

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement” or “Agreement”),¹ dated as of July 27th, 2023, is entered into by Plaintiff, Kiomy Encarnacion, individually and on behalf of the Settlement Class, (“Kiomy Encarnacion” or “Plaintiff”), and Defendant Workers Federal Credit Union (named in the Complaint as “Workers Credit Union”) (“Workers” or “Defendant”). All references in this Agreement to a “party” or the “parties” shall refer to a party or the parties to this Agreement. The Parties hereby agree to the following terms in full settlement of the action currently pending in the United States District Court for the District of Massachusetts captioned *Kiomy Encarnacion, Individually and on Behalf of All Others Similarly Situated v. Workers Credit Union and DOES 1 Through 100*, No. 4:21-cv-40077, subject to Final Approval by the Court.

I. Procedural History and Recitals

1. On July 23, 2021, Plaintiff filed a putative class action complaint in the Action seeking – among other things – damages, restitution, and declaratory relief arising from the allegedly unfair and unconscionable assessment and collection of retry NSF/overdraft fees, allegedly, in violation of, *inter alia*, Workers’ contracts with its credit union members.

2. Defendant timely filed a Motion to Dismiss on September 17, 2021. Plaintiff opposed that Motion. The Court denied the Motion to Dismiss on April 14, 2022.

3. The Court issued several scheduling orders throughout the litigation of the Case and the Parties vigorously pursued discovery pursuant to those Order. In particular, Plaintiff served document requests and interrogatories on Workers, to which Workers served its written responses, including sample transactional data. The Parties met and conferred several times discovery issues.

4. Negotiations by the Parties resulted in the Settlement reflected in this Agreement.

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

5. 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. Workers has entered into this Agreement to resolve any and all controversies and disputes arising out of or relating to the allegations made in the Action. Workers does not in any way acknowledge, admit to, or concede any of the allegations raised or which could have been raised 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 defense. The Parties intend this Agreement to bind Plaintiff, Workers, 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. Definitions

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

6. “Account” means any consumer checking account or share account that any member of Workers Federal Credit Union maintained with Workers Federal Credit Union.

7. “Account Holder” means any person who has or had any interest, whether legal or equitable, in an Account during the Class Period.

8. “Action” means *Encarnacion v. Workers Credit Union, et al.*, No. 4:21-cv-40077 (D. Mass.), the action referred to in the first paragraph of this Agreement.

9. “Complaint” means the Complaint filed in this Action on July 23, 2021.

10. “Class Counsel” means: McCune Law Group, McCune Wright Arevalo Vercoski Kusel Weck Brandt, APC and Shaheen & Gordon, P.A.

11. “Class List” means a list of all members of the Settlement Class to be prepared by Workers and/or its consulting expert. The Class List shall be in Excel worksheet format and shall provide the name, last known address or e-mail address, account number and Relevant Fee information for all members of the Settlement Class. Joint or co-owners of a particular Account shall be treated as one person and the Class List need only identify the primary member on the Account.

12. “Class Period” means the period beginning six years preceding the filing of the Complaint (July 23, 2015) and ending on the date on which the Preliminary Approval Order is granted.

13. “Class Representative” means Kiomy Encarnacion.

14. “Court” means the United States District Court for the District of Massachusetts.

15. “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.

16. “Former Account Holder” means a Settlement Class Member who no longer has an Account as of the date that the Net Settlement Fund is distributed to Class Members Pursuant to this Agreement.

17. “Debit Card” means a card or similar device issued or provided by Workers, including a debit card, check card, or automated teller machine (“ATM”) card that can or could be used to debit funds from an Account by Point of Sale and/or ATM transactions.

18. “Defendant” or “Workers” means Workers Federal Credit Union.

19. “Effective Date” means 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) 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.

20. “Email Notice” means a short form of notice that shall be sent by email to Settlement Class members who agreed to receive account statements by email in the form attached as **Exhibit 1**.

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

22. “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 fees, costs awarded to Class Counsel and the amount of any Service Award to the Class Representative.

23. “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 fees, and costs awarded to Class Counsel and the amount of any Service Award to the Class Representative.

24. “Long Form Notice” means the form of notice that shall be posted on the Settlement website created by the Settlement Administrator which shall be available to Settlement Class members by mail on request made to the Settlement Administrator, in the form attached as **Exhibit 2**.

25. “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.

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

27. “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, which shall be substantially in the forms as the exhibits attached to this Agreement.

28. “Opt-Out Period” means the period that begins the day after the earliest date on which the Notice is first distributed, and that ends no later than 30 days before the Final Approval Hearing. The deadline for the Opt-Out Period shall be specified in the Notice.

29. “Party” means Plaintiff and Defendant, and “Parties” means Plaintiff and Defendant collectively.

30. “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.

31. “Plaintiff” means Kiomy Encarnacion, and all those on whose behalf she is prosecuting this action.

32. “Postcard Notice” shall mean the short form of notice that shall be sent by mail to Settlement Class members who did not agree to receive notices by email, or for whom the Settlement Administrator is unable to send Email Notice using the email address provided by Defendant, in the form attached as **Exhibit 1**.

33. “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 Joint Motion for Preliminary Approval.

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

35. “Releasing Parties” means 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.

36. “Relevant Fees” means Retry Fees incurred during the Class Period.

37. “Retry Fee” means an overdraft or NSF fee charged on an ITEM when that ITEM had already resulted in at least one overdraft or NSF fee.

38. “Service Award” means any Court ordered payment to Plaintiff for serving as a Class Representative, which is in addition to any payment due Plaintiff as Settlement Class Member.

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

40. “Settlement Administration Costs” means all costs and fees of the Settlement Administrator regarding Notice and Settlement administration, but does not include Defendant’s costs, if any, to create a Class List using its business records

41. “Settlement Class” means all current and former members of Defendant with consumer accounts, who were charged a Retry Fee during the Class Period. Excluded from the Settlement Class is Workers Federal Credit Union, 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.

42. “Settlement Class Member” means any member of the Settlement Class who is entitled to be considered for benefits of the Settlement by the Class Administrator, including for a Settlement Class Member Payment.

43. “Settlement Class Member Payment” means the cash distribution that will be made from the Net Settlement Fund to each Settlement Class Member, pursuant to the allocation terms of the Settlement.

44. “Settlement Fund” means the Four Hundred Thirty-Seven Thousand and Five Hundred dollars (\$437,500.00) common cash fund Workers is obligated to pay or credit under the terms of this Settlement. The Settlement Fund shall be paid into an account established by the Settlement Administrator within 10 days of the Court’s entry of the Final Approval Order less the total amount that will be credited to Settlement Class Members by Defendant as provided in Paragraph 64(d)(ii)(1) below.

45. “Settlement Website” means the website that the Settlement Administrator will establish as a means for Settlement Class members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Long Form Notice, Preliminary Approval Order, and such other documents as the Parties agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website at least until Final Approval. This website shall be password protected and the homepage shall not contain any content other than a box to insert the password and contact information for the Settlement Administrator to allow Class Members to retrieve the password. The nomenclature and content of the website must be disclosed to and approved by Defendant prior to its launch.

III. Certification of the Settlement Class

46. For the purpose of implementing the settlement provided for under the terms of this Agreement, and for that purpose only, Plaintiff and Defendant agree to ask the Court to certify the Settlement Class under the Federal Rule of Civil Procedure 23. Neither this Settlement nor this paragraph nor any court order entered pursuant to this Settlement, including but not limited to the Preliminary Approval Order and the Final Approval Order, may be cited as authority or precedent by either Party and shall not stand as support of a motion for certification in any other case where certification is contested.

IV. Settlement Consideration

V. Within 10 days of Final Approval by the Court, Defendant shall pay Four Hundred Thirty-Seven Thousand and Five Hundred dollars (\$437,500.00) in cash less the total amount that will be credited to the Settlement Class Members, as provided in Paragraph 64(d)(ii)(1) below, to the Settlement Administrator to create the Settlement Fund for the benefit of the Settlement Class. 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 Representatives; and all Settlement Administration Costs. Settlement Approval

47. 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 Joint 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

48. 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, including, but not limited to, effectuating the Notice Program, and distributing the Settlement Fund as provided herein.

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

a. Use the Class List and Relevant Fee information for Settlement Class members provided by Workers 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 for whom it is not feasible or reasonable for Defendant to make the Settlement Class Member Payments by a credit to the Current Settlement Class Members Accounts;

b. The Parties and Class Counsel acknowledge that the Class List contains confidential information, which may not be disseminated to anyone other than the Settlement Administrator. The Settlement Administrator shall sign a confidentiality agreement and agreement to safeguard member information and former member non-public personal information in compliance with NCUA Regulation Part 748 and all other applicable law, which shall provide that the information provided shall be treated as confidential and shall be used only as required by this Settlement Agreement and shall be protected against unauthorized access or use. Defendant shall compile the Class List at its expense and forward it to the Settlement Administrator, including the last known mailing address for each Settlement Class Member. The Settlement Administrator will

process the addresses through the National Change of Address database as well as a service such as Probe 260 or Lexis/Nexis Accurint to update address data. The names, addresses, and other identifying information of the Class Members shall not be provided to Class Counsel. Defendant shall provide the Class List to the Settlement Administrator within 60 days from the date that the Court grants preliminary approval.

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

d. Establish and maintain the Settlement Website;

e. 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;

f. Respond to any mailed Settlement Class member inquiries;

g. Process all requests for exclusion from the Settlement Class;

h. Provide weekly reports to Class Counsel and Defendant that summarizes the number of requests for exclusion received that week, the total number of exclusion requests received to date, and other pertinent information;

i. 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.

j. Distribute Settlement Class Member Payments by check to Past Account Holder Settlement Class Members and Current Account Holder Settlement Class Members who are unable

to receive credits;

k. Provide to Defendant the amount of the Settlement Class Member Payments to Current Account Holder Settlement Class Members and instruct Defendant to initiate the direct deposit or credit of Settlement Class Member Payments to Current Account Holder Settlement Class Members.

l. Pay invoices, expenses, and costs upon approval by Class Counsel and Defendant, as provided in this Agreement;

m. Provide notice of this Settlement as required under the Class Action Fairness Act, 28 U.S.C. § 1715; and

n. Any other Settlement Administration function at the instruction of Class Counsel and Defendant, including, but not limited to, verifying that the Settlement Funds have been distributed.

VII. Notice to Settlement Class Members

50. As soon as practicable after Preliminary Approval but in no event later than 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 internet 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.

51. 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 payment under the Settlement.

52. 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 Service Award for the Class Representative. Objections to the Settlement, to the application for 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, as specified in the Notice. 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.

53. For an objection to be considered by the Court, the objection must also set forth:
- a. the name of the Action;
 - b. the objector's full name, address, and telephone number;
 - c. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
 - d. the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;
 - e. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
 - f. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection, and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five years;
 - g. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;
 - h. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;
 - i. a list of all persons who will be called to testify at the Final Approval Hearing in

support of the objection;

j. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

k. the objector's signature (an attorney's signature is not sufficient). Class Counsel and/or Defendant may conduct limited discovery on any objector or objector's counsel consistent with the Federal Rules of Civil Procedure.

54. For those Settlement Class Members who are Current Account Holders and have agreed, or Past Account Holders who had agreed, to receive Account statements from Defendant electronically, 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.

55. For those Settlement Class members who are Current Account Holders of Defendant who have not agreed to, or Past Account Holders who had not agreed to, receive Account statements from Defendant electronically, 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 the 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.

56. 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.

57. The Email Notice, Postcard Notice, and Long Form Notice shall be in forms approved by the Court and substantially similar to the notice forms attached hereto as **Exhibit 1** and **Exhibit 2**. The parties may by mutual written consent make non-substantive changes to the Notices without Court approval.

VIII. Final Approval Order and Judgment

58. Plaintiff shall file their 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 after the last day of the Opt-Out Period, or on the date which the Court orders. 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 Awards 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.

59. 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:

- i. Determine that the Settlement is fair, adequate, and reasonable;
- ii. Finally certify the Settlement Class for settlement purposes only;
- iii. Determine that the Notice provided satisfies Due Process requirements;
- iv. Bar and enjoin all Releasing Parties from asserting any of the Released Claims; bar and enjoin all Releasing Parties 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;
- v. Release Defendant and the Released Parties from the Released Claims; and

- vi. 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.

60. 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 64(d)(ii), below.

61. 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.

62. 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.

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

- a. Class Counsels' Fees and Costs. Class Counsels' 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 of up to 33.33% of the Settlement Fund, plus reimbursement of reasonable litigation costs, to be approved by the Court. Defendant agrees not to oppose an application for attorneys' fees of up to 33.33% of the Settlement Fund 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 \$2,500.00 for her role as the Class Representative. The Service Award shall be paid from the settlement funds 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 invoicing to and approval by the Parties. The Parties and the Settlement Administrator agree that any fees or costs incurred by the Settlement Administrator prior to funding of the Settlement Fund shall be deferred and not invoiced until the Settlement Fund has been funded. In the event the Final Approval Order is not entered, or this Agreement is terminated pursuant to Section XII below, Workers agrees to cover any costs incurred and fees charged by the Settlement Administrator pursuant to Section VI and Section VII above prior to the denial of Final Approval or the termination of this Agreement.

d. Settlement Class Member Payments. Of the \$437,500.00 paid or credited into the Settlement Fund, all amounts other than the Service Award, fees paid to Class Counsel, and the amounts paid for Settlement Administrator's Fees and Costs, the payments from the Net Settlement Fund to the Settlement Class Members shall be calculated as follows:

i. Settlement Class Members shall be paid per incurred Retry Fee calculated as follows:

1. Settlement Class Members' distributions from the Net Settlement Fund will be determined on a pro rata basis, based on the amount of Retry Fee(s) paid by the Settlement Class Member, which will be established by the Settlement Administrator after receiving the amount of

Retry Fees at issue in this lawsuit paid by each Settlement Class Member from Defendant. The following formula will determine each Settlement Class Member's distribution:

$$\text{Settlement Class Member's Pro Rata \%} = \frac{\text{Retry Fee Amounts Paid by That Settlement Class Member}}{\text{Total of Retry Fee Amounts Paid by All Settlement Class Members}}$$

$$\text{Settlement Class Member's Distribution} = \text{Settlement Class Member's Pro Rata \%} \times \text{Net Settlement Fund}$$

No Settlement Class Member shall receive more in this settlement than the Retry Fees received by Defendant from that Settlement Class Member. For purposes of issuance of settlement payments, the primary Account holder along with any joint or co-holders shall be treated as one person. Any settlement checks for Class Members who are joint or co-holders shall be issued payable to only the primary Account holder but shall be deemed to satisfy any rights or interests of any joint or co-owners of the Account and shall be mailed to the last known address of the primary Account holder.

ii. Settlement Class Member Payments shall be made no later than 90 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 they are entitled to receive shall be applied to any account they are maintaining individually at the time of the credit. If by the deadline for Defendant to apply credits of Settlement Class Member Payments to accounts 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 at that time do not have an individual account, 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. For jointly held accounts, checks will be payable to all members, and will be mailed to the first member listed on the account. The Settlement Administrator will 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 or, in the case of a jointly held account, and in the Settlement Administrator's discretion, to an accountholder other than the one listed first. The Settlement Class Member shall have one-hundred 180 days to negotiate the check. Any checks uncashed after 180 days shall be distributed pursuant to Section X.

X. Disposition of Residual Funds

64. Within one year after the date the Settlement Administrator mails the first Settlement Class Member Payment, any remaining amounts resulting from uncashed checks shall be distributed *cy pres* to the United Way.

XI. Releases

65. As of the Effective Date, 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 (including but not limited to CUNA Mutual and TruStage), 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”).

66. Each Settlement Class Member is barred and 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 Defendant in any forum, action, or proceeding of any kind.

67. Plaintiff and all Settlement Class Members acknowledge and agree that they may hereafter discover facts other than or different from those that they know or believe to be true with respect to the subject matter of the claims released 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. In addition to the releases made by Plaintiff and Settlement Class Members above, Plaintiff, including each and every one of their agents, representatives, attorneys, heirs, assigns, or any other person acting on their behalf or for

their benefit, and any person claiming through them, makes the additional following general release of all claims, known or unknown, in exchange and consideration of the Settlement set forth in this Agreement. Plaintiff agrees to a general release of the Released Parties from all claims, demands, rights, liabilities, grievances, demands for arbitration, and causes of action of every nature and description whatsoever, known or unknown, pending or threatened, asserted or that might have been asserted, whether brought in tort or in contract, whether under state or federal or local law.

68. 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. 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 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 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.

XII. Termination of Settlement

69. This Agreement shall be subject to and is expressly conditioned on the occurrence of all of the 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.

70. If all of the conditions specified in Paragraph 71 are not met, then this Agreement shall be cancelled and terminated.

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

72. 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: (a) all amounts deposited into the Settlement Fund will be returned to Defendant, with the exception of the Settlement Administrator's costs; (b) 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 (c) any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

XII. Effect of a Termination

73. The grounds upon which this Agreement may be terminated are set forth herein above. In the event of a termination, this Agreement shall be considered null and void; all of Plaintiff's, Class Counsel's, and Defendant's obligations under the Settlement and this Agreement shall cease to be of any force and effect; and the Parties shall return to the status *quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement rights, claims and defenses will be

retained and preserved.

74. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Agreement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made or filed with the Court.

XIII. No Admission of Liability

75. 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.

76. 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.

77. 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.

78. 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.

79. In addition to any other defenses Class Counsel may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement or the Releases contained herein.

XIV. No Press Release

80. Neither Party shall issue any press release, social media posting, or shall otherwise initiate press coverage of the Settlement. If contacted, the Party may respond generally by stating that they are pleased a Settlement was reached and that the Party believes it was a fair and reasonable result. Nothing herein shall be interpreted as preventing Defendant from making necessary regulatory disclosures.

XV. Miscellaneous Provisions

81. 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.

82. 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.

83. 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.

84. 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.

85. 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.

86. 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.

87. 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 Massachusetts, without regard to the principles thereof regarding choice of law.

88. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which 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.

89. 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.

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

Elaine S. Kusel
McCune Law Group, McCune Wright Arevalo Vercoski Kusel Weck Brandt APC
One Gateway Center
Suite 1500
Newark, NJ 07102
esk@mccunewright.com
Class Counsel

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.

91. 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.

92. 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.

93. Authority. Class Counsel (for the Plaintiff and the Settlement Class Members), 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 of the terms and provisions of this Agreement.

94. 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.

95. 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.

96. 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.

Signatures to Follow on Next Page

Dated: 7-30-23



KIOMY ENCARNACION
Plaintiff

Dated: _____

Elaine S. Kusel
McCune Law Group, McCune Wright Arevalo
Vercoski Kusel Weck Brandt APC
Class Counsel

Dated: _____

Christine M. Craig
Shaheen & Gordon, P.A.
Class Counsel


WORKERS FEDERAL CREDIT UNION

Dated: August 3, 2023



By: James C. Champion
Its: President / Chief Executive Officer

Dated: Aug. 1, 2023

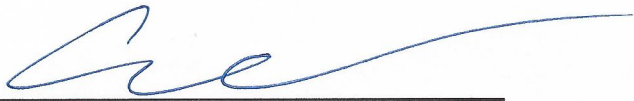


Jason E. Hunter
Counsel for Workers Federal Credit Union

Dated: _____

KIOMY ENCARNACION
Plaintiff

Dated: 7/27/23


Elaine S. Kusel
McCune Law Group, McCune Wright Arevalo
Vercoski Kusel Weck Brandt APC
Class Counsel

Dated: _____

Christine M. Craig
Shaheen & Gordon, P.A.
Class Counsel

WORKERS FEDERAL CREDIT UNION

Dated: _____

By:
Its: President / Chief Executive Officer

Dated: _____

Jason E. Hunter
Counsel for Workers Federal Credit Union

Dated: _____

KIOMY ENCARNACION
Plaintiff

Dated: _____

Elaine S. Kusel
McCune Law Group, McCune Wright Arevalo
Vercoski Kusel Weck Brandt APC
Class Counsel

Dated: July 27, 2023

Christine Craig

Christine M. Craig
Shaheen & Gordon, P.A.
Class Counsel

WORKERS FEDERAL CREDIT UNION

Dated: _____

By:
Its: President / Chief Executive Officer

Dated: _____

Jason E. Hunter
Counsel for Workers Federal Credit Union

Exhibit 1 – Email and Postcard Notice

Kiomy Encarnacion

v.

Workers Federal Credit Union

NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

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

**IF YOU HAVE OR HAD AN ACCOUNT WITH WORKERS FEDERAL
CREDIT UNION AND YOU WERE CHARGED CERTAIN INSUFFICIENT
FUND OR OVERDRAFT FEES BETWEEN JULY 23, 2015, AND _____,
THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS
ACTION SETTLEMENT**

The United States District Court for the District of Massachusetts has authorized this Notice; it is not a solicitation from a lawyer.

You may be a member of the settlement Class in *Kiomy Encarnacion v. Workers Credit Union*, in which the plaintiff alleges that defendant *Workers Federal Credit Union* (“Defendant”) unlawfully assessed certain Retry Fees between July 23, 2015, and _____. If you are a member of the Settlement Class and if the Settlement is approved, you may be entitled to receive a cash payment from the \$437,500.00 Settlement Fund, benefits established by the Settlement. If you are a member of the Settlement Class, you will receive a payment from the Settlement Fund so long as you do not opt out of or exclude yourself from the Settlement. **You do not have to do anything to be entitled to a payment from the Settlement Fund.**

The Court has preliminarily approved this Settlement. It will hold a Final Approval Hearing in this case on [INSERT DATE]. At that hearing, the Court will consider whether to grant Final Approval to the Settlement, and whether to approve payment from the Settlement Fund of up to \$2,500.00 in a Service Award to the Class Representative, up to 33.33% of the Settlement Fund as attorneys’ fees, and reimbursement of costs to the attorneys and the Settlement Administrator. If the Court grants Final Approval of the Settlement and you do not request to be excluded from the Settlement, you will release your right to bring any claim covered by the Settlement. In exchange, Defendant has agreed to issue credit to your Account, payment to you if you are no longer a member, and/or to return certain Relevant Fees.

To obtain a Long Form Notice and other important documents please visit [INSERT WEBSITE ADDRESS]. Alternatively, you may call [INSERT PHONE #].

If you do not want to participate in this Settlement—you do not want to receive a payment and you do not want to be bound by any judgment entered in this case—you may exclude yourself by submitting an opt-out request postmarked no later than [PARTIES TO INSERT DATE]. If you want to object to this Settlement because you think it is not fair, adequate, or reasonable, you may object by submitting an objection postmarked no later than [PARTIES TO INSERT DATE]. You may learn more about the opt-out and objection procedures by visiting [PARTIES TO PROVIDE WEBSITE ADDRESS] or by calling [Insert Phone #].

Exhibit 2 – Long Form Notice

Kiomy Encarnacion
v.
Workers Federal Credit Union

NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

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

**IF YOU HAVE OR HAD AN ACCOUNT WITH WORKERS FEDERAL
CREDIT UNION (“DEFENDANT”) AND YOU WERE CHARGED
CERTAIN INSUFFICIENT FUND OR OVERDRAFT FEES BETWEEN
JULY 23, 2015, AND [REDACTED], THEN YOU MAY BE ENTITLED TO A
PAYMENT FROM A CLASS ACTION SETTLEMENT**

The United States District Court for the District of Massachusetts 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 do not do anything, you will receive a payment from the Settlement Fund so long as you do not opt out of or exclude yourself from the settlement (described in the next box).
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 for Relevant Fees. If you exclude yourself from the settlement but want to recover against Defendant, you will have to file a separate lawsuit or claim.
OBJECT TO THE SETTLEMENT	You can file an objection with the Court explaining why you believe the Court should reject the settlement. If your objection is overruled by the Court, then you may receive a payment and you will not be able to sue Defendant for the claims asserted in this litigation. If the Court agrees with your objection, then the settlement may not be approved.

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

BASIC INFORMATION

1. What is this lawsuit about?

The lawsuit that is being settled is entitled *Encarnacion v. Workers Credit Union*. It is pending in the United States District Court for the District of Massachusetts, Case No. 4:21-CV-40077. The case is a “class action.” That means that the “Class Representative,” Kiomy Encarnacion is an individual acting on behalf of current and former members who were assessed certain Retry Fees between July 23, 2015, and [REDACTED]. The Class Representative has asserted, among other claims, a claim for breach of the Account agreement.

Defendant does not deny it charged the fees the Class Representative is complaining about but contends it did so properly and in accordance with the terms of its agreements and applicable law. Defendant therefore denies that its practices give rise to claims for damages by the Class Representative or any Settlement Class members.

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

You received this Notice because Defendant’s records indicate that you were charged one or more Retry Fees that are the subject of this action. The Court directed that this Notice be sent to all Settlement Class members because each such member has a right to know about the proposed settlement and the options available to him or her before the Court decides whether to approve the settlement.

3. Why did the parties settle?

In any lawsuit, there are risks and potential benefits that come with a trial versus settling at an earlier stage. It is the Class Representative and her 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, the Class Representative’s lawyers, known as Class Counsel, make this recommendation to the Class Representative. The Class Representative has the duty to act in the best interests of the class as a whole and, in this case, it is their belief, as well as Class Counsels’ opinion, that this settlement is in the best interest of all Settlement Class members.

There is legal uncertainty about whether a judge or a jury will find that Defendant was contractually and otherwise legally obligated not to assess the fees at issue. And even if it was contractually wrong to assess these fees, there is uncertainty about whether the Class Representative’ claims are subject to other defenses that might result in no or less recovery to Settlement Class members. Even if the Class Representative were to win at trial, there is no assurance that the Settlement 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 Settlement Class members will avoid these, and other risks and the delays associated with continued litigation.

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

WHO IS IN THE SETTLEMENT

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

If you received this notice, then Defendant's records indicate that you are a member of one or both of the Settlement Classes who is entitled to receive a payment or credit to your Account.

YOUR OPTIONS

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

You have 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.

6. What are the critical deadlines?

There is no deadline to receive a payment. If you do nothing, then you will get a payment.

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

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

7. How do I decide which option to choose?

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

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

If you want to participate in the Settlement, then you do not have to do anything; you will receive a payment if the Settlement is approved by the Court.

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

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

THE SETTLEMENT PAYMENT

9. How much is the Settlement?

Defendant has agreed to create a Settlement Fund of \$437,500.00.

As discussed separately below, attorneys' fees, litigation costs, the service award, and the costs paid to a third-party Settlement Administrator to administer the Settlement (including mailing and emailing notice) will be paid out of the Settlement Fund. The Net Settlement Fund will be divided among all Settlement Class Members entitled to Settlement Class Member Payments based on formulas described in the Settlement Agreement.

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

Class Counsel will request the Court to approve attorneys' fees of not more than 33.33% of the Settlement Fund and will request that it be reimbursed for litigation costs incurred in prosecuting the case. The Court will decide the amount of the attorneys' fees and costs based on a number of factors, including the risk associated with bringing the case on a contingency basis, the amount of time spent on the case, the amount of costs incurred to prosecute the case, the quality of the work, and the outcome of the case.

11. How much of the Settlement Fund will be used to pay the Class Representative a Service Award?

Class Counsel will request that the Class Representatives be paid a service award in the amount of \$2,500.00 for the Class Representative's work in connection with this case. The Service Award must be approved by the Court.

12. How much will my payment be?

The balance of the Settlement Fund after attorneys' fees and costs, the service award and the Settlement Administrator's fees, also known as the Net Settlement Fund, will be divided among all Settlement Class Members entitled to Settlement Class Member Payments in accordance with the formulas outlined in the Settlement Agreement. Current members of Defendant will receive a credit to their Accounts for the amount they are entitled to receive. Former members of Defendant shall receive a check from the Settlement Administrator.

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

No. If you received this Notice, then you may be entitled to receive a payment for a Relevant Fee without having to make a claim, unless you choose to exclude yourself from the settlement, or "opt out."

14. When will I receive my payment?

The Court will hold a Final Approval Hearing on [REDACTED], at [REDACTED] to consider whether the Settlement should be approved. If the Court approves the Settlement, then payments should be made, or credits should be issued approximately 90 days later. 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

15. 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 *Encarnacion v. Workers Credit Union* class action. Be sure to include your name, the last four digits of your account number(s) or former account number(s), address, telephone number, and email address. Your exclusion or opt-out request must be postmarked by _____, and sent to:

Encarnacion v. Workers Federal Credit Union

Attn:

ADDRESS OF THE SETTLEMENT ADMINISTRATOR

16. 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 the settlement.

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. (Settlement Class members who exclude themselves from the Settlement have no right to object to how other Settlement Class members are treated.) To object, you **must** send a written document by mail or private courier (e.g., Federal Express) to the Clerk of Court, Settlement Administrator, Class Counsel, and Defendant’s Counsel at the addresses below. Your objection must include the following information:

- a. the name of the Action;
- b. the objector’s full name, address and telephone number;
- c. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector’s counsel;
- d. the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector’s prior objections that were issued by the trial and appellate courts in each listed case;
- e. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the

Settlement or fee application;

- f. the number of times in which the objector’s counsel and/or counsel’s law firm have objected to a class action settlement within the five years preceding the date that of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel’s or the counsel’s law firm’s prior objections that were issued by the trial and appellate courts in each listed case in which the objector’s counsel and/or counsel’s law firm have objected to a class action settlement within the preceding five years;
- g. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector’s counsel and any other person or entity;
- h. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;
- i. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
- j. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- k. the objector’s signature (an attorney’s signature is not sufficient).

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

ADDRESS OF THE SETTLEMENT ADMINISTRATOR

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 Settlement 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 for Retry Fee(s) 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 for a Relevant Fee, 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 member of the Settlement Classes, 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 FINAL APPROVAL 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 [redacted] on [redacted], 2023 at the United States District Court for the District of Massachusetts, which is located at 595 Main Street, Worcester, Massachusetts 01608. 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 litigation costs and the amount of the Service Awards to the Class Representative. The hearing may be virtual, in which case the instructions to participate shall be posted on the website at <http://www.mad.uscourts.gov/>.

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 17, above, the statement, "I hereby give notice that I intend to appear at the Final Approval Hearing."

THE LAWYERS REPRESENTING YOU

23. 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 Settlement Class members.

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

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

25. 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 attorneys' 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, or by requesting the court record online from the United States District Court for the District of District of Massachusetts at <https://eservices.archives.gov/orderonline>.

GETTING MORE INFORMATION

This Notice only summarizes the proposed Settlement. More details are contained in the Settlement Agreement, which can be viewed/obtained online at [**WEBSITE**] or at the Office of the Clerk of the United States District Court for the District of Massachusetts, which is located at 595 Main Street, Worcester, Massachusetts 01608, by asking for the Court file containing the Joint Motion For Preliminary Approval of Class Settlement (the settlement agreement is attached to the motion) or obtaining a copy online at <https://eservices.archives.gov/orderonline>.

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

Encarnacion v. Workers Federal Credit Union.
Settlement Administrator

Attn:

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

Elaine S. Kusel
McCune Law Group, McCune Wright Arevalo Vercoski Kusel Weck Brandt APC
One Gateway Center
Suite 1500
Newark, NJ 07102

esk@mccunewright.com

PLEASE DO NOT CONTACT THE COURT OR ANY REPRESENTATIVE OF DEFENDANT CONCERNING THIS NOTICE OR THE SETTLEMENT OTHER THAN FOR PURPOSES OF OBJECTING TO THE SETTLEMENT.