

SETTLEMENT AGREEMENT & RELEASE

This Settlement Agreement and Release (the "Settlement Agreement") is entered into by and between Plaintiffs John J. Diel, Jr., and Rebecca L. Cleveland (collectively, "Plaintiffs"), for themselves and the Settlement Class Members (as defined below), and Defendant Salal Credit Union ("Defendant" or "Salal"). Plaintiffs and Defendant are referred to collectively in this Settlement Agreement as the "Parties."

I. RECITALS

This Settlement Agreement is made with reference to and in contemplation of the following facts and circumstances:

1. On April 15, 2019, Plaintiffs initiated a lawsuit, captioned *John J. Diel, et al v. Salal Credit Union*, King County Superior Court Case No. 19-2-10266-7 KNT (the "Action"), against Defendant in the Superior Court of Washington for King County. On May 14, 2019, Plaintiffs filed their First Amended Complaint.
2. Salal filed an answer to the First Amended Complaint on June 7, 2019.
3. Plaintiffs allege in the First Amended Complaint, on behalf of Plaintiffs and two proposed classes, that Defendant violated the Washington Consumer Protection Act, RCW 19.86.010, *et seq.* ("CPA") and Washington common law by imposing overdraft and NSF fees based on a member's "available balance" and by failing to provide contemporaneous notice that a point-of-sale or ATM transaction will trigger an overdraft fee.
4. Salal contends that the At-Issue Fees were authorized by the Consumer Membership & Account Agreement with the Plaintiffs and with the Class Members. Salal denies and does not admit or concede any of the claims asserted in the Action. Salal also denies and does not admit or concede any of the allegations of wrongdoing and liability in this Action. Salal seeks to settle this Action for the sole purpose of avoiding the burden, risk, and distraction from serving credit union members and the expense of continuing to litigate this Action.
5. The Parties and their counsel have conducted investigations of the facts and law underlying the claims asserted in this Action. In addition, Plaintiffs and their counsel have conducted initial discovery. The Parties and their counsel have also conducted a thorough assessment of the strengths and weaknesses of their respective cases.
6. The Parties and their counsel have engaged in extensive and arm's-length negotiations concerning settlement of the claims asserted in the Action, including participating in private mediation on November 18, 2019 with Louis D. Peterson of Hillis Clark Martin & Peterson, an experienced mediator of consumer class action lawsuits.

7. As a result of the abovementioned efforts, the Parties enter into this Settlement Agreement. Subject to this Court's approval as required by Rule 23 of the Washington Superior Court Civil Rules, this Settlement Agreement will fully and forever resolve, discharge, and release all rights and Released Claims of Plaintiffs and the Settlement Class Members (as defined below). In exchange, Defendant agrees to pay the sum of \$650,000 to Plaintiffs and the Settlement Class Members in full satisfaction of the alleged claims for actual damages, attorneys' fees and costs, and service awards to Plaintiffs, subject to Court approval. Defendant also agrees to prospective relief in the form of ceasing the practice of charging overdraft fees on any transaction involving an authorization hold for which there were sufficient funds available at the time of authorization but for which there are not sufficient funds available at the time of settlement.

8. Plaintiffs and their counsel have concluded, based upon their investigation and thorough assessment, and taking into account Defendant's defenses, the expense and time necessary to continue to litigate the Action through trial, the risks and costs associated with any further proceedings and potential appeals, the uncertainties of proving the claims asserted in the Action, and the substantial benefits to be received pursuant to this Settlement Agreement, that a settlement with Defendant and the terms of this Settlement Agreement are fair and reasonable, as well as in the best interest of Plaintiffs and Class Members.

9. Plaintiffs, on behalf of themselves and the Settlement Class Members, and their counsel agree to the terms of this Settlement Agreement and to have judgment entered without trial or adjudication of any factual or legal issue. Plaintiffs and their counsel also agree that this Settlement Agreement, including any of its exhibits, does not constitute any evidence against, or any admission by Defendant.

THEREFORE, the Parties hereby stipulate and agree that, in consideration of the agreements, promises, and covenants set forth in this Settlement Agreement, and subject to approval of the Court, the Action shall be completely, fully, and finally settled and dismissed with prejudice as follows:

II. DEFINITIONS

In addition to the terms defined in other Sections of this Settlement Agreement, the following defined terms apply to this Settlement Agreement and its exhibits:

1. "At-Issue Fees" means the total dollar amount of overdraft fees and non-sufficient fund (NSF) fees that were assessed by Defendant to a Class Member between April 15, 2015 and November 18, 2019 at a time when the ledger balance of the Class Member's checking account with Defendant was equal to or greater than the amount of the transaction, along with overdraft fees and non-sufficient fund (NSF) fees that would not have been imposed but for an overdraft or NSF fee that was assessed within the previous seven (7) calendar days. This definition is solely for purposes of this Settlement Agreement and does not constitute an admission or concession by Salal that any such fees were wrongful or that this definition constitutes a proper measure of damages for the claims asserted in this Action.

2. “Class Administrator” means the third-party agreed upon by Plaintiffs’ Counsel and Defendant’s Counsel to prepare and send notice to the Settlement Class and to administer the settlement claims.

3. “Class Counsel” or “Plaintiffs’ Counsel” means the law firms of Terrell Marshall Law Group, PLLC and Smith & Dietrich Law Offices, PLLC.

4. “Class Member” means all Washington residents who were Salal Credit Union members and who at any point from April 15, 2015 through November 18, 2019 incurred an overdraft fee or an NSF fee for a transaction when the amount of the ledger balance shown in Salal’s record of the account was equal to or greater than the amount of the transaction.

5. “Class Period” means April 15, 2015 to November 18, 2019.

6. “Court” means the Superior Court of Washington for King County.

7. “Days” means calendar days unless the end of a period of days falls on a Saturday, Sunday or court holiday, in which case the period shall be extended to the next calendar day which is not a Saturday, Sunday or court holiday.

8. “Defendant’s Counsel” means Tim J. Filer and Rylan L.S. Weythman of Foster Garvey PC.

9. “Effective Date” means the seventh day after the later of the following events:

- a. The final disposition of any appeals from or review of the Final Approval Order if such disposition upholds or approves the Final Approval Order; or
- b. In the case of no appeal or review being filed regarding the Final Approval Order, expiration of the applicable appellate or review period.

10. “Email Notice” means the notice that will be provided pursuant to Section VII.4.a of this Settlement Agreement, substantially in the same form as Exhibit A.

11. “Final Approval Hearing” means the hearing held by the Court to determine whether to finally approve the Settlement, and whether to approve Plaintiffs’ Counsel’s requested fees and expenses and the amount of the service awards to Plaintiffs.

12. “Final Approval Order” means the order and judgment that the Court enters after finally approving the Settlement.

13. “Long Form Notice” means the notice that will be provided pursuant to Section VII.4.b of this Settlement Agreement, substantially in the same form as Exhibit B.

14. “Notice Plan” means the proposed plan of sending notice to the Settlement Class of the proposed Settlement as set forth in Section VII.4 of this Settlement Agreement.

15. “Net Settlement Fund” means the amount remaining in the Settlement Fund after all deductions for court-approved attorneys’ fees and costs and service awards for Plaintiffs.

16. “Objection Deadline” means 60 calendar days from the Settlement Notice Date.

17. “Opt-Out Deadline” means 60 calendar days from the Settlement Notice Date.

18. “Preliminary Approval Order” means the order that the Court enters upon preliminarily approving the Settlement which shall be substantially in the form attached as Exhibit C, with such modifications as may be mutually approved by the Parties.

19. “Released Claims” means all claims to be released as set forth in Section XI.2 of this Settlement Agreement.

20. “Released Parties” means Defendant and all of its present, former, and future affiliates, parents, subsidiaries, divisions, corporate family members, officers, directors, partners, employees, agents, insurers, attorneys, heirs, vendors, administrators, executors, members, member entities, shareholders, predecessors, successors, representatives, trustees, principals, and assigns, and the marital communities or domestic partnerships of any such natural persons, individually, jointly and severally.

21. “Settlement” means the proposed class action settlement contemplated by this Settlement Agreement.

22. “Settlement Award” means the proportional cash payment available to Settlement Class Members as calculated under Section IV.3 of this Agreement.

23. “Settlement Class” means all persons and accounts identified in Paragraph 4, above. The Settlement Class does not include persons that the Court designates in the Final Approval Order as having been excluded from this Settlement at their request.

24. “Settlement Fund” means the total cash sum of \$650,000 to be paid by Defendant pursuant to Section IV.1 of this Settlement Agreement. Defendant will deposit the Settlement Fund with the Class Administrator, who will establish and manage it in a Qualified Settlement Fund within the meaning of Treasury Regulation §1.468B-1, 26 C.F.R §1.468B-1. The Class Administrator will act in accordance with the terms of this Settlement Agreement and the orders of the Court.

25. “Settlement Notice Date” means the date on which the Class Administrator finishes sending the Long Form Notice and the Email Notice pursuant to the Notice Plan.

26. "Settlement Website" means the website that will be established and maintained by the Class Administrator pursuant to the Notice Plan.

III. TERMS OF SETTLEMENT

1. Conditional Certification of the Settlement Class. For the sole purpose of settlement, the Parties and their counsel agree to ask the Court for conditional certification of the Settlement Class. Preliminary approval of the Settlement Class shall not be deemed a concession that certification of a contested litigation class is proper, and it will not preclude Defendant from challenging class certification in the event the Court does not approve the Settlement. No agreements made or entered into by Defendant in connection with this Settlement may be used by Plaintiffs, any person in the Settlement Class, or any other person to establish any liability or any element of class certification in this Action or any other proceedings.

2. The conditional certification will be one of the terms provided for in the Preliminary Approval Order.

IV. SETTLEMENT CONSIDERATION

1. Settlement Fund. Defendant shall pay the \$650,000 constituting the entire Settlement Fund, which will be the sole source for payment of the following: (a) the Settlement Awards for Settlement Class Members; (b) Class Counsel's attorneys' fees and expenses; and (c) the named Plaintiffs' service awards. Defendant shall not be required to make any further or additional payments into the Settlement Fund. Within seven (7) days of the Effective Date, Defendant shall deposit the Settlement Fund into a Qualified Settlement Fund set up by the Class Administrator. Any taxes on income from the Qualified Settlement Fund shall be paid solely from the Settlement Fund or such income. The Settlement Fund shall be non-reversionary. If the Court awards anything less than the amounts requested for service awards for the named Plaintiffs and/or attorneys' fees and expenses, then the difference shall be allocated to the Net Settlement Fund for awards to Settlement Class Members. If this Settlement is terminated, for any cause, the Settlement Fund will be returned to Defendant by the Class Administrator.

2. Settlement Awards. Each Settlement Class Member shall be entitled to a proportional share of the Net Settlement Fund. The proportional share calculations shall be based on Class Counsel expert's calculation of Settlement Class Member damages based on Salal's transaction data, as described in Section IV.3. Settlement Class Members will not be required to submit claims in order to receive a Settlement Award. Payments shall be issued to Settlement Class Members within forty-five (45) days after the Effective Date as follows:

- a. Salal shall issue payment to Settlement Class Members who are members of Salal at the Effective Date through direct deposit into the Class Member's Salal checking account. Not later than 20 days after the

Effective Date, Salal shall provide the Class Administrator with a list of the Class Members who are then-current members of Salal. Not later than 30 days after the Effective Date, the Class Administrator shall (i) deliver to Salal by wire transfer funds from the Net Settlement Fund in an amount sufficient to pay the Settlement Awards of those Class Members and (ii) provide Salal with a list of the amounts of each such Class Member's Settlement Award.

- b. The Class Administrator shall mail, by first class mail, a check drawn on the Net Settlement Fund to each Settlement Class Member who is not a member of Salal at the time of the Effective Date in the amount of such Class Member's Settlement Award.

3. Calculation of Settlement Awards. Within twenty-one (21) days of the execution of this Settlement Agreement by all Parties, Defendant shall provide Arthur Olsen, expert for Plaintiff's counsel, with the transaction data described in this section so that Mr. Olsen may confirm Settlement Class membership and each Class Member's Settlement Award. The transaction data is intended to be consistent with the data Defendant previously provided Mr. Olsen, brought current to November 18, 2019. The information will be provided to Mr. Olsen via the same secure server at Ankura which Mr. Olsen previously used for settlement purposes. Defendant shall provide this transaction data to Mr. Olsen subject to a confidentiality agreement prohibiting Mr. Olsen from sharing any information regarding Salal members' identities with Plaintiffs' Counsel. Defendant shall pay for Mr. Olsen's time to confirm Class Membership and damages calculations for the purposes of settlement administration up to a maximum of \$7,500.

- a. Defendant shall provide Mr. Olsen with updated transaction data for each transaction that served as the basis for any overdraft or NSF fee between April 15, 2015 and November 18, 2019, consistent with the data Defendant previously provided Mr. Olsen.
- b. Within ten (10) days of receiving the data, Mr. Olsen shall provide to Ankura the results of his analysis of the following items: (1) total At-Issue Fees charged by Defendant; (2) total At-Issue Fees refunded by Defendant; (3) net At-Issue Fees for each account included in the transaction data. Within ten (10) days of receiving the analysis from Mr. Olsen, Ankura will provide Mr. Olsen and Class Administrator with the following information in Excel format for each Class Member: (1) the reasons and amounts for any accounts on which Ankura disagrees with Mr. Olsen's calculations, using Mr. Olsen's parameters for the damages calculations; (2) the corresponding unique identifier previously assigned to each member account and (3) the full name of the Class Member(s) associated with each account. Mr. Olsen shall notify Plaintiffs' Counsel whether any discrepancies exist between Mr. Olsen's analysis of Class Member identities and damages and Ankura's analysis. Defendant shall

work in good faith with Mr. Olsen to solve any discrepancies within fourteen (14) days. As soon as any discrepancies are resolved, Mr. Olsen shall provide Ankura with the estimated proportional Settlement Award for each Class Member, which Defendant shall provide to the Class Administrator as provided in Section VII.3.

- c. Mr. Olsen shall provide Plaintiffs' Counsel with the following information:
 - i. The total number of Class Members;
 - ii. The total amount of At-Issue Fees;
 - iii. The average At-Issue Fees per class member;
 - iv. The lowest At-Issue Fees per class member;
 - v. The highest At-Issue Fees per class member;
- d. Within ten (10) days after the entry of the Final Approval Order, Mr. Olsen shall provide updated Settlement Awards to the Class Administrator and to Ankura to account for any Class Members who the Court has excluded from the Settlement Class by reason of a request for exclusion.

4. Disputes Regarding Amount of Class Member Settlement Awards. If any Class Member disputes the value of that Class Member's Settlement Award, Salal shall promptly take steps to resolve the dispute and provide Class Counsel with an explanation of the steps taken and the findings regarding the dispute.

5. Unclaimed Settlement Funds. Class Members shall have 90 days after the date on the Settlement Award check to negotiate, cash or deposit the check, after which the check shall be void and of no value. The Settlement Award checks shall bear a legend on the face of the check substantially as follows: "Void if not cashed before [DATE]." If the Class Administrator issues a replacement check to a Class Member, that reissued check shall be valid for 90 days from the date of re-issue. Unless the counsel for the Parties agree or the Court enters an order allowing it, the Class Administrator shall not (1) issue any replacement checks after the initial void date has passed and (2) issue more than one replacement check to any Class Member.

6. Cy pres Award. If there are undistributed amounts remaining in the Net Settlement Fund after the check-cashing periods described in the preceding paragraph, the parties agree that these amounts shall be paid to *cy pres* recipients as follows:

- a. 50% to the Legal Foundation of Washington; and
- b. 50% to Consumer Education and Training Services (CENTS).

7. Injunctive Relief. Within thirty (30) days after the Effective Date, Defendant shall stop charging overdraft fees on transactions involving an authorization hold for which there

were sufficient funds available at the time of authorization, but for which there are not sufficient funds available at the time of settlement

V. SERVICE AWARD TO PLAINTIFFS AND ATTORNEYS' FEES AND EXPENSES

1. Service Award to Plaintiffs. Plaintiffs may move the Court for service awards for their time and effort in connection with this Action. Plaintiffs will ask the Court to approve service awards in the amount of \$1,250 for each Plaintiff. The Service Awards will be paid by the Class Administrator and shall come solely from the Settlement Fund. The Class Administrator shall issue any approved service awards from the Settlement Fund to Plaintiffs within ten (10) days after the Effective Date.

2. Litigation Expenses and Attorney's Fees. Class Counsel will move the Court for an award of reasonable attorneys' fees not to exceed one quarter (25%) of the Settlement Fund as well as reimbursement of expenses, with the attorneys' fees and expenses to be paid solely from the Settlement Fund. Class Counsel will file their motion for an award of attorneys' fees, expenses, and service awards to Plaintiffs within fourteen (14) days before the Final Approval Hearing. The Class Administrator shall pay any award of attorneys' fees and expenses approved by the Court from the Settlement Fund to Class Counsel within ten (10) days after the Effective Date.

3. Effect of Lesser Award. If the Court awards service awards to Plaintiffs or attorneys' fees and expenses to Class Counsel that are lower than requested, this Settlement Agreement will remain in full force and will continue to be binding on all Parties, including the Settlement Class Members. No funds shall revert to Defendant.

VI. PRELIMINARY APPROVAL

1. Motion for Preliminary Approval. On or before February 1, 2020, Plaintiffs will move the Court for entry of the Preliminary Approval Order (Exhibit C), which shall specifically include requests that the Court: (a) preliminarily approve the Settlement reflected herein as the product of serious, informed, and arm's-length negotiations, with no obvious deficiencies and without granting preferential treatment to any Class Members, and within the range of possible judicial approval; (b) conditionally certify the Settlement Class for settlement purposes only, without waiver by Defendant of the right to contest class certification if the Settlement is not approved or the Effective Date does not occur, and appoint Class Counsel as counsel for the Settlement Class for settlement purposes only; (c) approve the forms of Class Notice and find that the Notice Plan constitutes the best notice practicable under the circumstances, provides due and sufficient notice to the Settlement Class and fully satisfies the requirements of due process under federal and state law and under Washington Civil Rule 23; (d) direct that notice be provided to the Settlement Class, in accordance with the Notice Plan, within forty-five (45) days following entry of the Preliminary Approval Order; (e) establish a procedure for Class Members to object to the Settlement or request to exclude themselves from the Settlement Class, and set a date sixty (60) days after the Settlement Notice Date, after which no one shall be allowed to object to the Settlement or request to exclude himself or herself from the

Settlement Class or seek to intervene; (f) preliminarily approve the Notice Plan and distribution of the Settlement Awards described herein; (g) pending final determination of whether the Settlement should be approved, stay all proceedings in the Action except those related to effectuation of the Settlement; and (h) schedule a hearing on Final Approval of the Settlement, which shall be scheduled no earlier than forty-two (42) days after the Opt-Out and Objection Deadline.

2. Class Counsel will provide the Motion for Preliminary Approval and any supporting documents to Defendant's Counsel at least 4 days before that motion is filed. Counsel for the Parties shall meet and confer to seek to resolve objections, if any, raised by Defendant to the motion or the supporting declarations.

VII. ADMINISTRATION AND NOTICE

1. Class Administrator. The Class Administrator shall be responsible for providing notice to the Class Members of this Settlement, issuance of Settlement Awards and such other duties as are called for by this Settlement Agreement or ordered by the Court. The Class Administrator shall be allowed to communicate freely with the Parties' counsel, and will provide updates on a monthly basis to and as requested by the Parties' counsel.

2. Payment of Administration and Notice. Defendant shall pay all reasonable costs of the Class Administrator relating to this Settlement separately and in addition to the Settlement Fund. Any disputes regarding the Class Administrator's fees will be subject to resolution by the Court.

3. Identification of Class Members. Within twenty-one (21) days of the issuance of the Preliminary Approval Order, Defendant shall provide the Class Administrator with the following information for each Class Member: (1) full name, (2) last known mailing address, (3) email address (if available), (4) social security number, and (5) estimated Settlement Award. The Class Administrator shall be subject to a confidentiality agreement acceptable in form to Salal regarding this information.

4. Notice. The Class Administrator shall provide notice as detailed below within forty-five (45) calendar days after the issuance of the Preliminary Approval Order:

- a. For Class Members who are members of Defendant as of the date of the Preliminary Approval Order and who have agreed to receive notices regarding their accounts from Defendant by email, Defendant shall provide the Claims Administrator with the most recent email addresses it has for those Class Members. The Class Administrator will send email to that email address using text approved by the parties and substantially similar to Exhibit A (Email Notice), which shall consist of the first two pages of the Long Form Notice.

- b. Notice by U.S. Mail. For Class Members who (1) are not members of Defendant as of the date of the Preliminary Approval Order, (2) are current members of Defendant but have not agreed to receive notices regarding their accounts from Defendant by email, or (3) are current members of Defendant who have elected to receive account notices from Defendant via email, but for whom the email sending the Email Notice comes back as undeliverable, the Class Administrator will provide individual Notice through first class U.S. mail on a form approved by the parties and substantially similar to Exhibit B (Long Form Notice). Should any Long Form Notice be returned as undeliverable without a forwarding address, the Class Administrator will perform a reasonable “skip-trace” search using the National Change of Address database or another equally reliable system to obtain an updated address and, if located, shall make a second attempt at mailing the Long Form Notice. If such Long Form Notice is again returned as undeliverable, no further attempts at delivery of the Long Form Notice are required to be made. Re-mailing the Long Form Notice shall not extend the Opt-Out Deadline or Objection Deadline for any Class Member.
- c. Online/Mobile Banking Notice. The Class Administrator shall include as an attachment to the Email Notice and as an enclosure to the mailed Long Form Notice a separate notice to Class Members regarding the use of Salal’s mobile banking application to reduce the chance of incurring overdraft fees, attached hereto as Exhibit D.
- d. Settlement Website. Within thirty (30) calendar days from entry of the Preliminary Approval Order, the Class Administrator will also establish and maintain the Settlement Website, which will display, at a minimum, the First Amended Complaint, the Long Form Notice (Exhibit B), this Settlement Agreement, and the Preliminary Approval Order signed by the Court. The Parties shall meet and confer regarding the domain name for the Settlement Website. Within twenty-four (24) hours after Class Counsel files a motion for final approval of the Settlement and an award of attorneys’ fees, expenses and service awards to Plaintiffs, that motion will also be displayed on the Settlement Website.
- e. The Class Administrator will maintain a database showing the email addresses and postage addresses used for sending Notice to the Class Members. The Class Administrator will also maintain an activity log or other similar record showing the access activity on the Settlement Website. Unless otherwise requested by both Parties, the Class Administrator shall delete and destroy all copies of this database and website activity records not later than two hundred ten (210) days after the Effective Date.

5. If asked, Defendant's member service representatives may answer Class Member questions regarding the Settlement by providing the information contained in the "Frequently Asked Questions for Member Service Representatives," attached as Exhibit E.

VIII. OPT-OUT PROCESS

1. **Opt-Out Requirements.** Class Members may request to exclude themselves from the Settlement Class by advising the Class Administrator in writing no later than the Opt-Out Deadline that they do not want to be a Settlement Class Member. All such writings must include the name and address, and the last four digits of their Social Security Number and if mailed, must be postmarked no later than the Opt-Out Deadline. If the Effective Date occurs, all Class Members will be bound by this Settlement and judgments of this Court in this Action unless the Court determines that they properly requested exclusion in writing by the Opt-Out Deadline. If a Class Member submits both a timely request for exclusion and an objection to the Settlement, the Class Member's request for exclusion will be honored and the Class Member will be excluded from the Settlement Class. The Class Administrator shall inform the Parties of the identities of the Class Members who submit a request for exclusion. The Final Approval Order will identify the Class Members who are excluded from the Settlement Class.

2. **Retention of Opt-Outs.** The Class Administrator will retain a copy of all opt-out requests and will provide copies to the Parties' counsel upon request.

IX. OBJECTIONS

1. **Right to Object.** Any Settlement Class Member who desires to object to the fairness of this Settlement must file a written objection with the Court by the Objection Deadline. The written objection must provide the objector's name, address, and telephone number, and the reason(s) for the objection. The objection must also be mailed (postmarked before the Objection Deadline) to counsel for Plaintiffs and counsel for Defendant at the addresses specified in Section XIV.10. Untimely objections shall not be considered by the Court absent a finding of excusable neglect on the part of the objecting Class Member.

2. **Right to Appear at Final Approval Hearing.** Any Class Member who properly objects, as described herein, may appear at the Final Approval Hearing, including through an attorney hired at the objector's expense. Such objectors or their attorneys intending to appear and be heard at the Final Approval Hearing must file a notice of appearance with the Court and serve that notice on counsel for the Parties no later than ten (10) days before the Final Approval Hearing. Failure to provide a timely notice of appearance shall constitute a waiver of the right to be heard at the Final Approval Hearing.

3. Any member of the Settlement Class 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 Settlement and the orders and judgments of this Court.

X. FINAL APPROVAL

1. Declaration of Notice by Class Administrator. The Class Administrator shall provide the Parties' counsel no later than fourteen (14) calendar days after the Opt-Out and Objection Deadline with a declaration stating that the Notice Plan required by this Settlement Agreement has been completed pursuant to the Preliminary Approval Order and specifying the Class Members who have requested to be excluded from the Settlement Class.

2. Motion for Final Approval Order. After completion of the Notice Plan and the expiration of the Opt-Out and Objection Deadlines, and no later than fourteen (14) calendar days prior to the Final Approval Hearing, Plaintiffs' counsel shall move the Court to enter the Final Approval Order. Plaintiffs' counsel shall file a memorandum addressing any valid objections, and Defendant's counsel may, but is not required to, file an additional memorandum in response. The Parties' responses addressing such objections shall be filed no later than fourteen (14) days prior to the Final Approval Hearing. Class Counsel will provide the Motion for Final Approval and any supporting documents to Defendant's Counsel at least 4 days before that motion is filed. Counsel for the Parties shall meet and confer to seek to resolve objections, if any, raised by Defendant to the motion or the supporting declarations.

3. Final Approval Order. This Settlement Agreement is subject to and conditioned upon the issuance by the Court of a Final Approval Order that grants approval of this Settlement and:

- a. Certifies the Settlement Class as set forth in this Agreement;
- b. Finds that the notice under the Notice Plan satisfies the requirements of due process under state and federal law and Washington Civil Rule 23;
- c. Finds that the Settlement Agreement is fair, reasonable, and adequate to the Settlement Class Members;
- d. Finds that Plaintiffs and Class Counsel have adequately represented the Settlement Class Members;
- e. Finds that each Settlement Class Member shall be bound to this Settlement Agreement, including the release in Section XI;
- f. Approves this Settlement;
- g. Dismisses on the merits with prejudice all claims of the Settlement Class Members asserted in this Action;
- h. Permanently enjoins each Settlement Class Member from bringing, joining, or continuing to prosecute against the Released Parties any action or proceeding involving the Released Claims; and

- i. Retains jurisdiction of all matters relating to the administration, implementation, interpretation, and enforcement of this Settlement.

XI. RELEASE OF CLAIMS

1. **Release.** As of the Effective Date, Plaintiffs and each Settlement Class Member and their respective heirs, executors, administrators, representatives, agents, attorneys, partners, marital communities, domestic partnerships, affiliates, successors, predecessors-in-interest, and assigns hereby release, resolve, relinquish, and discharge forever each of the Released Parties from each of the Released Claims as defined below.

2. **Released Claims.** Released Claims means any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys' fees of any nature whatsoever, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive, exemplary or compensatory, that were brought or that could have been brought in the Action as of the date this Agreement is executed, and that arise out of or relate in any way to Defendant's imposition of overdraft and non-sufficient fund (NSF) fees, including, but not limited to, claims based on a violation of the CPA, agreements between Salal and the Settlement Class Members and Washington common law. The scope of the release shall be from April 15, 2015 to November 18, 2019.

3. These releases shall not extend to any claims that arise out of this Settlement Agreement.

4. Plaintiffs represent and warrant that they have the full right, power and authority to enter into these releases on their own behalf, that they own or have the right to release each of the Released Parties and from each of the Released Claims, and that they have not transferred any interest in any Released Claims to any third party. Settlement Class Members shall be conclusively deemed to have made these same representations and warranties upon and as of the Effective Date.

XII. TERMINATION OF AGREEMENT

1. **The Parties' Right to Terminate Settlement.** The Parties shall have the right to unilaterally terminate this Settlement Agreement by providing written notice of its election to do so to the other party within fourteen (14) calendar days of any of the following events:

- a. The Court rejects, materially changes or modifies, or declines preliminary or final approval of the Settlement Agreement. A material change or modification shall include a change to the Settlement Fund or the Released Claims;

- b. An Appellate Court reverses the Final Approval Order and such order becomes final and non-appealable;
- c. The Effective Date does not occur;
- d. A party, its counsel or the Class Administrator breaches the terms of this Settlement Agreement prior to the Effective Date;
- e. Any other ground for termination provided elsewhere in this Agreement.

XIII. NO ADMISSION OF LIABILITY

1. Denial of Liability. Defendant denies any liability or wrongdoing of any kind in connection with the claims alleged in this Action. Defendant has denied and continues to deny each and every material factual allegation in this Action. Nothing in this Settlement Agreement and none of the acts performed in furtherance of this Settlement Agreement shall constitute an admission by Defendant of wrongdoing or liability in this Action. Nothing in this Settlement Agreement and none of the acts performed in furtherance of this Settlement Agreement shall constitute an admission by Defendant of the truth of any factual allegations in this Action. While Salal denies any liability, it has concluded that further litigating this Action would be expensive and waste time and resources that are better devoted to serving its members. Thus, Defendant has concluded that it is desirable to fully and finally settle this Action.

2. Washington Rule of Evidence 408. Pursuant to Rule 408 of the Washington Rules of Evidence, this Settlement Agreement and any related documents filed or created in connection with this Settlement Agreement shall be inadmissible as evidence in any proceeding, except as necessary to approve, interpret, or enforce this Settlement Agreement.

XIV. GENERAL PROVISIONS

1. Entire Agreement. This Settlement Agreement and its exhibits constitute the entire agreement between the Parties.

2. Jurisdiction. This Court shall retain continuing and exclusive jurisdiction over the Parties to this Settlement Agreement, including the Settlement Class Members, and the administration and enforcement of this Settlement Agreement.

3. No Construction Against Drafter. This Settlement Agreement will be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter will not apply.

4. Authority. Each person executing this Settlement Agreement on behalf of any of the Parties hereto represents that such person has the authority to so execute this Settlement Agreement.

5. No Oral Modifications. This Settlement Agreement may not be amended or modified in any manner except by a writing signed by Defendant and Class Counsel, and approved by the Court.

6. No Assignment. No Party to this Settlement Agreement has heretofore assigned, transferred, or granted, or attempted to do so, any of the claims or causes of action disposed of by this Settlement Agreement.

7. Agreement Binding on Successors in Interest. This Settlement Agreement is binding on and shall inure to the benefit of the respective heirs, successors, and assigns of the Parties.

8. Resolution of Disputes. Any disputes regarding the administration of this Settlement Agreement that the Parties cannot resolve between themselves will be decided by the Court.

9. Execution in Counterparts. This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

10. Notices. All notices to counsel provided herein shall be sent by electronic mail with a hard copy sent by overnight mail to:

As to Plaintiffs and Settlement Class Members:

Beth E. Terrell, WSBA #26759
Email: bterrell@terrellmarshall.com
Toby J. Marshall, WSBA #32726
Email: tmarshall@terrellmarshall.com
Ari Y. Brown, WSBA #29570
Email: abrown@terrellmarshall.com
TERRELL MARSHALL LAW GROUP PLLC
936 North 34th Street, Suite 300
Seattle, Washington 98103-8869
Telephone: (206) 816-6603
Facsimile: (206) 319-5450

Walter M. Smith, WSBA #46695
Email: walter@smithdietrich.com
Steve E. Dietrich, WSBA #21897
Email: steved@smithdietrich.com
SMITH & DIETRICH LAW OFFICES PLLC
3905 Martin Way E., Suite F
Olympia, Washington 98506
Telephone: (360) 915-6952

As to Defendant Salal Credit Union:

FOSTER GARVEY PC
Tim J. Filer, WSBA #16285
Email: tim.filer@foster.com
Rylan L.S. Weythman, WSBA #45352
Email: rylan.weythman@foster.com
1111 Third Avenue, Suite 3000
Seattle, Washington 98101-3292
Telephone: (206) 447-4400
Facsimile: (206) 447-9700

SIGNATURE BLOCKS FOLLOW ON NEXT PAGE

IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

John J. Diel, Jr.

By: 
Plaintiff

12/30/19
Date

Rebecca L. Cleveland

By: 
Plaintiff

12.30.19
Date

Salal Credit Union

By: _____
Defendant

Date

IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

John J. Diel, Jr.

By: _____
Plaintiff

Date

Rebecca L. Cleveland

By: _____
Plaintiff

Date

Salal Credit Union

By: _____
Defendant

Date

— EXHIBIT A —

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

If you had a checking account with Salal Credit Union and were charged an overdraft or NSF fee between April 15, 2015 and November 18, 2019, a proposed class action settlement may affect your rights.

THIS NOTICE RELATES TO A NEGOTIATED SETTLEMENT. NO COURT HAS RULED ON THE CLAIMS ASSERTED IN THIS LAWSUIT.

A court authorized sending you this notice. This is not solicitation from a lawyer.

- Members of Salal Credit Union sued Salal for alleged violations of the Washington Consumer Protection Act and Washington common law. Salal denies those allegations and any liability.
- The parties have entered into a proposed settlement on behalf of all Washington residents who were Salal Credit Union members and who at any point from April 15, 2015 through November 18, 2019 incurred an overdraft fee or an insufficient funds (NSF) fee for a transaction when the amount of the ledger balance shown in the account's record was equal to or greater than the amount of the transaction.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

Do Nothing. Stay in this lawsuit. Receive a payment. Give up certain rights.

By doing nothing, you will receive benefits from the settlement if it is approved by the Court, including cash payments. You give up any rights to sue Salal Credit Union on the claims alleged in this lawsuit or similar claims.

Ask to be Excluded. Get out of this lawsuit. Get no benefits from it. Keep rights.

If you ask to be excluded from the lawsuit, you will not receive any benefits of the settlement, including payment. You keep any rights to sue Salal Credit Union separately about the same or similar legal claims. To be excluded, you must mail an Exclusion Request to the Class Administrator by XXXXX, 2020.

Object to the Settlement. Stay in the Class. File a written objection to the Settlement.

If you disagree with any portion of the settlement, you may file a written Objection with the Court, which will be considered at the Final Approval Hearing. You may also ask to speak at the hearing. If you exclude yourself from the Settlement, the Court will not consider an objection from you. If the Settlement is approved, you will be bound by the Settlement Agreement and you give up any rights to sue Salal Credit Union separately about the same or similar legal claims in this lawsuit, but you will still be eligible to receive the benefits of the Settlement Fund. Your Objection must be postmarked no later than XXXXX, 2020.

BASIC INFORMATION

Why did I receive this notice? Salal Credit Union's records show that between April 15, 2015 and November 18, 2019, you incurred one or more overdraft or non-sufficient funds (NSF) fees for a transaction when the amount of the ledger balance in your account was equal to or greater than the amount of the transaction. This notice explains that the parties have reached an agreement to settle a class action lawsuit that may affect you. You have legal rights and options that you may exercise before the Court decides whether to approve the Settlement. Judge Ketu Shah of the Superior Court of the State of Washington for King County is overseeing this class action. The lawsuit is known as *Diel et al v. Salal Credit Union*, Case No. 19-2-10266-7-KNT.

What is this lawsuit about? Plaintiffs and the Class allege that Salal Credit Union violated the Washington Consumer Protection Act and Washington common law by imposing overdraft and NSF fees at times when Salal's members had a ledger balance—but not an available balance—in their accounts sufficient to cover the transaction. The ledger balance reflects only settled transactions that have been debited from or credited to an account. The available balance includes transactions by the member that were authorized but not yet settled, such as account holds for point-of-sale purchases. The available balance may be lower than the ledger balance. Plaintiffs also alleged that Salal violated Washington law by failing to provide real-time notice that a point-of-sale debit transaction or ATM transaction will trigger an overdraft fee. Salal contends that its overdraft and NSF fees were authorized by its Member Account Agreement, were in compliance with the law and denies the claims alleged by Plaintiffs.

What is a class action and who is involved? In a class action lawsuit, one or more people called Plaintiffs and "Class Representatives" (in this lawsuit John Diel and Rebecca Cleveland) sue on behalf of other people who have similar alleged claims. The people together are a "Class" or "Class Members." The party they sued (in this case Salal Credit Union) is called the Defendant. If the lawsuit proceeds as a class action, it resolves the issues for everyone in the Class—except for those people who choose to exclude themselves from the Class.

Why is there a Settlement? The Court did not decide in favor of Plaintiffs or Salal. Instead, both sides agreed to a settlement. This way, they avoid the cost and risks associated with a trial, and the people affected will receive compensation. The Class Representatives and their attorneys think the Settlement is best for the Settlement Class Members.

This notice is only a summary. A more detailed notice and information about the lawsuit can be found on the [Settlement Website](#) or by calling [ADD](#).

To unsubscribe from this list, please click on the following link: [Unsubscribe](#)

— EXHIBIT B —

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

If you had a checking account with Salal Credit Union and were charged an overdraft or NSF fee between April 15, 2015 and November 18, 2019, a proposed class action settlement may affect your rights.

THIS NOTICE RELATES TO A NEGOTIATED SETTLEMENT. NO COURT HAS RULED ON THE CLAIMS ASSERTED IN THIS LAWSUIT.

A court authorized sending you this notice. This is not a solicitation from a lawyer.

- Members of Salal Credit Union sued Salal for alleged violations of the Washington Consumer Protection Act and Washington common law. Salal denies those allegations and any liability.
- The parties have entered into a proposed settlement on behalf of all Washington residents who were Salal Credit Union members and who at any point from April 15, 2015 through November 18, 2019 incurred an overdraft fee or an insufficient funds (NSF) fee for a transaction when the amount of the ledger balance shown in the account’s record was equal to or greater than the amount of the transaction.

Your Legal Rights and Options in This Lawsuit	
Do Nothing	<p>Stay in this lawsuit. Receive a payment. Give up certain rights.</p> <p>By doing nothing, you will receive benefits from the settlement if it is approved by the Court, including cash payments. You give up any rights to sue Salal Credit Union on the claims alleged in this lawsuit or similar claims.</p>
Ask to be Excluded	<p>Get out of this lawsuit. Get no benefits from it. Keep rights.</p> <p>If you ask to be excluded from the lawsuit, you will not receive any benefits of the settlement, including payment. You keep any rights to sue Salal Credit Union separately about the same or similar legal claims. To be excluded, you must mail an Exclusion Request to the Class Administrator by XXXXX, 2020.</p>
Object to the Settlement	<p>Stay in the Class. File a written objection to the Settlement with the Court.</p> <p>If you disagree with any portion of the settlement, you may file a written Objection with the Court, which will be considered at the Final Approval Hearing. You may also ask to speak at the hearing. If you exclude yourself from the Settlement, the Court will not consider an objection from you. If the Settlement is approved, you will be bound by the Settlement Agreement and you give up any rights to sue Salal Credit Union separately about the same or similar legal claims in this lawsuit, but you will still be eligible to receive the benefits of the Settlement Fund. Your Objection must be postmarked no later</p>

TURN OVER

Questions? Call 1-###-###-#### Toll Free or Visit [WEBSITE]

	than XXXXX, 2020.
--	-------------------

BASIC INFORMATION

1. Why did I receive this notice?

Salal Credit Union’s records show that between April 15, 2015 and November 18, 2019, you incurred one or more overdraft or non-sufficient funds (NSF) fees for a transaction when the amount of the ledger balance in your account was equal to or greater than the amount of the transaction. This notice explains that the parties have reached an agreement to settle a class action lawsuit that may affect you. You have legal rights and options that you may exercise before the Court decides whether to approve the Settlement. Judge Ketu Shah of the Superior Court of the State of Washington for King County is overseeing this class action. The lawsuit is known as *Diel et al v. Salal Credit Union*, Case No. 19-2-10266-7-KNT.

2. What is this lawsuit about?

Plaintiffs and the Class allege that Salal Credit Union violated the Washington Consumer Protection Act and Washington common law by imposing overdraft and NSF fees at times when Salal’s members had a ledger balance—but not an available balance—in their accounts sufficient to cover the transaction. The ledger balance reflects only settled transactions that have been debited from or credited to an account. The available balance includes transactions by the member that were authorized but not yet settled, such as account holds for point-of-sale purchases. The available balance may be lower than the ledger balance. Plaintiffs also alleged that Salal violated Washington law by failing to provide real-time notice that a point-of-sale debit transaction or ATM transaction will trigger an overdraft fee. Salal contends that its overdraft and NSF fees were authorized by its Member Account Agreement, were in compliance with the law and denies the claims alleged by Plaintiffs.

3. What is a class action and who is involved?

In a class action lawsuit, one or more people called Plaintiffs and “Class Representatives” (in this lawsuit John Diel and Rebecca Cleveland) sue on behalf of other people who have similar alleged claims. The people together are a “Class” or “Class Members.” The party they sued (in this case Salal Credit Union) is called the Defendant. If the lawsuit proceeds as a class action, it resolves the issues for everyone in the Class—except for those people who choose to exclude themselves from the Class.

THE SETTLEMENT

4. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Salal. Instead, both sides agreed to a settlement. This

Questions? Call 1-###-###-#### Toll Free or Visit [WEBSITE]

way, they avoid the cost and risks associated with a trial, and the people affected will receive compensation. The Class Representatives and their attorneys think the Settlement is best for the Settlement Class Members.

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

You are in the Settlement Class if you resided in Washington, were a Salal Credit Union member, and at any point from April 15, 2015 through November 18, 2019 incurred an overdraft fee or an NSF fee for a transaction when the amount of the ledger balance shown in Salal’s record of your account was equal to or greater than the amount of the transaction.

The Settlement Class does not include any persons who validly request exclusion from the Settlement Class, as described under Question 12. A person who does not exclude him or herself is a “Settlement Class Member.”

If you have questions about whether you are part of the Class, you may call 1-###-###-#### or visit [WEBSITE] for more information.

THE SETTLEMENT BENEFITS

6. What does the Settlement Agreement provide?

To settle this lawsuit, Salal has agreed to pay \$650,000 into a Settlement Fund which will provide individual payments to eligible Settlement Class Members, service award payments to the Class Representatives, and attorneys’ fees and reimbursement of out-of-pocket litigation costs. Salal has also agreed to pay reasonable costs related to settlement administration.

Settlement Class Members will receive a cash payment equal to their proportional share of the allegedly wrongful overdraft and NSF fees Salal charged.

Salal has also agreed to stop charging overdraft fees on any transaction involving an authorization hold for which there were sufficient available funds at the time of authorization but for which there were not sufficient available funds at the time of settlement of the transaction. Salal has and continues to deny engaging in this practice alleged in the lawsuit.

7. Your Estimated Settlement Award

Your estimated settlement payment is:

\$*****.**

If you do not request to exclude yourself from the Settlement, the Class Administrator will direct a payment to you. You do not need to file a claim form. If you are a Salal member at the time the settlement payments are issued, you will receive the payment by direct deposit to your Salal checking account. If you are not a Salal member at the time the settlement payments are issued, you will

Questions? Call 1-###-###-#### Toll Free or Visit [WEBSITE]

receive a check by mail. If you have questions about how settlement payments will be made or need to update your mailing address before the settlement payment distribution, you should contact the Class Administrator at ###-###-####.

8. What are the tax implications of accepting a settlement payment?

The tax implications may vary based on your income, the amount you receive and other factors, so you should consult a tax professional to assess the specific tax implications of any payment you may receive. Class Counsel, Salal, and the Class Administrator cannot advise you with respect to your tax obligations.

HOW TO BENEFIT FROM THE SETTLEMENT

9. How do I receive the benefits of the Settlement?

If you received a Notice and you do not request to exclude yourself from the Settlement, you will automatically receive the benefits of the Settlement and receive a payment. **You do not need to submit a claim to receive the benefits of the Settlement or to get a payment—it's automatic.** If your mailing address changes before the Settlement Award distribution, you should contact the Class Administrator at 1-###-###-#### to update your information.

10. When will I get my payment?

If no appeals are timely filed after the Court enters the Final Approval Order, then the Order will become final and the Settlement will be effective. You will receive your settlement payment approximately 45 days from the Settlement's Effective Date (roughly 75 days after the Final Approval Hearing). If you are a Salal member when the Settlement becomes effective, Salal will directly deposit your Settlement Award amount into your Salal checking account. If you are not a Salal member when the Settlement becomes effective, the Class Administrator will mail you a Settlement Award check. The checks will only be valid for 90 days from the date of issuance, after which you will not be able to cash or deposit them. However, if an appeal is filed, Settlement Award payments will not be sent until after the appeal is finally resolved.

11. What am I giving up to stay in the Settlement Class?

Unless you request to exclude yourself, you are staying in the Settlement Class and you will be a Settlement Class Member. If the Court approves the Settlement, you and other Settlement Class Members can't sue, continue to sue, or be part of any other lawsuit against Salal regarding Salal's imposition of overdraft and NSF fees between April 15, 2015 and November 18, 2019.

The Settlement Agreement (available at [WEBSITE]) describes the claims you are releasing (the "Released Claims") and against whom you are releasing claims in detail, so read it carefully.

Questions? Call 1-###-###-#### Toll Free or Visit [WEBSITE]

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want to receive the benefits of this Settlement or if you want to keep the right to sue or continue to sue Salal, then you must take steps to remove yourself from the Settlement Class. This is called excluding yourself – or is sometimes referred to as “opting out” of the Settlement Class.

12. How do I opt out of the Settlement?

To exclude yourself from the Settlement you must send the request in writing to the Class Administrator saying that you want to be excluded from the *Diel v. Salal Credit Union* settlement. You must include your name, last four digits of your Social Security Number and address in the letter. You can mail your exclusion request letter, which must be postmarked no later than [OPT-OUT DEADLINE] to the following address:

[CLASS ADMINISTRATOR]
[ADDRESS]

Requests for exclusion mailed after [OPT OUT DEADLINE] will not be effective and will not result in your being excluded from the Settlement Class.

If you ask to be excluded, you will not get any Settlement Award payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit.

13. Why would I ask to be excluded?

If you already have, or want to bring, your own lawsuit against Salal Credit Union regarding the imposition of overdraft and NSF fees and want to continue with the lawsuit, you need to ask to be excluded from the Class. If you exclude yourself from the Class—which also means to remove yourself from the Class, and is sometimes called “opting-out”—you won't get any money or benefits from the settlement between Salal and Plaintiff. However, you may be able to sue or continue to sue Salal regarding these notices on your own. If you exclude yourself, you will not be legally bound by the Court's judgments in this class action.

14. If I exclude myself, can I get anything from this Settlement?

No. You will not receive the benefits of the Settlement, including a payment, if you exclude yourself.

THE LAWYERS REPRESENTING YOU

15. Do I have a lawyer in this lawsuit?

Questions? Call 1-###-###-#### Toll Free or Visit [WEBSITE]

The Court decided that the law firms of Smith & Dietrich Law Offices, PLLC of Olympia, WA, and Terrell Marshall Law Group, PLLC of Seattle, WA, are qualified to represent you and all Class Members. These law firms are referred to as "Class Counsel." You will not receive a bill from these lawyers, who are being paid by receiving a percentage of the Settlement Fund. If you want to be represented by your own lawyer, you may hire one at your own expense. The names and addresses of Class Counsel are:

Walter M. Smith
 Steve E. Dietrich
 SMITH & DIETRICH LAW OFFICES PLLC
 3905 Martin Way E., Suite F
 Olympia, Washington 98506

Toby J. Marshall
 Beth E. Terrell
 Ari Y. Brown
 TERRELL MARSHALL LAW GROUP PLLC
 936 N 34th Street, Suite 300
 Seattle, Washington 98103

16. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel are working on your behalf. But, if you want to hire your own lawyer, you will have to pay that lawyer. For example, you can ask a lawyer to appear in Court for you if you want someone other than Class Counsel to speak for you.

17. How will the lawyers be paid?

Class Counsel will ask the Court to approve payment of up to 25 % of the \$650,000 Settlement Fund to them for attorneys' fees, plus their out-of-pocket expenses. This payment compensates Class Counsel for investigating the facts, litigating the case, and negotiating the Settlement. Class Counsel will also request a service award of \$1,250 for each of the Class Representatives, John Diel and Rebecca Cleveland, payable out of the Settlement Fund to compensate them for their time and effort during the litigation. Class Counsel's complete request for fees, costs, and the service awards to the named Plaintiffs will be posted on the Settlement Website [WEBSITE] by XXXX, 2020. The Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

18. How do I object to the Settlement?

If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class, you can object to the Settlement if you don't like any part of it. Your written objection must provide your name, address, telephone number, and the reason(s) for your objection. You must mail a copy of the objection to the following addresses postmarked no later than [OBJECTION DEADLINE]:

CLASS ADMINISTRATOR	CLASS COUNSEL	DEFENSE COUNSEL
[ADDRESS]	Toby J. Marshall Beth E. Terrell Ari Y. Brown	Tim J. Filer Rylan L.S. Weythman Foster Garvey PC

Questions? Call 1-###-###-#### Toll Free or Visit [WEBSITE]

	Terrell Marshall Law Group PLLC 936 N 34th Street, Suite 300 Seattle, Washington 98103	1111 Third Avenue Suite 3000 Seattle, Washington 98101
--	---	--

19. What is the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself from the Settlement Class is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

20. When and where will the Court hold a hearing on the fairness of the Settlement?

The Court will hold the Final Approval Hearing on **XXXX, 2020** at X:00 a.m./p.m., before the Honorable Ketu Shah of the Superior Court of the State of Washington for King County, 401 4th Ave. N, Kent, WA 87032, Courtroom 2D. The purpose of the hearing is for the Court to determine whether the Settlement is fair, reasonable, adequate, and in the best interest of the Class. At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed Settlement, including those related to the amount requested by Class Counsel for attorneys' fees and expenses and the service awards to the Class Representatives. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

The date and time of the Final Approval Hearing are subject to change by Court Order. Any changes will be posted at the Settlement website, **[WEBSITE]**.

21. Do I have to come the hearing?

No. Class Counsel will answer any questions the Court may have. You are welcome to come to the hearing at your own expense. If you send an objection you don't have to come to the Court to talk about it. As long as your written objection was filed or mailed on time, and meets the other criteria described in the Settlement Agreement, the Court will consider it. You may also pay a lawyer to attend, but you don't have to.

22. May I speak at the hearing?

If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the hearing concerning any part of the proposed Settlement Agreement. If you submit an objection (see Question 18 above) and intend to appear at the hearing, you must state your intention to do so in your objection. To speak, you must send a letter saying that it is your "Notice of Intention to Appear" in *John Diel et al v. Salal Credit Union*, Case No. 19-2-10266-7-KNT. Be sure to include your

Questions? Call 1-###-###-#### Toll Free or Visit **[WEBSITE]**

name, address, telephone number, that you are a Class Member, and your signature. Your Notice of Intention to Appear must be postmarked no later than then (10) days before the Final Approval Hearing and be sent to the Court, Class Counsel, and Defense Counsel at the addresses set forth below. You cannot speak at the hearing if you exclude yourself.

COURT	CLASS COUNSEL	DEFENSE COUNSEL
<p>Hon. Ketu Shah King County Superior Court 401 4th Ave. N, Rm. 2D Kent, WA 87032</p>	<p>Toby J. Marshall Beth E. Terrell Ari Y. Brown Terrell Marshall Law Group PLLC 936 N 34th Street, Suite 300 Seattle, Washington 98103</p>	<p>Tim J. Filer Rylan L.S. Weythman Foster Garvey PC 1111 Third Avenue Suite 3000 Seattle, Washington 98101</p>

23. What happens if I do nothing at all?

If you do nothing, you will be a member of the Settlement Class and you will receive the benefits of the Settlement. You will also be bound by the terms of the Settlement, including the Release described in Section 11, above.

GETTING MORE INFORMATION

24. Are there more details about the Settlement?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You may review and download or print a copy of the Settlement Agreement via the Settlement Website at [WEBSITE]. You can also get a copy of the Settlement Agreement by writing to the [Class Administrator] at [ADDRESS].

25. How do I get more information?

You can call 1-###-###-#### toll free; write to the [Class ADMINISTRATOR] at [ADDRESS]; or visit the website at [WEBSITE] where you will find answers to common questions about the Settlement, the Settlement Agreement, Plaintiffs’ First Amended Complaint, Class Counsel’s motion for an award of attorneys’ fees and costs, and other information.

PLEASE DO NOT CONTACT THE COURT, THE JUDGE, OR SALAL CREDIT UNION WITH QUESTIONS ABOUT THE SETTLEMENT.

Questions? Call 1-###-###-#### Toll Free or Visit [WEBSITE]

— EXHIBIT C —

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

THE HONORABLE KETU SHAH
Department 50
Noted for Consideration: (6 day Motion)
Without Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

JOHN J. DIEL, JR. and REBECCA L. CLEVELAND,
husband and wife, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

SALAL CREDIT UNION,

Defendant.

NO. 19-2-10266-7 KNT

**[PROPOSED] ORDER GRANTING
PLAINTIFFS’ MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Plaintiffs John Diel, Jr. and Rebecca Cleveland have moved for preliminary approval of a class action Settlement with Defendant Salal Credit Union (“Salal”). The terms of the Settlement are set forth in the Settlement Agreement and Release attached as Exhibit A to the Declaration of [ADD] in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. Capitalized terns that are not otherwise defined in this Order have the meanings given to them in the Settlement Agreement and Release.

The Court has read and considered the Settlement Agreement and Release, the exhibits attached thereto, and the briefing submitted in support of preliminary approval of the Settlement and is fully advised.

1 NOW, THEREFORE, IT IS HEREBY ORDERED:

2 1. The Court preliminarily approves the Settlement Agreement and Release
3 between Plaintiffs and Salal.

4 2. The proposed Settlement appears to be the product of serious, informed, non-
5 collusive negotiations, including a mediation before a mediator with substantial experience
6 with consumer class action cases. The proposed Settlement has no obvious deficiencies, does
7 not improperly grant preferential treatment to any class members, and falls within the range
8 of possible judicial approval. These factors weigh in favor of granting preliminary approval.
9 *See William B. Rubenstein, Newberg on Class Actions* § 13:10 (5th ed. June 2019 update 5th).

10 3. For purposes of settlement only, the Court finds that the Settlement Class
11 satisfies the requirements of CR 23(a) and (b)(3) and grants conditional and preliminary
12 certification of the following Settlement Class: All Washington residents who were Salal Credit
13 Union members and who at any point from April 15, 2015 through November 18, 2019
14 incurred an overdraft fee for a transaction when the amount of the ledger balance shown in
15 Salal's record of the account was equal to or greater than the amount of the transaction.
16 Entry of this order and the findings contained in it for settlement purposes are subject to
17 Salal's reservation of, and are without prejudice to, Salal's right to contest class certification
18 on all available factual and legal grounds if the proposed Settlement is not finally approved or
19 the Effective Date does not occur for any reason.

20 4. The numerosity requirement is satisfied because the Class consists of
21 approximately [ADD] individuals. *See CR 23(a)(1); Miller v. Farmer Bros. Co.*, 115 Wn. App.
22 815, 821, 64 P.3d 49 (2003).

23 5. The commonality requirement is satisfied because there are overarching
24 questions of law and fact common to the class, including the contested issue of whether
25 Salal's imposition of overdraft and NSF fees based on a member's "available balance" rather
26 than the member's "ledger balance" is unfair or deceptive under the Washington Consumer

1 Protection Act. *See* CR 23(a)(2); *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 320, 54 P.3d
2 665 (2002).

3 6. The typicality requirement is satisfied because Plaintiffs' claim arises from the
4 same course of conduct that gives rise to the claims of other Class Members and is based on
5 the same legal theory. *See* CR 23(a)(3); *Pellino v. Brink's Inc.*, 164 Wn. App. 668, 267 P.3d 383,
6 392 (2011).

7 7. The adequacy requirement is satisfied because Plaintiffs have no interests
8 antagonistic to the other Class Members and are represented by qualified counsel. *See*
9 *Hansen v. Ticket Track, Inc.*, 213 F.R.D. 412, 415 (W.D. Wash. 2003).

10 8. The predominance requirement is satisfied because there is a "common
11 nucleus of operative facts" to each Class Member's claim, and all Class Members were subject
12 to the same conduct by Salal. *See* CR 23(b)(3); *Chavez v. Our Lady of Lourdes Hosp. at Pasco*,
13 190 Wash. 2d 507, 516, 415 P.3d 224 (2018).

14 9. The superiority requirement is satisfied because the resolution of
15 approximately [ADD] claims in one action is far superior to individual lawsuits and promotes
16 consistency and efficiency of adjudication, particularly in a case like this one with modest
17 statutory damages. *See* CR 23(b)(3); *Chavez*, 190 Wn.2d at 518-23.

18 10. For the purposes of settlement, the Court appoints John Diel, Jr. and Rebecca
19 Cleveland as the class representatives.

20 11. The Court appoints Walter M. Smith and Steve E. Dietrich of Smith & Dietrich
21 Law Offices PLLC and Toby J. Marshall, Beth E. Terrell, and Ari Y. Brown the Terrell Marshall
22 Law Group PLLC and as Settlement Class Counsel.

23 12. The Court appoints and has jurisdiction over [ADD] as the Class Administrator.
24 As provided for in the Settlement Agreement, the Class Administrator shall disseminate notice
25 to Class Members, by mail and email, track responses, mail Settlement Awards and arrange
26

1 for the filing of tax forms and payments (if any) relating to the Settlement Fund and such
2 other duties as are called for by the Settlement Agreement or ordered by the Court.

3 13. The Court approves, as to form and content, the Long Form Notice that is
4 attached to the Settlement Agreement as Exhibit B, the Email Notice attached to the
5 Settlement Agreement as Exhibit A, the Online/Mobile Banking Notice attached to the
6 Settlement Agreement as Exhibit D, and the FAQ's relating to the Settlement attached to the
7 Settlement Agreement as Exhibit E, that the Parties have prepared (collectively the "notices").
8 The notices provide all of the information Class Members need to evaluate and respond to the
9 Settlement, including: the nature of the litigation; the general terms of the proposed
10 Settlement; their rights under the Settlement; an explanation of how they can object to or
11 exclude themselves from the Settlement; the identity of Class Counsel and that Class Counsel
12 will request attorneys' fees and expenses from the Settlement Fund; and the date and time of
13 the Final Approval Hearing. The notices also direct Class Members to a website established by
14 the Class Administrator that will provide additional information about the Settlement, as well
15 as a toll-free number for the Class Administrator that Class Members can call with questions
16 about the Settlement.

17 14. The Court also approves the parties' plan for disseminating notice, which will
18 ensure that Class Members receive "the best notice practicable under the circumstances." See
19 CR 23(c)(2). Issuance of notice substantially in the manner set forth in Part VII of the
20 Settlement Agreement satisfies the requirements of due process and applicable state and
21 federal law and constitutes due and sufficient notice to all members of the Settlement Class.

22 15. Within 21 calendar days of this order, Salal will provide the Class Administrator
23 with the following information for each Class Member: (1) full name, (2) last known mailing
24 address, (3) email address (if available), (4) social security number, and (5) estimated
25 Settlement Award.

26 16. Within 45 days of this order, the Class Administrator shall distribute notice to

1 all Class Members as provided in the Settlement Agreement.

2 17. Any Class Member may exclude himself or herself from the Settlement by
3 submitting a written request to the Class Administrator no later than 60 days after the
4 Settlement Notice Date. The exclusion request must state the individual's name and address
5 and the last four digits of their Social Security Number, and state that the individual wants to
6 be excluded from the *Diel et al. v. Salal Credit Union* Settlement. Following final approval of
7 the Settlement and the occurrence of the Effective Date, each Class Member who does not
8 submit a timely, valid request for exclusion shall be bound by the releases in the Settlement
9 Agreement.

10 18. Any Class Member may object to the Settlement by submitting a written
11 statement to the Class Administrator by 60 days after the Settlement Notice Date. The
12 statement must include the objector's name, address, and telephone number, and the
13 reasons(s) for the objection. Any objector or their attorney may appear at the Final Approval
14 Hearing. In order to do so, such objectors or their attorneys must file a notice of appearance
15 with the Court no later than 10 days before the Final Approval Hearing and send a copy of the
16 notice of appearance to Class Counsel and Defendant's Counsel.

17 19. The Class Administrator shall provide the Parties with a declaration stating that
18 the Notice Plan has been completed no later than 14 days after the deadline for submitting
19 requests for exclusions (Opt Out Deadline) and objections (Objection Deadline). The Parties
20 shall provide the declaration to the Court.

21 20. Responses from the Parties to any objections from Class Members shall be filed
22 no later than 14 days prior to the Final Approval Hearing.

23 21. Class Counsel shall file their motion for entry of the Final Approval Order, final
24 approval of the Settlement, and their motion for attorneys' fees and reimbursement of costs
25 and for service awards to the class representatives no later than 14 days prior to the Final
26 Approval Hearing.

1 22. The Final Approval Hearing shall be held before this Court on
2 _____, at _____ a.m./p.m. in the courtroom of the Honorable Ketu
3 Shah, King County Superior Court, 401 4th Ave. N., Room 2D, Kent, Washington, 98032. At the
4 hearing, the Court will consider whether the prerequisites for class certification and treatment
5 under CR 23(a) and (b)(3) are satisfied and whether the Settlement is fair, reasonable, and
6 adequate, and should be approved by the Court. The Court will also consider Class Counsel's
7 motion for attorneys' fees and costs and for service awards to the class representatives, and
8 rule on any other matters that the Court deems appropriate.

9 23. The Court retains jurisdiction over the Action and all matters arising out of or
10 connected with the proposed Settlement. All deadlines in the current Case Scheduling Order
11 are hereby stricken, including the trial date, and all proceedings in the Action are hereby
12 stayed other than proceedings relating to the consideration of whether the Settlement should
13 be approved. The Court reserves the right to adjourn or continue the date of the Final
14 Approval Hearing without further notice to Class Members and retains jurisdiction to consider
15 all further applications arising out of or connected with the Settlement. After the Final
16 Approval Hearing, the Court may approve the Settlement without further notice to Class
17 Members.

18 24. If the Court does not enter the Final Approval Order, or if the Effective Date
19 does not occur for any reason, then the Action shall proceed as if the Settlement Agreement
20 had not been executed. In that event, the Parties shall meet and confer and present the court
21 with a proposed revised case scheduling order.

22 IT IS SO ORDERED.

23 DATED this _____ day of _____, 2020.

24
25 _____
26 SUPERIOR COURT JUDGE

1 Presented by:

2 TERRELL MARSHALL LAW GROUP PLLC

3 By: /s/ Ari Y. Brown, WSBA #29570

4 Beth E. Terrell, WSBA #26759

Email: bterrell@terrellmarshall.com

5 Toby J. Marshall, WSBA #32726

Email: tmarshall@terrellmarshall.com

6 Ari Y. Brown, WSBA #29570

Email: abrown@terrellmarshall.com

7 TERRELL MARSHALL LAW GROUP PLLC

8 936 North 34th Street, Suite 300

Seattle, Washington 98103-8869

9 Telephone: (206) 816-6603

10 Facsimile: (206) 319-5450

11 Walter M. Smith, WSBA #46695

Email: walter@smithdietrich.com

12 Steve E. Dietrich, WSBA #21897

Email: steved@smithdietrich.com

13 SMITH & DIETRICH LAW OFFICES PLLC

14 3905 Martin Way E., Suite F

Olympia, Washington 98506

15 Telephone: (360) 915-6952

16 *Attorneys for Plaintiffs*

17
18
19
20
21
22
23
24
25
26
[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT – 7
CASE NO. 19-2-10266-7 KNT

TERRELL MARSHALL LAW GROUP PLLC
936 North 34th Street, Suite 300
Seattle, Washington 98103-8869
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

— EXHIBIT D —

Use the Salal online and mobile banking applications to reduce the chance of overdraft and NSF fees

As a Salal member, you have access to Salal's online and mobile banking applications. You can view your account balances before to check whether you have enough funds for a transaction. This may help you avoid overdraft fees and NSF fees.

The apps show two amounts: your "available balance" and your "balance." Your available balance may be lower than your "balance." Salal uses your available balance to determine whether you have sufficient available funds for a transaction and whether it may be subject to overdraft or NSF fees.

What is the difference between my "available balance" and my "balance?"

Balance is the actual amount of money in your account, which is updated throughout the day as transactions are posted. It does not include pending transactions or holds.

Available balance is the amount of money in your account that is currently available for you to make purchases, withdrawals, etc. The available balance is the balance in your account minus any approved pending transactions that have yet to clear your account. It does not include any checks you have written that have not been presented for payment, bill payments that have been scheduled but not yet sent, or ACH transactions (direct withdrawals and/or direct deposits) that have not yet posted. Your available balance is updated throughout the day as transactions are posted. Available balance is used to determine whether an item will be paid and to assess overdraft fees.

The balance and available balance reflected on your account at times may be different. This can be due to things such as:

- A hold is placed on a check you deposited.
- A temporary debit authorization hold.

On debit card purchases, merchants may request a temporary hold on your account for a specified sum of money, which may be more than the actual amount of your purchase. This temporary hold, and the amount charged to your account, will eventually be adjusted to the actual amount of your purchase, but it may be up to three (3) business days before the adjustment is made.

Until the adjustment is made, the amount of funds in your account available for other transactions will be reduced by the amount of the temporary hold. If another transaction is presented for payment in an amount greater than your available balance at the time the transaction is presented, that transaction will be considered a non-sufficient funds ("NSF") transaction if we do not pay it or an overdraft transaction if we

do pay it. You will be charged an NSF or overdraft fee according to our NSF or overdraft fee policy.

Set Up Balance Alerts

To help you manage your account and avoid overdraft and NSF fees, you should set up email alerts within Online Banking to warn you when your balance falls below an amount you specify.

— EXHIBIT E —

Salal – Member Service Representative FAQ's and Answers

1. General Points

- The Notice of Class Action Settlement (“Notice”) is the member’s source of the information regarding the lawsuit and the proposed Settlement. It was approved by the Court as providing the information Class Members need to make decisions about the proposed Settlement.
- You should read the Notice carefully and if you have questions about it, you should contact the Class Administrator that sent the Notice to you.
- The judge has not decided which side is right at this point. The parties agreed to settle the case before trial. The Notice explains the reasons why each side decided to settle at page ____.
- If you have questions, we advise you to read the Notice carefully. If you still have questions, you can contact the Class Administrator at XXX-XXX-XXXX.

2. Why did I get an email from [CLASS ADMINISTRATOR] about a lawsuit against Salal Credit Union?

- You are a Salal member whose account activity included you in the proposed Settlement class.
- The email you received relates to your account at Salal Credit Union and the proposed Settlement.
- The Class Administrator was authorized by the court to send you the Notice by email.
- If you would like a copy of the Notice by regular mail, you can ask the Class Administrator to send you one. Contact information for the Claims Administrator is at the end of the email you received.

3. I didn’t sue the credit union; why did I receive this Notice?

- Two credit union members sued Salal in a proposed class action lawsuit on behalf of a group of people who were charged overdraft fees and non-sufficient funds (NSF) fees in certain situations. The Notice describes those situations at page ____.
- You are in that group.
- The Notice provides you with information about the allegations in the lawsuit, a proposed Settlement and your rights under the Settlement.

4. What did the credit union do wrong? What was the lawsuit about?

- The judge has not decided which side is right at this point.
- The Notice gives details about plaintiffs’ claims at page ____ and why Salal denies those claims at page ____.
- In general, the lawsuit alleges that Salal used the wrong balance to decide if a member’s account was overdrawn and when overdraft fees and NSF fees could be charged.

- Salal believes its overdraft calculations correctly used the available balance according to Salal's Consumer Membership & Account Agreement and the law and denies liability for the claims in the lawsuit.
- The parties agreed to settle the case before trial. The Notice explains the reasons why each side decided to settle at page ____.

5. If Salal doesn't think it did anything wrong, why did it settle the lawsuit?

- Salal believes its overdraft policy was correct and followed its Member Account Agreement and the law, but all lawsuits present risks, cost the credit union money to defend and cause distraction from our main goal of serving our members.
- Salal's management decided it was in the credit union's best interest to settle the case rather than spending more of its members' money in defending the case.
- The Notice gives details about what plaintiffs claim in the lawsuit at page ____ and why Salal denies those claims at page _____. You should read that information carefully.
- The Notice explains why each side decided to settle at page _____.
- The Settlement must be approved by the Court to ensure that it is fair and reasonable.

6. Do I get money / how much?

- You do not need to submit a claim in order to get a Settlement payment.
- The individual Settlement payments will depend on how many overdraft fees covered by the Settlement you were charged and how much money remains in the Net Settlement Fund after payment of other expenses.
- If you have an account with Salal when the Settlement payments are made, and you qualify, Salal will automatically deposit the Settlement payment into your account. If you do not have an account with Salal when the Settlement payments are made, the Class Administrator will send you a check.
- I do not know at this time how much you will receive from the Settlement.

7. What are my options?

- The Notice explains your options under the Settlement at pages ____-____. You should read that information carefully.
- There are three options. The first is to do nothing, in which case you will receive a payment and release your claims; you can opt out of the Settlement, in which case you will get no payment, but will not release your claims, or you can object to the Settlement.
- The Notice provides information about each of these options.
- I'm sorry, but the credit union cannot give you any advice or recommendations about which of the options you should choose.
- If you have more questions, please contact the Class Administrator at (XXX)-XXX-XXXX.