

EXHIBIT A

PREAMBLE

This Settlement Agreement and Release (the “Agreement”) is entered into by and among plaintiffs Danielle Wellington and Dianna Conley (“Named Plaintiffs”) and all those on whose behalf they are prosecuting this action (each of them a “Plaintiff” and all of them “Plaintiffs”), on the one hand, and defendant Empower Federal Credit Union (“Defendant”), on the other hand, as of the date executed below. All references in this Agreement to a “party” or the “parties” shall refer to a party or the parties to this Agreement.

RECITALS

A. On November 4, 2020, plaintiff Danielle Wellington filed a putative class action complaint entitled *Danielle Wellington v. Empower Federal Credit Union*, in the United States District Court for the Northern District of New York, Case No. 5:20-cv-01367-DNH-ML, alleging claims for Violations of the Electronic Fund Transfer Act (Regulation E) 12 C.F.R. § 1005 *et seq.* and Violations of NY GLB § 349 (the “Wellington Action”).

B. On February 2, 2021, Defendant filed a motion to dismiss the Wellington Action.

C. On April 13, 2021, the Court denied Defendant’s motion to dismiss the Wellington Action.

D. On April 26, 2021, Defendant filed an answer to the Complaint in the Wellington Action.

E. On April 27, 2021, plaintiff Dianna Conley filed a putative class action complaint entitled *Dianna Conley v. Empower Federal Credit Union*, in the Supreme Court of the State of New York County of Onondaga, Index No. 003959/2021, alleging claims for Breach of Contract and Violations of NY GLB § 349 (the “Conley Action”).

F. On or about May 17, 2021, Defendant removed the Conley Action to the United States District Court for the Northern District of New York, Case No. 5:21-cv-00566-MAD-ATB.

G. On June 7, 2021, Defendant filed an answer to the Complaint in the Conley Action.

H. On June 28, 2021, the Court entered an order consolidating the Conley Action with the Wellington Action, with the Wellington Action being deemed the “Lead Action” by the Court.

I. On August 9, 2021, the parties participated in a mediation before the Honorable Diane Welsh (Ret.). The mediation resulted in a Mediator’s Proposal, which both parties accepted. The settlement described below is the result of the accepted Mediator’s Proposal.

J. Defendant has entered into this Agreement to resolve any and all controversies and disputes arising out of or relating to the allegations made in the Wellington Action and Conley Action, and to avoid the burden, risk, uncertainty, expense, and disruption to its business operations associated with further litigation. Defendant does not in any way acknowledge, admit to, or concede any of the allegations made in the Wellington Action and Conley Action, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been

or could have been asserted in Wellington Action and Conley Action. Defendant nevertheless believes that this settlement is in its best interest and in the best interests of all of its members. Nothing contained in this Agreement shall be used or construed as an admission of liability and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement.

K. Plaintiffs have entered into this Agreement to liquidate and recover on the remaining claims asserted in the Wellington Action and Conley Action, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiffs do not in any way concede the claims alleged in the Wellington Action and Conley Action lack merit or are subject to any defenses.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into and are an integral part of this Agreement, and in consideration of the mutual promises below, the parties agree as follows:

1. DEFINITIONS. In addition to the definitions contained elsewhere in this Agreement, the following definitions shall apply:

(a) “Bar Date To Object” will be the date set by the Court as the deadline for Class Members to file an Objection, and shall be approximately fifteen (15) days after the filing of the Motion for Final Approval.

(b) “Bar Date To Opt Out” shall be the date set by the Court as the deadline for Class Members to opt out. The Bar Date shall be thirty (30) days after the date the Notice (defined below) must be delivered to the Class Members.

(c) “Breach of Contract Overdraft Fee” shall be an Overdraft Fee when the account had a positive actual balance at the time of the posting of the transaction from April 27, 2015 through November 3, 2017, both dates inclusive.

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

(e) “Class Counsel” shall mean Richard D. McCune and Elaine S. Kusel of McCune Wright Arevalo, LLP and Joseph I. Marchese of Bursor & Fisher, P.A.

(f) “Class Member” shall mean any member of Defendant who had a checking account with Defendant and was assessed an Overdraft Fee on any type of payment transaction from April 27, 2015 through September 24, 2021 against their checking account if, at the time such fee was assessed, the member had sufficient money in his or her ledger balance to cover the transaction that resulted in the fee.

(g) “Court” shall mean the United States District Court for the Northern District of New York.

(h) “Defendant’s Counsel” shall mean Peter Siachos and Eric Evans of Gordon & Rees LLP.

(i) “Effective Date” shall be thirty (30) days after the entry of the Final Approval Order (defined below) provided no objections are made to this Agreement. If there are objections to the Agreement, then the Effective Date shall be the later of: (1) Ninety (90) days after entry of the Final Approval Order, if no appeals are taken from the Final Approval Order; or (2) if appeals are taken from the Final Approval Order, then thirty (30) days after an Appellate Court ruling affirming the Final Approval Order; or (3) Thirty (30) days after entry of a dismissal of the appeal.

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

(k) “Final Approval Hearing Date” shall be the date set by the Court for the hearing on any and all motions for final approval of this Agreement.

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

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

(n) “GBL Overdraft Fee” shall be an Overdraft Fee when the account had a positive actual balance at the time of the posting of the transaction from November 4, 2017 through September 24, 2021, both dates inclusive.

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

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

(q) “Notice” shall mean the notice to Class Members of the settlement provided for under the terms of this Agreement, as ordered by the Court in its Preliminary Approval/Notice Order (defined below), and shall refer to the form of Notice attached hereto as **Exhibit 1** and **Exhibit 2** (E-mail version).

(r) “Overdraft Fee” shall mean a fee assessed against a member’s checking account when that account does not have sufficient funds at the time a transaction is presented for payment that was not reversed.

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

(t) “Regulation E Overdraft Fee” shall mean an overdraft fee on a non-

recurring debit card or ATM transaction when the account had a positive actual balance at the time of the posting of the transaction that was assessed from November 4, 2019 through September 24, 2021, both dates inclusive.

(u) “Settlement Fund” shall mean the two million dollars and zero cents (\$2,000,000.00) to be paid by Defendant under the terms of this Agreement.

(v) “Sufficient Funds Settlement Class” shall mean those members of Defendant who, from April 27, 2015 through September 24, 2021, were assessed an overdraft fee when the account had a positive actual balance at the time of the posting of the transaction (hereinafter “Sufficient Funds Overdraft Charges”).

(w) “Uncollected Fees” shall mean any Sufficient Funds Overdraft Charges assessed on Class Members whose accounts were closed and uncollected with a negative balance from April 27, 2015 through September 24, 2021.

(x) “Value of the Settlement” shall mean the Settlement Fund plus the value of the changes in practice described in Section 2 below, plus the Uncollected Fees.

2. CHANGES TO DEFENDANT’S ACCOUNT DISCLOSURES. Effective January 1, 2021 and September 1, 2021, Defendant changed its membership agreement and other disclosures to more clearly disclose its overdraft practices, including defining available balance and describing the impact of holds on available balance. Defendant has implemented processes to provide the revised membership agreement and disclosures to new and existing members. On September 24, 2021, Defendant discontinued charging members any overdraft fees on Regulation E transactions until such time as the members were opted-in utilizing the current opt-in form that specifically discloses Empower’s usage of the available balance.

3. CLASS ACTION SETTLEMENT. Plaintiffs shall propose and recommend to the Court that one settlement class (the “Sufficient Funds Settlement Class”) be certified, which shall be comprised of the Class Members. Defendant agrees solely for purposes of the settlement provided for in this Agreement, and the implementation of such settlement, that this case shall proceed as a class action; provided, however, that if a Final Approval Order is not issued, then Defendant shall retain all rights to object to maintaining this case as a class action. Plaintiffs and Class Counsel shall not reference this Agreement in support of any subsequent motion relating to certification of a liability class.

4. PRELIMINARY SETTLEMENT APPROVAL. Class Counsel shall use reasonable efforts promptly to file a motion seeking a Preliminary Approval/Notice Order by **June 20, 2022**. The Preliminary Approval/Notice Order shall provide for: preliminary approval of this Agreement, provisional certification of the class for settlement purposes, appointment of Class Counsel as counsel to the provisionally certified class, and the requirement that the Notice be given to the Class Members as provided in Section 5, below (or as otherwise determined by the Court).

5. NOTICE TO THE CLASS.

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

(b) For those Class Members who are current members of Defendant and have agreed to receive notices regarding their accounts from Defendant by email, Defendant shall provide the Claims Administrator with the most recent email addresses it has for the Class Members. The Claims Administrator shall email an Email Notice (see Exhibit 2) to each such Class Member's last known email address, in a manner that is calculated to avoid being caught and excluded by spam filters or other devices intended to block mass email. For any emails that are returned undeliverable, the Claims Administrator shall use the best available databases to obtain current email address information, update its database with these emails, and resend the Notice by email. The Email Notice shall inform Class Members how they may request a copy of the Long Form Notice (see Exhibit 1).

(c) For those Class Members who are not current members of Defendant or who have not agreed to receive notices regarding their accounts from Defendant by email, the Notice shall be mailed to these Class Members by first class United States mail to the best available mailing addresses. Defendant shall provide the Claims Administrator with last known mailing addresses for these Class Members. The Claims Administrator will run the names and addresses through the National Change of Address Registry and update as appropriate. If a mailed Notice is returned with forwarding address information, the Claims Administrator shall re-mail the Notice to the forwarding address. For all mailed Notices that are returned as undeliverable, the Claims Administrator shall use standard skip tracing devices to obtain forwarding address information and, if the skip tracing yields a different forwarding address, the Claims Administrator shall re-mail the Notice to the address identified in the skip trace, as soon as reasonably practicable after the receipt of the returned mail.

(d) The Notice shall also be posted on a settlement website created by the Claims Administrator.

(e) The Claims Administrator shall maintain a database showing mail and email addresses to which each Notice was sent and any Notices that were not delivered by mail and/or email. A summary report of the Notice shall be provided to the Parties at least five (5) days prior to the deadline to file the Motion for Final Approval. The database maintained by the Claims Administrator regarding the Notice shall be available to the parties and the Court upon request. It shall otherwise be confidential and shall not be disclosed to any third party.

(f) The Notice shall be in a form approved by the Court and, substantially similar to the notice form attached hereto as Exhibit 1 and Exhibit 2. The parties may by mutual written consent make non-substantive changes to the Notice without Court approval.

(g) All costs associated with publishing, mailing and administering the Notice as provided for in this Section, and all costs of administration, including but not limited to the Claims Administrator's fees and costs shall be paid out of the Settlement Fund.

6. **MOTION FOR FINAL APPROVAL.** Within a reasonable time after the Bar Date to Opt Out, and provided the conditions in Section 15, below, are satisfied, Class Counsel shall file a Motion for Final Approval of this Agreement so that same can be heard on the Final Approval Hearing Date.

7. **ENTRY OF JUDGMENT.** The Final Approval Order shall constitute the Court's final judgment in this action. The Court shall retain jurisdiction to enforce the terms of the Final Approval Order.

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

(a) **Payments to Class Members.** Within ten (10) days after the entry of the Final Approval Order, Defendant shall transfer the Settlement Fund to the Claims Administrator, less the total amount that will be credited to Class Members by Defendant, as provided in subsection 8(d)(iv)b(1), below. The Settlement Fund shall be the total amount Defendant is obligated to pay under the terms of this Agreement and includes (a) Class Counsels' fees and costs; (b) any service award payment to the Named Plaintiffs; (c) costs associated with administering the Notice in accordance with Section 5, above; and (d) any fees paid to the Claims Administrator for services rendered in connection with the administration process. Defendant shall not make any additional or further contributions to the Settlement Fund, even if the total amount of all alleged improper fees charged to the Class Members exceeds the value of the Net Settlement Fund. In the event a Final Approval Order is not issued, or this Agreement is terminated by either party for any reason, including pursuant to Section 16, below, the portion of the Settlement Fund paid to the Claims Administrator (including accrued interest, if any) less expenses actually incurred by the Claims Administrator or due and owing to the Claims Administrator in connection with the settlement provided for herein, shall be refunded to Defendant within two (2) business days.

(b) All funds held by the Claims Administrator shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until distributed pursuant to this Agreement.

(c) All funds held by the Claims Administrator at any time shall be deemed to be a Qualified Settlement Fund as described in Treasury Regulation §1.468B-1, 26 C.F.R. §1.468B-1.

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

(i) **Plaintiffs' Fees and Costs.** Plaintiffs' reasonable attorneys' fees and costs, as determined and approved by the Court, shall be paid from the Settlement Fund ten (10) days after entry of the Final Approval Order. Class Counsel shall apply for an award of attorneys' fees of up to one-third (33-1/3%) of the value of this settlement to the Class Members plus reimbursement of reasonable litigation costs, to be approved by the court. Defendant agrees not to oppose an application up to one-third (33-1/3%) of the Settlement Fund but reserves the right to oppose an application for fees in excess of that amount. Should the judgment approving the settlement be reversed on appeal, Class Counsel shall immediately repay all fees and costs to Defendant; should the award of fees and costs be reduced on appeal,

Class Counsel shall immediately repay into the Settlement Fund an amount equal to the reduction ordered by the appellate court.

(ii) Service Award. Named Plaintiffs may apply to the Court for a service award of up to \$10,000.00 each. Subject to the Court's approval, the service award shall be paid from the Settlement Fund ten (10) days after the Effective Date.

(iii) Claims Administrator's Fees. The Claims Administrator's fees and costs, including estimated fees and costs to fully implement the terms of this Agreement, as approved by the Court, shall be paid within ten (10) days after the Effective Date.

(iv) Payments to Class Members. The amount paid to each Class Member shall be calculated as follows:

a. The Net Settlement Fund shall be allocated to members of the Sufficient Funds Settlement Class on a *pro rata* basis, as follows: (1) 25% of the Net Settlement Fund shall be allocated to Class Members' Regulation E Overdraft Fees; (2) 62.5% of the Net Settlement Fund shall be allocated to Class Members' GBL Overdraft Fees; and (3) 12.5% of the Net Settlement Fund shall be allocated to Class Members' Breach of Contract Overdraft Fees.

b. For Class Members with GBL Overdraft Fees, payments to those individual class members ("Individual Payments") shall be made no later than ten (10) days after the Effective Date, as follows:

(1) For those Class Members who are members of Defendant at the time of the distribution of the Net Settlement Fund, their checking accounts shall be credited in the amount of the Individual Payment they are entitled to receive. If they do not have a checking account, but maintain another account at Defendant, then that account shall be credited.

(2) For those Class Members who are not members of Defendant at the time of the distribution of the Net Settlement Fund, they shall be sent a check by the Claims Administrator at the address used to provide the Notice, or at such other address as designated by the Class Member. The Class Member shall have one-hundred eighty (180) days to negotiate the check. Any checks uncashed after one-hundred eighty (180) days shall be distributed to Class Members with GBL Overdraft Fees if practical. Otherwise, any residual shall be distributed pursuant to Section 12.

c. Class Members with Regulation E Overdraft Fees shall be entitled to make a claim for a refund of such fees from that portion of the Net Settlement Fund allocated to the Regulation E Class (25%) and shall be provided a Claim Form with the Notice. The Claim Form shall indicate the number and amount of Regulation E Overdraft Charges assessed against each such member's accounts. To the extent the 25% of the Net Settlement Fund allocated to pay Regulation E Overdraft Fees is not sufficient to make

full payment for all such claims made, the money shall be distributed on a *pro rata* basis. There may be circumstances where GBL Overdraft Fees will also be Regulation Overdraft Fees. To prevent Class Members from recovering more than the fees they paid, Class Members shall not be entitled to recover more for each allegedly improper fee than the actual amount charged for such fee. Payments shall be made in a similar manner as outlined above, §8.d.iv.b. Any residual from uncashed checks shall be redistributed to Class Members with GBL Overdraft Fees.

d. Class Members with Breach of Contract Overdraft Fees shall be entitled to make a claim for a refund of such fees from that portion of the Net Settlement Fund allocated to the Regulation E Class (12.5%) and shall be provided a Claim Form with the Notice. The Claim Form shall indicate the number and amount of Breach of Contract Overdraft Fees against each such member's accounts. To the extent the 12.5% of the Net Settlement Fund allocated to pay Breach of Contract Overdraft Fees is not sufficient to make full payment for all such claims made, the money shall be distributed on a *pro rata* basis. Payments shall be made in a similar manner as outlined above, §8.d.iv.b. Any residual from uncashed checks shall be redistributed to Class Members with GBL Overdraft Fees.

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

9. UNCOLLECTED FEES. Upon the occurrence of the Effective Date, Defendant shall forgive the Uncollected Fees as defined in Section 1(t) which are the Uncollected Fees portion of any amounts owing to Defendant by Class Members to the extent, if any, Defendant is attempting to collect thereon. If any Uncollected Fees are inadvertently collected, then they shall be refunded by Defendant insofar as Defendant is aware of the Uncollected Fees. If a member of Defendant with Uncollected Fees attempts to open a new account or re-open a closed account, Defendant shall not require payment of the Uncollected Fees as a condition to account opening insofar as Defendant is aware of the outstanding Uncollected Fees.

10. FINAL REPORT TO THE COURT. Within two hundred (200) days after the Effective Date, Class Counsel shall submit to the Court a Final Report, setting forth: (a) the amounts paid to Class Members by the Claims Administrator, (b) Any checks not cashed or returned; (c) the efforts undertaken to follow up on uncashed and/or returned checks; (d) the total amount of money unpaid to Class Members; and (e) the total amount of credits issued to Class Members by Defendant. Defendant shall provide a declaration under penalty of perjury setting forth the amount of the credits issued to Class Members. Class Counsel shall be entitled to verify credits by confidential review of Class Member account statements.

11. THE CLAIMS ADMINISTRATOR.

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

(b) The Claims Administrator shall be subject to the jurisdiction of the Court

with respect to the administration of this Agreement.

(c) The Claims Administrator shall keep all information regarding Class Members confidential except as otherwise provided herein. All data created and/or obtained and maintained by the Claims Administrator pursuant to this Agreement shall be destroyed twelve (12) months after the Final Report is submitted to the Court, provided that Class Counsel and Defendants Counsel, or either of them, at their own cost, shall receive a complete digital copy of the Claims Administrator's records, together with a declaration establishing completeness and authenticity, which they may maintain consistent with their own document retention policies.

(d) The Claims Administrator also shall be responsible for timely and properly filing all tax returns necessary or advisable, if any, with respect to the Settlement Fund. Except as provided herein, Class Members shall be responsible for their own tax reporting of payments received under the terms of this Agreement.

(e) The Claims Administrator shall provide the data in its claims administration database to Defendant's Counsel and/or Class Counsel in response to any written request, including an email request. The written request shall be copied to the other party when made.

(f) Within one hundred-ninety (190) days after the Effective Date, the Claims Administrator shall prepare a declaration setting forth the total payments issued to Class Members by the Claims Administrator, the total amount of any checks uncashed and/or returned, and the total amount of money being held by the Claims Administrator.

12. CY PRES PAYMENT. Subject to Court approval, thirty (30) days after the Final Report the total amount of uncashed checks, and amounts held by the Claims Administrator at the time of the Final Report, shall be paid by the Claims Administrator to one or more public interest organizations nominated by the parties and subject to Court approval.

13. OPT-OUTS.

(a) A Class Member who wishes to exclude himself or herself from this Agreement, and from the release of claims and defenses provided for under the terms of this Agreement, shall submit an Exclusion Letter by mail to the Claims Administrator. For an Exclusion Letter to be valid, it must be postmarked on or before the Bar Date to Opt Out. Any Exclusion Letter shall identify the Class Member, state that the Class Member wishes to exclude himself or herself from the Agreement, and shall be signed and dated.

(b) The Claims Administrator shall maintain a list of persons who have excluded themselves and shall provide such list to Defendant's Counsel and Class Counsel at least five (5) days prior to the date Class Counsel is required to file the Motion for Final Approval. The Claims Administrator shall retain the originals of all Exclusion Letters (including the envelopes with the postmarks). The Claims Administrator shall make the original Exclusion Letters available to Class Counsel, Defendant's Counsel and/or the Court upon two (2) court days' written notice.

14. OBJECTIONS.

(a) Any Class Member, other than a Class Member who timely submits an

Exclusion Letter, may object to this Agreement.

(b) To be valid and considered by the Court, the objection must be in writing and sent by first class mail, postage pre-paid, to the Claims Administrator. The objection must be postmarked on or before the Bar Date to Object, and must include the following information:

(i) The objector's name, address, telephone number, and the contact information for any attorney retained by the objector in connection with the objection or otherwise in connection with this case;

(ii) A statement of the factual and legal basis for each objection and any exhibits the objector wishes the Court to consider in connection with the objection; and

(iii) A statement as to whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying the counsel by name, address and telephone number.

(c) Class Counsel shall file any objections and responsive pleadings at least seven (7) days prior to the Final Approval Hearing Date.

15. RELEASE. Except as to the rights and obligations provided for under the terms of this Agreement, Named Plaintiffs, on behalf of themselves and each of the Class Members, hereby release and forever discharge Defendant, and all of its past, present and future predecessors, successors, subsidiaries, divisions, employees, affiliates, assigns, officers, directors, shareholders, representatives, attorneys and agents (collectively, the "Defendant Releasees") from any and all claims, charges, complaints, debts, liabilities, demands, obligations, costs, expenses, actions, and causes of action of every nature, character, and description, whether known or unknown, asserted or unasserted, suspected or unsuspected, which Named Plaintiffs and Class Members, who do not opt out, now have, own or hold against any of the Defendant Releasees that arise out of and/or relate to the facts and claims alleged in the Complaints, including claims or allegations of "Authorized Positive, Settle Negative Transactions."

16. CONDITIONS TO SETTLEMENT.

(a) This Agreement shall be subject to and is expressly conditioned on the occurrence of all of the following events:

(i) The Court has entered the Preliminary Approval/Notice Order, as required by Section 4 above;

(ii) The Court has entered the Final Approval Order as required by Sections 6 and 7 above, and all objections, if any, to such Order are overruled, and all appeals taken from such Order are resolved in favor of approval; and

(iii) The Effective Date has occurred.

(b) If all of the conditions specified in Section 16(a) are not met, then this

Agreement shall be cancelled and terminated.

(c) Defendant shall have the option to terminate this Agreement if five (5%) percent or more of the Class Members opt out. Defendant shall notify Class Counsel and the Court of its intent to terminate this Agreement pursuant to this Section 16 within fifteen (15) business days after the Bar Date To Opt Out, or the option to terminate shall be considered waived.

(d) In the event this Agreement is terminated, pursuant to Section 16(c) immediately above, or fails to become effective in accordance with Sections 16(a) and/or (b) immediately above, then the parties shall be restored to their respective positions in this case as they existed as of the date of the execution of this Agreement. In such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the parties and shall not be used in this case or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

17. REPRESENTATIONS.

(a) The parties to this Agreement represent that they have each read this Agreement and are fully aware of and understand all of its terms and the legal consequences thereof. The parties represent that they have consulted or have had the opportunity to consult with and have received or have had the opportunity to receive advice from legal counsel in connection with their review and execution of this Agreement.

(b) The parties have not relied on any representations, promises or agreements other than those expressly set forth in this Agreement.

(c) The Named Plaintiffs, on behalf of the Class Members, represent that they have made such inquiry into the terms and conditions of this Agreement as they deem appropriate, and that by executing this Agreement, they believe the Agreement and all the terms and conditions set forth herein, are fair and reasonable to all Class Members.

(d) The Named Plaintiffs represent that they have no conflicts or other personal interests that would in any way impact their representation of the class in connection with the execution of this Agreement.

(e) Defendant represents and warrants that it has obtained all corporate authority necessary to execute this Agreement.

18. FURTHER ASSURANCES. Each of the parties hereto agrees to execute and deliver all such further documents consistent with this Agreement, and to take all such further actions consistent with this Agreement, as may be required in order to carry the provisions of this Agreement into effect, subject to Class Counsel's obligation to protect the interests of the Class Members.

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

20. NO ORAL WAIVER OR MODIFICATION. No waiver or modification of any provision of this Agreement or of any breach thereof shall constitute a waiver or modification of any other provision or breach, whether or not similar. Nor shall any actual waiver or modification constitute a continuing waiver. No waiver or modification shall be binding unless executed in writing by the party making the waiver or modification.

21. ENTIRE AGREEMENT. This Agreement, including the exhibit attached hereto, constitutes the entire agreement made by and between the parties pertaining to the subject matter hereof, and fully supersedes any and all prior or contemporaneous understandings, representations, warranties, and agreements made by the parties hereto or their representatives pertaining to the subject matter hereof. No extrinsic evidence whatsoever may be introduced in any judicial proceeding involving the construction or interpretation of this Agreement.

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

23. SEVERABILITY. In the event any one or more of the provisions of this Agreement is determined to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement will not in any way be affected or impaired thereby.

24. COUNTERPARTS AND FACSIMILE SIGNATURES. This Agreement may be executed and delivered in separate counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts together shall constitute but one and the same instrument and agreement. Facsimile and pdf signature pages shall have the same force and effect as original signatures.

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

Richard D. McCune
McCune Wright Arevalo LLP
3281 E. Guasti Road, Ste. 100
Ontario, CA 91761
Telephone: (909) 557-1275
rdm@mccunewright.com

- And -

Elaine S. Kusel
McCune Wright Arevalo LLP
One Gateway Plaza, Suite 1500
Newark, NJ 07102
Telephone: (973) 737-9981
esk@mccunewright.com

- And -

Joseph I. Marchese
Bursor & Fisher, P.A.
888 Seventh Avenue
New York, NY 10019
Telephone: (646) 837-7150
jmarchese@bursor.com

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

Eric Evans, Esq.
Gordon & Rees LLP
18 Columbia Turnpike, Suite 220
Florham Park, New Jersey 07932
Telephone: (973) 549-2500
eevans@grsm.com

Any notice to the Claims Administrator shall be sent by email to the address of the claims administrator, which will be determined by the lowest bid for services.

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

Dated: June ~~08~~, 2022

EMPOWER FEDERAL CREDIT UNION, a
federally chartered credit union

By: 

Its: VP of COMPLIANCE

Dated: June 3, 2022

DANIELLE WELLINGTON, an individual on behalf
of herself and those she represents

By: 

Danielle Wellington

Dated: June __, 2022

DIANNA CONLEY, an individual on behalf of
herself and those she represents

By: _____

Dianna Conley

APPROVED AS TO FORM:

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

Eric Evans, Esq.
Gordon & Rees LLP
18 Columbia Turnpike, Suite 220
Florham Park, New Jersey 07932
Telephone: (973) 549-2500
eevans@grsm.com

Any notice to the Claims Administrator shall be sent by email to the address of the claims administrator, which will be determined by the lowest bid for services.

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

Dated: June __, 2022

EMPOWER FEDERAL CREDIT UNION, a
federally chartered credit union

By: _____

Its: _____

Dated: June __, 2022

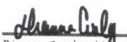
DANIELLE WELLINGTON, an individual on behalf
of herself and those she represents

By: _____

Danielle Wellington

Dated: June⁸ __, 2022

DIANNA CONLEY, an individual on behalf of
herself and those she represents

By:  _____
Dianna Conley (June 8, 2022 09:37 EDT)

Dianna Conley

APPROVED AS TO FORM:

Dated: June __, 2022

GORDON & REES LLP
Peter Siachos
Eric Evans

By: _____

Peter Siachos

Attorneys for Defendant Empower Federal Credit
Union

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

Eric Evans, Esq.
Gordon & Rees LLP
18 Columbia Turnpike, Suite 220
Florham Park, New Jersey 07932
Telephone: (973) 549-2500
eevans@grsm.com

Any notice to the Claims Administrator shall be sent by email to the address of the claims administrator, which will be determined by the lowest bid for services.

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

Dated: June __, 2022

EMPOWER FEDERAL CREDIT UNION, a
federally chartered credit union

By: _____

Its: _____

Dated: June __, 2022

DANIELLE WELLINGTON, an individual on behalf
of herself and those she represents

By: _____
Danielle Wellington

Dated: June __, 2022

DIANNA CONLEY, an individual on behalf of
herself and those she represents

By: _____
Dianna Conley

APPROVED AS TO FORM:

Dated: June 24, 2022

GORDON & REES LLP
Peter Siachos
Eric Evans

By:  _____
Peter Siachos

Attorneys for Defendant Empower Federal Credit
Union

Dated: June __, 2022

GORDON & REES LLP
Peter Siachos
Eric Evans

By: _____
Peter Siachos
Attorneys for Defendant Empower Federal Credit
Union

Dated: June 6, 2022

McCUNE WRIGHT ALEVARO LLP
Richard D. McCune
Elaine S. Kusel

By:  _____
Elaine S. Kusel
Attorneys for Plaintiff Danielle Wellington

Dated: June __, 2022

BURSOR & FISHER, P.A.
Joseph I. Marchese

By: _____
Joseph I. Marchese
Attorney for Plaintiff Dianna Conley

Dated: June __, 2022

McCUNE WRIGHT ALEVARO LLP
Richard D. McCune
Elaine S. Kusel

By: _____
Elaine S. Kusel
Attorneys for Plaintiff Danielle Wellington

Dated: June 6, 2022

BURSOR & FISHER, P.A.
Joseph I. Marchese

By: Joseph I. Marchese
Joseph I. Marchese
Attorney for Plaintiff Dianna Conley

Exhibit 1

Danielle Wellington and Dianna Conley
v.
Empower 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 HAD A CHECKING ACCOUNT WITH EMPOWER FEDERAL CREDIT
UNION (“DEFENDANT”) AND YOU WERE CHARGED AN OVERDRAFT
FEE BETWEEN APRIL 27, 2015 AND SEPTEMBER 24, 2021 THEN YOU
MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION
SETTLEMENT.**

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

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION	
MAKE A CLAIM	You may make a claim for overdraft fees which were paid by you if there was no refund of the overdraft fee regardless of the funds in your account. The number of such overdraft fees you may have incurred are shown on the Claim Form attached to this Notice. If you did not receive a Claim Form, then you have no eligible fees of this type and therefore need not make a claim. You may still be entitled to payment for other Overdraft Fees which do not require a claim to be made. If you are eligible to make a claim for ATM and debit card fees, you should fill out and submit the Claim Form within thirty (30) days after receipt of this notice, or might not receive any funds.
DO NOTHING	If you have incurred an overdraft fee on your checking account which was paid by you while your ledger balance was sufficient to pay for the transaction, 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 Empower but you will not receive a payment. If you want to recover against Empower, then 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, you <u>will</u> receive a payment and you <u>will not</u> be able to sue Empower 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 lawsuits that are being settled are entitled *Danielle Wellington v. Empower Federal Credit Union*, in the United States District Court for the Northern District of New York, Case No. 5:20-cv-01367, and *Dianna Conley v. Empower Federal Credit Union*, in the United States District Court for the Northern District of New York, Case No. 5:20-cv-00566. The cases are each a “class action.” That means that the “Named Plaintiffs,” Danielle Wellington and Dianna Conley, are individuals who are acting on behalf of a group. The group is made up of all members of Empower (the “Defendant”) who had a checking account with Empower and were assessed an Overdraft Fee on any type of payment transaction from April 27, 2015 through September 24, 2021, against their checking account if, at the time such fee was assessed, the member had sufficient money in his or her ledger balance to cover the transaction that resulted in the fee. The persons in this group are collectively called the “Class Members.”

The Named Plaintiffs claim Defendant improperly charged overdraft fees in checking accounts when members had enough money in the balance to cover the transaction if holds placed on pending transactions or deposits were not deducted from the balance, *i.e.*, the ledger balance. Defendant does not deny it charged overdraft fees but contends it did so properly and in accordance with the terms of its agreements and applicable law. Defendant contends it assessed overdraft fees based on the available balance in a member’s account. Defendant maintains that this practice is proper and was disclosed to its members, and therefore denies that its practices give rise to claims for damages by the Named Plaintiffs or any Class Member.

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

You received this Notice because Defendant’s records indicate that you are in the group that was alleged to have been charged improper overdraft fee(s). The Court directed that this Notice be sent to all Class Members because each Class 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 Named Plaintiffs’ lawyers’ job to identify when a proposed settlement offer is good enough that it justifies recommending settling the case instead of continuing to trial. In a class action, these lawyers, known as Class Counsel, make this recommendation to the Named Plaintiffs. The Named Plaintiffs have 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 Counsel’s opinion, that this settlement is in the best interest of all Class Members for at least the following reasons:

There is legal uncertainty about whether a judge or a jury will find that Defendant was contractually and otherwise legally obligated not to assess overdraft fees on checking accounts when the ledger balance was sufficient to pay for a transaction even though the available balance

was not. There is also uncertainty about whether the Named Plaintiffs' claims are subject to other defenses that might result in no or less recovery to Class Members. Even if the Named Plaintiffs were to win at trial, there is no assurance that the Class Members would be awarded more than the current settlement amount and it may take years of litigation before any payments would be made. By settling, the Class Members will avoid these and other risks and the delays associated with continued litigation.

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

WHO IS IN THE SETTLEMENT

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

If you received this notice, then Empower's records indicate that you are a Class Member 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) file a claim with the Claims Administrator on the Claim Form attached to this Notice to recover for the Overdraft Fees you were charged for ATM and debit card transactions, and certain overdraft fees (if you did not receive a Claim Form then you were not assessed any eligible fees); (2) do nothing and you will receive a payment according to the terms of this settlement for overdraft fees you may have been charged on your checking account when your ledger balance was sufficient but your available balance was not sufficient to pay the transaction that resulted in the fee; (3) exclude yourself from the settlement ("opt out" of it); or (4) 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?

The deadline for sending a Claim Form to the Claims Administrator is _____.

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

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

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 will not be approved and no payments will be made to you or any other Class Member. If your objection (and any other objection) is overruled, and the settlement is approved, then you will still get a payment.

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 this Notice. The Court will make a final decision regarding the settlement at a “Fairness Hearing” or “Final Approval Hearing”, which is currently scheduled for _____.

THE SETTLEMENT PAYMENT

9. How much is the Settlement?

Defendant has agreed to create a Settlement Fund of \$2,000,000.00. In addition, Empower has agreed to change certain overdraft practices and disclosures, and has agreed to forgive eligible overdraft fees assessed on Class Members whose accounts were closed and uncollected with a negative balance from April 27, 2015 through September 24, 2021. Together these constitute the Value of the Settlement.

As discussed separately below, attorneys’ fees, litigation costs, a service award to the Named Plaintiffs, and the costs paid to a third party Claims Administrator to administer the settlement (including mailing and emailing this notice) will be paid out of this amount. The balance of the Settlement Fund will be divided among all Class Members on a pro rata basis to members who incurred an overdraft fee on checking accounts which was assessed while the ledger balance was sufficient to pay for the transaction.

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

Class Counsel will request that the Court award no more than one-third (33-1/3%) of the value of the settlement as attorneys’ fees plus reimbursement of not more than \$___ in litigation costs incurred in prosecuting the case. The Court will decide the amount of the attorneys’ fees based on a number of factors, including the risk associated with bringing the case, the amount of time spent on the case, the amount of costs incurred to prosecute the case, the quality of the work, and the outcome of the case.

11. How much of the settlement fund will be used to pay the Named Plaintiffs a Service Award

Class Counsel on behalf of the Named Plaintiffs will request that the Court award \$10,000 each for their role in securing this settlement on behalf of the class. The Court will decide if a Service Award is appropriate and if so, the amount of the award.

12. How much of the settlement fund will be used to pay the Class Administrator’s expenses?

The Claims Administrator has estimated its total costs at \$_____, and agreed to cap them at \$_____.

13. How much will my payment be?

The balance of the Settlement Fund will be divided among all Class Members on a *pro rata* basis according to an allocation in the Settlement Agreement to members who incurred an overdraft fee on checking accounts which was assessed while the ledger balance was sufficient to pay for the transaction.

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

No. Any amount you are entitled to under the terms of the settlement will be distributed to you unless you choose to exclude yourself from the settlement or “opt out.” 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. In that case, if you choose to seek recovery against Defendant, then you will have to file a separate lawsuit or claim.

15. When will I receive my payment?

The Court will hold a Fairness Hearing (explained below in Questions 22-24) on to consider whether the settlement should be approved. If the Court approves the settlement, then the claims administrator should begin paying claims within approximately 10 days. 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**16. 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 Claims Administrator that you want to be excluded. Your letter can simply say “I hereby elect to be excluded from the settlement in the *Wellington/Conley v. Empower Federal Credit Union* class action.” Be sure to include your name, last four digits of your member number, address, telephone number, and email address. Your exclusion or opt out request must be postmarked by ____, and sent to:

Wellington/Conley v. Empower Federal Credit Union Claims Administrator
Attn:

ADDRESS OF THE CLAIMS ADMINISTRATOR

17. What happens if I opt out of the settlement?

If you opt out of the settlement, you will preserve and not give up any of your rights to sue Defendant for the claims alleged in this case. However, you will not be entitled to receive a payment from this settlement.

18. If I exclude myself, can I obtain a payment?

No. If you exclude yourself, you will not be entitled to a payment.

OBJECTING TO THE SETTLEMENT

19. How do I notify the Court that I do not like the settlement?

You can object to the settlement or any part of it that you do not like **IF** you do not exclude yourself or opt out from the settlement. (Class Members who exclude themselves from the settlement have no right to object to how other Class Members are treated.) To object, you must send a written document to the Claims Administrator at the address below. Your objection should say that you are a Class Member, that you object to the settlement, and the factual and legal reasons why you object, and whether you intend to appear at the hearing. In your objection, you must include your name, address, telephone number, email address (if applicable) and your signature.

All objections must be post-marked no later than _____, and must be mailed to the Court as follows: United States District Court for the Northern District of New York, James T. Foley Courthouse, 445 Broadway, Albany NY, 12207. And to the Claims Administrator as follows:

CLAIMS ADMINISTRATOR Wellington/Conley v. Empower Federal Credit Union Claims Administrator Attn: <div style="background-color: yellow; padding: 2px; display: inline-block; text-align: center;"> ADDRESS OF THE CLAIMS ADMINISTRATOR </div>

20. What is the difference between objecting and requesting exclusion from the settlement?

Objecting is telling the Court that you do not believe the settlement is fair, reasonable, and adequate for the class, and asking the Court to reject it. You can object only if you do not opt out of the settlement. If you object to the settlement and do not opt out, then you are entitled to a payment if the settlement is approved, but you will release claims you might have against Defendant. Excluding yourself or opting out is telling the Court that you do not want to be part of the settlement, and do not want to receive a payment or release claims you might have against Defendant for the claims alleged in this lawsuit.

21. What happens if I object to the settlement?

If the Court sustains your objection, or the objection of any other Class Member, then there is no settlement. If you object, but the Court overrules your objection and any other objection(s), then you will be part of the settlement.

THE COURT'S FAIRNESS HEARING

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

The Court will hold a Final Approval or Fairness Hearing at _____ **on** _____ at the United States District Court for the Northern District of New York, located at James T. Foley Courthouse, 445

Broadway, Albany NY, 12207. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys' fees and expenses and how much the Named Plaintiffs should get as a "Service Award" for acting as the class representative.

23. 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.

24. 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 19, above, the statement, "I hereby give notice that I intend to appear at the Final Approval Hearing."

SUBMIT A CLAIM

25. How do I make a claim if I received a Claim Form?

If you received a Claim Form, then you should use it to make a claim. It should be filled out, signed, and sent to the Claims Administrator.

All claims must be post-marked no later than _____, and must be mailed to as follows:

<p align="center">CLAIMS ADMINISTRATOR</p> <p align="center">Wellington/Conley v. Empower Federal Credit Union Claims Administrator Attn: ADDRESS OF THE CLAIMS ADMINISTRATOR</p>

IF YOU DO NOTHING

26. What happens if I do nothing at all?

If you do nothing at all, and if the settlement is approved, then you may receive a payment that represents your share of the Settlement Fund net of attorneys' fees, Claims Administrator expenses, and the Named Plaintiffs' Service Award. You will be considered a part of the class, and you will give up claims against Defendant for the conduct alleged in this lawsuit. You will not give up any other claims you might have against Defendant that are not part of this lawsuit.

THE LAWYERS REPRESENTING YOU

27. Do I have a lawyer in this case?

The Court ordered that the lawyers and their law firms referred to in this notice as “Class Counsel” will represent you and the other Class Members.

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

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

29. Who determines what the attorneys’ fees will be?

The Court will be asked to approve the amount of attorneys’ fees at the Fairness Hearing. Class Counsel will file an application for fees and costs and will specify the amount being sought as discussed above. You may review the fee application at [WEBSITE] or view a physical copy at the Office of the Clerk of the United States District Court for the Northern District of New York, which is located at James T. Foley Courthouse, 445 Broadway, Albany NY, 12207.

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 Northern District of New York, which is located at James T. Foley Courthouse, 445 Broadway, Albany NY, 12207, by asking for the court file containing the Motion For Preliminary approval of Class Settlement (the settlement agreement is attached to the motion).

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 Claims Administrator as follows:

Wellington/Conley v. Empower Federal Credit Union
Claims Administrator
ADDRESS OF THE CLAIMS ADMINISTRATOR

For more information you also can contact the Claims Administrator or Class Counsel as follows:

Wellington/Conley v. Empower Federal Credit Union Claims Administrator

Attn:

ADDRESS OF THE CLAIMS ADMINISTRATOR

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

Richard D. McCune
McCune Wright Alevaro, LLP
3281 E. Guasti Road, Ste. 100
Ontario, CA 91761
Telephone: (909) 557-1250
rdm@mccunewright.com

Joseph I. Marchese
Bursor & Fisher, P.A.
888 Seventh Avenue
New York, NY 10019
Telephone: (646) 837-7150
jmarshese@bursor.com

Elaine S. Kusel
McCune Wright Arevalo LLP
One Gateway Plaza, Suite 1500
Newark, NJ 07102
Telephone: (973) 737-9981
esk@mccunewright.com

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

Exhibit 2

Subject of Email: Legal Notice of Class Action Settlement

(Body of email below, dynamic text is in purple and will appear black in final email)

ATTENTION:

<<FName1>><<MName1>><<LName1>>

<<FName2>><<MName2>><<LName2>>

<<Business>>

<<Rep>>

Wellington/Conley v. Empower Federal Credit
Nos. 5:20-cv-01367, 5:20-cv-00566

**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 A CHECKING ACCOUNT WITH EMPOWER FEDERAL
CREDIT UNION (“EMPOWER” OR “DEFENDANT”) AND YOU WERE CHARGED
AN OVERDRAFT FEE BETWEEN APRIL 27, 2015 AND SEPTEMBER 24, 2021, THEN
YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION
SETTLEMENT.**

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

**This email only summarizes the proposed settlement. The full Notice and Settlement
Agreement can be viewed and downloaded from the settlement website at
[www. \[REDACTED\] .com](http://www. [REDACTED] .com).**

What is this lawsuit about, and who is included in the settlement?

The lawsuits that are being settled are entitled *Danielle Wellington v. Empower Federal Credit Union*, in the United States District Court for the Northern District of New York, Case No. 5:20-cv-01367, and *Dianna Conley v. Empower Federal Credit Union*, in the United States District Court for the Northern District of New York, Case No. 5:20-cv-00566. The cases are each a “class action.” That means that the “Named Plaintiffs,” Danielle Wellington and Dianna Conley, are individuals who are acting on behalf of a group. The group is made up of all members of Empower (the “Defendant”) who had a checking account with Empower and were assessed an Overdraft Fee on any type of payment transaction from April 27, 2015 through September 24, 2021, against their checking account if, at the time such fee was assessed, the member had sufficient money in his or her ledger balance to cover the transaction that resulted in the fee. The persons in this group are collectively called the “Class Members.”

The Named Plaintiffs claim Defendant improperly charged overdraft fees in checking accounts when members had enough money in the balance to cover the transaction if holds placed on

pending transactions or deposits were not deducted from the balance, *i.e.*, the ledger balance. Defendant does not deny it charged overdraft fees but contends it did so properly and in accordance with the terms of its agreements and applicable law. Defendant contends it assessed overdraft fees based on the available balance in a member's account. Defendant maintains that this practice is proper and was disclosed to its members, and therefore denies that its practices give rise to claims for damages by the Named Plaintiffs or any Class Member.

Why did I receive this Notice of this lawsuit?

You received this Notice because Defendant's records indicate that you are in the group that was alleged to have been charged improper overdraft fee(s). The Court directed that this Notice be sent to all Class Members because each Class 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.

What does the settlement provide?

Empower has agreed to create a Settlement Fund of \$2,000,000. In addition, Empower has agreed to change certain overdraft practices and disclosures, and has agreed to forgive eligible overdraft fees assessed on Class Members whose accounts were closed and uncollected with a negative balance from April 27, 2015 through September 24, 2021. Together these constitute the Value of the Settlement.

Attorneys' fees, litigation costs, a Service Award to the Named Plaintiffs, and the costs paid to a third-party Claims Administrator to administer the settlement (including mailing and emailing this notice) will be paid out of the Settlement Fund first. The balance of the Settlement Fund will then be divided among all Class Members *pro rata* based on the allocation in the Settlement Agreement and the amount of eligible overdraft fees they paid.

Do I have to do anything if I want to participate in the settlement?

You may make a claim for overdraft fees which were paid by you if there was no refund of the overdraft fee regardless of the funds in your account. The number of such overdraft fees you may have incurred are shown on the Claim Form attached to this Notice. If you did not receive a Claim Form, then you have no eligible fees of this type and therefore need not make a claim.

However, as long as you do not opt out you are entitled to a payment or forgiveness of fees that are owing but have not been paid. If you are entitled to a payment, then a credit will be applied to your account if you are an existing member, or a check will be mailed to you at the last known address Empower has for you if you are not an existing credit union member. If your address has changed, you should provide your current address to the Claims Administrator at the address set forth under "Other Options," below. Excluding yourself from the settlement means you choose not to participate in the settlement. You will keep your individual claims against Empower, but you will not receive a payment. If you choose to seek recovery against Empower, then you will have to file a separate lawsuit or claim.

Do I have a lawyer in this case?

The Court ordered that the lawyers Richard D. McCune and Elaine S. Kusel of McCune Wright Arevalo, LLP and Joseph I. Marchese of Bursor & Fisher, P.A (“Class Counsel”) will represent you and the other Class Members. You do not have to pay for Class Counsel. They will apply for one-third of the Value of the Settlement to be awarded by the Court. Complete contact information for Class Counsel can be found on the settlement website at [www. \[REDACTED\] .com](http://www. [REDACTED] .com).

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

The Court will hold a Final Approval or Fairness Hearing at _____ **on** _____ at the United States District Court for the Northern District of New York, located at James T. Foley Courthouse, 445 Broadway, Albany NY, 12207. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys’ fees and expenses and how much the Named Plaintiffs should get as a “Service Award” for acting as the class representative.

Other Options

If you do not want to receive a payment, or if you want to keep any right you may have to sue Empower 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 Claims Administrator requesting to be excluded. Your letter can simply say “I hereby elect to be excluded from the settlement in the *Wellington/Conley v. Empower Federal 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. The deadline for sending a letter to exclude yourself from, or opt out of, the settlement is _____.

You can object to the settlement or any part of it that you do not like **IF** you do not exclude yourself, or opt out, from the settlement. (Class Members who exclude themselves from the settlement have no right to object to how other Class Members are treated.) To object, you must mail a written document to the Claims Administrator at the address below. Your objection should say that you are a Class Member, that you object to the settlement, the factual and legal reasons why you object, whether you intend to appear at the hearing, and whether you are represented by counsel, and if so, the name of your attorney and contact information. In your objection, you must include your name, address, telephone number, email address (if applicable) and your signature. The deadline to file an objection with the Court is [REDACTED]. All requests for exclusion and objections must be postmarked no later than their Court-ordered deadlines and mailed to the Claims Administrator as follows:

**Wellington/Conley v. Empower Federal Credit Union Claims Administrator
ADDRESS**

You may hire your own attorney, at your own expense, to appear or speak for you at the hearing.

Questions?

Detailed information about the settlement, including complete details on how to exclude yourself or object, is available at the settlement website at www._____.com or by calling toll-free on 1-855-XXX-XXXX.

Please do not contact the Court or any representative of Empower Federal Credit Union about this Notice or settlement. They will not be able to provide legal advice or answer your questions.