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SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

STEVE R. MARICAL, on behalf of himself and
all others similarly situated, and EMILY J.
ANDERSON, in her individual capacity

No. 19-2-20417-6 KNT

Plaintiffs,

v.

BOEING EMPLOYEES' CREDIT UNION,

Defendant.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement")¹ is made and entered into this 30th day of April, 2021, by and among (1) Plaintiff Steve R. Marical, individually and on behalf of the Settlement Class, (2) Boeing Employees' Credit Union (collectively with Plaintiff Steve R. Marical, "Parties"), and (3) Plaintiff Emily J. Anderson, and, subject to approval as required by the Washington Civil Rules. As provided in this Agreement, Plaintiff Steve R. Marical, Class Counsel, and BECU stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a Final Order and Judgment, all claims of the Settlement Class against BECU in the action titled *Steve R. Marical et al. v. Boeing Employees' Credit Union*, No. 19-2-20417-6 ("Action") shall be settled and compromised on the terms and conditions contained herein.

¹ All capitalized terms have the same meanings as those given to them in Section II below.

1 **I. RECITALS**

2 1. On August 2, 2019, Plaintiffs filed a Complaint against BECU regarding its
3 practices for charging overdraft and insufficient funds (“NSF”) fees. Plaintiffs challenge BECU’s
4 practice of assessing overdraft and NSF fees based on the member’s available balance, rather than
5 the “ledger balance” which does not account for pending transactions or other holds. Second,
6 Plaintiffs challenge BECU’s practice of assessing NSF fees when a transaction is re-presented—
7 that is, presented to BECU for payment again after payment was previously declined and was the
8 basis for an NSF fee. The Complaint alleged claims for breach of contract, breach of the covenant
9 of good faith and fair dealing, violation of the Washington Consumer Protection Act (“CPA”),
10 and unjust enrichment.

11 2. On September 9, 2019, BECU moved to dismiss the Complaint. After briefing and
12 oral argument, the Court granted BECU’s motion in part by dismissing Plaintiffs’ contract related
13 claims and permitting Plaintiffs’ claims to proceed under the Washington CPA.

14 3. The Parties and Plaintiff Anderson engaged in discovery. On November 6, 2020,
15 Plaintiffs filed a motion for class certification, which BECU opposed in its response on December
16 7, 2020.

17 4. Between the filing of Plaintiffs’ motion for class certification and when BECU
18 filed its response, the Parties and Plaintiff Anderson stipulated to the withdrawal of Plaintiff
19 Anderson as a class representative. Plaintiff Anderson proceeds in this case only as a member of
20 the class.

21 5. After BECU filed its response to Plaintiffs’ motion for class certification, the
22 Parties’ counsel met and conferred about settlement. The Parties successfully mediated this case
23 on February 9, 2021, with the assistance of Mediator Stew Cogan. They agreed to the material
24 terms of settlement on that date, which they memorialized in a term sheet executed on February 9,
25 2021.

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1 6. The Parties now agree to settle the Action in its entirety, without any admission of
2 liability, with respect to all Released Claims of the Releasing Parties. The Parties intend this
3 Agreement to bind the Plaintiffs, BECU, and all Settlement Class Members.

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

7 **II. DEFINITIONS**

8 In addition to the terms defined at various points within this Agreement, the following
9 defined terms apply throughout this Agreement

10 7. “Account” means any checking account maintained with BECU.

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

13 9. “Action” means *Steve R. Marical et al. v. Boeing Employees’ Credit Union*, No.
14 19-2-20417-6 KNT.

15 10. “Available Balance NSF Fee” means an NSF fee charged by BECU based on
16 available balance when the account’s ledger balance met or exceeded the amount of the
17 transaction, or would have met or exceeded the amount of the transaction but for previously
18 assessed Available Balance NSF or Available Balance Overdraft Fees.

19 11. “Available Balance Overdraft Fee” means an overdraft fee charged by BECU
20 based on available balance when the account’s ledger balance met or exceeded the amount of the
21 transaction at any time between the time of the transaction and the time the transaction posted, or
22 would have met or exceeded the amount of the transaction but for previously assessed Available
23 Balance NSF, or Available Balance Overdraft Fees.

24 12. “BECU” means Boeing Employees’ Credit Union.

25 13. “Class Counsel” means

26 Beth E. Terrell
27 Ari Y. Brown

1 Toby J. Marshall
2 TERRELL MARSHALL LAW GROUP PLLC
3 936 North 34th Street, Suite 300
4 Seattle, Washington 98103

5 E. Michelle Drake
6 Joseph C. Hashmall
7 BERGER & MONTAGUE, P.C.
8 43 SE Main Street, Suite 505
9 Minneapolis, Minnesota 55414

10 Walter M. Smith
11 Steve E. Dietrich
12 SMITH & DIETRICH LAW OFFICES PLLC
13 3905 Martin Way East, Suite F
14 Olympia, Washington 98506

15 and other such counsel as are identified in Class Counsel's request for attorneys' fees and costs.

16 14. "Class Representative" means Steve R. Marical.

17 15. "Court" means the Superior Court for the State of Washington King County.

18 16. "Current Account Holder" means a Settlement Class Member who maintains his or
19 her Account as of the date that the Net Settlement Fund is distributed to Settlement Class
20 Members pursuant to this Agreement.

21 17. "Effective Date" means the 5th day after which all of the following events have
22 occurred:

23 a. The Court has entered without material change the Final Approval Order
24 and Final Judgment; and

25 b. The time for seeking rehearing or appellate or other review has expired, and
26 no appeal or petition for rehearing or review has been timely filed; or the Settlement is affirmed
27 on appeal or review without material change, no other appeal or petition for rehearing or review is
pending, and the time period during which further petition for hearing, review, appeal, or
certiorari could be taken has finally expired and relief from a failure to file same is not available.

18. "Escrow Account" means the interest-bearing account to be established by the
Settlement Administrator consistent with the terms and conditions described in Section IV below.

1 19. "Final Approval" means the date that the Court enters an Order granting final
2 approval to the Settlement and determines the amount of attorneys' fees, costs, and expenses
3 awarded to Class Counsel and the amount of any Service Award to the Class Representative. The
4 proposed Final Approval Order shall be in a form agreed upon by Class Counsel and BECU. In
5 the event that the Court issues separate orders addressing the foregoing matters, then Final
6 Approval means the date of the last of such orders.

7 20. "Final Approval Hearing" means the hearing set by the Court but no earlier than
8 60 days after the Initial Mailed Notice is sent, to determine the fairness of the Settlement and
9 whether to approve its terms.

10 21. "Final Approval Order" means the final order that the Court enters upon Final
11 Approval, which shall be substantially in the form attached as an exhibit to the Motion for Final
12 Approval. In the event that the Court issues separate Orders addressing the matters constituting
13 Final Approval, then the Final Approval Order includes all such Orders.

14 22. "Final Judgment" means the date after which entry of judgment by the Court in
15 connection with the Final Approval Order becomes final, after any appeals have ended without
16 reversal, ending the Action and resolving all claims.

17 23. "Former Account Holder" means a Settlement Class Member who no longer
18 maintains his or her Account as of the date that the Net Settlement Fund is distributed to
19 Settlement Class Members pursuant to this Agreement.

20 24. "Motion for Preliminary Approval" means the motion Class Representative Steve
21 R. Marical will file with the Court seeking an order preliminarily approving of the Settlement.

22 25. "Net Settlement Fund" means the Settlement Fund, minus Court-approved
23 attorneys' fees, costs and expenses, any Court-approved Service Award to Class Representative,
24 and Settlement Administration Costs.

25 26. "Notice" means the notices of this class action lawsuit and proposed settlement
26 that the Class Representative will ask the Court to approve in connection with the Motion for
27 Preliminary Approval.

1 27. "Notice Program" means the methods provided for in this Agreement for giving
2 the Notice and consists of Postcard Notice, Email Notice and Long Form Notice (all defined
3 herein below), which shall be substantially in the forms as the exhibits attached to the Motion for
4 Preliminary Approval of the Settlement.

5 28. "Opt-Out Period" means the period that begins the day after the earliest date on
6 which the Notice is first mailed or emailed, and that ends 45 days later.

7 29. "Plaintiffs" means Steve R. Marical and Emily J. Anderson.

8 30. "Preliminary Approval" means the date that the Court enters, without material
9 change, an Order preliminarily approving the Settlement.

10 31. "Preliminary Approval Order" means the Court's order on Plaintiffs' Motion for
11 Preliminary Approval approving the Notice Program and authorizing Notice, which shall be
12 substantially in the form of the exhibits attached to the Motion for Preliminary Approval.

13 32. "Releases" means all of the releases contained in Section XIV hereof.

14 33. "Released Claims" means all claims to be released as specified in Section XIV
15 hereof.

16 34. "Released Parties" means those persons released as specified in Section XIV
17 hereof.

18 35. "Releasing Parties" means Plaintiffs and all Settlement Class Members, and each
19 of their respective heirs, assigns, beneficiaries and successors.

20 36. "Release Period" means the period from August 2, 2013, through July 1, 2020.

21 37. "Representment NSF Fees" means the second or subsequent NSF Fee charged due
22 to insufficient funds when there is a re-presented debit item, ACH, or check submitted to BECU
23 for payment.

24 38. "Service Award" means any Court ordered payment to Class Representative for
25 serving in that role, which is in addition to any payment due to him as a Settlement Class
26 Member.

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1 39. "Settlement" means the settlement into which the Parties have entered to resolve
2 the Action. The terms of the Settlement are as set forth in this Agreement.

3 40. "Settlement Administration Costs" means all costs of the Settlement Administrator
4 regarding notice and settlement administration, including notices.

5 41. "Settlement Administrator" means JND Legal Administration.

6 42. "Settlement Class" means all current and former BECU consumer members who
7 are residents of the State of Washington and who, (a) between August 2, 2015, and July 1, 2020,
8 were charged one or more (1) Available Balance Overdraft or Available Balance NSF Fees, where
9 the member's ledger balance would have been sufficient to cover the transaction, (2) Available
10 Balance Overdraft or Available Balance NSF fees, where the member's ledger balance would
11 have been sufficient to cover the transaction but for previously incurred fees described in (1) on
12 the same day; or (b) between August 2, 2013, and July 1, 2020, were charged one or more
13 Representment NSF Fees. The start of the Settlement Class period regarding Representment NSF
14 Fees may be adjusted to August 2, 2015 based on the results of confirmatory discovery. Excluded
15 from the Settlement Class is BECU, its parents, subsidiaries, affiliates, officers and directors, all
16 Settlement Class members who make a timely election to be excluded, and all judges assigned to
17 this litigation and their immediate family members.

18 43. "Settlement Class Member" means any person included in the Settlement Class
19 who does not opt-out of the Settlement.

20 44. "Settlement Class member" means all members of the Settlement Class, regardless
21 of whether they have opted-out of the Settlement Class.

22 45. "Settlement Class Member Payment" means the cash distribution that will be made
23 from the Net Settlement Fund to each Settlement Class Member, pursuant to the allocation terms
24 of the Settlement.

25 46. "Settlement Fund" means the \$6,000,000 common cash fund for the benefit of the
26 Settlement Class that BECU is obligated to pay under the Settlement. The Settlement Fund will
27 be used to pay Settlement Class Member Payments, any award of attorneys' fees, litigation costs

1 and expenses and Service Award to Mr. Marical ordered by the Court, and Settlement
2 Administration Costs. Except as specified in this paragraph, BECU is not required to place all or
3 any of Settlement Fund into a separate bank account and will not relinquish control of any funds
4 until payments are due, as required by the Settlement. BECU shall not be responsible for any
5 payments or obligations other than those specified in this Agreement. To the extent the Final
6 Approval Order and Final Judgment is not entered or Final Approval does not occur, BECU will
7 be entitled to a refund of any remaining amounts paid in trust to the Settlement including but not
8 limited to costs of providing Notice.

9 47. "Settlement Website" means the website that the Settlement Administrator will use
10 as a means for Settlement Class members to obtain notice of and information about the
11 Settlement, through and including hyperlinked access to this Agreement, the Long Form Notice,
12 the Preliminary Approval Order approving this Settlement, and such other documents as the
13 Parties agree to post or that the Court orders posted on the website. These documents shall
14 remain on the Settlement Website at least until Final Approval. The URL of the Settlement
15 Website shall be www.NSFsettlement.com.

16 III. CERTIFICATION OF THE SETTLEMENT CLASS

17 48. For Settlement purposes only, Plaintiffs and BECU agree to ask the Court to
18 certify the Settlement Class under Civil Rule 23.

19 IV. SETTLEMENT CONSIDERATION AND THE ESCROW ACCOUNT

20 49. Subject to approval by the Court, under the Settlement, the total cash consideration
21 to be provided by BECU shall be \$6,000,000 inclusive of the amount paid to Settlement Class
22 Members, any and all attorneys' fees, costs and expenses awarded to Class Counsel, any Service
23 Award to the Class Representative, and all Settlement Administration Costs. Except as otherwise
24 specified in this Agreement, BECU shall not be responsible for any other payments under this
25 Agreement. If there are no objections to the Settlement, then within 15 days after Final Approval,
26 or if there are objections to the Settlement, then within 15 days of the Effective Date, BECU shall
27 deposit into the Escrow Account \$6,000,000, minus the amount of the Settlement Class Member

Deleted: MaricalOverdraftFeeLitigation

Deleted: , or such other URL as Class Counsel and BECU agree upon in writing

1 Payments to be credited to the Accounts of Settlement Class Members who are Current Account
2 Holders.

3 50. The funds in the Escrow Account shall be deemed a “qualified settlement fund”
4 within the meaning of United States Treasury Reg. § 1.468B-1 at all times since creation of the
5 Escrow Account. All taxes (including any estimated taxes, and any interest or penalties relating
6 to them) arising with respect to the income earned by the Escrow Account or otherwise, including
7 any taxes or tax detriments that may be imposed upon BECU, BECU’s Counsel, Class
8 Representative, and/or Class Counsel with respect to income earned by the Escrow Account for
9 any period during which the Escrow Account does not qualify as a “qualified settlement fund” for
10 the purpose of federal or state income taxes or otherwise (collectively “Taxes”), shall be paid out
11 of the Escrow Account. BECU and BECU’s Counsel and Plaintiff and Class Counsel shall have
12 no liability or responsibility for any of the Taxes. The Escrow Account shall indemnify and hold
13 BECU and BECU’s Counsel and Class Representative and Class Counsel harmless for all Taxes
14 (including, without limitation, Taxes payable by reason of any such indemnification).

15 **V. NONMONETARY CONSIDERATION**

16 51. BECU will publish prominently on its website a hyperlink to a statement of
17 BECU’s overdraft and NSF policies, including the fact that overdraft and NSF fees are calculated
18 based on Available Balance rather than Ledger Balance and the examples of how Available
19 Balance is calculated.

20 52. BECU agrees to create a formal policy governing refunds of NSF and Overdraft
21 fees, by which BECU will, upon request from a BECU member in good standing, refund one NSF
22 or Overdraft fee annually. BECU will create a notification to be sent to any member receiving a
23 NSF or Overdraft refund under this policy, informing the member of the basis for the fee, and
24 offering money management resources.

25 53. In connection with the Notice Program described herein, BECU will remind class
26 members of the options for opting in or out of overdraft coverage and the Courtesy Pay for
27 Overdraft opt-in program. The notice will describe the use of available balance to determine

1 overdraft and NSF fees and describe the factors that cause an available balance to differ from a
2 ledger balance, and inform class members that they may change their enrolment in the Courtesy
3 Pay for Overdraft program by contacting BECU to opt in or out.

4 54. BECU will provide Class Counsel proposed drafts of the proposed text to be
5 included in the policies, notices, and information addressed in paragraphs 51 - 53 above no later
6 than April 6, 2021. BECU and Class Counsel will confer to seek agreement on the text of each
7 document. The text will be included with the Motion for Preliminary Approval for the Court's
8 approval.

9 55. Within three years of Settlement, BECU will implement a checking account
10 product featuring no NSF or Overdraft fees. The parties acknowledge that the account is still in
11 development phase, but will presumptively have at least the following characteristics:

- 12 a. Full use of Debit Card, ATMs, Telephone, Mobile, In Person, and Online
13 banking services.
- 14 b. No NSF fees and no Overdraft Fees will be charged on the accounts.
- 15 c. There shall be no fees for the following services:
- 16 • Mobile and Online Banking
 - 17 • Telephone Banking
 - 18 • In person banking
 - 19 • Zelle, BillPay access
 - 20 • Debit Card with ATM network access
- 21 d. Monthly maintenance fee shall be equal to or less than \$5.00.

22
23 56. BECU acknowledges that Plaintiff's lawsuit was a catalyst for the nonmonetary
24 relief described above, along with the changes to BECU's July 2020 account agreement.

25 57. Plaintiff Marical will use his best efforts to permanently end his membership at
26 BECU by closing his accounts by December 31, 2021.

27

1 **VI. SETTLEMENT APPROVAL**

2 58. Upon execution of this Agreement, Class Counsel shall promptly move the Court
3 for an Order granting Preliminary Approval of this Settlement. The proposed Preliminary
4 Approval Order that will be attached to the motion shall be in the form agreed upon by Class
5 Counsel and BECU attached as Exhibit A to this Agreement. The motion for Preliminary
6 Approval shall, among other things, request that the Court: (1) approve the terms of the
7 Settlement as within the range of fair, adequate and reasonable; (2) provisionally certify the
8 Settlement Class pursuant to Civil Rule 23 for settlement purposes only; (3) approve the Notice
9 Program set forth herein and approve the form and content of the Notices of the Settlement; (4)
10 approve the procedures set forth herein below for Settlement Class members to exclude
11 themselves from the Settlement Class or to object to the Settlement; (5) stay the Action pending
12 Final Approval of the Settlement; and (6) schedule a Final Approval Hearing for a time and date
13 mutually convenient for the Court, Class Counsel, and counsel for BECU but no earlier than 60
14 days following the Initial Mailing Deadline, at which the Court will conduct an inquiry into the
15 fairness of the Settlement, determine whether it was made in good faith, and determine whether to
16 approve the Settlement and Class Counsel's application for attorneys' fees, costs, and expenses,
17 and for a Service Award to the Class Representative.

18 **VII. DISCOVERY AND SETTLEMENT DATA**

19 59. Class Counsel and BECU already have engaged in discovery related to liability
20 and damages. For purposes of effectuating this Settlement, BECU will use its best efforts to
21 provide to Class Counsel and its expert by April 6, 2021, (or as soon thereafter as is reasonably
22 possible) data for the entirety of the Release Period sufficient for Plaintiffs' expert to determine
23 Settlement Class membership and ultimately each Settlement Class Member Payment. Because
24 Plaintiffs' expert will not have access to Settlement Class member names or complete account
25 numbers, Plaintiffs' expert will provide results to BECU, who will then create a list of Settlement
26 Class members and their electronic mail or postal addresses and provide that list to the Settlement
27 Administrator to provide Notice to the Settlement Class of the terms of the Settlement. BECU will

1 bear the expense of extracting the necessary data to make available to Class Counsel's expert for
2 analysis, while Class Counsel shall be responsible for paying Class Counsel's expert, who will
3 analyze the data provided to determine Settlement Class membership as well as the amount of each
4 Settlement Class Member's damages using a methodology to be approved by the Court. Prior to
5 seeking final approval, the parties may agree that the start of the Settlement Class period regarding
6 Representation NSF Fees may be adjusted to August 2, 2015 based on the results of confirmatory
7 discovery.

8 **VIII. SETTLEMENT ADMINISTRATOR**

9 60. Class Counsel, in consultation with BECU, has selected the Settlement
10 Administrator. The Settlement Administrator shall administer various aspects of the Settlement as
11 described below and perform such other functions as are specified for the Settlement
12 Administrator elsewhere in this Agreement, including, but not limited to, providing Mailed and
13 Email Notice to Settlement Class members and distributing the Settlement Fund as provided
14 herein. The duties of the Settlement Administrator, in addition to other responsibilities that are
15 described in the preceding paragraph and elsewhere in this Agreement, are as follows:

- 16 a. Use the name and address information for Settlement Class members
17 provided by BECU in connection with the Notice process approved by the Court, for the
18 purpose of mailing the Mailed Notice and sending the Email Notice, and later mailing
19 distribution checks to Former Account Holder Settlement Class Members, and to Current
20 Account Holder Settlement Class Members where it is not feasible or reasonable for
21 BECU to make the payment by a credit to the Settlement Class Members' Accounts;
- 22 b. Establish and maintain a Post Office box for the receipt of opt-out requests
23 and objections;
- 24 c. Establish and maintain the Settlement Website;
- 25 d. Establish and maintain an automated toll-free telephone line for Settlement
26 Class members to call with Settlement-related inquiries, and answer the frequently asked
27

1 questions of Settlement Class members who call with or otherwise communicate such
2 inquiries;

3 e. Respond to any mailed Settlement Class member inquiries;

4 f. Process all requests for exclusion from the Settlement Class;

5 g. Provide weekly reports to Class Counsel and BECU that summarize the
6 number of requests for exclusion and/or objections received that week, the total number of
7 exclusion requests and/or objections received to date, and other pertinent information;

8 h. In advance of the Final Approval Hearing, prepare an affidavit to submit to
9 the Court confirming that the Notice Program was completed, that the Notice requirements
10 have been met, describing how the Notice Program was completed, providing the names
11 of each Settlement Class member who timely and properly opted-out from the Settlement
12 Class, as well as those Settlement Class Members that timely filed objections, and other
13 information as may be necessary to allow the Parties to seek and obtain Final Approval;

14 i. Identify to BECU the amount of the Net Settlement Fund required to make
15 Settlement Class Member Payments to Current Account Holders by a credit to those
16 Settlement Class Members' Accounts, as well as the amount that shall be paid into the
17 Escrow Account;

18 j. Perform all tax-related services for the Escrow Account as provided in the
19 Agreement;

20 k. Pay invoices, expenses and costs upon approval by Class Counsel and
21 BECU, as provided in this Agreement; and

22 l. Any other Settlement-administration-related function at the instruction of
23 Class Counsel and BECU, including, but not limited to, verifying that the Settlement Fund
24 has been distributed.

25 **IX. NOTICE TO SETTLEMENT CLASS MEMBERS**

26 61. Within 14 days after Preliminary Approval of the Settlement, at the direction of
27 Class Counsel and BECU's Counsel, the Settlement Administrator shall implement the Notice

1 Program provided herein, using the forms of Notice approved by the Court in the Preliminary
2 Approval Order. The Notice shall include, among other information: a description of the material
3 terms of the Settlement; a date by which Settlement Class members may exclude themselves from,
4 or “opt-out” of, the Settlement Class; a date by which Settlement Class Members may object to the
5 Settlement; the date on which the Final Approval Hearing is scheduled to occur; and the address of
6 the Settlement Website at which Settlement Class members may access this Agreement and other
7 related documents and information. Class Counsel and BECU shall insert the correct dates and
8 deadlines in the Notice before the Notice Program commences, based upon those dates and
9 deadlines set by the Court in the Preliminary Approval Order. Notices and publications provided
10 under or as part of the Notice Program shall not bear or include the BECU logo or trademarks or
11 the return address of BECU, or otherwise be styled to appear to originate from BECU.

12 62. The Notice also shall include a procedure for Settlement Class members to opt-out
13 of the Settlement Class. A Settlement Class member may opt-out of the Settlement Class at any
14 time during the Opt-Out Period, provided the opt-out notice is postmarked no later than the last
15 day of the Opt-Out Period. Any Settlement Class member who does not timely and validly
16 request to opt-out shall be bound by the terms of this Agreement.

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

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

2 a. the name of the Action;

3 b. the objector's full name, address and telephone number;

4 c. an explanation of the basis upon which the objector claims to be a Settlement Class
5 Member;

6 d. all grounds for the objection, accompanied by any legal support for the
7 objection known to the objector or objector's counsel;

8 e. the number of times in which the objector has objected to a class action
9 settlement within the five years preceding the date that the objector files the objection, the
10 caption of each case in which the objector has made such objection, and a copy of any orders
11 related to or ruling upon the objector's prior objections that we issued by the trial and appellate
12 courts in each listed case;

13 f. the identity of all counsel who represent the objector, including any former or
14 current counsel who may be entitled to compensation for any reason related to the objection
15 to the Settlement or fee application;

16 g. a copy of any orders related to or ruling upon counsel's or the counsel's law
17 firm's prior objections that were issued by the trial and appellate courts in each listed case in
18 which the objector's counsel and/or counsel's law firm have objected to a class action
19 settlement within the preceding 5 years;

20 h. the objector's signature (an attorney's signature is not sufficient).

21 Class Counsel and/or BECU may conduct limited discovery on any objector consistent with
22 Washington Civil Rules.

23 65. Notice shall be provided to Settlement Class members in three different ways:
24 email notice to Account Holders for whom BECU has email addresses ("Email Notice"); postcard
25

1 notice sent by U.S. mail to Account Holders for whom BECU does not have valid email addresses
2 or from whose email addresses the Email Notice bounces back (“Postcard Notice”); and long
3 form notice, which will be written in both English and Spanish, and shall be available on the
4 Settlement Website and/or via mail upon a Settlement Class member’s request (“Long Form
5 Notice”). Email Notice and Postcard Notice shall collectively be referred to as “Mailed Notice.”
6 Not all Settlement Class members will receive all forms of notice, as detailed herein.

7 66. As detailed above in Section VII, BECU will cooperate with Class Counsel and its
8 expert to make available the necessary data to Class Counsel’s expert to determine Settlement
9 Class membership and determine each Settlement Class Member Payment. The Settlement
10 Administrator shall send out Email Notice to all Settlement Class members receiving Notice by
11 that method. For any Settlement Class Members for whom BECU does not have a valid email
12 address or from whose email addresses the Email Notice bounces back, the Settlement
13 Administrator shall run the physical addresses through the National Change of Address Database
14 and shall mail to all such Settlement Class members Postcard Notice. The initial Mailed Postcard
15 and Email Notice shall be referred to as “Initial Mailed Notice.”

16 67. The Settlement Administrator shall perform reasonable address traces for all Initial
17 Mailed Notice postcards that are returned as undeliverable. A “reasonable” tracing procedure
18 would be to run addresses of returned postcards through the Lexis/Nexis database that can be
19 utilized for such purpose. The Settlement Administrator shall promptly re-mail Postcard Notice to
20 those Settlement Class members whose new addresses were identified as of that time through
21 address traces (“Notice Re-mailing Process”). The Settlement Administrator shall also send
22 Postcard Notice to all Settlement Class members whose emails were returned as undeliverable and
23 complete such Notice pursuant to the deadlines described herein as they relate to the Notice Re-
24 mailing Process.

25 68. All costs and expenses related to the Notice Program shall be paid to the Settlement
26 Administrator from the Settlement Fund.

27

1 69. Within the provisions set forth in this Section VIII, further specific details of the
2 Notice Program shall be subject to the agreement of Class Counsel and BECU.

3 **X. FINAL APPROVAL ORDER AND JUDGMENT**

4 70. The Motion for Preliminary Approval of the Settlement will include a request to
5 the Court for a scheduled date on which the Final Approval Hearing will occur. Plaintiffs shall
6 file the Motion for Final Approval of the Settlement, and application for attorneys' fees, costs,
7 and expenses and for Service Award for the Class Representative, no later than 45 days before the
8 Final Approval Hearing. Plaintiffs will file their response to any objections and any supplemental
9 materials in support of final approval no later than 10 days before the Final Approval Hearing. At
10 the Final Approval Hearing, the Court will hear argument on the Motion for Final Approval of the
11 Settlement, and on Class Counsel's application for attorneys' fees, costs, and expenses, and for
12 the Service Award for the Class Representative. In the Court's discretion, the Court also will hear
13 argument at the Final Approval Hearing from any Settlement Class Members (or their counsel)
14 who object to the Settlement or to Class Counsel's application for attorneys' fees, costs, expenses,
15 or the Service Award application, provided the objector(s) submitted timely objections that meet
16 all of the requirements listed in the Agreement.

17 71. At or following the Final Approval Hearing, the Court will determine whether to
18 enter the Final Approval Order granting Final Approval of the Settlement and entering final
19 judgment thereon, and whether to approve Class Counsel's request for attorneys' fees, costs,
20 expenses, and a Service Award. The proposed Final Approval Order shall be in a form agreed
21 upon by Class Counsel and BECU. Such proposed Final Approval Order shall, among other
22 things:

- 23 a. Determine that the Settlement is fair, adequate, and reasonable;
 - 24 b. Finally certify the Settlement Class for settlement purposes only;
 - 25 c. Determine that the Notice provided satisfies due process requirements;
 - 26 d. Enter judgment dismissing the Action with prejudice;
- 27

1 e. Bar and enjoin all Releasing Parties from asserting any of the Released Claims, bar
2 and enjoin all Releasing Parties from pursuing any Released Claims against BECU or its affiliates
3 at any time, including during any appeal from the Final Approval Order, and retain jurisdiction
4 over the enforcement of the Court's injunctions;

5 f. Release BECU and the Released Parties from the Released Claims; and

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

9 **XI. DISTRIBUTION OF NET SETTLEMENT FUND**

10 72. Within 7 days after Final Approval, the Settlement Administrator shall identify to
11 BECU the full amount of Settlement Class Member Payments, along with the amount of each
12 Settlement Class Member's Payment to be credited to Current Account Holders' Accounts, as
13 well as the remaining amount of the \$6,000,000 Settlement Fund that shall be paid by BECU into
14 the Escrow Account.

15 73. Within 15 days after Final Approval if there are no objections to the Settlement or
16 15 days after the Effective Date if there are objections or an appeal, BECU shall wire to the
17 Escrow Account the remainder of the \$6,000,000 Settlement Fund.

18 74. Within 30 days after the Effective Date, BECU shall deposit the Settlement Class
19 Member Payments into Current Account Holders' Accounts. At BECU's option, the Settlement
20 Administrator may deposit the Settlement Class Member Payments into Current Account Holders'
21 Accounts, in which case, BECU shall pay the additional cost of the Settlement Administrator
22 effectuating the deposits into Current Account Holders' Accounts.

23 75. Within 30 days after the Effective Date, the Settlement Administrator shall pay
24 from the Escrow Account Former Account Holders their Settlement Class Member Payments by
25 check.

26

27

1 **XII. CALCULATION OF AUTOMATIC DISTRIBUTIONS FROM SETTLEMENT**
2 **FUND**

3 76. The calculation and implementation of allocations of the Settlement Fund
4 contemplated by this section shall be done by Class Counsel and its expert for the purpose of
5 compensating Settlement Class Members. BECU shall have the right but not the obligation to
6 review and challenge the accuracy of this calculation. The methodology provided for herein will
7 be applied to the data as consistently, sensibly, and conscientiously as reasonably possible,
8 recognizing and taking into consideration the nature and completeness of the data and the purpose
9 of the computations. Consistent with its contractual, statutory, and regulatory obligations to
10 maintain credit union security and protect its members' private financial information, BECU shall
11 make available such additional data and information as may reasonably be needed by Class
12 Counsel and its expert to confirm and/or effectuate the calculations and allocations contemplated
13 by this Agreement. Class Counsel shall confer with BECU's counsel concerning any such
14 additional data and information. All such data and information produced by BECU for the
15 purpose of confirming and/or effectuating the calculations and allocations contemplated by this
16 Agreement shall be returned to BECU's counsel or destroyed.

17 77. The amount of the Settlement Class Member Payment from the Settlement Fund to
18 which each Settlement Class Member is entitled for the Release Period (subject to the availability of
19 data) is to be determined using the following methodology or such other methodology as would
20 have an equivalent result:

21 a. All Accounts held by Settlement Class Members will be identified for
22 which BECU assessed Representment NSF Fees or Available Balance Overdraft or
23 Available Balance NSF Fees during the Release Period.

24 b. Representment NSF Fees and Available Balance Overdraft or Available
25 Balance NSF Fees will be totaled for each Account ("Relevant Fees").

26 c. Relevant Fees that were previously refunded or that remained uncollected
27 from each account will be subtracted from the total for each respective account ("Net

1 Relevant Fees”). Relevant Fees shall be considered uncollected only in cases in which the
2 fees had been assessed against the account thereby causing or increasing a negative
3 balance, the account was subsequently closed without any subsequent non-fraudulent
4 deposits that equaled or exceeded the amount of the fees being made to the account prior
5 to closure, and no successful efforts had been made to collect the negative balance that
6 existed at the time the account was closed.

7 d. The Net Settlement Fund will be allocated pro rata to the Settlement Class
8 Members based on their Net Relevant Fees.

9 78. The Settlement Administrator shall divide the total amount of the Net Settlement
10 Fund by the total amount of all Settlement Class Members’ Net Relevant Fees. This calculation
11 shall yield the “Pro Rata Percentage.”

12 79. Each Settlement Class Member’s Pro Rata Percentage will be multiplied by the
13 amount of the Net Settlement Fund, which yields a Pre-Adjustment Payment Amount for each
14 Settlement Class Member.

15 80. If any Settlement Class Member’s Pre-Adjustment Amount is less than \$5.00, the
16 Settlement Class Member’s Payment amount shall be adjusted to \$5.00. The remainder of the Net
17 Settlement Fund shall then be apportioned pro rata to all other Settlement Class Members by
18 multiplying those Settlement Class Members’ Pro Rata Percentage by the remaining amount of
19 the Net Settlement Fund.

20 81. The Parties agree the foregoing allocation formula is exclusively for purposes of
21 computing, in a reasonable and efficient fashion, the amount of any Settlement Class Member
22 Payment each Settlement Class Member should receive from the Net Settlement Fund. The fact
23 that this allocation formula will be used is not intended (and shall not be used) for any other
24 purpose or objective whatsoever.

25 82. Settlement Class Member Payments to Current Account Holders shall be made
26 first by depositing the Class Member’s Payment amount into those Account Holders’ Accounts,
27 or by mailing a standard size check if it is not feasible or reasonable to make the payment by a

1 direct deposit. BECU shall notify Current Account Holders of any such deposit on the Account
2 statement on which the credit is reflected by stating “Marical class settlement” or something
3 similar. BECU will bear any costs associated with implementing the Account deposits and
4 notification discussed in this paragraph.

5 83. Settlement Class Member Payments to Former Account Holders shall be made by
6 mailing a standard size check. Such mailing shall be accomplished by the Settlement
7 Administrator.

8 84. The amount of the Net Settlement Fund attributable to uncashed or returned checks
9 sent by the Settlement Administrator shall be held by the Settlement Administrator one year from
10 the date that the first distribution check is mailed by the Settlement Administrator. During this
11 time the Settlement Administrator shall make a reasonable effort to locate intended recipients of
12 settlement funds whose checks were returned (such as by running addresses of returned checks
13 through the Lexis/Nexis database that can be utilized for such purpose) to effectuate delivery of
14 such checks. The Settlement Administrator shall make up to three such additional attempt to
15 identify updated addresses and re-mail or re-issue a distribution check to those for whom an
16 updated address was obtained.

17 **XIII. DISPOSITION OF RESIDUAL FUNDS**

18 85. Any funds not claimed through the process of distribution of the Settlement Fund
19 shall be distributed 50% to Legal Foundation of Washington, and 50% to Financial Beginnings, a
20 501(c)(3) non-profit organization. No further distribution of residual funds or *cy pres* payment
21 will be made after the distribution as set forth in paragraph 83-85.

22 **XIV. RELEASE**

23 86. As of the Effective Date, Plaintiffs and each Settlement Class Member, each on
24 behalf of himself or herself and on behalf of his or her respective heirs, assigns, beneficiaries and
25 successors (“Releasing Parties”), shall automatically be deemed to have fully and irrevocably
26 released and forever discharged BECU and each of its present and former parents, subsidiaries,
27 divisions, affiliates, predecessors, successors and assigns, and the present and former directors,

1 officers, employees, agents, insurers, members, attorneys, advisors, consultants, representatives,
2 partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers,
3 predecessors, successors and assigns of each of them (“Released Parties”), of and from any and all
4 liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys’ fees, losses
5 and remedies, whether known or unknown, existing or potential, suspected or unsuspected,
6 liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory,
7 that result from, arise out of, are based upon, or relate to the conduct, omissions, duties or matters
8 that were or could have been alleged in the Action (“Released Claims”) relating to the assessment
9 of Representment NSF Fees and Available Balance Overdraft or Available Balance NSF Fees prior
10 to July 1, 2020.

11 87. Each Settlement Class Member is barred and permanently enjoined from bringing
12 on behalf of themselves, or through any person purporting to act on their behalf or purporting to
13 assert a claim under or through them, any of the Released Claims against BECU in any forum,
14 action, or proceeding of any kind.

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

1 89. Nothing in this Agreement shall operate or be construed to release any claims or
2 rights that BECU has to recover any past, present or future amounts that may be owed by
3 Plaintiffs or by any Settlement Class Member on his/her accounts, loans or any other debts with
4 BECU, pursuant to the terms and conditions of such accounts, loans, or any other debts.
5 Likewise, nothing in this Agreement shall operate or be construed to release any defenses or
6 rights of set-off that Plaintiffs or any Settlement Class Member has, other than with respect to the
7 claims expressly Released by this Agreement, in the event BECU and/or its assigns seeks to
8 recover any past, present or future amounts that may be owed by Plaintiffs or by any Settlement
9 Class Member on his/her accounts, loans or any other debts with BECU, pursuant to the terms and
10 conditions of such accounts, loans, or any other debts.

11 **XV. PAYMENT OF ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS**

12 90. Class Counsel shall apply to the Court for the Fee Award of up to 30% of the
13 Settlement Fund of \$6,000,000, plus out-of-pocket costs and expenses incurred by Class Counsel
14 in this litigation. Nothing in this Agreement requires BECU or its counsel to take any position
15 with respect to any motion or request made as contemplated by this Section. If the Fee Award
16 entered by the Court is less than that sought by Class Counsel, the difference will remain part of
17 the Settlement Fund. Any award of attorneys' fees, costs, and expenses to Class Counsel shall be
18 payable solely out of the Settlement Fund. The Parties agree that the Court's failure to approve,
19 in whole or in part, any award for attorneys' fees shall not prevent the Settlement Agreement from
20 becoming effective, nor shall it be grounds for termination.

21 91. If there are no objections to the Settlement, all Court-approved attorneys' fees, cost
22 and expenses shall be payable from the Escrow Account by the Settlement Administrator to Class
23 Counsel within 15 days of entry of a Final Approval Order. If there are objections to the
24 Settlement, or any appeals as to the propriety of the Settlement, any Court-awarded attorneys'
25 fees, costs and expenses, shall be payable from the Escrow Account by the Settlement
26 Administrator within 30 days of the Effective Date.

1 92. The payment of attorneys' fees, costs, and expenses of Class Counsel shall be
2 made as designated by Class Counsel. After the fees, costs and expenses have been paid, Class
3 Counsel shall be solely responsible for distributing each Class Counsel's firm's allocated share of
4 such fees, costs, and expenses to that firm. BECU shall have no responsibility for any allocation,
5 and no liability whatsoever to any person or entity claiming any share of the funds to be
6 distributed for payment of attorneys' fees, costs, or expenses or any other payments from the
7 Settlement Fund not specifically described herein.

8 93. Class Counsel will also seek a service award of up to \$7,500 for Plaintiff Marical.
9 Nothing in this Agreement requires BECU or its counsel to take any position with respect to any
10 motion or request made as contemplated by this Section. If the Service Award entered by the
11 Court is less than that sought by Class Counsel, the difference will remain part of the Settlement
12 Fund. The Service Award is to be paid by the Settlement Administrator from the Escrow Account
13 within 30 days of the Effective Date. The Service Award shall be paid to the Class
14 Representative in addition to the Settlement Class Member Payment. The Parties agree that the
15 Court's failure to approve the Service Award, in whole or in part, shall not prevent the Settlement
16 Agreement from becoming effective, nor shall it be grounds for termination.

17 **XVI. TERMINATION OF SETTLEMENT**

18 94. This Settlement may be terminated by either Class Counsel or BECU by serving on
19 counsel for the opposing Party and filing with the Court a written notice of termination within 15
20 days (or such longer time as may be agreed in writing between Class Counsel and BECU) after
21 any of the following occurrences:

- 22 a. Class Counsel and BECU agree to termination;
- 23 b. the Court rejects, materially modifies, materially amends or changes, or
24 declines to preliminarily or finally approve the Settlement;
- 25 c. an appellate court vacates or reverses the Final Approval Order, and the
26 Settlement is not reinstated and finally approved without material change by the Court on
27 remand within 360 days after such reversal;

1 d. any court incorporates into, or deletes or strikes from, or modifies, amends,
2 or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement terms
3 relating to the class period, the claims released, or the consideration paid in a way that Class
4 Counsel or BECU seeking to terminate the Settlement reasonably considers material;

5 e. the Effective Date does not occur; or

6 f. any other ground for termination provided for elsewhere in this Agreement.

7 95. BECU also shall have the right to terminate the Settlement by serving on Class
8 Counsel and filing with the Court a notice of termination within 14 days after its receipt from the
9 Settlement Administrator of any report indicating that the number of Settlement Class Members
10 who timely request exclusion from the Settlement Class equals or exceeds 7%.

11 **XVII. EFFECT OF A TERMINATION**

12 96. The grounds upon which this Agreement may be terminated are set forth herein
13 above. In the event of a termination, this Agreement shall be considered null and void; all of
14 Plaintiffs', Class Counsel's, and BECU's obligations under the Settlement shall cease to be of any
15 force and effect; any amounts in the Escrow Account shall be returned to BECU; and the Parties
16 shall return to the status *quo ante* in the Action as if the Parties had not entered into this
17 Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-
18 Settlement rights, claims, and defenses will be retained and preserved.

19 97. In the event of termination, BECU shall have no right to seek reimbursement from
20 Plaintiffs, Class Counsel, or the Settlement Administrator for Settlement Administration Costs paid
21 by BECU.

22 98. The Settlement shall become effective on the Effective Date unless earlier
23 terminated in accordance with the provisions hereof.

24 99. Certification of the Settlement Class shall have no bearing in deciding whether the
25 claims asserted in the Action are or were appropriate for class treatment in the absence of
26 settlement. If this Agreement terminates or is nullified, the provisional class certification shall be
27 vacated by its terms, and the Action shall revert to the status that existed before execution of this

1 Settlement Agreement. Thereafter, Plaintiffs shall be free to pursue any claims available to them,
2 and BECU shall be free to assert any defenses available to it, including but not limited to, denying
3 the suitability of this case for class treatment. Nothing in this Agreement shall be argued or
4 deemed to estop any Party from the assertion of such claims and defenses.

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

10 **XVIII. NO ADMISSION OF LIABILITY**

11 101. BECU continues to dispute its liability for the claims alleged in the Action, and
12 maintains that its NSF Fee and overdraft fee assessment practices and representations concerning
13 those practices complied, at all times, with applicable laws and regulations and the terms of the
14 account agreements with its members. BECU does not admit any liability or wrongdoing of any
15 kind, by this Agreement or otherwise. BECU has determined that entering into this Agreement is
16 in the best interests of its membership and has agreed to enter into this Agreement to avoid the
17 further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be
18 completely free of any further claims that were asserted or could possibly have been asserted in
19 the Action.

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

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

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

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

18 **XIX. NO PRESS RELEASE OR PUBLICITY**

19 106. Neither Party shall issue any press release or shall otherwise initiate press coverage
20 of the Settlement with the exception of language consistent with that contained in the Notices,
21 which Class Counsel may use on their websites or on firm resumes or declarations filed with the
22 Court. Neither Party shall make statements of any kind regarding the Settlement to any third
23 party, other than parties required to administer the Settlement, prior to filing a motion for
24 Preliminary Approval with the Court. The Parties may make public statements as necessary to
25 obtain Preliminary or Final Approval of the Settlement and Class Counsel will not be prohibited
26 from communicating with any person in the Settlement Class regarding the Actions or the
27 Settlement. Each Party shall refrain from disparaging any other Party publicly or taking any

1 action designed or reasonably foreseeable to cause harm to the public perception of another Party
2 regarding any issue related to the Actions or the Settlement.

3 **XX. MISCELLANEOUS PROVISIONS**

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

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

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

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

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

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

22 113. Governing Law. Except as otherwise provided herein, the Agreement shall be
23 construed in accordance with, and be governed by, the laws of the State of Washington, without
24 regard to the principles thereof regarding choice of law.

25 114. Counterparts. This Agreement may be executed in any number of counterparts,
26 each of which shall be deemed an original, but all of which together shall constitute one and the
27 same instrument, even though all Parties do not sign the same counterparts. Original signatures

1 are not required. Any signature or electronic signature submitted by facsimile or through email of
2 an Adobe PDF shall be deemed an original.

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

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

17
18 Beth E. Terrell
19 Email: bterrell@terrellmarshall.com
20 Ari Y. Brown
21 Email: abrown@terrellmarshall.com
22 Toby J. Marshall
23 Email: tmarshall@terrellmarshall.com
24 TERRELL MARSHALL LAW GROUP PLLC
25 936 North 34th Street, Suite 300
26 Seattle, Washington 98103
27 Telephone: (206) 816-6603
Facsimile: (206) 319-5450
Class Counsel

E. Michelle Drake
Email: emdrake@bm.net
Joseph C. Hashmall
Email: jhashmall@bm.net

1 BERGER & MONTAGUE, P.C.
2 43 SE Main Street, Suite 505
3 Minneapolis, Minnesota 55414
4 Telephone: (612) 594-5999
5 Facsimile: (612) 584-4470
6 *Class Counsel*

7 Walter M. Smith
8 Email: walter@smithdietrich.com
9 Steve E. Dietrich
10 Email: steved@smithdietrich.com
11 SMITH & DIETRICH LAW OFFICES PLLC
12 3905 Martin Way East, Suite F
13 Olympia, Washington 98506
14 Telephone: (360) 915-6952
15 *Class Counsel*

16 Fred B. Burnside
17 Tim Cunningham
18 MaryAnn Almeida
19 DAVIS WRIGHT TREMAINE LLP
20 920 Fifth Avenue, Suite 3300 Seattle, WA 98104-1610
21 Telephone: 206-757-8016
22 Fax: 206-757-7016
23 E-mail: fredburnside@dwt.com
24 E-mail: timcunningham@dwt.com
25 E-mail: maryannalmeida@dwt.com
26 *Counsel for BECU*

27 117. The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

118. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and counsel for BECU and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

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

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

8 121. Acknowledgment and Statement of Present Intent. BECU represents it would not
9 enter into this Agreement without assurances that Class Counsel have no current intention to
10 bring, file, resume, or prosecute any arbitration, litigation, or other legal proceedings against
11 BECU over the same or similar issues as those released by Plaintiffs in this Agreement. Class
12 Counsel represent and warrant they do not currently intend to bring, file, resume, or prosecute any
13 claims against BECU the same as or similar to those released in this Agreement, and they are
14 aware of no entities or persons who have a currently expressed intent to assert, bring, file, or
15 prosecute any claims against BECU arising from or related to BECU's assessment of NSF or OD
16 fees, or any other theory related to BECU's Account Agreements and Consumer Account
17 Disclosure, or any other theory under Washington's Consumer Protection Act, or under any
18 federal or state statute or common law principle. Further, Class Counsel do not currently intend
19 to solicit or actively seek entities, persons, or clients, or advertise availability for representation of
20 any person or entity, to pursue relief against BECU with respect to any claims that are the same as
21 or similar to those that arise from or are related to facts or legal theories alleged in the Action.

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

26 123. Independent Investigation and Decision to Settle. The Parties understand and
27 acknowledge that they: (a) have performed an independent investigation of the allegations of fact

1 and law made in connection with this Action; and (b) that even if they may hereafter discover facts
2 in addition to, or different from, those that they now know or believe to be true with respect to the
3 subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit
4 the binding nature of this Agreement. BECU has provided and is providing information that
5 Plaintiffs reasonably requested to identify Settlement Class members and the alleged damages they
6 incurred. All Parties recognize and acknowledge that they and their experts reviewed and analyzed
7 data for a subset of the time at issue and that they and their experts used extrapolation to make
8 certain determinations, arguments, and settlement positions. The Parties agree that this Settlement
9 is reasonable and will not attempt to renegotiate or otherwise void or invalidate or terminate the
10 Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to
11 resolve their disputes in connection with this Action pursuant to the terms of this Agreement now
12 and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect
13 notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement
14 shall not be subject to rescission or modification by reason of any changes or differences in facts or
15 law, subsequently occurring or otherwise.

16 124. Settlement Purpose of Agreement. This Settlement Agreement is governed by the
17 terms of Washington Evidence Rule 408 and is for settlement purposes only, and neither the fact of,
18 nor any provision contained in this Settlement Agreement or any attachments, nor any action taken
19 hereunder shall constitute, be construed as, or be admissible in evidence as, any admission of the
20 validity of any claim, defense or any fact alleged by any of the Parties in the Action or in any other
21 pending or subsequently filed action or of any wrongdoing, fault, violation of law, or liability of any
22 kind on the part of any Party, or admission by any Party of any claim, defense or allegation made in
23 the Action or any other action, nor as an admission by any of BECU, Plaintiffs, or Settlement Class
24 Members of the validity of any fact or defense asserted against them in the Action or any other
25 action. If the Court should for any reason fail to approve this Agreement in the form agreed to by
26 the Parties, decline to enter the Settlement Order and Final Judgment in the form described in this
27 Settlement Agreement, or impose any condition to approval of the settlement to which the Parties

1 do not consent, or if the Final Approval Order or Final Judgment are reversed or rendered void, then
2 (a) this Settlement Agreement shall be considered null and void, (b) neither this Settlement
3 Agreement nor any of the related negotiations shall be of any force or effect, and (c) all Parties to
4 this Settlement Agreement shall stand in the same position, without prejudice, as if the Settlement
5 Agreement had been neither entered into nor filed with the Court. Invalidation of any portion of this
6 Settlement Agreement shall invalidate this Settlement Agreement in its entirety unless the Parties
7 agree in writing that the remaining provisions shall remain in full force and effect. This includes
8 that the provisional certification of the Settlement Class shall have no bearing in deciding whether
9 the claims asserted in the Action are or were appropriate for class treatment in the absence of
10 settlement. If this Agreement terminates or is nullified, the provisional class certification shall be
11 vacated by its terms, and the Action shall revert to the status that existed before the execution of this
12 Settlement Agreement. Upon nullification of this Settlement Agreement, Plaintiffs shall be free to
13 pursue any claims available to them, and BECU shall be free to assert any defenses available to it,
14 including, but not limited to, denying the suitability of this case for class treatment. Nothing in this
15 Agreement shall be argued or deemed to estop any Party from asserting such claims or defenses.
16 In the event the Court should for any reason fail to approve this Settlement Agreement in the form
17 agreed to by the Parties, decline to enter the Final Approval Order or Final Judgment in the form
18 described in this Settlement Agreement, or impose any condition to approval of the settlement to
19 which the Parties do not consent, or if the Final Approval Order or Final Judgment are reversed or
20 rendered void, the Parties will negotiate in good faith to address the issues raised by said events.

21 125. Assignment; Third Party Beneficiaries. None of the rights, commitments, or
22 obligations recognized under this Settlement Agreement may be assigned by any member of the
23 Settlement Class without the express written consent of the other Parties.

24 126. Communications. Any communications to the Parties relating to this Settlement
25 Agreement shall be sent to all counsel signing this Agreement on behalf of the Parties.

26 127. Calculation of Time. All time listed in this Agreement is in calendar days. Time is
27 calculated by (a) excluding the day of the event that triggers the period; (b) counting every day,

1 including intermediate Saturdays, Sundays, and legal holidays; and (c) including the last day of
2 the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run
3 until the end of the next day that is not a Saturday, Sunday, or legal holiday.

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

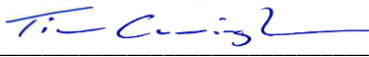
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10 DATED this 30th day of April, 2021.

11 BOEING EMPLOYEES' CREDIT UNION

12
13 By _____

14 Its _____

15
16 Davis Wright Tremaine LLP
17 *Attorneys for Defendant*

18 By  _____

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