

SETTLEMENT AGREEMENT AND RELEASE

Brower v. Northwest Community Credit Union

Multnomah County Circuit Court Case No. 20CV38608

PREAMBLE

This Settlement Agreement and Release (“Agreement”) is entered into by and among Plaintiff Angelique Brower (“Named Plaintiff”) and all those on whose behalf she is prosecuting this action on the one hand, and defendant Northwest Community Credit Union (“Northwest” or “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 October 28, 2020, Angelique Brower initiated this action by filing a Class Action Complaint with the caption of *Brower v. Northwest Community Credit Union*, Case No. 20CV38608, in the Circuit Court for the State of Oregon, County of Multnomah, asserting causes of action for Breach of Contract (including Breach of the Covenant of Good Faith and Fair Dealing), and violation of Oregon’s consumer protection statute.
- B. On March 8, 2021, Defendant filed a Motion to Dismiss Plaintiff’s Complaint. Plaintiff opposed that Motion on May 10, 2021. After oral argument, the Court granted the motion as to Plaintiff’s Third Claim for Relief under the Unlawful Trade Practices Act and denied the remainder of the motion.
- C. Subsequently, the Parties engaged in an extensive discovery effort.
- D. 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, or any charges of wrongdoing that have been or could have been asserted in the Complaint, and expressly disclaims and denies any fault or liability. Defendant nevertheless believes that this settlement is in its best interest, in the best interest of its membership, and in the best interests of all of the Settlement Class Members (as that term is defined herein). Nothing contained in this Agreement shall be used or construed as an admission of liability or wrongdoing, 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.
- E. 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.

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 Settlement Class Members to file an Objection, which shall be approximately sixty (60) days after the date the Notice must be delivered to the Potential Settlement Class Members.

(b) “Bar Date to Opt-Out” shall be the date set by the Court as the deadline for Potential Settlement Class Members to opt-out of the Settlement. The Bar Date shall be sixty (60) days after the date the Notice must be delivered to the Potential Settlement Class Members.

(c) “Class Counsel” shall mean the law firms of KalieGold PLLC and The Kick Firm, A.P.C.

(d) “Class Period” shall mean October 1, 2015 through February 28, 2021.

(e) “Complaint” shall mean the Complaint filed by Plaintiff in this matter.

(f) “Court” shall mean the Circuit Court of the State of Oregon, Multnomah County.

(g) “Defendant’s Counsel” shall mean the law firm of Farleigh Wada Witt.

(h) “Effective Date” shall be thirty (30) 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) sixty (60) 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) “Exclusion Letter” shall mean a letter by a Potential Settlement Class Member who elects to opt out of this Agreement.

(j) “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.

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

(l) “Final Report” shall mean the report prepared by the Settlement Administrator of all receipts and disbursements from the Settlement Fund, as described in Section 9, below.

(m) “Item” means a check or ACH.

(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 and any court approved service award.

(p) “Notice” shall mean the notice to the Potential Settlement 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), in accordance with Oregon Rules of Civil Procedure 32 D and 32 F, and shall refer to the form of Notices attached hereto as Exhibits 1-3.

(q) “NSF Fee(s)” shall mean the fee that Defendant charges when a third party presents an Item for payment and the member’s account has an insufficient balance to cover the cost of the Item resulting in Defendant’s rejection of the attempt at collection and refusal to pay the Item.

(r) “Overdraft Fee(s)” shall mean the fee that Defendant charges when a third party submits an item in an attempt to collect on a check (including an electronic check) or ACH item and the Defendant pays the check or item, despite the fact that the member’s account had an insufficient balance to cover the amount of the check or item.

(s) “Potential Settlement Class Member” shall mean any consumer member of Defendant who is in the Class.

(t) “Potential Settlement Class Members” shall mean the Potential Settlement Class Members.

(u) “Preliminary Approval/Notice Order” shall mean the Order issued by the Court preliminarily approving this Agreement and authorizing the sending of the Notice to the Settlement Class Members, as provided in Sections 4 and 5, below.

(v) “Retry NSF/Overdraft Fee(s)” shall mean the NSF Fee or Overdraft Fee that Defendant charges on the second or third time (or subsequent times) a third party presents an Item in an attempt to collect on an Item after the first or prior attempt at collection was rejected and the member’s account was assessed an NSF Fee.

(w) “Settlement Class” shall mean all accountholders who incurred a Retry NSF/Overdraft Fee during the Class Period.

(x) “Settlement Class Member” shall mean all Potential Settlement Class Members who do not opt-out.

(y) “Settlement Administrator” shall mean the entity that will provide the notice and settlement administration.

(z) “Settlement Fund” shall mean the \$745,000 to be paid by Defendant under the terms of this Agreement.

2. **CHANGE IN PRACTICES.** Defendant previously updated its disclosures to disclose that it charges NSF fees “per presentment” effective February 28, 2021.

3. **CLASS ACTION SETTLEMENT.** Plaintiff shall propose and recommend to the Court that the Settlement Class be certified. 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.** As soon as practicable, Class Counsel shall use reasonable efforts to file a Motion seeking a Preliminary Approval/Notice Order. The Preliminary Approval/Notice Order shall provide for: Preliminary Approval of this Agreement, provisional certification of the classes for settlement purposes, appointment of Class Counsel as counsel to the provisionally certified classes, and the requirement that the Notice be given to the Potential Class Members as provided in Section 5, below.

5. **NOTICE TO THE CLASSES.**

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

(b) For those Potential Settlement Class Members who are current members of Defendant and have agreed to receive notices regarding their accounts from Defendant electronically, Defendant shall provide the Settlement Administrator with the most recent email addresses it has for those Potential Settlement Class Members. The Settlement Administrator shall email an Email Notice (Exhibit 1) to each such Potential Settlement 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 Settlement Administrator shall use the best available databases to obtain current email address information for Potential Settlement Class Members, update its database with those email addresses, and resend the Notice. The Email Notice shall inform Potential Settlement Class Members how they may request a copy of the Long Form Notice (Exhibit 3).

(c) For those Potential Settlement Class Members who are not current members of Defendant or who have not agreed to receive notices regarding their accounts from Defendant electronically, or for Potential Settlement Class Members who are sent emails referenced in Paragraph 5(b) but such emails are returned undeliverable and the Settlement Administrator is unable to identify an updated email address by the means prescribed in Paragraph 5(b), the Settlement Administrator will mail a Postcard Notice (Exhibit 2) by first class United States mail to the best mailing addresses available in Defendant’s records. Defendant shall provide the

Settlement Administrator with last known mailing addresses for those Potential Settlement Class Members. The Settlement Administrator shall 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 Settlement Administrator shall re-mail the Notice to the forwarding address. For all mailed 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 Notice 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 Potential Settlement Class Members how they may request a copy of the Long Form Notice (Exhibit 3).

(d) 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. 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 Settlement 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 without a court order.

(e) The Notices shall be in a form approved by the Court and, substantially similar to the notice forms attached hereto as Exhibits 1-3. The Parties may by mutual written consent make non-substantive changes to the Notices without Court approval.

(f) The Settlement Administrator shall also maintain a dedicated website for providing information to Potential Settlement Class Members, including access to the Long Form Notice. Defendant's written approval of the domain name of the website is required prior to the Settlement Administrator creating the website.

(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 Settlement Administrator's fees and costs, shall be paid out of the Settlement Fund.

6. MOTION FOR FINAL APPROVAL. No later than 30 days before the Final Approval Hearing Date (or such other date set by the Court), 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 Settlement Class Members. Within ten (10) business days after the Effective Date, the Settlement Administrator shall create a list of Settlement Class Members with a corresponding amount payable to each Settlement Class Member under this Settlement Agreement and the Final Approval Order (the "Allocation Amount"). Within fifteen (15) business days from the Effective Date, Defendant shall transfer the Settlement Fund to the Settlement Administrator to be deposited in an interest-bearing account for the benefit of the Class

(the “Settlement Administration Account”), The Settlement Administrator shall establish the Settlement Administration Account. The Settlement Fund shall be the total amount Defendant is obligated to pay under the terms of this Agreement, subject to deductions for (a) Class Counsel’s fees and costs awarded by the Court; (b) any Service Award payment to the Named Plaintiff approved pursuant to Paragraph 8(d)(ii); and (c) the costs associated with the Notice and Settlement Administration services. Defendant shall not make any additional or further contributions to the Settlement Fund.

(b) 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.

(c) 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.

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

(i) Class Counsel’s Fees and Costs. Class Counsel’s reasonable attorneys’ fees and costs, as determined and approved by the Court, shall be paid by the Settlement Administrator from the Settlement Fund twenty (20) business days after the Effective Date. Class Counsel shall apply for an award of attorneys’ fees of up to one-third (33-1/3%) of the Settlement Fund, plus reimbursement of reasonable litigation costs, to be approved by the court. Defendant agrees not to oppose an application up to one-third (33-1/3%) of the Settlement Fund. Any awarded fees shall be deducted from the Settlement Fund. This paragraph was negotiated and agreed to only after all material terms of the Settlement were agreed upon.

(ii) Service Award. Named Plaintiff may apply to the Court for a Service Award of up to seven thousand five hundred dollars (\$7,500) without an objection from Defendant. Subject to the Court’s approval, the Service Award shall be paid by the Settlement Administrator from the Settlement Fund twenty (20) business days after the Effective Date. Any Service Award shall be deducted *pro rata* from the Settlement Fund.

(iii) Settlement Administration Services. The Settlement Administrator may deduct reasonable and actual settlement administration fees (including the cost of Notice) without further order of the Court.

(iv) Payments to Settlement Class Members. After deductions of the amounts described in 8(d)(i)-8(d)(iii), the amount paid to each Settlement Class Member shall be calculated as follows:

(Settlement Fund ÷ Total Instances of Retry NSF/Overdraft Fees)

X

Number of Retry NSF/Overdraft Fees per Settlement Class
Member

(v) Payments to individual Settlement Class Members (“Individual Payments”) shall be made no later than twenty-five (25) business days after the Effective Date, as follows: The Settlement Administrator shall send Settlement Class Members a check to the address used to provide the Notice, or at such other address as designated by the Settlement Class Member. The Settlement 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 8(e).

(e) Any funds remaining after the distribution in Section 8(d)(v) shall be distributed as follows: (1) 50% to the Legal Services Program established under ORS 9.572; and (2) 50% to a cy pres recipient to be agreed upon by the parties and approved by the Court.

9. THE SETTLEMENT ADMINISTRATOR.

(a) The Settlement Administrator shall execute a retainer agreement that shall provide, among other things, that the Settlement Administrator shall be bound by and shall perform the obligations imposed on it under the terms of this Agreement.

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

(c) The Settlement Administrator shall keep all information regarding Potential Settlement Class Members confidential, except as otherwise provided herein. All data created and/or obtained and maintained by the Settlement Administrator pursuant to this Agreement shall be destroyed twelve (12) months after the Effective Date.

(d) The Settlement 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, Settlement Class Members shall be responsible for their own tax reporting of payments or credits received under the terms of this Agreement.

(e) The Settlement 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 or such other date as required by the Court, the Settlement Administrator shall prepare the Final Report, which, at a minimum, shall consist of a declaration setting forth the total payments issued to Settlement Class Members by the Settlement Administrator, the total amount of any checks uncashed and/or returned, and the total amount of money being held by the Settlement Administrator.

10. OPT-OUTS.

(a) A Potential Settlement 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 Settlement 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 Potential Settlement Class Member, state that the Potential Settlement Class Member wishes to be excluded from the Agreement, and shall be signed and dated.

(b) The Settlement Administrator shall maintain a list of Potential Settlement Class Members 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 Settlement Administrator shall retain the originals of all Exclusion Letters (including the envelopes with the postmarks). The Settlement 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.

11. OBJECTIONS.

(a) Any Settlement Class Member 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 Court, Settlement Administrator, Class Counsel, and Defendant's Counsel. The objection must be postmarked on or before the Bar Date to Object, and must include the following information:

(i) A heading referring to the *Brower v. Northwest Community Credit Union* Action;

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

(iii) 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

(iv) 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 and/or Defendant's Counsel shall file any responses to objections at least seven (7) days prior to the Final Approval Hearing Date.

(d) Any objector who retains counsel shall be solely responsible for paying his or her own attorney's fees and costs.

(e) Any objector who fails to comply with the provisions herein shall waive and forfeit any and all rights to appear and/or object separately and shall be bound by the terms of this Agreement and the orders and judgments of the Court.

12. RELEASE.

(a) Except as to the rights and obligations provided for under the terms of this Agreement, Named Plaintiff, on behalf of himself and all of their respective past, present and future predecessors, successors, assigns, devisees, relatives, heirs, legatees, and agents, and each of the Settlement Class Members, including their respective past, present and future predecessors, successors, assigns, devisees, relatives, heirs, legatees, and agents, hereby fully 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, insurers, and agents (collectively, the “Defendant Releasees”) from any and all charges, complaints, claims, demands, debts, obligations, attorneys’ fees, expenses, costs, actions, damages and remedies, liabilities, and causes of action of every nature, character, and description, whether arising under federal, state, or local law or under a constitutional provision, statute, regulation, rule, contract, or common law, whether or not now known, asserted or unasserted, suspected or unsuspected, fixed or contingent, or claimed against the Defendant Releasees that may have accrued from the beginning of time until the Effective Date that relate to the conduct, omissions, duties or matters that were or could have been alleged in the Complaint (“Released Claims”) resulting from, related to, or arising out of the following: (1) the assessment or charging of multiple NSF Fees and/or Overdraft Fees when there are multiple attempted presentments for collection on individual Automated Clearing House (ACH) payments or check payments (including an electronic check); and (2) the sufficiency of Defendant’s disclosures in its deposit account terms and conditions and Settlement Class Members’ assent to the same relating to (1) (collectively, the “Released Claims”).

(b) Named 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 dismissed with prejudice and 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.

(c) 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 Named 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. Likewise, nothing in this Agreement shall operate or be construed to release any defenses or rights of set-off that Named Plaintiff or any Settlement Class Member has, other than with respect to the claims expressly Released by this Agreement, in the event Defendant and/or its assigns seeks to recover any past, present or future amounts that may be owed by Named 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.

13. 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 4 above;

(ii) The Court has entered the Final Approval Order as required by Sections 6 and 7 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 13(a) are not met, and the Parties have no further recourse from the Court or an appellate court to complete these conditions, 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 Potential Settlement Class Members opt-out. Defendant shall notify Class Counsel and the Court of its intent to terminate this Agreement pursuant to this Section 13(c) 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 13(c), or fails to become effective in accordance with Section 13(b), 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*.

(i) Neither the Agreement terms nor any publicly disseminated information regarding the Agreement including, without limitation, the Notice, court filings, orders, and public statements relating to the Agreement, may thereafter be used as evidence for any purpose whatsoever.

(ii) The fact of, and any documents, findings, decisions, or orders relating to any failure of a court to approve the Agreement or any modifications or amendments of the Agreement, as well as the fact and content of any objections which may have been filed to the Agreement, may not be used as evidence for any purposes whatsoever.

14. 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 Settlement Class members, represents that he has made such inquiry into the terms and conditions of this Agreement as they deem appropriate, and that by executing this Agreement, they, based on Class Counsel's advice, and their understanding of the case, believe the Agreement and all the terms and conditions set forth herein, are fair and reasonable to all Potential Settlement Class Members.

(d) The Named Plaintiff represents that she has no knowledge of conflicts or other personal interests that would in any way impact their representation of the Potential Settlement Class Members 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.

15. 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 Potential Settlement Class Members. Warranties, representations, agreements, and obligations contained in this Agreement shall survive the execution and delivery of this Agreement and shall survive any and all performances in accordance with this Agreement.

16. APPLICABLE LAW. This Agreement shall be governed by, interpreted, construed, and enforced pursuant to the laws of the State of Oregon, without giving effect to its choice-of-law principles.

17. 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.

18. AGREEMENT. This Agreement, including the exhibits attached hereto, constitutes the agreement made by and between the Parties pertaining to the Complaint and any claims that were or could have been raised in the Complaint, and fully supersedes any and all prior understandings, representations, warranties, and agreements made by the parties hereto or their representatives pertaining to the Complaint and any claims that were or could have been raised in the Complaint.

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

20. **ARM'S-LENGTH AGREEMENT.** The parties have negotiated all of the terms and conditions of this Agreement at arm's length. All terms and conditions are material and necessary to this Agreement and have been relied upon by the Parties in entering into this Agreement.

21. **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.

Notwithstanding any other provision of this Agreement, any order of the Court regarding Class Counsel's request for attorneys' fees and expenses or Service Award to Named Plaintiff is neither material to, nor part of the Agreement, and shall not operate to terminate or cancel the Agreement, or affect or delay the judgment approving this Agreement from becoming final. Neither a modification nor reversal on appeal of any order of the Court regarding the Class Counsel's request for attorneys' fees and expenses, or Named Plaintiff's Service Award, shall constitute grounds for any Party to cancel, terminate, or withdraw from the Agreement.

22. **NO PRESS RELEASE OR PUBLICITY.** Each Party agrees not to make any statements, written or oral, or cause or encourage others to make any statements, written or oral, that defame, disparage or in any way criticize the personal or business reputation, or conduct of the other Party, including affiliates, parents, direct and indirect subsidiaries, agents, insurers, and any company or companies under common control with any of them. Before entry of Final Judgment by the Court, neither Plaintiff nor Class Counsel shall directly or indirectly issue or cause to be issued any statements to the media or engage in any other press, publicity or disclosure regarding this Agreement or the settlement of the Action beyond those necessary to obtain court approval of the settlement. If contacted by the media after the entry of Final Judgment by the Court, the Party may respond generally by stating that they are happy that the Settlement was reached and that it is a fair and reasonable result. Neither Party, nor Class Counsel, shall issue any press release, initiate communications with the media, or disclose or publicize the Settlement in any manner, including on social media and the Internet, or otherwise initiate press coverage of the Settlement.

23. **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.

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

Jeffrey Kaliel
Kaliel PLLC
1100 15th St. NW, 4th Flr.
Washington, DC 20005
jkaliel@kalielgold.com

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


Kimberley Hanks McGair
Farleigh Wada Witt
121 SW Morrison, Suite 600
Portland, OR 97204
kmcgair@fwwlaw.com

Any notice to the Settlement Administrator shall be sent by email to the address of the Settlement Administrator.

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

Dated: June 6th, 2022

NORTHWEST COMMUNITY CREDIT UNION

By:  _____

Its: Chief Risk Officer _____

Dated: June __, 2022

ANGELIQUE BROWER, an individual on behalf of herself and those she represents

By: _____
Angelique Brower

APPROVED AS TO FORM:

Dated: May __, 2022

By: _____

Kimberley Hanks McGair
Attorney for Defendant NORTHWEST COMMUNITY
CREDIT UNION

Dated: May____, 2022

KALIELGOLD PLLC

By: _____
Jeffrey Kaliel
Sophia Gold

Dated: May____, 2022

THE KICK FIRM APC

By: _____
Taras Kick

Attorneys for Plaintiff Angelique Brower

EXHIBIT 1

LEGAL NOTICE

**If you were a member of Northwest
Community Credit Union and you
were charged multiple
nonsufficient funds and/or
overdraft fees, you may be entitled
to a payment from a class action
settlement.**

**1- - - -
www. - - - - .com**

<<Barcode>>

Postal Service: Please do not mark barcode

<<First1>> <<Last1>>

<<CO>>

<<Addr2>>

<<Addr1>>

<<City>>, <<St>> <<Zip>>

<<Country>>

A settlement has been reached with Northwest Community Credit Union (“Defendant”) in a class action lawsuit about overdraft (“OD”) and nonsufficient funds (“NSF”) fees charged on member accounts from October 1, 2015 through February 28, 2021.

Who is included? Defendant’s records indicate that you are a “Potential Settlement Class Member” in this Settlement because you were charged an NSF or OD fee. Specifically, Potential Settlement Class Members are: all members of Defendant who were charged multiple NSF or OD fees on their accounts for the same transaction presented to Defendant for collection during the Class Period—from October 1, 2015 through February 28, 2021—which request for collection initially was rejected for insufficient funds, but subsequently was re-presented to Defendant for collection on one or more additional occasions resulting in additional NSF and/or OD Fees.

What does the Settlement provide? Defendant will create a \$745,000 Settlement Fund. After deducting attorneys’ fees and costs and service awards to the Named Plaintiff, the balance of the Settlement Fund will be divided proportionately among all Class Members.

What are my options? If you do nothing and the Settlement is approved and becomes final, you will automatically receive a check and your rights will be affected. If you do not want to be legally bound by the Settlement or receive a check, you must exclude yourself from it by [Date]. Unless you exclude yourself, you will not be able to sue or continue to sue Defendant for any claim made in this lawsuit or released by the Settlement Agreement. If you stay in the Settlement (do not exclude yourself), you may object to it by [Date].

The Court’s Fairness Hearing. The Circuit Court of the State of Oregon, County of Multnomah, located at 1200 SW 1st Avenue, Portland, OR 97204, will hold a hearing in this case (*Brower v. Northwest Community Credit Union*) on _____ at _____. At this hearing, the Court will decide whether to approve: (1) the Settlement; (2) Class Counsel’s request for attorneys’ fees (up to 33 1/3% of the Settlement Fund) and costs; and (3) a \$7,500 service award to each of the Named Plaintiff. You or your lawyer may appear at the hearing at your own expense, but you don’t have to.

More information, including the Long Form Notice and Settlement Agreement are available at www._____.com or by calling 1-____-____-____.

Exhibit 2

To:
From:
Subject: Notice of Refund – Northwest
Community Credit Union

Northwest Community Credit Union’s (“Northwest” or “Defendant”) records indicate that you were charged multiple nonsufficient funds fees and/or overdraft fees on a single transaction between October 1, 2015 and February 28, 2021. You do not have to do anything now to receive a payment. However, your rights are affected by this class action settlement.

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION	
DO NOTHING	If you have been assessed the type of NSF fee and/or Overdraft fee that is being challenged in this case, then you will receive a payment from the Settlement Fund so long as you do not exclude yourself (described in the next box).
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 Northwest, but you will not receive a payment. If you want to recover against Northwest, then you will have to file a separate lawsuit or claim.
OBJECT TO THE SETTLEMENT	You can file an objection to the Settlement explaining why you believe the Court should reject the settlement. If your objection is overruled by the Court, you <u>will</u> receive a payment and you <u>will not</u> 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.

A settlement has been reached with the Northwest in a class action lawsuit about multiple nonsufficient funds (“NSF”) fees and Overdraft (“OD”) fees charged on accounts from October 1, 2015 through February 28, 2021.

Who is included? Defendant’s records indicate that you are a “Potential Settlement Class Member” in this Settlement because you were charged certain OD or NSF fees. Specifically, Class Members are: all members of Defendant who were charged multiple NSF or OD fees on their

accounts for the same transaction presented to Defendant for collection during the Class Period — which request for collection initially was rejected for insufficient funds, but subsequently was re-presented to Defendant for collection on one or more additional occasions resulting in additional NSF and/or OD Fees.

What does the Settlement provide? Defendant will create a \$745,000.00 Settlement Fund. The balance of the Settlement Fund will be divided proportionately among all Class Members after deducting attorneys' fees and costs and a service award to the Named Plaintiff. In addition, Defendant implemented changes to its disclosures after the Lawsuit was filed but before the Settlement was reached that clarify its NSF and OD fee practices.

What are my options? If you do nothing and the Settlement is approved and becomes final, you will automatically receive a payment and your rights will be affected. If you do not want to be legally bound by the Settlement or receive an account credit or check, you must exclude yourself from it by [Date]. Unless you exclude yourself, you will not be able to sue or continue to sue Defendant for any claim made in this lawsuit or released by the Settlement Agreement. If you stay in the Settlement (do not exclude yourself), you may object to it by [Date].

The Court's Fairness Hearing. The Circuit Court of the State of Oregon for the County of Multnomah, located at 1200 SW 1st Avenue, Portland, OR 97204, will hold a hearing in this case (*South v. Northwest Community Credit Union*) on _____ at _____. At this hearing, the Court will decide whether to approve: (1) the Settlement; (2) Class Counsel's request for attorneys' fees (up to 33 1/3% of the Settlement Fund) and costs; and (3) a \$7,500 service award to the Named Plaintiff. You or your lawyer may appear at the hearing at your own expense, but you don't have to.

More information, including the Long Form Notice and Settlement Agreement are available at www._____.com or by calling 1-____-____.

Exhibit 3

Brower
v.
Northwest Community 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 WERE A MEMBER OF NORTHWEST COMMUNITY CREDIT UNION (“DEFENDANT”) AND YOU WERE CHARGED MULTIPLE NONSUFFICIENT FUNDS (“NSF”) FEES AND/OR OVERDRAFT (“OD”) FEES BETWEEN OCTOBER 1, 2015 AND FEBRUARY 28, 2021, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT

The Circuit Court of the State of Oregon for the County of Multnomah has authorized this Notice; it is not a solicitation from a lawyer.

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION	
DO NOTHING	If you have been assessed the type of NSF fee and/or OD Fee that is being challenged in this case, then you will receive a payment from the Settlement Fund so long as you do not exclude yourself (described in the next box).
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 want to recover against Defendant, then you will have to file a separate lawsuit or claim.
OBJECT TO THE SETTLEMENT	You can file an objection with the Settlement Administrator explaining why you believe the Court should reject the settlement. If your objection is overruled by the Court, you <u>will</u> receive a payment and you <u>will not</u> 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 *Brower v. Northwest Community Credit Union*. The case is a “class action.” That means that the “Named Plaintiff,” Angelique Brower, is an individual who is acting on behalf of a group that includes all members of Defendant who were charged multiple NSF or OD fees on their accounts for the same transaction presented to Defendant for collection during the Class Period—from October 1, 2015 through February 28, 2021—which request for collection initially was rejected for insufficient funds, but subsequently was re-presented to Defendant for collection on one or more additional occasions resulting in additional NSF and/or OD Fees. The persons in this group are collectively called the “Class Members.”

The Named Plaintiff claims she was improperly charged NSF and/or OD fees. Defendant does not deny that it assessed the Named Plaintiff NSF and/or OD fees, but denies that its practices give rise to claims for damages by the Named Plaintiff or any Class Member. Defendant specifically maintains that it properly and lawfully assessed all fees in accordance with the terms of its agreements, disclosure, and applicable law.

2. 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 his 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 the Court (or eventually a trial court judge or a jury) will find that Defendant breached its agreements with members or otherwise acted improperly by assessing the NSF and/or OD fees that are the subject of this case. There also is uncertainty about whether the Named Plaintiff’s claims are subject to other defenses that might result in no recovery or less recovery to Class Members. Even if the Named Plaintiff was 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.

Although Defendant disputes Plaintiff’s claims, it has agreed to settle to avoid the costs, distractions and risks of further litigation. Thus, even though Defendant denies that it did anything improper, it believes settlement is in its best interest and in the best interests of all of its members.

WHO IS IN THE SETTLEMENT

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

If you received a notice in the mail or via email, 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

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

You have three options: (1) do nothing and you will receive a payment according to the terms of this settlement; (2) exclude yourself from the settlement ("opt out" of it); or (3) participate in the settlement but object to it. Each of these options is described in a separate section below.

5. What are the critical deadlines?

If you do nothing, you will receive settlement funds by credit to your account if you are still a member of Defendant when the settlement is paid or via check mailed to your residence of record if you are not a member of Defendant when the settlement is paid at the close of the claims period.

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

The deadline to file an objection with the Court is also [REDACTED].

6. 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.

7. 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 authorized 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 [REDACTED].

THE SETTLEMENT PAYMENT

8. How much is the Settlement?

Defendant has agreed to create a Settlement Fund of \$745,000.00. As discussed separately below, attorneys' fees, litigation costs and a service award to the Named Plaintiff, will be paid out of this

amount. The balance of the Settlement Fund will be divided among all Class Members proportionally. Additionally, as a result of this lawsuit, Defendant has implemented changes to its disclosures that clarify Defendant's NSF and OD fee practices.

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

Class Counsel will request that the Court award up to one-third (33-1/3%) of the value of the settlement as attorneys' fees plus reimbursement litigation costs incurred in prosecuting the case. The Court will decide the amount of the attorneys' fees based on a number of factors, including the risk associated with bringing the case, 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.

10. 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 will request that the Court award her up to \$7,500 apiece for their role in securing this settlement on behalf of the class. The Court will decide if a Service Award is appropriate and if so, the amount of the award.

11. How much will my payment be?

The balance of the Settlement Fund will be divided among all Class Members proportionally. Class Members will receive a check for the amount they are entitled to receive from the Settlement Administrator.

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

No. 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.

13. When will I receive my payment?

The Court will hold a Fairness Hearing (explained below in Questions 22-24) on [REDACTED] to consider whether the settlement should be approved. If there are no objections and the Court approves the settlement, then the Settlement Administrator should begin paying claims within approximately forty days of the Court's approval. 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

14. 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 Settlement Administrator that you want to be excluded. Your letter can simply say “I hereby elect to be excluded from the settlement in the *Brower v. Northwest Community Credit Union* class action. Be sure to include your name, the last four digits of your account number (current or former) or Social Security Number, address, telephone number, and email address. Your exclusion or opt out request must be postmarked by [REDACTED], and sent to:

Brower v. Northwest Community Credit Union
[ADDRESS]

15. 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.

16. 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

17. 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 Settlement Administrator, the Court, Class Counsel, and Defendant’s counsel, at the addresses below. Your objection must include the following:

- A heading referring to the *Brower v. Northwest Community Credit Union* Class Action;
- Your name, address, telephone number, the last four digits of your account number (current or former) or Social Security Number, and the contact information for any attorney you have retained in connection with this case;
- A statement of the factual and legal basis for each objection and any exhibits you wish the Court to consider in connection with the objection;
- A statement as to whether you intend to appear at the Final Approval Hearing, either in person or through an attorney, and, if through an attorney, identifying the attorney by name, address, and telephone number; and
- Your signature.

Class Counsel and/or Defendant’s Counsel will file any objections and responsive pleadings at least seven days before the Final Approval Hearing Date.

Be advised that if you object to the settlement and retain an attorney for purposes of objecting, you are solely responsible for paying that attorney’s fees and costs.

If you fail to comply with the provisions herein, you will waive and forfeit any and all rights to appear and/or object separately, and will be bound by the terms of this Agreement and the orders and judgments of the Court.

All objections must be post-marked no later than [REDACTED], and must be mailed to the above-identified recipients as follows:

CLAIMS ADMINISTRATOR
Brower v. Northwest Community Credit Union Settlement Administrator [ADDRESS]

18. 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.

19. 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

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

The Court will hold a Final Approval or Fairness Hearing at [date/time] at [REDACTED]. 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 and how much the Named Plaintiff should get as a “Service Award” for acting as the class representatives.

21. 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.

22. 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 18, above, the statement, “I hereby give notice that I intend to appear at the Final Approval Hearing.”

IF YOU DO NOTHING

23. 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. You will be considered a part of the class, and you will give up claims against Defendant for the conduct identified in the settlement. You will not give up any other claims you might have against Defendant that are not released in this settlement.

THE LAWYERS REPRESENTING YOU

24. 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.

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

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

26. 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 Settlement Administrator, www._____.com.

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

Brower v. Northwest Community Credit Union Settlement Administrator
[ADDRESS]

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