

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

CHRISTINE COLEMAN, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

ALASKA USA FEDERAL CREDIT UNION,

Defendant.

CASE NO. 3:19-cv-00229-HRH

SETTLEMENT AGREEMENT AND RELEASES

This Settlement Agreement and Releases (“Settlement” or “Agreement”),¹ dated as of May 3rd, 2021, is entered into by Plaintiff Christine Coleman, individually and on behalf of the Settlement Class, and Defendant Alaska USA Federal Credit Union. The Parties hereby agree to the following terms in full settlement of the Action *Christine Coleman v. Alaska USA Federal Credit Union*, No. 3:19-cv-00229, subject to Final Approval, by the United States District Court for the District of Alaska.

I. Procedural History and Recitals

1. On August 21, 2019, Plaintiff filed a putative class action Complaint in the United States District Court for the District of Alaska, entitled *Christine Coleman v. Alaska USA Federal Credit Union*. Plaintiff asserted three claims for relief: (1) breach of contract, including breach of the covenant of good faith and fair dealing; (2) unjust enrichment; and (3) violations of Alaska’s Unfair Trade Practices Act (“UTPA”). All three claims were based on the theory that Defendant allegedly assesses improper Retry Fees.

¹ All capitalized terms herein have the meanings ascribed to them in Section II below or various other places in the Agreement.

2. After the filing of the Complaint and as a result of the Action, Defendant modified its Account Agreement and disclosure documents to better explain its practice of assessing Retry Fees.

3. On January 28, 2020, Defendant filed a Motion to Dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

4. On April 14, 2020, the Court denied Defendant's Motion to Dismiss Plaintiff's breach of contract and breach of the implied covenant of good faith and fair dealing claims, but granted Defendant's Motion as to the unjust enrichment and UTPA claims.

5. Defendant filed its Answer to Plaintiff's Complaint on May 20, 2020.

6. Thereafter, the Parties engaged in formal and informal discovery.

7. The Parties participated in a private mediation session before the Honorable Edward A. Infante, Ret. on February 23, 2021. Although the Parties did not settle at the mediation, the mediation resulted in a mediator's proposal. This Settlement is based on the Parties' acceptance of the mediator's proposal.

8. The Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims of the Releasing Parties. 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. 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. Plaintiff does not in any way concede the claims alleged in the Complaint lack merit or are subject to any defenses. The Parties intend this Agreement to bind Plaintiff, Defendant, and all Settlement Class Members.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

II. Defined Terms

In addition to the terms defined at various points within this Agreement, the following Defined Terms apply throughout this Agreement:

1. “Account” means any member account maintained by Defendant.
2. “Account Holder” means any person who has or had any interest, whether legal or equitable, in an Account during the Class Period.
3. “Action” means *Christine Coleman v. Alaska USA Federal Credit Union*, No. 3:19-cv-00229.
4. “Complaint” means the Class Action Complaint filed in this Action on August 21, 2019.
5. “Class Counsel” means:
 KOPELOWITZ OSTROW P.A.
 Jeff Ostrow, Esq.
 Jonathan M. Streisfeld, Esq.
 1 West Las Olas Blvd.

Suite 500
Fort Lauderdale, FL 33301

KALIEL PLLC
Jeffrey Kaliel, Esq.
Sophia Gold, Esq.
1875 Connecticut Ave. NW
10th Floor
Washington, DC 20009

PACE LAW OFFICES
Daniel I. Pace, Esq.
101 E. 9th Ave, Suit 7A
Anchorage, Alaska 99501

6. “Class Period” means the period from November 1, 2016 to September 30, 2019, excluding any Accounts opened after October 1, 2018.

7. “Class Representative” means Christine Coleman.

8. “Court” means the United States District Court for the District of Alaska.

9. “Current Account Holder” means a Settlement Class Member who continues to have his or her Account as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

10. “Defendant” means Alaska USA Federal Credit Union.

11. “Effective Date” means 10 days after the entry of the Final Approval Order 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) 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 the earlier of 30 days after an appellate court ruling affirming the Final Approval Order or 30 days after entry of a dismissal of the appeal.

12. “Email Notice” means a short form of notice in the form attached as ***Exhibit 1*** that shall be sent by email to Current Account Holders who agreed to electronically receive their

Account statements.

13. “Final Approval” means the date that the Court enters the Final Approval Order.

14. “Final Approval Hearing” is the hearing held before the Court wherein the Court will consider granting Final Approval to the Settlement and further determine the amount of attorneys’ fees and costs awarded to Class Counsel and the amount of any Service Award to the Class Representative.

15. “Final Approval Order” means the final order that the Court enters granting Final Approval to the Settlement. The proposed Final Approval Order shall be in a form agreed upon by the Parties and shall be substantially in the form attached as an exhibit to the motion for Final Approval. Final Approval Order also includes the orders, which may be entered separately, determining the amount of attorneys’ fees and costs awarded to Class Counsel and the amount of any Service Award to the Class Representative.

16. “Long Form Notice” means the form of notice that shall be posted on the Settlement Website created by the Settlement Administrator and shall be available to Settlement Class Members by mail on request made to the Settlement Administrator in the form attached as ***Exhibit 2.***

17. “Net Settlement Fund” means the Settlement Fund, minus Court approved attorneys’ fees and costs awarded to Class Counsel, any Settlement Administration Costs, and any Court approved Service Award to the Class Representative.

18. “Non-Sufficient Funds Fee” means any non-sufficient funds fee or fees assessed to an Account Holder for items returned when the Account had insufficient funds.

19. “Notice” means the Email Notice, Long Form Notice, and Postcard Notice that Plaintiff will ask the Court to approve in connection with the Motion for Preliminary Approval of

the Settlement.

20. “Notice Program” means the methods provided for in this Agreement for giving the Notice and consists of Email Notice, Postcard Notice, and Long Form Notice.

21. “Opt-Out Period” means the period that begins the day after the Notice is distributed and ends 30 days before the Final Approval Hearing. The deadline for the Opt-Out Period shall be specified in the Notice.

22. “Party” means Plaintiff or Defendant and “Parties” means Plaintiff and Defendant collectively.

23. “Past Account Holder” means a Settlement Class Member who no longer holds his or her Account as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

24. “Plaintiff” means Christine Coleman.

25. “Postcard Notice” shall mean the short form of notice in the form attached as ***Exhibit 1*** that shall be sent by mail to all Past Account Holders, Current Account Holders who have not agreed to electronically receive Account statements, and Current Account Holders to whom the Settlement Administrator is unable to send Email Notice using the email address provided by Defendant.

26. “Preliminary Approval” means the date that the Court enters, without material change, an order preliminarily approving the Settlement, substantially in the form of the exhibit attached to the Motion for Preliminary Approval.

27. “Preliminary Approval Order” means the order granting Preliminary Approval of this Settlement.

28. “Retry Fee Class” shall mean those current or former members of Defendant who

were assessed Retry Fees.

29. “Retry Fees” shall mean Non-Sufficient Funds Fees that were charged and not refunded from November 1, 2016 to September 30, 2019, excluding any fees charged to members who opened an Account after October 1, 2018, for Automated Clearing House (ACH) and check transactions that were re-submitted by a merchant after being returned by Defendant for insufficient funds.

30. “Service Award” means any Court ordered payment to Plaintiff for serving as the Class Representative, which is in addition to any payment due to Plaintiff as a Settlement Class Member or forgiveness of Uncollected Retry Fees.

31. “Settlement Administrator” means Epiq Systems. Settlement Class Counsel and Defendant may, by agreement, substitute a different organization as Settlement Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, either Settlement Class Counsel or Defendant may move the Court to substitute a different organization as Settlement Administrator, upon a showing that the responsibilities of Settlement Administrator have not been adequately executed by the incumbent.

32. “Settlement Administration Costs” mean all costs incurred and fees assessed by the Settlement Administrator for the Notice and administration services performed pursuant to the terms of this Agreement.

33. “Settlement Class” means all current and former members of Defendant with one or more Accounts, who were charged a Retry Fee during the Class Period. Excluded from the Settlement Class is Defendant, its parents, subsidiaries, affiliates, officers and directors; all Settlement Class members who make a timely election to be excluded; and all judges assigned to

this litigation and their immediate family members.

34. “Settlement Class Member” means any member of the Settlement Class who has not opted-out of the Settlement and who is entitled to the benefits of the Settlement, including a Settlement Class Member Payment and/or forgiveness of Uncollected Retry Fees.

35. “Settlement Class Member Payment” means the cash distribution that will be made from the Net Settlement Fund to each Settlement Class Member.

36. “Settlement Fund” means the \$836,000.00 in cash Defendant is obligated to pay under the terms of this Settlement.

37. “Settlement Website” means the website that the Settlement Administrator will establish relating to this Settlement.

38. “Uncollected Retry Fees” means any Retry Fees that were assessed but were not paid in an amount calculated to be \$372,447.00.

39. “Value of the Settlement” means the \$1,208,447, consisting of the Settlement Fund plus the Uncollected Retry Fees.

III. Certification of the Settlement Class

40. For Settlement purposes only, Plaintiff and Defendant agree that Plaintiff shall ask the Court to certify the Settlement Class under Federal Rule of Civil Procedure 23 and Defendant shall not oppose such application.

IV. Settlement Consideration

41. Defendant has agreed to settle the Action by establishing the Settlement Fund and forgiving Uncollected Retry Fees for the benefit of the Settlement Class Members.

42. Within 10 days of Final Approval by the Court, Defendant shall transfer to the Settlement Administrator the Settlement Fund, less the total amount that will be credited to Current

Account Holders by Defendant, as provided in Paragraph 62(d)(i) below. The Settlement Fund shall be used to pay Settlement Class Members their respective Settlement Class Member Payments; any and all attorneys' fees and costs awarded to Class Counsel; any Service Award to the Class Representative; and all Settlement Administration Costs. Defendant shall not be responsible for any other payments under this Agreement.

43. Within 90 days of the Effective Date of the Settlement, Defendant shall forgive, waive, and agree not to collect the Uncollected Retry Fees.

44. It is agreed by the Parties that a Settlement Class Member may qualify for a Settlement Class Member Payment and forgiveness of Uncollected Retry Fees.

V. Settlement Approval

45. Upon execution of this Agreement by all Parties, Class Counsel shall promptly move the Court for a Preliminary Approval Order. The proposed Preliminary Approval Order shall be attached to the motion, or otherwise filed with the Court, and shall be in a form agreed to by Class Counsel and Defendant. The Motion for Preliminary Approval shall, among other things, request that the Court: (1) preliminarily approve the terms of the Settlement as being within the range of fair, adequate, and reasonable; (2) provisionally certify the Settlement Class pursuant to Federal Rule of Civil Procedure 23, for settlement purposes only; (3) approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement; (4) approve the procedures set forth herein for Settlement Class members to exclude themselves from the Settlement Class or for Settlement Class Members to object to the Settlement; (5) stay the Action pending Final Approval of the Settlement; and (6) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel, and counsel for Defendant, at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was

made in good faith, and determine whether to approve the Settlement and Class Counsel's application for attorneys' fees and costs and for a Service Award to the Class Representative.

VI. Settlement Administrator

46. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement.

47. The duties of the Settlement Administrator are as follows:

a. Use the name and address information for Settlement Class members provided by Defendant in connection with the Notice Program approved by the Court, for the purpose of distributing the Postcard Notice and Email Notice, and later mailing Settlement Class Member Payments to Past Account Holder Settlement Class Members, and to Current Account Holder Settlement Class Members where it is not feasible or reasonable for Defendant to make the Settlement Class Member Payments by a credit to the Current Account Holder Accounts.

b. Establish and maintain a post office box for requests for exclusion from the Settlement Class.

c. Establish and maintain the Settlement Website, which shall include information and documents relating to the Settlement, including hyperlinked access to this Agreement, the Long Form Notice, Preliminary Approval Order, motion for Final Approval and such other documents as the Parties agree to post or that the Court orders posted on the website.

d. Establish and maintain an automated toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answer the questions of Settlement Class Members who call with or otherwise communicate such inquiries.

e. Respond to any Settlement Class member inquiries.

- f. Process all requests for exclusion from the Settlement Class.
- g. Provide weekly reports to Class Counsel and Defendant that summarize the number of requests for exclusion received that week, the total number of exclusion requests received to date, objections, the results of the Notice Program, cashed and uncashed checks, and other pertinent information.
- h. In advance of the Final Approval Hearing, prepare a declaration or affidavit to submit to the Court confirming that the Notice Program was completed, describing how the Notice Program was completed, providing the names of each Settlement Class member who timely and properly requested exclusion from the Settlement Class, and other information as may be necessary to allow the Parties to seek and obtain Final Approval.
- i. Distribute Settlement Class Member Payments by check to Past Account Holders and Current Account Holders who are unable to receive credits from Defendant.
- j. Provide to Defendant the amount of the Settlement Class Member Payments to Current Account Holders at least five days before the Effective Date.
- k. Pay invoices, expenses, and costs upon approval by Class Counsel and Defendant, as provided in this Agreement.
- l. Provide notice of this Settlement as required under the Class Action Fairness Act, 28 U.S.C. § 1715.
- m. Following the period for Settlement Class Members to cash checks, provide a declaration accounting for the distribution of the Settlement Fund and the total amount of uncashed checks and residual funds, if any.
- n. Any other Settlement Administration function at the instruction of Class Counsel and Defendant or the Court.

48. Class Counsel and Defendant may, by agreement, substitute a different organization as Settlement Administrator, subject to approval by the Court, if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, either Class Counsel or Defendant may move the Court to substitute a different organization as Settlement Administrator, upon a showing that the responsibilities of Settlement Administrator have not been adequately executed by the incumbent.

VII. Notice to Settlement Class Members

49. As soon as practicable after Preliminary Approval through the time directed by the Court, the Settlement Administrator shall implement the Notice Program provided herein, using the forms of Notice approved by the Court. The Notice shall include, among other information: a description of the material terms of the Settlement; a date by which Settlement Class Members may exclude themselves from or “opt-out” of the Settlement Class; a date by which Settlement Class Members may object to the Settlement; the date upon which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website at which Settlement Class members may access this Agreement and other related documents and information. Class Counsel and Defendant shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Notices provided under or as part of the Notice Program shall not bear or include Defendant’s logo or trademarks or the return address of Defendant, or otherwise be styled to appear to originate from Defendant.

50. The Notice also shall include a procedure for Settlement Class Members to opt-out of the Settlement Class. A Settlement Class Member may opt-out of the Settlement Class at any time during the Opt-Out Period, provided the opt-out notice that must be sent to the Settlement

Administrator is postmarked no later than the last day of the Opt-Out Period. Any Settlement Class Member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement. If an Account has more than one Account Holder, and if one Account Holder excludes himself or herself from the Settlement Class, then all Account Holders on that Account shall be deemed to have opted-out of the Settlement with respect to that Account, and no Account Holder shall be entitled to a Settlement Class Member Payment.

51. The Notice also shall include a procedure for Settlement Class Members to object to the Settlement and/or to Class Counsel's application for attorneys' fees and costs and/or the Service Award for the Class Representative. Objections to the Settlement, to the application for attorneys' fees and costs, and/or to the Service Award must be mailed to the Clerk of the Court, Class Counsel, Defendant's counsel, and the Settlement Administrator. For an objection to be considered by the Court, the objection must be submitted no later than the last day of the Opt-Out Period. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

52. For an objection to be considered by the Court, the objection must also set forth:

- a. The name of this case, which is *Christine Coleman v. Alaska USA Federal Credit Union*, United States District Court for the District of Alaska, Case No. 3:19-cv-00229;
- b. 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 who may be entitled to compensation for any reason related to the objection;

c. 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;

d. 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, identify the counsel by name, address, and telephone number;

e. A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; and

f. The objector's signature or the signature of the objector's legally-authorized representative.

Class Counsel and/or Defendant may conduct limited discovery on any objector or objector's counsel consistent with the Federal Rules of Civil Procedure.

53. For Current Account Holders who have agreed to electronically receive Account statements from Defendant, Defendant shall provide the Settlement Administrator with the most recent email addresses it has for these members. The Settlement Administrator shall send the Email Notice to each such 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 Settlement Administrator shall send a Postcard Notice in the manner described below. The Email Notice shall inform Settlement Class Members how they may request a copy of the Long Form Notice.

54. For those Settlement Class Members who are Current Account Holders of Defendant who have not agreed to electronically receive Account statements from Defendant or

are Past Account Holders, the Postcard Notice shall be mailed to these members by first class United States mail to the best available mailing addresses. Defendant shall provide the Settlement Administrator with last known mailing addresses for these members. The Settlement Administrator shall run the names and addresses through the National Change of Address Registry and update as appropriate. If a mailed Postcard Notice is returned with forwarding address information, the Settlement Administrator shall re-mail the Postcard Notice to the forwarding address. For all mailed Postcard Notices that are returned as undeliverable, the Settlement Administrator shall use standard skip tracing devices to obtain forwarding address information and, if the skip tracing yields a different forwarding address, the Settlement Administrator shall re-mail the Postcard Notice once to the address identified in the skip trace, as soon as reasonably practicable after the receipt of the returned mail. The Postcard Notice shall inform Settlement Class Members how they may request a copy of the Long Form Notice.

55. The Settlement 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. In addition to weekly updates to the Parties regarding the progress of the Notice Program and the declaration or affidavit by the Settlement Administrator in advance of the Final Approval Hearing and in support of the Motion for Final Approval, a summary report of the Notice Program shall be provided to the Parties three days prior to the Final Approval Hearing. The database maintained by the Settlement Administrator regarding the Notices 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 kept confidential, not be shared with any third party and used only for purposes of implementing the terms of this Agreement, and shall not be used for any other purposes.

56. The Parties may by mutual written consent make non-substantive changes to the Notices without Court approval.

VIII. Final Approval Order and Judgment

57. Plaintiff shall file her Motion for Final Approval of the Settlement, inclusive of Class Counsel's application for attorneys' fees and costs and for a Service Award for the Class Representative, no later than 15 days before the last day of the Opt-Out Period. At the Final Approval Hearing, the Court will hear argument on Plaintiff's Motion for Final Approval of the Settlement, and on Class Counsel's application for attorneys' fees and costs, and for the Service Award for the Class Representative. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to Class Counsel's application for attorneys' fees and costs, or the Service Award application, provided the objectors submitted timely objections that meet all of the requirements listed in the Agreement.

58. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting Final Approval of the Settlement and final judgment thereon, and whether to approve Class Counsel's request for attorneys' fees and costs, and any Service Award. Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice provided satisfies due process requirements;
- d. Bar and enjoin all Releasing Parties (defined below) from pursuing any Released Claims (defined below) against Defendant or its affiliates at any time, including during any appeal from the Final Approval Order; and retain jurisdiction over the enforcement of the

Court's injunctions;

e. Release the Released Parties (defined below) from the Released Claims; and

f. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendant, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

IX. Calculation and Disbursement of Settlement Class Member Payments.

59. Within 10 days after entry of the Final Approval Order, Defendant shall transfer the Settlement Fund to the Settlement Administrator, less the total amount that will be credited to Settlement Class Members by Defendant, as provided in Paragraph 62(d)(i), below.

60. All funds held by the Settlement 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.

61. All funds held by the Settlement 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.

62. Payments shall be made from the Settlement Fund as follows:

a. Class Counsel's Fees and Costs. Class Counsel's reasonable attorneys' fees and costs, as determined and approved by the Court, shall be paid from the Settlement Fund within 10 days after entry of the Final Approval Order. Class Counsel shall apply for an award of attorneys' fees up to 25% 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 up to 25% of the Value of the Settlement, but reserves the right to oppose an application for attorneys' fees in excess of that amount. Should the Final Approval Order be reversed on appeal, Class Counsel shall immediately repay all attorneys' fees and costs to the

Settlement Administrator; should the award of attorneys' 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.

b. Service Award. Subject to Court approval, the Class Representative shall be entitled to receive a Service Award of up to \$5,000.00 for her role as the Class Representative. The Service Award shall be paid no later than 10 days after the Effective Date.

c. Settlement Administrator's Fees and Costs. Consistent with Section VI above, the Settlement Administrator's fees and costs shall be paid from the Settlement Fund within 10 days after the Effective Date. The Parties and the Settlement Administrator agree that any fees or costs incurred by the Settlement Administrator prior to the Effective Date shall be deferred and not invoiced until after the Effective Date. In the event the Final Approval Order is not entered or this Agreement is terminated pursuant to Section XII below, Defendant agrees to cover any costs incurred and fees charged by the Settlement Administrator pursuant to Section VII above prior to the denial of Final Approval or the termination of this Agreement.

d. Settlement Class Member Payments. Settlement Class Members Payments shall be calculated as follows: (Net Settlement Fund/Total Retry Fees) x Total number of Retry Fees charged to and paid by each Retry Fee Class member.

i. Settlement Class Member Payments shall be made no later than 30 days after the Effective Date, as follows:

1. For those Settlement Class Members who are Current Account Holders at the time of the distribution of the Settlement Fund, a credit in the amount of the Settlement Class Member Payment shall be applied to any Account they

are maintaining individually at the time of the credit. If Defendant is unable to complete certain credit(s), Defendant shall deliver the total amount of such unsuccessful Settlement Class Member Payment credits to the Settlement Administrator to be paid by check in accordance with subsection 2 below.

2. For those Settlement Class Members who are Past Account Holders at the time of the distribution of the Net Settlement Fund or their Account cannot be credited pursuant to subsection 1, above, they shall be sent a check by the Settlement Administrator at the address used to provide the Notice, or at such other address as designated by the Settlement Class Member. The Settlement Administrator shall make reasonable efforts to locate the proper address for any check returned by the Postal Service as undeliverable and will re-mail it once to the updated address. Settlement Class Members shall have 180 days to negotiate checks. Any checks uncashed after 180 days shall be distributed pursuant to Section X or as directed by the Court.

- ii. In no event shall any portion of the Settlement Fund revert to Defendant.

X. Disposition of Residual Funds

63. Any amounts resulting from uncashed checks or other residual funds in the

Settlement Fund shall be distributed to an appropriate *cy pres* recipient agreed to by the Parties and approved by the Court.

XI. Releases

63. As of the Effective Date, Plaintiff and all Settlement Class Members, and each of their respective executors, representatives, heirs, predecessors, assigns, beneficiaries, successors, bankruptcy trustees, guardians, joint tenants, tenants in common, tenants by entireties, agents, attorneys, and all those who claim through them or on their behalf (“Releasing Parties”) shall automatically be deemed to have fully and irrevocably released and forever discharged Defendant and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former directors, officers, employees, agents, insurers, members, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors and assigns of each of them (“Released Parties”), of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys’ fees, losses and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties or matters during the Class Period that were or could have been alleged in the Action relating to the assessment of Retry Fees (“Released Claims”).

64. Each Settlement Class Member is barred and shall be permanently enjoined from bringing on behalf of themselves, or through any person purporting to act on their behalf or purporting to assert a claim under or through them, any of the Released Claims against any Released Party in any forum, action, or proceeding of any kind.

65. Plaintiff or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the claims released herein, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he/she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by herein. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement, including by the release herein and that all of their claims in the Action shall be released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he/she never receives actual notice of the Settlement and/or never receives a distribution of funds or credits from the Settlement.

66. Nothing in this Agreement shall operate or be construed to release any claims or rights that Defendant has to recover any past, present, or future amounts that may be owed by Plaintiff or by any Settlement Class Member on his/her accounts, loans or any other debts with Defendant, pursuant to the terms and conditions of such accounts, loans, or any other debts, with the exception of the Uncollected Retry Fees. Likewise, nothing in this Agreement shall operate or be construed to release any defenses or rights of set-off that Plaintiff or any Settlement Class Member has, other than with respect to the Released Claims.

XII. Termination of Settlement

67. This Agreement shall be subject to and is expressly conditioned on the occurrence of all following events:

- a. The Court has entered the Preliminary Approval Order, as required by

Section V above;

b. The Court has entered the Final Approval Order as required by Section VIII, 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

c. The Effective Date has occurred.

68. If all conditions specified in Paragraph 67 are not met, then this Agreement shall be cancelled and terminated.

69. Defendant shall have the option to terminate this Agreement if 5% or more of the total Settlement Class opts-out of the Settlement. Defendant shall notify Class Counsel and the Court of its intent to terminate this Agreement pursuant to this Section XII within 10 business days after the end of the Opt-Out Period, or the option to terminate shall be considered waived.

70. In the event this Agreement is terminated or fails to become effective, 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*.

XIII. No Admission of Liability

71. Defendant continues to dispute its liability for the claims alleged in the Action and maintains that its overdraft practices and representations concerning those practices complied, at all times, with applicable laws and regulations and the terms of the account agreements with its members. Defendant does not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. Defendant has agreed to enter into this Agreement to avoid the further expense,

inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Action.

72. Class Counsel believe that the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims, conducted significant informal discovery, and conducted independent investigation of the challenged practices. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class Members.

73. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

74. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiff or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency, or other tribunal.

XIX. Confidentiality

75. None of the Parties shall issue any press release or shall otherwise initiate press

coverage of the Settlement, nor shall any Party post about the Settlement on social media or any website other than the fact that the Settlement was reached and that it was a fair and reasonable result. If contacted, the Party may respond generally, either online or in person, by stating that they are satisfied that the Settlement was reached and that it was a fair and reasonable result.

XX. Miscellaneous Provisions

76. Gender and Plurals. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

77. Binding Effect. This Agreement shall be binding upon, and inure to for the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

78. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

79. Obligation to Meet and Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted.

80. Integration. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

81. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

82. Governing Law. Except as otherwise provided herein, the Agreement shall be

construed in accordance with, and be governed by, the laws of the State of Alaska, without regard to the principles thereof regarding choice of law.

83. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

84. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of their agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against Defendant or its affiliates at any time, including during any appeal from the Final Approval Order.

85. Notices. All notices to Class Counsel provided for herein, shall be sent by email with a hard copy sent by overnight mail to:

KOPELOWITZ OSTROW P.A.
Jeff Ostrow, Esq.

Jonathan M. Streisfeld, Esq.
1 West Las Olas Blvd., Suite 500
Fort Lauderdale, Florida 33301
Email: ostrow@kolawyers.com
Class Counsel

KALIEL PLLC
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Sophia Goren Gold, Esq.
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Washington, DC 20009
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Class Counsel

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Class Counsel

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Counsel for Alaska USA Federal Credit Union

STOEL RIVES LLP
Kevin M. Cuddy, Esq.
510 L Street, Suite 500
Anchorage, Alaska 99501
Email: kevin.cuddy@stoel.com
Counsel for Alaska USA Federal Credit Union

The notice recipients and addresses designated above may be changed by written notice.

Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice program.

86. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and counsel for Defendant and, if the

Settlement has been approved preliminarily by the Court, approved by the Court.

87. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

88. Authority. Class Counsel (for the Plaintiff and the Settlement Class), and counsel for Defendant, represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation or entity included within the definitions of Plaintiff and Defendant to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all terms and provisions of this Agreement.

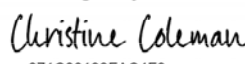
89. Agreement Mutually Prepared. Neither Defendant nor Plaintiff, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

90. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. Both Parties recognize and acknowledge that they and their experts reviewed and analyzed data for a subset of the time at issue and that they and their experts used extrapolation to make certain determinations, arguments, and settlement positions.

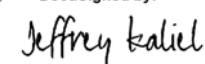
The Parties agree that this Settlement is reasonable and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

91. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.


Dated: 4/19/2021

DocuSigned by:

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 Christine Coleman
Plaintiff

Dated: 4/20/2021

DocuSigned by:

 F817E468E0B1427...
 Jeffrey Kalie, Esq.
 KALIEL PLLC
Class Counsel

Dated: 4/20/2021


 Jeff Ostrow, Esq.
 KOPELOWITZ OSTROW P.A.
Class Counsel


Dated: _____

s/ Daniel I. Pace

Daniel I. Pace, Esq.
PACE LAW OFFICES
Class Counsel

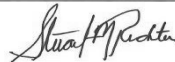
Dated: April 28, 2021

Alaska USA Federal Credit Union



By: Geoffrey S. Lundfelt
ITS President and CEO

Dated: May 3, 2021



Stuart M. Richter, Esq.
KATTEN MUCHIN ROSENMAN LLP
Counsel for Alaska USA Federal Credit Union