _____.

7. How do I decide which option to choose?

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

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

If you want to participate in the settlement, and the Claim Form attached to this Notice indicates you were assessed Overdraft Fees for ATM withdrawals or one-time (non-recurring) debit card signature payments, then you should fill out the Claims Form and return it. See Question 25 below. If you did not receive a Claim Form with this Notice, then Defendant's records indicated you were not assessed the type of Overdraft Fees for ATM withdrawals or debit card payments that are reimbursable under the claims portion of the settlement. In that case, you need not do anything and

you will still receive a payment for other Overdraft Fees assessed when you had sufficient ledger balance in your account (so long as you do not opt out).

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

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

THE SETTLEMENT PAYMENT

9. How much is the Settlement?

Defendant has agreed to create a Settlement Fund of $5,201,096.00. In addition, Defendant has agreed to forgive certain overdraft fees that were assessed from June 6, 2013 to December 11, 2019, for those accounts that were closed with a negative balance. Further, Defendant has agreed to refund all Regulation E overdraft charges assessed on or after December 12, 2019, until such time as the credit union member has opted in to that overdraft program pursuant to the revised Opt-In form sent in December 2019.

As discussed separately below, attorneys' fees, litigation costs, and the costs paid to a third-party Claims Administrator to administer the settlement (including mailing and emailing this notice) will be paid out of the Settlement Fund. The balance of the Settlement Fund will be divided among all Class Members based on the amount of eligible Overdraft Fees they paid. The formula for distributing the settlement is described in the settlement agreement.

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

Class Counsel will request an attorney fee be awarded by the Court of not more than one-third of the Value of the Settlement. Value of the Settlement includes the Settlement Fund, refunded Regulation E fees assessed on or after December 12, 2019, and the forgiven overdraft fees. Class Counsel has also requested that it be reimbursed approximately $_____in litigation costs incurred in prosecuting the case. The Court will decide the amount of the attorneys' fees and costs based on a number of factors, including the risk associated with bringing the case on a contingency basis, the amount of time spent on the case, the amount of costs incurred to prosecute the case, the quality of the work, and the outcome of the case.

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

Class Counsel on behalf of the Named Plaintiff has requested a service award in this case equal in value to approximately $14,674.

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

The Claims Administrator has agreed to cap its expenses as $_____.

13. How much will my payment be?

You may make a claim for up to 25 of the debit card overdraft fees listed on the attached Claim Form, which will be paid from 27.9% of the Settlement Fund. The remaining funds from the Net Settlement Fund will be distributed to Class Members who were assessed Overdraft Fees for payments made when they had a positive ledger balance in their checking accounts, Class Members who were assessed Regulation E overdraft fees between June 6, 2019 and December 9, 2019, and Class Members who were assessed Regulation E overdraft fees after December 11, 2019 until such time as they opted-in under the revised Opt-In form, and Class Members who were assessed more than one NSF fee on a on a *pro rata* basis. Current members of Defendant will receive a credit to their accounts for the amount they are entitled to receive. Former members of Defendant shall receive a check from the Claims Administrator.

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

No. But if you received a Claim Form with this Notice and it indicates you had Overdraft Fees from ATM and debit card transactions, then you should fill out the Claim Form and send it to the Administrator as provided in Question 25, below. If you received this Notice but there is no Claim Form attached, then you will still be entitled to receive a payment, without having to make a claim. If you are eligible to make a claim, then you may receive more if you fill out and submit the Claim Form. Any amount you are entitled to under the terms of the settlement will be distributed to you unless you choose to exclude yourself from the settlement, or "opt out." Excluding yourself from the settlement means you choose not to participate in the settlement. You will keep your individual claims against Defendant, but you will not receive a payment. In that case, if you choose to seek recovery against Defendant, then you will have to file a separate lawsuit or claim.

15. When will I receive my payment?

The Court will hold a Fairness Hearing (explained below in Questions 22-24) on _____, 2020 at _____ to consider whether the settlement should be approved. If the Court approves the settlement, then payments should be made or credits should be issued within about 40 to 60 days after the settlement is approved. However, if someone objects to the settlement, and the objection is sustained, then there is no settlement. Even if all objections are overruled and the Court approves the settlement, an objector could appeal, and it might take months or even years to have the appeal resolved, which would delay any payment.

EXCLUDING YOURSELF FROM THE SETTLEMENT

16. How do I exclude myself from the settlement?

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

To opt out, you **must** send a letter to the Claims Administrator that you want to be excluded. Your letter can simply say "I hereby elect to be excluded from the settlement in the *Tiffany Coleman-Weathersbee v. Michigan State University Federal Credit Union* class action. Be sure to include your name, the last four digits of your account number(s) or former account number(s), address,

telephone number, and email address. Your exclusion or opt out request must be postmarked by _____, and sent to:

Tiffany Coleman-Weathersbee v. Michigan State University Federal Credit Union
Attn:
ADDRESS OF THE CLAIMS ADMINISTRATOR

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

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

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

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

OBJECTING TO THE SETTLEMENT

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

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

All objections must be post-marked no later than _____, and must be mailed to the Claims Administrator as follows:

CLAIMS ADMINSTRATOR
Coleman-Weathersbee v. Michigan State University Federal Credit Union Claims Administrator Attn: ADDRESS OF THE CLAIMS ADMINISTRATOR

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

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

21. What happens if I object to the settlement?

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

THE COURT'S FAIRNESS HEARING

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

The Court will hold a Final Approval or Fairness Hearing at ___ on _____, 2020 at the District Court for the Eastern District of Michigan, Southern Division, which is located at 200 E. Liberty Street, Suite 300, Ann Arbor, Michigan 48104. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys' fees and expenses.

23. Do I have to come to the hearing?

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

24. May I speak at the hearing?

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

SUBMIT A CLAIM

25. How do I make a claim if I received a Claim Form?

If you received a Claim Form, then you should use it to make a claim. It should be filled out, signed, and sent to the Claims Administrator:

All claims must be post-marked no later than _____, and must be mailed as follows:

CLAIMS ADMINSTRATOR

Coleman-Weathersbee v. Michigan State University Federal Credit Union Claims Administrator
Attn:
ADDRESS OF THE CLAIMS ADMINISTRATOR

IF YOU DO NOTHING

26. What happens if I do nothing at all?

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

THE LAWYERS REPRESENTING YOU

27. Do I have a lawyer in this case?

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

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

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

29. Who determines what the attorneys' fees will be?

The Court will be asked to approve the amount of attorneys' fees at the Fairness Hearing. Class Counsel will file an application for fees and costs and will specify the amount being sought as discussed above. You may review a physical copy of the fee application at the website established by the Claims Administrator, or by reviewing it at the Records Department of the District Court for the Eastern District of Michigan, Southern Division, which is located at 200 E. Liberty Street, Suite 300, Ann Arbor, Michigan 48104. GETTING MORE INFORMATION

This Notice only summarizes the proposed settlement. More details are contained in the settlement agreement, which can be viewed/obtained online at [WEBSITE] or at the Office of the Clerk of the United States District Court for the Eastern District of Michigan, Southern Division, which is located at 200 E. Liberty Street, Suite 300, Ann Arbor, Michigan 48104, by asking for the Court file containing the Motion For Preliminary Approval of Class Settlement (the settlement agreement is attached to the motion).

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

Coleman-Weathersbee v. Michigan State University Federal Credit Union
Claims Administrator
Attn:

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

Richard D. McCune
McCune Wright Arevalo, LLP
3281 E. Guasti Road, Suite 100
Ontario, California 91761
Telephone: (909) 557-1250
rdm@mccunewright.com

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

PLEASE DO NOT CONTACT THE COURT OR ANY REPRESENTATIVE OF DEFENDANT CONCERNING THIS NOTICE OR THE SETTLEMENT.

EXHIBIT 2

Claims Administrator Sends Notice and Website Goes Live	Forty-Five Days After Preliminary Approval or Sooner
Last day to Opt Out	Thirty Days After Claims Administrator Sends Notice
Motion for Final Approval and Attorneys' Fees Filed with Court	Thirty-Five Days After Claims Administrator Sends Notice
Last day to Object	Fifteen Days After Motion For Final Approval and Attorneys' Fees is Filed With the Court
Last day to file responses to objections and Class Counsel's and Defendants' Replies in Support of Motion for Final Approval and Attorneys' Fees	Ten Days After Last Day to Object
Final Approval Hearing	Twenty Days After Last Day to Object, If Convenient to This Court's Calendar
Filing by Claims Administrator of Final Report	Thirty Days After Time to Cash Checks has Expired

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIFFANY K. COLEMAN-WEATHERSBEE, individually, and on behalf of others similarly situated, Plaintiff, v. MICHIGAN STATE UNIVERSITY FEDERAL CREDIT UNION and DOES 1 through 100, Defendants.	**Case No.: 5:19-cv-11674-JEL-DRG**

DECLARATION OF ARTHUR OLSEN IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, Arthur Olsen, declare as follows:

1. I have personal knowledge of the following and if called as a witness could and would testify competently thereto.

Scope of Work

2. Based on my experience in the information technology ("IT") field and my prior work as a data management expert in other cases, I have been retained by Class Counsel to analyze the class data produced in connection with this action involving Michigan State University Federal Credit Union ("MSUFCU").

Qualifications and Background

3. My qualifications and background are set forth in my consultant profile ("Profile") attached hereto as **Exhibit 1**. As set forth in my Profile, I am the principal of Cassis Technology,

LLC, an IT consulting firm, and have over twenty years of professional experience in the IT field, specializing in the areas of data analysis, database development, and database administration and support.

4. Prior to starting my own firm, I worked as a database engineer for Microsoft Corporation ("Microsoft"), and also worked under contract as a database administrator, developer, and administration support specialist for Hewlett-Packard Company ("Hewlett-Packard"). At Microsoft, I participated in the design, implementation and support of an extensive data warehousing solution for Microsoft's licensing division, managed and supported numerous databases throughout the company, and received Microsoft's award for operational excellence for my database-related work. At Hewlett-Packard, I served as the primary database administrator for both Oracle and SQL Server systems that supported multiple Hewlett-Packard divisions, and also served as the lead analyst in charge of compiling, analyzing, and processing data from various internal database systems throughout Hewlett-Packard for use in litigation support.

5. I have experience working on several litigation consulting projects. For example, I previously provided trial testimony and was qualified as an expert witness in a consumer lawsuit against Wells Fargo relating to its overdraft practices and fees, which ultimately resulted in a judgment of over $200 million against Wells Fargo. *See Gutierrez v. Wells Fargo Bank*, N.A., 730 F. Supp. 2d 1080 (N.D. Cal. 2010). In its Order awarding restitution to the class members, the court found that I had done a "professional and careful job" in connection with this work:

> This order finds that plaintiffs' expert Arthur Olsen has convincingly shown that it is entirely practical to re-run the computerized data in storage for each class members' account and determine how many overdrafts were added by the high-to-low practice for debit-card transactions during the class period. Indeed, he has already done so, using various alternate posting sequences. This has been done by him on an account-by-account, day-by-day, and transaction-by-transaction basis, using the bank's own real-world data. Court orders were needed to provide him access to this data, but after much work and time, this order finds that Expert Olsen has done a professional and careful job in laying out the impacts of various

> alternative posting protocols. This work has not only demonstrated the enormous impact of the high-to-low scheme, but it has demonstrated that it is possible, in considering relief and restitution, to add back to depositors' specific accounts the amounts that were wrongfully taken by Wells Fargo, using posting protocols that this order finds would have tracked the ordinary and reasonable expectations of depositors.

Id. at 1138.

Analysis

6. In connection with the present action, I have reviewed the class data produced by MSUFCU. The class data contained detailed information regarding all overdraft and NSF fees assessed by MSUFCU on debit card, check, and ACH transactions between June 6, 2013 and October 23, 2019. Among other things, the class data included account numbers, the date of each overdraft or NSF fee, the amount of each overdraft or NSF fee, information allowing the determination of the type of transaction which caused each overdraft or NSF fee, (either debit card, check, or ACH), merchant information, and the ledger balance at the time when each transaction posted to the account.

7. It is my understanding that MSUFCU will be producing additional data covering the period October 24, 2019 through January 31, 2020. Therefore, the results described in this declaration are provisional, and will be updated once I have completed the analysis on the full range of data for the entire class period. Specifically, the results described in this declaration are based on the data provided, which covers the periods June 6, 2013 through October 23, 2019.

8. For the Sufficient Funds Class, based on the data provided, I have identified 18,895 MSUFCU members (across 18,904 accounts) that were assessed at least one overdraft fee when the member had a positive ledger balance in their account that was sufficient to cover the transaction at issue between June 6, 2013 and October 23, 2019, after the application of any refunds already credited by MSUFCU. There were 94,945 such fees totaling $2,848,350.

9. For the Multiple NSF Fees on a Single Item Class, based on the data provided, I have identified 13,367 MSUFCU members (across 13,501 accounts) that were assessed more than one NSF fee on a single payment at least once between June 6, 2013 and October 23, 2019, after the application of any refunds already credited by MSUFCU. There were 46,328 such fees totaling $1,389,840.

10. For the Post-Litigation Regulation E Class, based on the data provided, I have identified 4,103 MSUFCU members (across 4,103 accounts) that were assessed at least one overdraft fee for an ATM or debit card transaction between June 6, 2019 and October 23, 2019, after the application of any refunds already credited by MSUFCU. There were 25,476 such fees totaling $764,280.

11. For the Pre-Litigation Regulation E Class, based on the data provided, I have identified 17,964 MSUFCU members (across 18,010 accounts) that were assessed at least one overdraft fee for an ATM or debit card transaction between June 15, 2013 and June 5, 2019, after the application of any refunds already credited by MSUFCU. There were 356,170 such fees totaling $10,685,100. Of those, 180,881 fees totaling $5,426,430 remain after capping the number of such fees at 25 for each member.

12. Some of the overdraft fees that were assessed by MSUFCU were included in multiple classes. For instance, an overdraft fee could be included in both the Sufficient Funds Class and either the Pre-Litigation Regulation E Class or the Post-Litigation Regulation E Class. After accounting for this overlap, there are a total of 34,320 MSUFCU members (across 34,611 accounts) that are a member of at least one of the four classes: (a) Sufficient Funds Class; (b) Multiple NSF Fees on a Single Item Class; (c) Post-Litigation Regulation E Class; and (d) Pre-Litigation Regulation E Class. Further, after accounting for the overlap, there are a total of 356,170 fees at issue totaling $13,787,430.

13. With regard to all four classes, under the Settlement Agreement, I understand that MSUFCU has agreed to forgive and release any claims it may have to collect any Sufficient Funds Overdraft Charges, Multiple NSF Fees on a Single Item NSF Charges, Post-Litigation Regulation E Overdraft Charges; and Pre-Litigation Regulation E Overdraft Charges that have been assessed by MSUFCU, but never collected. Based on charge-off data produced by MSUFCU, as of October 23, 2019, the total amount to be forgiven by MSUFCU is $244,416. This figure is net of those fees that were subsequently recovered by MSUFCU.

14. As noted above, the data that has been produced thus far is incomplete, but I intend to supplement the analysis to cover the entire class periods once that data is made available to me. For the Sufficient Funds Class and the Multiple NSF Fees on a Single Item Class, the final class period will be June 6, 2013 through December 9, 2019. For the Post-Litigation Regulation E Class, the final class period will be June 6, 2019 through December 11, 2019. For the Pre-Litigation Regulation E Class, the final class period will be June 6, 2013 through June 5, 2019.[1] Additionally, the charge-off amount to be forgiven by MSUFCU, as described in paragraph 13, will also be updated. In the meanwhile, I have been asked to estimate the final damages once the full class-wide data is made available to me.

15. In order to estimate damages for the time periods for which data is currently unavailable, I extrapolated the expected results from the time periods for which data is available. Based on that extrapolation, I estimate that the final results will be approximately the following: (a) for the Sufficient Funds Class, $2,915,086 in damages; (b) for the Multiple NSF Fees on a Single Item Class, $1,430,827 in damages; (c) for the Post-Litigation Regulation E Class,

[1] The class period for the Pre-Litigation Regulation E Class is June 6, 2013 through June 5, 2019. Since the data produced covers this entire period, the analysis for this class will not need to be updated.

$1,032,536 in damages; (d) after accounting for overlap as described in paragraph 12, $14,117,869 in damages; and (e) forgiveness of charged-off fees as described in paragraph 13, $250,274 in forgiven fees.

16. With regard to the Post-Resolution Regulation E Class as described in the Settlement Agreement, as a result of this litigation MSUFCU has agreed to stop collecting overdraft fees for all Regulation E transactions starting December 12, 2019 and continuing through January 31, 2020. Further, it is my understanding that MSUFCU was not able to implement this change to their system prior to December 12, 2019, so some number of the Regulation E fees were assessed during this time frame and will need to be refunded to members. Once additional class data is produced, I will be able to identify those fees.

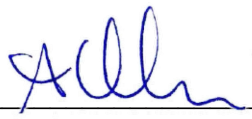
17. Regardless of the number of Regulation E fees that MSUFCU actually assessed between December 12, 2019 and January 31, 2020, I was asked to estimate the amount of Regulation E fees that MSUFCU would have assessed but for the agreement to stop collecting such fees during that time frame. In order make this estimate, I extrapolated the expected results from the time periods for which data is available. Based on that extrapolation, I estimate that MSUFCU would have assessed $300,991 in Regulation E fees between December 12, 2019 and January 31, 2020.

18. Finally, effective February 1, 2020, it is my understanding that MSUFCU will once again begin collecting Regulation E fees for members that have affirmatively opted-in based on a revised Regulation E Opt-In form. Assuming that 25% of the MSUFCU members opt-in as a result of the revised Opt-In form, I was asked to estimate the effect that would have on the Regulation E fees over the next three years. In order make this estimate, I extrapolated the expected results from the time periods for which data is available. Based on that extrapolation, I estimate that MSUFCU would have assessed $6,462,450 in Regulation E fees between February 1, 2020 and January 31,

2023 absent the requirement that members opt-in based on the revised Opt-In agreement. Again, assuming an opt-in rate of 25%, I estimate that they will only assess $1,615,613 during that same three year period. In other words, MSUFCU will assess approximately $4,846,837 less in Regulation E fees over the next three years.

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

Executed this 31st day of January 2020, at Seattle, Washington.



Arthur Olsen

EXHIBIT 1

IT CONSULTANT PROFILE: ARTHUR OLSEN

BACKGROUND

Specializing in the areas of data analysis, database development, and database administration, Mr. Olsen has nearly 20 years of professional IT experience. He has a strong background in both Oracle and Microsoft database technologies, with a focus in developing large-scale applications and designing reporting solutions for publicly traded corporations. Additionally, he has had valuable experience in analyzing and processing massive amounts of data for use in litigation support.

SKILLS

- Considerable experience compiling, analyzing and processing data in support of corporate and class-action litigation.
- Extensive training and experience creating functional designs and logical data models.
- Proficient in the wide range of database development and administration technologies including: Microsoft SQL Server; Oracle RDBMS; and Teradata RDBMS.
- Relevant experience designing, implementing and maintaining large scale database solutions on Oracle and SQL Server, including both online transaction based systems and data warehouses.
- Reporting specialist with experience developing custom reporting solutions based on financial systems such as Microsoft Dynamics and Oracle Financials, as well as custom applications.

AWARDS

- Award for Operational Excellence | Microsoft
  Recognized for outstanding contribution to the design and implementation of the data warehousing solution for the Microsoft Licensing division.

CERTIFICATIONS

- Oracle Certified Professional
- Certified Oracle Database Administrator

EXPERIENCE

Data Expert: Litigation Specialist | retained by various law firms

- Data expert supporting massive multi-district class action litigation, (MDL No. 2036 – *In Re: Checking Account Overdraft Litigation*).
- Processed and analyzed data in support of class action litigation, (*Arnett v. Bank of America, N.A.*, D. Or. Case No. 3:11-CV-01372).
- Processed and analyzed data in support of class action litigation, (*Sheila I. Hofstetter et. al. v. JP Morgan Chase Bank, N.A.*, N.D. Cal. Case No. CV-10-1313 WHA).
- Processed and analyzed data in support of class action litigation, (*Veronica Gutierrez et. al. v. Wells Fargo Bank, N.A.*, N.D. Cal. Case No. 07-05923 WHA), that resulted in a $203 million class restitution award.

Database Engineer: Reporting Specialist | under contract at various clients

- Developed a custom Chart of Accounts management solution that integrates with Microsoft Great Plains for small to mid-size companies.
- Designed and implemented several custom financial reporting solutions, including one for a Fortune 500 company, based on Microsoft Business Intelligence, MOSS, and Excel Services.
- Architected a solution for a large corporation that integrated with Oracle Financials and automated the process of calculating inventory reserves.

Database Administrator, Developer & Litigation Support Specialist | under contract at Hewlett Packard, Cupertino, CA

- Primary Database Administrator responsible for both Oracle and SQL Server support for three divisions, including 20+ applications spread out over a total of 30+ development, test and production servers.
- Lead analyst responsible for compiling, analyzing and processing data from various systems throughout HP for use in litigation support.
- Participated as the principal authority in the composition and implementation of SQL Server database standards across the three divisions, including security models, backup and recovery plans, programming standards, and general database naming conventions.

Database Engineer | Microsoft Licensing, Inc., Reno, NV

- Participated in the design, implementation and support of an extensive data warehousing solution for Microsoft's licensing division. System included nearly twenty data sources and several thousand end users, including select customers who accessed the system remotely via the Internet.
- Developed numerous DTS packages to pull delta information from various source systems, process and denormalize data and push it to one of several data repositories.
- Created and documented plans for database maintenance, backup and recovery, and high availability.

Database Engineer | under contract at Microsoft Corporation, Redmond, WA

- Lone Oracle database administrator and general Oracle resource for all teams associated with an enterprise level online end user billing system, including: Management, Development, Testing, Production Support and Infrastructure.
- Primary owner of a 24 x 7 production database that resided on a DEC Alpha failover cluster.
- Designed replication model using Oracle replication to satisfy extensive reporting requirements.
- Tuned SQL statements as written by members of the development team. Developed PL/SQL triggers, stored procedures, SQL scripts and NT scripts as needed to enhance applications and to correct problems as discovered.
- Acted as liaison between Microsoft and Oracle for all technical issues related to the databases, and between Microsoft and Digital for all technical issues related specifically to the Alpha cluster.

EDUCATION

- Microsoft Internal Training – Redmond, WA | March 2000
  Instructor led SQL Server training, including courses on Database Architecture and Administration, Database Tuning, and Microsoft's TSQL
- ARIS Education Center – Bellevue, WA | June 1996
  Oracle DBA Program, including courses on Relational Database Design, Database Architecture and Administration, SQL and PL/SQL, Application Tuning, Database Tuning, and Advanced Database Concepts
- University of Washington – Seattle, WA | June 1989
  BA in Business Administration with a concentration in Finance.

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIFFANY K. COLEMAN-WEATHERSBEE, individually, and on behalf of others similarly situated,

Plaintiff,

v.

MICHIGAN STATE UNIVERSITY FEDERAL CREDIT UNION and DOES 1 through 100,

Defendants.

Case No.: 5:19-cv-11674-JEL-DRG

Honorable Judith E. Levy

Magistrate Judge David R. Grand

DECLARATION OF TIFFANY K. COLEMAN-WEATHERSBEE IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL

I, Tiffany K. Coleman-Weathersbee, declare as follows:

1. I am over the age of eighteen, have personal knowledge of the following, and if called as a witness could and would testify competently thereto.

2. I am the proposed class representative in this case, and have incurred overdraft fees from Michigan State University Federal Credit Union ("MSUFCU") when I had enough money in the account to cover the transaction, and also have incurred more than one non-sufficient funds fee for the same item. I understand what this case is about, and I have participated actively in it. As the proposed class representative in this matter, I understand my duties towards the absent class members, including that I have a fiduciary duty towards them and to look out for their best interests. I understand that I also have a responsibility to actively

participate in the case. I have done so. I have met with my attorneys in person, including to prepare for deposition, and I sat for deposition in this case. Further, I have answered discovery in this case. Also, would the case have gone to trial I was prepared to participate in the trial, including testifying. Additionally, I personally attended the mediation in this matter which took place before the Honorable Gerald Rosen on December 9, 2019. I was never offered anything to become the class representative. I became the proposed class representative in this matter because I felt the fees being charged by MSUFCU were not fair and I wanted to help not just myself but also other MSUFCU members who were charged these fees similarly.

3. I have had a lot of contact with my attorneys in this matter. Before my attorneys filed this lawsuit, they gave me an opportunity to review the Complaint, and I did. Also prior to filing this lawsuit, my attorneys disclosed that their two firms, McCune Wright Arevalo, LLP, and The Kick Law Firm, APC, would be sharing in any fees in this equally, and I approved that in writing. Also, before this lawsuit was filed, I gathered documents to provide to my attorneys, which they then analyzed for me and we reviewed together, and discussed the implications for the case.

4. As stated, I personally attended the mediation in this matter which took place before the Honorable Gerald Rosen on December 9, 2019. I discussed the proposed settlement in this case with my attorneys at the mediation, and I was and am in favor of it, and consider it to be a favorable one for the class members.

I declare under penalty of perjury under the laws of the United States of America and the State of Michigan that the foregoing is true and correct.

Executed this 31st day of January 2020, at WARREN, Michigan.

Tiffany K. Coleman-Weathersbee

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIFFANY K. COLEMAN-WEATHERSBEE, individually, and on behalf of others similarly situated, Plaintiff, v. MICHIGAN STATE UNIVERSITY FEDERAL CREDIT UNION and DOES 1 through 100, *Defendants.*	Case No.: 5:19-cv-11674-JEL-DRG Honorable Judith E. Levy Magistrate Judge David R. Grand

DECLARATION OF RICHARD MCCUNE IN SUPPORT OF PLAINTIFF'S NOTICE OF UNOPPOSED MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, Richard McCune, declare as follows:

1. I am an attorney at law duly licensed to practice before all courts of the State of California and a shareholder with McCune Wright Arevalo, LLP. The following is based on my personal knowledge, and, if called as a witness, I could and would testify competently thereto.

2. I am a partner with McCune Wright Arevalo, LLP. My firm is a twenty-attorney firm headquartered in Ontario, California with offices in Edwardsville, Illinois; Irvine, California; San Bernardino, California; Palm Desert, California; and Newark, New Jersey. McCune Wright Arevalo represents

plaintiffs in consumer fraud class actions, product liability and other complex class action litigations in California and nationwide. I obtained my J.D. from the University of Southern California in June of 1987 and became a member of the California Bar in December of 1987. I have more than thirty-two years of litigation and trial experience and am AV-rated. Over the last decade, I have focused my practice on representing consumers in class action litigation. Prior to that, I represented plaintiffs in a variety of complex litigation matters, with particular emphasis in product liability actions.

3. I have been appointed class counsel in numerous state and federal class actions. A significant part of my practice since 2004 has been litigating the overdraft practices of financial institutions. In 2007, I was class counsel against Bank of America in an overdraft class action case that settled for $35 million. In 2010, I served as co-class counsel and co-trial counsel in a consumer fraud class action case against Wells Fargo Bank, N.A., on behalf of over one million customers who had been improperly assessed overdraft fees. That trial resulted in a $203 million bench trial verdict, and a permanent injunction issued forbidding Wells Fargo Bank, N.A. from continuing to misrepresent its overdraft practices. From 2009 to 2012, I was heavily involved in litigation against over 33 banks in an overdraft MDL in the Southern District of Florida (*In re: Checking Account Overdraft Litigation*, MDL No. 2036), that has generated over $1 billion in settlements. I was appointed class counsel in a $5 million settlement with Citibank, N.A. relating to its overdraft practices. I am currently appointed co-lead counsel in an overdraft MDL against TD Bank, N.A. (*In re: TD Bank, N.A., Debit Card Overdraft Litigation,* MDL No. 2613), that recently announced a tentative $70

million settlement. And I am currently litigating several additional active cases against state and national financial institutions related to their overdraft practices.

4. In 2011, I was class and trial class counsel in a consumer class action trial that resulted in a plaintiffs' verdict on behalf of a class of California Correct Craft, Inc. boat owners. My firm and I have been appointed class counsel in certified class actions in a number of other consumer fraud class actions, including cases against Correct Craft, Gateway Computers, Kaiser Steel Retirees Benefit Trust, Bank of America, N.A., Hewlett-Packard, American Honda Motor Co., Mazda Motors of America, Inc., and JP Morgan Chase Bank, N.A.

5. I have been appointed co-lead counsel in one MDL, serve on one MDL executive committee, and have been appointed as one of two settlement class counsel in a third MDL. I am appointed by Central District of California Judge James V. Selna to the Plaintiffs' Personal Injury and Wrongful Death Committee in *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation* (MDL No. 2151). Central District of California Judge George H. Wu appointed me to serve as settlement class counsel in *In re: Hyundai and Kia Fuel Economy Litigation* (MDL No. 2424). I am currently appointed by South Carolina District Judge Bruce H. Henricks to serve as co-lead counsel in *In re: TD Bank, N.A. Debit Card Overdraft Fee Litigation* (MDL No. 2613).

6. I have been appointed as class counsel or co-lead counsel in contested overdraft litigation class certification proceedings in *In re: TD Bank, N.A. Debit Card Overdraft Fee Litigation* (MDL No. 2613), United States District Court for the District of South Carolina, Greenville Division, Case No. 6:15-MN-02613;

Gutierrez, et al. v. Wells Fargo Bank, United States District Court for the Northern District of California, Case No. C 07-05923 WHA; *Gunter v. United Federal Credit Union*, United States District Court for the District of Nevada, Case No. 3:15-cv-00483-MMD-WGC; and *Hernandez v. Point Loma Credit Union*, Superior Court of the State of California, County of San Diego, Case No. 37-2013-00053519-CU-BT-CTL.

7. I have been appointed as settlement class counsel or co-lead class counsel in *Fernandez v. Altura Credit Union*, Riverside County Superior Court, Case No. RIC1610873; *Behrens v. Landmark Credit Union*, United States District Court for the Western District of Wisconsin, Case No. 17-cv-101-JDP; *Hernandez v. Logix Federal Credit Union*, Los Angeles County Superior Court, Case No. BC628495; *Bowens v. Mazuma Federal Credit Union*, United States District Court for the Western District of Missouri, Case No. 15-00758-CV-W-BP; *Santiago v. Meriwest Credit Union*, Sacramento County Superior Court, Case No. 34-2015-00183730; *Fry v. MidFlorida Credit Union*, Case No. 8:15-CV-2743; *Ketner v. State Employees Credit Union of Maryland, Inc.*, Case No. 1:15-cv-03594; *Ramirez v. Baxter Credit Union*, 3:16-cv-03765; *Lynch v. San Diego County Credit Union*, San Diego County Superior Court, Case No. 37-2015-00008551; *Towner v. 1st MidAmerica Credit Union*, Case No. 3:15-cv-1162; *Lane v. Campus Federal Credit Union*, Case No. 3:16-cv-00037; *Gray v. Los Angeles Federal Credit Union*, Los Angeles County Superior Court, Case No. BC625500; *Moralez v. Kern Schools Federal Credit Union*, Kern County Superior Court, Case No. BCV-15-100538; *Manwaring v. Golden I Credit Union*, Sacramento County Superior Court, Case No. 34-2013-00142667; *Casey v. Orange County Credit*

Union, Orange County Superior Court No. 30-2013-00658493-CJ-BT-CXC; *Gunter v. United Federal Credit Union*, United States District Court for the District of Nevada, Case No. 3:15-cv-00483-MMD-WGC, *Sewell v. Wescom Credit Union*, Los Angeles County Superior Court No. BC586014; *Salls v. Digital Federal Credit Union*, United States District Court for the District of Massachusetts, Case No. 18-cv-11262-TSH; and *Pingston-Poling v. Advia Credit Union*, United States District Court for the Western District of Michigan, Case No.: 1:15-CV-1208.

8. I have been personally involved in all aspects of the investigation, pleadings, law and motion, discovery and settlement negotiations in this case, and it is my belief that this settlement is in the best interest of the class, taking into account both the risks and benefits of proceeding to trial and verdict in this case.

9. McCune Wright Arevalo, LLP's current costs entered in this matter to date are $48,507.00. It is expected that there will not be more than an additional $50,000 in expenses for expert fees in providing the class administration firm the damage numbers per customer and travel for the preliminary approval hearing and the final approval hearing, for total and anticipated costs of approximately $98,507.00.

I declare under penalty of perjury under the laws of the United States of America and the State of Michigan that the foregoing is true and correct. Executed this 31st of January, 2020, at Irvine, California.

Richard McCune