

SETTLEMENT AGREEMENT AND RELEASE

Brandi Salls v. Digital Federal Credit Union,

United States District Court, District of Massachusetts

Case No. 4:18-cv-11262-TSH

PREAMBLE

This Settlement Agreement and Release (the “Agreement”) is entered into by and among plaintiff Brandi Salls (“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 Digital 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 15, 2018, Named Plaintiff filed a putative class action complaint entitled *Salls v. Digital Federal Credit Union*, in the United States District Court for the District of Massachusetts, Case No. 4:18-cv-11262-TSH, alleging claims for Breach of Opt-In Contract, Breach of 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 Transfer Act (Regulation E) 12 C.F.R. §§ 1005 *et seq.* (the “Complaint”).

B. On September 17, 2018, Defendant filed a motion to dismiss the Complaint for failure to state a claim;

C. On September 22, 2018, Plaintiff filed a brief in opposition to Defendant’s Motion to Dismiss.

D. On October 9, 2018, Defendant filed a Reply in Support of the Motion to Dismiss.

E. On November 8, 2018, the Court granted Defendant’s motion to dismiss in part and denied it in part, dismissing Plaintiff’s causes of action for Unjust Enrichment and Money Had and Received and allowing the cause of action for Violation of the Electronic Fund Transfer Act to proceed only as to claims arising after June 15, 2017, and otherwise denying the motion.

F. On December 17, 2018, Defendant served its First Set of Interrogatories and requests for Production on Plaintiff.

G. On June 3, 2019, Plaintiff responded and objected to the Defendant’s First Set of Interrogatories and Requests for Production. Plaintiff also served her own First Set of Requests for Production on Defendant and Defendant responded by producing 1257 documents.

H. On June 6, 2019, Plaintiff served a Notice of Deposition on Defendant.

I. On June 14, 2019, Plaintiff served Supplemental Objections and Responses to the Defendant’s First Set of Interrogatories and Requests for Production.

J. On June 14, 2019, Plaintiff took the FRCP Rule 30(b)(6) depositions of Defendant’s designated witnesses Allison Cormier and Kathleen Haywood. On June 24, 2019, Plaintiff’s deposition was taken by Defendant.

K. On June 26, 2019, the parties engaged in a mediation before the Honorable Edward A. Infante (Ret). The mediation resulted in the settlement described below.

L. On July 2, 2019, Plaintiff filed her Notice of Settlement.

M. 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. Defendant nevertheless believes that this settlement is in its best interest and in the best interests of all of its members. 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.

N. Plaintiffs have 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. Plaintiffs do not in any way concede the claims alleged in the Complaint lack merit or are subject to any defenses.

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

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

(e) “Class Member” shall mean any member of Defendant who is in either the Regulation E Class or the Sufficient Funds Class.

(f) “Court” shall mean the United States District Court for the District of Massachusetts.

(g) “Defendant’s Counsel” shall mean Stuart M. Richter and Andrew J. Demko of Katten Muchin Rosenman LLP.

(h) “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-five (35) 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.

(i) “Eligible Overdraft Fee” shall mean “Regulation E Overdraft Charges” and “Sufficient Funds Overdraft Charges” that were not reversed within 30 days after they were assessed.

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

(k) “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.

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

(m) “Final Report” shall mean the report prepared by the Claims Administrator of all receipts and disbursements from the Settlement Fund, as described in Section 8, below.

(n) “Motion For Final Approval” shall mean the motion or motions filed by Class Counsel, as referenced in Section 6 below.

(o) “Net Settlement Fund” shall mean the net amount of the Settlement Fund after payment of court approved attorneys’ fees and costs, any court approved service award and the costs of Notice, and any fees paid to the Claims Administrator.

(p) “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 Notice attached hereto as Exhibit 1.

(q) “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 Section 5 below.

(r) “Regulation E Class” shall mean those members of Defendant who became members of Defendant prior to March 1, 2018 and were assessed an overdraft fee for a non-recurring debit card payment transaction between June 15, 2017 and September 13, 2018.

(s) “Regulation E Overdraft Charges” shall mean overdraft fees that were assessed between June 15, 2017 and September 13, 2018 on any nonrecurring or one-time debit card transaction on members of the Regulation E Class.

(t) “Settlement Fund” shall mean the one million eight hundred thousand dollars (\$1,800,000.00) to be paid by Defendant under the terms of this Agreement.

(u) “Sufficient Funds Class” shall mean those members of Defendant who became members of Defendant prior to March 1, 2018, and were assessed an overdraft fee between June 15, 2012 and June 15, 2019, on any type of payment transaction and at the time such fee was assessed the member had sufficient money in his or her ledger balance to cover the transaction that resulted in the fee.

(v) “Sufficient Funds Overdraft Charges” shall mean overdraft fees that were assessed against any member of the Sufficient Funds Class between June 15, 2012 and June 15, 2019, on any payment transaction when there was enough money in the member’s ledger balance to cover the transaction in question.

2. CHANGE IN PRACTICES IN HOW DEFENDANT DOES AND WILL ASSESS OVERDRAFT FEES. Prior to the filing of this lawsuit, Defendant assessed overdraft fees based on what it called the available balance in a member’s account at the time a transaction was presented to Defendant for payment, meaning the money in the account less holds on deposits and less holds on pending debit card transactions. Defendant stopped collecting overdraft fees for all Regulation E transactions as of September 2018, meaning those transactions for non-recurring debit card transactions. Defendant eventually intends to resume collecting overdraft fees on overdrafted Regulation E transactions. Defendant agrees that as a part of this Settlement that within ninety (90) days after the Effective Date of this Settlement Agreement, to the extent Defendant collects overdraft or non-sufficient funds (“NSF”) fees on any type of overdrawn transactions, the determination whether to assess such a fee will be based on the ledger balance in the account, meaning the amount of money in the account without deduction for holds on deposits or on pending debit card transactions. Defendant shall continue to assess fees in this manner for a period of at least three (3) years after the change from available to ledger balance is made.

3. CLASS ACTION SETTLEMENT. Plaintiff shall propose and recommend to the Court that a settlement class be certified, which class 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. Plaintiff and Class Counsel shall not reference this Agreement in support of any subsequent motion relating to certification of a liability class.

4. PRELIMINARY SETTLEMENT APPROVAL. Class Counsel shall use reasonable efforts to file a motion seeking a Preliminary Approval/Notice Order by August 1, 2019. 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 5, below (or as otherwise determined by the Court).

5. 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 by email, Defendant shall provide the Claims Administrator with the most recent email addresses it has for the Class Members. The Claims Administrator shall email the 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.

(c) For those Class Members who are not current members of Defendant or who have not agreed to receive notices regarding their accounts from Defendant by email, 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.

(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.

6. **MOTION FOR FINAL APPROVAL.** Within a reasonable time after the Bar Date to Opt Out, and provided the conditions in Section 16, 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.

7. **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.

8. **THE SETTLEMENT FUND AND DISTRIBUTION.**

(a) **Payments to Class Members.** Within ten (10) days after the entry of the Final Approval 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 8(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 5, 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 16, 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) **Plaintiff's Fees and Costs.** Plaintiff's 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 not more than one-third (33-1/3%) of the value of this settlement to the Class Members plus reimbursement of reasonable litigation costs, to be approved by the court. The value of the settlement includes the value of savings to date and future savings from the change in practices, as well as the uncollected fees which Defendant is waiving. 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 may apply to the Court for a service award of up to ten thousand dollars (\$10,000). Subject to the Court's approval, the service award shall be paid from the Settlement Fund ten (10) days after the Effective Date.

(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. The Net Settlement Fund shall be divided into two portions, those two portions being 27.78% for "Regulation E Overdraft Charges" and 72.22% for "Sufficient Funds Overdraft Charges."

- (a) The amount paid to each Regulation E Class Member shall be calculated as follows:

$(.2778 \text{ of Net Settlement Fund} / \text{Total Regulation E Overdraft Charges}) \times \text{Total Regulation E Overdrafts Charged of the Regulation E Class Member} = \text{Individual Payment}$

- (b) The amount paid to each Sufficient Funds Class Member shall be calculated as follows:

$(.7222 \text{ of Net Settlement Fund} / \text{Total Sufficient Funds Overdraft Charges}) \times \text{Total Sufficient Funds Overdrafts Charged of the Sufficient Funds Class Member} = \text{Individual Payment}$

- (c) Because members of the Sufficient Funds Class may also be members of the Regulation E Class, there may be circumstances where Eligible Overdraft Fees which are Sufficient Funds Overdraft Charges will also be Regulation E Overdraft Charges. To prevent Class Members from recovering more than the fees they paid, Class Members shall not be entitled to recover more for each allegedly improper fee than the actual amount charged for such fee. Thus, if a Class Member was charged \$30 for an Eligible Overdraft Fee which is a Regulation E Overdraft Charge that is also a Sufficient Funds Overdraft Charge, then that member shall only be entitled to recover at most \$30 for that fee.

- (d) 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, their savings accounts shall be credited in the amount of the Individual Payment they are entitled to receive.

For those Class Members who are not members of Defendant at the time of the distribution of the Net Settlement Fund, 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 12.

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

9. FORGIVENESS OF UNCOLLECTED OVERDRAFT FEES. Upon the occurrence of the Effective Date, Defendant also shall forgive and release any claims it may have to collect any Sufficient Funds Overdraft Charges and Regulation E Overdraft Charges that have been assessed against Class Members but not collected by Defendant.

10. FINAL REPORT TO THE COURT. Within two hundred (200) days after the Effective Date, 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 Class Member account statements.

11. 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.

(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 digital 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.

(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) The 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.

(f) Within one hundred-ninety (190) days after the Effective Date, 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.

12. CY PRES PAYMENT. Thirty (30) days after the Final Report, the total amount of uncashed checks, and amounts held by the Claims Administrator at the time of the Final Report, shall be paid by the Claims Administrator as follows: 50% shall be paid to Public Citizen, and 50% shall be paid to Junior Achievement of Boston. The payments and the recipients of the payments shall be subject to Court approval. The Cy Pres recipients shall engage in work which affects one or more areas where Defendant maintains branches.

13. 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.

14. 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, 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.

15. 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, subsidiaries, divisions, employees, affiliates, assigns, officers, directors, shareholders, representatives, attorneys and agents (collectively, the "Defendant Releasees") from any and all 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 Sufficient Funds Class Members and Regulation E 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, including claims relating to overdraft and nonsufficient funds fees assessed against said class members.

16. 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 3 above;

(ii) The Court has entered the Final Approval Order as required by Sections 5 and 6 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 16(a) are not met, then this Agreement shall be cancelled and terminated.

(c) Defendant shall have the option to terminate this Agreement if five (5%) percent 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 16 within fifteen (15) 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 16(c) immediately above, or fails to become effective in accordance with Sections 16(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*.

17. 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 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 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.

18. 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.

19. APPLICABLE LAW. This Agreement shall be governed by and interpreted, construed, and enforced pursuant to the laws of the Commonwealth of Massachusetts.

20. 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.

21. 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.

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

23. 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.

24. 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.

25. 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, Ste. 100
Ontario, CA 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, Esq
Katten Muchin Rosenman LLP
2029 Century Park East, Suite 2600
Los Angeles, California 90067
Telephone: (310) 788-4400

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: August __, 2019

DIGITAL FEDERAL CREDIT UNION, a federally chartered credit union

By: _____

Its: _____

Dated: August 6, 2019

BRANDI SALLS, an individual on behalf of herself and those she represents

By: Brandi Salls
Brandi Salls

APPROVED AS TO FORM:

Dated: August __, 2019

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

By: _____

Stuart M. Richter
Attorneys for Defendant DIGITAL FEDERAL CREDIT UNION

Dated: August __, 2019

McCUNE WRIGHT AREVALO LLP
Richard D. McCune

THE KICK LAW FIRM, APC

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

Stuart M. Richter, Esq.
Katten Muchin Rosenman LLP
2029 Century Park East, Suite 2600
Los Angeles, California 90067
Telephone: (310) 788-4400
stuart.richter@kattenlaw.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: August __, 2019

DIGITAL FEDERAL CREDIT UNION, a federally chartered credit union

By: _____

Its: _____

Dated: August __, 2019

BRANDI SALLS, an individual on behalf of herself and those she represents

By: _____

Brandi Salls

APPROVED AS TO FORM:

Dated: August __, 2019

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

By: _____

Stuart M. Richter
Attorneys for Defendant DIGITAL FEDERAL CREDIT UNION

Dated: August 6, 2019

McCUNE WRIGHT AREVALO LLP
Richard D. McCune

THE KICK LAW FIRM, APC

Taras Kick

By: 

Richard D. McCune
Attorneys for Plaintiff BRANDI SALLS